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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Perry H. Gravely, Circuit Court Judge

JACORY FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000875

APPENDIX

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2019-GS-42-2445
) 2018-GS-42-2228;2229
Jacory Sharod Foster,)
) October 21 - 24, 2019
Defendant.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Circuit Court Reporter

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(Proceedings October 21, 2019)

(The following takes place outside the presence of the jury.)

THE COURT: All right. Are we ready to begin the trial in the case of the State vs. Jacory Sharod Foster?

MR. BULSA: Yes, sir. I would like to put something on the record.

THE COURT: Okay.

MR. BULSA: The state intends to introduce part of the interview of Mr. Foster.

I provided the defense with a copy of the redacted portion of the lengthy interview from the police department. I just need to verify that there's no challenge to that, there's no Jackson vs. Denno hearing necessary.

MR. DELANEY: That's correct, Judge.

THE COURT: Any statement provided was voluntarily made?

MR. DELANEY: Yes, sir.

THE COURT: No threats, no coercion, no promises?

MR. DELANEY: That's correct.

THE COURT: Didn't deprive him of any necessities?

MR. DELANEY: No, sir.

THE COURT: He freely and voluntarily provided any information they claim he provided?

MR. DELANEY: Yes, sir.
THE COURT: And you discussed that with him --
MR. DELANEY: Yes, sir.
THE COURT: -- at length?
Mr. Foster, you heard your lawyer's representation to me. Is that accurate?
THE DEFENDANT: Yes, sir.
THE COURT: Okay. Any other matters we need to address before the jury panel is brought around?
MR. DELANEY: Your Honor, we're asking that all witnesses called by the state be sequestered outside the courtroom.
THE COURT: Mr. Bulsa.
MR. BULSA: We understand that and we'll do that as -- are you going to have any witnesses?
MR. DELANEY: I don't know the answer to that yet.
MR. BULSA: Just like reciprocity if they're calling witnesses.
THE COURT: Yeah. If y'all agree, then there definitely will be reciprocity.
All right. Everybody's in agreement all witnesses will be sequestered?
MR. DELANEY: Yes, sir.
THE COURT: Except for?
MR. BULSA: Investigator Taylor.

THE COURT: Okay.

MR. BULSA: At the appropriate time I'll need to meet with everybody and let them know what that means.

THE COURT: All right. If nothing further, we'll bring the jury panel around.

MR. BULSA: I believe Your Honor has our requested voir dire.

MR. DELANEY: As well as the defense's, Judge.

THE COURT: I do.

[redacted] Fisher Avenue is where?

MR. BULSA: It's in Spartanburg, City of Spartanburg, Pineview community. Right. Pineview community.

THE COURT: Where is that?

THE OFFICER: In the west side of the city, on the west side.

MR. BULSA: The west side.

THE COURT: Is that like near Camelot?

THE OFFICER: Not that far down, Your Honor.

THE COURT: Okay.

THE OFFICER: Near Textile Road out by the Methodist College.

(D.V.D. marked Court's Exhibit No. 1.)

(The following takes place in the presence of the jury venire.)

THE COURT: Good afternoon, ladies and gentlemen of

the jury panel.

We are ready to begin with jury selection in the first case that's going to require some of your participation. The title of the case is the State vs. Jacory Sharod Foster.

Mr. Foster is accused by the prosecutor of having committed five separate and distinct criminal offenses, although they are alleged to have arisen out of one particular event or a course of events which the state alleges occurred back on November the 27th of 2017.

Any time a person is accused of a crime where the jurisdiction lies in this court they have to be brought here by way of a legal document called an indictment. An indictment is just like an arrest warrant. It sets forth the charge that has been brought against the person accused of a crime.

In this particular case there are three indictments, legal documents, which charge Mr. Foster with having committed five separate and distinct criminal offenses as I've just described it.

One of the indictments charges Mr. Foster with having committed the crimes of murder and possession of a firearm during the commission of that crime, the state alleging by way of that indictment that the defendant, Jacory Sharod Foster, did here in Spartanburg County on or about November

the 27th of 2017 wilfully and with malice aforethought kill one Kiyounnie Duran Jackson by shooting him and that Mr. Jackson died as a proximate result of that gunshot wound.

Count two of that indictment charges Mr. Foster with possessing a weapon during the commission of the crime of murder. That's a separate and distinct offense from the crime of murder itself set forth in count one.

A second indictment charges Mr. Foster with having committed the offenses of armed robbery and possession of a firearm during the commission of that crime, the state alleging that on or about November the 27th of 2017 Mr. Foster did while armed with a deadly weapon take, steal and carry away from the person or the presence of Kiyounnie Duran Jackson by the use of force or intimidation, took monies or other property belonging to Mr. Jackson. That property is being described in the indictment as currency and/or a handgun. And they allege that he intended to take the property permanently. That is he intended to steal it.

Count two of the indictment alleges that he did possess a firearm during the commission of the violent crime of armed robbery.

And the remaining indictment charges Mr. Foster with having committed the crime of using a person under the age of 18 to commit a violent crime. The state alleges in this indictment that Mr. Foster did on November the 27th of 2017

knowingly and intentionally use, solicit, direct, hire, persuade, induce, entice, coerce or employ a person named Regina Foster, a person who is under the age of 18 years, to commit a violent crime, that violent crime alleged to have been armed robbery, and that Mr. Foster was over the age of 18 years at the time that that offense occurred.

Now, as to all of those allegations and as to each of the charges contained in each of the separate indictments Mr. Foster has entered a plea of not guilty.

A plea of not guilty places upon the state because they made the accusation the burden of proving the allegations that they have made by way of the indictments, the burden of proving each of the essential elements of the crimes that they have alleged against the defendant; and therefore the burden is upon the state to establish the defendant's guilt to the satisfaction of 12 jurors beyond a reasonable doubt before any verdict of guilty could be returned as to any of the separate charges.

And so we're going to be selecting -- there'll be 13 of you, 12 primary jurors and one additional juror to serve as an alternate.

The function of the jury is to consider all of the evidence introduced during the trial. At the end of the trial when you go back to deliberate you'll consider all of that evidence, you will determine the facts that relate to

the allegations where you can, upon determining the facts you'll apply the law that I will have provided, and the jury will determine whether or not the defendant has been proven guilty beyond a reasonable doubt.

Now, before we begin with that jury selection I've got some folks to introduce to you, as well as some other questions to ask of you. But the purpose of these questions is to find out if you have any connection of any kind with anybody who is going to be involved in the trial of this case.

That includes the lawyers; that includes the defendant; that includes the Jackson family; that includes any potential witnesses.

Then as they're introduced I need you to let me know if you have any connection by way of blood or marriage, do you attend church with any of these folks or any members of their respective families, do you or did you go to school with any of these people or their respective family members, are you or have you been employed at a place where they or some member of their family has been employed, do you socialize with any of these people, do you know them in any way whatsoever.

So as they're introduced if you have any type of a connection with an individual introduced or some member of their respective family, then I'll ask you to please stand

so that we can determine what that connection is and whether or not it would have any bearing whatsoever in your decision if you were called upon to serve as a juror in this particular case.

Now, as I told you, the person who is accused of having committed these offenses is Jacory Sharod Foster.

Mr. Foster, if you will, please stand and face the jury panel so that they may see who you are.

(Whereupon, the defendant and Mr. Delaney stood.)

THE COURT: Mr. Foster is the gentleman standing to your left without the jacket on. The gentleman standing with Mr. Foster with the jacket on is Brendan Delaney. Mr. Delaney is Mr. Foster's lawyer. He'll be assisting him in the course of this trial. Mr. Delaney is employed by the Seventh Judicial Circuit Public Defender's Office. And so I'll need to find out if you know anybody else employed in that office.

Okay. Thank you.

The person who is alleged to have been the victim of the crime of murder, as well as armed robbery, is Kiyounnie Duran Jackson.

Do we have Mr. Jackson's family members present? Will you introduce those for me, Mr. Bulsa?

MR. BULSA: Wilma Moore is his mother; Clifford Jackson is his uncle.

THE COURT: Let me ask y'all, if you will, to turn and face the jury so they can see who you are, and by that they might be able to determine if they knew Mr. Jackson.

MR. BULSA: And Ambra McCreary is his sister.

THE COURT: Thank you. You may be seated.

Now I'm going to recite -- oh, excuse me -- and presenting the case on behalf of the state are Derrick Bulsa and Lauren Brown. They are both assistant circuit solicitors for the Seventh Judicial Circuit. And they will be presenting the case on behalf of the state.

Now, I'm going to recite a list of potential witnesses. All of these witnesses may not necessarily be called during the trial, but they all have certain information that they might need to share if a lawyer determines that that information needs to be presented.

So I'm going to give an entire list of potential witnesses, and I need to find out if you have any connection as I've described it with any of these potential witnesses in addition to those that have already been introduced.

We have Jacorey Bogan, Jazzmun Bullock.

Let me say this. If you -- they're not present in the courtroom, but if you know somebody or you think you know somebody by that name, stand and let me know of that fact, and we'll try to narrow down the identification so we'll be

certain to know whether or not this is a person that you happen to have some connection with.

So Jacorey Bogan, Jazzmun Bullock. We also have Regina Foster, Tony Foster, Desmond Gray, Joshua Hillstock, Shandella Holly, Reyna Jefferies, Chelsea Landrum, Tasheka Meadors, Audrey Mills, Anthony Thompson, Shannon Thompson.

And the next, looks like, 12 or 13 witnesses are all employed by the Spartanburg City Police Department. And they include Shawn Cloran, Officer Doyle, Brandi Edwards, Ed Guthro, Tim Hancock, Samantha Hayes, Inderjit Kaur, Louis Nelson, Christy Norkett. Somebody with the beginning name M, and Pollich, Jason Tapp, Chris Taylor, and somebody with the first name P Thomas, first letter P Thomas.

We also have Jared Gilstrap and John Sherfield with the Union County Sheriff's Department. We have James Green with the law enforcement division, and John David Wren, a pathologist employed at the Spartanburg Regional Medical Center.

Are there any other potential witnesses on behalf of the state?

MR. BULSA: No, sir.

THE COURT: The defendant?

MR. DELANEY: None at this time, Your Honor.

THE COURT: Okay. Those are all the witnesses. So I need to know if you have any connection with any of those

or any potential -- excuse me -- or any respective family member, and also if you know anybody who is employed in the Seventh Judicial Circuit Solicitor's Office or the Seventh Judicial Circuit Public Defender's Office. If so, I need you to let me know of that fact.

All right. So I've got three jurors standing.

Sir -- ma'am, I'll start with you on the front row. Tell me your name and number and what connection you have.

JUROR NO. 164: Tabitha Stokes, 164, and I coached with Derrick.

THE COURT: With who?

JUROR NO. 164: With Derrick.

THE COURT: Okay. And would that have any bearing in your decision in this case?

JUROR NO. 164: No.

THE COURT: All right. Thank you. Be seated.

Yes, sir.

JUROR NO. 184: Patrick Wilson, 184.

THE COURT: Did you say 184?

JUROR NO. 184: Yes.

THE COURT: Okay.

JUROR NO. 184: Shannon Thompson and Tony Wilson, I mean, Tony Foster. Those names I'm familiar with.

THE COURT: Tony Foster?

JUROR NO. 184: And Shannon Thompson.

THE COURT: How do you know Tony Foster?
JUROR NO. 184: Well, I just was saying. I don't know if it's the same. It's one, it sounds like.
THE COURT: Can y'all narrow down Tony Foster's identity for me? If he's here, we can show him to him.
JUROR NO. 184: Just give me the age.
MR. BULSA: Mr. Foster is in his 50s, late 40s.
THE COURT: Is he related to the defendant?
MR. BULSA: Yes, sir.
THE COURT: How?
MR. DELANEY: Nephew.
THE COURT: Nephew. Mr. Foster --
MR. BULSA: Tony Foster is the uncle.
THE COURT: The defendant is Mr. Tony's Foster's nephew?
MR. DELANEY: Yes, sir.
THE COURT: Do you know where Tony Foster lives?
MR. DELANEY: He lives in Lyman, Your Honor.
THE COURT: Okay. And he's 50 something?
MR. DELANEY: Late 40s, early 50s.
JUROR NO. 184: Ain't.
THE COURT: That's not him?
JUROR NO. 184: He's in 50s, but that ain't him.
THE COURT: Okay. Thank you.
Let me ask you this. In the event that there was a

connection there, would that have any bearing upon your decision in the case?

JUROR NO. 184: No.

THE COURT: Sir?

JUROR NO. 184: No, sir.

THE COURT: Okay.

MR. BULSA: He also said a Thompson.

THE COURT: Who is the other person? You have another person you know?

JUROR NO. 184: Shannon Thompson. But I remembered he ain't --

MR. BULSA: That's actually a lady -- Shannon Thompson.

JUROR NO. 184: No.

THE COURT: Shannon Thompson. Okay. Thank you.

Yes, sir.

JUROR NO. 113: Rocky McGill, No. 113. Same high school with Mr. Bulsa.

THE COURT: Same high school?

JUROR NO. 113: Yes, sir.

THE COURT: Would that have any bearing in your decision in this case?

JUROR NO. 113: No, sir.

THE COURT: Thank you. Be seated.

Anybody else?

(No response.)

THE COURT: All right. Now, this is an event, which I told you, is alleged to have occurred back on November the 27th of 2017, and it is alleged to have occurred at a residence located at [redacted] Fisher Avenue, which is on the west side of the City of Spartanburg, on the north side of 29, over in the area of the Spartanburg Methodist College.

Does anybody on the panel think you might have heard, seen or read something that relates to this particular case? In other words, have you -- or do you believe that you have been exposed to any information that relates to this case from any source whatsoever, whether it be television, radio, newspaper or even people just talking at school, church, work or somewhere else? Do you think you have been exposed to any type of information relating to the case? If so, please stand.

(No response.)

THE COURT: Has any member of the jury panel or any members of your respective families -- and when I refer to a family I mean an immediate family member, and that would include a parent, a spouse, a child or a sibling -- a parent, child or sibling. Have you or any members of your immediate family as I just defined it ever been the victim of any type of violent crime, or have you or that family member ever been accused of having committed any

type of violent crime?

And included in the definition of violent crime would be murder, manslaughter, burglary, armed robbery, robbery, criminal sexual conduct of any degree, domestic violence of a high and aggravated nature, attempted murder, aggravated assault and battery or any other similar type of an offense.

Have you or any members of your immediate family ever been the victim of such or ever been accused of having committed such an offense? If so, please stand.

All right. I've got four. I'll start, and I need y'all to tell me whether it was you or a family member, whether they were the victim or the accused, and what was the nature of the crime itself, not details, just the nature of the crime whether it be burglary, armed robbery, assault and battery, whatever.

And if you don't feel comfortable answering the questions where you are, feel free to step down here. Otherwise, I'll simply ask that you respond where you are.

Your name and number, please.

JUROR NO. 50: Ashley Fowler, 50.

THE COURT: Fifty?

JUROR NO. 50: Juror No. 50.

THE COURT: Fifty?

JUROR NO. 50: Yes, sir.

THE COURT: All right. And --
JUROR NO. 50: My home was burglarized about two years ago.
THE COURT: And was anyone charged?
JUROR NO. 50: Yes.
THE COURT: Has the case been resolved?
JUROR NO. 50: At least one person has gone to -- has been -- is in jail. I don't know what happened to the other defendants. They were --
THE COURT: All right. Is there anything about that personal experience that you've had that would have any bearing upon your decision in this case?
JUROR NO. 50: No, sir.
THE COURT: All right. Thank you, ma'am. You may be seated.
Yes, sir.
JUROR NO. 123: May I approach?
THE COURT: Sure. Tell me your number as you come up.
JUROR NO. 123: No. 123, Alex Morrison.
(Bench conference held off the record with Juror No. 123 with counsel present.)
THE COURT: Juror 123 is excused from service in this case.
Yes, ma'am.
JUROR NO. 120: Thalia Moffitt, Juror 120. And our

home was burglarized about 15 years ago and the three defendants -- two were -- two were juveniles and one was not -- and they did pretrial intervention in the cases.

THE COURT: Okay. Is there anything about that experience you had that would affect your judgment in this case?

JUROR NO. 120: No.

THE COURT: All right. Thank you, ma'am. You may be seated.

Yes, ma'am.

JUROR NO. 75: May I approach?

THE COURT: Yes, ma'am. Tell me your number while you come up.

JUROR NO. 75: Seventy-five.

(Bench conference held off the record with Juror No. 75 with counsel present.)

THE COURT: All right. Yes, ma'am. You, ma'am. Do you want to come up? Your number?

JUROR NO. 73: Seventy-three.

(Bench conference held off the record with Juror No. 73 with counsel present.)

THE COURT: All right. Next.

JUROR NO. 113: Rocky McGill, No. 113. My home was burglarized maybe ten years ago.

THE COURT: Would that have any bearing in your

decision in this case?

JUROR NO. 113: No, sir.

THE COURT: Thank you. Be seated.

Yes, sir.

JUROR NO. 61: Like to approach.

THE COURT: Okay. Your number?

JUROR NO. 61: Sixty-one.

THE COURT: Sixty-one?

JUROR NO. 61: Yes, sir.

(Bench conference held off the record with Juror No. 61 with counsel present.)

THE COURT: All right. Anyone else need to respond to the question of you or a family member being a victim or an accused in relationship to a violent crime?

(No response.)

THE COURT: Has any member of the jury panel or any member of your immediate family, as I've already defined it, ever been employed as any type of law enforcement officer with any type of law enforcement agency, whether it be civilian or military? You or a family member ever been employed as any type of law enforcement officer? If so, please stand.

All right. I'll start over here and work my way back, and then I'll jump the aisle.

Yes, ma'am.

JUROR NO. 50: Ashley Fowler No. 50. My sister-in-law was a former sheriff's department deputy and worked in the coroner's office.

THE COURT: All right. Would that have any bearing in your decision here?

JUROR NO. 50: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 176: Paula Waldrop, No. 176. My nephew works for Spartanburg County with the canine.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 176: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 73: Seventy-three. My husband worked with Nassau County Corrections. Retired.

THE COURT: Would that have any bearing?

JUROR NO. 73: No.

THE COURT: No bearing in your decision. Thank you.

Yes, ma'am.

JUROR NO. 75: No. 75, Grace Howard. My aunt is Naval military police.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 75: No, sir.
THE COURT: Thank you. Be seated.
Yes, sir.
JUROR NO. 3: Michael Ashley, No. 3. Father and bother military.
THE COURT: Would that have any bearing in your decision?
JUROR NO. 3: No, sir.
THE COURT: Thank you. Be seated.
Yes, ma'am.
JUROR NO. 60: Annette Graham, No. 60. My sister is a -- with the sheriff's department, but it is in Louisiana. I didn't know if I should stand or not.
THE COURT: You should. Would that have any bearing in your decision?
JUROR NO. 60: No, sir.
THE COURT: Thank you. Be seated.
Yes.
JUROR NO. 48: Anjonique Fernanders, No. 48. My father worked at the sheriff's department in Anderson County.
THE COURT: Would that have any bearing in your decision?
JUROR NO. 48: No, sir.
THE COURT: Thank you. Be seated.

Yes, sir.

JUROR NO. 98: Sean Loftis, 98. My father was a military police.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 98: No, sir.

THE COURT: Thank you. Be seated.

Does any member of jury panel belong to any type of group that might be described as law enforcement support or victims advocate support type groups?

Those might include Mothers Against Drunk Drivers, Citizens Against Violent Crime, the honorary troopers' association, the honorary sheriffs' association, fraternal order of police, police benevolence society, neighbor watch, any type of organization that might be characterized as law enforcement support or victims advocacy type groups.

And I need to know if you belong to any or if you contribute time or money to any such of those organizations.

If so, please stand.

All right. 113.

JUROR NO. 113: Yes, sir.

THE COURT: Which one?

JUROR NO. 113: I may contribute to the law enforcement association and I'm on a security team at my

church.

THE COURT: Okay. And would any of that have any bearing in your decision?

JUROR NO. 113: No, sir.

THE COURT: Thank you. Be seated.

Now, during the course of this trial there may be some evidence presented regarding illegal drug usage.

Is there -- does any juror have an opinion about the use or abuse of any type of drugs that -- that if it came up during the course of the trial it would impair your ability to be fair in deciding the cases before you?

In other words, you wouldn't be able to put that out of your mind and base a decision upon the facts relating to the material allegations of the indictments. Anyone have such an opinion about the use and/or the abuse of any type of drugs that it would affect your judgment in this particular case? If so, please stand.

(No response.)

THE COURT: Has any member of the panel already formed an opinion as to what you think the outcome of the case ought to be based upon what you've heard up to this point or based upon any other consideration? Have you already made up your mind as to the outcome? If so, please stand.

(No response.)

THE COURT: Does any juror know of any reason

whatsoever why you think you could not be fair and impartial if called upon to serve as a juror in this particular case? If so, please stand.

(No response.)

THE COURT: All right. Any other questions requested by the state?

MR. BULSA: No, Your Honor.

THE COURT: By the defendant?

MR. DELANEY: No, Your Honor.

THE COURT: All right. Now, the way a jury is selected is all of your names are in the computer. The computer is going to make a random selection. And as that selection is made you'll be called up to come forward. You'll be standing next to Mr. Bogan, the bailiff, over here when you come up.

Each side has an opportunity to have you excused from serving as a juror in the case, or both may agree to have you seated for service in the case.

If either side asks that you be excused from serving, just go back and have a seat on the back row.

If both agree to have you seated for service in the case, you'll be having a seat in the jury box to your right and to my left.

So please come forward as your name is called, and you'll be instructed whether you have been excused from

service in the case or accepted for service in the case.

THE CLERK: Juror No. 184, Patrick Wilson.

What say the state?

MR. BULSA: Please present the juror.

THE CLERK: What say the defense?

MR. DELANEY: Please present the juror.

THE CLERK: Juror No. 60, Annette Brown.

MS. BROWN: Sixty?

THE CLERK: Sixty.

What say the state?

MR. BULSA: Please excuse the juror in this case.

THE COURT: Have a seat on the back row.

THE CLERK: Juror No. 120, Thalia Moffitt.

What say the state?

MR. BULSA: Please present the juror.

THE CLERK: What say the defense?

MR. DELANEY: Please excuse the juror.

THE CLERK: Juror No. 181, Bobby Wilkins.

What say the state?

MR. BULSA: Please present the juror.

THE CLERK: What say the defense?

MR. DELANEY: Please present the juror.

THE CLERK: Juror No. 70, Monica Heng.

What say the state?

MR. BULSA: Please excuse the juror in this case.

THE CLERK: Juror No. 4, Jennifer Babb.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 43, Pamela Cross.
THE COURT: Thirty-four.
THE CLERK: Oh, I'm sorry. Thirty-four, Pamela Cross.
What say the state?
MR. BULSA: Thirty-four, madam clerk?
THE CLERK: Thirty-four.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 136, Jeremy Phalen.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 135, Thomas Pearson.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 71, Shontella Herndon.
What say the state?

MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 46, Daneisha Espinal.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 176, Paula Waldrop.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 183, James Willis.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 13, Alfonso Borquez.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 173, Robin Upton.
What say the state?

MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 95, Daniel Likhtar.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 5, Tye Bailey.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 121, Mehdi Momin.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 106, Christopher Mason.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 45, April Emory.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 148, Stephen Russell.

What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 38, Jonathan Dickerson.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defendant?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 103, Michael Mannion.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 75, Grace Howard.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 98, Sean Loftis.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 23, Dylan Cody.

What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE COURT: This will be for the first alternate.
THE CLERK: Juror No. 73, Felicia Hicks.
What say the state?
MR. BULSA: Please excuse the juror.
THE CLERK: Juror No. 157, Barbara Smith.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 164, Tabitha Stokes.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please excuse the juror.
THE CLERK: Juror No. 109, Brandon McCall.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
THE CLERK: Juror No. 130, Viktoriya Onufriychuk.
What say the state?

MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. DELANEY: Please present the juror.
(Whereupon, a jury was impaneled.)
THE COURT: All right. Those who have been selected, I'll ask you to please go with a bailiff to a jury room, and I'll bring you back shortly.
(The following takes place outside the presence of the jury.)
THE COURT: Are there any matters to be addressed regarding jury selection by the state?
MR. BULSA: No, sir.
THE COURT: By the defendant?
MR. DELANEY: No, Your Honor.
(Whereupon, the remaining members of the jury venire were excused.)
THE COURT: We will be at ease for ten minutes.
(Whereupon, a recess was taken.)
THE COURT: May I see y'all just a minute, please?
(Bench conference held off the record.)
THE COURT: All right. Bring the jury in, please.
(The following takes place in the presence of the jury.)
THE COURT: Ladies and gentlemen, we're going to start the trial in the morning beginning at 9:30.

So you're going to be excused for the balance of today, and you'll be asked to come back and report to the jury assembly room in the morning at 9:30. And from there you'll be taken to the jury room that you have just been introduced to.

Now, understand that now that you have already been selected to serve in the trial of the case you cannot permit yourselves to be influenced by any outside or extraneous information. You've got to base any decision you make in this case solely upon the testimony and the evidence that is presented and received during the trial of the case and the law that's applicable as I will provide it to you at the trial's conclusion.

So you're not to allow yourselves to be influenced by any outside or extraneous information, and therefore you are not permitted to have any discussions about this case in any fashion whatsoever with any person whatsoever. That includes spouses, children, friends, neighbors. You can't talk about the case.

Now, after the case is over and you've reached a decision, you can talk about it as much or as little as you'd like to as many or as few as you'd like, but until your decision has been rendered you cannot discuss the case even among yourselves. You can't discuss it among yourselves until the end of the trial after you've been

exposed to all the evidence in the case and I've given you the law and you've been asked to begin with your deliberations. That's the time that you can begin your discussions.

So no discussions with anybody outside of this trial and no discussions among yourselves until you're involved in jury deliberations.

Also, in order to avoid influence by any outside or extraneous information you can't permit yourselves to be exposed to any type of media coverage that might relate to the case. Don't know that there will be, but if something should come over the television or the radio or appear in the newspaper, you can't look at it, you can't listen to it, you can't read it.

As I say, you have to base your decision upon what you see and hear during the trial, because oftentimes outside accounts are inaccurate and it might influence a decision that you make and it might be an incorrect factual representation. So no media exposure whatsoever.

Also, as I say, you have to base your decision upon what you see and hear during the trial, and so you can't conduct your own research or do your own investigation into any issue that might relate to the case.

You can't go on the internet or social media and try to find out something about the case. Under your

obligations as a juror you have to base your decision upon what happens here in the courtroom. Okay. So no discussions, no investigation, no media exposure, no internet searches, no research or investigation of any kind.

All right. With that, do have a good evening. Please report to your jury room at 9:30 in the morning, or jury assembly room. 9:30 in the morning. Have a good afternoon.

(The following takes place outside the presence of the jury.)

(Map marked State's Exhibit No. 1 for Identification; photographs marked State's Exhibits 2 through 10 for Identification.)

THE COURT: The court reporter has let me know that there have been ten exhibits marked that are intended to be offered by the state. The first is a map. The remaining are photos.

Are those all in by agreement?

MR. DELANEY: I need to go look at them, Judge.

THE COURT: Okay.

MR. DELANEY: I haven't seen what's been marked.

THE COURT: All right. Well, have a look at them.

(Pause.)

MR. DELANEY: No objection, Your Honor.

THE COURT: Okay.

MR. DELANEY: Some of them are stapled.

THE COURT: All right. One through ten are admitted by agreement. No further introduction is necessary.

(Map marked State's Exhibit No. 1; photographs marked State's Exhibits 2 through 10.)

THE COURT: Do you have others you're going to introduce?

MR. BULSA: Yes, sir. We do.

THE COURT: All right. Okay. Matters we need to address before we recess?

MR. BULSA: Your Honor, we have discussed some SLED testimony.

We have a firearms expert available to testify to some rounds and some shell casings recovered at the scene and in the autopsy.

Mr. Foster's denying being the shooter. So we talked about maybe stipulating to that witness' testimony and introducing his report. I just wanted to see if that's viable so I can --

THE COURT: The ballistics report?

MR. BULSA: Yes, sir.

THE COURT: Okay. Well, y'all talk about it and let me know in the morning.

MR. DELANEY: Yes, yeah. We will. We stipulate to

that SLED ballistics report, Your Honor.

THE COURT: All right. Where is it? Have you got it?

MR. DELANEY: We have talked about this.

MR. BULSA: We have a working copy. I'll have to get a printed copy.

THE COURT: Okay.

MR. BULSA: We have a clean copy.

THE COURT: That's No. 11.

MR. BULSA: I wasn't going to mark it right now because I've got several other pictures if I can just keep them in order. I'll just introduce it.

THE COURT: All right. Anything else to address?

MR. BULSA: Not by the state.

MR. DELANEY: The only thing the defense -- one moment, please, Your Honor.

(Pause.)

MR. DELANEY: All right. Your Honor, we previously asked that the witnesses in this matter be sequestered, and I do think there are some folks in the courtroom now, and it's just kind of as a reminder that they'll need to be sequestered.

I think there are some potential family members, and I don't know how many, but there's been a lot of people enter the courtroom recently. I don't know. In your discretion -- and that may be in the morning -- to let

people know about the sequestration-of-witnesses issue.

THE COURT: Well, do you know who's here? Because I don't.

MR. DELANEY: One of them is my client's brother.

MR. BULSA: We have several. I can't remember what people actually look like.

MR. DELANEY: He's under subpoena, but he came into the courtroom, and I just found out about 15 minutes ago. That's why I bring the issue up.

THE COURT: All right. Well, I'll address it in the morning, but y'all -- y'all are going to have to identify who is present, because I don't know who they are. And we won't know who's been instructed or who hasn't if we don't know who is in the courtroom.

MR. BULSA: Yes, sir. We'll flesh that out and have it by tomorrow.

THE COURT: Okay. Anything else?

MR. DELANEY: Nothing from the defense, Your Honor.

THE COURT: All right. Court is in recess until 9:30 in the morning.

END OF PROCEEDINGS OCTOBER 21, 2019

(Proceedings October 22, 2019)

(The following takes place outside the presence of the jury.)

THE COURT: All right. Mr. Delaney.

MR. DELANEY: Thank you, Your Honor.

Yesterday afternoon when we recessed at approximately 4:00 p.m. some information was brought to my attention regarding Juror No. 184.

My client's family informed me that my client's aunt went to school with Juror No. 184 and that she knew him and that Juror No. 184 knew several members of my client's family and that Juror No. 184 grew up in the Highlands community here in Spartanburg County and that had knowledge of my client's family.

If I had known that prior to jury selection I may or may not have exercised a challenge. And I think Mr. Bulsa has some information as well.

THE COURT: Mr. Bulsa.

MR. BULSA: Yes, sir. This morning the victim's mother, Wilma Moore, told us that she recognized Mr. Wilson and knew -- she knew his sister, an older sister, and she also knew that they grew up in the Highlands area and just wanted the Court to be aware that she knew their family and the Wilsons probably knew her family. And had I known the connection to Mr. Foster, we may have struck him as well.

MR. DELANEY: As such, Your Honor, the state and defense have come to an agreement regarding this matter, and we have agreed that Juror No. 184 should be removed from this jury and be replaced by the current alternate number -- Juror No. 130.

MR. BULSA: The state agrees with that, Your Honor.

THE COURT: All right. Mr. Foster, you've heard what your lawyer has told me. Are you in agreement with his position?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Based upon the circumstances and the agreement of counsel, Juror No. 184 will be removed, and Juror 130 will take his place as the twelfth juror. Juror 109 will remain as the alternate.

(The following takes place in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

We are ready to begin with the trial of the case for which each of you have been selected.

Ms. Emory, I'm going to ask you to serve as the foreperson of the jury, and as the foreperson you're going to have three specific duties that none of the other jurors will have.

First of all, you'll be asked to serve as the spokesperson for the jury, and that just means if something

arises during the trial that needs to be brought to my attention -- you or one of your fellow jurors has some difficulty, problem or question -- you're going to be the person to let me know of that fact. You'll do that directly if you're in the courtroom and you'll do it through the bailiff if you're outside of the courtroom.

Secondly, you'll be called upon to preside over jury deliberations when that time comes, in other words, after all of the evidence has been received, I've instructed you on the law and the jury has been asked to go back into the jury room to begin deliberations.

You are the person who will be responsible for presiding over that process simply to ensure that the deliberations are carried out in some orderly fashion.

And, thirdly, you'll be asked to actually write the decisions of the jury. You'll do that on verdict forms that I'll provide you at the trial's conclusion on which you will indicate the jury's unanimous decision as it relates to each of the separate charges.

Now, the foreperson has those specific duties that I've just indicated, but that doesn't mean she is any more important than any of you other jurors, and that's because the decision of a jury is the unanimous and consensus opinion of all 12 jurors, and so all 12 will have an equal say and equal vote in what the ultimate decisions will be

in this case.

Someone simply has to be tasked with the responsibility of carrying out those duties that I've indicated, and I have asked Ms. Emory to assume that responsibility. But all of you jurors are equally important so far as the ultimate decisions in this case are concerned, because, as I've stated, the verdicts have to be unanimous. All of you must be in agreement.

Now, Ms. Onufriychuk -- did I get that right? Okay. You were an alternate juror, but you're not now. You are one of the 12 jurors because one of your fellow jurors has been excused from service in this case. So you are now going to be the twelfth juror and you will be participating just like all of the other 11 jurors will be with you.

Mr. McCall, you will still be serving now as an alternate juror, and the function of an alternate juror, as in the case of Ms. Onufriychuk, is to take the place of one of the original 12 jurors in the event one of these 12 cannot continue to serve for some reason.

And so if one is called away or some emergency arises or an illness and it precludes that juror from continuing to serve in the case, then you would be called upon to take that person's place, and that event you would become the twelfth juror. And in that event you would participate throughout the trial, including the jury deliberations at

the trial's conclusion.

If however when the time does come for jury deliberations the original 12 are able to perform that function, then your service would end and you would not participate any further, because the decision of a jury is that of 12. No more than 12 are permitted to engage in that deliberation process.

But it is important that you pay just as careful attention as we ask of all of the jurors in the case because it does occur from time to time for one reason or another one of these 12 may be unable to continue, and in that event you become the twelfth.

So we do appreciate your participation as an alternate juror just as we appreciate the participation of each of you jurors who have been selected for the purpose of deciding the verdicts in this particular case.

You may swear the panel.

(Whereupon, the jury was duly sworn.)

THE COURT: All right. Ladies and gentlemen, as you know, you've been selected as jurors in the case of the State vs. Jacory Sharod Foster.

As you also know, Mr. Foster has been accused by the prosecutor by way of these indictments with having committed five separate and distinct criminal offenses, although they are alleged to have arisen out of one

particular event or a course of events which the state alleges occurred back on November the 27th of 2017.

But by way of these indictments Mr. Foster has been charged with the crime of murder and possession of a weapon during the commission of that violent crime.

He's also charged with the crime of armed robbery and possession of a firearm during the commission of that violent crime.

And the remaining indictment charges Mr. Foster with using a person under the age of 18 to commit a violent crime.

Now, the indictments themselves are not evidence in the case because they just bring the charge against the defendant. They put him on notice as to what the state claims that he has done by way of the commission of a criminal offense, but the indictments themselves don't prove anything. They're not evidence of anything.

They will be in the jury room when you go back to deliberate, but that's because they're there to serve as the verdict form.

Because it's on the back of each indictment, Madam Forelady, that you are going to indicate the jury's decision as to the charge or charges set forth in those separate indictments. But other than serving as the verdict forms, the indictments serve no purpose so far as

you jurors are concerned.

As to each of the indictments and as to the charges contained therein the defendant has entered a plea of not guilty, and, as I told you prior to your selection, a plea of not guilty places upon the state the burden of proving the allegations that they have made by way of each of those indictments.

The state has the burden of proving each of the essential elements of the crimes that they have alleged against the defendant; and therefore the burden is upon the state to establish the defendant's guilt as to a particular charge beyond a reasonable doubt before you jurors could find him guilty of that particular crime.

Every person who is accused of a crime is always presumed to be innocent of the charge. That presumption of innocence remains with any defendant, as it does with this defendant, from the time that he is placed under arrest and throughout the course of the criminal process and even throughout the course of the actual trial in the case.

That presumption of innocence will be with Mr. Foster even as you go back into the jury room to begin with your deliberations at this trial's conclusion, and that presumption of innocence will be with him in that jury room, and it'll be with him forever unless you 12 jurors determine that he is no longer entitled to that presumption

of innocence as it relates to a particular charge.

In other words, after you have carefully considered all of the evidence introduced during the trial and from that evidence you have been able to determine the material facts that relate to the allegations contained in each of the separate indictments, and after deciding those facts you apply the law that I will have provided you as it relates to that particular charge, if you 12 jurors unanimously determine that his guilt as to a charge has been proven beyond a reasonable doubt, then he would no longer be entitled to that presumption of innocence as it relates to that particular charge. But it is only if, unless and until you are satisfied of his guilt beyond a reasonable doubt that the presumption of innocence would no longer be applicable as it relates to a particular charge.

Now, the way the trial will proceed is that in a moment the lawyers are going to address you in what are called opening statements.

There are two occasions in the trial of a case where lawyers are permitted to address the jury directly, and that is at the beginning of the trial before any evidence has been introduced, then again at the conclusion of the trial after all of the evidence has been received.

But please understand, as I just indicated, the lawyers' statements are not evidence upon which you will

base your decision. The evidence upon which you will base your decision as to the determination of fact comes in between the opening and the closing statements of the lawyers, and that's because the lawyers don't know anything about this case of their own personal knowledge or perception like witnesses will be testifying to when witnesses are called to take the witness stand and provide you information under oath.

The lawyers aren't going to take the witness stand. They're not going to be placed under oath and they're not going to be subjected to direct and cross-examination like each of the witnesses will be that do provide you with information, and so what they tell you in those statements is not to be considered by you as any evidence upon which you will base your decision.

The closing statements occur after all of the evidence has been received. And, again, while those statements are not evidence, it does afford the lawyers an opportunity to discuss with you the evidence that you have seen and heard during the course of the trial. And through that discussion each will have an opportunity to try to persuade you or to convince you that the evidence in the case does or does not support a particular decision.

And it's in between those opening and closing statements that we actually receive the evidence upon which

you will base your determination of fact and ultimately your decision and your verdict.

The state has the burden of proof. As I told you, the state has to prove the defendant guilty beyond a reasonable doubt, and so the state goes forward first in its presentation of evidence.

Once the state has concluded with that presentation of evidence any person accused of a crime always has an opportunity to take the witness stand and testify or to call the witness to testify or to introduce other evidence in the case, but a defendant, a person accused of a crime, is never under any obligation to take the witness stand and testify, to call any witness or produce any evidence, because while the state does have a burden to prove his guilt, a defendant has no burden in a case to prove anything, and he certainly has no burden in a case to prove that he is not guilty or to prove that he is innocent because in some cases that might not be possible.

And therefore in a case where a defendant does not testify or call a witness, that's not a fact or circumstance that the jury may allow to weigh in the slightest degree against the defendant, nor may you allow that to influence your decision as to the verdict, nor may you even discuss that fact while you are engaged in your deliberations in the case. But every person accused of a

crime is always afforded an opportunity to present evidence in the event he or she wishes to do so.

So after all of the evidence has been received and after you hear the final summations of the lawyers, I will then instruct you fully on the law as it relates to the criminal law generally, as well as the law that relates to each of these particular crimes specifically. And after that you'll be asked to go back and to begin with your deliberations.

Through that process you're simply going to be called upon through the exercise of good judgment and common sense conscientiously applied to the testimony and evidence received during the course of the trial to decide the facts where you can that relate to the material allegations in the indictments. After deciding the facts you apply the law, and you determine whether or not the defendant has been proven guilty of a particular crime beyond a reasonable doubt.

And if he has, then the verdict is guilty as to that charge. And if he has not, then the verdict would be not guilty as to that particular charge.

Now, all that we're going to ask for you to do is to pay careful attention throughout the course of the trial, because in order for you to be able to appropriately determine the facts in the case based upon the evidence

presented you've got to pay attention during the trial. You've got to pay attention to every witness that testifies during the trial, because there may be a number of witnesses, and you never know whether or not there's going to be some conflict in testimony that relates to witnesses.

If there is a conflict in testimony and it relates to a material fact that you have to decide, you are the persons who decide the facts, and therefore you are the persons who determine the credibility and the believability of any witness that testifies during the trial of this case.

So in order for you to be in a proper position to be able to appropriately evaluate each witness' credibility you've got to watch and listen to them while they testify so that when you do go back to begin your deliberations you'll be in a proper position to fairly evaluate that testimony in light of not just that witness' own testimony but in light of all of the testimony and all of the evidence received during the course of the trial.

And in your evaluation and your determination of the facts you can accept everything that a witness testifies to. You may reject everything a witness testifies to. You may believe some portion of a witness' testimony and reject some other portion of that same witness' testimony.

In a given case you could believe one witness as

opposed to several, or several as opposed to one. But whatever your good judgment and common sense tells you is the most believable and credible evidence is the evidence you should accept, and you should reject any testimony or other evidence that you find not to credible or believable.

Now, it's also important that you keep an open mind throughout the course of the trial, and that just means that you are not to begin making up your minds or formulating your opinions as to what you think the ultimate decisions in this case ought to be until all of the evidence has been received, until I have instructed you on the law that's applicable in the case and until you've been asked to go back and to begin with your deliberations at the trial's conclusion.

That is the process that has been designed over the last 243 years, I think it is now, to ensure that you can arrive at a fair and impartial decision based upon the evidence presented and the law that's applicable.

So I do want to thank you in advance for your participation, as well as for your careful attention. I would ask that you please give the lawyers your attention now as they give you their opening statements.

Ms. Brown.

MS. BROWN: May it please the Court.

THE COURT: Yes, ma'am.

MS. BROWN: Ladies and gentlemen, I want to take y'all today to December 2015. I don't really remember much about it honestly. I'm sure that I ate a lot of food. I know I hang out with my family, probably watched a lot of football. That was about two years ago. I don't remember too much about it. You probably don't either.

I'm going to tell y'all this lady to my right, Wilma Moore, she will never forget that Thanksgiving. That's because that is the last Thanksgiving, the last holiday even, that she will get to spend with her son, Kiyounnie Jackson. That's because that following Monday, November 27 of 2017, that's the last time she'd ever see him alive.

You'll find out that on that Monday, Kiyounnie Jackson was supposed to meet a girl, Regina Foster, and he was going to sell her some weed.

Now, admittedly this is illegal. But what was supposed to be a casual, a low-key weed deal between friends soon turned out to be nothing of the sort.

You'll find out that Kiyounnie Jackson, that he met -- he went to the arranged place, which was a house on Fisher Avenue, to meet Regina.

He goes in the house. His friends are in his car. They probably don't think he's going to be very long. Only he never comes out of that house, because when he goes in that house he is ambushed, he is gunned down and he is

robbed by two men, one of which is that man, the defendant.

Now, that girl, Regina Foster, you will hear from her, and she'll tell you that on that Monday the defendant and another man named Derrick Bennett who was dating her sister at the time, they picked her up that day. They were going to go to Ellen C. Watson Apartments, which is where her sister and Mr. Bennett lived.

And she'll tell you that the defendant and Mr. Bennett, that they were relentless, that they kept pressuring her to arrange a deal with Kiyounnie Jackson, a weed deal. And she'll tell that's because they knew that she was close to him. In fact, they knew that he wouldn't come to them, that he only come to her, and they exploited that.

She'll tell you that she did assist with setting up that deal. She'll also tell you that she was scared of the defendant. She was scared of Mr. Bennett.

She's also 17 years old at this time. She is young, and, honestly, she's naive. She'll tell you that they go to the house on Fisher. They wait for the victim.

She'll tell you that what happened to him, she never expected that to happen. She probably also didn't expect to be abandoned in that house, left in that house with a dead body of someone that she probably considered a friend.

She was young, she was naive, and they exploited her.

She was a pawn in their game.

Now, you're going to hear from her. You're going to hear from her sister, Reyna Jefferies.

Honestly, they didn't immediately cooperate with the police. They didn't immediately volunteer what they knew. But, again, especially Regina. She's 17. She has just been privy to the murder of someone she considered a friend.

She doesn't know what these two are capable of, but eventually they both -- they stop up and they tell law enforcement what they know. They tell law enforcement what they know about this defendant's involvement in the killing of Kiyounnie Jackson, and they're going to tell you.

In South Carolina we have what is called the hand of one, hand of all. And that means if a crime is committed by two or more persons acting together in the commission of a crime, then the act of one is the act of both. The hand of one is the hand of all.

And I like to think about it like this. My nana, she used to tell us don't run in my house, you're going to break something. And one day my cousins were running in the house and, low and behold, they broke my nana's favorite lamp. She was not happy. When my nana came in the house to discover this my cousins just went in on each other. They said, nana, it wasn't me, it was her, it was

her elbow, she's the one that hit the lamp and knocked it over. And my other cousin said no, no, it wasn't, it was her knee, she hit the table and that's what made it knock over.

And do you know what my nana said? She said I don't care, I don't want to hear it, I told both of you don't run in my house, exactly what I said would happen happened, you broke my lamp, you're both in trouble. That is the hand of one, hand of all. And that is what we have in this case. Judge Cole will talk to you more about that.

Now, this defendant, as Judge Cole says, is before you on several charges, on charges of possession of a weapon during a violent crime, on a charge of armed robbery, on a charge of a person over 18 using a minor to commit a violent crime and murder.

Ladies and gentlemen, you are going to hear from several people in this case. You're going to see several pieces of evidence.

I ask you to listen carefully. Use your common sense. And we're going to come back at the end of this and we're going to talk to you about what you've heard and what you've seen, and you're going to see at the end of all of that this defendant, this man, is guilty as charged.

