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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Calhoun County

Honorable R. Kirk Griffin, Circuit Court Judge

JERRY MCKNIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001809

APPENDIX

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1 come into the sheriff's office?

2 A. Yes, sir, she did.

3 Q. And she actually had Bryant McKnight with her; is that
4 correct?

5 A. Yes, sir, that's correct.

6 Q. And Ms. Hughes ultimately, you heard her testimony, she
7 ended up getting charged with obstruction of justice?

8 A. Yes, sir, that's correct.

9 Q. And that was based on?

10 A. The information she was attempting to provide us at the
11 time.

12 Q. Now kind of fast-forward. So that evening Stephon Green
13 came in, so the evening of Tuesday, February 18th?

14 A. Yes, sir.

15 Q. And did he give a statement that night?

16 A. He did.

17 Q. Now, at any point in time on the evening of
18 February 18th of 2014, did Stephon Green mention
19 Derrick Sumter's name?

20 A. No, sir.

21 Q. Had Derrick Sumter's name come up at all in your
22 investigation up to that point that Tuesday night?

23 A. No, sir.

24 Q. At any point had there been any mention either by
25 Stephon Green that night or any of the other witnesses about

1 K. R. [REDACTED]'s body being moved and dumped in the swamp
2 in the Four Holes area?

3 A. No, sir.

4 Q. Ultimately, though, in talking to Stephon Green that
5 night, was there another person's name that kind of came
6 forward that had some involvement in this?

7 A. Yes, sir. We had the name then of
8 Mr. Jonathan McKnight.

9 Q. Are you aware of Jonathan's relationship to Bryant and
10 Jerry McKnight?

11 A. Yes, sir. I believe he is a cousin.

12 Q. Now, with Jonathan McKnight, on the evening of -- after
13 Stephon Green gave a statement and provided his name to you
14 all, did you attempt to go find him?

15 A. Yes, sir, we did.

16 Q. And who was involved in that?

17 A. Myself and Captain Regalis.

18 Q. And where was it that you found Jonathan McKnight?

19 A. Oriole Circle, which is right in the city limits or
20 borderline city limits of St. Matthews.

21 Q. Is that Mr. McKnight, Jonathan McKnight's residence?

22 A. Yes, sir, it is.

23 Q. And tell the jury who else was there when you picked
24 up -- when you went and talked to Jonathan McKnight at his
25 residence that night.

1 A. Mr. Jerry McKnight.

2 Q. And do you know Jerry McKnight (indicating)?

3 A. Yes, sir, I do.

4 Q. And do you know approximately what time it was that you
5 got out there?

6 A. Somewhere around 5:30, 6-ish.

7 Q. Okay. 5:30, 6:00 in the evening. And where was
8 Jerry McKnight located at?

9 A. He was at the residence of Oriole Circle.

10 Q. Inside, outside, do you remember?

11 A. He was outside.

12 Q. Now let me ask you this: When you responded out there
13 to attempt to talk to Jonathan McKnight, had Jerry McKnight's
14 name come up at all at that point in time?

15 A. No, sir, not at all.

16 Q. So was he even talked to that night out there or
17 attempted to talk to?

18 A. No, sir.

19 Q. Jonathan, did he end up giving a statement that evening
20 of February 18th?

21 A. Yes, sir, he did.

22 Q. Where was that at?

23 A. Calhoun County Sheriff's Office.

24 Q. Did he come voluntarily to the sheriff's office?

25 A. Yes, sir, he did.

1 Q. And in that statement on the evening of February 18th,
2 that Tuesday night, he doesn't say anything about
3 Jerry McKnight at all --

4 A. No.

5 Q. -- is that correct?

6 Now, the following day, on February 19th, did
7 Jonathan McKnight come back into the sheriff's office or is
8 he brought back into the sheriff's office and ultimately
9 gives a couple of additional statements the night of the
10 19th?

11 A. Yes, sir.

12 Q. And the statements on the 19th, so that Wednesday
13 evening, implicates the two of them; is that correct?

14 A. That is correct.

15 Q. Now, did he tell you that night why he hadn't said
16 anything about why he didn't mention Jerry's name the night
17 before?

18 A. Yes, sir, he did.

19 Q. What was that?

20 A. He started explaining to me that he was actually afraid
21 of Mr. Jerry McKnight.

22 Q. Did he indicate that Jerry had threatened him?

23 A. Yes, sir, he did.

24 Q. Yet again, that night on the 19th when Jonathan McKnight
25 gave you some further information, had you at that point in

1 time heard anything about Derrick Sumter?

2 A. No, sir.

3 Q. Heard anything about anybody taking and moving K. R. 's
4 body to the Four Holes Swamp area?

5 A. No, sir.

6 Q. Now, when he talks to you that night of February 19th,
7 does he give you information to that effect, though?

8 A. I can't remember. He gave a statement.

9 MR. SORENSON: Beg the Court's indulgence one second,
10 Your Honor.

11 Q. I'll come back to that in one second, all right?

12 A. Yes, sir.

13 Q. Let me ask you, though, based on that information that
14 you got from -- what Solicitor Pascoe finds that he had
15 Mr. McKnight read --

16 MR. SORENSON: May I approach, Your Honor?

17 THE COURT: You may.

18 Q. Let me ask you this: Do you remember when Jonathan
19 testified when I think it was Solicitor Pascoe asked him kind
20 of on redirect about providing the information in the
21 statement that two days later Jerry told me that Bryant got
22 somebody to take him back to get the body and take the body
23 and drop it in a swamp in the Four Hole area?

24 A. Yes, sir.

25 Q. Do you recall that?

1 A. Yes, sir.

2 Q. Is that the first time that you all had heard that
3 information?

4 A. Yes, sir.

5 Q. Yet again, at that point in time, still didn't know who
6 Derrick Sumter was, didn't know who that person was that
7 supposedly did that, is that correct, with Jerry?

8 A. That's correct.

9 Q. Let me ask you this: Based on that information, though,
10 that he provided, the following day, on Thursday,
11 February 20th, did the Calhoun County Sheriff's Office start
12 searching around areas that you all had heard referred to as
13 the Four Holes Swamp area?

14 A. Yes, sir, we did.

15 Q. Are you aware that a blanket was recovered out in that
16 area of Four Holes Road, that swamp area near the Calhoun
17 County/Orangeburg County line?

18 A. Yes, sir, I am.

19 Q. Now, that night of February 20th, that Thursday night
20 then, did you all have an opportunity to bring somebody else
21 back in to re-interview them?

22 A. Yes, sir, we did.

23 Q. And who was that?

24 A. Mr. Stephon Green.

25 Q. And why was it that you brought Mr. Green back in to

1 interview him?

2 A. After the interview with Mr. Jonathan McKnight, we
3 actually had further information that we wanted to get into
4 about the bag that he explained about that Mr. Bryant
5 McKnight had.

6 Q. See if he had any information about what that was or
7 where it went?

8 A. Correct.

9 Q. And I guess at that point in time, you're still trying
10 to figure out who this person that, according to Jonathan,
11 assisted Jerry in moving the body; is that correct also?

12 A. That's correct.

13 Q. And did Mr. Green give you all a second statement at
14 that point in time?

15 A. Yes, sir, he did.

16 Q. And did -- as a result of that statement, did that lead
17 you to another person to talk to?

18 A. Yes, sir. Mr. Derrick Sumter.

19 Q. And did you all have an opportunity to find or locate
20 Mr. Sumter that -- late that Thursday evening?

21 A. No, sir.

22 Q. When did -- so how did you go about doing that?

23 A. The very next morning myself and Chief Smalls were able
24 to locate him.

25 Q. So that would be the morning of Friday, February 21st?

1 A. Yes, sir.

2 Q. Where was it that you located Derrick Sumter at?

3 A. [REDACTED] Oglesby Drive in St. Matthews.

4 Q. Is that his mother's residence?

5 A. Yes, it is.

6 Q. And you said Chief Smalls was with you?

7 A. Yes, sir, Chief Michael Smalls.

8 Q. And what -- did you talk to Mr. Sumter out there at his
9 residence?

10 A. He was Mirandized and brought back to the Calhoun County
11 Sheriff's Office.

12 Q. And did he start talking to you at the sheriff's office?

13 A. Yes, sir, he did.

14 Q. And did you take a statement from him at the sheriff's
15 office?

16 A. We began taking a written statement and a verbal
17 statement at that time.

18 Q. And tell the jury kind of how -- we heard a little bit
19 when he testified about his statement. On the morning of
20 February 21st tell the jury how you went about taking his
21 statement and what happened that morning during that
22 statement.

23 A. As Mr. Sumter began to give us the statement, it became
24 very apparent that he had a lot of information as far as a
25 location and other physical evidence that we needed, so we

1 actually stopped the written statement and I actually asked
2 him if he wouldn't mind showing us. And he said "yes," so he
3 voluntarily went with us and showed us exactly what we
4 needed.

5 Q. So you heard testimony about that first statement being
6 shorter than a subsequent statement?

7 A. Yes, sir.

8 Q. Is that because you all basically stopped him at that
9 point in time?

10 A. Yes, sir. We stopped him at that time, and we thought
11 it better to go physically see what he was talking about.

12 Q. And tell the jury where he took you.

13 A. Initially we went to a location off of Stiffmire Road,
14 which is right outside of town.

15 MR. SORENSON: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 (Counsel confer.)

18 Q. Let me show you a couple maps and let me get you to kind
19 of step down here a second if I can.

20 We had talked about a location around Stiffmire Road.
21 Let me show you State's Exhibit No. 11. Does that kind of
22 show where Stiffmire Road is located at in relationship to
23 coming out of the town of St. Matthews?

24 THE WITNESS: Is it okay if I step down?

25 MR. SORENSON: Yes. Or I can come over here.

1 Your Honor, at this time we'd offer State's 11 into
2 evidence.

3 THE COURT: Any objection?

4 MR. BANKS: No, Your Honor.

5 MR. LEIENDECKER: No.

6 THE COURT: It's in.

7 (State's Exhibit 11 admitted into evidence.)

8 Q. Showing you, Lieutenant, State's Exhibit No. 12, does
9 that kind of show the overall, the whole general area showing
10 from Stiffmire Road and then all the way down to the Four
11 Holes Swamp area --

12 A. Yes.

13 Q. -- where K. R. [REDACTED]'s body was found?

14 A. Yes, it does.

15 MR. SORENSON: We'd also offer State's 12 into evidence.

16 THE COURT: Any objection?

17 MR. LEIENDECKER: No, Your Honor.

18 MR. BANKS: None.

19 THE COURT: It's in.

20 (State's Exhibit 12 admitted into evidence.)

21 MR. SORENSON: May I have him step down, Your Honor?

22 THE COURT: You may step down, sir.

23 Q. Let me show you State's Exhibit No. 11. If you can keep
24 your voice up nice and loud, if you would, Lieutenant, just
25 kind of explain to the jury -- I need to hold this up

1 higher -- just kind of show the jurors kind of what we're
2 seeing in State's Exhibit No. 11.

3 A. Here in State's Exhibit No. 11, this is St. Matthews,
4 the city of St. Matthews. Coming out of this, this is
5 Highway 6, Old No. 6 Highway, which is right out here, and it
6 leads you down to Stiffmire, which intersects here
7 (indicating).

8 Q. So you indicated that Derrick Sumter, where did he take
9 you initially that day when you all left the sheriff's
10 office?

11 A. This is Highway 6 coming out on Bridge Street. He
12 didn't know the actual street names, so he was just kind of
13 directing us, and we turned on Sikes Road, which leads around
14 and comes in to Belleville over here, which is not on that
15 map.

16 Q. Let me show you State's Exhibit No. 12.

17 A. This is Sikes Road, again, which is continuing from the
18 other map that comes around. He said that they made a left
19 turn, they made a left turn on a dark road, he called it a
20 country road, which he was asked at that point to stop. And
21 that's just as they were -- this is the direct route that he
22 took us that day.

23 Q. When he got over that kind of Stiffmire Road area, did
24 he appear to know exactly where he was going to?

25 A. No, sir, he had a pretty good idea, but he didn't have

1 an exact location.

2 Q. And describe, if you would, this kind of area back here
3 on Stiffmire Road. What is that area like out there?

4 A. This is -- there's no houses, very little street lights.
5 This is actually a very secluded road, and it's
6 Belleville Road and Old No. 6 Highway.

7 Q. Back on -- let me ask you, back on February 13th of
8 2014, what was the condition of that road back on that
9 Thursday night?

10 A. I was informed after the ice storm at some point they
11 actually paved the road, so it had been repaved.

12 Q. So was it paved on February 13th or was it paved after
13 February 13th?

14 A. I want to say it was after February 13th.

15 Q. Okay.

16 A. Because it was newly paved when we got there.

17 Q. Okay. All right. But there's no -- along this stretch
18 here (indicating), there's no houses along here?

19 A. No, sir, none on the road.

20 Q. Okay. Street lights on Stiffmire Road?

21 A. Very little, if any, street lights. It's very, very
22 secluded.

23 Q. Now, that location on Stiffmire Road there where he
24 initially kind of took you, that stretch of Stiffmire Road,
25 what county is that whole area located in?

1 A. That is all in Calhoun County.

2 Q. Now, where did you ultimately go? And what did he tell
3 you? What was the purpose of him taking you to that location
4 that you ultimately found on Stiffmire Road there?

5 A. This is where he stated that he was instructed to stop
6 by Mr. Jerry McKnight, opened the trunk. He stated that
7 Mr. McKnight at that point exited the vehicle, went over to
8 the ditch, placed something in the trunk. He then closed the
9 trunk and was directed to go out to Highway No. 6. Right
10 here (indicating), this is Stiffmire Road.

11 He was directed to come out to Highway No. 6, in which
12 he made a right-hand turn, which would have been taking him
13 out 6 towards the Ellore, Orangeburg County line.

14 He was instructed to make a right turn onto Cameron
15 Road, which is still in Calhoun County. He made a left turn
16 on Nate's Store Road. And once he made the turn onto Nate's
17 Store Road, he followed that all the way out to Midway Road,
18 which is right here (indicating). Midway Road connects to
19 Highway 176, which is Old State Road.

20 He came out to Old State Road. He made a right-hand
21 turn, followed it up to Four Holes Road, which he would have
22 came out to this intersection right here (indicating). He
23 made a right-hand turn and then a quick left onto Four Holes
24 Road. And the actual bridge location where he said he
25 stopped the last time is right here (indicating).

1 Q. Is that right at the Calhoun/Orangeburg County line
2 there?

3 A. Yes, sir, it is.

4 Q. And what did he indicate had happened when he got to
5 that bridge there at the Calhoun/Orangeburg County line?

6 A. Mr. Sumter stated that once he got to that location, he
7 was asked to stop the vehicle. Mr. McKnight exited the
8 vehicle. He opened the trunk, retrieved an item from the
9 trunk, an object from the trunk, threw it over the rail. He
10 got back in the vehicle and they went to another location
11 where he got some gas in Orangeburg County.

12 Q. Okay. You can have a seat.

13 Now, when he provided you and you got to that area at
14 that bridge at Four Holes Road and told you what had
15 allegedly happened there, what did you then do as a result of
16 that?

17 A. At that point I stopped everything and contacted the
18 sheriff's office to ask for assistance to see if we could get
19 the dive team right down there.

20 Q. And are you aware that that ultimately happened that
21 afternoon?

22 A. Yes, sir. They ultimately discovered the body of

23 Ms. K. R. [REDACTED].

24 Q. That location that Mr. Sumter took you to, is that where

25 Ms. K. R. [REDACTED] was recovered --

1 A. Yes, sir.

2 Q. -- later on that day?

3 A. Yes, sir.

4 Q. Did you end up, after calling and getting that kind of
5 ball rolling, did you end up staying out there at that
6 bridge?

7 A. No, sir, we did not. We went to another location.

8 Q. Had Mr. Sumter given you information about having kind
9 of disposed of some other items prior to dealing with
10 Ms. K. R. 's body?

11 A. Yes, sir, he did.

12 Q. And where had he told you that he had gone to dispose of
13 those other items?

14 A. Mr. Sumter stated he'd left his residence or his
15 girlfriend's residence in Roosevelt Gardens. Once he had
16 these items, he went up 601, came through St. Matthews to the
17 Congaree River, at which time he stated that he stopped on
18 the bridge, retrieved a handgun out of the bag and threw it
19 over the rail.

20 He got back into his vehicle and went up to Highway 48,
21 which is also Bluff Road, which takes you to Columbia, and
22 made a left-hand turn and went down a couple of miles, made a
23 right turn onto a dirt road, which led back to a wooded area.

24 Q. And he was able to show you that area that he went to?

25 A. Yes, sir, he took us straight there.

1 Q. Let me ask you, kind of backing up, as far as the gun,
2 has the gun ever been recovered that was thrown off the
3 bridge?

4 A. No, sir. It was in the Congaree.

5 Q. Did you all make some attempts to locate it?

6 A. We talked about it, but because of the weather
7 conditions, actually it was raining and weather conditions
8 were extremely bad because of the ice storm, I guess.

9 Q. Now, he took you, you said, off of Highway 48, so that's
10 Bluff Road actually into Richland County; is that correct?

11 A. That's correct.

12 Q. Did you have an opportunity to get out kind of in the
13 area that he showed you that he had stopped?

14 A. Yes, sir, I did.

15 Q. And were you able to search that area?

16 A. Yes, sir.

17 Q. Did you find anything, any items in that area?

18 A. Yes, sir, I did.

19 Q. Tell the jury what it was that you found in that area.

20 A. A trash bag, a black and white purse with several items
21 inside the purse and a black jacket or hoodie.

22 Q. Let me show you, first of all, State's Exhibit No. 3.
23 Do you recognize that photograph?

24 A. Yes, sir.

25 Q. Does that show one of the items that you recovered out

1 there that day?

2 A. Yes, sir. That shows a purse that was black and white
3 in color.

4 Q. And that was recovered?

5 A. Yes, sir.

6 MR. SORENSON: Your Honor, at this time we'd offer
7 State's 3 into evidence.

8 THE COURT: Any objection?

9 MR. LEIENDECKER: No.

10 MR. BANKS: No, Your Honor.

11 THE COURT: It's in.

12 (State's Exhibit 3 admitted into evidence.)

13 Q. Showing you State's Exhibit No. 6, which I believe is
14 already in evidence, does that show the trash bag and the
15 jacket that was recovered?

16 A. Yes, sir, it is does.

17 Q. And the trash bag was just a standard just kind of black
18 trash bag?

19 A. Yes, sir, a black plastic trash bag.

20 Q. Let me show you State's Exhibit No. 19. Do you
21 recognize that?

22 A. Yes, sir.

23 Q. Is that the bag?

24 A. That looks like the bag.

25 MR. SORENSON: Your Honor, at this time we'd offer

1 State's 19 into evidence.

2 THE COURT: Any objection?

3 MR. BANKS: No, Your Honor.

4 MR. LEIENDECKER: No.

5 THE COURT: It's in.

6 (State's Exhibit 19 admitted into evidence.)

7 Q. And these items, Lieutenant, let me show you State's
8 Exhibit No. 6. That's the -- what's that item up in the top
9 area there where my finger is (indicating)?

10 A. That's the bag.

11 Q. And then right here?

12 A. That's the jacket there.

13 Q. So the bag up in the corner and the jacket. Were they
14 just loose in the woods like that (indicating)?

15 A. Yes, sir.

16 Q. And then the purse, State's Exhibit No. 3, was that in
17 the same vicinity as those items?

18 A. Yes, sir.

19 Q. Now, State's Exhibit No. 3, that's the same purse that's
20 depicted in State's 32 that's in evidence; is that correct?

21 A. That's correct.

22 Q. And did that have any items in it that identified it as
23 being K. R. [REDACTED]'s purse?

24 A. Yes, sir, it did.

25 Q. Have her ID in there?

1 A. Yes, sir, South Carolina DL.

2 Q. And all her other credit cards and medical cards and
3 things of that nature?

4 A. Yes, sir. Yes, sir.

5 Q. And ultimately the jacket was recovered. It was sent
6 out to the State Law Enforcement Division?

7 A. Yes, sir.

8 Q. That's the jacket we just heard the testimony about the
9 gunshot residue on; is that correct?

10 A. Yes, sir.

11 Q. Let me ask you, did you have an opportunity a couple
12 days later on the 24th of February, so that's going to be
13 that following Monday, to talk to Jonathan McKnight again?

14 A. Yes, sir, we did.

15 Q. And by that point in time, you all had talked to
16 Mr. Sumter; is that correct?

17 A. That's correct.

18 Q. Had information from him about where the events had
19 allegedly occurred, right on Stiffmire?

20 A. This is correct.

21 Q. And Mr. Jonathan McKnight had not given you that
22 information yet; is that correct?

23 A. Correct.

24 Q. And did you confront him with that, with his kind of
25 inconsistency in his prior statements?

1 A. I did.

2 Q. And as a result, did he end up giving another statement
3 that day on the 24th?

4 A. Yes, sir, he did.

5 Q. And did he end up taking you anywhere?

6 A. Yes, sir. He took us to a location on Stiffmire.

7 Q. And is that the same road that Mr. Sumter had taken you
8 to?

9 A. Yes, sir, it was.

10 Q. Did he take you to the exact same location on Stiffmire?

11 A. Almost.

12 Q. Almost?

13 Let me ask you, how did he get there?

14 A. Mr. McKnight went down Highway 6 and just made a right.

15 Q. Okay.

16 A. Whereas Mr. Sumter went down Sikes Road.

17 Q. So they had come in from opposite directions?

18 A. Yes, sir.

19 Q. When Mr. Sumter came in like from this direction

20 (indicating) --

21 A. Correct.

22 Q. -- Mr. McKnight in from this direction (indicating)?

23 A. Correct.

24 Q. Now, did you have an opportunity -- and let me ask you
25 this: Did you at any point in time, I mean, tell

1 Mr. McKnight where to take you?

2 A. No, sir. He stated that he would show us exactly where
3 everything took place and what happened.

4 Q. And did he kind of point out an area for you all to
5 search kind of like where he indicated Ms. K. R. [REDACTED]'s body
6 had been drug to?

7 A. Yes, sir, he did.

8 Q. Did you all have an opportunity to then search that
9 area?

10 A. Yes, sir, we did.

11 Q. Tell the jury what, if anything, was found in that
12 search of that area off of Stiffmire Road.

13 A. Right in the ditch off the edge of the highway, we found
14 a pair of earrings.

15 Q. Let me show you, if I could, State's Exhibit Nos. 7 and
16 8 ask you, do you recognize those photographs?

17 A. Yes, sir, I do.

18 Q. And does that indicate that area where those two
19 earrings were located?

20 A. Yes, sir.

21 Q. And, in fact, State's Exhibit No. 7 kind of show the
22 area; is that correct?

23 A. That's correct.

24 Q. And State's No. 8 is a kind of close up, shows a circle
25 where the two earrings were located; is that correct?

1 A. That's correct.

2 MR. SORENSON: Your Honor, at this time we'd offer
3 State's 7 and 8 into evidence.

4 THE COURT: Any objection?

5 MR. BANKS: No, Your Honor.

6 MR. LEIENDECKER: Your Honor, my only question as to 8
7 is there appear to be two circles on those. I wondered where
8 those came from. Those are not in the original photographs
9 that were produced.

10 THE COURT: Could you further explain that, Solicitor?

11 Q. What do those circles help kind of illustrate on that
12 picture?

13 A. On this photo there are actually two earrings, and both
14 are circled, because you can barely see them in there, in the
15 photo, so they're just circled on the photo so that you can
16 see them in the dirt.

17 MR. LEIENDECKER: I would object to that exhibit because
18 I think it's the jury's responsibility to look at the picture
19 and determine what it depicts, not the responsibility of the
20 witness or anyone else to show them or tell them what it
21 depicts.

22 THE COURT: I think that would go to the weight and the
23 probative value. Certainly he's testified it's a fair and
24 accurate depiction of where they were found and merely just
25 pointing out where in the picture the earrings are exactly

1 located, so your objection's overruled.

2 MR. LEIENDECKER: Thank you.

3 (State's Exhibits 7 and 8 admitted into evidence.)

4 Q. Lieutenant Graham, in State's Exhibit No. 7, who is
5 that -- who is that up in that picture?

6 A. That is Jonathan McKnight and Investigator
7 Kendra Williams.

8 Q. Does she work for the sheriff's office?

9 A. She does.

10 Q. And on this picture, does it kind of illustrate -- is
11 there something that shows approximately where those -- the
12 earrings were located at in the picture?

13 A. Yes, sir. There is a -- what we use is a small
14 measuring device. That's actually in the picture as well.

15 Q. And is that the same measuring device that you can see
16 in State's Exhibit No. 8?

17 A. Yes, sir, it is.

18 Q. Describe kind of how that -- that area off the side of
19 Stiffmire Road, is that level?

20 A. No, sir. It's actually a grade at that point where it
21 starts to go down.

22 Q. And you had indicated -- let me show you now State's
23 Exhibit -- did you collect those two earrings that were out
24 there?

25 A. Yes, sir, we did.

1 Q. Showing you State's Exhibit No. 20, what are in State's
2 Exhibit No. 20?

3 A. A pair of -- actually, in this bag it is a gold in color
4 earrings.

5 MR. SORENSON: Your Honor, we'd offer the two earrings,
6 State's Exhibit No. 20, into evidence.

7 THE COURT: Any objection?

8 MR. BANKS: No, Your Honor.

9 MR. LEIENDECKER: No.

10 (State's Exhibit 20 admitted into evidence.)

11 Q. Did you have an opportunity, Lieutenant Graham, to kind
12 of look on K. R. 's Facebook page?

13 A. Yes, sir, I did.

14 Q. And did you find any photographs on that Facebook page
15 that showed her wearing any jewelry?

16 A. Yes, sir, I did.

17 Q. And I believe State's No. 9 is already in evidence. Is
18 that one of the photographs that you found on her Facebook
19 page?

20 A. Yes, sir, it is.

21 Q. And the earrings that you found, are they consistent or
22 inconsistent with the earrings that K. R. was wearing in
23 this picture?

24 A. They're consistent.

25 Q. And the two earrings, this other one's still sealed, but

1 they appear to be a pair?

2 A. Yes, sir, they do.

3 Q. Is there anything else that was located out there in
4 that area?

5 A. No, sir.

6 Q. Now, you testified earlier that you all learned that at
7 some point in time recently that road had been paved?

8 A. Yes, sir.

9 Q. At the time you were out there?

10 A. Yes, sir.

11 Q. And was that obvious by looking at it that it was a
12 newly paved road?

13 A. Yes, sir, it was.

14 Q. Let me show you one other map I want to talk to you
15 about, State's Exhibit No. 13, and ask you if you recognize
16 that map.

17 A. Yes, sir. That is a map of the City of St. Matthews.

18 MR. SORENSON: Your Honor, at this time we'd offer
19 State's 13 into evidence.

20 THE COURT: Any objection?

21 MR. BANKS: No, Your Honor.

22 MR. LEIENDECKER: No.

23 THE COURT: They're in.

24 (State's Exhibit 13 admitted into evidence.)

25 MR. SORENSON: May I have him step down just briefly one

1 more time, Your Honor?

2 THE COURT: You may.

3 Q. And you said that that is a map of basically the city
4 limits of St. Matthews?

5 A. Yes, sir.

6 Q. The first thing, if you could, we've heard some
7 testimony from witnesses earlier about kind of where Liberty
8 Street is and I think Little John Court, Fair Street, a bunch
9 of addresses, and it seemed like people pointing every
10 different direction.

11 Could you kind of get us oriented at least that kind of
12 neighborhood that we're talking about where Jamaal Pearce,
13 James Keller, Stephon Green's mother, where they all live?
14 Where is that located at in relation to the courthouse, where
15 we are today?

16 A. In relation to the courthouse, this is Highway 601
17 directly behind you (indicating). Bridge Street literally is
18 the next street -- I mean Liberty is the next street up.
19 Everyone lives directly across in front of you.

20 If you look at the map, you'll see Liberty street right
21 here (indicating). This is Courthouse Square where we are
22 located (indicating). If you follow it down, straight down
23 Liberty Street, this is the area in which everyone lived
24 (indicating).

25 Q. So we heard testimony about Mr. Keller living on -- I

1 think his address was [REDACTED] Liberty Street and then Mr. Pearce
2 living at [REDACTED] Little John Court, the two of them kind of in
3 relation to each other?

4 A. Yes, sir. This is Liberty Street (indicating). It
5 comes in. Little John Court literally is right here
6 (indicating) and they are across the street from each other
7 from where Mr. James Keller lives and where Mr. Jamaal Pearce
8 lives.

9 Q. And then Stephon Green I think had testified about going
10 to his mother's house on Fair Street. Is Fair Street located
11 in that vicinity?

12 A. Fair Street is a couple of blocks back towards -- from
13 that direction coming back towards the courthouse. And Fair
14 Street is right here (indicating) and it runs right across
15 Bridge Street -- I mean Liberty Street and Bridge Street as
16 well.

17 Q. And how about we also heard testimony earlier about the
18 Robert Ford School, where the police department is located
19 now, and Agnes Street, the apartments kind of right across
20 from there?

21 A. Yes, sir. Agnes Street is right here and this is the
22 old John Ford School (indicating), where the St. Matthews
23 Police Department is now located.

24 Q. So we've heard testimony about Jerry McKnight being
25 picked up at his aunt's house on Agnes Street. That's right

1 in that vicinity there?

2 A. Yes, sir. That's these apartments right here
3 (indicating).

4 Q. And how about the pantry that we've heard testimony
5 about where Jonathan McKnight or Stephon Green testified he
6 picked up Bryant McKnight?

7 A. 601 is right here directly behind you (indicating). If
8 you go through the intersection, it is literally on the next
9 block. This is Highway 601 right here and the pantry is
10 right in this area (indicating).

11 Q. Okay. Thanks.

12 Now, Lieutenant Graham, the jury has ultimately heard
13 testimony from Jamaal Pearce, James Keller, Mr. Keller's
14 father, Stephon Green, Jonathan Mack, Derrick Sumter,
15 Sandra Hughes. Hope I'm not leaving anybody out there. And
16 ultimately those last four, Mr. Green, Jonathan McKnight,
17 Derrick Sumter, Sandra Hughes, they've all been charged in
18 some capacity in this incident; is that correct?

19 A. That's correct.

20 Q. And that's either for either lying about their
21 involvement initially or for helping kind of dispose of
22 evidence after the fact; is that correct?

23 A. That's correct.

24 Q. Now, and you are involved in some capacity in all of
25 those seven people being interviewed and questioned on --

1 some of them on multiple occasions?

2 A. Yes, sir, I was.

3 Q. At any time did you, anybody at your direction, anybody
4 in your presence ever promise any of those individuals
5 anything to get them to talk to you?

6 A. No, sir.

7 Q. Ever coerce them in any way?

8 A. No, sir.

9 Q. Ever do anything to get them -- you know, make them any
10 promises of leniency?

11 A. No, sir.

12 Q. To get their cooperation or get them to tell you
13 anything?

14 A. No, sir.

15 MR. SORENSON: Beg the Court's indulgence.

16 Thank you, Lieutenant Graham. Please answer any
17 questions Mr. Leiendecker or Mr. Banks has.

18 THE WITNESS: Yes, sir.

19 THE COURT: Cross-examination?

20 MR. LEIENDECKER: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. LEIENDECKER:

22 Q. In an attempt, Lieutenant Graham, to do the most
23 complicated thing and work my way backwards, can we put a
24 couple of these maps up and you can help me identify to the
25 jury a couple things beyond what you identified?

1 A. Sure.

2 Q. Okay. First, I'd like to put up a map of the town of
3 St. Matthews that you were just dealing with, and that is
4 State's Exhibit 13, I believe.

5 Okay. You showed us Liberty Street that took us out to
6 where Jamaal Pearce and Mr. Keller and other people reside,
7 took us to a cross street where Stephon Green's mother
8 resides, correct?

9 A. Correct.

10 Q. And then you showed us where the police station is,
11 which is in the old school; is that right?

12 A. That's correct.

13 Q. And the name of that school is John?

14 A. John Ford.

15 Q. Ford.

16 And that sits on Agnes Street, correct?

17 A. That's correct.

18 Q. Show me where that is again.

19 A. Right here (indicating). This is the old John Ford
20 School.

21 Q. Okay. And from there, can you just show me, is there --
22 are there -- is there a housing development near there called
23 Lake View --

24 A. Yes, there is.

25 Q. -- or Lake View Apartments?

1 A. Yes.

2 Q. Can you show me where that is?

3 A. This is right here (indicating).

4 Q. So that sits right on the edge of that purple line of
5 the town; is that right?

6 A. Yes, sir.

7 Q. And it sets in, wouldn't you say, relative close
8 proximity to Agnes Street?

9 A. Yes, sir.

10 Q. Okay. All right. Now, bear with me. This is the one I
11 want, State's Exhibit 12. This is the map that shows us the
12 roads from and/or around Stiffmire to Four Holes Swamp,
13 correct, the Four Holes Swamp Road area?

14 A. Yes, sir. Yes, sir.

15 Q. Okay. Would you trace for me again, because I was over
16 here and I just want to make sure I understand, would you
17 trace for me again the route you took on February the 21st
18 with Derrick Sumter when he told you he knew the sites where
19 everything happened?

20 A. He came out of town. He made a right, slight right,
21 which is up here off of Sikes Road. We made a left on --

22 Q. Okay, hang on a second.

23 A. Okay.

24 Q. And I'm not trying to interrupt. I'm just trying to
25 clarify so we don't have to go back.

1 A. Okay.

2 Q. If this map's followed up, and I don't want to put the
3 other map up there, these roads converge.

4 A. Correct.

5 Q. This is Highway 6, correct?

6 A. Correct.

7 Q. And this is Sikes Road, and they sort of triangle into
8 each other?

9 A. That's correct.

10 Q. All right. So you came out on Highway 6 and turned onto
11 that -- off the map, you turned onto that road, correct?

12 A. Correct. Sikes Road.

13 Q. Okay.

14 A. Made a left onto Belleville, which is right here
15 (indicating), and a left back onto Stiffmire.

16 Q. Okay. And then he stopped there and he told you that
17 this is where the body was?

18 A. Yes, sir.

19 Q. Right?

20 A. Correct.

21 Q. Then from that point, he took you to where the body was
22 moved, correct?

23 A. To where the body was ultimately found?

24 Q. Yes.

25 A. Correct.

1 Q. And show me now again the route you took from Stiffmire
2 to where he showed you the body had been placed.

3 A. Out to Highway 6, which is right here (indicating), Old
4 No. 6, made a right turn, came all the way down to Cameron
5 Road, which is Highway 33 technically. He made a right turn,
6 a left turn onto Nate's Store Road, followed it all the way
7 out to Midway Road.

8 Q. Midway's all the way down here (indicating)?

9 A. All the way down here (indicating). Made a right turn
10 onto Midway Road, all the way over to Highway 176, made a
11 right turn onto Highway 176 and made a left turn back onto
12 Four Holes Road, and the bridge is right here (indicating).

13 Q. Okay. So he navigated from one corner of this map to
14 the other corner of this map on that day with you, correct?

15 A. Correct.

16 Q. And tell me, he seemed to know exactly where he was
17 going, didn't he?

18 A. Pretty fairly, yes, sir.

19 Q. He told you where to turn, told you where you were
20 going, didn't know the names of the roads but knew by sight
21 exactly where he was going?

22 A. Correct.

23 Q. And didn't seem to be lost or have any trouble getting
24 there, right?

25 A. Not a lot, no, sir.

1 Q. Okay. Thank you.

2 A. You're welcome.

3 Q. Now, backing up a little, on February the 18th when you
4 went to Jonathan McKnight's house, you say that
5 Jerry McKnight, his cousin, was there, correct?

6 A. That is correct.

7 Q. And other people were there too, correct?

8 A. I think in the house, yes, sir.

9 Q. Peter Smith?

10 A. I don't remember if he was actually there or not, I
11 mean --

12 Q. The girlfriend's mother?

13 A. I don't remember if she was there.

14 Q. Girlfriend?

15 A. I think she may have been there, yes, sir.

16 Q. So you don't know who else was there?

17 A. That's correct.

18 Q. Did you go in the house?

19 A. No, sir.

20 Q. You are aware that other people were there, you just
21 don't know who?

22 A. I'm not aware that other people were there other than
23 Jerry.

24 Q. All right. And you didn't talk to Jerry or say anything
25 to Jerry at that time?

1 A. I just spoke, "Hey, how you doing," or whatever. That's
2 it.

3 Q. Okay. Now, if I could put my hands on the State's
4 exhibit that is the earrings.

5 THE COURT: Should be 20.

6 MR. LEIENDECKER: Thank you, Your Honor.

7 Q. And they're bagged separately; is that correct?

8 A. Yes, sir.

9 Q. What type of earrings is this? Is it a clip-on earring,
10 a pierced earring, what kind of earring?

11 A. This actually has a loop, so I would think that it's a
12 pierced earring.

13 Q. And so it doesn't just snap on. It actually goes
14 through the ear and then it's hooked; is that correct?

15 A. I would say yes. I don't wear earrings, but I would say
16 yes.

17 Q. Come on Lieutenant. Not when you're on duty anyway,
18 right? I apologize.

19 Now, those earrings are seen on State's Exhibit 8,
20 correct?

21 A. Yes, sir.

22 Q. I might add conveniently circled so we can find them,
23 correct?

24 A. Yes, sir.

25 Q. Okay. In case we couldn't see them.

1 The little ruler that's beside the one that's on the
2 left as I hand it to you, about how big is that ruler, six
3 inches?

4 A. Maybe six inches.

5 Q. And so if you take that as a scale, about how far apart
6 are those earrings from each other?

7 A. Maybe -- maybe a foot or two.

8 Q. Okay. And they're really relatively right beside each
9 other, aren't they?

10 A. Yes, sir, you could say that.

11 Q. And they were conveniently right beside each other at
12 the site where who took you?

13 A. Mr. Jonathan McKnight and Mr. Derrick Sumter.

14 Q. Oh, both of them?

15 A. Correct.

16 Q. Okay. And they both took you to Stiffmire Road, but
17 interestingly enough, they both took you different ways to
18 Stiffmire Road, right?

19 A. Correct.

20 Q. Now, let me ask you a few questions about the
21 investigation. And bear with me just a minute until I can
22 get there. I apologize.

23 When you undertook the investigation of this murder,
24 we've heard that it was a collaborative effort of several
25 agencies. St. Matthews town police department, right?

1 A. That's correct.

2 Q. The Orangeburg County Sheriff's Office, correct?

3 A. Correct.

4 Q. The Calhoun County Sheriff's Office, correct?

5 A. Correct.

6 Q. But isn't it true you also called in the South Carolina
7 Law Enforcement Division, and they helped you with crime
8 scene processing?

9 A. That's correct.

10 Q. Okay. And who was the agent that you dealt with from
11 there? Do you remember?

12 A. I do not remember.

13 Q. Man or woman?

14 A. I had a couple different incidents. I do remember
15 females, agents being there.

16 Q. Okay. Isn't it true that they were called out to
17 process things like the two vehicles in question,
18 Jonathan McKnight's vehicle and Derrick Sumter's vehicle?

19 A. That's correct.

20 Q. Isn't it true that both of those vehicles were at the
21 Calhoun County Sheriff's Office and being held so that they
22 could be processed --

23 A. I know one of them --

24 Q. -- by SLED?

25 A. One of them was. I'm not sure about the other one. I

1 don't think the other one was.

2 Q. And what kind of things were you looking for in the
3 processing of these vehicles?

4 A. Trace evidence or any evidence.

5 Q. Trace evidence is a technical or legal term talking
6 about things like touch DNA, right?

7 A. Correct.

8 Q. If somebody grabs a door handle, they leave their DNA,
9 right?

10 A. Correct.

11 Q. And you called SLED in because they have expertise doing
12 that.

13 A. Yes, sir.

14 Q. So isn't it, in fact, true that you brought SLED in to
15 do trace DNA on Jonathan's car?

16 A. Yes, sir, it's possible.

17 Q. And isn't it true that you asked that the Calhoun County
18 Sheriff's Office ask them to check for DNA in multiple places
19 where the parties involved in this case may have touched?

20 A. That's correct.

21 Q. You asked them to check the back doors and the front
22 doors; you asked them to check the inside and the outside,
23 correct?

24 A. Correct.

25 Q. Isn't it also true that with Derrick Sumter's vehicle,

1 you asked them to check places like the lid of the trunk?

2 A. Yes, sir.

3 Q. Right?

4 A. Yes, sir, that's correct.

5 Q. And the door handles and other places there where people
6 would have gotten in and out, correct?

7 A. Correct.

8 Q. Not only did you ask them to look for DNA, you asked
9 them to look for latents or fingerprints, right?

10 A. That's correct.

11 Q. Because a person could also leave a fingerprint where
12 they touched or they closed or they did things like that,
13 correct?

14 A. That's correct.

15 Q. And you took a jacket that you found and you sent it for
16 gunshot residue processing, correct?

17 A. Correct.

18 Q. And that's the only item of clothing that you all sent
19 for gunshot residue, correct?

20 A. That I'm aware of, yes, sir.

21 Q. And we haven't heard about any other, and SLED testified
22 they didn't receive any other?

23 A. Yes, sir.

24 Q. And all that stuff was sent off, correct?

25 A. Yes, sir, that I'm aware of.

1 MR. LEIENDECKER: I believe that's all I have for the
2 lieutenant right now. Thank you, Your Honor.

3 THE COURT: Mr. Banks, any cross-examination?

4 MR. BANKS: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. BANKS:

6 Q. Deputy Graham.

7 A. Yes, sir.

8 Q. You said that Sandra Hughes brought Bryant in to talk to
9 you guys; is that right?

10 A. Yes, sir. She testified to that this morning.

11 Q. What day was that?

12 A. I think it was on 2/18.

13 Q. 2/18. Do you think or you know?

14 A. I have it in my notes as 2/18.

15 Q. Okay. Would that be in the morning or the afternoon?
16 Do you remember?

17 A. That would have -- that morning.

18 Q. That morning. And Bryant came in voluntarily?

19 A. Yes, sir.

20 Q. And, in fact, I think he made some telephone contact
21 prior to that date?

22 A. I wouldn't know about that.

23 Q. You all sent latent prints off to SLED, right, SLED
24 collected latent prints?

25 A. Yes, sir, that's correct.

1 Q. And they did a report? They analyzed it?

2 A. Yes, sir.

3 Q. And you're the head of the investigation. Was there one
4 single print, one single print that came back connected to my
5 client?

6 A. Mr. Bryant McKnight?

7 Q. Yes.

8 A. I'm not aware that there was.

9 Q. In fact, there were a number of prints that came back to
10 one individual, weren't there?

11 A. I'm not aware of that either.

12 Q. You're not aware? Have you seen the SLED reports?

13 A. Not for the latents, no.

14 Q. Not for latent prints?

15 A. No, sir.

16 Q. Did you know -- were you there when they collected the
17 evidence from the car?

18 A. Which car?

19 Q. Jonathan's.

20 A. I'm not sure if I was or was not --

21 Q. Okay.

22 A. -- at the time.

23 Q. Are you aware that they tested some cans and some
24 bottles and things like that?

25 A. I think Captain Regalis did relay that to me.

1 Q. At the time, after the girl was shot, you actually, from
2 the statements that you've collected, believe that you know
3 exactly where in the car my client was sitting; is that
4 right? The statements were detailed enough to indicate what
5 seat my client was sitting in?

6 A. Okay.

7 Q. After the --

8 A. Which car?

9 Q. After the shooting, that first car.

10 A. Okay.

11 Q. You knew what seat he was sitting in; is that right?

12 A. Yes, sir.

13 Q. According to the statement.

14 A. Correct.

15 Q. And you know what contamination is, right?

16 A. I do.

17 Q. And you know if you've shot a gun, residue, right?

18 A. Correct.

19 Q. And that residue can rub off, right?

20 A. Possibly.

21 Q. And so if somebody shot a gun, like let's say the driver
22 of a car shot the gun. He sat in the driver's seat, right?
23 It's very likely that that residue would rub off on the
24 driver's seat.

25 A. It's possible.

1 Q. On the driver's door.

2 A. Yes, sir, it's possible.

3 Q. On the edge of the steering wheel.

4 A. Yes, sir.

5 Q. Did you all test any of that?

6 A. Did SLED test any of that?

7 Q. Yes, or did you all?

8 A. Did we?

9 Q. Yes.

10 A. No, sir, not at that time.

11 Q. And SLED didn't either?

12 A. Not that I'm aware of.

13 Q. The home invasion on February the 2nd --

14 A. Yes, sir.

15 Q. -- of 2014 --

16 A. Mm-hmm.

17 Q. -- you said that there were how many involved in the
18 home invasion?

19 A. Let me look at this incident report.

20 Q. Sure.

21 A. It says three black males wearing ski masks.

22 Q. Three black males?

23 A. Yes, sir.

24 Q. Wearing ski masks?

25 A. Yes, sir.

1 Q. And you didn't get much more of a description than that,
2 did you?

3 A. No, sir.

4 Q. Okay. There were a lot of words exchanged, I believe,
5 or did you catch that?

6 A. According to who?

7 Q. Whoever made the report.

8 A. A lot of words between the victim and the suspects?

9 Q. The perpetrators and the victim.

10 A. They asked for her son and where he was at.

11 Q. When you say "the son," do we know which son?

12 A. No, sir.

13 Q. But they didn't ask for two sons or both sons?

14 A. No, sir.

15 Q. Did you all follow up with an investigation on that or
16 were you able to follow up?

17 A. We attempted to follow up, yes, sir.

18 Q. And how did that go?

19 A. Initially then Lieutenant Dukes, Henry Dukes, initially
20 responded to the scene, but he didn't get a lot of
21 cooperation from the victim or anybody else on the scene, so
22 he did what he could do to process the scene. And a little
23 bit later on I got involved because I wanted to see what I
24 could do with it because I knew the family.

25 Q. And did you, did any other information come after you

1 kind of gave up on that investigation?

2 A. Not to my knowledge, no, sir.

3 Q. Nobody's ever come forward and talked about anything
4 from any other source of who might have perpetrated that?

5 A. No, sir.

6 MR. BANKS: One moment, Your Honor.

7 No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. SORENSON: No, Your Honor.

10 THE COURT: You may step down, sir. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Ladies and gentlemen of the jury panel, it's
13 4:15. I know we've had a lot of testimony today and a lot to
14 absorb, so I think it's a good thing for us to take our
15 evening recess.

16 We have some scheduling issues first thing in the
17 morning, so we'll start a little bit later, which will give
18 you a little bit more time in the morning. We'll start at
19 10:00, so if you would please be in your jury room around
20 9:45 so we can, again, ensure we have everyone together and
21 ready to go.

22 If you, again, would please remember my initial
23 instruction to you to please not discuss the case with anyone
24 or allow anyone to discuss the case with you or read or look
25 at any outside sources of information regarding this case.

1 You have a good night.

2 (The jury retires to the jury room at 4:17 p.m.)

3 THE COURT: Anything further at this time from either
4 the State or the defense?

5 MR. SORENSON: Not from the State.

6 MR. BANKS: No, Your Honor.

7 MR. LEIENDECKER: No, Your Honor.

8 THE COURT: We'll be at recess until 10:00.

9 (Trial of the case adjourned on 3/4/2015 at 4:20 p.m.)

10 - - -

11 (Trial of the case resumed on 3/5/2015 at 11:00 a.m.)

12 (State's Exhibit 37 marked for identification.)

13 THE COURT: Let's have our jury, please.

14 (The jury enters the courtroom at 11:00 a.m.)

15 THE COURT: Good morning, ladies and gentlemen of the
16 jury. I want to apologize to you for the delay this morning
17 and thank you for your patience, but we are now ready to
18 proceed with the trial of this case.

19 Solicitor, you may call your next witness.

20 MR. SORENSON: Thank you. May it please the Court.

21 THE COURT: Yes, sir.

22 MR. SORENSON: State calls Captain Scott McDonald.

23 CLERK OF COURT: Place your left hand on the Bible,
24 raise your right hand.

25 SCOTT MCDONALD,

1 being first duly sworn, testified as follows:

2 CLERK OF COURT: Please state your full name for the
3 record.

4 THE WITNESS: Scott McDonald.

5 THE COURT: Your witness.

6 MR. SORENSON: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. SORENSON - VOIR DIRE:

8 Q. Captain McDonald, if you would, tell the jury where it
9 is that you're employed.

10 A. With the Richland County Sheriff's Department in
11 Columbia.

12 Q. And how long have you been with the Richland County
13 Sheriff's Office?

14 A. It will be 27 years in a couple weeks.

15 Q. In what capacity are you employed there at this time?

16 A. I'm currently captain in the major crimes unit, which is
17 homicides, assaults, robberies, home invasions, that type.

18 Q. How long have you been employed in that capacity?

19 A. As a captain?

20 I was promoted last February to captain. I was formerly
21 lieutenant in the same unit.

22 Q. How long have you worked in investigations at the
23 sheriff's office?

24 A. I've been in investigation since '94.

25 Q. Now, let me ask you this, Captain: Have you received

1 any specialized training with regards to analyzing and
2 interpreting cell phone records?

3 A. I have. I've been working with cell phone records since
4 November 2001. The first five or six years, there wasn't a
5 whole lot of training out there other than dealing with the
6 companies on the phone and learning as we went.

7 Beginning in 2007, we started to see classes being
8 offered for law enforcement, so I attended one in 2007 on
9 cell phone tracking and plotting towers, sectors, that type
10 activity.

11 From there in May 2008, I attended the World Conference
12 for Mobile Forensics in Chicago where we had leading
13 authorities from around the world that came in and taught on
14 this same subject and also the downloading of phones, which
15 was beginning to take root at that point, trying to gather
16 further data from that.

17 June 2008, I had mobile forensics training as far as the
18 downloading of cell phones. That was here in South Carolina.

19 I also attended -- in November 2012, we had an advanced
20 cell phone forensics class that we hosted at Richland County,
21 where we had experts come in to teach us the latest
22 information provided by smartphones and some of the
23 information and data that's exclusive to them.

24 And most recently I attended a class February of this
25 year in Atlanta, which was another advanced cell phone

1 tracking and plotting class for the latest technology on
2 that.

3 Q. So over the last, you know, 13, 14 years, then, have you
4 had an occasion not only to work with your own agency but
5 also with other law enforcement agencies with regards to
6 analyzing and interpreting cell phone records?

7 A. I have. I've worked with Columbia Police Department,
8 Lexington County Sheriff's Department and now with Calhoun
9 County.

10 Q. Okay. And have you had an opportunity, then, to come
11 into court and testify regarding the interpretation and the
12 analyzation of cell phone records?

13 A. I have. I've been --

14 Q. How many times have you done that?

15 A. I've been certified as an expert seven times in state
16 court.

17 Q. And that's in the field of cell phone investigation?

18 A. That's correct.

19 MR. SORENSON: At this time we'd offer Captain McDonald
20 as an expert in the field of cell phone investigation.

21 THE COURT: Any voir dire from the defense?

22 MR. BANKS: A couple, Your Honor.

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

24 CROSS-EXAMINATION BY MR. BANKS - VOIR DIRE:

25 Q. Captain McDonald, you actually basically attended a half

1 a dozen classes or so?

2 A. Classes and on-the-job training, hundreds of hours on
3 the phone with legal compliance offices and meeting with
4 engineers locally to explain how these towers work and
5 plotting cell phone points as they relate to the records.

6 Q. Have your credentials ever been challenged in -- when
7 you put them up in court to be offered as an expert
8 witness --

9 A. Have they ever --

10 Q. -- in this area?

11 Have you ever had voir dire like I'm doing now?

12 A. Yes, yes, yes.

13 Q. And was that the very first time you were ever
14 challenged or was it later in your testifying for this stuff?

15 A. The first couple times there was no questions to speak
16 of, but as these are being more and more prevalent, I do get
17 more questions with reference to voir dire over the last four
18 or five years.

19 Q. And phone records, they're not uniform or standard by
20 any stretch of the imagination, are they?

21 A. Each company's a little bit different the way they
22 compile their records.

23 Q. And have you studied the New Star, Verizon and Alltel?

24 A. I mainly deal with the big, the major companies. In
25 this particular case there was a smaller company, Allied

1 Wireless, which is through New Star who administers their
2 records. I'd never dealt with them before. Their records
3 are very unique, as I found out in this situation, as far as
4 plotting and, you know, putting locations on a map as to
5 where the --

6 Q. So you never had a class with New Star Allied's
7 material?

8 A. Not a particular class with that -- that particular
9 company, but when we attend these classes, we go over records
10 of every size and sort. All of them usually contain the same
11 information. It's just -- might be in a little bit different
12 format, a different column, that kind of thing. In general,
13 most of them are all the same as far as --

14 Q. But don't they have different codes, like Columbia-MMX
15 or whatever?

16 A. Right. You have different switch names. Different
17 companies call it different things. You might have a
18 Carolina switch which would encompass all of South Carolina
19 and North Carolina possibly. It just depends on that
20 company, how they classify a switch is what you're talking
21 about.

22 Q. And this is your first case with the New Star Allied
23 records?

24 A. That's correct.

25 Q. And you've never had a class that deals with their

1 particular techniques or --

2 A. Well, I've talked with their legal compliance people on
3 the phone, and their records are pretty straightforward.
4 They provide you a tower list, and you have latitude and
5 longitude of the calls. And it's just a matter of looking at
6 that call and that date and that time and putting in the lat
7 and longitude on the map. It's very basic.

8 MR. BANKS: No further questions, Your Honor.

9 THE COURT: Mr. Leiendecker, any voir dire?

10 MR. LEIENDECKER: Just very briefly.

11 CROSS-EXAMINATION BY MR. LEIENDECKER - VOIR DIRE:

12 Q. And honestly, Captain, for my own understanding and
13 edification, I believe, these classes that you have gone to
14 with -- they're put on by the cell phone companies or by
15 investigative agencies? Which?

16 A. They're put on by training agencies. They're put on --
17 one of them I went to late last year was put on by the
18 federal government, National Domestic Communication
19 Assistance Center in Virginia. It's just a variance. You
20 have a lot of training with experts in the field that teach
21 these classes. Some of them are government funded, others
22 are private.

23 Q. And who are these experts? What are their credentials?
24 Are they engineers? Are they scientists? Who are these
25 people that are training --

1 A. Many of them are law enforcement that have far more
2 training and far more experience than I do that have been
3 doing this much longer, and a lot of them have engineering
4 backgrounds to understand some of the technical sides of some
5 of this, but they've all been, you know, in federal court,
6 state courts, been certified in a number of different states,
7 that type thing.

8 One of them was -- if I could, one of them was actually
9 a Purdue University professor in this type area, so --

10 Q. Okay. And so those people like the Purdue professor and
11 those guys with engineering degrees, those guys have a lot
12 more advanced knowledge and degree than you do concerning the
13 actual physics or mechanics of the working of these
14 operations; is that correct?

15 A. Right. It's kind of like driving a car. I know how to
16 get in the car, turn the key, put the gas on and put it in
17 gear to get where I'm going. They could tell me how the
18 whole engine was put together. So they have much more
19 detail, but I can get the basic information out as far as
20 where the phones were approximately, who's calling who, those
21 type things.

22 Q. Funny you should say that, I'm not sure I have that kind
23 of ability today, but I'm with you. I have no idea how the
24 car works or doesn't, as the case may be.

25 You are a member of the sheriff's staff in Richland

1 County, right?

2 A. Yes, sir.

3 Q. There's no question that you are part of the law
4 enforcement branch of the judicial system, correct?

5 A. Correct.

6 Q. All your training has been where they've sent you for
7 the purposes of detecting and solving crime, correct?

8 A. Yes.

9 Q. And what you bring here today is based on what you've
10 learned at those sessions from people who are actual
11 engineers or actual technicians that build and/or work with
12 these kind of towers, correct?

13 A. The people you're talking about would be the people with
14 the actual cell phone companies. That's not who's teaching
15 these classes. These are experts in the field that deal with
16 these companies and have studied far more extensively than me
17 or anyone else, but the information provided to us is easily
18 relayable [sic].

19 When you break this stuff down, it's very technical in
20 one way, but the part we're doing is very basic. It's
21 nothing more than looking at a map and finding your way there
22 if you were going on a trip.

23 Q. It's just -- I'm sorry. Go ahead.

24 A. Essentially it's the same thing with these. You're
25 given a date, a time, a phone call and a tower location or

1 the latitude and longitude of that tower, and you place it on
2 a map.

3 Q. Okay. Is it fair to say, then, these seminars and these
4 experts that are training you, they're law enforcement people
5 too?

6 A. Some are, some aren't.

7 Q. And the purpose of these is to train law enforcement
8 people?

9 A. That's correct.

10 MR. LEIENDECKER: Okay. I don't have any further
11 questions. Thank you.

12 THE COURT: Any objections to his qualifications?

13 MR. BANKS: Your Honor, I do have a couple more. He
14 brought something up that I think needs to be addressed.

15 THE COURT: Very briefly.

16 FURTHER CROSS-EXAMINATION BY MR. BANKS - VOIR DIRE:

17 Q. Deputy, the fact that you're in law enforcement really
18 doesn't have any bearing on your expertise other than giving
19 you the opportunity to go to these classes; is that right?

20 A. That's correct. The records are what they are. I don't
21 embellish them. I don't change them. I'm not able to. I'm
22 basically reading a report and putting it on a map or looking
23 at phone -- one phone calling another phone and identifying
24 who that party is.

25 Q. In fact, because law enforcement really isn't a

1 component of what you're here for today, you're actually paid
2 for your testimony today; is that right?

3 A. I'm contracted to assist in this case, yes.

4 Q. So the -- I'm sorry, the solicitor's office?

5 A. Solicitor's office contracted me to work on this case.
6 That's correct.

7 MR. BANKS: No further questions, Your Honor.

8 THE COURT: Anything further, Solicitor?

9 I do find that Captain McDonald is qualified as an
10 expert pursuant to Rule 702, that his testimony would assist
11 the fact finder in deciding this case, that the opinion's
12 sufficiently reliable based upon his education and experience
13 and that the testimony is an appropriate one for expert
14 testimony and I find that he is so qualified.

15 You may proceed.

16 MR. SORENSON: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. SORENSON:

18 Q. Captain McDonald, my next question to you was have you
19 been retained by our office basically to assist in
20 interpreting and analyzing all the phone records that were
21 obtained in this case?

22 A. Yes, I was.

23 Q. And as part of that, your preparation for court today,
24 were you provided copies of the phone records that the
25 Calhoun County Sheriff's Office had gathered in this case?

1 A. Yes, I was.

2 Q. And specifically showing you on State's Exhibit No. 34,
3 did you have Bryant McKnight's cell phone records pertaining
4 to [REDACTED] 9423?

5 A. I do.

6 Q. Jerry McKnight's, [REDACTED] 9375?

7 A. I do.

8 Q. Jonathan McKnight's, [REDACTED] 2948?

9 A. Yes.

10 Q. Stephon Green, [REDACTED] 8344?

11 A. I do.

12 Q. Derrick Sumter, [REDACTED] 6425?

13 A. I do.

14 Q. Sandra Hughes, [REDACTED] 0445?

15 A. I do.

16 Q. K. R. [REDACTED]'s, [REDACTED] 6313?

17 A. I do.

18 Q. And actually, I think you have Jamaal Pearce's also,
19 [REDACTED] 6336?

20 A. I do.

21 Q. And all of those records that were obtained that were
22 provided to you, did they all encompass the time frame
23 leading up to and then shortly after February 13th of 2014?

24 A. They do. Most of the records cover from early February
25 till late February, and those dates of this incident were

1 contained within that.

2 Q. Okay. So the evening of February 13th into the morning
3 of February 14th is contained in all those records?

4 A. Right.

5 Q. Now, briefly explain, if you would, Captain, for the
6 jury kind of when you receive, like in this case, it's kind
7 of a large volume of phone records, kind of how you go about
8 looking at those and what you're able to ultimately do with
9 those records to come to court.

10 A. Well, first thing I do is sit down with whoever's
11 presenting the case and get a little bit of facts on the
12 case, key locations, things like that, where something may
13 have happened, where somebody lived, where someone says they
14 were, where someone says they weren't, just try to get a
15 little background on what we're trying to show.

16 Because literally I have records, let's say, from
17 February 10th through the end of February. I'm focused -- I
18 need to narrow that focus down to the time around the
19 incident mainly, which in this case was February 13th early
20 evening through the early morning hours of the 14th. All
21 those other records are kind of superfluous as far as my
22 purposes in this case.

23 So once I am able to get a little information about the
24 case, the who, what, when, where that we know of from the
25 investigation, I then kind of narrow the spectrum down to

1 what we're trying to show during this time frame.

2 And first thing I do is, you know, who -- this
3 particular number, who's the carrier. Who's the company
4 providing the records: Verizon, Sprint, whoever it may be.
5 Look at that, look at the tower locations and start kind of
6 plotting.

7 And there's several ways I can do that. We have some
8 software that plots some of this stuff for us. We import the
9 records into the software, import the towers. We give it
10 parameters as to what we're looking at, you know, let's say
11 the 13th, February 13th between 6:00 that evening until 4 in
12 the morning on the 14th, and all the other stuff it will
13 block out and it will just show me where that phone is
14 hitting on towers during that time frame.

15 And you'll see that illustrated in a PowerPoint in a
16 little while. And that's the phone, as it travels or as it
17 moves, it's pinging off these towers.

18 One thing you have to realize, when you have a cell
19 phone, that phone is always searching, waiting for the next
20 call or next text message, whatever may be coming to that
21 phone. So it's always seeking out the strongest tower, which
22 in general's going to be the closest tower.

23 And when you place that call, in mere milliseconds, that
24 call is completed because your phone is always in that search
25 mode, always searching, even though you may not be on it.

1 And this is what leaves us a track, oftentimes, especially
2 with today's smartphones on where that phone was. I can't
3 pinpoint where the phone was; I can tell you a general area
4 that phone was.

5 Q. And ultimately in this case, were you able to prepare,
6 as you referenced a second ago, a PowerPoint presentation
7 that helps kind of explain initially kind of how cell phones
8 kind of work?

9 A. Yes, I was.

10 Q. And then also any contact between kind of all of these
11 relevant numbers?

12 A. Yes.

13 Q. And then also whatever cell tower information that --
14 that was provided in the records?

15 A. That's right.

16 Q. And showing you State's Exhibit No. 37, is this a copy
17 of the presentation that you prepared?

18 A. It is.

19 MR. SORENSON: Your Honor, at this time I'd offer
20 State's 37 into evidence.

21 THE COURT: Any objection?

22 MR. LEIENDECKER: No objection, Your Honor.

23 MR. BANKS: No, Your Honor.

24 THE COURT: It's in.

25 (State's Exhibit 37 admitted into evidence.)

1 MR. SORENSON: Your Honor, at this time I'd like for him
2 to be able to publish it, so we've got to play the projector
3 up on the screen.

4 THE COURT: Sure. Could you scoot it back so the Court
5 can see it as well?

6 MR. SORENSON: Sure.

7 And I think what we'll have, if it's all right with the
8 Court, we'll have Captain McDonald come sit at the chair
9 right there. That way he's got access to his laptop and he's
10 got a laser pointer, and that way Ms. Mott can hear him also.

