

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ABBEVILLE COUNTY

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

Case No. 2012-212875

Clarence Austin Harrison.....Petitioner,

vs.

State of South Carolina.....Respondent

APPENDIX

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RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 car was in front of ours when we got there. I do not know
2 what cell they put him in at that time.

3 THE COURT: I'll sustain the objection.

4 MR. ANTHONY: All right. That's all my questions.

5 THE COURT: Any questions?

6 MR. PADGETT: No, Your Honor.

7 THE COURT: Any questions, Mr. Grose?

8 MR. GROSE: No. No, sir.

9 THE COURT: You may step down, sir.

10 The State may call its next witness.

11 MR. ANTHONY: That's the State's evidence, Your
12 Honor.

13 THE COURT: I assume that there's some matters the
14 defense would like to take up with the Court at this time?

15 MR. PADGETT: Yes, Your Honor.

16 THE COURT: Is that correct, Mr. Grose?

17 MR. GROSE: It is, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury, I note
19 that we are about 10 minutes until 5 o'clock. Normally, after
20 the State rests there are some matters that I have to take up
21 with the attorneys concerning the continuation of the trial
22 and how to proceed from this point forward.

23 Rather than try to add any more testimony this
24 afternoon, I think that would be fruitless, so I'm going to
25 excuse you for the evening and ask you to return again in the

1 morning at 9:30.

2 I will repeat the same admonishment I gave you upon
3 your leaving the courthouse on every occasion. Please don't
4 gather any information outside of this courthouse in
5 connection from any source in connection with this case.
6 Please do not talk to anyone about the case. Please do not
7 share any information with anyone about the case.

8 Should anyone attempt to contact you concerning this
9 matter, please report that upon your return and I'll take the
10 appropriate action for that.

11 Please be back in the jury room at 9:30 in the
12 morning. Thank you very much. You are free to go.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 4:50 p.m.)

15 THE COURT: Mr. Padgett, you may proceed.

16 MR. PADGETT: Thank you, Your Honor. Taking all the
17 evidence in the light most favorable to the State it's the
18 defendant's position that the State has failed to offer
19 substantial evidence as to the guilt or innocence of
20 Mr. Haskell and that what has been offered has only raised a
21 mere suspicion of guilt. I would ask for the Court to grant a
22 motion of directed verdict in favor of not guilty for
23 Mr. Haskell, Your Honor.

24 THE COURT: All right. Who is going to argue for
25 Mr. Harrison?

1 MR. GROSE: I will, Your Honor.

2 THE COURT: All right, Mr. Grose.

3 MR. GROSE: I'll refer the Court, of course, to Rule
4 19 of the South Carolina Rules of Criminal Procedure, and Part
5 A which refers to the Court shall direct a verdict in the
6 defendant's favor of any offense in the indictment after the
7 evidence of either side is closed if there is failure of
8 competent evidence tending to prove the charge in the
9 indictment.

10 And we have issues as to competent evidence in this
11 case. The State is trying to prove the vast majority of their
12 case including what happened through statements of witnesses
13 who don't have credibility and even through officers
14 recollections of -- or repeating what was in some of the
15 statements of what happened, and in some cases those
16 statements have been actually denied in this courtroom.

17 So as to all three counts we would move for directed
18 verdict for lack of competent evidence. There's not any
19 evidence the jury could rely on, either direct or
20 circumstantial beyond a reasonable doubt.

21 Where regards to the possession of a handgun during
22 the commission of a violent crime, it's always been my
23 contention that that person has to actually display the
24 handgun, the person who's charged with the crime. There's
25 been no testimony that Mr. Harrison ever touched a handgun,

1 let alone display a handgun in all of this.

2 It's my contention that that is not something that
3 is a hands of one hands of all accomplice liability, that that
4 is something that they actually have to prove as to that
5 person, and they have not done that.

6 THE COURT: I'll be happy to hear from you,
7 Mr. Anthony.

8 MR. ANTHONY: Well, as to Mr. Harrison -- well,
9 first of all, I agree that this case hinges on credibility
10 determinations, but when a Court makes a ruling on directed
11 verdict it takes evidence in the light most favorable to the
12 State so --

13 THE COURT: And any inferences that can be drawn
14 from that evidence have to be drawn in favor of the State.

15 MR. ANTHONY: Yes, sir. And certainly as to
16 Mr. Harrison the State believes that just Mr. Gartrell's
17 testimony alone would provide a basis to send Mr. Harrison's
18 charges to the jury.

19 You have testimony that Mr. Harrison asked him to
20 come around to the area where he was shot. That after the
21 shooting Mr. Harrison was trying to take -- attempting to take
22 property off his person. So we feel like those facts alone
23 would give rise to this being submitted to the jury against
24 Mr. Harrison.