THE COURT: Mr. Delaney.

MR. DELANEY: May it please the Court.

On November 27th of 2017 this family suffered a tremendous loss. Kiyounnie Jackson was shot and killed. That's not in dispute. He went into the house on Fisher Avenue and was shot by Derrick Bennett.

You're going to hear from a lot of witnesses, a lot of law enforcement. You're going to see photographs from the crime scene, you're going to see some documents with measurements on them. You're going to hear from people whose vocation or profession it is to investigate crime scenes and put together evidence to submit to a jury.

We're not disputing the vast majority of that evidence. Okay. Many of the facts that Ms. Brown just cited are not in dispute.

There is a major dispute though, and the major dispute is why you all are sitting here today. And that dispute is who killed Kiyounnie Jackson. That man didn't.

Let's talk about the hand of one, hand of all. So we've got two cousins in a house. One of them's running around; one of them's sitting there playing on his game board, has no idea the other one's running around and knocks the lamp out. Is that hand of one, hand of all? Absolutely not.

That's what we've got here. You will see it as it comes out. Like I said, the professionals, the people that make a living doing that, we're really not disputing

anything they have to say.

Okay. There's a few people that can help you answer the question. Derrick Bennett, Regina Foster. They were in that house.

There was a driver in a vehicle outside by the name of Deondre Williams. You may or may not hear from him. Those are the only three people in any proximity to this house on Fisher Avenue that have personal knowledge of what went on.

The judge talked about who has personal knowledge of what went on. Those are the people you need to focus on, because those are the people that have the information and can give you something to act on, something to make your decision on, and that if they don't provide that to you, that oath you just took requires you to say they didn't, they didn't prove their case.

Kiyounnie Jackson was shot. It's not in dispute. What is in dispute is who killed him, and I submit to you today that it was not Jacory Foster.

MS. BROWN: The state calls Tim Hancock to the stand.

TIMOTHY HANCOCK, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Mr. Hancock, could you state your name again for the jury?

A Yes. I'm Senior Patrol Officer Timothy Hancock. I'm

employed with the Spartanburg City Police Department Canine Division.

Q Do what do you in the canine division?

A I have a dual-purpose dog. We do tracks, track people, track suspects, find drugs, those kinds of things.

Q How long have you been doing that?

A For four years now.

Q Do you have any special training, certification, especially in the role as a canine officer?

A Yes, ma'am.

Q What are those?

A Well, myself and the dog, we went to Alabama. We start training, trained through NAPWDA, which is the National Association Police Working Dog, where myself and the dog are trained together in specialties of searching vehicles, searching for people, searching for lost articles, that sort of thing.

Q And were you working in that capacity on November 27th of 2017?

A Yes, ma'am.

Q At any point did you respond to [redacted] Fisher Avenue?

A Yes, ma'am.

Q Is that in Spartanburg County?

A Spartanburg City, yes, ma'am.

Q And the county?

A And the county, yes, ma'am.
Q Why did you go there?
A There was a call for a shots-fired in the area, a disturbance in the area. I responded. Another officer had gone out -- Officer Pollich. I responded with him.
Q Do you remember what time you got there?
A No, ma'am, not off the top of my head.
Q So what's going on when you get there?
A When I first arrive on scene I saw Officer Pollich, three males near him, surrounding him, two black males, one white male. They were screaming and hollering, yelling, being very disruptive and belligerent. I asked Officer Pollich what he had, what was going on and --
Q So what do you do once you get there and you see people acting like that?
A I'm just trying to figure out what -- what is happening, why are they acting the way they're acting, what -- what is going on at the time. I knew nothing at the time. Like I said, I just -- I rolled up and I see this commotion, trying to find out what's happening.
Q At any point did you go in the house?
A Yes, ma'am. I did.
Q Tell us about the house.
A Yes, ma'am. When I first entered the house, of course by this time one of the gentlemen on scene had told me that

his friend had been shot, or actually I believe he said he was dead inside the house.

Because of the commotion at the scene outside and Officer Pollich by himself I -- we detained the suspects or these gentlemen, I should say, because I didn't know if they were suspects or victims at the time. So we detained them, put them in the back of Officer Pollich's car, and I went inside the house.

Q Tell us what the house looked like.

A Honestly, it looked like a tornado had kind of hit it. There was no furniture in the house, but there was a lot of debris, a lot of loose items, garbage, laying all over the place.

Q Describe the lighting in the house.

A No lighting at all except for one light in the kitchen. I believe it was in the kitchen-dining room area.

Q So what do you do when you go in the house?

A Well, knowing that there was possibly a person in the house that had been shot or was down, I didn't know if there was also people in the house that might still be in there trying to hurt me or have guns. So I drew my weapon. I went in and cleared the house making sure there was no other suspects in the house. And that's when I also saw the gentleman laying in the hallway.

Q What did you do when you saw the body in the hallway?

A Well, after I cleared the house to make sure there were no other suspects in the house, I checked his pulse, checked to make sure, see if he was breathing, and he was not.
Q How was he positioned?
A He was laying on his back. His head was facing down the hallway toward the main entrance or the living room area. But he was laying on his back.
Q What, if anything, did you find in the immediate area around the body?
A I believe I found his -- well, I did find his I.D. or a work I.D., I believe it was. I was able to look at it, and I was pretty fairly certain it was him, had a name. Looked at it, compared the picture and compared the person laying there and see that it was possibly him.
There was a lot of other debris items, looked like they might have been pulled out of his pockets.
Q Where did you find his I.D., do you remember?
A It was at his foot. It was at his foot. I am not sure exactly which one it was. I think it might have been his left foot, right around about his left foot.
Q So the debris you're talking about, what, if anything, did that indicate to you?
A Possibly somebody had gone through his pockets. I mean, you got chapstick, you know. I believe there was

like a tube of like chapstick or something. There's, of course, his I.D. at his foot. Looked like his pockets had been pulled out. He was -- his clothes were very disheveled like somebody had searched his body, gone -- gone over his body with something.

Q Can you describe to us the layout of the house?

A The layout of the house? Well, as you first go in the main entrance to the door you have the living room area. Just past it is a kitchen area where the light was at. To the left you go down the hallway, and then there is a -- there's two rooms together. And toward the very back there's a 1-room right beside where I found this gentleman at. And then there's also a bathroom. A very small house though. I think it's a small 3-bedroom, 1-bath house.

Q Did you ever go in that back bedroom by the bathroom?

A Yes, ma'am.

Q What did you notice?

A A big open window.

Q And from where you were standing in that bedroom were you able to see the hallway?

A Yes, ma'am, yes.

Q Were you able to see where the victim was?

A Yes, ma'am.

Q What did you do after you cleared the house?

A Well, I, once, like I said, I cleared the house to

make sure no suspects. I checked him for a pulse, breathing. None. And then I began securing the scene, telling Officer Pollich to start setting up crime-scene tape, start a crime-scene log.

Other officers started coming in. I grabbed a -- little cones and I started marking things that looked like possible evidence -- this gentleman's I.D. I found another driver's license in the house. Just things I may feel that might be of importance.

MS. BROWN: Your Honor, may I approach the witness?

THE COURT: Yes, ma'am.

Q Handing you some premarked exhibits. It's eight through seven. Showing you State's Exhibits 4 through 10 for I.D.

A Yes, ma'am.

Q Do you know what those are?

A Yes, ma'am. These are actually pictures that are inside of the house.

This is right next to his -- I believe it's his right foot there. There's a little closet area, a little recess area in there.

This one of course is where I had put the cone, the marker, where his I.D. was found right beside his foot. That's just a close-up picture of that. Another close-up picture.

This picture was taken. It was -- this white car was on scene when we first arrived. I didn't know who it belonged to at the time, but it was on scene near the -- near the house or almost right in front of the house.

This is [redacted] Fisher Avenue. This is the house at the time. It was nighttime.

And this is right inside the front door.

This is the living room area where all of the debris, the trash. And looking right inside to the kitchen area is the refrigerator, and that one light that's on in the house.

Q Does that fairly and accurately represent the state of the house, the outside of the house, as you observed it that day?

A Yes, ma'am. Very much so.

MS. BROWN: Your Honor, at this time the state moves to enter into evidence State's Exhibits 4 through 10.

THE COURT: They're already in.

MR. DELANEY: No objection.

MS. BROWN: Your Honor, may I publish to the jury?

THE COURT: You may.

Q I know you were explaining to me, but just so the jury will have an idea of what this is -- can you explain to the jury what this is?

A Yes, ma'am. This is the front door of [redacted] Fisher

Avenue. Right inside this door as you're looking in, this is the living room area. This is your living room area with all of the trash, debris.

Here is a kitchen, refrigerator. That one light is the only light that was on in the house.

This is a -- there's no wall here. That's just a -- that's a wall there, but there's nothing in between this kitchen and this area here. This is, I guess, a dining room area, the kitchen area.

Q Is that how the house looked when you --

A Oh, yes, ma'am, yes.

Q Can you tell the jury what this is?

A This is [redacted] Fisher Avenue. This is the house, of course, again the front door, right inside the living room area, trash can out front.

Q Can you tell us what this is?

A Yes, ma'am. This is the white car that was on scene. This is [redacted] Fisher Avenue. This is where the car was at in relationship to the house. It was not moved by us or anyone else. It was there the entire time, and we blocked it off.

Q I believe you mentioned this earlier. Tell us what we're seeing here.

A Yes, ma'am. This is the victim's foot. I believe that's going to be his right foot. That was his I.D. and

where it was at in relationship to his body. This is the cone where I marked it.

Q Tell us what we're seeing here.

A Yes, ma'am. These are just other items that were -- this is -- this is his foot. There's the I.D. This is a recessed little closet area. I'm not -- it's like garbage. There were -- item here outside. These are items we marked, things here, a bunch of trash and garbage all over the place.

Q After you cleared the house did you with your canine unit take --

A Yes, ma'am. Once other officers arrived and we established and were able to control the scene better, I deployed my canine Jack that I had at the time. He was a Dutch shepherd.

He is also trained in tracking. Now, tracking itself is -- he's not a bloodhound, but when dogs are tracking something it's for -- the best way to figure it for people that are like you and me is that it's like a fresh piece of cut grass through -- through high grass.

Imagine 10 inches of grass and there's a spot that's cut down to 5 inches. We can follow that. He follows it the same way, but he follows it with his nose. He follows an odor. And we figured that if they went out of the back of the house, the suspects went out of the back of the

house -- I deployed Jack at the back of the house toward that window. And he picks up the freshest, strongest human scent and begins to follow it.

Q And where was that freshest, strongest scent?

A Right about the window. I started him at the window in the very back bedroom that was open. I put him there. He actually went to the far side of the house, the other side, smelled around and then came back, and then we began tracking.

Q And how do you know that a dog's tracking a scent?

A His -- his reaction. He has a change in behavior. His nose will go close to the ground. And with this particular dog -- and all dogs are different so that the handler themselves has to get to know the dog.

With Jack, his nose would go to the ground and he would begin pulling with all fours. He -- he -- it's like he's pulling like a freight train honestly. It's like instead of just a walking-your-dog-down-the-sidewalk, the dog is walking you, because he was pulling hard.

Q Where does he take you?

A Eventually we wound up on Wilkinson Court, which is roughly maybe a hundred yards from the back of the house. Maybe not even that. And then I think he finally stopped at [redacted] Gowan Street.

Q Where is that in relation to the house at [redacted] Fisher?

A From the back side of the house -- from the back side of [redacted]Fisher Avenue, it's almost a straight shot, roughly a hundred or two hundred yards to [redacted] Gowan Street. That's where he lost the track at when we -- we were no longer tracking.

MS. BROWN: Your Honor, may I approach the witness?

THE COURT: Yes.

Q Showing you State's Exhibits 1 through 3. Do you know what those are?

A This is a -- a digital picture, I guess you'd say, of just of a -- of the area where [redacted]Fisher Avenue is at -- Gowan Street, Wilkinson Court. It's just an overlay of the whole area.

This is a -- I guess it would be a satellite view. This is a street view. This is a satellite view of the exact same area showing real time in daylight. And this, again, is -- once again, is [redacted] Fisher Avenue.

MS. BROWN: Your Honor, may I publish these to the jury?

THE COURT: You may.

Q You still have the pointer? Can you point to the jury where [redacted]Fisher is?

A This is [redacted] Fisher Avenue.

Q Now, explain the route that your canine unit -- that you tracked.

A When I deployed my canine he was on --

THE COURT: Excuse me. Be careful of that microphone that's making all of that noise. You're rubbing against it.

THE WITNESS: Oh, I'm sorry, Your Honor.

A So you have [redacted] Fisher Avenue. This left corner as we're looking at it is where the window, open window, was at. That's where I put my dog Jack at, where I deployed.

Q Is that the back of the house?

A Ma'am?

Q Is that the back of the house?

A Yes, this is the back of the house. This is the front; this is the back.

And right about here was where he started at. He pulled to this side, searched around.

Now, there had been a lot of officers already back, in the back, side of the house where we cleared it to make sure there was nothing out there.

He pulls to this area, comes back. And when he started really pulling hard and showed a change in behavior picking up a real fresh strong scent, an odor, a human odor, he started pulling and going this way, because we went through these woods. And there's a fence in here. And he went through these woods, and we came out here, which this is Wilkinson Court. And worked up this area.

And he finally stopped right there. I believe it's [redacted] Gowan Street. This is Gowan Street here, and he stopped there, or no longer showed a change in behavior.

Q Can you explain that again on this one -- it may be easier to see -- the route the canine took?

A Yes, ma'am. Of course [redacted] this is the Fisher Avenue. So this is actually the front of the house here. This is the back side.

As he starts tracking he went this way toward the -- on the right side of the house. He came back, showed a change in behavior in here picking up a fresh strong human odor, came through here along this fence line beside this house, and we came out here on Wilkinson Court.

Q Officer Hancock, I asked you earlier what time you responded on scene. Would a copy of your report refresh your memory?

A It may, yes, ma'am. I arrived roughly about 6:30. 6:35 is what it says on here. Officer Pollich was the first on scene, and I arrived maybe two minutes after him.

Q That's in the evening, right?

A Ma'am?

Q Over in the evening?

A Oh, yes, ma'am, p.m., yes, ma'am, because it was dark. It had -- this time of the year it'd already started getting dark about that time.

MS. BROWN: Your Honor, I have no further questions at this time.

MR. DELANEY: No questions, Judge.

THE COURT: You may step down.

MR. BULSA: Officer Edwards.

We ask this officer be excused.

THE COURT: He may be.

(Whereupon, the witness was excused.)

MS. BROWN: Your Honor, the state calls Brandi Edwards to stand.

(Photograph marked State's Exhibit No. 11.)

BRANDI EDWARDS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Will you state your name again for the jury?

A Brandi -- Brandi Edwards.

Q Where do you work?

A Spartanburg City Police Department.

Q What do you do at the police department?

A Currently I'm a sergeant over patrol for second shift.

Q What kind of things do you do in that role?

A What kind of things do I do on patrol?

Q No. Oh, in that role.

A In that role. Currently I supervise six or seven other officers that work on a day-to-day basis for daily

operations during the hours of 4:00 p.m. to 2:00 a.m. answering calls, wrecks, accidents, things like that.

Q How long have you worked there?

A Fourteen years.

Q Were you working in that capacity on November 27th of 2017?

A Not -- I was on patrol at the time but not as a supervisor. I was answering calls.

Q You were working?

A Yes, ma'am.

Q How did you become involved in this case?

A I responded to the scene to assist because it had come in as a -- a shooting call. So I went over there to help the other officers to maintain the scene.

Q What did you do when you got there?

A I'm referring to my supplemental. Sorry. I arrived and I began to photo the incident lotion on Fisher Avenue, specifically a white vehicle that had been sectioned off with small orange -- orange evidence cones by Officer Doyle who was there as I arrived.

I then began to photograph the front exterior of [redacted] Fisher Avenue. Officers had already placed crime scene tape upon the section, up to section off the incident location. And other officers had started the crime scene log. I photographed the front, the residence. And I

observed E.M.S. personnel was exiting the residence at that time.

Q You said that you photographed the front of the residence?

A Yes, ma'am.

MS. BROWN: Your Honor, may I approach the witness?

Q This is State's Exhibit 11. Do you know what that is?

A That's a picture of the eviction notice on the front door of the residence.

Q A picture you took?

A Yes.

MS. BROWN: Your Honor, may I publish to the jury?

THE COURT: You may.

Q Can you explain to the jury what this is?

A This is a notice. It's an eviction notice that was on the front door of [redacted] Fisher Avenue.

So one of the standard procedures that we do when we contain a crime scene is we will start photographing from outside going in just showing where things are located and how it looks as we're going through the scene.

Our forensic unit usually comes in, and they get more specific in details. I -- since I was already outside photographing the vehicle that was out front and showing its location and where items were being marked, I went ahead and got a picture of the front of the residence and

observed that. So I took a picture of that because that was on the front door.

Q So tell us about the scene when you got there.

A To my memory, the best I can remember, it was a little chaotic.

I remember Officer Doyle was marking off shell casings, I believe, that were around the car. Officer Hancock was inside, I believe. E.M.S. was coming out.

Family and friends were starting to arrive, which was one of the reasons that I stayed there, because it was a little chaotic with them wanting to go inside and see if they could see the subject that was inside that was deceased.

Q At any point did you go in the house?

A I did.

Q What did you observe when you went in the house?

A When I walked inside I walked -- when you open the front door or when you go into the front door that's -- that's what's considered the living room area.

The kitchen was on the right-hand side of the house.

As you walk in the front door there's a wall here, and then immediately to your left after you walk maybe 3 or 4 feet to your left there's a hall. And I observed the deceased subject was at the end of the hall.

So I basically hung around right there in the living

room area just making observations, making sure nobody was trying to come in through the back door or anything, because the back door was to the right through the kitchen. I did notice that, but I didn't touch the door. I did notice it was unlocked.

Officer Hancock had actually stepped out briefly and went to conduct a -- a track, I believe. I'm not a hundred percent. I believe he went to go conduct a track to try track the possible suspects to see if they were potentially still in the area towards the back yard or something. I can't remember exactly what had happened for him to do that. But I do remember he walked out. So I stayed on scene there inside the house until investigations arrived to take over.

Q Earlier you said that Officer Pollich was marking shell casings outside the car. Is that what happened?

A It was Officer Doyle, I think. My supplemental says it was Officer Doyle who's no longer with the department, yes.

Upon arrival I began to photo the incident location on Fisher Avenue, specifically a white vehicle that had been sectioned off with small orange evidence cones by Officer Doyle.

Q Do you see anything in your report about shell casings by the car?

A Not by the car, no.

MS. BROWN: I have no further questions at this time, Your Honor.

MR. DELANEY: No questions, Judge.

THE COURT: You may step down.

MR. BULSA: Ms. Mills, Audrey Mills.

AUDREY MILLS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Can you state your name again for the jury?

A Audrey Mills.

Q How old are you?

A I'm 48.

THE COURT: Ms. Mills, let me ask you to use that black microphone.

THE WITNESS: Okay.

THE COURT: You can move it as you need to.

A Forty-eight.

Q Where do you live?

A At [redacted] Fisher Avenue.

Q How long have you lived there?

A About 40 years.

Q Forty years?

A Uh-huh.

Q What were you doing around 6:00 o'clock on

November 27th of 2017?
A November the 27th. Is that that Monday?
Q Yes, ma'am.
A I was taking my trash out that Monday because our trash pickup on Tuesday. And my daughter and my grandson were leaving to go home, and I was taking some trash out. And I was returning back into my house.
Q And what, if anything, did you see when you were taking your trash out?
A When I was taking my trash out the house that's next door, the [redacted] it was a vacant house, I thought.

And when I was returning from taking the trash I saw a guy standing over in the door. He had on a red hoodie and, you know, he was just standing in the door.

So I proceeded on in the house to finish cleaning out my refrigerator, and like five minutes after I got in the house I heard four gunshots. And I kinda, like, paused a little bit and finished cleaning out the refrigerator.

And then I heard -- the guy -- the people that stay behind me, they got a lot of dogs. The guy breed pit bulls or whatever. They were, you know, extremely -- you know, you could tell someone was back there walking. And I heard -- you know, at that time of the year we don't -- I rake the back of my yard right then. I wait till all the leaves fall. And I heard the leaves moving and then --

Q You heard the leaves moving where?
A Move, you know -- you know, like somebody's walking through the leaves.
Q What was that?
A In my back yard.
And once the dogs kind of calmed down a little bit I went to the front door, and there was a car out there, and I stepped out the front door and I asked the guys. I didn't even know them. I said is everything okay out here.
And Ms. Shannon Thompson who stay across the street, she hollered. And she said, "Audrey, go back in the house and I'm going to call your phone." And I said okay.
So I went back in the house and she did call my phone. I said, "What's going on?" And she said, "You call the police and I'm going to call the police." I said, "What's going on?" She said, "Did you not hear the four gunshots?" I said, "I did."
MR. DELANEY: Objection. Hearsay, Your Honor.
THE COURT: Sustained.
Q Without going into what -- what was said -- go back to the car that you said that you saw. What color was that? Do you remember?
A I want to say it was a white or more like a silver. I'm not sure. I'm not familiar. I wasn't out there. Like, you know, when she told me to -- Shannon told me to

go --

THE COURT: Don't say what Shannon said. She can testify.

THE WITNESS: Okay.

A Yeah. I just went back in the house, but I think it was a -- I know it was a white or a silver car.

Q Now, when you said that you -- let me go back to the leaves in your back yard. So tell me where [redacted] Fisher is in relation to your house. Is it across the street?

A It's next -- it's on the left side.

Q Does it share a yard with your yard?

A You can walk. You can walk -- leave from [redacted] and go across, you know, come cross my back yard.

Q There's no fence that separates it or anything?

A Not -- not separate [redacted] from [redacted]

Q Now, I think you said earlier that some people came running up to your porch.

A Yes. After.

Q Without getting into what they said, how were they acting?

A They were acting. You know, that's when they went over there and found whoever the guy was with -- and they came to my porch telling me to call the cops, that their friend had -- was dead over there in the house. And I said, "Well, there's a city cop right there."

Q Had you ever seen those people in your neighborhood before?
A No.
Q Did you know the victim, Kiyounnie Jackson?
A No.
Q You never met him before?
A I didn't even know, didn't know him.
Q I guess you never saw him in your neighborhood?
A Never.
Q Did you know or know of Jacory Foster, the defendant?
A I don't -- I don't know him. I didn't know him personally, but I did -- I have seen -- I had seen him in the neighborhood.
Q Where had you seen him at?
A Over at that, at [redacted]
Q Ms. Mills, I'm showing you State's Exhibit 3. Which one is your house?
A This one.
Q And which one is [redacted] Fisher?
A That one.
Q Are you meaning the one on the right?
A Yes, this one on the right.
Q This is the pointer.
THE COURT: Ms. Mills, be sure that when you respond to the question -- I know you're looking at the picture,

but when you respond to the question use the microphone.

THE WITNESS: Okay.

Q Okay. So show the jury which one is your house.

A That one is my house -- this one is my house.

THE COURT: Now, just tell if it's the one shown on the left or the right.

Q That's your house?

A That's my house.

Q And which one is [redacted] Fisher?

A That one right there is [redacted]

MS. BROWN: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. DELANEY

Q Ms. Mills --

A Uh-huh.

Q -- you testified a few minutes ago about a vehicle you saw on the street. Is that accurate?

A Yeah. That one that was in front of my -- at the driveway when I went to the door.

Q Is that the vehicle there in Defendant's -- I'm sorry -- in State's Exhibit 8 that you're referring to?

A Yes. That's it.

Q And did you notice when that vehicle first arrived to that location?

A No.

Q You just saw it when you took your garbage out?
A Well, I didn't -- I didn't see it when I took my garbage out. After I heard the four shots and I went to the front door, that's when that vehicle was at the end of my driveway.
Q And did you see any occupants of that vehicle?
A I did, but, now, I don't know who they were, because, I mean, like, I was told to go back in the house.
Q Did any of those occupants have on a red hoodie?
A Not that I know of.
Q Do you know -- you had referenced an individual with a red hoodie earlier. Do you know who that was?
A No, sir. I don't. I just saw him standing over there in the door at [redacted]
Q Did you see that individual when you were taking your trash to the street?
A No. I -- when I -- I had already took my trash, the actual container, to the street. I was just cleaning out my refrigerator, and I had some trash, and I was taking that out there. And when I turned around he was standing in the door like his hands, like this, you know, like he was holding onto the screen door.
Q What time was that approximately?
A Might have -- I want to say about -- about 5:00, 5:50, something like that.

Q I'm going to show you a document here, Ms. Mills. Are you familiar with that?
A Uh-huh.
Q Is that a statement that you gave --
A Yes.
Q -- to law enforcement?
A Yes, sir.
Q And what time does it say that you heard four gunshots?
A At 6:15.
Q So you had taken your main garbage to the street, turned around and walked back to your house.
A Uh-huh.
Q Gathered up some secondary garbage --
A Right.
Q -- from the refrigerator.
A Right.
Q Took it to the street --
A Uh-huh.
Q -- at 5:50.
A Uh-huh, that's about.
Q Turned around. And that's where you saw this individual with the red hoodie.
A Standing over there in the door.
Q And when you're going back to your house at 5:50 after

you had taken the second load of garbage to the street, you would have seen that person to your right, is that correct?
A Uh-huh.
Q And that's because [redacted] would have been to your right as you walked back.
A Right, right.
Q Was it dark at that time?
A It was getting dark.
Q Then at 6:15 when you heard the four gunshots -- when did this white car arrive?
A I'm not -- I'm not sure when it arrived. When I heard the dogs barking in the -- in my -- in the back yard and then they kinda calmed down, that's when I went to the front car and that's when I saw the white car.
Q In relation to the -- the four gunshots you heard at 6:15, when did you hear the dogs begin to bark?
A Shortly after the four gunshots.
Q Do you think the gunshots made them start barking?
A May have. I mean, I can't answer that, because, I mean, I just know they started barking.
Q I'm going to show you a document here marked State's Exhibit 11. Do you know what that is?
A This right here was hanging on that door over at [redacted]
Q And what is it to the best of your knowledge?
A I think it's where they were being evicted.

Q Do you know who was being evicted from that house?
A Ms. Ethel.
Q Ms. Ethel?
A Ethel -- Ethel Jefferies.
Q Female?
A Uh-huh, yes, sir.
Q About how old?
A Oh, she's an older lady.
Q When is -- to your knowledge when is the last time that she was a full-time resident of that house?
A She came and -- and told me that she was going to be moving -- her and her husband -- but she was going to leave her grandson, grandchildren.
MS. BROWN: Objection, Your Honor. Hearsay.
THE COURT: Sustained.
Q When is the last time you saw her residing in that house? Was it 30 days before November the 27th?
A It had been a while.
Q Had it been 60 days before November the 27th?
A Yes.
Q Had it been 90 days before November the 27th?
A I don't think it had been quite 90 days.
Q Somewhere in the area of 60 days?
A Right.
Q So in the 60 days before November the 27th was anybody

living in that house?
A Her grand -- her grandsons. She -- I mean, she told me that she was going to leave her grandchildren over at the house.
Q Did you see them there?
A Sometime. Most of them worked. I mean, it was -- it was just, like, two guys that lived -- that was living there. But then from my understanding they was moving. They were moving too.
Q Did you see daily activity at that house?
A No, not --
Q Human activity?
A Not -- I mean, I stayed in my house. I mean, you know, if I -- you know, if I'm going out to go to my car or something like that, you know, it may be someone over there, may not be.
MR. DELANEY: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MS. BROWN

Q Ms. Mills --
A Uh-huh.
Q -- you mentioned a person in a red hoodie. Were you able to get a good look at that person?
A No, ma'am.
Q Now, you mentioned you lived at Fisher for about 40

years.
A Uh-huh.
Q You say you're pretty familiar with goings-on at that street?
A Am I -- excuse me?
Q You're pretty familiar with what goes on on that street?
A Yeah, if I'm outside, yeah.
Q Have you seen people at [redacted] recently live there?
A Well, someone has bought the house now.
Q I mean, in November of 2017.
A Oh, okay.
Q Had you seen people at [redacted]Fisher after they moved out?
A It -- it was, you know, different people were in -- you know, in and out. You know, like I say, I didn't -- I would see them, you know, if I'm going in and out, you know, going to my car and outside in the yard or something like that. It would be, you know, the -- Ms. Ethel's grandsons that I know. I -- I really didn't know the children.
Q Had you seen anyone that day? Had you seen anyone -- had you seen them that day?
A No. Hadn't saw them. I didn't see any of them that day.

MS. BROWN: No further questions, Your Honor.
MR. DELANEY: No questions, Judge.
THE COURT: You may step down.
MS. BROWN: May she be excused, Your Honor?
THE COURT: She may be.
(Whereupon, the witness was excused.)
THE COURT: We are going to take a short break before we go further.
I'll ask the jury to please go to your jury room.
Remember the caution I've previously given you. You're not discuss the case in any fashion whatsoever. You can only do that during deliberations.
(The following takes place outside the presence of the jury.)
THE COURT: We'll be at ease 15 minutes.
(Whereupon, a recess was taken.)
(Diagram marked State's Exhibit No. 12; photographs marked State's Exhibits Nos. 13 through 41; shell casings marked State's Exhibits Nos. 42 through 46; spent rounds marked State's Exhibits Nos. 47 through 49; cell phone marked State's Exhibit No. 50.)
MR. BULSA: May it please the Court.
THE COURT: Yes, sir.
MR. BULSA: Your Honor, the state has marked several additional photographs and shared them with defense

counsel. I believe there's no objection to introducing them into evidence. That will be State's 11 through 41. They are photographs and a couple of diagrams.

MR. DELANEY: That's correct, Your Honor.

THE COURT: All right. Eleven through 41 are admitted without further introduction.

MR. BULSA: And then we also marked some shell casings and a spent round and a -- the victim's iPhone or cell phone. Not iPhone. A cell phone. They've been marked 42 through 50. I believe they're also to be entered without objection.

MR. DELANEY: That's correct, Your Honor.

THE COURT: All right. Forty-two through 50 are also admitted without further introduction.

All right. Are we ready for the jury?

MR. BULSA: Yes, sir.

MR. DELANEY: Yes, sir.

THE COURT: Bring them in, please.

Who is the next witness?

MR. BULSA: Shawn Cloran.

THE COURT: Is he in the courtroom?

MR. BULSA: Yes, sir.

(The following takes place in the presence of the jury.)

THE COURT: All right. The jury is present. You may

proceed.

MR. BULSA: The state calls Shawn Cloran.

SHAWN CLORAN, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please introduce yourself to the jury.

A My name is Shawn Cloran. I work for Spartanburg Police Department as a forensic investigator.

Q And just so we get an understanding, why are you in two slings?

A On October 26th of this year I was headed to a class in North Carolina and wrecked the forensics truck and dislocated both shoulders and have to have surgery on both of them.

Q All right. Are you going to be able to testify?

A Yes, sir.

Q Okay. All right. Now, you worked this crime scene, is that right?

A I did.

Q Kind of explain to the jury what you do when you go to a crime scene.

A I start by photographing overall to get an overall idea. And then myself and the investigators will do a walk-through to get an idea of things that we see or deem to be of evidentiary value. We'll discuss it, and then

I'll take more detailed photographs.

Then I'll mark with placards. If I don't mark with numbered placards first I use cones or little yellow triangles. Sometimes you'll be there an hour; sometimes you'll be there 36 hours. It all depends. But once more detailed photographs are taken, then we'll go back one by one and take pictures of that item and recover it.

Q Okay. Now, do you recall when you actually arrived at [redacted] Fisher Avenue?

A At approximately 2030 hours on November 27th.

Q And explain to the jury what 2030 hours is.

A 8:30. That is military time.

Q That's 8:30 in the evening.

A Yes, sir.

Q And what was taking place?

A There were -- upon my arrival there was a white vehicle. It was a 1995 Mercury Tracer, and it was illegally parked in front of the residence. It was still running. The officers on scene didn't want to do anything with the vehicle until I arrived.

There was a crowd starting to form, and there was crime scene tape. And, if I recall, there was orange cones around the vehicle when I arrived.

And then the officers-investigators had started talking to the people that were starting to crowd the area.

Q And your job was to go in and, as you stated, take pictures and try to collect any --
A Yes, sir. When I first arrived I spoke to the first responding officers and investigators to get some details of what they had learned. And I had to wait for the search warrant to enter the residence. And in that time I photographed the vehicle and the exterior of the residence.
Q Now, I'm going to be showing you some pictures that have already been introduced into evidence by consent. So we're going to reference those. Do you think you'll be able to use that pointer?
A Yes, sir.
Q Let's first talk about State's Exhibit No. 8. This white car that you mentioned --
A Yes, sir.
Q -- did you determine whose car that was?
A It was the victim's vehicle, but it was registered to his mother.
Q But it was Kiyounnie Jackson that you learned was driving it.
A Yes, sir.
Q And --
A I'm not sure if he was driving. I couldn't prove any of that, but it was his vehicle, yes, sir.
Q Now, that was actually taken to a location, a

different location, and then you processed it, looked in it for evidence?

A Yes, sir. After I worked the scene and everything, I photographed the vehicle. I turned the ignition off, left the keys in the ignition.

It was towed to the Spartanburg Police Department Impound and it was followed by Investigator Norkett to show that it -- nobody else touched the vehicle. It was secured inside the impound and logged into evidence.

Q Now, is there any significance to the red cones surrounding that vehicle?

A The red cones, that was patrol placed those to show, basically, leave it alone. But I later around the tires -- you can't see it now because I hadn't done it yet -- but around the tires I used red paint to mark each tire, and then in front of the bumper, in the center and in the back bumper.

Q That's so you could position it if you needed to later?

A Yes, sir. To recreate the scene.

Q Okay. All right. So the red cones don't mark anything other than --

A Where it was and to stay away from it.

Q Okay. We've seen some of these. The jury's seen some, but I want to walk you through this house. This is

the front of the house, right, State's Exhibit 9?
A Yes, sir.
Q Okay. State's No. 10. Is that a view through the front door?
A Yes, sir.
Q We see a lot of things around.
A Yes, sir. The -- the house was a -- it was a mess.
Q Okay. Cluttered, messy, dirty?
A It was dirty. There was trash throughout. There was some clothes throughout, blankets, food wrappers, cockroaches. I mean, it was -- was complete disarray.
Q Okay. Let's -- let's carry you through a few more of the rooms to see if that continues.
State's No. 14. That's a view down the hallway?
A Yes, sir.
Q That's where Kiyounnie was actually found, is that right?
A The victim was approximately -- his head and torso was approximately here. His back was approximately here somewhat at an angle. And his legs extended this way.
Q Okay. And State's No. 4 is the hallway where we actually see the hand and foot of Mr. Jackson, is that right?
A Yes, sir.
Q Okay. So even the closets were cluttered.

A Yes, sir.
Q And then State's 39. Is that the bedroom at the end of the hall?
A I believe so, yes, sir, because I remember pallets being made.
Q Okay. You see the blankets there at the end of the hall?
A Yes, sir.
Q Appear to be the blankets right there that are orange and blue?
A Yes, sir.
Q And then State's No. 40. Is that the hallway adjacent to it, to the right?
A Yes, sir. If I remember correctly, that's the back right bedroom of the residence.
Q Okay. And we've heard some testimony previously about a window. Is this the window, State's 41, that exits or is in that room?
A Yes.
Q State's 40?
A Yes, sir.
Q Okay. And then it was photographed as it was found.
A Yes, sir.
Q So it was in the raised position.
A Yes, sir.

Q Now, to assist you in your report writing and analysis do you prepare diagrams?
A Yes, sir. Depending on the case. Yes, sir.
Q And in this case, State's No. 12, overall view of the residence, is that right?
A Yes, sir. A not-to-scale diagram.
Q Okay. You can use the pointer and just kind of walk us through and show us what pictures we saw.
A Yes, sir. This was a small-porch area and in the front of the residence. Upon entering the living room there was a small little section of wall here which entered into the kitchen. And then at first I thought it was a closet, but it entered into the laundry and utility room which had a back door.
Q Was that door opened, locked or what?
A It was unlocked, but I'm not sure if it was unlocked when the residence was cleared or unlocked due to other people coming and going.
Q Okay.
A This is the hallway where the victim was found, what appeared to be a closet containing the air conditioning system, the closet which was shown in the photo with the clutter on the floor, the victim, the first bedroom, the bedroom at the end of the hall where the pallets were seen, and the bedroom where it had the open window.

Q Okay. And there was a single bath in the house?
A Yes, sir.
Q Was that at the end of the hall?
A Yes, sir. And there was a shell casing recovered just inside the threshold here.
Q We're going to get into that in just a minute.
Okay. Now, you created another diagram, State's 13. It has more description on it. What are the items that we're seeing?
A The numbered items, the two, three, five, six, seven, ten, eleven, twelve are items that were measured using point A and B, which was the corners of the hallway.
The other items, eight and nine, they were marked, but I was unable to measure them due to line of sight. You couldn't get an exact. And then here are the items listed with the measurements.
Q In such a cluttered residence how did you determine what to actually collect?
A From experience, knowing and seeing the victim, his injuries, knowing what to look for.
Q State's No. 5. His I.D. was actually found, is that correct?
A Yes, sir, at the bottom of his right foot. And that was later marked as placard No. 10.
Q It appears to be attached to a lanyard.

A Yes, sir.
Q One would wear around their neck, is that right?
A Yes, sir.
Q A couple of other I.D.s were actually collected, weren't they?
A Yes, sir. Inside the threshold -- not the threshold -- but just inside the bedroom at the end of the hallway a South Carolina I.D. belonging to Bianca Watson was located. And then outside of the residence where the open window was an I.D. was located as well.
Q That's not for you to follow up on, right?
A No, sir. To recover.
Q That's for investigations unless there's something you figured might be interesting and important.
A Yes, sir.
Q So you don't know if they had any significance, do you?
A Correct. There was also a, like a, prepaid card located outside of the residence as well on the back side of the house.
Q Just so the jury can get a better understanding of those numbers, let's walk through some of these significant ones.
State's No. 2. It's placard -- excuse me -- State's No. 15. There's a No. 2 placard by the front door.

A Yes, sir. Right just in the corner of it was a shell casing.
Q And that's the -- the picture is State's No. 16.
All right. Then we have State's No. 17 is another, appears to be --
A Yes, sir.
Q -- casing.
A Right here is another shell casing.
Q And State's 18 shows another shell casing and some fabric.
A Right here. And they were inside of a -- looks like a wooden basket laying -- laying on top. The casings were on top of the items inside the basket.
Q And State's 4.
A Yes, sir.
Q Those were inside the hallway which was opposite the victim's body?
A Yes, sir.
Q And State's No. 19 showing marker No. 11.
A Yes, sir. And that was just inside the bedroom entry, the bedroom at the end of the hallway where the I.D. was found as well.
Q That's a shell casing in the room you're identifying as State's 14. Is that the end of the hall --
A Yes, sir.

Q -- we can see, No. 11?
A Eleven would be the shell casing and 12 was the I.D.
Q Okay. Now State's 13 is another shell casing. Showing where?
A Yes, sir.
Q State's No. 20. I'm sorry. Is that the shell casing, looks like a towel?
A Yes, sir.
Q That's where, inside a bathroom?
A It's the bathroom which was around the corner from the victim, which was a short hallway, and it was just inside the threshold of the bathroom.
Q So that makes five shell casings, right?
A Yes, sir.
Q All right. And seem to be strewn about the house -- one near the front door, one in the bathroom -- way, basically opposite ends of the house, is that right?
MR. DELANEY: Objection. Leading.
THE COURT: Don't lead him.
Q Did you find one near the front door?
A Yes, sir.
Q One near the bathroom?
A Yes, sir.
Q Are those basically opposite ends of the house?
A Yes, sir.

Q And then three others were closer to the victim's body, is that right?
A Yes, sir.
Q In your experience do you have any idea of how that could have -- how they could have been spread out that far?
A From experience, it could be multiple people, it could be as someone's running away from someone, things like that.
Q Could they be kicked?
A Could be kicked, could be moved around, could have been when Officer Hancock was clearing the residence, could have been as E.M.S. was in and out of the residence checking the vitals on the victim.
Q Or when somebody themselves --
A Was running.
Q -- may have left?
A Yes, sir.
Q So --
A And shell casings bounce as well.
Q Ricochet.
A Yes, sir.
Q All right. So you can't really tell from positioning of the shell casings in a place like this as to where the shooter might be.
A No, sir. The -- I'm not sure. Yeah. Right here it

shows 3.07 feet, which was the width of the hallway. So if someone was standing on one -- on the right side and fired the weapon, it could have bounced off one wall and went to the other side. There's no way to determine where someone was standing.

Q Let's see if the spent rounds help us any.

Now, State's No. 21 shows a -- what can you tell us? What does it show?

A That is a fired projectile, the lead part of the bullet that had been fired.

Q Based on your diagram, where was it found?

A No. 5, just above the victim's head --

Q Okay.

A -- on the floor.

Q And you recovered one other spent round at the scene, is that right?

A Yes, sir.

Q So that is shown in State's 25?

A Yes, sir.

Q What are we seeing?

A The fired bullet. The projectile is embedded into the doorframe of one of the hallway closets.

Q Let me walk you through some other pictures. And tell us if they're related to that spent round.

State's 23. See what appears to be a hole in the

door?
A This is an entry or exit inside the hallway closet.
Q And then State's 24.
A Again, entry. And it's where the pressure from a large caliber round hitting the wood and splintering it.
Q Okay. And State's 26.
A That is the projectile.
Q Okay. And you actually dug it out of the wall?
A Yes, sir.
Q Now, where -- show the jury where you found that spent round in your diagram.
A Do you have the other -- I'm sorry -- the other diagram that shows both closets? The closet door for this one, they were both very close together, and it was embedded into the doorframe which was closer to the head and torso area of the victim.
Q Based on the location of these spent rounds, in your experience can you tell where some one was fired from?
A In close proximity to the victim.
Q Okay. Back in that direction, in the direction towards the living room?
A I would -- can't really say but --
MR. DELANEY: Objection, Your Honor. I don't think he's qualified to make these type of assertions to the jury.

THE COURT: Sustained.
Q What's your experience?
A I've been a forensic investigator for over four years.
THE COURT: He already testified in response that he couldn't actually say. So that answers that question.
Q Okay. All right. So, once again, there's no way to tell where somebody was standing.
A No, sir. I can -- I can say close proximity.
Q Okay. They can speak for themselves, the photographs, but --
MR. DELANEY: Objection. May we approach, Your Honor?
THE COURT: Okay.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
Q Okay. And lastly State's No. 22. What does that show us?
A Is a blue piece of plastic containing green leafy plant material which was located near the victim.
Q Okay. What was that believed to be?
A Marijuana.
Q That's right next to the victim?
A Yes, sir. Below his right hand.
Q Now, it's part of your job to collect those, the physical objects themselves.
A Yes, sir.

Q We don't have to go through them in detail, but show you State's 42, 43, 44, 45 and 46. Are those the shell casing that were recovered from inside the residence?
A Yes, sir.
Q Okay. And were these secured and then sent for analysis --
A Yes, sir.
Q -- to the state law enforcement division?
Okay. And State's 47 and 48. Were those the spent rounds that you retrieved from inside the residence?
A Yes, sir.
Q Okay. And they were recovered to be sent also for analysis?
A Yes, sir. They put their lab number on to keep track of it.
Q Now, so the jury has a good perspective, let's look at some of the photographs on the outside of the house. We've seen the front. Can you tell me what State's 27 shows?
A We are facing the back of the residence. That would be the back left corner.
Q Okay. What is that portion protruding out from the house near the H.V.A.C. unit?
A This area?
Q Yes, sir.
A The area near the laundry room, the back-door area.

Q Okay. State's 28.
A The back door to the residence.
Q We see another door to the left of that, right?
A Yes, sir.
Q That appears to be that protrusion.
A Yes, sir.
Q Appears to be some sort of a closet?
A Yes, sir.
Q And State's 29. Another view of the back of the residence showing the door and the window?
A Yes, sir.
Q And that window on the right-hand side of it, is that the window that was open in the back bedroom?
A Yes, sir. You can see the bottom of the upper portion of the window and the bottom portion of the lower part.
Q And that's further depicted in State's 30?
A Yes, sir.
Q Okay. So you memorialize the scene with photographs and secured what you thought might be important, and then that was turned over for investigations to work with, is that right?
A Yes, sir, after recovering everything.
Q All right. Did you view the victim's body?
A Initially on scene prior to transport, the Spartanburg County Coroner and I, we took a few photographs. We didn't

want to disturb him without me being able to take measurements. But we were able to take a few photographs and look before transporting him and furthering our photographs.

Q And he was taken to the hospital, to the morgue?

A Yes, sir.

Q Did you attend the autopsy?

A Yes, sir. I did.

Q Did you collect anything from the autopsy?

A Yes, sir. At the autopsy I collected the projectiles and the copper jacket, which is part of the projectile, from the victim's body, as well as his clothing that he was wearing.

Q Let me show you what's been marked State's 49. Does that contain the projectiles from his body?

A Yes, sir.

Q And how many did you receive from the pathologist?

A Two containers. There were three in total. Two pieces were from the victim's head and the other one was recovered from the torso area, which was the round that traveled from the victim's leg and went into his torso area.

Q And those were secured as the other ones were --

A Yes, sir.

Q -- for later analysis?

