

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Jasper County

Honorable Roger M. Young, Circuit Court Judge

ANEISHA YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001386

APPENDIX

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GRABSKI - DIRECT - HOLLEN

1 a.m., we have Tower 290, Sector 3, which is now facing
2 away from the incident location, in the opposite -- not
3 the opposite direction, but a more southern direction
4 than Sector 1 on the same tower.

5 Q. Okay. And let's go to the next slide. What are
6 we looking at here?

7 A. This is to show the progression. This, to me,
8 would indicate, in my expert opinion, would indicate
9 movement of the phone. So when you pass towers and
10 they're not being utilized, and then you have another
11 tower down here, and as you can see, the time
12 progression, 12:34 and 12:54, two [sic] minutes later
13 it's on the other end of this tower. And then, you have
14 a few minutes later coming back down. What is that six
15 minutes later? coming back down to Tower 252, Sector 1.
16 So to me, that shows me that this phone is likely moving
17 on I-95 in a southern direction.

18 Q. All right. Let's go to the next slide. And what
19 are we looking at here?

20 A. Again, the progression of the phone of where the
21 phone was hitting these towers or connecting to these
22 towers during the progression. Here, we have 1:02 a.m.,
23 Tower 252, Sector 1. This is I-95 right here, headed
24 toward -- headed toward Hardeeville. And then, at 1:11
25 a.m., we have Tower 299, Sector 3, and it's -- now, it

1 looks to be off of 95.

2 Q. Let's go to the next slide. And again, this is
3 just progression of the phone? Is that right?

4 A. Yes.

5 Q. And where is Tower 219 located? Is that in --

6 A. 219? Somewhere near Okatie, right here. We have
7 a little area, but that's going to be between Hilton
8 Head and Ridgeland.

9 Q. Okay. Let's go to the next slide. And what are
10 we looking at there?

11 A. Again, just another progression, just kind of bit
12 by bit here. I wanted to leave the last tower used and
13 then the next tower used just in the same frame just so
14 we can, you know, a little easier to look at, I suppose.
15 But 1:16 a.m. Tower 219, Sector 2. And then, 2:06,
16 nearly an hour later here at 291, Sector 2 coming down
17 out of Okatie, it looks like, and then back toward
18 Hilton Head Island.

19 Q. All right. And the next slide, please. And
20 again, this is -- you can show the sector utilized.
21 What does this indicate to you?

22 A. So this is a great example of how a cell phone
23 can, you know, if it's in the same area as another
24 tower, okay, it could use different towers. So as you
25 see here, 2:06 to 2:10 a.m., we have Tower 291, Sector

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GRABSKI - DIRECT - HOLLEN

1 2. At 2:12, we have Tower 223, Sector 1 utilized. And
2 then, back again, 291 Sector 2, at 2:13. So it went
3 from 291 here, down to 212 -- or sorry -- 223, and then
4 back to 291. That's very common, especially when
5 there's a lot of towers in the area. You know,
6 sometimes when you make a call, as I mentioned before,
7 the traffic or the signal can be stronger to another
8 tower, and it's going to be the path of least
9 resistance, whichever tower is most available at the
10 time.

11 Q. Okay. Go to the next slide. And again, that's
12 just the same thing. Let's skip that one and go to the
13 next one. And where is that tower located?

14 A. That tower is -- is closer toward Bluffton here.

15 Q. All right. Go to the next slide, please. And
16 that's, again, time period showing. At what point does
17 this cell phone begin utilizing Tower 253, which you
18 already testified to is on Hilton Head?

19 A. Let's see. 2:38 a.m. is the first connection that
20 I -- that is seen on that cell site, the CDR, the
21 records.

22 Q. Okay. And looks like that's where you end your
23 analysis. How long is that phone utilizing that tower?

24 A. Until 4:31 p.m. the following Day -- or that Day.

25 Q. All right, Mr. Grabski. Thank you. Go ahead and

1 take a seat one more time for me.

2 A. Thank you.

3 Q. Now, again, can you say exactly where that phone
4 was located in relation to a tower?

5 A. I cannot say exactly where it was, just based on
6 the -- it's all based on the sector of the tower.

7 Q. And you have no idea who had that phone in their
8 possession, do you?

9 A. That's correct. I do not.

10 Q. You don't know who that phone belonged to, do you?

11 A. No. At that time, I could have been in anybody's
12 possession.

13 Q. All you can say is that the phone is utilizing
14 certain towers at certain times?

15 A. That's absolutely right.

16 Q. Let me ask you this. In your expert opinion, is
17 there any reasonable explanation that a phone could be
18 utilizing a Hilton Head -- stop. Back up. I'm going to
19 withdraw that question. Do you know approximately how
20 many towers there are between Hilton Head and Ridgeland?

21 A. Approximately, I would say upwards of fifteen to
22 twenty towers. Again, the further you pan out over, the
23 more towers there's going to be, so.

24 Q. Okay. So there are fifteen to twenty towers, you
25 believe, between Hilton Head and Ridgeland. In your

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GRABSKI - CROSS - PLEXICO

1 expert opinion, is there any possible way, or is there
2 any way, that a cell phone in Ridgeland can utilize a
3 Hilton Head tower?

4 A. No. Not based on that analysis, with as many
5 towers there between. No, that's not possible.

6 Q. How about vice-versa? Could a phone on Hilton
7 Head utilize the Ridgeland tower?

8 A. No. I -- I don't believe so.

9 SOLICITOR HOLLEN: I don't have anything further
10 for you, Mr. Grabski. Answer any questions Mr. Plexico
11 has.

12 THE COURT: Mr. Plexico.

13 AGENT ERIC GRABSKI

14 CROSS-EXAMINATION, BY MR. PLEXICO:

15 Q. Okay. They could use a nearby tower, correct?

16 A. Certainly. When you say *nearby*, nearby to the
17 phone.

18 Q. Nearby tower. Instead of the one they keep
19 harping on, it could have used one of the other towers
20 around?

21 A. Around --

22 Q. Is that not correct? I understand Hilton Head
23 Island's a good distance away.

24 A. Certainly.

25 Q. But once you decrease that distance, then it could

1 become -- could have been transferred from one of the
2 other towers, if they had a problem accepting calls,
3 correct, because they're not all up and functional one
4 hundred percent?

5 A. Yes, yeah.

6 Q. Okay.

7 A. So within a short distance, yes.

8 Q. All right. And Ridgeland is not New York City,
9 correct?

10 A. That is correct.

11 Q. And we're a small little southern town?

12 A. That's right.

13 Q. Okay. And what's it, about a mile, a mile and a
14 quarter in circumference, something like that?

15 A. I didn't measure it, but I trust it. I would
16 trust that.

17 Q. Okay. You don't have any doubts about that?

18 A. Certainly not.

19 Q. Okay. All right. All right. So it wouldn't hard
20 -- wouldn't be hard not to be in Ridgeland, correct?

21 A. When you say that, physically --

22 Q. To use your phone and to not physically be in
23 Ridgeland. You may be using the Ridgeland tower, but it
24 would be quite easy not to be in Ridgeland, right?

25 A. When we say Ridgeland tower, again, I -- I don't

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GRABSKI - CROSS - PLEXICO

1 really base my towers on the city or the town. It's the
2 tower number and the sector.

3 Q. I mean, but you understand what my point is?

4 A. I understand what your point is. Yeah, you could
5 be outside town limit and still utilize Tower 208. Yes,
6 you could be outside of the town limits, and still
7 utilize Tower 208.

8 Q. Easily, correct?

9 A. I don't know how easy that would be, but yes, it
10 is possible.

11 Q. If you have a small town, and that covers more
12 than the town, then, that would be easy. Okay. And it
13 does cover more than the town?

14 A. I can't -- I can't testify to that. I don't know
15 exactly how -- I -- I didn't measure the energy of the
16 tower, so I can't testify to that.

17 Q. Okay.

18 MR. PLEXICO: I don't have anything further.

19 THE COURT: Anything further?

20 SOLICITOR HOLLEN: Nothing further, your Honor.

21 THE COURT: All right. Ladies and gentlemen, now
22 is a very good time -- you may step down, sir. Any
23 objection to this witness being excused?

24 SOLICITOR HOLLEN: None from the State, your Honor.

25 THE COURT: Mr. Plexico?

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BY THE COURT

1 MR. PLEXICO: No, your Honor.

2 THE COURT: Agent, you're excused. Thank you, sir.

3 A. Thank, your Honor.

4 BY THE COURT:

5 THE COURT: All right. Ladies and gentlemen, it is
6 almost 1:00 o'clock. I would like, if at all possible,
7 to get a quick lunch today. I am asking you all be back
8 in the jury room at 2:00 o'clock. Is that acceptable?
9 You all okay? If you're running a few minutes late,
10 don't worry. It's all right. You know I'll be looking
11 for you, but don't worry too much. You understand, I
12 promise you, I'm not that much of a taskmaster. You can
13 just be back at about 2:00 o'clock, 2:05. So we're
14 going to go ahead and continue with the case, and we'll
15 kind of figure out where we're going from here.

16 I realize we're probably running now a little bit
17 slower. We were ahead before. Now we're running a
18 little bit slow. So I say that for what it's worth.
19 I'm going to talk to the lawyers over the lunch hour to
20 kind of figure out where we're going from here. Okay?

21 Go grab a bite to eat. Don't discuss this case.
22 Don't do any independent research. Don't read anything.
23 Don't listen to anything, watch anything about it. Have
24 a bite. I'll see you all back here at 2:05. Okay?
25 Thank you.

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BY THE COURT

1 JURORS LEAVE COURTROOM 12:59 P.M.

2 MR. PLEXICO: I want to make this a part of the
3 Court's record.

4 THE COURT: Make it a part of the Court's record.

5 ITEM IDENTIFIED AS MOTION TO EXCLUDE

6 TEXT MESSAGES AS HEARSAY

7 MARKED COURT'S EXHIBIT NUMBER 8.

8 OFF THE RECORD 1:00 P.M.

9 BACK ON THE RECORD 2:28 P.M.

10 THE COURT: Please be seated. All right. Is the
11 State ready?

12 SOLICITOR HOLLEN: Yes, your Honor.

13 THE COURT: Defense ready?

14 MR. PLEXICO: Yes, your Honor.

15 THE COURT: Let's bring the jury in.

16 JURORS ENTER COURTROOM 2:29 P.M.

17 THE COURT: Welcome back, ladies and gentlemen.
18 We're going to go ahead and continue with the testimony.
19 Mr. Hollen, Call your next witness.

20 SOLICITOR HOLLEN: Andrew Garinger.

21 MADAM CLERK: Will you raise your right hand and
22 place your left hand on the *Bible*? Is the testimony
23 you're about to give the Court the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 ANDREW GARINGER: I do.

1 MADAM CLERK: Go around and have a seat in the
2 witness chair.

3 ANDREW GARINGER

4 DIRECT EXAMINATION BY SOLICITOR HOLLEN:

5 Q. Good afternoon, Mr. Garinger.

6 A. Good afternoon.

7 Q. Who do you work for?

8 A. I work for the Beaufort County Sheriff's Offices,
9 Forensic Services Laboratory.

10 Q. And what do you do in the Forensic Services
11 Laboratory for the Beaufort County Sheriff's Office?

12 A. I'm a forensic DNA analyst.

13 Q. What does your job entail as a forensic DNA
14 analyst?

15 A. So we accept evidence, analyze it for DNA, write
16 reports on our findings, and then sometimes testify in
17 court.

18 Q. Does your job require you to have any specialized
19 training or experience?

20 A. Quite a bit, yes.

21 Q. Can you just describe a little bit about that for
22 us. For instance, how long have you been a DNA analyst?

23 A. A little over eleven years now. I've been with
24 the Beaufort County Sheriff's Office for a little over
25 three years, and I previously worked for the Illinois

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GARINGER - VOIR DIRE - PLEXICO

1 State Police for about eight years.

2 Q. Okay. And what about training in DNA or your
3 educational background?

4 A. I've got a bachelor of science in biochemistry and
5 molecular biology. I have a master's in forensic
6 science and quite a bit of training that went into all
7 of that. And a year and a half with the Illinois State
8 Police. And then, another four to five months with
9 Beaufort County lab.

10 Q. Have you ever been qualified in state court as an
11 expert in DNA?

12 A. I have. I've been qualified in Cook County,
13 Illinois, and I've testified a number of times in
14 Beaufort County as well.

15 SOLICITOR HOLLEN: Your Honor, at this time State
16 would offer Mr. Garinger as an expert in the field of
17 DNA analysis.

18 THE COURT: Any voir dire?

19 MR. PLEXICO: Briefly, your Honor.

20 ANDREW GARINGER, VOIR DIRE

21 BY MR. PLEXICO:

22 Q. How many times have you testified in court, sir?

23 A. The last time I looked I believe it was seventeen
24 in total.

25 Q. And you have been in this field working for law

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GARINGER - DIRECT - HOLLEN

1 enforcement for how many years?

2 A. A little over eleven.

3 Q. And you said you testified fifteen times?

4 A. Seventeen, I believe.

5 Q. Okay.

6 MR. PLEXICO: I don't have any -- I believe he's
7 qualified, your Honor.

8 THE COURT: Ladies and gentlemen, in this case Mr.
9 Garinger has been qualified as an expert in the field of
10 DNA analysis. That allows him to give his opinion and
11 the reasons for his opinion. Again, that's for you to
12 use as you see appropriate, and as compared to other
13 evidence in the case.

14 SOLICITOR HOLLEN: Thank you, your Honor.

15 AGENT ANDREW GARINGER

16 CONTINUE DIRECT EXAMINATION

17 BY SOLICITOR HOLLEN:

18 Q. Mr. Garinger, I'm about to hand you what's been
19 marked for identification as State's Exhibit 12 and 13,
20 previously identified by Lieutenant Litchfield.

21 SOLICITOR HOLLEN: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 BY SOLICITOR HOLLEN:

25 Q. Can you take a look at this for me.

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GARINGER - DIRECT - HOLLEN

1 A. Thank you.

2 Q. Mr. Garinger, do you recognize those items?

3 A. I do.

4 Q. And what are they?

5 A. These are the casings that I analyzed for this
6 case.

7 Q. When you received those casings, cases, what
8 condition were they in? Were they still sealed?

9 A. They were.

10 Q. Would you have tested them if they weren't in a
11 sealed condition?

12 A. No, I would not.

13 Q. All right. And did you subsequently perform tests
14 on those items?

15 A. I did.

16 Q. All right. And does it look like they've been
17 tampered with, or were they tampered with before you did
18 anything with them?

19 A. I mean, I can see my seals on them and the
20 stickers that I added, but otherwise, it doesn't appear
21 that they've been changed.

22 Q. Okay.

23 SOLICITOR HOLLEN: Your Honor, at this time I would
24 ask to admit State's 12 and 13 into evidence.

25 MR. PLEXICO: I have no objection, your Honor.

1 THE COURT: Without objection.

2 ITEM IDENTIFIED AS SIX .22 SHELL CASINGS
3 MARKED STATE'S EXHIBIT NUMBER 12
4 ADMITTED AS EVIDENCE.

5 ITEM IDENTIFIED AS TEN SHELL CASINGS
6 MARKED STATE'S EXHIBIT NUMBER 13
7 ADMITTED AS EVIDENCE.

8 BY SOLICITOR HOLLEN:

9 Q. Okay. So Mr. Garinger, you've identified those
10 items. What would you have done when you received
11 those?

12 A. So with firearm casings, usually what I'll do is
13 I'll group them, depending on how they're found, what
14 the caliber and make are. I'll group them in similar
15 groups, and then all of the casings that are similar, I
16 will swab the exterior of them with a wet swab in order
17 to pick up any DNA that might have been left behind on
18 them.

19 Q. And is it, in your position, do you frequently
20 examine shell casings for DNA?

21 A. Yes.

22 Q. In regards to those specific cases, were you able
23 to extract any DNA that could be used for analysis?

24 A. I was not.

25 Q. And when I say that, does that mean there's no DNA

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GARINGER - DIRECT - HOLLEN

1 on them? Can you explain that a little bit.

2 A. Not necessarily. I don't recall specifically what
3 the amount was that -- that was found in this case, but
4 there's definitely a threshold between zero and some
5 number that we know we're not going to get a usable
6 result out of. I want to say two nanograms. I'm sorry,
7 not two nanograms. Twenty peak grams or so is roughly
8 where we know we're just going to get noise and nothing
9 useful. In this case, I was not able to get enough that
10 it would be useful for our processes.

11 Q. Okay. So you said you fairly frequently, I guess,
12 examine shell casings for DNA. Is it common for you to
13 be able to extract usable DNA from a shell case?

14 A. It's not common. It happens every once in awhile,
15 but it -- it's uncommon enough to be remarkable when it
16 does happen.

17 Q. So it is remarkable when you're able to get DNA
18 off a shell case, what you just said?

19 A. Correct.

20 Q. What is it about shell cases that make them
21 difficult for you to extract DNA or any kind of useful
22 material from?

23 A. There's a couple different features of them that
24 make them more difficult than a typical item. First of
25 all, we're looking for touch DNA, which is always hit or

1 miss, no matter what type of item we're talking about.
2 You never know how much DNA is going to be left behind
3 through just casual contact. Additionally, shell
4 casings are small, not working with much surface area,
5 even when you group a bunch of them together. So you
6 know, there can only be so much DNA there. They're non-
7 porous, meaning they're smooth metal, so what DNA may or
8 may not have been deposited there isn't likely to stick.

9 And then, in the process of firing a casing, they
10 are usually heated up, and then ejected out into, sort
11 of, the controlled environment. So that heating process
12 of firing and then falling to the ground and sitting out
13 in the sun and humidity, if there was DNA there, a good
14 deal of it ends up getting destroyed.

15 Q. Gotcha. Let me ask you this. Have you read any
16 studies, are you familiar with any scientific analysis
17 about the properties of the shell cases that are made
18 out of brass?

19 A. I have not read the study myself. I was recently
20 told about a study where someone looked into whether
21 casings made out of different metals retained more or
22 less DNA. And I -- the finding that I was told about
23 was that brass specifically tends to hold onto less DNA
24 than other materials that make up shell casings.

25 Q. And that's just because, and just as far as you

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GARRINGER - CROSS - PLEXICO

1 know, the property of brass itself?

2 A. Yeah. I'd have to speculate on that, but yeah.
3 It's probably because of the metal. Some metals tend to
4 exhibit -- are known to exhibit antibacterial
5 properties. I would imagine that holds true of human
6 cellular material as well.

7 SOLICITOR HOLLEN: Court's indulgence, your Honor.
8 Mr. Garinger, that's all I have for you. Please answer
9 questions from Mr. Plexico.

10 THE COURT: Mr. Plexico.

11 ANDREW GARINGER

12 CROSS-EXAMINATION, BY MR. PLEXICO:

13 Q. And you never examined any DNA from my client,
14 correct?

15 A. No, I didn't examine standards from anyone.

16 Q. Okay. And you have no -- there's no DNA that you
17 have discovered that's useful in this case?

18 A. Correct.

19 Q. Okay.

20 MR. PLEXICO: I don't have anything further.

21 THE COURT: Okay. Anything further?

22 SOLICITOR HOLLEN: He may be excused, your Honor.

23 THE COURT: Sir, you may be excused. Thank you.

24 A. Thank you.

25 THE COURT: Call your next witness.

1 SOLICITOR HOLLEN: Marie Powell.

2 MADAM CLERK: Raise your right hand and place your
3 left hand on the *Bible*. Do you swear the testimony
4 you're about to give the Court is the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 MARIE POWELL: Yes, ma'am.

7 MADAM CLERK: Adjust your chair and this mic.

8 MARIE POWELL

9 DIRECT EXAMINATION BY SOLICITOR HOLLEN:

10 Q. Ms. Powell, you okay?

11 A. Um-hmm.

12 Q. You're moving a little slow. Are you feeling all
13 right?

14 A. Yeah, I'm okay.

15 Q. Are you injured in some way?

16 A. Yeah, I just had a back surgery a couple weeks
17 ago.

18 Q. Okay. You're not in any pain? Are you in any
19 pain right now?

20 A. No, I'm okay.

21 Q. Marie, you know why you're here today, right?

22 A. I do.

23 Q. Do you know the defendant in this case, Aneisha
24 Young?

25 A. I do.

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MARIE POWELL - DIRECT - HOLLEN

1 Q. How do you know her?

2 A. I was incarcerated with her in Jasper County
3 Detention Center.

4 Q. Do you know about how long the two of you were
5 incarcerated together?

6 A. On two separate occasions. One for about forty-
7 five days, and then a separate one for about three
8 months.

9 Q. During your time incarcerated with Ms. Young, did
10 you have the opportunity to speak with her?

11 A. I did.

12 Q. And at some point, how did you get in contact with
13 the Ridgeland Police Department?

14 A. I talked to Lieutenant -- or Detective Litchfield.

15 Q. All right. Now, did Detective Litchfield reach
16 out to you and find you?

17 A. No, I reached out to him.

18 Q. Okay. Why did you do that?

19 A. Because I had some information that I thought was
20 relevant to what was going on.

21 Q. And you subsequently met with him on a few
22 occasions. Is that right?

23 A. I did.

24 Q. And did you provide him with this information?

25 A. I did.

1 Q. Okay. Marie, how did you know Davonte Freeman?

2 A. I met him. He lived in some apartments that I
3 used to stay in.

4 Q. Okay.

5 A. And we all kind of knew each other from like the
6 neighborhood area.

7 Q. So is it safe to say that you were friendly with
8 Davonte?

9 A. Yeah.

10 Q. Were you pretty close to him?

11 A. We weren't like best friends, but we knew each
12 other. We were cordial. We spoke, you know. We
13 wouldn't hang out just us, but like a group of people we
14 would both be kind-of-there type thing.

15 Q. All right. Is there any other connection you have
16 to him? For instance, did you used to date a person
17 named Anthony Austin?

18 A. I did.

19 Q. Did Anthony Austin have any connection with Mr.
20 Freeman; do you know?

21 A. He did. He used to date Davonte's mother.

22 Q. Okay. So before he dated you, he dated Davonte's
23 mother?

24 A. He did.

25 Q. All right. So you knew Davonte, you had seen him

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MARIE POWELL - DIRECT - HOLLEN

1 around, you'd lived in the same apartment.

2 A. Um-hmm. Yes.

3 Q. Did he ever -- did he ever stay with you in your
4 apartment?

5 A. Yes. We -- a guy named Eric, I lived there, and
6 then Davonte and his girlfriend moved in there.

7 Q. Um-hmm.

8 A. So we were all kind of dwelling there together for
9 a few weeks, maybe a month or so.

10 Q. Who's Eric?

11 A. Eric Orr. He was a guy that lived in the
12 apartment.

13 Q. Okay. I just want to make sure, because there was
14 a co-defendant named Eric.

15 A. No.

16 Q. All right. Ms. Powell, when you were incarcerated
17 with Ms. Young, was she aware initially of your
18 connection to Davonte Freeman? Do you know?

19 A. I don't believe she knew right away. I used to
20 talk to Anthony Austin on the phone, because he was my
21 boyfriend at the time.

22 Q. Gotcha.

23 A. And I believe she overheard conversations, and
24 approached me, you know, about some things, you know,
25 that was -- Anthony didn't have the best reputation, so

1 I was approached about Anthony maybe doing something for
2 her.

3 Q. All right. Okay. So you got some information.
4 Tell me about how this whole thing started. How did you
5 start talking to Ms. Young and how did all this come
6 out?

7 A. We were -- at that time, were in an open pod. We
8 were in B-5. It wasn't the single cells; it was just a
9 big open area.

10 Q. Um-hmm.

11 A. So I mean, it wasn't -- I mean, you could visit.
12 It wasn't like, you know, you had to go into a cell. I
13 mean, your bed was there. And at the time, I was three
14 beds down from her.

15 Q. Okay.

16 A. And once she realized who I was and who I knew, we
17 just kind of started speaking back and forth about the
18 situation. As she got more comfortable with me, we
19 talked more and got more in-depth about things.

20 Q. So did all of the information that you learned
21 come out at one time, or was -- did this take --

22 A. No, it was over the course of a few days. It
23 wasn't like, you know, a-spill-your-guts-all-at-one-
24 time, no.

25 Q. Okay. So you requested to speak to Lieutenant

1 Litchfield. Is that right?

2 A. Yes, sir.

3 Q. Why did you specifically request Lieutenant
4 Litchfield?

5 A. Because I -- I was told that he was the detective
6 on the case.

7 Q. All right. So you informed someone that got in
8 touch with Lieutenant Litchfield, and you went and spoke
9 to him?

10 A. I did.

11 Q. And did you provide him with the information that
12 I'm about to ask you about relating to Ms. Young and the
13 murder of Davonte Freeman?

14 A. I did.

15 Q. Okay. So let's just jump into it, Marie.

16 A. Um-hmm.

17 Q. What is the first information that you were
18 approached with from Ms. Young, and -- well, let's just
19 start there.

20 A. Kind of about the -- the night at Siesta, the
21 night that everything happened. I was not there, so.
22 It was kind of, you know, about Kwame, which was the
23 brother, and Davonte coming to this guy named Seabrooks'
24 apartment.

25 Q. Um-hmm.

1 A. Her being there. Kwame, not really being
2 responsive to her; she wasn't sure why. And it just
3 kind of went into the series of events that night. And
4 basically, I guess, the owners of the property came and
5 asked Davonte to leave, and that's when Davonte and
6 Kwame, I guess, said they were going to go to the store.

7 Q. Um-hmm.

8 A. And so.

9 Q. And so, you learned that the owners of the Siesta
10 came and asked Davonte to leave. Do you know how that
11 came about? Did you guys discuss that at all?

12 A. I believe someone called. I'm not sure.

13 Q. Okay.

14 MR. PLEXICO: This is hearsay, your Honor. Not
15 going to my client, I would object as hearsay, your
16 Honor.

17 SOLICITOR HOLLEN: Your Honor, I'm asking --

18 THE COURT: If she knows.

19 SOLICITOR HOLLEN: And I'm asking her what she's
20 told her. If this is what she told her, this is not
21 hearsay; this is statements from --

22 THE COURT: From Defendant?

23 SOLICITOR HOLLEN: Yes.

24 THE COURT: Okay.

25 SOLICITOR HOLLEN: That's why I'm --

1 BY SOLICITOR HOLLEN:

2 Q. You were not at the Siesta that night?

3 A. I was not.

4 Q. Do you have any independent information about
5 anything you saw with your own eyes that happened that
6 night?

7 A. I do not.

8 Q. So any information you have, where did it come
9 from?

10 A. Aneisha Young.

11 Q. Okay. I should say, at the time that you spoken
12 to Lieutenant Litchfield.

13 A. Um-hmm. Right.

14 Q. I don't know what information you've gained since
15 then. But all right. So when you guys were talking
16 before the first time you went and spoke to Lieutenant
17 Litchfield, did she indicate to you anything about a
18 weapon or a caliber or anything like that? Do you
19 remember?

20 A. On the first time?

21 Q. Yes. The first -- before you went the first time,
22 did you know anything about a gun that was used?

23 A. Not at that time, no.

24 Q. You didn't know anything at that time?

25 A. No. It was the next.

1 Q. Was it the next time?

2 A. Yeah.

3 Q. What did she tell you about a .9 millimeter
4 handgun?

5 A. That is the gun that Eric possessed.

6 Q. Okay. And at the time you gained that
7 information, according to Ms. Young, was she under the
8 impression that that was the gun that killed Davonte
9 Freeman?

10 A. Yes.

11 MR. PLEXICO: That's leading. I'll object, your
12 Honor.

13 THE COURT: Don't lead.

14 SOLICITOR HOLLEN: Okay. I'll rephrase the
15 question, if you like.

16 BY SOLICITOR HOLLEN:

17 Q. What did she tell you about the .9 millimeter
18 handgun and who had it?

19 A. That Eric was the one who possessed the .9
20 millimeter handgun.

21 Q. Okay. And with that information, did you pass it
22 on to Lieutenant Litchfield?

23 A. I did.

24 Q. And what did he tell you in response? Did he give
25 you some information in response?

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1 A. Right. That it was actually the .22 handgun that
2 killed Davonte, which is the gun that she possessed.

3 Q. All right. And at that point, did you know
4 anything about a .22?

5 A. No.

6 Q. Okay.

7 A. No.

8 Q. So --

9 A. It was later whenever I had found out that
10 information about the .22. That was the one that
11 actually killed Davonte.

12 Q. Okay.

13 A. Her not knowing I was speaking to Lieutenant
14 Litchfield, I went back, and that's how I gained the
15 information about the .22 handgun.

16 Q. Okay. Now, you indicated that Ms. Young
17 approached you. What did she do in asking you about
18 Anthony Austin?

19 A. How much would Anthony Austin charge to take out
20 Kwame, because he was the only eyewitness.

21 Q. When you say *take out*, what did you take that to
22 mean?

23 A. Kill Kwame.

24 Q. All right. Why would she approach you and ask you
25 about Anthony Austin killing someone?

1 A. Anthony Austin doesn't have the best reputation.

2 Q. Okay. What would have given her the impression
3 that you -- well, you were dating Anthony Austin at the
4 time, right?

5 A. Um-hmm.

6 Q. So she approached you with this, and what did you
7 do?

8 A. I -- I kind of used it to my benefit --

9 Q. Okay.

10 A. -- and kind of got more in-depth about what
11 happened that night at the Siesta.

12 Q. What do you mean *use it to your benefit*?

13 A. I basically made it seem like that Anthony didn't
14 really care for Kwame, just to see why I could get her
15 to go with the information.

16 Q. Okay.

17 A. Like, to see where she would go as far as what
18 happened that night, and how far she would go.

19 Q. And it was after that that she asked about Anthony
20 Austin taking out Kwame?

21 A. Yes.

22 Q. All right. So had spoke with Lieutenant
23 Litchfield, you said?

24 A. I did.

25 Q. And he gave you some information about a .22?

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MARIE POWELL - DIRECT - HOLLEN

1 A. He did.

2 Q. You went back?

3 A. Yes.

4 Q. Into jail?

5 A. I did.

6 Q. Did you continue -- where did -- where did Ms.
7 Young -- where'd you tell her you were?

8 A. I told her I was up front with Medical.

9 Q. So armed with the information about the .22, what
10 did you do next when you went back? Did you continue to
11 speak with her?

12 A. Yes, I continued to speak with her. I didn't
13 like, go back and immediately -- you know, it was kind
14 of like the course of a couple days, just kind of
15 hinting around asking questions.

16 Q. All right. And at some point, did she talk to you
17 about a .22 caliber gun that was used?

18 A. Yes, that she possessed that gun.

19 Q. Okay. Did she indicate to you what happened to
20 that gun after Davonte Freeman's murder?

21 A. No. It was said that it was sold to another guy.

22 Q. Did she tell you that?

23 A. Yes.

24 Q. Did she tell you who?

25 A. It's a nickname, Tome. I don't know the real

1 name.

2 Q. Okay. So she indicated to you that she -- what
3 did she do with the gun? Gave it to him? Sold it to
4 him?

5 A. Sold it to him was the terms that she used.

6 Q. So she indicated she sold the gun to a guy named
7 Tome?

8 A. Um-hmm.

9 Q. At that point, did she indicate to you that she
10 was aware that it had murdered Davonte Freeman?

11 A. No.

12 Q. No? So all right. So she sold the gun to Tome.
13 Did you go back and talk to Lieutenant Litchfield after
14 that?

15 A. I did.

16 Q. And did you relay any information to him?

17 A. I did.

18 Q. Did you relay to him that she had sold the gun to
19 a guy named Tome?

20 A. I did.

21 Q. Okay. The second time you spoke to him, where
22 were you? Do you recall?

23 A. We were at the Mag -- I think it's at the
24 Magistrate building. It's that like a water building
25 and a courthouse together in one.

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1 Q. Were you in court that day?

2 A. Yes, I had court that day.

3 Q. All right. So what happened? How did that come
4 about? How did -- how did you talk to him the second
5 time?

6 A. Because he was -- Detective Litchfield was there.

7 Q. Okay.

8 A. Yeah. And he asked the judge that was presiding
9 that day if I could speak with him in that judge's
10 office.

11 Q. Okay.

12 A. And that's how him and I got to speak that time.

13 Q. All right. Did you request to speak with him, or
14 did he request to speak with you that time?

15 A. He requested to speak with me at that time.

16 Q. And so, you provided him with that little bit of
17 information about the gun?

18 A. Yes.

19 Q. Okay. That day, do you recall Lieutenant
20 Litchfield speaking on -- speaking to the judge on your
21 behalf?

22 A. Yes.

23 Q. What did he do for you?

24 A. Nothing. He just asked the judge to give me time
25 to pay my tickets.

1 Q. And did you get that time?

2 A. I did.

3 Q. All right. Did you end up paying your tickets?

4 A. I did not.

5 Q. So what happened to you after that?

6 A. I ended up -- that's when I spent the three months
7 in jail.

8 Q. Were you incarcerated at that point for that whole
9 three months in the Jasper County Jail?

10 A. No, they moved us to the Beaufort County Jail,
11 because the Jasper County Jail ran out of room for the
12 males, so they housed the females in the Beaufort County
13 Detention Center.

14 Q. Gotcha. So you were in jail in Beaufort County?

15 A. I was.

16 Q. For three months?

17 A. I was.

18 Q. All the females from Jasper County were moved?

19 A. We were.

20 Q. And was Ms. Young moved as well?

21 A. Yes.

22 Q. Okay. So you were in jail for awhile. At some
23 point, did you request to speak to Lieutenant Litchfield
24 again?

25 A. Yes.

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MARIE POWELL - DIRECT - HOLLEN

1 Q. And did you speak with him again at a later date?

2 A. I did. It was the last time I spoke with him.

3 Q. That was the last time you spoke with him. Had
4 you learned a little bit more information in this case?

5 A. I did.

6 Q. And do you remember what that information was?

7 A. That one of the guard's brothers was roommates
8 with Ms. Young's co-defendant.

9 Q. Okay. So is that a guard at the Jasper --

10 MR. PLEXICO: That would be hearsay, your Honor,
11 because, if she's in jail, she has no way of knowing
12 that, and I object to that. That's hearsay. I move to
13 strike and ask for a curative instruction.

14 BY SOLICITOR HOLLEN:

15 Q. And who -- where did you get that information?

16 A. Aneisha Young.

17 Q. Okay. So.

18 SOLICITOR HOLLEN: Can I continue, your Honor?

19 THE COURT: You may.

20 SOLICITOR HOLLEN: Thank you.

21 BY SOLICITOR HOLLEN:

22 Q. Did she indicate to you that anything about Peanut
23 or Eric Darien? Do you remember?

24 A. Just that she was -- he was the roommate of the
25 brother. And I believe she had been corresponding with

1 Peanut through the guard's brother.

2 MR. PLEXICO: That's speculation. I object to
3 that. That's not proper, your Honor. That's not what
4 my client said.

5 SOLICITOR HOLLEN: I'll withdraw the question.

6 MR. PLEXICO: I'd ask for a curative instruction,
7 your Honor.

8 THE COURT: All right. Ladies and gentlemen, just
9 strike that last question and answer. It wasn't
10 appropriate.

11 BY SOLICITOR HOLLEN:

12 Q. Did Ms. Young tell you that she planned on
13 talking?

14 MR. PLEXICO: That's leading, your Honor. I
15 object.

16 SOLICITOR HOLLEN: *Did Ms. Young tell you, that's*
17 *leading?*

18 BY SOLICITOR HOLLEN:

19 Q. Did Ms. Young tell you that she planned on talking
20 to law enforcement?

21 A. Yes.

22 Q. And what did she --

23 SOLICITOR HOLLEN: Can I continue?

24 THE COURT: You may.

25 SOLICITOR HOLLEN: Thank you.

1 BY SOLICITOR HOLLEN:

2 Q. Did she -- what did she tell you she planned on
3 talking to law enforcement about?

4 A. About Mr. Darien.

5 Q. And what was she going to tell them?

6 A. About his role in the murder.

7 Q. Was she going to tell him that she knew something?
8 Do you remember?

9 A. Right. That -- basically, that he was the one at
10 fault.

11 Q. At some point, did she mention someone named
12 Davonte Frost? Do you remember that?

13 A. Yes.

14 Q. What did she say about him?

15 A. He was there the night that everything happened at
16 the Siesta.

17 Q. Okay. Did she tell you that -- did she tell you
18 what -- if he had any role in this?

19 A. That he was there, but he never fired a weapon.

20 Q. Did she say why?

21 A. He just chickened out.

22 Q. Okay. When you all were talking, did she indicate
23 that she was in -- what state of mind did she say she
24 was in on the night of the shooting?

25 A. She was high.

1 Q. Was she under the influence of drugs?

2 A. Xanax and Molly.

3 Q. What else did she say about that? Do you
4 remember?

5 A. That she was high on Xanax and Molly.

6 Q. Okay.

7 A. And I mean, that basically that -- well, that
8 would just telling you what I think, but yeah, she was
9 high on Xanax and Molly.

10 Q. Ms. Powell, I got to ask you about this. It was
11 brought up before.

12 A. Um-hmm.

13 Q. It was brought up be. You have a -- do you have a
14 lengthy criminal record?

15 A. I do.

16 Q. So you've got convictions for a number of things.
17 What are most of your convictions for?

18 A. Drug-related charges.

19 Q. Have you ever written a bad check?

20 A. Yes.

21 Q. Shoplifted?

22 A. Shoplifted.

23 Q. How about forgery?

24 A. Yes.

25 Q. All right. Ms. Powell, a lot of these are crimes

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1 of dishonesty. Why should we believe you?

2 A. About what I'm saying?

3 Q. Yes, ma'am.

4 A. Everybody deserves -- deserves justice. He made a
5 lot of mistakes. He might not have been the most honest
6 person. I may not be the most honest person, but he
7 didn't deserve that. He had a baby on the way. He
8 didn't deserve it. No matter what he's done to people,
9 he didn't deserve that.

10 Q. Ms. Powell, so you weren't at Siesta that night.
11 Where were you the night of this murder? Do you
12 remember?

13 A. I was in Hardeeville.

14 SOLICITOR HOLLEN: Court's indulgence, your Honor.

15 THE COURT: Yes.

16 BY SOLICITOR HOLLEN:

17 Q. Ms. Powell, do you remember -- do you know the
18 dates you were incarcerated?

19 A. July of 2016.

20 Q. And do you know about how long after the murder of
21 Davonte Freeman these conversations started?

22 A. That's when I was -- that's when I was arrested
23 was July, so.

24 Q. Okay.

25 A. Maybe a little bit over a year.

1 Q. Was this 2016 or 2017 when you were incarcerated?

2 A. 2016.

3 SOLICITOR HOLLEN: Okay. So -- never mind. All
4 right. Ms. Powell, I don't have anything further for
5 you right now. Please answer Mr. Plexico's questions.
6 Okay?

7 A. Yes, sir.

8 MARIE POWELL

9 CROSS-EXAMINATION, BY MR. PLEXICO:

10 Q. Okay, ma'am. So you remember telling Lieutenant
11 Litchfield my client said that Davonte Frost, her, and
12 Peanut is what my client said were involved in the
13 shooting. Is that correct?

14 A. Yes, but Davonte Frost never fired a weapon.

15 Q. Okay. All right. Now, you spoke with -- you
16 arrived in early July in jail, correct?

17 A. I did.

18 Q. All right. So you spoke with Lieutenant
19 Litchfield on July 20th. Isn't that right?

20 A. I believe so.

21 Q. And you had been free from the time of -- now, you
22 knew Anthony Austin, correct?

23 A. I did.

24 Q. And he used to date Davonte Freeman's mother,
25 correct?

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1 A. Right.

2 Q. Okay. And so, you were close to Anthony Austin,
3 right?

4 A. I was.

5 Q. And he was like a step-father to Davonte Freeman,
6 wasn't he?

7 A. He was.

8 Q. Okay. And Davonte Freeman had a brother, Wrenshad
9 Anderson, correct?

10 A. I'm not sure about Wrenshad Anderson.

11 Q. You don't know Wrenshad Anderson at all?

12 A. I do not.

13 Q. Okay. Did you ever live in the house over here,
14 down here, down near the intersection of 278 and Jacobs
15 Park Boulevard? Did you live on that side of town ever?

16 A. No, sir.

17 Q. Okay. All right. Did you -- you said you felt
18 sorry for Davonte Freeman. He had a hard time, right?

19 A. No, sir. I never said I felt sorry for him. No,
20 sir.

21 Q. Okay. All right. Didn't he actually stay with
22 you and Anthony sometimes?

23 A. No, he never stayed with me and Anthony. He
24 stayed in the house when I lived there with Mr. Orr.

25 Q. Okay. And he wasn't ever around his brother?

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1 A. Not a Wrenshad. I don't know any brother by that
2 name.

3 Q. Okay. All right. And you -- this was recently --
4 well, as far as 2016, this was 2015, 2016 we're talking
5 about, before April 30th, when he was staying over there
6 with Eric.

7 A. Right. This was before, this was 2015.

8 Q. Okay. All right. Now, when you first talked with
9 Detective Litchfield --

10 A. Um-hmm.

11 Q. -- he told you that the young man, Davonte
12 Freeman, had been killed with a .22 caliber?

13 A. No, the first time I spoke with him, he did not
14 tell me that, no, sir.

15 Q. You're saying he absolutely did not tell you that?

16 A. No, sir, not the first time I spoke with him, he
17 did not.

18 Q. Did he tell you that the second time?

19 A. The second time, yes, sir.

20 Q. Okay. All right. And now, so he helped you
21 understand -- he told you he was looking for help on the
22 case, correct? He wanted a witness?

23 A. No, sir, he didn't tell me he was looking for help
24 on the case.

25 Q. So all right. So you're out on the street from

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1 April 30th, from the -- okay, until July, correct?

2 A. Yes, sir.

3 Q. And you know all these characters that are
4 involved because you've been in town for awhile, right?

5 A. I was in Hardeeville.

6 Q. Okay. But you know some of the guys up here.
7 They hang out back and forth, right?

8 A. Yes, sir.

9 Q. Okay. So you know these characters, and you're
10 saying that you didn't talk to any -- and you knew
11 Anthony Austin, right?

12 A. I did.

13 Q. And you had a relationship with Anthony Austin?

14 A. I did.

15 Q. And that was like, almost his stepson that got
16 killed, correct?

17 A. Yeah, he had dated his mother probably ten years
18 previous to this, so there was no -- it wasn't like he
19 dated the mother and then dated me a month or two later.
20 There was a big time span in between the two times.

21 Q. Okay. But he's like his stepson? That was my
22 question. Please answer it.

23 A. I don't know.

24 Q. Okay.

25 A. I don't know what relationship him and Davonte

1 had.

2 Q. All right. But he knew about Davonte being
3 killed?

4 A. He did.

5 Q. He was not happy about that, correct?

6 A. He was not.

7 Q. He knew a lot about it, didn't he?

8 A. He was not happy, no.

9 Q. Okay. And he knew a lot about it, and he knew
10 Davonte's family and all, right?

11 A. He knew Davonte's family, yes.

12 Q. Okay. All right. And he knew what the family
13 knew, didn't he?

14 A. I don't know what Mr. Austin knew.

15 Q. Okay. But he associated with the family of
16 Davonte Freeman, because he was almost part of it,
17 correct?

18 A. He associated with them as far as I know, yes,
19 sir.

20 Q. Okay. All right. So you're saying you never
21 discussed any details that Anthony Austin knew about the
22 crime that happened to Davonte with you?

23 A. No, sir.

24 Q. Okay. And you did not talk to -- you never talked
25 to Lieutenant Litchfield the first time, with him

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1 telling you that he was killed with a .22 caliber?

2 You're positive that didn't happen?

3 A. I'm positive.

4 Q. Okay. Now, when she, my client, was talking to
5 you, was anybody else around?

6 A. Yeah, there was -- all -- all the females are
7 housed in one area, so there's always people around.
8 But as far as in direct earshot of us, no, not that I'm
9 aware of.

10 Q. So she's talking about being -- now, she's aware
11 of the relationship of -- because she grew up here,
12 she's aware of the relationship with Anthony Austin and
13 Davonte Freeman and Wrenshad Anderson, correct?

14 A. I'm not sure what relationship she knew about.

15 Q. Okay. right. So you're telling the jury that
16 she asked you, and you needed -- you were asking for
17 favours. Let me ask this first. You were asking for
18 favours with Judge Nancy down in Hardeeville during your
19 interviews, for instance, with Lieutenant Litchfield,
20 right?

21 A. That is incorrect. I never asked for anything
22 from Judge Nancy in Hardeeville.

23 Q. You didn't mention that?

24 A. No, sir.

25 Q. Okay. All right. You did ask for other things,

1 you say, correct?

2 A. The only thing I received was Lieutenant
3 Litchfield let me -- I was let out of jail. I posted my
4 bond on my other charges. The -- Lieutenant Litchfield
5 allowed me to get out of jail, and I had to pay the
6 restitution on those tickets. So that is the only thing
7 that I received was time to pay the tickets.

8 Q. All right. And did he have anything to do with --
9 you have a lengthy criminal record, correct?

10 A. I do.

11 Q. All right. And that doesn't bode well for you
12 when you go back to General Sessions court, does it?
13 This court, big court?

14 A. I don't have any General Sessions charges pending.

15 Q. Pending?

16 A. I do not have any, no.

17 Q. Did he have anything to do with you getting
18 probation on your General Sessions forgery?

19 A. I received nothing from the Solicitor's Office or
20 anything else in reference to my General Sessions
21 charges.

22 Q. Okay. Now, so you're saying that my client wanted
23 you to get Anthony Austin to kill his stepson. Is that
24 correct?

25 A. Yes, because after I got off the phone with her --

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1 I -- with Mr. Austin, I told her that, because Anthony
2 and Kwame had had a little run-in. So at the time she
3 did not believe that Mr. Austin was happy with Kwame.

4 Q. Okay. So but, isn't -- no, isn't, okay. So he'd
5 kill him. He'd kill his stepson. A reasonable person
6 would expect him to kill his stepson because he's a
7 little upset with him?

8 A. Maybe reasonable. I don't know. I don't know
9 what her thinking is. I can only speak for myself.

10 Q. Okay. All right. Well, let's talk about you.

11 A. Absolutely.

12 Q. Are you Erica Raines, too?

13 A. No.

14 Q. Are you Brittany Raines?

15 A. No.

16 Q. Are you Lisa Lloyd?

17 A. No.

18 Q. Well, have you used those names before?

19 A. No. Brittany Raines used my name in a ticket that
20 she received.

21 Q. So you never used any aliases before?

22 A. I have one time.

23 Q. Okay. So sometimes you're a person that you're
24 not today? Is that correct?

25 A. Only one time I have used a different name for a

1 ticket that I've received.

