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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

ANDRE T. HEATLEY, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001526

APPENDIX

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1 of the crime. Rarely do we actually go to the
2 crime scene and collect it ourselves. So most of
3 the time, we receive either items that we examine
4 and collect the DNA from by swabbing it ourselves
5 or -- but most of the DNA evidence is submitted
6 through a swab that has been collected by a crime
7 scene person or another person involved in the
8 investigation.

9 These swabs then are cut out, extracted to see
10 if indeed there is human DNA on the swab. The swab
11 can be from stains, like blood, or it could be from
12 evidence collected in a sexual assault case that
13 would be analyzed for semen. And it could be swabs
14 from items that DNA may have come -- somebody's DNA
15 may have come in contact with, like if you're
16 wearing a hat, your DNA will probably be on the
17 inside of that hat from just simply wearing it. Or
18 we can collect it from touching items, so if
19 somebody has handled an item or touched an item
20 extensively or enough to leave enough DNA, we can
21 collect that and extract the DNA from the skin
22 cells that are left behind from an individual.
23 Because all nucleated cells in your body contain
24 your DNA and they are all the same. They're unique
25 to you. So your DNA would not match anybody else's

1 DNA unless you have an identical twin.

2 So any type of evidence that would leave
3 biological human cells behind could be analyzed for
4 DNA. And depending on how many cells are left
5 behind, it would depend on the quality or quantity
6 of DNA that was present.

7 So we extract the cuttings from the swabs or
8 like cutting of the blood from a shirt or something
9 like that. We would extract that, find out how
10 much human DNA is present. From there, we would go
11 about amplifying or copying certain portions of the
12 DNA molecule that are used for human
13 identification.

14 DNA, of course, has been studied extensively
15 over the last few decades and is used in medical
16 research. It's being used for all kind of things
17 out there as far as research, but it's also been
18 applied to forensic science. By using certain
19 portions of the DNA molecule that are probably
20 more -- in other words, they have many different,
21 shapes or sizes that can be used to identify
22 people. So, being done in population studies to
23 find out what percentages of the population might
24 contain a certain DNA combination. And those
25 statistical analyses of the probability of the DNA

1 present then would indicate the strength or
2 weakness of the DNA results as to whether or not it
3 could or could not have come from the individuals.

4 And basically our end product is does it match
5 a known sample that has been submitted or not. And
6 DNA is pretty specific, so it can give us pretty
7 conclusive answers.

8 Q All right. Speaking of known samples, did you have
9 any known samples in this case?

10 A Yes, sir.

11 Q Can you tell us who those where?

12 A I received a known sample from Deandra Roach, who
13 I understand is the victim in this case. And then
14 Andre Heatley, who is considered a possible suspect
15 in this case. And Desha Anderson as well, as a
16 person of interest in this case as well.

17 Q Let's just start with the items you analyzed in
18 this case done with Item Number 1?

19 A Item Number 1 is a sexual assault collection kit.
20 So in the case of homicide or a known sexual
21 assault, if there is any indication that a sexual
22 assault occurred, then a sexual assault collection
23 kit is used to obtain evidence from the victim's
24 body. That would include a known sample from the
25 victim for use as a reference standard, which was

1 done in this case. As well as in a sexual assault
2 case you would -- if it's a female, you would take
3 vaginal samples, rectal samples, oral samples, any
4 type of orifice where there could have been
5 penetration and deposit of seminal fluid by a
6 potential suspect.

7 Q All right. And you wouldn't know the nature of the
8 investigation in regards to that, correct?

9 A I get bits and pieces here and there, but, no, I'm
10 not involved consistently with a particular case
11 because I analyze so many cases at the laboratory,
12 so a lot of times I don't get the whole picture
13 until it comes together at trial.

14 Q Got you. Tell us your results as it relates to
15 Item Number 1, the sexual assault kit.

16 A Well, I examined the vaginal, oral, and rectal
17 swabs for seminal fluid and found them to be
18 negative. So that would indicate no presence of
19 seminal fluid, no recent sexual contact where
20 ejaculation occurred. That doesn't mean there
21 wasn't sexual contact or sexual intercourse, it's
22 just that there was no male seminal fluid left
23 behind to determine DNA. So no further DNA
24 analysis would have been performed at that point.

25 Q All right. And your next Items 30, 32, 34, and 37,

1 I'm going to sort of lump those together, can you
2 tell us what those are and what your results were?

3 A 30 through -- okay, those are swabs from apparently
4 a vehicle, driver's side exterior door, passenger
5 side exterior door handle, driver's side interior
6 door handle, and a passenger side interior door
7 handle. So it looks like swabs from the vehicle's
8 door handles both inside and outside were
9 collected.

10 Q What were your results as it relates to 30, 32, 34,
11 and 37?

12 A No DNA was extracted from those items. So we just
13 didn't get anything to go further and try to find
14 out whose it is.

15 Q Just -- I guess, this is a silly question, but that
16 doesn't necessarily mean no one ever touched those
17 items, obviously?

18 A No. I mean, obviously, when you're dealing with
19 touch DNA, there is a lot of unknown factors
20 involved, how much DNA a person may leave behind.
21 In the case of a door handle, when was the last
22 time it was cleaned or wiped down. Or how well the
23 swabs were -- the evidence was collected by the
24 individual swabbing, did they do a good job, did
25 they thoroughly swab it, did they collect enough

1 cells to analyze.

2 So our initial analysis is to determine
3 whether or not there is human DNA present. And
4 upon extracting these swabs, we just didn't find
5 any human DNA.

6 Q All right. Item 50 and 52, tell us what you did
7 with that.

8 A 50 and 52, a gray jacket and a black hoodie.
9 Excuse me. I'm sorry, there was a lot of evidence
10 submitted and it was submitted at different times.

11 Q No problem.

12 A Okay, 50 and 52, there was -- we were asked to
13 examine Item 52 for blood. We did not find any.
14 Both of these items were -- a GSR collection kit
15 was performed on those items to forward to SLED for
16 analysis, which involved aluminums, what they call
17 sticky tabs that go on the scan electron
18 microscope. These two items were dabbed, if you
19 will, in hopes of collecting gunshot residue.

20 Q And that was forwarded to SLED?

21 A Yes.

22 Q Tell us about Item 65.

23 A Item 65 is cigarette butt. Cigarette butts are
24 good sources of DNA. We did develop a DNA result
25 from Item 65. It was compared to the three

1 individuals that were submitted in this case, and
2 it did not match any of them.

3 Q So the cigarette butt didn't match the known
4 standards you had?

5 A Right. It's from an unknown male at this point. I
6 don't have a known sample to match it to that did
7 match to it. As -- you know, cigarette butts are
8 collected very often associated with crime scenes
9 that may or may not have been involved in the
10 crime. But in this case, as far as these
11 individuals are concerned, it did not match them.

12 Q All right. The next sort of group we'll talk
13 about, 73 through 89 and 93.

14 A These are swabs from fired cartridge casings that
15 were collected. I did not swab them. They were
16 submitted to me as swabs allegedly coming from the
17 cartridge casings. Which item numbers are these
18 again now, 73 --

19 Q 73 --

20 A 89.

21 Q And 93.

22 A And 93. Okay. 73, 89, 93. Okay, those were no
23 DNA again. Cartridge casings may or may not have
24 DNA on them. I have gotten many, many cartridge
25 casings that were negative for DNA and then I've

1 also gotten cartridge casings that actually had DNA
2 match someone. So it's just kind of a -- again,
3 we're depending upon how many skin cells are left
4 behind by the individual handling that particular
5 item.

6 Q And you stated that that would be a result of touch
7 DNA?

8 A Yes. When you touch something, there's a chance
9 that you could leave enough of your skin cells from
10 your fingers or if you are putting them in your
11 pocket or anything like that where some of your
12 sloughed-off skin cells could have been transferred
13 to that item. By sloughed off, the most easy
14 demonstration of that would be dandruff. That's
15 sloughed-off skin cells. So we're sloughing off
16 skin cells every day, some people do it more than
17 others, from your skin. Your layers of skin are
18 constantly falling off and being replaced.

19 As you've had a cut or something like that,
20 you notice the healing. That's what is happening.
21 The skin cell is -- the old skin cells are being
22 done away with and new skill cells are replacing
23 it. So those old skin cells that are left behind
24 are what we're looking for because they do contain
25 a nucleus which contains your DNA.

1 Q All right. And as to the fired cartridge casings,
2 which are identified as Marker 7, Marker C, and
3 Marker H?

4 A No DNA was found.

5 Q No DNA. So nothing to compare it to because no DNA
6 was found?

7 A Exactly.

8 Q Tell us about your Item Number 94.

9 A 94 is a swab from Marker RB-1. I would assume
10 that's some sort of crime scene designation.

11 Q Correct. What was your result from that?

12 A There was blood on it and it matched the victim.

13 Q The blood from Marker RB-1 matched the victim?

14 A That's correct, it matches Ms. Roach.

15 Q Thank you. Can you tell us about Item 135?

16 A Stain from the front passenger seat.

17 Q 135 and 136.

18 A Okay. Well, 135 is a stain from the front
19 passenger seat labeled Marker 8. And 136 is a swab
20 from a stain of the passenger side sun visor
21 labeled Marker 9.

22 Q Can you tell us what sort of analysis you did on
23 those two and what the results were?

24 A They were tested for blood and it was negative.

25 Q After that, did you do any further analysis on

1 those two?

2 A No.

3 Q I want to show you what has been marked as State's
4 238 and ask if you recognize that?

5 A Yes. This is an envelope containing a swab from
6 Item 57, which is renumbered Item Number 158 for
7 us, because we never saw the firearm, we just
8 received a swab from the firearm. Labeled swab and
9 firearm frame below the barrel.

10 Q And did you do any analysis on that swab from the
11 firearm frame?

12 A Yes.

13 Q What were the results of that?

14 A Yes. The DNA result from that was that there was
15 DNA, human DNA. I was able to develop a DNA result
16 from that. And that DNA result matched Andre
17 Heatley. And applying his statistical evaluation
18 to that, it would be that he is ten million times
19 more likely to be the source of this DNA than a
20 random person. So in statistical DNA analysis, we
21 would ask the question, What is the -- What is more
22 likely? Is it more likely to be this person's DNA
23 or just a random person to pick from the population
24 in general?

25 So, randomly speaking, every DNA result has a

1 random possibility of matching somebody. So that's
2 the question. Is this DNA that we found more
3 likely to belong to an individual that we tested or
4 is it just a random DNA that could show up anywhere
5 in the population?

6 So that's what we testify to as to statistical
7 weight to the evidence. So the weight is it is ten
8 million times more likely to be the DNA from Andre
9 Heatley than just taking DNA at random from the
10 population.

11 Q All right. Thank you. Move on to your next item,
12 which is 166, and also 167.

13 A 166, swab from the release hatch center console.
14 And 167, swab from the handle of a glove box.

15 Q Can you tell us the results for those?

16 A The DNA result from Item 166, which is the release
17 hatch of center console, I'm assuming this is from
18 a vehicle.

19 Q Correct.

20 A Is a mixture. So it's not uncommon that more than
21 one person can touch something in a vehicle, we
22 call it a DNA mixture. In a mixture, we take the
23 known samples and ask the question, Could this
24 person be included in this mixture and how likely
25 is he to be included in this picture?

1 So in this particular mixture, the victim
2 cannot be excluded as a contributor. There was no
3 statistical weight applied to that because it was
4 my understanding that would have been
5 non-probative. I guess this was maybe her vehicle.

6 Q Her vehicle, yes, sir.

7 A Yes. And then comparing the other two individuals,
8 Desha Anderson and Andre Heatley, they were
9 excluded as a contributor to this mixture. So this
10 mixture is a mixture of the victim and some other
11 individual that I don't have a standard to compare
12 it to to make a determination.

13 Q All right. Can you tell us -- so Desha Anderson
14 and Andre Heatley did not contribute to that
15 mixture? Can you tell us what other findings you
16 have?

17 A 167, the partial DNA result. In other words, it
18 was just a very little bit of DNA. Enough to say
19 there is some human DNA there, but there is not --
20 cannot be conclusively matched to anyone in this
21 case or probably anybody else submitted as well.
22 It's just not enough there.

23 Q It is just too little for you to analyze?

24 A Well, it's enough for me to tell there's human DNA
25 present, but as far as matching it to someone,

1 there is just not enough there to do that.

2 Q Got it. I want to move back to 166. You compared
3 that to the DNA from the cigarette butt?

4 A No, not that I can tell. Generally speaking, DNA
5 comparisons are done to known standards, in other
6 words, known individuals. For investigative
7 purposes, sometimes we get a request to compare it
8 to DNA from another item. But I don't see where
9 that was done.

10 Q I'll come right back to that. Can you tell us
11 about Item 186?

12 A Yes. Item 186, again, is blood that matches the
13 victim.

14 Q What is that from?

15 A Swab from a stain, Marker 6, a reddish-brown stain,
16 which was blood, the victim's blood.

17 Q And Item 181?

18 A Swab from stain Marker 1 from a silver Honda Civic.
19 And that is also blood that matches the victim.

20 MR. FYALL: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. FYALL:

23 Q All right. I just want to -- you said you received
24 a lot of evidence in this case, obviously?

25 A Yes, sir. We've gone through every piece of

1 evidence that was done for DNA.

2 Q All right. I want to approach just to make sure I
3 have your most updated report.

4 A Oh, okay. I see what you're referring to now. I
5 was reading my report and I failed to read it
6 completely as far as the mixture on Item 166. It
7 was compared to an unknown male in 65 from the
8 cigarette butt, and he was excluded as well.

9 Q Item 166, what's that labeled as in your report?

10 A 166, swab from the release hatch at the center
11 console.

12 Q And you excluded Desha Anderson, Andre Heatley, and
13 whoever it was that left the cigarette butt?

14 A Yes, the unknown male and the cigarette butt, yes.

15 MR. FYALL: No further questions.

16 THE COURT: All right. Yes, sir?

17 CROSS-EXAMINATION

18 BY MR. O'NEIL:

19 Q Mr. Barron, do you know approximately how many
20 items you tested for DNA in this case?

21 A Well, I can count them.

22 Q Yes, sir.

23 A Well, counting the items that did not have DNA --
24 do you want me to count those as well?

25 Q Yes, sir.

1 A It looks like 14.

2 Q Fourteen?

3 A Plus the victim's known sample, which would be 15.

4 Q So 14 items other than the victim's known sample?

5 A Right.

6 Q And of those items, only one item matched

7 Mr. Heatley?

8 A That's correct, a swab from the -- a firearm.

9 Q The firearm that already belonged to him, correct?

10 Or you don't know that part?

11 A All I know is swab from a firearm.

12 Q Okay. But there's also, you indicated there was

13 some DNA recovered on the cigarette butt at the

14 scene?

15 A Correct.

16 Q But that DNA didn't match Mr. Heatley?

17 A It was a cigarette butt. I don't know where it was

18 recovered, it was just submitted. So probably

19 somewhere in relation to the incident.

20 Q Okay. That was a male DNA, unknown male DNA?

21 A That's correct.

22 Q And the center console of the victim's car, you

23 indicated was Item Number 166?

24 A Yes, sir.

25 Q And, of course, that was a mixture. And, of

1 course, you said the victim could not be excluded
2 from the mixture, but that wasn't important to you
3 because that was basically her car, so you would
4 expect that?

5 A Correct, yes. We consider DNA from known places
6 where a person would be expected to have his DNA as
7 non-probative. In other words, that's not -- we
8 don't add any statistical weight to that because of
9 that situation. It would be the same thing if we
10 recovered her DNA from her vaginal swab only, that
11 would be non-probative.

12 Q So we got a DNA sample from the console of her car,
13 that's a mixture. She's probably -- she can't be
14 excluded as part of that mixture, but Mr. Heatley
15 is definitely excluded from being part of that
16 mixture?

17 A Yes.

18 Q All right. And then we have also a partial DNA
19 swab from the glove box of her car, correct?

20 A Which item number is that?

21 Q It's Item Number 167.

22 A 167?

23 Q Yes, sir.

24 A Yes, that DNA couldn't be matched to anybody.

25 Q You couldn't match that to anybody?

1 A That's correct.

2 Q Were any items that -- well, those 14 items were
3 the only items tested, nothing else?

4 A Correct.

5 Q Who determines what gets tested? You determine
6 what gets tested or does the investigator determine
7 what gets tested?

8 A The investigators involved in the case make
9 requests for us to test certain items and ask to
10 look for blood or test for DNA in general, or
11 whatever.

12 Q How many items did you have submitted to you where
13 there was no testing done on it whatsoever?

14 A I think we had some items that we inventoried that
15 we didn't test, if I look at the work sheet
16 correctly. Oh, we actually -- we inventoried them
17 to start with and then we went back and tested
18 them, which were the door handles from the vehicle.

19 Q Okay. So the only items that were initially not
20 tested were door handles from the vehicle, but you
21 wound up testing those items later on?

22 A Right. As well as some of the fired cartridge
23 casings as well.

24 Q And no DNA was recovered from any of these items?

25 A That's correct. I mean, nothing probative as far

1 as DNA is concerned.

2 MR. O'NEIL: That's all I have, Your Honor.

3 THE COURT: Redirect?

4 MR. FYALL: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MR. FYALL:

7 Q I want to go back to the fired cartridge casings
8 one more time. You said you have tested a bunch of
9 those in your career?

10 A Yes, Yes. A lot of shootings involve leaving fired
11 cartridge casings behind at the crime scene.
12 Theoretically speaking, as you load the weapon or
13 magazine with cartridges, you might leave some DNA
14 behind. But if you're wearing gloves or just --
15 it's a random process as to whether or not somebody
16 leaves enough DNA on one single cartridge case to
17 get enough to identify an individual. So most of
18 the cartridge casings I test are negative.

19 Q Most of them?

20 A Most of them, yes.

21 MR. FYALL: Nothing further.

22 THE COURT: All right, sir, you may step down.

23 (Witness steps down.)

24 THE COURT: Can I see you one second?

25

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: All right, ladies and gentlemen of
5 the jury, we are conferencing regarding the next
6 witness. The next witness, they tell me, may take
7 a little more than an hour. I'm not sure if the
8 lunch is here, but what we're going to do is go
9 ahead and break. We're going to start back -- it's
10 about 12:40 -- it will take them a minute to
11 separate. We'll probably start back about 12:50,
12 closer to -- I mean, 1:50. We'll start back closer
13 to 2:00 o'clock. So if you -- I don't know if
14 there are those of you who need to run out and get
15 some fresh air, you can do that. Remember to keep
16 the badges on. And be back about 10 till 1:00.
17 That's about an hour and ten minutes. If you'll be
18 back at about 10 till -- did I say 1:00 -- 2:00.
19 10 till 2:00. If you will be back about 1:50 and
20 we'll start back up with that witness around 2:00
21 o'clock. And enjoy your lunch. They're going to
22 have to separate it like they did on Friday.

23 Remember, please do not discuss the case. I'm
24 guessing if the bailiffs say it's okay, you can
25 leave if you want to get some fresh air. Do that

1 and be back about 1:50.

2 All right. Thank you.

3 (WHEREUPON, the jury is excused for
4 lunch at 12:40 p.m.)

5 THE COURT: All right. Be ready to start back
6 at 2:00 o'clock.

7 Thank you.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Are you ready to bring them in?

10 MR. GOLDBERG: Not just yet, Your Honor. I've
11 got one issue I need to bring up. Just a few
12 moments ago before we came in here, I was told some
13 somewhat conflicting information about possible
14 juror interactions. I just wanted to put it on the
15 record just out of an abundance of caution.

16 I was initially told by some employees in my
17 office who have been coming back in, Investigator
18 Wesley and Assistant Solicitor Pratt, that a
19 deputy, courthouse deputy, had been downstairs with
20 two of the jurors who were outside. I think they
21 might have been smoking. And that -- it was
22 initially reported to me that the jurors had made a
23 comment about issues regarding their safety in
24 terms of their ability to render a verdict on the
25 case and relating to some sort of Blood involvement

1 in some way, which, as Your Honor knows, there has
2 been no reference to that in the case whatsoever
3 thus far.

4 So I then had the deputy come down here and I
5 asked her to come back now and I asked her directly
6 about it, and she told me that the jurors never
7 said anything, that this was her observations
8 watching the jurors, that they looked as though
9 they were worried about something, but that she did
10 not actually hear any of them say that, nor did she
11 speak to them about it. She said that she was in
12 the garage and they were actually outside the
13 garage. Obviously, I wasn't there. I don't know.
14 But any time you're involved in this kind of issue,
15 I felt the need to certainly bring it up. I would
16 ask her to come back to the courtroom so that if
17 there are any questions specifically about it, they
18 could be addressed. I don't know if this would
19 necessitate any questioning of the jury about
20 anything or not. I have no idea. I'm just putting
21 it out there.

22 MR. O'NEIL: I guess, Your Honor, I'm hearing
23 it third-hand, third layer from Mr. Goldberg.

24 THE COURT: You want me to put the deputy on
25 the stand and you can question her and you can ask?

1 I can put her under oath and ask her.

2 MR. O'NEIL: I probably would put the
3 employees that overheard what they overheard or
4 what they were told, put them on the stand --

5 THE COURT: So the only person that has had
6 any contact with them is the deputy?

7 MR. O'NEIL: My understanding from talking to
8 Mr. Goldberg is that his employee -- employees in
9 their office were told by a deputy that the deputy
10 overheard the juror say something.

11 INVESTIGATOR WESLEY: May it please the Court,
12 Your Honor? Basically, we pull in and she's at the
13 gate there and then we pull in and basically
14 asked -- it was not initiated to ask anything like
15 that, we just asked was that the jury. Harrison
16 Pratt is one of the Assistant Solicitors in the
17 case, not this case, but in our office, and he's
18 basically downstairs right now, he is going to
19 bring the deputy up. But basically what was
20 reflected to us is that she -- the way she put it
21 is that she heard -- the jurors told her that they
22 were scared and that they were not -- they were
23 scared to render a verdict of guilty or anything,
24 because of the consequences, I guess. And
25 basically that's what -- and then she let on

1 elaborating a little bit about Blood members, gang
2 members, stuff like that.

3 THE COURT: And she's saying that the jurors
4 told -- she told the people in your office that the
5 jurors told her this?

6 INVESTIGATOR WESLEY: Yes. It was me and
7 Assistant Solicitor Harrison Pratt. He's gone down
8 to get her now, and then he's coming up. He'll
9 address you.

10 THE COURT: I mean, the best thing I can do is
11 put her on the stand, and then y'all can ask her is
12 that she said.

13 MR. GOLDBERG: She said that is not what
14 happened and that it was that that was her
15 observations of said jurors that were outside the
16 garage and that there was no exchange where she
17 heard them say anything directly about it.

18 THE COURT: Do you know which jurors it is?

19 MR. GOLDBERG: She didn't say. I didn't ask.

20 INVESTIGATOR WESLEY: May it please the Court,
21 Your Honor? Of course, and I felt an obligation to
22 report this to the Court, you know, as an officer
23 of the court. And there's Mr. Pratt there. And I
24 ask her to come on down.

25 DEPUTY: Yes, Your Honor?

1 THE COURT: Yes, ma'am.

2 DEPUTY: Yes, ma'am.

3 THE COURT: So I'm guessing we are trying to
4 figure out, did you have a conversation or overhear
5 a conversation with the jurors talking about the
6 case?

7 DEPUTY: No, ma'am.

8 THE COURT: Okay. So everything -- I'll let
9 you -- apparently, you told somebody or somebody
10 overheard you talking about the jurors being
11 afraid?

12 DEPUTY: No, I just made observation. It
13 was -- they were all the way outside and I was
14 inside. Harrison and I whispered. There's no way
15 they could have heard me.

16 THE COURT: All right, but they -- the
17 jurors -- it's just observation?

18 DEPUTY: Nothing was said to me.

19 THE COURT: But did you overhear them say
20 anything?

21 DEPUTY: No, ma'am.

22 THE COURT: That's my concern, that they said
23 something.

24 DEPUTY: No, ma'am. I didn't hear anything
25 that they said. I wasn't really -- nothing was

1 said to me. I don't know what this is about.

2 THE COURT: Any questions?

3 MR. O'NEIL: I don't have any questions, I
4 just don't know how to figure this out.

5 THE COURT: Huh?

6 MR. O'NEIL: I don't have any questions, I
7 just don't know how to figure this out. There's
8 two different versions of the incident here.

9 THE COURT: I can ask the jurors have they
10 discussed it. I'm just trying to figure out what
11 is the best way to do that.

12 Let me see the lawyers one second.

13 (WHEREUPON, a bench conference was
14 held.)

15 THE COURT: We'll just go back on the record.
16 We had a conference outside with the attorneys.
17 And at that time, Mr. Talbert, who's the bailiff,
18 was with the jurors who were outside, and he's able
19 to provide some information, so I will let him put
20 that on the record, and then we'll keep moving.

21 THE BAILIFF: Yes, Your Honor. I took the
22 jurors outside. We came down through G1, went
23 outside. They stood to the right side of there.
24 They were in contact with no one. One juror went
25 across the street to her car, came back, and we

1 came back upstairs. No one made any contact with
2 the jurors in my presence.

3 THE COURT: All right. And they were in your
4 presence the entire time?

5 THE BAILIFF: Yes, ma'am.

6 THE COURT: Except the one that went to the
7 car?

8 THE BAILIFF: Went across the street.

9 THE COURT: All right. Thank you.

10 Thank you, Lieutenant Price.

11 All right. Other than that, the jurors, we
12 may have to move them from one jury room because
13 it's hot, but that's the only thing. And I talked
14 to them about the heat situation in the room. They
15 did not say anything to me about anything. So
16 that's probably consistent -- they seem to be
17 fine -- consistent with what Mr. Talbert and also
18 the deputy said.

19 So, all right, are we ready to bring them in?

20 MR. GOLDBERG: Yes, ma'am.

21 MR. O'NEIL: Yes, ma'am.

22 THE COURT: Thank you.

23 (WHEREUPON, the jury came into open
24 court at 2:31 p.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: Ladies and gentlemen of the jury,
2 we are working on the air. If not, we will try to
3 move you to another jury room or figure something
4 out. It is warm in there. So we're working on
5 that. I apologize for the delay. There's some
6 matters I needed to take up outside your presence.
7 But right now, we are ready to start.

8 I ask the State to call their next witness.

9 MR. FYALL: The State calls Captain Scott
10 McDonald.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you swear or affirm the
16 testimony you are about to give in this case will
17 be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Have a seat in the
21 witness stand, please.

22 (Witness seated.)

23 THE CLERK: State your name for the record.

24 THE WITNESS: Scott McDonald.

25 SCOTT MCDONALD,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FYALL:

4 Q Captain McDonald, can you tell us where you're
5 employed?

6 A The Richland County Sheriff's Department.

7 Q How long have you been there?

8 A Thirty years.

9 Q Can you tell us about your career there from when
10 you started until now?

11 A March of 1988, I started there, was on the road for
12 six years. From there, I went into investigations
13 where I've been ever since. While in
14 investigations, I worked a little bit of everything
15 from burglary, property crimes. Then I went to
16 robbery. Then I went to Major Crimes from there,
17 homicides, assaults. And most recently, I'm the
18 captain over property crimes.

19 Q All right. As part of your duties there, what do
20 you do in regards to cell phones?

21 A I get involved on a lot of the homicides with the
22 cell phone aspect of it and the downloading of cell
23 phones and the plotting or tracking of the cell
24 phone locations, particularly around the time of
25 incidents to see if we can place suspects in the

1 area around the crime scene, that type thing.

2 Q How do you go about doing that?

3 A Through training that I have been through, numerous
4 training classes. We get the call detail records
5 from the major providers, Verizon, T-Mobile,
6 Sprint. And on these call detail records, not only
7 are they date and time stamped, they also have cell
8 phone tower information on there, what towers that
9 particular call was hitting off. In addition to
10 which tower, it can narrow down even more, on which
11 side of the tower. And in general, these towers
12 are 120 degrees and there's three sectors on each
13 tower. So we can place a phone in that
14 geographical area at a specific time and date.

15 Q You were telling us about training you've been to.
16 Tell us about some of those trainings.

17 A I first got involved in cell phone investigations
18 back in 2001, November. Back then, there weren't
19 really many classes. Most of my training early on
20 was with engineers from Sprint, Verizon, that type
21 thing, to try to learn all I could and understand
22 these towers and these sectors and how they
23 interacted and basically how a cell phone works.

24 As the years went on and became more and more
25 important to these cases, there are a number of

1 classes now. The first one I went to was in 2007.
2 It was a cell phone investigations class, primarily
3 looking at call detail records, gleaning
4 information available off those records and putting
5 them onto a map to illustrate where a phone is
6 during a particular incident.

7 Q How many times would you say you've done that
8 throughout your career?

9 A The classes?

10 Q Actually mapped cell phone records?

11 A Probably 300 or more cell phone call detail
12 records, maps, and downloading phones, probably
13 couple of hundred at this point.

14 MR. FYALL: Your Honor, at this time the State
15 would tender Captain Scott McDonald as an expert in
16 cell phone investigations.

17 THE COURT: Any objection or voir dire?

18 MR. O'NEIL: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen
20 of the jury, Captain McDonald will be qualified as
21 an expert in cell phone investigations -- Is that
22 what you said?

23 MR. FYALL: Yes, Your Honor.

24 THE COURT: To give opinion testimony in that
25 area. You may use it in any way you see fit and

1 give it the weight and credibility you believe is
2 appropriate.

3 Yes, sir, you may proceed.

4 BY MR. FYALL:

5 Q When you were talking about your training, you
6 talked about actually working with the engineers
7 from various cell phone companies?

8 A Right. My first experience was actually here on
9 that first case back in November of 2001. It was a
10 Sprint cell phone that was the subject of the
11 investigation. And there was a local engineer that
12 still works here as far as I know down here on
13 Huger Street. I went and met with him for a couple
14 of hours and got an understanding of how the cell
15 system works in this country. You know, how when a
16 call is placed, it hits off a tower. Towers are
17 what makes the call happen. And when you place a
18 call, it hits off the strongest signal, which, in
19 general, is going to be your closest tower.

20 Q I'm going to turn your attention to this case. I'm
21 going to show you State's 241. Do you recognize
22 that?

23 A Yes. This is the cell phone of Andre Heatley that
24 I downloaded.

25 MR. FYALL: Your Honor, at this time, the

1 State would seek to enter State's 241 into
2 evidence.

3 THE COURT: Any objection?

4 MR. O'NEIL: No, Your Honor.

5 THE COURT: All right, it will be entered
6 without objection.

7 (WHEREUPON, State's Exhibit No. 241 was
8 marked for identification and received
9 into evidence.)

10 BY MR. FYALL:

11 Q You said you did a phone dump. Tell us what that
12 entails.

13 A Basically, we have a machine that -- Cellebrite
14 produces this machine, that's the name of the
15 company. We hook it up to the machine, we give it
16 a few directions, and from there it downloads the
17 contents of the cell phone for us where we're able
18 to capture phone calls, text messages, e-mails,
19 pictures, a variety of things. And as these phones
20 have gotten more technologically advanced over the
21 years, we're able to get more and more things.
22 We're now to the point where we can get information
23 from applications which are just rampant out there.
24 There's new ones coming out every day. So each
25 cell phone is like basically a mini computer these

1 days. And the information located on these phones
2 is extremely important to our investigations.

3 Q When you do a phone dump, what happens, if
4 anything, if the owner of the phone has deleted
5 some information, texts, apps, messages, whatever?

6 A The phone -- the Cellebrite machine is actually
7 able, depending on the phone, to detect any deleted
8 items, and in many instances is able to capture
9 those deleted items.

10 Q But not always?

11 A Not always, no.

12 Q I'm going to show you State's 242. Can you tell us
13 what that is?

14 A This is the dump of Andre Heatley's cell phone.

15 MR. FYALL: Your Honor, at this time the State
16 offers 242 into evidence.

17 THE COURT: Any objection?

18 MR. O'NEIL: No, Your Honor.

19 (WHEREUPON, State's Exhibit No. 242 was
20 marked for identification and received
21 into evidence.)

22 BY MR. FYALL:

23 Q In preparation for your testimony here today, did
24 you create anything to aid the jury?

25 A I did. I find it easier to produce a PowerPoint to

1 kind of illustrate some of things I'm talking
2 about. As they say, a picture is sometimes worth a
3 thousand words. And for you to see it, it might be
4 a little more meaningful than me up here talking
5 about it.

6 Q Let me show you State's 240. Can you tell me what
7 that is?

8 A This is the PowerPoint presentation I prepared for
9 this case.

10 Q All right. And would that PowerPoint help the jury
11 in understanding your testimony here today?

12 A Yes, it would.

13 MR. FYALL: Your Honor, at this time the State
14 offers 240 into evidence.

15 THE COURT: Any objection?

16 MR. FYALL: No, Your Honor.

17 (WHEREUPON, State's Exhibit No. 240 was
18 marked for identification and received
19 into evidence.)

20 BY MR. FYALL:

21 Q Captain, I'm going to ask you to step down for a
22 moment.

23 (Witness steps down.)

24 Q I'm going to have you stand on that side so she can
25 hear you. Over here. Can you tell us about this

1 slide?

2 A This is in real basic terms how a cell phone works.
3 Caller A wants to call Caller B. When your phone
4 is in the on position, it's always searching for
5 the best signal so in anticipation of you making a
6 call. So Caller A here is calling Caller B. And
7 all this happens in microseconds. She dials his
8 number, the system automatically scans for the best
9 signal, which is generally going to be your closest
10 tower. From there, it goes to a switch, which
11 verifies, Number 1, that Caller A is a valid
12 subscriber. Once that's verified, then it begins
13 searching for Caller Number B globally, where in
14 the world is this call and where is this phone
15 located. Once again, it verifies that it's a valid
16 subscriber, whatever service it may be, and then
17 locates the strongest signal or tower and completes
18 the call to Caller B.

19 This is the cell tower configuration I spoke
20 of. Most of your towers are set up like this.
21 This is Sector One, Sector Two, Sector Three. Each
22 one is broken down in 120-degree angles.

23 Q And just to be clear, you are saying a call is
24 received in a certain sector?

25 A Yeah, let's say, for instance, in those call detail

1 records, which you will see an example of in a
2 minute, that the call came in on a particular
3 tower, Sector Two. Well, we know that that phone
4 was somewhere in this area here on this side of the
5 tower versus over here or over here or some other
6 tower miles away.

7 Q And what about when it comes to 4G data?

8 A 4G data, like I said, your phone is always
9 communicating. And with these new smart phones,
10 even more so. Your phone is constantly updating
11 information from apps, from service they're
12 getting. So even though you may not be on your
13 phone talking, it's still leaving a trail of where
14 you've been. You know, if you've got WiFi and
15 you're riding by somewhere that's got WiFi, it's
16 popping that. You know, it gives a paper trail of
17 where this phone has been.

18 As I said, call detail records from cell phone
19 companies are obtained from this information. The
20 information leaves a paper trail of where the cell
21 phone has been geographically on a particular date
22 and time, as well as who the subscriber is
23 communicating with during this time period. This
24 information can then be mapped for display purposes
25 to show the area a phone was in during a particular

1 date and time.

2 Q In order to map it, what sort of information do you
3 necessarily need to have?

4 A The date, the time, the tower, the sector.

5 Q In regards to this case, were you able to get all
6 that information?

7 A Yes, I was.

8 Q Can you tell us what this is?

9 A This is an example -- this is Andre Heatley's
10 actual call detail records obtained from Verizon.
11 This switch information or the network element
12 name, the Columbia switch is where all these calls
13 were. And that's like a regional thing, so
14 anything in the Columbia area with Verizon is going
15 to be this Columbia MTX5.

16 The mobile directory number, that's going to
17 be our target number, which is Mr. Heatley's
18 number, 803-240-████. The dial digit number is the
19 number that was dialed by this phone. So on this
20 particular call, he dialed 803-933-████. Call
21 directions, either incoming or outgoing. This was
22 an outgoing call. This occurred on January 28th,
23 2016, 2120 hours, which is military time, it's 9:20
24 p.m. This is the length of the phone call, 40
25 seconds. The first serving cell site, which we

1 have a list of cell towers by number. So Tower
2 Number 127, Sector Number Three. This is the first
3 serving cell face. And Verizon actually provides
4 you with the first sector and the final sector
5 tower on each call. So you've got the first
6 serving cell site, the first serving cell face,
7 127, Sector Three, and then the last one, which is
8 identical, same sector, same tower.

9 Q In regards to Mr. Heatley's records, as far as when
10 he made his last phone call on the 28th, can you
11 show us what that is?

12 A It's going to be right here at 2120 hours.

13 Q All right.

14 A This is a program we have called Cell Hop, where I
15 can put the phone records into this system and it
16 actually maps it for me. It's a little hard to
17 tell, but this is a tower right here and this is
18 Sector Three for that call at 9:19. He's got
19 several right around 9:19, 9:20, 9:21, 9:22, 9:23.

20 So this tells us he's in this geographical
21 area right here. This line here is not finite,
22 this outside edge. He's somewhere in this area
23 here until the next tower would pick up. So
24 anywhere -- I'm magnetic today -- he's in this
25 general area right here. This is 10771 Farrow

1 Road, which is the crime scene where the murder
2 occurred.

3 The next call he makes is at 12:03 a.m. on the
4 29th. He's hitting on the tower over here near his
5 residence. It's kind of hard to see behind there,
6 but [REDACTED] Kirkstone Road.

7 Q The last phone call he makes on the 28th was at
8 9:23 --

9 A Fourteen.

10 Q And the first phone call he made after midnight on
11 the 29th?

12 A Was at 12:03 in the morning. Okay. This is the 4G
13 report here. I was talking about how your phone is
14 constantly updating and talking to the towers.
15 This has a lot more information on it than just the
16 phone calls. Obviously, he wasn't on the phone
17 from 9:24 until 12:03, so we have a huge gap there.
18 But on here, this thing is constantly updating, so
19 we have pretty consistent information coming in.

20 Q All right. Can you give the jury an overview of
21 what they're looking at?

22 A This is kind of an overview here of the travels of
23 Mr. Heatley's phone on the 28th into the 29th. It
24 starts out up here on this tower at 10332 Wilson
25 Boulevard, it will be up in Sector One. You'll see

1 this in detail on some of the other slides. And
2 from there, it starts hitting off these towers as
3 he starts making his way back home over around his
4 residence at Kirkstone and around the three ATMs
5 that were accessed over this time.

6 This is that in detail. On 1/28/16, he's
7 hitting Sector One, which is this sector right
8 here, starting at 2144. So beginning at 9:44 p.m.,
9 he's up in this area right here. I can't say he's
10 right there, I can't say he's right there. I can
11 say he's in this area right in here during those
12 times.

13 Q All right. Can you give that end time right there?

14 A 2233 hours, which is 10:33.

15 Q All right. And the crime scene is within Sector
16 One?

17 A Yes, right here. All right. Number 2, in order,
18 1/28/16, Sector Three, so he's in this sector on
19 the Killian Road tower. The Wilson Boulevard tower
20 is right up in here. So now it appears the phone
21 is moving because he's hitting off this tower.
22 2235, 2238 hours, he's on this side of Killian Road
23 right here.

24 Q I'm going to go back to the previous slide for a
25 moment. Is that the same tower?

1 A This is the tower on Wilson Boulevard.

2 Q Gotcha.

3 A This is just above the next tower. He's going to
4 hit right down here.

5 Q The next tower would be --

6 A Right. Wilson Boulevard is right up here, Killian
7 Road is right here. He's hitting right there
8 during those times, 10:35 to 10:38.

9 Q And these are in order -- you have the numbers
10 here?

11 A Right.

12 Q Is it in order of when they were hitting certain
13 towers and sectors?

14 A Right. And then continuing right on down to 2240
15 towers -- 42 hours, I'm sorry, he's hitting in this
16 sector, Sector Three, of the one right here at
17 Rabon Road.

18 Q Let's move on to Number 4.

19 A Tower at 6407 Fairfield Drive, he's hitting Sector
20 One at 1046 hours, somewhere in this area right
21 here.

22 Number 5, this is Fernandina Road over I-26,
23 2253 hours. He's hitting Sector Number Three,
24 which is this area right here.

25 Q All right. Just backing up a little bit, just in

1 chronological order here. He starts off at the
2 Wilson Boulevard tower?

3 A Right.

4 Q Moves to that tower, which is 600 Killian Road
5 tower, 5919 Rabon Road tower, and then 647
6 Fairfield Road tower?

7 A That's correct.

8 Q And then goes to Fernandina Road tower?

9 A That right.

10 Q All right. Based on your cell phone investigation
11 here, what route does it appear to you that this
12 phone was taking?

13 A It appears he's coming down 77, getting on 20, and
14 then up 26, which would be the most direct route.

15 Okay, and it starts to get a little more
16 complicated here because things are happening quick
17 around these. But Number 6 right up here, 1/28
18 into 1/29, so at 2258 hours, which is 10:58, and
19 then at 11:03, he's hitting off this sector right
20 here, Sector Two, which is Palmetto Citizens ATM is
21 located within that sector right here.

22 Q All right. Can you tell us about 7 and 10 down
23 here?

24 A 7 at 2306, which is 11:06 and 11:07 p.m., he's
25 hitting off Sector Three of this tower right here

1 on Shady Lane, which is where the Bank of America
2 ATM is located.

3 Q When you say the Palmetto Citizen ATM and the Bank
4 of America ATM, what specifically are you referring
5 to in regards to this case?