25 As to the possession with a firearm during the

1 commission of a violent crime charge, the State believes that
2 that can go to the jury on the hand of one hand of all theory.
3 Mr. Harrison, considering the facts in the light most
4 favorable to the State, Mr. Harrison joined with Mr. Haskell
5 to commit this crime. There's obviously something -- the
6 other party was armed so we think that that should go to the
7 jury as well.

8 As to Mr. Haskell, you have statements, although
9 obviously statements that are now recanted, but you have
10 statements from Mr. Norman that Mr. Harrison gave Mr. Haskell
11 a firearm before the robbery took place.

12 You have a statement from Mr. Adams which was taken
13 into evidence that Mr. Haskell had a firearm shortly after the
14 incident took place in the apartment complex that adjoins the
15 apartment complex where this occurred. Then you have
16 Ms. Cole's statement that when Mr. Harrison came to her door
17 he said that he and Mr. Haskell had some business they were
18 going to take care of.

19 So the State believes that as to Mr. Haskell these
20 charges should be submitted because there is competent
21 evidence from which a jury could find that they are both
22 guilty on all three of the charges against them.

23 THE COURT: Anything further, gentlemen?

24 MR. GROSE: No, sir.

25 THE COURT: Mr. Padgett, you are looking at me like

1 there is something you'd like to say.

2 MR. PADGETT: Might as well add it, Your Honor.
3 Citing State V. Edwards, 298 S.C. 272, 379 S.E.2d 888, which
4 is a 1989 case; and then later State V. Williams, 303 S.C.
5 274, 400 S.E.2d 131, 1991 case held that the trial judge
6 should grant the motion where the circumstantial evidence
7 merely raises a suspicion of guilt but must submit the case if
8 there is any substantial evidence reasonably tending to prove
9 the defendant's guilt from which the guilt may be fairly and
10 logically deduced.

11 Your Honor, I would submit there is no substantial
12 evidence in this case from which a jury can rely on.

13 THE COURT: I'll take the motion under advisement
14 and make a ruling in the morning. Court is adjourned until
15 9:30 in the morning. Thank you very much.

16 MR. PADGETT: If the bondman is here would you
17 change your position on the defendants?

18 THE COURT: I'll hear from him.

19 MR. PADGETT: Sorry, Your Honor, I was misinformed
20 again.

21 (WHEREUPON, the trial of this case was recessed for
22 the day.)

23 Thursday, March 23, 2006

24 THE COURT: All right. Mr. Anthony, the State
25 ready?

1 MR. ANTHONY: Yes, sir, we are.

2 THE COURT: Mr. Padgett, the defense ready?

3 MR. PADGETT: Yes, Your Honor.

4 THE COURT: Mr. Grose, you ready?

5 MR. GROSE: Yes, sir.

6 THE COURT: When we ended the day yesterday I had
7 received motions for directed verdict from both defendants. I
8 have considered the motions. Based on my consideration of the
9 evidence thus far it's my finding that those motions should be
10 denied.

11 Are you ready to go forward with the defense case?

12 MR. GROSE: Yes, sir. I think Mr. Padgett would be
13 going first.

14 THE COURT: Mr. Padgett?

15 MR. PADGETT: Yes, Your Honor, I just need to make
16 sure my witness is out here. She is under subpoena.

17 THE COURT: I understand. Go ahead. You can go
18 ahead and ask the first witness to step in.

19 [PAUSE.]

20 THE COURT: It's my understanding all jurors are in
21 the jury room. You can bring the jury in.

22 MR. PADGETT: Your Honor, she's not here.

23 THE COURT: She's not here?

24 MR. PADGETT: No. I'm getting that subpoena now. I
25 did talk to her this morning. She was served on the 14th by

1 Deputy L. Norman.

2 THE COURT: What is the name of this witness?

3 MR. PADGETT: Meyun Wharton.

4 THE COURT: Do you want to put your subpoena on the
5 record or enter it in the record?

6 MR. PADGETT: That's fine, Your Honor.

7 THE COURT: Do you have certificate of service?

8 MR. PADGETT: I do have a proof of service, yes,
9 sir.

10 THE COURT: Any objection to him putting that into
11 the record?

12 MR. ANTHONY: No, sir.

13 MR. BUERGEY: None, Your Honor.

14 (WHEREUPON, Court's Exhibit No. 2, a Subpoena
15 Document for Meyun Wharton, was marked and made a part of the
16 record.)

17 THE COURT: You wish for the Court to take any
18 action for that subpoena?

19 MR. PADGETT: If I can make another phone call?

20 THE COURT: Sure.

21 [PAUSE.]

22 THE COURT: We've made that exhibit a Court's
23 exhibit that way it won't go back to the jury.

24 MR. PADGETT: Thank you.

25 Your Honor, for -- I guess for three days all my

1 witnesses have been here and none of them are here right now.