A Yes, sir.
Q Now, we spoke briefly at the beginning about the white vehicle out -- that was out in front of the house?
A Yes, sir.
Q And you -- it was taken to a location, and you looked inside of it to see if there was anything of value.
A Yes, sir. It was taken to the Spartanburg Police Department's lot where it was secured. The impound.
Q Show you what's been marked State's 50. Is that a cell phone that was retrieved from inside that car?
A Yes, sir.
Q Did you learn whose cell phone it was?
A I don't know if I directly learned. I know that it was recovered and I logged it into evidence where it was later gone through by other investigators.
Q And you noted it was found on the front passenger seat.
A Yes, sir.
Q Okay. All right. Now, this case was being worked by Investigator Taylor and Investigator Nelson, is that right?
A Yes, sir. They were the primaries.
Q And there were other investigators involved, is that right?
A Yes, sir.
Q Did some investigators come to you with information

about a potential other location that needed to be looked at?

A Some of the -- our supervisors. On the 29th they contacted me and asked me to come up to the C.I.D. area because we had to have a briefing. And that's when they informed me of additional items of evidence.

Q Okay. So two days later you were in a meeting. And were you directed to Duncan Park?

A Yes, sir.

Q And for what purpose?

A I was informed that information was given that a gun used in the incident was placed in a bag and thrown into a storm drain or sewer drain at the Duncan Park trail area and that the clothing was burned on the Duncan Park trail area.

Q So did you go to Duncan Park to look for those items?

A Not initially. But after conducting a photo lineup for Investigator Taylor and Nelson, then I responded to Duncan Park.

Q Was a pistol found?

A No. It wasn't.

Q Did you find a burn pile?

A We did.

Q Where was that?

A That was a little ways down Duncan Park trail, the

paved path.
Q We have some photographs. We will walk you through those. State's 31.
A That was --
Q Entry of the path?
A Yes, sir. Just behind the baseball field.
Q Okay. State's 32. Is that farther down the path?
A Yes, sir.
Q State's 33. Farther down the path. And what do we see?
A We start to see the charred area on the path.
Q Okay. State's 34. That's a closer picture?
A Yes, sir.
Q And we see some coloring. What is that?
A That is clothing that was burned in the pile.
Q Okay. And another photo of that, State's 35.
A A closer-up picture. It was like a plastic type material, because it started clumping together, I guess you'd say, when it melted. Several placards were used in the area to show the size of the pile as it was spread.
Q And the rest of these, they show similar objects. What do we see to the upper left end of that picture, State's 35?
A Right here was a cell phone.
Q And that's also depicted in State's 36.

A Yes, sir.
Q State's 37.
Okay. And then State's 38 kind of shows the size of that object, the clothing.
A Yes, sir. It was a rather large piece melted down, and used several gallon-size zip-lock baggies to collect everything that was burned.
Q Okay. You of course at that time didn't have -- know the significance of this.
A No, sir. I was informed there was items -- items burned on the Duncan Park trail that were related to the case.
Q Okay. And you mentioned a lineup that you showed that was to a certain witness.
A Yes, sir, to Ms. Foster.
Q Regina Foster?
A Ms. Regina Foster.
Q And did she identify anybody from the lineup?
A I didn't know the individuals in the lineup, but she signed the back of photo No. 5 identifying the person as the suspect.
Q And do you know who that person was?
A I did not. I didn't know the persons in any of the photos.
Q Why do you do it that way?

A So we can't coerce or give hints or anything like that. We show -- if they knew or said person No. 1 is who they believe it was, we still go through all six photos and that way it's --
Q So you didn't want to suggest anything.
A Right.
Q But she did pick someone out.
A Yes, sir. A person, No. 5. And the photos were mixed up so they weren't in order.
Q Okay. All right. That's all I have. Answer any questions that Mr. Delaney may have.
A Yes, sir.
MR. DELANEY: No questions, Your Honor.
THE COURT: Step down.
MR. BULSA: State calls Inderjit Kaur.
Your Honor, we ask that Officer Cloran be excused.
THE COURT: He may be.
(Whereupon, the witness was excused.)
INDERJIT KAUR, having been first duly sworn, testified as follows:
MR. DELANEY: Your Honor, may we approach?
THE COURT: Okay.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
(Cell phone marked State's Exhibit No. 51 for

Identification.)

DIRECT EXAMINATION BY MR. BULSA

Q Introduce yourself to the jury.

A Good afternoon. I'm Officer Kaur. I apologize. I'm a little cold. If you can't hear me, please let me know.

I've been working with the City of Spartanburg for about five years now. And I mainly do cell phone extraction and analysis.

THE COURT: Mr. Kaur, let me ask you to move up towards that black microphone, and you can adjust it if you need to.

THE WITNESS: This one?

THE COURT: That's right.

THE WITNESS: Okay. Thank you. Thank you, sir.

Q Now, Officer Kaur, let me show you State's Exhibit 50. This was a phone recovered from the vehicle. Did you do an analysis to that phone?

A I did. Yes, I did.

Q Was that determined to be the victim's phone in this case?

A I'd like to look at my paperwork in order to see that, sir.

Q Okay. What paperwork do you need?

A I'll open the phone if you don't mind.

Q Okay.

A Sorry. Do you have the -- the list of all of the phones, sir? Apologize. The only way I can tell is -- now, I'm not sure if it was the victim's phone. The way I get it is just the phone itself, and I'll get a consent or a search warrant with it and I'll do my report.
Q Okay. What I'm trying to get at is State's 51. Did you analyze this, a phone, and pull those pictures from it?
A Yes. I did.
Q You actually photographed something off a phone, is that correct?
A Yes.
Q And that phone was attributed to the victim?
A Yes.
MR. DELANEY: Objection, Your Honor. She's testified that she doesn't have any way of knowing who owned that phone. She is tasked solely with the purpose of pulling information off of it.
THE COURT: I understand. She didn't identify that. She's just saying it was attributed to.
Q And what are those pictures of?
A They're messages off of the phone messenger, facebook messenger.
Q Facebook messenger?
A Yes, sir.
Q Okay. And you actually took a video of that when you

did the phone analysis and I asked you to take pictures of it.

A Correct. Yes, sir.

Q Produce them in court, is that right?

Okay. Now, you don't know who made these, do you?

A No, sir.

Q Okay. But they are --

A Just the label that's the contact, yes.

Q And we'll have that witness testify later.

Okay. Thank you. That's all I have.

CROSS-EXAMINATION

BY MR. DELANEY

Q Just a moment, ma'am. The phone is given to you by employees of Spartanburg Police Department, is that correct?

A Correct.

Q And then basically you're good with computers and extracting information from phones and computers, is that correct?

A That's correct.

Q And that's what your job is every day.

A One of it, yes, sir.

Q And you're not necessarily concerned with who owned the phone or who was possessing the phone or who had the phone when -- you're simply pulling information off of a

computer or a phone, and that's the extent of your employment duties.

A Negative, sir. I -- I do analysis when I'm asked to do it.

Q What do you mean by analysis?

A When -- so if -- if I have a follow-up question, whose phone it is or I only want information from so-and-so person, because when I give you a report it's over thousands and thousands of pages, and I don't have the time to sit there and give you all the answers unless I'm specifically asked for those answers.

If you look at my report that I generated from the extraction you'll see the owner information or you'll see the -- the follow-up questions that my employment-employer would have for -- of me. Excuse me.

Q Is the state prepared to submit that report that you've just referenced into evidence today?

MR. BULSA: Your Honor, that's not for her to answer.

THE COURT: Well, I agree with that.

Let me see y'all just a minute.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

MR. DELANEY: No further questions for this witness at this time, Judge.

THE COURT: All right. Step down. But you may need

to be recalled later, so stay available.

THE WITNESS: Yes, sir.

MR. BULSA: I should have told you while we are up there. The next witness is going to be lengthy if you want to break for lunch.

THE COURT: Okay. All right. We're going to break for lunch. We'll come back and start at 2:00 o'clock.

Keep in mind no discussions, no research, no investigation.

Have a good lunch. Report to your jury room at 2:00 o'clock, 2:00 o'clock this afternoon.

(The following takes place outside the presence of the jury.)

THE COURT: Mr. Bulsa, have you got an extra copy of that exhibit, No. 51?

MR. BULSA: I can print some extra ones, Judge.

THE COURT: Can you do before you go to lunch?

MR. BULSA: Yes, sir.

THE COURT: All right. Court is in recess until 2:00 o'clock.

(Whereupon, a recess was taken.)

THE COURT: All right. Are we ready for the jury?

MR. BULSA: Your Honor, the next witness is Regina Foster.

She's in custody. My understanding is they're

bringing her up. I don't know how long it's going to take.

THE COURT: Bringing her up?

MR. BULSA: She was held downstairs to keep them separated.

She's also charged, Your Honor. I don't know if you need to question her about that. She has Travis Moore as her attorney.

THE COURT: Is he here?

MR. BULSA: He is. I think he's next door working out a plea.

(Pause.)

THE COURT: Do we have any other witness we can call?

I didn't know they were going to wait until we started court to bring a witness and get her dressed. Did she have clothes while she was in jail?

THE OFFICER: I probably got the clothing maybe five or ten minutes ago.

THE COURT: No. I'm talking about she had something on when y'all got her out of jail.

THE OFFICER: Jumpsuit.

THE COURT: That's right. Well, nobody's going to know she's in jail? Is that what I'm understanding?

(Pause.)

THE COURT: All right. Mr. Bulsa.

MR. BULSA: Regina Foster, step up here.

REGINA FOSTER, having been first duly sworn, testified as follows:

(Attorney Travis A. Moore was present with witness.)

MR. BULSA: Your Honor, as you know and can gather through the case, Ms. Foster is a codefendant in this case. She's agreed to cooperate and testify on behalf of the state. She's represented by Travis Moore who we talked to on several occasions. And I just wanted to present that information to the Court and make sure she understands everything and she's still willing to cooperate.

THE COURT: All right. You are Regina Foster.

THE WITNESS: Yes, sir.

THE COURT: How old are you, Ms. Foster?

THE WITNESS: Eighteen.

THE COURT: How far did you go in school?

THE WITNESS: Eleventh grade.

THE COURT: Do you know what you're charged with?

THE WITNESS: Yes, sir.

THE COURT: What are you charged with?

THE WITNESS: Murder and armed robbery.

THE COURT: Anything else?

THE WITNESS: No, sir.

THE COURT: Is she charged with anything besides murder and armed robbery?

MR. BULSA: Also a firearm count.

THE COURT: With both?
MR. BULSA: Yes, sir.
THE COURT: And possession of a firearm during the commission of murder and armed robbery.
THE WITNESS: I guess.
THE COURT: Mr. Moore is your lawyer?
THE WITNESS: Yes, sir.
THE COURT: Have you talked to him about the case?
THE WITNESS: Yes, sir.
THE COURT: And the solicitor indicates that he's called you today as a witness to testify in a case of Jacory Foster.
THE WITNESS: Yes, sir.
THE COURT: Did you know you were going to be called today to testify?
THE WITNESS: Yes, sir.
THE COURT: You're in custody now?
THE WITNESS: Yes, sir.
THE COURT: And have you had time to talk to Mr. Moore about your decision of whether or not you would testify?
THE WITNESS: Yes, sir.
THE COURT: And has he explained to you that because you're charged with these crimes that you can't be required to testify?
THE WITNESS: Yes, sir.

THE COURT: In other words, you've got a right to remain silent, because likely whatever testimony you provide is going to implicate you in the commission of these crimes. In other words, your testimony is going to likely prove your own guilt in addition to perhaps someone else.

THE WITNESS: Yes, sir.

THE COURT: And because of that you don't have to testify if you don't want to. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Have you had plenty of time to discuss your right to testify or not testify with Mr. Moore?

THE WITNESS: Yes, sir.

THE COURT: And has he advised you fully on it?

THE WITNESS: Yes, sir.

THE COURT: Has he answered all of the questions you had about it?

THE WITNESS: Yes, sir.

THE COURT: And what have decided that you wish to do?

THE WITNESS: Testify.

THE COURT: And is that a decision that you reached on your own?

THE WITNESS: Yes, sir.

THE COURT: Has anybody forced you into it?

THE WITNESS: No, sir.

THE COURT: Anybody pressured you into it?
THE WITNESS: No, sir.
THE COURT: Anybody coerced you into it?
THE WITNESS: No, sir.
THE COURT: You decided that for yourself?
THE WITNESS: Yes, sir.
THE COURT: And you're satisfied with that decision?
THE WITNESS: Yes, sir.
THE COURT: Do you need to discuss it with Mr. Moore any further?
THE WITNESS: No, sir.
THE COURT: Do you need to ask me any questions about it before we proceed?
THE WITNESS: No, sir.
THE COURT: All right. Mr. Moore. Do you have anything you'd like to ask her?
MR. MOORE: No, sir.
I just say that we have discussed this on multiple occasions, also in preparation for trial this spring, and then again in preparation for trial now. And I've advised her both ways on her willingness to testify and not testify. And she's ultimately the one who made the decision that she would cooperate and testify. And I believe it's in her best interest at this time.
THE COURT: And you're satisfied she understands the

consequences of that decision?

MR. MOORE: Yes, sir. I am.

THE COURT: And she understands that she cannot be required to testify?

MR. MOORE: Yes, sir.

THE COURT: Okay. Thank you.

All right. Ms. Foster, you can step down. Just have a seat back there behind the solicitor.

MR. DELANEY: May we approach, Derrick?

(Bench conference held off the record.)

THE COURT: Are we ready?

MR. DELANEY: Can I get 60 more seconds, Judge?

THE COURT: Yes.

(Pause.)

MR. DELANEY: Thank you, Your Honor.

THE COURT: All right. Bring the jury in, please, sir.

(The following takes place in the presence of the jury.)

THE COURT: Good afternoon, ladies and gentlemen.

As you know, when we recessed for lunch the state was in the midst of its presentation of evidence. So we will continue with that presentation this afternoon.

Mr. Bulsa.

MR. BULSA: The state calls Regina Foster.

REGINA FOSTER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Ms. Foster, would you introduce yourself to us?

A My name is Regina.

Q And how old are you?

A Eighteen.

Q What's your date of birth?

A [redacted]

Q [redacted]

THE COURT: Get a little closer to that microphone, please.

Q So back in 2017, November 27 of 2017, how old were you?

A Seventeen.

Q You had just turned 17, right?

A Yes, sir.

Q Do you know Mr. Foster over here?

A Yes, sir.

Q How do you know Jacory Foster?

A Through -- through my sister and her exboyfriend.

Q And your sister is who?

A Reyna Jefferies.

Q Reyna Jefferies. She doesn't have the same last name as you?

A No, sir.
Q You have different fathers?
A Yes, sir.
Q And who is her boyfriend?
A Derrick Bennett.
Q He also goes by --
A D.J., yeah.
Q All right. Had you met Jacory Foster before this incident?
A No, sir.
Q And you're actually still in custody, aren't you?
A Yes, sir.
Q You're charged with the same charges as Mr. Foster?
A Yes, sir.
Q Except one, because you were under 18, right?
A Yes, sir.
Q All right. Where were you living back when all of this happened?
A With my mom in Crescent Hills Apartments.
Q What was that, Crescent Hills Apartments?
A Yes, sir.
Q And could you tell the jury how you came to be with Mr. Foster the day this happened?
A I had spent the night with my sister Reyna and he -- he was over there.

Q Where were you spending the night?
A At Ellen C. Watson.
Q Ellen C. Watson. Are those apartments?
A Yes, sir.
Q Whose apartment were you at?
A My sister's friend, Ta-Ta. I don't know her real name.
Q You don't know her full name.
A Uh-uh.
Q Okay. So Reyna was staying with Ta-Ta and you were spending the night with them.
A Yes, sir.
Q And was Mr. Bennett with your sister over there?
A Yes, sir.
Q And when did you meet Mr. Jacory Foster?
A The same day.
Q How is it that you came to meet him?
A He -- he was with my sister and D.J.
Q All right. So do you know Kiyounnie Jackson?
A Yes, sir.
Q How did you know Mr. Jackson?
A We was cool.
Q What does that mean? You were friends?
A Yeah. We was friends.
Q Okay. Did he supply you with marijuana?

A Yes, sir.
Q How long had you known Kiyounnie?
A Since I was a young girl when I stayed in Cammie Clagett.
Q Can you give us an approximation?
A Maybe -- maybe about eight years.
Q How old was he when he died, do you know?
A Nineteen, I think.
Q Just a little older than you?
A Yes, sir.
Q Did you contact him that day to try to set up anything?
A Yes, sir.
Q What did you do?
A I logged into my facebook.
Q Logged into your facebook?
A Yes, sir, so -- so he can be contacted.
Q And who directed you to do that?
A Derrick and Jacory.
Q All right. Let me show you what's been marked State's Exhibit No. 51 for Identification. Have you seen these pictures before?
A Yes, sir.
Q What do they show?
A Kiyounnie being contacted off of my facebook.

Q Okay. So your facebook is Regina Nicole?
A Yes, sir.
Q And these pictures show the conversation, how you tried to or how you contacted him and telling him where to go?
A Yes, sir.
Q All right.
MR. BULSA: Your Honor, the state would offer 51 into evidence.
MR. DELANEY: Your Honor, we'd object at this time based on the previous witness called by the state's inability to authenticate and verify actually whose phone this is.
I don't think this witness' testimony overcomes that at this time. I think the coupling of the two would overcome the burden of authentication and verification, but based on the employee of Spartanburg County earlier, the computer analyst, they don't meet that burden, Judge.
THE COURT: Let me see y'all.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
THE COURT: I will allow the question over the objection.
Q Now, Regina, when you logged into your facebook messenger whose -- whose device were you using?

A Jacory's.
Q Excuse me?
A Jacory's.
Q You were using Jacory Foster's phone to log in to contact Kiyounnie.
A Yes, sir.
Q And State's 51. That is the record of the conversation between whom?
A Kiyounnie and Derrick off my facebook.
Q Okay. So walk the jury through this.
How did -- am I understanding you, Jacory gave you the phone and you were told to log in and then Mr. Bennett took the phone to communicate?
A Yes, sir.
Q And were you present during all of that time?
A Yes, sir.
Q And you -- did you know what was being -- what was taking place?
A Yes, sir.
Q Okay. I'll let that warm up and I'll ask you a couple of other questions.
Now, what -- what was going on with your understanding? What was supposed to take place?
A Kiyounnie was supposed to come and sell me some weed, and Derrick and Jacory was supposed to rob him.

Q So you knew a robbery was being set up.
A Yes.
Q Did you want to be a participant in that?
A No.
Q Why did you go with them?
A I -- I really felt like I didn't have no choice.
Q Why is that?
A I was scared.
Q Where were you and Mr. Foster and Mr. Bennett when this was taking place, this setup was taking place?
A At a abandoned house.
Q Where was that house? Had you ever been there before?
A Yes.
Q Do you know the address?
A No.
Q Do you know the neighborhood?
A No.
Q Okay. Was it nearby the apartment where you stayed?
A Yeah. Well, where my sister was staying.
Q Where your sister was.
A Yeah.
Q Okay. It was nearby Ellen C. Watson.
A Yes.
Q Okay. Showing you what's been marked State's Exhibit No. 9. Do you recognize that house?

A Yes.
Q That the house where you were?
A Yes.
Q Okay. You called it abandoned. Why did you call it that?
A Because it had trash everywhere.
Q Did it have any furniture in it?
A No.
Q How did you get in?
A Derrick and Jacory let me in.
Q What door did you go in?
A The front door.
Q Do you know how they got inside?
A The back door.
Q How did y'all actually get to that location? Did you walk?
A No. They drove.
Q They drove. What vehicle were you in, do you know?
A A red -- I don't know what kind.
Q A red colored car?
A Yes.
Q Okay. So y'all go there. You get in the house. It's set up?
A Yes.
Q Right? Okay. Let's walk you through this. Can you

turn and look at that, look at the screen for me?

THE COURT: Ms. Foster, let me remind you that Mr. Bulsa is going to be directing you to look at the screen, but when you answer a question you'll need to turn and be sure you answer it into that black microphone.

Q Now, Regina, you communicated with Kiyounnie by facebook messenger on earlier occasions, right?

A Yes.

Q Okay. As we're looking at this and we actually see November 26th, the day before, did you have communication with him the day before?

A Yes.

Q Okay. Now, here we start the 27th at 12:07 a.m. Look at that. It says you got some dough. Would that be you talking to him?

A It's my facebook, yes.

Q Okay. This incident occurred about what time, around 6:00 or 6:30 in the evening?

A I don't remember.

Q Okay. Was it in the afternoon hours, the evening hours?

A Yes.

Q So it wouldn't have been around 12:07 a.m.

A No.

Q All right. We have another conversation beginning at

6:02. Okay. Is this when it all started?
A Yes.
Q And it states that, "I am in Pineview. How much?" What is that supposed to mean?
A Derrick was telling him I was in Pineview and how much was he charging for the weed.
Q Okay. And this is continuation. Address is sent to him. And then this communication about coming in, right?
A Yes.
Q Can you read that for us, this phrase here? What does it -- what does it actually say?
A It says, "Okay. Let me know when you out there. You can come in." I guess it's supposed to say I have to babysit.
Q All right. And the blue is Kiyounnie responding back, is that right?
A Yes.
Q And then at 6:23 we have this. What did this phrase mean?
A It says, "Where you at? What the world?"
Q This started about 6:01, and then about 22 minutes later y'all are wondering where he is?
A They was, yes.
Q They were. Okay. But you were with them, right?
A Yes.

Q Okay. Now, we have apparently some calls trying to be made back and forth. Then we have this phrase right here. Read that.
A It says, "You at the wrong house, I think."
Q What was that all about?
A Kiyounnie was at the wrong house, I guess.
Q Did you see him outside? Did you see his car?
A Yes.
Q Where was he?
A At -- at -- at the second house.
Q Second house next to this one?
A Yes.
Q Okay. And it's -- was there a phone call between you and him?
A Yes.
Q What was that about?
A I was telling him he at the wrong house.
Q Did you tell him which house to come to?
A Yes.
Q And then the final message telling him to come to the door?
A Yes.
Q And what happened? Did he come back and come to the door?
A Yes.

Q Where were you?
A At the door.
Q All right. And then did you invite him into the house?
A I opened the door and I ran.
Q Where did you run to?
A To the bathroom.
Q And why did you do that?
A Because I was scared.
Q Where were -- where was Mr. Foster, Jacory Foster?
A In a room next to the bathroom.
Q One of the bedrooms?
A Yes.
Q And where was Mr. Bennett?
A In -- in another room.
Q Did either one or both of them have a firearm, a pistol?
A Both of them.
Q Both of them had pistols?
A Yes.
Q Could you tell if Mr. Kiyounnie had a pistol?
A No.
THE COURT: Mr. Bulsa, will you adjust that microphone? Turn it up so she can speak into it.
Q So you run to the bathroom. And what do you see or

hear from where you are?
A I had told Jacory where the gun, and I heard Kiyounnie come in and call my name, and then I heard both gunshots.
Q What did you hear after that?
A What I heard after that?
Q Yes.
A Like -- like a little scattering and scuffling, and then it was silent.
Q And you were in the bathroom. Were you hiding?
A Yes.
Q How were you hiding?
A Against the wall.
Q And you heard that shuffling-scuffling noise. You didn't know what was happening, did you?
A No.
Q Did you peak out to look?
A No.
Q When did you come out of the bathroom?
A After -- after I heard. After I realized something, it was quiet.
Q So it got quiet. Can you approximate how long you might have been in there, or do you even know?
A Maybe about seven minutes.
Q Did you hear Mr. Foster or Mr. Bennett tell you anything or say anything after the shots?

A No.
Q Did they come to get you to go out of the house?
A No.
Q Did you know that they left?
A No.
Q When you came out of the bathroom, what did you see?
A I saw Kiyounnie laying. I saw Kiyounnie laying on the ground.
Q What did you do when you saw him?
A I had ran. I ran out. Well, I ran to the back door, and I couldn't get out. I just ran out the front door.
Q Did you touch Kiyounnie --
A No.
Q -- through passing? So you basically went out the same door that you went in.
A Yes.
Q And where did you go when you ran out?
A I was just roaming around the neighborhood, and I went to like the dead end, U-turn.
Q Went to what you thought was a dead end?
A Yes.
Q And what were you looking for?
A The car.
Q Okay. And?
A And it wasn't there.

Q Why were you looking there for the car?
A Because that's how I got there.
Q Okay. So you went to where the car was parked.
A Yes.
Q And it was gone.
A Yes.
Q Did you see Jacory Foster and Derrick Bennett anywhere in the neighborhood?
A No.
Q So you didn't -- you went to where the car was, and it's gone. What did you do then?
A I was running around. Well, walking around the neighborhood.
Q Did you see the police start coming?
A No.
Q How did you get out of the neighborhood?
A Ta-Ta had came and picked me up with Derrick and Jacory.
Q So Ta-Ta is the lady's house at Ellen C. Watson's apartment that you were staying at.
A Yeah. My sister was staying there.
Q Your sister.
A Yeah.
Q But you spent the night before.
A Yes.

Q You said she came back with Mr. Foster and Mr. Bennett?
A Yes.
Q Whose car were they in?
A Ta-Ta's.
Q So it was a different car than the one that took you over there.
A Yes.
Q All right. So you got picked up. And then what happened?
A We went to Ellen C. Watson, and everybody was just acting weird.
Q What do you mean, acting weird?
A Like freaking out.
Q Okay. And what happened when that was going on? Did you stay there?
A No. They told me to get in the car with another boy.
Q Get in which car?
A The red one.
Q Who told you to get in that car?
A My sister and Derrick.
Q They put you in the red car that was used to take you to the scene?
A Yes.
Q And where did you go?

A To pick up Jacory's brother from work.
Q Do you know why you were doing that?
A No.
Q Did you know Jacory's brother?
A Yes.
Q What's his name?
A Quan.
Q You just know him by his nickname Quan?
A Yes.
Q And where was he working?
A B.M.W., I think.
Q Who drove you over there?
A This -- this boy named Ketrel.
Q Did you know him?
A No.
Q So you picked up Quan. And then what happened?
A We went back to Ellen C. Watson, and my sister was gathering up her things.
Q Okay.
A And --
Q What was she doing with her things?
A Put -- putting them in the car.
Q Which car?
A Jacory's girlfriend's car. I don't --
Q So there was a different -- another car came.

A Yes.
Q Okay. And to your knowledge it was Jacory's girlfriend that came over?
A Yes.
Q And who was getting in her car?
A My sister.
Q And who else?
A That's -- that's it.
Q Just her.
A Uh-huh.
Q Okay. Did your sister leave with her?
A Yes.
Q Was Mr. Foster or Mr. Bennett around?
A No.
Q They weren't there?
A No.
Q Did you see them again?
A Yes.
Q Where?
A In Collins Park.
Q At whose house?
A Jacory's girlfriend.
Q Okay. That was -- you saw her at the girlfriend's apartment that took your sister?
A Yes.

Q Do you know her name?
A Chelsea.
Q Chelsea.
A I think.
Q So the jury understands this, Chelsea gives Reyna a ride away from Ellen C. Watson --
A Yes.
Q -- over to Collins Park.
A Yes.
Q How do you get over to Collins Park?
A I was in the red car.
Q You stayed in that car and they took you over there?
A Yes.
Q So who all went over there that was in your car?
A Quan and Ketrel and me.
Q When you got to Chelsea's apartment, who was there?
A Derrick, Jacory, my sister, Chelsea.
Q So they had already made it over there.
A Yes.
Q What happened while you were at Chelsea's apartment?
A My sister made me take off my clothes.
Q How were you dressed?
A I had on a pink North Face jacket and some leggings and some snow boots and a t-shirt.
Q So you took your clothes off. Do you know why, why

they wanted you to take them off?
A No.
Q What happened to those clothes?
A They burnt them.
Q Did you go with them to burn them?
A No.
Q Do you know who went somewhere to burn them?
A Derrick, my sister and Quan and Jacory.
Q And whose vehicle did they drive?
A I think Chelsea's.
Q Did you see Jacory or Derrick with any money that they got from Kiyounnie?
A Yes.
Q Do you know about how much it was?
A No.
Q Can you describe what you saw?
A It was, like, just some money, just money.
Q Like a wallet? Was it folded up?
A Yes, yes.
Q Where did you see that? Where were you when you saw that?
A Well, I first saw it when I got in the car, in the red car.
Q In the red car. At what point?
A When I was still in Ellen C. Watson when I first got

in the red car. It was on the back seat.
Q That's when you got back from?
A Yes.
Q Okay. From the crime.
A Yes.
Q It was -- the money was in the back seat?
A Yes.
Q Do you know what happened to that money?
A They split it.
Q Did you get any?
A No.
Q Did they take anything else from Kiyounnie?
A His gun.
Q His gun. Do you know what kind of gun it was?
A It was a .30 -- a .30 with a clip on it.
Q Okay. Was there anything unique about the clip? Did it look different than most clips? Was it longer than usual?
A Yes.
Q Okay. All right. So you know they took some items. Did you see that pistol again?
A Yes.
Q Who had that pistol?
A Derrick.
Q Okay. So Derrick kept the pistol and they split the

money --
A Yes.
Q -- from what you know.
Now, when these -- when Jacory and Derrick and your sister and Quan took the clothes, what did you do?
A I -- I was just -- I stayed there.
Q You stayed there.
A Yeah.
Q And did those four come back to that apartment?
A Yes.
Q And what else happened at that apartment?
A I had an iPad 6 and my sister broke it.
Q Did that go with your clothes?
A Yes.
Q Now, did y'all spend the night at that apartment?
A Yes.
Q Was Chelsea around during all of this?
A Yes.
Q Was she out with everybody else or was she off with a child?
A No. She -- she was with her child.
Q Okay. So how many people spent the night there?
A Derrick, my sister and me, Ketrel and Jacory, Chelsea and child.
Q So Quan had left?

A Yes.
Q Did he take the red car with him?
A Yes.
Q So what happened the next day?
A My sister and Derrick found a ride for us to go to Jonesville.
Q Jonesville?
A Yes.
Q All right. Did you know where you were going?
A No.
Q Do you know why you went?
A No.
Q So tell us what happened in Jonesville.
A Derrick was telling my sister he was going to have to kill me and, uh, my sister she -- since she broke my iPad she had gave me a phone because she felt bad, and I texted my mom.
Q And why were you texting your mother?
A So I can get away from there.
Q Had you tried to get away from them any time while you were in Spartanburg?
A Yes.
Q How?
A I told my sister I was -- I wanted to go home.
Q But you weren't allowed to leave?

A No.
Q Did you finally get found in Jonesville?
A Yes.
Q Did the police come and get you?
A Yes.
Q And then they took you to Spartanburg?
A Yes.
Q And you were put under arrest?
A Yes.
Q And you met with the investigators?
A Yes.
Q And you told them what happened?
A Yes.
Q You have the same last name as Jacory Foster. Are y'all related at all?
A No, sir.
Q Are you telling -- you tell us that you had not even met him, you didn't know who he was?
A Period, until that night.
Q Was he and Derrick Bennett acting together?
A Yes.
Q And they both had pistols.
A Yes.
Q And they split the money.
A Yes.

Q When did you realize this was going bad?
A That whole time.
Q Why did you stay involved?
A I was scared. I felt -- I didn't know what else I was supposed to do, like.
Q Why are you testifying today?
A Because Kiyounnie need justice.
Q Do you expect to get some help --
A From?
Q -- from the state?
A No.
Q Have you been promised anything?
A No.
Q All right. Mr. Foster's attorney has some questions for you. Okay. Listen to them and answer them.

CROSS-EXAMINATION

BY MR. DELANEY

Q Good afternoon, Ms. Foster.

How long had you known Kiyounnie Jackson before he passed away?
A Probably about eight years.
Q And Reyna Foster is your half sister, is that correct?
A Reyna Jefferies, yes.
Q Reyna Jefferies. I'm sorry. That is your half sister. So you've known her your whole life.

A Yes.
Q And how long had Reyna Jefferies been dating or in a romantic relationship with Derrick Bennett prior to this incident?
A About five years.
Q And had you known Derrick those whole five years?
A Yes.
Q So you know Reyna Jefferies your whole life; Kiyounnie Jackson five years; and Derrick Bennett eight years?
A No.
Q Reyna Jefferies your whole life.
A Yes.
Q Derrick Bennett how long?
A Five years.
Q And Kiyounnie Jackson?
A Eight years.
Q Eight years. I'm sorry. I got that inverted.
And then how long had you known Jacory Foster?
A I don't know him.
Q Was November 27th of 2017 the first time you met him?
A Yes.
Q I show you a document here that's been marked State's 21. Do you remember going through this with Mr. Bulsa a few minutes ago?
A Yes.

Q And do you recall testifying that the individual communicating with Kiyounnie was Derrick Bennett?
A Yes.
Q So that's Derrick Bennett. And Kiyounnie Jackson thinks he's talking to you.
A Yes.
Q But he's really talking to Derrick Bennett.
A Yes.
Q When you were on the run in Union and you got to that house, you were with Derrick Bennett and Reyna Foster, is that correct?
A Reyna Jefferies, yes.
Q Reyna Jefferies. I've got to stop doing that. So Reyna Jefferies, Derrick Foster and you were on the run in Jonesville.
A Derrick Bennett.
Q Derrick Bennett.
A Yes.
Q And you were scared to leave.
A Yes.
Q Was Jacory Foster there?
A In Union, no.
Q This homicide occurred on November 27th. You were picked up on November 29th, correct?
A Yes.

Q And on November the 29th you gave a statement, a written statement, to police, didn't you?
A Yes.
Q In any of these documents or these text items on 51, are those all Derrick Bennett talking?
A Yes.
Q Only time you've ever interacted with Jacory Foster was around 5:00 p.m. on November 27th until later in that evening. That's the only time you've ever been in his physical presence, correct?
A No.
Q Was there some time after that?
A No. After.
Q After that?
A Yes.
Q Okay. But November 27th at about 5:00 o'clock was the first time you met him.
A Yes.
Q Do you recall giving a statement to police on November the 29th?
A Yes.
Q Can you read that portion to the jury for me?
MR. BULSA: Let me see that, please.
(Pause.)
Q In your statement to police did you state that, "While

Cory was messaging Kiyounnie on facebook we were at the vacant house"?

A Yes, but I meant to say Derrick. It was Cory's phone. So I -- I was kind of messed up.

Q Did Jacory ever snatch the phone out of your hand?

A Derrick did. But it was Cory's phone. So I got them mixed up.

Q Did you tell the law enforcement --

A Yes.

Q -- that Cory snatched the phone out of your hand?

A Yes.

Q But it was Derrick?

A But I meant Derrick.

Q You were very confused and traumatized on that day, weren't you?

A Yes.

Q And you and Derrick, long time friend, and your sister concocted a plan to point the finger at this man, didn't you?

A No.

Q Because none of y'all knew him.

A No. I didn't know him. They knew him.

Q When you were in the house did you see the shooter?

A No.

Q When y'all left the house and ended up at Chelsea's

house, that's where Jacory lived, isn't it?
A I guess, yes.
Q So he, Jacory Foster, went home, right?
A When?
Q After y'all left the vacant house.
A No.
Q Shortly thereafter.
A Yes.
Q Did you ever see Derrick Bennett holding, physically holding, Kiyounnie Jackson's firearm?
A Yes.
Q Did you ever see Jacory Foster holding Kiyounnie Jackson's firearm?
A No.
Q Did you ever physically eye witness some splitting up of money?
A Yes.
Q Who had the money first?
A Jacory.
Q Where did this take place?
A In Collins Park.
Q And you certainly expect for some leniency from the state for your testimony today, don't you?
A No.
Q You don't want anything in return?

A No.
Q Have you talked to your lawyer about that?
A Yes.
Q But you don't have any testimony to offer today as to who physically shot Kiyounnie Jackson.
A Yes.
Q Did you see who did it?
A No.
Q Over the long-term relationship that you had with Derrick Bennett had you ever participated in this type of activity with him before?
A No.
Q How long had you been buying marijuana from Kiyounnie Jackson?
A For about a year.
Q Did you buy any other illegal substances from him?
A No.
Q Do you have any personal knowledge as to what the relationship between Kiyounnie Jackson and Derrick Bennett was? Were they friends?
A No.
Q Were they enemies?
A No.
Q Did they know each other at all?
A Yes.

Q What knowledge do you have of that relationship?
A They knew each other.
Q Did Derrick Bennett buy drugs from Kiyounnie Jackson?
A No.
Q Whose idea on these texts, on these phone messages that have been submitted, whose idea was it to tell Kiyounnie that you were babysitting?
A Derrick.
MR. DELANEY: May we approach the bench, Your Honor?
THE COURT: Sure.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
Q Do you know where Derrick Bennett is today?
A No.
Q And your testimony earlier was that you were involved in this situation because you felt like you couldn't leave, is that accurate?
A Yes.
Q And then when you were in Jonesville with Reyna Jefferies and Derrick Bennett, you still had those same feelings. That's why you texted your mother.
A Yes.
Q And that's what tipped the police off to the location of Derrick Bennett and you.
A Yes.

Q And he wasn't there, was he?
A No.
Q He was at his house with his girlfriend Chesnee -- Chelsea, correct?
A Yes.
MR. BULSA: Objection, Your Honor. I don't think she would know that. She was --
MR. DELANEY: I withdraw it, Judge.
No more questions at this time.
MR. BULSA: Just briefly.

REDIRECT EXAMINATION

BY MR. BULSA

Q Now, you just met Mr. Foster, Jacory Foster, the day -- the day this happened?
A Yes.
Q How certain are you that that's the man involved in this?
A One hundred percent.
Q Okay. I just wanted to make sure the jury understood that. Just because you just met him doesn't mean you don't remember this.
A Right.
Q Okay. Thank you.
THE COURT: Okay. You may step down.
MR. BULSA: May we approach, Your Honor?

THE COURT: Yeah.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, I've got one matter I'll need to address outside of your presence, so I'll ask you to please go to your jury room. Don't discuss the case. I'll bring you back shortly.

(The following takes place outside the presence of the jury.)

REYNA JEFFERIES, having been first duly sworn, testified as follows:

(Attorney Robin Clark File was present with witness.)

MR. BULSA: Your Honor, Ms. Jefferies is charged with accessory after the fact to murder and armed robbery.

She's represented by Robin File. In our discussions she agreed to cooperate and testify on behalf of the state.

THE COURT: All right. You are Regina Jefferies.

THE WITNESS: Reyna Jefferies.

THE COURT: Excuse me. Reyna Jefferies.

THE WITNESS: Yes, sir.

THE COURT: And how old are you?

THE WITNESS: Twenty.

THE COURT: Twenty. How far did you go in school?

THE WITNESS: I made it to the eleventh grade.

THE COURT: And are you charged with anything right

now?

THE WITNESS: Yes, sir.

THE COURT: What are you charged with?

THE WITNESS: Accessory after the fact to murder and armed robbery.

THE COURT: And do you have a lawyer?

THE WITNESS: Yes, sir.

THE COURT: Who is your lawyer?

THE WITNESS: Robin File.

THE COURT: And have you talked to Mr. File about the state calling you as a witness today?

THE WITNESS: Yes, sir.

THE COURT: And did you and he discuss the fact that they can't make you testify if you don't want to?

THE WITNESS: Yes, sir.

THE COURT: Do you understand because you're charged with a crime and because of the testimony you provide today might implicate you in a criminal offense -- in other words, it might tend to prove you guilty of some crime the state claims you committed -- you can't be required to testify because you have an absolute right to remain silent? Did Mr. File advise you of that right?

THE WITNESS: Yes, sir.

THE COURT: And did y'all discuss you testifying during the trial of Mr. Foster's case?

THE WITNESS: Yes, sir.
THE COURT: And did you tell Mr. File that you were willing to testify?
THE WITNESS: Yes, sir.
THE COURT: And did he explain to you the consequences of your taking the witness stand and testifying?
THE WITNESS: Yes, sir.
THE COURT: And did he explain to you that if you do testify it's likely you're going to provide evidence tending to prove your own guilt?
THE WITNESS: Yes, sir.
THE COURT: And did he tell you that nobody could make you?
THE WITNESS: Yes, sir.
THE COURT: It was your decision?
THE WITNESS: Yes, sir.
THE COURT: And you understand that?
THE WITNESS: Yes, sir.
THE COURT: What do you want to do about testifying today?
THE WITNESS: I want to proceed forward with it.
THE COURT: So you do wish to testify?
THE WITNESS: Yes, sir.
THE COURT: Has anybody forced you into that decision?
THE WITNESS: No, sir.

THE COURT: Anybody coerced you into it?
THE WITNESS: No, sir.
THE COURT: Anybody pressured you into it?
THE WITNESS: No, sir.
THE COURT: Has anybody promised you anything in return for your testimony?
THE WITNESS: No, sir.
THE COURT: And you've made that decision on your own?
THE WITNESS: Yes, sir.
THE COURT: And you're satisfied with it?
THE WITNESS: Yes, sir.
THE COURT: Do you need to talk to Mr. File any more about it?
THE WITNESS: No, sir.
THE COURT: Do you have any questions you need to ask me about it?
THE WITNESS: No, sir.
THE COURT: Okay. All right. Thank you. You can step down. Have a seat over there with Mr. File.
We're going to take a break, and then we'll come back and proceed with the testimony.
We'll be at ease for 15 minutes.
(Whereupon, a recess was taken.)
(SLED firearms report marked State's Exhibit No. 52 for Identification.)

THE COURT: All right. Are we ready for the jury?
MR. BULSA: Yes, sir.
MR. DELANEY: Yes, sir.
THE COURT: Bring them in.
(The following takes place in the presence of the jury.)
THE COURT: All right. Mr. Bulsa.
MS. BROWN: The state calls Reyna Jefferies to the stand.

REYNA JEFFERIES, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Will you state your name for the jury?
A Reyna Jefferies.
Q And how old are you are?
A Twenty.
THE COURT: You're going to need to get closer to that black microphone, and adjust it if you need to.
Q So in November of 2017 you would have been 18?
A Yes, ma'am.
Q And Regina Foster is your half sister, right?
A Yes, ma'am.
Q Now, on November 27th of 2017, where were you that day?
A In Ellen C. Watson Apartments.

Q Were you living there?
A Yes, ma'am.
Q Who were you living with?
A Tasheka and her baby daddy. 3-D.
Q Anyone else living there with you?
A D.J.
Q Who is D.J.?
A He was my boyfriend at the time.
Q How long did y'all live there?
A For a couple of months.
Q Who was with you at Ellen C. Watson the afternoon of November 7 -- 27th of 2017?
A Just me and Tasheka.
Q Where was D.J.?
A He left and went to Prince Hall Apartments.
Q Was he by himself when he left?
A No.
Q Who was with him?
A Cory.
Q Who?
A Cory Foster.
Q The defendant?
A Yes, ma'am.
Q Did he come back ever -- he and Cory?
A Yeah.

Q What time?
A It was later on in the night.
Q What happens when they come back to Ellen C. Watson?
A They were just like in a panic, and I was asking what was going on, but nobody wanted to tell me.
Q What do you mean by in a panic?
A Like, they were pacing back and forth, just like acting weird.
Q And where was Regina during all of this?
A She got left at the house.
Q What house?
A I don't know the street but the house where everything occurred at.
Q Did you ask where she is?
A Yes.
Q What do you do then?
A I keep asking and nobody tells me. Then finally the defendant tells me that she's on the street in front of the apartments. So I go up there to see if I could find her.
Q What happened when you go look for her?
A Nobody was out there, so I turned back around.
Q Where did you go then?
A Back to the apartment, Ellen C. Watson.
Q Who is there when you get back to Ellen C. Watson?
A Corey, D.J. and Tasheka.

Q At any point does Regina return to Ellen C. Watson?
A Yes.
Q When?
A Once I got back, she was there.
Q Do you know how she got back there?
A Yeah. The girl we was staying with went and got her and brought her back.
Q Tasheka?
A Uh-huh.
Q Do y'all stay at Ellen C. Watson?
A Yeah.
Q Do you stay after that at Ellen C. Watson?
A Oh, no.
Q Where do y'all go then?
A Collins Park, another apartment complex.
Q How do you get to Collins Park?
A I was in a car with the defendant's girlfriend. She took us to Collins Park.
Q Who's us?
A Me, D.J. and Cory.
Q What about Regina?
A She was in a burgundy-reddish car with Quan and Honey Cut.
Q She didn't ride to Collins Park with y'all?
A No.

Q Who was at Collins Park?
A Chelsea did.
Q This is Chelsea -- Chelsea Landrum?
A I don't know her last name, but I know it was the defendant's girlfriend.
Q Now, when you're at Collins Park at any point -- when did you find out about the death of Kiyounnie Jackson?
A Later on that night I was in the bathroom and I was scrolling through facebook and I seen where people were posting the pictures of him, so I asked what happened to him. That's when I found out.
Q Who do you ask?
A Like, I asked everybody that was in the bathroom with me but I asked -- when I asked, Corey answered me. So he told me that he had shot him.
Q The defendant told you that he had shot Kiyounnie?
A Yes.
Q Now, when you're at Collins Park at any point do you go to Duncan Park?
A Yes, ma'am.
Q When do you go there?
A It was sometime over in the night like 1:00, 2:00 in the morning maybe.
Q Who do you go there with?
A D.J. and Cory and Quan.

Q And what do y'all do when you're there?
A We -- I tell them where to hide the gun, and they burn the clothes.
Q Whose clothes?
A Regina's clothes, if I'm not mistaken, and Cory's.
Q Do you remember what the clothes looked like?
A Cory's was all -- maybe all black, but Regina's, I don't remember.
Q Where did y'all burn the clothes?
A Like down by the nature trail.
Q What else did you do when you were there?
A Hid a gun.
Q Where?
A In a manhole in the park.
Q Do y'all return to Collins Park after that?
A Yes.
Q How long do y'all stay in Collins Park?
A Until the next day.
Q Where do y'all go the next day?
A Union -- Union.
Q Jonesville?
A Yes.
Q Why do y'all go there?
A To get away to hide, I guess.
Q How long do y'all stay there?

