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S.C. SUPREME COURT

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

MIMI J. MARSHALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001123

APPENDIX

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1 stains that you would expect to see that would inform your
2 opinion?

3 A It could.

4 Q Okay. But none of that's present in this case?

5 A I looked myself at the stains there.

6 Q Okay.

7 A I was present on the scene.

8 Q So you saw them with your own eyes?

9 A I did.

10 Q And in doing that, you determined that there was a
11 void where Ms. Marshall was sitting?

12 A When she left --

13 Q Yes.

14 A -- there was a void there, yes, sir.

15 Q And again, just to be 100 percent clear of the void
16 --

17 A Oh, no, no, you're talking about when I looked at the
18 photographs --

19 Q Yes, sir.

20 A -- in order to do that?

21 Q Yes, sir.

22 A That's when I was looking at the photographs, you are
23 correct.

24 Q Okay. And just making sure we know what a void is,
25 Investigator, I think it was Lee said that if I sat in

1 this chair and he threw a can of paint on me, as much as
2 he might like to do that, there would be a -- basically,
3 an area where there would be no paint where my back is?

4 A That's my understanding.

5 Q I mean, a very simplified version of that?

6 A Yes.

7 Q So when you say that there was a void in the area, I
8 mean, what you're essentially saying is that some -- there
9 was a physical body present through which liquid could not
10 transfer?

11 A On portions of it, yes, sir.

12 Q And you say that theory or phenomenon exist in this
13 case?

14 A Yes.

15 Q And you're 100 percent sure of that?

16 A I am.

17 Q Okay. Now, you also testified a little bit to some
18 of this stuff up here, this information about stringing?

19 A Yes.

20 Q And you noted that --

21 MR. KRZYSTON: Permission to approach the drawing,
22 Your Honor?

23 BY MR. KRZYSTON:

24 Q And you noted that up here on some of this stuff that
25 it's pretty -- again, this is not to scale, this drawing?

1 A No, sir.

2 Q Obviously not. It's a pretty big blood drop. But
3 again, blood drops are small, correct?

4 A Yes.

5 Q And it's a difficult time to measure them, correct?

6 A Yes.

7 Q And basically, because of that difficulty in
8 measuring round and not square objects, you have a margin
9 of error, correct?

10 A Correct.

11 Q And that margin of error could be anywhere from three
12 to, what was the upward limit you said there?

13 A Well, depending on what you're looking at. There's
14 some areas if you're trying to do what you feel like is a
15 complete circle, it could go as high as seven or eight
16 degrees.

17 Q Okay. And that's the amount -- when I say error
18 rate, okay, what I mean is, you could be wrong?

19 A You have to be -- you would be within that margin of
20 error, that many degrees.

21 Q And that's why when you do stringing or you run it
22 through one of the computer's drawing program, you can
23 only really in the best case scenario narrow it down to a
24 volleyball size area?

25 A You're talking about an area of origin?

1 Q Area of convergence or area of origin?

2 A Yeah, you can get closer than that, depending on what
3 the pattern is that you have and how good the stains are.
4 I said when I up here, the best scenario would be a small
5 type impact spatter pattern. That's when you can --
6 depending on the person that's taking the measurements
7 also, that's why you're still going to have a plus or
8 minus three degrees.

9 Q Okay.

10 A You can get within a fairly good range.

11 Q And again, you could be mistaken? You could be?

12 A You could be.

13 Q And there's an error rate associated with the actual
14 scientific-ish test of doing the stringing?

15 A Yes.

16 Q Okay. What do you think the error rate is when you
17 come in and look at a stain and determine an area of
18 convergence?

19 A What do I think?

20 Q Yeah, what's your error rate?

21 A For me, myself, looking at it?

22 Q Yeah, just looking at it?

23 A After 16 years, I wouldn't put it any less than
24 three percent.

25 Q Okay.

1 MR. KRZYSTON: Court's indulgence.

2 (Pause.)

3 MR. KRZYSTON: No further, Judge.

4 THE COURT: Redirect?

5 MS. SAMPSON: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SAMPSON:

8 Q The Defense showed you some photographs, Defense 2
9 through 11?

10 A Yes, ma'am.

11 Q I showed you photographs, State's Exhibit's 74
12 through a whole lot of them -- or 74 through 93, right?

13 A Yes, you did.

14 Q On these photographs, some of the lighting is
15 different, correct?

16 A Yes. It's different based on where you are and a lot
17 of different aspects, yes.

18 Q And just between those pictures and my pictures,
19 they're different. Could it be the way they were printed?

20 A It could be anything, ma'am.

21 Q Doesn't affect your evaluation -- or does it affect
22 your evaluation of where she was sitting when this
23 happened?

24 A No, ma'am.

25 Q And he talked to you about -- do you still have the

1 protocols?

2 A Yes.

3 Q He asked you should -- he went through the six steps
4 or whatever. Can you read to the jury what it says right
5 under that where he stopped reading?

6 A Oh, yes. The listed procedures are a guide for
7 examining blood stain pattern evidence. The variables
8 surrounding each crime scene may necessitate altering the
9 procedure.

10 Q So what does that mean?

11 A It means it's a guide. You try to go by it the best
12 you can, but it may not always work for the scene that
13 you're on.

14 Q And is it okay to go in different order or do you
15 have to go one through six, in that order?

16 A No, this is also a guide to crime scene
17 investigation, and not just blood stain pattern, also.
18 This is an investigative guide that come out.

19 Q In your expert opinion, was stringing necessary in
20 this case?

21 A No.

22 Q Would it have helped at all in this case?

23 A Could it have? In the way -- I couldn't string it.
24 I couldn't tell you because I couldn't do it.

25 Q You couldn't do it?

1 A No.

2 MS. SAMPSON: Nothing further, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. KRZYSTON:

5 Q It's your testimony that you didn't have the stains
6 required to do stringing?

7 A The stains were not good enough to do stringing,
8 that's what I'm saying, yes, sir. Yes, sir.

9 MR. KRZYSTON: Okay. Nothing further.

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

11 All right, ladies and gentlemen, hold on one second.

12 Go ahead and step down, Investigator Richards.

13 Y'all come up to talk about scheduling.

14 (There was a bench conference.)

15 THE COURT: All right. We're going to go ahead and
16 break for lunch. It is 12:20. You've done a good job of
17 staying with us this morning and paying attention. I
18 appreciate that and I know the parties and the lawyers do,
19 too. I'm going to dismiss you now for lunch.

20 It's 12:20. We're going to start back at 2:00
21 o'clock. You are not allowed to discuss the case in any
22 way, shape, or form. You are to keep an open mind about
23 the case and we will start back at 2:00 o'clock.
24 2:00 o'clock. Thank you very much.

25 (WHEREUPON, the jury left the courtroom at 12:19

1 p.m.)

2 THE COURT: All right. Anything before we break?

3 MS. SAMPSON: Not from the State, Your Honor.

4 THE COURT: From the Defense?

5 MS. GOODE: No, Your Honor.

6 THE COURT: Okay. 2:00 o'clock.

7 MS. SAMPSON: Thank you.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Anything from the State?

10 MS. SAMPSON: Not at this time, Your Honor.

11 THE COURT: Ms. Goode.

12 MS. GOODE: No, Your Honor.

13 THE COURT: All right. Bring them in.

14 (WHEREUPON, the jury entered the courtroom at 2:05
15 p.m.)

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

17 THE COURT: Thank you very much.

18 Welcome back, ladies and gentlemen.

19 You may call your next witness.

20 MS. SAMPSON: The State calls Investigator Joe
21 Clarke.

22 THE COURT: All right. Please come forward and be
23 sworn.

24 JOE CLARKE, after being duly
25 sworn, testified as follows:

1 THE CLERK: Thank you. Please have a seat in the
2 witness stand. State your full name for the record and
3 spell your last name.

4 THE WITNESS: Joseph Clarke, C-L-A-R-K, with an E on
5 the end.

6 DIRECT EXAMINATION

7 BY MS. SAMPSON:

8 Q Good afternoon.

9 A Good afternoon.

10 Q What is your official title?

11 A Official title is a sergeant.

12 Q I always call you investigator, but I forget you're
13 actually a sergeant?

14 A Just don't call me late for lunch, I'm good.

15 Q Where do you work?

16 A Richland County Sheriff's Department.

17 Q And what do you do there?

18 A Currently, I'm in charge of the assaults unit.

19 Q What does that entail?

20 A I manage seven investigators and two civilian
21 employees and we deal with all things involving assaults.
22 It's aggravating and then simple assault and then also
23 domestic violence cases.

24 Q And can you take us through your history as being
25 employed as a law enforcement officer?

1 A Certainly. I got out of the Army and then went to
2 college. And after getting a degree in criminal justice,
3 I was hired by the University of South Carolina Police
4 Department. They actually have a police department. And
5 I worked there for about three years, leaving there in '03
6 to come to the sheriff's department where I've been ever
7 since. Upon going to the sheriff's department -- at USC
8 PD, I was a patrol officer doing standard parole
9 operations in a car, doing things you've seen, writing
10 tickets, that kind of thing.

11 When I came to the sheriff's department, same thing,
12 I was a patrol officer for about three years before
13 becoming a supervisor on the road. And then after that
14 point, I left parole operations and tested to become an
15 investigator and became an investigator in about '06.

16 At that point, I went into -- I've done pretty much
17 everything you can do, to include a stint in narcotics
18 undercover. The only thing I really haven't ever done is
19 white collar crime. I've mostly been in the assault,
20 special victims unit and domestic violence realm.

21 Q Do you receive training in order to be an
22 investigator?

23 A You do. Unlike other disciplines in law enforcement,
24 an investigator, detective is one of those things where
25 there is a basic qualifications test, but then most of the

1 work is -- most of the qualifications come -- or
2 credentialing comes as a result of on-the-job training and
3 then classes and things that go along.

4 Q Do you take classes often or yearly?

5 A We do. There's the standard 40 hours recert. All
6 law enforcement officers have to do that in the State of
7 South Carolina. Then there is -- in any given year, it
8 would be unheard of for me to not to have been in three or
9 four seminars. Some are a week, two weeks, three days,
10 that type of thing.

11 Q I want to take you back to August of 2015, what were
12 you employed as at that time?

13 A At that point, I was attached to the special victim's
14 unit as an investigator. I was also a named primary
15 homicide investigator.

16 The way we do it, the division of labor at the
17 sheriff's department as that goes is there's six to ten
18 investigators that are titled primary homicide
19 investigators, meaning that if you are assigned to a
20 homicide that your duties normally cease -- your normal
21 duties cease and you just concentrate on that homicide,
22 walking it all the way through, possibly -- you know,
23 obviously, to adjudication here in court, but that's the
24 plan.

25 So on that particular day, I was the named primary

1 homicide investigator for that particular week. You saw
2 Sergeant Caldwell before. He would have been the shift
3 supervisor. I'm not going to bore you with the minutia.
4 Starting on a Thursday night at midnight to the next
5 Thursday night, there's six or seven investigators in
6 Richland County that are going to handle all the felony
7 level and sometimes misdemeanor level cases that arise,
8 particularly in those late hours. It's not common to get
9 called out at 3:00 in the morning, 5:00 in the morning,
10 6:00 in the morning, whatnot to catch those things.

11 If there is a homicide during that week, your primary
12 homicide investigator is going to be tasked with taking
13 that investigation.

14 Q In this case, were you assigned as the primary
15 investigator?

16 A I was.

17 Q So tell me how you got involved in the case, start
18 from the beginning.

19 A I was called at home first by the desk sergeant to
20 tell me there was a homicide and that we had a deceased
21 female in Richland County, and that it was possibly a
22 crime of violence and, therefore, I was asked to respond.

23 I made contact with the shift supervisor at that
24 time, who was Sergeant Caldwell, who told me a little bit
25 more what about he knew. And then my job was to get to

1 the scene and start coordinating some of the things that
2 were going on.

3 I traveled to Leesburg Road to the Bel-Aire Mobile
4 Home Park, and there, I made contact with people that were
5 already on the scene. At that point, we had police tape
6 up. We had several uniform officers there, and then I
7 believe CSI was arriving at the same time.

8 At that point, we were in a holding pattern because I
9 had learned that some family members had made entry into
10 the home for reasons that had been explained. They were
11 unsure about their loved one in there or whatnot. From
12 that point on, I thought let's do this as an
13 investigation, which it had just become, and let's get a
14 search warrant.

15 At that point, I gave information to Drew Caldwell,
16 Sergeant Caldwell, who was typing a search warrant. We
17 were going to locate a judge on Sunday morning and get
18 them to sign it.

19 Q I'm going to stop you for a second. How do you get a
20 search warrant?

21 A Well, in this case, we have information, credible
22 information that there is a body inside, someone is
23 deceased and that there's been a crime. At that point,
24 we've now elevated to probable cause to get a search
25 warrant.

1 Just from the exterior of the home, now we have
2 daylight to work with, I could see what appeared to be
3 reddish stains on the windows and whatnot, so it seemed
4 that something dynamic had taken place inside the trailer.

5 So, at that point, we want to secure a search warrant
6 by giving information to someone who's typing it. It's
7 typed up in a form and then it is hand carried to a judge,
8 magistrate or higher, in the county and the judge agrees
9 with our probable cause to sign off on that said search
10 warrant. We do that by giving a description of the
11 premise. We give probable cause for why we think we
12 should go inside, the collection of evidence in this case,
13 the location of a body, and do those types of things.
14 That's just a process we go through to put this in a
15 framed-up search warrant so we can proceed as we move
16 through the home.

17 Q So were you able to obtain a search warrant for the
18 home in this case?

19 A We were.

20 Q So once that was obtained, what did you do?

21 A Once a search warrant is obtained, then I'm going to
22 step back a little bit and let the CSI do their thing.

23 Q Why is that?

24 A Well, I think at this point -- I've learned over time
25 you do a number of these, and I really can't count anymore

1 how many of these I've done, you want there to be as much
2 preservation of evidence as possible. You don't want to
3 miss anything if it's possible. We're not dealing with a
4 vacuum here. We're dealing in a dynamic situation. We're
5 dealing with a mobile home park. We're dealing homes that
6 are in close proximity to each other. It's a Sunday
7 morning. The weather was fairly pleasant. There's people
8 about. So my job was to hold back and let CSI work their
9 way in. I always equate to it ripples in the pond. The
10 rock hits the pond, the ripples come out, our job is to
11 then work those ripples back and kind of get back to where
12 the rock hit pond.

13 Q So you let them go in first, is that fair to say?

14 A That is.

15 Q What did you do while they were doing that?

16 A Well, in the process of getting the search warrant, I
17 had time to speak to several folks. I spoke Amanda and
18 Tamieka individually. I had my county truck there. It
19 was warm, it was getting warm, so we sat in the cab of the
20 truck. I sat with both women individually and learned
21 what their relationships were. Tamieka, of course, being
22 the daughter of the decedent and Amanda, being the
23 daughter-in-law.

24 I wanted to gather some information one, about their
25 mother, Doris, who I did not know, and also, perhaps, who

1 our suspect was. In that same process, I'm learning
2 things from people in the mobile home park and both
3 Tamieka and Amanda, whom are speaking to folks on their
4 phones and whatnot. So we're collecting a lot of
5 information.

6 I'm simultaneously talking to Drew Caldwell, who's
7 back at headquarters finishing up the search warrant and
8 I'm talking to road units that are present and I'm talking
9 to CSI, who's present. So I'm, basically, kind of
10 directing where everything is going on.

11 But in that process of talking to Amanda and Tamieka,
12 I was able to learn about their mother and kind of her
13 standard -- how she lived her life. I learned she worked
14 regularly.

15 MS. GOODE: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MS. SAMPSON:

18 Q You don't need to tell me what you learned about
19 Ms. Marshall. Were you able to ascertain what time she
20 got home that night?

21 A I was.

22 Q What time did you believe it was?

23 A Somewhere after 9:00 o'clock, possible 9:30ish.

24 Q Were you able to gather any information that lead you
25 to believe that the Defendant was a suspect at that time?

1 A Yes.

2 Q What was that information?

3 A Well, again, that's where we were getting lots of
4 bits of information. One, apparently, he had already
5 visited his brother, Robert, and Robert had already
6 expressed to law enforcement that --

7 MS. GOODE: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MS. SAMPSON:

10 Q Let me ask you this. Who called in the welfare
11 check?

12 A Robert.

13 Q Robert Marshall?

14 A Marshall.

15 Q And that welfare check was for what?

16 A He had reason to believe that his sister-in-law was
17 dead.

18 MS. GOODE: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MS. SAMPSON:

21 Q Based on what he stated, they did a welfare check?

22 A That is correct.

23 Q And based on that information, was that what led you
24 to believe the Defendant was a suspect?

25 A Yes.

1 Q Okay.

2 A Amongst other things.

3 Q What other things led you to believe that?

4 A Well, the fact that he had told his brother he had
5 shot his wife.

6 Q Okay. So that's -- what he had stated was part of
7 what led you to believe he was a suspect, he, the
8 Defendant?

9 A Correct.

10 Q Did you have any idea -- what information did you
11 have about any vehicles he might have been in?

12 A Well, the vehicle was missing, not there. And as I
13 understand it, that was primary transportation for Doris,
14 it was her vehicle. That was confirmed by family members
15 that were there and said the vehicle was gone. And Joe
16 Marshall was gone as well, Mimi Joe.

17 Q So the Defendant was not there?

18 A Not present.

19 Q And where was the car?

20 A It wasn't there.

21 Q What, if anything, did that mean to you?

22 A It meant that the potential suspect was either still
23 operating that vehicle in the area or had fled. That
24 subject was maybe in the vehicle down the road. We had a
25 number of -- a couple of scenarios are going through my

1 head. We had heard --

2 MS. GOODE: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. SAMPSON:

5 Q But at this point, you believed he was to be a
6 suspect?

7 A Absolutely.

8 Q Okay. Based on that, what did you do?

9 A Well, at that point, we got a good description of
10 Mimi Joe Marshall, the vehicle, the idea that he was
11 potentially still armed. We put a BOLO out at that point,
12 and that's a precautionary matter for law enforcement that
13 may encounter him in the next near future, but also to
14 have a BOLO put out for other agencies in the area to be
15 looking for the subject and possibly the vehicle he was
16 operating.

17 Q How long did you stay on the scene?

18 A I was on the scene until Doris was removed from the
19 scene.

20 Q What did you do at that point?

21 A At that point, I had already learned that Mimi Joe
22 had been apprehended at Tony's Lounge.

23 Q And you weren't part of that apprehension or were
24 you?

25 A Well, I mean, I'm coordinating it. I'm hearing it.

1 When the report came over from road units that they were
2 out with him, I quickly went direct with that deputy and
3 said, Hold what you got. Don't move the car, don't do
4 anything. I was told that the weapon, the shotgun was in
5 the vehicle still. They could see it. I said, Fine.
6 We'll tow it in place. Don't touch the vehicle. So they
7 took him into custody. I said, Transport him to
8 headquarters.

9 Q Was he transported?

10 A He was.

11 Q Okay.

12 A And then I went to headquarters, assuming the vehicle
13 was being towed as per my wishes back to headquarters to
14 put in the garage.

15 Q Was the vehicle towed?

16 A As I understand it, it was.

17 Q So what was the next step you did?

18 A At that point, I got to headquarters, conversed
19 quickly with Sergeant Caldwell, read a written statement
20 from both Robert Marshall, Sr., that would be his brother,
21 and his nephew, Robert Marshall, to kind of get an idea of
22 what Mimi had told them and what they had seen or
23 observed. At that point, I went and sat down and
24 interviewed Mimi Joe Marshall.

25 Q And before you talk to him, is there anything that

1 you do?

2 A Yes, I advise him of his right to counsel, his
3 Miranda warning.

4 MS. SAMPSON: May we approach, Your Honor?

5 THE COURT: Sure.

6 (There was a bench conference.)

7 MS. SAMPSON: May I approach the witness, Your Honor?

8 BY MS. SAMPSON:

9 Q I'm going to show you what's been marked as State's
10 Exhibits 1 and 3 and ask if you recognize those?

11 A I do.

12 Q And what is State's Exhibit No. 1?

13 A The first one is going to be the Richland County
14 interrogation advice of rights form.

15 Q And what's State's Exhibit No. 3?

16 A A typed statement from Mimi Joe Marshall.

17 Q And do those fairly and accurately depict them the
18 way they were back when you did in August of 2015?

19 A They do.

20 MS. SAMPSON: At this time, Your Honor, we'd ask to
21 admit State's Exhibit Nos. 1 and 3 into evidence as noted?

22 MS. GOODE: No objection, Your Honor.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit Nos. 1 and 3 were
25 admitted into evidence.)

1 BY MS. SAMPSON:

2 Q All right. I'm going to start with State's Exhibit
3 No. 1. Can you explain to the jury what that is?

4 A Yes. This is a -- you may have seen this earlier in
5 the trial. This is going to be a standard sheriff's
6 department interrogation advice of rights, Miranda.
7 You've seen that on television. It's something we read
8 off the cards. We also sometimes memorize them, probably
9 not a good idea. What we like to do is read it.

10 What we do is we advise the person that we want to
11 speak to of their rights. We go through it
12 systematically, checking it off. Once we do that, we ask
13 if they would like to waive their rights, meaning would
14 they like to speak to us without counsel present. If they
15 agree to do that, sign it off as well and we proceed with
16 an interview.

17 Q Did you that with Mr. Marshall?

18 A I did.

19 Q How did you do that with him?

20 A First, I identify I'm speaking to Mimi Joe Marshall,
21 make sure I spell his name correctly, make sure I put the
22 address, date and time and where we were. In this case,
23 we were at 5623 Two Notch Road, which is Richland County
24 headquarters. They're located off of Two Notch. I put
25 the date and the time at the beginning. As I go through,

1 you may be able to see it, I do check marks as I read it.

2 Would you like me to read it?

3 Q Yes.

4 A Before we ask you any questions, you must understand
5 your rights. You have the right to --

6 Q I'm going to interrupt you for just a second.

7 A Certainly.

8 Q Do you read each and every one of them and then check
9 it off or how do you actually do it?

10 A I read them off one at a time and check them off.

11 Q So go ahead.

12 A Before we ask you any questions, you must understand
13 your right. You have the right to remain silent.
14 Anything you say can be used against you in court. You
15 have the right to talk to a lawyer for advice before we
16 ask you any questions and have a lawyer with you during
17 any questioning. If you cannot afford a lawyer, one will
18 be appointed for you before any questioning if you wish.
19 If you decide to answer questions now without a lawyer
20 present, you still have the right to stop answering at any
21 time. You also have the right to stop answering at any
22 time until you talk to a law enforcement.

23 Then I'll say, Do you understand that? And they will
24 most always say they understood. And when they say they
25 understood, I'll say, Fine, sign. In this particular

1 case, I witnessed it and in this case, I had Sergeant
2 Caldwell present, so I had him sign it, as well.

3 Then we proceed to the next part, that's the waiver
4 of rights. That goes as follows: I have read this
5 statement of my rights and understand what my rights are.
6 I am willing to talk and answer questions. I understand
7 and know what I am doing. No promises have been made to
8 me and no pressure or coercion of any kind has been used
9 against me. Sometimes I have to define coercion to folks,
10 and I do that by saying there's no reward and there's no
11 punishment for not talking to me. You're doing this of
12 your own free will and accord. There's not going to be
13 any pressure on you. And folks understand that we're not
14 coercing them to do that.

15 If they agree to that and want to speak to us, then
16 we again sign. In this case, I was able to have it
17 witnessed and I had Mr. Marshall sign and then we proceed.

18 Q Did you ask him any additional questions?

19 A Yeah, it's something I've done and I can't take
20 ownership of it. I learned it from a more experienced
21 person years ago. One of the things I like to do is ask
22 somebody can they read and write. There's no shame in
23 that. If they can't, I need to know that. And so, he
24 said he could. And I asked, What's the highest level of
25 education you've achieved? In varying degrees when I deal

1 with people, what I deal with. In this case, he said he
2 had finished the sixth grade and that he understands what
3 I said. So I make sure we go through this systematically
4 so he understands what we're talking about.

5 Q Okay. And while you're doing this, did he ask any
6 questions to clarify anything?

7 A No.

8 Q Did he ask to speak to a lawyer first?

9 A No.

10 Q Once you talked to him -- once you get him to sign
11 that, what was next step that you did?

12 A At that point, I started a conversation with Mimi Joe
13 Marshall. And, you know, at this point, I've already
14 gotten some information. I've already -- like I said,
15 I've reviewed the statement he gave his brother and that
16 he gave his nephew. I've been to the scene. I've taken a
17 good look at the scene, so I know what was there and what
18 wasn't there.

19 So I start eliminating the obvious. You know, this
20 up here was not a suicide. If it was, someone had removed
21 the weapon. This was not a gun cleaning accident. There
22 was no materials laying around like somebody was cleaning
23 a gun. It certainly didn't look self-inflicted. So
24 whatever happened here, someone had done it and taken the
25 weapon with them.

1 At that point, I also knew that he had already told
2 both his nephew and his brother that he had shot Doris.
3 And in the statements they provided --

4 Q I don't want you to go into what they talked to you
5 about?

6 A Fair enough.

7 Q But based on that information, why is that
8 information important to you before you speak -- to have
9 that information before you speak to the Defendant?

10 A Well, I know I have a line of questioning that I
11 would like to get to. In this case, you know, I think the
12 suspect information was pretty well established. We knew
13 who we were looking for. We maybe need to know why, you
14 know, and maybe know some more things.

15 Q As you're sitting there with him, I believe you
16 already said this, but Caldwell was also there with you?

17 A Yes. In a situation like this, we like to have a
18 witness in the room with us. And so at that point,
19 Sergeant Drew Caldwell was in the room with me as I began
20 to question Mimi Joe.

21 Q Anyone else in there?

22 A No.

23 Q So while you're questioning him, what is his demeanor
24 like?

25 A Solemn, you know, but he would talk to us. He seemed

1 sober and alert, but was very forthcoming when I asked him
2 questions. There was no -- I didn't see any hesitation
3 from him.

4 Q And I interrupted you, but you start a conversation
5 with him. Is it immediately question and answer? How did
6 you do that?

7 A No, you learn in this -- you do this job long enough,
8 you learn that sometimes you do need to talk to somebody,
9 kind of norm them in a way. I'm not a psychiatrist or a
10 psychologist, but you want to know -- kind of let's hear
11 how they talk. What's the cadence of their speak. Do
12 they understand the way I'm talking? You know, am I
13 talking too fast? Am I using words they don't understand,
14 you know. You want to just kind of norm them a little
15 bit, find out a little bit about them. I usually go about
16 it, you know, where are you from, how long you lived here,
17 you know, and use some sort of -- you know, what do you do
18 for a living, that kind of thing. You kind of learn a
19 little something about them.

20 Q Did you do that with Mr. Marshall?

21 A Yes.

22 Q And this norming, as you called it, or conversation,
23 do you put that in a written statement?

24 A No.

25 Q So did he give you any indication as to why this

1 happened?

2 A Yes.

3 Q What did he tell you?

4 MS. GOODE: Objection, Your Honor.

5 THE COURT: What's the objection?

6 MS. GOODE: I'm not sure if we -- can we approach?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: All right. Ladies and gentlemen, step
10 back to your jury room. Do not discuss the case. Keep an
11 open mind. We'll be right back with you.

12 (WHEREUPON, the jury left the courtroom at 2:31
13 p.m.)

14 THE COURT: All right. Ask him the last question you
15 just asked him.

16 BY MS. SAMPSON:

17 Q I believe my question was why -- did he indicate to
18 you -- or what did he tell you as to why this happened?

19 A He started off saying that the gun had gone off
20 accidentally as he got it out of a closet. I explained to
21 him there's no closet in the living room, try again. He
22 said, I shot her at the front door. I knew he had not
23 shot her at the front door. The blood evidence was
24 overwhelming, what I saw at the scene, that didn't happen.
25 She had been shot sitting in a sofa with her lunch bag

1 beside her feet.

2 Q So then what did you do?

3 A At that point, I said, Were you arguing with her,
4 Joe? And he said, Well, we were talking at each other. I
5 said, Okay, is that an argument? Because at that point, I
6 had heard that he mentioned -- with the jury not present,
7 I can explain. He told his brother that he had a burning
8 in his private parts and that he suspected Doris had given
9 him a sexually transmitted disease.

10 Q Did you ask him about that?

11 A I did.

12 Q What did he say?

13 A He denied that at this point.

14 Q And that's in his written statement?

15 A That is in his written statement. He also stated
16 that there was a problem with the front tire of the car
17 that he had recently had repaired for her and that he was
18 concerned for her safety and that she was not calling him
19 back in time. And I said, Explain that. He said he knew
20 what time she left the food service and stated that he
21 could not get her on the phone. I said, Did that anger
22 you? Did that make you upset? He said, Well, we were
23 talking at each other about that. I said, Was it about
24 that? And that's why I gathered, perhaps, there had been
25 an argument.

1 At that point, I had already learned from his nephew
2 who said they had been arguing because Mimi Joe told his
3 nephew that, as he told his brother that he had shot his
4 wife, that they had been arguing. So I assumed there may
5 have been some sort of quarrel in the house.

6 I said explain to me how a weapon accidentally goes
7 off, but yet, it's pointed at her face? And he says, She
8 did that (indicating). I said, So that means you had it
9 in her face? He said, Well -- I said, Well, if she did to
10 do that, that means the barrel of the gun was in her face.

11 Q Did he answer that?

12 A Yeah, he said it went off at that point that she
13 grabbed the gun. I said, Explain to me how she grabbed
14 the gun. And then he swatted, he swatted away. So I
15 said, The gun was in her face? He said, Well, she grabbed
16 the gun.

17 Q And that's in his written statement?

18 A Yes. So at that point, I knew there had been either
19 some sort of argument or quarrel in the house. Obviously,
20 I had spoken to both Amanda and Tamieka, who stated that
21 there had been some domestic violence in the past.

22 Q And we're not going to talk about that.

23 A That's fine. I wanted to flesh out the reason why I
24 go down that line of questioning.

25 Q Well, let me ask you this, getting back to what's in

1 his actual statement, did you ask him about having the gun
2 in his hand the whole time?

3 A Yes.

4 Q What did he tell you about that?

5 A He did.

6 Q What did he say? Let's have the specifics so we can
7 get this out of the way?

8 A All right. You want to go through it?

9 Q Go on Page two, the third question -- fourth
10 question.

11 A Tell me what happened in the front room with your
12 wife?

13 Q You can start there, that's fine.

14 A Question: Tell me what happened in the front room
15 with your wife before the gun went off?

16 Answer: I told her when she came in the house that I
17 had just called her job. She was a little late and I was
18 worried about her. I just had the car's front end
19 alignment fixed with a new tire for her safety. She comes
20 in with an attitude. I told her I was worried about her.
21 She says, quote, you got no reason to worry about me,
22 unquote. She said it with an attitude. We were just
23 talking at each other.

24 Q Next question?

25 A Next question. Question: Did you have the gun in

1 your hand the whole time?

2 Answer: My gun was lying against the wall the whole
3 time. When I decided to check out around my trailer with
4 my shotgun, Doris was coming in the front door. We are
5 right there at the same time. She comes in the door and
6 that is when I told her I was worrying about her. That is
7 when the gun went off. She had just touched the gun when
8 it went off. She took the gun and threw it up.

9 So I asked him, What's threw it up mean? And he said
10 the gun -- obviously, the barrel was in her face and she
11 did this. I believe he's got the sequence out of order
12 because he's already had the conversation with her prior
13 and then, suddenly, he needed to do some sort of security
14 check around the trailer.

15 Q I want you to go back to the first question, the very
16 first question on that page.

17 A First question?

18 Q Uh-huh.

19 A Question: Joe, we found your wife deceased in your
20 home this morning. Can you tell me what happened?

21 Answer: When she came home from work last night, I
22 had my gun in the front room. I did this because the
23 trailer park is an unstable place. She came at me. She
24 grabbed the gun. It went up and it went off. I grabbed
25 her. I had her head in my hands. I let her down in the

1 chair. I knew she was dead. I should have handled it
2 differently -- in a different way, the way I did not
3 handle it. I should have killed myself.

4 Q All right. So, all that's in this written -- and you
5 were doing it differently telling me what he said, but you
6 did put that in writing?

7 A Correct.

8 Q Now, I'll go back to that. The next question down
9 was, So you were standing up facing the front when the
10 shooting happened? Can you start there?

11 A Question: So you were standing up facing the front
12 door when the shooting happened?

13 Answer: Yes, sir.

14 Question: What time was this?

15 He said, I would say about 10:00 to possibly
16 11:00 p.m.

17 Q And then you talked to him about where you went after
18 the shooting?

19 A Correct.

20 MS. SAMPSON: I don't think that -- is that an issue?

21 MS. GOODE: No.

22 MS. SAMPSON: Okay. I'm just trying to get through
23 the stuff that was an issue really quick. We are not
24 going to mention -- and I'm saying this so the jury is not
25 here so I can tell him. Where it says Joe, have you ever

1 been locked up for CDV in the past? We're going to redact
2 that, so do not say that.

3 A I'll even scratch it off.

4 Q I will do that. Don't touch that. We will do it.
5 You ask him what about kind of gun it is. You then ask
6 him about talking to his brother?

7 A I did.

8 Q Can you read that, please?

9 A Question: Did you tell your brother that the gun
10 accidentally went off when you took it from a closet or
11 that she was cheating on you and may have given you a
12 venereal disease.

13 He said, No, I did not.

14 But previously, he had in a statement to --

15 Q That's what the brother say, I understand that. And
16 then go to the next set of questions.

17 A Question: Are you sorry you shot your wife?

18 Answer: I will tell you how sorry I am. I was going
19 to kill myself today. I was going to put that shotgun
20 under my throat and pull the trigger.

21 Continue?

22 Q Uh-huh.

23 A Question: Joe, are you a convicted felon?

24 Answer: Yes.

25 Question: Is that for shooting in the past?

1 Q And we need -- I'm going to say we need to redact
2 that, so do not say that again.

3 A Okay.

4 Q Next one?

5 A Question: So you were aware you were not supposed to
6 have a firearm?

7 Absolutely.

8 Question: How did you get the shotgun?

9 He said, It belonged to my son who is dead.

10 MS. SAMPSON: That's all in the statement that I've
11 already got in, except we'll redact those two parts out.

12 MS. GOODE: The issue I have, Your Honor, is with the
13 question regarding the venereal disease, that's
14 information he got from Robert, Sr. That testimony has
15 not been offered to the jury at all. I think that this is
16 essentially hearsay in the question that Investigator
17 Clarke got from Robert, Sr. And he's asking him, you
18 know, did you tell your brother this? And that
19 information has to come from somewhere, but we don't
20 have -- I just -- this question -- or that she was
21 cheating on you and had given you a venereal disease,
22 that's information he got from Robert, Sr., and there
23 hadn't been any testimony.

24 THE COURT: Okay. Here's the rules. Are you ready?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. You can't talk about the domestic
2 violence or any history of domestic violence. Do you
3 understand that.

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Read me the questions about the
6 convicted felon again at the end or just let me see it,
7 one of the two.

8 MS. SAMPSON: I can give you mine. It's not written
9 on. It's the last page.

10 THE COURT: Okay. So you see where it says, Joe, are
11 you a convicted felon? Yes. Is that for shooting in the
12 past? Yes. Those two questions are out.

13 THE WITNESS: Yes, sir.

14 THE COURT: The question: So you were aware you were
15 not supposed to have a firearm? Absolutely, that question
16 is fine, and then the last question is fine. All right.
17 The information about from Robert Marshall, Sr., that's
18 admissible.

19 MS. SAMPSON: Okay. Do you want me mark -- it's in
20 the written statement, so do you mean me to redact that,
21 too?

22 THE COURT: What?

23 MS. SAMPSON: That question is in the statement
24 that's already been introduced.

25 THE COURT: I know, I just said it's admissible.

1 MS. SAMPSON: Oh, I'm sorry. I misunderstood. I
2 thought you said you didn't want it in.

3 MS. GOODE: As far as the last page goes, Are you a
4 convicted felon, that's redacted.

5 MS. SAMPSON: (Nods in the affirmative.)

6 MS. GOODE: And the very next question for the
7 shooting.

8 THE COURT: Okay. Are you good?

9 THE WITNESS: I think so.

10 MS. SAMPSON: I'm marking it out so we don't say it.

11 THE WITNESS: No mention of CDV in any way, shape, or
12 form.

13 MS. SAMPSON: I just marked it out. I'll show you.

14 THE WITNESS: And no mention -- okay.

15 MS. GOODE: For efficiency, I'll come up here.

16 MS. SAMPSON: The convicted felon is out.

17 MS. GOODE: And the next question.

18 THE WITNESS: No, venereal disease is in.

19 MS. SAMPSON: So is the shooting in your past, that's
20 out?

21 THE COURT: Yes.

22 MS. SAMPSON: And the question about him being a
23 convicted felon is out?

24 THE COURT: (Nods in the affirmative.)

25 MS. GOODE: But next one about not being able to

1 carry a firearm is in.

2 THE COURT: The one that says are you aware you can't
3 own a gun, that's fine.

4 MS. SAMPSON: Okay. So I have redacted -- it's on
5 the last page, question number two and the answer and
6 question number three and the answer. And then I redacted
7 the CDV question. And we'll do it better. I just didn't
8 want him to accidentally say it so I darkened it out so
9 nobody can read it.

10 THE COURT: Okay. Bring them back in, Mr. Dye.

11 (WHEREUPON, the jury enters the courtroom at 2:42
12 p.m.)

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

14 THE COURT: All right. Okay.

15 MS. SAMPSON: Thank you.

16 CONTINUED DIRECT EXAMINATION

17 BY MS. SAMPSON:

18 Q All right. So -- I have no idea where we stopped.

19 All right. So he was -- you were talking to him about
20 what had happened and you were explaining to us what he
21 said happened -- why this happened. I think that's it.
22 Is that correct?

23 A Well, to kind of bring it back again to where we
24 were, there's information we now know that's irrefutable.

25 Q And I don't want you to talk about what anybody told

1 you.

2 A Okay.

3 Q I just want you to go to what he told you.

4 A Right. At that point, we start questioning him
5 specifically about the event that we want to talk to him
6 about, obviously, the killing of Doris. And so, at that
7 point, we start asking a series of questions.

8 Q And just so the jury understands the process, do you
9 ask them the questions and then immediately do the written
10 statement?

11 A It's -- we don't -- in Richland County, we don't
12 record -- video or audio our interviews. I'm going to be
13 one of the first investigators to go on record to say I
14 wish we did because it eliminates this process right here.
15 I think it's perfect for transparency, but it's also
16 perfect -- it helps all parties involved in working that
17 process through, so it's kind of a hodgepodge.

18 A question will be asked, which may then begin
19 another question. We'll say okay, let's go that route and
20 see where that goes. But many times, there are some basic
21 things -- in this case that I needed or felt were
22 important and that was, did you, in fact, Mimi Joe
23 Marshall shoot your wife with the shotgun. I wanted that
24 answer. Where is the shotgun? I had that answer already
25 because the shotgun was in the car that we found as he was

1 coming out of Tony's Lounge. So some of this stuff had
2 already been done. Some of these questions had already
3 kind of answered themselves. So then we really get to I
4 kind of wanted to go the route -- it's important at this
5 point that this woman has been killed. Why?

6 Q Okay. So I want to stop you. So, initially you
7 asked him why or what happened this morning and what did
8 he tell you? And you can refer to his written statement.

9 A I think that should probably be the way to do it.

10 Q Page 2.

11 A Yes, ma'am. In my statement, I said, here's my
12 question, Joe, we found your wife deceased in your home
13 this morning, can you tell me what happened?

14 His answer was, When she came home from work last
15 night, I had my gun in the front room. I did this because
16 the trailer park is an unstable place. She came at me.
17 She grabbed the gun. It went up and it went off. I
18 grabbed her. I had her head in my hands and I let her
19 down on the chair. I knew she was dead then. I should
20 have handled it a different way, the way I did not handle
21 it, I should have killed myself.

22 Q Were you able to -- was the -- what was next thing
23 you did?

24 A Well, at that point, I go, Okay, well, let's talk
25 about that. Let's unpack that a little bit. Where is the

1 gun? First, he told me it was in a closet. I had been to
2 the home. I had been there when we took Doris out of the
3 home. I said, There's no closet in that living room, Joe.
4 What closet are you referring to?

5 He said, No, I shot her at the front door. I knew
6 that was also not true simply because the evidence did not
7 support that in any way. She clearly had been sitting on
8 a sofa with her lunch bag beside her foot and had been
9 shot in the face at close range with a shotgun. That's
10 where she was killed instantly.

11 Q So then on the statement, what's the next thing you
12 have written down?

13 A I said, question: What do you mean you should have
14 handled it a different way?

15 Answer: I should have called y'all first.

16 Q Then what's the next thing you asked him?

17 A On the statement?

18 Q Yes, sir.

19 A Question: Tell me what happened in the front room
20 with your wife before the gun went off?

21 Answer: I told her when she came in the house that I
22 had just called her job. She was a little late and I was
23 worried about her. I had just had the car's front end
24 alignment fixed with a new tire for her safety. She comes
25 in with an attitude. I told her I was worried about her.

1 She says, quote, you've got no reason to worry about me,
2 unquote. She said it with an attitude. We were just
3 talking at each other.

4 Q And what, if anything, did he indicate to you as to
5 whether he was angry or not with her?

6 A I said, Well, were you guys arguing? You know,
7 what's going on here. He said, Well, we were talking to
8 each other. Well, people express things different ways
9 and you learn syntax and how people like to talk. You
10 know, over the years, you learn different things. I said,
11 Explain that to me, talking at each other.

12 He says, You know -- and he didn't say we were
13 arguing or we were quarreling. He just made it clear that
14 they were having a conversation.

15 Q Okay.

16 A Okay.

17 Q And the next thing you asked him about where and
18 having the gun. What was his answer or what did he tell
19 you about that?

20 A Question: Did you have the gun in your hand the
21 whole time?

22 His answer was, My gun was laying against the wall
23 the whole time. When I decided to check out around my
24 trailer with my shotgun, Doris was coming in the front
25 door. We are right there at the same time. She comes in

1 the door, that is when I told her I was worried about her.
2 That is when the gun went off. She had touched the gun
3 when it went off. She took the gun and threw it up.

4 So I asked him, What does throw it up mean?

5 And he states, did this.

6 Q Just waves his hand in front of his face?

7 A Swiped his hand. So I said, So the barrel was
8 obviously was in her face?

9 He pushed the gun away. And that's when he said it
10 went off.

11 Q You said you asked him about the gun being pointed in
12 her face. Did he ever answer that yes or no?

13 A No, he would say she grabbed the gun.

14 I would say, What do you mean she grabbed the gun?

15 She threw it up.

16 What does throw it up mean?

17 He would do this.

18 So I would say, The barrel was in her face, the
19 barrel was pointed at her? And nothing.

20 Q So never got a definitive answer?

21 A Never got yes, I pointed the gun at her face.

22 Q And you then asked him to explain her location on the
23 couch?

24 A Yes. I asked the question, question: Joe, we found
25 her sitting on the couch. Can you explain her location?

1 Answer: She was standing on the side of the couch
2 when the gun went off. I held her by the face and laid
3 her on the couch.