2 I don't know how to proceed.

3 THE COURT: Well, if you've got subpoenas for them
4 you can certainly put those on the record. I have the
5 authority if they are properly served to issue a bench warrant
6 and have them brought to the Court under subpoena.

7 MR. PADGETT: I apologize, Mr. Anthony.

8 THE COURT: He was telling me -- go ahead make that
9 statement again for Mr. Anthony's benefit. He was out of the
10 courtroom.

11 MR. PADGETT: When I came back -- my witnesses have
12 been here for three days and they are not here now, and I've
13 got subpoenas on all of them. And the Court was just saying
14 that the Court has the ability to ask our fine deputies to go
15 pick them up.

16 MR. ANTHONY: Okay.

17 MR. PADGETT: Also, I do have a subpoena on
18 Ms. Janet Brownlee Jackson.

19 THE COURT: Do you wish to see these, Mr. Anthony?

20 I'll need to get the service on that as well. And
21 I'll make these Court's exhibits.

22 MR. PADGETT: And then I'll have another one on
23 Jessica Butler. These are the proofs of service.

24 (WHEREUPON, Court's Exhibit Numbers 3 and 4,
25 Subpoena Documents, were marked and made a part of the

1 record.)

2 THE COURT: Do we have one that's incarcerated?

3 MR. PADGETT: Yes, sir.

4 MR. ANTHONY: I just asked Detective Benson to
5 transport him.

6 THE COURT: Mr. Brown?

7 MR. ANTHONY: Mr. Brown.

8 THE COURT: Okay.

9 MR. PADGETT: I do apologize, Your Honor.

10 THE COURT: As long as you issued subpoenas that's
11 all you're required to do and put them on the record. Are you
12 moving the Court, asking that we make efforts to try to get
13 those people to the courthouse?

14 MR. PADGETT: Yes, Your Honor.

15 THE COURT: Then I'll issue a verbal bench warrant
16 that those persons be picked up, if they are available, and be
17 brought forthwith to the courthouse.

18 Now, do you want me to inquire of your client
19 concerning his right to testify at this time?

20 MR. PADGETT: I think that, yes, that would be
21 appropriate, Your Honor.

22 MR. GROSE: That's what we're taking about right
23 now, Your Honor.

24 THE COURT: Well, I'll give you a chance to talk
25 about it if you'd like to.

1 [PAUSE.]

2 THE COURT: Mr. Padgett, you ready to discuss this
3 with your client?

4 MR. PADGETT: Yes, sir.

5 THE COURT: Mr. Haskell, raise your right hand.

6 ALTI MONTE LIVINGSTON HASKELL, after having
7 been duly sworn, testified as follows:

8 THE COURT: You can be seated, sir. Thank you very
9 much. At this time, I'm going to explain to you certain of
10 your constitutional rights. If you do not understand the
11 explanation that I have at this time I would ask for you to
12 please let me know and I'll try to give you some more detail
13 or further explain it to you.

14 We've reached the stage of this trial where you have
15 the right to present your defense. As you present your
16 defense you have the right to claim the protections which are
17 given to you under the Fifth Amendment to the United States
18 constitution. That amendment in part states that no person
19 shall be compelled in any criminal case to be a witness
20 against himself.

21 What that means is that you cannot be required to
22 testify in this case. You certainly have the right to testify
23 on your own behalf, however no one can make you testify. This
24 right that you have to remain silent is a personal right and
25 no one can waive that right or give it up except yourself.

1 If you decide to testify you will be subject to the
2 same rules that govern other witnesses, that means that you
3 will be examined by your attorney, you will also be
4 cross-examined by the other attorneys in this case.

5 In addition to that cross-examination, should you
6 have any convictions in your record which involve dishonesty
7 or false statement or for crimes which were punishable by
8 imprisonment for more than one year and this Court makes the
9 determination that the probative value of admitting that
10 evidence outweighs its prejudicial effect to you then the
11 solicitor or other attorney in the case would be able to use
12 those convictions to attack your credibility and introduce
13 those into the record.

14 If you decide to testify the decision must be made
15 on your part freely, voluntarily and intelligently with
16 knowledge of the protections which are given to you by the
17 Fifth Amendment and the consequences that could result from
18 your decision to testify.

19 If you decide not to testify I will tell you that I
20 will instruct the jury that the fact that you did not testify
21 could not be considered by them in any way in reaching a
22 decision in your case. In fact, I will instruct them that
23 they cannot even discuss that fact during their deliberations.

24 Now, it's left entirely up to you as to whether or
25 not you testify in the case. You have the right to consult

1 with your attorney, family, friends or anybody else you'd like
2 to consult with in reaching that decision. However, the
3 decision as to whether or not to testify is left entirely up
4 to you. Now, sir, do you understand what I have just
5 explained to you about your right to remain silent?

