

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Honorable G.D. Morgan, Jr., Circuit Court Judge

MAURICE DEMON MITCHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000044

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEYS FOR RESPONDENT

RECEIVED

Jun 12 2024

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 27 th – 29 th , 2017	1
INDICTMENTS AND SENTENCE SHEETS.....	408
APPLICATION FOR POST-CONVICTION RELIEF	420
RETURN.....	430
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	440
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOV. 18, 2022	441
ORDER OF DISMISSAL.....	478

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF HAMPTON) CASE NO.: 2015-GS-25-369, 373, 375
) 2016-GS-25-229

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 MAURICE DEMON MITCHELL,)
)
)
 DEFENDANT.)
)

NOVEMBER 27th -29th, 2017
COMMENCING AT
HAMPTON COUNTY COURTHOUSE
HAMPTON, SOUTH CAROLINA
BEFORE THE HONORABLE ROGER YOUNG.

APPEARANCES:

SOLICITOR ISAAC MCDUFFIE STONE, ESQUIRE
DEPUTY SOLICITOR SEAN P. THORNTON, ESQUIRE
FOURTEENTH CIRCUIT SOLICITOR'S OFFICE
BLUFFTON, SOUTH CAROLINA
Attorney for the State of South Carolina

MR. STEPHEN T. PLEXICO, ESQUIRE
FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
HAMPTON, SOUTH CAROLINA
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

INDEX

MOTION FOR HEARING.....	10
WITNESSES.....	11
<u>NEIL V. BIGGERS</u>	
WITNESS: SGT. RHETT LONG	
DIRECT EXAMINATION BY ASST. SOL. HOLLEN.....	20
CROSS-EXAMINATION BY MR. PLEXICO.....	28
EXAMINATION BY THE COURT.....	31
FURTHER CROSS-EXAMINATION BY MR. PLEXICO.....	31
DIRECT EXAMINATION BY SOLICITOR STONE.....	32
WITNESS: SHELLEVEESE STOKES	
DIRECT EXAMINATION BY ASST.SOL. HOLLEN.....	34
CROSS-EXAMINATION BY MR. PLEXICO.....	40
WITNESS: * RODNEY STOKES	
DIRECT EXAMINATION BY ASST. SOL. HOLLEN	44
CROSS-EXAMINATION BY MR. PLEXICO.....	50
<u>JACKSON V. DENNO</u>	
WITNESS: DAVID DELOACH	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	55
CROSS-EXAMINATION BY MR. PLEXICO.....	59
WITNESS: LT. BRAD DOUGHERTY	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	61
CROSS-EXAMINATION BY MR. PLEXICO.....	66
WITNESS: SGT. NICK GINN	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	67
CROSS-EXAMINATION BY MR. PLEXICO.....	78
VOIR DIRE.....	79
JURY SELECTION.....	98
DEFENSE MOTION TO SEQUESTER WITNESSES.....	115
JURY SWORN.....	116
INSTRUCTIONS BY THE COURT.....	116

OPENING STATEMENTS	
BY SOLICITOR STONE.....	124
BY MR. PLEXICO.....	127
WITNESS: CATHERINE BOZARD	
DIRECT EXAMINATION BY SOLICITOR STONE.....	129
WITNESS: OFFICER BRAD DOUGHERTY	
DIRECT EXAMINATION BY SOLICITOR STONE.....	134
CROSS EXAMINATION BY MR. PLEXICO.....	143
WITNESS: SHELLEVEESE STOKES	
DIRECT EXAMINATION BY SOLICITOR STONE.....	146
CROSS EXAMINATION BY MR. PLEXICO.....	156
REDIRECT EXAMINATION BY SOLICITOR STONE.....	158
WITNESS: RODNEY STOKES	
DIRECT EXAMINATION BY SOLICITOR STONE.....	159
CROSS EXAMINATION BY MR. PLEXICO.....	168
REDIRECT EXAMINATION BY SOLICITOR STONE.....	171
WITNESS: SGT. RICHARD LONG	
DIRECT EXAMINATION BY SOLICITOR STONE.....	172
CROSS EXAMINATION BY MR. PLEXICO.....	176
REDIRECT EXAMINATION BY SOLICITOR STONE.....	178
WITNESS: SGT. NICK GINN	
DIRECT EXAMINATION BY SOLICITOR STONE.....	179
CROSS EXAMINATION BY MR. PLEXICO.....	188
REDIRECT EXAMINATION BY SOLICITOR STONE.....	191
WITNESS: DAVID DELOACH	
DIRECT EXAMINATION BY SOLICITOR STONE.....	196
CROSS EXAMINATION BY MR. PLEXICO.....	200
WITNESS: MAJOR JAKE SULLIVAN	
DIRECT EXAMINATION BY SOLICITOR STONE.....	202
WITNESS: AGENT TIFFANY EDWARDS	
DIRECT EXAMINATION BY SOLICITOR STONE.....	204
VOIR DIRE EXAMINATION BY MR. PLEXICO.....	215
DIRECT EXAMINATION BY THE COURT.....	238
REDIRECT EXAMINATION BY SOLICITOR STONE.....	240
CROSS EXAMINATION BY MR. PLEXICO.....	240

WITNESS: <u>AGENT HALEY NELSON</u>	
PROFFER OF EXAMINATION.....	246
DIRECT EXAMINATION BY SOLICITOR STONE.....	257
CROSS EXAMINATION BY MR. PLEXICO.....	274
WITNESS: <u>AGENT ASHLEY BELL</u>	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	277
CROSS EXAMINATION BY MR. PLEXICO.....	280
WITNESS: <u>CAPTAIN ANTHONY RUSSELL</u>	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	281
WITNESS: <u>TYLER STURKIE</u>	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	283
WITNESS: <u>MICHELLE EICHENMILLER</u>	
CROSS EXAMINATION BY DEP.SOL. THORNTON.....	289
WITNESS: <u>MARYANN BOEHM</u>	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	297
DIRECT EXAMINATION BY MR. PLEXICO.....	304
REDIRECT EXAMINATION BY DEP. SOL. THORNTON.....	309
RE-CROSS-EXAMINATION BY MR. PLEXICO.....	311
WITNESS: <u>CAPTAIN ANTHONY RUSSELL</u>	
DIRECT EXAMINATION BY DEP. SOL. THORNTON.....	319
CROSS EXAMINATION BY MR. PLEXICO.....	323
WITNESS: <u>DR. FRANK DAVIS</u>	
DIRECT EXAMINATION BY SOLICITOR STONE.....	324
CROSS EXAMINATION BY MR. PLEXICO.....	335
WITNESS: <u>DR. LEE MARIE TORMOS</u>	
DIRECT EXAMINATION BY SOLICITOR STONE.....	344
STATE RESTS.....	356
DEFENSE RESTS	361
DEFENDANT'S POST VERDICT MOTIONS.....	356
DEFENDANT'S FIFTH AMENDMENT RIGHTS.....	357
CLOSING ARGUMENT	
BY SOLICITOR STONE.....	362
BY MR. PLEXICO.....	367

JURY CHARGE.....	378
EXHIBITS TO THE JURY	391
VERDICT.....	392
JURY POLLED.....	394
MR. JOE MOLE, III.....	398
SENTENCE.....	405
CERTIFICATE OF COURT REPORTER.....	406

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
ONE	PHOTO LINEUP - COLOR
TWO	PHOTO LINEUP - BLACK AND WHITE
THREE	PHOTO LINEUP - COLOR
FOUR	PHOTO LINEUP - BLACK AND WHITE
FIVE	911 CALL
SIX	PHOTO SHIRT
SEVEN	PHOTO OF PANTS
EIGHT	PHOTO OF GUN
NINE	RUGER GUN
TEN	DENTURES
ELEVEN	DENTURES
TWELVE	MIRANDA RIGHTS FORM
THIRTEEN	WHITE T-SHIRT
FOURTEEN	PANTS
FIFTEEN	SHOES
SIXTEEN	BLOOD SPOT OF EDDIE MOLE
SEVENTEEN	CRACK PACKAGE
EIGHTEEN	MITCHELL FINGERPRINT CARD
NINETEEN	FRONT DOOR PIC
TWENTY	BLOOD SPATTER ON WALL
TWENTY-ONE	LIVING ROOM FLOOR HOTOE

TWENTY-TWO	PHOTO - TOOTH WITH ROOT	
TWENTY-THREE	PHOTO - DENTURES TEETH	
TWENTY-FOUR	PHOTO OF SHELL CASING	
TWENTY-FIVE	PHOTO OF WALL WITH BULLET HOLE	
TWENTY-SIX	CLOSEUP OF WALL WITH BULLET HOLE	
TWENTY-SEVEN	WALL DUG OUT PHOTO	
TWENTY-EIGHT	PROJECTILE PHOTO	443
TWENTY-NINE	BLOOD ON DOOR KNOB IMAGE	445
THIRTY	DOOR KNOB PHOTO	
THIRTY-ONE	BLOOD ANALYSIS PHOTO LCV	
THIRTY-TWO	GSR KIT	
THIRTY-THREE	NOT ENTERED	
THIRTY-FOUR	SWAB FROM TRIGGER	
THIRTY-FIVE	SWAB FROM GUN GRIP	
THIRTY-SIX	BULLET FROM WALL	
THIRTY-EIGHT	BULLET FROM POCKET	
THIRTY-NINE	COLLECTED SWAB FROM SHIRT	
FORTY	SWAB FROM BLUE JEANS	191 353
FORTY-ONE	SWAB FROM SHOES	
FORTY-TWO	BLOOD SPATTER WALL IMAGE	
FORTY-THREE	BLOOD SPATTER MEASUREMENT IMAGE	
FORTY-FOUR	BLOOD SPATTER MEASUREMENT DISTANT	
FORTY-FIVE	BLOOD SPATTER CLOSE UP IMAGE	
FORTY-SIX	BLOOD SPATTER - EVERYWHERE PHOTO	

FORTY-SEVEN	BLOOD SPATTER MARKER M AND L
FORTY-EIGHT	BLOOD SPATTER MARKER K AND J
FORTY-NINE	BLOOD SPATTER MARKER J CLOSEUP
FIFTY	BLOOD SPATTER MARKER P - CEILING
FIFTY-ONE	BLOOD SPATTER SPOT
FIFTY-TWO	BLOOD SPATTER SPOT
FIFTY-THREE	WALL STAIRWELL PHOTO WITH SHOES
FIFTY-FOUR	STAIRWELL RIGHT SIDE PHOTO
FIFTY-FIVE	DEFENDANT'S WRITTEN STATEMENT
FIFTY-SIX	DVD - VIDEO INTERVIEW
FIFTY-SEVEN	BLOOD SWAB FROM DOOR KNOB
FIFTY-EIGHT	KNOWN/UNKNOWN FINGERPRINT
FIFTY-NINE	I.D. LARGE BAG HELD EXH. 57
SIXTY	I.D. LARGE BAG HELD EXH. 36 - 38
SIXTY-ONE	I.D. LARGE BAG HELD 39-40
SIXTY-TWO	DR. DAVIS POWER POINT DVD

COURT EXHIBITS

ONE	MIRANDA FORM
TWO	STATEMENT (2 PP.)
THREE	COLLECTION OF BLOOD FORM
FOUR	ORAL COLLECTION FOR DNA
FIVE	CLOTHING COLLECTION
SIX	NEIL V. BIGGERS HEARING PHOTO LINEUP
SEVEN	NEIL V. BIGGERS HEARING PHOTO LINEUP
EIGHT	NEIL V. BIGGERS HEARING PHOTO LINEUP

NINE	NEIL V. BIGGERS HEARING PHOTO LINEUP
TEN	DVD
ELEVEN	MOTIONS
TWELVE	RECEIPT OF DISCOVERY
THIRTEEN	JURY NOTE
FOURTEEN	JURY NOTE

DEFENSE EXHIBITS

NONE .

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

2 THE COURT: Yes, sir.

3 SOLICITOR STONE: We are ready on a number of
4 indictments regarding Maurice Demon Mitchell. Before I do
5 that, I want to nol pros one of them, Indictment Number
6 2015-GS-25-370, charging the defendant with discharging a
7 firearm into a dwelling. We don't think that's a proper
8 charge to go forward on. I'm nol prossing that and handing
9 that to the clerk.

10 We are ready at this time to go forward on Indictments
11 2016-GS-25-229, charging Mr. Mitchell with murder.
12 Indictment 372, charging him with the unlawful carrying of a
13 firearm. Indictment 2015-GS-25-369, charging him with
14 possession of crack cocaine. Indictment 2015-GS-25-375,
15 charging the defendant with burglary in the first degree.
16 Indictment 2015-GS-25-373, charging him with possession of a
17 firearm during the commission of a violent crime. And 2015-
18 GS-25-371, possession of a firearm having been convicted of
19 a crime of violence.

20 There are about three or four other motions that we
21 need to handle at this point if we can, and I will turn it
22 over to Deputy Solicitor Thornton for those.

23 DEP. SOL. THORNTON: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

1 DEP. SOL. THORNTON: Your Honor, I talked to Mr.
2 Plexico who handed me these motions and I think I can
3 shorten a couple of these up. Do you have copies of these
4 motions up there?

5 THE COURT: Electronically, I do.

6 DEP. SOL. THORNTON: Your Honor, the first motion that
7 I think we can dispose of pretty quickly is a motion to
8 suppress testimony involving footwear impression evidence.
9 We're not going to introduce any of that, so I think that is
10 moot at this point, but we would consent to it for purposes
11 of this case.

12 THE COURT: So ordered.

13 DEP. SOL. THORNTON: Your Honor, the second motion he
14 has done is a motion to suppress testimony involving blood
15 stain pattern evidence. That is a SLED expert who will not
16 be here until tomorrow, so we would ask the Court to reserve
17 that and take it up prior to her taking the stand, but we
18 would have to do that tomorrow. So we would ask the Court
19 to put that one until tomorrow.

20 THE COURT: Okay.

21 DEP. SOL. THORNTON: There is a motion to stipulate to
22 the defendant's prior conviction for common law robbery or a
23 request for severance. We would object to the severance.
24 We don't object to the Court, to us doing the stipulation,
25 although, generally, stipulations are read to the jury, and

1 I don't know that that's what Mr. Plexico has intended. The
2 State does not object though if his intent is to not have
3 that part of the indictment read to the jury, because as
4 Your Honor knows, he has prior convictions for common law
5 robbery, which supports the charge for a person in
6 possession of a handgun after having been convicted of a
7 crime of violence. But we're happy to do a stipulation and
8 read that to the jury.

9 THE COURT: All right. One of y'all come up with some
10 language that we can read to the jury.

11 MR. PLEXICO: We -- and what I meant, Judge, is that we
12 would agree on the record out of the presence of the jury
13 that he does have that conviction. I've discussed this with
14 my client. They simply would not have to prove that fact or
15 bring it out to the jury.

16 THE COURT: You're okay with them knowing that he was
17 convicted of robbery?

18 MR. PLEXICO: No, that's not what I said.

19 THE COURT: What are you saying?

20 MR. PLEXICO: On the Court record, we will agree that
21 he does have a common law, so he would only have to prove
22 that he possessed a gun, but for sentencing purposes, we
23 agree that he has that element in the record as far as the
24 record goes, but not the record in front of the jury. Do
25 you understand what I'm saying? Like stipulating if you have

1 a prior DUI first or second.

2 DEP. SOL. THORNTON: Your Honor, the difference of this
3 one is that one is a necessary -- I don't know how the jury
4 could find you guilty of that offense without finding you
5 had been convicted prior. I mean, I understand what Mr.
6 Plexico is saying, but I don't know how you could do that in
7 a case like this. This isn't a first, or second, or third,
8 where you'd have to prove the elements, and then as a
9 sentencing matter, just talk about that it's a burg one.
10 That's a necessary element of the offense. I suppose he
11 could plead guilty to it if he wanted to, but I don't know
12 how else you would do it, from an elements perspective,
13 Judge.

14 MR. PLEXICO: Your Honor, if they find him guilty of
15 possession of a pistol, then we would agree to enter a plea
16 of guilty now -- well, not now, but for the record, we would
17 agree that element is proven to the Court; it may be a
18 bifurcated matter. We agree that he has a common law
19 robbery on the record and that conviction of possession of a
20 pistol, then we agree to it. We're agreeing on the record
21 as to that. It may be a bifurcated matter, but I think it
22 would be unduly prejudicial and that's why I had the
23 alternative of a severance.

24 THE COURT: Why do you think it's unduly prejudicial?

25 MR. PLEXICO: Because he's charged with robbery now. I

1 mean, he broke in and stole the guy's wallet and shot him
2 and murdered him.

3 THE COURT: Well, it's a probative element of the crime
4 that he's charged with. I understand that it might be
5 prejudicial, because he's charged with something similar,
6 but he's charged with that and they have to prove that. I'm
7 not sure that this is just a sentencing enhancement; this is
8 an element of the crime.

9 MR. PLEXICO: Then, in the alternative, I would ask the
10 Court for a severance of that to give him a due process
11 violation to give him a fair trial. I mean, he's looking at
12 several life sentences here, easily.

13 THE COURT: Let me think about that a little bit over
14 the lunch hour and see if there is a different way to handle
15 that. They don't have to take your stipulation if it's a
16 predicate element of the crime, but I'll think about it.

17 DEP. SOL. THORNTON: Your Honor, next is a motion from
18 Mr. Plexico to hold a hearing to determine what prior crimes
19 the defendant has been convicted of and admissible under
20 609. Obviously, that would come if and when we get to that
21 point with the defendant as to whether or not he would
22 testify. We would ask the Court to hold that hearing off
23 until then.

24 THE COURT: What's he been charged with or what has he
25 been convicted of?

1 DEP. SOL. THORNTON: One is the strong armed robbery,
2 Your Honor. Court's indulgence, please.

3 He has an attempted common law robbery, Your Honor,
4 conviction from 2008. Discharging a firearm into a vehicle
5 from 2011. He has a couple of probation violations, as
6 well, and he has a failure to stop for a blue light
7 conviction from August of 2015. Those are the matters that
8 we would seek to introduce, Your Honor. Obviously, I would
9 ask the Court to let me make sure of that over the
10 overnight, but I believe that's it.

11 THE COURT: Okay. He had a strong arm robbery and an
12 attempted strong arm robbery?

13 DEP. SOL. THORNTON: I believe the strong arm is the
14 attempted common law robbery, Judge.

15 MR. PLEXICO: Your Honor, his public index says he was
16 convicted of armed robbery and he only got a six year YOA.

17 THE COURT: For armed robbery?

18 MR. PLEXICO: For armed robbery, which I don't
19 think ---

20 THE COURT: I didn't think you could get a YOA for
21 armed robbery.

22 DEP. SOL. THORNTON: You can't. That would have been
23 the common law robbery.

24 MR. PLEXICO: I don't have the sentencing sheet, but
25 his NCIC report says that he was convicted of, as I read it,

1 of common law robbery.

2 DEP. SOL. THORNTON: Your Honor, we'll look that up in
3 the clerk's records and make sure.

4 THE COURT: So you have, presumably, a strong arm
5 robbery conviction and then a discharging a firearm?

6 DEP. SOL. THORNTON: Yes, sir. Discharging a firearm
7 into a vehicle in 2011 and failure to stop for a blue light
8 in 2015.

9 THE COURT: Discharging into a vehicle, that's zero to
10 10 years?

11 DEP. SOL. THORNTON: Yes, sir.

12 THE COURT: And what was the year on that you say?

13 DEP. SOL. THORNTON: 2011, Your Honor.

14 THE COURT: How about the strong arm robbery?

15 DEP. SOL. THORNTON: 2008, Judge.

16 THE COURT: And then the failure to stop for a blue
17 light?

18 DEP. SOL. THORNTON: 2015, Your Honor.

19 THE COURT: Okay.

20 DEP. SOL. THORNTON: We will verify it, Your Honor.

21 THE COURT: Okay, what else we got?

22 DEP. SOL. THORNTON: Your Honor, in addition to that,
23 we have a requested voir dire. I thought maybe we could
24 take that up as well. This is Mr. Plexico's request and has
25 submitted one through nine. The State does have several

1 objections.

2 THE COURT: Which ones do you object to?

3 DEP. SOL. THORNTON: Number one, I always ask that the
4 word "acquaintance" be taken out. Is anyone on the jury
5 panel related by marriage, blood, or a good friend or
6 acquaintance? I just think that's too broad. A good friend
7 or a family relation, I would certainly understand. Beyond
8 that, it's too broad. Number two -- do you want me to go
9 through all of these one after the other, Judge?

10 THE COURT: Yes.

11 DEP. SOL. THORNTON: Number two, the State has no
12 objection. Three, Your Honor, the State has no objection.
13 Four, I think it's covered by Your Honor's general charges;
14 do you have any relationship to any witnesses? Five, Your
15 Honor, I would ask that it be limited to violent crime
16 rather than listing out crimes, serious assault and battery,
17 crime involving a gun, a murder, or a burglary. I think
18 violent crime would encompass all of those. Seven, Your
19 Honor, the State has no objection. Eight, Your Honor,
20 frankly, I've always considered pitting witnesses against
21 one another in front of the jury. You're asking them if
22 they would believe a law enforcement officer more than they
23 believe somebody else. And nine, Your Honor, is covered by
24 Your Honor in the general charge and it's also asking the
25 jury to answer a question that you're going to tell them

1 they can't do. In other words, do you find the defendant --
2 do you presume him guilty or he wouldn't have been arrested.
3 Your Honor covers that. I think it's unfair to ask jurors
4 that before they get charged on the law because Your Honor
5 is going to tell them that they are presumed innocent
6 several times. So those would be the State's objections,
7 Your Honor.

8 THE COURT: Do you want to respond?

9 MR. PLEXICO: Well, number one, as far as the
10 acquaintance goes, it's just how some people list it. It's
11 just a common question that judges normally ask.

12 THE COURT: I usually just say, "Is anyone related by
13 blood or connected by marriage or acquainted with them in
14 any way?" I don't know if I can not say that.

15 MR. PLEXICO: All right. Number two, I don't think
16 there is an objection. Number three, I need to know if
17 there is any relationship with witnesses. And number four,
18 this thing about ---

19 THE COURT: I will tell you, the two that cause me to
20 say -- well, are eight and nine. I typically do not allow
21 eight and nine.

22 MR. PLEXICO: I don't think it's fitting, Judge. Some
23 people have that high esteem of law enforcement and I think
24 we should know about it. You know, this is a real serious
25 case that we want solved. It involves a gun and murder.

1 THE COURT: Well, again, eight and nine are problematic
2 to me. I typically do not allow those. They tend to go
3 toward credibility of witnesses and there is a charge that
4 we cover that. I understand why you probably want to know
5 it, but I think it raises more questions in people's head
6 than satisfying the need that either the State or defendant
7 have. So I won't ask either eight or nine.

8 DEP. SOL. THORNTON: Thank you, Your Honor. Although
9 not filed by Mr. Plexico, we talked about it this morning.
10 We need to have a Biggers' Hearing in which Mr. Hollen in
11 our office is prepared to do and that will obviously take
12 testimony and then a Denno hearing in which we would ask to
13 do last. We have about an hour long videotape, which once
14 we get to that point, Judge, if you would rather take that
15 back with you and watch it or we have it ready to play out
16 here as well. I believe those are the last two motions that
17 Mr. Plexico filed.

18 THE COURT: I want to make these motions a part of the
19 Court record, Judge.

20 (Court Exhibit Number One is received into evidence.)

21 THE COURT: You want to do the Biggers, first?

22 DEP. SOL. THORNTON: Yes, Mr. Hollen from our office
23 will be handling the Biggers' hearing.

24 THE COURT: All right.

25 MR. HOLLEN: Thank you, Your Honor. We would first

1 call Sgt. Rhett Long.

2 (Whereupon, Sgt. Rhett Long is duly sworn by the
3 Clerk.)

4 NEIL V. BIGGERS HEARING

5 DIRECT EXAMINATION

6 BY ASST. SOL. HOLLEN:

7 Q Good morning, Sgt. Long.

8 A Good morning.

9 Q Sgt. Long, who do you work for?

10 A Currently I work for Savannah River Site, but I work
11 part time for the Hampton Police Department.

12 Q So you're employed part time with the Hampton Police
13 Department and full time with the Savannah River Site?

14 A Yes, sir.

15 Q What about in October of 2015, who did you work for
16 then?

17 A Full time with the Hampton Police Department.

18 Q And what was your position there?

19 A I was Sergeant with the road.

20 Q Did you respond to a call at some point on October
21 28th, 2015, to some apartments here in Hampton?

22 A Yes, I did.

23 Q And can you tell us a little bit about what you saw
24 when you first got there?

25 A When I arrived on scene, I met several witnesses in a

Neil v. Biggers Hearing
Direct Examination of Sgt. Rhett Long by Asst. Sol. Hollen

1 parking lot. There was a fight, an altercation. There was
2 a man with a gun. At that time, I saw the suspect exit the
3 apartment and take off running. They pointed him out and
4 said that was him. I gave pursuit until Lt. Drawdy then
5 pulled up and took over the pursuit. I returned to the
6 apartment to see what had transpired at the residence.

7 Q So you were one of the initial responding officers?

8 A Yes, sir. I was the first one there.

9 Q Okay. And did you enter the apartment at that time?

10 A Yes, I did.

11 Q And what did you find when you got there?

12 A At that point in time, I found a male. He was laying
13 face down on the floor who had been severely beaten from
14 what I could see at the time.

15 Q And what did you do at that point?

16 A I called for EMS and secured the scene and waited for
17 them to arrive.

18 Q Did you speak with any eyewitnesses on the scene?

19 A Yes, I did.

20 Q Who were they?

21 A Rodney Stokes and Shelleveese Stokes.

22 Q And at some point later that evening, did you show
23 anyone a photo lineup?

24 A Yes, I showed both Rodney and Shelleveese.

25 Q All right.

1 ASST. SOL. HOLLEN: Your Honor, may I approach the
2 witness?

3 THE COURT: You may.

4 Q Sgt. Long, I'm handing you what has been marked for
5 identification as State Exhibits One, Two, Three and Four.
6 Do you mind taking a look at those for me?

7 A Yes, sir.

8 Q Do you recognize those?

9 A Yes, I do.

10 Q And what are they?

11 A These are the photo lineups that were generated by SLED
12 and given to me to show both the witnesses.

13 Q All right. You said those were generated by SLED,
14 correct?

15 A Correct.

16 Q And those are the lineups you showed Rodney and
17 Shelleveese Stokes?

18 A Correct.

19 Q Have those been altered or changed in any way?

20 A Your stickers, that's it.

21 Q Stickers? Okay. So that's a fair and accurate copy of
22 the lineups that you showed them on that evening?

23 A That's correct.

24 ASST. SOL. HOLLEN: Your Honor, at this point, I would
25 ask that we submit State's One, Two, Three and Four solely

Neil v. Biggers Hearing
Direct Examination of Sgt. Rhett Long by Asst. Sol. Hollen

1 for purposes of this hearing.

2 MR. PLEXICO: May I see them?

3 ASST. SOL. HOLLEN: I apologize. Yes, sir.

4 MR. PLEXICO: I have no objection, Your Honor.

5 THE COURT: So admitted.

6 (State Exhibit Number One, photo lineup in color, is
7 received into evidence.)

8 (State Exhibit Number Two, black and white photo
9 lineup, is received into evidence.)

10 (State Exhibit Number Three, photo lineup in color, is
11 received into evidence.)

12 (State Exhibit Number Four, black and white lineup, is
13 received into evidence.)

14 Q Sgt. Long, where were you when you showed those lineups
15 to Rodney and Shelleveese Stokes?

16 A I was inside of their apartment.

17 Q And who was present for that? Did you show them all of
18 the lineups together or were they separated?

19 A They were separated.

20 Q So it was just you and whoever you were showing the
21 lineups to?

22 A That's correct.

23 Q Well, you were inside the apartment, correct?

24 A Correct.

25 Q How long after this incident did you show these lineups

1 to Rodney Stokes and Shelleveese Stokes?

2 A It had been some time. I don't know the exact
3 timeframe. We have to get in touch with SLED and they have
4 to generate the lineups. It had been quite some time that
5 night. I stayed on scene the whole time. The timeframe, I
6 couldn't exactly tell you.

7 Q That's fine. Was it the same evening?

8 A It was.

9 Q And had Rodney and Shelleveese Stokes indicated that
10 they had seen the individual prior to showing them that
11 lineup?

12 A Yes. They indicated they had seen him.

13 Q Did you speak with them about what they had seen prior
14 to showing them that lineup?

15 A Yes, I did.

16 Q All right. So you said it was just you and whoever you
17 were showing the lineup to, correct?

18 A Correct.

19 Q Did you say anything at all when you gave them those
20 lineups other than to show it to them?

21 A I gave them the basic information that these were the
22 photo lineups generated by SLED. I need you to look at them
23 and tell me if you can identify the suspect listed on these
24 pages.

25 Q All right. Let's start with one and two you have

Neil v. Biggers Hearing
Direct Examination of Sgt. Rhett Long by Asst. Sol. Hollen

1 there. Can you tell me what those are and who you showed
2 those to? They are marked on the bottom.

3 A These were shown to Shelleveese Stokes.

4 Q And what's the difference between one and two, if you
5 don't mind.

6 A One is actually in full color and two is in black and
7 white.

8 Q And you showed those to Shelleveese Stokes?

9 A That's correct.

10 Q Did you say anything when you showed those to her? Did
11 you give her any instructions?

12 A I did not. I told her they were generated by SLED and
13 that I needed her to look over them to see if she could
14 identify the suspect involved.

15 Q And did she identify anyone?

16 A She did.

17 Q What number did she identify?

18 A She circled number five, signed it, and then put her
19 date of birth on there.

20 Q Is that what you asked her to do?

21 A That is what I asked her to do.

22 Q And did she say anything when she identified the person
23 in number five?

24 A She said, "That's him."

25 Q She said, "That's him"?

1 A Yes, sir.

2 Q How certain did she appear to be in her identification?

3 A She done it almost immediately.

4 Q And when you showed her that picture, did you point at
5 anyone?

6 A No, I did not.

7 Q Did you tell her who to pick in that lineup?

8 A I did not.

9 Q Did you suggest in any way who she should pick out of
10 that lineup?

11 A No, I did not.

12 Q All right. Let's go to number three and four.

13 A Okay.

14 Q What's the difference between three and four, if you
15 don't mind?

16 A Three and four is going to be -- three is in color and
17 four is in black and white.

18 Q And who did you show those to?

19 A I showed these to Rodney Stokes.

20 Q And did you give Mr. Stokes any instructions before you
21 showed him the lineups?

22 A The same instructions I gave to Ms. Shelleveese
23 Stokes. Take a look at the photo lineup, circle whoever
24 you believe was the suspect, and then I need you to initial
25 and put your date of birth.

Neil v. Biggers Hearing
Direct Examination of Sgt. Rhett Long by Asst. Sol. Hollen

1 Q How quickly did Mr. Stokes identify the individual he
2 identified?

3 A As soon as I gave turned it towards him, he said,
4 "That's him."

5 Q So pretty quickly?

6 A Yes.

7 Q What number did he identify?

8 A He identified number five.

9 Q And who is in number five?

10 A The defendant sitting right there.

11 Q Did you point to anyone or did you show the lineup to
12 Mr. Stokes and let him choose?

13 A I did not point to anyone.

14 Q Did you tell him who to pick?

15 A I did not.

16 Q Did you suggest in any way who he should pick?

17 A I did not.

18 Q Okay.

19 ASST. SOL. HOLLEN: Your Honor, I have no further
20 questions for Sgt. Long.

21 THE COURT: Cross?

22 MR. PLEXICO: All right.

23 CROSS-EXAMINATION

24 BY MR. PLEXICO:

25 Q You never said that the individual you were looking for

1 might not be in there? Isn't that true? To either party?

2 A I never said that.

3 Q All right. You told Rodney Stokes to circle whoever
4 you believe the suspect is.

5 A That's correct.

6 Q So that would indicate that the suspect is in that
7 picture of sets; is that correct?

8 A It depends on how you take that statement, yes.

9 Q All right. And that's pretty much the same thing you
10 told Ms. Shelleveese Stokes, the other witness?

11 A That's correct.

12 Q Okay. And his picture is the only one who appears to
13 have been taken at a closer up range than the other ones; is
14 that correct?

15 A I can't answer that. I'm not responsible ---

16 Q Well, just look at it. Common sense. I'm just asking
17 to you to apply common sense.

18 A They look the same to me.

19 Q All right. Isn't his picture much lighter than the
20 other five?

21 A I mean ---

22 Q They all have dark complexions. He is the only one
23 with a lighter complexion.

24 A I can't answer. I mean, it looks the same to me.

25 Q Okay. And his picture is centered among the six?

Neil v. Biggers Hearing
Cross-Examination of Sgt. Rhett Long by Mr. Plexico

1 A Yes, it is.

2 Q And did you show them the lineup inside their
3 apartment?

4 A I did.

5 Q All right. Did you show it to Ms. Shelleveese Stokes,
6 first?

7 A I did.

8 Q And where exactly was Rodney Stokes when you were
9 showing the lineup to Ms. Stokes?

10 A He was in a separate room. I was in the kitchen area.

11 Q Okay. But he was still inside the apartment?

12 A Yes, he was still inside the apartment.

13 Q Do you know if the door was closed?

14 A I do not know.

15 Q Okay. And when you spoke to Mr. Stokes, where did you
16 speak to Mr. Stokes?

17 A In the kitchen.

18 Q And where was Ms. Stokes?

19 A She had went to where he had been located.

20 Q Okay. How did you know this?

21 A Because she exited the kitchen and went to somewhere
22 else in the apartment.

23 Q Okay. So you don't know where she went once she exited
24 the kitchen?

25 A Correct.

1 Q She could have been standing on the other side of the
2 wall?

3 A She could have been.

4 Q And Rodney Stokes could have been standing on the other
5 side of the wall?

6 A He could have been standing on the other side of the
7 wall.

8 Q And when you arrived there, you said you saw someone
9 run out of the apartment; is that correct?

10 A That's correct.

11 Q Did you pursue them?

12 A I did.

13 Q Did you ever lose sight of him?

14 A Did I ever lose sight of him?

15 Q Yes.

16 A Yes, I did when he entered the woods, I lost sight of
17 him.

18 Q Did he jump the fence?

19 A Yes.

20 Q Did you see him jump the fence?

21 A I did.

22 Q Did you jump the fence behind him?

23 A No, I did not.

24 Q Okay.

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

Neil v. Biggers Hearing
Further examination of Sgt. Rhett Long by The Court
Re-cross examination by Mr. Plexico

1 ASST. SOL. HOLLEN: Nothing further for Sgt. Long, Your
2 Honor.

3 EXAMINATION

4 BY THE COURT:

5 Q How did you come up with him as a suspect? Did the
6 people tell you they thought it was him or did they give you
7 a description?

8 A They knew who he was.

9 Q Okay.

10 MR. PLEXICO: May I follow up?

11 THE COURT: Sure.

12 FURTHER CROSS-EXAMINATION

13 BY MR. PLEXICO:

14 Q Did either Rodney Stokes -- did Rodney Stokes give you
15 the name of a person?

16 A They said he lived in the last apartment.

17 Q Who are "they"?

18 A The Stokes.

19 Q Rodney Stokes and Shelleveese Stokes together? Who
20 told you first?

21 A I can't remember that.

22 Q They were standing together?

23 A We were in the parking lot.

24 Q Okay. And how did you determine who lived in the last
25 apartment?

1

2 A I want to say we had a previous -- something had taken
3 place there previously with law enforcement. We had
4 information of who stayed in the apartment.

5 Q Who had the information?

6 A The computer.

7 Q So you plugged in the apartment's address and it came
8 up?

9 A Yes.

10 Q All right. And what apartment is that?

11 A I do not remember what apartment number it is.

12 Q And for my information, you got a face or a name?

13 A From there we got a name.

14 Q All right. How did you get a picture of him that
15 night?

16 A I do not know how we got a picture of him.

17 Q So did you submit anything to SLED?

18 A I did not do all of that.

19 Q Who did that?

20 A I have no idea.

21 MR. PLEXICO: Your Honor, I don't have anything
22 further.

23 ASST. SOL. HOLLEN: I do have some follow-up to that.

24 THE COURT: Go ahead.

25 REDIRECT EXAMINATION

Neil v. Biggers Hearing
Redirect examination of Sgt. Rhett Long by Asst. Sol. Hollen

1 BY ASST. SOL. HOLLEN:

2 Q Sgt. Long, you testified that you pursued him. At some
3 point, did you turn around or did you pursue him all of the
4 way?

5 A I had to stop. We had another officer that continued
6 the pursuit.

7 Q So you had other officers on the scene that continued
8 the pursuit?

9 A Yes, sir.

10 Q Where was the defendant caught?

11 A Highway 601.

12 Q Where is that in relation to the scene?

13 A It would be southwest, I guess you would say.

14 Q How long after this incident or after you saw the
15 individual run out of the front door, was the defendant
16 captured?

17 A Minutes.

18 Q Minutes? And Highway 601 is just on the other side of
19 the woods from the incident?

20 A That's correct.

21 Q You were given a lineup to show to Rodney Stokes and
22 Shelleveese Stokes? You had nothing to do with preparing
23 that, did you?

24 A That's correct.

25 Q You had nothing to do with preparing that, correct?

1 A That's correct.

2 ASST. SOL. HOLLEN: Nothing further, Your Honor.

3 THE COURT: All right. Do you want to make an
4 argument?

5 ASST. SOL. HOLLEN: Your Honor, I have two more
6 witnesses.

7 THE COURT: Oh, I'm sorry. Bring them on.

8 ASST. SOL. HOLLEN: The State calls Shelleveese Stokes.
9 (Whereupon, Shelleveese Stokes is duly sworn by the
10 Clerk.)

11 DIRECT EXAMINATION

12 BY ASST. SOL. HOLLEN:

13 Q Good morning, Ms. Stokes.

14 A Good morning.

15 Q Ms. Stokes, where do you live?

16 A I live at 14 Holly Street, Apartment One, in Hampton,
17 South Carolina.

18 Q How long have you lived at 14 Holly Street, Apartment
19 One?

20 A Almost three years.

21 Q Almost three years? And how did you know the victim in
22 this case, Eddie Mole?

23 A I knowed (sic) Eddie since I was a child, really, and
24 from living next door; we got kind of close.

25 Q How long had you lived next door to Eddie?

Neil v. Biggers Hearing
Direct examination of Shelleveese Stokes by Asst. Sol. Hollen

1 A About two years.

2 Q And that was before this incident happened?

3 A Yes.

4 Q Tell me about the day of the incident. Where were you
5 when you first heard something out of place?

6 A I was in my living room laying down watching TV.

7 Q And what did you hear?

8 A I heard a loud ruckus, like furniture was being moved.
9 I didn't move at first. Then, I heard Eddie.

10 Q What did you hear Eddie say?

11 A I heard Eddie say, "Please don't kill me. Don't shoot.
12 Don't kill me. Please, don't."

13 Q And did you hear anything else?

14 A I heard a gunshot.

15 Q You heard a gunshot?

16 A Yes.

17 Q What did you do after hearing the commotion and the
18 gunshot?

19 A I got up off of my couch and went to the front door,
20 pulled my front door open, saw Eddie and I saw a man.

21 Q So you saw Eddie and a man. What was going on when you
22 peeked out your door and saw all of that?

23 A I saw a lot of blood and he had a gun in his hand and I
24 immediately closed the door and got on my phone and called
25 my husband -- I was in panic mode and I called my husband to

1 come. Please get here. Somebody killed Eddie. Hurt Eddie
2 real bad.

3 Q You said "he" had a gun, are you talking about Eddie or
4 the other person?

5 A No, the other person.

6 Q The other person had a gun. When you saw the other
7 person with Eddie, did you recognize the other person?

8 A Yes, sir.

9 Q How did you recognize the person that was with Eddie?

10 A He was living out there with me. He lived right on the
11 end at the last apartment from where we live at.

12 Q So you saw him and you knew him because he lived in the
13 same apartment complex?

14 A Yes, and I seen him every day.

15 Q Did you know him by name or did you just know him by
16 sight?

17 A I know him by name.

18 Q You know him by name, okay. So you left, you closed
19 the door, and you said you called someone. Who did you
20 call?

21 A I called my husband.

22 Q And he was not home, clearly?

23 A He wasn't home.

24 Q Did you ask him to come home?

25 A I did.

Neil v. Biggers Hearing
Direct examination of Shelleveese Stokes by Asst. Sol. Hollen

1 Q And did he?

2 A He did.

3 Q And what happened when he got home?

4 A I peeked out -- we have a little window where you can
5 see, so I peeked out and I saw the facial expression on his
6 face. And I just opened the door and he came in.

7 Q All right. What did you all do after that?

8 A I wanted to go upstairs because I just had on a t-shirt
9 and I wanted to go upstairs and put some pants on, but he
10 said we got to get out of here. That fellow has a gun and
11 he's going to come in here and hurt us. So we ran out the
12 back door to a neighbor's house.

13 Q Okay. So you ran out the back door and went to a
14 neighbor's house. What did -- did you call 911? Did your
15 husband call 911?

16 A I called 911.

17 Q You called 911. What did your husband do?

18 A I don't remember.

19 Q It's okay if you don't.

20 A I really don't.

21 Q At some point later that day, well, let's talk first of
22 all about what you saw. You said you knew the individual
23 standing by Eddie immediately.

24 A Right.

25 Q How long did you get a chance to look at him?

1 A For maybe about 10 to 15 seconds.

2 Q Okay. How far is it from your door to Eddie's door, do
3 you know?

4 A It's right next door.

5 Q It's right next door?

6 A Yeah, once you open my door, it's maybe here.

7 Q So it's not very far.

8 A No.

9 Q Did you have anything obstructing your vision when you
10 saw him?

11 A No.

12 Q So it was clear and you knew who it was?

13 A Right.

14 Q Later that day, after everything happened, did you meet
15 with an officer who showed you a lineup?

16 A Yes, sir.

17 ASST. SOL. HOLLEN: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 Q I am showing you what has already been entered into
21 evidence for purposes of this hearing as State's One and
22 Two. Do you recognize those?

23 A Yes, sir.

24 Q And is that the lineup you were shown by someone on the
25 day of the incident?

Neil v. Biggers Hearing
Direct examination of Shelleveese Stokes by Asst. Sol. Hollen

1 A Yes, sir.

2 Q Do you recall which officer showed you that lineup?

3 A Brett ---

4 Q Sgt. Rhett Long?

5 A Yeah.

6 Q And when he showed you that lineup, where were you; do
7 you recall?

8 A In my kitchen.

9 Q You were in your kitchen. Who was present when he was
10 showing you that lineup?

11 A Just me and him.

12 Q Just you and him? Do you know where Mr. Stokes was?

13 A Well, he came and got him and told him they wanted to
14 do a lineup, but they couldn't do it with both of us.

15 Q Gotcha. So they asked for y'all to be separated?

16 A Right.

17 Q When Sgt. Long showed you that lineup, did he hold it,
18 lay it down, or how did he show it to you?

19 A He laid it down.

20 Q He laid it down? On the kitchen counter?

21 A Yes.

22 Q Did he point to anyone or tell you who to pick?

23 A He did not.

24 Q Did he suggest in any way who to identify out of that
25 lineup?

1 A He did not.

2 Q And did you identify anyone out of that lineup?

3 A I did.

4 Q All right. What number did you pick?

5 A Five.

6 Q You picked number five? Okay, how certain were you at
7 the time that that was the person you saw with Eddie Mole?

8 A I was 100 percent certain.

9 Q And how certain are you today that that was the person
10 you saw with Eddie Mole?

11 A Still 100 percent certain.

12 Q Ms. Stokes, is the person you identified in that lineup
13 and the person you saw on that day on October 28, 2015, do
14 you see that person in the courtroom today?

15 A Yes, sir.

16 Q Can you identify him for the record, please?

17 A That gentleman sitting with the black shirt on, seated
18 by Mr. Plexico.

19 Q Okay. Let the record reflect that she has identified
20 the defendant, Mr. Maurice Mitchell. Ms. Stokes, I don't
21 have anything else for you.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q How are you today, ma'am?

25 A I'm good. How are you?

Neil v. Biggers Hearing
Cross-examination of Shelleveese Stokes by Mr. Plexico

1 Q Just fine. Your apartment -- when you walk up to Mr.
2 Mole's door where the incident happened at, your door is
3 directly to the right?

4 A Uh-huh (affirmative).

5 Q So if the door is here -- so they are adjacent on the
6 same plane?

7 A Right.

8 Q All right. So when you opened your door, when you are
9 standing in front of your apartment, you can't see into
10 Eddie's apartment; is that correct?

11 A No.

12 Q So you never saw into Eddie's apartment that day?

13 A I never saw in. I didn't have to see in, because he
14 was standing right there.

15 Q Eddie was standing right there?

16 A No. Mr. Mitchell was standing right there. I didn't
17 have to look in. He was standing in the door frame.

18 Q Did you step out of your door to look and see what was
19 going on?

20 A I peeked my head like this. We live so close together,
21 all I had to do was peek my head out.

22 Q Okay. So what exactly did you see? Did you see the
23 full body of the person standing in the doorway?

24 A Just half. His body, I saw his legs. I saw Mr.
25 Mitchell with the gun with blood. Blood was everywhere.

1 Q Okay. Did you see his head?

2 A I did not see his head.

3 Q Okay. So you only saw the clothing? So you didn't
4 actually see the person doing this? You didn't identify the
5 face of the person who was over there at the time causing
6 all the commotion?

7 A If you mean I didn't identify Mr. Mitchell or if I
8 didn't see Mr. Mitchell, I saw Mr. Mitchell, but I could not
9 see Eddie's face. All I could see were his legs.

10 Q All right. Let's go back to the person standing at the
11 door. You said you could see the gun in his hand. You said
12 you could see the person's legs. You said you couldn't see
13 the person standing in the door; is that correct?

14 A Yeah, I did see his face. We looked at each other. He
15 looked at me and I looked at him. Yeah.

16 Q Okay. So you actually saw the person standing with the
17 gun and you saw the face of the person with the gun?

18 A Yes, sir, I did.

19 Q Okay. You gave a statement, correct?

20 A I did.

21 Q Okay. And in that statement, you never actually said
22 that person -- you said you saw a black male wearing blue
23 jean pants and a white shirt; is that correct?

24 A Yes, sir.

25 Q You never actually said a name?

Neil v. Biggers Hearing
Cross-examination of Shelleveese Stokes by Mr. Plexico

1 A I never said his name.

2 Q Is it because you didn't know the person's name; is
3 that correct.

4 A I did know his name. I don't know why -- you have to
5 realize I was in panic mode. I know Maurice Mitchell and I
6 know what he looks like. I knew that was him standing in
7 that doorway.

8 Q And how long has Maurice Mitchell lived in apartment
9 number six.

10 A I don't know how long he has been there. He's been
11 there for as long as I've been there. I see him every day.

12 Q Okay. But you said the person in number six, is that
13 who you believe you saw ---

14 A It's not number six on here; it's number five.

15 Q I'm sorry. Perhaps I wasn't clear, the person who
16 lived in apartment number six is Mr. Mitchell seated beside
17 me?

18 A Yes, sir.

19 Q Okay. And you said you saw him every day?

20 A Yeah, almost every day. Yeah.

21 Q Okay. Was your outside light on -- was it dark that
22 day?

23 A It was not.

24 Q What time did this happen?

25 A I don't remember what time it was, Mr. Plexico. It

1 was daylight. I don't remember what time of day it was.

2 Q Okay. Was it getting dark?

3 A I don't think so.

4 Q Were there any outside lights on?

5 A No.

6 Q All right. I don't have anything further.

7 ASST. SOL. HOLLEN: Nothing further from the State,
8 Your Honor.

9 THE COURT: You may step down.

10 ASST. SOL. HOLLEN: We would call Rodney Stokes.

11 (Whereupon, Mr. Rodney Stokes enters the courtroom and
12 is duly sworn by the Clerk.)

13 DIRECT EXAMINATION

14 BY ASST. SOL. HOLLEN?

15 Q Good morning, Mr. Stokes.

16 A Good morning.

17 Q Mr. Stokes, where do you live?

18 A Holly Street Apartments.

19 Q And is that Number 14 Holly Street, apartment number
20 one?

21 A Yes, sir.

22 Q All right. How long have you lived there?

23 A Going on like four years now.

24 Q So you were living there in October of 2015?

25 A Yes, sir. About a year.

Neil v. Biggers Hearing
Direct examination of Rodney Stokes by Asst. Sol. Hollen

1 Q Mr. Stokes, how did you know the victim in this case,
2 Eddie Mole?

3 A He was my next door neighbor. I stayed in apartment
4 one and he stayed in apartment two.

5 Q And how long did you live next to Eddie?

6 A A little over a year.

7 Q Do you recall getting a call from your wife on October
8 28th, 2015?

9 A Yes, sir. I was at Pizza Hut pickign up some food and
10 she called me and said, "Hurry up and get home. Somebody is
11 next door." She could hear Eddie hollering and begging for
12 his life, so I left out of Pizza Hut and was going about 50
13 to 70 miles an hour until I got to the house.

14 Q All right. About how long did it take to get to your
15 house? A About two minutes.

16 Q And what did you see when you pulled up at your house?

17 A Eddie was in the doorway and the man was standing over
18 him; the door was open. He had the pistol in his hand; had
19 a lot of blood on it. So I jumped out my car. My first
20 reaction was to help him, but he had the gun in his hand and
21 he was looking at me. There was nothing I could do but walk
22 toward my house and soon as I walked into my house I told my
23 wife we got to get out of here. We ran out the back door and
24 went to a neighbor's house and called the police.

25 Q All right. Let's back up just a little bit. You said

1 you pulled up and you saw Eddie and you saw a guy with a gun
2 in his hand. Did Eddie have the gun or did somebody else
3 have the gun?

4 A No. That man right there had the gun.

5 Q That man right there had the gun?

6 A Yeah.

7 Q You kind of nodded toward So you came home. Tell me
8 about this apartment complex. When you pulled in, could you
9 see straight inside of Eddie's door?

10 A Yeah, yeah.

11 Q And you said you lived next door to him, correct?

12 A Yeah.

13 Q All right. How long did you or about how long do you
14 think you saw the guy standing in the door with Eddie?

15 A About a good 15 seconds. By the time I pulled in and
16 turned the corner, it went in the house, it been about 15
17 seconds.

18 Q And when you saw that person with Eddie, did you know
19 who it was?

20 A Oh, yeah. He stayed in apartment six, right down from
21 mine.

22 Q So he lived in the same apartment complex. About how
23 long probably?

24 A Ever since I moved out there.

25 Q So he had lived there as long as you did?

Neil v. Biggers Hearing
Direct examination of Rodney Stokes by Asst. Sol. Hollen

1 A Yeah.

2 Q And when you saw him, was there any doubt it was him
3 standing in the doorway?

4 A No, sir.

5 Q Okay. So you said you went in your house, you got your
6 wife, and y'all went out the back door?

7 A Yes, sir.

8 Q That time when you pulled in and saw that person
9 standing in the doorway with Eddie Mole, as that the last
10 time you saw that person that night?

11 A No, sir.

12 Q When was the next time you saw him?

13 A We ran next door and called the police. The police
14 took about three minutes before they got there. So the
15 police ran around to the apartments, I was behind the police
16 and I saw when he ran out the front door and ran in the
17 woods. That's the last time I seen him.

18 Q So when the police came, he was still there?

19 A Yeah.

20 Q Did you see him run out the door at that time?

21 A Yes, sir.

22 Q Did you see him run to the woods?

23 A Yes, sir.

24 Q And do you remember what he was wearing?

25 A Some blue jeans and a t-shirt.

1 Q Some point later that night, did an officer arrive to
2 show you a photo lineup?

3 A Yes, sir.

4 ASST. SOL. HOLLEN: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q Mr. Stokes, I'm going to hand you what's already been
7 entered into evidence for purposes of this hearing as
8 State's Three and Four. Do you recognize those?

9 A Yes, sir.

10 Q Are those the lineups that you were shown that night?

11 A Yes, sir.

12 Q Where were you when you were shown that lineup?

13 A In my apartment, apartment one, in the kitchen.

14 Q And when the officers showed you that lineup, do you
15 remember how he showed it to you? Did he hold it or did he
16 lay it down?

17 A He laid it flat on the kitchen counter.

18 Q When he did that, did he point at anyone? Give you
19 instructions? Tell you who to pick?

20 A No, sir.

21 Q How long did it take for you to identify the person you
22 picked out of that lineup?

23 A About a second.

24 Q About a second. And how certain were you at that time
25 that you had identified the person you thought it was?

Neil v. Biggers Hearing
Direct examination of Rodney Stokes by Asst. Sol. Hollen

1 A 100 percent.

2 Q What number did you pick in the lineup?

3 A Number five.

4 Q Mr. Stokes, on that day, was there anything blocking
5 your vision of where you saw the person with Mr. Mole?

6 A No, sir.

7 Q About how far was it?

8 A About from me to you.

9 Q So you were pretty close. Was there anything to impair
10 your vision that night? Were you under the influence of
11 drugs or alcohol?

12 A It wasn't night. It was like 4:00, something like
13 that.

14 Q So it was still daylight?

15 A Yeah.

16 Q Mr. Stokes, do you see the person in the courtroom
17 today that you identified on that lineup or that you saw
18 with Eddie Mole that day?

19 A Yes, sir.

20 Q Can you identify him for us, please?

21 A Man over there. (Pointing to the defendant, Mr.
22 Maurice Mitchell.)

23 Q What is he wearing?

24 A A black shirt and a grey shirt and a red tie.

25 Q Let the record reflect he has identified the defendant.

1 Mr. Stokes, I don't have anything else for you. Please
2 answer any questions that Mr. Plexico may have for you.

3 CROSS-EXAMINATION

4 BY MR. PLEXICO:

5 Q Good afternoon, sir.

6 A Yes, sir.

7 Q When Sgt. Long came back to show you the pictures,
8 where were you when he was talking to Ms. Shelleveese?

9 A Before he did the lineup, he told one of us to step
10 outside on the front porch. So she did hers and then I did
11 mine.

12 Q All right. And you said you knew the defendant,
13 Maurice Mitchell, for over a year?

14 A I seen him off and on to his old lady's house.

15 Q Okay. So he was standing in the doorway when you
16 pulled up from the Pizza Hut?

17 A Yes, sir.

18 Q Okay. And then you walked practically past him to go
19 into your apartment?

20 A Yeah, exactly past him. Mr. Eddie was laying right in
21 front of him begging for his life, but he was looking at me
22 with the gun in his hand. It was all bloodied up, but for
23 some reason he let me walk past him and once I got in the
24 house, me and my wife ran out the back door

25 Q All right. And your door is how close to Mr. Mole's?

Neil v. Biggers Hearing
Cross-examination of Rodney Stokes by Mr. Plexico

1 A About from here to the judge.

2 Q All right. And does number five appear to be -- in the
3 photographic lineup, does that picture appear to be lighter
4 than all the others?

5 A It's a little lighter than the others.

6 Q Okay. He is centered; is that correct?

7 A Sir?

8 Q Is he centered in the photograph?

9 A At the bottom, Yes, sir.

10 Q All right. And his picture appears to have been taken
11 closer up shot making his face bigger than the others?

12 A That's your opinion, not mine.

13 Q Excuse me?

14 A That's your opinion, not mine. It looks the same to
15 me.

16 Q All right. But you made the statement, you just said
17 it was a black male; is that correct?

18 A No, I didn't. I said a black male stayed out at the
19 apartments we stayed at.

20 Q You didn't say, "Well, I was away and my wife called me
21 screaming saying, 'Come home. Somebody's trying to kill
22 Eddie.' So I walked up and saw the black male wearing blue
23 jeans and a white shirt"? You didn't put that in your
24 statement?

25 A If that's what's written. The question was what kind

1 of ---

2 MR. PLEXICO: May I approach the witness?

3 THE COURT: Yes.

4 Q Is this your statement?

5 A Yeah.

6 Q Would you like to review it?

7 A No.

8 Q So you just described him as a "black male" to start
9 with?

10 A To start with, yeah.

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

12 ASST. SOL. HOLLEN: Your Honor, we don't have anything
13 further.

14 THE COURT: You may step down. Anything else?

15 ASST. SOL. HOLLEN: Nothing from the State, Your Honor.

16 MR. PLEXICO: Yes, just a brief argument, Judge.

17 THE COURT: Go ahead.

18 MR. PLEXICO: Part of the -- I think the photographic
19 lineup of my client does appear to be different. It's a
20 closer-up shot of my client as compared to the other ones.
21 It makes him stand out. It's centered, which makes him stand
22 out. Then, there is a different skin tone in the black and
23 white that my guy uniquely has in the selection of six.

24 Further, Sgt. Long tells them to pick out the suspect
25 in there. He never stated that the suspect might not be in

1 there, the person they are looking for may not be in there.
2 So I think with all of those factors combined may be unduly
3 suggestive in the totality of the circumstances. I would
4 ask that we suppress the photographic lineup.

5 THE COURT: Mr. Solicitor?

6 SOLICITOR STONE: Your Honor, the lineup is composed by
7 SLED of six males who all are similar in appearance, all of
8 whom has some facial hair. Yes, the defendant's facial
9 complexion is a little lighter in that, but I do not believe
10 that makes it unduly prejudicial, especially since the fact
11 that both eyewitnesses knew this defendant for a significant
12 period of time prior to the incident. They had the
13 opportunity to witness him close up at the time of the
14 incident.

15 The lineup occurred around two hours after this whole
16 thing happened, and I think all of that combined, looking at
17 the totality of the circumstances makes this identification
18 not unduly prejudicial. So that would be our argument.

19 THE COURT: Do you wish to reply?

20 MR. PLEXICO: No, Your Honor.

21 THE COURT: Well, I don't really find a significant
22 difference in the photographs. There is a color print on
23 one of them and a black and white on the other. The shades
24 between one and the other really aren't that significant.
25 The procedure was to get SLED to generate it and it wasn't

1 put together by the officer who showed it to them. It looks
2 like the witnesses had ample opportunity to view the crime.
3 They were there when it happened. They were fully focused on
4 what was going on and wasn't a peripheral vision. It was
5 alarmingly close. They were absolutely certain of who it
6 was. They knew the person, the defendant, ahead of time.
7 There was a very short period of time between the time the
8 crime took place and the time of identification. I don't
9 find anything at all that's impermissibly suggestive in the
10 procedures nor was there anything unduly suggestive in the
11 lineup or the process of identification. So the motion is
12 denied.

13 Solicitor, did say that you have a video that would
14 take about an hour?

15 DEP. SOL. THORNTON: Your Honor, what we have -- I have
16 four witnesses I would like to put up that should be
17 relatively short to do the paperwork and Miranda forms and
18 waiver forms. And then he makes a brief statement about the
19 general location of where the gun is. They ask him on
20 scene. He was found right there at the scene. Then, they
21 take him back and Mirandize him again and he gives a
22 videotape statement.

23 The videotaped portion would be an hour. The witnesses
24 should be relatively short, because it's really two
25 statements. The very brief one about where is the gun

Jackson v. Denno Hearing
Direct examination of Officer David Deloach by Dep. Sol. Thornton

1 at and the defendant gives a general location of the gun to
2 officers on scene. And then he is Mirandized on tape with a
3 written form back at the Hampton Police Department and he
4 gives a much longer statement. That is about 56 minutes
5 long.

6 THE COURT: All right. Why don't we do this, why don't
7 we do the live witnesses portion now and then that will give
8 us the time to eat something before lunch. We will start
9 back at 2:00 and we can qualify the jury, draw the jury.
10 And if you can download the video somehow, I can watch that
11 this evening and hear argument on that in the morning.

12 DEP. SOL. THORNTON: Yes, sir. We can download that to
13 a thumb drive for you before you go home today.

14 THE COURT: Okay. Let's take five minutes and then we
15 will come back.

16 (12:25 p.m., off the record, briefly. 12:30 p.m.,
17 thereafter, the following is held on the record.)

18 THE COURT: Are we ready?

19 DEP. SOL. THORNTON: The State is ready, Your Honor.
20 Your Honor, at this time, the State calls David Deloach.

21 (Whereupon, David Deloach enters the courtroom and is
22 duly sworn.)

23 JACKSON v. DENNO EXAMINATION

24 BY DEP. SOL. THORNTON:

25 Q Mr. Deloach, I'm going to call you Officer Deloach.

1 Obviously, you are in a Hampton Police Officer uniform. Who
2 do you work for?

3 A The Hampton Police Department.

4 Q All right. And did you work for the Hampton Police
5 Department on or about October 28th, 2015?

6 A I did.

7 Q And did you respond out to a scene of what has turned
8 out to be now a murder case involving Eddie Mole, the victim
9 in this case, and the defendant in this case, Mr. Maurice
10 Mitchell?

11 A I did.

12 Q And where did you -- what address did you go to? Or
13 what apartments did you go to?

14 A It was the Kramer Apartments off of Holly Street.

15 Q And when you got there, sir, did you see anyone in
16 particular as far as the defendant or anybody else?

17 A We were given direction of -- excuse me. The subject
18 was running on foot and we were given a direction of travel.

19 Q Okay. And did you move to intercept?

20 A We moved to intercept on First Street West where we
21 seen the subject coming.

22 Q And is that in the same area as the apartments?

23 A That is directly behind the apartment that we were
24 called to.

25 Q Is that through some woods?

Jackson v. Denno Hearing
Direct examination of Officer David Deloach by Dep. Sol. Thornton

1 A Yes, sir.

2 Q And when you got there, did you make contact at some
3 point with the defendant in this case, Mr. Mitchell?

4 A Yes, I did.

5 Q And at the time, were you there when he was apprehended
6 and arrested?

7 A Yes, sir.

8 Q And did you participate in that?

9 A Yes.

10 Q And at any time did you read him his Miranda rights?

11 A Yes, sir.

12 Q And did you do that by memory? Did you use a written
13 card? How did you do that?

14 A I read it off of a card.

15 Q You got the card with you; the same card?

16 A Yes, sir.

17 Q Can you pull it out and read the rights as you read to
18 Mr. Mitchell that day?

19 A (Witness complies.) "You have the right to remain
20 silent. You do not have to make any statements or answer
21 any questions. If you give up this right, anything you say
22 may be used against you in a court of law. You have the
23 right to have an attorney present before any questions if
24 you wish. If you cannot afford an attorney, one will be
25 appointed to represent you before any questioning if you

1 wish. Do you understand these rights as I have read them to
2 you?"

3 Q And after you read those rights, I will as this, as you
4 were reading those rights, did Mr. Mitchell seem to
5 understand those rights as you read them to him?

6 A Yes, sir.

7 Q Did he seem to be under the influence of any alcohol or
8 drugs to the point he didn't know what he was doing or what
9 you were saying?

10 A Not to my recollection.

11 Q Did you ask him any questions?

12 A I did not.

13 Q Did anyone in your presence ask him any questions?

14 A I believe Lt. Drawdy was there and asked a few
15 questions.

16 Q All right. And were the questions in reference to
17 anything in particular?

18 A I believe a weapon.

19 Q And was Lt. Drawdy asking about the location of the
20 weapon?

21 A Yes.

22 Q And did the defendant provide a general location?

23 A A general location of him somewhere in the woods where
24 he was running from.

25 Q Other than that, did the defendant make any

Jackson v. Denno Hearing
Cross-examination of Officer David Deloach by Mr.Plexico

1 detailed statements at that time?

2 A No.

3 Q And what did you do after that?

4 A The subject was placed in the rear of my patrol car and
5 was transported to the police department.

6 Q Did you have any conversations or discussions about the
7 case with Mr. Mitchell on the way to the Hampton Police
8 Department?

9 A No.

10 Q Did you threaten him or try to coerce him in any way?

11 A No.

12 Q Did you give him any promises of leniency either before
13 or after reading him his Miranda rights?

14 A No.

15 Q And did anyone else promise him or threaten him in any
16 way in your presence?

17 A No.

18 DEP. SOL. THORNTON: Your Honor, at this time, I don't
19 have anything further.

20 THE COURT: Do you have anything?

21 MR. PLEXICO: I do, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q So my client never said anything to you, correct?