6 A These are ATMs that were accessed by the victim's
7 ATM card. Number -- what number did we leave off,
8 6? Number 8 right here, the 28th at 11:09 p.m.,
9 Section One, the tower at 419 Western Lane just
10 above the Shady Lane tower that we just showed the
11 last is up in this area.

12 Q All right. And you said before this sort of
13 expands outward?

14 A Yes. These lines are just for illustration. I
15 mean, this tower boundary may go further, may go a
16 little less. As they get closer together like
17 here, these towers are set up by a volume of calls
18 and more populated areas are going to be closer
19 together like they are here. Where out in the
20 country, you might have one there and one up here
21 because you don't have the demand. But in the Irmo
22 area, there's a lot of people and there is a lot of
23 calls, so these towers here, somewhere in here,
24 they're going to overlap because they want
25 coverage, but they don't want to blanket each

1 other. So there's going to be a little bit of
2 bleed over from this tower to that tower so there's
3 coverage there.

4 Q Thank you.

5 A And 1/28/16, Sector One, 2311 hours. Once again,
6 right in this area here.

7 10, it's bouncing down here around this area
8 at 2311 and 2315, which is 11:11 and 11:15.

9 Q All right, now, moving on to Ms. Roach's records.
10 Can you tell us about this?

11 A All right. We know from the investigation that
12 Ms. Roach was at a meeting at Walmart the evening
13 of the 28th. She got out of there around 10:00, a
14 little after 10:00. And that's where we start
15 seeing some calls. Walmart is going to be like
16 right in here somewhere. And these calls right
17 here are illustrated, 10:13, 10:14, 10:16. So her
18 phone is right in this area here.

19 Q What's this red information on the PowerPoint?

20 A Those are either text messages or other types of
21 information, but they weren't calls with tower
22 information. Could not be mapped.

23 All right. So just like before, I start here
24 at Number 1. There's the Walmart. Between 2200
25 and 2214, which is 10:00 to 10:14 p.m., her phone

1 is in this area here in Sector Three around Rivkin
2 Way. Her phone is right in there, which would make
3 sense if she was leaving Walmart.

4 Q Walmart is in Sector Three?

5 A Right.

6 Q Move on to Number 2.

7 A Number 2. Now, she's in this sector, Number 2, at
8 2216 hours. This is the tower at Whitaker Road.
9 So she's moving from this tower up into this area.
10 And this is her 4G. These aren't calls. These are
11 her phone communicating with the tower.

12 Three, between 2219 and 2221 hours, she's in
13 this area, Sector 2. So now she's left here,
14 moving this way, moving this way.

15 Q In reference to this, this is the 1600 Killian Road
16 tower?

17 A 600 Killian.

18 Q 600 Killian, I'm sorry.

19 A So she's over here at this Killian Road tower. She
20 next enters Sector Three at 2222 to 2223, this
21 sector here, Sector Three of the Lee Road tower.
22 So she's still moving this way. There's a 5 right
23 here, 2222, 2236. She's hitting right here in
24 Sector Three of this Killian Road tower.

25 Q So Sector Three would cover I-77?

1 A Right.

2 This is the tower at 10332 Wilson Boulevard.
3 There's the crime scene right there. As she's
4 approaching the crime scene area, she's hitting in
5 this sector, Number 2, at 10:23 p.m. and at
6 1:50:35 p.m. And then she then hits in this
7 sector, Number 1, at 2234 and 2237 hours in this
8 area.

9 Q Next -- 10:34 and 10:37 p.m.?

10 A Correct.

11 Q All right. I want to go back to that 10:34 and
12 10:37, I want to go back to the 600 Killian Road
13 tower. Can you tell us about 5 and 8 right there,
14 those times?

15 A Yes, 8 picks up, I believe, at 2238, 2239, 2240,
16 2241. That's when her phone is in that area there.
17 Her phone is in this area.

18 This is just another illustration what we just
19 saw down here, 5 and 8. This side of the tower on
20 Killian Road adjoining 77.

21 Q All right. Tell us about 9 and 10. And you have
22 these numbered in order of when the phone hits the
23 towers?

24 A Right. So Number 9 at 2240 hours on the 28th in
25 Sector One, which is this area here. Also

1 consistent with coming down 77.

2 Number 10 at 10:43 in Sector Three of this
3 same tower at Rabon Road, which is consistent in
4 this area here. 2240, 10:40, 519 Rabon Road. This
5 is just a closer-up, this area and then this area
6 here.

7 Q So just for clarification, Sector Nine, that goes
8 out a little further, that would cover that sort of
9 side of 77?

10 A Yes.

11 Q And 10 would cover that side?

12 A Yes.

13 Q Gotcha.

14 A Number 11, this is up 26 right here, Sector Three,
15 1/29/16 at 0010 hours and 0012 hours. The phone is
16 somewhere in this area right here.

17 Q Do you know which side of town this is?

18 A It's the Irmo, Friarsgate area. The Defendant's
19 address right there.

20 Q Tell us about 12 and 13.

21 A Number 12 at 0012, 12 minutes after midnight on the
22 29th, and 13 hours -- 13 minutes after midnight in
23 Sector Two of this tower at 903 Old Salem Church
24 Road, right up in here. This is kind of northern
25 Irmo, getting close to Ballentine.

1 Q Tell us about --

2 A Number 13, Sector One, at 14 minutes after midnight
3 on the 29th. This area right in here.

4 Q What do you have marked there in Sector One?

5 A There's a Wells Fargo that was accessed at 24
6 minutes after midnight. It's at the Ballentine
7 Walmart out there. It's in the parking lot. It is
8 a drive-up ATM at Wells Fargo, was accessed with
9 her card.

10 Q This one is not numbered, but can you tell us about
11 this right here?

12 A This is 10:58 and 1100 -- 11:00 o'clock p.m. on the
13 28th, Deandra's phone in this area right here.

14 Q All right. I'm going to back up a little bit. So
15 we have her phone beginning in that 600 Killian
16 Road tower area and also Wilson Boulevard tower.
17 And it looks like it's moving in which direction?

18 A South. It's moving -- it's basically echoing the
19 Defendant's phone movement.

20 Q Which is 77, 20, 26?

21 A Right. This is just an illustration of the
22 similarities between the two phones. This is
23 Mr. Heatley's phone, 2144, 9:44 to 10:33, he's in
24 this Sector One area. And Ms. Roach at 10:34 and
25 10:37 hours, she's in that same sector.

1 Q All right. And just for clarity, they both have
2 Verizon phones?

3 A They both have Verizon phones.

4 Q That's why they're using the same towers?

5 A Yes. This is the very last location we have for
6 Ms. Roach's phone. Sector Three at 0023 hours and
7 23 minutes after midnight on the 29th. This area
8 right here off Western Lane tower, somewhere in
9 this Friarsgate area over in this direction.
10 Another tower there, it doesn't pick up over there,
11 so it's going to be somewhere right in here.

12 Q And after that point, 12:23 a.m. on the 29th, just
13 activity --

14 A We have no more activity. The phone was dead,
15 destroyed, we don't know.

16 This is an illustration of all the Verizon
17 towers in the Columbia area. We don't have
18 everything, but this is kind of just below town,
19 Bluff Road area, all the way up. And this is used
20 to illustrate out of all the towers that either one
21 of these phones could have hit on this particular
22 evening, they hit on these up around the crime
23 scene, down 77 area, across 20, up 26 around the
24 location of these ATMs.

25 Q All right. Before you get into the specific

1 information, can you tell the jury what this is
2 sort of a shot of?

3 A This is -- one of the things we talked about that
4 we can download off these phones are instant
5 messages, text messages, e-mails, that type thing.
6 These are actually instant messages back and forth
7 between Mr. Heatley and, in this particular case,
8 family. That number there is going to belong to
9 Denise Winston.

10 Q You don't have to go line by line here, but can you
11 tell us generally what this conversation was about?

12 A This is Mr. Heatley talking about buying an AK,
13 AK-47 is the inference here, for \$350. He's kind
14 of asking her, Yes or no, should I get it. Her
15 response. Of course, he indicates, Why not. And
16 she says, No need to waste the money. And he says,
17 What about, okay, well layaway then. She says, No.
18 He says, Too late, they are doing a sale. It's
19 \$850. She will sell it for \$350, just \$60 down, so
20 yes or no. And then she says, Fine.

21 There is an actual picture of what we believe
22 is the weapon he's talking about that he sends.
23 And then he also comments, It takes 9 bullets,
24 inference 9-millimeter bullets.

25 Q And here he said that he put it on layaway for \$60

1 down?

2 A Right. This is an instant message with an unknown.
3 We don't know who this particular party is he's
4 talking to. But it says, I'm going to buy a rifle
5 next week. This is on 1/22, a couple of days
6 before this incident. Well, you take five hours
7 away from that --

8 Q I'm sorry, I meant to talk about that. Why do you
9 take five hours away from the time listed here?

10 A The UTC time is Greenwich Marine time, which they
11 are five hours ahead of us this time of year. So
12 you would subtract five hours from 4:46 a.m. So
13 he's referencing, I'm going to buy a rifle next
14 week. This party says, For what? His response,
15 I'm going to kill a (blank).

16 These are conversations with Ms. Denise
17 Winston, once again, his girlfriend, where she
18 wants to know what he's doing. It's an
19 abbreviation, WYD, What you doing? And he is
20 saying, Hold up, Vonta just shoot me some shit.

21 Q And so then he sent some screenshots of what
22 Devonta --

23 A Was saying, right.

24 Q There's more conversation about Devonta. I'm going
25 to skip that a little.

1 A Yes.

2 Q But go ahead to where the Defendant is talking
3 again.

4 A Here, the Defendant -- all right, this is Denise
5 saying, Uh, y'all doing too much. And the
6 Defendant says, I should have kept that fucking
7 dog. She says, LOL, no. He says, I want him to
8 talk shit. I want him. She's like, No, no, no.
9 There's a beef between the Defendant and Devonta --

10 MR. O'NEIL: Objection, Your Honor.
11 Speculation.

12 THE WITNESS: There appears to be.

13 MR. O'NEIL: I object to the witness
14 characterizing what he believes the text messages
15 are about. The text messages speak for themselves.

16 THE COURT: And what were -- all right, the
17 objection is sustained.

18 BY MR. FYALL:

19 Q All right, this is more conversation with Denise
20 about Devonta?

21 A Right. She's basically saying, It wasn't that
22 serious. He's indicating, It is. Because he do
23 stupid. He's the one who shot up Andre's house for
24 Ke'Yon and Ke'Yon went to jail for it. So there's
25 just back and forth. He mentions he's going to

1 kill him.

2 Q All right. That conversation stops and a new
3 begins. Can you tell us about that?

4 A Once again, Denise asked him what he's doing. This
5 is on the 28th at about 6:20 p.m., minus the five
6 hours. And he says, Laying here thinking of a
7 master plan.

8 Q Keep going.

9 A She says, No master plans, babe. That's 6:25. He
10 responds at 6:28, Yes, babe, got to get this money.
11 Murder and robbery. She got bands. Vonta
12 confirmed it the other day when she took him home.
13 Bank card the same pass code on the phone. Saying,
14 She got bands and I'm going to take it.

15 Q And she asked him who he's talking about?

16 A Yes.

17 Q And he responds?

18 A No names. The fee is watching, babe.

19 Q Fee is obviously a --

20 THE COURT REPORTER: I'm sorry, what was that?

21 Q I'm sorry. Fee is -- do you think that's a typo?

22 MR. O'NEIL: Objection, Your Honor. Calls for
23 speculation.

24 THE COURT: Sustained.

25 BY MR. FYALL:

1 Q All right. Keep going.

2 A She says, Really. He says, Babe, I need someone to
3 watch Jullie for three or four days a week. I was
4 thinking I could ask NaNa if that was cool with you
5 and I'll pay her. And he responds, WTF, for what?
6 So she can get this money. He says, Really? Is
7 Zalana one yet? She responds, No, but I'm not
8 working right now and you're not working right now
9 and we have a child.

10 Q All right. Go to the next conversation. Now, this
11 is just more conversations about money?

12 A Basically, yes. They've got a child and they need
13 money. Back up. Right here, and take six hours
14 off that, it's like 8:51.

15 Q Five hours? 9:51?

16 A 9:51, I'm sorry. Denise, once again, asked him,
17 What you doing? He responds back at 9:55, In the
18 cut thinking of a plan. Thinking about you and
19 Jullie.

20 Q And I don't want to go all the way back through
21 these slides, but if you can remember, do you
22 remember where his phone was during that 9:55 time?

23 A He's in that Sector One area where the crime scene
24 is located, the tower at 10332 Wilson Boulevard.

25 She responds, Way? He responds back, In the

1 cut. She responds, Where? And he responds -- she
2 states, Man, stop playing with me. And all you
3 thinking about is that sweet now, go home.

4 Q And, again, take it back five hours, that's
5 10:50 -- or 9:55?

6 A Right.

7 Q All right, tell us about this.

8 A This is Andre's conversation with Devonta Shuttles
9 where they kind of go back and forth from -- the
10 inference I get from reading these text messages is
11 there's some kind of disagreement.

12 MR. O'NEIL: Objection, Your Honor. Hearsay
13 and speculation.

14 THE COURT: Sustained. Just read them.

15 A Okay. This is from Devonta saying, What was said
16 about my sister? He's cut and pasted some text
17 message there.

18 Devonta -- I mean, Andre responds back that
19 she was a liar and a shit -- and shit.

20 Devonta responds back, How you supposed to be
21 my big brother, but screaming on my blood, my MF
22 sister. I ain't never spoke out of mouth about
23 your sister when it's plenty of shit I could have
24 said, but out of respect I thought we had, I kept
25 shit to myself. But for another MF to come to me

1 and tell me shit got me questioning your loyalty on
2 some real shit.

3 BY MR. FYALL:

4 Q All right. Again, both messages talking about his
5 sister, what was said about Devonta's sister by the
6 Defendant?

7 A That's correct. This just continues this
8 conversation kind of back and forth.

9 Q Okay, tell us.

10 A This is from Devonta, who says, My fault for
11 yesterday fam. I was just mad because it's a lot
12 going on right now family-wise, but I appreciate
13 you coming and being a man about it.

14 Q All right, this next line, this is conversations
15 with other people. Can you tell us just a little
16 bit about what's going on here?

17 A This is where Mr. Heatley has sent this message out
18 to several people, kind of group-type text. I
19 don't know what's going on with you and Vonta on
20 the street -- actually, this is from someone else,
21 not from Mr. Heatley's phone, this is someone to
22 Mr. Heatley -- I don't know what's going on with
23 you and Vonta on the front street. He's running
24 his mouth if he says anything to you Elijah, Nay,
25 or Cassandra, keep moving, don't say anything to

1 him, don't let him in your car, nothing. Don't
2 stop, nothing. Daddy come around there with that
3 gun, shoot him dead and don't hesitate. If you do
4 anything, let me know. Anything. I'm losing
5 patience with these dudes who think they're
6 gangsters. Please pay attention to y'all's
7 surroundings.

8 Q This next set here?

9 A It says -- a message to Mr. Heatley. Nothing much.
10 Did you text Vonta with a picture of me saying you
11 talked to me?

12 Mr. Heatley responds, Really? What else he
13 say, because I'm really about to act the F.

14 This person responds back, He was like that
15 somebody asked him did he know a girl named Autumn
16 at RV and that they sent a picture to him and was
17 like I talked to her and he came to me and was like
18 somebody told me they know you and talked to you.
19 And I was like who. And he was like, don't worry
20 about that. And I was like, really, tell me. And
21 I was like gray. And he started smiling.

22 Q And he responds?

23 A Then Mr. Heatley responds, WTF, Vonta about to
24 rest. Yes.

25 Q All right. And these are just more --

1 A A continuation of these.

2 Q -- conversations about Vonta?

3 A Same thing.

4 Q Same thing?

5 A Same thing.

6 Q All right. Can you tell us what you did here?

7 A All right. There's a Facebook message, we don't
8 know from who, that texts Mr. Heatley saying, I'm
9 outside. Well, we know from this investigation
10 that the victim in this case went over to --

11 MR. O'NEIL: Objection, Your Honor. May we
12 approach?

13 (WHEREUPON, a bench conference was held
14 in the presence of the jury but out of
15 the hearing of the jury.)

16 THE COURT: Objection sustained. Please
17 rephrase.

18 BY MR. FYALL:

19 Q All right. So there was a deleted message from the
20 Defendant's phone where someone said, I'm outside?

21 A That's correct.

22 Q What was the time of that message?

23 A 1/28 at 3:58 p.m. minus the five hours, so that
24 would be around 10:58 -- or at 10:58. And when I
25 checked the victim's cell phone location at that

1 time, at 10:58 and at 1100 hours on January 28th,
2 10:58 a.m., 11:00 o'clock a.m., her phone is in
3 this sector here.

4 Q And, again, what is this address here, 212
5 Kirkstone?

6 A That's where the Defendant lives right here.

7 Q So just to wrap it all up, a message sent at
8 10:58 a.m. that says, I'm outside. Ms. Roach, the
9 victim's phone is pinging at 10:58 a.m. on the
10 tower in which the Defendant's residence is
11 located?

12 A That's correct.

13 Q All right. Can you tell us about this?

14 A This is on a call log to Desha Anderson at
15 Yahoo.com. It appears this would be a FaceTime
16 message.

17 Q You say FaceTime? Is that why there's not a phone
18 number here, I guess?

19 A Right.

20 Q It's to an e-mail address?

21 A Yeah. Two iPhones can do FaceTime with each other.

22 Q And the time of that call?

23 A It would be five hours before that, so 10:35.

24 Q Thank you.

25 A And these are some instant messages between the

1 Defendant and Desha Anderson.

2 Desha says, Yeah, babe, what you doing?

3 He responds, About to get ready to try you
4 know what.

5 Q And just for sort of reference, you are talking
6 about the time difference here. I'm going to show
7 you State's 217, this text message from
8 Ms. Anderson says, Yeah, babe, what you doing?
9 What time is it right there?

10 A 6:16. Excuse me. And then at 6:17, About to get
11 ready to try you know what.

12 Q All right. So that's with the five hours being
13 deducted?

14 A Right.

15 Q All right. Can tell us what this is?

16 A This is a deleted message on the 29th. Well, it's
17 the 29th at 3:08. If you go back five hours, that
18 would be 10:08.

19 Q So it was deleted, but all you were able to extract
20 was that it was an instant message?

21 A Right. We didn't get the content of that message.

22 Q And that's 10:08 p.m.?

23 A Right, on the 28th.

24 This is an e-mail transaction that was
25 captured on the download. Once again, back up the

1 five hours, so that would be 1:55 a.m. on the 29th.

2 There is a response to a purchase from Michael
3 Kors. And that's the actual receipt sent by
4 Michael Kors basically acknowledging the
5 transaction. Dear Deandra, reply to confirm your
6 order.

7 Q All right. And, again, this is from the
8 Defendant's phone?

9 A Yes.

10 Q Correct? Here would be --

11 A It says, Dear Deandra. And that's just more of
12 the receipt. Billing address, Deandra Roach.

13 Q All right. So Deandra Roach's information?

14 A Right.

15 Q On the billing address. Are you familiar with the
16 shipping address information?

17 A Right. Stanford Street. That was the grandmother
18 of the Defendant. That was for a watch, Michael
19 Kors watch.

20 Q All right, you can have a seat.

21 (Witness returns to witness stand.)

22 MR. FYALL: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. FYALL:

25 Q Last thing, Investigator, there is -- I'm sorry,

1 Captain McDonald. There is -- on the victim's
2 phone records, there are a series of calls. That
3 will be on State's Exhibit 56. There are a series
4 of calls from one number over and over and over
5 again that appear to go unanswered. Are you able
6 to look at that?

7 A Yes. That is going to be Deandra's mother trying
8 to make contact with her.

9 Q Did she ever pick up the phone?

10 A No.

11 MR. FYALL: Beg the Court's indulgence.

12 (Pause.)

13 MR. FYALL: No further questions.

14 THE COURT: All right. Yes, sir?

15 CROSS-EXAMINATION

16 BY MR. O'NEIL:

17 Q Investigator McDonald, I'm not as good with
18 technology, but I'll try. We know from your cell
19 phone investigation here that according to your
20 records, you were able to obtain Mr. Heatley's cell
21 phone is from the time of 9:44 to 10:33 is bouncing
22 off Sector One right here?

23 A May I step down?

24 Q Yes, sir.

25 (Witness steps down.)

1 Q That's from 9:44 to when?

2 A 10:33.

3 Q So I know this is the victim's cell phone right
4 here. We know from your investigation,
5 Mr. Heatley's phone is in this sector here. This
6 is the crime scene here, correct?

7 A Right here.

8 Q So we know that Mr. Heatley's phone is in this
9 sector, Sector One, above these two crosshairs,
10 right?

11 A Right.

12 Q From 9:44 to 10:33, correct?

13 A Correct.

14 Q All right. And the only time the victim's cell
15 phone pings in this particular section is at 10:34,
16 correct?

17 A Well, 10:34 and 10:37.

18 Q And 10:37, correct?

19 A Correct.

20 Q So we know her cell phone is still pinging in the
21 area in the sector above the crime scene at 10:37,
22 correct?

23 A I can't say above the crime scene, I can say above
24 this line, somewhere in this area.

25 Q And the crime scene is above this line, correct?

1 A The crime scene, yes.

2 Q So we know -- I apologize. The victim's cell phone
3 is pinging in the area above this line?

4 A Correct.

5 Q At 10:37?

6 A Correct.

7 Q At 10:35, where is Mr. Heatley's phone?

8 A Sector Two of the Killian Road tower.

9 Q And where is that? Can we go down one? So we
10 know -- and this is the victim's phone right here,
11 correct?

12 A This is the victim's phone. 2235 hours, he's in
13 Sector Three at the Killian Road tower.

14 Q So at 10:35, he's here, correct?

15 A Yes, sir.

16 Q I apologize. Sector Three of the tower at 600
17 Killian Road?

18 A Correct.

19 Q But and at 10:37, the victim's cell phone is
20 pinging in a cell tower above this location?

21 A It's also pinging in this --

22 Q And tell me how that's possible. How far --

23 A During that minute, if the phone's moving, it would
24 hit in one tower and then come down to the next
25 tower.

1 Q But also at 10:37, it stays -- it stays on this
2 tower. We have 10:36 all the way to 10:41?

3 A No, no, no. To right here. And that is 5, and
4 then Number 8 picks up again right here.

5 Q And where is that, 6?

6 A For Deannandra's?

7 Q Yes.

8 A Sector Two of the Wilson Boulevard tower.

9 Q And where is that tower, the location of that
10 tower?

11 A Here.

12 Q Where?

13 A It would be above this.

14 Q So how would it be -- that's what I'm trying to --
15 help me out here. At the 6 spot that you denote
16 here, what time was that? What time do you denote
17 it is hitting Wilson Boulevard?

18 A 10:23.

19 Q 10:23. And then?

20 A And at 10:35.

21 Q 10:35. Okay. So it's in what block of Wilson
22 Boulevard?

23 A Well, somewhere in this area here. I can't say
24 necessarily in the 10,000. It could be further
25 south as well.

1 Q And that location is where?

2 A It would be above here.

3 Q So where is the crime scene in relation to that
4 tower?

5 A (Indicating.)

6 Q See if we can get a better, more general one.
7 Here -- all right. This is more of a universal one
8 here?

9 A Kind of an overview.

10 Q So let's look at it from an overview state of view.
11 We know that from 9:44 to 10:33, Mr. Heatley's
12 phone is in the section -- the top section of this
13 tower right here, right, Section One?

14 A That's correct.

15 Q All right. That's from 9:44 to 10:33?

16 A Correct, 9:44 to 10:33.

17 Q So 9:44. He's in this sector here above these two
18 crosshairs?

19 A Correct.

20 Q And the next thing for him is down here in this
21 section right here, correct, Sector Three of this
22 tower right here?

23 A At Killian Road, yes.

24 Q So at 10:33, he's last here, and at 10:35, his
25 phone was last here?

1 A Correct.

2 Q At 600 Killian Road, correct?

3 A And at 10:38 as well.

4 Q But we know that the victim's phone, cell phone is
5 up here at 10:44 -- I'm sorry, 10:34, it is in
6 Section One up here on Wilson Boulevard, correct?

7 A At what time?

8 Q 10:34?

9 A Correct.

10 Q And at 10:37?

11 A Correct.

12 Q So at 10:37, the victim's phone is still pinging
13 above this -- above the crosshairs of the crime
14 scene, correct? But at 10:35, Mr. Heatley's cell
15 phone is pinging well below the crime scene, fair
16 enough to say? 10:35, Mr. Heatley's cell phone is
17 down here?

18 A Correct.

19 Q How many miles away is 600 Killian Road from 10332
20 Wilson Boulevard? Do you know that?

21 A I don't know that off the top of my head, no.

22 Q But it's down -- and this over here is 77, right?

23 A Right.

24 Q So it's down some part of 77?

25 A Yes.

1 Q Some distance down 77. And the crime scene is kind
2 of tucked away up there in Farrow Road. It's not a
3 direct access from the crime scene to 77?

4 A Right.

5 Q You have to get on the main road here, then jump on
6 77?

7 A Right.

8 Q And then come down here, fair enough?

9 A Correct.

10 Q So we know at 10:35, Mr. Heatley's cell phone is
11 down here in Sector Three and at 10:37, her cell
12 phone is pinging way up here above, above these two
13 crosshairs of the crime scene. They're not in the
14 same sector?

15 A Not at that particular time.

16 Q In fact, at 10:42, Mr. Heatley's cell phone is at
17 519 Rabon Road, correct?

18 A Correct.

19 Q And that's down here?

20 A Right.

21 Q And that's Sector Three, right?

22 A Right.

23 Q So that's here?

24 A Right.

25 Q And that's 10:42?

1 A Correct.

2 Q At 10:41, where is the victim's cell phone ping
3 off of? I'll save you some time. It's 600 Killian
4 Road, Sector Three, right? 10:41?

5 A Yes.

6 Q So Mr. Heatley was here and the victim's cell phone
7 was in 519 Rabon Road, Sector Three, at 10:42,
8 correct?

9 A Correct.

10 Q And the victim's cell phone was in a cell phone
11 tower up the road here. Do you know how far away
12 519 is from --

13 A Beginning at 2238, 2239, 40 and 41, her phone was
14 hitting in the same sector.

15 Q And from 36, 37, 38, 39, 40, and 41, it was hitting
16 in 600 Killian Road here?

17 A From 37 on, it's hitting Killian Road.

18 Q Yes. And we know from -- at 10:36, 10:38, 10:39,
19 10:40, 10:41, her cell phone was hitting off Sector
20 Three at 600 Killian Road?

21 A Correct.

22 Q And we know at the same time, at 10:42,
23 Mr. Heatley's cell phone is in a different cell
24 tower, correct?

25 A This area right here.

1 Q And that's different, correct?

2 A Well, yeah, a minute later if you're traveling,
3 it's very possible.

4 Q I'm not asking you all that. I'm asking you a
5 simple question. He's hitting in a different cell
6 phone tower a minute apart from her, correct?

7 A He is hitting an adjoining sector to where her
8 phone is.

9 Q And --

10 A A minute later.

11 Q It is a different cell tower, correct? You don't
12 how -- so you don't know how far -- he can be
13 anywhere in this sector, correct?

14 A Correct.

15 Q And that could be anywhere from until basically he
16 went into the next cell phone tower?

17 A Right. You go about halfway here, and that's where
18 this one will start picking up.

19 Q And you don't know where those boundaries are?

20 A No. Only an engineer can.

21 Q You can be here, you can be here. And if this
22 phone is pinging in this sector, that person could
23 be here, correct? Anywhere --

24 A Below this line --

25 Q Anywhere below this line, that's where she can be

1 at, correct?

2 A Anywhere before this tower.

3 Q And that person in this sector could be anywhere
4 below this line to where this tower picks up,
5 correct?

6 A It could.

7 Q So these are two adjoining towers. One person
8 could be coming down 77 -- this is 77, correct?

9 A Correct.

10 Q And the other person could be on 20 going this way,
11 and there will still be two adjacent towers?

12 A No. If you're on 20, you would be picking up on
13 this tower. You're probably --

14 Q What does this tower cut off at?

15 A It's going to be right in this general area here.

16 Q But you don't know how far --

17 A I can't give you an exact location.

18 Q You can't tell. All right. I noticed when I
19 looked at the records here, we have 10:22. Where
20 do you have the victim at at 10:22? We can go back
21 and try to find it here, but at 10:22 --

22 A 600 Killian Road at Sector Three.

23 Q Wasn't there also a Lee Road at the same time,
24 right around that same time, at 10:22?

25 A Yes, right, 10:22, 10:23.

1 Q How --

2 A If the phone is traveling, it can bounce between
3 the two, whichever it's getting the strongest
4 signal from.

5 Q That's what I'm asking you, because at 10:22, you
6 have down here in Sector Three, 600 Killian Road,
7 correct, at the lower left sector?

8 A Uh-huh.

9 Q But then at the same time of 10:22, 10:23 here, we
10 have her in the upper sector of this, correct?

11 A Correct.

12 Q So your general kind of motion would be that she
13 traveled this way, this way, and then down this
14 way? Is that what the cell phone towers are
15 leading you here, two, three, four, five? Correct?

16 A Yes.

17 Q So this is at 10:16, 10:22, and then 10:22 again,
18 then 10:36, 10:36. But then we have her at 10:34
19 up near the crime scene?

20 A Correct.

21 Q So we have her going here -- when I say here, from
22 sector -- from 130 Whitaker Road to near Killian
23 Road, correct?

24 A Right. From this area --

25 Q We both are touching here. So we have got her

1 going from 130 Whitaker Road over here to 600

2 Killian?

3 A Right.

4 Q Up here towards Lee?

5 A Right.

6 Q Down towards Killian?

7 A Right.

8 Q And then back up momentarily up here above the
9 crime scene immediately back down towards the crime
10 scene?

11 A Not necessarily momentarily, she's there for --

12 Q Well, no, sir, because the phone only hit there
13 from 10:34 to 10:37, correct?

14 A Yeah, that's what I'm saying, she was there for
15 more than just a minute. 10:34 to 10:37, we know.

16 Q But then she also hit down here at 10:36 and 10:37?

17 A No -- yes, 10:36.

18 Q How is that possible?

19 A Because the phone is moving.

20 Q Well, how would she be there at 10:37 -- she hit
21 here at 10:37, correct?

22 A Correct.

23 Q But then you have her below the crime scene at
24 10:36?

25 A As you're traveling, it's, like I said, it's

1 hitting the closest strongest tower. Why it hit
2 here versus there, it's getting a stronger signal.

3 Q Fair enough. What you're saying, basically, is
4 sometimes the phone bounces from tower to tower,
5 depending on where the phone gets the strongest
6 signal?

7 A Yeah. The way it is designed is, it wants to give
8 you the best call quality, so if the phone is
9 moving, it's constantly searching for the best
10 signal. So it may jump down to the next tower if
11 it's got a stronger signal at that point.

12 Q That can throw off -- sometimes can throw off your
13 mapping of what's going on?

14 A Well, I'm only putting on the map what Verizon is
15 giving me. I don't make any of this up. This
16 is -- they give me directions, and I put the
17 directions on a map.

18 Q And I'm not saying you are making it up, what I'm
19 saying is it appears not to be as consistent. If
20 she was pinging off a cell phone tower at 10:37 and
21 then pinging off a lower one at 10:36 here, that
22 makes no sense to me.

23 A Well, it depends on what the phone was doing. If
24 the phone was moving, then that makes sense, yes.

25 Q But that needs some explanation because it appears

1 to be in two different cell phone towers at two
2 different times.

3 A Well, you know, a minute is 60 seconds. So if the
4 minute and one second she's hitting this sector at
5 this tower, that phone is traveling and it makes it
6 to that next sector before the minute is up, it is
7 going to register at the same time.

8 Q I understand that, but your general assumption is
9 she is going south, correct, traveling south down
10 77?

11 A Correct.

12 Q And you would agree with me, it's not possible for
13 her to be in this sector at 10:36 if she's
14 traveling south, but be in this sector at 10:37?

15 A Depending on what's happening here. You know, if
16 the phone was heading this way, then it goes back
17 up and then changes direction again. I mean, I --

18 Q You don't know?

19 A I can't say that.

20 Q You don't know?

21 A Yes.

22 Q All right. And I think lastly, Sergeant McDonald,
23 and I'll leave you alone here. There are no phone
24 calls you were able to ascertain between Ms. Roach
25 and Mr. Heatley?

1 A No, they were conversing via Snapchat.

2 Q That's what you assume from your investigation, you
3 don't know that?

4 A That's not what I assume, that's what we learned
5 during this investigation.

6 Q You don't have personal knowledge of that, do you?

7 A I have Investigator Gonzalez's knowledge, who
8 interviewed a witness who was shown the Snapchat
9 conversations between them.

10 Q When you dumped the phones, you didn't see any
11 phone calls between --

12 A No, because Snapchat is an app and those messages
13 disappear.

14 Q Like I said before, you cut me off here, there were
15 no phone calls you dumped from Mr. Heatley's phone
16 and Ms. Roach's phone between the two of them?

17 A There were no phone calls.

18 MR. O'NEIL: That's all I have.

19 (Witness returns to witness stand.)

20 THE COURT: Hold on one second.

21 I'm sorry, are you done with this witness?

22 MR. O'NEIL: One moment.

23 (Pause.)

24 MR. O'NEIL: That's all I have, Your Honor.

25 THE COURT: All right. Yes, sir?

1 MR. FYALL: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FYALL:

4 Q Now, you were talking with Mr. O'Neil about
5 adjoining sectors. Can you tell us a little more
6 about how that works?

7 A Can I step down?

8 Q Yes.

9 (Witness steps down.)

10 A The phones in this area here or in this area, now,
11 as it begins to move, it's going to start getting
12 picked up by this tower here, which is the Killian
13 Road tower we discussed. And if the phone enters
14 this area and then backtracks, I mean, it could hit
15 here and hit here during that same timeframe very
16 easily. It just depends on what that phone is
17 doing. You know, the thing that you don't want to
18 see, obviously, it wouldn't make any sense is if
19 the phone is in this area and a minute later
20 hitting over here. I can't explain that. I don't
21 think Verizon could either. But it's not doing
22 that, it's hitting in an adjoining sector. And if
23 the phone starts down and then the phone changes
24 direction for some reason and goes back, yeah, it
25 could easily hit this sector and then that sector

1 before coming back down and eventually following
2 over to Irmo.

3 Q Can you tell us what happens, let's say, if a phone
4 is sort of on the borders of the sectors?

5 A Like I said, there's some overlap, so it's very
6 easily -- this can overlap and the tower coming
7 this way might overlap. That's where it can get
8 the cross signals as well. They're wanting this to
9 be -- they don't want you to drive from this sector
10 to that sector and there be a 2-second gap. They
11 want that call to be consistent, so they put these
12 towers for the coverage areas just to meet up and
13 just slightly overlap each one so you get maximum
14 coverage and you don't drop the call. We all know
15 when you get way out in country sometimes, the
16 coverage isn't so great. That's because there is a
17 gap. They need another tower out there. If you're
18 going from one sector to another sector and there's
19 that gap, maybe a quarter mile, you lose that phone
20 and you have to redial it and it picks up again.

21 Q And so in your opinion, again, as a cell phone
22 investigations expert, can you tell us what
23 conclusions you draw about the path of her cell
24 phone and the path of his cell phone?

25 A It's my opinion that these two cell phones leave

1 this area around the crime scene and they are
2 consistent with the towers they're hitting on the
3 way back to Irmo. And then once in Irmo, both
4 phones bounce around at these three different ATMs
5 at the time of the access until that phone finally
6 goes dead about 12:30 -- 12:23, something like
7 that. That's the last thing that we have.

8 MR. FYALL: That's all. Thank you.

9 THE COURT: You said that's all you have?

10 MR. FYALL: Yes, ma'am.

11 THE COURT: All right. Sir, you may step
12 down.

13 (Witness steps down.)

14 THE COURT: Do y'all need a break?

15 All right. Call your next witness.

16 MR. GOLDBERG: The State calls Cynthia Roach.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, and raise your right hand, please.

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the
22 testimony you are about to give in this case will
23 be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. Have a seat in the
2 witness stand, please.

3 (Witness seated.)

4 THE CLERK: State your name for the record.

5 THE WITNESS: Cynthia Roach.

6 CYNTHIA ROACH,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GOLDBERG:

10 Q Ms. Roach, good afternoon.

11 A Good afternoon.

12 Q I want to talk to you a little bit about Deannadra.

13 A Okay.

14 Q How old was Deannadra?

15 A Eighteen.

16 Q Where did she live?

17 A With me and my husband.

18 Q And where -- what part of town did you guys live
19 in?

20 A Northeast, Brookhaven.

21 Q Brookhaven?

22 A Yes.

23 Q And back in January of 2016, Deannadra was working
24 at Walmart, correct?

25 A Correct.

1 Q And were you familiar with her work schedule at the
2 time?

3 A Yes.

4 Q Okay. And on January 28th, did you speak to her
5 that day?

6 A I did.

7 Q Did she go to work earlier that afternoon?

8 A She did.

9 Q Was that about 1:00, 2:00 o'clock, somewhere in
10 there?

11 A I spoke with her between 1:00 and 2:00, and she had
12 to be to work at 5:00.

13 Q She had been at work for a meeting, I guess,
14 earlier that day?

15 A Correct.

16 Q And you spoke to her after that meeting between
17 1:00 and 2:00 o'clock?

18 A Correct.

19 Q And she had to be back at 5:00 o'clock for her
20 shift?

21 A Yes.

22 Q And when you spoke to her at that time, I mean,
23 what did you talk about?

24 A I just asked her how did the meeting go. And she
25 just went to explain that they talked about them

1 getting a raise.

2 Q And was it common for you to speak to her before or
3 after her job at Walmart before her shift?

4 A Yes.

5 Q And can you explain that a little bit, about how
6 often that would happen?

7 A I spoke to my daughter, my children multiple times
8 during the day just to check on them and see how
9 things are going.

10 Q And so, ordinarily, when she would leave her job at
11 Walmart, would you speak to her?

12 A Yes.

13 Q Would that be regardless of whether she was coming
14 home or not?

15 A Correct.

16 Q And on the 28th, January 28th, 2016, did you speak
17 to her after her 10:00 o'clock shift?

18 A No, I did not.

19 Q Did you attempt to speak to her?

20 A I did.

21 Q How did you do so?

22 A I called -- actually, I fell asleep and I woke up,
23 it was 11:13. And I looked, I said I hadn't talked
24 to Dee Dee. So I went to go call. I dialed her
25 phone number, and it went to voicemail.

1 Q Went straight to voicemail?

2 A Went straight to voicemail.

3 Q Approximately how many times?

4 A I don't know. I called all night long, and it kept
5 going to voicemail.

6 Q The next morning, what did you do?

7 A I got up and I continued calling the phone. And
8 then my daughter and one of my neighbors, we went
9 up to Walmart and I spoke with the manager. And I
10 said, My daughter didn't come home and I was
11 wondering if anyone know where she was. And after
12 that, no one knew. And then I said, Well -- I
13 called the deputy out to do a report.

14 Q You filed a missing person's report?

15 A I did.

16 Q And you gave them basic information about her?

17 A I did.

18 Q What kind of car she drove and where she lived?

19 A Yes.

20 Q Phone number, things like that?

21 A Yes.

22 Q And what, if anything, at that point -- and this
23 deputy that you met with, that was when you were at
24 Walmart?

25 A Yes.

1 Q What information, if any, did you give that deputy
2 about Deandra's social media activity?

3 A I didn't give him any social media activity.

4 Q And at some point thereafter, you went back home,
5 yes?

6 A I did.

7 Q And contact was made with you by, I believe
8 Investigator Gonzalez and Torres, is that right?

9 A It was so much going on, I don't remember.

10 Q You had some people come to your house, though?

11 A I did.

12 Q Correct?

13 A I did.

14 Q Including the Coroner's Office?

15 A Yes.

16 Q And you spoke to them, correct?

17 A It was maybe five or six people. I did speak to
18 them.

19 Q Okay. And when asked about any associates of
20 Deandra or people that may be helpful to talk to,
21 what names did you provide?

22 A I gave them Andre Heatley, A.J., and Kelvin Davis.

23 Q Okay. And did you also tell them that Deandra
24 also had a boyfriend at the time as well?

25 A I did. Shanard Stokes. But he was in North -- he

1 lived in North Carolina. He was going to school.

2 Q And when they were talking to you, when you had all
3 these people in your home, at some point while they
4 were there, they notified you that they had found
5 Deannandra, is that correct?

6 A Yes.

7 Q And that she had been found off Farrow Road?

8 A Yes.

9 Q In talking to the folks at your house after they
10 notified you, including the Coroner's Office,
11 there's been some question about what you may have
12 said to the coroner about Deannandra and her
13 activity. Now, you had already been notified about
14 some financial activity of hers, correct?

15 A Correct.

16 Q And that her card was attempted to be used several
17 times over the course of the night?

18 A Correct.

19 Q And had been unsuccessful at various ATMs, is that
20 right?

21 A Correct.

22 Q And that there was a watch that was purchased, a
23 Michael Kors watch that was purchased with her card
24 over the course of the night, correct?

25 A Correct.

1 Q A men's watch. What information did you tell to
2 the Coroner's Office, to law enforcement, to anyone
3 about Deandra's use of Facebook since the time you
4 last talked to her?

5 A I didn't say anything about social media. I just
6 told them the last time I spoke with my daughter
7 was on the 28th between 1:00 and 2:00 o'clock in
8 the afternoon.