6 DEFENDANT HASKELL: Yes, sir.

7 THE COURT: Do you have any questions about it that
8 you want me to answer at this time?

9 DEFENDANT HASKELL: No, sir.

10 THE COURT: Have you had an opportunity to fully
11 discuss this decision with your attorney or other persons?

12 DEFENDANT HASKELL: No, sir.

13 THE COURT: So you wish to discuss it further?

14 DEFENDANT HASKELL: Yes, sir.

15 THE COURT: All right, sir. I'm going to give you a
16 few minutes to do that. Do you wish to discuss that in
17 another setting other than in the courtroom? I'll allow you
18 to retire to another setting.

19 While he's doing that I will inquire of Mr. Harrison
20 concerning his rights since he will be in a position to
21 present his case shortly.

22 (WHEREUPON, Defendant Haskell and his attorney left
23 the courtroom.)

24 THE BAILIFF: Your Honor, sir. The witness they
25 were calling has arrived outside.

1 THE COURT: All right. I'll let him know when he
2 comes back. Thank you very much.

3 All right. Mr. Harrison, if you would please stand,
4 raise your right hand.

5 CLARENCE HARRISON, after having been duly
6 sworn, testified as follows:

7 THE COURT: You were present in the courtroom, you
8 heard me go over with Mr. Haskell his rights but I'm going to
9 go over these rights with you as well, and I'm going to
10 explain to you certain constitutional rights that you have.
11 Again, if you have a question concerning my explanation, when
12 I've completed this please let me know and I'll be happy to go
13 back over this right and explain it to you further.

14 As I stated before, we have reached the stage in the
15 trial where you shortly will be presenting your defense in the
16 case. You have the right at that time to claim the
17 protections which are afforded to you under the Fifth
18 Amendment to the United States Constitution which reads in
19 part that no person shall be compelled in any criminal case to
20 be a witness against himself.

21 What that means is that you cannot be required to
22 testify in this case. You have the right to testify if you so
23 choose, however no one can make you testify. It's a personal
24 right to remain silent. No one can waive or give up that
25 right except yourself.

1 If you decide to testify you will be subject to the
2 same rules that govern any other witness who testifies in this
3 case. You'll be examined by your lawyer, cross-examined by
4 the other lawyers.

5 Again, should you have a conviction in your record
6 which involves dishonesty or false statements or for a crime
7 which was punishable by imprisonment for more than one year
8 and I make a determination that the probative value of
9 admitting that evidence outweighs its prejudicial effect to
10 you then that attorney seeking to introduce that record would
11 be able to introduce it to attack your credibility.

12 If you decide to testify the decision on your part
13 must be freely, voluntarily and intelligently made by you with
14 knowledge of the protections afforded to you by the Fifth
15 Amendment and also with knowledge of the consequences which
16 could result by your decision to testify. The decision to
17 testify is again left entirely to you.

18 I will advise you that I will instruct the jurors
19 should you decide not to testify that they could not give the
20 fact that you did not testify any consideration whatsoever in
21 reaching a verdict in your case. And, again, I will instruct
22 them that they cannot even discuss that fact during their
23 deliberations.

24 You have the right to talk this decision over or
25 consult about this decision with anyone you choose to; family,

1 friends, your attorney. But the decision, the ultimate
2 decision is left entirely up to you. Do you understand the
3 right that I have now explained to you?

4 DEFENDANT HARRISON: Yes, sir.

5 THE COURT: Do you have any questions about it?

6 DEFENDANT HARRISON: No, sir.

7 THE COURT: Have you had an opportunity to fully
8 discuss this with the people that you wish to discuss it with?

9 DEFENDANT HARRISON: Yes, sir.

10 THE COURT: Do you wish to have any further
11 discussions at this time?

12 DEFENDANT HARRISON: No, sir.

13 THE COURT: Okay, sir. Do you wish to testify in
14 your case?

15 DEFENDANT HARRISON: No, sir.

16 THE COURT: Beg your pardon?

17 DEFENDANT HARRISON: No, sir.

18 THE COURT: Thank you.

19 Now, back to Mr. Haskell.

20 MR. PADGETT: And, Your Honor, does he have to make
21 that decision right now?

22 THE COURT: Well, you are going to present your case
23 first, still.

24 MR. PADGETT: Oh, yes.

25 THE COURT: So, I mean, he's going to have to make

1 that decision. I will tell you this, one of the witnesses
2 apparently has arrived. I can take that witness and then get
3 the decision. You might want to check and see who has
4 arrived. The bailiff indicated someone had arrived.

5 MR. PADGETT: Thank you, Your Honor.

6 [PAUSE.]