2 Q. Have you -- have you had three -- do you have
3 three different Social Security numbers?

4 A. I do not; I have one.

5 Q. Do you have three associated with your arrest?

6 A. No, I have one.

7 Q. Have you turned up other different Social Security
8 numbers on arrests?

9 A. No, sir.

10 Q. Okay. All right. Now, let's see. Do you
11 remember 2010?

12 A. I do.

13 Q. All right. Did you have a conviction for
14 attempted conspiracy for getting drugs by fraud and
15 deceit?

16 A. Yes, I remember that.

17 Q. Okay. So you had a -- 2011, you had a financial
18 identity fraud?

19 A. I did.

20 Q. You got convicted?

21 A. I did.

22 Q. Okay. So that was identity. You were somebody
23 else. You were pretending to be something, somebody
24 else, right? Financial identity fraud?

25 A. Right. I used my grandmother's credit card.

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MARIE POWELL - CROSS - PLEXICO

1 Q. Okay. All right. 2013, you had another obtaining
2 drugs by fraud and deceit, right?

3 A. I believe so.

4 Q. All right. Now, you were arrested in 2012, and
5 convicted in 2013, okay? Is that correct?

6 A. That is correct.

7 Q. All right. Let's see here. You had a fraudulent
8 check, 2013, in January, correct?

9 A. Yes, sir.

10 Q. Number 293. I'm looking at the end of the warrant
11 number.

12 A. Okay.

13 Q. So you had another one in 2013, another fraudulent
14 check?

15 A. I don't dispute that. I'm not sure, but I don't
16 know.

17 Q. Did you have another one, too, in 2013?

18 A. It's possible. I'm not looking at it, but it's
19 possible.

20 Q. Do you have a fourth one, fraud, fraudulent check?

21 A. I'm not -- I don't know. I'm not sure. I can't
22 say no. I can't say yes. I don't know.

23 Q. Well, did you have five, six, seven, eight, nine,
24 ten, eleven, twelve, thirteen, fourteen --

25 A. Okay. That was not --

1 Q. Excuse me. Fifteen, sixteen, seventeen, did you
2 have those other ones, also that you were convicted of
3 in 2013?

4 A. Those were not fraudulent checks. Those were
5 written out of my own bank account. That was nothing --
6 no identity fraud. That was out of my own personal bank
7 account that those were written out, and it was
8 insufficient funds. It wasn't anything about fraud or
9 deceit.

10 Q. So when you give somebody money and the money's
11 not in the account, that's not fraudulent? That's okay?

12 A. No, it's not. It's not okay by any means.

13 Q. That's why you went to jail, right?

14 A. Right.

15 Q. You had a shoplifting in 2013? Yes?

16 A. Yes.

17 Q. So you had another fraudulent check in 2013, and
18 another drug conviction in 2013?

19 A. I may have, sir. I don't dispute it. I'm not
20 sure. I may have, yes. I have had no recent charges
21 since 2015, though.

22 Q. Well, you had -- also had -- you had no recent
23 charges since 2015?

24 A. No.

25 Q. Okay. You also have receiving stolen goods,

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MARIE POWELL - CROSS - PLEXICO

1 correct, in October of 2015. In the city of Ridgeland,
2 you got a fine. Criminal and financial transaction card
3 fraud. They called it criminally receiving goods.

4 A. In 2015? I think I have, yes.

5 Q. Okay. And you had -- let's -- you had one, two,
6 three, four of those in October of 2015, correct?

7 A. 2015, yes, sir.

8 Q. Okay. So you weren't straight in 2015 for sure,
9 right? Correct?

10 A. Right, but I'm saying since 2015.

11 Q. You've been -- you've been lawfully acting,
12 correct? You've behaved and been lawfully acting,
13 correct?

14 A. Yes.

15 Q. Well then, how come you got a conviction for
16 giving false information in 2017? That's true, isn't
17 it?

18 A. In 2017?

19 Q. Giving false information, you got a conviction for
20 that.

21 A. In the town of Hardeeville, it was a ticket that I
22 received in 2015. All those tickets were from then.

23 Q. Okay. Did you get a giving false information, and
24 you were found guilty of it in 2017? Yes or no?

25 A. Not that I'm aware of.

1 SOLICITOR HOLLEN: Objection, your Honor. He's
2 asking the question; she's answering it differently.

3 MR. PLEXICO: She can answer and explain.

4 SOLICITOR HOLLEN: She's trying to.

5 THE COURT: She can answer and explain. Let's just
6 get through this.

7 MR. PLEXICO: Okay.

8 BY MR. PLEXICO:

9 Q. So in 2016, you had another shoplifting, correct?

10 A. No, sir.

11 MR. PLEXICO: May I approach the witness?

12 THE COURT: You may.

13 BY MR. PLEXICO:

14 Q. Shoplifting in 2016. Is that a conviction?

15 A. I believe that was the one where Brittany arranged
16 to use my identity. It was for Summerville, but that's
17 the one.

18 Q. So you got put on probation in 2017, correct?

19 A. I did.

20 Q. Okay. For more forgery, correct?

21 A. For a forgery, yes, sir, from 2015.

22 Q. Okay. All right. So you weren't telling the
23 truth since you said you had been good since 2015,
24 correct? That was completely untrue?

25 A. The probation -- that is not. The probation I'm

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MARIE POWELL - CROSS - PLEXICO

1 on now is from charges in 2015, a forgery charge, yes,
2 sir.

3 Q. All right. Now, so she told you a different
4 story? Is that what you're -- is that what you pretty
5 much told Lieutenant Litchfield?

6 A. No, sir.

7 Q. Okay. Well, didn't you tell him on another date
8 that my client had said that Peanut and she were going
9 to kill Davonte and Wrenshad Anderson?

10 A. On a different -- I don't understand the question.

11 Q. Well, one time you said my client said Davonte
12 Frost was involved. The next time, another time you
13 talked to him, you said it was just the two of them. So
14 was this a change in story?

15 A. No, sir. Davonte Frost was there from the
16 beginning, but he didn't -- he wasn't an active
17 participant.

18 Q. Now, do they record the jail phone calls?

19 A. I believe they do. I'm not sure.

20 Q. Okay. All right. Now, so. So you never --
21 you're saying that Litchfield never told you at all that
22 the .22 was what killed Davonte Freeman?

23 A. No, he did tell -- I didn't say he didn't tell me
24 that. He did not tell me that initially. It was not
25 until the second time that I spoke with him that I was

1 aware of the .22 killing Davonte.

2 Q. Okay. All right. Did you ever make a statement
3 to him during your second interview: *what she says is*
4 *just like what you said?* Isn't that what you were
5 talking to him? You remember that conversation with him?

6 A. I don't understand that question.

7 Q. Well, you all were talking, and you explained what
8 you told me happened is just like what she said.

9 A. No, sir.

10 Q. Your car was shot up?

11 A. My truck, yes, sir.

12 Q. Okay. All right. Now, so there's all these
13 ladies in the female barrack, correct?

14 A. Yes, sir. It's a big area. It's not small. It's
15 big.

16 Q. And she's choosing to speak to you about her
17 murder case?

18 A. Right, because I --

19 Q. You had a close relationship with Anthony Austin,
20 Davonte Freeman's stepfather, correct?

21 A. I did. He wasn't the stepfather, though. He
22 dated their mother.

23 Q. That was putative, almost stepfather.

24 A. I'm not sure they extend their relationship.

25 Q. But he spent ten years with their mother?

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MARIE POWELL - CROSS - PLEXICO

1 A. I don't know how long he spent with her, sir.

2 Q. Was it quite awhile, would you say that, from your
3 knowledge?

4 A. I'm -- I'm not sure, sir.

5 Q. Now, did Litchfield, Lieutenant Litchfield, ever
6 get you to say to get Aneisha Young to say that Peanut
7 did it? Do you remember that statement?

8 A. No, sir.

9 Q. You don't remember that request?

10 A. No, sir.

11 Q. You know all these were recorded, right?

12 A. I'm sure they were, but no, I don't remember that
13 request, no.

14 Q. But he wanted you to bring him information. Is
15 that correct?

16 A. He never asked me to bring him information, no.

17 Q. And you're saying you didn't learn anything about
18 the killing from any community members from April 30th
19 until your arrest in July?

20 A. No, sir, because I was living in Hardeeville. I
21 was residing in Hardeeville at the time, not Ridgeland.

22 Q. Okay. But it's not very far apart.

23 A. Right, but I didn't have a vehicle, so I wasn't
24 over in Ridgeland. I was in Hardeeville.

25 Q. Did anybody else hear my client? I mean, did you

1 all have fifteen, twenty conversations or what about
2 this?

3 A. I think just a few, because where my -- where my
4 bed was, like I said, they were free-standing beds, so
5 that you could walk and stand at my bed, and I would be
6 right here in my bed, and you could be right there. So
7 unless you were right there on top of us, you probably
8 wouldn't have heard anything that we talked about.

9 Q. And nobody heard any of this?

10 A. Not that --

11 Q. Only you. Nobody heard a single mention of this?

12 A. She wasn't speaking to anyone but me, so I don't
13 believe that they did. Not that I'm aware of.

14 Q. So she shunned everybody else?

15 A. I wouldn't say she shunned them, no.

16 Q. She just didn't speak to them, correct?

17 A. I mean, she spoke to them cordially. They -- and
18 everybody kind of spoke.

19 Q. But you were her only close friend.

20 A. I wouldn't say I was her only -- I'm not sure of
21 the relationship she had with other girls. I don't
22 know.

23 Q. Well, you were there all in the same pod where you
24 can see everything. There's no privacy, correct?

25 A. Right. But just like they couldn't hear our

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MARIE POWELL - RE-DIRECT - HOLLEN

1 conversation, I couldn't hear what she was conversing
2 with other girls about. So I would have no way of
3 knowing.

4 Q. But you had had three different interviews,
5 bringing information in July and August to Lieutenant
6 Litchfield so you had to have numerous conversations
7 with my client.

8 A. We probably had a few, yes, sir.

9 Q. Okay. And you're not -- and you're saying nobody
10 heard a word about them? And she never --

11 A. Not that I'm aware of. If they did, I'm not aware
12 of it personally.

13 MR. PLEXICO: And -- all right. I don't have
14 anything further, Judge.

15 SOLICITOR HOLLEN: Very briefly, your Honor.

16 MARIE POWELL

17 RE-DIRECT EXAMINATION BY SOLICITOR HOLLEN:

18 Q. Ms. Powell, when you were saying you hadn't been
19 in trouble since 2015, you were talking about -- what
20 were you talking about? Were you talking about
21 resolution of charges or picking up charges?

22 A. Picking up new charges.

23 Q. So if you pick up charge in 2015, it could have
24 been resolved in 2017, right?

25 A. It was resolved in 2017.

1 Q. So that's what you meant?

2 A. Yes, sir.

3 Q. All right. You say you don't know Wrenshad. Is
4 that right?

5 A. I don't know, no.

6 Q. Do you know if Kwame has a first name?

7 A. I know him by Kwame.

8 Q. You know him by Kwame?

9 A. Um-hmm.

10 Q. So if he -- his first name was something
11 different, would you know that?

12 A. No, sir.

13 SOLICITOR HOLLEN: Okay.

14 MR. PLEXICO: Just one question.

15 SOLICITOR HOLLEN: Whoa, whoa, whoa. I'm not done.

16 THE COURT: Okay.

17 SOLICITOR HOLLEN: I know briefly. I'm about done.

18 BY SOLICITOR HOLLEN:

19 Q. You have a lengthy record. That's been
20 established, right?

21 A. Yes, it's been established.

22 Q. You have been to prison, haven't you?

23 A. I have been to prison.

24 Q. Ms. Young asked you about that?

25 A. She asked me what prison was like, but nothing,

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MARIE POWELL - RE-CROSS - PLEXICO

1 you know, nothing extensive, no.

2 SOLICITOR HOLLEN: Okay. Nothing further.

3 THE COURT: Okay.

4 MR. PLEXICO: May I approach, your Honor?

5 THE COURT: You may.

6 MARIE POWELL

7 RE-CROSS-EXAMINATION, BY MR. PLEXICO:

8 Q. You are Marie Powell, correct?

9 A. I am.

10 Q. This is 2016, correct?

11 A. It is.

12 Q. And this is a conviction for giving false
13 information, convicted on 2/13/17? Isn't that true?

14 A. Okay, yeah, but I'm not, like I said --

15 Q. Thank you.

16 A. -- a lady named Brittany Raines used my identify,
17 so I'm not sure if that's the records of the false
18 information.

19 Q. Your name is Marie Christen -- Christine Powell?

20 A. That is my name, sir.

21 MR. PLEXICO: All right. I don't have anything
22 further.

23 THE COURT: Anything?

24 SOLICITOR HOLLEN: No, your Honor. Ask that she be
25 excused.

1 THE COURT: You may step down.

2 A. Thank you.

3 SOLICITOR HOLLEN: Next call Debbie Spann.

4 THE COURT: Okay. While Ms. Spann's coming, if
5 anyone wants to stand, you are more than welcome to.

6 THE COURT: All right. Come on, Ms. Spann. Come
7 forward. Everyone's just taking a stretch right now.

8 MADAM CLERK: Raise your right hand and put your
9 left hand on the *Bible*. The testimony you're going to
10 give to the Court be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 DEBBIE SPANN: Yes, ma'am.

13 DEBBIE SPANN

14 DIRECT EXAMINATION BY SOLICITOR HOLLEN:

15 Q. Good afternoon, Ms. Spann. How are you?

16 A. I'm fine. How are you?

17 Q. I'm okay, thank you. You excited to be here?

18 A. No, not really.

19 Q. Ms. Spann, I didn't meet you 'til today, did I?

20 A. Yes, sir.

21 Q. But you heard we were looking for you, didn't you?

22 A. Yes, sir.

23 Q. Were you there when we came by your house last
24 week?

25 A. No.

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DEBBIE SPANN - DIRECT - HOLLEN

1 Q. But you heard about it?

2 A. Yes.

3 Q. So did you know why we were looking for you?

4 A. No.

5 Q. Do you know now why we're looking for you?

6 A. Yeah.

7 Q. Why didn't you want to talk to us?

8 A. Because I don't like talking to the law.

9 Q. Fair enough. Ms. Spann, when I talked to you this
10 morning, you indicated you had some information. Is
11 that right?

12 A. Yes, sir.

13 Q. How do you know the defendant, Aneisha Young?

14 A. I met her in jail when she admitted that she
15 killed my cousin Davonte Freeman.

16 Q. Okay. Did she know when she admitted to you that
17 she killed Davonte Freeman that he was your cousin?

18 A. No, sir.

19 Q. So how did that all come about? Do you remember?
20 How did you all start talking about it?

21 A. When you go to jail, everybody asks why you in
22 jail, things like that.

23 Q. Um-hmm.

24 A. And you've got to tell every female the reason why
25 you in jail, and they tell you.

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DEBBIE SPANN - DIRECT - HOLLEN

1 Q. And that like -- what? is like a code? You just
2 have to tell?

3 A. I guess. I don't --

4 Q. You don't know? All right. So how did you all
5 start talking about this? Did you ask her why she was
6 in jail?

7 A. Yeah, because she was -- she wanting to know in my
8 business.

9 Q. Did you tell her?

10 A. What did you say, sir?

11 Q. Did you tell her what you were in for?

12 A. Yes, sir.

13 Q. Okay. Now, you've got -- you've got some --
14 you've been in trouble before, haven't you?

15 A. I've been in trouble plenty of time.

16 Q. Okay. Well, I'm not going to go through the whole
17 thing, but what do you usually get in trouble for?

18 A. Child support, checks, simple assault, and a lot
19 of stuff.

20 Q. So Ms. Spann, did you -- when were you
21 incarcerated with Ms. Young? Do you remember?

22 A. I think I was incarcerated January the 5th, 2017,
23 to January the 22nd. I was incarcerated -- I was
24 incarcerated May the 31st, so I -- I been incarcerated
25 with her three times.

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DEBBIE SPANN - DIRECT - HOLLEN

1 Q. Three times?

2 A. Yes.

3 Q. Okay. Do you remember, was the first time you
4 were incarcerated with her that she told you this?

5 A. Yes, sir.

6 Q. What happened after she told you this? Did you
7 all --

8 A. She -- I guess she realized, and she flipped on me
9 and wanted to fight me, and I don't -- it was -- it's
10 just a --

11 Q. All right. So you've had this information for
12 awhile. Is that right?

13 A. Yes, sir.

14 Q. How come you didn't tell anybody?

15 A. I don't like the law.

16 Q. Okay. But Davonte was your cousin.

17 A. Yes, sir, but I'm scared of the police. I always
18 go to jail.

19 Q. Okay. So Ms. Spann, why -- is what you're telling
20 us the truth? How come you haven't told anybody about
21 this before now, other than being afraid of the law?

22 A. To tell you the truth, sir, we got the school not
23 to be a snitch. And furthermore, I don't talk to a lot
24 of people. I'm a very -- I'm not a people's person.

25 Q. When you talked to Ms. Young, did she give you any

1 details? Did you all talk about details or anything
2 like that?

3 A. No, sir.

4 Q. So what exactly did she say to you when she told
5 you about this?

6 A. She was the one who murdered Davonte Freeman, and
7 she wanted to take Kwame Freeman out cause he was the
8 only witness to the case.

9 Q. That's what she told you?

10 A. Yes, sir.

11 Q. All right. Ms. Spann, do you know Marie Powell?

12 A. I met her. Well, I don't know her, know her, but
13 she used to date my brother.

14 Q. Who's your brother?

15 A. Henry Spann III.

16 Q. All right. So Ms. Powell used to date your
17 brother, and that's how -- but do you know who she is?

18 A. I mean, I don't know her. Like I tell you, I know
19 of her. And when she was dating my brother, I didn't
20 know her. When I got close to her, we was in jail
21 together. I meant, when I finally get -- you know,
22 conversate with her.

23 Q. Yeah, Ms. Powell?

24 A. Yes.

25 Q. So were you locked up with her, too?

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DEBBIE SPANN - CROSS - PLEXICO

1 A. Yes.

2 Q. All right. So you were locked up with Ms. Powell
3 and Ms. Young?

4 A. Yes.

5 Q. All right. Did you and Ms. Powell ever talk about
6 this case?

7 A. No.

8 Q. Did you know Marie Powell had information about
9 this case?

10 A. No.

11 Q. Did she know you had information about this case?

12 A. No.

13 Q. So you all didn't get together and decide to
14 snitch together?

15 A. No, sir.

16 SOLICITOR HOLLEN: All right, Ms. Spann.

17 Court's indulgence. All right, Ms. Spann, that's
18 all I have for you. Please answer Mr. Plexico's
19 questions. Okay?

20 THE COURT: Mr. Plexico.

21 DEBBIE SPANN

22 CROSS-EXAMINATION, BY MR. PLEXICO:

23 Q. All right, so my client tell you that she's in
24 jail for killing -- or does she say I killed Davonte
25 Freeman, and I'm going to kill Wrenshad Anderson next?

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DEBBIE SPANN - CROSS - PLEXICO

1 Is that what she said? Please look at me, please. Are
2 you okay?

3 A. Excuse me. Will you say it again, sir? Yes, that
4 what she said. She admitted to murdering Davonte
5 Freeman, and she wanted Kwame Freeman off the streets,
6 cause he was a witness to the case.

7 Q. Did you go to Davonte Freeman's funeral?

8 A. No, sir, I did not.

9 Q. Or wake? You did not? Okay. But he was your
10 cousin, correct?

11 A. Yes.

12 Q. All right. Now, so when you got there and this is
13 what she -- she asked you, you all were talking about --

14 A. Um-hmm.

15 Q. -- why are you in jail, and you tell her whatever
16 --

17 A. Um-hmm.

18 Q. -- and she says I'm here because I killed Davonte
19 Freeman, and I'm going to kill Wrenshad Anderson. Is
20 that right? Pretty much, to sum it up, that's what
21 happened?

22 A. She admitted to killing him.

23 Q. Okay. But that was one of your all's exchange and
24 why you're in here, right? Getting in each other's
25 business, as you said, correct?

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DEBBIE SPANN - CROSS - PLEXICO

1 A. Well, first of all, sir, when I got -- they ain't
2 got in nobody's business. They was getting into mine.
3 So evidently, I got back into hers. Okay?

4 Q. Okay. All right. So now, you said there was an
5 altercation between the two of you?

6 A. Between the two?

7 Q. Between the two of you?

8 A. Yeah. Well, once she realized that she admitted
9 to me, and once, I guess, she realized that she
10 incriminated herself, then she wanted to fight me.

11 Q. Was she -- was she --

12 A. And then, she told the officer that I was
13 something to her case, something to her murder case and
14 getting us back to cell. I mean, I don't have no reason
15 to lie about any of that.

16 Q. So she immediately trusted you?

17 A. Yes, because I told for the information that I'm
18 --

19 Q. Okay. But you didn't know her from any other
20 place before?

21 A. No.

22 Q. All right. So she's the pod rep, right?

23 A. Yes.

24 Q. Okay. All right. And did -- did, you know, she
25 was controlling the T.V. Did you all get in an argument

1 over the T.V.?

2 A. No, she got into an argument with me. I was in my
3 bed asleep. I always be sleeping before 7:00 o'clock,
4 before Sylvia Stokes come on. And my roommate, Alicia
5 Galvin, changed the T.V. to Channel 11 because a
6 accident happened in Bluffton, and she wanted to make
7 sure it was not her brother. And I guess when she
8 called up front, they told her say it was Room 2, which
9 was the room that I was in. And before she asked,
10 before she even asked, she just start flipping up, oh,
11 it's Debbie, blah, blah, blah, blah, suh, blah.

12 Q. So you all don't get along?

13 A. Let me tell you something, sir. I don't have no
14 problems with no one. I never did have a problem with
15 her. She had a problem with me.

16 Q. Okay. You got assault and battery first degree
17 conviction for what you're on probation?

18 A. That don't have nothing to do with what we got
19 going on right now, sir.

20 Q. You had a problem with them.

21 A. That don't have nothing to do with this case.

22 Q. Okay. Well, do you have --

23 A. We here for your client, not for me.

24 Q. We have --

25 A. We here for your client, not for me.

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DEBBIE SPANN - CROSS - PLEXICO

1 THE COURT: Ma'am, ma'am, lower your voice. He's
2 permitted to ask you questions about your background, so
3 you need to answer them.

4 BY MR. PLEXICO:

5 Q. Do you have an assault and battery first degree?

6 A. Yes, I do.

7 Q. And that was on -- you were placed on probation on
8 that on 7/26/2017?

9 A. Yes.

10 Q. And then, in October of 2017, did you plead guilty
11 to a fraudulent check charge here in Jasper County?

12 A. Yes.

13 Q. Did you plead guilty to another one in Jasper
14 County --

15 A. Yes.

16 Q. -- in October? Did you plead guilty to a third
17 fraudulent one in October, too?

18 A. Yes.

19 Q. Did you plead guilty to a fifth one here in Jasper
20 County in October, too?

21 A. Yes.

22 Q. Did you plead guilty to a sixth one in Jasper
23 County?

24 A. Yes.

25 MR. PLEXICO: I don't have anything further.

1 THE COURT: Anything further?

2 SOLICITOR HOLLEN: Ask to be excused, your Honor.

3 THE COURT: You are excused, ma'am. Thank you.

4 Mr. Hollen, Mr. Plexico, come talk to me for a sec.

5 OFF-THE-RECORD BENCH CONFERENCE, OUT OF

6 HEARING OF JURORS. PRESENT: THE COURT,

7 MR. HOLLEN, MR. PLEXICO.

8 END BENCH CONFERENCE.

9 MADAM CLERK: Raise your right hand and place your
10 left hand on the *Bible*. Do you swear the testimony
11 you've about to give to the Court be the truth, the
12 whole truth, and nothing but the truth, so help you God?

13 CAPTAIN HARRY ORR: Yes.

14 MADAM CLERK: Come right around and have a seat in
15 the witness chair.

16 THE COURT: Mr. Hollen.

17 SOLICITOR HOLLEN: Thank you.

18 CAPTAIN HARRY ORR

19 DIRECT EXAMINATION BY SOLICITOR HOLLEN:

20 Q. Captain Orr, I'm referring to you as Captain. Who
21 do you work for?

22 A. Jasper County Detention Center.

23 Q. And what is your position? You're a captain, but
24 what do you do over there?

25 A. Oversee the daily operation.

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CAPTAIN HARRY ORR - DIRECT - HOLLEN

1 Q. So you basically are the director of the jail?

2 A. Not the director; second in command.

3 Q. So you oversee the daily operations of the jail?

4 A. Yes.

5 Q. All right. Captain Orr, I'm going to hand you
6 four things. These have been marked for identification
7 as State's 33 -- 32, 33, 34, and 35, and ask if you'll
8 take a look at those. Okay?

9 A. Yes.

10 SOLICITOR HOLLEN: All right. May I approach.

11 BY SOLICITOR HOLLEN:

12 Q. Have a chance to take a look at them?

13 A. Yes, sir.

14 Q. What are those?

15 A. Those are daily housing rosters.

16 Q. And did you pull those at law enforcement's or our
17 request?

18 A. Yes.

19 Q. And what is -- what is a daily housing roster?

20 A. A daily housing roster is where every inmate
21 inside the detention center is housed, which particular
22 housing unit they're in.

23 Q. Gotcha. And in each of those, State's 32, 33, 34,
24 and 35, are they accurate?

25 A. Yes.

1 Q. Have they been changed or altered in any way?

2 A. No.

3 Q. And are those records that the jail would keep in
4 it's ordinary course of business?

5 A. Yes.

6 Q. How long do you keep those records for?

7 A. I'm not sure. There isn't a time limit, you know,
8 that I know of.

9 Q. Gotcha.

10 A. Yeah.

11 Q. But you're familiar with those records and how
12 they're kept?

13 A. Yes, sir.

14 SOLICITOR HOLLEN: Your Honor, I'd like to admit
15 State's 33, 34 -- no, 32, 33, 34, and 35 at this time.

16 THE COURT: Okay.

17 MR. PLEXICO: I've examined them. I have no issues
18 with three of them. I do have a relevancy issue with
19 one of them. May we approach, Judge, and put it on --
20 be faster, and we'll put it on the record.

21 THE COURT: Okay. Yes.

22 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
23 HEARING OF JURORS. PRESENT: THE COURT,
24 MR. HOLLEN, AND MR. PLEXICO.
25 END BENCH CONFERENCE.

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CAPTAIN HARRY ORR - DIRECT - HOLLEN

1 SOLICITOR HOLLEN: Your Honor, I see where Mr.
2 Plexico is going.

3 BY SOLICITOR HOLLEN:

4 Q. Captain Orr, in State's 35, on Page 6, there's a
5 name scratched out. Can you look at that. Do you know
6 why that's scratched out?

7 A. Well, when the -- the night shift prepares this
8 roster for the new day.

9 Q. Um-hmm.

10 A. So I don't know if Ms. Powell may have gotten out
11 that Day or she was moved to a different area. I'm not
12 sure. That would be the notation, yeah.

13 Q. Okay. So that's a notation made by that?

14 A. Right.

15 SOLICITOR HOLLEN: Your Honor, I'll withdraw
16 State's 35.

17 THE COURT: Thank you.

18 SOLICITOR HOLLEN: All right. As to State's 32,
19 33, and 34, I would ask that they be entered into
20 evidence.

21 THE COURT: Okay.

22 MR. PLEXICO: I have no objection.

23 THE COURT: Without objection, in evidence. Okay?

24 ITEM IDENTIFIED AS DOCUMENT TITLED

25 JASPER COUNTY DETENTION CENTER,

3-14-18 STATE V YOUNG

CAPTAIN HARRY ORR - DIRECT - HOLLEN

1 DATED 7-1-2016
2 MARKED STATE'S EXHIBIT NUMBER 32
3 ADMITTED AS EVIDENCE.
4 ITEM IDENTIFIED AS DOCUMENT TITLED
5 JASPER COUNTY DETENTION CENTER

6 DATED 7-8-2016
7 MARKED STATE'S EXHIBIT NUMBER 33
8 ADMITTED AS EVIDENCE.
9 ITEM IDENTIFIED AS DOCUMENT TITLED
10 JASPER COUNTY DETENTION CENTER

11 DATED 7-15-2016
12 MARKED STATE'S EXHIBIT NUMBER 34
13 ADMITTED AS EVIDENCE.

14 BY SOLICITOR HOLLEN:

15 Q. Okay. Captain Orr, I'm going to hand them to you
16 real quick, and just ask you to look at them. What are
17 the dates on those daily housing records?

18 A. July 1, 2016; July 8, 2016; and July 15, 2016.

19 Q. And do each of those records contain the names of
20 Marie Powell and Aneisha Young?

21 A. Yes, they do.

22 Q. And in each of those records, where are they
23 housed?

24 A. They're housed in Bravo 5.

25 Q. In B-5?

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CAPTAIN HARRY ORR - CROSS - PLEXICO

1 A. Right.

2 Q. And are they housed together?

3 A. Yes.

4 Q. What is Bravo 5?

5 A. Bravo 5 is an open dorm.

6 Q. Okay. So how are the bunks and things like that
7 arranged?

8 A. It's like bunk beds, one on the top and one on the
9 bottom, and they're just stacked by twos.

10 Q. Is B-5 a place where a large group of people are
11 housed together?

12 A. Yes.

13 Q. Okay. Is that normal for the jail? Are they
14 usually housed in a large dorm-type bunk?

15 A. No, they're normally housed in cells.

16 Q. All right. But they were in the B-5 for this?

17 A. Right.

18 SOLICITOR HOLLEN: All right. Captain Orr, I don't
19 have anything further for you.

20 THE COURT: Anything further?

21 MR. PLEXICO: May I?

22 THE COURT: You may.

23 CAPTAIN HARRY ORR

24 CROSS-EXAMINATION, BY MR. PLEXICO:

25 Q. Okay. There's not -- this is not a place of

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CAPTAIN HARRY ORR - CROSS - PLEXICO

1 privacy. Isn't that true? Don't you -- aren't you
2 observed all the time?

3 A. Right.

4 Q. Okay. All right. And that's for safety reasons,
5 obviously?

6 A. Yes.

7 Q. Okay. All right.

8 THE COURT: That's a yes for the record?

9 A. Yes. Yes.

10 THE COURT: You're shaking your head, sir. Thank
11 you.

12 BY MR. PLEXICO:

13 Q. And are Bunks 1 and 8 are not near each other. Is
14 that correct?

15 A. No.

16 Q. Okay. And Bunks 12 and -- excuse me -- 12 and --
17 excuse me -- 12 and 24, they're not near each other,
18 correct?

19 A. No.

20 Q. All right. Could you refer to those and see what
21 bunks they're assigned to, which bunks that Marie Powell
22 and Aneisha Young are assigned to? On 7/1 and 7/8

23 A. 7/1, Marie Powell is bunked in 8, and Aneisha
24 Young is 1. And 7/8, Marie Powell is bunked in 8, and
25 Aneisha Young is 1.

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CAPTAIN HARRY ORR - CROSS - PLEXICO

1 Q. And on 7/15, would you look at that one, please,
2 sir. Not to --

3 A. Marie Powell is in 6, and Aneisha Young is 24.

4 Q. And those aren't together, either?

5 A. No.

6 Q. Okay. All right. And this is an open kind of --
7 where everybody can observe and see?

8 A. Right.

9 Q. Obviously, Security in there can observe and see?

10 A. Yes.

11 Q. Okay. All right. Now, we've had a flood at the
12 jail. Is that correct? And the women -- had to move
13 the women to Beaufort, I believe, for awhile? Is that
14 correct?

15 A. Yes.

16 Q. Isn't that when Aneisha Young was moved to
17 Beaufort, correct?

18 A. Yes.

19 Q. And it took her awhile to bond out because of her
20 bond, didn't it? She's not in jail now, but it took her
21 awhile to bond out and get the money.

22 A. Correct.

23 Q. She was also in Sumter, correct? I think they had
24 overcrowded?

25 A. Yes.

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1 Q. And at some point in time, she was in Barnwell,
2 correct?

3 A. Yes.

4 Q. That was due to overcrowding. You just don't have
5 that much room for women, and when you have a lot of
6 men, the women are moved around. Is that correct?

7 A. Right, yes.

8 Q. To accommodate all the men coming in.

9 A. Yes.

10 Q. All right. She wasn't any problem in jail or
11 anything, correct?

12 A. I can't say, sir.

13 Q. So you aren't familiar with her record? You're
14 not saying she was?

15 A. Right.

16 Q. Nothing came to your attention?

17 A. Exactly.

18 MR. PLEXICO: Okay. All right. I don't have
19 anything further.

20 SOLICITOR HOLLEN: I have one more quick question.

21 CAPTAIN HARRY ORR

22 RE-DIRECT EXAMINATION BY SOLICITOR HOLLEN:

23 Q. When the women were assigned in that bunk, are
24 they restrained to that bunk in any way?

25 A. No.

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1 Q. You don't chain them there?

2 A. No.

3 Q. They're allowed to move around in there?

4 A. Yes.

5 SOLICITOR HOLLEN: Okay. Nothing further, your
6 Honor.

7 THE COURT: Anything, Mr. Plexico?

8 MR. PLEXICO: I don't have anything.

9 THE COURT: All right. You may be excused, sir.
10 Thank you. All right. Mr. Hollen, anything else?

11 SOLICITOR HOLLEN: Your Honor, at this time, the
12 State rests.

13 STATE RESTS.

14 ITEMS IDENTIFIED AS PHOTOGRAPHS

15 MARKED STATE'S EXHIBIT NUMBERS

16 2, 19, 20, 21, 22, 23, 24

17 ADMITTED AS EVIDENCE.

18 ITEM IDENTIFIED AS SHELL CASING FROM

19 THE TEN SHELL CASINGS

20 MARKED STATE'S EXHIBIT NUMBER 15

21 ADMITTED AS EVIDENCE.

22 ITEM IDENTIFIED AS MAP MADE BY GRABSKI

23 MARKED STATE'S EXHIBIT NUMBER 31

24 FOR IDENTIFICATION ONLY.

25 ADMITTED AS EVIDENCE.

1 BY THE COURT:

2 THE COURT: Ladies and gentlemen, at this time the
3 State has rested their case. I'm going to send you back
4 to your jury room. I'm going to be back with you very
5 shortly to tell you what we're doing from here. Okay?
6 Do not discuss this case. It would be inappropriate to
7 do so. I'll bring you right back in. Okay?

8 JURORS LEAVE COURTROOM 3:37 P.M.

9 THE COURT: All right. What I'd like to do is
10 this. Mr. Plexico, I have changed my mind. I have
11 decided -- I think by the time we make motions, we talk
12 about the charge, I go through your client's rights,
13 this thing isn't going to get to jury until after 5:00
14 o'clock. I don't think it's going to be a quick
15 verdict, in my opinion. It could be. I just may be
16 wrong, but I just think it's too late. So I do want to
17 argue and charge in the morning, but I do want to go
18 through all those other things at this point.

19 So what I propose to do, ladies and gentlemen,
20 bring the jury back out, send them home for the Day. I
21 have hearings tomorrow at 9:00 and 9:30. I say we have
22 the jury come back at 10:00 o'clock, when we will argue
23 and charge and finish up this case. Okay? The rest of
24 you have to be here earlier than that, because there are
25 other motions we have. But with that said, that's what

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BY THE COURT

1 we're going to go ahead and do. Okay?

2 SOLICITOR HOLLEN: Yes, your Honor.

3 MR. PLEXICO: I have a motion for a directed
4 verdict, your Honor.

5 THE COURT: I'd like to send the jury home before
6 you do that.

7 MR. PLEXICO: Oh, I'm sorry. I'm sorry.

8 THE COURT: Okay?

9 MR. PLEXICO: I'm sorry, I missed it.

10 THE COURT: Let's bring the jury back out.

11 JURORS ENTER COURTROOM 3:40 P.M.

12 THE COURT: Ladies and gentlemen, welcome back. We
13 were just talking about scheduling. What we have left
14 to do in this case is hear the closing arguments from
15 the attorneys. I have to charge you on the law. That's
16 all going to take awhile, plus, there's some other
17 motions that I need to hear before all of that can
18 happen. There is a rule of thumb for judges is that we
19 don't send cases to juries after 3:00 o'clock. At the
20 rate we're going right now, after all of that is done, I
21 might get the case to you by about 5:30 or 6:00, and
22 that means that is when you would begin your
23 deliberations. That's just simply too late for today.
24 Okay? So this is what I'm asking you to do, and I want
25 to make sure no one has a problem. I'm asking that you

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BY THE COURT

1 all return tomorrow morning at 10:00 a.m., where we're
2 going to go ahead and finish up this case. Is that
3 okay? Everybody?

4 RESPONSES FROM JURORS.

5 THE COURT: I have to have you all here, so I want
6 to make sure that's fine with everybody. But I want to
7 start at 10:00 a.m. There are some matters I can take
8 up with the lawyers right now, after you all go home.
9 Everyone's tired, and it's been a long Day, ladies and
10 gentlemen, and this is an important case. So I'm going
11 to ask that you go home at this point. I will see you
12 all tomorrow morning at 10:00 a.m. You are not to do
13 any independent research. You are not to read anything,
14 watch anything, listen to anything. Ladies and
15 gentlemen, get a good night's sleep. All right? I will
16 see you all tomorrow morning in the jury room at 10:00
17 a.m. Okay? Thank you all.

18 JURORS LEAVE COURTROOM 3:50 P.M.

19 MOTIONS AND RULING:

20 THE COURT: All right, Mr. Plexico, any motions?

21 MR. PLEXICO: Yes, your Honor. I move for a
22 directed verdict on the count of attempted murder of
23 Davonte Freeman. And based on the fact that the
24 attempted murder of Wrenshad Anderson, based on the fact
25 that Mr. Anderson could not see who the shooters were;

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BY THE COURT

1 that he described them in this courtroom as Peanut, who
2 is obviously not my client. And he originally said that
3 this was -- the person was a Dre character who was
4 Keandre Frazier, and he described Keandre Frazier. And
5 you saw Mr. Anderson himself, who is six-two. He says
6 who's almost as tall as him, and there's just no way to
7 make such a mistake with my client who is four-foot-
8 eleven, which is in the record, that possibly have been
9 her, Judge.

10 Any of the other testimony that they have is
11 merely speculation, or so suspect that it would only
12 create a suspicion that my client is guilty of that
13 charge. I also have the same basis for the attempted
14 murder of Wrenshad Anderson. This goes along with the
15 murder charge, and of course, if there's no murder
16 charge, a directed verdict of not guilty on the murder
17 charge and the attempted murder charge, that would --
18 should extinguish that the possession of a weapon --

19 COURT REPORTER: I'm sorry, speak up.

20 MR. PLEXICO: -- because there would be no felonies
21 that would be involved. Do I need to repeat anything?
22 Sorry. And I'd get a directed verdict on the last one,
23 Judge.

24 THE COURT: Mr. Hollen?

25 SOLICITOR HOLLEN: Your Honor, you know the

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BY THE COURT

1 standard here. I'm not going to go into that as far as
2 the concern with the existence of evidence. We have
3 both enough circumstantial and direct evidence in this
4 case for the jury to make a finding of guilty. All of
5 these charges starts with defendant's own statement and
6 lying about knowing Eric Darien, texting Eric Darien,
7 and text messages where people were congratulating her
8 on joining the family for killing somebody. She does
9 not deny those. The car that she was in with Eric
10 Darien, when she denies the phone calls to Eric Darien.
11 The -- Mr. Malphrus seeing and hearing a car with a loud
12 muffler leaving the scene, which was described by Mr.
13 Riley and Mr. Horton, who saw Aneisha Young in a car
14 similar to that.

15 Then you have the testimony from both Marie Powell
16 and Debbie Spann, and that the defendant admitted to
17 them the killing of Davonte Freeman, and that the intent
18 there was specifically to kill Wrenshad Anderson as
19 well. I think taking all that into account, there is
20 more than enough evidence from which the jury can
21 determine guilt, and I think they should be the ones to
22 determine it.

23 THE COURT: Okay. Obviously, taking the evidence
24 in the light most favorable to the non-moving party, I
25 do think there is evidence from which this jury could

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BY THE COURT

1 determine that Ms. Young is guilty of the charges, and
2 I'm going to let it go to the jury for their
3 determination.

4 At this point, Mr. Plexico, I would like to go
5 over Ms. Young's rights, whether or not she wishes to
6 testify. So Ms. Young, if you would stand and raise
7 your right hand, I'm just going to swear you in. Do you
8 swear or affirm the testimony you give to be the truth,
9 so help you God?

10 ANEISHA YOUNG: Yes, ma'am.

11 THE COURT: Thank you. Put your arm down; just
12 keep standing. I just want you to know that at this
13 time I'm going to explain certain constitutional rights
14 that you have. If there's anything you don't
15 understand, ask me to stop, ask me to repeat it,
16 rephrase it. I am happy to do that.

17 We have reached the stage in the trial where you
18 may present your defense now. The State has rested
19 their case, so if you choose to, you can present a
20 defense. You have the right to claim the protections
21 that are given to you by the *Fifth Amendment* to the
22 *Constitution of the United States*, which states in part
23 that no person shall be compelled in any criminal case
24 to be a witness against themselves. This means that you
25 cannot be required to testify in this case. You have

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BY THE COURT

1 the right, though, to testify on your own behalf if you
2 want to, but no one can make you testify. Do you
3 understand that?

4 ANEISHA YOUNG: Yes, ma'am.

5 THE COURT: All right, ma'am. I want to make sure
6 you also understand that the decision to testify or not
7 testify, while I expect you to talk to your client --
8 you're the client -- your attorney, Mr. Plexico, whether
9 or not you should testify, this is a personal right that
10 you have to choose and use and invoke. So it's
11 something that you have to understand and make sure you
12 agree with.

13 I want you to know that if you choose to testify
14 in this case, you are going to be subject to the same
15 rules that other witnesses in this case were subject to.
16 In other words, you can be examined and cross-examined
17 on any evidence that I believe is relevant to this case.

18 Now, it's my understanding from both the State and
19 your attorney that you do not have any prior convictions
20 that would be subject to being cross-examined on those.
21 But again, if you take the witness stand, the State can
22 ask you anything they want to related in any way to this
23 case and what happened here and the parties involved,
24 and you understand that. Is that correct?

25 ANEISHA YOUNG: Yes, ma'am.

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BY THE COURT

1 THE COURT: All right, ma'am. Also, I want you to
2 understand, again, that if you do not want to testify in
3 this case, in my jury charge at the end of the trial,
4 I'm going to tell this jury that the fact that you
5 didn't testify can't even be discussed by them back in
6 the courtroom -- or, I'm sorry -- in the jury room, and
7 the reason is this. You are not required to prove your
8 innocence. The burden is on the State to prove your
9 guilt as to these charges beyond a reasonable doubt. So
10 I will tell them that they are not to even talk about it
11 back in the jury room. All right?

12 ANEISHA YOUNG: Yes, ma'am.

13 THE COURT: So basically, have you had an
14 opportunity thus far to talk to Mr. Plexico and decide
15 whether or not you want to testify in this case?

16 ANEISHA YOUNG: Yes, ma'am.

17 THE COURT: And have you had enough time and a long
18 enough time to have that discussion?

19 ANEISHA YOUNG: Yes, ma'am.

20 THE COURT: Okay. Ma'am, do you want to testify in
21 this case?

22 ANEISHA YOUNG: No, ma'am.

23 THE COURT: Okay. And is that your decision?

24 ANEISHA YOUNG: Yes, ma'am.

25 THE COURT: Are you making that freely and

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BY THE COURT

1 voluntarily?

2 ANEISHA YOUNG: Yes, ma'am.

3 THE COURT: And no one's forcing you to make that
4 decision, are they?

5 ANEISHA YOUNG: No, ma'am.

6 THE COURT: All right. Well, I appreciate that,
7 ma'am. You can go ahead and be seated.

8 A. Thank you.

9 THE COURT: At this point, I think what we will go
10 ahead and do, Mr. Plexico, tomorrow morning when we come
11 in, I say that we just -- we'll go ahead and I will have
12 you rest in front of the jury, we will renew our
13 motions, and then we'll go into closing arguments.
14 Okay?

15 MR. PLEXICO: Yes, your Honor.

16 THE COURT: Is that acceptable? And Crystal has
17 spoken with you all about the jury charge, and she's got
18 a verdict form. Do you want to show that to them?

19 In this case I am charging -- it's pretty much my
20 standard, which if you both don't know. It's the *Bench*
21 *Book* charge. Obviously, that the indictments are not
22 evidence; if there's a presumption of innocence. I
23 charge reasonable doubt; that the jury is the judge of
24 the facts and I'm the judge of the law. I explain to
25 them direct and circumstantial evidence. I talk to them

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BY THE COURT

1 about the credibility of witnesses. I also explain
2 about expert witnesses.

3 The charge that Ms. Young did not testify is not to
4 even be talked about back in the jury room. I've got
5 the charge that the hand of one is the hand of all.
6 Obviously, I have an identification charge, the question
7 of who the assailant is in this case. The question is
8 the I.D. of that person. And then, I would charge
9 murder, attempted murder, and possession of a deadly
10 weapon during the commission of a violent crime. And
11 then just the standard of you don't owe any support to
12 anyone, and that's it. It's pretty straightforward.
13 Does the State have any additional charges, other than
14 that, that they would like?

15 SOLICITOR HOLLEN: No, your Honor. That sounds
16 perfect.

17 THE COURT: Mr. Plexico, anything from you, sir?

18 MR. PLEXICO: No. I only wanted the identification
19 and silence of the accused, so I'm happy, Judge. Thank
20 you.

21 THE COURT: Okay. Absolutely. So anything else?
22 No?

23 SOLICITOR HOLLEN: Not from the State, your Honor.

24 THE COURT: Okay. So my understanding is we have
25 three hearings, I think two at 9:00 o'clock -- one at

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BY THE COURT

1 9:00, two at 9:30 in the morning tomorrow morning, and
2 then we're going to start with this jury at 10:00
3 o'clock. Okay? So other than that, we're going to be
4 at ease. I think we've been talking -- our office has
5 been talking with Bob Hughes and with Mr. Hall about the
6 next case, so we'll deal with them on that. But I do
7 think maybe we need to all be looking forward to
8 possibly doing guilty pleas while this jury is
9 deliberating. As you all know, it's very difficult to
10 start a second trial here, and then we have one jury
11 room and one courtroom. So it's not like I can tuck
12 anyone away and start the next one. So it's looking
13 right now, to me, that we will be doing guilty pleas and
14 whatever else we need to do tomorrow afternoon. So I'm
15 going to go ahead and warn you right now that once this
16 jury is done, I may need you to bring over a load of
17 people, so. But we'll take a break in between and it
18 should be okay. All right. So that's what my hope is.
19 But we'll be talking, like I said to Patrick Hall and
20 Bob Hughes, who are the next case up that I pull a jury
21 on. And I would assume we have to make that decision
22 soon, because we have to put something on the juror
23 line. So anything else we need to do tonight before we
24 break for the evening? Anyone?