9 Q Now, there was testimony from the Coroner's Office
10 that you told I believe Deputy Coroner Neeley that
11 Deandra had made a Facebook post at 4:00 a.m.,
12 that was the testimony. Did you ever tell anyone
13 that?

14 A No, I did not.

15 Q How can you be sure that you did not say that?

16 A I know I didn't say anything like that. I'm not
17 sure where they got it from. But I did tell
18 them -- they asked me when was last time I saw or
19 spoke to my daughter, I didn't see her any on the
20 28th, but I did speak with her between 1:00 and
21 2:00 in the afternoon, and that's the last I talked
22 to her.

23 Q Deandra and Mr. Heatley, it has been testified to,
24 they had kind of an on-again/off-again
25 relationship, is that right?

1 A I'm not sure.

2 Q Okay. When Deannandra would go see Mr. Heatley or
3 meet up with him, would she tell you about it?

4 A No.

5 Q Why not?

6 A Because she knew we didn't approve of him.

7 MR. GOLDBERG: One moment, please.

8 (Pause.)

9 MR. GOLDBERG: Thank you. Those are all my
10 questions.

11 THE COURT: Yes, sir.

12 MR. O'NEIL: No questions, Your Honor.

13 THE COURT: All right, you may step down.

14 (Witness steps down)

15 THE COURT: All right. Does anybody want to
16 take a break? Let's take about five minutes.
17 Let's take about five minutes. Please do not
18 discuss the case.

19 (WHEREUPON, the jury retires to the jury
20 room at 3:57 p.m.)

21 THE COURT: Let's all take about five or ten
22 minutes. Let me see the attorneys one second.

23 (WHEREUPON, a bench conference was
24 held.)

25 (WHEREUPON, a break was taken.)

1 THE COURT: Are you ready to bring them on in?

2 MR. GOLDBERG: Just one thing to put on the
3 record, Your Honor. State's 136 and 135 previously
4 marked for identification, State's 135 is the video
5 footage from Palmetto Citizens ATM, and 136 is the
6 footage of the Ballentine/Irmo. Mr. O'Neil
7 indicated to me that the Defendant is stipulating
8 to the admissibility of these two items.

9 THE COURT: Is that correct?

10 MR. O'NEIL: Yes, Your Honor.

11 THE COURT: All right. Those will be entered
12 without objection.

13 MR. GOLDBERG: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit Nos. 135 -
15 136 were marked for identification and
16 received into evidence.)

17 THE COURT: All right. Are you ready to bring
18 them in?

19 MR. GOLDBERG: Yes, ma'am.

20 THE COURT: All right, bring them in.

21 (WHEREUPON, the jury came into open
22 court at 4:19 p.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Call your next
25 witness.

1 MR. GOLDBERG: The State calls Investigator
2 Aubrey Torres.

3 (Witness approaches.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about to give in this case will
6 be the truth, the whole truth and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat in the
10 witness stand, please.

11 (Witness seated.)

12 THE CLERK: State your name for the record.

13 THE WITNESS: Aubrey Torres, T-O-R-R-E-S. It
14 was formerly Taylor at the time of this case.

15 AUBREY TORRES,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q Where are you currently employed?

20 A The Richland County Sheriff's Department.

21 Q How long have you been employed there?

22 A Ten years.

23 Q Can you describe for the jury what it is you've
24 done over those ten years?

25 A I started off in the street as a road patrol

1 officer. After a couple of years, I moved on to
2 the Community Actions Team. From there, I was a
3 field training officer for the deputies that you
4 see coming out of the police academy. After that,
5 I was a supervisor on the street, and I was in
6 charge of about five patrol officers per shift.
7 And then from there, I moved to investigations.
8 I've been in investigations for about four years.
9 And within investigations, I have been in several
10 divisions, such as burglary, sex crimes, and now
11 major crimes.

12 Q And you're currently investigating major crimes, is
13 that right?

14 A I am.

15 Q And how did you come to be involved with the
16 investigation regarding the Defendant, Andre
17 Heatley, and the victim, Deannadra Roach?

18 A Back in 2016, I was assigned -- I was in the
19 Burglary Unit and at that time, I was on the
20 secondary rotation. We have primaries and we have
21 secondaries when it comes to homicides. I was
22 fairly new to investigations, so I was a secondary
23 at that time. I have currently, for the last two
24 and a half years, been a primary homicide
25 investigator, but during this case, I was a

1 secondary. So I was pulled from the secondary list
2 to assist Investigator Gonzalez.

3 Q And he was primary?

4 A He was.

5 Q All right. And once you were notified, did
6 actually respond out to the crime scene?

7 A I did.

8 Q And upon arrival, what did you do at the crime
9 scene?

10 A At that time, the crime scene had already been
11 established. Investigator Gonzalez was already
12 there. There were multiple people with the
13 Richland County Sheriff's Department assisting as
14 far as crime scene responding units. I was
15 basically collecting information of what we had
16 already gathered. My role is to start the
17 investigative process, to see what we have at that
18 moment and to see where we go from there.

19 Q What was the general information that you had at
20 this point about the case?

21 A I learned that we had a missing female that was
22 reported by her mother the day before, and that
23 Investigator Molly Nations was working that case
24 and she had collected some information. She also
25 had some possible suspects at that time. And we

1 also had some bank information. We also had some
2 ATM photographs as well at that time. We had
3 evening shift investigators that were working
4 ongoing to get footage from where she worked. And
5 so we were starting to devise a plan of action of
6 where we were going to start executing at that
7 point.

8 Q And once it was determined that the body that was
9 located on Farrow Road was, in fact, Deandra
10 Roach, what steps as the lead investigator of the
11 case do you have to take from an identification
12 standpoint?

13 A It was determined at that point, because me,
14 Investigator Gonzalez, and Deputy Coroner Neeley, I
15 know her as Ann, so --

16 Q Neeley.

17 A Neeley, there you go. Were still at the scene and
18 proper notification had not been made to Ms. Roach.
19 We had to go do that. So that was first and
20 foremost that we had to notify Ms. Roach.

21 Q And when you say you have to notify Ms. Roach, I
22 mean, describe for the jury how that process works
23 and what you have to do.

24 A We, obviously -- it's twofold. Any time that you
25 have a missing person's case that, in fact, turns

1 out to be the person you find is deceased, you have
2 to notify the family. Obviously, the coroner was
3 with us. That's usually the coroner's job, but we
4 decided we were going to do it together. And then
5 on a criminal investigation standpoint, there's
6 nobody but the family that can give us more leads
7 than the family. So our job as investigators is to
8 find out who killed Deandra Roach and who was
9 possibly responsible for it. So we decided to do
10 it together. And that is what we did.

11 So that was our very next step. We did go to
12 [REDACTED] Wilkerson Drive, which was in Richland County,
13 and we made contact with Ms. Cynthia Roach and Mr.
14 Roach, and I believe her brother was there, and
15 confirmed that her daughter was dead.

16 Q And did you attempt to gather additional
17 information from the Roach family at that time?

18 A I did. I'm the one that primarily spoke with
19 Ms. Roach while Investigator Gonzalez spoke with
20 Mr. Roach. He went upstairs. He asked Mr. Roach
21 for consent to go upstairs and look in Ms. Deandra
22 Roach's room. A lot of times in investigations,
23 there could be any type of clues or evidence. I
24 mean, we're looking -- at this point, this is very
25 preliminary. We don't really have a lot to go on.

1 We're looking for anything that can help us.

2 So Investigator Gonzalez went upstairs with
3 Mr. Roach to look in her room. There may have been
4 letters, there may have been another cell phone.
5 There may have been anything that could help us at
6 this point. So he handled that while I spoke with
7 Ms. Roach downstairs to collect any friends that
8 she may know, any type of leads that we can go off
9 of, and that is what I did.

10 Q Regarding leads, what information, if any -- while
11 you and Gonzalez and the Coroner's Office were
12 present, what information, if any, was provided by
13 Ms. Roach about any social media activity by
14 Deandra?

15 A She didn't give me any social media activity. The
16 only thing that she gave me was her Facebook name,
17 which is Dee Dee Booth. That was it. That's all
18 she gave me. And she said Andre Heatley's name was
19 A.J. Heatley. That was it. That's the only thing
20 that I asked for.

21 Q And so she gave you also the name A.J., Andre
22 Heatley?

23 A Correct.

24 Q And then also she mentioned Kelvin Davis, correct?

25 A She did.

1 Q And I believe Kelvin Davis's child's mother, Ivory
2 Fleming?

3 A Correct.

4 Q And so from there, you're off to -- generally
5 speaking, to run it down and see what you can find,
6 correct?

7 A Right. She mentioned friends, which was an Ashley
8 Gadson. She described her as speaking to her. So
9 we -- obviously, that's a person that we want to go
10 speak to immediately, so that's what we did. We
11 went and spoke to her, uh-huh.

12 Q And you also talked to Brittany Carroway, another
13 friend of the victim?

14 A Absolutely, yep.

15 Q And Brittany was actually able to identify
16 Mr. Heatley from the ATM photos, is that correct?

17 A Yes, she described him in the ATM photo by his
18 facial -- one of the facial features and by one of
19 the pairs of clothing he was wearing. And she gave
20 a specific reason of the pair of clothing he was
21 wearing, giving a specific incident.

22 Q And that was the red shoes, correct?

23 A Correct.

24 Q All right. And she -- well, moving on. So once
25 you acquired this information about who it is

1 that's believed to have used the victim's card in
2 these ATM photos, at this point, I believe you guys
3 obtained a search warrant for Mr. Heatley's
4 residence, is that right?

5 A Yes. It was collected afterwards. I believe
6 Investigator Faust -- I'm not sure whose name was
7 ascertained on the search warrant, but a search
8 warrant was ascertained for Andre Heatley's
9 residence.

10 Q And did you actually then go and participate in
11 setting up to go serve the search warrant on his
12 residence?

13 A Yes, as we were staging to go execute the search
14 warrant.

15 Q And that was the Kirkstone residence, correct?

16 A Yes, [REDACTED] Kirkstone.

17 Q Okay. And so tell us about your involvement once
18 Mr. Heatley began to make his way towards having
19 contact with you all on that night?

20 A So as we all were staging to go execute the search
21 warrant, it was relayed to the execution team that
22 Mr. -- or a male was leaving the residence that we
23 were getting ready to go do the search warrant in a
24 white car that was described in the search warrant.
25 It was relayed by Sergeant Faust, and that it was

1 leaving the residence heading towards exactly where
2 we were staged.

3 At that point, we all got in our vehicles. We
4 were at a gas station less than, I guess, half a
5 mile from where the residence was. I was in the
6 vehicle with Investigator Gonzalez. At that point,
7 Mr. Heatley pulled into the Burger King gas
8 station. Sergeant Faust is the one that stopped
9 Mr. Heatley. From there, I kind of held back and
10 let Investigator Gonzalez and Sergeant Faust and
11 the other investigators take custody of
12 Mr. Heatley. And Investigator Gonzalez brought him
13 back to the vehicle where me and Investigator
14 Gonzalez were. So I didn't really have too much
15 involvement of actually obtaining Mr. Heatley. I
16 kind of held back. And he was brought to the front
17 seat of Investigator Gonzalez's unmarked Ford
18 Explorer.

19 Q And you later learned that upon being detained,
20 Mr. Heatley indicated that he had a firearm in the
21 glove compartment of his car?

22 A I did learn that.

23 Q Okay. And so once he gets into Gonzalez's car -- I
24 believe he was in the front seat, correct?

25 A Correct.

1 Q And you were in the back seat?

2 A I was.

3 Q And Investigator Gonzalez was in the front seat as
4 well?

5 A Correct.

6 Q And once he was placed in Gonzalez's vehicle, what
7 was the conversation at that point?

8 A He -- Investigator Gonzalez -- well, initially,
9 when he sat in the front seat, he didn't say any
10 questions, he didn't ask why he was being detained,
11 which is -- he didn't say, What are you doing, why
12 am I here, he didn't say anything. Investigator --

13 MR. O'NEIL: Objection, Your Honor. May I
14 approach?

15 (WHEREUPON, a bench conference was held
16 in the presence of the jury, but outside
17 the hearing of the jury.)

18 THE COURT: The objection is overruled.

19 MR. GOLDBERG: Thank you, Your Honor.

20 BY MR. GOLDBERG:

21 Q Okay. So initially he doesn't say anything, and
22 then Investigator Gonzalez begins talking to him,
23 correct?

24 A Correct. He then -- Investigator Gonzalez explains
25 to him that we are investigating the disappearance

1 of Deanndra Roach and asked him why he is using her
2 stolen ATM card.

3 His response was: My parents told me I should
4 always have an attorney.

5 That is when Investigator Gonzalez pulled out
6 an Advice of Rights card that all investigators are
7 issued, that we always carry with us at all times,
8 and read Mr. Heatley his Miranda Rights at that
9 point.

10 Q And at that point, did he seem like he understood
11 his rights as they were given to him?

12 A Yes.

13 Q And did he indicate that he wanted to speak to you
14 all and answer those questions that you had?

15 A Yes.

16 Q What exactly did he say?

17 MR. O'NEIL: I would renew my previous
18 objection to this, Your Honor.

19 THE COURT: Yes, noted for the record. The
20 objection is overruled.

21 Go ahead.

22 A When I asked the very last question on the Advice
23 of Rights card, Are you willing to speak with us,
24 he said, Yes, or he said, Yeah, but can I use the
25 phone? Investigator Gonzalez asked him who he

1 wanted to call. And he said, My mom. And
2 Investigator Gonzalez said that he's a grown adult
3 and that he cannot use the phone to call his mom at
4 that time.

5 And then that is when Investigator Gonzalez
6 proceeded to -- I want to make sure I'm completely
7 clear on what he said. He said that he was an
8 adult, that he could not make that phone call yet.
9 He then informed him that Deannandra was deceased and
10 we were now -- you know, we are involved in a
11 homicide.

12 Q At any point during those questions, did he
13 indicate that he wanted to stop and speak with an
14 attorney?

15 A No.

16 Q Did he ever say that he didn't want to speak to
17 you?

18 A No.

19 Q Was he threatened with violence in any way?

20 A No.

21 Q Was he given any promises of leniency in any way in
22 order to get him to speak to you?

23 A No.

24 Q He was answering your questions freely and
25 voluntarily?

1 A Yes.

2 Q And when asked about whether or not he had a
3 girlfriend or had any communication with Ms. Roach,
4 what was his response?

5 A He said he hadn't talk to her in two to three
6 months.

7 Q Okay. And he indicated that he, in fact, had a
8 different girlfriend currently, correct?

9 A Yes. He said Desha.

10 Q And did he indicate whether he was working at that
11 time?

12 A He said he had just quit over a misunderstanding.

13 Q That was at Taco Bell?

14 A Correct.

15 Q Okay. Did you all then -- I guess Investigator
16 Gonzalez is asking most of the questions at this
17 point, is that right?

18 A Yes, up until a point. Once the car that Mr.
19 Heatley came to the Taco Bell in, and it was found
20 out that there, in fact -- upon Mr. Heatley's own
21 admission, that there was a gun in the glove box
22 and it was secured at that point and Investigator
23 J.P. Smith sat on the vehicle, the execution team
24 left to go, in fact, still execute the search
25 warrant at the home. Investigator Gonzalez would

1 go in and out of the vehicle to make phone calls,
2 to kind of get an update of what was going on at
3 the house. So he would step in and out of the car,
4 so me and Mr. Heatley would be in the vehicle alone
5 at times.

6 Q And now, prior to that point, when he was
7 questioned about how he got Deannandra's card --

8 A Uh-huh.

9 Q -- what was his response?

10 A He said that a guy named Von gave him the card on a
11 corner, a street corner. And when he said it, he
12 motioned with his head back this way. And the way
13 our vehicle was positioned in the Burger King
14 parking lot, when he motioned his head, it would
15 have been on Columbiana Drive.

16 Q Okay. And did you all also show him the still
17 photos from the ATMs that had been taken?

18 A Yes.

19 Q Those were the same ones that had been shown to
20 Ms. Gadson and Ms. Carroway?

21 A Yes.

22 Q A couple of examples here, State's 114 through 116?

23 A Yes.

24 Q Those are photos showed to him?

25 A Yes.

1 Q And when confronted with State's 114 through 116 or
2 some variation thereof, what was his response to
3 that?

4 A He paused for a second and he said, That's me.

5 Q Okay. And these are from -- State's 114, I think
6 is from the Wells Fargo in Ballentine, is that
7 correct?

8 A Yes.

9 Q Okay. And, again, he said, Yeah, that's me?

10 A Yes.

11 Q Now, you started talking about how the questions or
12 his responses turned to an individual named Von?

13 A Correct.

14 Q What did he tell you about his interactions with
15 Von?

16 A He -- he said that he had met Von once before
17 because he sells chains. He said he sells fake
18 chains. Investigator Gonzalez was trying to find
19 out more information about Von. In the beginning
20 of the interview of Mr. Heatley, he was referring
21 to him as Von, and then he starts using Vonnie. So
22 it was like back and forth between Von and Vonnie
23 with the interview. But he couldn't give
24 identifiers about Von, a phone number, where he
25 lived, description. We couldn't get anything from

1 Mr. Heatley about Von, other than he's met him one
2 time before and that he met him because he sells
3 chains, Mr. Heatley sells chains and that's how he
4 met him.

5 Q And did he then tell you that Von actually gave him
6 Deannandra's debit card?

7 A Yes.

8 Q Okay. And can you describe what he said about
9 that?

10 A Let me make sure I'm correct exactly what he said.
11 He states, Von then pulls out a debit card and he
12 sees that it's Deannandra's card. He said Von told
13 him he, Heatley, knew the pin number to her account
14 and that he wanted him to go get the money out. He
15 states that he went to the Palmetto Citizens ATM
16 first and tried to get money out. And he states he
17 then went to the Wells Fargo ATM and tried to get
18 money out. And her account said insufficient
19 funds, so he threw the card on the ground. He
20 states he then met back up with Von at the BP gas
21 station and he told him he couldn't get money out.
22 Then he told us that Von pulled a gun out on him
23 and took \$100 out of a cup holder and told him that
24 he would kill him if he told anybody.

25 And that is when I asked Mr. Heatley what was

1 he getting out of this whole deal. And his
2 response was, Nothing.

3 Q And can you describe for the jury during this
4 conversation with him what his demeanor is like?

5 A Mr. Heatley showed absolutely no emotion with this
6 entire interaction of this interview. His voice
7 did not fluctuate. The only time that I could see
8 any physical reaction was when we showed him the
9 ATM photos. He paused. He looked away. When we
10 asked him identifiers about Von, he would pause.
11 He would look away. But there was a time during
12 the interview when Investigator Gonzalez stepped
13 out and I asked him about the relationship between
14 him and Deannadra, and when he found out that she
15 was dead, and he said his heart sunk. But once
16 again, monotone voice, no emotion. There was
17 nothing.

18 Q Now, again, when you asked him to elaborate on the
19 history between him and Deannadra, what did he say
20 about the keying of the car incident?

21 A His words, and I quote: He had hatred towards her
22 for keying her car.

23 Q Hatred?

24 A Hatred.

25 Q Did you then ask him about why he would have used

1 her debit card and been involved with Von and this
2 whole thing?

3 A I did. He told me that he took the debit card and
4 tried to get the money because he didn't want Von
5 to get it.

6 Q Was there ever any indication throughout your
7 investigation that anyone else was present at these
8 ATMs?

9 A Not in the video surveillance when Andre Heatley is
10 using Deandra Roach's debit card. There's nobody
11 else in the video surveillance.

12 Q All right. Turn this around. You've had an
13 opportunity to review the surveillance videos?

14 A I have.

15 Q From the ATMs?

16 A Yes, sir. May I step down?

17 Q You may.

18 (Witness steps down.)

19 Q Okay. State's Number 125 -- excuse me, let me back
20 up. State's Number 135, which has been admitted
21 into evidence, that's the video from the Palmetto
22 Citizens, correct?

23 A Correct.

24 Q We'll put a copy on here. Is this the video
25 depicting the Palmetto Citizens ATM?

1 A Yes.

2 Q And what's the time on that?

3 A It's going to be at 10:59 on the 28th, would be the
4 first ATM transaction. This is going to be
5 Mr. Heatley, by his own admission, saying, That's
6 him. He's going to be wearing a dark -- a black
7 hooded jacket with black Nike shoes at the ATM
8 attempting to get money out of Deandra Roach's
9 account. It is now 11:00 on the 28th.

10 Q 11:00 p.m.?

11 A 11:00 p.m.

12 Q I believe the testimony earlier was that he made
13 several attempts to withdraw at this time, is that
14 correct?

15 A Correct.

16 (Video played in open court.)

17 Q For the sake of brevity, he continues to try to
18 utilize the ATM for upwards of about five minutes?

19 A It's now 20 -- it's now 11:03, almost 11:04. Still
20 continuing to be at the ATM. And he walks off at
21 11:04, almost 11:05. 11:04, that is when he walks
22 off.

23 Q All right. And then the second ATM that he
24 attempted to withdraw money represented here in
25 State's 125, already in evidence, the Bank of

1 America High Point Center near Columbiana Drive, is
2 that correct?

3 A Correct.

4 Q And this picks up -- I believe the video picks up
5 at 11:00 o'clock, which obviously is not there at
6 that moment.

7 A You see right here is very, very close up.

8 Q The individual using the ATM, I believe, is outside
9 there in the black hoodie?

10 A Black hoodie, yes.

11 Q And I believe that is 11:13 p.m. on the 28th?

12 A Correct. Appears here to be something of trying to
13 cover up the camera.

14 Q Another minute or so, and same or similar
15 viewpoint, correct?

16 A Correct.

17 Q Okay. And he walks off?

18 A Right.

19 Q And then the third ATM was the Ballentine area
20 Wells Fargo, is that right?

21 A Correct.

22 Q Actually, it is a couple of angles here. And this
23 is at what time?

24 A This is at 12:23 on the 29th. You can see he has
25 the black hooded jacket, the gray jacket is over

1 the black hooded jacket. He has switched -- he is
2 wearing the red Nikes we have in a State's Exhibit
3 as well. We have the black Nikes and the red Nikes
4 as State Exhibits, as well as the gray jacket and
5 the black jacket as State's Exhibits already in
6 evidence.

7 Q Black hoodie?

8 A Black hoodie, I'm sorry, which he has identified
9 himself in all the video surveillances.

10 (Pause.)

11 A I believe it goes on until about 12:30 or so.
12 We're at 12:25 on the 29th still being
13 unsuccessful. Then he walks away.

14 Q Let me point out one thing real quick before we --
15 again, the shoes were which ones?

16 A Those are the red Nikes that we recovered.

17 Q All right. Thank you. You can have a seat. Thank
18 you.

19 (Witness returns to witness stand.)

20 Q Now, I believe at this point the conversation
21 between you and Gonzalez and the Defendant gets to
22 the point where you guys start to head back towards
23 headquarters, is that right?

24 A Yes, correct, uh-huh.

25 Q And on the drive there between the Burger King

1 parking lot and headquarters, did you talk to him
2 at all? Ask him any questions at that time?

3 A Just a little bit of small talk, nothing major. I
4 asked him if he smoked cigarettes or drank alcohol,
5 just nothing too significant.

6 Q And, again, during that time did he ever indicate
7 that he did not wish to speak to you?

8 A No.

9 Q Did he ever indicate that he wanted an attorney?

10 A No.

11 Q All right. Upon arrival at headquarters, I believe
12 Investigator Gonzalez testified y'all took him back
13 to his cubicle area, is that right?

14 A Yes.

15 Q And continued the conversation?

16 A Yes.

17 Q And there was this issue about the money that was
18 in his pocket and it had a stain on it. Can you
19 talk about that?

20 A Yes. When we brought him back to headquarters, we
21 noticed he had a couple of layers of pants on. I
22 think he had two pairs of pants and like some
23 boxers or basketball shorts or something. And then
24 in I think the second or third layer of pants,
25 there was a wad of money. And then inside the

1 inner layer of money, there was red bright stain.

2 And at the time, obviously investigating a homicide

3 freshly, me and Investigator Gonzalez thought at

4 that moment it was possible that was blood.

5 Q And what was his reaction when he was questioned
6 about that?

7 A He gave an explanation of how that was blood and
8 how it got there.

9 Q Did he express any emotion of any kind during this
10 time period?

11 A No.

12 Q And at some point during this conversation, I
13 believe -- did you guys then ask him about whether
14 or not he shoots guns and where he might do that?

15 A Yes. At first, he denied shooting guns, but then
16 he did admit that he shoots guns.

17 Q Okay. And what, if anything, did Mr. Heatley then
18 say to you?

19 A He randomly asked me where Deannandra's body was
20 found.

21 Q Was that in response to any question or point of
22 conversation you were having with him at that time?

23 A No.

24 Q He asked you where she was found?

25 A Yes.

1 Q What did you say?

2 A I said in a field.

3 Q And what was his response?

4 A He said, Oh, off of Farrow Road?

5 Q And how did it go from there?

6 A I said, What would make you think that she was
7 found off of Farrow Road? And that opened up the
8 question of why would he know that she was found
9 off of Farrow Road. And that brought on a
10 conversation of the shooting spot.

11 Q And when asked if he had ever fired any guns out at
12 the shooting spot, what did he say?

13 A He said he fired, I believe he said, his friend's
14 gun out there.

15 Q Did he initially deny ever shooting guns out there?

16 A Yes.

17 Q And then he said he shot his friend's gun out
18 there?

19 A Yes.

20 Q But not his gun?

21 A Right.

22 Q All right. And at some point did you then ask him
23 about whether or not his DNA would be found on any
24 items of evidence?

25 A I did.

1 Q And what was his response?

2 A He said no.

3 Q Okay. Is it at that point that he then voluntarily
4 gives you consent to take a buccal swab for his
5 DNA?

6 A Correct.

7 Q All right. What else did he say at that point
8 about any evidence that could possibly tie him to
9 the crime scene?

10 A He said his gun wouldn't be a match either.

11 Q He said it would not be a match?

12 A Correct.

13 Q He said his gun would not be a match to the crime
14 scene?

15 A Correct.

16 Q And later what did you learn about the evidence
17 pertaining to the firearm taken from his vehicle of
18 the crime scene?

19 A I learned that his gun matched the bullet in
20 Deanndra Roach's head.

21 Q As well as multiple shell casings at the scene, is
22 that right?

23 A Correct.

24 Q Again, at this point, any kind of emotion from him?

25 A No.

1 Q And at that point, he also agreed to reduce the
2 conversation you had with him to writing in the
3 form of State's Exhibit Number 1 there, is that
4 right?

5 A Yes. Investigator Gonzalez asked him if he would
6 provide a statement in regards to what we talked
7 about, and he said yes.

8 Q And did he ever indicate to you all yay or nay
9 whether he was involved with killing Deandra
10 Roach?

11 A In a monotone voice, when asked several times, he
12 said no.

13 Q Ultimately, you guys actually charged him with
14 murder and armed robbery, is that correct?

15 A Correct.

16 Q Upon doing so, what was his reaction?

17 A He had none.

18 Q Did he ask any questions?

19 A No.

20 Q All right. I believe the next day you and Gonzalez
21 then went back out to the crime scene, is that
22 right?

23 A We did.

24 Q Okay. And what information did you learn about
25 whether or not the victim's belongings were found

1 at the crime scene by her vehicle? Was her cell
2 phone located at her car?

3 A No. We learned that her cell phone, her keys, and
4 obviously her debit card, and there was pepper
5 spray that was on her keys was taken.

6 Q None of that was located?

7 A No. We didn't find any of that.

8 Q All right. And jumping ahead a little bit, you
9 guys -- Investigator Gonzalez also testified about
10 attempting to track down the location of this
11 Michael Kors watch, is that right?

12 A Yes. We learned that purchase -- a purchase was
13 made about 1:00 o'clock in the morning from her
14 bank records to [REDACTED] Stanford Street. And so we, me
15 and Investigator Gonzalez, went out there. The
16 time that we went out there originally, it was
17 relatives of Andre Heatley. The package had not
18 arrived at that time, but they did agree that when
19 it did arrive that they would hand the package over
20 to us. And we ultimately did get that package at a
21 later date unsealed, and they did not tamper with
22 it. So we got it in its original state.

23 Q And that was the watch that has already been
24 admitted into evidence under State's 222, correct?

25 A Correct.

1 Q That was purchased with the victim's debit card
2 approximately 1:30 in the morning?

3 A Yes, around that time.

4 Q All right. And what efforts did you make to speak
5 to Denise Winston, the mother of Mr. Heatley's
6 child?

7 A We attempted to make contact with Denise Winston.
8 Those efforts did not go very well on the strength
9 of Denise Winston and her family. It was a very
10 hostile environment. They -- it was very clear
11 that they were -- they did not want to speak with
12 law enforcement. And they were very uncooperative
13 in providing any information or anything to help
14 with this investigation that they knew. So we were
15 not able to speak with Denise or any of their
16 family members.

17 Q You were, however, able to speak with Desha
18 Anderson, Mr. Heatley's girlfriend, correct?

19 A Yes.

20 Q Okay. And she actually provided you with a
21 statement, is that right?

22 A That's right.

23 Q Okay. And I believe during that statement she
24 indicated a number of things that were testified to
25 by her relating to threats made by the Defendant

1 about Ms. Roach, correct?

2 A Yes.

3 Q And also information about communicating with the
4 Defendant via Snapchat, is that right?

5 A Yes.

6 Q Okay. And she actually spoke to you on multiple
7 occasions?

8 A Yes.

9 Q All right. There was some question of her
10 regarding what was said to her about possibly
11 facing charges as it relates to this case. Tell
12 the jury about your interaction with her and how
13 you got the information from her that she provided
14 about these threats made by Mr. Heatley.

15 A As far as her facing possible charges? Or can
16 you -- what are you asking me?

17 Q Yeah. I mean, there were some questions of
18 Investigator Gonzalez about whether or not
19 Ms. Anderson was a suspect in the case.

20 A Well, we knew that we had information that --
21 because upon execution of the search warrant, Desha
22 Anderson was there the night of Mr. Heatley's
23 apprehension. And that at this point, the
24 investigation was extremely fresh. We didn't know
25 who was involved, who may have been an accessory,

1 who was helping. We didn't know anything at this
2 point. It was very preliminary. So as homicide
3 investigators, we want to talk to anybody that may
4 have information, all of the above. So when
5 Ms. Desha Anderson was very cooperative with us and
6 was willing to come forward and provide information
7 that she knew on multiple counts, that is exactly
8 what she did. Our first encounter with her, she
9 provided what she testified to, and then she
10 voluntarily came and provided a second statement to
11 us on more information of what she testified to as
12 well.

13 As far as any threats that were given to her,
14 there were no threats that were given to her. I
15 always, as a standard, when I am dealing with
16 anybody that has possible involvement or has
17 information or anything of the above, I always
18 explain to people that if you have more
19 information, or you know anything further, or are
20 you involved, it is in your best interest to come
21 forward and let law enforcement know so that you do
22 not face any possible criminal charges. But that
23 is always my standard thing that I always say to
24 anybody that I speak to in a criminal investigation
25 that I am investigating. So that is what would

1 have been said. There were no threats that were
2 given to Desha.

3 Q Throughout the remainder of the course of the
4 investigation, was there anything that you found to
5 suggest that Ms. Anderson was involved with the
6 killing of Ms. Roach?

7 A No.

8 Q The information that she testified to about
9 Mr. Heatley saying he was going to kill the victim
10 and being mad about keying her car and using
11 gunfire or knife, that was all provided the first
12 time you spoke to her on February 2nd, correct?

13 A Yes.

14 Q I believe on the 4th, she talked about this
15 additional information about how he told her that
16 he was getting ready to try you know what. And
17 that also he had gotten into an argument with
18 Ms. Roach and she tried to pepper spray him?

19 A Yes.

20 Q And what did you learn from the investigation about
21 whether or not there was pepper spray involved in
22 the case?

23 A After I collected pepper spray to provide as a
24 standard for testing --

25 Q I'm sorry to interrupt. How did you go about doing

1 that?

2 A I contacted Ms. Roach to see if we can get the same
3 pepper spray that Ms. Deandra had on her key ring
4 at the time that she was murdered so we could
5 collect it as a standard for testing to see if that
6 was a possibility, if there -- if Mr. Heatley was,
7 in fact, pepper sprayed that night as Desha
8 testified, that she said that they got into an
9 argument and he was pepper sprayed. So that is
10 what I did. I met with Ms. Roach, I collected the
11 pepper spray.

12 Q State's 239?

13 A Absolutely, yes. And I submitted that to our
14 evidence for SLED to test.

15 Q And as we heard about earlier, the results of that
16 were that the clothing that Mr. Heatley was wearing
17 on the videos we just saw were negative for pepper
18 spray, is that right?

19 A Correct.

20 Q Now, throughout the course of your investigation,
21 what did you learn about the status of
22 Mr. Heatley's 2011 Ford Fusion?

23 A I learned that it was three months behind in
24 payments and that it was on repo.

25 Q There was a repo order for it?

1 A Correct.

2 Q You were also present when the second search
3 warrant was executed at the Kirkstone residence,
4 Mr. Heatley's residence, and additional fired
5 cartridge casings were located, is that right?

6 A Yes.

7 Q That later turned out to be fired by the weapon
8 taken from Mr. Heatley's car?

9 A Yes.

10 Q Did you have an opportunity to come in contact with
11 and interview Devonta Shuttles?

12 A I did.

13 Q Was he cooperative?

14 A Yes.

15 Q And what did you learn about a possible nickname
16 that he might have?

17 A He told me that he goes by -- well, he has a friend
18 that calls him Von.

19 Q Was that Mr. Heatley?

20 A He has -- he's known to be called -- he had a
21 circle that knows Mr. Heatley that calls him Von.

22 Q Okay. And based upon your interview of him, and he
23 testified earlier in the week, they knew each other
24 pretty well, right?

25 A Correct.

1 Q I believe Mr. Shuttles actually testified that they
2 were friends, is that right?

3 A Correct.

4 Q And Mr. Shuttles also knew the victim as well?

5 A Yes.

6 MR. GOLDBERG: One moment, please.

7 (Pause.)

8 BY MR. GOLDBERG:

9 Q One final thing. The person that you interviewed
10 and took the statement from, collected the weapon
11 from, and that was ultimately arrested for this
12 crime, Mr. Heatley, do you see him in the courtroom
13 today?

14 A I do.

15 Q Can you point him out, please?

16 A He is wearing a burgundy long-sleeve shirt and
17 glasses, goatee.

18 MR. GOLDBERG: Thank you. That's all I have.

19 THE COURT: Yes, sir?

20 MR. O'NEIL: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. O'NEIL:

23 Q Investigator Torres, you said you went -- after you
24 gave the death notification, you went to the family
25 house, one of the things, to possibly get the

1 family's leads, potential leads?

2 A Yes, sir.

3 Q I think from your investigation there at the
4 parents' house, you got a couple different leads.
5 You got the name Andre Heatley -- the name Andre
6 Heatley, I apologize?

7 A That's okay. I did get Andre Heatley. Well, I got
8 Andre Heatley while I was on scene.

9 Q And --

10 A But Ms. Roach did give me that too.

11 Q She told you Andre Heatley? She told you Kelvin
12 Davis?

13 A Yes.

14 Q She told you some concerning things about what
15 Kelvin Davis's baby's mother said, correct?

16 A Yes.

17 Q What did Kelvin Davis's baby's mother say?

18 A She did --

19 MR. GOLDBERG: Objection. Hearsay.

20 MR. O'NEIL: It is not for the truth of the
21 matter asserted, what happened after hearing that
22 statement, Your Honor.

23 THE COURT: Rephrase the question.

24 BY MR. O'NEIL:

25 Q Was the information you received concerning leads

1 important in your investigation?

2 A Yes.

3 Q Okay. And you would follow up based off the leads
4 that you got?

5 A We did follow up on those leads.

6 Q All right. And if an individual had animosity
7 towards the victim, would that be an important lead
8 to follow up on?

9 A Yes.

10 Q Okay. What did the victim's mother tell you Ivory
11 Fleming felt about the victim?

12 MR. GOLDBERG: Objection, Your Honor. It's
13 still hearsay.

14 MR. O'NEIL: Not for the truth of the matter
15 asserted, Your Honor.

16 THE COURT: Sustained.

17 BY MR. O'NEIL:

18 Q Did you follow up with what the victim's mother
19 told you about how Ivory Fleming felt about the
20 victim?

21 A We did follow up on that lead.

22 Q Okay. And Ivory Fleming -- did you also get a
23 similar statement from a different witness about
24 how Ivory Fleming felt about the victim?

25 A Can you give me --

1 Q In the form of Brittany Carroway?

2 A Can I refer to my notes real quick?

3 Q You can.

4 A We did.

5 Q Okay. So you got two -- you got a statement from
6 two different witnesses about Ivory Fleming having
7 some issues with the victim, fair enough?

8 A Feelings, I guess you can say, yes.

9 Q Not pleasant feelings, fair enough?

10 A Yes, I guess so.

11 Q And Ivory Fleming is -- without a reasonable doubt,
12 Ivory Fleming is the baby mother of Kelvin Davis,
13 correct?

14 A Yes.

15 Q And Kelvin Davis resides where? Do you know what
16 city, town?

17 A I think Columbia.

18 Q He has lived in the Irmo area as well?

19 A I don't have his address.

20 Q But you would have that somewhere in your
21 investigation, I'm assuming?

22 A Somewhere, yes.

23 Q Did you wind up speaking to him at some point?

24 A Yes, we got a statement from him.

25 Q And you said we, you mean either you or

1 Investigator Gonzalez?

2 A Yes, me and Investigator Gonzalez did get a
3 statement from him.

4 Q Now, you talked -- you and Investigator Gonzalez
5 talked to Mr. Heatley both in the car there at
6 Burger King and also at headquarters? Were you
7 there at headquarters?

8 A Yes, sir.

9 Q And none of those conversations, neither one of
10 those locations were audio taped or video taped?

11 A We didn't have that technology into law at that
12 point in 2016, so, no, sir.

13 Q You say you didn't have the technology or --

14 A Well, we didn't have it in policy or mandated in
15 law in 2016, so, no, sir.

16 Q You just didn't use it? I mean, I'm sure you had a
17 tape recorder laying around somewhere that you
18 could have used if you wanted to, correct?

19 A Well, the county did not provide that for us, so,
20 no. No, sir. I'm not buying it on my own dime,
21 so, no, sir.

22 Q A tape recorder too expensive?

23 A I'm not going to buy it on my own dime.

24 Q And I ask you because there's parts of this -- of
25 Mr. Heatley's statement to you all as to some

1 things that Vonnie did that did not make it into
2 his written statement, would that be fair enough to
3 say?

4 A Into his witness statement?

5 Q Into his written statement?

6 A His written statement. Okay. Well, whatever he
7 says exactly on his written statement is exactly
8 what he wants to put on his statement. So what
9 Andre Heatley says on his own statement is what is
10 his statement.

11 Q I understand that, but I guess what I'm asking you
12 is, he told you, for instance, that -- because I
13 know because this is your own notes here -- he told
14 you in the Burger King parking lot here that Vonnie
15 pulled a gun on him and took \$100 out of the cup
16 holder, correct?

17 A He did say that.

18 Q And he also said that Vonnie said he would kill him
19 and hurt his baby if he told anyone?

20 A He did say that.

21 Q And what I'm asking you is, that particular
22 statement never made it into his written statement
23 when y'all got to headquarters, correct?

24 A Correct.

25 Q All right. Is there anything else that Mr. Heatley

1 said about what Vonnie did that didn't make into
2 his written statement, that you know of?

3 A Not that I know of.

4 Q And through your investigation here -- well, let me
5 back up one second here. Even though you weren't
6 initially involved when Mr. Heatley was pulled over
7 in the Burger King parking lot here, to your
8 knowledge, he turned himself over peacefully?

9 A No, I was there, I just -- when Investigator
10 Gonzalez and Faust and the other deputies, when
11 they approached the vehicle, I kind of held -- I
12 kind of stood back by the vehicle. So I didn't --
13 the apprehension part. So I physically was there,
14 I just -- so I just want to clarify that.

15 Q That's what I mean, you wasn't like at the car?

16 A Correct, I wasn't.

17 Q Because what I'm getting into is that when he
18 turned himself in, he didn't fight with the
19 officers there in the parking lot?

20 A No, he was very cooperative.

21 Q In fact, I think it's your testimony and also
22 Investigator Gonzalez's testimony as well that he
23 volunteered -- well, he responded off of the
24 question and he told him that there was gun in the
25 glove box?

1 A When he was asked, he responded yes.

2 Q He didn't try -- to your knowledge, he didn't try
3 to hide that fact from anybody?

4 A No.

5 Q All right. And, in fact, I think you said later on
6 at some time, either at the headquarters or at the
7 Burger King parking lot, he told you that that gun
8 would not match anything related to this case,
9 correct?

10 A He did.

11 Q And he told you that in the car or he told you that
12 at headquarters?

13 A Headquarters.

14 Q And that particular fact didn't make it in the
15 statement either, did it?

16 A Can I refer to his statement?

17 Q Yes, ma'am.

18 A Okay. No, that question is not in the statement.

19 Q And we'll just wrap things up when it comes to
20 overall looking at forensic-wise here. As it
21 relates to the DNA evidence here, as an
22 investigator you know that Mr. Heatley's DNA was
23 not found on any item other than the firearm that
24 was recovered from the glove box?

25 A From what the DNA analyst testified to today,

1 that's what I heard.

2 Q Okay. And none of his fingerprints were on
3 anything as relates to the actual crime scene, the
4 victim's car, the victim's clothing, the victim's
5 body, anything like that?