7 THE COURT: Is this one of the witnesses?

8 MR. PADGETT: It is, Your Honor.

9 THE COURT: Do you wish to postpone his decision
10 until a later point in the case?

11 MR. PADGETT: Yes, Your Honor.

12 THE COURT: Mr. Anthony?

13 MR. ANTHONY: Yes, sir. Yesterday afternoon
14 Mr. Padgett was good enough to give me the addresses -- or the
15 birthdays and social security numbers of a number of his
16 witnesses. He didn't give me one for Ms. Wharton, though. So
17 I need to get that information so if she has any impeachable
18 offenses I can know and we'll be able to state what I can do
19 about that.

20 MR. PADGETT: I'll be glad to get that information
21 from her.

22 THE COURT: Mr. Anthony, are you ready to go
23 forward?

24 MR. ANTHONY: Yes, sir, I am.

25 THE COURT: Are you going to go ahead or you need

1 Mr. Vandiver to be back before you start?

2 MR. ANTHONY: He's going to be right back.

3 THE COURT: All right. I'll wait on him.

4 MR. ANTHONY: Thank you, Your Honor.

5 [PAUSE.]

6 THE COURT: You ready?

7 MR. ANTHONY: Yes, sir. Thank you.

8 THE COURT: You ready at this point in time?

9 MR. PADGETT: Yes. I don't anticipate my direct
10 being very long at all.

11 THE COURT: Okay. If we have to stop and take a
12 little break, we'll see where we are. Let's get started with
13 it.

14 Anything, Mr. Grose, before we begin?

15 MR. GROSE: No, sir.

16 THE COURT: Bring the jury back.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 10:00 a.m.)

19 THE COURT: The record should reflect that all
20 jurors have returned to the courtroom. I trust everyone had a
21 good evening and you're ready to begin this morning. When we
22 rested yesterday afternoon the State had presented its case.
23 At this point in time, we will allow the defendants to go
24 forward and present their case.

25 First Mr. Haskell. Mr. Padgett?

MEYUN WHARTON - DIRECT BY MR. PADGETT

1 MR. PADGETT: Thank you, Your Honor. Mr. Haskell
2 calls Meyun Wharton.

3 THE COURT: Ma'am, come forward to be sworn.

4 MEYUN WHARTON, after having been duly sworn,
5 testified as follows:

6 THE COURT: Your witness, Mr. Padgett.

7 DIRECT EXAMINATION

8 BY MR. PADGETT:

9 Q. Ma'am, my name is Tripp Padgett, and I am the
10 attorney for Mr. Haskell. Will you please state your name for
11 the record.

12 A. Meyun Wharton.

13 Q. And you might speak up just so the court reporter
14 can hear you.

15 A. Meyun Wharton.

16 Q. Thank you. Where do you live presently? Where do
17 you live?

18 A. 1108 Cambridge Street, Apartment 503.

19 Q. Where did you live on February 10th, 2004?

20 A. 1108 Cambridge Street, Apartment 401.

21 THE COURT: Speak slowly so she can take that down,
22 please.

23 Q. Could you speak slowly.

24 A. 1108 Cambridge Street, Apartment 401.

25 Q. Apartment 401, is that known as -- what's that

MEYUN WHARTON - DIRECT BY MR. PADGETT

1 complex known as?

2 A. The Village.

3 Q. The Village. Does it have another name, too?

4 A. Hickory Heights Apartment.

5 Q. Okay. Thank you. Ms. Wharton, if I can point your
6 attention to Defendant Haskell's Exhibit 2. Do you recognize
7 what this depiction is or what it could be?

8 A. Uh-huh.

9 Q. That's a yes?

10 A. Yes.

11 Q. Who is your next door neighbor?

12 A. Kytraundra Cole.

13 Q. What apartment was she in?

14 A. 402.

15 Q. Okay, 402?

16 A. No. Yeah, 402.

17 Q. Now, if this is 402 where are you located? Here,
18 and you can mark on it. Yeah, if you'll take the top off of
19 the pen and you can mark it as your apartment.

20 A. (The witness complied).

21 Q. So you're right next door to Ms. Cole?

22 A. Yes.

23 Q. Okay. Were you in your apartment the night of
24 February 10th, 2004?

25 A. No.

MEYUN WHARTON - DIRECT BY MR. PADGETT

1 Q. You were not in your apartment?

2 A. No.

3 Q. What was your relationship to Mr. Sherman Norman?

4 A. He was my boyfriend.

5 Q. Okay. Were you dating him at that time?

6 A. Yes.

7 Q. Do you have any knowledge of who was in your house
8 at this time?

9 A. Yes.

10 Q. Who was?

11 A. My mother and my son.

12 Q. Was anybody else in your house?

13 A. No.

14 Q. And that was apartment what?

15 A. 401.

16 Q. Next door to Ms. Cole's?

17 A. Yes.

18 Q. And those are the only two people in that house on
19 February 10th, 2004?

20 A. Yes.

21 MR. PADGETT: Okay. I have nothing further, Your
22 Honor?

23 THE COURT: Mr. Anthony.

24 MR. ANTHONY: Thank you, Your Honor.

25 CROSS-EXAMINATION

MEYUN WHARTON - CROSS BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. Well, where were you that night?