11 THE COURT: Can all the jury see okay? If anybody has a
12 problem, please let me know.

13 Q. Captain McDonald, you had indicated, I guess, the first
14 part of the presentation is there a couple slides that kind
15 of talk about just generally how kind of cell phones work?

16 A. Right. Here's a real basic understanding of how a cell
17 phone works: Whenever Caller A goes to make a call to
18 Caller B, Cellular Phone A scans for the best tower or the
19 best cell, which is generally going to be the closest tower.

20 Once that's identified, it then sends that call into a
21 switch, and it verifies that that is a valid subscriber for
22 Phone A before it can complete the call. Once it's verified,
23 it shoots it out of that switch and begins looking globally
24 for Caller No. B or Caller B, and it verifies that that's a
25 valid caller that that call is going to be going through.

1 Once that is done, it goes out and finds the strongest cell
2 that's in contact with Caller B's phone.

3 And, of course, all this sounds very complicated, but
4 all this happens in microseconds. I mean, you place a call
5 and hit "send," and that phone starts ringing within a half a
6 second or so generally. Sometimes it takes a little longer
7 if it's searching for a signal or someone's remote, something
8 like that, but that's, in a nutshell, very basic how a cell
9 phone works.

10 And as it's hitting these towers, that's where you're
11 getting locations. Companies provide us locations of these
12 particular towers where these phones hit. Sometimes we get
13 the initial tower. When the caller calls someone, the tower
14 he's hitting on when that call is made and oftentimes someone
15 will get an ending tower, which may be different or may be
16 the same.

17 And if it's different, it could be because that caller
18 is moving, either on the highway or walking, and cross over
19 to another area where he's hitting on another tower.

20 MR. LEIENDECKER: Okay. Your Honor, can I have one
21 second to confer with my client?

22 THE COURT: Sure.

23 (Defendant and attorney confer.)

24 MR. LEIENDECKER: Sorry, Your Honor. I just want to
25 make sure that, in case -- all right. Thank you.

1 Q. Go ahead, Captain.

2 THE COURT: You may proceed.

3 THE WITNESS: Once we get this tower information, it's
4 necessary to understand how these towers are configured or
5 broken down. In general, not always, but in general, each
6 tower is broken down into 120 degrees, and you have three --
7 three sectors, A, B, C, 1, 2, 3, different ways they're
8 labeled by different companies. And each one roughly is
9 120 degrees.

10 Depending on the record requested and then the company,
11 we get the tower location and the sector or side of that
12 tower that that call was hitting on, which is significant
13 because it can help us isolate -- instead of just a general
14 area around that tower, we can isolate it down to a more
15 specific area around that tower, kind of a piece-of-pie-type
16 thing.

17 So oftentimes you'll see that. And you're going to see
18 that in some of the demonstration here today on the map in
19 some of the sectors. You'll see a little pie where it'll
20 just pop up, and that's the side of the tower that that phone
21 was hitting in.

22 Q. In this case, Captain, you had received phone records
23 from Verizon Wireless?

24 A. Right.

25 Q. T-Mobile and Allied Wireless, or I think they've been

1 bought out by Alltel now?

2 A. Right.

3 Q. But those three separate companies involved basically in
4 the --

5 A. Right.

6 Q. Are all their records kind of uniform between the three
7 of those companies?

8 A. In the information provided generally, but format may be
9 totally different. And as we found with Allied Wireless,
10 they're really different. They're a smaller company that's
11 been absorbed, and their records are very, very different
12 than any other records I've ever seen. Basically only
13 outgoing calls can be tracked for certainty. Incoming calls
14 cannot for basis of plotting.

15 Q. And in all of those records that you received, were you
16 able to break down this kind of sector on all of those?

17 A. Not all of them. The information I was provided, like I
18 think the Verizon one, I had the towers and sectors. Allied
19 Wireless, all I had was towers. There was no sector
20 information provided.

21 Q. Okay. All right. Now, I guess the first -- we'll kind
22 of go through these. So the first records I want you to kind
23 of talk about were the Verizon Wireless records, [REDACTED] 6313,
24 belonging to Ms. K. R. [REDACTED]. Kind of describe to the jury
25 briefly what those records consisted of and what you were

1 able to do with them.

2 A. These are the RTT data records from her phone.

3 What we find with today's smartphones and more advanced
4 phones, there's several types of records available: There's
5 call detail records, which show only calls made between
6 parties; there's other records that show data, where you
7 access the Internet, different things like that; and there's
8 also texting or SMS usage.

9 What this does -- what I was provided in this particular
10 case was just the RTT data, real time travel, which in this
11 particular case, these are going to be more detailed than any
12 call records, because this is not -- in addition to calls and
13 SMS locations, you're also getting updates that may be
14 happening to the phone where the phone's communicating with
15 something on the Internet, things like that.

16 So you'll get locations like down here, this 3GD, that's
17 3G service data, and that's hitting a tower. You wouldn't
18 see that on call detail records. SMS is text messages. 3GV,
19 that's 3G service voice, so those are going to be calls.

20 And going through these columns real quick, most of them
21 are self-explanatory, but I'll try to explain them. The
22 first column there you have the date, obviously, of the call.

23 The access time, the access time right here, that's the
24 time the call was placed.

25 The release time, that's when the call terminated.

1 Call length in seconds, two seconds, four seconds.

2 The MID, that's the unit identifier for that particular
3 phone. That has nothing to do with the phone number. That's
4 just a number put on that phone when it was manufactured to
5 help ID it.

6 The ESN's going to be the subscriber identity with that
7 particular company.

8 The tech type is what I talked about earlier. This just
9 tells what type of activity: SMS is a text message, 3GV is
10 voice call and the 3GD is going to be data.

11 The entry type, they do it a little bit different, but
12 terminating and original. So this would be an incoming call;
13 this would be an originating call, so this would be a call
14 placed by the target number.

15 Actually, this is a text message here. This is one
16 initiated by Ms. K. R. 's phone. This is one that came
17 into Ms. K. R. 's number. That tells the in or the out
18 there.

19 This information here deals with tower information, the
20 access sector. The access distance from the tower, this is
21 where you get a little more detail than you would on call
22 detail records. This is giving you a strong estimate, either
23 high or low, on the actual mileage from the tower.

24 In this particular case, this call location confidence
25 is either high or low. When it's high, that means it's very

1 accurate, so that phone was 5.15 miles approximately from
2 that tower.

3 Sometimes you'll see a low confidence where it says
4 5.38, so you can't put a lot of stock in that. That could be
5 some variance there because it didn't get a strong enough
6 signal, so it's a low confidence.

7 And then the call longitude over here, the call
8 latitude, these are the points that we plot on the map or, in
9 this case, the computer did this on this particular case,
10 plots these on a map, your latitude and longitude for the
11 location of that particular tower.

12 Q. Okay. And let me ask you, in looking at -- can you go
13 back real quick, because I'm going to just ask you a couple
14 things about those.

15 So in looking at those records and you plotted just
16 obviously because the records you had, as you said, contained
17 kind of a large time frame; is that correct?

18 A. That's correct.

19 Q. What you've got here is I guess starting on the 13th at
20 1700, so that would be 5:00 in the afternoon; is that
21 correct?

22 A. That's correct. That's in military time. So to explain
23 that, 5:00 is 1700 hours.

24 Q. And then it ends at 2254, so that would be 1054 p.m.; is
25 that correct?

1 A. That's correct.

2 Q. And was that the last actual contact that was on that
3 phone in these --

4 A. That was the data contact on that phone with high
5 confidence, yes, at 2254, 10:54 p.m.

6 Q. Okay. And tell the jury, what is the last outgoing
7 phone call then that is made by K. R. [REDACTED] according to
8 those phone records?

9 A. I believe it's here at 1802 hours.

10 Q. So that would be 6:02?

11 A. Yes, 6:02.

12 Q. Okay.

13 A. And we know that because that's an originating call
14 right there.

15 Q. And it's 3GV, so we know that's a voice call?

16 A. Call, correct.

17 Q. There's no other originating voice calls after that; is
18 that correct?

19 A. It appears that was the last outgoing voice call.

20 Q. And there are several text messages later on throughout
21 the evening; is that correct?

22 A. That is correct.

23 Q. Originating an SMS. Yet again, that means a text
24 message?

25 A. Correct.

1 Q. Okay. And there are four or five of them, I guess with
2 the last one being, what, at about 9:26 in the evening; is
3 that correct?

4 A. As far as outgoing, originating from, yes, 9:26 p.m.

5 Q. And then the last two are 3GD, so that's basically her
6 phone doing something. So that may not even be anybody
7 actually physically doing anything with the phone; that's the
8 phone itself doing something?

9 A. Right. It could be communicating with the tower,
10 updating an app, all kinds of things like that.

11 Q. Okay. Now, were you ultimately able to then go through
12 and kind of plot K. R. [REDACTED]'s phone kind of where it
13 went on the evening of February the 13th into the -- through
14 10:54 in the evening?

15 A. I was. What this is is -- what I'm getting ready to
16 show you, I drop her records and the tower information into
17 some software I have called CellHawk. CellHawk -- this is
18 where I was talking about where I narrow the time frame to
19 the 13th. I think we started around 4 or 5 in the afternoon
20 until the last transaction or the last data, which was at
21 2254 hours I believe we just saw on the preceding.

22 And what this is going to do, on the right side of the
23 screen, you're going to have a moving slide come down with
24 the date and the time. Now, as it moves, you're going to see
25 locations pop up on the map, and that's her phone bouncing

1 off those particular towers.

2 And some of them you're going to see a little arch.
3 That's going to be that RTT data showing the distance from
4 the tower approximately where her phone was within that
5 sector.

6 And I can stop this or back up if we need to.

7 Q. Okay. So that is kind of starting -- if you could just
8 kind of stop it just from the get-go there. So where is
9 that -- we're at what -- what time of day is that?

10 A. That is at --

11 Q. 3:00 in the afternoon?

12 A. 3:23 p.m., correct. And that's hitting off a tower down
13 close to -- in the general area of Brookdale. I mean,
14 it's -- you've got to look at this by scale. This is zoomed
15 out a bit to encompass this whole area.

16 Q. So that's over kind of on Orangeburg side of I26--

17 A. Right.

18 Q. -- but somewhere in that vicinity; is that correct?

19 A. Right. And those little arcs you see, that's going to
20 be the distance from the tower being demonstrated there. And
21 the kind of pie shapes you see, those are the two sectors
22 that phone or the sector that phone was hitting off around
23 those times.

24 Q. Okay. All right.

25 A. And you have a little movement at 3:44 p.m., then at

1 4:10 p.m.

2 Q. So in that 4:10 to 4:30, 4:40, her phone was in that
3 kind of bottom pie shape there on there?

4 A. Right, in that general area.

5 Q. And that's still kind of over -- I guess kind of -- I
6 guess that would be a little bit east of Orangeburg maybe?

7 A. Correct.

8 Q. And then I saw another pie shape pop up around 5:00.
9 That pie shape has moved kind of up towards 601?

10 A. Mm-hmm.

11 Q. Is that correct?

12 A. That's correct.

13 Q. All right. Keep going.

14 All right. Can you stop it again?

15 Now that, now we are at, what, quarter after 5 or so?

16 A. Yes, 5:14 and 5:19, hitting in two different sectors on
17 a tower near Liberty Street.

18 Q. And that's here in St. Matthews?

19 A. That's correct.

20 Q. All right.

21 A. Still hitting on that tower.

22 Q. Pause it right there. So that's still -- that's 6:50 or
23 so now?

24 A. 6:55, still at the same tower in that particular sector,
25 right.

1 Q. Okay. Can you pause it there?

2 So from that last time it hit back around 6:50 so until
3 now 8:00, was her phone hitting off of anything during that
4 time period?

5 A. No, it wasn't.

6 Q. Okay. All right. Keep going.

7 All right. Pause it now.

8 So now it's about 8:30 in the evening. Where is it
9 hitting now?

10 A. Back on the tower right adjacent to Liberty Street.

11 Q. Okay. Okay. Pause that there.

12 So now we're at, what, closer -- closing in on 9:00?

13 A. Right.

14 Q. And where is it hitting off of now?

15 A. Just off of 26. You can see, based on the legend here,
16 southwest of St. Matthews.

17 Q. Okay. So that's kind of on 26 if you're heading kind of
18 from Orangeburg back towards Columbia, right?

19 A. Right.

20 Q. Headed in that direction on 26?

21 A. There's a tower appears to be right adjacent to 26 that
22 they're hitting off.

23 Q. Okay.

24 A. That the phone's hitting off.

25 Q. Okay. And that's at 8:59?

1 A. Correct.

2 Q. Okay.

3 A. 8:56.

4 Q. 8:56 and 8:59?

5 A. 8:59.

6 Q. All right. All right. Pause it again.

7 Now, as we've hit 9:00, I guess 9:01, 9:02, where is her
8 phone now starting to hit off of?

9 A. Appears to be a tower west of 26 down towards
10 Orangeburg.

11 Q. So basically her phone appears to be traveling, you
12 know, from St. Matthews out to the interstate and then kind
13 of in towards Orangeburg?

14 A. In that general area, yes. I can't say for fact that
15 they're on 26, but that general area that's illustrated there
16 is where that phone was.

17 Q. Gotcha. Okay. All right. Then again at 9:11, 9:18,
18 still all in that same kind of vicinity, moving slightly
19 closer to Orangeburg?

20 A. Right. Up to 9:30, still down in that area.

21 Q. Okay. Okay. Now pause that there. So now we've moved
22 to 9:51, I guess?

23 A. Right.

24 Q. So her phone is now kind of moving away from Orangeburg?

25 A. Right. West of Orangeburg, near Highway 321.

1 Q. And that, I see that's kind of a long arc there; is that
2 correct?

3 A. That's, in general, the general location of her phone.
4 This -- whether this had a high confidence or low confidence,
5 that's somewhere along that arch is where they're saying the
6 phone was in general.

7 Q. All right.

8 A. And this would be your final location here.

9 Q. And that is now over kind of, I guess, on -- off of
10 Highway 78 -- oops.

11 A. Oops. Bear with me just a second.

12 Q. If you can pause it.

13 A. Okay.

14 Q. And you indicate that's where, basically, 10:52 and
15 10:54, those were the last two, those last two kind of data
16 things on the prior slide; is that correct?

17 A. Right. Just kind of east of Williston, in that area.

18 Q. Kind of on 78 kind of heading towards Williston; is that
19 correct?

20 A. Right. In that general area, yes.

21 Q. Okay. All right. So we'll move on. I guess the next
22 set of records are the numbers relating to Bryant McKnight;
23 is that correct? That's the [REDACTED] 9423?

24 A. Right. This was an Allied Wireless phone on these
25 particular records. These aren't the raw records here. What

1 I have is some software called it ACISS. It's case
2 management software. One of the components of this software,
3 it has a phone -- phone investigation in it.

4 What I take is the raw records from Allied Wireless,
5 import those into the system and import any known numbers I
6 have, like K. R. 's -- I knew her number -- some of the
7 other people involved in this case, numbers I was provided.
8 I entered that into the software.

9 Once I dumped these records, it's -- auto populates who
10 that phone is talking to, if it's known. You see a number of
11 them we don't know who those numbers are for. I wasn't
12 provided that information or it didn't hit in our system with
13 a known subscriber.

14 What you see in this first column, that's just a column
15 number of these records. That was called 1514. Like I said,
16 these records began back in early February. I was only
17 focused on the 13th and early morning hours of the 14th.

18 This 21MN, that's just a random number I have to make
19 up. It's a reference number that the computer needs in order
20 to enter these things. This is the raw data that's taken
21 from the records, imported into the software here. This is
22 the actual time, beginning and ending time -- excuse me.

23 Of this particular phone call, this is the number of
24 seconds here, 34 seconds. This was an inbound call coming
25 from K. R. in to Bryant McKnight's phone

1 (indicating).

2 Q. So those records show then at 4:34, there's a 34-second
3 call from K. R. [REDACTED]'s phone to Bryant McKnight's
4 phone?

5 A. That's correct.

6 Q. And I guess on the prior, the prior slide dealing with
7 K. R. [REDACTED]'s, I think you had that starting at 5:00; is that
8 correct?

9 A. Right.

10 Q. Is that why those would not have been shown on that
11 slide?

12 A. It just may have depended on whether there's activity or
13 not. I think we tried to start around 4 on most of them, but
14 sometimes there's no calls or nothing happening to
15 illustrate.

16 Q. Okay. But according to Bryant's phone, I mean, the
17 calls -- two calls -- I mean, one call at 4:34 and another
18 one at 4:35 from K. R. [REDACTED]'s phone; is that correct?

19 A. That's correct.

20 Q. And then a phone call back from Bryant McKnight's phone
21 to K. R. [REDACTED]'s phone then at 4:48; is that correct?

22 A. That's correct, right.

23 Q. All right. And let me ask you, the next kind of call I
24 want to ask you about, is there a call at 6:00 in the evening
25 from Bryant McKnight's phone to the phone that you were given

1 as being Jonathan McKnight's phone?

2 A. Yes. This phone call right here, 1800, which is
3 6:00 p.m., 42-second phone call. Bryant called out to
4 Jonathan McKnight on that number.

5 Q. And then there's actually another short call right after
6 that to K. R. 's phone, right, or from K. R. 's phone?

7 A. Right. K. R. 's phone called inbound to Bryant's for
8 35 seconds right after that.

9 Q. And then at the very bottom there's an outbound call to
10 Derrick Sumter; is that correct?

11 A. Yes. On the 13th at 1813 hours, a two-second call,
12 which could have been a hang-up, could have been voice mail.
13 It wasn't -- it doesn't look like it was much of a call.

14 Q. All right. If we can go to the next screen, there's
15 another two-second one, 6:13, is that correct, at the very
16 top, to Mr. Sumter?

17 A. Right there (indicating), yes.

18 Q. And then a couple incoming calls that you don't know who
19 they're from. And then at 6:29, 6:30 --

20 A. Right.

21 Q. -- there is a phone call from who to Bryant McKnight's
22 phone?

23 A. Inbound call from Jerry McKnight to Bryant's phone.

24 Q. Okay. Now, let me ask you this: After that 6:30
25 incoming call from Jerry McKnight, when is the next outbound

1 call that Bryant McKnight makes on that phone?

2 A. 1938.

3 Q. So 7:38?

4 A. Yes.

5 Q. Okay. So that's a little over an hour from that call
6 from Jerry McKnight, is that correct, hour and eight minutes?

7 A. That's correct.

8 Q. Okay. And who is that call to?

9 A. Sandra Hughes.

10 Q. And then immediately after that call to Sandra Hughes a
11 few minutes later, who is that next outbound? I know you
12 don't have it on there, but is that [REDACTED] 8344 number --

13 A. Yes.

14 Q. -- a number you're familiar with?

15 A. Yes, that's going to be Stephon Green's number right
16 there.

17 Q. Immediately after that at 7:46 there is a call to -- a
18 20-second call to Stephon Green?

19 A. Yes.

20 Q. And let me ask you this: Does it show somewhere around
21 8:22 Mr. McKnight making any phone calls?

22 A. Yes. It's an outbound call to Jamaal Pearce.

23 Q. That's about 30 second, 29 seconds?

24 A. 29-second call, yes.

25 Q. And ultimately, a few more of these I want to run

1 through before we move on to the next, but do you also have a
2 map that kind of plots out tracking Bryant McKnight's
3 outgoing calls, his locations, cell locations?

4 A. I do.

5 Q. Okay.

6 A. As we discussed earlier, Allied Wireless, the only
7 reliable information is the outgoing call information, so
8 that's what was plotted.

9 Q. So we'll get to that in a second once we kind of go
10 through these.

11 So the 8:22 call to Jamaal Pearce, are there also around
12 8:40 or so any calls to Derrick Sumter?

13 A. Yes. 2042 or 8:42 p.m. there's an outbound call,
14 seven-second call to Derrick Sumter.

15 Q. All right. And is there another one right after that?

16 A. Right after that there's a five-second outbound call at
17 8:43.

18 Q. And a seven-second and a five-second call, is that -- I
19 mean, is there any guarantee that there's actually a
20 connection made?

21 A. There's no guarantee there was a conversation. It could
22 have been the phone connected and it rang and someone swiped
23 it and got rid of the call or went -- might have had it set
24 up to go straight to voice mail, something like that it.
25 Obviously if there was a conversation, it wasn't very long,

1 five seconds, seven seconds.

2 Q. Then there were a couple calls right after that that are
3 a little lengthier, nine and, what, four minutes or so to
4 Ms. Hughes, Sandra Hughes?

5 A. Right.

6 Q. Okay. You can go on to the next. All right.

7 And then ultimately are there a couple calls to
8 Jonathan McKnight's phone?

9 A. There are. There's an outbound call right here on the
10 13th at 9:49 p.m., a seven-second call outbound.

11 Q. And there's another one little while later at 9:58?

12 A. 2158, 9:58 hours, another seven-second outbound call.

13 Q. Yet again, very short calls?

14 A. Yes.

15 Q. And then ultimately between 9:58 and 10:49 in the
16 evening, how many calls are there from Bryant McKnight's
17 phone either to or from Derrick Sumter's phone during that
18 hour period of time?

19 A. Four.

20 Q. Four? I believe there's two outgoing, two incoming; is
21 that correct?

22 A. Right.

23 Q. And then after that at 10:58 and 11:00 p.m., are there
24 some outgoing calls from Bryant's phone?

25 A. Right. There's a 91-second outgoing call to

1 Stephon Green, followed by 11:00 there's a 159-second call
2 outbound, Stephon Green.

3 Q. And then ultimately during that 11:00, from 11 -- let me
4 ask you, from 11 then until 12:30, so over the next hour and
5 a half, from 11:00 to 12:30 in the morning, are there any
6 calls either to or from Bryant McKnight's phone to
7 Jerry McKnight's phone?

8 A. Yes, one right here at 2308, 11:08 p.m.

9 Q. Okay. And going to the next, that's one.

10 A. 2309, 11:22 p.m., 101-second call outbound to
11 Jerry McKnight; 2355, 11:55 p.m., inbound call from Jerry,
12 59-second call.

13 Q. All right.

14 A. Do you want me to keep going?

15 Q. All the ones up to 12:30 in the morning.

16 A. Okay. On the 14th there's an inbound call from Jerry at
17 16 minutes after midnight, 158 seconds; then here at 21
18 minutes after midnight, 48-second outbound call to Jerry; and
19 at 12:30 we see an inbound call from Jerry, 49 seconds.

20 Q. So I think if I counted right, over that hour and a half
21 period of time, there were seven calls: Four outbound and
22 then three inbound calls?

23 A. I believe that's correct, yes.

24 Q. With Jerry McKnight's phone?

25 A. Yes.

1 Q. And then -- and after -- let me just ask you, after --
2 after 12:30, for the rest of that early morning, are there
3 any other calls between those two phones?

4 A. Between Jerry and?

5 Q. Between Bryant McKnight and Jerry McKnight?

6 A. No.

7 Q. Okay. All right. Kind of go, back it up. All right.

8 Now, during the time period now from 11 p.m. all the way
9 to 2 a.m., so that three-hour time period, how many calls are
10 there to or from Bryant McKnight's phone to Derrick Sumter's
11 phone?

12 A. There's one right there (indicating). There's one right
13 there (indicating), two, three, four, five, six.

14 Q. You still counting or --

15 A. Give me the parameters again.

16 Q. I'm sorry. It was from 11 p.m. to 2 a.m.

17 A. To 2 a.m. Just past 2 a.m. I have two additional ones,
18 three additional ones.

19 Q. So six plus three, so that's nine total; is that
20 correct?

21 A. Nine, right.

22 Q. And those were, you know, multiple that were outgoing
23 and some that were incoming. I mean, both. I think it's six
24 and three. Six incoming, three outgoing?

25 A. Correct.

1 Q. Now, were there any calls during that time period that
2 we just talked about to Stephon Green after -- I mean, there
3 was a call at 11:00. Any other calls to or from
4 Stephon Green the rest of that night?

5 A. You've got one at 12:31 a.m. and then --

6 Q. And that would be an outbound call to Stephon Green?

7 A. Outbound call. And that's it.

8 Q. And then the last call I want to ask you about before I
9 go to the cell tower information is the following morning on
10 February 14th of 2014, is there a call, an inbound call at
11 about 10:40 that morning?

12 A. Yes, there is, from Jamaal Pearce.

13 Q. And that's 186 seconds?

14 A. 186 seconds, correct.

15 Q. So that would be three minutes and six seconds long?

16 A. Right.

17 Q. Now, were you able to ultimately kind of plot out for
18 the evening of the 13th Mr. Bryant's cell phone, the outgoing
19 calls made by Mr. Bryant?

20 A. I was.

21 Q. Okay.

22 A. The initial activity that day, this is Tower 1720. It's
23 a little bit hard to see, but 21314 started around 1648
24 hours. These are outbound calls. These are the times he's
25 hitting on this particular tower right here around

1 St. Matthews in close proximity to Liberty Street.

2 So you have at 1648, 4:48 p.m.; 5:25 p.m.; 5:26; 5:36;
3 5:43; 5:55; 6:00; 1610, which is -- I mean 1810, 6:10; 6:13;
4 7:30; 7:46; 8:06; 8:11; 10:22 p.m.; and 2026 p.m. on that
5 particular tower.

6 Q. Okay. So it's 8:22 and 8:26, right?

7 A. I'm sorry, yes.

8 Q. So that's all. So those -- basically his phone is
9 hitting from shortly around 5:00 until 8:30 or so, 8:26 or
10 so, is hitting around that Liberty Street tower; is that
11 correct -- or in that -- somewhere in St. Matthews?

12 A. Somewhere in this area. Somewhere in this general area
13 that phone is, yes.

14 Q. Okay. And that is kind of in proximity to the address
15 that you have on -- noted on there on Liberty Street?

16 A. That's correct.

17 Q. Okay. And --

18 A. And on these particular records, we didn't get sector,
19 so I can't say if it's on this side of the tower, that side
20 of the tower, this side of the tower, but we know it was
21 somewhere in this general area right around this tower.

22 Q. And yet again, from the time period -- there were no
23 outgoing calls between 6:30 in the evening and 7:38 in the
24 evening; is that correct?

25 A. Correct.

1 Q. So therefore, there wouldn't be any tower information
2 showing where the phone was hitting on during that time
3 period?

4 A. Not on these particular records. They didn't provide
5 any RTT information or anything with these type records.

6 Q. All right. And then where after -- so after 8:26 or so
7 in the evening, where did Mr. McKnight's phone move to then?

8 A. Next tower it hit on was Tower 1750 right here, and that
9 was at 8:42 to 8:44 p.m., which is close proximity to Deer
10 Meadow Road.

11 Q. And those would be, if you remember on the beforehand
12 there was a couple short calls, seven and five seconds to
13 Derrick Sumter at 8:42 and 8:43, so that would be consistent
14 with where the tower is hitting on when those two
15 seven-second and five-second calls were made?

16 A. Right, somewhere in this general around this tower right
17 here (indicating).

18 Q. Okay. Where did it move after that?

19 A. Next it moved down here to Tower 1750 at 2106, which is
20 9:06 p.m., right down Orangeburg area. Right in here is
21 where this tower is (indicating), right off 301 it looks
22 like.

23 Q. That's kind of right after where 601 and 301 kind of
24 come in, kind of in that area there?

25 A. Right in here, yes.

1 Q. All right. And where does it move from there?

2 A. Tower 1740 at 9:49 p.m., it's over here near Norway.

3 Q. And then at 9:49 was a seven-second call to

4 Jonathan McKnight's phone?

5 A. Correct.

6 Q. All right.

7 A. Picking up, this is the last tower we just saw here,

8 just so there's some continuity. From there it moves to this

9 next tower down near Bamberg, Tower 1706. This is at

10 9:50 p.m.

11 Q. Okay. Yet again, that just means that the phone is

12 somewhere in the vicinity of that tower?

13 A. Somewhere around this tower, yes, general area.

14 Q. All right.

15 A. And from there it goes to Tower 1701 at 9:56 and

16 9:58 p.m., right here, west of Denmark.

17 Q. Okay.

18 A. From there, Tower 1752 at 10:06 and 10:10 p.m., over

19 towards Blackville right here (indicating).

20 Q. Okay.

21 A. And Tower 1763 ultimately 2231, 10:31 hours, and it's

22 there. Looks like it remains there throughout the night.

23 10:36, 10:58, 11:06, 11:09, all the way up until 8:15 the

24 next morning, it's still hitting off that same tower right

25 around this general area here near Williston.

1 Q. And that kind of general track, is it fairly consistent
2 with the same track K. R. [REDACTED]'s phone had taken that
3 you showed the jury earlier?

4 A. Yes.

5 Q. And yet again, these are only on -- with Allied
6 Wireless, these are only showing his outbound calls; is that
7 correct?

8 A. Only the outbound calls, yes.

9 Q. That would be, yet again, the general vicinity of where
10 the phone was when those --

11 A. Right.

12 Q. -- at those particular times?

13 A. Somewhere in this general area.

14 Q. All right. Next I guess is Jerry McKnight's. It's
15 [REDACTED] 9375; is that correct?

16 A. Right.

17 Q. And his were Verizon?

18 A. Yes.

19 Q. And let me ask you, did you have the same information on
20 his records as were contained on K. R. [REDACTED]'s records?

21 A. Yes.

22 Q. Was it the real-time travel or tracking?

23 A. Actually, these are the call detail records on these.

24 The RTT was only provided to me on K. R. [REDACTED]'s.

25 Q. All right. And let me ask you that as far as from the

1 law enforcement standpoint, when you're trying to track a
2 victim, you're trying to find her, is that something that law
3 enforcement typically tries to get?

4 A. Right. If you're in a tracking mode or pieces of
5 investigation, you would want the RTT. Law enforcement, we
6 would probably want it all. We want the call detail records,
7 data records and the RTT and use all that information in
8 trying to reconstruct where she had been or her phone had
9 been, where it ended up, that kind of thing.

10 Q. All right. And for Jerry McKnight's records, does it
11 show a call at 6:11 that evening?

12 A. This right here (indicating).

13 Q. I'm sorry.

14 A. I'm sorry, right here (indicating), 1811.

15 Q. Okay.

16 A. At 6:11 p.m. is an outbound call to Jonathan McKnight.

17 Q. And that's about, what, 18 seconds long; is that
18 correct?

19 A. That's correct.

20 Q. And then is there also a call to Bryant McKnight at
21 6:29?

22 A. Yes, this one right here is a 23-second outbound call.

23 Q. And that was corroborated by Bryant McKnight's records
24 that showed that as an incoming call on his, right, at that
25 time?

1 A. Correct.

2 Q. Then I think at 6:59 there's an incoming, 34-second
3 incoming call; is that correct?

4 A. That's correct.

5 Q. Other than that one 34-second incoming call, is there
6 any phone activity on Jerry McKnight's phone between 6:29,
7 the call to Bryant McKnight, and the next incoming call at
8 7:40 in the evening?

9 A. Not other than this call right here, no.

10 Q. So there's an hour-and-ten-minute period there where
11 there's just a 34-second incoming call; is that correct?

12 A. Right, that's correct.

13 Q. And then ultimately at 8:07 there's an outbound call to
14 who?

15 A. Bryant McKnight.

16 Q. And later on that evening, a couple lines down, are
17 there any outbound calls to Jonathan McKnight's cell phone?

18 A. Yes, there's several. Beginning right here at
19 10:22 p.m., 10-second call; 10:23 p.m., 9-second call.

20 Q. So neither one of them are of any significant length; is
21 that correct?

22 A. Right. This one's a little bit longer, 30 seconds, at
23 11:03 p.m.

24 Q. Okay. But who is that to? That's not to Jonathan,
25 right?

1 A. I'm sorry, that's Bryant.

2 Q. All right. And then ultimately, and what time was that
3 one, 11:02; is that right?

4 A. Correct.

5 Q. And that would basically kind of corroborate when we
6 talked about with Bryant's records that during that 11 p.m.
7 and 12:30 there were seven calls between their phones?

8 A. Yes.

9 Q. Is that kind of also shown obviously in these records
10 going the other way?

11 A. It's reflected here as well, yes.

12 Q. Let me ask you, on Jerry McKnight's phone then from
13 12:30 in the morning on February 14th until 3 a.m., is there
14 any phone activity at all?

15 A. No, there's no activity. This here's 12:30 on the 14th,
16 51-second outbound call to Bryant McKnight. Then there's no
17 activity until 3:17 a.m.

18 Q. So obviously with these records, would there be any way
19 to then track his phone with these records between 12:30 in
20 the morning and 3:00 in the morning?

21 A. No. Not with the records that were provided, no. I
22 didn't have the RTT data.

23 Q. All right. Were you ultimately able to kind of plot the
24 out -- these --

25 A. Right.

1 Q. -- also, just like you did with K. R. 's?

2 A. Right.

3 This begins about 6:36 p.m. on the 13th, hitting off the
4 tower right there near Liberty Street, in that particular
5 sector, Sector No. 1.

6 Q. And what time was that now?

7 A. 8:00, 8:10, 8:15.

8 Q. Okay. Stop it there. So from 6, it was hitting at 6:30
9 or so. And then does it -- is it hitting anywhere between 7
10 and 8:00?

11 A. No. It's continuing right in this general area. If
12 there's no -- if it's not making a call or hitting a signal,
13 you can assume the phone's still there, but it could be
14 moving and just hadn't made a call, either one.

15 Q. And that was confirmed by the records where there were
16 no -- there was a, you know, 40-minute period there where
17 there was no phone activity at all; is that correct?

18 A. Correct.

19 Q. All right. What time is that now?

20 A. 10:00 or 9. I can't see it with the dot over it,
21 indicating Liberty Street, but at 10:05 the phone's still in
22 that same sector on that same tower. 10:30, continues there,
23 10:45, 11:00, 11:15, 11:30. Now you have some activity, some
24 movement.

25 Q. What time are we -- what time is that now?

1 A. 11:55 p.m. You're hitting off this tower right down
2 here at 11:55 p.m. (indicating), 11:53 p.m. over here
3 (indicating), so moving from this way to that way.

4 Q. Okay.

5 A. Back at that tower on Liberty Street up until 1:20 or so
6 a.m.

7 Q. Now, this is a period here where there was two and a
8 half hours with no activity or so, right?

9 A. Right.

10 Q. And then what time was this? What time are we talking
11 now? Are we into the 3:00-and-on calls now?

12 A. Right.

13 Q. Okay.

14 A. This is down to 4:38. The last call was around 3 a.m.

15 Q. So after 3 a.m., he's back in that vicinity in
16 St. Matthews of somewhere in the vicinity of Liberty Street
17 there; is that correct?

18 A. That's correct. That's where it ends at 5:34 a.m.,
19 still at the same tower.

20 Q. All right. The next records that you had is
21 Jonathan McKnight's?

22 A. Right. There wasn't a lot of activity on this
23 particular record as far as the defendants in this case.
24 There's the one call, inbound call, at -- on the 13th at
25 1811, 6:11 p.m., one-second call inbound from Jerry McKnight

1 to Jonathan McKnight.

2 Q. Then the next call that actually is on his records is,
3 what, all the way at 12:16 in the morning?

4 A. That's correct.

5 Q. So would that be consistent then with him -- he
6 basically -- those four real short calls that we saw earlier,
7 two from Bryant McKnight, two from Jerry McKnight to his
8 phone in the evening of the 13th, are not showing up on his
9 records, so that --

10 A. Not showing up on these particular records could be
11 due to the -- and here again, you're dealing with different
12 companies, Allied and T-Mobile, in this particular case. For
13 whatever reason, on T-Mobile's records, it's not showing a
14 contact there. Either it wasn't long enough to reach. It
15 was a second, two seconds, something like that.

16 Q. A T-Mobile representative testified that basically if
17 you don't answer the call, it's not going to show up because
18 you're not going to get billed, so it's not going to show up
19 on your records. Would that be consistent then with those
20 four calls, basically Jonathan McKnight not answering those
21 four calls?

22 A. Correct.

23 Q. All right.

24 MR. LEIENDECKER: I'm sorry, Your Honor. At this point,
25 one, I would object to the solicitor testifying as to what's

1 already been testified from the stand, but, two, what he said
2 is speculation regarding whether they were answered or not
3 answered.

4 THE COURT: I think the testimony was whether or not
5 that would be consistent with, not whether he answered or
6 not, and I think it's consistent with the prior testimony.

7 MR. LEIENDECKER: Yes, ma'am, but I still think it's
8 inappropriate for the solicitor to be testifying.

9 THE COURT: Just don't lead, Solicitor.

10 MR. SORENSON: Yes, ma'am.

11 Q. Any other activity at all that night into the early
12 morning hours of the 14th with Jonathan McKnight's phone and
13 any of the other parties involved in this case?

14 A. None, no.

15 Q. All right. And let me ask you, did you have any
16 tracking data for him?

17 A. No. There was no -- no mapping information provided in
18 his records, so I wasn't able to map anything on that
19 particular one.

20 Q. And of course there were no phone calls from 6:00 to
21 12:30 in the morning, so there wouldn't have been anything
22 even if they had --

23 A. Right.

24 Q. -- for you to track during that time period?

25 A. That's correct.

1 Q. All right. Whose records are next?

2 Stephon Green, so [REDACTED] 8344?

3 A. Right.

4 Q. Let me ask you this: At 6:30 in the evening, is there
5 an incoming call to Mr. Green's cell phone?

6 A. Right here at 1831 there's an inbound call here.

7 Q. What number is that from?

8 A. [REDACTED] 1866.

9 Q. Is that consistent with the number that's on State's
10 Exhibit No. 34 as being Stephon's mother's number?

11 A. That's Stephon Green's mother's phone, yes.

12 Q. So that is at 6:31 in the evening?

13 A. That's correct. Right here, 28-second call
14 (indicating).

15 Q. Okay. Let me ask you this: Is there ultimately an
16 outgoing call shortly after that at 6:55?

17 A. There's one right here at 1855, an outbound going call
18 right here.

19 Q. And let me ask you, these are, yet again, Allied
20 Wireless or Alltel records. Do they -- is it just like
21 with -- when we talked about Bryant McKnight's records, were
22 you only able to ultimately, when you do the cell tower
23 mapping, do the outbound calls?

24 A. That's correct.

25 Q. So when we get to that map, you'll be able to see that

1 6:55 outbound call where that call was placed from?

2 A. Correct.

3 Q. All right. And let me ask you, are there any calls then
4 between him and Bryant McKnight then in that kind of early,
5 early evening time period?

6 A. Yes, there's quite a few. Beginning at 7:46 p.m.,
7 inbound call from Bryant to his phone, 27 seconds; 8:06 p.m.,
8 54-second inbound call from Bryant; 8:11, 21-second inbound
9 call from Bryant; 8:15 p.m., outbound call from Bryant to --
10 I'm sorry from Stephon to Bryant, 21 seconds.

11 Q. Now, let me stop you there because the next two kind of
12 jump forward a couple hours; is that correct?

13 A. Correct.

14 Q. So in that time period there from 7:46 in the evening to
15 8:15 in the evening, so that 30-minute time period, there are
16 four phone calls?

17 A. There's four phone calls, yes.

18 Q. The first three being incoming from Bryant McKnight?

19 A. First three incoming, last one outgoing.

20 Q. And let me ask you, is there an outgoing call in that
21 time period from Stephon Green's phone that's to a number
22 that's not Bryant McKnight?

23 A. Right here at 8:04 p.m.

24 Q. So yet again, that should be a phone call then at 8:04,
25 and then the subsequent one at 8:15, those are phone calls

1 that you should be able to map out on the map; is that
2 correct?

3 A. That's correct.

4 Q. And obviously then there's two -- the last two lines are
5 incoming calls from who?

6 A. From Bryant McKnight to Stephon Green's phone.

7 Q. What time are those calls?

8 A. 10:58 p.m., 91-second call; and then 11:00 p.m.,
9 159-second inbound call.

10 Q. And those also were corroborated on Bryant McKnight's
11 records?

12 A. They were.

13 Q. You can go on to the next -- anything up on the next
14 page? All right.

15 And is there a third call at 12:31 in the morning from
16 Bryant McKnight?

17 A. Right, inbound call from Bryant, 29 seconds in length.

18 Q. And let me ask you, are there any other through -- I
19 mean, these records go through, I guess, actually the next
20 afternoon; is that correct?

21 A. Right. The first call is at 11:37 inbound, and the next
22 one after that is at 1:33 p.m.

23 Q. So after 8:15 in the evening when there's an outbound
24 call from Stephon Green to Bryant McKnight's phone, does
25 Stephon Green make any more phone calls that entire night?

1 A. After what time?

2 Q. 8:15 in the evening?

3 A. No, no outbound calls.

4 Q. Is there any contact on his phone with anybody other
5 than Bryant McKnight during that time period from 8:15
6 through the rest of that evening?

7 A. No, only Bryant McKnight.

8 Q. Any contact with any of the other codefendants,
9 Derrick Sumter, Jonathan McKnight, Jerry McKnight,
10 Jamaal Pearce, I mean, any of those individuals?

11 A. No contact with any of those individuals.

12 Q. All right. So we have, I guess looking at, probably
13 three calls, three outbound calls. Were you able to kind of
14 plot those on the next diagram? I don't know if you went
15 back earlier than that, but --

16 A. This is the first call right down here at 1614 hours,
17 hitting off Tower 1700 down here kind of near Orangeburg.

18 Q. So that's 1614, so that's 4:14 in the afternoon?

19 A. That's correct.

20 Q. So that was prior to -- that call wasn't reflected on
21 those prior records; is that correct?

22 A. Right, that was a little bit earlier.

23 Q. Okay. Does it show the 6:55 call that was placed
24 shortly after the phone call from his mother?

25 A. It would be this one right here, Tower 1711. This

1 tower's right here at Orangeburg, 601.

2 Q. Okay. And then does it show the
3 little-over-an-hour-later call at 8:04 that was an outgoing
4 call?

5 A. Right here at Tower 1720, St. Matthews area.

6 Q. Does that also show then the 8:15 outbound call to
7 Bryant McKnight's phone?

8 A. It does.

9 Q. And where is that located at? That same tower?

10 A. Same tower right here.

11 Q. And those were the only outbound calls on his records;
12 is that correct?

13 A. That's correct.

14 Q. And then lastly, I think we move to Derrick Sumter,
15 [REDACTED] 6425?

16 A. That's correct.

17 Q. And he was also Allied Wireless?

18 A. Yes.

19 Q. And Mr. Sumter, I'm going to try not to kind of --
20 obviously we talked about Bryant McKnight's phone records.
21 Do his records kind of corroborate the phone calls back and
22 forth between them?

23 A. They do.

24 Q. Okay. Are there any calls between Derrick Sumter and
25 any of the other codefendants involved in this case at any

1 point in time that night?

2 A. Other than Bryant.

3 Q. Other than Bryant, so Jerry McKnight, with

4 Stephon Green, Jonathan McKnight?

5 A. Only Bryant.

6 Q. All right. And looking at it between ultimately between

7 about 9:00 or so on the evening of the 13th through I think

8 the last one is at 2:05 in the morning, how many calls are

9 there between -- back and forth between Bryant McKnight and

10 Mr. Sumter? So between -- you have to look -- start at about

11 9:00 in the evening or so.

12 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 calls.

13 Q. Now, ultimately with him, like you were able to do with

14 Stephon Green and Bryant McKnight, were you able to then plot

15 his outgoing calls for the evening or for the early evening

16 into the early morning, February 13th to February 14th?

17 A. Yes, I was.

18 Q. Okay.

19 A. Once again, began around 1627. I don't think that was

20 reflected in the call log, but this first tower down here,

21 down in this general area, the early evening hours, you know,

22 4:30, 5:48, 6:07 p.m., 614 p.m., 6:15. Then you have a

23 little bit of a break there until 2049. 2049, 2051, 2054.

24 This is 8:54, 8:51. Then 2322, which is 11:22 p.m.

25 Q. Let me back you up before we get to 11. So up to -- so

1 he's bouncing around that -- hitting off of that tower that's
2 denoted by the green number one?

3 A. The tower's right here (indicating). Number one is the
4 point of reference to it.

5 Q. That is just off of Highway 601 across Interstate 26,
6 basically almost heading into Orangeburg; is that correct?

7 A. That's correct.

8 Q. And so he is bouncing off of that tower from 4:27 in the
9 afternoon until 8:54; is that correct?

10 A. 8:54, that's correct.

11 Q. And where does he go -- and let me ask you this just so
12 there's not -- if you kind of go up, do you see is there a
13 Tower 1758 where you've got a call listed right there?

14 A. That's a scrivener's error on my part. That's an
15 incoming call that's not accurate.

16 Q. So that would not be where his phone is pinging off of
17 at that time?

18 A. Right.

19 Q. So we've got him at 8:54 down at Tower 1711 at that
20 number one. So where is the next time that his phone pings
21 off of a tower making an outbound call?

22 A. Right here at Tower 1720 at 2207 hours, 10:07 p.m.

23 Q. 10:07. And that's -- that tower is up in the
24 St. Matthews vicinity?

25 A. Right.

1 Q. Is that correct? Okay.

2 Then ultimately at 10:49, does he ping off another
3 tower?

4 A. This tower over here near Lone Star, right here,
5 Tower 1731.

6 Q. That's kind of heading out of St. Matthews kind of away
7 from Orangeburg, is that correct --

8 A. That's correct.

9 Q. -- the other direction.

10 Then -- all right. Where is the next one? So that's at
11 10:49 in the evening?

12 A. That's correct.

13 Q. And where is the next time he has an outbound call that
14 pings?

15 A. (Indicating).

16 Q. So 11:22 is that --

17 A. Right, 11:22 back here at Tower 1711.

18 Q. So 11:22, Mr. Sumter, at least Mr. Sumter's phone's back
19 in Orangeburg; is that correct?

20 A. That's correct.

21 Q. Making a call?

22 A. That's correct.

23 Q. And then at 12:32, is it making -- I think that was the
24 next outbound call. Was he still in Orangeburg?

25 A. No, it's back up here around St. Matthews.

1 Q. So 12:30, his phone is making a call in the St. Matthews
2 vicinity; is that correct?

3 A. Up in this general area, yes.

4 Q. And looking back at the records, most of his outbound
5 calls, he was communicating with Bryant McKnight; is that
6 correct?

7 A. That is correct.

8 Q. Then at 1:20, does he go anywhere?

9 A. Hits on this tower right here (indicating), Tower 1749,
10 at 0120 hours, 1:20 in the morning. On the 14th at 1:20 a.m.
11 he's hitting off Tower 1749 in the Cameron area, which is in
12 close proximity to Four Holes Road.

13 Q. Were you given the Four Holes Road -- did you -- were
14 you given the GPS coordinates of where K. R. [REDACTED]'s
15 body was found?

16 A. I was. When I was briefed on the case, certain things,
17 where the body was found, different things like that,
18 locations that we know people were at, that's what you see on
19 here when you see [REDACTED] Liberty Street, [REDACTED] Deer Meadow Lane,
20 things like that. That's just information I was given and
21 plotted that to show the relation to the towers to those
22 locations.

23 Q. So that bottom -- the bottom there just kind of just
24 below that Tower 1749, is that that Four Holes Road area that
25 you were given?

1 A. Right.

2 Q. And so that was at 1:20; is that correct?

3 A. That's correct.

4 Q. Then at 2:00 does his phone ping somewhere again?

5 A. Back up here at Tower 1720 in St. Matthews, right up in
6 this general area.

7 Q. So 2:00 his phone is now back in St. Matthews making a
8 call?

9 A. Right.

10 Q. And then lastly at 3:16, is there --

11 A. Back down here, Orangeburg, 3:16, and there's no
12 activity again until 8:06 outbound, 8:06 a.m. that following
13 morning.

14 Q. All right. Yet again, there were no calls -- I mean,
15 all of -- there were 13 calls between him and Bryant McKnight
16 that night between 10 p.m. and 2 a.m.?

17 A. Yes.

18 Q. I think that was the end, right?

19 A. Yes.

20 MR. SORENSON: All right. I believe that's all I'd have
21 for Captain McDonald. Thank you.

22 MR. LEIENDECKER: There's a lot of numbers and a lot of
23 times and dates. Can we, at this time, take a break, Your
24 Honor?

25 THE COURT: Sure. We'll take about a 10, 15-minute

1 recess, ladies and gentlemen.

2 (The jury retires to the jury room at 12:22 p.m.)

3 (Recess held.)

4 THE COURT: Parties ready to proceed?

5 MR. SORENSON: Yes.

6 MR. LEIENDECKER: Yes, Your Honor.

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: Let's have our jury, please.

9 (The jury enters the courtroom at 12:44 p.m.)

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION BY MR. LEIENDECKER:

12 Q. Captain, I'm Mark Leiendecker. I represent
13 Jerry McKnight. You and I spoke briefly before court today
14 just to get the idea of how your program works and what it
15 was going to show us, right?

16 A. That's correct.

17 Q. You showed and explained it to me then, correct?

18 A. Right.

19 Q. And what you've shown us today shows the records of
20 several of the key people in this case, some of them charged
21 and others not charged, correct?

22 A. That's correct.

23 Q. And the truth of the fact is what you boiled down on
24 those condensed records that you showed us today, those are
25 coming off of records that were about this thick (indicating)

1 in some cases?

2 A. If you were to print them out, yes.

3 Q. Okay. And that they were phone records for that
4 individual telephone number, but they showed more than voice
5 conversations, didn't they?

6 A. Depending on the phone company, yes.

7 THE COURT: Mr. Leiendecker, I hate to interrupt you.
8 Would you scoot back a bit so you don't block the view of any
9 juror.

10 MR. LEIENDECKER: I am sorry, Your Honor. Thank you.

11 Q. And the records for Jerry McKnight, and you looked at
12 those extensively when you downloaded them into your program,
13 correct?

14 A. Correct.

15 Q. Those are Verizon records, right?

16 A. If you'd give me a second just to catch up. There was a
17 large number of records here. I just want to make sure.

18 Yes, they were Verizon.

19 Q. And the reason that Jerry's don't show us the 3G voice,
20 the 3G data, the SMS text messaging tracking is because you
21 didn't have an RTT report on Jerry's phone; is that right?

22 A. That's my understanding, yes.

23 Q. Okay. And the truth of it is, what you have there for
24 Jerry McKnight's -- and can you jump me to those spreadsheets
25 for Mr. McKnight?

1 What you have on these couple of pages of
2 Jerry McKnight's are merely the phone calls. There are a
3 bunch of other records contained on the Verizon, if you were
4 to print them out, correct?

5 A. I'd have to look back at them. I don't recall off the
6 top of my head.

7 Q. If there are any text activity going on, that doesn't
8 reflect here, does it?

9 A. Not on this software. On the raw records, it may
10 reflect; however, with Verizon, there's no location data
11 provided on SMS or text messaging.

12 We saw earlier on the other phone company where the RTT
13 data, that did give a location, but the call detail records
14 themselves generally show a zero for text messages on call
15 detail records. And I know this is getting confusing, but
16 call detail records and RTT are drastically different in what
17 they capture.

18 Q. I think I do understand.

19 A. Okay.

20 Q. And K. R. [REDACTED], her phone was also a Verizon phone, but
21 it's not the phone company, it's the type of report you
22 received, correct?

23 A. I went off the records I received, and the only records
24 I had for K. R. [REDACTED]'s phone were the RTT. I didn't have call
25 detail records.

1 Q. Okay. Now, I'm going to ask you to look at the first
2 one, in fact where your little hand is, is highlighting 201,
3 it shows that phone call to Jonathan McKnight, and it shows
4 it as an 18-second call, right?

5 A. That's correct.

6 Q. But if you'll jump forward to Jonathan's records, it
7 shows it there as one second, right?

8 A. That's correct.

9 Q. So isn't it fair to say that there really wasn't any
10 phone call or conversation there?

11 A. I can't say that. T-Mobile is reporting a one-second
12 call. Verizon's reporting an 18-second call, and that could
13 be due to a number of factors: Different companies,
14 different software, clocks different.

15 Q. One of the factors could be that Verizon's clock starts
16 the minute their phone hits the tower before it reaches the
17 other phone or connects, right?

18 A. That's a possibility. Some of them start when you hit
19 the send button; others don't start until the call is
20 answered.

21 Q. But there's nothing on Jonathan's record, his T-Mobile
22 record, which reflects the receipt of his calls, which
23 suggests he had any conversation with Jerry McKnight?

24 A. That would be doubtful. For one second, that would
25 be -- it's very doubtful for one second you would have any

1 kind of conversation.

2 Q. Doubtful, maybe impossible?

3 A. According to what T-Mobile's reporting, yes.

4 Q. Okay. Thank you.

5 Can we work back to Jerry's? The blue words or names, I
6 should say, in the far right column are people who you know
7 or you were given their phone records. That's why their
8 names are there, right?

9 A. Part of when I was briefed on this case and talked with
10 the solicitor about this case, I was briefed, and these
11 numbers were known to have been used by these parties, yes.

12 Q. Okay.

13 A. Through the course of the investigation.

14 Q. Did you notice the calls on Jerry's spreadsheet that
15 aren't listed have some redundancy or similarity?

16 A. I'm not sure I'm following your question.

17 Q. They're made to the same number or numbers. There's not
18 a bunch of different people that were called. It appears
19 that the same phone was called with regularity or received
20 with regularity.

21 A. That's correct, in general, yes.

22 Q. The calls in particular, at Line 209 and 210, which are
23 at 7 p.m. and 7:40 p.m.; is that correct?

24 A. That's correct.

25 Q. Those were calls received. Those were incoming calls

1 received from the same phone number by the phone that Jerry
2 had, correct?

3 A. That's correct.

4 Q. And those weren't one-second calls, were they?

5 A. They were 34-second call and a 100-second call.

6 Q. So a minute and a half and half a minute?

7 A. Correct.

8 Q. Long enough to have an actual word with someone?

9 A. Yes.

10 Q. All right. Then if you'll switch the page. Note that
11 number for me, if you will, that [REDACTED] 5906. If you'll turn to
12 the next page for me, the phone calls at Line 227 and 228,
13 that's the same number, right?

14 A. That's the same number, yes.

15 Q. And those calls were around 3:00 in the morning the next
16 day, the 14th, right?

17 A. That's correct.

18 Q. All right. In those moments when you don't have calls
19 going out or coming in, we don't know from these records
20 where the phones were or where the people were; is that
21 right?

22 A. Not during those periods where there's no activity, call
23 detail record-wise, correct.

24 Q. Okay.

25 A. If we have the RTT data, we might know a tighter time

1 frame, yes.

2 Q. And all of the calls that you showed us mapped for
3 Jerry's cell phone hit off the tower that's on Liberty Street
4 here in St. Matthews save two of them, correct? And those
5 were around the midnight?

6 A. I'd have to play this again to confirm that. I do know
7 there was a lot of activity around Liberty Street.

8 Q. You know, it was so much fun the first time, let's watch
9 it again.

10 And when you get to those towers that aren't Liberty
11 Street, can you pause it for us?

12 A. Sure.

13 Q. Okay. Right there. You show two different towers; is
14 that right?

15 A. That's correct.

16 Q. The first one is at 11:53 p.m., seven minutes before
17 midnight. And where is that tower?

18 A. Just off of 601 at the Brookdale area.

19 Q. Okay.

20 A. Just off 26 and 601, in that general area.

21 Q. All right. And then you show one just mere minutes
22 after that, two minutes after that at 176; is that right?

23 A. Yes.

24 Q. Isn't it possible that if someone traveled on Route 601
25 from St. Matthews to Orangeburg, they could hit both of those

1 towers while making phone calls?

2 A. I can't say that. I can only go by what the company has
3 provided me with. I can't say that without knowing if
4 there's any other towers in the area.

5 Q. You can't say if it's possible or not possible, then, is
6 what you're telling us?

7 A. I can tell you what's probable. The strongest signal is
8 where the phone hits. In general, short of some factors, and
9 I'll explain those, it's going to be the closest tower. And
10 oftentimes mountain ranges, tall buildings, things like that
11 interfere with signal, and it may jump to another tower if
12 they can't get through the building or over the mountain,
13 situations such as that.

14 Q. Or crowded signals. I mean, certainly at 11:00 we're
15 not talking about that?

16 THE COURT: Mr. Leiendecker, please let him finish his
17 answer before you go to the next question.

18 MR. LEIENDECKER: Oh, I'm sorry, Your Honor.

19 THE WITNESS: In a situation like this, when we're
20 generally in a rural area, you don't have skyscrapers, you
21 don't have mountains, generally a flat area for the most
22 part, these calls are hitting the strongest or closest tower
23 to where that call was.

24 Q. Okay. But you have no idea if traveling up and down 601
25 you couldn't hit both of these towers; you can't say that to

1 any degree of certainly as an expert today?

2 A. I can't say that, no. This information's provided by a
3 phone company. All I do is take the information they
4 provided and put it on this map. You'd have to get a radio
5 frequency engineer in to answer that question.

6 Q. So your expertise doesn't give us any insight as to
7 where this phone was used?

8 A. My expertise deals with the information provided by the
9 cell phone company as to where that phone was hitting.

10 Q. So you're a mapper?

11 A. I'm a mapper, and I know from my training that phone is
12 in that general area or in that sector, as you see on --
13 right here. We actually have sectors with Verizon.

14 Q. Well, that sector's actually pointing us towards 601,
15 right?

16 A. In that general direction, yes.

17 Q. It's not showing us an arc that gives us a proximity as
18 to where his phone is, like K. R. 's, right?

19 A. That's correct. That's only with the RTT data.

20 Q. It's only showing us that it hit that tower, right?

21 A. Hit that tower on this side, and it's in this general
22 area.

23 Q. Okay. So it could have been -- it could have been up
24 that direction, correct?

25 A. Let me just explain this a little further, this line

1 right here is not the extension or the extent of that tower
2 signal. That's only for illustrative purposes.

3 Q. It's just a cartoon. That just shows us the pie is that
4 direction?

5 A. In that direction, that's right. That actual area is
6 going to come out in this general area here (indicating).

7 MR. LEIENDECKER: Okay. Beg the Court's indulgence for
8 just a second.

9 THE COURT: Yes, sir.

10 (Counsel and defendant confer.)

11 MR. LEIENDECKER: Thank you, Captain. No further
12 questions.

13 Thank you, Your Honor.

14 THE COURT: Mr. Banks?

15 CROSS-EXAMINATION BY MR. BANKS:

16 Q. Captain McDonald, I'm Martin Banks. I represent
17 Bryant McKnight. And you testified to a great deal of phone
18 information here and can I characterize K. R. 's phone
19 records as being the best of the records that you had to look
20 at?

21 A. Depending on what you're looking for. As far as
22 activity and location, yes. The RTT was very helpful.
23 However, her RTT did not show calls being made, who she was
24 talking to, that type thing. So that's why I wasn't able to
25 put the detailed spreadsheet of who she's talking to, because

1 I had no call detail records.

2 Q. Just, if you would, go up to that slide that shows the
3 list. I think it's a spreadsheet you called it. That's an
4 actual spreadsheet?

5 A. That's the actual raw data from Verizon on her phone.

6 Q. And you can manipulate that if you wanted to? Not that
7 you would. I mean, it's just a spreadsheet, right?

8 A. I mean, you could, yes. I imagine you could.

9 Q. I mean, you can actually make the columns wider and all
10 that?

11 A. Right.

12 Q. Right? Right.

13 And the neat thing about a spreadsheet is you can
14 literally download it into your software?

15 A. Correct. When we deal with phone records, electronic
16 transfer in Excel or something similar is how we prefer to
17 deal with them. They're much easier to deal with versus a
18 stack of paper like this. You can't put that stack of paper
19 into the computer, but the computer will read the raw data as
20 it comes when it goes in the software to read it.

21 Q. In fact, you can actually sort that information as it
22 comes to you, right?

23 A. Yes.

24 Q. You could sort that if you wanted to, right?

25 A. Yes, chronologically or whatever.

1 Q. Or by any column type?

2 A. Any column you wanted to, yes.

3 Q. Just pull up one of Bryant's -- pull up the page of
4 Bryant -- what you call Bryant McKnight's phone, and let's go
5 to the -- it's probably the third or fourth page where it's
6 1595, 1596, those call numbers.

7 That's where Bryant -- I know you've assigned -- you
8 didn't go check to see if that phone at the top there is his
9 phone number; you didn't go to the records and see if this is
10 Bryant's phone number?

11 A. The information I was provided was that Bryant had two
12 phones.

13 Q. And was -- is this the information you were provided?

14 A. Partial.

15 Q. You just got a list of phone numbers?

16 A. I've got more than that. Some people had multiple
17 phones.

18 Q. Okay. And so that's the one you were told is Bryant's
19 phone that you're checking, right?

20 A. Based on the investigation that was conducted, this was
21 the phone. That's correct.

22 Q. But you didn't go check to make sure that they were
23 accurate?

24 A. I relied on law enforcement information on this, yes.
25 Oftentimes on these subscriber information, you will get

1 another name, sometimes associated with the individual, that
2 may not be the one actually using the phone, a mother, a
3 sister, a brother, that type thing.

4 Q. And down there on 1595 and 1596, you indicate on these
5 records you've developed that Bryant McKnight called
6 Bryant McKnight?

7 A. According to the information I was provided.

8 Q. Well, let me ask you, this page of your demonstration
9 doesn't look anything like the one that we just looked at
10 with K. R. .

11 A. No, it's greatly simplified to show the call
12 relationships, the calls made, the time, inbound, outbound,
13 the length and who's calling who.

14 Q. And the one with K. R. was a spreadsheet that we could
15 sort and manipulate, right?

16 A. It can be manipulated, yes.

17 Q. And downloaded?

18 A. Yes.

19 Q. Did this come to you in a PDF?

20 A. No. It came to me on a disc, CSV format in Excel.

21 Q. A what kind of format?

22 A. Comma -- I can't think of what the SV stands for, comma
23 delineated format in Excel.

24 Q. Okay.

25 A. Basically they're separated by commas. When it comes in

1 Excel, it puts it into columns.

2 Q. And didn't you say earlier that that 21MN, and for the
3 life of me, I kept thinking it meant 21 minutes. It doesn't
4 mean 21 minutes.

5 A. No. When I enter this into ACISS, it asks for a
6 reference number. That's just something I make up just to
7 fill the block. It has no reference to this case whatsoever.

8 Q. So you put that data in there?

9 A. I put that data in.

10 Q. Okay. And you typed it in?

11 A. When I go to import these records, it wants a case
12 number; it wants the target number; it wants a reference
13 number. Some people put a case number in there twice. Some
14 people write "Bryant McKnight's phone records." I usually
15 just make up some -- anything just -- you've got to put
16 something in that block for it to accept it.

17 Q. Understood.

18 And did you type in the Derrick Sumter, you know, and so
19 forth?

20 A. What I did before I imported any of the records, all the
21 known subjects and their phone numbers I typed into the
22 software, okay? So I would type in that number and associate
23 it to Derrick Sumter, let's say. When I dump these records
24 in, it auto populates anything that's already in our system.