25 A No, sir.

1 Q That's not correct?

2 A Correct, he never said anything to me.

3 Q Okay. So he never said that he understood or heard his
4 Miranda warnings; is that correct?

5 A He stated he understood his Miranda warnings.

6 Q So he did say something to you?

7 A Correct.

8 Q What was the question you asked him on the card?

9 A I read him his warnings. I asked him if he understood
10 his Miranda warnings and he said yes.

11 Q Did he have any smell of alcohol on him?

12 A I don't recollect it.

13 Q Okay. Did you note the smell of any marijuana?

14 A I don't -- I mean -- I don't recollect.

15 Q Did you look him in the face?

16 A Yes.

17 Q How close were you to him?

18 A Standing ---

19 Q Within three feet?

20 A Within three feet.

21 Q All right. Did you look at his eyes?

22 A No.

23 Q All right. Are you trained to size somebody up to see
24 if they are under the influence of drugs before you take a
25 statement?

Jackson v. Denno Hearing
Direct examination of Lt. Brad Drawdy by Dep. Sol. Thornton

1 A No.

2 Q You are not trained to do that?

3 A That's correct.

4 MR. PLEXICO: All right. I don't have anything
5 further, Judge.

6 DEP. SOL. THORNTON: Nothing further from this witness,
7 Judge.

8 THE COURT: All right. You may step down.

9 DEP. SOL. THORNTON: The State would now call Lt. Brad
10 Drawdy to the stand.

11 (Whereupon, Lt. Brad Drawdy enters the courtroom and is
12 duly sworn by the Clerk.)

13 DIRECT EXAMINATION

14 BY DEP SOL. THORNTON:

15 Q Lt. Drawdy, I see you are in a Hampton Police
16 Department uniform. Did you work for the Hampton Police
17 Department on or about October 28th, 2015?

18 A I did.

19 Q And did you respond out to the scene -- and can you
20 give me an address to the apartments where you responded
21 that day where Maurice Mitchell is accused of killing Eddie
22 Mole?

23 A I believe we were given four -- either Four Holly
24 Street East, Apartment Two.

25 Q And were you one of the initial responding officers?

1 A I was, along with Sgt. Long.

2 Q And when you got to the scene, what, if anything, did
3 you do?

4 A Me and Sgt. Long pulled up at the same time and Sgt.
5 Long and myself we both were pulling in and the subject was
6 coming out of the apartment. I then yelled across the radio
7 that the subject was running. Sgt. Long takes off after the
8 subject down the side of the apartments. I then take my car
9 and back it up and go to the opposite side as Sgt. Long is
10 proceeding to chase him. I then get out my car and proceed
11 to chase him also. And as he jumps up in behind the other
12 set of apartments, I go around the fence and pursue him
13 through the woods. As I am pursuing him through the woods,
14 I am giving directions to the other officers on the way that
15 are -- telling them which way he is headed and that's when
16 Sgt. Ginn and Deloach cut him off in the vehicle and get
17 out.

18 Q So this place that -- and when you say "he" any
19 particular person you are talking about?

20 A This defendant.

21 Q And let me ask you this, when he was arrested, when the
22 defendant was apprehended, how far are we talking about from
23 Eddie Mole's apartment to where he is grabbed?

24 A Probably a good hundred to a hundred and fifty yards I
25 would say.

Jackson v. Denno Hearing
Direct examination of Lt. Brad Drawdy by Dep. Sol. Thornton

1 Q So close to the same place?

2 A Yes, sir.

3 Q And you said that you had chased him through the woods
4 and on the other side of the woods, is that where he was
5 arrested?

6 A Yes, it was. Right at the edge of the woodline. He
7 came out by a little ditch and we all converged on him right
8 there.

9 Q Okay. At some point, were you then standing near the
10 defendant in this case?

11 A I'm actually the one who put the handcuffs on him.

12 Q When you put the handcuffs on him, at some point, did
13 someone in your presence read him his Miranda Rights?

14 A Yes, sir, Sgt. Ginn actually advised to make sure we
15 read the Miranda and at the time I was handcuffing so I
16 asked Officer Deloach and at that time he pulled out his
17 card and read it to him.

18 Q And he read the rights off the card?

19 A Yes, sir.

20 Q And while he was doing that, did Mr. Mitchell seem to
21 understand his rights?

22 A He did.

23 Q And did he agree to -- or did he make any statements to
24 you?

25 A He acknowledged them and then he went on to ask him

1 about the gun.

2 Q All right. Let me ask you a question. When you were
3 dispatched out there, did you already have information
4 provided that there was a gun involved?

5 A We did. We did.

6 Q So at that time, you asked him about the gun? Did he
7 make any statement?

8 A Yes, sir, he said he dropped it in the woods.

9 Q And was he -- where was he running through?

10 A Running through the woods.

11 Q So he gave you a general description of where he had
12 dropped the firearm?

13 A Yes, sir.

14 Q Did he make any other statements at that time?

15 A He actually did. He said his kids were left in the
16 apartment, his apartment.

17 Q At the time, did you know which apartment that was?

18 A No, I did not.

19 Q Other than that, did he make any statements?

20 A No, sir.

21 Q Did you try to question him anymore at that time?

22 A No, sir.

23 Q And what did you do in response to what he told you?

24 A Once he was placed in the vehicle and taken away, I
25 immediately started searching the woods for the weapon.

Jackson v. Denno Hearing
Direct examination of Lt. Brad Drawdy by Dep. Sol. Thornton

1 Q Did he appear, when you asked him about the gun and
2 where the weapon was, did he appear to understand what you
3 were asking him?

4 A Oh, absolutely.

5 Q And was he able to communicate with you in a clear
6 manner?

7 A Yes, sir.

8 Q Did he appear to be under the influence of alcohol and
9 drugs to the extent that he didn't know what was going on?

10 A No.

11 Q Did you or anybody in your presence, and you've
12 indicated whether that be Sgt. Ginn or Officer Long who was
13 there, did anyone in your presence, or you, threaten the
14 defendant in any way or try to coerce him to try to get him
15 to talk to you?

16 A No, sir.

17 Q Did you make him any promises of leniency or did anyone
18 else in your presence?

19 A No, sir.

20 DEP. SOL. THORNTON: Your Honor, I don't have any
21 further questions at this time. Lt. Drawdy, please answer
22 any questions that Mr. Plexico may have.

23 THE COURT: Okay.

24 CROSS-EXAMINATION

25 BY MR. PLEXICO:

1 Q You said he acknowledged his rights, what exactly did
2 he say?

3 A I don't recollect, but I would make sure somebody would
4 acknowledge whether they do or do not understand. I do not
5 know his exact words.

6 Q Okay. So you were very close to him during this time?

7 A Yes, I was.

8 Q Did he have the smell of marijuana about him?

9 A Not that I can recall.

10 Q Did he have a smell of alcohol about him?

11 A Not that I can recall.

12 Q Did you look him in the eyes?

13 A Yes, sir.

14 Q And did they appear glassy or bloodshot or pupils
15 dilated or small or anything like that?

16 A Not that I can recall or remember.

17 Q Okay. None that you noted?

18 A Yeah, none that I noted.

19 Q All right. What exactly did you ask him about the gun?

20 A I asked him where it was.

21 Q And what did he say?

22 A He said he had dropped it in the woods.

23 Q And what time was all this?

24 A I believe we got the call about five after six, so
25 sometime after that. I don't know the exact time. We

Jackson v. Denno Hearing
Direct examination of Sgt. Nick Ginn by Dep. Sol. Thornton

1 were on scene within a couple of minutes and long enough for
2 a quick foot chase.

3 Q Was it still daylight?

4 A At that time, it was. It was starting -- I wouldn't
5 say dark, but the sun was starting to probably go down, but
6 it was still daylight.

7 Q So the sun was down, but you could still see?

8 A I'm not -- the sun was starting to set. I wouldn't say
9 it was down. October, you know, 6:00 in October, the sun is
10 starting to go down

11 Q Did you lose sight of the person you were chasing?

12 A No.

13 MR. PLEXICO: All right. I don't have anything
14 further, Your Honor.

15 DEP. SOL. THORNTON: I don't have anything else at this
16 time, Your Honor. Thank you, Sgt. Drawdy. The State would
17 call Sgt. Nick Ginn to the stand.

18 (Whereupon, Sgt. Nick Ginn enters the courtroom and is
19 duly sworn by the Clerk.)

20 DIRECT EXAMINATION

21 BY DEP. SOL. THORNTON:

22 Q Sgt. Ginn, on or about October 28th, 2015, who did you
23 work with, sir?

24 A I worked with the Hampton Police Department.

25 Q And on that date, did you respond out to the scene

1 involving Maurice Mitchell and Eddie Mole?

2 A Yes, I did.

3 Q And at some point, did you come into contact on October
4 28th, 2015, with the defendant in this case, Maurice
5 Mitchell?

6 A Yes, sir.

7 Q And did you at some point on the evening of the 28th,
8 talk to Mr. Mitchell, the defendant in this case?

9 A Yes, sir. Initially, I made contact with him on 601
10 South, first Street West.

11 Q I'm sorry, is that where he was arrested?

12 A That's where he came out of the woodline, yes, sir. I
13 saw him come out of the woodline. He matched the
14 description of what Lt. Drawdy was giving over the radio and
15 at that point, I drew my weapon because we knew there was a
16 gun involved and ordered him to the ground and that's when
17 Lt. Drawdy started handcuffing him.

18 Q And were you present with him when his rights were read
19 to him?

20 A Yes, I was.

21 Q And did you hear those rights being read to him?

22 A Yes, I did.

23 Q And at that time, did anyone either yourself or anybody
24 else threaten him or promise him anything to get him to
25 talk?

Jackson v. Denno Hearing
Direct examination of Sgt. Nick Ginn by Dep. Sol. Thornton

1 A No, sir.

2 Q Once his rights were read to him, was he able to
3 communicate back?

4 A Yes, sir.

5 Q Did he seem to be under the influence of any alcohol or
6 drugs to the extent that he didn't know what was going on?

7 A No, sir.

8 Q Did you talk to Mr. Mitchell again later that evening?

9 A I did.

10 Q I'm handing you, first, what has been marked as Court
11 Exhibit Number one and ask if you can identify that.

12 A Yes, sir. These are the Miranda rights that I read to
13 him on video that he acknowledged and waived his rights and
14 stated that he would talk with myself and Captain Russell.

15 Q All right. Would you go through those rights quickly,
16 please.

17 A You have the right to remain silent. You do not have
18 to make any statements or answer any questions. If you give
19 up this right, anything you say can and will be used against
20 you in a court of law. You have the right to have an
21 attorney present before any questions if you wish. If you
22 cannot afford an attorney, one will be appointed to
23 represent you before any questioning if you wish. You can
24 decide at any time to exercise these rights and not make any
25 statements. Do you understand these rights as I have read

1 them to you? Having these rights in mind, do you wish to
2 talk with us?

3 Q And did you read those rights to Maurice Mitchell at
4 the Hampton Police Department?

5 A Yes, word for word.

6 Q And did he indicate that he understood those rights?

7 A Yes, sir.

8 Q And did he wish to waive those rights?

9 A Yes, sir.

10 Q And at that time, did he talk to you about the murder
11 involving -- well, at the time it was attempted murder, of
12 Eddie Mole?

13 A Yes, he did.

14 Q Has that document been altered or changed in any way,
15 obviously there is a sticker on it now for Court.

16 A That's it, just the sticker.

17 DEP. SOL. THORNTON: Your Honor, at this time, and I've
18 shown Mr. Plexico, I ask that Court Exhibit One be entered
19 into evidence for purposes of this hearing.

20 MR. PLEXICO: Without objection.

21 THE COURT: Admitted.

22 (Court Exhibit Number One, Miranda Rights Form, is
23 received into evidence.)

24 Q You mentioned something earlier about a video, is that
25 -- I've referred the judge to a videotape. Was your

Jackson v. Denno Hearing
Direct examination of Sgt. Nick Ginn by Dep. Sol. Thornton

1 interview videotaped?

2 A Yes, sir.

3 Q Who else was in the room with you?

4 A Captain Anthony Russell with the Sheriff's Office.

5 Q And is Captain Russell's signature also on this form,
6 Court Exhibit Number one?

7 A It is.

8 Q And I hand you up what has been marked as Court Exhibit
9 Number Two and ask if you can identify that.

10 A After the Mr. Mitchell, I read him his Miranda Rights,
11 I asked him if he would provide a voluntary statement and
12 this is the voluntary statement he completed later on after
13 the interview.

14 Q And does him doing that, is that also on a videotape?

15 A Yes, sir.

16 Q Does that document appear to be altered or changed in
17 any way?

18 A No, sir, other than the sticker and Captain Russell's
19 signature is also affixed on there.

20 DEP. SOL. THORNTON: Your Honor, I would ask at this
21 time that Court's Exhibit Number two be entered into
22 evidence for the purposes of this hearing.

23 MR. PLEXICO: No objection.

24 THE COURT: Admitted.

25 (Court Exhibit Number Two, Statement of Maurice

1 Mitchell, is received into evidence.)

2 Q I hand you now, Court's Three, and ask if you can
3 identify that.

4 A This is the form for collection of blood for DNA
5 purposes, which also has the Miranda Rights on it again that
6 Maurice Mitchell has initialed and signed.

7 Q And what is that for? It would appear that there are a
8 lot of different things this could be used for, DNA, buccal
9 swabs. What is that one for?

10 A This one is specifically for blood for DNA purposes.

11 Q All right. And could you go through the rights,
12 please.

13 A Yes, sir. You have the right to refuse to consent to
14 the collection of your hair, blood, saliva, etc. Anything
15 collected can and will be used against you in a court of
16 law. You have the right to talk to a lawyer and him present
17 with you while these samples are being collected from you.
18 If you cannot afford to hire a lawyer, one will be appointed
19 to represent you before giving samples. You can decide at
20 any time to exercise these rights and not consent to the
21 collection of the above samples.

22 Q And would you read the paragraph that is underneath
23 that, please.

24 A I am giving this written permission to these officers
25 freely, voluntarily without any threats or promises having

Jackson v. Denno Hearing
Direct examination of Sgt. Nick Ginn by Dep. Sol. Thornton

1 been made. I understand I have the right to refuse to this
2 collection. I have read and have had read to me the above
3 statement of my rights and I understand each of these
4 rights. Having these rights in mind, I waive them and I
5 willingly make a statement. Signed by Maurice Mitchell.

6 Q Is that an accurate copy of that document, other than
7 the sticker?

8 A Yes, sir.

9 Q Has it been altered or changed in any way?

10 A No, sir.

11 Q Would you also please look at Court's Four and Five and
12 are those the same form but filled out for different things?

13 A Yes, sir. Court's Four is for DNA oral swab and
14 Court's Five is clothing and any other article that would be
15 pertinent to the investigation.

16 Q And I'm going to hand you back Court's Three. So you
17 now have Court's Three, Four and Five that have been marked
18 for identification. Is there a space on there for time,
19 like what time this rights form is done?

20 A Yes, sir.

21 Q And are they all three done at different times?
22 Relatively close, but different?

23 A Correct.

24 Q So did you read each and every one of those rights each
25 time you did one of these forms to Mr. Mitchell?

1 A Yes, sir, each time.

2 Q Did he, throughout this entire process, seem to
3 indicate to you that he understood what he was doing?

4 A Yes, sir. He did not seem impaired at all.

5 Q I'm looking at the statement, you know, sometimes
6 people write this themselves and sometimes they have an
7 officer write it for them. Did Mr. Mitchell write Court's
8 Exhibit Two, which is over a page statement?

9 A He did write his statement.

10 Q And he did that on his own?

11 A Yes, sir.

12 Q As to Court's Three, Four and Five, have they been
13 altered or changed in any way, other than the sticker?

14 A No, sir.

15 DEP. SOL. THORNTON: Your Honor, at this time, for the
16 purposes of this hearing, the State would ask that Court's
17 Three, Four and Five be admitted as evidence.

18 MR. PLEXICO: No objection.

19 THE COURT: So admitted.

20 (Court Exhibit Number Three, Collection of blood form,
21 is received into evidence.)

22 (Court Exhibit Number Four, Collection of oral DNA -
23 buccal swab, is received into evidence.)

24 (Court Exhibit Number Five, collection of clothing, is
25 received into evidence.)

Jackson v. Denno Hearing
Direct examination of Sgt. Nick Ginn by Dep. Sol. Thornton

1 Q Now, as to the videotape, let me hand you what's been
2 marked as Court Exhibit Number 10. Your Honor, we do not
3 have a sticker on that yet, and the court reporter is going
4 to help me with that tomorrow, but I have written on it
5 Court's Ten and shown it to Mr. Plexico.

6 THE COURT: All right.

7 Q Can you identify the disc that is in that envelope?

8 A Yes, sir. This is the interview that was recorded on
9 video at the Hampton Police Department.

10 Q And I believe some of the dead space is like when he is
11 writing his interview, and some of that has been edited out
12 of that, but Your Honor, that would be what we would seek to
13 introduce in the statement is on that disc. How do you know
14 that that is the disc that you reviewed?

15 A Because I have my signature and the date on it.

16 Q Is Captain Russell's also on there?

17 A It is, yes, sir.

18 Q All right.

19 DEP. SOL. THORNTON: Your Honor, for the purposes of
20 this hearing, and we will give Your Honor a copy of this on
21 a thumb drive, but I did want to introduce it as a present
22 Court's Exhibit.

23 THE COURT: All right.

24 MR. PLEXICO: No objection.

25 Q During the videotape, I understand we have edited

1 out some of the very long pauses, but was it a continuous
2 recording?

3 A Yes, sir.

4 Q And at any time, and obviously, it is on the tape, but
5 at any time, did you or anyone in your presence threaten or
6 coerce Mr. Mitchell to get him to make a statement?

7 A No, sir.

8 Q Did you make promises of leniency?

9 A No, sir.

10 Q At any time, did he appear to not understand what was
11 going on or what he was doing?

12 A No, sir.

13 DEP. SOL. THORNTON: Your Honor, Court's indulgence,
14 please.

15 (Brief pause.)

16 DEP. SOL. THORNTON: Thank you very much, Your Honor,
17 nothing else for this witness.

18 CROSS-EXAMINATION

19 BY MR. PLEXICO:

20 Q Do you know my client?

21 A Yes, sir.

22 Q Did you know him before this?

23 A No, sir.

24 Q Do you know anything about his educational level?

25 A I do not.

1 Q Did you make any attempt to assess his educational
2 level?

3 A I did not.

4 Q Do you know if he has any hearing difficulties?

5 A I do not.

6 Q Do you know if he has any eyesight difficulties?

7 A I'm sorry?

8 Q Do you know if he has any eyesight difficulties?

9 A I do not.

10 Q you wouldn't know how far he went in school?

11 A I do not.

12 Q All right. Did you smell any alcohol or marijuana on
13 him?

14 A I don't recall.

15 Q Did you look for that?

16 A Did I look for that?

17 Q Yes.

18 A No, sir.

19 Q Okay. What is your training to assess somebody to know
20 whether or not they are capable of making a statement to law
21 enforcement?

22 A If we can have an adult-like conversation or if their
23 speech is not slurred or doesn't seem impaired, then I would
24 assume they have a decent education level. He can read and
25 write.

1 Q All right. I don't have anything further questions.

2 REDIRECT EXAMINATION

3 BY DEP. SOL. THORNTON

4 Q He did write his own statement, correct?

5 A That's correct.

6 DEP. SOL. THORNTON: Your Honor, I don't have anything
7 further for Sgt. Ginn. And I have Captain Russell, but I
8 think he would frankly be superfluous, unless the Court
9 needs anything, I think we would rest on that as to the
10 statement. Technically, there are three statements. One is
11 about the gun on the scene. It's his written statement that
12 he does on videotape in the actual videotaped session that
13 is ongoing at that time.

14 THE COURT: All right. You may step down.

15 All right. Well, let's break for now. It's 1:00 and
16 the jury is coming in at 2:00. We will draw a jury and see
17 where we are at that point. Anything else before we break?

18 DEP. SOL. THORNTON: Nothing from the State.

19 MR. PLEXICO: Nothing from the defense.

20 THE COURT: All right. See y'all at 2:00.

21 (Whereupon, the trial in this case is adjourned for
22 lunch. Therefore, at 2:00 p.m., the following is held on
23 the record in front of the jury.)

24

25

1

VOIR DIRE

2

BY THE COURT:

3

4

5

6

7

Okay. Well, you are our jury pool, now, and so the next phase that we move into is what we call voir dire, or as I like to tease my wife who is from Lexington, it's called the voir dire. It's a southern thing, but that's the way my wife says it.

8

9

10

11

12

13

14

15

16

Voir dire is simply the process where we now narrow down the questions to those that are case specific. We are just trying to find out again if there are 12 people, plus two alternates, who can sit and listen to this case who don't have any preconceived ideas of what the outcome will be, they don't know any of the parties or know anything about the case, know any of the witnesses, or any of the lawyers for that matter, to the extent that it would affect your ability to be fair and impartial in this case.

17

18

19

20

21

Again, we're not trying to pry. None of these questions are designed to embarrass you. There are some questions that might cause you to say, well, I would really like to speak a little more privately about this. You just come up and we will talk about it a little more privately.

22

23

24

25

Now, this is the case of the State of South Carolina v. Maurice Demon Mitchell. The State of South Carolina prosecutes their cases through prosecutors in our State called Solicitors. And we have 16 judicial circuits in this

1 state. We are in the 14th Judicial Circuit. Your solicitor
2 for the 14th Judicial Circuit is Mr. Isaac McDuffie Stone
3 who is sitting right over here. Mr. Stone would you please
4 stand? (Sol. Stone stands.)

5 Mr. Stone is prosecuting this case this week along with
6 Mr. Sean Thornton, who is standing there before you right
7 now. Thank you. You may be seated.

8 Is there any member of the jury panel who is related by
9 blood, marriage, or a close personal friend in any way with
10 either of these two gentleman? Either on a personal level
11 or a professional level. For instance, you may have been
12 prosecuted by the Solicitor's Office before or one of your
13 immediate family members or good personal friends may have
14 been prosecuted by the Solicitor's Office before. If so, I
15 would like you to stand and give me your name and number.

16 (NO RESPONSE.)

17 THE COURT: All right. I find none. Is there any
18 member of the jury panel who either you or one of your
19 immediate family members or close personal friends ever been
20 employed by the 14th Judicial Circuit? If so, please stand.

21 (NO RESPONSE.)

22 THE COURT: Okay. I find none. Now, the defendant in
23 this case is Maurice Mitchell. Mr. Mitchell, would you
24 stand and face the jury panel, please. (Mr. Mitchell
25 stands.)

1 THE COURT: This is Mr. Maurice Mitchell. Is there any
2 member of the jury panel who is related by blood or marriage
3 or acquainted in any way by Mr. Maurice Mitchell? Would you
4 please stand?

5 (NO RESPONSE.)

6 THE COURT: All right. I find none. He is represented
7 by Mr. Steve Plexico, who is now standing before you. Is
8 there any member of the jury panel who is related by blood
9 or marriage or acquainted in any way with Mr. Plexico or
10 perhaps you've been represented by him in the past? If so,
11 please stand.

12 (JUROR STANDS.)

13 THE COURT: Yes, ma'am, your name and number.

14 JUROR: My jury number is 41.

15 THE COURT: What would you tell me?

16 JUROR: That Mr. Plexico was my public defender.

17 THE COURT: How long ago was that?

18 JUROR: That was like back in ---

19 THE COURT: Would that affect your ability to be fair
20 and impartial either for or against the State or for or
21 against the defense?

22 JUROR: No, sir.

23 THE COURT: Okay. Anyone else?

24 (NO RESPONSE.)

25 THE COURT: All right. Now, I told you the State of

1 South Carolina is prosecuting this case and the defendant is
2 Mr. Maurice Mitchell. There are four charges that the State
3 has brought against Mr. Mitchell this week. I'm going to
4 talk to you about those and explain what these charges
5 represent. The main reason I'm going to tell you about them
6 is because I need to know if anybody knows anything about
7 this case. But there are four charges and they are brought
8 to the jurisdiction of this Court by way of what we call
9 indictments.

10 Do you remember when we were talking about qualifying
11 the jury and I asked if anybody had served on the grand jury
12 within the last five years? All right, well, the grand jury
13 is one of these holdovers from the old days from the common
14 law of the King of England and it actually goes way back and
15 has origins in the Magna Carta some 800 years ago now, and
16 hopefully a short story out of the long story out of history
17 of how we got the grand jury is kinds back when we had the
18 Norman Conquest when we had what is now known as the
19 beginnings of Great Britain or the United Kingdom.

20 The kings of England, they weren't the nice guys that
21 you see like Queen Elizabeth now; and you go, who could have
22 a problem with Queen Elizabeth: She is such a nice lady.
23 Well, they weren't always so nice. They would often take
24 being king to be a big deal, and it is a big deal. But one
25 of the things they would do is if they didn't like you, they

1 would often throw you into jail without giving you a trial.
2 Or they would give you a trial and you didn't even know what
3 you were charged with. It would be one of those deals where
4 they would arrest you and put you in a courtroom and a judge
5 would hear the evidence; you weren't even sure what you were
6 on trial for and you got convicted and put away. Well,
7 those were abuses that led to the creation of the Magna
8 Carta that led to our present grand jury system. And the
9 grand jury system is really designed to be a buffer between
10 the governing ability to arrest somebody and put them on
11 trial and your rights as a United States citizen. We don't
12 have kings, obviously, but we do have the grand jury; and
13 the grand jury they meet about once a month. There is
14 usually an officer who will give a recital of some facts to
15 the grand jury and if 12 out of those 18 agree that there is
16 reason to believe that a crime has been committed and it's a
17 possibility that a particular person did it, and then they
18 will issue what is called a true bill of indictment. That
19 person has been arrested and brought before the court to
20 stand trial. An indictment is a charging instrument or an
21 arresting instrument that serves two purposes: (1) it puts
22 the defendant on notice of what he or she is charged with or
23 what he or she will stand trial for, and (2), it gives this
24 Court jurisdiction to hear the case.

25 An indictment is not evidence. The fact that somebody

1 is arrested for a crime in this state is not evidence. That
2 is an important constitutional right that you have, that I
3 have, and that the defendant has in this courtroom. All of
4 us share that right. We don't have to prove we are
5 innocent. The State has to prove that we are guilty when
6 they charge us with a crime. So the fact that he was
7 indicted is not to be considered by you as evidence. The
8 indictments themselves are the only pieces of paper that
9 will go back in the jury room with you when you deliberate
10 your verdict. That is not evidence in the trial, and the
11 only reason that it's going back then is so the foreman of
12 the jury can write down what the verdict is, either guilty
13 or not guilty. But I stress to you that the fact that a
14 person has been indicted and charged with crimes that I'm
15 about to tell you about is not to be considered by you as
16 evidence of guilt.

17 Evidence is going to come from people getting up on the
18 witness stand and telling you what they saw, they heard,
19 they touched, they felt, they smelt. There might be
20 photographs or other documents or pieces of paper, those are
21 evidence. But these charging documents are not evidence.
22 All right? But they do tell Mr. Mitchell the crimes he is
23 charged with and what he is to come to Court to stand trial
24 on this week. There are four charges and I am going to read
25 them to you. My main purpose again, is to tell you what

1 this case is about and to see if anybody knows anything
2 about this case.

3 Now, there are four indictments. The first is 2016-GS-
4 25-229 and this is an indictment for murder. This
5 indictment alleges that in Hampton County on or about
6 October 28th, 2015, that the defendant, Maurice Mitchell,
7 did with malice aforethought kill Eddie Mole and Eddie Mole
8 did die as a proximate result of Maurice Mitchell's actions
9 to wit shooting him and/or striking him with a firearm, all
10 in violation of 16-3-10 of the South Carolina Code of Laws.

11 The second indictment is Indictment 2015-GS-25-375, and
12 it is for burglary in the first degree. It alleges that in
13 Hampton County, South Carolina, on or about October 28th,
14 2015, the defendant Maurice Mitchell did enter a dwelling
15 without consent and with intent to commit a crime therein,
16 and when in effecting entry or while in the dwelling or
17 immediate flight there from, the defendant was armed with a
18 deadly weapon. Or the defendant or another participant in
19 the crime caused physical injury to Eddie Mole who was not a
20 participant in the crime. Or the defendant visibly
21 displayed what was or appeared to be a pistol, revolver,
22 rifle, shotgun, or other firearm or remained in the premises
23 in the nighttime all in violation of 16-3-311 of the South
24 Carolina Code of Laws.

25 The third indictment is Indictment 2015-GS-25-373 and

1 it alleges possession of a weapon during the commission of a
2 violent crime. It alleges that in Hampton County, South
3 Carolina, on or about October 28th, 2015, the defendant,
4 Maurice Mitchell, did possess a firearm, visibly displayed
5 what appeared to be a firearm, or visibly displayed a knife
6 during the commission of a violent crime to wit burglary
7 first degree and/or murder, a violent crime is defined in
8 Section 16-1-60, all in violation of 16-23-490 of the South
9 Carolina Code of Laws.

10 The fourth indictment is 2015-GS-25-369. It is for
11 possession of crack cocaine and it alleges that in Hampton
12 County, South Carolina, on or about October 28th, 2015, the
13 defendant, Maurice Mitchell, did possess a controlled
14 substance or a controlled substance analog in the amount to
15 wit cocaine base, known as crack, all in violation of
16 Section 44-53-375(a) of the South Carolina Code of Laws.

17 Is there any member of the jury panel who knows
18 anything at all about this case as a result of me reading
19 the indictments? If so, please stand.

20 ((NO RESPONSE.))

21 THE COURT: Okay, I find none. Is there any member of
22 the jury panel who is related by blood, connected by
23 marriage or a close personal friend with any member of any
24 law enforcement agency? If so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Okay, I find none. Any member of the jury
2 panel who is related by blood, connected by marriage or a
3 close personal friend with anyone who is employed with any
4 State, Federal prosecution office? If so, please stand.

5 (NO RESPONSE.)

6 THE COURT: I find none. Any member of the jury panel
7 or one of your close relatives ever been employed by any
8 civilian or military law enforcement agency? If so, please
9 stand.

10 (NO RESPONSE.)

11 THE COURT: I find none. Can we have a list of the
12 witnesses?

13 SOLICITOR STONE: I gave that to your law clerk.

14 THE COURT: All right. I'm going to call out the names
15 of the potential witnesses in this case. Not all of these
16 people will necessarily be called. I'm going to call out
17 all the names of people who might be called because later on
18 if somebody gets called and we didn't bring it up, it would
19 be too late to do anything about it. These are people who
20 might be called as witnesses. So I'm going to ask if you
21 are related by blood, connected by marriage or are a close
22 personal friend with any of these people when I call their
23 name out, if you would please stand.

24 Officer David Deloach with the Hampton Police
25 Department. Lt. Brad Drawdy with Hampton Police Department.

1 Sgt. Nick Ginn with the Hampton Police Department. Sgt.
2 Richard Long with the Hampton Police Department. Yes, sir,
3 your name and number?

4 JUROR: Dakota Moseley, 100.

5 THE COURT: And you know Sgt. Richard Long?

6 JUROR: Yes, sir, he is married to my cousin.

7 THE COURT: All right. So the fact that he is married
8 to your cousin, if he is called as a witness in this case,
9 would that affect your ability to be fair and impartial?

10 JUROR: No.

11 THE COURT: All right. Thank you. Yes, sir, your name
12 and number.

13 JUROR: Douglas Cook, number 27.

14 THE COURT: Okay. What would you like to tell me? Do
15 you know him?

16 JUROR: Yes, sir.

17 THE COURT: How do you know him?

18 JUROR: Yes, sir. We're just friends.

19 THE COURT: All right. Would that affect your ability
20 to be fair and impartial in the trial of this case?

21 JUROR: No, sir, it would not.

22 THE COURT: Okay. Anyone else?

23 (NO RESPONSE.)

24 THE COURT: Major Jake Sullivan with the Hampton Police
25 Department.

1 (Juror stands.)

2 THE COURT: All right. Your name and number, again?

3 JUROR: Douglas Cook, number 27. Same thing.

4 THE COURT: Just a general acquaintance?

5 JUROR: Yes, sir.

6 THE COURT: Would that affect your ability to be fair
7 and impartial in this case?

8 JUROR: No, sir.

9 THE COURT: Anyone else?

10 (NO RESPONSE.)

11 THE COURT: Okay. Renatta Ford with the Hampton EMS.

12 (NO RESPONSE.)

13 THE COURT: Travis Shaffer with Hampton EMS.

14 (NO RESPONSE.)

15 THE COURT: Donna Smith with Hampton EMS.

16 (NO RESPONSE.)

17 THE COURT: Scott Gerald with the Hampton Fire
18 Department.

19 JUROR: Dakota Moseley, number 100.

20 THE COURT: Would that affect your ability to be fair
21 and impartial?

22 JUROR: No, sir.

23 THE COURT: All right. Captain Anthony Russell,
24 Hampton County Sheriff's Department.

25 (NO RESPONSE.)

1 THE COURT: Special Agent Ashley Bell with SLED, South
2 Carolina Law Enforcement Division.

3 (NO RESPONSE.)

4 THE COURT: Special Agent Travannia Buford with SLED.
5 NO RESPONSE.)

6 THE COURT: Special Agent Mary Ann Boehm, BOEHM, with
7 SLED.

8 (NO RESPONSE.)

9 THE COURT: Special Agent Michelle Eichenmiller with
10 SLED.

11 (NO RESPONSE.)

12 THE COURT: Special Agent Tiffany Hezel-Edwards with
13 SLED.

14 (NO RESPONSE.)

15 THE COURT: Special Agent Haley Nelson with SLED.

16 (NO RESPONSE.)

17 THE COURT: Special Agent Tyler Sturkie with SLED.

18 (NO RESPONSE.)

19 THE COURT: Dylan Hightower with the Solicitor's
20 Office.

21 (NO RESPONSE.)

22 THE COURT: Donnie Hutto with the Solicitor's Office.

23 (NO RESPONSE.)

24 THE COURT: Catherine Bozard with Hampton County
25 Dispatch.

1 (NO RESPONSE.)

2 THE COURT: Rodney Stokes who lives in Hampton.

3 (NO RESPONSE.)

4 THE COURT: Shelleveese Stokes who lives in Hampton.

5 (NO RESPONSE.)

6 THE COURT: Dr. Lee Marie Tormos with the Medical
7 University.

8 (NO RESPONSE.)

9 THE COURT: Dr. Frank Davis, Savannah Memorial
10 Hospital.

11 (NO RESPONSE.)

12 THE COURT: Any member of the jury panel, either you or
13 one of your close friends ever been the victim of a violent
14 crime, a serious assault and battery, or a crime involving a
15 gun or a murder or a burglary? If so, please stand.

16 (Jurors stand.)

17 THE COURT: All right. Please come up.

18 Number 2, Sammy Altman, my cousin was murdered about
19 eight months ago right here in Varnville. His case is still
20 ongoing.

21 THE COURT: Do you think that would affect your ability
22 to be fair and impartial in this case?

23 JUROR: No, sir.

24 THE COURT: All right. Thank you. Your name and jury
25 number.

1 JUROR: Joseph Mays, 91.

2 THE COURT: All right. What would you like to tell me?

3 JUROR: Actually, my brother been convicted of a
4 murder.

5 THE COURT: Your brother was convicted?

6 JUROR: Yeah.

7 THE COURT: Okay. And when was this?

8 JUROR: Maybe about a year ago, something like that.

9 THE COURT: And where was this?

10 JUROR: In North Carolina.

11 THE COURT: Okay. For murder?

12 JUROR: Yes, sir.

13 THE COURT: Okay. Would that affect your ability to be
14 fair and impartial in the trial of this case?

15 JUROR: I don't believe in the Judicial System.

16 THE COURT: Pardon?

17 JUROR: I don't too much believe in the Judicial
18 System.

19 THE COURT: Does that mean you wouldn't be able to be
20 fair and impartial?

21 JUROR: No, I wouldn't be.

22 THE COURT: Thank you. You may be seated. Next?

23 JUROR: Juror number one, Tarnisha Alston. October 1985,
24 my dad was killed by a burglar in Harlem, New York City.

25 THE COURT: Would that affect your ability to be fair

1 and impartial in this case?

2 JUROR: I guess it wouldn't.

3 THE COURT: Okay. Next?

4 JUROR: Lisa Grant, 51. My sister's boyfriend came in
5 and burglarized the house and held us hostage and stuff like
6 that.

7 THE COURT: When was that?

8 JUROR: It was a couple of years back.

9 THE COURT: And where did that take place?

10 JUROR: In Ohio.

11 THE COURT: Okay. Would that affect your ability to be
12 fair and impartial in this case?

13 JUROR: I can't answer that.

14 THE COURT: Well, I need you to give me an answer one
15 way or the other. If you think it will or if you don't
16 think it will.

17 JUROR: I don't know. I think it might. Being back in
18 that situation, you know.

19 THE COURT: You can have a seat. What is your name and
20 number?

21 JUROR: Juror 168, Kimberly Williams.

22 THE COURT: All right. What would you like to tell me?

23 JUROR: My uncle was murdered.

24 THE COURT: And where was that?

25 JUROR: In Hampton.

1 THE COURT: How long ago was that?

2 JUROR: About four or five years ago.

3 THE COURT: And what was his name?

4 JUROR: Michael Williams.

5 THE COURT: Would that affect your ability to be fair
6 and impartial in the trial of this case?

7 JUROR: I don't know.

8 THE COURT: Well, you tell me.

9 JUROR: Yes, it would.

10 THE COURT: Okay. Thank you. You can be seated.
11 Anyone else?

12 BAILIFF: No, Your Honor.

13 THE COURT: Is there any member of the jury panel who
14 is a member or a financial contributor to any group which
15 has as its primary concern the promotion of law enforcement
16 or victim's rights such as CAVE, Citizens Against Violent
17 Crime, or CADRE, which is Citizens Advocating a Return to
18 Ethics, CODA, Citizens Opposed to Domestic Abuse, and MADD,
19 Mothers Against Drunk Driving, SADD, Students Against Drunk
20 Driving. Any similar groups like that? Either you are a
21 member or you give money to them?

22 (NO RESPONSE.)

23 THE COURT: All right. I find none. Has any member of
24 the jury panel ever been a witness in a criminal trial?

25 (NO RESPONSE.)

1 THE COURT: Folks, now, the next phase is where we
2 actually draw a jury. It used to be in the old days you
3 either had a blind person or a small child come in and they
4 would have all of the juror numbers in these little capsules
5 in a big box and it looked like drawing the lotto almost.
6 Well, everything is electronic now, so there is an
7 algorhythm that will spit out a list of y'all completely
8 randomly and that will take just a minute or two and we will
9 start drawing the jury.

10 Now, the way we do this is the clerk will call your
11 name and number. When she calls your name and number, bring
12 your possessions with you, if you have any. When you come
13 through those two little doors, come up towards the front of
14 where the Clerk is sitting, facing the back of the
15 courtroom. The State will get the opportunity to first say
16 either present the juror or excuse the juror. If they say
17 present the juror, then it shifts over to the defense and
18 they get to say present or excuse. If either one of them
19 say excuse, then you go back and have a seat. If both of
20 them say present, then you come over here, because you are
21 on the jury. We will do that until we get 12 jurors and two
22 alternates.

23 THE COURT: Madame Clerk, give us the jury, please.

24 MADAME CLERK: Leon Jones, juror number 80. What says
25 the State?

1 SOLICITOR STONE: Please present this juror.

2 MADAME CLERK: What says the defense?

3 MR. PLEXICO: Please swear the juror.

4 MADAME CLERK: Have a seat in the jury box. Juror
5 number 119, Tyronsa Robertson. What says the State?

6 SOLICITOR STONE: Please excuse the juror from this
7 case.

8 MADAME CLERK: You may have a seat. Juror number 59,
9 James Hammack. What says the State?

10 SOLICITOR STONE: Please present this juror.

11 MADAME CLERK: What says the defense?

12 MR. PLEXICO: Please excuse the juror from the trial of
13 this case.

14 MADAME CLERK: You may have a seat. Number 49, Latosha
15 Grant. What says the State?

16 SOLICITOR STONE: Please present this juror.

17 MADAME CLERK: What says the defense?

18 MR. PLEXICO: Please swear the juror.

19 MADAME CLERK: You can have a seat in the jury box.
20 Number 14, Eleanor Bostick. What says the State?

21 SOLICITOR STONE: Please present this juror.

22 MADAME CLERK: What says the defense?

23 MR. PLEXICO: Please excuse this juror from the trial
24 in this case.

25 MADAME CLERK: Number 11, Ella Blake. What says the

1 State?

2 SOLICITOR STONE: Please excuse Ms. Blake for this
3 case.

4 MADAME CLERK: Number 121, Richard Rodemann. What says
5 the State?

6 SOLICITOR STONE: Please present this juror.

7 MADAME CLERK: What says the defense?

8 MR. PLEXICO: Please swear the juror in the trial of
9 this case.

10 MADAME CLERK: Have a seat in the jury box. Number
11 149, Shane Trader. What says the State?

12 SOLICITOR STONE: Please present this juror.

13 MADAME CLERK: What says the defense?

14 MR. PLEXICO: Please swear the juror.

15 MADAME CLERK: Have a seat in the jury box. Number
16 159, Charles Whittington. What says the State?

17 SOLICITOR STONE: Please present this juror.

18 MADAME CLERK: What says the defense?

19 MR. PLEXICO: Please excuse this juror in the trial of
20 this case.

21 MADAME CLERK: Number 156, Shirley Watson. What says
22 the State?

23 SOLICITOR STONE: Please present this juror.

24 MADAME CLERK: What says the defense?

25 MR. PLEXICO: Please swear the juror.

1 MADAME CLERK: Have a seat in the jury box. Number 99,
2 Khalil Morris. What says the State?

3 SOLICITOR STONE: Please present this juror.

4 MADAME CLERK: What says the defense?

5 MR. PLEXICO: Please swear the juror.

6 MADAME CLERK: Have a seat in the jury box. Number 76,
7 Betty Johnson. What says the State?

8 SOLICITOR STONE: Please present this juror.

9 MADAME CLERK: What says the defense?

10 MR. PLEXICO: Please swear the juror.

11 MADAME CLERK: Number 111, DeKelly Pittinger. What
12 says the State?

13 SOLICITOR STONE: Please present this juror.

14 MADAME CLERK: What says the defense?

15 MR. PLEXICO: Please excuse this juror from the trial
16 of this case.

17 MADAME CLERK: Number 174, Damorra Wright. What says
18 the State?

19 SOLICITOR STONE: Please excuse Ms. Wright.

20 MADAME CLERK: Number 71, Mary Housey. What says the
21 State? SOLICITOR STONE: Please present this juror.

22 MADAME CLERK: What says the defense?

23 MR. PLEXICO: Please swear the juror.

24 MADAME CLERK: Number 100, Dakota Mosley. What says
25 the State?

1 SOLICITOR STONE: Please present this juror.

2 MADAME CLERK: What says the defense?

3 MR. PLEXICO: Please excuse the juror from the trial of
4 this case.

5 MADAME CLERK: Number 33, Cody Davis. What says the
6 State?

7 SOLICITOR STONE: Please present this juror.

8 MADAME CLERK: What says the defense?

9 MR. PLEXICO: Please excuse this juror.

10 MADAME CLERK: Number 3, Mary Atkins. What says the
11 State?

12 SOLICITOR STONE: Please present this juror.

13 MADAME CLERK: What says the defense?

14 MR. PLEXICO: Please swear the juror.

15 MADAME CLERK: Number 66, Karen Herndon. What says the
16 State?

17 SOLICITOR STONE: Please present this juror.

18 MADAME CLERK: What says the defense?

19 MR. PLEXICO: Please excuse the juror from the trial in
20 this case.

21 MADAME CLERK: Number 148, Patti Terry. What says the
22 State?

23 SOLICITOR STONE: Please present this juror.

24 MADAME CLERK: What says the defense?

25 MR. PLEXICO: Please excuse the juror.

1 MADAME CLERK: Number 23, Patricia Chassereau. What
2 says the State?

3 SOLICITOR STONE: Please present this juror.

4 MADAME CLERK: What says the defense?

5 MR. PLEXICO: Please excuse the juror from the trial of
6 this case.

7 MADAME CLERK: Number 19, Jennifer Brown. What says
8 the State?

9 SOLICITOR STONE: Please present this juror.

10 MADAME CLERK: What says the defense?

11 MR. PLEXICO: Please swear the juror.

12 MADAME CLERK: Number 12, Leonard Blocker. What says
13 the State?

14 SOLICITOR STONE: Please excuse Mr. Blocker.

15 MADAME CLERK: Number 27, Douglas Cook. What says the
16 State?

17 SOLICITOR STONE: Please present this juror.

18 MADAME CLERK: What says the defense?

19 MR. PLEXICO: Please excuse the juror from the trial of
20 this case.

21 MADAME CLERK: Number 29, Edna Cooler. What says the
22 State? SOLICITOR STONE: Please excuse Ms. Cooler.

23 MADAME CLERK: Number 60, Franklin Harriott. Does the
24 State have cause for strike?

25 SOLICITOR STONE: Please present this juror.

1 MADAME CLERK: Does the defense have cause for strike?

2 MR. PLEXICO: Please swear the juror.

3 MADAME CLERK: Number 1, Tarnisha Alston. Does the
4 State have cause for strike?

5 SOLICITOR STONE: Please present Ms. Alston.

6 MADAME CLERK: Does the defense have cause for strike?

7 MR. PLEXICO: Please swear the juror.

8 MADAME CLERK: Number 6, Shanta Badger. What says the
9 State?

10 SOLICITOR STONE: Please present this juror.

11 MADAME CLERK: What says the defense?

12 MR. PLEXICO: Please swear the juror.

13 MADAME CLERK: Number 147, Cephus Terry. What says the
14 State?

15 SOLICITOR STONE: Please present this juror.

16 MADAME CLERK: What says the defense?

17 MR. PLEXICO: Please swear the juror.

18 MADAME CLERK: The jury has been drawn, Your Honor.

19 THE COURT: All right. Anything from the State?

20 SOLICITOR STONE: No, sir.

21 THE COURT: Anything from the defense?

22 MR. PLEXICO: No, Your Honor.

23 THE COURT: Well, Folks, you are our jury now. I am
24 going to send you home here in a few minutes with a few
25 instructions. We are going to start the case tomorrow

1 morning. We will get into the beginning of the trial
2 tomorrow. I will instruct you now and every time we take a
3 break that you are not to talk to anybody about the case,
4 including other jurors. It's not proper to get outside
5 influences that would affect your judgment, nor is it proper
6 for you to begin your deliberations because you haven't
7 heard all of the evidence. It's simply a matter of fairness
8 if you stop and think about it, because tomorrow morning the
9 very first thing I'm going to do is ask you to take an oath
10 that says I promise that I'm going to make my decision based
11 on what I hear in this courtroom and I promise to apply the
12 law as you tell me what it is. So we don't need to have
13 other people telling you, "Oh, this is what I heard," nor do
14 you need to look on the internet for anything. A lot of
15 times people will get vested in cases and they will try to
16 look up old court records or newspaper articles. I don't
17 know if there is anything about this case on the internet or
18 in any way accessible by public records outside of the
19 courtroom, but it's not proper. It's not fair to both
20 sides, because you are going to make your decision based on
21 the evidence and the evidence as I told you earlier is when
22 people tell you what they heard, saw, touched, felt, smelt,
23 photographs, documents, and nothing else. If you were on
24 trial, you wouldn't want to have some of your jurors
25 decision based on what your husband or wife or cousin or

1 mother or next door neighbor is telling you what they think
2 about this case. You want to have 12 people that have said
3 I will do it based on what I hear in this courtroom alone.
4 So that's what I'm asking you to do. That's what I'm
5 ordering you to do.

6 Now, the very first thing is somebody is going to say,
7 "Did you get picked on a jury?" You can say, "Yeah, I did
8 get picked on a jury." I will even allow you to even say,
9 "It's a murder case. But that's all I'm allowed to say."
10 Please respect that. This is a very important case, not only
11 to the State, but also to the defendant. So we are going to
12 do it right and we are going to do it the fair way. I need
13 you to abide by that instruction. Now, there is this thing
14 called social media. Some of you are very familiar with it.
15 Some of you probably have heard about it but just don't use
16 it. For those of you in the social media, please don't use
17 it in the next several days to talk about your jury
18 experience. Don't say that you are on a jury or anything
19 like that. That's the same as if talking to strangers about
20 it and invariably someone is going to comment something to
21 you about it.

22 Only while you are on the jury am I barring you from
23 saying anything about the case. I'm not saying you can't do
24 your Facebook or twitter, just don't comment about this
25 case. Once this case is over with, you can do whatever you

1 want. All the restrictions about talking to people and
2 posting on social media are lifted. But during this trial,
3 I need you to abide by these instructions. It's very
4 important that you don't talk to other people about the case
5 and refrain from using social media. What I want you to do
6 is go home and enjoy your evening. Come back tomorrow
7 morning. We're going to start at 10:00, so if you could get
8 here about 9:45, that would help us out so we can get
9 started right at 10:00. The bailiff here is going to show
10 you where to go and how to get in and out of the courthouse.
11 You don't come back into the courtroom. You will go
12 straight to your jury room. So thank you for your patience
13 today and we will see you in the morning about 10:00, but if
14 you could get here a little bit before that. Thank you very
15 much.

16 (4:30 p.m., whereupon, the jury exits the courtroom and
17 the following is held on the record.)

18 THE COURT: Now, the rest of you, thank you for showing
19 up and helping us. You are no longer needed for jury
20 service this week and you will be free to go not only for
21 the rest of the day, but for the rest of the week. You are
22 welcome to come back and watch the trial, but you are not
23 required to. If you need an excuse for work today, the
24 Clerk's office can help you out. Thank you very much. You
25 are free to go.

1 (4:32 p.m., whereupon, the remaining jury panel exits
2 and the following is held on the record.)

3 THE COURT: Tomorrow morning, let's get back here at
4 9:30 and we can discuss the Jackson v. Denno

5 Mr. Mitchell, I want to talk to you before we break
6 today. You've heard me tell these folks that you are on
7 trial for murder, burglary and a couple other charges.
8 Murder and burglary are the big ones, because you can get,
9 if you're convicted of murder; it's 30 years minimum up to
10 life without parole and that's day for day, no parole on
11 that murder charge. Burglary is 15 years minimum to life
12 without parole, and you can get -- you have to serve at
13 least 85 percent if you are convicted of that; but you don't
14 go up for parole. You can earn 15 percent off for
15 essentially good behavior. But both of those carry life
16 without parole as a possible sentence. You also have a zero
17 to five year charge and a zero to three year charge, but
18 your big problems are with the murder and the burglary in
19 the first degree. I say that to you because I want you to
20 understand this is what you are going on trial for tomorrow.
21 As far as the trial, you've heard me tell that you don't
22 have to prove your innocence. The State has to prove that
23 you are guilty beyond a reasonable doubt and I'm going to
24 instruct the jury as to what that means tomorrow. I'm sure
25 you've gone over that with your lawyer. Part of the way we

1 do this is because the State has the burden of proof and
2 they have to put up evidence of your guilt. They have to
3 convince 12 of those jurors that you are guilty. You don't
4 have to testify. You don't have to put up a defense. You
5 don't have to do a thing except show up, and you've done
6 that. However, you have rights and I want to go over that
7 with you right now. Again, I'm sure that Mr. Plexico has
8 talked about this with you, but I want to go over this with
9 you while we have a court reporter.

10 Putting up a defense means that you can sit there and
11 have Mr. Plexico cross examine witnesses, which I'm sure he
12 will do. But you can also call witnesses if you wanted to.
13 Maybe there are photographs or documents that he can try to
14 get on your behalf. He can do that for you. But one of the
15 most important rights that you have is a right to get up and
16 tell the jury your side of the story if you want to.
17 however, equally as important, you have the right to not
18 testify if you don't want to. And if you don't want to
19 testify and tell your side of the story, then I will
20 instruct them that they are not to hold that against you
21 while they are deliberating the verdict. Ultimately, this
22 is a constitutional right that you have and only you can
23 exercise it and only you can waive it or give it away.

24 I want to encourage you to talk to Mr. Plexico about
25 that tonight or tomorrow morning. If you want to talk to a

1 family member of a close personal friend that you take
2 advice from, if you want to talk with them, perhaps Mr.
3 Plexico can arrange that for you. But ultimately, this is
4 your right, and only you can exercise that right. I'm not
5 asking you what you want to do today; I'm just making sure
6 you understand it, because you are going on trial tomorrow
7 morning for two charges that can get you life without any
8 possibility of parole, which means you will never get out of
9 prison. The only way you get out is when they carry you out
10 in a pine box after you die. So this is the big leagues.
11 This doesn't get any more serious.

12 So I want you to think about that long and hard. I
13 have no position on whether or not you should exercise that
14 right. I'm not trying to talk you into it or out of it.
15 But I'm just telling you it's your decision and your
16 decision alone. After the State presents their case, if I
17 make a determination that they have presented to the jury
18 enough evidence that would allow a jury to convict you, then
19 you will have to make a decision and then you and I will
20 have this conversation again. It will be up to you then to
21 tell me whether or not you want to take the witness stand or
22 not take the witness stand and whether you want Mr. Plexico
23 to call witnesses on your behalf or not. Totally up to you.
24 I want to make sure you have time to think about it. It
25 sounds to me like you will have to make this decision by

1 Wednesday morning, because I think the State's case is going
2 to go pretty quickly tomorrow and it may finish up Wednesday
3 morning. So things move along pretty fast in General
4 Sessions Court, so this case is going to be over with in a
5 couple of days. So by Wednesday morning or maybe lunchtime,
6 you and I will have this conversation again in which you
7 will need to make a final decision. Do you understand that?

8 MR. MITCHELL: Yes, sir.

9 THE COURT: Okay. I encourage you to think long and
10 hard about it. I don't know what your discussions have been
11 with Mr. Plexico and what your inclinations are, but again,
12 think about it long and hard and we will have this
13 discussion again in a day or two.

14 Is there anything else we need to take up before we
15 break for the day?

16 SOLICITOR STONE: No, I don't believe so.

17 THE COURT: Anything from the defense?

18 MR. PLEXICO: No, Your Honor.

19 THE COURT: Well, let's reconvene tomorrow morning
20 About 9:30. Have a good evening.

21 (4:50 p.m., whereupon, the trial in this case is
22 adjourned for the evening. Thereafter, at 9:30 a.m., the
23 following morning, the following is placed on the record
24 outside the presence of the jury.)
25

1 THE COURT: Okay. What do we have?

2 MR. PLEXICO: Before we have the jurors come out, you
3 were going to make a ruling on just the Denno hearing,
4 Judge.

5 THE COURT: Go ahead and make your argument.

6 MR. PLEXICO: I think they didn't establish, Judge,
7 whether or not he was intoxicated and whether or not he
8 understood what his rights were, Judge. I think with the
9 totality of the circumstances that it should not be -- the
10 video should not be amended and should not be played.

11 SOLICITOR THORNTON: Your Honor, he was given Miranda,
12 and actually if you include the DNA and other things, about
13 five or six times in various stages. From the time they got
14 him at the scene, he was read Miranda off of a card and then
15 he was re-Mirandized on videotape.

16 As far as the intoxication issue, he was able to write
17 his own statement, Judge, which frankly, his handwriting is
18 better than mine is; over a page. He was clearly not under
19 any coercion or duress. He was repeatedly read his rights
20 when they did swabs and they did other things. Yesterday,
21 Your Honor was able to view a -- obviously, we took a lot of
22 the spaces out, because it was almost four hours long with
23 all the dead space in there. Your Honor was able to see
24 that he was never put under any coercion or duress. He
25 understood or seemed to understand all of the questions and

1 was able to give responses. The State believes, Your Honor,
2 that in viewing all of the circumstances and the fact that
3 he was certainly Mirandized on multiple occasions, he did
4 voluntarily understand and waive his rights and agree to
5 give both a verbal and written statement. Thank you, Your
6 Honor.

7 MR. PLEXICO: I just have one other matter aside and
8 separate from this, Judge.

9 THE COURT: Well, I heard the testimony yesterday and I
10 watched the video last night. There is no evidence
11 whatsoever that he was incapacitated or didn't know what he
12 was doing. He was Mirandized almost from the first moment of
13 his interaction with law enforcement and was Mirandized
14 several times thereafter, including in the beginning of the
15 statement that he gave. So I find that his statement was
16 freely, voluntarily, knowingly and intelligently made, so I
17 find that your motion to suppress is denied.

18 MR. PLEXICO: Thank you, Your Honor. I would like to
19 add just to make sure I'm protected on the record that under
20 Neil v. Biggers, and the issue of I.D., that the lineup was
21 unduly suggestive, I don't think I used that.

22 THE COURT: I think I did rule on that. It wasn't
23 unduly suggestive.

24 MR. PLEXICO: Thank you, Judge.

25 THE COURT: All right. Anything else before we start?

1 MR. PLEXICO: We do have a matter on the blood spatter
2 at some point in time whenever the Solicitor brings the
3 witness here.

4 THE COURT: Well, let's do that before you call that
5 witness. I would just like to go ahead and get started.

6 DEP. SOLICITOR THORNTON: Yes, sir, Your Honor. The
7 only other thing I am aware of, Your Honor, is we have
8 provided Mr. Plexico with the two rap sheets from the
9 Stokes' who are really the only non-law enforcement
10 witnesses that we will start with today.

11 I don't believe Ms. Stokes has anything that she could
12 be questioned on, Your Honor. She has a 2002 misdemeanor
13 fraud check charge that is over 15 years old. Mr. Stokes,
14 however, does have a 2011 and 2012 drug convictions. I do
15 believe that both of those that Mr. Plexico would be able to
16 go into both of those. But those are the only ones that
17 would be within the timeframe. I just didn't know what Mr.
18 Plexico's position on that was.

19 MR. PLEXICO: Your Honor, yes, he does have the 2011
20 drug convictions where he got five years. He also has a
21 number of -- five or six outstanding drug charges at this
22 point in time which shows that he is continuing to be in the
23 business. He's been there for a year. My client was caught
24 with drugs and I think that it should be allowable that I
25 can question him. He does have pending drug charges and

1 that's the basis to go into, was there anything involved
2 with drugs in this matter that he knew about? Because this
3 is a pretty bizarre matter and there are drugs found on my
4 client. He's the next door neighbor. He's the drug dealer.
5 He says he just walks by somebody who is shooting or has
6 just shot somebody and it's just an odd set of
7 circumstances, and I think that might tie it all together
8 and bring the truth to light, Judge.

9 SOLICITOR THORNTON: Your Honor, we object to him
10 mentioning anything about pending charges. The testimony,
11 as Your Honor heard yesterday during Biggers, and we expect
12 it to be the same today, is that he came home because his
13 wife said somebody was trying to kill their neighbor and
14 him, Mr. Plexico, what it sounds like is Mr. Plexico is
15 attempting to use some third-party guilt argument that there
16 might have been some drug activity involving one of the eye
17 witnesses, when there is absolutely no basis for that
18 whatsoever.

19 The only reason he came home was because his wife
20 called him to let him know that Mr. Mole was being attacked.
21 Your Honor, further, he hasn't been convicted of those. I
22 think Mr. Plexico can certainly ask about the 2011, and
23 there is a 2012 conviction for drugs. I think those are
24 within the ten year timeframe and they both carry time and I
25 think he can ask whether or not he's been convicted of that,

1 Your Honor. But beyond that, Your Honor, I don't think he's
2 allowed to use pending charges to try to add some way of
3 third party guilt into this case. Thank you, Your Honor.

4 THE COURT: I've got to agree. I think the drug
5 charges that resulted in convictions are fair game to use,
6 but pending charges are usually not, so I'm not going to
7 allow that. Anything else?

8 SOLICITOR THORNTON: Nothing from the State.

9 MR. PLEXICO: Your Honor, I just want to be clear. He
10 has a 2012 is the way I read it, convictions for two of
11 them, not 2011. It starts in 2011, unless they have
12 documentation that I don't have.

13 SOLICITOR THORNTON: I think one he was convicted of in
14 2012, Judge, but it's two charges.

15 MR. PLEXICO: He had two charges, but they both say
16 2012. I want to make sure there was no additional ones in
17 2011.

18 THE COURT: Where are the pending drug charges?

19 SOLICITOR THORNTON: In Hampton County, I believe, Your
20 Honor. I'm not sure which agency, but Hampton County.

21 THE COURT: All right. So you can use the convictions.
22 Anything else?

23 SOLICITOR THORNTON: Nothing from the State, Your
24 Honor.

25 MR. PLEXICO: No, Your Honor, nothing from defense.

1 THE COURT: All right. Well, yesterday after we broke,
2 Juror 156, Shirley Watson, brought to my attention a
3 conflict that she had with the case and I spoke with the
4 Solicitor and the defense lawyer and I believe that
5 everybody is in agreement that she should be excused. I
6 have excused her and we will seek either of the two
7 alternates. I have put their names on a piece of paper and
8 put them in a cup. Madame Clerk, if you will draw one of
9 these pieces of paper ---

10 MR. PLEXICO: Your Honor, may I be heard on that?

11 THE COURT: Yes.

12 MR. PLEXICO: I believe the first alternate is the one
13 who should go on the jury.

14 THE COURT: Well, I believe in Civil Court, it would be
15 that. In Criminal Court, you draw out of a hat or a cup.
16 Take a piece of paper and draw out of a cup.

17 MR. PLEXICO: I've just never heard of that. I've
18 always thought the alternate one was the first alternate.

19 THE COURT: Well, I will double check, but that's
20 criminal court.

21 MR. PLEXICO: I still have an objection.

22 THE COURT: That's the way it's done. That's the way
23 I'm doing it.

24 (Clerk draws a piece of paper and hands up to the
25 Court.)

1 THE COURT: All right. Juror number 147, Cephus Terry.
2 All right, anything else we need to deal with before we
3 bring the jury in?

4 SOLICITOR STONE: Nothing from the State, Your Honor. I
5 think the defense had made a motion to sequester the
6 witnesses. We have agreed to do that, with the exception of
7 Dylan Hightower and Donnie Hutto who were both on the
8 witness list. I don't expect to call either one of those
9 and they are helping me with the technology end of it. I
10 believe Mr. Plexico agreed to let them stay.

11 MR. PLEXICO: That's correct, Your Honor. He has
12 assured me that all of the other ones will be sequestered.

13 THE COURT: All right.

14 SOLICITOR STONE: Jake Sullivan is the case officer, so
15 he is the only single case officer that we would have.

16 THE COURT: All right. Anything else?

17 SOLICITOR STONE: Nothing from the State, Your Honor.

18 MR. PLEXICO: No, Your Honor.

19 THE COURT: All right. Bring the jury in.

20 (10:25 a.m., whereupon, the jury enters the courtroom
21 and the following is held on the record.)

22 THE COURT: Folks, before we begin and have the Clerk
23 administer the oath to you, I will tell you that I have
24 excused juror number 156, Ms. Watson, yesterday after we
25 adjourned and am seating juror number 147, Mr. Cephus Terry.

1 You are now a regular juror and no longer an alternate.

2 So before I begin with my introductory remarks, I want
3 to have the clerk administer your oath of office to you, so
4 if you would, please stand and raise your right hand.

5 (Whereupon, the jury is sworn by the Clerk, Ms.
6 Brooks.)

7 THE COURT: Okay. Folks, I want to give you a few
8 introductory remarks of what we do in a case like this and
9 kind of the procedures that we follow and why we do some of
10 the things that we do during a trial. I recognize that most
11 of you have not served on a jury before, and certainly not
12 in General Sessions Court, and so there is a flow to the way
13 we do things, but if you're not familiar with it some of the
14 things may not make sense.

15 We may use fancy words that we take for granted and you
16 may not know what it is, and so I want to kind of demystify
17 what we're doing here today, because ultimately, you guys
18 are going to be making a decision as to the outcome of this
19 case. So it's very important to me that you understand what
20 you're doing and why we're doing some of the things that
21 we're doing and the order that we do them.