A Maybe like two days.
Q Why do y'all leave?
A I guess to not risk being caught by the police or other people who were upset about it.
Q Why do y'all -- do you eventually leave Union?
A Yeah.
Q Why did y'all leave Union?
A The police came.
Q At any point when you're in Union did you see D.J. Bennett with a gun?
A Yes, ma'am.
Q What did it look like?
A It was all black and it had an extended clip in it, and it was all black as well.
Q Now, all of this stuff that you've told us about you went to Duncan Park, y'all hide the clothes, burn the clothes, why weren't you up front with the police about that when they first asked you?
A That I was scared in the beginning.
Q Why?
A I didn't want to get myself involved in it from the beginning of it, and I didn't want other people saying stuff, you know, about me or threatening me more than they already were.
Q Are you and D.J. still together?

A No.
Q When is the last time you talked to him?
A Over a year ago.
Q Now, earlier you said that you were in the bathroom at Collins Park. Who was in the bathroom with you?
A Me, Cory, D.J., Quan.
Q Why are y'all in the bathroom?
A It was just like we were just hanging in the bathroom, I guess, to be away from my sister and maybe his girlfriend.
Q And you mentioned Tasheka. Did she go by any other names?
A Ta-Ta.
Q And when y'all went to Duncan Park and hid the gun in the manhole, who did that?
A Quan threw the gun in the manhole.
MS. BROWN: Beg the Court's indulgence.
(Pause.)
Q Who is Twan, by the way?
A Cory's brother.
Q What's his full name, do you know?
A Uh-uh.
Q What's D.J.'s full name?
A Derrick Bennett.
Q Do you know what you're currently charged with?

A Yes, ma'am.
Q What?
A Accessory to murder after the fact and armed robbery after the fact.
Q Has the state promised you anything in exchange for your testimony today?
A No, ma'am.
MS. BROWN: I have no further questions at this time, Your Honor.

CROSS-EXAMINATION

BY MR. DELANEY

Q Reyna, you understand if you do today what they want you to do you're going to get beneficial results. You understand that, right?
A Yes, sir.
Q Tell me about your relationship with your little sister Regina.
A She was my best friend at one point in time, but since this happened we don't really talk to each other.
Q And were you -- was your relationship -- I understand you were best friends, but were you sometimes like a mother figure to her or took care of her?
A Kinda in certain situations, yeah.
Q Like that night when y'all showed up at Chelsea and Jacory's apartment, you told Regina to get outta those

clothes, didn't you?
A Yes, sir.
Q And she listened to you.
A Yes, sir.
Q And the next morning when you told Derrick and Regina that y'all had to get outta Spartanburg and get of town and get to Union, they listened to you, didn't they?
A Yes, sir.
Q And y'all got out of town, didn't you?
A Yes, sir.
Q How long were you and Derrick boyfriend and girlfriend?
A For a couple of years.
Q How long have you known Jacory Foster?
A Probably about three weeks previous to the incident up until now.
Q But the first time you met him was around, say, November the 10th of 2017?
A Maybe.
Q Give or take a couple of days?
A Uh-huh.
Q And when you and Derrick and Regina fled to Union, y'all talked about what happened, didn't you?
A Yes, sir.
Q And y'all talked about how y'all were going to handle

it, didn't you?
A Yes, sir.
Q And y'all were all going to take care of each other, weren't you?
A Yes, sir.
Q And that's what y'all are doing right now, isn't it?
A No.
Q Y'all know that if y'all all point the finger at the outsider they'll take care of you. Won't they?
A That's not how I feel.
Q And at first you weren't cooperating. Well, you -- you started giving statements to the police on the 29th when they picked you up, right?
A Uh-huh.
Q And you gave them a simple statement, didn't you?
A Yes, sir.
Q You said he did it.
A Yes, sir.
Q And that -- that's what Regina was going to say, right?
A I really don't know what she was going to say.
Q Where is Derrick --
MS. BROWN: Your Honor, she can't testify to what --
MR. DELANEY: I withdraw it.
Q Where is Derrick today?

A Jail.
Q Are you in custody still?
A Yes, sir.
Q And then you gave a statement on November the 29th, and then you gave another statement on December the 1st, didn't you?
A Yes, sir.
Q Were you the first individual to tell law enforcement where this evidence was destroyed on the nature trail in Duncan Park?
A No.
Q Do you know who the first individual was to tell law enforcement that?
A Derrick Bennett.
Q Do you know when Derrick did that?
A No.
MS. BROWN: Your Honor, this calls for speculation.
MR. DELANEY: She doesn't know. I'll withdraw it.
Q And did you give a third statement to law enforcement on January 18th of 2018?
A Yes, sir.
Q Back up. Well, and at that interview at one point did your mother, Tara Jefferies, come into the interview room?
A Yes, sir.
Q And then at some point did she leave?

A Yes, sir.
Q And then at some point your cousin Kenya Hayes came into the interview room?
A Yes, sir.
Q And then at some point did she leave?
A Yes, sir.
Q Did your mom and your aunt tell you to do -- or your mom and your cousin tell you to do something?
A Told me to tell the truth.
Q During that January 18th interview did an investigator show you a picture from Kiyounnie Jackson's facebook page where Kiyounnie had a gun in his possession? Do you recall that?
A I want to say yes.
Q Did you tell law enforcement on that day that that's the gun that Derrick Bennett had in Union?
A Yes, sir.

MR. DELANEY: No further questions.

MS. BROWN: No further questions, Your Honor.

THE COURT: You may step down.

MR. BULSA: May we approach?

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

MR. BULSA: Ladies and gentlemen, it's previously been challenged as to whether State's 51, the photographs of the

telephone, had come from State's 50, which we allege is the victim's phone. The defense is now stipulating that it is the victim's phone and the photographs came from the phone. Thank you.

THE COURT: Is that accurate?

MR. DELANEY: That's accurate.

(Cell phone marked State's Exhibit No. 51.)

THE COURT: All right. Ladies and gentlemen, a stipulation is an agreement as to a fact, and when the parties agree to a stipulation as to a fact that means no other proof is necessary. They're in agreement that the fact exists. So you can accept that as a fact in the case without further proof. All right.

MS. BROWN: State calls Tasheka Meadors.

TASHEKA MEADORS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Before you testify I want to tell you to make sure you speak into the mic. Okay?

A This one?

Q Yes.

A Oh.

Q Can you introduce yourself to the jury?

A My name is Tasheka Meadors.

Q How old are you?

A I'm 22.
Q Where were you living on November 27th of 2017?
A Ellen C. Watson.
Q Who lived with you?
A Me and my child and my child's father. And I let Reyna and D.J. stay as well.
Q Reyna Jefferies?
A Uh-huh.
Q And D.J. Bennett?
A Yes.
Q How long had they lived with you?
A The first time for about a month or two and the second time for about a week.
Q Who was at the house with you that afternoon?
A Reyna.
Q Where was D.J.?
A I'm not sure. He left.
Q Where was your boyfriend?
A At work.
Q At any point did D.J. come back?
A Later on that day.
Q What do you mean by later on?
A He was there that morning, but I didn't see him again until about 2:00 or 3:00, and then again that night.
Q What time that night?

A About 7:00.
Q Did he come back alone?
A No.
Q Who was with him?
A Jacory.
Q How were they acting when they got back?
A Panicking. D.J. was panicking, back and forth. Jacory stood at the door.
Q Do you remember what they were wearing?
A All black.
Q Where was Regina?
A I'm not sure.
Q At any point did she come to Ellen C. Watson that day?
A Yeah.
Q When?
A Well, she actually spent a night that night, and I didn't know until I woke up that morning and she was on the couch asleep.
Q Did she come back to Ellen C. Watson that night?
A Yeah.
Q What time?
A About 7:00 something.
Q So she doesn't come with Jacory and D.J.
A No.
Q So how does she get back to Ellen C. Watson?

A I picked her up at the end of the street.
Q Where is the end of the street in relation to L.C. Watson? How far?
A Just right up the road. It's not far.
Q Why did you pick her up?
A Reyna was, like, panicking, like where's her sister. She didn't know where her sister was at. So she had done left. And when she left I went out there and I found Regina before she did.
Q So you went looking for her?
A Uh-huh.
Q At any point when they got back did the defendant say anything to you?
A Yes.
Q What did he say?
A Shots fired.
Q And what happens next? Did you allow him to stay with you?
A No.
Q Do you go by any nicknames? What are they?
A Just Ta-Ta.
Q Did you allow them to stay with you after they returned to Ellen C. Watson?
A No. I told them they had to leave.
MS. BROWN: Your Honor, no further questions at this

time.

CROSS-EXAMINATION

BY MR. DELANEY

Q Do you know where they went when they left?

A No.

MR. BULSA: No further questions.

THE COURT: You may step down.

MR. BULSA: We ask she be excused.

THE COURT: She may be.

(Whereupon, the witness was excused.)

MS. BROWN: The state calls Chelsea Landrum.

CHELSEA LANDRUM, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q I just want to remind you to sit up and speak into the microphone.

Okay. Can you state your name for the jury?

A Chelsea Landrum.

THE COURT: Adjust that black microphone. That's the one you're using.

THE WITNESS: This one.

Q Ms. Landrum, are you familiar with the defendant, Jacory Foster?

A Yes.

Q In November of 2017, specifically on the 27th, what

was your relationship with the defendant?
A We were boyfriend and girlfriend.
Q Where did you live at that time?
A Collins Park.
Q Did the defendant live with you?
A Yeah. We was -- it was like he was back and forth from me and his grandma house.
Q Where did grandma live?
A Not my grandma.
Q Where did his grandma live?
A At Pineview Hills.
Q Do you remember the street that she lived on?
A Wilkinson Court.
Q Was the defendant at your house that day on that Monday?
A What day?
Q November 27th, the Monday that Kiyounnie was shot.
A Yes.
Q Was the defendant at your house that day? Where was he that morning?
A He was at work.
Q Did he keep that job?
A He had left because his supervisors was picking with him.
Q So he quit that day?

A He left that day, yeah.
Q So after he quit did he come to your house?
A Yes.
Q What time was that?
A I don't remember no time. It was just morning time. He left -- probably been at work for, like, two or three hours or so, something like that. Probably been at work for not too long. He came home.
Q Did he leave at any point after that?
A Yeah. He left.
Q When was the next time you saw him?
A When he left.
Q What time did he leave?
A He probably was there for, like, an hour or so, and then he left.
Q So about noon?
A Probably something like that. I really don't remember the times.
Q When was the next time you saw him that day?
A He came back. It was daytime. He came back. He left, and then he came back probably like three hours later or something like that.
Q Now, at any point that day did you go to the Ellen C. Watson Apartments?
A I did.

Q Why did you go there?
A To pick him up.
Q What time was that?
A It was just like sundown a little bit.
Q So it was dark outside?
A Yeah.
Q Why did you have to go pick him up?
A Just to pick him up because he wasn't driving at the time. So I picked him up. It wasn't that abnormal for me to pick him up.
Q What do you mean, he wasn't driving?
A Like he didn't have a car, so.
Q He didn't have a car?
A Yeah. He didn't have a car.
Q Was anybody with him when you went to pick him up at Ellen C. Watson?
A Yeah.
Q Who was with him?
A D.J. and Reyna.
Q D.J. Bennett.
A Yes.
Q Reyna Jefferies.
A Yes.
Q So what happened when you get there?
A I thought they was getting put out, they needed --

they asked could they spend -- he asked could they spend the night, that night, just because I thought -- I thought they was getting put out or stuff, like, so they put their clothes in my trunk.

Q Okay. Why did you think they were getting put out?

A I don't know why. I was, like, I didn't want nobody at my house, so I ain't really ask no questions. I just let it -- let them.

Q But why did you think that they were getting, I guess, put out? Meaning they didn't have a place to stay?

A Yeah, because he was, like, can they spend the night tonight, they'll be gone tomorrow, they need somewhere to lay.

Q So the defendant asked if they could stay?

A Yes.

Q You didn't know why they needed to stay at your house?

A No.

Q What about Regina Foster? Was she with him?

A No.

Q Did you see her at all that day?

A I seen her later on that night.

Q What time was that?

A I don't remember the time. It was just later on that night at my house.

Q Are they still there that next morning -- D.J. and

Reyna and Regina?
A They were still there when I left to go to work.
Q What time was that?
A Like 7:00 or so, like that.
Q Did they leave at any point?
A When I got off work, they were gone.
Q What time was that?
A Like 2:30, 3:00.
Q You said that the defendant, he didn't have a car. How did he get to work that day?
A He drove his grandma car.
Q Do you know what it looks like?
A It's a burgundy Nissan Altima.
MS. BROWN: No further questions at this time, Your Honor.
THE COURT: Mr. Delaney.

CROSS-EXAMINATION

BY MR. DELANEY

Q Ms. Landrum, on November the 28th when you came home from work at about 2:30 was Jacory Foster at your -- y'all's apartment?
A Yes.
Q Was Derrick Bennett, Brandon Jefferies and Regina Foster there?
A No.

Q Do you have any idea where they went?
A No.
Q Did you demand that they get out of that apartment?
A I do. He told they would be gone the next day, so, and they were gone when I got off the next day, so.
Q Were you relieved when you got home from work and those three were gone?
A Yeah.
MR. DELANEY: No further questions.
MS. BROWN: No further questions, Your Honor.
THE COURT: Step down.
MS. BROWN: May the witness be excused?
THE COURT: She may be.
(Whereupon, the witness was excused.)
MR. BULSA: May it please the Court.
This is the State's Exhibit 52. This is a firearms report from the South Carolina Law Enforcement Division.
Ladies and gentlemen, the defense and the state have stipulated instead of bringing the scientist to come and testify about the comparison of these, we've agreed to introduce his report. So you'll have it in the deliberations. And pertinent part is that the five cartridge cases that were taken out of the house were all fired by the same firearm and the four spent rounds --
MR. DELANEY: Your Honor, may we approach?

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

MR. BULSA: The four spent rounds, two from the house and two recovered from Kiyounnie's body, were also fired by this firearm, but nobody can say whether the firearm that fired the spent shell casings fired the spent rounds, okay, just can't do that. But they all match each other, okay, if that makes sense. We'll talk about it at the closing.

THE COURT: Mr. Delaney, is the defendant in agreement with that stipulation?

MR. DELANEY: We're in agreement that that document be entered into evidence, Judge.

THE COURT: Okay.

(SLED firearm report marked State's Exhibit No. 52.)

MR. BULSA: May we approach on the next witness?

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, due to the witness-availability schedule we're going to recess for the afternoon. We'll resume in the morning beginning at 9:30.

Keep in mind still no discussions about the case, no research, no investigation, no media exposure.

Do have a good evening. Please report to your jury room at 9:30 in the morning, 9:30 in the morning. Have a good afternoon.

(The following takes place outside the presence of the jury.)

THE COURT: Court is in recess until 9:30 in the morning.

END OF PROCEEDINGS OCTOBER 22, 2019

(Proceedings October 23, 2019)

(Diagrams marked State's Exhibits Nos. 53 through 55 for Identification.)

(The following takes place outside the presence of the jury.)

THE COURT: Are we ready for the jury?

MR. BULSA: Yes, sir.

THE COURT: Bring them in.

(The following takes place in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

As you know, when we recessed yesterday the state was still in the midst of their presentation. So we will continue with that presentation of evidence this morning.

Mr. Bulsa.

MS. BROWN: The state calls Dr. David Wren to the stand, Your Honor.

DR. JOHN DAVID WREN, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MS. BROWN

Q Introduce yourself to the jury.

A My name is John David Wren.

Q Where do you work?

A I'm a pathologist at Spartanburg Medical Center. I work for Carolinas Pathology Group which has the contracts

at all of the hospitals in Spartanburg.
Q How long have you worked there?
A I started October the 18th, 1982, and I've been continually employed. Employed by, first, Spartanburg Pathology Associates, which was just the pathologists here in Spartanburg. We opened a private laboratory, which I became the president of the group and served the whole time that it was in operation.

Then in 2005 we merged our two groups together and I became president of the whole group.

And then in 1997 I became laboratory medical director and chairman of the department of pathology at Spartanburg Medical Center also.

Then we merged with Carolina Pathology Group in Charlotte in 2009 in January. Since then I worked for them.
Q And what type of training have you had in pathology?
A Well, first off, I have a bachelor's degree, a master's degree and doctor of philosophy in chemical engineering from Clemson University.

I worked for several years at Hoechst Fibers here in Spartanburg. Actually five years.

Then I want to medical school. I finished in -- my M.D. training in three years and three months.

I then went directly into pathology residency and

finished that with research that I had done both in biological systems and in medical school in nephrology.

I finished my requirements in three years and ten -- nine months.

And then I -- during that time I also took an informal but certified, at least a year, and it was over several years, but it was at least a year's worth of work in residency in forensic pathology. And I was qualified for the boards, to take them. I never did take the forensic boards, but I passed the anatomic and clinical pathology boards, general boards, the first attempts.

Q So you specialize in anatomical and clinical pathology?

A It's not a specialty. All pathologists usually are board certified in that area if you're a general pathologist. But, like I said, there are subclassifications that you can take the boards in, one of which is forensic pathology. I was qualified to take the boards, but I was so busy doing coroners' cases and things like that, I did not ever apply to take the boards, although I was qualified to take them.

And I've been qualified as an expert in forensic pathology in at least half the counties in South Carolina over the years, both in residency and afterwards. I was -- testified for both plaintiffs and defendants in individual

cases, as well as legal cases.

And I've done over 6,000 autopsies in my career, most of them being forensic pathology.

Q And just tell us generally what pathology is.

A Pathology is basically broadly defined as the study of disease processes in the body.

The specialty of pathology is anatomic and clinical pathology, is a subspecialty just like internal medicine or family practices after one passes their boards and -- and for the M.D. degree a national exam that takes place in three separate parts.

Pathology is divided into two general classifications, the first being, but not the foremost being, clinical pathology, which is basically running tests, supervising the laboratory, acting as a clinical consultant for other physicians, specialties on interpretation and followup of tests. And it encompasses both chemical pathology, which is that associated with blood tests that everyone has.

Hematology, which is analysis of the blood for C.B.C.s is what most people think about.

Then microbiology, which is identifying various organisms, whether they be fungal, bacterial or viral in the -- in a sample.

And then blood banking and special chemistry, which is the one I supervise now and have been doing since 1997 when

Dr. Patton who has -- had been in Spartanburg since 1953 retired. I took over as -- his job basically.

Then the second branch is anatomic pathology, which is divided into surgical pathology and forensic pathology.

Anatomic pathology is examination of tissues, whether it be in surgical pathology where tissues are removed from the body either in a doctor's office or in the operating rooms or at hospitals.

They're sent to pathology for the pathologist to examine. We examine them grossly, it's called, where we look at them. If they look -- we take the history and whatever they're looking for. We choose an appropriate -- that we think is the appropriate specimen of that whatever they send and examine it microscopically and then give a diagnosis, whether it be benign or malignant or whether it be infectious or autoimmune or other types of disease processes so the doctor can actually treat that case.

There are other parts, being autopsy pathology, which is divided into hospital cases which are a little different from forensic cases or legal cases in that hospital cases are not so much to determine the cause of death, although that is a primary interest in cases where there's an unknown cause of death in the hospital, but to establish whether diseases are present that have been diagnosed or to -- at least 40 percent of the time we will be able to

diagnose a disease that has not been noticed -- it may be minor or it may be major -- and to determine the result of treatments that have been done during the course of the person's life, if they have a malignancy and it's been treated experimentally or with appropriate background for that treatment being satisfactory or indicated. We determine if -- how well -- how well it did.

Then the forensic pathology is medical-legal cases that are commonly called coroners' cases or medical examiners' cases.

Then the other portions of anatomic pathology I'll just cover briefly are cytology, which include pap smears that everyone's familiar with, or biopsies of aspirates of either fluids in the body or -- or washings from the lungs and things like that to determine cytologically what might be present, and then other minor areas of anatomic pathology. That's what pathology is all about.

Q And you said that you performed over 6,000 autopsies?

A The last I counted it was over 6,000.

Q How many times have you been qualified as an expert in pathology?

A Between two -- 250 and 500, I guess. I don't -- I'm too old to keep track any more.

MS. BROWN: Your Honor, the state moves to qualify this witness as an expert in pathology.

MR. DELANEY: We stipulate to that, Judge.

THE COURT: He is so qualified.

Q Dr. Wren, did you perform an autopsy on the victim, Kiyounnie Jackson, in this case?

A Yes. I performed an autopsy on -- I can't -- probably will masker the first name -- Kiyounnie Duran Jackson on November 28th of 2017 in the Spartanburg Medical Center Autopsy Room. And I began that autopsy at approximately 10:45 a.m.

Q How long did it last?

A I don't record exactly how long they last. It really depends on the complexity of the case.

I tell residents and students that the quickest I've ever done an autopsy that was straightforward was 27 minutes. And it was a complete autopsy, by the way. And the longest that I ever took was almost eight hours. So, generally speaking, on a case like this it's usually two and a half to three hours.

MS. BROWN: Your Honor, the defense has stipulated to State's Exhibits 53 through 55. So at this time we'd like to enter them into evidence.

THE COURT: Fifty-three through 55 inclusive are admitted without objection?

MR. DELANEY: Yes, sir.

THE COURT: Okay.

(Diagrams marked State's Exhibits Nos. 53 through 55.)
Q Dr. Wren, when you noticed the autopsy did you create some diagrams?
A Yes. Usually if it's requested or there's some other circumstances, unless it's very straightforward, I will provide a diagram of the wounds and the paths.
In this case I think I prepared four because there was more than one gunshot and more than one seen.
Q Is this the diagrams?
A The first one, No. 53, is an overall of the body. And since several of the gunshot wounds were more lateral, I did just the entrances and the -- the entrance in his lower left-hip area and the entrance in the -- almost in the lateral neck on the left.
Q Do you have a pointer?
A Pardon me?
MR. BULSA: It's right here.
A That's No. 54. And then number --
Q Step down and use the pointer.
(Whereupon, the witness left the stand.)
A And then No. 55 is the back shots of the head and neck area.
Q Can you describe the wounds to the jury? Tell me if I need to move the exhibit.
A Okay. There were basically four gunshot wounds to the

body. And in this case I number them No. 1. Generally speaking, you, to keep track of them, you go from the top of the head down, and then you can either go from left to right depending on how far it is from the midline, and then you do the back about the same way. Most of these were in the back, so I -- so I chose in this case to label them as I did.

No. 1 is in the left occipital area. It went into the skull just to the left of midline. I don't think it really matters, but it was 5 inches from the top of the head. And, by the way, he was 67 inches tall or long lying on the autopsy table. That can vary, plus or minus, an inch or so depending on how laxed the body is.

It went in there, and it went into the cranial vault and went through the cerebellum and lodged in some bone on the right side. That was the immediately fatal one.

I recovered a bullet from there. It was -- I labeled it with an Arabic No. 2, which is the last number of the autopsy, which was 232. It's kind of hard to put all of these numbers on there, so I just -- I use arbitrarily the last number of the autopsy. And then I identify it with my own form in that I put a Delta. It's an equilateral triangle. It's the Greek letter Delta, capital D. And that's the way I identify the bullets. That was the one I recovered there. It measured 0.55 inches long and

0.44 inches in diameter. And at the base -- I'm sorry. It's .55 or .44 at the base. And it measured -- I got a piece of lead out of there also that had separated from the bullet, and it measured .75 inches or three quarters of an inch that was -- had broken off as it entered the skull. That was the more immediately fatal gunshot wound.

No. 2 actually entered just to the left of midline, I mean, in the lower left-neck area up at -- where the -- where the neck starts out onto the shoulder. And it passed through the soft tissues of the neck and exited just to the interior to the clavicle, which is the collarbone, and kept going.

It was not recovered. I can give you the dimensions of the holes and all, but it came from his posterior left or lateral left, slightly posterior as his position was to the -- to the weapon and then kept on going.

And then the third -- and those are labeled No. 2 and No. 3. No. 2 is labeled because it occurred in the front, and then No. 3 was in the back.

And No. 4 entered posterior lateral in his lower buttocks and upper thigh area. It traveled anteriorly and did not hit anything specifically fatal that I could tell.

There was some hemorrhage associated with it. It went into the abdomen but did not hit any vital structures and came to rest near the hipbone on the left where I recovered

bullet B. It was labeled 2-B and Delta. The other one was labeled 2-A and Delta.

And this bullet was -- the defect was circular. It measured .45 inches in diameter and that bullet was -- I have forgotten where I put the bullet. It measured .45 inches in diameter at the base of the bullet and it measured half an inch in length. It was pretty pristine. It didn't hit any bony structures at all.

It was a hollow point bullet because in the track of the wound I did find a yellow plug that's -- is in the -- that stuck into the hollow point, and it separated and came out. But I saved it also.

These two bullets I forwarded to Officer Shawn Cloran -- Cloran -- the Spartanburg City Police Department who signed for them.

Q Would you return to the stand.

(Whereupon, the witness returned to the stand.)

Q Based on your findings and autopsy do you have an opinion as to the victim Kiyounnie Jackson, to his cause of death?

A His cause of death was, like I said, the -- the gunshot wound that went through and through his neck did not hit anything vital. He could have bled to death and eventually died from an infection if it happened. So I called it potentially fatal.

The one in his lower thigh, I called it potentially fatal too. Same reasons.

And then the immediately fatal one was to the back of his head. And I just assigned the cause of death as the -- the difference between the cause of death and manner of death, the cause of death is actually what caused the death.

And in all death certificates that are sent to vital records you're supposed to put -- there are four lines that you -- one can -- can label what happened in the order that it happened. A lot of physicians don't really follow that.

But the immediate cause of death is A; and then B, what caused that; and C is what caused that; and D, what might have caused that if you need those. And then there are some contributing factors you can put at the -- that might have contributed some to it. It's in a separate line. That's the way they're supposed to be.

But I said that he died as a result of a gunshot wound to the head. It was inter -- intracranial hemorrhage and -- and trauma to the brain. And I just put gunshot wound to the head. That was the cause of his death.

The manner of his death, there are basically six manners of death that can be assigned. The coroner assigns those at his insistence.

Medical examiners usually assign both the coroner and

mostly in this state want to -- by convention want to assign the manner of death.

Those are natural, accidental, homicide, suicide and then undetermined, are the main five. But there is another one that is sort of in vogue now in some cases. Undetermined after toxicology and -- and autopsy result. Basically, it's undetermined also. But it's a -- they're not saying that they don't know exactly what it is. They just don't have enough evidence to say what it was. But it indicates that it was not suicide, homicide or accidental in their opinion.

MS. BROWN: I have no further questions at this time, Your Honor.

MR. DELANEY: No questions, Judge.

THE COURT: You may step down.

MS. BROWN: May the witness be excused?

THE COURT: He may be.

(Whereupon, the witness was excused.)

MR. BULSA: The state calls Chris Taylor.

CHRIS TAYLOR, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q If you would, please, introduce yourself to the jury.

A My name is Chris Taylor. I work for the City of Spartanburg Police Department.

Q And you've been sitting in this whole trial, right?
A Yes, sir.
Q Were you the lead investigator in this case?
A Yes, sir.
Q Were you called to the scene at [redacted] Fisher Avenue on November 27th of 2017?
A Yes, sir.
Q Did you actually enter the house?
A Yes, sir.
Q And what did you observe?
A I observed a house that would look apparently vacant with trash all about the house, and I looked down the hallway and I saw the victim laying there.
Q Did you let the I.D. officers process the house?
A Yes, sir. That's what we normally do.
Q What do you do yourself?
A From that point while, as far as processing the house, I'm actually checking with neighbors, witnesses, other people that's possibly seen what happened.
Q Okay. When did you first develop any suspects in this case?
A It was back on the 29th of November.
Q And who did you first determine might be involved?
A Well, I came in contact with Kenya Hayes and Tara Jefferies. That was on the 29th at 8:35 that morning. And

they stated that --
Q Don't get into what they stated.
A Okay.
Q But as a result of the conversation with them, what did you do?
A From that point we went to try to locate one of their daughters.
Q And who was that?
A That would be Regina Foster.
Q Okay. And through your efforts did you locate Regina in the Jonesville area?
A Yes, sir.
Q And did you get assistance from the Union County officers to actually go get her?
A That was the sheriff's office in Union County that helped us.
Q Okay. All right. Where -- do you know where -- did you go yourself?
A Yes, sir.
Q Where actually was she found? Not necessarily the address, but what type of location?
A It was a trailer in Jonesville.
Q And who was she with?
A She was with her sister Reyna and Derrick Bennett.
Q Also known as D.J.

A As D.J., yes, sir.
Q Okay. And was a weapon recovered from anybody at that location?
A Yes, sir. Recovered a weapon from D.J. Bennett.
Q Okay. And you heard the testimony about the items being sent to the state law enforcement division. Was a weapon also sent?
A Yes, sir.
Q Okay. I'm showing you State's Exhibit 52. It identifies as Item 9, a weapon. Is that the weapon that was recovered in Union?
A Yes, sir.
Q Okay. And what would have been the purpose of submitting that with the other items recovered at the scene?
A We wanted to make sure we could identify this weapon.
Q Okay. Were you checking to see if that weapon might have fired the rounds?
A Yes, sir.
Q Based on your knowledge of the report did it fire the rounds?
A No, sir.
Q Now, when you found Ms. Foster and you brought her in did she cooperate and give you a statement?
A Yes, sir. She did.

Q And did you learn that this case was connected to the Ellen C. Watson area, as well as Pineview Hills?
A Yes. We did.
Q Show you State's Exhibit 1. This is a diagram of the Pineview Hills area, is that right?
A Yes, sir.
Q Where is Ellen C. Watson Apartments in relation to this community?
A Can I step down?
Q Yes, sir.
(Whereupon, the witness left the stand.)
A This is Fisher Avenue. Ellen C. Watson -- if you go across right here you follow Ellen C. Watson. This roadway leads into the apartments.
Q Is there a pathway to get between them?
A There's several pathways behind people's houses right there.
Q Thank you.
(Whereupon, the witness returned to the stand.)
Q So as the crow flies about how far would that be, would you say?
A Maybe two to three hundred yards.
Q Separating the two neighborhoods?
A It's probably not that much as far as separating the two neighbors. I'm just talking about from the incident

location to the apartments.
Q So they could've walked up there.
A Yes, sir.
Q Now, we've heard from the canine officer, Hancock, about the tracking he did.
A Yes, sir.
Q And he actually showed the location of where his dog tracked down to Wilkinson Court.
A Yes, sir.
Q Gowan Street. Did you determine where the defendant lived or at least put on -- put as his address?
A The address that he provided myself and Investigator Nelson was [redacted] Wilkinson Court.
Q Okay. And would you point that out to us on the diagram?
A It would be the first house on the left once you go into Wilkinson Court.
Q Okay. Now, and that's actually his grandmother's residence, right?
A Yes, sir.
Q And is that the grandmother that owned the vehicle that he would have been driving?
A Yes, sir.
Q Now, we heard from Officer Cloran that one of his duties was to show a photo lineup to Ms. Foster to help

identify who she was talking about. Do you know who she actually identified?
A Yes, sir.
Q And who was she talking about?
A That was Jacory Foster.
Q She identified Jacory Foster in those pictures that Officer Cloran showed.
A Yes, sir.
Q And based on that information did you begin trying to find Mr. Foster?
A Yes. We did.
Q Were you able to locate him?
A Yes, sir. Narcotics picked him up.
Q And brought him to the police station?
A They put him in -- they took him to the county jail, and we later picked him up from the county jail and brought him to the city to talk to him.
Q Okay. And who would have met with him?
A Myself and Investigator Nelson would have talked to him.
(Rights waiver form marked State's Exhibit No. 56 for Identification.)
Q Let me show you what's been marked State's No. 56 for Identification. Do you recognize that?
A Yes, sir.

Q What is it?
A That's a rights waiver form.
Q Is that the first thing you do with him when you bring him in to talk to him?
A Yes, sir.
Q Is that to make sure he understands all of his legal rights?
A Yes, sir.
Q And did he sign this and acknowledge he understood those?
A Yes. He did.
Q Did he agree to talk with you?
A Yes. He did.
MR. BULSA: Your Honor, the state would offer 56 into evidence.
MR. DELANEY: No objection.
THE COURT: It's admitted.
(Rights waiver form marked State's Exhibit No. 56.)
Q Now, where did you actually speak to him?
A We spoke to him in the interview room at city hall.
Q Okay. And is the interview videotaped?
A Yes. It is.
Q Did you note on this form how long the interview with him lasted?
A Yes, sir.

Q How long did it last?
A We started at 1440 hours and we ended at 1644 hours, which is from 2:40 till 4:44 p.m.
Q Okay. Did he acknowledge any involvement in this case?
A Yes, sir.
Q And how forthright was he in acknowledging that?
MR. DELANEY: Objection, Your Honor. I don't think this witness has the ability to judge an individual's forthrightness or honesty. I think he can talk about potential --
THE COURT: Sustained.
Q Well, let's do it this way.
That video, that interview, was recorded for two hours.
A Yes, sir.
Q And we've looked at that video, and we've cut it down to about 30 minutes of the pertinent parts, is that right?
A Yes, sir.
Q Okay. And you viewed that video?
A Yes, sir.
Q And State's 57 is a copy of that video?
A Yes, sir.
Q Okay.
MR. BULSA: Your Honor, the state would move 57 into

evidence.

MR. DELANEY: No objection, Your Honor.

THE COURT: It's admitted.

(C.D. marked State's Exhibit No. 57.)

Q Now, when we watch this, it's not going to be a continuous flow because it took two hours to get the information you were looking for, right?

A Yes, sir.

Q Okay. And we're going to let it speak for itself, and then we'll ask you some more questions.

MR. BULSA: Your Honor, I'd like to publish this for the jury.

THE COURT: You may.

(Whereupon, State's Exhibit No. 57 was played for the jury.)

Q At the end there you're signing something. Is that the bottom of State's 56?

A Yes, sir.

Q Okay. You're acknowledging that the interview is --

A Is over.

Q Been two hours. Okay. So he actually signs that as well.

A Yes, sir.

Q Now, we saw another gentleman in there in one of the clips. Who is that officer?

A That's Investigator Nelson.
Q And he was assisting you in investigating the case?
A Yes, sir.
Q Y'all kinda work together, is that right?
A We work major crimes.
Q He mentioned the name of his homeboy -- Dry.
A Yes, sir.
Q He didn't give you the full name.
A No. He didn't.
Q There was some talk there at the end about Duncan Park. Did you go out to Duncan Park?
A Yes, sir.
Q You are familiar with the investigation and what they found in the burn pile, right?
A Yes, sir.
Q In your part of Duncan Park, what were you trying to do?
A We were trying to locate a firearm that was supposed to have been throwed in one of the storm drains near the ball field.
Q Did you take anybody out there with you?
A Yes. There was several of us went out there. We had Forensic Tech Cloran, Forensic Tech Norkett, Investigator Nelson, Investigator Laden, Lieutenant Hillers. There was several of us out there.

Q Did you take any of the suspects?
A We took Reyna Jefferies.
Q Were you able to find any weapon?
A Investigator Cloran went down in the storm drain. We did not find anything but footprints at the bottom.
Q We've seen photographs of the items recovered from the burn pile.
A Yes, sir.
Q Did you look at those?
A Yes, sir.
Q Did they appear to match what Regina stated she was wearing?
A Yes, sir.
Q Thank you.

MR. BULSA: That's all I have.

CROSS-EXAMINATION

BY MR. DELANEY

Q Good afternoon, Mr. Taylor.

When your office received that original tip from Regina Foster's parents, what was the nature of that tip? What information did they bring to your office?
A They were trying to locate Regina. She was listed as a missing person.
Q Had they -- and so Regina's mother contacted your office, is that accurate?

A It was her and her cousin.
Q And do you remember what specifically they said, that they just hadn't seen their daughter in two days, or that they heard from their daughter and their daughter was in distress, or what was the nature and the content of the information that they brought to you?
A They were worried about Regina. They hadn't heard from her, but then they received some text messages from her.
Q Do you know what those text messages said, or did they say -- I'm assuming they were of the nature that would put a parent on alarm that their child was in danger. Is that --
A Yes, sir.
Q And to your knowledge those texts were being generated by Regina in Jonesville. Is that your understanding?
A Yes, sir.
Q And so based on that information you got the assistance of the Union Sheriff's Department and you took a few of your guys with you and y'all contacted cell phone companies to do a ping on her cell phone?
A Yes, sir.
Q And is that how you found her location?
A Yes, sir.
Q Did you know -- so you identified the trailer in

Jonesville where she is or where this cell phone is that you're receiving these -- where the mother is receiving these texts from. Is that accurate?

A Yes, sir.

Q And so you and the Union Sheriff's Department put a team together to go to that trailer. Did you have any idea who was in that trailer?

A We knowed for sure that Regina was there but wasn't sure who else was in the house.

Q At that time were you tying your efforts in Jonesville to save this young lady from the distress that she's in to the incident that occurred on Fisher Avenue a couple of days earlier? Was there any connection in your mind at that point based on the information you had at that time?

A From the information that was given to her mother and a cousin we thought it was a possibility it was linked.

Q And I'm assuming, just like in every case, when you were going to clear this residence and look for this person, you're assuming that there's going to be other people and weapons. And you've to prepare for the worst, right?

A Yes, sir.

Q And when y'all entered that residence in Jonesville, who all was there?

A Well, the sheriff's officer entered. Myself and

Investigator Nelson, we waited outside farther away.

In the house was Derrick Bennett, Reyna Jefferies, Regina Foster, a resident of the house. I think her name was Holly. And her child.

Q Was Regina taken into custody at that point? Was she arrested?

A No.

Q Was Reyna arrested?

A No.

Q Was Derrick Bennett arrested?

A Yes, sir.

Q Was Holly and the other child, were they left back?

A Yes, sir. They was left there.

Q Was Jacory Foster there?

A No, sir.

Q Jacory Foster was arrested and charged a couple of days later?

A It would have been the same day, the 29th.

Q Was that after?

A Two days after the homicide.

Q Was that after law enforcement received information from Regina Foster?

A Yes, sir.

Q Based on that information Jacory Foster was arrested and charged?

A Yes, sir.
Q Where -- when you went to execute that arrest warrant and put him into custody, where did you go pick -- or where did your officers go pick him up at?
A Narcotics would have went to Collins Park, which is going to be over there at his girlfriend's residence.
Q Right here in the City of Spartanburg.
A Yes, sir.
MR. DELANEY: No further questions.
MR. BULSA: Just briefly.

REDIRECT EXAMINATION

BY MR. BULSA

Q When Mr. Bennett was arrested in Union, it wasn't for these charges, was it?
A No, sir.
Q It was because of a pistol he had.
A Yes, sir.
Q And how did you know where to look for Mr. Foster?
A Mr. Foster had told us that he stayed at his girlfriend's house, as well as his grandmother's house.
Q I know. But when you went to -- you went to arrest him, how did your officers know where to go to arrest Jacory Foster?
A Well, they checked both locations and just happened to find him more by chance, more or less, over there.

Q Because his known address was his grandmother's house.
A [redacted] Wilkinson Court, yes.
Q But y'all just knew that his girlfriend was Chelsea?
A He told us that his girlfriend's name was Chelsea.
Q I know he told you, but you didn't know -- did you know that before you spoke to him?
A No.
Q So how did y'all know where to go?
A Actually, well, I think what happened was the fact that our narcotics units looked as far as social media and different stuff to locate him. Thank you.
Q All right. All right. Thank you.

MR. DELANEY: Nothing further.

THE COURT: You may step down.

MR. BULSA: The state would rest at this time.

THE COURT: Ladies and gentlemen, that is all of the testimony or other evidence to be offered by the state, at least in their case in chief.

Before we go any further I've got some matters I'll need to address with the lawyers.

So we'll take a break. I'll ask you to please go to your jury room. Don't talk about the case. I'll bring you back shortly.

(The following takes place outside the presence of the jury.)

THE COURT: Any motions or other matters to address before we continue?

MR. DELANEY: A couple, Judge.

First, I make a motion for a directed verdict. The state has failed to produce and submit sufficient evidence to give the jury the opportunity to make any finding of guilt in this matter. As such, we'd move for a directed verdict at this time.

THE COURT: And where do you feel like the state is lacking in their presentation?

MR. DELANEY: I think they've submitted sufficient evidence to the jury to show that my client may be guilty to accessory after the fact of murder, but I do not feel like they have submitted sufficient evidence to show that my client has in any way shot and killed the deceased in this matter. And, as such, it is proper for this charge -- to be charged with accessory after the fact of murder. But I do not feel that there has been sufficient evidence to connect by client with the killing of Kiyounnie Jackson.

THE COURT: Mr. Bulsa.

MR. BULSA: Your Honor, there's clearly direct evidence the defendant was involved in the planning and participation of this crime.

There's also evidence that he made an admission to one of the witnesses that he's the one that actually shot and

killed Kiyounnie Jackson. There's clearly enough evidence to go to a jury.

THE COURT: There is sufficient evidence for it to be submitted; therefore your motion for a directed verdict is denied.

Any other matters to address?

MR. DELANEY: Yes, Your Honor.

Obviously, the state has now rested and my client is going to have to make a decision as to whether or not he's going to testify.

I just want to confirm that the state will not be using that 2009 conviction to attempt to impeach Mr. Foster.

Is that correct? We talked about that briefly, Derrick, yesterday.

THE COURT: What is the conviction?

MR. DELANEY: It's an accessory after the fact of robbery. I think -- and it's ten years old. It's closely related. I don't think it's admissible, obviously, but --

MR. BULSA: I don't remember us talking about it.

MR. DELANEY: Okay.

MR. BULSA: It is within the timeframe because he received a 5-year sentence. Actually, received a 10-year sentence.

THE COURT: Well, let's do this.

Let's take a short break, and y'all discuss it. If I need to address it, I will.

We'll be at ease 15 minutes.

(Whereupon, a recess was taken.)

THE COURT: Mr. Delaney, have you talked to Mr. Foster about his decision as to whether or not he'll testify during this trial?

MR. DELANEY: I have discussed the matter with him, Judge.

THE COURT: And has he indicted to you a preference?

MR. DELANEY: I would ask the Court to inquire of Mr. Foster, please.

THE COURT: Okay. Mr. Foster, as you know, you're charged with a crime. You're standing trial now.

Any time you're charged with a crime you always have an absolute right to remain silent, which means no one can ever require that you take the witness stand and testify.

No one can ever require that you make any statements; no one can require that you answer any questions, just as you already know from the fact that you were advised of your rights prior to giving that statement to law enforcement. You didn't have to unless you wanted to. So that was your decision.

And that's the same case here. You have a right to take the witness stand and testify if you want to, but

nobody can make you take the witness stand and testify.

If you choose to take the witness stand and to testify you have to answer not only your lawyer's questions, but you also have to respond to the prosecutor's questions to the extent that they're relevant even if the responses to those questions might tend to prove you guilty of some crime they claim you've committed.

If you make a decision not to testify during the trial, that's not something that you can change later. You can't wait until after the decision is reached by the jury and then decide that you want to provide me with additional information.

If you do not take the witness stand and testify, I will instruct them, as I already have, that they can't hold that against you and they can't consider it in any way during their deliberations or in their decision as to whether or not your guilt has been proven beyond a reasonable doubt.

Only you can make the decision as to whether or not you will testify. You may seek advice from your lawyer or anybody else that you choose, but the ultimate decision has to be yours because you are the person that has to live with the consequence of that decision.

Do you understand your right to testify?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand your right not to testify?

THE DEFENDANT: Yes, sir.

THE COURT: Have you and Mr. Delaney discussed the advantages and disadvantages of testifying, as well as not testifying?

THE DEFENDANT: Yes, sir.

THE COURT: And do you appreciate what those advantages and disadvantages are?

THE DEFENDANT: Yes, sir.

THE COURT: And have you had time to reflect upon your decision as to whether or not you will testify?

THE DEFENDANT: Yes, sir.

THE COURT: And what is that decision?

THE DEFENDANT: I agree.

THE COURT: You what?

THE DEFENDANT: I agree to testify.

THE COURT: You want to testify?

THE DEFENDANT: Yes, sir.

THE COURT: And is that a decision that you made of your own free will and accord?

THE DEFENDANT: Yes, sir.

THE COURT: Has anybody pressured you into that decision?

THE DEFENDANT: No, sir.

THE COURT: Has anybody even suggested that that's the decision you ought to make?

THE DEFENDANT: No, sir.

THE COURT: Are you -- have you made that decision based upon your own determination as to the appropriateness of it and having time to reflect upon it?

THE DEFENDANT: Yes, sir.

THE COURT: And you're satisfied with that decision?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Are we ready for the jury?

MR. BULSA: Yes, sir.

THE COURT: All right. Bring them in, please.

(The following takes place in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, as you know, the state has rested in their presentation. So we'll now proceed with any additional evidence to be offered by the defense.

Mr. Delaney.

MR. DELANEY: Your Honor, we call Jacory Foster.

JACORY SHAROD FOSTER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DELANEY

Q State your name, please.

A Jacory Foster.

Q How old are you, Mr. Foster?

A Twenty-eight.

Q Do you have any children?

A Yes, sir.

Q How many?

A One.

Q How far did you go in school?

A Eleventh grade.

Q Do you have a G.E.D. or --

A Yes, sir.

Q And on the November 27th of 2017, that morning, were you employed?

A Yes, sir.

Q Where were up employed?

A B.M.W.

Q How long had you been working there?

A About a year.

Q And did you have some sort of problem at the job that day with the supervisor?

A Yes, sir.