25 So Derrick Sumter had been entered by me with that phone

1 number, so when I bring these records into the system, it
2 automatically recognized that that number belongs to
3 Derrick Sumter and it populates it in this report.

4 Q. I believe you said that the Allied/New Star records that
5 Bryant McKnight -- that have been assigned to Bryant McKnight
6 here were the least accurate of all the phone records that
7 you -- among the least accurate?

8 A. They had a strange -- like I said, every company's a
9 little bit different, but they had one thing that I'd never
10 seen before: Only the outgoing calls placed were accurate
11 for tracking and mapping. The incoming ones were not
12 accurate and not to be used for any kind of tracking or
13 associating with a cell phone tower.

14 Q. And that's not the only problem with the Allied records,
15 is it?

16 A. I'm not sure I follow you.

17 Q. Well, didn't you say that I believe a cell -- we saw a
18 nice picture on the very front. You don't have to go to it,
19 but a cell phone tower has sort of a -- has three sides to it
20 at the top, is; that right?

21 A. Right.

22 Q. And those are those sectors you talked about?

23 A. Right.

24 Q. So this is -- when you saw that red arc, that was like
25 this sector or this sector or this sector (indicating)?

1 A. Right.

2 Q. And those three arcs would make a circle?

3 A. Right.

4 Q. Bryant's, I believe you said you can't tell which side
5 of that tower is being hit; is that right?

6 A. No. The information they provide is only the tower
7 location. They don't provide any sector information.

8 Q. So it's hitting off a tower, but it could be in the
9 360 degree area; it could be anywhere around that tower?

10 A. Yes. Anywhere in fairly close proximity within a two to
11 three, four miles, probably something like that.

12 Q. Now, that's the next question. Two to three or four
13 miles, why is that?

14 A. Tower signals vary due to a number of factors. Like I
15 talked about earlier, mountains, skyscrapers, populated
16 areas. Downtown Columbia, you're not going to have as far a
17 signal due to the dense population and dense use of the cell
18 phones.

19 In a more rural setting, that signal can go much
20 farther. There's not near the activity; there's not near the
21 structures that block the signal or use up the power of the
22 signal that's being put out by the phone company.

23 In an area like this, I can't give you it's a three-mile
24 radius, a four-mile radius. I can tell you it's going to be
25 to be a little further radius than it is in Columbia. I can

1 tell you, depending on one tower and where an adjoining tower
2 will be for the same company, roughly halfway in between is
3 going to be your coverage area.

4 They're designed by these engineers. They tilt the
5 tower a certain way to maximize coverage area, but they don't
6 want to overlap very much because they want to maximize their
7 profit and not have to, you know, put a strong signal way,
8 way over into this tower area. They want to kind of meet and
9 not have any dropped calls. So they're looking for
10 ultimately depth coverage everywhere. Occasionally you're
11 going to have a space in between one that may drop a call.

12 Q. But you're not familiar -- have you ridden all these
13 roads that we've been talking about today?

14 A. No, I haven't.

15 Q. Okay. You're not familiar with the topography of all
16 these roads that we've been talking about?

17 A. Not specifically, no.

18 Q. So how can you say three to four miles? Is that the
19 extent of the distance of a tower?

20 A. I'll just say the general area around that tower could
21 be anywhere from two to three up to seven, eight. It just
22 depends on where the other towers are for Allied Wireless in
23 relation to that particular tower.

24 Q. And so if my client's phone was hitting off of a tower,
25 and you don't know which direction it's coming from --

1 A. Mm-hmm.

2 Q. -- he could be -- I think you just said seven or eight.
3 He could be seven or eight miles in this direction, seven or
4 eight miles in that direction from the tower, seven or eight
5 miles in that direction from the tower or seven or eight
6 miles in that direction from the tower (indicating); is that
7 what you're saying?

8 A. Conceivably. Let me see if I can show you on the map
9 here.

10 This tower here, 1750, and this tower here (indicating),
11 1758, I can tell you the coverage area approximately. It's
12 going to be right in this area between the two. And then if
13 you go over here to this one (indicating), the coverage area,
14 so you say roughly right here (indicating), you bring this on
15 around, roughly this area right here, then you bring it on
16 around to this next tower roughly right in here. So it's not
17 a perfect circle. That's just illustrative purposes because
18 of the sectors.

19 Q. Because of the tilt and whatnot?

20 A. The tilt and things like that, yes.

21 Q. But if you have a rural, you know, fairly rural cell
22 tower --

23 A. Yes.

24 Q. -- with, you know, cell towers that are not as close
25 together, that's going to try to get full extension all the

1 way around, is it not?

2 A. I would expect it to be more than just a couple miles.

3 Q. Yes.

4 A. And probably less than ten.

5 Q. Okay. So now you're saying that in a rural cell tower,
6 you could be ten miles in any direction from the center of
7 that?

8 A. Lot of factors.

9 Q. Sure, sure.

10 A. It's possible.

11 Q. But it could be?

12 A. It's possible.

13 Q. Which means from one end to the other end is 20 miles?

14 A. Conceivably, yes.

15 Q. Okay? Now, you talked about your -- I think called
16 CellHop?

17 A. CellHawk.

18 Q. CellHawk.

19 A. Hawk.

20 Q. Like the bird?

21 A. Yes.

22 Q. CellHawk. You don't enter in all the data; you just
23 enter in some of the data and it populates is what you said?

24 A. I literally -- much like the other software, I drag and
25 drop the call detail records and the cell tower -- I get a

1 listing of all the cell towers in the area. I drag and drop
2 that into the software. It then reads it, it loads it and
3 then it allows me to put in search parameters.

4 So instead of everything from February 10th to the end
5 of the month, I only focused on February 13th late afternoon
6 early evening until the early morning hours of the 14th,
7 narrowed that window down.

8 And then when I recorded the display that we saw here
9 earlier, that's what's illustrated there, the towers that are
10 hit during that time during phone calls, not RT -- I think
11 K. R. 's was the only one that had the RTT data, where you
12 saw that arc. Everything else was call detail records.

13 And this system, all this system does is, there's two
14 ways you can do this: You can do it by hand, which I did on
15 these Allied Wireless ones where I physically put it on
16 Microsoft Streets & Trips myself versus letting a computer do
17 it by importing the records.

18 Q. When you go to all these courses and you, you know,
19 learn all this stuff you've taught us here today, do they
20 talk about disclaimers that they have in the -- in their
21 delivery system with this cell information?

22 A. As far as?

23 Q. Well, have you ever seen anything like that
24 (indicating)?

25 A. Yes. This is what I was talking about earlier with the

1 high confidence, low confidence on the RTT data.

2 Q. So that --

3 A. They do have certain disclaimers, yes.

4 Q. And that's just limited to high confidence, low
5 confidence?

6 A. Yes.

7 Q. And this disclaimer wouldn't even apply -- I know it's
8 not New Star or Allied, but that type of disclaimer isn't
9 even necessary on what we're assigning Bryant McKnight's
10 9423, that wouldn't even apply there because they don't even,
11 they don't even offer the confidence level that this Verizon
12 account did?

13 A. They don't -- well, I don't know if they offer it or not
14 because I didn't obtain these records, but the records I have
15 were the call detail records for the tower locations of the
16 calls only. Whether or not Allied has those available, I
17 don't know. I was only working with the information I was
18 given.

19 Q. Very good.

20 And I'll just show you, for example, this is
21 Derrick Sumter's -- this is State's Exhibit 26. This is A.
22 This is Derrick Sumter's phone records. You said you got a
23 DVD. You didn't receive hard copies?

24 A. Not hard copies, no. And I prefer it to be in
25 electronic format on a CD or email, where I can work with it

1 much easier than flipping through several hundred pages.

2 Q. But you've got DVD's only of all these numbers that
3 we've talked about today?

4 A. Records that were developed during the investigation by
5 Calhoun County.

6 Q. Right. And then you were instructed to focus on the
7 13th and a few days after; is that right?

8 A. The 13th and the 14th mainly.

9 Q. Okay. So no one asked you to look at any data from
10 February the 2nd?

11 A. No.

12 MR. BANKS: One moment, Your Honor.

13 Nothing further, Your Honor.

14 THE COURT: Any redirect?

15 MR. SORENSON: No, Your Honor.

16 THE COURT: You may step down, Captain. You're free to
17 go.

18 Solicitor?

19 MR. PASCOE: Beg the Court's indulgence. I think we're
20 going to rest. I just want to make sure.

21 THE COURT: Sure.

22 MR. PASCOE: Thank you, Your Honor. At this time the
23 State rests.

24 THE COURT: Thank you, Solicitor.

25 Ladies and gentlemen of the jury, it's about 1:15 right

1 now. It's a good time for us to take our lunch break. We
2 must take certain matters up with the Court, and I'm certain
3 that you're hungry. We've had a long morning here. If you
4 could be back in the jury room about 2:30, then we'll get
5 started back up with the trial.

6 Again, please remember my previous instruction not to
7 discuss this case with anyone or allow anyone to discuss this
8 case with you. Have a nice lunch.

9 (The jury retires to the jury room at 1:16 p.m.)

10 THE COURT: Any motions at this time?

11 Could we have quiet in the gallery, please.

12 Any motions at this time?

13 MR. BANKS: Yes, Your Honor. In the light most
14 favorable to the State, on behalf of Bryant McKnight, I'd
15 move for directed verdict on both the count of murder and of
16 kidnapping, and I'd like to focus on the kidnapping, if I
17 could.

18 I think, you know, obviously, you've heard the
19 testimony, Your Honor. I believe that we had repeated -- in
20 fact, I don't think there was one witness out there that
21 contradicted the testimony that K. R. voluntarily, apparent
22 to everyone, she voluntarily went with Bryant.

23 I think if you combine that with the -- what they
24 participated in during the entire time that they were
25 together up until the fateful moment, I think I'd

1 characterize Bryant as being more of an unwilling
2 participant, just like the driver of the car,
3 Jonathan McKnight.

4 I believe that, again, in the light most favorable to
5 the State, that you've heard the testimony, Jerry McKnight
6 was in charge as soon as he got on the scene or in the same
7 company as K. R. the entire evening.

8 After he came upon Ms. K. R. at the scene, my
9 client -- the only thing my client did at any point was he
10 tried to talk to Jerry. He -- and I believe he tried to stop
11 this from happening. He thought it was a bad idea.

12 And Jerry even threatened him. One witness said that,
13 "You gonna shoot this B too," and Jerry had already, I
14 believe, shot her nine to ten times. We know that. She was
15 only shot 12 times. One was a nonfatal wound.

16 I think she was already dead when Bryant killed her --
17 or I mean shot her, and I believe that you should find in our
18 favor on this motion for kidnapping and murder.

19 THE COURT: Mr. Leiendecker?

20 MR. LEIENDECKER: Thank you, Your Honor. On behalf of
21 Jerry McKnight, I would make the same motions for directed
22 verdict I do appreciate counsel's argument that suggests that
23 his client was there. I certainly don't make those
24 arguments. I don't believe that the State's provided
25 sufficient evidence to demonstrate that my client was there

1 and/or involved.

2 The only testimony even available is the testimony of
3 coconspirators who were involved, I believe, in this crime
4 itself, both during, before and after the crime. There is no
5 physical evidence there is no forensic evidence, there is no
6 real evidence that ties Mr. McKnight, my client, to this
7 crime.

8 Without putting him in this crime, you can't put the
9 weapon in his hand; therefore, he didn't possess a weapon,
10 and so I would ask that directed verdict be granted as to all
11 three of these indictments: Kidnapping, murder and the
12 use of -- possession of a weapon by someone convicted of a
13 violent felony.

14 THE COURT: Thank you, Mr. Leiendecker.
15 Solicitor?

16 MR. SORENSON: May it please the Court, Your Honor. I
17 guess I'd kind of go backwards and address Mr. Leiendecker's
18 assertion first. Obviously, as Your Honor knows the standard
19 here, evidence most favorable to the State, I think just
20 Jonathan McKnight's testimony is enough to get this to a
21 jury.

22 Obviously he testified that he observed that man,
23 Jerry McKnight, you know, drag K. R. [REDACTED] against her
24 will out of the back of the car and unload a gun into her and
25 drag her into a ditch after he'd handed the gun off to his

1 codefendant and told him to shoot her also. So I think in
2 the light most favorable to the State, that's enough to get
3 it to a jury without going into talking about any of the
4 corroborating evidence.

5 As to Bryant McKnight, my argument there is when you
6 look under -- I mean, the hand of one, the hand of all. We
7 have evidence that he texted Stephon Green prior to the
8 homicide that he was going to kill her, have evidence from
9 multiple other witnesses about the two of them talking about
10 if they found out that they thought she may have been
11 involved in the burglary at their mother's house, if they
12 found out who was involved, they were going to do harm and
13 possibly kill that person. So I think that would go to kind
14 of the prior knowledge that would lead to that accomplice
15 liability.

16 Additionally, as far as Mr. Banks' arguments about what
17 happened out there on Stiffmire Road, I do think we have
18 evidence of a kidnapping, whether she was technically
19 willingly in the car, I think there is evidence basically
20 that she was deceived and decoyed into that car.

21 There's also evidence that the kidnapping, even if you
22 assume that the kidnapping hadn't started then, it did occur
23 when she was forcibly removed from the back seat of that car
24 and drug to the back of the car and shot 12 times. I do
25 think that would be evidence that the jury could find both of

1 them guilty of kidnapping.

2 And as to the murder, Your Honor, as Your Honor is aware
3 of the -- I don't know if he's going to ask for the duress
4 defense, but duress is not a defense to murder. You can't
5 claim somebody threatened you and then use that as a defense
6 for committing a homicide.

7 So I think if he, I mean, basically conceded that he
8 fired. Evidence shows that he fired, shot her. I mean, he's
9 guilty of murder under accomplice liability, hand of one. So
10 we'd respectfully ask, Your Honor, to deny as to all five of
11 the indictments on both defendants.

12 THE COURT: Thank you, gentlemen. As all parties are
13 aware, the Court, at this stage of the proceeding, shall
14 consider only the existence or nonexistence of evidence and
15 not its weight; and therefore, the Court does find that the
16 State has provided competent evidence to prove each of the
17 charges contained in each indictment, and I'll respectfully
18 deny your motions.

19 Defense counsel, at this point obviously we'll take our
20 lunch break; however, when we come back, please have your
21 clients prepared, as I will place them under oath to ask
22 whether or not they wish to testify or not.

23 MR. LEIENDECKER: Thank you, Your Honor.

24 THE COURT: Just for housekeeping purposes, obviously
25 we'll talk about timing later, but I told the jury to come

1 back at 1:30, so if you could be back in here at 1:30.

2 MR. LEIENDECKER: 2:30, Your Honor.

3 THE COURT: 2:30, I'm sorry. At 2:30 we'll be back here
4 in the courtroom to start with that before we bring the jury
5 back in.

6 MR. LEIENDECKER: Thank you, Your Honor.

7 MR. PASCOE: Thank you, Your Honor.

8 (Recess held.)

9 THE COURT: Defense counsel, have you had an opportunity
10 to discuss with your clients whether or not they wish to
11 testify?

12 MR. LEIENDECKER: I have, Your Honor.

13 MR. BANKS: Yes, Your Honor.

14 THE COURT: Are they prepared to be explained their
15 rights by the Court?

16 MR. LEIENDECKER: They are, Your Honor.

17 THE COURT: Gentlemen, if you'd please rise.

18 Mr. Clerk, if you'd please place them under oath.

19 CLERK OF COURT: Yes, ma'am. Raise your right hand,
20 please.

21 JERRY MCKNIGHT and BRYANT MCKNIGHT,
22 being first duly sworn, were examined and testified as
23 follows:

24 CLERK OF COURT: Please state your full name for the
25 record.

1 JERRY MCKNIGHT: Jerry McKnight.

2 BRYANT MCKNIGHT: Bryant McKnight.

3 THE COURT: Mr. Jerry McKnight, Mr. Bryant McKnight, at
4 this time I'm going to explain to you certain of your rights.
5 If you don't understand anything that I say, please let me
6 know. If you want me to explain anything in more detail for
7 you, also please let me know. Do you understand?

8 JERRY MCKNIGHT: Yes, ma'am.

9 BRYANT MCKNIGHT: Yes, ma'am.

10 THE COURT: We have now reached the stage of your trial
11 where you may present your defense. You have the right to
12 claim the protections given to you by the Fifth Amendment of
13 the Constitution of the United States. This amendment states
14 in part that no person shall be compelled in any criminal
15 case to be a witness against himself.

16 This means that you cannot be required to testify in
17 this case. You have the right to testify on your own behalf;
18 however, no one can make you testify. This is a personal
19 right and no one can waive this right except for you.

20 If you decide to testify, you will be subject to the
21 same rules that govern other witnesses and you may be
22 examined and cross-examined on any relevant issue in this
23 case.

24 In addition, if you have any convictions involving
25 dishonesty or false statement or for crimes punishable by

1 imprisonment for more than one year and the Court determines
2 that the probative value of this evidence outweighs the
3 prejudicial effect to you, the solicitor will be able to
4 introduce your record and attack your credibility.

5 If you decide to testify, this decision on your part
6 must be made freely, voluntarily and intelligently made with
7 the knowledge of the protections given to you by the Fifth
8 Amendment and the consequences of your decision to testify.

9 If you decide not to testify, I will instruct the jurors
10 they cannot give the fact that you did not testify any
11 consideration whatsoever and that there is to be absolutely
12 no prejudice to you because you did not testify.

13 It's left entirely up to you whether or not you wish to
14 testify. You may talk to your attorney. You may talk to
15 your family, your friends and anyone else that you wish to
16 talk to, but the final decision is left entirely up to you.

17 Mr. Jerry McKnight, do you understand what I've
18 explained to you?

19 JERRY MCKNIGHT: Yes, ma'am.

20 THE COURT: Mr. Bryant McKnight, do you understand what
21 I've explained to you?

22 BRYANT MCKNIGHT: Yes, ma'am.

23 THE COURT: Have you discussed with your lawyers whether
24 or not you should testify, Mr. Jerry McKnight?

25 JERRY MCKNIGHT: Yes, ma'am.

1 THE COURT: And, Mr. Bryant, have you discussed with
2 your lawyer whether or not you wish to testify?

3 BRYANT MCKNIGHT: Yes, ma'am.

4 THE COURT: Do you wish to have any more time to talk to
5 your lawyers as to whether or not you wish to testify,
6 Mr. Jerry McKnight?

7 JERRY MCKNIGHT: No, ma'am.

8 THE COURT: Mr. Bryant McKnight?

9 BRYANT MCKNIGHT: No, ma'am.

10 THE COURT: Do you wish to testify, Mr. Jerry McKnight?

11 JERRY MCKNIGHT: No, ma'am.

12 BRYANT MCKNIGHT: No, ma'am.

13 THE COURT: All right. Thank you. You may have a seat.
14 Counsel for the defense, you've had an opportunity to
15 discuss such matters with each of your clients?

16 MR. BANKS: Yes, Your Honor.

17 THE COURT: Is that correct, Mr. Leiendecker?

18 MR. LEIENDECKER: Yes.

19 THE COURT: All right. Are we ready to proceed with the
20 defense?

21 MR. LEIENDECKER: Yes, Your Honor. The only caveat I
22 would add to that is we do have some witnesses that we intend
23 to present as a defense, and I will be asking my client again
24 after those witnesses have testified that it's still his
25 intention not to testify.

1 THE COURT: Sure. And that --

2 MR. LEIENDECKER: Before I close my side of the case.

3 THE COURT: Sure. And then that applies to each of you.

4 If at any time during the presentation of your defense if you
5 change your mind and wish to testify, you certainly have that
6 right; however, that decision, again, must be made by you,
7 freely, voluntarily, intelligently made, knowing the
8 protections that are there for you by the constitution.

9 Anything further?

10 MR. LEIENDECKER: No.

11 MR. BANKS: No, Your Honor.

12 THE COURT: Who will be going first? Mr. Leiendecker,
13 are you going first?

14 MR. LEIENDECKER: I will.

15 THE COURT: Okay. Are we ready for our jury then?
16 Let's have our jury.

17 (The jury enters the courtroom at 2:38 p.m.)

18 THE COURT: Welcome back, ladies and gentlemen of the
19 jury. I hope that you had a nice lunch.

20 At this stage of the proceeding, it is now the
21 opportunity for the defense, if they wish to present
22 anything, to do so.

23 Counsel for the defense, do you wish to proceed?

24 MR. LEIENDECKER: I do, Your Honor.

25 THE COURT: Mr. Leiendecker, you may call your first

1 witness.

2 MR. LEIENDECKER: The defense would call
3 Melissa Robinson, Ms. Robinson.

4 CLERK OF COURT: If you will place your left-hand on the
5 Bible and raise your right hand.

6 MELISSA ROBINSON,
7 being first duly sworn, testified as follows:

8 CLERK OF COURT: Please state your full name for the
9 record.

10 THE WITNESS: Melissa Renee Robinson.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION BY MR. LEIENDECKER:

13 Q. Ms. Robinson, my name's Mark Leiendecker. I'm counsel
14 for Mr. Jerry McKnight. Would you please introduce yourself
15 to the jury, tell us your age and where you live.

16 A. I'm 33 years old and I reside at [REDACTED] Lakeview Street,
17 Apartment [REDACTED].

18 Q. What is the name of the apartment complex you live in?

19 A. Lakeview Apartments.

20 Q. Do you know Jerry McKnight?

21 A. Yes, sir.

22 Q. Do you know Bryant McKnight?

23 A. Yes, sir.

24 Q. In February of 2014, February of last year, what was
25 your relationship with Jerry and what was your living

1 arrangement with him?

2 A. We was girlfriend and boyfriend.

3 Q. Did Jerry on occasion stay at the apartments at

4 Lakeview?

5 A. Yes, sir.

6 Q. Was it a bit of a problem that he stayed there?

7 A. No, sir.

8 Q. With the apartment manager I mean, not with you?

9 A. In the -- yes, sir.

10 Q. A lot of attention and discussion in this trial
11 obviously centers on the day before Valentine's Day last
12 year, the 13th of February. Do you remember that day?

13 A. I left to go to work.

14 Q. Okay.

15 A. I left from my home.

16 Q. The question is do you remember the day.

17 A. Oh, no, sir.

18 Q. Then I'll get to what happened that day.

19 A. Oh, okay.

20 Q. Do you remember?

21 A. No, sir.

22 Q. You don't remember February 13th?

23 A. Yes, I remember February the 13th.

24 Q. Okay. Where were you that day on the 13th of February?

25 A. At home.

1 Q. Okay. And did you, was there a time that you left home?
2 What -- first of all, I'm sorry. Let me ask you, do you
3 work? Did you work then?

4 A. Yes, sir.

5 Q. And where did you work?

6 A. McEntire.

7 Q. Explain to the jury what that is, what you do there.

8 A. It's a produce -- work with frozen vegetables, lettuce,
9 tomatoes, cucumbers.

10 Q. And where are their offices or location?

11 A. In Columbia.

12 Q. On the 13th, did you go to work that day?

13 A. Yes, sir.

14 Q. Were you at home until you went to work?

15 A. Yes, sir.

16 Q. And approximately, if you remember, what time did you go
17 to work?

18 A. At 2 p.m.

19 Q. Did you see Jerry McKnight that day before you went to
20 work?

21 A. Yes, sir.

22 Q. Where did you see him?

23 A. At my house.

24 Q. Okay. And when you go to work, how long are you
25 generally there? When do you get home?

1 A. I'm there until 2:00.

2 Q. You go in -- you leave at 2 and you're there until 2?

3 A. Yes, sir.

4 Q. Okay. So if I understand your testimony, you're gone
5 about 12 hours; is that right?

6 A. Yes, sir.

7 Q. Okay. Thank you.

8 And when you got done with work on the 13th in the early
9 morning hours of February 14th, where did you go?

10 A. Home.

11 Q. And when you got home, was it -- what time was it,
12 approximately?

13 A. Around about 2:30.

14 Q. Was anyone at the apartment when you got home?

15 A. Yes, sir.

16 Q. Who?

17 A. Jerry McKnight.

18 Q. And what was Jerry doing?

19 A. He had cook us a Valentine dinner.

20 Q. Do you remember what he cooked?

21 A. Beans, rice and neck bones.

22 Q. And where was -- where was the meal?

23 A. On the stove.

24 Q. Where was Jerry?

25 A. At my apartment.

1 Q. What was he doing?

2 A. Upstairs washing up.

3 Q. Okay. In preparation for the meal?

4 A. Yes, sir.

5 Q. Okay. Did you -- when you got home and you saw that he
6 had cooked a meal for you, did you settle in and eat that
7 meal?

8 A. Yes, sir.

9 Q. And did you talk with him?

10 A. Yes, sir.

11 Q. Tell me what was going on that day with you and Jerry.
12 Were you guys having a good day, an average day, a bad day?

13 A. It was average.

14 Q. Okay. Were you guys in communication with each other
15 during the day?

16 A. Yes, sir.

17 Q. And how was he in communication with you while you were
18 gone to work?

19 A. Cell phone.

20 Q. What is your cell phone number at that time?

21 A. [REDACTED] 5906.

22 Q. Were you guys having any kind of fuss or argument?

23 A. We argued.

24 Q. Okay. When you got home, did you eat your whole meal
25 with Jerry?

1 A. Half of it.

2 Q. Okay. Why did you only eat half the meal?

3 A. We argued.

4 Q. What were you guys arguing about? Do you remember?

5 A. Just me hanging out.

6 Q. And I'm really -- I know this is sensitive. I'm not
7 trying to pry, but when you say you hanging out, can you
8 explain that a little better to me? What were you guys
9 arguing about you hanging out?

10 A. Like me running the streets and not staying home, just
11 hanging out with the girls, drinking and stuff.

12 Q. Okay. So you and Jerry were fussing about the hours you
13 were keeping and not being home?

14 A. Yes, mm-hmm.

15 Q. And as a result of that argument, what happened?

16 A. I left.

17 Q. You left your own apartment?

18 A. Yes.

19 Q. And where was Jerry at that time?

20 A. I left him at home.

21 Q. And where did you go?

22 A. To my cousin house.

23 Q. All right.

24 A. Mm-hmm.

25 Q. Did you and Jerry then try to call each other?

1 A. Yes, I tried to call him.

2 Q. Okay. And if there are phone calls reflected in the
3 records that show that there were calls to you around 3:00,
4 did you guys finally hook up and talk around 3:00?

5 A. He never answered.

6 Q. Did he call you back?

7 A. No, sir.

8 Q. How many times did you try to call him?

9 A. About three or four.

10 Q. When is the next time you spoke with Jerry?

11 A. The next day.

12 Q. About what time?

13 A. Around about between 1 and 2.

14 Q. All right. Was there anything off or unusual about
15 Jerry when you got home on the 13th?

16 A. No, sir.

17 Q. Was there anything that made you suspicious or concerned
18 regarding his demeanor, attitude, anything that was at the
19 apartment, anything when you got home?

20 A. No, sir.

21 Q. On the 14th I mean, because you got home that morning.

22 Did you ever see a book bag, a black book bag, at or
23 near your home, in Jerry's possession or near Jerry on the
24 13th or 14th of February last year?

25 A. No, sir.

1 Q. Did you ever see Jerry at any time with a book bag?

2 A. No, sir.

3 MR. LEIENDECKER: One moment, Your Honor.

4 No further questions. Thank you.

5 THE COURT: Cross-examination.

6 MR. PASCOE: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. PASCOE:

8 Q. Good afternoon, Ms. Robinson.

9 A. Good afternoon.

10 Q. You doing okay today?

11 A. Yes, sir.

12 Q. I only have two more questions for you. My name's
13 David Pascoe. I'm the solicitor. So basically what you've
14 told this jury is you work pretty hard, 12 hours a day?

15 A. Yes, sir.

16 Q. 2:00 in the afternoon until 2:00 the next morning?

17 A. Yes, sir.

18 Q. So what you've told this jury is on Thursday, February
19 the 13th, you have absolutely no idea where Jerry McKnight
20 was at 6:30 that afternoon or evening because you were at
21 work --

22 A. Yes, sir.

23 Q. -- correct?

24 A. Yes, sir.

25 Q. You have no idea where he was at 7:00 that night.

1 A. No, sir.

2 Q. Because you're working.

3 A. Yes, sir.

4 Q. You have no idea where he was at 8, 9, 10, 11 or
5 midnight, do you?

6 A. No, sir.

7 Q. No idea where he was at 1:00 in the morning on the 14th
8 either, do you, ma'am? Right? No idea?

9 A. No idea.

10 Q. And no idea what he was doing during that time, do you?

11 A. No, sir.

12 Q. Okay. And the other thing is, where -- Lakeview
13 Apartments, are those the ones near the sheriff's office?

14 A. Yes, sir.

15 Q. Which is on the same road as John Ford, technically,
16 right?

17 A. Yes, sir.

18 Q. And do you know Carolyn McKnight?

19 A. Yes, sir.

20 Q. She actually technically lives just right down the road
21 from you, doesn't she?

22 A. Yes, sir.

23 Q. And his phone number back then was [REDACTED] 9375,

24 Ms. Robinson?

25 A. Yes, sir.

1 Q. And one last question, if you don't know where he was
2 at, say, 11:55 p.m. because you're working on February 13th,
3 do you have any reason to know why his phone would be pinging
4 going towards the Four Holes area that night?

5 A. No, sir.

6 MR. PASCOE: Beg the Court's indulgence.

7 Thank you very much for coming today, Ms. Robinson.

8 Thank you.

9 THE COURT: Any redirect?

10 MR. LEIENDECKER: Yes, Your Honor.

11 REDIRECT EXAMINATION BY MR. LEIENDECKER:

12 Q. Melissa, the solicitor said that you don't have any idea
13 what Jerry was doing or where he was from 2 p.m. on the 13th
14 to 2 a.m. on the 14th. You heard him ask you that, right?

15 A. Yes, sir.

16 Q. But in actual point of fact, you spoke with Jerry
17 several times that day by cell phone, correct?

18 A. Yes, sir.

19 Q. In any of those conversations did Jerry ever --

20 MR. PASCOE: Objection, hearsay, Your Honor.

21 MR. LEIENDECKER: I'm not asking what he said to her.

22 MR. PASCOE: Okay, go ahead.

23 MR. LEIENDECKER: But I appreciate your anticipation.

24 MR. PASCOE: That's right.

25 Q. At any time in those conversations, did Jerry seem

1 upset, angry, stressed, in a bad place?

2 A. No, sir.

3 Q. Were those conversations just about relationships and
4 matters between the two of you?

5 A. Yes, sir.

6 Q. Did they seem at all abnormal or did they seem normal?

7 A. They was normal.

8 MR. LEIENDECKER: Okay. I don't have any further
9 questions.

10 THE COURT: You may step down, ma'am. Thank you.
11 You may call your next witness.

12 MR. LEIENDECKER: Defense would call Carolyn McKnight.

13 CLERK OF COURT: Place your left hand on the Bible,
14 please, raise your right hand.

15 CAROLYN MCKNIGHT,
16 being first duly sworn, testified as follows:

17 CLERK OF COURT: Please state your full name for the
18 record.

19 THE WITNESS: Carolyn McKnight.

20 THE COURT: Your witness.

21 DIRECT EXAMINATION BY MR. LEIENDECKER:

22 Q. Ms. McKnight, I'm Mark Leiendecker. I'm Jerry's
23 attorney, and I have a few questions for you today about the
24 night and the evening of February the 13th last year, 2014,
25 okay?

1 A. Mm-hmm.

2 Q. Do you remember that night just a day or so after the
3 ice storm had hit here in St. Matthews?

4 A. Yes, I remember that night.

5 Q. Can you tell me on that night or that afternoon, who was
6 at your house?

7 A. He came and got a hair braid.

8 Q. I'm not asking -- I'm asking if you can tell me who was
9 there. When you say "he" --

10 A. Oh, Jerry came and got a hair braid.

11 Q. Jerry came to your house that afternoon?

12 A. Got a hair braid, yes.

13 Q. Okay. Was anyone else at your house?

14 A. His mama.

15 Q. His mother?

16 A. Mm-hmm.

17 Q. Why was his mother at her house?

18 A. Because she -- the light was out and she came stay with
19 me.

20 Q. Okay. And what's your relationship with his mother,
21 Johnnie Mae?

22 A. Sister.

23 Q. I'm sorry, you've got to speak up for me.

24 A. Sister.

25 Q. She's your sister?

1 A. Yes.

2 Q. And what's your relationship with Jerry then?

3 A. Nephews.

4 Q. Okay. Do you know Bryant McKnight also?

5 A. Yes, sir.

6 Q. He's also your nephew?

7 A. Yes, sir.

8 Q. How about Jonathan McKnight; do you know Jonathan?

9 A. My grandson.

10 Q. Jonathan is your grandson.

11 When Jerry came over to your apartment, how did he get
12 there?

13 A. I think he walked. Someday he ride a bike.

14 Q. That day, do you know if he walked or rode a bike?

15 A. He walked that day.

16 Q. Okay. Did Jerry have -- did Jerry drive a car?

17 A. No.

18 Q. He came over for what reason again?

19 A. Get a hair braid.

20 Q. Okay. And who did the hair braid for him?

21 A. I did.

22 Q. And you lived then and you still live now where?

23 A. [REDACTED] Agnes Street.

24 Q. Okay. And where is that in relation to the old John
25 Ford School, the police station?

1 A. Right across from the police station.

2 Q. Okay. And is it close to the Lakeview Apartments?

3 A. Right down the street.

4 Q. They're close to each other?

5 A. Mm-hmm.

6 Q. How long does it take to braid Jerry's hair back then?

7 Now it would take forever.

8 A. 30 or 45 minutes, something like that.

9 Q. About 45 minutes?

10 A. Depending on how I braid it.

11 Q. Okay.

12 A. If I braid it small. If I braid it big, don't take that

13 long, about 30 minutes, something like that.

14 Q. Do you know how long you took that day, approximately?

15 Do you have any idea?

16 A. About 45 minutes, something like that.

17 Q. Okay. And after Jerry had his hair done, did he stay at
18 your place?

19 A. He stayed -- he stayed for a while, then he left and he
20 never came back.

21 Q. About what time was it? What was it like outside? Was
22 it getting dark?

23 A. It was like dusk dark.

24 Q. Dusk dark?

25 A. Yes.

1 Q. Okay. Could you still see when he left? I mean --

2 A. I don't pay no attention.

3 Q. Okay.

4 A. I be in my house. I don't know what be going on out
5 there in the street.

6 Q. That's a fair answer.

7 A. You know I'm gone tell the truth. I got tell it.

8 Q. From the time that he left your apartment at some time
9 around dusk dark -- and I like that phrase. I'm going to use
10 it -- did he come back that evening?

11 A. No.

12 Q. Who was --

13 A. I ain't seen him no more after that.

14 Q. You didn't see him again after that?

15 A. No. After he left, I didn't see him no more.

16 Q. Who else was there that night?

17 A. My grandkids came there. They always come to see me.

18 Q. Your grandkids came to see you?

19 A. Yes, sir.

20 Q. What grandkids, Jonathan?

21 A. No. Just his sister and brother, they come. They come
22 every now and then.

23 Q. Okay. Was Johnnie Mae, the --

24 A. Yes, she was.

25 Q. -- the McKnights' mother still there?

1 A. Yes.

2 Q. Okay. Do you remember Bryant having a bag at your
3 house?

4 A. He had like a trash -- like a paper bag, like grocery
5 bag with clothes in. That's it.

6 Q. You don't remember a --

7 A. I ain't never see no book bag and whatever they talking
8 about. I don't know nothing about that.

9 Q. Okay, Ms. McKnight, I'm going to ask you to stay with
10 me, because you're doing kind of a mind-reading trick on me
11 right now. So just listen to my questions and then answer
12 them, okay? I know you're nervous, all right?

13 A. All right.

14 Q. Did Bryant come back to the house at any time to get the
15 bag that was there?

16 A. No.

17 Q. Is the bag still at your house?

18 A. No.

19 Q. So how did it get out of your house?

20 A. It was well before then, before anything, whatever come
21 up, whatever, so I don't know.

22 Q. So he took the bag, but you don't know when he took it;
23 is that what you're telling me?

24 A. I don't know what day it is. I got a bad memory.

25 Q. Okay.

1 MR. PASCOE: Your Honor, I'm sorry. Could I ask the
2 court reporter or somebody to tell me what that answer was?
3 I couldn't hear it.

4 THE WITNESS: I said I have bad memory.

5 MR. PASCOE: You have a bad memory? I'm sorry.

6 THE WITNESS: Yes, I don't remember.

7 MR. PASCOE: Okay. Thank you, ma'am.

8 Q. So on that day in question, after the ice storm, you
9 remember Carolyn being at your house; is that right?

10 A. Carolyn?

11 Q. I'm sorry. Johnnie May, your sister, Ms. Carolyn. I
12 apologize.

13 A. Yes, I remember she be there.

14 Q. And you remember braiding Bryant's -- someone's hair
15 that day, correct?

16 A. Jerry, yes.

17 Q. And did Jerry ever come back to your house after he left
18 at dusk dark?

19 A. No.

20 MR. LEIENDECKER: All right. No further questions.

21 THE COURT: Mr. Banks?

22 MR. BANKS: Very briefly, Your Honor.

23 CROSS-EXAMINATION BY MR. BANKS:

24 Q. Miss Carolyn, did you see Jonathan McKnight bring Bryant
25 by your house that night?

1 A. No.

2 Q. Have you ever seen Sandra Hughes bring Bryant by your
3 house?

4 A. I don't know who that is.

5 Q. You don't know who that is?

6 A. No, I don't.

7 Q. Okay. Did you ever see a woman, maybe a little older
8 woman --

9 A. No. No, sir.

10 Q. -- bringing Bryant by your house?

11 A. Uh-uh.

12 MR. BANKS: All right. One moment, Your Honor.

13 THE WITNESS: Who you say the woman was?

14 Q. Ma'am?

15 A. Talking about his girlfriend?

16 Q. Yes, that green truck, she drove the green truck.

17 A. Yes, she come, you know.

18 Q. Okay.

19 A. I didn't know his girlfriend, who he was staying with.

20 I don't be paying attention. I be in my house, trying to
21 mind my business. I don't know what going on.

22 Q. Do you remember the green truck?

23 A. I know the -- yes. Yes, sir.

24 Q. Have you ever seen Bryant with a gun?

25 A. Hm-mm.

1 Q. Ever seen Bryant with a black and white gun?

2 A. No.

3 Q. Did you ever call Bryant on his cell phone?

4 A. No.

5 Q. Ms. McKnight, have you ever seen Bryant in this hoodie?

6 A. No.

7 Q. How often do you see Bryant, back then?

8 A. I don't be seeing Bryant that much.

9 Q. He's your nephew, right?

10 A. Yes.

11 MR. BANKS: No further questions.

12 THE COURT: Solicitor?

13 CROSS-EXAMINATION BY MR. PASCOE:

14 Q. Good afternoon, Ms. McKnight.

15 A. Good afternoon.

16 Q. My name's David Pascoe. I just have a few questions for
17 you. Like you said, you try to mind your own business,
18 right?

19 A. Oh, I be trying to.

20 Q. That's right. And as you've testified to a couple
21 times, you have a bad --

22 A. I'll say one thing, if I'm gone tell the truth, I'm gone
23 tell the truth.

24 Q. Yes, ma'am.

25 A. Something I don't see, I'm not gone tell something I'm

1 not seen.

2 Q. Yes, ma'am. That's fine.

3 A. I tell what I know.

4 Q. Exactly.

5 And like you told this jury, you told the truth. You
6 said you have a bad memory?

7 A. I've got a bad memory. I go to doctors.

8 Q. Yes, ma'am. I've got a bad memory too.

9 A. I've got a bad memory. My memory go sometime. You
10 know, I ain't young now.

11 Q. What are you about 29, 30?

12 A. No, I'm 55 years old.

13 Q. All right. Never would have guessed it.

14 A. I don't remember like I used to remember.

15 Q. Okay. But going back, like you've testified that you
16 have a bad memory, have people been trying to refresh your
17 memory this week?

18 A. They tried, but I don't let them do it.

19 Q. Okay. Mr. Leiendecker has been trying to refresh your
20 memory?

21 A. No, sir.

22 Q. You wouldn't let him do it, would you? Good for you.

23 MR. LEIENDECKER: Objection, Your Honor. First of all,
24 her answer was "no," and then the solicitor continued on.

25 MR. PASCOE: I asked if she was letting him do it. She

1 said "no."

2 THE COURT: Let's move on.

3 Q. And let me ask you this: And finally, you lived near
4 Ms. Robinson?

5 A. Who that is?

6 Q. The lady who just testified. You live near Lakeview
7 Apartments?

8 A. Who is Robinson?

9 Q. Melissa Robinson?

10 A. Oh, I didn't know her last name. I didn't know her last
11 name. I know Scott, that's it.

12 Q. You live near Lakeview Apartments?

13 A. Right down the road from her.

14 MR. PASCOE: Right down the road. Thank you. That's
15 all I have. Thank you.

16 THE COURT: Anything further?

17 REDIRECT EXAMINATION BY MR. LEIENDECKER:

18 Q. In an attempt to avoid any comedy of error, if I
19 understand, you told the solicitor you'd tell the truth, and
20 if you don't know the truth, you'll say you don't know; is
21 that right?

22 A. I tell like it is. Whatever it is, I tell what I know.
23 If I don't know, I'm not gone tell it.

24 MR. LEIENDECKER: Yes, ma'am, that's all I needed.
25 That's all I needed and that's all I asked. Thank you.

1 THE COURT: You may step down, Ms. McKnight. Thank you.

2 You may call your next witness.

3 MR. LEIENDECKER: Jasmond Jones. Mr. Jones is in
4 custody.

5 JASMOND JONES,
6 being first duly sworn, testified as follows:

7 THE COURT: Your witness.

8 MR. LEIENDECKER: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. LEIENDECKER:

10 Q. Mr. Jones, Mark Leiendecker. I'm the defense attorney
11 for Mr. Jerry McKnight. Do you know Mr. McKnight?

12 A. Yes, sir.

13 Q. How long have you known Mr. McKnight?

14 A. All my life.

15 Q. Okay. Can you tell me where you live? Right now where
16 are you living?

17 A. [REDACTED] Ridge Lake Circle.

18 Q. But you're not there right now, are you?

19 A. No, sir.

20 Q. Where are you?

21 A. Detention Center.

22 Q. The Orangeburg County Detention Center?

23 A. Yes, sir.

24 Q. And why are you in the Orangeburg County Detention
25 Center right now? You've been picked up on a warrant for

1 failure to appear?

2 A. Yes, sir.

3 Q. Okay. Have you ever been convicted of a crime and sent
4 to the correctional institution?

5 A. Yes, sir.

6 Q. And did that occur in approximately 2010?

7 A. Yes, sir.

8 Q. What were you convicted of?

9 A. I was -- I got sentenced to a YOA.

10 Q. A YOA for a burglary?

11 A. Yes, sir.

12 Q. Did you serve your 24 months of YOA time?

13 A. Yes, sir.

14 Q. Okay. Are you here today pursuant to a subpoena? Did I
15 subpoena you to be here?

16 A. Yes, sir.

17 Q. Let me ask you just a very few questions, all right?

18 We've been talking about in this trial what happened on the
19 night of February the 13th, the day after the ice storms here
20 in St. Matthews last February. Do you remember that time?

21 A. Yes, sir.

22 Q. Do you have a relative that lives in the Lakeview
23 Apartments?

24 A. Used to.

25 Q. Used to?

1 A. Yes, sir.

2 Q. Back in February last year?

3 A. Yes, sir.

4 Q. Okay. And who was that?

5 A. My sister.

6 Q. What's your sister's name?

7 A. Victoria.

8 Q. Okay. Victoria Jones, right?

9 A. Yes, sir.

10 Q. And did Victoria Jones live in any proximity to
11 Melissa Scott or Melissa Robinson's house?

12 A. Next door.

13 Q. They lived next door to each other?

14 A. Yes, sir.

15 Q. On the night, the evening, the afternoon, whatever, of
16 February 13th, that day we're talking about, did you see
17 Jerry McKnight at any time?

18 A. Yes, sir.

19 Q. Okay. Can you describe his appearance, how he looked?

20 A. I know his hair was braided, but I didn't remember what
21 he had on.

22 Q. Okay. You noticed his hair. Was it unique or unusual?

23 A. It was -- looked like freshly braided.

24 Q. Okay. That has a unique look, right?

25 A. Yes, sir.

1 Q. And was it about dusk dark, still light enough to see
2 when you saw him?

3 A. It was still daylight.

4 Q. Okay. You could definitely see him. It wasn't like
5 you'd mistake who it was?

6 A. No, sir.

7 Q. And where were you when you saw him?

8 A. On the side of my sister apartment.

9 Q. Okay. Did you speak with him?

10 A. I said "Hey," and he said "Hey" back.

11 Q. So just a greeting, "Hey."

12 A. Yes, sir.

13 Q. And where did you see him go?

14 A. Into Ms. Melissa apartment.

15 Q. All right. And so if that's around 5:15, 5:30, a little
16 before 6, how much longer were you there at the apartment
17 where you saw him hanging out?

18 A. I was down on the side. I was outside for about three
19 to four hours, but I was there on the side for about an hour.

20 Q. Okay. So in that three to four hours after he went into
21 Ms. Melissa's apartment, did you ever see him leave and walk
22 back up the street towards Agnes?

23 A. No, sir.

24 Q. Were you able to observe him at least that first hour or
25 so?

1 A. Yes, sir.

2 Q. Right where he went in?

3 A. Yes, sir.

4 Q. And at that other time, is it certainly probable that
5 you would have seen him if he'd walked all the way out of the
6 apartment complex?

7 A. Yes, sir.

8 Q. Did you see him leave that night, in that three to four
9 hours you were outside?

10 A. Not that I know of he didn't leave.

11 Q. I'm just asking what you saw.

12 A. Mm-hmm.

13 MR. LEIENDECKER: All right. I have no further
14 questions. Thank you. Thank you for coming.

15 THE COURT: Mr. Banks?

16 MR. BANKS: Thank you, Your Honor. One moment, Your
17 Honor.

18 (Defendant and attorney confer.)

19 MR. BANKS: No questions at this time, Your Honor.

20 THE COURT: Solicitor?

21 MR. PASCOE: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. PASCOE:

23 Q. Good afternoon, Mr. Jones.

24 A. Good afternoon.

25 Q. Are you related to Jerry and Bryant McKnight, sir?

1 A. Yes, sir.

2 Q. How are you related?

3 A. Cousins.

4 Q. Okay. And back on February the 13th, did you have a
5 conversation with Jerry McKnight when he came back to
6 Melissa Robinson's?

7 A. No, sir.

8 Q. So you didn't talk to him?

9 A. No, sir.

10 Q. You weren't hanging out with him?

11 A. No, sir.

12 Q. And bottom line is you have absolutely no idea where he
13 was at 7:00 that night?

14 A. No, sir.

15 Q. You have no idea what he was doing between 8:00 that
16 night and 1:00 the next morning, do you?

17 A. No, sir.

18 Q. Now, they're your first cousins. And will they talk to
19 you?

20 A. Sir?

21 Q. Will they talk to you? Do you have conversations with
22 them sometimes?

23 A. Yes, sir.

24 Q. Okay. And --

25 A. Yes, sir.

1 Q. Okay. I didn't mean to cut you off.

2 And you've had conversations with the defendant
3 Bryant McKnight, haven't you, since February the 13th of last
4 year, "yes" or "no"?

5 A. Yes, sir.

6 Q. You've talked to Bryant McKnight since then? In fact,
7 do you remember giving a statement to Captain Regalis on
8 February the 15th, just two weeks ago? Do you recognize
9 Captain Regalis right there? Did you give him a statement?

10 A. Yes, sir.

11 Q. Yes. And I'm going to give you a copy of it, just to
12 refresh your memory. You can have it, okay, Mr. Jones?

13 There you go. You can hold that for me.

14 Is that statement truthful? Did you tell
15 Captain Regalis the truth?

16 A. Yes, sir.

17 Q. And you wanted to meet with Captain Regalis, didn't you,
18 sir?

19 A. Yes, sir.

20 Q. And you told Captain Regalis that Bryant McKnight
21 admitted to you that he murdered K. R. [REDACTED], yes?

22 A. Yes, sir.

23 Q. Say that again. I want to make sure everybody --

24 A. Yes, sir.

25 Q. Bryant McKnight admitted that he shot that girl?

1 A. Yes, sir.

2 Q. And did -- "yes" or "no," did he tell you how that
3 murder occurred, just "yes" or "no"?

4 A. Yes, sir.

5 Q. And you put it down in your statement, correct?

6 A. Yes, sir.

7 Q. Speak up, okay, Mr. Jones?

8 A. Yes, sir.

9 Q. And just "yes" or "no," he even told you who purchased
10 the bullets, "yes" or "no"?

11 A. Yes, sir.

12 Q. And "yes" or "no," he also told you he was not the only
13 person to shoot the victim that night, right?

14 A. Yes, sir.

15 Q. He even told you, on Page 2 of your statement, where the
16 victim's body was dumped, "yes" or "no"?

17 A. Yes, sir.

18 Q. And just "yes" or "no," he told you exactly, the two
19 people that shot the victim, "yes" or "no"?

20 A. Yes, sir.

21 Q. Now, let me ask you this: According to Bryant McKnight,
22 did Jonathan McKnight shoot the victim, K. R. [REDACTED] ?

23 MR. LEIENDECKER: Objection, Your Honor. Can we
24 approach?

25 THE COURT: You may approach.

1 (The following was held at the bench out of the hearing
2 of the jury.)

3 MR. LEIENDECKER: The solicitor is giving indirect
4 testimony attempting to get in hearsay testimony by
5 eliminating the suspects and bringing it down to what he said
6 that Jerry McKnight was involved in this case. That's not
7 permissible. He can't -- he cannot go down that list and
8 then leave the only alternative the hearsay answer which he's
9 not allowed to elicit.

10 MR. PASCOE: I absolutely can get out that certain
11 people did not shoot the victim in this case. Absolutely. I
12 don't see how that -- that would be just like redacting the
13 statement. If it was --

14 MR. LEIENDECKER: That's not the same as redacting the
15 statement. Redacting the statement is taking a name out, not
16 providing other names.

17 MR. PASCOE: I'm taking the name out, that these people
18 didn't do it.

19 MR. LEIENDECKER: No, that's impermissible. That's
20 totally impermissible, Your Honor. He's not allowed to ask
21 that question. He's not allowed to get it through the back
22 door. That's totally impermissible.

23 THE COURT: Solicitor, stick to the statement against
24 interest against just the defendant.

25 MR. PASCOE: Just the defendant? Okay. Just against

1 just Bryant McKnight?

2 THE COURT: Right.

3 MR. PASCOE: Okay.

4 THE COURT: The information, given the hearsay
5 exception, would be as to him.

6 MR. LEIENDECKER: Okay. Thank you, Your Honor.

7 CLERK OF COURT: Your Honor, one of the jurors has to go
8 to the bathroom real bad.

9 THE COURT: Okay.

10 (The following was held in open court.)

11 THE COURT: Ladies and gentlemen of the jury, I
12 understand you need a quick break. We will take a brief
13 recess for you. Just let us know when you're ready to
14 proceed.

15 (The jury retires to the jury room at 3:13 p.m.)

16 THE COURT: The jury just requested a quick restroom
17 break, so we'll be at ease until they're ready to proceed.

18 (Recess held.)

19 MR. LEIENDECKER: Your Honor, before the jury comes
20 back, please the Court, relative to my motion, I think it's
21 appropriate that the Court would strike the question of the
22 solicitor and advise the jury to disregard the question
23 regarding Mr. McKnight, Jonathan McKnight.

24 THE COURT: Let me look at what the last question was,
25 because it was my understanding that the witness did not

1 answer that question.

2 MR. LEIENDECKER: He had not answered, but I would ask
3 that you strike the question.

4 THE COURT: Any objection to that, Solicitor?

5 MR. PASCOE: No objection, Your Honor.

6 THE COURT: All right.

7 MR. LEIENDECKER: And advise the jury to disregard and
8 disabuse themselves of that.

9 THE COURT: The last question was, "Now, let me ask you
10 this: According to Bryant McKnight, did Jonathan McKnight
11 shoot the victim, K. R. [REDACTED]?"

12 MR. LEIENDECKER: Right.

13 THE COURT: Do you want me to repeat the question or
14 just --

15 MR. LEIENDECKER: No, I certainly don't.

16 THE COURT: I just want to make sure it's clear on the
17 record just to strike the last question.

18 All right. Are we ready to proceed.

19 (The jury enters the courtroom at 3:30 p.m.)

20 THE COURT: Ladies and gentlemen of the jury, you're to
21 strike that last answer -- or that last question that was
22 asked. Please do not take any consideration into that last
23 question that was asked.

24 You may proceed, Solicitor.

25 Q. Thank you, Your Honor. Mr. Jones, I have just one more

1 question for you, okay?

2 A. Yes, sir.

3 Q. Your first cousin, Bryant McKnight, told you exactly how
4 and why that girl, K. R. [REDACTED], was murdered, didn't he?

5 A. Yes, sir.

6 MR. PASCOE: That's all I have.

7 THE COURT: Any redirect?

8 MR. BANKS: Yes.

9 MR. PASCOE: We're out of order now.

10 THE COURT: Right. Mr. Leiendecker should go first.

11 Any redirect from you, Mr. Leiendecker?

12 MR. LEIENDECKER: No, I don't have any.

13 THE COURT: Mr. Banks?

14 MR. BANKS: Your Honor, this is cross-examination, just
15 to be clear.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION BY MR. BANKS:

18 Q. Mr. Jones, how are you?

19 A. Fine.

20 Q. You've been in jail for how long at this stretch?

21 A. About -- about a little over a month.

22 Q. Little over a month?

23 A. Yes, sir.

24 Q. Okay. And you've been in jail before?

25 A. Yes, sir.

1 Q. In fact, and when you go into jail, you have papers with
2 you, don't you?

3 A. Papers of what kind?

4 Q. Did they give you a warrant? When you go into jail, do
5 they give you a warrant?

6 A. Yes, sir.

7 Q. Do they give you other papers?

8 A. Like what papers?

9 Q. Well, do they give you any papers when you're in jail?
10 Do you have paperwork? An affidavit to be appointed to the
11 public defender and that kind of thing? Don't you have to
12 fill out --

13 A. I didn't receive that this time.

14 Q. Okay. Well, not this time, but in the past. You've
15 been in the jail before, right?

16 A. Yes, sir.

17 Q. And you see other inmates with papers, right?

18 A. I know about the papers I have but not other inmates.

19 Q. Right. But you don't see anybody with their papers?
20 Other inmates?

21 A. Like what papers?

22 Q. Any papers.

23 A. Yes, sir.

24 Q. Okay. And some of them might be in little envelopes,
25 yellow envelopes and things like that, right?

1 A. Yes, sir.

2 Q. Okay. And some of them have more papers than others; is
3 that right?

4 A. Yes, sir.

5 Q. And have you ever asked your attorney in the past for
6 the papers that are involved in your case, your discovery
7 motion?

8 A. I didn't have to ask; she showed me.

9 Q. I'm not asking you that. I'm saying have you ever asked
10 your attorney --

11 A. No, sir.

12 Q. -- for papers?

13 A. No, sir.

14 Q. Now, just now you said you didn't ask Bryant for his
15 paperwork; he showed you his paperwork? That's what you just
16 said.

17 A. Bryant did not show me his paperwork.

18 Q. All right. Go back two questions. Your exact words
19 were, and we can read them off the thing, "I didn't ask him;
20 he showed me."

21 MR. PASCOE: No, Your Honor. He's talking about his
22 lawyer.

23 THE WITNESS: I'm talking about my attorney.

24 MR. BANKS: Your attorney.

25 MR. PASCOE: The lawyer said that.

1 THE WITNESS: I didn't ask my attorney for my papers;
2 she showed me my papers.

3 Q. Okay. So with Bryant, he had paperwork, didn't he?

4 A. I guess so.

5 Q. He had a lot of paperwork?

6 A. I don't know how much paperwork he had.

7 Q. Well, I don't need you to count it, but you saw his
8 paperwork, didn't you?

9 A. No, sir.

10 Q. You didn't look at his case file, his entire file?

11 A. No, sir.

12 Q. Mr. Jones, you've got this statement here, and it sounds
13 like a very condensed version of --

14 MR. PASCOE: Objection, Your Honor, to what his
15 statement sounds like, a condensed version.

16 MR. BANKS: I hadn't finished my question. A condensed
17 version of the facts in this case.

18 THE COURT: Ask him about his particular statement.

19 MR. BANKS: Yes, I'm talking about his particular
20 statement sounds like a condensed version of the facts in
21 this case.

22 THE COURT: Is that a question, Mr. Banks?

23 MR. BANKS: Yes, ma'am.

24 MR. PASCOE: I don't have a problem with that, Your
25 Honor.

1 Q. Is that true?

2 Who are you looking at?

3 THE COURT: Mr. Banks, I don't think the question was
4 clear. Ask him is it --

5 Q. You basically condensed your statement into this --
6 condensed this case into your statement; is that right?

7 A. It was -- I wrote it how it was told to me, Your Honor.

8 Q. Mr. Jones, you actually called my office. How many
9 times did you call my office after you saw this paperwork?

10 A. I never called your office, sir. I wrote your office
11 asking for attorney about my case, but then after I found out
12 that I couldn't get you for my attorney, I got -- they
13 appointed me an attorney. I never called your office about
14 this case.

15 Q. You're saying you never called my office to try to get
16 me to help you with this statement?

17 A. No, sir.

18 Q. All right. Mr. Jones, did you call the Orangeburg
19 Public Defender's Office and -- I don't know if you actually
20 spoke to her, but tried to get ahold of Ms. Peggy over there
21 to try to shop this statement around and get her to help you
22 with it?

23 A. I was trying get in contact with the sheriff's
24 department, Your Honor.

25 THE COURT: We need to turn off the cell phones or they

1 will be confiscated. If there's any more cell phone
2 activity, they will be confiscated.

3 Please repeat your question, Mr. Banks.

4 Q. Mr. Jones, did you or did you not call and ask for
5 Ms. Peggy over at the Orangeburg Public Defender's Office to
6 try to shop this statement around?

7 A. To try -- I was calling Ms. Peggy to try to get in
8 contact with the sheriff's department, Your Honor.

9 Q. What sheriffs, Calhoun sheriffs?

10 A. Yes, sir.

11 Q. And because you had this information. What did you want
12 to gain from this information, having this information?

13 A. Nothing.

14 Q. Nothing. So you're sitting there out of the goodness of
15 your heart?

16 A. Yes, sir.

17 Q. And since when did you decide to start acting out of the
18 goodness of your heart?

19 A. I felt that this was a serious case and I needed to tell
20 what I know.

21 Q. Let me ask you this: Sitting here today, you're cousins
22 with these two fellows back here, right?

23 A. Yes, sir.

24 Q. And are you scared of Jerry McKnight?

25 A. No, sir.

1 Q. You're not scared of him?

2 A. No, sir.

3 Q. How come you look so timid?

4 A. No.

5 Q. Was that an answer?

6 How come you look so timid and scared?

7 A. I'm not.

8 Q. You're not.

9 Okay. In your statement, and you say you heard it and
10 not read it. You read, don't you?

11 A. Yes, I can read.

12 Q. You read pretty well, don't you?

13 A. Yes, sir.

14 Q. In fact, you write pretty well?

15 A. Yes, sir.

16 Q. Your handwriting's very nice.

17 In your statement, how did he explain -- how did Bryant
18 explain why this young lady, if she knew they suspected
19 him -- they suspected her of trying to rob his mother,
20 arranging that, why -- did he explain why in the world she
21 would go off with him, that she would leave with him?

22 A. Could you ask that question over?

23 Q. You didn't ask him that question?

24 A. Could you ask that question over?

25 Q. Yes, I will.

1 He told you the entire story, didn't he; is that right?

2 He told you the entire story?

3 A. He trusted that I'd tell no one.

4 Q. But that's not my question. Did he tell you the entire
5 story?

6 A. Yes, sir.

7 Q. And did you ask him questions about that story?

8 A. I just listened to what he told me.

9 Q. All right. So he just blurted it out. You didn't say,
10 "Hey, what are you in for," or anything like that? He just
11 blurted this statement out?

12 A. Yes, sir. He trusted me.

13 Q. And you just sat there and listened and didn't think
14 about what he was saying; you just took notes?

15 A. Exactly what he told me what I put on the statement.

16 Q. I'm having trouble hearing you.

17 A. Yes, sir.

18 Q. Can you speak closer to the microphone?

19 A. Yes, sir.

20 Q. So you didn't ask him any question -- when something
21 didn't make sense or add up, you didn't ask any questions?

22 A. No, sir.

23 Q. So you're saying that he -- you say he told you that
24 this girl went off with him, right?

25 A. Yes, sir.

1 Q. Did he say why she would do such a thing?

2 A. I don't understand your question.

3 Q. Did he tell you why Jerry or who was in control of this
4 situation? Did he tell you anything like that?

5 MR. LEIENDECKER: Objection, Your Honor. Calls for
6 hearsay.

7 MR. BANKS: It doesn't call for hearsay if it's out of
8 Bryant's mouth. Bryant is the defendant in this case.

9 THE COURT: That's true.

10 MR. LEIENDECKER: It doesn't relate to Bryant. He just
11 asked about Jerry.

12 THE COURT: Sustained.

13 MR. BANKS: One moment, Your Honor.

14 Q. Mr. Jones, did you ever go into Bryant's actual cell?

15 A. When?

16 Q. Before this statement came up. Have you ever been in
17 Bryant's cell back a month ago, whatever?

18 A. Yes, sir.

19 Q. Okay. How many times have you gone into his cell?

20 A. I only was in there for one night, then I left out.
21 They moved me to another room. He said I snored too long.

22 Q. So you spent the night in Bryant's cell?

23 A. Yes, sir.

24 Q. Okay. And earlier I think you were having trouble
25 remembering whether Bryant had paperwork or not. So if you

1 spent the night there, you saw his paperwork, right?

2 A. He didn't show me any paperwork, no, sir.

3 Q. I didn't ask you if he showed it to you, but you saw
4 that he had paperwork; is that right?

5 A. No, sir, I didn't saw the paperwork.

6 Q. You didn't see any paperwork now?

7 A. No, sir.

8 Q. Okay. You spent the night in his cell?

9 A. Mm-hmm.

10 Q. And you never saw any of his paperwork?

11 A. No, sir.

12 Q. Is there any other place to keep paperwork in the jail
13 but the cell?

14 A. You can have it in your cell, but you can have it
15 underneath your mattress. You can have it -- it don't have
16 to be out in the open.

17 Q. All right. So you can hide your paperwork under the
18 mattress?

19 A. Yes, sir. You can sleep on your paperwork like I do.

20 Q. You sleep on yours?

21 A. Yes, sir.

22 Q. Now, earlier you were having trouble even thinking that
23 you had any paperwork in the jail, but now you readily
24 remember where you keep it. Do most people keep their
25 paperwork under their mattress?