22 As I told you yesterday, this is a criminal case and it
23 involves the State of South Carolina bringing a charge
24 against Mr. Maurice Demon Mitchell. They've brought four
25 charges against him for murder, burglary in the first

1 degree, possession of a weapon during the commission of a
2 violent crime and possession of crack cocaine.

3 Now, Mr. Mitchell pled not guilty to those four
4 charges. Therefore, it is incumbent upon the State to
5 provide him with a jury trial and they have to prove to the
6 twelve of you that he is guilty of these charges beyond a
7 reasonable doubt. He doesn't have to prove that he is not
8 guilty or innocent. The State has to prove that he is
9 guilty, and I use this phrase, "Beyond a reasonable doubt",
10 a number of times; you're going to hear it a bunch of times,
11 so I'm going to try and explain that to you.

12 It's basically what we call a burden of proof. So the
13 State made the charge and they have to prove it. So how
14 much evidence do they have to produce in order for you to be
15 able to come up with a verdict of guilty on these charges?
16 Well, the law says it's proved beyond a reasonable doubt.
17 In other words, to state it another way, at the end of the
18 case, are you firmly convinced that he is guilty.

19 Now, if you're like me, you are probably -- you
20 understand the words that I use, but you may not understand
21 the context for what they mean, because most of us are
22 visual learners. So it's helpful if you consider a set of
23 scales, you see the scales of justice with the lady Justice
24 holding out her arms like that. Well, it's helpful if we
25 use those and we also contrast it with the burden of proof

1 in a civil case.

2 The burden of proof in a civil case is a burden called
3 the preponderance of the evidence. And in that kind of case
4 what that means is whatever the party trying to prove more
5 likely true than not true. That so far I doubt has cleared
6 it up for you. This is where the scales come in, because it
7 makes a little bit easier to understand the point we are
8 trying to make.

9 In a civil case, and in a criminal case, those scales
10 start out even. So in a civil case, you have the plaintiff,
11 which is the person who has brought the lawsuit, who is
12 suing the defendant, the person getting sued, over a
13 dispute; whether it's a breach of contract or automobile
14 accident or whatever it may be.

15 The plaintiff in a civil case has the burden of proof
16 by a preponderance of the evidence, or the greater weight,
17 they just have to tip that scale even if it's just slightly
18 in their favor, then the plaintiffs have met their burden of
19 proof in a civil case.

20 However, in a criminal case like this, the burden of
21 proof that the State has to meet is much greater than that
22 of a civil case. You start out with the scales being even.
23 On one hand you have the State and on the other hand you
24 have the defendant; they're even. But in order to convince
25 you beyond a reasonable doubt to be firmly convinced of

1 guilt, those scales have to tip more than just barely like
2 they do in a civil case.

3 So in other words, at the end of all the evidence, you
4 have to be firmly convinced that the State has proven to you
5 that Mr. Mitchell is guilty of these charges, alright? And
6 remember, he doesn't have to prove that he's not guilty.
7 The State has to prove that he is guilty. That's his
8 constitutional right that he has, but you have and I have
9 and everybody that is a citizen of the United States has it.
10 So it's not just some theoretical thing that they teach
11 about in law school. It's a real constitutional right, and
12 it's a burden that the State has to prove to you. So they
13 will get to go first. They will get to put up their
14 evidence first. They get to ask the questions to the
15 witnesses first. So in a minute, we will start with opening
16 statements in which the lawyers will get up and tell you
17 what I call the Readers Digest condensed version of the
18 case, where they just give you a little overview of what
19 this case is about, so that it will help you understand what
20 they are trying to prove and what the evidence is likely to
21 show. Sometimes cases can get really confusing and people
22 don't understand little bits and chunks that can come from
23 different witnesses. So they have to try and tie it all
24 together for you.

25 So we have opening statements. Then, we have the

1 evidence that comes in. Then we have closing arguments, and
2 then I charge you on what the law is on these kinds of
3 cases. Then, you go and deliberate as to what the verdict
4 will be. That's, in essence, what we do.

5 Everybody in this courtroom has a role to play. I'll
6 go with the two most basic ones as far as you and I are
7 concerned and that's your role and my role, alright? We are
8 both judges, but we're different kinds of judges. I'm
9 what's called the judge of the law and you are the judges of
10 the facts, so you are going to appear evidence. Sometimes
11 all of the evidence points in the same direction; sometimes
12 it doesn't. But wherever there's a conflict, you have to
13 decide how to resolve that conflict, who to believe.

14 Do your eyes match up with what reality is? It's
15 totally up to you how to resolve a conflict in the evidence.
16 I am not allowed to give you my opinion about the evidence.
17 I don't have an opinion about the evidence. And if I did
18 have one, I'm not allowed to express it to you. That's
19 totally your job. My job, on the other hand is two-fold:
20 one is to conduct the trial and to make sure that both sides
21 get a fair trial. The State of South Carolina is entitled to
22 a fair trial and the defendant is entitled to a fair trial.
23 They bring me in and my job is to make sure we follow our
24 rules of procedure, our rules of evidence, and explain to
25 you what we are doing along the way.

1 I, also, at the end of the trial, tell you that this is
2 what the elements of murder are, this is what the elements
3 of burglary are, this is what the elements of each of the
4 crimes are; explain that to you. Then, you go back and take
5 the law that I tell you and you apply the facts as you
6 determine the facts to be. And you see that the State has
7 met its burden of proof. And if they have, then you find
8 the defendant guilty. On the other hand, if you don't think
9 the State has met its burden of proof, then you have a duty
10 to find the defendant not guilty. That's what we are doing
11 here.

12 So now, I told you that you are going to hear from the
13 lawyers first. And they are going to give you that opening
14 statement. It's very important that you remember this,
15 because you hear from the lawyers really more than anybody
16 else in the trial. The lawyers are not witnesses. They
17 weren't there. They didn't see what happened. And what
18 they say is not to be considered by you as evidence in this
19 trial. They are only going to be talking about the evidence.
20 So when they tell you, oh, the evidence is likely to show
21 this, you don't weigh what they're saying, because they
22 weren't there and what they say isn't to be considered by
23 you as evidence.

24 When a person gets up here on the witness stand under
25 oath and tells you what they heard, and saw, and touched,

1 and felt, and smelt, that's evidence. If I say there's a
2 document, you get to see it. That's evidence. If there's a
3 photograph or a video that comes up, that's evidence. But
4 what the lawyers tell you about that is not to be considered
5 by you as evidence. So when the lawyers are asking the
6 witness a question, the question isn't evidence; the answer
7 to the question is evidence. Okay? So keep that in mind.
8 You're going to hear from the lawyers, a lot.

9 Now, another thing I want to talk to you about. It
10 seems like the easiest thing in the world to say this, but
11 it's extremely difficult to do, and that is to keep an open
12 mind until you've heard all of the evidence. Doesn't that
13 sound so simple? But how many times in life have we heard
14 something and we make a snap judgment? Only to come back
15 later and go, "Well, you know, I didn't think about that."

16 Then, you hear the other side or you hear more
17 evidence. Now, it may be that you very well come back to
18 the place that you started. I don't know. But sometimes it
19 changes and you never come back, but the important thing I
20 want you to remember is we're going to be here for the
21 better part of the week and you're going to hear a lot of
22 evidence.

23 Don't talk to each other about the case. Don't begin
24 your deliberations, because until you've heard all of the
25 evidence and you hear what the law is, you can't begin to

1 make up your mind on whether or not somebody is guilty or
2 not guilty. So that's the importance of remembering, because
3 you're going to hear a lot of things and they might not all
4 say the same thing. Ultimately, the 12 of you are going to
5 come together and resolve those things. Whatever you guys
6 decide on that, we are all bound by that. So that's why
7 it's very important to follow those instructions and not
8 talk amongst each other during the course of the trial.
9 it's also important that you not talk to anybody outside
10 when you go on breaks and things like that, because it's
11 only human nature. If you were to just say inadvertently
12 when you go home or had lunch, "Oh, you won't believe what I
13 heard." The first thing they're going to say is what they
14 think about it. Well, you know, that ain't right. You just
15 took an oath that says, "I promise I am going to make my
16 decision based on what I hear in this courtroom."

17 So that's where we are going with that.

18 There is one other thing I want to bring up. The
19 defendant doesn't have to prove his innocence. He also has
20 a constitutional right to put up evidence defense or not put
21 up a defense. Included in that, he has the right to
22 testify, but he also has a right not to testify. Now, I'm
23 going to tell you, I don't know whether he plans to testify
24 or not. He doesn't have to tell me whether or not he is
25 going to. He can make that decision on down the road. But

1 I will tell you that if he does not testify, you are not to
2 hold that against him in any way on what your verdict will
3 be. That again is a constitutional right that he has, you
4 have, I have, and everybody in this courtroom has. That's
5 very important rights. I want you to remember that. He
6 doesn't have to put up a defense. The only thing he has to
7 do is show up. Okay? So I'm going to turn it over to the
8 lawyers now to begin their opening statements. We will go
9 through the opening statements and then we will have the
10 first witness. Mr. Solicitor, you may begin.

11 SOLICITOR STONE: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 OPENING STATEMENT

14 BY SOLICITOR STONE:

15 The Judge is going to tell you that murder is the
16 unlawful killing of another with malice. Malice. What's
17 malice? Malice is hatred. Malice is meanness. Malice is
18 something that you feel in your heart and you act out toward
19 somebody else.

20 Sometimes you hear people say, "I hate you," and you
21 know they feel that malice. Sometimes, like in this case,
22 it's what they do and how they do it.

23 This case is about malice and this case is about the
24 malice that Maurice Mitchell had in his heart on October
25 18th, 2015. The malice that you will see, and you will

1 hear, and you will know about, because on that day Maurice
2 went over to the home of Eddie Mole. He took with him a 40-
3 caliber metal pistol and he shoved his way into Eddie Mole's
4 house.

5 Eddie Mole did everything he could to keep the door
6 closed and to keep him out, but he shoved his way in anyway.
7 When he got in just well enough, he shot Eddie Mole. Shot
8 him in the side. The bullet went through, into one side,
9 clipped his kidney, clipped his liver; actually split his
10 spine in two, and ended up in a wall inside of Eddie Mole's
11 home; a place where before this, he was secure.

12 Maurice Mitchell didn't stop there. Not only did he
13 force his way into his home, not only did he shoot him, not
14 only did he put him on the ground after trying his best to
15 keep Maurice Mitchell out, but then he started beating him.
16 He took that same metal, 40-caliber gun and he beat him in
17 the face over and over and over and over. So badly that
18 when Eddie Mole got to Savannah Memorial Hospital, the
19 surgeon thought he had been shot in the face. That's the
20 damage that Maurice Mitchell caused. The shooting and the
21 beating was so bad that Eddie Mole went into a coma. A coma
22 that he stayed in for five months and then died.

23 Now, ladies and gentlemen, my job today and tomorrow is
24 to prove this case to you beyond a reasonable doubt. Put
25 witnesses up on the stand that you're going to hear from.

1 Show you photographs that you're going to see. My job is to
2 show you that on October 18th, Maurice Mitchell shoved his
3 way into Eddie Mole's house, committed burglary, and that he
4 shot him, and that he beat him, and the beating and the
5 shooting resulted in his death. And he did it with a gun.

6 If I don't do that, if I don't put up the evidence to
7 prove that, then it's your job to come back here and say,
8 No, sir, not guilty. But you're going to hear from
9 witnesses, eyewitnesses, who saw and heard the shooting, saw
10 the beating. You're going to hear from police officers who
11 see Maurice Mitchell running from Eddie Mole's door, with
12 Eddie Mole's blood all over him, still carrying the gun that
13 he had beat him into a coma with.

14 You're going to hear from officers who found the gun
15 and then catch up very shortly with Maurice Mitchell and
16 arrest him. You're going to hear all that, and see that,
17 and you're even going to hear from Mitchell himself, because
18 when he went down to the police station after being read his
19 rights, he said, "I took the gun and confronted Eddie Mole.
20 I shoved my way into his house. I shot him. Then, I beat
21 him. And then, you guys caught me. If I don't prove that
22 to you, then you come back and say not guilty.

23 Ladies and gentlemen, this courtroom is about the
24 truth. Your job is to give us a verdict that speaks the
25 truth. That's the only thing I'm going to ask you to do.

1 Please listen to the evidence. See the evidence. Listen to
2 the witnesses. Come back and give us a verdict that speaks
3 the truth. Thank you.

4 THE COURT: Mr. Plexico.

5 MR. PLEXICO: May it please the Court? Ladies and
6 Gentlemen of the jury, Mr. Solicitor.

7 OPENING STATEMENT

8 BY MR. PLEXICO:

9 I'm Steve Plexico; one of the public defenders. It's a
10 pleasure to be here. This is my client's only time in
11 court. We all have very important roles. Y'all are the
12 judges of the facts and Judge Young is the judge of the law.
13 What he says in reference to the law, that's the rule in
14 this case. He defines the law. It's your duty to find out
15 what the facts are, individually and collectively. This is
16 very, very important because once y'all decide the facts,
17 the facts can't ever be changed because y'all say exactly
18 what it is. An error of law by a judge can be appealed and
19 changed. But there aren't any errors by the judges of the
20 facts, which are you, because that's our system. We have
21 had this system for years and it works very well for us, and
22 others wish they could have such a system in other
23 countries, but this is something that you must take very
24 seriously and I think you will.

25 This is not a civil matter as the judge said. Y'all

1 know what guilt beyond a reasonable doubt means. It means a
2 heavy burden. The State has a heavy burden in proving each
3 and every element of the case. Murder is the unlawful
4 killing of another with malice aforethought, and I think
5 y'all will see that the evidence will show that the State
6 will put up that this was not an intentional act which would
7 take away any malice.

8 Furthermore, burglary is many things. It is entry
9 without consent in an attempt to commit a crime therein.
10 You have to have an intent to commit a crime therein and
11 that forms when you first go in a place. I believe this
12 evidence is going to show that there would not be any intent
13 or evidence to show that he intended to commit a crime
14 therein.

15 I want you to keep your minds open. The Judge has
16 instructed you not to consider the evidence until you hear
17 everything; not to make any judgment. Then, that's when you
18 go back in the jury room together and that's when you have
19 heard the arguments of the attorneys, that's when you've
20 heard everything and that's when you start to discussing and
21 making up your minds and thinking and talking about the
22 facts of this case as to what the evidence actually means.

23 And then we get down to has the State actually done
24 their job? It is the job of the State to show that this
25 defendant is guilty beyond a reasonable doubt. Remember

1 the State has all the power. They have all the police
2 power. They come in and essentially the Attorney General
3 has the prosecution in this state and the circuit solicitor
4 is their representative. They have everything from top to
5 bottom and all the resources that they need.

6 Well, what does the common man have? The common man
7 cannot match those resources. He is only appointed an
8 attorney. So because of that, you put the burden on the
9 State of South Carolina to prove that their case is valid
10 beyond a reasonable doubt, because no one could withstand
11 that power.

12 I want you all to do your job and make sure they do
13 their job. I'm asking you to keep an open mind until you go
14 back in your jury room after you've heard from the Judge,
15 and you've heard from all the evidence and all of the
16 lawyers, and the Judge's important charge on the law. Thank
17 you very much.

18 THE COURT: Mr. Stone, you may call your first witness.

19 SOLICITOR STONE: The State calls Cathy Bozard to the
20 stand. (Whereupon, the witness, Cathy Bozard, is duly
21 sworn.)

22 DIRECT EXAMINATION

23 BY SOL. STONE:

24 Q Ms. Bozard, can you tell us what you do, please, ma'am?

25 A I am the E-911 Coordinator for Hampton County.

1 Q All right. What is the E-911 Coordinator? What does
2 that mean?

3 A I handle all of the day-to-day activities for the 911
4 center; handling employees, records, files, recordings.

5 Q Pull that microphone a little closer to you. That 911
6 center, is that where all the 911 calls come in to you from
7 Hampton County; is that right?

8 A Yes, sir.

9 Q All right. So you don't cover any other counties; just
10 Hampton County?

11 A Just Hampton County.

12 Q In the course of your business, you're the supervisor
13 over all of this, correct?

14 A That's correct.

15 Q When a 911 call comes in, is it recorded?

16 A Yes, it is.

17 Q And how does that work?

18 A All of the calls that come into our center, whether
19 they are
20 911 calls or admin calls, go through our recording system.
21 Everything that's said over the radio or the phones is
22 recorded.

23 Q And are they recorded contemporaneously? In other
24 words, are they recorded as they're happening?

25 A Yes, as they're happening.

1 Q And do you also dispatch, I guess, officers and
2 emergency personnel to scenes as well; is that correct?

3 A Yes.

4 Q So all of that is taking place in your call room?

5 A Yes, sir.

6 Q Now, for people that work for you in this center, they
7 take these calls in, they then dispatch all of this out, and
8 all of this is captured in your digital system?

9 A That's correct.

10 Q And those are kept in your regular course of business,
11 I guess it's E-911?

12 A That's correct.

13 Q Okay. Let me show you what's been marked as State's
14 Exhibit Five; do you recognize that?

15 A Yes, sir.

16 Q What is that?

17 A It is a 911 recording of a call that came in.

18 Q And that is dated, as I said earlier, as October the
19 28th of 2015; is that correct?

20 A Yes, sir.

21 Q And is this an accurate recording of the call as it
22 came in that day?

23 A Yes, it is.

24 Q There is a transcript, I believe, that goes along with
25 that. Have you reviewed that?

1 A Yes, sir.

2 Q And is that transcript accurate?

3 A Yes, it is.

4 Q All right.

5 SOLICITOR STONE: Your Honor, at this time, we would
6 move State's Exhibit Five into evidence. This is the audio.
7 We have supplied it with a transcript which would be in the
8 form of an exhibit, so that would not be part of this piece
9 of evidence as the evidence itself would be the audio, but
10 we would like to play both of those for the jury together.

11 MR. PLEXICO: I understand he is only putting the DVD
12 into evidence.

13 THE COURT: Is that correct?

14 SOLICITOR STONE: No, sir. I'm playing the audio with
15 the transcript, but the transcript is technically an exhibit
16 and the audio is technically the evidence itself. So put
17 the evidence in as audio and the transcript goes along with
18 it.

19 MR. PLEXICO: I do have an objection, Your Honor.

20 THE COURT: To the transcript being shown?

21 MR. PLEXICO: To the transcript being shown. I haven't
22 been shown the transcript, Your Honor. I don't have a copy
23 of it.

24 SOLICITOR STONE: I don't think that's true, Your
25 Honor. Let me check on that.

1 MR. PLEXICO: I only watched the 911 tape.

2 SOLICITOR STONE: Sorry, I thought that he had seen it.
3 I know she has seen it and said it is accurate, so we have
4 testimony that it is accurate. If there is any issue with
5 it.

6 THE COURT: Well, if he hasn't seen it, just play the
7 audio portion of it.

8 SOLICITOR STONE: Okay. Thank you. And at this time,
9 we move State's Exhibit Five into evidence.

10 MR. PLEXICO: No objection, Your Honor.

11 (Whereupon, State's Exhibit Number Five, 911 AUDIO CD,
12 is received into evidence.)

13 (State's Exhibit Number Five is played to the jury.
14 Audio begins at 10:57 a.m. and ends at 11:00 a.m.)

15 Q The voice that you hear on that, I know it's a lady
16 calling into 911, then your dispatcher is responding; is
17 that correct?

18 A That's correct.

19 Q There is a male voice. Is that the officer that is
20 dispatched as well that arrives on the scene at the same
21 time?

22 A That would be one of them.

23 Q Okay. I have no further questions at this time.

24 THE COURT: Do you have any questions, Mr. Plexico?

25 MR. PLEXICO: I don't have any questions, Your Honor.

1 THE COURT: All right. You may step down.

2 SOLICITOR STONE: The State calls Officer Brad
3 Dougherty to the stand.

4 (Whereupon, Officer Brad Dougherty enters the courtroom
5 and is duly sworn.)

6 DIRECT EXAMINATION

7 BY SOLICITOR STONE:

8 Q Officer Dougherty, you're a police officer; who are you
9 with, sir?

10 A Hampton Police Department.

11 Q And how long have you been with the Hampton Police
12 Department?

13 A Going on 11 years.

14 Q What do you do with the Hampton Police Department?
15 What is your job?

16 A Now, I'm administrative Lieutenant. I run all the I.T.
17 within the department and do all the digital evidence and
18 work the front office.

19 Q Let's talk about October 28th, 2015. What was your job
20 then?

21 A I was road patrol.

22 Q And at some point in time, did you get called out to --
23 I think it was Holly Street, in Hampton?

24 A Yes, sir.

25 Q And how did that happen? How did that come about?

1 A We were all in the parking lot at the police department
2 and dispatch come across the radio and advised us of the
3 armed robbery in progress on Holly Street.

4 Q Okay. Let me show you what we are marking as State's
5 Exhibit A. We will use this as demonstrative evidence. Do
6 you recognize that?

7 A Yes, sir. That's

8 Q Okay. And this is an overview of the apartments and
9 this address that you recall, too?

10 A Okay.

11 SOLICITOR STONE: Your Honor, at this time, we would
12 like to use this. We're not going to put it into evidence.
13 We'd like to use this as a demonstrative evidence.

14 MR. PLEXICO: No objection, Your Honor.

15 THE COURT: In evidence.

16 Q Officer, let me get you to come down off the stand.
17 Keep your voice up so the reporter can hear you, but more
18 importantly, the jury. First of all, is the overview of the
19 location that you were dispatched to?

20 A Yes, sir.

21 Q And tell me the street; where are we?

22 A This is going to be 601 South.

23 MR. PLEXICO: Your Honor, may I come around?

24 THE COURT: Yes.

25 Q Go ahead.

1 A This is 601 South. This is Holly Street. That's the
2 caution light right there. That's the police department
3 would be right back there in the corner. Right back here
4 would be First Street East.

5 Q All right. All of that is in Hampton County; is it
6 not?

7 A Yes, sir.

8 Q In fact, how far is the police station from where you
9 guys were?

10 A Less than a quarter of a mile.

11 Q So you obviously got there pretty quickly once you got
12 the dispatch?

13 A Yes, sir.

14 Q About how long did it take you to get there?

15 A By the time we got in our car and stuff, probably less
16 than two minutes.

17 Q Tell me, you're by yourself or you're with somebody?

18 A I was in a car by myself, but we were all right there
19 together.

20 Q Tell me what you do.

21 A Well, upon getting the call, we get further information
22 from dispatch. They tell us which area of the apartment is
23 in. I then come down 601 and turn left onto Holly Street.
24 As I'm coming down, I'm being flagged down by the caller --
25 or who I suspect to be the caller. And I've been advised by

1 other officers to come this way. As I am, me and Sgt. Long
2 were pulling up in here around the same time, he's right in
3 front of me. We see a male subject come out of what
4 appeared to be the second apartment at the time. We then
5 advise he's running. I then back my car up and come to this
6 side while Sgt. Long pursues him around the building. I
7 then picked up the foot chase and chased the subject back
8 here. This is also Apartments on 601 South and he runs
9 through the wood line right here, jumps a fence; I go around
10 the fence. I pursue him into these woods right here where
11 he comes out of the woods and officers cut him off in a
12 patrol car, Sgt. Ginn and Officer Deloach, we all converge
13 on him at one time.

14 Q And when you first see him, where is he coming out of?
15 Where do you first see him?

16 A Out of the victim's apartment.

17 Q I see there are three apartments?

18 A There are actually four.

19 Q Okay. So tell me about ---

20 A It would roughly be that door right there.

21 Q And when he took off running, which way did he go?

22 A He comes straight down beside the building and down the
23 back.

24 Q Okay. Do you recall what he was wearing when you saw
25 him?

1 A I believe it was blue jeans and a white t-shirt.

2 Q Okay. Let me show you what's been marked as State's
3 Exhibit Six and State's Exhibit Seven and ask if you
4 recognize those.

5 A Yes, sir.

6 Q What are those?

7 A That is the defendant that I caught and arrested that
8 day, and that's the clothes that he had on at the time.

9 SOLICITOR STONE: Your Honor, we would move State's
10 Exhibit Six and Seven into evidence.

11 MR. PLEXICO: Without objection, Your Honor.

12 THE COURT: So admitted.

13 (Whereupon, State's Exhibit Six, photo of Maurice
14 Mitchell, is received into evidence.)

15 Whereupon, State's Exhibit Seven, photo of defendant's
16 clothing at time of arrest, is received into evidence.)

17 Q This is obviously the top portion?

18 A Yes, sir.

19 Q And this would be the, I guess, State Exhibit Seven
20 would be the what?

21 A The pants -- his pants and shoes.

22 Q And this is how he appeared when you saw him running
23 out of the apartment and you caught him on the street; is
24 that correct?

25 A Yes, sir.

1 Q All right. Now, when you caught him, were there any
2 other officers -- you said there were other officers who cut
3 him off; who else was out there at the time?

4 A At the time, like I said, Sgt. Long. Upon me picking
5 him up here, Sgt. Long went back to check on the victim. So
6 only three of us were on 601 South were Sgt. Ginn and
7 Officer Deloach. Other officers, I don't know exactly which
8 ones, but they responded to the scene also.

9 Q Was he taken into custody at that point?

10 A He was.

11 Q And was he read his rights at that point?

12 A Yes, sir.

13 Q And were you there when his rights were read to him?

14 A Yes, sir.

15 Q Who read him his rights?

16 A Officer Deloach.

17 Q Do you recall those rights, specifically?

18 A He has a card that he reads from. It's the general one
19 that we use. We all carry a card. He pulled his card out
20 and read it from the card and made sure that the suspect
21 understood the rights.

22 Q When he read him his rights, did the suspect -- did the
23 defendant -- did the man in this picture here, did he say
24 that he understood his rights?

25 A Yes, sir.

1 Q Was there any questioning at that point?

2 A Yes. We had information that this was an armed robbery
3 with a gun. I then asked him where the gun is. He
4 proceeded to tell me "in the woods."

5 Q And what wooded area was he talking about at this
6 point?

7 A Well, he then pointed in the general area and he said,
8 "The woods that he ran out of." So the area I searched
9 immediately was the woods itself. We later found the gun
10 just before he crossed the fence, but the area we first
11 started looking was the wood line area that he had been
12 talking about.

13 Q I'm going to show you what's been marked as State's
14 Exhibit Eight and ask if you can identify that, please.

15 A Yes, sir. That's the gun that I located.

16 Q Is that a fair and accurate depiction of the gun when
17 you saw it?

18 A Yes, sir.

19 SOLICITOR STONE: Your Honor, we move State's Exhibit
20 Eight into evidence.

21 MR. PLEXICO: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Whereupon State's Exhibit Number Eight, picture of
24 gun, is received into evidence.)

25 Q And this gun, you located -- I'm assuming somewhere

1 there is a fence; I can't see.

2 A I believe it's going to be that dark spot right there
3 is going to be the fence. I searched for probably a few
4 hours. Like I said, the wood line was based off of what he
5 told us. Upon my not being able to find it, I then got the
6 fire department to come and we checked the roof. After
7 coming down off of the roof as I'm walking, it was laying --
8 as you can see, it's dark. The handle is dark. It was
9 laying right next to the fence where he climbed the fence.
10 I believe they even found blood on the fence where he jumped
11 it.

12 MR. PLEXICO: I object. Move to strike. That would be
13 hearsay, Your Honor.

14 THE COURT: Sustained. The jury will disregard the
15 last statement.

16 Q I'm going to show you what's been marked as State's
17 Exhibit Nine. Can you identify that, please?

18 A Yes, sir, that's the same gun that was located here in
19 The picture.

20 Q And I guess this is the serial number?

21 A It is.

22 Q And that matches the gun in the picture?

23 A It does.

24 SOLICITOR STONE: Your Honor, at this time, we move
25 State's Exhibit Nine into evidence.

1 MR. PLEXICO: No objection, Your Honor.

2 THE COURT: Admitted.

3 (State Exhibit Number Nine, gun, is received into
4 evidence.)

5 Q This is the handgun that you found out there at the
6 scene, correct?

7 A Yes, sir.

8 Q Did you clear to check for the bullets or somebody else
9 did?

10 A I never touched it. As soon as I found it, I notified
11 Major Sullivan, which was at the apartment with the SLED
12 crime scene. Then, they come photographed it and took
13 possession of it.

14 Q What type of gun is that?

15 A A Ruger.

16 Q What caliber?

17 A A .40-caliber, I believe.

18 Q Okay. Officer, do you see the individual that you saw
19 running from the apartment that day, that you caught on the
20 side of the road?

21 A Yes, sir, the defendant, Maurice Mitchell.

22 SOLICITOR STONE: No further questions at this time,
23 Your Honor.

24 THE COURT: Cross?

25 CROSS-EXAMINATION

1 BY MR. PLEXICO:

2 Q Did you interview either Shelleveese Stokes or Bobby
3 Stokes?

4 A No, sir.

5 Q And he said, actually, he just had a one-word answer
6 when you asked him about his rights, he said -- what was it
7 he said?

8 A I cannot recall.

9 Q He never actually said he understood his rights, did
10 he?

11 A I always make sure that somebody understands their
12 rights. I don't remember his exact words.

13 Q Okay. Did you ask him about his education level?

14 A No, sir.

15 Q Okay. Did you ask him if he had anything to drink?

16 A No, sir.

17 Q Okay. All right. You had no personal knowledge of Mr.
18 Mitchell, did you?

19 A No, sir.

20 Q And you didn't do anything actually in fact to assure
21 whether or not he was capable of understanding his rights
22 and waiving that, did you?

23 A He understood. In my opinion, he understood.

24 Q But you can't state why you believe that, correct?
25 Because you don't remember?

1 A It's not that I don't remember, but I mean.

2 Q Could you tell us?

3 A We just left an apartment where somebody was running
4 and we ran through the woods, you know, all this happened
5 within 30 seconds.

6 Q So you were already looking for the gun within 30
7 seconds after talking with my client; is that correct?

8 A Well, I was the officer on scene. He was quickly
9 transported to the police department.

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

11 THE COURT: Redirect?

12 SOLICITOR STONE: Nothing else, Your Honor. Thank you,
13 Officer.

14 THE COURT: Let's take a quick break before we start
15 with the next witness. I'm going to send you back to your
16 jury room. You can use the restroom and we will see you
17 back in 10 minutes. Again, don't begin deliberations or
18 discussions.

19 (11:14 a.m., whereupon, the jury exits the courtroom
20 and the following is held on the record.)

21 THE COURT: Before we break, I want to visit the non-
22 conditions of the witness who is coming up, are they pending
23 charges or are they charges that did not result in a
24 conviction?

25 SOLICITOR THORNTON: No, they are pending now, I

1 believe.

2 THE COURT: Well, why wouldn't he be able to cross
3 examine him under 608 just like he would any other person, a
4 jailhouse informant typically comes in, are you expecting to
5 get a deal? If your officers prosecute him, then I think he
6 would be entitled to ask. That would be evidence of bias.

7 SOLICITOR THORNTON: Your Honor, it might be evidence
8 of bias, but that's not what Mr. Plexico said he wanted to
9 ask about it for. What he said he wanted to do was ask
10 about pending charges and then make some allegation or tie-
11 in that Mr. Stokes is not being honest when he says he just
12 happens to come by and there is some illicit drug activity
13 because his client had drugs on him. If all he would say is
14 do you have any pending charges that you would like to incur
15 favor with the Solicitor's Office, I still would object to
16 that, but I understand that it's a much better argument, But
17 that's not what he said he wanted to do. What he said he
18 wanted to do was impugn some possible nefarious motives to
19 Mr. Stokes, an eyewitness, because he has pending drug
20 charges and his client was found with drugs in his pocket.

21 THE COURT: Mr. Plexico?

22 MR. PLEXICO: Well, I think I can do it under 608.

23 THE COURT: Well, I would limit you to that, and not
24 third-party guilt line of questioning.

25 MR. PLEXICO: I would leave it to the jurors, Your

1 Honor.

2 THE COURT: I will allow you to question him on whether
3 or not -- the typical thing you would allow. If it was
4 somebody who was brought in and sitting over in the jail
5 pending charges prosecuted by this office. Are you being
6 prosecuted by this office? Are you expecting to get any
7 relief from your charges as a result of your plea; that sort
8 of thing, but not any kind of questioning or argument about
9 third party guilt. So for evidence of bias only, I will
10 allow you to bring up the pending charges. Okay?

11 MR. PLEXICO: Yes, Your Honor.

12 THE COURT: Are we ready to bring the jury in?

13 SOLICITOR THORNTON: Yes, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 (11:30 a.m., whereupon, the jury enters the courtroom
16 and the following is held on the record.)

17 THE COURT: Welcome back, ladies and gentlemen.
18 Solicitor, you may call your next witness.

19 SOLICITOR STONE: Shelleveese Stokes.

20 (Whereupon, Ms. Shelleveese Stokes enters the courtroom
21 and is duly sworn by the Clerk.)

22 DIRECT EXAMINATION

23 BY SOLICITOR STONE:

24 Q Ms. Stokes, where do you live, ma'am?

25 A 14 Holly Street, Apartment One.

1 Q How long have you lived in Holly Street, Apartment One?

2 A This year will be three years.

3 Q All right. And what do you do, ma'am?

4 A I'm a Tech at Beaufort Memorial Hospital.

5 Q Have you worked there for a while?

6 A Yes, I've worked there for two years now.

7 Q Let me ask you if you could, first, I want to show you
8 and make sure that I understand this. This has been used as
9 State's Exhibit A, and I'll just hold it up for you, an
10 overview of the apartments. Which apartment do you live in?
11 Can you tell from there?

12 A (Witness indicates on State's Exhibit A by pointing.)
13 Here.

14 Q So that's Apartment One?

15 A Right. Uh-huh (affirmative).

16 Q And you're in Apartment One?

17 A Uh-huh (affirmative).

18 Q Who lives in Apartment Two -- or who lived in Apartment
19 Two in October of 2015?

20 A Mr. Eddie Mole.

21 Q And do you know any of your other neighbors who lives
22 in these areas?

23 A I do.

24 Q And who lives in these other areas? And when I say
25 "lives," let's go back to October of 2015 and talk about

1 that.

2 A Would you like for me to say all the neighbors here?

3 Wanda Morgan lives here, her aunt -- this apartment is

4 vacant now. A school teacher lives here, but I don't know

5 his name. And Nadine Dunbar and Maurice Mitchell lived

6 there in number six.

7 Q Okay. Now, this is -- and this is back in October of

8 2015. Did you work on that day?

9 A I didn't. I worked that previous night.

10 Q Okay. So your night schedule, what was that?

11 A It was 7 p to 7 a.

12 Q Okay, so you got in at 7:00 a.m. on October 28th, you

13 were just actually coming in from work, right?

14 A Right.

15 Q Sometime during the afternoon hours of October 28th, do

16 you hear anything unusual?

17 A Yes, sir.

18 Q All right. And again, I'm going to get you to pull

19 that microphone a little bit closer to you so I can hear

20 you. Tell me what you heard.

21 A I was laying on the couch watching TV. I heard what

22 sounded like furniture being moved and I didn't move at

23 first, but what made me move was when I heard Eddie -- what

24 he said. He said, "Don't kill me. Don't shoot me." And

25 when I heard that, I jumped up and went to my front door and

1 opened it.

2 Q When you are hearing the furniture moving, where are
3 you hearing the furniture moving from?

4 A It sounded like it was moving from downstairs to
5 upstairs or upstairs from downstairs.

6 Q Okay. Just a lot of commotion, I guess?

7 A Yeah, a lot of commotion.

8 Q And specifically, this was from what apartment?

9 A Mr. Eddie Mole's apartment, apartment number two.

10 Q So you're on the end and then Eddie Mole's apartment is
11 next to you; is that correct?

12 A Yes, sir.

13 Q All right. So you hear the noise. Do you hear
14 anything else?

15 A I hear Mr. Mole, you know, saying, "Don't kill me.
16 Don't shoot me." And then as I was getting up off the
17 couch, I heard a gunshot.

18 Q What did you do after you heard the gunshot?

19 A I was up at that time and I opened the door, and when I
20 opened the door, I saw Mr. Mitchell and I saw -- I couldn't
21 see Mr. Eddie's face, but I saw his legs.

22 Q All right. Now, when you go out your door, how close
23 is your door to Eddie Mole's door?

24 A They are right beside each other there.

25 Q All right. So if you put me in the spot of the door,

1 where would your door be compared to that? And I'll move
2 anywhere you need me to go.

3 A You can come a little closer. Right there. Right
4 there.

5 Q All right. So you literally walk out of your door and
6 there's this door here?

7 A Right.

8 Q And you walk out and see Mr. Mole's feet; is that
9 correct?

10 A Yeah.

11 Q Could you tell if he was standing up, laying down, or
12 anything like that?

13 A He was laying down.

14 Q Okay. And then what do you see? You were this
15 distance, what do you see here?

16 A I see Mr. Mitchell, or Maurice, standing there with a
17 gun and blood was on it.

18 Q Which way was he facing?

19 A He was facing the same way you're facing.

20 Q Okay.

21 A Kind of like diagonally. He wasn't directly, but he
22 was like sideways.

23 Q Okay. The door opens in or out?

24 A The door opens in, uh-huh (affirmative).

25 Q Okay. He's standing here?

1 A Right.

2 Q So you are this distance away from him?

3 A Uh-huh (affirmative).

4 Q Okay. What do you see?

5 A I see a gun. I see blood.

6 Q Let me show you what's been marked as State's Exhibit
7 Number Six. Can you identify that?

8 A Yes, sir.

9 Q And who is that?

10 A Maurice Mitchell

11 Q Is that man that you saw outside of Eddie Mole's door?

12 A Yes, sir.

13 Q Were you able to get a look at the gun? Could you see
14 the gun?

15 A I saw the gun, but I couldn't identify the gun. I did
16 see it, but I couldn't identify it.

17 Q Now, this man you identified in this photograph, what
18 is he doing when you walk out and look at him?

19 A He was just looking. He looked at me. I looked at
20 him. And I shut my door.

21 Q You went back inside?

22 A I went back inside.

23 Q Are you the person then that called 9-1-1?

24 A I am.

25 Q What happens after you call 9-1-1?

1 A Well, after -- I had to run out the house to a
2 neighbor's house to call 9-1-1, and after I called 9-1-1 and
3 waited for them to come, and my husband went with -- I guess
4 he went with the police to try to look for him and I knew
5 nobody was with Eddie, so I left my neighbor's house and I
6 went to Eddie's apartment. When I walked up, he was saying
7 "help me," and I went in there and stayed with him until 9-
8 1-1 came.

9 Q How did Eddie look when you got in there?

10 A Horrific. Blood was everywhere. I saw his jawbones on
11 the floor, and his house was just a mess. It was terrible.

12 Q I'm going to show you what's been marked as State's
13 Exhibit 10 and State's Exhibit 11. Can you identify those?

14 A Yes, sir.

15 Q Are those fair and accurate depictions of how the scene
16 looked when you got there?

17 A Yes, sir.

18 Q Okay.

19 SOLICITOR STONE: Your Honor, we would move State's
20 Exhibits 10 and 11 into evidence.

21 MR. PLEXICO: No objection, Your Honor.

22 THE COURT: Admitted.

23 (State Exhibit 10 and 11, picture of dentures/jawbone
24 of victim, Eddie Mole, is received into evidence.)

25 Q I show you State's 10. Can you tell us what that is,

1 ma'am?

2 A That is part of Mr. Eddie's jawbone.

3 Q That is a fair and accurate depiction of how it looked
4 in his apartment when you got in there?

5 A Yes, sir.

6 Q Go to State's Exhibit 11. Can you tell us what that
7 is?

8 A Looks like piece of gum and another part of his
9 jawbone.

10 Q And again, that's not -- obviously, Mr. Mole is not
11 there, but that's the scene as you saw it?

12 A Right.

13 Q Now, where you there when the police arrived?

14 A I was.

15 Q Let me ask you this, at some point in time, I know
16 you're referring to Mr. Mitchell, but did you actually know
17 his name at that time?

18 A I did know his name.

19 Q Okay. On the 9-1-1 call, that was you, correct?

20 A Correct, that was me.

21 Q And you said on the 9-1-1 that you didn't know who it
22 was?

23 A I did. I was so upset and so shocked and frantic from
24 hearing all of that and having to run out of my back door.

25 Q How did you know Maurice Mitchell?

1 A Only from seeing him at his girlfriend's; living at
2 Apartment Six, living with his girlfriend.

3 Q And that's the apartment, I guess, at the end; he's the
4 exact opposite of that of where you are located?

5 A Right.

6 Q And how long had he been living there with her?

7 A They were there when I moved in. So I'm not sure how
8 long they lived there.

9 Q How long have you lived there up until when Mitchell
10 attacked Eddie Mole?

11 A About two and a half years.

12 Q Okay. Now, at some point in time, law enforcement
13 showed you a lineup, a photographic lineup; is that correct?

14 A Yes, sir.

15 Q Okay. Let me show you what's been marked as State's
16 Exhibit One and State's Exhibit Two, and ask if you can
17 identify those, please.

18 A Maurice Mitchell.

19 Q Is that the photographic lineup that the officer showed
20 you?

21 A Yes, sir.

22 Q And State's Exhibit Two, did he also show you that one?

23 A Yes, sir.

24 Q One is in color and two is in black and white?

25 A Right.

1 Q When the officer showed you these photo lineups, did he
2 indicate in any way who you should choose out of this
3 lineup? A No, he did not.

4 Q And did he point to anything, any of that stuff?

5 A No, he did not.

6 Q And you chose somebody out of these lineups on your
7 own, from you own memory; is that correct?

8 A Yes, sir.

9 Q And actually at this point, knowing them?

10 A Yes, sir.

11 SOLICITOR STONE: State's Exhibit One and State's
12 Exhibit Two, Your Honor. One is in color and Two is in
13 black and white and we'd enter that into evidence at this
14 time.

15 MR. PLEXICO: I'd renew my prior objections to those,
16 Your Honor.

17 THE COURT: Overruled. They're admitted.

18 (State Exhibit Number One, photo lineup in color, is
19 received into evidence.)

20 (State Exhibit Number Two, photo lineup black and
21 white, is received into evidence.)

22 Q Let's show State's Exhibit One. This lineup, you
23 indicated a witness, a number in there, and I'll show you --
24 I'll hand it back to you so you can see it. Is that your
25 handwriting at the bottom?

1 A Yes, sir.

2 Q Is that your name and date?

3 A And my date of birth, yes, sir.

4 Q Your date of birth, okay. And do you see that man in
5 the courtroom today?

6 A Yes, sir.

7 Q Could you point him out for me, please.

8 A Sitting by Mr. Plexico with the white shirt on and the
9 black and grey tie.

10 Q This man right here?

11 A Yes, sir.

12 Q And at some point in time, did you -- I think you
13 called your husband to the scene as well; is that correct?

14 A Yes, sir.

15 SOLICITOR STONE: No further questions at this time,
16 Your Honor.

17 CROSS-EXAMINATION

18 BY MR. PLEXICO:

19 Q I'm a little confused about the chain of events. You
20 said once you went back in, haven't you testified that you
21 called your husband who was at the Pizza Hut?

22 A Right.

23 Q Okay. Then, you waited on your husband to come home?

24 A Right.

25 Q Your husband came home from the Pizza Hut.

1 A Right.

2 Q Y'all went out the back door?

3 A Right.

4 Q At that point in time, you called 9-1-1?

5 A Right.

6 Q So that's a span of about five minutes; is that right?

7 A I'm not sure how long it was, but that's what happened.

8 Q Okay. So you didn't call 9-1-1 to start with, correct?

9 A No. I called my husband at first. I called my husband
10 because I knew he would not let anything happen to Eddie if
11 someone was trying to hurt him and like I said, I went into
12 panic mode and called my husband.

13 Q Okay. But you know where the local police station is.
14 The Hampton Police Station is right around the corner from
15 you?

16 A Yes, sir.

17 Q You knew that at the time, correct?

18 A Yes, sir.

19 Q Okay. Now, didn't you testify that you didn't walk
20 outside, you just stuck your head out the door frame and
21 looked over?

22 A Right.

23 Q So you never walked outside?

24 A No, I never walked out. You don't have to walk outside
25 from the apartment. The apartments are right here. All

1 I had to do was stick my head to the door and I could see
2 right there.

3 Q Okay. I just wanted to clarify that you never walked
4 outside. Now, you said in your statement that you saw a
5 black male, correct? You didn't say Maurice Mitchell;
6 that's correct, right?

7 A Right.

8 Q All right. Did Maurice Mitchell frequent Mr. Mole's
9 apartment? Had you seen him there before?

10 A Yes, I've seen him there before.

11 Q Okay. So you've seen him go in and out Mr. Mole's
12 apartment and they're friends?

13 A I guess they're friends. I'm not sure about their
14 friendship.

15 Q But you've seen him over there?

16 A I've seen him over there.

17 Q Enough to remember that you've seen him over there?

18 A Right.

19 MR. PLEXICO: I don't think I have any other questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY SOL. STONE:

23 Q Let me ask you one other thing, Mr. Mole, did he work
24 anywhere?

25 A Yes, sir.

1 Q Where did he work?

2 A With his brother at C&N Auto Parts in Estill.

3 Q What time does he come home every day?

4 A I think Eddie used to get home maybe 5-ish or a little
5 after 5:00. I'm not sure.

6 Q Did he ever have anything with him?

7 A Yes, sir.

8 Q What was that?

9 A He had a bank bag. He used to carry a bank bag with
10 him.

11 SOLICITOR STONE: Nothing else, Your Honor.

12 THE COURT: Recross?

13 MR. PLEXICO: I don't have any recross.

14 THE COURT: Ma'am, you may step down.

15 SOLICITOR STONE: The State calls Rodney Stokes to the
16 stand.

17 (Whereupon, Mr. Rodney Stokes enters the courtroom and
18 is duly sworn by the Clerk.)

19 DIRECT EXAMINATION

20 BY SOL. STONE:

21 Q Mr. Stokes, Shelleveese Stokes who just testified, that
22 is your wife; is that correct?

23 A Yes, sir.

24 Q And you live where?

25 A In Apartment One on Holly Street.

1 Q Now, Apartment 1, and we've been showing this to the
2 jury, State's Exhibit A, is this first apartment here; is
3 that correct?

4 A Yes, sir.

5 Q On October the 20th, 2015, did you get a call from your
6 wife?

7 A Yes, sir.

8 Q Tell me about that. Where were you when you got that
9 call?

10 A I was at Pizza Hut picking up some food for me and her.

11 Q All right. Let me get you to pull that microphone to
12 you and get it a little closer.

13 A All right.

14 Q Where were you, sir?

15 A At Pizza Hut picking up some food for both of us.

16 Q Sometime that afternoon?

17 A Yes, it was between four and five, something like that.

18 Q All right. After you got the call from her, what did
19 you do?

20 A She called and said somebody was over next door. She
21 said Eddie was begging for his life. So I had already got
22 the food and was walking out the door when the phone rang.
23 I jumped in the truck and took about two minutes to get
24 there.

25 Q So the Pizza Hut is right down the street, literally?

1 A It's about two miles from the house.

2 Q Gotcha. When you get there, what did you see?

3 A As soon as I pulled in ---

4 Q Let me stop you right there. When you pull in -- I
5 tell you what I'm going to do. Let me get you to come down
6 off the stand. Come on around here.

7 MR. PLEXICO: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q All right. First off, when you come in, how do you get
10 there?

11 A Come down here on Holly Street.

12 Q That's Holly Street here; is that correct?

13 A The caution light. This is Holly Street and I turned
14 right here. That's the first thing that I seen was Eddie
15 and Mr. Mitchell. Eddie was laying in the doorway and Mr.
16 Mitchell standing over him and Mr. Mitchell had a pistol in
17 his hand. And Mr. Mitchell had just got through hitting him
18 up side the head.

19 MR. PLEXICO: I object, Your Honor. That's hearsay and
20 I would move to strike and ask for a curative instruction.
21 He couldn't know what he just got through doing.

22 A He was coming down and hitting him in the head.

23 THE COURT: He's saying what he saw. He can do that.

24 Q Thank you. Go ahead. So where are you when you see --

25 -

1 A I was turning in. Turning in the apartment, in the
2 parking lot, right there.

3 Q Which I guess is right in front of your apartment; is
4 that right.

5 A Yes, sir.

6 Q Okay.

7 A So I gets out the truck and I'm panicking. I left my
8 phone in the truck. So I'm looking at him and he look like
9 he talking to Eddie and he's saying all kind of stuff.

10 Q Did you hear what he was saying?

11 A He kept asking him where it at? You know what I'm
12 talking about. All kinds of stuff. But he looked at me. I
13 was scared for my life, but he walked on in the house. As
14 soon as I got in the house, my wife, like, she was all
15 worried. She worked at night and all she had was a t-shirt
16 on. She told me she had to go upstairs and put on some
17 pants and I said, No, we ain't got time for that. Let's go
18 ahead and get out the back door before he change his mind
19 and come get us. So she left her phone in the house, too,
20 so we escaped. So we went out the back door and went to the
21 neighbor's house and we called 9-1-1.

22 Q All right. When you first get there and see him
23 hitting Eddie Mole, how far away are you from him? Put me
24 where how far are you away?

25 A I seen him hitting Eddie as soon as I was turning in.

1 Q Okay. So how far would he be away from you? As far as
2 you and me?

3 A About from me to a little bit past that counter right
4 there.

5 Q Okay. And then you walked through -- I guess it's a
6 straight shot into your apartment; is that right?

7 A That's the scariest ten feet I ever took in my life.

8 Q All right. Could you hear anything from Eddie Mole?
9 Could you hear him say anything?

10 A He said, "Why you doing this?" "Please don't kill me."
11 My intention was to help him, but once I seen him done it,
12 there wasn't nothing I could do for him, but call the police
13 and get him some help.

14 Q Okay. I'll show you what's been marked as State's
15 Exhibit Six. Is that the man that you saw beating Eddie Mole
16 that day?

17 A Yes, sir.

18 Q And I'll show you what's been marked as State's Exhibit
19 Eight. Does that look like the gun that he had in his hand
20 when he was beating him?

21 A Yeah. Had way more blood on it, but that's it.

22 Q Okay. Had more blood on the gun?

23 A Yes, sir.

24 Q Okay. Go ahead and have a seat, sir.

25 A Witness complies.

1 Q Now, at some point, did law enforcement show you what's
2 called a photo lineup?

3 A Yes, sir.

4 Q And did they show you a series of photographs -- well,
5 first, let me show you what's been marked as State Exhibit
6 Three and Four. Are these the lineups that the officer
7 showed you?

8 A Yes, sir.

9 Q And when you were shown there three and four, was
10 anyone else in the room with you other than the officer?

11 A No, sir.

12 Q Where was your wife at this time?

13 A She did hers first and I stepped outside. Then, she
14 went outside and I done mine.

15 Q Okay. So y'all did them at separate times?

16 A Yeah.

17 Q Okay. So when the officer shows you these, State
18 Exhibit Three is in color and State Exhibit Four is in black
19 and white, did the officer point to any of these people or
20 indicate to you in any way which one you should choose?

21 A No, sir.

22 Q And that is, I'm assuming, your initials under number
23 five?

24 A Yes, sir.

25 SOLICITOR STONE: At this time, Your Honor, we would

1 move State Exhibit Number Three and State Exhibit Four into
2 evidence.

3 MR. PLEXICO: Just my prior objection I would renew,
4 Your Honor.

5 THE COURT: Overruled. Admitted.

6 (State Exhibit Number Three, color photo of lineup, is
7 received into evidence.)

8 (State Exhibit Number Four, black and white photo
9 lineup, is received into evidence.)

10 Q I will show you State's Exhibit Three. These are your
11 initials at the bottom, correct?

12 A Yes, sir.

13 Q And [REDACTED], that's your date of birth?

14 A Yes, sir.

15 Q And that's the person you chose and was the person that
16 you saw beating Mr. Mole?

17 A Yes, sir.

18 Q Had you seen him before?

19 A Yeah, he stays out there -- his girlfriend stays there
20 at the end of our apartment complex. He stayed at apartment
21 number six.

22 Q Apartment number six is at the far end and is the exact
23 opposite of where you and your wife ---

24 MR. PLEXICO: I object, Your Honor. That's leading.

25 A I'm number one; she's number six.

1 Q And then how long have you stayed there?

2 A From the time I stayed there over a year, I used to see
3 him quite frequently.

4 Q So you were out there a year before this event?

5 A Yeah.

6 Q And you say you saw him a number of times?

7 A Yes, sir.

8 Q Do you see the individual that you chose in that photo
9 lineup, do you see the individual that you saw beating Eddie
10 Mole, in the courtroom today?

11 A Yes, sir. Mr. Maurice Mitchell, sitting beside Mr.
12 Plexico.

13 Q Can you point him out for me, please?

14 A (Witness Complies.)

15 Q What is he wearing?

16 A A white dress shirt and a tie.

17 Q Now, when you get there, and you go inside, when do the
18 police get there?

19 A It took them at least three and five minutes to get
20 there. By the time we ran next door to call 9-1-1, you know
21 they ask 50 questions to ---

22 Q Say that again.

23 A We ran next door to call 9-1-1, but 9-1-1, you know,
24 they ask so many questions before they -- so it took them
25 about five minutes to get there.

1 Q Okay. Do you know if Maurice Mitchell was still on the
2 scene when law enforcement got there?

3 A Oh, Yes, sir, because when police came in, they asked
4 which apartment, so we pointed and told them which
5 apartment, and I ran behind them, and then he was just -- as
6 soon as he saw the police, he ran out the front door and
7 they ran chasing him. And I was just behind the police.

8 Q Did you see them catch him?

9 A No, they caught him -- when he ran through the woods,
10 they caught him on the main highway. I didn't go that far.

11 Q Okay. Just so we understand, when law enforcement gets
12 there, where are you?

13 A I'm in the front, not my complex, but it's a front
14 complex. I'm sitting there waiting on law enforcement to
15 get there.

16 Q Where are you on this State's Exhibit A?

17 A This is my complex right here. And this is on the main
18 road where the other complex is.

19 Q So law enforcement comes down here?

20 A They turn in and I come behind them and that's when he
21 took off running. He took off running out the apartment
22 through these woods and came out here.

23 Q "He," you're talking about Maurice Mitchell?

24 A Yes, Mr. Mitchell.

25 SOLICITOR STONE: Nothing further at this time, Your

1 Honor.

2 THE COURT: Mr. Plexico?

3 CROSS-EXAMINATION

4 BY MR. PLEXICO:

5 Q Sir?

6 A Yes, sir.

7 Q Okay, you have some pending charges, correct?

8 A Yes, sir.

9 Q Isn't it true you are looking at 30 years on those
10 charges as a second offense?

11 A Yes, sir.

12 Q Is that correct?

13 A Yes, sir.

14 Q Now, you've got prior convictions for drug
15 distribution; is that correct?

16 A Yes, sir .

17 Q Now, you're in a lot of trouble for that, aren't you?

18 A Yes, sir.

19 Q Do you have any deals with any Solicitor's Office for
20 your charges?

21 A No, sir.

22 Q Do you hope to get some help from the Solicitor's
23 Office in regards to your charges?

24 A I haven't really thought about that. I'm just here for
25 the Mole family, not the Solicitor's Office right now.

1 Q But you're not doing this to try to get out of a
2 possible 30-year sentence?

3 A No, sir.

4 Q Okay. How old are you?

5 A Forty-four.

6 Q So you might not get out of jail until you're 74 years
7 old, correct?

8 A Yes, sir. You do the math, yes, sir.

9 Q My client, you say -- I want to make sure, he never
10 said a word to you; is that correct?

11 A No, sir.

12 Q That's not correct?

13 A No, he never said a word to us, yes, sir.

14 Q All right. You testified earlier, correct?

15 A Yes, sir.

16 Q And you were under oath?

17 A Yes, sir.

18 Q And you never said during your first testimony in
19 regards to this anything about you seeing Mr. Mitchell
20 striking the head of Eddie Mole; isn't that correct?

21 A I was not asked none of them questions, sir. I was not
22 told to say what I'd seen, so I just answered the question
23 that y'all asked yesterday.

24 Q So is that correct that you didn't testify today?

25 A Yes, sir.

1 Q Okay. All right. Did you have your cell phone with
2 you at Pizza Hut?

3 A Yes, sir.

4 Q Did you get your food and then come back?

5 A Yeah.

6 Q So you waited to get your food and then ---

7 A No, I didn't wait to get my food. I was leaving out
8 the door when my wife called.

9 Q Did you call 9-1-1 at the Pizza Hut?

10 A No, sir.

11 Q And have the police meet you over there?

12 A No, sir.

13 Q Okay. That didn't occur to you?

14 A No, sir.

15 Q Okay. And you gave a statement earlier, correct?

16 A Yes, sir.

17 Q In your statement, you never mentioned Maurice
18 Mitchell, correct?

19 A No, sir.

20 Q That's not correct?

21 A I mentioned a black man; my statement said a black
22 male. I think they just wanted me to describe the man. He
23 was a black male.

24 Q You said a black male; that's what you said? You
25 didn't say Maurice Mitchell?

1 A No, sir.

2 Q All right. And you have no idea what precipitated
3 this, because you weren't there, correct?

4 A Yes, sir.

5 Q And you didn't see him inside the apartment; is that
6 correct?

7 A Oh, yeah. I seen him inside the door the whole time.

8 Q He was inside?

9 A Inside the doorway the whole time.

10 Q But just standing there?

11 A He was just standing there. He had just got through
12 hitting when I turned in, he was standing over there talking
13 to him and Eddie was begging for his life.

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

15 THE COURT: Redirect?

16 SOLICITOR STONE: Just briefly.

17 REDIRECT EXAMINATION

18 BY SOL. STONE:

19 Q The charges that you have pending, you picked those up
20 in July of 2016; is that correct?

21 A Yes, sir. Before that, I already had done wrote
22 statements to this matter before I even know that I had
23 charges. So this ain't got nothing to do with no charges
24 that I'm trying to work off or nothing like that.

25 Q Okay. So that's roughly nine months after you picked

1 him out of a photo lineup?

2 A Yes, sir.

3 SOLICITOR STONE: I don't have anything else.

4 THE COURT: Recross?

5 SOLICITOR STONE: I don't have anything, Judge.

6 THE COURT: You can step down. Call your next witness.

7 SOLICITOR STONE: The State calls Sgt. Richard Long.

8 (Whereupon, Sgt. Richard Long enters the courtroom and
9 is duly sworn by the Clerk.)

10 DIRECT EXAMINATION

11 BY SOL. STONE:

12 Q Sgt. Long, you work now with -- who do you work with
13 now, sir?

14 A I work full-time for Savannah River Site.

15 Q And what do you do with the Savannah River Site?

16 A I am an ENI Mechanic. I do heavy, major electrical
17 work.

18 Q In October of 2015, what did you do then?

19 A I was a full-time police officer for the Town of
20 Hampton.

21 Q And how long did you serve in that capacity for the
22 Town of Hampton?

23 A I think it was like two years, two and a half years.

24 Q Did you respond to Holly Street on October 28th, 2015?

25 A Yes, sir.

1 Q And you were dispatched out to the scene?

2 A Yes, sir.

3 Q Tell me about that.

4 A We were dispatched out for a fight/shooting taking
5 place at the Kramer Apartments, so I responded to the Kramer
6 Apartments. Once I responded to the scene, I was met by the
7 Stokes' and they said that a fight had taken place in an
8 apartment right next to theirs. As all that was
9 transpiring, the gentleman exited the apartment and they
10 started yelling that that was him. I gave pursuit to him
11 until I got behind the building. Once he cleared the fence,
12 Lt. Drawdy then came from the other side of the building.
13 Once he came from the other side of the building, he carried
14 on the pursuit and I returned back to the scene to see what
15 had taken place inside of there.

16 Q Tell me what you found once you got back inside the
17 apartment.

18 A Once I got back inside the apartment, I found the
19 victim. He was laying face down, severely beaten. I did
20 not recognize him. I've known the man my entire life.

21 Q You knew Eddie Mole?

22 A Yes, I've known him my entire life.

23 Q And you saw him and that was his apartment, I'm
24 assuming?

25 A Correct.

1 Q Tell me what it looked like.

2 A It was something you would see out of a movie almost.

3 It was almost fiction. He was severely beaten. Blood

4 scattered throughout the room. Fragments of his jaw were on

5 the floor. It was a pretty intense beating.

6 Q At some point, do you show a lineup to the Stokes?

7 A Yes, I do.

8 Q I will show you what's been put into evidence as

9 State's One and Two. State's Exhibit One is a color version

10 and State's Exhibit Two is a black and white. Is that the

11 lineup that you showed Mrs. Stokes?

12 A That is the lineup.

13 Q All right. And where is Mr. Stokes when you are

14 showing her that lineup?

15 A Mr. Stokes is over by the kitchen area of the

16 apartment. I had separated her and her husband. He was in

17 the apartment. You have the kitchen area and then the

18 living room area. Me and her was in the kitchen area by the

19 table.

20 Q And y'all are by yourselves?

21 A Yes, sir.

22 Q You show her that lineup; is that correct?

23 A I do show her that lineup.

24 Q Did you do anything to indicate which one she should

25 choose out of that photo lineup?

1 A No, I did not.

2 Q And did she make a choice in that?

3 A She did make a choice.

4 Q And who did she pick?

5 A She picked the defendant. He was listed as number
6 five.

7 Q On a separate time, State's Exhibit Three and State's
8 Exhibit Four, are these the lineups that you showed to Mr.
9 Stokes?

10 A That is correct. These are the lineups that I showed
11 him.

12 Q Is it just you two at that point?

13 A Yes, sir.

14 Q Did you in any way indicate which one he should have
15 chosen out of that?

16 A No, sir.

17 Q Did you choose someone out of that?

18 A Yes, sir. He chose Mr. Mitchell, number five.

19 Q He chose Mr. Mitchell as well?

20 A Yes, sir.

21 Q How certain were they in their picks of this when they
22 indicated?

23 A Immediately. They said, "That's him."

24 Q And that was done the same night or different day?

25 A Same night.

1 Q Thank you, Officer. Nothing further.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. PLEXICO:

5 Q All right. So you showed them a lineup and you asked
6 them to pick the suspect out of that array of six
7 photographs, correct?

8 A That's correct.

9 Q All right. You never told them the suspect may not be
10 in this lineup, is that correct?

11 A I did not.

12 Q Okay. Isn't that the best procedure to use as far as
13 normal police protocol in showing people a lineup?

14 A That's the way I've done it since I started showing
15 photo lineups.

16 Q So you never been trained to show a photo lineup?

17 A I was trained in the academy, but I've never used that
18 type of procedure. They could have changed it since I went
19 to the academy.

20 Q Okay. And you try to document what happened that day,
21 correct?

22 A I did.

23 Q And you're taught at the academy how to properly
24 document everything that happened; is that correct?

25 A That's correct.

1 Q Do you remember your interview with Mr. Rodney Stokes?

2 A I remember pieces of it.

3 MR. PLEXICO: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 Q Are these your notes in regards to Mr. Stokes?

6 A Yes, these would be them.

7 Q All right. And in this, it says that Mr. Stokes was
8 confronted by the offender; is that correct?

9 A Can I see it?

10 MR. PLEXICO: May I approach again?

11 THE COURT: Yes.

12 A That is correct.

13 Q And this is based off of your discussions with Mr.
14 Stokes; is that correct?

15 A Yes, sir.

16 Q Okay. And you don't know anything really about Mr.
17 Mitchell; is that correct?

18 A No, sir. If I've had involvement with him prior to
19 this case, I don't remember it.

20 Q Okay. And you don't know anything about the
21 relationship between Mr. Mitchell and Eddie Mole do you?

22 A No, sir, I don't.

23 Q Okay.

24 MR. PLEXICO: Court's indulgence, please.

25 (Brief pause.)

1 MR. PLEXICO: I don't have anything further for this
2 witness.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY SOL. STONE:

6 Q I just want to make sure I've got this straight. This
7 is the witness statement that you took, I guess, after
8 talking with Mr. Stokes; is that correct?