4 Obviously, there was no evidence to support that in
5 any way, shape, or form.

6 Q Did he give you an indication as to what time he
7 thought this happened?

8 A Sometime between 10:00 and 11:00.

9 Q Where did he tell you he went after the shooting?

10 A He said he left. And in the statement, I asked him,
11 Where did you go after the shooting?

12 He said -- his answer was, I left there and went to
13 Hopkins School. There is a long dirt road there. I
14 thought about it. I stayed there a long time. I had the
15 gun in my hand. I was going to do myself in. I stayed in
16 the car and fell asleep. I woke up that morning. I drove
17 to my brother's house and told him what had happened. I
18 left there and went to Junior Reese's house. I parked my
19 car in the yard. I dozed off. A guy named Benjamin
20 Harris came by on a bicycle and he woke me up. I backed
21 out and left. I came down 48 and was going to go to the
22 detention center and turn myself in. I then turned around
23 and went back towards Hopkins. I then went to Tony's
24 place where they got me.

25 Q And Tony's place would be?

1 A Tony's Lounge in Congaree.

2 Q Did he admit that he -- what, if anything, did he say
3 about having the gun when it went off?

4 A I asked him, When the gun went off and shot your
5 wife, you were holding the gun, correct?

6 Answer: I was.

7 Q You asked him about did both barrels go off. What
8 was his answer to that?

9 A I said, What kind of gun is it?

10 He said, A double-barrel shotgun. It's a 12 gauge.

11 I said, When the gun went off, did both barrels go
12 off?

13 He said, No.

14 Q What was the next thing you asked him?

15 A Question --

16 MS. GOODE: Just renew our previous objection, Judge.

17 THE COURT: Overruled.

18 THE WITNESS: Did you tell your brother that the gun
19 accidentally went off when you took it from a closet or
20 that she was cheating on you and may have given you a
21 venereal disease?

22 Answer: No, I did not.

23 BY MS. SAMPSON:

24 Q Then I'm going to ask you about was he aware that he
25 was not supposed to have a firearm?

1 A Yes.

2 Q And he indicated that to you?

3 A He did.

4 Q And did he tell you who the gun belonged to?

5 A He stated it belonged to his deceased son.

6 Q So after you did this interview, did he -- after you
7 did the interview, what happened?

8 A Well, after the interview, at that point, we knew we
9 were talking to the right person. We were talking to the
10 person that was responsible for the death of Doris
11 Marshall. At that point, we had started charging
12 documents in this case, one for the weapon and one for the
13 murder of Doris Marshall. At that point, we had no
14 further questions to ask him necessarily. He was
15 transported to Alvin S. Glenn Detention Center without
16 really any further issues.

17 Q What, if anything, did you do with the Defendant's
18 clothing?

19 A We took his clothing. We took his clothing and we
20 dressed him out in some clothing that we keep at
21 headquarters, flip-flops and pants and shirts and things.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 104. What is that?

24 A This would be a box of clothing that we took off of
25 Mimi Joe Marshall on that day.

1 Q Is it sealed in the manner that it was sealed when
2 you collected it?

3 A It is.

4 MS. SAMPSON: At this time, Your Honor, we'd ask to
5 introduce State's Exhibit No. 104 into evidence?

6 MS. GOODE: No objection.

7 THE COURT: Admitted without objection.

8 (WHEREUPON, State's Exhibit No. 104 was admitted
9 into evidence.)

10 BY MS. SAMPSON:

11 Q All right. Each item is individually wrapped. Why
12 is that?

13 A Separated just so there's no cross-contamination, but
14 it's also separate.

15 Q All right. And have these been in here since 2015?

16 A I would assume so. I had no reason to -- I have not
17 taken them out.

18 Q What would this be?

19 A It's a pair of khaki shorts he had on.

20 Q These were the shorts that the Defendant had on when
21 you arrested him?

22 A That is correct.

23 Q And this?

24 A Socks.

25 Q And were these on the Defendant when you arrested

1 him?

2 A We did -- they were.

3 Q This one, as well?

4 A As well.

5 Q Was the Defendant wearing a belt?

6 A I don't remember, but that was most likely on him.

7 Q Okay. He did have on shoes?

8 A He did. That would be them.

9 Q This one?

10 A Yes.

11 Q And there are stickers on some of these?

12 A Right.

13 Q Where are those stickers coming from?

14 A That's where we located reddish stains which were
15 consistent -- I think I may have even questioned him on
16 that, is that blood from your wife.

17 Q And this is the shirt he had on when he got arrested?

18 A Yes, a tank top.

19 Q And this was in August, correct?

20 A It was.

21 Q Did you all also at some point collect victim's
22 completing?

23 A Yes, that would have been collected -- that would
24 have stayed on her as they took Doris from the home. But
25 to answer your question, yes, we would have collected it.

1 Q I'm going to show you what's been marked as State's
2 Exhibit 98 and ask you if you recognize this?

3 A I do. This would be an evidence tag. It looks like
4 it was collected by Melissa Satterfield, who is in the
5 lab. And it has a list of items that were apparently on
6 Doris at the time.

7 Q And you've seen these items before, correct?

8 A I have.

9 Q Can you stand up before I show them?

10 A Sure.

11 Q Does it seem to be what was collected in this case?

12 A Yes.

13 MS. SAMPSON: At this time, we'd ask to introduce
14 State's Exhibit No. 98 into evidence?

15 MS. GOODE: No objection.

16 THE COURT: Ninety-eight without objection.

17 (WHEREUPON, State's Exhibit No. 98 was admitted
18 into evidence.)

19 BY MS. SAMPSON:

20 Q So these would be the shoes?

21 A Correct. It still has the nonslip covers that she
22 wore in the food service.

23 Q So the cover, is this what you're talking about.

24 A Correct.

25 Q And that's a what?

1 A It's a nonslip device that sometimes folks in food
2 service and folks that work in kitchens will put on.

3 Q And this one is actually coming off?

4 A Correct.

5 Q Was this on the Defendant? Is this her bra?

6 A Correct.

7 Q Excuse me, on the victim?

8 A Yes.

9 Q These would be her pants?

10 A Those would be the pants that Doris had on at the
11 time.

12 Q Still in the same condition as when y'all collected
13 them?

14 A Yes.

15 Q This is her shirt?

16 A That is her shirt.

17 Q And this is how it was when y'all collected it? It's
18 cut up now.

19 A Correct. That would have been done per autopsy.

20 Q And was her ID tag collected, as well?

21 A It was.

22 Q And where was that on her body at the time?

23 A That was still on her clothing, actually, there on
24 her shirt.

25 Q Was her cell phone collected?

1 A It was.

2 Q Where was that?

3 A It was in her pocket.

4 Q I'm showing you what's been marked as State's Exhibit
5 No. 99. Can you tell me what that is?

6 A One brown lady's wallet.

7 Q And that was located where?

8 A That was taken -- I believe that came from autopsy.

9 Q Do you know for sure?

10 A I'm not 100 percent certain on that.

11 MS. SAMPSON: At this time, we'd ask to introduce
12 State's Exhibit No. 99 into evidence?

13 MS. GOODE: No objection.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 99 was admitted
16 into evidence.)

17 BY MS. SAMPSON:

18 Q And this was her wallet?

19 A Correct.

20 Q I show you what's been marked as State's Exhibit
21 No. 101, ask you if you recognize that?

22 A That is a receipt from O'Reilly Auto Parts.

23 Q And we've shown a picture of this already that's in
24 evidence. Do you have any idea where this was located?

25 A I believe this was found in the vehicle.

1 Q And does that accurately reflect it the way it was
2 received by evidence?

3 A Yes.

4 MS. SAMPSON: At this time, we'd ask to introduce
5 State's Exhibit No. 101 into evidence?

6 MS. GOODE: Your Honor, I would object on
7 authentication grounds.

8 MS. SAMPSON: Authentication as to what?

9 MS. GOODE: The actual item.

10 MS. SAMPSON: It is what it -- I'm not sure I
11 understand the question.

12 (Pause.)

13 THE COURT: Overruled.

14 MS. SAMPSON: Thank you, Your Honor.

15 BY MS. SAMPSON:

16 Q And this --

17 MS. SAMPSON: So 101 is introduced, I'm sorry, Your
18 Honor?

19 THE COURT: Yes.

20 (WHEREUPON, State's Exhibit No. 101 was admitted
21 into evidence.)

22 BY MS. SAMPSON:

23 Q And this was found from O'Reilly Auto Parts?

24 A Correct. That's a receipt from O'Reilly Auto Parts.

25 Q And what's the date?

1 A I'm not familiar with their receipts. Hang on a
2 second. August 15th, 2015.

3 Q What time? Is there a time in the middle of it?

4 A There is. Time of order 10:07 in the morning.

5 MS. SAMPSON: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 (Pause.)

8 BY MS. SAMPSON:

9 Q So after you got the statement from Mr. Marshall, he
10 was arrested at that point, taken to detention. I think
11 you already said that, correct?

12 A I did.

13 Q What was next thing that you did?

14 A At that point, we start tying up some loose ends,
15 things we can do that particular day, so we worked on
16 different parts of the investigation, things that may
17 still need to be done, things to follow up on, that kind
18 of thing.

19 Q What did you have to get in order to look inside the
20 vehicle?

21 A We had to get a search warrant for that vehicle.

22 Q Do you use the same process to do that as you did to
23 get the search warrant for the home?

24 A Correct. We would fill out an affidavit, take that
25 affidavit to a judge, explain where we were in this

1 investigation and we felt it could be some evidence. We
2 want to make sure we process that vehicle. To do that, we
3 made sure we got a search warrant.

4 Q And I think you testified already, but the gun was
5 found inside the vehicle?

6 A Yes, the gun was in the vehicle.

7 Q What, if any, ammunition was found in the vehicle?

8 A There were some loose rounds in the vehicle. I think
9 it was three to be exact. One may have been fired. I'm
10 not 100 percent certain on that.

11 Q But ammunition was found in the car?

12 A Yes.

13 Q Now, at some point, you were provided information
14 about Pee Wee and you all were able to flush that out,
15 correct?

16 A Correct.

17 Q We've already heard from him --

18 A Correct.

19 Q -- so we're not going to go into that. But part of
20 your investigation was to determine any information about
21 that?

22 A Yes. That would be a loose end.

23 Q That you were talking about?

24 A Yes.

25 Q All right.

1 MS. SAMPSON: Beg the Court's indulgence.

2 (Pause.)

3 BY MR. SAMPSON:

4 Q Do you have any idea what time the Defendant was
5 apprehended at Tony's Lounge?

6 A It is on the arrest report, which I don't have in
7 front of me to be exact, but it would have probably been
8 around -- I don't want to venture a guess, somewhere in
9 the early afternoon.

10 Q If I showed it to you, would it help refresh your
11 memory?

12 A Yes, yes, to have the exact time.

13 Q Let me ask you this. Do you have your report with
14 you?

15 A I do.

16 Q Look at your report and see if that helps refresh
17 your memory as to the time?

18 A The actual incident report?

19 Q Your report that you make, your investigative report?

20 A That would be 1:00 o'clock in the afternoon.

21 Q So he was arrested about 1:00 in the afternoon?

22 A That is correct.

23 Q All right. Were you ever able to see the gun, either
24 in pictures or in any manner before it was placed into
25 evidence?

1 A Yes, I saw how it was in the vehicle.

2 Q I'm going to show you what's been marked as State's
3 Exhibits 102 and 69. Start with 69, do you recognize
4 that?

5 A I do.

6 Q And what is that a picture of?

7 A That would be a photograph of the actual weapon
8 involved.

9 Q Does that fairly and accurately depict the way the
10 gun was when you all received it back in August 2015?

11 A It appears so.

12 MS. SAMPSON: I would ask to introduce State's
13 Exhibit No. 69 into evidence?

14 MS. GOODE: Without objection.

15 THE COURT: Sixty-nine without objection.

16 (WHEREUPON, State's Exhibit No. 69 was admitted
17 into evidence.)

18 BY MS. SAMPSON:

19 Q And I'm going to have you look at State's Exhibit
20 102. Do you recognize that?

21 A I do. That's going to be an aerial shot of Leesburg
22 Road and Bel-Aire Mobile Home Park.

23 Q Is the victim's home in that shot?

24 A It's obscured by a tree, but there's a little marker
25 there.

1 Q Don't show it to the jury yet.

2 A I'm sorry.

3 Q Is the area in the photograph?

4 A Yes.

5 Q How about the market -- or the AM/PM store?

6 A Right next door.

7 Q Does that fairly and accurately depict the way that
8 area looked?

9 A It does.

10 MS. SAMPSON: At this time, we'd ask to admit State's
11 Exhibit 102 into evidence?

12 MS. GOODE: No objection.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit No. 102 was admitted
15 into evidence.)

16 BY MS. SAMPSON:

17 Q Now, you can show it to the jury.

18 A Oh, okay. So there's a tree obscuring the actual
19 trailer. It's an aerial shot. And this is the AM/PM
20 Quick stop.

21 Q And that's what we heard about where Pee Wee went?

22 A Correct.

23 Q And State's Exhibit No. 69?

24 A Correct.

25 Q That's the gun as it appeared back then?

1 A That would be the actual shotgun.

2 Q And the tape is kind of coming off now, but that's
3 the way it was when you received it?

4 A Yes.

5 MS. SAMPSON: That's it. Please answer any questions
6 the Defense may have.

7 THE WITNESS: Certainly.

8 THE COURT: All right.

9 MS. GOODE: Thank you, Your Honor. May it please the
10 Court?

11 CROSS-EXAMINATION

12 BY MS. GOODE:

13 Q All right. So you were assigned as the lead
14 investigator on the case or the primary investigator?

15 A Correct.

16 Q And that would have happened that morning shortly
17 after the call came in?

18 A Correct.

19 Q And the call came in around 9:00 o'clock in the
20 morning?

21 A Sounds about right.

22 Q And so that was about the time you would have been
23 assigned?

24 A Correct. I was asked to come to the scene.

25 Q Okay. And you did go to the scene?

1 A I did.

2 Q And I want to show you what's -- give me just one
3 second.

4 (WHEREUPON, Defendant's Exhibit No. 13 was marked
5 for identification.)

6 BY MS. GOODE:

7 Q I want to show you what's been marked as Defense's
8 13?

9 A Okay.

10 Q Do you recognize that?

11 A I do.

12 Q Is that a fair and accurate representation of the
13 scene that day when you were there?

14 A It is.

15 MS. GOODE: I would ask that Defense Exhibit 13 be
16 admitted?

17 MS. SAMPSON: Without objection.

18 THE COURT: Defendant's 13 admitted without
19 objection.

20 (WHEREUPON, Defendant's Exhibit No. 13 was
21 admitted into evidence.)

22 BY MS. GOODE:

23 Q As your -- one of the things you want to do as an
24 investigator is -- because there's a lot going on, you
25 want to take notes about what's going on?

1 A Physically take notes?

2 Q Well, you want to keep a record of what's going on?

3 A You could.

4 Q Because in a death investigation, there is -- there's
5 going to be a lot of people that you're kind of directing?

6 A Yes.

7 Q You've got other investigators assisting you?

8 A I do.

9 Q And we've heard from, at least, one of those people,
10 that was Investigator Caldwell?

11 A Correct.

12 Q Sergeant Caldwell. And you also have several members
13 of the crime scene?

14 A Yes.

15 Q And they -- within the crime scene unit, there could
16 be -- I think in this case, maybe four investigators?

17 A I remember L.T., I remember Stan Richards being
18 there. I remember Melissa Perry being there. I remember
19 Tim Lee being there. I just remember those people
20 specifically.

21 Q So there's several people doing several different
22 jobs?

23 A Yes, they move almost an autonomous unit once they're
24 in there.

25 Q And there were several road deputies that were

1 involved in this case, as well?

2 A Yes.

3 Q And you're kind of the point man?

4 A I become more the collection agent.

5 Q Right, everything comes back to you?

6 A Yes.

7 Q So they are informing you of what they've done?

8 A Yeah, that's fair.

9 Q And what they've found or collected?

10 A Hopefully.

11 Q Hopefully, yeah. And there were several items
12 collected in this case?

13 A Yes.

14 Q We've seen several items?

15 A Yes, ma'am.

16 Q And quite a few of them are in evidence?

17 A Correct.

18 Q We have the gun, right?

19 A Yes.

20 Q And some shells?

21 A Yes.

22 Q Even the pellets?

23 A Yes.

24 Q And there's several swabs that were taken?

25 A Yes.

1 Q And that would have been done through CSI, through
2 the crime scene unit?

3 A Yes.

4 Q I mean, we've even got the time sheet in evidence.
5 We heard Mr. Wider testify, I believe it was yesterday?

6 A I believe so.

7 Q And that was Ms. Marshall's boss?

8 A Correct.

9 Q And he tells us that on the night of the 14th when
10 she went home, she clocked out at 2215?

11 A I'd have to see it to know that.

12 Q And another item that was collected was Ms. Doris'
13 cell phone?

14 A Correct.

15 Q It was on her person before she was taken by the body
16 removal service?

17 A It was on her person. I don't know exactly the
18 sequence from that point forward.

19 Q Okay. So you're not sure who took it or --

20 A No, I don't know physically who would have taken it
21 off her body.

22 Q So that would have been done back in August of 2015?

23 A That sequence of the cell phone and the clothing
24 being removed from Ms. Marshall would have happened then,
25 yes.

1 Q Okay. And like a lot of stuff in this case, it was
2 analyzed? It was processed?

3 A Yes.

4 Q And it was analyzed just a couple weeks ago?

5 A I'm not certain about that.

6 Q As the lead investigator, you're not certain about
7 that?

8 A When you say a couple weeks ago, I don't know the
9 exact date.

10 Q Okay. And you heard the DNA person yesterday tell us
11 that she received a request a couple weeks ago to test the
12 DNA in this case?

13 A In the DNA, yes.

14 Q And the GSR expert testified today, again, just a
15 couple weeks ago?

16 A Right.

17 Q I believe -- I don't know if it was a couple of weeks
18 ago, but it was not back in August of 2015 that she
19 received a request?

20 A No, I don't think that was her testimony.

21 Q It would have been later sometime this year that she
22 received that request?

23 A I assume so.

24 Q And you didn't make these requests back in August
25 of 2015?

1 A Which request specifically?

2 Q Any --

3 A And I would probably need to look to know exactly
4 when those requests were made.

5 Q Any requests to process any of the evidence, the cell
6 phone, the DNA, the GSR, anything of that nature, there
7 were no requests made by you back in August of 2015?

8 A I would doubt that, but I don't -- there were things
9 that would have been done already without my knowledge. I
10 wouldn't have to say, you know, do this, do that, do that.
11 There are some things that there is a request asked for,
12 but I don't know right off the top of my head when exactly
13 those requests were made.

14 Q Would you follow up on something like that with maybe
15 other investigators that would make those requests?

16 A What I would do is if the request was made, I would
17 usually give myself a task somewhere in the database which
18 would alert me. Because we're working multiple case
19 loads. This isn't the only case I ever worked on. I can
20 assure you at that time I was on nights. My guess is I
21 was managing SVU. I was managing probably eight to 12
22 active cases in a month easily. So what you do is you
23 give yourself some reminders so that when that comes back
24 up, I could possibly follow up on it.

25 Q Right. Like you said, more than one case at a time?

1 A Sure.

2 Q You've got to be able -- that's why in your cases,
3 you like to make these notes, these reports that you do,
4 your investigative followup, right?

5 A Right, in somewhat of a sequence, right.

6 Q That way, you remember -- because you remember
7 generally, but you want to remember what you did?

8 A You have a general idea. You remember some of the
9 big stuff, but you don't remember some of the minutia. I
10 mean, you have to lay it out there slowly and just make
11 sure you hit those things. There's the biggies that go
12 off. You know, there's a weapon involved. There's a cell
13 phone involved. There's a fingerprint possibly. I'm just
14 thinking in general, not just for this case, but in
15 general, there's those things that go out, blood evidence,
16 autopsy reports, did we search the vehicle, did we find
17 anything, did we search the home, did we find anything,
18 those kind of things.

19 Q Okay. And you generally try to do that in each of
20 your cases so whenever you come to court, you're able to
21 recall the information for the jury accurately?

22 A Right. You try to put that in some sort of a
23 timeline so you can recall that. Keeping in mind that
24 we're not working in a vacuum here and there are a lot of
25 moving parts and what you may find important or not

1 important someone else would find important. So you want
2 to have some peer review by different folks so you can
3 recover these things.

4 Q You're erring on the side of putting too much in
5 there?

6 A Well --

7 Q In detail?

8 A -- I try to be as detailed as you can.

9 Q Right. So I want to go through Mimi Joe's statement
10 when y'all had the chance to sit down and speak with him
11 about what happened?

12 A Okay.

13 Q And you indicate -- and it's -- on Page 1 of his
14 statement indicates, basically, that you had to read the
15 rights to him. Says, Do you understand your rights that I
16 read to you and you're willing to speak with us?

17 A Yes, that's what I asked him.

18 Q And you asked him, Can you read and write? And he
19 says, To a point. And that's Page 1?

20 A I don't remember. He says, To a point, yes. Can you
21 read and write? To a point. Yes.

22 Q And that's when you asked him how far he went in
23 school and he indicates to the sixth grade?

24 A Correct.

25 Q And you're about 12 years old in the sixth grade?

1 A I don't know. I don't have kids.

2 Q And you typed this statement out. He's not typing
3 it, right?

4 A Correct. I'm sitting at a computer in an office.
5 There is a monitor there. Many times, it's turned towards
6 the person I'm speaking with and I am typing it as we
7 speak. We do that for a number of reasons. The easiest
8 one is just so we can edit, you know, is that exactly what
9 you mean. And if someone says no, that's not what I
10 meant, I can say, okay, tell me what you mean. Are these
11 the words. I'm fond of putting in slang, I'm fond of
12 putting quotations in. I want it to be exactly the same.
13 I will read it back to someone as they said to it me so
14 that when they sign this, there's no question, this is
15 their words, this is how they said it. So in this case, I
16 am typing this statement as I'm asking, in this case, Mimi
17 Joe these questions and writing and recording his answer
18 as I type them.

19 Q And writing and recording, as you said, is not -- the
20 recording is not done by video or audio recording?

21 A Unfortunately not.

22 Q That's a policy of the sheriff's department?

23 A As I understand it.

24 Q Okay. Because there would be a lot that could be
25 shown to the jury if there was a recorded or, at least,

1 audio?

2 A I would welcome it.

3 Q Right. So he agrees to speak with you?

4 A He does.

5 Q As you said, he was cooperative, he was forthcoming?

6 A Yes.

7 Q And he told you that he had not been arguing with her
8 before? On Page 2 of his statement, you ask him
9 specifically, Had you and her been arguing -- had you and
10 her been arguing with her before? I imagine that just
11 means have you been arguing with her before and his answer
12 is no?

13 A Bear with me. I want to see -- on Page 2?

14 Q On Page 2.

15 A Oh, okay, I'm sorry, at the bottom, okay. Question:
16 Had you and her been arguing with her before? I could
17 have done better on my syntax.

18 Q And the answer?

19 A His answer was no.

20 Q His answer was no. And when you asked him when the
21 shooting -- what time this was, he tells you, I would say
22 after 10:00 o'clock to possibly 11:00?

23 A Correct.

24 Q He's able to narrow down a timeframe?

25 A That's what he was asked before then.

1 Q I'm sorry?

2 A He asked -- I asked that question before then.

3 Q Right. And that's -- you're asking him in reference
4 to when this shooting happened?

5 A Correct. And just so we put it in context, the first
6 question is, So you were standing up facing the front door
7 when the shooting happened? He said, Yes, sir. My
8 followup question was, What time was this? And he said, I
9 would say after 10:00 to possibly 11:00 p.m. And then I
10 asked him, Had you and her been arguing before?

11 Q And he answered?

12 A He answered no.

13 Q And if we could go to Page 3 of the statement, he
14 tells you it was an accident?

15 A Where is that?

16 Q Why did you shoot your wife? It was an accident.

17 A Correct.

18 Q And he tells you they had been married 37 years?

19 A He did. It also wasn't lost on me that he had a good
20 12 hours to 15 hours to figure out what he wanted to tell
21 me.

22 Q Okay. And he tells you what kind of gun it is, it's
23 a double-barrel shotgun, 12-gauge?

24 A Correct.

25 Q And I'm not sure if we said this on direct or not,

1 but he tells -- or you ask him, Are you sorry you shot
2 your wife? That's on the last page. I will tell you how
3 sorry I am, I was going to kill myself today. I was going
4 to put that shotgun under my throat and pull the trigger?

5 A Correct.

6 Q And that's under his answer. You typed that out?

7 A Correct.

8 Q And you read this statement back to him?

9 A I did.

10 Q Like you said on direct, this isn't the entirety of
11 the statement?

12 A No, there's way more questions -- well, there's way
13 more conversation. And then you just kind of have to
14 narrow it down. For a number of reasons, you have to
15 narrow it down. Hence, why I really like video and audio
16 recording. You narrow it down to the pertinent parts to,
17 basically, let's move this along.

18 Q And it's to build a kind of rapport?

19 A Sure.

20 Q Get him comfortable answering questions so that you
21 guys can get to the meat of it?

22 A Correct.

23 Q And again, he was, you said, forthcoming and
24 cooperative?

25 A Right. There was no real pull on Mimi Joe on this.

1 At this point, I think it was a foregone conclusion we had
2 the right person we were talking to. There were other
3 things in motion. Things, I guess, we can't mention, but,
4 you know, it's just not that sterile. You know, there are
5 things going on.

6 And at that point, we realized we were talking to the
7 right person. He knew we were talking to the right
8 person. And I think at that point, certainly, someone he
9 had known for a long time was dead at his own hand, so...

10 Q And after you finished with him, Investigator
11 Caldwell spoke with him again?

12 A Correct.

13 Q You asked him to go speak with Mimi Joe at the
14 detention center about three days later, right?

15 A I'm not sure I directed him to do that. I think that
16 was just --

17 Q Okay. And that was to gather information from Mimi
18 Joe about Pee Wee?

19 A Correct, about Pee Wee.

20 Q And again, he was advised of his rights, but decided
21 to speak with you guys?

22 A As his testimony showed, I assume that went without
23 any problems.

24 Q Okay. Now, I want to talk about the car. It was
25 received by Richland County?

1 A Correct.

2 Q By the crime scene unit?

3 A Uh-huh.

4 Q And the car was released to Tamieka Marshall?

5 A As I understand, yes.

6 Q And that is -- we've heard from Ms. Marshall, that's
7 Doris and Mimi Joe's daughter?

8 A Correct.

9 Q And you would have given permission to release the
10 car?

11 A No. At that point, once the search warrant had been
12 completed and I was aware that it was completed, it's --
13 these things don't go did Investigator Clarke say we could
14 do this? Did he say we couldn't do this? I have orders.
15 No one is sitting there -- you know, I'm not sitting in an
16 ivory tower waiting to give orders and commands. So what
17 happened is that vehicle would be released by our vehicle
18 manager and, most likely, when it was cleared by CSI after
19 they had done their search warrant.

20 Q So as the lead investigator on the case, no one
21 checked with you about potentially, you know, this
22 evidence in the case, the car that he was driving?

23 A Well, what I've done is I have made sure a search
24 warrant was secured.

25 Q Right.

1 A Given it to CSI to do said search warrant. Many
2 times, they will let us know they are done with it and
3 it's, you know, at that point. And then somewhere in that
4 process, either a family member contacts us, us, in
5 general, not necessarily me, whatnot, but we knew a search
6 had been completed of the car.

7 Q And there were some items that were turned in after
8 the car was released?

9 A Yes, I learned about that later.

10 Q Not a t-shirt, though?

11 A I don't remember specifically.

12 Q Because the t-shirt had been thrown away?

13 A I remember hearing about that, right.

14 Q And it's roughly about August 18th. That's the last
15 time, at least, in your notes I have, anyway, that
16 anything is really done on the case from your end?

17 A Directed personally by me, yes.

18 Q And so that would have been three days after this?

19 A Correct.

20 Q Until --

21 A Well --

22 Q -- we began the processing of certain items and then
23 you're being contacted about making those requests to have
24 those items processed?

25 A Yeah, but let me answer your first question just a

1 little bit. You can characterize it that way, but I think
2 that would be unfair. There's things that -- you could
3 sit -- in every phone call you make with someone, you
4 could write down the date, time and nature of that phone
5 call. I probably make 15 to 20 phone calls a day on
6 different cases. I would never get anything done if I
7 wrote everything down.

8 So there are things that are happening after the fact
9 that are not necessarily being written down. Just because
10 it didn't get recorded, I spoke to Joe Bob at such and
11 such a time on such and such a date doesn't mean it didn't
12 happen. It just meant there wasn't a notable event to
13 write down.

14 So I think it would be unfair or a
15 mischaracterization of the process to say everything
16 stopped on the 18th and I didn't do anything else on this
17 case, you know, even from that point on, but I don't
18 remember exactly what I would have done. I would be real
19 surprised if there wasn't some followups or meetings with
20 people at headquarters and things like that to talk about
21 this case for several weeks after the fact.

22 Q If that would have been important enough, that would
23 have been in your report?

24 A I would have been -- in my opinion -- I mean, I have
25 to make a call on that. I think we all do in life. We

1 all have to make a call on that, is this something that
2 needs to be notated.

3 Q Like evidence coming in months after the fact?

4 A If evidence came in months after the fact, that would
5 be something that would need to be notated. It would
6 stand to reason it would be something you would want to
7 notate.

8 Q And that wasn't notated in your file?

9 A Which thing?

10 Q The items brought. I think it's the wallet and the
11 receipt from Ms. Tamieka Marshall?

12 A No, it wasn't. I own that. That was on me. That
13 didn't happen.

14 Q As part of your role, I guess, as lead investigator,
15 you pull some things like driving records or things like
16 that?

17 A If you need to.

18 Q And you pulled one for Mr. Marshall in this case?

19 A I'll take your word for it. I probably did, yeah.

20 Q I just want to show you this, if you can tell me,
21 does it indicate on there how tall Mr. Marshall is?

22 A It indicates Mr. Marshall, according to the
23 Department of Motor Vehicles, is five-seven and 156 on the
24 date that he got this license.

25 Q Okay.

1 MS. GOODE: Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. GOODE: I don't have any more questions for you.
5 Thank you.

6 THE COURT: All right. Redirect?

7 MS. SAMPSON: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. SAMPSON:

10 Q Investigator Clarke, I want to start with the
11 statement. Do you still have a copy of it?

12 A I do. Stand by.

13 Q Okay.

14 A I do.

15 Q All right. She asked you about that he stated that
16 they didn't have an argument, correct? That's what she
17 just asked you on cross?

18 A Yes.

19 Q Can you show or tell the jury about when he talked
20 about them talking at each other? Top of Page 2.

21 A Sure. Page 2, that first question?

22 Q First or second, whichever one you want to use.

23 A Okay. Joe, we found your wife deceased in your home
24 this morning, can you tell me what happened?

25 His answer was, When she came home from work last

1 night, I had my gun in the front room. I did this because
2 the trailer park is an unstable place. She came at me.
3 She grabbed the gun. It went up and it went off. I
4 grabbed her. I had her head in my hands and I let her
5 down on the chair. I knew she was dead. I should have
6 handled it a different way, the way I did not handle it.
7 I should have killed myself.

8 Q I want you to go down not to the next question, but
9 the following question. Is there any information in there
10 about whether they argued or not?

11 A Question: Tell me what happened in the front room
12 with your wife when the gun went off?

13 Answer: I told her when she came in the house that I
14 had just called her job. She was a little late and I was
15 worried about her. I had just had the car's front end
16 alignment fixed with a new tire for her safety. She comes
17 in with an attitude. I told her I was worried about her.
18 She says, quote, you've got no reason to worry about me,
19 unquote. She said it with an attitude. We were just
20 talking at each other.

21 Q And -- well, I think when I was talking to you, I
22 asked you about did you try to get any kind of definition
23 for manner of talking at each other?

24 A Right, just -- obviously, he mentioned she has an
25 attitude. He's speaking to her. He says she had an

1 attitude. He said it twice. And so he says we were
2 talking at each other.

3 Like I said, vernacular is different sometimes with
4 folks. I don't know what that means. You know, I'm
5 talking with you, I'm talking at you. What does that
6 mean? So, I wanted to see if that was confrontational. I
7 wanted to see if this was an argument. I want to see if
8 this was a heated exchange. But in that answer, he
9 mentioned the fact that she had an attitude twice.

10 Q And would it be fair to say that there were different
11 parts of his statement where it had changed?

12 A Yes.

13 Q Now, I want to ask you, she talked about were you
14 finished doing anything on the 18th. Is it normal for you
15 to get things weeks, months after this happened and not
16 put it in the report, such as the autopsy report?

17 A Certainly.

18 Q And do you get it immediately, the autopsy report?

19 A No, I've got three cases right now that I'm waiting
20 on the autopsy reports that happened in July -- two in
21 July and one in May.

22 Q She also asked you about having things processed or
23 tested. Is it out of the ordinary for it to happen in one
24 month and ask months later or a year later for something
25 to be processed?

1 A No.

2 Q Does that change the outcome of the evidence?

3 A Not in any way. The evidence is preserved. The
4 evidence is in the room, in the evidence room. It is now
5 -- through discussions with different parties, this item
6 may now be pertinent. We want to make sure this item got
7 done, et cetera, that kind of thing. The evidence is
8 there. It's preserved. It's ready to go and it can be
9 done at any time. Whether we did it on the 18th or the
10 15th of August of 2015 or whether we did it two weeks ago
11 has absolutely no bearing on what occurred that day.

12 MS. SAMPSON: No further questions.

13 MS. GOODE: Briefly, Your Honor.

14 RECROSS-EXAMINATION

15 BY MS. GOODE:

16 Q Just to clarify, what he says to you on Page 2, I
17 should have handled it in a different way. Can you read
18 that very next line? We're talking about the very top of
19 the statement, the very next question you asked him.

20 A I asked him, What do you mean you should have handled
21 it in a different way? He answered, I should have called
22 y'all first.

23 Q So you clarified that with him, what he meant by
24 handled it in a different way?

25 A Yes.

1 Q When you asked him, What do you mean you should have
2 handled it in a different way?

3 A Right. And the clarification was what happened in
4 the house, not what he should have done with himself or
5 perhaps...

6 Q He says, The way I did not handle it. I should have
7 killed myself. Then you say, What do you mean you should
8 have handled it in a different way. I should have called
9 y'all first?

10 A Correct.

11 Q That's what he says?

12 A That's what he says.

13 MS. GOODE: No further questions.

14 THE COURT: You can step down.

15 You may call your next witness.

16 MS. SAMPSON: At this time, the State rests, Your
17 Honor.

18 THE COURT: Ladies and gentlemen, the State has
19 rested its case in chief. At this point, we have a legal
20 issue that we have to take up outside of your presence.
21 You are still not allowed to talk about the case. You are
22 still to keep an open mind about the case. We'll be back
23 with you in just a few moments.

24 Everyone else will remain seated, please.

25 (WHEREUPON, the jury left the courtroom at 3:32

1 p.m.)

2 THE COURT: Okay. Any motions?

3 MR. KRZYSTON: Judge, we do have one motion -- well,
4 we have a couple motions, excuse me. We would renew all
5 pretrial objections, as well as all objections made during
6 the life of the trial as well as our mistrial motion. We
7 would also move for a directed verdict on the basis that
8 the State has not offered substantial evidence to prove
9 the element of malice aforethought.

10 THE COURT: All right. Your response?

11 MS. SAMPSON: Your Honor, the law requires not that
12 there be substantial evidence, but any evidence. It's the
13 State's position that we have offered plenty of evidence
14 both in terms of both malice that this was murder, in
15 terms of the gun being used, him leaving her there 12
16 hours, not calling law enforcement, fleeing the scene.
17 All of those things would go towards him acting
18 unlawfully, having the gun. All of those things, we would
19 argue go towards murder and as far as malice aforethought,
20 as well. It's not a substantial, it's a scintilla of
21 evidence and I believe we're way past that at this time.

22 MR. KRZYSTON: Your Honor, specifically, I would take
23 exception to the State citing that they proved malice with
24 the use of a deadly weapon. In a prior conviction, State
25 v. Belcher specifically finds that to be unacceptable.

1 MS. SAMPSON: For the record, that's presumptive
2 malice. I wasn't saying that. I was saying that was just
3 one of the things in terms of everything, not just the use
4 of the gun.

5 THE COURT: All right. Under Rule 19 of the South
6 Carolina Rules of Civil Procedure, our courts have set out
7 the rules for directed verdict motions. At this point,
8 the standard before me is considering the existence of the
9 evidence and not the weight of the evidence. The State
10 has presented sufficient evidence to prove the elements of
11 the charge of murder to the jury. In that case, there is
12 sufficient evidence based upon the 20 witnesses that the
13 State has called in this case and the testimony that they
14 have given in relation to the incident. And there's
15 sufficient evidence for the case to go forward to the jury
16 considering the existence of the evidence and not the
17 weight of the evidence.

18 Anything else?

19 MR. KRZYSTON: Not from Defense, Judge.

20 THE COURT: Okay. All right.

21 Mr. Marshall, stand up. All right. Raise your right
22 hand.

23 MIMI JOE MARSHALL, after being
24 duly sworn, testified as follows:

25 THE COURT: Okay. You can put your hand down.

1 Now, at this time, I need to explain some of your
2 rights to you. If you don't understand anything I say,
3 just let me know. If you want me to explain anything in
4 more detail, just let me know that, too, okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So if you don't understand something, you
7 can say hey, Judge, that didn't make sense, or explain
8 that again, or I want to talk to my lawyers. You're not
9 going to bother me or upset me or frustrate me. I want to
10 make sure you understand what's going on, okay?

11 THE DEFENDANT: Okay.

12 THE COURT: We have now reached the stage of the
13 trial where you may present a defense. You have the right
14 to claim the protections that are given to you by the
15 Fifth Amendment to the Constitution of the United States
16 of America. This amendment states in part that no person
17 shall be compelled in any criminal case to be a witness
18 against himself. This means that you cannot be required
19 to testify in this case. You have the right to testify on
20 your own behalf. However, no one can make you testify.
21 This is a personal right and no one can waive or give up
22 this right but you and you alone.

23 If you decide to testify, you will be subject to the
24 same rules that govern other witnesses and you may be
25 examined and cross-examined on any relevant issue in the

1 case. In addition, if you have any convictions that
2 involve dishonesty or false statements or for crimes
3 punishable by imprisonment for more than one year and I
4 determine that the probative value of admitting that
5 evidence outweighs its prejudicial effect to you, the
6 solicitor may be able to introduce your record to attack
7 your credibility.

8 If you decide to testify, this decision on your part
9 must be made freely. It must be made voluntarily and it
10 must be made intelligently with the knowledge of the
11 protections that are given to you by the Fifth Amendment
12 and the consequences of your decision to testify.

13 If you decide not to testify, I will tell the jury
14 and I will instruct them that they cannot give the fact
15 that you did not testify any consideration whatsoever and
16 that there is to be absolutely no prejudice to you because
17 you did not testify.

18 It is left entirely up to you whether or not you
19 testify. You may talk with your attorneys or your family
20 or anyone else, but the final decision is left entirely up
21 to you.

22 Do you understand everything that I've explained to
23 you so far?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And prior to today, have you and your

1 attorneys talked about this issue?

2 THE DEFENDANT: Yes.

3 THE COURT: I mean, it's not the first time you've
4 heard what I --

5 THE DEFENDANT: No, we've been talking.

6 THE COURT: You don't need to tell me those
7 discussions, but that's something y'all have been talking
8 about?

9 THE DEFENDANT: That's right.

10 THE COURT: Is that fair?

11 THE DEFENDANT: That's right.

12 THE COURT: Do you have any questions for me about
13 what I just explained to you?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Now, do you need any more time to
16 meet with your lawyers about this issue?

17 MS. GOODE: We just need a few minutes to talk about
18 it.

19 THE COURT: All right. Let's take a break.

20 Then when we come back in, I'll need you to answer
21 the question as to whether or not you want to testify,
22 okay, Mr. Marshall.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Thank you very much.

25 All right. Let's take a 10-minutes break and we'll

1 jump back in.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: All right. Mr. Marshall, did you make a
4 decision about whether or not you want to testify?

5 THE DEFENDANT: Yes, sir, I sure did. I'd rather
6 not.

7 THE COURT: Okay. That's fine. Thank you very much.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do y'all have witnesses you
10 want to call?

11 MR. KRZYSTON: We do, Your Honor.

12 THE COURT: All right. Bring them in.

13 MS. SAMPSON: Your Honor, before we bring them in.

14 THE COURT: Okay.

15 MS. SAMPSON: It's my understanding that their first
16 witness is Christopher Robinson.

17 Is that correct, Chris Robinson?

18 MR. HAWKS: That's correct.

19 MS. SAMPSON: Over the break, they explained to me
20 that they were going to have him qualified as an expert in
21 firearms, ballistics, blood stain pattern and shooting
22 reconstruction.

23 MR. HAWKS: Yes, crime scene and shooting
24 reconstruction, blood spatter analysis and firearms.

25 MS. SAMPSON: My only concern -- and I asked just to

1 make sure I wasn't not understanding, is that we've never
2 actually had anyone qualified as a shooting
3 reconstructionist. I do think that would qualify under
4 the Jones standard to do it outside the presence of the
5 jury just on that issue, because we've never had that
6 happen before. Not on the blood stain pattern, not on the
7 firearm, but solely on the shooting reconstruction.

8 THE COURT: All right. Bring him up here.

9 MR. HAWKS: Your Honor, we can just take that out and
10 we'll just do crime scene reconstruction.

11 THE COURT: Okay.

12 MS. SAMPSON: Okay.

13 THE COURT: All right. Before we bring the jury back
14 in, I want to make sure the record is clear on this. So
15 that the record is clear, I find that every expert called
16 by the State clearly falls under Rule 702 and its progeny.
17 Number one, the subject matter testified to by all of
18 State's experts were beyond any jury's ordinary knowledge.
19 Number two, the experts had all testified, acquired the
20 requisite knowledge and skill to qualify as an expert in
21 the area of their subject matter and the substance of the
22 testimony was reliable and, in some cases, completely
23 unchallenged by the Defense.

24 As to the scientific evidence that was introduced, I
25 find that it was peer reviewed. There was an appropriate

1 application of the method to the type of the evidence in
2 the case and that the quality control used ensured
3 reliability and the methods were consistent with
4 recognized scientific laws and procedures. The State
5 clearly established and met their burden of showing that
6 the witnesses possessed the necessary learning, skill
7 and/or practical experience to enable the witnesses to
8 give his or her opinion in his or her specific area of
9 expertise. The Court has clearly performed its
10 gatekeeping function as it relates to 702 evidence.

11 All right. Bring them in.

12 (WHEREUPON, the jury entered the courtroom at 3:54
13 p.m.)

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

15 THE COURT: All right. Welcome back, ladies and
16 gentlemen. When we last broke, the State rested its case
17 in chief. The Defense now has the opportunity to call
18 witnesses if they want to. You will remember at the very
19 beginning of the trial, I explained to you that the burden
20 of proof lies with the State. It's their burden to prove
21 the guilt of the Defendant to you beyond a reasonable
22 doubt. The Defense has no burden. They do not have to
23 put on any evidence or call any witnesses, but they can if
24 they wish to.