6 A From what the fingerprint analyst testified to,
7 that's what I heard.

8 Q And you were involved with the search warrants to
9 some extent here. None of the two times you
10 executed a search warrant on Mr. Heatley's home
11 here, none of the victim's belongings were found at
12 the home, at his home?

13 A We have not recovered any of the victim's
14 belongings to date.

15 Q Specifically, you haven't recovered them from any
16 location or any vehicle belonging to Mr. Heatley?

17 A Say that one more time, sir?

18 Q Specifically, you haven't recovered anything
19 belonging to the victim from Mr. Heatley's
20 residence or Mr. Heatley's vehicles?

21 A We haven't recovered any of Ms. Roach's belongings
22 anywhere.

23 Q I think -- you might have mentioned it early on in
24 the testimony here. There was an attempt here to
25 try to see whether or not there was video

1 surveillance with other surrounding locations
2 around the crime scene, correct? The SCE&G
3 building, the daycares?

4 A We did. The difference -- like the daycare and
5 there was a business that -- it's now like a Kroger
6 supercenter there now, but the quality is horrible.
7 The SCE&G building that is across the street does
8 not have video cameras. So, yes, efforts were
9 made.

10 Q And probably to be precise, they were not fruitful
11 in recovering really any footage to determine who
12 was -- who all -- who else would have been at the
13 location based off the video?

14 A Can you rephrase the question?

15 Q You couldn't tell -- you couldn't get any usable
16 footage from any one of those videos?

17 A No, the quality was so -- either it didn't point to
18 the actual road or the quality was just so poor.

19 MR. O'NEIL: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. O'NEIL: Nothing further, Your Honor.

24 THE COURT: All right. Yes, sir?

25 MR. GOLDBERG: Just a couple questions.

REDIRECT EXAMINATION

BY MR. GOLDBERG:

Q Mr. O'Neil asked you about the recording issue.
And back in 2016, the policy at the Sheriff's
Department regarding recording was that there was
no automatic recording of interviews, correct?

A That is absolutely correct.

Q Now, currently there is an area set up to record
those interviews, is that right?

A Yes. It is a policy now under South Carolina state
law for violent crimes, to include homicide, that
is automatic, that we have to video, audio tape
recording.

Q That just wasn't the case back in 2016?

A Correct.

Q And he asked you about some of the leads and
whether or not you followed up on certain leads in
the case. Specifically, Ivory Fleming and Kelvin
Davis?

A Uh-huh, yes, sir.

Q Throughout your complete investigation of this
case, all the evidence that was gathered, the
statements that were taken, is there any evidence
in this case that led you to believe that Ivory
Fleming was somehow involved in the death of

1 Deanndra Roach?

2 A No. Ivory was cooperative. She came in. She gave
3 a statement. She let us download her phone.
4 She -- there was nothing to point us to believe
5 that she had any involvement or motive to kill
6 Deanndra Roach.

7 Q Was there any evidence that led you to believe that
8 Kelvin Davis was involved in the death of Deanndra
9 Roach?

10 A No. Same thing. He was cooperative and gave a
11 statement. There was no evidence to point to
12 Kelvin Davis.

13 Q And to your knowledge, he actually lives in Georgia
14 now, is that correct?

15 A I can't testify to that. I don't know.

16 Q Okay. I'll withdraw it. And regarding Devonta
17 Shuttles, there was some testimony from Captain
18 McDonald via the phone records about some texts
19 between the Defendant and Mr. Shuttles, correct?

20 A Yes.

21 Q And those texts were generally about an issue
22 involving Mr. Shuttles' sister and the Defendant,
23 is that right?

24 A Yes.

25 Q And I believe the last text that was read about

1 that was actually Mr. Shuttles apologizing for the
2 whole thing, is that right?

3 A Yes.

4 Q Was there any evidence that you encountered
5 throughout this investigation to suggest that
6 Devonta Shuttles was involved with the death of
7 Deanndra Roach in any way?

8 A No. I was able to verify Devonta Shuttles' alibi.
9 He wasn't even in the state when Deanndra Roach was
10 murdered. He was actually in Tennessee with his
11 family.

12 Q Regarding all three of those, or any other people
13 that were involved in this case, was there any
14 firearms evidence tying anyone other than the
15 Defendant to the death of Deanndra Roach?

16 A No.

17 Q Were there any phone records tying anyone other
18 than the Defendant to the death of Deanndra Roach?

19 A No.

20 MR. GOLDBERG: Thank you.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 (Witness steps down.)

24 THE COURT: All right. Call your next
25 witness.

1 MR. GOLDBERG: May we approach the bench?

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: Ladies and gentlemen of the jury,
7 it is 5:26, and this is a good time for us to take
8 our evening break. I am going to remind you not to
9 discuss the case with anyone. Please do not do any
10 independent research. Please do not do any social
11 media posts or anything regarding this case.

12 I ask that you when you leave the courtroom,
13 clear your mind of everything regarding court until
14 tomorrow morning at 9:30. We'll see you back at
15 9:30.

16 I have put in a work order for them to cool
17 down that jury room, so we'll see how it goes
18 tomorrow. Close the blinds, or if we need to try
19 to move you to another jury room, we will look into
20 that. But they tell me that possibly it's a little
21 cooler once they close the blinds. And our heating
22 and air conditioning systems are controlled at 2020
23 Hampton Street. So they are on notice. And I
24 actually approved the work order.

25 So we will see you back tomorrow morning at

1 9:30. You all have a good evening.

2 Thank you.

3 (WHEREUPON, the jury is excused at 5:27
4 p.m.)

5 THE COURT: Anything we need to put on the
6 record? I think we put everything on the record
7 regarding any in camera.

8 All right, so 9:30 in the morning? Does that
9 work for everyone?

10 MR. GOLDBERG: Yes, ma'am.

11 MR. O'NEIL: Yes, ma'am.

12 THE COURT: We'll let the State call any last
13 witnesses that they have. If not, rest. Then I'll
14 have to -- I don't think I can do it now -- read
15 the Defendant his rights regarding testifying, if
16 he chooses to testify, and go through that whole
17 thing with him, colloquy with him. I'm assuming,
18 though, if he -- Mr. O'Neil, you are going to talk
19 to him tonight?

20 MR. O'NEIL: Yes, ma'am.

21 THE COURT: We are getting close to the end of
22 the State's case, and talk to him about either
23 putting up any evidence or him testifying, and then
24 I'll ask him about it. And then if he wants to
25 take a break and talk again and if there is anybody

1 he needs to talk to, we might be able to arrange
2 that with the deputies.

3 MR. O'NEIL: Yes, ma'am.

4 THE COURT: Either this evening or in the
5 morning when he gets here. All right?

6 MR. O'NEIL: Yes, ma'am.

7 THE COURT: All right. Y'all have a good
8 evening.

9 MR. GOLDBERG: Thank you, Your Honor.

10 (WHEREUPON, court adjourned for the
11 evening at 5:30 p.m.)

12 JANUARY 29, 2019

13 (WHEREUPON, the proceedings began at
14 9:55 a.m.)

15 THE COURT: Are ready to get started?

16 MR. GOLDBERG: Yes, ma'am.

17 THE COURT: Ready?

18 MR. FYALL: Yes, ma'am.

19 THE COURT: All right. Let's bring them on
20 in.

21 (WHEREUPON, the jury came into open
22 court at 9:55 a.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Good morning, ladies
25 and gentlemen of the jury, I hope you had a restful

1 evening. At this time, we will continue with the
2 State's case.

3 I'll ask that the State call their next
4 witness.

5 MS. GOLDBERG: If it please the Court, Your
6 Honor, at this time the State rests.

7 THE COURT: All right. Thank you.

8 All right, ladies and gentlemen of the jury,
9 there are some matters of law that I need to take
10 up outside of your presence. I'm going to have to
11 send you all out and bring you back in in a second.

12 All right, thank you.

13 (WHEREUPON, the jury retires to the jury
14 room at 9:56 a.m.)

15 THE COURT: All right. I'll be glad to hear
16 from you regarding any motions.

17 MR. O'NEIL: Thank you, Your Honor. May it
18 please the Court? At this time the Defendant would
19 move for a directed verdict, specifically -- well,
20 on the murder charge and on the armed robbery
21 charge, but I will argue the armed robbery charge
22 first.

23 I think the standard for directed verdict was
24 laid out I think in State v. Bostick here. The
25 standard is that if there's any direct evidence or

1 if there's any substantial circumstantial evidence
2 that reasonably tends to prove the guilt of the
3 accused or his guilt may be fairly or logically
4 deduced, then the case will go forward to the jury.
5 If there is no direct evidence or any substantial
6 circumstantial evidence here, then the Defendant is
7 entitled to a directed verdict.

8 As it relates to the armed robbery, I think
9 there is no direct evidence as relates to the fact
10 that Mr. Heatley took any items from the victim,
11 either by the use of a deadly weapon or the threat
12 of use of a deadly weapon would be required under
13 armed robbery here. I think the evidence as it
14 relates to what is in evidence at this point as it
15 relates to armed robbery would be that the only
16 items that Mr. Heatley would have been in
17 possession of would be the victim's credit card or
18 debit card, however you want to label that card
19 there, Your Honor.

20 There was allegations that the victim was
21 missing her keys, cell phone, and purse, none of
22 which was ever found in Mr. Heatley's possession
23 here. So I think the only item that the State
24 could possibly argue that there is any direct
25 evidence that Mr. Heatley was involved would be the

1 debit card, Your Honor, based off, of course, the
2 ATM photos and Mr. Heatley's own statement.

3 But, Your Honor, as it relates to whether or
4 not those items were taken by the use of a deadly
5 weapon or by the threat of the use of a deadly
6 weapon, I think there is no evidence, no direct
7 evidence of that. I think the circumstantial
8 evidence as it relates to Mr. Heatley's prior use
9 of the victim's debit card is that the victim on
10 other occasions had been given the debit card to
11 other people, including Mr. Heatley, I think it
12 goes to there is no substantial circumstantial
13 evidence that proves Mr. Heatley obtained those
14 debit cards by the use of a deadly weapon or the
15 threat of the use of a deadly weapon.

16 So based off of that, I would ask that Mr.
17 Heatley be granted a directed verdict of not guilty
18 as it relates to the armed robbery.

19 And as it relates to the murder, of course,
20 there is no direct evidence that links Mr. Heatley
21 to the murder of the victim in this case. And the
22 only inference there is, Your Honor, would be
23 circumstantial in nature here, Your Honor. And I
24 think there is not any substantial circumstantial
25 evidence that the jury could find Mr. Heatley

1 guilty of murder.

2 And based off of that standard, I would ask
3 that the Court grant Mr. Heatley a directed verdict
4 of not guilty as it relates to the murder as well.

5 THE COURT: All right. Yes, sir?

6 MR. GOLDBERG: Thank you, Your Honor. As Your
7 Honor is aware, the Court is concerned here with
8 the existence or non-existence of evidence, not the
9 weight. And if you take the evidence in the light
10 most favorable to the State, we believe there has
11 been both direct and circumstantial, substantial
12 circumstantial evidence reasonably tending to prove
13 the guilt of Mr. Heatley related to both charges.

14 In regards to the armed robbery, in addition
15 to the credit card, Your Honor, it's the State's
16 position that there's circumstantial evidence that
17 he, in fact, did have her phone. Based upon the
18 phone records, the testimony showed that both his
19 phone and her phone traveled substantially the same
20 route leaving the crime scene all the way to the
21 ATMs in the Irmo area near his house until shortly
22 around the time of the last ATM purchase when her
23 phone went missing. There has been testimony
24 linking him to a firearm that would have been
25 connected to the scene by way of the firearms

1 analyst, including the casing at the scene. That
2 was the weapon taken off of Mr. Heatley that he
3 admits was his weapon. And we would argue that
4 also goes to the murder as well.

5 And, additionally, you have text messages
6 specifically related to committing a murder and
7 robbery. Got to get this money, murder and
8 robbery, was a text directly from Mr. Heatley to
9 his girlfriend indicating his intentions that
10 night.

11 So it's the State's position that in light of
12 all that and in the light most favorable to the
13 State that there is enough evidence for these
14 charges to proceed for the jury to decide guilt or
15 innocence.

16 THE COURT: All right. The Court finds that
17 based on the testimony that there is sufficient
18 evidence of fact for the jury to decide -- there's
19 an issue of fact for the jury to decide as to the
20 armed robbery and as to the murder charge. And,
21 therefore, the Defendant's motion for directed
22 verdict is denied.

23 And I think -- what was other motion? It was
24 denied as to the armed robbery and as to the
25 murder.

1 And then any other motions?

2 MR. O'NEIL: No, Your Honor.

3 THE COURT: Anything else from the State?

4 MR. GOLDBERG: Did you want to address the
5 jury charges?

6 THE COURT: Well, let me -- I need to read the
7 Defendant his rights. We'll go over the jury
8 charge, depending on what he says.

9 Let me get you to stand up and raise your
10 right hand. Let me get you to raise your right
11 hand.

12 (Defendant complies.)

13 THE COURT: Do you swear or affirm to tell the
14 truth, the whole truth, so help you God?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Thank you. You can put your hand
17 down.

18 (Defendant complies.)

19 THE COURT: All right. Mr. Heatley, at this
20 time I am going to explain to you certain of your
21 rights. If you do not understand anything I say,
22 please let me know. If you want me to explain
23 anything in more detail, please let me know. Do
24 you understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. We have now reached
2 the stage of the trial where you may present your
3 defense. You have the right to claim protections
4 given to you by the Fifth Amendment to the
5 Constitution of the United States. This amendment
6 reads -- it states in part: No person shall be
7 compelled in any criminal case to be a witness
8 against himself. This means that you cannot be
9 required to testify in this case. You have the
10 right to testify on your own behalf. However, no
11 one can make you testify. This is a personal right
12 and no one can waive this right except you.

13 If you decide to testify, you will be subject
14 to the same rules that govern other witnesses and
15 you may be examined and cross-examined on any
16 relevant issue in this case.

17 In addition, if you have any convictions
18 involving dishonesty or false statement or for
19 crimes punishable by imprisonment for more than one
20 year and this Court determines that the probative
21 value of admitting this evidence outweighs its
22 prejudicial effect to you, the Solicitor will be
23 able to introduce your record to attack your
24 credibility.

25 If you decide to testify, this decision on

1 your part must be freely, voluntarily, and
2 intelligently made with the knowledge of the
3 protections given to you by the Fifth Amendment and
4 the consequences of your decision to testify.

5 If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you
7 did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you
9 because you did not testify.

10 It is left entirely up to you whether or not
11 you testify. You may talk with your attorney, your
12 family and friends, or anyone else, but the final
13 decision will be left entirely up to you.

14 Do you understand what I have explained to
15 you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about
18 what I have explained to you?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And have you discussed with your
21 lawyer with you should or should not testify?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And do you wish to talk to your
24 lawyer any more at this time?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: All right. And do you wish to
2 testify? I know -- I will put on the record that
3 you have also had an opportunity, I think, to speak
4 with your attorney and his parents?

5 MR. O'NEIL: He spoke with his parents.

6 THE COURT: You understand the decision is
7 ultimately yours? You understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And do you wish to testify?

10 THE DEFENDANT: No, ma'am, I'm not going to
11 testify.

12 THE COURT: All right. Thank you. You may be
13 seated. Thank you.

14 (Defendant seated.)

15 THE COURT: All right. So let's -- instead of
16 me bringing the jurors back in -- of course, I have
17 to bring them in and I'll ask them -- I'll come to
18 you and ask if you have anything to present. And
19 I'll explain to them that you don't have to, but
20 I'll ask you any way if you do, now is the time to
21 do so. I'll explain all that to the jurors.

22 Jury charges. My law clerk e-mailed you
23 yesterday the jury charges from the desk book?

24 MR. O'NEIL: Yes, Your Honor.

25 THE COURT: Have you had a chance to look at

1 it?

2 MR. GOLDBERG: Yes, ma'am.

3 MR. O'NEIL: Yes, ma'am.

4 THE COURT: And I believe we received two
5 requests, one from the State and one from the
6 Defense?

7 MR. O'NEIL: Yes, Your Honor.

8 MR. GOLDBERG: I have not seen the one from
9 the Defense.

10 MR. O'NEIL: I e-mailed one this morning.

11 MR. GOLDBERG: Okay, I didn't see it.

12 THE COURT: I'll be glad to hear from you all
13 instead of bringing them back in. We'll go
14 straight into closing arguments and the charge.

15 MR. O'NEIL: I don't object to the State's
16 requests. I requested a jury charge to accessory
17 after the fact here. That's the Defendant's
18 request for jury charge.

19 MR. GOLDBERG: You're not objecting to the one
20 that I proposed about the robbery in conjunction
21 with the murder?

22 MR. O'NEIL: Correct.

23 MR. GOLDBERG: But you're also separately
24 asking for one on accessory after the fact?

25 MR. O'NEIL: Correct.

1 MR. GOLDBERG: What does it say?

2 MR. O'NEIL: I'm requesting the Court charge
3 the jury on the evidence of accessory after the
4 fact. I think -- I'm basing that off of State vs.
5 Fuller, Your Honor. State vs. Fuller talks about
6 this idea if there is exclusionary facts that would
7 show that the Defendant is guilty of accessory
8 after the fact and not the principal offense here,
9 then he could in theory be entitled to an accessory
10 after the fact here.

11 Granted, now, in State v. Fuller, the Court
12 decided that particular Defendant was not entitled
13 to accessory after the fact and that was under
14 those particular facts here, but I think
15 Mr. Heatley's case is kind of unique from State v.
16 Fuller. I think if the jury believes Mr. Heatley's
17 statement that the State put into evidence here
18 about his version of what happened that night here,
19 I think the jury could then, under those
20 circumstances, find Mr. Heatley guilty of accessory
21 after the fact and not have him be the principal in
22 this matter here and be guilty of the murder and
23 the armed robbery.

24 So based off that, I would ask that the Court
25 charge the jury on accessory after the fact.

1 THE COURT: Yes, sir? I know you all haven't
2 had a chance to look at the Fuller case, but I
3 have, I've read it. Fuller says that -- and I'll
4 read directly from it, even though my law clerk,
5 this tiny print, I don't know how she can read it.
6 My eyes are getting bad on me.

7 Let's see. If accessory after the fact is
8 not -- let's see. Oh, here it is. Okay.
9 Appellant is not entitled to a charge on accessory
10 after the fact. First, he was not entitled to the
11 charge because he was not indicted as an accessory,
12 and accessory after the fact is not a lesser
13 included offense of murder.

14 Second -- and I'm assuming this is where
15 Mr. O'Neil is trying to get in accessory after the
16 fact. It says: Second, the evidence did not
17 eliminate appellant as a principal first. So it
18 says that in order for this to be charged, it
19 either has to be indicted as an accessory or
20 accessory after the fact because it's not a lesser
21 included of murder, or the evidence would have to
22 eliminate the appellant as a principal first.

23 MR. GOLDBERG: And I don't believe -- the
24 State's position, I don't believe we have any
25 evidence that eliminates him as principle. In

1 fact, there's significant evidence to the contrary,
2 most notably the phone records, the firearms
3 analysis, and direct testimony from the witnesses
4 regarding his intentions and his plans for Ms.
5 Roach.

6 The only connection to anyone else would be
7 the reference to Von in his statement, which says
8 nothing about Von actually committing a murder. It
9 simply relates to his position about the passing of
10 the cards to him.

11 And based on the information that you just
12 read, it has to eliminate him as a principal first
13 and then provide -- and then there has to be some
14 evidence implicating him as an accessory. And I
15 don't believe that there's been any evidence to
16 suggest that.

17 THE COURT: Yes, sir?

18 MR. O'NEIL: Well, I think there is evidence
19 that eliminates Mr. Heatley as a principal. That
20 evidence would be his statement, his statement
21 which is in evidence here, his version of what
22 transpired that night here would, if believed,
23 eliminate him as the principal person in this case
24 and only make him guilty of accessory after the
25 fact.

1 Based on the fact that his statement is in
2 evidence and, if it's believed, would eliminate him
3 as the principal first, in my opinion it would,
4 then I think he's entitled at that point to a jury
5 charge on accessory after the fact. Then it's up
6 to the jury to determine the facts in the case and
7 whether or not the State has proved Mr. Heatley is
8 guilty of murder or just only as accessory after
9 the fact.

10 MR. GOLDBERG: And, just briefly. I mean, his
11 statement does that indicate that he has any
12 knowledge of the murder. I don't know how he would
13 be able to then suggest he was an accessory when he
14 doesn't even acknowledge that he knows that the
15 murder has taken place in his statement. He
16 doesn't even talk about that.

17 THE COURT: All right, I'm going to deny the
18 request to charge pursuant to Fuller. I'm not sure
19 how, based on the testimony, what's in the
20 evidence, how the jury would be able to find that
21 he was -- either they will find that he was not
22 involved in the murder or he was involved, either
23 guilty or not guilty of the murder. I'm not sure
24 if there has been any testimony that arises to an
25 accessory after the fact. And, furthermore, there

1 is not any evidence that eliminates him as the
2 principal first, based on the evidence that has
3 been presented, eliminates him as the principal
4 first.

5 So for those reasons, I am going to deny the
6 motion to - I mean, deny the request to charge
7 accessory after the fact.

8 All right.

9 MR. O'NEIL: Your Honor, can I have five
10 minutes to make sure my charges are prepared for
11 closing? I just need five minutes.

12 THE COURT: Yes.

13 (Pause.)

14 THE COURT: You know what? Let's take about
15 -- she's going to get the jury charges. Let's go
16 ahead and take our break, because during closing
17 arguments, we're not going to get up and down. And
18 we'll lock the door during the jury charge. So if
19 anyone needs to use the restroom, now is the time
20 to do so. If you need to make a phone call, now is
21 the time to do so.

22 Let's take about 10 minutes, and that will
23 give the attorneys an opportunity to collect
24 yourselves, use the restroom before we go into
25 charge and closing.

1 (WHEREUPON, a break was taken.)

2 THE COURT: She's going to give you a copy.
3 Depending on how long the closings go, I'll check
4 with the jury and see if they need another break.
5 I am going to -- I don't normally limit y'all in a
6 closing. Of course, I didn't do that not long ago
7 and I had a 3-hour closing, so. I don't think
8 either one of y'all are going to close for three
9 hours, but just be mindful. I'm not going to give
10 you a time, but three hours is too long. All
11 right.

12 Speaking of closing, of course the State is
13 going to close in full, and then we'll hear from
14 the Defense. And I think pursuant to State v.
15 Beatty, you will only be able to reply to anything
16 that they bring up.

17 Let me see y'all one second.

18 (WHEREUPON, a bench conference was
19 held.)

20 THE COURT: All right. So we're ready?

21 MR. GOLDBERG: Yes, ma'am.

22 THE COURT: Closing will be Mr. Goldberg and
23 then Mr. -- the Defense did not put up any
24 evidence, and so therefore they will get last
25 closing.

1 All right. Are we ready to bring them in?

2 MR. GOLDBERG: Yes, ma'am.

3 THE COURT: You can go ahead and bring them
4 in.

5 (WHEREUPON, the jury came into open
6 court at 10:38 a.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: Good morning again, ladies and
9 gentlemen of the jury. As you heard, the State has
10 rested. And as I told you on Monday, the Defense
11 does not have to put up any evidence. The burden
12 is upon the State to prove the Defendant guilty
13 beyond a reasonable doubt. However, if they wish
14 to put up any or call any witnesses at this point,
15 now is the time to do so.

16 So I will ask Mr. O'Neil if he has any
17 witnesses that he wishes to call.

18 MR. O'NEIL: Your Honor, at this time the
19 Defense rests.

20 THE COURT: All right. Thank you.

21 All right. Ladies and gentlemen of the jury,
22 the State has rested, and the Defense has rested
23 also.

24 At this time we are ready for closing
25 arguments. You will hear first from Mr. Goldberg,

1 on behalf of the State, and then you will hear from
2 Mr. O'Neil on behalf of the Defendant. Following
3 closing arguments, you will then receive the charge
4 on the law from me, from the Court. I will see
5 after closing arguments if anyone needs a break.
6 We'll take a break before we go into the charge on
7 the law, if necessary. If not, if y'all say keep
8 rolling, I'll keep rolling.

9 MR. O'NEIL: So the record is clear, I'm
10 moving at this point to renew my previous motions
11 as it relates to directed verdict and the standard
12 of either direct evidence or circumstantial
13 evidence.

14 THE COURT: All right. So noted for the
15 record. Thank you, sir.

16 All right. Yes, sir?

17 MR. GOLDBERG: Thank you, Your Honor. May it
18 please the Court? Counsel?

19 CLOSING ARGUMENT

20 MR. GOLDBERG: Ladies and gentlemen of the
21 jury, 19-year-old Deandra Roach did not deserve
22 this. She was a daughter, sister, a friend,
23 co-worker, and a giving person. Someone who always
24 wanted to make sure that everybody was taken care
25 of. She did not deserve this.

1 Despite being all of those things, she was
2 shot 12 times. Bullets traveled through her brain,
3 liver, sternum, breast, intestines. Her arm was
4 broken from a bullet. Her leg was broken. She was
5 dragged out of her car, robbed of her belongings,
6 her phone, her credit card, keys. And she was left
7 in a deserted field like a piece of garbage.
8 Deanndra Roach did not deserve this.

9 Now, Mr. O'Neil told you in his opening that
10 you couldn't see the full picture in this case as
11 there was an obstructed view. And he gave you that
12 little example, that picture he showed you. I
13 couldn't agree more. In a perfect world, the full
14 picture would include Deanndra Roach sitting right
15 here telling you her story. But that didn't
16 happen. There is an obstructed view in this case.
17 And in this case, the obstruction is the Defendant,
18 Andre Heatley.

19 Your job is to take all the little pieces that
20 have been presented to you, all of the facts, put
21 them together, use your common sense when looking
22 at this. And you will see the whole picture
23 surrounding Mr. Heatley. And that picture will
24 show you that he must be held responsible for his
25 actions. And they were his actions, mind you. His

1 choices. His plan. Don't let yourself get
2 distracted from the facts of the case. He planned
3 an attack on Deanndra Roach. We know that via the
4 text messages. He shot her in the head, he robbed
5 her, and he left her to rot alone in a field. He
6 must be held accountable for his intentional
7 actions.

8 Now, ladies and gentlemen, this case isn't
9 about the fastest route from the Walmart to the
10 shooting spot on Farrow Road and which direction
11 that she went. It's not about some -- what I would
12 argue, some made up guy named Von. It's not about
13 how many times he has used her card in the past or
14 how many times she let him use her card in the
15 past. And it is certainly not about some bad
16 information about Facebook posts.

17 This case is about holding Andre Heatley
18 accountable and responsible for his malicious and
19 intentional actions that he committed on
20 January 28th, 2016, when he robbed and murdered
21 Deanndra Roach.

22 Now, I want to spend just a few minutes first
23 talking to you about the law in this case. You all
24 are the judges of the facts. You decide what
25 happened. Judge Benjamin is the judge on the law.

1 She's going to tell you what the law in this state
2 is. And if anything I'm about to tell you about
3 the law contradicts with what she says, you take
4 her word. But I need to give you a little bit of a
5 preview of what she's going to tell you so you know
6 what you're looking at.

7 First, Mr. Heatley is charged with murder.
8 Simple definition, one of the simplest ones we've
9 got. Killing of any person with malice
10 aforethought, either express or inferred.
11 Obviously, there was a killing here. The question
12 is, has the State proven that malice was used?

13 Well, what is malice? Malice is a legal
14 definition. It's a term of art, as they say. And
15 I'm not going to ask you to read this whole thing,
16 but the judge is going to tell you that malice
17 conveys the meaning of hatred, ill-will, hostility
18 towards another, a condition of the mind which
19 shows a heart devoid of social duty and fatally
20 bent on mischief. A malicious killing is where an
21 act is done without justification or excuse. It's
22 an intentional doing of a wrongful act towards
23 another without justification.

24 Now, let's look at a more streamline version
25 of that. Simple terms. Malice. Hatred, ill-will,

1 or hostility towards another person. Has there
2 been evidence presented to you of malice? I would
3 argue overwhelming evidence.

4 You had specific testimony from Investigator
5 Torres that Mr. Heatley told her when being
6 interviewed that he had hatred for Deandra. You
7 have testimony from Desha Anderson, his girlfriend
8 at the time, that he was angry with her for keying
9 his car. Ill-will. Hatred.

10 Now, earlier, I told you a moment ago that
11 malice could be either express or implied. Okay,
12 two different kinds of malice, same thing. Let's
13 talk about what express malice is. When a person
14 speaks words which express hatred or ill-will, what
15 I just told you, that is express malice. But it
16 goes -- the law goes a step further. When the
17 person prepared to do the act which was later
18 accomplished, for example, lying in wait for a
19 person or any other acts of preparation going to
20 show that the deed was within the Defendant's mind
21 would be express malice.

22 You heard that he was lying in wait. You
23 heard testimony that his cell phone puts him in the
24 area of the crime scene at 9:44 p.m., some 45
25 minutes before she arrived. And at that time,

1 what's he doing? He's texting. He's talking to
2 Denise and he's talking to Desha and he's telling
3 them -- what does he say on the text messages?
4 We'll go back through it. Lying here thinking of a
5 plan. His words via the text messages. Not anyone
6 else's account of what he said. You have the text
7 messages. Lying here thinking of a plan. Lying in
8 wait, preparing. Got to get this money, murder and
9 robbery, he says in the text messages.

10 Now, the judge is also going to tell you --
11 well, let me back up. We talked about express
12 malice. Inferred malice. Even if you think there
13 wasn't express malice, which I submit there was
14 based on what I just said, you can infer malice by
15 the use of a deadly weapon. And in this case,
16 there is evidence that there was two deadly weapons
17 used, a Smith & Wesson that was collected from
18 Mr. Heatley, and a High Point 995. And we'll get
19 into how we know that was used. But I submit to
20 you the use of those two weapons with evidence
21 tying both types of weapons to the crime scene to
22 Ms. Roach's body in the form of the projectiles
23 that were removed from her implies the use of
24 malice.

25 The other charge that Mr. Heatley is looking

1 at, armed robbery. Pretty simple. If you commit a
2 robbery while armed with a pistol or any other
3 deadly weapon during -- alleging either by actions
4 or words while armed or using representation of a
5 weapon or any object which the person believed to
6 be a weapon is guilty of armed robbery.

7 So we know he had a gun at the scene. The
8 ballistics, the firearms analysis confirmed that
9 there are casings at the scene that match the gun
10 that he used.

11 We know that her credit card was taken. We
12 know that she had it right before work. She used
13 it at the Sonic right by the Walmart where she
14 worked ten minutes before her job started. And
15 then it was used in Irmo at those three ATMs which
16 he admits using.

17 And I submit to you that Mr. Heatley shot
18 Deanndra, pulled her out of the car, rummaged
19 through her person. And if you recall, the
20 testimony was that her shirt had been pulled up.
21 And then he took her phone, her credit card, this
22 pepper spray, her personal belongings, and he took
23 them for his own use while armed with that weapon
24 after he shot her.

25 And the judge is going to tell you, the victim

1 doesn't have to be alive during an armed robbery.
2 It is not essential that the victim must be alive
3 when the robbery occurs. In order to be guilty of
4 armed robbery in conjunction with a homicide, the
5 State has to prove the victim's death and the
6 taking are part of a continuous chain of events so
7 interconnected so as to be inseparable. And I
8 submit to you that's exactly what happened here.
9 He went there, he shot her, he pulled her out of
10 the car, and he took her stuff while armed with
11 that weapon, and then he went and used her credit
12 card. He tried to use it at the ATM, and he did
13 use it when he bought the watch. Murder and armed
14 robbery.

15 Now, the standard of proof in this case is
16 proof beyond a reasonable doubt. The judge is
17 going to tell you that we have to prove our case to
18 you and prove each element of those offenses to you
19 beyond a reasonable doubt. And that's a lot of
20 language up there, and the judge is going to read
21 it to you later, but I want to tell you what
22 reasonable doubt is.

23 What does that mean, proof beyond a reasonable
24 doubt? That does not mean proof beyond any doubt
25 or all doubt. It means that we have to prove our

1 case beyond a reasonable doubt.

2 Now, there are some people in this world who
3 may doubt, for example, that the sun is going to
4 rise in the morning. That would be an unreasonable
5 doubt, okay? The standard is that we must prove to
6 you our case beyond a reasonable doubt.

7 So what is reasonable doubt? It's the kind of
8 doubt that would cause a reasonable person to
9 hesitate to act. When you're considering this
10 evidence, do you hesitate to act?

11 Now, further, the judge is going to tell you
12 that proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the Defendant's
14 guilt. You can have a doubt. It's not proof -- we
15 are not required to prove our case beyond any doubt
16 or all doubt. You can have doubt. However, if,
17 after considering all the evidence, you are firmly
18 convinced of Mr. Heatley's guilt, then the law
19 requires that you have no choice but to find him
20 guilty.

21 And I submit to you at this time, based on all
22 the evidence that's been presented in this case,
23 the State welcomes the burden of proof in this
24 case. There is overwhelming evidence that has been
25 presented to you that we're going to talk about

1 that shows you that we have met the burden of proof
2 and you will be and should be firmly convinced that
3 Mr. Heatley is responsible for Deandra Roach's
4 death.

5 The judge is going to tell you that there is
6 two kinds of evidence presented, circumstantial
7 evidence and direct evidence. Direct evidence is
8 exactly what it sounds like. The person saw
9 something, they heard something themselves, they
10 said something, and they got on the stand and told
11 you about it. Circumstantial evidence is when you
12 take these little facts that have been presented
13 and you piece them together to make a bigger
14 picture. And there is no distinction between them
15 in the law. One doesn't carry any more importance
16 than the other. You take whatever direct evidence
17 you have and you take whatever circumstantial
18 evidence you have and you put it together and you
19 apply the facts to the law in the case and you make
20 your decision. And the judge is going to tell you
21 about that.

22 Just a couple more quick things on the law.
23 There was testimony about Mr. Heatley's statement.
24 And you heard me ask a bunch of questions about
25 whether he spoke freely and voluntarily. And

1 that's because any time a Defendant provides a
2 statement to law enforcement, we have to show you
3 that it was a voluntary statement. Did he make the
4 statement? Yes, no question about that. Was he
5 warned of his rights? Yes. You heard from Torres
6 and Gonzalez that he was advised of his rights, he
7 said he understood them, and he agreed to talk.

8 Now, he did say that he wanted to call his
9 mama and talk to her and they told him he couldn't
10 call his mama, but he never said that he didn't
11 want to talk. Once they told him that, he never
12 said he didn't want to talk, he never asked for a
13 lawyer. He said he was okay with talking to them,
14 and then he proceeded to answer their questions
15 about what happened. A knowing and intelligent
16 waiver of his rights. And I would submit to you
17 that what he told law enforcement on that night was
18 voluntary.

19 You heard from expert witnesses in the case.
20 And the judge is going to tell you about that,
21 about the significance of expert opinion, expert
22 witnesses, and how they can offer their opinions as
23 to certain matters. You don't have to take it,
24 it's up to you. It's just like any other witness.
25 However, they are allowed to give their opinion,

1 such as the firearms analyst talking about her
2 conclusions about the gun compared to the shell
3 casings, the gunshot residue analyst, the crime
4 scene technicians, the DNA witness, the latent
5 print. All of those that provide you these
6 opinions about conclusions they made, you can give
7 that whatever weight you deem appropriate.

8 However, it goes back to the same as any other
9 witness that you hear from where you were tasked
10 with judging the credibility of witnesses, okay?
11 That's just another way of telling you that you are
12 tasked with judging the believability of a witness,
13 okay? When they're on the stand, do they -- what's
14 their demeanor like? Do they appear to be
15 forthright in what they're telling you? Was their
16 testimony consistent? Was it corroborated by other
17 evidence?

18 Credibility of witnesses is simply the
19 believability of witnesses. Ladies and gentlemen,
20 I submit to you that this is something you do every
21 day of your lives, okay? These witnesses get on
22 the stand, they testify and you are deciding, is
23 this person believable? Are they credible? You do
24 that every day already. You may not realize it.
25 Whether you're at work, you go to the water cooler,

1 you're in a grocery store, wherever you might be,
2 any time you come in contact with somebody,
3 somewhere inside of you you're asking yourself, is
4 this person believable? Is this person telling me
5 the truth? This isn't any different.

6 Think back to the witnesses that took the
7 stand. Think about their reasons for why they said
8 what they said. Think about whether or not they
9 came across as believable in what they said.

10 Cynthia Roach, for example, was she believable
11 when she told you she never said that about the
12 Facebook? Use your common sense when thinking
13 about those things.

14 And I'm not going to go on forever about the
15 law because, like I said, the judge is the expert
16 on the law. She's going to -- again, if I tell you
17 anything different than what she says, you take her
18 word for it. But I think it's important for you to
19 have a preview of what you're going to hear from
20 her.

21 Now, the Defense has tried to draw your
22 attention away from the facts in this case, okay?
23 It reminds me of an old story that they used to
24 tell us way back in law school, okay? And the
25 story was about a Defense attorney and a preacher.

1 And they're walking down the street and they come
2 up to the corner waiting to cross the road. And it
3 was raining that morning. And as they're waiting
4 to cross the road, they look down and, sure enough,
5 there's a puddle right at the curb, a big old
6 puddle. They both stop and they look at it. And
7 when they look down at the bottom of the puddle,
8 there's a big bright shiny silver dollar at the
9 bottom of the puddle.

10 And the preacher looks at it and says, Hey,
11 look at that silver dollar. And the Defense
12 attorney leans down, picks up a stick off the
13 ground, and stirs up the puddle. All the dirt and
14 silt from the bottom comes up, rises up and mixes
15 with the water, clouds up the puddle. And he looks
16 at the preacher and he says, What silver dollar?

17 And I submit to you, that's exactly what the
18 Defense has tried to do in this case. They are
19 trying to take your attention away from the facts
20 that have been presented that will show that Mr.
21 Heatley is guilty of these offenses.

22 So let's talk about those facts, okay?
23 There's been a lot of discussion about the timeline
24 in this case, so let's go through it.

25 Now, we know that Deandra Roach clocked in to

1 work at 5:00 p.m. that night at Walmart on the
2 28th. We know she was there. She worked her
3 shift. And I'm going to kind of try and combine
4 the timeline as we go through it because there's
5 been a lot of disjointed presentation -- and that
6 reminds me, if we've done anything during the
7 presentation of this case that was clumsy or out of
8 order, please don't hold it against the witnesses
9 and the testimony that was presented. We try to
10 present to you the most complete case we can,
11 sometimes it's a little hard to wrangle everybody
12 in the right way, in the right order.

13 So let's go through this timeline. 5:00 p.m.
14 Deandra clocks in to work, undisputed. At
15 6:00 p.m. that night on the 28th, the Defendant
16 actually calls his girlfriend, Desha Anderson, and
17 says, according to her, that he was, quote, about
18 ready to -- about to get ready to try you know
19 what.

20 And when asked what she thought that meant,
21 Desha told you that she thought that A.J., the
22 Defendant, meant that he was going to kill Deandra
23 Roach. And she said that because she had heard him
24 say things about harming her in the past. That's
25 at 6:00 o'clock that night. About to get ready to

1 try you know what.

2 Then at 6:20, Denise Winston, the mother of
3 his child is communicating with him. She texted
4 him, What are you doing? His response, Laying here
5 thinking of a master plan. His words, okay? You
6 saw them in the text messages. The text messages
7 are in evidence. You can see them yourself, you
8 can look at the PowerPoint. His words. Laying
9 here thinking of master plan. She says, No plan
10 Babe, come on. And that's when he says to her in
11 print -- in fact, why don't we look at it exactly.
12 What are you doing? Remember the minus five hours,
13 so that is 6:20 p.m. 6:25, laying here thinking of
14 a master plan. And then the Defendant texted to
15 Denise Winston: Yes, babe, got to get this money.
16 Murder and robbery. She got bands. Devonta
17 confirmed it the other day when she took him home.
18 Bank card the same. Pass code on phone the same.
19 She got bands and I'm taking it. His words at
20 6:28 p.m. on the night of the murder.

21 Now, that same conversation, they go on and
22 Denise is saying that she's not working right now
23 and neither is he, and she's talking about their
24 child and they need money.

25 And his response, Okay, babe, I got this. I

1 got this. He had a plan. He had a plan of how he
2 was going to take care of this money situation.
3 We'll come back. We'll come back to this.

4 Now, around that same time, let's fast forward
5 now to 9:24 p.m., the phone records show that Mr.
6 Heatley actually makes a call from the Farrow Road
7 area. His phone hits off a tower in the Farrow
8 Road area at 9:24. At 9:44, his phone is
9 specifically pinging off the tower closest to the
10 crime scene. You heard all that testimony about
11 the particular sectors and how they could tell
12 which sector of the three the phone was located in.
13 Well, we know that his phone is located in the
14 sector within the -- within which the crime scene
15 is located at 9:44 p.m.

16 At 9:51, a text from Denise. What you doing?
17 His response: In the cut. Thinking of a master
18 plan. 9:55 p.m., In the cut, thinking of a plan,
19 thinking about you and Jullie. That's at 9:55,
20 minutes before Deannadra gets off work.

21 At 10:08 p.m., the phone records show that he
22 has a deleted Facebook message on his phone, okay?
23 Why is that significant? Well, there was testimony
24 about the manner in which Mr. Heatley communicated
25 with people. We know text messages, phone calls,

1 instant messages.