1 A. I'm speaking for me.

2 Q. Yes. How many cellmates have you had?

3 A. Just the room -- my roommate now and Mr. McKnight.

4 Q. And in the past you've had others?

5 A. Yes, sir.

6 Q. More than six?

7 A. No, sir.

8 Q. Okay. Less than six?

9 A. Yes, sir.

10 Q. All right. Did all of them have some amount of
11 paperwork?

12 A. Yes, sir.

13 Q. And all of them, did all of them or most of them keep it
14 under the mattress?

15 A. Yes, sir.

16 Q. Okay. So you spent the night in Bryant's cell?

17 A. Mm-hmm.

18 Q. Did you assume he had paperwork under his mattress?

19 A. I wasn't aware about his paperwork.

20 Q. You weren't worried about it?

21 MR. SORENSON: He wasn't aware.

22 Q. You spent one night in Bryant's cell; is that right?

23 A. Yes, sir.

24 Q. How many days? Was it a whole day before and a whole
25 day after and just the night in between?

1 A. I came in that day and I spent a night. Then the next
2 day he told me I had to move because I snored too loud.

3 Q. Bryant told you that?

4 A. Mm-hmm. So I moved, and I moved from 31 to 28.

5 Q. And that's just, what, three doors down?

6 A. Yes, sir.

7 Q. Okay. And is the cell -- is the cell locked during the
8 days?

9 A. Yes, sir.

10 Q. Okay. So if Bryant leaves that cell, it's locked?

11 A. Yes, sir.

12 Q. Okay. So you all don't have free roam -- you all roam
13 around in the pod?

14 A. If you want to go back in your room, a correctional
15 officer open again for you to go back in.

16 Q. Where exactly were you when Bryant supposedly told you
17 all this?

18 A. On the rock.

19 Q. On the what?

20 A. On the rock.

21 Q. Can you speak closer to that microphone?

22 A. On the rock.

23 Q. What does that mean?

24 A. Out for rec on the floor where be rec at.

25 Q. Okay. And there were other people around?

1 A. Yes, sir.

2 Q. And they didn't hear any of this story?

3 A. We was talking like face to face, right here and right
4 here (indicating).

5 Q. How long did it take him to tell you this story?

6 A. We was talking maybe like an hour or two.

7 Q. An hour?

8 A. Mm-hmm.

9 Q. And that's all you came up with?

10 A. Yes, sir.

11 Q. He talked for an hour straight, and you didn't ask any
12 questions, and he talked about this case for an hour
13 straight?

14 A. Yes, sir.

15 Q. An hour?

16 A. Yes, sir.

17 Q. And you came up with -- how long did it take you to
18 write this?

19 A. Maybe like 30, 35 minutes.

20 Q. Took you 35 minutes to write a page and a half?

21 A. Yes, sir.

22 Q. An hour. That's your testimony.

23 A. Yes, sir.

24 MR. BANKS: One moment, Your Honor.

25 No further questions.

1 THE COURT: All right.

2 MR. LEIENDECKER: Your Honor, can I have one follow-up
3 to what Mr. Banks was asking? A redirect?

4 THE COURT: Yes, you can have a redirect.

5 REDIRECT EXAMINATION BY MR. LEIENDECKER:

6 Q. Sorry, Mr. Jones. Mr. Banks pointed out you're being
7 tentative. Would you please tell us, in the jail, do you
8 live in the same pod area as Bryant McKnight?

9 A. Yes, sir.

10 Q. Does that bother you now?

11 A. Sir?

12 Q. Does that concern you now that you've been called here
13 and had to testify to this?

14 A. Yes, sir.

15 MR. LEIENDECKER: No further questions.

16 THE COURT: You may step down, sir. Thank you.

17 You may call your next witness.

18 MR. LEIENDECKER: I have no further witnesses to call on
19 behalf of Jerry McKnight.

20 THE COURT: Pardon me?

21 MR. LEIENDECKER: I have no further witnesses to call on
22 behalf of the defendant Jerry McKnight.

23 THE COURT: Thank you, Mr. Leiendecker.

24 Mr. Banks?

25 MR. BANKS: Yes, Your Honor. I have two that are here.

1 She's in and out so often. I haven't had a chance to talk to
2 her for a moment. And I have one other matter I'd like to.

3 THE COURT: Can you all approach?

4 (The following was held at the bench, out of the hearing
5 of the jury.)

6 THE COURT: How long are your witnesses?

7 MR. BANKS: They're short.

8 THE COURT: Okay.

9 MR. BANKS: Very short. But I have -- now that -- the
10 statement that we've been talking about for the last 30
11 minutes was dropped on my table this morning when I got here,
12 so this is the first time I've seen that statement. As a
13 result of that and the testimony I just heard, I have one
14 additional witness that I'd like to call that's not on my
15 list. That witness is my private investigator, and he
16 should -- he'll be here any second, but I don't need him
17 right now.

18 If they don't have an objection to me calling him, I'm
19 just going to call him for the purpose of the statement -- I
20 mean the material that my client had in the jail was about
21 this big (indicating). You couldn't miss it. That's
22 essentially what he's going to testify to.

23 THE COURT: Well, I think he can certainly testify that
24 it was that voluminous and, in his opinion, he had it in the
25 jail cell, but that doesn't mean that he saw it.

1 MR. BANKS: I know. It doesn't mean he saw it.

2 THE COURT: It doesn't mean that he saw it.

3 MR. BANKS: It doesn't mean he saw it, but you couldn't
4 even put it under a mattress, and they shared a room
5 together.

6 THE COURT: I think that they'd showed that, but he
7 can't speculate as to what this guy saw or not.

8 MR. BANKS: Ma'am?

9 THE COURT: He can't speculate as to what this guy saw.

10 MR. BANKS: I'm not -- I'm not asking him to speculate.
11 I just want him to testify to the quantity of the material
12 that was in that room that they shared together.

13 THE COURT: All right. So then obviously I'll just have
14 to caution the jury if anybody, close personal friend or
15 anything --

16 MR. BANKS: Yes. Danny McDaniel.

17 THE COURT: Danny McDaniel? Any objections to that?

18 MR. PASCOE: Do we have to call Danny McDaniel to do
19 this?

20 MR. BANKS: Do you all want to stipulate it?

21 MR. PASCOE: Let me talk to Don about that.

22 (Counsel confer.)

23 (The following was held in open court.)

24 THE COURT: Mr. Banks, are you ready to proceed?

25 MR. BANKS: Yes, Your Honor, this was the one witness I

1 hadn't had a chance to --

2 I call Ms. Johnnie Mae Matthews to the stand.

3 CLERK OF COURT: Place your left hand on the Bible,
4 raise your right hand.

5 JOHNNIE MAE MATTHEWS,
6 being first duly sworn, testified as follows:

7 CLERK OF COURT: Please state your full name for the
8 record.

9 THE WITNESS: My name Johnnie Mae Matthews.

10 CLERK OF COURT: Thank you, ma'am. Have a seat.

11 THE COURT: Your witness.

12 MR. BANKS: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION BY MR. BANKS:

16 Q. Ms. Matthews, you are the mother of my client and Jerry;
17 is that right?

18 A. Mm-hmm, yes, sir.

19 Q. And back in February of last year, where was Bryant
20 living?

21 A. Bryant was living with Sandra, Sandra in Williston.

22 Q. Okay. At Sandra Hughes's house?

23 A. Yes.

24 Q. And did you have a chance to see him during that time
25 period, the middle of February?

1 A. Yes. Sometimes she would bring him by the house and see
2 me, mm-hmm.

3 Q. Mm-hmm. So where -- if he lived there, where were his
4 clothes?

5 A. Oh, his clothes now, some of his clothes would be at my
6 house and some of them at Sandra house.

7 Q. Okay.

8 A. Where he live at.

9 Q. All right. And do you remember the day of
10 February the 2nd, 2014?

11 A. Mm-hmm, yes, sir.

12 Q. You do?

13 A. Mm-hmm.

14 Q. And on that day, where were you? Were you at home?

15 A. I was home.

16 Q. Okay. And if you were at home that evening, did
17 anything unusual happen that evening?

18 A. Yes. That evening I was home and during the day, okay,
19 I was home all day that day. And when night fall, around --
20 I think it was around about between 11, I was on the phone
21 with my granddaughter, Bridget McKnight. And so we was on
22 the phone talking that night.

23 And during the night, and I was saying, "Bridget, I see
24 somebody like holed down by my curtains." You could see
25 through my curtains. I got see through curtains. And so

1 that night I had seen somebody. And then I had seen Jon-Jon.
2 That's my -- Jon-Jon is my -- that's my nephew. As soon as I
3 say that name, they kick my door in.

4 Q. Okay. Hold on now. You said you saw?

5 A. The person that holing down by the window.

6 Q. Yes.

7 A. And soon as the person holed down by the window, and I
8 said, "Jon-Jon, that you?" And nobody didn't say nothing.
9 That's the time when the person kick my door in.

10 Q. Okay. So you thought -- are you saying you thought the
11 person down by the window was Jon-Jon?

12 A. Yes, down by the window.

13 Q. Okay. And what made you think that was Jon-Jon?

14 A. I don't know, something that trying -- I don't know
15 whether the Lord was trying show me or trying tell me
16 something it was Jon-Jon. And I just called that name.

17 Q. And who is Jon-Jon?

18 A. That's Carolyn grandson. That's my nephew.

19 Q. What's his last name?

20 A. Jonathan McKnight.

21 Q. What's -- his whole name is?

22 A. Jonathan McKnight.

23 Q. Okay.

24 A. We call him Jon-Jon.

25 Q. Okay. And have you ever heard of body language? Do you

1 know what body language is?

2 A. Like talk kind of funny or something like that?

3 Q. Yes, how somebody moves, that's right.

4 A. Oh, okay. You mean --

5 Q. I'm just asking you, do you know what body language is,
6 how somebody moves?

7 A. How they move around --

8 Q. Yes.

9 A. -- like, trying talk about they move around the place
10 when they came in my house.

11 Q. Well, that's kind of where I'm going.

12 A. When they came in -- he came in, then he was walking
13 kind of slow, not fast, and he throw me down. And he was
14 sort of short.

15 Q. How tall is Jon-Jon approximately?

16 A. I don't know how tall he is, but he like -- I don't
17 know. He's short. I know he's short.

18 Q. So is that the person you saw crouching down by the
19 window?

20 A. Yes.

21 Q. And did you recognize his face?

22 A. Oh, okay. I look at the face. And then when they came
23 in, they had ski masks on their face.

24 Q. Okay.

25 A. Mm-hmm.

1 Q. And how many people?

2 A. When I see them, it looked like it was two of them.

3 When they throw me down, I couldn't see how much it was, you
4 know, after they done throw me down on my face, right.

5 Q. Mm-hmm.

6 A. And after he throw me down, he was saying some nasty
7 stuff to me, calling me all kinds of names and disrespectful
8 to me.

9 Q. So you heard his voice?

10 A. I kind of like heard a little voice. He kind of talk
11 kind of a little funny, fast like.

12 Q. So you said he was trying to talk funny?

13 A. Mm-hmm. And then he talked kind of like fast.

14 Q. How do you know he wasn't just talking funny, I mean he
15 just talked funny naturally?

16 A. Man, like sometime, like me, I talk fast.

17 Q. Mm-hmm.

18 A. And then he talking fast, and some people don't
19 understand you.

20 Q. And did that talk -- all right.

21 So is that the same person that -- that -- I think --
22 did something happen next in your house there? You know, you
23 said he pushed you down?

24 A. Yes. He pushed me down on my face, and then he got a
25 thing where you tie people up with it. It go on the -- I

1 think it go on like something on the back of your TV.

2 Q. Mm-hmm.

3 A. It had like a yellow little thing on the end. One was
4 white and one was red. And he tied me up.

5 Q. Okay.

6 A. And then he put the pistol to my fore [sic]. He put it
7 to my fore. Then he put it to my ear.

8 Q. You said the pistol?

9 A. Mm-hmm. It was a pistol. It look like it was black and
10 white. It was kind of long like.

11 Q. So he put it where?

12 A. My fore (indicating).

13 Q. Yes, I'm just wondering, you said fore. Is fore -- are
14 you talking about your forehead?

15 A. Yes, the forehead right here (indicating).

16 Q. All right. And you're pointing between your eyes; is
17 that right?

18 A. No, right up here (indicating).

19 Q. Okay. Above your eyes?

20 A. Mm-hmm.

21 Q. Okay. And at that point, were you able to get a good
22 look at that gun?

23 A. Yes. It was black and white. It was black and white.

24 Q. You're sure of that?

25 A. Yup, it was black and white, yup.

1 Q. And when you say "black and white," which part was black
2 and which part was white?

3 A. Okay, the black was like on the end, and then it was
4 like -- I don't know whether that white was in the middle,
5 but it was another little part was black.

6 Q. Okay. Could you tell what -- like what kind of bullets
7 would go in it, how big?

8 A. No, I didn't see the bullet. I never did find a bullet,
9 nothing like that.

10 Q. Okay.

11 A. Because when he did -- wait a minute.

12 Q. Is this Bryant's? Do you recognize this (indicating)?

13 A. No, I ain't never seen that jacket before, hm-mm.

14 Q. So if he had clothes at your house, was that some of the
15 clothes he kept at your house?

16 A. No, not that jacket. I ain't never seen that jacket
17 before. He got a lot of jacket now.

18 Q. Are you sure now?

19 A. I can look at it. No, that ain't his jacket there,
20 hm-mm, because he got a lot of jacket.

21 MR. BANKS: One moment, Your Honor.

22 Q. Ms. Matthews, did Bryant spend February the 12th, that's
23 the night before this young lady was killed, did Bryant spend
24 that night at your house?

25 A. No.

1 Q. Did he spend the 13th at your house?

2 A. No, sir.

3 Q. Did he call you anytime? Do you remember if he called
4 you anytime?

5 A. No. I mean, okay, he had called me from Sandra house.

6 Q. On which day?

7 A. That was like -- I can't remember the day now, but I
8 know he had called me from Sandra house, but I can't remember
9 that date.

10 MR. BANKS: Okay. No further questions.

11 THE COURT: Mr. Leiendecker?

12 CROSS-EXAMINATION BY MR. LEIENDECKER:

13 Q. Good afternoon, Ms. Matthews. I'm Mark Leiendecker.
14 I'm Jerry's attorney.

15 A. Mm-hmm.

16 Q. On the night of February 13th, were you staying at your
17 sister's house.

18 A. Yes, sir.

19 Q. Had you lost power at your house.

20 A. Yes, sir.

21 Q. Do you remember Jerry being over there in the late
22 afternoon having his hair done?

23 A. Okay. Yes, Jerry had been there, get his hair done, but
24 it was in daylight.

25 Q. Yes. And your sister Carolyn braided his hair?

1 A. Yes, sir.

2 Q. And he left about dark dusk while you could still see
3 outside?

4 A. Yes, you could see.

5 Q. Were you there the rest of the night?

6 A. Mm-hmm.

7 Q. Did he ever come back?

8 A. No.

9 Q. Did you see him the rest of that night?

10 A. No.

11 MR. LEIENDECKER: I don't have any further questions.

12 Thank you.

13 THE COURT: Solicitor?

14 MR. PASCOE: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. PASCOE:

16 Q. Good afternoon, Ms. Matthews.

17 A. Good afternoon.

18 Q. I don't have too many questions for you.

19 A. Okay.

20 Q. Did you know Ms. Sandra Hughes back in February of last
21 year?

22 A. Yes.

23 Q. And you knew her name, Sandra Hughes?

24 A. Yes, sir.

25 Q. Okay. She was good enough to tell you her real name,

1 wasn't she?

2 A. No, not tell me, you know, her last name. I had know
3 her name Sandra when she told me her first name Sandra.

4 Q. She told you the truth that her name was Sandra. Are
5 you aware that your son lied to her about his name?

6 A. About his name, talking about calling him Brandon or
7 whatever?

8 Q. Mm-hmm, yes, ma'am.

9 A. I reckon he might be don't want the lady to know that he
10 was young and she was older than him.

11 Q. Okay. But she was good enough to let you know her real
12 name?

13 A. Mm-hmm.

14 Q. Now, if he was only there once maybe twice a week, that
15 would have to mean that he was at your house five, six days a
16 week, correct?

17 A. No. Because he was not be there.

18 Q. But he was not -- I'm sorry. Go ahead. I want to let
19 you finish.

20 A. He would be to Sandra house, not my house. He didn't
21 used to stay at my house like that.

22 Q. But as you testified --

23 A. But he will come and see me.

24 Q. As you testified to, if he was not at Sandra's house, he
25 would be at your house?

1 A. Sometime Sandra bring him here. She would come and pick
2 him up.

3 Q. I just want to make sure, if he's not at Sandra's house,
4 he's at your house, correct?

5 A. Just a little while, yes, until Sandra pick him up.

6 Q. All right. Are you trying to tell this jury today that
7 Jonathan McKnight had something do with your burglary?

8 A. Yup. He was talking about in the street and he was
9 bragging about what he did and he was in the Lakeview
10 Apartments and he was on the -- he was bragging on what he
11 did.

12 Q. He was bragging about it?

13 A. Mm-hmm.

14 Q. And you told law enforcement that night that
15 Jonathan McKnight had something to do with it, I guess?

16 A. No.

17 Q. Why not?

18 A. I did not tell them and I was in like a shock and I
19 didn't tell them nothing during that time.

20 Q. Because it would have been a lie. That's why you didn't
21 tell them about Jonathan McKnight.

22 A. It wouldn't have been no lie if I would have tell them
23 that. I wasn't thinking. I was hurt then.

24 Q. So when did you all of a sudden have this premonition
25 that Jonathan McKnight was involved in your burglary?

1 A. I just found out about a week ago.

2 Q. Okay.

3 A. Because I went with nobody at first. When he did, I
4 would have let them know about it.

5 Q. Very good.

6 After you learned that Jonathan McKnight was going to
7 testify against your sons and after you saw him testify, then
8 he's the one who broke into your house?

9 A. No. I didn't -- I told them not during that time. I
10 say I just find out from my sister Carolyn about a week ago
11 and my niece. And Jonathan mama know about it, but during
12 the night when the burglary and they break in my house,
13 Jonathan mama had to know, because Jonathan told his mama.
14 That's what I heard the people was saying. And my sister
15 Carolyn, one told me, and my niece Carolyn McKnight, so they
16 the one told me about it.

17 Q. Ma'am, you testified when Mr. Banks was asking you
18 questions that you even said, "Jon-Jon, is that you," during
19 the burglary.

20 A. Yes, that his nickname Jon-Jon. Because we don't call
21 him by his real name, Jonathan.

22 Q. Exactly.

23 A. I call him Jon-Jon. That what everybody else call him,
24 and so I call him Jon-Jon too.

25 Q. Yes, ma'am.

1 A. I know his real name because that's my nephew, and
2 that's my niece son, and that's why I called him Jon-Jon.
3 That what I say to that door that night when he came to that
4 door and he break in there, and that's when I say. And I
5 know it was him.

6 Q. On February 2nd, when he was allegedly breaking in, you
7 said, "Jon-Jon, is that you?"

8 A. Yes.

9 Q. Okay.

10 A. That's what I said.

11 Q. Do you remember just like two minutes ago you said you
12 didn't know it was Jon-Jon until last week?

13 A. I said about a week ago I found out about it, about the
14 thing. I didn't know all the time, right. When he break in
15 my house February 2nd, I didn't know that he did it then.

16 Q. Okay.

17 A. I just found out about a week ago.

18 Q. And now today, of course, the gun is black and white.
19 That was your testimony?

20 A. Yes, the gun was black and white when he came in, when
21 he came in my house.

22 Q. When you talked to law enforcement that night, the gun
23 was just black; do you remember that?

24 A. It was black, but like I say, I wasn't thinking during
25 the time, but it was black and white.

1 Q. Now, back then you also -- well, you didn't say it was
2 black and white back then, did you? You just said it was
3 black, but after this trial it was black and white, right?

4 A. Yes, but don't you be crossing me when I'm --
5 I mean, I'm sorry, Your Honor.

6 But you cross -- don't be crossing me. And I tell you
7 one thing, then you try to screw me up anything. Don't screw
8 me up because I know what I'm talking about.

9 THE COURT: Ms. McKnight --

10 THE WITNESS: I'm sorry. I'm sorry.

11 THE COURT: Answer the questions you're asked.

12 THE WITNESS: I'm sorry, Your Honor.

13 Q. Also, back then you wouldn't tell the police who the
14 three burglars were looking for. Will you tell the jury
15 today who they were looking for?

16 A. Who they were looking for? I don't know who they was
17 looking for.

18 Q. You said that they were looking for one of your sons.
19 Which son?

20 A. They called -- they called the name when they came in,
21 in my house. They called Jerry and Bryant.

22 Q. So they were looking for both of them?

23 A. Mm-hmm.

24 Q. Jerry and Bryant?

25 A. They was disrespect me, calling me all kind of name.

1 Q. And finally, ma'am, they took money?

2 A. Yes, they took money.

3 Q. And they also took drugs, didn't they?

4 A. Oh, I don't know about no drugs now. I know about the
5 money. I know about the money, but I don't know nothing
6 about drugs and that now, not about that.

7 Q. Because you didn't have drugs kept at your house, did
8 you, Ms. McKnight?

9 A. No, I did not have drugs there.

10 MR. PASCOE: Okay. Thank you, ma'am, appreciate it.

11 THE COURT: Any redirect?

12 MR. BANKS: No, Your Honor.

13 THE COURT: You may step down, ma'am. Thank you.

14 THE WITNESS: Okay.

15 THE COURT: You may call your next witness.

16 MR. BANKS: Yes, Your Honor. I'll call Teresa McKnight.

17 THE COURT: Before we get started, members of the
18 gallery, you're not to make any outbursts or laughter or
19 interrupt these proceedings in any way. If you feel that you
20 cannot be quiet in these proceedings, then you may step out
21 right now.

22 TERESA MCKNIGHT,
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BANKS:

25 Q. Ms. McKnight, back in February of last year, you had a

1 cell phone that was the number [REDACTED] 9523; is that correct?

2 A. Yes, sir.

3 Q. And that phone is registered in your name?

4 A. Yes, sir.

5 MR. BANKS: No furthers questions.

6 MR. LEIENDECKER: I don't have any questions.

7 THE COURT: Solicitor?

8 MR. PASCOE: Yes, ma'am.

9 CROSS-EXAMINATION BY MR. PASCOE:

10 Q. Good afternoon, Ms. McKnight.

11 A. Good afternoon.

12 Q. And that phone number that was registered in your name,
13 Bryant McKnight used it?

14 A. Well, I bought me another phone, and I just let him use
15 that one.

16 Q. And he was using it back on February the 13th of last
17 year, obviously.

18 A. I don't know nothing about that night. I say I'm
19 letting him use the phone.

20 Q. So he was using the phone number [REDACTED] 9423.

21 A. Yes.

22 Q. Okay. Because you didn't have any reason to call
23 Sandra Hughes, did you?

24 A. To call Sandra? I don't know her like that.

25 Q. Did you have any reason to call Stephon Green back on

1 February the 13th?

2 A. I wasn't it even home February 13th.

3 Q. Would you have called Derrick Sumter on February the
4 13th?

5 A. No, I did not.

6 Q. Would you have called Jonathan McKnight on
7 February 13th?

8 A. No, sir.

9 Q. Would you have called Jamaal Pearce on February the
10 13th?

11 A. No, sir.

12 MR. PASCOE: That's all I have. Thank you, ma'am.

13 MR. BANKS: Nothing, Your Honor.

14 THE COURT: You may step down, ma'am. Thank you.

15 MR. BANKS: Your Honor, I call Lieutenant Graham to the
16 stand.

17 STANLEY ADAM GRAHAM,
18 being first duly sworn, testified as follows:

19 CLERK OF COURT: Please state your full name for the
20 record.

21 THE WITNESS: Stanley Adam Graham.

22 DIRECT EXAMINATION BY MR. BANKS:

23 Q. Lieutenant Graham, how are you today?

24 A. I'm fine, sir.

25 Q. I believe I handed you part of your case file; is that

1 right?

2 A. That's correct.

3 Q. And you're the chief investigator for the sheriff's
4 office.

5 A. No, sir, an investigator.

6 Q. An investigator.

7 A. Yes, sir.

8 Q. Well, who's the chief investigator?

9 A. The chief investigator is Captain John Regalis.

10 Q. Really?

11 A. Yes, sir.

12 Q. But they've assigned you to cover this particular case;
13 is that right? That's why you've been sitting here?

14 A. Yes, sir.

15 Q. Okay.

16 A. That's right.

17 Q. And the thing I handed you is part of your file; is that
18 right?

19 A. That's correct.

20 Q. And you are -- this file you're responsible for; is that
21 right?

22 A. Yes, sir.

23 Q. And this file, I believe SLED has a hand in some of
24 these things; is that right?

25 A. That's correct.

1 Q. And SLED did -- I believe did SLED do some investigation
2 related to fingerprints?

3 A. Yes, sir. They processed a vehicle for us. That's
4 correct.

5 Q. And when they processed the vehicle, one of the things I
6 think they processed -- well, they processed several things.
7 Was one of them --

8 MR. PASCOE: Objection, Your Honor. Shouldn't he have
9 gone into this when he was on the stand during the State's
10 case?

11 MR. BANKS: Your Honor, I can bring it in in my case.
12 In fact, I can actually --

13 MR. PASCOE: It's hearsay too, Your Honor. It's all
14 hearsay evidence.

15 THE COURT: Will you all approach.

16 MR. PASCOE: Yes, ma'am.

17 (The following was held at the bench out of the hearing
18 of the jury.)

19 MR. BANKS: In his case, Regalis kind of passed the
20 buck, and he said -- I mean Graham kind of passed the buck
21 when I started going for the fingerprints on Derrick. He
22 passed the buck and said, "No, that's Pat's."

23 During the break, after he finished testifying, I went
24 to Pat, and he said, "No, that's Graham."

25 All I'm going to say is, "As part of your file, do you

1 have in your file fingerprint results that say" --

2 THE COURT: Why didn't you ask him that during the
3 cross-examination?

4 MR. BANKS: I'm telling you, he passed the buck. He
5 said that was Pat's. I went during the break, after he was
6 finished testifying, when he didn't get that testimony that I
7 thought I'd get from him, I asked Pat. Pat said, "No, that's
8 all on Graham because he's got the entire file. That's his
9 thing."

10 MR. PASCOE: The other thing is it's hearsay.

11 MR. SORENSON: You can't just get into start publishing
12 SLED reports.

13 THE COURT: Right. You have to abide by the rules of
14 evidence. You can't put a report in which is hearsay.

15 (The following was held in open court.)

16 Q. Lieutenant Graham, were you involved in the statement
17 that Jasmond Jones gave your office?

18 A. Yes, sir. I was at the office. That's correct.

19 Q. Did you witness it?

20 A. I did.

21 Q. Okay. So you were there when he gave the statement?

22 A. Yes, sir.

23 Q. And that statement --

24 MR. BANKS: One moment, Your Honor.

25 No further questions of this witness, Your Honor.

1 THE COURT: Mr. Leiendecker?

2 MR. LEIENDECKER: I have no questions for the
3 lieutenant, Your Honor.

4 THE COURT: You may step down. Thank you.

5 Next witness.

6 MR. BANKS: Your Honor, at this time I have another
7 witness that was not introduced to the jury. His name is
8 Danny McDaniel.

9 THE COURT: All right. I'll ask the appropriate
10 questions to the jury.

11 Ladies and gentlemen of the jury, there is a witness
12 that I did not question you about during jury selection.
13 That witness's name is Danny McDaniel. Does any member of
14 the jury panel have any close, personal or social
15 relationship or is related by blood or marriage to
16 Mr. Danny McDaniel? Any relation whatsoever? Or knowledge?

17 Let the record reflect that each member of the jury has
18 looked at the Court, and nobody has acknowledged any
19 knowledge or relationship with Mr. Danny McDaniel.

20 You may call your witness.

21 MR. BANKS: Thank you, Your Honor. Danny McDaniel.

22 DANNY WAYNE MCDANIEL,
23 being first duly sworn, testified as follows:

24 CLERK OF COURT: Please state your full name for the
25 record.

1 THE WITNESS: Danny Wayne McDaniel.

2 CLERK OF COURT: Thank you, sir.

3 THE COURT: Your witness.

4 MR. BANKS: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. BANKS:

6 Q. Mr. McDaniel, how are you today?

7 A. Good, sir.

8 Q. Thanks for coming out on short notice.

9 A. That's okay.

10 Q. You -- what is your role in this case?

11 A. I'm a licensed private investigator here in South
12 Carolina.

13 Q. How long have you been doing that?

14 A. Since 2002.

15 Q. And before that, what did you do?

16 A. I retired from the South Carolina Highway Patrol.

17 Q. When you say "retired," after how many years?

18 A. I don't remember. 1986 until 2002.

19 Q. And so you've worked this case for my office; is that
20 right?

21 A. Yes, sir, correct.

22 Q. All right. And in your -- in your part of your
23 investigation, did you have occasion to go to the jail?

24 A. Several times, yes, sir.

25 Q. Okay. And then when you went to the jail, did you see

1 my client?

2 A. Yes, sir.

3 Q. And how many times do you think approximately you went
4 to the jail?

5 A. I actually document when I go to the jail. I have to
6 sign in on the jail log.

7 Q. Mm-hmm.

8 A. And my first visit was on December the 11th, 2014. The
9 next visit was December 30th, 2014. The next visit was
10 February 13th, 2015.

11 Q. Okay. And your visits to the jail, you met, you said,
12 with my client?

13 A. Yes, sir.

14 Q. And did you meet with anyone else besides myself at the
15 jail?

16 A. No, sir. No, sir.

17 Q. And in meeting with my client, did you bring your file,
18 I suppose?

19 A. Yes, sir.

20 Q. And did my client bring anything with him at all?

21 A. Yes, sir. I request -- when I go to the jail, when I go
22 to meet with an inmate, we generally try to meet in the
23 chapel. And that's just an area inside the jail that -- it's
24 a lot of glass and it's very open.

25 And in trying to save time, what I do is I get them to

1 bring their discovery, whatever documents that has been
2 provided by the attorneys, so if they've got any questions,
3 we don't have to wait for them to go back and get something
4 or whatever. So they bring their discovery up when I meet
5 with them.

6 Q. Okay. And so when you met with Bryant, did he bring his
7 discovery?

8 A. Yes, sir.

9 Q. And, again, exactly -- tell the jury what discovery
10 really is. What is it?

11 A. Well, discovery is -- can be called two things. It can
12 be called, like, Rule 5, a Rule 5 motion or basically just a
13 discovery in a case. It's the information that the police
14 have or law enforcement has to use to -- to use in the
15 prosecution of the defendant for his criminal defense.

16 Q. So as part of discovery, as you call it, there would
17 be -- if there were any statements against my client, would
18 they typically be in that?

19 A. Yes, sir. It's generally everything that we have, the
20 defense and the prosecution, at that time, that we have been
21 able to give to the defendant in his case.

22 Q. And the police reports?

23 A. Police reports, statements.

24 Q. Everything?

25 A. Everything.

1 Q. Okay. So when you met with my client, you said he
2 brought with him his discovery; is that right?

3 A. Yes, sir.

4 Q. Could you characterize how large it was by the time --
5 by the last visit, how large was the discovery that he
6 brought with him?

7 A. Probably twice what mine is. On my discovery, what I
8 need for criminal defense purposes is not the entire file.
9 It's just certain things that I need to carry out what my job
10 responsibilities are.

11 Q. So that batch of stuff you brought with you today is
12 just your case file; is that right?

13 A. Yes, sir, that's correct.

14 Q. And that is about, what, three to three and a half
15 inches thick?

16 A. Yes, sir.

17 Q. Okay. And you're saying his was closer to twice or
18 twice that thick?

19 A. Yes, sir, it was more than that.

20 Q. Have you had occasion to go back into the back of the
21 jail, you know, into the rooms themselves and pods and things
22 in the jail?

23 A. No, sir, I don't go back into the pods.

24 Q. Okay. So you don't know how -- the size of the cells or
25 anything like that?

1 A. No, sir, I don't know anything about that.

2 MR. BANKS: No further questions.

3 THE COURT: Mr. Leiendecker?

4 MR. LEIENDECKER: I have no questions for
5 Investigator McDaniel.

6 THE COURT: Solicitor?

7 MR. PASCOE: A few questions. Thank you.

8 CROSS-EXAMINATION BY MR. PASCOE:

9 Q. How are you doing, Investigator McDaniel?

10 A. Good.

11 Q. Have you had an opportunity to go through the discovery
12 in this case?

13 A. Yes, sir, I have.

14 Q. A lot of statements, right?

15 A. Yes, there were a lot of them.

16 Q. A lot of evidence, statements, a lot of paperwork?

17 A. Yes, a lot of paperwork, criminal histories, all kind of
18 stuff.

19 Q. Exactly.

20 How many hours did it take you to go through that stuff?

21 A. I can look. I keep an invoice about that. It --

22 Q. Sure. And you're trained to go through stuff like this,
23 right?

24 A. That's correct, yes.

25 Q. How many hours did it take you to go through that file?

1 A. 73 hours.

2 Q. Wow. And it might take an untrained eye even longer to
3 go through that file, right, and come up with a good summary
4 of the facts of this case, correct?

5 A. Yes, sir, that's correct. A lot of this stuff doesn't
6 have any application to what I do. For example, criminal
7 histories and just stuff like that, that's just -- that's
8 beyond my scope of --

9 MR. PASCOE: Thank you, sir. That's all I have.

10 THE COURT: Any redirect?

11 MR. BANKS: Yes, Your Honor, please.

12 REDIRECT EXAMINATION BY MR. BANKS:

13 Q. Investigator McDaniel, your purpose is a lot different
14 than, say, purpose of a jailhouse snitch; isn't that true?

15 A. I'm not a jailhouse snitch.

16 Q. I know that.

17 A. Okay.

18 Q. But, I mean, you're trying to break things down, right?

19 A. Yes, sir. I'm trying to look at both sides of the case,
20 from the law enforcement and from the defense, and trying to
21 figure out what exactly is true and what's not true and form
22 an opinion based on the facts as I see the facts and make my
23 report to you and discuss the findings and come to a
24 conclusion, you know, be it good, bad or indifferent.

25 Q. But if you want to grab some dirt out of your file real

1 quick and try to sling it on somebody, how long would that
2 take? Just like a jailhouse snitch would.

3 A. I don't have a clue about what -- I don't understand.

4 Q. You're breaking things down, adding things up, putting
5 things together; is that correct?

6 A. Yes, correct.

7 Q. If you were just going to be handed a batch of papers,
8 how long would it take you to just grab a few of those and
9 make a just concise statement of the facts of the case?

10 A. I wouldn't try to make anything up. I would just go by
11 what I'm given. I mean, I don't really understand.

12 MR. BANKS: Nothing further.

13 THE COURT: You may step down, sir, thank you.
14 You may call your next witness.

15 MR. BANKS: We rest, Your Honor.

16 THE COURT: Ladies and gentlemen --
17 Solicitor, did you have any reply?

18 MR. PASCOE: No, Your Honor, no, ma'am.

19 THE COURT: Ladies and gentlemen, both parties have
20 rested their case at this time. It's about 4:30, so it's a
21 good time for us to take our evening break. And in the
22 morning, we will proceed with the closing arguments of
23 counsel and instruction on the law to you. If you would
24 please report to your jury room at 9:30, we'll begin promptly
25 thereafter.

1 Have a good evening. Again, please remember my previous
2 instruction to you to not discuss this case with anyone or
3 allow anyone to discuss the case with you or do any
4 independent research on the case. Have a good evening.

5 (The jury retires to the jury room at 4:23 p.m.)

6 THE COURT: Anything further from either the State or
7 the defense at this time?

8 MR. PASCOE: No, ma'am.

9 MR. BANKS: No, Your Honor.

10 MR. LEIENDECKER: Your Honor, is it appropriate to renew
11 our motion at this time, or do you want to do that in the
12 morning?

13 THE COURT: Is it based on the same grounds?

14 MR. LEIENDECKER: Absolutely, Your Honor.

15 THE COURT: Mr. Banks, is your motion based on the same
16 grounds?

17 MR. BANKS: Yes, Your Honor.

18 THE COURT: Based on the same grounds, the Court will,
19 for the same grounds, respectfully deny your motion.

20 MR. LEIENDECKER: Thank you, Your Honor.

21 (Trial of the case adjourned on 3/5/2015 at 4:25 p.m.)

22 - - -

23 (Trial of the case resumed on 3/6/2015 at 10:40 a.m.)

24 THE COURT: We've had an opportunity to go through the
25 proposed jury instructions with both the State and with the

1 defense. Is there anything that either party would like to
2 place on the record regarding the jury instructions?

3 MR. LEIENDECKER: Yes, Your Honor. Please the Court.

4 In the proposed jury instruction requests that were
5 passed up by myself on behalf of Jerry McKnight, we handed up
6 the accepted and adopted standard of reasonable doubt in the
7 State of South Carolina from the Manning case. That was
8 originally included, but the Court in chambers in the
9 conference is going to expand that, it is my understanding,
10 and add the language of *Victor v. Nebraska*.

11 It's our position and remains our position that the
12 Manning case is the law in the State of South Carolina and
13 it's, because of it's brevity, much clearer and more
14 understood instruction.

15 THE COURT: All right.

16 MR. LEIENDECKER: And if it please the Court, I would
17 have my jury instruction just marked as a court exhibit.

18 THE COURT: I will do that. I think I actually left
19 yours in chambers.

20 MR. LEIENDECKER: I have a copy I can pass up.

21 THE COURT: Okay. Sure. We can do that.

22 (The Court's Exhibit 3 marked for identification.)

23 THE COURT: And in regards to your position, Mr.
24 Leiendecker, what the Court intends on doing is charging both
25 the Manning plus the *Victor v. Nebraska*. Certainly it's the

1 Court's position that to give the jury as much information as
2 possible is reasonable, and the law reflects the charge as
3 the Court intends on charging it.

4 MR. LEIENDECKER: Thank you, Your Honor. Then there's
5 nothing further from me.

6 THE COURT: Anything further before we bring our jury
7 out?

8 MR. BANKS: No, Your Honor.

9 THE COURT: All right. Let's have our jury. Please.

10 (The jury enters the courtroom at 10:42 a.m.)

11 THE COURT: Good morning, ladies and gentlemen of the
12 jury. Thank you for your patience this morning. We
13 certainly appreciate it. We are now at the stage of the
14 proceedings where the parties will present their closing
15 statements to you, their closing arguments to you. And after
16 that, I will instruct you on the law of this case. Please
17 pay close attention as the parties proceed.

18 Solicitor?

19 MR. SORENSON: Thank you. May it please the Court, Your
20 Honor.

21 THE COURT: Yes, sir.

22 MR. SORENSON: Good morning. Madam forelady, ladies and
23 gentlemen of the jury, I want to start off by thanking you
24 not only for your time, because I know you really didn't have
25 a choice in the matter to be here this week, but more

1 importantly for the attention, the attention that you've
2 given this matter over the last several days and the
3 attention that I know you're going to continue to give this
4 matter this morning throughout the lawyers' closing arguments
5 and then ultimately when you have a chance to finally get
6 back in your jury room and to begin deliberating and reach a
7 verdict in this case.

8 As I'm sure you're aware, this is a very important
9 matter, not only to the family and the friends of
10 K. R. [REDACTED] but also to the defendants in this case,
11 Bryant and Jerry McKnight.

12 As Her Honor told you, we've reached that point in the
13 proceedings where the lawyers have an opportunity to come
14 before you and give our closing arguments. The way that's
15 going to work is I'm going to take a couple minutes of your
16 time right now to talk to you a little bit about some of the
17 law involved, go over the charges, things like that.
18 Hopefully no more than five, ten minutes.

19 Then I'm going to sit down and Mr. Leiendecker or
20 Mr. Banks are going to have an opportunity to then come
21 before you and argue to you what they feel are the facts that
22 are proven in this case.

23 Then when they're done, I'm going to then have an
24 opportunity to come back before you and talk to you about
25 what I submit to you the evidence has proven in this case.

1 Now, as you heard on Monday, both of the defendants,
2 Jerry and Bryant McKnight, were both charged with the crime
3 of murder. I want to briefly talk to you about what that
4 means.

5 Murder, while it's the most serious charge we have in
6 the State of South Carolina, probably has what is ultimately
7 the shortest definition in our law books. Very simply, it is
8 the unlawful killing of another person with malice
9 aforethought, either express or applied. Unlawful killing of
10 another with malice aforethought express or applied.

11 Notice that nowhere in there -- you may have heard on
12 television or books or something the term premeditated
13 murder. We don't have premeditated murder in South Carolina.
14 Very simply, we have to prove that that malice, and I'm going
15 to talk to you about that in a minute, that there was malice
16 in the defendants' mind at the time the fatal shot was fired.
17 That's the aforethought. It had to be present. It could
18 have developed a second before those shots were fired.

19 Express or implied, I'm going to talk to you about that
20 in a second also, all right?

21 But malice, what's the definition of malice? Reckless
22 disregard for the welfare of another human, the depraved
23 heart fatally bent on mischief, heart devoid of social duty,
24 conduct that signifies the conscious effort creating a high
25 risk of serious bodily injury to another.

1 No time limit. That malice, as I said, does not have to
2 exist for any great period of time. You're going to hear in
3 this case, when we get into the evidence later on, that that
4 malice, I submit to you, is something that had developed over
5 a couple-week period of time after February 2nd.

6 Can be either express or implied. Very simply what that
7 means is that's how you can find that malice. Express
8 malice, if somebody says, "I'm going to kill you," that would
9 be an example of express malice.

10 Acts preparing for the act, in this case, them getting
11 together, getting a bag that I submit to you had items in it
12 involved, taking her out where they took her, dragging her
13 out of the vehicle. Acts in preparation.

14 Express malice, another example, Bryant McKnight's text
15 to Stephon Green, "Got the girl. Thinking about killing
16 her," about 7:00 before the homicide. Evidence of express
17 malice.

18 Implied malice is when there are facts and circumstances
19 that you, the jury, can take and apply that they had that
20 evil heart, devoid of social duty, back at that time; the
21 fact that they used a deadly weapon; the circumstances
22 surrounding the crime; the fact that they shot her 12 times.
23 Those are facts that you can find to apply that malice
24 existed in this case.

25 As you heard also, they've both been charged with one

1 count of kidnapping. Kidnapping is very simply seize,
2 confine, inveigle, decoy, kidnap, abduct or carry away
3 another person without authority of law. In other words, a
4 law enforcement officer arresting somebody is not kidnapping
5 them by any means whatsoever, all right?

6 Kidnapping, you know, doesn't mean you have to send a
7 ransom note. Very simply, ladies and gentlemen, in this
8 case, when they took her under false pretenses out Highway 6
9 off Stiffmire Road and ultimately drug her against her will
10 out of the back of that vehicle, that's a kidnapping, ladies
11 and gentlemen.

12 And then lastly, you also heard that the defendant,
13 Jerry McKnight, has been charged with one count of possession
14 of a weapon by a person convicted of a violent crime. Very
15 simply, you heard the stipulation between the State and
16 Mr. McKnight's lawyer that he has a conviction from 2003 for
17 trafficking crack cocaine, and our legislature has deemed
18 that to be a violent offense. And as a result of that, he is
19 prohibited from possessing a firearm, okay?

20 So the mere fact that if you find that he had that black
21 and white, pearl-handled gun, that he possessed that gun at
22 any point in time back on February 13th of 2014, he's guilty
23 of that based on that prior conviction that he has from 2003.

24 All right. The next term I want to kind of talk to you
25 about is reasonable doubt. You've heard that. I'm sure it's

1 a term that everybody has heard at some point in time. And
2 ultimately, the burden in this case is the same as it is in
3 every criminal case in the United States. The State has the
4 burden of proving the defendants -- defendants, in this case,
5 guilty beyond a reasonable doubt.

6 What that means, ladies and gentlemen, is after you've
7 heard all the evidence and you have a chance -- and you've
8 heard all of that, and once you get back to your jury room,
9 begin deliberating, at that point in time, if you find that
10 you're firmly convinced of the defendants' guilt, under your
11 oath, you have a duty to find each of them guilty, murder,
12 kidnapping, and on Jerry McKnight, the weapons charge.

13 Now, the next thing I want to talk to you about is
14 something called accomplice liability. That very simply is a
15 fancy term for -- I'm sure you've all heard the term "The
16 hand of one is the hand of all." And that's very simply,
17 ladies and gentlemen, when two or more people get together
18 for the purpose of committing an unlawful act, they are each
19 responsible and accountable for the actions of each other.

20 As Her Honor will tell you, you can have a homicide case
21 where you can have just one bullet fired. If you have more
22 than two people that have conspired together to commit a
23 crime and as a natural consequence of that crime a homicide
24 occurs, the victim's shot one time, every person who is
25 involved in planning and carrying out that offense is guilty

1 of murder.

2 In this case we have more than that. Not only do we
3 have that, but we have multiple -- where they're both
4 shooting as opposed to just one shot.

5 I think the last thing I want to talk to you about
6 before I sit down is credibility of the witnesses. As Your
7 Honor is going to tell you, just as she is the judge of the
8 law and ultimately she is going to -- after we give our
9 closing arguments, she's going to charge you on the law in
10 this case. And you have a duty to follow the law as Her
11 Honor instructs you.

12 But she's going to tell you that not only is she the
13 judge of the law, the 12 of you are also judges also. You're
14 judges ultimately of the credibility of the witnesses.
15 Credibility of the -- and the determiner of the facts in this
16 case, all right?

17 And that, ladies and gentlemen, is something I submit
18 that you've been preparing for all your lives. I'm sure when
19 you showed up here on Monday, you didn't -- probably didn't
20 expect to be still sitting here on Friday involved in this.

21 But at some point in time you may have also been kind of
22 questioning, How on earth did I end up here? I'm not
23 prepared for this, haven't taken any classes on this,
24 nobody's given me any instruction on how -- how am I suited
25 to be a juror, to come in here and determine this?

1 I submit to you the 12 of you have been preparing for
2 that every day of your lives, because basically what you're
3 going to be asked to do, as I told you, you're going to
4 have -- your role is to basically determine the credibility
5 of not only the witnesses that have testified but also the
6 evidence that has been presented to you in this courtroom.

7 When you do that, just like you do every day when you're
8 dealing with your spouses, children, coworkers, friends,
9 family, and some of the factors that you look at ultimately
10 in this case, I mean: What was the demeanor of the witness
11 on the witness stand? Did they appear to be forthright?
12 Were they hesitant in their answers? Was their testimony
13 consistent or did it jump all over?

14 Probably something I'm going to talk to you a whole lot
15 about when I get up here and go over the facts, was the
16 witness's testimony corroborated? In other words, was it
17 supported and backed up by not only other witnesses but also
18 the physical evidence? Does the witness have some reason or
19 bias or motive, some stake in the outcome to not come in and
20 tell you the truth?

21 And the one thing about the credibility of the
22 witnesses, obviously the State, I think we called about 24
23 witnesses that testified, and obviously you've got to
24 determine their credibility.

25 The defense, just like in every criminal case, they have

1 no burden. I talked to you about that burden of proof. They
2 don't have to call a witness. They don't have to ask a
3 single question. They can sit there and make us prove, prove
4 their guilt beyond a reasonable doubt.

5 But the one thing, ladies and gentlemen, to keep in
6 mind, is that once they start calling witnesses, you judge
7 them the same way. They are subject to the same scrutiny,
8 the same questioning, and ultimately you have to determine
9 that same credibility of the witnesses that they put on the
10 stand, and I'm going to talk to you in a little while about
11 them also, all right?

12 Before I sit down I basically just have one request:
13 Please just keep an open mind, okay? As I said, I know I've
14 watched you. I know you all have paid attention. I know
15 you're going to give Mr. Leiendecker and Mr. Banks your
16 undivided attention.

17 I would ask you just for one thing, and that's please
18 keep an open mind and give me an opportunity to come back
19 before you when they're done so I can show you how those
20 stubborn facts that Mr. Leiendecker talked about Tuesday
21 morning, how those stubborn facts I submit to you prove
22 Jerry McKnight and Bryant McKnight's guilt, not beyond a
23 reasonable doubt. I submit to you in this case it proves
24 them guilty beyond any shadow of a doubt. Thank you.

25 THE COURT: Mr. Banks.

1 MR. BANKS: Thank you, Your Honor. Please the Court.

2 THE COURT: Yes, sir.

3 MR. BANKS: Miss Forewoman, members of the jury, I'm
4 Martin Banks, as you know, and I represent Bryant McKnight.
5 I do appreciate you all spending your time this week
6 listening patiently to what we've had to say. And I'm going
7 to take you through our version of what we think happened,
8 through the evidence and all the testimony, sort of recap it
9 for you guys in a more condensed version than -- maybe I'll
10 be less than five days' worth of arguing.

11 Let me start by saying, kind of tailing off something
12 that the solicitor -- assistant solicitor just said. He
13 said, you know, he had maybe 20 witnesses and we had a few of
14 our own.

15 The major difference between his witnesses and our
16 witnesses is not one of our witnesses were charged with a
17 crime. Not one of our witnesses was a codefendant. Not one
18 of our witnesses was hoping that the solicitor would help
19 them later on down the road with the charges that they faced
20 because of their participation in this matter. Our witnesses
21 didn't have that, and that goes toward credibility.

22 You've got to weigh what these people said with what
23 they're facing, their experience, what they've said other
24 times, and decide for yourselves who's being honest with you.

25 The -- I'll start by going back to February the 2nd of

1 2014. February 2nd, 2014 was that day that Mrs. Matthews'
2 house was home invaded and robbed. Ms. Matthews, the mother
3 of both of the defendants over here, my client and Jerry,
4 she -- as you'll recall, she said, as she looked out the
5 window, and she actually said Jon-Jon, but she -- I don't
6 know if you heard -- I know she's a little difficult to
7 understand, but if you -- I think she kind of leaned over
8 like this (indicating) and said, "Jon-Jon," with a question
9 mark. So she thought it was her relative, Jonathan McKnight.

10 True, she didn't report that crime. She didn't -- she
11 didn't just fill out a police report and all those things.
12 When the police came, she had, at the time, thought it was
13 Jon-Jon, but I don't think that she really believed that
14 Jonathan McKnight would have actually done that to her at the
15 time.

16 Then you heard her later say, well, after a while we
17 figured out that -- in fact, only a few weeks ago, we figured
18 out that he's been out there bragging that he did do this
19 thing. And being a relative, not being sure, I mean, she
20 didn't want to implicate her relative without being sure.
21 And so it took her a while to finally hear what he had been
22 saying in the streets. And so she -- she told what she knew.

23 On February the 2nd, my client -- you know, you heard
24 testimony that my client had maybe evil in his heart toward
25 this girl, K. R. [REDACTED], that he had planned on -- you

1 know, I think he showed his gun and things like that on the
2 way. That's what the testimony was from some witnesses.

3 But he -- the question that can't be answered, that
4 couldn't -- nobody could answer, I don't even think you all
5 can answer this question, but the question is -- and
6 apparently she knew, K. R. [REDACTED] supposedly knew before
7 Bryant came to pick her up that day that he suspected her in
8 some involvement in that crime. You heard that. I heard
9 that, but it doesn't make any sense. We -- it doesn't make
10 any sense because why in the world would you get in the car
11 with him if you truly believed that to be true?

12 I think I asked the question of one witness, you know,
13 "Do you think she was amused by that," like really believed
14 that? And I think you all need to answer that question
15 yourselves. Did she really believe?

16 And therefore, did Bryant really believe at that point,
17 two weeks later, that she was somehow involved in the robbery
18 at his mother's house. I submit to you it doesn't make a
19 lick of sense for you to get in a car with somebody who
20 suspects you of something like that and has threatened harm
21 to you.

22 And then you heard during the course of your day from
23 various witnesses that she went around with him freely. She
24 got in the car freely. She planned this, if you want to call
25 it a date, whatever. She got in there freely. She walked

1 around freely. She was even left alone once in the car when
2 he went out to somebody else's house or whatever.

3 She was freely going with him. Nobody said he had to
4 manhandle her or threaten her or do anything. She was just
5 there. And of course we heard about the drugs that were done
6 at one of the fellows' houses.

7 My point being that if there was a kidnapping, if there
8 was a kidnapping, when did it occur? When could it have
9 occurred? I submit to you that he didn't kidnap her. She
10 was a free, willing participant, and he didn't intend to kill
11 her that night. She didn't believe it, and they must have
12 discussed it. He didn't intend to kill her that night.

13 Also, throughout that evening, there were calls, many
14 calls and some texts. You heard testimony of all these
15 terrible texts. Did they bring any of those texts? They
16 didn't even have those phones anymore. They didn't have the
17 texts. That makes me very suspicious about the existence of
18 those texts, and I think to the person. None of them could
19 produce any of those texts from their phones. None of them.

20 Wouldn't you have liked to have seen that? Wouldn't you
21 have liked to have seen these written and black and white,
22 some of the things they said? It's all just what they said.

23 And remember, some of these guys are charged with being
24 involved in this. Some of them are very involved. Some of
25 them were there. Some did a lot of things afterwards. The

1 more they can say to put things off on them and put them on
2 someone else, the clearer they are from being charged and
3 eventually convicted of something heinous, maybe not a
4 murder, but the things they're charged with.

5 The use of the telephone itself, I remember we broke
6 down one conversation with a guy who said Bryant called me
7 and said this thing. Remember the guy that said Bryant was
8 mumbling on the phone and he really couldn't identify his
9 voice? If you can't identify the voice, then how do you know
10 who you're talking to? You have this phone that could be
11 anybody's phone. It could be anybody's phone or anybody
12 using your phone.

13 I remember right after my daughter got an iPad, she
14 FaceTimes with her little friends. And occasionally she
15 would, I guess, text them or do something like a text, an
16 email or something over the little phone, but it doesn't have
17 the face. FaceTime, you can see the face. And then these
18 other ways, texting and emailing, you don't see the face.

19 And occasionally she'd walk away to go do something, and
20 I would go and play a little joke on her friends. And I
21 would, you know, say something embarrassing, not terrible,
22 but embarrassing about my daughter, or as if it was from my
23 daughter. And they thought it was from my daughter, and they
24 thought it for a couple of days until my daughter found out
25 that I'd done it and I was relieved of -- they found out and

1 they knew who it was.

2 But you all didn't have an opportunity to find out who
3 it was. You didn't have somebody come forward and say it was
4 theirs, it was their text or their phone call. You heard
5 that that phone was actually registered in Teresa McKnight's
6 name.

7 Let me move to February the 12th. February the 12th.
8 Sandra Hughes -- tell you what, let's go back. Let's go to a
9 few days after the 12th.

10 A few days after the 12th, February the 12th, 2014,
11 Sandra Hughes, along with Bryant, went into the sheriff's
12 department. This was only a few days after Bryant had gone
13 to her house. They went to the sheriff's department just a
14 few days later and gave a statement. She told the police at
15 that time that he had gone to her house on the 12th of
16 February, the 12th of February, the day before this all
17 happened.

18 And she also said that she was much -- she remembered
19 things a lot better back then than she did today. Do you
20 remember the day she testified and she said that? If she
21 remembered things better a few days after this than she did
22 this day -- and by the way, she's also charged with a crime
23 of accessory after the fact, and she would like those
24 charges, I'm sure, to be relieved of her. And the best way
25 to do that is to testify in this courtroom.

1 But she remembered better then than she did the other
2 day when she testified. And she testified and she gave her
3 statement that he was there on the 12th.

4 Mrs. Hughes also had a couple of things happen around
5 that time, about the 12th, 13th, 11th, maybe even into the
6 14th. This was the ice storm. The ice storm.

7 And I don't know about you, but my power doesn't go out
8 a lot of times. It doesn't go out very often, but when it
9 does, I remember it. And when there's an ice storm, I mean,
10 I remember all the way back to last year from the ice storm.
11 I mean, that doesn't happen very often.

12 But both of those things happened around the time Bryant
13 was there, and she had ample time -- she had several days to
14 think about it, because the police had called them before
15 that, a day or two after the crime, two or three days after
16 the crime. And so she had enough time to think about it
17 before she actually came in with Bryant to give the
18 statement.

19 And so she had time to think about it, and she had those
20 two important events happen, the ice storm -- and if you are
21 thinking a day or two about, all right, there's this ice
22 storm. Bryant shows up. Bryant shows up and there's this
23 ice storm. You have time to think about that.

24 And then her power went out, and you can -- then you
25 have the ability to have realize, all right, now, he came

1 before or after the power went out or during when the power
2 was out. You have two little landmark things that happened
3 in your life to determine what day, approximately what time
4 Bryant got there.

5 She had, I mean, again, two very kind of landmark
6 events. She had days to think about it, and she came and
7 told them when he got there. And that was just a few days
8 after she had -- he'd come there and she remembered it better
9 then than she did when she testified. She had plenty of time
10 to rethink her position because of -- the charges came after
11 she gave the statement.

12 Now, I can't -- I don't really concede that, I don't
13 really concede necessarily that Bryant was at the scene of
14 the crime, but I realize you all heard a couple of days worth
15 of testimony on that, so I have to address that, that Bryant
16 was with Jon-Jon. I mean, I'd be -- I'd be foolish not to
17 address that issue, because if you all heard it, you all
18 would likely consider it, and so I need to address some of
19 the things that occurred at the crime.

20 First of all of course Jon-Jon, Jonathan McKnight, who
21 Ms. Matthews said was involved in her home invasion, and I
22 believe she also said that she could identify the gun because
23 Jon-Jon put it square -- not between her eyes, but just above
24 her eyes, and it was black and it was white.

25 Jon-Jon drove the car that night. The car that took

1 K. R. to Stiffmire Road. Jon-Jon -- and this is all that
2 he would admit to, that he drove the car that night. He
3 never got out of the driver's seat, that kind of thing. But
4 he did say some key things about what occurred that gives you
5 something to really think about in detail.

6 As you remember, there was a discussion about the girl
7 getting out of the car, but you remember that Jon-Jon said
8 Jerry was running the show from the moment he came out of the
9 house. Do you remember that? Jerry was in charge. "Jerry
10 told me where to go." I mean, he used the word "Jerry" a lot
11 more than he mentioned Bryant. He only mentioned Bryant a
12 couple of ways, and they were both in a very interesting,
13 interesting way.

14 Jerry came out of the house. Jerry directed the car.
15 Jerry ended up getting out and ultimately pulling the girl,
16 dragging, yanking the girl, dragging the girl around behind
17 the car, but not before Bryant actually had a word with him.

18 Now, we don't know what Bryant said, but we do know from
19 his testimony that Jerry just was doing most of the talking,
20 Jerry was doing most of the talking. Bryant said something.
21 We don't know what he said, but Jerry was doing most of the
22 talking.

23 I submit to you that Bryant was trying to say, "No.
24 Stop. Bad idea. Let's just not do this." And Jerry, being
25 the one doing most of the talking, was the one who was

1 forcing this down my client's throat.

2 Of course then Jerry took the girl behind the car and he
3 either shot her nine or ten times. Nine or ten times. And
4 you all didn't get to see all the gruesome details, but the
5 pathologist located most of these bullets in this area and
6 this area (indicating).

7 And that -- if you take any -- as you remember what the
8 pathologist said, you take any, any one except that
9 superficial one that we talked about behind the ear that
10 really didn't fracture or go into the skull, any one of those
11 could have killed her. Some of them would have definitely
12 killed her, but the more she was shot, the more blood that
13 would be lost and the more, and the quicker she would die.
14 Do you remember that?

15 Well, I tell you that -- remember the pathologist talked
16 about the vena cava, one of the largest -- it is the largest
17 vein in the body, and it parallels the aorta right by the
18 spine. The vena cava pumps more blood or has more blood in
19 it than any other vein in the body and basically equivalent
20 to the amount in the aorta.

21 If one of those nine or ten shots that he shot hit the
22 vena cava, that will be one of the more fatal, more fatal
23 blows, one of the quicker ways to die.

24 Also the liver has a lot of blood in it, and a
25 penetrating wound to the liver, which did happen, would also

1 be another very bloody wound.

2 And we don't have to talk about six shots to the head.

3 I mean, you know, the brain is the brain, and it makes all
4 your organs function, and if you get shot six times in the
5 head, things are going to shut down pretty quick. Might not
6 bleed as much, but you will shut down. You will die.

7 Jerry shot her nine or ten times, and she laid there.

8 Jon-Jon wants to get out of this too. He's trying to
9 abandon ship, and what happened? Jerry pointed the gun at
10 Bryant -- I mean at Jon-Jon and threatened him to, "No, you
11 ain't going nowhere. You stay right there. Get your head
12 back in the car," or whatever he said like that. So he
13 threatened Jon-Jon.

14 And then Bryant, standing right next to Jerry, was then
15 told by Jerry, "You're gone shoot this bitch too."

16 Now, Bryant hadn't shot her yet, but then he hands
17 Bryant the gun, and Bryant unloads the gun in the dark,
18 except for the running lights, little red lights on the back
19 of the car. But they weren't right behind those lights
20 either; they were a little further. Unloads the gun. These
21 are .22 bullets, by the way. Loads the gun back, shuts the
22 cylinder, and because Jerry ordered him to shoot her, he shot
23 her three times.

24 I tell you that one of those -- reluctant at best. He's
25 reluctant at that point at best to participate in this crime.

1 He's already had a word with Jerry a few moments before.

2 He's already had that discussion that Jerry seemed to command
3 more time and effort in, and then Jerry's threatening. And
4 he, I submit to you, forced him to shoot her.

5 And he didn't -- he didn't unload like Jerry did. He
6 shot her two or three times. We don't really know exactly.

7 Remember, one of those shots was not even a fatal wound,
8 so I submit, being the reluctant one, that he didn't
9 necessarily have the most fatal intent. One of the -- that
10 nonfatal wound, I'd suggest to you, is one of the shots that
11 Bryant made. And again, all this argument is not conceding
12 that he may have not even been there.

13 So maybe Bryant shot her one time. Maybe Bryant shot
14 her two times. Maybe one of those bullets didn't even do any
15 real damage, but we do know he did it because Jerry
16 threatened him that he must.

17 The pathologist said that the girl could have been dead
18 before he even fired the first shot because of the amount of
19 time. I believe Jon-Jon said, you know, two to three
20 minutes, couple minutes, before Bryant was able to -- you
21 know, all the threat and the gun and the unloading, the
22 loading, all that, there were a few minutes that went by.

23 And the autopsy, the pathologist said something very
24 close to that. She said, yes, the more he shot, depending on
25 where he shot, the more blood comes out. The vena cava would

1 have been a bad one. The liver would have been a bad one.
2 Of course the brain speaks for itself. Two or three minutes,
3 and she could have already been dead. So if she was already
4 dead, you can't murder somebody who is already dead. You can
5 only shoot a dead body.

6 And let's talk about that phone expert for a second.
7 The guy with the big video, I mean, that was kind of it cool.
8 I was an accountant before I was a lawyer, and I like
9 spreadsheets. Maybe not as much as you do, but I like
10 spreadsheets.

11 And, you know, he was qualified as an expert, and then
12 some of his testimony kind of puzzled me. It puzzled me
13 because, you know, he was -- having had 27 years of law
14 enforcement experience, which got him to say, yes, that
15 really didn't have anything to do with this presentation and
16 my being labeled an expert here.