3 A. At my aunt's house.

4 Q. And what was your aunt's name?

5 A. Lillian Cunningham.

6 Q. Where does she live?

7 A. 209 Raymond Road.

8 Q. Okay. And Mr. Norman, you and Mr. Norman were
9 involved at that time; is that right?

10 A. Yes.

11 Q. You had a romantic boyfriend-girlfriend
12 relationship?

13 A. Yes.

14 Q. And he would be over at the Village at your
15 apartment some, wouldn't he?

16 A. Yes.

17 Q. Did he have -- I mean, did he pretty much come and
18 go as he pleased from there?

19 A. Yes.

20 Q. And did he have a key to get in?

21 A. No.

22 Q. So somebody would have had to let him in?

23 A. Yes.

24 Q. But it wouldn't be uncommon for him to be over
25 there?

MEYUN WHARTON - CROSS BY MR. ANTHONY

1 A. Uh-uh. He was with me.

2 Q. Huh?

3 A. He was with me.

4 Q. He was with you. Okay. When was he with you?

5 A. On the 10th he was with me at my aunt's house.

6 Q. On the what?

7 A. I guess it was the 10th.

8 Q. Okay.

9 A. But when it happened he was by my aunt's house with
10 me.

11 Q. And when did you first have somebody ask you where
12 you were on the 10th of February, 2004?

13 A. I guess it was beginning of the year.

14 Q. The beginning of this year?

15 A. (Nodded).

16 Q. Is that a yes?

17 A. Yes.

18 Q. Who asked you where you were? Who came and talked
19 to you about where you were on February 10th, 2004?

20 A. Well, my momma had asked me was I at the house.

21 Q. Your mother?

22 A. I wasn't at the house that day. Monte asked me was
23 I there.

24 Q. Your mother asked you what?

25 A. My mother asked me was I at the house. I told her

MEYUN WHARTON - CROSS BY MR. ANTHONY

1 no. Because Monte had asked her, I guess.

2 Q. Okay. Okay. So your mother asked you if you were
3 at the Village.

4 A. (Nodded).

5 Q. When you say the house you say the apartment at the
6 Village; is that right?

7 A. Yes.

8 Q. So your mother asked you that the first of this
9 year; is that correct? You got to answer yes or no.

10 A. Yes.

11 Q. And then Monte came and talked to you about it; is
12 that correct?

13 A. Yes.

14 Q. Okay. And Monte wanted to know if you were at the
15 Village on February 10th, 2004?

16 A. Yes.

17 Q. Okay. And you recall specifically two years ago you
18 were at -- you were not at the Village?

19 A. I know I wasn't at the Village because I couldn't
20 get to my apartment because the police were down there. So my
21 aunt had to let us out in front of my Uncle Joe's house in
22 front of the Village. So that's how I know I wasn't there.

23 Q. Let us out. Who is us?

24 A. Me and Sherman Norman.

25 Q. And when was that?

MEYUN WHARTON - CROSS BY MR. ANTHONY

1 A. February the 10th.

2 Q. What time was that?

3 A. I don't know the exact time but I know it was
4 nighttime because the police and everything was at the top of
5 our building and my aunt couldn't drive up there. So she had
6 to let us out in front of my Uncle Joe Bryson's apartment.

7 Q. And what's your aunt's name?

8 A. Lillian Cunningham.

9 Q. Oh, that's Ms. Cunningham. Okay. And did you
10 eventually get to your apartment?

11 A. Yes, after the police left.

12 Q. And who was there?

13 A. My mother and my son.

14 Q. All right. And who were they, what are their name?

15 A. Georgia Ann Wharton and Quadarious [ph] Gilbert.

16 Q. And so Monte came to you and asked you where you
17 were that night?

18 A. Yes.

19 Q. And did he ask you anything else?

20 A. No. He just asked me that and I told him.

21 Q. And then who else talked to you about what happened
22 that night?

23 A. Nobody.

24 Q. Nobody else has ever talked to you about it?

25 A. Uh-uh.

MEYUN WHARTON - CROSS BY MR. GROSE

1 Q. Just Monte?

2 A. And my mother.

3 Q. And your mother?

4 A. That's it.

5 Q. Well, how did you know to come to court today?

6 A. I got subpoenaed. Got subpoenaed.

7 Q. Okay. Okay. And did you see Monte that night?

8 A. No.

9 Q. Did you see Clarence Harrison, Blue?

10 A. No.

11 Q. When you were there you said you were at your Aunt

12 Lillian Cunningham's house that night?

13 A. Yes.

14 Q. With Mr. Norman?

15 A. Yes.

16 Q. And was Ms. Cunningham there as well?

17 A. Yes.

18 MR. ANTHONY: Thank you. That's all on cross.

19 THE COURT: Mr. Grose?

20 MR. GROSE: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. GROSE:

24 Q. The prosecutor asked you some questions about
25 remembering that night. That was a pretty big deal that

MEYUN WHARTON - CROSS BY MR. GROSE

1 night, wasn't it?