2 Now, there was testimony from Ashley Gadson, a
3 friend of the victim, who clearly was completely
4 frozen by this entire situation when she was on the
5 stand. But she still told you that she observed
6 Snapchat messages between the Defendant and the
7 victim from time to time. She actually saw them
8 with her own eyes. And the Snapchat messages
9 disappear once they've been sent. They would not
10 appear in these records. Once they've been done,
11 they're gone. And she told you that she saw
12 Deannadra and the Defendant communicate via
13 Snapchat.

14 Now, these Facebook messages are notable as
15 well. On January 28th at 10:58 a.m. -- a.m. --
16 Mr. Heatley gets a message on his phone, later
17 deleted, that says, I'm outside. Somebody sends
18 him this message at 10:58 saying, I'm outside.

19 Well, it just so happens that Deannadra's phone
20 is pinging off the tower that includes the
21 Kirkstone residence where he lives at that exact
22 moment, 10:58 a.m. This cannot be a coincidence.
23 This is how they were communicating. If it wasn't
24 Snapchat, they were using Facebook messages. I
25 would argue to you that that message saying I'm

1 outside is from Deannandra's phone, which was in the
2 area of his house at 10:58 a.m.

3 So that brings us back to that night, 10:08
4 p.m., he has a deleted message of the same variety.
5 We were unable to retrieve the content from that.
6 I would argue that that message that was deleted at
7 10:08 was Deannandra leaving work communicating with
8 him about meeting up shortly thereafter. If you're
9 wondering how they knew to meet up, that's it.
10 That's it. They were communicating via those
11 messages.

12 So she's leaving work. You heard from Reno
13 Jordan who told you that Deannandra said that she was
14 going to meet up with her boyfriend and that he
15 told her not to go. Now, he doesn't know the guy's
16 name. Y'all think back to when Reno was on the
17 stand. He didn't know the guy's name. He said he
18 didn't know who the guy was. He didn't know if it
19 was her current boyfriend, if it was her
20 ex-boyfriend, she just said her boyfriend, right?
21 Well, let's be honest. Would it surprise anyone
22 for anyone to say that Deannandra and the Defendant
23 were boyfriend and girlfriend, whether they were
24 technically broken up or not? No. There was all
25 kinds of testimony about how they had an

1 on-again/off-again relationship. Okay? Her
2 mother, who knew everything about her life, didn't
3 know that they were talking at that time because of
4 the on-again/off-again nature of their
5 relationship. So the fact that Reno didn't know if
6 it was current boyfriend, ex-boyfriend that is of
7 no significance. What, you expect me to believe
8 that she was going to get in her car at 10:15 and
9 drive to Charlotte to go see Shanard right then?
10 No. That wasn't happening. Shanard's in school.
11 He's playing football. It's a week night. It's a
12 Thursday night. She's not going up there. She
13 called him, we know that. He talked to her on the
14 phone for a couple or three minutes at 10:16. She
15 wasn't going to Charlotte. She was going to meet
16 up with the Defendant. She had already been with
17 him earlier that day.

18 10:13, she leaves the parking lot. 10:16,
19 she's on the phone with Shanard. And this is where
20 we get into some of the phone records, right. And
21 those phone records, as Captain McDonald told you,
22 show you the exact route that her phone takes from
23 Walmart to the crime scene location on Farrow Road
24 where it looks like she travels up Clemson Road,
25 all the way to Farrow, right on Farrow, up to the

1 crime scene. It's the roundabout way, but her
2 phone travels that direction and it puts her there
3 at the 10:34 area, 10:34 timeframe, in the sector
4 where the crime scene is located.

5 Her phone and the Defendant's phone are at the
6 crime scene at virtually the same time. They're
7 bouncing off the same tower within seconds of each
8 other, within a minute of each other, the same
9 minute.

10 Now, I want to make sure that you caught the
11 testimony from Captain McDonald about this because
12 there was an issue made about whether the phone is
13 bouncing off of this tower or this tower at this
14 time or that time. And I think it's extremely
15 important that you understand what he was saying.
16 The phones can bounce between towers, okay? As
17 you're traveling, they can bounce off of different
18 towers. It can even hit a tower in what appears to
19 be the opposite direction.

20 So if you recall, he described how the phone
21 could hit the tower further north at, you know,
22 10 -- we'll say 10:34 and then at 10:35, it picks
23 up the tower further south. And then at 10:37,
24 it's hitting this tower back up here. And then at
25 10:38, it's back down here. His testimony is not

1 that the phone was traveling up and down the road.
2 That didn't happen. His testimony was that those
3 phones search for the strongest signal. And they
4 do that so cell phone companies don't lose calls.
5 They don't want you to drop calls was his
6 testimony. So they have overlapping coverage. And
7 your phone, whether you're on it or not, is
8 searching for the strongest signal as you're
9 traveling.

10 And his testimony was that her phone very well
11 could have hit off the one down here and then one
12 up here even though she was traveling this
13 direction, and then hit down here again. That was
14 clear. And that's important. There was no riding
15 up and down. Their phone, movements -- the
16 movements of their phones echoed each other from
17 the time they were at the crime scene to the time
18 they left. Study this thing. Go back and look at
19 it if you want. It's detailed.

20 It shows the exact travels. Down 77, over to
21 26, and it puts them both there, both phones in the
22 area of the Palmetto Citizens ATM, which we know he
23 used with her card at the same time. It's got her
24 phone there at 10:58.

25 Now, is it reasonable to believe that she was

1 alive at this point and drove herself or rode with
2 him down the interstate to the ATM for him to try
3 to use her card at three different ATMs and then
4 somehow she ends up back at the crime scene
5 sometime later all the way back across town? No.
6 That is unreasonable. The reasonable explanation
7 has already been provided to you. He shot her, he
8 took her phone, he took her card, and he used her
9 card. And then he bought a watch. Then he ditched
10 the phone and he ditched the card.

11 Let's back up just a hair during this
12 timeline. 10:35 p.m., as this is all going down,
13 probably within a minute either way of her being
14 killed, you heard testimony that the Defendant
15 called his girlfriend, Desha Anderson. The call
16 wasn't long. And what does she tell you about his
17 demeanor on the phone? She said he was jittery.
18 And that's when he told her that he got into an
19 argument with Deandra and that she tried to pepper
20 spray him.

21 Desha Anderson's got no reason to lie in any
22 of this. This was her boyfriend. If anything, she
23 had been dating him for two years, she'd want to
24 try to protect him, but she told law enforcement
25 what she knew. And she told them about that phone

1 call at 10:35 where he was jittery and he admits to
2 her that he got into an argument with Deannandra and
3 she tried to pepper spray him. She didn't try to
4 pepper spray him. We got his clothes. Law
5 enforcement went and got his clothes from his
6 house, the same clothes that are matched up with
7 the ones he's wearing at the ATM. They were tested
8 for pepper spray. You heard from Mr. Tang, no
9 pepper spray on those clothes. The only way you'd
10 be able to get that out is bleach, and there was no
11 evidence of that. She didn't pepper spray him
12 because she didn't even get the chance.

13 Now, as I said, his phone and her phone echo
14 each other's movements from the crime scene, down
15 77, across 20, up 26 to the Palmetto Citizens
16 Credit Union at 11:00 o'clock.

17 So let's talk about the credit or debit card
18 usage for a minute. We know that at Chick-Fil-A
19 that morning, she used her card, or her card was
20 used at Chick-Fil-A. There was no video preserved
21 from Chick-Fil-A about that. We know that the
22 Sonic within, I mean, a stone's throw of the
23 Walmart, I mean, it's practically in the same
24 parking lot, that her card was used at the Sonic 10
25 minutes before she had to be at work. She used her

1 card. She was going to work from 5:00 to 10:00.
2 She got something to eat before she went to work.
3 There was no activity between the Chick-Fil-A
4 charge in the morning and the Sonic charge at 4:49.
5 Because she had the card, nobody else had the card.

6 And then there's no activity on the card
7 between 4:49 at the Sonic and the time that it's
8 used at 11:00 o'clock at the Palmetto Citizens by
9 the Defendant per his own admission. And, again,
10 at the Bank of America at 11:13, and at Wells Fargo
11 at 12:23 a.m. And, of course, the watch. At 1:55
12 in the morning, he gets a receipt for the purchase
13 of a Michael Kors watch. I submit to you that
14 Deandra Roach was laying in a field in a pool of
15 her own blood, shot 12 times -- 12 times -- and
16 what does he do? He buys a watch with her credit
17 card. He even puts her name on the receipt and has
18 it sent to his uncle's house. He admits he used
19 the card. He admits he bought the watch.

20 And then at 12:23, the records show the last
21 ping of her phone off the tower. It happens to be
22 in that area of the Irmo Wells Fargo area of where
23 he was. And there's no more activity on her phone
24 after that. 12:23 a.m. is the last time her phone
25 pinged a tower.

1 So you want to talk about this 4:00 a.m.
2 Facebook post? I don't know what that was. It
3 didn't happen, okay? I don't know where the
4 coroner lady got that from, but she was wrong. You
5 heard from Ms. Roach. Ms. Roach told you in her
6 own words in no uncertain terms that she never said
7 that. She never told anybody about whether
8 Deannandra used her Facebook at 4:00 a.m. She said
9 she told them what her screen name was, and that
10 was it. I don't know if there was a
11 misunderstanding or what, but she was wrong.

12 Now, she even told you, Ms. Neeley told you
13 that when she wrote down the time of death, she
14 wrote estimated based on that information. And I
15 believe her words was that was a guesstimate.
16 That's not very scientific to me. That sounds like
17 something grounded in incorrect facts. But you
18 guys judge the credibility of Ms. Roach and whether
19 she was telling the truth about that. I submit to
20 you it didn't happen. We know she didn't use her
21 phone because it wasn't used after 12:23. She
22 didn't go home. Nobody ever saw her again. Her
23 mother never saw her at home. She called her phone
24 all night. What did she do, she went to the
25 library or went to his house and got on the

1 internet and made a Facebook post at 4:00 a.m.?

2 No. Didn't happen. Bad information. And nobody's
3 perfect, I don't fault Ms. Neeley for it, but she
4 got it wrong.

5 Let's talk about why he did this. He told
6 Investigator Torres when they met when he was
7 detained on the 29th, said he, quote, had hatred
8 for Deandra. Hatred, because she keyed his car
9 previously. That was his word, hatred. You want
10 to talk about malice? Malice, he talked about
11 hatred, he said.

12 And if that wasn't enough for why he would
13 have done what we did, what's the other reason that
14 he said himself in the text messages? Murder and
15 robbery. He needed money. How do we know that?
16 Well, Investigator Torres told you that the repo
17 man was coming for his car. His car was three
18 months behind on payments and the repo man called
19 and said they wanted it. So he owed money on his
20 car. He was going to lose his car. He no longer
21 had a job at Taco Bell. There was some kind of
22 misunderstanding as it was described by him.
23 Denise, the mother of his child, is not working.
24 He's not working. They have text message exchanges
25 about needing money to provide for the baby. He

1 just bought a rifle on layaway. He talks about
2 that on the text messages. And he's trying to
3 balance all these women in his life. He's got
4 Deannadra, who's been on-again/off-again for a
5 couple of years. He's got Denise, who's the mother
6 of his child. He's got Desha, who's his current
7 girlfriend for two years. And all this crazy stuff
8 in these text messages between him and Devonta
9 Shuttles about rumors regarding Devonta's sister.
10 So he's got all these women in his life, all these
11 money problems. The answer was staring him in the
12 face. I know her pin number. I've just got to get
13 her card.

14 And when he's with Gonzalez and Torres, he
15 talks about it. I told you already about the
16 voluntariness of his statement. He waived his
17 rights. They asked him again even when they got
18 back to headquarters, the first two questions, Do
19 you understand your rights as I read them to you in
20 my vehicle? Yes. Were you willing to talk to me
21 in reference to Deannadra Roach? Yes. He willingly
22 told them his version of the events.

23 And during that time -- well, first when he's
24 detained at the Burger King, what was the testimony
25 about his reaction? Nothing. He didn't ask any

1 questions. He didn't ask anybody what was going
2 on, why he had been stopped, why they were talking
3 to him. Nothing. He just went and he began
4 talking to them after waiving his rights and he
5 proceeds to lie consistently through his
6 conversations with them and then when he puts it
7 down on paper.

8 Where were you Thursday, January 28th, 2016?
9 I was at my mother's house all day, all night. No.
10 Not true. He only admitted after being shown the
11 ATM footage, the videos -- and I'm not going to
12 play them for you right now, but the videos, the
13 stills, only once he's confronted with that does he
14 admit that he went to the ATM and that he wasn't at
15 his mother's house all night.

16 The Von issue. I only know this guy by face,
17 by his face. I don't know anything else about him.
18 That's because there was no Von. You have this
19 discussion about the red stain on the money and he
20 says that it probably happened when Von gave me the
21 credit card, it got stained with blood. He's
22 guessing about why there could be blood on this
23 money in his pocket. It wasn't blood. He didn't
24 know. He's searching. He's searching for some
25 story that can explain his actions and how he ended

1 up with her card and how -- why he was using it at
2 the ATM.

3 He tells them that he hasn't seen her in over
4 two months. He says that he left her card on the
5 ground at the Wells Fargo. But then he said no,
6 that was a lie. I didn't leave it on the ground
7 because then I went and I bought the watch
8 afterwards. He's asked if he was anywhere near the
9 northeast that night, and he says, No, I was at
10 home. Well, we know that's not true from the phone
11 records.

12 He's asked if has any other guns. He says,
13 No, just the one in the glove compartment in my
14 car. Again, we know that's not true. We know by
15 way of the video and the testimony from the pawn
16 shop owner that he went into the pawn shop and
17 bought another weapon, a High Point 995.

18 He denies to them that he's ever been to the
19 shooting spot, that he's ever fired guns out there,
20 but then he retracts and says, Well, actually, I
21 was out there and I shot my friend's gun one time.

22 And then, interestingly enough, think back to
23 what Investigator Torres told you when she was
24 talking to him. He told her that there was no
25 evidence that would match his gun to the crime

1 scene. And we know that isn't true. We know that
2 his gun, pulled out of his glove compartment of his
3 car that he admitted was his gun, is the same gun
4 that fired shell casings that were found at the
5 crime scene and in Deanndra Roach.

6 The testimony was that that gun fired shell
7 casings, Marker C, Marker 7, Marker H -- and I'll
8 go back through this in a minute -- all at the
9 crime scene, all match up to his gun. But he told
10 her, No, you're not going to find any of that.

11 And then what did he say after that? On his
12 own, not in response to any question, he says to
13 her, Where was she found anyway? And she says, In
14 a field. And he said, Oh, off Farrow Road? Now,
15 how would he know that?

16 He proceeds to go through this story about Von
17 and Vonnice. And you guys heard from Devonta
18 Shuttles. He knows Devonta Shuttles. They were
19 friends. They had this whole long text message
20 chain that you can read for yourself about
21 Devonta's sister and whether there was this said or
22 that said about the sister. He had his phone
23 number. They knew each other. They knew each
24 other well. There are people who refer to Devonta
25 Shuttles as Von, but that is not the Von that he

1 was talking about. Why would he say that name? He
2 was backed into a corner. He had no other way to
3 explain how he ended up with this credit card. So
4 he comes up with this story that this guy named Von
5 gave him the card and then actually tried to rob
6 him, oddly enough, and that's where it all came
7 from and that's why he has the card. But he can
8 give no identifying information about Von, no
9 specifics related to him, nothing, other than this
10 weird gold chain exchange and meeting him on the
11 corner.

12 If he was talking about Devonta, he would have
13 told them the specific information. Hey, here's
14 the phone number. We were just texting two days
15 ago. So why does he throw out the name Von? Well,
16 think about it. He's caught, right? He's been
17 pulled over. They know he has the gun. They know
18 that he's used the card. He's got to come up with
19 something. And the first name that pops into his
20 head is the one that he happened to have this
21 disagreement with a couple of days prior about the
22 sister. It was an easy out in his mind to just
23 throw that name out there. Oh, it was Von. There
24 is no Von. Not in the way he describes. And we
25 know that Devonta, the real Devonta Shuttles was in

1 Tennessee visiting family and was on the way back
2 from Tennessee when this all happened. Undisputed.

3 Think back to what he told you as well,
4 Devonta, when he testified. He told you that
5 Deannandra was a giving person. She wanted to make
6 sure everybody was good, they were taken care of.
7 She used to buy people food. But he also told you
8 that she wasn't literally giving and that when
9 people used her card, she was there. When he,
10 Devonta Shuttles, used her card, she was there.
11 They were together. I believe he said the majority
12 of the time, they were together. She wasn't
13 literally giving her card away. And he told you
14 that he never had her card. He never had it
15 himself and he certainly never gave it to
16 Mr. Heatley.

17 Brittany Carroway got on the stand. She
18 identified the Defendant as being the one in these
19 videos and stills. And what does she recognize
20 about him in particular? Not only does she
21 recognize his face, the shoes. The red shoes. She
22 recognized them as a present from Deannandra to
23 Mr. Heatley.

24 The other important thing that she told you is
25 that her brother, Tyrek, Tyrek's fingerprint was

1 found in Ms. Roach's car. And she told you that
2 she was Ms. Roach's best friend. They were
3 together all the time. And on several occasions,
4 her brother would be with them hanging out, and on
5 one particular occasion they all went to the zoo
6 and that he rode in the car and he rode in the back
7 seat. And you heard from the fingerprint examiner
8 that fingerprints can remain. There's no time
9 stamp on fingerprints. So Tyrek was in the car
10 with Brittany once upon a time. Tyrek did not kill
11 Deandra Roach. There's no evidence to support
12 that. But we have to explain to you and show you
13 why his fingerprint would have been in her car.

14 Ivory Fleming took the stand. Now, Ivory told
15 you that Deandra keyed the Defendant's car one
16 time and that he was upset about it. She also told
17 you that the Defendant said to her, Denise wants to
18 beat her ass and I want that girl dead. His words
19 to Ivory Fleming. And he told her that he was just
20 using Deandra for her money. And he also told her
21 that Deandra had told people that when she was
22 leaving work, she was going to be with him.

23 Now, if you think back to Ivory's testimony,
24 it was pretty clear that she didn't want to be
25 here. I think anybody could have been able to tell

1 that. And there's a way to describe her testimony.
2 There's an old saying, crime conceived in hell
3 don't have angels for witnesses. I'm not saying
4 she's a bad person, I'm just saying it was clear
5 she didn't want to be here. She told you what she
6 knew and she told you things Mr. Heatley said about
7 Deandra, that he wanted her dead, that he was
8 using her for her money, and that she was going to
9 be with him after work.

10 Now, if you recall, there was this old song
11 and dance that Mr. Fyall went through with Ivory
12 with her statement, where he would show it to her
13 and ask her if she remembered it and could refresh
14 her memory about it. And she would look at it and
15 say, yeah, and then she'd answer it. Well, there's
16 a reason for that. This happened three years ago.
17 And, in fact, Deandra Roach was found in that
18 field three years ago today.

19 So when these witnesses come in, yeah, their
20 memory may not be fresh. And that is precisely why
21 law enforcement writes it down when they talk to
22 them as it happened, so that three years later,
23 they can show them what they said and ask them if
24 it refreshes their memory. And in this case, she
25 told you that he said -- that Andre Heatley said he

1 wanted her dead.

2 Desha Anderson, think about her on the stand,
3 think about her demeanor. She was upset about
4 being here. But she was pretty forthright and
5 forthcoming with what she had to say. You could
6 see the emotion on her face, though. This had to
7 be tough. This is her boyfriend for two years.
8 I'm sure she didn't want to be here. I'm sure she
9 didn't want to be part of this. But she told you
10 what she remembered. She told you that the
11 Defendant kept a gun, Smith & Wesson, in fact, in
12 his car or on his person. She told you he recently
13 bought a long gun from a pawn shop. Both those
14 things were corroborated.

15 She told you that he went to the shooting spot
16 that week. And then on January 28th at 6:00 p.m.,
17 as I said before, the Defendant tells Ms. Anderson
18 that he was about to get ready to try you know
19 what. And she thought that meant that he was going
20 to kill her because of all the things he'd said
21 about her in the past.

22 Days before she's found, he told her that he
23 was going to kill that girl because he was still
24 bitter about his car being keyed. And he went so
25 far as to tell her specifically how he might do it.

1 Very interesting word choice that she relayed. He
2 told her that he was either going to use gunfire or
3 a knife. Well, he used one of them. He also said
4 that she had money and that he was going to take
5 it.

6 Now, this whole notion that Ms. Anderson lied
7 and made all this up because she was threatened by
8 law enforcement that she was going to be charged
9 with murder is ridiculous. You heard her
10 testimony. You heard Investigator Torres's
11 testimony and Gonzalez about that very issue. They
12 said that she was cooperative when she came on the
13 2nd. And Mr. O'Neil asked her a lot of questions
14 suggesting that the bulk of the information she
15 provided that I just told you about was given the
16 second time that she talked to him. No. When
17 Mr. Fyall questioned her and showed her her
18 statement from February 2nd, the first time, that
19 information was in there. She was cooperative.
20 She was forthcoming the first time they met, the
21 first time they talked. They weren't going to
22 charge her with murder. They just wanted to know
23 what she knew. She was his girlfriend, she had to
24 know something. And she did.

25 There were other messages from him. There was

1 an instant message with Denise texting about buying
2 the rifle on layaway. It's interesting that he
3 notes in those, and it takes 9 bullets, referencing
4 9-millimeter. As you heard, those 9-millimeter
5 bullets could be used in a Smith & Wesson and the
6 High Point rifle that was purchased at the pawn
7 shop. And again on the 21st in the instant
8 message, he says, I'm going to buy a rifle next
9 week. For what? And he said -- and his response,
10 I'm going to kill a N word. His words.

11 His clothes. He told investigators that night
12 that he drove home and changed clothes between
13 times at the ATM. I think he went to the Palmetto
14 Citizens. He goes to the Bank of America. And
15 then he tells them, Well, I slipped and I had to go
16 change clothes, and he goes home and he changes
17 clothes. Well, that's corroborated. We do know
18 that. If you look at the video, he's wearing the
19 dark black hoodie in the first two. And then in
20 the Wells Fargo at 12:23, what's he wearing? He's
21 got that gray sweatshirt. And if you look at it,
22 it's got that little black zipper right on the side
23 right there. Very distinctive item of clothing.

24 Well, this was taken from his house shown in
25 the search warrant. Well, what's that right on the

1 side? That zipper. Right on the end. This is the
2 shirt that he put on over it when he changed
3 clothes, when he tried to change what he looked
4 like when he went back to the ATM.

5 Those were collected from his house. The
6 shoes. We've heard a lot about the shoes, the red
7 Nike Air Force Ones collected from his house. The
8 same ones from the ATM photos. The same ones that
9 Deandra gave him as a gift. And the same ones
10 that left an impression at the crime scene.

11 Now, you heard from Sergeant Bouknight about
12 that. Sergeant Bouknight told you that when he
13 looks at these shoes, he looks at the size, the
14 particular size, the shape, the design, like the
15 swirls that you see here, the lines, and then the
16 overall general condition of the shoe, like has it
17 been worn down on any parts. And he looks at that
18 and he compared it to the cast. It was marked at
19 the crime scene as Marker AA. This cast, which is
20 a molding of a print, two prints removed from the
21 crime scene. Think about it. Where was Marker AA
22 located at the crime scene? Here we go. State's
23 101. Right there, Marker AA. That's the print
24 we're talking about. The shoe collected from
25 Mr. Heatley's house that he's wearing on video is

1 consistent with the shape, size, design and overall
2 general condition of this footprint at the crime
3 scene on the passenger side of Ms. Roach's car,
4 which we know from the testimony from the crime
5 scene analyst and Dr. Durso, the pathologist, that
6 she was shot from the right side and that all of
7 the shots were from the passenger side. Lo and
8 behold, his shoe print or a shoe consistent with
9 his shoe print is right there.

10 And you know what else is next to that?
11 Marker C. Marker C is the shell casing. And you
12 know what that shell casing matched? The gun taken
13 from his glove box. His gun fired this shell
14 casing right there next to his footprint at the
15 crime scene.

16 The jacket, the gray jacket, and the black
17 hoodie were tested for gunshot residue. Both
18 positive. Gunshot residue on his clothes. Gunshot
19 residue all over the inside of his car. That crime
20 scene was thoroughly processed. You heard a lot of
21 testimony from these crime scene investigators
22 about cigarette butt, a condom, a Skoal dip can was
23 found. They didn't have any evidentiary value in
24 the case. The value was the shell casings, all
25 these casings collected at the scene. We'll talk

1 about that in just a second.

2 You've got the Defendant's DNA on the barrel
3 of the weapon. You have fingerprints on the gun
4 magazine that the analyst told you were
5 inconclusive. There was insufficient ridge detail.
6 In other words, she couldn't get enough to say
7 whether it was him or it wasn't him with his print
8 on the gun. And she told you that's not unusual.
9 Let's not forget, this is not CSI, the TV show,
10 okay? It's not unusual for the analysts to not
11 find DNA or to not find a fingerprint on something.
12 Now, we put them up and we tried to explain to
13 y'all everything they did to try to get things that
14 they could. And they told you the things they
15 found, but they can't make it appear if it's not
16 there. All they can do is look. So it's not
17 unusual to not have his print on the gun. But you
18 do have the GSR all over his clothes and all over
19 the inside of the car.

20 Now, let's talk about his gun, State's 110.
21 Undisputed this gun is his gun and it was taken out
22 of his glove compartment when he's pulled over
23 on -- at the Burger King parking lot.

24 Now, you think back to what Amanda Metz told
25 you about these firearms. She told you that this

1 gun, his gun, fired this bullet. This bullet.
2 This bullet removed from Deannandra's head. That is
3 unquestioned.

4 But it doesn't stop there. She tells you that
5 there are three fired cartridge casings at the
6 crime scene that match this gun, his gun. And
7 where were they? You have Marker C right by the
8 passenger side car door. And you have Marker H
9 right there at the rear passenger side of the
10 vehicle. And tucked away right there, Marker 7.
11 Three different shell casings at the crime scene
12 that she told you came from this gun, the same gun
13 that put that bullet in her head.

14 Now, interestingly enough, she also told you
15 she can't match the bullet to the shell casing.
16 That's like the one thing they can't do. But she
17 can tell you that the bullet came from that weapon
18 and she can tell you that the shell casings came
19 from that weapon. His weapon. And, again, one of
20 those being right by Marker AA where his footprints
21 were.

22 And then you also heard about how there were
23 shell casings collected at his house, located
24 inside a box in an infant car seat here in State's
25 230 and 231. You'll see a whole bunch of shell

1 casings there in that car seat box that Ms. Metz
2 told you were fired, again, by the Defendant's gun.

3 She then told you about this High Point
4 firearm. And that was especially interesting. She
5 told you that High Point firearms make a very
6 distinctive marking when they fire either a
7 projectile or cartridge casing, and it makes it
8 somewhat easy to identify. There were cartridge
9 casings found all over the scene. Here's the
10 actual casings in State's 52. And you see a lot of
11 them here in State's 17. You've got these markers
12 1 through 6, 8 through 21, A, B, G, and J, all
13 throughout the crime scene here. All of those are
14 consistent to having been fired by a High Point
15 9-millimeter. And she told you that all of these
16 casings that I just mentioned, 1 through 6, 8
17 through 21, A, B, G, and J, were all fired by the
18 exact same firearm. Okay?

19 So let's take it one step further. We know
20 that just two days prior, Mr. Heatley went to the
21 Best Deal Pawn Shop layaway plan and he bought a
22 rifle, High Point 995, 9-millimeter. High Point
23 995. And that's significant, because what Amanda
24 Metz told you are that the projectiles taken out of
25 Ms. Roach's body -- now, we've already talked about

1 the one to her head coming from this gun, but in
2 addition to that, these projectiles from her arm,
3 her leg, her breast, her abdomen, her sternum, her
4 pelvis, every one of those, as well as the fragment
5 that Cavanaugh collected from the crime scene that
6 was the bullet fragment under Ms. Roach's arm and
7 two fragments pulled out of Ms. Roach's car, all of
8 these things were consistent with being fired by --
9 well, actually, she told you that the possible
10 firearms manufacturer and origin of these shots
11 were two possibilities. She told you a High Point
12 995 and a High Point C. So you are telling me that
13 these items that were pulled directly out of her
14 body and out of her car are consistent with being
15 fired by the exact type of weapon that he purchased
16 the day before.

17 And you must be sitting there thinking, Wait a
18 minute, he shot her with two guns? Yeah, he shot
19 her with two guns. That is malice. Her body was
20 riddled with these bullets from the rifle. But
21 that wasn't enough. He had to finish her.

22 You also heard about how some of the bullets
23 were made by Hornaday, some were made by
24 Winchester, some were made by Blazer. And none of
25 that matters. They're all the same caliber. They

1 were all 9-millimeter Luger caliber. And Metz told
2 you that both of those weapons could have fired all
3 of those and they all could have been loaded in
4 there in the same way. Her work was reviewed by
5 another firearms examiner who did not find any
6 discrepancies in what she did and agreed completely
7 with her assessment.

8 Now, as I'm wrapping up here, there was the
9 autopsy. And Dr. Durso explained to you in
10 painstaking detail the gunshot wounds. You'll have
11 this and you can look at it. All the different
12 places that she was shot, and that those were
13 consistent with being shot from the right side,
14 from the passenger side. Some of them were even
15 defensive wounds. Broken arm, broken leg.
16 Projectiles cut into her body at various angles.

17 What do we know in conclusion? We know his
18 gun, the Smith & Wesson from his glove compartment,
19 the bullet in her head came from his gun. The High
20 Point 995 purchased just days prior, same kind of
21 weapon that fired the bullets removed from her body
22 and her car. Cell phone records tracks her phone
23 right to the crime scene, tracks his phone to the
24 crime scene. Puts them there virtually at the same
25 time. Has them travel, her phone leave with his,

1 goes the same route away from the crime scene to
2 the ATM where he uses her card and later buys a
3 watch. ATM, he's on video. He admits it's him
4 using the card and gives this insane story about
5 Von.

6 Why? We know why. He had hatred towards her.
7 He told you that. He told everyone that. He hated
8 her. She keyed his car. Are you kidding me? If
9 that wasn't enough, he needed money. So he came up
10 with a plan. He laid in wait for her and he killed
11 her.

12 Now, I told you at the beginning of this that
13 it was your job to take all the little pieces, all
14 the facts, put them together, and use your common
15 sense when looking at this to see the whole picture
16 around him. And once you've done that, the
17 obstruction that I referenced earlier kind of fades
18 away. And there's one clear picture that is left,
19 one reasonable conclusion that you can reach.
20 Andre Heatley is guilty. He planned it. He
21 carried it out. And he tried to blame anybody but
22 himself. Deandra Roach did not deserve this.

23 Hold Andre Heatley accountable, hold him
24 responsible by finding him guilty of murder and
25 armed robbery.

1 Thank you.

2 THE COURT: All right. Mr. O'Neil?

3 MR. O'NEIL: Yes, ma'am.

4 THE COURT: Are you going to use the screen
5 also?

6 MR. O'NEIL: No, Your Honor.

7 THE COURT: Y'all can move the screen.

8 Let's take about five minutes to use the
9 restroom real quick.

10 (WHEREUPON, the jury retires to the jury
11 room at 11:55 a.m.)

12 THE COURT: Let's take about five minutes.

13 (WHEREUPON, a break was taken.)

14 THE COURT: All right. Are we ready to bring
15 them back in? Are you ready?

16 MR. GOLDBERG: Yes, ma'am.

17 THE COURT: Bring them on in.

18 (WHEREUPON, the jury came into open
19 court at 12:10 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you.

22 Yes, sir, Mr. O'Neil.

23 MR. O'NEIL: Thank you, Your Honor. May it
24 please the Court?

25 CLOSING ARGUMENT

1 MR. O'NEIL: I have a 2-year-old daughter, and
2 her favorite characters all come from either the
3 Lion King or Doc McStuffins. And her grandmother,
4 my mother-in-law, decided to buy her these puzzles
5 for Christmas. She's two years old, but she bought
6 her some puzzles. It wasn't a good idea, but
7 grandmama bought the puzzles anyway. And as my
8 daughter often would do, she opened both toys
9 because she wanted to play with both puzzles at the
10 same time. And she opened both puzzles and she
11 mixed them altogether. All the pieces on the floor
12 altogether mixed up. The Lion King puzzle pieces
13 are mixed up with the Doc McStuffins puzzle pieces.
14 And my 2-year-old daughter would try to put the
15 puzzle together here to try to make it look like
16 the picture on the box. And she would try her best
17 to put the puzzle pieces together, make them fit.
18 And she would bend them. They wouldn't fit
19 together, but she would bend them and try to make
20 them fit together here. And she would be so
21 frustrated that sometimes she would just throw some
22 pieces away because she couldn't get them to fit
23 together. And then when she would try to put
24 together -- when she was done trying to put them
25 together to make it look like the picture on the

1 box, she would say, Daddy, look, I did it. And
2 then it would be my job as dad to say, Well, baby,
3 it don't quite look like the picture on the box.
4 Let's work on it a little bit more here. I got to
5 be the tough guy. And that reminds me of this case
6 here. These puzzle pieces don't fit together. The
7 pieces that they try to present to you guys don't
8 fit together. They don't show the guilt of Andre
9 Heatley.

10 The State said just now that it was your job
11 to put the pieces together. But it's not your job
12 to put the pieces together. I told you at the
13 beginning when I spoke to you that everybody had a
14 job. And, in fact, it's the State of South
15 Carolina's job to put the pieces together to show
16 you the picture that they want you to see. And
17 they haven't done that job here.

18 The judge has a job. Her job is basically to
19 be the referee of this whole engagement here. My
20 job is to be Mr. Heatley's attorney. And I work
21 for him and I love that job. But your job is to
22 simply to be the supervisor. Your job is similar
23 to my role when my daughter presents the puzzle to
24 me. Your job is to simply say does it look like
25 the picture on the box. And I submit to you when

1 you look at the whole picture of this evidence,
2 when you look at the pieces that the State has
3 presented to you, they don't look like the picture
4 on the box. They don't show the guilt of Andre
5 Heatley.

6 Now, let's talk about just simply the question
7 of first armed robbery here. The State gave you
8 the elements of armed robbery. I will simply tell
9 you that when it comes to armed robbery here, what
10 proof is there that Mr. Heatley took anything that
11 belonged to the victim by force, using a deadly
12 weapon, or the threat of a deadly weapon? There's
13 no evidence of that here. We have evidence that
14 the victim on plenty of occasions gave her credit
15 card out to many people to use. That came not from
16 Mr. Heatley, that came from the State of South
17 Carolina's own witnesses here. I submit they
18 haven't proven their case of armed robbery beyond a
19 reasonable doubt here.

20 But, more importantly, when we look at the
21 homicide case here -- and I promise you, I'm not
22 going to take an hour of your time. I don't need
23 an hour to prove to you that they haven't proved
24 their case beyond a reasonable doubt here. When we
25 look at the timeline of this case here, that's one

1 of the most important puzzle pieces there are. And
2 this timeline is one of those puzzle pieces that
3 the State has tried to match together and put
4 together and make it show a particular picture
5 here, but it doesn't. And when it doesn't fit
6 together the way they want it to fit together, they
7 want to throw away pieces of it and just ignore it
8 and not talk about it.

9 What do we know that came from their own
10 expert witnesses? Their own Investigator McDonald
11 here, their own cell tower expert, what did they
12 tell you? We know that Andre's cell phone is
13 pinging off Sector One, this tower on 1032 Wilson
14 Boulevard, Sector One here, between 9:45 p.m. and
15 10:33 p.m. That's extremely important. He's in
16 Sector One above where the crime scene is. And the
17 time period that they establish, not that we
18 establish, but they establish is from 9:44 to
19 10:33. Why is that super important? Because when
20 you look at Deannandra's same cell tower information,
21 we know for a fact that she does not enter Sector
22 One where the crime scene is located at until
23 10:34 p.m. 10:34 p.m., a minute after his last
24 pinging of that same tower.

25 What's also important is we know that Andre's

1 cell phone at 10:35 is in Sector Three of 600
2 Killian Drive. Crime scene is up here. Killian
3 Road is down here. We know that at 10:35, Andre is
4 in Sector Three, the left bottom side of this cell
5 phone tower, at 10:35. At 10:34, the victim's cell
6 phone is in Sector Number One at 10332 Wilson
7 Boulevard, miles up I-77 pinging off that cell
8 phone tower.

9 The State would want you to believe that
10 Mr. Heatley somehow shot the victim with two guns,
11 changed guns in one minute, drug her out the car,
12 opened the center console, opened the glove box
13 here, pulled her out of the car here, grabbed her
14 purse, grabbed her cell phone, grabbed her keys,
15 got out of this incident location onto the
16 interstate here and in less than one minute.

17 Now, this is not the timeline that I created,
18 it's the timeline that their expert created. Their
19 experts tell you at 10:35 that Mr. Heatley's cell
20 phone is in Sector Three, the left bottom side on
21 600 Killian Road, which is miles down I-77, miles
22 away from the crime scene. So at 10:35, according
23 to the State's own evidence, Mr. Heatley is miles
24 away from the crime scene. And the victim's cell
25 phone is still pinging off of Sector One in this

1 crime scene area cell phone tower at 10:37. That's
2 not something I created, that's something they
3 created. That in and of itself is enough for
4 reasonable doubt.

5 We talk about this idea of reasonable doubt.
6 It's a doubt that would cause a reasonable person
7 to hesitate. A reasonable person would hesitate if
8 they knew that Mr. Heatley at 10:35 was miles away
9 from the crime scene when the victim was at the
10 crime scene at 10:34. There's no possible way that
11 Mr. Heatley in one minute time shot the victim with
12 two different guns, pulled her out the car, drug
13 her away from the car, got her purse, got her cell
14 phone, got her keys, went through the glove
15 compartment box, went through the center console,
16 jumped on the road, got down the interstate and got
17 miles away in one minute time.

18 That's the timeline that the State of South
19 Carolina has created. That in and of itself -- I
20 don't have to go on another minute -- that in and
21 of itself is reasonable doubt. That is enough
22 doubt to not leave you firmly convinced. That is
23 enough doubt for you to hesitate to act.

24 But let's go on and look at the whole picture.
25 So I told you at the beginning of the case here

1 that I was going to show you the whole picture.
2 The State of South Carolina wants to show you part
3 of the picture here, but I will show you the whole
4 picture. The State talked about two different
5 things that they think was motive for this crime.
6 One was this keying of the car. We know this
7 keying of the car occurred at least a year before
8 Ms. Roach's death here. They want you to believe
9 that Mr. Heatley was so upset about this keying of
10 the car, a year later he decided to kill her
11 because she keyed his car.

12 The judge will tell you in her jury charge,
13 use your common sense. Does that makes sense to
14 anybody that a year later, he's upset about his car
15 being keyed, and that's the time he decided to kill
16 her?

17 They also talk about this idea of motive, that
18 the motive is based off of some sort of monetary
19 issue, that he needed money and that's why he did
20 it. Look at their own evidence that they
21 presented. In evidence, you'll see a receipt from
22 the pawn shop. On the Wednesday before the murder,
23 their own evidence that the State put in, that Mr.
24 Heatley spent over \$300 for a firearm. So he's got
25 \$300 on Wednesday. When they arrest him on Friday,

1 he's got \$100 in his pocket. But they want you to
2 think that he killed her over money.

3 And we also know through the evidence here
4 that Mr. Heatley knew the victim's pin number.
5 When you see the ATM transactions, when you see the
6 ATM videos, you notice he didn't get any money out
7 of the ATM. He told you why here. When you look
8 at his statement that's in evidence, he basically
9 said that he didn't get the money out of the ATM
10 because -- why you think he didn't get money out of
11 the ATM? He wasn't trying to get the money out of
12 the ATM. He had the ATM card here. He had the ATM
13 pin number. If he wanted to get the money out of
14 the ATM, he would have got it. He didn't. He
15 wasn't trying to do that.

16 There's no other witnesses to the crime here.
17 No eyewitnesses whatsoever. Nobody puts
18 Mr. Heatley at the scene. No DNA. There's no DNA
19 of Mr. Heatley on the victim's car, on the victim's
20 clothes, on the victim's body, on the crime scene
21 anywhere. And the reverse of that is true.
22 There's none of the victim's DNA on Mr. Heatley's
23 body, in Mr. Heatley's car, nowhere around the
24 victim. No fingerprints. None of Mr. Heatley's
25 fingerprints are at the crime scene, on the

1 victim's car, on the victim's body.

2 There is one fingerprint on the gun that was
3 used in the murder here. And that fingerprint
4 could not be matched to Mr. Heatley. There was
5 DNA, a mixture of DNA on the victim's car. There
6 was a mixture of DNA from the victim's car on the
7 center console that was open and the glove box that
8 was open as well. Neither one of those DNA spots
9 from the center console or the glove box here could
10 be linked back to Mr. Heatley. None of those
11 things matched him. DNA found nowhere on the scene
12 of the crime. The only other object on the crime
13 scene that had DNA was cigarette butts. We know
14 that cigarette butt here belonged to an unknown
15 male, not Mr. Heatley.

16 There was none of Mr. Heatley's fingerprints
17 on the weapon itself here. There was one
18 fingerprint on the weapon, the magazine of the
19 9-millimeter that did not match Mr. Heatley. There
20 was no dirt on the car from Mr. Heatley. You got a
21 picture of Mr. Heatley's car, Mr. Heatley's tires.
22 We know that this crime scene was a dusty dirt road
23 here. Look at the picture of the car when you go
24 back in the jury room. Do you see any sort of
25 evidence that this vehicle Mr. Heatley was found in

1 the very next day, is there any evidence the car
2 had been detailed, cleaned, cleaned up or anything?
3 You won't find any of that evidence here. Will you
4 see any evidence that this car had recently been
5 down a dirt road at any point in time? No. Look
6 at the pictures of the tires. Look at everything
7 in the car. You won't find any evidence that this
8 car had been down a dirt road.