9 A Yes, that is.

10 Q And this was information that Mr. Stokes gave you at
11 the time when you were there?

12 A Yes, sir. As he was giving me this information, I was
13 transcribing it in a computer.

14 Q What does the first line say?

15 A "Returned home at wife's request and found the offender
16 assaulting the victim in apartment two.

17 Q Thank you.

18 SOLICITOR STONE: Nothing else, Your Honor.

19 THE COURT: Recross?

20 MR. PLEXICO: No recross, Your Honor.

21 THE COURT: You may step down. Do you have another
22 witness before lunch?

23 SOLICITOR STONE: Yes, sir. We can keep going. The
24 State calls Sgt. Nick Ginn.

25 (Whereupon, Sgt. Nick Ginn enters the courtroom and

1 is duly sworn by the Clerk.)

2 DIRECT EXAMINATION

3 BY SOL. STONE:

4 Q Sergeant, with whom do you work, sir?

5 A The Hampton Police Department.

6 Q How long have you worked with the Hampton Police
7 Department?

8 A Approximately four years.

9 Q And what is your job with them?

10 A I am currently a Sergeant with road patrol and I have
11 worked in investigations.

12 Q On October 28th, 2015, were you with the Hampton Police
13 Department at that time?

14 A Yes, sir.

15 Q All right. Did you get called out to the apartments on
16 Holly Street?

17 A Yes, sir.

18 Q All right. Tell me how that came about.

19 A I don't remember the exact specifics. There was an
20 assault with a weapon. Some officers went ahead of us. I
21 got in the car with Officer Deloach and once I got a
22 description of a black male with a white shirt and it was
23 either blue jeans or blue jean shorts, we went a different
24 direction to try and triangulate him and he came out of the
25 woods -- a guy came out of the woods fitting the description

1 -- Mr. Mitchell came out of the woods fitting the
2 description of the person that they gave.

3 Q Let me stop you there if I could. If I could get you
4 to come off the stand.

5 A (Witness Complies.)

6 MR. PLEXICO: Your Honor, if I could come around so I
7 can see.

8 THE COURT: Yes.

9 Q All right. Which direction do you come?

10 A We come from this direction here.

11 Q What road is that?

12 A That is 601 South and First Street West.

13 Q That road is perpendicular to what?

14 A That is Holly Street.

15 Q So your direction, you go 601?

16 A We go 601 South. The description and the direction of
17 travel from this apartment complex here, they said he went
18 behind the apartments and was coming toward 601 South. And
19 he actually came out of the woods somewhere in this area.

20 Q Now, who is with you? Deloach is with you?

21 A Deloach, yes, sir.

22 Q Tell me what you see when he comes out of the woods?

23 A When he comes out of the woods, obviously, he is -- he
24 appears sweaty and is in a panic. He has what appears to be
25 blood on his shirt. As soon as he come out, we are there at

1 the same time, basically.

2 Q Let me show you what has been marked as State's Exhibit
3 Six and State's Exhibit Seven. Can you tell us what those
4 are, please?

5 A That's Mr. Mitchell in a white t-shirt and blue jeans.

6 Q Is that how he appeared when he came out of the woods?

7 A Yes, sir.

8 Q And is this how he appeared when all of you captured
9 him coming out of that spot?

10 A It is.

11 Q Okay. Now, did you take him into custody or did
12 someone else take him into custody?

13 A That was Drawdy, I believe, who actually placed the
14 handcuffs on him. I drew my weapon because the initial call
15 was about a weapon. I drew my weapon and ordered him to the
16 ground. I asked them to go ahead and read him his Miranda
17 rights and they secured him in handcuffs while I held him
18 with my weapon.

19 Q And did they actually read him his Miranda rights?

20 A Yes, sir.

21 Q And what rights were those? Did he read them off his
22 card or did he do it from memory?

23 A They were read off of a card by Officer Deloach who
24 keeps it in his vest.

25 Q Okay. Did you hear those rights being read to him?

1 A Yes, sir, I did.

2 Q And did the defendant indicate that he understood those
3 rights?

4 A Yes, sir, he did.

5 Q And did he say anything or did you guys question him at
6 that point?

7 A I heard them ask, "Where's the gun?" and he stated
8 that he dropped it in the wood line when he went into the
9 woods.

10 Q All right. Let me ask you to go ahead and get back on
11 the stand and I will put this down.

12 A (Witness Complies.)

13 Q At that point, did you go to the police station and
14 have another contact with Maurice Mitchell?

15 A Yes, sir. Officer Deloach transported him to the
16 police department where myself and Captain Russell then made
17 contact with him for an interview.

18 Q Let me show you what's been marked as State's Exhibit
19 Twelve and ask if you can identify that for me, please, sir.

20 A Yes, sir. These are the Miranda rights on paper form
21 that I offered Mr. Mitchell and he waived his rights by his
22 signature. I witnessed it and Captain Russell did as well.

23 SOLICITOR STONE: At this time, Your Honor, we would
24 move State's Exhibit Twelve into evidence.

25 MR. PLEXICO: Subject to my prior objection.

1 THE COURT: Overruled. It's admitted.

2 (Whereupon, State's Exhibit Number Twelve, Miranda
3 Rights form, is received into evidence.)

4 Q All right. Now, Sergeant, you are at the police
5 department when you read him this?

6 A Yes, that is correct.

7 Q All right. Tell me exactly what you do. Did you read
8 those to him? Did you point to them? Tell me exactly how
9 it happened.

10 A It's kind of a two-form process. First, we cut on a
11 videotape so the interview is videoed. We advise him that
12 we are going to do it on paper form. He's already been read
13 his Miranda rights, but I advise him that we are going to do
14 it again on paper form. He understood. I read him the
15 Miranda rights; he understood. I offer him the paper where
16 he could read them as well and he understood and the way he
17 expressed to me that he understood is he used his signature
18 on the signature line.

19 Q Now, do you actually read the rights to him or did you
20 just hand him the form?

21 A Yes, sir, I read them to him.

22 Q Okay. Read them to the jury as you read them to him
23 that day.

24 A "You have the right to remain silent. Anything you say
25 can and will be used against you in a court of law. You

1 have the right to talk to an attorney or have him or her
2 present with you while you are being questioned. If you
3 cannot afford to hire an attorney, one will be appointed to
4 represent you before any question, if you wish. You can
5 decide at any time to exercise these rights and not answer
6 any questions or make any statements; do you understand each
7 of these rights that I've explained to you? Having these
8 rights in mind, do you wish to talk to us now?" I also went
9 on to read the next few sentences. It says, "I, the
10 undersigned, do hereby waive my rights and will answer any
11 questions that may be asked by law enforcement. No promises
12 or threats have been made to me." I asked him if he
13 understood that and he did. I also asked if he still wanted
14 to waive his rights and to indicate that by his signature.

15 Q And did he sign that?

16 A Yes, he did.

17 Q And did he indicate to you that he would give a
18 statement?

19 A Yes, sir.

20 Q And all of that is on videotape?

21 A Yes, sir.

22 Q Now, you reviewed the videotape; is that correct?

23 A Yes, sir.

24 Q Is that a fair and accurate depiction of the event?

25 A Yes, sir.

1 Q Thank you, sir. Let me show you what's been marked as
2 State's Exhibit 13 and State's Exhibit 14. At some point,
3 did you while dealing with this defendant, did you take the
4 clothes that he was wearing?

5 A Yes, sir. If I recall correctly, we had a jumpsuit
6 from the jail brought to the office so that he would have
7 something to put on. We collected his clothes and then
8 released him to SLED for processing.

9 Q And the clothes that are indicated in State's six and
10 seven, are these what's in those bags?

11 A Yes, sir.

12 Q All right. In State's Exhibit 13, can you tell us
13 what's in those bags?

14 A Exhibit 13 is a white t-shirt; no size is indicated.

15 Q And this is what came off of the defendant at the
16 police station?

17 A Yes, sir.

18 Q All right. And this is now put into a -- I guess it's
19 a SLED bag. It was turned over to SLED after you collected
20 it.

21 A Yes, sir. It was turned over to SLED.

22 Q Let me show you what is marked as State's Exhibit 14
23 and ask if you can tell me what that is.

24 A I'm assuming that's the name brand jeans, Gervald,
25 pants, size 36. These were also along with the t-shirt,

1 which is what the defendant was wearing at the police
2 department.

3 Q All right. You collected this and turned it over to
4 SLED as well?

5 A Yes, we did.

6 Q Did you also collect the shoes that he was wearing?

7 A That's correct.

8 Q Again, these are the shoes indicated in State's Exhibit
9 Number Seven?

10 A Yes, sir.

11 Q I'm going to show you what's been marked as State's
12 Exhibit 15. Can you tell us what is in that box?

13 A Shoes.

14 Q These are the shoes that were taken from him that
15 night?

16 A Yes.

17 Q And these were also turned over to SLED? I see SLED
18 evidence tape.

19 A That's correct. All of his clothes were turned over to
20 SLED that night at the police department.

21 Q All right. And at some point in time, did you take a
22 buccal swab as well or was that Captain Russell?

23 A I do not recall.

24 Q All right. And at some point, did you go to the
25 Medical University of South Carolina and specifically their

1 autopsy.

2 A Yes, sir, I did. I collected a sample, a blood sample,
3 that was immediately carried to SLED in Columbia from
4 Charleston.

5 Q Let me show what's been marked as State's Exhibit 16.
6 Can you tell me what that is, please?

7 A Yes, sir. This is the autopsy of Eddie Mole. This is
8 a blood spot that has been collected from the Medical
9 University. It's sealed. The date on it that was provided
10 to me and the bag that it is in came through SLED. We
11 dropped it in this bag and sealed it at SLED. I signed my
12 name across the seal.

13 Q And did you change or alter this in any way coming from
14 autopsy to SLED?

15 A No, sir. I went directly from Charleston to Columbia.

16 Q Now, these items here, State's Exhibits 13, 14 and 15,
17 the clothes that Maurice Mitchell was wearing that day, did
18 you change or alter those in any way from getting them from
19 him and then handing them over to SLED?

20 A No, sir, they were not changed.

21 Q All of this took place in your presence?

22 A That's correct.

23 Q Do you see the individual in the courtroom today that
24 you arrested and you say you took the clothes from him and
25 the man that you actually arrested at the scene?

1 A That's Mr. Maurice Mitchell sitting by Mr. Steve
2 Plexico.

3 Q All right. Can you describe him for me?

4 A He's a black male, short haircut, with a little bit of
5 facial hair.

6 Q What is he wearing?

7 A A white button-up shirt with a tie.

8 SOLICITOR STONE: I don't have any further questions at
9 this time, Your Honor.

10 THE COURT: Cross?

11 MR. PLEXICO: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. PLEXICO:

14 Q Do you have -- did you ask my client and this is the
15 form that you used?

16 A That's correct.

17 Q Did the form have any place for him to answer a
18 question such as what is his educational level?

19 A No, sir, it does not.

20 Q Okay. Did you ask him about any medications he might
21 be on?

22 A No, sir, I did not.

23 Q Okay. Did you ask him does he have any disabilities?

24 A No, sir, I did not.

25 Q Okay. So y'all do not attempt to -- essentially, you

1 will take a statement from anybody that talks? Is that
2 pretty much the way it goes?

3 A If they don't have any known medical or mental
4 condition or we don't believe they are impaired, then, yes,
5 we will collect a statement. Mr. Mitchell did not seem
6 impaired. He provided a written statement voluntarily on
7 his own free will. He was conversing with us in a manner
8 that we saw fit that he was of the mental capacity to do so.

9 Q Did he initial any of these items on one through seven
10 for the waiver for all of that?

11 A No, sir, he just indicated it by his signature.

12 Q So you have no way to understand that he perceived the
13 gravity of what he was doing?

14 A Other than the conversations with him, he seemed fine
15 to me; what would be normal.

16 Q All right. He showed you those items 13, 14 and 15,
17 correct?

18 A Yes, sir.

19 Q All right. But you don't have any idea what's actually
20 in those bags today, because you didn't bag them, correct?

21 A That would have been SLED that was packaging them.

22 Q You were just reading their labels since you don't know
23 what's inside?

24 A What's indicated on the bag, yes, sir.

25 MR. PLEXICO: Court's indulgence, Your Honor.

1 (Brief pause.)

2 Q You took the statement from Mr. Mitchell, correct?

3 A It was a video statement and a written statement.

4 Q And you made notes of that, correct?

5 A Yes, sir.

6 Q All right. And you -- and my client told you that he
7 had been intoxicated and that he had sexual intercourse with
8 Mr. Mole, correct?

9 A On a previous occurrence, yes, sir.

10 Q Okay. And that he hears voices; is that correct?

11 A That's correct.

12 Q Okay. Did you do anything to see if he got examined or
13 do anything further to determine that he understood what he
14 was saying?

15 A No, sir. I went off the basis that he stated he was
16 intoxicated before, but he recollected all of the events
17 that took place with him and Mr. Mole, so I assumed he knew
18 what was going on at that point as well.

19 Q So they had a liaison relationship based in Mr. Mole's
20 apartment; is that correct?

21 A From what I understand from Mr. Mitchell, yes.

22 Q Okay.

23 MR. PLEXICO: I don't have anything else.

24 THE COURT: Redirect.

25 REDIRECT EXAMINATION

1 BY SOL. STONE:

2 Q Officer, let me show you what's been marked as State's
3 Exhibit 55. Is this the statement that Mr. Plexico was just
4 asking you about?

5 A This is the voluntary statement that Mr. Mitchell
6 completed on his own.

7 Q All right. Let me ask you this, the writing on this,
8 who did the writing?

9 A The writing came from Mr. Mitchell, except for the
10 date, place and time started, and my signature.

11 Q And so, the top writing up here, that is from who?

12 A The top writing underneath Hampton Police Department is
13 Mr. Mitchell's.

14 Q So he filled all of this in as well?

15 A Yes, sir. And he indicates that his level of education
16 is 9th grade.

17 Q And then this writing here; who does that?

18 A That's Mr. Mitchell.

19 Q He wrote that as well?

20 A Yes, sir.

21 Q Who signed this at the bottom?

22 A Myself and Captain Anthony Russell.

23 SOLICITOR STONE: Your Honor, at this time, we would
24 move State's Exhibit 55 into evidence.

25 MR. PLEXICO: I would object as to my previous

1 objection, Your Honor.

2 SOLICITOR STONE: Over previous objection, it's
3 admitted.

4 (Whereupon, State's Exhibit Number 55, Defendant's
5 written statement, is received into evidence.)

6 Q Officer, if you could, publish that to the jury. Tell
7 us what that says.

8 A Hampton Police Department Voluntary Statement. The
9 date was October 28, 2015 at the Hampton Police Department. .
10 It started at 7:36 p.m. It says, "I, the undersigned,
11 Maurice Mitchell, am 28 years of age, having been born on
12 [REDACTED] in Hampton County." He gives his social security
13 number and level of education as 9th grade. Now lives in
14 Hampton. He has been duly warned and advised by N. Ginn,
15 myself, a person who has identified him or herself as an
16 officer of the Hampton Police Department. It says that I
17 declare that the following voluntary statement is made to
18 the aforesaid person of my own free will without promise of
19 hope or reward, without fear or threat of physical harm,
20 without coercion, favor, or offer of favor, without leniency
21 by any person or persons whomsoever. It starts with Maurice
22 Mitchell's handwriting ---

23 Q Let me stop you there. I apologize. Let me interrupt
24 you a second. Where are you when he is writing this
25 statement?

1 A I -- we had left the room and allowed him time to
2 compose this statement without us being there, without any
3 kind of interference.

4 Q And who is "us"?

5 A Myself and Capt. Russell.

6 Q So both of you are out of the room at this point?

7 A Yes, sir, that's correct.

8 Q And he is writing this?

9 A Yes, sir.

10 Q Go ahead. I'm sorry to interrupt you.

11 A It says, "I, Maurice Mitchell, hereby, am writing this
12 statement on my own. Today I left my -- it's a little
13 difficult to read, "my" -- he has b.m. in parentheses, "baby
14 moma," I'm assuming, Nadine Dunbar Robinson, apartment
15 number 106 around 10 or a little bit after 10.

16 Nadine Dunbar Robinson dropped off my two sons a little
17 bit after 3-something to four. We was outside, me and my
18 two sons, and then Mr. Eddie Mole was on his way to his
19 apartment, so I told the boys to go into the house and I
20 went to talk to Mr. Eddie Mole. I asked him did he insert
21 my bottom-back area and he said he didn't do anything to me.
22 Then, I asked him was he being honest with me? And he said
23 he didn't do so. I pulled out my weapon P94 Ruger Auto and
24 he started going into the house, so I tried to force my way
25 into the apartment. As I was pushing the door on one

1 another, as my foot -- I don't know what that next word is,
2 "bend -- bend in his doorway, so he couldn't close it, then
3 I finally did get into the house with him still on his
4 apartment door, he slide and hit my elbow and the gun went
5 off. Not knowing if I strike him or not as he hit the
6 floor. I started hitting him with the armored weapon and
7 then Hampton County rode up to his apartment and I took out
8 and started running behind the apartment buildings, ran in
9 the woods, jumped a fence and ran into some more wooded
10 area. After I fell, I throw the gun into the woods with my
11 right hand and then I ended up on the main highway. Hampton
12 County officers caught me as I was entering out the woods.
13 And the only thing I took from his apartment was his car
14 keys and cell phone." And there's nothing further after
15 that.

16 SOLICITOR STONE: No further questions. Thank you.

17 THE COURT: Recross?

18 MR. PLEXICO: I don't have anything further, Your
19 Honor.

20 THE COURT: Okay. You can step down.

21 Well, it's 12:30. We can go ahead and take our lunch
22 break now. We will resume at 2:00. You can go to lunch
23 with anybody you want to, but again, I instruct you how
24 important it is that you not discuss the case before it's
25 over with anyone, including other members of the jury. So

1 please don't discuss the case with anybody. Don't talk
2 about the case in any regards whatsoever. Please report
3 back to me if somebody does try to discuss the case with
4 you. If you would, be back in your jury room a little
5 before 2:00 and we will try to get started at 2:00. Thank
6 you very much.

7 (WHEREUPON THE JURY Exits THE COURTROOM AND THE FOLLOWING IS
8 HELD ON THE RECORD.)

9 THE COURT: All right. Do we need to take up anything
10 before we break?

11 SOLICITOR THORNTON: Not from the State.

12 SOLICITOR STONE: Not from the defense.

13 THE COURT: All right. Have a good lunch. See y'all
14 back at 2:00.

15 (12:30 p.m., whereupon, the Court is in recess for
16 lunch. Thereafter, the case resumes and the following is
17 held on the record.)

18 THE COURT: All right. Everyone is back in the
19 courtroom. Let's bring in the jury.

20 (2:04 p.m., whereupon, the jury enters the courtroom
21 and the following is held on the record.)

22 THE COURT: Okay, folks, we will resume now with the
23 State calling their next witness.

24 SOLICITOR STONE: Officer David Deloach.

25 (Whereupon, Officer David Deloach enters the courtroom

1 and is duly sworn by the Clerk.)

2 THE COURT: Your witness, Solicitor.

3 SOLICITOR STONE: May it please the Court?

4 DIRECT EXAMINATION

5 BY SOLICITOR STONE:

6 Q Officer Deloach, you are with the Hampton Police
7 Department, correct?

8 A Yes, sir.

9 Q And you were with them on October 28th of 2015; is that
10 correct?

11 A Yes, sir.

12 Q Specifically, were you involved with the arrest of the
13 defendant at, I think it was Highway 601, right off of Holly
14 Street?

15 A Yes, sir.

16 Q What was your role in that?

17 A Once we had the subject placed in cuffs, I read the
18 subject his Miranda rights.

19 Q So you were the one who actually read him his rights
20 while the other officers were standing there; is that
21 correct?

22 A Yes, sir.

23 Q Did you read those off of memory or a card or what did
24 you do?

25 A No, sir. I read them off of a card.

1 Q Do you have that card with you?

2 A Yes, sir, I do.

3 Q Could you read that card today as you read that card to
4 the defendant that day?

5 A "You have the right to remain silent. You do not have
6 to make any statements or answer any questions. If you give
7 up this right, anything you say may be used against you in a
8 court of law. You have the right to have an attorney
9 present before any questioning, if you wish. If you cannot
10 afford an attorney, one will be appointed to represent you
11 before any questioning, if you wish."

12 Q And you read those rights to the defendant that day?

13 A Yes, sir.

14 Q Did he indicate to you that he understood those rights?

15 A Yes, sir.

16 Q Was this before you or anyone questioned him where the
17 gun was?

18 A Yes, sir.

19 Q I want to show you what's been marked as State's
20 Exhibit Six. Is that the individual you read the rights to?

21 A Yes, sir.

22 Q Okay. Were you also involved in searching the
23 defendant after he had been arrested?

24 A Yes, sir.

25 Q Who was handcuffing? What were you doing exactly?

1 A Once the subject was placed in handcuffs after reading
2 the warnings, we searched the subject for weapons on his
3 person to make sure, you know, because we were told there
4 was a weapon, to make sure there was no weapons on his
5 person at the time and to make sure there was no other
6 contraband.

7 Q Did you find anything on him?

8 A While searching the subject, we did find a green and
9 white container in his pocket that was containing a white
10 rock-like substance.

11 Q Let me show you what's been marked as State's Exhibit
12 Number 17. Tell me if you can identify that, sir.

13 A That's the rock-like substance believed to be crack
14 cocaine.

15 Q This bag that's inside of the overall sealed plastic
16 bag ---

17 MR. PLEXICO: I would object, Your Honor, and move to
18 strike and ask for a curative instruction. He does not have
19 the actual piece to analyze what it is.

20 SOLICITOR STONE: He said "what appears to be," but
21 Your Honor, we're just going through the bag right now.

22 THE COURT: Overruled.

23 Q All right. This bag that we're talking about, this bag
24 inside the plastic here, is that your writing? Is that
25 SLED's writing? Or how does that work?

1 A That's my handwriting.

2 Q I'm going to get some scissors. We are opening State's
3 Exhibit 17. Inside State's Exhibit 17 is what is referred
4 to as an evidence property bag?

5 A Yes, sir.

6 Q And that's your handwriting on there?

7 A Yes, sir.

8 Q What does that indicate?

9 A The agency that this is the police department. Has the
10 case number 201510281805 on it. Suspect is Mitchell,
11 Maurice Demon. Victim is Town of Hampton. State of South
12 Carolina. Date of time and recovery is 10-28-15 at 18:15
13 hours. Recovered by Officer Deloach. A white rock-like
14 substance.

15 Q And so you put that inside that package?

16 A Yes, placed inside of that bag, yes.

17 Q All right. Then, once you do that, what do you do?

18 A That bag is placed inside of a Best bag and then sent
19 to SLED for analysis.

20 Q Is that the Best bag there?

21 A Yes, sir, it is.

22 Q And then you seal this?

23 A That is sealed and placed into this bag, and that bag
24 is also sealed.

25 Q Okay. So the initial bag is sealed that held this

1 white rock-like substance. And then, are those your
2 initials, or your name, on the seal?

3 A Yes, sir. That is my name on the seal.

4 Q Then inside this bag, on that seal as well?

5 A That's right.

6 Q Once you placed it inside these bags, do you do
7 anything to alter or change the substance in any way?

8 A No, sir.

9 Q Did you do anything to alter or change the substance
10 before you put it in this bag?

11 A No, sir.

12 SOLICITOR STONE: Your Honor, I'm going to put the Best
13 bag and the other bag back into State's Exhibit 17.

14 Q And do you see the individual in the courtroom today
15 that you took that white rock-like substance out of their
16 pocket?

17 A Yes, sir. The defendant sitting over there.

18 Q All right. No further questions for you at this time.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. PLEXICO:

22 Q You said that you are a police officer here in Hampton?

23 A Yes, sir.

24 Q Okay. And you understand the importance of making a
25 thorough report?

1 A Yes, sir.

2 Q And would that be because it might be a while and
3 memory's fade and you want to put down all of your
4 recollections at that time; is that correct?

5 A Yes, sir.

6 Q Okay. In the report that you made, you never said
7 anything about my client responding. Is that true after you
8 read him his right?

9 A Can you repeat that?

10 Q You never wrote anything in your report about Mr.
11 Mitchell responding after you read him his rights?

12 A I couldn't tell you if it's not in that report, sir.

13 Q Okay. Would you like to read and review your report?

14 A I can review it.

15 MR. PLEXICO: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 A What was your question, sir?

18 Q You didn't put anything in your report about any
19 response that my client had after you read him his Miranda
20 Rights, correct?

21 A According to my report, after I read him his Miranda
22 Rights, he stated that he dropped the weapon in a wooded
23 area.

24 Q And you just testified to the Solicitor that you read
25 him his rights and you asked him where the gun was, and

1 that's what he said. Now, that's accurate, right?

2 A Yes, sir.

3 Q All right. You have a video in your car too, correct?

4 A No, not at that time.

5 Q Okay. Did you say that I did not get a chance to turn
6 on my in-car camera?

7 A Yes, sir.

8 Q So you did have a camera in your car?

9 A There is a camera in the car.

10 Q But you didn't turn it on?

11 A I had just got on and it had not been activated yet.

12 Q Okay.

13 MR. PLEXICO: I have no further questions for this
14 witness, Your Honor.

15 THE COURT: Okay. You may step down.

16 SOL. STONE: The State calls Major Jake Sullivan.

17 (Whereupon, Major Jake Sullivan enters the courtroom
18 and is duly sworn by the clerk.)

19 DIRECT EXAMINATION

20 BY SOL. STONE:

21 Q Good afternoon. Major Sullivan, you are with the
22 Hampton Police Department as well?

23 A Yes, sir.

24 Q At some point, did you have an occasion to see the
25 defendant fingerprinted?

1 A Yes, sir.

2 Q Let me show you what has been marked as State's Exhibit
3 18 and ask if you can tell us what is in there, please.

4 A I've reviewed this earlier and sealed it back up.
5 There is a fingerprint card of the defendant, Maurice
6 Mitchell, that was taken at the Hampton County Sheriff's
7 Office just a few days before trial.

8 Q Okay. And what did you do with this fingerprint card?

9 A Immediately after getting the fingerprints, I took them
10 to Columbia to SLED to be analyzed.

11 Q So this card was actually turned over to SLED; is that
12 correct?

13 A That's correct.

14 Q Inside State's Exhibit 18 is this the fingerprint card
15 that you were talking about?

16 A Yes, sir. I know it to be the one because on the back
17 where it shows who actually took the prints, Corporal T.
18 Joyner actually took the prints and I wrote on there that it
19 was witnessed by myself and I signed it.

20 Q Okay.

21 SOL. STONE: Your Honor, at this time, we would move
22 State's Exhibit 18 into evidence.

23 MR. PLEXICO: No objection, Your Honor.

24 THE COURT: So admitted.

25 (Whereupon, State's Exhibit 18, fingerprint card of

1 Maurice Mitchell, is received into evidence.)

2 Q No further questions, Major Sullivan.

3 MR. PLEXICO: I have no cross, Your Honor.

4 THE COURT: You may step down. Call your next witness.

5 SOL. STONE: The State calls Tiffany Hazel Edwards.

6 (Whereupon, Tiffany Edwards enters the courtroom and is
7 duly sworn by the clerk.)

8 SOL. STONE: Ms. Edwards, I may have pronounced your
9 name wrong, so please, is it Hazel or Hazel-Edwards?

10 MS. EDWARDS: It's Tiffany Edwards. Hazel is my maiden
11 name, but I just kind of go by all of my names.

12 SOL. STONE: So you skip the middle and go straight to
13 Edwards.

14 DIRECT EXAMINATION

15 BY SOL. STONE:

16 Q Where are you employed, ma'am?

17 A I am employed by the South Carolina Law Enforcement
18 Division, more commonly known as SLED. Currently, I am
19 assigned to the Special Victim's Unit, Child Fatality.

20 Q Prior to that, what was your job with the State Law
21 Enforcement Division?

22 A I was assigned to the crime scene and latent print
23 unit.

24 Q How long did you work crime scene?

25 A Approximately six years.

1 Q Now, in order to work crime scene, is there any type of
2 special training that you undergo or do you just get
3 assigned to crime scenes; how does that work?

4 A My background is that I have a Bachelor's Degree in
5 Criminal Justice. I have a Master's Degree in Forensic
6 Science. I worked four years in Memphis, Tennessee, with
7 the Medical Examiner's Office as a death investigator.

8 I completed the in-house training program at SLED for
9 crime scenes. During which time I not only completed
10 reading and kind of like research type projects, I also
11 trained under court-qualified senior agents, and that
12 training was extended into latent prints with doing not only
13 internal, but external trainings in that kind of discipline
14 as well.

15 Q And when you're dealing with crime scenes, what kind of
16 -- when you approach the crime scene, what exactly do you
17 do? Is it photography, gathering evidence, what do you do?

18 A When we arrive to a scene, the first thing that we want
19 to do is we want to document in the most pristine condition
20 that it presents at that time. We want everything
21 documented as it is at the time of our arrival. So we
22 document that not only with photography, but also with notes
23 and sketches, to include measurements. We then process the
24 scene by not only observing and identifying items of
25 evidence, but also collecting those items of evidence. And

1 if additional processing for perhaps blood evidence needs to
2 be done, we can apply chemicals on the scene to enhance that
3 evidence as it's done.

4 Q And all of the training that you talked about, that
5 allows you to do this once you get to the crime scene?

6 A That's correct.

7 Q Now, fingerprinting, itself, what type of training did
8 you get in fingerprint analysis?

9 A I not only completed in-house training at SLED, which,
10 again included both the academia, but also numerous
11 comparisons and working under a trained court-qualified
12 senior examiner. I also attended external training in
13 comparison, distortion, palm comparison, and various
14 different things with that.

15 Q Now, have you ever been found to be an expert in the
16 area of crime scene?

17 A Yes, I have.

18 Q Now, is that in State Court? Federal Court?

19 A In State Court.

20 Q Okay. Do you know how many times?

21 A Just once. Well, at the time, crime scene isn't
22 considered more of an expert, because we are more of a
23 documenting entity.

24 Q Okay. From the standpoint of fingerprint analysis,
25 have you been determined to be an expert in fingerprint

1 analysis at crime scenes?

2 A Yes, I have.

3 Q And was that also in State Court?

4 A Yes, it was.

5 Q Have you ever been found not to be an expert in
6 fingerprint analysis?

7 A No, sir.

8 Q All right.

9 SOL. STONE: At this time, Your Honor, for purposes of
10 documentation, I think it's safer to have her qualified as
11 an expert in crime scene, but primarily the focus is going
12 to be on fingerprint analysis. So we ask that she be
13 determined to be an expert in that field as well.

14 THE COURT: Do you wish to voir dire?

15 MR. PLEXICO: Yes, Your Honor.

16 VOIR DIRE EXAMINATION

17 BY MR. PLEXICO:

18 Q Ma'am, with crime scene analysis is documentation; is
19 that correct?

20 A It's documentation and collection of evidence.

21 Q Okay. So there's not really an expertise, is there?

22 A It depends on how one interprets it.

23 Q Okay. So is it easily -- if you're talking about
24 gathering evidence, that's not something that takes an
25 expert to do; isn't that correct?

1 A You would have to be able to identify what potential
2 evidence is and articulate that into the course of the
3 investigation as to determining what to or not to collect.
4 You can't just go to a crime scene and collect the whole box
5 in a paper bag. You have to be able to distinguish and
6 differentiate those items as they present to the scene as an
7 entirety and kind of what the scene is presenting to you.

8 Q Correct. So that would be you would gather evidence,
9 label evidence, and document it?

10 A Yes.

11 Q Okay. And this is why it's generally not recognized as
12 an expertise, correct?

13 A That is an opinion.

14 Q But it's generally not recognized as an expertise?

15 A In this state, it has not been.

16 Q Furthermore, you've had training in fingerprint
17 analysis, correct?

18 A Yes, I have.

19 Q Okay. And how many -- how do you go about doing that?
20 Do you document different points of agreement in two
21 fingerprints?

22 A We don't have points. There is no set number of points
23 in the United States. We look at the overall composition of
24 the fingerprint, the specific characteristics that are
25 present, and those relationships between those

1 characteristics on an unknown impression to those
2 characteristics that may be present on the known impression.

3 Q But those characteristics are actually points that you
4 are finding to agree; isn't that correct?

5 A We do not refer to them as points; we refer to them as
6 characteristics.

7 Q Okay. All right. Let me put it this way, in the
8 United States, you say there is no set number of points that
9 you have to match, or characteristics of a set number, in
10 order to render an opinion; is that correct?

11 A That is correct.

12 Q And for instance, in Europe, isn't it you have to have
13 20 points of characteristics that match before they will say
14 that the two prints are a match?

15 A I am not familiar with the protocol in that area.

16 Q Okay. Do you have -- do you know what Galton Points
17 are?

18 A Galton Points minutia characteristics are
19 interchangeable terminology for characteristics that we
20 look at within fingerprints.

21 Q Have you ever been to an international symposium on
22 fingerprints?

23 A I have attended the International Association of
24 Identification meeting. I just went to one in Florida this
25 past year.

1 Q All right. Were there any experts from other countries
2 there?

3 A No, there were not.

4 Q All right. Then, you seem to qualify your statement
5 when you said, "In the United States" there were no set
6 number in order to have a valid comparison; is that correct?

7 A That is correct.

8 Q All right. So this is a developing science then; is it
9 not?

10 A Can you be more specific in your statement?

11 Q All right. Are there not different schools of thought
12 in the United States that there should be a set number of
13 characteristics that match?

14 A I'm not familiar with any belief that there should be a
15 set number.

16 Q Did there ever at any point before was there a set
17 number that had to match?

18 A In the history of the science of fingerprints, there
19 was a number. However, that has evolved and now we look at
20 the overall composition of the print and the characteristic
21 within that print and the relationship to each other. It is
22 no longer a sense of sitting and pointing and picking
23 numbers to make a match. We are looking at the overall
24 print and that's the way the science is being presented, and
25 that's the way that I was taught science, that we are

1 looking at the whole thing as a whole and we are not
2 singling in on just one thing to look for.

3 Q Would it be a correct statement to say the evolution of
4 fingerprints has been to go from a larger number to a
5 smaller number of characteristics in order to have a setting
6 match?

7 A I don't know.

8 Q Is that not in fact what has happened?

9 A I believe that we are going from a hunt and peck of
10 point to looking again at the overall composition of the
11 print as a whole and the presence of the characteristic
12 within the unknown print to the presence of the same
13 characteristics that may be present in a known print and the
14 positioning and the orientation and the relationship between
15 the two.

16 Q Okay. So you have -- there are thousands of different
17 characteristics on a known print; is that true?

18 A Potentially, yes.

19 Q Okay. So you are making a comparison of thousands of
20 these things in looking at two prints or --- I'm a little
21 lost. Where do you get to a point of matching
22 characteristics to where you can say that they are a match?
23 Is it five? Two? Four? Fifty?

24 A You have to take into consideration that every time a
25 latent print is left, it's not a perfect print. May I

1 explain what fingerprints are to the jury?

2 Q I didn't ask the question. I'm asking you.

3 A On your hand, you have ridges that are raised and these
4 ridges are in a unique pattern to you and you alone. Not
5 only on your palm, but also on your fingers. Along these
6 ridges, you also have pores that sweat, and also throughout
7 the day, you're going to touch your face, other objects,
8 you're going to adhere oils and other residue on those
9 ridges. Therefore, when you touch an object, you by chance
10 may leave a portion of that print or all of that print --
11 kind of like a stamp on an envelope, of that fingerprint on
12 that item. Now, depending on the quality of that print that
13 is left, it's undetermined how many characteristics or how
14 clear the ridge flow might be because you might have a wet
15 surface, a lot of pressure; you might have movement, so it's
16 not fair to say that there is always going to be hundreds or
17 thousands or you know, 30-some odd points, as he refers to
18 them, or characteristics present within that print, because
19 it's left by chance. Then, you are trying to compare that
20 print left by chance to a known ink standard that again, the
21 quality is going to be whatever it is at the time, because
22 they're not always taken under ideal circumstances and
23 depending on how much ink, how much pressure. Now, again,
24 not all of those characteristics may be represented. So
25 it's not always fair to say you're going to have a set

1 number of characteristics present to compare.

2 Q Okay. So it's not an exact science; is that true?

3 A It is not an exact science in the fact that you cannot
4 control how the print is when it is placed on an object at
5 random. There is a scientific methodology within the
6 science of latent print and is referred to as Eight B.
7 Where we analyze the impression, we are going to compare the
8 impression, we are going to evaluate the impression, and
9 then we are going to verify our finding and within my
10 laboratory, another examiner will verify and work through
11 the first three sets as well, to see if the same conclusion
12 is reached between two examiners.

13 Q Okay. You don't have any outside sources that verify
14 your work; is that correct?

15 A We do not.

16 MR. PLEXICO: I do have an objection, Your Honor, as to
17 her qualifications as to her being qualified as to the crime
18 scene, but not to fingerprints.

19 THE COURT: Is she giving an opinion to anything other
20 than fingerprinting?

21 SOL. STONE: Not really, Your Honor. She is going to
22 take gunshot residue from the defendant. She is going to
23 take spray LCD to take -- I don't believe any of that
24 requires an interpretation, so from that standpoint, I don't
25 think it's necessary. I just want to make sure the Court is

1 aware.

2 THE COURT: Well, I will qualify her as an expert in
3 the field of fingerprint analysis.

4 Folks, when I was talking to you earlier, I told you
5 that evidence is when people get up on the stand and they
6 tell you what they heard, they felt, they smelt, they saw.
7 We don't normally let people come in and give you their
8 opinion about evidence. But the law says when there are
9 people who because of specialized training or experience or
10 education in some field, if they rise to the level of
11 expertise in that field, we will allow them to come into
12 court and give you their testimony in the form of an opinion
13 and give you the basis of their opinion. This witness is
14 now qualified as an expert in the field of fingerprint
15 analysis, so she will be allowed to not only give you
16 testimony about her observations, but she will be allowed to
17 give you her opinion about those observations. An opinion
18 by an expert through testimony is solely for you to decide
19 how to deal with it and how much weight to give it. If you
20 feel like you're not required to give an expert's testimony
21 weight, simply because they are qualified as an expert. You
22 alone determine how much or how little weight to give an
23 expert's testimony and you can consider such things as their
24 training, education, experience and things like that. But
25 you are not required to blindly accept an expert's

1 testimony. You alone decide how much weight to give an
2 expert's testimony based on all of the evidence you hear
3 throughout the trial. All right? Proceed.

4 SOL. STONE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOL. STONE:

7 Q Agent, you responded to the scene on Holly Street on
8 October 28, 2015, is that correct?

9 A Yes.

10 Q And you prepared, at some point, a crime scene sketch,
11 is that correct?

12 A Yes.

13 SOL. STONE: Now, Your Honor, we have this marked as
14 State's Exhibit B, and we are going to use only as
15 demonstrative evidence for her to walk us through the scene.

16 Q Let me ask you to come down off the stand, please, if
17 you don't mind. This is the crime scene sketch that you
18 prepared?

19 A Yes.

20 Q Now, if you could, walk us through what you're finding
21 and what these markers are in this particular part. First
22 of all, this is Eddie Mole's apartment? I think Apartment
23 2; is that correct?

24 A Yes.

25 Q Okay.

1 A Within these apartments, there are six apartments that
2 are kind of in a row. They go from six to one, left to
3 right. Mr. Mole resided in Apartment number 2. Here is the
4 front door into this residence. It is a two-story
5 apartment. As soon as you walk into the front door of the
6 apartment, there is kind of like a small, entry landing area
7 that has some linoleum flooring. Off to the left of that,
8 you would have the living room and further down, you would
9 go into an eating room and the kitchen. Up the steps, you
10 have some bedrooms and a bathroom. The scene was primarily
11 concentrated to the entry portion of the residence.

12 So as we walked through the downstairs of the
13 residence, we started with marker D. We had already used
14 markers A,B, and C outside on some other potential evidence.
15 So marker D noted a cartridge case that was present at that
16 location.

17 Q All right. Let me slow you down for just a second.
18 These markers that you're putting up there. These are
19 markers that you placed or your team placed?

20 A Yes.

21 Q All right. Let me show you State's Exhibit 24 and ask
22 if you can identify that, please.

23 A Yes, that is the presenting condition of marker D once
24 we placed a marker by it.

25 Q All right. Is that a fair and accurate depiction of

1 the item as you saw it that day?

2 A Yes, it is.

3 Q And marker D is your marker; is that correct?

4 A Yes, it is.

5 SOL. STONE: Your Honor, we would move State's Exhibit
6 24 into evidence.

7 MR. PLEXICO: It would be without objection, Your
8 Honor.

9 THE COURT: So admitted.

10 (Whereupon, State's Exhibit 24, photo of shell casing,
11 is received into evidence.)

12 Q All right. And as I'm showing on the monitor, what
13 exactly is that item?

14 A Marker D represents what we refer to as a cartridge
15 case.

16 Q What is a cartridge case?

17 A If you have a projectile, the cartridge case is what is
18 going to hold the bullet, the powder, that ignites, that
19 warms the gas, that pushes the bullet that fires out of the
20 gun. That is basically the housing that is left over that
21 is then expelled from the firearm.

22 Q So that's a fired bullet, basically, but the bullet is
23 gone?

24 A Yes, it's the housing from which the bullet or
25 projectile came out of.

1 Q Okay. Let me show you what's been marked as State's
2 Exhibit 19 and ask if you can identify that, please?

3 A Yes, that's a photograph depicting the walk entry
4 walkway, just as these markers are depicted on the scene.

5 Q Okay. Is this a fair and accurate -- again, these are
6 your markers, correct?

7 A Yes. Those are placed by us. We had already gone into
8 the residence, taken photographs as is, without adding
9 anything else. Then, what we will do is go back in and we
10 will place markers by pieces of potential evidence that we
11 want to draw more attention to, more focus to, and
12 eventually we will collect, so that at this time this is
13 what we are doing. We are documenting what we have marked.

14 Q Is that a fair and accurate depiction of the scene?

15 A Yes.

16 SOL. STONE: At this time, Your Honor, we would move
17 State's Exhibit 19 into evidence.

18 MR. PLEXICO: I have no objection.

19 THE COURT: So admitted.

20 (Whereupon, State's Exhibit 19, front door photo, is
21 received into evidence.)

22 Q All right. If you can walk us through this picture on
23 the screen, tell us what those markers indicate.

24 A Okay. As we have already discussed, you cannot see D
25 in this frame very well. It sits at the top left of that

- 1 photograph by the back leg of that coffee table. If you
2 move forward to E, E is going to represent a piece of the
3 gum, the soft palate, teeth. If you move to F, again,
4 that's soft palate and teeth. If you move to marker G,
5 that's a tooth. Marker H was a couple of teeth that were
6 still kind of held together by some tissue. Marker I was
7 another tooth. "J", moving a little bit closer to the
8 linoleum, is some suspected blood on the carpet of the
9 living room. It was a larger, red, stained area. And we
10 have marker K here at the door of the threshold, which again
11 was a partial piece of the palate or soft gum with a tooth.
- 12 Q Let me show you first what has been marked as State's
13 Exhibit 21 and ask if that is a fair and accurate depiction
14 of the scene as you are seeing closer down on top of it?
- 15 A Yes.
- 16 Q State's Exhibit 22, is that a fair and accurate
17 depiction of what was found on marker "I"?
- 18 A Yes, that is showing one of his teeth.
- 19 Q State's Exhibit 23, is that a fair and accurate
20 depiction of what is H, G and F?
- 21 A Yes, that's correct.
- 22 Q And then, lastly, State's Exhibit 20, is that a fair
23 and accurate depiction of the inside of the wall as you are
24 walking in?
- 25 A Yes. That is going to be a depiction of the wall to

1 the side of the stairwell.

2 Q Okay.

3 SOL. STONE: At this time, Your Honor, we would move
4 State's Exhibits 21, 22, 23 and 20 into evidence.

5 MR. PLEXICO: No objection, Your Honor.

6 THE COURT: So admitted.

7 (State Exhibit Number 20, wall in apartment photo, is
8 received into evidence.)

9 (State Exhibit Number 21,

10 (State Exhibit Number 22, close-up photograph with
11 marker I (tooth), is received into evidence.

12 (State Exhibit Number 23, Soft palate of teeth photo,
13 is received into evidence)

14 Q To start with, Exhibit 21, tell us where that is
15 located as far as your chart is concerned.

16 A This is just a few steps over, kind of photographing
17 more head on and providing more lighting so you can see D is
18 no longer in that shadow. And again, with this perspective,
19 you can see B in more contrast with the red in color
20 substance that is saturated into the carpet in that general
21 area.

22 Q State's Exhibit 22.

23 A This again is a more close up photograph of the
24 evidence that is placed with marker "I".

25 Q And what is that?

1 A It presented to be a tooth.

2 Q State's Exhibit 23.

3 A Again, the markers have been placed by potential pieces
4 of evidence and this is again showing that soft palate and
5 either a single or several teeth held together by tissue.

6 Q And what does that correspond to on your drawing?

7 A It corresponds to H, G, and F; same letters depicted on
8 the photograph or depicted on the sketch.

9 Q State's Exhibit 20.

10 A This is going to be the wall. This wall right here. So
11 if you were standing where the blue dotted line would be,
12 looking forward, to this wall, that's the wall you are going
13 to see; see where it ends right there on the right hand side
14 of your screen? That's where the wall ends and the steps
15 would then go back up. The door that you are seeing in the
16 background, runs alongside here, and that's the front door.
17 It opened all the way up, and as it opened back into that
18 wall so that those steps you are entering from the outside.
19 That is just showing what we refer to as blood stain
20 evidence and there is some specific stains that are present
21 on that wall.

22 Q Okay. Let me also show you what's been marked as
23 State's Exhibit 25, 26, 27 and 28. Can you tell us what
24 those photographs are, please? First of all, can you
25 identify those photographs?

1 A Yes, these are photographs which were taken at the
2 crime scene by me.

3 Q Are those fair and accurate depictions of the scene as
4 you saw them?

5 A Yes.

6 SOL. STONE: At this time, Your Honor, we would move
7 State's Exhibits 25, 26, 27 and 28 into evidence.

8 MR. PLEXICO: I have no objections to those exhibits.

9 THE COURT: So admitted.

10 Whereupon, State's Exhibit 25, photo of shell casing,
11 is received into evidence.

12 State's Exhibit 26, photo of wall with bullet hole, is
13 received into evidence.

14 State's Exhibit 27, photo of the wall dug out, is
15 received into evidence.

16 State's Exhibit 28, photo of projectile, is received
17 into evidence.

18 Q State's Exhibit 25, if you would blow that up, Donnie.
19 First of all, where is that picture taken?

20 A So this is going to be the wall right here, the wall in
21 which the door opened into. So you can see that the front
22 door is closed. It's the wall right here.

23 Q So if the door were all the way open, this would be the
24 wall behind the door; is that correct?

25 A Yes.

1 Q State's Exhibit -- and what is that that is marked off
2 with the tape?

3 A The yellow tape is just giving a general location of
4 where the defect is observed within the wall, and the white
5 tape is closer to the defect so that once a closer
6 photograph is taken, you can still have an idea of the size
7 of what you are looking at, the defect in the wall.

8 Q State's Exhibit 26.

9 A This is the closer up photograph of the defect. So
10 once again, we have still have some measurement showing just
11 to put it into perspective, the size. We still have our
12 tape label showing that we are at the wall behind the front
13 door, the front door would be to the right. Again, we gave
14 it a marker number, the date it was, and the initials of the
15 individual who placed the tape up there in my presence.

16 Q State's Exhibit 27.

17 A Okay, so we go from that defect we just had on the
18 previous photograph, which based upon my experience
19 recognized to be a bullet defect. So at that point, we knew
20 that a projectile had gone into the wall, so we wanted to
21 see if we could recover the fired projectile. First, we cut
22 a small hole in the wall just below the defect, which we
23 refer to as a viewing window, which just allows us to kind
24 of look into the wall and see if it's gone through into
25 another unit, or to see if it has perhaps hit something and

1 dropped down. In this case, we were able to see that it had
2 dropped straight down. We then cut another hole into the
3 wall closer to the baseboard, and documented the position of
4 the fired projectile.

5 Q State's Exhibit 28.

6 A This was after the projectile was picked up from that
7 location and again was documented as to what it was.

8 Q (TO CLERK) May I borrow your scissors once again? All
9 right. First of all, this large bag, what exactly is this?

10 A So this large, heat-sealed bag we can use to put other
11 individually sealed items of evidence in that we want to
12 containerize. Multiple pieces of evidence to go to a
13 specific unit within the laboratory for further analysis.
14 This particular bag I placed items for firearm examination
15 in. So each item was individually packaged within this bag
16 so they would not come into contact with each other. This
17 bag was then sealed with the date it was sealed and my
18 initials. And it was provided with the unique lab number
19 assigned to this case, and again, a specific container
20 number for only these items of evidence. This allowed it to
21 be tracked within our lab so that we would always know whose
22 custody it was in and what was in the container.

23 SOL. STONE: Your Honor, I'm going to mark the large
24 bag as State's Exhibit 58, and inside the bag are items that
25 we had previously pre-marked for the Court and those are the

1 ones that I will address individually on separate numbers.
2 I just want to make sure that the big, large bag itself is
3 item number 58, and that is just what you've described,
4 correct?

5 A Correct.

6 Q Let me first hand you State's Exhibit 37 and ask if you
7 can identify that exhibit.

8 A This is the cartridge case that was collected from
9 marker D. The box that it was placed in was marked with what
10 it was and the date and time which I collected it, followed
11 by my initials. Once a unique lab number was generated for
12 this case, this piece of evidence was then labeled with the
13 lab number and the assigned item number to this specific
14 piece of evidence, again with my initials, and this item was
15 sealed by the yellow tape by me prior to it ever going to
16 the firearms department.

17 Q So this is the item that you collected?

18 A This is the item we collected from marker D on scene,
19 and it was sealed again on the date with my initials on the
20 yellow tape.

21 Q Other than placing it in the package and sealing it,
22 did you alter it in any way?

23 A No, I did not.

24 Q Okay. I am now going to show you what's been marked as
25 State's Exhibit 36 and ask if you can identify that, please.

1 A This is gonna be the fired projectile that we
2 photographed as being recovered from a wall. Again, we have
3 a description of a fired projectile from marker 3. The
4 dates, time and initials and again, that unique lab number
5 and then the unique item number assigned to this specific
6 item of evidence.

7 Q And where on this chart was that taken?

8 A This was the fired projectile that was recovered from
9 the wall behind where the door was.

10 Q And other than placing it in the package and sealing
11 it, did you change or alter that package in any way?

12 A No, I did not.

13 Q Okay. I am handing you what's been marked as State's
14 Exhibit 29, 30 and 31, and ask if you can identify those,
15 please.

16 A These are photographs of the exterior and I believe the
17 interior of the front door.

18 Q Are those fair and accurate depictions of the scene as
19 you saw them?

20 A Yes.

21 Q Now, this one, State's Exhibit 31 appears to have some
22 sort of a blue substance.

23 A Yes.

24 Q So what is that?

25 A So within our crime scene truck, we carry certain

1 chemicals that can assist in enhancing blood evidence. On
2 this particular case, I used a chemical called blue-gold-
3 crystal-violet which refers to basically and in shorthand a
4 LCD chemical. And what it does is it reacts to a presence
5 of hemoglobin, which is found in blood. And in a positive
6 reaction, it will turn potential blood to a purple or blue
7 color. Again, that's only a presumptive test. Swabs of
8 that red-in-color substance, which is now in purple, has to
9 be confirmed by further testing by the DNA department.

10 Q Okay.

11 SOL. STONE: We move at this time, Your Honor, State
12 Exhibits 29, 30 and 31 into evidence.

13 MR. PLEXICO: I have no objections, Your Honor.

14 THE COURT: So admitted.

15 (State Exhibit 30, photo of door knob, is received into
16 evidence.)

17 (State Exhibit 31, photo of blood analysis, is received
18 into evidence.)

19 (State Exhibit 29, blood spatter photo of Marker J, is
20 received into evidence.)

21 Q State's Exhibit 29, what is that, Agent?

22 A This is going to be the exterior of the door. It's a
23 red-in-color appears to be kind of a transfer stain of some
24 sort, again, on the outside portion of the door.

25 Q State's Exhibit 30?

1 A This is going to be on the interior door knob, so we
2 are inside the residence. Again, you can see the red-in-
3 color stain, not only on the white door, but also on the
4 door handle itself.

5 Q And State's Exhibit 31?

6 A This again is just showing you what this red-in-color
7 substance looked like after it was sprayed with the LCD
8 chemical and it did react positively as a presumptive test
9 for blood with the purple color change.

10 Q Is the bottom of that door knob -- I can't -- I'm
11 trying to ---

12 A Again, I believe we are still on the exterior, so
13 that's the exterior side of the door.

14 Q And the door knob is at the bottom of that?

15 A Yes.

16 Q Let me hand you what's been marked as State's Exhibit
17 59 and ask if you can tell us what that large bag is,
18 please, ma'am.

19 A This is going to be another one of those large, heat-
20 sealed bags that I made a container, because again, we had
21 multiple items of individually sealed evidence that were all
22 going to go to the same location, so again, a unique lab
23 number to this case, a unique container number with only
24 these items inside, and again, it was sealed with my date
25 and initials and the time in which it was sealed.

1 Q I hand you State's Exhibit number 57. Can you tell us
2 what that is, please?

3 A This is two swabs of collected blood from item 21, as
4 ridge detailed designated 21.1. So the interior portion of
5 the door knob I actually removed from the crime scene and
6 transported back to the laboratory for additional testing.
7 Once it was back at the lab within the latent print
8 department, I actually processed it with a different
9 chemical that is known as amino-black and it's a protein
10 sensitive dye stain, so instead of just turning the
11 suspected blood a bright bluish purple, it's going to turn
12 it a deep, dark blue or black color, so the contrast is much
13 better for a latent examination. So after I processed it
14 with the amino black and had the developed ridge detail
15 photographed, I then went back and swabbed the suspected
16 blood from those areas of ridge detail and this would be a
17 swab from one of those areas of ridge detail that was
18 developed on the interior side of the door knob.

19 Q All right. Once you took the swab, you also put in the
20 envelope and sealed it?

21 A Yes. That swab was placed inside this envelope and it
22 was sealed with the date, my initials.

23 Q And other than putting it in there, did you change or
24 alter it in any way?

25 A I did not.

1 Q Okay. Earlier, we moved into evidence State's Exhibit
2 18, which is the known fingerprints of Maurice Mitchell, and
3 I'll hand those to you. At some point in time, did you
4 review that fingerprint card?

5 A Yes, I did. Again, the unique lab number is a case.
6 The unique item number is a specific piece of evidence, and
7 my initials are located on the evidence.

8 Q And you compared that to your possession of known
9 fingerprints of Maurice Mitchell and those were the same
10 fingerprints; is that correct?

11 A That is correct.

12 Q Now, did you also gather what is called a latent print
13 from the scene?

14 A I documented from the scene some impressions of
15 suspected blood. So because the impressions were liquid,
16 you can't do a traditional powder and paste lift, so we had
17 to document with photography and then I did comparisons off
18 of the photographs.

19 Q Okay. Let me show you what's been marked as State's
20 Exhibit 58. Is this the card that you prepared in order to
21 show those two items?

22 A Yes, it is.

23 Q And the known is whose fingerprints?

24 A That is a fingerprint from the known card belonging to
25 Maurice Mitchell.

1 Q And the unknown, what is that?

2 A This is an unknown impression found from the interior
3 side of the door above the door knob.

4 Q And this is the item where you took the swabs of
5 suspected blood; is that correct?

6 A The swabs came from the door knob that came from the
7 door.

8 SOL. STONE: At this time, Your Honor, we move State's
9 Exhibit 58 into evidence.

10 MR. PLEXICO: No objection.

11 THE COURT: So admitted.

12 (State Exhibit Number 58, known/unknown fingerprint
13 board, is received into evidence.)

14 Q Let me ask you if you could, tell you what, I'm going
15 to get you to stand right here. Show the jury what this is.

16 MR. PLEXICO: Your Honor, may I?

17 THE COURT: Yes.

18 A So as I was explaining earlier, on your hand, you have
19 different patterns that these ridges are going to compose.
20 So on the end of your fingers, they are going to do three
21 things. They can either come in one side and go out the
22 other side, which means you have an arch. The ridges can
23 come in one side, kind of recurve and come out the same side
24 they entered, being a loop. Or they can make what kind of
25 looks like a bull's eye pattern and that would be a whirl.

1 So on this particular unknown, we weren't real sure what
2 pattern we had. So we were going to have to look at all the
3 known impressions to start doing your comparison. So when
4 you have your basic pattern, you are going to have your
5 individual ridges within that pattern. So the
6 characteristics that we like to look for are going to be a
7 bifurcation when you have ridges that forms along and breaks
8 into two. An ending ridge that flows along and just stops,
9 or simply a dot that looks like a period at the end of a
10 sentence; that's all a ridge does. So we then are going to
11 look for the overall ridge flow, the presence of these
12 characteristics, and the relationship these characteristics
13 have with each other and the print as a whole. So within our
14 unknown, we start to locate characteristics. We see that A
15 is an ending ridge. We see that B is an ending ridge.
16 Again, it's that ridge that flows and it just stops. It
17 doesn't connect anything. It doesn't continue. It just
18 stops, just like a dead end in a road.

19 So from these characteristics and their presence to
20 each other, we begin to look and we see that there is an
21 ending ridge and another ending ridge. So their condition
22 within the overall ridge flow is consistent, their
23 relationship to each other is consistent, so we are going to
24 start looking for additional similarities between the two
25 prints and we're just going to look through the whole print

1 the same way, looking for the presence of those
2 characteristics and their relationship to each other and the
3 overall ridge flow. Based on doing that process during this
4 comparison, it would seem that this was a identification of
5 the unknown to the known belonging to Maurice Mitchell.

6 Q This again, is taken from where?

7 A This was, I believe, without consulting my notes, was
8 from the inside of the interior portion of the door, above
9 the door knob.

10 Q Okay. Let me ask you another question. You actually
11 went to the crime scene, did you -- I'm sorry, not the crime
12 scene, but the arrest scene; did you not? You were at the
13 scene itself, but you were also out with law enforcement
14 with the defendant; is that correct?

15 A Yes, I responded to the town hall and photographed,
16 yes, sir.

17 Q At some point in time, did you come into contact with
18 what has been moved into evidence as State's Exhibit Number
19 9?

20 A Yes, I did.

21 Q And the items that are in State's Exhibit Number 9 --
22 well, first of all, did you take possession of these items?

23 A Yes, I did.

24 Q Now, this is marked in what appears to be an evidence
25 bag; is that correct?

1 A Yes.

2 Q Tell me about that.

3 A That evidence bag was not placed by me, so it would
4 have been placed by an examiner after me, but in the gun
5 itself, it is scribed on the inside with the identifying lab
6 number, item number, and initials.

7 Q Okay. These items as well, can you tell us about
8 these, please?

9 A These were just original packaging that was present.
10 This was the magazine that was found to be in the weapon at
11 the time it was collected. We have a cartridge that was
12 removed from the chamber at the time the gun was collected,
13 and then we have cartridges, seven of them to be exact, that
14 were removed from the magazine at the time the gun was
15 collected.

16 Q Okay. The magazine is -- is this the magazine?

17 A Yes.

18 Q And all of that was taken to SLED for testing as well?

19 A Yes. It was collected from its discovery location and
20 transported to SLED by myself for further processing and
21 examination.

22 Q Now, if I could please, hand you State's Exhibit 32 and
23 ask if you can identify that.

24 A This is a GSR kit, however at the time I signed this
25 over, it was not in this bag, so I took this and placed this

1 back in the bag when we got to SLED providing that unique
2 lab number and item number and sealing it, but this is a
3 gunshot residue collection kit that I received via chain of
4 custody.

5 Q All right. And this gunshot residue here; that's the
6 only thing in this bag. So this here, this is what you
7 received and you transferred to SLED?

8 A Yes.

9 Q And that would be State's Exhibit 32?

10 A Yes.

11 Q Were you present when the gunshot residue test was
12 taken?

13 A I was not.

14 Q Okay. Going back to State's Exhibit Nine that is in
15 evidence. At some point, did you take swabs for this item?

16 A Yes. I took swabs at two different times. At the time
17 the gun was collected, I swabbed suspected blood from the
18 trigger and the slide area. When I took it back to the lab
19 for further fingerprints for analysis and processing, I then
20 swabbed the textured grip for perhaps potential touch DNA
21 that might be present on the gun.

22 Q Now, this obviously, is the cleaned up version, I
23 guess. State's Exhibit 8, is that how the gun appeared to
24 you?

25 A Yes, sir.

1 Q So this red stuff that's on the gun, is that the
2 suspected blood that you took?

3 A Yes.

4 Q Let me show you what's been marked as State Exhibit 34
5 and ask if you can identify that for me, please.

6 A Yes. These are two swabs of suspected blood from the
7 slide, frame and trigger of the handgun. The swab is marked
8 as such with the date and time and my initials, and then
9 again, it's sealed with field tape on scene with the way our
10 policy is all swabs will be sealed. Then, again, placed in
11 further packaging with unique lab number, item number, and
12 sealed and dated.

13 Q This has a card on it, but where was that item -- you
14 swabbed this, but where on this gun?

15 A It roughly was swabbed from the trigger, the slide and
16 kind of the frame area. It really was just kind of an
17 overall swab of where the red-in-color substance was
18 present. We didn't want to be lost during transport, so we
19 swabbed it on scene.

20 Q And once you sealed this, did you do anything to change
21 or alter it?

22 A I did not.

23 Q And then this went from you to SLED for testing; is
24 that correct?

25 A Correct.

1 Q I'm going to show you what's been marked as State's
2 Exhibit 35 and ask if you can identify that, please.

3 A This is going to be two swabs from the textured grip of
4 item 1. Again, the grip would have been collected back at
5 the laboratory once I had done further, kind of, processing
6 on the weapon itself. Again, placed in more packaging,
7 unique lab number, unique container number, sealed with my
8 name, date and initials.

9 Q And where was that taken from this gun?

10 A The textured grip would be the black textured area,
11 kind of around the handle portion where one would properly
12 hold the weapon.

13 Q And you sealed that and that went to SLED for testing
14 as well?

15 A Yes.

16 Q And did you do anything to change or alter it in any
17 way?

18 A No.

19 Q All right. Let me show you what's been marked as
20 State's Exhibit 38. It is also found in a larger bag with
21 58 and ask if you can identify that, please.

22 A This is a cartridge recovered from the jeans and the
23 only clothing that I have in this case is clothing that came
24 from what Mr. Mitchell had removed. This was a cartridge,
25 which is an unfired projectile, from the pocket of those

1 jeans.

2 Q All right. And are these also sealed and initialed by
3 you as well?

4 A Yes. Again, we have the date and time of collection
5 with my initials, unique item and lab number specific to
6 this item of evidence and sealed with date and initials on
7 the yellow tape as well.

8 Q And did you change or alter that in any way?

9 A I did not.

10 Q Go ahead and take the stand.

11 A (Witness Complies.)

12 Q Agent, thank you. If you will answer any questions the
13 defense may have.

14 MR. PLEXICO: Court's indulgence, Your Honor.

15 (Brief pause in the courtroom.)

16 CROSS-EXAMINATION

17 BY MR. PLEXICO:

18 Q Did you testify that you took fingerprints off of the
19 door knob?

20 A Fingerprints were developed on the door knob back in
21 the laboratory and they were documented with photography for
22 comparison purposes.

23 Q Were they ever compared?

24 A Yes.

25 Q Okay. Did you testify to whose fingerprints they were?

1 A Yes, I did.

2 Q Okay. And whose fingerprints were they?

3 AGENT: May I consult my notes, Your Honor?

4 THE COURT: Yes.

5 A On the interior portion of the door knob that I had
6 removed to take back to the lab for processing, I identified
7 the ridge detail that I had sub-itemed as 21.1. That was
8 identified to Maurice Mitchell.