25 SOLICITOR HOLLEN: Not from the State, your Honor.

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BY THE COURT

1 THE COURT: Anything, Mr. Plexico?

2 MR. PLEXICO: No, your Honor.

3 THE COURT: All right. Everyone have a good
4 night's rest. I will see you all tomorrow morning.
5 I'll be on the bench at 9:00 a.m. Okay?

6 END DAY THREE, WEDNESDAY,

7 MARCH 14, 2018, 4:01 P.M.

8 BEGIN DAY FOUR, THURSDAY,

9 MARCH 15, 2018, 10:33 A.M.

10 BY THE COURT:

11 THE COURT: All right. So we're back to this case.
12 For the record, are there any objections to the verdict
13 form in this case? Mr. Hollen?

14 SOLICITOR HOLLEN: No, your Honor.

15 THE COURT: Mr. Plexico?

16 MR. PLEXICO: No, your Honor.

17 THE COURT: Okay. Gentlemen, are you ready?

18 SOLICITOR HOLLEN: Yes, your Honor.

19 THE COURT: Everybody have a good night's sleep?

20 MR. PLEXICO: Yes, your Honor.

21 THE COURT: Mr. Hollen, you're ready?

22 SOLICITOR HOLLEN: Ready, your Honor.

23 THE COURT: Okay. Good. All right. Everyone's
24 ready. All right. Mr. Plexico, I'm holding you to 45
25 minutes. I will never cut you off, but you may hear a

1 lot of movement up on this bench. You never know what's
2 going to happen. So you may hear a lot of this, you
3 might hear some tapping. So again, let's put it in
4 front of them efficiently. Okay?

5 MR. PLEXICO: Thank you, your Honor. That would be
6 long for me this time.

7 THE COURT: Good. Okay. All right. We're ready
8 to go. So you're going to open, he's going to get --
9 oh, you didn't put in any evidence, did you?

10 MR. PLEXICO: No, no.

11 THE COURT: You didn't put in any evidence. So
12 very good.

13 SOLICITOR HOLLEN: I think Mr. Plexico needs to
14 rest in front of the jury.

15 THE COURT: He does, he does. Can we do this now,
16 Mr. Plexico? I want you to, right now, I'm going to
17 have you formally rest for the jury, and we'll just go
18 straight into closing arguments. You need to renew your
19 motions right now, and I am preserving them.

20 MOTIONS AND RULING:

21 MR. PLEXICO: Yes, your Honor. I'm moving for a
22 directed verdict on all of the indictments, based on the
23 sufficiency of the evidence; the evidence that there is
24 no reliable eyewitness evidence that could create no
25 more than a suspicion. I don't think that's

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1 sufficiently certainly enough to take it in front of the
2 jury that my client was guilty. And you add in all the
3 other insinuations, they are so doubtful in their
4 sources, Judge, I don't believe that creates a
5 sufficient question for the jury, and I'd move for
6 directed verdict of not guilty on all three indictments
7 on those grounds.

8 THE COURT: All right. Thank you. Well,
9 respectfully, taking the evidence in the light most
10 favorable to the State, which is the non-moving party,
11 obviously, I think there is evidence from which this
12 jury could determine that Ms. Young was involved in this
13 incident, certainly under the hand of one is the hand of
14 all theory, and/or as the shooter, I think, either way,
15 and I think it's a jury issue. So we're going to let
16 them have it. Okay?

17 All right. Go ahead and bring everybody in, and
18 then --

19 Come on in. All right. Well, good morning to the
20 rest of you who just came in. I just need to remind
21 both sides, everyone that's in the gallery here, again,
22 these are closing arguments. I want the jurors focusing
23 on the lawyers and their arguments, not anyone coming in
24 or out, standing up or sitting down. The doors are
25 going to be locked in the back of the courtroom, so

1 you're not going to be able to leave. I can tell you,
2 also when I start charging them on the law and I start
3 reading the law to them, everything will be locked down.
4 You don't move. Okay? Because if you move, I'm going
5 to hold you in contempt of court, so I just want to make
6 sure you all know that. I don't mean any disrespect to
7 anybody. It's just simply that's what's required, and
8 the lawyers all know that.

9 So anyway. So we're going to give our attention
10 to the attorneys. Again, no head bobbing or anything
11 along those lines. And I know this is difficult and I
12 certainly appreciate it, but we're going to show the
13 respect we need to, to the jury and to the trial. And
14 we're going to go ahead and begin the case. Okay? So
15 let's bring the jury in, Honicutt.

16 JURORS ENTER COURTROOM 10:36 A.M.

17 THE COURT: Good morning, ladies and gentlemen.

18 RESPONSES FROM JURORS.

19 THE COURT: It is a pleasure to see you all again.
20 Thank you for waiting on us. I can tell you that I was
21 working on a couple matters on Monday that I had set for
22 this morning to take care of.

23 At this time, what you're going to hear is the
24 closing arguments in this case. I'm going to then
25 charge you on the law that's applicable, and it's going

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CLOSING - STATE - HOLLEN

1 to be sent to you for your deliberations. But before we
2 do that, Mr. Plexico, if you would formally rest for the
3 jury, sir.

4 DEFENSE RESTS.

5 MR. PLEXICO: Defense rests, your Honor.

6 THE COURT: Ladies and gentlemen, at this point,
7 the Defense has also rested their case. Again, that
8 means that now, you're going to hear arguments from the
9 lawyers and I'm going to charge you on the law. All
10 right? Everyone fine this morning? Everyone feeling
11 okay?

12 RESPONSES FROM JURORS.

13 THE COURT: Very good. All right. We'll go ahead
14 and begin the closing arguments.

15 SOLICITOR HOLLEN: Thank you, your Honor. May it
16 please the Court?

17 THE COURT: Yes, sir.

18 SOLICITOR HOLLEN: Mr. Plexico.

19 CLOSING ARGUMENT ON BEHALF OF THE

20 STATE BY SOLICITOR HOLLEN:

21 SOLICITOR HOLLEN: Good morning, everybody. Who,
22 what, when, where, why, how, those are really the six
23 questions that we, as prosecutors, try to answer for you
24 in every single case, and in this case I think the
25 answer to four of them is pretty clear. You know what,

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1 you know when, you know where, and you know how. It's
2 the who and the why that you need to worry about.

3 You know that on April 30th of 2016 Davonte
4 Freeman and Wrenshad Anderson, sitting right over there,
5 were walking on Adams Street, here in Ridgeland, in
6 Jasper County, South Carolina, when two people dressed
7 in black opened fire. Davonte Freeman was killed by a
8 .22 caliber bullet to the back of the head, and Wrenshad
9 Anderson survived.

10 It's easy. Four questions answered in a couple
11 sentences. Now, the thing that each and every one of
12 you guys is going to decide for yourself is who did this
13 and why. And based on everything you've seen, based on
14 the witness testimony you've heard, I think the answer
15 is clear. The answer is that that defendant, Aneisha
16 Young, and her co-defendant, acted together to kill
17 Davonte Freeman, and to try to kill Wrenshad Anderson.

18 Now, I told you at the beginning you guys were
19 going to have to put a couple pieces together, and it's
20 true, you do. You've got to put some things together,
21 but the pieces are there. They're all there, and I
22 don't want to insult your intelligence, because it's
23 going to seem like that's what I'm about to do, so I'm
24 going to walk through some things that might seem pretty
25 simple, but this is my chance to talk to you guys, last

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1 chance I'm going to get before you get back and
2 deliberate. So forgive me, that is not my intention,
3 but it is going to seem that way.

4 So let's start with the why. You know why. Who
5 had the motive to commit these crimes? Aneisha Young
6 did. Who had prior altercations with Davonte Freeman?
7 Who had threatened him? Aneisha Young.

8 You first heard from Demitria Williams. That's
9 Mimi. She is the mother of Davonte's son. She was
10 pregnant at the time he was killed, and she told you
11 about the time that Aneisha Young came into her house,
12 confronted Davonte about the money that he had stolen
13 from her. On the way out the door, there was something
14 said that she took as a threat. I don't know if it was
15 I got you, or I'm going to handle you. It was something
16 along those lines. That's what she told you. And then,
17 the defendant, in her statement, told you that Davonte
18 stole money from her. That may be the only thing she
19 said in that statement that was the truth, but we're
20 going to get to that in a minute.

21 Wrenshad Anderson told you that Davonte had taken
22 some money from the defendant, and that he had taken
23 some money and a gun from Eric Darien. There's your
24 motive. And let's talk about Wrenshad for a minute.
25 We've got to talk about Wrenshad. Wrenshad, the first

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1 thing you know about him is the 911 call you heard, and
2 I don't know if you all remember how distraught he was.
3 All he could do was scream his brother's name. He got
4 out that somebody shot him, but other than that, there
5 was a lot of Davonte, Davonte, Davonte. He was clearly
6 distraught. And there was no question that he said
7 Peanut and Dre. There is no question that he said that.
8 There's also no question that right now, he says he
9 knows who shot at him, and he knows it was Aneisha Young
10 and Eric Darien.

11 So why should you believe that? Well, if he was
12 going to lie, this is the trial of the person that he
13 believed killed his brother. If he was going to lie,
14 he'd have gotten on that stand and he'd have pointed
15 right at him and said, I saw her, I saw her face, I know
16 it was her. But he didn't do that. He said, I saw
17 figures dressed all in black; they were wearing the same
18 or similar clothing that I saw Aneisha Young in thirty
19 minutes prior, less than thirty minutes prior. So did
20 he see her face? No, but he knows it was her. He told
21 you he knew it was her. You don't need him to see her
22 face, it's all there, guys. Everything else is there.

23 He saw the shooters, because I can tell you that
24 those shell casings were found exactly where they should
25 have been found for where he said the shooters were

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1 standing, and this goes into why they weren't found.
2 And there's no excuse. Anyone who's ever shot a gun can
3 tell you that most of them eject cartridges to the
4 right. And for them to be standing on one side of the
5 street, and the cartridges to be found right on the
6 other side of the street, to the right, exactly where
7 they were standing, there's no excuse. With the
8 experience that Lieutenant Ginn and Lieutenant
9 Litchfield had, they told you, they didn't do a great
10 job, they should've done better, and they should've
11 found those cases.

12 Andrew Garinger from the Beaufort County Sheriff's
13 Office forensic lab got up there and told you that -- I
14 think the wording he used was that it's so rare -- or,
15 excuse me. I'm sorry. I'm going to mis-quote him.
16 Rare enough to be remarkable, is what he said. So if
17 those casings were found right after this, would it have
18 made a difference? Probably not. Would he have gotten
19 any DNA off of them? Probably not. But it's not good
20 enough. Those cases should have been found. That scene
21 wasn't secured the way it was supposed to be. All
22 right? But in the end, I don't know.

23 Let's go forward a little bit. You saw the
24 interview with her. Who lied and lied and lied and lied
25 in their interview? That defendant did, so let's go

1 through some of that.

2 First of all -- technology. This is where the
3 problems always come in. While we're getting that
4 fixed, let's think about it. The first thing you're
5 going to see up there when we finally get it working is,
6 I don't know that boy, I don't know Peanut. I wasn't
7 sure how many times she said that, but I went back and I
8 counted. And you all, I think if I counted right, I
9 could be off one or two, seventeen times she denies
10 knowing Peanut, or Eric Darien, seventeen times. That's
11 almost as many times as they called each other on the
12 Day of this murder and right after. Twenty-four times,
13 if you remember what Karen Milbrodt testified to.
14 Twenty-four times either he called her or she called
15 him.

16 And let's think about the numbers here. You were
17 told that Aneisha Young's phone number -- in fact, she
18 tells you on the video -- [REDACTED] 3731, I think is what
19 she gives, or what Litchfield asked her about. So 3731.
20 He told you that he got information, got a search
21 warrant for a phone number belonging to Eric Darien.
22 That was [REDACTED] 3234. So just remember that as we're
23 looking -- if we can ever get this fixed -- at the
24 messages. So I don't know Peanut. If we could get
25 there. What's next? Peanut wasn't in my car. Never

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1 got in the car. She says that seven times. You heard a
2 few people testify about this car.

3 You heard Keith Horton, who has absolutely no
4 reason to lie at all, talk about Aneisha Young leaving
5 in a small car, with at least three, maybe four, other
6 people, shortly before Davonte Freeman and Wrenshad
7 Anderson leave the Siesta Motel. Cedric Riley told you
8 not only that he saw her in the car with Peanut, he told
9 you where everyone was sitting. He told you that she
10 was in the front seat. This third person was driving,
11 and Peanut was in the back. Well, seven times he says
12 he never got in the car. And then, the other thing
13 about this car is that Cedric Riley told you that the
14 muffler was kind of loud. He remembered that. And
15 then, there's William Malphrus who, shortly after the
16 shooting, heard a loud muffler car speeding away from
17 the scene at a high rate of speed. So remember that.
18 Got it? So let's back up a little bit.

19 VIDEO PLAYING.

20 SOLICITOR HOLLEN: Okay. [REDACTED] 3234, 9:55 p.m. on
21 the day of the murder, *yo call me asap. Come on sis.*
22 When she didn't call, he wanted her to call, he texted
23 her again. Remember what Cedric Riley told you about
24 Eric Darien and calling her sis? There you go.

25 VIDEO PLAYING.

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1 SOLICITOR HOLLEN: Like I said, seven times. Seven
2 times she says he never got in the car.

3 VIDEO PLAYING.

4 SOLICITOR HOLLEN: I was gone, gone back to Hilton
5 Head, 10:30, 11:00 o'clock. Well, and look, guys, we
6 talked about the limitations of this. We're not trying
7 to say that this information can put that defendant at
8 the scene exactly when it happened, but it does put her
9 in Ridgeland, and it puts her pretty close to the scene.
10 So we know at 9:55, before she leaves, 9:54, she goes on
11 -- she's on Hilton Head, all right? And then, you can
12 watch where that phone goes. Keep flipping. 10:49 on
13 the way to Ridgeland. 10:53 to 12:34, one tower,
14 nothing else. 10:53 to 12:34, somewhere in the
15 vicinity, and we can't say how close. We don't know.
16 It's just a small piece, guys. It's a small place. So
17 12:34 is the last time that it hits on that tower, Tower
18 208, Sector 3, closest to the incident location. All
19 right.

20 Remember what Eric Grabski told you guys about only
21 being able to get the location when the phone was using
22 data? Basically, when it makes a call or receives a
23 call is when you get that location. There's a twenty-
24 minute window, 12:34 to 12:54, seven minutes after
25 Wrenshad makes his phone call to 911, seven minutes, she

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1 starts moving. That phone starts moving. Excuse me.
2 What is she doing with that twenty minutes? She's
3 sitting in the woods, waiting on Wrenshad Anderson and
4 Davonte Freeman with Eric Darien. That's where she is.
5 She's not calling anybody. They're waiting. That's
6 where they are. And then -- and guys, again, I was gone
7 at 10:30. That's a lie. That's a lie. And eventually,
8 we get back to Hilton Head, and that phone doesn't leave
9 or doesn't seem to move from that tower from some time
10 after 2:30 in the morning until 4:30 the next Day.

11 She came in and interviewed with Lieutenant
12 Litchfield on May the 5th. Where was she before that?
13 Well, I think she said that she couldn't -- she didn't
14 have transportation when she talked to him, or she kept
15 trying to get in touch with Tameka Bailey, who is the
16 Sheriff's Deputy, and she told you she didn't need to
17 come in or anything like that. Well, she didn't come in
18 because she went to North Carolina. What's next?

19 PLAYING VIDEO.

20 SOLICITOR HOLLEN: [REDACTED] 5180. 5180. Talks a lot
21 about an alibi, Tashonda Washington. Lieutenant
22 Litchfield told you that he called and left a message.
23 He called again; spoke to the female who answered the
24 phone; said, hey, need you to come in and make a
25 statement; you've been used as an alibi; you need to

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1 come in and make a statement. Well, it's her cousin.
2 Never heard from Tashonda Washington. He never heard
3 from her. Because she didn't want to be involved. She
4 didn't want to be used as an alibi in the lie. It's her
5 cousin. And as Mr. Plexico told you when he was talking
6 to Captain Orr, or as Captain Orr said, she was in jail
7 for awhile. If your cousin, who is a real alibi, leaves
8 you sitting in jail for almost 700 days, I imagine your
9 family is going to be pretty upset. It's a lie. We
10 know where she was.

11 MR. PLEXICO: Your Honor, the defendant has nothing
12 to prove this. I believe that's at least on the border
13 of burden shifting.

14 THE COURT: Okay. You can continue. Obviously,
15 just don't burden shift. Okay?

16 SOLICITOR HOLLEN: Yes, your Honor.

17 BY SOLICITOR HOLLEN:

18 VIDEO PLAYING.

19 SOLICITOR HOLLEN: 3731, Aneisha. The 3234, Eric
20 Darlen. Sixteen minutes before Wrenshad Anderson calls
21 911. Take from that what you will, guys. *Shawty*
22 *trippin.what's the move?* Well, the move is to go kill
23 Eric Darlen -- or excuse me -- to go kill Davonte
24 Freeman, and to try to kill Wrenshad Anderson. That's
25 the move. Oh, it's not her phone, I'm sorry. May 2nd,

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1 9:53, what's your email? [aneishay@](#) [REDACTED]. But it's
2 not her phone; it's not her number anymore; it broke.

3 He didn't ask her anything about texting Peanut.
4 He asked her if that was her number. And that's
5 somebody getting caught in a lie, guys. She was making
6 that up as she went.

7 You all, the pieces are all there. They're all
8 right there. People who don't have anything to hide do
9 not lie that much to the police in the course of a 35-
10 minute interview. They just don't.

11 But then, in addition to all that, in addition to
12 all the lies, she talks to a couple of people. And
13 there was a lot said about Marie Powell, and some said
14 about Debbie Spann. Marie Powell clearly has a very
15 long record. She has not been the most upstanding
16 member of society. That part is clear. She knew
17 Davonte Freeman, and from her tearing up on the stand, I
18 think you can imagine that she liked Davonte Freeman,
19 despite all his issues. But Marie Powell, liking him or
20 being close to him or whatever does not give her a
21 motivation to come in here and try to lie and put the
22 wrong person in jail for killing Davonte. That doesn't
23 make any sense. If anything, it gives her more
24 motivation to come here and tell the truth, to make sure
25 the person that killed the person that she liked goes

1 away.

2 And this thing about Anthony Austin dating
3 Davonte's mother ten years prior or whatever, would the
4 defendant had known that before she talked to her about
5 Anthony Austin? I don't know. I don't know.
6 Ridgeland's not that big. I get it. But I'm not sure
7 people remember who an acquaintance's mother dated ten
8 years prior. But she did know that she dated Anthony
9 Austin, and she said that Anthony Austin had a
10 reputation. Maybe he still does. I don't know. But
11 not only did she tell Marie that she -- the first thing
12 she said was that her and Peanut did it. They tried to
13 kill Wrenshad, they killed Davonte, and Peanut had a .9
14 millimeter. She approached her and asked about getting
15 rid of Wrenshad. When she thought -- at the time, it
16 may have been true -- that the biggest and only piece of
17 evidence was Wrenshad's eyewitness testimony, she tried
18 to have him killed. And then, she told you, and
19 Lieutenant Litchfield did tell her in that interview,
20 said, no, he was killed with a .22. And she took that
21 information and she went back, and she didn't come back
22 in and say, yes, she told me she killed him with a .22,
23 but she did. But that wasn't it. She came back in
24 armed with this little tiny nugget of information that
25 is so specific I don't know how she would have made it

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1 up. Said she killed him; she had the .22; she sold it
2 to a guy named Tome. Where did that come from? That's
3 not something someone just makes up. It's just too
4 specific.

5 And then, there's Debbie Spann, who I don't even
6 need to talk about Debbie Spann. She told you what she
7 told you, and that's it. Yes, she was related to
8 Davonte Freeman. Again, why does that make her want to
9 come in and point the finger at a person who didn't do
10 it? It doesn't. She was told by Aneisha Young that she
11 killed Davonte Freeman, and she was trying to get rid of
12 Wrenshad Anderson, who also goes by Kwame, by the way.
13 I don't know if that was clear, but Lieutenant
14 Litchfield, in his interview, says Wrenshad Anderson, he
15 confused Aneisha Young, and then, Mr. Plexico confused
16 Ms. Powell on the stand, because they don't call him
17 Wrenshad. He goes by Kwame, which is his middle name.
18 So Debbie Spann told you that.

19 Guys, there are some things in this case that
20 don't really matter, but could lead you down the wrong
21 path. Okay? A lot of people call them red herrings.
22 Think about -- what was the testimony about Matthew
23 Hatchell and Joshua Lafler seeing people in the woods.
24 One of them saw two men. One of them saw one person. I
25 don't know. I don't know what they saw. But I'm going

1 to wrap it up here, because you guys have been being
2 talked at for three days, and I know that you're ready
3 to start talking to each other about this case.

4 So real quick, the Judge is going to tell you
5 about the law. As I told you, Aneisha Young is charged
6 with the murder of Davonte Freeman and the attempted
7 murder of Wrenshad Anderson. Murder is the killing of
8 another person with malice aforethought. And one of the
9 ways that malice can be inferred, because you don't know
10 what someone feels in their heart, is doing something
11 like, I don't know, lying in wait for someone before you
12 kill them. That could show malice. She's also charged
13 with possessing a weapon during a violent crime, but as
14 I said, the judge will tell you about that.

15 Reasonable doubt is something you hear a lot about
16 on T.V. and that kind of thing, but it's important. It
17 is a high burden. It's the highest burden we have in
18 the law. And that means that I have the responsibility
19 to make sure that I prove to you beyond a reasonable
20 doubt that that defendant was involved in the killing of
21 Davonte Freeman, attempted murder of Wrenshad Anderson,
22 and possessing that weapon.

23 The Judge will tell you that a reasonable doubt is
24 the kind of doubt that would cause a reasonable person
25 to hesitate. We don't know, it's impossible to prove --

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1 not impossible, but it's very difficult to prove
2 everything beyond any possible doubt, beyond all doubt,
3 because there's always just a small doubt. But look at
4 the evidence, guys. Look at everything you've seen, and
5 put the pieces together. And I told you I was going to
6 insult your intelligence, and I don't mean to do that,
7 but I just wanted to put all that out there one more
8 time.

9 And finally, Davonte -- this is the last thing I'm
10 going to tell you. Davonte Freeman had issues, clearly.
11 Sounds like he had a rough life. Wrenshad told you that
12 they were homeless at this time; they were going to get
13 a hotel room when they were ambushed, for lack of a
14 better term. He -- which I have no idea why this
15 matters, but he had cocaine and marijuana in his system.
16 Does that mean he deserved to die? He had taken some
17 money from Aneisha Young. Okay? I get it. But what
18 gives her the right to take his life? She doesn't have
19 that right. She doesn't have the right to take Davonte
20 from his family. She doesn't have the right to take him
21 from the son that will never meet his father, and that's
22 what she did.

23 So when you go back in that jury room, guys, look
24 at all the evidence, talk everything through, and then
25 make up your mind, each person for yourself. But once

1 you guys have a chance to look at everything, I really
2 am confident that you will find the defendant guilty;
3 find her guilty of the murder of Davonte Freeman; find
4 her guilty of the attempted murder of Wrenshad Anderson;
5 and find her guilty of possessing a weapon during the
6 commission of a violent crime. Thank you.

7 MR. PLEXICO: Your Honor, Mr. Solicitor.

8 THE COURT: Sir.

9 CLOSING ARGUMENT ON BEHALF OF

10 THE DEFENSE, BY MR. PLEXICO:

11 MR. PLEXICO: Madam Forelady, ladies and gentlemen
12 of the jury, now the time for me to speak to you has
13 come, and I want to start off with just a few principles
14 of the law, which I certainly don't want to overlook,
15 and I'm not going to. It's the Judge's duty to charge
16 the law, and anything that she says is absolutely right.
17 And if there's any conflict with anything I say, I'm
18 absolutely wrong.

19 The State has the burden of proof in every
20 criminal case. This is what I told you to start with.
21 They start out, you come in here, and you don't know
22 anything, this is zero here. They have got to go all
23 the way down where there is no reasonable doubt that the
24 defendant is guilty. They have to prove him guilty
25 beyond a reasonable doubt. And if you hesitate and go,

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1 ah, well, you know, maybe not, that's enough hesitation.
2 They have not proved. This is not a fifty-fifty car
3 wreck case. There's no balancing. You can't take any
4 piece of evidence, okay? particularly circumstantial
5 evidence, and balance it out and call that, well, that
6 probably indicates something. No, it has to indicate
7 something beyond a reasonable doubt. Everything you
8 rely on, it has to be taken and proven beyond a
9 reasonable doubt to make up this crime, and that's their
10 burden. We have no burden. We have no duty to prove
11 anything. There's a presumption of innocence, and the
12 Judge, I believe, will charge you that the presumption
13 of innocence in America is of such a nature legally that
14 jurors can rely on it by itself to find someone not
15 guilty. They've got to overcome that presumption of
16 innocence. It is a powerful, powerful concept that we
17 have brought to this country, and it applies to
18 everybody who's a defendant is presumed, presumed to be
19 innocent, and they have the heavy burden.

20 You've heard from people on the witness stand. If
21 it's not in evidence and it's not sworn to from that
22 witness stand, it's not evidence. You can only rely on
23 evidence. You've heard from people. People have biases
24 and prejudices. Okay? You have to reflect on the
25 credibility of any witness in their motive to

1 misrepresent. Okay? All right? You have to focus.
2 That's how you balance that out. You can believe some
3 of what they say, all of what they say, or I'm not going
4 to base a conviction on what he or she said, because
5 they're not honest and trustworthy people; because this
6 is a murder case; and we have a lot at stake here. And
7 nobody can overturn a jury's finding of fact. An error
8 of law can be appealed. There are no errors in finding
9 of fact by an American jury. That just isn't the way it
10 is.

11 She'll give you a charge, I believe, on
12 identification. You know, is it reliable? And there are
13 many factors to look at. One is the opportunity to
14 view. Delirious, everything was a blur, I was focusing
15 on my brother; we heard rustling in the leaves, meaning
16 it's back over in the woods; we ran; looked at each
17 other; he fell; everything was a blur. Opportunity to
18 observe anybody just wasn't there. It just wasn't
19 there. The degree of attention was focused on his
20 brother.

21 Accuracy of prior descriptions, do I even have to
22 go there? And this Dre character he said was as tall as
23 him, and that guy should have been a basketball player,
24 and would have been very successful, Mr. Wrenshad
25 Anderson because he could practically just go ahead and

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1 walk up and toss the thing in. Okay? And if Dre is
2 that tall, okay, that tells you a lot.

3 And a level of certainty. Here, he's not that
4 certain about anything. There is no eyewitness
5 testimony to put my client at that scene. There are
6 suppositions, just suppositions.

7 I want to talk to you about what's cooking. Okay?
8 All right. My mom would always cook. Sometimes she'd
9 come up short in the kitchen, and I didn't catch onto
10 this until I got older, because whether it was chicken
11 and rice, or macaroni and chicken, or macaroni, or
12 whatever she was doing, it was always great, but
13 sometimes it didn't quite taste the same. And the way
14 that I figured out when I was older, if she came short
15 on cheese, she might add another egg. Okay? Or she
16 might add something to something different. Okay? Or a
17 different type of cheese if she didn't have cheddar.
18 But Mom always made it work and everybody was happy.
19 And you know, it was a pinch here and a pinch there, and
20 I think Mama said the rule was if it looks like it's
21 supposed to, I know you all will think it's good. Okay?

22 Now, taking that from the kitchen, let me talk
23 about the way the case was handled by the police. If it
24 looks good, it's all right. A pinch of this, a pinch of
25 that. Now, let me start with the .22 shells. They go

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1 to the crime scene; they find two on one side of the
2 road; two on the other side of the road. That gives you
3 four, and four should be in evidence. So they have a
4 pinch of this, a pinch of that, and we'll add a few
5 more, because they have six. Okay? Did they have any
6 at all? You know, if you're not going to do it right
7 and you're going to fudge on the evidence, you ought to
8 fudge at least by what you said you were going to have.
9 You don't need to add into. Where did these come from?
10 They weren't found at the crime scene. That wasn't the
11 testimony. The testimony is clear. Fake evidence. Did
12 they maintain the crime scene? Because they called
13 SLED. Did they call Beaufort? Did they call Port
14 Royal? Did they call the Jasper Sheriff's Department?
15 Did they call Hardeeville for help to maintain that
16 crime scene? They knew they were dealing with a bunch
17 of criminals. Okay? All right? They knew the boy had
18 been shot at 45 -- before my client even had any reason
19 to be mad. That stuff they were telling about with my
20 client, where she clearly forgave him and let it go, was
21 three weeks to a month. Who was shooting at Davonte
22 Freeman in the same spot 45 days earlier? Forty-five
23 days earlier is more than a month. Okay? So not my
24 client tried to kill him 45 -- or two years before that.
25 He's just got a bad history with people, a bad history.

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1 If he needs to have been looked at, you know,
2 they're trying to say my client had a motive. Looks
3 like a bunch of people had motive. Made their living
4 robbing and stealing, and laughed about it. And laughed
5 about it. I said, didn't you all rob somebody of a
6 thousand dollars in Xanax? Wrenshad laughed, and said
7 no. The boy was on Xanax, now, when I stole from him.
8 You know, a little bit of truth. You figure. All
9 right? So now drugging. And talk about Cedric Riley,
10 you know, lying on the stand. Who hasn't lied on the
11 stand?

12 Yeah, I just wonder what shells were on the
13 ground. I mean, and you're talking about an iron site,
14 and you have a pistol, and you have got not a scope,
15 just a regular metal iron site. And you're talking 60
16 yards, and you're going to put it straight in somebody's
17 head, straight through, not at an angle. If I'm
18 shooting at a tall person, and I'm a short person,
19 there's going to be an angle going up. There's going to
20 be some angle, because it wouldn't make sense otherwise.
21 Think about that. Who was he shot by? A tall person.
22 I had to be. Or a rifle and a scope from somebody
23 standing back in those woods. And let's see here. One
24 thing you can see is woods, woods, woods, woods. They
25 didn't know who -- heard leaves rustling, but the leaves

1 don't rustle on the street. Leaves don't rustle. How
2 you going to hear leaves rustling if you're halfway up
3 that long distance?

4 Now, where's the picture at here? Court's
5 indulgence, please.

6 Well, you saw the distance, and you see the path
7 here. Okay? And if you were way up there, halfway at
8 least to KFC, you probably -- and you're talking to your
9 brother, you're probably not going to hear leaves
10 rustling. And as long as that shot was three feet away,
11 there would be no soot and no stippling. So we don't
12 know what happened. But we know that it happened
13 further than three feet. Okay? Because there is no
14 reliable witness. Now, a tall person shot him, and we
15 don't know who that is. That matches the evidence. And
16 the doctor testified, as well about the drugs he had
17 been using is that straight line, not deviating left or
18 right, not deviating up or down. That doesn't match a
19 shorter person shooting. The evidence doesn't match.
20 Even when they fix the evidence and fabricated evidence,
21 they haven't fabricated to match because you can't
22 change the trajectory, for instance, of the bullet
23 wound.

24 Look at Matthew Fraleigh. He did the 911 call.
25 All he said was -- I'm going to go through these quick,

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1 and don't have a whole lot of time, but I'm sure I'll
2 have enough. They are shooting at him. Wells shows up,
3 the officer shows up. They know who they're looking
4 for, it's Peanut and Dre. There's not questioned.
5 That's what he says. Okay? Why would he make that up?
6 He says Peanut and Dre. That's what -- and that's what
7 he repeats on and on again. He radios that out to
8 Lieutenant Ginn, who does the canvas at the Siesta
9 Hotel, looking for two black males and matching -- were
10 wearing dark clothes. He doesn't seem to find anybody.
11 So remember -- and this goes on and on.

12 Now, remember, the police knew that Peanut had a .9
13 millimeter from before, and he kept saying there were
14 only two shooters. Lieutenant Ginn came. He said he
15 was delirious, confused. He was impaired. He described
16 him not under the influence associated with alcohol, but
17 impaired. Okay? You didn't get to see the video of
18 that, which they could have played it for you, but
19 remember, they have the burden of proving --

20 SOLICITOR HOLLEN: Objection, your Honor. May we
21 approach?

22 THE COURT: You may.

23 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
24 HEARING OF JURORS. PRESENT: THE COURT,
25 MR. HOLLEN, MR. PLEXICO.

1 END BENCH CONFERENCE.

2 BY THE COURT:

3 BY MR. PLEXICO:

4 MR. PLEXICO: Okay. So let's talk about the
5 videos. All right. They had all -- they had police cam
6 videos. They could have put it in. They didn't do it.
7 They could have showed you his state of mind so you
8 could have seen it and judged it right there.
9 Furthermore, when he pulled up, you can see behind those
10 trash cans at the KFC. There's no wall there. There's
11 a building and there's trash cans, and that's where the
12 boys came through. The picture shows that. You could
13 have seen how dark it was yourself. They had a street
14 light out. Truth is, you couldn't see anything. So
15 when they went over there, it was so if there was
16 anything to start with. They couldn't see it after
17 looking, because there were things on the side of the
18 road. You all really think they only walked one side of
19 the road? That bugs me. They only walked one side of
20 the road? When they came off the path over there,
21 you're going to only walk this side and not go over
22 there at the path? That was mind-boggling. But if they
23 said they had, with all those nines they got over there.
24 Okay. That'd look mighty funny. That would've looked
25 mighty funny. Okay?

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1 Now, you take your common sense and your common
2 knowledge. Look at all the traffic monitors that they
3 have with cameras in Ridgeland. When you drive around
4 major intersections, did you see any video from that?
5 Did you see any video from any of the businesses around
6 that could've shown the car? No. Did they go get it?
7 No. Didn't show what they wanted, if they looked. Or
8 they fail to look. Poor quality investigation,
9 fabricated evidence, and you can't convict on that.

10 All right. Alex Inniss came in, smelled alcohol
11 on body. Okay? And that was the -- he was the EMS guy
12 who attended. All right? Which matches up with what
13 Dr. Tormos says. Demitria Williams came in. She went
14 to high school here with my client. She knows my
15 client. Now -- now, she testified about them arguing
16 three weeks to a month. Now, like I said, they're
17 trying to show she had a motive, and therefore, you
18 ought to convict. Well, 45 days before somebody was
19 popping a shot at him, and she didn't have the motive
20 before that. She didn't have the motive on the other
21 time they tried to kill him, so who's trying to kill
22 him? It does not seem to match up to what you see
23 sitting in the witness chair.

24 Bernard Seabrooks, he said that Horton spent an
25 hour talking to the guy he thought. I think Mr. Horton

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1 said maybe it was longer than that, because he was
2 counseling him. All right. And Davonte couldn't be
3 there, because he had been carrying a gun, and there had
4 been a shooting, and luckily, he shot himself in the leg
5 over at the Siesta. Remember, that's why Davonte
6 Freeman couldn't be there to start with. They were
7 toting guns. Okay? So you got guns, drugs. All right?
8 Stealing, you know. These don't lead to good results,
9 and there are a lot of enemies you make along the way.

10 And remember, Wrenshad Anderson talked about how
11 they were always together, you know, two peas in a pod.
12 Whatever one was doing, the other was probably down with
13 and had his back. You think about it. These are two
14 brothers. Now, Mr. Horton said a female called. He
15 didn't say if the were black, white. You know, that's
16 half the population. Okay. We don't know who called.
17 Everybody has his number. Apparently, anybody coming in
18 and out of there has his number. Anybody who knows he's
19 toting a gun and can fire through the walls, people over
20 there with kids, there'd be a lot of reason for a woman
21 not to want a gun-toting man over there. A lot of
22 reason for it. Okay?

23 Speaking of the video, he was supposed to walk --
24 walk through the apartments. We don't know if the
25 apartments had --

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1 SOLICITOR HOLLEN: Objection, your Honor.

2 Referring to items not in evidence. There's no
3 testimony to that.

4 MR. PLEXICO: This is their duty to go out and find
5 and produce evidence on a failed investigation.

6 THE COURT: Okay. You can talk about there not
7 being any evidence, but again, move on.

8 BY MR. PLEXICO:

9 MR. PLEXICO: That's the problem, is the lack of
10 evidence. It's what they didn't go get, which they
11 could have gotten.

12 Now, Cedric Riley, he's the drug dealer that pled
13 guilty but said he hadn't -- you know, he never dealt --
14 sold drugs. Well, he's lying under oath to start with,
15 but they're basing part of their investigation on the
16 word of Cedric Riley. They want you to take the word of
17 a perjurer, who perjured himself in front of you, and
18 use that to convict my client, which is just utterly
19 incredible.

20 And he claims -- he's the only person who claims
21 that Peanut left with my client. Okay? Now, that's not
22 what Mr. Horton said. Now, think about Mr. Malphrus.
23 Okay? Mr. Malphrus hears shots. He lives on this
24 street. Okay? Where the shots were fired. He said
25 from here to here. So you go one, two, three, four,

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1 he's got his door open. He doesn't hear a car leaving
2 from that street or that area. Okay? Remember, if guns
3 are being fired, they've got to get to the car, get in
4 the car, slam the doors, and drive off from that street.
5 And that ain't going to happen, because that's not where
6 he heard the noise from. The noise was from the main
7 road, and there are a lot of loud, small cars around.
8 So we have something that is a completely innocent
9 factor they want you to meld in, mold in somehow, and
10 cause nobody reliable says anything about a muffler.
11 It's just ridiculous to think that this is a key piece
12 of evidence in a murder case, is how loud a car is. It
13 just shows their acts of desperation to prosecute my
14 client and try to fix this bad matter. He heard no car
15 leaving from his home, and this whole thing about a loud
16 muffler will speak of red herrings, okay? It just keeps
17 you from focusing on what's important.

18 Wrenshad Anderson, like I said, I think I've
19 already addressed most of this, he never sees anybody's
20 face. How do you make an I.D.? How do you go from two
21 men to a man and a woman, and the woman being a foot
22 shorter, and the woman -- that's -- that's incredible.
23 That's not even -- that's not even worth talking about
24 it's such a bad idea. Then, he calls my client later,
25 and they're like -- my client's all freaking out. No

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1 wonder. Okay? He's calling her like, you know, be a
2 fly on the wall during that conversation, accusing her
3 of being involved. And nobody -- he's out talking to
4 people, and he's trying to figure out who's doing this.
5 He's making up names of who he thinks did it, or maybe
6 who he's done wrong last. Who knows? But it's
7 certainly not reliable.

8 You know, they only got text messages -- they
9 didn't go get any phone call logs from him or anybody
10 else. Okay? But he's calling my client, threatening
11 her, and that's what -- that's what one of the officers
12 said. Okay? I'm sure it wasn't very nice. Now, that'd
13 be enough to upset anybody.

14 You heard from Dr. Tormos. All right? One thing
15 Davonte said, and I don't want to skip that, he said my
16 client, you know, said everything was fine. He
17 apologized to my client. It wasn't any big deal. Okay?
18 There was somebody who didn't like him. Somebody took
19 shots at him. Whereas, my client was upset, and if my
20 client was that bad, they would have got up and got out
21 of there anyway. Okay? I mean, just think about it. I
22 mean, still mind-boggling why they would go someplace
23 that he had been shot at twice before. It's just
24 inexplicable.

25 And I don't know why it was -- Deputy McIntosh,

1 when you go out and you have two males that are armed,
2 is one person's testimony, another one is, or one male,
3 and I didn't see the other one, they're giving, you
4 know, Matthew -- Matthew Hatchell. And why that lead
5 wasn't followed up -- why did I have to bring that out?
6 Isn't that important? The very spot that he was shot at
7 from, you've got a witness saying that, you know, there
8 are two people there, and they're identifying one of
9 them, but not my client. My client is not there. They
10 don't say there's a car there with a loud muffler or
11 anything else. They say there are two people in the
12 woods, twenty minutes, but other words, about time they
13 left, there were people there waiting on them. Maybe,
14 we don't know. But you can't tie that to my client.
15 They have to have reliable, believable evidence that's
16 credible.

17 And what is -- how do you get good police work?
18 Going out to the family, who's hanging out with
19 Wrenshad, going over to the Siesta, going out with her,
20 hanging out with Wrenshad, and they're friends, and
21 telling them I need somebody to say so-and-so -- I need
22 to say -- saw -- saw somebody saw him pull the trigger.
23 Okay? Then, on the 2nd, he's meeting with all these
24 family members, and he's telling them the boy's killed
25 by a .22. That's a close and a small -- a close-knit

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1 family of friends in a small town. Who didn't know
2 about all that? Everybody knew about all of it. He
3 spilled all the beans out on the street, and he's saying
4 I want somebody to come forward and say this. Well, he
5 got that, and it was family and -- I mean, how many
6 family members of Wrenshad Anderson and did Marie Powell
7 was on and off sleeping with? Okay? It's just
8 incredible to believe anything that she would say.
9 Well, I'll address her individually in a minute, but
10 that was just horrible police work.

11 Now, and when you say Peanut and Dre, that's the
12 deputy's son, Keandre Frazier, okay? They just let that
13 go. They didn't investigate the deputy's son.
14 Professional courtesy, I don't know, but you know,
15 certainly not good -- good quality police work. All
16 right? Cause Dre fit the description and had the height
17 to make the shot? Okay? Because it's his height. Dre
18 had the height to make the shot. And how's a short --
19 how's a short person going to shoot -- you're going to
20 shoot like that at sixty or seventy yards on an iron
21 site? No. That's -- just doesn't work.

22 And you've got to consider what my client said.
23 She says, I go out, I work hard for a living. She
24 performs, plays rap music. Okay? All right?

25 And you know, Wrenshad told them -- he gave a

1 three-page statement. She came back, Marie came back,
2 and said, you know, the same things that she had heard,
3 and had every opportunity to hear, because she's got a
4 relationship with the practical stepfather of -- of
5 Wrenshad Anderson and Davonte Freeman. You know, she
6 has an ace up her sleeve. And while she's a witness for
7 the Solicitor's Office in 2017, because remember, now,
8 she didn't get any help from anybody, but she did get
9 probation with a lengthy criminal record. And I always
10 kind of thought when your number was up.

11 You come back to General Sessions and you got a
12 lengthy criminal record, you know, it's the bus to
13 Columbia time. Oh, no, not for her. Not for the
14 State's witness. Okay? Think about it. What was her
15 expectations, and were they -- did it serve her well?

16 And you got to look at knowing what he knew at that
17 time, and remember, he's probably already bagged and
18 tagged. Lieutenant Litchfield, okay, signs an affidavit
19 saying -- which is a sworn statement subject to perjury,
20 an arrest warrant has an affidavit subject to perjury,
21 saying he has an eyewitness, saying that my client,
22 okay, was shooting at Davonte Freeman. Now, could you,
23 in good conscience, do that? That just wasn't -- that
24 was wrong. That was just wrong. They have to prove
25 you're guilty.

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1 Now, I think we expect better from our public
2 servants, and we have a right to. And in America, the
3 buck stops with you guys. Okay? If you all don't like
4 the way it's working, you all have a right to say I'm
5 not finding this person guilty based on this shoddy
6 work, made-up evidence. Okay? And a complete lack
7 thereof. I mean, you have a duty to do that. You've
8 got to let them know, you've got to let the government
9 know it fails in its job that you're the backstop. You
10 have the backbone to do it. That's what matters. And
11 remember, it's okay for the police to lie. We do expect
12 better, but they're lying in their statement about
13 insinuating Peanut said something to incriminate my
14 client. That never happened. That was just a lie. I
15 don't care if the Court's saying it's okay for the
16 police to lie to the citizens or not. Okay? But it's
17 all just a lie. But they're going to blame my client.
18 Hey, I don't know him like that is not I don't know him.
19 But whoa, I'm not involved in this. Okay? And if they
20 go out and arrest Aneisha Young on this evidence, do you
21 think the gal's mama is going to say you go down there
22 and talk to them; oh, they might arrest you, too. No,
23 they're going to say, baby, you stay home and stay out
24 of that; no, no, no, no, no. Okay? You make them come
25 and get you? No, go get you a lawyer. All right? They

1 aren't going to go walk into the -- unsuspectingly to
2 the lion's den. Okay? And you see what happened. All
3 right? Unfortunately, you see what happened.

4 You know, and they can't ever put -- they can't
5 show prior expertise with a gun by my client, prior
6 shooting of a gun by my client, prior gun ownership by
7 my client. There's nothing there that ever put a weapon
8 in that young lady's hand, ever, ever. Okay. It just
9 doesn't match up.

10 And you know, and I had to pull it out of him,
11 Detective Litchfield wanted to avoid saying that the two
12 officers, when he first got there on the scene, showed
13 him where Peanut and Dre were shooting from. Okay? I
14 had to pull that, and that's not really the way it
15 should be.

16 Like I already told you about the Siesta canvas, I
17 mean, I just don't see where that is, well, here's what
18 I need, and basically you all go get it for me. Well,
19 they went and got Marie Powell. And the guy with the
20 cell phone, that was kind of odd because he can't -- he
21 can say it's on a tower, but maybe if it went to one
22 tower to start with, it got transferred to another
23 tower. He didn't say how far the towers went out.