9 Look at Mr. Heatley's shoes that you have in
10 evidence here. The State wants to say that these
11 are, they use the word consistent with the
12 footprint left at the scene. What they didn't tell
13 you is that every other Air Force One in the world
14 here that was the same size here and the same
15 general makeup is consistent with the shoe print
16 left on the scene here. Look to see if those
17 shoes, are they indicative of shoes that had been
18 recently down a dirt road in this sort of area?

19 What's also used is this idea of the time of
20 death. You heard from the deputy coroner. The
21 deputy coroner says she estimated the time of death
22 to be 4:00 a.m. on the morning of the 29th between
23 4:00 a.m. and 5:00 p.m. that day. 4:00 a.m. to
24 5:00 p.m. That fact alone presents reasonable
25 doubt.

1 Now, the State tried to bring a witness here
2 basically to contradict their own -- say maybe the
3 deputy coroner don't know what she's talking about
4 here. Spend all that time, you know, preparing an
5 expert witness, present to you that she's an expert
6 witness in her field here, and then they bring this
7 other witness to say maybe she don't know what
8 she's saying. Kind of like my daughter here, when
9 the pieces don't fit, she decides to kind of throw
10 them away because she don't want to deal with the
11 pieces that don't fit here. We've got to deal with
12 the whole picture. You're not allowed to throw
13 away the pieces that don't fit here and only pick
14 and choose what facts you want to use and not use.

15 The deputy coroner estimated the time of death
16 between 4:00 a.m. on the 29th to 5:00 p.m. on the
17 29th. She got on the witness stand and told you
18 she was absolutely sure about that. She did a
19 check of the body, the rigor status of the body,
20 and nothing she did in her medical examination of
21 the body -- and that's backed up by the pathologist
22 as well -- nothing either one of those two people
23 did contradicted the estimated time of death to be
24 4:00 a.m. -- between 4:00 a.m. and 5:00 p.m.

25 If Ms. Roach died between 4:00 a.m. on the

1 29th and 5:00 p.m. on the 29th here, that is
2 reasonable doubt. Because we know Mr. Heatley was
3 nowhere near this crime scene at 4:00 a.m. on the
4 29th. If that fact in and of itself is true, that
5 the time of death was on -- 4:00 a.m. on 29th to
6 5:00 p.m. on the 29th here, that in and of itself
7 is reasonable doubt. We don't have to go another
8 step further here. That would be reasonable doubt.

9 Let's look at Mr. Heatley's own actions here
10 and see if they provide reasonable doubt here. We
11 know that law enforcement got in contact with
12 Mr. Heatley on the following night, that Friday
13 after Ms. Roach was found. We had testimony from
14 the investigators here that they basically boxed
15 Mr. Heatley in in the drive-through of the Burger
16 King. There's no evidence that Mr. Heatley had his
17 bags packed, that he was heading out of town. Is
18 he acting like a man who knows law enforcement is
19 searching for him, looking for him for a murder?
20 Are his actions indicative of somebody who just
21 committed a murder or the actions of an innocent
22 man? What was he doing? One o'clock in the
23 morning here, he was going to the Burger King to
24 get something to eat. He didn't run. He didn't
25 try to flee the location. He didn't try to flee

1 the state here. He was at Burger King getting
2 something to eat.

3 And when they -- how about when they pulled
4 the guns on him, asked him to get out the car here,
5 did he fight with them? Did he run away like a man
6 that was running away from being charged with
7 murder? No. He surrendered to law enforcement
8 without incident. No fighting, no running.

9 And probably the most thing -- most important
10 thing here when you talk about reasonable doubt
11 here, one puzzle piece that doesn't fit here, when
12 asked about whether or not he had any weapons in
13 the car, their own investigator said he told them
14 about the gun. He told Investigator Torres,
15 Investigator Taylor at the time, that that gun
16 would not match anything at the crime scene. If,
17 like the State wants you to believe, Mr. Heatley
18 had gunned down Ms. Roach with this firearm, why
19 would he tell them about the firearm in the glove
20 box? Why would he ride around in his car the day
21 after the murder with a firearm in it that
22 committed a murder here if he was guilty? If he
23 thought he had any evidence of a murder in his
24 possession, why would he keep the firearm? The
25 State wants you to believe that he bought this

1 high-powered rifle here the day before, paid \$350
2 for it and then got rid of it here. So they want
3 you also to believe that he kept the murder weapon
4 in his glove box here. And when the police asked
5 him about it, he told them -- he voluntarily told
6 hem where it was. Is that indicative of somebody
7 who actually committed a murder? It's not. It's
8 reasonable doubt. It doesn't make sense for him to
9 have done that if he knew that was a murder weapon.

10 He voluntarily gave them a statement. He
11 didn't have to talk to them. Law enforcement
12 indicated that they gave him his Miranda Warnings
13 and told him he didn't have to talk if he didn't
14 want to. Is that indicative of somebody who's
15 guilty of a murder? He voluntarily gave them his
16 statement. But if you look at the statement, he
17 tells you how he came in contact with this
18 individual named Vonnice and how he got the debit
19 card in question.

20 And we know from the witnesses here that Mr.
21 Heatley still knew the victim's pin number here.
22 That he had the pin number. They hadn't been
23 dating for a while. He wasn't her current
24 boyfriend. Everybody knew that he wasn't her
25 current boyfriend here. But he still had the pin

1 number. If he had the pin number -- in fact, the
2 State bragged in opening that Mr. Heatley had the
3 pin number, he knew the pin number. If he was
4 actually trying to get money out of the ATM, why
5 didn't he? It's clear because he was not trying to
6 get money out of the ATM. He was trying to stall
7 this Von guy. Investigator Torres you that Mr.
8 Heatley told her that this Vonnie guy held a gun to
9 his head and threatened him and threatened his
10 family if he didn't get the money out of the ATM
11 machine. Mr. Heatley knew the pin number. If he
12 was trying to get the money out of the ATM machine,
13 he would have got the money out of the ATM machine.

14 This gun that they find at Mr. Heatley's house
15 is still loaded. Does that make sense to you for
16 an individual here to commit a crime, go back home,
17 load the firearm back up here and leave it at his
18 own home here? Look at the brand and type of
19 firearm cartridge that are loaded in this
20 particular gun here. They don't match the same
21 type of shell casings that were found at the scene.
22 They don't match because Mr. Heatley is not guilty.
23 The pieces just don't fit. You can mash them. You
24 can try to press them together here. You can throw
25 away the ones you don't want to utilize and don't

1 want to use here, but when you look at all the
2 pieces together, they don't fit.

3 We just celebrated the life of Martin King,
4 Jr. on last Monday here. And one of his quotes
5 that always stood out to me, he said, The true test
6 of a man is not where he stands at in the time of
7 comfort and convenience, but during times of
8 challenge and controversy. A true test of a man is
9 not where he stands at in comfort or convenience,
10 but during times of challenge and controversy.

11 This case right here, this case, Andre
12 Heatley's case, is a true test of our judicial
13 system. I know you may not remember it now here,
14 but on last Tuesday here, Judge Hood talked to you
15 in Courtroom 3A right above us, he said this
16 criminal justice system we have, the jury system
17 where juries comes in and they weigh in on the
18 guilt or innocence of their fellow citizens here is
19 the best system devised by the mind of men here to
20 settle disputes between man and the State. It only
21 works the way it works when jurors come in and they
22 decide the case on the facts and not emotions. I
23 know this case is very emotional here. I know some
24 of y'all may feel emotions for the victim and
25 victim's family here, but that emotion that you

1 feel here can't go back with you to the jury room.
2 What you decide on in the jury room can only be
3 based on the facts. The only thing that can go
4 back with you to jury room are the facts that the
5 State has presented to you.

6 Now, I submit when you look at all the facts,
7 the pieces do not fit. So I'm not asking you to do
8 what's comfortable, I'm not asking you to do what's
9 convenient, I'm merely asking you to do what's
10 correct. And it would be comfortable to find Mr.
11 Heatley guilty because you feel bad for the
12 victim's family here. It would be convenient to
13 find Mr. Heatley guilty because the pieces are
14 close enough and I can kind of squint my eyes up
15 and make them fit. But it wouldn't be correct.
16 The correct thing to do is to find Mr. Heatley not
17 guilty because the pieces don't fit and the State
18 of South Carolina hasn't done their job. They
19 haven't proved to you their case beyond a
20 reasonable doubt. So I just solely ask that you do
21 your job now and find Mr. Heatley not guilty.

22 Thank you.

23 JURY CHARGE

24 THE COURT: All right, ladies and gentlemen of
25 the jury, you have heard all of the evidence. You

1 have heard the arguments of the parties. It is now
2 my responsibility to charge you as to the law in
3 this case.

4 I remind you that during this trial, you and I
5 have certain duties to perform. As the trial
6 judge, it is my responsibility to preside over the
7 trial of this case. And I also have the duty to
8 rule on the admissibility of evidence offered
9 during the trial.

10 You are to consider only the competent
11 evidence before you. If there was any testimony
12 ordered stricken from the record in this case
13 during this trial, you must disregard that
14 testimony. You are to consider only the testimony
15 which has been presented from this witness stand,
16 any exhibits which have been made a part of the
17 record in this case, and any stipulations of
18 counsel.

19 I have the additional duty to charge you the
20 law applicable to this case. As the presiding
21 judge, I am the sole judge of the law of this case.
22 And it is your duty as jurors to accept and apply
23 the law as I now state it to you.

24 If you already have any idea as to what the
25 law is or what the law ought to be and it does not

1 agree with what I now tell you the law is, you must
2 abandon this idea because you are sworn to accept
3 the law and apply the law exactly as I state it to
4 you.

5 In every case tried in this court before a
6 jury, the jury becomes the sole and exclusive judge
7 of the facts in a case. A trial judge cannot
8 comment on, state, or make any statements to a
9 trial jury about the facts in a case.

10 Since you, the jury, are the sole judges of
11 the facts in this case, you are not to infer from
12 what I have said during the process of this trial
13 in ruling upon the admissibility of the evidence,
14 or otherwise, or anything that I say now during the
15 courses of this instruction to you, that I have any
16 opinion about the facts in this case. The law does
17 not allow me to have an opinion about the facts in
18 this case. This is a matter solely for you, the
19 jury, to determine. As jurors, it is your duty to
20 determine the effect, value, and weight of the
21 evidence presented during this trial.

22 Ladies and gentlemen of the jury, there are
23 two types of evidence which are generally presented
24 during a trial. That is direct evidence and
25 circumstantial evidence.

1 Direct evidence is the testimony of a person
2 who claims to have actual knowledge of a fact, such
3 as an eyewitness. It is evidence which immediately
4 establishes the main fact to be proved.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of
7 a fact. It is evidence which immediately
8 establishes collateral facts from which the main
9 fact may be inferred. Circumstantial evidence is
10 based on inference and not on personal knowledge or
11 observation.

12 The law makes absolutely no distinction
13 between the weight or value to be given to either
14 direct or circumstantial evidence, nor is a greater
15 degree of certainty required of circumstantial
16 evidence than of direct evidence.

17 You should weigh all the evidence in this
18 case. After weighing all the evidence, if you are
19 not convinced of the guilt of the Defendant beyond
20 a reasonable doubt, you must find the Defendant not
21 guilty.

22 Necessarily, you must determine the
23 credibility of witnesses who have testified in this
24 case. Credibility simply means believability. It
25 becomes your duty as jurors to analyze and to

1 evaluate the evidence and determine which evidence
2 convinces you of its truth.

3 In determining the believability of witnesses
4 who have testified in this case, you may believe
5 one witness over several witnesses, or several
6 witnesses over one witness. You may believe a part
7 of the testimony of a witness, and reject the
8 remaining part of the testimony of that same
9 witness. You may believe the testimony of a
10 witness in its entirety, or reject the testimony of
11 the witness in its entirety. You may consider
12 whether any witness has exhibited to you any
13 interest, bias, prejudice, or other motive in this
14 case. You may also consider the appearance and
15 manner of a witness while on the witness stand.

16 Ladies and gentlemen of the jury, the rules of
17 evidence ordinarily do not permit witnesses to
18 testify to opinions or conclusions, as I told you
19 throughout the trial. An exception to this rule is
20 for witnesses we call expert witnesses. A witness
21 who by education and experience has become an
22 expert in some art, science, profession, or calling
23 may state an opinion as to relevant and material
24 matters in which the witness claims to be an expert
25 and may also state the reason for their opinion.

1 You should consider any expert opinion
2 received in evidence in this case and, like any
3 other evidence, give it the weight you think it
4 deserves. If you decide that the opinion of an
5 expert witness is not based on sufficient education
6 and experience, or if you conclude that the reasons
7 given in support of the opinion are not sound, or
8 that the opinion is outweighed by other evidence,
9 you must disregard the opinion entirely.

10 An expert witness's testimony is to be given
11 no greater weight than that of other witnesses
12 simply because a witness is an expert. Further,
13 you are not required to accept an expert's opinion
14 even though it is not contradicted.

15 The indictments in this case, the indictments
16 in this case charge the Defendant with murder and
17 armed robbery. I remind you that the Defendant --
18 the fact that the Defendant was arrested, charged,
19 and indicted in this case is not evidence in this
20 case and cannot be considered by you as evidence of
21 guilt in this case, nor does it create any
22 presumption or inference of guilt. These are the
23 documents -- the indictments are the documents that
24 are simply the formal written instruments which
25 contain the charges made against the Defendant.

1 They are the formal documents by which the case is
2 brought into court.

3 Ladies and gentlemen of the jury, I instruct
4 you in this case that the Defendant did not
5 testify. I instruct you and emphasize that the
6 fact that the Defendant did not testify is not a
7 factor to be considered by you in any way in your
8 deliberations and in your consideration of the
9 question of the guilt or the innocence of the
10 Defendant. It must not be considered by you in any
11 manner whatsoever. A Defendant has a
12 constitutional right to remain silent. And the
13 assertion of this right must not be considered by
14 you in your deliberations.

15 I repeat, under your oath you are to draw no
16 conclusion whatsoever from the fact that the
17 Defendant in this case did not testify. The fact
18 that the Defendant did not testify should not even
19 be discussed in the jury room. The burden of
20 proof, as I have stated it to you, is on the State.
21 The Defendant is not required to prove himself
22 innocent. The burden of proof remains on the State
23 to prove guilt beyond a reasonable doubt.

24 The Defendant in this case -- presumption of
25 innocence -- the Defendant in this case has pled

1 not guilty to the indictments, and that plea puts
2 the burden on the State to prove the Defendant
3 guilty.

4 A person charged with committing a criminal
5 offense in South Carolina is never required to
6 prove himself innocent. I charge you that this is
7 an important rule of the law that the Defendant in
8 a criminal trial, no matter what the seriousness of
9 the charge may be, will always be presumed to be
10 innocent of the crime for which the indictment was
11 issued unless guilt has been proven by evidence
12 satisfying you of that guilt beyond a reasonable
13 doubt.

14 This presumption of innocence does not end
15 when you begin your deliberations, but it
16 accompanies the Defendant throughout the trial
17 until you have reached a verdict of guilt based on
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the
22 Defendant which remains with the Defendant until it
23 has been stripped from the Defendant by evidence
24 satisfying you of the Defendant's guilt beyond a
25 reasonable doubt.

1 The presumption of innocence is not mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which every Defendant is
4 entitled unless you, the jury, are satisfied from
5 the evidence of the Defendant's guilt beyond a
6 reasonable doubt.

7 What is reasonable doubt? What is reasonable
8 doubt in the law? A reasonable doubt is the kind
9 of doubt that would cause a reasonable person to
10 hesitate to act. The State has the burden of
11 proving the Defendant guilty beyond a reasonable
12 doubt. Some of you may have served as jurors in
13 civil cases where you are told that it is only
14 necessary to prove that a fact is more likely true
15 than not true, such as by the greater weight or
16 preponderance of the evidence.

17 In criminal cases, the State's proof must be
18 more powerful than that. It must be beyond a
19 reasonable doubt. Proof beyond a reasonable doubt
20 is proof that leaves you firmly convinced of the
21 Defendant's guilt. There are very few things in
22 this world that we know with absolute certainty.
23 And in criminal cases, the law does not require
24 proof that comes over every possible doubt. If
25 based on your consideration of the evidence, you

1 are firmly convinced that the Defendant is guilty
2 of the crimes charged, you must find the Defendant
3 guilty. If, on the other hand, you think there's a
4 real possibility that the Defendant is not guilty,
5 you must give the Defendant the benefit of the
6 doubt and find him not guilty.

7 In order to establish criminal liability,
8 criminal intent is required. For example, the
9 mental state required to be proven by the State for
10 a particular crime might be purpose, intent,
11 knowledge, recklessness or criminal negligence.
12 Criminal intent must be proven by the State beyond
13 a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation.

16 There is no way to prove intent to a
17 mathematical certainty. There is no way medical
18 science can dissect a person's brain and determine
19 what the person had in mind. So the law says that
20 criminal intent may be inferred from the
21 circumstances to have existed.

22 This is how you make a determination of
23 whether or not the element requiring intent was
24 present. It is not necessary to establish intent
25 by direct and positive evidence, but intent may be

1 established by inference in the same way as any
2 other fact by taking into consideration the act of
3 the parties and all of the facts and circumstances
4 of the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based on the circumstances
8 shown to have existed. Criminal intent can arise
9 from action or failure to act. It may arise from
10 negligence, recklessness, or an indifference to
11 duty or to consequences considered by the law to be
12 equivalent of criminal intent.

13 Ladies and gentlemen of the jury, the
14 Defendant in this case is charged with murder. The
15 State must prove beyond a reasonable doubt that the
16 Defendant killed another person with malice
17 aforethought.

18 Malice is a legal term implying wickedness and
19 excluding a just cause or excuse. The term malice
20 indicates a formed purpose and design to do a
21 wrongful act under the circumstances that exclude
22 any legal right to do it. It is something which
23 springs from wickedness, from depravity, from a
24 heart devoid of social duty and fatally bent on
25 mischief. Malice may be express or implied.

1 Malice is hatred, ill-will, or hostility
2 towards another person. It is the intentional
3 doing of a wrongful act without just cause or
4 excuse and with an intent to inflict an injury or
5 under circumstances that the law would infer an
6 evil intent.

7 Malice aforethought does not require that
8 malice exist for any particular time before the act
9 is committed, but malice must exist in the mind of
10 the Defendant just before and at the time of the
11 act -- at the time the act is committed.

12 Malice may be conceived at the very moment the
13 fatal blow is given. Therefore, there must be a
14 combination of the previous evil intent and the
15 act. Malice afterthought may be express or
16 inferred. These terms, express or inferred, do not
17 mean different kinds of malice, but merely the
18 manner in which malice may be shown to exist. That
19 is, either by direct evidence or by inference from
20 the fact and circumstances which are proved.

21 Express malice is shown when a person speaks
22 words which express hatred or ill-will for another
23 or when the person prepared beforehand to do the
24 act which was later accomplished. For example,
25 lying in wait for a person or any other act of

1 preparation going to show that the deed was within
2 the Defendant's mind would be express malice.

3 Malice may be inferred from conduct showing a
4 total disregard for human life. Malice may be
5 inferred from the facts and circumstances
6 surrounding the case.

7 Malice does not necessarily impart ill-will
8 towards the individual injured, but signifies,
9 rather, and general malignant recklessness of the
10 lives and safety of others, or a condition of mind
11 which shows a heart regardless of social duty and
12 fatally bent on mischief.

13 The Defendant in this case is also charged
14 with armed robbery. In order to prove this
15 offense, the State must first prove beyond a
16 reasonable doubt that the Defendant took personal
17 property from the person or presence of another
18 person. Property is in the presence of a person if
19 it is within a person's reach, inspection,
20 observation, or control so that the person could,
21 if not overcome with violence or prevented by fear,
22 keep possession of the property.

23 The State must also prove beyond a reasonable
24 doubt that the Defendant carried the property away
25 intending to permanently deprive the owner of the

1 property and to keep the property for the
2 Defendant's own use. The slightest removal of the
3 property or the complete possession of the
4 property, even for an instant, by the Defendant is
5 sufficient to show a taking and carrying away of
6 the property. The taking and carrying away of a
7 property must have been done with violence or by
8 putting the owner of the property in fear of
9 violence.

10 Finally, the State must prove beyond a
11 reasonable doubt that the Defendant was armed with
12 a deadly weapon during the robbery. A deadly
13 weapon is any article, instrument, or substance
14 which is likely to cause death or great bodily
15 harm. Whether an instrument has been used as a
16 deadly weapon depends on the facts and
17 circumstances of each case. The following are
18 examples of instruments which may be deadly
19 weapons: A pistol, a shotgun, a rifle, a dirk, a
20 dagger, a knife, a slingshot, metal knuckles, a
21 razor, gasoline, fire bomb, Molotov cocktail, and
22 lighter fluid. A gun may be a deadly weapon even
23 if it is not operating.

24 It is essential that the victim of an armed
25 robbery must -- it is not essential that the victim

1 of an armed robbery must be alive when the robbery
2 occurs. However, in order to be guilty of armed
3 robbery in conjunction with a homicide, the State
4 must prove the victim's death and the taking are a
5 part of a continuous chain of events so
6 interconnected as to be inseparable.

7 Ladies and gentlemen of the jury, the law
8 requires that a jury verdict be unanimous, which
9 means that all jurors must agree. The only two
10 forms of the verdict are guilty or not guilty.

11 Mr. Foreman, once the jury reaches a verdict
12 of not guilty or guilty, circle the verdict on the
13 face of the verdict form and sign under the verdict
14 to signify that what you have circled is the
15 verdict of all jurors. Then notify us that you
16 have reached a verdict by knocking on the door.

17 The State and the Defendant are entitled to
18 the individual opinion of each juror on the issues
19 of fact in this case. It is the duty of each of
20 you to consider and weigh all the evidence in the
21 case from such evidence to determine, if you can,
22 the question of guilt or innocence of the
23 Defendant.

24 There is nothing peculiarly different in the
25 way a jury should consider the evidence in a

1 criminal case from that in which all reasonable
2 persons treat any question depending upon evidence
3 presented to them. You are expected to use your
4 good sense, consider the evidence in the case for
5 only the purpose for which it has been admitted,
6 and give it a reasonable and fair construction in
7 the light of your common knowledge of the natural
8 tendencies and inclinations of human beings.

9 If the accused be proved guilty beyond a
10 reasonable doubt, say so. If not so proved guilty,
11 say so.

12 Your verdict in this case will be one of two
13 forms. If from the evidence and the law, you find
14 that the Defendant is not guilty, you will circle
15 not guilty on the verdict form that I will give
16 you, Mr. Foreman. If, on the other hand, you find
17 that the Defendant is guilty based on the -- based
18 upon the evidence and the law which you have heard,
19 you will circle guilty on the verdict form and the
20 foreman will sign his name.

21 Your verdict must be unanimous. It must be
22 guilty or not guilty.

23 Ladies and gentlemen of the jury, I have a
24 copy of the verdict form. Well, let me hold that
25 back. I'll explain it to you and then we'll hand

1 it to you if you have any questions.

2 All right, so the verdict form that I have in
3 my hand reads that the State of South Carolina,
4 County of Richland, in the Court of General
5 Sessions of the Fifth Judicial Circuit, Indictment
6 2016-GS-40-6572, State of South Carolina v. Andre
7 Tyrone Heatley, Jr. And this is Indictment 6572.
8 It reads: As to the indictment alleging murder,
9 We, the jury, unanimously find the Defendant, and
10 you have a place where you can circle guilty or not
11 guilty. You will stop and end your deliberations
12 and sign, Mr. Foreman, and date it.

13 Then you will have a second verdict form that
14 reads: The State of South Carolina, County of
15 Richland, In the Court of General Sessions of the
16 Fifth Judicial Circuit, Indictment 2016-GS-40-6573,
17 State of South Carolina v. Andre Tyrone Heatley.
18 As to the indictment alleging armed robbery, We,
19 the jury, unanimously find the Defendant, and once
20 again you will circle guilty or not guilty. Mr.
21 Foreman, you will sign your name and date it.

22 Then you will stop your deliberations. You
23 will knock on the door and inform the bailiff that
24 you have reached a verdict.

25 At this time, I am going to send you all back

1 into the jury room, but you cannot begin your
2 deliberations until you receive all of the evidence
3 and you receive the verdict form. It may take a
4 second because there is quite a few exhibits that
5 have been entered into evidence. So once you
6 receive the verdict form, the evidence, and the
7 instructions from the bailiff to begin your
8 deliberations, then you may begin your
9 deliberations.

10 I am guessing that your lunch may be back
11 there. You all -- there's a chance you may have to
12 come back out. So you may start eating your lunch,
13 but just know we may have to stop you and bring you
14 back out.

15 Let me see the attorneys one second.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: Ladies and gentlemen of the jury,
20 I am also going to send a copy of the jury charge
21 back into the jury room. It will be marked as
22 Court's Exhibit 6.

23 Prior to sending the jury charge back in the
24 jury room, there's another instruction that goes
25 with that. It says that I will give you a copy of

1 these instructions in written form. During your
2 deliberations, you may refer to the instructions to
3 guide your decision-making. You must consider the
4 instructions as a whole and not follow some and
5 ignore others. Please return the instructions to
6 the Court at the time your verdict is rendered --
7 at the time your verdict is rendered.

8 All right. Mr. Foreman, so I will send back a
9 copy of the verdict form and also the jury charge
10 and then you will also receive all of the evidence.
11 And once they instruct you to begin, you may begin.

12 All right. Thank you. We are going to ask
13 that you retire to your jury room. Is it cooler in
14 there today?

15 MR. FOREMAN: Yes.

16 THE COURT: All right. Thank you.

17 Don't begin deliberating until you get
18 everything.

19 (WHEREUPON, Court Exhibit No. 6 was
20 marked for identification only.)

21 (WHEREUPON, the jury retires to the jury
22 room at 12:58 p.m.)

23 THE COURT: Any objections or exceptions to
24 the jury charge?

25 MR. GOLDBERG: Nothing from the State, Your

1 Honor.

2 MR. O'NEIL: Your Honor, I renew my previous
3 objections as it relates to the Court deciding not
4 to charge the jury on accessory after the fact.

5 THE COURT: Yes, sir. It will be noted for
6 the record, the objection to the Court not charging
7 accessory after the fact.

8 All right. If there's not anything else, we
9 will bring the alternates out and release them.
10 And we will mark this as a Court Exhibit. And you
11 all take another look at the verdict form and
12 see -- lay eyes on the verdict form and then send
13 those back. And then I know we'll take a second,
14 unless Ms. Debbie already has it all together, to
15 make sure we have all the exhibits, everything that
16 has been entered goes back and the stuff that has
17 not been entered does not go back.

18 All right. If they want to start -- is their
19 lunch back there?

20 THE CLERK: No.

21 THE COURT: Oh, it's not here?

22 All right. We'll be in recess. Oh, I'm
23 sorry, bring the alternates.

24 THE CLERK: You want the alternates in here?

25 THE COURT: Yes.

1 (WHEREUPON, the alternates return to the
2 courtroom at 1:00 p.m.)

3 THE COURT: All right. You all -- the three
4 of you were selected as our alternates. And we
5 selected three alternates because sometimes people
6 get sick, you know, flu season. But, luckily, all
7 12 of the jurors that were initially selected to
8 serve on the jury have returned and are able to
9 deliberate -- begin deliberations here shortly.
10 And so therefore we no longer need your services.

11 In the words of my former boss, being an
12 alternate is like being invited to the dance and
13 not being able to dance. So we appreciate you all
14 being here with us over the last week and a half,
15 but at this time, your service has ended.

16 And you're more than welcome to stick around
17 and see what your fellow jurors are going to come
18 up with or what their verdict will be or you are
19 free to leave. And your service -- you're excused,
20 obviously, for the rest of the week.

21 So I'd like to thank you, Ms. Robinson and Ms.
22 Bautista and Mr. Skipper for your service here on
23 behalf of the State, on behalf of the Defendant,
24 all the attorneys involved, the court staff, we
25 want to thank you for your service over the last

1 week and a half. Your lunch should be arriving any
2 time soon. So if you want to hang back there and
3 wait on your lunch, she will get that to you and
4 you can go ahead and leave. If you need a work
5 excuse for lunch, please see the clerk and she will
6 get you a work excuse.

7 Once again, thank you for your service on the
8 jury. Thank you.

9 (WHEREUPON, the alternates were excused
10 at 1:03 p.m.)

11 THE COURT: Any objection or exceptions?

12 MR. GOLDBERG: No, ma'am.

13 MR. O'NEIL: No, ma'am.

14 THE COURT: Anything else? All right. Y'all
15 take a look at the exhibits and the verdict form.

16 (WHEREUPON, court was in recess awaiting
17 a verdict.)

18 (WHEREUPON, the following occurs at 3:49
19 p.m.)

20 THE COURT: We have a question. I'm not sure
21 how to answer it. It says: What degree murder
22 charge?

23 MR. FYALL: Could you read that again? I'm
24 sorry.

25 THE COURT: What degree murder charge? I'm

1 assuming they watch --

2 MR. FYALL: TV.

3 THE COURT: -- stuff on TV, and so they're
4 trying to figure out if it's first degree, second
5 degree. I don't know. I'm not even sure -- I've
6 given them the jury charge to read, so I don't know
7 what -- I can tell them they don't need to be
8 concerned, go to the charges I've given them and
9 make a determination.

10 Any suggestions? I can't get into we don't
11 have separate degrees of murder in this state.

12 MR. GOLDBERG: I mean, I guess the only thing
13 to do would be to tell them that the information
14 that they need to know about what type of murder
15 charge is contained in the jury charge that talks
16 about murder. I don't really know how else you
17 would answer it.

18 THE COURT: I could tell them that they have
19 the jury charge and it explains to them what the
20 elements of murder are.

21 MR. GOLDBERG: Yes.

22 THE COURT: And that is all they need to be
23 concerned with.

24 MR. O'NEIL: That would suffice, I think, Your
25 Honor.

1 MR. GOLDBERG: Yes, ma'am.

2 THE COURT: I have given you the complete jury
3 charge which has a charge on the law regarding the
4 elements of murder. That is the only charge that
5 you need to be concerned with? What did I say the
6 last time? That is all you are to be concerned
7 with?

8 MR. O'NEIL: I don't know if you said
9 concerned or consider.

10 THE COURT: That is the charge that you must
11 consider?

12 MR. GOLDBERG: As it pertains to murder.

13 THE COURT: As it pertains to the indictment
14 for murder?

15 MR. O'NEIL: Yes, Your Honor.

16 MR. FYALL: Yes, ma'am.

17 THE COURT: All right. Bring them in.

18 (WHEREUPON, Court Exhibit No. 7 was
19 marked for identification only.)

20 (WHEREUPON, the jury came into open
21 court at 3:52 p.m.)

22 THE COURT: Let me see y'all one second.

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: All right, thank you.

3 All right. Ladies and gentlemen of the jury,
4 I received your question. And it reads: What
5 degree murder charge?

6 I have given you -- you have a copy of, I
7 think it's Court Exhibit Number 6, I have given you
8 a complete copy -- a copy of the complete jury
9 charge which has a charge on the law of the State
10 of South Carolina regarding the elements of murder.
11 That is the charge you must consider as it pertains
12 to the indictment in this case for murder.

13 All right. Thank you. I will send you back
14 in the jury room to continue your deliberations.

15 (WHEREUPON, the jury retires to the jury
16 room at 3:54 p.m.)

17 THE COURT: All right. Any objections or
18 exemptions?

19 MR. GOLDBERG: No, ma'am.

20 MR. O'NEIL: No, Your Honor.

21 THE COURT: We'll just wait. All right, we'll
22 be in recess.

23 (WHEREUPON, court was in recess awaiting
24 a verdict.)

25 (WHEREUPON, the following occurs at 6:32

1 p.m.)

2 THE COURT: We've got three notes. One juror
3 says he needs to go home and get pain medicine for
4 his back pain and his leg pain. Another juror said
5 she had -- I think it's a she. I have to pick up
6 my daughters from daycare by 7:00. I have no one
7 also to pick them up because their dad is at work
8 and can't get them. And another one, I need to go
9 home. I need my meds for my knee and my hip.

10 MR. O'NEIL: Are there two people with meds or
11 the same?

12 THE COURT: No, it's the same.

13 So I just spoke with them and told them
14 that -- because I needed to check to see who was
15 going to need to leave -- they had to leave at
16 7:00. And she said she has no one else to get her
17 children. So we're going to have to start in the
18 morning. I told them to come back in the morning.

19 So I'm going to bring them back in. I got to
20 explain to them that they're deliberating and
21 cannot discuss the case, cannot do any independent
22 research. But we need to wait on the Defendant to
23 get up. If they had told me earlier, we could have
24 broken earlier.

25 Let me see you all one second.

1 (WHEREUPON, a bench conference was
2 held.)

3 THE COURT: Before we bring them in. Also,
4 I'm not sure if he's going to send it back out, but
5 there was a third note. As you all know, the
6 jurors can't tell us where they are in terms of how
7 many jurors say what, and so I have asked them to
8 rewrite the note, the foreman to rewrite the note.
9 But the essence of that was that, We are hung.
10 Obviously I have to give them the Allen charge and
11 then I have to send them back in the room to
12 deliberate. I can't do that if the juror has to
13 get her child by 7:00 o'clock, and it is about 20
14 until 7:00. I'm not sure where she has to get the
15 child or children from, but it's close to
16 7:00 o'clock now. So what I discussed with the
17 attorneys at the bar is if he gives us the note, we
18 will give the Allen charge in the morning at
19 9:00 o'clock and then send them back in to
20 deliberate. All right.

21 MR. O'NEIL: Yes, ma'am.

22 THE COURT: I asked him to change the content.
23 I explained to him that he can't tell us where they
24 are, but he can send a letter -- another note out.

25 All right. You can bring them on in.

1 (WHEREUPON, Court Exhibit Nos. 8 AND 9

2 were marked for identification only.)

3 (WHEREUPON, the jury came into open

4 court at 6:38 p.m.)

5 THE BAILIFF: The jury is present, Your Honor.

6 THE COURT: All right. Ladies and gentlemen

7 of the jury, I received two notes, Court's Exhibit

8 8 and Court's Exhibit 9. And one of them, as I

9 told you all, someone needs to go home and get some

10 medication, so I can't excuse one of you -- since

11 you're deliberating, one without excusing all of

12 you. And also someone needs to pick their children

13 up by 7:00 o'clock. So with that being said, we

14 will go ahead and take our evening recess.

15 I will instruct you that it is very, very

16 important at this point not to discuss the case

17 with anyone, not to do any independent research,

18 not to -- not to do any independent research, not

19 to go on any social media account regarding this

20 case. Please do not discuss the case with anyone.

21 Remember that you have taken an oath. I am going

22 to send you home. We will see you back in the

23 morning at -- let's start back at 9:30. It's

24 almost 7:00 o'clock now. 9:30 in the morning.

25 You'll report, Mr. Foreman, directly to the

1 jury room. Once everyone is present, you're
2 welcome to begin your deliberations. You don't
3 have to come back in here. You can begin your
4 deliberations.

5 All right. Thank you. Have a good evening.

6 (WHEREUPON, the jury is excused at 6:40
7 p.m.)

8 THE COURT: All right, any objection or
9 exceptions?

10 MR. FYALL: Can we approach, Your Honor?

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was
13 held.)

14 THE COURT: I will see all at 9:30.

15 (WHEREUPON, court adjourned for the
16 evening at 6:41 p.m.)

17 **JANUARY 30, 2019**

18 (WHEREUPON, the proceedings began at
19 10:15 a.m.)

20 THE COURT: They are still deliberating. And
21 he has not sent the note back out.

22 MR. GOLDBERG: Oh. I think we got some bad
23 information.

24 THE COURT: Yes, I think it came from my
25 office. Somebody said we were supposed to be doing

1 the Allen Charge. He didn't send the note back
2 out. As soon as he sends the note back out --

3 MR. GOLDBERG: All right. See you later.

4 (WHEREUPON, court was in recess awaiting
5 a verdict.)

6 (WHEREUPON, the following occurred in
7 chambers at 2:55 p.m.)

8 THE COURT: All right. So, I received your
9 note, and it is marked Court Exhibit Number 10.
10 And it says: We feel that one of our jurors is
11 biased, and she has made statements indicating she
12 is biased. She is not taking evidence into
13 consideration. She is reading her book and
14 ignoring the evidence. She stated, You know how
15 these police do these young black men. And that
16 was in quotations. She has no reasoning why she
17 wants to vote different from everyone else. She
18 ignores us and won't engage in our conversation.
19 Signed, Myron Singleton, Foreman, Juror 249.

20 So I received the note, your note. And don't
21 go into discussion about which juror it is. And,
22 but there were two questions I need to ask of you
23 to answer.

24 The first one is, the juror that is not
25 participating, has she ever participated in

1 deliberations?

2 THE FOREMAN: She has participated, but she --
3 when it comes to looking at the evidence, she don't
4 put in her opinion. She writes it down on her pad,
5 as we have already used the blackboard, and we use
6 the stencil thing we had. And she has not -- each
7 time we ask her a question about, how do you feel,
8 she is not giving us an answer that makes this
9 thing what it is supposed to be.

10 THE COURT: All right. But she is giving you
11 an answer?

12 THE FOREMAN: She has not. Well, she said she
13 doesn't feel there is enough evidence.

14 THE COURT: All right. But as far as
15 reviewing the evidence, it is like 200 something or
16 100 something, is she looking at the exhibits?

17 THE FOREMAN: Yes.

18 THE COURT: She is reviewing it?

19 THE FOREMAN: She is. We have all reviewed it
20 with her.

21 THE COURT: Okay.

22 THE FOREMAN: We went back over everything
23 from text messages --

24 THE COURT: Okay. All right.

25 THE FOREMAN: Everything. We went through all

1 that with her.

2 THE COURT: And so you said she is now sitting
3 in the corner reading a book?

4 THE FOREMAN: She is.

5 THE COURT: And she is just completely not
6 participating at this point?

7 THE FOREMAN: Completely. Not answering how
8 she feels. Like she said yesterday, the same.

9 THE COURT: Yeah, yeah, yeah. But is she just
10 not talking to you all right now or she just --

11 THE FOREMAN: She doesn't talk. She doesn't
12 say anything to us.

13 THE COURT: Okay.

14 THE FOREMAN: If we are talking, if we are
15 deliberating and everybody has got up putting their
16 points in, she is in her book.

17 THE COURT: And then she -- you sent this
18 also, a letter from her, which will be Number 11.
19 And it says that she is starting to feel threatened
20 in the room, that somebody says she had blood on
21 her hands and the room was getting hostile. Do
22 you -- and you signed that also?

23 THE FOREMAN: Uh-huh.

24 THE COURT: Okay. I don't know if I want
25 to -- all right. I am going to ask you to stand

1 right here. I may have to bring you back in. See
2 if Mr. Talbert is there. We'll have you stand
3 right there if he is out there.

4 Mr. Talbert, take him back to the jury room.
5 And we'll come back and get you if we need you.
6 Okay.

7 (WHEREUPON, the foreman returns to the
8 jury room at 2:50 p.m.)

9 THE COURT: So it appears that she has
10 participated, even though she is not participating
11 at this point.

12 MR. O'NEIL: And I guess -- I don't want to
13 delve too much into their internal --

14 THE COURT: Yes.

15 MR. O'NEIL: But I think the definition of
16 participation is that, She won't agree with us.

17 THE COURT: No, he said -- that's why I asked
18 the question. He said, She is sitting in the
19 corner with her face in the book.

20 MR. O'NEIL: Yes, I understand he said that.

21 THE COURT: He said they are going --
22 everybody else is deliberating. That's why I asked
23 again. And he said everybody else is deliberating
24 and she is sitting in the corner with her face in
25 the book.

1 I said, Is she speaking to you all? And he
2 said, No.

3 MR. O'NEIL: And I guess it is difficult to
4 talk with him and kind of figure out what he means
5 by deliberating. The impression I get, he didn't
6 say it, the impression I get is that when he says
7 deliberating, I get the impression what he means is
8 that 11 people have decided this way and one person
9 has decided she is not going this way, and by
10 deliberating he means, She won't agree with us.
11 Because it is not like -- I don't get the
12 impression that -- somebody tell me if I'm wrong --
13 I don't think -- the impression is he is saying
14 that the other 11 people are going back and forth
15 about what they want to do on the issue. When he
16 says deliberate, I think he is meaning that she
17 won't agree with the other 11 people.

18 MR. EADDY: And he did say at one point, We
19 all went back over the evidence with her, and she
20 stated, It is just not enough evidence.

21 MR. GOLDBERG: But he also said that --

22 THE COURT: She won't --

23 MR. GOLDBERG: -- they asked her questions
24 about how she feels, and she won't answer.

25 MR. O'NEIL: I think that is now. I don't

1 think she ever came in there saying, I'm not
2 talking to y'all. I mean, I think they have come
3 to an impasse where they showed her the evidence,
4 she made a decision. They made a decision, she
5 made a decision. Those two decisions just weren't
6 the same.