9 Q Okay. Is that photograph down here?

10 A No, it's not.

11 Q All right. Do you have any paperwork from that? Do
12 you have any comparison sheet to show the Court?

13 A I have a -- my report that shows it was identified.

14 Q Do you have any notes or any comparisons, any pictures,
15 that shows this?

16 A I have comparison documentation that is a part of my
17 case file.

18 Q May I see that, please?

19 A (Witness shows defense attorney documentation.)

20 Q One is very light and one is very dark; is that
21 correct?

22 A Yes. The unknown is on the left and the known
23 impression is on the right.

24 Q All right. And there's no points of comparison that
25 you've made on that one, correct?

1 A Can you repeat the question? I'm not sure I
2 understand.

3 Q Do you have any -- this is what's in evidence. Do you
4 have any points of comparison?

5 A Yes. On this one, the characteristics in agreement are
6 marked by green dots. On the chart, they are marked by
7 letters as a visual aid for the jury.

8 Q Okay.

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

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY SOL. STONE:

13 Q Just to be clear, you identified not one, but two
14 fingerprints; is that correct?

15 A I actually identified four fingerprints in this case.

16 Q Were they all Maurice Mitchell?

17 A Yes, they were.

18 Q Okay.

19 SOL. STONE: No further questions, Your Honor.

20 THE COURT: Recross?

21 MR. PLEXICO: Yes, Your Honor.

22 RECROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q It's not unusual when someone has a relationship with
25 someone and visits their home to find fingerprints; is that

Proffer Examination

Direct examination of Agent Haley Anne Nelson by Sol. Stone

1 correct?

2 A Latent fingerprints, no. In this case, the prints were
3 in a red cast.

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

5 THE COURT: You may step down.

6 SOL. STONE: Nothing else at this time, Your Honor.

7 THE COURT: All right. Folks, we are going to take up
8 a break right now. We are going to take up a matter of law
9 while we are on this break, so I'm going to give you 15
10 minutes; it might be a little bit longer. It just depends
11 on how long it will take us to work this out. Just be
12 patient with us, and again, don't begin any deliberations or
13 discussions about the case.

14 (3:06 p.m., whereupon the jury exits the courtroom and
15 the following is held on the record.)

16 SOL. STONE: Haley Anne Nelson, Your Honor.

17 THE COURT: Go ahead, Solicitor.

18 (Whereupon, Ms. Nelson enters the courtroom and is duly
19 sworn by the clerk.)

20 DIRECT EXAMINATION

21 BY SOL. STONE:

22 Q You are an agent with the State Law Enforcement
23 Division; is that correct?

24 A That's correct.

25 Q And how long have you been with them?

1 A Approximately over five years.

2 Q And what do you do with them in that regard?

3 A I'm currently assigned to the behavioral science unit.
4 I have been there since October of 2016. Prior to that, I
5 was with the crime scene unit.

6 Q And what did you do as far as the crime scene unit?
7 What was your job in that?

8 A My job duties in the crime scene unit were respond to
9 the crimes of local jurisdiction to assist crime scene
10 processing where we collect evidence, photograph the scene
11 to take back. I also was also assigned to the blood stain
12 analysis to the crime scene reconstruction.

13 Q All right. Now, let me break those down. There's two
14 things. One is -- you just said it and I don't want to get
15 it wrong. One is blood stain analysis; is that correct?

16 A Blood stain pattern analysis.

17 Q Blood stain pattern analysis. What is blood stain
18 pattern analysis?

19 A It's an evaluation looking at the physical properties
20 of blood and blood stain at a crime scene.

21 Q And then the second part of that is the actual crime
22 scene reconstruction; is that correct?

23 A That's correct.

24 Q Is that a part of the blood stain analysis?

25 A It is.

1 Q First, tell me about the blood stain analysis. What is
2 the science that backs this up? What type of science is out
3 there? How can you do any type of analysis for blood stain?

4 A Well, it's been documented in history in 1856, I
5 believe, was the first time that it was documented in
6 regards to the fly spots, which is where flies pick up spots
7 of blood and they deposit it back in another area. Then,
8 throughout the 1800's, 1900's and 2000's, there's been
9 numerous books written, numerous studies on different
10 organizations within the Association of blood stain pattern
11 analysis to assist the International Association of Blood
12 Stain Pattern analysis, which was formed in 1983 and they
13 have a journal that they have been publishing since 2000.

14 Q What's the characteristic of blood that would allow it
15 to be tested or reconstructed in a laboratory setting?

16 A Blood is a fluid, so it can be tested and it can be
17 reproduced as a reproducible phenomenon.

18 Q Is this something that you had special training for or
19 is this something that is part of the general crime scene?

20 A This is something that I had special training for.

21 Q Okay. Tell me about your special training in this
22 field.

23 A Okay. In college, I had my degree was in forensics and
24 I had 45 hours in blood stain pattern analysis and in
25 reconstruction. Then, when I got out of college and I

1 started my career at SLED, I got started in crime scene,
2 initially, and then started to do a different process of
3 training for the blood stain pattern analysis and crime
4 scene reconstruction.

5 It was a two-year in-house training program with
6 another agent who was signed off in the blood stain pattern
7 analysis discipline, and so I had internal training and
8 there were certain areas that I had to be exposed to while
9 working at SLED with that other agent.

10 Then, I also had external training and I had
11 approximately 80 hours in blood stain pattern analysis
12 training externally and then 80 hours of crime scene
13 reconstruction and 40 hours of shooting reconstruction
14 external.

15 Q Okay. How many blood stain tests have you performed,
16 do you know?

17 A Approximately 25.

18 Q Okay. Have you done -- how many have you done in
19 conjunction with other agents at SLED?

20 A Reports that I've actually done since I've been signed
21 off?

22 Q Yes.

23 A Approximately 12. So the other 13 would have been
24 during my training process.

25 Q What is Bevell Gardner and Associates?

Proffer Examination

Direct examination of Agent Haley Anne Nelson by Sol. Stone

1 A That is -- it's a company they provide training. That
2 is where I received my external training for blood stain
3 pattern analysis. They have two parts. They have a basic,
4 which is a 40-hour course and then they have an advanced
5 blood stain pattern analysis course, which is another 40
6 hours and I've taken both of those.

7 Q You've taken both of those?

8 A Yes, sir.

9 Q So you've got 80 hours of blood stain analysis and 80
10 hours of crime scene reconstruction; am I calculating that
11 correct?

12 A That's correct.

13 Q Okay. And how long were you working in the blood stain
14 pattern analysis part of SLED?

15 A Approximately, including my training, two years in the
16 crime scene part. In my current position, we still use
17 blood stain pattern analysis; so three years.

18 SOL. STONE: Your Honor, instead of me going into these
19 particular findings, I think that gives us her background,
20 as well as the science. But at this point, I would invite
21 the defense to ask any questions he may have.

22 PROFFER CROSS-EXAMINATION

23 MR. PLEXICO:

24 Q So, I've noticed in this case you never visited the
25 crime scene?

1 A I did visit the crime scene.

2 Q You did visit the crime scene?

3 A Yes, sir.

4 Q All right. In your report, you didn't seem to document
5 that. You cite that you're looking for -- is your work with
6 gunshot wounds? Is your work with gunshot wounds on the
7 blood stain pattern analysis?

8 A It depends on the case, but gunshot wounds can be part
9 of the case.

10 Q How many of them have been gunshot wounds that you've
11 worked on and the 12 that you've worked on alone?

12 A Maybe four or five.

13 Q Okay. So you looked at clothing and DVD's and
14 miscellaneous paperwork?

15 A Yes, sir.

16 Q Okay. When did you actually go to this crime scene?

17 A October 29th.

18 Q Now, you said you had 45 hours of training. Is that
19 while you were in college?

20 A Yes, sir.

21 Q All right. And what type of course was this?

22 A That was a blood stain pattern analysis course. I have
23 my two degrees. I have my Bachelors of Science in Forensics
24 and Investigative Science and then I have a Bachelor of Arts
25 in Pathology and Investigations. I went to West Virginia

Proffer Examination
Cross-examination of Agent Haley Anne Nelson by Mr. Plexico

1 University and they have a specific forensics program and
2 you choose between an examiner track, chemistry or biology,
3 and I chose the examiner track, which is the crime scene
4 processing. So through that course, they have a certain
5 setup where you have crime scene processing as its
6 processing, blood stain pattern analysis reconstruction.

7 Q Okay. So that's 120-hour program to get a Bachelor's
8 Degree, correct? You have 45 hours of your 120 hours of
9 required college undergraduate work to get a degree?

10 A Well, I know that had more than 120 hours, because I
11 had two degree.

12 Q Okay. Now, so of those 45 hours, what was -- was three
13 hours for blood stain pattern analysis?

14 A No, that was a whole semester of 45 hours dedicated to
15 blood stain pattern analysis in college.

16 Q Okay. But you mentioned other things that you were
17 studying at the time. But you're saying that on blood stain
18 pattern analysis were these three hour courses?

19 A Yes.

20 Q So you had 45 hours, so you did 15 courses in blood
21 stain pattern analysis?

22 A Well, no, it was a semester course. So if I'm
23 remembering correctly, I think they go by the three hours,
24 three, six, depending on the course and then if there was a
25 lab associated with it, then it was four hours. But the

1 total hours for the course, it was a total of 45 hours.

2 Q Okay. What are the names of the classes that you took?

3 A From college?

4 Q From college.

5 A Related to forensic science?

6 Q No, related to blood stain pattern analysis.

7 A It was blood stain pattern analysis.

8 Q And that was four hours?

9 A That was 45 hours.

10 Q Okay. So you got 45 hours of credit toward a
11 Bachelor's Degree?

12 A No. No. Not in terms of looking overall at your course
13 hours. If you're looking at course hours for three, six and
14 nine, but in terms of what we had overall in the semester,
15 there was 45 hours of course work.

16 Q Okay. So you had one class. How many hours a day did
17 you attend the class per week?

18 A I think it was one day a week and it would last for
19 four hours.

20 Q Okay. So you went for four hours one day a week for a
21 semester to study this.

22 A Yes, this was seven years ago, so I'm pulling from my
23 memory.

24 Q Okay. How many hours did you need to graduate from
25 your undergraduate degree program?

Proffer Examination
Cross-examination of Agent Haley Anne Nelson by Mr. Plexico

1 A I cannot recall.

2 Q Could it have been 120?

3 A It could have been, but like I said, I was taking 21
4 hours per semester because I was trying to get two degrees
5 within four years.

6 Q So a quarter of your entire undergraduate college, 21
7 times -- that would be 42 a year times four is 168. A
8 quarter of that would be 42, so you spent an entire quarter
9 of your entire undergraduate academic career studying blood
10 stain pattern analysis?

11 A No, I wouldn't say that.

12 Q So perhaps it's not 45 hours?

13 A I do have a certificate saying that it's 45 hours.

14 Q Okay. Could that have been just the number of hours
15 you were in class?

16 A Yes, it could have been.

17 Q All right. Were you a sophomore then?

18 A I was a junior when I took that.

19 Q Okay. And that was in 2009 or 2010 or something?

20 A 2010, yes.

21 Q Okay. And while you were at SLED you went to this
22 Bevell Gardner and Associates for 40 hours?

23 A Yes, for their basics. It was 40 hours and then their
24 advanced course was another 40 hours.

25 Q And then where was that held at?

1 A Baton Rouge, Louisiana.

2 Q So that was how many weeks were you there?

3 A Two weeks total.

4 Q For the one and two?

5 A Yes, for both.

6 Q Okay. So you had eight hours a day for two weeks?

7 A Yes.

8 Q Okay. So do you have -- you talked about the
9 reproducing these tests, was that in a lab structure that
10 you are doing this in?

11 A Yes.

12 Q So you actually go and make blood try to do the same
13 things as what you see on a wall or a crime scene or
14 something?

15 A Not for every single thing, but when we have an unusual
16 scene or we want to figure out how it was produced, we will
17 go and test it.

18 Q All right. What did you do in this case?

19 A I did not do any laboratory testing on this case.

20 Q Okay. So you merely observed the pictures and you went
21 to the crime scene and looked?

22 A That's correct. And at the crime scene, I took
23 additional photographs and swabs.

24 Q Okay. Did you have any photographs of the victim as
25 the victim lay, did you have any photographs of that?

Proffer Examination
Cross-examination of Agent Haley Anne Nelson by Mr. Plexico

1 A I did not.

2 Q Okay. So you are not sure of where the victim was
3 exactly in that crime scene; is that correct?

4 A That's correct.

5 Q Okay. All right. You are looking at the blood stains
6 where?

7 A When you're looking at blood stains, you're looking at
8 -- you're taking everything into context. So wherever there
9 was blood, I was observing.

10 Q Okay. All right. Are you aware there was a gunshot
11 wound, too?

12 A Yes, I was advised of that.

13 Q At least one gunshot wound? Were you told there were
14 two gunshot wounds or three gunshot wounds?

15 A One, and I also was told that he has received some
16 blunt force trauma.

17 Q Okay. All right. But you don't have a degree in this,
18 correct?

19 A A degree in blood stains?

20 Q Yes.

21 A No, I do not.

22 Q Okay. Do you have a degree in Math?

23 A No.

24 Q Any sort of math computation?

25 A No, I do not.

1 Q Okay. Do you have a degree in Chemistry?

2 A No, I do not.

3 Q Okay. Do you have any medical training?

4 A No, I do not.

5 Q So you have no training in exactly what blood is, its
6 chemistry, or pathology of blood or anything like that?

7 A Well, part of the training and learning about the blood
8 and also the physics that are taken into consideration when
9 you are dealing with blood as a fluid and how that can be
10 applied.

11 Q Okay. So do you have a course in Physics?

12 A Yes, I did take two courses back in Physics back in
13 college.

14 Q Okay. But you said -- the Physics they are teaching
15 you is at a level one or a level two training for the 40
16 hours of each one of those?

17 A Both.

18 Q Okay. What Physics, exactly, is it that y'all use?

19 A We're looking at the inertia of a blood stain when it
20 is deposited on a surface, for example, or when you're
21 looking at the biology of the surface and the molecular bond
22 why blood stains stay together as a sphere when it's in
23 flight.

24 MR. PLEXICO: I don't have any further questions, Your
25 Honor. I do have an objection. I just don't think that her

1 courses, four hours, two weeks of training,

2 THE COURT: Do you have any follow-up questions?

3 SOL. STONE: No, sir.

4 THE COURT: All right.

5 SOL. STONE: Your Honor, there are two issues here.

6 One is blood spatter testimony proffer before the jury. You
7 have State v. Myers, which I handed you earlier, which
8 specifically says, and I quote, "The interpretation of blood
9 stains and spatters is a matter of expert opinion. A matter
10 outside the knowledge of ordinary truths. Thus, expert
11 testimony was warranted." So the testimony itself comes in.

12 The next question then becomes, does this particular
13 witness have the expertise to testify about blood spatter in
14 this fashion? First, the person in State v. Myers had a
15 one-week seminar taught by someone who wrote a booklet. She
16 has much, much more experience than that, not only an
17 undergraduate degree in specific forensics, but also in the
18 80 hours that she took in blood stain analysis, the 80 hours
19 of crime scene reconstruction.

20 Regardless of that, the issue before Your Honor is
21 whether or not that is admissible and if there is, quite
22 frankly, I don't believe at this point you do have any
23 deficits in her knowledge base, but if there were, that
24 would go to the weight and not the admissibility, again,
25 according to State v. Myers. She is qualified, much more

1 qualified, in fact, than the expert in State v. Myers said
2 should have been allowed to testify and actually said,
3 although the judge has a wide discretion in this, the judge
4 abused that discretion by not allowing this testimony and
5 not qualifying the person.

6 So at this point, Your Honor, I think we have crossed
7 both those thresholds and obviously Mr. Plexico may have
8 cross-examination but that goes to the weight of the
9 testimony and not the admissibility.

10 THE COURT: Anything you want to add, Mr. Plexico?

11 MR. PLEXICO: No, Your Honor.

12 THE COURT: Are you challenging just this particular
13 witness's qualifications in this field or the field in
14 general; or both?

15 MR. PLEXICO: Both. I don't believe that taking a
16 college course and then taking two weeks is something --
17 it's not a recognized science.

18 THE COURT: Well, she took more than just a class in
19 college.

20 MR. PLEXICO: Yeah, she did have the two weeks of
21 training, which is, I mean, she testified to, but obviously
22 she talks about the background of medicine for physics. Two
23 courses that will qualify her to understand some blood
24 spatter.

25 THE COURT: How about, you said you also objected to

1 the field in general, being the area of examination?

2 MR. PLEXICO: It's not a field for conjecture and
3 guessing, and I just don't see where it's a recognized
4 field, Judge.

5 THE COURT: Well, State v. Myers is a Supreme Court
6 decision which I haven't seen it overruled, so I'm bound by
7 it.

8 MR. PLEXICO: I accept that, Your Honor.

9 THE COURT: All right. Well, I think the field is a
10 recognized field of expertise. This witness has
11 demonstrated a level of training and experience in this
12 field. I think it is sufficient to qualify her in the field
13 of blood stain pattern analysis. So I will allow her to be
14 qualified as an expert, and of course, it is ultimately up
15 to the jury to decide whether or not her qualifications are
16 sufficient to back up what she's saying, and they have the
17 right to give it as much weight as they think they do, which
18 as they feel like it will deserve, so I will instruct them
19 accordingly. Anything else before I bring the jury back
20 in?

21 DEP. SOL. THORNTON: Your Honor, if I could have just
22 one moment, I want to talk to Mr. Plexico to try to resolve
23 a witness issue that will be right after her. It shouldn't
24 take more than a minute.

25 THE COURT: Okay.

1 (Brief pause in the courtroom.)

2 DEP. SOL. THORNTON: Your Honor, just to make sure Mr.
3 Plexico and I are on the same page, after this witness, one
4 of the things in this case is GSR and I think Your Honor
5 heard the testimony of Tiffany Edwards, who actually sealed
6 up the GSR into the SLED pouch, but she didn't take it.

7 The person who took it was Anthony Russell. He's the
8 Captain with the Hampton County Sheriff's Office. We would
9 actually need him again after this. So in order to speed
10 through this afternoon and try to get these SLED folks, one
11 of whom analyzed the GSR and he's here; I've talked to Mr.
12 Plexico and he says he has an objection.

13 At some point, I think it may be not directly after
14 this witness, but the next one, I will pull Captain Russell
15 in for the sole purpose of asking him about the GSR that he
16 took and Mr. Plexico has agreed that he will limit his cross
17 to that issue and then I will recall him and Mr. Plexico
18 will have full opportunity to cross examine him. I need him
19 for two things and he comes later in the order, so I'm
20 trying to resolve that so we can go ahead and get the GSR
21 admitted.

22 MR. PLEXICO: I have no objections to that, Judge.

23 THE COURT: Thank you.

24 DEP. SOL. THORNTON: Thank you, Your Honor. Thank you,
25 Mr. Plexico.

1 THE COURT: Let's bring the jury in, please.

2 (3:43 p.m., whereupon, the jury enters the courtroom
3 and the following is held on the record.)

4 THE COURT: Please swear the witness.

5 (Whereupon, Agent Haley Nelson is duly sworn by the
6 clerk.)

7 DIRECT EXAMINATION

8 BY SOL. STONE:

9 Q What is your full name, ma'am?

10 A My name is Haley Ann Nelson; H-A-L-E-Y N-E-L-S-O-N.

11 Q And what do you do, ma'am?

12 A I am currently employed at the South Carolina Law
13 Enforcement Division, commonly known as SLED and I'm
14 assigned to the behavioral science unit.

15 Q How long have you been with the behavioral science
16 unit?

17 A I started in October of 2015; prior to that I was in
18 the crime scene unit.

19 Q How long did you spend in the crime scene unit?

20 A Approximately four years.

21 Q All right. First of all, let me cover a couple of
22 bases with you. Were you involved in taking, I guess, swabs
23 and cuttings of various items in the case of State v.
24 Maurice Mitchell?

25 A I was.

1 Q All right. Let me show you what's been marked as
2 State's Exhibit 39 and 40 and ask you if you can identify
3 those two items. I know that's in a larger bag. The large
4 bag, I'm going to refer to as State's Exhibit 61. And inside
5 that large bag, which we've previously opened and marked as
6 State's Exhibit 40 and 39. Let me go ahead and tear this
7 open. First, let me ask you about State's Exhibit 39. Can
8 you tell me what that is, please?

9 A State's Exhibit 39 is one cutting collected from marker
10 A area and marker A was from, I believe, the defendant's
11 shirt. And State's Exhibit 40 is one cutting collected from
12 marker C and that was on a pair of blue jeans.

13 Q Let me show you what's been marked as State's Exhibit
14 41 and ask if you can identify this, please.

15 A State's Exhibit 41 is two swabs collected from right
16 shoe, outer portion.

17 Q Now, do you take these swabs or does somebody else take
18 them? How does that happen?

19 A Well, with this case, I was requested to look at the
20 clothing from the suspect, so I would have done this in the
21 lab and collected swabs or cuttings from the clothing and
22 the shoes.

23 Q Okay. Let me show you what's been marked as State's
24 Exhibit 14. It's been tested. These are the blue jeans
25 from this case. It matches the lab number and the item that

1 you took -- and that would be a cutting, I'm assuming, and
2 not a swab; is that correct?

3 A That's correct, yes.

4 Q And is that where that cutting came from?

5 A Yes.

6 Q This is marked as State's Exhibit 13 and you testified
7 it's a white t-shirt of the defendant. Does that marking
8 match the cutting that you took from the white t-shirt?

9 A Yes, it does.

10 Q Okay. And State's Exhibit 15, you testified to the
11 shoes taken from the defendant, and I don't know if there is
12 a lab number on this -- yeah, there is.

13 A Okay.

14 Q Does that match the swab that you took from the shoes?

15 A That's correct.

16 Q Now, what is the purpose of you taking cuttings and
17 swabs?

18 A The purpose for doing that, well, with the blood stain
19 pattern analysis sometimes there is gonna be initial
20 questions that will need to be answered, so I like to have
21 as many covered prior to having those questions asked later
22 on in case there are multiple people leading. That's the
23 reason we are taking the cuttings or we're looking for
24 victim's blood, suspect's blood; there's a variety of
25 reasons we could have done it.

1 Q But you don't actually test the blood; somebody else
2 from the lab does that, correct?

3 A That's correct.

4 Q And the reason you take the cuttings instead of the
5 entire item, why is that? Did you say it's easier to
6 process?

7 A That's correct. That's the preferred method that they
8 have for clothing.

9 Q All right. Now, other than taking those cuttings and
10 swabs, did you change or alter it in any way?

11 A No.

12 Q And that then goes to the blood examiner; is that
13 correct?

14 A Correct.

15 Q All right. Now, you also mentioned blood stain
16 analysis; you were asked to do blood stain analysis in this
17 case?

18 A I was.

19 Q What is blood stain analysis?

20 A Blood stain pattern analysis is an evaluation of
21 looking at the blood stain pattern at the crime scene, for
22 example.

23 Q What is the purpose behind that? What does it tell
24 you?

25 A Well, there's multiple reasons for it. The different

1 criteria that you're looking for with blood stain pattern
2 analysis is pattern, recognition and classification, the
3 spatial orientation of the scenes at the crime scene and how
4 the blood is affected by the environmental conditions. The
5 main function is to identify these patterns and then to take
6 that in consideration and look at an event that may have
7 created it and then take that event and look at it in the
8 context.

9 Q So do you do the analysis and that is part of basically
10 a reconstruction to be able to tell how that happened or how
11 that blood got there; that type of thing?

12 A That's correct.

13 Q All right. Now, in this particular matter, what type
14 of education or training did you have prior to that that
15 would allow you to testify in this particular field?

16 A Well, I started my career out at SLED in the crime
17 scene unit. I became a certified law enforcement officer
18 and then I had to get signed off in crime scene processing
19 first, and that was six months in-house training program.
20 Once I was signed off in crime scene, then I had to do a
21 two-year in-house training program with another agent who
22 was signed off in blood stain pattern analysis and crime
23 scene reconstruction, as well as taking an external training
24 that required me to be signed off in the blood stain pattern
25 analysis.

1 Q Now, prior to getting to SLED, did you have any
2 training in this particular field?

3 A I did. I received my degree from West Virginia
4 University. I have my Bachelor of Science in forensics and
5 investigative sciences and then I have a Bachelor of Arts in
6 criminology and investigations.

7 Q At any point in time during that, did you also study
8 blood stain pattern analysis reconstruction?

9 A Yes, in the forensics degree, there were certain tracks
10 that I had the opportunity to take or choose to take. There
11 was a standard biology chemistry and I went the examiner
12 route, which would be the crime scene processing. And with
13 that route, there was a blood stain pattern class that I
14 took for a semester which accounted for 45 hours.

15 Q And how many years did you put in with SLED in this
16 particular field?

17 A Currently, I've been doing it for three years now.

18 SOL. STONE: At this time, Your Honor, we would offer
19 her as an expert in blood stain pattern analysis and
20 reconstruction.

21 MR. PLEXICO: Your Honor, I've already objected.

22 THE COURT: Subject to your earlier objection. Folks,
23 I have now qualified this witness as an expert in the field
24 of blood stain pattern analysis. That's sometimes called
25 blood spatter; you will hear that word a lot. She is an

1 expert in that field. Like I told you earlier with other
2 witnesses, she will be allowed to testify in the form of an
3 opinion and give her basis for her opinion.

4 As I told you with the other witnesses, you decide
5 alone how much weight to give this witness's testimony based
6 on all of the testimony that you will hear throughout the
7 trial. If you feel like other testimony outweighs it,
8 you're not required to give it any weight at all. You
9 decide how much weight to give it based on your review of
10 all of the evidence. You can also judge such things as
11 education, experience, background, et cetera, when it comes
12 to determining how much weight to give an expert's
13 testimony. In other words, it's just like I told you with
14 the other expert witnesses; you're not required to blindly
15 give an expert's testimony weight simply because they've
16 been qualified as an expert. Your role as a juror is to
17 determine how much weight to give an expert's opinion. All
18 right? You may proceed.

19 EXAMINATION CONTINUES:

20 Q Prior to your analysis of this scene, were you advised
21 that the victim had been shot in this case?

22 A Yes, I was.

23 Q Do you know how many times?

24 A I believe I was told once.

25 Q Were you also made aware that the victim was struck a

1 number of times?

2 A Yes, I was.

3 Q And that would be -- I guess the technical term would
4 be blunt force trauma?

5 A Yes, correct.

6 Q Let me show you what's been marked as State's Exhibit
7 42. I'm going to hand you this as a bunch. State's 42, 43,
8 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54, and ask if
9 you can identify those photographs.

10 A Do you want me to go through them one by one?

11 Q If you would, just look and see if you can identify
12 those photographs.

13 A Okay.

14 Q Are these fair and accurate depictions of the scene as
15 you viewed it that day?

16 A They are.

17 Q And there appears to be some yellow tape on some of
18 this. Is that tape that SLED put there?

19 A That's correct.

20 Q And then there is a good bit of what appears to be
21 white tape as well?

22 A That is also scale tape.

23 Q What is scale tape?

24 A It is showing measurements

25 Q Okay. Many of the photographs already

1 A I placed them in there.

2 Q Okay. Are these fair and accurate depictions of the
3 scene as you saw them that day?

4 A Yes.

5 SOL. STONE: Your Honor, we would move State Exhibits
6 42 through 54 into evidence.

7 MR. PLEXICO: 42 through 54?

8 SOL. STONE: Yes.

9 MR. PLEXICO: No objection.

10 THE COURT: So admitted.

11 (State Exhibit 42, is received into evidence.

12 (State Exhibit 43, is received into evidence.

13 (State Exhibit 44, is received into evidence.

14 (State Exhibit 45, is received into evidence.

15 (State Exhibit 46, is received into evidence.

16 (State Exhibit 47, is received into evidence.

17 (State Exhibit 48, is received into evidence.

18 (State Exhibit 49, is received into evidence.

19 (State Exhibit 50, is received into evidence.

20 (State Exhibit 51, is received into evidence.

21 (State Exhibit 52, is received into evidence.

22 (State Exhibit 53, is received into evidence.

23 (State Exhibit 54, is received into evidence.

24 Q All right. What I would like for you to do, and we
25 have these on the monitors, and if you could, if you would

1 just walk us through these photographs in any order that
2 would be appropriate for you; you're the expert in this
3 case. Tell us what it is that you did and what your
4 determinations were. And if you would, refer to the state
5 exhibit number on there, please.

6 A State's Exhibit 42.

7 Q All right. Let me get you to ---

8 SOL. STONE: Your Honor, this is Donnie Hutto. He is
9 with me. I'm asking him to blow that up.

10 Can you blow that up for the screen so we can see that?

11 Thank you.

12 A This is a photo of the wall in the living room. The
13 scale tape was placed for timeline, as well as for
14 measurement. We have actual reference to a lot of blood on
15 this wall, so this is just an overall photo of this pattern.

16 Q Okay. Next?

17 A State's Exhibit 44. So this is another overall photo
18 with blood stain pattern analysis. One of the things we
19 like to do is called roadmapping. Roadmapping is seen as a
20 form of documentation and is heavy intrusive; it can be
21 intrusive. What I mean by saying that is the reason why I
22 took the photo prior to placing the white scale tape is to
23 show the blood as it was because when I put the white scale
24 tape, there was so much going on right there, it would have
25 covered up some of those stains. So this is a form of

1 roadmapping and then when each of the white scale tapes will
2 perpendicular; you have horizontal and vertical lines.

3 Then, they are each marked. The markings here are marker I,
4 J, K, L, M, P and Q.

5 Q Can you tell from that what direction the blood is
6 coming from?

7 A If I ---

8 Q Exactly what made you tell me that?

9 A This would just be an overall photograph to show in
10 relation to the different areas that I'm looking at, such as
11 marker I or marker K which is below it.

12 Q Okay.

13 A And State's Exhibit 43, this is a midrange photo, so a
14 little bit closer look and you can see that the yellow tape
15 where it's placed is marker J and there's marker Z, which
16 was actually one of the very last things that was done.
17 There was a complex pattern in that, so there are multiple
18 patterns within that that I was looking at.

19 When I say patterns, with blood stain pattern analysis
20 or what we short term we will say "pta", we start with
21 classification and the training that I learned under was did
22 it start with spatter or non-spatter? They are broken down
23 from there and there are certain physical characteristics
24 that we look at within these stains to classify them.

25 Q Now, when you say there are various -- I think you said

1 various contracts, are they going in different directions?

2 What does that mean?

3 A I'm not --

4 Q I'm sorry. I misunderstood what you said. What did
5 you say?

6 A There's different characteristics to classify a
7 pattern.

8 Q Okay.

9 A State's Exhibit 45, this is a close-up of marker I and
10 it has small elliptical stains, and when we're looking at
11 these stains, we're looking at you have circular and you
12 have elliptical; so elliptical is kind of like the elongated
13 circle and that tells us the direction that the blood is
14 going.

15 So with this, I can tell that the blood is moving up
16 and to the left; and that's kind of zoomed in on marker 1i.
17 I did take another close up of that just to show the
18 elliptical direction of travel that it was going.

19 Q Up and to the left from the door?

20 A Yes.

21 Q All right. What's next?

22 A State's Exhibit 46, so this is an overall of marker L.
23 There were elliptical stains within that and they were
24 traveling to the left.

25 Q If you're facing the wall itself, if it's on the wall,

1 can you tell if it's going to the left, going up, or how is
2 it going?

3 A If I'm looking at the wall right now, it's going to the
4 left.

5 Q Okay.

6 A State's Exhibit 45, this is an overall of marker M
7 which was small, elliptical stains and specifically with
8 marker L, marker L, K and M. Looking at the linear, the
9 stains being in a line, and with marker M, there was little
10 stains traveling to the left and down. So these little
11 stains show direction and that's a change in direction from
12 the other stains that were shown above.

13 Q Can you tell by looking at this whether, by looking at
14 the scene there, or not these are blood smears or these are
15 blood -- I guess we refer to them as castoff?

16 A These are markers K, L, and M, which I classify as
17 castoff. Castoff is a stain that when a blood is on an
18 object and that object is in motion, you're going to have
19 these stains created. It's going to be flung off and
20 projected onto the surface. These are classified as castoff
21 patterns. The criteria we are looking for that is a linear
22 smudge and then a change in the impact angle. When I say
23 the impact angle, I mean I'm looking at if I have a stain
24 that starts out as a circle and then I see it changing into
25 an elliptical, then that's a change in the impact angle. So

1 a circular stain tells me that it's 90 degrees, and then as
2 I see it start to change, I can tell it's a different impact
3 angle. State's Exhibit 48, again this is Marker K, there
4 were things in a linear fashion. This is the overall
5 photograph to show the elliptical stains moving to the left
6 and up. State's Exhibit 49, there was -- this is what I
7 call a complex pattern. There was a lot that was going on.
8 There were elliptical stains traveling in all different
9 directions. There were circular stains. There was also a
10 pattern transfer -- and when I say pattern transfer, you
11 could have that from if I have blood on my hand and I put it
12 on the surface, I'm going to see a pattern when I lift my
13 hand up. Or if I have a bloody footwear impression, if you
14 step in blood and you then step onto carpet, you're going to
15 see some sort of impression. So that's what a pattern
16 transfer is. There was a pattern transfer within this
17 pattern, because I could see ridge detail. There was also -
18 - we call them light and lights are when there is a stain
19 already deposited and then somebody wipes the wood, you can
20 see a disturbance on the stain. So there were also multiple
21 patterns going in there.

22 State's Exhibit 50, this would be above marker J; this
23 is towards the ceiling; we have Marker P and Marker Q.
24 Marker P was an elliptical stain and it was traveling up and
25 to the left and Marker Q was a circular stain.

1 Now, if I'm thinking of when stains are traveling and I
2 see that Marker P and it's going up, the reason why Marker Q
3 would be a circular stain is because the surface has
4 changed. It's not continuing up on a flat wall. It's the
5 ceiling so it's at a different point.

6 Q And again, is that smear or is that castoff?

7 A I would just classify that, since there was not a lot
8 of stain within that Marker P, I would just classify that as
9 elliptical stain traveling up and to the left, and Marker Q
10 I would classify as a circular stain.

11 Q Okay.

12 A State's Exhibit 52 is a circular stain. To be honest,
13 I'm not sure where this one is at within the scene, but it
14 looks like it's on the ceiling. It has the popcorn texture.

15 Q Okay.

16 A State's Exhibit 51 is an elliptical stain. And again,
17 I'm not too sure where this one is at within the scene, but
18 you can kind of -- this is a good depiction of what an
19 elliptical stain looks like, so you have the elongated and
20 that tail on that. Again, that tells where the direction is
21 going. If I'm looking at the screen, I'm seeing that this
22 stain is traveling to the left.

23 State's Exhibit 53 is the wall that is adjoining to the
24 living room wall that we were initially looking at. It has
25 Marker S and Marker R. There are multiple patterns. Again,

1 within those, there are many circular stains and there was
2 also elliptical stains traveling to the right and up. Then,
3 I have State's Exhibit 54 which is an overall picture of
4 Marker U, which is the wall next to the staircase and you
5 can see Marker R in the lower left hand corner. Marker U
6 was a circular stain. So I didn't have enough to say this
7 was a castoff pattern, but Marker R had elliptical stains
8 and they were traveling to the right and up and then Marker
9 U was a circular stain, so I could kind of contribute those
10 to possibly being related to the same events because the
11 surface can change and you are going to have a different
12 impact angle when that hits. So I would expect it to be
13 circular based on that it's traveling.

14 Q From the castoff patterns, first of all, I want to make
15 sure I'm clear on this, castoff itself, does that come from
16 an item? How does that work exactly?

17 A That's correct. So if I had an item that had blood on
18 it and this is bigger and I was cleaning it, and it had
19 blood on it, you're going to see blood coming off, being
20 projected off of this item, because there is enough volume
21 meaning there is enough blood on this item to come off. The
22 blood is going to be fighting typically they say with three
23 millimeters or less the cohesive forces with this blood are
24 gonna be able to hold it to this item, but if there is a
25 larger volume of blood, more than three millimeters of

1 blood, which is a very small amount, and you start shaking
2 an item, it's going to be coming off of the item.

3 Q Okay. I show you State's Exhibit Number Nine, and this
4 could be an item that could be castoff blood; is that
5 correct?

6 A That's correct.

7 Q And how would that happen?

8 A It could happen in any sort of way that you're holding
9 that. I mean, if there is blood on any portion of that and
10 I'm swinging, I would expect there to be castoff. And if
11 it's being held a different way and there is blood on the
12 other side, you still would expect there to be castoff.

13 Q So if there is blood on the gun at any point and the
14 gun is moving in a fast direction, it's going to throw
15 blood; is that correct?

16 A Yes.

17 Q Can you tell from any of these photographs of the
18 scene, what can you tell us about the castoff in this case?

19 A I was able to say that there was a minimum number of
20 four strikes that the victim sustained. So I saw three
21 distinct castoff patterns and those were within the living
22 room wall, Marker M, K and L. I was able to see three
23 distinct castoff patterns. When I say I was able to tell
24 that they were different, they were going in different
25 directions, but they were all linear and they had the

1 same criteria to be classified as a castoff pattern. Now, I
2 say I can only see three, but you have to have at least one
3 hit to get a blood-letting event. So if I was hit right now
4 by this gun and the gun swings back, you wouldn't see the
5 castoff yet, because that blood hasn't been produced from
6 the wound. On the second one, you're going to have blood
7 getting on that object. So I saw three castoff stains
8 within the scene, but I can account for one other blow
9 possibly because you need a blood-letting event.

10 Q So in other words, before the person bleeds, there is
11 no blood, but they've already been hit once?

12 A That's correct.

13 Q Okay. I don't have any further questions. If you
14 would answer any questions that the defense has.

15 CROSS-EXAMINATION

16 BY MR. PLEXICO:

17 Q Okay. You said that you had been to college in
18 Virginia or West Virginia; is that correct?

19 A West Virginia University.

20 Q Okay. And you took a class four hours a week for one
21 semester in blood stain analysis?

22 A Yes, approximately.

23 Q Then, a few years later, you graduate and get a job
24 with SLED?

25 A I graduated in May of 2012 and I was hired on at SLED

1 in October of 2012.

2 Q Okay. And you spent two years working with somebody
3 else in blood stain pattern analysis?

4 A That's correct.

5 Q And what other things did y'all do?

6 A Within the training?

7 Q No, what other things did you do aside from blood stain
8 pattern analysis?

9 A I was assigned to the crime scene unit, so my first job
10 duty in being assigned to that unit was responding to crime
11 scenes at the request of local jurisdictions. So if they
12 had a suicide or whatever, or some kind of need, we would
13 respond out to the scene and photograph the scene and
14 document the evidence, collect the evidence, and then bring
15 it back to SLED laboratory and log it in and send it to the
16 respected departments for further testing.

17 Q So only some of your work was with blood stain pattern
18 analysis over those couple of years; is that correct?

19 A That's correct. The majority of our cases were going
20 out primarily for violent crime scenes and I worked
21 approximately over 200 crimes scenes at that time.

22 Q Okay. So the vast majority of your time was in working
23 crime scenes and not doing the blood stain pattern analysis;
24 is that correct?

25 A No, because every single crime scene, if there was

1 blood, I would still have to find the pattern.

2 Q Okay. So you did that for each crime scene?

3 A Yes, I did.

4 Q You didn't produce a report for each crime scene, did
5 you?

6 A No, I didn't. Well, I produced a crime scene report,
7 but if I was rendering an opinion, then I would have to do a
8 blood stain pattern analysis report.

9 Q But you didn't do a blood stain pattern analysis report
10 for all of those crime scenes; is that correct?

11 A I did not.

12 Q For the vast majority you did not?

13 A That's correct.

14 Q Okay. So if you say since you've been on your own,
15 you've done this analysis, this blood stain pattern
16 analysis, 12 times; is that correct?

17 A Well, approximately during my training and within my
18 training I worked approximately 25 blood stain cases.

19 Q So the answer to my question is approximately 12?

20 A Yes.

21 Q Okay. I don't have anymore questions.

22 SOL. STONE: Nothing further, Your Honor.

23 THE COURT: All right. You may step down and you are
24 excused.

25 DEP. SOL. THORNTON: The State calls Ashley Bell.

1 (Whereupon, the witness is duly sworn by the Clerk of
2 Court.)

3 DIRECT EXAMINATION

4 BY DEP. SOL. THORNTON:

5 Q Agent Bell, who do you work for?

6 A The South Carolina Law Enforcement Division, more
7 commonly referred to as SLED.

8 Q And how long have you worked for SLED?

9 A Approximately six years.

10 Q And what is it that you do for SLED currently?

11 A I'm a forensic scientist in the drug analysis
12 department.

13 Q And how did you become a scientist in the drug analysis
14 department?

15 A I underwent extensive in-house training at SLED under a
16 court-qualified expert and a forensic drug analyst.

17 Q And did you have a school background in college that
18 you would have taken to help prepare you for this job?

19 A Yes. I have a Bachelor's of Science Degree in
20 Biochemistry from Washington and Lee University. I also
21 successfully completed competency testing, written
22 examinations and oral examinations. I also successfully
23 completed online course work with West Virginia University
24 in Forensic Mass Spectrometry and Forensic Drug Chemistry.

25 Q And you may have already said this already, but how

1 long have you worked for SLED?

2 A Approximately six years.

3 Q And have you spent that entire time doing drug analysis
4 or have you done other things?

5 A I've done other things.

6 Q All right. And what other jobs have you done at SLED?

7 A My first three years I was a forensic serologist and I
8 transferred to the drug chemistry department in March of
9 2016.

10 Q And have you been qualified as an expert before in drug
11 analysis?

12 A Yes, I have.

13 DEP. SOL. THORNTON: Your Honor, at this time, I would
14 ask that Agent Bell be qualified as an expert in drug
15 analysis.

16 MR. PLEXICO: I have no objection to Agent Bell's
17 qualifications.

18 THE COURT: All right. Folks, this witness has been
19 qualified as an expert in the field of drug analysis. The
20 same instructions I've given you for previous witnesses
21 apply to this witness as well. You're not bound to accept
22 her testimony simply because she is qualified as an expert.
23 You decide how much weight to give her testimony based on
24 the evidence that she gives.

25 DEP. SOL. THORNTON: Thank you, Your Honor.

1 Q And this has already been opened for court purposes,
2 but I'm going to hand you what has been marked as State's
3 Exhibit 17. Can you examine that and tell me whether you
4 recognize it or not. It's open at the top if you need to
5 pull the best bag out.

6 A Yes, I recognize it.

7 Q And is that an item, I believe on the envelope, it was
8 collected, and testified to earlier, by Officer Deloach. It
9 was pulled out of the pocket of Maurice Mitchell. Did you
10 test the item that is in State 17?

11 A Yes, I did.

12 Q And what test did you perform? What did you do to it?

13 A First, I would have performed a two-part presumptive
14 chemical test or preliminary test that is used to indicate
15 if a controlled substance may possibly be present. I then
16 would follow that presumptive test with a confirmatory test
17 using our ??? gas .

18 Q All right. Let me ask you a quick question, backing up
19 one second. When you received that, would it have been in a
20 sealed condition?

21 A Yes. The Best bag was sealed when I received it and I
22 know that because I've written the words "sealed" on the bag
23 along with my initials and the date on the actual Best kit
24 and it's also documented in my notes.

25 Q And also what's been testified to as a rock-like

1 substance is in additional bags with writing on them much
2 smaller bags; is that correct?

3 A That's correct.

4 Q And let me ask you this, after you performed these
5 tests, were you able to come to an opinion as to what this
6 substance is?

7 A Yes, I was.

8 Q All right. And what is it?

9 A Referring to my notes, cocaine base crack, C2, found in
10 the sample tested, one tested, net weight 0.63 +/-, 0.01
11 gram. 9.72 + or - 0.15 gram.

12 Q So in layman's terms, the substance is crack cocaine.

13 A That's correct.

14 DEP. SOL. THORNTON: Your Honor, I have no further
15 questions at this time, but I would ask that State's Exhibit
16 17 be admitted into evidence.

17 MR. PLEXICO: I have no objection to that.

18 (State's Exhibit Number 17, crack cocaine package, is
19 received into evidence.)

20 THE COURT: All right. Defense, do you want to cross?

21 MR. PLEXICO: Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q You only saw that in your lab, so you have no idea
25 where it came from?

1 A That's correct.

2 Q Or what county it was submitted from?

3 A It was submitted to SLED in the Best bag and I received
4 the Best bag.

5 MR. PLEXICO: No further questions. Thank you.

6 DEP. SOL. THORNTON: Nothing further, Your Honor, and
7 we would ask that she be excused.

8 THE COURT: All right. You are excused.

9 DEP. SOL. THORNTON: Captain Anthony Russell.

10 (Whereupon, the witness, Captain Russell is duly sworn
11 by the Clerk of Court.)

12 Your Honor, as previously discussed, this is Captain
13 Russell and I'm just calling him for the limited purposes of
14 dealing with what's been identified as State's Exhibit 32.
15 He will be re-called at a later time. This is just for a
16 chain issue.

17 THE COURT: Okay.

18 DIRECT EXAMINATION

19 BY DEP. SOL. THORNTON:

20 Q Captain Russell, who do you work for, sir?

21 A Hampton County Sheriff's Office.

22 Q And did you work for the Hampton County Sheriff's
23 Office on or about October 28th of 2015?

24 A Yes, sir.

25 Q And did you have an occasion to come into contact with

1 Maurice Mitchell, the defendant in this case?

2 A Yes, I did.

3 Q And we will be recalling you, Captain Russell, at a
4 later time, for other information, but for right now I just
5 want to ask you, can you identify for me Item contained in
6 what's been marked as State's Exhibit 32?

7 A Yes, sir, I can.

8 Q And what is that, sir?

9 A State's Exhibit 32 is the gunshot residue kit that I
10 collected from the defendant.

11 Q And was that then sealed up by you and turned over to
12 Tiffany Edwards with SLED?

13 A Yes, it was.

14 Q All right. And in taking this, did you alter it or
15 change it in any way?

16 A No, sir. The only thing it's missing out of there is
17 the sheet that you have to fill out when you submit it.

18 Q Okay. And did you confirm that the SLED agent that
19 will be testifying to this next has that sheet?

20 A Yes, I did.

21 Q Did you compare the numbers that are on this bag with
22 that sheet?

23 A Yes, sir.

24 Q Is it a match?

25 A Yes, sir, it is.

1 DEP. SOL. THORNTON: Your Honor, I have nothing else at
2 this time. As I indicated to the Court, Mr. Plexico will be
3 recalling Captain Russell for other matters.

4 THE COURT: Do you have anything you want to ask him
5 now, Mr. Plexico?

6 MR. PLEXICO: No, if he's going to recall him, I don't
7 need to ask him anything.

8 THE COURT: Okay. Thank you. You may step down.

9 DEP. SOL. THORNTON: Thank you. Captain Russell, you
10 are subject to recall.

11 CAPTAIN RUSSELL: Yes, sir.

12 THE COURT: Call your next witness.

13 DEP. SOL. THORNTON: The State calls Tyler Sturkie.

14 (Whereupon, the witness, Tyler Sturkie, enters the
15 courtroom and is duly sworn by the Clerk of Court.)

16 DIRECT EXAMINATION

17 BY DEP. SOL. THORNTON:

18 Q Mr. Sturkie, who do you work for, sir?

19 A I work for the South Carolina Law Enforcement Division.

20 Q Is that commonly known as SLED?

21 A Yes, sir.

22 Q And what do you do for SLED?

23 A I assist in the trace evidence department.

24 Q And what types of things do you do at SLED?

25 | A In the trace evidence department at SLED, we analyze

1 the gunshot residue, fire debris, glass, fibers, paints,
2 explosives and general unknowns.

3 Q And do you receive any kind of special training or
4 education to be able to do your job at SLED?

5 A Yes, sir. Each discipline within the trace department
6 requires its own specific training. I attempt to do gunshot
7 residue analysis and firearm analysis.

8 Q Okay. And do you have any type of college or
9 undergraduate work to be able to prepare you for this job?

10 A Yes, sir. I received a Bachelor of Science degree in
11 Chemistry. And when I was hired at SLED, I began a year-
12 long training program in the analysis of gunshot residue.
13 This training consisted of written and practical
14 examinations on theory and practice of gunshot residue. I
15 also attended classes at the Polk College of Applied
16 Sciences in courses entitled gunshot residue identification,
17 scanning electron and advanced x-ray micro analysis.

18 Q And how long have you been at SLED?

19 A I have been at SLED for three and a half years.

20 Q And do you work exclusively with gunshot residue and
21 other items in the trace department?

22 A Yes, I do.

23 Q And did you receive in-house training, as well as the
24 education you've already talked about?

25 A Yes, sir. Correct. During my year long training

1 program before gunshot residue analysis it was in house.

2 DEP. SOL. THORNTON: Your Honor, I would ask that Agent
3 Sturkie be qualified as an expert in the fields of trace
4 evidence analysis, specifically in this case it would be
5 gunshot residue.

6 MR. PLEXICO: I have no objection, Your Honor.

7 THE COURT: All right. Folks, this witness has now
8 been qualified as an expert in the field of Trace Evidence
9 Analysis, specifically in gunshot residue and the same
10 instructions I've already given you for the other witnesses
11 who have been called as experts apply to this as well. You
12 decide how much weight to give to his testimony based on the
13 evidence you will hear throughout the trial.

14 DEP. SOL. THORNTON: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUED:

16 Q Agent Sturkie, I'm going to hand you what's been marked
17 for identification as State's Exhibit 32. Did you have
18 occasion to analyze that? I believe it's Sled item 24.

19 A Yes, sir, I did analyze this.

20 Q And the item identified as 24 is a GSR kit from Maurice
21 Demon Mitchell; is that correct?

22 A That's correct.

23 Q And when you're examining something or testing
24 something for GSR, can you tell the jury what you are
25 looking for?

1 A Gunshot residue is composed of the burned and unburned
2 particles from the primer and propellant and projectile of a
3 firearm when it has recently discharged. These particles
4 are molten, or round, in shape and they contain the elements
5 of lead, barium and antimony. When a subject is
6 administered a gunshot residue kit, these kits contain four
7 particle lifts. That is the left palm, left back, right
8 palm and right back, and the officer will collect from
9 those designated areas. Those samples will then be
10 submitted to me and I will place them on what we call the
11 scanning electron microscope which will then do an automated
12 analysis to view and characterize these particles that may
13 be on these particle lifts. I will then go into a manual
14 analysis to confirm any particles that the automated
15 analysis may find. And if it fits the two criteria of being
16 either round or molten, and also contain the elements of
17 lead, barium or antimony, then that particle is deemed as
18 gunshot residue.

19 Q You testified earlier that you examined what's been
20 marked for identification as State's Exhibit 32. Are there
21 a vial for both the front and back of each hand?

22 A Yes, sir. This is a clear container that I can clearly
23 see the particle lifts inside and there are four of them as
24 I stated earlier left palm, left back, right palm, right
25 back.

1 Q You testified that you examined State's 32. Did you
2 come to any conclusions?

3 A Yes, sir, I did.

4 Q And what were they?

5 A When we analyzed these, and because there are four
6 particle lifts, I will combine the results of the right
7 palm, and the right back to include the results from the
8 right hand and the same for the left palm and left back. My
9 results for item 24, which is a GSR kit from Maurice
10 Mitchell, the right hand results were one particle of
11 gunshot residue was found and for the left hand results, one
12 round particle was consistent with gunshot residue was
13 found.

14 Q Did you receive these items in a sealed condition?

15 A Yes, sir, I did.

16 Q All right. And would you have examined them had they
17 not been sealed?

18 A No, sir, I would not have.

19 Q And other than to test them, did you alter or change
20 them in any way?

21 A No, sir, I didn't.

22 DEP. SOL. THORNTON: Your Honor, I'd ask that State
23 Exhibit 32 be admitted into evidence.

24 MR. PLEXICO: No objection.

25 THE COURT: It's admitted.

1 (State Exhibit 32, GSR kit, is received into evidence.)

2 Court's indulgence, please, Your Honor.

3 Q I don't have any further questions, Agent Sturkie.

4 Please answer any questions that Mr. Plexico has for you.

5 CROSS-EXAMINATION

6 BY MR. PLEXICO:

7 Q How big are these particles?

8 A These particles are typically between one and ten
9 micrometers. To give you a visual of a micrometer. If you
10 take a strand of hair, the circumference of your hair is
11 around one hundred micrometers. Particles can be one
12 percent to ten percent.

13 Q So the ten percent of 1/100's of a width of a hair?

14 A Yes, sir.

15 Q Okay. And this residue can come from you being in the
16 vicinity of where a firearm was discharged; is that correct?

17 A Yes, sir. When we find gunshot residue, I can tell you
18 one of three things. One is that the individual fired the
19 weapon. Two is that the individual was in the vicinity or
20 the area when that weapon was fired, or three, the
21 individual touched an object that had gunshot residue
22 previously on it. All three possibilities are equally
23 possible.

24 Q But it doesn't mean that that person fired a gun,
25 right?

1 A That is one of the options. I cannot confirm one of
2 those three. I can only state that one of those three are
3 possible.

4 Q So I'm correct? You can't tell from your test that
5 someone fired a gun?

6 A Correct, yes, sir.

7 Q All right. I don't have anything further.

8 DEP. SOL. THORNTON: Your Honor, we don't have anything
9 further. We would ask that he be excused.

10 MR. PLEXICO: No objection.

11 THE COURT: You may step down and you are excused.
12 Call your next witness.

13 DEP. SOL. THORNTON: Michele Eichenmiller.

14 (Whereupon, Ms. Michele Eichenmiller enters the
15 courtroom and is duly sworn by the Clerk of Court.)

16 DIRECT EXAMINATION

17 BY DEP. SOL. THORNTON:

18 Q Agent Eichenmiller, who do you work for?

19 A I work for the South Carolina Law Enforcement Division
20 in the forensic lab in the firearms department.

21 Q And is that commonly known as SLED?

22 A Yes.

23 Q How long have you worked with SLED?

24 A Approximately 11 and a half years.

25 Q And you said in the Firearms Identification Department?

1 A Yes.

2 Q All right. And what do you do there?

3 A I receive evidence from crime scenes that are related
4 to firearms, so fired bullets, fired cartridge cases, fired
5 arms, and any other related evidence.

6 Q You said 11 and a half years; have you spent that
7 entire time doing firearms identifications?

8 A I have.

9 Q And what sort of training and education did you receive
10 to allow you to be able to do the job that you do at SLED?

11 A I have a Bachelor's Degree in Biology. I also have a
12 Master's of Science in Forensic Science. In order to be a
13 firearms examiner, though, there is no school that you can
14 go to. You do an apprentice type program. So I learned next
15 to all the examiners who were currently at SLED when I was
16 there. They taught me how they do their job. I also did a
17 lot of reading on my own. I did a lot of comparisons under
18 the microscope on my own, test-firing, disassembling
19 firearms, and then I was tested at the end, and when I
20 passed the test, they said I could do case work on my own.
21 It took approximately three to four years.

22 Q So you spent three to four years training in house at
23 SLED?

24 A Correct.

25 Q And so you've been doing it now an additional -- I'm

1 sorry, my math is not great today, but seven years after
2 that?

3 A Correct.

4 Q Have you ever been qualified as an expert before in
5 identifying firearms and bullets and firearm identification?

6 A I have.

7 Q In State or Federal Court or both?

8 A In the State Courts of South Carolina.

9 DEP. SOL. THORNTON: Your Honor, at this time, I would
10 ask that Agent Eichenmiller be qualified as an expert in the
11 field of Firearms Identification.

12 MR. PLEXICO: I have no objection.

13 THE COURT: Folks, this witness has been qualified now
14 in the field of firearm identification. Again, the same
15 instruction that I had given you on previous expert
16 witnesses apply to this witness as well. You determine how
17 much weight to give her testimony based on all of the
18 evidence that you hear during the testimony in this trial.
19 You may proceed.

20 DEP. SOL. THORNTON: Thank you, Your Honor.

21 Q Agent, I'm going to give you -- and I will try to keep
22 this straight for record purposes, I'm going to hand you
23 several items. One is a box which has been entered into
24 evidence as State Exhibit Nine which is a Ruger Pistol.
25 Then, I'm going to hand you a large bag, which is State's

1 Exhibit 60 that has three smaller boxes inside of it, which
2 are 36, 37, and 38, State Exhibit Numbers. Can you tell me
3 whether or not in your work on this case did you examine
4 these items?

5 A Whenever I receive evidence in a case after I do photo
6 documentation, I will write my initials, item number, and
7 case number on each piece of evidence. And these are still
8 in my heat sealed ziplock bag. This is evidence I examined
9 in this case.

10 Q And did you examine those items against the gun that
11 was recovered in this case, which is State's Exhibit Nine. I
12 believe it's SLED item 1 for your lab numbers.

13 A Yes, I did.

14 Q And if you would go through those individually and
15 reference the State's Exhibit number and tell us what you
16 did and what your finding was.

17 A State's Exhibit Nine is the firearm. I test fired that
18 into our bullet recovery tank to make sure I knew it came
19 from that firearm. Then, I compared ---

20 Q All right. Let me stop you for a second. So you test
21 fired the gun first so that you could retrieve a bullet that
22 you knew was fired from that gun?

23 A Correct.

24 Q And what is the purpose of doing that?

25 A Just so that I could compare that to any evidence that

1 I received. If I had more fired cartridge cases than
2 bullets, I would first compare evidence to each other. But
3 in this case, I only had one of each, so all I needed to do
4 was compare it to the firearm.

5 Q I am sorry to have interrupted you. Go ahead and do
6 the next one.

7 A So I compared the test fires that I shot from State
8 Exhibit Nine to State Exhibit 36 and 37. State Exhibit 36
9 is a fired bullet.

10 Q And could you please go through your item number.

11 A State's 36 is my item number five, which is a fired --
12 or Item 23, sorry, which is a fired bullet, retrieved from
13 inside the wall. It's a 40-caliber and/or 10 millimeter.
14 Both of those calibers have the same diameter. They have
15 the same land and groove number as the firearm, so then I
16 went forward with the comparison to the firearm.

17 Then, I also compared State's Exhibit 37, which is my
18 item number five to the test cartridge cases that I had
19 received from the firearm.

20 Q And is Item five one fired 40-Smith and Wesson
21 cartridge caliber case described as from Marker D, which I
22 think has already been testified to in front of the jury?

23 A Yes.

24 Q Were you able to get results as to -- and forgive me, I
25 want to make sure I get this right. Let's start with State

1 Exhibit 36, which is the bullet pulled from the wall. Were
2 you able to reach an opinion as to whether or not that
3 bullet was fired from State's Exhibit Number nine?

4 A I was.

5 Q And was it?

6 A It was, yes. After physical and microscopical
7 examination, I concluded that that bullet was fired by that
8 firearm.

9 Q What about State Exhibit 37, which I believe you said
10 was Item five, the cartridge case from Marker D?

11 A After physical and microscopic examination of the
12 cartridge case to test fires, I concluded that that
13 cartridge case was fired by that firearm.

14 Q All right. And what about your item number 34, our
15 State's Exhibit 38, cartridge pulled from jeans of Maurice
16 Mitchell?

17 A Yes. I physically examined Item 34, which is State's
18 Exhibit 38, and it was used in Item 1, pistol, or in any
19 other firearm chamber in 40-caliber.

20 Q So it's the correct type of ammunition that would go
21 into State's Exhibit Nine?

22 A Correct.

23 Q And just to recap briefly what you indicated, the
24 bullet that was pulled from the wall as well as the
25 cartridge casing of Marker D, is it your expert opinion

1 that both of those items were fired by State's Exhibit
2 Number Nine?

3 A That's correct.

4 DEP. SOL. THORNTON: Your Honor, at this time, I would
5 ask that -- I'm not sure that we've put these into evidence
6 yet. So out of an abundance of caution, I would ask that
7 State Exhibits 36, 37 and 38, and they are all located
8 within the bag as State's 60, a large bag. I would ask that
9 they all be admitted into evidence.

10 MR. PLEXICO: I do have an objection, Your Honor. I
11 don't believe the chain is complete in regards to that.

12 THE COURT: It's admitted.

13 DEP. SOL. THORNTON: Thank you, Your Honor.

14 (State Exhibit 36, bullet from wall, is received into
15 evidence.)

16 State Exhibit 37, shell casing, is received into
17 evidence.)

18 State Exhibit 38, bullet from defendant's pocket, is
19 received into evidence.)

20 DEP. SOL. THORNTON: Thank you, Your Honor. I have
21 nothing else for this witness. Please answer any questions
22 that Mr. Plexico has.

23 CROSS-EXAMINATION

24 BY MR. PLEXICO:

25 Q You have had years of experience in firing semi-

1 automatics and revolvers?

2 A Correct.

3 Q Okay. How far can a semi-automatic eject a shell?

4 A There's no way to test for that. We don't do any kind
5 of testing with that.

6 Q Could it be 20 feet, 25 feet? Could it be 30 feet?

7 A I shoot it into a bullet recovery tank, so I don't have
8 any estimates of that.

9 Q Okay. But it's a good distance. Do you fire guns for
10 leisure?

11 A No.

12 Q Have you ever fired a gun outside?

13 A I have.

14 Q Have you fired a semi-automatic outside?

15 A Yes.

16 Q Okay. And it ejects the shells at a good distance,
17 doesn't it?

18 A Sometimes.

19 Q Okay.

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

21 THE COURT: All right. Redirect?

22 DEP. SOL. THORNTON: No, Your Honor. I ask that she be
23 excused.

24 MR. PLEXICO: No objection.

25 THE COURT: You are free to go. Call your next

1 witness.

2 DEP. SOL. THORNTON: Your Honor, I'd ask that we go
3 forward with MaryAnn Boehm.

4 (Whereupon, MaryAnn Boehm enters the courtroom and is
5 duly sworn by the Clerk of Court.)

6 DIRECT EXAMINATION

7 BY DEP. SOL. THORNTON:

8 Q Agent, I'm sure I did not get your name right before
9 you entered in here. I said "Bohem"; how close am I?

10 A Close, it's Boehm. Kind of like poem, but with a "b".

11 Q Okay. Agent Boehm, who do you work for?

12 A I work for the South Carolina Law Enforcement Division,
13 more commonly known as SLED.

14 Q And what do you do for SLED?

15 A I am assigned to the DNA case works department. I
16 receive evidence from local law enforcement agencies, as
17 well as our crime scene and analyze the evidence for DNA
18 profiles. I also develop data profiles from known standards
19 to compare the known standards to the evidence and issue a
20 report based on my findings.

21 Q And how long have you worked for SLED?

22 A Approximately 12 years.

23 Q And have you done, for lack of a better word, a DNA
24 analysis that entire time?

25 A Yes, sir, I have.

1 Q And what kind of education or training do you have that
2 allows you to do that training at SLED?

3 A I received a Bachelor of Science from James Madison
4 University; that's in Harrisburg, Virginia. And Integrated
5 Science and Technology with a concentration in
6 Biotechnology. Upon graduation, I worked for a private
7 company in doing DNA analysis for approximately two years
8 before I was hired on at SLED. Once I was hired at SLED, I
9 went through the training program, which was approximately a
10 year on the proper techniques and protocol used in the
11 laboratory. Upon completion of my training, I had to take a
12 series of tests to ensure that I was competent in DNA
13 analysis training before I could do case work.

14 Q Ma'am, have you been qualified as an expert before in
15 the field of DNA analysis?

16 A Yes, I have.

17 Q In State or Federal Court or both?

18 A I have been qualified in State in a court marshal
19 trial, which is the military.

20 Q And approximately how many times?

21 A Approximately 15 times.

22 DEP. SOL. THORNTON: All right. Your Honor, at this
23 time, I would ask that Agent Boehm be qualified as an expert
24 in the area of DNA analysis.