24 My client's saying I'm not in Ridgeland.
25 Ridgeland's only about a square mile, or maybe a mile on

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1 either side, but the cell towers go out farther than
2 that. So even if my client -- what does it prove about
3 my client murdering anybody since they aren't putting
4 her at the crime scene? Okay? How does that prove
5 anything that she's -- aside from the fact that she's
6 pinging off -- the phone is pinging off the tower? If
7 you look at those text messages, when they're taken out
8 of context, the Verizon lady says there's no telling
9 what they mean. When I go shaking my head, it's like
10 you've got -- you've got to -- I don't believe I've
11 heard more bad names. Okay? You know, there's been
12 another shooting at a school somewhere or something
13 tragic like that. Okay? Shaking my head, you know,
14 what's going on out there? And I always thought that
15 was the common meaning, but according to her it might
16 not be. Okay? Why? It's taken out of context, and
17 showing that she knows Peanut does not mean that you are
18 guilty of a crime. That wouldn't mean anything, and she
19 doesn't deny that. So how can you take something that
20 she doesn't deny and twist it around? It just shows the
21 desperation to try to make it look like they're guilty
22 of murder. We expect more. The State needs strong
23 evidence of guilt. They've got to have substantial
24 evidence of guilt that convicts you, that would convict
25 somebody, beyond a reasonable doubt.

1 The DNA was an absolute big zero, and I really
2 didn't understand Marie Powell's testimony. I just
3 couldn't get around it, effectively, I thought, until
4 Debbie Spann came. When Debbie Spann added in the
5 additional family connections, I saw how deep Marie
6 Powell was tied into the different men and their family
7 and friends. Okay? Anthony Austin with Marie Powell.
8 Anthony Austin with the cousin of Debbie Spann. Debbie
9 -- imagine this. Hello, my name's John Smith, and I
10 killed Bill -- Bill Johnson. Okay? Who's going to do
11 that? That's the way she described it. It was totally
12 unbelievable. Totally unbelievable. That's your
13 introduction. Oh, and I'm going to kill Sally Smith,
14 too, or Bill Anderson, too. That's just not -- that's
15 just not credible.

16 So if you take away evidence that you can't be
17 allowed -- and she said she had plenty of -- it's a
18 simple assault and batteries, and I forget everything
19 she was saying, but she left out the big one, which is
20 assault and battery first degree, which is what she's on
21 probation for now. And what an act of desperation on
22 the State's part to put up a witness that you hadn't
23 interviewed until the second Day of the trial. An act
24 of desperation, because you know what? You've got a
25 weak case, and you're relying on a jailhouse snitch

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1 that's related to the victim and sleeping with his
2 punitive stepfather as your witness. That's sad.
3 That's sad. That doesn't make any sense. That's not
4 good evidence.

5 And then, you put in Marie. And look at Marie
6 Powell, because Debbie Spann obviously was not going to,
7 and then you look at Marie Powell, who has this long,
8 long history of deception and deceit. How do you do
9 identity fraud? You convince somebody of something
10 that's not true. You do it and you smile, or you do it
11 and you're sad. Or, okay, or I'm sick, you know, I need
12 to get these drugs, or whatever it is that you're
13 conning at that moment. Okay? Every time that you do a
14 fraud, you're improving your skills as a con artist to
15 be something that you're not. Okay? That means you're
16 trying -- you're an actress or an actor. You're putting
17 on a show. Okay? You're learning to be convincing.
18 What are you doing? You're getting money, you're
19 getting favors. You're getting something through your
20 con. Okay? Because it doesn't bother you that you're
21 out doing that, because it's your lack of character.
22 You're a thief. It's your lack of character, and it
23 makes you untrustworthy. And a con artist, a flim-flam
24 artist, imagine old people and things like that.
25 They're the most evil of the bunch. Okay? Because they

1 -- they induce you to trust. That's what a con artist
2 does. They induce you to trust them. And there's no
3 basis to trust her when you looked at that huge criminal
4 history, which she lied about. I finally went up there,
5 and you all heard me. Okay? Oh, I have those other
6 things, but that charge there, I wouldn't do. Why?
7 Because it blows her con, which is her, okay, giving
8 that false, okay, okay, false information, criminal
9 false information. And she's under oath, supposed to be
10 telling the truth. And that was what? 2016, 2017?

11 THE COURT: Mr. Plexico, you need to speak up, sir.

12 MR. PLEXICO: Yes.

13 THE COURT: Speak up.

14 MR. PLEXICO: You're getting false information that
15 she finally admitted to. That was 2016 to 2017, and
16 that's right around the corner. Okay? And all these
17 other things, her behavior has never changed. She's a
18 con artist that uses people. And Lieutenant Litchfield
19 admitted on 7/20, he told her he was killed with a .22.
20 Okay? He admitted telling the family on 5/2 the boy was
21 killed with a .22. It's out there in her group of
22 people. Now she needs a favor. Okay? She's got big
23 charges. Forget Judge Nancy, forget Judge Scoggins
24 where she talked about going in the judge's offices and
25 sat down and talked with Lieutenant Litchfield. What a

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1 con. I like that. I mean, imagine taking your client
2 in the judge's office. I mean, you know, that's mind
3 boggling. But it just shows how effective some people
4 can be. But she's running a con, she had the
5 information, she had outstanding General Sessions
6 charges that she said in 2017 she used this to get help.
7 Okay? And you can't trust a con artist in a -- if you
8 hesitate and believe she might have been lying, so you
9 take out her testimony, you know Debbie Spann, you can't
10 trust that.

11 So what do you have left in this hodgepodge of
12 evidence that they tried to throw together? That's why
13 they brought in Debbie Spann at the last minute,
14 because, you know, man, this is bad; we failed. Okay?
15 That's throwing in everything but the kitchen sink, and
16 maybe the kitchen sink, too. That's just not right.
17 You all have a serious duty here. You all have to --
18 this isn't going to be done by anyone else. Oh, and
19 Captain Orr testified this was an open area. Okay?
20 Where these ladies were at -- she was at before she
21 could make a family -- make bond and was transferred to
22 these different jails. They record phone calls. My
23 client never said anything indicating a confession,
24 because, you know, they're so desperate they would have
25 went through all of her calls, okay, at any jail, at any

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1 time, to anybody. Okay? All right? Which the only
2 people that she's going to confess to are people who are
3 sleeping with the family and friends of Davonte Freeman?
4 Okay? And Wrenshad Anderson? Does that even make
5 sense? Who would do that? That makes no sense.

6 Everybody knows everybody around here. She grew up
7 here. She went to high school here. I mean, it's just
8 -- it's just mind-boggling coming from these criminals
9 who are just lying, or dope heads, or whatever their
10 problem is. You know, if somebody's going to get
11 convicted, it ought to be on credible, reliable evidence
12 that you don't have a doubt about, and that's a
13 reasonable doubt, and I don't see how you all can
14 possibly put any of this together. Remember, I don't
15 care where the phone was. Okay? I don't care where,
16 you know, it doesn't matter where my client was. It's
17 did they prove she was out shooting the gun, not that
18 she was somewhere else. Out of Ridgeland, it ain't that
19 -- it ain't far. Okay? I could walk out of Ridgeland.
20 In a half an hour, I'm out of Ridgeland. Okay?

21 And I want to end with this. The nature of fraud
22 and deceit, it's the art of the con. Okay? And as this
23 what the State's doing to you in order to get a
24 conviction? Are they bringing together things that make
25 no sense and asking you to place a conviction on it?

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JURY CHARGE

1 Don't do that to my client. Don't do that. This is
2 about the weakest murder case there is. They failed in
3 their duty. You all have a duty to weigh that evidence,
4 and it's not 49/51. You all look at what they've got,
5 and if it's no good, throw it out. Throw it out. What
6 do I have left? Why are they adding to the evidence and
7 making stuff up? How bad of a case is this? Bad police
8 work, unreliable accusers. Okay? Untrustworthy
9 accusers. Where does it stop? I think it stops with
10 you all, with not guilty.

11 Thank you all for listening to me, and thank you
12 for letting me take up your time.

13 THE COURT: Thank you, Mr. Plexico.

14 Everyone stand up and take a stretch. Does anyone
15 need a break? My charge is going to take roughly
16 twenty, twenty-five minutes or so. Anyone need a break?
17 You okay? You sure? Okay. I just want to make sure.
18 End 1022, begin 1023

19 JURY CHARGE:

20 THE COURT: Madam Foreperson and members of the
21 jury, you've followed very patiently and listened very
22 attentively to the presentation of the evidence in this
23 case. I want to thank you for that. It now becomes the
24 duty of the trial judge under the constitution of the
25 state to charge and instruct you on the law that's

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JURY CHARGE

1 applicable to this case. And it's your duty as jurors
2 to accept the law and apply the law as I will now state
3 it to you.

4 As jurors, it is your exclusive duty to decide all
5 the issues of fact in this case. You must determine the
6 effect, the value, the weight, and the truth of the
7 evidence. Both the State and the defendant, Ms. Young,
8 have the right to expect that you will carefully
9 consider and evaluate the evidence, and apply the law of
10 the case to the evidence. And by doing so, both the
11 State and the defendant, Ms. Young, will receive a fair
12 and impartial trial in this matter.

13 Now, the State of South Carolina, by the Bills of
14 Indictment in this case, charge the defendant, Aneisha
15 Young, with the offenses of murder, attempted murder,
16 and possession of a weapon during the commission of a
17 violent crime. Now, I remind you that the fact the
18 defendant was arrested, charged, and indicted in this
19 case is not evidence in this case, nor can it be
20 considered by you as evidence of guilt in the case, nor
21 does it prove any presumption or inference of guilt.

22 An indictment is simply a formal written instrument
23 which contains a charge which is made against the
24 defendant. It's the formal document by which the case
25 is brought into the courtroom. Now, in this case, the

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JURY CHARGE

1 defendant, Ms. Young, has pled not guilty to these
2 indictments, and that plea puts the burden on the State
3 to prove Ms. Young guilty beyond a reasonable doubt.

4 Now, a person committing a criminal crime or
5 offense in South Carolina is never required to prove
6 themselves innocent. I charge you that it's an
7 important rule of law the defendant in a criminal trial,
8 no matter what the seriousness of the charges may be,
9 will always be presumed innocent of the crime for which
10 an indictment was issued, unless guilt has been proven
11 by evidence satisfying you, the jury, of that guilt
12 beyond a reasonable doubt.

13 Now, this presumption of innocence does not end
14 when you begin your deliberations, but it accompanies
15 the defendant throughout the trial until you reach a
16 verdict of guilt based on evidence satisfying you of
17 that guilt beyond a reasonable doubt. Now, the
18 presumption of innocence is like a robe of righteousness
19 that's placed about the shoulders of the defendant, and
20 it remains with the defendant until it has been stripped
21 away by evidence satisfying you, the jury, of the
22 defendant's guilt beyond a reasonable doubt.

23 Now, the presumption of innocence is not a mere
24 legal theory. It's not just a legal phrase we use. It
25 is a substantial right to which every person is entitled

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1 unless you, the jury, are satisfied from the evidence of
2 the defendant's guilt beyond a reasonable doubt. So
3 what is reasonable doubt in the law? A reasonable doubt
4 is the kind of doubt that would cause a reasonable
5 person to hesitate to act in their most important
6 decisions.

7 Now, the State has the burden of proving the
8 defendant guilty beyond a reasonable doubt, and again,
9 you must give the term reasonable doubt its ordinary and
10 plain meaning. However, again, to the extent I may
11 define it for you, again, a reasonable doubt is the kind
12 of doubt that would cause a reasonable person to
13 hesitate to act in the most important of their personal
14 decisions.

15 The defendant, Ms. Young, in this case is entitled
16 to every reasonable doubt arising. If, upon any fact
17 essential to conviction, you have a reasonable doubt as
18 to how that issue should be resolved, you must resolve
19 the reasonable doubt in favor of Ms. Young.

20 Now, some of you may have served as jurors in civil
21 cases where you were told that it was only necessary to
22 prove that a fact is more likely true than not true.
23 Such is what has been called the greater weight, or the
24 preponderance of the evidence. In criminal cases, the
25 State's proof must be more powerful than that. It must

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1 be beyond a reasonable doubt. Suspicion, no matter how
2 strong, is insufficient to convict a person charged with
3 a crime. That the facts and circumstances presented may
4 seem suspicious, and the defendant's guilt may seem
5 probable, this is not sufficient or enough on the law to
6 convict. Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.

8 Now, ladies and gentlemen, there are very few
9 things in this world that we know with absolute
10 certainty, and in criminal cases the law does not
11 require proof that overcomes every possible doubt. If,
12 based on your consideration of the evidence, you are
13 firmly convinced that the defendant is guilty of the
14 crime charged, you must find the defendant guilty. If,
15 on the other hand, you think there is a real possibility
16 that the defendant is not guilty, you must give the
17 defendant the benefit of the doubt and find her not
18 guilty.

19 Now, I remind you that during this trial you and I
20 have certain duties to perform. As a judge, it's my
21 responsibility to preside over the trial of this case,
22 and I also have the duty to rule on the admissibility of
23 the evidence that's being offered. You are to consider
24 only the competent evidence that's before you. You are
25 to consider only the testimony which has been presented

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1 from the witness stand, as well as any other exhibits
2 that have been entered into the record.

3 I have the additional duty to charge you on the law
4 that's applicable to this case. I'm the sole judge of
5 the law in this case, and as jurors you must accept and
6 apply it as I now state it to you. If you have any idea
7 as to what the law is or what you think the law ought to
8 be and it does not agree to what I tell you the law is,
9 you must abandon this idea because you are sworn to
10 accept and apply the law exactly as I state it to you.

11 Now, in every case tried in this court before a
12 jury, the jury becomes the sole and exclusive judge of
13 the facts. A trial judge cannot intimate, comment on,
14 or make any statement to a trial jury about the facts in
15 a case. And since you, the jury, are the sole judge of
16 the facts in this case, you are not to infer from what
17 I've said during the progress of this trial in ruling
18 upon the admissibility of the evidence or otherwise, or
19 anything that I say now during the course of this
20 instruction to you that I have an opinion about the
21 facts in this case. The law does not allow me to have
22 an opinion about the facts of this case. This is a
23 matter solely for you, the jury, to determine.

24 Now, there are typically two types of evidence
25 which are presented during a trial. That is direct and

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1 circumstantial evidence. Direct evidence is testimony
2 of a person who claims to have actual knowledge of a
3 fact, such as an eyewitness. It is evidence which
4 immediately establishes a main fact to be proved.
5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of fact. It is
7 evidence which immediately establishes collateral facts
8 from which a main fact may be inferred. Circumstantial
9 evidence is based on inference and not personal
10 knowledge or observation.

11 Ladies and gentlemen, crimes may be proven by
12 circumstantial evidence. The law makes no distinction
13 between the weight or value to be given by either direct
14 or circumstantial evidence. However, to the extent the
15 State relies on circumstantial evidence, all of the
16 circumstances must be consistent with each other, and
17 when taken together, point conclusively to the guilt of
18 the accused beyond a reasonable doubt. If these
19 circumstances merely portray the defendant's behavior as
20 suspicious, the proof has failed. Now, again, the State
21 has the burden of proving the defendant guilty beyond a
22 reasonable doubt, and this burden rests with the State
23 regardless of whether the State relies on direct
24 evidence, circumstantial evidence, or some combination
25 of the two.

1 Now, as a jury, it is your duty to determine the
2 credibility of the witnesses who have testified in this
3 case. And credibility simply means believability. It's
4 your duty as jurors to analyze and evaluate the
5 evidence, and determine which evidence convinces you of
6 the truth. In determining the believability of the
7 witnesses who have testified in this case, you may
8 believe one witness over several witnesses or several
9 witnesses over one witness. You may believe a part of
10 the testimony of a witness and reject the remaining part
11 of the testimony of that same witness. You may believe
12 the testimony of a witness in its entirety, or reject
13 the testimony of witness in its entirety. You may
14 consider whether any witnesses exhibited to you an
15 interest, bias, prejudice, or other motive in this case,
16 and you may also consider the appearance and number --
17 and manner -- excuse me -- of a witness while on the
18 witness stand.

19 Now, normally in a trial, a person cannot give what
20 we call opinion testimony. Normally, when a person
21 testifies, they must testify as to what they either saw,
22 heard, or sensed or smelled, or something of that
23 nature. However, there is an exception. When someone
24 is qualified because of education or experience, they
25 are permitted to give their opinion in certain areas

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1 that qualifies them in that way.

2 Ladies and gentlemen, that evidence is for you to
3 use in any way you see fit, and give it the weight and
4 credibility that you believe is appropriate. Again, you
5 can accept or reject the expert witness's testimony. It
6 is for your help and your assistance if you find it
7 necessary.

8 Now, ladies and gentlemen, I instruct you and
9 emphasize that the fact the defendant, Ms. Young, did
10 not testify is not a fact to be considered by you in any
11 way in your deliberation and in your consideration on
12 the question or the guilt or innocence of the defendant.
13 It must not be considered by you in any manner
14 whatsoever. A defendant has the constitutional right to
15 remain silent, and the assertion of this right must not
16 be considered by you in your deliberations. I repeat,
17 under your oath, you are to draw no conclusion
18 whatsoever from the fact that the defendant, Ms. Young
19 in this case, did not testify. The fact that she didn't
20 testify shouldn't even be discussed in the jury room.

21 Ladies and gentlemen, the burden of proof, as I
22 stated to you, is on the State. The defendant is not
23 required to prove her innocence. And again, the burden
24 of proof remains on the State to prove guilt beyond a
25 reasonable doubt.

1 Now, if a crime is committed by two or more people
2 who are acting together and committing a crime, the act
3 of one is the act of all. A person who joins with
4 another to commit an unlawful act is criminally
5 responsible for everything done by the other person
6 which happens as a probable or natural consequence of
7 the acts done in carrying out the common plan and
8 purpose. If two or more people are together, acting
9 together, assisting each other in committing the
10 offense, the act of one is the act of all, or as we
11 sometimes say, the hand of one is the hand of all.

12 Prior knowledge that a crime is going to be
13 committed without more is not sufficient to make a
14 person guilty of that crime. Mere knowledge that
15 another person is going to commit a crime, even if the
16 defendant is present when the crime is committed, is not
17 sufficient to convict a defendant as a principal.
18 Guilt, as a principal, is shown by actual or
19 constructive presence at a scene as a result of prior
20 arrangement. Therefore, a finding of a prior arranged
21 plan or common scheme is necessary for a finding of
22 guilt as a principal. The State must prove beyond a
23 reasonable doubt by competent evidence the theory of the
24 hand of one is the hand of all.

25 A principal in a crime is one who either actually

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1 commits the crime, or who is present aiding, abetting,
2 or assisting in committing a crime. When a person does
3 an act in the presence of and with the assistance of
4 another, the act is done by both. Where two or more are
5 acting with a common plan or intent are present at the
6 commission of a crime, it does not matter who actually
7 commits the crime, all are guilty. The hand of one is
8 the hand of all.

9 Present at the commission of a crime means to be
10 sufficiently near to aid and abet and assist in the
11 commission of the crime. However, again, mere presence
12 at the scene of a crime is not sufficient to convict one
13 as a principal on the theory of aiding and abetting.
14 Intent is also a necessary element, for there must have
15 been a common design or intent to commit the crime, and
16 the crime must have been committed pursuant thereto with
17 a person aiding and abetting by some overt act. Intent
18 means intending the result which actually occurs, not
19 accidentally or involuntarily, and intent may be shown
20 by acts of conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent. Now, the State must prove
23 these elements beyond a reasonable doubt.

24 Now, ladies and gentlemen, at issue in this case
25 is the identification of the defendant as the person who

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1 committed the crimes charged. Now, the State has the
2 burden of proving identity beyond a reasonable doubt.
3 You must be satisfied beyond a reasonable doubt of the
4 accuracy of the identification of the defendant before
5 you may convict the defendant. Identification testimony
6 is an expression of belief or impression by a witness.
7 You must determine the accuracy of the identification of
8 the defendant. You must consider the believability of
9 each identification witness in the same way as any other
10 witness. You may consider whether the witness had an
11 adequate opportunity to observe the offender at the time
12 of the offense, and this would be affected by things
13 like how long or short a time was available; how far or
14 close the witness was; the lighting conditions; and
15 whether the witness had a chance to see or know the
16 person in the past.

17 Once again, I instruct you the burden of proof on
18 the State extends to every element of the crimes
19 charged, and this includes the burden of proving beyond
20 a reasonable doubt the identity of the defendant as the
21 person who committed the crime. If, after examining the
22 testimony, you have a reasonable doubt as to the
23 accuracy of the identification, you must find the
24 defendant not guilty.

25 Now, ladies and gentlemen, in this case, the

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1 defendant, Ms. Young, is charged with three separate
2 offenses, and the first offense that she is charged with
3 is the murder of Davonte Freeman. Now, the State must
4 prove beyond a reasonable doubt the defendant killed
5 another person with malice aforethought to prove Ms.
6 Young guilty of murder.

7 Ladies and gentlemen, malice is hatred, ill will,
8 or hostility towards another person. It's the
9 intentional doing of a wrongful act without just cause
10 or excuse, and with intent to inflict an injury, or
11 under circumstances the law will infer an evil intent.
12 Malice aforethought does not require that malice exists
13 for any particular time before the act is committed, but
14 malice must exist in the mind of the defendant just
15 before and at the time the act is committed. Therefore,
16 there must be a combination of a previous evil intent
17 and the act.

18 Ladies and gentlemen, malice aforethought may be
19 express or inferred, and those terms, express and
20 inferred, do not mean different kinds of malice, but
21 merely the manner in which malice may be shown to exist.
22 That is either by direct evidence or by inference from
23 the facts and circumstances which are proved. Express
24 malice is shown when a person speaks words which express
25 hatred or ill will for another, or when the person

1 prepared beforehand to do the act which was later
2 accomplished. For example, lying in wait for a person
3 or any other acts of preparation is going to show that
4 the deed was within the defendant's mind would be
5 express malice. Malice may be inferred, ladies and
6 gentlemen, from conduct showing a total disregard for
7 human life, and inferred malice may also arise when a
8 deed is done with a deadly weapon.

9 Now, a deadly weapon is any article, instrument, or
10 substance which is likely to cause death or great bodily
11 harm. And whether an instrument has been used as a
12 deadly weapon depends on the facts and circumstances of
13 each case. Now, the following are examples of
14 instruments which may be deadly weapons: a pistol, a
15 shotgun, a rifle, a dirk, a dagger, a knife, metal
16 knuckles, a razor, gasoline, a fire bomb and lighter
17 fluid. Now, if one intentionally kills another during
18 the commission of a felony, the inference of malice may
19 arise. If facts are proved beyond a reasonable doubt
20 sufficient to raise an inference of malice to your
21 satisfaction, this inference would simply be an
22 evidentiary fact to be taken into consideration by you,
23 along with all other evidence in the case, and you may
24 give it the weight that you decide it should receive.

25 Now, in this case, the defendant, Ms. Young, is

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1 also charged with the attempted murder of Wrenshad
2 Anderson. Now, in order to prove this crime, the State
3 must prove the defendant attempted to kill another
4 person with malice aforethought, either express or
5 implied. And bear with me, ladies and gentlemen,
6 because I have to go through and explain to you again
7 what malice is, as I just did as to murder. Okay?

8 Again, malice is hatred, ill will, or hostility
9 towards another person. It's the intentional doing of a
10 wrongful act without just cause or excuse, and with an
11 intent to inflict an injury or under circumstances that
12 the law will infer an evil intent. Malice aforethought
13 does not require that malice exists for any particular
14 time before the act is committed, but it must exist in
15 the mind of the defendant just before and at the time
16 the act is committed. So therefore, there must be a
17 combination of the previous evil intent and the act.

18 Malice aforethought may be express or inferred, as
19 I told you before. And again, these are not different
20 types of malice, but rather the manner in which they can
21 be shown to exist. That is either by direct evidence or
22 by inferences from the facts and circumstances which are
23 proved. Again, express malice is shown when a person
24 speaks words with express hatred or ill will for
25 another, or when a person prepared beforehand to do the

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1 act which was later accomplished. And again, I give you
2 the example, lying in wait for another person or any
3 other acts of preparation, going to show that the deed
4 was in the defendant's mind would be express malice.
5 Again, malice may be inferred from conduct showing a
6 total disregard for human life. And again, inferred
7 malice may also arise when a deed is done with a deadly
8 weapon. And I gave you examples of a deadly weapon,
9 again, before. It's any article or substance that is
10 likely to cause death or great bodily harm.

11 Now, ladies and gentlemen, last, the defendant,
12 Ms. Young, is charged with possession of a weapon during
13 the commission of a violent crime. Now, the State must
14 prove beyond a reasonable doubt as to this charge that
15 the defendant was in possession of a firearm or visibly
16 displaying what appeared to be a firearm during the
17 commission of a violent crime. Now, a firearm means any
18 machine gun, automatic rifle, revolver, pistol, or any
19 weapon which will, is designed to, or may be readily
20 converted to expel a projectile.

21 Now, in order to find the defendant guilty of
22 possession of a weapon during the commission of a
23 violent crime, you must first find the defendant guilty
24 of committing a violent crime. I instruct you, ladies
25 and gentlemen, under the laws of the State of South

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1 Carolina, the charges of murder and attempted murder are
2 violent crimes.

3 Ladies and gentlemen, lastly, to prove this
4 charge, the State must prove beyond a reasonable doubt
5 that the weapon further advanced or helped in the
6 commission of the crime.

7 Now, I also remind you in this case that there are
8 three separate indictments, and each indictment charge
9 is a separate and distinct offense. You must decide
10 each indictment separately on the evidence and the law
11 that's applicable to it. The defendant may be convicted
12 or acquitted on any or all of the offenses charged.
13 Again, Madam Foreperson, you'll be asked to write a
14 separate verdict of guilty or not guilty as to each
15 charge in this case, for murder, attempted murder, and
16 possession of a deadly weapon during the commission of a
17 violent crime.

18 However, I do want to point out that in order for
19 you to find the defendant guilty of a possession of a
20 weapon during the commission of a violent crime, you
21 must first find the defendant guilty of committing a
22 violent crime. In other words, again, you can't find
23 the defendant not guilty of murder and not guilty of
24 attempted murder, and then find the defendant guilty of
25 the weapons charge. And while these are separate

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1 charges, again, as I've stated before, you can find the
2 defendant guilty of possession of a deadly weapon during
3 the commission of a violent crime, you must first find
4 that she is guilty of either murder or attempted murder
5 or both.

6 Madam Foreperson, members of the jury, as you
7 retire to begin your deliberations in this case, I wish
8 to express the hope that each of you are mindful of your
9 responsibility here today. You're not called upon very
10 often to serve as jurors, and the proper performance
11 requires that each of you reach the height of freeing
12 your mind of all improper influences.

13 Please don't get the idea that I'm trying to
14 intimate to you that you should decide how to decide
15 this case. Again, under the laws of our state you, the
16 jury, are the sole judge of all facts, and it would be
17 highly improper for me to influence you in your
18 performance of that duty. However, ladies and
19 gentlemen, as the presiding officer of this court, I am
20 vitally concerned that whatever verdict you reach will
21 be the result of you going back into your jury room and
22 confining your consideration to the evidence and the law
23 that you've heard here in this courtroom, weighing it
24 fairly and impartially, as I have every confidence you
25 will.

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1 Ladies and gentlemen, your verdict must be
2 unanimous. It must be the verdict of all twelve jurors.
3 And to that end, Madam Foreperson, we prepared a verdict
4 form. It has the case caption in this case. It says,
5 *the State of South Carolina versus Aneisha Shaire Young,*
6 *Defendant.* It has three questions, all of which you
7 must answer. And the first question says, *as to the*
8 *charge of the murder of Davonte Freeman, we find the*
9 *Defendant, Aneisha Young, and it says either not guilty*
10 *or guilty.*

11 As to the next question, Number 2, *as to the*
12 *charge of attempted murder of Wrenshad Kwame Anderson,*
13 *we find the Defendant, Aneisha Young, either not guilty*
14 *or guilty.*

15 And lastly it says, *as to the charge of possession*
16 *of a weapon during the commission of a violent crime, we*
17 *find the Defendant, Aneisha Young, either not guilty or*
18 *guilty.*

19 Ladies and gentlemen, please don't infer the order
20 that I put not guilty or guilty. Every trial that I do
21 is just flip them. Okay? After that, there is a line
22 that says, *I certify that this is the unanimous decision*
23 *of the jury, and then there is a line for the foreperson*
24 *to sign her name and date the verdict form.*

25 Madam Foreperson, when the jury has reached a

1 unanimous verdict of all twelve of you, I need you to
2 knock on the jury room door, and we are going to accept
3 you back into the courtroom to take your verdict. All
4 right?

5 Ladies and gentlemen, for the very last time I'm
6 going to send you to your jury room, and I am going to
7 tell you not to begin discussing this case. If there's
8 something further on the law that the lawyers want me to
9 charge you, I'm going to bring you back in here, and I'm
10 going to charge you further on the law. If not, you're
11 going to get the verdict form, as well as the other
12 evidence that was introduced into the record, and that
13 is going to be your signal to begin your deliberations.

14 Also, Madam Foreperson, I need to tell you that
15 while you have seen my court reporter taking everything
16 down in this trial, there is no transcript of what has
17 been said in here. If you would like to have testimony
18 played back in this case of a witness, what we do is, we
19 bring you back in the courtroom, sit you right back down
20 in your seats, and I play the audiotape of it. But what
21 I need you to understand is this. If you ask me for a
22 witness's testimony, I am required to play that
23 witness's entire testimony, which means the direct
24 examination, the cross-examination, the re-direct. All
25 right?

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1 Also, ladies and gentlemen, I will tell you that
2 all the evidence that has been entered into this case
3 for you will be given to you back in the jury room. So
4 don't send me a note asking me about whether or not you
5 can have x, y, or z. If it was not entered into
6 evidence, it is not properly before you and I cannot
7 give it to you. Okay?

8 Ladies and gentlemen, I'll also tell you this. It
9 is about 12:15. I'm going to let you begin your
10 deliberations. I'm going to send the bailiffs back to
11 talk to you. If you believe you're going to be going
12 for a little bit, Ms. Bostick will order you pizza or
13 something to keep you going, if it's necessary. But I
14 want you first to begin your deliberations to see how
15 you're doing, and to see if you can reach a verdict, you
16 know, some time, you know, in the very near future.

17 Margaret, I don't know how long it takes to order
18 pizza. How long is it, roughly, once we put in the
19 order?

20 MADAM CLERK: It's about thirty or forty-five
21 minutes.

22 THE COURT: It's about thirty or forty-five minutes
23 or so. So once the bailiff comes in and asks you, Madam
24 Foreperson, should we order some pizza, you can expect
25 it will be here between thirty or forty-five minutes.

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1 Okay? And then, after that, if you need anything,
2 please ask the bailiffs. I know there are Cokes back
3 there and coffee, water. Whatever you need, though, let
4 us know. Okay?

5 Madam Foreperson, again, I'm going to send you
6 back to your jury room. Do not discuss this case yet.
7 You must wait until you get the verdict form, as well as
8 the other evidence. Okay? You all are excused back to
9 your jury room. Thank you.

10 JURORS LEAVE COURTROOM 12:18 P.M.

11 THE COURT: Thank you. Any exceptions or additions
12 from the State?

13 SOLICITOR HOLLEN: None from the State.

14 THE COURT: From the Defense?

15 MR. PLEXICO: No, your Honor.

16 THE COURT: All right, you all. You need to look
17 at the evidence with Wanda very quickly. We're going to
18 send it back to them, and like I said, we're going to
19 let them deliberate a little bit.

20 OFF THE RECORD 12:15 P.M.

21 VERDICT FORM AND EXHIBITS TAKEN

22 TO JURORS 12:24 P.M.

23 BACK ON THE RECORD 2:45 P.M.

24 VERDICT:

25 THE COURT: Come on up, Ms. Young. All right.

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1 Ladies and gentlemen, I understand the jury has reached
2 a verdict. They're going to come out and I'm going to
3 read the verdict. I want to go ahead and warn everybody
4 right here, right now, there will be no outbursts, no
5 nothing, no words. I don't even want to see someone
6 stand up after the verdict. If you do, you'll be taken
7 into custody, and that's anyone involved. Do you
8 understand? Okay. I would hate for that to happen. I
9 know this is a very difficult case. I know it's very
10 emotional for both sides, and again, I would never want
11 that to happen. So if you cannot contain yourself,
12 right now I am asking that you leave. You can look
13 around, there are a lot of police officers in this
14 courtroom. Their job here is if anyone acts out in any
15 way, they are going to grab you. Okay? So I just want
16 to make sure everybody understands that. Okay? All
17 right. Let's bring the jury out.

18 JURORS ENTER COURTROOM 2:47 P.M.

19 THE COURT: Welcome back, ladies and gentlemen of
20 the jury. Madam Foreperson, I understand the jury has
21 reached a verdict. Is that correct?

22 FOREPERSON: Yes, ma'am, we have.

23 THE COURT: Would you please hand it to Ms.
24 Bostick. Thank you.

25 All right. Mr. Plexico, would you and your client

1 please rise.

2 *In the case of the State of South Carolina versus*
3 *Aneisha Young, defendant, as to the charge of murder of*
4 *Davonte Freeman, we find the defendant, Aneisha Young,*
5 *guilty.*

6 *As to the charge of attempted murder of Wrenshad*
7 *Anderson we find the defendant, Aneisha Young, guilty.*

8 *As to the charge of possession of a weapon during*
9 *the commission of a violent crime, we find the*
10 *defendant, Aneisha Young, guilty.*

11 Signed by our foreperson. You may be seated, Mr.
12 Plexico.

13 Mr. Plexico, would you like this jury individually
14 polled, sir?

15 MR. PLEXICO: Yes, your Honor.

16 JURORS POLLED:

17 THE COURT: All right. Ms. Young, you need to face
18 forward now.

19 Ladies and gentlemen of the jury, when I go
20 through, do you all remember your numbers, your juror
21 numbers? Okay. And if you don't, I'm going to prompt
22 you a little bit, if I need to.

23 I am going to ask each of you two questions. When
24 I say your number, I want you to raise your hand, and
25 I'm going to ask you, is this your verdict, and I'm

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1 going to ask you, is this still your verdict. All
2 right? So I'm going to ask each of you individually
3 this question.

4 To begin with, Juror Number 158. Yes, ma'am. Is
5 this your verdict, ma'am?

6 JUROR NUMBER 158: Yes.

7 THE COURT: Is it still your verdict?

8 JUROR NUMBER 158: Yes.

9 THE COURT: Thank you very much. You may be
10 seated.

11 Number 89. Ma'am, is this your verdict?

12 JUROR NUMBER 89: Yes.

13 THE COURT: Is it still your verdict?

14 JUROR NUMBER 89: Yes.

15 THE COURT: Thank you, ma'am. You may be seated.

16 Number 163. You can stand. It's fine. Ma'am, is
17 this your verdict?

18 JUROR NUMBER 163: Yes.

19 THE COURT: Is it still your verdict?

20 JUROR NUMBER 163: Yes.

21 THE COURT: Thank you.

22 Juror Number 60. Sir, is this your verdict?

23 JUROR NUMBER 60: Yes.

24 THE COURT: Is it still your verdict?

25 JUROR NUMBER 60: Yes.

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1 THE COURT: Thank you, sir.

2 Juror Number 179. Sir, is this your verdict?

3 JUROR NUMBER 179: Yes.

4 THE COURT: Is it still your verdict?

5 JUROR NUMBER 179: Thank you, sir.

6 Juror Number 106. Ma'am, is this your verdict?

7 JUROR NUMBER 106: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR NUMBER 106: Yes.

10 THE COURT: Thank you.

11 Juror Number 186. Ma'am, I think it's -- it's got
12 to be either you -- Juror Number 186. Not familiar to
13 anyone? Do you know who it is, Margaret? Which one is
14 it? Why don't you show her. Just go show her a picture
15 of her own right person.

16 MADAM CLERK: 89.

17 THE COURT: I'm sorry. Hold on a second. It looks
18 like the numbers are just mixed up. Okay.

19 MADAM CLERK: 89, in the back.

20 THE COURT: 89, If you will please stand. Ma'am,
21 is this your verdict?

22 JUROR NUMBER 89: Yes.

23 THE COURT: Is it still your verdict?

24 JUROR NUMBER 89: Yes.

25 THE COURT: Thank you.

3-14-18 STATE V YOUNG

VERDICT

1 124. Thank you. Ma'am, is this your verdict?

2 JUROR NUMBER 124: Yes.

3 THE COURT: Is it still your verdict?

4 JUROR NUMBER 124: Yes.

5 THE COURT: You wanted the 186 again?

6 THE COURT: I will do 186 again. I apologize,

7 ma'am. Again, is this your verdict?

8 JUROR NUMBER 186: Yes.

9 THE COURT: Is it still your verdict?

10 JUROR NUMBER 186: Yes.

11 THE COURT: Thank you. I did Number 124, correct?

12 MADAM CLERK: Yes.

13 THE COURT: Number 65. Ma'am, is this your
14 verdict?

15 JUROR NUMBER 65: Yes.

16 THE COURT: Is it still your verdict?

17 JUROR NUMBER 65: Yes.

18 THE COURT: Thank you, ma'am.

19 Number 84. Ma'am, is this your verdict?

20 JUROR NUMBER 84: Yes.

21 THE COURT: Is it still your verdict?

22 JUROR NUMBER 84: Yes.

23 THE COURT: Thank you.

24 Number 68. Ma'am, is this your verdict?

25 JUROR NUMBER 68: Yes.

1 THE COURT: Is it still your verdict?

2 JUROR NUMBER 68: Yes.

3 THE COURT: Thank you, ma'am.

4 And finally, sir, Number 112. Is this your
5 verdict?

6 JUROR NUMBER 112: Yes.

7 THE COURT: Is it still your verdict?

8 JUROR NUMBER 112: Yes.

9 THE COURT: Thank you. You may be seated. All
10 right. Ladies and gentlemen of the jury -- is there
11 anything further required of the jury from the State?

12 SOLICITOR HOLLEN: Nothing from the State, your
13 Honor.

14 THE COURT: From the Defense?

15 MR. PLEXICO: No, your Honor.

16 THE COURT: Ladies and gentlemen of the jury, I
17 want to thank you. You have resolved this matter for
18 us. As you know, I had a second trial that I pulled,
19 but because we ran long, my intention is, is to try that
20 case next week, which is what I'm going to do. But at
21 this time, you have fulfilled your jury service here in
22 Jasper County for the next three years. I want to thank
23 you for resolving this matter.

24 We are going to make sure that everyone gets to
25 their car safely. Is that fine? We're going to take

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SENTENCING

1 them out right now, and you all are going to get them to
2 their cars? And you're going to make sure that you get
3 to your cars and off at this point. Okay? If anyone
4 needs a work excuse, simply ask the bailiffs. Or do you
5 need to go downstairs, Margaret?

6 MADAM CLERK: Yes.

7 THE COURT: But we're going to go ahead and have
8 you escorted out now. All right. Again, thank you,
9 ladies and gentlemen. We appreciate your service. You
10 are excused.

11 JURORS LEAVE COURTROOM 2:54 P.M.

12 SENTENCING:

13 THE COURT: All right. Do we have sentencing
14 sheet?

15 SOLICITOR HOLLEN: Your Honor, I'm filling it out.

16 THE COURT: Okay.

17 SOLICITOR HOLLEN: As we speak.

18 DEFENDANT YOUNG: That's crazy, woman. That's
19 crazy.

20 THE COURT: Ma'am, don't speak.

21 DEFENDANT YOUNG: Y'all took me away from my
22 family, man. Ain't no way.

23 UNKNOWN PERSON: Aneisha, stop.

24 DEFENDANT YOUNG: This man got on the stand and
25 said he didn't even see me go.

1 THE COURT: Ma'am, do not speak. Do not speak.

2 UNKNOWN PERSON: Stop, Aneisha. Stop.

3 SOLICITOR HOLLEN: Your Honor, I don't have her
4 address or anything like that.

5 THE COURT: That doesn't matter, just pass up the
6 sentencing sheet. All right. Mr. Hollen, does she have
7 any prior record?

8 SOLICITOR HOLLEN: Your Honor, her only prior
9 conviction is a 2015 public disorderly conduct.

10 THE COURT: Okay. Do I need to hear anything more
11 from the State?

12 SOLICITOR HOLLEN: I know that the family would
13 possibly like to address the Court just briefly.

14 THE COURT: Do we have one person that is contained
15 enough and can speak on the family's behalf? Yes,
16 ma'am.

17 DEMITRIA WILLIAMS: I'm thankful that you all
18 settled the case down. My son couldn't see his father.
19 I'm glad you all did the job to do. I appreciate you
20 all.

21 SOLICITOR HOLLEN: Your Honor, I think the facts --

22 THE COURT: For the record, what was her name
23 again, Mr. Hollen?

24 SOLICITOR HOLLEN: Oh. That was Demitria Williams.

25 THE COURT: Thank you.

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SENTENCING

1 SOLICITOR HOLLEN: Your Honor, I think the facts of
2 the case speak for itself. I don't have anything
3 further to add, other than what came out on the stand.

4 THE COURT: Okay. Thank you. All right. Mr.
5 Plexico.

6 MR. PLEXICO: Yes, your Honor. My client, she was
7 working at Hudson Seafoods when this happened. She said
8 in her statement she was a hard-working person. She
9 always has been. She graduated from high school. She's
10 here with her family. They had a really hard time for
11 her making bond. Matter of fact, she only made bond
12 last week, Judge. And it's a sad turnaround, we do
13 believe. We're asking the Court be as merciful as
14 possible.

15 I don't know if any family members wish to speak.

16 TAMEKA EDWARDS: I will. I'm her mother, Ms.
17 Tameka Edwards.

18 THE COURT: Yes, ma'am.

19 TAMEKA EDWARDS: I first would like to say to the
20 family, I'm very, very, deeply sorry for your loss,
21 because no family has to go through what you all are
22 going through. So besides what you feel towards my
23 daughter in her innocence or in her guilt, I just want
24 us to lay this to rest, to rest, because we all taken a
25 loss here. We really are.

1 So again, my heart goes out to you for the loss of
2 Davonte. And Kwame, I ain't never had no ill feelings
3 towards you, even back then when we used to talk and
4 laugh, it's still the same. It don't change. But
5 again, you all, we need to let this stuff rest, because
6 too many people are taking a loss, because now we have
7 to raise a son without a father. And that's not fair.

8 As to you, I'm your mother, I love you, and I'm
9 going to always be here for you. Do you understand?
10 You -- your -- your -- your most -- your outside freedom
11 is gone, but you still have freedom in your heart. You
12 remember that, and you hold onto that.

13 DEFENDANT YOUNG: Can I hug?

14 TAMEKA EDWARDS: Can I hug, your Honor, before
15 this, because this is it. I love you. Be good, be
16 good. I love you.

17 THE COURT: Thank you, ma'am. I appreciate your
18 words. All right.

19 MR. PLEXICO: My client would like to address the
20 Court, your Honor.

21 THE COURT: Yes, sir. Yes, ma'am.

22 DEFENDANT YOUNG: First off, I would like to
23 apologize, you know, to the Courts. I apologize to the
24 family. You know, we had a lot of ill feelings through
25 this trial, but just like my mama said, ain't nobody --

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SENTENCING

1 everybody losing. But you know, you all lost Davonte.
2 He can't -- you all can't even see him no more. You
3 know what I'm saying? I'm still here, so I understand
4 how you feel, man. I lost my brother thirty years to a
5 chain gang, but at the end of the day, I still can talk
6 to him, I still can see him. You can't see your
7 brother, and I really do apologize. I'm sorry.

8 And I'm sorry, man. I'm sorry. And I'm sorry to
9 the Court, and I -- and I ask that you just be much
10 lenient on me as possible. I'm not a bad person. When
11 you young, you make dumb mistakes. So I just want to
12 let you know. I was hanging around the wrong crowd, and
13 then get caught up in a situation just like now. You
14 know what I'm saying? I didn't have nothing to do with
15 this, but of course, my name's tied up in it, so it is
16 what it is.

17 And I love you all. Everything will be all right.
18 I love you all.

19 MR. PLEXICO: Your Honor, in view of my client's
20 history, this was a one-standoff event. I know she's
21 been convicted of the most serious -- two most serious
22 offenses, but we're asking -- I think she has a lot of
23 redeemable qualities, and we're asking that -- she was a
24 hard-working person for years before that. She's
25 twenty-four years old. We're asking for a minimum,

1 concurrent, thirty-year sentence on the two serious
2 charges, the serious and most serious charge, and a
3 five-year, concurrent sentence on the use of a weapon
4 during the commission of a violent crime.

5 THE COURT: On Indictment 2016-241, it is for
6 murder, the sentence of this court is you be committed
7 to the Department of Corrections for a period of thirty
8 years. And of course, I'm giving you credit for the
9 time you've done, up until you got out last week.

10 DEFENDANT YOUNG: Yes, ma'am. Thank you.

11 THE COURT: On Indictment 2016-251 for attempted
12 murder, the sentence of this court is that you be
13 committed to the Department of Corrections for a period
14 of ten years, and that is to run consecutive to the
15 murder charge.

16 On Indictment 2016-569 for possession of a weapon
17 during the commission of a violent crime, the sentence
18 of this court is you be committed to the Department of
19 Corrections for a period of five years, and that is to
20 run concurrent to the other charges. Good luck to you.

21 All right. All right. I'm going to step down.
22 The rest of you need to remain until the deputies escort
23 you out. Okay? Thank you.

END TRIAL 3:03 P.M.

3-12-18 STATE v. YOUNGCERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

MARCH 12, 13, 14, AND 15, 2018 TRANSCRIPT OF TRIAL
STATE OF SOUTH CAROLINA
COUNTY OF JASPER

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing March 12, 13, 14, 15, 2018 Transcript of Trial is a true and accurate record of the proceedings had and exhibits admitted on said dates, in the case of State of South Carolina versus Aneisha Shaire Young, Jasper County, Court of General Sessions, Case Numbers 2016-GS-27-00241, 2016-GS-27-00251, 2016-GS-27-00569; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original of this transcript. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature July 7, 2018.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED

JUL 18 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANEISHA SHAIRES YOUNG,

APPELLANT

APPELLATE CASE NO. 2018-000525

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether appellant was deprived of her right to due process, where the defense was suddenly notified on the third day of trial that Debbie Spann would testify as a jailhouse snitch that appellant admitted her guilt to Spann in prison, since the solicitor not informing appellant of the basic content -- a synopsis -- of the testimony of this state's witness was outside the established course of discovery conduct, and constituted "trial by ambush" in violation of due process notice?

2.

Whether the court erred by allowing the text messages to be introduced into evidence through the business custodian where defense counsel correctly argued they were not trustworthy to be admissible under Rule 803 (6), SCRE, that they were unduly prejudicial and confusing, and where the court incorrectly reasoned the jury could "infer what they want" from text messages because the court believed appellant wrote them but where the texts admittedly could have multiple meanings and some of them were undoubtedly vulgar?