7 MR. EADDY: I think her decision was stated,
8 There is not enough evidence. I think that was her
9 decision.

10 MR. O'NEIL: She went over the evidence with
11 them, all the evidence.

12 MR. GOLDBERG: I don't know if that is her
13 decision.

14 MR. FYALL: Speculation.

15 MR. EADDY: An impression that she doesn't
16 agree.

17 MR. GOLDBERG: I will be honest with you guys,
18 I don't know what the hell it is -- excuse my
19 language, sorry. I don't know what it is. Like, I
20 mean, some of the answers would suggest what you
21 are saying and some wouldn't. Like, it is
22 difficult to -- I think it is difficult to read for
23 us to know exactly what it means, honestly.

24 MR. O'NEIL: Fair enough. Without, like I
25 said --

1 THE COURT: What I do know is he said that at
2 this point she is not participating, she is in the
3 corner with her head in her book.

4 MR. GOLDBERG: Yes, he did say that.

5 THE COURT: And she is not talking to them.

6 MR. O'NEIL: And I guess the problem is,
7 because especially for the Court's perspective,
8 when you tell -- not tell her -- if you tell the
9 jury they must participate, what does that mean in
10 the sense that -- because it is almost like you
11 have to tell them -- because does she have to --

12 THE COURT: Oh, I am definitely not going to
13 suggest participation is that she has got to vote
14 with them, because that is not participation. But,
15 and I really -- that is why I was just going to
16 remind them of the oath that they took.

17 MR. O'NEIL: Yes. I don't know what we do,
18 because I don't know what we tell her she has to
19 do.

20 THE COURT: I was just going to remind them
21 that they all swore or affirmed that they shall
22 well and truly try, and true deliverance make
23 between the State of South Carolina and the
24 Defendant at bar, whom you shall have in charge,
25 and a true verdict give, according to the law and

1 the evidence, so help you God. I am just going to
2 remind them that is their oath that they took. And
3 remind them to be respectful of each other. And
4 then I will send them back in the room to
5 deliberate. I think until he says that they are
6 hung -- and I can't say that, he hasn't said it.
7 And he still hasn't said it just then. He said she
8 is not participating. You can't be hung if one
9 person isn't participating. So she does have to
10 participate, and then he has to say she is hung.
11 But if she is sitting in the corner reading a book,
12 then that is not deliberating.

13 MR. GOLDBERG: I mean --

14 THE COURT: And he said something along the
15 lines of, like, they are asking her to explain --
16 give us an explanation for them to consider. You
17 know, which Allen would --

18 MR. O'NEIL: Yes.

19 THE COURT: But she won't say anything.

20 MR. O'NEIL: I think it is impossible -- I
21 think we have to ask them too many questions to
22 figure out exactly what is going on. A follow-up
23 has to be, Has she ever answered you or is she just
24 not answering you now?

25 MR. FYALL: We are not allowed to ask.

1 MR. O'NEIL: Getting into --

2 THE COURT: But he did say she won't explain.
3 Even the note says, She has no reasoning. She
4 won't give us any reason -- they are asking her --

5 MR. O'NEIL: Yes.

6 THE COURT: I'm assuming -- this is
7 speculation -- I'm assuming they must be asking her
8 to, Explain to us your position, and she won't
9 discuss.

10 MR. O'NEIL: Yes. I think the Court has
11 done -- the Court can't referee --

12 MR. GOLDBERG: No.

13 THE COURT: I don't want to ask them too many
14 questions to be honest with you.

15 MR. GOLDBERG: You know, I think what you
16 said, you bring them in, you read them the oath,
17 tell them to treat each other with respect, you
18 send them out.

19 MR. O'NEIL: And see what happens.

20 MR. GOLDBERG: And see what happens. I mean,
21 he is a pretty intelligent guy.

22 MR. O'NEIL: Yes.

23 MS. GOLDBERG: And at some point he is going
24 to say, if this continues like this, he is going to
25 say, Judge, we just aren't -- we can't come to a

1 conclusion.

2 MR. O'NEIL: Yes.

3 MR. GOLDBERG: If that is what happens.

4 MR. O'NEIL: Yes.

5 MR. GOLDBERG: In other words, we don't need
6 to address it because if that is what they are
7 doing, he is going to get there at some point and
8 he is going to send that note out, if that is what
9 they are doing.

10 THE COURT: Well, we'll go ahead and do that.
11 Would you go ahead and tell them to bring the
12 Defendant up?

13 MR. O'NEIL: And if we get there, I do think
14 the record needs to be clear about what happened
15 last night.

16 MR. GOLDBERG: We will take that up if and
17 when --

18 THE COURT: Do you want me to -- I mean, I'm
19 not --

20 MR. O'NEIL: I don't know.

21 THE COURT: The problem with asking him about
22 last night, I can ask, Do you still have the note?

23 MR. O'NEIL: I wonder if they still have the
24 note. That would solve everything. We can just
25 ask him if they still have the note from last

1 night. Then we don't have to ask him anything.
2 Just ask him, does he still have the note from last
3 night.

4 THE COURT: But he didn't rewrite the note.

5 MR. O'NEIL: I don't think we need -- I just
6 think the record needs to reflect what the note
7 from last night was, not that it be rewritten.
8 What the note from last night needs to be preserved
9 for the record. Then it can be interpreted, how it
10 is interpreted, if it needs to be interpreted
11 again, but I think we need to know what the note
12 was.

13 THE COURT: Okay.

14 MR. GOLDBERG: We will cross that bridge when
15 we get to it, I guess.

16 MR. O'NEIL: If we get to it.

17 THE COURT: We don't even need to address that
18 at this point.

19 MR. O'NEIL: I mean, only if we need to.

20 THE COURT: We only address it if --

21 MR. GOLDBERG: If he says --

22 THE COURT: -- they come back and say they are
23 hung, then you are going to make the argument that
24 I can't give them an Allen charge. Are we done?
25

1 (WHEREUPON, Court's Exhibit Nos. 10 AND
2 11 were marked for identification only.)

3 (WHEREUPON, the following occurred in
4 open court at 3:07 p.m.)

5 THE COURT: I'm going to bring the jurors back
6 in. There are people in here for motions I assume
7 that are not associated with the case. When the
8 jurors come back in, no conversations going on.
9 Please make sure your cell phones are off when the
10 jurors are in the courtroom.

11 Just so we are clear -- back on the record --
12 I'm going to read them the oath, remind them of the
13 oath that they took, and then ask that they all be
14 respectful of each other, and then I'm going to
15 send them back out to deliberate.

16 All right?

17 MR. GOLDBERG: Yes, ma'am.

18 THE COURT: Or respectful to each other.
19 Bring them on in.

20 (WHEREUPON, the jury came into open
21 court at 3:18 p.m.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury,
24 I have received two notes from you all. I have
25 marked them as Court Exhibit Numbers 10 and 11.

1 I am going to read you, remind you of the oath
2 that you took on last week, Tuesday or Wednesday.
3 And this is an oath that all jurors take in this
4 state in criminal cases.

5 It says: Do you swear or affirm that you
6 shall well and truly try, and true deliverance
7 make, between the State of South Carolina and the
8 Defendant at bar, whom you shall have in charge,
9 and a true verdict give, according to the law and
10 the evidence, so help you God?

11 I remind you that you all took that oath. I
12 am going to send you back in the room and continue
13 to deliberate. I ask that you be respectful to
14 each other during your deliberations.

15 All right. Thank you.

16 (WHEREUPON, the jury retires to the jury
17 room to continue deliberations at 3:20
18 p.m.)

19 THE COURT: Any objections or exceptions?

20 MR. GOLDBERG: Nothing from the State.

21 MR. O'NEIL: No, Your Honor.

22 THE COURT: Let me see the attorneys one
23 second.

24 (WHEREUPON, a bench conference was
25 held.)

1 (WHEREUPON, at 3:21 p.m. a note was sent
2 from the jury.)

3 (WHEREUPON, the following occurred at
4 3:59 p.m.)

5 THE COURT: All right. The bailiffs have
6 informed me that the jurors have reached a verdict,
7 so I will bring them on in.

8 Bring them on back in.

9 Hold on one second. Hold on one second.

10 Let me just say this. Let me say this. If
11 you are in the courtroom and you do not feel like
12 you can control yourself or control your emotions,
13 this is your opportunity to leave now. I am asking
14 that -- I know that it is an emotional case and --
15 from all sides, and I'm asking that if you cannot
16 control your emotions that you leave out of the
17 courtroom at this time, because if there are any
18 outbursts or any comments or remarks in the
19 presence of the jury, I am going to send you
20 downstairs with one of these deputies for Richland
21 County. It's going to be very simple. We'll have
22 a contempt hearing in the morning or later this
23 week. All right. So now is the time to go if you
24 think you can't control your emotions.

25 All right. You can bring them in.

1 (WHEREUPON, the jury came into open
2 court at 4:01 p.m.)

3 THE BAILIFF: The jury is seated, Judge.

4 THE COURT: All right, ladies and gentlemen of
5 the jury, it is my understanding that you all have
6 reached a verdict.

7 Is that correct, Mr. Foreman?

8 THE FOREMAN: Yes, we have.

9 THE COURT: And is that verdict unanimous?

10 THE FOREMAN: Yes.

11 THE COURT: All right. I will ask that you
12 pass the verdict forms to the bailiff.

13 (Court views the verdict form.)

14 THE COURT: All right. I will ask the clerk
15 to publish the verdict.

16 VERDICT

17 THE CLERK: The Court of General Sessions of
18 the Fifth Judicial Circuit, State of South
19 Carolina, County of Richland, State of South
20 Carolina v. Andre Tyrone Heatley, Jr., Indictment
21 Number 2016-GS-40-6572. As to the indictment
22 alleging murder: We, the jury, unanimously find
23 the Defendant guilty. Signed by the foreperson,
24 and dated January 30th, 2019.

25 In the Court of General Sessions in the Fifth

1 Judicial Circuit for the State of South Carolina,
2 County of Richland, State of South Carolina vs.
3 Andrew Tyrone Heatley, Jr., Indictment
4 Number 2016-GS-40-6573. As to the indictment
5 alleging armed robbery: We, the jury, unanimously
6 find the Defendant guilty. Signed by the foreman,
7 and dated January 30th, 2019.

8 Mr. Foreman, is this your verdict, and the
9 verdict of the entire jury?

10 THE FOREMAN: Yes, ma'am.

11 THE CLERK: Thank you.

12 THE COURT: All right. Anything else from the
13 jurors before I release them?

14 MR. GOLDBERG: Nothing from the State.

15 THE COURT: Anything from the Defense?

16 MR. O'NEIL: We ask that you poll the jury.

17 THE COURT: Madam Clerk, if you would please
18 poll the jury by number.

19 THE CLERK: Yes, Your Honor.

20 Mr. Foreman, and ladies and gentlemen of the
21 jury, I am going to ask each of you two questions.
22 I need you to answer yes or no to each question.

23 Number 249, was this your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Number 9, was this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Number 210, was this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Number 41, was this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Number 19, was this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Number 116, was this your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Number 155, was this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Number 130, was this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Number 100, was this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Number 231, was this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Number 244, was this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Number 177, was this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: The jury is polled, Your Honor.

22 THE COURT: All right. Thank you.

23 Ladies and gentlemen of the jury, on behalf of
24 all of the parties involved, the attorneys and the
25 Court, I do want to thank you for your service here

1 the last two weeks. I understand -- as you can
2 see, there are matters that arise in courtrooms all
3 across this state, all across this country that
4 cannot be resolved by the parties, and that is when
5 we have to turn to, under our constitution, turn to
6 12 citizens like you every week to make decisions
7 in cases just like this.

8 And so I do want to thank you for fulfilling
9 your civic duty and being here the last week and a
10 half, leaving your jobs, your families, and coming
11 and working. And I understand you all deliberated
12 late and you stayed here late some nights, I do
13 want you to understand that we appreciate your
14 service. You will not have to serve for another
15 three years in this court. I cannot protect you
16 from federal court, municipal court, or
17 magistrate's court, but you will not have to serve
18 in this court for another three years.

19 The clerk will have some comments, some
20 information for you in the back, I think. And then
21 you are released for the remaining part of the
22 week.

23 All right. Thank you.

24 (WHEREUPON, the jury is excused at 4:06
25 p.m.)

1 THE COURT: I'm going to take a short recess.
2 You all have to get the paperwork. I will speak to
3 jurors real quick.

4 (WHEREUPON, a recess was taken.)

5 THE COURT: Are you ready?

6 MR. O'NEIL: Before we get started, just so
7 the record is clear, at this time --

8 THE COURT: I'm sorry. Any post-trial
9 motions?

10 MR. O'NEIL: Yes, Your Honor. At this time, I
11 would renew all my previous objections, Your Honor.
12 And I would ask at this point for a new trial for
13 Mr. Heatley on the basis, specifically -- renewing
14 my previous objections, but specifically as it
15 relates to two things, Your Honor. The motion that
16 we made to suppress the handgun that was found in
17 Mr. Heatley's car, and also based off the nature of
18 the jury deliberation and the various notes we
19 received of the deliberations.

20 At this point here, since we got a verdict
21 shortly after, minutes after we had the previous
22 note from the jury, and those notes are a part of
23 the Court's record here, based on the totality of
24 all that, Your Honor, I would ask for a new trial
25 for Mr. Heatley.

1 THE COURT: Any response, Mr. Goldberg?

2 MR. GOLDBERG: Judge, we would just ask that
3 you stand by your previous rulings. We believe it
4 was appropriate. In regards to the jury
5 deliberations, they obviously spent a great deal of
6 time in the totality considering this. We would
7 ask that we respect their decision.

8 THE COURT: All right. The motion for a new
9 trial is denied, respectfully denied. And the
10 reason stated -- but your motions are noted for the
11 record. The previous motions are noted for the
12 record and preserved for the record.

13 And as to the new motion, I believe -- I'll
14 just put on the record that the parties -- that the
15 Court, after receiving the last two questions from
16 the jury, which are marked as Court's Exhibit 10
17 and 11, the Court spoke with the attorneys, and I
18 say in camera, but it was on the record in camera
19 regarding the response to the question. The
20 response to the question was based on the, I won't
21 say consensus, but suggestions of both sides and no
22 objections were made at that time to the Court's
23 re-reading the oath to the jurors, their oath,
24 regarding the issue of one juror not participating
25 and sitting in the corner.

1 For that reason, the Court is going to deny
2 any motion for a new trial regarding that issue.

3 All right. Any further motions?

4 MR. O'NEIL: No, Your Honor.

5 MR. FYALL: Not from the State, Your Honor.

6 THE COURT: Thank you.

7 All right. Yes, sir?

8 MR. GOLDBERG: Your Honor, I know that the
9 victim's father would like to address you.

10 THE COURT: You said the father would like to
11 speak?

12 MR. GOLDBERG: Yes, ma'am.

13 THE COURT: I'll be glad to hear from you.
14 Then I'll hear from any victims, and then I'll hear
15 from Mr. O'Neil, on behalf of his client.

16 MR. GOLDBERG: Your Honor, I mean, Your Honor
17 is obviously well familiar with the facts of the
18 case. I think it will probably be better if we
19 heard from the father first.

20 THE COURT: All right. I will be glad to hear
21 from him.

22 VICTIM'S FATHER: Good afternoon. My name is
23 David Roach. This is my wife, Cynthia Roach. And
24 I just want to read the victim impact statement of
25 it's how impacted our life.

1 Every day when I awake, I wonder if the
2 nightmare of losing my daughter will ever end.
3 Unfortunately, this nightmare is the new normal for
4 me and my family. Not only did this senseless
5 crime end her life here on earth, it left a wound
6 in our hearts that will never heal. Nevermore will
7 we have the opportunity to talk and spend time with
8 her, to celebrate holidays and birthdays with her,
9 to go on family vacations with her and to tell her
10 that we love her or just to see her smiling face.

11 The loss of Dee Dee, Deandra Roach, is
12 immeasurable to say the least. She was our
13 youngest daughter and a joy to be around. Not only
14 was she our daughter, she was a sister to her
15 siblings, a granddaughter to her grandparents, a
16 niece to her aunts and uncles and cousins to the
17 many family members who still love her dearly, and
18 friends and classmates, neighbors and co-workers.
19 We all know that our daughter did not deserve to
20 die in the manner in which she did. She was not a
21 piece of trash. She was a human being that had
22 hopes and dreams and someone that is missed more
23 than words or feelings could ever describe or
24 explain. Why Andre had so much hatred toward our
25 daughter, Deandra, we will never truly know.

1 However, based on the evidence that was shared with
2 this court, I pray that Your Honor will have no
3 mercy imposing a sentence that we feel is fair.

4 My daughter had dreams and aspirations of one
5 day joining the military to defend our country,
6 which she was in pursuit of achieving before her
7 demise. Her life didn't mean anything to Andre. A
8 person like that should never experience liberty
9 and freedom so many of us strive to have. But like
10 the old saying goes, if you're big enough to do the
11 crime, you should be big enough to do the time.
12 Let's give him his just reward.

13 Thank you.

14 THE COURT: Thank you.

15 MR. GOLDBERG: Judge, he has a prior
16 conviction for shoplifting in 2012, and entering
17 premises after warning in 2015. He has a pending
18 burglary second degree and safecracking unrelated
19 to this matter.

20 Judge, you obviously have sat through this
21 case and are very familiar with the facts. This
22 was not a heat of passion situation. As the
23 evidence was presented during the trial, this was
24 something that was planned. He laid in wait. And
25 the manner in which it was carried out was violent,

1 vicious. Twelve gunshot wounds, one to the head,
2 and leaving her there behind. His words, his text
3 messages of his intentions of what he was going to
4 do to her, and then he did it. We do not believe
5 that this is a case for a sentence towards the
6 minimum, and we would ask that you impose a
7 significant sentence consistent with his actions in
8 the case.

9 Thank you.

10 THE COURT: All right. Anything else from the
11 State?

12 MR. FYALL: Your Honor, I don't know if any of
13 the investigators want to say something.

14 Nothing else, Your Honor.

15 MR. O'NEIL: Thank you, Your Honor. May it
16 please the Court?

17 As you see from Andre's prior record, he had
18 no felony convictions whatsoever. The only
19 convictions he had were for misdemeanor items, Your
20 Honor.

21 He is a high school graduate here in the
22 Midlands area. He's actually an avid sports fan
23 and participated in his high school. He has held
24 down jobs. He has a 3-year-old daughter at this
25 point here, Your Honor, that he cares about and

1 loves, Your Honor.

2 I advised him, because he still has post-trial
3 matters to deal with, not to speak to the Court as
4 related to the facts of the case. That's my advice
5 to him as his attorney, Your Honor. But I think
6 while he was down at the jail these past three
7 years -- he's been incarcerated for three years,
8 Your Honor -- he has availed himself of some of the
9 opportunities down there. He was involved with the
10 Fatherhood Coalition, he was involved with a civics
11 program down there. He's also got certificates
12 from the WorkKeys program down there. I think that
13 actually shows he has some redeemable qualities he
14 has that really can be rehabilitated. We would ask
15 this Court to consider a sentence towards the
16 minimum in this case here.

17 And I would say for the Court -- for the
18 record and for the Court's consideration that there
19 was movement as it relates to -- and the Court knew
20 kind of based on some of our in camera discussion
21 that there was some discussions about trying to
22 resolve the case prior to the jury coming back with
23 a verdict. And there was efforts and movement,
24 very close movement to get that resolved prior to
25 the verdict coming in, but the verdict came in the

1 way it did, Your Honor. But I would ask Your Honor
2 to consider a sentence close to the minimum in this
3 case here.

4 As Your Honor is aware, we've been here close
5 to eight days, and Mr. Heatley has strong family
6 support that have been in the courtroom this entire
7 time. His biological mother, his stepmother, and
8 his father are all in the courtroom. I think they
9 do not wish to -- I just want to make sure nobody
10 in his family wants to address the Court at this
11 time. His sister is here, his mother is here, his
12 father are here. And I think Your Honor has seen
13 them over this period of time, you can kind of see
14 the support that he has. I think they're all
15 emotional at this point and don't want to address
16 the Court, but I would say -- I would ask the Court
17 on Andre's behalf to consider a sentence close to
18 the minimum of 30 years.

19 THE COURT: All right. Anything?

20 MR. GOLDBERG: No, ma'am.

21 SENTENCING

22 THE COURT: All right. Of course, I have had
23 the opportunity over the last week and a half to
24 hear all the testimony and review the evidence
25 along with the jury. And, of course, the jury is

1 the trier of fact in this case. But, of course,
2 the Court has heard and observed all the evidence
3 in the case.

4 I want to first say to the Roach family, I'm
5 so sorry for your loss. While I know that whatever
6 sentence that I give Mr. Heatley will not bring you
7 your daughter back and heal your broken hearts, I
8 do hope that this brings you some closure. Going
9 through this process, I know it has been hard, and
10 I hope that this brings you some closure. And I
11 understand it's three years -- almost three years
12 actually to the date of your daughter's murder.
13 So, once again, I am so sorry for your loss. God
14 bless you all.

15 And, Mr. O'Neil, as to Mr. Heatley, Mr. O'Neil
16 has done a good job, a great job representing you
17 and representing your interest. But with all due
18 respect to Mr. O'Neil, this case is not a case that
19 warrants a minimum sentence.

20 On the burglary, a minimum is 10 -- I mean, on
21 the armed robbery is 10 and on the murder is 30
22 years, 30 years to life.

23 As I sat and listened to the witnesses and
24 looked at the evidence in the case, at some point
25 it became very clear that this was premeditated

1 murder, lying in wait. I think it said 45 minutes
2 they testified on yesterday, 45 minutes lying in
3 wait for her to get off work and come meet you, Mr.
4 Heatley. It wasn't -- I didn't hear any testimony
5 of heat of passion or argument. It is just
6 appeared in the text messages to be premeditated
7 murder.

8 Taking all of that into consideration, on
9 Indictment 2016-GS-40-6572, sir, you will be
10 sentenced to the State Department of Corrections
11 for 50 years. He will be given credit for any time
12 that he has served.

13 On Indictment 2016-GS-40-6573, he will be
14 sentenced to the State Department of Corrections,
15 that is the armed robbery charge, 10 years. The
16 sentence will run consecutive. He will be given
17 credit -- I know he's been in jail for three years.
18 I don't have the exact days, but he will be given
19 credit for the time that he has served. The
20 Solicitor's Office can get with the jail and get me
21 a number. I will give him credit for that.

22 MR. GOLDBERG: Thank you, Your Honor.

23 MR. FYALL: Thank you, Your Honor.

24 THE COURT: Thank you all.

25 Deputies, as we did, if you all can take the

1 victim's family out at this time, escort them out,
2 and then we'll allow you to take the Defendant's
3 family out.

4 (WHEREUPON, the trial adjourned at 4:28
5 p.m.)
6
7
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 22nd, 23rd, 24th, 25th, 28th, 29th, and 30th days of January, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 11, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of RICHLAND)ANDRE TYRONE HEATHEY JR #378998)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021CP4004083

APPLICATION FOR

POST-CONVICTION RELIEF

2021 SEP 16 PM 2:10
FILED
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 ARVIN S. GLENN DETENTION
CENTER
2. Name and location of Court which imposed sentence CLERK OF COURT
GENERAL SESSIONS, RICHLAND COUNTY COLUMBIA, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-40-006572
 - (b) 2016-GS-40-006573

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1/30/19 50 YEARS DAY FOR DAY
- (b) 1/30/19 10 YEARS 85 %
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES
- (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. CHIEF OF COURT GENERAL SESSIONS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 14, 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO. 2021-UP-265
- 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) VIOLATION OF FIFTH AND SIXTH AMENDMENT
- (b) DENIAL DUE PROCESS
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DO TO THE FACT OF INEFFECTIVE OF ASSISTANCE OF COUNSEL.
- (b) LAWYER FAILED TO PRESERVE MIRANDA RIGHTS VIOLATION FOR THE RECORD.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) EXERCISED ALL MY APPEALS
 (b) _____
 (c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. TERESA JOANS - 1720 MAIN ST COLUMBIA, SC 29201
- ii. DEON O'NEIL - 2127 PARK ST COLUMBIA, SC 29204
- iii. NARA CAUDY - P.O. Box 11589 COLUMBIA, SC 29211

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

- i. ARRAIGNMENT AND PLEA
- ii. TRIAL AND SENTENCING
- iii. APPEAL

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

RESPECTFULLY, THIS COURT SHOULD REVERSE
CONVICTION AND SENTENCE AND REMAND FOR
A NEW TRIAL.

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

No

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, ANDRE TYRONE HEATNEY JR, 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.

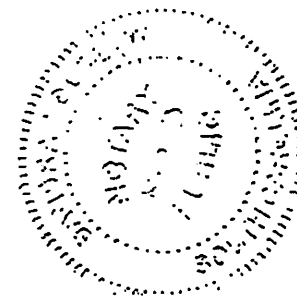
Andre Tyrone Heatney Jr.

SWORN to and subscribed before me this 9th

day of September, 2021

J. Ouellet (L.S.)
 Notary Public

My Commission Expires: 2/17/24



2021CP4004683

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

I, ANDRE HEATHLEY JR, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

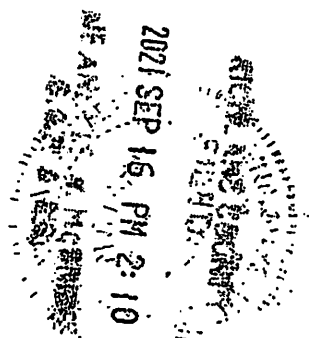
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

+ Andre Heathley Jr.
Applicant

SWORN or affirmed to and subscribed before me this
9th day of September.

J. Ouellet
Notary Public

My Commission Expires: 2/17/24



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Andre T. Heatley, Jr., #378998,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2021-CP-40-4683

RETURN
(Counsel Appointed)

RICHLAND COUNTY
FILED
2022 DEC 31 PM 12:30
JEANETTE V. HOSBROOK
Clerk, C.P. & G.S.

In response to Applicant Andre T. Heatley, Jr.'s action for post-conviction relief (PCR) commenced September 16, 2021, Respondent, the State of South Carolina, makes this Return:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC). During the November 2016 term, the Richland County Grand Jury indicted Applicant for murder (2016-GS-40-6572) and armed robbery (2016-GS-40-6573). Applicant was represented by E. Deon O'Neil and Khalil C. Eaddy, Esquires. Deputy Solicitor Daniel Goldberg and Assistant Solicitor Lamar Fyall of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant's case proceeded to a jury trial January 22-30, 2019, before the Honorable DeAndrea G. Benjamin. The jury found Applicant guilty as indicted. Judge Benjamin sentenced Applicant to fifty years' imprisonment for murder and ten years for armed robbery, to be served consecutively. Applicant appealed.

Appellate Defender Laura M. Caudy perfected Applicant's appeal by filing an *Anders*¹ brief to the court of appeals presenting the following issue:

1. Did the trial judge abuse her discretion by admitting evidence that Appellant allegedly told a third party that the decedent told others she was "going to be with" Appellant "after she got off

¹ *Anders v. California*, 386 U.S. 738 (1976).

work” because Appellant “had some drama going on” when such evidence was hearsay within hearsay and did not meet any exceptions to the hearsay rule, and where the evidence was unfairly prejudicial since the state’s theory was that the decedent was shot and killed within thirty minutes of leaving work?

Thereafter, Applicant submitted his own *pro se* brief on March 18, 2020, which identically reiterated the points raised by Appellate Counsel. The Court of Appeals dismissed the appeal in an unpublished decision. *State v. Heatley*, 2021-UP-265 (filed July 14, 2021). The Remittitur was issued August 5, 2021.

II. FACTS GIVING RISE TO THE CONVICTION

On January 26, 2016, Deannndra Roach (“Victim”), left her job at Walmart just after 10:00 o’clock in the evening and drove to meet Applicant, who she had an on/off relationship with. (Tr. 303, 1173). Cell tower data showed both Applicant and Victim’s phones at the crime scene that evening. (Tr. 1175). At the location Applicant and Victim met, Applicant fatally shot Victim twelve times, pulled her body out of the car, and took her phone and debit card before leaving her body on the side of the road. (Tr. 303, 1156, 1162). Applicant then drove to three different ATM machines and was recorded via video attempting to withdraw money from Victim’s account with her debit card. (Tr. 305, 1161). Applicant additionally purchased a watch with Victim’s credit card. The shell casings found at the scene and in Victim’s body matched Applicant’s gun. (Tr. 1185). Applicant was eventually apprehended and gave several conflicting statements to law enforcement (Tr. 309, 1181).

III. CURRENT APPLICATION

Applicant timely commenced this PCR action on September 16, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. “Violation of Fifth and Sixth Amendment”
 - a. “Do [sic] to the fact of ineffective assistance of counsel.”

2. "Denial Due Process"

- a. "Lawyer failed to preserve Miranda rights violation for the record."

Applicant requests relief in the form of a new trial.

Attached herewith and incorporated herein are the Richland County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, the appellate records, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. MOTION FOR A MORE DEFINITE STATEMENT

The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRPC, provides appointed PCR counsel "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

Here, Applicant has failed to state with any specificity the facts giving rise to his allegation of ineffective assistance of counsel, as required by section 17-27-50. Additionally, Applicant's allegation that Counsel did not perform in his best interest is not supported by any other additional information in the application. Therefore, Respondent moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegation of ineffective assistance of counsel.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application for failure to state a claim.

V. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits that Applicant’s allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the 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. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

“The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “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.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. 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 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must

be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). 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).

In making a fair assessment of attorney performance, a court must make every effort 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." *Strickland*, 466 U.S. at 689. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, *Strickland* requires the Petitioner to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. The function of the PCR court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." *Id.* at 690. With respect to prejudice, Applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. *Harrington*, 562 U.S. 86.

"Surmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules

of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversarial process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. See *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result would have been different. *Id.* at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; *Harrington*, 562 U.S. 86. “In determining whether the Petitioner has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695–96 (explaining the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

Respondent submits Applicant cannot satisfy either requirement of *Strickland* and cannot meet the requisite burden of proof necessary for relief. However, the allegations of ineffective assistance of counsel likely raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve the issues. 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 lower court”).

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he 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. Respondent 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, Respondent will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“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.”).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, Respondent 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. As noted above, Respondent 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.

VII. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, having made its Return, Respondent moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, Respondent requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

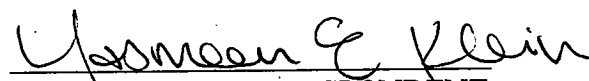
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 21, 2021

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Andre T. Heatley, Jr,
SCDC # 378998,

Applicant,

v.

State of South Carolina.

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-40-4683

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 16, 2021, to add the following allegations:

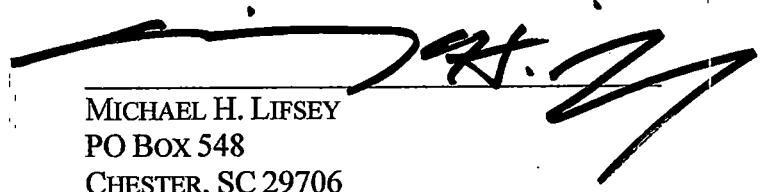
1. Ineffective assistance of counsel for

- (a) Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not fully explain the elements of the charges he was facing and possible defenses to those charges, and did not adequately prepare for trial.
- (b) The ineffective assistance described above in (a) led Applicant to have an inaccurate view of the strength of the state's case and led to him insisting on a jury trial rather than entering into plea negotiations with the state.
- (c) Applicant's trial counsel did not properly advise him concerning his right to testify in his own defense, particularly in regard to the advantages thereof.
- (d) Applicant's trial counsel failed to object to the trial judge's incorrect charge to the jury regarding circumstantial evidence and not requesting a charge in conformity with *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013).
- (e) After the jury indicated by note that a juror was refusing to deliberate further, Applicant's trial counsel failed to object to the judge recharging the jury on their oath

as jurors without also requesting that the court recharge them that they should not compromise their firmly held beliefs in order to reach a verdict.

2. The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
3. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



MICHAEL H. LIFSEY
PO BOX 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR NO. 015154
ATTORNEY FOR APPLICANT

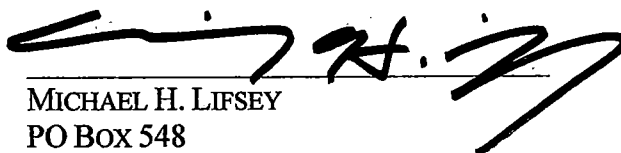
April 20, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

D. Russell Barlow, II
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 20th Day of April, 2023.



MICHAEL H. LIFSEY
PO Box 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

April 20, 2023

2023 APR 24 AM 11:00
JENNIFER W. MORRIS
C.O.P. & G.S.
MILLAND COUNTY
FILED

May 12, 2023
Columbia, South Carolina

B E F O R E:

The Honorable Daniel Coble, Judge

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

Michael F. Lifsey, Esquire
Attorney for the Applicant

D. Russell Barlow, III, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>

Andre T. Heatley, Jr.

Direct Examination by Mr. Lifsey 5

Cross-examination by Mr. Barlow. 10

Redirect Examination by Mr. Lifsey 13

E. Deon O'Neil

Direct Examination by Mr. Barlow 14

Cross-examination by Mr. Lifsey. 20

Recross-examination by Mr. Lifsey. 23

Certificate Page. 29

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No exhibits introduced.

1 MR. BARLOW: May it please the court? Russ Barlow on
2 behalf of the State of South Carolina. This is the
3 post-conviction relief matter of *Andre T. Heatley, Jr., v.*
4 *The State*, case number 2021-CP-40-04683 out of Richland
5 County.

6 During the November 2016 term, the Richland County
7 Grand Jury indicted applicant for murder, 2016-GS-40-6572;
8 and armed robbery, 2016-GS-40-6573. Applicant was
9 represented by Mr. E. Deon O'Neil and Khalil C. Eaddy,
10 Esquire, and deputy solicitor Daniel Goldberg and assistant
11 solicitor Lamar Fyall of the Fifth Circuit Solicitor's
12 Office prosecuted the case.

13 Applicant proceeded to a jury trial January 22nd
14 through the 30th 2019 before the Honorable DeAndrea G.
15 Benjamin. The jury found applicant guilty as indicted, and
16 Judge Benjamin sentenced applicant to fifty' years
17 imprisonment for murder and ten years for armed robbery to
18 be served consecutively. Applicant appealed.

19 Appellate defender Lara M. Caudy perfected applicant's
20 appeal by filing an *Anders* brief to the Court of Appeals.
21 Thereafter, applicant submitted his own pro se brief on
22 March 18, 2020, which identically reiterated the points
23 raised by appellate counsel. The Court of Appeals
24 dismissed the appeal in an unpublished decision, *State v.*
25 *Heatley*, 2021 UP 265, filed July 14, 2021, and the

A. HEATLEY - DIRECT EXAMINATION BY MR. LIFSEY

4

1 remittitur was timely returned on August 5, 2021.

2 Applicant timely commenced this PCR action on
3 September 16, 2021. Applicant asserts he is being held in
4 custody unlawfully and alleges ineffective assistance of
5 counsel for violation of his Fifth and Sixth Amendment,
6 denial of his due process, and the lawyer failed to
7 preserve Miranda rights violations for the record.

8 On April 20, 2023, applicant amended his allegations
9 to include in the ineffective assistance of counsel failure
10 to meet with applicant a sufficient number of times,
11 failure to explain the elements of the charges, failure to
12 develop a defense and prepare for trial, failure to
13 properly advise applicant of his right to testify and the
14 advantages thereof, failure to object to the trial judge's
15 charge to the jury circumstantial evidence, and not
16 requesting a charge -- or a *Logan* charge. And after the
17 jury indicated by note that a juror was refusing to
18 deliberate further, applicant's trial counsel failed to
19 object to the judge recharging the jury on their oath as
20 jurors without -- I'm sorry, also requesting the court
21 recharge them that should they should not compromise their
22 firmly held beliefs in order to reach a verdict.

23 Applicant requested relief in the form of a new trial,
24 and before this court are the Richland County clerk of
25 court records, applicant's records from the Department of

A. HEATLEY - DIRECT EXAMINATION BY MR. LIFSEY

5

1 Corrections, applicant's appellate records, which includes
2 the entire trial transcript, and the records of this PCR
3 action.

4 At this time, we would ask counsel to indicate which
5 allegations he intends to move forward on.

6 MR. LIFSEY: Thank you, Your Honor. My name is Mike
7 Lifsey. I'm representing the applicant in this case.
8 We're going to proceed on the, the allegations in our
9 amended application, Your Honor.

10 THE COURT: Anything further before you call your
11 first witness?

12 MR. LIFSEY: No, sir.

13 THE COURT: All right. You can go right ahead.

14 MR. LIFSEY: Your Honor, I'd call Mr. Heatley to the
15 stand.

16 THE COURT: Mr. Heatley, if you'll come and be sworn.

17 ANDRE T. HEATLEY, JR., BEING DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 THE COURT: All right, grab a seat. State your name
20 for the record.

21 WITNESS: Yes, sir. For the record, my name is Andre
22 Tyrone Heatley, Jr.

23 MR. LIFSEY: May it please the court, Your Honor?

24 DIRECT EXAMINATION BY MR. LIFSEY:

25 Q. All right, Mr. Heatley, where are you housed right

A. HEATLEY - DIRECT EXAMINATION BY MR. LIFSEY

6

1 now?

2 A. Evans Correctional Facility in Bennettsville, South
3 Carolina.

4 Q. All right, and why are you in the Department of
5 Corrections?

6 A. Because I was convicted of a murder charge.

7 Q. All right. Let's talk about your, your murder charge.
8 When you were arrested on your charge, tell me about your
9 lawyer and what your lawyer situation was when you first
10 got arrested.

11 A. When I first got arrested, I was appointed with
12 Theresa Johns. She automatically asked me did I commit
13 this murder. I told her no, and then she said, well, we're
14 going to trial.

15 Q. Okay, and Ms. Johns represented you from when you were
16 arrested until when?

17 A. I would say almost a year and a half.

18 Q. Okay. Then what happened?

19 A. I got appointed another lawyer. I can't remember her
20 name. She was public defender's office, but it was a
21 conflict of interest because one of my homeboys wrote a
22 statement on me, so they appointed Mr. Deon O'Neil.

23 THE COURT: Hold on.

24 COURT REPORTER: Having difficulty hearing the
25 witness.

1 THE COURT: If you could just -- we have a court
2 reporter. That's no problem. If you could just make sure
3 you speak up so she can hear and just speak slowly.

4 WITNESS: Yes, sir. Is that better?

5 MR. LIFSEY: That will be good.

6 Q. All right. So, let's, let's talk about Mr. O'Neil
7 getting appointed or how that happened. You said -- you
8 said he was appointed to represent you?

9 A. Yes, sir.

10 Q. All right. Do you remember when that was in relation
11 to when you had your trial?

12 A. I would say a year. I'm not really sure. I would
13 assume a year.

14 Q. Tell me about your relationship with Mr. O'Neil and
15 what that was like.

16 A. I mean, it was a better -- it was a better situation
17 because he came to see me. We talked more.

18 Q. You need to speak up.

19 A. We talked more, but at the same time, I was never
20 fully explained, like, murder, you know, the definition of
21 murder, everything, but he did come and see me more than
22 the other lawyer did.

23 Q. All right. Well, let's talk about that. Did, did --
24 you were charged with murder, for example?

25 A. Yes, sir.

A. HEATLEY - DIRECT EXAMINATION BY MR. LIFSEY

8

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. Did Mr. O'Neil ever explain to you the elements of
4 murder, what the state had to prove beyond a reasonable
5 doubt?

6 A. No, sir.

7 Q. What did -- did he talk to you about defenses you
8 might have or anything like that?

9 A. I mean, he said he had a plan of what, what we was
10 going to do.

11 Q. All right. Well, I mean, did, did, did y'all discuss
12 how strong the case -- the state's case was or what
13 evidence the state would use against you?

14 A. I mean, no, sir. I mean, he said they had a lot of
15 evidence and a lot of witnesses to come take the stand, but
16 there was -- he never told me how strong we had, our side
17 of the case was.

18 Q. All right. Well, tell me about plea negotiations.
19 Did you have plea negotiations in this case?

20 A. No, sir, had no plea. At one point in time -- I
21 didn't get to hear a plea until I got to trial.

22 Q. All right. Why did you ultimately decide to go to
23 trial rather than plead? Why did that happen?

24 A. Because my first lawyer told me if I didn't commit
25 this murder, there's no reason for me to take a plea. I

1 was going to trial.

2 Q. Did they or either -- or any of your lawyers discuss
3 with you the penalties you would receive if you lost at
4 trial on murder?

5 A. A life sentence.

6 Q. Okay. All right. What other complaints or issues do
7 you have with Mr. O'Neil or any of your lawyers?

8 A. I mean, just that it was just certain parts that I
9 felt like that should have been objected on during the
10 trial, but for the most part he did a great job.

11 Q. What is the reason you're asking for a new trial
12 today? Why, why do you think you ought to have a new
13 trial?

14 A. Because I feel like the judge was biased, and I feel
15 like everything wasn't right. I mean, stuff was allowed in
16 that shouldn't have been allowed in, and then every time we
17 objected to something, we'd get overruled by her, and it
18 wasn't fair.

19 Q. All right, let's talk about you testifying. Did you
20 testify at your trial?

21 A. No, sir.

22 Q. All right. Why did you not testify?

23 A. Because of a pretrial. I was heated at the moment
24 when I was talking to Mr. Daniel Goldberg, and it wasn't
25 wise for me to take the stand at that time, how I was

A. HEATLEY - DIRECT EXAMINATION / CROSS-EXAMINATION 10

1 feeling.

2 Q. What was -- what was y'all's defense in this case? Do
3 you remember what the state -- what your lawyer's theory of
4 this case was?