25 All right. At this time, does the Defense wish to

1 call any witnesses.

2 MR. HAWKS: We do, Your Honor.

3 THE COURT: You may call your first witness.

4 MR. HAWKS: May it please the Court. The Defense
5 calls Christopher Robinson.

6 THE COURT: All right.

7 CHRISTOPHER ROBINSON, after being
8 duly sworn, testified as follows:

9 THE CLERK: Please have a seat in the witness stand.
10 State your name for the record.

11 THE WITNESS: All right.

12 THE BAILIFF: Watch your step.

13 THE WITNESS: My name is Christopher Nelson Robinson.

14 DIRECT EXAMINATION

15 BY MR. HAWKS:

16 Q Good afternoon, Chris. How you doing today?

17 A Great.

18 Q I want to start with you telling the jury what you do
19 for a living?

20 A I'm a private forensic consultant.

21 Q So you own your own company?

22 A I do, Chris Robinson Forensics.

23 Q And what kind of education do you have?

24 A I received my Bachelor of Science Degree in chemistry
25 from Berry College in Rome, Georgia, in July of 1998.

1 Q And what kind of position have you held?

2 A I began my career in the forensic field at the
3 Georgia Bureau of Investigation in July of 1998. I worked
4 there for 10 years as a firearms examiner. I then left
5 and became the crime lab director for the City of Atlanta
6 Police Department, where I held that position for
7 two-and-a-half years. Now, I've owned my own company for
8 the past over seven years.

9 During my career, I've logged over 15,000 hours on
10 the comparison microscope and performed over 100,000
11 forensic examinations. I've had eight armorers courses,
12 I've been to eight manufacturing plants, and I've
13 currently worked over 8,000 actual cases.

14 Q Do you have any certifications?

15 A I'm certified in the disciplines of crime scene
16 reconstruction, gunshot residue analysis, blood spatter
17 analysis, firearms identification.

18 Q And you've worked in how many shooting cases?

19 A I've worked over 8,000 cases, some of those blood
20 spatter, gunshot residue, firearms, but in total over
21 8,000.

22 MR. HAWKS: At this time, Your Honor, the Defense
23 would ask that Mr. Robinson be certified as an expert in
24 crime scene reconstruction, blood spatter and firearms
25 analysis?

1 THE COURT: And firearms what?

2 MR. HAWKS: Analysis.

3 THE COURT: Voir dire?

4 MS. SAMPSON: Not at this time, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, this
6 witness will be qualified as an expert in the area of
7 crime scene reconstruction, blood spatter analysis and
8 firearms analysis. He will be permitted to give opinion
9 testimony in that area. That doesn't mean you have to
10 accept his opinion, but it is evidence for you to use in
11 any way that you see fit and give it the weight and
12 credibility that you are required to do with each and
13 every witness that appears before you.

14 MR. HAWKS: Thank you, Your Honor.

15 BY MR. HAWKS:

16 Q So what did you review in this case, Mr. Robinson?

17 A I was asked to review the police reports, crime lab
18 reports, autopsy reports, all the photographic evidence,
19 basically, everything that was contained within discovery.

20 Q Did that include Mr. Collins' testing of the gun?

21 A Yes, sir.

22 Q And his report?

23 A Yes, sir.

24 Q And did that include the autopsy report?

25 A It did.

1 Q And the autopsy photos?

2 A Yes, sir.

3 Q And did you also review Mr. Marshall's statement?

4 A I did.

5 Q Let's start off talking about the firearm. Did you
6 have a chance to look at the firearm yourself?

7 A I did.

8 Q And what kind of testing did you do?

9 A I did a function check of the weapon to ensure that
10 it was functioning properly, testing the trigger pulls,
11 measuring the length, the weight, barrel length,
12 observation of the weapon itself.

13 Q And what did your trigger pull test result in?

14 A The trigger pull for the front trigger resulted in an
15 average trigger pull of seven pounds. The trigger pull
16 for the rear trigger measured six and three-quarter pounds
17 on average.

18 Q And what was the length you measured?

19 A The length of the overall weapon is 44-and-a-half
20 inches.

21 Q And would you mind stepping down and doing a
22 demonstration for jury?

23 THE BAILIFF: Watch your step, sir.

24 MR. HAWKS: If you wouldn't mind, make sure not to
25 point the muzzle at anybody.

1 THE WITNESS: Do you want to move out of there?

2 THE COURT: All right. Mr. Robinson, I need you to
3 keep your voice up, okay, so the people on the last row of
4 the jury can hear you and the court reporter can hear you
5 so we get what you say down accurately.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Thank you very much.

8 BY MR. HAWKS:

9 Q Could you just describe to the jury your impressions
10 of the firearm?

11 A I think the impressions are pretty much
12 self-explanatory. The weapon is an older weapon. This
13 weapon was probably produced in 1949. It's a pre-1968
14 just because there's no serial number on the weapon. The
15 first thing would be you can tell it has a Winchester
16 bullet plate. This is a Stevens 12-gauge, so it has an
17 incorrect bullet plate on the weapon. You can tell the
18 receiver is cracked in multiple places on the weapon
19 itself. You see that it's cracked and then electrical
20 tape is holding the stock together at some point.

21 When you -- do you see right there what happened?

22 When I open up this weapon, that cocks the triggers
23 inside. This is supposed to automatically engage and it
24 did not; so therefore, it's already unsafe to begin with.

25 The second thing would be when I do engage this

1 safety all the way, do you see what happened just then?
2 It's not acting as it's supposed to. So when I move the
3 safety just partially, the weapon will fire, even with the
4 safety partially engaged. See, if it's all the way to the
5 rear, then it will finally engage, but if I move it just
6 off a little bit. So again, this gun is unsafe in my
7 opinion.

8 Q Thank you. Now, let's go back to the autopsy
9 information that you reviewed. You read Dr. Durso's
10 report?

11 A Yes, sir.

12 Q And you looked at the pictures that were provided to
13 you?

14 A Yes, sir.

15 Q And what did that information tell you?

16 A In my opinion, the shot occurred from a distance of
17 approximately three to four inches or less. The reason I
18 say this is because of the expulsion of the brain that you
19 see in the pictures. That's gas pressure. A shotgun has
20 a chamber pressure around 12 to 13,000 pounds per square
21 inch. The shot itself would not cause the brain to leave
22 the skull. It's the gas pressure that is being driven
23 into the skull and then it causes the brain -- it forces
24 the brain out. In the pictures of the scene, you can see
25 the two parts of the brain in the pictures.

1 Q All right. Does it --

2 A Furthermore, the shot is, according the doctor, front
3 to back, upwards and left to right. So the shot is,
4 basically, going upwards.

5 Q If you wouldn't mind stepping down again. I'd like
6 to, perhaps, do a little demonstration. Could you give us
7 your opinion of how you think this could have happened?

8 A Based on the blood spatter at the scene, at the crime
9 scene, and the statement by Mr. Marshall, he says as he's
10 leaving the scene, she places her hand on the weapon or
11 she pushes the weapon in some way, shape or form. If my
12 finger is on the trigger --

13 Will you come over here and be my -- I'll let you
14 hold the gun so it would be better this way.

15 If he's walking out the door and I'm coming in, if I
16 were to do anything like this, move the trigger, if I grab
17 the gun now, we start to divide the way the trigger pulls.
18 If I pull it, your instinct is to pull back. The
19 statement is she put her hands on the gun. Was it like
20 this? Was it like this? But as long as the gun is this
21 close, based on the blood spatter that you see on the
22 ceiling, behind the couch, high up on the curtains, it's
23 not straight across the couch. She's not down on the
24 couch. Based on the dispersion pattern that you see on
25 the ceiling, it's an upward shot through the head.

1 Now, if she's seated on the couch -- I'm six feet
2 tall, she's five-two. So how would the gun get under her
3 head if she's on the couch. That's not possible. Because
4 he didn't place the gun on the floor and reach down and
5 pull trigger, because it's an upward shot. However,
6 again, if you come back over, he has the gun, I come in
7 the door. He's holding the gun to go out. And as long as
8 it's in line with the head, if I move the gun and it goes
9 off, it would be an upwards shot causing the dispersion
10 pattern that you see on the ceiling of the blood, brains
11 and tissue.

12 Q All right. Let's talk about some of those pictures
13 now. What does this picture tell you?

14 THE COURT: Whoa, whoa, whoa. Are we looking at
15 something that's in evidence?

16 MR. HAWKS: Yes, Your Honor.

17 THE COURT: All right. What number is it?

18 MR. HAWKS: That is the last one that we put in. 13,
19 I believe.

20 THE COURT: Okay. I need to know what number it is.

21 THE WITNESS: This again shows you the parts of the
22 brain, indicating that the gun had to be very close to the
23 skull at the time of the shooting. You can see that the
24 tissue has come down on her pants. She has been shot
25 standing over here and it drives her onto the couch. You

1 see the spatter pattern. Spatter's all over the ceiling,
2 on the window behind her. But this is an indication of
3 the tissue and the brain that you've seen.

4 MR. HAWKS: The next three pictures, Your Honor, from
5 Defense 2 through 11?

6 THE COURT: Thank you.

7 BY MR. HAWKS:

8 Q And this picture?

9 A Again, this just shows more of the blood spatter.
10 She falls down after she's shot. You can see the blood
11 spatter. This has an indication of an upward angle.
12 These tails are pointing down, so there has to be some
13 kind of upright trajectory where they came down to -- she
14 couldn't have been on the couch because the tails are not
15 pointing in that direction like they're going away from
16 the weapon. They're coming down, so they have to have
17 some kind of gravitational arc to them, which means that
18 the victim had to be upright when the shooting occurred.

19 Q And do you see anything in this area of the picture?

20 A Yes, sir. You see the blood spatter that you see in
21 this area. You see right here, this is an elongated tail.
22 These are coming downward, again, showing that she was
23 upright when she was shot based on those tails.

24 Q So would you call that area a void?

25 A No, I would not call it a void because you see the

1 spatter. If there was a void, there wouldn't be any
2 spatter there at all. This is a window shade behind her
3 where it gets shot. Again, the main thing you're looking
4 at here for me, I know the spatter is a great deal of
5 pressure exerted onto her head. Based on the shotgun
6 wound at close range, it just causes a very wide
7 dispersion. You see even up here on the curtain, it goes
8 extremely high. This is the dispersion pattern you see on
9 the ceiling. It starts on this side where the couch is
10 and it goes all the way across the room.

11 Again, there has to be -- the shot has to be pointing
12 upwards. If I'm shooting anywhere close just to middle
13 range across the couch, it would not be an upward
14 dispersion. It would have to go against physics because
15 blood is thick, tissue is thick and it's dense. You see
16 this huge dispersion of pattern. Again, you see nice
17 tails pointing away, so indicating that the shot had to be
18 upward.

19 Q Thank you. All right. Just a couple more things
20 here, Mr. Robinson. What is your opinion of how far away
21 the shot hit?

22 A I'm telling you it's no more than, I'll say three to
23 4 inches, possibly even closer than that. You're talking
24 about gas pressure is what causes that massive trauma. It
25 basically folded back this flap and folded it straight up.

1 That's bone. That's gas pressure. Once you get to
2 12 inches, two feet, that gas has time to dissipate.
3 Therefore, you would not see that kind of extensive damage
4 once you get past that far. It's gas pressure and that is
5 the most dangerous.

6 Q And what is your opinion about where she was when she
7 was shot?

8 A She's at the end of the couch. Again, like we
9 indicated, he's going out the door. Reportedly, she's
10 standing at the end of the couch when the shot occurs,
11 driving her over onto the couch.

12 MR. HAWKS: Beg the Court's indulgence.

13 BY MR. HAWKS:

14 Q Could you describe what you would have done had you
15 come to this scene and done the blood stain analysis --
16 blood spatter, excuse me?

17 A What I don't see here, I don't see too many rulers
18 and what we call strings. I don't believe they did any
19 stringing. What you do is you take the length of the
20 blood stain divided by the width and you take the arc
21 tangent of that. That gives you that angle if the blood
22 struck that surface. And you can pull a string from that
23 particular blood spatter to the tail that you see pointing
24 away and we can pull the strings back to the point of
25 convergence, which would be the origin of where the blood

1 came from, so that would have given us a true indication.
2 We could have pulled one from behind her, one from the
3 couch, a couple from the ceiling and they would have all
4 come to a point of convergence. But that wasn't done in
5 this case.

6 Q In your opinion, is there blood spatter in these
7 pictures? I know you didn't go to the scene, but is there
8 blood spatter in the pictures that that could have been
9 done on?

10 A Absolutely. I just showed you the tails of the
11 blood. That's what you're looking for. The tail gives
12 you directionality. The tails point away from the
13 direction of the blood flow, so therefore, those tails are
14 pointing away from where you see the blood letting event.

15 Q Is it possible to string on something like a couch or
16 other soft?

17 A It is. You can still do the length and the width.
18 You just have to be careful because of the cloth surface.
19 It absorbs the blood and kind of spreads it out a little
20 bit. But overall, the length and the width will give you
21 an idea of -- again, when you're trying to pull multiple
22 surfaces, you just want to pull back to the point of
23 convergence.

24 MR. HAWKS: I don't have anything else, Your Honor.

25 THE COURT: Cross-examination?

1 MS. SAMPSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. SAMPSON:

4 Q Good afternoon, Mr. Robinson.

5 A Good afternoon.

6 Q We've never met before, correct?

7 A I don't believe so.

8 Q Now, you say that all of this was in your opinion?

9 A Yes, ma'am.

10 Q All right. You're hired by the Defense, correct?

11 A I am.

12 Q How much are they paying you here?

13 A I think I'm going to get paid about 5,000 overall.

14 Q Overall. And when did you first look at the gun?

15 A I looked at it on the 24th of October.

16 Q So last Monday?

17 A Yes, ma'am.

18 Q How long were you here looking at the gun?

19 A About an hour.

20 Q About an hour. And they gave you, you said, some
21 reports to look at?

22 A Yes, ma'am.

23 Q When were you first contacted about this case?

24 A I would say six or seven months ago.

25 Q Six or seven months ago. How many hours have you put

1 in preparing for this trial?

2 A I would say around 12 to 15 hours.

3 Q Twelve to 15 hours. And then an hour -- does that
4 include the hour you were here last week?

5 A Yes, ma'am.

6 Q So \$5,000 for 12 to 15 hours and the time that you're
7 in this room right now?

8 A Yes, ma'am.

9 Q And in your opinion, this happened three to
10 four inches away?

11 A Yes, ma'am.

12 Q So let's talk about your opinion and how qualified
13 you are to make it. You stated that you are certified.
14 Who certified you?

15 A The Henry Lee Institute in Connecticut.

16 Q And how did you get that certification?

17 A I went there and took six courses over the course of
18 several months, beginner, intermediate and advance crime
19 scene reconstruction, shooting reconstruction and blood
20 spatter analysis.

21 Q You just said that was over the course of several
22 months?

23 A Yes, ma'am.

24 Q So you went there when, what year?

25 A I can't recall. I don't have my CV in front of me.

1 I believe it was 2007, '08, maybe '05, '06, somewhere in
2 there.

3 Q Would it be fair to say under your CV, it says you
4 were certified in June of 2005?

5 A Sure.

6 Q You said you got that certification over several
7 months?

8 A Yes, ma'am.

9 Q Okay. So when did you first get there?

10 A I went up there and took it in March. And I went
11 back -- you see January, February. I took it in March, I
12 took it in May, I took it in June.

13 Q So three months?

14 A Yes, ma'am.

15 Q So you got those certifications in three months?

16 A Yes, ma'am.

17 Q Not --

18 A Forty hours a week for six weeks, yes, ma'am.

19 Q That's it?

20 A Yes, ma'am.

21 Q And since -- when was the last time you got any
22 training?

23 A I would say probably six or seven years ago.

24 Q So according to your CV, your last training was a
25 shot show in 2010?

1 A Yes, ma'am.

2 Q And that's just a show?

3 A It's a show from all the ammunition manufacturers and
4 weapons, yes, ma'am.

5 Q So you have no ongoing training on a yearly basis?

6 A No, ma'am, I don't have any time for that.

7 Q You don't have any time for that. Well, let's talk
8 about what you do have time for. You are self-employed?

9 A I am.

10 Q And you stated at some point, you were employed by
11 the Georgia Bureau of Investigations?

12 A Yes, ma'am.

13 Q You were terminated from that job, correct?

14 A Negative. I left the GBI to become the director of
15 the crime lab for the City of Atlanta Police Department.

16 Q And you were terminated from that job?

17 A I was let go from that job.

18 Q And you were terminated when?

19 A In September of 2010.

20 Q And that was after working there for two years?

21 A Two-and-a-half, yes, ma'am.

22 Q And then you opened your own practice?

23 A Yes, ma'am.

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

25 A Six hundred thirty-four today.

1 Q Today is 634?

2 A Yes, ma'am.

3 Q Do you remember testifying back in 2015 in this
4 courtroom, this courthouse?

5 A Maybe.

6 Q In the case of Michael Juan Smith?

7 A I don't know that.

8 Q Luck Campbell questioned you. You don't remember
9 that?

10 A Do you know who the attorney was for the defense?

11 Q Aimee Zmroczek.

12 A Yes.

13 Q Do you remember now?

14 A I do.

15 Q Do you remember in that time you said you had
16 testified 598 times?

17 A Yes, ma'am.

18 Q So today, you said how many?

19 A Six thirty-four.

20 Q So you've testified since that time in the last two
21 years 36 times?

22 A In two years, yes, ma'am, that's very easy.

23 Q And prior to that, how many times did you qualify in
24 blood spatter pattern?

25 A I've testified 80 times on average, I believe to

1 date, on blood spatter.

2 Q On just blood spatter?

3 A Yes, ma'am.

4 Q How about on firearms expertise?

5 A Overall, it's going to be -- firearms are covered up
6 in the blood spatter, so I would say a vast majority, but
7 634 is for GSR, weapons and blood.

8 Q Okay.

9 A And 520 were for the State.

10 Q Five hundred and twenty --

11 A Before I left the State.

12 Q And you left the State back in 2000 what?

13 A Well, when I left in 2010, it was APD.

14 Q 2010?

15 A Yes, ma'am.

16 Q So most of those were when you were still getting
17 training?

18 A Sure.

19 Q And most of those were before you went into private
20 practice?

21 A Sure.

22 Q And most of those were when you were still in a lab
23 that had to be certified?

24 A Yes.

25 Q Currently, you're not in a lab that has to be

1 certified, correct?

2 A That's correct.

3 Q And your certification doesn't require continual
4 training?

5 A No, ma'am. I take the CLE test that's -- the
6 collaborative testing services give testing every year to
7 these different scientists for their fields. Because I'm
8 an individual, I have the people who take these tests get
9 me copies of the test and then I can take the test. And I
10 don't have to pay for the test because I am an individual.

11 Q Okay. So it's to avoid paying for the tests that you
12 don't get it?

13 A That's correct.

14 Q Okay. And we've already covered you were terminated
15 from the Atlanta Police Department?

16 A Yes, ma'am, for administrative -- for buying software
17 that let two things talk to each other. Yes, ma'am, I was
18 let go because they said I didn't have authorization to
19 purchase the software, but I had the signature of my
20 major, who signed off on the purchase. When the bill came
21 in for \$34,000, the City of Atlanta was broke, so somebody
22 had to get let go and it was me.

23 Q And you got let go for that, but that's not what you
24 sued them for. You sued them for wrongful termination?

25 A Wrongful termination.

1 Q And you said you were terminated because of your
2 race?

3 A My race and because the two months before I was
4 terminated, I had an outstanding on my job performance and
5 two months later, I was let go.

6 Q And again, your suit was for wrongful termination due
7 to race, not for any of that you just said?

8 A Correct.

9 Q And that suit has subsequently been dismissed?

10 A It was. Suing the city, you know, it's hard to win
11 that.

12 Q Now, that we've gone over that, are you certified by
13 the Association of Firearms and Tool Marks Examination?

14 A I am not.

15 Q But the report that you looked at by Investigator
16 Collins, he is?

17 A Okay.

18 Q And are you certified by the International
19 Association for Identification?

20 A No, ma'am.

21 Q Unlike Stan Richards, whose report you looked at?

22 A Okay.

23 Q And you're telling us about trigger pull. You only
24 looked at the gun the one day, back last Monday?

25 A Correct.

1 Q You didn't fire it?

2 A No.

3 Q You didn't look at any of the ammo that was used in
4 it?

5 A No.

6 Q You didn't look at any of the pellets that were taken
7 out of it?

8 A No.

9 Q And when you talk about what Dr. Durso did, let's
10 move on to that. You talked about how you can say that
11 it's three to four inches away?

12 A Correct.

13 Q You looked at the photographs?

14 A I did.

15 Q Any soot on her face?

16 A The soot doesn't matter. The barrel was 20 inches
17 long. You're not going to expect to see soot, especially
18 when you have three to four inches. It's going to burn up
19 most of the vaporous lead before it even enters her. This
20 is a shotgun, not a handgun.

21 Q Correct. So my question is no, you didn't see any
22 soot?

23 A I did not.

24 Q And you said you can say it's three to four inches
25 based on the approximated wounds. You didn't see the

1 body?

2 A Or less, yes, ma'am.

3 Q You didn't see the body?

4 A I did not.

5 Q You didn't see the wound?

6 A I looked at the autopsy report and the photographs.

7 Q Did you notice in the autopsy report, she said she
8 had to reapproximate the wounds?

9 A I saw that.

10 Q So she had to make it back up?

11 A She did.

12 Q And that --

13 A That's because of the gas pressure because it
14 destroyed her head. That's gas pressure, not the pellets,
15 not the wad. That's the gas. So three to four inches is
16 as far away as it could be, no further.

17 Q In your opinion?

18 A I'm sure.

19 Q And again, you're basing that on her reapproximation
20 of the wound, which is based on what she did, not what you
21 did?

22 A I'm just looking at the overall pictures. I'm
23 telling you that's what the range is based on the massive
24 destruction of the cranial ball.

25 Q And you put that in a report?

1 A I did not.

2 Q You did not? Because it's important to make a report
3 that we all can rely upon?

4 A I was not asked to do a report.

5 Q You were not asked, but you would agree with me that
6 reports are important?

7 A Sure.

8 Q That we rely upon those?

9 A Sure.

10 Q In fact, you relied upon a bunch of reports?

11 A I did.

12 Q And today, you said Dr. Durso said that the shot was
13 front to back and upward?

14 A Correct.

15 Q Her report actually says slightly upward, does it
16 not?

17 A Front to back, upwards, and left to right. That's
18 what it says on Page 2 of 5. The trajectory to the body
19 appears to be front to back, upwards, and left to right.

20 Q So you're telling me there's no definition of
21 upwards?

22 A Upwards. You can tell that it folds the flap of her
23 skull straight back, so it's going upwards.

24 Q You can tell that from the picture, but you didn't
25 see the live scene, correct?

1 A Correct.

2 Q Again, she had to reapproximate that? That says that
3 in her report.

4 A That's due to the damage caused by the gas pressure.

5 Q Again, so the answer to my question is yes, she had
6 to reapproximate it?

7 A Okay.

8 Q And she noted that she didn't see any satellite or
9 any patterns from the pellets, which I think you already
10 admitted?

11 A Correct.

12 Q And when she says upwards, there's no part of this
13 that says it's directly upwards, slightly upwards, just a
14 little upwards, it just says upwards?

15 A Correct.

16 Q You would agree with me that could be straight up, it
17 could be a little up?

18 A No, ma'am, not on the photograph. It is upwards.
19 You can tell where it folds her skull back. It's going
20 upward. It goes into her skull and then it forces her
21 brain out of her skull.

22 Q Again, I'm asking about the report. Is all that that
23 you just said in this report?

24 A No, ma'am.

25 Q So the report just says upwards. You're taking what

1 she says as upwards and making the rest of it -- you said
2 it's not in the report?

3 A You look at the photographs as well as the report,
4 ma'am.

5 Q So, again, the answer to my question is no, it's not
6 in the report?

7 A It says upwards.

8 Q Okay. And you're not a medical doctor?

9 A I'm not, but I am certified in gunshot wounds through
10 the GBI. I had to review 1,000 autopsies while I was with
11 the GBI.

12 Q When did you get that certification?

13 A While at the Georgia Bureau of Investigation by
14 reviewing autopsies.

15 Q The year?

16 A I started in '98, so from 2000 until 2008 when I
17 left.

18 Q And you no longer get training on that certification,
19 correct?

20 A No, ma'am.

21 Q So the last time you got any training would have been
22 in 2008?

23 A It wouldn't change my training and my opinion if I
24 took training. I know what it looks like to see a contact
25 or near contact gunshot wound.

1 Q So you're saying ongoing training isn't helpful?

2 A I didn't say that. I said it's not necessary to take
3 ongoing training.

4 Q It's not necessary to take ongoing training. All
5 right. Well, then -- but you're not a forensic
6 pathologist either?

7 A I'm not.

8 Q That is her field of expertise, Dr. Durso?

9 A It would be.

10 Q And you talked about the gun and the safety. You
11 have no idea whether the safety was on or off prior to
12 that gun being held by Mimi Joe Marshall, do you?

13 A I do not.

14 Q And you talked about a lot of what you based your
15 opinion on was his statement, correct?

16 A No, ma'am. My opinion of the weapon is me looking at
17 the weapon.

18 Q Oh, I'm sorry. My question was probably not clear.
19 Not of the weapon, but how this happened?

20 A Correct.

21 Q Was based on his statement?

22 A And the forensics that you see, the blood that you
23 see.

24 Q But you gave an entire demonstration about how the
25 gun was pushed or held and all that. That's solely based

1 on his statement, correct?

2 A Correct.

3 Q So if he didn't tell the truth, that could change how
4 the gun got to her head, correct, because you only used
5 what he said?

6 A Correct.

7 MS. SAMPSON: Beg the Court's indulgence.

8 (Pause.)

9 BY MS. SAMPSON:

10 Q Let me ask you, you talked a little bit about this
11 trigger pull. That was actually the average trigger pull
12 you would expect to find on a shotgun, right?

13 A It is.

14 Q There's nothing wrong with the trigger pull?

15 A There is not.

16 Q And you went over these photographs and the downward
17 trajectory and all that. Do you write any protocols for
18 any certified laboratories?

19 A No, ma'am, not anymore. When I was at the Atlanta
20 Police Department, I did.

21 Q Back then at the Atlanta Police Department where you
22 got terminated?

23 A Yes, ma'am.

24 MS. SAMPSON: No further questions.

25 THE COURT: Mr. Hawks.

1 MR. HAWKS: May it please the Court?

2 REDIRECT EXAMINATION

3 BY MR. HAWKS:

4 Q Did you follow your protocols when you were doing
5 this kind of stuff?

6 A I did.

7 Q Were you paid at the GBI?

8 A I was. I think we're all paid, aren't we? I don't
9 think anybody works for free.

10 Q Were you paid to testify for the State?

11 A I was, but it was -- yeah, I was.

12 Q How many times did you testify for the State?

13 A Five hundred twenty.

14 Q She talked to you about firing the gun. They didn't
15 fire the gun in their testing either, did they?

16 A They did not.

17 Q And all the men she told you about, Collins, they're
18 all here, aren't they? You see them here?

19 A They are.

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

21 (Pause.)

22 MR. HAWKS: Nothing further, Your Honor.

23 MS. SAMPSON: Briefly, Your Honor.

24 RECROSS-EXAMINATION

25 BY MS. SAMPSON:

1 Q You just said that they didn't fire the gun. You
2 have the report, right?

3 A I do.

4 Q He fired primer from the gun. Did you not see that
5 in the report?

6 A I do, I see that right here.

7 Q So he did fire the gun?

8 A He did.

9 MS. SAMPSON: Nothing further.

10 THE COURT: Have a nice day.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Call your next witness.

13 (There was a bench conference in the presence of the
14 jury, but outside the hearing of the jury.)

15 THE COURT: All right. Ladies and gentlemen, we're
16 going to stop there for the day. The next couple of
17 witnesses would push us into kind of a weird timeframe and
18 I don't like the attorneys to feel constrained about a
19 timeframe. So what we're going to do is stop right there
20 for the day.

21 Now, as we take this break overnight, you are
22 reminded that you are under an oath. You are under an
23 oath that you made to me, to the lawyers in this case, to
24 each other, and to yourself not to discuss this case with
25 anyone in any way, shape, or form, and you are not to do

1 any research on this case in any way, shape, or form.

2 We're going to start tomorrow morning at 9:30. I
3 apologize, we'll start tomorrow morning at 9:45. I have a
4 matter completely unrelated to this case I promised some
5 of the lawyers I would do right at 9:30. I told them to
6 be here and ready to go. So we're going to knock that out
7 real quick at 9:30, and then we'll jump right into you
8 guys at 9:45. So please be here at 9:45. Do not discuss
9 the case. Keep an open mind. Enjoy your evening. Thank
10 you very much.

11 (WHEREUPON, the jury left the courtroom at 4:30
12 p.m.)

13 THE COURT: So you have two more?

14 MS. GOODE: I believe that's it, Your Honor.

15 THE COURT: How long do you think that --

16 MS. SAMPSON: We may be able to stipulate to one of
17 them.

18 THE COURT: All right. How long you think that will
19 take? Just ballpark? You know I'm not going to hold you
20 to it, I'm just trying to get an idea.

21 MS. GOODE: Between the two of them, I can't imagine
22 it would be more than an hour, hour-and-a-half.

23 THE COURT: And then are y'all going to call reply
24 witnesses?

25 MS. SAMPSON: I'm going to figure that out, but I can

1 e-mail you in the next half hour.

2 THE COURT: Okay. That's fine. Y'all figure out if
3 you need to call some reply witnesses so you can have them
4 ready to go so we don't have to go find them tomorrow.

5 Anything else?

6 MS. SAMPSON: Not from the State.

7 THE COURT: From the Defense?

8 MS. GOODE: No, Your Honor. Thank you.

9 THE COURT: All right. See you all in the morning.

10 (WHEREUPON, the proceedings were adjourned for
11 the day to be reconvened on Thursday, November 2, 2017.)

12 THURSDAY, NOVEMBER 2, 2017

13 THE COURT: Are you ready to go?

14 MS. GOODE: We're still waiting on Mr. Rainsford.

15 THE COURT: Where is he?

16 MR. MCGLOTHIN: I spoke to his supervisor. He said
17 he's in en route, Your Honor.

18 THE COURT: Is he their witness?

19 MS. GOODE: He would be our only witness, Your Honor.

20 THE COURT: All right. Is the State calling any
21 reply witness?

22 MS. SAMPSON: Barring something crazy from Rainsford,
23 no.

24 MR. HAWKS: Judge, while we're waiting --

25 THE COURT: Hold on one minute.

1 MR. HAWKS: Sure.

2 (Pause.)

3 THE COURT: What did you want to say, Mr. Hawks?

4 MR. HAWKS: Just curious how you want to do the
5 charging conference. Would you like a written request for
6 charge or just do it on the record and hash it out?

7 THE COURT: However, you want to do -- we'll do it on
8 the record. If you've got something you want me to read,
9 the sooner you get it to me, the better it is.

10 (WHEREUPON, a short break was taken.)

11 (WHEREUPON, the jury entered the courtroom at
12 10:08 a.m.)

13 THE BAILIFF: The jurors are seated, Judge.

14 THE COURT: All right. Welcome back. Thank you very
15 much for being on time. We have your lunch in the process
16 of being ordered. Thank you for bearing with us this
17 morning on getting started a little bit late.

18 You may call your next witness.

19 MR. KRZYSTON: Thank you, Your Honor. May it please
20 the Court?

21 THE COURT: Yes, sir.

22 MR. KRZYSTON: The Defense calls Franklin Rainsford.

23 THE COURT: All right. Mr. Rainsford, please come
24 forward and be sworn.

25 FRANKLIN RAINSFORD, after being

1 duly sworn, testified as follows:

2 THE COURT: Okay. Have a seat. If you would, please
3 spell your last name for us.

4 THE WITNESS: Franklin Rainsford, R-A-I-N-S-F-O-R-D.

5 DIRECT EXAMINATION

6 BY MR. KRZYSTON:

7 Q And Mr. Rainsford, where are you employed currently?

8 A Richland County Sheriff's Department.

9 Q How many times have you testified for the Defense?

10 A This would be my first.

11 Q What is your scope of employment with the sheriff's
12 department?

13 A I'm the crime scene investigator with the forensic
14 science unit.

15 Q And on August 14th, 2015, did you have occasion to
16 respond to the scene here that we've been talking about?

17 A To the scene, no.

18 Q No. Did you process evidence related to the
19 investigation?

20 A I did.

21 Q Okay. In processing that evidence, did you conduct a
22 swab of the gun labeled as item 72?

23 A I did.

24 Q And what locations on the weapon did you swab with
25 the swab?

1 A After processing for fingerprints, I swabbed the
2 shotgun kind of as a single unit, the trigger guard, the
3 trigger stock and the barrel as a single unit.

4 MR. KRZYSTON: Okay. Thank you. No further.

5 THE COURT: Cross?

6 MS. MOSER: Just briefly, Your Honor.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. MOSER:

10 Q Hi, Investigator Rainsford.

11 A Good morning.

12 Q How are you?

13 A Good.

14 Q As a crime scene investigator, your job is to
15 document evidence, correct?

16 A Correct.

17 Q Okay. And another part of your job is to collect
18 evidence, correct?

19 A Yes, ma'am.

20 Q And in this case, you collected a gun?

21 A Yes, ma'am.

22 Q And that was the Defendant's gun?

23 A Correct, the shotgun.

24 Q Okay. And you swabbed that gun?

25 A Correct, after processing for fingerprints, I swabbed

1 it for DNA.

2 Q What was the first part of that?

3 A Processing for fingerprints.

4 Q Okay. So you first processed for fingerprints and
5 then after that, you swabbed the gun?

6 A Correct.

7 Q Okay. Is that standard procedure?

8 A Yes, ma'am, it's standard procedure.

9 Q Okay. So you were following protocol?

10 A Yes, ma'am.

11 Q Okay. And was that at the direction of a supervisor?

12 A Generally, when I receive a firearm of any type, I
13 will process it for fingerprints and then swab as standard
14 procedure.

15 Q Okay. So it's typical?

16 A Yes, ma'am.

17 MS. MOSER: Thank you. No further questions.

18 THE COURT: Redirect?

19 MR. KRZYSTON: Nothing further, Judge.

20 THE COURT: Have a nice day. Thank you very much.

21 All right. You may call your next witness.

22 MS. GOODE: The Defense rest, Your Honor.

23 THE COURT: All right, ladies and gentlemen, the
24 Defense has rested its case. I have some matters of law
25 that I have to take up outside of your presence. You are

1 still not allowed to talk about the case. We'll be back
2 with you in just a few moments. Do not discuss the case
3 and keep an open mind. Thank you very much.

4 (WHEREUPON, the jury left the courtroom at 10:12
5 a.m.)

6 THE COURT: All right. Motions?

7 MS. GOODE: Your Honor, again, we would just renew
8 our motion for a directed verdict and all pretrial and --
9 pretrial objections to motions and anything raised
10 throughout the trial.

11 THE COURT: All right. My ruling upon them is the
12 same as it would be based upon the reasons that I've
13 previously given.

14 All right. Does the State care to call any rely
15 witnesses?

16 MS. SAMPSON: No, sir.

17 THE COURT: All right. Let's talking about charges.
18 Go for it.

19 MR. HAWKS: Judge, I have some law clerks working on
20 a document that has the ones that we want. If we could
21 take a few minutes, I can see if that's ready.

22 THE COURT: I just need to know what it is you want
23 first.

24 MR. HAWKS: We want accident, involuntarily and
25 spoliation.

1 THE COURT: What's the spoliation based on?

2 MR. HAWKS: The spoliation is about the shirt that
3 was found in the van.

4 THE COURT: All I've heard is there's a white shirt
5 in the van that she was told she could throw away.

6 MR. HAWKS: It is the shirt that he was wearing when
7 the shooting occurred.

8 THE COURT: And where is the evidence of that in the
9 record?

10 MS. GOODE: Robert, Jr. testified that he was wearing
11 a white t-shirt. I believe there was another witness that
12 testified he wore a white t-shirt. Ms. Tamieka Marshall
13 testified that she had the white t-shirt and when asked --
14 she, I guess, asked law enforcement what she could do with
15 it, they told her she could throw it away.

16 THE COURT: Where is the evidence that that white
17 t-shirt is the white t-shirt he had on?

18 MS. GOODE: I think that's part of our issue, Your
19 Honor. It's a white t-shirt that potentially had evidence
20 on that and it could have helped in the case.

21 THE COURT: Okay. There's no evidence of spoliation
22 in the record. I'm not going to charge spoliation.

23 Okay. Now, let's talk about involuntary. I think
24 your biggest issue with involuntary is State vs. Reese.
25 What State vs. Reese says is that you do not get an

1 involuntary charge when you are pointing or presenting a
2 firearm at another person. It's directly on point.
3 Justice Kittredge, Supreme Court 2006.

4 In that case, the guy said he was threatening suicide
5 and they -- and the trial court did not charge
6 involuntary. The Court of Appeals said you should have
7 charged involuntary, and the Supreme Court came back and
8 said because the defendant was pointing or presenting a
9 firearm, which is a felony, that precludes an involuntary
10 manslaughter charge.

11 MR. HAWKS: Your Honor, he's not charged with
12 pointing and presenting.

13 THE COURT: He doesn't have to be charged with it.
14 He wasn't charged with it in State vs. Reese either. He
15 was charged with murder.

16 MR. HAWKS: The only evidence that I can think of in
17 the record would be when Clarke was talking about the
18 exchange with the Defendant about what he meant by she
19 pushed it up. Other than that, I don't know of any
20 evidence that would suggest he pointed and presented it at
21 her.

22 THE COURT: His own statement admits that he pointed
23 the gun at her. His statement to Robert Marshall, Jr.
24 says that he pointed the gun at her. His statement to
25 Clarke says that he pointed the gun at her.

1 MR. HAWKS: I don't recall any of that, Your Honor.
2 The other problem is --

3 THE COURT: You don't recall any of that?

4 MR. HAWKS: Only Clarke's part.

5 THE COURT: Okay. When he says to Robert Marshall,
6 Jr. or Robert Marshall, Sr., I killed my wife, it was an
7 accident, how do you think that occurred without the gun
8 being pointed at her?

9 MR. HAWKS: But that doesn't mean he purposely
10 intentionally pointed it at her. It could have happened
11 as he said, as she grabbed it and pulled it up.

12 THE COURT: Okay. You're not getting an involuntary
13 charge. State vs. Reese is directly on point. There is
14 direct evidence in the case that he pointed the firearm at
15 the victim in this case, which would constitute pointing
16 and presenting.

17 Now, so, in your accident charge, I've been
18 struggling with this accident charge all week because I
19 despise the case that says you can arm yourself even
20 though it's a crime for you to possess a firearm for the
21 purposes of self-defense. That legal fiction that has
22 been created is beyond my own personal comprehension.
23 But, however, that's the law. But under this, the
24 accident charge says, The defendant has raised the defense
25 of accident. An act may be excused on the ground of

1 accident if it is shown that the act was unintentional,
2 that the defendant was acting lawfully, and that
3 reasonable care was used by the defendant in the handling
4 of the weapon.

5 The burden is on the State to prove beyond a
6 reasonable doubt that the act was not an accident, but was
7 caused by the negligence or the carelessness on the part
8 of the Defendant in the handling of a dangerous
9 instrumentality or by unlawful activity by the Defendant.
10 And then it says that you are to charge the unlawful
11 activity committed by the Defendant.

12 So you want me to charge that?

13 MR. HAWKS: But doesn't State v. Burris say that it,
14 in essence, is lawful.

15 THE COURT: No, State -- the defense has had a
16 misperception of these cases from the beginning. That
17 entire line of cases is someone who armed themselves in
18 self-defense, and therefore, their arming themselves was
19 not unlawful because they were arming themselves in
20 self-defense.

21 There is no evidence in this record in any way,
22 shape, or form that Mr. Marshall armed himself in
23 self-defense.

24 MR. HAWKS: I would argue that there is because of
25 his own statement. He says that he picked up the shotgun

1 to go outside and check what was going on with the shed
2 outside his trailer. The other problem is Burris
3 specifically says that when there is evidence that could
4 mitigate murder, i.e., that it could have been an
5 accident, then you get involuntary.

6 THE COURT: I mean, how do you get around the case
7 that says you can't be committing a felony and get an
8 involuntary?

9 MR. HAWKS: Well, they're directly contradicting each
10 other.

11 THE COURT: All right. I'm going to charge accident
12 and I'm going to charge that the unlawful activity that he
13 was committing was pointing and presenting a firearm.

14 MR. HAWKS: Well, we would object to that based on
15 Burris and there's no evidence outside of Clarke that he
16 pointed and presented a weapon.

17 MS. SAMPSON: Your Honor, if I may, it would be the
18 State's position that he was also acting unlawfully by
19 having the gun in the first place.

20 THE COURT: Okay. I believe you. I understand --
21 and I'll tell you, I read every single one of these cases
22 at least 10 times this week. I believe that he's acting
23 unlawfully the moment he picks up a gun and, therefore, he
24 would never be entitled to self-defense, he would never be
25 entitled to accident, he would never be entitled to

1 involuntary manslaughter under any stretch of the
2 imagination because he is a convicted felon and he is
3 prohibited from possessing a firearm under federal law and
4 under state law, period. End of story. Not up for
5 discussion.

6 That's not what the case law says. Every single one
7 of those cases down to the footnotes in them talk about
8 the fact that there are times when people can arm
9 themselves in self-defense and that does not trigger this
10 unlawful activity category. And that's why I'm not going
11 to charge -- I think it would be a problem if I charged
12 the jury that the mere fact that he had a gun was unlawful
13 activity enough.

14 The difference is -- in those cases, they're just
15 clear. They just say that. I don't know how else to get
16 around it. I don't know how else to process through it
17 other than our Supreme Court has determined that there are
18 circumstances where you can lawfully arm yourself in
19 self-defense. And all those cases say the person lawfully
20 armed themselves -- and I'm talking about Goodson,
21 McCaskill, Burris. Let's see, Goodson, McCaskill, Burris,
22 those are the main ones, okay.

23 The conclusion that Burris ends up reaching is that
24 you can lawfully arm yourself in self-defense at the time
25 the fatal shooting occurred, okay, but they have to meet

1 the elements of self-defense along with the other
2 elements. And this case, all the elements of self-defense
3 are not met.

4 But there's even a footnote in one of these things
5 that basically says -- there's a footnote in one of these
6 things where they come back and they say, We reject the
7 State's claim that because Goodson unlawfully possessed a
8 firearm, the defense of accident is precluded. Rather,
9 the burden rests upon the State to prove beyond a
10 reasonable doubt that the unlawful act in which the
11 accused was engaged in was at least the proximate cause of
12 a homicide.

13 In Goodson -- I mean, they -- it's just been
14 rejected. I don't know what -- that's the status of the
15 law and that's what we have to go with, so I cannot charge
16 them that. Just the fact that he was not allowed under
17 our statutes to possess a firearm isn't enough, but I do
18 believe there's evidence in the record that he was
19 pointing and/or presenting the firearm at the victim in
20 this case, which would be unlawful activity.