Q And you walked off the job site for all intents and purposes?
A Yes, sir.
Q What time was that?
A I say around about between 10:00 to 11:30. It was before lunchtime.
Q So you left B.M.W. in Greer.
A Yes, sir.
Q Where did you go?
A To my girlfriend's house.
Q What's her name?
A Chelsea Landrum.
Q How did you get there?
A Drove my grandma's car.
Q What kind of car is that?
A Burgundy Nissan Altima.
Q You drove it to Chelsea's?
A Yes, sir.
Q This is November 27th of 2017, correct?
A Yes, sir.
Q What time did you get to Chelsea's approximately?
A Say, around about 12:00, 12:30.
Q Did y'all get something to eat?
A Yes, sir.
Q Do you remember where or what you ate?

A Zaxby's.
Q Which Zaxby's?
A Reidville Road.
Q Did you eat it there or did you get it to go?
A To go.
Q Did you take it back to Chelsea's house?
A Yes, sir.
Q Did you eat it and hang out there?
A Yes, sir.
Q Did you smoke marijuana?
A Yes, sir.
Q How long have you been using marijuana?
A Particularly [sic] my whole life, sir.
Q At some point did you leave Chelsea's in that burgundy vehicle?
A Yes, sir.
Q Did you go pick somebody up?
A Yes, sir.
Q Who?
A Derrick Bennett.
Q How long have you known Derrick Bennett?
A Two and a half weeks.
Q Did you meet him through your brother?
A Yes, sir.
Q Your brother had known him for quite some time. Is

that your understanding?
A Yes, sir.
Q But you had only met Derrick approximately two and a half weeks before November 27th of 2017.
A Yes, sir.
Q Did y'all smoke dope together?
A Yes, sir.
Q Did y'all smoke dope that day, that evening, around the time you picked him up?
A Yes, sir.
Q At some point did y'all run out of dope?
A Yes, sir.
Q Did y'all need some more dope that night to smoke it?
A Yes, sir.
Q Who took the lead on finding some dope to buy that night? Who took the lead on that?
A Derrick Bennett.
Q Were y'all kind of riding around Spartanburg hitting Collins Park? And where were y'all going in the vehicle when you first picked him up?
A Well, when I -- when I first went to Ellen C. Watson it wasn't to pick him up. I was just over there chilling for a while.
Q And you happened to see Derrick? Is that how you --
A Yeah. He was over there. I went to where he was

staying at.
Q And so where did you pick him up at physically?
A At Three and Ta-Ta house.
Q And that's at Ellen C. Watson.
A Yes, sir.
Q So when y'all left there, where did you go?
A Prince Hall.
Q Who lives there?
A Well, I didn't know who he stayed -- went over there. My sister was staying over there, but he asked me to take him over there, and that's what I did. And while he was over there talking to her -- when he was talking to her -- I went to my sister's house to see her and my niece.
Q And so when y'all at Prince Hall were y'all out of weed?
A At the time we were.
Q Do you know if Derrick was looking to score any weed at Prince Hall?
A I didn't know what he was over there doing.
Q At some point did y'all leave Prince Hall?
A Yes, sir.
Q In your grandmother's burgundy vehicle?
A Yes, sir.
Q Were you the driver?
A No, sir.

Q Who's driving?
A My homeboy -- Dray.
Q When y'all left Prince Hall homeboy Dray was driving.
A Yes, sir.
Q Who was in the front passenger seat?
A Derrick.
Q Who was in the rear driver's-side seat?
A Me.
Q Was there anybody else in the vehicle?
A Not at the time.
Q So y'all left Prince Hall and went where?
A Spartan Terrace Apartments.
Q When you got there, what did you do?
A We pulled up in front of Reyna and Regina's mother's house.
Q And Reyna is Derrick's girlfriend.
A Yes, sir.
Q And you knew that.
A Yes, sir.
Q You knew -- you had seen them together in the two-and-a-half weeks that you'd known Derrick, correct?
A Yeah. They all stayed together.
Q And so that's why y'all went there.
A Yes, sir.
Q Y'all had contacts there, specifically Derrick's

girlfriend.
A Yes, sir.
Q How long did you stay there?
A We didn't stay there long. He went and knocked on the door looking for somebody. Some baldheaded dude came to the door and, well, we asked for him. They told him that the person wasn't there. He came back to the car.
Q Did you find anything unusual about going to these different places, or is that kind of the way y'all do business?
A I mean, at the time we was just really, just riding. And, like, when we went there, he was looking for Regina. And the dude stated that she wasn't here. So he came back to the car. And as we was leaving out of Spartan Terrance we seen her walking by the mailbox and he rolled the window down and told -- stopped the car and called her to the car and told her to get in the car, and she did.
Q And that's Regina got in the car.
A Yes, sir.
Q And that was on Derrick's invitation.
A Yes, sir.
Q Did you -- had you ever seen Regina before in your life?
A No, sir.
Q So you left there and went where?

A Straight to the vacant house.
Q When you left there and were heading towards the vacant house did Derrick take a phone from Regina, or some sort of electronic device?
A No, sir. He didn't.
Q Was somebody texting the whole time?
A Yes, sir.
Q Who was doing that?
A Regina.
Q Do you know if at any point Derrick contacted Kiyounnie Jackson?
A He never contacted him physically. He was telling her to contact him.
Q Was Derrick telling Regina what to do?
A Yes, sir.
Q And was she following his instructions?
A Yes, sir.
Q In the two weeks that you had known Derrick Bennett, what did you know his reputation in the community to be?
A Robbing people, just doing all type of crazy things.
Q Do you know if he had had -- in the two-and-a-half weeks that you knew him do you know if he had had any interactions with Kiyounnie Jackson?
A No, sir.
Q Why not?

A I mean, I didn't know nothing about Kiyounnie. I never heard of Kiyounnie until that day.
Q Why did you think -- okay. Did y'all arrive to the vacant house on Fisher Avenue?
A Yes, sir.
Q Had you ever been in vacant houses before in your life?
A Yes. I have.
Q People smoke dope in them?
A Yes, sir.
Q Had you ever been in the house at Fisher Avenue before?
A Yes, sir.
Q When you stopped the car out front, who got out first?
A Regina.
Q What did she do?
A Stood outside the car.
Q Did anybody go try to open the front door?
A Yes, sir.
Q Who?
A Derrick Bennett.
Q Was it open?
A No, sir.
Q So what did y'all do then?
A Walked to the back of the house, and he lifted up the

window.
Q Did you all three climb in that window?
A Yes, sir.
Q Were you all three in that bedroom together for a period of several minutes?
A Yes, sir.
Q Were you waiting for Kiyounnie and the drugs to arrive?
A Yes, sir.
Q Did you have any -- were you armed?
A No, sir.
Q Did you have any intent to rob anybody?
A No, sir.
Q Did you have any intent to kill anybody?
A No, sir.
Q Why were you there?
A To be honest, you know, we was supposed to buy some weed. But being at the vacant house, she had contacted Kiyounnie, and he stated that he agreed to sell her some weed. He decided that he was going to rob him once he got to the house.
Q Who decided that?
A Derrick Bennett.
Q How long were you -- how long were you all in the house before Kiyounnie Jackson arrived?

A About 20 minutes.
Q When Kiyounnie Jackson arrived, what happened?
A He -- he first, he texted Regina phone and told her to come outside, and she told D.J. that he want me to come outside. D.J. told her to tell him that she's babysitting, tell him to come in the house, and that's what she did. And he came in the house. She ran in the bathroom and he got to calling her name. She didn't say nothing.
Q Who was calling what name?
A Kiyounnie was calling Regina's name, called her name about five times.
Q What happened next?
A He got to walking down the hallway, and the next thing you know heard gunshots.
Q How many?
A Like five.
Q Did you shoot him?
A No, sir.
Q Did you see who shot him?
A I didn't see it, but I just heard the gunshots.
Q Do you know who was in the proximity, their location was in proximity with where those -- where you heard those gunshots? Who was there?
A It was just three of us in the house. It was me, Derrick and Regina.

Q Did Regina shoot him?
A No, sir.
Q What did you do after you heard the gunshots?
A When I heard the gunshot I was in a panic, a shot mode. And when I looked out the room window -- I was in a room where the window was at. And when I looked out in the hallway all you seen was his feet and seen his body laying on the ground. And I seen Derrick going through his pockets. So I took off running and jumped out the window and I ran to the right -- to the right back to the car.
Q Back to the burgundy -- your grandmother's burgundy vehicle?
A Yes, sir.
Q What did you do next?
A Told my homeboy to pull off and told him what took place.
Q Is that homeboy Dray?
A Yes, sir.
Q Where did y'all go?
A We -- we was heading back towards -- like leaving out of Pineview when we seen D.J. come running out of nowhere through the pathway behind the house that was on Gowan Street. And we stopped the car and he got in the car.
Q So D.J. gets in the car with you and homeboy Dray?
A Yes, sir.

Q Where did y'all go?
A Back to Ellen C. Watson to Ta-Ta house.
Q Was Ta-Ta there?
A Yes, sir.
Q Was Regina there?
A No, sir.
Q Regina arrived at some point later that evening, didn't she?
A Yes, sir.
Q Who picked her up?
A Ta-Ta.
Q But Ta-Ta -- when you all got there Ta-Ta was there.
A Yes, sir.
Q But she left at some point after.
A Yes, sir.
Q And then she came back with Regina.
A Yes, sir.
Q At that point in time were you armed?
A No, sir.
Q Was Derrick Bennett armed?
A Yes, sir.
Q What did he have on him firearms-wise?
A He had, he still had, the murder weapon on him, and he had the gun that he had tooken off Kiyounnie.
Q At that point how long were you at Ellen C. Watson?

A I can't really state how long I stayed, but, you know, I was there for a little -- I say about -- I say about 30 minutes.
Q Did you leave there?
A Yes, sir.
Q What car?
A My girlfriend came and got me.
Q What's your girlfriend's name?
A Chelsea.
Q Who else rode in the car with you and Chelsea?
A Derrick Bennett and Reyna Jefferies.
Q Where did you go?
A Back to Collins Park.
Q Is that Chelsea -- where Chelsea lives?
A Yes, sir.
Q Did all four of you enter the apartment?
A Yes, sir.
Q At some point did Regina show up?
A Yes. She did later.
Q Who brought her there, do you know?
A Dray.
Q Homeboy Dray.
A Yes, sir.
Q So in your girlfriend's apartment is you and Chelsea, Derrick Bennett, Reyna and Regina, is that right?

A Yes, sir.
Q You and Chelsea stay upstairs?
A Yes, sir.
Q What did Chelsea instruct you?
A That they had to leave, she didn't want them there.
Q Did you ever see Derrick Bennett in possession in a sum of cash?
A Yes, sir.
Q Did he show it to you?
A Yes, sir.
Q Did he try to give some of it to you?
A Yes, sir.
Q What was your response?
A I told him to keep it because I don't want none of it. And he was talking about he was going -- he was leaving. I told him he better take it with him because he going to need it.
Q Why did you say he was going to need it?
A Because they was talking about running out of the city.
Q Why -- were you at this point in time -- were you -- it was a stressful time, right, as is -- this whole episode has been, right?
A Yes, sir.
Q Did you ever imagine that you'd be charged with

murder?
A No, sir.
Q What time did y'all arrive at Chelsea -- Chelsea's apartment that evening approximately?
A I really can't say. I don't know.
Q The next morning some folks left, right?
A Yes, sir.
Q Who left?
A D.J., Reyna and Regina.
Q When they left were you in possession of any firearms?
A No, sir.
Q Were you in possession of any sums of cash?
A No, sir.
Q When they left do you know where they were going?
A To my knowledge Union.
Q Do you know anybody in Union or have any idea where they might be going there or --
A No, sir.
Q If you will, answer any questions Mr. Bulsa has.

CROSS-EXAMINATION

BY MR. BULSA

Q What's a jug -- what's a jug?
A A who?
Q A jug.
A A jug?

Q Yes, sir.
A Oh, a robbery.
Q A robbery, right.
A Mean jug.
Q I think it's in your second version you said that D.J. pointed somebody out and said he was going to do a jug, right?
A Yes, sir.
Q So you knew what he was going to do.
A Yes, sir.
Q So you were right in there with him, right?
A Yes, sir.
Q Chelsea had warned you not to go with D.J., right?
A Yes, sir.
Q Yet after this happened you insisted that Chelsea let them come and stay with you, didn't you?
A Yes, sir.
Q Okay. And you didn't go pick your brother up.
A No, sir.
Q Who's this Dray fellow?
A I been knowing him for about maybe 16 years now.
Q You didn't give his name to the police, did you?
A No, sir.
Q In fact, you didn't even want to give his nickname.
A No, sir.

Q And you're telling this jury that you told him what happened right when you got in the car?
A Yes, sir.
Q Where is he today?
A I guess he out and about in the free -- free world.
Q He's not here to come and corroborate your story?
A No, sir.
Q I'm not sure which story he would corroborate because you've told about four, right?
A Yes, sir.
Q And this vacant house just happened to be in the same neighborhood where your grandma lived, right?
A Yes, sir.
Q And you've been in that neighborhood before.
A Yes, sir.
Q So the neighbors have seen you around before.
A Yes, sir.
Q So you clearly knew where a vacant house was.
A Yes, sir. All of us did. I'm not the only one that been to the house before.
Q I thought you'd just met D.J. two-and-a-half weeks ago.
A Yeah, I have, but that house right there, people was staying in the house before it was vacant, like. I done seen him around, but me personally knowing him, knowing

him, I didn't know him personally but for like two-and-a-half weeks.

Q Right. So you didn't know in two-and-a-half weeks whether he knew that house was vacant, did you?

A No, sir.

Q You're the one that knew about the vacant house.

A Say what?

Q Didn't you pick out the house where this to happen?

A No. He picked out the house. He told -- he the one told us to go to Fisher Avenue.

Q Oh, just happened to be in your neighborhood.

A That's not my neighborhood.

Q Isn't that where your grandma lives, right behind it?

A Yes, sir.

Q And you were driving her car.

A Yes, sir.

Q That's your neighborhood, isn't it? That's the address you put on your waiver-of-rights form, right?

A That's my grandmama's house there, sir.

Q But you claim it as your neighborhood. You put it in writing even.

A Yes, sir.

Q And you just met Regina that day, right?

A Yes, sir.

Q Okay. How old is she?

A How old is who -- me?
Q Regina.
A I think she was 17.
Q How old are you?
A Now I'm 28.
Q So you were what, 26, when this happened?
A Yes, sir.
Q And how old was D.J.?
A I think he was 20.
Q Twenty?
A Twenty-one. I don't really know.
Q Reyna was how old?
A I think 19 -- 18. I don't know.
Q They're a lot younger than you, right?
A Yes, sir.
Q And yet you went and looked for him that day, right, to hang out with him?
A Who. Derrick?
Q Yes, sir.
A Na. He contacted me, and that's when I went over there.
Q He contacted you. Did he know you had quit your job that day?
A No, sir.
Q So it's just by chance that you had had the day free

to go meet with him?
A See, he -- he called my phone looking for my brother, because we was at work. So I guess he was trying to contact my brother, and my brother wasn't answering the phone due to -- well, you know, on the line that we be on, you have to be real busy. Sometimes you can't hang your phones on the floor. So he called my phone and he asked me where my brother was at. I told him he's at work. He asked me where I was at. I told him I was at the house.
Q So you just decided to go see him.
A Na. He asked me what I had going on, and I told him I was chilling, and he asked me did I have some Bud. I said I had enough. He told me to pull up on, and that's what I did later on.
Q And while y'all were riding around is when y'all saw that guy with the green backpack and he was talking about jugging.
A We was riding around at first. We went from Ellen C. Watson straight to Pineview. It wasn't no riding around.
Q I know. Earlier in the afternoon is when I think your second version was, is when you saw the guy with the backpack.
A It was --
Q He started talking about jugging somebody, right?
A When we was in Prince Hall he was over there talking

to a lot of people.
Q You can't remember that because of all of this stuff you made up, right?
A It ain't that, just what's going on.
Q And you've testified. You told this jury what you knew his reputation was.
A Yes, sir.
Q And you readily went around him, right?
A Yes, sir.
Q Hung with him.
A Yes, sir.
Q Drove him around.
A Yes, sir.
Q When did -- when did Dray come into the picture?
A Well, Dray came into the picture. We was all at Ta-Ta house and we was -- it was me -- when I first got there it was just me, D.J., 3-D and Reyna. Ta-Ta was in the house with her son, and we was all out there smoking.

And Dray got dropped off over there. He had called my phone and asked where I was at. Told him I was at Ellen C. Watson. And he got dropped off over there. He was -- just came from playing cards. And he got dropped off over there, and we was all over there smoking. And that's when another individual pulled up, and we was all over there smoking, but he left because the person who car he was in

stated that they wanted their car back.

So he left, and it was just us at the time. And then 3-D stated that he had to go to work. He was fixing to get ready to go to work. And he asked what we's about to do. I was like I was fixing to go back to the crib. That's when Derrick asked me would I take him somewhere. And that's when we left there and went to Prince Hall.

Q Derrick asked you to take him somewhere.

A Yeah.

Q And you left to take him.

A Yes, sir. Well, we all left to take him.

Q Is that when Dray jumped in?

A I mean, he was driving the car the whole time.

Q It was your grandma's car.

A Yes, sir. When I get high I don't like to drive, when I'm high. I drove to Ellen C. Watson. But when we drove to Prince Hall, he was driving.

Q Did you know Kiyounnie Jackson?

A No, sir.

Q So you didn't care what happened to him, did you?

A I mean, yeah. What you mean?

Q Y'all set this up. You went in that house to wait for him. You went in there armed.

A No. I didn't go in there armed.

Q You were in that house and shots were fired and y'all

got money and a gun and you bailed out the window.
A Yes, sir.
Q Right?
A That's where I left back out.
Q How'd you get in?
A We went through the window.
Q You went through the window and went out the window.
A Yes, sir.
Q And you didn't know Regina at all, did you?
A No, sir.
Q So she didn't know you.
A No, sir.
Q She had nothing against you, right?
A I don't reckon, no, sir.
Q She had no reason to lie about you, right?
A I mean, situations like that, mean, people try to tell anything to get theirself out of things.
Q That third person you gave -- remember the last one? You left it by saying you went and got your brother and didn't have anything else to do with D.J., right?
A Yes, sir.
Q You just -- it was just lie after lie after lie, right?
A Well, to be honest with you, sir, at the time I was just really panicking and I was nervous. So I really was,

like, I really was just saying anything to try to keep myself out of the situation.

Q Thank you.

MR. DELANEY: No questions, Judge.

THE COURT: You may step down.

MR. DELANEY: The defense rests.

THE COURT: Any reply?

MR. BULSA: No, sir.

THE COURT: All right. That is all of the testimony or evidence to be offered in the trial of the case.

What remains to be done are the lawyers' final summations, after which I'll instruct you on the law, and then you can begin with your deliberations.

That's going to take a little time, so we're going to stop now for lunch. We'll resume this afternoon at 2:00 o'clock, at 2:00 o'clock this afternoon. We'll continue with the final summations, my instruction as to the law and then your deliberations.

So keep in mind during the lunch recess no discussions, no research, no investigation.

Have a good lunch. Report to your jury room this afternoon at 2:00 o'clock, 2:00 o'clock this afternoon.

(The following takes place outside the presence of the jury.)

THE COURT: Mr. Delaney, do you want to renew your

motions?

MR. DELANEY: Yes. Renew my motion for a directed verdict, Judge, based on the same grounds and arguments I presented before.

THE COURT: All right. That's denied.

Any instruction requests? I have one from the state, which I've reviewed, and it appears that everything in it's covered in my general charge.

MR. DELANEY: We'd ask the jury be instructed as to the law on accessory after the fact of murder and accessory after the fact on an armed robbery.

THE COURT: Well, I can't do that because he's not charged with that and it's not a lesser included offense as to anything he's charged with.

MR. DELANEY: We would argue, Judge, that the facts and evidence that's been presented at trial, there's been new light shed on certain realities of this case. And, as such, if the jury was to interpret the evidence and testimony presented in a certain fashion, which I think is plausible, it would tend to lead them potentially to a finding on accessory after the fact to both murder and armed robbery.

THE COURT: Well, if that's their determination, then they have to find him not guilty of what he's charged with, but he's not charged with accessory after the fact. It's

not a lesser included offense of either of these offenses.

MR. DELANEY: Thank you, Your Honor.

THE COURT: All right. Court is in recess until 2:00 o'clock.

(Whereupon, a recess was taken.)

THE COURT: All right. Are we ready for the jury?

MR. DELANEY: One matter.

Judge, we're asking that the Court during its charges charge the jury mere presence. I've got a charge here.

THE COURT: Okay. Do you want me to look at it?

MR. DELANEY: It starts at the bottom there and goes on to page two.

THE COURT: All right. Anything else?

MR. BULSA: Not from the state, no, sir.

MR. DELANEY: No, Your Honor.

THE COURT: All right. Bring them in.

(The following takes place in the presence of the jury.)

THE COURT: Good afternoon, ladies and gentlemen.

As you know, you've heard and seen all of the evidence to be presented. You're now going to hear from the lawyers in their final summations. After that I'll provide you with the legal instruction.

The way that's accomplished is the state has the burden of proof, so they go forward first in their

presentation of evidence. They also go forward first in the final summations.

After the state concludes the defendant's counsel will make a final summation in response, and then the state is permitted a brief reply.

So please give the lawyers your attention now as they give you their final summations.

MR. BULSA: May it please the Court.

THE COURT: Mr. Bulsa.

MR. BULSA: First of all I want to thank you, ladies and gentlemen, for being here and serving your civic duty. The Jackson family appreciates it as well.

As you know, Kiyounnie was gunned down in a vacant house at [redacted] Fisher Avenue. That's without a doubt. He was shot in the back of the head, the neck and the leg. Tragic. He was a young man.

We started this case out by bringing you the police officers to kind of help set the scene for you, kinda set a picture in your mind so when you start hearing from other people hopefully you can get an understanding of what was going on.

Okay. I hope you didn't get lost in that. We put up a bunch of pictures and we brought people in to explain various parts of it. I'm going to try to walk you through that as best I can to help you understand it.

The police get a call from neighbors about a shooting in this house. Officers arrive. It's clearly a vacant house. There's an eviction notice on the door.

It does appear that people have been in and out because of all of the junk left in it. And Ms. Mills said that she did see people over there even after the people left out. But no one was supposed to be there.

On this occasion the police are called. They go in. There's a single light in the kitchen. Okay. So the power is still on. There's a light in the kitchen. They go in and they find Kiyounnie laying in the hallway clearly dead.

The officer checks the rest of the scene. They look closer at his body and it appears that his pockets are gone through. Shoot his I.D. It looked like it was on a lanyard. It was at his feet. So somebody clearly disturbed his body and presumably took something off of it.

So the police began in this case thinking they've a murder and a robbery. Okay. Armed robbery. Somebody used a gun to rob him because they shot him. Okay. That's the motive in armed robbery.

I submit to you, ladies and gentlemen, this case is about the who -- who did this. And in the eyes of the law if people were present and participating, they're guilty whether they pulled the trigger or not. That's the hand of one is the hand of all.

Now, when the police are there and they're investigating they have no idea how many people were in there. They have no idea how many people were involved in this case. They just have Kiyounnie Jackson's body, and they're talking to neighbors trying to figure out what happened.

Now, they have Kiyounnie's car and they find his cell phone and they're going to go through the cell phone and hope that leads them to someone and maybe see who he had contact with. And they would've eventually discovered from the last contact with -- was through facebook by someone named Regina Nicole.

Now, that's -- whether they could have tracked that down or not, we don't know. But they got a lucky break, because Regina Nicole got scared. She was in a situation over her head. She was taken to Union, the Jonesville area of Union County, and she got scared and she started texting her family.

Remember that. And the family -- the mother and the cousin, I think it was -- went to city hall and started sharing that information with the police. So the police start looking for Regina, and they're able to work the science of the problems and they're able to locate where she is and get the Union County people to help go get her. And they find her there with her sister and D.J. Bennett,

Derrick Bennett, and then the resident of that trailer.

Now, Mr. Bennett is arrested at the scene because he's got a pistol. And you've heard about the pistol that he was caught with.

And then they take Regina in and they start questioning her and she tells them what happened. And she doesn't know Mr. Foster. She has no bias against him, no reason to name him unless he's involved.

Please understand that. She could have just said D.J. did it, D.J. took me away, I was scared of D.J. This man was just as involved with D.J. She identified him to the police by the photo lineup and they started looking for him and everything is starting to come together.

They find Reyna through Regina, and she's there. And Reyna gives some statements, and Reyna talks about Duncan Park. So they go to Duncan Park. And what do they find? They find a burn pile of clothes. Regina said Reyna told me to give her my clothes and then they left.

All of this is corroborated. She talks to them about how she used the messenger to link in to Kiyounnie. And then her statement said Cory, but she explained that, that it was really D.J. that took the phone. She was using Cory's phone. So the two are connected in the setting up of this deal. Kiyounnie Jackson was set up.

Regina told you she knew it was going to be a robbery.

It was put out like they wanted to buy some marijuana, but she knew it was a setup. Those guys pressured her. She'd just turned 17. Two weeks after her birthday she's involved in this.

So, once again, they look in the phone. And, yes, they can corroborate that Regina is telling the truth. Two men were there, two men were armed.

Now we know forensically. The reason for this SLED report instead of bringing in the agent from SLED, all of the shell casings, the five in the house, were fired by one gun. And the rounds that were found in the house -- they actually missed one because we've got five shell casings and only four bullets. But you saw the house. It's not unusual to miss the small items of evidence like that.

In fact, it appears that some of them got kicked, because one shell casing is found near the front door I think when Regina ran out, or it could have been when the officers were in there checking out the scene.

But we know the confined area where Kiyounnie was is a 3-foot hallway. So the bullets were bouncing around. It's not likely they would have bounced that far. But the point of this is, is we know only one of the persons is shot, only one of them fired -- fired a pistol.

It doesn't matter which one did it. They're both involved. They both participated in setting up this

robbery, going there to rob and continuing to rob. And then one of them goes crazy and shoots. Okay. The hand of one is the hand of all.

Now, we actually have direct evidence from Reyna that he is the one that shot. That's enough in and of itself.

Now, she told you how she was checking her facebook and she saw the messages about Kiyounnie's death and that she asked what happened and this man said that he shot him. That's enough in and of itself. But everybody involved, because of the law, is guilty of pulling the trigger even though they didn't pull it, is guilty of robbing, taking items off him even if they didn't do it.

That young lady, Regina Foster, is just as guilty as this man of murder and armed robbery. She helped set it up knowing that she was setting up a robbery.

She didn't intend anybody to get killed. She didn't want Kiyounnie to get killed. But the law says that it's a natural and probable consequence that something could happen. And it does happen, you are responsible for what happens.

If you go to a location armed with firearms intending to rob someone and something goes south and that person -- somebody gets killed, then you're all responsible for the murder just as you're also responsible for the robbery, because it is a natural and probable consequence that if

guns are displayed, a robbery's in progress that trigger might get pulled. So you're guilty of murder even though you just intended to commit a robbery. The judge will charge you on that kind of language.

Now, we have to overcome the burden that he was not just present. We have to -- we have to show that he was involved.

That was some of the reasons we brought in Ta-Ta, Tasheka Meadors. Remember that young lady. She lived in the Ellen C. Watson Apartments. Remember Ellen C. Watson is just a few hundred yards away from the Pineview Hills.

Why did we bring her in? Because she saw him after the fact and she figured something happened because Mr. Foster said shots were fired. And she told him to leave. She told everybody to pack up and leave. She left herself because she wanted to get away from this situation.

Mr. Foster. Shots fired.

And we brought in Chelsea because Chelsea didn't want D.J. at her house. That's probably maybe one of the few factual things that I'm going to ask you to take Mr. Foster's statements, is Chelsea didn't like D.J., Chelsea didn't want him hanging out with D.J. Chelsea sure wasn't going to invite him over to her house at any time, yet D.J. -- I mean Mr. Foster, Jacory Foster -- insisted that she let D.J. and Reyna come over there right after he

knew somebody had been shot and killed.

His actions after the fact remain with this person he now wants you to believe did it all even though his actions show that he was involved. He was a participant in accomplishing this act. In fact, as we already know, he was the triggerman. Why do we keep harping on this? Because he gave so many versions of his statement.

We brought the officer up, and he talked you through some of the things he did, some of the corroborations he did with the defendant's statement, and we put in the 30-minute clip of the interview. The interview was two hours long. So there's things happening and there's -- there's other -- that's not important for you to listen to.

Okay. We boiled it down to his -- I counted three versions. First version is nothing about D.J. Went to work, got fired, not -- didn't get fired. Quit. Went out and did a few things and went home and had nothing to do with D.J. You can listen to it again.

In his second version he admits getting up with D.J., and that's when he admits that D.J. was going to commit a jug. Remember when I asked that question, what's a jug. That's why I asked it. It's because in his second version he said that they saw someone out with a green backpack and that he said -- D.J. apparently told Mr. Foster, according to Mr. Foster, said I'm going to jug that guy. Means I'm

going to rob him. That was earlier in the afternoon.

He says he knows D.J.'s reputation and he's hanging out with him. He's knowing he's getting ready for a robbery.

He said merely that on that second occasion that all he did was drive him to the location. And he drove him there with the knowledge and understanding, I submit to you by his own version, that he knew D.J. was going to commit some sort of robbery. And that was his second version. Okay. They're not believing that I don't know anything, let me tell them that I drove him over there.

And then they continued to question him, and then finally he says I'm going to be real with you. He talks through a little bit and finally admits to going in the house, staying there.

He throws Dray in -- didn't want to tell his name, still didn't tell his full name -- as being the driver when he's somewhere away.

Then he wants you to believe that, well, let's see. How does this all work. Second version was, yeah, I knew he was going to rob, and third version was I went in there but I didn't really do anything.

Then you heard a fourth version today, because in the third version what does he say he does after the fact? He says he gets back to Ellen C. Watson and he leaves D.J. He

goes and picks up his brother. And that was the last time they'd seen him, was at Ellen C. Watson.

I submit to you he gave the Court and had to give you a fourth version because he knows his girlfriend and Ta-Ta has said he left with Chelsea and he took D.J. and Reyna with him. So he's trying to piece all of this together to try to confuse you.

I submit to you there's a fifth story, the real story, and that was told to you by the witnesses on this witness stand. It was told to you by Regina and Reyna, two people involved in this, charged. They'll face their day later.

D.J.'s also charged. He'll face his day later. Whatever happens to him or them is not for your concern. You judge their credibility. You decide whether they were honest and truthful, whether they had any bias.

I submit to you they didn't know him. Reyna knew him, I guess, for a couple of weeks through her -- through her boyfriend. Regina didn't know him. She had no reason to pull him into this.

I'm going to leave you with this. In my cross-examination on him -- and this is the way he ended his answer. I was just trying to say anything to keep out of the situation. That's exactly what he did in court.

I submit to you he's not truthful. He's guilty as charged of the crimes that the judge will give you the law

on -- murder, armed robbery. And also in each one of those there's a second count of possession of a firearm during the commission of a violent crime.

I submit to you he had one because he fired. And the hand of one also allows for that charge even if the other person had the gun and you didn't. And then he's also charged with using a person under the age of 18 -- that's Regina Foster -- to commit a violent crime. This is a violent crime. Thank you, ladies and gentlemen.

THE COURT: Mr. Delaney.

MR. DELANEY: May it please the Court.

Thank you, ladies and gentlemen of the jury. People are just trying to say anything to get out of the situation. Yeah. It's sloppy; it's a mess.

Regina's statement that she wrote to police two days later that I read back to her and she read from the stand, she said Jacory Foster did all of that texting. Then she took the stand. She cleaned that up, didn't she? She told you all the truth. People are just trying to say anything to get out of the situation. It was a mess, a tragedy. There was a young man killed, gunned down, shot in the head in close range.

You've got a 17-year-old girl, a couple of 20-somethings. People are just trying to say anything to get out of this situation. That's what they were doing,

all of them.

And so the reason why nearly two years later we come to this court is we're going to clean it up and we're going to find out what happened and you're going to take that witness stand and you're going to go under oath and we're going to figure it out. And that's what we're doing today.

So I'm going to go through the evidence with you, a lot of which was consented to and stipulated to by us. Because I already started on Exhibit 51, let me back up to this for a minute.

You remember the young lady that was called by the state, the phone extractor, to get the information from the phone? And she was having a bad day. I have a bad day. She forgot a bunch of documents. She didn't know whose phone was what.

And I have a big problem with that, okay, because from day one my client's telling me I didn't send this nonsense, this ain't me, it ain't me, it ain't me, it ain't me. And that's a huge part of this case. And now I've got the woman up here that supposedly got it, and she doesn't have all of the records.

Okay. We all have bad days. She stands down. Going to go get her report. She can come back later. But to authenticate this document, who is the person luring Kiyounnie Jackson to this house? That's important because

this is the bait. Whoever is sending this to Kiyounnie is giving the bait to get him to the house, and that's important. My client is adamant that he didn't do it, and he's telling me, his lawyer, to figure it out.

Then this employee comes up here, and we don't have everything, so she stands down. And I know that in order to authenticate this they're going to have to have the employee, the phone extractor, and then the person whose account it is -- Regina. So I knew it was a 2-step process. All right. Stand her down, call Regina, we'll work through Regina.

Well, guess what? Regina said he didn't do it, it wasn't him. So now -- you never saw the phone lady again. I agree this comes in without objection. Stipulation.

People are just trying to say anything to get out of this situation. They're trying to protect themselves -- Reggie, Reyna, Derrick -- boyfriend, girlfriend, sister, stranger.

Let's go hold up in Union for a couple of days and figure out how we're going to say anything to get out of this situation. Let's do that -- let's do that.

Hand of one, hand in all, hand of all, present and participating. Mere presence. The defense of mere presence. Just because you're present in a room where a -- where a crime is committed doesn't make you guilty of that

crime. Mere presence as opposed to hand of one, hand of all.

Exhibit 1, map of the area, conceded; two, conceded; three, conceded; four, conceded; eight, Kiyounnie's car where the cell phone was found, conceded; eviction notice, conceded; drawing of the house, conceded; measurements from the forensics, conceded; disarray in the house, conceded -- conceded, conceded, conceded, conceded.

And I know I sound repetitious, and I'm not trying to be repetitious like that. But as go through this I want you to know. I want you to be able to focus on what's important here. And a lot of this stuff is conceded. So I don't want you wasting your time on it.

Conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded, conceded -- the window where they all three and spent several minutes in that house, pictures of Duncan Park where my client never went, by the way. But we'll agree that these are pictures of that. But my client did not participate in any burning of any evidence on the nature trail in Duncan Park. Didn't happen. But we'll concede that this is pictures of what they found.

But you need to understand he's not conceding that he participated in that, because he did not.

Statement of my client that you saw. People were just trying to say anything to get out of the situation. They're all in a whirlwind of panic trying to protect themselves, trying to protect them -- buddies. There's plenty of inconsistent statements going around. You saw it.

Autopsy reports conceded; bullet casings, SLED report, more bullet casings, all conceded.

Missing the phone. I submit to you that's crucial. For Regina two days after this tragedy to go from there to Derrick Bennett on all of this is very telling, very telling.

How can you say that this man is luring someone to their death or to their robbery and then come into court and say oh, no, no, no. It wasn't him. It was Derrick.

By the way, where is Derrick? Where is Derrick Bennett? Where's D.J.?

MR. BULSA: Objection, Your Honor.

THE COURT: Sustained.

MR. DELANEY: Reyna wasn't there. Regina was there. She didn't see the shooter. Jacory was there. He didn't -- didn't physically see -- Regina didn't physically see someone pulling the trigger. She saw the shooter afterwards, beforehand. My client saw the shooter afterwards, beforehand, taking the money and the gun off of

him. He never got any of the money. He wanted away from them. They -- they end up at his -- at Chelsea's house, and they're all in a panic, you know, all in a panic.

They spend the night. Chelsea wants them out the next morning. He wants them out the next morning. They load up and they go to Union.

He never left the city limits of Spartanburg. He was very distraught, a nervous wreck. But murder? He didn't kill anybody. He didn't participate in it either. He wasn't present and he didn't participate.

You don't -- I understand the law that you don't have to pull the trigger to be charged with murder. But you have to participate to some degree. Your mere presence alone is not sufficient for a finding of guilt.

I submit to you that he's not guilty of murder; I submit to you that he's not guilty of armed robbery; I submit to you that he's not guilty of the two counts of possession of a weapon during the commission of a violent crime.

And then the easy one. He's not guilty of using a minor to help him in a crime. That's Derrick Bennett using the minor, committing the crime, possessing the firearms, picking up some cash and another firearm, getting found with a firearm in Union, trying to throw a firearm away in a drainage ditch in Duncan Park.

They're all doing that, not my client, not today, not November 27th of 2017. That's not how it went down. Thank you for your time.

MR. BULSA: I'm just going to speak briefly in reply to that.

All of that concession, that's a little misleading. And the pushing the envelope, a concession doesn't mean don't ignore it.

He wants you to believe just because he conceded none of these are important. The rules of court -- rules of court, we enter evidence. They know it's going to be admitted. They concede to it. That's what's going on.

And using his own words, he finally conceded to the phone, because he knows it was a lost cause. It was taken out of the victim's car, going to be able to prove it was his.

I told you Derrick will have his day in court. He's got his rights just like he does. He doesn't have to come in and implicate himself.

This man was read those rights. He knew he didn't have to talk, but he gave a story, after story, after story, lie, lie, lie, lie. He's the one that's saying anything to get out of this because he knows the evidence shows he's guilty. And I ask you to find him guilty. Thank you, ladies and gentlemen.

THE COURT: Madam forelady and ladies and gentlemen of the jury, you of course have now heard and seen all of the evidence in the case, as well as the final summations of the lawyers.

It now becomes by duty and obligation to instruct you on the law that's applicable in the case, and then you'll be asked to go back and begin with your deliberations. And through that process you'll examine the evidence, decide the facts where you can, apply the law that I provided and determine whether or not the defendant's guilt as to a particular charge has been proven beyond a reasonable doubt.

It is your exclusive prerogative to determine what the facts are. You do that through your own common sense examination and evaluation of all of the testimony and other evidence received during the course this trial.

You 12 jurors alone will decide what weight, value and effect to give to any particular witness' testimony or even portions of that testimony.

Again, your sole objective is to simply render a fair and impartial decision based upon the evidence that has been presented during the trial and the law that's applicable as I will have provided it to you.

Now, as you know, in this case the state has accused the defendant, Jacory Sharod Foster, with having committed

five separate and distinct offenses, although they are alleged to have arisen out of one particular event or a course of events which the state alleges occurred back on November the 27th of 2017. But there are five separate and distinct criminal offenses alleged; and therefore you will be called upon to render five separate and distinct verdicts in the case.

And as I think I previously told you, those verdicts may be the same; they may be different. That, obviously, will depend upon your determination of fact as it relates to a particular charge and the allegations relating to that particular charge and then your application of the law as I will have provided it to you in order to render a decision.

But Mr. Foster has been accused in one indictment with the crimes of murder and possession of a firearm during the commission of that violent crime.

He's charged in a separate indictment with the crime of armed robbery and possession of a firearm during the commission of that violent crime.

He's charged in the remaining indictment with use of a person under 18 years of age to commit a violent crime.

The crimes of murder and armed robbery are each classified under the law as violent crimes in this state.

Now, as to the indictments and as to each of the charges contained therein the defendant has entered a plea

of not guilty. That plea of not guilty has placed upon the state the burden of proving the allegations that they have made by way of each of those indictments, the burden of proving each of the essential elements that make up the crimes that have been alleged against the defendant; and therefore the burden is upon the state to establish the defendant's guilt to the satisfaction of you 12 jurors beyond a reasonable doubt before any verdict of guilty could be returned as to any of the charges that have been brought against him.

The burden is never upon a defendant or a person accused of a crime to prove that they are not guilty or to prove that they are innocent because in some cases that might not be possible. The burden is always upon the state because they made the accusation and they brought the charge to prove that person's guilt beyond a reasonable doubt.

You are instructed that it is a vital, important and cardinal rule of law that every defendant in a criminal trial -- and it does not matter how serious the offense might be for which that person stands charged -- that person shall always be presumed innocent of that charge, and that presumption of innocence remains with every defendant, as it does with this defendant, from the time that he is placed under arrest and throughout the course of

the criminal process and even throughout the course of the actual trial in the case.

That presumption of innocence, as I told you, will be with Mr. Foster even as go back to begin with your deliberations in this case after this instruction, and that presumption of innocence will be with him in that jury room, and it'll be with him forever unless you 12 jurors determine that he's no longer entitled to the presumption of innocence as it relates to a particular charge.

In other words, after you've carefully considered all of the evidence received during the trial, and from that evidence you've been able to determine the facts as they relate to the particular allegations set forth in the separate indictments, and upon determining those facts you apply the law that I will have provided you, if you 12 jurors unanimously determine that his guilt as a particular charge has been proven beyond a reasonable doubt, then he would no longer be entitled to that presumption of innocence as it relates to that particular charge. But it is only if, unless and until you are satisfied of his guilt beyond a reasonable doubt as to a charge that the presumption of innocence would no longer be applicable to that particular charge.

Now, as you know, the state has the burden of proving the defendant's guilt beyond a reasonable doubt. That does

not mean however that the state has to prove his guilt beyond all doubt or beyond any possible doubt, but it does require that the state to prove his guilt to your satisfaction beyond a reasonable doubt.

The term reasonable doubt should be given its plain and ordinary meaning. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act upon the information provided.

A defendant in a trial is entitled to every reasonable doubt that arises from the evidence or lack of evidence in a case, and if upon any factual issue essential to a finding of a verdict of guilty you have some reasonable doubt has to how that issue should be resolved, it will be your duty to resolve that reasonable doubt in favor of the defendant.

Now, while there are various forms of evidence such as testimony and photographs and documents and charts and other types of physical exhibits, there are really only two types of evidence. Either or both of those types of evidence may be used to prove any fact in issue. But the two types of evidence are direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who testifies from actual knowledge of that fact. It is the testimony of a person who has perceived the existence of

some fact by means of his or her senses, and then they come into court and they testify as to what they have previously seen or heard, or felt for that matter.

Proof by direct evidence does not -- proves a fact directly and does not require any deduction or inference in order to establish that fact.

Circumstantial evidence, on the other hand, is the proof of some other fact or set of facts which taken either singly or collectively may prove the existence a fact in question as a necessary consequence, that is through an inference.

An inference is simply a deduction of fact that may logically and reasonably be drawn from the proof of some other fact or set of facts.

In other words, it's not a fact which is proven by the direct testimony of a witness based upon that witness' perception, but it is a conclusion which might reasonably be drawn from the proof of other facts.

In other words, you may infer that a particular event occurred or that a particular fact exists based upon the proof of sufficient factual circumstances which would reasonably warrant your arriving at a particular conclusion.

The commission of a crime and any particular element necessary to prove that crime may be proven by direct

evidence; it may be proven by circumstantial evidence; or it may be proven by a combination of both direct and circumstantial evidence.

The law makes no distinction between the weight or value to be given to direct evidence or circumstantial evidence, however to the extent that the state relies upon circumstantial evidence in order to establish the commission of a crime, all of the circumstances proven must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof is insufficient and it fails.

The burden rests with the state to prove a defendant guilty beyond a reasonable doubt regardless of whether the state relies upon direct evidence or circumstantial evidence or a combination of both types of evidence.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the laws does not require proof that overcomes every possible doubt.

So if, based on your consideration of the evidence and the exercise of your good judgment and common sense, you are firmly convinced that the defendant is guilty of a

particular crime for which he stands charged, then you must find him guilty of that crime.

If, on the other hand, you think there is a real possibility that the defendant is not guilty of a crime for which he stands charged, then you must give him the benefit of that doubt and find him not guilty as to that particular charge.

Now, because you are the sole judges of the facts in this case you are therefore necessarily the sole judges of the credibility and the believability of each witness that has testified during the course of the trial.

You 12 jurors alone will decide what weight, value and effect to give to any particular witness' testimony or even portions of that testimony. But there are several factors which you should consider in arriving at your evaluation as to a witness' credibility, and I'm going to list those factors for you.

You should consider the demeanor of the witness. That is how the witness appeared to you wile the witness was testifying from that witness stand. Was the witness straightforward in responding to questions, or was the witness hesitant or evasive in responding to questions that were posed of the witness? Simply put, did the witness appear to you have to be telling the truth and to have knowledge of the facts to which that witness has testified.

You should also consider whether or not the testimony of a witness is consistent, or is it inconsistent, with that witness' own testimony provided here during the trial, or is it consistent or inconsistent with other statements made by that same witness, whether they be made in court or outside of court.

You should also consider whether or not the testimony of a witness was consistent or was it inconsistent with that other testimony or other evidence received during the course of the trial.

You should also consider how the witness came to know the facts to which that witness has testified. In other words, what was a particular witness' opportunity and ability to perceive the existence of those facts to which that witness has testified by having previously used his or her senses, and then what is the ability of that witness to be able to come into court and to accurately recollect to you as to what they have previously perceived.

You should also consider any bias or prejudice or interest that you find a witness might have with respect to the case. In other words, do you find some reason that a particular witness would come into court and testify one way or another to help or hurt one side or the other. And you should consider any interest that a witness might have in the outcome of the case if you determine that that

witness did have an interest in the outcome and you find that that interest would bear upon that particular witness' credibility.

You should also consider whether or not the testimony of a witness is strengthened, or is it weakened by other testimony or other evidence received during the course of the trial.

Now, because you are judges of the facts and because you do judge the credibility of each witness that has testified during the trial of this case, you are permitted to believe as much or as little of what a witness has testified to as you deem is appropriate in the exercise of good judgment and common sense.