25 MR. PLEXICO: I have no objection to that.

1 THE COURT: All right. Folks, this witness has been
2 qualified in the field of DNA analysis. Again, the same
3 instructions that I've been giving you for earlier witnesses
4 applies to this witness as well. And you decide how much
5 weight to give her testimony based on all of the evidence
6 introduced that you hear throughout the trial.

7 DEP. SOL. THORNTON: Thank you, Your Honor.

8 Your Honor, I'm going to need the Court's indulgence
9 for just one moment, please. I have several pieces of
10 evidence to get together.

11 Your Honor, I apologize. Thank you.

12 Q Agent Boehm, I am handing you several items, and I
13 apologize. I'm sure we will have to go back at some point,
14 but I'm going to ask you if you can identify -- we will
15 start with State's Exhibit 16.

16 A State's Exhibit 16 is our lab item number 79, which is
17 the blood stain from Eddie Mole.

18 Q State's Exhibit 61? If you need to open them, I can
19 get you a pair of scissors. I believe that was opened for
20 Court and then re-sealed by the evidence custodian. So I
21 believe it's already tagged. The envelope is on the inside.
22 It's a large bag, Your Honor, and Madame Court Reporter, the
23 large bag is State's 61. There are two envelopes inside if
24 you would go ahead, please, and cut that open.

25 A (Witness complies.) These are our lab items 27.3 and

1 28.1.

2 Q And for the record I will also state that it's State's
3 Exhibit 39, which is your SLED Item 27.3 and State's Exhibit
4 30, which is your SLED item 28.1. Would you go through what
5 those are labeled as, please?

6 A Yes. State's Exhibit 39, which is our lab number 27.3,
7 is a cutting collected from Marker A. Then, State's Exhibit
8 40 is our lab item 28.1 and it is one cutting collected from
9 Marker C.

10 Q State Exhibit C which is one item out of a larger bag.

11 A State Exhibit 35 is our lab item 1.1 which was two
12 spots of the textured grip of Item 1. Item 1 was the Ruger
13 P94.

14 Q Which has been entered into evidence as State's Exhibit
15 Number Nine. State's Exhibit 34?

16 A State Exhibit 34 is our lab item number four, which was
17 swabbed from the slide of the Ruger P94.

18 Q And State's Exhibit 41. That which you may have to
19 open.

20 A State's Exhibit 41 is our lab item number 29.1, which
21 was two swabs collected from the right to outer portion.

22 Q And this is a smaller envelope 57, State Exhibit 57,
23 which came out of a larger bag, State's Exhibit 59. So just
24 as to State's 57.

25 A State Exhibit 57 is our lab item 21.6 and these are two

1 swabs from item 21, a ridged detail designated as 21.1 and
2 for clarification, our lab item 21 is the interior side of
3 the door knob.

4 Q And I apologize; I missed the last part of that. You
5 said the last number was out of ridge detail. What does
6 ridge detail mean?

7 A That's a latent print term. It's a print that was
8 found on the interior door knob.

9 Q Okay. So they took a swab of suspected blood from some
10 sort of fingerprint on the interior of the door knob.

11 A That's correct.

12 Q All right. I know you've looked at a lot of items, but
13 are those items, items that you've tested?

14 A Yes, they are.

15 Q Are those all items that would have been processed at
16 SLED by you? And when I say processed, I mean analyzed by
17 you?

18 A Yes. I performed DNA analysis on all of these items.

19 Q Okay. And the very first item I handed you was a blood
20 standard from Eddie Mole; is that correct?

21 A That would be correct.

22 Q And we will just go through these if that's okay with
23 you, one at a time. As to the swabs that you got from the
24 textured grip of the Ruger, which is your item 1.1, I
25 believe?

1 A That's correct.

2 Q And let me just correlate that to the Exhibit number, I
3 believe that's State Exhibit 35. Were you able to reach a
4 determination on that?

5 A Yes. I performed DNA analysis on it. Our lab item 1.1
6 and the DNA profile that was developed was a mixture of two
7 individuals. The partial DNA profile of the major
8 contributor to this mixture matches the DNA profile of Eddie
9 Mole. The probability of having a DNA profile matching the
10 major contributor to this item is approximately one in
11 seven.seven quintillion. Due to the inability to calculate
12 a statistic, no further comparisons will be offered
13 regarding the partial DNA profile of the minor contributor
14 to this mixture.

15 Q So to break that down a little bit to me in English
16 that's basically what you're saying is there is a mixture of
17 two people as the major contributor on State's Exhibit 35
18 which is the swabs from the grip of the pistol in this case
19 that matches Eddie Mole?

20 A That's correct.

21 Q Let me ask you as to your swabs from the trigger guard,
22 which is your SLED Items 4 and the State's Exhibit for
23 identification, 34.

24 A All right. There was a request for blood on this item,
25 so I performed a presumptive test for blood, which just

1 gives us an indication if there is possible presence of
2 blood on this item, and it was positive; meaning there was
3 an indication of blood on this item. I ran a DNA analysis.
4 The DNA profile is a mixture of two individuals. The DNA
5 profile is a major contributor to this mixture. It matches
6 the DNA profile of Eddie Mole. The probability of having a
7 DNA profile matching the major contributor to this item is
8 approximately 1 in 50 quintillion. Due to the physical
9 significance of any comparison, no further interpretation
10 will be offered regarding the minor contributor to this
11 mixture.

12 Q Again, just to break it down, so the swabs from the
13 trigger of the Ruger in this case, State's 9, also matched
14 the major contributor who was Eddie Mole?

15 A Yes. The major contributor matches Eddie Mole.

16 Q As to -- if you will go with me to Item 21.6, your item
17 number 21.6, which is the ridge detail that you mentioned,
18 which is our item State's Exhibit 57. So from the
19 fingerprint of the ridge detail of the door knob, did you
20 reach any conclusion about that?

21 A Yes, the ridge detail is a mixture of at least two
22 individuals. The partial DNA profile is the major
23 contributor matches the DNA profile of Eddie Mole. The
24 probability of randomly selecting an unrelated individual
25 having an DNA profile matching a major contributor to this

1 item is approximately 1 in 130 quadrillion. Due to the
2 inability of calculating statistics, no further
3 interpretation will be offered regarding the minor
4 contributor to this mixture.

5 Q So the major contributor again as to the ridge detail
6 on the door knob, that was Eddie Mole's blood?

7 A That's correct.

8 Q And if you could go to your item 27.3, which is State
9 Exhibit 39. And that was a cutting from marker A. I
10 believe that was the shirt.

11 A It's described as one cutting collected from Marker A
12 area; and that's State Exhibit 39.

13 Q And what was the result of that?

14 A I also tested the sample for the possible presence of
15 blood, and it was positive, meaning there is an indication
16 of blood present on this item. The DNA profile matches the
17 DNA profile of Eddie Mole. The probability of randomly
18 selecting an unrelated individual having a DNA profile
19 matching this item is approximately one in 15 quintillion.

20 Q And if you will move now to the cutting of the jeans,
21 item 28.1, which is our State's Exhibit Number 40.

22 A The presumptive testing for blood was also positive on
23 this item. The DNA profile matches the DNA profile of Eddie
24 Mole. The probability of randomly selecting an unrelated
25 individual having a DNA profile matching this individual is

1 approximately one in 15 quintillion.

2 Q And finally, I believe, is Item 29.1, the swab from the
3 right shoe for Maurice Mitchell, which is your 29.1; State's
4 Exhibit 41.

5 A Presumptive testing for blood was also positive on the
6 sample. The DNA profile matches the DNA profile of Eddie
7 Mole. The probability of randomly selecting an unrelated
8 individual having a DNA profile matching this item is
9 approximately one in 15 quintillion.

10 DEP. SOL. THORNTON: Your Honor, at this time, I would
11 ask that State's Exhibits 34, 35, 39, 40, 41, 57 and I don't
12 know if we put in 16, the blood spot yet, which is the known
13 standard of Eddie Mole. I would ask that all of those now
14 be moved into evidence.

15 MR. PLEXICO: No objection, Your Honor.

16 THE COURT: Admitted.

17 (State Exhibit Numbers 34, 35, 39, 40, 41, 57 and 16,
18 is received into evidence.)

19 State Exhibit Number 34,

20 State Exhibit Number 35,

21 State Exhibit Number 40

22 State Exhibit Number 41

23 State Exhibit Number 57

24 State Exhibit Number 16

25 DEP. SOL. THORNTON: Your Honor, with that I have,

1 if I could ask the Court's indulgence for one moment.

2 (Brief pause.)

3 DEP. SOL. THORNTON: Your Honor, with that, I don't
4 have anymore questions. I would ask the witness to answer
5 any questions that Mr. Plexico may have.

6 THE COURT: All right. Do you have any?

7 MR. PLEXICO: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PLEXICO:

10 Q Okay, if I touch my door knob and it's my house and my
11 door knob, you would expect to find my DNA there, correct?

12 A That's correct.

13 Q All right. Did you -- you didn't personally take any
14 of these samples that you were given; is that correct?

15 A These items were submitted to SLED. I was not at the
16 scene.

17 Q Okay. All right. So there's blood on someone's door
18 knob and another person's DNA, would it necessarily have to
19 be the same person?

20 A Could you please repeat that question?

21 Q Okay. Someone touches a door knob every day,
22 constantly, four or five times a day, and then there is
23 blood on it. When you test the blood, can't those two items
24 of DNA, two different DNA's get mixed together in that?

25 A It's possible. If there are two different sources of

1 DNA, then it would appear when I develop the DNA profile, it
2 could appear as a mixture.

3 Q So the solicitor kept saying that was Eddie Mole's
4 blood, so we don't really know that. We just know that his
5 DNA was there, but we don't know that was his blood,
6 correct?

7 A (NO RESPONSE.)

8 Q I'm not talking about the sample of blood, that's
9 entirely different.

10 A You're referring to Item 21.6, our lab item?

11 Q I'm talking in general.

12 A I didn't test that item for blood, so ---

13 Q That was not my question. When you have someone who
14 touches something and then there is blood from another
15 individual, when you test that, you could pick up either the
16 DNA of either individual, correct?

17 A You would pick up the majority of blood, because blood
18 is a great source of DNA and it contains a lot of cells that
19 contain DNA. However, with touch DNA, it's more variable.
20 There's a chance that you may not get anybody's DNA from it
21 or you may get some DNA, but as far as blood goes, it is a
22 great source of DNA.

23 Q Okay. Now, let's talk about my question. Someone
24 constantly touches a door knob, okay? And now there's some
25 blood on that door knob from another source. When you do

1 the testing, you can pick up the DNA from either party; is
2 that not true?

3 A I would pick up the DNA from both parties if they were
4 two different people.

5 Q So that's true, you could? You could pick up the DNA
6 from both parties?

7 A Yes.

8 Q Okay. Thank you. Now, so that means you don't know if
9 there is blood on the door knob, for instance, when you get
10 a positive DNA test that that is the blood of the person?
11 You just know you have the DNA, correct?

12 A Well, It would depend if I did a presumptive test for
13 blood or not on that item. If I did a presumptive test for
14 blood and I got a DNA profile, in my expert opinion, then if
15 it's a single source profile, the source of the DNA profile
16 would ---

17 Q That's not my question. This isn't a single source.
18 This is an object that's being touched by two different
19 DNA's. One from one person and blood from another person.
20 So when you test and you find someone's DNA, that doesn't
21 mean that's the DNA that was in the blood, that's just the
22 DNA that you found. You don't know which one is which.

23 A It's the DNA present on that item, correct.

24 Q Correct. Have you had training on how to testify in
25 court?

1 A Yes, sir.

2 Q Okay. And SLED provides you with that? The State
3 provides you with training?

4 A That's part of my training. It's a part of the
5 training program.

6 Q Oh, okay. I don't have any further questions.

7 DEP. SOL. THORNTON: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY DEP. SOL. THORNTON:

10 Q I think I know maybe what Mr. Plexico is asking you.
11 If you have touch DNA and you have blood over it and you
12 didn't do a presumptive test for blood, you indicated it
13 would just be -- your opinion would be it would be based on
14 the DNA is present; is that right?

15 A Yes, that's correct.

16 Q But in this case, there is actually several items where
17 you did do a presumptive test for blood?

18 A That's correct.

19 Q Like from the cutting of Marker A, which was testified
20 as the shirt from Maurice Mitchell, 27.3 is your Item
21 number. Did you do a presumptive test for blood?

22 A I did.

23 Q And was it positive?

24 A Yes, sir.

25 Q And did you pull a DNA profile from that blood?

1 A Yes, sir.

2 Q Whose was it?

3 A It was Eddie Mole's.

4 Q Was there a mixture on that?

5 A No, sir. .

6 Q So as to the cutting from Marker C, which was testified
7 to as the jeans from Mr. Mitchell, 28.1 is your item number,
8 did you do a presumptive test on that one?

9 A I did.

10 Q And what was the result?

11 A It was positive for the evidence of blood.

12 Q And did you do a DNA analysis?

13 A I did.

14 Q And whose blood is it?

15 A It matched Eddie Mole.

16 Q And was it a mixture?

17 A No, sir.

18 Q All right. How about the swab on the shoes that
19 Maurice Mitchell was wearing, your item 29.1, did you do a
20 presumptive test for blood?

21 A I did.

22 Q And what was your presumptive test?

23 A It was positive for the presence of blood.

24 Q And whose blood is it?

25 A It matches Eddie Mole.

1 Q And on the -- I think what Mr. Plexico was asking you,
2 the bloody fingerprint on the ridge detail, that you did not
3 do a presumptive test for, but you can testify that DNA was
4 present?

5 A That's correct.

6 Q And there was a major contributor?

7 A That's correct.

8 Q And who was the major contributor?

9 A Eddie Mole.

10 DEP. SOL. THORNTON: Thank you, Your Honor.

11 RECROSS EXAMINATION

12 BY MR. PLEXICO:

13 Q Okay. So if two people were touching and hugging
14 together, then they are constantly together and they are
15 hugging together and loving together and they are close
16 together and then blood is put on that item, not clothing
17 item, couldn't you pick up the DNA from either person, since
18 they are doing the making love thing or whatever it is,
19 hugging and kissing, isn't that true?

20 A It's possible, yes.

21 Q Okay. Thank you.

22 THE COURT: All right.

23 DEP. SOL. THORNTON: I don't have anything further,
24 Your Honor.

25 THE COURT: Let me see you all up here for a second.

1 (Whereupon, a bench conference is held off the record
2 and out of the hearing of the jury.)

3 THE COURT: All right. Folks, this is where we will
4 break for the day. I will send you home with the same
5 instructions as I did yesterday. Don't talk about the case
6 with anybody, including other members of the jury. Just go
7 home and relax. Don't post anything on social media or
8 anything like that. We will resume tomorrow morning at
9 9:30, so if you would get here a little bit before 9:30 and
10 we will try to get started right after 9:30. Thank you for
11 your patience. We will see you in the morning at 9:30.
12 (5:05 p.m., WHEREUPON THE JURY EXITS THE COURTROOM AND THE
13 COURT IS IN RECESS IN THE TRIAL OF THIS CASE FOR THE
14 EVENING.) (THEREAFTER, AT 9:30 A.M., THE NEXT MORNING, THE
15 FOLLOWING IS HELD ON THE RECORD.)

16 THE COURT: Let's put on the record what we're doing
17 and why we're doing it. Mr. Plexico, you had an objection
18 to some of the editing of the video that was done. We
19 talked about it in chambers. You asked us for a specific
20 portion of a piece that needs to be added back in, which
21 we're in the process of having done at this moment. Is
22 there anything else that you want to state for the record
23 about this issue?

24 MR. PLEXICO: Yes, Your Honor. I just discovered one
25 other thing on this. I forgot to put the part about the

1 money and I don't even know what he's talking about. There
2 was no allegation that the defendant took any money. I'm
3 looking at the new video. My computer said around 24:15 it
4 says and my client says yes. I forgot the part where it
5 says, "I have picked out money," and I don't know how they
6 got that in. There's no allegation he took the money. He
7 had the car keys and a cell phone. That's around 24 ---

8 THE COURT: He just asked a question?

9 MR. PLEXICO: Yes. I'd like to have that deleted.

10 THE COURT: Well, if he just asked a question and said,
11 "No," then I don't understand what the problem is.

12 MR. PLEXICO: What I'm saying is here they're going to
13 play a video that shows my client talking about where "I
14 took the money" and there's no evidence that he took any
15 money, and if you look at the part about -- if you look at
16 the whole original tape, he's not saying he took any money.
17 I don't even know how this got on the end. "I took car keys
18 and a cell phone."

19 THE COURT: Who is saying -- is he asking a question?

20 MR. PLEXICO: At the end of the video, my client made a
21 statement that says, "I forgot the part where it says I have
22 -- I took out money." Then, Captain Russell goes, "Hmmm," I
23 don't know how they got that together. Their line is at
24 24:28. It's not in the original transcript. I'm asking
25 that that part be deleted.

1 SOL. STONE: We have two issues here. Let me make sure
2 we are clear on it. First, under Rule 106, I believe he
3 wanted to include something in the video that we had
4 previously edited out, which we have agreed to put in, and I
5 think under Rule 106, that's fair.

6 The second part, which is what he is bringing up now,
7 is what the defendant said. That's why it's in the video.
8 That's why it's in this cut, because the defendant says
9 that. We don't have any intention of taking that out. Now,
10 he's asking us to edit things out of the video that he
11 didn't particularly like for his client; that's a different
12 issue.

13 So we have no objection to adding in the part that he
14 is asking us to add in, which in all fairness, under 106,
15 probably should be added back in. We have no problem doing
16 that. We are trying to do that now and that's what is
17 taking us so long. However, what he is asking now, is that
18 we go in and take things out that his client said because he
19 doesn't like it, and that's not proper. So we strongly
20 object to taking anything out of the video that we are
21 offering to the jury.

22 MR. PLEXICO: That's not my point at all. My point is
23 that does not exist as I remember it. I only got the new
24 tape yesterday afternoon. This does not exist in the
25 original tape. I'm looking now to see if it exists in the

1 original tape; not in my memory. My point is, since it was
2 -- since they did cutting and pasting, that they have done
3 this improperly where it misleads the jury and that's what
4 I'm looking at now. I have the other one in now and I'm
5 working on that video.

6 SOL. STONE: Just to make sure, I don't want the record
7 to reflect that we're handing him discovery last night;
8 that's not true. The video, the full, complete version of
9 the video has been in there, in discovery for quite a while.
10 He's had access to it. Now, whether he's watched it or not
11 is totally a different issue. I can't answer that right
12 now.

13 I can say this, the only thing that's new is the edited
14 version that we plan on showing to the jury that cuts out
15 things such as the defendant sitting there writing a
16 statement, which took 30 minutes or so. Which we think is a
17 huge waste of time for the jury to sit there and watch him
18 do, especially since we introduced the written statement
19 yesterday. We also took out some other issues concerning
20 drug use, prior crimes that the defendant committed, because
21 we don't think that's proper in front of the jury, so we
22 edited that out as well. The other statements have been in
23 there from the beginning, so I'm not sure what he's saying
24 that there is something new that has popped up. Nothing new
25 has popped up.

1 (To court reporter) If you would mark this as a court's
2 exhibit, please, ma'am.

3 Your Honor, I am handing up Courts Exhibit 12. This is
4 a receipt for discovery, which is from the Fourteenth
5 Circuit Solicitor's Office, which includes the Mitchell
6 interview that Mr. Plexico signed for on May 11th of 2016.

7 MR. PLEXICO: Your Honor, my objection was to the new
8 one, which was doctored, and I didn't have time to prepare
9 proper cross-examination from the new document. So I have
10 two issues. Originally, I thought I had one. Actually,
11 there is a misleading statement at the end of the new
12 doctored video that I got yesterday, which I did not have.
13 This has nothing to do with prior original statements.

14 THE COURT: Well, the solicitor is saying that you got
15 the original and it might have been edited -- edited some
16 things out, but they didn't put anything new in. So what
17 you're saying is you didn't -- what you're objecting to, the
18 solicitor says was in the original; they just haven't edited
19 it out. Maybe you just need to look at that a little bit.

20 MR. PLEXICO: They are adding that one in, Judge. But
21 my other objection is the part where he is talking about
22 money, and I believe that is not in the original one at all.
23 That sentence, which is not coherent, is not in the original
24 sentence, and it makes it looks like my client was talking
25 about getting money. There is no proof in the record that he

1 took any money. His only evidence is that he took car keys
2 and a cell phone. There is nothing about money. So when
3 they cut and pasted it, and there is something about money
4 there, then that is misleading to the jury and that's what I
5 am asking them to take out. I can't find it on the three
6 hour original tape. I didn't have time to do that.

7 THE COURT: What is your position on this part about
8 the money?

9 SOL. STONE: That's what I'm talking about. That has
10 been in there from the very beginning; we just have not
11 edited it out. And I think Your Honor is exactly right.

12 THE COURT: Have you moved it from one place to
13 another?

14 SOL. STONE: No, sir. No, sir.

15 THE COURT: It naturally falls where it fell in the
16 original?

17 SOL. STONE: Yes, sir.

18 THE COURT: Unless there was something in between?

19 SOL. STONE: Well, there was a part in between, because
20 the part in between is where he was writing a statement, so
21 we took that out, and the statements about the drug use, I
22 think he referred to as using mollies; we took that out. We
23 took out the former of strong arm robbery, which we didn't
24 think that was proper in front of the jury as well. So we
25 are going in trying to edit this stuff out ahead of time so

1 it won't go before the jury. We haven't added anything in.

2 MR. PLEXICO: I would like to ask the solicitor to show
3 me on the original tape where this is on 2.4.28 of the
4 original tape, because I can't find it myself. Since I only
5 got this yesterday, he says this new tape is a reproduction
6 of the old tape. I am now asking the Solicitor to show me
7 where that statement is on the original tape.

8 DEP. SOL. THORNTON: Sure. I will be glad to do that.
9 Give me a few minutes and I will go and find it for the
10 defense attorney and show it to him.

11 THE COURT: All right.

12 (Off the record, briefly.)

13 THE COURT: All right. Okay, so Mr. Plexico, you've
14 been shown by the solicitor and you are now satisfied?

15 MR. PLEXICO: Yes, Your Honor.

16 THE COURT: Okay. So we just need to get someone in
17 here to edit everything.

18 SOL. STONE: Yes, Your Honor. We are finishing with
19 that as we speak.

20 THE COURT: Are we ready?

21 MR. PLEXICO: Your Honor, I haven't had a chance to see
22 the final copy.

23 THE COURT: Well, if it's not then we will replay it
24 again. He says he has edited it to your request and we can
25 always edit it again.

1 MR. PLEXICO: Okay, Your Honor.

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

3 (11:00 a.m., whereupon the jury enters the courtroom
4 and the following is held on the record.)

5 THE COURT: Welcome back, folks. I apologize for the
6 delay. Sometimes technology can be our best friend or our
7 worst enemy; but we've had some technical difficulties this
8 morning that you'll see in a few minutes. The next bit of
9 evidence is going to involve showing you a videotape, and
10 just by our best efforts we sometimes run into delays. So I
11 apologize for that, but we will start now with the State
12 calling their next witness.

13 SOL. STONE: The State calls Captain Anthony Russell.

14 (Whereupon, Captain Russell is duly sworn by the
15 Clerk.)

16 DIRECT EXAMINATION

17 BY SOL. STONE:

18 Q Captain Russell, you testified yesterday; is that
19 correct?

20 A Yes, sir, that's correct.

21 Q You are with the Hampton Sheriff's Office?

22 A Yes, sir.

23 Q I want to go directly now to -- I think you covered
24 some other bases yesterday, but today I want to talk to you
25 directly about the statement the defendant gave you. First

1 of all, where did that take place?

2 A At the Hampton Police Department.

3 Q And who was present at the time?

4 A It was myself, the defendant, Maurice Mitchell and
5 Sergeant Nick Ginn.

6 Q Yesterday, I think we also introduced into evidence the
7 right's form. Were you present when the defendant was read
8 his rights?

9 A Yes, sir, I was.

10 Q And is that on video as well?

11 A Yes, sir, it is.

12 Q Did you do anything, promise him anything, to get him
13 to give you that statement?

14 A No, sir. We didn't.

15 Q Did Sergeant Ginn, in your presence, did anyone promise
16 him anything?

17 A No, sir. No one promised him anything.

18 Q All right. Let me show you what has been marked as
19 State's Exhibit Fifty-six. This is a section of that
20 statement that we are offering. Have you reviewed this
21 video?

22 A Yes, sir, I have.

23 Q Is it a fair and accurate depiction of the interview
24 that took place with you and Sergeant Ginn?

25 A Yes, sir, it is.

1 Q I believe on this as well is a transcript. Is the
2 transcript accurate as well?

3 A Yes, sir.

4 SOL. STONE: Your Honor, at this time, we have taken
5 out sections of this in which the defendant is sitting there
6 writing a statement. That's not in here. You see him write
7 it, but we cut that out for the timing issue. Otherwise, we
8 offer State's Exhibit Fifty-six into evidence. And again,
9 the transcript will be -- we're using that as a
10 demonstrative piece of evidence.

11 MR. PLEXICO: No objections, Your Honor.

12 THE COURT: All right. Folks, I just want to give you
13 one explanation about the demonstrative part that he was
14 talking about. What that means is you are going to see this
15 videotape and you will hear the audio. You are also going
16 to see along the bottom what looks like closed captioning.
17 It is just a transcript that aids you to follow along
18 because sometimes the acoustics get pretty poor in a
19 courtroom with a lot of ceilings and a lot of space. So
20 this will help you hear it and follow it. The transcript
21 that is along the closed captioning, if you will, is not
22 evidence. When you go back to the jury room to deliberate,
23 you will have the video with the audio available for you to
24 listen to, if you desire; it will not have the closed
25 captioning on it. So what I want you to remember is this is

1 a demonstrative aid, in other words it is to assist you and
2 aid you, and if you hear something -- if it doesn't match up
3 with what you see then you trust your ears. All right.
4 When you get back later on and listen to this -- you can
5 listen to it as many times as you want. Everybody, to my
6 knowledge, thinks that the transcript that goes along with
7 it is accurate, but it is not guaranteed. If you trust your
8 ears -- if you hear something different than what's on
9 there, then you go with what you hear. Okay?

10 SOL. STONE: At this time, we would ask to publish it
11 to the jury, please.

12 (Whereupon, State Exhibit 56 begins to play and is
13 interrupted by Mr. Plexico 10 seconds in.)

14 MR. PLEXICO: Your Honor, I'm sorry to interrupt. So
15 that my client can see it, can they also play it on this
16 video player in front of us?

17 THE COURT: Can you bring it up over there?

18 SOL. STONE: We cannot do it on both, I don't believe.

19 MR. PLEXICO: Your Honor, we would ask that we be able
20 to come and stand at the door to see it.

21 THE COURT: Okay. Go ahead.

22 (Defense attorney and defendant move to where they can
23 see. Solicitor has issues with video playing.)

24 THE COURT: I may have misspoken. I thought our
25 technological issues had been resolved. Folks, I'm going

1 to send you back to your jury room for just a few minutes
2 while we work through these technical difficulties.

3 (11:13 a.m., whereupon the jury exits the courtroom)

4 THE COURT: All right. Let's bring the jury back in.

5 (11:18 a.m., whereupon, the jury enters the courtroom
6 and the following is held on the record.)

7 THE COURT: Okay, folks, we are going to give it a try
8 again.

9 (11:20 a.m. - 11:45 a.m. Video begins play from
10 beginning.)

11 SOL. STONE: No further questions for Captain Russell.

12 THE COURT: Mr. Plexico, do you have any?

13 CROSS-EXAMINATION

14 BY MR. PLEXICO:

15 Q So, this whole process took what, about three and a
16 half hours over at the Hampton Police Department; something
17 like that?

18 A Yes, sir. I believe so.

19 Q Okay. Court's indulgence, please.

20 MR. PLEXICO: I don't have anything further, Your
21 Honor.

22 SOL. STONE: Thank you, Your Honor. Your Honor, the
23 State would like to call Dr. Frank Davis.

24 (Whereupon, Dr. Frank Davis enters the courtroom and is
25 duly sworn by the Clerk.)

1 DIRECT EXAMINATION

2 BY SOL. STONE:

3 Q Okay. Dr. Davis, what do you do, sir?

4 A I am a trauma surgeon.

5 Q Trauma surgeon where?

6 A At Memorial Health in Savannah, Georgia.

7 Q How long have you been a trauma surgeon at Memorial
8 Health?

9 A Almost twenty-four years.

10 Q At Savannah Memorial?

11 A That's correct.

12 Q Do you teach as well?

13 A Yes, I do.

14 Q Is this in the area of trauma surgery or?

15 A That is correct. Trauma surgery, Emergency General
16 Surgery, that particular field.

17 Q I'm assuming med school -- just generally, what is your
18 medical background?

19 A I went to the medical college of -- well, University of
20 Georgia, undergraduate; Medical College of Georgia for
21 medical school. And then I did five years of general
22 surgery internship and residency at Memorial Health, and was
23 in private practice for ten years, then went back to shock
24 trauma in Baltimore, Maryland, and did a trauma Fellowship.
25 Following that, I did a triple vascular fellowship in

1 Memphis, Tennessee.

2 Q Now, Savannah Memorial -- I'm going to get this, is
3 that a level one trauma center?

4 A That's correct.

5 Q What does that mean?

6 A We're the highest level trauma center. There are
7 levels four all the way down to one. Four are your smaller
8 hospitals where a level one is where you handle the most
9 severe injuries and also where we teach and do research
10 related to traumatic injuries.

11 SOL. STONE: And Your Honor, I can certainly go into
12 more background, but I don't think it's necessary. I'm
13 offering him as an expert in trauma surgery and trauma
14 medicine.

15 MR. PLEXICO: We have no objections to that. We agreed
16 on it.

17 THE COURT: Okay. Folks, this witness has now been
18 qualified as an expert in the field of trauma medicine and
19 surgery. The instructions I gave you yesterday about expert
20 witnesses apply to this witness as well. You determine how
21 much weight to give his testimony, based on all of the
22 evidence that you hear throughout the trial.

23 SOL. STONE: Thank you, Your Honor.

24 Q Dr. Davis, you were one of the treating physicians for
25 Eddie Mole; is that correct?

1 A That's correct.

2 Q And you're familiar with everything that was done as
3 far as his health from the time that he got to Savannah
4 Memorial on; is that correct?

5 A Well, for the most part. We had multiple physicians.
6 He was there for six weeks and there were multiple
7 physicians, but I was there the night he came in.

8 Q Okay. And you've also studied his medical records as
9 well; is that correct?

10 A That's correct.

11 Q Tell me what you found when Eddie Mole was -- I'm
12 assuming -- how did he get to you?

13 A He came in through the E.R. and I do not know the mode
14 of transportation. They often fly in and I do not know if
15 the weather permitted, but that's how he -- they usually
16 come in and his arrival was announced, what we call a trauma
17 alert, which means the whole team was there ready and
18 waiting on him to arrive.

19 Q What condition was he in when he got there?

20 A He was severely injured.

21 Q And in what areas?

22 A Well, he came in what we call a Glasgow 3 which means
23 he was in a coma, he was not breathing for himself, and he
24 was also in hemorrhagic shock, meaning his blood pressure
25 was very low.

1 Q At this point, do you operate on him or other people
2 operate on him? How does that work?

3 A Well, we do the initial evaluation along with
4 simultaneous resuscitation. We go through what we call the
5 ABC's: airway, breathing, circulation and so forth.

6 Q All right. You mentioned the Glasgow scale. That's a
7 coma scale?

8 A That's correct. It goes from three to fifteen. He was
9 a three. He did nothing neurologically when he arrived.

10 Q All right. I'm assuming 15 is normal?

11 A That's normal; that's correct.

12 Q All right. And do you have MRI's with you of the
13 damage that was done to Eddie Mole?

14 A Yes, I do.

15 Q And do you have those with you?

16 A Yes, they are loaded in the projector.

17 Q Okay.

18 THE COURT: Your Honor, if we could at this time, I
19 would like doctor to be allowed to use the x-rays. We've
20 already shown them to the defense.

21 Q Am I saying x-rays or MRI's?

22 A These are Cat Scans virtually, which are a type of
23 cross-sectional anatomy.

24 THE COURT: We already have it loaded into the computer
25 and we will put it on a disc and put it in as physical

1 evidence later.

2 THE COURT: Any objection?

3 MR. PLEXICO: No objection, Your Honor.

4 THE COURT: So admitted.

5 Q All right. Doctor, you took the clicker on this thing
6 so I assume you know what you are doing.

7 A Yes, sir.

8 Q Let me ask you to come down here if you can.

9 A (Witness complies.)

10 MR. PLEXICO: May me and my client stand here at the
11 podium, Your Honor?

12 THE COURT: Well, Mr. Plexico, I will let you stand
13 over here, but typically, he got to watch the video but as
14 far as this testimony goes, you can stand over here.

15 MR. PLEXICO: Okay. I just wanted him to stand here to
16 see the video. I don't think he can see the video; my
17 client.

18 THE COURT: All right.

19 Q Doctor, if you would explain what this is.

20 A This is a cat scan of the body. This is a normal cat
21 scan. And the reason I wanted to do this just so you will
22 have an idea of what you are looking at, and how these
23 images, computed topography of cross-sectional anatomy, this
24 is if you took a hot knife and went through the body. This
25 is the mid part of the abdomen and this is looking up from

1 the feet. This is the largest organ of the body, this is
2 the stomach, this is the spleen. Another thing I will point
3 out is this is the backbone of the body. So I just want you
4 to get an idea of what the anatomy of a normal body looks
5 like.

6 The next image is of the patient. The liver, stomach,
7 spleen. This is the liver and what you are seeing here is
8 this black area is blood clot and injury, laceration to the
9 lung, and this white area here, this image is blood, and it
10 appears to be white. This is vertebral column. That's
11 important in the minute.

12 I do not know if he was shot from right to left or left
13 to right, that's why we have a double arrow here, but this
14 is the approximate trajectory through the body of what we
15 call the actual plains.

16 Q Let me ask you this, so other than the vertebra, which
17 we see, what other areas of Mr. Mole's body was hit by the
18 bullet?

19 A Well, it clearly went through, it started on the chest
20 wall. And as you went through -- and I'm going to show you
21 again a different trajectory. It went through the bottom of
22 the lungs, injured the lungs, into the chest cavity where
23 there was blood. Went through the liver. Nearly transected
24 in half. This is potential injury. In a minute, I'm going
25 to show you where it went through the vertebral body and

1 then exited the posterior of the back on the left side of
2 the body.

3 Q Okay. So on me, where did the gunshot go? Put me
4 where you need me.

5 A It's probably easier if I show you on me. So it went
6 in here and again, I don't know which way it went in or
7 exited, but I'm going to assume it went in here and exited
8 down here on this back. Does that make sense? Went on the
9 white side and exited -- now, I could be going the opposite
10 direction, but I just want you to get the possible
11 trajectory. This was a patient lying on his back.

12 Now, the next slide is the center of the body, but this
13 time we cut it this way. If you took a carving knife and
14 were shaving away at layers. He is standing up but let's
15 assume that he is standing up and looking at you and we have
16 sliced down through the body and I just want to again show
17 the trajectory through the body. Again, on this trajectory,
18 it's from the eye to below and went through the back and
19 then exited. So two different planes and I know it may be
20 kind of confusing, but I just want you to get an idea. And
21 this is important, because what I'm going to show you on the
22 next slide will be we went back a little bit further to the
23 back so you can see the backbone, the vertebral body and how
24 it's kind of sliced there. I just wanted to show this.
25 This is the trajectory here. And it went through his

1 vertebral body and the spinal cord lives just behind this
2 and it was damaged also to the trajectory of this.

3 Q Well, let me ask you this. It looks like it has been
4 literally separated; is that right?

5 A That's correct.

6 Q And the spinal column, the spinal cord is in that?

7 A Yes, just behind this, very, very close.

8 Q What condition did that leave Eddie Mole in at the
9 point of when that was split?

10 A Not only did it interrupt the vertebral body here,
11 which has structural stability to help us stand and not fall
12 over, it also injured the spine.

13 Q And what condition would that leave him in?

14 A The inability to use his legs; what we call a
15 paraplegic.

16 Q All right. And basically, that happens at the time
17 when the bullet went through?

18 A That's correct.

19 Q He becomes a paraplegic when the bullet went through?

20 A That's correct. So this is another cross section of
21 the lungs. This is the right lung, left lung and everything
22 from here down should look like this side, but this is a
23 blood clot, this is a chest tube that we had here. So I
24 just wanted to point out the injury to the right lower lung
25 and to the diaphragm, the big muscle that separates the

1 chest from the abdominal cavity. It went through the liver,
2 through the vertebral body, and then out. So I just wanted
3 to give you kind of a comprehensive look.

4 Q So that's basically, all of this is internal bleeding?

5 A Yes. All of this right here.

6 Q All right. Go ahead.

7 A Next I just wanted to show a picture of the head. This
8 is a normal head and just for orientation, this is the
9 bottom of the head. This is your cheek bones here and this
10 is your nose. This is a normal person. You have structural
11 anatomy that looks relatively normal. These are his
12 sinuses.

13 Q Is this from the top looking down?

14 A Yes, this is the nose and this is the back of the head.

15 Q So he's laying on his back and you are kind of ---

16 A This is the front part of his face and this is the
17 bottom of his face.

18 Q What is this here? This white area here?

19 A Those are your cheek bones.

20 Q Okay.

21 A So I just wanted to show you a picture of the patient,
22 and although you don't need to know what all of these bones
23 are, you can see these are all relatively normal.
24 Everything is just crushed for lack of a better term over
25 here. This is the cheek bone over here and this fracture is

1 on this side and all the bones in the area of his sinuses,
2 and all the normal anatomy has been significantly disrupted
3 by blunt force trauma.

4 Q And you said, obviously, this is dark here and on a
5 normal body it's grey.

6 A Yes, this is blood from bleeding into the soft tissues.

7 Q This looks like a clear line and this one does not.

8 A Yes, he's got blood and what not all in the back of his
9 nose.

10 Q Can you tell how many bones are broken in his nose?

11 A Many, many; there are too many to count.

12 Q Okay.

13 A So just multiple bones are broken due to blunt force
14 trauma. Q Okay. Thank you, Doctor. That's all I have on
15 that. If you will take the stand.

16 A (Witness Complies.)

17 Q Do you know how long Eddie Mole stayed with you and
18 then what happened to him after that?

19 A He came in about 9:30 at night. We resuscitated him.
20 He went to the Angiography suite where we had our
21 radiologist try to control the bleeding, and then he went
22 into the critical care unit that night. He stayed there in
23 the hospital for about six weeks.

24 Q So then after six weeks in the hospital, where did he
25 go?

1 A Because he still was not doing very well, he went to
2 the longterm acute care. They are too sick to go to a
3 nursing home and too sick to go to a regular house, because
4 of the amount of care. His Glasgow coma scale at the time
5 he left was only at 9, which is barely above the coma level.
6 So he still had a significant amount of injury or brain
7 injury -- and the brain injury, we didn't really talk about
8 that earlier, was from the lack of oxygen. Somewhere from
9 the time he was initially injured until the time he got to
10 me, there was a cardiac arrest and the heart was not pumping
11 blood, and there was an amount of time, I don't know the
12 exact, where there was an inadequate amount of blood flow to
13 his brain and he suffered an irreversible brain damage from
14 that.

15 Q During the time that he was with you and moved on to
16 the critical care, did he ever improve? Did he ever get
17 better?

18 A Eventually he came in with a Glasgow of 3 and by the
19 time he was discharged, he was up to a 9. So he did get
20 better, but certainly not enough to take care of himself.
21 He could not follow commands. He could not dress himself.
22 I think his eyes were open, but no one was really home, if
23 you know what I mean.

24 Q Okay. When he died, I think that was in May of 2016; is
25 that correct?

1 A That's the time I -- I do not have that information
2 right in front of me, but that sounds about right.

3 Q Okay. But that was at that second facility, correct?

4 A Right.

5 Q And those injuries would have been consistent with that
6 cause of death?

7 A Yes.

8 Q Thank you, Doctor. Please answer any questions that
9 Mr. Plexico has.

10 CROSS-EXAMINATION

11 BY MR. PLEXICO:

12 Q Thank you for being here, Doctor. We've talked briefly
13 about this, with the head injury alone, from the head
14 injury, you opine that that would not have been enough to
15 cause his death; is that correct?

16 A The blunt force trauma to the face itself, his brain
17 was not really injured from the blunt force trauma. The
18 brain injury was from the lack of oxygen when he had his
19 cardiac arrest at the pre-hospital or en route. I don't
20 know exactly when that occurred.

21 Q The damage from the bullet to the lungs, which is the
22 breathing, and that's going to cut off the brunt of his air
23 supply, okay? And bisected his liver?

24 A That's correct.

25 Q Then his spine?

1 A That's correct.

2 Q And there was a small amount of damage to his kidneys?

3 A Not anything significant.

4 Q Okay. Major injuries were from the bullet and that's
5 what he eventually succumbed to?

6 A Yes, sir. That is our best understanding of this. He
7 never really -- he continued to have problems from the liver
8 leaking bile and when he left the hospital, he had a
9 tracheotomy, an artificial air tube in his neck, and he had
10 a feeding tube because he was not awake enough to eat on his
11 own. So he was just really never got over all of that. He
12 became what we call failure to thrive in the end.

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

14 SOL. STONE: Thank you, Doctor.

15 THE COURT: You may step down. Ladies and gentlemen of
16 the jury, we are checking to see if your lunch is here. So
17 we are going to break for lunch so you can eat while it's
18 hot. Let's see, it's 12:00 right now. Let's meet back here
19 at 12:45. Don't begin deliberations or discussions about
20 the case. When you come back we will get started back with
21 the next witness. Enjoy your lunch. You can eat it inside
22 or take a break outside. It's a pretty day. But again,
23 don't discuss the case. See you in 45 minutes.

24 (12:05 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM
25 AND THE COURT IS IN RECESS FOR LUNCH IN THE TRIAL OF THIS

1 CASE. THEREAFTER, THE FOLLOWING IS HELD ON THE RECORD.)

2 THE COURT: All right. Mr. Plexico, you want to ask
3 for a charge on voluntary and involuntary manslaughter?

4 MR. PLEXICO: Yes, Your Honor, and accident.

5 THE COURT: What are your basis -- what is your factual
6 basis for making those legal arguments?

7 MR. PLEXICO: Starting with manslaughter, Your Honor,
8 it's the unlawful killing of another and I think it's a
9 human factor and ends the realization of what he said on the
10 video that he had been sexually abused, intoxicated by Mr.
11 Mole and I can't say in the heat of that passion would
12 dissipate. I think when it dissipates is a jury question
13 and therefore, it would be proper to charge manslaughter,
14 Your Honor.

15 THE COURT: What was the timeframe between the sexual
16 act and the shooting?

17 MR. PLEXICO: He said he had seen him the week before
18 or maybe that week. He did not say when the sex act actually
19 occurred. He did not pinpoint that down.

20 THE COURT: But somewhere in the several days before
21 category? Not several minutes before or even several hours
22 before?

23 MR. PLEXICO: Yes, Your Honor, and I don't know when
24 that realization when he believed that someone he had
25 plucked him somehow in that he was hearing voices when that

1 realization came to him about what had happened. That would
2 be a jury question and would justify manslaughter.

3 THE COURT: All right. And what about involuntary?

4 MR. PLEXICO: Involuntary manslaughter, Your Honor,
5 can be the unintentional killing of another or without
6 malice while engaged in unlawful activity not actually death
7 with great bodily harm. Here, they may find that he did not
8 in fact commit murder. Well then, what was he doing? if
9 they find that he's not guilty of burglary, which is
10 feasible on these facts, then they may find that he was only
11 engaged in trespass which is also unlawful activity. Then,
12 this would be easily, I believe, based on these facts, a
13 killing about malice. He kept saying the gun accidentally
14 discharged. So based on those facts, I think an involuntary
15 manslaughter charge would be found. And on the accident, as
16 far as accident goes, Your Honor, they do have a
17 relationship. He is known to be over at the house. There's
18 a dispute over sexually what happened, and then at that
19 point in time, he says that that is when his elbow is hit
20 and that's when the firearm discharges. He is somewhere
21 where he is welcome. He apparently always keeps his gun
22 with him. And if you have a sexual relationship with
23 someone who is carrying a gun, I think it would be hard not
24 to know that you have them over at your house and they've
25 always got a gun. So that would be implied that he had the

1 tacit consent of Mr. Mole to have the gun on his property
2 and that's the property at the apartments. he can get his
3 gun and walk around the apartments all that he wants,
4 because that's a common area where he lived with his
5 girlfriend. He can have it at his home. It's a common
6 area, so he's not engaged in

7 THE COURT: How about sticking it inside somebody
8 else's door?

9 MR. PLEXICO: Well, that goes to what I just said about
10 he's having a sexual relationship with the man and he always
11 has his gun.

12 THE COURT: I know that's what you said, but I don't
13 understand how that gives him the right to put a gun inside
14 of another man's door. As the undisputed testimony seems to
15 be that guy was trying to keep him from coming in and trying
16 to shut that door. How is he legally in the house or in the
17 apartment and legally putting that gun in while he was,
18 presumably, from the testimony that I heard, still on the
19 other side of the threshold?

20 MR. PLEXICO: Well, the split was there at least at
21 that point in time, and they were still discussing the prior
22 sexual activity.

23 THE COURT: Response?

24 SOL. STONE: I'm sorry -- the undisputed facts in this
25 case is that he took a gun over to his house and forced

1 himself in. There wasn't any friendly conversation on the
2 outside of the door that ended up inside the house. Every
3 bit of evidence is that he takes the gun over there, the gun
4 is loaded, he walks into the house and says that Eddie Mole
5 does not want him in that house. He's trying to keep him
6 out of the house. He actually sticks his foot in the door
7 to keep him from closing the door. And in fact, when the
8 door closed, it was because Eddie Mole's body weight, which
9 had been shoved against the door, closes it after he gets
10 in. Even by the defendant's own statement, that's the core
11 problem he's got with any of this. There is no evidence at
12 all of voluntary. There's no evidence of involuntary adn as
13 far as accident is concerned, I handed up to you three
14 cases, Your Honor, Bryant, Goodson and Warren. Bryant is a
15 self defense case, but the analysis is the same. And the
16 bottom line is that in any situation, if you're trying to
17 get an accident charge or even argue accident, you have to
18 show that the shooting itself was unintentional and
19 secondly, and probably most importantly, is that he was
20 acting lawfully at the time, and the undisputed testimony is
21 that he was not acting lawfully at the time. he was
22 committing burglary in the first degree.

23 Then, whether or not he operated the gun with due case,
24 I think that is somewhat problematic for the defense as
25 well. But I think at the end of the day, the evidence is

1 clear. He went over there to confront Mole. Mole did not
2 want him in the house. He tried to keep him out of the
3 house. He forced himself into the house and this is again,
4 his testimony and his statement that he gave to the police.
5 There is nothing to dispute that.

6 THE COURT: Would you like to respond?

7 MR. PLEXICO: I don't have anything further, Your
8 Honor.

9 THE COURT: Well, going last, first, accident seems to
10 be precluded by the acting lawful. There wasn't -- even if
11 he took his statement to be true and the jury believed
12 everything he said, I don't believe he was acting lawfully
13 by attempting to enter the apartment with his gun leading
14 going in such that it would be considered a lawful entry.
15 It sounded like a forced entry, even if you believe what the
16 defendant has to say because he was trying to keep him from
17 coming in and he was pointing and presenting his firearm at
18 him, according to the statement he gave that may have
19 accidentally gone off. There is no evidence of self defense.
20 There was nothing the victim was doing at the time to
21 suggest that he was an aggressor. He wasn't trying to
22 wrestle with the weapon. There is nothing to excuse a lack
23 of due care here. The defendant not acting lawfully, not
24 acting with due care in handling the weapon. I don't see
25 there is any way you can believe what we have heard

1 factually to suggest that it was accidental. Assuming even
2 we get to the part where we are not sure what the cause of
3 death was, let's just go with it was the consequence of the
4 shooting and not of the beating for the sake of argument, I
5 don't see where the facts can support the accident charge.
6 passionate and upset, but it wasn't anything that the victim
7 had done prior to provoke that response. It's a suddenness
8 that brings about -- a suddenness has to do with something
9 the victim is doing at that point that causes him to be able
10 to react without reflection. In other words, no malice. It
11 was an unlawful killing. there wasn't any malice because of
12 the actions that the victim somehow provoked and caused him
13 to feel a need to shoot a gun.

14 Voluntary, you know, we get back to the same thing.
15 The defendant in this case, i don't see where he was again
16 acting lawfully in trying to get into the apartment of
17 somebody else. He may have the right to carry his firearm
18 in the common area of the apartment, but it wasn't legal for
19 him to try and go into somebody else's apartment with a
20 firearm being held out the way that it was preceding entry
21 into the apartment; so it wasn't a lawful activity. And an
22 unlawful activity is not intending to cause death or serious
23 injury. It was a forcible entry and to point a gun at
24 somebody. Usually that kind of activity, I don't know how
25 putting a gun inside somebody's apartment doesn't naturally

The

1 tend to cause death or serious bodily injury. So on either
2 prong of the voluntary, I don't think you're entitled. AS I
3 see it, it is straight up murder. Straight up burglary
4 first. Straight up possession of a weapon during the
5 commission of a violent crime, and possession of crack
6 cocaine.

7 MR. PLEXICO: I understand your ruling, Your Honor.

8 THE COURT: Anything from the State on the jury
9 charges?

10 SOL. STONE: Yes, sir. We had noticed there is not
11 anything in this on expert witnesses. I may have missed it.
12 The other thing is the statement of the defendant,
13 obviously, you have to find that it's voluntary, and the
14 jury does as well, and I don't know if there is a jury
15 charge that you would like to put in for that.

16 THE COURT: I guess I've said it so many times I've
17 just overlooked it.

18 MR. PLEXICO: That was an omission on my part for a
19 charge on the statement of the defendant.

20 THE COURT: Oh, voluntariness?

21 MR. PLEXICO: Yes, sir.

22 THE COURT: All right. We will add expert and
23 voluntariness of the statement. Anything else?

24 SOL. STONE: No, sir.

25 THE COURT: Anything else, Mr. Plexico?

1 MR. PLEXICO: No, Your Honor.

2 THE COURT: All right. Are we ready to resume? Let's
3 bring the jurors back in.

4 (12:55 p.m., WHEREUPON THE JURY ENTERS THE COURTROOM AND THE
5 FOLLOWING IS HELD ON THE RECORD.)

6 THE COURT: All right. Folks, we are going to resume
7 now with the State calling their next witness. Mr. Stone,
8 if you're ready.

9 SOL. STONE: Dr. Lee Marie Tormos.

10 (Whereupon, Dr. Tormos is duly sworn by the Clerk of
11 Court.)

12 THE COURT: Your witness, Solicitor.

13 SOL. STONE: Thank you, Your Honor. May it please the
14 Court?

15 DIRECT EXAMINATION

16 BY SOL. STONE:

17 Q Dr. Tormos, what do you do, ma'am?

18 A I am a Forensic Pathologist.

19 Q And what exactly is a Forensic Pathologist?

20 A A Forensic Pathologist is a doctor that specializes in
21 how injuries bring about the death of an individual.

22 Q You've performed -- in the course of your job, you
23 perform autopsies; is that correct?

24 A That's correct.

25 Q And how long have you been doing this?

1 A Since 2007, so about 10 years.

2 Q Prior to that, what kind of medical experience did you
3 have in order to allow you to be a Forensic Pathologist?

4 A Okay. My studies start with an undergraduate degree in
5 sciences. Followed by a medical degree from the University
6 of Puerto Rico. Then, I did my pathology training.

7 Pathology is a branch of medicine that studies disease
8 and how disease processes are diagnosed and trapped in the
9 body. Then I worked as a medical examiner for a couple of
10 years in Puerto Rico for a couple of years before
11 transferring to the Medical University of South Carolina in
12 Charleston where I did my sub-specialty training in Forensic
13 Pathology. Then, after I finished, I stayed on for seven
14 years at MUSC.

15 Q MUSC, that's in Charleston?

16 A Yes.

17 Q And where are you now?

18 A I'm a medical examiner in West Palm Beach, Florida.

19 Q How long have you been there?

20 A Since July.

21 Q Okay. Now, in your time at the Medical University of
22 South Carolina, did you perform an autopsy on Eddie Mole?

23 A Yes, I did.

24 SOL. STONE: First of all, Your Honor, I'd like to have
25 her found as an expert in the field of Forensic Pathology.

1 MR. PLEXICO: Without objection, Your Honor. I believe
2 she is qualified.

3 THE COURT: All right. Again, folks, this witness has
4 been qualified as an expert in the field of pathology and
5 you are to give the witness's testimony as much or as little
6 weight that you think it deserves based on all of the
7 evidence that you will hear. In other words, the same
8 instruction that I've been giving you for the last few days
9 on expert witnesses. So you may resume.

10 Q Doctor, When did you perform the autopsy on Eddie Mole?

11 A On May 15th, 2016.

12 Q And I think you were present during Dr. Davis's
13 testimony earlier?

14 A Yes, I was.

15 Q Did you have any involvement to the Savannah Memorial,
16 I think it was October 28th, 2015; is that correct?

17 A That's correct.

18 Q Did you receive the body actually from that secondary
19 hospital that he was sent to?

20 A He actually passed away in a skilled nursing facility
21 and that is where the body was transported from to MUSC for
22 the performance of the autopsy.

23 Q I guess you made two determinations, the manner of
24 death and the cause of death?

25 A That's correct.

1 Q And what's the difference between the two?

2 A The cause of death is the injury that brings upon the
3 sequence of events that leads to a person's death. The
4 manner of death is determined by medical definitions of how
5 injuries occur. So for example, we could have an accident
6 where injury was not meant to cause harm. Everyone knows
7 pretty much what an accident is. Homicide, the medical
8 definition, is an injury brought upon by the action or
9 inaction of another individual. Suicide, when the injury is
10 brought upon by the person who has passed away. Then we
11 have a manner of natural when it's only a natural decease
12 that brings upon the death and then undetermined when the
13 death is not classified into one of these categories.

14 Q What was Eddie Mole's manner of death?

15 A His manner of death was homicide.

16 Q Specifically, what were your findings at the autopsy?

17 A If I may, please?

18 Q You may come down, sure.

19 A (Witness Complies.)

20 Q Are you right handed or left handed?

21 A I'm right handed. The first thing I want you to
22 understand, when I come in, is six months and two weeks
23 after the initial event. However, we still have
24 jurisdiction and this is how it works. You have a normal
25 individual, Eddie Mole. This is an event and this event

1 happened on October 28th, 2015, after which he declined
2 until his death on May 14th, 2016. We have to take
3 individuals as they are. We are all unique. We all have
4 habits and medical conditions that may or may not be present
5 from the time you are born or maybe there are acquired. So
6 we have to take people as they are. On October 27th, the
7 day before the injury, Eddie Mole was 56 years old. He is a
8 six foot man, 185 pounds. He does all of his activity from
9 daily living. He takes care of himself. He walks, talks, is
10 able to speak. He is able to feed himself. He possibly
11 needs glasses and he smokes a half a pack of cigarettes a
12 day. That's about how much I know of Eddie before the
13 injury. He is just a normal walking, talking human being.
14 Around 6:00 on the 28th, he sustained an injury that changed
15 the course of his baseline health. And that is he received
16 some blunt force trauma to the head and he received a
17 gunshot wound. So this is the injury. And as Dr. Davis
18 said, they tried very hard to resuscitate him. He did
19 actually suffer a cardiac and respiratory arrest and they
20 did bring him back, a somewhat marvel of modern medicine. He
21 was bleeding out internally ,and his brain suffered
22 irreversible damage, as did some of his other organs and he
23 never regained full consciousness, awareness, and he kept on
24 declining, declining, until he died on May 14th, 2016, six
25 months and two weeks after the initial injury. But because

1 this is what preceded his death and there is linear
2 continuity, then he just progressively declined and this is
3 a homicide based on the medical definition because the
4 actions and event were brought upon by another individual.

5 Now, as I reviewed the medical records that I received,
6 I can give you a list of things and basically, it will be
7 the same things that Dr. Davis mentioned. So he has facial
8 fractures. He mentioned facial fractures. You saw in the
9 MRI how the cheek bones were fractured. He also had a
10 mandibular fracture and he also had a skull fracture,
11 because all of these bones are connected together. So the
12 fractures did extend up into the skull, but it is Dr.
13 Davis's opinion that the brain under the frontal fracture is
14 fine. We cannot tell if he was concussed or not; we cannot,
15 because right after he sustained those fractures, he had the
16 cardiac respiratory arrest where his brain did not get
17 enough oxygen and we would be unable to tell if he had a
18 concussion or not. But at least to the naked eye and to Dr.
19 Davis's expertise, his brain was fine, but he did have skull
20 fractures, facial fractures, nose, cheek bones and jaw, they
21 were all there.

22 Q Let me stop you there, too. On the facial fracture,
23 you are pointing to your forehead, there is some indication
24 in the medical record of a gunshot wound. And that actually
25 was not the case, but it appeared to be; is that correct?

1 A It can absolutely appear to be. The way the face
2 bleeds and the way that the patient ruptured when struck
3 with an object, it can absolutely look like a gunshot wound.
4 We see that interpretation in my line of work all the time
5 when doctors are looking at a bloody wound and figure that
6 could be a gunshot wound.

7 Q One other thing, there is a reference to an orbital
8 fracture. What does that mean?

9 A Well, the bones in the cheek and the frontal skull are
10 really all sort of like a piece, they are all together, so
11 the orbital fracture is anywhere around the edge of the eye.
12 Anywhere around the eye socket.

13 Q And I think you made reference to an open mandible
14 fracture as well. What is that?

15 A A mandible fracture would be a laceration to the skin
16 and the bone is fractured underneath so you can see the bone
17 through the skin, through the hole in the skin.

18 Q I didn't mean to interrupt you.

19 A So that was covered in the MRI, and essentially, by the
20 time I see him, he is healed from all of these. So all I'm
21 seeing at the autopsy are scars. I'm not really seeing the
22 fractures. Everything is healed over at this point. He had
23 a liver injury and this is one of the major causes of
24 morbidity in his case. So what does that mean? The bullet
25 went through the liver. You saw that in the MRI. They went

1 in and one of the first things that they did is they went
2 into one of the blood vessels in the groin and they are
3 little metal coils with material and you are trying to clot
4 up the artery to stop it from bleeding. Then, they are
5 doing this and they do this interventional radiology enough
6 that Dr. Davis mentioned it. But then, they went in
7 surgically because he is still bleeding. They took his gall
8 bladder out. His bile is leaking. They are trying to fix
9 the liver and he just keeps leaking bile into the abdomen.
10 They are literally able to control the bleeding, but they
11 did take his gall bladder out. And this was complicated by
12 a bile leak that he has drained because he was leaking bile
13 for a while into his abdomen. If we don't know the anatomy
14 of the right side of the abdomen or the chest, it turns out
15 that the lungs sit on top of the diaphragm, which is a
16 muscle that we use to breathe and it's actually dome-shaped.
17 So it's very easy to have a bullet go through the lung and
18 the liver of the diaphragm because essentially it's a dome
19 and it's a semi-circle. So even if it comes in the chest
20 cavity, it is going through the dome of the liver and the
21 diaphragm that sits right above it, so that is why you are
22 able to have both liver and lung injury in a single straight
23 line because it is a dome.

24 So as you saw on the MRI, he had blood in the chest
25 cavity. And he had a lung injury. This one is the one that

1 caused him the most trouble of all. They had to go in and
2 repair the damage to the lung. They actually had to take a
3 section of the lung out. I'm not sure how much they took
4 out, probably about a third was taken out because of the
5 bullet. I only found about two-thirds of the lung. This
6 lung injury got complicated even more by a very severe
7 infection by e-coli. E-coli is a bacteria that not only
8 lives in our gut, and it's supposed to live there, but when
9 it gets out into other body cavities, it causes incredible
10 damage and it can cause a urinary tract infection. It can
11 give you all sorts of infections. In his case, he had
12 pneumonia, but a very bad type of pneumonia called empyema
13 in which the entire right chest cavity fills up with pus. So
14 he needed the stripping, so basically they had to go in
15 again and try to remove all of that infected tissue, so
16 basically by the time they had finished, he basically had a
17 non-functional right lung because it was so scarred over
18 between the initial injury and this infection.

19 As Dr. Davis said, his heart stopped at some point
20 before he got to the hospital and then the other part that
21 is presenting directly to the injury, he bled out so much
22 internally into the chest cavity and into the abdomen that
23 his heart was not able to sustain the blood pressure and he
24 essentially stopped receiving oxygen in his brain. That's
25 called anoxic encephalopathy and that is basically brain

1 damage due to lack of oxygen. So when he got to the
2 hospital, he had a Glasgow coma scale of three. That means
3 complete unresponsiveness to anything, including pain.

4 When he was sedated and all of these things were
5 intervened, he remained with a brain injury .The brain
6 injury included muscle jerks and contractions and these are
7 involuntary. He wasn't able to communicate. He wasn't able
8 to walk. And in fact, he was a paraplegic. He wasn't able
9 to eat. and therefore, they gave him a tube to the stomach
10 and they could only feed him a liquid diet straight into the
11 stomach because he didn't have the ability to swallow and he
12 would be aspirating his saliva all of the time. So he has
13 all these secretions that he cannot manage. This in turn,
14 because we are not designed to live on a fluid diet; it
15 leads to malnutrition. The best fluids and the best Ensure
16 that we can give someone is still not equal to your Big Mac.
17 We need food. We are designed to eat food, so this led to
18 malnutrition.

19 And due to his debilitative state, there is one more
20 complication and it's that he is in a hospital followed by a
21 nursing facility that is essentially another type of
22 hospital, just a more chronic hospital. Patients that live
23 a long time in hospitals that are colonized by bacteria that
24 are very difficult to treat. They are antibiotic resistant.
25 And he was in fact colonized by a bacteria called

1 pseudomonas and that is antibiotic resistant. No matter how
2 many antibiotics we give him, he would still have this
3 bacteria in his respiratory tract. Eventually, it was this
4 bacteria and pneumonia that made him pass away when he did
5 and his own complication from the lung injury that he just
6 never got over, and also that brain injury that did not let
7 him return to baseline at all.

8 AT the time of autopsy, six months and two weeks after
9 the initial event, what do I see? I see a man with scars on
10 his face from all the injuries. I see a lot of scars on the
11 right side of the body. He had so many interventions, I
12 cant tell which ones was which. There are scars from all
13 the tubes and drains that he had and the surgeries that he
14 had. He is missing part of the right lung. He has the
15 scarring in the liver from where they repaired the injury. I
16 see the coils that they put in there to try to block the
17 artery and I also saw the presence of feeding tubes into his
18 abdomen and I also saw the pneumonia.

19 When he died, Eddie Mole weighed 99 pounds. He lost 85
20 pounds in six months and two weeks. That is the extent of
21 the malnutrition due to the injuries. He never made it out
22 of the hospital. He never made it back to himself 100
23 percent.

24 Q in the finding of your autopsy, you had a finding of
25 death of homicide because of the event that took place on

1 October 28th?

2 A Yes, we go back to the event that changed the course of
3 history in this man's life and this event is the injury.
4 And because it is an event that involves another individual,
5 it is a homicide.

6 Q And then you cause of death becomes ---

7 A Complications of gunshot wounds.

8 Q All right. And the blunt force trauma, what role did
9 that play in it as well?

10 A It's very difficult to tell what the blunt force trauma
11 entailed. I did not see it, so I am just going by the same
12 thing that you saw, the MRI for facial fractures and what
13 I'm reading in the medical record. I cannot tell if he had a
14 concussion or not, but I am sure that it was all very
15 painful. But as to how that contributed to his death, I
16 really cannot tell.

17 Q Any question in your mind though that the gunshot wound
18 and these other factors that you put up here were the cause
19 of Eddie Mole's death?

20 A Yes. The gunshot wound with the injury to the lung and
21 the liver and the bleeding out causing his heart to stop and
22 it was only the sake of really good medical care and timely
23 medical care that actually brought him back. But he had a
24 reversible damage at that point.