17 He said that the phone information from Bryant was
18 actually -- he'd never seen it before. Not before that day,
19 but he had never experienced that company's records, and they
20 were really strange, odd, and they were the worst set of
21 records that he had to deal with. And the reason was that
22 they didn't have the data on the cell tower.

23 If this is the cell tower (indicating), top of a cell
24 tower has three sides, and it sort of makes a circle of their
25 broadcast or their ability to receive cell calls. It's like

1 a big triangle, but it works in a circle.

2 Bryant's information and the information from what they
3 call Bryant's phone didn't report which of those sectors --
4 they call them sectors, three different sectors. It didn't
5 report that. It just said this tower, somewhere around this
6 tower, could have been that way, could have been that way,
7 that way, that way, somewhere around this tower.

8 K. R. [REDACTED]'s did have -- K. R. [REDACTED]'s
9 records were very, very, more detailed. A lot more detailed.
10 But the cell phone records from my client, do you remember
11 when he said that the more rural areas, you could get a
12 further range from the signal? You could actually, depending
13 on the location of cell towers and whatnot, you could
14 actually be ten miles in one direction, up to ten miles in
15 one direction or up to ten miles in another direction.
16 That's 20 miles.

17 Do you know the mile marker for the Orangeburg 601 exit
18 is 145, and 20 miles in that direction up 26 is Sandy Run, is
19 125, that exit. That's 20 miles.

20 I tell you that Stiffmire, how many times did you hear
21 how remote of an area Stiffmire was? There happened to be a
22 cell tower near it, but my client could have been ten miles
23 in any direction of that cell tower at that time, in any
24 direction.

25 Do you know how remote the road up through Williston is?

1 That, I tell you, I believe that between -- except for
2 Orangeburg and St. Matthews, and St. Matthews ain't much more
3 than rural, but I'll concede it might not be that rural, but
4 Orangeburg and St. Matthews, every other place, Four Holes
5 Swamp, Stiffmire Road and the road up through -- some of
6 the -- a lot of the roads between here and Orangeburg and
7 some of the road up to Williston, you may be -- he may be ten
8 miles in any direction from whatever cell tower they chose to
9 present that he was at.

10 And I tell you, his phone may have been at it, but I
11 don't know if they've proved he was with that phone at all
12 times.

13 Let's talk about the trace evidence guy, the guy that
14 came up and -- well, I'm talking about the bullet. The guy
15 that came up with the bullets first. He was asked the
16 question, "Is this consistent with this -- this type of
17 weapon?" And he said "yes."

18 And Mr. Leiendecker very quickly got up and said, "But
19 your report suggested," I believe he said 93 different
20 weapons could have used that gun. 93. I mean, it's just a
21 guess. It's simply -- it's just a guess.

22 And then the -- Mr. Moskal from SLED, he was the trace
23 evidence guy, and I don't know if you remember the
24 description of the -- I got lost in how many zeros after the
25 decimal -- how small that little -- that little speck that

1 showed up on this black jacket. It was so small. He used
2 the illustration it was like a pea in I forget how many
3 football fields or something like that.

4 I said, "Is it the size of a pea?" No, it's not the
5 size of a pea. It's so small you could never see it, and it
6 takes an electron microscope to even see it. It's so
7 extremely small. So the only thing that even links that
8 black jacket is that one tiny spec that you would have no
9 prayer in even seeing. You probably --

10 And he talked about contamination. If you're standing
11 next to someone who shoots someone, you can get that
12 material, that type of matter on your clothing just by
13 standing there.

14 You know, it's a funny thing about malice. The
15 solicitor talked to you about malice aforethought as an
16 element of murder. Malice, while it is that state of mind,
17 and we've heard some things about it today, but malice is, it
18 has to exist in the point of time when you're involved in --
19 when you're actually involved in the killing itself. And if
20 it doesn't exist then, then you, you can find that my client
21 is not guilty of murder beyond a reasonable doubt.

22 I believe the judge is going to charge you something
23 called proximate cause, and proximate cause means did my
24 client cause the death. Did my client cause that death? I
25 think it's very, very reasonable and within the scope of

1 reasonable doubt to consider that, no, she was already dead,
2 and he didn't kill her.

3 I believe that's all I have, Your Honor.

4 THE COURT: Thank you, Mr. Banks.

5 Would counsel please approach briefly.

6 (The following was held at the bench out of the hearing
7 of the jury.)

8 THE COURT: I hate to interrupt you going next. I'm
9 concerned about the juror in the orange sweatshirt. She's
10 either falling sleep or something.

11 MR. LEIENDECKER: She's not feeling well or something.

12 MR. PASCOE: The juror next to her has nudged her a
13 minimum of three times to wake up. Even had to talk to her.

14 THE COURT: Yes. I've made eye contact with her several
15 times and she --

16 MR. BANKS: There's another guy whose hand is just
17 shaking.

18 THE COURT: Do you all want me to take a brief recess
19 and just talk to her --

20 MR. LEIENDECKER: A brief recess would be great.

21 THE COURT: -- and see if she's --

22 MR. LEIENDECKER: Yes.

23 THE COURT: If she's not feeling well, do you all want
24 to just go with the first alternate? I mean, she's clearly
25 not paying attention.

1 MR. LEIENDECKER: Let's see what the problem is and then
2 make a decision.

3 (The following was held in open court.)

4 THE COURT: Ladies and gentlemen, let's take a brief
5 recess before we continue with the closing arguments. If you
6 would please go to your jury room, we'll be right with you.

7 (The jury retires to the jury room at 11:25 a.m.)

8 THE COURT: As discussed at the bench, we've taken a
9 brief recess. It appears that one of our jurors may not be
10 feeling well. I'm going to go check on her and see what the
11 problem is, and we'll address it at that point. I just want
12 to make sure she's feeling okay so that she's able to pay
13 full attention to all of the parties before we continue.

14 So any objection if I go speak with her? Would you all
15 like to -- I can bring her in chambers. Would the parties
16 like to be in there, or how would you like to handle that?

17 MR. BANKS: Can we go --

18 THE COURT: I mean, we could bring her out on the -- I'm
19 not going to go into the jury room; however, we can bring her
20 out and talk with her individually.

21 MR. LEIENDECKER: My only concern is, if there is
22 something wrong with her -- and obviously she needs to be
23 able to pay attention. My secondary concern is I don't want
24 to do anything that is intimidating --

25 THE COURT: Sure. And I don't want to embarrass her in

1 any way.

2 MR. LEIENDECKER: -- to her. And bringing her back in
3 here seems that way. Even all of us being in chambers with
4 you seems like, you know, everybody's ganging up.

5 I don't have a problem if Your Honor wants to broach the
6 subject with her in chambers and then report to us. And if
7 we all need to be there, then certainly we could hear that.

8 THE COURT: Sure. And I can have our bailiff or the
9 clerk of court in there with me as well so it's not just the
10 judge in there talking to her. So hopefully there -- you
11 know, I certainly don't want to embarrass her or intimidate
12 her in any way. Is that okay with all of the parties?

13 MR. PASCOE: That's fine with us, Your Honor, yes,
14 ma'am. Can we approach about one more thing to let you know
15 about something?

16 THE COURT: Sure.

17 (The following was held at the bench.)

18 MR. PASCOE: During Martin's closing, Don was handed a
19 note from our victim advocate. It said that our victim's
20 mother noticed that when the female in the orange came out,
21 she looked toward the defendants' family and moved her lips
22 as if she was saying something to them.

23 THE COURT: Mm-hmm.

24 MR. PASCOE: So, I mean, you might want to inquire about
25 that too.

1 THE COURT: Okay.

2 MR. PASCOE: Now, there are other people out there
3 besides the defendants' family, so maybe she was talking to
4 one of them.

5 MR. LEIENDECKER: I didn't see that, Your Honor.

6 MR. BANKS: I didn't see it.

7 MR. PASCOE: I didn't either. I didn't. I'm not saying
8 I saw it. I'm just saying we've got to ask about it.

9 THE COURT: Was she -- the young lady in the orange, was
10 she the one that was not feeling well yesterday?

11 CLERK OF COURT: I believe so, but I'm not absolutely
12 sure.

13 MR. PASCOE: She had a paper towel in her hands when she
14 was getting up. Kyle heard her complaining about her
15 stomach.

16 THE COURT: Do you mind coming in with me?

17 CLERK OF COURT: No, ma'am, not at all.

18 (Recess held.)

19 THE COURT: Counsel, please approach.

20 (The following was held at the bench.)

21 THE COURT: She's clearly not feeling well. She looks
22 like she's about to throw up. She's very queasy. She
23 clearly -- I'm concerned about her getting sick. So if
24 there's no objection, if all parties want to go with the
25 alternate.

1 MR. LEIENDECKER: I don't even know who the first
2 alternate is. I don't.

3 MR. PASCOE: I don't remember either.

4 THE COURT: Literally she walked out of the jury room
5 holding her mouth with a paper towel like she was about to
6 throw up.

7 MR. SORENSON: Yes, and I know that she did have paper
8 towels down there also, so --

9 THE COURT: Yes, she's clearly not feeling good at all.
10 The clerk tells me she asked for some Imodium when he came
11 in.

12 MR. LEIENDECKER: That's why we have alternates, so --

13 THE COURT: Right. I mean, she's clearly not feeling
14 well. Alternate No. 1 will be Jenny Troutman, No. 188.

15 MR. LEIENDECKER: Okay. Thank you.

16 THE COURT: Sure.

17 (The following was held in open court.)

18 THE COURT: And just for the record, it appears that one
19 of our jurors is not feeling well. She's indicated that she
20 is very queasy and she asked for some Imodium this morning
21 and wishes to be relieved. I've discussed that matter with
22 all parties, and nobody has an objection to going with our
23 first alternate.

24 Clearly by observing her this morning, she's clearly not
25 feeling well, and it's probably in best interests to allow

1 her to go home. Is that a correct recitation, Counsel for
2 the Defense?

3 MR. LEIENDECKER: Yes, Your Honor, that's what was
4 happening and certainly what the Court's reported to us
5 after.

6 MR. BANKS: That's right, Your Honor.

7 THE COURT: Solicitor?

8 MR. PASCOE: Yes, ma'am. Yes, Your Honor.

9 THE COURT: All right. What we'll do is I'll just
10 ask -- do you mind just informing her that she's free to go
11 and that we'll go with the first alternate, which is Juror
12 No. 188; is that correct?

13 CLERK OF COURT: Yes. She's actually in the hallway.

14 THE COURT: She's in the hallway, so we'll have the
15 bailiff let her know she's free to go.

16 Madam Clerk, what's her name?

17 CLERK OF COURT: No. 66.

18 THE COURT: No. 66.

19 CLERK OF COURT: Tiffany Goodwin.

20 THE COURT: So it is Ms. Goodwin, No. Six 66.

21 Anything further before we bring the jury back out?

22 MR. PASCOE: No, Your Honor.

23 MR. LEIENDECKER: No, Your Honor.

24 THE COURT: Let's have our jury.

25 (Juror No. 66, Tiffany Goodwin, excused from the trial

1 of this case. Alternate No. 1, Jenny Troutman, Juror No.
2 188, seated in her place.)

3 (The jury enters the courtroom at 11:34 a.m.)

4 THE COURT: Welcome back, ladies and gentlemen of the
5 jury. Sorry for the interruption there. Apparently our
6 juror, Ms. Goodwin was not feeling well this morning, and so
7 I have relieved her of jury duty because she was not feeling
8 well. She clearly needed to go home and was ill.

9 So Ms. Troutman, Juror No. 188, you are now promoted to
10 be on the jury rather than being an alternate.

11 All right. We'll now proceed with the remainder of the
12 closing arguments.

13 Mr. Leiendecker?

14 MR. LEIENDECKER: Thank you, Your Honor.

15 Members of the jury, as I told you in my opening
16 statement to you all, and as the solicitor reminded you in
17 the beginning of his close, "Facts are stubborn things,"
18 President Adams said. But what President Adams didn't say is
19 that facts are clearly open to interpretation based on our
20 perspective and our prejudices.

21 This is my opportunity to speak to you about the facts
22 in as concise and brief a way as I can as they regard my
23 client, Jerry McKnight.

24 The truth of it is, as I stand up here, there are times
25 when I think I'm in a two-on-one fight. But the truth of it

1 is that there is no inconsistency with the argument I'm going
2 to present to you today. The argument and the facts, I
3 believe, demonstrate that there was an awful crime committed
4 here, that a young lady who had just really begun her life
5 lost her life on February the 13th, and I believe the facts
6 do not demonstrate, do not demonstrate, that Jerry McKnight
7 is responsible for that.

8 The solicitor, in his discussion of the law, talked with
9 you about reasonable doubt. Reasonable doubt is the key
10 element of our criminal jury system. There are lots of
11 standards of proof in the United States. There are lots of
12 standards of proof in your life. There are things that
13 you're more certain of than other things. There are things
14 you're pretty sure happened. There are things that are
15 probable. There are things that are likely, but those are
16 all things that are less than beyond a reasonable doubt.

17 The judge presents you at the end when we're all done
18 with the law of the State of South Carolina. And if I say
19 anything that doesn't line up with what she says, then she's
20 right and I'm wrong. But I think what I'm saying lines up
21 exactly with what she's going to tell you.

22 In South Carolina, our Supreme Court has defined
23 reasonable doubt as a doubt that causes you in an important
24 matter to hesitate to act. A hesitation to act. Not a
25 failure to act, but a hesitation to act.

1 I'm always thinking about these things, since I've been
2 over 30 years doing this kind of work of criminal defense,
3 and I'm always thinking about how can I tell people what
4 reasonable doubt is. The facts -- the situations just come
5 up in my life all the time that remind me.

6 Last week, two of my four kids are going to college, but
7 the two younger ones are still at home. My wife, being a
8 teacher at a local public school, also stays after class on
9 several nights a week to help tutor kids in mathematics.
10 She's the bright one in our family. She's an engineer and
11 certainly very skilled in mathematics.

12 And on some of those evenings when she's staying and
13 helping tutor kids at the school, it falls on me to be
14 responsible for helping get supper started. My 14- and
15 9-year-old are at home, and we don't leave that
16 responsibility to them, and we certainly don't want them, you
17 know, using the gas cooktop or anything like that when we're
18 not there.

19 And so just two weeks ago, as I'm getting ready for this
20 trial, spaghetti is the call for that evening. Well, I'm
21 pretty good with spaghetti, because the way I make spaghetti
22 is I boil the noodles and open a can or a jar, and I pour it
23 on top. So even I can handle that.

24 And I started it. And I started the noodles. I talked
25 with Cindy. She said she'd be home in 45 minutes, and I got

1 the water going. And when the water got going, I threw the
2 noodles in and I got in the pantry to get out the can of or
3 jar of spaghetti sauce, and it wasn't there.

4 I still had time. Cindy wasn't going to be home for a
5 while, and so I needed to run to the store. So I called my
6 daughter and I said, "Watch your brother. I'm going to run
7 to the store. I need to get some spaghetti sauce. I won't
8 be long."

9 But those noodles had been boiling a while and I didn't
10 want to leave them on, and so I turned them off. And I got
11 in the car and I left out of my cul-de-sac and I headed up
12 the street. And I got about 800 yards from my house and I
13 said, "You know, I didn't want to leave those noodles on." I
14 didn't want it to cause a problem. I didn't want to burn the
15 noodles or worse, cause an issue of leaving an unattended
16 fire that could -- could actually damage the home.

17 Did I turn that cooktop off when I left? Sure, I know I
18 did. I'm sure I did because I'm that kind of responsible
19 dad. And I got to the stop sign to turn and head to the
20 grocery store, and I'm like, "dog -- I am not sure," and I
21 whipped around and U-turned -- there are no Summerville
22 police officers here, are there -- in the middle of the
23 intersection. I went back to my house and I walked in the
24 house and I walked right to that cooktop and I had turned it
25 off. And I got in the car and I went on.

1 What I had, ladies and gentlemen, was a reasonable
2 doubt. What I had was the hesitation to act. Even though I
3 was pretty sure, I had a reasonable doubt.

4 Jerry McKnight is charged in three indictments before
5 this court for your decision and only for your decision. All
6 12 of you that will decide this case are important,
7 individually important.

8 Each of you must decide this case yourself, with
9 consultation with everybody else, but you must decide this
10 case yourself. Each of you must be convinced beyond a
11 reasonable doubt that Jerry McKnight is guilty of one, two or
12 three of those indictments before he can be convicted. Each
13 of you must determine that every element and every fact of
14 those three indictments has been met beyond a reasonable
15 doubt.

16 I'm going to help you. I'm not going to come in and
17 tell you what to do, although I'd love to, but I'm going to
18 help you.

19 The third indictment is use of a weapon by a person
20 convicted of a violent felony. One of the elements of that
21 crime is that my client, Jerry McKnight, has been convicted
22 of a violent felony. We stipulated to that.

23 In 2003, Jerry McKnight was convicted in the State of
24 South Carolina, sentenced and has served his time for a drug
25 offense, a drug offense called trafficking, a drug offense

1 called trafficking because the amount of drugs that were
2 involved, a drug offense that has been defined by our
3 legislature as a violent crime because of the amount of drugs
4 involved, a misnomer when used with the word violent.

5 It does not imply, it does not include, it does not
6 require that anybody suffer physical harm. Unlike other
7 violent crimes like murder.

8 So I'm going to help you. Yes, he does have a violent
9 crime conviction in his past. But that will not allow you to
10 convict him of that indictment, because to convict him of
11 that indictment, there must be proof beyond a reasonable
12 doubt that he possessed a weapon. And I'm here to tell you
13 he didn't commit the crimes charged and he could not,
14 therefore, have been proven to possess a weapon.

15 Did somebody say he possessed a weapon that night? Yes,
16 they did. Jonathan McKnight said he possessed a weapon that
17 night or held a weapon that night. Derrick Sumter had a
18 different story about a different weapon that night. But
19 guess what? If their word was enough, we wouldn't have a
20 trial. If what those indicted codefendants said was the law,
21 we wouldn't need you. But it isn't. And it wasn't what
22 happened.

23 Stubborn facts can't be influenced by passion, prejudice
24 or self-interest John Adams said. And there were enough
25 people sitting on that witness stand that had just that.

1 Just that.

2 On the night of February 13th, 2014, in fact, going back
3 a little further than that in the afternoon of that day,

4 K. R. [REDACTED] was picked up at the residence where she
5 lived in Orangeburg, South Carolina. The testimony, it seems
6 undisputed even at this point by Mr. Banks' closing
7 statement, is that she was picked up by Bryant McKnight. She
8 was picked up by Jamaal Pearce, who was driving without a
9 license, and she was picked up by James Keller.

10 None of them said anything about Jerry McKnight. None
11 of them were close with or in communication with
12 Jerry McKnight.

13 They brought her back, the three of them, to an address
14 on Liberty Street, just up this way. Got very confusing
15 during the trial where Liberty was, wasn't it, based on
16 pointing, but I think it's really up that way (indicating).

17 And they partied with drugs. And then they left.
18 According to Talley Keller, Mr. Keller's daddy, he saw them
19 leave.

20 Then Jonathan McKnight says out of the blue he gets a
21 phone call from Bryant McKnight, "Come pick me and this girl
22 up," and he does. And what does he say? "I picked him up.
23 He told me to go to my grandma's house on Agnes Street."
24 That's Ms. Carolyn McKnight, and you heard from her too. "Go
25 to grandma's house," he needed to get something.

1 Now, I can't resist. It's the contrarian in me, but I
2 can't resist backing up on Jonathan McKnight. What I'm
3 telling you now is Jonathan McKnight's final story, his
4 fourth story, his story that he finally tells them, after
5 Derrick Sumter tells them something different, that he
6 finally admits to Lieutenant Green [sic] that, "This is as
7 far as I'm willing to say I was involved in the case. Will
8 this be enough for you, Lieutenant Green, to quit pursuing
9 this case related to me? Because the first time I told you,
10 Lieutenant Green, I thought maybe the safest thing for me to
11 do is to tell you that I saw Bryant and the girl together and
12 I did pick them up, because people might have seen that and
13 people might know that. And then I dropped them off and I
14 didn't see them the rest of the day. And is that enough,
15 Lieutenant Green" -- or Graham -- "for you?" Not Green.
16 What am I talking about?

17 "Is that enough, Lieutenant Graham, for you?"

18 "Yes," on the 18th of February, "that's enough for me.
19 You're free to go."

20 Then on the 19th, it turns out it's not enough. "So I'm
21 going to come back in and tell the lieutenant that, yes, I
22 picked them up, and I took him, and I took him and that girl,
23 and I took them out to Deer Meadow and -- where
24 Ms. Johnnie Mae Matthews lives. I took them out there.
25 That's what I did. And Jerry McKnight was there. Is that

1 enough, Lieutenant? Is that enough to get me out of this?

2 Is that enough that I don't get in trouble?"

3 Well, later that day, because it's really not enough the
4 third time, "I took them out to Deer Meadow, and those boys
5 shot her. Those boys shot her and they drug her somewhere in
6 the woods behind Ms. Matthews' trailer. How about now, is
7 that enough?

8 "Oh, no, you're going to arrest me? You're going to
9 arrest me as an accessory because I didn't tell you this
10 before? But it's not so bad. I'm going to get out on a
11 bond. I don't have to have wait in jail."

12 Well, it's not enough, because later Lieutenant Graham
13 finds out where the body actually is.

14 "Crap, it's not enough. Okay, here's what happened,
15 here's what happened, because, Lieutenant, I was there. I
16 drove the car. I was there when the girl was killed, and it
17 was on Stiffmire Road, and I was there, and I'll take you
18 there and I'll show you there where it happened.

19 "Now is that enough that I'm not responsible for killing
20 this girl? I'll even prove to you she was there, because
21 she's going to lose not one but two pierced earrings, and
22 they're going to be laying right beside each other. It's a
23 miracle.

24 "I've had a lot of time to get my story together and get
25 it ready. I finally found a story that means I am not going

1 to be charged with killing that girl. And there will be
2 physical evidence to prove what I say.

3 "And I can take them to Stiffmire Road. And the way you
4 get to Stiffmire Road, because I'm told -- I'm going to tell
5 them that it's very confusing. Jerry didn't tell me where we
6 were going. Jerry didn't tell me where we were going when we
7 picked him up at Agnes Street."

8 Hold that thought because we're coming back to that one
9 you all.

10 "He told me turn right, turn left, turn right, turn
11 left."

12 I am not a St. Matthews resident. I have had the
13 pleasure of working almost eight years with you all, and I
14 love your library beyond all things here. But this isn't an
15 incredibly confusing town, and I have got a feel for where
16 most everything is.

17 I know where the pantry is, I know where John Ford
18 School is, which is now the police station. I now know where
19 the Lakeview Apartments are. I know where Agnes Street is.
20 I know how to get to the middle school. I know how to get to
21 the country club, although I've never been there. I've seen
22 the signs. I know how to get to Elloree from here. I know
23 how to get to Cameron. I know all those things.

24 To get to Stiffmire Road, you have to follow the
25 incredibly complicated formula of turning on Highway 6 and

1 heading towards Elloree and turning right on Stiffmire Road.

2 And the realty of it is it was dark. It was late. It
3 was night. Jonathan McKnight didn't know where he was going,
4 but when he was asked to get them there, no problem. This
5 unnamed, hard-to-find road that he went to in the dark, he
6 took him right to. This place where this girl was killed, he
7 took him right to. And to make sure he didn't get in
8 trouble, the person who did this is Jerry McKnight.

9 "Am I okay now."

10 If that was my cooktop, I'd be turning around and going
11 home to check on it, because that's reasonable doubt. That's
12 motivation by a codefendant to save his butt in exchange for
13 someone else's butt.

14 What about Derrick Sumter? Come on, Mr. Leiendecker.
15 Derrick Sumter surely brings this together for the State.
16 Derrick Sumter, when he finally comes forward and talks on
17 the 21st and finishes his statement on the 24th, gives them
18 full disclosure about what happened. And that full
19 disclosure is that he and Jerry went out to Stiffmire Road
20 and picked up a body and threw it off the bridge at Four
21 Holes.

22 I've been to all these places. I rode these places from
23 Stiffmire to Four Holes with people that are born and bred
24 and Calhoun County. And guess how many wrong turns we made?
25 More than one. More than one.

1 I'm going to pick up this easel. I'm going to try to
2 set it up, and I want to look at this map with you.

3 All right. This is Old No. 6. Got it? If you follow
4 Old No. 6 up off the road, Lieutenant Graham told us there's
5 a point where Old No. 6 and Sikes Road come together in an
6 angle, like a triangle, all right?

7 The Jonathan McKnight story, he gets to Stiffmire Road
8 by coming right out of town on Old No. 6, following it
9 straight down -- see how bad I am? Right off the top of the
10 map -- and hits Stiffmire Road right there (indicating).

11 Derrick Sumter, who says he had absolutely no idea where
12 he was going that night, didn't know what they were doing,
13 hadn't planned ahead of time to make this happen, had been
14 given nothing but general directions, says he got to the body
15 because of directions from my client and he got to the bridge
16 because of directions from my client in the middle of the
17 night.

18 When he tells Lieutenant Graham, "I know where she is
19 and I know where she was killed," he takes him there.

20 Bear with me because even my finger gets lost, and I'll
21 try to be careful.

22 He comes out Highway 6. He comes to where it catches
23 Sikes Road. He catches Sikes Road at the right. He goes to
24 the dead end on Belleville Road. He turns on Belleville
25 Road. He doesn't turn on Mossdale Road, which is the first

1 left, but he goes on to Stiffmire Road, the next left. He
2 takes them to Stiffmire Road.

3 I'm sure he and Jonathan hadn't been talking. They're
4 not even friends, right? He goes up to Highway 6. He knows
5 Stiffmire Road exits both ways. He did this in the pitch
6 dark. He'd never done it before, but he had no trouble,
7 Lieutenant Graham said, taking him.

8 He turns on Highway No. 6. He's now headed all the way
9 to Elloree. No, he's not. When he gets to Cameron, the road
10 that takes you into Cameron, he turns on Cameron Road. He
11 follows Cameron Road all the way down. He follows it down
12 to -- I don't remember because I'm going to get lost now. He
13 follows it down to old State?

14 No. See, I'm having that problem again. I can't
15 find -- I can't find it.

16 Oh, I'm sorry. He follows it down a short distance, and
17 then he turns on Nate's Store Road. I told you, I should
18 have practiced this before I came. He follows Nate's Store
19 Road down until he gets somewhere, on Jericho or otherwise,
20 that will take him across to Old State.

21 He goes all the way down here to Midway. That was the
22 testimony, wasn't it? Went to midway, and he turned on
23 Midway, almost off the map, and then he turned up, and then
24 he took him to Four Holes Swamp Road. Wow.

25 "Never done it before. Someone directed me. Middle of

1 the night. But can I get a deal better than murder,
2 Lieutenant Graham? Can I? How about if I show you what I
3 did? Miraculously, I can show you what I did, just like that
4 (indicating)."

5 Ladies and gentlemen, I'd be turning around at that stop
6 sign and heading home to check that cooktop. That's
7 reasonable doubt.

8 "I'm telling a story that's going to save my butt by
9 giving you someone else's." That's reasonable doubt.

10 The State's going to talk a lot about telephone records,
11 and those discussions are interesting. I'm with Mr. Banks;
12 the video is pretty cool. But what does it demonstrate
13 regarding my client? It demonstrates that my client was in
14 St. Matthews with the exception of two pings from his cell
15 phone at 11:53 and 11:55 down in Orangeburg.

16 Now, hallelujah, one of those pings is off a cell tower
17 near Four Holes not really actually at Four Holes but near
18 Four Holes. But guess what? That's the first tower you hit
19 on 601 heading back from Orangeburg. Well, that doesn't fit
20 the theory so much, Mr. Leiendecker, so we're not going to
21 use that.

22 And guess what? Those pings don't really match up with
23 Derrick Sumter, who was supposedly driving Jerry around in
24 the middle of the night. Derrick Sumter, who, for some
25 unknown reason, takes a garbage bag full of items that he's

1 asked to discard by Bryant McKnight and goes from Roosevelt
2 Gardens over in Orangeburg, virtually in the city, all the
3 way back through St. Matthews, all the way over to Richland
4 County.

5 There wasn't a dumpster in a nearby Piggly Wiggly? Good
6 grief.

7 "No, no, because I have other things to do. I don't
8 need to just get rid of this. I've got other things to do.
9 Someone's got to go off a bridge. And I certainly know where
10 to find that and I know where to do that. I may have even
11 discussed it before it happened about what I was going to do
12 to clean it up.

13 "Crap. They know. They've got cell phone records.
14 They know I was in St. Matthews. They know I was here at
15 10:00 and they know I was here at midnight. They know I was
16 still here at 2:00.

17 "Should I say I was at my mom's? No, that doesn't make
18 sense. Then my mom -- guess what, I'm going to say, just
19 like Jonathan said, Jerry McKnight took me along.

20 "And guess what? We'll be the only two people that will
21 testify from that witness stand that we're afraid of
22 Jerry McKnight.

23 "And guess what? We'll make our story more credible by
24 saying he was threatening us."

25 And guess what? Jerry actually comes over to Jonathan's

1 house pretty regularly because he's friends with his uncle.
2 I'm not sure what they're doing over there, but I suspect it
3 wasn't always smoking cigarettes.

4 "And guess what? We'll be able to corroborate that at
5 least one time, because Lieutenant Graham came to get me and
6 Jerry was there.

7 "And guess what? Oh, no, I forgot to say that in my
8 statements. But I'm going to say it from the witness stand.
9 Not only am I going to say it from the witness stand, I'll
10 get my girlfriend to say it from the witness stand, the
11 mother of my child, who also gave a statement to the police
12 and never mentioned it in February of last year either."

13 But a year later, a miraculous remembering of something
14 that helps Jonathan McKnight. I'm not even getting to the
15 stop sign and I'm turning around to check that cooktop.
16 That's reasonable doubt.

17 The weird thing about Jonathan's statement is, "Jerry
18 was coming over and telling me that he's going to tell these
19 people and he's going to stop these people from talking and
20 he's threatening me and he's threatening." Who else was he
21 threatening? He was threatening Jamaal Pearce and
22 James Keller.

23 What did Jamaal Pearce and James Keller have to do with
24 Jerry? We already talked about them. They hadn't even seen
25 Jerry, they didn't know Jerry had been anywhere near them or

1 anywhere near this case. They actually had nothing to say
2 about Jerry.

3 Oh, surely Mr. Leiendecker, he's threatening to protect
4 his brother. Oh, yes, right. Absolutely. Jerry wants to go
5 to prison for his brother for life. Absolutely. Reasonable
6 doubt, folks. Reasonable doubt.

7 I tell you, as I get ready for this case, I wish it was
8 easy. I wish. It ain't. Mark Carson and Norris Shuler came
9 in from the feed store where they run a gun shop to tell you
10 that Jerry McKnight came in and bought some bullets that are
11 consistent with the gun that everybody said Bryant McKnight
12 had.

13 Jerry McKnight doesn't have a car. Jerry McKnight
14 didn't drive there. Mr. Shuler said someone drove him there.
15 He didn't know who. There was at least one person in the car
16 besides Jerry. And Jerry bought .22 long bullets.

17 Well, it would have been cool if SLED could have matched
18 those bullets up, but they couldn't, and they didn't. And
19 all they could say is they're consistent. That's not beyond
20 a reasonable doubt. That's consistency. That's consistency.

21 And maybe it made their story cooler by saying Jerry was
22 looking to buy a gun, but the truth of it was what Jerry was
23 doing was he was asking about buying a gun. And in 30 years
24 of criminal defense work, I don't really remember the case I
25 had where my client committed a crime with a gun they went to

1 a gun store, a gun shop and bought from people, because they
2 buy them on the streets. Just the same way we're told that
3 Bryant McKnight got that gun; he bought it on the street.

4 I wish, I wish I had a perfect alibi. Oh, how I wish
5 that Melissa Robinson didn't have a job that went to work at
6 2 in the afternoon and came back at 2 in the morning. I wish
7 she and Jerry had been together there that day. I wish I
8 could have made a more perfect finding about where Jerry was
9 that day, but what I did was give you the honest truth from
10 some honest people.

11 They didn't have anything to gain. They didn't have
12 anything to get out of this. They weren't trying to persuade
13 Lieutenant Graham that they weren't the ones involved. They
14 told you what they knew.

15 They told you that Jerry was at Carolyn McKnight's house
16 that afternoon, late afternoon, as it was getting dark. He
17 got his hair braided and he hung around for a little while,
18 10 minutes, 30 minutes, just a little while, and that he
19 left. That was verified by both Carolyn McKnight and
20 Ms. Matthews because they were both there. It's her sister's
21 house. Her power was out. She was there.

22 Then he left and went back to Melissa's house, where
23 he'd been earlier in the day. She verified he'd been there.
24 And he was actually seen by people there. And what would
25 have been wonderful is if those people saw him and then went

1 in and watched TV with him until 2:00 in the morning. They
2 didn't.

3 If he knew he had to create an alibi, he should have
4 done that. But guess what, he didn't know he needed an alibi
5 because he wasn't doing anything except cooking rice and
6 greens and some neck bones for his girlfriend when she got
7 home as kind of a celebration because it was going to be
8 Valentine's Day.

9 Now, what I do have is that he was there when she got
10 home. They had a fuss and she left. And they talked a
11 couple more times on the phone after that, and the phone
12 records reflect that. The phone records show her phone
13 number called several times during the day, not only called
14 several times during the day, not only talked to several
15 times during the day but talked to specifically in these
16 times when someone was committing these crimes. Not
17 Jerry McKnight.

18 It's reasonable doubt, ladies and gentlemen. It's
19 reasonable doubt.

20 The State's case would have really come together if all
21 of those SLED experts and crime scene analysts and everything
22 else that the lieutenant told us about that came and worked
23 with him had been able to give us something.

24 They checked both cars, and they didn't get Jerry's
25 fingerprints from either car because he wasn't there. They

1 didn't get Jerry's touch DNA where if you just touch
2 something, the DNA will be there in either car or trunk or
3 anything else because he wasn't there, because he didn't do
4 it.

5 There is a whole lot of circumstances that they want to
6 argue to you if you stack them up, they say Jerry did it.
7 Even Mr. Banks, in his alternate theory, wants you to believe
8 Jerry did it.

9 But you can't say that, and it's not your job to solve
10 this crime. It's your job to determine if they have proven
11 that Jerry did it beyond a reasonable doubt, if Jerry did it
12 like Derrick Sumter and Jonathan Green, the only two
13 witnesses that said he did it to save their behinds. But the
14 thing they couldn't fix, the thing they couldn't get is
15 physical trace evidence, because he wasn't there. He didn't
16 do it.

17 The phone records are thick. I don't really want you to
18 go through all of them because you'll be a here week, but
19 when you do check them, you'll find that there are things
20 more than telephone calls there, like they talked about with
21 the captain. There are text messages during those times back
22 and forth.

23 Jerry's brother and he talked a bit that night. I'm
24 sure the State's theory is they were conspiring. Guess what?
25 When someone's in trouble and panicked, they call anybody and

1 everybody for advice. Or when they're trying to establish an
2 alibi, they call any and everybody to establish an alibi.

3 Suspicion is not beyond a reasonable doubt.
4 Circumstance is not beyond a reasonable doubt. Probability
5 not beyond a reasonable doubt. Strong hunches are not beyond
6 a reasonable doubt. People who testify for their own
7 purposes don't help us get beyond a reasonable doubt.

8 As it relates to Jerry McKnight and as it relates to the
9 allegations contained in these three indictments, go check
10 that cooktop. You might have left it on, because it's
11 reasonable to doubt these facts. Thank you.

12 THE COURT: Solicitor?

13 MR. SORENSON: Thank you. May it please the Court, Your
14 Honor.

15 THE COURT: Yes, sir.

16 MR. SORENSON: Ladies and gentlemen, it's hard to
17 imagine a more evil, a more senseless, I submit to you, more
18 cowardly act than what those two men right there did to this
19 young lady back on February the 13th of 2014. It's hard to
20 imagine a more evil act, a more malicious act to drive her
21 out in the dark, drag her from the back of her vehicle, put
22 12 rounds in her head and chest, drag her into a ditch to die
23 in the cold icy weather, and ultimately throw her in a pond.

24 And I submit to you that night, ladies and gentlemen,
25 they thought nobody was going to care about her. She's

1 nothing but another troubled teen that nobody's going to miss
2 and nobody's going to care about.

3 I submit to you, 3:00 in the morning when he's sitting
4 in his girlfriend's house, fixing rice and beans, 3:00 in the
5 morning when he's made it to Williston in the house with
6 Sandra Hughes, the two of them thought at that point in time
7 they had gotten away with murder. They thought through their
8 threats and intimidation of their friends and family that
9 they had gotten involved in this that nobody was going to
10 care about that young girl, they had gotten away with murder.

11 I submit to you, ladies and gentlemen, in a short while
12 I'm going to ask you to go back to that jury room to prove
13 the two of them wrong.

14 Before that, though, I want to talk to you a little bit,
15 though, about those stubborn facts, and I submit to you in
16 this case the mountain, the mountain of evidence that proves
17 Jerry McKnight and Bryant McKnight guilty beyond any doubt.
18 I want to start off kind of where we started in our case.
19 Bear with me one second.

20 The first two witnesses that you heard from Tuesday
21 morning, Kimberly Livingston, K. R. 's mother, and
22 Tameka Williams, her roommate, and basically what we learned
23 from the two of them is that K. R. disappears the evening
24 of Thursday, February 13th of last year.

25 Learned from Tameka that she got ready to go to the

1 store somewhere around 4, 4:30, somewhere in that range, and
2 that K. R. was in -- in her house, waiting for B, the
3 person that she identified that she knows as that man right
4 there, Bryant McKnight, to come get her. And when she got
5 back between 5 and 5:30, K. R. was gone. That's the last
6 time her friends and family saw her alive, last time they
7 heard from her.

8 We know later that night her mother starts calling and
9 texting her, because, remember, she told you that it was her
10 understanding that K. R. was planning on coming home that
11 night, coming back to her home. And when she didn't hear
12 from her, didn't show up, she starts calling, starts texting
13 her. You've got the phone records, it's dozens of times over
14 the next several days that she tries to get ahold of K. R. .

15 And ultimately, based on that information that she gets
16 from going to talk to Tameka. She comes over because B,
17 Brandon -- Brandon, I'm sorry, Bryant, is from over here in
18 St. Matthews, and that's where she knew that she was going
19 with him. So they come over and they start putting up flyers
20 such as this (indicating) then sadly gets a call on Sunday
21 from somebody telling her there's a rumor out there that
22 K. R. 's dead.

23 It's at that point in time that she contacts the
24 Orangeburg County Sheriff's Office and files a missing
25 persons report. She gives them the information that Tameka

1 had given her about Bryant McKnight, but, see, also it
2 continues from there, because that's that Sunday, the 16th.
3 They're still talking to people, coming over to this area.

4 And what other information do they get that following
5 day. The name James Keller and Jamaal Pearce, two other
6 people who, word on the street here in St. Matthews, had some
7 information and know something about what had happened to
8 K. R. . And that information, ladies and gentlemen, is then
9 ultimately turned over to the Orangeburg County Sheriff's
10 Office for law enforcement here to follow up on.

11 You know what it ends up corroborating, what that ends
12 up corroborating? Derrick Sumter and Jonathan McKnight,
13 because if you think about it, the two of them both end up
14 telling law enforcement and both end up telling you here in
15 the courtroom that Derrick Sumter tells us that he had run
16 into Jerry McKnight a couple days after all this happened
17 over at I think it was the same gas station, the pantry, and
18 that he had made the comment to him at that point in time
19 that Jamaal and James were running their mouths and he has
20 something for them.

21 And then Jonathan says basically the same thing, that
22 Jerry, when he was over one of those afternoons waiting for
23 him when he got home from work, made the same comment to him,
24 that he'd heard that Jamaal and James were running their --
25 or talking. He might have to kill them too.

1 Mr. Leiendecker says, "Well, why would that make any
2 sense? The two of them don't know anything about Jerry, but
3 they knew what had happened."

4 He told them that he had killed the girl (indicating).
5 So it makes sense that they were running their mouths.
6 They're talking about it, and we know that because it gets to
7 Kimberly Livingston. I submit to you not only it gets to
8 Kimberly Livingston, it got to Jerry McKnight.

9 And ultimately, Ms. Livingston's talking to people,
10 getting names, creates that kind of domino that ends up
11 occurring when the sheriff's office and the St. Matthews
12 Police Department get involved on the morning of Tuesday, the
13 18th.

14 I want to kind of go through -- I'm going to try to go
15 through kind of chronologically how these people kind of come
16 into play with law enforcement, but the first two people they
17 talk to that morning, James Keller, and then after him, they
18 go get Jamaal Pearce, okay?

19 And the thing to keep in mind about James Keller, he's
20 not really friends with any of these other people, not
21 friends with Derrick Sumter, not friends with
22 Bryant McKnight, Jerry McKnight, Stephon Green. He's
23 Jamaal Pearce's friend. They live basically across the
24 street from each other, all right?

25 But what do the two of them tell us? That about 4:30,

1 between 4:30 and 5, I mean, basically between the two of
2 them, ultimately if you look at the phone records, probably
3 closer to 5:00 Thursday afternoon the two of them and
4 Bryant McKnight go pick up K. R. [REDACTED] from her house
5 over in Orangeburg.

6 On the way there, Bryant McKnight shows them a black gun
7 with a white pearl handle, I submit to you the same gun that
8 Derrick Sumter told you that he sold to -- sold
9 Bryant McKnight the day after the burglary at the McKnight
10 mother's house.

11 And then ultimately they return to James Keller's house,
12 smoke a blunt laced with cocaine, which is corroborated by
13 K. R. [REDACTED]'s -- you heard Dr. Ross's -- by the toxicology report
14 that she had a small amount of cocaine in her system. And
15 they both admit to you that.

16 I mean, they admit that they -- I mean, Jamaal Pearce, I
17 mean, about as forthright as you can be on a witness stand,
18 admitting to doing drugs, admitting to driving without a
19 license. So they -- I mean, they're truthful there, all
20 right?

21 And then ultimately Bryant and K. R. [REDACTED] leave to go
22 walking at 6:00. They leave the house, okay? Who's the
23 third witness that what we called that I submit to you in
24 that little chain there that corroborates that, I submit to
25 you, beyond any doubt? That's James Keller's father Talley.

1 I mean, what possible reason does he have to lie about
2 seeing Bryant McKnight and a young lady who he did not know
3 walking from behind the back of his house at about 6:00 in
4 the evening?

5 Mr. Banks got up and attacked him about how he could be
6 sure and how -- and he was about as adamant about it as you
7 could possibly be. Keep in mind, we're talking about he said
8 it was about 6:00.

9 Well, we know ultimately from the phone call and the
10 phone records that Bryant McKnight calls Jonathan at 6:00 on
11 the nose, says, "I'm walking on Liberty Street. It's cold
12 and I need a ride." That means he's left the house shortly
13 before 6:00. And use your common sense, it's not getting
14 dark until a little bit after 6:00 now.

15 But needless to say, Talley Keller says, "He's 10 feet
16 away from me. I know Bryant McKnight. I have no doubt about
17 it that's the man that I saw walking from the back of my
18 house," all right?

19 As I said, calls Jonathan, "Walking on Liberty Street.
20 It's cold. I need a ride," all right?

21 Let me talk a little bit, kind of while I'm at this
22 point here about the phone, because I'm not too sure right
23 now if Mr. Banks is trying to say that Bryant McKnight didn't
24 have a phone and wasn't in St. Matthews at all or whether
25 he's conceding that, so I sort of need to kind of address

1 that.

2 Remember he got up, Mr. Banks did in his opening Tuesday
3 morning, and I think this was pretty much his direct quote,
4 "My client denies he even owns a cell phone."

5 And I guess that's technically truthful, I mean, because
6 we heard that, you know, there's not a cell phone that we're
7 aware of that's actually in his name, but I think the
8 implication was that my client didn't have a cell phone.

9 Well, I submit to you now there should be no doubt that
10 back on February 13th into the early morning hours of
11 February 14th, Bryant McKnight had a cell phone. Not only do
12 multiple witnesses put him with a cell phone, multiple
13 witnesses, have the cell phone records that put him calling
14 not only his friends and family here but ultimately
15 Sandra Hughes all the way on the drive to Williston that
16 night.

17 And lastly, the kind of the end of it is the witness
18 they call. I mean, I couldn't quite figure that out. They
19 called Teresa McKnight to get up there and basically say --
20 Mr. Banks read off the cell phone number and she said, "Yes
21 that number is in my name." And then he sat down. That's
22 all he asked her.

23 Then remember when Solicitor Pascoe got up there and
24 asked her kind of a little -- a few more questions about
25 that, found out that the truth of the matter is yes, that

1 cell phone is in her name, but she wasn't the one using it
2 back in February. She had lent him the phone (indicating).

3 Teresa doesn't know Sandra Hughes, no reason to call
4 her, no reason to be calling Derrick Sumter, no reason to be
5 calling Stephon Green, no reason to be calling Jamaal Pearce
6 on the evening of February the 13th.

7 So what does Jonathan tell us after that, though? He
8 picks them up on Liberty Street, Bryant McKnight and the
9 victim. And at that point in time, Bryant asks to be taken
10 over to Agnes Street, all right?

11 So let's talk about Jonathan McKnight, all right?
12 Because obviously you've heard -- I mean, this has turned
13 into the Attack Jonathan Show, starting out yesterday, all
14 right?

15 You have a 20-year-old, he's younger than all of these.
16 He's younger than Bryant, younger than Derrick Sumter. He's
17 not friends with any of them, he didn't go to school with all
18 them, seven to eight years younger than them, all right?
19 20-year-old, had a good job, steady relationship, never been
20 in trouble before back in February of 2014, all right?

21 Ultimately, ladies and gentlemen, for the 12 of you to
22 go back in that jury room and find Bryant McKnight and
23 Jerry McKnight not guilty, you've got to find that on the
24 evening of February the 13th of 2014, Jonathan McKnight, and
25 I suppose Derrick Sumter, because I guess that's who

1 basically the argument is did this. Maybe Bryant was there
2 or not. I don't know.

3 But the two of them, for some reason, killed K. R. [REDACTED]
4 [REDACTED] and then started this grand conspiracy after that
5 where they were somehow going to get his friends involved in
6 covering up and hiding evidence (indicating).

7 But then to top it all off, not only are they going to
8 do that, but they're ultimately, especially as far as
9 Jonathan goes, that, you know, when push comes to shove, I'm
10 going to try to blame my two cousins. I mean, does that make
11 any sense?

12 Or what is more logical, when one looks at it, when
13 looking at it, when push comes to shove, they realize they're
14 a week away from trial, and suddenly we're in trial, that the
15 only obvious person to try to point the finger at is the
16 person that's the eye witness, the person who got on that
17 witness stand and told you, "Those are the two people that
18 killed that young girl at the back of my car."

19 He's the obvious scapegoat that they now have to try to
20 point the finger at. And that became more obvious yesterday
21 morning, afternoon, I can't remember when she testified -- we
22 talk about having bias -- when their mother got on the
23 witness stand.

24 I have no doubt that her home was broken into a year
25 ago, and probably what happened to her was traumatic,

1 terrorizing, but, ladies and gentlemen, I mean, that was the
2 one of the most ridiculous things I think I have ever heard
3 when she got on that witness stand yesterday.

4 And it was hard following it, but the general gist I got
5 out of it was that on one hand she's saying a year ago she
6 knew it was Jon-Jon, Jonathan McKnight, her nephew, that came
7 into her home and put a gun to her forehead and robbed her
8 house, looking for her two sons, on the one hand. And then
9 the other hand, she's turning around saying I didn't know who
10 it was, I only found out when they told me a week ago.

11 They've got to find some way to try to deflect the blame
12 to somebody else. And Jonathan McKnight, unfortunately for
13 him, because of the involvement because of them getting him
14 involved that night, became the obvious target, to the point
15 of actually having their mother come in here and say that.
16 Does that appeal to your common sense?

17 And the other thing just to show how far she's going to
18 go to kind of embellish things, she told the police that
19 night, she described it was a black gun. Now suddenly, you
20 know, 12 months later, it was a black gun with a white
21 handle. Why do you think she's saying that? Do you think
22 somebody's coached her and told her about, you know, what
23 kind of gun was used in this case?

24 What else did Jonathan tell us? Taking them to Agnes
25 Street to Carolyn McKnight's house. Bryant goes in. I think

1 he said he was in there for about ten minutes. Came back
2 out. He's got a black bag and Jerry McKnight with him. What
3 corroborates that? What corroborates that?

4 We know that Bryant McKnight, in looking at the phone
5 records, had gotten a phone call from Jerry at 6:30. 6:30.
6 I submit to you that's probably right before they go over
7 there. And then their own witness, Carolyn McKnight, now,
8 one part of me wants to say she got up there, if you remember
9 her yesterday, testifying basically that she has a bad
10 memory, okay?

11 So part of me wants to just -- basically wants you to
12 disregard -- I mean, there's no possible way 13 months later
13 she can remember who was at her home at some specific time 13
14 months ago, okay? But what does she tell us, though, that's
15 kind of curious and interesting in this case? Two things.

16 One, she puts Jerry at her house that day leaving
17 shortly after dark. Well, guess what Jonathan McKnight says?
18 We went and picked up Jerry McKnight from her house probably
19 shortly after dark, okay? So that's one thing.

20 The second thing she mentioned, she kind of got, and
21 that's when she finally started saying she has the bad
22 memory, but said that Bryant McKnight kept a bag at her
23 house, that Bryant McKnight kept a bag at her house, all
24 right?

25 And in his testimony, and Mr. Leiendecker kind of made

1 some reference to making it sound like he -- that Jerry had
2 him turning and driving all over the place to get to
3 Stiffmire Road. If you remember his testimony, that's not
4 the case.

5 If you remember, he said that when Jerry picked -- when
6 they picked Jerry up, Jerry got in, I believe he said in the
7 front seat with him, and said that he wanted him to take him
8 to his girlfriend's house and that he'd give him directions,
9 and that they stopped initially at the pantry, got gas, he
10 put gas in his own car. And at that point in time, they came
11 out, turned on Highway 6, drove down, and Jerry told him to
12 take a right on Stiffmire.

13 There's not a whole lot of driving all over the place
14 like Mr. Leiendecker had implied.

15 And he tells him that -- Jerry tells him at that point
16 in time that "I've got to use the restroom," so he pulls
17 over. And that ultimately what he -- Jerry and Bryant get
18 out. There's some conversation at the back of their car.
19 They both, at that point in time, attempt to get

20 K. R. [REDACTED] to get out of the car. She refuses, and
21 Jerry ultimately drags her out of the car to the back of the
22 vehicle where he then sees Jerry McKnight unload a gun into
23 K. R. [REDACTED], hand it to Bryant, make the comment, "You gone do
24 this bitch now." Bryant McKnight reloads the gun and fires
25 some more shots into her. Jerry then drags her off into the

1 ditch by the side of Stiffmire Road.

2 I submit to you right now when that's done, it's
3 somewhere 7:30, 7:35, 7:40 in the evening. The way we know
4 that, ladies and gentlemen, is because what's the next call?
5 If you look at these phone records, Bryant McKnight, no phone
6 activity on his phone at all from 6:30 to 7:38. Got an hour
7 in there.

8 I submit to you that's from the time that Jerry has
9 called him, they've gone over, he's gone in, talked to Jerry,
10 talked about what they're going to do, drive out to
11 Stiffmire, go to the gas station first, drive to Stiffmire,
12 K. R. 's killed.

13 The first phone call he makes after that hour period is
14 a phone call to Sandra Hughes in Williston. You remember
15 what Sandra told you: She got a call from him that night,
16 wanted her to come pick him up and she told him "no."

17 He's trying to work on that alibi already. She's been
18 dead for probably five, ten minutes, and he's already trying
19 to figure out how to get out of town to start creating his
20 alibi. But she says "no."

21 The next call right after, less than ten minutes later,
22 is a call to Stephon Green. I submit to you that's the call
23 that Stephon got, finding out where he was at.

24 Now, you look at Jerry's phone during that time period,
25 there's no activity on his phone from 7 to 7:40, almost the

1 same time period as there's no activity on Bryant's phone.
2 That's because I submit to you they've gotten together,
3 they've gotten in the car and they're driving her out to kill
4 her during that time period.

5 Then they go to the pantry. That's when Bryant gets out
6 with the black trash bag, goes and puts it -- puts it in
7 Stephon's car.

8 I submit to you Jonathan McKnight's involvement is
9 basically done at that point in time. We know that from his
10 testimony. We know that from Stephon Green's testimony. We
11 know that from Derrick Sumter's testimony. And I submit to
12 you we know it from the phone records. There's no calls on
13 his phone to anybody else involved in this that night.

14 He does ignore some calls that night. If you look at
15 the phone calls around 10:00 that night, I think it's between
16 9:45 and 10:30 or so, he ignores two phone calls to
17 Bryant McKnight, two phone calls from Jerry McKnight. He
18 told you why. He was scared and he didn't want anything else
19 to do with the two -- those two that night.

20 We find out, I mean, maybe, you know, that threatening
21 behavior by Mr. Jerry McKnight continued. He said he
22 threatened him that night. Then for the next five days, what
23 did we hear? The 14th, 15th, 16th, 17th and finally the
24 evening of the 18th, that every night when he'd get off of
25 work, a little after 5:00, he'd come home and Jerry McKnight

1 would be sitting in his house, telling him to make sure, you
2 know, "You might be my cuz, but, you know, you've got to keep
3 your mouth shut."

4 His girlfriend Jessica confirmed that, said it made her
5 kind of a little -- kind of a little creepy feeling, fact
6 that he would show up before Jonathan got home from work
7 every day and basically just sit and wait on him.

8 It's also confirmed by Lieutenant Graham. Because guess
9 what? The evening of Tuesday the 18th, they go out to
10 Jonathan's house on Oriole Drive to go pick him up to bring
11 him in to talk to him and guess who's there between 5:30 and
12 6:00 in the evening? Jerry McKnight.

13 Of course law enforcement didn't have any reason at that
14 point in time to know, you know, nobody even mentioned his
15 name, so had really no reason to do anything other than just
16 having seen him there.

17 But ultimately it shouldn't be any surprise. It
18 shouldn't be any surprise when Jonathan McKnight gets to the
19 sheriff's office that night, that Tuesday the 18th and gives
20 a statement and doesn't admit to anything. He's been
21 threatened over and over again by that man right there
22 (indicating).

23 Gives Bryant's name because, of course, by that point in
24 time, Bryant's name is all over St. Matthews as being, you
25 know, one of the last people seen with the victim, but they

1 don't know anything about Jerry. So it shouldn't be any
2 surprise that he doesn't mention his name on the 18th.

3 So let's talk about Stephon Green, all right? We know
4 back then Stephon was living in Orangeburg with his wife and
5 kids, all right? We know that he got a call by the phone
6 records and his testimony from his mother that looking at the
7 records was 6:31 in the evening on that Thursday night,
8 because she was out of kerosene and the gas station close to
9 their house was out also, wanted to know if he could come
10 over and take her husband, Bob, to go pick up some kerosene.

11 We also know that he makes an outgoing call from his
12 phone at 6:55 in the evening, and that's still pinging in
13 Orangeburg, okay? So he's not in St. Matthews, I submit to
14 you, at the time of the homicide, all right?

15 We know he gets a text, though, from Bryant McKnight.
16 He said it came in somewhere right around 7:00 in the
17 evening. Do you remember what that text said? "Got the
18 girl. Thinking about killing her."

19 His response to that, I think he said he actually texted
20 back, I mean, "LOL. You tripping?" I mean, he did obviously
21 not take him serious at that point in time.

22 7:00, I submit to you, Bryant McKnight is probably over
23 at his aunt Carolyn's house inside conspiring with his
24 brother about what they're going to do with that girl sitting
25 out in the car with Bryant -- with Jonathan.

1 Then we got a call, 7:47, a call from Bryant right after
2 he had tried to -- he had talked to Sandra, "Where are you?"
3 And he ultimately ends up meeting him at the pantry. Stephon
4 tells us that he leaves the pantry, goes back to his house --
5 his mom's house to drop -- to drop her husband off, says he
6 goes in.

7 At that point in time, he thought he -- he really didn't
8 honestly know where Bryant wanted to go or what was going on,
9 comes back out, and at that point in time, Bryant asks him,
10 "Can you take me over to Jamaal Pearce's house?"

11 If you remember, we're talking about a pretty close --
12 they live on Fair Street, so he's dropping him at his mom's
13 house at Fair Street and ultimately ends up taking him over
14 to Jamaal's house on Little John Court right at Liberty
15 Street.

16 I submit to you what happens when he's inside is Bryant
17 calls Jamaal, because there's a phone call from Bryant to
18 Jamaal at 8:22 finding out where Jamaal was at. Because
19 remember what Jamaal told us? That he thought when he had
20 got that call and then Bryant showed up at his house, he
21 thought he wanted a ride.

22 So they go over there, Jamaal steps outside and he's not
23 there because he wants a ride. What does he tell him? "I
24 had to smoke that girl. She's somewhere up Highway 6."

25 That's that man, I mean, less than an hour after --

1 probably 30 to 40 minutes after K. R. [REDACTED]'s been
2 killed. He's now running his mouth about it.

3 Is it any wonder? Is it any wonder? I'm going to kind
4 of jump ahead because I've got it on my mind at this point in
5 time.

6 You know, we've heard him now run his mouth to Jamaal,
7 run his mouth to Stephon. He ultimately tells Derrick Sumter
8 what happened. Anybody else I'm missing there? Three people
9 that he runs his mouth to during that time period about what
10 happened. Is it any wonder that several weeks ago
11 Jasmond Jones, he's running his mouth to Jasmond Jones about
12 what happened?

13 You know, they want you to believe that Jasmond Jones,
14 you saw him up on the stand, that he somehow over a night,
15 having access somehow without Bryant, going through his
16 paperwork, was able to digest all that and make a -- and
17 created his statement, something that took their investigator
18 70 some-odd hours to do.

19 Or is it more reasonable, just like Bryant McKnight had
20 that tendency back then to like to run his mouth about what
21 he did, and he was still doing it over at the detention
22 center to another cousin of his?

23 All right. But what else do we have that kind of
24 corroborates what Jamaal says about him telling him that
25 night about smoking the girl? What corroborates that is the

1 next morning, what does Jamaal tell you he did? And he told
2 James what Bryant said.

3 Then the two of them get together and get on
4 speakerphone and call Bryant to ask him, I mean, just to find
5 out, "Were you serious about what you said last night?"
6 Because remember, K. R. 's body, it's not like her body's
7 been found or anything. Everybody knows there's been a
8 homicide in St. Matthews at that point in time.

9 And look at the phone records, the morning of
10 February 14th, that next Friday morning, 10:40 a.m. is a
11 three-minute phone call from Jamaal Pearce to
12 Bryant McKnight. You've heard their testimony. Mr. Banks
13 tried to kind of put a spin on it, but yes, he was mumbling.

14 They both said there was no doubt; they knew who they
15 were talking to. He just wasn't talking back and answering
16 their questions. By that point in time, he's kind of
17 realized he's kind of screwed up a little bit with how much
18 he'd been talking.

19 But after leaving Jamaal Pearce's, what does
20 Stephon Green tell us that he did then? Takes
21 Bryant McKnight to Orangeburg, specifically to
22 Derrick Sumter's house over in Roosevelt Gardens. And what's
23 kind of telling about that, you know, ultimately he says that
24 they didn't come back through town and go out 601 to
25 Orangeburg. They went up Highway 6 and went out towards the

1 interstate and cut over to Orangeburg.

2 What do we have that tells us that, that corroborates
3 that besides Stephon Green? We have the phone records. We
4 have his phone, his phone records showing his phone going up
5 and over into Orangeburg. And that would be, you know, maybe
6 in itself not that big a deal. It just kind of corroborates
7 what Stephon says.

8 But the most important thing, what do we have that's
9 basically following his phone that night? K. R. [REDACTED]'s
10 phone. At 8:45, 9:00, 9:15, 10:00, 10:30. On the evening of
11 February 13th K. R. [REDACTED]'s phone shouldn't be going
12 from St. Matthews to Orangeburg to Bamberg to Blackville on
13 the way to Williston unless it's in his possession, just like
14 Stephon Green told us it was, that there were text messages
15 coming in that he even responded back to one of them.

16 I submit to you somewhere on the way near Blackville he
17 ended up tossing that phone out the window. And
18 unfortunately, 12 days later when they have the chance to go
19 out there, the only thing they can locate is the back of the
20 phone. There's no reason that should be there. There's no
21 reason her phone should be pinging off of towers going all
22 the way almost to Williston but for the fact that he took it.

23 And you remember what -- you know, he's in the back seat
24 with her, where all her stuff is. He's the one putting all
25 of her stuff in that trash bag, her purse -- I'm going to get

1 to the jacket in a few minutes -- the gun. I don't know why
2 he kept her phone, but for some reason he did for at least
3 another hour. The rest of that stuff, though, is given to
4 Derrick Sumter. And then Stephon Green takes him, takes
5 Bryant McKnight on to Sandra Hughes's house.

6 And what do we know? This is kind of where the phone
7 records kind of help us a little more also. You know, during
8 that time period when they're driving from Orangeburg to
9 Williston, he's talking to -- he has four conversations with
10 Derrick Sumter on the phone, two incoming, two outgoing,
11 okay?

12 Remember Derrick Sumter's testimony, you know, he ends
13 up getting the bag, and I don't know why he drove all the way
14 into Richland County. I mean, obviously he knew that it's
15 something that Bryant wanted nowhere near where any of them
16 were, but that he's calling him back and forth, talking to
17 him multiple times, you know, making sure he'd gotten rid of
18 the stuff, and he tells him when he's almost done, all right?

19 Then Stephon Green drops him off, and he heads on back
20 to -- heads on back to Orangeburg, and he says that Bryant
21 calls him a couple times on the way back. And those phone
22 calls are also corroborated up to 12:30 in the morning that
23 he's called them a couple times, basically telling him to,
24 you know, keep quiet.

25 And something about -- and I'm going to talk a little

1 bit about Derrick Sumter, all right? And he comes in on
2 February 21st, 2014, that morning, they go pick him up, find
3 him at his mom's house, get him to come in, all right? He
4 doesn't lie. He doesn't start making up stories.

5 You know, they've already talked to all these witnesses,
6 so they have a pretty good idea before that morning kind of
7 what everybody -- what had happened. One thing they didn't
8 know yet was kind of how the body got moved from Stiffmire to
9 the Four Holes Swamp. Or actually they hadn't found it yet,
10 but we'll talk about that in a second about being dumped in
11 the swamp, all right? But he comes in and gives a statement.

12 And Mr. Banks tries to imply, and he says it even in his
13 opening, I think he said, you know, that his story kept
14 changing, you know. I submit to you you heard his testimony
15 and you heard Lieutenant Graham's testimony. And
16 Derrick Sumter's story never changed. There's no evidence of
17 that. There's nothing pointed out by defense counsel of him
18 ever changing his story, you know.