And so as I previously stated, you can believe everything that a witness testified. You may choose to believe none of it. You may believe some portion of a witness' testimony and reject some other portion of that same witness' testimony.

In a given case you could believe one witness as opposed to several, or several as opposed to one. But whatever your good judgment and common sense tells you is the most believable and credible testimony is the testimony you should accept, and you should reject any testimony that you find not to be credible or believable.

Again, your sole objective is to simply render a fair

and impartial decision based upon the evidence presented and the law that is applicable as I will have provided it to you.

The same law that provides that you are the judges of the facts also provides that I am the judge of the law, and that simply means that nobody's going to tell you how to arrive at your determination of fact in this case. You do that, as I've already stated, through the exercise of good judgment and common sense conscientiously applied to the testimony and evidence received during the trial of the case.

You must however under your oath as a juror accept the law as I provide it to you as being the law that you are to apply in the case.

In other words, you're not to concern yourself with what you thought the law was before you came to serve as a juror this week or what you think the law ought to be.

You must simply under your oath as a juror accept the law as I provide it to you as being the law that you are to apply in the case, and then you simply take that law and you apply it to the facts as you 12 jurors determine those facts to be based upon your examination of the evidence in the case.

Now, as you know, the defendant is charged with five separate and distinct offenses. Two of the indictments

contain two charges. One indictment has a single charge. The indictment charging the crime of murder also charges the crime of possession of a firearm during the commission of that crime, which is a violent crime.

The second indictment charges the defendant with having committed the crime of armed robbery, as well as in count two possession of a firearm during the commission of that violent crime. Armed robbery is a violent crime.

Then the third indictment charges him with using a person under 18 in order to commit a violent offense. Violent offenses include armed robbery and murder, as I've stated.

So I'm going to begin instructing you on the law as it relates to the various offenses. I'll start with murder. That'll follow with armed robbery. And I'll charge you about possession of a firearm during the commission of a violent crime, because that's going to apply to both the murder and armed robbery charges. And then lastly I'll charge you on the law as it relates to use of a person under 18 to commit a crime.

Murder is defined in South Carolina Code Section 16-3-10 as the killing of any person with malice aforethought, either expressed or implied -- the killing of any person with malice aforethought, either expressed or implied.

In order for you to be able to find the defendant guilty of the crime of murder, it would be necessary that the evidence in this case has established to your satisfaction beyond a reasonable doubt that the defendant, Jacory Sharod Foster, or an accomplice where acting as an accomplice, did commit some act or acts which proximately caused the death of Kiyounnie Duran Jackson and that that killing was done with malice aforethought. Malice aforethought is an essential element of the crime of murder.

So what is malice? Well, malice as an essential element of the crime of murder is a state of mind connoting an ill will and having an intent to do harm.

Intent refers to the state of a person's mind which directs his actions towards a specific object or goal. Intent would include those consequences which represent the very purpose for which an act is done, as well as those consequences which are known to be substantially certain to result, whether actually intended or not.

Malice is a technical term importing wickedness and excluding just cause or legal excuse. It is something which springs from depravity, from a heart devoid of social duty and fatally bent on mischief. It is a state of mind indicating an extreme disregard for or an extreme indifference to human life.

Malice may be likewise defined as a state of mind which indicates a formed purpose and design to do a wrongful act under circumstances that exclude any legal right to do it.

The words expressed or implied malice do not mean different kinds of malice but merely the manner in which malice may be shown to have existed. That is to say malice being proven by direct evidence or by circumstantial evidence from which you might infer or imply the existence of malice.

Malice may be expressed as where there is an expressed threat to kill or a lying in wait or where the circumstances show directly that an intent to kill was entertained by the killer.

Malice may be inferred, though no expressed intent to kill is proven by direct evidence, where the facts and the circumstances which have been proven by the evidence in the case satisfy you beyond a reasonable doubt that malice was present in the mind of the killer at the time any killing took place.

The existence of malice may be inferred from the acts, declarations and conduct of the killer, as well as from any other circumstances shown to have existed at the time of the event from which you might reasonably infer the existence of malice as often the state of a person's mind

can only be proven by circumstantial evidence.

Malice as an essential element of the crime of murder does not necessarily require proof of an ill will or hatred to the particular individual who is killed, nor does it necessarily require proof of an actual, a specific intent to take human life, but rather it means a state of mind accompanying conduct signifying a general malignant recklessness and an extreme disregard for or an extreme indifference to human life.

Even if the facts proven are sufficient to raise an inference of malice, such an inference is simply an evidentiary fact to be taken into consideration by you 12 jurors along with all of the other evidence received during the trial of the case, and you may give such weight, if any, to such inferences that you deem they should receive, if any.

The state is required to prove malice, just as it must prove any other essential element of a crime charged, and it is for you 12 jurors to determine in the case of murder whether or not the evidence in the case establishes malice beyond a reasonable doubt.

It's also essential that there exist not only malice but that it be malice aforethought. The law does not require that malice must exist for any appreciable length of time before the commission of an act proximately causing

a fatal result. In fact, it may be conceived at the very moment that the fatal act is committed.

It is sufficient in the law so long as the evidence in the case has established to your satisfaction beyond a reasonable doubt both the existence of malice and the commission of an act or acts by the defendant or an accomplice which proximately caused the fatal result.

You must determine whether or not malice aforethought existed based upon your consideration of all of the evidence received during the course of the trial and any reasonable inferences that might be derived from that evidence.

Now, while the state must prove beyond a reasonable doubt that a killing did occur and it was accompanied by the element of malice aforethought in order to establish the crime of murder, it is not necessary that the state prove any motive for the killing, although there may be evidence introduced during the trial that relates to that particular fact.

I'm now going to instruct you on the law as it relates to the crime of armed robbery.

Section 16-11-330 of the Code of Laws of South Carolina provides that a person who commits the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor or any other deadly weapon is guilty of the

crime of armed robbery.

Now, armed robbery necessarily includes the crime of robbery. So in order for you to understand the crime of armed robbery, I'll also charge you on the crime of robbery.

But a robbery is what's referred to as a larceny by force or by the threat of the use of force. A robbery is defined in the law as the taking of another person's property with the intent to steal it from the person or from the presence of that person by the use of force or violence or by the threat of the use of force or violence through intimidation in order to accomplish the theft.

A robbery is the forcing of a person to surrender property with an intent to steal it by the use of force or violence or by threatening a person with the use of force or violence in order to accomplish that theft.

A robbery becomes an armed robbery when the robbery is accomplished through the use of a pistol or other deadly weapon.

Now, as you know, in the indictments charging murder, as well as armed robbery, there's a second count in each of those indictments charging the defendant with possession of a weapon during the commission of a violent crime.

That particular crime is set forth in Section 16-23-490(A), and that statute provides in its relevant

part a person shall be guilty of an additional criminal offense if a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60.

As I told you, Section 16-1-60, which defines violent crimes, includes the crimes of murder and armed robbery as violent crimes under the law.

So before the defendant could be found guilty of a violation of this particular provision of law it would be necessary that you have found the defendant to be guilty of the crimes of murder and/or armed robbery, depending upon which indictment that you are considering, and that you find beyond a reasonable doubt that the defendant possessed or visibly displayed a firearm during the commission of that violent crime, or an accomplice possessed or visibly displayed a firearm during the commission of that violent crime and the defendant had knowledge of the use and possession of the weapon by the accomplice and the defendant was guilty of the commission of the violent crime as an accomplice.

Now, possession of a weapon or any other item may be actual or constructive. Actual possession means that the weapon is in the actual physical custody of the person

charged with its possession.

Constructive possession occurs when one does not have actual physical custody of the weapon but has knowledge of the presence of the weapon and the intent to exercise dominion and control over the weapon.

The element of an intent to exercise dominion and control over the weapon may be established where it is proven that the defendant had knowledge that another participant in a criminal offense had actual possession of the weapon that was used in the commission of a crime and it is proven that the defendant was an accomplice in the commission of that crime.

Now, I'm going to instruct you on the law as it relates to the legal theory of accomplice liability because that has been discussed during the course of this trial.

You are instructed that one who is charged with the commission of a crime may be convicted as the principal offender or as an accomplice with the principal offender.

In this case the state is alleging that the defendant, Jacory Sharod Foster, is guilty of the crimes of murder and armed robbery as an accomplice with another person or other persons.

An accomplice is one who knowingly and voluntarily and with a common intent and purpose unites with a principal offender in the commission of criminal acts which result in

the commission of a crime. An accomplice is often referred to as an aider or as an abettor in the commission of a crime.

In order to be guilty as an aider or an abettor or as an accomplice a person must be a participant in the crime. Prior knowledge by the defendant that some person is intending to commit a crime without more is not sufficient to make him guilty of the crime with which he may be shown to have knowledge.

And, likewise, the mere presence of the defendant at the scene of a crime or in close proximity thereto even with knowledge that some other person is intending to commit a crime is not sufficient standing alone to prove the defendant guilty of the crime as an accomplice.

In order for the defendant to be found guilty of a crime under the legal theory of aiding and abetting or accomplice liability, it must be proven beyond a reasonable doubt that the defendant was present at the scene of the crime with the intention of aiding, abetting, assisting or participating in a common plan or scheme which culminates in the commission of a crime.

In this case the state alleges that the defendant is guilty of the crimes of murder and armed robbery as a principal and an accomplice with another or others.

You are further instructed that it is the law in this

state that when two or more people act together with a common intent and purpose and they combine, plan or otherwise agree to the commission of a crime, each person who is present to aid, abet, assist or otherwise participate in the commission of that crime are equally guilty of any crime accomplished by the efforts of all who participate. The hand of one is deemed to be the hand of all, and the act of one is deemed to be the acts of all.

Any person who joins with another to accomplish an illegal purpose is held to be criminally responsible for everything done by another person which occurs as a natural and probable consequence of the acts done pursuant to and in furtherance of the common plan and purpose.

In order for the defendant to be found guilty under the legal theory of accomplice liability it must be proven that the defendant was present at the scene when a crime was committed and was present at the scene with the intention of aiding, abetting, assisting and participating in the commission of that crime or that common plan or that common scheme and that it culminates in the commission of a crime and that he was not just merely present without that intent.

Under the legal theory of accomplice liability two or more persons may be guilty of an unlawful homicide even though only one person actually commits the act which is

directly responsible for the death of another; and therefore where two or more persons combine or otherwise agree to the commission of a crime such as an armed robbery and in the commission of criminal acts done in furtherance of that crime a homicide is committed by one of the participants in that crime which is a natural and probable consequence of those acts done in furtherance of the common plan, all who are present and participating in the criminal acts are equally as responsible as the one whose act or acts directly caused the fatal result.

The common purpose may not have been to kill anyone at all, but if during the commission of a criminal offense a homicide is committed by one of the participants which is a natural and probable consequence of the acts done in furtherance of the common plan, then each person who is present aiding, abetting, assisting and participating in the common design are equally guilty of any homicide committed by any one of the participants. As I say, the hand of one is the hand of all, the acts of one are the acts of all.

A criminal intent is also a necessary element of any crime that has to be proven beyond a reasonable doubt, for there must have been a common design and an intent to commit a crime, and the crime must be committed pursuant thereto with that person aiding, abetting, assisting and

otherwise participating by some overt act.

A criminal intent is a state of mind that operates jointly with some act in the commission of a crime. A criminal intent is a mental state of conscious wrongdoing in contrast to the commission of an act which is the result of accident or mistake or inadvertence.

As I have stated, intent may be proven by any acts, declarations and conduct -- conduct of the defendant, as well as any other circumstances which are established by the evidence in the case from which you might naturally and reasonably infer any such intent, as often a person's intent can only be proven by circumstantial evidence.

The remaining indictment charges -- excuse me. The remaining indictment charges the defendant with a violation of Section 16-3-1045, and that's using a person under 18 to commit a violent crime.

That statute provides that it is unlawful for any person at least 18 years of age to knowingly and intentionally use or conspire to use, solicit, direct, hire, persuade, induce, entice, coerce or employ a person under 18 years of age to commit a violent crime defined in 16-1-60. And as I previously told you, murder and armed robbery are violent crimes for purposes of this statute also.

In order for the defendant to be found guilty of a

violation of this particular statute it must be proven beyond a reasonable doubt that the defendant was at least 18 years of age at the time that the crime was committed and the defendant used or conspired to use, solicit, direct, hire, persuade, induce, entice, coerce or employ another person to commit that crime and that the person used was under the age of 18 years of age at the time that crime was committed and that the crime that was committed was a violent crime, which, as I've stated, includes murder and armed robbery.

Now, Madam Forelady and ladies and gentlemen of the jury, I am not in any way concerned with what your decisions are, but you are instructed that the verdicts have to be unanimous. All of you must be in agreement before any decision may be reached as to a particular charge.

Madam Forelady, as you know, as I previously indicated, the indictments will be in the jury room. They're not evidence of anything, but they will be in the jury room because they will serve as the verdict forms.

You've got three indictments. The first two, murder and armed robbery, have two counts. First count is murder; second count, possession of a firearm during the commission of that crime of murder.

Second indictment charges armed robbery; second count,

possession of a firearm during the commission of that violent crime, that being armed robbery.

The last indictment charges use of a person under 18 to commit a violent crime.

Now, in this case with respect to each of the charges, you have two potential verdict forms. Those verdict forms are guilty and not guilty.

So whatever that decision is, Madam Forelady, you're going to be charged with the responsibility of completing the verdict form. You'll see on the back of each indictment in the lower left-hand corner is the word verdict. It's beneath that word that you're going to indicate the jury's decision.

I -- on the indictments charging murder and armed robbery I have written in count one, count two. So count one in this case, in this indictment, is murder. Count two is possession of a firearm during the commission of the crime of murder. So whatever the decision is, guilty or not guilty, insert it in the space provided.

Now, understand that with respect to the indictments charging murder and armed robbery, count two charges possession of a firearm during the commission of a violent crime, the violent crime being the crime alleged in count one of those indictments.

So in order for the defendant to be found guilty of

count two in each of those indictments he would have had to have been found guilty in count one. So you could not find him guilty of count two if you had found him not guilty in count one.

Now, during deliberations there may come a time where you have some question about the evidence or the facts of the case. Please understand that I am never permitted to discuss the evidence with you. I'm never permitted to give you any guidance as to issues of fact, and therefore I can't answer questions that relate to questions of fact.

Also, no additional evidence can be introduced now that the evidence has been closed if you're going back to deliberate.

So don't ask me about something else that you think might help you that you don't have or it wasn't introduced during the trial, because if it wasn't introduced during the trial, you can't have it even if it did exist.

The lawyers and the court reporter will verify all of the exhibits which have been introduced, but if for some reason you think something was introduced but you don't have it, then let me know of that fact and we'll locate it. But every exhibit which was introduced should be there because they will have been accounted for prior to being sent back.

If you ever have a question about testimony -- in

other words, what a witness said during the trial -- if that question can be answered by having a witness' testimony reheard, we can bring you back to accomplish that purpose.

I do not transcripts of the witnesses' testimony, but if you want to rehear a witness' testimony, I can bring you back into the courtroom for the purpose of the jury rehearing a witness' testimony in its entirety or just some portion if that's all you need. So you'll just need to let me know of that fact should that arise.

If at any time you need a re-instruction or an additional explanation or a clarification of the law that's applicable, I am always permitted to answer those questions. So I can give you a re-instruction on the law in its entirety or just to give you some clarification or explanation if that's all you require.

Madam Forelady, if at any time during deliberations you need to address some matter to me, if you'll write it on a piece of paper, give it to the bailiff, and then he or she will provide that to me and I'll respond to that issue accordingly.

Don't know if we have smokers on the jury. If you do smoke, you can do that during deliberations, but you can't do it in the courthouse. You'll have to be taken outside to accomplish that purpose. So if you want to smoke, let

the bailiff know. He or she will take you outside.

You are however instructed that deliberations may not be engaged in unless all 12 jurors are present so that all may participate. So if at any time a juror is absent for some authorized purpose, the deliberations have to stop, and they may only resume when all are present so that all may participate.

Madam Forelady, once you have completed the verdict form with the jury's decision, you'll sign your name on the verdict form on each one. You're the only juror that signs the verdict form. You'll knock on the jury-room door, let the bailiff know that you've reached a decision, and then we'll bring you back to receive your verdicts.

Once you have decided the case and you let the bailiff know, you can give the bailiff the exhibits, but you will hold on to the verdict forms. I'll receive those from you after the jury returns to the courtroom for us to receive your decisions.

Let me say that as you go back and you begin deliberations and at you some point you're going to be asking to take a vote as to what everybody thinks, at no time are you ever to tell me what any kind of division is if there is one. So don't ever give me a count is what I'm asking.

Okay. Well, I'm in hopes that that covers everything,

but if it didn't cover everything, I'm sure one of these lawyers will remind me that I failed to give you some information that I should have. And if I agree with that, I'll bring back to give you additional information.

If I do not need to bring you back for any reason, I'll simply send word by way of the bailiff that you may begin with your deliberations, and in that event he will bring to the jury room all of the exhibits which have been introduced during the trial.

And to you, Madam Forelady, he'll also bring the indictments which will serve as the verdict forms.

So right now I'll ask the original 12 to retire to your jury room. But don't begin deliberations until I send you word to do so.

Mr. McCall, I'm going to ask you to stay here in the courtroom with me.

(Whereupon, the jury retired to deliberate at 3:17 p.m.)

(Whereupon, the alternate juror was excused.)

THE COURT: Are there any exceptions taken to the instruction or requests for additions to the instruction by the state?

MR. BULSA: No, sir.

THE COURT: By the defendant?

MR. DELANEY: No, Your Honor.

THE COURT: All right. Let me ask y'all to verify the exhibits, please, before they go back.

(Pause.)

THE COURT: All of the exhibits are accounted for?

MR. BULSA: Yes, sir.

THE COURT: All right. Send them back and tell the jury to begin deliberations and notify us when they've concluded.

We'll be at ease while they are deliberating.

(Whereupon, a recess was taken.)

THE COURT: Bring the jury in, please.

(Whereupon, the jury returned to the courtroom at 5:25 p.m.)

THE COURT: Madam Forelady, I understand you and your fellow jurors have requested clarification on some points of law that I'll provide you with a re-instruction as to.

And I understand also that you and your fellow jurors prefer to have that re-instruction and continue with deliberations beginning in the morning as opposed to this afternoon. Is that correct?

THE FOREPERSON: Yes, sir.

THE COURT: All right. So we'll recess for today. You will report to the jury room in the morning at 9:30. Once all have reported we will then bring you into the courtroom for me to provide you with that additional

instruction on the law that you've requested.

So, again, during the overnight recess you still can't discuss the case with anybody, not even among yourselves, but certainly not with any family members or friends or children, neighbors or anybody outside the case.

No research, no investigation, no social media, no media exposure otherwise -- television, radio or newspaper.

Okay. Have a good evening. We'll see you in the morning at 9:30, at 9:30 in the morning.

(Whereupon, the trial jury was excused at 5:27 p.m.)

THE COURT: Court is in recess until 9:30 in the morning.

(Question from the jury and response marked Court's Exhibit No. 2.)

END OF PROCEEDINGS OCTOBER 23, 2019

(Proceedings October 24, 2019)

(The following takes place outside the presence of the jury.)

THE COURT: All right. The jury has made a request to have written instructions provided them for their benefit, and I have discussed that with counsel and have shown them the written instruction that was provided yesterday, but it's simply been printed for their benefit.

Is there any objection to the written instruction being provided to the jury?

MR. BULSA: Not by the state, Your Honor.

MR. DELANEY: None by the defense, Your Honor.

THE COURT: Okay.

(Question from the jury marked Court's Exhibit No. 3.)

THE COURT: Bring the jury in, please, sir.

(Whereupon, the jury returned to the courtroom at 10:20 a.m.)

THE COURT: Good morning, ladies and gentlemen.

Madam Forelady, I have your note that you provided this morning wherein you had requested, the jury had requested, a copy of the instruction that I provided yesterday. You had requested a written copy of those instructions as they relate to the individual charges themselves, as well as the law of accomplice liability.

Now, understand that there was more to the instruction

than just that yesterday, but that is what you have requested by way of clarification, and so that's what I'm going to be providing.

However, understand that the fact that this is being provided in a written form at your request does not mean that everything else that I provided yesterday is not just as important.

So if at any time you have any clarification about the other portions of the instruction I provided, I'm happy to provide you with that clarification. But what I'm providing to you this morning is simply a response to your request, which is written instructions relating to each of the charges contained in each of the separate indictments, as well as the law of accomplice liability. And that will be provided to you in written form. So if there's anything else that you need, just let me know of that fact and we'll address that also.

Now, when you go back -- the exhibits are here. There's an envelope in that box. That envelope contains the notepad that presumably the foreperson was using. There may be notes on it. I don't know because nobody's been permitted to look at it. I took it myself and put it in that envelope along with the indictments. So that's what's in the envelope -- your notepad, as well as the indictments. So you'll open that when you go back. It's

sealed shut. So you'll open it when you go back.

And also the exhibits and the computer will also be returned to the jury room for your benefit.

Okay. So please retire to your jury room and continue with your deliberations and let me know if you have any other additional requests.

(Whereupon, the jury retired to deliberate at 10:24 a.m.)

THE COURT: We'll be ease while the jury continues to deliberate.

(Whereupon, a recess was taken.)

THE COURT: I'm told that the jury has reached a decision. Are we ready to receive the verdict?

MR. BULSA: Yes, sir.

MR. DELANEY: Yes, sir.

THE COURT: Okay. Bring them in.

(Whereupon, the jury returned to the courtroom at 12:20 p.m. to report its verdict.)

THE COURT: Madam Forelady, have you and your fellow jurors reached unanimous decisions as to each of the separate charges?

THE FOREPERSON: Yes, we have, Your Honor.

THE COURT: Have you reflected those decisions on the indictments which served as the verdict form?

THE FOREPERSON: Yes, we have.

THE COURT: Have you signed your name as the foreperson and dated it today's date?

THE FOREPERSON: I didn't date it.

THE COURT: Do you have your pen with you? Do you need a blue one or a black one?

THE FOREPERSON: A black one.

THE COURT: Today is the 24th in case you didn't know.

(Pause.)

THE COURT: Okay. If you will, please, hand those forms up by way of the bailiff.

You may publish the verdicts.

THE CLERK: Indictment No. 2018-GS-42-2228, the State of South Carolina, County of Spartanburg, the State vs. Jacory Sharod Foster, indictment for, count one, murder, count two, possession of a weapon during the commission of a violent crime.

We, the jury, find the defendant guilty as to count one; guilty as to count two. Signed by the foreperson, April Emory, October 24th of 2019.

Indictment No. 2018-GS-42-2229, the State of South Carolina, County of Spartanburg, the State vs. Jacory Sharod Foster, indictment for armed robbery and possession of a firearm during the commission of a violent crime, we, the jury, find the defendant guilty as to count one, guilty as to count two.

Signed by the foreperson, April Emory, on October 24th of 2019.

2019-GS-42-2445, the State of South Carolina, County of Spartanburg, the State vs. Jacory Foster, indictment for use of person under 18 to commit a violent crime, we, the jury, find the defendant not guilty.

Signed by April Emory, October 24th of 2019.

Ladies and gentlemen of the jury, if this is your verdict and still your verdict, please raise your right hand.

(Whereupon, all responded in the affirmative.)

THE CLERK: So say you all.

THE COURT: Does the defendant wish to have the jury polled?

MR. DELANEY: No, Your Honor.

THE COURT: All right. Any other matters that need to be addressed with the jury present?

MR. BULSA: No, sir.

MR. DELANEY: No, sir.

(Whereupon, the trial jury was excused.)

THE COURT: All right. Any matters to address prior to the imposition of sentence?

MR. BULSA: Not from the state.

MR. DELANEY: No, Your Honor.

THE COURT: Let me say this. The record shall reflect

that all jurors raised their right hands in response to the clerk's question. All responded in the affirmative to the verdicts being their decisions.

(Section 16-3-10 provided to the jury marked Court's Exhibit No. 4.)

THE COURT: All right. Mr. Bulsa.

MR. BULSA: Yes, sir. The defendant has a prior record of accessory after the fact to an armed robbery, a conviction date in July of 2009. He got a 10-year sentence.

Also, malicious injury to courthouse on that same date. Received a 5-year concurrent sentence.

Standing with me is Mr. Kiyounnie Jackson's sister. She would like to address the Court.

THE COURT: Yes, ma'am. Your name.

AMBRA BRIANA McCREARY: Ambra Briana McCreary.

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

AMBRA BRIANA McCREARY: This situation has been a ripple effect on my family. We won't be able to see him graduate college; we won't be able to see my brother become a father or enter into adulthood if that -- we sorely miss him, and every year is a painful reminder of us losing him.

We lost him on Thanksgiving, yes, but Christmas will never be the same; New Year's will never be the same. His

birthday even will never be the same.

We will like, if you may, life, day for day, with no parole, because we have to go day for day and not -- not see that face, not hear him.

THE COURT: Thank you, ma'am.

MR. BULSA: Nothing further.

THE COURT: All right. Mr. Delaney.

MR. DELANEY: Your Honor, my client is 28 years old. You heard from him. We would ask the Court for mercy and leniency, and he tells me that he is not desirous of addressing the Court.

THE COURT: Mr. Foster, you don't want to tell me anything?

THE DEFENDANT: No, sir.

THE COURT: On Indictment 2018-02228, an indictment for murder and possession of a firearm during the commission of that violent crime, wherein you have been found guilty by a jury for the offense of murder in count one, the Sentence of the Court is you, Jacory Sharod Foster, be confined to the South Carolina Department of Corrections for the period of your natural life.

As to count two, possession of a firearm during the commission of that crime, no sentence is imposed by virtue of Section 16-23-490, since a life sentence has been imposed for the crime of murder.

Indictment 2018-02229, armed robbery, wherein you have been found guilty by a jury, the Sentence of the Court is you be confined to the South Carolina Department of Corrections for a period of 30 years.

Count two, possession of a firearm during the commission of armed robbery, the Sentence of the Court is you be confined to the South Carolina Department of Corrections for a period of five years.

Mr. Foster, you have a right to appeal the verdicts of the jury and the Sentence of the Court. You must file any notice of your intent to appeal those decisions within ten days of today's date. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Anything else?

MR. BULSA: No, sir.

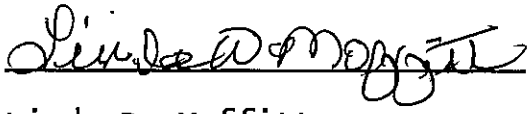
END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21, 22nd, 23rd and 24th days of October 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 20, 2020



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACORY SHAROD FOSTER,

APPELLANT.

APPELLATE CASE NO. 2019-001833

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Where the State relied primarily on the theory of accomplice liability, did the trial court err in refusing to charge accessory after the fact as lesser included offenses?

STATEMENT OF THE CASE

Appellant Jacory Sharod Foster was indicted in Spartanburg County for murder, armed robbery, associated weapons charges, and using a person under the age of 18 to commit a crime. R. 312. On October 21, 2019, appellant was tried before the Honorable J. Derham Cole and a jury. R. 1. Derrick B. Bulsa and Lauren Gabrielle Brown represented the State. R. 1. Brendan M. Delaney represented appellant. R. 1. The jury acquitted appellant of using a person under the age of 18 to commit a crime, but convicted him on the remaining counts. R. 306, l. 12 – 307, l. 12. Judge Cole sentenced appellant to life imprisonment for murder and concurrent terms on the other charges. R. 309, l. 15 – 310, l. 12. This appeal follows.

STANDARD OF REVIEW

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014).

ARGUMENT

Because the State relied primarily on the theory of accomplice liability, the trial court erred in refusing to charge accessory after the fact as lesser included offenses.

In her opening statement, the solicitor told the jury about the law of accomplice liability, calling it "the hand of one, hand of all." R. 60, l. 14 – 61, l. 10. She used a story from her "nana" about her cousins running in the house and breaking a favorite lamp to explain accomplice liability. R. 60, l. 14 – 61, l. 10. The State returned again to the law of accomplice liability six times during its closing argument. R. 256, l. 21 – 25. R. 259, l. 24 – 260, l. 3. R. 260, l. 6 – 20. R. 260, l. 21 – 261, l. 4. R. 262, l. 2 – 5. R. 265, l. 4 – 9.

The State's theory of the case was that appellant conspired with Derrick Bennett and Regina Foster[1] to lure Kiyounnie Jackson to an abandoned house for a sham weed deal in order to rob him. R. 58, l. 13 – 60, l. 13. Bennett was the boyfriend of Foster's sister. R. 130, l. 22 – 131, l. 7. Foster never met appellant before the night of the shooting. R. 131, l. 8 – 10.

Foster had known the decedent, Jackson, for eight years. R. 133, l. 5 – 6. Jackson sold her marijuana. R. 132, l. 25 – 133, l. 1. According to Foster, Bennett and appellant directed her to log into Facebook and message Jackson to come sell her weed. R. 133, l. 11 – 135, l. 25. She used appellant's phone to log into Facebook and Bennett told her what to write. R. 134, l. 24 – 135, l. 6. R. 157, l. 4 – 6. Foster said she did not want to participate, but "was scared." R. 136, l. 1 – 8.

Through Foster's Facebook account, Jackson was told to come to an abandoned house. R. 136, l. 9 – 137, l. 8. Foster, appellant, and Bennett drove to the house in a red car. R. 137, l. 15 – 21. Appellant's grandmother owned a burgundy Nissan Altima. R. 189, l. 9 – 13.

[1] Regina Foster is not related to appellant. R. 153, l. 14 – 16.

Appellant and Bennett went in first through the back and let Foster in the front door. R. 137, l. 9 – 17. They waited on Jackson and directed him to the abandoned house when he arrived. R. 139, l. 3 – 140, l. 22.

Foster opened the door for Jackson and ran to the bathroom. R. 141, l. 3 – 141, l. 7. Appellant was in a room next to the bathroom and Bennett was in another room. R. 141, l. 10 – 15. Both had pistols. R. 141, l. 16 – 20. Foster did not know if Jackson had a pistol. R. 141, l. 21 – 22.

Foster heard Jackson call her name followed by gunshots. R. 142, l. 2 – 3. She then heard "scattering and scuffling, and then it was silent." R. 142, l. 5 – 8. Foster waited in the bathroom for about seven minutes, then emerged to find Jackson on the floor. R. 142, l. 16 – 143, l. 8. She ran out the front door and the red car in which they arrived was gone. R. 143, l. 9 – 25.

A friend picked up Foster and took her to an apartment with appellant and Bennett. R. 144, l. 16 – 145, l. 12. "[E]verybody was just acting weird" and "freaking out." R. 145, l. 9 – 14. They eventually made their way to appellant's girlfriend's apartment and Foster's sister took her clothes and an iPad and burned them. R. 148, l. 1 – 149, l. 4. R. 151, l. 11 – 14. Foster claimed to see Bennett and appellant split up some money. R. 149, l. 11 – 150, l. 11. Bennett had a gun he took from Jackson. R. 150, l. 12 – 24.

Foster, her sister, and Bennett then left appellant and went to Jonesville in Union County. R. 152, l. 4 – 152, l. 17. Bennett told Foster's sister that he was going to have to kill Foster. R. 152, l. 13 – 17. Foster's sister gave her a phone and Foster texted her mom for help. R. 152, l. 13 – 17. The police entered the trailer in Jonesville and apprehended Foster, her sister, and

Bennett. R. 207, l. 4 – 208, l. 22. The police took a firearm from Bennett, but it was not the gun that fired the shots that killed Jackson. R. 208, l. 2 – 22.

Foster's sister, Reyna Jeffries, testifed that Bennett and appellant left that night and when they returned they were "in a panic." R. 168, l. 14 – 169, l. 5. A friend went to retrieve Foster. R. 169, l. 9 – 170, l. 11. They went to appellant's girlfriend's apartment. R. 170, l. 14 – 171, l. 5. Jeffries saw posts on Facebook about Jackson and asked appellant what happened. R. 171, l. 6 – 17. Jeffries claimed appellant then volunteered that he shot Jackson. R. 171, l. 6 – 17. Takesha Meadors, who was briefly part of the group that evening, claimed appellant only responded to her, "Shots fired." R. 183, l. 10 – 16. Jeffries burned Foster and appellant's clothing and threw a gun down a manhole. R. 172, l. 1 – 14. The State charged Jeffries with accessory after the fact to both murder and armed robbery. R. 175, l. 2 – 4.

Appellant testified in his own defense. R. 227, l. 21. Appellant and Bennett hung out that day smoking marijuana. R. 230, l. 19 – 231, l. 7. Appellant met Bennett through his brother and had only known him for a couple of weeks. R. 230, l. 20 – 24. Appellant knew that Bennett had a reputation for robbing people and "doing all type of crazy things." R. 235, l. 18 – 20.

Bennett and appellant ran out of weed and Bennett started trying to find more. R. 231, l. 11 – 17. While riding around in appellant's grandmother's car, they saw Foster walking by a mailbox. R. 234, l. 8 – 17. Bennett told her to get into the car and she did. R. 234, l. 11 – 21. Appellant had never seen Foster before that night. R. 234, l. 22 – 24.

Bennett told Foster to contact Jackson and Foster began texting him. R. 235, l. 2 – 17. They drove straight to the abandoned house. R. 234, l. 25 – 235, l. 1. Everything Foster did, she did only at Bennett's instructions. R. 235, l. 10 – 17. Appellant had never heard of Jackson before that day. R. 236, l. 1 – 2.

When they got to the abandoned house, they climbed in a back window. R. 236, l. 25 – 237, l. 3. Appellant said he thought they went to the house to buy weed from Jackson, but that Bennett then decided he was going to rob Jackson. R. 237, l. 16 – 21. Appellant was unarmed and never intended to rob or kill anyone. R. 237, l. 10 – 15. When Jackson arrived, he heard him calling Foster's name and then saw him walking in the hallway. R. 238, l. 2 – 14. He then heard gunshots, but did not see Bennett shoot Jackson. R. 238, l. 12 – 239, l. 2. Bennett started going through Jackson's pockets and appellant jumped out the window and ran back to the car. R. 239, l. 3 – 10.

Appellant went to the first apartment and then took everyone to his girlfriend's apartment. R. 240, l. 1 – 241, l. 11. Bennett still had his gun and another gun that he took off Jackson. R. 240, l. 18 – 24. Bennett tried to give appellant money, but appellant refused, saying, "I don't want none of it." R. 242, l. 6 – 17.

At the charge conference, appellant asked the court to charge accessory after the fact to both murder and armed robbery. R. 253, l. 9 – 22. Appellant argued that based on the evidence presented at trial, a jury could render an accessory verdict. R. 253, l. 9 – 22. The trial judge responded that accessory is not a lesser included offense and that the State had not charged appellant as an accessory. R. 253, l. 12 – 254, l. 1. The court refused to charge accessory, but charged the jury on accomplice liability and mere presence. R. 290, l. 13 – 294, l. 1.

While Judge Cole was correct that accessory has traditionally not been a lesser included offense of felonies, this case where the State relied heavily on accomplice liability warranted giving the charge. The general rule is that, absent indictment, courts should not charge accessory as a lesser included offense. State v. Fuller, 346 S.C. 477, 481, 552 S.E.2d 282, 284 (2001). Appellant's case differs in a material respect from Fuller. In Fuller, the defendant admitted that

he was a willing participant with knowledge of the plan to rob the victim. Id. The defendant fell asleep before the robbery and remained asleep while his co-defendants stabbed the victim. Id. The defendant, with knowledge of the plan, drove his co-defendants to the victim's house and drove them away after the victim's murder. Id.

Unlike the defendant in Fuller, appellant never admitted to being an active participant in the robbery plan. Appellant testified that Bennett planned the robbery and directed Foster to lure Jackson to the abandoned house. Appellant thought they were going to the house to buy marijuana and did not learn of Bennett's intentions until they were waiting. The ballistics report strongly indicated that only one firearm was used to kill Jackson. R. 190, l. 15 – 191, l. 8. Appellant's testimony and the testimony of the State's witnesses could have supported an accessory charge because of appellant's role in helping Bennett escape the scene. "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004). The court erred in not realizing these distinctions from the general rule regarding accessory crimes and this Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

This 26th day of August, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACORY SHAROD FOSTER,

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacory Sharod Foster states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on October 21-24, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Jacory Sharod Foster.

Respectfully Submitted,
s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of August, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACORY SHAROD FOSTER,

APPELLANT.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Trial Transcript dated October 21-24, 2019
(2) Indictments
(3) Sentence Sheets
(4) State's Exhibit No. 57 (to be transported)

I certify that this designation contains no matter which is irrelevant to this appeal.

August 26, 2020

s/David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 26, 2020.

s/David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACORY SHAROD FOSTER,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Jacory Sharod Foster, 335911, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 26th day of August, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jacory Sharon Foster, Appellant.

Appellate Case No. 2019-001833

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2022-UP-053
Submitted January 1, 2022 – Filed February 9, 2022

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Melody Jane Brown, both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.[1]

THOMAS, GEATHERS, and VINSON, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)
County of Spartanburg)
Jacory Foster #335911)
Full name and prison number (if any) of Applicant)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-42-01534

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correction Institution / 990 Wisacky Highway

2. Name and location of Court which imposed sentence Spartanburg County General Sessions Court

3. Name(s) of co-defendant(s) (if any) Derek Bennett / Reyna Jeffries Regina Foster

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 19-GS-42-2445

(b) 18-GS-42-2228 Murder

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX
2022 APR 29 PM 12:40
FILED

(c) 18-GS-42-2229 Armed Robbery

5. The date upon which sentence was imposed and the terms of the sentence:

(a) October 24th, 2019

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. Affirmed

ii.

iii.

(c) the date of each such result:

i.

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i.

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX
2022 APR 29 PM 12:40
FILED

Argument

Ineffective Assistance of Counsel

A) Failure To Object

1) Counsel was ineffective when counsel stipulated to allowing report to be submitted without expert testimony.

Counsel violated accused right to confrontation

2) Counsel was ineffective when counsel stipulated a fact state could not prove.

3) Counsel failed to object when the registered voters list systematically excluded an identifiable class of persons from group which juries are drawn.

4) Counsel failed to challenge confession

B) Failure To Present Defense

1) Counsel failed to Present third-Party Guilt defense

FILED
2022 APR 29 PM 12:41
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____

(b) See Attached Sheets

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) See Attached Sheets

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? ND

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ND

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ND

(d) any other petitions, motions or applications in this or any other Court? ND

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. _____

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX
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(c) the disposition thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. N/A

iv. _____

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

i. _____

ii. _____

iii. N/A

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?

N/A

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

(a) which grounds have been presented:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) _____

(b) N/A

(c) _____

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

(a) your arraignment and plea? No

(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?

No

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. Brendan M. Delaney

ii. South Carolina Appellate Defense

iii. _____

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

i. Trial/Sentencing

ii. Direct Appeal

iii. _____

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

vacate conviction

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

ND

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Spartanburg)

I, Jacory Foster, 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.

Jacory Foster

SWORN to and subscribed before me this 13th day of April, 2022.

Renee McFalls (L.S.)
Notary Public

My Commission Expires: 09/04/2029

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG Jacory Foster, #335911, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT Case No. 2022-CP-42-01534 **RETURN AND MOTION FOR A MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on April 29, 2022, by Jacory Foster (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during a violent crime (count two) (2018-GS-42-02228) and armed robbery (count one) and possession of a firearm during commission of a violent crime (count two) (2018-GS-42-02229). During its May 2019 term, the Spartanburg County Grand Jury indicted Applicant for use of a person under eighteen to commit a violent crime (2019-GS-42-2445). Applicant was represented by Brendan M. Delaney, Esquire. Derrick Bulsa and Lauren Brown, Esquires, of the Seventh Circuit Solicitor's Office prosecuted the case. On October 21-24, 2019, Applicant proceeded to trial before the J. Derham Cole, circuit court judge, and a jury. The jury acquitted Applicant of using a person under eighteen years' of age to commit a violent

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but found Applicant guilty as indicted on all other counts. Judge Cole sentenced Applicant to life imprisonment for murder,[1] thirty years' imprisonment for armed robbery, five years' imprisonment for the corresponding weapons possession charge.

Applicant filed a timely notice of appeal on October 30, 2019, that was perfected by David Alexander, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Foster*, 2022-UP-053 (S.C. Ct. App. filed Feb. 9, 2022). The remittitur was issued on March 11, 2022.

II. Statement of Facts

Applicant conspired with Derrick Bennett and Regina Foster to lure Kiyounnie Jackson to an abandoned house for a sham weed deal to rob him. (R. 58–60). Bennett was the boyfriend of Foster's sister. (R. 130-31). Foster never met Applicant before the night of the shooting. (R. 131). Foster had known the decedent, Jackson, for eight years. (R. 133).

According to Foster, Bennett and Applicant directed her to log into Facebook and message Jackson to come sell her weed. (R. 133-35). She used Applicant's phone to log into Facebook and Bennett told her what to write. (R. 134-35, 157). Through Foster's Facebook account, Jackson was told to come to an abandoned house. (R. 136-37). Foster, Applicant, and Bennett drove to the house, where they waited on Jackson and directed him to the abandoned house when he arrived. (R. 137-40). Foster opened the door for Jackson and ran to the bathroom. (R. 141). Applicant was in a room next to the bathroom and Bennett was in another room, both armed with pistols. (R. 141). Foster did not know if Jackson had a pistol. (R. 141). Foster heard

[1] Applicant was not sentenced on the corresponding weapons' possession charge pursuant to S.C. Code § 16-23-490.

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Jackson call her name, gunshots, and "scattering and scuffling, and then it was silent." (R. 142). Foster waited in the bathroom for a few minutes, then emerged to find Jackson on the floor. (R. 142-43).

She ran out the front door and the red car in which they arrived was gone. (R. 143). A friend picked up Foster and took her to an apartment with Applicant and Bennett. (R. 144-45). They eventually made their way to Applicant's girlfriend's apartment and Foster's sister took her clothes and an iPad and burned them. (R. 148-49, 151).

Foster claimed to see Bennett and Applicant split up some money. (R. 149-50). Bennett had a gun he took from Jackson. (R. 150). Foster, her sister, and Bennett then left Applicant and went to Jonesville. (R. 152). Bennett told Foster's sister that he was going to have to kill Foster. (R. 152). Foster's sister gave her a phone and Foster texted her mom for help. (R. 152). The police entered the trailer in Jonesville and apprehended Foster, her sister, and Bennett. (R. 207-08). The police took a firearm from Bennett, but it was not the gun that fired the shots that killed Jackson. (R. 208).

Foster's sister, Reyna Jeffries, testified that Bennett and Applicant left that night and when they returned they were "in a panic." (R. 168-69). Jeffries saw posts on Facebook about Jackson and asked Applicant what happened. (R. 171). Jeffries claimed Applicant volunteered that he shot Jackson. (R. 171). Jeffries burned Foster and Applicant's clothing and threw a gun down a manhole. (R. 172). The State charged Jeffries with accessory after the fact to both murder and armed robbery. (R. 175). Takesha Meadors, who was briefly part of the group that evening, claimed Applicant only responded to her, "shots fired." (R. 183).

At trial, Applicant testified that he and Bennett hung out that day smoking marijuana. (R. 230-31). Applicant met Bennett through his brother and had only known him for a couple

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weeks. (R. 230). Applicant knew that Bennett had a reputation for robbing people and "doing all type of crazy things." (R. 235). Bennett and Applicant ran out of weed and Bennett started trying to find more. (R. 231). While driving around, they saw Foster walking by a mailbox. (R. 234). Bennett told her to get into the car and she did. (R. 234). Applicant had never seen Foster before that night. (R. 234). Bennett told Foster to contact Jackson and Foster began texting him. (R. 235). They drove straight to the abandoned house. (R. 234-35). Everything Foster did, she did only at Bennett's instructions. (R. 235). Applicant had never heard of Jackson before that day. (R. 236). When they got to the house, they climbed in a back window. (R. 236-37). Applicant said he thought they went to the house to buy weed from Jackson, but that Bennett then decided he was going to rob Jackson. (R. 237). Applicant was unarmed and never intended to rob or kill anyone. (R. 237). When Jackson arrived, he heard him calling Foster's name and then saw him walking in the hallway. (R. 238). He heard gunshots but did not see Bennett shoot Jackson. (R. 238-39). Bennett started going through Jackson's pockets and Applicant jumped out the window and ran to the car. (R. 239). Applicant went to the first apartment and then took everyone to his girlfriend's apartment. (R. 240-41). Bennett still had his gun and a gun that he took off Jackson. (R. 240). Bennett tried to give Applicant money, but Applicant refused. (R. 242).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
    a. Failure to object.
        i. Counsel was ineffective when Counsel stipulated to allowing report to be submitted without expert testimony.
        ii. Counsel was ineffective when Counsel stipulated to a fact the State could not prove.
        iii. Counsel failed to object when the registered voters list systematically excluded an identifiable class of persons from group which juries are

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drawn.

iv. Counsel failed to challenge confession.

b. Failure to present defense.

i. Counsel failed to present third-party guilt defense.

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the direct appeal records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) ("[A] defendant has a right to effective representation, not a right to an attorney who performs his duties 'mistake-free.'" (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]"); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The right to assistance of counsel is governed by the Sixth Amendment, as explained by the United States

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Supreme Court in *Strickland v. Washington.*

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. S*ee also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel's strategic decisions are to be afforded "'strong presumption' of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland,* 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

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proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant because of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object

Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Stipulation to Report

Applicant claims Counsel was ineffective for failing to object, as opposed to stipulating, to the report. However, he fails to state why Counsel should have objected, why Counsel was deficient for failing to object, or how Applicant was prejudiced. Thus, Respondent contends that Applicant likely cannot meet his burden of proof on this allegation but requests an evidentiary

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hearing to fully resolve the matter.