21 The way the accident charge is going to read is this:
22 The Defendant has raised a defense of accident. An act
23 may be excused on the ground of accident if it is shown
24 that the act was, number one, unintentional, that the
25 Defendant was acting lawfully and that reasonable care was

1 used by the Defendant in the handling of the weapon.

2 The burden is on the State to prove beyond a
3 reasonable doubt that act was not an accident, but was
4 caused -- that the act was not an accident, but was caused
5 by the negligence or the carelessness on the part of the
6 Defendant in the handling of a dangerous instrumentality
7 or by unlawful activity by the Defendant. In South
8 Carolina, pointing and/or presenting a firearm at another
9 person loaded or unloaded is considered to be unlawful
10 activity.

11 All right. Anything else on the charges? I'm not
12 charging implied malice by the use of a deadly weapon. I
13 believe there's mitigation under --

14 What's that case, Belcher?

15 MR. HAWKS: Belcher, Your Honor.

16 MS. SAMPSON: Yes, sir.

17 THE COURT: I believe the mitigation of accident is
18 present and I will not be charging that implied malice --
19 that the jury can imply malice from the use of a deadly
20 weapon.

21 MR. HAWKS: Your Honor, respectfully, if I could just
22 for the record also add that we are objecting based on the
23 common law that that is a comment on the facts.

24 THE COURT: How am I commenting on the facts?

25 MR. HAWKS: Because you're saying that he's acting

1 unlawfully by pointing and presenting.

2 THE COURT: No, I'm saying unlawful activity is doing
3 this. I'm not saying he did this. I'm saying an unlawful
4 activity is pointing and/or presenting a loaded or
5 unloaded firearm. I'm not saying that he did it. I'm
6 saying that the State -- this is going to be upon the
7 State to convince them that he was committing unlawful
8 activity.

9 What else?

10 MS. SAMPSON: Just for the record, Your Honor, we
11 were prepared on this particular issue and just so I could
12 make a good record, I would hand to the Court State v.
13 Smith. And this is on both involuntary and accident, and
14 that is 2011 case from our Supreme Court.

15 In this case, they said because the defendant was not
16 arming himself in self-defense and he was not allowed to
17 have a gun, they didn't have to give a charge of
18 involuntary or the charge of accident because the question
19 was whether he armed himself in self-defense. Since there
20 was no evidence that he armed himself in self-defense, he
21 could not have the accident charge. That would be the
22 State's position. It wasn't just that he couldn't have a
23 gun, it was several factors. But in this particular case,
24 they said no, you didn't have to have accident and you
25 didn't have to have involuntary. Just for the record.

1 THE COURT: Hold on, let me read this real quick.

2 (Pause.)

3 THE COURT: All right. Anything else, Mr. Hawks?

4 MR. HAWKS: Just again, Your Honor, our contention
5 would be -- and I think I said this wrong earlier.

6 THE COURT: Okay.

7 MR. HAWKS: What I meant to say was that he armed
8 himself -- there's testimony that he armed himself to go
9 check around the trailer or around outside the trailer,
10 and that's what he was on the way to do and the accident
11 interrupted that.

12 THE COURT: But there's no evidence that he was in
13 imminent fear of anything?

14 MR. HAWKS: No.

15 THE COURT: Right.

16 MR. HAWKS: But he went to go --

17 THE COURT: Which he's not allowed to do because he's
18 a convicted felon.

19 All right. I am going to charge the accident charge.
20 I think this situation is a little unique from the Smith
21 case. The Smith case is, basically, a drug deal gone bad
22 where someone goes to collect a debt. I think,
23 basically -- I guess, the other reason I'm charging
24 accident is I think based upon between the testimony of
25 Durso and the blood spatter people and the firearms

1 experts on both sides of the case, the prosecution and the
2 Defense, it's not -- I think there's sufficient evidence
3 in the record that it could have been an accident. I'm
4 not saying it is.

5 Remember, the standard that's before me at this point
6 is does any evidence exist to give the charge. But I
7 think there's sufficient -- they've created enough of a
8 record and enough of the evidence considering the
9 existence of the evidence and not the weight of the
10 evidence that accident should be charged.

11 And I need probably about 10 minutes to put this
12 thing in its final form and get it printed and make sure I
13 have the wording just the way I want it.

14 MS. SAMPSON: I didn't ask my charges.

15 THE COURT: Okay.

16 MS. SAMPSON: I'm sorry. The only thing that -- we
17 did not want the presumption of malice charge, so I wasn't
18 asking for that, but I did have and would submit -- I
19 think this is what you charge any way for malice, but I
20 just wanted to make sure. Specifically, it has definition
21 of expressed malice and implied malice, so I just wanted
22 to make sure.

23 THE COURT: Hold on one second. Let me just do it
24 while I'm out here.

25 MS. SAMPSON: Okay.

1 THE COURT: So we don't have to go back and forth.

2 (Pause.)

3 THE COURT: All right. Here's what my malice charge
4 says: Malice is hatred, ill will or hostility towards
5 another person. It is the intentional doing of a wrongful
6 act without just cause or excuse and with an intent to
7 inflict an injury or under circumstances that the law will
8 infer an evil intent. Malice aforethought does not
9 require that malice exist for any particular time before
10 the act is committed, but malice must exist in the mind of
11 the defendant just before and at the time the act is
12 committed. Therefore, there must be a combination of
13 previous evil intent and the act. Malice aforethought may
14 be expressed or inferred.

15 These terms expressed and inferred do not mean
16 different kinds of malice, but, merely, the manner in
17 which the malice may be shown to exist. That is either by
18 direct evidence or by inference from the facts and
19 circumstances which are proved.

20 Expressed malice is shown when a person speaks words
21 with expressed hatred or ill will for another or when the
22 person prepared for -- let's see. That doesn't come out.

23 So expressed malice is shown and then take that out.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Period.

1 So is there anything from that Wild's charge that you
2 want added?

3 MS. SAMPSON: I think the only thing you didn't say,
4 Your Honor, was for implied or inferred malice, the second
5 part of a reasonably prudent man would have known that
6 according to common experience there was a plain and
7 strong likelihood that death would follow the contemplated
8 act. That's directly from Wilds and the definition of
9 implied malice.

10 THE COURT: Okay. Let me go look at that.
11 Anything else?

12 MS. SAMPSON: Not from the State, Your Honor.

13 MR. HAWKS: No, Your Honor.

14 (Pause.)

15 THE COURT: Give me about 10 minutes and we'll be
16 ready to go.

17 MS. SAMPSON: Can I ask a question, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. SAMPSON: If you're not willing to add that
20 language about reasonably prudent, could you let me know
21 so I can --

22 THE COURT: Yeah, I will. I just need to read that
23 case.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: I am going to charge that line from

1 Wilds.

2 MS. SAMPSON: I didn't hear you.

3 THE COURT: I am going to charge that line from
4 Wilds.

5 MS. SAMPSON: Thank you.

6 THE COURT: Anything else before we start?

7 MS. GOODE: Your Honor, I would make a request
8 regarding closing, just that the State would close in
9 full, then I would be allowed to close and then they would
10 come back with any rebuttal based on State v. Beatty.

11 MS. SAMPSON: Yes. I assumed that's what we were
12 doing.

13 MS. GOODE: Yes, I was just making sure.

14 THE COURT: Technically, under Beatty, she's got to
15 stand up and ask for it.

16 MS. SAMPSON: That's correct, I'm sorry.

17 THE COURT: Okay. Bring them in.

18 THE BAILIFF: Yes, sir.

19 THE COURT: All right. If you're in here now, you're
20 staying in here till my jury charge starts. If you don't
21 want to be present for my jury charge, I'll take a break
22 after their closing arguments and let you slide out. But
23 if you're in here now, make sure your phone is off and you
24 plan on staying in here.

25 These attorneys have worked very hard this week.

1 They've all been completely and totally and fully prepared
2 and have done a lot of work on this case for a long time.
3 I'm not going to have people coming in and out like it's
4 some kind of -- something for entertainment purposes. So
5 if you're here, stay in here. I want this jury to have
6 these attorneys -- I want the jury to give them their
7 undivided attention.

8 (WHEREUPON, the jury entered the courtroom at
9 10:57 a.m.)

10 THE BAILIFF: The jurors are seated, Judge.

11 THE COURT: Thank you very much.

12 All right, ladies and gentlemen, as I told you in the
13 beginning, we'll reach a point in the trial known as
14 closing arguments or closing summations. We're at that
15 point in the trial at this point in time.

16 Now, I do want to say one thing to you. You all have
17 done a very good job this week of paying attention and
18 staying with us, paying attention to the witnesses, paying
19 attention to the attorneys, paying attention to me, and we
20 all sincerely thank you for that. This is the attorney's
21 final opportunity to come before you and summarize the
22 case from their representative points of view. I ask that
23 you give them your undivided attention.

24 Now, as with everything else that happens in here,
25 there's a rule and there's an order in how things go. So

1 the State will give their closing argument first, the
2 Defense will give their closing argument second, then the
3 State will be allowed to reply to what the Defense says,
4 okay. At that point in time, depending on how long that
5 takes, we may or may not take a break, okay.

6 Now, I don't ever hold attorneys to time limits.
7 Sometimes I wish I did, okay, but I don't do that, so, you
8 know, this is their case and I want them to be able to try
9 their case. I want you to give them your full attention.

10 What happens once they're done is I tell you what the
11 law is. That is often not the most exciting part of
12 trial. Needless to say, it's very boring and hearing my
13 voice that much isn't fun for anybody. If we've gone for
14 a lengthy time, I may stop, take a break or I may just say
15 let's stand up and stretch right where we are and then
16 give you the charge. But that's kind of the general
17 timeframe for where we're going to be for the next little
18 bit or so. So please give the attorneys your undivided
19 attention.

20 Who's closing?

21 MS. SAMPSON: I am, Your Honor.

22 THE COURT: Ms. Sampson, the floor is yours.

23 MS. SAMPSON: Thank you, Your Honor. May it please
24 the Court?

25 THE COURT: Yes, ma'am.

1 CLOSING STATEMENT BY MS. SAMPSON

2 MS. SAMPSON: Selfish, callous, unapologetic, just
3 plain wrong. These words describe the actions taken by
4 the Defendant on August 14th and August 15th of 2015 when
5 he picked up this shotgun right here, when he loaded it,
6 shut it, disengaged the safety, put his finger on the
7 trigger, waited for his wife to come through the front
8 door, sit down, pulled this trigger and shot her eye out,
9 leaving her brains on the floor. That old gun, a gun he's
10 not even supposed to have, a gun that's so old, it doesn't
11 even have a serial number, a gun that had to be taped
12 together in order to work. That is the definition of
13 reckless disregard for human life.

14 On August 14th, Doris Marshall got out of her bed and
15 began her day, like most of us, just getting ready to go
16 about her day, not knowing it would be the last time she
17 ever saw her bedroom.

18 She received a text from her daughter with her
19 newborn four-week-old grandbaby's picture. She then got
20 ready for work, put on her ID badge, headed to Fort
21 Jackson, where she worked as a dining facility attendant.
22 She put on her work uniform, her white shirt, her navy
23 pants, her black shoes with the covers on the bottom. She
24 went to serve our Armed Forces.

25 Preston Wider came to you and talked to you about her

1 duties, that she cleaned the facility, she provided them
2 food. He talked about how her hours fluctuated. We
3 provided you with the timesheet that showed you that she
4 clocked in at 2:00 o'clock, clocked out for a break, went
5 back in and worked. He talked to you about how her hours
6 fluctuated because she couldn't leave, didn't leave until
7 every man and woman was served. That was her job. She
8 did that every day. She worked, worked hard for her
9 money, like most of us do.

10 And what was Mimi Joe Marshall doing while she did
11 that? Sitting in the house smoking some cigarettes,
12 sitting around outside drinking some beer. Wasn't going
13 to work. You heard from Leslie Brown, who told you she
14 saw him outside, how he even asked her did she want a beer
15 while he went to the store down the street and got it. He
16 wasn't working. He wasn't serving our Armed Forces.
17 Doris Marshall was at the time, she told you.

18 Doris Marshall checked out of work at 10:22 for the
19 last time. She got in her Chrysler Pacifica and drives
20 home. This is the Chrysler Pacifica. We have plenty of
21 pictures of it. This is her car. She pays for it. She
22 got in it and drove home.

23 She arrives at the Bel-Aire Mobile Home Park. It's
24 off of Leesburg Road in Richland County. As she pulls in
25 the entrance, as you see here on this dirt road -- you can

1 even see the very distance of the AM/PM store that we've
2 all been talking about. As she pulls in the entrance, she
3 has no idea that the Defendant has loaded this gun, closed
4 it, released the safety and is sitting home waiting for
5 her to come so he can blow her away and end her life.

6 She pulls up to her trailer, lot No. ■, and enters
7 the home. As most of us do, she sat down to relax. It's
8 been a hard day. She had her lunch bag by her feet.
9 Before she has time to take off her badge, similar to the
10 ones you're wearing, she sat down, badge still attached,
11 phone still in her pocket, glasses still on her face,
12 shoes still on her feet tied. Didn't even have time to
13 untie her shoes.

14 At that point, what does the Defendant do? Takes
15 that gun, pulls the correct trigger and blows her away.
16 The blast is so powerful, knocks her glasses off her face.
17 And not just off her face, knocks them across the room by
18 the entertainment center. The blast is so powerful, so
19 bad that it blows her brain in two, leaving one piece on
20 the floor directly by her lunch bag, blowing her skull
21 into pieces, leaving the other half of her brain on the
22 couch. That's how powerful that shotgun blast was. As
23 Dr. Durso told you, she had just enough time,
24 Ms. Marshall, to take one breath full of blood, full of
25 blood before she died.

1 Does the Defendant call for help? Does he say oh, my
2 God, I didn't mean for this to happen. Oh, my God, what
3 do I do? No. Not at all. He goes outside, starts
4 banging on the car, turns the lights off. Leslie Brown
5 came in here and she told you about that, how the noise
6 woke her up. She told you that she went outside and she
7 looked. And when she saw him, they even locked eyes. Did
8 he say to her help, what have I done? Come help me? No.
9 He gives her a look so powerful, she runs back in her
10 house. He doesn't mention that he's done anything to his
11 wife.

12 Lindsay Edwards, Pee Wee, you saw him, he came in and
13 he talked to you about the banging on the window. He
14 talked about how first, he saw a flash. How he could see
15 while he was washing his dishes a flash across the mobile
16 home. He told you about when he does go outside, he hears
17 the same banging that Leslie Brown told you about. He
18 tells you that he sees him right out the window and that
19 he hears the glass go into the car, window broke. He
20 continues down the road, tells you he goes to the AM/PM
21 Mart.

22 Now, as you can see from this photo, they live here.
23 Remember, Investigator Clarke told you that the trailer
24 was kind of hidden. He only had to walk here. Very close
25 in walking distance. He walked back. And by the time he

1 walked back, Mr. Marshall has realized he has locked his
2 keys in the house. Does he say to Pee Wee help me, I did
3 something terrible. I accidentally shot my wife, please
4 help me, tell me what to do? No. He asks for his help to
5 get into his house. He doesn't say, by the way, my wife's
6 in there dead, what do I do? He says, Can you help me get
7 in? So Pee Wee does, climbs in the window. He pushes the
8 AC out of way and he goes through.

9 What did he tell you upon coming in? It's quiet and
10 he didn't hear Doris. He told you how it smelled foul.
11 And remember, he told Investigator Clark that it smelled
12 like blood. He told you how he started to go down the
13 hall to see what was going on and he starts hearing
14 banging on that back door. He hears Mr. Marshall, the
15 Defendant, banging on this back door so he could let him
16 in. So he doesn't go in through the living room, he stops
17 and he let the Defendant in.

18 Does the Defendant at this point say, let me show you
19 what I did. Oh, my God, help me, please. I don't know
20 what to do. No. He says, Get out. I'll bring you some
21 cigarettes for your trouble. I'll be back. So Pee Wee
22 goes to his trailer and he waits and he waits and he
23 waits. The Defendant never goes back, never.

24 He then proceeds to go in the house, takes what he
25 needs from the house, the gun, Doris' wallet, whatever

1 else he wanted, gets in Doris' car and drives away from
2 the scene, telling no one what he'd done, locking all the
3 doors back so no one can even get in trying to cover his
4 tracks.

5 Does he now call 9-1-1? Does he now call his family,
6 what do I do? Does he do anything, anything to show he's
7 remorseful, to show this is an accident, to show that he
8 didn't mean to do it? No. He drives around Columbia. He
9 tells Investigator Clarke, this was so bad, I took a nap.
10 Not only one nap, two. He can lay his head down and rest
11 after he put her to rest. That is the definition of
12 murder.

13 At this point, he just drives around doing whatever
14 he wants for six hours, enjoying his freedom. Eventually,
15 when he comes up with this accident story, calls his
16 brother.

17 You heard from the nephew, Robert Marshall, Jr., how
18 Mr. Marshall shows up at the door unexpectedly. You heard
19 how he called his brother first and left a message. He
20 tells him, I missed up, killed my wife. That she came
21 home, I had the gun out. She grabbed it and it just went
22 off.

23 Well, ladies and gentlemen, for the gun to be out and
24 kill her, it had to be loaded. For the gun to go off, the
25 safety had to be disengaged. For it to hit her in the

1 face, it had to be pointed at her. He didn't bother
2 telling him any of that stuff.

3 Now, they have to figure out what do we do? At this
4 point, everybody starts doing the right thing and Mimi Joe
5 Marshall continues to do the wrong thing. Robert
6 Marshall, Sr. and Jr., they start calling everybody.
7 Robert Marshall calls 9-1-1, Sr., says, Can y'all go check
8 on my sister-in-law? My brother just came by saying
9 something happened.

10 And law enforcement does exactly what they're
11 supposed to. They go to the house, but they can't just
12 break into somebody's house. I mean, what would that be
13 like if every time somebody says something happened, they
14 just broke on in to see what's happened. They can't do
15 that. So they look to see are there any signs to support
16 what they just got called. The doors are locked, nothing
17 is disturbed. It's 6:30 or so in the morning. It's not
18 like it's broad daylight. They don't see anybody hurt.
19 They don't hear anything. They even ask can somebody let
20 us in, we'll go in. Somebody come, the Defendant, the
21 caller, somebody, but nobody shows up.

22 You heard from Corporal Norton and from Deputy
23 Furgal, who told you they waited 30, 45 minutes. They did
24 what they could, but they can't just break in. You heard
25 from Leslie Brown, who said they were there, but they had

1 to go.

2 At this point, everyone is now looking for Mimi Joe
3 Marshall. His daughter, his daughter-in-law, his brother,
4 his nephew, they're calling him. They're doing whatever
5 they can, but they can't get in touch with him. It would
6 have taken one action on his part, answering his cell
7 phone to have kept Tamieka Marshall and Amanda Marshall
8 from having to live with the sight that all of us have had
9 to share, but they've got to live with it because they saw
10 it in person.

11 Does he do anything to help at this point? No. He
12 even flees the scene from his brother and his nephew. He
13 didn't even stay there to face what he's done, runs off to
14 enjoy his freedom.

15 So we're left now with Amanda and Tamieka. Tamieka
16 has a daughter -- it's two children. She can't just get
17 up. She has to get that situated. Amanda is able to make
18 it there first. So what does she do? When she gets
19 there, she starts looking around. She starts trying to
20 figure out what happened. She talks to Tamieka, I'll do
21 it. You don't come. Tamieka starts, again, calling her
22 dad. All he had to do was answer the phone, but he
23 doesn't.

24 Amanda goes there to the trailer. Now, it is
25 daytime. She can't open any doors. This is the back door

1 in this picture. She already told you the front door was
2 locked, too. So she does what she can, she takes the
3 stepladder, pushes the AC unit to the side so she can see
4 in. And she sees what had to be the worst thing for a
5 daughter-in-law to see, her mother-in-law laid to the
6 side, brains and blood everywhere.

7 At this point, she is freaking out. She starts
8 banging on people's doors, help me, help me. She gets to
9 Leslie Brown. You heard from Leslie Brown. They do the
10 right thing. They call the police, after they break down
11 the door and enter to confirm what they saw. You can even
12 see the piece of wood that they broke. They go in just
13 far enough to see what happened.

14 And I'm going to go a little bit out of order because
15 I want you to see as you look at this picture. Does it
16 look like there was any sign of a struggle over anything?
17 I think that house may be cleaner than my own. There's no
18 sign of a struggle. Nobody moved anything. They didn't,
19 and they testified about that. When they go in, see this,
20 they then do the right thing. They then call 9-1-1.

21 And, of course, because I don't know what I'm
22 doing -- all right. We'll play the call later, but they
23 call 9-1-1. And you heard the call earlier when we did it
24 with her and she talked about how she was a CNA, certified
25 nursing assistant. And on the phone, she is retching

1 because it's so bad. A stranger to her, she saw and she
2 can't even go near the body enough to check it to see if
3 it's alive. And she has training. But he was able to not
4 only do that, but leave. Didn't seem to bother him so
5 much that he took a nap. So again, everybody is doing
6 what they're supposed to do right when they see this,
7 except for Mimi Joe Marshall.

8 And where is he at the exact same time that everybody
9 is doing this? As the 9-1-1 calls are being made, as
10 people are trying to figure out what's going on, as police
11 investigators, CSI, EMS, everyone is coming on the scene,
12 what is Mimi Joe Marshall doing? He's at O'Reilly's Auto
13 Parts turning in parts to get a cash refund because that's
14 what you do after you shoot your wife that you've lived
15 and loved for 37 years. No. What you should have done
16 was called 9-1-1 if there was an accident. What you
17 should have done is answered the phone when your family is
18 looking for you. What you should have done is faced what
19 you did. Instead, he tries to cover it up.

20 Investigator Clarke told you that in order to do
21 things the right way, they waited for a search warrant,
22 and then they entered. You heard from the CSI team about
23 what they saw. You heard from Investigator Lee and you
24 heard from Lieutenant Stan Richards, who gave us that
25 great hour-long demonstration about everything in the

1 world having to do with his field of expertise.

2 He talked to you about how many photographs it took,
3 153 photographs. 153. Did we show you every single one
4 of them? Do you want to see every single one of them?
5 I'm pretty sure none of us want to see every single one of
6 them. We showed you the ones you needed to see. I bring
7 that up because I'm sure the Defense is going to get up
8 here and talk about what we didn't do, what investigators
9 didn't do. I want to ask you to focus on what did get
10 done. 153 pictures, and you got a bunch of them, that
11 show exactly what they did.

12 Investigator Lee and Lieutenant Richards talked to
13 you about how dynamic the scene was, how there was a blood
14 letting of horrific proportions. It was so clear where
15 everything happened, they didn't need to do anything. Not
16 that they didn't try, not that it was necessary, it was
17 just that clear. They told you about all the stains. And
18 he went through all the pictures. And I'm not going to
19 stand here and go through all that again because you heard
20 it from him. And boy, can he do it way better than I ever
21 could.

22 He told you in detail about that. He demonstrated to
23 you about how he knew what happened and when it happened.
24 He talked to you about that radiating pattern and how
25 everything was to this way and not this way. There was

1 reasons for all of that.

2 He talked to you about how there's blood on the
3 ceiling. There's blood on the blinds. There's blood on
4 these blinds. There's blood on the couch. There's blood
5 on the floor. There's blood on the table. But there's no
6 blood by the door. There's no blood on the end of the
7 couch.

8 He talked to you about if she would have been shot by
9 the door, there would be blood there. Think about that.
10 How did the blood all end up on the couch and all above
11 where the couch is if she's shot over here? It just
12 doesn't make common sense, and he explained all that to
13 you. He talked about the cone and directionality. And I
14 just want you guys to remember all that he explained to
15 you as you go back and look at this evidence.

16 Investigator Lee told you about he processes a crime
17 scene and how he looked for whatever they said. Because
18 they don't even know what happened, so they can't form an
19 opinion about how it happened because they don't know. So
20 what do they do, they look for anything. And despite the
21 fact of how much blood they saw in that living room, they
22 still went all over the rest of the house looking just to
23 make sure, to be safe. And they didn't find anything
24 anywhere else.

25 And as they're doing this -- this took several hours.

1 You heard from EMS how they came. They clearly couldn't
2 help her, so they called the coroner. You heard from the
3 coroner, who said well, we came and we looked and she was
4 dead, so we called for services to help us get her out of
5 there and how everybody took pictures, did what they were
6 supposed to do for several hours.

7 I want you to think back. What is Mimi Joe Marshall
8 doing? The man who promised to love, honor and cherish
9 this woman that he left dead on the couch? He is now at
10 Tony's Lounge hanging out at the bar. And we only know
11 this because of Yolonda Jackson.

12 Thankfully, Yolonda Jackson, like everybody else in
13 this case, except for Mimi Marshall, was doing the right
14 thing. When she sees his car, she goes to see is he in
15 there and she listens. Oh, he's in there. He's in there
16 talking to Tony, she told y'all that. We played the call
17 for you then. And again, I'm not going to do it now. She
18 played the call telling you about that. She told them
19 everything she knew.

20 So they come, they show up, they arrest him. They do
21 their job. And, lo and behold, in that car is the gun.
22 Lo and behold, in that car are bullet casings, the
23 receipt, the wallet. You have all those pictures. Look
24 at all that. It supports everything the police have been
25 saying.

1 At this point, the Defendant has had over 12 hours to
2 come up with this story. And come up with one, he does.
3 He talks to Investigator Clarke. And you'll have the
4 entire statement, but here's one page of it. He tells
5 Investigator Clarke a great story. He starts with, Well,
6 I had the gun in the closet. Remember, Investigator
7 Clarke told you -- he said he challenged that. He said,
8 There's no closet in your small, little living room. He's
9 like, Oh, yeah, there's no closet. You're right. Then it
10 got changed to, Well, the gun was in the front room.

11 Okay. Then he says, Well, first, she came in and I
12 shot her. She grabbed the gun and it went off. But he
13 was like, Well, she's on the couch. Said, okay, well, we
14 had a conversation first about the car and then the gun
15 went off. Okay, but her stuff is on the floor. How did
16 any of that work? Oh, yeah, well, see, I shot her and
17 then I carried her onto the couch and put her down.

18 Well, that doesn't match any of the evidence because
19 her scalp is on the back of the couch. And that didn't
20 just magically jump over there. Her brain is on the floor
21 next to the bag. That didn't just magically jump over
22 there when you laid her so nicely on the couch. That just
23 doesn't work with the evidence, ladies and gentlemen. It
24 just doesn't. It's just a nice story he created to cover
25 up what he did.

1 You heard from David Collins, the ballistics expert.
2 He told you, as well as George Norton and Deputy Furgal
3 about gun safety. First, you don't take out a loaded
4 weapon unless you plan on using it. Second, you don't
5 have your finger on the trigger unless you plan on
6 shooting the target. He did both those things, both.

7 In fact, when David Collins came up here before you
8 guys, do you remember he went through all kind of stuff
9 before he'd even pick the gun up. He opened it. He
10 looked in it. He made sure nothing was wrong with it.
11 And he made absolutely sure he never pointed it at
12 anybody, even though we all knew it was empty.

13 He didn't even bother with basic gun safety. Mimi
14 Joe Marshall not only loaded the gun, he not only
15 disengaged the safety, he not only pulled that trigger, he
16 first pointed it at her. That is the definition of
17 murder.

18 Now, murder is defined as the killing of another with
19 malice aforethought, either expressed or implied. Now, we
20 lawyers like our big old words, sometimes in Latin or
21 something. So malice aforethought, not something you
22 normally use in regular language, right? I'm going to
23 talk a little bit about that.

24 Malice is the doing of a wrongful act intentionally
25 and without just cause or excuse. In this case, pointing

1 and presenting a gun at his wife, pulling the trigger,
2 wrongful act without just cause or excuse.

3 Expressed malice is when there is a deliberate
4 intention to unlawfully take the life of another, such as
5 when you take a loaded shotgun, point it and pull the
6 trigger.

7 Implied malice is when circumstances demonstrate a
8 wanton or reckless disregard for human life. You saw the
9 condition of that gun. You'll be able to see it back
10 there. Talk about disregard, walking around with a loaded
11 shotgun with your finger on the trigger, the only trigger
12 that will shoot the one bullet. Because there's two
13 triggers, remember, so he had to have it on the right
14 trigger. Reckless disregard for human life.

15 Although malice must be aforethought, there is no
16 requirement that it exists for a specific amount of time
17 or an appreciable amount of time. In other words, you see
18 on TV sometimes you have these premeditations. They think
19 about it for a long time. You know, they plot. You don't
20 need that. It needs to be one second.

21 It could have happened when he loaded that gun and
22 closed it. When he's sitting around holding it. Or he
23 sees her sit down, come in -- come in, sit down and he
24 pulls that trigger. In that one instant, malice
25 aforethought. That's all you need.

1 Now, ladies and gentlemen, at the beginning of this
2 case, my co-counsel, Sandra Moser, told you that we must
3 prove this beyond a reasonable doubt. She told you how we
4 welcomed that burden. And let's be clear, we do. The
5 Defense does not have to prove one single thing to you,
6 make that perfectly clear. We do and we have.

7 We have proven to you beyond a reasonable doubt what
8 happened. The Defendant told his brother that he did it,
9 so there's no question who did it. He told his brother.
10 He told his nephew. He told Investigator Clarke. Of
11 course, it was hours after it happened, but he told him.
12 There's no question of who.

13 We've proved to you beyond a reasonable doubt the
14 next portion, which is what happened. Now, I've gone over
15 that ad nauseam at this point, all right, but when he
16 went, loaded that gun, shot his wife, there was no
17 accident.

18 Dr. Durso told you it had to be 12 inches to
19 38 inches due to the stippling. So he's close enough that
20 he sees what he's doing, it just was upward. Now, their
21 expert tried to tell you how it must have been all the way
22 upward or this way. But she actually testified. He
23 wasn't here when she testified, you guys were. And you
24 heard her say it was slightly up. Because she couldn't
25 tell you exactly what happened because he blew her face

1 off, but their expert didn't bother to tell you that. She
2 explained to you what happened. Stan Richards explained
3 to you what happened. It's beyond a reasonable doubt what
4 happened in this case.

5 Where it happened, never a question it happened on
6 Leesburg Road here in Richland County. But the bigger
7 where I want to talk about probably goes also into how it
8 happened, which is on the couch. You will have all the
9 pictures. You heard me talk about this -- and I promise
10 you I'm almost done. On the couch is a space with no
11 blood. All the blood is over here to the left, to my
12 right. All of the blood is on the ceiling. There's
13 absolutely nothing by the door. In order for the
14 Defendant's version of story to be true, there has to be
15 blood in front of that door. And you have a picture, I
16 even showed it to you, it is bare. The ceiling is bare.
17 There's nothing. His story doesn't add up. She was
18 sitting on the couch minding her own business in her own
19 home, where she should feel safe and secure, and he blew
20 her away. That's where it happened and how it happened.

21 As you're looking at the evidence, it's your job to
22 decide what's reasonable and what's not, what makes sense
23 and what doesn't. At the beginning of this case, Judge
24 Hood instructed you not to leave your common sense at the
25 door, and I implore you to please use your common sense.

1 Does it make any sense, any sense, that a woman
2 seeing this gun would grab it and pull it to her eye?
3 That is the only way his story works, the only way. Does
4 that make any logical sense that after coming home from a
5 hard day of work, when faced with a gun, you pull it to
6 your eye and that you leave it three to four inches away
7 that their expert tried to tell you?

8 When I finish talking, the Defense is going to get up
9 here and try to convince you that everything I just said
10 was wrong, and that's their job. They're going to tell
11 you that we didn't meet our burden, that we didn't prove
12 this beyond a reasonable doubt.

13 Now, during their opening, they talked about accuracy
14 and correctness. Accuracy and correctness. They, too,
15 told you to look at what was done and wasn't done. But
16 let's talk about some inaccuracies and incorrectness in
17 what was done and wasn't done by the Defendant.

18 In their opening, they talked to you about being
19 married for 37 years, but that's not accurate and correct
20 because for part of that, they were separated. Yeah, they
21 were technically married, but we had to put Tamieka up
22 here to tell you that they didn't live together. They
23 weren't together for years.

24 Now, they'll try to tell you more tests should have
25 been done, more people should have been talked to, I don't

1 know, more pictures should have been taken. We have
2 plenty of evidence here. There's nothing else that needs
3 to be done.

4 Would any of the stuff that they want done change the
5 outcome? That's what I want you to think about when you
6 listen. It wouldn't have. They said well, you should
7 have tested it earlier. They logged this stuff in. It's
8 sealed. I had to unseal it in front of you. Was waiting
9 going to change anything? No, the evidence is what it is.
10 Call a thing a thing. That's her DNA in there. That's
11 her blood on her clothing. That's the gun that was used.
12 None of that changed simply because it got tested a few
13 months later than right when it happened.

14 They talked to you about you should do it
15 immediately. Well, let's remember, when did their expert
16 look at the evidence, the one getting paid \$5,000? Let me
17 see, he said he looked at it on Monday, last Monday, and
18 the only thing he looked at was the gun. He didn't look
19 at the bullets. He didn't look at the pellets. He didn't
20 look at the wadding. He couldn't be bothered to write a
21 report. He came to y'all and just talked. Didn't bother
22 to look at anything other than pictures and the
23 Defendant's statement. Apparently, it only matters when
24 things get done if it's our witnesses and not theirs.

25 Now, talking about the Defendant's actions and

1 inactions, he had a gun when he shouldn't, and it's that
2 old gun. He loaded that gun that's over 50 years old.
3 Talking about reckless disregard. He disengaged the
4 safety. He pointed a loaded weapon at his wife. There is
5 no way she would have been shot if that hadn't happened,
6 ever. He pulled the trigger and shot her in the face.
7 I'm sure that's going to be what they argue, that that was
8 somehow an accident. She accidentally managed to get a
9 kill shot to the face.

10 He didn't call police ever, never, not one call. He
11 didn't call, say he was sorry, ever. The only reason he
12 ever said he was sorry was after he got caught. And I ask
13 you, was he sorry he got caught or sorry that it happened?

14 He fled the scene in her car with her wallet, never
15 to return. He fled. If you're innocent and you did this
16 on accident, say. Tell somebody. Do something right. I
17 don't know, but you don't leave the scene. Took naps.
18 I'm traumatized after seeing these pictures. Leslie Brown
19 couldn't speak after seeing the live body. He managed to
20 take a nap.

21 He only told his brother and nephew about killing his
22 wife when he had to. He showed up and told them, but then
23 it was an accident. When he thought of a story, that's
24 when he told them. He didn't answer his daughter's calls.
25 And that might be what bothers me the most, because as a

1 parent, you would think that his first reaction would be
2 to protect his child, to keep her from harm, so that when
3 she called and you know she would go see her mother's dead
4 body, you would stop her. He didn't even bother to do
5 that.

6 He returned car parts for cash. You just killed your
7 wife by accident, but you return car parts for cash
8 because that was so important, but you couldn't be
9 bothered to make sure your daughter didn't see any of
10 this. He sat at a bar while his family cleaned up his
11 mess. He couldn't even be bothered to clean up what he
12 did, couldn't be bothered.

13 Ladies and gentlemen, that is the definition of
14 reckless disregard for human life. That is the definition
15 of murder.

16 I know when you walked in here on Monday, you did not
17 think you would be sitting in this jury box listening to a
18 murder trial, but I bet you, you also didn't have in your
19 head that a murderer would look like that man over there.
20 But now you know murderers come in all shapes and sizes.
21 They come as a 5'7", 58-year-old man, who took a gun and
22 shot his wife in the face one time.

23 At this point, you do know that Mimi Joe Marshall
24 committed the biggest crime of domestic violence you could
25 ever do, shot his wife in the face. He left her broken

1 skull and brains on the floor. For that, and for that
2 alone, I ask that you find him guilty of murder. Not just
3 because it's a heinous act, not just because Doris
4 Marshall is dead, not just because Stan Richards told you
5 how he did it, not just because of the 20 witness who came
6 in here and told you what happened, not just because of
7 the 100 and some pieces of evidence we gave you, not
8 because his story just doesn't make sense, I ask you to
9 find him guilty, quite frankly, because he is. He killed
10 his wife for no reason, no reason. He pointed a loaded
11 gun at his wife for no reason, pulled that trigger for no
12 reason, and she is dead for no reason.

13 I ask that you hold him accountable and that you find
14 him guilty. Thank you.

15 THE COURT: Thank you very much, Ms. Sampson.
16 Ready?

17 MS. GOODE: May it please the Court, Your Honor?

18 THE COURT: Yes, ma'am.

19 CLOSING STATEMENT BY MS. GOODE

20 BY MS. GOODE: Ladies and gentlemen, this is it.
21 This is the time of the case where you've heard it all.
22 You've heard the testimony. You've heard what the State
23 has offered as proof to you of what happened. What they
24 have proven to you is that this is, in fact, an accident,
25 a terrible, tragic, unintentional killing. That's the

1 evidence that they put up.

2 Now, what's happened here is the case is, basically,
3 now broken down into two big pieces, right. We have the
4 night of the shooting and then we have the next day. We
5 have what Mimi Joe did and what Mimi Joe didn't do. So I
6 want to talk about the night of the shooting. I want to
7 break it down.

8 The State wants you to believe that because Doris got
9 home a little late from work, 10:15 on Friday night, that
10 Mimi Joe maliciously guns her down as she walks in the
11 door. But how does that make any sense? Three nights
12 before, she didn't get home until almost 11:00 p.m. He's
13 supposed to be angry and upset because she's late from
14 work. Well, no.

15 You remember he told Sergeant Clarke when he met with
16 him, Look, I was worried about her. I wasn't angry with
17 her. It's not that she's so late getting home from work.
18 She's late, I'm worried about her. We just had work done
19 on her car, had a front end alignment done. I'm worried
20 about her. Because he's sitting inside smoking cigarettes
21 in August, he's a bum, he's not doing anything, he's a bad
22 guy, that equals malice?

23 Unfortunately, the truth is Doris was shot. She was
24 shot shortly after she got home. She clocked out at
25 10:15. Mimi Joe tells Sergeant Clarke, look, this

1 happened between 10:00 o'clock and 11:00 o'clock, I'm
2 pretty sure. That fits. That's a piece of the puzzle
3 that fits.

4 It all happened so fast. She gets in the house.
5 She's in her work clothes. She's still got her name tag
6 on. Her nonslip shoes. Her work clothes. Her lunchbox
7 is at her feet. It all happens so fast. And they do,
8 they pretty much meet right as she's coming in the door.

9 You guys, you didn't get to go to the trailer, but
10 this is a tiny, tiny place. The room is definitely no
11 bigger than this jury box. We don't have any
12 measurements. The crime scene investigators didn't take
13 any measurements for you. It's a tiny, tiny room. And
14 the couch, you see in the pictures, takes up pretty much
15 that whole wall by the window and where that door is.

16 Doris comes in and she's right there, so is Mimi Joe.
17 And he's -- like he told Sergeant Clarke, he's up. He's
18 about. He's got the gun. He's checking out around the
19 trailer. They live out in Hopkins. He wants to make sure
20 that everything is safe. He's got the gun, an old rickety
21 gun. I don't even want to touch it it's so unsafe. I
22 think we've had plenty of testimony about the gun and how
23 unsafe it is. He's checking out around the trailer,
24 unstable where it is. Doris is coming in the door, and he
25 tells Sergeant Clarke this is what happened.

1 Sergeant Clarke told you about his statement, and he
2 told you about how Mimi Joe sat down and talked. And I
3 think he called it norming, where they sit down and have a
4 conversation before they go put everything in writing, you
5 know, kind of get comfortable having a conversation with
6 each other. That's what he did in this case. That's what
7 he does with other people, I'm sure.

8 He'll have him explain some things a little more,
9 some things not so much. But in this case, what they want
10 you to take as literal is exactly what Sergeant Clarke
11 typed in that statement without any explanation. Because
12 as Sergeant Clarke said, it would be nice if we had a
13 video of the interview or, at least, an audio recording
14 because we would know exactly what was said, exactly what
15 Mimi Joe was trying to explain to them. But they want to
16 hold him right to the part of the door, right there in
17 front of the door. They want to act like it happened
18 right there. Mimi Joe tells them it happened right at the
19 side of the couch. When you walk in the door, the couch
20 is right here. Where was Doris found? Laying on the
21 couch right there.

22 And he tells Sergeant Clarke I've got the gun in my
23 hand. I'm the one holding the gun the entire time. He
24 doesn't tell him his finger's on the trigger. He doesn't
25 tell him he has it pointed at her. But he says I was

1 talking with my wife, told her I was worried about her.
2 I've got this gun. I've got it, and she grabs it, and he
3 moves it, starts moving it. At that point, who knows
4 where the gun is, right, who knows how far away it is.
5 But she's grabbed it, she's got it in her hand and she's
6 moving it and he's holding onto it, too. And the next
7 thing he knows, his wife is shot in the face in the most
8 tragic graphic way you can imagine, right under her eye
9 and straight through her head.

10 His wife of 37 years gone in an instant, the mother
11 of his children and his happily ever after. And what he
12 sees in that instant changes him, scars him in a way that
13 no one can understand, and he leaves. He runs out into
14 the night this August night. He's not thinking. He's not
15 making any sense. He doesn't know what to do. He's
16 thinking how did this happen? It all happened so fast.

17 So to tell the story of the night of, the State
18 brought in several experts, right. So they started with
19 the crime scene. They had Investigator Lee, who was one
20 of the experts or one of the investigators that actually
21 went to the trailer. And he took pictures, that's
22 basically what he did. And then he came in here and gave
23 you an opinion about what he thought, okay.

24 He describes it as a dynamic scene, the shotgun wound
25 to the head. That's -- there's probably a lot of words to

1 describe that. It was messy, it was tragic. And he told
2 you in his opinion, based on what he saw that day, it was
3 a close shot, not 12 inches, not all the way up to 30, but
4 a close shot.

5 He doesn't take any measurements of anything, the
6 room, the couch, even the blood stains. That's been a big
7 topic of discussion throughout the week, right, the blood
8 stains. You know, it's a science. Blood pattern
9 analysis, blood stain pattern analysis, it's science,
10 right. So in order to be scientific about it, you have to
11 take scientific measurements. That wasn't done. It could
12 have been done, but it's not done. Plenty of stains to
13 work with. You'd probably have a clearer picture of what
14 did happen. But he basically takes pictures and that is
15 his involvement.

16 You heard Sergeant Richards -- Lieutenant Richards,
17 and he wants to say she's sitting down during a blood
18 letting event. Not necessarily that she's sitting down
19 while she's shot, right, she's sitting down during a blood
20 letting event, all right. And that was when the blood
21 came out of her head. And you heard Chris Robinson, our
22 expert, say yeah, that's -- you know, the gases -- and
23 that's what -- the gases from the shotgun went in her
24 face. That is what caused that damage. That is what
25 caused that major damage to her head and the scene as we

1 see it and why her brain is where it is and why there's
2 spatter where it is.

3 Now, Richards doesn't follow his own protocol, the
4 ones he wrote for his department. He doesn't look at the
5 gun, and he doesn't look at the autopsy report. Again,
6 two State's experts giving an opinion on something where
7 they're not taking in all of the information in the case.
8 Because there's more to it than just going to the crime
9 scene. We're talking looking at Doris herself because she
10 can tell a lot about what happened.