25 Q Thank you, Doctor. If you would answer any questions

1 that Mr. Plexico has.

2 MR. PLEXICO: I don't think I have any questions, Your
3 Honor.

4 THE COURT: All right. Thank you. You may step down.

5 SOL. STONE: Thank you, Dr. Tormos. And with that,
6 Your Honor, the State rests.

7 THE COURT: Okay, folks, you have now heard all of the
8 evidence you are going to hear from the State. So we have
9 to take up at this point some legal matters, so I need you
10 to go back into the jury room so we can get ready for the
11 next phase of trial. Don't begin deliberations or
12 discussions about the case. Also, alternate number one,
13 you're my foreperson, so you will just write down the
14 verdict on the indictments at the end of the trial. You
15 don't get any extra pay or anything like that. You just
16 preside over the deliberations and write the verdict. I'm
17 appointing you as foreperson.

18 (1:20 p.m., whereupon the jury exits the courtroom and
19 the following is held on the record.)

20 THE COURT: Okay, Mr. Plexico, any motions?

21 MR. PLEXICO: Yes, Your Honor, I move for a directed
22 verdict in that the State has not presented enough evidence
23 in regards to intent, in regards to the burglary and in
24 regards to malice and ask that a directed verdict on the
25 burglary first and the murder charge I believe that would

1 entitle me to a directed verdict in the possession of a
2 weapon during the commission of a violent crime, and I don't
3 have any motions -- well, I do make motions for a directed
4 verdict.

5 THE COURT: Would you like to respond?

6 SOL. STONE: Your Honor, I think the evidence is not
7 just sufficient, but I think it is overwhelming at this
8 point. I mean, you've heard it as well as I have, so we
9 don't really have any argument to that.

10 THE COURT: Well, I do believe there is sufficient
11 evidence for a jury to convict him on all of the
12 indictments. The motion is denied.

13 All right. Let's take a few minutes so you can get
14 your thoughts together. The only charge will be an expert
15 charge and a voluntariness charge.

16 THE COURT: If the defendant will come forward, please.
17 Mr. Mitchell, you and I talked about whether or not you
18 wanted to testify and whether or not you wanted to present
19 any defense. I told you that you had that right and I
20 advised you that you should talk to your lawyer and any
21 family members or close personal friends that you trust
22 their advice. I told you ultimately that it was your
23 decision because it is a constitutional right that you own
24 to either testify or not to testify and to present a defense
25 or not present a defense. If you decide you want to

1 testify, you will be required to take the stand, you will be
2 put under oath and you will be required to testify
3 truthfully. If you decide you do not want to testify, I
4 will instruct the jury that they are not to hold that
5 against you while they are deliberating their verdict.

6 I told you at the time that you didn't have to make a
7 decision then, but you would later on, and now is the time.
8 The State has presented their case and I have made a
9 determination that there is sufficient evidence that if
10 believed by the jury they could convict you on all of the
11 indicted charges So have you had the opportunity to speak
12 with your lawyer?

13 DEFENDANT: I need to speak to him again.

14 THE COURT: Okay. Well, let's take a ten-minute break
15 and I will give you the opportunity to discuss it with him.

16 (Off the Record, briefly.)

17 THE COURT: All right. Mr. Mitchell, you asked for
18 time to talk with Mr. Plexico. Have you had enough time to
19 talk with him?

20 DEFENDANT: I have.

21 THE COURT: All right. And what is your decision?

22 DEFENDANT: I don't want to testify.

23 THE COURT: All right. You don't want to testify. How
24 about putting up a defense. Do you want to call any
25 witnesses?

1 MR. PLEXICO: No, Your Honor, we have no witnesses to
2 call. And we have no voir dire of the jury.

3 THE COURT: All right. You don't have any witnesses
4 that you want him to call then?

5 DEFENDANT: No, sir.

6 THE COURT: All right. Well, how old are you?

7 DEFENDANT: Almost 31.

8 THE COURT: How far did you get in school?

9 DEFENDANT: Ninth.

10 THE COURT: Okay. Did you work before you got
11 arrested?

12 DEFENDANT: yes, sir.

13 THE COURT: What did you used to do?

14 DEFENDANT: I worked in different places.

15 THE COURT: All right. Mr. Plexico, in your opinion,
16 does this gentleman understand what he is doing?

17 MR. PLEXICO: Yes, Your Honor.

18 THE COURT: All right. Well, I find that his decision
19 to waive the right to testify and put up a defense is
20 freely, voluntarily, knowingly and intelligently made. So
21 we will then proceed on to closing arguments. Do you want
22 to rest in front of the jury?

23 MR. PLEXICO: Yes, Your Honor. And if I could beg the
24 Court's indulgence for one moment.

25 (Off THE RECORD, BRIEFLY.)

1 THE COURT: Yes, Mr. Plexico?

2 MR. PLEXICO: He had mentioned bringing his baby moma
3 here who is Ms. Nadine Badger to address an issue of she did
4 not bring him the children that day, which I explained to
5 him was not relevant in this case, and therefore, he has
6 decided not to bring his baby moma and testify. So we will
7 rest in front of the jury and we will renew our motions on
8 the sufficiency of the evidence.

9 THE COURT: All right. Your motion has been denied for
10 the same reasons. All right. So we talked about the order
11 of closing and the State will open in full and close in
12 full. You will have the right to final argument, Mr.
13 Plexico.

14 DEP. SOL. THORNTON: Just to make sure everything is
15 correct on the record. Earlier, the State moved into
16 evidence what we have a lot of trouble with, but the audio
17 version of Mr. Mitchell's statement without a transcript
18 attached, which is State's 56. I have handed that now to
19 the court report, and the Doctor's power point which the
20 Solicitor referenced and we have burned that to a disc and
21 that has been labeled as State's Exhibit 62 and has been
22 turned over to the court reporter for reference in the
23 record.

24 THE COURT: All right. I believe everything is in
25 evidence that needs to be in.

1 DEP. SOL. THORNTON: Yes, sir. We have checked three or
2 four times and I believe everything is in.

3 THE COURT: All right. Let's bring the jury in and
4 commence to the closing.

5 (1:50 p.m., whereupon, the jury enters the courtroom
6 and the following is held on the record.)

7 THE COURT: All right. Folks, welcome back. We now
8 move to the final phase of the trial. Does the defense have
9 any witnesses to call?

10 MR. PLEXICO: The defense would rest, Your Honor.

11 THE COURT: All right. Well, you have heard now all of
12 the evidence that you are going to hear in this trial and so
13 now you will move to the final phase before deliberations
14 and that is the closing arguments and the charge on the law.
15 Closing arguments are now the lawyers getting up and
16 reviewing the evidence that you have heard or seen, giving
17 you a preview of the law as I will charge it to you, and
18 attempt to persuade you by way of argument to render a
19 verdict on their client's behalf.

20 AS I told you, this is not an evidentiary portion of
21 the trial. In other words, what the lawyers tell you is not
22 to be considered by you as evidence. They are going to
23 review the evidence that you heard during the trial. Again,
24 giving you a preview of the law and making arguments.

25 Our Rules of Procedure state that the State you will

1 hear from first and then you will hear from the defendant.

2 So Mr. Solicitor, if you are ready, you may begin.

3 SOL. STONE: May it please the Court, Your Honor.

4 CLOSING ARGUMENT

5 BY SOL. STONE:

6 I want to talk to you very briefly about what we know.
7 I'm not going to ask you to guess. I'm not going to ask you
8 to make suppositions. I'm not going to ask you to infer
9 anything. I'm just going to talk about what we know from
10 the evidence we heard in the courtroom, without any
11 question.

12 We first start with what happened. We know Maurice
13 Mitchell shot and beat Eddie Mole and Eddie Mole died as a
14 result of that.

15 We know that Maurice Mitchell went over to Eddie Mole's
16 house with this gun already on him, fully loaded, and as you
17 heard in the statement, not only was the clip loaded, but
18 the gun itself was loaded. There was a bullet in the
19 chamber. He didn't even have to rack it. It was that ready
20 to use when he went over to Eddie Mole's house.

21 We know that Eddie Mole didn't want him in the house
22 and tried to shut that door to keep him out, but he went in
23 anyway. As he himself said, "I forced myself in." Leading
24 with the gun. The gun that he turns around and shoots, that
25 not only goes through Eddie Mole, but goes into the wall. I

1 would suggest to you, ladies and gentlemen, if you look at
2 this bullethole, it's pretty close to that door that is
3 already closed. Now, there is no way to know really whether
4 or not he was inside or outside of that apartment when that
5 happened and whether the door was closed or not, but I would
6 suggest to you to take a look at this. He shoots him inside
7 his house. The bullet goes through Eddie Mole and you
8 heard from the pathologist and you heard from Dr. Davis
9 something that is pretty interesting as well, not only did
10 complications of that kill him, but the minute that bullet
11 hit Eddie Mole's spinal column, he was paralyzed. Eddie
12 Mole hits the ground and he can't even fight back because
13 the bullet has cut his spinal column.

14 So what happens after that? We know that Maurice
15 Mitchell starts beating him. He starts beating him with the
16 pistol that was already loaded and that he already shot him
17 with. He beat him so badly that he knocks his teeth out.
18 Teeth are found all over the apartment. Some plates, some
19 gum, some of the teeth actually have the root still
20 attached. That's how bad he beat him. The doctor testified
21 and the pathologist made a reference to it as well, that he
22 beat him so badly in the face that he broke so many bones,
23 there were just too numerous to mention.

24 That he hit him so hard in the center of his forehead
25 that it looked like a gunshot wound. That he had an open

1 mandible fracture which means that he hit him in the jaw so
2 hard that the jawbone broke and came out of his skin. We
3 know that after he hit him the first time, there wasn't any
4 blood then, but he hit him at least three times after that.
5 And he hit him with such force and with such effort that
6 there was literally blood thrown all over the apartment.
7 Literally, blood thrown from floor to ceiling.

8 Evidence in this case, other than that, Mitchell's
9 bloody fingerprint at the scene. not just a fingerprint,
10 but a bloody fingerprint. Mitchell was identified by not
11 one, but two witnesses as the man doing the beating, as the
12 man in his apartment, as the man doing the shooting. But
13 even if you didn't want to believe that, he was caught right
14 at the same scene by the police officers who see him running
15 out of that apartment, with what? It's Eddie Mole's blood
16 all over him. Eddie Mole's blood on the gun that he used to
17 beat him. His gun. His gun, Maurice Mitchell's gun. We
18 know that.

19 Those are the facts. That's the evidence that you
20 heard, and you heard it from that witness stand. You saw
21 the photographs. You heard the testimony. You heard the
22 statements. He is charged now with Burglary first, he is
23 charged with possession of a weapon during the commission of
24 a violent crime, and he is charged with murder. And I want
25 to talk to you very briefly about that. In my opening, I

1 told you what murder was. Murder is the unlawful killing of
2 another with malice. It is not the unlawful killing of
3 another because I had a reason to. Now, I don't know, and I
4 don't suggest for a minute that you know, why Maurice
5 Mitchell felt the ill will he felt toward Eddie Mole. I
6 don't suggest to you that you know why he felt it necessary
7 to take a loaded gun to his house to shove his way in, to
8 shoot him, to then beat him. I don't suggest to you that
9 you know at all the why to that.

10 There was testimony from the State that Eddie Mole
11 carried a money bag with him every day when he came home and
12 there was testimony that Maurice Mitchell was yelling at
13 him, "Where is it? Where is it?" I don't know if he was
14 there looking for the money or not. I don't know. I don't
15 know if they had a sexual relationship before. Something
16 that made him for whatever angry or wanting a sexual
17 relationship or whatever that would cause him that kind of
18 anger. I don't know. I don't suggest that we all know
19 anything about that.

20 What I really don't know and I don't think any of us
21 know, the effect of using crack cocaine is on somebody.
22 Whether that causes you to hear things or do things. But we
23 know Maurice Mitchell had to know.

24 In Maurice Mitchell's statement, he talks about the gun
25 going off by accident and here is the question on that, was

1 it accident when he loaded the gun to go over there? Was it
2 an accident to send the kids in, because I'm going to
3 confront him? Was it an accident when he pushed his way in?
4 Was it an accident when he pulled the trigger and shot him?
5 And as the man lay there paralyzed, was it an accident when
6 he beat him over and over and over again?

7 Murder is the unlawful killing of another with malice.
8 As I told you in my opening, that's what this case is about.
9 Malice. It's ill-will. It's meanness. It's anger towards
10 an individual. We know who killed him and we know he did it
11 with malice and if there is any question about that, if
12 malice is any question that you have, think about this one
13 other thing. This gun is heavy. And you will have it back
14 in the jury room. You can pick it up. If there is a
15 question about malice and whether or not Maurice Mitchell
16 had malice in his heart that day, when he hurt this man so
17 much that he died, I'd ask you to think about this. How
18 much malice does it take for somebody to go (gun slams on
19 table four times.) That's what he did. That, ladies and
20 gentlemen, is malice. That ladies and gentlemen, is murder.

21 THE COURT: Mr. Plexico?

22 MR. PLEXICO: May it please the Court, Mr. Solicitor,
23 ladies and gentlemen of the jury.

24

25

CLOSING ARGUMENT

BY MR. PLEXICO:

I am glad that you all have had an opportunity to be here this week. Let me start out by trying to unconfuse the issues here. Take a look over here and the first thing you see on this bulletin board is facial fractures healed.

Okay? You have two types of injuries here. The first type are the facial fractures. My client is charged with murder. He is not charged with assault and battery. This is not an assault and battery case. That would be a separate case.

Those fractures are healed. There was no testimony from either doctor that a facial fracture was the cause of death.

Why is this important? One of the cases we have here is a murder case. That means an unlawful killing with malice. That means that injury would have to be an intended act; intend the injury. But obviously, the State chose to show you right here, you have an older man, he was somehow manipulating is what Maurice Mitchell said, a younger man, who is Maurice Mitchell, who is on trial today. Okay? Who was hearing voices, Okay? Who blamed that he had something inserted into him during a sexual relationship with this older man who was taking advantage of him while he was intoxicated.

He wanted -- and who had a limited education. He went to confront him about the sexual abuse. What do people who

1 are not well educated do? Sure, sometimes, they carry a
2 gun. That seems to be a common problem with young people
3 these days. That's the sad thing, but that doesn't mean
4 that you have the gun. Okay, actually, did he mean to
5 intimidate? Yes, I believe he did. But did he mean to
6 kill? This is the fine line that y'all have to think about.
7 You're going to have to figure out was this the intentional
8 doing of a wrongful act. Okay? Is this an intentional
9 injury? Okay? Now, did he inflict an intentional injury?
10 He is confronting him, and obviously, whatever happened
11 while he was intoxicated, the man just didn't want to deal
12 with, but if you know him well enough, you heard the officer
13 testify that it was a long-time sexual affair that they had
14 and you also heard -- it came from the witness stand. You
15 also heard that he was over there, had more than one
16 witness. So he is not over there to commit a burglary and
17 murder with somebody he goes in and has sex with. This is
18 what they are doing. This is an argument between a couple.
19 I don't see how they can find that this is an intent about
20 how all of this is horrific.

21 What do you get when you are out manipulating other
22 people who aren't mentally developed well, who hear voices,
23 and you're giving them intoxicants and you're taking
24 advantage of them and having sex with them. What do you
25 think they are thinking? Probably ain't gonna be anything

1 useful. Okay?

2 The issue here is not Eddie Mole, not that he had a
3 gun. The issue here is did he go over there with the issue
4 of malice and an intent to kill. You repeatedly heard him
5 say, "I just want the honest truth of what he had done to
6 me." You should expect that when manipulating somebody who
7 hears voices. There's no telling what they're going to do.
8 This was his fault. This was something awful he shouldn't
9 have been doing to a person. You just don't abuse people
10 like that.

11 So in his little mind, when he went over there, he went
12 over there actually to confront him. And the gunshot was
13 when his elbow was hit and that was an accident. Is that
14 intent to inflict that injury? Which you will have to find
15 that man, not I didn't intend to be foolish and use bad
16 judgment and carry the gun, but an intent to inflict that
17 injury that killed him. Not when he freaked out and did the
18 assault; that's a different crime. You can't mix the two
19 together and call it murder. Because this crime, the
20 assault and battery, did not kill him. That's all there is
21 to it.

22 Think thoroughly. Think logically. Look at all this
23 stuff. Now, he is over there to talk to his lover who he
24 thinks is abusing him because that's his level of
25 functioning. He's not over there to have sex and drink beer

1 or whatever.

2 So what is burglary? Burglary is like I told you to
3 start with, burglary is entry without consent with intent to
4 commit a crime. They want to mix this together and that's
5 not it. These are separate matters. He did not have an
6 intent to commit a crime when he entered the house. He went
7 there to confront him about the voices and fog and what was
8 going on to get the honest truth in where this little mind
9 was. Then, there is no intent to commit a crime therein.

10 Now, entry without consent is pretty much trespass,
11 okay? Not a burglary. But you're not allowed to charge if
12 you convict him of trespass, because that's not to be
13 considered. It's either burglary, first, or nothing. So
14 the answer has to be that there is no intent here. That's
15 the only reasonable answer when you're dealing with somebody
16 like that.

17 They did a paste job of cutting and pasting to get down
18 to where it matters, I guess so y'all wouldn't get so bored
19 with three and a half hours of him; this is just his level
20 of functioning. This is how he thinks.

21 He is on trial. No one else is on trial. It's what
22 that person intended to do. Did he intend to commit
23 burglary? And the answer is no, he didn't, because he is
24 welcome over there as long as he is engaged in some sort of
25 sexual behavior or whatever. That's pretty much the way it

1 is. Now, that's where he is at, okay? He's not here with
2 the intent to go in and commit a burglary.

3 Think about purpose. After he assaulted him, he said
4 he didn't want him to call 9-1-1. That happened after this,
5 after he lost his temper, and after the accidental shooting.
6 He didn't go bam, bam, bam, bam, bam. If he wanted to do it,
7 he could have. That's his level of functioning. That's who
8 we're dealing with. We're dealing with Maurice Mitchell.
9 We're not dealing with some really smart person.

10 We're dealing with Maurice Mitchell and what his
11 understanding was and the question is what did the
12 defendant, Maurice Mitchell, intend to do in regards to
13 entering that house without consent? If he wanted to get
14 the honest truth, that was his intent, not this crime. So
15 you can't confuse all of this.

16 Then, the other question is did Maurice Mitchell hate
17 this man with malice with the intent to take his life and
18 intend to inflict the injury. He didn't even know where he
19 was shot. You saw him answer the question, that's just who
20 he is. He is that small-minded kind of a person, but that
21 doesn't make him a murderer. Bad judgment, being
22 manipulated, probably not having anybody to turn to, really
23 just going to talk to him about these things, okay? This is
24 where we are at.

25 Is he responsible for all of this? And my answer is

1 going to be no. To find somebody guilty of possession of a
2 weapon during the commission of a violent crime, he has to
3 commit a violent crime. If you don't find him guilty of the
4 burglary first, because he's not, because he didn't intend
5 to do it.

6 If you don't find him guilty of murder, he didn't go
7 over there to kill anybody. You all know that in your
8 hearts. Now, he can't be found guilty. That only leaves
9 possession of a weapon during the commission of a violent
10 crime. He clearly had that.

11 The issue comes now to is there an injury he intended
12 to inflict? I want to point out that as far as the
13 statement, you can give that any weight that you want to
14 give it. You have to look at some factors like his level of
15 education, his IQ as best as you can determine.

16 But look at who he is. He is on trial today; not some
17 average Joe who is an average person. This isn't a self
18 defense case where you have to have the average to get to
19 the steel of an average individual, so to speak. This is
20 all about Maurice Mitchell and about the relationship with
21 Mr. Mole, and it's about intent. It comes down to the
22 intent. Not the sad, terrible things that happened.

23 Mr. Mole should have known better than to manipulate
24 somebody like him. What was it like to be in a relationship
25 with someone who apparently was hearing voices and giving

1 them intoxicants? You know, bad things come out of that.
2 That's abuse. If somebody is giving that to a 15 year old
3 or a 14 year old, it's against the law. So it's okay to
4 give it to somebody like Maurice? It's just wrong. We know
5 in our hearts that that is wrong. It's a sad turn of
6 events.

7 One day he can be tried for the assault and battery and
8 he should be punished for the assault and batter, but of all
9 the indictments that you have, you should have four. The
10 ones are possession of a weapon during the commission of a
11 violent crime, one for burglary, and one for murder.

12 You will not have the opportunity to convict him of the
13 crime, aside from the crack, that he is guilty of which is
14 the beating of Mr. Mole, because he said he blacked out and
15 you just can't do that.

16 The rest of it requires intent and they want to lump
17 them together and put them together all in one. This is a
18 big, bad person. The only thing we know is he had to have
19 the intent. And you have to weigh it as listening; I want
20 to go briefly over some of the testimony we had.

21 I just want to remind you that this is all after the
22 fact that anybody has seen this.

23 Take Mr. Stokes, he gets his pizza and comes back and
24 he couldn't have seen much or he would have gone in the back
25 door. Think about it, you have to be somewhat respective,

1 but he has a whole lot of reason and you need to think about
2 his credibility. The judge will give you his charge on
3 credibility. Y'all need to consider that.

4 Why in the world would you hear your neighbor getting
5 robbed and not call 9-1-1? I was just amazed about that.
6 And when they first got him talking, they should have had a
7 video on the car. They didn't do that. Why wasn't it turned
8 on? All you have to do is flip a switch. But you don't do
9 that; that gives you pause about his behavior.

10 And we all found out an important thing, you can take
11 this back there and you can look at all the differences and
12 the pictures and the size differences and how subjective it
13 is. And what does subjective mean? It is entirely my
14 opinion. When you have no known standards and it is one
15 person's opinion over another, there will be a whole lot of
16 room for disagreement and error.

17 She didn't know the national standard, because it's not
18 like the American standard. So she wasn't able to compare
19 it and say, well, they do it this way and we do it this way.
20 What came out is "this is my opinion." She's over there
21 doing math, she's a crime scene investigators, and she is
22 doing all this other stuff. Think about it. They are all
23 very young. They are all very inexperienced. It makes you a
24 little worried about what's going on up there with SLED.

25 Ashley Bell was just wonderful. Finally, I had to

1 keep asking, I don't know what it is with SLED, but would
2 you answer my question? Then, come to find out, they are
3 taught how to testify.

4 You know, when I was a child, nobody ever taught me how
5 to tell the truth, because that's what you are supposed to
6 do. You don't hide issues and then just get lost in what
7 you're saying, which is definitely confusing for all of us.

8 We had to work hard to get a straight answer out of
9 her.

10 And I never thought about anybody being a firearms
11 expert and not understand the ejection system of a semi-
12 automatic. I was just amazed at how little she knew. And
13 the solicitor hit on it himself. He says he didn't know if
14 it fired from the outside to the inside or the outside to
15 the inside. Because if you don't know anything about this,
16 she couldn't say anything about the ejection system of a
17 semi-automatic Ruger. But, that's something an expert
18 should have known, okay?

19 But we don't even know about that, because there is no
20 physical evidence. She did say it would be a good distance;
21 and it's a good distance.

22 I think I've addressed pretty much everything I wanted
23 to say, but I just want to talk about a couple of issues;
24 this presumption of innocence. Every defendant is presumed
25 to be innocent. It is up to the solicitor to prove my client

1 guilty beyond a reasonable doubt.

2 If you have a doubt, you have a reasonable doubt and
3 you hesitate, you have a duty to give the defendant the
4 benefit of every reasonable doubt. If you have a doubt,
5 then that's because you're reasonable people, there ought to
6 be a reasonable doubt. If you hesitate because you are
7 reasonable people, that's a reasonable doubt.

8 Then, what happens? You have a duty to give Mr.
9 Mitchell, the defendant, the benefit of that reasonable
10 doubt. You have to show that he's guilty of all of the
11 elements. That would be burglary, entry without consent,
12 with intent to commit a crime. Two out of three does not
13 get it.

14 The State has to prove each crime beyond a reasonable
15 doubt. And they have to prove each element of the crime
16 beyond a reasonable doubt. You can't make stuff up. These
17 are serious, serious matters.

18 In that presumption of innocence, unless they overcome
19 it, that alone is enough to find someone not guilty, which
20 is what I'm asking you to do on the murder and the burglary
21 and the possession of a weapon during the commission of a
22 violent crime, because I think that's a reasonable
23 interpretation of the evidence. He is entitled to that.
24 You are good jurors and that you are going to do your jobs
25 like you're supposed to.

1 He came this week and still has a cloak of innocence,
2 and that cloak of innocence is something that they have to
3 take away. Look at the doubts that I've raised, and I'm
4 sure you have some in your own mind and some from the
5 evidence, and I don't believe that they have actually proven
6 anything beyond a reasonable doubt.

7 Once you divide up the assault, and the shock of the
8 assault and the damage from the assault, and he should be
9 punished for the assault, but he shouldn't be punished for
10 the assault for lack of intent to commit and have the
11 malice.

12 Now, none of it should have happened, but when you're
13 abusing somebody with this disposition, I don't see where
14 anyone can reasonably believe that the discussion was going
15 to be about more than that. You know, he just shouldn't
16 have been dating or having sex with my client.

17 I'm asking you to keep the issues separate. There is a
18 time to punish him for the correct charge, but neither one
19 is burglary first or murder. I'm asking you to consider
20 this and stand by your convictions and give Mr. Mitchell the
21 benefit of the doubt, and I believe in the end you can
22 honestly return a verdict of not guilty in this case. Thank
23 you.

24

25

JURY CHARGE

BY THE COURT:

All right. Well, folks, you've heard all of the arguments now and we are at the point in the trial where I told you at the beginning of the trial where we have different roles and one of my roles was to preside over the trial and make sure that both sides get a fair trial and rule on admissibility of the evidence. Again you are to consider only the evidence that you have heard in this courtroom, which are the witnesses telling you what they heard, saw, touched, felt, smelt. Exhibits, photographs, videos, things like that, and any stipulations that may have been entered into the record. And now, I also have the additional duty of charging you on the law that applies to this kind of case. It is your duty as jurors to accept this law as I now state it to you. If you have some idea of what the law is or what it ought to be, and it doesn't agree with what I tell you now the law is, you must forget that idea. Because under the oath that you took at the beginning of the trial, you are duty bound to accept the law as I now state it to you.

You, on the other hand, are the judge of the facts. You are the sole judge of the facts. As the trial judge, I told you that I'm not allowed to comment on the facts of the case or give you any statement which indicates to you that I

1 have any opinion about what the facts are. You are the sole
2 judges of the facts, and again, you should not try to infer
3 from anything that I said during the course of the trial on
4 either ruling on admissibility of the evidence or making of
5 any comments, that I have any sort of opinion about this
6 case. I'm not allowed to have an opinion about the facts of
7 this case. That is solely a matter for you to determine.
8 And as jurors, it is your duty to determine the effect, the
9 value, the weight and the truth of the evidence that was
10 presented during this trial.

11 Now you heard me state normally many times throughout
12 this trial that we usually don't allow people to give
13 opinion testimony but we just let them tell you again what
14 they heard, saw, felt, touched, smelt and they can only give
15 their opinion about those sort of things, but as I told you
16 when somebody because of education or experience has risen
17 to the level of expertise, they become experts within a
18 field and are allowed to give you their opinion within that
19 area of expertise if they are qualified. That does not mean
20 that you have to accept that opinion blindly. It is there
21 for you to decide how much weight to give the testimony and
22 what credibility to give the witness of the testimony.
23 However you deem to be appropriate.

24 Now, I also want to remind you that the fact the
25 defendant was arrested, charged and indicted in this case,

1 it is not evidence in this case and it cannot be considered
2 by you as evidence of guilt in this case, nor does it create
3 any presumption or inference of guilt. The indictment is
4 simply the formal written notice that contains the charges
5 against the defendant. It is the formal document by which
6 this Court gets jurisdiction of the case and allows the
7 defendant to know what he is to stand trial for.

8 Again, there were four indictments in this case.
9 Possession of less than one gram of crack cocaine,
10 possession of a weapon during the commission of a violent
11 crime, burglary in the first degree, and murder. Each of
12 these indictments is a separate and distinct offense. You
13 must decide each indictment separately on the evidence and
14 the law applicable to it, not influenced by your decision as
15 to any other indictment. The defendant may be convicted or
16 acquitted on any or all of the offenses charged and you will
17 be asked to write a separate verdict of guilty or not guilty
18 on each indictment.

19 Now, as to these indictments, the defendant pled not
20 guilty to each of these indictments, and that plea,
21 therefore, put a burden on the state to prove that the
22 defendant is guilty beyond a reasonable doubt. I told you
23 at the beginning of the trial and I want to reiterate to you
24 that a person charged with committing a criminal offense in
25 South Carolina is never required to prove themselves

1 innocent. This is an important rule of law in this country.
2 A defendant in a criminal trial will always be presumed to
3 be innocent of the crime in which he is indicted, unless and
4 until it has been proven by evidence satisfying you of that
5 guilt beyond a reasonable doubt

6 This presumption of innocence is not just some mere
7 legal theory. It is not a legal phrase. This is a
8 substantial constitutional right that every defendant is
9 entitled to. This presumption of innocence accompanies the
10 defendant from the time he is charged throughout the trial
11 and unless and until you reach a verdict of guilty based
12 upon guilt satisfying you of that guilt beyond a reasonable
13 doubt.

14 So we talked earlier at the beginning of the case about
15 what is reasonable doubt and I have you an example in civil
16 cases where it was only necessary to prove by a
17 preponderance of the evidence or the greater weight of the
18 evidence that a fact is true or more likely true than not
19 true.

20 However, in a criminal case, the State's burden of
21 proof must be more powerful than that. It must be beyond a
22 reasonable doubt. Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the defendant's guilt.
24 It has also been defined as that kind of doubt that leaves a
25 reasonable person to hesitate to act.

1 Now, there are very few things in this world that we
2 know with absolute certainty, and in criminal cases, the law
3 doesn't require proof that overcomes every possible doubt.
4 If, based on your consideration of the evidence, you are
5 convinced that the defendant is guilty of the crime charged,
6 then you must find the defendant guilty.

7 If, on the other hand, you think there is a real
8 possibility that the defendant is not guilty, then you must
9 give the defendant the benefit of the doubt and find him not
10 guilty.

11 I also want to instruct and emphasize the fact that the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberation and in your
14 consideration on the question of the guilt or innocence of
15 the defendant. It must not be considered by you in any
16 manner whatsoever.

17 A defendant has a constitutional right to remain silent
18 and an assertion of this right must not be considered by you
19 in your deliberations.

20 I repeat that under the oath that you took, you are to
21 draw no conclusion whatsoever from the fact that the
22 defendant in this case did not testify. The fact that the
23 defendant did not testify should not even be discussed by
24 you in the jury room. The burden of proof as I stated is on
25 the State and the defendant is not required to prove his

1 innocence. The burden of proof remains on the State to
2 prove guilt beyond a reasonable doubt.

3 Now, a statement was alleged to have been made by the
4 defendant that was admitted into evidence in this case. And
5 while I made a determination that the statement is
6 admissible, I instruct you that you make the ultimate
7 decision as to whether or not the defendant made the
8 statement. If the defendant did make the statement, you
9 must determine whether the statement was made by the
10 defendant voluntarily and of his own free will. This means
11 that the statement was not caused by pressure, force, fear,
12 threats, coercion, or intimidation; or by hope or promise of
13 leniency or a reward of any kind.

14 In determining whether the statement was voluntary, you
15 should consider both the characteristics of the defendant
16 and the details of the questioning. Some factors you can
17 consider are the age of the defendant, his education or lack
18 of education, his mental ability and capacity, his IQ or
19 intelligence, his background and environment, the length and
20 place of the detention, the nature of the questioning, the
21 advice or lack therefore to the defendant of his
22 constitutional rights, including, but not limited to, his
23 right to remain silent, that any statement could be used
24 against him in a court of law, the right to have a lawyer
25 present if he couldn't afford a lawyer, that a lawyer would

1 be appointed to represent him without cost, and that he
2 could stop making a statement at any time. You must
3 carefully consider all of the surrounding circumstances
4 before you give any weight to an alleged statement. The
5 State has the burden of proving beyond a reasonable doubt
6 that the alleged statement was voluntary. If you determine
7 it was, you may give the statement any further consideration
8 you deem proper. You must decide what weight, if any,
9 should be given to the alleged statement. If you determine
10 the alleged statement was not the free and voluntary
11 statement of the defendant, you should not consider the
12 statement at all.

13 Now, during a trial, there are generally two types of
14 evidence which are presented. There is direct evidence and
15 there is circumstantial evidence. Direct evidence directly
16 proves the existence of a fact. It does not required
17 deduction. Circumstantial evidence is proof of a chain of
18 facts and circumstances that indicate the existence of a
19 fact. Crimes can be proven by circumstantial evidence and
20 the law makes no distinction between the weight or value to
21 be given to either direct or circumstantial evidence.
22 However, to the extent that that State relies on
23 circumstantial evidence, all of the circumstances must be
24 consistent with each other and when taken together, point
25 conclusively to the guilt of the accused beyond a reasonable

1 doubt. If these circumstances merely portray the
2 defendant's behavior as suspicious, then the proof has
3 failed. The State has the burden of proving the defendant
4 guilty beyond a reasonable doubt. This burden rests with
5 the State regardless of whether the State relies on direct
6 evidence, circumstantial evidence, or some combination of
7 the two.

8 As jurors, you must also determine the credibility of
9 witnesses who have testified in this case and that
10 credibility simply means believability. It is your duty as
11 jurors to evaluate the evidence and determine which evidence
12 convinces you of its truth.

13 In determining the believability of witnesses who have
14 testified in this case, you can believe one witness over
15 several witnesses or several witnesses over one witness.
16 You can believe the testimony of a witness in its entirety
17 or you can reject the testimony of a witness in its
18 entirety. You can believe part of the testimony of a
19 witness and reject the remaining testimony of the same
20 witness. And if you reject part, you can still accept the
21 remainder of a witness's testimony. You can consider such
22 things as were there any witnesses exhibited to you, any
23 interest, bias, prejudice, or other motive in this case, and
24 you can consider the appearance and demeanor of a witness
25 while on the witness stand. You are not bound to decide the

1 case based on the number of witnesses that a side produces.

2 Now, I'm going to talk to you about the substantive law
3 or the elements of each of the alleged offenses. Let's go
4 over murder, first. The defendant was charged with murder.
5 In South Carolina, murder is defined as the killing of a
6 person with malice aforethought, either express or implied.

7 Malice is hatred, ill will or hostility towards another
8 person and it is the intentional doing of a wrongful act
9 without just cause or excuse and with an intent to inflict
10 an injury. Malice aforethought does not require that malice
11 exist for any particular time before the act is committed,
12 but malice must exist in the mind of the defendant just
13 before and at the time that the act is committed.
14 Therefore, there must be a combination of the previous evil
15 intent and the act.

16 Malice aforethought may be expressed or inferred. The
17 terms express or inferred do not mean different kinds of
18 malice, but merely the manner in which malice may be shown
19 to exist. Express malice is shown when a person speaks
20 words which express hatred or ill will for another or when a
21 person prepared beforehand to do an act which was later
22 accomplished. For example, lying in wait for a person, or
23 any other act or preparation going to show that the deed was
24 within the defendant's mind would be express malice.

25 Inferred malice can be shown with conduct showing a

1 total disregard for human life. Inferred malice may also
2 arise when the deed is done with a deadly weapon. A deadly
3 weapon is any article, instrument or substance which is
4 likely to cause death or great bodily harm. Whether an
5 instrument has been used as a deadly weapon depends on the
6 facts and circumstances of each case. The facts are proved
7 beyond a reasonable doubt sufficient to raise an inference
8 of malice to your satisfaction. This inference would simply
9 be an evidentiary fact to be taken into consideration by
10 you, the jury, along with any other evidence in the case and
11 you give it the weight as you determine it should received.

12 Now, he is also charged with burglary in the first
13 degree and to prove this, the State must prove beyond a
14 reasonable doubt that the defendant entered a dwelling
15 without consent. A dwelling is any building or portion of a
16 building in which a person ordinarily sleeps. In order to
17 prove that the defendant entered a dwelling, the State does
18 not have to show that the defendant's entire body entered
19 the dwelling. The smallest entry is sufficient. It can be
20 any part of the body, such as a hand or foot or even an
21 instrument, such as a hook or other instrument.

22 In addition, the State does not have to prove that
23 force was used to gain entry. If a person enters a building
24 by using deception or artifice or trick or misrepresentation
25 to get consent to enter, this is considered an entry without

1 consent.

2 Next, the State must prove beyond a reasonable doubt
3 that the defendant intended to commit a crime at the time of
4 the injury. The mere entry into a dwelling without consent
5 is not burglary if the intent to commit a crime is formed
6 after the entry is not burglary. On the other hand, if the
7 defendant intended to commit a crime at the time of the
8 injury, it is a burglary even if the intent was abandoned
9 after the entry. It does not matter if the intended crime
10 was not completed, intent may be shown by facts, by acts and
11 conduct of the defendant and other circumstances by which
12 you may naturally and reasonably infer intent.

13 Then, finally, the State must prove beyond a reasonable
14 doubt that when entering while in the dwelling or when
15 fleeing, the defendant was armed with a deadly weapon or the
16 defendant caused physical injury to anyone not participating
17 in the crime or the defendant used a dangerous object or the
18 defendant displayed what was or appeared to be a knife,
19 pistol, revolver, rifle, shotgun, machine gun or other
20 firearm.

21 Next, the offense that the defendant is charged with is
22 possession of a weapon during the commission of a violent
23 crime. The State must first prove beyond a reasonable doubt
24 that the defendant was in the possession of a firearm during
25 the commission of a violent crime. In order to find the

1 defendant guilty of a possession of a weapon during the
2 commission of a violent crime, you must first find the
3 defendant guilty of committing a violent crime or attempting
4 to commit a violent crime. I charge you that murder and
5 burglary first degree are violent crimes as defined by the
6 South Carolina Law.

7 The State must also then prove beyond a reasonable
8 doubt that the weapon further advanced or helped in the
9 commission of either the alleged murder or burglary or both.
10 A firearm means any machine gun, automatic rifle, revolver,
11 pistol, or any weapon which is designed to or may be readily
12 converted to expel a projectile.

13 Then, the final charge is for possession of less than
14 one gram of crack cocaine. To prove possession, the State
15 must prove beyond a reasonable doubt that the defendant had
16 both the power and intent to control the disposition or use
17 of the crack. Possession may be either constructive or
18 actual. Actual possession means that the crack was in the
19 actual physical custody of the defendant. Constructive
20 possession means that the defendant had dominion and control
21 or the right to exercise dominion or control either by the
22 crack itself or the property on which the crack was found.

23 Now, in determining the verdict of guilty or not
24 guilty, you may not consider any possible penalty for any
25 particular crime. Punishment is a matter for me to

1 determine. It should never be considered by you in any way
2 arriving at a verdict of guilty or not guilty. Your verdict
3 must be unanimous. In other words, all 12 must agree to the
4 verdict. Each indictment is a separate charge. You must
5 consider whether the State has met its burden in proving
6 guilt beyond a reasonable doubt as to each charge
7 separately. In other words, just because you find the
8 defendant guilty or not guilty as to one charge has no
9 bearing on the other charges, except that you cannot find
10 the defendant guilty of possession of a weapon during the
11 commission of a violent crime unless you also find him
12 guilty of either murder or burglary in the first degree.

13 Now, I am going to send you back to the jury room.
14 Before you begin any of your deliberations, I have to give
15 the lawyers the opportunity to tell me if I misspoke, so
16 that I can bring you back in and correct whatever I
17 misstated. This just takes but a minute, unless I really
18 made a big booboo. So I will have it back to you very
19 shortly or will have you back out so that I can correct any
20 misstatements that I made.

21 Also, I'm going to send back, along with the evidence,
22 a copy of the jury charge that I just gave you and I'm also
23 going to send back the indictments. And Madame Foreman, you
24 are to preside over the deliberations and then write
25 whatever the verdict is. You will see on these indictments,

1 on one side there is a stamp up there that says true bill
2 where the grand jury made their stamp saying that they
3 agreed on teh charge. Below that, it says verdict, and you
4 either write guilty or not guilty. That's the verdict on
5 either of them. After you have reached a verdict on that,
6 you sign it and date it. After you have reached a verdict
7 on all four charges, simply let the bailiff know you have
8 reached a verdict.

9 Now, I'm going to send the evidence back. As I told
10 you before, you have a video. If you want to watch that
11 video statement, just let us know. We can either -- well,
12 we will probably have to bring you back in here. I'm not
13 sure what the technology setup is here. More than likely we
14 will just bring you back in here and let you watch it. You
15 just need to let us know if you need to watch that video.
16 Other than that, we will send in photographs and documents
17 or other evidence that you have. If you need anything else,
18 just let the bailiffs know. Don't begin deliberations until
19 I send the evidence back, along with the indictments and
20 charges, and the bailiff will tell you that you can begin
21 deliberations. Don't begin until I send word back. Thank
22 you.

23 (2:50 p.m., whereupon the jury exits the courtroom and
24 the following is held on the record.)

25 THE COURT: Anything from the State?

1 SOL. STONE: No, sir, not from the State.

2 THE COURT: From the defense?

3 MR. PLEXICO: No, Your Honor.

4 THE COURT: All right. Well, let's get the evidence
5 together.

6 (Off the record briefly while the court reporter,
7 Solicitor and defense attorney go through all of the
8 evidence.)

9 THE COURT: Is the State so satisfied that the court
10 reporter has all of the evidence and that the bailiff can
11 now take the evidence, along with the indictments, into the
12 jury room so that the jury can begin their deliberations?2

13 SOL. STONE: The State is satisfied, Your Honor.

14 THE COURT: Is the defense satisfied that the court
15 reporter has all of the evidence and that the bailiff can
16 not take the evidence, along with the indictments, into the
17 jury room so that the jury can now begin their
18 deliberations?

19 MR. PLEXICO: Yes, Your Honor.

20 THE COURT: All right. Bailiff, take it on back.

21 (3:00 p.m., whereupon, the exhibits and the verdict
22 form are taken back to the jurors who can now begin
23 deliberations in this case.)

24 THE COURT: All right. Folks, we have a verdict. Is
25 the State ready to proceed?

1 SOL. STONE: Yes, Your Honor.

2 THE COURT: Is the defense ready to proceed?

3 MR. PLEXICO: Yes, Your Honor.

4 THE COURT: All right. Bring the jury in.

5 (3:40 p.m., whereupon, the jury enters the courtroom
6 and the following is held on the record.)

7 THE COURT: Madame Foreperson, I understand the jury
8 has reached a verdict. Is it unanimous?

9 MS. FOREMAN: Yes, sir.

10 THE COURT: Okay. As to all four indictments?

11 MS. FOREMAN: Yes, sir.

12 THE COURT: All right. Hand it to the Clerk, please.

13 If the defendant will rise. As to indictment 2016-GS-
14 25-229, State of South Carolina v. Maurice Demon Mitchell,
15 indictment is for murder. The verdict is guilty.

16 As to 2016-GS-25-373, State of South Carolina v.
17 Maurice Demon Mitchell, possession of a weapon during the
18 commission of a violent crime. It is guilty.

19 Indictment 2015-GS-25-373, State of South Carolina v.
20 Maurice Demon Mitchell, burglary in the first degree. The
21 verdict is guilty.

22 Indictment 2015-GS-25-369, indictment is for possession
23 of crack cocaine. The verdict is guilty.

24 If this is, in fact, your verdict, would you raise your
25 right hand? Let the record reflect, all of the jurors have

1 raised their right hand. Do you wish to have the jury
2 polled?

3 MR. PLEXICO: I do, Your Honor.

4 THE COURT: All right. Madame Clerk, would you poll
5 the jury, please?

6 MADAME CLERK: Yes, sir. I'm going to call your name
7 and ask you a question and you will need to respond. Then, I
8 will ask you a second question, and you will need to respond
9 to that.

10 Juror Leon Jones, was this your verdict?

11 JUROR: Guilty.

12 MADAME CLERK: Is it still your verdict?

13 JUROR: Yes.

14 MADAME CLERK: Latasha Grant, was this your verdict?

15 JUROR: Yes, ma'am.

16 MADAME CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 MADAME CLERK: Richard Rodman, Was this your verdict?

19 JUROR: Yes.

20 MADAME CLERK: Is it still your verdict?

21 JUROR: Yes.

22 MADAME CLERK: Shane Trader, Was this your verdict?

23 JUROR: Yes.

24 MADAME CLERK: Is it still your verdict?

25 JUROR: Yes.

1 MADAME CLERK: Kelia Morris, Was this your verdict?

2 JUROR: Yes, ma'am.

3 MADAME CLERK: Is it still your verdict?

4 JUROR: Yes, ma'am.

5 MADAME CLERK: Betty Johnson, Was this your verdict?

6 JUROR: Yes.

7 MADAME CLERK: Is it still your verdict?

8 JUROR: Yes.

9 MADAME CLERK: Mary Housey, Was this your verdict?

10 JUROR: Yes.

11 MADAME CLERK: Is it still your verdict?

12 JUROR: Yes.

13 MADAME CLERK: Mary Atkins, Was this your verdict?

14 JUROR: Yes.

15 MADAME CLERK: Is it still your verdict?

16 JUROR: Yes.

17 MADAME CLERK: Jennifer Brown, was this your verdict?

18 JUROR: Yes.

19 MADAME CLERK: Is it still your verdict?

20 JUROR: Yes.

21 MADAME CLERK: Franklin Harriott, was this your verdict?

22 JUROR: Yes, ma'am.

23 MADAME CLERK: Is it still your verdict?

24 JUROR: Yes, ma'am.

25 MADAME CLERK: Tarnisha Austin, Was this your verdict?

1 JUROR: Yes.

2 MADAME CLERK: Is it still your verdict?

3 JUROR. Yes.

4 THE COURT: All right. Ladies and gentlemen, I want to
5 thank you for your service this week. You see what we do
6 and how the process works. I don't know your familiarity
7 was with the General Sessions trial court, but you see how
8 the process works. It's time-tested and I think it's a
9 pretty good system. You heard evidence that got presented,
10 you decided how to resolve these factual disputes and you
11 applied the law and you came up with a verdict. All 12 of
12 you had to agree what the verdict was, so the process works.
13 When you think about it, getting 12 people to agree to
14 anything in this day and age is a remarkable thing. The
15 fact that all 12 of you came to the same decision I think
16 speaks highly of y'all and of the process. I know sometimes
17 I run into people and they ask me, "Did we make the right
18 decision?" And I tell them, "Look, all 12 of you came up
19 with the same decision." I know we can all come back
20 sometimes and you have regrets or second thoughts about a
21 verdict, especially on a big case like this was, but you
22 shouldn't have those second thoughts. You guys heard some
23 difficult testimony this week. You made some difficult
24 decisions. But I Hope that in time you will feel good about
25 your service this week. I hope you feel good about it now.

1 I certainly hope you feel better in the future as you think
2 about the process where the Government has accused somebody
3 of committing a crime, and in this case, a terrible crime,
4 the worse we have. And yet, we go through a process which
5 affords a trial in which a defendant does not have to say
6 anything. He doesn't have to prove his innocence. The State
7 has to prove his guilt. And all 12 of you came to the same
8 decision on a very difficult set of facts and some very
9 difficult charges. So I want to thank you for your service
10 this week. I know it's been a stressful week. You're
11 finished with service for the jury this week. You don't have
12 to come back. You are finished. If you need anything,
13 papers or work, the Clerk's office can get that for you.

14 Now, I've been telling you all week long not to talk to
15 anybody about the case. That restriction is lifted. You
16 can talk to anybody you would like to. Sometimes you will
17 hear from maybe the lawyers or someone from the lawyer's
18 office and they will want to follow up and say, "Hey, would
19 you mind talking to us about some things?" It helps them
20 prepare their next case a little bit better. You are doing
21 nothing wrong by talking to them. By the same token, you
22 are not required to talk to them. You don't have to and if
23 you don't want to, just say that you would rather not. I'm
24 sure that it will cease. If it doesn't, then you can
25 contact me. You are perfectly free to talk to anybody you

1 want to. You can post things on social media now. You
2 don't have any restrictions. But you do have my sincere
3 thanks with helping us out in a very, very difficult trial
4 this week. So you are free to go. Thank you very much for
5 your patience.

6 (3:55 p.m., whereupon, members of the jury exit the
7 courtroom and the following is held on the record.)

8 THE COURT: All right. Well, let's move to sentencing.
9 Solicitor, is there anything you would like to say or is
10 there anything any member of the victim's family would like
11 to say?

12 SOL. STONE: There are a couple of things, Your Honor,
13 but first I want to make sure that the family from the
14 victim, Eddie Mole's family, has been here throughout the
15 trial. If they have anything to offer, I just, if I could
16 have just a moment to find out.

17 THE COURT: Yes, sir. Would you state your name for
18 the record, please?

19 MR. MOLE: Yes, sir. Joe Mole, the Third.

20 THE COURT: Thank you. What would you like to tell me?

21 MR. MOLE: Your Honor, first of all, I just want to
22 begin by saying some gratitude to you for the facilitations
23 in the processing. Words can't express the pain that we, not
24 only just this week, but that we have been experiencing
25 since October 28th. But in the midst of all that pain, I

1 told my bride when I left here on Monday night, and I told
2 my daughter, too, that I felt like I had been back to school
3 through history again because the way that you outlined and
4 reestablished the Judicial System in the State of South
5 Carolina is to be commendable. First, I want to say that it
6 has revived us. It has restored our confidence and we feel
7 like it's a most important time in our nation when the
8 Judicial System has sometimes been questioned. But in the
9 midst of all the pain that we have suffered, we must say to
10 you, Judge, that you have restored that confidence in our
11 Judicial System.

12 THE COURT: Thank you very much.

13 MR. MOLE: And we believe that it was facilitated with
14 all due rights. We didn't even realize that we, the
15 victim's family, would have the right to have anything to
16 say. We trust in the State, but we made a request because
17 we wanted you to feel our hearts.

18 with that being said, October 28th our lives have never
19 been the same. It was painful. Twice I felt like this week
20 because not only was our brother murdered, that was one
21 thing, but then when it came to the attempt to assassinate
22 his character, as a businessman of our family, a reputable
23 part of this community, that was one thing. We understand
24 it was part of the process. That, too, brought pain again.
25 We are trying to find healing now. But let me tell you

1 this, most of this entire community know that our father is
2 lying on his back as we speak and our mother takes care of
3 him. My father had a stroke many years ago. They are very
4 elderly people. Daddy don't even know what happened to
5 Eddie. The only thing he knows is that Eddie didn't come
6 back because every afternoon he would leave the business.
7 He's the only one who lives by himself. Always been a
8 bachelor. Kept his home. He is the one who would go put
9 daddy in bed, because mommy can't lift him. Daddy don't
10 know today what really happened to Eddie. The only thing he
11 knows is that there was an accident.

12 We've got to try to bring some closure. We've got to
13 leave here and go back to report to Mom. Daddy will never
14 know. What we're saying in closing today is nothing from
15 here will bring Eddie back. That's something we have to
16 live with. But we ask that you are the decision, you will
17 handle the sentence. We ask that you would consider life.
18 He will live. Even his children will get to see him,
19 because they can visit him. But we will only be able to the
20 only visit that we have left is by the graveside of our
21 Eddie. I truly thank you. I want to thank the State. I
22 want to thank this community. I'm a pastor. But as I've
23 told people before, you can be a pastor, you can be a
24 priest, even the Pope, but when it comes to this type of
25 brutality, I'm still human. So I just wanted to -- I feel

1 like this will ever be the last that we will be able to do
2 for our brother. And we wanted to close it decent and in
3 order, and I pray that I've come before you and condensed as
4 much as I can, but enough for you to feel the heart of the
5 Mole family. Thank you. And we thank the Judicial System
6 of South Carolina, and from here, sir, we press on.

7 THE COURT: Yes, sir.

8 SOL. STONE: If I may, Your Honor. I spoke with the
9 defense attorney months ago and told him that whether this
10 was a plea or a trial, that we were going to ask the Court,
11 whoever the judge was, for life in prison; primarily because
12 of the crime.

13 To me, it is unconscionable how somebody can shoot
14 somebody and then beat them with a handgun as many times as
15 he did and from the crime itself, I think that asks for a
16 life sentence. However, I have pulled his criminal history,
17 Mr. Maurice Mitchell's criminal history, and if I could,
18 Your Honor, give you an insight into that history. In May,
19 May the 3rd of 2008, Mr. Mitchell entered the Bert's Fast
20 Food Shop located at 458 Hampton Avenue here, actually in
21 Fairfax, demanding money from the cash register. The person
22 who was in the store tried to resist him. He was wearing
23 all black. He was carrying a handgun with him and he then
24 beat the store owner in the head with the firearm. That was
25 in 2008. He pled guilty and by the way, during the

1 struggle, the firearm went off in that case as well. He
2 pled guilty and received a Youthful Offender's Sentence. He
3 entered the South Carolina Department of Corrections in
4 November of 2008 and was paroled in September of 2009. In
5 January of 2011, Mitchell fired several shots into a vehicle
6 that was occupied by Yolanda Dunbar and Natalie Williams in
7 the parking lot of the Melanie Club of Fairfax. The victim
8 stated that Mitchell walked up to the vehicle, fired two
9 shots at them. One entered the passenger side front fender
10 in the hood and the other one the passenger side tire. His
11 parole was revoked in 2011 and he re-entered the South
12 Carolina Department of Corrections in February of that year
13 and stayed until May of that year.

14 In April of 2014, he violated his probation. In August
15 of 2015, he was convicted for failure to stop for a blue
16 light. Now, the last offense prior to this one wasn't
17 nearly as serious as the other one, but what we see is
18 somebody who it's beyond a reckless disregard for the safety
19 of others. It's somebody who is malicious, who has hurt
20 other people, who has tried to rob other people, and who has
21 done it with a handgun consistently, and this time, the
22 crime itself, I would suggest, would warrant life in prison.
23 But with that kind of criminal history and his pattern of
24 abuse, I would ask Your Honor to consider sentencing him to
25 life in prison. Thank you.

1 THE COURT: Mr. Plexico, would you like to say
2 anything?

3 MR. PLEXICO: Yes, Your Honor. Mr. Mitchell has two
4 children, they are five and four years old. He has just
5 turned 31, Judge. He was born in Denmark, trying to get his
6 GED, which is a sign that people can change. He used to
7 work at Brunson Laundry, Your Honor. While he does have a
8 record and he has been convicted of this, we are asking the
9 Court to be as merciful as possible. We are asking for a
10 30-year sentence on the murder, Your Honor. A 15-year
11 sentence on the burglary, and we're asking for a 5-year
12 sentence on the possession of a weapon during the commission
13 of a violent crime, and whatever sentence for the possession
14 of drugs. We're asking that they all run concurrent, Your
15 Honor; the 30-year sentence on the murder will rule, Your
16 Honor. He will not get out of jail for a solid 30 years.
17 We would ask you to consider that sentence.

18 THE COURT: Do you want to say anything, Mr. Mitchell?

19 MR. MITCHELL: No.

20 THE COURT: All right. There's no question of the
21 who-done-it here or the manner in which it was done.
22 Motivation is a little bit of an issue, but the State is not
23 required to prove a motive in these type of cases. It just
24 sometimes help to understand, especially when you see a
25 crime that was committed with such viciousness.

1 I've lost count of how many murder trials I've presided
2 over and while none of them are good, some of them are worse
3 than others, but the savagery with which this beating took
4 place after the shooting is really -- I've not seen anything
5 like it before where you literally have somebody whose jaw
6 is knocked out of their head because the force of the blows
7 are such. That was new to me. I guess I would say to the
8 family, you know when I see people like you folks who have
9 been through now the system, I go, well, perhaps the healing
10 process can begin. I don't think you ever get over it. I
11 think you just learn to deal with it, because you've got to
12 go through life. You know there are people that have a
13 feeling about forgiveness and I've thought about the issue
14 of forgiveness a long, long time. I've never been a
15 minister, but I was the son of a minister, so I was exposed
16 to a lot of theology in my years and I've thought about a
17 lot of things with regard to the specific issue of
18 forgiveness in the 20 years plus that I've been a judge now.
19 I tell people that forgiveness is a personal thing to you,
20 the forgiver. And I've really come to the conclusion that
21 forgiveness really doesn't do that much for the person who
22 was the defendant in a case like this. The forgiveness
23 begins the healing for the forgiver. You're the ones that
24 can forgive and that begins the healing for you.

25 However you deal with that and if it helps at all, I

1 would say it's there for you to consider and give thought,
2 because you have many, many things that I've never been in
3 your position. I wouldn't want to ever be in your position.
4 I don't know if I would be capable of forgiving somebody who
5 had committed such a crime on a member of my family.

6 However, I would say that any healing that comes from
7 forgiveness is for you, not for him. I'll leave that with
8 you.

9 Mr. Mitchell, as far as your crime is concerned, I see
10 that you are a young man, 31 years old. I don't know how
11 you got to where you're at, at this point in life. You've
12 been involved in the criminal justice system, in and out of
13 it, a good bit it looks like. I've always thought that
14 there was some hope for rehabilitation for people, but over
15 the years I've gone back and forth over that, but there are
16 some that I'm just not convinced are ever gonna get it.
17 Maybe you get it when you're a very old man and you realize
18 you have thrown your life away. But you have thrown your
19 life away and with the history that you have with crimes
20 involving weapons and the viciousness, the pure viciousness
21 with which you beat Mr. Mole, you have forfeited your right
22 to walk amongst us. You will always spend the rest of your
23 life in prison.

24 The sentence for murder is life without parole. For
25 burglary, it's life without parole. For possession of a

1 weapon during the commission of a violent crime, of course,
2 is five years, and the crack charge is three. They will all
3 run concurrent. Good luck to you.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Hampton County, South Carolina, beginning on the 27th day of November 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 18, 2018

Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

408 WITNESSES

N A Ginn - Hampton Police Department

J. E. Sullivan - Hampton Police
Department

ARREST WARRANT NUMBER

2015A2520300156

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 30 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS2500369

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

June Term 2016

THE STATE

vs.

Maurice Demon Mitchell

Indictment For

**Methamphetamine, Cocaine Base,
and Ephedrine**

SC Code: 44-53-375(A)

CDR Code: 3009

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HAMPTON)

2015GS2500369

At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Hampton County present upon their oath:

Methamphetamine, Cocaine Base, and Ephedrine

That in Hampton County, South Carolina, on or about October 28, 2015, the Defendant, Maurice Demon Mitchell, did possess a controlled substance or a controlled substance analogue in an amount less than one gram, to wit: cocaine base (crack), all in violation of Section 44-53-375(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

JLS BUA

410

WITNESSES

N A Ginn - Hampton Police Department

J. E. Sullivan - Hampton Police
Department

ARREST WARRANT NUMBER

2015A2520300160

TRUE BILL

Foreperson of Grand Jury

Date: JUN 30 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/24/17

INDICT

DOCKET NO. 2015GS2500373

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

June Term 2016

THE STATE

vs.

Maurice Demon Mitchell

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF HAMPTON

2015GS2500373

At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Hampton County present upon their oath:

Possession of Weapon During Violent Crime

That in Hampton County, South Carolina, on or about October 28, 2015, the Defendant, Maurice Demon Mitchell, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: burglary - 1st degree and/or murder, a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

145 3070

412 WITNESSES

N A Ginn - Hampton Police Department

J. E. Sullivan - Hampton Police
Department

ARREST WARRANT NUMBER

2015A2520300162

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 30 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

11/29/17

DOCKET NO. 2015GS2500375

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

June Term 2016

THE STATE

vs.

Maurice Demon Mitchell

Indictment For

Burglary – 1st Degree

SC Code: 16-11-311(A)

CDR Code: 0079

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)

IN JUDICIUM)

COUNTY OF HAMPTON)

2015GS2500375

At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Hampton County present upon their oath:

Burglary – 1st Degree

That in Hampton County, South Carolina, on or about October 28, 2015, the Defendant, Maurice Demon Mitchell, did enter a dwelling without consent and with intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight therefrom, the defendant was armed with a deadly weapon; or the defendant or another participant in the crime caused physical injury to Eddie Mole who was not a participant in the crime; or the defendant visibly displayed what was or appeared to be a pistol, revolver, rifle, shotgun or other firearm; or entered or remained in the premises in the nighttime, all in violation of Section 16-11-311, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

TRUE COPY

414 WITNESSES

N A Ginn - Hampton Police Department

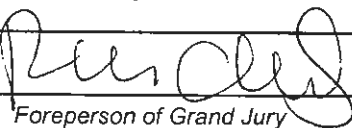
J. E. Sullivan - Hampton Police
Department

ARREST WARRANT NUMBER

2016A2520300085
2016A250300085- LHM 7/6/16



TRUE BILL



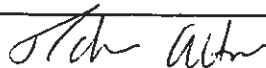
Foreperson of Grand Jury

Date:

JUN 30 2016

VERDICT

Guilty



Foreperson of Petit Jury

Date:

11/29/17

INDICT

DOCKET NO. 2016GS2500229

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

June Term 2016

THE STATE

vs.

Maurice Demon Mitchell

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

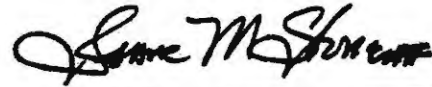
INDICTMENT
2016GS2500229

At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Hampton County present upon their oath:

Murder

That in Hampton County, South Carolina, on or about October 28, 2015, the Defendant, Maurice Demon Mitchell, did, with malice aforethought, kill Eddie Mole and Eddie Mole did die as a proximate result of Maurice Demon Mitchell's actions, to wit: shooting him and/or striking him with a firearm, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

THANE BIRT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

VS. Maurice Deman Mitchell

AKA:

Race: M Sex: B Age: 31DOB: [REDACTED] SS#: [REDACTED]

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: Possession of Cocaine baseIn violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3009☐ 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:

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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

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: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____ Beginning _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk Melinda D. NokesCourt Reporter: Becky Hill

Presiding Judge _____

Judge Code: 2104Sentence Date 11/26/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Hampton

STATE

VS. Maurice Demon Mitchell

AKA:

Race:

Sex:

Age: 31

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: Possession of weapon during commission of violent crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ 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:

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 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:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

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 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: Becky Hill

Presiding Judge

Judge Code: 2139

Sentence Date 11/25/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Hampton

STATE

VS.

Maurice Demor Mitchell

AKA:

Race:

Sex:

Age: 31

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 § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ 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:

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 Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ no parole provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Melinda D. Nix
Becky Hill

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date

30-Lite

419

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Hampton

STATE

INDICTMENT/CASE#: 2016GS-25-00229

A/W#:

2016A2520300085

Date of Offense:

10/28/2015

S.C. Code §:

16-3-10, 16-3-20

CDR Code #:

0116

Maurice Demar Mitchell

AKA:

Race:

B

Sex:

M

Age:

31

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

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-3-10, 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

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 Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 4000; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

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: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____ Beginning _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: Becky Hill

Presiding Judge

Judge Code:

Sentence Date

FORM 5

STATE OF SOUTH CAROLINA)

County of Hampton)Maurice Damon Mitchell)

Full name and prison number (if any) of Applicant)

331615)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-25311

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
AM/PM

AUG 12 2019

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SCINSTRUCTIONS - 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 Lieber Correctional Institution
P.O. Box 205 Ridgville SC. 29472
2. Name and location of Court which imposed sentence Hampton County
Courthouse 1st Elm st. West SC. 29924
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-25-00229 Murder 16-3-10
 - (b) 2015-GS-25-00375 Burglary 16-11-0311 (A)

(c) 2015-GS-25-00373 Possession of weapon During violent Crime 16-23-49

5. The date upon which sentence was imposed and the terms of the sentence:

more
on the
Back page

(a) November 29, 2017 30 years for Murder Concurrent

(b) November 29, 2017 15 years for Burglary Concurrent

(c) November 29, 2017 5 years for possession of a weapon Concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty No

(b) after a plea of not guilty No

(c) after a plea of nolo contendere No

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes, ~~the judgment of conviction and the imposition of sentence~~

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Hampton County Courthouse

ii. South Carolina Court of Appeal

iii. _____

(b) the result in each such Court to which you appealed:

i. Verdict of guilty 30 years concurrent sentence

ii. Appeal Dismissed / Denied

iii. _____

(c) the date of each such result:

i. November 29, 2017

ii. June 26, 2019

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unknown

ii. ~~Unknown~~ Written opinion

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) N/A

4. D, 2015-GS-25-00369 Possession of cocaine 44-53-0375 concurrent

5. D, 2015-GS-25-00369 possession of cocaine 44-53-0375 Concurrent

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

more
on the
Back page..