3.

Whether the court erred by qualifying SLED agent Eric Grabski as an expert in cell phone location data analysis where he admitted the program and method of his cell phone analysis had never been peer reviewed, and that he had never been qualified as an expert in state court in this area before, and where the erroneous qualification of Grabski allowed him to allege that appellant's cell phone was, in context, suspiciously "on the move" on the night of the murder?

STATEMENT OF THE CASE

Appellant was indicted by the Jasper County Grand Jury for the offenses of murder, attempted murder, and possession of a weapon during a violent crime. R. 576 – 581. Her case was called to trial on March 12, 2018, before the Honorable Carmen T. Mullen, and a jury. Stephen T. Plexico represented appellant. Brian Hollen, Patrick Hall, and Lynnor Musser were the assistant solicitors. R. 1 – 2.

On March 15, 2018, appellant was found guilty on all three counts. R. 512, ll. 2-10. Judge Mullen sentenced appellant for thirty years imprisonment for murder, ten years consecutive for attempted murder, and five years concurrent for possession of a weapon during a violent crime. R. 513, ll. 5-20.

This appeal follows.

STANDARD OF REVIEW

Discovery violation – non-Brady

The appellate court analyzes “the circuit court’s ruling under an abuse of discretion standard.” State v. Lawton, 382 S.C. 122, 127, 675 S.E.2d 454, 457 (2009). “A violation of Rule 5 is not reversible unless prejudice is shown.” State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006). “Admission of evidence falls within the trial court’s discretion and will not be disturbed on appeal absent abuse of that discretion.” State v. Colf, 337 S.C. 622, 625, 525 S.E.2d 246, 247 (2000)).

Evidentiary issues

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

Expert testimony

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court’s decision to admit expert testimony will not be reversed on appeal absent “a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court’s conclusions “either lack evidentiary support or are controlled by an error of law.” State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495

(2013) (quoting Douglas, 369 S.C. at 429–30, 632 S.E.2d at 848) (internal quotation marks omitted). “A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair.” State v. Grubbs, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing Means v. Gates, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct.App.2001)). To show prejudice, the appellant must prove “that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.” Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing Means, 348 S.C. at 166, 558 S.E.2d at 924).

ARGUMENT

1.

Appellant was deprived of her right to due process, where the defense was suddenly notified on the third day of trial that Debbie Spann would testify as a jailhouse snitch that appellant admitted her guilt to Spann in prison, since the solicitor not informing appellant of the basic content -- a synopsis -- of the testimony of this state's witness was outside the established course of discovery conduct, and constituted "trial by ambush" in violation of due process notice.

Introduction

Defense counsel Plexico objected on the third day of trial when the prosecution suddenly announced, without any prior notice, that it was going to have Debbie Spann testify Appellant Young allegedly confessed to her in jail that she committed the murder. Plexico would argue this "trial by ambush" violated due process, and all of the tenets of fundamental notice fairness that the solicitor's office and the defense attorneys operated under in that judicial circuit. R. 243, l. 9 – 250, l. 11.

Counsel Plexico filed his Motion for Discovery and Disclosure of Evidence and Brady Motion and Criminal Procedure Rule 5 and 6 Edwards Notice on May 26, 2016 – ten months prior to trial – but Plexico's trial argument made clear that the defense understood an "open file policy" existed or at least an understanding or course of dealings that at least the bare bones of such an inculpatory statement made by the defendant to a state's witness would not be hidden from the defense for any alleged technical discovery reason. Supp. R. 1 – 4.

During general *voir dire*, the trial judge listed as witnesses, among many others: "Marie Powell of Ridgeland, South Carolina. Debbie Spann of Ridgeland, South Carolina." R. 3, l. 22 – 4, l. 6. As will be seen *infra*, Debbie Spann would later testify, over objection, that appellant

admitted her guilt, while they were in the detention center together, in the murder of the decedent. The trial judge would also later note that she had called out Spann's name during voir dire. One logical and rational interpretation of the fact that Spann was on the state's witnesses list was that there was no reason to think the solicitor did not know, at least generally, what he thought Spann were going to say when called as a witness: That appellant confessed to murder.

Trial Evidence

Matthew Fraleigh worked for the Jasper County Communications Center. Matthew remembered a 911 call where a man said somebody was shooting at them but did not identify the shooter.¹ R. 32, l. 20 – 33, l. 7.

EMS employee Rusty Wells was also working as a reserve police officer for the Ridgeland Police Department on April 30, 2016. He recalled a scene behind the Kentucky Fried Chicken in Ridgeland where, "I found two individuals sitting on the ground. One was holding another individual." The wounded man was Wrenshad Anderson. Devonte Freeman was lying next to Anderson and he had a gunshot wound in the back of his head. Devonte Freeman would later die. R. 35, l. 1 – 37, l. 17.

Anderson told Officer Wells that "Peanut [Eric Darien] and Dre [Keandre Frazier]" were the shooters and that they were dressed in all black. R. 38, l. 11 – 39, l. 13. Wells said Anderson told him he had "contact numbers for Peanut and Dre in his cell phone, and then, he also identified Aneisha --" R. 40, l. 23 – 41, l. 5. Wells read from his "narrative" which stated, "Anderson, at some point in time during his excited state, indicated that he had in his cell phone the contact numbers for Peanut and Dre. He also included a third name of Aneisha. He further

¹ The 911 call, State's Exhibit 1, is on file with this Court.

indicated several times that Peanut and Dre were suspects. Anderson also indicated that Freeman [the decedent] and Peanut [Eric Darien] had a beef all day.”

Wells admitted he did not know who Aneisha was at the time. R. 49, ll. 2-22. Wells also acknowledged that Anderson “never said Aneisha was the shooter.” R. 50, ll. 21-23. R. 58, ll. 2-22. Part of Anderson’s statement was read to the jury without objection:

We just left the Siesta [Motel] Weekly rentals. Talking to Mr. Horton [the owner]. And we was walking to Econo Lodge. When we got close to KFC path, that’s when we heard shots.

I’m sorry. I’m trying to decipher this.

Vonte got into it with peanut earlier today, and we saw Neisha and her friend. That’s when we was ordered to leave. That’s when we left walking, and they sneak up behind us and started shooting.

Q: Does that statement say Aneisha?

A: Yes, sir.

Q: Okay. So you were given that name Aneisha by Mr. Anderson less than 45 minutes after the shooting. Is that right?

A: Somewhere around there, yes, sir.

R. 61, ll. 13 – 62, l. 3.

As will be seen infra, Anderson repeatedly said he was “delirious” at the time, and disclaimed responsibility for the accuracy of anything he asserted.

Alex Inniss was a paramedic with the Jasper County Fire and Rescue crew. He remembered finding the decedent with a gunshot wound to his head lying on his back. The decedent was not responsive although he was breathing and had a pulse. The decedent never regained consciousness while being airlifted to a hospital in Savannah. R. 72, l. 3 – 75, l. 4.

Lieutenant Joey Ginn testified that on April 30, 2016, he responded to a shooting behind the Kentucky Fried Chicken in Jasper County. R. 79, ll. 12-23. He later spoke with Keith

Horton, the owner of the Siesta Hotel. R. 79, l. 24 – 80, l. 23. Lieutenant Ginn remembered that Anderson was very confused and excited after his decedent brother was shot. Ginn did his best to calm Anderson down. R. 81, l. 18 – 83, l. 12.

Lieutenant Ginn said he was later told by Officer Wells that there were two unknown suspects dressed in all black. “They could have been Asian, they could have been Hispanic, they could have been white, they could have been black.” R. 93, ll. 10-17.

Demitria Williams was pregnant with the decedent’s child at the time he was killed. Williams had gone to school with appellant and knew her from there. R. 102, l. 4 – 104, l. 4. Williams testified a week before the decedent was shot and killed that appellant allegedly came to her house and “she knocked on my door when me and Davonte Freeman was living together at [the] Siesta. Williams said that appellant burst her way inside and fought with the decedent in front of her. Williams claimed that appellant threatened to kill the decedent and was cursing at him. Williams also maintained that appellant “tried going through his pants pockets -- on the floor by the bed,” saying, “that N has some of her money.” R. 104, l. 10 – 105, l. 14.

Williams testified that the police never came and talked to her or the decedent about alleged stealing from appellant. R. 106, ll. 9-14.

Bernard Seabrooks was living at the Siesta Hotel on April 29 – 30, 2016, the night the decedent was killed. He was playing cards and he remembered seeing Wrenshad Anderson, “Kwame.” Again, Kwame was the decedent’s brother. R. 114, l. 25 – 115, l. 25. Seabrooks remembered seeing Horton, the owner of the Siesta Hotel, talking to the decedent and Peanut [Eric Darien] that night. R. 116, l. 3 – 119, l. 15.

Keith Horton testified that the decedent rented from him at various times at the Siesta, but he was on trespass notice at the time of the shooting. R. 120, l. 21 – 121, l. 23. Horton said he

was not angry with the decedent for being in violation of the trespass notice because “Davonte was always very polite.” The decedent was a drifter and apparently homeless during some hard times. R. 122, l. 2 – 125, l. 7.

Horton remembered the decedent and his brother Wrenshad Anderson leaving together in a car that evening with appellant. Horton said he heard later “that somebody had been shot behind the KFC and everything, and I went and hung out. I was still on site whenever we got the call from the police. I think the police department came back over there.” R. 126, l. 5 – 127, l. 22.

Wrenshad Anderson testified about the events at the Siesta Hotel before the shooting. Anderson remembered talking with appellant in Seabrooks’ room that evening. Anderson maintained it was “funny” to see appellant at the Siesta Hotel because she “wasn’t supposed to be there.” R. 156, l. 4 – 157, l. 23.

Anderson claimed appellant was wearing all black that evening. He further maintained that he knew his decedent brother and appellant had “got into it.” R. 158, l. 17 – 159, l. 9.

Anderson remembered walking through the brush with his decedent brother when they heard loud gunshots. The decedent was hit and he fell to the ground. R. 160, l. 17 – 167, l. 3.

Anderson admitted he told the police that Peanut [Eric Darien] and Dre [Keandre Frazier] were the shooters but repeatedly now claimed: “I was delusional. Something like that happened to you and you almost got your life taken from you, and these people shooting at you -- you don’t know what’s happening with your brother. You just know they haul him off somewhere, and yeah, I was a little delusional. Like, yeah, I was delusional . . .” R. 166, l. 8 – 167, l. 13.

Anderson said that he knew the decedent and appellant “had problems” a few weeks before the decedent was killed. Anderson claimed appellant said she was going to kill the

decedent and he speculated that appellant “was behind” the decedent being shot at on a prior occasion. R. 181, l. 1 – 182, l. 20. Finally, Anderson admitted at an earlier time that he had stolen a pistol from Peanut [Eric Darien] “that started the beef.” R. 188, l. 17 – 189, l. 22.

Lieutenant Daniel Litchfield testified that based on his talks with others in law enforcement, he developed “Eric Darien, who is Peanut; Aneisha; and I was looking at Dre, Keandre Frazier, as being involved in it.” R. 229, ll. 18-25.

The interview with appellant was then played for the jury. R. 229, l. 18 – 233, l. 19. This interview, State’s Exhibit 29, is on file with this court. During the interview or interrogation, appellant repeatedly denies having anything to do with the death of the decedent.

Appellant also told the police during the interrogation that she had an alibi -- Deshonda Washington. Lieutenant Litchfield maintained he reached out to Deshonda Washington, but he said she did not come in for an interview. He was even unsure Washington was the woman who answered the phone when he called about wanting to interview her. Suffice it to say Lieutenant Litchfield did not pursue the alibi any further. R. 236, l. 6 – 238, l. 17.

At the end of Litchfield’s testimony, he said a female inmate in the detention center, Marie Powell, had asked that Litchfield come and speak with her. R. 239, l. 2 – 243, l. 7. The court was then recessed for the day.

Proposed testimony of Debbie Spann

The following morning, the trial judge noted the attorneys had talked in chambers about Debbie Spann. The judge said she understood Spann was housed in the detention center with appellant. The solicitor now proposed that Spann was going to testify that appellant admitted to killing the decedent to her while they were in jail together. R. 243, l. 20 – 244, l. 3.

The judge observed, "I am slightly concerned about the late hour in finding her. You put her on the witness list. *You obviously knew she had information from Ms. Young*, because you knew she was housed with her . . ." R. 243, l. 9 – 244, l. 16. (emphasis added). The judge cited Rule 5, SCRCrimP, on a defendant giving a statement against her interest but the judge said she understood because the statement was not written or recorded and that the state therefore maintained "there was nothing to turn over." R. 244, ll. 17-23.

The judge told defense counsel Plexico that she did not see anything in the rule that prohibited the witness from testifying. Plexico countered that they had selected a jury on Monday and it was now Wednesday morning and he was caught completely by surprise. Plexico said he had no indication what "this witness was going to say. So if they're going to call a witness, *they're supposed to give me witness statements.*" R. 245, ll. 8-23. (emphasis added).

The judge said there were not any witness statements and that the only statement was a statement against interest by appellant to a jailhouse snitch, Debbie Spann. Plexico responded that he had asked "*for a synopsis of any statement they're going to use against my client,*" and Plexico said the state's failure to provide that synopsis should bar Spann from testifying. R. 245, l. 8 – 246, l. 11. (emphasis added).

The solicitor then asserted the rule only required him to turn over a copy of the witness statement under Rule 5, SCRCrimP, after the witness had testified. The solicitor said he did not have any statement from Spann. The solicitor claimed he was not happy that he was telling Counsel Plexico of the alleged confession at this late date, but said he had no other responsibility under the rule. The judge then ruled because Spann was not a prosecution agent but a jailhouse snitch that the state technically complied with the rule and "I think it comes in." R. 245, l. 8 –

249, l. 24. Defense counsel Plexico responded that was “trial by ambush” and the judge only urged that defense counsel talk with Spann “to see if that might cure it.” R. 249, l. 19 – 250, l. 6.

Debbie Spann testified that she did not know the police had been looking for her. Spann said she did not like talking to law enforcement but said she met appellant “in jail when she admitted that she killed my cousin Davonte Freeman.” R. 427, l. 12 – 428, l. 18. On cross-examination, Spann said appellant “admitted to murdering Davonte Freeman, and she wanted to take Kwame Freeman off the streets cause he was a witness to the case.” R. 432, l. 23 – 433, l. 6.

Other evidence - Marie Powell

Earlier in the trial, Marie Powell testified she was in jail with appellant. Powell claimed that appellant told her that Eric Darien possessed the .9 millimeter handgun. R. 394, l. 2 – 395, l. 22. Powell claimed that appellant asked her how much her friend Anthony Austin would charge to “take out Kwame, because he was the only eyewitness.” Powell said she interpreted this as appellant wanted Anthony Austin to kill Kwame. R. 396, l. 9 – 397, l. 21.

Powell also said she was aware that appellant at some point possessed the .22 caliber gun that allegedly was the murder weapon. R. 398, l. 6 – 399, l. 11. Powell also claimed that appellant told her that she planned to talk to law enforcement about Eric Darien’s “role in the murder.” R. 403, l. 19 – 404, l. 13. Powell admitted her long criminal record but stated she was testifying to get “justice” for the decedent who “had a baby on the way.” R. 405, l. 1 – 406, l. 9.

Discussion

Defense counsel Plexico told the judge that he expected, as usual, a synopsis of the contents of any inculpatory statements that his client had made to any witness for the state. Defense had filed and served its discovery motion requesting these statements, and it was in the

ordinary course of business that defense counsel expected to be told of any inculpatory statement his client made. “Hiding behind” the technicalities of Rule 5, SCRCrimP, was not the course of dealings in Jasper County or that judicial circuit. Supp. R. 1 – 4. As this Court is well aware some counties or judicial circuits have an “open file policy,” or an understanding on disclosure – a course of daily dealings – that goes beyond Rule 5, SCRCrimP.

Defense counsel was correct that it was “trial by ambush” to tell defense counsel, for the first time, on the morning of the third day of trial, that witness Debbie Spann was going to testify that appellant allegedly admitted to killing the decedent to Spann while they were in jail together.

As to Rule 5(a)(1)(A), SCRCrimP, “the rule, of course, is intended to enable a defendant to obtain prior to trial **any of his own statements** relevant to the crime charged against him so he will be able to prepare properly to face the evidence that may be introduced against him at trial.” United States v. Gleason, 616 F.2d 2, 24 (1979). (discussing the underlying purpose of the similar federal rule). Early v. State, 418 S.C. 255, 266, 792 S.E.2d 226, 233 (2016).

“Where a party fails to comply with Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the undisclosed evidence, or enter such order as it deems just under the circumstances.” State v. Kerr, 330 S.C. 132, 150, 498 S.E.2d 212, 221 (Ct. App. 1998). “Sanctions for noncompliance with disclosure rules are within the discretion of the trial court and will not be disturbed absent an abuse of discretion.” State v. Davis, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct. App. 1992). “Moreover, trial court also has a prerogative to waive the disclosure requirements ‘for good cause shown.’” Rule 5(g), SCRCrimP. “The court may, for good cause shown, waive the requirements of this rule.” Early v. State, 418 S.C. 255, 267, 792 S.E.2d 226, 232 (2016).

Defense counsel protested that the solicitor was, by not disclosing a synopsis or any other notice of Debbie Spann's assertion that appellant confessed to the murder conducting "trial by ambush" in violation of due process and fundamental fairness. It was a breach of the course of dealings in that circuit. While Rule 5 requirements and their violations can lead to reversal on appeal, so too many judicial circuits have "open file policies" and the course of dealings that lead the prosecution and the defense to deal in good faith with one another regarding the disclosure of witness statements in advance. See State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) (A letter written by the defendant regarding his dishonesty pertaining to the underlying incident should have been disclosed by the state in response to the discovery motion and defendant was entitled to a new trial).

While the testimony of Marie Powell was intended to have the jury conclude that appellant made inculpatory statements about knowledge of the murder and wanting to cover-up information about the murder the testimony of jailhouse snitch Debbie Spann unequivocally asserted that appellant confessed to murdering the victim. While the judge was bothered by that lack of notice of the alleged confession to the defense – given the course of dealings between the solicitor's office and defense attorneys in that circuit -- the judge did not bar Spann from testifying as a sanction. That was an abuse of discretion because this was a fundamentally unfair, indeed egregious discovery violation that denied appellant her right to due process and a fundamentally fair trial. See Early v. State, 418 S.C. 255, 267, 792 S.E.2d 226, 232 (2016); State v. Davis, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct. App. 1992). Appellant should be granted a new trial.

2.

The court erred by allowing the text messages to be introduced into evidence through the business custodian where defense counsel correctly argued they were not trustworthy to be admissible under Rule 803 (6), SCRE, that they were unduly prejudicial and confusing, and where the court incorrectly reasoned the jury could “infer what they want” from text messages because the court believed appellant wrote them but where the texts admittedly could have multiple meanings and some of them were undoubtedly vulgar.

Relevant Facts

During the testimony of Agent Grabski, defense counsel Plexico asked for a ruling on the admissibility of the text messages. The solicitor said that Grabski would not be testifying about the text messages, that witness Karen Milbrodt would testify regarding the text messages, and that Milbrodt “can’t say that this was her [appellant’s] phone or the number that she’s texting was Eric Darien’s phone.” At that point, the solicitor claimed Milbrodt would just testify as to the number from which the text message was sent, seemingly only to show that appellant knew Eric Darien, which allegedly conflicted with her statement to the police. R. 270, l. 9 – 272, l. 17. See State’s exhibit 29 (Appellant’s interview is on file with this Court).

Karen Milbrodt was later called as a witness. She was a record custodian for Verizon Wireless. R. 313, l. 18 – 314, l. 4. When the solicitor offered State’s Exhibit 28, a call log, the judge noted defense counsel’s prior objection. R. 316, l. 13 – 317, l. 12. Those records are also before this Court to review. R. 514 – 555.

When the content of the text messages themselves became an issue, the judge sent the jury out so the attorneys could argue the matter. Defense counsel objected to the undue prejudice of these text messages. R. 322, l. 1 – 324, l. 14.

The judge stated her initial view that the text messages were “her words. So, it’s an admission by a defendant. The question then becomes the other text messages that are coming and going back and forth.” R. 323, l. 25 – 324, l. 8. The judge, solicitor, and defense counsel then discussed the various text messages, including “*I see you hitting niggas what that fire. Is that fire?*” and “*Welcome to the family fool.*” “*The next bus leaves at 5:50 a.m. on 5/1; get it now.*” R. 325, l. 6 – 328, l. 5. (emphasis in original).

Also included were the solicitor’s claim that text messages between appellant and Eric Darien said, “*Talking bout u told her I did that s/h/i/t . . . smh means shaking my head.*” R. 328, l. 6. – 335, l. 12. (emphasis in original). Defense counsel argued the text messages and documents were absolutely not trustworthy under Rule 803(6), SCRE, and that there was no legitimate purpose for the admission of text messages such as “*I see you hitting N’s what with that fire welcome to the family fool*” as far as relevance and undue prejudice were concerned. R. 334, l. 10 – 336, l. 5. (emphasis in original). Counsel also noted appellant asserted to the investigator her interview that she had misplaced or lost her phone, and that she broke it later. Counsel again noted the untrustworthiness of the text messages and the bizarre nature of them. R. 334, l. 15 – 336, l. 5.

The judge finally noted that the jury could hear the text messages including those which were racially provocative, and vulgar. “I think they [the jury] can infer what they want from that. She could have absolutely said they’re lying on me. And it isn’t that it’s not admissible because it’s evidence of flight; it’s her statement. Whatever she said as her statement’s coming in. I mean, that’s an admission by a defendant. **Anything she says is coming in.** So I think for the whole thing in context for what the jury wants to surmise from it, they can.” R. 336, l. 6 – 337, l. 23. (emphasis added).

The judge then said that Milbrodt would be able to read the text messages to the jury. R. 338, ll. 13-16. Milbrodt then read the jury a text message that said, "*I see you hitting niggas what -- what the fire welcome to the family fool.*" R. 343, ll. 5-7. (emphasis in original). Another text message said, "*Mimi just hmu talking bout u told her I did that shit . . . smh.*" R. 344, ll. 7-9 (emphasis in original). Another said, "*Chillout for uh minute.*" Another said, "*Mane I aint gone lie bruh I been hiding out they tryna pin me to this "M" delete this.*" R. 345, l. 20 – 346, l. 5. (emphasis in original). Milbrodt identified appellant's Gmail address and told the solicitor she did not know who had the phone when the text messages were sent. R. 346, ll. 15-22.

On cross-examination by defense counsel, Milbrodt admitted many of the text messages could have multiple meanings. R. 348, ll. 9-21. The text messages themselves were introduced as an exhibit, State's Exhibit 30, in addition to them being read to the jury by Milbrodt. R. 556 – 573.

Discussion

The court incorrectly reasoned that the text messages were admissible against appellant merely because the court believed that she wrote them. The court also erred by ruling that the jury could infer whatever it desired from the text messages, since the court believed appellant wrote them or "said it." The solicitor initially asserted that the text messages would only show that appellant knew Eric Darien which contradicted appellant's statements to the investigator in the state's estimation. Again, appellant's statement during interrogation is before this Court for viewing. See State's Exhibit 29.

As seen, the state's witness Milbrodt admitted that the text messages could have multiple meanings. It was undisputed that they contained racially offensive language and that they were

vulgar at times. It should be undisputed that the text messages cast appellant in an overall very bad light. Defense counsel was correct in urging that any probative value the text messages had was outweighed by their undue prejudice or unduly prejudicial effect. See Rule 403, SCRE. (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues. . .”). See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

The text messages showed appellant speaking in some slang language, which a reasonable juror would conclude was attempting to hide illegal or socially unacceptable behavior from a law-abiding citizen and reader.

In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), the Supreme Court held that the judge abused his discretion in admitting fifteen minutes of jail calls from King without listening to them first. The Supreme Court also found the jail calls should not have been admitted against King because of their limited probative value being outweighed by their undue prejudice. The jail calls were riddled with racial slurs and profanity. In this case also, the text messages contained racial slurs and profanity.

The text messages, as with the jail calls in King, had the undue tendency to suggest a verdict on an improper basis, here, that appellant was an uncouth lowlife not deserving of the benefit of the doubt.

The text messages in this case went far beyond allegedly showing that appellant knew Eric Darien. The judge’s reasoning that because she believed appellant wrote the text messages automatically making the text messages admissible flies in the face of the judge’s duty to weigh any probative value of the text messages against their unfair prejudice. See Rule 403, SCRE. It was an acquiescence of discretionary authority which in and of itself was an error of law. See

State v. King, *supra*, *citing* State v. Smith, 376 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”) Just as the judge in King abused his discretion by refusing to listen to jail tapes before admitting them, the judge here abused her discretion by reasoning and ruling that because she believed appellant wrote the text messages that they were automatically admissible since appellant “wrote it,” or “said it,” ending the need for any probative value versus undue prejudice analysis. Rule 403, SCRE.

The text messages were confusing, had multiple meanings, and the judge abused her discretion by ruling the jury could infer whatever it wanted from the text messages. Such an unchanneled admission of evidence is the antithesis of trustworthy evidence likely to aid the jury in reaching a correct result. State v. King, *supra*. Appellant should be granted a new trial.

3.

The court erred by qualifying SLED agent Eric Grabski as an expert in cell phone location data analysis where he admitted the program and method of his cell phone analysis had never been peer reviewed, and that he had never been qualified as an expert in state court in this area before, and where the erroneous qualification of Grabski allowed him to allege that appellant's cell phone was, in context, suspiciously "on the move" on the night of the murder.

Relevant Facts

SLED agent Eric Grabski had worked at SLED for less than two years at the time of appellant's trial. R. 350, l. 25 – 351, l. 8. Grabski said he had "special training or experience in cell phone records and location data." R. 352, ll. 1-5. Grabski said for purposes of his proposed testimony: "I use an application called CAST Viz. It was created by the FBI, and it was actually created by their CAST team, which is an acronym for their Cellular Analysis Survey Team. I attended a sixteen-hour training class where they tell us how to map records within their program that will basically analyze the tower cell site listing, as well as the call detail records of the target device, and put it more cleanly out into a -- into a map. It helps me from doing that by hand." Grabski said he also attended training put on by PenLink. Grabski said PenLink was where they "run a pen register track and trace software." He also attended a two-week training by a company called ETS, which was "a basic foundation and the theory behind how, you know, the technology of cell phones." R. 352, ll. 18-24.

Grabski said he had used cell tower information about two hundred times to map cell phone data. However, Grabski had never testified in state court before as an expert in this area. R. 353, l. 14 – 354, l. 8.

Defense counsel Plexico then conducted voir dire of Grabski on his qualifications as a proposed expert. Grabski said the program was developed by the FBI and he did not know who created the program and he could not say if it had ever been peer-reviewed. When asked whether the program had been scrutinized by the scientific community to validate it, Grabski said, "It's not a scientific application." R. 354, l. 18 – 355, l. 16. Grabski also said he did not know how his doctorate degree in engineering pertained would assist him in his proposed testimony as "an expert" that day. R. 356, ll. 1-11.

Grabski also admitted that computers do get "bugs and have problems" but asserted "I'm not sure how this pertains to call record analysis." Grabski also acknowledged he was uncritically relying on what the computer provided to him as being reliable information. R. 357, l. 9 – 358, l. 3. Defense counsel Plexico objected to Grabski being qualified as an expert, and the judge admitted Grabski as an expert in the area of cell phone location data analysis over appellant's objection. R. 358, ll. 2-11.

Once qualified, Grabski said he was able to pinpoint the cell phone calls to a general area. R. 361, ll. 19-23. Grabski said the location of interest to him was "8146 East Main Street," which was the dumpster behind the Kentucky Fried Chicken. R. 362, ll. 18-23. This was the area where the decedent was shot and killed. The solicitor then used a slide presentation to describe the movement of appellant's cell phone that evening with the analysis beginning at 9:54 PM on April 29, 2016. R. 363, l. 24 – 378, l. 17.

In his closing argument, the solicitor told the jury what SLED Agent Grabski had told the jury about the movement of the cell phone: "There's a twenty-minute window, 12:34 to 12:54, *seven minutes after Wrenshad [Anderson] makes his phone call to 911, seven minutes, she [appellant] starts moving. That phone starts moving. . . .* What is she doing with that twenty

minutes? *She's sitting in the woods, waiting on Wrenshad Anderson and Davonte Freeman with Eric Darien. That's where she is. She's not calling anybody. They're waiting. That's where they are. And then -- and guys, again, I was gone at 10:30. That's a lie. That's a lie. And eventually, we get back to Hilton Head, and that phone doesn't leave or doesn't seem to move from that tower for some time after 2:30 in the morning until 4:30 the next day.*" R. 456, l. 23 – 457, l. 10. (emphasis added).

The solicitor also argued the text messages saying "*Shawty trippin.what's the move?*" meant, "The move is to go kill Davonte Freeman, and to try to kill Wrenshad Anderson. That's the move. Oh, it's not her phone, I'm sorry. May 2nd, 9:53, what's your email? *aneishay@gmail.com*. But it's not her phone; it's not her number anymore; it broke." R. 458, l. 19 – 459, l. 3.

Discussion

The solicitor used the cell phone evidence after SLED agent Grabski was qualified as an expert to argue that it proved appellant was on the move on the night she participated in the murder of the decedent. Grabski had never testified as an expert in cell phone analysis before. That is telling, although appellant understands it always opens the door to the assertion, "There has to be a first time." However, defense counsel correctly argued the voir dire of Grabski did not show he was sufficiently familiar with the science, and he merely accepted what the computer told him. That was true while he admitted that computers had "bugs" and flaws.

In State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), our Supreme Court held that the trial judge has the gatekeeping function to ensure the reliability of expert testimony. This gatekeeping function also applied to nonscientific evidence.

Rule 702, SCRE, provides, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Here, the question was whether SLED agent Grabski was qualified as an expert to opine and interpret the cell phone tower evidence.

To the contrary of State v. White, the qualifications of the proposed expert witness was the key matter in contention. In this case, again, SLED agent Grabski had never testified as an expert in state court in cell phone analysis. The jury -- in the area of cell phone analysis -- is at the mercy of the "expert" as far as his or her interpretation of the pinging of the cell phone off of the cell phone towers interpretations provided by the "expert." This testimony is far beyond the ken of the average juror.

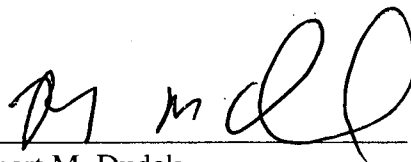
While the publication and peer review of the technique often goes to the admissibility of the scientific evidence under the State v. Jones, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979), standard, it is also applicable to the qualification of the witness regarding his knowledge of any flaws within the program or science. Here, agent Grabski admitted computers and programs have "bugs" or flaws but he was unable to elaborate, or to recognize them when they occurred given that he did not have any knowledge of any peer review of the program or the technique.

The solicitor used the cell phone testimony of Grabski in his closing argument to urge that evidence showed appellant's suspicious movements on the night of the murder. This was a slim case against appellant where the state had to resort to the last-second alleged surprise testimony of jailhouse snitch Debbie Spann, coupled with vague and difficult to understand unfairly prejudicial text message evidence in addition to this cell phone testimony. The judge abused her discretion and abdicated her gatekeeping function as to the qualifications of SLED

agent Grabski by admitting him as an expert witness under Rule 702, SCRE in cell phone analysis. See State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). As seen above, the solicitor used his “scientific” testimony as a great asset in urging a guilty verdict. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Jasper County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

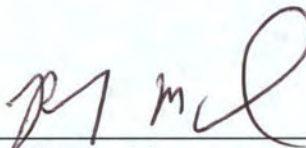
ATTORNEY FOR APPELLANT

This 18th day of July, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 18, 2019.



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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Jasper County
The Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

Respondent,

v.

ANEISHA SHAIRES YOUNG,

Appellant.

Appellate Case No. 2018-000525

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether appellant was deprived of her right to due process, where the defense was suddenly notified on the third day of trial that Debbie Spann would testify as a jailhouse snitch that appellant admitted her guilt to Spann in prison, since the solicitor not informing appellant of the basic content – the synopsis – of the testimony of this state's witness was outside the established course of discovery conduct, and constituted "trial by ambush" in violation of due process notice?

II. Whether the court erred by allowing the text messages to be introduced into evidence through the business custodian where defense counsel correctly argued they were not trustworthy to be admissible under Rule 803(6), SCRE, that they were unduly prejudicial and confusing, and where the court incorrectly reasoned the jury could "infer what they want" from text messages because the court believed appellant wrote them but where the texts admittedly could have multiple meanings and some of them were undoubtedly vulgar?

III. Whether the court erred by qualifying SLED agent Eric Grabski as an expert in cell phone location data analysis where he admitted the program and method of his cell phone analysis had never been peer-reviewed, and that he had never been qualified as an expert in state court in this area before, and where the erroneous qualification of Grabski allowed him to allege that appellant's cell phone was, in context, suspiciously "on the move" on the night of the murder?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. The State fully complied with the rules of criminal procedure by disclosing the identity of a potential witness against Young. The State did not possess any written statements to turn over to Young and was not required to give Young a synopsis of the witness's testimony. Moreover, the issue is not preserved.

II. The trial judge did not abuse her discretion in admitting text messages attributable to Young as an admission by a party opponent when Young claimed the cell phone number in an interview with police, provided her email address in one of the texts, and made incriminating statements about her involvement in the murder of the victim. The prejudicial impact of the texts was not argued to and ruled upon by the trial court and is not preserved for review.

III. The trial judge did not abuse her discretion in qualifying SLED Agent Eric Grabski as an expert in cell tower location information when the witness received extensive training from the FBI, the state, and private industries in the field of cellular signal analysis and performed this analysis as part of his job, and his testimony was limited to tower signal information, not the physical location of the phone.

STATEMENT OF THE CASE

In October of 2016, a Jasper County Grand Jury indicted Appellant, Aneisha Shaire Young, for murder, attempted murder, and possession of a weapon during the commission of a violent crime. (R. pp. 576-581.) Young proceeded to a jury trial on March 12, 2018, before the Honorable Carmen T. Mullen and a jury. (R. p. 1.) Young was represented by Assistant Public Defender Steven T. Plexico. (R. p. 2.) Assistant Solicitors Brian Hollen, Patrick Hall, and Lynnor Musser, of the Fourteenth Circuit Solicitor's Office, represented the State. (R. p. 2.)

The jury found Young guilty of murder, attempted murder, and possession of a weapon during the commission of a violent crime. (R. p. 512, lines 2-10.) Judge Mullen sentenced Young to thirty years' imprisonment for murder, a consecutive term of ten years for attempted murder, and a concurrent term of five years for the weapons charge. (R. p. 513, lines 5-20.) This appeal follows.

STATEMENT OF FACTS

On April 30, 2016, first responders to a the 911 call found Wrenshad Anderson and his brother, Devonte Freeman, on the ground behind a fast food restaurant in Jasper County. Freeman had been shot in the back of his head and Anderson was holding Freeman in his arms. (R. p. 35, line 7 – p. 36, line 9.) Freeman was transported to the hospital, and Anderson was interviewed by police. Anderson was upset and indicated to police he thought “Peanut” (Eric Darien) and “Dre” (Keandre Frazier) were the perpetrators. (R. p. 37, line 12 – p. 38, line 15.) Anderson said the men were dressed in all black and he believed they were going back to the Siesta hotel. (R. p. 38, lines 14-20.) Anderson gave investigators the contact numbers for Darien and Frazier and also mentioned Aneisha Young. (R. p. 41, lines 3-9.) In his statement to police, Anderson wrote the following:

We just left the Siesta weekly rentals. Talking to Mr. Horton, and we was walking to Econo Lodge. When we got close to KFC path, that's when we heard shots. Vonte got into it with Peanut earlier today, and we saw Neisha and her friend. That's when we was ordered to leave. That's when we left walking, and they sneak up behind us and started shooting.

(R. p. 61, lines 13-24.)

Keith Horton was the property manager of the Siesta Hotel and knew Freeman was previously a regular who had rented a room there in the past. (R. p. 120, line 10 – p. 121, line 6.) Horton said he received a call at approximately 11:00 pm informing him that Freeman, who was on trespass notice, was on the property. (R. p. 121, lines 7-18.) Freeman had been asked to leave the property a few weeks before for having a gun on the premises. (R. p. 121, lines 14-23.) Freeman would return to the Siesta to visit cousins who still lived there. (R. p. 122, lines 2-6.) Horton said the call he received about Freeman came from a female calling from a blocked phone. (R. p. 122, lines 12-23.) When he arrived at the Siesta to ask Freeman to leave, Horton

identified Young as one of the people who approached Horton and told him where Freeman was on the property. (R. p. 123, line 5 – p. 124, line 11.) Horton said Freeman was polite, and they talked for an hour or so about Freeman's family and the need for Freeman to stay away from the Siesta. Freeman acknowledged he should not be on the premises and agreed to leave peacefully. (R. p. 124, line 14 – p. 125, line 7.) Horton said Young and two other men left the Siesta in a car just before Freeman and Anderson left the property. (R. p. 125, lines 8-24.)

Wrenshad Anderson said that some time before his brother was killed, he and Eric Darien had a disagreement. (R. p. 154, line 14 – p. 155, line 24.) Similarly, his brother and Young had recently fought over money. Demitria Williams, who was two months pregnant with Freeman's child, recalled an incident a few weeks before the murder in which Young forced her way inside the home of Williams and Freeman when they were living together at the Siesta hotel. (R. p. 102, lines 2-19; p. 103, line 9 – p. 104, line 14; p. 105, lines 12-19.) Young and Freeman began "wrestling and tumbling and whatever" and Williams had to get help from someone to break up the fight. (R. p. 104, lines 14-18.) Young said she was going to kill Freeman. (R. p. 104, lines 19-21.) When Young pushed her way into the home, she was saying "wake up, you pussy, get him up" and then as she rifled through Freeman's pants, saying "that N has some of her money." (R. p. 104, line 22 – p. 105, line 11.)

On the day of the murder, Anderson called his brother and learned Freeman was at the Siesta. (R. p. 156, lines 1-13.) Anderson went to the Siesta and ran into Darien, who flashed a gun at Anderson. (R. p. 156, lines 11-25.) Anderson said he also saw Aniesha Young at the Siesta and found it unusual because that is not where Young usually spent her time. (R. p. 157, line 14 – p. 158, line 2.) Anderson said Young was wearing all black. (R. p. 158, lines 3-6.) Anderson said he planned to stay at the Siesta until his brother was called out to talk to the

property manager and asked to leave. (R. p. 159, line 13 – p. 160, line 19.) Anderson said as he and brother walked off down the path away from the Siesta, they both felt “funny,” sensing something felt off about the night. (R. p. 160, lines 19-24.)

Anderson said they heard leaves rustling, and then gunshots, so the men started running down the path. (R. p. 161, lines 13-20.) Anderson saw his brother get hit by the gunfire and fall to the ground: Even after his brother was shot, the shooters continued to fire at the men. (R. p. 162, lines 1-10.) Anderson turned to look in the direction of the shots and saw two figures in all black. (R. p. 170, lines 1-8.) Anderson said he called Darien and Young after the shooting and confronted them, but they said they were in the “country.” (R. p. 175, lines 7-24.) Anderson also said Young contacted him repeatedly the next day, denying her involvement. (R. p. 175, lines 18-21.)

The lead investigator, Lieutenant Daniel Litchfield, located .9 millimeter shell casings at the scene. (R. p. 211, lines 5-10; p. 220, line 23 – p. 221, line 3.) Two days later, Litchfield returned to the scene and found .22 caliber casings approximately eight feet from the .9 millimeter casings he found previously. (R. p. 225, line 19 – p. 226, line 19.) Litchfield said he interviewed some of the people who were at the Siesta the night of the shooting and they confirmed Keandre Frazier was playing cards at the Siesta when the shooting occurred. (R. p. 229, line 21 – p. 230, line 8.) Litchfield obtained search warrants for the phones of Young and Eric Darien. (R. p. 235, line 22 – p. 236, line 5.) Young gave a statement to investigators, but Litchfield could not confirm Young’s alibi. (R. p. 235, lines 6-23.)

Text messages sent around the time of the shooting and in the days immediately afterwards incriminated Young in the murder of Freeman. (R. pp. 556-573.) A SLED agent testified Young’s cell phone utilized the cell tower nearest to the crime scene between 10:53 pm

and 12:34 am the night of the murder. (R. p. 369, lines 1-19.) At 12:54 am, the cell phone used a different tower. (R. p. 370, lines 20-24.) The progression of the towers used indicated movement of the phone, likely on Interstate 95 in a southern direction and contradicted Young's statements to police about her movements on the night of the murder. (R. p. 372, lines 7-17.)

The State also presented testimony from two informants. Marie Powell was incarcerated with Young a few months before the trial. (R. p. 387, line 6 – p. 388, line 11.) Powell knew Davonte Freeman when he lived in the same apartment complex as Powell. (R. p. 389, lines 1-14.) Powell also used to date a man who previously dated Davonte's mother. (R. p. 389, lines 15-24.) Young told Powell about the night of the murder at the Siesta. (R. p. 392, lines 20-24.) Young said Eric Darien had the .9 millimeter handgun and she had the .22 millimeter gun. (R. p. 394, line 14-p. 396, line 11.) Young also asked Powell how much Powell's boyfriend would charge to kill Wrenshad Anderson, the only eyewitness. (R. p. 396, line 16 – p. 397, line 5.) Young also told Powell she planned to talk to the police and tell them Eric Darien killed Freeman. (R. p. 403, line 12- p. 404, line 10.) Young said she was high on Xanax and Molly the night of the murder. (R. p. 405, lines 1-9.) Debbie Spann also testified she knew Young from her time in jail, when Young admitted to Spann she killed Davonte Freeman, who was Spann's cousin. (R. p. 428, lines 9-18.) Young also wanted to kill Wrenshad Anderson because he was the only witness. (R. p. 431, lines 4-10.)

Young did not testify at trial, and the defense did not present evidence. (R. p. 447, lines 20-22; p. 448, lines 7-12.)

I. The State fully complied with the rules of criminal procedure by disclosing the identity of a potential witness against Young. The State did not possess any written statements to turn over to Young and was not required to give Young a synopsis of the witness's testimony. Moreover, the issue is not preserved.

The State sought to introduce evidence from jailhouse informant Debbie Spann that Young confessed to the murder of Davonte Freeman and the attempted murder of Wrenshad Anderson. Young was informed of the witness the week prior to trial but did not inquire about the nature of the testimony. The trial judge, acting within her discretion, found no discovery violation because a synopsis of the witness testimony, as demanded by Young, is not information subject to disclosure prior to trial. Young did not object when Spann took the stand. On appeal, Young argues the failure to inform the defense of the substance of Spann's purported testimony constituted a violation of her due process rights, and the trial judge should have barred Spann from testifying. However, any issue concerning the judge's refusal to exclude the testimony is unpreserved and wholly without merit.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995).

Under Rule 5, SCRCrimP, the trial judge has discretion to determine what remedy, if any, is necessary to protect a defendant's rights. Rule 5(d)(2), SCRCrimP, states that if a party fails to comply with Rule 5, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing the undisclosed evidence, or it may enter such other order as it deems just under the circumstances. Rule 5(d)(2), SCRCrimP; *State v. Trotter*, 322 S.C. 537, 473 S.E.2d 452 (1996). The remedy, or the determination no remedy is required, will not be reversed absent an abuse of discretion. *See State v. Newell*, 303 S.C. 471, 476, 401 S.E.2d 420, 423 (Ct. App. 1991).

How the Issue Arose at Trial

The morning of the third day of trial, the parties discussed the remaining witnesses to be called by the State, which included two informants. (R. p. 242, lines 2-19.) The solicitor informed the judge that witness Debbie Spann had been located that morning and was served with a subpoena. (R. p. 244, lines 3-8.) The judge noted Spann was included on the witness list earlier, but Spann had not made a written or recorded statement indicating Young confessed the murder to her, so there was nothing to turn over to the defense. (R. p. 244, lines 9-23.) The judge ruled Spann would be allowed to testify and the defense would have the opportunity to cross examine her about bias or prejudice. (R. p. 244, line 23 – p. 245, line 2.)

Defense counsel objected, claiming a due process violation, because although he was aware Spann was a potential witness, he was caught by surprise by her testimony because the State did not give him a synopsis of what Spann would say on the stand. (R. p. 245, line 8 – p. 246, line 11.) The solicitor argued Rule 5, SCRE provided guidance for the specific situation, and he was not required to turn over any statements to the defense before the witness testified, even if he had a written statement. (R. p. 246, line 14 – p. 247, line 13.) Defense counsel

conceded Rule 5(a)(1)(a) did not exactly apply to the situation before the court, but argued *Brady*¹ required the court to exclude the witness. (R. p. 248, line 13 – p. 249, line 8.)

The trial judge asked counsel why he did not inquire into the substance of Spann's testimony the previous week when he was notified she might be called as a witness, and counsel did not offer an explanation. (R. p. 249, lines 9-18.) The Court suggested counsel take the time to talk to Spann before she testified to prepare himself for her testimony to "cure" any prejudice from the lack of notice to the defense. (R. p. 250, lines 2-9.) In response to the judge's suggestion, counsel said, "[A]bsolutely." (R. p. 250, lines 2-7.)

When Spann took the stand to testify, Young did not object, nor did she object when Spann testified Young "admitted that she killed my cousin Davonte Freeman." (R. p. 427, line 13 – p. 428, line 15.)

Argument

As an initial matter, the trial judge's refusal to exclude the testimony of Debbie Spann is not preserved for this Court's review. The judge ruled the testimony would be admissible, and then offered time for Young to question the witness to cure any prejudice she might suffer from the late notice of the witness's testimony. When the witness did testify after the presentation of five additional witnesses, Young did not renew her objection.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). South Carolina law is clear that a party must make a contemporaneous objection

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

that is ruled upon by the trial judge to preserve an issue for appellate review. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See *State v. Owens*, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial); *State v. Sheppard*, 391 S.C. 415, 420–21, 706 S.E.2d 16, 19 (2011) (finding defendant did not properly preserve for appellate review when defendant made no contemporaneous objection and instead began cross-examining a witness). Young was afforded an opportunity to talk to the witness and prepare for the cross-examination before the witness took the stand. Presented with the opportunity to “cure” any prejudice, Young accepted with the phrase “absolutely.” When Young failed to object when Spann was called to the stand, she waived her prior objection. See *Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997) (“The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object.”) This issue is not preserved.