2 A. Yes.

3 Q. When you came back you saw the police there?

4 A. (Nodded).

5 Q. And is that a yes?

6 A. Yes.

7 Q. And you couldn't get back to your apartment because
8 of the police being there?

9 A. Yes.

10 Q. And you certainly heard about what had happened that
11 night and that was stuck in your mind, correct?

12 A. Yes.

13 Q. I mean, this was not an ordinary day?

14 A. No.

15 Q. So it's something that would stand out to you?

16 A. Yes.

17 Q. He asked you some questions about, you know, where
18 you were and about Mr. Norman. And Mr. Norman was with you?

19 A. Yes.

20 Q. Okay. He also asked you some questions about who
21 you had given this information to. Did anybody from the
22 police department ever come to your house on February of '04
23 to ask you questions?

24 A. No.

25 Q. And your apartment was right next door to where this

MEYUN WHARTON - CROSS BY MR. GROSE

1 incident took place?

2 A. Yes.

3 Q. In March of '04, the next month, did anybody from
4 the police department come and ask you questions about what
5 happened?

6 A. No.

7 Q. Has anybody from the solicitor's office ever come
8 and asked you questions about what happened?

9 A. No.

10 Q. If the police or the solicitor had asked you
11 questions about what happened you would have told them the
12 same thing you told them here today, wouldn't you?

13 A. Yes.

14 MR. ANTHONY: Objection, calls for speculation.

15 MR. GROSE: I think that's well within her
16 knowledge.

17 THE COURT: Overruled.

18 BY MR. GROSE:

19 Q. You would have told them the same thing?

20 A. Yes.

21 MR. GROSE: Thank you.

22 THE COURT: Redirect?

23 MR. PADGETT: I don't have anything further, Your
24 Honor.

25 THE COURT: You may step down.

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 MR. ANTHONY: May I approach one minute?

2 THE COURT: Yes, you may.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: Ma'am, you may step down but you are
5 still under subpoena and not released from that subpoena.
6 I'll ask you to wait outside the courtroom. Thank you very
7 much.

8 THE COURT: Mr. Padgett, you may call your next
9 witness.

10 MR. PADGETT: Thank you, Your Honor. The defense
11 would call Janet Brownlee Jackson.

12 THE COURT: Check to see if Janet Brownlee Jackson
13 is outside the courtroom.

14 Come forward, ma'am, be sworn.

15 JANET BROWNLEE JACKSON, after having been duly
16 sworn, testified as follows:

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. PADGETT:

20 Q. Good morning, ma'am.

21 A. Good morning.

22 Q. My name is Tripp Padgett, and I am the attorney for
23 Mr. Haskell.

24 A. Yes.

25 Q. Thank you. Would you please state your name for the

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 record.

2 A. Janet Brownlee Jackson.

3 Q. And where do you live?

4 A. Iva, South Carolina.

5 Q. Where were you the night of February 10th, 2004?

6 A. I stayed in Oakland Apartments, Apartment 206, but I
7 was at Apartment 205.

8 Q. So you lived at Oakland Apartments?

9 A. Yes, sir.

10 Q. Ma'am, I have placed a drawing on the easel.

11 Looking at that, can you tell where Oakland Apartments are
12 located.

13 A. Yes, sir.

14 Q. Where would they be located?

15 A. Over here (indicated).

16 Q. If you'd like to you can take the top off that pen
17 and mark on that where those are located?

18 A. (The witness complied).

19 Q. Okay. Now, you just placed an X in a certain
20 apartment. What is that? Where is that place you marked that
21 X?

22 A. Apartment 205.

23 Q. Apartment 205. And that's where you were the night
24 of February 10th, 2004?

25 A. Yes, sir.

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 Q. How long were you at that apartment?

2 A. From about after seven until after eight.

3 Q. What were you doing there?

4 A. Watching TV and talking.

5 Q. And talking?

6 A. Yes, sir.

7 Q. With whom?

8 A. Me, Neketa, Jessica, Alti and Chris Brown and

9 Lakendra.

10 Q. Does Jessica have a last name?

11 A. Butler.

12 Q. And what are the last names of the other people?

13 A. Gray and Brown.

14 Q. And you said from after seven and after eight?

15 A. Yes, sir.

16 Q. How do you know that you were there for those times?

17 A. Because we were getting ready to watch Martin and it

18 comes on at 7:30.