- (a) ~~Violated~~ Violated (Wrongful)
(b) ~~Accused~~ Accused (Wrongful)
(c) ~~Convicted~~ Convicted (Wrongful)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

more
in the
back page..

- (a) ~~Legal docum~~
(b) ~~Legal docum~~
(c) ~~Legal docum~~

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No specified in 8
(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
ii. N/a
iii. _____
iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
ii. N/a
iii. _____
iv. _____

10. D. ~~mistaken~~ Mistaken (wrongful)

11. D. Warrants + Search Warrant / Legal Documents

E. Incident Report Supplemental / Legal Documents

F. Hampton Medical Records / Legal Documents

G. Hampton Police Department Incident Report / Legal Document

H. Witnesses Statement / Legal Documents

11. ~~Police Department Incident Report~~

~~Police Department Incident Report~~

~~Police Department Incident Report~~

~~Police Department Incident Report~~

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

more
on the
Back page..

- (a) ~~_____~~
 (b) Ineffective counseling was inadequate for failing to challenge the in-court ident
 (c) ~~_____~~

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

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

Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Stephen T. Plexico
P.O. Box 506 Hampton S.C. 29924
 ii. Kathrine H. Hudgins
P.O. Box 11589 Columbia S.C. 29211 / 1330 Lady Street Suite 401
 iii. _____

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

- i. Trial Attorney (Public Defender)
 ii. Appellate Attorney (Appellate Defender)
 iii. _____

The checked ones

16. ☒ ^C Ineffective counsel was ineffective for failing to move on the defense of Mistaken identity (Fail to introduce Incident Report)
- ☒ ^D Ineffective counsel was ineffective for failing to challenge the state to an meaningful adversarial testing meaning the state did not meet its burden beyond reasonable doubt, they were relieved of their burden with help from counsel (Motion for a direct verdict)
- ☒ ^E Ineffective counsel was inadequate for denying the Petitioner the rights to a fair trial, and equal protection of the law Violating the Petitioner 14th amendment under the United States Constitution and state constitution. ~~_____~~ 6th 14 (Judge Jury Charge)
- ☒ ^F Ineffective counseling appellate counsel was inadequate for failing to raise an abused of discretion
- ☒ ^G Counselor was inadequate for abandoning his/her client during trial. (Fail to introduce medical Records)
- ☒ ^H Counsel was inadequate for not challenging the sufficiency of the indictments. / (Quash Indictments) Jury Charge
- ☒ ^I Counsel was inadequate for failing to raise any constitutional Violations (Abused of Discretion)
- ☒ ^J Counsel was ineffective for failing to request for a jury instruction / ~~the~~ jury charge

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

Seek a released conviction. (Second
Continuous (First Relief)

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

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, _____, 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.

SWORN to and subscribed before me this _____
 day of _____, _____.

 Notary Public (L.S.)

My Commission Expires: _____

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

I, Maurice Demon Mitchell, 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.

Maurice Mitchell
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

Maurice Demon Mitchell #331615,

Case No.: 2019-CP-25-253

Applicant,

FILED
AM/PM

RETURN

v.

JUL 07 2020

State of South Carolina,

Respondent.

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on August 12, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Maurice Mitchell (Applicant) is presently confined pursuant to orders of the Hampton County Clerk of Court. A Hampton County Grand Jury indicted Applicant for murder (2016-GS-25-00229), unlawful carrying of a firearm (2015-GS-25-327), possession of crack cocaine (2015-GS-25-369), burglary first degree (2015-GS-25-375), possession of a firearm during the commission of a violent crime (2015-GS-25-373), and possession of a firearm having been convicted of a crime of violence (2015-GS-25-371). On November 27-29, 2017, Applicant was tried before the Honorable Roger Young and a jury. Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean Thornton represented the State. Stephen Plexico of the Fourteenth Circuit Public Defender's Office represented Applicant. The jury convicted Applicant. Judge Young sentenced Applicant to life without parole for murder, five years for possession of a weapon during the commission of a violent crime, and three years for possession of crack cocaine. The sentences were to run concurrently.

Applicant appealed his convictions. Applicant filed a timely Notice of Appeal on November 30, 2017. Stephen Plexico perfected the appeal. Applicant was represented on appeal by Katheriné Hudgins, Appellate Defender for the South Carolina Commission on Indigent Defense Appellate Division. Applicant's counsel filed an Anders Brief on September 17, 2018. The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion (No. 2019-UP-228) filed June 26, 2019. The Remittitur was issued to the lower court on July 12, 2019. This application for post-conviction relief follows.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective counsel was ineffective for failing to move on the defense of mistaken identity
2. Ineffective counsel was ineffective for failing to challenge the state to an meaningful adversarial testing meaning the state did not meet its burden beyond reasonable doubt, they were relieved of their burden with help from counsel
3. Ineffective counsel was inadequate for denying the petition the rights to a fair trial and equal protection of the law violating the petitioner 14th amendment under the United States Constitution and state constitution
4. Ineffective counseling appellate counsel was inadequate for failing to raise an abused of discretion
5. Counselor was inadequate for abandoning his/her client during trial
6. Counsel was inadequate for not challenging the sufficiency of the indictments
7. Counsel was inadequate for failing to raise any constitution violations
8. Counsel was ineffective for failing to request for a jury instruction

In relief sought, Applicant is seeking: "a released convictions (second relief) Continuous (first relief)."

Attached to this Return and incorporated by reference are the records of the Hampton County Clerk of Court regarding the subject convictions, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent

contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

III. INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have

pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. FAILURE TO INVESTIGATE

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent **634 investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court

deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

V. DUE PROCESS VIOLATIONS

Applicant alleges a denial of due process of law. Applicant’s allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must “...specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

VI. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.”

Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VII. MOTION FOR A MORE DEFINITE STATEMENT

In his application for relief, Applicant fails to set forth with specificity the facts and circumstances upon which his allegations of ineffective assistance of appellate counsel are based. The Uniform Post- Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant

to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDoueall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for his claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss his application.

VIII. ANY FUTURE AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP; *Mangal v. State*, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

IX. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

X. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin H. Limbaugh
ATTORNEY FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 2, 2020

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Maurice Demon Mitchell, #331615

Case No.: 2019-CP-25-253

Applicant,

FILED

AM/PM

v.

Certificate of Service

State of South Carolina

JUL 07 2020

Respondent,

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

James K. Falk, Esquire
jfalklaw@gmail.com

DATED this 1st day of July, 2020.

s/Benjamin H. Limbaugh
Benjamin Hunter Limbaugh
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
BLimbaugh@scag.gov



ALAN WILSON
ATTORNEY GENERAL

July 2, 2020

The Honorable Mylinda D. Nettles
Clerk of Court, Hampton County
Post Office Box 7
Hampton, South Carolina 29924-0007

Re: Maurice Demon Mitchell, #331615 v. State of South Carolina
2019-CP-25-253

Dear Ms. Nettles:

Enclosed for filing please find the original Return of the Respondent, in the above-captioned post-conviction relief case.

Please do not hesitate to contact me if anything additional is needed regarding this case at this time.

Sincerely,

s/ Benjamin H. Limbaugh

Benjamin Hunter Limbaugh
Assistant Attorney General

BHL/jj
Enclosure

cc: James K. Falk, Esquire

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Maurice Demon Mitchell 331615	)	
Applicant	)	2020-CP-43-892
Vs.	)	
State of South Carolina	)	AMENDED PCR
Respondent,	)	
_____	)	

PCR Applicant Maurice Demon Mitchell by counsel amends his PCR application filed August 19, 2019 to add the following specific allegation of ineffective assistance of counsel.

1. Trial counsel failed to object to hearsay statements attributed to the decedent. Record on Appeal p. 148 lines 21-25; p. 149 lines 15-16; p 163 lines 10-12.
2. Trial counsel failed Trial counsel was ineffective for not seeking a hearing pursuant to State v. Council, 335 S.C. 1 (1999) to challenge the reliability of SLED agent Michelle Eichenmiller's expert testimony in the field of toolmarks and firearm identification. Specifically whether the witness could opine that the Exhibit 36 (recovered bullet) was fired from State's Exhibit 9. Record on Appeal 294 line 5.
3. Trail counsel failed to preserve his objection to the court's decision not to charge the jury on accident, involuntary manslaughter, and voluntary manslaughter.

S/ James Falk
 Falk Law Firm
 PO Box 1058
 Charleston, SC 29402
 (843) 606 6007
 jfalklaw@gmail.com

1 STATE OF SOUTH CAROLINA

TRANSCRIPT OF RECORD

2 COUNTY OF BEAUFORT

CASE NOS. 2019-CP-25-00311

3
4 -----
5
6 November 18, 2022

7 BEFORE: The Honorable G. D. Morgan, Jr.
8 -----

9
10 Maurice Demon Mitchell,

11 Applicant,

12 vs.

13 State of South Carolina

14 Respondent.
15 -----

16
17 APPEARANCES:

18 Lauren Mims
19 South Carolina Attorney General's Office
Fourteenth Circuit - PCR

20 James K. Falk
21 Attorney for the Applicant
22 -----

23 Betty R. Lyons, Court Reporter I
24 South Carolina Judicial Department
25 747 Bishops Circle, Evans, Georgia 30809

1	I-N-D-E-X	
2	WITNESS/DESCRIPTION	
3		PAGE
4	Introduction of Case	
5	Lauren Mims	03
6	Maurice Demon Mitchell	
7	Direct by Mr. Falk	05
8	Cross by Ms. Mims	09
9	Stephen T. Plexico	
10	Direct by Mr. Falk	12
11	Cross by Ms. Mims	21
12	Redirect by Mr. Falk	28
13	Closing Arguments	
14	Mr. Falk	29
15	Ms. Mims	31
16	Mr. Falk	34
17	Court Reporter's Certificate	37
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (COURT REPORTER'S NOTE: Due to remote platform
3 interruption and audio interference throughout the hearing,
4 those instances are denoted with "inaudible" in the
5 transcript.)

6 THE COURT: All right. This is the case of
7 Maurice Mitchell. I call the AG's -- Attorney General's
8 office to call the case, and I'll turn it over to the
9 Applicant.

10 MS. MIMS: May it please the Court. Lauren Mims
11 on behalf of the State.

12 This is the post-conviction relief matter of
13 Maurice Mitchell. Maurice Mitchell is presently confined
14 pursuant to orders of the Hampton County Clerk of Court.
15 The Hampton County Grand Jury indicted Applicant for murder,
16 unlawful carrying of a firearm, possession of crack cocaine,
17 burglary first degree, possession of a firearm during the
18 commission of a violent crime, and possession of a firearm
19 having being convicted of a crime of violence.

20 On November 27th through 29th of 2017, Applicant
21 was tried before the Honorable Roger Young and the jury.
22 Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean
23 Thornton represented the State. Stephen Plexico of the
24 Fourteenth Circuit Public Defender's Office represented
25 Applicant.

1 The jury convicted Applicant. Judge Young
2 sentenced Applicant to life without parole for murder,
3 five years for possession of a weapon during the commission
4 of a violent crime, and three years for the possession of
5 crack cocaine. The sentences were to run concurrently.

6 Applicant appealed his convictions. Applicant
7 filed a timely Notice of Appeal on November 30, 2017.
8 Stephen Plexico perfected the appeal. Applicant was
9 represented on appeal by Katherine Hudgins, Appellate
10 Defender of the South Carolina Commission on Indigent
11 Defense. Applicant's Counsel filed an Anders Brief on
12 September 17, 2018.

13 The South Carolina Court of Appeals dismissed
14 Applicant's appeal in an unpublished opinion. The
15 remittitur was issued to the lower Court on July 12, 2019.
16 And this application for post-conviction relief follows.

17 THE COURT: All right. I'll turn it over to the
18 Applicant, Mr. Falk.

19 MR. FALK: I'll call Mr. Mitchell to the stand.

20 THE COURT: Mr. Mitchell.

21 (WHEREUPON, Mr. Maurice Demon Mitchell having been
22 duly sworn, testifies as follows.)

23 THE COURT: All right. Mr. Mitchell, you
24 understand that -- that I have no authority to reduce your
25 sentence. The only thing we have here today is your PCR.

1 If I were to grant your PCR, then it goes back down and
2 starts all over.

3 Looks like you were convicted of murder,
4 possession of a weapon during the commission of a violent
5 crime, and crack cocaine. So, those charges -- you could be
6 tried again on those charges, and you could receive a
7 different sentence. You could receive consecutive sentences
8 in addition to life on the murder. Do you understand that?

9 MR. MITCHELL: Yes, sir.

10 THE COURT: All right. You want to go forward
11 with your PCR hearing?

12 MR. MITCHELL: I'm going to do it.

13 THE COURT: Is that correct?

14 MR. MITCHELL: Yes, sir.

15 THE COURT: All right. Mr. Falk.

16 DIRECT EXAMINATION

17 BY MR. FALK:

18 Q. Mr. Mitchell, how did Mr. Plexico start
19 representing you in this case? Was he appointed to you, or
20 did you retain him?

21 A. He was appointed.

22 Q. You're going to have to talk louder.

23 THE COURT: Yeah.

24 MR. MITCHELL: He was appointed.
25

1 BY MR. FALK:

2 Q. He was appointed?

3 A. Yes, sir.

4 Q. And, so, about how many times did he meet with you
5 prior to going to ---

6 A. I can't recall how many times. But, it was -- it
7 was more than three to four times.

8 Q. Did he go over the evidence with you?

9 A. He talked about it.

10 Q. Okay. And did he tell you any kind of strategy he
11 wanted to go forward with for the trial?

12 A. Oh, I can't remember.

13 Q. Okay. So, I've raised some concerns in an amended
14 PCR, which I've filed on your behalf, and I sent you a copy
15 of. One of them says that, "Trial Counsel provided
16 ineffective assistance and counseling by failing -- failing
17 to object to some hearsay statements that were attributed to
18 the decedent."

19 Did y'all have any conversations about that?

20 A. Can you repeat that again?

21 Q. All right. So, the decedent in this case, there
22 were some hearsay statements that were attributed to -- you
23 know, some people said that, "That guy said this." And did
24 he go over anything with you on, you know, why he elected
25 not to object to those statements?

1 A. No, he never said.

2 Q. And, did he go over with you any kind of strategy
3 on how to handle the forensic evidence regarding the bullet
4 that was found?

5 A. No, sir.

6 Q. Did he go over with you any kind of strategy
7 regarding the way the jury was going to get charged, whether
8 it was going to get charged on accident, involuntary
9 manslaughter, voluntary manslaughter? Did he go over any of
10 that with you?

11 A. No, sir.

12 Q. So, in addition -- so, in my amended PCR -- my
13 first ---

14 THE COURT: Mr. Falk, do you have a copy of that,
15 because I don't see -- I don't see it in the file?

16 Is that your only copy?

17 MR. FALK: I've got one.

18 THE COURT: Okay. All right.

19 MS. MIMS: I will see if we have it in ours and
20 pass it up.

21 MR. FALK: Your Honor, I think this makes this
22 work better. I'm used to calling the lawyer up to do these
23 things. But I don't want to get in that situation where I
24 got him for -- that he's my witness. I don't know, maybe I
25 can call Mr. Plexico ask to treat him as hostile, or

1 something like that. I just think it will flow better
2 instead of me trying to do it this way.

3 THE COURT: All right.

4 MR. FALK: So, let me just -- let me just go
5 through them -- what these amended claims are and then I'll
6 call Mr. Plexico.

7 So, the first one was trial Counsel failed to
8 object to hearsay statements attributed to the decedent.
9 And it would be on Pages 148, Lines 21 to 25. This is all
10 in the record of appeal. It was the standards case of the
11 record. It should be same as the transcript. Page 149,
12 Lines 15 through 16, and Page 163, Lines 10 through 12.

13 And then, my second claim was trial Counsel was
14 ineffective for failing to seek a hearing pursuant to the
15 State versus Council to challenge the -- to challenge the
16 reliability of SLED Agent Nate -- Michelle Eiken-Mills
17 (phonetic) expert testimony in the field of tool marks and
18 firearm identification.

19 Specifically, that this witness could opine that
20 Exhibit 36, which was a recovered bullet, was fired from
21 State's Exhibit 9. And that happened on Page 294, Line 5.

22 And then, trial Counsel provided ineffective
23 assistance for failing to preserve an objection to the
24 State's -- to the Court's decision not to charge on
25 accident, involuntary manslaughter, voluntary manslaughter.

1 THE COURT: All right.

2 MR. FALK: Let me just excuse Mr. Mitchell, I
3 guess. I have no more questions for Mr. Mitchell.

4 THE COURT: All right. Any cross -- or you ---

5 MS. MIMS: Would it proper for me to wait to
6 cross, you know, later on after the first portion?

7 THE COURT: Are you calling him back up, or this
8 is it?

9 MR. FALK: I don't think I'm calling him back up.
10 I think ---

11 MS. MIMS: Okay. Well, I'll need to cross him
12 then.

13 THE COURT: Yeah.

14 CROSS-EXAMINATION

15 BY MS. MIMS:

16 Q. Good morning. How are you doing?

17 A. (Inaudible.)

18 Q. Now, you stated that Mr. Plexico was appointed to
19 your case, right?

20 A. Yes, ma'am.

21 Q. About how long -- was he your first attorney on
22 this case?

23 A. Yes, ma'am.

24 Q. And you say you couldn't recall how many times
25 y'all met?

1 A. Yes, ma'am.

2 Q. If you could give a ballpark, if it was more than
3 three or four, was it more than ten, more than 15?

4 A. It was more than -- it was about three or four.

5 Q. Okay.

6 A. About three or four times.

7 Q. And did you review your Rule 5 Discovery in this
8 matter?

9 A. Yes, ma'am.

10 Q. Okay. And y'all discussed everything in your
11 Rule 5, correct?

12 A. I mean, he -- he gave them to me. I looked over
13 them. He said he looked over it, and that was it.

14 Q. Okay. Did y'all have a conversation about your
15 Rule 5?

16 A. I mean, we had -- we had multiple -- we had
17 multiple casing (sic) on -- we talked about it multiple
18 times.

19 Q. Okay. So, more -- more than once?

20 A. Yes, ma'am.

21 Q. Okay. And you testified you don't recall any
22 trial strategy? Did he tell you how he would defend your
23 case?

24 A. I ain't never said -- I can't -- I can't recall.

25 Q. Okay.

1 A. I can't recall.

2 Q. Well, let me clarify that for the record. You
3 can't recall if he told you, or if ---

4 A. I can't recall if he told me.

5 Q. Okay. And when you went to trial, did you ever --
6 were you worried about any issues happening during the
7 trial?

8 A. No, ma'am.

9 Q. Okay. And if you had a question, would
10 Mr. Plexico answer any questions you had during your trial?

11 A. Did I had (sic) any problems?

12 Q. Yeah. If you had any questions or anything like
13 that, if you needed to ask Mr. Plexico any questions, did he
14 answer those for you during the trial?

15 A. Yes, ma'am.

16 MS. MIMS: No further questions, Your Honor.

17 THE COURT: All right. Any redirect?

18 MR. FALK: No, Your Honor.

19 THE COURT: All right. You may step down.

20 MS. MIMS: Your Honor, do you mind if I pull the
21 podium forward?

22 THE COURT: What's that?

23 MS. MIMS: Do you mind if I pull the podium
24 forward?

25 THE COURT: Yeah, that's fine.

1 MS. MIMS: Okay.

2 THE COURT: All right. Next witness.

3 MR. FALK: I will call trial Counsel, Stephen
4 Plexico.

5 (WHEREUPON, Mr. Stephen T. Plexico having been
6 duly sworn, testifies as follows.)

7 DIRECT EXAMINATION

8 BY MR. FALK:

9 Q. Mr. Plexico, have you had the chance to review
10 this file?

11 A. Yes.

12 Q. Can you sort of just lay out for us what the
13 State's proof was in this case?

14 A. Well, basically, there was a dispute between
15 Mr. Mole and Mr. Mitchell. Mr. Mitchell gave a statement
16 saying he had his gun, he went in the apartment, there was
17 arguing.

18 It was heard by neighbors, and she called -- a
19 neighbor and she called -- she called her husband who came
20 and parked in front of it, looked inside and saw my client,
21 I believe, assailing the man. And went inside his
22 apartment, grabbed his wife, they ran out the back door
23 after calling the police. I think she had already called
24 the police. That's the factual.

25 Q. I'm sorry, what ---

1 A. That's the factual.

2 Q. Yeah. No, I was just trying to -- you sort of
3 trailed off on the end. So, who grabbed -- who grabbed
4 their wife?

5 A. The husband who had been called after the wife
6 realized that Mr. Mole was being killed, she heard him say,
7 you know, "Don't kill me." He came home, he saw my client
8 in there, basically, I guess, killing the guy, or whatever.

9 And so he walks into his apartment and grabs his
10 wife, they run out the back door, and apparently had already
11 called the police, or they were calling the police again.
12 The police rolled up and my client ran off the scene. They
13 ran him down.

14 Q. And so, identification was one of the issues in
15 the case?

16 A. I didn't see that as an issue. When you go
17 killing your neighbors (sic) in front of your neighbor, I
18 mean, that's not an issue. I mean...

19 Q. (Inaudible.)

20 A. No, no. I'm just -- I'm just saying, you know,
21 you go kill your neighbor, and you do it in front of your
22 other neighbors, I mean, I think you're going to get
23 identified. I mean, that's just not an issue.

24 Q. And Mr. Mitchell made some statements, because
25 there's a Jackson versus Deno hearing?

1 A. Yeah. Well, you've got ---

2 THE COURT: Mr. Plexico, if you want to, you can
3 take off the -- you can keep it on. You're fine ---

4 MR. PLEXICO: Please let me.

5 THE COURT: Yeah.

6 MR. PLEXICO: Thank you. I've gone this far. If
7 you can't hear me, Judge, I'll be glad to take it off.

8 THE COURT: That's fine.

9 MR. PLEXICO: As long as you can hear me.

10 THE COURT: I just wanted to make sure you had the
11 option to do that.

12 MR. PLEXICO: Thank you, Judge.

13 All right. "I Maurice Mitchell hereby writing
14 this statement on my own. Today I left Nadine Badger
15 Robertson's (phonetic) apartment around 10:00, or a little
16 after. Nadine Badger dropped off my two sons a little bit
17 after 3:00, something to 4:00. We was outside, me and my
18 twins" -- something -- "then Eddie Mole on his way to his
19 apartment."

20 "So, I told the boys to go to the house, and I
21 went back to talk to Mr. Mole. I asked his" -- "asked him,"
22 I think that's what he's trying to say -- "did he insert my
23 bottom back area, and he said he didn't do anything to me.
24 Then I asked was he being honest with me, and he said he
25 didn't do so."

1 "I pulled out my weapon, Ruger 40 audi (sic) --
2 automatic and he started going into the house. So, I tried
3 to force my way into his apartment. As we was pushing the
4 door on one another, as my foot had been in his doorway so
5 he couldn't close it."

6 "Then I did finally get into the house with him
7 still in his apartment" -- something -- "he slid and hit my
8 elbow and the gun went off not knowing if I strike him or
9 not as he hit the floor. I started hitting him with the
10 armored weapon."

11 "Then Hampton County Officers rolled up to his
12 apartment and I took out and started running behind the
13 apartment buildings. Ran in the woods, jumped a fence. Ran
14 into some" -- something -- something "wood area. And after
15 I fell, I threw the gun in the woods with my right hand."

16 "Then I ended up on the main highway and Hampton
17 County Officers caught me as I was entering out of the
18 woods. And the only thing I took from his apartment was his
19 car keys and cell phone."

20 That was his whole statement.

21 BY MR. FALK:

22 Q. So he, obviously, then admitted to the gun going
23 off, and the person getting hit by the bullet. But it
24 sounded like he was asserting that it possibly was an
25 accident?

1 A. Yes, sir.

2 Q. Or it could possibly be some other degree of
3 murder?

4 A. Yes, sir.

5 Q. And was -- it's my recollection that the jury was
6 not charged on involuntary, voluntary, accident in this
7 case?

8 A. Yes. I did request that.

9 Q. But once the jury was charged, did you renew
10 that ---

11 A. No, I didn't.

12 Q. Okay. Is it your understanding that that's
13 necessary in order to preserve that issue for appeal?

14 A. Yes, sir.

15 Q. Okay. Because there was an Anders brief filed in
16 this case and, you know, they couldn't have raised that
17 issue because ---

18 A. I understand.

19 Q. --- there's no preserve -- preservation. I don't
20 need to go anything further, there.

21 Let me ask you -- you know, you and I talked about
22 this before, and this is just something new I found when we
23 were talking about Mr. Pocher -- Pochè?

24 A. Joshua Pocher (phonetic).

25 Q. Pocher. So, there was an expert for the State

1 that testified and was able to say -- was allowed to say
2 that the gun that was -- the bullet that was extracted had
3 come from the gun that Mr. Mitchell had?

4 A. Yes.

5 Q. And in my PCR application I'm asserting that
6 possibly you could have had a -- requested a Council hearing
7 to see whether or not that is within the realm of what a gun
8 marks expert could testify to?

9 A. Yes. And I should have done that. And I know to
10 do that now, but I don't think anybody was -- that I know of
11 around the State was doing it back then, so.

12 And this didn't start off as a murder case. It
13 took quite a while for Mr. Mole to die from his injuries.
14 So, you know, we had -- you know, to change postures when he
15 died.

16 Q. But as far as the case law that's out there in
17 other jurisdictions where they're extremely limited, a gun
18 mark expert to say that that bullet came from that gun?

19 A. Well, they can't -- yes. They can't say that it's
20 an exact match to all other guns in the world. As I
21 understand the case law and the theory behind it is, is that
22 there's no empirical evidence where you've gone out and
23 tested a reasonable proportion of the guns in the world and
24 made a comparison, therefore you can say that it is
25 consistent.

1 These markings on this bullet is consistent with
2 being fired out of this gun. And, you know, then there's
3 different standards about how certain they can -- how much
4 they can go into certainty as far as whether or not it's
5 like a civil standard, more likely than not, this gun fired
6 it, or to a reasonable degree of certainty, I can
7 professionally say it was fired.

8 But, I think I've done that -- and I can't finger
9 it -- I've done that before and their attitude was like,
10 "Here are the photographs. You show me, sir, where they are
11 different." That is -- that is witness to the Defense
12 lawyer. Okay. So, be careful what you wish for sometimes.

13 Q. Fair enough. And let's go over some of this
14 hearsay testimony. You have a record on there or a
15 transcript?

16 A. Yes, sir.

17 Q. I'm looking at Page 148.

18 A. Getting there. Okay, I'm there.

19 Q. So starting, like, on the bottom of 148, Line 21,
20 and then it's repeated again on Page 149. First of all,
21 what was Sherweezy (phonetic) Stokes' role in this case?

22 A. Well, she was the neighbor who initially heard all
23 of this stuff going on and had called -- you know, hear
24 somebody saying, "Don't kill me. Don't shoot me." Okay.
25 And obviously -- these are neighbors. She recognized Eddie

1 Mole's voice.

2 "When I heard Eddie, what he said, he said 'don't
3 kill me, don't shoot me.' When I heard that, I jumped up and
4 went to my front porch and opened it."

5 When you are hearing the furniture moving -- she's
6 asked, "Where are you hearing the furniture moving from? It
7 sounded like it was moving from downstairs to upstairs or
8 upstairs from downstairs. Okay, just a lot of commotion, I
9 guess? Yes, a lot of commotion."

10 So, in her frame of mind, she was like, "Yeah,
11 this is some serious stuff going on next door." That's
12 when, I guess, she called her husband and, you know, I
13 think ---

14 Q. But you would admit that, that's hearsay
15 statement on ---

16 A. Unquestionably. I kind of thought it was like,
17 you know, last words, is what I was thinking.

18 Q. Okay.

19 A. You know, I mean, maybe I'm wrong. And I think
20 they take kind of a -- depending on the Judge you get, okay.

21 We had a case where, you know, they asked the --
22 they were precluded from asking an officer who was a Bishop
23 in a church, came out upon a murder scene, the man was still
24 alive, they're waiting on EMS, he asked him, "Who shot you?"
25 And he said, like, "Steve shot me." However, they had

1 Johnny on trial. And they wouldn't include that as a, you
2 know, last utterance, whatever you want to call it. I
3 forget the specific name for the exception.

4 Q. Dying ---

5 A. But anyway, you know other -- you know, usually
6 they kind of take an expansive look at that. So, I mean,
7 hey, the man's dead. What's the last thing anybody heard
8 him say was, "Don't kill me." I mean if that's not, you
9 know, a last utterance, I don't -- you know, I don't know
10 what is. Maybe I'm wrong, but that's the way I saw it.

11 Q. So, was it -- was it a trial strategy or just
12 a ---

13 A. Get them off the stand as -- I'm sorry. I thought
14 it was admissible, and get them off the stand as quick as
15 you can because how can you have something that -- anymore
16 damaging. And add that to his own statement, I mean, you
17 see where this trial is going.

18 And they wouldn't give me a plea. They
19 wouldn't -- you know, just give me something to take to the
20 guy, you know. And then, again, on the other hand, you
21 know, no young person is going to take 30 years in prison.
22 I mean, non-parolable, they just -- they can't grasp that's
23 in their best interest. But at least you should have an
24 opportunity, you know, it's more efficient.

25 And, you know, you get to prison, you don't want

1 to have life because then the person has no hope of getting
2 out and that does -- if you have hope of getting out, that
3 immediately rates your behavior, philosophically speaking,
4 as far as the philosophy of sentencing goes. And -- so, you
5 really don't want to do a life sentence, but that's not the
6 way they see it in the Fourteenth Circuit, so. And it was a
7 pretty awful situation.

8 Q. So, there was no deal on the table?

9 A. No. The guy died. The war was on. After the guy
10 died, the war was on, you know, so to speak, you know.

11 Q. What was the gap in time?

12 A. I think it was about a year. I've got my thing
13 here. I noted when he died. We opened the file on 11-20,
14 and I have down he died in May of 2000 -- no, I'm sorry,
15 11-20 of '15 -- 2015. I put down he died in May of 2016.
16 So, you know, he lingered quite a while.

17 Q. So, was he originally charged with ---

18 A. Attempted murder ---

19 Q. Attempted murder.

20 A. --- and burglary, first.

21 MR. FALK: Your Honor, I have no further
22 questions.

23 THE COURT: All right. Cross?

24 MS. MIMS: Yes, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. MIMS:

2 Q. Good morning, Mr. Plexico.

3 A. Good morning.

4 Q. How long have you been practicing law?

5 A. I started out in the Public Defender's Office in
6 '90, and I was sworn in, in '88. I can fairly say I don't
7 remember. I'm just joking.

8 Q. So, a large portion of your practice has been
9 criminal law?

10 A. Yes.

11 Q. Okay. And you ---

12 A. Enjoyably. Enjoyably.

13 Q. And you were appointed to represent Mr. Mitchell,
14 correct?

15 A. Yes, ma'am.

16 Q. Did you represent him throughout the entire
17 process?

18 A. Yes, ma'am.

19 Q. Okay. And could you give a ballpark of about how
20 many times y'all met?

21 A. Well, I just put that up. I don't write
22 everything down, but I've got down here -- I've got a 12-4
23 interview; 12-8 prelim, Defendant present; need to do a bond
24 hearing 2-24-16; don't do a motion to compel.

25 All right. Did bond. Judge Griffin denied the

1 bond 3-14-16. All of that would be more opportunities to
2 talk to him. I finally did do on 4-13-16, a motion to
3 compel; 5-10 I withdrew it based on compliance via email.

4 I delivered -- 5-10 I delivered a copy to the
5 Defendant at the county jail and he signed for it. "I
6 received a copy of my motion of discovery, Maurice Mitchell,
7 5-10-16." All right, 5-10-16 we had discussions also on
8 whether or not to file a speedy trial, which I told him
9 don't do that, because they'll give it to you, and you're
10 looking at life on burglary first, anyway. So, you know,
11 the murder is extra, you know. And, you know, look at the
12 statement.

13 And then we -- like, 6-4-16. I put something down
14 for 5-19. He sent a letter on 4-28. On 5-19 I discussed
15 the letter with him, apparently. Served the motion for a
16 speedy trial, okay, on Jessica Cook, 6-10-16. Obviously,
17 he -- I don't remember, but obviously he insisted.

18 Went back on 8-13, I think I gave him copies of
19 the indictments. I gave him copies of burglary first to
20 murder -- I assume that's indictments. He wants a trial,
21 does not want to testify, 10-13-16. Had an interview
22 10-31-16. We apparently did a pretrial with Judge Goldsmith
23 setting a trial date. Twelve something I did a letter. And
24 it looks like we had a trial verdict of guilty on 12-19-17.

25 Q. So, it was a number of times?

1 A. Yes. And I've got other stuff in here where I
2 went from -- I just read the front. I've got Page 2.
3 That's Page 3. Okay. So, it was plenty of times that I
4 talked with him.

5 Q. Clearly a number of times. Did y'all discuss
6 discovery?

7 A. Yeah. I mean, we didn't have anything good to
8 discuss. I mean, I hate to say it. I'm just being honest.
9 You know, I'm not -- I don't tell people what they want to
10 hear, and sometimes they hate me for that, but that's just
11 life, you know.

12 Q. What was the State's evidence against
13 Mr. Mitchell? You can testify a little bit about his
14 statement.

15 A. Well, you had his statement. You had -- you know,
16 you had testimony and evidence of what they heard and saw.
17 You had pictures. The scene was gruesome.

18 I remember Thanksgiving I was -- I was -- we had
19 the trial, I think, right after that. So, Thanksgiving
20 afternoon when everybody was already eaten and all I snuck
21 away and reviewed my file. Any way, I thought -- I thought
22 they had tracked leaves into the apartment -- Mr. Mole's
23 apartment.

24 And so then I zoomed in on it, and I realized that
25 when you're beaten so badly, apparently your bone flakes off

1 and it looks leaflike. And that's what I was looking at.
2 It was a gruesome scene. And, you know, they just didn't
3 want to -- they didn't want to do anything for the guy.

4 But, I mean, they had the evidence. And the way
5 they are is, you know, when they've got your guy, they've
6 got your guy.

7 Q. So, regarding that evidence that you had from the
8 State, what was your trial strategy going in?

9 A. Oh, I mean, I was just hoping -- I mean, I hate to
10 say it, but I was just hoping it was a hail Mary or, you
11 know, they'll fumble the football.

12 I mean, you know, they had the pieces to the
13 puzzle if they could get it out and put it together. So,
14 you know -- and it's a hard case to find jury sympathy for.

15 Q. Okay. Let's go into Applicant's specific
16 allegations. So, failure to object her -- (inaudible)
17 Stokes -- both of those on Page 148 and Page 149. You
18 didn't object to that testimony, correct?

19 A. Yes. And I've already stated why.

20 Q. Because you didn't see any ---

21 A. I kind of thought it came under a dying
22 declaration. I mean -- I mean, I'm not being funny. I
23 mean -- I mean, that's pretty much some of the last stuff
24 the poor guy said, you know.

25 Q. And would that apply to her husband's statement as

1 well?

2 A. Yes.

3 Q. We can go forward to Applicant's second allegation
4 for failure to request a Council hearing. I think you
5 testified a little bit earlier that at the time of the
6 hearing you -- it was your understanding that this method of
7 testing is reliable?

8 A. That's -- that's -- but I'll question it from now
9 on. And I want to thank the Applicant's Counselor for
10 pointing this out.

11 Q. Yeah, but at the time you ---

12 A. At the time I had no clue.

13 Q. At the time you felt she was qualified, correct?

14 A. Yes.

15 Q. In the case of the -- you know, you discussed with
16 Mr. Falk, those are Federal matters not in South Carolina,
17 correct?

18 A. Correct.

19 Q. Okay. And has there been, or was there at the
20 time, any directive or any case law that would have pointed
21 you to question this type of ---

22 A. Well, there was nationally, but I was not aware of
23 it. But, I'm unaware of anything on the State level.

24 Q. Okay. So, would it have been reasonable for you,
25 at that time, to request a Council hearing if you hadn't ---

1 A. Well, I didn't have a reason to.

2 Q. And, lastly, the failure to object to the Court's
3 ruling on not allowing accident, involuntary manslaughter,
4 and voluntary manslaughter. You requested those jury
5 charges, correct?

6 A. Right. I was looking for an opportunity, maybe
7 there's one juror out there that felt sorry for the guy and
8 would do something for us. However, I certainly can't say
9 the Judge was wrong on the law in his analysis.

10 But I should have -- if you're going to make the
11 motion, go ahead, and if you don't get it, go ahead and
12 renew it. I should have done that.

13 Q. Do you think that was prejudicial to your
14 client ---

15 A. I think that ---

16 Q. --- in regards to the (inaudible) already
17 presented at trial?

18 A. It limited what I could argue to the jury, and in
19 that sense it would have been. However, I believe -- I
20 mean, I can't say the Judge was wrong on the law in his
21 analysis, okay.

22 I mean, when you're in that desperate of a
23 situation, you're going to pull out all the stops. I mean,
24 we were in a pretty desperate situation as far as the trial
25 goes. You know, they had all the cards.

1 MS. MIMS: I beg the Court's indulgence.

2 MR. PLEXICO: It wouldn't have made a difference,
3 if that's what you're asking.

4 MS. MIMS: Okay. No further questions, Your
5 Honor.

6 THE COURT: All right. Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. FALK:

9 Q. You would agree that your closing argument, you
10 were focusing on intent and malice, right?

11 A. Yes, sir. If -- yeah, I've already said I should
12 have renewed my request to my jury charge request.

13 Q. Yes, sir. I know some of the facts in this case.
14 Just for the benefit of the Court, there was some
15 testimony -- or there could have been some testimony about
16 the gun going off accidentally?

17 A. Yes, sir.

18 Q. And maybe a scuffle between the two?

19 A. Yes. And you had the homosexual thing, too, going
20 on.

21 Q. Yes.

22 A. So, you know -- I mean, that may have turned off
23 some jurors. And, you know, it could have been some
24 compromised verdict or something, but not on these facts.
25 But, I mean, you can always wish, and you can always hope.

1 Q. But you asked for the instructions because you
2 thought there was evidence to support the instructions?

3 A. I thought -- yes. Looking at it may way.

4 Q. Right.

5 A. Which is only the Defense way. Okay. So, you
6 know, we always have hope.

7 MR. FALK: No further questions.

8 THE COURT: All right. Anything else? Any other
9 cross?

10 MS. MIMS: No, Your Honor.

11 THE COURT: All right. You may step down. Thank,
12 you, sir.

13 MR. PLEXICO: Thank you, Judge.

14 THE COURT: Are there any other witnesses from the
15 Applicant?

16 MR. FALK: No, Your Honor.

17 THE COURT: All right. Anything from the State?

18 MS. MIMS: No, Your Honor.

19 THE COURT: All right. I'll just hear from you if
20 you want to give me any kind of closing.

21 CLOSINGS

22 MR. FALK: Your Honor, I think, sort of, in the
23 order of, I think, importance here, my arguments are the
24 failure to preserve -- the failure to object to the Judge's
25 charge, therefore Mr. Plexico's argument for something less

1 than murder was not preserved for review.

2 And there were facts in this case that could
3 possibly have supported an involuntary or, possibly even, an
4 accident verdict. And that it's nothing that the Appellant
5 Court had any opportunity to look at since the issue was not
6 preserved for appeal. I think that's my strongest one.

7 The next one is, I think this gun marks evidence,
8 it's stronger cases. The Massachusetts Federal cases have
9 way predate this case, where they have challenged the
10 admissibility of this type of testimony. And, you know,
11 they might not have done it in South Carolina, but
12 somebody's got to do it one time.

13 THE COURT: I mean, and you do concede there's
14 nothing in South Carolina on it at this time, do you?

15 MR. FALK: No -- well, other than Council, and
16 that, you know, if you're going to have scientific evidence,
17 it's got to be support for the scientific evidence. You
18 know, it's got to meet that crucible there.

19 And the fact that we never had an opportunity --
20 I'll admit there's no gun mark case. I won't admit that
21 expert testimony can't be subjected to a Council hearing no
22 matter what it is.

23 THE COURT: All right.

24 MR. FALK: And then, you know, certainly the
25 statements made by the witness were damaging. Whether or

1 not they were dying declaration or not, we contend that
2 Counsel should have objected to the first one, and possibly,
3 then, the other four that followed that would not have come
4 in.

5 THE COURT: All right. Yes, ma'am.

6 MS. MIMS: To be entitled to post conviction
7 relief, Applicant must show that Counsel was deficient
8 according to professional norms, and that he was prejudiced
9 by these deficiencies to such in extent that there is a
10 reasonable probability he would have not been convicted but
11 for Counsel's errors or admissions.

12 And here, Your Honor, I will argue he has not met
13 his requisite burden of proof as to any of these
14 allegations. Leaving an issue unpreserved does not
15 automatically constitute ineffective assistance of Counsel.

16 And that's Milledge v. State 422 S.C. 366, which
17 states that an Applicant must prove deficiency and prejudice
18 to establish ineffective assistance of Counsel for failing
19 to preserve an issue. And when you look at prejudice, you
20 have to see if there was evidence and a requisite to support
21 the trial Court's finding. If so, an Appellate Court would
22 necessarily have affirmed the trial Court's ruling.

23 And if you look into the colloquy after
24 Mr. Plexico's request, I believe that there was evidence in
25 the -- in that colloquy where the trial Court could have

1 reasonably not put forth accident, involuntary manslaughter,
2 and voluntary manslaughter. As Mr. Plexico stated, it was
3 kind of a hail Mary sort or argument.

4 Additionally, an ineffective assistance of Counsel
5 claim based on failure to object which is Applicant's -- one
6 of Applicant's allegations regarding the hearsay evidence.
7 If the evidence is admitted without objection, it was
8 admissible. Then the complain (sic) of action fails both
9 prongs of the Strickland test.

10 And I think, if you listen to Mr. Plexico's
11 testimony, he didn't find that those issues were
12 objectionable at that time and it would not have been
13 reasonable for him to object to those issues.

14 And looking at prejudice, there was other
15 evidence, including Applicant's own statement, that kind of
16 corroborated some of that testimony.

17 And lastly, Your Honor, regarding Counsel's
18 failure to request a Council hearing, as -- as Applicant --
19 excuse me, as it has Applicant's -- from a trial Counsel,
20 there is no South Carolina State Law or any directive that
21 would lead Mr. Plexico to know to question anything about
22 the reliability of the gun and the bullet and
23 identification.

24 THE COURT: You would agree, though, State -- the
25 Council is the law and has been the law for a long time.

1 It's sort of our Daubert standard. Although we won't say we
2 have adopted Daubert, in essence we've seem to have adopted
3 most of Daubert?

4 MS. MIMS: Yes.

5 THE COURT: You still are under State v. Council,
6 no matter what, whether it's a specific case on gun markings
7 or not. You agree with that?

8 MS. MIMS: Yes, Your Honor. But I -- and the
9 Council has four different, I guess you can say, steps or
10 requirements, two of those being, you know, whether or not
11 the State's expert was qualified as well as the reliability
12 of the evidence.

13 And as I asked Mr. -- Mr. Plexico, he felt that
14 the witness was qualified to do that. As well as he felt
15 that, at that time he didn't know anything else about that
16 evidence being unreliable. So I think it would have been
17 unreasonable for him to ask for a Council hearing if he
18 couldn't meet those two standards in the test.

19 And for those reasons, Your Honor, I ask that this
20 Court deny the application of Mr. Mitchell.

21 THE COURT: And you also do concede, though, that
22 Mr. Plexico didn't renew his exception to the charge of
23 manslaughter, voluntary -- involuntary manslaughter,
24 voluntary manslaughter, accident. He raised it, asked
25 Judge Young to charge it. He did not charge it. And then

1 after it was charged, he didn't renew that.

2 MS. MIMS: Yes.

3 THE COURT: You concede that, correct?

4 MS. MIMS: Yes, Your Honor, I concede that he did
5 that.

6 THE COURT: And would that have been necessary for
7 appellate purposes?

8 MS. MIMS: That would have been -- that would have
9 been necessary for appellate purposes. But, leaving an
10 issue unpreserved does not automatically constitute
11 ineffective assistance of Counsel.

12 And like I stated a little bit earlier, I think
13 that there was other evidence -- or other things in the
14 record that would allow -- that the Appellate Court would
15 have been able to review to see -- to review the trial
16 Court's ruling to see how they got to that.

17 THE COURT: All right. Yes, sir.

18 MR. FALK: This is sort of a rebuttal. You know a
19 lot of these cases turn out whether or not there's other
20 evidence of guilt. But we have to remember in this case,
21 it's whether or not there was other evidence to support a
22 murder conviction as opposed to, you know, an involuntary
23 conviction or something less.

24 I mean, granted there's probably plenty of
25 evidence, and he has his own statement that he caused this

1 person's death with the shot, you know. But it's just
2 whether or not there's sufficient evidence of malice
3 aforethought -- malice aforethought.

4 THE COURT: All right. And let me ask you this,
5 too, on the hearsay. I looked at the hearsay. It's,
6 "Don't -- don't kill me, don't shoot me." I mean, is
7 that -- is it -- is it hearsay?

8 I mean was it -- when I read that, in looking at
9 it, I mean, he didn't say, "Don't shoot me, Maurice," or
10 "Don't do this," or "Why" -- you know something along those
11 lines. She testified -- and he did too -- basically, "Don't
12 shoot me. Don't kill me." And as a result of hearing that,
13 she then took some action.

14 Is it arguable that it's not really hearsay,
15 anyway? It's not offered to prove the truth in the matter
16 asserted. Would you agree with that?

17 MR. FALK: I thought she -- I thought they
18 mentioned the name in there at least once. But, as I've
19 said, Your Honor, I'm not arguing. I'm not putting a lot
20 faith on ---

21 THE COURT: I understand. I've got your
22 arguments. All right. Anything else?

23 MS. MIMS: No, Your Honor.

24 THE COURT: All right. Thank you both. I'll take
25 it under advisement and I'll let you know my decision.

1 MR. PLEXICO: May I be excused, Your Honor?

2 MS. MIMS: Oh, I'm sorry.

3 THE COURT: Yes, sir. You may be excused.

4 (WHEREUPON, end of requested transcript.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF TRANSCRIBER

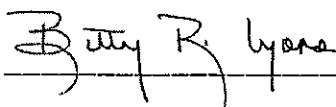
2 Case Name/Numbers: Maurice Demon Mitchell vs.
3 State of South Carolina
2019-CP-25-00311

4 Date of Hearing: November 18th, 2022

5 Court Reporter/Monitor: Johnny Shaw

6
7 I, Betty R. Lyons, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were transcribed
10 to the best of my ability from the audio recording and
11 supporting information; and that I am neither Counsel for,
12 related to, nor employed by any of the parties to this case,
13 and I have no interest, financial or otherwise, in its
14 outcome.

15
16
17 June 10th, 2023

18
19
20 

21 Betty R. Lyons
22 Official Court Reporter
23 State of South Carolina
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

FILED

—) AM/PM

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Maurice Demon Mitchell, #331615

JAN) 2 2024

Applicant,

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

Case No.: 2019-CP-25-311

v.

ORDER OF DISMISSAL

State of South Carolina

Respondent,

This matter is before the Court by way of an application for post-conviction (PCR) filed by Maurice Mitchell (Applicant) on August 12, 2019. Respondent filed a return requesting an evidentiary hearing. An evidentiary hearing convened before the Honorable G. D. Morgan Jr. Applicant was present and represented by James K. Faulk, Esquire. Assistant Attorney General Lauren Mims represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Stephen Plexico. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In June 2016, the Hampton County Grand Jury indicted Applicant for murder (2016-GS-25-00229), burglary first degree (2015-GS-25-375), possession of a firearm during the commission of a violent crime (2015-GS-25-373), and possession of cocaine base (2015-GS-25-369). On November 27-29, 2017, Applicant proceeded to a jury trial before the Honorable Roger Young. Public Defender Stephen Plexico represented Applicant, and Solicitor Isaac McDuffie

Stone and Deputy Solicitor Sean Thornton prosecuted the case. The jury convicted Applicant as indicted, and Judge Young sentenced him concurrently to life for murder and first-degree burglary, five years for the weapon charge, and three years for possession of cocaine base.

Applicant filed direct appeal. Appellate Defender Katherine Hudgins perfected the appeal by filing an Anders¹ brief arguing, “The trial judge erred in refusing to suppress identification testimony and evidence when the identification procedure was unnecessarily suggestive rendering the identification unreliable.” The Court of Appeals dismissed pursuant to Anders. State v. Mitchell, No. 2019-UP-228 (filed June 26, 2019). The remittitur was sent July 12, 2019.

SUMMARY OF PERTINENT TRIAL TESTIMONY

At trial, Shellevesse Stokes, Applicant’s neighbor, testified she heard Eddie Mole (Victim) say, “Don’t kill me, Don’t shoot me,” (Tr. 148). Mrs. Stokes then testified that she heard a gunshot, opened her front door, saw Applicant standing in the doorway with a bloody gun, and Victim’s feet laying down. (Tr. 149-50). Mrs. Stokes called her husband Rodney Stokes. (Tr. 150). Mrs. Stokes later identified Applicant in a photographic lineup. (Tr. 154).

Rodney Stokes testified he saw Applicant hitting Victim as he was returning to the apartment complex. Stokes exited his vehicle and walked to his apartment, which was directly adjacent to where the murder occurred. (Tr. 163). Stokes testified he heard Victim say, “why are you doing this” and “please don’t kill me.” (Tr. 163). He stated he saw Applicant standing over Victim in the doorway with a pistol in his hand. (Tr. 161). The Stokes called 911, and Mr. Stokes later identified Applicant from a photographic lineup. (Tr. 162-63).

Sergeant Richard Long testified that as soon as the police arrived on the scene, Applicant fled out the front door. (Tr. 173). Sergeant Long pursued Applicant until he cleared the apartment

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

complex fence behind the building, then allowed others to continue the pursuit. (Tr. 173). Sergeant Long returned to the scene. (Tr. 173). He testified that he was unable to recognize Victim, whom he had known his entire life, due to the severity of the beating. (Tr. 173). Sergeant Long testified he administered the photographic lineups to Mr. and Mrs. Stokes separately. (Tr. 174).

Sergeant Nick Ginn stated he continued pursuing Applicant and arrested him because he fit the description provided by the Stokes—a “black male with a white shirt and blue jeans or blue jean shorts.” (Tr. 180). Officer David Deloach testified that once he and Sergeant Ginn handcuffed Applicant, he read Applicant his Miranda rights and found a substance that was later determined to be crack cocaine. (Tr. 198). Sergeant Ginn observed blood on Applicant’s shirt. (Tr. 180). Applicant then told Sergeant Ginn at the scene that he had dropped the gun in the wood line from which he just emerged. Sergeant Ginn later interviewed Applicant and took his statement after reading him his Miranda rights. (Tr. 180). Applicant provided the following statement:

Nadine Dunbar Robinson dropped off my two sons a little bit after 3-something to four. We was outside, me and my two sons, and then [Victim] was on his way to his apartment, so I told the boys to go into the house and I went to talk to [Victim]. I asked him did he insert my bottom-back area and he said she didn’t do anything to me. Then, I asked him was he being honest with me? And he said he didn’t do so. I pulled out my weapon P94 Ruger Auto and he started going into the house, so I tried to force my way into the apartment. As I was pushing the door on one another, as my foot [. . .] bend in his doorway, so he couldn’t close it, then I finally did get into the house with him still on his apartment door, he slide and hit my elbow and the gun went off. Not knowing if I strike him or not as he hit the floor. I started hitting him with the armored weapon and then Hampton County rode up to his apartment and I took out and started running behind the apartment buildings, ran in the woods, jumped a fence and ran into some more wooded area. After I fell, I throw the gun into the woods with my right hand and then I ended up on the main highway. Hampton County officers caught me as I was entering out the woods.

(Tr. 193-94).

Tiffany Edwards, an investigator with South Carolina Law Enforcement Division, responded to the scene and documented various items, including Victim's blood, teeth, and soft palate; and Applicant's fingerprints on the grip of the gun. (Tr.205, 219-21). Haley Nelson, an expert in blood stain pattern analysis, reviewed castoff patterns and opined Victim sustained a minimum of four strikes. (Tr. 273-274). Tyler Sturkie, an expert in trace evidence, testified he identified one particle of gunshot residue on Applicant's right hand and one round particle consistent with gunshot residue on his left hand. (Tr. 287-288). Michelle Eichenmiller, an expert in firearms identification, testified concluded a bullet found in the wall at the crime scene was fired from State's Exhibit 9—the weapon retrieved from the wood line where Applicant emerged after fleeing the scene. (Tr. 294). This bullet also matched those found in the cartridge pulled from Applicant's pocket at arrest. (Tr. 294).

CURRENT APPLICATION

On August 12, 2019, Applicant timely filed this PCR application alleging:

- I. Ineffective Assistance of Counsel
 - a. Failure to “move on the defense of mistaken identity.”
 - b. Failure to “challenge the state to a meaningful adversarial testing meaning the state did not meet its burden beyond reasonable doubt, they were relieved of their burden with help from counsel.”
 - c. Failure to “petition the rights to a fair trial and equal protection of the law violating petitioner's 14th amendment under the United States Constitution and state constitution.”
 - d. Failure to object to hearsay statements attributed to the victim. (R. 148-49, 163).
 - e. Failure to “raise any Constitutional violations.”
 - f. Failure to raise a “request for jury instruction.”
 - g. Failure to “challenge the sufficiency of indictments.”
- II. Appellate Ineffective Assistance of Counsel: failure to raise an abuse of discretion claim.

At the hearing, counsel proceeded only on the following allegations of ineffective assistance of counsel:

1. Failed to object to hearsay statements attributed to the victim. (R. 148-149, 163).
2. Failed to seek a hearing pursuant to State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) to challenge the reliability of SLED agent Eichenmiller's expert testimony in the field of firearm identification. Trial counsel failed to question reliability on whether Eichenmiller could submit an opinion to the jury that Exhibit 36 (bullet recovered from victim's apartment wall) was fired from Exhibit 9 (gun found in the woods following apprehension of Applicant).
3. Failed to preserve an objection to court's decision not to charge the jury on accident, involuntary manslaughter, and voluntary manslaughter.

(PCR 9-10).

TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the PCR hearing, Applicant testified he met with counsel three or four times prior to trial. (PCR 6). Applicant testified counsel did not explain strategy regarding the hearsay statements admitted against him, the bullet forensic evidence, or the jury charge. (PCR 6-7). Applicant stated he did not recall if trial counsel ever told him how he planned to defend him at trial, but counsel answered all of his questions at trial. (PCR 11).

Trial counsel testified he had met with Applicant more than three or four times as reflected in his personal records. (PCR 22-23). Regarding hearsay by the Stokes, trial counsel testified he did not object because he believed the statements fell under the dying declaration exception recognized under Rule 804, SCRE. (PCR 20). Trial counsel also testified he did not object as part of his strategy to get the harmful witnesses off the stand as quickly as possible. (PCR 20).

Trial counsel testified that at the time of the trial he believed that the method of testing used by Agent Eichenmiller was reliable. (PCR 26). Furthermore, trial counsel testified he was not

aware of any case law in South Carolina on point at the time of trial and did not have information that would have caused him to question Agent Eichenmiller's method of testing. (PCR 26).

Trial counsel admitted that he failed to preserve the request to charge accident, voluntary manslaughter, and involuntary manslaughter. (PCR 27). He averred the State's evidence against Applicant was so overwhelming that failing to include alternative charges did not prejudice Applicant and would not have changed the outcome of the trial. (PCR 27).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Hampton County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Correction, the trial transcript, Applicant's appellate records, and the records from this PCR action. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh the testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry 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 (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it]

cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, an applicant must prove counsel’s performance was deficient. Strickland, 466 U.S. at 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance under its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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 to Hearsay

This Court finds Applicant failed to prove counsel was ineffective for not objecting to hearsay statements by the Stokes. The dying declaration hearsay exception applies when a declarant is unavailable to testify at trial for a multitude of reasons, including death. Rule 804(a)(4), SCRE. State v. McHoney, 344 S.C. 85, 92, 544 S.E.2d 30, 33 (2001). A statement will not be excluded by the hearsay rule, specifically in homicide cases, if the declarant makes a statement

while believing their death was imminent about the cause of what they believe to be their impending death. SCRE 804(b)(2). Id.

Here, the declarant was Victim, now deceased. Victim made the following statements: “Don’t kill me, don’t shoot me,” “why are you doing this,” and “please don’t kill me.” (Tr. 148); (Tr. 163). Initially, this Court finds these statements were not hearsay because they were not offered for the truth of the matter asserted. Further, according to the Stokes, Victim made these statements while Applicant was forcing his way into Victim’s home with his gun and threatening Victim. Thus, it is likely that Victim believed he was about to die at the hands of Applicant when he said the words, “don’t kill me don’t shoot me,” as overheard by Mrs. Stokes, and “why are you doing this, please don’t kill me,” as overheard by Mr. Stokes. This Court agrees with counsel’s assessment that the statements fit the dying declaration hearsay exception. See Rule 804(a)(4). Thus, counsel articulated a valid reason for not objecting and Applicant failed to prove deficiency.

Further, this Court finds credible counsel’s testimony that he did not object as part of his strategy to get the harmful witnesses off the stand as quickly as possible. Due to the unlikelihood that the statements would have been excluded by hearsay, this strategy was reasonable within prevailing professional norms, and counsel was not deficient.

Finally, Applicant failed to prove prejudice because it is not reasonably likely the statement would have been excluded based on hearsay. Further, due to the overwhelming evidence of guilt—including two eyewitnesses that identified Applicant, the fact law enforcement arrested Applicant while he was fleeing the scene, and the fact police recovered cartridges on Applicant that were consistent with a cartridge at the scene, and Applicant’s statement admitting he forced his way into Victim’s home with a gun—it is not reasonably likely the outcome would be different had these

statement been successfully excluded. Thus, Applicant did not prove prejudice, and this claim is denied.

Failed to Seek a State v. Council Hearing

This Court finds Applicant did not prove counsel was ineffective for failing to request a pre-trial hearing on Eichenmiller's expert testimony. "[T]he proper analysis for determining admissibility of scientific evidence is now under the SCORE." State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "When admitting scientific evidence under Rule 702, SCORE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." Id. To determine reliability, the trial judge should apply the Jones factors. Id. "[U]nder the Jones standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." Id. at 1, 515 S.E.2d at 517.

Initially, Applicant did not prove prejudice. Critically, there was no issue at trial as to whether subject gun was the gun used in the shooting. Thus, even if the expert witness should not have been allowed to testify the gun was an exact match, this testimony was not prejudicial. Further, even if counsel had challenged the reliability of this testimony under Jones—the proper standard in South Carolina—Applicant did not set forth sufficient argument or caselaw to show it is reasonably likely this testimony, upon further challenge, would have been excluded as unreliable. Finally, based on the overwhelming evidence against Applicant, it is not reasonably likely the outcome would have been different had counsel successfully excluded this testimony. Specifically, two eyewitnesses identified Applicant, law enforcement arrested Applicant while he

was fleeing the scene, and Applicant admitted he forced his way into Victim's home with a gun. Based on the foregoing, it is not reasonably likely the outcome would have been different had counsel objected to Eichenmiller's expert testimony, and this claim is denied.

Further, this Court finds Applicant did not prove deficiency. The expert testimony here related to identifying firearm markings on cartridge casings is common testimony in South Carolina by experts in this field; thus, counsel's failure to challenge the reliability of this testimony did not fall outside of prevailing professional norms. Likewise, Applicant did not show a reasonable likelihood this testimony would have been excluded under Jones. Although Applicant loosely cited to "Massachusetts Federal cases" that have challenged the admissibility of this type of testimony, he did not set forth with specificity *what* cases he was relying on, and he acknowledged no South Carolina case had questioned the reliability of gun mark evidence.² To the extent Applicant contends counsel was deficient for not challenging the existing standard, attorneys are not required to anticipate changes to the law to be constitutionally effective. Cf. Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) ("Fundamentally, a collateral review proceeding is ill-suited for announcing a new rule of substantive law pertaining to an underlying trial; appellate courts are to do so only in the rarest of circumstances. This is especially true in a retrospective PCR analysis under Strickland, which seeks to determine whether counsel was ineffective at the time of the alleged error. . . . [W]e do not require attorneys to be clairvoyant in anticipating changes to the law"). Finally, even if federal courts have questioned the reliability of this type of evidence, the standard under Jones and Council does not require universal acceptance. Thus, even if a federal court has questioned this type of evidence, that does not mean a South Carolina Court—applying a different standard than the federal Daubert

² Notably, federal courts apply the Daubert standard, which was rejected by our Supreme Court in Council.

standard—would find this type of evidence unreliable. Because Applicant did not show counsel’s failure to challenge this type of expert testimony was outside of prevailing professional norms, he did not prove deficiency, and this claim is denied.

Improper Jury Charge

This Court finds Applicant failed to show counsel was ineffective for failing to preserve his request for jury charges on accident, voluntary manslaughter, and involuntary manslaughter. The law requires that the facts support a jury instruction for it to be proper. See State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). Furthermore, for a defendant to be entitled to a jury instruction for a lesser offense, there must be some evidence in the record to show that the defendant is guilty of the lesser rather than the greater offense. See State v. Funchess 267 S.C. 427, 229 S.E.2d 331 (1976).

Initially, this Court finds counsel properly preserved this issue for appellate review. See State v. Johnson, 432 S.C. 652, 657, 855 S.E.2d 305, 307 (Ct. App. 2021) (stating “[w]hen a party requests a jury charge, and after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court’s instructions”). Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.³

³ This Court further finds no evidence supported a charge for accident, voluntary manslaughter, or involuntary manslaughter. At trial, the Stokes testified they observed Applicant breaking into Victim’s home gun-first, threatening, beating, and shooting Victim. (Tr. 148-50, 163). In his statement, Applicant admitted he was beating Applicant, forcing his way into Victim’s apartment, and threatening Victim with a gun. Thus, the uncontradicted evidence showed Applicant was acting unlawfully and not exercising care in the handling of the gun, and no evidence was introduced that could support an accident, involuntary manslaughter, or voluntary manslaughter charge. See State v. Smith, 391 S.C. 408, 415, 706 S.E.2d 12, 15 (2011) (providing that for a defendant to be entitled to an accident charge, “it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon”); id. at 414 (providing that for a defendant to be entitled to a charge of involuntary manslaughter, there must be evidence of a “reckless disregard for safety of others” while engaged in lawful activity and a lack of intent to kill); id. at 413 (providing that for a defendant to be entitled to a charge of voluntary manslaughter, “there must be evidence of both sufficient legal provocation and heat of passion at the time of the killing”).

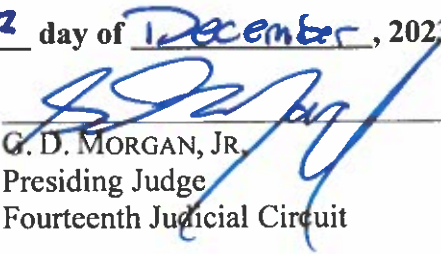
CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This, this application is denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgement. See Rule 203, SCAC. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If applicant wishes to seek appellate review, PCR counsel must serve and file a notice appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 12 day of December, 2023



G. D. MORGAN, JR.
Presiding Judge
Fourteenth Judicial Circuit

_____, South Carolina.