Nevertheless, even if Young had properly preserved this issue with the trial court, her argument is without merit. There is no right to discovery in a criminal case. *State v. Smart*, 274 S.C. 303, 306, 262 S.E.2d 911, 913 (1980). “‘Pretrial discovery in favor of defendants in criminal cases is not required by due process, and when the court permits discovery in advance of the trial, it is not acting under constitutional compulsion, but to promote ascertainment of the truth. Neither the provision of a state constitution that in criminal prosecutions every man has a right ‘to examine the witnesses for and against him on oath,’ nor the due process clause of the Fourteenth Amendment, was held to give an accused the right to take pretrial depositions for discovery purposes.’” *State v. Flood*, 257 S.C. 141, 145, 184 S.E.2d 549, 551–52 (1971) (citing 23 Am.Jur. Depositions and Discovery s 312 (1965)). Young’s argument, that her due process

rights were violated when the State failed inform her of the substance of Spann's testimony, or provide a synopsis, is not supported by case law.

Further, Young cannot show the State violated any provision of criminal procedure.² At trial, Young argued, "I asked for a synopsis of any statement they're going to use against my client, and they could have provided me with a synopsis, which is in Rule 5, and they failed — and by Rule 5, they failed to do that." (R. p. 246, lines 7-11.) Young appears to argue the State should have turned over any prepared documents related to this witness prior to trial. However, Rule 5, SCRCrimP, does not contain such a requirement. Indeed, the rule specifically excludes such disclosure.

Rule 5 requires the State to turn over, upon request of the defendant, statements made by the defendant, the defendant's prior record, documents and tangible items, and reports of examinations and tests. *See* SCRCrimP 5(a)(1)(A-D). In contrast, Rule 5 (a)(2) provides the following:

Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), **this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution** or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that **after a prosecution witness has testified** on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any **statement of the witness in the possession of the prosecution** which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

² As for Young's claim the practice of providing a synopsis of witness testimony is the common course of dealings in Jasper County, there is no testimony on the record supporting that contention, only a generalized statement from counsel. (IBOA p. 13.)

(emphasis added). According to the provisions of the rule, the State is not required to turn over any document, or synopsis of testimony, prepared by the solicitor in preparation for trial. It is unclear from the record whether the solicitor had prepared such an internal document, but the Rule is clear that he was not required to turn it over to the defense prior to trial, even if he had. Moreover, the record is clear that the State possessed no written statement from Spann (R. p. 244, lines 20-23.) Even if there was a statement, the State would only have to turn over the statement **after** Spann testified.

In sum, there is no constitutional obligation or procedural rule by which the State is required to write and deliver to Young a synopsis of a witness testimony. Young's due process rights were not compromised, and the State complied with Rule 5, SCRCrimP. Moreover, Young was notified of Spann's potential appearance and was given time to speak to the witness prior to her testimony to prepare a cross-examination. Young has not offered how the cross-examination testimony would have presented differently if she had known about Spann's testimony well before the start of trial. Thus, Young cannot show prejudice from the State's refusal to provide her with a synopsis of Spann's testimony. There was no violation of the rules, but even so, a violation of Rule 5 is not reversible unless prejudice is shown. *State v. Landon*, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

Harmless error

Lastly, the admission of Spann's testimony was harmless because it was merely cumulative to Marie Powell's testimony, which was also entered into evidence without a contemporaneous objection. *See State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (recognizing admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993) (finding

any error in admission of evidence cumulative to other un-objected to evidence is harmless); *State v. Johnson*, 298 S.C. 496, 498, 381 S.E.2d 732, 733 (1989) (instructing admission of improper evidence is harmless where it is merely cumulative to other evidence). There were two jailhouse informants. Young objected to Spann's testimony, but not Marie Powell's. Not only has Young failed to show prejudice from her lack of foreknowledge about Spann's testimony, she cannot show prejudice from the substance of the testimony to the jury when the jury heard similar evidence from Powell. This unpreserved issue is without merit.

II. The trial judge did not abuse her discretion in admitting text messages attributable to Young as an admission by a party opponent when Young claimed the cell phone number in an interview with police, provided her email address in one of the texts, and made incriminating statements about her involvement in the murder of the victim. The prejudicial impact of the texts was not argued to and ruled upon by the trial court and is not preserved for review.

The trial judge properly admitted text messages sent from and received by Young's cell phone in the hours immediately before and in the two days following the shooting. On appeal, Young suggests the texts were untrustworthy because the custodian could not identify the subscriber of the targeted phone and argues the texts were unduly prejudicial. At trial, however, the judge was sufficiently satisfied that the State authenticated Young's possession of the targeted cell phone, despite the lack of subscriber information, because Young identified her phone number to police in an interview and provided her email in one of the texts. The court concluded, therefore, that the messages from Young's phone were not hearsay but statements by a party opponent. Moreover, the messages were relevant and probative of Young's involvement in the murder of Freeman. Young's claim the vulgarity of the texts were prejudicial was not presented to the trial court, but, regardless, the claim lacks merit.

Standard of Review

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Washington*, 379 S.C. 120, 123, 665 S.E.2d 602, 604 (2008). “A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.” *Id.* at 123–24, 665 S.E.2d at 604. “The improper admission of hearsay is reversible error only when the admission causes prejudice.” *State v. Weston*, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006).

How the Issue Arose at Trial

In pretrial motions, Young sought to exclude text messages sent by Young, as well as her cell phone location data. (R. p. 5, lines 5-10.) The solicitor told the court there were a number of text messages and phone calls he sought to use against Young to prove she lied to police when she claimed not to know Eric Darien. (R. p. 6, lines 16-25.) The solicitor also told the court additional text messages were evidence of flight because she discussed going to North Carolina. (R. p. 7, lines 4-16.)

Counsel for Young claimed to have only received the copies of the messages the previous week, but when challenged by the solicitor, said he would need to check his files to determine when he received the documents. (R. p. 8, lines 10-20.) Counsel claimed to be unaware of the text messages concerning Young traveling to North Carolina, arguing “It would take days to sit down and figure out whose phone number is what and go through all this. So I mean, he said he had a small number of messages he was going to put in. I expected to get them.” (R. p. 9, lines 8-12.) The solicitor offered to hand up the particular texts he sought to use, but informed the judge he had turned over all the messages to the defense, saying, “I gave him everything. It’s not my

job to narrow everything down and organize the documents for him.” (R. p. 9, lines 18-20.) The court asked to have a copy made of the text messages of interest and gave a copy to defense counsel. (R. p. 11, lines 7-18.) The judge did not rule on the messages at that time.

Later, following SLED Eric Grabski’s proffer of testimony regarding his cell phone tower analysis, Young asked for “a formal ruling on the text messages.” (R. p. 270, lines 9-10.) Counsel then moved to have the cell phone data excluded pursuant to Rule 702, SCRE. (R. p. 270, lines 11-17.) The solicitor told the court Verizon representative Karen Milbrodt would be testifying about the text messages, saying Milbrodt would give the cell phone numbers sent and received, the date, the time, and the **content** of the messages. (R. p. 270, line 23 – p. 271, line 6.) The solicitor acknowledged Milbrodt could not and would not testify about identity of the sender of the text messages. (R. p. 271, lines 3-10.) The court again deferred its ruling on the motion. (R. p. 271, lines 20-25.)

When she took the stand, Karen Milbrodt testified about how Verizon Wireless keeps records of phone call logs. (R. p. 313, line 18 – p. 314, line 21.) Milbrodt identified the phone records of targeted telephone number 803-842-3731. (R. p. 316, lines 2-6.) Milbrodt said there was no subscriber information to identify the user of that particular phone number, likely because the phone was contracted through a reseller. (R. p. 318, lines 11-23.) Milbrodt testified the text message content log associated with that number was provided to law enforcement, had not been altered in any way, and were kept in Verizon’s ordinary course of business. (R. p. 321, line 21 – p. 322, line 13; pp. 556-573.)

Young objected, arguing the records were not created by the business, but by an unknown third party. (R. p. 322, lines 16-20.) Young further objected to the relevance and undue prejudice of the text messages, but did not identify which messages she believed were unduly prejudicial

or irrelevant and did not elaborate on the objection. (R. p. 323, lines 10-12.) The court noted that the phone number associated with the records had been identified by Young as her number in a video statement already admitted through a pervious witness, so the texts were admissible as a party admission. (R. p. 324, lines 1-10.)

The solicitor said the purpose of offering a limited portion of the texts was to show Young was lying when she claimed to police that she was not texting Eric Darien. (R. p. 325, lines 10-21.) The text messages also gave rise to the inference Young was directly involved in the murder because of her responses to some of the texts. The solicitor sought to introduce the following texts sent from or received by the cell phone Young identified as her own:

Received by Young's phone at 9:55 pm on April 29: *Yo call me asap*

Received by Young's phone at 9:58 pm on April 29: *Come on sis*

Sent from Young's phone at 12:31 am on April 30: *shawty's trippin. what's da move?*

Sent from Young's phone at 2:02 am on April 30: *You good bro?*

Received by Young's phone at 2:06 am on April 30: *Yea*

Received by Young's phone at 12:32 pm on April 30: *I see you hitting niggas what that fire welcome to the family fool*

Received by Young's phone at 12:33 pm on April 30: *Wit*

Sent from Young's phone at 12:33 pm on April 30: *Already....delete this text NOW*

Sent from Young's phone at 2:24 pm on April 30: *Who told u?*

Received by Young's phone at 7:57 am on May 1: *Mimi just hmu talking bout u told her I did that shit ... smh*

Sent from Young's phone at 8:20 pm on May 1: *Not around kuzzo.*

Received by Young's phone at 9:26 pm on May 1: *Wyd*

Sent from Young's phone at 9:30 pm on May 1: *on my way to nc.*

Received by Young's phone at 9:30 on May 1: *Why?*

Sent from Young's phone at 9:31 pm on May 1: *chillout fo uh minute.*

Sent from Young's phone at 5:51 pm on May 1: *mane I aint gone lie bruh I been hiding out they tryna pin me to uh "M"!!! Rs delete this*

Received by Young's phone at 9:53 pm on May 2: *What's your email?*

Sent from Young's phone at 9:53 pm on May 2: *aneishay@gmail.com*

(R. pp. 556-573.)

The court ruled the texts were admissible as an admission by a defendant. (R. p. 336, lines 6-24.) When the jury returned, the text messages were entered into evidence, subject to Young's objection. (R. p. 339, lines 1-4.) Milbrodt read the texts into the record. She also testified she had no subscriber information about who sent any of the texts. (R. p. 340, line 12 – p. 347, line 4.)

Argument

On appeal, Young does not dispute the relevance of the messages, but instead claims the messages were untrustworthy and unduly prejudicial. Young argues the judge reasoned "that because she believed appellant wrote the text messages automatically making the text messages admissible flies in the face of the judge's duty to weigh any probative value of the text messages against their unfair prejudice." (IBOA p. 18.) However, the record reveals a different presentation of the argument at trial. When given an opportunity to argue her objection, Young said the following:

All right, your Honor. I think they indicate an absolute, a lack — there's an absolute lack of trustworthiness under 803(6), your Honor. I just don't understand. And furthermore, I don't see how they are -- what someone's opinion,

as far as there's 2615 about I see you hitting N's what with that fire welcome to the family fool. I mean, that is – there's no purpose in that, and I would have to be able to cross-examine it; and this is obviously some kind of hearsay on hearsay or whatever. I mean, there's just no basis, no basis to find there's any trustworthiness that's related to this statement, your Honor. And my client's response, as she's already remembers, her testimony is, she's already been called by Wrenshad Anderson and harassed and accused, apparently, and she's going already, delete this, I don't want to – I don't want to hear it. And that was one of the other statements was, you know, I'm just tired of people, you know, like, you know, shaking my head, meaning I'm disgusted. That's what – that's what her responses are. And I just – I just – nobody knows whose phone Eric Darien was using that night, because apparently, he used a lot of phones. And there's nobody – my client said during her statement, which they introduced, that she had lost her phone, and she said she had broken it several days after this, in frustration over being accused. So they haven't established that phone was in my client's possession on that night of the 29th through the 30th.

(R. p. 334, line 10 – p. 335, line 12.) Young then continued to argue the texts could have multiple explanations other than incriminating Young in the murder. (R. p. 335, line 15 – p. 336, line 5.) In response to that argument, the judge specifically ruled:

Okay. I can tell you that, based on everything I've heard, and in looking at the totality of it, and reading it into context, I think it comes in, particularly the part where we have from this number 2615 to her number, to Ms. Young's number, I see you hitting the N's what that fire welcome to the family. That person then says Witness back to her. She, back to that person, again says, already....delete this text NOW. But most importantly, back from her right after that was, who told u. So I think the jury can hear that. I think they can infer whatever they want from that. She could have absolutely said they're lying on me. And it isn't that it's not admissible because it's evidence of flight; it's her statement. Whatever she said as her statement's coming in. I mean, that's an admission by a defendant. Anything she says is coming in. So I think for the whole thing in context for what the jury wants to surmise from it, they can.

(R. p. 336, lines 6-24.)

As noted above, Young argued the text messages were not admissible because the subscriber information could not be ascertained from the Verizon records custodian. Young also argued the text messages could be interpreted with multiple meanings. When given the opportunity to explain her objection, Young did not elaborate to the trial judge her argument that

the text messages were unfairly prejudicial because one contained a racial slur and another contained a vulgar word. (*Compare* R. p. 334, line 10 – p. 335, line 12, with IBOA p. 16.) Further, contrary to Young’s assertion, the trial court did not rule that because she believed Young sent the texts, the texts were “automatically” admissible. Instead, the judge responded to Young’s apparent authentication argument, as well as the argument the texts were subject to interpretation. The judge rightfully determined the texts were relevant to the murder (“I can tell you that, based on everything I’ve heard, and in looking at the totality of it, and reading it into context, I think it comes in”) and were not hearsay (“I mean, that’s an admission by a defendant”). The judge did not make a specific ruling on the prejudicial impact of the racial slur and the vulgar word because Young did not make that argument to the judge at trial.

Though Young failed to argue the specifics of her prejudicial impact claim at trial, the judge properly admitted the texts as statements of Young because they were relevant admissions and were not unduly prejudicial. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901, SCRE. Evidence must be authenticated before it can be admitted. *State v. Aragon*, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). “‘The burden to authenticate . . . is not high’, and requires only that the proponent ‘offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.’” *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 132 (4th Cir. 2014)).

In the instant case, the trial judge could consider the police interview with Young, in which she identifies the targeted cell phone number as her own, as well as the substance of the texts, in which the sender identifies her email address as aneishay@gmail.com. Although Young does not challenge the “authentication” of the texts, she does argue the texts are “untrustworthy” in an effort to convince the Court the statements were not sufficiently authenticated as statements from a defendant. However, when considering the corroborating information provided directly by Young and by the texts, themselves, the State produced more than enough evidence to support the trial judge’s finding the texts from the targeted number were not hearsay and were admissible pursuant to 801(d)(2).³

As for the admissibility of the incoming messages, “Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The incoming text messages to Young’s phone came from unknown individuals. However, they were properly admitted because they were not offered for the truth of the matter asserted. The incoming messages were not offered to show the sender had any knowledge of Young’s role in the murder. Rather, the messages were offered to give context to Young’s outgoing messages. The outgoing messages would not have made any sense to the jury if they were presented out of context. (R. p. 332, lines 2-10.) The outgoing

³ Rule 801, SCRE, reads: d) Statements Which Are Not Hearsay. A statement is not hearsay if ... (2) **Admission by Party-Opponent.** The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

messages only make sense when considered in conjunction with the incoming messages. Because the incoming messages were not offered for the truth of the matter asserted, they were not hearsay and thus the trial judge did not err by admitting them into evidence.

Next, “although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE. The text messages were clearly relevant and highly probative of Young’s role in the murder because she discussed the murder with others and she did not dispute her involvement in the crime when confronted. But to be admissible, the probative value of the messages must be balanced against the “danger of unfair prejudice” to Young. “‘Unfair prejudice means an undue tendency to suggest a decision on an improper basis.’” *State v. Stephens*, 398 S.C. 314, 728 S.E.2d 68, 71-72 (Ct. App. 2012) (quoting *State v. Lyles*, 379 S.C. 328, 665 S.E.2d 201, 206 (Ct.App.2008)). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be [scrutinized under Rule 403].” *State v. Gilchrist*, 329 S.C. 621, 496 S.E.2d 424, 429 (Ct.App.1998) (quoting *United States v. Rodriguez-Estrada*, 877 F.2d 153, 156 (1st Cir.1989)). In determining whether the danger of unfair prejudice outweighs the probative value of evidence, the court must consider the entire record, and the determination will turn on the facts of each case. *Lyles*, 665 S.E.2d at 206.

Young claims the messages were unduly prejudicial and argues, on appeal, the text messages suggested a verdict on the improper basis “that appellant was an uncouth lowlife not deserving of the benefit of the doubt.” (IBOA, p. 18.) Young attributes this unfavorable impression to the jury based upon a racial term and one vulgar word, both used in texts by other unknown people and sent to Young. However, Young did not make this argument to the trial court, and therefore, it is not preserved for appellate review. An argument not raised and ruled on by the trial court is not preserved for appeal. *State v. Nichols*, 325 S.C. 111, 481 S.E.2d 118, 120

(1997) (specific ground for objection must be raised at trial to preserve issue for appeal). A party cannot argue one ground at trial and a different ground on appeal. *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483, 489 (Ct. App. 2013). More importantly, Young cannot argue the trial court committed an error of law by refusing to exercise her discretionary authority to rule on a Rule 403, SCRE analysis when Young did not raise that objection to the court.

Even still, the particular text messages at issue were not sent by Young, so any inference from the use of the terms is not attributable to her. Moreover, as Young argued at trial, the use of the racial term and the vulgarity are subject to interpretation. While Young suggests the use of the terms makes her an “uncouth lowlife,” the assumption the jury would interpret them in that manner is tenuous, at best. Young’s reliance on *State v. King*, 427 S.C. 47, 810 S.E.2d 18 (2018), is misplaced. In *King*, the Court held the introduction of a fifteen-minute recording “riddled with profanity, racial slurs, and impermissible references to King’s prior bad acts” was improper. *King*, at 69, 810 S.E.2d at 30. The texts in the instant case were limited in number, were not “riddled” with profanity and slurs, and do not refer to any other impermissible prior bad acts of Young. In short, the texts by Young are substantially more probative than prejudicial, are relevant to the element of identity, and are admissible under Rule 801(d)(2).

Finally, as the trial court noted, the jury, as the finder of fact, could interpret the messages in any manner it found credible. Young’s argument the messages were subject to multiple meanings does not mean the messages lacked probative value, were untrustworthy, or were confusing. The trial judge, in her role as gatekeeper, properly admitted the messages into evidence so that the jury could make that determination. The trial court committed no error and this unpreserved issue is without merit.

III. The trial judge did not abuse her discretion in qualifying SLED Agent Eric Grabski as an expert in cell tower location information when the witness received extensive training from the FBI, the state, and private industries in the field of cellular signal analysis and performed this analysis as part of his job, and his testimony was limited to tower signal information, not the physical location of the phone.

SLED Agent Eric Grabski was qualified, for the first time in court in South Carolina, as an expert⁴ in cell phone tower location information. Despite his first time qualification, the agent was immensely knowledgeable based on his training and experience with SLED. Further, Grabski limited his testimony to the towers utilized by the targeted cell phone and explained how and when a signal might be received by a particular tower. He did not attempt to pinpoint the location of the phone in relation to those towers. Grabski's qualifications allowed him to present

⁴ Arguably, this particular type of evidence does not require expert qualification of the witness. This Court has previously affirmed a case pursuant to Rule 220(c), SCACR, in which the appellant asserted that his murder and armed robbery convictions should be reversed because the trial court allegedly erred in permitting two witnesses to testify regarding cell phone location data without qualifying them as experts. *See State v. McDonald*, 2017-UP-285, 2017 WL 4791156, at *1 (S.C. Ct. App. July 12, 2017). Other jurisdictions have likewise consistently found testimony that simply describes the information in a cell phone record, such as that given by Grabski, is proper lay testimony. *See Collins v. State*, 172 So. 3d 724, 743 (Miss. 2015) (holding that testimony that merely informs the jury as to the location of cell phone towers is proper lay testimony when it is based upon the personal observations of the witness); *Perez v. State*, 980 So. 2d 1126, 1131-32 (Fla. 3d Dist. Ct. App. 2008) (finding a cellular company's records custodian was not required to be qualified as an expert to testify regarding geographic coverage of a typical cell tower and factually explain the contents of phone records); *United States v. Baker*, 496 Fed. App'x 201, 204 (3d Cir. 2012) (finding a federal agent's testimony as to his use of computer mapping software to create map of defendant's general location from cell phone records did not involve expert testimony); *United States v. Evans*, 892 F. Supp. 2d 949, 953 (N.D.Ill. 2012) (finding creation of a map plotting cell towers utilized by a defendant's phone does not require specialized knowledge and is admissible through lay opinion testimony); *Burnside v. State*, 352 P.3d 627, 636 (Nev. 2015) (holding the State was not required to notice as an expert witness a detective who made a map of cell phone sites that handled calls from cell phones registered to the defendant).

reliable information to assist the jury in their assessment of Young's credibility. The trial judge committed no error.

Standard of Review

"The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). While an expert's qualification generally goes to weight of his testimony and not its admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

How the Issue Arose at Trial

At the beginning of the third day of trial, the State proffered the testimony of SLED Agent Eric Grabski to determine his qualification as an expert witness. (R. p. 250, lines 11-15.) Grabski described his employment with SLED and his extensive training. The agent also explained how cell towers function, as well as the limitations of the data received from the carrier about the cell tower and signal. (R. p. 251, line 2 – p. 260, line 2.) The solicitor explained to the court that he sought to introduce the cell records to show Young's phone was on the move at certain times during the night of the murder, not to put the phone near the scene of the crime. (R. p. 390, line 7 – p. 391, line 11.)

Under questioning by the defense, Grabski testified the cell signal ordinarily pings off the closest tower, but other factors affect which tower is the "most appealing." (R. p. 263, lines 9-17.) Grabski estimated he received approximately 120 hours of training related to the analysis of

historical cell site location data. (R. p. 264, line 24 – p. 265, lines 2.) He acknowledged his analysis was dependent on the system operating normally. (R. p. 265, line 14 – p. 267, line 2.)

The judge confirmed Grabski would not be testifying about the estimated distance between the cell tower and the cell phone, but only the particular cell tower that responded to the cell signal. The Court then ruled:

[T]he science is good in this. I've admitted it in many cases. There's always a question of, if you've got one signal versus if you've got a triangulation, the strength. Typically, the argument is whether or not how close you can place that phone to the incident location, but that's not what he's trying to do here. What my understanding is, is that he is trying to use this to show her movement from Hilton Head to Ridgeland, and then back to Hilton Head, which the science of what he's talking about is good, and he can say that.

(R. p. 269, lines 13-23.) The court went on to say, "But the science, I think, is fine. I think to the extent he's testifying, he's certainly is not going too far. I find you qualified, certainly, to testify to it, so I don't have a concern about that." (R. p. 270, lines 3-7.)

When Eric Grabski took the stand to testify, the solicitor reviewed his qualifications before the jury. Young then questioned Grabski about his knowledge of the engineers who created the data collection, as well as procedures and technology involved in the cell towers' collection of that data. (R. p. 354, line 18 – p. 358, line 2.) Young objected again to his qualification as an expert, and the court overruled the objection. (R. p. 358, lines 3-12.) Grabski proceeded to testify about the general area in which the cell phone could have been located, based upon the cell tower that received the cell signal. (R. p. 361, line 16 – p. 363, line 19.) Grabski began his analysis of the target cell phone beginning April 29, 2016 at 9:54 pm and ending April 30, 2016, at 4:00 pm. (R. p. 364, lines 2-11.)

Grabski testified Young's cell phone utilized the cell tower nearest to the crime scene between 10:53 pm and 12:34 am the night of the murder. (R. p. 369, lines 1-19.) At 12:54 am,

the cell phone used a different tower. (R. p. 370, lines 20-24.) Grabski said the progression of the towers used indicated movement of the phone. (R. p. 372, lines 7-17.) Grabski acknowledged he could not identify exactly where the phone was located in relation to any tower, who used the phone, or who the phone belonged to. (R. p. 375, lines 3-15.)

Argument

Young argues Grabski was not qualified to be an expert in cell phone location data analysis because Grabski “admitted the program and method of his cell phone analysis had never been peer reviewed, and that he had never been qualified as an expert in state court in this area before” (IBOA p. 20.) However, neither the peer review of his work, nor his previous qualification is a factor the court must consider in determining whether Grabski was qualified to give opinion testimony at trial.

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” *State v. Simpson*, 425 S.C. 522, 535–36, 823 S.E.2d 229, 236 (Ct. App. 2019), reh'g denied (Feb. 21, 2019) (citing Rule 702, SCRE). Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) the expert's testimony is reliable. *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). Further, to present expert testimony, a party must show the witness possesses through either study or experience the knowledge or skill in a business, profession, or science making him or her better qualified than the jury to form an opinion on the particular subject in question. *Hall v. Clarendon Outdoor Advertising, Inc.*, 311 S.C. 185, 428 S.E.2d 1 (Ct. App. 1993).

The trial court heard the following information about Grabski's qualifications and his analysis of the data during the proffer: Grabski was assigned for the last two years to the surveillance and intelligence unit, in which the main goal is to pursue violent fugitives. His team specializes in the analysis of historical cellular phone data. Grabski said the unit typically obtains the cell phone data from the provider, then maps the location data for up to thirty days before the target incident in an effort to corroborate the information. Grabski had performed this analysis in about 200 cases. Grabski was trained by the FBI's Cellular Analysis Survey Team and received additional training from the private sector about the technology involved in cell phone towers. Grabski also received extensive training for pen register track and trace techniques. Grabski explained how cell towers function and described how a cell signal might be received by a tower, including various factors that affect the signal strength. Grabski said the unit obtains the data from the carrier and then references specific information about each cell tower from a database maintained by the Department of Justice. Grabski said the maps he prepares show only a tower and a sector that receives the cell signal; it does not attempt to pinpoint the exact location of a given cell phone. Grabski said that in his experience, although the tower and sector information is accurate, the estimated longitude and latitude of the signaling cell phone is not reliable. Grabski said the tower that receives the signal in any particular cell phone transaction will depend on many factors, but generally the responding tower is the "path of least resistance." (R. p. 251, line 2 – p. 260, line 2.)

Considering Grabski's extensive training from the FBI and private industry, the trial judge did not abuse her discretion in qualifying Agent Grabski as an expert and allowing him to testify about the cell towers utilized by Young's phone. Regardless of whether Grabski had been qualified before as an expert in cell tower information analysis, the record supports the judge's

finding. Grabski's explanation of how a particular cell tower might receive a signal from a cell phone, as well as his plotting of the cell towers utilized by Young's phone on the night of the murder, certainly assisted the jury in its determination of whether Young's statements to police were credible. Grabski's training from the FBI, the private sector, and as part of his everyday experience in the surveillance and intelligence unit at SLED gave him the requisite education, experience, and skill to analyze and present the information to the jury. Grabski was certainly better qualified than the jury to interpret the data returned by the cell phone carrier about this phone.

Lastly, the testimony was reliable, particularly given Grabski's limitation on how the data could be interpreted. In other words, Grabski did not attempt to oversell the value of the data. Grabski said the longitude and latitude data from the cell carrier was often untrustworthy in his experience. (R. p. 258, line 16 – p. 259, line 2.) Therefore, while he could definitively say the cell phone utilized a particular cell tower at a given time, he would not testify where the phone was located when it utilized a particular tower. (R. p. 259, lines 4-13.) Moreover, Young's contention Grabski could not provide reliable testimony because "he merely accepted what the computer told him," despite the possibility of computer "bugs and flaws" (IBOA p. 22), misses the mark. Experts are not required to testify to the precise reliability of the underlying data, as opposed to the reliability of the underlying science, generally. *See State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009); *State v. Jones*, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001) (holding scientific evidence is admissible under 2, SCRE, if the trial court determines the underlying science is reliable after applying the factors set forth in *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979)). Several courts have rejected challenges to the reliability of cell phone mapping technology, with some finding that it is so well accepted in both science and law that a

hearing on its admissibility is unnecessary. *See, e.g., Jackson v. Allstate Ins. Co.*, 785 F.3d 1193, 1204 n. 5 (8th Cir. 2015) (rejecting a challenge to the reliability of cell phone mapping technology); *United States v. Lewisbey*, 843 F.3d 653, 659 (7th Cir. 2016) (“Using call records and cell towers to determine the general location of a phone at specific times is a well-accepted, reliable methodology”)

In short, the jury was entitled to reasonably infer, based on Grabski’s narrow testimony, that the targeted phone was moving in the hours after the murder. The trial court, in qualifying Grabski as an expert after confirming the limits of his testimony,⁵ did not err.

CONCLUSION

Young has shown no error in the State’s disclosure of information, the trial court’s admission of evidence, or in the court’s qualification of an expert. For all of the foregoing reasons, it is respectfully submitted that the appeal must be dismissed and the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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⁵ R. p. 269, lines 4-23.

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July 18, 2019.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Jasper County
The Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED
JUL 18 2019
SC Court of Appeals

THE STATE,

Respondent,

v.

ANEISHA SHAIRES YOUNG,

Appellant.

Appellate Case No. 2018-000525

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 18th day of July, 2019.

Susannah R. Cole
Assistant Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Aneisha Shaire Young, Appellant.

Appellate Case No. 2018-000525

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5795
Submitted November 2, 2020 – Filed January 27, 2021

AFFIRMED

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Deputy Attorney General Melody Jane Brown, and
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Bluffton, all for Respondent.

HEWITT, J.: Aneisha Shaire Young appeals her convictions for murder, attempted murder, and possessing a weapon during the commission of a violent crime. Young argues a former cellmate's testimony should not have been admitted because the State did not disclose the testimony's contents before trial. She also argues text messages should have been excluded and that the trial court erred in

qualifying a SLED Agent as an expert in cell phone location analysis. We respectfully disagree with each of these arguments. Thus, we affirm.

FACTS

Devonte Freeman was shot and killed late one night in April 2016 near the Siesta Hotel in Jasper County. Wrenshad Anderson—Freeman's brother—was with him when he died.

Anderson met Freeman at the Siesta earlier that evening and recalled seeing Young at the hotel, which he believed was unusual because she did not usually spend time there. He remembered Young was wearing all black. According to Anderson and other witnesses, he and Freeman recently had disagreements and fights over money with Young, Eric Darien, and Keandre Frazier.

While Anderson and Freeman were at the Siesta, Keith Horton, the hotel's property manager, received a call from an unidentified female, calling from a blocked number, notifying him that Freeman was at the property. Horton knew Freeman had been placed on trespass notice for having a gun on the premises a few weeks earlier. Horton then went looking for Freeman, and Young approached him to tell him where to find Freeman. After that, Horton recalled seeing Young and two other men leave the Siesta in a car. Horton found Freeman and Anderson, asked them to leave, and they agreed to leave peacefully.

According to Anderson, he and Freeman were walking from the Siesta to another location when they heard leaves rustling, followed by gunshots. Anderson recalled he and Freeman started running down the path when Freeman was shot and fell to the ground. Anderson said the shooters, two figures dressed in all black, continued to fire at them even after Freeman was shot.

When officers arrived, they found Anderson on the ground holding Freeman, who had been shot in the back of the head. Anderson initially indicated he believed Darien and Frazier were the perpetrators, but he also believed Young was involved.

Anderson said he called Darien and Young after the shooting and confronted them, but they said they were in the "country." He recalled Young contacted him repeatedly the next day and denied her involvement.

Officers recovered .9 millimeter and .22 caliber shell casings from the crime scene. They also interviewed people who were at the Siesta the night of the shooting and confirmed Frazier was playing cards at the hotel when the shooting occurred. Young gave a statement to police, but police were unable to confirm her alibi. Officers also obtained search warrants for various cell phones.

A Jasper County grand jury indicted Young for Freeman's murder, Anderson's attempted murder, and possessing a weapon during the commission of a violent crime. At trial, the State offered the testimony of multiple witnesses, including the testimony of two of Young's cellmates from the detention center—Marie Powell and Debbie Spann—who both testified Young told them she killed Freeman and wanted to kill Anderson because he was the only witness. The State also introduced incriminating text messages between Young and others sent around the time of the shooting and in the days immediately afterwards. Additionally, SLED Agent Eric Grabski testified as an expert witness in cell phone location analysis, stating Young's cell phone used cell phone towers on the night of the murder in a manner that contradicted Young's statements to police. Young did not testify or present any evidence in her defense.

The jury found Young guilty of all counts. The trial court sentenced Young to thirty years' imprisonment for murder, a consecutive term of ten years for attempted murder, and a concurrent term of five years for the weapons charge. This appeal followed.

ISSUES

1. Did the trial court err in allowing Young's former cellmate, Debbie Spann, to testify against her when the State did not share the contents of Spann's testimony before trial?
2. Did the trial court err in admitting text messages because they were not trustworthy under Rule 803(6), SCRE (pertaining to business records), and unduly prejudicial under Rule 403, SCRE?
3. Did the trial court err in qualifying SLED Agent Eric Grabski as an expert in cell phone location analysis?

SPANN'S TESTIMONY

Young claims the State's failure to provide a synopsis of Spann's testimony violated Rule 5, SCRCrimP, and her due process rights by failing to provide sufficient notice, resulting in a "trial by ambush."

There was no question the State identified Powell as a potential witness. Powell and Spann were both on the pre-trial witness list. According to the colloquy in the record, the State had difficulty locating Spann and had not served her with a subpoena at the start of the trial. The State did not disclose a summary of Spann's testimony to Young prior to trial.

On the trial's third day, the State told the court it had located Spann that morning and served her with a subpoena. Young objected to Spann testifying, arguing it was a due process violation because Spann's testimony caught her by surprise and the State did not provide a synopsis of what Spann would say. The trial court encouraged Young's counsel to talk to Spann before she testified and see if that would "cure" any prejudice from the lack of notice. Although it is fair to say the trial court forecasted Spann would likely be allowed to testify, the court did not announce a ruling to that effect. Four witnesses testified after that, including Powell (another of Young's former cellmates, as already mentioned). Spann testified next. Young did not object when Spann took the stand.

The failure to contemporaneously object to Spann's testimony means any argument about that testimony is not preserved. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court."). Although Young initially objected to Spann's testimony, she did not renew her objection prior to Spann testifying. *See Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997) ("The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object.").

Even so, and even if we believed there was an abuse of discretion in admitting the testimony (we express no opinion whatsoever on that question), it is evident Spann's testimony was cumulative to Powell's testimony. *See State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 448–49 (2003) (recognizing the admission of improper evidence is harmless when the evidence is merely cumulative of other evidence). Young admitted her involvement in Freeman's murder to both women. Just like Spann, Powell said Young admitted her co-defendant had the .9 millimeter gun, she had the .22 caliber gun, and she planned to tell police the co-defendant killed Freeman. Just like Spann, Powell recalled Young asked how much Powell's boyfriend would charge to kill Anderson. And just like Spann,

Powell testified Young admitted she killed Freeman and expressed interest in killing Anderson because he was the only witness.

TEXT MESSAGES

Young argues the trial court erred in admitting multiple text messages into evidence because the State could not prove Young sent the text messages. Young also claims the messages were confusing, had multiple meanings, were racially provocative, and were thus unfairly prejudicial. We disagree.

There was a preliminary showing that some of the messages were Young's own statements. Young gave police a cell phone number she admitted was hers, but she disavowed the text messages by claiming she broke and lost that phone. Officers got the data associated with the phone number from the phone's service provider—Verizon. This data included incoming and outgoing text messages. At trial, the State sought to enter the text messages (both incoming and outgoing) into evidence.

At trial, the State called a Verizon representative to authenticate certain aspects of the text messages. The Verizon representative verified the accuracy of the phone numbers sending and receiving the messages, the date and time the messages were sent, and the content of the messages. The testimony also made clear that this witness could not and would not testify about the identity of who sent the messages.

The trial court gave specific reasons for admitting the various messages. For some, the court noted Young had identified one of the phone numbers as hers and that there was accordingly evidence from which the jury could conclude some of the messages were admissions. The court allowed other messages to show Young was in contact with a phone identified with Eric Darien (another suspect)—a fact Young denied. The court allowed another group of messages not for their truth, but because Young's response was arguably incriminating. For example, there was no testimony about who sent Young messages, shortly after the shooting, which stated "I see you hittin [expletive] [with] that fire welcome to family fool." Young's responses—"Already ... delete this text NOW" and "Who told u?"—suggested she was involved. The Verizon representative read the messages into the record.

Young's arguments about undue prejudice are not preserved. Although Young initially objected to the text messages based on relevance and undue prejudice, the

objection completely lacked specificity. Young never argued why the text messages were irrelevant or prejudicial, and the trial court never ruled upon the objection. *See State v. Bailey*, 253 S.C. 304, 310, 170 S.E.2d 376, 379 (1969) ("It is well settled that an objection, to be good, must point out the specific ground of the objection, and that if it does not do so, no error is committed in overruling it." (quoting 53 Am. Jur. *Trial* § 137 (1945))); *State v. Millings*, 247 S.C. 52, 53, 145 S.E.2d 422, 423 (1965) ("[A]n objection couched in terms no more specific than 'highly prejudicial' is too general."). Instead, Young's arguments at trial centered entirely on the trustworthiness of the text messages as business records under Rule 803(6), SCRE.

We also respectfully reject Young's business records argument. The trial court did not rule the text messages were admissible solely under the business records rule. After establishing that the records were reliable, the court ruled several of the messages were admissions because Young had identified the cell phone number as hers in a recorded interview with police. The jury might not (and apparently did not) believe Young's subsequent statements that she broke and lost her phone. We also agree the incoming text messages to Young's phone were not hearsay because they were not admitted for their truth, but because Young's responses were incriminating.

The fact that the State could not identify who sent some of these messages does not affect the question of whether Verizon's records of the text messages are business records. *See* Rule 803(6), SCRE ("A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; *provided, however*, that subjective opinions and judgments found in business records are not admissible."). Young's arguments do not call into question the trustworthiness of Verizon's record keeping or the authenticity of the text messages.

CELL PHONE LOCATION EXPERT

Young argues the trial court erred in qualifying SLED Agent Grabski as an expert in cell phone location analysis because he "admitted the program and method of his

cell phone analysis had never been peer reviewed" and he had never been qualified as an expert witness in state court prior to this case. We disagree.

The proffer at trial established Agent Grabski had been a member of the SLED surveillance and intelligence unit for two years and had performed cell phone location analysis in over 200 cases. It also revealed Agent Grabski was trained by the FBI's Cellular Analysis Survey Team and received additional training from private entities. Agent Grabski also said he received extensive training in pen register track and trace techniques.

Agent Grabski's testimony centered on a map he developed showing how Young's cell phone "pinged" off different cellular towers the night of Freeman's murder. He explained that he and his team log general location information after they receive cell phone data from a service provider. These maps show which cellular tower, and which sector on the tower, received a signal from the phone. Agent Grabski explained the cell tower and sector reliably illustrate the general area a phone is located.

The proffer disclosed there are limitations on how cell phone location data can be used. For example, Agent Grabski noted precise longitude and latitude data from cellular carriers can be untrustworthy. Still, he said there is no legitimate questioning of the historical data identifying which cell phone tower (and which sector) a mobile phone engages during a call. He further explained this tower and sector information is a reliable way to get a general idea of a phone's movements. Then, over several pages of testimony, Agent Grabski walked through the data showing Young's phone began the night on Hilton Head Island, traveled to the general area in Ridgeland where the shooting occurred, and then returned to Hilton Head after 2 a.m.

Grabski acknowledged he did not know the individual who developed the cell phone "mapping" software and did not know if the software had been peer reviewed. He also acknowledged he had not testified as an expert witness before.

We see no abuse of the trial court's discretion in qualifying Agent Grabski as an expert in this sort of cell phone location analysis. *See Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) ("The qualification of a witness as an expert is within the discretion of the circuit court, and we will not reverse absent an abuse of that discretion."). It is evident from Agent Grabski's proffer that his testimony would help the jury understand the cell phone location data and Young's movements on the night of the shooting. It is equally evident that Agent

Grabski has the requisite knowledge, skill, experience, and training, and his testimony was reliable. *See State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011) ("Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) [] the expert's testimony is reliable."); *Hall v. Clarendon Outdoor Advert., Inc.*, 311 S.C. 185, 188, 428 S.E.2d 1, 2 (Ct. App. 1993) ("To be competent as an expert, a witness by reason of study or experience or both must possess such knowledge or skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.").

The fact that Agent Grabski acknowledged he did not know the individual who developed the software that helped him produce the location "map" and did not know if the software had been peer reviewed does not tend to show he lacked the requisite knowledge, training, or experience, or that his testimony was unreliable. This court recently examined the same sort of testimony, on the same subject, at length. *See State v. Warner*, 430 S.C. 76, 83–89, 842 S.E.2d 361, 364–67 (Ct. App. 2020) (finding similar testimony regarding cell phone location analysis and related expert testimony reliable and admissible).

In fact, other jurisdictions have also determined this method of using cell phone records to determine a cell phone's location "is a well-accepted, reliable methodology." *See, e.g., United States v. Lewisbey*, 843 F.3d 653, 659 (7th Cir. 2016). The fact that this was Agent Grabski's first time testifying as an expert does not render his testimony unreliable. *See Warner*, 430 S.C. at 87, 842 S.E.2d at 366 ("The number of times a court has qualified a witness as an expert or found a method reliable will almost never be relevant to the trial court's Rule 702 task, as what matters is the method's endorsement by the relevant field, not the bench.").

CONCLUSION

Based on the foregoing, Young's convictions are

AFFIRMED.¹

THOMAS and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Jasper)Aneisha Young 375749)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-27047

APPLICATION FOR

POST-CONVICTION RELIEF

2022 JAN 31 AM 11:18

FILED
JASPER COUNTY
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Gamille Graham Correctional
2. Name and location of Court which imposed sentence General Sessions
Jasper County
3. Name(s) of co-defendant(s) (if any) Eric Darien
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2016-GS-27-00569
 - (a) possession of a weapon during commission a violent crim
 - (b) murder 2016-GS-27-00241

(c) attempted murder

743

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

(a) 3-15-18 5yrs concurrent

(b) 3-15-18 30yrs } consecutive

(c) 3-15-18 10yrs }

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. 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. January 28, 2021

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2018-000525 opinion no. 5795

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) ineffective assistance counsel
- (b) no evidence, due process violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failed to make proper objections
- (b) all circumstantial based on testimony of cell-mates
- (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. no
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

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

(a) first attempt at PCR
 (b) _____
 (c) _____

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

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

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. Stephen Plexigo
Jasper Co. Public Defender
 ii. Robert Dudek
1330 Lady St, Suite 401 Columbia, SC 29201
 iii. _____

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

i. trial
 ii. appeal
 iii. _____

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

new trial

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

no

STATE OF SOUTH CAROLINA)

County of Jasper)

VERIFICATION

I, Aneisha Young, 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.

Aneisha Young

SWORN to and subscribed before me this 20th day of January, 2022.

Kelley Alston (L.S.)
Notary Public

My Commission Expires: July 12, 2031



STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Aneisha Young, SCDC #375749,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2022-CP-27-00047

**RETURN TO APPLICATION FOR
POST-CONVICTION RELIEF
PARTIAL MOTION TO DISMISS,
AND MOTION FOR A MORE
DEFINITE STATEMENT
(Counsel Already Appointed)**

FILED
JASPER COUNTY
CLERK OF COURT
2022 JUN 9 A 9:02

Respondent the State of South Carolina, making its return¹ to the application for post-conviction relief filed by Applicant Aneisha Young² (Applicant) on January 31, 2022, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its October 2016 term, the Jasper County Grand Jury indicted Applicant for murder (2016-GS-27-00241); attempted murder (2016-GS-27-00251); and possession of a weapon during the commission of a violent crime (2016-GS-27-00569). On March 12-15, 2018, Applicant proceeded to trial before the Honorable Carmen T. Mullen and a jury. Stephen T. Plexico, Esquire,

¹ Respondent's return was due to be filed ninety days after receipt of Applicant's instant post-conviction relief application. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

² Applicant filed this post-conviction relief application *pro se*. Counsel, James K. Falk, Esquire, was appointed on February 10, 2022.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: 
DATE: 10-9-2022

represented Applicant. Brian Hollen, Patrick Hall, and Lynnor Musser of the Fourteenth Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Mullen sentenced Applicant to an aggregate sentence of forty years – thirty years' for murder; ten years' for the attempted murder conviction, to run consecutively to the murder conviction; and five years' for the weapons charge, to run concurrent to the murder conviction.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised three (3) issues:

- I. Whether [Applicant] was deprived of her right to due process, where the defense was suddenly notified on the third day of trial that Debbie Spann would testify as a jailhouse snitch that [Applicant] admitted her guilt to Spann in prison, since the solicitor not informing [Applicant] of the basic content – a synopsis – of the testimony of this state's witness was outside the established course of discovery conduct, and constituted "trial by ambush" in violation of due process notice?
- II. Whether the court erred by allowing the text messages to be introduced into evidence through the business custodian where defense counsel correctly argued they were not trustworthy to be admissible under Rule 803(6), SCRE, that they were unduly prejudicial and confusing, and where the court incorrectly reasoned the jury could "infer what they want" from text messages because the court believed [Applicant] wrote them but where the texts admittedly could have multiple meanings and some of them were undoubtedly vulgar?
- III. Whether the court erred by qualifying SLED agent Eric Grabski as an expert in cell phone location data analysis where he admitted the program and method of his cell phone analysis had never been peer reviewed, and that he had never been qualified as an expert in state court in this area before, and where the erroneous qualification of Grabski allowed him to allege that [Applicant's] cell phone was, in context, suspiciously "on the move" on the night of the murder?

Following further briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by published opinion filed on January 27, 2021. *State v. Young*, 432

S.C. 535, 854 S.E.2d 615 (S.C Ct. App. 2021). The case was remitted back to the circuit court on February 17, 2021.