5 A. No, sir.

6 Q. Did your lawyer discuss with you the advantages and
7 disadvantages of you testifying?

8 A. I mean, only disadvantage we had was put myself --
9 telling what really happened and put myself in deeper,
10 deeper waters about what really happened.

11 Q. Well, what advantage did your lawyer explain to you
12 there was in your not testifying?

13 A. I mean, it was -- it was no advantage.

14 Q. Okay. Anything else you want to complain about Mr.
15 O'Neil did or didn't do in this case?

16 A. I mean, that's just about it. Everything else was the
17 judge and the jury.

18 Q. Okay.

19 MR. LIFSEY: All right, I don't have any other
20 questions for this witness, Judge.

21 MR. BARLOW: May it please the court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION BY MR. BARLOW:

24 Q. Good morning, Mr. Heatley.

25 A. Good morning.

A. HEATLEY - CROSS-EXAMINATION BY MR. BARLOW

11

1 Q. So, we're here today because you're alleging that Mr.
2 O'Neil was ineffective in his representation of you,
3 correct?

4 A. Yes, sir.

5 Q. Okay. Let me ask you. You testified on direct that
6 you were represented by Ms. Johns.

7 A. Yes, sir.

8 Q. For about a year and a half prior to Mr. O'Neil being
9 appointed.

10 A. No. She was my -- it was three different lawyers.

11 So, I had, what, Theresa Johns. I think her name was

12 Megan. I'm not familiar. I think it's Megan from the

13 public defender's office. She came to see me a couple

14 times, but she say she couldn't be my lawyer because of a

15 conflict of interest.

16 Q. How long did Mr. O'Neil represent you?

17 A. I would assume a year. I can't be sure.

18 Q. And I believe you testified on direct that Mr. O'Neil
19 never explained murder to you?

20 A. No, sir.

21 Q. Okay. Did Ms. Johns?

22 A. No, sir.

23 Q. So, no one ever explained what murder was?

24 A. Only way -- only, only time I heard about murder and
25 read about it was in a book, and I heard the judge, the

A. HEATLEY - CROSS-EXAMINATION BY MR. BARLOW

12

1 trial judge said -- explained it to me.

2 Q. Do you know what murder is?

3 A. I'm pretty sure I do now.

4 Q. So, you did not know what murder was when you were
5 charged?

6 A. No, sir.

7 Q. Okay, and I believe that you claim that they failed to
8 explain the elements of murder, correct?

9 A. Yes, sir.

10 Q. Okay. Another allegation was that you failed to -- or
11 they failed to develop a defense for you?

12 A. Yes, sir.

13 Q. Okay. Do you recall what the defense was?

14 A. No, sir.

15 Q. What was your defense?

16 A. My defense was I was innocent.

17 Q. And what defense should trial counsel have developed
18 that would have changed the outcome of trial?

19 A. I mean, it was best to take a plea because nobody
20 wanted to hear what I had to say.

21 MR. BARLOW: Beg the court's indulgence.

22 Q. One appears that they did not -- another -- excuse me,
23 another allegation is that they failed to properly advise
24 you of your right to testify, but I believe your direct was
25 that there was no advantage in you testifying, correct?

A. HEATLEY - REDIRECT EXAMINATION BY MR. LIFSEY

13

1 A. I mean, it really didn't matter; the deck was stacked
2 against me.

3 Q. And you made a claim that they failed to object on
4 stuff. What specifically should they have objected to?

5 A. I mean, it was a lot of stuff. At the moment, I can't
6 really tell you; I'd have to go through my notes and look
7 at it.

8 Q. Okay.

9 MR. BARLOW: Your Honor, nothing further from the
10 state.

11 MR. LIFSEY: May I ask briefly a couple of questions
12 on redirect?

13 THE COURT: You may.

14 REDIRECT EXAMINATION BY MR. LIFSEY:

15 Q. The attorney general asked you and in response to one
16 of his questions you said that if you had known -- what did
17 you say about you should have gone ahead and plead? Isn't
18 that what you said?

19 A. Yes, sir.

20 Q. All right. Did anybody, any of your lawyers tell you
21 you need to plead on this case?

22 A. No, sir.

23 Q. Did any of your lawyers explain to you that there --
24 you were at some point offered plea bargain that was less
25 than what you would have gotten if you went to trial?

D. O'NEIL - DIRECT EXAMINATION BY MR. LIFSEY

14

1 A. No, sir.

2 Q. If they had explained all that, would you have pled?

3 A. I probably would.

4 MR. LIFSEY: Thank you. I don't have any further
5 questions.

6 THE COURT: All right, thank you, sir. You may step
7 down.

8 WITNESS: Yes, sir.

9 (THE WITNESS EXITS THE STAND.)

10 MR. LIFSEY: Your Honor, I call Mr. O'Neil to the
11 stand.

12 THE COURT: Mr. O'Neil, come up.

13 E. DEON O'NEIL, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 THE COURT: All right, grab a seat. State your name
16 for the record.

17 WITNESS: Deon O'Neil.

18 MR. LIFSEY: Please the court, Your Honor?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION BY MR. LIFSEY:

21 Q. All right, Mr. O'Neil, you represented our client in
22 this case?

23 A. I did.

24 Q. All right. How long did you represent him?

25 A. I think he had two set of charges. I represented back

1 in November of 2017 for an unrelated burg -- no, safe
2 cracking, burglary first that involved a different set of
3 charges, and then he had Ms. Theresa Johns for the murder
4 charge.

5 Q. Okay.

6 A. I think around maybe March of 2018, Ms. Johns was
7 relieved as his counsel for the murder charge. I think his
8 case at that time went back to the public defender's
9 office, and then it came to me, I think, April 9th of 2018.

10 Q. And you were appointed pursuant to one of the contract
11 appointments, I assume?

12 A. Yeah, I think. Once it -- once this case went back to
13 the public defender's office, it was assigned a public
14 defender at that time, but then they had it as just a
15 conflict, I think, from the safe cracking, burglary charge
16 that he had.

17 Q. I got it.

18 A. So then that was still pending in their office as
19 well, so that's why they sent it to me in April of 2018.

20 Q. All right. How often did you meet with the client in
21 this case?

22 A. Let me look back at my notes here. Back then we had
23 the -- with -- the clients had the kiosk at the jail where
24 they'd actually send messages to their attorneys. Looking
25 back at my notes, it looks like -- look at my notes here.

D. O'NEIL - DIRECT EXAMINATION BY MR. LIFSEY

16

1 It looks like I would have saw Andre the week of April 27,
2 2018. That's when we went over discovery. Then I would
3 have saw him the week of July 30th of 2018; September 23,
4 2018, that week; the week of October 19, 2018; the week of
5 November 30, 2018; looks like we had a video conference
6 December 29, 2018. Then I would've seen him the week of
7 the trial in January of 2019, but I don't have any records
8 of that. So, I would assume the week before we went to
9 trial in January 2019.

10 Q. What was the -- and as short as you can make it, what
11 was the gist of the state's allegations in the trial, the
12 case that went to trial?

13 A. I mean, the gist of that, I guess, was he was the one
14 who actually committed the murder of the young lady.

15 Q. All right. What was your theory and defense of that
16 case?

17 A. It was not him because there was no direct evidence
18 linking him to the murder. At best, all it came -- all the
19 state had was circumstantial evidence that connected him.

20 Q. Did you have an alternate theory as to who might have
21 done it or did you -- what was your -- anything else in
22 that regard?

23 A. I think their -- I think a statement -- because --
24 back up. The connection to the case was that there was ATM
25 video in evidence that linked Andre to the deceased credit

1 cards, and Andre gave a statement basically saying who he
2 got these credit cards from, an individual named Vaughn.
3 So, I guess our kind of alternate theory would be that he
4 was the actual one who committed the murder and that, you
5 know, Andre only got the credit cards from him.

6 Q. Let me back -- let me just jump ahead a little bit,
7 though. Would there have been value in him being able to
8 explain that to the jury, that connection and his
9 connection with the deceased?

10 A. There's always value to that, yes.

11 Q. You heard him testify about a dispute with the
12 solicitor Goldberg in this case. What do you remember
13 about that, if anything?

14 A. As it relates to?

15 Q. His, his decision to testify.

16 A. Oh. There was, was a pretrial. We did a pretrial
17 hearing as relates to his statement coming in. He had an
18 opportunity to take the stand. I think he -- I think what
19 he referred to, he got a little bit heated in that
20 cross-examination as it relates to him testifying pretrial.
21 And I think just based off that was if that's how you're
22 going to react kind of without the jury here, then it's
23 probably not, not going to be in your best interest to
24 testify if you get upset in front of the jury. You don't
25 want the jury to see you get upset.

D. O'NEIL - DIRECT EXAMINATION BY MR. LIFSEY

18

1 Q. Did you explain to him potential advantages he would
2 have had testifying?

3 A. Probably not in those words. What we probably talked
4 about was that -- getting your side of the story out, and I
5 think what we talked about was that he gave a statement to
6 law enforcement.

7 No. Originally in the case here -- and it was going
8 to be our presumption that his testifying would be the same
9 as what -- his statement that he gave to law enforcement
10 already was pretrial. So, my conversation usually would
11 have -- would have been if you're going to testify
12 similarly to what you've already told law enforcement, then
13 the cons of testifying might not outweigh you testifying
14 in court, especially if you can't keep it cool here.

15 Q. When, when would those discussions have taken place?
16 Would they have taken place pretrial or posttrial -- or
17 during the trial, not posttrial.

18 A. Pretrial.

19 Q. So, you would have -- do your notes indicate when you
20 discussed with him advantages and disadvantages of
21 testifying?

22 A. They do not here, but that would have been my standard
23 practice, but I don't have any independent notes in Andre's
24 case that we had that conversation.

25 Q. All right. Let me jump ahead then. Let's talk about

1 you, you referred a minute ago that this was basically a
2 circumstantial evidence case.

3 A. Correct.

4 Q. Is that correct?

5 A. Correct.

6 Q. All right. When it came time -- are you aware of the
7 case of *State v. Logan*?

8 A. I am now.

9 MR. LIFSEY: Okay, and I just want to put on the
10 record just so it's clear what I'm arguing, Judge. I'm
11 arguing *State v. Logan*, 405, SC 83 747 SC 2d 444, 2013
12 case.

13 Q. All right. So, you, you are aware now that the *Logan*
14 case gives a potential charge on circumstantial evidence
15 that is different from the one that Judge Benjamin charged
16 in this case?

17 A. I am.

18 Q. Would you agree with me that it is a more-favorable-
19 to-defendant's charge than the one she gave?

20 A. I would.

21 Q. You did not request that charge?

22 A. I did not.

23 Q. Thank you. Let's ask -- tell me about the jury
24 deliberation issue. Do you remember when there was some
25 indication? What do you remember about that?

D. O'NEIL - DIRECT EXAMINATION / CROSS-EXAMINATION

20

1 A. I do. This was the first time I've ever had that
2 situation where the note came back from -- two notes come
3 from the jury. One said basically that one juror would not
4 participate at all with the rest of us. Then the other
5 note might have come from that juror but through the
6 foreman, basically complaining about how the rest of the
7 jury was treating her.

8 Q. Okay. All right. In response to that, what did the
9 judge do?

10 A. She simply recharged the initial oath to the jury.

11 Q. Did you at any point object to that charge?

12 A. I don't think so. I'm going to rely on what the
13 transcript says, but I don't believe so.

14 Q. Did you ever ask her to recharge or to charge the jury
15 that they should not compromise their firmly held beliefs
16 in order to reach a verdict?

17 A. No.

18 MR. LIFSEY: I beg the court's indulgence just one
19 moment.

20 (A PAUSE.)

21 MR. LIFSEY: I don't have any further questions.

22 MR. BARLOW: Thank you, Your Honor. May it please the
23 court?

24 CROSS-EXAMINATION BY MR. BARLOW:

25 Q. Good morning, Mr. O'Neil.

1 A. Good morning.

2 Q. How are you?

3 A. All right.

4 Q. Good. All right, let me ask you. Did you explain the
5 elements of the charges to Mr. Heatley?

6 A. I don't have -- I don't have any notes, but that would
7 have been my standard practice here, but I don't have any
8 documentation in my notes saying that specifically for
9 Andre.

10 Q. Okay, and I think you covered it on direct, but did
11 you advise Mr. Heatley of his right to testify?

12 A. Yes.

13 Q. Okay. Move to the *Logan* issue that was brought up.
14 You're aware of the *Logan* case now, correct?

15 A. Correct.

16 Q. And while that charge is more favorable to the
17 defense, was the charge that was given at trial wrong?

18 A. No.

19 Q. Okay. So, that is a charge that is -- that is used?

20 A. In my understanding it's a valid charge, but there's
21 just more favorable charge out there.

22 Q. Okay, and regarding the juror's refusing to deliberate
23 issue and failure to object on the charging something
24 further than the oath, was this -- was an *Allen* charge
25 given?

D. O'NEIL - CROSS-EXAMINATION BY MR. BARLOW

22

1 A. No.

2 Q. So, there was no *Allen* charge?

3 A. They never used the magic term. Like, nobody ever
4 came in and said we're hung or can't come to a decision
5 here. So, they never -- the judge never give an *Allen*
6 charge.

7 Q. And it was just the judge recharging on the oath?

8 A. Yes.

9 Q. Okay, and do you recall moving for a mistrial?

10 A. I do.

11 Q. Directly after that?

12 A. I do.

13 Q. Based on what happened with the jury?

14 A. Yes.

15 Q. Okay.

16 MR. BARLOW: Beg the court's indulgence.

17 (A PAUSE.)

18 Q. Whose decision was it to go to trial?

19 A. It's always going to be the client's decision to go to
20 trial. I'm going to advise, give my -- give my counsel on
21 it. It's always ultimately up to the client here.

22 Q. Do you stand by your representation today?

23 A. I do.

24 MR. BARLOW: Nothing further.

25 MR. LIFSEY: Just briefly.

1 REDIRECT EXAMINATION BY MR. LIFSEY:

2 Q. I presume if you have a circumstantial evidence case
3 today, are you requesting the *Logan* charge?

4 A. Yes, sir.

5 MR. LIFSEY: Thank you. I don't have any further
6 questions.

7 THE COURT: All right, you may step down, sir.

8 (THE WITNESS EXITS THE STAND.)

9 MR. LIFSEY: I don't have any other witnesses, Your
10 Honor.

11 MR. BARLOW: Your Honor, the state has no witnesses.

12 THE COURT: Anything further from defense?

13 MR. LIFSEY: Not in the way of witnesses. I wouldn't
14 mind putting on the record just exactly what my argument is
15 as to a couple of legal issues.

16 THE COURT: Is Mr. O'Neil free to leave at this point
17 from the state?

18 MR. BARLOW: Sure.

19 THE COURT: From defense?

20 MR. LIFSEY: Yes. I have no objection to Mr. O'Neil
21 leaving.

22 THE COURT: Very well.

23 All right. Yes, sir. I'll hear from defense.

24 MR. LIFSEY: Your Honor, I just want to put on the
25 record. Obviously, a number of these issues that, that,

1 that he's testified about and Mr. O'Neil testified about
2 are credibility issues that Your Honor, as the finder of
3 fact, will have to make a judgment on, and you don't need
4 me to help you do that, okay? You can decide however you
5 wish to on that.

6 I do wish to clarify my issues in regards to, first of
7 all, the, the, the *Logan* charge issue. I acknowledge that
8 the *Logan* case itself does not demand that the language
9 that they use in the *Logan* charge be given. I want to be
10 forthright with the court on that. However, I do not
11 understand why any defense lawyer would not want the *Logan*
12 charge charged. The *Logan* charge by itself, the language
13 suggested in *Logan* is clearly more favorable to defendants.
14 So, I don't understand how anybody could try a
15 circumstantial evidence case or have any, any strategic or
16 tactical reason why you would not request a *Logan* charge.

17 So, I guess my point is if it's not the law -- and I
18 argue it ought to be the law -- that, that defense lawyers
19 are ineffective for not requesting the *Logan* charge. You,
20 Your Honor, or an appellate court ought to rule that it is
21 because it doesn't, it just doesn't inherently -- as
22 someone who's tried a million -- not a million but a bunch
23 of cases over the years, it does not make any sense to me
24 how as a defense lawyer, if *Logan* is available, how you
25 would not ask for the *Logan* charge.

1 In regards to the jury deliberation, this is kind of a
2 unique and unusual situation. You have, as I understand, a
3 juror who was allegedly failing to deliberate. I would
4 point the court's attention to *State v. Rampey*. I don't
5 have an actual cite for it yet, but it came out in October
6 5th of 2022 from the South Carolina Supreme Court.

7 Now, *Rampey* is different; I want to be forthright with
8 that. *Rampey* is an *Allen* charge case, but the reasoning in
9 *Rampey* -- ultimately what happened in *Rampey* is that case
10 was reversed because the trial judge refused to charge the
11 jury that -- or did not add to the *Allen* charge that the
12 jury should not compromise their firmly held beliefs.

13 The court recognized in *Rampey* that the *Allen* charge
14 -- and I would argue any subsequent charge to the jury,
15 certainly this one -- an *Allen* charge is inherently
16 coercive. So, there needs to be language in the *Allen*
17 charge telling jurors that they're under no obligation to
18 compromise their firmly held beliefs.

19 In this case where you have a juror who is not
20 deliberating for whatever reason, or at least by the
21 interpretation of, of the note, and the judge brings the
22 jury out and reads to them a, a charge reminding them of
23 their oath as jurors, which presumably is their duty to
24 deliberate, it's hard to understand how that would not be
25 a charge directed at that juror. In other words, that

1 juror, I don't see how that juror could see that is a
2 noncoercive charge.

3 And so I think that the same logic that applied to
4 *Rampey* -- and I know that *Rampey* came after this case, but
5 the reasoning is good. If the courts required that
6 language about not compromising firmly held beliefs in a
7 *Rampey*-type *Allen* charge, I think that should be a
8 requirement for any charge, especially one directed and
9 telling jurors to do anything, which is what this is.

10 So, I guess my position is what the judge did was
11 inherently coercive and should not have been done without
12 language that would have allowed -- or reminded the juror
13 that she didn't have to compromise firmly held beliefs.
14 Those are my arguments. Thank you, Judge.

15 THE COURT: Yes, sir.

16 MR. BARLOW: I would just say that when it comes to
17 *State v. Logan*, again he's mentioned it: *Logan* is not
18 required. *Logan* itself says that the *Logan* charge may be
19 given, is not required. And even if this court were to
20 find that trial counsel were deficient, I don't think you
21 can reach the prejudice prong because there is nothing that
22 requires the trial attorney to request the *Logan* charge on
23 circumstantial evidence.

24 And then, Your Honor, as to the argument regarding the
25 recharging of the oath by the judge, Your Honor, the case

1 law given all revolves around the *Allen* charge. This was
2 not an *Allen* charge; no *Allen* charge was given. So, this
3 judge did not refuse to give an *Allen* charge. He just
4 recharged them on the oath, exactly what he told them at
5 the beginning of trial and when he charged them.

6 So -- and I will point this court to *State v. Winkler*.
7 It's 418 SC 643. In that, Your Honor, the Supreme Court
8 found that:

9 The trial court should be careful to keep the
10 jury focused on its duty to deliberate and not
11 empower one juror to control the sentence by
12 refusing to participate in deliberation.

13 The judge, trial judge did nothing wrong in this by
14 just recharging their oath. And I would argue that, Your
15 Honor, that the case law that he's raised in this and his
16 argument does not apply here.

17 THE COURT: All right, at this point I'm going to take
18 this under advisement. There's a lot of information I need
19 to review factually for this case, as well as the law that
20 has been cited. So, I'm going to take this under
21 advisement.

22 I'll give each party thirty days to send any proposed
23 orders for my review. If you need more time, I'm more than
24 happy to grant you an extension.

25 So, at this point, we're going to take it under

1 advisement until further deliberation.

2 We're going to allow Mr. Heatley to be escorted out.

3 If everyone will remain seated.

4 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 12TH DAY OF MAY, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 5TH, 2023

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

ANDRE T. HEATLEY, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001526

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Andre T. Heatley, Jr., #378998,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2021-CP-40-4683
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

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RICHLAND COUNTY
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This matter comes before the Court by way of Andre T. Heatley, Jr's (Applicant) application for post-conviction relief (PCR) filed on September 16, 2021, challenging his trial for Murder and Armed Robbery. Respondent, the State of South Carolina, submitted its Return on December 31, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application. On April 24, 2023, Applicant filed amendments to his PCR application.

On May 12, 2023, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Daniel Coble. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from E. Deon O'Neil, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In November 2016, the Richland County Grand Jury indicted Applicant for Murder (2016-GS-40-6572) and Armed Robbery (2016-GS-40-6573). Applicant was represented by E. Deon O'Neil and Khalil C. Eaddy, Esquires. Deputy Solicitor Daniel Goldberg and Assistant Solicitor Lamar Fyall, of the Fifth Circuit Solicitor's Office, prosecuted the case.

Applicant's case proceeded to a jury trial on January 22-30, 2019, before the Honorable DeAndrea G. Benjamin. The jury found Applicant guilty as indicted. Judge Benjamin sentenced Applicant to fifty years' imprisonment for murder and ten years for armed robbery, to be served consecutively.

Applicant filed a timely notice of appeal. Appellate Defender Laura M. Caudy perfected Applicant's appeal by filing an Anders¹ brief to the court of appeals presenting the following issue:

1. Did the trial judge abuse her discretion by admitting evidence that Appellant allegedly told a third party that the decedent told others she was "going to be with" Appellant "after she got off work" because Appellant "had some drama going on" when such evidence was hearsay within hearsay and did not meet any exceptions to the hearsay rule, and where the evidence was unfairly prejudicial since the state's theory was that the decedent was shot and killed within thirty minutes of leaving work?

Thereafter, Applicant submitted his own *pro se* brief on March 18, 2020, which identically reiterated the points raised by Appellate Counsel. The Court of Appeals dismissed the appeal in an unpublished decision. State v. Heatley, 2021-UP-265 (filed July 14, 2021). The Remittitur was returned to the lower court on August 5, 2021.

¹ Anders v. California, 386 U.S. 738 (1976).

FACTS GIVING RISE TO THE CONVICTION

On January 26, 2016, Deandra Roach (Victim) left her job at Walmart just after 10:00 o'clock in the evening and drove to meet Applicant, whom she had an on/off relationship with. (Tr. 303, 1173). Cell tower data showed both Applicant and Victim's phones at the crime scene that evening. (Tr. 1175). At the location Applicant and Victim met, Applicant fatally shot Victim twelve times, pulled her body out of the car, and took her phone and debit card before leaving her body on the side of the road. (Tr. 303, 1156, 1162). Applicant then drove to three different ATM machines and was recorded via video attempting to withdraw money from Victim's account with her debit card. (Tr. 305, 1161). Applicant additionally purchased a watch with Victim's credit card. The shell casings found at the scene and in Victim's body matched Applicant's gun. (Tr. 1185). Applicant was eventually apprehended and gave several conflicting statements to law enforcement. (Tr. 309, 1181).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Violation of Fifth and Sixth Amendment"
 - a. "Do [sic] to the fact of ineffective assistance of counsel."
2. "Denial Due Process"
 - a. "Lawyer failed to preserve Miranda rights violation for the record."

Applicant amended his PCR application with the following ineffective assistance of counsel allegations:

1. Failure to meet with Applicant a sufficient number of times;
2. Failure to explain the elements of the charges;
3. Failure to develop a defense and prepare for trial;
 - a. These failures led Applicant to have an inaccurate view of the strength of the state's case and led to him insisting on a

jury trial rather than entering into plea negotiations with the state;

4. Failure to properly advise Applicant of his right to testify and the advantages thereof;
5. Failure to object to the trial judge's incorrect charge to the jury regarding circumstantial evidence and not requesting a charge in conformity with State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013);
6. After the jury indicated by note that a juror was refusing to deliberate further, Applicant's trial counsel failed to object to the judge recharging the jury on their oath as jurors without also requesting that the court recharge them that they should not compromise their firmly held beliefs in order to reach a verdict.

Applicant proceeded at the hearing on his amended allegations.

SUMMARY OF EVIDENTIARY HEARING TESTIMONY

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that he was originally represented by Teresa Johns for about a year and a half. Applicant testified that Trial Counsel was appointed about a year before the trial, and it was a better situation because they talked more. Applicant testified that he saw Trial Counsel more than the other attorneys. Applicant testified that Trial Counsel never explained what murder was to him. Applicant testified that Trial Counsel never explained the elements of his charges to him. Applicant testified that they had a plan. Then Applicant testified that he and Trial Counsel never discussed the strength of the State's evidence or the burden of proof.

Applicant testified that there were no plea negotiations. Applicant testified that he knew he could get a life sentence. Applicant testified that there were objections that should have been done, but Trial Counsel "for the most part [] did a great job." Applicant testified that when Trial Counsel did object, it was overruled. Applicant testified that he did not testify because of a heated situation during pretrial, and there was no advantage to his testifying.

Applicant testified that those were all his complaints with Trial Counsel, and the rest of his complaints were about the judge and jury.

On cross-examination, Applicant testified that no one explained murder to him, and he did not know what murder meant when he was charged. Applicant testified that Trial Counsel failed to develop a defense because he is innocent. When asked what Trial Counsel should have done, Applicant testified that Trial Counsel should have taken a plea. Applicant testified that it did not matter if he testified.

On redirect examination, Applicant testified that no one advised him to plea or discussed that he could get less time if he pled.

TRIAL COUNSEL'S TESTIMONY

On direct examination, Trial Counsel testified that he got the case in April of 2018, and he met with Applicant on the kiosk at the jail and saw him on April 27, 2018, to review discovery, met with him again on July 30, 2018, September 23, 2018, October of 2018, November of 2018, went over video in December 2018, and saw him the week before trial in January 2019. Trial Counsel testified that their theory of the case was that it was not Applicant because there was no direct evidence. Trial Counsel testified that the ATM videos linked Applicant to Victim's debit card.

Trial Counsel testified that Applicant and Deputy Solicitor Goldberg had a heated exchange, so it was not a good idea for him to testify in front of the jury. Trial Counsel testified that it is sometimes good for the defendant to get their story out to the jury, but he had given a statement to law enforcement, so there was no need to testify. Trial Counsel testified that it was a primarily circumstantial case and the Logan² charge is more favorable to a defendant, and he failed

² State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

to request it. Trial Counsel testified that the trial judge recharged the jurors' oath, and he did not request a charge about compromising their beliefs.

On cross-examination, Trial Counsel testified that it was his standard practice to go over the charges and the elements of the charges with his clients. Trial Counsel testified that he advised his client about his right to testify. Trial Counsel testified that while the Logan charge is more favorable to a defendant, the charge given was correct. Trial Counsel testified that no Allen³ charge was given to the jurors, and the trial judge just recharged their oath. Trial Counsel testified that he did move for a mistrial based on what happened with the juror.

Trial Counsel testified that it was Applicant's decision to go to trial. Trial Counsel testified that he stood by his representation of Applicant.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

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;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
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 his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he 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[.]

³ Allen v. United States, 164 U.S. 492 (1896).

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; 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 v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). 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; accord, 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)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. 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).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n 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." Strickland, 466 U.S. at 691. To meet this burden,

counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, 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 689–90. 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. Id. 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"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where she presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing **not credible**. This Court further finds applicable

the strong presumption that at all stages of Trial Counsel's representation of Applicant that she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Applicant has alleged multiple claims of ineffective assistance of trial counsel and asserts that as a result of Trial Counsel's purported errors, he is entitled to a new trial. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation 1: "Failure to meet with Applicant a sufficient number of times."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation is without merit.

At the evidentiary hearing, Trial Counsel credibly testified to numerous meetings and expounded at times as to what he and Applicant reviewed in those meetings. Trial Counsel credibly testified that he reviewed discovery with Applicant and explained the charges and their corresponding elements. Regardless of the number of times they met, the record reflects that Trial Counsel was clearly prepared for trial and fully defended Applicant at the trial.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency);

United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

As stated *supra*, this Court finds the record reflects Trial Counsel was well-prepared in his defense and was familiar with the facts of the case and the law surrounding the charges. Importantly, this Court finds Applicant has failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Harris, 377 S.C. at 75, 659 S.E.2d at 145 (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective). This Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, Applicant's allegation Trial Counsel did not meet with him a sufficient number of times is **DENIED** and **DISMISSED**.

Allegation 2: "Failure to explain the elements of the charges."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to explain the elements of the charges. This Court finds this allegation is without merit.

On direct examination, Applicant testified that Trial Counsel did not explain the elements of the charges against him.

On cross-examination, Applicant testified that he did not know what murder meant.

On direct examination, Trial Counsel testified that he explained the charges and the elements of the charges, and it was his standard practice to review the charges and elements with all clients.

This Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Based on Trial Counsel's credible testimony, this Court finds Trial Counsel explained the elements of murder and armed robbery to Applicant. Therefore, this Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, Applicant's claim Trial Counsel did not explain the elements of the charges **DENIED** and **DISMISSED**.

Allegation 3: "Failure to develop a defense and prepare for trial."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to develop a defense and prepare for trial. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has presented no witnesses or specific testimony other than his self-serving assertion that Trial Counsel failed to develop a defense because Applicant is "*innocent*." This Court finds Applicant's testimony **not credible**—thus, he has failed to show this Court how the result at trial would have been different with additional preparation and what further defenses Trial Counsel could have pursued. As well, as noted *supra*, this Court finds the record reflects Trial Counsel was well-prepared in his defense and was familiar with the facts of the case and the law surrounding the charges. This Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, Applicant's allegation that Trial Counsel failed to develop a defense and prepare for trial is **DENIED** and **DISMISSED**.

Allegation 4: "Failure to properly advise Applicant of his right to testify and the advantages thereof."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to properly advise him of his right to testify and the advantages thereof. This Court finds this allegation is without merit.

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. [However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

As an initial matter, this Court finds that Applicant's testimony *refutes* this allegation. On direct examination, Applicant testified that there was no advantage in his testifying. On cross-examination, Applicant testified that it did not matter if he testified.

On direct examination, Trial Counsel testified that discussions with Deputy Solicitor Goldberg and Applicant were heated in the pretrial phase, and he did not think it would be a good idea for Applicant to be cross-examined and have that happen in front of the jury. Furthermore, Trial Counsel testified that Applicant gave a written statement to law enforcement, so he did not need to testify.

This Court finds that Applicant was fully aware of his right to testify and the advantages and disadvantages of doing so. The record reflects, Applicant knowingly waived his right to testify after a thorough colloquy with the court. (Trial Tr. 1143 - 1146). Further, the record reflects that

Applicant informed the trial court that Trial Counsel discussed his right to testify with him, that he had no questions for the trial court, and that he had no questions for Trial Counsel regarding his right to testify. (Trial Tr. 1145). This Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, Applicant's allegation that Trial Counsel did not discuss his right to testify is **DENIED and DISMISSED.**

Allegation 5: "Failure to object to the trial judge's incorrect charge to the jury regarding circumstantial evidence and not requesting a charge in conformity with State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013)."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the incorrect charge to the jury regarding circumstantial evidence and not requesting a charge in conformity with State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). This Court finds this allegation is without merit.

As an initial matter, this Court finds that the allegation that the charge given was the incorrect charge fails as a matter of law. In State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997), the Supreme Court of South Carolina adopted the reasoning that "if a proper reasonable doubt instruction is given, a jury need not be instructed that circumstantial evidence must be so strong as to exclude every reasonable hypothesis other than guilt." Id., 327 S.C. at 83, 489 S.E.2d at 464 (citing Holland v. U.S., 348 U.S. 121 (1954)). Pursuant to that reasoning, the Court recommended a specific jury instruction for circumstantial evidence:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating

the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Id., 327 S.C. at 83-84, 429 S.E.2d at 464 (citation omitted). Subsequently, to eliminate any confusion in circumstantial evidence instructions, the Supreme Court affirmed the above language as "the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction." State v. Cherry, 361 S.C. 588, 601, 606 S.E.2d 475, 482 (2004).

The Supreme Court substantially modified its restrictive ruling in Cherry in State v. Logan. Logan provides that defendants should not be restricted from requesting a jury charge that reflects the requisite connection of collateral facts necessary for conviction and, thus, Courts must provide the following alternative language in its jury instructions when so requested by a defendant:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of

whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id., 405 S.C. at 99, 747 S.E.2d at 452. Though the Court must give the above charge if requested by a defendant, the Grippon instruction remains valid. Id., 405 S.C. at 100, 747 S.E.2d at 452-53.

At trial, Trial Counsel did not request a Logan charge, and he did not object to a Logan charge not being given. (Trial Tr. 1220 – 1221).

At the evidentiary hearing, Trial Counsel testified on direct examination that while this case was primarily a circumstantial case, he did not ask for a Logan charge. Trial Counsel also testified that the charge the trial judge gave was a correct charge, and a Logan charge is not required.

This Court finds that Trial Counsel's failure to request a Logan charge does not amount to deficient performance, nor can this Court discern any prejudice that would result if it did. First, as a matter of law, the Court cannot reconcile Applicant's proposition that failure to seek a Logan charge constitutes deficient performance with the Supreme Court's preservation of the Grippon charge as valid—if satisfaction with and reliance upon the Grippon charge by Trial Counsel were a deficiency, then Grippon would, as a practical matter, no longer constitute a valid charge.

Second, the Court cannot determine what, if any, prejudice Applicant suffered from the lack of the Logan language, given the case against him—Applicant was found with Victim's debit card on his person, the bank video of him using Victim's debit card to withdraw cash from Victim's accounts at three separate ATM's on the night of the murder, the text messages from Applicant to his girlfriend, and the gun that Applicant admitted was his property linking him to the murder through the ballistics analysis showing the bullets that killed Victim were shot from Applicant's gun. Simply put, all of the circumstances were consistent with each other and pointed conclusively to Applicant's guilt beyond a reasonable doubt. This Court finds Trial Counsel was not deficient

in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, Applicant's allegation that Trial Counsel failed to object to the trial judge's incorrect charge to the jury regarding circumstantial evidence and not requesting a charge in conformity with State v. Logan is **DENIED** and **DISMISSED**.

Allegation 6: "After the jury indicated by note that a juror was refusing to deliberate further, Applicant's trial counsel failed to object to the judge recharging the jury on their oath as jurors without also requesting that the court recharge them that they should not compromise their firmly held beliefs in order to reach a verdict."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the judge recharging the jury on their oath as jurors without also requesting that the court recharge them that they should not compromise their firmly held beliefs in order to reach a verdict. This Court finds this allegation is without merit.

At trial, when one of the jurors stopped deliberating, and after an exhaustive discussion between the trial judge, Trial Counsel, and the Solicitor, the trial court brought the jury out and charged them with their oath they took at the beginning of trial:

I am going to read you, remind you of the oath that you took on last week, Tuesday or Wednesday. And this is an oath that all jurors take in this state in criminal cases. It says: Do you swear or affirm that you shall well and truly try, and true deliverance make, between the State of South Carolina and the Defendant at bar, whom you shall have in charge, and a true verdict give, according to the law and the evidence, so help you God? I remind you that you all took that oath. I am going to send you back in the room and continue to deliberate. I ask that you be respectful to each other during your deliberations.

(Trial Tr. p. 1259).

Here, Applicant contends that the trial court was required to include language that the jurors were not required to compromise their beliefs because an Allen charge is inherently coercive.⁵ This Court finds that the charge of the jurors' oath was not an Allen charge; therefore, the trial court was not required to include any other language. An Allen charge is used to encourage a deadlocked jury to reach a verdict. State v. Jones, 320 S.C. 555, 466 S.E.2d 733 (Ct. App. 1996); See Allen v. U.S., 164 U.S. 492 (1896) (if the jury returns without a verdict, the trial judge may instruct the jury to take more time to deliberate, to re-examine their views, and to avoid a mistrial by reaching a unanimous verdict).

In Applicant's case, the record reflects that the jury was not deadlocked, but that one juror decided not to further participate in deliberations. The foreman reported that the juror participated in part, but refused to consider evidence, engage in conversations, and refused to voice her opinion when asked. The foreman further stated to the trial judge that the juror was, at that point, sitting in a corner reading a book and completely refusing to participate. (Trial Tr. 1247-1250). Also, the record reflects that the trial court, Trial Counsel, and Solicitor exhaustively discussed exactly what the trial court was going to do with regard to the jurors, and that was to charge them with their oath and to continue to deliberate. (Trial Tr. pp. 1250 – 1257). Further, this Court finds that there was no objectionable basis for Trial Counsel to object as the trial court did not give an Allen charge.

Accordingly, Applicant's allegation that Trial Counsel failed to object to the judge recharging the jury on their oath as jurors without also requesting that the court recharge them that they should not compromise their firmly held beliefs in order to reach a verdict is **DENIED** and **DISMISSED**.

⁵ Applicant pointed this Court to State v. Rampey, 438 S.C. 519, 885 S.E.2d 366 (2022).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of Aug, 2023.

 THE HONORABLE DANIEL COBLE
 Presiding Judge
 Fifth Judicial Circuit

Richland County, South Carolina

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA



1347

WITNESSES

(s) William Gonzalez
-- Richland County Sheriff

DOCKET NO. 2016GS4006572

The State of South Carolina

County of

Richland

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

2016A4010200306

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2016
74

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Andre Tyrone Heatley

TRUE BILL

Foreperson of Grand Jury *William Gonzalez*
Date: **NOV 07 2016**

VERDICT

Indictment for
MURDER / MURDER

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

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 7, 2016,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Andre Tyrone Heatley did in Richland County, on or about January 29, 2016, kill the victim, Deandra Roach, with malice aforethought, either express or implied, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

349
- (S) William Gonzalez
- Richland County Sheriff

DOCKET NO. 2016GS4006572

AMENDED

The State of South Carolina

County of

Richland

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

2016A4010200306

74

NOVEMBER TERM 2016

Defendant

ACTION OF GRAND JURY

THE STATE
vs.

Andre Tyrone Heatley

TRUE BILL

A.S.J. [Signature]

Foreperson of Grand Jury **NOV 06 2018**
Date:

VERDICT

AMENDED Indictment for
MURDER / MURDER

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

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

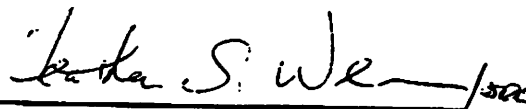
AMENDED INDICTMENT

At a Court of General Sessions, convened on November 7, 2016,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Andre Tyrone Heatley did in Richland County, on or about January 29, 2016, kill the victim, Deannadra Roach, with malice aforethought, either express or implied, by means of a gunshot wound and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


HEATHER S. WEISS, SOLICITOR

WITNESSES

1351
(S) William Gonzalez
- Richland County Sheriff

DOCKET NO. 2016GS4006573

The State of South Carolina

County of

Richland

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

2016A4010200307

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2016
74

Defendant

ACTION OF GRAND JURY

THE STATE
vs.

Andre Tyrone Heatley

Witness:

C.C.C. PLS. AND G.S.

TRUE BILL

Foreperson of Grand Jury *Audrey Brown*
Date: **NOV 07 2016**

VERDICT

Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON

SC Code: 16-11-0330(A)
CDR Code: 0139

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 7, 2016,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Andre Tyrone Heatley did in Richland County on or about January 29, 2016, commit robbery by feloniously taking from the person or presence of Deanndra Roach, by means of force or intimidation, goods or monies of Deanndra Roach, such goods or monies being described as credit cards, US Currency and/or miscellaneous personal property, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Andre Tyrone Heatley Jr.

INDICTMENT/CASE#: 2016GS4006572

AKA: _____
 Race: BLACK Sex: M Age: 25

A/W#: 2016A4010200306Date of Offense: 1/30/2016S.C. Code §: 16-03-0010CDR Code #: 0116**RECEIVED**

FEB 04 2019

SENTENCE SHEET

SC Court of Appeals

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 ☐ PLEADSTO: Murder / Murderin violation of § 16-03-0010 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 CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solitor

72620
SC Bar#

Defendant

Attorney for Defendant

74819
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 50 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 SCDOC.☐ The Defendant is to be placed on the 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: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5%) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 _____ \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 _____ \$

§ 56-5-2995 (DUI Assessment) \$12 _____ \$

§ 56-1-286 (DUI Breath Test) \$25 _____ \$

Proviso (Public Def/Probation) \$500 _____ \$

§ 14-1-212 (Law Enforce. Funding) \$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) _____ \$

TOTAL _____ \$

Clerk of Court/ Deputy Clerk Jeanette McBrideCourt Reporter: McCouch

SCCA/217 (04/2018)

_____ 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 \$ _____

\$ _____ paid to Public Defender Fund

Other: _____

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

JAMES H. BRIDE

CC 2019-001

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge WJJudge Code: 2161Sentence Date: 1-30-19

1354

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Andre Tyrone Heatley Jr.

AKA:

Race: BLACK Sex: M Age: 25

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Road

City, State, Zip: Irmo, SC 29203

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: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 72620

Defendant

Attorney for Defendant

SC Bar# 7911

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:☒ 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 SCDOC.☐ The Defendant is to be placed on the 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) \$100 \$ _____

14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

14-1-212 (Law Enforce. Funding) \$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) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4006573

A/W#: 2016A4010200307

Date of Offense: 1/30/2016

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

RECEIVED

FEB 04 2019

SENTENCE SHEET SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 72620

Defendant

Attorney for Defendant

SC Bar# 7911

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:☒ 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 SCDOC.☐ The Defendant is to be placed on the 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) \$100 \$ _____

14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

56-1-286 (DUI Breath Test) \$25 \$ _____

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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) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

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: _____

CERTIFIED TRUE COPY

FILED

S.

RICHMOND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2161

Sentence Date: 1-30-19