Stipulation to Fact

Applicant claims Counsel was ineffective for stipulating to a fact that the State could not prove. He fails to state what the fact was, why it should not have been stipulated to, why Counsel was deficient for stipulating, or how Applicant was prejudiced. Thus, Respondent contends that Applicant likely cannot meet his burden of proof on this allegation but requests an evidentiary hearing to fully resolve the matter.

Registered Voters

Applicant claims there was a *Batson* issue in his case because the jury only consisted of registered voters. "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). "The purposes of *Batson* and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." *State v. Haigler*, 334 S.C. 623, 628–29, 515 S.E.2d 88, 90 (1999) (internal citations omitted). "When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one." *Shuler,* 344 S.C. at 615, 545 S.E.2d at 810.

Batson applies to issues of race and gender, not registered voters versus unregistered persons. Accordingly, Respondent contends that this allegation is without merit, but requests an evidentiary hearing to fully resolve the matter.

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Confession

Applicant claims Counsel was ineffective for failing to challenge the confession. He fails to state how this should have been challenged, on what basis, how Counsel was deficient, or how he was prejudiced. Thus, Respondent contends that Applicant likely cannot meet his burden of proof on this allegation but requests an evidentiary hearing to fully resolve the matter.

Failure to Present Third-Party Guilt Defense

Applicant claims Counsel was ineffective for failing to present a third-party guilt defense. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland,* 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not

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ineffective when the applicant denied any wrongdoing); *Arnette v. State,* 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Applicant has failed to show how a third-party guilt defense would have been applicable or admissible at trial, how Counsel could have presented this defense, why Counsel was deficient for failing to pursue this defense, or how he was prejudiced at trial. Thus, Respondent contends that Applicant likely cannot meet his burden of proof on this allegation but requests an evidentiary hearing to fully resolve the matter.

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants 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 a PCR application, it is incumbent upon applicants 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. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

> [M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure

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Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last

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minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

June 29, 2022

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COMMON PLEAS COURT
7th JUDICIAL CIRCUIT

JACORY FOSTER,

Applicant,

vs.

CASE NO. 2022-CP-42-01534

STATE OF SOUTH CAROLINA,

Respondent.

HEARING BEFORE: HONORABLE PERRY H. GRAVELY

DATE: April 18, 2023

TIME: 11:30 AM

LOCATION: Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

APPEARANCES:

ATTORNEYS FOR THE APPLICANT
SUSANNAH ROSS, ESQ.

ATTORNEYS FOR THE RESPONDENT
ANDREW N. COLE, ESQ.

I N D E X

WITNESS/EXAMINATION	DIRECT	CROSS	REDIRECT	RECROSS
JACORY FOSTER				
BY MS. ROSS	4	--	29	--
BY MR. COLE	--	14	--	--
BRENDAN DELANEY				
BY MR. COLE	31	--	49	--
BY MS. ROSS	--	46	--	--

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E X H I B I T S

	FOR I.D.	IN EVD
APPLICANT EXH. 1, Random Strike Sheet	51	51

THE COURT: Going morning, Mr. Foster.

MR. FOSTER: Good morning.

THE COURT: We are here on Jacory Foster versus State. Application for PCR, 2022-CP-42-1534. Glad to hear from you.

MR. COLE: Do you need any more introduction?

THE COURT: Ready to go.

MR. COLE: We're ready to go.

THE COURT: I guess outline the issues that we're going to be addressing, Ms. Ross.

MS. ROSS: I filed an amended application in the case.

THE COURT: You're just going with the amended one?

MS. ROSS: Yes, and there are a couple others that he's bringing out, I think. It's all related to these amended ones. He's also keeping, in addition to his basic allegation of ineffective assistance of counsel, failure to meet, prepare and investigate.

Then I just added failure to effectively cross-examine witness Regina Foster. She had given a number of different prior statements and then changed her story. Some of that is on page 162, like I listed, stipulating to ballistic evidence, and then other evidence that the State couldn't prove regarding funds. I added a little there.

Failing to make facts and motions. Failing to

object to the inferred malice charge. That's page 285. It doesn't specifically mention use of a handgun. That Burdette case that talks about that charge is wrong.

We argue certainly that instruction of inferred malice along with accomplice liability decreases the burden of proof on the State. There was no objection to those jury instructions.

At this time we call Jacory Foster.

THE COURT: Mr. Foster, if you'll come forward. Be sworn.

Come on this side. I have to swear you in. See the Bible. Raise your right hand and put your left hand on the Bible.

JACORY FOSTER

being first duly sworn, testified as follows:

THE COURT: Take a seat, and state your name for the record.

MR. FOSTER: Jacory Foster.

THE COURT: Ms. Ross.

DIRECT EXAMINATION

BY MS. ROSS:

Q. Mr. Foster, you understand that you'll be put back in the position you were in before this trial that you have a life sentence. What's your decision on this PCR? Do you want to go forward?

A. I'm not understanding.

Q. Never mind. There's not much to lose. You have a life sentence. You understand what a Post-Conviction Relief hearing is? You know what kind of relief we discussed --

A. Yes, ma'am.

Q. -- that you can possibly get?

And you still want to proceed with the hearing?

A. Yes, ma'am.

THE COURT: You need to make sure you speak up just so I can be able to hear you.

MR. FOSTER: Yes, sir.

BY MS. ROSS:

Q. Talk to him so he can hear you.

Why have you alleged that your lawyer was ineffective?

A. In one situation when Regina first had wrote her statement in the beginning, she stated that everything was basically me. Like stated the shots came from me. I was the one that was calling the shots. I was the one that had the phone. I was the one that was basically telling her what to do. That's what got me locked up.

She get on the stand two years later, after sitting in the county, stated that she didn't know who did the shooting. And basically stated the next person, my coDefendant, was the one that had the phone and telling her

what to do.

My lawyer failed to really like cross-examine that. He really didn't press the issues on that. That was basically one of the statements that was really damaging to me, like actually hurt me.

Q. Let's talk a little bit about the players. Regina Foster was charged just like you were at first; right?

A. Yes, ma'am.

Q. She ended up getting probation, basically getting out after she testified; right?

A. Yes, ma'am.

Q. Who was the other coDefendant?

A. Reyna Jefferies and Derrick Bennett.

Q. How was Derrick Bennett related to Regina Foster?

A. He was in a relationship with Reyna. Reyna was -- Regina and Reyna were sisters.

Q. He was with Regina and Reyna right after the incident for some time?

A. From my understanding they all got caught together in Union County.

Q. Didn't he tell or try to tell where the gun was?

A. Yes, ma'am.

Q. Derrick Bennett, your coDefendant, gave a statement saying where the gun was supposed to be?

A. Yes, ma'am.

Q. Was it actually there?

A. No, they never found it.

Q. Regina Foster, she said -- you said something about phones and text and running the show. How did that play out in your trial?

A. She stated in the beginning that I was the one that was doing the texting. But when day of trial, she let it be known that it was my co-Defendant. She stated that it was DJ that was telling her what to do, DJ was the one that took the phone from her and everything like that.

I just don't understand how she can state that in the beginning that it was all me but then on trial she change it up and that was used against me.

Q. What came up at trial that gave her a reason to change up her story?

A. Mr. Delaney had asked her does she remember the statement that she gave in the beginning when she first got locked up. And she stated yes. And when he asked her to read the statement that she wrote in the beginning, it was read. And then the statement, she had my name on everything that she was saying pertaining to me doing everything. Before he asked her that, she had just testified stating that it was my coDefendant.

Q. Isn't it true that the phone records proved that it was the coDefendant and her that were communicating by phone?

A. Yes.

Q. And what did your lawyer do with those phone records?

A. I mean, nothing really.

Q. Was the phone expert able to testify at your trial?

A. Yes, she testified, but she couldn't determine who phone was whose. That's something that he spoke on. When she testified, she didn't have her paperwork or nothing to prove who phone was whose. She had no type of evidence. They still let it go through.

Q. Did your lawyer stipulate to that?

A. I mean, he spoke on it. He objected to it from my understanding. You know, like they still let it go through.

Q. So you think he could have cross-examined her more effectively on that issue?

A. I feel like he shouldn't have allowed that evidence to be put forth. I feel like it shouldn't have been used.

Q. In his closing at one point, didn't he state that Regina Foster was telling the truth?

A. Yes, in his closing. That's what he stated when he did his closing.

Q. Did you think that was effective representation?

A. I mean, I just feel like knowing -- me sitting in the county for two years, I feel like he was supposed to come and see me and actually go over my case correctly. That's

something that he never did.

That's why, while I was in the county, I was filing for him to be taken off my case. They denied me that. They told me that, in order for him to be taken off my case, I had to hire a private attorney. And at the time I didn't have the correct funds to do that. I had no choice but to go to trial with him.

Q. I believe you pointed this out to me, page 265, line 18. This is about Regina Foster. What did he say?

A. He says she cleaned that up, didn't she. She told y'all the truth. People are just trying to say anything to get out of a situation. It was a mess. A tragedy.

Continue reading?

Q. That's okay. She told you the truth that you pointed out. Why did you think that was ineffective to say that about the witness Regina Foster?

A. Because when you stating that she told y'all the truth, he supposed to point out exactly what truth she was telling.

Q. What kind of impression do you think the jury was left with by him giving credibility to the testimony of Regina Foster?

A. No disrespect to no one in here. I'm doing a life sentence. I feel like it wasn't no good impression left on the jury at all.

Q. You said a little bit about how many times your lawyer met with you. Did you feel like he met with you enough prior to your trial?

A. No, ma'am.

Q. Do you recall how often you met with him?

A. I can literally remember three times. One time was for me to let it be known my bond hearing and the other two times was like probably a month before my trial actually started. That's my reason for sitting in the county, filing all the motions that I was filing because he wasn't coming to see me the way that he was supposed to, knowing that I was sitting right here, fighting a case that was really serious.

Q. Did you file a motion to have him relieved?

A. Yes, ma'am.

Q. What was the basis of that motion?

A. They basically denied me. They told me in order to relieve him from my case, I would have to hire a private attorney.

Q. Did you feel that he didn't investigate the case enough?

A. He didn't.

Q. Did you feel prepared for trial?

A. No, ma'am. Majority of the time, the first time he came to see me, he had me mixed up with my coDefendant. He thought I was -- I was the one that got caught in Union. And I

wasn't. And I had to correct him on that.

Q. Did you review discovery with him?

A. I mean, we reviewed it, but it wasn't really nothing. He wasn't trying to come and visit me and actually sit down and try to put things together and figure out how I was going to go about anything in the court. I basically had to do it all on my own. Still it didn't get nowhere. Everything that I asked him to do he didn't do.

Q. Like what?

A. Like every statement that was written, I told him to challenge every last one of them and bring it up. He didn't do it. He only spoke on which ones he wanted to speak on.

Q. Approximately, how many statements were we talking? How many different statements did Regina Foster give?

A. I think she had a total of four different statements and her sister had a total of three.

Q. You think your lawyer could have done more to bring out how different each statement was from the other one?

A. I mean, each statement was different.

Q. How about stipulating to ballistics evidence?

A. I never read it.

Q. Are you aware that the evidence was stipulated to?

A. Yes, ma'am.

Q. The State was not forced to prove every element of that evidence?

A. No, ma'am.
Q. He also failed to make a Batson motion?
A. Yes, ma'am.
Q. Do you know what that is?
A. I know what it is. I can't remember it word for word offhand.
Q. Did he discuss it to challenge the racial makeup of the jury?
A. Yes, ma'am.
Q. He didn't object to any of the judge's charges?
A. No, ma'am.
Q. Is there anything else that you feel your lawyer should've done at trial that he did not do?
A. I mean, I just feel like, during the day of my trial, me, you know, going up here and preparing myself to fight for my life, I feel like he could have did a way better job than he did because a lot of issues could've been raised and a lot of things that was pertaining to my Rule Five and that was used in my Rule Five, I can't even use in a PCR. I feel like he should've spoke on and got on record during my trial.
Q. Can you give us some specifics?
A. Okay, like for instance, situation with the gun being found. The gun that these people charged me with possession of a firearm and I never got caught with a gun. My

coDefendant was the one that got caught with a gun. They charged me. He didn't challenge that.

Q. Were there any further tests that could've been done on that gun to show it wasn't yours?

A. No, ma'am. They knew it wasn't mine. They knew who it belonged to. I never got checked for no gunpowder residue, no nothing. They never did no type of test. He never even challenged none of that.

Q. At the beginning of your trial, it seemed like they were sort of saying that you were the gunman?

A. Yes.

Q. And that was Regina's original testimony --

A. Yes, ma'am.

Q. -- when she saw you fire?

A. Yes, ma'am.

Q. At trial she didn't say that, did she?

A. She said she didn't know who was the shooter.

Q. She said she didn't see it at all?

A. Yes, ma'am.

Q. You're saying that was important. The gun was found with the coDefendant?

A. The murder weapon was never found. There was a gun that was found. The gun that was found belonged to the victim.

Q. A gun was found with the coDefendant?

A. Yes, ma'am.

Q. Is there anything else you would like the Judge to hear about your Post-Conviction Relief matter?

A. No, ma'am.

MS. ROSS: Nothing further.

THE COURT: Cross-examination.

MR. COLE: Thank you, Your Honor. May it please The Court.

CROSS-EXAMINATION

BY MR. COLE:

Q. Mr. Foster, I'm here on behalf of the State. I'm going to ask you some questions here. You were originally arrested November 27, 2017, and the trial was October of 2019; right?

A. Yes, sir.

Q. And you actually met with your public defender at least eight times in person; right?

A. No, it wasn't eight times. In the county, like a lot of people don't know. You can come in and visit another person and put your name down on a document but you don't actually have to see the person. It still going to show up on the records that you visit that person because you put your name down on the document. No, we didn't meet eight times.

Q. When you were first arrested and you went to your first bond hearing, the first bond was denied; correct?

A. Yes, sir.

Q. And there's a time period before you can request another bond; right?

A. Well, my first bond was when I was in the county like, you know, when you get locked up, you got to go back to see the judge. That was the first time my bond was denied.

The second one I went to, I think it was like in April of 2017, and that's when they gave me $125,000 bond.

Q. You're not saying you never met with your defense attorney; correct?

A. No, I met with him. It just wasn't eight times.

Q. As you were getting closer to the actual trial date, you had more frequent and longer meetings with him; correct?

A. He came to visit me twice.

Q. This case actually went to a trial. This is not a plea or anything like that?

A. No, sir.

Q. When you met with your attorney, Mr. Delaney, did you-all discuss the case and what might be your trial strategy as you get to the trial?

A. The only thing, he basically really just asked me to do was really take the 30-year plea. When I asked him what was his angle, what did he see, how was he trying to go about presenting the case in court, he really didn't have everything together. He was basically asking me what I wanted to do, what

did I see, what did I want to present. Him, himself, he really didn't have really nothing or present nothing to me every meeting that we had on how he was going to present the case in court.

Everything that he basically did -- I ain't going to say he didn't present something that he see on the day of trial. The majority of the things that he went about in trial is what I told him to do. Some of those things he didn't do. I was trying to figure out why.

Q. Let me unpack a little bit of what you just said. You're saying that he advised you that it might be a good idea for you to try to enter a plea?

A. Yeah, he told me, he said that it's best for me to take 30-year plea.

Q. You didn't, and you ended up going to trial and getting life?

A. Yes, sir.

Q. The plea, whether or not there was a decision to take it or not, that was your decision; correct?

A. Yes, sir.

Q. You actually testified at this trial; correct?

A. Yes, sir.

Q. That was your decision; right?

A. Yes, sir.

Q. Before you testified, your attorney talked to you

about the pro's and cons of your testimony; right?

A. Can you be more specific about that.

Q. He told you that, if you testified, then the State could then cross-examine you and can try to point out inconsistencies with your statements or do other things like that to impeach you while you're on the stand; right?

A. Yes, but he the one that really advise me to do that. He told me it would be best for my side of the story to be heard in order to have an understanding with the jury. Basically he like pointed me to it. He didn't tell me not to do it.

Q. Let's go into the actual case itself. You're one of three individuals that were involved with calling the victim to a house that was abandoned and the victim ended up getting shot; right?

A. Correct.

Q. And you already talked about Ms. Foster, who's not related to you, but one of the people that was involved with this. And I'm trying to understand your earlier testimony today. You're saying that originally she was accusing you of being the person that had the gun and did the bad stuff; right?

A. Yes, sir.

Q. At trial, in front of the jury, her testimony was: I didn't see who actually shot; correct?

A. Yes, sir.

Q. In fact, her testimony at trial was: The only person she ever saw holding a gun was her boyfriend, Mr. Bennett; right?

A. No. That's what Reyna said, not Regina.

Q. She never said you had a gun?

A. Not on the stand up here. In her statement, yes, but not on the stand.

Q. The jury, all the jury heard was you didn't have a gun according to her, or she didn't see you have a gun according to her is what the jury heard; correct?

A. They just stated that she didn't know who did the shooting.

Q. Hypothetically, if she had come on the stand and said, he's the guy who shot him, that would've been worse for you; right?

A. I mean, it's no way that she can go on the stand and say I was the shooter because I wasn't the shooter.

Q. I understand that's what you're saying.

By her testimony, that was actually better than her actually accusing you of being the shooter when she actually testified; correct?

A. No, it's not better. At the end of the day if you're going to state that I was the shooter, at the beginning, me being locked up, you should've used the same statement.

You get up here and state that you didn't know who

was the shooter but stated that I was the shooter and the shot came from my room, in the beginning on me getting locked up, I just felt like, how could you be credible for that.

You stated that I gave this man a gun. You stated that I was the one that was using it on you, telling you what to do, I was the one that was basically running the show, I was doing like this and shooting, this is everything that you stated in your statement. When Mr. Delaney asked her, did she see me give this man a gun, she said no.

When he asked her did she see me doing the shooting, she said no, she don't know who did the shooting. In your statement you stated it was me. This is what got me in here.

Q. All the jury heard from her, she didn't know who shot the gun?

A. Yes.

Q. When she was cross-examined by your attorney, he pointed out that you have similar charges alleged against her and he impeached her in front of the jury and said, you're looking for a good deal because you haven't actually gone to trial yet. She denied it, but he was trying to impeach her credibility there; right?

A. Yes.

Q. You talk about discovery. The State did provide multiple times that they sent discovery as they started getting

in the case. They provided it to your attorney. Are you saying you never saw any of that discovery?

A. One of the discovery that I got from the State that they had for y'all Solicitors, I didn't get until the day of my trial. Like, with the text messages and all of that, I never had that at my motion. It never came with my Rule Five. I didn't get that until the day of my trial.

When they presented it up there in court, he seen that it was presented to The Court. He spoke to the judge. They all went up front to the bench and was discussing what they were discussing. They allowed him to make copies for me.

I never had that throughout my whole time in the county. A lot of the evidence that I got, I got it late.

Q. You're talking about the phone evidence?

A. That and the text messages and stuff like that.

Q. When the State put their witness up -- that was the witness dealing with the phone -- they started getting into some testimony, and your attorney objected. And there was a bench conference. After that the testimony basically stopped; right?

A. She finished her testimony, and she left. She was supposed to come back but she didn't.

Q. Her testimony, she was stopped with whatever she was doing with her testimony based off an objection from your attorney; right?

A. No. From what I remember, like when she was up here talking, he objected to it, but she was still able to give, like, she was still able to speak. But then she left. She was supposed to go back and get the evidence that my lawyer was speaking about but she never came back.

Q. So I don't forget, at the end of the case your attorney informed you that you have a right to an appeal; correct?

A. Yes.

Q. You filed an appeal or an appeal was filed on your behalf?

A. Yeah, he filed it.

Q. The appeal ultimately was dismissed; correct?

A. Yes.

Q. In the incident, there were only four possible witnesses that could testify as to what happened -- I'm going mess up the name -- Kiyounnie Jackson when he died; correct? That would've been Mr. Jackson. Derrick Bennett. Regina Foster, and you; correct?

A. Yes.

Q. You testified that, at the trial, that you never had a gun, you were not the shooter, and that you never took any of the money. That was the reason why you were meeting at the house; correct?

A. Correct.

Q. The testimony that came out was that Derrick Bennett was getting Regina Foster to contact Kiyounnie Jackson to show up and sell them weed but you found out at some point before Mr. Jackson showed up that Mr. Bennett was intending to rob him; correct?

A. Can you repeat that again.

Q. I'll try to. Basically at the trial, Regina Foster said Derrick Bennett was the one who got her to contact the victim, and they were going to tell the victim we want to buy weed from you.

And at some point before Mr. Jackson showed up at the house, you found out that Mr. Bennett was intending to rob him.

A. You say that was said during the trial?

Q. Yes.

A. Yes.

Q. You discussed trial strategy with your attorney; right?

A. Talking about Mr. Delaney?

Q. Yes, sir.

A. As far as like can you be more specific by what you mean by trial strategy.

Q. I'll get into some of that.

Since nobody at trial put the gun in your hand, it doesn't matter if there is a ballistic report or not. The

ballistic report when it was put in, all it said was that gun was what was used during the incident; right?

A. Correct.

Q. Ballistic report didn't have anything in it that said if it was anybody's gun in particular or fingerprints on it or anything like that because they didn't have the gun; right?

A. Correct.

Q. The only gun that was there afterwards that the jury heard was the gun that Mr. Jackson had that Mr. Bennet was found with later; right?

A. Correct.

Q. The only firearms in this case that the jury heard and your attorney helped you get out was all with Mr. Bennett, not with you; correct?

A. Correct.

Q. Now, the State's case in this, they used the theory of the hand of one is the hand of all. Do you understand what that is?

A. Yes, sir.

Q. What is your understanding of what that is?

A. From my understanding, we all used accomplice liability law. With accomplice liability, hand of one is hand of all mean, basically, one did it, you-all did it. Don't matter if you have knowledge of the crime, if you participated

in the crime. Any type of knowledge of the crime, you're just as guilty as the other person.

Q. And that was the problem you had going to trial is that you knew that's what the State was going to try to prove?

A. Yes, sir.

Q. You did not nor could you deny being at the house when the incident occurred?

A. Right.

Q. Mr. Bennett -- excuse me. Mr. Delaney, he was able to get the judge to charge the jury something that was called, and the term of it, basically, just because you're there doesn't mean you should be guilty; right?

A. Yes, sir.

Q. He was trying to help out. Basically, saying that you were there but you should be considered different from the people that actually committed the crime?

A. Yes, sir, that's what he was asking for.

Q. That's saying basically that's the trial strategy; you were trying to let the other people that were there, let the jury think that Ms. Foster, Mr. Bennett are the ones that actually did it and you were, unfortunately, there at the same time; correct?

A. You are saying that's what I was thinking?

Q. That's what you were trying to do; correct? That's your trial strategy?

A. That ain't what I was trying to do. It's pretty much simple like. It's on -- you can have a bunch of people in this room together, at a party or something. And it makes everybody being at a party. A fight break out between two people. And the individual end up dead. Just because all of us came here together doesn't mean all of us are guilty of the same situation. Just because all of us knew this person did it, doesn't mean all of us just as guilty as this person. You see what I'm saying? With the hand of one, hand of all of them, that's what they do.

You see me like, okay, you did this. I know you did this or, he did this. I know he did that. That don't make me guilty. That don't mean -- that don't make me a triggerman just 'cause I know you pulled the trigger. How is that making me just as guilty as you just because I knew you pulled the trigger?

Q. What the jury heard was Ms. Foster said: When I answered the door for the victim, I ran away, and I don't know what happened after that.

A. Yes, sir.

Q. There are only two other people that could've been the shooter; either you or Mr. Bennett?

A. Yes, sir.

Q. You obviously testified in front of the jury and said, I didn't do it, Mr. Bennett did it?

A. Yes, sir.

Q. Your attorney was also able to bring out that Mr. Bennett is the only one that the jury heard who actually had a gun; correct?

A. Yes, sir.

Q. Unfortunately, the jury didn't believe you and they convicted you; correct?

A. Yes, sir.

Q. Your attorney asked you about the jury and the jury pool. Other than raising that there was not an objection made to the jury pool at the time, do you have anything else to add as to why the jury that was sat was not a jury that was representative of who the members of the county are?

A. Speaking of that, like in this county, in my jury selection, there was only seven blacks. And I know that seven black people don't represent the County of Spartanburg. You feel me? Like, no way possible. I ain't really -- I told her that I wasn't even going to raise that issue 'cause it was pointless.

Out of everybody that was on my jury pool selection, there's only seven people that was black that was there. Only one was selected. And that one that was selected was actually from the area that the victim was from. And he went to school with my aunt. So they got rid of him.

After that, it was no more of my race. It's no way

that seven black people represent just the County of Spartanburg.

I brought that paper to her and gave it to her. I ain't bringing it up to use it. I told her I wasn't going to use it.

Q. You said the only black member of the jury was the one that was dismissed after the pool got sat?

A. Yes.

Q. And that juror, when that person was originally selected, neither the State nor your defense attorney knew they had a connection to you; correct?

A. Yes. My family told Mr. Delaney.

Q. There was some concern that, that was raised by both the State and Mr. Delaney that they were not sure if that witness could be impartial; correct?

A. They was sure because when my family told him right after the selection, they approached the victim's mother. She let it be known that she knew him. He was from the area. He was aware.

Q. Were aware there's a connection here?

A. Yes.

Q. What my question was is that: When it was brought to the attention of both sides, the attorneys, that the attorneys told the court that we just found out there's a relationship here. And both sides were a little worried that

they weren't sure how that juror would react having some connection to you?

A. Yes, sir.

Q. It was by consent that the State and your attorney said, we'll go ahead and dismiss that, and sat the alternate?

A. Yes, sir.

Q. The reason that juror was dismissed was not because they're black but because they had some knowledge of you?

A. No. No. I never said that he was dismissed because he was black. No. What I was raising my issue about, the race, is the selection of the jury. Out of everybody that I had to select from, there was only seven black to select from. I know that in the County of Spartanburg, seven black people don't represent the population of the blacks. That was my reason for raising that. I told her that I wasn't going to use that today. That's why I never even brought it.

Q. After the verdict was handed down, you were given the opportunity to address the court and you elected not to. Your attorney did state on your behalf that he asked the court to grant leniency for you; correct?

A. Yes, sir.

MR. COLE: I think that's all the questions that I have.

THE COURT: Any redirect?

MS. ROSS: Yes, Your Honor, briefly.

REDIRECT EXAMINATION

BY MS. ROSS:

Q. Going back, you were talking about reviewing the case saying, talking about text messages. You said something about text messages. Isn't it true that none of those text messages were from you?

A. Yes, ma'am.

Q. When they were on cross, summing up the facts, you weren't one of three callers texting or calling to the victim at all?

A. No, ma'am.

Q. Your testimony was you did not know about an armed robbery, were not part of any kind of plan to rob that man?

A. Yes, ma'am.

Q. That was your testimony all along. Had the phone evidence not been stipulated to, there would've been pieces of paper proving that you were not the one who made any of those texts or calls?

A. Yes, ma'am.

Q. If that expert witness had come in and brought all the stuff she was supposed to bring, that would've put in front of the jury pieces of paper showing that Regina had lied about your involvement in the text messages or any set up prior to this incident?

A. They had, like with the phone expert, like her only

thing was that Mr. Delaney was trying to stretch and implement was she couldn't prove who the phone -- who phone it actually was. She didn't know. That's where he was trying to press the issue about.

She was up here testifying about this phone and these messages coming from this phone, but she couldn't prove who the phone had belonged to. That's where he was really speaking about and objecting to when they brought it up here.

As far as the text messages, they had the text messages printed out, and she let it be known that it wasn't me. In the beginning she stated that it was me.

Q. You mean Regina Foster?

A. Yes, ma'am.

Q. I'll just refer you to page 259, line 24. In closing, the State told the jury it doesn't matter who was the shooter; is that correct?

A. Yes, ma'am.

Q. That was because they were arguing accomplice liability?

A. Yes, ma'am.

Q. To argue that, they would've had to prove that you were a part of the plan to do an armed robbery?

A. Yes, ma'am.

Q. Those text messages would support the fact that you were not part of any of that plan?

A. Yes, ma'am.

MS. ROSS: No further questions.

THE COURT: You may step down.

(The witness exited the stand.)

MS. ROSS: No further evidence.

THE COURT: Anything from State?

MR. COLE: Mr. Delaney.

THE COURT: Mr. Delaney, come forward and be sworn. Left hand on the Bible and raise your right hand.

BRENDAN DELANEY

being first duly sworn, testified as follows:

THE COURT: Please state your name for the record.

MR. DELANEY: Brendan Delaney.

THE COURT: Spell your name.

MR. DELANEY: B-R-E-N-D-A-N. D-E-L-A-N-E-Y.

THE COURT: Answer questions Counsel may have.

MR. COLE: Thank you.

DIRECT EXAMINATION

BY MR. COLE:

Q. Mr. Delaney, thank you for coming here today. How long have you been practicing law?

A. Twenty-three years.

Q. Where are you currently working?

A. Spartanburg Public Defender's Office.

Q. How long have you been with them?

A. I've been with them for a little over five years.

Q. Prior to that, what type of law were you working?

A. Criminal law. Family law. Solo practitioner. Criminal defense from the very beginning. I would say I've been practicing criminal defense law for 23 years.

Q. Now you work for the State instead of doing it private?

A. Correct.

Q. You know the Applicant?

A. I do.

Q. How do you know the Applicant?

A. I represented him on a murder charge that arose here in Spartanburg County.

Q. Can you tell me -- we heard some testimony from Mr. Foster that -- I'll say it this way. He was displeased you not coming to see him very frequently. Can you tell me how do you typically work through a case that you have or that you've been assigned?

A. It's pretty standard that, on a murder charge, from the date of the charge, if it's close to the alleged incident date, it's going to be a year or two before that matter gets brought up for trial. In the interim time, if they're denied bond, I'll file multiple bond requests again.

Once we get past six months, unless there's a change in circumstances, which I did for Mr. Foster, and I

believe ultimately the court moved from the bond denial and gave him $125,000 bond along with some other conditions.

At those bond motions we'll discuss his case. Meet in the jail room back there. Probably met with him six to eight times. Not sure.

As we get closer to the trial date, that's when I begin to ramp up my meetings with my client. Kind of the way I think most -- I can't speak for anybody else.

For me, I have a murder case coming up on the May 22nd trial docket at the end of next month. In the next couple to three weeks I'll begin meeting with that client much more frequently than I have for the past 18 to 24 months that he has been sitting in the county. I have met with that particular client at numerous bond request motion hearings, et cetera.

Which is what I did with Mr. Foster. Met with him infrequently early on in the case. I want to make sure when we get to the trial date, everything that he's telling me is fresh in my memory. If I meet with him six months, 12 months, 18 months before the trial, it's likely that I'm going to forget a vast majority of the items that he's told me.

I want to make sure I meet with him frequently as we lead up to the trial, then I can address any issues that he has. When we get to the trial, all those issues are fresh in my memory. We can deal with them appropriately, which is what I did with Mr. Foster.

Q. I would assume that other people that you've worked with don't like having to wait until the month before to ramp up the preparation?

A. I understand their frustration. I certainly sympathize with them. As a practical matter, if I've got a defendant that's been charged with murder and he's been in jail for three or four weeks, I know the trial date is not for a minimum 18 months away. The fact of the matter is, I'm not going to be able to meet with them very frequently. It's not going to be productive. It's not going to do them any good, not going to be doing me any good. They're sitting around and waiting. They're in the detention center. They're going to stew on me. It just is what it is.

Q. When you're originally assigned as the public defender in this case, you filed a Notice of Appearance?

A. Correct.

Q. Do you file anything else when you file your Notice of Appearance?

A. Notice of Appearance, Request for Discovery. A lot of times -- I don't think it's this way in every county, unfortunately, in Spartanburg, a lot of times magistrates at the jail just refuses to issue a bond on a certain number of charges including murder. At that point I'll file a motion for bond immediately to get him in front of a circuit court judge to try to get a bond set, which I believe I did on his case.

Q. When you sent out the motion for discovery, does discovery show up all at once?

A. No, not usually in a murder case. It can take several months to kind of get that initial narrative and some of the reports and things of that nature. As soon as it comes in, I'll send my client what I get. And there could be another round of discovery several weeks later, several months later.

If it's a drug case, you might get the drug report six months later. Comes in separately. Whenever it comes in, I send it to the client in the jail.

Q. That's your common practice; you can't send it before you get it?

A. Correct. We have very capable staff. That's the daily grind really is the discovery. Every day we have discovery coming in. If they're in the jail, it goes straight to them in the jail.

Q. We heard some testimony earlier that some of the discovery didn't show up until maybe even the morning of trial. Is that atypical?

A. Yeah, that would be atypical. I don't necessarily remember that. Maybe there was some phone records or some phone logs that he maybe didn't recall reviewing prior to trial. I don't remember that specifically.

As far as the phone logs are concerned, again, Mr. Foster talked about what was I going to present as his

lawyer. I was constantly questioning him about the facts of the case and what is our trial strategy going to be. At the end of the day, I think you can basically say our defense was: It wasn't me. It wasn't me. It wasn't me.

We talked about this. I said, all right, Jacory, you didn't shoot this man, you didn't know this man was going to be shot. They got a witness that places you in this house that you didn't know any of this was going to go down.

Yeah, it wasn't me. I didn't know.

We talked about this. When it comes to things like ballistic reports, the manner and cause of death where some bullet hole entered the body, any of that stuff, I think we'd be better served not to object to it because that way we can maybe convey a story to the jury that: We're sorry this guy is dead, too, but we didn't have anything to do with it.

As far as ballistic reports or anything like that, we talked about that. I said: Jacory, I'm inclined not to object to it just because I don't want the jury to think that you are somehow interfering with or trying to hide from them the fact that this man is dead when you're acknowledging that he's been shot and killed but you didn't have anything to do with it. We talked about that. That was a concerted trial strategy to not object to that stuff.

Q. Do you believe that was a reasonable trial strategy given the facts, as you understood them, preparing for the

trial?

A. I think it was more than reasonable. Obviously Mr. Foster didn't get the outcome we were trying to. I think it was a very reasonable strategy.

Q. At trial, nobody actually testified and put a gun in Mr. Foster's hands; right?

A. Yeah. We had a couple things break at trial. Obviously, we didn't get -- Mr. Foster didn't get the outcome he wanted. There were a couple of things that broke our way at trial I felt like. Ultimately the jury did find him guilty.

Q. You heard some of the questioning about the cell phone expert who testified on behalf of the State. Skimming through that part of the testimony, essentially, they said they showed me a phone, I showed him some pictures and some Facebook posts on it. That's all that person testified about; right?

A. Yeah. I think the cell phone messages, there was some dispute about Ms. Foster, Regina Foster being held against her will, to some degree, in this car. And that our position was that Derrick Bennett, the coDefendant, had taken that phone from Ms. Foster and was texting the victim, pretending to be Ms. Foster and luring him to that house. All of that was done by the coDefendant, Derrick Bennett.

Any cell phone expert could be talking at any given time about a particular cell phone. Who was actually in possession of that phone, actually phoning out those messages

was a point of contention and in dispute.

Q. At trial, actually Regina offered testimony that she may have been the one doing it but at the direction of Derrick?

A. Yes.

Q. The jury heard testimony, again, that it wasn't Mr. Foster doing that?

A. Correct.

Q. And that assisted with your trial strategy that he just happened to be, unfortunately, there at the same time?

A. Correct.

Q. Regina Foster, she was a cooperating Defendant for the State, and she was the girlfriend of Derrick Bennett; correct?

A. That's my understanding, yes.

Q. They say that you did not effectively cross or object to her testimony when she testified. How did you try to handle her as a witness?

A. If I recall correctly, I believe I pointed out while she was on the stand some prior inconsistent written statements I believe she gave regarding Mr. Foster. Ultimately, her testimony from the stand was essentially she didn't know who shot. She didn't see who shot.

Q. And one of the objections that was raised in the PCR was that you did not object to the redirect that the State

did. I'll just walk you through this. When you did your examination, and even when the State did it, it was established that the first time Regina and Mr. Foster met was earlier that day that the shooting occurred; correct?

A. Yes.

Q. You pointed out several times on your cross that they didn't know each other; correct?

A. Yes.

Q. And then on the redirect, all the redirect was, okay, you may not have met him, that's the guy that was there at the house with you; correct? That was all the redirect was?

A. Yes.

Q. In your opinion, is that something that you would need to object to?

A. I mean, if she's testifying that he's present in the house, Mr. Foster, my client, he never disputed that to me. Never gave me alibi defenses to investigate or, again, kind of skimming on the surface; maybe noncommittal completely on where his whereabouts were the night this crime occurred. He never told me he wasn't in the house.

Basically his position was that, yeah, I might've been there, I had no idea this was going down, this robbery and shooting. I had no idea.

Q. You've addressed the ballistics report in part. Basically, from your trial strategy, since nobody is putting

the gun in your client's hand, whatever the ballistics report said, it's just confirming that somebody died?

A. Right. I talked to Mr. Foster. Obviously, I said, Jacory, do you agree that this person has been shot and killed in this house? He said yes. He said, I don't know anything about it.

Then we don't really have any objection to any ballistics report or anything like that; we're not disputing this man was killed. He basically confirmed that. That was essentially our trial strategy.

Q. Next I want to ask you about, which I think is really creative, is the failure to make a Batson charge.

THE COURT: I think he said he withdrew that on his testimony. That was my understanding from what he said.

MS. ROSS: He withdrew challenging the jury pool, the venire pool for not being a makeup of Spartanburg County. Is that correct? Didn't withdraw the actual Batson motion to the makeup of the jury to try the case.

THE COURT: Go ahead.

MR. COLE: Your Honor, the amended PCR application kind of clarifies. She put in Batson, which I think is the correct term. The original version basically said that a jury pool was improper because it only picked from the registered voters, not from -- that's all it says. That's the part.

BY MR. COLE:

Q. You heard the testimony about the one juror that was dismissed. Why was that juror dismissed?

A. Again, just like it was discussed earlier, it was brought to both the State and the defense's attention that this particular juror maybe had a connection with not only my client but the victim that could cause the juror to not be able to be unbiased on the case.

Q. Basically, both the State and you on behalf of your client, you don't want that wild card 'cause you don't know what might happen?

A. Yeah. I don't recall it specifically. I'm sure I talked to Jacory about it. It was like you said, it was brought to my attention that this particular juror may know the victim or be from his area, have some ties. That's obviously red flags. We'll gladly excuse that juror.

Q. That information of the connection wasn't brought up to your -- I guess it was brought up to you first after the jury was picked originally?

A. Yes.

Q. If that had been brought up before then, maybe you could've had a preemptive charge or strike or something like that?

A. Yes.

Q. In your opinion, you've been dealing with trials here in Spartanburg County for a long time. Was the jury pool

that you all were selecting from, venire itself, did that appear to be representative of juries that you have seen in other trials here in Spartanburg?

A. Yeah. The jury pools in Spartanburg County are overwhelmingly Caucasian. You can draw your own statistical analysis as to whether that's proper or not. The fact of the matter is that jury pool after jury pool in Spartanburg County is going to be overwhelmingly Caucasian.

Q. Have you ever in your practice come across an objection that someone makes saying that the jury pool itself is improper because it only pools from the voter roles?

A. I'm not familiar with that.

Q. Last thing I want to ask you about, they say that there was a proper -- improper to not object to the charge that referenced inferred malice. Can you explain that to me.

A. I'm trying to think if there was a case that's come down recently, maybe in the last year or two after this that kind of chopped inferred malice down. I think Mr. Foster's -- if I'm recalling correctly, I could be wrong -- I believe that case that may be the reasoning for that was a Court of Appeals or Supreme Court case after Mr. Foster's case maybe.

Q. The inferred malice, the cases that I've seen, they reference that. The problem is, if you give a charge about inferred malice and then tell the jury, if somebody has a firearm or a weapon, that can be used as evidence of inferred

malice. That's the big problem; right?

A. Yes.

Q. In this case this charge did not go on to give examples of, if you have a gun, then you can infer that.

It just said malice can be inferred is what the charge was in this case; correct?

A. Yes.

Q. And in your experience -- let me ask this. For murder, is malice part of the analysis that the jury must go through to get to murder?

A. Yes.

Q. Is a general statement malice can be implied or inferred, that's a general statement of the law?

A. That's my understanding.

Q. That's all that happened. That's not something that would be necessarily objectionable; correct?

A. That's my understanding.

Q. You asked The Court to add or make sure that they had a charge dealing with that presence; does not mean that you're also part of the hand of all; correct?

A. Yes.

Q. And that judge actually charged that?

A. Yes. I believe that's the mere presence charge.

Q. So the court did charge that to the jury, which fit into your theory and defense of the case that, unfortunately,

Mr. Foster was there in the situation and his position was: I was not a part of it. I just happened to be there.

A. That's correct. That was our theory.

Q. Mr. Foster said you talked to him prior to the trial, that maybe you would think about a plea?

A. Yeah. I mean, I talked about -- I'm not even sure if 30 was ever put on the table. I don't recall specifically. I know if I have a murder case or maybe I'm not receiving any offer at all on the case, I will have discussions with my client usually to the effect, if I can get you 30, if the case warrants discussions of a plea -- pretty standard practice -- if I can get you 30 on a voluntary, are you willing to entertain potentially taking that plea? Just like gauge where their head space is.

I believe that's what I did with Mr. Foster. I'm not even sure if that was on the table. At a minimum I would've had that conversation with him

Q. And the State's case, they were going pretty hard on Mr. Foster saying you're the one who actually did it is what their presentation to the jury was; correct?

A. Yeah. They tried him first. At some point later, months later they tried Derrick Bennett. Read into that what you will. They put him up first.

Q. There were 11 witnesses that testified for the State and then you had your client testify as well. There's a

lot of evidence that went into this trial and you were prepared for all of those witnesses and to go forward with the trial?

A. Yeah. I mean, I knew the case. I read witness statements and watched body cams and talked with Mr. Foster. We talked about everything.

Q. In the original PCR application, there was a PCR objection that you-all did not put forward a third-party defense. The way that you presented this case, do you believe you essentially put a third-party defense case up?

A. I do. It was basically, again: It wasn't me. And everything we kind of couched around that it wasn't me defense, it was Derrick Bennett. This man shot this other man. We had no idea he was going to do it, it wasn't me.

Is that a third-party defense? I would maybe assert that it is. Maybe with a little bit of a twist. I don't know.

Q. In this case, you believe that you were fully prepared, that you had met with your client sufficiently ahead of time and he was aware of the trial strategy to try to get the best result for him as you're heading to trial?

A. Yeah. I mean, we had been over everything multiple times. I think Mr. Foster even today expresses somewhat frustration with me as to what am I bringing, what am I going to do. I wasn't there. I need to hear from you.

And eliciting information from my client on how I

can help him was a little bit challenging with Mr. Foster. Ultimately we got there. A lot of clients are that way. They're looking to me to produce some narrative. That's not my job. I can assist you, but I need to get information from you.

Q. He mentions possibly hiring an attorney to take over his defense. Was an attorney ever hired to do that?

A. No.

Q. And did you ever have any conversations with anybody who said: I've been approached by the family, I'm thinking about taking over the defense?

A. I don't recall that in Mr. Foster's case.

MR. COLE: That's all the questions I have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q. Derrick Bennett, are you aware he got 35 years on the murder?

A. I'm not aware of what his verdict was.

Q. You're not surprised. I have the SCDC form here.

A. I heard he was convicted. I didn't look any further into it.

Q. Just going back, just clarify for me what's going on with these phone records. It looked like from the transcript that the expert didn't bring in enough material to see whose phone was whose.

A. You would have to refresh my memory on that a little bit more. I don't have a great recollection of what went down with that particular phone expert or whoever it may have been.

Q. As it ended up, though, Regina changed her story because the phone records did not match what she was saying about Mr. Foster's involvement in the texting and the phone action. Does that make sense?

A. Yeah. That sounds fair.

Q. On page 258, line 23, in closing argument, the State starts saying --

A. Is this the State talking?

Q. Yes, this is the State's closing. That Regina was using Corey's phone. And the fact of the matter was there was no evidence that Regina was using Corey's phone; correct?

A. I don't recall who this Corey individual is.

Q. The Defendant.

A. Jacory. I'm sorry. Repeat the question.

Q. In closing, the State argues Regina was using Corey's phone. However, the testimony and phone evidence did not support that statement, did it?

A. I don't know. I don't know the answer to that. This was their theory in closing. She was using -- she being Regina, I'm assuming, was using Jacory's phone. There was some confusion as to who owned the phone, who was actually holding

the phone and thumbing out the text messages to the victim. That was a constant.

Q. Originally, Regina, that witness said it was all Jacory who was doing it. She changed her testimony at trial because the phone evidence didn't support her prior statements?

A. Right. Yes.

Q. And then there was no objection in closing when the State continued to go along with this kind of wrong narrative that Corey's phone was somehow involved?

A. Yeah. I mean, that was their theory. They had their theory. And depending on which version of events you wanted to believe from Regina or another handful of witnesses, you could hang your hat on that and argue it at closing. They chose what theory they were subscribing to and used that as their theme in their closing argument.

Q. Again, you didn't have any objections to the jury instructions. Just to amend a little bit, not only on the malice charge, you did not object either to the hand of one, hand of all charge?

A. If I didn't, I didn't.

Q. There were no black jurors on that final jury in Corey's case?

A. I don't remember specifically. If there wasn't, there wasn't.

Q. Now I'm confused what he waived, what he didn't. I

didn't think he waived the Batson issue.

Looking down at the strikes on this, and the people who are listed as African-American, this Patrick Wilson, the only one that made it to the jury, is that the one who ended up leaving?

A. I don't recall. I don't recall who that specific juror was. I recall what went down as was testified to earlier. Specific names or anything like that I don't recall.