II. Facts Giving Rise to Convictions

On April 30, 2016, first responders to a the 911 call found Wrenshad Anderson and his brother, Devonte Freeman, on the ground behind a fast food restaurant in Jasper County. Freeman had been shot in the back of his head and Anderson was holding Freeman in his arms. (R. p. 35, line 7 – p. 36, line 9.) Freeman was transported to the hospital, and Anderson was interviewed by police. Anderson was upset and indicated to police he thought “Peanut” (Eric Darien) and “Dre” (Keandre Frazier) were the perpetrators. (R. p. 37, line 12 – p. 38, line 15.) Anderson said the men were dressed in all black and he believed they were going back to the Siesta hotel. (R. p. 38, lines 14-20.) Anderson gave investigators the contact numbers for Darien and Frazier and also mentioned Aneisha Young. (R. p. 41, lines 3-9.) In his statement to police, Anderson wrote the following:

We just left the Siesta weekly rentals. Talking to Mr. Horton, and we was walking to Econo Lodge. When we got close to KFC path, that’s when we heard shots. Vonte got into it with Peanut earlier today, and we saw Neisha and her friend. That’s when we was ordered to leave. That’s when we left walking, and they sneak up behind us and started shooting.

(R. p. 61, lines 13-24.)

Keith Horton was the property manager of the Siesta Hotel and knew Freeman was previously a regular who had rented a room there in the past. (R. p. 120, line 10 – p. 121, line 6.) Horton said he received a call at approximately 11:00 pm informing him that Freeman, who was on trespass notice, was on the property. (R. p. 121, lines 7-18.) Freeman had been asked to leave the property a few weeks before for having a gun on the premises. (R. p. 121, lines 14-23.) Freeman would return to the Siesta to visit cousins who still lived there. (R. p. 122, lines 2-6.) Horton said

the call he received about Freeman came from a female calling from a blocked phone. (R. p. 122, lines 12-23.) When he arrived at the Siesta to ask Freeman to leave, Horton identified Young as one of the people who approached Horton and told him where Freeman was on the property. (R. p. 123, line 5 – p. 124, line 11.) Horton said Freeman was polite, and they talked for an hour or so about Freeman's family and the need for Freeman to stay away from the Siesta. Freeman acknowledged he should not be on the premises and agreed to leave peacefully. (R. p. 124, line 14 – p. 125, line 7.) Horton said Young and two other men left the Siesta in a car just before Freeman and Anderson left the property. (R. p. 125, lines 8-24.)

Wrenshad Anderson said that some time before his brother was killed, he and Eric Darien had a disagreement. (R. p. 154, line 14 – p. 155, line 24.) Similarly, his brother and Young had recently fought over money. Demitria Williams, who was two months pregnant with Freeman's child, recalled an incident a few weeks before the murder in which Young forced her way inside the home of Williams and Freeman when they were living together at the Siesta hotel. (R. p. 102, lines 2-19; p. 103, line 9 – p. 104, line 14; p. 105, lines 12-19.) Young and Freeman began "wrestling and tumbling and whatever" and Williams had to get help from someone to break up the fight. (R. p. 104, lines 14-18.) Young said she was going to kill Freeman. (R. p. 104, lines 19-21.) When Young pushed her way into the home, she was saying "wake up, you pussy, get him up" and then as she rifled through Freeman's pants, saying "that N has some of her money." (R. p. 104, line 22 – p. 105, line 11.)

On the day of the murder, Anderson called his brother and learned Freeman was at the Siesta. (R. p. 156, lines 1-13.) Anderson went to the Siesta and ran into Darien, who flashed a gun at Anderson. (R. p. 156, lines 11-25.) Anderson said he also saw Aniesha Young at the Siesta and found it unusual because that is not where Young usually spent her time. (R. p. 157, line 14 – p. 158, line 2.) Anderson said Young was wearing all black. (R. p. 158, lines 3-6.) Anderson said he

planned to stay at the Siesta until his brother was called out to talk to the property manager and asked to leave. (R. p. 159, line 13 – p. 160, line 19.) Anderson said as he and his brother walked off down the path away from the Siesta, they both felt “funny,” sensing something felt off about the night. (R. p. 160, lines 19-24.)

Anderson said they heard leaves rustling, and then gunshots, so the men started running down the path. (R. p. 161, lines 13-20.) Anderson saw his brother get hit by the gunfire and fall to the ground. Even after his brother was shot, the shooters continued to fire at the men. (R. p. 162, lines 1-10.) Anderson turned to look in the direction of the shots and saw two figures in all black. (R. p. 170, lines 1-8.) Anderson said he called Darien and Young after the shooting and confronted them, but they said they were in the “country.” (R. p. 175, lines 7-24.) Anderson also said Young contacted him repeatedly the next day, denying her involvement. (R. p. 175, lines 18-21.)

The lead investigator, Lieutenant Daniel Litchfield, located .9 millimeter shell casings at the scene. (R. p. 211, lines 5-10; p. 220, line 23 – p. 221, line 3.) Two days later, Litchfield returned to the scene and found .22 caliber casings approximately eight feet from the .9 millimeter casings he found previously. (R. p. 225, line 19 – p. 226, line 19.) Litchfield said he interviewed some of the people who were at the Siesta the night of the shooting and they confirmed Keandre Frazier was playing cards at the Siesta when the shooting occurred. (R. p. 229, line 21 – p. 230, line 8.) Litchfield obtained search warrants for the phones of Young and Eric Darien. (R. p. 235, line 22 – p. 236, line 5.) Young gave a statement to investigators, but Litchfield could not confirm Young’s alibi. (R. p. 235, lines 6-23.)

Text messages sent around the time of the shooting and in the days immediately afterwards incriminated Young in the murder of Freeman. (R. pp. 556-573.) A SLED agent testified Young’s cell phone utilized the cell tower nearest to the crime scene between 10:53 pm and 12:34 am the night of the murder. (R. p. 369, lines 1-19.) At 12:54 am, the cell phone used a different tower. (R.

p. 370, lines 20-24.) The progression of the towers used indicated movement of the phone, likely on Interstate 95 in a southern direction and contradicted Young's statements to police about her movements on the night of the murder. (R. p. 372, lines 7-17.)

The State also presented testimony from two informants. Marie Powell was incarcerated with Young a few months before the trial. (R. p. 387, line 6 – p. 388, line 11.) Powell knew Davonte Freeman when he lived in the same apartment complex as Powell. (R. p. 389, lines 1-14.) Powell also used to date a man who previously dated Davonte's mother. (R. p. 389, lines 15-24.) Young told Powell about the night of the murder at the Siesta. (R. p. 392, lines 20-24.) Young said Eric Darien had the .9 millimeter handgun and she had the .22 millimeter gun. (R. p. 394, line 14-p. 396, line 11.) Young also asked Powell how much Powell's boyfriend would charge to kill Wrenshad Anderson, the only eyewitness. (R. p. 396, line 16 – p. 397, line 5.) Young also told Powell she planned to talk to the police and tell them Eric Darien killed Freeman. (R. p. 403, line 12- p. 404, line 10.) Young said she was high on Xanax and Molly the night of the murder. (R. p. 405, lines 1-9.) Debbie Spann also testified she knew Young from her time in jail, when Young admitted to Spann she killed Davonte Freeman, who was Spann's cousin. (R. p. 428, lines 9-18.) Young also wanted to kill Wrenshad Anderson because he was the only witness. (R. p. 431, lines 4-10.)

Young did not testify at trial, and the defense did not present evidence. (R. p. 447, lines 20-22; p. 448, lines 7-12.)

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on January 31, 2022. In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following:

- 1) Ineffective Assistance of Counsel;
 - a. “failed to made proper objections”;
- 2) No evidence;
 - a. “all circumstantial based on testimony of cellmates”³; and
- 3) Due Process Violation.

As relief sought, Applicant requests a “new trial”.

Attached to this return and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; the records from Applicant’s appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials

IV. Partial Motion to Dismiss

Applicant’s allegations of “no evidence” and “all circumstantial based on testimony of cellmates,” which Respondent interprets as challenging the sufficiency of the evidence and as an allegation of actual innocence, should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act⁴ (the Act). *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State; United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

³ Respondent interprets this allegation as challenging the sufficiency of the evidence presented at trial and a claim of actual innocence.

⁴ S.C. Code Ann. § 17-27-10 to -160.

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That [her] sentence has expired, [her] probation, parole or conditional release [was] unlawfully revoked, or she is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation nor does it support a cognizable claim for relief under any of the statutory grounds. S.C. Code Ann. § 17-27-20; *see Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct

review of the sentence or conviction.”). Therefore, Respondent submits these allegations should be dismissed for failure to state a cognizable claim.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant further asserts counsel was ineffective failing to make “proper objections.” Without more definite facts and circumstances to support Applicant’s claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended application with specific allegations.

Ineffective Assistance of Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s

deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of

detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges [her] conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel's] errors had some conceivable effect” on the outcome of the proceeding—counsel's errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had

no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

Failure to Object, Generally

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court’s finding If so, an appellate court would necessarily have affirmed the trial court’s [ruling]”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*; see *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

The State submits Applicant can satisfy neither requirement of the *Strickland* standard. However, as discussed above, it is impossible for the State to adequately and specifically respond to Applicant’s allegations of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support these claims. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”). Thus, the State moves to require Applicant, through appointed counsel, to provide a more definite statement of her allegations pursuant to Rule 12(e), SCRCP.

VI. Response to Allegation of Due Process Violation

Applicant further alleges a due process violation. However, it is impossible for the State to adequately respond to Applicant’s allegation because she has failed to provide specific facts and details supporting her claim. Because Applicant has failed to set forth facts to “support each ground” or to explain with any specificity the facts upon which her claims of due process violations are based, Respondent hereby moves for a more definite statement.

Here, Applicant has failed to state with any specificity the facts giving rise to her allegation of due process violations and gives no other relevant facts to support the allegation. Therefore, the State moves pursuant to Rule 12(e), SCRCPP, and Rule 71.1(d), SCRCPP, to require Applicant, through appointed counsel, to provide a more definite statement of her allegation.

Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Accordingly, the State moves to require Applicant, through appointed counsel, to file an amended application. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

VII. Motion for a More Definite Statement

The State submits Applicant’s allegations of ineffective assistance of counsel and of a due process violation are without merit. However, it is impossible for the State to adequately respond to these claims because Applicant has failed to explain with specificity the facts upon which her claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to “*specifically set forth the grounds upon which the application is based*”)(emphasis added); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”); Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCPP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through appointed counsel, to amend her application to provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act.

VIII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

IV. Response to Any and All Other Allegations

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

X. Conclusion

WHEREFORE, the State moves to dismiss the allegations regarding sufficiency of the evidence presented at trial and of actual innocence as neither are cognizable PCR claims. Additionally, the State respectfully requests this Court grant its motion for a more definite statement and allow the State an opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held.

Respectfully submitted,

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June 3, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) FOR THE FOURTEENTH JUDICIAL CIRCUIT
FILED JASPER COUNTY
CLERK OF COURT

Aneisha Young, #375749, 2023 JUL 20 A S. 06 Case No.: 2022-CP-27-00047

Applicant,)

v.)

State of South Carolina,)

Respondent.)

APPLICANT'S AMENDED APPLICATION

NOW COMES Applicant, Aneisha Young, amending her application filed January 31, 2022. In addition to the allegations raised in her initial application, Ms. Young, through PCR Counsel, submits the following:

Procedural History

Ms. Young is currently incarcerated after being found guilty at her jury trial of murder (2016-GS-27-00241), attempted murder (2016-GS-27-00251), and possession of a weapon during the commission of a violent crime (2016-GS-27-0569), on March 15, 2018. She was represented by Stephen T. Plexico, Esquire. Ms. Young was sentenced by the Honorable Carmen T. Mullen to an aggregate of forty years' imprisonment. Specifically, Ms. Young was sentenced to thirty years' imprisonment for murder, a consecutive ten years' imprisonment for attempted murder, and a concurrent five years' imprisonment for weapons possession.

Ms. Young filed a timely notice of appeal on March 26, 2018, that was perfected by Robert Dudek, Esquire, through filing a brief raising the following questions:

1. Whether [Ms. Young] was deprived of her right to due process, where the defense was suddenly notified on the third day of trial that Debbie Spann would testify as a jailhouse snitch that [Ms. Young] admitted her guilt to Spann in prison, since the solicitor not informing [her] of the basic content – a synopsis – of the testimony of this state's witness was outside the established course of discovery conduct, and constituted "trial by ambush" in violation of due process notice?
2. Whether the court erred by allowing the text messages to be introduced into evidence through the business custodian where defense counsel correctly argued they were not

trustworthy to be admissible under Rule 803(6), SCRE, that they were unduly prejudicial and confusing, and where the court incorrectly reasoned the jury could “infer what they want” from text messages because the court believed [Ms. Young] wrote them but where the texts admittedly could have multiple meanings and some of them were undoubtedly vulgar?

3. Whether the court erred by qualifying SLED agent Eric Grabski as an expert in cell phone location data analysis had never been peer reviewed, and that he had never been qualified as an expert in state court in this area before, and where the erroneous qualification of Grabski allowed him to allege that [Ms. Young’s] cell phone was, in context, suspiciously “on the move” on the night of the murder?

The South Carolina Court of Appeals dismissed Ms. Young’s appeal by published opinion, *State v. Aneisha Young*, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. Jan. 27, 2021). Relevantly, the Court found that the first issue was not properly preserved because of Counsel’s failure to contemporaneously object to Spann’s testimony coming in and that issue two was not properly preserved because Counsel did not argue that the texts must be excluded because of undue prejudice. The remittitur was issued on February 17, 2021.

Statement of Facts

Background

On April 30, 2016, first responders responded to a 911 call regarding a shooting. (Tr. 151-52). Specifically, Wrenshad Anderson and his brother Devonte Freeman were shot. (Tr. 151-52). Freeman passed away and Anderson survived. Anderson initially stated that the perpetrators were Eric Darien (“Peanut”) and Keandre Frazier (“Dre”). (Tr. 153-54). At trial, Anderson identified Ms. Young as one of the perpetrators, pointing to her prior altercation with the deceased as the motive. (Tr. 222-23).

Text Messages

At trial, Karen Milbrodt, a records custodian for Verizon Wireless, was called to testify. (Tr. 442-43). Through her testimony, the State offered a call log, which the Court entered while

noting the defense counsel's objection. (Tr. 445-46). Counsel objected to the texts, which the Court admitted as an admission by Ms. Young, the defendant. (Tr. 464-65). Milbrodt was permitted to read the texts to the jury which consisted of "I see you hitting niggas what – what the fire welcome to the family fool", "Mimi just hmu talking bout u told her I did that shit . . . smh", "Chillout for uh minute", and "Mane I aint gone lie bruh I been hiding out they tryna pin me to this 'M' delete this". (Tr. 472-75).

The Court of Appeals found that Appellate Counsel's arguments about undue prejudice were not preserved because Counsel's objection to the texts "completely lacked specificity." The Court found that Young never argued why the texts were irrelevant or prejudicial, and the trial court never ruled on that objection.

Spann's Testimony

On the third day of the trial, the State represented their intention to call Debbie Spann, an individual Ms. Young was jailed with, to testify. (Tr. 372-73). The bulk of the testimony was centered around the alleged confession to the crime Ms. Young made to Spann while they were housed together. (Tr. 372-73). Though the State put Spann on their witness list, Counsel asserted that he was caught completely by surprise, that he was not provided with a witness statement or synopsis, and that he had no idea what she would testify to. (Tr. 374-75). The Court concluded that the testimony came in. (Tr. 378). Spann testified that she met Ms. Young in the jail, where Ms. Young admitted to killing Spann's cousin, Davonte Freeman. (Tr. 558-59). Counsel did not renew their objection to the witness contemporaneously and, accordingly, the Court of Appeals found that this issue was not preserved for appellate review.

Argument

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v.*

Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains deferential towards defense counsel with a presumption that counsel acted competently. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Ms. Young submits that Counsel was constitutionally ineffective based upon the following grounds:

1. Counsel was constitutionally ineffective for failure to argue that the text records should be excluded for undue prejudice.

Counsel was constitutionally ineffective for failing to object to the text messages because they were unduly prejudicial and that prejudice outweighed their probative value.

Concerning prejudice, the texts entered were offensive, ambiguous, and not inherently inculpatory. However, given their vulgarity, the texts did paint Applicant in a bad light because of their offensive nature. Thus, the probative value of the texts was outweighed by their prejudicial impact. *See* Rule 403, SCRE. As Appellate Counsel analogized, Ms. Young's case can be likened to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), where admission of jail calls

constituted an abuse of discretion, because the calls probative value was outweighed by their undue prejudice, in part because their vulgarity had an undue tendency to suggest a verdict on an improper basis.

The Court of Appeals found that this argument was unpreserved on appeal. There is no reasonable, strategic reason apparent indicating why this argument was not properly preserved on appeal. Further, the failure to properly preserve this issue is prejudicial, both because this argument, if properly made and presented to the Court could have led to the texts' exclusions and a different verdict, and because the failure to preserve prevented the appellate courts from ruling on the merits of the case, which could have been in Ms. Young's favor, had it been properly preserved. Accordingly, relief should be granted on this ground.

2. Counsel was constitutionally ineffective for failure to object to leading and hearsay.

Counsel was constitutionally ineffective for failure to object to multiple instances of hearsay. Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. See *Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Here, there were multiple instances where Counsel failed to object to hearsay. Ms. Young submits that these failures were unreasonable and prejudiced her at trial.

First, Counsel was constitutionally ineffective for failing to object to the question "[a]nd I think you can go ahead and tell us what [Anderson] said when you first got there. Do you recall what you asked him and what his response was?" (Tr. 154 ll. 11-15). In response, Rusty Wells,

reserve officer Rusty Wells stated "I asked him if he knew who did it. He indicated it was Peanut and Dre."

This was clearly hearsay. There is no reasonable, strategic decision behind why Counsel failed to object. Additionally, because the question elicited an answer implicating Ms. Young's co-defendants, Ms. Young was prejudiced by Counsel's deficiency. Accordingly, relief should be granted on this ground.

Second, Solicitor Hollen asked Wells "Now, that any point when you're sitting there talking to Mr. Anderson . . . [did] he have any information . . . about Peanut and Dre that he gives you?" (Tr. 156 ll. 23 – 157 ll. 2). In response, Wells stated "[h]e indicate[d] that he ha[d] contact numbers for Peanut and Dre in his cell phone. And then, he also identified Aneisha." (Tr. 157 ll. 3-5).

This was clearly hearsay. There is no reasonable, strategic decision behind why Counsel failed to object. Further, because the question elicited an answer implicating Ms. Young, Ms. Young was prejudiced by Counsel's deficiency. Accordingly, relief should be granted on this ground.

Third, Solicitor Hollen asked Wrenshad Anderson "[d]o you remember talking to Officer Wells and telling him, when he asked you who the shooters were, do you remember Peanut and Dre?" (Tr. 286 ll. 23-25).

Counsel failed to object to this question. There is no reasonable, strategic reason behind not objecting. Further, Counsel's failure to object was prejudicial. Accordingly, relief should be granted on this ground.

Fourth, Counsel failed to object to the following testimony:

I was on the phone. I talked to Mr. Darien. I said, man, I know you was the one come shooting us. He sounded like he was out of breath, and go talking about he

was in – he in country. I just left the Siesta. Ain't no way he got in the country that fast.

(Tr. 295 ll. 10-16).

Counsel should have objected to Anderson's recount of his conversation with Darien on hearsay grounds. There was no reasonable, strategic reason for failing to object and Ms. Young was prejudiced by this deficiency. Accordingly, relief should be granted on this ground.

3. Counsel was constitutionally ineffective for failure to contemporaneously object to Spann's testimony.

Counsel was constitutionally ineffective in failing to contemporaneously object to Spann's testimony. A ruling *in limine* is not a final ruling on the admissibility of evidence. *State v. Griffin*, 339 S.C. 74, 528 S.E.2d 668 (2000); *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. *See State v. Floyd*, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial. *Id.* Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993).

The South Carolina Court of Appeals found that this issue was not preserved for appellate review *because* Counsel failed to contemporaneously object to the decision to permit Spann's testimony in at trial. There is no reasonable, strategic decision for failing to renew his objection. Counsel was inarguably deficient on this ground. Further, this was prejudicial to Ms. Young, because the Circuit Court may have prohibited this testimony from coming in at trial, which would have undermined the results of the proceedings. Ms. Young was also prejudiced because, even if the circuit court permitted the testimony, the issue would have been preserved for

appellate review, which could have led to an appellate decision in Ms. Young's favor.

Accordingly, relief should be granted on this ground.

4. Counsel was constitutionally ineffective for failure to object to the Court's jury instructions that malice can be inferred from use of a deadly weapon.

Counsel was constitutionally ineffective for failure to object to the Court instructing the jury that they could infer malice from use of a deadly weapon. The South Carolina Supreme Court in *State v. Burdette* found that jury instructions informing the jury that they could infer malice from use of a deadly weapon were improper. 427 S.C. 490, 832 S.E.2d 575 (2019). This decision was an extension of the Court's finding in *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).

Counsel should have objected to the erroneous jury instructions. There is no reasonable, strategic decision backing why he did not object. Further, Ms. Young was prejudiced by this deficiency. Accordingly, relief should be granted on this ground.

5. Counsel was constitutionally ineffective for opening the door for Wrenshad Anderson's statement to be admitted through Rusty Wells.

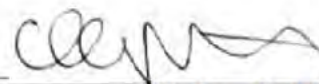
Counsel was also constitutionally ineffective for opening the door for Wrenshad Anderson's statement to be read into the record in its entirety. Counsel read in a portion of Anderson's police statement into the record during cross-examination of Rusty Wells. This opened the door for the State to enter the statement in its entirety. (Tr. 175). This move on Counsel's part was not reasonable and, accordingly, was deficient. Additionally, because Anderson was the only person to identify Ms. Young as a perpetrator, having this statement highlighted was detrimental to her case and, thus, was prejudicial. Accordingly, relief should be granted on this ground.

6. Counsel was constitutionally ineffective for failure to move for a new trial.

After the jury returned a guilty verdict, Counsel failed to move for a new trial. Ms. Young contends that this was constitutionally ineffective assistance of counsel because there was no reasonable, strategic decision behind failing to make this motion and failure to make this motion prejudiced Ms. Young. Accordingly, relief should be granted on this ground.

Conclusion

Based upon the above, Ms. Young requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto

Bar No. #104191

For Applicant Aneisha Young

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF JASPER

FOURTEENTH JUDICIAL CIRCUIT

2022-CP-27-00047

Aneisha Young,

)

)

Plaintiff,

)

)

vs.

)

TRANSCRIPT OF HEARING

)

State of South Carolina,

)

)

Defendants.

)

-----)

July 31, 2023

Beaufort, South Carolina

B E F O R E:

The Honorable Roger Young, Judge Presiding

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

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P R O C E E D I N G S

* * * * *

THE COURT: All right, this is Aneisha Young; is that you?

MS. YOUNG: Yes, it is.

THE COURT: Okay. And you are Ms. Marto?

MS. MARTO: Yes, sir.

THE COURT: Okay. This is a PCR case. Y'all want to make a couple of brief openings?

MS. DIXON: Yes, Your Honor, when you are ready.

May it please the Court? I'm Danielle Dixon, Assistant Attorney General for the State of South Carolina. This is the case of Aneisha Young, State Docket Number 2022-CP-27-00047. Ms. Young is currently serving a cumulative 40-year sentence. In October of 2016 she was indicted by the Jasper County Grand Jury for murder, attempted murder, and possession of a weapon during a violent crime. Those were Indictment Numbers 2016-GS-27-241, 251 and 569. She proceeded to a jury trial March 12th through 15th of 2018 before the Honorable Carmen T. Mullen. She was represented by Mr. Plexico. Brian Holland, Patrick Hall and Lynorr Musser prosecuted the case. She was convicted as indicted and

1 sentenced to 30 years for murder, a ten-year
2 consecutive sentence for attempted murder, and a
3 five-year concurrent sentence for the weapon charge.
4 She filed a timely appeal and was represented by
5 appellate defender, Robert Dudek. On appeal she
6 argued that the Court denied due process when
7 Defense notified them on the third day of trial that
8 a witness, Spann, would be testifying as a jailhouse
9 snitch. She also argued the Court erred in allowing
10 texts to be introduced through business custodian,
11 and the Court erred in qualifying a SLED agent as an
12 expert in cell phone location data analysis. Her
13 appeal was affirmed, and the remittitur was sent
14 February 17th of 2021.

15 She timely filed this PCR application in
16 January of 2022, raising claims related to
17 ineffective assistance of counsel for failing to
18 make proper objections and also a due process
19 violation, no evidence. All the evidence was
20 circumstantial. She more recently amended it in
21 July of 2023 to allege that counsel was ineffective
22 for failing to argue text records, should be
23 excluded for undue prejudice, failing to object to
24 leading and hearsay, failing to object to Spann's
25 testimony, failing to object to an inferred malice

1 charge, opening the door for Anderson's statement to
2 be admitted through Rusty Wells. Anderson was the
3 brother of the victim. And then failing to move for
4 a new trial. And it is our understanding that those
5 are the allegations they are going forward on today.

6 MS. MARTO: Yes, Your Honor. Before I call
7 Ms. Young to the stand, I did want to make sure that
8 you received the amended application because I
9 wasn't sure if it made it to you on time.

10 THE COURT: Amended application, yes.

11 MS. MARTO: Okay. Perfect. Yes, and with
12 that, Your Honor, we would call Ms. Aneisha Young to
13 the stand.

14 THE COURT: All right.

15 * * * * *

16 Aneisha Young,
17 having been duly sworn,
18 testifies as follows:

19 DIRECT EXAMINATION

20 BY MS. MARTO:

21 Q. Good afternoon, ma'am. So what were
22 you convicted of at trial?

23 A. Murder, and attempted murder, and
24 possession of a weapon during the commission of a
25 violent crime.

1 Q. Was Mr. Plexico your attorney?

2 A. Yes, ma'am.

3 Q. And did you proceed to trial or go to a
4 plea?

5 A. They never offered me a plea. I --
6 they just took me to trial.

7 Q. Okay. So you went to trial?

8 A. Yes, ma'am.

9 Q. Okay. And you were present for your
10 trial, correct?

11 A. Yes, ma'am.

12 Q. Mr. Plexico was the only attorney
13 representing you at trial?

14 A. Yes, ma'am.

15 Q. And can you give us a brief rundown of
16 what the State said you did at trial?

17 A. At trial? Of what they said I did?

18 Q. Yes.

19 A. Well, they convicted me of murder, and
20 they said it was -- they said murder.

21 Q. Okay. And can you give us like a few
22 facts that made up the basis of that murder charge?
23 So did they say that you acted with other people?

24 A. Yes, they said I had a co-defendant.

25 Q. Okay. And did they say that you shot

1 and killed ---

2 A. Yes, ma'am.

3 Q. -- I guess shot and killed one person
4 and injured another?

5 A. Yes, ma'am. Well, he wasn't injured,
6 but they still charged me with attempted murder.

7 Q. Okay.

8 A. But, yes, that's what they was saying.

9 Q. Okay. How do you think that counsel
10 did at trial?

11 A. I think he did a pretty good job.

12 Q. Okay. Are there things that you wish
13 he had done differently at trial?

14 A. Yeah.

15 Q. Yeah? Did you and I talk about this
16 case beforehand, ma'am?

17 A. Yes, ma'am.

18 Q. And did we put together an amended
19 application?

20 A. Yes, ma'am.

21 Q. You received a copy of that?

22 A. Yes, ma'am.

23 Q. Okay. So in your initial application
24 you said that you wished counsel had objected more;
25 is ---

1 A. Right.

2 Q. -- that correct?

3 A. Right.

4 Q. And we highlighted a few issues that we
5 wish he objected to at trial in the application,
6 correct?

7 A. Yes, ma'am.

8 Q. Okay. You have a copy of the
9 transcript before you, correct?

10 A. Yes, ma'am.

11 Q. Can you flip to page 154 for me,
12 please?

13 A. 154?

14 Q. Yes, ma'am.

15 A. All right.

16 Q. Starting with line 11, it says, "All
17 right, and I think you can go ahead and tell us what
18 he said when you first got there. Do you recall
19 what you asked him and what his response was?" Do
20 you wish counsel objected to that portion?

21 A. (Reviews document.) Right.

22 Q. Yeah.

23 A. Right.

24 Q. And can you flip to page 157 for me,
25 please? At 156 it starts, starting with line 23,

1 and it says, now, at any point, when you're sitting
2 there talking to Mr. Anderson, in addition, let me
3 back up, so you're speaking with him. Does he have
4 any information -- further information that Peanut
5 and Drey? Do you wish he objected to that portion?

6 A. (Reviews document.) As far as you mean
7 like objected, what you mean by that? Like ---

8 Q. Do you wish he had objected because it
9 was hearsay specifically?

10 A. Right.

11 Q. Correct?

12 A. Right, right, right.

13 Q. Correct?

14 A. Correct.

15 Q. Okay.

16 A. Correct.

17 Q. And can you flip to page 286 for me,
18 please?

19 A. Yes, ma'am.

20 Q. And that's going to be starting with
21 line 23, it says, "Do you remember talking to
22 Officer Wells and telling him when he asked you who
23 the shooters were, do you remember saying Peanut and
24 Drey?" Do you wish counsel had objected to that for
25 leading and hearsay?

1 A. Right.

2 Q. Okay. And then finally 295, starting
3 with line ten, it says, "I was on the phone, I
4 talked to Mr. Darien." I said, "Man, I know you was
5 the one come shooting us. I know you was the one
6 shooting us. He sounded like he was out of breath
7 and got talking about how he was in the country."
8 Do you wish counsel objected to that?

9 A. Yes.

10 Q. Okay. And do you think the result at
11 trial would have been different?

12 A. Yes, ma'am.

13 Q. Okay. Now we also talked about how the
14 judge at trial charged that malice can be inferred
15 from use of a deadly weapon; do you recall that?

16 A. Yes, ma'am.

17 Q. Do you wish counsel had objected to
18 that portion?

19 A. Yes, ma'am.

20 Q. Do you think that would have made a
21 difference at trial?

22 A. Yes, it definitely would have.

23 Q. Okay. Do you recall if counsel moved
24 for a new trial at the close of trial?

25 A. I don't think -- I don't know. Did he?

1 Q. Would you be surprised to find out he
2 didn't?

3 A. He didn't?

4 Q. No.

5 A. Plexico.

6 Q. Do you think that would have made a
7 difference?

8 A. Yes, ma'am, but I didn't know that.

9 Q. And now you appealed this case,
10 correct?

11 A. Yes, ma'am.

12 Q. And do you recall what the Court
13 roughly said on your appeal?

14 A. The Court said -- I can't remember
15 exactly what they said. I know they affirmed it
16 though. It was affirmed.

17 Q. Yes, ma'am. Do you recall if Mr. Dudek
18 raised an issue about Spann's testimony coming in?

19 A. Yes, ma'am.

20 Q. And do you remember if counsel raised
21 an initial objection to that or not?

22 A. (Indicates negative response.)

23 Q. No?

24 COURT REPORTER: I need a verbal response.

25 BY WITNESS:

1 A. No, ma'am.

2 Q. Now when did you find out about Spann's
3 testimony?

4 A. That -- that day.

5 Q. Was it far in advance of trial, or was
6 it when you were in the middle of trial?

7 A. It was basically my last day of trial.
8 We didn't know nothing about her testimony.

9 Q. Okay. And so do you recall if counsel
10 made an argument against her being able to testify?

11 A. Yes.

12 Q. But did he renew that objection?

13 A. No.

14 Q. Okay. Do you recall if the Court of
15 Appeals found that that issue was preserved?

16 A. Uh-huh.

17 Q. Do you think that Spann's testimony
18 made a difference at trial?

19 A. Yes, ma'am.

20 Q. And what did she, I guess, roughly,
21 say? Like what was the bulk of her testimony about?

22 A. She basically said that I admitted to
23 her that I committed this crime.

24 Q. Where did you meet Ms. Spann?

25 A. In the county jail.

1 Q. And so while y'all were incarcerated
2 you told her you did it?

3 A. No, ma'am, I did not. We got into it,
4 and they separated us, and I guess that she took
5 that upon herself, and then when she -- and then
6 when she did and said I said what I said, but me and
7 her never had conversations about my crime.

8 Q. Okay. But she claimed you did,
9 correct?

10 A. Yes, ma'am.

11 MS. MARTO: One moment, Your Honor.

12 BY MS. MARTO:

13 Q. Do you recall if appellate counsel
14 raised an argument about the text messages coming
15 in?

16 A. Yes, ma'am.

17 Q. Gotcha. Do you recall if the Court
18 found the issue raised was preserved there?

19 A. (No response.)

20 Q. Did counsel make an objection to the
21 texts coming in?

22 A. I believe so.

23 Q. Okay. And so do you recall whether or
24 not he argued that the texts were prejudicial?

25 A. I think he did argue that the texts was

1 prejudicial, I think.

2 Q. Okay. Would you be surprised to find
3 out that the Court of Appeals found he didn't?

4 A. Uh-huh.

5 COURT REPORTER: Ma'am, a verbal answer. A
6 verbal answer, please.

7 BY WITNESS:

8 A. Oh, yes, I am surprised.

9 Q. Okay.

10 A. I'm sorry.

11 Q. You're good, ma'am. And then I believe
12 the last issue we raised in your amendment was about
13 how counsel read part of Wrenshad Anderson's
14 statement into the record?

15 A. Right.

16 Q. Do you recall that?

17 A. Yes, ma'am.

18 Q. Now who was Mr. Anderson in this case?

19 A. The victim.

20 Q. Okay.

21 A. One of the victims.

22 Q. So do you think his statement was
23 favorable to you?

24 A. No.

25 Q. Do you think counsel should have read

1 that into the record?

2 A. Yes, ma'am.

3 Q. Do you think that him reading that into
4 the record hurt your case?

5 A. Yes, ma'am.

6 Q. Now, based on all of these, do you
7 think that counsel was ineffective?

8 A. Yes, ma'am.

9 Q. And you understand that if you were to
10 be granted relief and go back, you would be facing
11 murder charges again, correct?

12 A. Yes, ma'am, I understand that.

13 Q. So you understand you'd be facing up to
14 life again?

15 A. Yes, ma'am.

16 Q. And you still want to go forward,
17 correct?

18 A. Yes, ma'am.

19 Q. Okay. Is there anything else you wish
20 to raise in this case?

21 A. No, ma'am.

22 MS. MARTO: No further questions, Your
23 Honor.

24 THE COURT: Cross?

25 MS. DIXON: One moment, Your Honor.

1 Your Honor, I have nothing for this
2 witness.

3 THE COURT: All right. You may step down.

4 WITNESS: Yes, sir.

5 THE COURT: Anything further for this
6 witness?

7 MS. MARTO: Nothing further for this
8 witness. Your Honor, we would call Mr. Plexico to
9 the stand.

10 THE COURT: Okay.

11 * * * * *

12 **Stephen Plexico,**
13 **having been duly sworn,**
14 **testifies as follows:**

15 **DIRECT EXAMINATION**

16 BY MS. MARTO:

17 Q. Good afternoon, sir, how are you doing
18 today?

19 A. Just fine, ma'am, I hope y'all are,
20 too.

21 Q. Doing well. You represent Ms. Young in
22 this case, correct?

23 A. Yes.

24 Q. Did you have this case from the
25 beginning?

1 A. Yes.

2 Q. Okay. Did you represent her at trial?

3 A. Yes.

4 Q. And you were present in the room when
5 Ms. Young testified today, correct?

6 A. Yes.

7 Q. Okay. And you've had a chance to look
8 over the amendment as well?

9 A. Yes.

10 Q. I'm just gonna talk you through,
11 basically, the same points I talked Ms. Young
12 through. Starting with the hearsay allegations, and
13 so if you could flip to page 154 for me, please?

14 A. Sure, just a minute.

15 Q. And starting with line 11.

16 A. Just a minute, just a minute.

17 Q. Would you agree that that ---

18 A. I have to get there, hold just a
19 minute, please -- please.

20 Q. Yes, sir.

21 A. Yes, go ahead.

22 Q. Now would you agree that that question
23 is hearsay?

24 A. (Reviews document.) Yes.

25 Q. Okay. And did you object to that

1 question?

2 A. No, I did not.

3 Q. Is there a reason why you didn't object
4 to that question?

5 A. Well, I -- I believe that this is -- if
6 I'm getting the context right, essentially, for
7 example, if my client Billy Bob is accused of a
8 burglary, and that a witness said that, you know,
9 Travis did it, well, I think that I want to get in
10 that Travis did it, and there's somebody aside from
11 my client. So the main point was, is they weren't
12 saying to the police initially that my client was
13 the one trying to kill him, and killed him. So that
14 was huge to me, and that was part of the defense.

15 Q. So you felt that that question was
16 favorable to you?

17 A. I thought it was -- I thought -- I
18 think you -- you would be negligent not to bring in
19 evidence, but they're saying someone aside from your
20 client did the kill -- did the crime. I mean you
21 have to bring it in. You'd have to have a darn good
22 reason not to bring that in, and I can't imagine
23 what that would be. I can't.

24 Q. And then the next piece of hearsay
25 would be on page 156 to 157.

1 A. I'm there, which lines, please?

2 Q. Starting with line 23.

3 A. (Reviews document.) Yes.

4 Q. Would you agree that that, again, would
5 be hearsay?

6 A. That is hearsay.

7 Q. Okay. And you did not object, correct?

8 A. No, I didn't. I thought it -- I
9 thought it helped us, because, you know, they
10 initially thought that the other two were doing the
11 shooting. It doesn't matter if you're there. This
12 is a murder case. I mean, you know, nobody's
13 testified saying my client is part of a conspiracy,
14 or she hired somebody to do a murder, or blah, blah,
15 blah, okay, or she's handing him bullets to reload
16 the revolver, so to speak, as they run out or
17 handing him clips for the semi-automatic. That
18 would make her a principal. Even if they thought
19 she was there, they didn't have strong enough
20 evidence she actually did the murder. Well, I mean
21 I've got somebody who already named who's the
22 murderers, so they go blame later on. I -- I
23 thought that -- that made sense.

24 Q. But you would agree that that question
25 elicited a question or an answer saying that Aneisha

1 was there and identified her?

2 A. Yeah, but nobody's saying she got shot
3 -- I mean she was -- she was shooting.

4 Q. And the third piece of hearsay would be
5 on page 286, starting with line 23?

6 A. (Reviews document.) Yes.

7 Q. Would you agree that that question was
8 leading?

9 A. Well, I mean if you're asking what --
10 if you're asking the witness what they said, you can
11 ask the witness what they said. I mean I don't
12 think that's particularly leading.

13 Q. So are you saying the question itself
14 is not objectionable?

15 A. I don't think it is. I mean if I'm
16 saying I've got Johnny on the stand, and, you know,
17 he says that Javari, you know, shot at the fellow,
18 and I said, "What -- what did you say?" "I yelled
19 out, 'Javari, don't kill that man,'" you know, I
20 don't think that would be particularly
21 objectionable, I'm just telling you.

22 Q. Next would be 295.

23 A. Which line?

24 Q. Starting with line seven.

25 A. Seven? (Reviews document.) Yes.

1 Q. Would you agree that that's hearsay?

2 A. He's saying what he said to him, is
3 what I see. "I call people, I said, you know, the
4 paint color's wrong on the room, that's not what we
5 contracted for." I'm not saying what the person I'm
6 talking to is saying back to me.

7 Q. But you also said you talked to Mr.
8 Darien, correct?

9 A. "I talked to Mr. Darien," I said,
10 ma'am.

11 Q. And you also relayed what Mr. Darien
12 said, correct?

13 A. I don't see where he did that.

14 Q. "He sounded like he was out of breath,
15 and go talking about how he was in the country?"

16 A. Yes, that would be hearsay.

17 Q. Okay. But you didn't object, correct?

18 A. I didn't object to that.

19 Q. And then, finally, on 298, starting
20 with line six?

21 A. Yes.

22 Q. Would you agree that part of that is
23 hearsay?

24 A. Yes.

25 Q. And you didn't object, correct?

1 A. I didn't object to that.

2 Q. Now, do you recall Debra Spann
3 testifying, correct?

4 A. Yes.

5 Q. And when did you find out about her
6 testimony?

7 A. Shortly before.

8 Q. Were you already in the middle of the
9 trial?

10 A. Yeah. It's pretty typical for the
11 Fourteenth Circuit Solicitor's Office. I hate to
12 say it, but it is. I'm under oath.

13 Q. Yes, sir.

14 A. It's the truth.

15 Q. And so you, initially, made the
16 argument that she shouldn't be allowed to testify,
17 correct?

18 A. Yes.

19 Q. Did -- do you recall if you renewed
20 your objection?

21 A. I don't remember exactly what I said,
22 but if I didn't say it -- I've looked at your
23 filings. If I didn't say it properly, I apologize,
24 but I think the criticism was didn't use undue --
25 didn't use unduly prejudicial, which I know better,

1 and I should use.

2 Q. Okay.

3 A. And, obviously, it was, but, you know,
4 that's -- if I didn't use the correct words ---

5 Q. Yes, sir.

6 A. I mean I said what I said. It's on the
7 record.

8 Q. Okay.

9 A. It'll be in the record.

10 Q. But you would agree that kept -- that
11 led to the Court of Appeals validating that that
12 issue wasn't preserved on appeal, correct?

13 A. Yes. And I think you said that I
14 didn't argue due process. I forget how you phrased
15 it.

16 Q. Uh-huh.

17 A. I don't remember that. I haven't seen
18 -- I couldn't find my transcript, so I didn't ---

19 Q. Okay.

20 A. -- have a chance to read it ---

21 Q. Yes, sir.

22 A. -- that portion of the appeal.

23 Q. Do you recall whether or not you
24 objected to the text messages?

25 A. I thought I did, yes.

1 Q. Okay.

2 A. I mean, yeah, that could have meant
3 anything for anybody. I mean it just depends on how
4 you read it, and text messaging is almost another
5 language. I certainly haven't adapted to it, but,
6 of course, I am like, you know, applying for
7 Medicare next month, and I'm not going to -- it's
8 not quite my generation, but it's almost a language
9 in itself, and, you know, they use -- they -- they
10 use shorthand, and this is like it's the new
11 shorthand. And -- and things have multiple
12 meanings, and you have to put them in context and
13 all this stuff, so, you know, it's -- God knows what
14 it means. I mean it's -- it's -- I - if I didn't
15 say unduly confusing, you know, I'm, you know, a
16 402, 403 guy. I mean, you know, if -- even if it is
17 relevant, who knows what it means, it's going to
18 just lead to a bad outcome from the jury, you know?
19 It's just -- I thought I did that correctly. If I
20 didn't, I apologize.

21 Q. Do you recall if you objected based
22 upon the 403 grounds specifically?

23 A. I don't recall, but, generally, I've
24 got the book open.

25 Q. Okay.

1 A. That's what I -- that's one of my
2 insecurities, I just lay it all out right there, you
3 know.

4 Q. Would you be surprised to find out that
5 the Court of Appeals -- or are you familiar with
6 what the Court of Appeals concluded in this case?

7 A. I didn't. They don't send me
8 transcripts back.

9 Q. Okay.

10 A. They don't send me back the rulings and
11 all that stuff.

12 Q. Okay.

13 A. I mean the record's the record, I did
14 what I did.

15 Q. Yes, sir.

16 A. If I made a mistake, well, hey, I'm
17 sorry.

18 Q. Okay.

19 A. But, you know, I wouldn't have had time
20 to think about a proper argument if it hadn't been
21 just so thrown on me, okay? It's like, you know,
22 you -- it happens a lot with CSC cases, where all of
23 a sudden people are saying different things, and,
24 oh, you know, we just learned that, you know,
25 yesterday evening.

1 Q. So ---

2 A. They've had the case three years, and
3 you learn something yesterday evening while we're at
4 trial? Come on. It's what's tolerated,
5 unfortunately.

6 Q. I don't want to put words in your
7 mouth, are you saying that there were multiple
8 things kind of thrown on you during the course of
9 this trial that you didn't anticipate?

10 A. Not -- that with Spann was the one,
11 Spann was the one.

12 Q. Okay. Were the text messages thrown on
13 you?

14 A. No, I think we had the text messages,
15 but I mean they're not -- I mean like what do they
16 mean?

17 Q. Okay.

18 A. I mean there's just no point in putting
19 them in, because, you know, they don't prove
20 anything. They don't, you know, you know, downtown
21 Richland's a party spot. If you go down the dirt
22 road -- well, go down the main road, like where the
23 Chinese restaurant is by the interstate across from
24 the -- the grocery store, you have the KFC here,
25 okay? And you've got a little strip mall with a

1 Chinese restaurant. You have a dirt road that goes
2 back around, hooks into a paved road, and then you
3 have a path that goes down toward the apartments,
4 where, you know, what they say, a hooker, okay? I
5 had another client was tried on a case that where a
6 murder happened back on this corner. This is a
7 heavily traveled region, and, you know, there are a
8 lot of people back there, and a lot of people doing
9 bad things. So I mean who knows what happened, but,
10 you know, it -- just -- just because you're in the
11 area, you could be partying at the apartments, you
12 could be partying at one of the old hotels, which
13 are basically residential facilities for poor
14 people, when they've put together enough day labor
15 money to be able to afford a room and a bath. Then
16 they go party until they get kicked out. So I mean
17 this is just the lifestyle, and, you know, people
18 sleeping in their cars and stuff, you know, ten to a
19 living room, if you can find a friend to open the
20 door. So this is just sad, but it's just -- it's
21 reality.

22 Q. Do you recall if you moved for a new
23 trial in this case?

24 A. No, I didn't. Y'all had that
25 criticism, and the record is the record, so ---

1 Q. Now, do you recall if the Judge charged
2 the jury on whether they could infer malice from use
3 of a deadly weapon?

4 A. Not specifically, but -- because it's
5 been a while back. I mean, you know, I've had 300,
6 I've closed 4,000, lately I've been picking up like
7 ten, so -- that's not an exaggeration. So when you
8 have so many cases, things run together, and I'm so
9 sorry about that, but, you know, it's not like we
10 have a federal standard of cases per year.

11 Q. Yes, sir.

12 A. Wow, that would be nice. I'm just
13 being realistic.

14 Q. Yeah.

15 A. You know, it's that way for everybody.

16 Q. Yeah.

17 A. You know, I know I'm not special. I'm
18 not complaining, you know, it's just the reality of
19 it.

20 Q. Can you flip to page 648 for me,
21 please, sir?

22 A. Yes, ma'am, what line?

23 Q. Starting with line six.

24 A. (Reviews document.) Yes.

25 Q. Now would you say that that's

1 objectionable under Burdette?