11 That's what Dr. Durso did, right. She's the medical
12 examiner. And her testimony was an upward trajectory.
13 Upward, right. And she testified that Doris was 5'2", not
14 a very tall lady. So Chris Robinson, he sat in the chair
15 with the gun that's 44 and a half inches long and tried to
16 show you how that just doesn't work. He's six feet tall,
17 so he had more height on him, more of an area to where he
18 could get that gun in that angle to create that trajectory
19 and that kind of wound pattern.

20 And you heard from David Collins. He was probably
21 the only expert up here that couldn't give an opinion.
22 Because he said, I didn't have sufficient information. I
23 didn't have all of the rest of the stuff. I can't tell
24 you -- I can't give you an opinion on distance. And he
25 knows his stuff about guns.

1 You heard him, he's been qualified 200 times as an
2 expert in court. And he tells you this gun is busted.
3 It's got electrical tape on it. Parts of the gun are
4 exposed. There's rust. It's in bad shape. Sixty years
5 old. Doesn't have a serial number. He tells you about
6 gun safety, about how the butt stock is different, right.
7 It's been altered. It's not a safe gun. And that likely,
8 a gun this old is not going to be drop safe. He didn't
9 drop it. He didn't test it that way because, you know, it
10 is so old and in such bad shape, he didn't want to damage
11 the gun any further.

12 Again, he did not have sufficient information, like
13 the autopsy report, like the crime scene pictures. He
14 basically looked at the gun. That was one piece of the
15 puzzle, right, that was his piece of the puzzle, look at
16 the gun, process the gun. And he took pictures of the
17 gun, right, and he swabbed an area that he thought was
18 important because it looked like there was some stuff on
19 it. Again, about four inches from the end of the barrel
20 of that gun, just enough of an area for someone's hand to
21 have grabbed it leaving behind potential matter on this
22 area of the gun, but nothing right here.

23 And you heard from the DNA expert. It was her first
24 criminal trial, but she did test the DNA in this case.
25 She had several swabs that she tested, swabs from the

1 scene, swabs from the gun, swabs from the car. I'm going
2 to talk about the swabs from the gun, okay, because it's
3 interesting.

4 You heard from Investigator Rainsford this morning.
5 He works for the Richland County Sheriff's Department. We
6 had to call him for you because he swabbed the shotgun,
7 right. He swabbed it. He said, I swabbed the trigger,
8 the trigger guard, the barrel. He swabbed the entire gun,
9 okay. And remember, Jennifer Martin testified that the
10 only DNA belonged to Doris Marshall on this gun. Swabbed
11 the trigger, the trigger pull, the trigger guards, the
12 barrel, everything comes back to Doris.

13 It wasn't a mixture, right. Where is the evidence
14 his finger is even on the trigger, the DNA? They didn't
15 lift any fingerprints, weren't able to. And even the swab
16 that David Collins took of this area, he actually
17 documented where he took the swab from, Doris Marshall.

18 Then we had a GSR expert come in. Nothing earth
19 shattering there. She explained how GSR works. We would
20 expect that there would be GSR from both people involved.
21 This wasn't a whodunit, okay. I mean, Joe told them I did
22 it. I shot my wife. Between all of these scientific
23 experts that the State produced for you, there's no
24 cohesive theory among them. There's no solid answer.
25 You're left with reasonable doubt, but no doubt when it

1 comes to whether this was an accident.

2 So when the State can't make all of their pieces kind
3 of fit together, they move on to well, let's focus on what
4 Mimi Joe did or didn't do the next day, right? And I
5 promise you, because he told Sergeant Clarke, Mimi Joe
6 wishes he had done things differently. He wishes he had
7 called them. I can't promise that would have changed
8 anything. We may still be here. If it were only that
9 simple, if he had just called the police. But he went to
10 his brother's house. He called his brother. He said,
11 Hey, brother. You didn't get to hear the voicemail, but
12 you, at least, got to talk to Investigator Caldwell about
13 it. And he said, you know, I shot her, told the same
14 story to Robert that he told to Sergeant Clarke.

15 The only consistent thing in this case is what Mimi
16 Joe said happened. The State's experts aren't consistent.
17 Their witnesses aren't consistent. Mimi Joe has been
18 consistent. He tells his brother this. He tells Sergeant
19 Clarke that.

20 Having seen what he saw, he is in such pain and grief
21 that he plans to kill himself, go be with his wife. Yeah,
22 the man was acting crazy. The testimony from Pee Wee was,
23 the car was on when I saw him that night. The lights were
24 on. The door was open, but he's busting out a window.
25 That doesn't make any sense.

1 He goes and returns -- they make a big deal about
2 this. He goes to the auto shop, O'Reilly's Auto Parts and
3 returns this Campbell alignment kit, right, for cash, and
4 then he goes to Tony's Lounge. He sits and he waits until
5 the police find him, and they do. He immediately gives
6 himself up. He knows they're coming. He's got the gun
7 with him.

8 This was an accident. It was unintentional, and it
9 was tragic. And yeah, it's incredibly tragic that Tamieka
10 and Amanda had to find Doris that way. I know Mimi Joe
11 wishes he would have handled that a lot differently. The
12 pictures were terrible. The scene was terrible. So the
13 State wants you to judge him based on what he didn't do
14 after the fact, not what was in his head at the time,
15 right, malice aforethought, meaning before. So that's
16 before the shooting. Malice aforethought can't be what
17 comes after. What did you do afterwards? In a perfect
18 world, yeah, everybody would react in a certain way, but
19 everybody is different. We can't explain why people
20 grieve the way they do. Why people react to certain
21 situations the way they do. But the law says
22 aforethought, right, before. What happens afterwards is
23 based on what he's seen at that point.

24 I want to go back through a little bit about what the
25 State has said. They have no blood on the end of the

1 couch. You guys will have all of the pictures back there.
2 We put some pictures in, too, to try to highlight some
3 things for you guys. Again, I focused on no blood on the
4 end of the couch. There's blood spatter and blood on the
5 end of the couch. Look at it. Chris Robinson told you.
6 He looked at the State's own pictures and said yep, that's
7 what that is. Once it got bigger in here, he said I want
8 to show you the directionality, the tails, and where she's
9 sitting, actually behind her. Compare the pictures,
10 there's blood there.

11 So for anybody to get up and testify unequivocally
12 that there was no blood there, you'll have the pictures.
13 You'll be able to see them. You'll have them back with
14 you in your room.

15 Ladies and gentlemen, you've heard a lot of evidence
16 over the past four days at this point. I'm sure I've left
17 something out. It's a lot to cover in a short amount of
18 time, but the main point here is that Mimi Joe Marshall
19 did not intentionally kill his wife.

20 He told his brother, his nephew and Sergeant Clarke,
21 I killed my wife. He never denied killing his wife. What
22 he told each and every one of them was I did not mean to
23 do this. I'm so sorry. I'll tell you how sorry I am, I'm
24 going to kill myself.

25 We'd ask that when you retire to your jury room,

1 after you've reviewed all the evidence and you've gotten
2 the law in the case that you find Mimi Joe Marshall not
3 guilty of murder because he did not intentionally kill his
4 wife.

5 THE COURT: Thank you very much, Ms. Goode.

6 MS. GOODE: Thank you, Your Honor.

7 THE COURT: All right. Would the State like to
8 reply?

9 MS. SAMPSON: Yes, Your Honor.

10 THE COURT: You may.

11 CLOSING STATEMENT BY MS. SAMPSON

12 MS. SAMPSON: I promise you I will not be nearly as
13 long as I just was. I'll keep this brief and get straight
14 to it. The Defense just told you that this was all an
15 accident, but they didn't bother to tell you the law of
16 accident. The Judge is going to instruct you about that,
17 but I thought we'd talk about it since well, they simply
18 didn't bother.

19 For a homicide to be excusable on the grounds of
20 accident, it must be shown that one, the killing was
21 unintentional; two, the Defendant was acting lawfully; and
22 three, due cause or care was exercised in the handling of
23 the weapon. And he's going to tell you, we have to prove
24 beyond a reasonable doubt that it wasn't an accident.

25 So let's go through that, the killing was

1 unintentional. He was pointing a loaded gun at her when
2 she came home from work. He had his finger on the
3 trigger. Now, she talked about how they swabbed it and
4 they didn't find his DNA, they only found Doris'.

5 Remember what Investigator Collins told you, that what he
6 saw was sticky. It wasn't just the cells as Jennifer
7 Martin told you sometimes you find. She also told you
8 that you can touch something and not leave any DNA.

9 Are they really standing here trying to tell you that
10 the gun was never in his hands because there was no DNA on
11 it? His fingerprints weren't on it either, so I guess he
12 never touched the gun. But even he said he touched the
13 gun. It was intentional. There is no question about
14 that, he meant to kill her. He pulled the trigger. That
15 is intentional.

16 The Defendant was acting lawfully. The Judge is
17 going to instruct you that it is unlawful to point or
18 present a gun, unlawful to point or present a gun. He did
19 both. He took that gun and showed it to her in a
20 threatening manner. He took that gun, and even if you
21 believe her version, she had to grab it or do something
22 with it with it pointed at her. The Defendant was not
23 acting lawfully.

24 Due cause or care was exercised in the handling of
25 the weapon. We've all talked about how old that weapon

1 is, how rusty. There was no due care. How could there be
2 due care with this thing? How could there be due care
3 when you loaded it? How could there be due care when you
4 took the safety off? You knew your wife was coming home.
5 Was she not going to come that night? So if you want to
6 believe their story, he had to be walking around with that
7 dangerous gun loaded and she just happened to walk in
8 while he's holding it. That's not due care. That is the
9 opposite of due care.

10 We only had to do away with one of these for an
11 accident not to work. We did away with all of them, all
12 of them. Accident? It's not an accident. There is no
13 legal or lawful reason for this to have happened, so
14 accident is out of the question.

15 She told you we proved accident. Were we in a
16 different courtroom for the last four days? Everything we
17 proved went against accident. We did talk what about he
18 did and didn't do. And I guess we're supposed to open up
19 his head and know exactly why he did this. That's not
20 what the law says. I can't do that. I don't have to tell
21 you what he was thinking in terms of why am I killing my
22 wife. If we could know why people do stuff like that,
23 then it wouldn't happen. Murder doesn't make any sense.
24 It's senseless. And he was senseless and he continued to
25 act senseless the rest of the day and into the next day.

1 That's murder. I can't make it make sense.

2 When we're going through this case, part of our job
3 is to prove what we have to do and we did that with our
4 experts. Part of their job, if they want to, is to put up
5 a case, which they chose to. And since they chose to do
6 that, you get to judge that case. And as sometimes
7 happens in the law, we end up having what's called a
8 battle of experts. We end up arguing over which expert is
9 better.

10 So in our battle of the experts, we have Christopher
11 Robinson, their expert. Fired from the Atlanta PD after
12 only working there for two years, last training was in
13 2007. Let me just ask you, is it normal that you would go
14 to an expert who hadn't been trained on anything in 10
15 years? 10 years? I'm certainly not going to a doctor who
16 hadn't had any training in 10 years, but that's the person
17 they brought to you. Got certifications in March, May and
18 June 2005, and none since. In 12 years, has never gotten
19 another certification. Did not look at any of the actual
20 evidence except for the gun, which he looked at last week.
21 That's it. Relied on the lies told to him by the
22 Defendant. The Defendant lied about whose gun that was.
23 He lied that it was his dead son's. So, apparently, it's
24 his dead son's fault that his wife is now dead, too?

25 He was paid \$5,000 for 12 to 15 hours of work. I'm

1 terrible at math, so it took a minute to figure out the
2 math. I couldn't do it while he was up here. But that's
3 about 250 to \$300 an hour. And they want to say well,
4 back when you worked for the State and Georgia and
5 Atlanta, you got paid there, right? I'm a State employee.
6 I don't think anybody who's testified, all our hours
7 worked together is 250 to \$300 an hour just to do our
8 jobs.

9 So we gave you Stan Richards, has attended training
10 every year since 2001, certified by the International
11 Association for Identification as a blood stain pattern
12 examiner in 2011 and recertified just two years ago.
13 Certified by the same association as a crime scene
14 investigator in 2006, in 2010 and in 2015. Explained in
15 detail the science of blood stain pattern examination. He
16 is so good at his job, he wrote the protocol for their lab
17 to stay accredited. And they put the protocol in. Now,
18 they want to tell you he didn't follow protocol. He did
19 follow protocol. He doesn't do every single piece of
20 that. It's not TV. There's not one person in the whole
21 lab doing everything. We brought you all those different
22 people. They also said well, you didn't put up Rainsford,
23 so we had to. We put up Jennifer Martin to tell you about
24 the swabs and the testing. We put in the gun. Did we
25 skip a person? Yes. Did he tell you anything new? No.

1 Review the actual crime without relying on anyone's
2 statements. Now, that's very important. You don't want
3 to be -- have a thought in your head as to what happened.
4 You want to look at the evidence and then determine what
5 happened, and that's what he did, instead of what their
6 expert did, which is let's just look at some pictures,
7 let's just look at some reports and then I'm going to
8 decide what to do and I'm going to take into account what
9 the Defendant said. Remember I asked him, How did you
10 decide this was going on? He said, Well, because that's
11 what the Defendant said. The person you're paid by. The
12 person who told you to be here. The person who gave you
13 \$5,000, I guess you would rely on what he said.

14 Now, we've already talked about the qualifications of
15 their expert. Let's talk about David Collins, has had
16 training every year since becoming a firearms examiner.
17 He is certified by SLED and Richland County since 1983.
18 That's what, 34 years? But I guess their examiner is
19 better. Examined the guns, the pellets, the wadding, the
20 shells, everything.

21 And she talked about well, he couldn't do the
22 distance, because he's a professional. He told you why.
23 It wasn't that he didn't want to. He would have loved to.
24 He didn't have any ammunition. It had nothing to do with
25 Durso's reports. He told you he used her report, but

1 because she had to reapproximate the wound and that he
2 couldn't be sure that was exactly how it was, he would not
3 rely on that. That would not be professional. But
4 apparently it's good enough for their guy. Maybe because
5 he hadn't been trained since 2007.

6 Test fired the gun, our guy did. Had to remind him
7 because he said oh, they didn't test fire the gun. It's
8 in their report, yeah, they did. They made sure it
9 worked. He told you how the front trigger controlled one,
10 the second trigger controlled the other barrel. He did
11 his job.

12 While I'm thinking about it, they wanted to compare
13 Stan Richards and Chris Robinson and that Robinson
14 demonstrated to you with his six-foot-one self, how could
15 a six-foot-one person have the same as a five-foot-two
16 person? It just doesn't work. You will have the pictures
17 and you will be able to see what they were saying when
18 there's no blood.

19 You saw the copious amounts of bloods that are on
20 this part of the couch because it goes out this way.
21 There's not enough on this. He told you there's little
22 parts, but that's not the same thing. She talked about a
23 blood letting event, that that means when the blood came
24 out. That is not what Stan Richards told you. What he
25 told you is a blood letting event is when you are either

1 shot, stabbed, whatever caused you to bleed. In this
2 case, it was when she got shot, the blood let onto the
3 couch. He didn't rely on anybody statement's either,
4 David Collins, he did his own investigation.

5 The last expert, Dr. Durso. She received her medical
6 license from North Carolina in 2005 and still Board
7 certified. 2010, in South Carolina, still Board
8 certified. Became certified by the American Board of
9 Pathology in 2009 and 2010. Currently, teaches at the
10 School of Medicine. She examined the actual wound. She
11 saw what it looked like.

12 She told you it didn't have the scalloping and why
13 that was important. She told you what she saw and how she
14 had to try to put it back together. But because she had
15 to try to put it back together, she was not going to give
16 you a distance. It wouldn't be professional. What she
17 told you was it had to be 12 to 30 inches away from the
18 end of the barrel because of the stippling. That is
19 scientific. The stippling doesn't occur unless you're
20 within 12 inches to 30 inches. She explained all that.
21 They're expert didn't deny that. He couldn't. He's not a
22 doctor. She also told you she found no burns on her hand,
23 no soot, no powder, no nothing. They want you to believe
24 that this five-foot-two woman -- first of all, her DNA is
25 all on this gun, as they said, but it's not on the

1 trigger. I can't shoot myself and I'm five-ten. How is
2 it at five-two, she's going to hold the trigger and shoot
3 herself?

4 Secondly, they told you about how her DNA was on the
5 gun. It wasn't touch DNA. It was her actual DNA. They
6 also told you that Dr. Durso said upwards and they keep
7 doing this. Did you ever, when Dr. Durso testified, see
8 her do that it was upwards or did she say slightly
9 upwards? Let's look at when upwards stops. If I hold my
10 hand, is this, is this, is this, is this? It's still
11 upwards.

12 If you take this gun and you just slightly tilt it,
13 it's still going to shoot up. You tilt it just a little
14 more. It's still going to shoot up. And it could still
15 manage to shoot somebody's eye out and knock her brains
16 onto the back of this couch. It wasn't the top of her
17 scalp. Dr. Durso told you it was the back and it was on
18 the couch. Back on the couch. If she's sitting and it's
19 just slightly up, that's going to work if it's just
20 slightly tilted. That's all that has to happen.
21 Dr. Durso told you that. She is the expert on that.

22 So they wanted to talk to you about this story he
23 concocted and the accuracy of somehow I did it, but I
24 don't know how I would have done that. She said that this
25 is a science. It is a science. That's why they came in

1 here and they told you the specifics of this science with
2 all of their knowledge. Stan Richards, David Collins,
3 Dr. Durso, their doctor, their expert had done that.

4 Pulled the gun to her face. Who would do that? I
5 don't have to tell you why he was pointing the gun at her
6 face. I have no idea. You don't have to, though, because
7 if you point a gun at somebody's face and pull the
8 trigger, that's malice. I don't have to prove to you why.

9 No blood on the door. That is important. He
10 continuously -- she said he's consistent. He's
11 consistently wrong, but yeah, he's consistent. Continues
12 to say that at first she comes in the door, she comes in
13 the door and it happens right then. Well, then how the
14 heck did her lunch bag get way over there? It's not even
15 near the door. Does she just throw it as she's getting
16 shot while she's moving the gun around? Didn't happen.
17 Her brain is on the floor. I can't get past this. It's
18 right by the lunch bag. Did that get thrown over there,
19 too? That doesn't match anything of what they just told
20 you. And it sure doesn't match an accident.

21 The scalp on the couch. We talked about that.
22 Again, did we throw that over there? There's blood on the
23 ceiling, on the couch, everywhere except by the door. He
24 never once said she came in, sat her lunch bag down. Look
25 at his statement. You'll have it. It's not in there.

1 He never once said, oh, yeah, I put her scalp up on
2 the back of the couch. Didn't say that. Because it
3 didn't happen. She was sitting. She got shot. It all
4 flew out because he did it. Her glasses get across the
5 room. She didn't bother to mention that. Because if he's
6 standing in front of her with a table between the two of
7 them and in front of the couch, like they now want you to
8 believe, then how do the glasses fly past him and the
9 table to get by the TV? It's not possible.

10 I just want you to remember what you heard and saw
11 from the witnesses and whether it makes sense. The
12 Defendant -- I don't want you to just judge what he did
13 after, but it's important because if he had just done the
14 right thing after, it wouldn't look like murder. It would
15 look like an accident, but he didn't do those things. And
16 he didn't do those things prior to it happening because he
17 wouldn't have had that loaded gun if he was doing the
18 right thing. He wouldn't have pointed that gun at her if
19 he was doing the right thing. He wouldn't have pulled
20 that trigger if he was doing the right thing. And that is
21 why I want you to find him guilty of murder, because he
22 did it with malice aforethought.

23 Thank you.

24 THE COURT: All right. Let's stand up, stretch right
25 where you are.

1 (Pause.)

2 CHARGE ON THE LAW

3 THE COURT: All right. The indictment has charged
4 the Defendant with murder. I remind you that the fact
5 that the Defendant was arrested and charged and indicted
6 in this case is not evidence in this case and it cannot be
7 considered by you as evidence of guilt, nor does it create
8 any presumption or inference of guilt. The indictment, as
9 I told you on the very first day, is simply the formal
10 written instrument that contains the charge made against
11 the Defendant. It is the formal document by which the
12 case is brought into this Court.

13 Now, you and I have had certain duties to perform
14 during this trial. It has been my responsibility to
15 preside over the trial and I have also had the duty to
16 rule on the admissibility of evidence. You are to
17 consider only the competent evidence before you. There
18 was testimony that I ordered stricken from the record in
19 this case and you must disregard that testimony. You are
20 to consider only the testimony which has been presented
21 from the witness stand, the exhibits which have been made
22 a part of the record in the case.

23 I have the additional duty to charge the law
24 applicable to this case. As the presiding judge, I am the
25 sole judge of the law, and it is your duty to accept and

1 apply the law as I now give it to you. If you have an
2 idea as to what you think the law is or what you think the
3 law ought to be and it does not agree with what I now tell
4 you the law is, you must abandon your own idea because you
5 are sworn to accept the law and apply it exactly as I give
6 it to you.

7 In every case tried in this court before a jury, the
8 jury becomes the sole and exclusive judge of the facts. I
9 cannot state, comment on or make any statement to you
10 about the facts in a case. You are the sole judge of the
11 facts. You are not to infer from anything that I have
12 said during this trial in ruling upon the admissibility of
13 evidence or otherwise or anything that I say to you now
14 during the course of this instruction that I have any
15 opinion about the facts in this case. The law does not
16 allow me to have an opinion about the facts. This is a
17 matter solely for you to determine. It is your duty to
18 determine the effect, the value and the weight of the
19 evidence presented during this trial.

20 Now, to this charge, the Defendant has pled not
21 guilty. That plea puts the burden of proof on the State
22 to prove the Defendant guilty. A person charged with
23 committing a criminal offense in South Carolina is never
24 required to prove himself innocent. I charge you that it
25 is an important rule of law that the defendant in a

1 criminal trial, no matter what the seriousness of the
2 charge may be, will always be presumed to be innocent for
3 the crime which the indictment was issued unless guilt has
4 been proven by evidence that satisfies you of that guilt
5 beyond a reasonable doubt.

6 This presumption of innocence does not end when you
7 begin your deliberations, but it accompanies the Defendant
8 throughout the trial until you reach a verdict of guilt
9 based upon evidence that satisfies you of that guilt
10 beyond a reasonable doubt.

11 The presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the Defendant,
13 which remains with the Defendant until it has been
14 stripped from the Defendant by evidence which satisfies
15 you of the Defendant's guilt beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory. It's just not something we say or just some legal
18 phrase. It is a substantial right to which every
19 defendant is entitled unless you, the jury, are satisfied
20 from the evidence of the Defendant's guilt beyond a
21 reasonable doubt.

22 So what is beyond a reasonable doubt? The State has
23 the burden of proving the Defendant guilty beyond a
24 reasonable doubt. Some of you may have served as jurors
25 in civil cases where you were told that it is only

1 necessary to prove that a fact is more likely true than
2 not true, such as by the greater weight or the
3 preponderance of the evidence. In a criminal case, the
4 State's proof must be more powerful than that. It must be
5 beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the Defendant's guilt. There are
8 very few things in this world that we know with absolute
9 certainty. In criminal cases, the law does not require
10 proof that overcomes every possible doubt. If based upon
11 your consideration of the evidence, you are firmly
12 convinced that the Defendant is guilty of the crime
13 charged, you must find the Defendant guilty.

14 If on the other hand, you think there is a real
15 possibility that the Defendant is not guilty, you must
16 give the Defendant the benefit of the doubt and find him
17 not guilty.

18 Some things that you have heard during this trial are
19 not evidence and you must not consider them as evidence in
20 deciding the facts of this case.

21 Number one, the statements and the arguments of the
22 attorneys are not evidence. Number two, the questions and
23 the objections of the attorneys are not evidence. Number
24 three, anything that I told you to disregard.

25 Now, there are two types of evidence which are

1 generally presented during a trial. One is known as
2 direct evidence, the other is known as circumstantial
3 evidence. So what is direct evidence? Direct evidence
4 directly proves the existence of a fact and does not
5 require any deduction. Circumstantial evidence is proof
6 of a chain of facts and circumstances that indicate the
7 existence of a fact.

8 Crimes may be proven by circumstantial evidence. The
9 law makes no distinction between the weight or the value
10 to be given to either direct or circumstantial evidence.
11 However, to the extent that the State relies on
12 circumstantial evidence, all of the circumstances must be
13 consistent with each other and when taken together, point
14 conclusively to the guilt of the accused beyond a
15 reasonable doubt. If the circumstances merely portray the
16 Defendant's behavior as suspicious, the proof has failed.

17 The State has the burden of proving the Defendant
18 guilty beyond a reasonable doubt. This burden rests with
19 the State regardless of whether they rely on direct
20 evidence, circumstantial evidence or some combination of
21 the two.

22 As I told you in the beginning, you must determine
23 the credibility of the witnesses who have testified in
24 this case. Credibility just means believability. It is
25 your duty to analyze and to evaluate the evidence and

1 determine which evidence convinces you of its truth.

2 In determining the believability of the witnesses who
3 have testified in this case, you may believe one witness
4 over several or several over one. You may believe a part
5 of the testimony of a witness and reject the remaining
6 part of the testimony of that same witness. You may
7 believe the testimony of a witness entirely or reject it
8 entirely. You may consider whether the witness has
9 exhibited to you any interest, any bias, any prejudice or
10 motive in the case. You may also consider the appearance
11 and the demeanor of the witness while on the witness
12 stand.

13 Now, ordinarily, the Rules of Evidence do not permit
14 witnesses to give their opinions or their conclusions. An
15 exception to this rule exists for expert witnesses. This
16 is a witness, who by some education and experience, has
17 become an expert in an art or a science or a profession or
18 a calling. That person is allowed to give their opinion
19 as to relevant and material matters in which the witness
20 claims to be an expert and may also give the reasons for
21 their opinion.

22 You should consider any expert opinion received in
23 evidence in this case and, like any other evidence, give
24 it the weight that you believe it deserves. If you decide
25 that the opinion of an expert is not based upon sufficient

1 education and experience or if conclude that the reasons
2 given in support of the opinion are not sound or that the
3 opinion is outweighed by other evidence, you may disregard
4 an expert's opinion entirely. An expert witness's
5 testimony is to be given no greater weight than that of
6 other witnesses simply because they're an expert. You are
7 not required to accept an expert's opinion even if it is
8 not contradicted.

9 Now, I instruct you and emphasize to you that the
10 fact that the Defendant did not testify in this case is
11 not a factor to be considered by you in any way whatsoever
12 in your deliberations and in your consideration on the
13 question of the guilt or innocence of the Defendant. It
14 must not be considered by you in any manner whatsoever. A
15 Defendant has a Constitutional right to remain silent.
16 And the assertion of this right must not be considered by
17 you in your deliberations.

18 I repeat, under the oath that you took at the
19 beginning of this case, you are to draw no conclusion
20 whatsoever from the fact that the Defendant did not
21 testify. The fact that the Defendant did not testify
22 should not even be discussed in the jury room. The burden
23 of proof, as I told you, is on the State. The Defendant
24 is not required to prove his innocence. The burden of
25 proof remains on the State to prove guilt beyond a

1 reasonable doubt.

2 Now, there is a statement that is alleged to have
3 been made by the Defendant that has been admitted into
4 evidence in this case. While the Court has determined
5 that the statement is admissible, I instruct you that you
6 make the ultimate decision of whether or not the Defendant
7 made the statement. If the Defendant did make the
8 statement, you must determine whether the statement was
9 made by the Defendant voluntarily and of his own free
10 will. This means that the statement was not caused by
11 pressure, force, fear, threats, coercion or intimidation
12 or by hope or a promise of leniency or a reward of any
13 kind.

14 In determining whether the statement was voluntary,
15 you should consider both the characteristics of the
16 Defendant and the details of the questioning. Some of the
17 factors that you must consider are the age of the
18 Defendant, the Defendant's education or lack of education,
19 the Defendant's mental ability or capacity, the
20 Defendant's IQ or intelligence, the Defendant's background
21 and environment, the place and the length of the
22 detention, the nature of the questioning and the advice or
23 lack thereof to the Defendant of his Constitutional
24 rights, including but not limited to the right to remain
25 silent, that any statement can be used against him in

1 court, the right to have a lawyer present, and that if he
2 cannot afford a lawyer, a lawyer will be appointed to
3 represent him without any cost and that he could stop
4 making a statement at any time.

5 You must carefully consider all the surrounding
6 circumstances before you give any weight to an alleged
7 statement. The State has the burden of proving beyond a
8 reasonable doubt that the alleged statement was voluntary.
9 If you determine it was, you may give it any further
10 consideration that you deem proper. You must decide what
11 weight, if any, should be given to the alleged statement.
12 If you determine the alleged statement was not the free
13 and voluntary statement of the Defendant, do not consider
14 it at all.

15 All right. The next thing I'm going to talk to you
16 about is called intent. So in order to establish criminal
17 liability, the State must prove criminal intent. For
18 example, the mental state required to be proven by the
19 State might be purpose, intent, knowledge, recklessness or
20 criminal negligence.

21 Criminal intent must be proven beyond a reasonable
22 doubt by the State. Criminal intent is always a matter
23 that must be determined by the jury from circumstances
24 surrounding the situation. There is no way to prove
25 intent to a mathematical certainty. There is no way that

1 medical science can dissect a person's brain and determine
2 what that person had in mind, so the law says that
3 criminal intent may be inferred from the circumstances
4 shown to have existed.

5 This is how you make a determination of whether or
6 not the element that requires intent was present. It is
7 not necessary to establish intent by direct and positive
8 evidence, but intent may be established by inference in
9 the same way as any other fact by taking into
10 consideration the acts of the parties and all the facts
11 and circumstances of the case.

12 Criminal intent is a mental state. It is a conscious
13 wrongdoing. It is up to you to determine what the
14 Defendant intended to do based upon the circumstances
15 shown to have existed.

16 Criminal intent can arise from an action or a failure
17 to act. It may arise from negligence, recklessness or an
18 indifference to duty or to consequences that is considered
19 by the law to be the equivalent of criminal intent.

20 All right. The charge in this case is murder. The
21 Defendant is charged with murder. The State must prove
22 beyond a reasonable doubt that the Defendant killed
23 another person with malice aforethought.

24 So what is malice? Malice is hatred, ill will or
25 hostility towards another person. It is the intentional

1 doing of a wrongful act without just cause or excuse and
2 with an intent to inflict an injury or under circumstances
3 that the law will infer an evil intent.

4 Malice aforethought does not require that the malice
5 exist for any particular time before the act is committed,
6 but malice must exist in the mind of the Defendant just
7 before and at the time the act is committed. There must
8 be a combination of the previous evil intent and the act.

9 Malice aforethought may be expressed or it may be
10 inferred. These terms expressed and inferred do not mean
11 different kinds of malice, but merely the manner in which
12 the malice may be shown to exist. That is either by
13 direct evidence or by inference from the facts and
14 circumstances which are proved.

15 Malice may be inferred from conduct that shows a
16 total disregard for human life, or it may be inferred if a
17 reasonably prudent man would have known that according to
18 common experience there was a plain and strong likelihood
19 that death would follow the contemplated act.

20 Now, the Defendant has raised the defense of
21 accident. So an act may be excused on the ground of
22 accident if it is shown that the act was unintentional,
23 that the Defendant was acting lawfully, and that
24 reasonable care was used by the Defendant in the handling
25 of the weapon. The burden is on the State to prove beyond

1 a reasonable doubt that the act was not an accident, but
2 was caused by the negligence or carelessness on the part
3 of the Defendant in the handling of a dangerous
4 instrumentality or by unlawful activity by the Defendant.

5 In South Carolina, pointing and presenting a firearm,
6 either loaded or unloaded at another person is considered
7 unlawful activity.

8 All right. I'm almost done. So let me talk to you
9 about deliberations. What deliberation means is this:
10 Deliberation is a careful consideration weighing up with a
11 decision. The genius of this system is that it allows 12
12 men and women from 12 totally different backgrounds, life
13 experiences and perspectives to consider the evidence, to
14 talk about it and to reach a verdict.

15 We call them deliberations for a reason. You are to
16 consider the evidence carefully and deliberately and
17 discuss it in a calm, thorough and courteous manner.
18 Remember, you are not a partisan. You are not an advocate
19 for either side. You don't favor one side or the other.
20 You are a judge. You are a judge of the facts. Listen to
21 the views of your fellow jurors. Consider other people's
22 points and points of view and talk through and discuss the
23 evidence. And remember, if you are doing something
24 deliberately, you are not in a big hurry and you should
25 not be in a hurry here. This case is very important to

1 both sides. This is their only day in court to resolve
2 this matter. When you retire to your jury room, you
3 should discuss the case with each other to reach an
4 agreement if you can do so.

5 Your verdict must be unanimous. Each of you must
6 decide the case for yourself, but only after you have
7 impartially considered the evidence, discussed it fully
8 with each other and listened to each other's views. Do
9 not be afraid to change your opinion if the discussion
10 persuades you that you should, but do not come to a
11 decision simply because everyone else thinks it's right.

12 It's important that you attempt to reach a unanimous
13 verdict, but, of course, only if you can do so after
14 having made your own decision. Do not change an honest
15 belief about the weight and the effect of the evidence
16 simply to reach a verdict. In other words, don't change
17 your opinion simply, solely for the sake of reaching a
18 unanimous verdict.

19 All right. Now, I'm going to give you what we call a
20 verdict form. So this form -- I'm going to show it to you
21 in just a second. It just has the case caption at the top
22 and then it simply says we, the jury, by unanimous consent
23 find the Defendant as to the charge of murder either
24 guilty or not guilty. Okay. Now, there's no significance
25 in which one is first and which one is second. I have to

1 put guilty first -- I have to put one first and one
2 second, so I switch it up.

3 Very simple, you check the box and you sign it. You
4 got that?

5 THE FOREMAN: Yes.

6 THE COURT: Okay. Now, here are your rules. Number
7 one, all 12 of you have to be in the room to deliberate.
8 So if somebody goes to the restroom, if somebody needs to
9 go smoke, somebody needs to call home and say we're going
10 to be a little bit late tonight, you have to stop
11 deliberating. Okay. When your lunch comes, you can
12 deliberate while you eat or you can stop deliberating and
13 eat. That's up for y'all to decide.

14 So I'm about to send you back to your jury room.
15 You're still not allowed to talk about the case. I need
16 to check with the lawyers and make sure I told you what I
17 was supposed to tell you. Okay. So the sign that you may
18 begin deliberating is when this evidence comes in the
19 room, okay. So when one of the bailiffs sends in the
20 evidence, that's your sign that you may begin
21 deliberating. Until then, don't talk about the case. At
22 that time, the alternates will come out, the evidence will
23 come in. When the evidence comes in, you may begin, all
24 right.

25 Now, don't tell me the count, okay. They don't teach

1 you this at judge's school, but I learned the hard way. I
2 started getting all these notes from juries in the
3 beginning saying their count is this. Your count is your
4 count. We don't ever need to know your count. Make
5 sense?

6 And let's see. Okay. There are some 9-1-1 calls
7 that are in evidence. If you want to listen to those, we
8 can provide you a clean computer to play those on. Just
9 send out a note that says, you know, we'd like to hear the
10 9-1-1 calls. I think that's the only thing that --

11 MS. SAMPSON: Yes, sir.

12 THE COURT: Isn't that right, Ms. Goode?

13 MS. GOODE: Yes, Your Honor.

14 THE COURT: That's the only thing you won't have with
15 you. So if you want to hear those, just let us know.
16 We'll give you a clean computer that has those on there
17 and my law clerk will show you how to come in and hit
18 play.

19 Okay. So you're still now allowed to talk about the
20 case. Retire to the jury room. When the evidence comes
21 in, you can start. I told them to have lunch here
22 around --

23 Is lunch here? It may be here already. I told them
24 12:30.

25 THE BAILIFF: It's here.

1 THE COURT: Okay. We'll go ahead and get your lunch
2 into you. You can go ahead and get started eating. Thank
3 you very much.

4 (WHEREUPON, the jury left the courtroom at 12:45
5 p.m.)

6 THE COURT: All right. Any exception to the charge
7 other than those previously stated?

8 MS. SAMPSON: Not from the State, Your Honor.

9 MR. HAWKS: Judge, I would just renew my objection to
10 the pointing and presenting being unlawful. This violates
11 established common law in South Carolina because it takes
12 away the jury's job of finding that fact. And we would
13 also renew all our pretrial objections, in-trial
14 objections, mistrial motions, directed verdict, all that
15 stuff.

16 THE COURT: Okay. All right. Make sure Bailey has
17 your phone numbers, make sure the right evidence goes back
18 and thank you very much.

19 (WHEREUPON, the jury began deliberations at 12:53
20 p.m.)

21 (WHEREUPON, Court was in recess awaiting a
22 verdict.)

23 THE COURT: All right. Now, it's my understanding we
24 have a verdict. I understand that this is a very
25 emotional case, and I appreciate that.

1 People can be sad. They can be upset. People cry.
2 People have all different kinds of different emotions in
3 these types of situations. What I cannot put up with is
4 any outbursts, okay. So no screaming or yelling or
5 anything like that. If you don't think you can handle
6 yourself that way, just walk out now. No one will think
7 bad of you and somebody can come tell you what happens.

8 I understand people being emotional and upset and
9 those different things, but we can't have any loud
10 outbursts or screaming or those kinds of things.

11 Okay. Let's bring them in.

12 (WHEREUPON, the jury returned to open court with a
13 verdict at 2:05 p.m.)

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

15 THE COURT: Mr. Foreman, it's my understanding you
16 have a verdict; is that correct?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Hand it to Mr. Tolbert,
19 please.

20 THE COURT: All right. The clerk may publish.

21 THE CLERK: Yes, Your Honor.

22 VERDICT

23 THE CLERK: Indictment number 2015-GS-40-06133, the
24 State of South Carolina versus Mimi Joe Marshall, we, the
25 jury, by unanimous consent find the Defendant, Mimi Joe

1 Marshall, as to the charge of murder on indictment
2 2015-GS-40-06133 guilty, signed number 280, Robert Wagner,
3 foreperson, November the 2nd, 2017.

4 Mr. Foreman, is this your verdict and the verdict of
5 the entire jury?

6 THE FOREMAN: Yes, ma'am.

7 THE CLERK: Thank you.

8 THE COURT: Do either side request polling?

9 MS. SAMPSON: Not from the State, Your Honor.

10 MS. GOODE: Yes, Your Honor.

11 THE COURT: Okay. Ladies and gentlemen, we're going
12 to ask you two questions. We're going to call out -- one
13 question that has two parts. We're going to call out each
14 of your numbers. And then the question will be: Is this
15 your verdict and is this still your verdict? And if
16 you'll just answer out loud when your number is called.

17 THE CLERK: No. 280, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: No. 172, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: No. 272, was this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: No. 108, was this your verdict?

5 JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR: Yes.

8 THE CLERK: No. 1, was this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: No. 295, was this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: No. 73, was this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: No. 187, was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: No. 275, was this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: No. 179, was this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: No. 102, was this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: No. 180, was this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: The jury has been polled, Your Honor.

16 THE COURT: All right. Thank you very much.

17 All right, ladies and gentlemen, I want to say thank
18 you very much for your service this week. You all have
19 been a great jury. You've paid attention. You've been on
20 time. You stayed with us. You stayed awake. And I want
21 to say on behalf of all the judges in the building thank
22 you very much for your service this week. I know there
23 are a million other places you would have rather been this
24 week. You can see now after sitting through a trial that
25 trials are not like TV or movies or books. This is real

1 life and real circumstances. I just want to say thank you
2 very much for your service and your attentive service this
3 week.

4 Now, you have a jury exemption for the rest of this
5 year and for 2018 and 2019, so if you get called for jury
6 duty, just make sure you tell them that you served this
7 week. You are now free to discuss the case with anyone
8 that you see fit. If you don't want to talk about it, you
9 don't have to, but if you choose to talk about it with
10 someone, you have the free ability to do that.

11 You can retire to your jury room. The bailiffs will
12 collect your badges and then you will be done. You do not
13 need to call back in or come in tomorrow. Thank you very
14 much.

15 Everyone else remain seated.

16 (WHEREUPON, the jury left the courtroom at 2:08
17 p.m.)

18 THE COURT: All right. I'll be back in about five
19 minutes for post-trial motions and sentencing.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: All right. Post-trial motions?

22 MS. GOODE: Your Honor, we would renew all previous
23 motions, objections made throughout the course of the
24 trial, pretrial. We would also at this time request --
25 make a motion for a new trial based upon the brevity of

1 the deliberations.

2 THE COURT: Okay. Those motions are denied. My
3 rulings on them would be the same as before. This jury
4 paid attention this entire week. They were very involved
5 in what was going on. They stayed with it. And I know
6 the case had a lot of what we call expert witnesses or
7 science in it, but it really, you know, as to the level of
8 complication in the case, it just wasn't that complicated
9 to a point where it would take hours upon hours to
10 deliberate.

11 All right. Does the victim's family want to be heard
12 from?

13 MS. SAMPSON: Yes, sir.

14 THE COURT: All right. Who wants to speak?

15 MS. SAMPSON: Do you want her to stand up and or come
16 up?

17 THE COURT: She can stay right there.

18 Are you Tamieka or Amanda?

19 TAMIEKA MARSHALL: Tamieka.

20 THE COURT: All right. Thank you for being here,
21 Tamieka. I know you've been here all week and I heard you
22 testify in the case. I'm more than happy to hear from you
23 now if you'd like to say anything. You don't have to, but
24 you're you're welcome to.

25 TAMIEKA MARSHALL: I just wanted you to know that I

1 didn't, you know, bring up things, but I witnessed
2 domestic violence in my household all my life until the
3 time that we left in 2010.

4 THE COURT: And that's when y'all went to Georgia?

5 TAMIEKA MARSHALL: Yes.

6 THE COURT: To live with your brother?

7 TAMIEKA MARSHALL: Yes. Because I called him to come
8 get me because I heard him abuse my mother every day. So
9 I just wanted you to know that this domestic violence had
10 been going on forever, up until she passed away. I didn't
11 know that -- you know, I didn't know because I didn't live
12 there that it was going on, but I just wanted you to know
13 that.

14 THE COURT: I can imagine that in -- you know, all
15 the lawyers come in here and we do this every day, so I
16 look at people all the time and I say you can't testify to
17 this or you can't to that. That's not the witness's
18 fault. Does that make sense? There's rules that are in
19 place, so I know -- you know, I can understand how people
20 would feel like I didn't really get to tell my whole story
21 because I didn't get to tell the jury about the things
22 that happened in the past. There's rules in place that
23 cover that. And I appreciate you, you know, staying with
24 the information that the State -- you had provided with
25 them and not going into that history in front of the jury.

1 That was very important that that not come in. And under
2 the rules, it would have not been permissible.

3 I do appreciate you telling me that and I appreciate
4 your participation in the trial. I can't imagine -- I
5 can't even begin to put myself in the situation you're in
6 in this case with the parties involved. But thank you
7 very much for being here and thank you for your comments.