MS. ROSS: I have no further questions.

THE COURT: Redirect?

MR. COLE: Just briefly.

REDIRECT EXAMINATION

BY MR. COLE:

Q. Part of your arguments in the case is you were arguing to the jury that Gina Foster, Derrick Bennett, and possibly some other people that knew each other were all colluding to try to say bad things about your client; correct?

A. Yes.

Q. You're bringing up those biases and things like that to the jury. And then also that is sort of asserting that your client was separate from them and asking the jury essentially to make him separate and not part of the group?

A. Yes. Again, the mere presence, it wasn't me, we didn't know what was going on, we had no idea, we're sorry this man is dead, it's a tragedy, that was our case.

Q. Real quick on the jury. The clerk of court was the one -- did the clerk of court use a randomized method of getting the jury up for the strike sheet?

A. As far as I know it's completely random.

Q. That randomness came from the overall county's voter roles; correct?

A. As far as I know.

Q. When the State struck jurors and when you struck jurors, were either side striking jurors specifically because they were black?

A. No.

Q. You're striking jurors because they had any other protective --

MS. ROSS: Object to speculation on what the State was thinking.

THE WITNESS: I can only speak for myself.

BY MR. COLE:

Q. That's fine. Did you strike for anybody that would be in any other protected class?

A. No.

Q. Neither you nor the State raised any Batson objections after the panel was empanelled?

A. I don't think we did, no.

MR. COLE: Thank you.

THE COURT: You may step down. Anything else from

the State?

(The witness exited the stand.)

MR. COLE: That's it for the State, Your Honor.

THE COURT: Any additional rebuttal?

MS. ROSS: No, Your Honor.

Actually, I offer this as an exhibit.

MR. COLE: No objection.

MS. ROSS: Usually it's part of the transcript. I didn't see it in my version.

MR. COLE: I don't have it in mine.

MS. ROSS: It's the final jury that they ended up with.

MR. COLE: The transcript includes the court reporter taking down when they went through all the juror strikes. That's just numbers and names. You don't know who they are.

MS. ROSS: I would offer Defendant's exhibit or Court's exhibit, however you want to put it in there.

THE COURT: That will be Applicant's Exhibit 1.

THE COURT REPORTER: Yes.

MR. COLE: Yes.

THE COURT: In without objection.

(APPLICANT EXH. 1, Random Strike Sheet, was marked for identification and entered into evidence.)

THE COURT: Any brief comments?

MS. ROSS: Judge, I just ask pursuant to Love v. State to conform the pleadings to the evidence. I kind of talked a little bit about the inferred malice charge. I think that's just changing law. There was no objection to that.

THE COURT: Isn't changing law -- like he said, I've looked in there. There's no reference to anything other than just inferred malice.

MS. ROSS: That's true. I'm just putting that on the record because of where we're going, especially with the accomplice liability charge as well. The problem I have, Judge, on the record, I do think that the burden for the State is decreased when malice is discussed and inferred malice for murder and then accomplice liability charge as well. Because there's no further mention of malice and accomplice liability. I would put that on the record.

As far as the Batson motion, the makeup of the jury, it was all white. The one African-American, I guess, ended up getting off the case.

As far as the stipulation to the evidence, it's the phone evidence that I'm talking about. It looks from the transcript and from what I'm hearing from my client and the testimony of the witness reading the transcript was that the phone evidence completely contradicted what the State's main witnesses were saying. Or had originally said. It contradicted what Regina Foster said, and then she changed her

testimony. And it contradicted what her sister said as well.

We would just argue that was prejudicial and could have changed the outcome of the case because, apparently, the jury paid a lot of attention to their testimony.

THE COURT: Anything the State want to say?

MR. COLE: I'll just speak briefly, Your Honor. I'm just going to go through the amended application part first with the cross-examination of Regina Foster was one of the things they brought up. I wasn't sure we had a motion for a more particular statement or something like that, that we filed. Then we got the amended part that may or may not have answered that. I wasn't sure exactly what the failure to object was because the cross-examination pointed out a bias. It pointed out -- I was kind of confused at the beginning of the hearing that they were complaining that the testimony she gave to the jury was actually more favorable than the testimony that they were expecting.

The fact that she didn't point the finger directly at the Applicant actually is better for him than what they were expecting she would do. I don't think that's a failure. Also, it goes to the fact that's part of the trial strategy that they were trying to diminish the impact of some of that testimony by being a bystander, not a participant.

The stipulation to the evidence, they changed the day from the ballistic report to the phone records. The phone

records, if I understand what they're saying, that could've been an additional impeachment of Ms. Foster, that she may have not been or whoever was responsible for the phone.

I think if you read the record, it's clear that they clarified. And there's some mix-up that both sides had of who was who and what names are what. We have nicknames, we have regular names, we have all this other stuff. It came down that Regina testified that whether it was her phone or someone else's phone, she's the one who knew the victim. She's the one that either by herself or by duress from her boyfriend was the one who actually texted the victim and told the victim we want you to come to this abandoned house and sell us weed, which was a set-up for them to rob the guy.

I don't think that rises to the level of proof necessary for PCR, to say that's enough prejudice to get to it.

The Batson motion, there's actually case law that directly addresses this question. I asked him questions just about who actually got sat on the jury. There's no testimony the burden is on the Applicant to prove there was something improper with the way that the jury was empanelled.

In this case he specifically said on the stand he does not want to make it a black-white thing for the people that were on the stand. And the only juror that was dismissed was because they had some familiarity with the person.

If we're just talking about the jury pool itself,

there's several cases that are -- that I can cite, State versus Hill. It is 394 South Carolina 280. It was actually overruled in part because it was an improper charge in that particular case.

When they're talking about the jury pool, they said that the pooling from the voter roles is actually appropriate. And, in fact, it's actually the best cross section of the people in the county that you can get. Because anybody can be a registered voter. The case law does not support that as a challenge.

And I will submit to The Court that is a novel issue that I found a couple articles talking about it, both South Carolina and federal case law. For example, federal case, which is actually unpublished, so I won't say it. Does not support that as a challenge. And even if it is a challenge, the burden is on the Applicant to come in and prove to the court that the jury pool itself was improper. I do not believe that reaches the level we need.

The last is about the malice charge. I'll just point out that the law was in flux at the time. There is some case law that -- I'll submit to The Court, that I think there is some case law that probably would help out the Applicant because there's some cases that said you can't charge malice with the statement that you have the gun, can be inferred malice. That's not what happened in this case.

In this case the charge just said that malice can be implied. It's a standard language that was charged to the jury. And when we look at whether or not the jury charge is proper, we look to whether or not the jury charge is a general recitation of what the law actually is. And this is sufficient for that. And the Applicant would have to prove that this is so far out of bounds that it would entitle them to a new jury -- or a new trial.

I would add to that, even if the malice charge had some defects in it, which we're not conceding, that would be in this case something the appellate courts would look at as a harmless error because of the overall evidence of guilt and everything else and all the other components that went into this. Those are the highlights that we have that I would argue.

THE COURT: After review --

MS. ROSS: Just to clarify for the record, I'm trying to conform the pleadings with the addition of the malice charge and the accomplice liability charge together because, in closing, the State is saying it doesn't matter who pulled the trigger. It doesn't matter in this case.

We argue that's lowering their burden because they're saying it doesn't matter if that Defendant had malice. I would just argue that it would matter. And I don't think in conjunction those charges were appropriate.

THE COURT: In our review, I had reviewed the record prior to the hearing. I don't think that the Applicant established any deficiencies on trial counsel nor that any such deficiencies could probably result in a different result.

I think the Batson issue -- only thing I've heard about the Batson issue was relating to the -- I realize this was maybe not have been representative of Spartanburg County and definitely didn't have any blacks on the jury. The one that was dismissed had some definitely non-race related reasons that the parties agreed should warrant his removal.

I'm going to deny the Applicant's petition and ask that the State prepare an order in 20 days.

MR. COLE: Thank you, Your Honor.

THE COURT: Good luck to you, Mr. Foster.

(The hearing was concluded at 12:51 p.m.)

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of July, 2023 at Spartanburg, Spartanburg County, South Carolina.

_____

Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

Spartanburg Co. Courthouse
RANDOM STRIKE SHEET

JUDGE NAME : Cole Derham J.
TRIAL TYPE : Criminal
PANEL ID : 2018GS4202228
COURTROOM WA

DESCRIPTION : State vs. Jacory Foster

Sorted by: Random NI
Trial

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1	Wilson, Patrick D	184	B	M	(✓)	(✓)	( )	
2	Graham, Annette	60	W	F	(X)	( )	( )	
3	Moffitt, Thalia S	120	W	F	(✓)	(X)	( )	
4	Wilkins, Bobby S	181	W	M	(✓)	(✓)	( )	
5	Heng, Monica K	70	A	F	(X)	( )	( )	
6	Babb, Jennifer A	4	W	F	(✓)	(✓)	( )	
7	Cross, Pamela J	34	W	F	(✓)	(✓)	( )	
8	Phalen, Jeremy G	136	W	M	(✓)	(✓)	( )	
9	Pearson, Thomas A III	135	W	M	(X)	( )	( )	
10	Herndon, Shontella N	71	B	F	(✓)	(X)	( )	
11	Espinal, Daneisha L	46	B	F	(✓)	(X)	( )	
12	Waldrop, Paula L	176	W	F	(✓)	(✓)	( )	
13	Willis, James H	183	W	M	(✓)	(✓)	( )	
14	Borquez, Alfonso A	13	H	M	(✓)	(✓)	( )	
15	Upton, Robin D	173	W	F	(✓)	(✓)	( )	
16	Likhtar, Daniel	95	W	M	(X)	( )	( )	
17	Bailey, Tye J	5	W	M	(X)	( )	( )	
18	Momin, Mehdi I	121	N	M	(✓)	(X)	( )	
19	Mason, Christopher J	106	W	M	(✓)	(X)	( )	
20	Emory, April K	45	W	F	(✓)	(✓)	( )	
21	Russell, Stephen A Jr.	148	W	M	(✓)	(X)	( )	
22	Dickerson, Jonathan R	38	W	M	(✓)	(✓)	( )	
23	Mannion, Michael J	103	W	M	(✓)	(X)	( )	
24	ward, Grace E	75	W	F	(✓)	(X)	( )	

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EXHIBIT 1
Applicant
LLM 41823

PENGAD 800-631-6989

Spartanburg Co. Courthouse
RANDOM STRIKE SHEET

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DESCRIPTION : State vs. Jacory Foster

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Trial

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
5	Loftis, Sean M	98	W	M	(✓)	(X)	( )	
5	Cody, Dylan J	23	W	M	(✓)	(✓)	( )	
7	Hicks, Felicia A	73	B	F	(X)	( )	( )	
3	Smith, Barbara G	157	W	F	(✓)	(X)	( )	
9	Stokes, Tabitha L	164	W	F	(✓)	(X)	( )	
0	Mccall, Brandon K	109	W	M	(✓)	(✓)	( )	
1	Onufriychuk, Viktoriya V	130	W	F	(✓)	(✓)	( )	
2	Bruce, Richard S	18	W	M	( )	( )	( )	
3	Tessnear, Sheri P	169	W	F	( )	( )	( )	
4	Ashley, Michael A	3	B	M	( )	( )	( )	
5	Hand, Barry L JR	67	W	M	( )	( )	( )	

Total Number of Jurors: 35

* END OF REPORT **

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Jacory Foster, #335911, Applicant, v. State of South Carolina, Respondent.	Case No. 2022-CP-42-01534 **ORDER OF DISMISSAL**

This matter is before this Court by way of application for post-conviction relief filed by Applicant Jacory Foster (hereafter the "Applicant") after the dismissal of Applicant's direct appeal by an unpublished opinion. See State v. Foster, 2022-UP-053 (S.C. Ct.App. filed Feb. 9, 2022). Applicant's initial application was filed *pro se* and alleged that trial counsel was ineffective by failing to object to and/or stipulating to various evidentiary issues, failed to object to the jury venire, and failed to present a third-party guilt defense. Susannah C. Ross, Applicant's appointed Post-Conviction Relief (hereafter "PCR") counsel, filed an amended application that provided some clarification and additional details to the original *pro se* application and added that trial counsel was ineffective by failing to object to the inferred malice charge.

On April 18, 2023, an evidentiary hearing was conducted before this Court at the Spartanburg County Courthouse. Applicant and attorney Ross were present. Respondent the State of South Carolina was represented by Assistant Attorneys General Andrew N. Cole and Blake Kennedy, both with the South Carolina Attorney General's Office. Applicant and trial counsel, Brendan M. Delaney, both testified at the evidentiary hearing. At the evidentiary hearing Mrs. Ross added additional clarity to the application and she asked this Court to conform the application to the testimony presented at the evidentiary hearing.

Prior to the hearing, this Court thoroughly reviewed the record of materials that were supplied to it ahead of time, which materials included the: (1) application for PCR and return; (2) materials from Spartanburg County; and (3) direct appeal documents and remittitur, including the trial transcript from October 21-24, 2019 (311 pages) and an index of exhibits that were introduced at the trial.[1] Based on the record, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below.

PROCEDURAL HISTORY

The records before this Court[2] establish that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during a violent crime (count two) (2018-GS-42-02228) and armed robbery (count one) and possession of a firearm during commission of a violent crime (count two) (2018-GS-42-02229). During its May 2019 term, the Spartanburg County Grand Jury indicted Applicant for use of a person under eighteen to commit a violent crime (2019-GS-42-2445).

A jury trial was conducted on October 21-24, 2019, with the Honorable J. Derham Cole

[1] The actual trial exhibits were not included in the packet of materials produced to the Court; however, none of the trial exhibits were raised or addressed during the PCR hearing nor, in this Court's determination, are any of the trial exhibits relevant to the issues raised at the PCR hearing.

[2] Again, the records before this Court included the application for PCR and return; the materials from Spartanburg County; and the direct appeal documents and remittitur, including the trial transcript from October 21-24, 2019 (311 pages) and an index of exhibits that were introduced at the trial. The trial exhibits themselves were not included in the record at the PCR hearing; however, in this Court's determination, the trial exhibits were not necessary, nor were they referenced at the evidentiary hearing. This Court has reviewed the record in its entirety.

plq

presiding. Applicant was represented by Public Defender Brendan M. Delaney. Prosecuting on behalf of the Seventh Circuit Solicitor's Office were Derrick Bulsa and Lauren Brown. The jury acquitted Applicant of using a person under eighteen years of age to commit a crime but found Applicant guilty as indicted on all other counts. Judge Cole sentenced Applicant to life imprisonment for murder,[3] thirty years' imprisonment for armed robbery, and five years' imprisonment for the corresponding weapons possession charge with the armed robbery.

Applicant filed a timely notice of appeal on October 30, 2019, that was perfected by David Alexander through filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Foster, 2022-UP-053 (S.C. Ct. App. filed Feb. 9, 2022). The remittitur was issued on March 11, 2022.

CURRENT APPLICATION

Applicant filed his PCR application *pro se* on April 29, 2022, alleging that he is detained unlawfully for the following reasons (stated verbatim):

1. Ineffective Assistance of Counsel.
    a. Failure to object.
        i. Counsel was ineffective when Counsel stipulated to allowing report to be submitted without expert testimony.
        ii. Counsel was ineffective when Counsel stipulated to a fact the State could not prove.
        iii. Counsel failed to object when the registered voters list systemically excluded an identifiable class of persons from group which juries are drawn.
        iv. Counsel failed to challenge confession.
    b. Failure to present defense.
        i. Counsel failed to present third-party guilt defense.

The State filed a Return and Motion for a More Definite Statement on June 29, 2022, and

[3] Applicant was not sentenced on the corresponding weapons' possession charge pursuant to S.C. Code § 16-23-490.

concurrently requested an evidentiary hearing. Mrs. Ross was assigned as PCR counsel for Applicant and, on February 10, 2023, she filed an Amended Application for PCR, which she states is intended to supplement the original *pro se* application, stating that there was ineffective assistance of counsel at the Applicant's trial due to:

a. Failure to effectively cross examine witnesses Regina Foster and failing to object to redirect (p.162, l. 19)
b. Stipulating to ballistics evidence (p.190)
c. Failing to make a Batson Motion due to racial makeup of the jury; and
d. Failing to object to inferred malice charge (p.285, l. 21)

These issues were further clarified at the evidentiary hearing and Mrs. Ross moved to conform the application with the testimony from the evidentiary hearing. The previously stated issue regarding the ballistics evidence was either supplanted or modified with an objection to the introduction of certain cell phone and/or text data (R.118-124). Finally, the Applicant testified at the evidentiary hearing that he was not challenging the exclusion of any potential jurors during the jury strike process based on race, but he objected to the jury venire as a whole because pulling the prospective jurors solely from the list of registered voters in the county allegedly resulted in a racially skewed jury pool. Other than the record discussed above, the only exhibit entered at the evidentiary hearing was a copy of the jury strike sheet from the trial (Applicant's Exhibit 1).

SUMMARY OF TESTIMONY AT TRIAL[4] AND THE EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING

Applicant conspired with Derrick Bennett and Regina Foster to lure Kiyounnie Jackson to an abandoned house for a sham weed deal to rob him. (R. 58–60). Bennett was the boyfriend of Foster's sister. (R. 130-31). Foster never met Applicant before the night of the shooting. (R. 131). Foster had known the decedent, Jackson, for eight years. (R. 133).

According to Foster, Bennett and Applicant directed her to log into Facebook and message

[4] The factual summary from the trial is the same as set forth in the return to the PCR application.

Jackson to come sell her weed. (R. 133-35). She used Applicant's phone to log into Facebook and Bennett told her what to write. (R. 134-35, 157). Through Foster's Facebook account, Jackson was told to come to an abandoned house. (R. 136-37). Foster, Applicant, and Bennett drove to the house, where they waited on Jackson and directed him to the abandoned house when he arrived. (R. 137-40). Foster opened the door for Jackson and ran to the bathroom. (R. 141). Applicant was in a room next to the bathroom and Bennett was in another room, both armed with pistols. (R. 141). Foster did not know if Jackson had a pistol. (R. 141). Foster heard Jackson call her name, gunshots, and "scattering and scuffling, and then it was silent." (R. 142). Foster waited in the bathroom for a few minutes, then emerged to find Jackson on the floor. (R. 142-43).

Foster ran out the front door and the red car in which they arrived was gone. (R. 143). A friend picked up Foster and took her to an apartment with Applicant and Bennett. (R. 144-45). They eventually made their way to Applicant's girlfriend's apartment and Foster's sister took her clothes and an iPad and burned them. (R. 148-49, 151).

Foster claimed to see Bennett and Applicant split up some money. (R. 149-50). Bennett had a gun he took from Jackson. (R. 150). Foster, her sister, and Bennett then left Applicant and went to Jonesville. (R. 152). Bennett told Foster's sister that he was going to have to kill Foster. (R. 152). Foster's sister gave her a phone and Foster texted her mom for help. (R. 152). The police entered the trailer in Jonesville and apprehended Foster, her sister, and Bennett. (R. 207-08). The police took a firearm from Bennett, but it was not the gun that fired the shots that killed Jackson. (R. 208).

Foster's sister, Reyna Jeffries, testified that Bennett and Applicant left that night and when they returned they were "in a panic." (R. 168-69). Jeffries saw posts on Facebook about Jackson and asked Applicant what happened. (R. 171). Jeffries claimed Applicant volunteered that he shot

Jackson. (R. 171). Jeffries burned Foster and Applicant's clothing and threw a gun down a manhole. (R. 172). The State charged Jeffries with accessory after the fact to both murder and armed robbery. (R. 175). Takesha Meadors, who was briefly part of the group that evening, claimed Applicant only responded to her, "shots fired." (R. 183).

At trial, Applicant testified that he and Bennett hung out that day smoking marijuana. (R. 230-31). Applicant met Bennett through his brother and had only known him for a couple of weeks. (R. 230). Applicant knew that Bennett had a reputation for robbing people and "doing all type of crazy things." (R. 235). Bennett and Applicant ran out of weed and Bennett started trying to find more. (R. 231). While driving around, they saw Foster walking by a mailbox. (R. 234). Bennett told her to get into the car and she did. (R. 234). Applicant had never seen Foster before that night. (R. 234). Bennett told Foster to contact Jackson and Foster began texting him. (R. 235). They drove straight to the abandoned house. (R. 234-35). Everything Foster did, she did only at Bennett's instructions. (R. 235). Applicant had never heard of Jackson before that day. (R. 236). When they got to the house, they climbed in a back window. (R. 236-37). Applicant said he thought they went to the house to buy weed from Jackson, but that Bennett then decided he was going to rob Jackson. (R. 237). Applicant testified he was unarmed and never intended to rob or kill anyone. (R. 237). When Jackson arrived, he heard him calling Foster's name and then saw him walking in the hallway. (R. 238). He heard gunshots but did not see Bennett shoot Jackson. (R. 238-39). Bennett started going through Jackson's pockets and Applicant jumped out the window and ran to the car. (R. 239). Applicant went to the first apartment and then took everyone to his girlfriend's apartment. (R. 240-41). At that time, Bennett still had his gun and a gun that he took off Jackson. (R. 240). Bennett tried to give Applicant a share of the money, but Applicant testified that he refused. (R. 242).

Applicant testified on his own behalf at his PCR evidentiary hearing. Applicant testified about the perceived lack of contact with his public defender trial attorney (Mr. Delaney), the inconsistent testimony of Foster, and his opinion regarding the Spartanburg County jury venire. Applicant testified that his trial attorney maybe only met with him three times prior to the trial. He said that he filed a motion to relieve his trial attorney but, since he was not able to secure separate counsel, he was forced to go to trial with the public defender. Applicant said he felt like his trial attorney was not prepared to go to trial. He believes that his trial attorney should not have stipulated to the introduction of the ballistics report. At the hearing, Applicant added that the introduction of certain cell phone and/or text messages was improper since there was insufficient evidence at the trial to link the cell phone to Applicant.

Applicant testified that his trial attorney should have cross examined Foster regarding her inconsistent statements. Foster may have provided up to four inconsistent statements and her sister at least three inconsistent statements. Applicant testified that Foster's pre-trial statements directly implicated Applicant as the shooter, but Applicant acknowledged at trial that Foster testified that she could not identify who the shooter was because she was hiding in a different room. Generally, Applicant testified that he was not involved in the planning of the robbery or the shooting of Jackson; albeit, on cross examination he acknowledged that he was present during the crimes and he was aware that Foster and Bennett lured Jackson to the house. Applicant understood that the State's theory at trial was the hand of one is the hand of all. Applicant acknowledged that his trial attorney was trying to present to the jury that his mere presence at the location of the crimes was not sufficient for a conviction. Applicant acknowledged that, upon his trial attorney's request, the trial judge charged the jury on the doctrine of mere presence.

Trial Counsel discussed his typical practice is to meet with his clients, like Applicant, with

more frequency and longer duration in the months prior to trial. Trial counsel testified that he wants to have the most current knowledge of the case directly before trial, rather than fully prepare the case early on when more than a year can pass between the initial assignment of the case and it coming up for trial. Trial counsel testified that he informed Applicant of this preparation strategy early on, but it is common for persons like Applicant to complain. Trial counsel had at least eight in-person visits in the detention center with Applicant while Applicant was awaiting his trial date. Trial counsel also testified that he thoroughly discussed with Applicant that a reasonable trial strategy was to present a case showing that Applicant did not know Foster or Bennett and should be considered separate from the crimes, even though he was present when they were committed. As a trial strategy, it was decided that trial counsel would not object to certain evidence regarding Jackson to downplay the cause of his death and to try to highlight the separation of Applicant from the crimes.

At the evidentiary hearing, Applicant challenged the validity of the Spartanburg County jury venire. Applicant testified that there were only seven black persons in the entire jury pool and only one black person, Juror No. 184, was seated on the jury panel. Neither the State nor the defense raised any Batson challenges after the initial jury strike and before the court recessed around 4:00 pm the first day of the trial. The next morning, before opening statements, defense counsel informed the trial judge that it was brought to his attention the prior evening that Juror No. 184 knew several of Applicant's family members and grew up in the same community in Spartanburg County. (R.45-46) The State informed the trial judge that Jackson's mother also recognized Juror No. 194. Both the State and defense counsel represented to the trial court that had they known of these connections between Juror No. 194, Applicant, and Jackson, they both likely would have struck the juror. Therefore, by agreement, Juror No. 194 was replaced with the

first alternate juror.

Applicant said at the evidentiary hearing that he specifically was *not* challenging the jury panel based on specific jury strikes. Rather, Applicant expressed the opinion that the jury venire was improper at the start because the jury pool was pulled solely from the list of registered voters in the county. Applicant asserted that this method of calling jurors could exclude an identifiable class of persons from the venire as a whole. Applicant did not present any testimony or evidence regarding how the jury pool or jury selection process was conducted. Applicant's trial counsel testified that the jury was selected using the same random selection process that he has observed over more than twenty years in practice. Trial counsel also noted that, in his experience, the juries in Spartanburg County are predominantly white and that the venire and subsequent jury for the trial was typical. Finally, trial counsel confirmed that he wanted to excuse Juror No. 194 because the connection of that juror with Applicant could be a wild card and that the State agreed to striking Juror No. 194

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged multiple instances of ineffective assistance of trial counsel and asserts that as a result of counsel's purported errors, he is entitled to have his conviction reversed and proceed back to the court of general sessions for a new disposition of his case.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

"A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution." Von Dohlen v. State, 360 S.C. 598, 603, 602 S.E.2d 738, 740 (2004), reh'g den. (Oct. 6, 2004), cert den. (March 21, 2005) (citing Strickland v. Washington, 466 U.S. 668 (1984)). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id.; see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See Weaver v. Massachusetts, 137 S. Ct. 1899 (2017) ("[A] defendant has a right to effective representation, not a right to an attorney who performs his duties 'mistake-free.'" (citation omitted)); Burt v. Titlow, 571 U.S. 12, 24 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]"); Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688.

"The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application." Butler, at 442, 334 S.E.2d at 814 (citing Griffin v. Martin, 278 S.C.

620, 300 S.E.2d 482 (1983)). "Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Butler, supra. (internal quotations omitted; citing Strickland, supra.).

The U.S. Supreme Court outlined a two-prong test for determining effective assistance of counsel. "First, a defendant must show that counsel's performance was deficient. Under this prong, the proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (internal quotations omitted; citing Strickland, supra.). "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent 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 117-118, 386 S.E.2d at 625 (internal quotations omitted; citing Strickland, supra.). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018), reh'g den. (March 29, 2018) (citations omitted). "Thus, an applicant must show both error and prejudice to be granted relief in a PCR proceeding." Von Dohlen, 360 S.C. at 603, 602 S.E.2d at 741.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable

miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of

counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial."

Id. at 687 (emphasis added). "In general, the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018), reh'g den. (March 29, 2018).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Preliminary Discussion Regarding Trial Strategy

As a preliminary matter, before addressing the specific issues raised by the Applicant, the Court notes that much of what Applicant now complains about relates to a deliberate and specific trial strategy that was discussed with Applicant before the trial commenced. Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Solomon v. State, 347 S.C. 635, 637, 557 S.E.2d 666, 667-668 (2001) (with client consent, and pursuant to a specific trial strategy, counsel intentionally waived the option to have the jury consider a "not guilty" verdict); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992), reh'g den. (Aug. 31, 1992) (counsel articulated a valid reason why he did not call several witnesses at trial, who counsel explained the witnesses "vacillated when offering their recollections" and did not have actual evidence that the victim husband actually committed

suicide); Truesdale v. Moore, 142 F.3d 749, 754 (4th Cir. 1998) (At a resentencing hearing before a jury that was different than the jury in the original trial of this case, counsel's strategy to not delve into the guilt aspect of the case and instead "try to maximize the mitigation" was found not ineffective.)

In this case, Applicant and two other persons were indicted for the same crime of luring Jackson to an abandoned house under the guise of buying drugs from Jackson and then robbing and shooting him.[5] Applicant testified at the trial that he did not shoot Jackson and that he did not take any of the stolen money from Jackson. This testimony was repeated at the evidentiary hearing. Foster testified at trial that she did not know who shot Jackson and that afterwards she saw Bennett in possession of Jackson's gun. The gun that shot Jackson was never found. The State prosecuted Applicant's case first and argued the theory of the hand of one is the hand of all.[6] Applicant's defense was that although he was present at the abandoned house when the crimes occurred, Bennet shot and robbed Jackson and that Applicant did not participate in the crimes. Applicant claimed he was merely and unfortunately present. Therefore, at trial, defense counsel emphasized testimony and evidence tending to show that Applicant should be considered more like a bystander and chose not to highlight the evidence of the killing itself. Given the circumstances of this case, defense counsel articulated a reasonable reason for employing this trial strategy. See Stokes, supra.

As discussed above, Applicant failed to present any evidence to establish that his trial counsel suggested and presented an improper trial strategy based on the particular facts of this case. Applicant's objections and assertions now regarding the defense of his case are merely

[5] However, Foster, who was 17 years old at the time of the crime, was not indicted for use of a person under eighteen to commit a violent crime.

[6] The subsequent dispositions of the indictments against Foster and Bennett have no bearing on the issues raised in Applicant's PCR hearing. Foster testified at the trial and was cross examined with the fact that she had been indicted for the same crimes, except for the use of an underage person for the commission of the crime. Foster testified that she had not been offered any deals to testify in the trial. Bennett did not testify at the trial.

speculative and do not meet the burden of proof he must establish for relief. Accordingly, to the extent that Applicant's complaints at the evidentiary hearing are resolved by the use of an acceptable trial strategy, Applicant's claims pertaining to ineffective assistance of counsel regarding the use of a particular defense strategy at trial are **DENIED.**

Cross Examination and Objections Regarding Foster

Applicant testified at the PCR hearing that Foster changed her testimony between her early statements to the police and her testimony at trial. Applicant testified that Foster's early statements directly accused Applicant of shooting Jackson. However, at trial Foster testified that she could not identify who shot Jackson because she was in a separate room hiding. During the cross examination of Foster, defense counsel pointed out Foster's possible biases and her possible collusion with Bennett and with other witnesses. Defense counsel also pointed out that Foster and Applicant met for the first time the day of the underlying crimes. The State's redirect of Foster, which Applicant now claims should have been objected to, merely clarifies that although Foster and Applicant had not met previously, Applicant was the person who was at the abandoned house with Foster and Bennett. This Court finds that Applicant has not demonstrated that the cross examination of Foster was not reasonable under the prevailing professional norms, see Cherry, 300 S.C. at 117, 386 S.E.2d at 625, and therefore, Applicant's claims regarding the testimony of Foster are **DENIED.**

Stipulating to Certain Discovery

Applicant argues that defense counsel should not have stipulated to the ballistics report. At the evidentiary hearing this argument was modified to include an objection to the introduction of certain telephone/text evidence. According to the trial transcript (R.190-191), the ballistics report showed that five cartridge cases that were found in the abandoned house were all fired from

the same firearm, and that four spent rounds that were found in the house, two of which were taken from Jackson's body, were also fired from the same firearm, but the report cannot say that the same firearm was linked to both the shell casings and the spent rounds. Again, the gun that was used to shoot Jackson was never found. Defense counsel testified at the evidentiary hearing that the stipulation to the ballistics report was part of the trial strategy to downplay this type of testimony. This Court finds Applicant's argument fails to impinge this trial strategy. See Stokes, supra.; Truesdale, supra.

The State called Officer Inderjit Kaur to provide information regarding a cell phone. (R.118-123) Officer Kaur pulled Facebook Messenger messages off a cell phone and produced these messages in the form of printed screen shots. These screen shots were marked for identification as Exhibit 51 during Officer Kaur's testimony. Officer Kaur provided no additional testimony. Foster testified next. Foster identified Exhibit 51 as a copy of the Facebook Messenger discussion that took place between her account and Jackson. (R.133-135) Over defense counsel's objection that Officer Kaur did not sufficiently authenticate whose phone the Facebook Messenger conversation was taken from, Exhibit 51 was entered. In the evidentiary hearing, Applicant pointed out the confusion in the testimony regarding whose phone was used to message Jackson—whether it was Applicant's or Foster's phone—but Foster's testimony clearly stated that Bennett was the person directing the text conversation with Jackson. Applicant's claims regarding either the ballistic report or the cell phone, including the Facebook messages, does not satisfy the burden that Applicant must prove under Strickland and, therefore, are **DENIED**.

The Jury Venire

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." State v. Shuler,

344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001), reh'g den. (May 23, 2001), cert. den. (Oct. 15, 2001) (citation omitted). "When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson [v. Kentucky, 476 U.S. 79 (1986)] hearing if the opposing party requests one." Id. (citation omitted) "Whether a Batson motion has occurred must be determined by examining the totality of the facts and circumstances in the record." Id. (citation omitted) "The opponent of the strike carries the ultimate burden of persuading the trial court the challenged party exercised strikes in a discriminatory manner." Id. (citation omitted).

At the evidentiary hearing, Applicant said that he was not challenging the specific jury strikes in his case, but he was challenging the makeup of the jury venire generally. As a preliminary matter, this Court first recognizes that the reason the State and the defense agreed to remove Juror No. 184 from the jury panel was race neutral. Applicant's trial counsel confirmed at the evidentiary hearing that neither side wanted a potential wild-card juror on the panel. This Court then reviews the Applicant's challenge of the jury venire generally, which method of drawing jurors from the voter rolls has already been found constitutional.

"The sixth amendment right to a trial by jury has been made applicable to the states via the fourteenth amendment." State v. Hill, 394 S.C. 280, 288, 715 S.E.2d 368, 373 (2011) (citation omitted) (overruled in part regarding the use of a specific jury charge by State v. Stukes, 416 S.C. 493, 787 S.E.12d 480 (2016), reh'g den. July 15, 2016)). "The right to trial by jury contemplates a jury drawn from a pool broadly representative of the community and impartial in a specific case." Id. However, "the Constitution does not require that a juror selection process be a statistical mirror of the community." U.S. v. Burgess, 836 F.Supp. 336, 340 (D.S.C. 1993) (citation omitted). "Where a defendant moves to quash a jury venire or challenges the panel or array, the burden is on him to introduce or offer strong and convincing evidence in support of his motion, and the

failure to prove such contentions is fatal." Hill, at 288, 715 S.E.2d at 373 (citation omitted). Challenges based on merely attorney statements or unsworn and unsupported testimony is insufficient. See Id.; Burgess, 836 F.Supp. at 340.

> In order to establish a prima facia violation of the fair cross-section requirement, the defendant must show that (1) the group excluded is a "distinctive" group in the community; (2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process.

Hill, at 289, 715 S.E.2d at 373 (citation omitted); Burgess, 836 F.Supp. at 341 (citation omitted).

Applicant provided no studies, reports, or other testimony at the evidentiary hearing why it was improper for Spartanburg County to use the voter rolls for the initial jury venire. Applicant testified that his jury was not diverse, but his trial counsel testified that the jury pool in Spartanburg County is predominantly white and the jury panel in Applicant's case was not atypical. Applicant provided no support for his objection to the jury venire. "A showing of mere statistical underrepresentation, without evidence of actual discriminatory or exclusionary practices is insufficient to establish a prima facie violation of the sixth amendment fair cross-section requirement." Burgess, 836 F.Supp. at 340. In fact, South Carolina recognizes that "[the] contention [that the use of voter registration rolls in selecting a jury is unconstitutional] has been generally rejected on the basis that voter registration lists are the most representative source of a community." State v. Hyman, 276 S.C. 559, 564, 281 S.E.2d 209, 212 (1981) (overruled on other grounds regarding improper jury charge for implied malice by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), reh'g den. (Sept. 27, 2019)); see also U.S. v. Cecil, 836 F.2d 1431, 1447 (4th Cir. 1988), reh'g and reh'g en banc den. (Feb. 5, 1988) ("We are aware of no case in which exclusive reliance on voter registration lists has been invalidated." (citation omitted)); Burgess, at 341 ("The Fourth Circuit has resoundingly approved of this method of selecting jurors.).

For the reasons discussed above, Applicant does not meet his burden regarding his objection to the jury venire in Spartanburg County generally and, therefore, his challenge to the jury is **DENIED**.

Inferred Malice Charge

Applicant alleges that his trial counsel should have objected to the implied malice charge to the jury, which is found in the trial transcript starting at line 15 on page 285. At the evidentiary hearing, PCR counsel clarified that she was arguing that the combination of the malice charge plus other charges effectively lowered the State's burden of proof. Jury charges should be considered as a whole in light of the evidence and issues as presented during the trial. Hyman, 276 S.C. at 569, 281 S.E.2d at 214 (citing State v. Tucker, 273 S.C. 736, 259 S.E.2d 414 (1979)). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App. 2003), reh'g den. (March 20, 2003), cert. den. (Feb. 19, 2004). "The substance of the law is what must be charged to the jury, not any particular verbiage." Id. at 318-319, 577 S.E.2d at 464. "A jury charge which is substantially correct and covers the law does not require reversal." Id. at 319, 577 S.E.2d at 464.

The implied malice charge that was charged to the jury in Applicant's trial merely explains that malice may be inferred. Importantly, the charge does not include as an example that the use of a deadly weapon could be used to infer malice. The absence of such an example is the correct version of the implied malice charge. "[R]egardless of the evidence presented at trial, a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon. Of course, whether the deed was done with a deadly weapon or not, the State and the defendant are free to argue the existence or nonexistence of malice based on the evidence in

the record." State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019), reh'g den. (Sept. 27, 2019). The implied malice charge from Applicant's trial provides a general statement of the law. Moreover, the appellate courts have recently affirmed that the implied malice charge does not shift or lower the burden of proof for the State. See State v. Brown, 438 S.C. 146, 154, 881 S.E.2d 771, 775 (Ct.App. 2022), reh'g den. (Jan. 4, 2023) ("inference charges are not burden-shifting if they are permissive and not mandatory.") Applicant's claims regarding the implied malice charge are **DENIED**.

Third-Party Guilt Defense

In his original application, Applicant claims trial counsel was ineffective for failing to present a third-party guilt defense. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. Strickland, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. Id. (quoting Washington v. Strickland, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. Id. "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." Id. at 681 Id. (quoting *Washington*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690).

South Carolina adopted the third-party defense evidentiary rule in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). This rule, as originally referenced in Gregory, requires the trial

judge to apply a probative value verses prejudicial analysis regarding the admission of evidence that someone other than the defendant at trial is guilty of the crimes that were charged.

> [E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.

Holmes v. South Carolina, 547 U.S. 319, 328 (2006) (quoting Gregory, 198 S.C. at __, 16 S.E.2d at 534-535) (internal quotations and internal citations omitted). In Holmes, The U.S. Supreme Court found that the original intent and analysis outlined in Gregory was valid but subsequent cases that shifted the analysis to an evaluation of the strength of the prosecution's case, where a strong case for the prosecution could prevent the defendant from putting forward any evidence of third-party guilt, "violates a criminal defendant's right to have a meaningful opportunity to present a complete defense." Holmes, 547 U.S. at 331 (internal quotations and citations omitted).

During Applicant's trial, testimony was presented to the jury that someone other than Applicant was responsible for robbing and shooting Jackson. Applicant explicitly testified that he was not the person who shot or robbed Jackson. Defense counsel explained at the evidentiary hearing that the defense strategy was to try to convince the jury that Applicant was merely present and not an active participant in the crimes. A review of the trial transcript shows that the State did not object to the introduction of this type of testimony on behalf of Applicant. Indeed, the State's theory was that it did not matter whether Applicant directly participated in the crimes or not because Applicant was guilty under the theory of the hand of one is the hand of all. Although it was not explicitly labeled as such, Applicant presented a third-party defense theory to the jury and, therefore, Applicant's claim regarding the third-party defense is **DENIED**.

CONCLUSION

Based on the evidence presented at the evidnetiary hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to Strickland and Rule 71.1, SCRCP. This Court finds trial counsel adequately conferred with Applicant; logically and realistically evaluated the circumstances of his case; provided effective and competent representation; and that the objection to the jury venire is insufficient. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to 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). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant Jacory Foster remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 5th day of May, 2023.

Perry H. Gravely
Seventh Judicial Circuit

Greenville, South Carolina

WITNESSES

City of Spartanburg

ARREST WARRANT NUMBER

2017A4210104285 (Count One)

2017A4210104292 (Count Two)

ACTION OF GRAND JURY

True Bill

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT

Count One: GUILTY

Count Two: GUILTY

Foreperson of Petit Jury
Date: 10/24/19

DOCKET NO. 18-GS-42-2228

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

MAY 14 2018 **TERM**

THE STATE
vs.

Jacory Sharod Foster

Indictment for

COUNT ONE-MURDER, COUNT TWO-POSSESSION OF WEAPON DURING VIOLENT CRIME
SC Code 16-03-0010, 0020, 16-23-490
CDR Code 116, 549
Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JAN -9 P 1:13
M. ROSE BLACKLEY

WITNESSES

City of Spartanburg

ARREST WARRANT NUMBER

2017A4210104285 (Count One)

2017A4210104292 (Count Two)

ACTION OF GRAND JURY

True Bill

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT

Count One: GUILTY

Count Two: GUILTY

Foreperson of Petit Jury
Date: 10/24/19

DOCKET NO. 18-GS-42-2228

The State of South Carolina

County of Spartanburg

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COURT OF GENERAL SESSIONS

MAY 14 2018 **TERM**

THE STATE
vs.

Jacory Sharod Foster

Indictment for

COUNT ONE-MURDER, COUNT TWO-POSSESSION OF WEAPON DURING VIOLENT CRIME
SC Code 16-03-0010, 0020, 16-23-490
CDR Code 116, 549
Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAY -9 PM 3:31
M. ROPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 04 2018, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-MURDER

The Defendant, Jacory Sharod Foster did in Spartanburg County on or about November 27, 2017, feloniously, willfully, and with malice aforethought, kill one Kiyounnie Duran Jackson, by shooting him and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO- POSSESSION OF WEAPON DURING VIOLENT CRIME

That the defendant, Jacory Sharod Foster, did in Spartanburg County on or about November 27, 2017, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Deputy Solicitor

WITNESSES

City of Spartanburg

ARREST WARRANT NUMBER

2017A4210104288 (Count One)

Direct Indictment (Count Two)

ACTION OF GRAND JURY

True Bill

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT

Count One: GUILTY

Count two: GUILTY

Foreperson of Petit Jury
Date: 10/24/19

DOCKET NO. -
18-GS-42-2229

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

MAY 14 2018 **TERM**

THE STATE
vs.

Jacory Sharod Foster

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR CODE: 139; 0549
CLASS: FELA; FELF

FILED
JEFF CLERK OF COURT
SPARTANBURG COUNTY
2019 NOV -6 PM 1:51
MIDDIE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 04 2018, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-ARMED ROBBERY

That the Defendant, Jacory Sharod Foster, did in Spartanburg County on or about November 27, 2017, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Kiyounnie Duran Jackson, by means of force or intimidation goods or monies of Kiyounnie Duran Jackson, described as follows: US currency and/or a handgun, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

COUNT TWO-POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

That the Defendant, Jacory Sharod Foster, did in Spartanburg County on or about November 27, 2017, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Jacory Shar ol Foster)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202228
A/W#: 2017A4210104285
Date of Offense: 11/27/2017
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] SCB 15264 [signature] SCB68596
BULSA, DERRICK SC Bar# Defendant Delanky, Brendan M. 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 $ ____, 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 SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Deferred ☐Def. Waives Hearing ☐Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 85.00
§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

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk C. Poole
Court Reporter: L. Moffitt

Presiding Judge [signature]
Judge Code: 2053
Sentence Date: 10/24/19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Jacory Sharod Foster)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted])
Address: [redacted] Wilkinson Court)
City,State,Zip: [redacted])
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202228A
A/W#: 2017A4210104292
Date of Offense: 11/27/2017
S.C. Code § : 16-23-049 0
CDR Code#: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death
in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: B. Bulsa SCB15264 Jacory Foster Delaney, Brendan M. SCB68596
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of _____ 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 pr r months/years and subject to South Carolina Department of Probation, Parole and Pardon Ser conditions of probation, which are incorporated by reference. To be served consecutive 10-16-03-490.
☐ 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 SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 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

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel. Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk C. Poole
Court Reporter: L. Moffitt

Presiding Judge
Judge Code: 2053
Sentence Date: 10/24/19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Jacory Sharod Foster)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted])
Addres [redacted])
City,State,Z [redacted])
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202229
A/W#: 2017A4210104288
Date of Offense: 11/27/2017
S.C. Code § : 16-11-0330(A)
CDR Code #: 01 39

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0 139
☐NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: s: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ _____ Recommendation by the State.

ATTEST: D R B Bulsa SCB15264 Jacory Sharod Foster Delaney, Brendan M. SCB68596
BULSA, DERRICK 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 20 ~~d d days/months/years~~ ☐ 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 SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐Deferred ☐Def. Waives Hearing ☐Ordered **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessment 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 (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

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk C. Poole
Court Reporter: L. Moffitt

Presiding Judge _____
Judge Code: 20053
Sentence Date: 10/24/19

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

SPARTANBURG

STATE VS. Jacory Sharod Foster

AKA:

[redacted]

INDICTMENT/CASE#: 2018GS4202229A

A/W#: 2018GS4202229A

Date of Offense: 11/27/2017

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Poss. weapon during violent crime, if not also sentenced to life witho

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: D. R B. Bulsa SCB15264 Jacory Foster [illegible] SCB68596

BULSA, DERRICK SC Bar# Defendant Delaney, Sheldon M. 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, ☐ 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 SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 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 C. Poole

Court Reporter: C. Moffitt

_____ days/hours Public Service Employment

Obtain GED ☐

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May serve W/E begining _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____

$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel. Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [illegible]

Judge Code: 02551

Sentence Date: 10/24/19

SCCA/217 (04/2018)