2 A. I don't think it's -- well, it's not
3 under -- it's not objectionable at the time because
4 we didn't put up a defense to mitigate what the
5 weapon -- another interpretation for the use of the
6 weapon, or however you want to phrase it. If we had
7 done that, then if -- then the law at the time would
8 have -- that would have been objectionable in the
9 law at the time. The law at the time though, we
10 didn't put on a defense, so we -- and the State
11 certainly didn't put up anything mitigating for us
12 that would mitigate that. So I think they could
13 actually legally -- that was the proper charge at
14 the time. It wouldn't be today, but it was then.

15 Q. Okay. So you're saying Burdette came
16 out just after the trial concluded here?

17 A. Yes.

18 Q. Do you know whether ---

19 A. Not just after it was, I think it was a
20 decade. I thought the law changed a decade later,
21 maybe I'm wrong. Maybe I have them backwards.

22 Q. A decade after Ms. Young's trial?

23 A. No.

24 Q. Okay.

25 A. The cases were brought a decade later.

1 Q. Okay.

2 A. I thought the law at the time was that
3 was okay.

4 Q. Okay.

5 A. But it's not if you have some
6 mitigating factor that you have put in. We didn't
7 put anything in, so that wouldn't apply, so they get
8 to have that charged lawfully.

9 Q. So you're -- you're referring to
10 Belcher, correct?

11 A. I think so.

12 Q. Okay.

13 A. I'm getting a little confused.

14 Q. Now do you recall reading part of
15 Anderson's statement into the record when
16 questioning Rusty Wells?

17 A. I don't specifically recall that, but
18 what page, and I'll turn to it.

19 Q. Yes, sir, it starts with 165 I think is
20 where you read it in.

21 A. (Reviews document.) Yes.

22 Q. And so you read part of Mr. Anderson's
23 statement into the record, correct?

24 A. Yes.

25 Q. Investigator Anderson, what part did he

1 play in this case?

2 A. Wrenshad Anderson?

3 Q. Yes, sir.

4 A. Oh, Wrenshad was Devante Freeman's
5 brother, and they are both ne'er-do-wells. They
6 were -- they were witnesses in another murder case
7 that I had. Highly suspect. They essentially were
8 at the dead man's house. And when that happened,
9 even though my client was convicted, one of them
10 testified, I don't remember whether it was Devante
11 or Wrenshad, that they saw my client walking with
12 items that were being removed from the house. And
13 in that high-crime area, 'cause the crimes happened
14 really close together. When you go down that dirt
15 road is where the -- the other dead man's house was,
16 he was found dead in his house. He was a local drug
17 dealer, all right? I mean my theory was they just
18 stashed the stuff in the woods over in that area,
19 came back and got it later after they robbed and
20 killed the drug dealer. So, you know, Anderson, all
21 right, survived the shooting, okay? And I mean I
22 just -- they just weren't saying -- when it came
23 down to it, you know, when the excitement level is
24 high, and you want to get the guy that killed your
25 brother, darn, if it's Aneisha, say it's Aneisha,

1 don't say it's Drey and Peanut. I mean by not
2 naming her said a lot, I thought. Apparently not to
3 the jury, but, you know, I thought it said a lot.

4 Q. Now would you agree that by putting up
5 part of the statement you opened the door for the
6 State to read the statement in its entirety?

7 A. Yes.

8 Q. Okay. And did that statement implicate
9 Ms. Aneisha?

10 A. Well, yes and no. It doesn't -- it
11 still doesn't say she's the shooter.

12 Q. Did it State ---

13 A. The statement that -- that she -- it
14 mentions her name, but it's in such a confusing
15 context, you can believe what you want, which is not
16 what you're supposed to do as a juror sworn to do
17 your duty, okay, which I trust they do. How they --
18 nobody's saying she's shooting. And just being
19 there is not, you know, it's not -- it's not being a
20 murderer, you know. So I'm driving by and one of my
21 buddies in the backseat blast a jogger, I don't know
22 why he did that, okay? Bad drugs, all right? So I
23 mean just an example. I mean it's -- the benefit
24 greatly outweighed anything negative. That was in
25 my opinion, you know?

1 Q. Do you think acknowledging her presence
2 on the scene was helpful to your case?

3 A. No, but I think it was worse not to
4 have the fact come in, that the originally accused
5 people were Drey and Peanut and darn sure not
6 Aneisha. So what were they talking about to start
7 with? Drey and Peanut. "Who killed -- who killed
8 your brother?" "Drey and Peanut." I mean I didn't
9 bring that in. I mean that'd just be -- you'd be a
10 nut.

11 MS. MARTO: One moment, Your Honor.

12 BY WITNESS:

13 A. They -- I'll put it this way, they had
14 to repair the damage from that as best they could,
15 okay? That was damaging to the State's case.

16 MS. MARTO: No further questions, Your
17 Honor.

18 THE COURT: From the State?

19 MS. DIXON: May it please the Court?

20 **CROSS-EXAMINATION**

21 BY MS. DIXON:

22 Q. Mr. Plexico, how are you doing today?

23 A. Just fine, I hope you're doing fine.

24 Q. Good, thank you. I just want to
25 clarify just a few things from the transcript. Now,

1 Devante Freeman was the victim of the murder,
2 correct?

3 A. Yes, ma'am.

4 Q. And his brother was Wrenshad
5 Anderson ---

6 A. Right.

7 Q. -- correct?

8 A. Stepbrother, or whatever, you know,
9 they -- they were brothers.

10 Q. Okay. And the statements that he made,
11 were they shortly after the shooting, a long time
12 later, like how did that unfold with ---

13 A. Well ---

14 Q. -- the investigation?

15 A. -- when it -- they didn't -- all right,
16 first it was Drey and Peanut right when it happened.
17 Then Aneisha gets drug into it after he talks to a
18 lot of people, okay? So it's like, you know, and
19 the toxicology came back where Devante's all high
20 anyway, okay? And one of the brother's high and
21 they're hanging out that night, don't tell me the
22 other brother's not high. I think a juror could
23 figure that one out.

24 Q. Uh-huh.

25 A. Okay? So there's no telling how his

1 brain was functioning, you know, and not what he
2 said to start with.

3 Q. So that was part of ---

4 A. Yeah.

5 Q. -- your strategy ---

6 A. That was ---

7 Q. -- for the jury?

8 A. Yes.

9 Q. When he first said this, he didn't name
10 Aneisha?

11 A. Right. And I thought I -- it'd just be
12 inexplicable not to bring out that he said someone
13 else did this, not my client.

14 Q. And do you recall testimony, if you
15 look at the transcript, page 153, line 17, and 155,
16 line 11, about Mr. Anderson's demeanor at the time
17 that the police were talking to him?

18 A. 150?

19 Q. 153, line 17.

20 A. (Reviews document.) All right.

21 Q. And 155, line 11.

22 A. (Reviews document.) Yeah.

23 Q. Was there -- what was their testimony
24 in regard to his demeanor at the time they were
25 talking to him?

1 A. Well, you've got your dead brother, and
2 you're trying to walk off? I mean it looks pretty
3 bad to me, that's what it says. You know ---

4 Q. Of course ---

5 A. -- he had to bring -- you know, at one
6 point he attempted to try and walk away, okay? He
7 was very excited, he was upset. At one point he
8 attempted to try to walk away, they had to bring him
9 back in front of the patrol car. He tried to walk
10 away, didn't know where he was headed. He just
11 walked back toward the direction of the Siesta. I
12 mean, you know ---

13 Q. And, of course ---

14 A. He -- he ---

15 Q. -- based on the ---

16 A. He looks crooked, you know. This is,
17 you know, people know the area and the community. I
18 mean you wouldn't walk your dog back there behind
19 KFC, I'm just telling you, all right? If you're a
20 respectable person, or a person trying to just stay
21 out of trouble for the night, okay? So, you know, I
22 mean it's just that ---

23 Q. And is that something that you tried to
24 highlight for the jury, the nature of the area
25 itself?

1 A. I thought I did, you know, and, you
2 know, a lot of them is just gonna know that. I
3 mean, you know, when you get people killed every
4 other year, you know, the community notices those
5 sort of things.

6 Q. Uh-huh.

7 A. There are constant robberies, and
8 violence, you know, in that small area of town with,
9 you know, it's just the characters that are there.

10 Q. And then moving onto the issue they
11 raised about Debra Spann's testimony, and you do
12 recall objecting to that, correct?

13 A. Yes, I did. If I didn't do it
14 properly, if I didn't use the right wording, I'm so
15 sorry.

16 Q. And do you believe that if you had
17 renewed your objection, it's likely the Judge would
18 have excluded her testimony?

19 A. No, I didn't -- no, I don't recall
20 anything happening between us -- me objecting and
21 her testifying.

22 Q. And do you recall there being another
23 jailhouse snitch that also testified?

24 A. I don't recall the second jailhouse
25 snitch.

1 Q. Okay. But the record would reflect if
2 it's in there?

3 A. Yes.

4 MS. DIXON: And, Your Honor, I believe that
5 will be the testimony -- just a moment, of Marie
6 Powell in the record.

7 BY MS. DIXON:

8 Q. And then let's see, moving onto the
9 issue about the inferred malice charge, and I have
10 two cases I'm gonna hand up to you to see if you're
11 familiar with. The first is State v. Belcher 2009
12 case. The second is State v. B. Burdette, that's a
13 2019 case. The cite for Belcher is 385 S.C. 597,
14 the cite for Burdette is 427 S.C. 490. I'm gonna
15 hand these up to you to review. And can you tell me
16 real quick what year was this trial?

17 A. It's like 2016, or something like that,
18 '18 ---

19 Q. Would 2018 ---

20 A. -- maybe. Yes, '18. She was arrested
21 in 4/30/16.

22 Q. So in 2018 what was the law regarding
23 whether a Court could give an inferred malice charge
24 from the use of a deadly weapon?

25 A. Well, the law would have been Belcher

1 at the time, so it has -- there is no place for --
2 for implied -- for an implied malice instruction.
3 Okay. Where evidence is presented that would
4 reduce, mitigate, excuse or justify the killing,
5 okay? So where evidence is presented. Well, there
6 was no evidence presented by me, and there was no
7 evidence presented by the State that would mitigate
8 any of this, or excuse, or justify. So Belcher is
9 the law in that it is permissible to give that.
10 Permissive -- it's actually a permissible charge.
11 The law has since changed. Burdette, that's a no-
12 no.

13 Q. So under the law at the time that was a
14 permissible jury charge?

15 A. Yes.

16 Q. Okay.

17 A. It would not have been objectionable.

18 Q. One last quick thing, Mr. Anderson's
19 statement, do you recall him testifying at trial?

20 A. Yes.

21 Q. And so he did offer all that testimony
22 at trial?

23 A. Yes.

24 Q. Okay. And then in regard to the text
25 messages, do you recall arguing against their

1 inclusion into evidence?

2 A. Yes.

3 Q. Okay.

4 MS. DIXON: I have nothing further, Your
5 Honor.

6 THE COURT: Do you have any redirect?

7 MS. MARTO: No redirect, Your Honor.

8 THE COURT: You can step down.

9 WITNESS: Thank you.

10 MS. MARTO: No further witnesses, Your
11 Honor.

12 MS. DIXON: We don't have any, I just have
13 some brief argument.

14 THE COURT: Then go ahead.

15 * * * * *

16 **ARGUMENT BY MS. DIXON**

17 MS. DIXON: Your Honor, we would just
18 submit that they have failed to meet their burden of
19 proof in showing that counsel was constitutionally
20 ineffective. And I will just touch briefly on each
21 thing.

22 Number one, the text -- the text messages,
23 I will note that there was an objection raised. He
24 did argue undue prejudice. The Supreme -- or the
25 Court of Appeals admittedly did find that he did not

1 specify what his objection there would be; however,
2 I would submit to you, Your Honor, first of all
3 they've cited to State v. King, in support of
4 finding counsel was ineffective in that regard. And
5 I would argue that State v. King is distinguishable
6 for several reasons, one being the -- the main
7 reason being in State v. King that this was a 15-
8 minute phone call from the defendant that got
9 introduced at trial over objection. And in that
10 case the Judge actually refused to even listen to
11 the call before ruling on its admissibility. And
12 that was something that the Court noted on appeal
13 that how can you exercise discretion, if you don't
14 even bother to listen to the call? They also did
15 find that it was -- should have been excluded,
16 because it was riddled with profanity, racial slurs
17 and references to prior bad acts. But they did also
18 go onto find that it was harmless, because it was
19 difficult to understand the -- the -- the phone
20 message recording itself, and it did not impact the
21 conviction for the armed robbery. So here we do
22 have, he did make an objection based on undue
23 prejudice on page 452 of the transcript. Of course,
24 the Court of Appeals found it was not specific
25 enough, but I would submit to you that in this case,

1 and if you look at pages 454 through 465, you will
2 see that the Judge went through the text messages in
3 camera. The Solicitor basically set forth his
4 reasons for each one. Mr. Plexico had some
5 objections. The Court stated her reasoning for
6 letting them all in. There was absolutely an
7 exercise of discretion in this case. I would also
8 submit that if you look at the text messages that
9 were actually admitted, they were not so riddled
10 with profanity or racial slurs. I believe there was
11 one obscene word and one racial slur, but overall
12 not riddled with it such that it would cause undue
13 prejudice under Rule 403, ultimately, we submit.
14 And the text messages I'll read them to you.
15 They're in the record starting at page 469, "Yo,
16 call me ASAP, come on sis, she already tripping,
17 once they move, you good, bro?" "Yeah." That's the
18 first series, that was allowed, according to the
19 Judge to show that Ms. Young was texting the co-
20 defendant around the time of the shooting. "I see
21 you hitting ends with that fire, welcome to the
22 family fold," witness, and her response to that was,
23 "Already delete this text now, who told you?" The
24 Court found that was probative because it was
25 basically not a denial of anything. "Mimi, just HMU

1 talking about you told her I did that S-H-I-T, S-M-
2 H." The next series, "Not around Kazoo, W-Y-D, on
3 my way to NCY, chill out for a minute." The next
4 one, "Man, I ain't gonna lie, bro, I've been hiding
5 out. They're trying to pin me to this M, delete
6 this." And the final one, "What's your email," and
7 then there's a response, "@gmail.com." Those are on
8 pages 469 to 475 of the record, and I would just
9 submit that if you reviewed them all in context,
10 they do not violate Rule 403, and any further
11 objection would not have been reasonably likely to
12 change the outcome of this trial, or the appeal. In
13 terms of the failure to object to leading and
14 hearsay, I think counsel articulated a valid reason
15 for wanting evidence, that whenever Anderson was
16 first questioned by police, he named Peanut and Drey
17 rather than Ms. Young as the shooters. Let's see,
18 in regards to Spann's testimony, and I would --
19 would concede there was not a contemporaneous
20 objection, I will note that the Court of Appeals
21 found -- ultimately found that that testimony was
22 cumulative to Marie Powell's testimony, who was
23 another jailhouse snitch. So even if that testimony
24 had been excluded, I don't believe it's reasonably
25 likely that the outcome would have been different.

1 Going onto the inferred malice charge, we submit
2 that charge was proper at the time of trial. In
3 terms of the final two allegations, allowing the
4 testimony of Wrenshad Anderson, you know, he did
5 testify at trial. All that was before the jury.
6 And the final issue, failure to move for a new
7 trial, we would just submit there's really no basis
8 that the Court would have granted it.

9 * * * * *

10 **ARGUMENT BY MS. MARTO:**

11 BY MS. MARTO: Judge, our arguments
12 preserving the amended application, if I can just
13 briefly run through these issues. For failure to
14 object to miscellaneous portions of leading
15 testimony -- leading questions or hearsay, I think
16 counsel acknowledged that pretty much everything
17 could have been objected to and was objectionable
18 that was highlighted, or that he didn't do it. And
19 he largely stated his reason for not doing that was
20 because they were blaming other people, but it also
21 still placed Miss Aneisha at the scene, which we
22 would argue wasn't culpatory in nature. Now, moving
23 onto the failure to object to Spann's testimony,
24 again, there was no contemporaneous objection found,
25 and the Court of Appeals did find, in part, anyway

1 that that issue wasn't preserved for appellate
2 review. So even we would argue that there's no way
3 of knowing whether or not that would have changed
4 the outcome of the appeal had counsel raised a
5 contemporaneous objection because they first and
6 foremost found this issue wasn't even preserved to
7 be heard on the merits. And that also goes for the
8 text messages, the Court found that the arguments
9 about undue prejudice, which appellate counsel
10 argued in particular were not preserved. So we'd
11 just argue that those would have changed the outcome
12 of the appeal. We argue that counsel couldn't argue
13 a strategic decision or reason for not moving for a
14 new trial, and we argue that that was prejudicial to
15 my client as well. Concerning opening the door, Mr.
16 Plexico did acknowledge that that opened -- reading
17 part of Wrenshad Anderson's statement into the
18 record did let the State read it in in full, and it
19 did identify Ms. Aneisha as being at the scene and
20 being present at that time. And, finally, Your
21 Honor, we would argue that concerning failure to
22 object to malice may be inferred from use of a
23 deadly weapon, and I believe the Court in Burdette
24 did find that that issue was preserved, and the
25 person's appeal was pending on appeal then that

1 would have forbid or foreclosed their opportunity to
2 I guess reverse the convictions, and we would submit
3 that Ms. Young's appeal was pending when Burdette
4 was issued, and that that wasn't properly preserved
5 either. And so for these reasons we would just
6 request you grant relief. Thank you.

7 THE COURT: All right. Well, what I'd like
8 y'all to do is submit me proposed orders within 15
9 days from today. A couple points I want to look at
10 in light of the testimony I heard today, so it would
11 refresh my memory a little bit to have you send me
12 proposed orders, okay? So 15 days, or whatever, two
13 weeks from -- two weeks from today.

14 MS. MARTO: Yes, thank you, Your Honor.

15 THE COURT: So say Monday, just do it that
16 way, okay? All right, thank you.

17 MS. DIXON: Yes, sir, thank you, Your
18 Honor.

19 (Whereupon, the hearing is concluded.)

20 - - -END OF TRANSCRIPT- - -

21

22

23

24

25

1
2 CERTIFICATE OF REPORTER
3

4 I, Cathy L. Young, CVR-M, for the
5 Fourteenth Judicial Circuit of the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record was
8 introduced in the hearing of the captioned case,
9 relative to appear, in the Circuit Court for
10 Beaufort County, South Carolina, on the 31st day of
11 July, 2023.

12 I do further certify that I am neither of
13 kin, counsel nor interest to any party herein.
14

15 Cathy L. Young
16

17 Cathy L. Young, CVR-M

18 Court Reporter and Notary

19 Public in and for South Carolina

20 My Commission expires: 3-28-2029
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

FILED
JASPER COUNTY
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Aneisha Young, SCDC #375749

Case No. 2022-CP-27-00047

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Aneisha Young (Applicant) on January 31, 2022. On July 31, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the evidentiary hearing, Applicant testified on her behalf and called as a witness Stephen Plexico (trial counsel). Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet her burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a cumulative forty-year sentence. In October 2016, the Jasper County Grand Jury indicted Applicant for murder (2016-GS-27-00241), attempted murder (-00251), and possession of a weapon during the commission of a violent crime (-00569). On March 12-15, 2018, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Stephen T. Plexico, Esquire, represented Applicant. Brian Hollen, Patrick Hall, and Lynnor Musser of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury convicted Applicant as indicated, and Judge Mullen

sentenced her to thirty years for murder, a consecutive ten-year sentence for attempted murder, and a concurrent five-year sentence for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Robert M. Dudek. On appeal, Applicant argued (1) she was deprived due process when the State notified her on the third day of trial that Debbie Spann would testify as a jailhouse snitch; (2) the trial court erred in allowing text messages through a business custodian that were not trustworthy and were unduly prejudicial and confusing; and (3) the trial court erred in qualifying Eric Grabski as an expert in cell phone location data analysis. The South Carolina Court of Appeals affirmed. See State v. Young, 432 S.C. 535, 854 S.E.2d 615 (S.C Ct. App. 2021). The remittitur was sent February 17, 2021.

SUMMARY OF TRIAL TESTIMONY

On April 30, 2016, law enforcement responded to a 911 call placed by Wrenshad Anderson and found Anderson and his brother, Devonte Freeman, behind a fast food restaurant. Freeman had been shot in the back of his head and later passed away. (R. 35-36). Anderson initially told law enforcement that "Peanut" (Eric Darien) and "Dre" (Keandre Frazier) were the perpetrators. (R. 37-38). However, at the scene he later mentioned Applicant. Anderson gave investigators the contact numbers for Darien, Frazier, and Applicant. (R. 41).

Keith Horton, the property manager of the nearby Siesta Hotel, testified he knew Freeman as someone who hung out around the hotel. (R. 120-21). Horton testified he received a call from a female caller with a blocked number at approximately 11:00 pm the evening of the shooting informing him that Freeman—who was on trespass notice—was on the property. (R. 121-22). Horton went to the hotel and spoke to Freeman, who agreed to leave. (R. 124-25). Horton testified Applicant initially approached him at the hotel and told him where Freeman was, and she left with one or two other men just before Freeman and Anderson left. (R. 123-25).

Bernard Seabrooks testified he lived at the Siesta, and Freeman and Anderson were hanging out in his room the night of the shooting. He recalled seeing Darien that evening as well. (Tr. 232-35). Likewise, Cedric Riley recalled seeing Freeman and Darien at the Siesta that evening. (Tr. 248-50). He testified Darien had on a black shirt and was initially wearing green pants but later changed into black pants. (Tr. 249-50). Riley testified Applicant went to the hotel that night to pick up Darien; she was wearing a black shirt and black or gray shorts. (Tr. 250-53).

Demitria Williams, who was pregnant with Freeman's child, recalled an incident a few weeks before the shooting where Applicant forced her way inside Williams and Freeman's home, accused Freeman of taking her money, and said she was going to kill Freeman. (R. 102-04).

Anderson testified that shortly before the shooting, he and Darien had a disagreement. (R. 154-55). Similarly, he stated Freeman and Applicant had recently fought over money. Anderson testified that on the day of the shooting, Freeman was hanging out in a friend's room at the Siesta hotel. (R. 156). Anderson met Freeman at the hotel and ran into Darien, who flashed a gun at Anderson. (R. 156). Anderson testified Applicant was also in the hotel room, which was unusual because she did not usually hang out there. (R. 157-58). Anderson stated Applicant was wearing all black. (R. 158). He testified he planned to stay at the Siesta until the property manager asked Freeman to leave. (R. 159-60). Anderson testified he felt funny and sensed something was off as he and Freeman walked away from the hotel. (R. 160).

Anderson testified they were walking on a nearby path and heard leaves rustling followed by gunshots; they started running, but Freeman was hit. (R. 161-62). Anderson testified he saw two figures in all black. (R. 170). He testified he called Darien after the shooting, but he claimed to be in the "country." (R. 175). Anderson also said Applicant repeatedly contacted him the next day, denying her involvement. (R. 175).

Lieutenant Daniel Litchfield testified he located .9 millimeter shell casings and .22 caliber casings at the scene. (R. 211-21, 225). He also interviewed witnesses who confirmed Frazier was playing cards at the Siesta when the shooting occurred. (R. 229-30). Lieutenant Litchfield stated Applicant provided a statement, but Lieutenant Litchfield could not confirm her alibi. (R. 235). He stated he obtained search warrants for Applicant's and Darien's phones. (R. 235-36).

The State introduced text messages from Applicant's phone as well an expert who mapped the location of towers used by Applicant's cell phone. (R. 369, 556-573). According to the mapping testimony, Applicant's cell phone utilized the cell tower nearest to the crime scene between 10:53 pm and 12:34 am the night of the murder, and the phone was likely moving southward on Interstate 95. (R. 369). This contradicted Young's statements to police about her location the night of the murder. (R. 372).

The State also presented testimony from "jailhouse snitches" Marie Powell and Debbie Spann. Both generally testified they were detained with Applicant, and Applicant admitted to killing Freeman. (R. 387-89, 392, 394, 428). Both also relayed that Applicant wanted to have Freeman killed. (R. 396-97, 431). The State rested after Spann's testimony. Applicant did not testify or present any witnesses at trial.

Current Application

Applicant timely commenced this PCR action on January 31, 2022, alleging she is being held in custody unlawfully based on the following:

- a. Ineffective Assistance of Counsel: failed to make proper objections;
- b. No evidence: all circumstantial based on testimony of cellmates;
- c. Due process violation.

Prior to the hearing, Applicant amended her application to allege counsel was ineffective for the following reasons:



- a. Failed to argue text messages should be excluded for undue prejudice;
- b. Failed to object to leading and hearsay;
- c. Failed to object to contemporaneously object Spann's testimony;
- d. Failed to object to instruction that malice can be inferred from the use of a deadly weapon;
- e. Opened the door for Wrenshed Anderson's statement to be admitted through Rusty Wells;
- f. Failed to move for a new trial.

At the PCR hearing, Applicant proceeded only on the allegations in her amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's appeal, including the trial transcript; and the records of the current PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry her burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to argue text messages should be excluded for undue prejudice

Applicant first contends trial counsel was ineffective for failing to argue text messages should have been excluded based on undue prejudice. She avers the texts were offensive, ambiguous, and not inherently inculpatory, but given their vulgarity they painted Applicant in a bad light. Applicant contends the probative value of the texts were outweighed by the danger of undue prejudice, and counsel was ineffective for not properly preserving this objection. In support, Applicant cites State v. King, 422 S.C. 47, 810 S.E.2d 19 (2017). This Court finds Applicant has not proved counsel was ineffective in this regard.

At trial, the State sought to introduce text messages to and from Applicant's phone; some of the messages were between Applicant's phone and co-defendant Darien's phone, and some were between Applicant's phone and unidentified numbers. Counsel objected, arguing the messages lacked trustworthiness and were not admissible as business records. (Tr. 451, 463). Counsel also argued the texts were unduly prejudicial. (Tr. 452). The Court held an in-camera hearing on the admissibility of the texts and concluded some were probative for impeaching Applicant's statement to law enforcement that she wasn't texting Darien and others were probative to show

Applicant did not deny committing the murder. The trial court allowed the text messages over objection. (Tr. 454-65). When the jury returned, the State entered the following text messages:

Yo call me asap.
Come on sis.
Shawty be trippin. What's dey move?
You good bro?
Yea.

I see you hitting n****s what the fire. Welcome to the family fool.
WITNESS.

Already . . . delete this text NOW. Who told you?

Mimi just hmu talking bout you told her I did that sh** . . . smh

Not around kuzzo.
Wyd
On my way to NC
Why?
Chillout for uh minute.

Mane I ain't gone lie bruh I been hiding out they tryna pin me to
this "M" delete this.

What's your email?
*****@gmail.com

(Tr. 469-75).

In King, the South Carolina Supreme Court found the trial court abused its discretion in entering into evidence a fifteen-minute jail call placed by the defendant. Pertinently, the Court noted the trial court "adamantly" refused to listen to the phone call before ruling on its admissibility—and thus could not have exercised any discretion under Rule 403. Further, the

Court found the call was "riddled with profanity, racial slurs, and references to prior bad acts," and the probative value of the call was thus outweighed by the danger of unfair prejudice. However, the Court found the admission of the call was harmless, in part because the call itself was difficult to understand.

Here, trial counsel *did* object to the text messages based on undue prejudice, although the Court of Appeals found the Rule 403 objection was not specific enough to preserve the issue for appeal. (Tr. 452). Counsel also objected to the texts as hearsay, but the court admitted them over objection. Overall, although counsel could have more specifically objected based on Rule 403, Applicant did not prove counsel was deficient in this regard. Like trial counsel, Applicant's allegation related to the text messages was vague and not specific. For example, Applicant did not cite to any specific text message that should have been excluded based on undue prejudice but rather generally argued all of them should have been excluded. Ultimately, Applicant failed to overcome the presumption that counsel's performance in this regard fell within prevailing professional norms and thus did not prove deficiency.

Further, this Court finds it is not reasonably likely the text messages would have been excluded had counsel raised a more specific objection under Rule 403. Unlike the King court, the trial court here held a lengthy in-camera hearing where she considered the texts messages the State sought to introduce and the reasons the State sought to introduce them. The trial court found some of the messages were probative for impeaching Applicant's statement to law enforcement and others were probative because they did not contain denials to allegations that Applicant was involved in the murder. Ultimately, the trial court *did* engage in an analysis of the admissibility of the text messages and considered their probative value. Thus, this Court finds it is not reasonably likely the trial court would have excluded the messages had counsel raised a more specific objection under Rule 403.



Finally, this Court finds it is not reasonably likely the Court of Appeals would have reversed had the Rule 403 objection been preserved. Unlike the text messages in King, the text messages here were not riddled with vulgarity or racial slurs. Of the 17 messages introduced, only one contained profanity and only one contained a racial slur. These two messages, however, were probative for showing Applicant did not deny the murders. Although these two messages contained one racial slur and one instance of profanity, this Court finds the prejudicial nature of the profanity and racial slur did not outweigh the probative value of the texts. Overall, this Court finds it is not reasonably likely the messages would have been excluded had counsel more specifically objected under Rule 403. Likewise, this Court finds it is not reasonably likely this would have been a reversible issue on appeal had it been more specifically preserved. Thus, Applicant did not prove prejudice, and this claim is denied.

Failed to object to leading and hearsay

Applicant contends counsel was ineffective for not objecting to leading and hearsay. This Court finds Applicant did not prove counsel was ineffective in this regard.

During Officer Rusty Well's testimony, the following exchanges occurred:

Q. All right. And I think you can go ahead and tell us what [Anderson] said when you first got there. Do you recall what you asked him and what his response was?

A. I asked him if he knew who did it. He indicated it was Peanut and Dre.

(Tr. 154).

Q. . . . Does [Anderson] have any information, further information, about Peanut and Dre that he gives you?

A. He indicates that he has contact numbers for Peanut and Dre in his cell phone. And then, he also identified [Applicant] . . . as somebody else.

(Tr. 156-57). During Anderson's testimony, the following exchange occurred:

Q. Do you remember talking to Officer Wells and telling him, when he asked you who the shooters were, do you remember saying Peanut and Dre?

A. Well, I was delusional. Something like that happened to you and you almost got your life taken from you, and these people shooting at you—

(Tr. 286-87). Later, Anderson testified,

I talked to Mr. Darien. I said, man, I know you was the one come shooting us. I know you was the one shooting us. He sound like he was out of breath, and go talking about he was in—he in the country. I just left the Siesta. Ain't no way he got in the country that fast.

(Tr. 295). Anderson also testified,

[Applicant] came in Mr. Seabrooks' house and sat on the couch. My brother was up there playing cards And then, when he seen her, he start apologizing to her, because he knew he done whip her behind or whatever and took her money and all that. But he was past that, because he was having kids, so he was trying to, you know, turn a new leaf in life, so when he seen [Applicant] he started apologizing to her. He was like, man, I'm sorry, doing you like that; I'll eventually pay you back later on. She was like, yeah, yeah, yeah, it's okay, it's okay, it's okay. And when she start doing all that, I kind of felt funny. I was like man, stop apologizing, because she ain't come down here for that. My exact words to him.

(Tr. 298). During the evidentiary hearing, Applicant averred counsel should have objected to the foregoing. Counsel testified that although some of it contained hearsay, it was part of his trial strategy to highlight the fact that when police arrived, Anderson initially identified Peanut and Dre as the shooters—not Applicant.

This Court finds credible counsel's testimony that part of his strategy was to highlight the fact that Anderson initially identified Peanut (Darien) and Dre (Frazier) as the shooters. Further, considering Anderson maintained he saw two shooters, this Court finds this was a reasonable strategy. (Tr. 289). Thus, Applicant did not show counsel was deficient for not objecting.

Likewise, it is not reasonably likely any objection to the foregoing would have changed the outcome of trial. When police initially arrived, Anderson was holding his brother—who had just been shot, and Officer Wells testified Anderson was “very upset” and “excited, upset.” (Tr. 153, 155). Thus, had trial counsel objected based on hearsay, this Court finds Officer Well’s testimony about Anderson’s statements likely would have come in under the excited utterance exception to hearsay. See Rule 803(2), SCRE (providing “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” is not excluded by the rule against hearsay). Further, the statements provided by Officer Wells were cumulative to Anderson’s trial testimony, and Anderson’s statements about what Freeman said to Applicant were cumulative to Williams’s testimony that Applicant had previously accused Applicant of stealing her money. (Tr. 222-23, 286-87, 289). Finally, it is not reasonably likely the jury convicted Applicant based on Anderson’s statement that Darien said he was in the country. Overall, Applicant has not shown the foregoing would have been excluded with an objection or the outcome of trial would be different without this testimony. Thus, Applicant did not prove prejudice, and this claim is denied.

Failed to contemporaneously object Spann’s testimony

Applicant asserts counsel was ineffective for not contemporaneously objecting to Spann’s testimony. This Court finds Applicant has not shown counsel was ineffective in this regard.

On the third day of trial, the State relayed to the Court that it had just located and subpoenaed Debbie Spann, a jailhouse snitch, and the State expected her to testify that Applicant confessed to the murder while they were detained together. (Tr. 372-73). Counsel moved to exclude her testimony, arguing the State did not provide a witness statement indicating what Spann would testify to, in violation of due process, Rule 5, and Brady. (Tr. 374-78). The trial court denied counsel’s motion, noting Spann had been on the State’s witness list and trial counsel could

speak to Spann before she testified. (Tr. 373, 379). Counsel did not renew his objections prior to Spann's testimony.

Ultimately, this Court finds Applicant failed to show a reasonable likelihood that a further objection would have changed the outcome of trial. Based on the trial court's consideration of this matter and its decision to allow Spann's testimony, this Court finds it is not reasonably likely the trial court would have changed its decision had trial counsel renewed his objection. Further, Applicant did not articulate what further objection should have been raised—other than a renewal of the prior objection—and thus did not meet her burden of proof in this regard. Finally, this Court finds it is not reasonably likely the Court of Appeals would have reversed on this ground had this issue been preserved, especially considering the Court's finding that Spann's testimony was cumulative to Powell's testimony and thus was harmless. Overall, the State submitted other compelling evidence of Applicant's guilt, including witnesses who testified to seeing her leave the Siesta shortly before the shooting; testimony that she was wearing black that night; Anderson's testimony that the shooters were wearing black; Anderson's identification of Applicant as a shooter; evidence that Applicant had a prior altercation with Freeman; text messages wherein Applicant did not expressly deny her involvement; and Powell's testimony that Applicant confessed to the murder. This Court finds Applicant did not show a reasonable likelihood (1) Spann's testimony would have been excluded had counsel renewed his objection, (2) the outcome of trial would have been different without Spann's testimony, or (3) the outcome of Applicant's appeal would have been different had this issue been preserved. Thus, Applicant did not prove prejudice, and this claim is denied.

Failure to object to inferred malice instruction

Applicant next contends trial counsel was ineffective for failing to object to the trial court's jury charge that malice can be inferred from the use of a deadly weapon. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, counsel acknowledged the trial court gave an inferred malice charge that was no longer good law in South Carolina. However, counsel explained that under the law that existed at the time of Applicant's trial, the instruction was proper as long as no evidence was presented that would reduce, mitigate, excuse, or justify the homicide. State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Counsel further explained that no evidence was presented that would reduce, mitigate, excuse, or justify the homicide, making the charge proper under existing law.

This Court finds Applicant did not prove counsel was deficient for not objecting because the charge was proper under the law that existed at the time of Applicant's trial. Although our Supreme Court has held the instruction that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina, that case was decided *after* Applicant's trial. See State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). Under the law that existed at the time of Applicant's trial, counsel correctly concluded the charge was proper because no evidence was presented that could reduce, mitigate, excuse, or justify the homicide. See Belcher, 385 S.C. at 597, 685 S.E.2d at 802. Thus, counsel articulated a valid reason for not objecting and was not deficient. Further, counsel is not required to anticipate changes in the law. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). c.f. Burdette, 427 S.C. at 504 n. 3, 832 S.E.2d at 583 n. 3 (noting the Burdette decision "overrules in part a considerable amount of South Carolina case law"); id. at 505, 832 S.E.2d at 583 (providing Burdette would "*not* apply to post-conviction relief" (emphasis added)). Based on the foregoing,

Applicant has not shown counsel was ineffective for not objecting to the implied malice charge.

Opened the door for Anderson's statement

Applicant next avers counsel was ineffective for opening the door for Anderson's statement to be admitted through Officer Wells. This Court finds Applicant did not prove counsel was ineffective in this regard.

During cross-examination of Officer Wells, the following exchange occurred:

Q. . . . And in that, you put down that the suspects that Wrenshed Anderson told you was Peanut and Dre, correct?

A. Yes, sir.

Q. All right. Then you have a—and do you know a Nisha Jones, who was—would that be Dre's girlfriend, Nisha Jones?

A. I don't know any of them prior to this incident.

Q. Okay.

A. Have no idea.

Q. Do you know a Tynisha Jones, T/Y-neisha Jones?

A. No, sir.

Q. Okay. All right. But you only put down in there that Neisha. Okay?

A. Yes, sir.

Q. Now, you never put in that statement—you may have mentioned the word Neisha one time, correct? Toward the bottom?

A. Yes, sir.

Q. And what context is that in?

A. If I may read the last paragraph?

Q. Read the sentence. The last sentence, yes.

A. The last paragraph of my narrative indicates that:

Anderson, at some point in time during his excited stated, indicated that he had in his cell phone the contact numbers for Peanut and Dre. He also included a third name of Aneisha. He further indicated several times that Peanut and Dre were the suspects. Anderson also indicated that Freeman and Peanut had a beef all day. I obtained a written—voluntarily written statement from Anderson. Anderson was provided a copy of the statement.

(Tr. 164-65). On redirect, Officer Wells read Anderson's statement into evidence:

We just left the Siesta. Weekly rentals. Talking to Mr. Horton. And we was walking to Econo Lodge. When we got close to KFC path, that's when we heard shots.

....

Vonte got into it with Peanut earlier today, and we saw Neisha and her friend. That's when we was ordered to leave. That's when we left walking, and they sneak up behind us and started shooting.

(Tr. 177).

During the PCR hearing, counsel agreed he may have opened the door for the State to read Anderson's statement into evidence. However, he reiterated his general strategy of highlighting for the jury that Anderson initially implicated Dre and Peanut—not Applicant—as the shooters. When asked whether Anderson's statement implicated Applicant, counsel responded, "Yes and not. It still doesn't say she's the shooter. He mentions her name but does not say she's shooting—she's just there."

This Court finds credible counsel's testimony that he was attempting to highlight the fact that Anderson initially named Peanut and Dre as the shooters. This Court further finds this strategy was reasonable, especially in light of Anderson's testimony that there were two shooters. (Tr. 289). Counsel's cross-examination here was consistent with his overall strategy of highlighting the fact that Anderson did not initially name Applicant and was thus reasonable under prevailing professional norms. Further, the statement itself referenced "Neisha" rather than "Aneisha." (Tr. 177). During cross-examination, trial counsel attempted to insinuate "Neisha" referred to someone

other than Applicant—which this Court finds to be a reasonable strategy under prevailing professional norms. Thus, Applicant did not show counsel was deficient in this regard.

Further, it is not reasonably likely that Officer Well's reading of this statement changed the outcome of trial. To the extent the jury interpreted "Neisha" as referring to Applicant, the statement was cumulative to Officer Well's direct testimony that Anderson provided the name "Aneisha" to him at the scene. (Tr. 157). It was also cumulative to Anderson's testimony that he provided law enforcement with Applicant's name when police responded. (Tr. 288). Thus, it is not reasonably likely the admission of this statement changed the outcome of trial, and Applicant has not shown prejudice.

Failing to move for a new trial

Applicant contend counsel was ineffective for failing to move for a new trial. Applicant did not prove counsel was ineffective in this regard. Applicant did not set forth any basis for a motion for a new trial in her amended application or at the evidentiary hearing other than a general allegation that counsel should have moved for a new trial. Without setting forth a more specific basis to move for a new trial, Applicant has not met her burden of showing counsel was deficient in this regard. Likewise, without articulating a valid basis upon which the court may have granted a new trial, Applicant has not proven prejudice. This Court finds no valid basis would warrant a new trial; thus, counsel was not deficient for not requesting a new trial, and Applicant was not prejudiced by his failure to do so.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

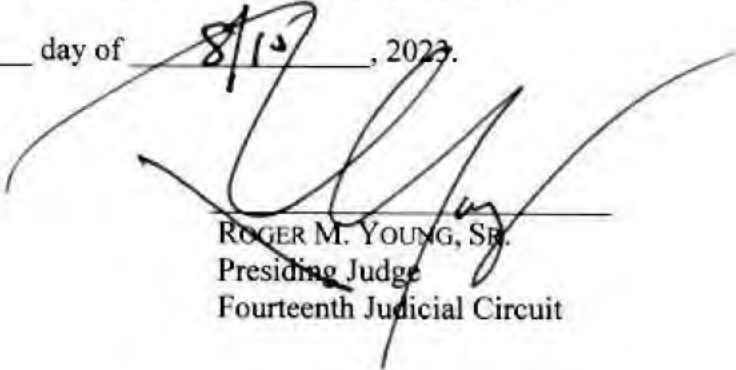


Should Applicant wish to secure appellate review, she must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on her behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS ___ day of 8/10, 2023.



ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit

Chambers, South Carolina

WITNESSES

Daniel Litchfield--RPD

DOCKET NO. 2016GS2700251

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2016

THE STATE

vs.

Aneisha Shaire Young

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

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

ARREST WARRANT NUMBER

2016A2720200072

TRUE BILL ✓

NO BILL

FOREMAN

DATE

M. Black

10/27/16

Foreperson of Grand Jury

Date:

VERDICT

Guilty 3/15/18

Defendant

Witness:

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

Foreperson of Petit Jury

Date:

INDICT

JASPER COUNTY
CLERK OF COURT

OCT 27 2016 PM 2:40

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF JASPER)

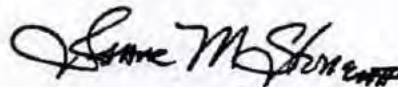
2016GS2700251

At a Court of General Sessions, convened on October 27, 2016, the Grand Jurors of Jasper County present upon their oath:

Attempted Murder

That in Jasper County, South Carolina, on or about April 30, 2016, the Defendant, Aneisha Shaire Young, did, with intent to kill and with malice aforethought, attempt to willfully kill Wrenshad Kwame Anderson, to wit: by shooting at him., all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Daniel Litchfield--RPD

DOCKET NO. 2016GS2700241

The State of South Carolina**County of Jasper****COURT OF GENERAL SESSIONS****October Term 2016****THE STATE**

vs.

Aneisha Shaire Young**Indictment For****Murder**

SC Code: 16-3-10

CDR Code: 0116

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.

ARREST WARRANT NUMBER

2016A2720200067

TRUE BILL ✓**NO BILL****FOREMAN** M Black**DATE** 10/27/16

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

COPY

STATE OF SOUTH CAROLINA

)

INDICTMENT

COUNTY OF JASPER

)

2016GS2700241

At a Court of General Sessions, convened on October 27, 2016, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about April 30, 2016, the Defendant, Aneisha Shaire Young, did, with malice aforethought, kill Davonte Freeman and Davonte Freeman did die as a proximate result of Aneisha Shaire Young's actions, to wit: shooting him., all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

WITNESSES

Daniel Litchfield--RPD

DOCKET NO. 2016GS2700569

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2016

THE STATE

vs.

Aneisha Shaire Young

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

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.

ARREST WARRANT NUMBER

DIRECT INDICTMENT

(JAS0257)

TRUE BILL

NO BILL

FOREMAN

DATE

M Black

10/27/16

Foreperson of Grand Jury

Date:

VERDICT

Guilty

3/15/18

Foreperson of Petit Jury

Date:

INDICT

JASPER COUNTY
CLERK OF COURT

MAR 16 PM 2:45

FILED

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

INDICTMENT

2016GS2700569

At a Court of General Sessions, convened on October 27, 2016, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about April 30, 2016, the Defendant, Aneisha Shaire Young, did possess a firearm during the commission of a violent crime(s), to wit: Murder and Attempted Murder and Aneisha Shaire Young was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

10-50

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

Jasper
Aneisha Shaheen King

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2016 - 241☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	0
§14-1-211 (A)(2)(DUI Surcharge)	\$100	0
§56-5-2995 (DUI Assessment)	\$12	0
§56-1-286 (DUI Breath Test)	\$25	0
Proviso 61.6 (Public Def/Probation)	\$500	0
§14-1-212 (Law Enforce. Funding)	\$25	25
§14-1-213 (Drug Court Surcharge)	\$150	
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)		3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Maya Boshad
Wanda Gove

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

PTUP

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

Beginning

\$

Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

FILED

SO - Lite

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

Aneisha vs. Sharee Young

AKA:

Race: B

Sex: F

Age: 23

DOB: 1994

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Pineland, SC 29934

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

murder

In violation of §

16-3-10

of the S.C. Code of Laws, bearing CDR Code #

0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted.☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s Initials)

The plea is:

☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

[Signature]

10/9/28

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

POSTED

DATE 10/9/18

Total: \$ _____ plus 20% fee: \$ _____

days/months Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	0
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 0
\$56-5-2995 (DUI Assessment)	\$12	\$ 0
\$56-1-286 (DUI Breath Test)	\$25	\$ 0
Proviso 61.6 (Public Def/Probation)	\$500	\$ 0
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$ 0
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ 0
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 0
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Margaret Bisher
Wanda GrouseRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2142

Sentence Date 8-15-18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

AKA:

Race:

DOB:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

In violation of §

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ \$17-25-45☐ (CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,The plea is: ☐ Without Negotiations or Recommendation,

ATTORNEY

WHEREFORE, the Defendant is committed to the

for a determinate term of \$

and/or to pay a fine of \$

of \$

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

Total: \$

plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

INDICTMENT/CASE#:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Date of Offense: 4/30/2016

S.C. Code §: 16-23-490

CDR Code #: 0549

☐ Mandatory GPS☐ \$17-25-45☐ (CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,The plea is: ☐ Without Negotiations or Recommendation,

ATTORNEY

WHEREFORE, the Defendant is committed to the

for a determinate term of \$

and/or to pay a fine of \$

of \$

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

Total: \$

plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP

days/hours

Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

Beginning

\$

Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees

Presiding Judge

Judge Code:

Sentence Date