19 His statements aren't the same length because the first
20 statement when he came in, he started talking to them, and
21 they realized two pages into it that he knows where the body
22 might be.

23 So they take him at that point in time, and they
24 actually end up never going back and finishing that statement
25 because he ultimately ends up going to jail. That's what

1 Derrick Sumter gets for his cooperation that morning. He
2 didn't go home. He went to jail, all right.

3 But for all that bad judgment that he exercised back
4 on -- and there was a lot, believe me, that Derrick Sumter
5 exercised back on the evening and early morning hours of
6 February 13th and 14th, you know. The one thing at least he
7 can be credited for is but for his cooperation, but for his
8 taking the sheriff's office out there, K. R. [REDACTED]'s
9 body may never be found.

10 But he ultimately tells us, and you've heard. I'm not
11 going to rehash all of this testimony, but he took the gun,
12 tossed it off the bridge on the way into Richland County, got
13 rid of the bag and takes them out there, shows them exactly
14 where that is, and they're able to find K. R. [REDACTED]'s purse.
15 They find a jacket. I'm going to talk about the jacket in a
16 little while. And the plastic bag.

17 Then he says he returns to -- goes all the way back from
18 Richland County all the way back to Orangeburg, talking to
19 Bryant McKnight during that time period, telling him, "Yes,
20 I've gotten rid of the stuff." Then Bryant asks him to go
21 get up with his brother Jerry.

22 So he at that point in time heads back to St. Matthews,
23 picks up his brother Jerry, said it was pretty late, maybe as
24 late as midnight or so. And at that point in time they go to
25 where K. R. [REDACTED]'s body is.

1 And keep in mind this is something where he is not going
2 to find this body on his own. You've heard the testimony.
3 It's not a populated area. There's really no -- it's not
4 lit. She's off the side of the road, a basically not even a
5 paved road at the time, down in the ditch.

6 Somebody who was involved has got to be with him. It's
7 not something where you're going to be able to get on the
8 phone and kind of tell him, "I think you go and you can find
9 her," all right? So somebody who was involved has got to be
10 with her.

11 Now, they, I guess, want you to believe that he was
12 involved, I guess, but the problem with that, the problem
13 with that is when you look at his cell phone, he's in
14 Orangeburg until 9:00 that night. His phone is pinging off
15 that tower in Orangeburg, 4:00, 5:00, 6:00, 7:00, all the way
16 to 9:00 when he then ultimately heads and it starts pinging
17 this way (indicating).

18 The other thing, Mr. Leiendecker kind of pointed this
19 out, and I think we have a different take on this a little
20 bit: He made a big deal about the fact that ultimately when
21 Jonathan McKnight and Derrick Sumter individually take
22 Lieutenant Graham back out to Stiffmire, they both come in
23 from a different direction.

24 And I'm not sure what his -- why he thought. I think
25 that's relevant. I think that's important. Because you

1 heard Jonathan's testimony, when they go up there that night
2 and K. R. was killed, they just go straight up Highway 6,
3 take a right on Stiffmire. So obviously that's going to be
4 the way -- as from his testimony, that's going to be the way
5 he's going to take Lieutenant Graham.

6 If Derrick Sumter was with Jonathan McKnight, if
7 Derrick Sumter was involved in killing K. R. , he's
8 going to take him the same way. I mean, that's the easy way.
9 I mean, it's a couple miles down 6 and take a right. All he
10 has to know, though, about how to get there is how
11 Jerry McKnight took him there. And I submit to you there's a
12 reason why they came in that way.

13 I'm going to talk to you a little bit about
14 Jerry McKnight's cell phone. It was pining in St. Matthews
15 for the most part the entire night until 11:50 some-odd time,
16 and there's a couple pings over closer to that Four Holes
17 swamp area.

18 There's a couple pings later on. I think it's at 11:53
19 and 11:55, if you remember from the PowerPoint presentation,
20 that are over more in a little closer proximity to Four Holes
21 Swamp.

22 I think at some point in time that evening he goes doing
23 some scouting, don't know who took him, to try to figure out
24 where ultimately that body needed to be put. It puts him
25 over in that vicinity. It also puts him where he'd be on

1 that side of Stiffmire coming into Belleville.

2 But what else did Derrick tell us? They get the body,
3 take it over, end up throwing it over in the Four Holes
4 Swamp, then he takes Jerry back to St. Matthews, then finally
5 makes himself back home, all right?

6 What do we have that corroborates that? The phone
7 records, to a T. As I said, he's pinging in Orangeburg up
8 until a little after 9:00 in the evening.

9 At 10:07 he makes an outgoing call -- and I think all of
10 these calls are to Bryant -- an outgoing call to
11 Bryant McKnight at 10:07 from here in St. Matthews. He has
12 gotten the bag from Bryant in Orangeburg and is heading
13 towards Richland County, coming through St. Matthews.

14 10:49, he's pinging beyond St. Matthews, heading
15 basically sort of the direction that he ends up getting rid
16 of the bag, my guess is probably on his way back by this
17 point in time, coming back home, because at 11:22, so 30
18 minutes later, he's making a phone call to Bryant McKnight
19 or -- yes, an outgoing phone call to Bryant McKnight, and
20 he's back in Orangeburg at that point in time.

21 I submit to you during that period of time is when he's
22 now hearing from Bryant again. He's telling him to go get --
23 he told him now, "I've gotten rid of that stuff," where he's
24 now asking him to go get -- to go get Jerry. Because then at
25 12:32 in the morning, Derrick Sumter's phone is pinging here

1 in St. Matthews again over near Liberty Street, which is just
2 a couple blocks away from his aunt's house on Agnes.

3 Then at 1:30, so an hour later, his phone is pinging
4 when he's making a phone call over near Four Holes Swamp. So
5 I submit to you K. R. 's body, by that point in time, is
6 either on the way to get dumped off that bridge or has just
7 been dumped off that bridge.

8 Because then at 2:00, his phone is pinging back here in
9 St. Matthews, I submit to you, dropping Jerry McKnight off,
10 so he's got plenty of time to be back in his house when his
11 girlfriend comes home from work. And then at 3:16, he makes
12 an outgoing call and he's back at home in Orangeburg.

13 These phone records are those stubborn facts that -- and
14 it was one of them, I think it was Mr. Leiendecker that said,
15 you know, when Derrick Sumter, when Jonathan McKnight,
16 Stephon Green, Jamaal Pearce, when they were being
17 interrogated 17th, 18th, 19th, 20th, 21st, we didn't have
18 their phone records. We didn't have their phone records.

19 They tried to almost imply that, you know, they knew we
20 had their records because they better make sure they make up
21 a story. I mean, you obviously believe these people are
22 clever enough to put all that together to be able to remember
23 where was I when I made a phone call to be able to lay it out
24 to match the phone records? Does that appeal to your common
25 sense? Or would it make more sense that the fact that they

1 told us what happened and then the phone records ultimately
2 were able to corroborate it? Those are the stubborn facts
3 that they can't get around.

4 I mean, obviously if Bryant McKnight's cell phone, at
5 6:30, 7:00 in the evening, was pinged in Williston, South
6 Carolina, he'd have a pretty good alibi, but it wasn't.
7 Mr. Banks got up here and still tried to talk about an alibi.
8 I mean, you heard from Sandra Hughes. I mean, I'm sure she
9 wishes that she had come in here and told you all what she
10 initially had told the police back in February of last year,
11 but she didn't. She told you the truth. She got herself
12 arrested for the lie she told for him back in February.
13 She's not going to compound that problem.

14 What other phone records do we have, all right, looking
15 at -- you know, to kind of tie him back into things that
16 night also? You've got -- and I counted them up, and I think
17 I had Captain McDonald say this when I asked him yesterday.
18 Between 11:00 in the evening and 12:30 in the morning, so
19 this is basically from when Bryant McKnight has made it to
20 Williston, so between 11 and 12:30, that's an hour and a half
21 period of time, there's seven calls back and forth between
22 those two. Seven calls.

23 Between 11 p.m. and 2 a.m., because there are a couple
24 calls after that 12:30 period of time, so in that three-hour
25 period of time, there are nine calls back and forth between

1 Bryant McKnight and Derrick Sumter. That's proof positive
2 right there of the three people that are now planning and
3 conspiring and planning to get rid of K. R. [REDACTED]'s
4 body.

5 Look at Jerry McKnight. There's no other phone activity
6 from 12:30 in the morning to 3:00; so therefore, we can't
7 track his phone. So when Derrick Sumter's phone is pinged
8 over by Four Holes Swamp at 1:29 or whatever it was in the
9 morning, he's not making any calls, so we don't know where he
10 is, the phones can't tell us. We know where he was. He was
11 in the car with Derrick Sumter.

12 I'm coming close to being done here, all right?

13 We've got evidence that Jerry McKnight bought .22
14 caliber bullets. It just happened to be the same caliber
15 bullets that killed the victim, consistent with the same
16 brand that killed her. And I think that's on multiple
17 occasions that he was in there buying. Didn't seem to have a
18 problem using more bullets than the gun held either.

19 We've got this jacket. You know, the thing about this
20 jacket is there's no -- there's no question whatsoever that
21 this jacket has something to do with K. R. [REDACTED]'s
22 death, okay? There's no question about that. It's found --
23 it's in the bag of stuff that Derrick Sumter throws in the
24 woods. It's found in close proximity to her purse in the
25 woods all the way in Richland County, and it's got gunshot

1 residue on it.

2 So Mr. Banks wants to make a big deal about how little
3 there was on it. Well, it sat out in the rain for several
4 days after she was killed. It's not surprising that it
5 doesn't have a lot of gunshot residue on it. That's not
6 really the issue. The issue is whose coat it is, and I
7 submit to you you've heard -- I submit to you beyond any
8 doubt whose jacket this is.

9 It's been identified by Jonathan McKnight,
10 Jamaal Pearce, Sandra Hughes, that's a cousin, a friend and a
11 girlfriend, all as being Bryant McKnight's jacket. And then
12 by Derrick Sumter, and he ultimately ends up probably being
13 the most telling out of them. All of them being that this is
14 Bryant McKnight's coat.

15 His mother gets up there and says, "I've never seen that
16 coat before." Well, at this point in time, what would you
17 expect her to say, given the rest of her testimony?

18 But what does Derrick Sumter tell us, all right, you
19 know, "I'm positive that that's his coat." Mr. Banks is
20 pressing him, asking him you know, "We have a million other
21 coats just like this all over. How are you positive that's
22 Bryant's coat?" He tells you because it's got a hole right
23 there. Got a hole right there (indicating).

24 And I'll be honest with you, I hadn't looked at this
25 that close beforehand to know whether it did or not, and I

1 know obviously Mr. Banks didn't because he didn't pull it out
2 and ask him to show us. So I had a chance to look and, you
3 know, remember where he was pointing, right there
4 (indicating). And sure enough, there's a little hole right
5 in the coat right there (indicating), right where he -- right
6 where he pointed (indicating).

7 Any doubt that this is Bryant McKnight's jacket? After
8 all, it's in the black bag that he gave to Derrick Sumter to
9 get rid of, along with his gun and the victim's purse.

10 I'll talk just briefly about motive. Usually, well, not
11 usually, but all the time in a criminal case, we don't have
12 to prove a motive. And a lot of times, you know, in cases we
13 don't know why things happen. People do bad things all the
14 time and we don't know why.

15 This case is not like that, though. I mean, we know
16 exactly why this happened. You know, back in February, you
17 know, you heard testimony from multiple witnesses that the
18 word was out from both of them that they were going to get,
19 in some cases they were going to kill whoever they found out
20 was involved in breaking into their mom's house, to the point
21 where he bought a gun from a friend.

22 Not only that, but we also heard them tell Jonathan,
23 Stephon, Derrick Sumter, all that they thought that
24 K. R. [REDACTED] may have had something to do with that
25 burglary. They're not the only people that told. He

1 actually told K. R. .

2 MR. LEIENDECKER: I'm sorry, Your Honor. It's generally
3 not my practice to object, but I think it's mischaracterizing
4 facts. Now he's saying "they." Clearly those comments were
5 from Bryant McKnight and Bryant McKnight only. He wasn't
6 communicating and they said none of them were communicating
7 with Jerry.

8 MR. SORENSON: I thought at least one of them said, and
9 I apologize this time. I thought at least one of them said
10 that Jerry had said that also.

11 THE COURT: All right. You may move on.

12 MR. SORENSON: I'll move on. That's fine. It may be
13 just -- right. And I probably did misspeak about that.
14 Specifically that K. R. was involved. It was Bryant. The
15 two of them both saying they found out who did it. That was
16 my misspeak on that, all right?

17 More telling is the fact that Bryant McKnight had told
18 K. R. that, that Bryant McKnight had told K. R. that,
19 that he had some questions about her being involved. And
20 just like Tameka Williams said, I mean, I -- I don't
21 understand why on earth she would have ended up getting in
22 the car with Bryant McKnight, obviously with tragic results.

23 K. R. showed some poor judgment back during that time
24 period, and taking that man serious was part of that. Not
25 taking him seriously was part of that, ultimately being fatal

1 judgment on her part.

2 So in this case we know the motive. We know exactly why
3 it happened. Motive that I submit to you Jonathan McKnight,
4 Derrick Sumter, Stephon Green, none of them have. They're
5 not the ones that are running around threatening to kill
6 people for -- or accusing anybody.

7 Then Jonathan McKnight, one other thing that I kind of
8 missed when I was doing my outline initially but I've got
9 kind of down here. The 18th he comes in, that Tuesday night.
10 His first statement, as we talked about a little while ago,
11 and he doesn't mention Jerry at all, all right? Comes back
12 in the following day and gives another statement to law
13 enforcement where he does implicate Jerry and Bryant as both
14 being involved.

15 But what else does he tell us? Do you remember, and
16 Solicitor Pascoe asked him this -- actually, I think either
17 solicitor read it or he read it off of his statement, that on
18 the evening of the 19th, he tells law enforcement that Jerry
19 had told him two days later about Bryant getting somebody to
20 take him to get the body and put it in Four Holes Swamp area.

21 Now, that Wednesday night, the 19th, they don't -- they
22 don't know who Derrick Sumter is. At that point in time,
23 they had no information about her body ever being moved from
24 one location to another. It's that information that actually
25 allows them to go search and find the blanket the following

1 day.

2 If that's not the truth, what Jonathan told us, I mean,
3 how does he make that up if that's not the truth? He doesn't
4 know, and if you look at the kind of what he would have known
5 at that point in time, it would make absolute sense that he
6 would -- he doesn't know who moved the body, because he
7 wasn't involved in that.

8 There's no phone calls in that time period with him
9 between Bryant, Jerry and Derrick. So it would make perfect
10 sense that he would tell basically Jerry told him that two
11 days later, Bryant got somebody to help him, but he wouldn't
12 know who it was either, though, that Jonathan wouldn't.

13 And the last couple of things I want to talk about is
14 just a couple briefly -- a couple of their witnesses that I
15 hadn't talked about already.

16 Melissa Robinson, the first witness I think that they
17 called, that Mr. Leiendecker called. You know, really I have
18 no reason to doubt, for the most part, probably anything she
19 told you. If you kind of sum it up, she didn't know what --
20 where or what Jerry was doing between 2 p.m. and 2 a.m.
21 because she was at work, confirmed his telephone number so we
22 know we got the right number that we're tracking.

23 And she lives right down the street from his aunt
24 Carolyn's house on Agnes Street, so would have had no -- no
25 problem with being there when State's witnesses are saying he

1 was.

2 Carolyn McKnight I already touched on.

3 Jasmond Jones, and I touched on him a little bit, but,
4 you know, let me talk a little bit more about what his
5 testimony was on direct examination. You know, he is
6 basically saying that he saw Jerry McKnight show up at his
7 girlfriend, Ms. Robinson's, house on the evening of the 13th
8 and didn't see him leave after that, basically I guess to
9 imply that he probably must have been in there the whole
10 time.

11 But what they don't ever give us is any reason for
12 Jasmond Jones to have any reason to recall what happened back
13 on February 13th of last year. It was a year ago that he's
14 somehow supposed to remember, "Oh, yes, a year ago I remember
15 that Jerry McKnight came walking up that day. I didn't
16 interact with him. I didn't talk to him, didn't hang out
17 with him, but I remember that he walked into his girlfriend's
18 house. It was still daylight out, which contradicts
19 Carolyn McKnight saying that he didn't leave until after
20 dusk/dark." But so, I mean -- and it's his cousin also
21 that's giving this information.

22 I submit to you that that basically has absolutely no
23 credibility. We talked about what he ends up telling us
24 after that, though, on cross-examination, that yet again
25 would not be surprising that that man right there is telling

1 him about his involvement about how it went down
2 (indicating), the fact that there are two people that shot
3 the victim.

4 I just want to touch on a couple things that Mr. Banks
5 talked about. I couldn't figure out where his -- you know,
6 when he came up here, I kind of -- basically five different
7 things that he was asking you to kind of consider maybe being
8 Bryant McKnight's defense in this case: You know, that she
9 wasn't really kidnapped, that he had an alibi, that he was in
10 Williston. Well, obviously we know there's been no testimony
11 at all that -- nothing that corroborates that fact.

12 That he was forced to do it by Jerry. I submit to you
13 it's one thing, you know -- it's one thing to force another
14 person to go steal a pack of crackers out of the grocery
15 store. You can't be forced to kill somebody. It's not a
16 defense. It's the defense of duress, and you're not allowed
17 to claim that in a homicide, especially not when you're one
18 of the people that fired the shots.

19 You can't murder someone who's already dead; that was
20 the fourth one. That falls back to remember when I talked to
21 you about Her Honor's going to charge it in a little more
22 detail than I went over it, but the hand of one is the hand
23 of all, okay?

24 Let's assume he didn't fire a shot at all. I submit to
25 you he's guilty of murder, Bryant McKnight is. Based on acts

1 preparing beforehand, the text to Stephon Green, the comments
2 after the fact, his actions getting rid of evidence after the
3 fact I submit to you prove his guilt of murder and
4 kidnapping. Even if he did not fire a shot, he was
5 conspiring with his brother Jerry McKnight that they had
6 planned in advance to kill her, and it was done.

7 And like Her Honor's going to charge you and like I told
8 you earlier, if there's only one shot, if there had been one
9 shot that hit her in the head and killed her fired by
10 Jerry McKnight, I submit to you he's guilty. So he somehow
11 doesn't get a defense if she happened to have already died
12 from the initial bullets when he got around to shooting her.
13 That doesn't somehow create a defense.

14 And lastly, that there's no malice when -- that if he
15 shot there was no malice? Does that make any sense? Yet
16 again, how much more malicious, evil, cold, can it be than
17 what they did to that young lady.

18 It kind of boils down, ladies and gentlemen, for you to
19 find Bryant McKnight, for you to find Jerry McKnight not
20 guilty, you've got to disregard basically all of the
21 witnesses that you heard for the first three days. You've
22 got to disregard the evidence, witnesses I submit to you have
23 no reason to lie: Jamaal Pearce, James Keller,
24 Talley Keller.

25 They're not charged with anything. Nobody's alleged

1 that they've done anything other than be with them
2 beforehand. You've got to find that they, for some reason,
3 are not telling the truth, are lying about what
4 Bryant McKnight told -- told them, told Jamaal after the
5 fact.

6 Clearly there are witnesses that did some things wrong
7 that night, and they were charged and they'll be held
8 accountable for that: Derrick Sumter, Stephon Green,
9 Sandra Hughes, Jonathan McKnight. But they want to make it
10 sound like they've been -- somehow that, you know, they're
11 testifying hoping to get a deal, hoping to get a deal.

12 They gave the statements that incriminated themselves
13 before they were charged, so it doesn't make sense. It's not
14 like somebody came to them and said, "Look, we got this on
15 you. You know, you're going to prison for the rest of your
16 life if you don't tell us X, Y and Z."

17 And they came forward based on the investigation. It
18 was like a domino effect, led to one after the other. They
19 hadn't been promised anything to get them to testify. They
20 didn't come in here and change their stories. If they did,
21 they would have been questioned about what they told the
22 police, and those inconsistencies would have been pointed
23 out.

24 But lastly, the thing that you've got to -- that you've
25 got to ignore and totally disregard are all the phone

1 records, because, as I said, they are ultimately the thing
2 that ends up corroborating where we can basically lay out
3 where we know, based on those phone records and the
4 statements that were given, exactly when she was killed, when
5 her body was moved.

6 We can track all of their movements throughout that
7 night, and I submit to you those phone records corroborate to
8 a T what each of those witnesses said they did and where they
9 went that night. Not only Jamaal Pearce, James Keller,
10 Jonathan McKnight, Stephon Green, Sandra Hughes,
11 Derrick Sumter, but also where the two of them went that
12 night, who they talked to, and as I told you earlier,
13 probably even most damning and most important with regards to
14 Bryant McKnight, where K. R. [REDACTED]'s phone went that
15 night. I submit to you it's got no business being sitting
16 broken on the side of the road in Blackville, South Carolina
17 but for the fact that he took it with him after he killed her
18 (indicating).

19 Ladies and gentlemen, a year ago, Kimberly Livingston
20 set out coming over to St. Matthews, Calhoun County, where we
21 are today, trying to find some answers, trying to find her
22 daughter. Tragically, ultimately kind of searching into
23 trying to find some justice.

24 I can't imagine how hard it would be to sit as a juror.
25 I've never had to do it. With my job, I probably never will.

1 But have to just sit there and not be able to say anything,
2 not be able to ask questions. That's going to change in a
3 few minutes here. Her Honor is going to have to charge you
4 on the law, but once she's done, you're going to have a
5 chance to go back to the jury room, and you're going to have
6 a chance to start talking at that point in time.

7 And ultimately, ladies and gentlemen, your voice is
8 going to be the strongest, loudest voice in this courtroom.
9 What I ask of you, the people of Calhoun County, the people
10 of the State of South Carolina, is I ask you to come back
11 with a voice that's loud and clear, a voice that tells
12 Jerry McKnight and Bryant McKnight that they didn't get away
13 with murder.

14 Prove them wrong. Find them guilty of the brutal, cold,
15 malicious killing of 17-year-old K. R. [REDACTED]. Prove
16 them wrong, find them guilty of kidnapping her, and in
17 Jerry's case, in possessing that weapon that he was not
18 allowed to have. Thank you.

19 THE COURT: Ladies and gentlemen of the jury, it is now
20 time for me to instruct you on the law of this case. I know
21 that you've had quite a bit of information this morning. I
22 don't know if you need a brief break before we do that. My
23 instructions to you will be about 15, 20 minutes. Do you
24 need a brief moment to stretch your legs and use the
25 restroom?

1 Okay. That seems like a consensus, so we'll do that.

2 Again, please don't discuss this case. You're not
3 allowed to deliberate until I instruct you on the law and you
4 receive all the exhibits. So just let us know when you're
5 ready.

6 Hold on one second. One other thing, your wonderful
7 clerk of court's office, of course, being thoughtful and
8 thinking ahead of time, have already ordered your lunch for
9 you, which is set up in the jury room. So you'll get to eat
10 that when you deliberate. So just take a brief break. We'll
11 come back, we'll do the jury instructions and then you can
12 have your lunch when you retire to deliberate.

13 (The jury retires to the jury room at 1:24 p.m.)

14 THE COURT: We'll be at ease for a few minutes until the
15 jury's ready.

16 (Recess held.)

17 THE COURT: Everybody ready for the jury?

18 MR. PASCOE: Yes, Your Honor.

19 MR. BANKS: Yes, Your Honor.

20 THE COURT: Let's have our jury, please.

21 (The jury enters the courtroom at 1:34 p.m.)

22 THE COURT: Ladies and gentlemen, I will now charge you
23 on the law of this case. I charge you that there are two
24 defendants in this case.

25 Jerry McKnight is charged with murder, kidnapping and

1 possession of a firearm by a person convicted of a violent
2 crime.

3 Bryant McKnight is charged with murder and kidnapping.

4 The case of each defendant and the evidence and the law
5 concerning that defendant should be considered separately and
6 individually. Your verdict does not have to be the same for
7 both defendants. The fact that you may find one defendant
8 guilty or not guilty should not control your verdict as to
9 the other defendant.

10 Where more than one person is charged with a crime, if
11 the evidence warrants it, you may convict one and acquit the
12 other, or you may acquit both, or you may convict both. It
13 will depend on your view of the testimony and the evidence.

14 You must take each defendant and consider the evidence
15 as to that defendant and my instructions to you on the law.
16 You will then write a separate verdict of guilty or not
17 guilty on each individual defendant.

18 The defendants have pled not guilty to these
19 indictments, and that plea puts the burden on the State to
20 prove the defendants guilty. A person charged with
21 committing a criminal offense in South Carolina is never
22 required to prove himself innocent.

23 I charge you that it is an important rule of the law
24 that the defendant in a criminal trial, no matter what the
25 seriousness of the charge may be, will always be presumed to

1 be innocent of the crime for which the indictment was issued
2 unless guilt has been proven by evidence satisfying you of
3 that guilt beyond a reasonable doubt.

4 The presumption of innocence does not end when you begin
5 your deliberations, but it accompanies the defendant
6 throughout the trial until you reach a verdict of guilt based
7 on evidence satisfying you of that guilt beyond a reasonable
8 doubt.

9 The presumption of innocence is like the robe of
10 righteousness placed about the shoulders of the defendant
11 which remains with the defendant until it has been stripped
12 from the defendant by the evidence satisfying you of the
13 defendant's guilt beyond a reasonable doubt.

14 The presumption of innocence is not a mere legal theory.
15 It's not just a legal phrase. It is a substantial right to
16 which every defendant is entitled unless you, the jury, are
17 satisfied from the evidence of the defendant's guilt beyond a
18 reasonable doubt.

19 What is a reasonable doubt? A reasonable doubt in the
20 law is the kind of doubt that would cause a reasonable person
21 to hesitate to act. The State has the burden of proving the
22 defendant guilty beyond a reasonable doubt.

23 Some of you may have served as jurors in civil cases
24 where you were told that it was only necessary to prove that
25 a fact is more likely true than not true, such as by the

1 greater weight or the preponderance of the evidence.

2 In criminal cases, the State's proof must be more
3 powerful than that. It must be beyond a reasonable doubt.

4 Proof beyond a reasonable doubt is proof that leaves you
5 firmly convinced of the defendant's guilt. There are very
6 few things in this world that we know with absolute
7 certainty, and in criminal cases, the law does not require
8 that proof overcomes every possible doubt. If based on your
9 consideration of the evidence you are firmly convinced that
10 the defendant is guilty of the crime charged, you must find
11 the defendant guilty.

12 If, on the other hand, you think there is a real
13 possibility the defendant is not guilty, you must give the
14 defendant the benefit of the doubt and find him not guilty.

15 I remind you that during this trial, you and I have
16 certain duties to perform. As the trial judge, it's my
17 responsibility to preside over the trial of this case, and I
18 also have the duty to rule on the admissibility of evidence
19 offered during this trial.

20 You are to consider only the competent evidence before
21 you. If there was any testimony stricken from the record in
22 this case during this trial, you must disregard that
23 testimony. You are to consider only the testimony which has
24 been presented from the witness stand, any exhibits which
25 have been made part of the record in this case and any

1 stipulations of counsel.

2 I have the additional duty to charge the law applicable
3 to this case. As the presiding judge, I am the sole judge of
4 the law in this case, and it's your duty as jurors to accept
5 and apply the law as I now state it to you.

6 If you already have an idea as to what the law is or
7 what the law ought to be and it does not agree with what I
8 now tell you the law is, you must abandon that idea because
9 you are sworn to accept the law and apply the law exactly as
10 I state it to you.

11 In every case tried in this Court before a jury, the
12 jury becomes the sole and exclusive judge of the facts in the
13 case. A trial judge cannot intimate, state, comment on or
14 make any statement to the trial jury about the facts in the
15 case.

16 Since you, the jury, are the sole judges of facts in
17 this case, you're not to infer from what I have said during
18 the progress of this trial in ruling upon the admissibility
19 of evidence, or otherwise, or anything that I say now during
20 the course of this instruction to you, that I have any
21 opinion about the facts in this case. The law does not allow
22 me to have an opinion about the facts in the case.

23 This is a matter solely for you, the jury, to determine.
24 As jurors, it is your duty to determine the effect, value,
25 weight and truth of the evidence presented during this trial.

1 There are two types of evidence which are generally
2 presented during a trial: Direct evidence and circumstantial
3 evidence. Direct evidence proves the existence of a fact and
4 does not require deduction. Circumstantial evidence is proof
5 of a chain of facts and circumstances indicating the
6 existence of a fact.

7 Crimes may be proven by circumstantial evidence. The
8 law makes no distinction between the weight or value to be
9 given to either direct or circumstantial evidence. However,
10 to the extent the State relies on circumstantial evidence,
11 all of the circumstances must be consistent with each other,
12 and when taken together, point conclusively to the guilt of
13 the accused beyond a reasonable doubt. If these
14 circumstances merely portray the defendant's behavior as
15 suspicious, the proof has failed.

16 The State has the burden of proving the defendant guilty
17 beyond a reasonable doubt. This burden rests on the State
18 regardless of whether the State relies on direct evidence,
19 circumstantial evidence or some combination of the two.

20 Necessarily, you must determine the credibility of
21 witnesses who have testified in this case. Credibility
22 simply means believability. It becomes your duty as jurors
23 to analyze and to evaluate the evidence and to determine
24 which evidence convinces you of its truth.

25 In determining the believability of witnesses who have

1 testified in this case, you may believe one witness over
2 several witnesses or several witnesses over one witness. You
3 may believe a part of a testimony of a witness and reject the
4 remaining part of the testimony of that same witness. You
5 may believe the testimony of a witness in its entirety or
6 reject the testimony of a witness in its entirety.

7 You may consider whether any witness has exhibited to
8 you any interest, bias, prejudice or other motive in this
9 case. You may also consider the appearance and manner of a
10 witness on the witness stand.

11 The testimony of a codefendant who provides evidence
12 against a defendant for personal advantage must be examined
13 and weighed by the jury with greater care than testimony of
14 an ordinary witness. You as the jury must determine whether
15 the testimony by such codefendant has been affected by
16 interest or by prejudice against the defendant.

17 The rules of evidence ordinarily do not permit witnesses
18 to testify to opinions or conclusions. An exception to this
19 rule is for witnesses that we call "expert witnesses." A
20 witness who by education and experience has become an expert
21 in some art, science, profession or calling, may state an
22 opinion as to relevant material matter in which the witness
23 claims to be an expert and may also state the reasons for
24 that opinion.

25 You should consider any expert opinion received in

1 evidence in this case like any other evidence, give it the
2 weight that you think it deserves. If you decide that the
3 opinion of an expert witness is not based on sufficient
4 education and experience, or if you conclude that the reasons
5 given in support of the opinion are not sound or that the
6 opinion is outweighed by other evidence, you may disregard
7 the opinion entirely.

8 An expert witness's testimony should be given no greater
9 weight than that of other witnesses simply because the
10 witness is an expert. Further, you're not required to accept
11 an expert's opinion, even though it's not contradicted.

12 I instruct you and emphasize that the fact that the
13 defendants did not testify is not a factor to be considered
14 by you in any way in your deliberation and in your
15 consideration on the question of guilt or innocence of the
16 defendants. It must not be considered by you in any manner
17 whatsoever.

18 A defendant has a constitutional right to remain silent,
19 and the assertion of this right must not be considered by you
20 in your deliberations. I repeat, under your oath, you are to
21 draw no conclusion whatsoever from the fact that the
22 defendants in this case did not testify. The fact that the
23 defendants did not testify should not even be discussed in
24 the jury room. The burden of proof, as I have stated to you,
25 is on the State. The defendants are not required to prove

1 their innocence. The burden of proof remains on the State to
2 prove guilt beyond a reasonable doubt.

3 If a crime is committed by two or more people who are
4 acting together in committing a crime, the act of one is the
5 act of all. A person who joins with another to commit an
6 unlawful act is criminally responsible for everything done by
7 the other person which happens as a probable or natural
8 consequences of the acts done in carrying out the common plan
9 and purpose.

10 For example, two people can be guilty of killing another
11 person when only one of the two had a gun. There was only
12 one bullet, and only one of the two fired the shot that
13 caused the death. If two or more people are together, acting
14 together, assisting each other in committing the offense, the
15 act of one is the act of all, or as it's sometimes said, "The
16 hand of one is the hand of all."

17 Prior knowledge that a crime is going to be committed,
18 without more, is not sufficient to make a person guilty of
19 that crime. Mere knowledge that another person is going to
20 commit a crime, even if the defendant is present when the
21 crime is committed, is not sufficient to convict the
22 defendant as a principal.

23 Guilt as a principal is shown by actual or constructive
24 presence at the scene as a result of prior arrangement.
25 Therefore, a finding of a prior arranged plan or common

1 scheme is necessary for finding of guilt as a principal. The
2 State must prove beyond a reasonable doubt by competent
3 evidence that the theory of the hand of one is the hand of
4 all.

5 A principal in a crime is one who either actually
6 commits the crime or who is present, aiding, abetting or
7 assisting in committing the crime. When the person does the
8 act in the presence of and with the assistance of another,
9 the act is done by both. Where two or more, acting with a
10 common plan or intent, are present at the commission of a
11 crime, it does not matter who actually commits the crime.
12 All are guilty. The hand of one is the hand of all.

13 Present at the commission of a crime means to be
14 sufficiently near to aid and abet and assist in the
15 commission of the crime. However, mere presence at the scene
16 of a crime is not sufficient to convict one as a principal on
17 the theory of aiding and abetting. Intent is also a
18 necessary element, for there must have been a common design
19 or intent to commit the crime, and the crime must have been
20 committed pursuant thereto with the person aiding and
21 abetting by some overt act.

22 Intent means intending the result which actually occurs;
23 not accidentally or involuntarily. Intent may be shown by
24 acts and conduct of the defendants or other circumstances
25 from which you may naturally and reasonably infer intent.

1 The State must prove these elements beyond a reasonable
2 doubt.

3 In order to establish criminal liability, criminal
4 intent is required. For example, the mental state required
5 to be proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness or criminal
7 negligence. Criminal intent must be proven by the State
8 beyond a reasonable doubt.

9 Criminal intent is always a matter that must be
10 determined by the jury from the circumstances surrounding the
11 situation. There is no way to prove intent to a mathematical
12 certainty. There is no way medical science can dissect a
13 person's brain and determine what the person had in mind, so
14 the law says that criminal intent may be inferred from the
15 circumstances shown to have existed. This is how you make a
16 determination of whether or not the element requiring intent
17 was present. It is not necessary to establish intent by
18 direct and positive evidence, but intent may be established
19 by inference in the same way as any other fact by taking into
20 consideration the acts of the parties and all of the facts
21 and circumstances of the case.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the defendants
24 intended to do based on the circumstances shown to have
25 existed.

1 Criminal intent can arise from an action or a failure to
2 act. It may also arise from negligence, recklessness or an
3 indifference to duty or to consequences that is considered by
4 the law to be the equivalent of criminal intent.

5 Where a person inflicts a fatal injury on another person
6 and that other person dies at a later time, you must be
7 convinced beyond a reasonable doubt that the infliction of
8 the first injury was a proximate cause of the victim's death.

9 Proximate cause is the direct cause; it is the immediate
10 cause; it is the efficient cause; it is that cause without
11 which the death of the victim would not have resulted. There
12 must be a chain of causation from the time of the injury
13 inflicted by the defendants until the time of the victim's
14 death. Proximate cause does not necessarily mean that it
15 occurred immediately prior to death.

16 There may be more than one proximate cause. The acts of
17 two or more persons may combine together to be a proximate
18 cause of the death of a person. The defendant's act may be
19 regarded as the proximate cause if it is a contributing cause
20 of the death of the victim. The fact that other causes also
21 contribute to the death of the victim does not relieve the
22 defendant from responsibility. The defendant's act need not
23 be the sole cause of the death, but it must be a proximate
24 cause contributing to the death of the victim.

25 It is not a defense to show that the victim might have

1 recovered had she been treated according to the most approved
2 surgical or medical standards or as a reasonably prudent
3 doctor would have treated in the case or even by showing that
4 the treatment was negligent.

5 If, however, the death was caused not by the wound or
6 the injury that the victim had, but was caused by the gross,
7 erroneous, willful, deliberate treatment, the defendant would
8 not be liable. In other words, negligence on the part of
9 someone else would not relieve the defendant from liability
10 if the injury was the proximate cause of the victim's death.
11 However, gross negligence or intentional activity on the part
12 of the practitioners would relieve the defendant of
13 liability. The propriety of medical procedures is an
14 integral question in determining caution.

15 Insanity caused by the use of drugs or alcohol may be a
16 defense if the insanity is permanent and destroys the
17 defendant's ability to know right from wrong. However, when
18 voluntary intoxication has not produced a permanent insanity,
19 it is not a defense to a crime. A person who voluntarily
20 becomes intoxicated is just as responsible for the acts
21 committed while intoxicated as when the person is not
22 intoxicated.

23 There has been evidence presented that witnesses have
24 made prior statements which are not consistent with the
25 witness's present testimony. You may use this evidence to

1 decide whether to believe the witness. You may also use the
2 evidence of the earlier contradictory statements to determine
3 the truth of those statements. It is up to you to decide
4 whether to believe the earlier statements or the testimony
5 given at trial.

6 If a witness is shown to have knowingly testified
7 untruthfully concerning any material matter, you may consider
8 this in determining whether to trust the witness's testimony
9 as to other matters. You may reject all testimony of that
10 witness or give all or part of the testimony the weight that
11 you think it deserves.

12 A person who has a past criminal record is competent to
13 testify during a trial. A past record does not affect the
14 ability of that witness to testify. A past record may only
15 be considered by you, if at all, in determining the witness's
16 believability.

17 Remember, you are the sole judges of the facts in the
18 case and that believability of any and all witnesses.

19 The defendants are each charged with murder. The State
20 must prove beyond a reasonable doubt that the defendants
21 killed another person with malice aforethought. Malice is
22 hatred, ill will or hostility towards another person. It is
23 the intentional doing of a wrongful act without just cause or
24 excuse and with the intent to inflict an injury or under
25 circumstances that the law will infer an evil intent.

1 Malice aforethought does not require that malice exists
2 for any particular time before the act is committed, but
3 malice must exist in the mind of the defendant just before
4 and at the time of the act is committed. Therefore, there
5 must be a combination of the previous evil intent and the
6 act.

7 Malice aforethought may be express or inferred. These
8 terms, "express" and "inferred," do not mean different kinds
9 of malice but merely the manner in which malice may be shown
10 to exist. That is either by direct evidence or by inference
11 from the facts and circumstances which are proved.

12 Express malice is shown when a person speaks words which
13 express hatred or ill will for another or when a person
14 prepared beforehand to do the act which was later
15 accomplished. For example, lying in wait for a person or any
16 other acts of preparation going to show that the deed was
17 within the defendant's mind would be express malice.

18 Malice may be inferred from conduct showing a total
19 disregard for human life. Inferred malice may arise when a
20 deed is done with a deadly weapon. A deadly weapon is any
21 article, instrument or substance which is likely to cause
22 death or great bodily harm. Whether an instrument has been
23 used as a deadly weapon depends on the facts and
24 circumstances of each case.

25 The following are examples of instruments which may be

1 deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
2 dagger, a knife, a slingshot, metal knuckles, a razor,
3 gasoline, a fire bomb or molotov cocktail, and lighter fluid.

4 A gun may be a deadly weapon even if it is not operating.

5 The defendants are charged with kidnapping. The State
6 must prove beyond a reasonable doubt that the defendants
7 knowingly and unlawfully seized, confined, inveigled,
8 decoyed, kidnapped, abducted or carried away another person
9 without the authority of law.

10 To do a thing unlawfully is to do it willfully against
11 the law.

12 Knowingly means with knowledge, consciously, not
13 accidentally.

14 Seize means to take hold of suddenly or forcibly.

15 Confine means to limit, restrict or impose within the
16 bounds, imprison or shut or keep in.

17 Inveigle means to lure, entice or lead astray by false
18 representations, promises or other deceitful means.

19 Decoy means to lure by, or as if by, decoy. A decoy is
20 something to entice a person into a trap.

21 Kidnap is to remove a person against his will by
22 unlawful force or by fraud.

23 Abduct means to carry off secretly or by force for an
24 illegal purpose.

25 Carry away means to remove.

1 The State does not have to prove that the defendants did
2 all of these things. Instead, if you find beyond a
3 reasonable doubt that the defendants did any of these things,
4 you may find each defendant guilty of kidnapping.

5 Something done without authority of law is something
6 which the law does not sanction, permit, allow, condone or
7 provide justification for.

8 The kidnapping does not have to be for any personal or
9 monetary gain for any illegal purpose, but may be for any
10 reason whatsoever.

11 The defendant Jerry McKnight is charged with unlawful
12 possession of a firearm by a person convicted of a violent
13 crime. The State must prove beyond a reasonable doubt the
14 defendant possessed a firearm or ammunition within this State
15 and that the defendant had a prior conviction for a violent
16 crime. Under section 16-1-60, trafficking cocaine base is
17 classified as a violent crime.

18 There are several possible jury verdicts in this case.
19 And, Madam Forelady, it will be your duty to actually fill
20 out the verdict forms.

21 Ladies and gentlemen, your verdict must be unanimous.
22 And I will explain the jury forms to you. There will be a
23 verdict form for each of the defendants, which you must
24 consider separately, and there's a verdict for each of the
25 crimes charged. They're very self-explanatory.

1 It goes, "As to the charge of murder, we, the jury,
2 unanimously find the defendant," and then you circle either
3 one, guilty or not guilty, and then you move on to the next
4 charge on each of the defendants.

5 Once you reach a verdict on all the charges,
6 Madam Forelady, if you would sign right here at the bottom.
7 And also, on each of the indictments, there is a -- on the
8 front of the indictment, it will state, where it says
9 "verdict," if you would sign what the verdict is, date it and
10 sign your name.

11 Then once you reach a verdict, if you would knock on the
12 door, we will receive your verdict and bring you back into
13 the courtroom at that time.

14 For the last time, I am going to ask you to return to
15 your jury room and ask you to not discuss this case quite
16 yet, as I want to make sure I didn't leave anything out. And
17 these attorneys I'm certain will tell me if I did, and we
18 will get all the evidence back to you.

19 Once you receive the verdict forms and the indictments
20 and the evidence into the jury room, it will be a good time
21 for you to begin your deliberations.

22 You may be excused to your jury room.

23 (The jury retires to the jury room at 1:55 p.m.)

24 THE COURT: Any exceptions or objections to the jury
25 charge from either the State or the defense?

1 MR. BANKS: No, Your Honor.

2 MR. PASCOE: None from the State, Your Honor.

3 MR. LEIENDECKER: No, Your Honor.

4 THE COURT: If you all will make sure all the evidence
5 is gathered together, I'll go and excuse the one alternate.

6 (Evidence and verdict forms delivered to the jury at
7 2:02 p.m.)

8 (Recess held.)

9 (The Court's Exhibit 4 marked for identification.)

10 THE COURT: It's my understanding that we have a verdict
11 in this case. Certainly I understand that this is a very
12 difficult and emotional process for all those involved and
13 the families involved; however, there will be no outbursts of
14 emotion in the courtroom when the verdict is read. Everybody
15 must maintain decorum while the jury is in the courtroom, and
16 please be mindful to do so. If you don't think that you can
17 do that, you may exit the courtroom now.

18 We're ready for our jury.

19 (The jury enters the courtroom at 4:09 p.m.)

20 THE COURT: Madam Forelady, has the jury reached a
21 verdict?

22 FOREPERSON: Yes, Your Honor, we have.

23 THE COURT: If you would please hand it to the bailiff.

24 Everything appears in order.

25 Mr. Clerk, if you would publish the verdict.

1 CLERK OF COURT: Yes, ma'am. In the matter of the State
2 of South Carolina versus Bryant McKnight, Case
3 No. 2014-GS-09-0059 and 2014-GS-09-060, as to the charge of
4 murder, we, the jury, unanimously find the defendant guilty.

5 As to the charge of kidnapping, we, the jury,
6 unanimously find the defendant guilty.

7 In the matter of the State of South Carolina versus
8 Jerry McKnight, Sr., Case No. 2014-GS-09-0054,
9 2014-GS-09-0056 and 2014-GS-09-0057, as to the charge of
10 murder, we, the jury, unanimously find the defendant guilty.

11 As to the charge of kidnapping, we, the jury,
12 unanimously find the defendant guilty.

13 As to the charge of possession of a firearm by a person
14 convicted of a violent crime, we, the jury, unanimously find
15 the defendant guilty.

16 Ladies and gentlemen of the jury, if this be your
17 verdict, so say you all and indicate by raising your right
18 hand.

19 (Jurors so indicate.)

20 CLERK OF COURT: It's been noted.

21 Ladies and gentlemen of the jury, I would like for you
22 to indicate that you are -- we're going to poll you right
23 now, and I'd like to ask you is this your verdict, and if it
24 is your verdict, is it still your verdict. I'm going to call
25 your juror number and your last name, and you indicate by

1 raising your right hand.

2 Juror No. 128, Millhouse, is this your verdict and is it
3 still your verdict?

4 JUROR NO. 128: Yes.

5 CLERK OF COURT: Juror No. 79, Heath, is this your
6 verdict and is this still your verdict?

7 JUROR NO. 79: Yes, sir.

8 CLERK OF COURT: Juror No. 178, Smith, is this your
9 verdict and is it still your verdict?

10 JUROR NO. 178: Yes.

11 CLERK OF COURT: Juror No. 38, Cowan, is this your
12 verdict and is it still your verdict?

13 JUROR NO. 38: Yes.

14 CLERK OF COURT: Juror No. 140, Palmieri, is this your
15 verdict and is it still your verdict?

16 JUROR NO. 140: (Juror nods affirmatively.)

17 CLERK OF COURT: Juror No. 132, Mills, is this your
18 verdict and is it still your verdict?

19 JUROR NO. 132: Yes.

20 CLERK OF COURT: Juror No. 50, Dunning, is this your
21 verdict and is it still your verdict.

22 JUROR NO. 50: Yes.

23 CLERK OF COURT: Juror No. 116, Mack, is this your
24 verdict and is it still your verdict?

25 JUROR NO. 116: Yes.

1 CLERK OF COURT: Juror No. 186, Sturkie, is this your
2 verdict is it still your verdict?

3 JUROR NO. 186: Yes.

4 CLERK OF COURT: Juror No. 59, Foster, is this your
5 verdict and is it still your verdict?

6 JUROR NO. 59: Yes.

7 CLERK OF COURT: Juror No. 185, Stoudemire, is this your
8 verdict and is it still your verdict?

9 JUROR NO. 185: Yes.

10 CLERK OF COURT: Juror No. 188, Troutman, is this your
11 verdict and is it still your verdict?

12 JUROR NO. 188: Yes.

13 CLERK OF COURT: The jury has been polled, Your Honor.

14 THE COURT: Thank you, Mr. Clerk.

15 Ladies and gentlemen of the jury, if you would please
16 return to your jury room. I'll be in there in two seconds to
17 release you.

18 (The jury retires to the jury room at 4:13 p.m.)

19 THE COURT: Solicitor, if you would prepare the
20 sentencing sheets while I release the jury.

21 (Recess held.)

22 THE COURT: Solicitor, are we ready to proceed with
23 sentencing?

24 MR. PASCOE: Yes, Your Honor.

25 THE COURT: I'll be happy to hear from victims and/or,

1 of course, the defense.

2 MR. PASCOE: Yes, Your Honor. Can I go ahead and give
3 you the defendant's record first?

4 THE COURT: Yes, sir.

5 MR. PASCOE: As Your Honor's already heard the facts,
6 there's nothing I can say that could make it more aggravated
7 than what this Court's already heard. Whatever sentence you
8 give these defendants, they're going to rightly deserve. I
9 promise you that.

10 The defendant Jerry McKnight's record, Your Honor, 1988,
11 carrying of a concealed weapon; 1989, simple possession of
12 cocaine; 1992, simple possession of cocaine; in 1993, he got
13 a nine-year sentence for distribution of cocaine; in 1998, he
14 was convicted of failure to stop for a blue light; in 2003,
15 that's when he got his drug trafficking conviction that the
16 Court knows about and also a possession of a stolen pistol
17 conviction; and 2012 driving under suspension.

18 As for the defendant Bryant McKnight, Your Honor, 2004
19 possession of crack; he had his parole revoked in 2006; and
20 in 2011, he was convicted of PWID cocaine, driving under
21 suspension and failure to stop for a blue light.

22 One other thing I'd like to say, Your Honor, I want to
23 commend -- as Your Honor got to hear, this was a really,
24 really good coordinated effort with the Orangeburg County
25 Sheriff's Office, particularly the Calhoun County Sheriff's

1 Office and the St. Matthews Police Department.

2 And I particularly want to praise Chief Smalls for
3 getting the ball rolling on this investigation and really
4 need to praise Captain Regalis and Lieutenant Graham. They
5 did an unbelievable job. They could put on a clinic of how
6 to continue an investigation even after charges are brought.

7 And that's the way -- that's been my experience with the
8 St. Matthews Police Department and the Calhoun County
9 Sheriff's Office. The only other homicide cases I've had
10 with this much evidence in this circuit are in this county
11 because of those two agencies.

12 THE COURT: Thank you, Solicitor.

13 MR. PASCOE: Thank you, Your Honor. With the Court's
14 permission, I know that Ms. Kim Livingston would like to
15 address the Court, of course, that's the victim's mother, and
16 also Mr. Craig Randolph, who is K. R. 's father.

17 THE COURT: Yes, sir.

18 MR. RANDOLPH: Yes, ma'am. Craig Randolph. K. R. ,
19 she's my only daughter. She's so young. I mean, her life
20 just got snatched of out from her. She's only 17. She had
21 so much she wanted to do, and, I mean, she was just snatched
22 away from us. And that's hurt that we're going to have to
23 deal with for the rest of our life.

24 And we can't bring her back. I mean, we'll never be
25 able to speak to her again, never be able to see her again.

1 That's something we've got to -- I've got to take to the
2 grave with me. I'm never going to be able to see my baby
3 again. And on behalf of myself and my family, we'd just ask
4 that you consider maximum penalty.

5 And also to speak about what you said, St. Matthews
6 Police Department and Calhoun County, I'd like to thank you
7 all, because they did a great job.

8 And that's all I have to say, Your Honor.

9 THE COURT: Thank you, sir. I am sorry for your loss.

10 MR. RANDOLPH: Thank you for your time.

11 THE COURT: Yes, ma'am.

12 MS. LIVINGSTON: Thank you, Judge, yes.

13 First I want to thank law enforcement. There's so many,
14 I can't name every one, but everyone was so great. I'm so
15 thankful for their assistance. And during the time when I
16 didn't know exactly what was going on with my daughter and
17 spending every night wondering where she is because she
18 wasn't found, they were excellent. They would call me to
19 check or I could call them and it was never like I was a
20 bother.

21 But, Judge, once again, just thinking back to those
22 nights, and my family not knowing where she was, if we would
23 ever see her again, some murder victims, you never see them
24 again. And it's just affected our family greatly. I have a
25 25-year-old son, my mother.

1 Also have a 7-year-old son who hasn't been the same
2 since this has happened. Every day is a bad day at school
3 for him. He's on medication. He's depressed. He's still
4 grieving. He still cries for her.

5 I have to take something to go to sleep, something for
6 anxiety, something for depression.

7 And like Mr. Randolph said, nothing will bring her back.
8 It's nothing we can do about it now, but that was his only
9 daughter, his only child, and that was my only daughter.

10 When I think about when I -- when I get older, who's
11 going to be there for me? I'm a female. I have my sons, but
12 I don't have my daughter. I don't have my best friend
13 anymore. I will never be able to see her again until I leave
14 this earth.

15 So I'm just asking that the Court will please find them
16 to the fullest extent of the law.

17 My daughter was -- I'm not going to keep you long, but
18 just the fear that I could imagine knowing that once she was
19 snatched away from the car, what she must have thought in her
20 mind, knowing she was getting ready to die. I just wish that
21 justice will be served and it would be equal justice. Just
22 as she had to experience that, that this would be -- you
23 would punish to the fullest extent of the law. Thank you.

24 THE COURT: Thank you, ma'am.

25 MR. PASCOE: That's all, Your Honor.

1 THE COURT: I'd be happy to hear from the defense.

2 MR. LEIENDECKER: Thank you, Your Honor. I represented
3 Jerry McKnight in this matter. Jerry is today 46 years old.
4 He's the father of nine children, has three grandchildren
5 himself. As the solicitor has set forth, he has an extensive
6 record, but that record is a reflection of the issues that
7 exist in Jerry's life, which is drug addiction.

8 It stretches back into the '80s. It involves drug
9 convictions right up to a weight that included trafficking in
10 2003, and he went to prison for an extended period of time
11 over that.

12 I'd ask Your Honor to consider the fact that he is the
13 kind of person who's had this kind of history, this kind of
14 background.

15 You've heard quite a bit about his family and all the
16 issues that surround the McKnights here in Calhoun County,
17 and I'd ask you to take that into consideration when passing
18 sentence and consider giving him some kind of sentence at 47
19 that would give him an opportunity to have something to work
20 forward and work towards in an attempt to rehabilitate
21 himself, and that certainly even a 30-year sentence is an
22 extensive sentence for someone at 46 years of age on a
23 day-for-day sentence. Thank you.

24 THE COURT: Thank you, Mr. Leiendecker.

25 MR. BANKS: Thank you, Your Honor. Of course, I

1 represent Bryant McKnight, who is Jerry's younger brother.

2 Bryant's 34, he's a lifelong resident of St. Matthews.
3 He's actually pretty well educated for most of the clients I
4 see. He communicates well. He writes well. He reads well.
5 He has some abilities that some of my clients don't have.

6 He is -- I think the fact that he's 34 and 12 years
7 younger than Jerry also is reflected in some of the facts you
8 heard in this case, that he is influenced by his brother.

9 And I think in mitigation, I'd offer that I still
10 believe he's less culpable, although he is guilty and fully
11 guilty. I think in mitigation, he's less culpable and for
12 any sentence you might offer Jerry -- sentence Jerry to.

13 If you find it reasonable to offer something less than
14 Bryant, it would give him an opportunity to as well, at age
15 34. To take Mr. Leiendecker's description, 30 years plus 34
16 is still retirement age. And while he won't be a young man,
17 it will give him something to hope for.

18 THE COURT: Anything further?

19 MR. BANKS: Thank you, Your Honor.

20 THE COURT: Both of you, Mr. McKnight, Jerry McKnight
21 and Bryant McKnight, you brutally executed this young woman,
22 looking at her in her face. And your actions just show a
23 propensity for evil that really cannot be tolerated in our
24 society; so therefore, Mr. Jerry McKnight, on Indictment
25 2014-09-0057, on the indictment for murder, you're hereby

1 committed to the State Department of Corrections for a period
2 of life.

3 On Indictment 2014-09-0054 for kidnapping, you're hereby
4 committed to the State Department of Corrections for a period
5 of 30 years.

6 And on indictment 2014-09-0056, for possession of a
7 firearm by a person convicted of a violent crime, you're
8 hereby committed to the State Department of Corrections for a
9 period of five years.

10 Mr. Bryant McKnight, on indictment 2014-GS-09-0059, on
11 the indictment for murder, you're likewise committed to the
12 State Department of Corrections for a period of life.

13 On Indictment 2014-GS-09-0060 for kidnapping, you're
14 hereby committed to the State Department of Corrections for a
15 period of 30 years.

16 And that is the sentence of the Court.

17 MR. BANKS: Thank you, Your Honor.

18 MR. PASCOE: Thank you, Your Honor.

19 --- END OF TRANSCRIPT OF RECORD ---
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF CALHOUN

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Calhoun County, South
11 Carolina held on the 1st through the 2nd of March, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 June 1, 2015

16
17 *Ruth L. Mott*

18 Official Court Reporter
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

County of Calhoun

FILED

IN THE COURT OF COMMON PLEAS

2018 MAY 30 P 12:05

Jerry M^c Knight
Full name and prison number (if any) of ApplicantKENNETH HASZ
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

2018-CP-09-00073

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

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 Perry Correctional Institution
430 Oaklawn Rd Pelzer South Carolina 29669
2. Name and location of Court which imposed sentence Calhoun County Court of
General Sessions
3. Name(s) of co-defendant(s) (if any) Bryant M^c Knight
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-09-0054
 - (b) 2014-GS-09-0056

(c) 2014-68-09-0057

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 3-6-15 30 years(b) 3-6-15 5 years(c) 3-6-15 life

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirm Court of Appeals Case No 2015-000559

ii. _____

iii. _____

(c) the date of each such result:

i. March 28, 2018 October 25, 2017

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished opinion #0 2017-UP 406

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel See attachments
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (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. Petition for a rehearing, Petition for a Writ of Certiorari in SC Supreme Court
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Supreme Court Columbia South Carolina
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. Rehearing December 14, 2017, Writ of Certiorari March 28, 2018
- ii. _____
- iii. _____
- iv. _____

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) First Filing of P.R., only time in which could file issues
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? never arraigned
- (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. _____
- ii. Trial ~~H/A~~ Mark A. Leiendecker
107 West 6th North Street Summerville SC 29483
- iii. Sentencing Mark A. Leiendecker
Appeal Howard W Anderson III P.O. Box 661 Pendleton SC 29670
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. Trial ~~H/A~~ _____
- iii. Sentencing
Appeal

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

reversed Remand, New trial

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Calhoun)

I, Mr. Jerry Mc Knight, 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.

Jerry McKnight ✓

SWORN to and subscribed before me this 22nd
day of May, 2018.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

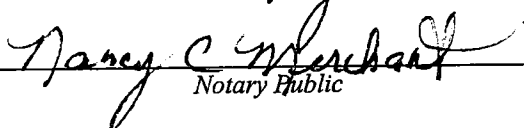
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

22nd day of May, 2018.


Notary Public

My Commission Expires: 1-23-2018

844

Calhoun County Clerk of Court
of Common Pleas

302 S. Huff Drive St. Matthew SC 29182

2018-CP-09-00073

FILED

5-15-2018

2018 MAY 30 P 12:05

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Dear Clerk of Court of Common Pleas Calhoun County.

Attached and enclosed you will find my Post Conviction
relief Application and attachments and my trial transcript pages
503 to 835 and a copy of Exhibit #1 Indictment 2014-GS-09-0054
for Kid napping. Please file them and provide a copy to the Solicitor's
office and The S.C Attorney General office and return a filed copy
to me.

Thank You

Mr Jerry M^e Knight #189200
Perry Correctional Institution
430 Oaklawn Rd
Pelzer South Carolina 29669

The outcome would have been different. Strickland v Washington, 466 U.S. 668, 687-88 (1984)

Applicant Jerry M^c Knight brings to this court attention that the trial transcript Id in his claims, grounds 1-7 in his Pet application, is pertaining to

State of South Carolina
County of Calhoun

Court of General Session

2014-GS-09-0059

2014-GS-09-0060

2014-GS-09-0054

2014-GS-09-0056

2014-GS-09-0057

March 2-6 - 2015

37 Matthew SC

Before the Honorable Maite Murphy, Judge and a jury.

Trial Transcript March 2-6 2015
Pages 503-836 as Exhibit # 2

Jerry M^c Knight 189200
Perry Correctional Institution
430 Oaklawn Rd
Pelzer SC 29669

5/15/2018

state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- 3) Applicant Jerry M^e Knight claims that he is being held in custody unlawfully in violation of his 6th Amendment right of the United States Constitution to effective assistance of Counsel

state concisely in the same order the facts which support each of the grounds set out in (10):

Ground one

- (2) In reference to Indictment 2014-65-09-0057 murder, Applicant Jerry M^e Knight, claims that pursuant to the first prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984), his trial counsel Mark A. Leiendecker performance fell below an objective standard of reasonableness in failing to object to the trial judge Meite Murphy Mandatory presumption charge to the jury that: Malice may be inferred from conduct showing a total disregard for human life. Inferred Malice may arise when a deed is done with a deadly weapon. see Id. at Trial transcript page 821 lines 18-20. Ex # 2

Pursuant to the second prong test of Strickland v Washington, 466 U.S. 668 687-88 (1984) Applicant Jerry M^e Knight claims that he was prejudiced by his trial counsel Mark A. Leiendecker deficient performance in failing to object to the trial judge Meite Murphy Mandatory presumption charge to the jury that: Malice may be inferred from conduct showing a total disregard for human life. Inferred Malice may arise when a deed is done with a deadly weapon. Id at Trial transcript page 821 lines 18-20, because the charge impermissibly shifted the burden of proof of Malice to Applicant Jerry M^e Knight, by creating a mandatory presumption that required the jury to find Malice if the state proved Applicant Jerry M^e Knight's conduct showed a total disregard for human life, and his deeds was done with a deadly weapon. The charge also omitted the permissive inference language Id in State v Peterson 287 S.C. 385 S.E.2d. 800 (1985) Evidentiary presumption must be charged as

permissive inference with specific instruction that the jury may accept or reject inference. The charge violated Applicants Jerry McKnight due process of right of the 5th, 14th Amendment of the United States Constitution citing Yates v Aiken 484 U.S. 211, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988); Francis, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344; Sandstrom, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39; Arnold v State/Plath v State 309 S.C. 157, 420 S.E.2d 834 (1992)

The unconstitutional mandatory presumption charge ^{Ex. 2} Id at Trial transcript pg 821 lines 18-20 lessened the states burden of proof on the element of Malice in violation of in re Winship 397 U.S. 358 (1970). U.S.C.A. 5th, 14th

In conclusion, therefore had it not been for Applicant Jerry McKnight trial counsel's deficient performance in failing to object to the trial Judge Maite Murphy unconstitutional mandatory presumption charge to the jury Id at Trial transcript page 821 lines 18-20. There is a reasonable probability that the outcome would have been different Strickland v Washington 466 U.S. 668 687-88 (1984); and Gibson v State 416 S.C. 260, 786 S.E.2d 721; and Lowry v State, 376 S.C. 499, 657 S.E.2d. 760.

Applicant claims that he believes he has shown based on the preponderance of the evidence, that he is entitled to the relief in the form reversal of his conviction and sentence under indictment 2014-GS-09-0057 murder, and the granting of a new trial

10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I am being held in custody unlawfully in violation of My 6th Amendment right of the United States constitution to effective assistance of counsel.

11 State concisely in the same order the facts which support each of the grounds set out in (10):

Ground Number two ineffective assistance of counsel.