8 Anybody else?

9 THE DEFENDANT: Can I say something?

10 THE COURT: I'm going to let you in just a minute,
11 yeah.

12 THE DEFENDANT: Okay.

13 MS. SAMPSON: You have to state your name for the
14 record.

15 THE SISTER: My name is Valerie Garvinger.

16 THE COURT: Yes, ma'am.

17 THE SISTER: Doris was my sister, but she was more of
18 a surrogate mother because our parents died when we were
19 young. I was three when my mother died. I was seven when
20 my father died. And Doris was the hands-on for us. As we
21 traversed between houses and other people's lives, she was
22 the one who made sure we didn't do anything wrong. And as
23 Tamieka and her brother grew up, she always called us each
24 other's names because when you raise two sets of kids, you
25 mix their names up.

1 When she met this man, I don't feel like he was the
2 right person, but that was her life. She loved him. And
3 I watched him just do crazy, from beating her because
4 someone rode down the street and threw up their hand as
5 they drove down, paying somebody to come pick me up from
6 work because he took the money I paid him for gas and went
7 and bought liquor and didn't come pick me up and I'm stuck
8 in Columbia catching rides in the middle of the night
9 because he felt like it wasn't important. And she took
10 her nephew with her with a cousin who came by to come get
11 me so I'm not stuck. So anything that he could control
12 and belittle her with, he did.

13 The only peace in her life was in her children, her
14 grandchildren, and when she was away from him. And out of
15 love for her family, she always wanted her family together
16 because our life was so scattered at a young age. So she
17 took him back because he had nowhere to go, and she didn't
18 want to see the father of her children in the street with
19 nowhere to go.

20 He tormented her and tortured her, but she loved him
21 still. Even when they were separated, she got lonely.
22 She went and got him, brought him to Georgia with her to
23 live. Came back to Columbia to live because she loved
24 him. You can't help who you love, but I wish her choice
25 had been different. I wish he had valued her, the kind of

1 person she was because she would give him her life above
2 everybody. Her life, she gave to him, and he took her
3 life and did not value her. And I'm glad he will not be
4 able to hurt anyone else because my nieces don't need to
5 look back and wonder if he's coming.

6 That's all I want. I don't wish him no death
7 penalty, no nothing. I don't want them to have to look
8 over their shoulder and wonder if he's coming because I
9 seen the meanness in him and that is my biggest concern.

10 Thank you for hearing me.

11 THE COURT: All right. Thank you, ma'am.

12 Anybody else?

13 Tell me your name, ma'am.

14 MS. TYSON: My name is Elizabeth Tyson. Doris
15 Marshall was my best friend for over 30 years. I told
16 Doris I couldn't live in the conditions she lived in. If
17 we was in the house talking and Mimi came in, she would go
18 (indicating). There were certain things she couldn't say.
19 There were certain things she couldn't do. I remember one
20 time we went to the fair, me and Doris -- that was before
21 Tamieka was born -- her brother and her son and his
22 mother. When we got back home, he raised all kind of hell
23 saying that we went to the fair to meet men with his
24 mother.

25 That girl lived under tension every day of her life

1 when she was with him. And she had a heart of gold. He
2 had an angel in his hands and didn't know it. Because
3 when I had my kids, I didn't trust my kids with anybody,
4 but I trusted my kids with Doris. And then when my son
5 had his daughter, she treated Nijah just like Nijah was
6 her granddaughter. We always tease her grandchildren now,
7 y'all are the second go around because Nijah was the
8 first. She loved Nijah with all her heart and soul. And
9 it's really not fair for Doris not to be in these girls'
10 life and watch them grow up for no reason, for simply
11 complete control. You go into your own house and you
12 didn't feel comfortable, that you was scared to talk to
13 someone or say something because he walked in.

14 This girl got up and cooked his meals, carried his
15 meals to him in bed, and she was the one working. He
16 didn't even work. She did not deserve to die the way she
17 did. It was a totally unnecessary death.

18 Thank you.

19 THE COURT: Thank you, ma'am.

20 All right. Anything from the Defense?

21 Mr. Marshall, you said you wanted to say something
22 earlier. If you'd like to, you're more than welcome to.
23 I wasn't trying to cut you off. I usually let all them
24 talk at one time, then I let you talk. So if you'd like
25 to say something, you're more than welcome to. I'm happy

1 to hear from you or from your attorneys or from anyone on
2 your behalf.

3 THE DEFENDANT: The only thing I say about this, Your
4 Honor, I'm the only one that was in the house. I know
5 what happened. But I'm going to leave it in the hands of
6 the Lord. I know I'm not a guilty man. I did not kill my
7 wife, but all these people back here, they just got this
8 thing against me. That's all they've been. So it's okay,
9 but, you know, my Jesus will take care of it.

10 THE COURT: Thank you very much, Mr. Marshall.

11 Ms. Goode, Mr. Krzyston, Mr. Hawks, anybody wish to
12 say anything on Mr. Marshall's behalf?

13 Or anybody else on Mr. Marshall's behalf?

14 MS. GOODE: Your Honor, he's been continuously
15 incarcerated since August 15th, 2015. Obviously, it's
16 tough for him to talk about it. As you heard, he
17 maintains his innocence. We understand the verdict and
18 we're just asking, Your Honor, to sentence him to the
19 minimum.

20 THE COURT: Do we have a sentencing sheet?

21 MS. SAMPSON: They have a sentencing sheet, Your
22 Honor.

23 THE COURT: And his criminal history is what?

24 MS. SAMPSON: He has a 1996 assault and battery with
25 intent to kill. In that case, there was also a shotgun

1 involved. He was accused of killing and shooting a man in
2 the back. He was convicted, received 10 years, suspended
3 upon the service of four and followed by probation.

4 It's the State's position that he should get more
5 than the minimum of 30 years. The facts and as you've
6 heard from the victim's family, it would be the State's
7 position it should be more than the 30-year sentence.

8 SENTENCE

9 THE COURT: All right, Mr. Marshall, the sentence of
10 the Court on indictment 2015-GS-40-6133 is that you be
11 committed to the State Department of Corrections for life
12 without the possibility of parole. Good luck to you.

13 MS. GOODE: Thank you, Your Honor.

14 THE COURT: And on the firearms charge, the sentence
15 is five years. They are to run concurrent. Thank you.

16
17
18
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21
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23
24
25 CERTIFICATE OF REPORTER

1
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5
6 I, PENNY M. JOHNSON, Official Court Reporter for the
7 Second Judicial Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true, accurate, and
9 complete Transcript of Record of the proceedings had and the
10 evidence introduced in the trial of the captioned case,
11 relative to appeal, in Court of General Sessions for
12 Richland County, South Carolina, on the days of October 30
13 through November 2, 2017.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16
17 January 7, 2018

18
19
20 Penny M. Johnson

21 Penny M. Johnson Court Reporter

22 My Commission Expires: 06/16/2018
23
24
25

WITNESSES

(S) Andrew Caldwell
- Richland County Sheriff

DOCKET NO. 2015GS4006133

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within Indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

91

ARREST WARRANT NUMBER

2015A4010202593

THE STATE
vs.

Mimi Joe Marshall

ACTION OF GRAND JURY**TRUE BILL**

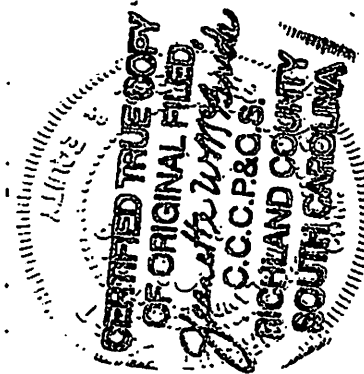
Deann Gardner
Foreperson of Grand Jury
Date: DEC 15 2015

VERDICT

Foreperson of Petit Jury
Date:

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
CDR Code: 0116



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

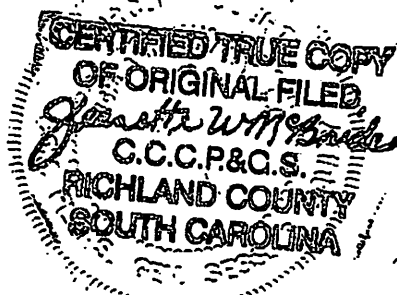
At a Court of General Sessions, convened on DECEMBER ¹⁵ 2015,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Mimi Joe Marshall did in Richland County, on or about August 15, 2015, kill the victim, DORIS MARSHALL, with malice aforethought, either express or implied, by means of GUNSHOT WOUND, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR



WITNESSES

(S) Andrew Caldwell
 – Richland County Sheriff

DOCKET NO. 2015GS4006134

The State of South Carolina

County of

Richland

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
 guilty to the within indictment or to

ARREST WARRANT NUMBER

2015A4010202595

Defendant

THE STATE
 vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Mimi Joe Marshall

Devin Gardner
 Foreperson of Grand Jury DEC 15 2015
 Date:

VERDICT

Foreperson of Petit Jury
 Date:

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

91



Indictment for
 POSSESSION OF FIREARM OR
 AMMUNITION BY PERSON CONVICTED OF
 VIOLENT FELONY

SC Code: 16-23-0500 (B)
 CDR Code: 3434

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on DECEMBER ¹⁵ 2015,
the Grand Jurors of Richland County present upon their oath:

POSSESSION OF FIREARM OR AMMUNITION BY PERSON
CONVICTED OF VIOLENT FELONY

That Mimi Joe Marshall did in Richland County on or about August 15, 2015, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under Section 16-1-60 that is classified as a felony offense. To wit: ASSAULT AND BATTERY WITH INTENT TO KILL. In violation of Section 16-23-500(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Garnette W. M. Bridges
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Dan Johnson
DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATEVS. Mimi Joe Marshall

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 15 -GS- 40 - 6133A/W#: 2015A-4010202593Date of Offense: 8-15-15S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.TEST: Cynthia Sampson 159609 * Mimi Joe Marshall Mem 100007
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center,
for a determinate term of LIFE 10 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 the State Department
of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)		\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
\$56-5-2995 (DUI Assessment)	\$12	\$	
\$56-1-286 (DUI Breath Test)	\$25	\$	
\$47.12 (Public Def/Prob)	\$500	\$	
\$14-1-212 (Law Enforce. Funding)	\$25	\$	
\$14-1-213 (Drug Court Surcharge)	\$100	\$	
\$50-21-114 (BUI Breath Test Fee)	\$50	\$	
\$56-5-2842(J) (Vehicle Assessment)	\$40/ea	\$	
\$90.7(SCCJA Surcharge)	\$5	\$	
3% to County (if paid in installments)		\$	
TOTAL		\$	

Clerk of Court/Deputy Clerk: Leannette W. McBride
Court Reporter: AmberlynnPTUP CERTIFIED TRUE COPYOF ORIGINAL FILED
days/hours Public Service EmploymentObtain GED C.C.C.P.&Q.S.Attend Voc. Rehab. RICHLAND COUNTY

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. In equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge ReHoyd

Judge Code: _____

Sentence Date Nov 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Mimi Joe Marshall

AKA:

Race: BLACK Sex: M Age: 59DOB: 1957 SS#: [REDACTED]Address: Leesburg Rd.City, State, Zip: Columbia, SC 29061DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Possession of firearm or Ammunition by person convicted of violent felony

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4006134A/W#: 2015A4010202595Date of Offense: 8/15/2015S.C. Code § : 16-23-0500 (B)CDR Code #: 3434

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-23-0500 (B) of the S.C. Code of Laws, bearing CDR Code # 3434

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)

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] 15964 [Signature] 100067
SAMPSON, APRIL SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-13-20 (Child
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-0500 (B) (Possession of
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL \$ _____

Clerk of Court/ Deputy Clerk: Jeanette W. McBriderCourt Reporter: Ambudzick

SCCA/217 (07/2016)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Presiding Judge Re HoodJudge Code: 2164Sentence Date: Sentencing deferred 10/30/17

CERTIFIED TRUE COPY

ORIGINAL FILED

RECORDED & INDEXED

JUL 20 2017

SOUTH CAROLINA

RICHLAND COUNTY

SOUTH CAROLINA

SOUTH CAROLINA

SOUTH CAROLINA

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of RichlandMinor T. Marshall 231397

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2022CP4002201

APPLICATION FOR
POST-CONVICTION RELIEF

2022 APR 28 AM 9:00

J. W. WINGGRIFF
P. & G.S.J. W. WINGGRIFF
P. & G.S.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 C. I., 990 WISACKY HWY.,
BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS, PO BOX 2766, COLUMBIA, S.C. 29202-2766
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) "15-GS-40-6133: MURDER
 - (b) " " 6134: POSS. ^{OF} FIRE ARM OR AMMUNITION BY PERSON
CONVICTED OF VIOLENT FELONY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11/02/17 - LIFE (NATURAL)
- (b) " " - FIVE (5) YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty A/W No.: 2015A4010202595
- (b) after a plea of not guilty 2015A4010202593
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES A/W No.: 2015A4010202593
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEALS
- ii. SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ~~August 12, 2020~~ AFFIRMED
- ii. ~~August 6, 2021~~ DENIED-appeal wrong Court
- iii. _____
- (c) the date of each such result:
- i. August 12, 2020
- ii. August 6, 2021
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2020-11P-241
- ii. Appellate Case No.: 2020-1546
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Court Lacked Jurisdiction(b) Actual INNOCENCE(c) SEE ATTACHMENT

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) _____

(c) _____

SEE ATTACHMENT

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? YES

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof: _____

i. _____

ii. _____

iii. _____

iv. _____

APPELLATE REVIEWAPPEAL FILED IN WRONG COURT

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

Court of Appeal, Columbia, SCSUPREME COURT, Columbia, S.C.

(c) the disposition thereof:

- i. AFFIRMED CONVICTION
- ii. DENIED - APPEALED IN WRONG COURT
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. AUGUST 12, 2020
- ii. AUGUST 6, 2021
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. 2020-11P-241
- ii. 2020-1546
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) SEE ATTACHMENT
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. (a)-(c) ALICIA GUDDE, PO BOX 192, COLUMBIA SC 29202

ii. (d)-(e) STEVEN F. KRZYSTON, 1717 MARION ST., COLUMBIA SC 29201

iii. (a)-(e) STEVEN F. KRZYSTON, 1717 MARION ST., COLUMBIA, SC 29201

(b) the proceedings at which each such attorney represented you:

i. SEE 17(a), (b), AND (c)

ii. SEE 17(d), AND (e)

iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of conviction and sentencing

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, MIMI JOE MARSHALL, 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.

Mimi Joe Marshall

SWORN to and subscribed before me this 25
day of March, 2020.

Debra Eastman (L.S.)
Notary Public

My Commission Expires: 3/3/2021

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, MIMI JOE MARSHALL, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X Mimi Joe Marshall
Applicant

SWORN or affirmed to and subscribed before me this

25 day of March, 2022.

Debra Eastley
Notary Public

My Commission Expires: 3/3/2026

STATE OF SOUTH CAROLINA
County of Richland

MINI JOE MARSHALL,
v. Applicant,

STATE OF SOUTH CAROLINA,
DEFENDANT.

IN THE COURT OF COMMON PLEAS
2022CP4002201

-CP-
AFFIDAVIT by
MINI JOE MARSHALL

2022 APR 20 AM 9:00
CLERK OF COURT
J. MERIDITH
C. S. S.

PERSONALLY APPEARED BEFORE ME, MINI JOE MARSHALL,
WHO ON OATH SAYS:

- 1- I AM AN ILLEGAL PRISONER OF THE STATE OF SOUTH CAROLINA'S DEPARTMENT OF CORRECTIONS #IN F-4-B #1263 AT LEE C. 1, BY THE STATE OF SOUTH CAROLINA.
- 2- I AM, AND HAVE PLEAD, NOT GUILTY OF THE CRIME OF MURDER BECAUSE OF THE FOLLOWING:

(i) At approximately ELEVEN P.M. ON AUGUST 15, 2015, I WAS LYING IN BED AND HEARD SOME NOISE OUTSIDE, AND STAYED IN BED AND LISTENED AND HEARD SOME MORE NOISE THAT SOUNDED LIKE SOMETHING OR SOMEBODY WAS IN MY UTILITY BUILDING IN THE BACK YARD, AND DECIDED TO GET DRESSED TO GO OUT AND SEE WHAT WAS GOING ON.

(ii) I GRABBED THE OLD RAGGITY 12 GAUGE SHOT GUN, THAT I KEPT IN THE CLOSET OF ME AND MY WIFE'S BEDROOM, AND WALKED TOWARDS THE FRONT DOOR SO I COULD BE BETTER PREPARED WALKING INTO MY BACK YARD.

(iii) I WAS HOLDING THE GUN IN MY LEFT HAND, WITH THE BARREL AIMED AT THE CEILING, AND MY HAND (LEFT) SIX (6) INCHES OR MORE FROM THE

trigger.

(iv) My wife came in from work as I got near the front door and I greeted her as I tried to make my way out the door.

(v) She noticed the gun, and asked me where I was going and I told her. I believe, she was trying to keep me out of trouble, and grabbed close to the top of the barrel, and was in an attempt to take the gun from me.

(vi) I was not prepared for her reaction to seeing the gun, so when she grabbed it, it caused the barrel to lean at a slight angle towards her, and, I believe, that "the movement" caused by the snatch, caused the gun to discharge.

(vii) After this accident, I threw the gun down as she grabbed my right wrist with her left hand and smiled at me as she squeezed my arm three (3) times as I pressed my left hand to the right side of her face in an hysterical attempt to stop the bleeding.

(viii) When I let a little pressure off her face, blood raced down my left arm and on to the "white t-shirt" I had on, at the time, and dripped on her pants and possibly the rug, from

my elbow.

(ix) While she was holding my wrist, she backed up to the couch at maybe a ten o'clock angle from where we were standing, and sat and pulled me down on the couch beside her, where she'd left just enough room for me to sit on her right side, between her and the door. I held her until her face/body slumped to her side leaving no question that she had passed.

(x) I sat beside my wife for a short time literally questioning how and why this had happened, and what I was going to do. I eventually called my brother, Robert Marshall (Rob), because it seemed like my safest option, at the time, because I felt I had no chance-in-truth - with the county police nor judicial system. But, I was trying to find a reasonable solution, and left a message on his voice mail.

(xi) I was still hysterical and remembered why I'd had the gun with me and decided to check on the disturbance in my back yard. I was so mad and distraught that I'd forgotten the gun, and possibly didn't want anything else to do with a gun. But I did not see the brick holding my utility's door closed was not out of place.

(xii) I walked back to the front door and realized that I'd locked myself out. So I went back to the back of the house to move the air unit out of the window so I could try to get in, and was having trouble, until a known thief called "Fee Wee" came out of the dark, and helped me by going in the window and opening the back door.

(xiii) I went in and realized I still had blood on ~~my~~ ^{my} and my "white t-shirt", shorts, and shoes, so I took the t-shirt off and washed some of the blood off my face and upper body and put on another shirt.

(xiv) I went back in the front room, looked at my wife & put the gun in a trash bag with the bloody t-shirt & my wife's pocket book, to save as evidence and to make sure that no one got my wife's pocket book.

(xv) I left to go to the store to get cigarettes to pay Fee Wee, and I needed a drink. But, I never made it back.

(xvi) I bought a beer, and at some point, decided to go to the end of a dirt road and commit suicide, but ended up with different thoughts,

AND ENDED AGREEING THAT I NEEDED TO GET DRUNK-- WHICH I DIDN'T DO (DRINK) ON A REGULAR BASES-- AND WENT TO GET A DRINK OF LIQUEUR.

(xvii) I EVENTUALLY WENT TO ROB'S HOUSE AND TOLD HIM AND ROB'S SON (ROBERT MARSHALL, JR. (ROB JR.)) WHAT HAPPENED, BECAUSE I WANTED THE POLICE TO FIND MY WIFE SO HER BODY COULD BE SECURED. SO I TOLD ROB TO CALL THE POLICE AND TELL THEM WHAT HAPPENED, AND TELL THEM TO KICK THE DOOR IN, BECAUSE IT WAS LOCKED.

(xviii) I LEFT ROB'S AND DROVE TO DIFFERENT PLACES ON A DRINKING BINGE BEFORE GOING TO JR. REESE'S HOUSE AND PARKED IN HIS FRONT YARD AND DROVE OFF TO SLEEP. WHEN I WOKE, BENJAMIN HARRIS RODE UP ON A BIKE. WE SAID A FEW WORDS AND BOTH LEFT JR. REESE'S HOME.

(xix) I FELT I'D MADE MY MIND UP TO GO BACK HOME TO SEE IF THE POLICE WAS THERE SO I COULD TURN MYSELF IN, AND WENT TO TONY'S ~~LOUNGE~~ LOUNGE TO GET ONE MORE DRINK BEFORE I WENT TO JAIL AND THIS IS WHERE I WAS ARRESTED.

(xx) EVEN THOUGH I WAS INTOXICATED AT THE TIME, I COULD NOT HAVE POSSIBLY TOLD DETECTIVE

LADWELL anything other than the foregoing, but he added and subtracted parts of the statements of my interrogation, because I was not in the frame of mind to feel nor want to read the statement - if anything was on it - when I signed it.

(xi) I told trial counsel this, but was not represented on the evidence provided, nor were any exculpatory evidence produced by defense trial counsel!

FURTHER AFFIANT SAYETH NOT.

X Mini ja Marahal

SWORN to AND SUBSCRIBED BEFORE
ME this 25 day of MARCH, 2022

Debra Castro (L.S.)
NOTARY PUBLIC

My Commission Expires: 3/3/2024

JEANNETTE W. McBRIDE, CLERK
P.O. Box 2766
Columbia, S.C. 29202-2766

RE: MARSHALL V. STATE
2022-CP-46-2201

July 5, 2022

Ms. McBride:

ENCLOSED, PLEASE FIND, IS THE ATTACHMENT
TO MY PCR. I REQUEST THIS ADDED TO MY
PCR APPLICATION, AND A FILED COPY BE FOR-
WARDED TO ME. TWO PAGES.

Thank you.

Mimi Joe Marshall
Mimi J. Marshall

WORTH AND COUNTY
FILED
2022 JUL 11 PM 12:30
JEANNETTE W. McBRIDE
CLERK & S.

PCR ATTACHMENT

10-(c) Judicial Misconduct

(d) Prosecutorial Misconduct

(e) INEFFECTIVE ASSISTANCE OF COUNSEL

11-(a) INDICTMENT IS FRAUDULENT: WAS NOT PRESENTED TO A GRAND JURY, LAWFULLY CONVENED.

(b) THERE IS EXCULPATORY EVIDENCE THAT WAS NOT ~~PRODUCED~~ PRODUCED AT TRIAL THAT WOULD HAVE PROVEN APPLICANT'S INNOCENCE:

(i) THERE WAS A BLOODY T-SHIRT, THAT APPLICANT CHANGED OUT OF AFTER THE INCIDENT, THAT WAS NOT LAWFULLY CHALLENGED BY STATE, APPOINTED COUNSEL, NOR STATE;

(ii) THE JURY DID NOT HEAR A TRUE AND ACCURATE STATEMENT OF THE ACCURENCE, BECAUSE OF APPLICANT'S RELIANCE ON COUNSEL'S FRAUDULENT ADVISE NOT TO TESTIFY, EVEN THOUGH APPLICANT WAS THE ONLY WITNESS TO THE INCIDENT; AND

(iii) ETC.

(c)(i) JUDGE WAS NOT CONCERNED WITH EXISTENCE OF "A T-SHIRT" NOR ITS WEIGHT, WHEN:

(1) THIS T-SHIRT WAS ACTUALLY "A BLOODY T-SHIRT" THAT WORN DURING THE INCIDENT, AND FOUND IN APPLICANT'S VEHICLE "AFTER" IT WAS INVESTIGATED;

(2) THIS T-SHIRT WAS TAKEN BACK TO THE PROPER AUTHORITIES, WHO ADVISED APPLICANT'S DAUGHTER

to dispose it; and

(3) etc.

(ii) there was not question of facts of where the t-shirt was disposed.

(iii) no question for which authority instructed that this evidence be disposed of.

(iv) no counsel stated that the t-shirt could hold evidence on it to prove Applicant's innocence; and

(v) etc.

(d)(i) Submitted fraudulent documents: Indictment was not presented to a grand jury, illegally convened; and

(ii) failed to produce evidence on behalf of Applicant: Bloody t-shirt was never produced;
~~which was never~~

(e)(i) failed to investigate. See sections 10(a)-(d);

(ii) failed to produce evidence exculpatory to the Applicant. See sections 11(b), and (c).

(iii) failed to object to hearsay statements of State, and witnesses;

(iv) failed to give an adversary challenge to the issues of this case:

(1) Evidence;

(2) Witnesses; and

(3) etc.

(v) failed to challenge the fraudulent indictments.

16. None of these issues have been raised on appeal.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

MIMI J. MARSHALL,
Applicant,
v.
STATE OF S. CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS

A/N: 2022-CP-40-2201

Affidavit by
Mimi J. Marshall

JEANETTE M. MCGRIDE,
Clerk, S.C. & C.S.

2022 JUN 17 AM 11:40

RICHLAND COUNTY
FILED

BEFORE ME MIMI J. MARSHALL DOES STATE:

1. THAT I AM A PRISONER OF THE STATE, IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AT LEE CORR. INST. IN F-4 ROOM #1263.

2. DURING MY TRIAL, THERE WERE ISSUES OF A "T-SHIRT." THIS IS "THE T-SHIRT" THAT THE TRIAL JUDGE INQUIRED ABOUT.

3. MY DAUGHTER PICKED MY CAR UP AFTER IT WAS INVESTIGATED, AND FOUND THIS T-SHIRT.

4. I BELIEVE, BECAUSE OF PERSONAL REASONS THAT SHE HAD CREATED, AND ETC., ~~SHE~~ ~~TOOK~~ ~~TO~~ AND FACT THAT THE SHIRT HAD BLOOD ON IT, SHE TOOK THE SHIRT TO THE PROPER AUTHORITIES, WHERE SHE WAS INSTRUCTED TO THROUGH IT AWAY.

5. IT WAS NEVER ENCLOSED, TO THE COURT, ~~AND~~ NOR INQUIRED:

(a) WHERE SHE THREW THE T-SHIRT AWAY;

(b) THAT THE T-SHIRT HAD BLOOD ON IT;

(c) THE REASON SHE TURNED (ATTEMPTED) THE T-SHIRT IN TO THE AUTHORITIES; AND

(d) WHO TOLD HER TO THROUGH THE BLOODY T-SHIRT AWAY, AND ETC.

(e) WHEN I TOOK THE T-SHIRT OFF, I PUT IT IN A

bag (trash bag), along with the gun, and my wife's pocket book/purse. But, after the investigation of the car - where I had placed the bag - only the T-shirt was in it.

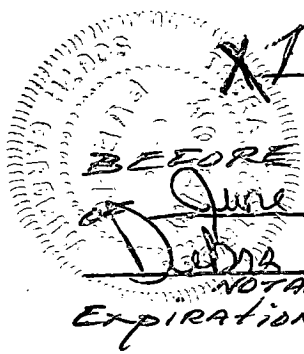
7. An expert witness testified that or indicated that there had been a question about the crime scene, and a spot on the couch where the blood stopped, and that something was missing.

8. It was me sitting on the couch, holding my wife, while her blood ran down the T-shirt, that I was wearing.

9. If this T-shirt had been disclosed, it would have proven - like another expert witness testified - that the incident did not happen like the prosecution stated and/or testified to the depth of this "bloody T-shirt," there is no way a jury would have found me guilty of murder.

10. If I had been advised to testify into the depth of this "bloody T-shirt," there is no way a jury would have found me guilty of murder.

FURTHER THE AFFIANT SAYETH NOT.

 X Minnie Joe Markel
AFFIANT
BEFORE ME this 15 day
of June, 2022
Debra Eastwood
NOTARY PUBLIC
EXPIRATION: 3/3/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Mimi J. Marshall, #231397,	)	CASE NO. 2022–CP–40–02201
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS AND MOTION FOR A
State of South Carolina,	)	MORE DEFINITE STATEMENT
	)	(Counsel Appointed)
Respondent.	)	
	)	

In response to Applicant Mimi J. Marshall's application for post-conviction relief (PCR) commenced on April 28, 2022,¹ Respondent, the State of South Carolina, makes the following Return and Motion for a More Definite Statement:

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court's orders of commitment. During the December 2015 term, the Richland County Grand Jury indicted Applicant for Murder (2015-GS-40-06133) and Possession of a Firearm by Felon (2015-GS-40-06134). On October 30 – November 2, 2017, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. Applicant was represented by Alicia Goode, Stephen Krzyston, and Lucas Hawks, Esquires. Fifth

¹ Respondent's return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, Respondent was unable to timely complete and file this return due to a heavy case load. Respondent respectfully requests that this Court accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Circuit Assistant Solicitors April Sampson, Sandra Moser, and Samuel McGlothin prosecuted the case. On November 2, 2017, Applicant was found guilty as indicted. Judge Hood sentenced Applicant to concurrent sentences of life without parole for Murder and five years' imprisonment for Possession of a Weapon by a Felon.

Applicant timely filed a notice of appeal. Assistant Public Defender Stephen F. Krzyston perfected Applicant's appeal. On August 12, 2020, the South Carolina Court of Appeal affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Marshall, Unpub. Op. 2020-UP-241. On August 25, 2020, Applicant petitioned the South Carolina Court of Appeal for a rehearing. Petition for rehearing was denied by Order filed October 28, 2020. On December 14, 2020, Applicant filed a Petition for Writ of Certiorari. Applicant's Petition for Writ of Certiorari was denied by Order filed August 6, 2021. The Remittitur was returned to the circuit court on August 6, 2021.

II. FACTS

Doris Marshall clocked out of her dining facility attendant shift at Fort Jackson at 10:15 PM on August 14, 2015. (R. p. 159, lines 9-13; R. p. 163, lines 10-33). Early that next morning, her nephew was awoken by Mimi Marshall knocking at his father's door. (R. p. 41, lines 22-25). Applicant had come over to tell them he had "messed up" while he was arguing with Auntie Doris and she tried to grab the gun and it went off. (R. p. 142, lines 5-8). Applicant had already left his brother a voicemail indicating the same. (R. p. 368, lines 1-9; R. p. 374, lines 4-22). Applicant had driven a gray van to their home. (R. p. 142, line 22). Applicant showed his nephew the double barrel shotgun. (R. p. 143, line 23 - p. 144, line 7). Then Applicant left, and the family members called 911 and their extended family to fill them in. (R. p. 144, lines 14-24).

As the family heard what happened, Applicant's daughter-in-law Amanda went to

Applicant's home. (R. p. 411, line 18 - p. 412, line 14). Amanda checked the front door, but it was locked, and the other door was too. She pushed in an A/C unit in the window until she caught sight of the victim in the living room. (R. p. 412, line 19 - p. 414, line 2). Amanda saw Doris sitting "like in the middle of the couch" and leaning to one side. (R. p. 414, lines 4-9). Amanda ran to the neighbor to ask for help breaking open the front door. (R. p. 414, lines 12-21). When they gained access, it was obvious that the victim was deceased. (R. p. 415, lines 22-23). The victim "had been sitting on a sofa with her lunch bag beside her foot and had been shot in the face at close range with a shotgun. That's where she was killed instantly." (R. p. 557, lines 7-10).

The Richland County Sheriff's Department and EMS arrived on the scene and EMS noted the following about its arrival:

EMS was able to visualize the patient from the front door of the home without entering. Noted brain matter on the floor. The patient was sitting on a couch to the right of the front door, leaning to her right with her head down. Noted injury to the head inconsistent with life, skull fragment on the back of the couch, noted brain matter. Blood splatter around the patient. The patient had no respiratory effort, no signs of life, noted coagulation of blood on and around the patient, lividity and notified dispatch of D.O.A.

(R. p. 150, lines 6-23).

Law enforcement issued a BOLO for Applicant and a gray Chrysler Pacifica minivan. (R. p. 174, lines 4-6). The night before, neighbors witnessed Applicant banging on the window of a running vehicle as if he were trying to break in. (R. p. 128, lines 10-20; R. p. 345, line 17 - p. 346, line 9). That same night one neighbor helped Applicant, who had locked himself out of his and the victim's home, by crawling in one of Applicant's back windows and opening the side door so Applicant could get back in. That neighbor said that it "reeked" when he got inside the house, but that he did not see the victim. (R. p. 329, line 23 - p. 341, line 25). That neighbor also recalled seeing a flash coming from the direction of Applicant's home that night. (R. p. 338, line

17 -p. 339, line 18).

A short time after the BOLO was issued, Applicant surrendered to law enforcement at Tony's Lounge, a spot near Eastover about ten miles away from his home. (R. p. 174, line 8 - p. 175, line 7). Somebody at the Lounge who had heard Applicant was suspected of murder noticed him there and called 911. (R. p. 333, line 3 - p. 334, line 19). At the time of arrest, Applicant had noticeable reddish-brown spatters on his pants, socks, and shoes. (R. p. 358, lines 15-17). The Chrysler Pacifica was parked at the Lounge and law enforcement located a double barrel shotgun inside the van. (R. p. 177, lines 10-21). The van's back window was broken. (R. p. 406, lines 5-8).

At the Sheriff's Department, Applicant gave a signed question-and-answer type statement to Sergeant Joe Clark about what happened to his wife:

When she came home from work last night, I had my gun in the front room. I did this because the trailer park is an unstable place. She came at me. She grabbed the gun. It went up and it went off. I grabbed her. I had her head in my hands and I let her down on the chair. I knew she was dead then. I should have handled it a different way, the way I did not handle it, I should have killed myself.

(R. p. 566, lines 11-21).

The Sergeant asked where the gun was. (Tr. p. 566, line 25 - p. 567, line 1). Applicant told him it was in a closet, but the Sergeant knew there was no closet in the living room. (R. p. 567, lines 1-4). Then Applicant said he shot her at the front door. (R. p. 567, line 5). Moments later in the interview Applicant expounded:

I told her when she came in the house that I had just called her job. She was a little late and I was worried about her. I had just had the car's front-end alignment fixed with a new tire for her safety. She comes in with an attitude. I told her I was worried about her. She says, quote, you've got no reason to worry about me, unquote. She said it with an attitude. We were just talking at each other.

...

My gun was laying against the wall the whole time. When I decided to check out around my trailer with my shotgun, Doris was coming in the front door. We are right there at the same time. She comes in the door, that is when I told her I was worried about her. That is when the gun went off. She had touched the gun when it when off. She took the gun and threw it up.

...

She was standing on the side of the couch when the gun went off. I held her by the face and laid her on the couch.

(R. p. 567, line 21 - p. 570, line 3).

Applicant defined "threw [the gun] up" by swiping his hand in front of his face. (R. p. 569, lines 4-7). The Sergeant asked, "So the barrel was obviously in her face?" (R. p. 569, lines 7-8). Applicant answered "he pushed the gun away. And that's when he said it went off." (R. p. 569, lines 9-10). Applicant's statement, however, was unsupported by the forensic evidence presented by the State at trial. (R. p. 567, lines 5-10).

TIMOTHY LEE: CRIME SCENE PROCESSER

Investigator Lee, a ten-year veteran of the Richland County crime scene unit, photographed the scene at the Marshall's home. (R. p. 188, lines 14-19; R. p. 208, lines 1-10). Lee documented small birdshot pellets and "gelatinized blood" pooled on the center of the living room sofa where the victim was located. (R. p. 212, lines 9-20; R. p. 213, lines 20-23). He documented the ceiling of the living room which was stained with blood as well. (R. p. 216, lines 10-17; see State's Exhibit 22). "There was a broken pair of glasses that were on the floor near the rug." (R. p. 219, lines 17-18). The investigator also denoted a piece of shotgun wadding found on the sofa. (R. p. 218, line 10). He testified that the location of the wadding indicated "that the shot occurred within the parameter" of where they found the victim. (R. p. 218, lines 13-21). Lee testified about photographs depicting differing concentrations of blood at the scene in relation to the victim's

location. (R. p. 231, lines 5-24; R. p. 233, lines 2-11; R. p. 255, lines 17-19). Lee photographed biological matter near the sofa, including the documentation of a portion of the brain near the victim's foot and "a chunk of skull and scalp that was up on top of the couch." (R. p. 270, line 7 - p. 271, line 13).

DAVID COLLINS: FIREARMS EXAMINER

Collins, the firearm and tool mark examiner from SLED, testified about the 12-gauge double barrel shotgun located in Applicant's Chrysler Pacifica. (R. p. 286, line 24 - p. 287, line 4). The butt stock on the shotgun had been repaired with electrical tape, but the gun fired and the safety worked. (R. p. 289, lines 1-25). The gun was manufactured before 1968. (R. p. 293, lines 17-22). On the muzzle of the gun, Collins noted not blood, but other biological material. (R. p. 295, lines 9-24). Collins did not test the trigger press weight but did not notice anything mechanically unsound about the trigger pull. (R. p. 303, lines 17-23). "It did not appear to be excessively light nor excessively heavy compared to other shotguns of the same make and model[.]" (R. p. 324, lines 1-4).

Collins also received for examination three unfired shotgun shells, the wadding located on the victim's sofa, and three sets of birdshot pellets. (R. p. 290, line 22 - p. 291, line 2; R. p. 292, line 1 ; R. p. 298, line 25 - p. 299, line 5). Like the shotgun muzzle, the wadding contained a coating of biological material which Collins cleaned off as part of his examination. (R. p. 297, lines 13-17). "The fired wadding was consistent with the wadding found in one of the fired shotgun shells" in brand, type, and gauge. (R. p. 298, lines 19-24). All three unfired shotgun shells "were capable of being fired in that gun." (R. p. 299, lines 13-18). Also consistent with the unfired shells received for comparison were the birdshot pellets received for examination, including those extracted from the victim. (R. p. 300, line 3 - p. 301, line 23).

"Based on the nature of the injury to the victim in this case and the severity of it, [Collins] did not feel that there was sufficient information present" for him to test the distance from which the victim was shot with any degree of scientific reliability. (R. p. 304, line 21 - p. 305, line 6). In addition to a precise diameter of the wound, which was unavailable, Collins needed more of the same ammunition to reliably test-fire and determine that distance. (R. p. 305, lines 8-14).

JENNIFER MARTIN: DNA ANALYST

Richland County Sheriff's Department's DNA analyst Jennifer Martin received a number of items for DNA testing. (R. p. 387, lines 3-13). Two swabs from the double barrel shotgun positively matched the victim's DNA, but the matter tested was some other biological matter other than blood. (R. p. 389, line 4 - p. 390, line 24).

AMANDA DURSO: FORENSIC PATHOLOGIST

Doctor Durso performed the autopsy on the 58-year-old victim. (R. p. 451, lines 3-6). She recorded a shotgun wound to the head as the cause of death. (R. p. 453, lines 11-12). The large wound "entered the right front of her face, kind of centered around the area of the right eye" and exited through the top of the skull. (R. p. 453, lines 6-10). "Some of it did exit the kind of back right top of the skull and very slightly left [to] right." (R. p. 454, lines 17-18). Manipulating the edges of the wound, Durso pieced together a 2.8-inch by 3-inch entry wound. (R. p. 454, lines 1-9). Durso retrieved birdshot pellets from the victim. (R. p. 454, lines 11-13). She identified stippling on the left side of the victim's face which she described as an indicator that the shotgun was within approximately 30 inches of the victim at the time the shot was fired. (R. p. 456, line 1 - p. 457, line 8). Durso testified that soot would be present if the shotgun was 12 inches or closer to the victim at the time of the shot. (R. p. 458, lines 9-18).

No soot was present, allowing Durso to estimate that the shot occurred between 12 and 30

inches from the victim. (R. p. 457, line 13; R. p. 458, lines 14-15; R. p. 461, lines 13-23). The victim's right eye was obliterated as was a portion of the brain such that "half of her brain actually fell out through this defect and was received separately in the body bag due to the force of the blast." (R. p. 459, lines 14-20). The victim sustained no other remarkable injuries to the remainder of her body. (R. p. 462, lines 2-9).

JENNIFER NATES: GSR ANALYST

Jennifer Nates from SLED testified that two gunshot residue (GSR) kits were collected and submitted for testing in conjunction with this case. (R. p. 472, lines 8-16). The kit collected from the victim tested positive for a single particle of GSR, which is not inconsistent with a shooting victim who has faced the muzzle of a loaded gun. (R. p. 477, lines 16-25). The result gave no information as to the distance from which the victim sustained the gunshot. (R. p. 478, lines 4-7). The second kit, collected from Applicant, was inconclusive as Applicant was swabbed for GSR beyond the 6-hour timeframe during which any probative test for GSR can be collected from a living person. (R. p. 478, lines 14-23). Although testing on the kit was halted halfway through the analysis, it did return one particle of GSR. (R. p. 479, lines 12-15).

STAN RICHARDS: BLOOD STAIN PATTERN ANALYST

Stan Richards, a lieutenant in the forensics division of the Richland County Sheriff's Department, testified about the bloodletting evidence at the scene photographed by Investigator Lee. (R. p. 484, lines 21-24; R. p. 486, lines 13-18). Richards attended the scene, identified the victim "slumped over on the sofa nearest the door" into the front of the mobile home, and observed the blood on the sofa cushions, extending up the sofa back, on the window shades, on the ceiling, and wrapping around the end of the sofa to the windows and blinds on the short side of the room. (R. p. 487, lines 13-25). He witnessed brain matter "at the doorway on the floor" unaccompanied by

"major blood." (R. p. 488, lines 1-4). Richards could tell from the nature of the wound on the victim's face that blood had gone from the point of impact outward as a result of "a very significant impact and a dynamic impact" of the shotgun blast. (R. p. 488, lines 10-15).

He identified the several stains, small and large, as "individual stains of an overall pattern called impact spatter" which occurs as a result of a high-velocity impact. (R. p. 488, lines 18-24). Impact spatter created stains that radiate outward from the point of impact, up to the ceiling, and out towards the end of the room. (R. p. 490, lines 11-18; see State's Exhibits 22, 84, and 85). Richards "saw no indication of any major bloodletting going through the door in that area." (R. p. 495, lines 5-6; see State's Exhibit 95). Blood was significantly present on the pillows, sofa, and blinds away from the front door. (R. p. 498, lines 10-25). Richards described the spatter stains as creating a V-shaped cone beginning at the window and radiating out to the sofa and ceiling and stopping at or near the other furniture in the room. (R. p. 499, line 17 - p. 502, lines 10).

Richards also attached significance to the lack of bloodletting in the area the victim would have been sitting when the impact occurred. (R. p. 506, line 22 - p. 507, line 15). Because blood on the victim's leg was soaked into the area rather than dripping downward, it indicated that the victim was sitting during the duration of the bloodletting event. (R. p. 514, lines 12-21). He called the area without blood the void in which the victim sat during the impact. (R. p. 514, line 22 -p. 515, line 1).

Richards also classified the stains and biological matter appearing nearest the front door as outliers because the bloodletting was otherwise contained to the center and side of the sofa farthest from the door and because the area from the front door straight back contained no major bloodletting. (R. p. 515, lines 2-9). Richards also described that in order for the portion of the victim's scalp to land on the back of the sofa where it was found, the victim had to be on the sofa

in the sitting position. (R. p. 515, lines 11-17).

Applicant countered the State's case with his own blood spatter analyst.