(a) Inference to indictment 2014-GS-09-0054 Kidnapping, Applicant Jerry McKnight claims that pursuant to the first prong test of Strickland v Washington, 466 U.S. 688, 687-88 (1984) his trial counsel Mark A. Lejendeker performance fell below an objective standard of reasonableness in failing to object to the trial Judge Maite Murphy constructive amendment to the indictment on the element of knowingly (knowledge) in his charge to the jury Id at trial transcript page 822 line 5-12 Ex. #2

The indictment 2014-GS-09-0054 returned by the grand jury on January 5, 2015 states the following

Kidnapping

that in Calhoun County South Carolina, on or about February 13th, 2004 the Defendant, Jerry McKnight Sr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim K. R. [REDACTED] without authority of law. This offense in violation of section 16-03-910 of the South Carolina Code of law, as amended

see Id as exhibit #1 attached

An indictment may be considered amended when the prosecution or the court either literally or constructively alters the charging terms of an indictment. Stirone, 361 U.S. at 217 when jury instructions

broadens the scope of the indictment by permitting conviction for an uncharged offense. U.S. v Randall 171 F.3d 195, 210 (4th Cir 1999) impermissible amendment because government broaden bases of conviction to include predicated offense not alleged in indictment. Indictment may not be substantively amended without reconvening the grand jury. Stirone v U.S. 361 U.S. 212, 217-19 (1960) amendment of indictment by court violated 5th Amendment Grand Jury clause. U.S. v Randall 171 F.3d, 195, 203 (4th Cir 1999)

Constructive amendment per-se reversible error and must be corrected on appeal even if defendant did not preserve issue by objection.

fatal variance. A variance that either deprives the defendant of a fair notice of the charges or exposes the defendant to the risk of double jeopardy.

The trial judge in his charge to the jury, instructed the jury as follows: The defendants are charge with Kidnapping. The state must prove beyond a reasonable doubt that the defendants knowingly and unlawfully seized, confined, inveigled, decoyed, Kidnapped, abducted or carried away another person without the authority of law.

To do a thing unlawfully is to do it willfully against the law
Knowingly - means with knowledge, consciously, not accidentally.

seize - means to take hold, of suddenly or forcibly

Confine - means to limit, restrict or impose within the bounds, imprison or shut or keep in.

Inveigle - means to lure, entice or lead astray by false representations, promises or other deceitful means

Decoy - means to lure by, or as if by decoy. A decoy is something to entice a person into a trap.

Kidnap - is to remove a person against his will by unlawful force or by fraud

Abduct - means to carry off secretly or by force for an illegal purpose.

Carry away - means to remove.

The state does not have to prove that the defendants did all of these things. Instead, if you find beyond a reasonable doubt that the defendants did any of these things you may find each defendant guilty of Kidnapping. Something done without authority of law is something which the law does not sanction, permit, allow, condone or provide justification for.

The Kidnapping does not have to be for any personal or monetary gain for any illegal purpose, but may be for any reason whatsoever.

see Id at Trial transcript page 822 lines 5 through page 823 line 10. EX 42

In reference to Exhibit #1. Indictment 2014 GS 04-0054 attached my trial Counsel performance fell below an objective standard of reasonableness in failing to object to the sufficiency of the indictment and Motion to dismiss the indictment before the jury was sworn on grounds it did not contain the element of knowingly - knowledge in which to afford Applicant due process. adequate notice of the charge of Kidnapping. In South Carolina it is a rule of universal observance in administering to Criminal law that a defendant must be convicted of convicted at all of the particular offense charged in the bill of indictment. State v Eunn 313 S.C. 128, 136, 437 S.E.2d. 75, 82 (1993) (quoting State v Cody, 180 S.C. 417, 423, 186 S.E. 165, 167. 1936. "A material variance between charge and proof entitles the defendants to a directed verdict. such a variance is not material if it is not an element of the offense. Id (citation omitted) see 41 Am. Jur. 2d indictments and

information § 252 (2005) stating that one of two ways an indictment can be improperly modified is through a variance, whereby the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment. While a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense such is not true when the indictment facially charges a complete offense and the state presents evidence which convicts under a different theory than alleged. Thompson v State, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994) (citations omitted). A conviction under the latter circumstances violates principles of due process because the state failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged. Id. (citations omitted). See 41 Am. Jur. 2d Indictment and Information § 256 (2005). A material variance that violates a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal on an appeal of the judgment of conviction of the offense not charged in the indictment.

Pursuant to the second prong test of Strickland v Washington, 466 U.S. 688, 697-98 (1984) had it not been for Applicant's trial Counsel failure to object to the insufficiency of the indictment and Motion the court to dismiss the indictment, as well as object to the trial judge's constructive amendment to the indictment, Applicant was prejudiced in violation of his due process of right to be put on adequate notice, absent the element of knowingly, and from being subjected to the double jeopardy, and convicted of an uncharged offense, and had it not been for counsel's deficient performance there is a reasonable probability the court's outcome would be different.

Strickland v Washington 466 U.S. 688 697-98 (1984).

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on the evidence presented, Applicant seeks relief, in the vacating or reversal of the conviction and sentence under indictment 2014-GS-09-0054 for kidnapping and the granting of a new trial.

ATTACHMENT

2. state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I am being held in custody unlawfully in violation of my 6th Amendment right of the United States Constitution to effective assistance of Counsel.

state Concisely in the same order the facts which support each of the grounds set out in (a):

Ground Three ineffective assistance of Counsel claim

(2) In reference to Indictment 2014-GS-09-0054 Kidnapping. Applicant Jerry McKnight claims that, pursuant to the first prong test of Strickland v. Washington, 466 U.S. 668-687-88 (1984) that his trial counsel Mark A. Leisendcker performance fell below an objective standard of reasonableness in failing to object to trial Judge Maife Murphy improper unconstitutional charge to the jury in reference to his charge to the jury, that

"The Kidnapping does not have to be for any personal or monetary gain for any illegal purpose, but may be for any reason whatsoever. Id at trial transcript page 823 lines 8-10 LX #2

Pursuant to the second prong test of Strickland v. Washington, 466 U.S. 668, 687-88 (1984) Applicant claim he was prejudiced by trial Counsel deficient performance because the improper charge shifted the burden of proof and lessened the states burden of proof, and allows Applicant to be convicted of an uncharged offense on element and fact not included in the indictment, subjecting applicant to a fatal variance. And had it not been for counsel deficient performance there is a reasonable

Probability the outcome of the trial concerning Indictment 2014-65-09-0054

Kidnapping would have been different. Strickland v Washington, 466 U.S. 668, 687-88 (1984)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant Jerry McKnight claims that he is being held in custody unlawfully in violation of his 6th Amendment Right of the United States Constitution to effective assistance of Counsel

1. State concisely in the same order the facts which support each ground set out in (a):

Fourth Ground ineffective assistance of Counsel

(a) In reference to indictments: 2014-65-09-0057 murder, Indictment 2014-65-09-0054 Kidnapping, Indictment 2014-65-09-0056 Possession of a firearm by person convicted of a violent crime. Applicant claims that pursuant to the first prong test of Strickland v Washington 466 U.S. 668-687-88 (1984) his trial Counsel Mark A. Leindick's performance fell below an objective standard of reasonableness in failing to object to the prosecutors closing argument: "Ultimately, ladies and gentlemen, your voice is going to be the strongest, loudest voice in this courtroom. What I ask you, the people of Calhoun County, the people of the state of South Carolina, is I ask you to come back with a voice that's loud and clear, a voice that tells Jerry McKnight and Bryant McKnight that they didn't get away with murder. Prove them wrong. Find them guilty of the brutal, cold malicious killing of 17-year old K. R. and in Jerry's case, in possession that weapon he was not allowed to have. see Id at Trial transcript page 806 line 7-18 Ex #2

Pursuant to the second prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984) his trial Counsel deficient performance in

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 failing to object to trial Judge jury instruction Id at Trial transcript
 page 806 line 7-18 ^{Ex 2} prejudice him of his due process of right
 to a fair trial pursuant to the 5th, 14th Amendment of the U.S.C.;
 Prosecutors' comment asking the jury to as the people of Calhoun County
 South Carolina to come back with a voice that's loud and clear, a voice
 that tells Jerry McKnight and Bryant McKnight that they didn't get
 away with murder. To prove them wrong find them guilty of the
 brutal, cold malicious killing of 17-year old K. R. [REDACTED]
 Prove them wrong. Find them guilty of Kidnapping her, and in
 Jerry's case, in possessing that weapon that he was not allowed
 to have, was intend to lead jury to convict for improper reason.
 Basically asking the jury to act as a voice for the people of
 Calhoun County, to come back with a voice that's loud and clear, a
 voice that tells Jerry McKnight and Bryant McKnight that they
 did not get away with murder, Kidnapping and Jerry's case, in
 possession that weapon that he was not allowed to have Id at Tr. pg
 806 lines 9-18. ^{Ex 2}

Had it not been for counsel deficient perforce, in failing to object
 as shown above, there is a reasonable probability that the outcome
 of the trial would have been different - Strickland v Washington.
 464 US 668 687, 88 (1984).

Based on the preponderance of the evidence disclosed from the Record before
 this court, Applicant seek relief in the form of Reversal or Vacating
 of his Conviction Under Indictment 2014-65-09-0057 murder 2014-65-09-
 0054 Kidnapping and 2014-65-09-0056 Poss of Firearm by person convicted
 of a violent crime.

10 state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant Jerry McKnight claims that he is being held in custody unlawfully in violation of his 6th Amendment right of the United States Constitution to effective assistance of counsel.

11. state concisely in the same order the facts which support each of the grounds set out in (10):

Ground # five

(a) Applicant Jerry McKnight claims that pursuant to the first prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984), that his trial counsel Mark A. Leiendoeker performance fell below an objective standard of Reasonableness in failing to object to Assistant Solicitor Don Sorenson improper closing argument Id at Trial transcript page 806 lines 9-18^{Ex 2}, which states,

I ask of you, the People of Calhoun County, the people of the state of South Carolina, I ask you to come back with a voice that's loud and clear, a voice that tells Jerry McKnight and Bryant McKnight that they didn't get away with murder.

Prove them wrong. Find them guilty of the brutal, cold malicious killing of 17-year-old K. R. [REDACTED]. Prove them wrong, find them guilty of kidnapping her, and in Jerry's case, in possessing that weapon he was not allowed to have.

The prosecutor may not appeal to the jurors to act as a

Conscience for the community or make other remarks likely to inflame the passion of the jurors if the remarks are intended to lead to conviction for an improper reason

Applicant Jerry McKnight,

Pursuant to the Second Prong test of Strickland v Washington, 466 U.S.

668, 687-88 (1984) claims that he was prejudiced by trial Counsel

Mark K. Lejendek's deficient performance in failing to object to

the assistant Solicitor Don Sorenson's improper closing argument

where based on his personal feelings ask the jurors to as the

People of Calhoun County, the people of the state of South Carolina,

is I ask you to come back with a voice that's loud and clear,

a voice that tells Jerry McKnight and Bryant McKnight that

they didn't get away with murder. Prove them wrong find

them guilty of the brutal, cold malicious killing of 17-year-old

K. R. [REDACTED] Prove them wrong find them guilty of

Kidnapping her, and in Jerry's case in possessing that weapon

he was not allowed to have. Id at Trial transcript pg 806 line 9-18 ^{EX-2}

Violated Due Process prejudicing Applicant of a fair trial, because

the comment/remarks were intended to lead to conviction

for improper reason, and had it not been for counsel deficient

performance there is a reasonable probability the outcome

of the trial would have been different, had counsel not failed

to object.

Strickland v Washington 466 U.S. 668 687-88 (1984)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I am being held unlawfully in violation of MY 5th, 6th, 14th Amendment right of the United States Constitution to effective assistance of counsel and a fair trial

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

Ground (b) SIX

(a) Applicant claims that Pursuant to the first Prong test of Strickland v. Washington, 466 U.S. 668, 687-88 (1984) that his trial Counsel performance fell below an objective standard or reasonableness in failing to object to the trial courts unconstitutional mandatory Presumption charge inference to Indictment 20146509-0054 Kidnapping, Indictment 20146509-0056 Possession of a weapon By Person convicted of a violent crime; Indictment 20146509-0057 Murder. That:

(1) If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequences of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun. There was only one bullet, and only one of the two fired the shot that caused death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or as it's sometimes said, "The hands of one is the hands of all." Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that a person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for finding of guilt as a principal. The state must prove beyond a reasonable doubt by competent evidence that the theory of the hand of one is the

hand 858. A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting or assisting in committing the crime. When the person does the act in presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. Id at Trial transcript page 815 line 3 through page 816 line 12 ^{Ex 2}

Applicant claims that Pursuant to the second Prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984) that he were prejudiced by his trial Counsel's deficient performance of a fair trial in failing to object to trial Court's Mandatory Presumption charge to the jury, that the acts of one is the acts of all. Id at Trial transcript Page 815 line 3 through page 816 line 12 Because it violated his Due Process of right of the 5th, 14th Amendment of the United States Constitution, against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged In Re Winship 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368 (1970), see also Jackson v Virginia, 443 U.S. 307, 315-316, 99 S. Ct. 2781 61 L. Ed. 2d 560 (1979) The instruction to the jury, of the theory that the 'hand of one is the hands of all or the acts of one is the acts of all, relieve the state of the burden of Proof on each and every element of Indictment 2014GS-0054 Kidnapping; Indictment 2014GS-0056 Possession of a weapon by person convicted of a violent crime; and Indictment 2014GS-0057 Murder. Had it not been for counsel deficient performance in failing to object, there is a reasonable probability that the outcome of the trial would have been different Strickland v Washington 466 U.S. 668, 687-88 (1984)

10 state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) I am being held in custody unlawfully in violation of my 6th Amendment Right of the United States Constitution to effective assistance of counsel.

11 state concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ground 1

(a) Pursuant to the first prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984) My trial Counsel Mark A. Leindcker performance fell below an objective standard of reasonableness in failing to object at sentencing phase to Trial Judge Maite Murphy sentencing me to 30 years in reference to Indictment 2014-65-09-10054. ^{EX 2}
see 7d at trial transcript page 834 line 24 through page 835 line 16.

Pursuant to the second prong test of Strickland v Washington 466 U.S. 668, 687-88 (1984) I was prejudiced by my trial Counsel Mark A. Leindcker failure to object to the trial Judge Maite Murphy sentencing me to 30 years for Kidnapping, because due process clause of S.C. 1976 Code of Law § 16-3-910 Kidnapping prohibits: The sentencing at 30 years for Kidnapping when the sentence for murder provided in Section § 16-3-20 is imposed. See S.C. Code § 16-3-910 ("Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20). Had it not been for my counsel deficient performance in failing to object to Judge Maite Murphy sentencing me for Kidnapping in violation of S.C. 1976 Code of Law § 16-3-910 There is a reasonable probability,

10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

(b) Applicant Jerry McKnight claims that he is being held in custody in violation of his 5th 14th Amendment right of the United States Constitution and S.C. Const article 1 section 3, 14. Due process and equal Protection of rights to a Fair Trial.

11 State concisely in the same order the facts which support each of the grounds set out in (10):

(b) In reference to indictments 2014 GS-09-0057, 56, 54, Murder, Possession of Firearm by person convicted of a violent crime and Kidnapping Applicant Jerry McKnight claims that assistant Solicitor Sorenson in his closing argument violated his due process and equal Protection of Right to a fair trial in violation of 5th 14th Amendment of the United States Constitution and South Carolina Const article 1 section 3, 14 by using the terms I submit, I mean, I said, I think, I could in referring to himself to allude to his own personal integrity to bolster the governments case. Using the term I over 50 times. throughout his closing argument. see Id in exhibit # 2 trial transcript page 806 line 16 through page 806 line 18

especially when assistant Solicitor Sorenson in his closing argument stated to the jury, I ask of you, the people of Calhoun County, the people of the State of South Carolina, is I ask you to come back with a voice that's loud and clear, a voice that tells Jerry McKnight and Bryant McKnight, that they didn't get away with murder. Prove them wrong. Find them guilty of the brutal, cold malicious killing of 17-year old K. R. [REDACTED]. Prove them wrong, find them guilty of Kidnapping her, and in Jerry's case in possessing that weapon that he was not allowed to have. Thank You. Id in exhibit # 2 trial transcript page 806 lines 9-18 This is improper. The

Assistant Prosecutor Mr Sorenson may not appeal to jurors to act as a conscience for the community or make other remarks likely to inflame the passion of the jurors if the remarks are intended to lead to conviction for an improper reason. His closing argument Id in exhibit #2 Trial transcript page 806 line 9-18 asked the jurors to act as a voice for the Community instead of finding Applicant guilty beyond a reasonable doubt on the evidence the State has presented.

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jerry McKnight, #189200,

Case No.: 2018-CP-09-00073

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on May 30, 2018, would respectfully show this Court:

I. PROCEDURAL HISTORY

Jerry McKnight (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In September 2014, the Calhoun County Grand Jury indicted Applicant for murder (2014-GS-09-0057), possession of a firearm by a person convicted of a violent crime (2014-GS-09-0056), and kidnapping (2014-GS-09-0054). Mark Leiendecker, Esquire represented Applicant.¹ Solicitor David Pascoe, Deputy Solicitor Donald N. Sorenson, and Assistant Solicitor Kyle Ward, Esquires, prosecuted the case. On March 2-6 2015, Applicant proceeded to a jury trial before the Honorable Maite Murphy. The jury found Applicant guilty as indicted. Judge Murphy sentenced Applicant to life without the possibility of parole for murder plus concurrent sentences of thirty years for kidnapping and five years for possession of a firearm by a person convicted of a violent crime.

¹ Applicant was tried together with his codefendant Bryant McKnight, who was represented at trial by Martin Banks, Esquire.

Applicant filed a timely notice of appeal. Howard W. Anderson, III, Esquire, an attorney in private practice, along with Robert M. Dudek of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. McKnight, 2017-UP-406 (S.C. Ct. App. filed October 25, 2017). Applicant petitioned for rehearing, which was denied by an order issued December 14, 2017. Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court, which was denied by an order issued March 28, 2018. The remittitur returned to the Circuit Court on April 3, 2018.

Attached to this Return and incorporated by reference are the records of the Calhoun County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. FACTUAL SUMMARY

The victim **K. R.** ("**K. R.**") was kidnapped, shot and killed on the night of February 13, 2015. At the time of her murder, **K. R.** had been romantically linked with Applicant's brother Bryant McKnight ("Bryant"). Bryant lured **K. R.** to accompany him that evening which eventually led to **K. R.** being taken to an isolated area where Applicant and Bryant repeatedly shot her in the face and chest.

Trial testimony showed Bryant and Applicant had at some point become suspicious of **K. R.** as having been involved in a home invasion at their mother's home. The home invasion occurred approximately two weeks prior to the murder. Bryant told friend Stephon Green ("Green") that money and drugs were taken during the robbery. (R. p. 52, lines 6-22). Applicant and Bryant both indicated they would kill whomever had committed the home invasion. (R. p. 51,

lines 15-25; p. 53, lines 2-5; p. 65, lines 6-19). Bryant reasoned that [K. R.], who had been at the home before the robbery and “probably knew where everything was” in the home, had played some role in the home invasion. (R. p. 51, lines 8-12; p. 53, lines 6-17). [K. R.]’s mother testified that, though she did not believe it to be true, there were rumors in the community that implicated her son, the victim’s brother. (R. p. 18, line 9 – p. 19, line 21).

At the time of her death, [K. R.] lived with Tameka Williams (“Williams”). Williams testified that the afternoon of February 13, 2015, [K. R.] told Williams she was waiting for “B” to pick her up. Williams knew who Bryant was who she was referring to by the nickname “B.” (R. p. 20, lines 6-25).

Jamaal Pearce (“Pearce”), a friend to Bryant, testified that he and Bryant, along with another friend, James Keller (“Keller”), went to Williams’ home around 4:30 pm, picked up [K. R.] then went back to Keller’s home. (R. p. 21, line 10 – p. 23, line 24). Pearce testified they “smoked a blunt together.” (R. p. 24, lines 22-24). The group began to disperse around the time Keller’s grandfather returned to the home. (R. p. 25, line 15 – p. 26, line 3; p. 36, line 8 – p. 37, line 2; p. 38, lines 4-23). Bryant left with [K. R.] on foot. (R. p. 26, lines 4-5). Bryant called his cousin Jonathan McKnight (“McKnight”) at approximately 6:00 pm to come give him a ride, since he did not have a car, which McKnight did. (R. p. 39, line 16 – p. 40, line 22).

McKnight testified that after eventually picking up Bryant and [K. R.] about ten or fifteen minutes after the call, he drove to Bryant’s grandmother’s house (also Applicant’s aunt) where he picked up Applicant. (R. p. 41, lines 2-21).

At approximately 7:00 pm, Bryant sent a text to Green and indicated he was thinking of killing the girl he was with. (R. p. 56, lines 5-23).

When in McKnight's car, Applicant asked to be taken to a girlfriend's house. He then began giving directions to McKnight which led the group down a rural stretch of South Carolina Highway 6 in Calhoun County. Applicant eventually asked McKnight to stop so Applicant could urinate. (R. p. 42, line 21 – p. 44, line 7). Applicant exited the car, but went to the back passenger door and asked [K. R.] to get out of the car. When [K. R.] refused, Applicant forcibly removed her, dragged her to the rear of the vehicle, "and opened fire." (R. p. 44, line 16 – p. 45, line 1). After emptying his gun, Applicant handed the gun to Bryant. McKnight testified, "Bryant unloaded and reloaded again and shot a couple of more times." (R. p. 45, lines 14-17). Applicant then moved the body into the woods off of the highway. (R. p. 46, lines 5-6). Applicant and Bryant returned to the car and McKnight took them back into town to a convenience store. (R. p. 46, lines 7-25). Bryant got out at the store, and McKnight saw Bryant place [K. R.]'s personal belongings into a trash bag. (R. p. 47, lines 9-13). McKnight then drove Applicant back to McKnight's grandmother's home. (R. p. 47, lines 13-16). Applicant began to visit McKnight regularly to ensure his silence. (R. p. 48, line 22 – p. 49, line 18).

Bryant texted Green again, this time asking for a ride. It was Green that Bryant was meeting at the convenience store at approximately 7:30 pm that evening. Bryant also asked Green to take him to Pearce's home. (R. p. 58, line 8 – p. 60, line 10).

Pearce testified Bryant called him after 8:00 pm and then showed up at Pearce's house. (R. p. 27, line 22 – p. 28, line 8). Bryant told Pearce that he "had to smoke that girl." (R. p. 28, lines 17-23). Pearce understood "smoked" to mean that Bryant had shot her. (R. p. 29, lines 1-11). Pearce testified he knew Bryant had a gun the night of February 13, 2015, because he had shown the gun to Pearce as they were going to pick up [K. R.]. (R. p. 32, line 22 – p. 33, line 9). (See also R. p. 34, line 6 – p. 35, line 14).

Green testified that Bryant asked him to take Bryant to Derrick Sumter's ("Sumter") house. (R. p. 61, line 8-18). Bryant had told Green he had "messed up and shot the girl." (R. p. 61, lines 18-25). Bryant had also asked for help in disposing of the body, but Green refused. (R. p. 63, line 21 – p. 64, line 4). Green, however, took Bryant to Sumter's home where Bryant gave Sumter the trash bag with K. R.'s belongings. (R. p. 62, lines 1-7). Bryant asked Sumter to dispose of these items. (R. p. 67, line 4 – p. 68, line 2). Bryant put his gun inside the bag before handing it to Sumter. (R. p. 68, lines 10-15). Sumter complied by dumping the revolver into the Congaree River then tossing the bag into a wooded area off of South Carolina Highway 48. (R. p. 69, line 17 – p. 72, line 4). After having completed this task for Bryant, Bryant then asked Sumter to pick up Applicant and drive him back to the scene of the murder. Sumter did as Bryant asked. He and Applicant recovered K. R.'s body, and drove to a swampy area called "Four Holes" where Applicant left K. R.'s body. (R. p. 72, line 19 – p. 78, line 18).

The pathologist who conducted the autopsy testified that K. R. had been shot twelve times – six times in the head and six times in the chest. K. R. suffered damage to several major organs including her brain. (R. p. 79, lines 19-23). Death would not have been immediate but K. R. would only have lived at the most several minutes before dying from the wounds. (R. p. 80, lines 5 – 13).

III. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel:²
 - a. Trial counsel failed to object on the grounds of burden-

² Respondent has grouped the allegations by subject matter, rather than following Applicant's numbering system. Additionally, it appears Applicant included the same allegation twice – as both Ground Four and Ground Five.

- shifting to the “mandatory presumption charge to the jury” regarding inferred malice;
- b. Trial counsel failed to object on the grounds of burden-shifting to the trial judge’s “improper unconstitutional charge to the jury. . . that kidnapping does not have to be for any personal or monetary gain for any illegal purpose, but may be for any reason whatsoever. . . .;”
 - c. As to the possession of a weapon charge, trial counsel failed to object to the trial court’s “mandatory presumption charge that the acts of one [are] the acts of all;”
 - d. Trial counsel failed to object to the trial judge’s “constructive amendment of the indictment on the element of knowingly (knowledge) in his charge to the jury;”
 - e. As to the kidnapping charge, trial counsel failed “to object to the sufficiency of the indictment and motion (sic) to dismiss the indictment before the jury was sworn on grounds it didn’t contain the element of knowingly and knowledge. . . .;”
 - f. Trial counsel failed to object to the sentence of thirty years for kidnapping as being in violation of South Carolina Code section 16-3-910 where Applicant was simultaneously sentenced for the murder conviction;
 - g. Trial counsel failed to object to the prosecutor’s closing argument (Tr. p. 806, lines 7-18) asking the jury “to convict for improper reason;”
 - h. Trial counsel failed to object to the solicitor’s improper closing argument wherein the solicitor used the term “I” over fifty times.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant’s claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of

such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—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 to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690-95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690.

An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, 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. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466

U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” Id. at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Strickland, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (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”).

V. AMENDMENTS AND DISCOVERY PROCESS

Additionally, 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. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative, to continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCP (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. 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 Respondent, pursuant to Love as discussed above.

VI. DENIAL OF ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. REQUEST FOR EVIDENTIARY HEARING

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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August 20, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Jerry McKnight, #189200

2020 AUG 24 A 11:26

Case No.: 2018-CP-09-00073

Applicant,

v.

Certificate of Service by Mail

State of South Carolina

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this 20th day of August, 2020.


Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

JERRY McKNIGHT

) NO. 218-CP-09-00073

VS.

) TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA

) PCR Hearing

B E F O R E:

The Honorable R. Kirk Griffin, Judge

Orangeburg, South Carolina

DATE: Wednesday, September 7, 2022

10:30 a.m.

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

Clarissa W. Joyner, Esquire

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Attorney for the State

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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MARK A. LEIENDECKER

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INDEX TO EXHIBITS

(No exhibits marked.)

- - - - -

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood due to low volume or
 quality of audio

1 -- P R O C E E D I N G S --

2 (Court called to order.)

3 THE COURT: Good morning, everyone. It's my understanding
4 we are here for the matter of Jerry McKnight versus the State; is
5 that correct?

6 ATTORNEY MIMS: Yes, Your Honor.

7 ATTORNEY JOYNER: Yes, Your Honor.

8 THE COURT: All right. Ms. Mims, if you can give us the
9 case caption, the procedural history, and kind of set the stage
10 for the hearing here this morning.

11 ATTORNEY MIMS: May it please the Court.

12 THE COURT: Yes, ma'am.

13 ATTORNEY MIMS: This is the matter of Jerry McKnight,
14 2018-CP-09-0073. Mr. McKnight is presently confined in the South
15 Carolina Department of Corrections pursuant to order of
16 commitment of the Calhoun County Clerk of Court. In
17 September 2014 the Calhoun County Grand Jury indicted
18 Mr. McKnight for murder, possession of a firearm by a person
19 convicted of a violent crime, and kidnapping. Mark Leiendecker
20 represented applicant. Solicitor David Pascoe, Deputy Solicitor
21 Donald Sorenson, and Assistant Solicitor Kyle Ward, Esquire,
22 prosecuted the case.

23 On March 2nd through 6th, 2015, applicant proceeded to a
24 jury trial before the Honorable Maite Murphy. The jury found
25 applicant guilty as indictment. Judge Murphy sentenced applicant

1 to life without the possibility of parole for murder, plus
2 concurrent sentences of 30 years for kidnapping, and five years
3 for possession of a firearm by a person convicted a violent
4 crime.

5 Applicant filed a timely Notice of Appeal. Howard Anderson,
6 Esquire, an attorney in private practice, along with Robert M.
7 Dudek of the Office of the Public Defense, perfected that appeal.
8 South Carolina Court of Appeals affirmed applicant's conviction.
9 Applicant petitioned for rehearing, which was denied by an order
10 issued on December 14 of 2017.

11 Applicant did file a petition of writ of certiorari in the
12 South Carolina Supreme Court, which was also denied by order
13 issued March 28, 2018. The remittitur returned to the Circuit
14 Court on April 3rd of 2018, and this post-conviction relief
15 application followed.

16 And at this time I would just ask that counsel for applicant
17 place the allegations going forward on the record.

18 THE COURT: All right. Ms. Joyner.

19 ATTORNEY JOYNER: Thank you. May it please the Court.
20 There are several allegations contained in his application for
21 post-conviction relief. Those issues relate to primarily charges
22 that were incorrectly made to the jury regarding malice being
23 inferred from the use of a deadly weapon; and burden shifting
24 charges relating to kidnapping being improper because of the
25 nature of the language used in the charge; and the counsel's

1 failure to object to the mandatory presumption -- mandatory
2 presumption that's contained in the judge's charge, the
3 constructive amendment of the kidnapping charge by the Judge
4 adding the element of knowing, when knowing wasn't in the
5 original indictment; and trial counsel's failure to object to the
6 indictment and move for a dismissal for insufficiency but instead
7 allowing the Court to constructively amend the indictment and
8 proceed forward under a faulty indictment; a sentence of 30 years
9 for kidnapping when there was a concurrent murder charge, and my
10 client asserts in his application that that was improper;
11 closing-argument issues relating to inflaming the passions of the
12 jury, use of "I" in appealing to the community, for the jury to
13 act on behalf of the community rather than focusing on the facts
14 and evidence in the case before them.

15 THE COURT: All right. So if my notes are correct, those
16 appear to be six grounds?

17 ATTORNEY JOYNER: Two of them are kind of meshed together.

18 ATTORNEY MIMS: Yes.

19 ATTORNEY JOYNER: It was alleged as seven grounds, but it
20 kind of discusses the same thing in two of them.

21 THE COURT: Okay. All right. Ms. Joyner, you can call your
22 first witness.

23 ATTORNEY JOYNER: Thank you. I call Jerry McKnight.
24
25

1 JERRY McKNIGHT,
2 having first been duly sworn, was examined and testified as
3 follows:

4 ATTORNEY JOYNER: Thank you. May it please the Court.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY JOYNER:

7 Q Mr. McKnight, state your full name for the record.

8 A Jerry McKnight.

9 Q And are you currently incarcerated?

10 A Yes, ma'am.

11 Q And in what institution are you at?

12 A [indiscernible.]

13 THE COURT REPORTER: I'm sorry?

14 THE WITNESS: Broad River.

15 BY ATTORNEY JOYNER:

16 Q Broad River. And you're incarcerated after having went to
17 trial?

18 A Yes, ma'am.

19 Q You pled not guilty to murder, kidnapping, and use of a
20 firearm by a person convicted of a violent crime?

21 A Yes, ma'am.

22 Q You pled not guilty to those charges, and you went to trial
23 March 2nd through the 6th --

24 A Yes, ma'am.

25 Q -- before Judge Murphy?

1 A Yes, ma'am.

2 Q And were you represented by Mark Leiendecker?

3 A Yes, ma'am.

4 Q And you asserted in your PCR application that you believe
5 his performance was deficient and affected the outcome of your
6 trial, correct?

7 A Yes, ma'am.

8 Q And you went through a number issues relating to how you
9 believe his performance was deficient and led to your conviction,
10 correct?

11 A Yes, ma'am.

12 Q And is it your testimony that had it not been for his
13 deficient performance that you're going to testify to that you
14 believe you would not have been convicted of the crimes that were
15 alleged?

16 A Yes, ma'am.

17 Q So you assert he was ineffective in assisting you in your
18 trial?

19 A Yes, ma'am.

20 Q And as background leading up to the trial, was he appointed
21 or was he retained by you?

22 A He was appointed.

23 Q Appointed. Do you feel you had sufficient time with him to
24 prepare your case?

25 A No, ma'am.

1 Q What kind of timeframe did your case proceed in?

2 A Uhm, I would say maybe from ...

3 Q When were you first charged?

4 A It was around March -- no. Around January or something like
5 that.

6 Q Of 2014?

7 A Think so.

8 Q You went to trial in March of 2015?

9 A Yes, ma'am.

10 Q You feel that wasn't sufficient time to prepare your case?

11 A No, ma'am.

12 Q What, if anything, do you think was not done? Did he meet
13 with you?

14 A Being it was due to I've been in the county jail for almost
15 nine months, and like I told him, I haven't prepared myself
16 before they was telling me, saying that, you know what I'm
17 saying, they was doing a speedy trial. And I felt like he didn't
18 prepare me enough to got ready for this trial.

19 Q When you say you felt he didn't prepare you enough, did he
20 meet with you?

21 A Maybe like three times out of the whole time I was locked up
22 for the nine months.

23 Q But you felt like you weren't sufficiently apprised of the
24 evidence against you?

25 A Yes, ma'am.

1 Q And that you weren't sufficiently apprised of what kind of
2 defense strategies and what you were doing going forward in terms
3 of your defense?

4 A Yes.

5 Q And that was based on him not properly meeting with you and
6 apprising you of what the case entailed?

7 A Yes, ma'am.

8 Q And do you think there were further investigation needed in
9 terms of your case?

10 A Yes, ma'am.

11 Q Were there allegations and things that you shared with your
12 attorney that you felt he didn't properly look into?

13 ATTORNEY MIMS: Objection, Your Honor.

14 THE WITNESS: No, he didn't.

15 ATTORNEY MIMS: Leading.

16 THE COURT: Sustained. Ms. Joyner, don't ask him questions
17 that suggest the answer.

18 ATTORNEY JOYNER: Yes, Your Honor.

19 BY ATTORNEY JOYNER:

20 Q Do you feel the investigation was adequate?

21 A No.

22 Q And why do you feel it wasn't adequate?

23 A They didn't even want to have -- you know what I'm saying?
24 The witness that testified, you know what I'm saying, they ain't
25 got the information that they should have got from them.

1 Q So turning your attention to the grounds that you
2 specifically alleged in your PCR application, in your application
3 did you allege that the trial judge improperly charged the jury;
4 that the things she instructed the jury to consider were not
5 proper?

6 A Yes, ma'am.

7 Q And do you believe that your attorney failed to object to
8 those things?

9 A Yes.

10 Q And specifically, was there a charge related to malice being
11 inferred from the use of a weapon?

12 A Yes, ma'am.

13 Q And you believe that the law of the South Carolina didn't
14 allow this mandatory presumption that the judge charged to the
15 jury?

16 A Yeah.

17 Q Did your attorney object to it?

18 A No.

19 Q And you feel that his failure to object prejudiced your
20 case?

21 A Yes.

22 ATTORNEY MIMS: Objection, your Honor. Making the same
23 objection to leading.

24 THE COURT: Again, I know we don't have a jury, but he's
25 under oath, and we don't get this many yes-or-no answers. So

1 just ask him open-ended questions.

2 ATTORNEY JOYNER: Sure. Sure.

3 BY ATTORNEY JOYNER:

4 Q But again, there was a charge to the jury related to
5 mandatory presumption?

6 A Yes.

7 Q You stated that in your application, correct?

8 A Yes, ma'am.

9 Q And you assert that -- do you think the outcome of your
10 trial would have been different?

11 A Yes, ma'am.

12 Q You also allege in your application for post-conviction
13 relief that the indictment for kidnapping didn't contain the
14 "knowing" element. That's in your application, correct?

15 A Yes.

16 Q Do you feel your attorney was deficient for failing to
17 object to that indictment --

18 A Yes.

19 Q -- and challenge the indictment?

20 A Yes.

21 Q Did he challenge the sufficiency of the indictment at all?

22 A No, he didn't.

23 Q He did not?

24 A No.

25 Q So that the knowing element that's required in the

1 indictment, you assert it wasn't in there, but was it charged to
2 the jury? Did the judge charge that to the jury or instruct the
3 jury concerning that element?

4 A I don't think so.

5 Q I think in your application you stated she did charge it to
6 the jury even though it wasn't in your indictment.

7 A I can't remember now.

8 Q Okay. And you feel like she constructively amended the
9 indictment?

10 A Yes.

11 Q And your attorney did not object to that?

12 A No.

13 Q You also alleged in your post-conviction relief application
14 one of your grounds was that the kidnapping charge was improper
15 because it stated that kidnapping does not have to be for any
16 personal or monetary gain.

17 A Yes, ma'am.

18 Q You put that in your application?

19 A Yes.

20 Q And you felt that charge was improper because it shifted the
21 burden to you?

22 A Yes.

23 Q And did your attorney object to the burden shifting?

24 A No.

25 Q Do you feel he was deficient for failing to do that?

1 A Yes.

2 ATTORNEY MIMS: Your Honor, same objection to leading.

3 THE COURT: On that one, she was just recounting what was in
4 his application, so I'm going to overrule that objection.

5 ATTORNEY JOYNER: Thank you, Your Honor.

6 BY ATTORNEY JOYNER:

7 Q And I believe in the attachment to your application for
8 post-conviction relief you went into the details of how you felt
9 that that shifted the burden to you, correct?

10 A Yes.

11 Q And it's specifically attached to your application?

12 A Yes.

13 Q And you want the Court to take into account what you stated
14 in your application, as well as your testimony, --

15 A Yes, ma'am.

16 Q -- correct? And did you also object to the prosecution's
17 closing argument?

18 A Yes.

19 Q You felt that there were elements of the closing argument
20 that were improper?

21 A Yes, ma'am. Yes.

22 Q And you felt like your attorney did not object to those
23 elements that were improper?

24 A No.

25 Q Specifically, I think you alleged in your application that

1 the prosecutor kept referring to the voice of the community?

2 A Yes, ma'am.

3 Q And the voice of the people?

4 A Yes.

5 Q And you felt like this led to improper consideration by the
6 jury?

7 A Yes.

8 Q Did your attorney object to that?

9 A No, he didn't.

10 Q And you feel that his failure to object prejudiced you?

11 A Yes, ma'am.

12 Q And I believe Assistant Solicitor Sorenson, in his closing
13 argument, also referred to himself repeatedly --

14 A Yes.

15 Q -- saying, "I", "I", "I" --

16 A Yes.

17 Q -- throughout the closing remarks?

18 A Yes, ma'am.

19 Q And you asserted that in your application as well?

20 A Yes.

21 Q And you felt like his remarks was prejudicial?

22 A Yes, ma'am.

23 Q All of these different allegations that you've raised --
24 because your application is quite voluminous, but all of the
25 different issues that you've raised -- concerning your attorney's

1 performance, do you feel, combined, that they led to your
2 conviction?

3 A Yes, ma'am.

4 Q And did you assert in your application that had your
5 attorney not made these numerous mistakes of not objecting and of
6 not interacting more in your trial, that it would have turned out
7 differently?

8 A Yes, ma'am.

9 Q I think we've discussed all of the issues that you raised in
10 your application, but I want to give you an opportunity to tell
11 the Court anything else, just in your own words, that you felt
12 prejudiced your rights as a defendant and your right to proceed
13 in a way that granted you fairness and due process.

14 What, if anything, do you think your attorney didn't do or
15 did do that prejudiced you in addition to what we've already
16 discussed?

17 A Just, like, in the whole time I'm in, you know what I'm
18 saying, trial, that he could object to half of the stuff that
19 they trying to paint a picture that made me look to be the bad
20 guy. I'm saying to know that, he never did any of that, and I
21 never was prepared for any of this, you know what I'm saying,
22 before the trial had started.

23 Q So all of that combined, you're asking this Court to
24 conclude that you did not receive a fair trial --

25 A Yes, ma'am.

1 Q -- because of the deficiency of your trial attorney?

2 A Yes, ma'am.

3 Q Are you asking this Court to grant you a new trial?

4 A Yes, ma'am.

5 Q And that's based on everything that you have asserted in
6 your application, as well as your testimony today?

7 A Yes, ma'am.

8 ATTORNEY JOYNER: I beg the Court's indulgence for one
9 moment.

10 THE COURT: Yes, ma'am.

11 ATTORNEY JOYNER: That's all I have of this witness, Your
12 Honor.

13 THE COURT: All right. Cross-examination.

14 CROSS-EXAMINATION

15 BY ATTORNEY MIMS:

16 Q Good morning, Mr. McKnight.

17 A Good morning.

18 Q How are you doing?

19 A All right.

20 Q You testified that you met with your attorney only three
21 times?

22 A Yes.

23 Q And that was throughout the time y'all had been -- he had
24 been appointed to you?

25 A Yes, ma'am.

1 Q Do you recall in the trial transcript Mr. Leiendecker
2 telling the Court that he had met with you numerous times, more
3 than three times?

4 A No, ma'am.

5 Q Would it refresh your recollection if I showed it to you?

6 A I mean, like I say, I know how many time he came to see me,
7 because I was down here for like nine months before I got, you
8 know what I'm saying, sentenced.

9 Q Okay.

10 ATTORNEY MIMS: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 ATTORNEY JOYNER: Your Honor, I don't know if she's trying
13 to point out how many times the attorney alleges he met with the
14 client, but I don't believe that that's proper through this
15 witness. I believe he's here to testify for himself. That's not
16 impeachment if my client has a different recollection.

17 ATTORNEY MIMS: That wasn't the reason --

18 THE COURT: She can ask him what he remembers from the
19 trial, and then if there's evidence that contradicts his prior
20 testimony, I think that's grounds for impeachment regardless of
21 whether it's his statement or not. So if she can point to
22 contradictory evidence in the transcript, I think that's
23 allowable.

24 ATTORNEY MIMS: And, Your Honor, it wasn't necessarily to
25 impeach Mr. McKnight. It was to -- my next question to

1 Mr. McKnight would be that, You had the opportunity to tell the
2 judge that you only met with him a few times.

3 THE COURT: Understood. I already overruled the objection.

4 BY ATTORNEY MIMS:

5 Q Mr. McKnight, you had the opportunity to tell the judge that
6 that wasn't correct, correct?

7 A Yes, ma'am.

8 Q And you didn't do so, correct? You didn't do so? You
9 didn't tell the judge that Mr. Leiendecker's testimony was
10 different than the testimony that you said here today?

11 A What you mean?

12 ATTORNEY MIMS: I beg the Court's indulgence. I'll just
13 move on.

14 BY ATTORNEY MIMS:

15 Q What did you discuss when you met with Mr. Leiendecker?

16 A He asked me what basically happened, and where I was during
17 the time, you know what I'm saying, that the crime was committed,
18 and I told him.

19 Q And do you remember or recall the evidence that he told you
20 that was against you in the State's case?

21 A Yes.

22 Q So he did discuss that with you, correct?

23 A Yeah.

24 Q And did you discuss any defenses with him?

25 A Not to my connection [sic]. I can't remember.

1 Q Did you discuss trial strategy with him?

2 A I ain't had time, ma'am. I mean, the only few time he
3 there, I can't -- like I say, I wasn't never prepared to speak on
4 anything.

5 Q It is your testimony that you did -- you did speak with him
6 about discovery and that sort of thing, correct?

7 A Yeah.

8 Q And did you ever give Mr. Leiendecker any leads on
9 witnesses?

10 A Yes, I did, but they -- you know what I'm saying. He never
11 -- whoever the investigator was, he never followed up on it.

12 Q I'm sorry. I couldn't understand.

13 A Whoever the investigator was, he never followed up on it.
14 He went out there and seen maybe like one or two people, and
15 whatever they tell him, that was done. He never, you know what
16 I'm saying, did a full investigation.

17 Q So it's your testimony that the investigator did go and meet
18 with the witnesses that you had suggested, correct?

19 A Yeah.

20 ATTORNEY MIMS: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 BY ATTORNEY MIMS:

23 Q And you have several allegations regarding the jury charges
24 and Mr. Leiendecker's alleged failure to object to those. Let me
25 start with the first one. It was your testimony that you allege

1 that trial counsel failed to object on the grounds of burden
2 shifting and the mandatory presumption regarding inferred malice.
3 That was your testimony, right?

4 A Yes.

5 Q At trial, did you ask Mr. Leiendecker to object?

6 A I shouldn't have to ask. He's the lawyer, right. He's the
7 lawyer. He should have been the one -- you know what I'm saying.
8 I shouldn't have to tell him. I didn't see him object to
9 anything.

10 Q It was your understanding at trial that this was improper?

11 A Yeah.

12 Q And it's your testimony today that you did not tell
13 Mr. Leiendecker, or didn't mention to Mr. Leiendecker, about any
14 of these objections?

15 A Yes.

16 Q And does that go for every allegation? Was it -- it's your
17 testimony that -- it was your testimony that you knew at trial
18 that these ... I'm sorry, I switched my thought.

19 Is it your testimony that at trial you knew that all of
20 these issues that you listed in your application were issues,
21 that he didn't object to those issues?

22 A Yes.

23 Q And you didn't ask him at trial to ever object to those
24 issues?

25 A I didn't feel like it was my job. Like I said, he's the

1 lawyer. He should have been the one objecting to whatever.

2 Q Were you concerned that he didn't object to those?

3 A Yes, I was.

4 Q And you never asked him --

5 A No.

6 Q -- to object to those?

7 ATTORNEY MIMS: I beg the Court's indulgence.

8 BY ATTORNEY MIMS:

9 Q And you further testified that had it not been for
10 Mr. Leiendecker's alleged deficiencies, that the outcome of your
11 trial would have been different?

12 A Yes, it would.

13 Q How do you feel it would have been different?

14 A Due to what -- the prosecutor was, like I say, trying to
15 paint a bad picture of me, to say that, you know what I'm saying,
16 whatever they had against me so for the evidence and this and
17 that, that they didn't have enough evidence. He should object to
18 a lot of, you know what I'm saying, stuff that the prosecutor
19 tried to make me look to be the bad person. And to know that,
20 you know what I'm saying, he never objected to any of that, and I
21 shouldn't have to say anything to him. And he's my lawyer.

22 And I wasn't prepared, you know what I'm saying, for stuff
23 that I did at the trial for, he never prepared me for anything to
24 be written and to say what I needed to say about it.

25 Q So you testified a little bit earlier that you all had

1 defenses, correct, for trial?

2 A Say what?

3 Q That y'all had a trial defense, that y'all discussed going
4 to trial.

5 A Yeah.

6 Q And during those meetings y'all discussed the discovery and
7 everything else?

8 A Yes.

9 Q Okay. And after those meetings you still didn't feel
10 prepared --

11 A No.

12 Q -- to go forward?

13 A No.

14 ATTORNEY MIMS: No further questions, Your Honor.

15 THE COURT: Redirect?

16 ATTORNEY JOYNER: Just a few on redirect.

17 **REDIRECT EXAMINATION**

18 BY ATTORNEY JOYNER:

19 Q How far did you go in school?

20 A Eleventh grade.

21 Q So you didn't graduate, --

22 A No.

23 Q -- and you don't have a high school diploma?

24 A (Nods head.)

25 Q And you're not trained in the law, correct? You're not

1 trained in the law?

2 A No, ma'am.

3 Q Were you relying on Mr. Leiendecker, who is trained in the
4 law --

5 A Yes, ma'am.

6 Q -- to defend you? And when you say you discussed the
7 discovery, did he explain what it meant?

8 A No.

9 Q And with your 11th grade education, did you understand what
10 he was telling you?

11 A No, I didn't.

12 Q And did you tell him that you didn't understand things?

13 A Yes, I did.

14 Q And did he do anything more to try and help you understand?

15 A No.

16 Q And as far as the transcript and knowing things were not
17 being conducted properly, did you just -- when you were going
18 through the trial with him did you feel like he wasn't speaking
19 up enough concerning anything?

20 A No, ma'am.

21 Q So your concern was he wasn't voicing any kind of challenges
22 to the evidence?

23 A No.

24 Q But you didn't know the specific way to challenge it
25 yourself, correct?

1 A No.

2 Q And there was testimony earlier about whether you told the
3 judge that your attorney wasn't prepared or whether you voiced
4 these things to the judge. Were you given an opportunity to do
5 that?

6 A No, I wasn't.

7 Q So you expected your attorney to be your advocate, correct?

8 A Yes, ma'am.

9 Q And you felt like he let all of these things go by that he
10 should be aware of?

11 A Yes, ma'am.

12 Q But you've now raised them in your post-conviction relief
13 application?

14 A Yes, ma'am.

15 Q Thank you.

16 ATTORNEY JOYNER: That's all I have.

17 ATTORNEY MIMS: Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 ATTORNEY MIMS: No further questions, Your Honor.

20 THE COURT: All right. Thank you, sir. You can step down.
21 Please watch your step.

22 ATTORNEY JOYNER: Your Honor, the applicant doesn't have any
23 further witness.

24 THE COURT: All right.

25 ATTORNEY MIMS: The State would call Mark Leiendecker.

1 THE COURT: Mr. Leiendecker, please come forward, sir.

2 MARK A. LEIENDECKER,

3 having first been duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY ATTORNEY MIMS:

7 Q Good morning, Mr. Leiendecker. How are you doing?

8 A Fine.

9 Q How long have you been practicing law?

10 A Since 1983, so, gosh, that's coming on 40 years. And it's
11 Leiendecker. I know --

12 Q I'm sorry.

13 A I know it's petty, but it's a hard name.

14 Q I apologize.

15 A No one's quite got it right today.

16 Q Leiendecker.

17 A Yes.

18 Q So how much of your practice has been criminal law?

19 A The bulk of my practice, and all of my practice since the
20 mid '90s, involved criminal. I was the public defender for
21 Dorchester County from 1993 until 1997 or '8. And then I came
22 back as the circuit public defender for the First Circuit in
23 2014, and have been exclusively involved in criminal practice.

24 Q And you were appointed to represent Mr. McKnight, correct?

25 A I was because this event occurred in Calhoun County.

1 Mr. Martin Banks was the only public defender working for the
2 First Circuit in Calhoun County, and so it created a conflict.
3 This then needed another attorney appointed to represent the
4 codefendant, Mr. Jerry McKnight, and I accepted that appointment
5 sometime maybe the end of April, beginning of May, in 2014.

6 Q And so this case was called in March of 2015, correct?

7 A Yes, ten months, about ten months, after my appointment.

8 Q Okay, about ten months after your appointment. And so you
9 represented him throughout the entire process, leading up to
10 trial?

11 A Yes, ma'am.

12 Q And so how many times did you all meet, if you can give me a
13 ballpark?

14 A We met several times in the detention center. I also had an
15 investigator, Mr. Harrell, who met with him and worked with him
16 regarding witnesses and locations and that kind of stuff. To say
17 we met probably, you know, half a dozen times individually, and
18 with Mr. Harrell during that time in those 10 months leading up
19 to, would probably be appropriate.

20 As I explained, Mr. McKnight -- I mean, it's kind of
21 interesting. At trial Mr. McKnight made a motion to have me
22 relieved as counsel and to proceed forward representing himself.
23 Today he argues that he didn't know what he was doing and he
24 needed me, which is what I argued to the trial court at that
25 time, but, you know, we also explained in the transcript all of

1 our meetings and times in preparation, and that all happened in
2 preparation for this case, and this was the primary case I was
3 working on during that 10 months.

4 Q What were your discussions with Mr. McKnight during those
5 meetings?

6 A Well, first of all, all discussions centered around the
7 facts of the case and the State's discovery, including the
8 physical evidence, the witness statements, the potential
9 statement or discussions with the co-defendant, whether he was
10 going to be antagonist or whether he was going to, you know, not
11 implicate our client.

12 And there were a number of witnesses and locations that were
13 called into question, and by Mr. McKnight, concerning his conduct
14 and his activity on the days in question in February of 2014, and
15 so we discussed those. We discussed the witnesses. We discussed
16 the interviews that the investigator had with the witnesses.

17 We discussed visits to the scenes that were involved that
18 the investigator and I both made, including the apartments in the
19 areas around Saint Matthews. We discussed the location of the
20 ammunition, or the store where ammunition was purchased. We
21 discussed locations regarding where the body was allegedly killed
22 and then ultimately dumped.

23 And we wound up discussing a lot about phone and phone
24 records because there was a fair amount of phone record and phone
25 tracing with cell signals because this was picked up very early

1 after the disappearance of the victim, and her cellphone was used
2 by the codefendant, apparently, and tracked.

3 Q And so what information did Mr. McKnight give you about what
4 happened? What was his contention?

5 A Mr. McKnight always contended that he wasn't involved in
6 this; that he didn't know what happened to the victim; that he
7 had met the victim, I believe, with his younger brother, and that
8 everything seemed fine and normal between them when he had seen
9 them on the, I think the, 13th of February; and that he was, in
10 fact, first at his aunt's house, Caroline, I believe, is her
11 first name, having his hair braided; and that then he was at an
12 apartment complex in Calhoun County, and that he had gone to
13 visit friends there.

14 And we had names of a few people, Carolyn, one, and a
15 Mr. Jones, to try to corroborate that, in fact, and put them on
16 as evidence in our case in chief.

17 Q And based upon the applicant's -- applicant's contention of
18 the facts, what was particularly problematic in the State's case
19 based on his assertions?

20 A What evidence was problematic?

21 Q Yes.

22 A The purchase of .22 caliber ammunition right before the
23 commission of the crime; the identification of Mr. McKnight as
24 the person who purchased the ammunition by the owner of the
25 store; the use of same or similar ammunition and weapon to commit

1 the murder. Those were problematic.

2 The alibi of him having his hair braided and then being at
3 someone's apartment was never able to be completely closed as far
4 as time, and ultimately we could identify that he was at his
5 aunt's but that he left in what would have been more than
6 sufficient time to have then ultimately been involved in the
7 crime; and that, even if he did visit someone, which I believe he
8 did, across the street and down the street at the apartment
9 complex, that the individual saw him go in but never really saw
10 him come out, so he couldn't say what time he left the apartment;
11 and the apartment owner not being, you know, willing to testify
12 regarding that.

13 And then ultimately the most serious problems turned out to
14 be one of the family members, who apparently was driving the car
15 when the actual crime occurred, then testifying that, on the
16 witness stand, that Mr. McKnight grabbed the victim out of the
17 car after he was told to stop on the side of the road; roughly
18 drug her behind the car; he didn't see what happened because she
19 was thrown to the ground, but he did hear gunshots; and then
20 Mr. McKnight came back to the car and got his brother out; Bryant
21 brought him back behind the car; and there were additional
22 gunshots. So those were all very problematic once we got into
23 trial.

24 Q And what were your defenses at the time?

25 A Our defense all along was that Jonathan, the cousin, was

1 lying, may have been involved himself, maybe with Bryant
2 McKnight, and that my client, Mr. McKnight, was not at the scene,
3 and that this was just a fabrication.

4 Q Did you discuss that with Mr. McKnight, that defense?

5 A We discussed all these things, and the difficulty and the
6 evidence and the problems with closing the gap in the alibi, and
7 all of those things. But it was what we had, and we aggressively
8 presented that and defended that.

9 Q Let's get into Mr. McKnight's specific allegations. First
10 I'll ask you, What is your practice surrounding jury charges? Do
11 you suggest jury charges, or?

12 A I'm not sure I understand the question. I'm sorry.

13 Q I'll rephrase it. Generally, what is your practice
14 surrounding, I guess, jury-charge preparedness, like, you know,
15 discussing it with the judge, et cetera?

16 A Yes. Okay, I think I understand. I prepare requested jury
17 charges. The State may prepare requested jury charges. The
18 judge always has some standard charges on the law. And then,
19 with Judge Murphy, the general practice is that there is a jury
20 charge conference, and then any objections to what the judge
21 resolves in the conference can be put on the record before the
22 charges are submitted to the jury.

23 Q So applicant's first allegation is that you failed to object
24 on the grounds of burden shifting, the mandatory presumption
25 charge to the jury regarding inferred malice. Can you speak a

1 little bit about that?

2 A Related to the murder charge?

3 Q Yes, regarding inferred malice.

4 A There was no burden shifting. I don't really understand the
5 argument, so it's hard for me to address. The judge instructed
6 the law as the law was written. It was almost a verbatim
7 quotation of it, and it talked about how malice can be expressed
8 or can be inferred, and explained to the jury, you know, how that
9 can be inferred.

10 Q So would you have objected to that?

11 A I not only would not, I did not.

12 Q And applicant's second allegation, on the grounds of burden
13 shifting, that the trial judge improperly charged the jury about
14 that kidnapping does not have to be for any personal or monetary
15 gain for any illegal purpose but may be for any reason
16 whatsoever, was there a reason not to object to that?

17 A Because that's the law. The judge explained that someone
18 doesn't have to be held for ransom, in essence. For it to be
19 kidnapping, they have to be detained; they have to be tricked
20 into coming someplace; they have to be lured someplace; and then
21 held against their will and unable to leave or move. And that
22 was the -- that was the charge from the Court. It didn't shift
23 any burdens; it, in fact, just stated as the law.

24 Q Applicant also alleged that you were ineffective for failing
25 to object the mandatory presumption charge to the "acts of one

1 are the acts of all."

2 A The "hand of one, the hand of all" instruction was given
3 because there were codefendants in this case, and I did not
4 object to it. In fact, if my client was going to be convicted,
5 it really wasn't under the "hand of one, hand of all"; it was
6 under the fact that there was testimony that he was the person
7 who had pulled the trigger and, therefore, there was direct
8 evidence that he was the gunman, or one of gunmen, in the case.
9 But the instruction itself was standard and appropriate, and I
10 did not object to it.

11 Q And I think these next two issues are a little bit related.
12 That you failed to object to the sufficiency of the indictment or
13 move to dismiss the indictment before the jury was sworn on
14 grounds that it didn't contain the element of knowing or
15 knowledge. And that applies to the kidnapping charge.

16 A I don't remember a specific recollection of reading that
17 and/or discussing that with him or anyone else, including counsel
18 for the codefendant who was also charged with that, but the
19 purpose of an indictment is to give notice.

20 The indictment provided notice that this happened on or
21 about the 13th of February, 2014, that it involved the victim in
22 the case, and that my client was the person who perpetrated the
23 kidnapping by, again, you know, holding her against her will.

24 And so it provided sufficient notice, and I didn't -- I
25 didn't object to it because I felt it met the standards for

1 notice required for an indictment.

2 Q And so when Judge Murphy gave the jury charge and she spoke
3 about the knowledge element, what was your understanding of that
4 jury discharge that you didn't bring it up or anything?

5 A My understanding was that that was what the law is, that you
6 can't accidentally kidnap someone, you can't hold someone without
7 specific intent or knowledge and therefore the instruction given
8 to the jury was appropriate and obviously sufficiently higher
9 than an instruction that would not have included any specific
10 intent. And, therefore, because it was appropriate, I did not
11 object to it.

12 Q Are you familiar with South Carolina Code 16-3-910 regarding
13 kidnapping?

14 A Am I familiar with the kidnapping statute?

15 Q Yes.

16 A Yes.

17 Q And the allegation is that you failed to object to the
18 sentence of 30 years for kidnapping as being in violation of that
19 kidnapping statute?

20 A I did. The judge, the prosecutor, and I, none of us,
21 appropriately applied the *Vick* standard, which says when you're
22 convicted of murder and sentenced to that penalty, which in this
23 case was life, although you can be tried for and convicted of
24 kidnapping, you cannot or should not be sentenced for that on top
25 of or even in conjunction with, concurrent with, the murder

1 sentence. And so, yes, that shouldn't have happened.

2 Q Okay.

3 A I don't think it affects the ultimate result but, you know,
4 that term of years should be stricken.

5 Q Okay. And the last two allegations deal with alleged
6 improper comments from the prosecutor. First, asking the jury to
7 convict for an improper reason, why didn't you object to that, or
8 was there a reason to object to that?

9 A I was there at the time, and I've gone back and re-read
10 Solicitor Sorenson's closing arguments, and I don't feel that
11 they rise to any level of passion. They don't rise to the level
12 of giving the -- asking the jury to put themselves in the place
13 of the victim's family. They don't raise any passions beyond the
14 typical passions of, you know, it's a hard job but you've got to
15 do your job. He used some phrase that, You need to show both of
16 the McKnight brothers that they can't get away with murder in
17 this county.

18 Q And it's your opinion that that is not burden shifting or
19 improper embellishment?

20 A No. That is my opinion, that it is not.

21 Q And the last allegation is that the solicitor improperly
22 used the term "I" over and over again. Was there anything that
23 you read or recollect from the time that would have alerted you
24 to object to that?

25 A No. At the time, listening to the closing argument -- and

1 I've objected during closing arguments when improper things have
2 been said or when facts that hadn't been presented have been
3 argued in closing arguments, but that's not what happened here.

4 I was, you know, surprised that Mr. Sorenson used that
5 description, or word "I", you know, 50 times but, as the judge
6 instructs, and as, you know, everybody was there was told, and as
7 I understand, all counsel expressed during closing argument their
8 take on the facts, their opinion, their interpretation of the
9 facts, and that jury was instructed to that fact, and all I felt
10 Mr. Sorenson was doing was saying, I see it this way; I see it
11 that way. He did not ever hold himself up as any decider of fact
12 or as, you know, smarter or more important than anybody there,
13 including any of the jurors. So I didn't notice it at the time
14 and, in re-reading it, I don't find it objectionable.

15 ATTORNEY MIMS: I beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 ATTORNEY MIMS: No further questions, Your Honor.

18 THE COURT: Cross-examination.

19 ATTORNEY JOYNER: Thank you. May it please the Court.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY JOYNER:

22 Q And I apologize if I mispronounced your name.

23 A Oh, it's all right, Ms. Joyner.

24 Q Can you say it one more time for me, please?

25 A Leiendecker.

1 Q Leiendecker. Again, I apologize.

2 A Sort of like l-i-n-e. For some reason, my German ancestors
3 didn't think that English interpretation was easier.

4 Q Okay. You said you've been practicing for over 40 years,
5 correct?

6 A It will be 40 years this spring of '23. Yes, ma'am.

7 Q But the number of years you're practicing doesn't mean that
8 you can't make mistakes, correct?

9 A Absolutely does not mean that.

10 Q And there have been mistakes made in the past?

11 A Do you want me to list them, or do you want me to admit that
12 there have been mistakes? Yes, ma'am.

13 Q Just an admission that mistakes have been made?

14 A Yes, ma'am. I don't know --

15 Q It may not be intentional, but mistakes are made during
16 trial?

17 A I hope not intentional. Yes, ma'am.

18 Q They happen. And you stated you were appointed to represent
19 Mr. McKnight, and you had about 10 months to prepare the case?

20 A Yes. There was some delay in the appointment process.

21 Bryant had been appointed counsel and, because of the conflict
22 from about March to -- or, late February or March to May,
23 Mr. McKnight was in the detention center without appointed
24 counsel.

25 Q And a defendant going to trial in less than a year of having

1 an attorney involved, that's pretty quick under normal
2 circumstances, isn't it?

3 A Didn't use to be as unique pre-COVID as it is today, but,
4 yes.

5 Q But for murder charges, generally it takes a pretty extended
6 period to prepare?

7 A I don't understand the question.

8 Q For murder charges, fr more serious charges, it generally
9 takes a more extended period to fully prepare?

10 A It takes whatever it takes, and that relates to the actual
11 evidence and facts and witnesses and things you need to do. But,
12 yes, a more complicated case can take more time but, as I
13 described, this was my primary case as the circuit public
14 defender. I wasn't carrying 100 cases like a lot of my assistant
15 public defenders, and so the bulk of and the most of my attention
16 during that time was on Mr. McKnight's case.

17 Q During the 10-month period the bulk of your time was to this
18 case, but you have testified that you may have met with him half
19 a dozen times?

20 A I probably met with him at least that many times, and it was
21 on every other month. As I described to the Court, and as I
22 would say today, I didn't go sit down with Jerry every week. I
23 didn't spend a lot of time asking Jerry, you know, how to
24 investigate the case or how to work the case.

25 I would get a bulk of questions and/or needs, and I would

1 take them to Jerry and I would talk with him about them, and I
2 would then go, following our discussions, and follow up on those
3 to seek further information or further clarification based on him
4 pointing me in one direction or the other. So, yeah, that's how
5 it worked.

6 Q Based on your interactions with Jerry, though, you were
7 aware that he didn't have a high-school education and had some
8 limitations as far as comprehension?

9 A I certainly interview and discuss with all my clients, and a
10 lot of them, you know, aren't college educated, and some of them
11 aren't even -- completed high school.

12 I did not, at any time, have any problem communicating with
13 Jerry, but I think I explained in his motion to have me relieved
14 that, you know, I didn't believe that, you know, he was fully
15 understanding, you know, the legalities of the severity of the
16 charges, and that it would be inappropriate to let him represent
17 himself.

18 Q In fact, isn't it true that he really didn't want to
19 represent himself; he just felt like you weren't prepared and he
20 didn't want to move forward with you, but he really wanted other
21 representation?

22 A I can't really express what Jerry thought or what Jerry
23 felt. He did move to have me removed. The case was going
24 forward, and the alternative was Jerry tried the case or I tried
25 the case.

1 Q Because based on some of the documents that he was left to
2 review, isn't it probable that he just didn't understand some of
3 the things and maybe you didn't appropriately explain them to
4 him?

5 A I can't express what Jerry thought or understood.

6 Q Well, he testified earlier that that was his concern, that
7 he didn't feel that he was engaging with you enough and knew
8 exactly what the case was.

9 A Jerry's major concern all along was the severity of the
10 case. And as I expressed at trial when he made his motion, and
11 as I would express today, he was worried. He was afraid. I
12 think that was appropriate. I think that was normal. I would
13 have been nervous in such a situation in case, as well. And any
14 opportunity to avoid the trial was a great opportunity, and Jerry
15 should have tried to seize it, which he did.

16 Q You discussed ammunition being purchased. There wasn't
17 anything particular about this specific ammunition or it wasn't
18 specifically tied to this crime.

19 A It was. It was. In fact, the type of ammunition was
20 consistent with the ammunition from the autopsy. It was .22
21 caliber, and fit the weapon that was used.

22 Q But .22 caliber handguns are not that unique, correct?

23 A Oh, they're absolutely not that unique.

24 Q So having ammunition for a .22 caliber handgun really is not
25 sufficient evidence to tie that to this particular crime?

1 A The question that I was asked was, What kind of evidence was
2 problematic? And although that evidence in and of itself, you're
3 correct, should never be sufficient to convict someone, the
4 reality that that evidence was bought the day of the murder and
5 was then that same or similar, evidence/ammunition used in the
6 murder was a troubling fact, but certainly it wasn't sufficient
7 alone to get a conviction.

8 Q And you testified, as relates to the alibi witnesses, that
9 the landlord wouldn't testify?

10 A No. That I didn't get anyone at the apartment where he
11 allegedly went in that was willing to testify that he came in or
12 how long there he was there. I couldn't find anyone, and my
13 investigator couldn't find anyone.

14 Q Okay. Because you made reference in your testimony to the
15 apartment owner. What were you referring to?

16 A The occupant, the person who occupied --

17 Q Okay.

18 A If I used the word "owner", I meant the person who was on
19 lease.

20 Q Okay, the person --

21 A The person who lived there.

22 Q And the person that lived there, did they provide testimony?

23 A No. Mr. Jones provided testimony, who knew Jerry and had
24 seen Jerry at that time in question, and had seen Jerry, in fact,
25 go into an apartment, he said.

1 Q So the owner was there as well?

2 A I assume. I didn't get that, and I wasn't able to provide
3 that. And at this point, all these years later, I don't remember
4 if Mr. Harrell found them and they wouldn't testify or they
5 wouldn't participate, or they wouldn't corroborate, but we didn't
6 present them.

7 And then, of course, the State called Mr. Jones's testimony
8 into question on cross-examination.

9 Q Yes. So if there was the owner, as well as Mr. Jones, that
10 would have been further corroboration if the owner had
11 information, correct?

12 A Great, but that's speculation, and I don't know the answer
13 to that.

14 Q Well, you stated the investigator spoke with him. So he had
15 some information?

16 A No, I didn't. I didn't.

17 Q Okay.

18 A I said the investigator went out and checked it; that the
19 investigator never -- and I just don't remember at this point
20 whether Mr. Harrell told me he, A, couldn't find them; B, he
21 found them and they didn't corroborate Jerry's story, or; B
22 [sic], that they didn't remember or were unwilling to testify.
23 But, I don't know why. It's been that long. And that question
24 would be answered -- Mr. Harrell may know better than I do.

25 Q Okay. But that could have been a potential witness that

1 would further corroborate his alibi at the scene?

2 A If such a person exists, it would have been great, and I
3 would have used that person.

4 Q And given more time, do you think you could have pursued
5 that line inquiry further?

6 A I had sufficient time to be ready.

7 Q Okay.

8 A My investigator had more than sufficient time to get and
9 talk to the witnesses.

10 Q But he didn't --

11 A Part of the defense is always maybe it gets better if we
12 delay it, but the solicitor, at that time, called this case, and
13 that case was ready for trial, and we tried it.

14 Q Mr. Jones -- was it Jasmin [ph] Jones?

15 A I believe that was his first name. It started a with a "J".
16 Yes.

17 Q Yes. Yes. Because his testimony was rather problematic to
18 the applicant, correct?

19 A His testimony was good as it related to Jerry. He is the
20 one who said he saw Jerry in the evening after dusk/dark, and
21 that Jerry was at these apartments in Saint Matthews, which was
22 nowhere near where the murder ultimately took place, and that he
23 saw Jerry go into an apartment, and that he then never saw Jerry
24 again.

25 Q But on cross-examination, were there some issues that were

1 brought out that were not favorable?

2 ATTORNEY MIMS: Your Honor, I would have to object to the
3 relevance of this. This doesn't go to any of the allegations
4 that applicant raised.

5 ATTORNEY JOYNER: It was explored during direct examination,
6 Your Honor, so I ...

7 THE COURT: I'll give you a little bit of leeway. Just --

8 ATTORNEY JOYNER: I'll move forward.

9 THE COURT: -- get to where we're going.

10 ATTORNEY JOYNER: Yes, Your Honor.

11 THE WITNESS: Not as related to my client. On
12 cross-examination, there were statements given by Mr. Jones as
13 they related to the other codefendant, Mr. Bryant. I think that
14 was his first name.

15 BY ATTORNEY JOYNER:

16 Q Bryant McKnight. Yes.

17 A And when the solicitor attempted to go further to say that
18 Bryant McKnight had also verbally implicated my client and that
19 there was a bit a brouhaha and an objection, I stopped that.

20 Q Okay.

21 A And not only stopped it, but the Court later instructed the
22 jury to disregard the question even though there hadn't been an
23 answer.

24 Q Okay. As relates to Jonathan McKnight's testimony, was he
25 offered anything, or did you investigate whether he was offered

1 anything by the State for that testimony?

2 ATTORNEY MIMS: Your Honor, relevance.

3 THE COURT: Well, she asked whether it was investigated and
4 as to whether he was promised anything. I think that's -- I
5 think that's relevant to the issue we're here for today.

6 THE WITNESS: There was no -- there was no offer regarding
7 Jonathan McKnight. And that was explored, and the solicitor and
8 the first circuit solicitor's office is pretty good and pretty
9 careful about not promising someone, If you testify, this what is
10 you'll get, so there was no offer that we could then
11 cross-examine him about.

12 We did, however, cross-examine him about his potential for
13 lying, his possible involvement, and a lot of those factors.

14 BY ATTORNEY JOYNER:

15 Q So he didn't have any pending charges that you were aware
16 of?

17 A I don't remember. It seems like he had something pending --

18 Q Yes.

19 A -- but I don't remember what he was charged with. But he
20 was -- he was charged in the crime itself. In the crime itself,
21 he was the driver of the car, allegedly, where the murder took
22 place.

23 Q But didn't he have other pending charges outside of that?

24 A Outside this case?

25 Q Yes.

1 A I don't remember.

2 Q If that were the case, do you think that's something that
3 needed to have been explored in his testimony?

4 A Like I say, I don't remember.

5 Q Okay. As relates to the applicant's grounds that are
6 outlined in his application relating to the jury charges, you
7 state that you found nothing inappropriate about the malice being
8 inferred from the use of a firearm or the use of a deadly weapon.

9 You are familiar with *State v. Peterson* that talks about
10 permissive inference language needed to be utilized in those kind
11 of instruction instead of a more mandatory-type language?

12 A I don't believe the judge's language was mandatory.

13 Q The judge did charge that malice may be inferred from
14 conduct showing the total disregard for human life and inferred
15 malice may arise from use of a deadly weapon. So if they found
16 both of those things, that shifted the burden to the applicant to
17 prove otherwise, correct?

18 A I disagree with your legal interpretation, and I have always
19 interpreted the word "may" to suggest that you can or you cannot
20 and, therefore, it's not mandatory. You not must infer but may
21 infer.

22 Q But in terms of the *Peterson* case, they speak -- and in
23 terms of the *Belcher* case, *State v. Belcher*, both of them speak
24 to the long history of confusion as relates to that and this
25 court's instruction to use more permissive inference language and

1 to be more specific in the instruction so that the jury will not
2 get confused on the specificity of what's required; isn't that
3 correct?

4 A Yes. I don't have the specific language in my mind. I
5 understand the generality of where you're going, but I disagree
6 with your legal premise. And I would also wonder if that were
7 such a fact why it wasn't raised in direct appeal, because that
8 opportunity existed and there were two other counsel that had an
9 opportunity to look at this, and that was never raised.

10 Q Wasn't it not raised in direct appeal because you didn't
11 object?

12 A The direct appeal to the Court of Appeals.

13 Q To the Court of Appeals. But there wasn't a proper
14 objection by you?

15 A Yeah. That could be.

16 Q And if there's not a proper objection, there's not a basis
17 for raising it --

18 A Correct.

19 Q -- on appeal?

20 A Correct.

21 Q So that issue is more appropriate for this forum?

22 A For this, yes. And again, I disagree with your legal
23 premise. I understand what you're saying, but I do not believe
24 that the judge made any mandatory instruction to the jury, and I
25 do not believe that it violates any of the case law.

1 Q Okay. I'm going to move on to the kidnapping indictment.
2 As relates to that indictment, in the indictment itself, knowing
3 is not part of the language or element that's required to be
4 proven. Did you review the indictment?

5 A I read the indictment. I don't remember picking that up or
6 finding that deficiency. I don't disagree with what you say.
7 I've looked at it since. But again, I did not object to the
8 indictment, and I felt -- even now, I feel the indictment was
9 sufficient because it gave notice. It gave notice of the date;
10 it gave notice of the event; it gave notice of the act; it even
11 cited of the statute.

12 Q But indictments must also outline the elements required to
13 be proven, correct?

14 A Indictments are meant to be notice.

15 Q And one of the elements that's required to be proven is
16 knowing, correct?

17 A Indictments are not evidence, and they do not provide
18 evidence.

19 Q They're not evidence, but they are supposed to outline the
20 elements of the crime.

21 A I felt that it gave sufficient notice of the crime charged,
22 and I did not object to it.

23 Q Okay. But there was an opportunity because they left out
24 that knowing element to object, correct?

25 A I don't agree with that.

1 Q So you don't think that an element of the crime is required
2 in the indictment?

3 A You can ask me again and again --

4 Q Okay.

5 A -- Ms. Joyner, --

6 Q I'll move forward.

7 A -- but I don't agree with that.

8 Q But if Mr. McKnight asserts that he wants a thorough
9 representation where any potential issue such as this is
10 addressed, you agree you did not address it?

11 A I agree I did not object to the indictment.

12 Q Okay. So again, that precluded an appellate issue because
13 he couldn't raise it because it was not raised by you?

14 A I agree.

15 Q You also had no issue with the judge including in her charge
16 language that was not in the indictment and basically
17 constructively amending what was charged?

18 A She did not constructively amend what was charged. She
19 charged the law, and she charged it once. She made no amendment
20 to the charge.

21 Q But you agree the language she used was not the language in
22 the indictment?

23 A Now that it's pointed out, I do agree that there was that
24 element of intention, but that was the law, and that's what the
25 law was given -- that law was given to the jury.

1 Q And the appropriate law was given, but that law was not
2 contained in the indictment itself, so there was a variance
3 between the indictment and what the judge charged?

4 A I'm sorry. Is that a question?

5 Q There was a variance. There was a difference between the
6 indictment and what the judge charged, and you made no objection
7 to that?

8 A I made no objection to the judge's charge.

9 Q Okay. You testified earlier that "hand of one, hand of all"
10 was not really applicable in this case?

11 A It was applicable in the case. I testified that ultimately
12 I don't think it was involved with the conviction of my client
13 because there was direct testimony saying that my client was the
14 shooter and, therefore, I do not believe that he was convicted
15 under that instruction.

16 Q Okay. But when "hand of one, hand of all" charges are made
17 and implicated in the case, doesn't there have to be a showing of
18 some kind of plan, some kind of arrangement, that was previously
19 made that would justify that?

20 A Evidence of the fact that two brothers took a young woman in
21 a car, had the car stopped, and then killed her, I felt, was
22 sufficient.

23 Q Was there evidence of a prearrangement?

24 A That prearrangement, as I understand it, doesn't have to be
25 something that took place a year ago, a week ago, or even a day

1 ago. It just has to be something that has been discussed before
2 the event.

3 Q Did you evaluate whether there was an actual discussion,
4 though, in any regard?

5 A I listened to the State's evidence, and the State's evidence
6 suggested that. Yes. I did not find the instruction
7 inappropriate.

8 Q But in evaluating the evidence on behalf of your clients, do
9 you give the State the benefit of the doubt, or do you try to
10 represent your client more zealously and object because there is
11 the availability of objecting to something that might be
12 improper?

13 A I did not find what was being done improper. I did not find
14 the judge's instruction improper.

15 I'm a bit insulted with the idea that I gave the State
16 deference over my client, which I did not do. And I did not
17 object, because I did not feel it was objectionable.

18 Q You did acknowledge, though, that the Vick standard wasn't
19 adhered to?

20 A I did.

21 Q Was there --

22 A The judge missed that. I missed that. The solicitor missed
23 that. We all -- we all were wrong.

24 Q Okay. But there was nothing placed on the record concerning
25 that, so you do acknowledge that error?

1 A That he should not have been sentenced to the kidnapping in
2 conjunction with the murder, that, I agree that should not have
3 happened.

4 Q So you agree that that conviction is an error that should
5 have been raised, because it is a vital argument that could have
6 been made and it comports with the law?

7 A No. First of all, you said I agree that conviction is
8 something that should have been objected to. He can be
9 convicted. That sentence --

10 Q The sentence. I apologize.

11 A That sentence is the only thing that could have been and
12 should have been objected to.

13 Q Yes, the sentence itself.

14 A I do not agree with the further assertion that it is a, you
15 know, huge impact on the result of this case.

16 Q But do you believe that he is entitled to resentencing as
17 relates to that specific violation?

18 A I absolutely do.

19 Q Thank you.

20 ATTORNEY JOYNER: That's all I have.

21 THE WITNESS: Thank you.

22 THE COURT: Any redirect?

23 ATTORNEY MIMS: Briefly, Your Honor.

24

25

REDIRECT EXAMINATION

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BY ATTORNEY MIMS:

Q Regarding the mandatory, or the alleged mandatory, presumption charge for the "act of one, act of all" was it your burden to prove "the hand of one of all" -- or, "the hand of one is the hand of all"?

A I don't have any burden in a criminal trial.

Q And so is it your recollection, or would it refresh your recollection if I showed you, that Judge Murphy also said it was the State's burden to prove "hand of one, hand of all"?

A I am sure the judge said that. I don't need to see that. I believe you.

Q And so any further investigation as to "the hand of one, hand of all," do you think -- do you think there was any further investigation that you needed to do for that specific charge, or object to that specific charge? I believe you said you needed to.

A I didn't think the charge was inappropriate, as I've said a few times, and I didn't object to it because I didn't think it was inappropriate.

ATTORNEY MIMS: I beg the Court's indulgence for one minute.

THE COURT: Yes, ma'am.

BY ATTORNEY MIMS:

Q I asked you a little bit about the indictment. It's your opinion that the indictment was sufficient for notice, correct?

1 A Yes.

2 Q And that the law surrounding the knowledge portion was also
3 correct? Was that your testimony?

4 A The instruction to the jury?

5 Q Yes.

6 A Yes, it was correct.

7 Q And as the indictment stood, would that have been a lower
8 burden for the State to meet?

9 A If you didn't have to have specific intent or knowledge,
10 that would be a lower bar. Absolutely.

11 Q Okay.

12 A But that's not what the jury was instructed.

13 Q Okay. They were instructed of the higher bar?

14 A Yes.

15 Q And so is it your opinion that that would have helped your
16 client, than the lower bar?

17 A I'm confused since it didn't happen. Yeah, if the judge had
18 misinstructed the jury, it probably would have helped my client,
19 but she didn't.

20 Q Okay.

21 ATTORNEY MIMS: No further questions, Your Honor.

22 THE COURT: Anything else?

23 ATTORNEY JOYNER: Can I have a few seconds with my client?

24 THE COURT: Yes, ma'am.

25 ATTORNEY JOYNER: Nothing further, Your Honor.

1 THE COURT: All right. Thank you, sir. You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Anything else from the State?

4 ATTORNEY MIMS: Unless you -- I would like to make a brief
5 closing, but the applicant -- it's up to you. The State rests.

6 THE COURT: That's what I was looking for.

7 ATTORNEY MIMS: I apologize.

8 THE COURT: I didn't see any other witnesses out there. I
9 thought that might be the end of where we are. I'll give both
10 sides the opportunity to make a brief summation, keeping in mind
11 that I have all of the documents before me.

12 Ms. Mims, you can go first. I will give the applicant the
13 last word since they have the burden.

14 ATTORNEY LEIENDECKER: Judge, may I be excused?

15 THE COURT: You may be excused, Mr. Leiendecker.

16 ATTORNEY LEIENDECKER: Thank you so much, Judge Griffin. I
17 appreciate that.

18 THE COURT: Did we get it right on the last time?

19 ATTORNEY LEIENDECKER: Excellent.

20 THE COURT: All right. Thank you, sir.

21 THE WITNESS: Thank you.

22 ATTORNEY MIMS: In regards to some of the issues that
23 applicant raised, I just wanted to make the Court aware of some
24 case law surrounding those.

25 First, regarding the mandatory presumption charge of

1 inferred malice that applicant mentioned, specifically, Judge
2 Murphy charged that malice may be express or inferred. These
3 terms do not mean different kinds of malice. Inferred malice may
4 arise when the deed is also done with a deadly weapon.

5 Applicant spoke to *State v. Peterson*, but in that case, when
6 it talks about permissive inference, it stated that language such
7 as "might infer" or "may be presumed" could be notice of
8 permissive inference, which is in direct contradiction to another
9 case, *State v. Elmore* and *State v. Lewellyn*, that say words such
10 as "rebuttal" and "reasonable explanation" or "unless the
11 contrary be approved" will be more indication of proper burden
12 shifting, and I don't think we have that here, so I would think
13 that applicant has not met his burden with that one, as well as
14 the mandatory presumption charge of the "acts of one are the acts
15 of all." It's well-established law that a person who joins with
16 another to accomplish an illegal act is liable criminally for
17 anything done. Applicant argued that failing to object to the
18 charge of "hand of one, hand of all" was improper because it
19 shifted the burden on applicant and was a mandatory presumption.

20 However, in Judge Murphy's charge, she charged the jury that
21 the burden was on the State, which Mr. Leiendecker agreed to,
22 that the defendant was liable under this theory. Of course trial
23 counsel was not deficient, nor prejudiced.

24 In regards to the kidnapping argument, the constructive
25 amendment, as well as the indictment, as Mr. Leiendecker stated,

1 an indictment is merely a notice document, and it was his
2 contention and his understanding that applicant was provided
3 sufficient notice into knowing what he was apprised to answer and
4 to allow him to decide whether to plead guilty or stand trial.

5 Furthermore, there is a case of *South Carolina v. Bailey*.
6 South Carolina Supreme Court ruled that counsel was ineffective
7 for failing to object to the trial court's supplemental jury
8 charge. And as Mr. Leiendecker said here, there was not a
9 supplemental jury charge. In that case there was the law that
10 was charged that was different from the indictment, and then
11 there was a supplemental, inaccurate jury charge. And we don't
12 have that issue here.

13 Applicant was indicted for kidnapping, which would put him
14 on sufficient notice. And as a reason, as the statute stands,
15 indicate that a person may be found guilty of kidnapping, or
16 unlawfully kidnapping. It does not mention knowledge.

17 However, having that added element of knowledge, as required
18 mens rea, wouldn't prejudice the client. It would make the State
19 have to further prove, or heighten, their burden that the
20 applicant actually had knowledge. So couldn't he couldn't have
21 been prejudiced even if this Court was to find that
22 Mr. Leiendecker was deficient, which we do not say that he was.

23 Issue 6, under 16-3-910, the State would concede that
24 applicant's sentence was improper. We do not concede that the
25 conviction was improper, but as the record stands and as the case

1 law stands, as Mr. Leiendecker stated with *Vick*, we concede that
2 applicant is entitled to resentencing on the kidnapping charge.

3 And for issues 7 and 8, trial counsel stated that he did not
4 feel it was improper or necessary to object to the statements of
5 the solicitor. The burden was on the applicant to prove that he
6 did not receive a fair trial because of an alleged statement,
7 which I don't think he met that burden here. Even if the
8 applicant could prove the statement wasn't proper, the statement
9 doesn't automatically require reversal, as it was not
10 prejudicial. We argue that it was not an improper comment.

11 And even if this Court was to deem that it was an improper
12 comment and Mr. Leiendecker was deficient because of that,
13 applicant was not prejudiced because there was more than enough
14 evidence, as Mr. Leiendecker testified to, to convict applicant
15 of these crimes.

16 And lastly, Your Honor, trial counsel deemed that he didn't
17 feel it was improper or necessary to object to every time the
18 solicitor made an "I" statement. Notably, it would be opposite
19 to the Court; opposite to the jury. He was, at no point,
20 providing anything outside of the scope of the evidence that was
21 presented at the trial in his closing argument, and if there was
22 any time that he did so, Mr. Leiendecker did object.

23 And I just wanted to point the Court to *State v. Schuler*
24 which says improper vouching occurs when the prosecution places
25 the government's prestige behind a witness by making explicit

1 personal assurances of the veracity, or where a prosecutor
2 implicitly vouches for a witness's veracity. And I don't think
3 that we have that here.

4 So for those reasons, your Honor, I ask that you deny
5 applicant's application for relief on all of the claims outside
6 of the resentencing for the kidnapping charge.

7 THE COURT: All right. Thank you, ma'am. Ms. Joyner.

8 ATTORNEY JOYNER: Thank you. May it please the Court. And
9 we certainly appreciate the State's concession that the *Vick*
10 standard was not adhered to and that my client is entitled to
11 resentencing on the kidnapping, or a vacating of that kidnapping
12 30-year sentence.

13 Your Honor, we believe that the combined errors alleged in
14 the application for post-conviction relief did lead to prejudice
15 and was not harmless error, and my client is entitled to a new
16 trial.

17 The mandatory presumption language, or language used by the
18 judge in that malice may be inferred by the use of a deadly
19 weapon, was explicitly addressed in the *Peterson* case where the
20 Court admonished courts to not use instructions that were
21 confusing, and to use a permissive inference instruction
22 specifically. We think there has been direction from the court
23 on how those charges should be handled, and that the charge in
24 this matter was not handled in that manner and did not comply
25 with the current state of the law, and because of counsel's

1 failure to object to that my client couldn't raise this issue on
2 appeal, and it led to, combined with other errors, his
3 conviction, so we believe it is not harmless and that he's
4 entitled to a new trial based on that alone, with other errors
5 committed by counsel.

6 Relating to the knowingly charge of the kidnapping,
7 knowingly element of the kidnapping charge, we believe knowingly
8 is an essential element of kidnapping. The judge instructed the
9 jury as such. Therefore, any deficiencies in the indictment
10 itself should have been raised because you can't raise that on
11 appeal if you don't raise it at trial, and the kidnapping charge
12 was deficient, the indictment was deficient, but it was never
13 brought up by counsel, it was never challenged by counsel, and he
14 was never given the opportunity to have that particular charge
15 thrown out. If they wanted to indict him properly, they
16 certainly could have done so, but the indictment was deficient
17 and should have been challenged by counsel.

18 Your Honor, as relates to the closing arguments, we do
19 believe that there was assertions made to inflame the passion of
20 the jury to assert that they should be looking at the response of
21 the community rather than focusing on the evidence that was
22 before them and weighing it individually, so we do believe that
23 that was improper closing argument that also should have been
24 objected to.

25 The failure to even object to these things impeded on my

1 client's rights because, when he perfected his appeal, he had
2 very limited issues because a lot of the things that were
3 improper at trial were never appropriately objected to, and he
4 did not have the ability to pursue those issues on appeal.

5 So we believe that the errors committed were not harmless,
6 they were prejudicial, and they led my client to a life sentence,
7 which we feel needs to be reversed and my client given an
8 opportunity for a new trial with an attorney who will scrutinize
9 the issues and apply proper challenge to things that are
10 unconstitutional and inappropriate, and not just give a pass to
11 some issues.

12 We believe that there is sufficient evidence presented to
13 show that he was prejudiced by the trial counsel's performance,
14 and that he should be given an opportunity for a new trial.
15 Thank you.

16 THE COURT: All right, folks. With the exception of the
17 issue with regard to the sentence on the kidnapping, I'm going to
18 take the remainder of this matter under advisement since a
19 voluminous transcript that has to be examined in this case. So
20 I'm going to take the remaining matters under advisement.

21 And I'm not going to direct that any order be issued with
22 regard to the vacation of the sentence on the kidnapping because
23 I want the order that addresses all of the issues to be complete.

24 But just so you'll know, Mr. McKnight, I'm agreeing with
25 your lawyer on one of the issues as raised right off the bat

1 because the solicitor and your lawyer admitted that that was
2 error. So the sentence on the kidnapping will be vacated.

3 Now, whether the conviction will be vacated, that's why I'm
4 taking this matter under advisement, because I've got to address
5 all these issues. It's not something that I'm prepared to rule
6 on 10 minutes after the close of the presentation.

7 So I will notify the parties of my decision probably by the
8 end of the month. I've got four PCRs to hear this week. So
9 you'll know in about three weeks, Mr. McKnight, what the outcome
10 of this matter is going to be. And I will direct the prevailing
11 side to prepare an order.

12 ATTORNEY JOYNER: Thank you, Your Honor.

13 THE COURT: All right. This matter is adjourned.

14 (End of Transcript of Record.)
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CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth 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/proceedings of the captioned case in the Court of Common Pleas for Calhoun County, South Carolina, on the 7th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Date: January 25, 2023

/s/ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED
2023 OCT 16 AM 9:12

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Jerry McKnight, #371498

Applicant,

v.

State of South Carolina,

Respondent.

LANEISHA MOORE
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Case No.: 2018-CP-09-00073

**ORDER VACATING KIDNAPPING
SENTENCE AND DISMISSING
REMAINING PCR APPLICATION**

This matter comes before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Jerry McKnight (“Applicant”) on May 30, 2018. Respondent made its return on August 24, 2020, requesting an evidentiary hearing. On September 7, 2022, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Clarissa W. Joyner, Esquire, represented Applicant, and Assistant Attorney General Lauren T. Mims represented Respondent. Applicant was present at the hearing and testified on his own behalf. Applicant also called as a witness trial counsel Mark A. Leiendecker, Esquire (“Counsel”). Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant met his burden of proof as to the claim related to the kidnapping sentence. This Court further finds Applicant did not meet his burden of proof for all other PCR claims. Thus, this Court grants relief in-part to vacate Applicant’s sentence for kidnapping, denies relief on all other claims, and dismisses this application with prejudice.¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In January 2015, the Calhoun County Grand Jury indicted Applicant for murder

¹ This Court’s ruling to vacate is limited to Applicant’s *sentence* for kidnapping. Applicant’s conviction for kidnapping remains unaltered.

(2014-GS-09-0057), kidnapping (2014-GS-09-0054), and possession of a firearm by a person convicted of a violent crime (2014-GS-09-0056). On March 2-6, 2015, Applicant proceeded to a jury trial before the Honorable Maite Murphy. Mark Leiendecker, Esquire, represented Applicant.² Solicitor David Pascoe, Deputy Solicitor Donald N. Sorenson, and Assistant Solicitor Kyle Ward prosecuted the case. The jury convicted Applicant as indicted, and Judge Murphy imposed concurrent sentences of life for murder, thirty years for kidnapping, and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Howard W. Anderson, III, Esquire, and Chief Appellate Defender Robert M. Dudek. The South Carolina Court of Appeals affirmed. State v. McKnight, 2017-UP-406 (Ct. App. filed Oct. 25, 2017). Applicant petitioned for rehearing, which was denied. Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court, which was also denied. The remittitur was sent April 3, 2018.

FACTUAL HISTORY

Applicant's charges arose from the fatal shooting of K. R. [REDACTED] ("Victim") on February 13, 2014. At trial, Kim Livingston, Victim's mother, testified she last spoke to Victim around 6:00 pm on February 13, 2014. Thereafter, she attempted to locate Victim and was informed that Victim went to St. Matthews with someone named "B." Ultimately, Livingston filed a missing person report. (Tr. 87-91). Tameka Williams, Victim's roommate, testified she last saw Victim on February 13th at their home. She testified Victim told her "B"—whom Williams identified as Bryant McKnight—was picking her up. Williams never saw Victim again. (Tr. 109-112).

² Applicant was tried together with his codefendant, Bryant McKnight, who was represented at trial by Martin Banks, Esquire.

Jamaal Pearce, Bryant's friend, testified that he, Bryant, and James Keller picked up Victim around 4:30 p.m. on February 13. He stated they hung out at Keller's home for a while, and Bryant and Victim later left on foot. According to Pearce, Bryant returned around 8:22 p.m. that evening and told Pearce he "had to smoke that girl." Pearce understood that to mean Bryant shot her. He recalled seeing Bryant with a revolver that night. (Tr. 154-65). Pearce recalled hearing about a burglary at the home of Bryant's and Applicant's mother earlier in 2014. (Tr. 170).

James Keller, a friend of Jamaal Pearce, testified he was hanging out with Pearce and Bryant on February 13. (Tr. 189). According to Keller, later that day, Keller, Applicant, Pearce and Bryant picked up Victim from her home. (Tr. 190). Keller stated Bryant was carrying a gun and Victim was last seen alive with Bryant. (Tr. 190; 196).

Jonathan McKnight, Applicant's cousin, testified he was hanging out with Applicant, Victim, and Bryant on February 13. (Tr. 218). Later that day, Applicant asked Jonathan to take him to his girlfriend's house. (Tr. 220). According to Jonathan, he, Applicant, Bryant, and Victim were in the car together, and Jonathan was under the impression that they were going to Applicant's girlfriend's house. (Tr. 220). The group stopped at a gas station then headed towards Elloree, SC on highway 6. (Tr. 221). Jonathan testified halfway down the road, Applicant asked to stop to urinate. (Tr. 222). After pulling over, Applicant got out of the car and asked Victim to get out of the car; she refused several times. (Tr. 222). Jonathan testified Applicant grabbed Victim and snatched her out of the car. (Tr. 223). Once outside of the car, Applicant dragged Victim to the back of the car and opened fire on her. (Tr. 223). According to Jonathan, Applicant emptied the revolver clip and handed the gun to Bryant, who reloaded the gun and shot Victim a few more times. (Tr. 223).

Jonathan testified he saw Applicant drag Victim to the side of the road, then Applicant and Bryant returned to the car. (Tr. 224). Jonathan testified Bryant and Applicant threatened him that if he told what happened, they would do the same to him. (Tr. 225). The group drove to a gas station to meet Stephon Green, at which, Bryant placed Victim's belongings in a trash bag and put it in the Green's car. (225). Jonathan testified he believed Bryant and Applicant killed Victim because they believed she was involved with the 2014 burglary that occurred at the home of Bryant's and Applicant's mother. (Tr. 229). Janice Ross, a forensic pathologist, testified she conducted an autopsy on Victim that revealed the Victim died from six gunshot wounds to the head and six wounds to the chest. (Tr. 457). Stephon Green, Bryant's friend, testified that Bryant asked him to dispose of Victim's body; Green refused. (Tr. 302). Green further testified Bryant kept Victim's cellphone and used it to respond to text messages Victim received from others. (Tr. 302-03).

CURRENT APPLICATION

In his current PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for:
 - a. Failing to object on the grounds of burden-shifting to the "mandatory presumption charge to the jury" regarding inferred malice;
 - b. Failing to object to the trial judge's "constructive amendment of the [kidnapping] indictment on the element of knowingly (knowledge) in his charge to the jury;"
 - c. Failing "to object to the sufficiency of the indictment and motion (sic) to dismiss the indictment before the jury was sworn on grounds it didn't contain the element of knowingly and knowledge. . . ." regarding the kidnapping charge;
 - d. Failing to object on the grounds of burden-shifting to the trial judge's "improper unconstitutional charge to the jury. . . that kidnapping does not have to be for any personal or monetary gain for any illegal purpose, but may be for any reason whatsoever. . . .;"
 - e. Failing to object to the prosecutor's closing argument asking the

- jury “to convict for improper reason;”³
- f. Failing to object to trial court’s “mandatory presumption charge that the acts of one [are] the acts of all;”
 - g. Failing to object to the sentence of thirty years for kidnapping as being in violation of South Carolina Code Section 16-3-910 where Applicant was simultaneously sentenced for the murder conviction;
 - h. Failing to object to the solicitor’s improper closing argument wherein the solicitor used the term “I” over fifty times.

At the evidentiary hearing, Applicant proceeded only on the following allegations of ineffective assistance of counsel:

- a. Failing to object to incorrect jury charges regarding malice being inferred from the use of a deadly weapon;
- b. Failing to object to improperly burden shifting the kidnapping charge due to the language used in the charge;
- c. Failing to object to the mandatory presumption contained in the judge’s charge and the judge’s constructive amendment to the kidnapping indictment by adding the “knowing” element;
- d. Failing to object to the kidnapping indictment and move for dismissal for insufficiency;
- e. Failing to object to a sentence of 30 years for kidnapping when there is a concurrent murder sentence;
- f. Failing to object to judge’s jury charge on “hands of one, hand of all[;]” and
- g. Failing to object to the solicitor’s closing argument issues relating to inflaming the passions of the jury, using “I” in appealing to the community, and inciting the jury to act on behalf of the community rather than focusing on the facts and evidence.

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant’s Testimony

Applicant testified he did not feel Counsel had sufficient time to prepare his case. (PCR Tr. 8). According to Applicant, Counsel met with him three times during the nine months Applicant was incarcerated and awaiting trial. (PCR Tr. 8). Applicant further testified he did not believe

³ It appears Applicant included the same allegation twice in his current PCR application – as both Ground Four and Ground Five.

Counsel sufficiently apprised him of the evidence against him and defense strategies. (PCR Tr. 8-9). Applicant testified he did not feel the investigation conducted by Counsel was adequate because Counsel did not get “information that they should have [gotten]” from “[t]he witness that testified[.]”

Applicant further testified he believed his attorney failed to object to the judge’s jury charge related to malice being inferred from use of a weapon; jury charge on the “knowing” element of the kidnapping; which was not included in the indictment; and comments the solicitor made during closing argument. (PCR Tr. 10-12). Applicant testified he believed the jury charge on kidnapping, stating kidnapping does not have to be for personal gain, improperly shifted the burden to him. Applicant testified he believed the issues raised in his application caused him to not receive a fair trial and led to his conviction. (PCR Tr. 15).

On cross-examination, Applicant testified he knew, at the time of trial, of all of the issues he listed in his application were issues, but he did not ask his attorney to object to them because he did not feel like it was his job to do so. (PCR Tr. 14). Applicant further testified he believed the outcome of his trial would have been different because the solicitor was trying to paint a bad picture of him. (PCR Tr. 21). Applicant testified that he and Counsel had a trial defense and reviewed discovery during meetings. (PCR Tr. 21-22).

On redirect, Applicant testified he went up to the eleventh grade in school, did not graduate, and does not have a high school diploma. (PCR Tr. 22). Applicant further testified that he is not trained in law and was relying on Counsel to defend him. (PCR Tr. 22-23). Applicant testified he did not understand the things Counsel explained to him. (PCR Tr. 23).

Counsel’s Testimony

Counsel, Mark Leiendecker, testified he has been practicing law since 1983 (approaching 40 years), practicing exclusively in criminal law. (PCR Tr. 25). According to Counsel, the case was called for trial ten months after he was appointed to represent Applicant. (PCR Tr. 26). Counsel testified that during that time he met with Applicant several times at the detention center. (PCR Tr. 26). Counsel testified he had an investigator, Harrell, who met with Applicant half a dozen times during the ten months leading up to trial. (PCR Tr. 26). According to Counsel, the investigator worked with Applicant [to investigate] witnesses and locations involved with the crime. (PCR Tr. 26-28).

Counsel testified he explained to the court all of his meetings with Applicant, trial preparations, and that this was the primary case Counsel worked on during the ten-month time span. (PCR Tr. 27). Counsel further testified that his meetings with Applicant included discussing the State's discovery, facts of the case, physical evidence, witness statements, statements made by co-defendants, and discussions with co-defendants regarding implicating Applicant. (PCR Tr. 27). Counsel stated he discussed with Applicant Victim's cellphone, which was used by the co-defendant and tracked. (PCR Tr. 27-28). According to Counsel, it was Applicant's contention that he was not involved and was at his aunt's house during the time of the murder, and Counsel investigated potential alibi witnesses to corroborate that. (PCR Tr. 28).

Counsel testified that the State's evidence against Applicant was "problematic" for Applicant's contention that he was not involved. According to the State's evidence, Applicant purchased the gun before the crime; the same weapon was used to commit the murder; the time Applicant left his aunt's house would have been sufficient time to be involved in the crime; and a family member [Jonathan], who was both the driver and a witness to the crime, implicated

Applicant. (PCR Tr. 28-29). According to Counsel, the defense strategy for trial was to impeach Jonathan by implying that he was lying or involved in the crime himself. (PCR Tr. 29-30).

Regarding jury charges, Counsel testified that generally, he prepared requested jury charges, the State prepared requested jury charges, and the judge has standard charges. (PCR Tr. 30). According to Counsel, it was general practice for Judge Murphy to hold a jury charge conference in which objections could be made and put on the record before being submitted to the jury. (PCR Tr. 30). Counsel did not believe there was burden shifting on the kidnapping charge, and the judge instructed the jury on the law on inferred malice as it was written. (PCR Tr. 31). Counsel testified not only did he not object to the inferred malice charge but he would not have. (PCR Tr. 31). Counsel testified he did not object to the "hand of one, hand of all" jury charge because there were co-defendants in this case, and if Applicant were going to be convicted, it would not be under this theory but would be due to testimony that he was one of the gunmen. (PCR Tr. 32).

Counsel further testified that he did not move to dismiss the indictment for not containing the knowledge element of kidnapping because the indictment provided Applicant with sufficient notice about date of the offense, the crime, and the victim. (PCR Tr. 32). Counsel stated he did not object to the judge mentioning the knowledge element of kidnapping because it was his understanding that kidnapping is not an accidental offense, it requires specific intent or knowledge. (PCR Tr. 33). According to Counsel, the jury charge was proper. (PCR Tr. 33). Counsel testified he is familiar with the South Carolina Code regarding kidnapping, and stated that neither he, the prosecutor, or the judge applied the Vick standard. (PCR Tr. 33). Counsel further testified that he understood that under the Vick standard, a person convicted of murder, and sentenced to that penalty, can be tried for and convicted of kidnapping but cannot be sentenced for kidnapping on

top of, in conjunction with, or concurrent with the murder sentence. (PCR Tr. 33-34). Counsel stated Applicant should not have received sentence for the kidnapping conviction. (PCR Tr. 34).

Regarding statements made by the solicitor, Counsel testified he did not object to the closing statements because he did not believe they rose to any level of passion – asking the jury to put themselves in the place of the victim’s family. (PCR Tr. 34). Counsel further testified that he did not believe the solicitor’s comments that Applicant and his brother could not get away with murder was improper burden shifting or improper embellishment. (PCR Tr. 34).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Calhoun County Clerk of Court records of the underlying convictions; Applicant’s records from the South Carolina Department of Corrections; the records from Applicant’s appeal, including the trial transcript; and the records of the current PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to meet his burden of proof. Below are this Court’s findings of fact and conclusions of law as required by Section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Object, Generally

Failing to object does not automatically constitute ineffective assistance of counsel. See Millidge v. State, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also id. at 380. ("[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court's finding... if so, an appellate court would necessarily have affirmed the trial court's [ruling]....").

Failure to Object to the Malice Inferred from Deadly Weapon Jury Charge

This Court finds Applicant has failed to prove Counsel was ineffective for failing to object to the trial court's jury charge that malice can be inferred from use of a deadly weapon. When evaluating a claim for ineffective assistance of counsel, counsel's conduct is to be evaluated by

the law available at the time of trial. “One of the key circumstances a court must consider in its examination of counsel’s decision not to make a particular objection is whether there was any law to support the objection.” Winkler v. State, 418 S.C. 643, 654, 795 S.E.2d 686, 692 (2016). The court is to evaluate counsel’s decisions at the time they were made and “every effort be made to eliminate the distorting effects of hindsight.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting Strickland, 466 U.S. at 689). Counsel is not required to anticipate potential changes in the law that did not exist at the time of conviction. Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004).

This Court finds Applicant did not prove counsel was deficient for not objecting to the inferred malice charge because the law that existed at the time of Applicant’s trial supported the charge. During Applicant’s trial in 2015, the prevailing case on inferred malice from use of a deadly weapon was State v. Belcher, 421 S.C. 622, 809 S.E.2d 423 (2009), *overruled by* State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). In Belcher, the Supreme Court held a jury could not be charged that it may imply inferred malice from use of a deadly weapon where evidence was presented that would reduce, mitigate, excuse, or justify the homicide. *Id.* There was no evidence presented at Applicant’s trial that reduced, mitigated, excused, or justified the homicide; as a result, the law permitted the judge to charge the jury on inferred malice from use of a deadly weapon. Thus, Applicant did not meet his burden of proving deficient performance by Counsel, and this claim is denied.

Failure to Object to the Kidnapping Jury Charge⁴

Applicant contends Counsel was ineffective for failing to object to improper burden shifting in the kidnapping charge due to the language use in the jury charge and failing to object

⁴ The following section combines Applicant’s allegations (b) and (c) and addresses them accordingly.

to the judge's constructive amendment to the kidnapping charge by adding the "knowledge" element. This Court finds Applicant has failed, on both allegations, to prove Counsel was ineffective failing to object.

"The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987) (quoting State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257 (1944)). When a jury charge is read as a whole, it is correct if "it contains the correct definition and adequately covers the law." State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)).

At trial, the judge charged the jury by stating the following (Tr. 822-23):

The defendants are charged with kidnapping. The State must prove beyond a reasonable doubt that the defendants knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away another person without authority of law.

...

Knowingly means with knowledge, consciously, not accidentally.

...

The kidnapping does not have to be for any personal or monetary gain, for any illegal purpose, but may be for any reason whatsoever.

Applicant also contends Counsel was ineffective for failing to object to the trial court's charge, asserting the charge is improper burden shifting. This Court finds Applicant failed to prove Counsel was ineffective in this regard and finds the charge was a correct statement of law. "[M]otive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence ... of the intent to commit the crime when intent or state of mind is in issue." State v. Sweat, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004) (quoting Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000)). The trial court charged the jury regarding purpose to show that motive is not a required element for kidnapping, which may be for any reason. This Court finds the trial court's charge is a correct

statement of law and finds *credible* Counsel's testimony that he did not have a basis to object because he did not believe the charge constituted improper burden shifting. Thus, Applicant has failed to prove Counsel was deficient for failing to object.

Applicant further contends Counsel was ineffective for failing to object to the trial court's jury charge for including "knowledge" as an element of kidnapping. This Court finds Applicant failed to prove Counsel was ineffective in this regard because the charge was a correct statement of law. This Court finds the judge's charge is a correct statement of law because knowledge is an element of the crime of kidnapping. The required mens rea for kidnapping is "knowledge." State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994). This Court finds the trial court's jury charge was a correct statement of law because knowledge is an element of kidnapping. Further, this Court finds *credible* Counsel's testimony that he did not object because he believed the charge was proper and without basis for objection. Thus, Applicant has failed to meet his burden, and this claim is denied.

Applicant contends Counsel was ineffective for failing to object to the trial court's jury charge, asserting adding "knowledge" language amounts to a constructive amendment of the indictment. This Court finds Applicant failed to prove Counsel was ineffective in this regard. If a defendant is convicted of a crime, he must be convicted "of the particular offense charged in the bill of indictment." State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (quoting State v. Cody, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)). An indictment may be amended at trial only if the amendment does not change the nature of the offense charged. Granger v. State, 333 S.C. 2, 507 S.E.2d 322 (1998).

In Granger, the Supreme Court found a defendant's indictment for trafficking more than ten grams of crack did not involve an amendment to his indictment for trafficking less than twenty-

eight grams of crack. *Id.* at 5. The Court compared the defendant's case to other cases in which indictments were amended, resulting in increased penalties. *Id.* (distinguishing facts of *Granger* from *State v. Riddle*, 301 S.C. 211, 391 S.E.2d 253 (1990) and *Clair v. State*, 324 S.C. 144, 478 S.E.2d 54 (1996)). The Court reasoned that the increase in penalties amounted to a change in the offense charged, and thus, an amendment of the indictment. *Id.*

This Court finds the trial court did not constructively amend the indictment for kidnapping. Analogous to the defendant in *Granger*, the trial judge's inclusion of the required "knowledge" element to kidnapping, in Applicant's case, did not increase the penalty for kidnapping resulting in a change to the nature of the offense. Rather, the inclusion of the "knowledge" element was a proper instruction on the offense of kidnapping. Further, this Court finds *credible* Counsel's testimony that the indictment for kidnapping provided sufficient notice to Applicant to apprise him of the kidnapping charge against him. This Court also finds *credible* Counsel's testimony that he did not have a basis to object because he did not believe the jury charge resulted in an amendment to the indictment. Thus, Applicant has not met his burden, and his claim is denied.

Failure to Object to the Kidnapping Indictment and Move to Dismiss for Insufficiency

Applicant contends Counsel was ineffective for failing to object to the kidnapping indictment and move to dismiss (squash) the indictment for insufficiency. This Court finds Applicant failed to prove Counsel was ineffective in this regard. An indictment is a notice document. *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005); *see* S.C. Code Ann. § 17-19-10 ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury..."). An indictment is sufficient if it appraises the defendant of the elements of the offense intended to be charged and appraises the defendant of what he must be prepared to meet. *Granger*, 333 S.C. at 4, 507 S.E.2d at 324. An indictment charging a statutory

crime does not need precise language from the requisite statute if the indictment contains equivalent language to the statute. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

The Calhoun County Grand Jury indicted Applicant for kidnapping. Although Applicant's indictment did not include language reflecting the "knowledge" element, Counsel testified it was his opinion that the indictment was sufficient to provide notice to Applicant of the nature, timing, and victim involved in the kidnapping charge against him. This Court finds Counsel's testimony *credible*. Further, this Court has reviewed the indictment and finds the indictment gave Applicant sufficient notice of the kidnapping charge. Thus, Applicant has failed to meet his burden, and this claim is denied.

Failure to Object to the Thirty-Year Sentence for Kidnapping

This Court finds Applicant has shown he is entitled to relief for counsel's failure to object to the court's thirty-year sentence for kidnapping. A person convicted of kidnapping "must be imprisoned for a period not to exceed thirty years *unless* sentenced for murder as provided in Section 16-3-20." S.C. Code Ann. § 16-3-910 (2015) (emphasis added). Where a defendant has been sentenced for murder of a victim, such sentence precludes a sentence for kidnapping of that victim, and any such sentence should be vacated. State v. Vick, 384 S.C. 189, 201, 682 S.E.2d 275, 281 (Ct. App. 2009). A challenge to sentencing must be raised at trial to be preserved for appellate review. Id. at 202. Counsel testified he failed to object to the thirty-year sentence for kidnapping, as Applicant had already been sentenced for murder of the same victim. (PCR Tr. 33-34). The State conceded Applicant's sentence was improper but did not concede that Applicant's conviction itself was improper. (PCR Tr. 56-57). Accordingly, this Court finds that Applicant has met his burden on this claim, and his concurrent thirty-year *sentence* for kidnapping is hereby

vacated pursuant to Section 16-3-910 of the South Carolina Code. Notwithstanding, this Court does not vacate Applicant's *conviction* for kidnapping.

Failure to Object to the "Hands of One, Hand of All" Jury Charge⁵

Applicant contends Counsel was ineffective for failing to object to the trial court's jury charge on the theory of "hands of one, hand of all." This Court finds Applicant has failed to prove Counsel was ineffective in this regard. "The law to be charged must be determined from the evidence presented at trial." State v. Ward, 347 S.C. 606, 614, 649 S.E.2d 145, 149 (2007) (quoting State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). Under the "hand of one, hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). A defendant can be convicted "on a theory of accomplice liability" even if the indictment only charges him with the principal offense. State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (quoting State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000)). Accomplice liability occurs when a defendant "personally commit[s] the crime or [is] present at the scene of the crime and intentionally, or through a common design, aid[s], abet[s], or assist[s] in the commission of that crime through some overt act." Id., (citing Langley, 334 S.C. at 648–49, 515 S.E.2d at 101).

The trial court charged the jury on the theory of "hands of one, hand of all[.]" by stating the following (Tr. 815):

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person

⁵ Applicant raised this issue in his original PCR application and testimony was elicited at the PCR hearing on this issue.

which happens as a probable or natural consequences of the acts done in carrying out the common plan and purpose.

This Court finds the trial court's jury charge on the "hands of one, hand of all" theory was proper. At trial, testimony was presented that Applicant and his co-defendant, acting together, held Victim against her will and killed her. As a result, the jury charge for "hands of one, hand of all" was proper because it was supported by evidence presented at trial.

Further, Applicant has failed to prove Counsel's failure to object to the charge resulted in prejudice. At trial, a witness, who was present at the crime scene, testified Applicant was actively involved in holding Victim against her will and shooting her. Counsel testified at the PCR hearing that he did not believe there was a basis to object because, regardless of the State's accomplice liability theory under "hands of one, hand of all," the witness' testimony provided sufficient evidence to find Applicant guilty of kidnapping and murder. This Court finds *credible* Counsel's testimony. Regardless of Counsel's failure to object, Applicant has not proven that an objection to the charge would have reasonably changed the outcome of the trial. Thus, Applicant has failed to meet his burden, and this claim is denied.

Failure to Object to Statements Made in Solicitor's Closing Arguments

This Court finds Applicant has failed to prove Counsel was ineffective for failing to object to comments made by the solicitor during closing arguments. "A solicitor's closing argument must not appeal to the personal biases of the jurors[,],... arouse the jurors' passions or prejudices, and...should stay within the record and reasonable inferences to it." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998); Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010). "The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 2471 (1986).

At the end of closing arguments, the solicitor stated the following:

And ultimately, ladies and gentlemen, your voice is going to be the strongest, loudest voice in this courtroom. What I ask of you, the people of Calhoun County, the people of the State of South Carolina, is I ask you to come back with a voice that's loud and clear, a voice that tells Jerry McKnight and Bryant McKnight that they didn't get away with murder.

Prove them wrong. Find them guilty of the brutal, cold, malicious killing of 17-year-old K. R. [REDACTED]. Prove them wrong, find them guilty of kidnapping her, and in Jerry's case, in possessing that weapon that he was not allowed to have. Thank you. (Tr. 806).

Applicant contends Counsel was ineffective for failing to object to the solicitor's comments which inflamed the passions of the jury. This Court finds Applicant failed to prove Counsel was ineffective in this regard. In Vasquez, the South Carolina Supreme Court found a solicitor's closing comments referring to a Muslim defendant as a "domestic terrorist" so infected the trial with unfairness as to result in a denial of due process. Vasquez, 388 S.C. at 464; 698 S.E.2d at 570. The solicitor's comment drew a correlation between the conduct the defendant was indicted for to the events of September 11, 2001. Id. at 452. The Court found the comments sought to inflame the passions and prejudice of the jury because reference to the events of September 11th was not related to or supported by the evidence presented at trial. Id. at 459-460.

This Court does not find the solicitor's comments inflamed the passions or prejudices of the jury. The statements made by the solicitor in Applicant's case were supported by the evidence and testimony presented at trial, and the reasonable inferences therein, unlike the solicitor in Vasquez. Counsel testified he did not object because he believed the solicitor's comments neither gave rise to "any level of passion" nor resulted in "burden shifting or improper embellishment." (PCR Tr. 34). This Court finds Counsel's testimony *credible*. Thus, Applicant has failed to meet his burden of showing deficient performance by Counsel.

Applicant contends Counsel was ineffective for failing to object to the solicitor's use of "I" during closing in an attempt to appeal to the community. This Court does not find Counsel was ineffective in this regard. A solicitor may state or comment on their version of evidence presented. Vasquez, 388 S.C. at 458, 698 S.E.2d at 566. Counsel further testified he did not believe there was a basis to object because the solicitor's use of "I" in closing was not improper as the solicitor expressed his opinion of the facts. This Court finds Counsel's testimony *credible* and finds the solicitor used "I" to express his interpretation of the facts. Thus, Applicant has failed to meet his burden of showing deficient performance by Counsel.

Applicant contends Counsel was ineffective for failing to object to the solicitor "inciting the jury to act on behalf of the community." This Court does not find Counsel was ineffective in this regard. In Brown v. State, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009), the Supreme Court found counsel was deficient for failing to object when the solicitor asked the jury to "speak up for the child victim" during his closing argument.

This Court finds the solicitor did not ask the jury to act on behalf of the community or the victim's family. Counsel also testified he did not believe there was a basis to object because the solicitor's comments did not ask the jurors to place themselves in the position of the victim's family. The Court finds Counsel's testimony *credible*. This Court also finds the statements made by solicitor in Applicant's trial merely asked the jury, in their capacities as a jury of Applicant's peers, to render a verdict against the Applicant, unlike the comments made by the solicitor in Brown. Thus, Applicant has failed to meet his burden of showing deficient performance by Counsel.

Further, this Court finds Applicant has failed to show Counsel's failure to object to *any* of the solicitor's statements so infected the trial with unfairness as to result in a denial of due process.

In Darden, the United States Supreme Court found a prosecutor's closing comments, in a capital case, referring to the defendant as an "animal" did not so infect the trial with unfairness as to make the resulting conviction a denial of due process. Darden, 477 U.S. at 181-82. According to the Court, the prosecutor's comment did not manipulate or misstate the evidence, nor did it implicate specific rights reserved by the defendant. Id. In reaching its decision, the Court found the comments did not prejudice the defendant because the evidence against the defendant was heavy: eyewitness testimony and circumstantial evidence supported a finding of guilt. Id. at 182.

The evidence against Applicant was overwhelmingly in favor of a finding of guilt, similar to the evidentiary finding in Darden. In Applicant's trial, Applicant's cousin, who was present at the scene, testified to Applicant being involved in the kidnapping and shooting the Victim. Additionally, circumstantial evidence, such as the gun purchased before the crime being the same gun used to commit the murder and Applicant's refuted alibi, supported a finding of guilt. Thus, Applicant has failed to meet his burden. This Court finds *credible* Counsel's testimony that the evidence presented at trial was "problematic" for Applicant. Applicant has failed to show that but for Counsel's failure to object, there is a reasonable probability the result of the trial would have been different. Thus, Applicant has failed meet his burden of showing both deficient performance by Counsel and resulting prejudice, and this claim is denied.

[Space left blank intentionally; conclusion follows.]

CONCLUSION

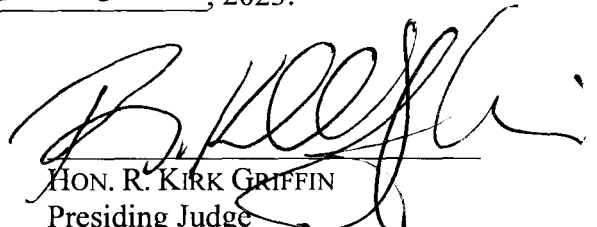
Based on the foregoing, this Court finds and concludes that Applicant has met his burden on the thirty-year kidnapping sentence and hereby vacates Applicant's sentence for kidnapping. Notwithstanding, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application on his remaining claims. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgement entry's written notice to secure appropriate appellate review. See Rule 203, SCAR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of denial of PCR. Rule 71.1 (g). SCRCP provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. Applicant's sentence for kidnapping is vacated and the remaining PCR application claims are denied and dismissed with prejudice; and
2. Applicant is to remain in custody of Respondent.

AND IT IS SO ORDERED this 13th day of October, 2023.


 HON. R. KIRK GRIFFIN
 Presiding Judge
 1st Judicial Circuit

Sumter, South Carolina.

WITNESSES

M Trentham

DOCKET NO. 2014CS09-0057

The State of South Carolina

County of CALHOUN

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

Defendant

Calhoun County Sheriff

COURT OF GENERAL SESSIONS

January 19, 2015 TERM

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

ARREST WARRANT NUMBER

2014A0910200004

Arrested: February 20, 2014

THE STATE

vs.

Defendant

TACIEN BRAND JURY

Dakota Cira

Jerry McKnight, Sr.

Witness:

C.C.C. PLS. AND G.S.

Date 1/5/15

Foreperson of Grand Jury
Date: January 5, 2015

Indictment for

MURDER

VERDICT

SC Code: 16-3-10

Foreperson of Petit Jury
Date:

2015 JAN - 5 PM 3:42

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

INDICTMENT
2014GS09-0057

At a Court of General Sessions, convened on January 5, 2015 the Grand Jurors of Calhoun County present upon their oath:

MURDER

That in Calhoun County on or about February 13, 2014, with malice aforethought, the defendant, Jerry Mcknight, Sr. did kill one K. R. [REDACTED] by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

CALHOUN

FILED

STATE

INDICTMENT/CASE#: 2014-GS-09-0057

AW#: 2014-09102-00004

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

PS12

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 14 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: 3/6/15☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§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 47.9 (Public Def/Prob)	\$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	\$
Proviso 80.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

WITNESSES

Pat Regalis

DOCKET NO. 2014GS09-0054

The State of South Carolina

County of CALHOUN

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

Defendant

Calhoun County Sheriff

COURT OF GENERAL SESSIONS

January 19, 2015 TERM

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

ARREST WARRANT NUMBER

2014A0910100041

Arrested: February 25, 2014

THE STATE
vs.

Defendant

ACTION OF GRAND JURY
TRUE BILL

Jerry Mcknight, Sr.

Witness:

C.C.C. PLS. AND G.S.

Deborah Chavis

Date: 1/5/15

Foreperson of Grand Jury

Date: January 5, 2015

Indictment for

KIDNAPPING

VERDICT

962.

Foreperson of Petit Jury

Date:

SC Code: 16-3-910

2015 JAN -5 P 6:47

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

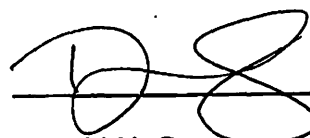
INDICTMENT
2014GS09-0054

At a Court of General Sessions, convened on January 5, 2015 the Grand Jurors of Calhoun County present upon their oath:

KIDNAPPING

That in Calhoun County, South Carolina, on or about February 13, 2014, the Defendant, Jerry Mcknight, Sr., unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, K. R. [REDACTED], without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Calhoun

STATE

INDICTMENT/CASE#: 2014-GS-09-0054

Jerry McKnight, Sr.

2015 MAR 6

AW#: 2014A0910100041

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

16-3-910

of the S.C. Code of Laws, bearing CDR Code #

0095

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST

9512

(Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/6/15☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

Marte' Murphy
2166
5/6/15

WITNESSES

Pat Regalis

965

DOCKET NO. 2014GS09-0056

The State of South Carolina

County of CALHOUN

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

Defendant

Calhoun County Sheriff

COURT OF GENERAL SESSIONS

January 19, 2015 TERM

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

ARREST WARRANT NUMBER

2014A0910100044

THE STATE

vs.

Defendant

Arrested: February 25, 2014

Jerry McKnight, Sr.

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY
TRUE BILL**

Robert Chavis

11/5/15

Foreperson of Grand Jury

Date: January 5, 2015

VERDICT

**POSESSION OF FIREARM BY
PERSON CONVICTED OF A VIOLENT
CRIME**

Indictment for

SC Code: 16-23-0500

Foreperson of Petit Jury

Date:

2015 JAN -5 P 4:48

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

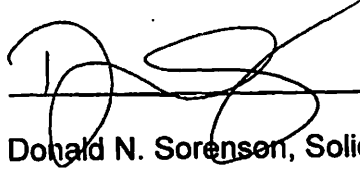
INDICTMENT
2014GS09-0056

At a Court of General Sessions, convened on January 5, 2015 the Grand Jurors of Calhoun County present upon their oath:

**POSSESSION OF FIREARM BY PERSON CONVICTED OF A VIOLENT
CRIME**

That in Calhoun County, South Carolina, on or about February 13, 2014, the Defendant, Jerry Mcknight, Sr., did have in his possession a firearm described as a .22 cal pistol, after having been convicted of a violent crime, to wit; 2003 conviction for Trafficking Crack Cocaine. This offense being in violation of Section 16-23-500, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorensen, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

CALHOUN

FILED

INDICTMENT/CASE#: 2014-GS-09-0056

AW#: 2014-A-0910100044

Date of Offense: 2/13/14

S.C. Code §: 16-23-500

CDR Code #: 3434

SENTENCE SHEET

AKA: Jerry McKnight, Sr.
 Race: B Sex: M Age: 46
 DOB: 6/10/68 SS#:
 Address:
 City, State, Zip:
 DL#
 SID#
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Poss Firearm by Person Convicted of Violent Crime

In violation of § 16-23-500 of the S.C. Code of Laws, bearing CDR Code # 3434

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 9512

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/6/15

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 18-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fines:

\$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 47.9 (Public Def/Prob)	\$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	\$
Proviso 80.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2164

Sentence Date 3/6/15

Clerk of Court/Deputy Clerk
 Court Reporter: Claudia H. Paulling
 Ruth Mett