CHRISTOPHER ROBINSON: PRIVATE FORENSIC ANALYST

Applicant put forward Robinson, who testified as an expert in crime scene reconstruction, blood spatter analysis, and firearms analysis. (R. p. 617, lines 5-9). Robinson addressed the double barrel shotgun and assessed its trigger pull as averaging 6 3A pounds of pressure. (R. p. 618, lines 9-17). He opined that the safety on the gun was not acting as intended and that the gun was unsafe. (R. p. 620, lines 1-7). He measured the overall length of the weapon as 44.5 inches. (R. p. 618, lines 19-20).

As for the victim's injury, Robinson opined "the shot occurred from a distance of approximately three to four inches or less" from the victim's face, with gas pressure from the chamber causing the expansive injury to the skull. (R. p. 620, lines 16-25; R. p. 622, lines 21-25; R. p. 624, line 22 - p. 625, line 5). Based on the pattern of blood dispersion, he described the shot as an "upward shot through the head". (R. p. 621, lines 20-25). He testified, "reportedly, she's standing at the end of the couch when the shot occurs, driving her over onto the couch" and Applicant was "going out the door." (R. p. 625, lines 8-11). He clarified for the record that he assessed the positioning of the parties at the time of the shot based upon Applicant's statement to law enforcement. (R. p. 640, line 14 - p. 641, line 6).

III. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. "Court Lacked Jurisdiction"
2. "Actual Innocence"
3. Ineffective Assistance of Counsel

a. Failure to Investigate²

Applicant requests relief in the form of "vacation of conviction and sentencing."

Attached to this return and incorporated by reference are the Richland County Clerk of Court records regarding the subject's convictions and sentences; Applicant's records from the SCDC; Applicant's trial transcript; the records of Applicant's appeal; and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

IV. MOTION TO DISMISS APPLICANT'S CLAIM NO. 1

Applicant contends that the trial court lacked subject matter jurisdiction, however, Applicant does not provide why the trial court lacked jurisdiction. Respondent submits that this allegation is without merit and should be summarily dismissed.

Applicant may challenge the subject-matter jurisdiction of the trial court at any time. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). However, "circuit courts obviously have subject-matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Therefore, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court, the indictments at issue were true-billed by a Grand Jury, and thus the circuit court had proper subject-matter jurisdiction.

Further, a circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or

² Based upon Applicant's affidavit attached to his application for post-conviction relief, Respondent interprets (xxi) as ineffective assistance of counsel for failing to investigate.

the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Richland County Grand Jury of Murder and Possession of a Weapon by a Felon. Those indictments were true-billed and signed by the foreman of the Grand Jury. Applicant's indictments contains all the necessary elements of the offense, and further cite the applicable statutes. On October 30, 2017, Applicant proceeded to trial before Judge Hood and a jury. Following a multi-day trial, Applicant was found guilty of the originally indicted offenses.

A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Respondent submits the indictment is a notice document, and any challenges to its sufficiency “shall be taken by demurrer or on motion to quash . . . before the jury shall be sworn and not afterwards.” S.C. Code § 17-19-20 (2003). Therefore, in post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so by alleging his trial counsel failed to properly move to quash the indictment in accordance with § 17-19-90 of the South Carolina Code.

Applicant has made no such allegation in this case, and therefore, the portion of Applicant’s claim objecting to the subject-matter jurisdiction of the circuit court should be summarily dismissed because Applicant has not raised any issue of material fact which would require an evidentiary hearing on this issue. See S.C. Code Ann. § 17-27-70(c) (authorizing the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law.”)

V. MOTION TO DISMISS ALLEGATION NO. 2

Applicant alleges actual innocence in his PCR application allegation number 2. Respondent submits that this allegation is without merit and should be summarily dismissed.

Actual innocence is not a proper claim in post-conviction relief. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State; United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That [her] sentence has expired, [her] probation, parole or conditional release [was] unlawfully revoked, or she is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, nor does it support a cognizable claim for relief under any of the statutory grounds. S.C. Code Ann. § 17-27-20; see Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of the evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”).

For these reasons, Respondent respectfully requests this Court dismiss the allegation of actual innocence as it is not cognizable under the Uniform Post-Conviction Procedure Act.

VI. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, GENERALLY

Applicant alleges he is entitled to post-conviction relief based on allegations of ineffective assistance of Trial Counsel and that the court lacked jurisdiction. The State asserts that it is impossible for Respondent to respond specifically to these vague allegations without more definite facts and circumstances to support Applicant's claims. Instead, Respondent generally responds and moves for Applicant through counsel to file an amended application with specific allegations.

In Strickland v. Washington,³ the United States Supreme Court established that to challenge a conviction based on ineffective assistance of counsel, a prisoner must prove two elements: (1) his counsel was deficient in his representation, and (2) he was prejudiced as a result. To satisfy the first prong, a prisoner "must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. To satisfy the second prong, a prisoner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The Supreme Court has cautioned that "[j]udicial scrutiny of counsel's performance must be highly deferential," and "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Id. at 685. Ordinarily,

³ 466 U.S. 668 (1984).

PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that an evidentiary hearing can only determine. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland, 466 U.S. at 687. Applicants seeking PCR relief must provide claims that satisfy both prongs in Strickland, and failure to satisfy both prongs defeat the ineffectiveness claim. Id. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

In the first prong of Strickland, constitutional deficiency is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant claiming ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Further, 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 burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [it].'" Dunn v. Reeves, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23– 24).

"When 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, 8 (2003) (citing Strickland, 466 U.S. at 690). In determining the deficiency, the court must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109– 10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 8; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or 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. No

particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688– 89; see id. at 693 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. ___, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106– 107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable but whether there is any reasonable argument counsel satisfied the Strickland deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel that ensures a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691– 92. An applicant seeking to prove prejudice 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 v. State, 300 S.C. 115, 117– 18, 386 S.E.2d 624, 625 (1989). A reasonable probability is one that is "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the

factfinder would have had a reasonable doubt respecting guilt").

To determine prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding— counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 693 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony according to the rules of evidence at the PCR hearing to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy considering the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690.

Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the

applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue after Applicant, through counsel, amends his application. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

i. Failure to Investigate

Applicant alleges Trial Counsel was ineffective for failing to investigate the evidence provided, nor did Trial Counsel produce any exculpatory evidence. However, Applicant has failed to explain what Trial Counsel should have investigated and how that prejudiced Applicant. The State asserts that it is impossible for Respondent to respond specifically to these vague allegations without more definite facts and circumstances to support Applicant's claims. Instead, Respondent generally responds and moves for Applicant, through counsel, to file an amended application with specific allegations.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642

S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Applicant alleges Trial Counsel was ineffective for failing to investigate the evidence provided, nor did Trial Counsel produce any exculpatory evidence. Applicant has failed to show what investigations Trial Counsel should have done that would have resulted in a different outcome in Applicant's case. Applicant has merely stated Trial Counsel was ineffective for failing to investigate the evidence provided, nor did Trial Counsel produce any exculpatory evidence. Therefore, this allegation is without merit.

The State submits that Applicant can satisfy neither requirement of the Strickland standard from the allegations that Trial Counsel did not prepare or investigate prior to trial. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support these claims. Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRPC.

VII. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's allegations of ineffective assistance of Trial Counsel are without merit. However, it is impossible for the State to adequately respond to these claims because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims are based. See S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); see also Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record

before the lower court"); Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCPP ("Counsel shall ensure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State requests that Applicant, through counsel, provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRCPP, and the Post-Conviction Procedure Act.

VIII. CONCLUSION AND ACTION REQUESTED

The State submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of Trial Counsel. Therefore, the State requests an evidentiary hearing to resolve the issues fully after Applicant has filed amendments to his PCR application through Counsel. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IX. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id.

at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss these allegations or claims. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; see also Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice against the State. See Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice against the State.

X. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion to dismiss as set forth in Sections IV and V; grant its motion for a more definite statement as set forth in Section VII, and; thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

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Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

August 10, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mimi J. Marshall, #231397,

Applicant,

V.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-40-02201

CERTIFICATE OF SERVICE BY MAIL

1. Undersigned is an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. Undersigned has served a copy of the Return and Partial Motion to Dismiss and Motion for a More Definite Statement in the above-captioned matter on opposing counsel by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201 (29205)
Post Office Box 90707

DATED this 10th day of August, 2022.

Summer C. Etheredge
SUMMER C. ETHEREDGE

SUMMER C. ETHEREDGE
Legal Assistant for Respondent

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
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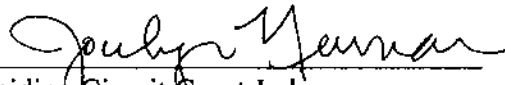
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
MIMI MARSHALL, # 231397,	)	2022-CP-40-02201
	)	
Applicant,	)	
	)	
v.	)	CONSENT ORDER TO
	)	SUBSTITUTE COUNSEL
STATE OF SOUTH CAROLINA	)	
	)	
_____	)	

RICHLAND COUNTY
 CLERK
 2023 MAY 22 PM 4:05
 JESSIE M. MOERIDE
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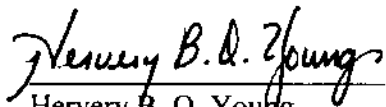
It appears to the Court that Applicant's counsel of record, Arthur Aiken is unable to continue representation of Applicant under his contract with the South Carolina Commission on Indigent Defense (SCCID). SCCID, on behalf of Mr. Aiken petitions to substitute **Timothy Griffith** as the new attorney for applicant Mimi Marshall. Mr. Griffith agrees to such representation and request that the May 11, 2023, hearing be continued to allow sufficient time to properly prepare the case. D. Russel Barlow II, Attorney for the State, consents.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Arthur Aiken is relieved as counsel for Defendant and that **Timothy Griffith, Esq.** is substituted as counsel of record and the May 11, 2023, is continued until the next term of PCR hearings.

AND IT IS SO ORDERED this 15th day of May, 2023


 Presiding Circuit Court Judge
 Fifth Judicial Circuit

I SO MOVE:


 Hervey B. O. Young,
 SC Bar 7013
 SCCID, General Counsel

I CONSENT:

s/ *Rodney W. Richey*

 Timothy L. Griffith
 SC Bar #9506

I CONSENT:

s/ *D. Russell Barlow II*

 D. Russell Barlow II
 SC Bar # 105228

ENTERED

MAY 22 2023

COMPLETED

STATE OF SOUTH CAROLINA	)	In Court of Common Pleas
	)	Fifth Circuit
COUNTY OF DARLINGTON	)	2022-CP-40-2201

MIMI JOE MARSHALL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Transcript of Record
THE STATE,	)	
	)	
Defendant.	)	
	)	
	)	

Columbia, South Carolina
January 11, 2024

B E F O R E:

The Honorable Maite Murphy

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

Mr. D. Russell Barlow, II, Esquire
Attorney for the Plaintiff

Mr. Timothy L. Griffith, Esquire
Attorney for the Defendant

Lisa Carter
Circuit Court Reporter

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1

EXHIBITS

2

3

NO.DESCRIPTIONEV.

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(NO EXHIBITS INTRODUCED DURING HEARING)

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Mr. Barlow, you may proceed.

3 MR. BARLOW: Thank you, Your Honor. May it
4 please, the Court?

5 THE COURT: Yes, sir.

6 MR. BARLOW: Russ Barlow for the State of South
7 Carolina. This is a post-conviction relief matter of
8 Mimi J. Marshall versus the State, case number 2022-
9 CP-21-1085, I'm sorry, Your Honor, just one second --
10 I believe I have the wrong -- I did. Your Honor, I
11 apologize. This is -- it's 2022-CP-40-02201 and that
12 is out of Richland County. During the December, 2015
13 term the Richland County Grand Jury indicted
14 applicant for murder, 2015-GS-40-06133; and
15 possession of a firearm by a felon, 2015-GS-40-06134.
16 On October 30th through November 2, 2017 applicant
17 proceeded to a jury trial before the Honorable Robert
18 E. Hood. Applicant was represented by Alicia Goode,
19 Steven Krzyston, and Lucas Hawks. And Fifth Circuit
20 Assistant Solicitor, April Sampson, Sandra Moser and
21 Samuel McLaughlin prosecuted the case. On November
22 2, 2017 applicant was found guilty as indicted.
23 Judge Hood sentenced applicant to concurrent
24 sentences of life without parole for murder and 5

1 years imprisonment for possession of a weapon by a
2 felon. Applicant timely filed a notice of appeal
3 and assistant public defender, excuse me, I don't
4 have that, but it was, his appeals was perfected by
5 the, um, I believe is was Steven Krzyston, maybe.
6 I'm not sure. It would be in the record, Your Honor,
7 I apologize. On August 12, 2020 the South Carolina
8 Court of Appeals affirmed applicant's convictions and
9 sentences in an unpublished opinion, that's State v.
10 Marshall, unpublished opinion 2020-NP-241. On August
11 25, 2020 the applicant petitioned the South Carolina
12 Court of Appeals for rehearing and the petition for
13 rehearing was denied by order filed October 28, 2020.
14 On December 14, 2020 applicant filed a petition for
15 writ of cert and applicant's petition for the writ
16 was denied by order filed August 6, 2021. The
17 remittitur was returned to the circuit court on
18 August 6, 2021. Applicant timely commenced this PCR
19 action on May 31, 2022 and asserted several
20 allegations of ineffective assistance of counsel,
21 actual innocence and subject matter jurisdiction
22 issues. On January 7, 2024 applicant filed
23 amendments to his application and then on, excuse me,
24 applicant requests relief in the form of a vacation
25 of conviction and sentence before this Court of the

1 Richland County Clerk of Court records, applicant's
2 records from the South Carolina Department of
3 Corrections, applicant's appellate records which
4 include the entire trial transcript and the records
5 of this PCR action. And at this time we would ask
6 counsel to indicate which allegation he intends to
7 move forward on.

8 MR. GRIFFITH: Your Honor, if it pleases, the
9 Court? Mr. Marshall would like to proceed on
10 ineffective assistance of counsel. And in that, Your
11 Honor, during the proceedings the attorneys,
12 according to Mr. Marshall, told him there was an
13 offer of 30 years, but he didn't have time to think
14 about it, he said he had less than a minute to think
15 about that before they were to move on. And that if
16 he had, if they had taken time to explain to him is
17 his, his right to a plea and what his, their
18 recommendation was that he may have taken that.

19 MR. MARSHALL: No! No! No! No! I would not have
20 taken that 30 years.

21 MR. GRIFFITH: Okay.

22 MR. MARSHALL: Period.

23 MR. GRIFFITH: Okay, I'm sorry.

24 MR. MARSHALL: We can just leave that ---

25 MR. GRIFFITH: You and I had a discussion about

1 that ---

2 MR. MARSHALL: Yes, sir.

3 THE COURT: All right.

4 MR. GRIFFITH: Okay. Then, Your Honor, the
5 attorney didn't allow him to tell his version of the
6 events because he would have liked to have testified,
7 but they did not allow him to do so. And he also
8 believes that there was some evidence left out of the
9 evidence that would've been crucial to his defense
10 concerning a t-shirt that would've shown that the
11 victim was standing at the time. That was not --
12 that was available but was not presented by his
13 attorneys and he felt that is an error, Your Honor,
14 and ineffective assistance. Also he feels that they
15 failed to investigate properly, Your Honor.

16 THE COURT: All right. You may call your first
17 witness.

18 MR. GRIFFITH: Okay. I would call Mr. Marshall,
19 Mr. Mimi Marshall.

20 THE COURT: Do you swear or affirm the testimony
21 you're about to give is the truth, the whole truth,
22 nothing but the truth so help you God?

23 MR. MARSHALL: I do.

24 THE COURT: All right. Sir, please have a seat.
25 Your witness.

M. Marshall- Direct Examination by Mr. Griffith

8

1 MR. GRIFFITH: Thank you, Your Honor.

2 MIMI MARSHALL, first being
3 duly sworn, testified as follows:

4 Direct Examination by Mr. Giffith:

5 Q. Mr. Marshall, can you first please state your
6 name for the record?

7 A. Mimi Joe Marshall.

8 Q. Okay. And where are you currently incarcerated,
9 Mr. Marshall?

10 A. Right now at Kirkland.

11 Q. Okay. When -- when we were initially
12 incarcerated?

13 A. It was -- I got arrested in 2015.

14 Q. Okay, 2015. All right. And -- now, you and I
15 have talked on about this a couple of times and
16 you've sent me a lot of letters we've gone over, but
17 Mr. Marshall, this is your opportunity to ask for a
18 new trial. And you believe you should have a new
19 trial. One of the things that you -- one of the
20 grounds that you have selected as your grounds for
21 getting a new trial is that your attorney was
22 ineffective, didn't do good job. And so one of the
23 things that you're saying that they were ineffective
24 about is that you didn't get to tell your side of the
25 story. Why don't you go ahead and tell us about it?

1 A. That's true. Alicia Goode had told me that it
2 was not in my best interest to say anything which it
3 really made me look guilty now thinking about it.
4 But I'm thinking my lawyer know what she's talking
5 about so how it look - I don't know the law. So I'm
6 going by what she said. But I'm telling you this,
7 now, I know I made a couple of bad decisions in this
8 and one, I didn't call law enforcement, but that
9 don't make me no murderer. Now, I went through a
10 tough time. This was my wife. Thirty years. I
11 would never take a gun and shoot my wife. I laid in
12 the bed that night, she come home about ten, eleven,
13 sometime, I don't even know she was in the yard
14 really, she comes in. When she come in sometimes I'd
15 be sleep and she would call my name coming down the
16 hall saying, "hey, daddy", she called me daddy, and
17 I'd wake up and greet her. Now, this particular
18 night -- I'm gonna say this right here, before this
19 even happened it was a Thursday night. She came home
20 and she, I was asleep then, she told me the car was
21 zigzagging in the road. I told her I'm sure glad you
22 made it home. Now, I got early Friday morning about
23 5 o'clock, got in the shower. Jumped in the car. I
24 was at the shop before the man even got there because
25 I wanted to fix this car 'cause my wife. If I wanted

M. Marshall- Direct Examination by Mr. Griffith

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1 her dead I would let her drive this vehicle. It was
2 for her safety. Now, I know I didn't supposed to
3 have this gun period. But me and my wife woked up
4 one night, there was an argument, about couple of
5 hours over when we looked out the window we seen this
6 guy, he pulled his pistol and shot a guy about seven
7 times. He killed him. I'm thinking and I made the
8 wrong thing on that one, but I shouldn't have never
9 gotten the gun. I'm thinking my wife come home late
10 at night. Now, anything could have happened at her in
11 that yard. Somebody could have grabbed her. It's
12 for our protection. It was still wrong for me having
13 the gun, but I'm thinking now. But when, listen --
14 now, I'mma come back to this, when I was laying in
15 that bed that night I heard something out back in my
16 utility house. My wife just had bought me a brand
17 you weedeater, a couple of months prior. And we had
18 a guy around their break into houses so I figured it
19 was. Now, I laid there a while and I'm thinking
20 first it's probably an animal running around the
21 outside so I, I just late on back down. But I hear
22 him again. I got up. When I got to the door my wife
23 was walking in. I'm telling you my, my wife loved
24 me. She had thought that I was going outside and
25 shoot somebody that's why she grabbed the gun. I, I,

1 I had no -- I had -- I had it in my left hand
2 straight in there, it, it just leaning - but if I had
3 two hands on it, you know I'm saying it would've, I
4 would've had a pretty good brace on it. But she
5 gripped -- looked, this gun was straight in the air
6 and this was a graze shot. It was not -- didn't make
7 like this was some kind of a direct shot. If it was
8 a direct shot it would've taken the whole head off.
9 This was a glaze (sic) shot where she grabbed the gun
10 as I was passing her. I was going -- I spoke to her
11 first and the door is right here by the couch. By
12 the time I got there she grabbed it and the only way
13 I believe this, she grabbed that gun, it was straight
14 in the air. I'm thinking that she was thinking I was
15 going outside to hurt somebody so she, she was gonna
16 try to stop this. And before I know it, this old
17 raggedy shotgun, tapped up, unsafe from the
18 beginning, it went off and it glazed (sic) her right
19 here. I reached up, I've dropped the gun, I reached
20 up and grabbed her to try to stop the bleeding.
21 Well, now that -- she was still standing, but
22 everybody saying that she was shot on the chair.
23 There's no way in this world that I'm gone shoot my
24 wife or no other person on no chair. I don't -- it's
25 just not like that. But I'm saying like this, she

1 was still standing. I reached up and grab the wound,
2 put pressure to it. She was still standing. As I
3 taken that little bit of pressure, right here on my
4 arm like this - I can't do it with this cuffs and
5 stuff on me the way I want to - but I had my arm
6 pressed against my body, my t-shirt. I had on a t-
7 shirt ---

8 Q. Be sure to talk into the microphone ---

9 A. A t-shirt. I had on a t-shirt. When that
10 happened, when I released it a little bit, the blood
11 came down my arm unto this t-shirt. And I reached up
12 and grabbed, she was still standing. She grabbed --
13 she took her left hand and grabbed my right wrist,
14 she squeezed it three times. She carried me with her
15 to the chair. She went over about 10 o'clock. She
16 could have went straight back and leave no room for
17 me at all. But she went over enough room for me to
18 sat there beside her. Now, people telling me what
19 they would have did. You just don't know what you
20 are going to do when something like that happened. I
21 was in a bad way. I mean, a bad way. This is my
22 wife. Married with her 30 years, 37 years and no law
23 officer never been in my -- the way they saying it, I
24 never had a law officer been on my step for no
25 domestic violent period. Now, the way these other

1 people tell it, sure. Listen, back in the day, hey,
2 we done had little arguments back in the day, that's
3 normal, but it wasn't that I beat her or anything
4 like this. And when they run that autopsy on it I
5 know exactly what they was looking for. It wasn't no
6 new wounds. It wasn't no old wounds that I ever did
7 it to her. I loved my wife. Believe me I'm not gone
8 shoot no woman period and that include my wife. But
9 I didn't know what to do. I -- look here, I was ---

10 MR. BARLOW: I'm going to object. Is there an
11 answer to any claim in this?

12 Q. What you're claiming is that they did not allow
13 you to testify yourself ---

14 A. No, they didn't.

15 Q. Okay.

16 A. They didn't.

17 Q. Well ---

18 THE COURT: Let's move on.

19 Q. So in that also we're talking about some evidence
20 that they did not allow in that is your attorneys
21 didn't present ---

22 A. That's right.

23 Q. Did they have the evidence, Mr. Marshall?

24 A. Listen, when this, this happened this t-shirt it
25 had plenty of blood on it. First of all, I reached

M. Marshall- Direct Examination by Mr. Griffith

14

1 and grabbed the phone and I called my brother. I
2 should have called law enforcement, but I called my
3 brother and there was a voice mail left on that
4 phone. They would -- I was in a bad way. I mean,
5 I'm asking my brother, hey, man, looky here, my wife
6 just grabbed this gun and it went off and I said man,
7 what in the world, man, I just don't know what to do.
8 The voice mail was on this phone was CD, they would
9 not play that CD before the jury. The jury would
10 have seen what bad way I was in during that, but they
11 wouldn't do that either. But now this t-shirt thing,
12 bloody - I'm talking about bloody -- when it hit it
13 sprayed me. When I released it the blood came down
14 my arm unto this t-shirt. I pulled the t-shirt off
15 and put on another t-shirt, but I put it in a plastic
16 bag. Her wallet hit the floor and I got it and I put
17 it in a plastic bag also. Now, I had it all in that
18 vehicle with the shotgun there. I just -- look here
19 I just didn't know what to do. I mean, it was
20 torture.

21 Q. Mr. Marshall?

22 A. Yes.

23 Q. That evidence, that t-shirt, did your attorneys
24 have that t-shirt?

25 A. They don't have it because of one reason when

1 CSI, they took -- they towed the car off at the
2 station, CSI went through that vehicle, that t-shirt
3 was in a bag. They took the wallet out the bag and
4 left the bloody t-shirt. When my daughter went back
5 to pick that vehicle up she discovered that t-shirt.
6 That t-shirt would -- they knew from the start what
7 the t-shirt would've shown. It would have shown my
8 wife was standing when that accident happened. Now,
9 my daughter was on the stand, my lawyers wouldn't
10 even question her about that t-shirt. That t-shirt
11 was evidence. They left it in that bag. They left
12 it in that bag thinking that she wasn't going to find
13 it, really. She didn't -- maybe I'm thinking that
14 they maybe thought that she was gone grab the bag and
15 just throw it in the trash. But she looked in that
16 bag and she found that bloody t-shirt, she took it
17 back to the sheriff's department. Some officer at
18 the sheriff's department told her to get rid of it.
19 Now, listen, my daughter ---

20 MR. BARLOW: Your Honor, I object to hearsay.

21 A. --- need to be involved in this ---

22 THE COURT: Sustained. You can't talk about what
23 other people said. You can move on to the next
24 question.

25 Q. Okay. So -- but what we want to establish is

M. Marshall- Direct Examination by Mr. Griffith

16

1 and what I want to ask you just to get the answer to
2 this ---

3 A. Okay.

4 Q. --- question, did your attorneys know about the
5 t-shirt? That's the ---

6 A. Yes. They did know about it.

7 Q. Okay. And so they were ineffective because they
8 didn't use that evidence, isn't that correct?

9 A. That's right. That was good ---

10 Q. Okay.

11 A. That was good evidence.

12 Q. And so being ineffectiveness came when they, they
13 didn't investigate about that t-shirt ---

14 A. They sure didn't.

15 Q. Okay. And then to add to that they knew about
16 it, but did not present it to the court, is that
17 correct?

18 A. My daughter was on -- my daughter, she, was on
19 the stand.

20 Q. Okay.

21 A. They could've questioned her right then ---

22 Q. All right.

23 A. --- and got that straight. Alicia Goode came and
24 told me at the courthouse where everybody work, she
25 said she had questioned my daughter about the t-

1 shirt. My daughter lied first. But she can clean
2 and said, yes, I found the t-shirt and took it back
3 to the sheriff's department. And ---

4 Q. Okay.

5 A. Yeah.

6 Q. All right.

7 MR. GRIFFITH: I have no further questions, Your
8 Honor. I would ask that if you'll answer the
9 assistant attorney general's questions.

10 THE COURT: Cross-examination?

11 MR. BARLOW: Your Honor, no questions.

12 THE COURT: All right. You may step down, sir.
13 You can step down, Mr. Marshall.

14 MR. MARSHALL: All right.

15 MR. GRIFFITH: Your Honor, I would call Andrew
16 Marshall.

17 THE COURT: Do you swear or affirm the testimony
18 you're about to give is the truth, the whole truth,
19 and nothing but the truth so help you God?

20 MR. MARSHALL: Yes, ma'am.

21 THE COURT: All right. Sir, please have a seat.

22 COURT REPORTER: State your name for the record
23 please.

24 MR. MARSHALL: My name is Andrew Junior Marshall.

25 THE COURT: Your witness.

A. Marshall- Direct Examination by Mr. Griffith

18

1 MR. GRIFFITH: Thank you, Your Honor. If it
2 pleases, the Court?

3 MR. MARSHALL: I know Mr. Mimi Joe Marshall. Me
4 and him raised up in the household since I've been a
5 child.

6 THE COURT: All right. Sir, all you have to do is
7 answer the questions the attorney ask you.

8 MR. MARSHALL: Okay. Yes?

9 ANDREW MARSHALL, first being
10 duly sworn, testified as follows:

11 **Direct Examination by Mr. Griffith.**

12 Q. How do you know Mr. Marshall?

13 A. He's my uncle.

14 Q. Okay. And so how long have you been around Mr.
15 Marshall?

16 A. All my life.

17 Q. Okay. And you're telling me that you, you guys
18 pretty much raised up together, isn't that correct?

19 A. Raised up since I've been a baby.

20 Q. Okay. Now, did Mr. Marshall talk to you about,
21 you know, you've heard him tell his side of the
22 story, is that correct?

23 A. Yes.

24 Q. And has it always been the same?

25 A. Yes.

1 Q. All right. But you were telling me that during
2 the trial -- you were present during the trial, is
3 that correct?

4 A. Correct.

5 Q. Were you there every day?

6 A. Yes.

7 Q. Okay. And you know when the judge sent the jury
8 out that he would always tell them ---

9 A. Yes.

10 Q. --- don't talk about this, right?

11 A. Yes.

12 Q. Okay. Want you tell us what happened one day
13 when you went to lunch?

14 A. We went to lunch and I was walking behind two
15 young men, the jury, and they was talking about the
16 trial, about my uncle. And I will just walking and
17 listening and just, one of the fellows just said,
18 man, ---

19 MR. BARLOW: Your Honor, objection. Hearsay.

20 THE COURT: Sustained.

21 MR. GRIFFITH: Okay.

22 Q. Well -- Okay. But in your opinion were some of
23 the jurors going ahead and deciding that your uncle
24 was guilty before the judge had turned that back into
25 the jury?

A. Goode- Direct Examination by Mr. Barlow

20

1 A. That's what I think.

2 Q. Okay.

3 MR. GRIFFITH: Well, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. BARLOW: No, Your Honor.

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

7 Next witness?

8 MR. GRIFFITH: No further witnesses, Your Honor.

9 THE COURT: Yes, sir?

10 MR. BARLOW: Your Honor, we would call Ms. Alicia
11 Goode.

12 THE COURT: Would you please raise your right
13 hand? Do you swear or affirm the testimony you're
14 about to give is the truth, the whole truth, nothing
15 but the truth so help you God?

16 MS. GOODE: Yes.

17 THE COURT: Please have a seat. Your witness?

18 MR. BARLOW: Thank you, Your Honor. May it
19 please, the Court?

20 ALICIA GOODE, first being
21 duly sworn, testified as follows:

22 **Direct Examination by Mr. Barlow:**

23 Q. Would you state your name and spell it?

24 A. Alicia Goode, G-o-o-d-e.

25 Q. Thank you for being here today, Ms. Goode. You

1 were present here for Mr. Marshall's testimony ---

2 A. Yes.

3 Q. --- correct? Okay. And let's just start with
4 some basic questions. How long have you been
5 practicing criminal law?

6 A. Thirteen years at this point.

7 Q. I asked you how long have you been practicing
8 criminal. How long have you been practicing law?

9 A. Thirteen years.

10 Q. Okay. So all of it has been in criminal law?

11 A. Yes.

12 Q. Okay. Were you appointed or retained in this
13 case?

14 A. I was appointed.

15 Q. Okay. When were you appointed?

16 A. Well, our office was appointed right after Mr.
17 Marshall's arrest. He was originally assigned to
18 Rebecca Williams who was a lawyer in our office. She
19 took a brief leave of absence and then I took over
20 representation. And so that would have been sometime
21 in August or September of 2016 is whenever I took
22 over representation.

23 Q. So roughly a year prior to trial?

24 A. Right. In about a year after his arrest.

25 Q. Okay. And in that time, did you receive the

1 discovery?

2 A. Yes.

3 Q. And did you review that with him?

4 A. Yes.

5 Q. And approximately how many times did you meet
6 with him?

7 A. Let me look here. It would appear from my notes
8 here, roughly, about 10 times. And that would --
9 there would be more and probably the month leading up
10 to trial that wouldn't, that's not in my notes but
11 just my general check in, I put in my notes here that
12 it's about 10 times.

13 Q. And when you reviewed the discovery and in your
14 meetings with him, were you able to craft a defense
15 strategy?

16 A. Yes. The defense was accident. That was -- that
17 was the defense we pursued at trial. That was based
18 off of what information we were able to obtain from
19 Mr. Marshall. The information he gave to law
20 enforcement when he was interviewed. And so that was
21 the defense.

22 Q. Let me ask you, you heard his testimony about
23 what happened, but based off of your review of the
24 evidence and what the State had present, can you give
25 us a brief overview of what that evidence was?

1 A. So the evidence, obviously, was the pictures from
2 the crime scene. Mr. Marshall's recount from law
3 enforcement. I think there was a statement maybe
4 from a neighbor that interacted with Mr. Marshall
5 that night. There were interviews with I believe
6 some family members, maybe his daughter or their
7 daughter. And then I believe we have received some
8 information in preparation, preparation from the
9 trial, for trial, a -- some -- one of the Richland
10 County Crime Scene Investigators what they would be
11 testifying at, um, at trial regarding blood spatter
12 and, and the crime scene, itself. Their, I guess,
13 analysis of the scene and where people would have
14 been standing based on the science of, you know, the
15 blood spatter and....

16 Q. One of his allegations is that he was unable to
17 tell his version of events at trial, did Mr. Marshall
18 ever indicate to you that he wanted to testify?

19 A. I, you know, I can't remember, specifically, if
20 we talked about him actually testifying. I mean, I
21 know that we would have discussed that. I would have
22 advised against it based on -- I mean, he brought it
23 up here today prior bad acts regarding, that's a
24 legal term, I'm not saying that they were, that law
25 enforcement ever charged him or that he was ever

A. Goode- Direct Examination by Mr. Barlow

24

1 convicted of any sort of domestic violence. But
2 there were allegations of domestic violence between
3 Mr. Marshall and his wife that would have likely,
4 that we were able to keep out pre-trial. The judge
5 said that that testimony couldn't come in. However,
6 if he opened the door during testimony that would
7 have brought all that information out and I believe
8 that the likelihood of that happening would have, was
9 very great. And his story was told that they want --
10 they put his statement in. He gave a statement to
11 law enforcement and his statement was read by the
12 lead investigator on the case and publish to the
13 jury.

14 Q. Okay. Well, we can move on to the evidentiary
15 stuff. There's a CD that was testified to, do you
16 recall that?

17 A. I ---

18 Q. On a voicemail?

19 A. Honestly, I don't. I think I remember there
20 being a voicemail. I don't remember it being -- I
21 just don't remember much about that.

22 Q. Okay. How about the t-shirt?

23 A. Again, I don't remember about a t-shirt either.

24 MR. BARLOW: I beg the Court's indulgence.

25 Q. Do you recall any plea offers being made?

1 A. So, you know, at the time I inherited the case,
2 Mr. Marshall was I think when he was arrested he was
3 maybe, I mean, he's close to 60. And, you know, he
4 was very adamant from the beginning, you know, this
5 was an accident. He would never hurt his wife. And
6 so given his age, you know, I had discussions with
7 the prosecutor on the case Ms. April Sampson. I
8 think I'd talked to her within probably the first
9 couple of months of my representation. It looks like
10 maybe November of 2016 where she indicated that she
11 wouldn't, would not be able to make too much of an
12 offer in the case. Then I was able to find an email
13 just kind of confirming a conversation closer to
14 trial where we had sit down and met to discuss the
15 case where we discussed plea offers at that time and
16 I think I had maybe requested something 10 years or
17 lower, not that I thought that he would take that
18 but, obviously, something if we could get that. I
19 would try to encourage him to take that given the,
20 you know, the massive sentence he was facing and
21 given his age. But that I think she would be, at
22 that point, had been willing maybe to discuss an
23 offer, a range of 20 to 30 years, but that she never
24 officially made an offer and so she had not made an
25 offer.

A. Goode- Cross-Examination by Mr. Griffith

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1 Q. Two more questions for you. Did -- what was Mr.
2 Marshall's inclination as to a plea versus a trial?

3 A. It was always a trial.

4 Q. Do you stand by your representation?

5 A. I do.

6 Q. Thank you.

7 MR. BARLOW: Nothing further, Your Honor.

8 THE COURT: Cross-examination?

9 MR. GRIFFITH: If it please, the Court, Your
10 Honor?

11 **Cross-Examination by Mr. Griffith:**

12 Q. And so if I heard you correctly you never heard
13 anything about the t-shirt?

14 A. I -- I was -- when I heard Mr. Marshall talk
15 about -- I just can't remember a t-shirt and I can't
16 remember it. I'm not saying that that didn't
17 happened. It's just not something that with this
18 particular case was sticking out in my mind right
19 now.

20 Q. And, Mr. Marshall, did he ask to be able to
21 testify?

22 A. I'm not -- I don't remember. I just remember
23 that being, um, that we were able to tell our theory
24 of the case through the evidence that was presented
25 without putting him in a situation where he could

1 potentially do damage to the case through his
2 testimony potentially opening the door to a prior
3 history of domestic violence.

4 Q. Certainly. But did he ask to be able to ---

5 A. I was reviewing the transcript. I -- I know that
6 we discussed it. We discussed it. You know, the
7 judge gave us time to discuss it. You know, because
8 the judge has to advise him that he has a right to
9 testify and, you know, one of the only things that
10 he's, an absolutely right to do things kind of just
11 happened around him. But, you know, going to trial
12 and whether you want to testify at that trial, those
13 are his decisions. And he chose at that point not to
14 testify. Probably based on our counsel. Um,
15 certainly had he wanted to testify, there would have
16 been no stopping him and I would have helped him
17 prepare for that.

18 Q. Okay. And so had you -- had you heard anything
19 prior to the end of the trial about any juror
20 misconduct or something like that?

21 A. Not that I can recall. I certainly would have
22 raised that issue had I heard about that for sure.

23 MR. GRIFFITH: I have no further questions, Your
24 Honor. Thank you.

25 THE COURT: Any redirect?

S. Krzyston- Direct Examination by Mr. Barlow

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1 MR. BARLOW: No, Your Honor.

2 THE COURT: You may sit down, ma'am. Thank you.

3 MS. GOODE: Thank you.

4 THE COURT: Next witness?

5 MR. BARLOW: The State would call Steven Krzyston.

6 THE COURT: Do you swear or affirm the testimony
7 you're about to give is the truth, the whole truth,
8 nothing but the truth so help you God?

9 MR. KRZYSTON: I do, judge.

10 THE COURT: All right. Your witness?

11 MR. BARLOW: Thank you, Your Honor.

12 STEVEN KRZYSTON, first being
13 duly sworn, testified as follows:

14 **Direct Examination by Mr. Barlow:**

15 Q. Mr. Krzyston, first, how long have you been
16 practicing law?

17 A. Around 12 yars.

18 Q. And how much of that is criminal?

19 A. Again, 7'ish.

20 Q. Were you primary on this case?

21 A. No. I was, um, the case was assigned to Alicia
22 and Lucas and I aided in the trial.

23 Q. Okay. Did you come in on this at same time that
24 Alicia did?

25 A. I did not.

1 Q. About how long before trial did you come on?

2 A. I couldn't -- a month maybe, somewhere around
3 there.

4 Q. Did you review the evidence?

5 A. Certainly. Yeah, absolutely.

6 Q. And let me ask you about the evidentiary, the
7 evidence, do you recall a CD?

8 A. I mean, discovering it's disclosed in a number of
9 fashion. I'm sure there were CDs in the case?

10 A. Was there -- was there a CD with a voicemail that
11 was relevant?

12 A. I do remember, I believe, a voicemail, yes.

13 Q. Okay. Was there anything particular you can
14 remember about that?

15 A. Yeah. I believe it was a voice message that was
16 left with his brother that was from a call that was
17 made in the middle of the night or in the early
18 morning on the day after the incident took place. I
19 believe it was some sort of, kind of, I don't know
20 how to relay this, it was something about -- I don't
21 know if it was an apology. It might have been an
22 apology. There was, I think, an allusion to suicide
23 if I'm recalling correctly. That may be a
24 conversation he had with his brother the next
25 morning. But I do remember there being something

L. Hawkins- Direct Examination by Mr. Barlow

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1 about that, that voicemail.

2 Q. Do you recall a t-shirt?

3 A. I do recall there being some relatively
4 substantive discussion about a t-shirt. I believe
5 that when they arrested Mr. Marshall he was at a
6 third location, I think it was like some sort of bar
7 and grill or private club. He was taken into custody
8 there. The car was searched. I believe CSI actually
9 overlooked the shirt. One of the family members
10 returned the shirt to the sheriff's department. The
11 sheriff's department seized it and if I recall
12 correctly, it was never analyzed by the blood pattern
13 section of their crime lab. But I believe it was
14 disposed of prior to the trial such that no analysis
15 could be conducted. I could be mistaken about that.
16 But I believe that was the distribution of that
17 evidence.

18 MR. BARLOW: Nothing further, Your Honor.

19 THE COURT: Cross--examination?

20 MR. GRIFFITH: No questions, Your Honor.

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

22 MR. KRZYSTON: Thank you.

23 MR. BARLOW: Your Honor, I'd call Lucas Hawks.

24 THE COURT: Do you swear or affirm the testimony
25 you're about to give is the truth, the whole truth,

1 and nothing but the truth so help you God?

2 MR. HAWKS: Yes, ma'am.

3 THE COURT: If you'd please have a seat. Your
4 witness?

5 MR. BARLOW: Thank you, Your Honor. May it
6 please, the Court?

7 LUCAS HAWKS, first being
8 duly sworn, testified as follows:

9 **Direct Examination by Mr. Barlow:**

10 Q. Sir, thank you for being here today. I know
11 you've been waiting. Let's go ahead. I'm gonna be
12 brief with you. Just -- how long have you been
13 practicing law?

14 A. About 11 years.

15 Q. And how much of that has been criminal?

16 A. All of it.

17 Q. And in this case -- did you come in with Mr.
18 Krzyston?

19 A. Probably around the same time or a little later.
20 I was third chair so they probably just brought me in
21 at the end.

22 Q. All right. Do you recall anything about a CD
23 with a voicemail?

24 A. Not really. I mean, now I do since I watched
25 their testimony, but I don't think if you'd asked me

1 earlier I'd, I'd be able to remember that.

2 Q. How about the t-shirt?

3 A. I do recall the t-shirt more, um, but I -- do you
4 have a specific question about it?

5 Q. Tell me what the t-shirt -- tell me what your
6 recollection is of the t-shirt, what was its
7 relevance to this case?

8 A. Just what Mr. Krzyston said that they found it
9 and never tested it and that it was destroyed.

10 Q. Okay.

11 MR. BARLOW: Thank you. Nothing further, Your
12 Honor.

13 THE COURT: Cross-examination?

14 MR. GRIFFITH: May it please, the Court? Briefly.

15 **Cross-Examination by Mr. Griffith:**

16 Q. About the t-shirt, so you were aware that there
17 was a t-shirt?

18 A. I believe so, yes.

19 Q. Okay. Were you aware of Mr. Marshall's
20 contentions that this would have shown that his wife
21 was standing when she was shot?

22 A. No. And I don't really understand that argument
23 to be honest.

24 MR. GRIFFITH: No further questions.

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

1 MR. BARLOW: Your Honor, are last witness is April
2 Sampson.

3 THE COURT: Do you swear or affirm testimony
4 you're about to give is the truth, the whole truth,
5 and nothing but the truth of God?

6 MS. SAMPSON: I do.

7 THE COURT: Please have seat. Your witness?

8 MR. BARLOW: Thank you, Your Honor. May it
9 please, the Court?

10 APRIL SAMPSON, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Barlow:**

13 Q. Ms. Sampson, you were the prosecutor on this
14 case, correct?

15 A. Correct.

16 Q. And were you lead? It was your case?

17 A. I'm the lead prosecutor. Yes, sir.

18 Q. Okay. And you shared discovery?

19 A. Yes.

20 Q. Okay. You were here for -- were you here for
21 the testimony of Mr. Marshall?

22 A. Yes.

23 Q. Okay. Does his testimony purport with what the
24 evidence the State presented?

25 A. No.

A. Sampson- Direct Examination by Mr. Barlow

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1 Q. Okay. What differences would you say?

2 A. So, basically, this case did involve a faulty
3 gun. But all the evidence that we had showed that
4 she was sitting when this occurred. Ms. Marshall had
5 on her work uniform so it was clear she had just come
6 home from work. She had a lunchbox that she took to
7 work, it was at her feet. But the bigger thing was
8 she was shot with a shotgun. It was so close though
9 that the shotgun did not open prior to hitting her,
10 it opened in her head. So her entire face was,
11 essentially, missing. The back of her scalp was on
12 the couch where she was sitting. All of the blood
13 spatter was on the back of the, there was like a
14 window, I guess, and the blinds. It was on the
15 couch. The -- she had fallen to the side and so the
16 biggest -- these are some of the worst photos I've
17 ever seen and I've been doing this 24 years as far as
18 criminal defense. She fell to the side and half of
19 her brain was literally on the floor. So it was our
20 belief there was no way that she was standing, as Mr.
21 Marshall claimed, by the door when all of the
22 physical evidence was on the couch.

23 Q. Did the State call an expert in blood splatter?

24 A. We called the criminal, the criminal crime scene
25 investigators. I believe one of them did get

1 qualified as an expert to discuss the blood spatter
2 and the fact that there was a void where she was
3 sitting and also where her head would have been. I
4 do know that the defense put up -- their defense was
5 that it was an accident and that it happened by the
6 door. They brought their own expert. And so we did
7 have an entire hearings and arguments about the blood
8 spatter and all of that evidence. And I do believe
9 one of our experts got qualified. It might have been
10 two.

11 Q. Did your expert testify that Mr. Marshall was
12 standing at or with Ms. Marshall?

13 A. I believe the expert testified that they, he
14 would have been standing, based on the way that the
15 shell, the shotgun opened, he could testify as how
16 far away the end of the barrel was from her head.
17 But -- and that it was his belief that Mr. Marshall
18 was standing with the gun kind of at his waist, if I
19 remember correctly. But there was no way that he was
20 sitting. There was nothing about the gun being
21 pointed upwards. It would've had to be pointed at
22 her in order for the shell to have entered the way
23 that it did.

24 Q. Let's jump into these evidentiary stuff. Do you
25 recall a CD with a voicemail?

A. Sampson- Direct Examination by Mr. Barlow

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1 A. So there was, and I know you're calling it a CD,
2 that's probably how we gave it to them, but it was
3 just a voicemail that had been left on his brother's
4 voicemail and that way that we gave it to the defense
5 was in a CD. But it was a voicemail that he left
6 for his brother as testified by Mr. Krzyston I think
7 just said that he called his brother in the early
8 morning hours after this had occurred and said
9 something to the effect that something bad had
10 happened. He was probably gonna end his life.
11 Something to that effect. But the problem was that
12 his brother did not have transportation. So when he
13 called his brother, the brother knew something had
14 happened, the brother ended up calling the daughter
15 of the victim and she, unfortunately, went to the
16 house and found her mother deceased with her face
17 missing. Mr. Marshall had done some other things
18 that we felt like showed indication of guilt. He had
19 tried to leave. When he went to leave he had left
20 his keys in the house. So he had locked,
21 essentially, locked himself out of the house but also
22 out of his car. He got a neighbor to crawl into the
23 back window, I believe it was, of a bedroom, go in
24 the bedroom, get the keys and go through the back
25 door and leave and bring him the keys so that he

1 could then leave. That is how he actually left the
2 residence. He also, as Mr. Krzyston said, went to a
3 bar and got arrested at the bar. But he had blood on
4 his clothing that they took off of him at the time.

5 Q. And that takes me to, was there a t-shirt that
6 went missing or wasn't tested?

7 A. So they did search the car but the car had a lot
8 of things in it. They did not keep the car. They
9 did release, and I say they, I mean, law enforcement,
10 released the car back to Ms. Marshall's daughter.
11 She actually brought the stuff back to our office.
12 She called and said that there's this stuff in the
13 car, I believe it's blood, what do I do? And we're
14 like, oh, let's figure this out. So law enforcement
15 did get it back from her. But at that point chain
16 was broken because she's not, clearly not a law
17 enforcement official and she's saying, oh, this has
18 blood in it. But it had been after the incident,
19 after the car been released. So they didn't test it
20 and they did destroy it, ultimately, because it, we
21 had believed it had blood on it but, no, we couldn't
22 use it because the chain had been broken.

23 MR. BARLOW: I beg the Court's indulgence.

24 Q. Do you recall anyone ever reporting that there
25 was juror misconduct?

A. Sampson- Direct Examination by Mr. Barlow

38

1 A. No. That wouldn't -- you, I think, you asked me
2 about that earlier, I'd never heard of anything about
3 that. As far as I know the jurors were -- it was a,
4 it was a long trial but it wasn't like two weeks or
5 anything. It was a few days of trial. I think it
6 took the whole week so, no, I don't remember there
7 being anything about that.

8 MR. BARLOW: Thank you, Ms. Sampson. Nothing
9 further.

10 THE COURT: Cross-examination?

11 MR. GRIFFITH: I have no questions, Your Honor.

12 THE COURT: You may step down, ma'am. Thank you.

13 MR. BARLOW: That's completes the witnesses, Your
14 Honor.

15 THE COURT: All right. I'll take the time to
16 review the transcript and notify you of an opinion.

17 MR. BARLOW: Thank you, Your Honor.

18 MR. GRIFFITH: Thank you, Your Honor.

19 (CONCLUSION OF HEARING HELD ON JANUARY 11, 2024)

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CERTIFICATE

I, the undersigned, Lisa S. Carter, do hereby
certify that the foregoing is a true, accurate, and
complete excerpt of transcript of record of all the
proceedings had and evidence introduced in the hearing
of the captioned cause, relative to appeal, in the Fifth
Circuit for Richland County, South Carolina, on the 11th
day of January, 2024.

I do further certify that I am neither of kin,
counsel, nor interest in any party hereto.

s/ Lisa Carter

Lisa Carter

Circuit Court Reporter

February 1, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mimi J. Marshall, #231397,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2022-CP-40-02201
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Hon. Maité Murphy

Timothy L. Griffith, Esq.

D. Russell Barlow, II, Esq.

Alicia D. Goode, Esq.

Steven F. Krzyston, Esq.

Lucas D. Hawks, Esq.

Date of Hearing:

January 11, 2024

Court Reporter:

Lisa Carter

This matter comes before the Court by way of Mimi Joe Marshall's (Applicant) application for post-conviction relief (PCR) filed on April 28, 2022, challenging his trial for Murder and Possession of a Firearm by a Felon. Respondent, the State of South Carolina, submitted its Return on December 31, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application. On April 24, 2023, Applicant filed amendments to his PCR application.

On January 11, 2024, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Maité Murphy. Timothy Lee Griffith, Esquire, represented Applicant. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his amended application. In support of these claims, Applicant testified on his own behalf and presented the testimony of Andrew Marshall. Respondent presented testimony from Alicia D. Goode (Counsel Goode), Steven F. Krzyston (Counsel

Krzyton), and Lucas D. Hawks (Counsel Hawks), collectively referred to as Trial Counsel. Additionally, Respondent presented testimony from April W. Sampson (Solicitor Sampson).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court's orders of commitment. During the December 2015 term, the Richland County Grand Jury indicted Applicant for Murder (2015-GS-40-06133) and Possession of a Firearm by Felon (2015-GS-40-06134). Fifth Circuit Public Defenders Alicia D. Goode, Stephen F. Krzyston and Lucas D. Hawks, Esquires, represented Applicant. Fifth Circuit Assistant Solicitors April W. Sampson, Sandra V. Moser, and Samuel C. McGlothlin, Esquires, prosecuted the case.

From October 30 to November 2, 2017, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. On November 2, 2017, Applicant was found guilty as indicted. Judge Hood sentenced Applicant to concurrent sentences of life without parole for Murder and five (5) years' imprisonment for Possession of a Weapon by a Felon.

Applicant timely filed a Notice of Appeal. Stephen F. Krzyston, Esquire, perfected Applicant's appeal, raising the following issues:

- I. The trial court erred in refusing to charge the jury on the law of involuntary manslaughter when there was evidence in the record to support the charge.
- II. The trial court erred in admitting the testimony of Timothy Lee on crucial blood spatter evidence because the witness was not qualified as an expert in blood spatter evidence or crime scene

- reconstruction, because the evidence failed to satisfy three or the four factors proffered in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), and because the evidence was not reliable.
- III. The trial court erred in admitting the testimony of Stan Richards on crucial blood spatter evidence because evidence was not reliable and could not satisfy three of the four factors proffered in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

On August 12, 2020, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. *State v. Marshall*, Unpub. Op. No. 2020-UP-241 (Ct. App. filed Aug. 25, 2020). On August 25, 2020, Applicant petitioned the South Carolina Court of Appeals for a rehearing. Applicant's petition for rehearing was denied by Order filed October 28, 2020. On December 14, 2020, Applicant filed a Petition for Writ of Certiorari. Applicant's Petition for Writ of Certiorari was denied by Order filed August 6, 2021. The Remittitur was returned to the circuit court on August 6, 2021.

SUMMARY OF FACTS ADDUCED AT TRIAL

Doris Marshall clocked out of her dining facility attendant shift at Fort Jackson at 10:15 PM on August 14, 2015. R. 159:9–13, 163:10–33. Early that next morning, her nephew was awoken by Applicant knocking at his father's door. R. 41:22–25. Applicant had come over to tell them he had "messed up" while he was arguing with Auntie Doris, she tried to grab the gun, and the gun went off. R. 142:5–8. Applicant had already left his brother a voicemail indicating the same. R. 368:1–9, 374:4–22. Applicant had driven a gray van to their home. R. 142:22. Applicant showed his nephew the double-barrel shotgun. R. 143:23–144:7. Then Applicant left, and the family members called 911 and their extended family to fill them in. R. 144:14–24.

As the family heard what happened, Applicant's daughter-in-law Amanda went to Applicant's home. R. 411:18–412:14. Amanda checked the front door, but it was locked, and the other door was too. She pushed in an A/C unit in the window until she caught sight of the victim

in the living room. R. 412:19–414:2. Amanda saw Doris sitting "like in the middle of the couch" and leaning to one side. R. 414:4–9. Amanda ran to the neighbor to ask for help breaking open the front door. R. 414:12–21. When they gained access, it was obvious that the victim was deceased. R. 415:22–23. The victim "had been sitting on a sofa with her lunch bag beside her foot and had been shot in the face at close range with a shotgun. That's where she was killed instantly." R. 557:7–10.

The Richland County Sheriff's Department and EMS arrived on the scene, and EMS noted the following about its arrival:

EMS was able to visualize the patient from the front door of the home without entering. Noted brain matter on the floor. The patient was sitting on a couch to the right of the front door, leaning to her right with her head down. Noted injury to the head inconsistent with life, skull fragment on the back of the couch, noted brain matter. Blood splatter around the patient. The patient had no respiratory effort, no signs of life, noted coagulation of blood on and around the patient, lividity and notified dispatch of D.O.A.

R. 150:6–23.

Law enforcement issued a BOLO for Applicant and a gray Chrysler Pacifica minivan. R. 174:4–6. The night before, neighbors witnessed Applicant banging on the window of a running vehicle as if he were trying to break in. R. 128:10–20, 345:17–346:9. That same night, one neighbor helped Applicant, who had locked himself out of his home, by crawling into one of Applicant's back windows and opening the side door so Applicant could get back in. That neighbor said that it "reeked" when he got inside the house but that he did not see the victim. R. 329:23–341:25. That neighbor also recalled seeing a flash coming from the direction of Applicant's home that night. R. 338:17–339:18.

A short time after the BOLO was issued, Applicant surrendered to law enforcement at Tony's Lounge, a spot near Eastover about ten miles away from his home. R. 174:8–175:7.

Somebody at the Lounge who had heard Applicant was suspected of murder noticed him there and called 911. R. 333:3–334:19. At the time of arrest, Applicant had noticeable reddish-brown spatters on his pants, socks, and shoes. R. 358:15–17. The Chrysler Pacifica was parked at the Lounge, and law enforcement located a double-barrel shotgun inside the van. R. 177:10–21. The van's back window was broken. R. 406:5–8.

At the Sheriff's Department, Applicant gave a signed question-and-answer type statement to Sergeant Joe Clark about what happened to his wife:

When she came home from work last night, I had my gun in the front room. I did this because the trailer park is an unstable place. She came at me. She grabbed the gun. It went up and it went off. I grabbed her. I had her head in my hands and I let her down on the chair. I knew she was dead then. I should have handled it a different way, the way I did not handle it, I should have killed myself.

R. 566:11–21.

The Sergeant asked where the gun was. R. 566:25–567:1. Applicant told him it was in a closet, but the Sergeant knew there was no closet in the living room. R. 567:1–4. Then Applicant said he shot her at the front door. R. 567:5. Moments later in the interview Applicant expounded:

I told her when she came in the house that I had just called her job. She was a little late and I was worried about her. I had just had the car's front-end alignment fixed with a new tire for her safety. She comes in with an attitude. I told her I was worried about her. She says, quote, you've got no reason to worry about me, unquote. She said it with an attitude. We were just talking at each other.

...

My gun was laying against the wall the whole time. When I decided to check out around my trailer with my shotgun, Doris was coming in the front door. We are right there at the same time. She comes in the door, that is when I told her I was worried about her. That is when the gun went off. She had touched the gun when it went off. She took the gun and threw it up.

...

She was standing on the side of the couch when the gun went off. I held her by the face and laid her on the couch.

R. 567:21–570:3.

Applicant defined "threw [the gun] up" by swiping his hand in front of his face. R. 569:4–7. The Sergeant asked, "So the barrel was obviously in her face?" R. 569:7–8. Applicant answered, "She pushed the gun away. And that's when he said it went off." R. 569:9–10. Applicant's statement, however, was unsupported by the forensic evidence presented by the State at trial. R. 567:5–10.

TIMOTHY LEE: CRIME SCENE PROCESSER

Investigator Lee, a ten-year veteran of the Richland County crime scene unit, photographed the scene at the Marshall's home. R. 188:14–19, 208:1–10. Lee documented that small birdshot pellets and "gelatinized blood" pooled on the center of the living room sofa where the victim was located. R. 212:9–20, 213:20–23. He documented the living room's ceiling, which was also stained with blood. R. 216:10–17. "There was a broken pair of glasses that were on the floor near the rug." R. 219:17–18. The investigator also denoted a piece of shotgun wadding found on the sofa. R. 218:10. He testified that the location of the wadding indicated "that the shot occurred within the parameter" of where they found the victim. R. 218:13–21. Lee testified about photographs depicting differing concentrations of blood at the scene in relation to the victim's location. R. 231:5–24, 233:2–11, 255:17–19. Lee photographed biological matter near the sofa, including the documentation of a portion of the brain near the victim's foot and "a chunk of skull and scalp that was up on top of the couch." R. 270:7–271:13.

DAVID COLLINS: FIREARMS EXAMINER

Collins, the firearm and tool mark examiner from SLED, testified about the 12-gauge double barrel shotgun located in Applicant's Chrysler Pacifica. R. 286:24–287:4. The butt stock

on the shotgun had been repaired with electrical tape, but the gun fired and the safety worked. R. 289:1–25. The gun was manufactured before 1968. R. 293:17–22. On the muzzle of the gun, Collins noted not blood but other biological material. R. 295:9–24. Collins did not test the trigger press weight but did not notice anything mechanically unsound about the trigger pull. R. 303:17–23. "It did not appear to be excessively light nor excessively heavy compared to other shotguns of the same make and model" R. 324:1–4.

Collins also received for examination three unfired shotgun shells, the wadding located on the victim's sofa, and three sets of birdshot pellets. R. 290:22–291:2, 292:1, 298:25–299:5. Like the shotgun muzzle, the wadding contained a coating of biological material which Collins cleaned off as part of his examination. R. 297:13–17. "The fired wadding was consistent with the wadding found in one of the fired shotgun shells" in brand, type, and gauge. R. 298:19–24. All three unfired shotgun shells "were capable of being fired in that gun." R. 299:13–18. Also consistent with the unfired shells received for comparison were the birdshot pellets received for examination, including those extracted from the victim. R. 300:3–301:23.

"Based on the nature of the injury to the victim in this case and the severity of it, [Collins] did not feel that there was sufficient information present" for him to test the distance from which the victim was shot with any degree of scientific reliability. R. p. 304:21–305:6. In addition to a precise diameter of the wound, which was unavailable, Collins needed more of the same ammunition to reliably test-fire and determine that distance. R. 305:8–14.

JENNIFER MARTIN: DNA ANALYST

Richland County Sheriff's Department DNA analyst Jennifer Martin received several items for DNA testing. R. 387:3–13. Two swabs from the double-barrel shotgun positively matched the victim's DNA, but the other biological matter tested was not blood. R. 389:4–390:24.

AMANDA DURSO: FORENSIC PATHOLOGIST

Doctor Durso performed the autopsy on the 58-year-old victim. R. 451:3-6. She recorded a shotgun wound to the head as the cause of death. R. 453:11-12. The large wound "entered the right front of her face, kind of centered around the area of the right eye" and exited through the top of the skull. R. 453:6-10. "Some of it did exit the kind of back right top of the skull and very slightly left [to] right." R. 454:17-18. Manipulating the edges of the wound, Durso pieced together a 2.8-inch by 3-inch entry wound. R. 454:1-9. Durso retrieved birdshot pellets from the victim. R. 454:11-13. She identified stippling on the left side of the victim's face, which she described as an indicator that the shotgun was within approximately 30 inches of the victim at the time the shot was fired. R. 456:1-457:8. Durso testified that soot would be present if the shotgun were 12 inches or closer to the victim at the time of the shot. R. 458:9-18.

No soot was present, allowing Durso to estimate that the shot occurred between 12 and 30 inches from the victim. R. 457:13, 458:14-15, 461:13-23. The victim's right eye was obliterated as was a portion of the brain such that "half of her brain actually fell out through this defect and was received separately in the body bag due to the force of the blast." R. 459:14-20. The victim sustained no other remarkable injuries to the remainder of her body. R. 462:2-9.

JENNIFER NATES: GSR ANALYST

Jennifer Nates from SLED testified that two gunshot residue (GSR) kits were collected and submitted for testing in conjunction with this case. R. 472:8-16. The kit collected from the victim tested positive for a single particle of GSR, which is not inconsistent with a shooting victim who has faced the muzzle of a loaded gun. R. 477:16-25. The result gave no information as to the distance from which the victim sustained the gunshot. R. 478:4-7. The second kit, collected from Applicant, was inconclusive as Applicant was swabbed for GSR beyond the 6-hour timeframe

during which any probative test for GSR can be collected from a living person. R. 478:14–23. Although testing on the kit was halted halfway through the analysis, it did return one particle of GSR. R. 479:12–15.

STAN RICHARDS: BLOOD STAIN PATTERN ANALYST

Stan Richards, a lieutenant in the forensics division of the Richland County Sheriff's Department, testified about the bloodletting evidence at the scene photographed by Investigator Lee. R. 484:21–24, 486:13–18. Richards attended the scene, identified the victim "slumped over on the sofa nearest the door" into the front of the mobile home, and observed the blood on the sofa cushions, extending up the sofa back, on the window shades, on the ceiling, and wrapping around the end of the sofa to the windows and blinds on the short side of the room. R. 487:13–25. He witnessed brain matter "at the doorway on the floor" unaccompanied by "major blood." R. 488:1–4. Richards could tell from the nature of the wound on the victim's face that blood had gone from the point of impact outward as a result of "a very significant impact and a dynamic impact" of the shotgun blast. R. 488:10–15.

He identified the several stains, small and large, as "individual stains of an overall pattern called impact spatter," which occurs as a result of a high-velocity impact. R. 488:18–24. Impact spatter created stains that radiate outward from the point of impact, up to the ceiling, and out towards the end of the room. R. 490:11–18. Richards "saw no indication of any major bloodletting going through the door in that area." R. 495:5–6. Blood was significantly present on the pillows, sofa, and blinds away from the front door. R. 498:10–25. Richards described the spatter stains as creating a V-shaped cone beginning at the window and radiating out to the sofa and ceiling and stopping at or near the other furniture in the room. R. 499:17–502:10.

Richards also attached significance to the lack of bloodletting in the area where the victim

would have been sitting when the impact occurred. R. 506:22–507:15. Because blood on the victim's leg was soaked into the area rather than dripping downward, it indicated that the victim was sitting during the duration of the bloodletting event. R. 514:12–21. He called the area without blood the void in which the victim sat during the impact. R. 514:22–515:1. Richards also classified the stains and biological matter appearing nearest the front door as outliers because the bloodletting was otherwise contained to the center and side of the sofa farthest from the door and because the area from the front door straight back contained no major bloodletting. R. 515:2–9. Richards also described that in order for the portion of the victim's scalp to land on the back of the sofa where it was found, the victim had to be on the sofa in the sitting position. R. 515:11–17. Applicant countered the State's case with his own blood spatter analyst.

CHRISTOPHER ROBINSON: PRIVATE FORENSIC ANALYST

Applicant put forward Robinson, who testified as an expert in crime scene reconstruction, blood spatter analysis, and firearms analysis. R. 617:5–9. Robinson addressed the double barrel shotgun and assessed its front trigger pull at seven (7) pounds and the rear trigger pull as averaging six and three-quarters (6¾) pounds of pressure. R. 618:9–17. He opined that the safety on the gun was not acting as intended and that the gun was unsafe. R. 620:1–7. He measured the overall length of the weapon as 44.5 inches. R. 618:19–20.

As for the victim's injury, Robinson opined, "The shot occurred from a distance of approximately three to four inches or less" from the victim's face, with gas pressure from the chamber causing the expansive injury to the skull. R. 620:16–25, 622:21–25, 624:22–625:5. Based on the pattern of blood dispersion, he described the shot as an "upward shot through the head". R. 621:20–25. He testified, "Reportedly, she's standing at the end of the couch when the shot occurs, driving her over onto the couch," and Applicant was "going out the door." R. 625:8–11. He

clarified for the record that he assessed the positioning of the parties at the time of the shot based upon Applicant's statement to law enforcement. R. 640:14–641:6.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Court Lacked Jurisdiction"
2. "Actual Innocence"
3. Ineffective Assistance of Counsel
 - a. Failure to Investigate

Applicant requested relief in the form of a "vacation of conviction and sentencing."

At the beginning of the evidentiary hearing, Applicant indicated he intended to move forward on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to advise Applicant what a plea was and failed to advise Applicant to accept a thirty (30) years plea offer prior to trial.
 - b. Trial Counsel did not allow Applicant to tell his version of events at trial.
 - c. Trial Counsel failed to present evidence of a t-shirt a trial that was crucial to his defense because it would have shown where the victim was standing when she was shot.
 - d. Trial Counsel failed to properly investigate Applicant's case.

During the evidentiary hearing, Applicant raised an additional allegation of Juror Misconduct through the testimony of Andrew Marshall.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of counsel and Juror Misconduct through the PCR action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its

entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for PCR. *See* Rule 71.1(e), SCRCP ("The [PCR] applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act (the Act), S.C. Code Ann. §§ 17-27-10 to -160, provides that a person may seek PCR based on 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).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, GENERALLY

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668

(1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) ("Without proof of both deficient performance and prejudice to the defense . . . it could not be said that the sentence or conviction 'resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.'" (quoting *Strickland*, 466 U.S. at 687)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate

assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *see also Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. To establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; *see Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial

counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Richter*, 562 U.S. at 112.

Finally, the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *see also United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsels' representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in their representation. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, *supra*). The United States Supreme Court has cautioned that "every

effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689; *see also Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Applicant has alleged multiple claims of ineffective assistance of Trial Counsel and asserts that, as a result of Trial Counsels' purported errors, he is entitled to a new trial. This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below.

Allegation 1a: Trial Counsel failed to advise Applicant what a plea was and failed to advise Applicant to accept a thirty-year plea offer prior to trial.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to advise Applicant to accept a thirty-year plea offer prior to trial. This Court find this allegation is without merit.

The United States Supreme Court has "long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (citations omitted); *see Hill v. Lockhart*, 474 U.S. 52 (1985) (extending the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel). In the context of plea negotiations, an attorney's failure to communicate a formal plea offer to a criminal defendant falls below an objective standard of reasonableness under *Strickland*. *Missouri v. Frye*, 566 U.S. 134 (2012); *Lafler v. Cooper*, 566 U.S. 156 (2012); *see Strickland*, 466 U.S. at 688 (explaining that counsel has a duty "to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution."). In *Lafler* and its companion case, *Frye*, the Court recognized

that "the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences." *Lafler*, 566 U.S. at 170 (citing *Frye*, 566 U.S. at 143–44).

Thus, the key question in *Lafler* was "how to apply *Strickland*'s prejudice test where ineffective assistance results in a rejection of the plea offer and the defendant is convicted at the ensuing trial." *Id.* at 163. Unlike *Hill*, the ineffective advice in *Lafler* "led not to an offer's acceptance but to its rejection." *Id.* In other words, "[h]aving to stand trial, not choosing to waive it, is the prejudice alleged." *Id.* at 163–64; *see id.* at 169 ("[T]he question is not the fairness or reliability of the trial but the fairness and regularity of the processes that preceded it, which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance.").

The Court ultimately held that, to show prejudice, the defendant must demonstrate a reasonable probability that (1) he would have accepted the plea offer; (2) the prosecution would not have withdrawn the offer in light of intervening circumstances; (3) the court would have accepted its terms; and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. *Lafler*, 566 U.S. at 164; *accord Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018).

Before being sworn in and while PCR Counsel was indicating to the Court the allegations they intended to move forward on, the following occurred:

Mr. Griffith: Your Honor, if it pleases, the Court? Mr. Marshall would like to proceed on ineffective assistance of counsel. And in that, Your Honor, during the proceedings the attorneys, according to Mr. Marshall, told him there was an offer of 30 years, but he didn't have time to think about it, he said he had less than a minute to think about that before they were to move on. And that if he had, if they had taken

time to explain to him is his, his right to a plea and what his, their recommendation was that he may have taken that.

Applicant: No! No! No! No! I would not have taken that 30 years.

Mr. Griffith: Okay.

Applicant: Period.

Mr. Griffith: Okay, I'm sorry.

Applicant: We can just leave that —

PCR Tr. 6.

On direct examination, Counsel Goode testified that Applicant was adamant from the beginning that the shooting was an accident and that he would never hurt his wife. PCR Tr. 25. Counsel Goode testified she had discussions with Solicitor Sampson about a plea, and Solicitor Sampson indicated to her in November of 2016 that she would not make "too much of an offer." *Id.* Counsel Goode testified she found emails wherein she asked Solicitor Sampson for a ten-year offer close to Applicant's trial, and Solicitor Sampson indicated a potential offer between twenty to thirty years, but she never officially made the offer. *Id.* Counsel Goode testified Applicant's inclination was always to go to trial. PCR Tr. 26.

This Court finds Applicant failed to establish he was offered a thirty-year plea offer and any resulting deficiency from Trial Counsel when there was no offer to extend to Applicant. Counsel Goode credibly testified she entered into plea negotiations with Solicitor Sampson, but Solicitor Sampson never made an offer. As such, Applicant cannot show prejudice from the alleged deficiency. While this Court recognizes that Applicant was not sworn before his spontaneous outburst at the beginning of the evidentiary hearing, it would be remiss if this Court did not highlight that Applicant exclaimed that he would have never taken a thirty (30) year deal. Therefore, Trial Counsel was not deficient in failing to advise Applicant to accept a non-existent offer, and thus, Applicant cannot show prejudice.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1b: Trial Counsel failed to properly advise Applicant of his right to testify and the advantages thereof.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to properly advise him of his right to testify and the advantages thereof. This Court finds this allegation is without merit.

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. [However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

At the evidentiary hearing on direct examination, Applicant testified Counsel Goode advised him it was not in his best interest to testify, and Applicant believed the fact he did not testify made him look guilty. PCR Tr. 8–9. Applicant testified that he listened to Counsel Goode's advice because she was his lawyer and he did not know the law. PCR Tr. 9. Applicant testified to his version of events leading to the shooting of his wife, as follows:

I laid in the bed that night, she come home about ten, eleven,
sometime, I don't even know she was in the yard really, she comes
in.
....

But me and my wife woked up one night, there was an argument, about couple of hours over when we looked out the window we seen this guy, he pulled his pistol and shot a guy about seven times. He killed him. I'm thinking and I made the wrong thing on that one, but I shouldn't have never gotten the gun. I'm thinking my wife come home late at night. Now, anything could have happened at her in that yard. Somebody could have grabbed her. It's for our protection. It was still wrong for me having the gun, but I'm thinking now. But when, listen—now, I'mma come back to this, when I was laying in that bed that night I heard something out back in my utility house. My wife just had bought me a brand you weedeater, a couple of months prior. And we had a guy around their break into houses so I figured it was. Now, I laid there a while and I'm thinking first it's probably an animal running around the outside so I, I just late on back down. But I hear him again. I got up. When I got to the door my wife was walking in. I'm telling you my, my wife loved me. She had thought that I was going outside and shoot somebody that's why she grabbed the gun. I, I, I had no—I had—I had it in my left hand straight in there, it, it just leaning—but if I had two hands on it, you know I'm saying it would've, I would've had a pretty good brace on it. But she gripped—looked, this gun was straight in the air and this was a graze shot. It was not—didn't make like this was some kind of a direct shot. If it was a direct shot it would've taken the whole head off. This was a glaze (sic) shot where she grabbed the gun as I was passing her. I was going—I spoke to her first and the door is right here by the couch. By the time I got there she grabbed it and the only way I believe this, she grabbed that gun, it was straight in the air. I'm thinking that she was thinking I was going outside to hurt somebody so she, she was gonna try to stop this. And before I know it, this old raggedy shotgun, tapped up, unsafe from the beginning, it went off and it glazed (sic) her right here. I reached up, I've dropped the gun, I reached up and grabbed her to try to stop the bleeding. Well, now that—she was still standing, but everybody was saying that she was shot on the chair.

....

But I'm saying like this, she was still standing. I reached up and grab the wound, put pressure to it. She was still standing. As I taken that little bit of pressure, right here on my arm like this—I can't do it with this cuffs and stuff on me the way I want to—but I had my arm pressed against my body, my t-shirt.

PCR Tr. 9–12.

On direct examination, Counsel Goode testified that Applicant's defense strategy was to argue accident based on the information that Applicant had provided her and law enforcement.

PCR Tr. 22. Counsel Goode testified that she could not specifically recall—but—she would have advised Applicant against testifying because of the prior domestic violence charges on his record. PCR Tr. 23–24. Counsel Goode testified the trial judge ruled in pre-trial proceedings that testimony concerning the allegations would not be allowed, unless Applicant opened the door. PCR Tr. 23–24. Counsel Goode testified she believed there was a great likelihood that Applicant's testimony would have opened the door for testimony concerning the allegations of domestic violence to come in. PCR Tr. 24. Counsel Goode testified Applicant gave a statement to law enforcement with his version of the events, and that statement was read by the lead investigator and published to the jury. PCR Tr. 24.

On cross-examination, Counsel Goode testified she could not recall whether Applicant requested to testify but that she was able to present Applicant's version of the events without the need for Applicant to testify and potentially open the door to prejudicial testimony. PCR Tr. 26–27. Counsel Goode testified the transcript reflects that the trial judge gave them time to discuss Applicant's right to testify. PCR Tr. 27. Counsel Goode testified the trial judge advised Applicant of his right to testify and Applicant chose not to testify. *Id.* Counsel Goode testified Applicant likely chose not to testify based on their counsel, but had he desired to testify, no one would have been able to stop him. *Id.*

This Court finds Applicant's testimony **not credible** and Counsel Goode's testimony **credible**. The Court finds Applicant was fully aware of his right to testify and the advantages and disadvantages of doing so. The record reflects that Applicant knowingly waived his right to testify after a thorough colloquy with the trial court. Trial Tr. 583–84. Further, the record reflects that Trial Counsel argued the defense of accident, and evidence was submitted to the jury detailing Applicant's version of the events. Moreover, Counsel Goode **credibly** testified that she advised

Applicant not to testify, as she believed there was a high likelihood Applicant would have opened the door for prejudicial evidence to come in if he had testified. Additionally, Counsel Goode **credibly** testified that had Applicant desired to testify, no one would have been able to stop him as it was his decision. This Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant cannot demonstrate how he was prejudiced by Trial Counsel's performance in this matter.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

- Allegation 1c:** Trial Counsel failed to present evidence of a t-shirt at trial that was crucial to his defense because it would have shown where the victim was standing when she was shot.
- Allegation 1d:** Trial Counsel failed to properly investigate Applicant's case.
- Allegation:** Trial Counsel failed to investigate and present CD with voicemail.¹

Applicant alleges Trial Counsel were constitutionally ineffective for failing to properly investigate Applicant's case. Specifically, Applicant alleges Trial Counsel failed to investigate and present evidence of the t-shirt he was wearing during the shooting and a CD with a voicemail he left on his brother's phone. This Court finds these allegations are without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v.*

¹ Applicant raised this allegation during the evidentiary hearing, and is addressed with Allegations c and d.

State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

T-Shirt

At the evidentiary hearing on direct examination, Applicant testified that he was wearing a t-shirt when he shot his wife. PCR Tr. 12. Applicant testified the t-shirt was really bloody because he used it on his wife's gunshot wound, and after, he put the t-shirt in a plastic bag and put on a new t-shirt. PCR Tr. 14. Applicant testified he put it in his vehicle with the shotgun. *Id.* Applicant testified Trial Counsel never had the t-shirt because when CSI went through the vehicle, they left the t-shirt in the vehicle, and his daughter discovered it. PCR Tr. 15. Applicant testified the t-shirt would have shown his wife was standing when he shot her. *Id.* Applicant testified that after his daughter discovered the t-shirt, she brought it to the sheriff's office. *Id.* Applicant testified Trial Counsel knew about the t-shirt. PCR Tr. 16. Applicant testified that his daughter testified at trial, and Trial Counsel could have questioned her about the t-shirt. *Id.* Applicant testified that Counsel Goode informed him at the courthouse she had questioned his daughter about the t-shirt. PCR Tr. 16–17.

On direct examination, Counsel Goode testified she did not recall a t-shirt. PCR Tr. 24. On cross-examination, Counsel Goode testified that a T-shirt could have been involved, but she could not recall specifically anything about a T-shirt. PCR Tr. 26.

On direct examination, Counsel Krzyston testified he recalled a t-shirt and recounted his recollection as follows:

I do recall there being some relatively substantive discussion about a t-shirt. I believe that when they arrested [Applicant] he was at a third location, I think it was like some sort of bar and grill or private club. He was taken into custody there. The car was searched. I believe CSI actually overlooked the shirt. One of the family members returned the shirt to the sheriff's department. The sheriff's department seized it and if I recall correctly, it was never analyzed by the blood pattern section of their crime lab. But I believe it was disposed of prior to the trial such that no analysis could be conducted. I could be mistaken about that. But I believe that was the distribution of that evidence.

PCR Tr. 30:3–17.

On direct examination, Counsel Hawkins testified he recalled the t-shirt and echoed Krzyston's testimony that the t-shirt was never tested and was destroyed. PCR Tr. 32. On cross-examination, Counsel Hawkins testified he was aware of the t-shirt at trial but was not aware that Applicant believed the t-shirt would show Applicant's wife had been standing when he shot her and did not understand Applicant's argument. PCR Tr. 32.

On direct examination, Solicitor Sampson testified that all the forensic evidence established Applicant's wife was sitting when he shot her. PCR Tr. 34. Solicitor Sampson testified the shotgun was so close to Applicant's wife when she was shot that the bullet opened in Applicant's wife's head, and as a result, her entire face was missing. *Id.* Solicitor Sampson testified Applicant's wife's scalp was on the couch where she was sitting, and half of her brain was on the floor. *Id.* Based on this, Solicitor Sampson testified Applicant's contention his wife was standing by the door when she was shot was not plausible. *Id.* Solicitor Sampson testified the State presented an expert to testify concerning the blood spatter and how it showed Applicant's wife was sitting when she was shot, and Trial Counsel put up their own expert to testify she was standing when she

was shot. PCR Tr. 34–35. Solicitor Sampson testified there was no evidence to show the shotgun was pointed upward when he shot his wife. PCR Tr. 35.

Solicitor Sampson testified that there were a lot of things in Applicant's vehicle when CSI searched it, and after the search, they released the car to Applicant's daughter. PCR Tr. 37. Solicitor Sampson testified Applicant's daughter brought items she found in the car that had blood on them back to the sheriff's office, but at that point the chain of custody was broken, so the t-shirt was destroyed because it could not be used at trial. PCR Tr. 37.

This Court finds Applicant's testimony wrought with speculation and **not credible**. This Court finds Applicant has failed to show any deficiency on Trial Counsel's part and has failed to show any resulting prejudice from the alleged deficiency. Counsel Krzyston and Solicitor Sampson **credibly** testified that the t-shirt had been destroyed and could not be used at trial because the chain of custody had been broken, therefore, Trial Counsel cannot be deficient for failing to investigate or present destroyed evidence. Additionally, Applicant failed to show how further investigation, presentation, or testimony concerning the t-shirt would have affected the outcome of his case.

This Court further finds Applicant's argument that the t-shirt would have shown his wife had been standing when she was shot is pure conjecture. Applicant testified the t-shirt had blood all over it, and he used it against his wife's shotgun wound. This Court cannot surmise how this would show Applicant's wife had been standing when she was shot, especially considering Solicitor Sampson's testimony concerning the nature of Applicant's wife's wounds. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Voicemail

At the evidentiary hearing on direct examination, Applicant testified that after he shot his wife, he called his brother and left a voicemail. PCR Tr. 14. Applicant testified that, on the voicemail he left his brother, he told his brother his wife had grabbed the gun and the gun went off, and he did not know what to do. PCR Tr. 14. Applicant testified the voicemail was on a CD and "They would not play the CD before the jury." PCR Tr. 14.

On direct examination, Counsel Goode testified she did not recall there being a voicemail. PCR Tr. 24. On direct examination, Counsel Krzyston testified that he reviewed the evidence of Applicant's case and he recalls the discovery containing a voicemail. PCR Tr. 29. Counsel Krzyston testified to the nature of the voicemail as follows:

Yeah. I believe it was a voice message that was left with his brother that was from a call that was made in the middle of the night or in the early morning on the day after the incident took place. I believe it was some sort of, kind of, I don't know how to relay this, it was something about—I don't know if it was an apology. It might have been an apology. There was, I think, an allusion to suicide if I'm recalling correctly. That may be a conversation he had with his brother the next morning. But I do remember there being something about that, that voicemail

PCR Tr. 29:15–30:1.

On direct examination, Counsel Hawks testified that he recalled there being a voicemail but could not recall specifics. PCR Tr. 32.

On direct examination, Solicitor Sampson testified as follows concerning the voicemail:

So there was, and I know you're calling it a CD, that's probably how we gave it to them, but it was just a voicemail that had been left on

his brother's voicemail and that way that we gave it to the defense was in a CD. But it was a voicemail that he left for his brother as testified by Mr. Krzyston I think just said that he called his brother in the early morning hours after this had occurred and said something to the effect that something bad had happened. He was probably gonna end his life. Something to that effect. But the problem was that his brother did not have transportation. So when he called his brother, the brother knew something had happened, the brother ended up calling the daughter of the victim and she, unfortunately, went to the house and found her mother deceased with her face missing. Mr. Marshall had done some other things that we felt like showed indication of guilt. He had tried to leave. When he went to leave he had left his keys in the house. So he had locked, essentially, locked himself out of the house but also out of his car. He got a neighbor to crawl into the back window, I believe it was, of a bedroom, go in the bedroom, get the keys and go through the back door and leave and bring him the keys so that he could then leave. That is how he actually left the residence. He also, as Mr. Krzyston said, went to a bar and got arrested at the bar. But he had blood on his clothing that they took off of him at the time.

PCR Tr. 36–37.

This Court finds Trial Counsel was not deficient, and Applicant failed to show resulting prejudice from Trial Counsel's performance. Counsel Krzyston credibly testified to his knowledge of and contents of the voicemail, evidence it was investigated by Trial Counsel. Additionally, Counsel Krzyston and Solicitor Sampson credibly testified that the voicemail from Applicant stated something bad had happened and that he was going to commit suicide. This Court finds from the credible testimony presented, that the voicemail was likely more inculpatory and hardly exculpatory. Applicant failed to present the voicemail to the Court for review. Thus, his assertions as to the exculpatory nature of the voicemail is pure conjecture—and—conjecture is not enough. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Juror Misconduct

Applicant alleges that juror misconduct took place during his trial. Specifically, the jurors had begun deliberations before the trial court instructed them to do so. This Court finds this allegation is without merit.

All criminal defendants have the right to a trial by an impartial jury. U.S. Const. Amends. VI and XIV; S.C. Const. Art. I, § 14. Where an applicant alleges juror misconduct in the form of premature deliberations, the applicant will be procedurally barred from raising the issue where he failed to call the alleged juror misconduct to the trial court's attention at his first opportunity. *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999).

An applicant must demonstrate prejudice from the alleged premature deliberations to receive a new trial. *Aldert*, 333 S.C. 307, 314-15, 509 S.E.2d 811, 814-15 (1999) (citing *United States v. Resko*, 3 F.3d 684 (3d Cir.1993) (prejudice is touchstone of entitlement to a new trial when improper intra-jury influences are at issue)); *United States v. Carmona*, 858 F.2d 66, 69 (2d Cir.1988); *United States v. Klee*, 494 F.2d 394 (9th Cir.) *cert. denied* 419 U.S. 835, 95 S.Ct. 62, 42 L.Ed.2d 61 (1974) (not every instance of misconduct warrants a new trial; test is whether misconduct has prejudiced the defendant to the extent he did not receive a fair trial), *Stockton v. Va.*, 852 F.2d 740 (4th Cir.1988) *cert. denied* 489 U.S. 1071, 109 S.Ct. 1354, 103 L.Ed.2d 822 (unrealistic to think jurors will never comment to each other on any matters related to trial); *United States v. Piccarreto*, 718 F.Supp. 1088 (W.D.N.Y.1989)

(given length and nature of trial, it is not surprising a juror may make some comments as trial progresses; new trial is not warranted absent evidence showing such discussions shaped final deliberations or improperly influenced jurors or prejudiced defendants).

At the evidentiary hearing on direct examination, Andrew Marshall testified that Applicant was his uncle and that he was present at Applicant's trial every day. PCR Tr. 18–19. Andrew testified that, in his opinion, some of the jurors were deciding that Applicant was guilty before his trial had concluded. PCR Tr. 19.

On direct examination, Counsel Goode testified she did not recall an issue with juror misconduct at trial. PCR Tr. 27. On direct examination, Solicitor Sampson testified she did not recall any issue of juror misconduct. PCR Tr. 38.

This Court finds Andrew's testimony not credible or persuasive. As Andrew's testimony was the only evidence presented by Applicant on this issue, this Court finds Applicant has failed to meet his burden. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, Applicant's allegation of juror misconduct is **DENIED** and **DISMISSED**.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for PCR must be **DENIED** and **DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453,

409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21 day of June, 2024.


 THE HONORABLE MAITÉ MURPHY
 Presiding Judge
 Fifth Judicial Circuit


 _____, South Carolina