19 Q. And at that time, those people you named were

20 present at that apartment?

21 A. Yes, sir.

22 Q. Were you all in the apartment the whole time?

23 A. We were in and out standing on the porch.

24 Q. Okay. The porch. Would you mark where the porch is

25 located.

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 A. (The witness complied).

2 Q. Thank you, ma'am. And that's the X where it's
3 marked balcony?

4 A. Right.

5 Q. Would you describe that type of area. Is it closed
6 is it open, does it have walls?

7 A. It's open, all open.

8 Q. So the stairway is open?

9 A. Yes. You can see down, up, onto the next apartments
10 and everything.

11 Q. So if you looked back towards up-- would you
12 identify that apartment complex behind Oakland Apartments?

13 A. That's the Village.

14 Q. Does it go by another name?

15 A. They call it Hickory Heights Apartments.

16 Q. So if you are standing on the balcony facing Hickory
17 Heights are able to see there?

18 A. Only going up toward like the bushes.

19 Q. But you can see people going downstairs?

20 A. Yes, sir.

21 Q. So from after seven until after eight was
22 Mr. Haskell in your presence?

23 A. Yes, sir.

24 Q. Was there any time that he left your presence?

25 A. No, sir.

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 Q. Any time that he left the apartment that you marked
2 with an X?

3 A. He left but we were standing outside. I could see
4 him downstairs knocking on the man's door downstairs.

5 Q. What was he doing knocking on the man's door
6 downstairs?

7 A. He went to use the restroom.

8 Q. Why couldn't he use the bathroom in your apartment?

9 A. At my apartment?

10 Q. Or in the apartment you marked with an X?

11 A. His cousin was in the shower and my daughter was in
12 my shower.

13 Q. Okay.

14 A. And went and stood on the porch from then on.

15 Q. So he left that apartment, went downstairs, knocked
16 on a man's door?

17 A. Yes.

18 Q. Did the man let him in?

19 A. No, sir.

20 Q. What happened then?

21 A. The man started arguing something and telling him to
22 get away from his door, and he came back up on the balcony
23 with us.

24 Q. And he being who?

25 A. Monte, Alti.

JANET BROWNLEE JACKSON - DIRECT BY MR. PADGETT

1 Q. So he knocked on the door, The man turned him away
2 and he came back upstairs?

3 A. Yes, sir.

4 Q. And during that entire period of time Mr. Haskell
5 was with you?

6 A. Yes, sir.

7 Q. At any point did someone else come to the apartment?

8 A. Meaning?

9 Q. Were you ever made aware of something that occurred
10 in Hickory Heights?

11 A. Yes, sir.

12 Q. How were you made aware of that?

13 A. Chris Brown came back and said that someone had been
14 shot.

15 Q. Now, you said he came back. Did he just walk up the
16 stairs, run up the stairs?

17 A. He walked up the steps.

18 Q. And he just said?

19 A. Someone had been shot, so we know how the police
20 department is in Abbeville.

21 MR. ANTHONY: Objection.

22 THE COURT: Sustained.

23 BY MR. PADGETT:

24 Q. So when Mr. Brown came up the stairs.

25 A. Yes, sir.

JANET BROWNLEE JACKSON - CROSS BY MR. ANTHONY

1 Q. And told you someone had been shot.

2 A. Yes, sir.

3 Q. Mr. Haskell had been with you or in your --

4 A. Presence.

5 Q. -- presence or vision.--

6 A. Yes, sir.

7 Q. -- the entire time?

8 A. Yes, sir.

9 MR. PADGETT: One second, Your Honor.

10 THE COURT: Yes, sir.

11 MR. PADGETT: I have nothing else further. Thank
12 you, Your Honor.

13 THE COURT: Mr. Anthony, your witness.

14 CROSS-EXAMINATION

15 BY MR. ANTHONY:

16 Q. Ms. Jackson.

17 A. Yes, sir.

18 Q. Mr. Haskell was over at your apartment that night?

19 A. At his cousin's apartment.

20 Q. It was his cousin's apartment?

21 A. Yes, sir.

22 Q. And you were at his cousin's apartment, too?

23 A. Yes, sir. I lived across the hall.

24 Q. Okay. I see. And what was his cousin's name?

25 A. Neketa Gray.

JANET BROWNLEE JACKSON - CROSS BY MR. ANTHONY

1 Q. And who did you say was there?

2 A. Neketa Gray; Lakendra Gray; myself, Janet Jackson;
3 Jessica Butler and Chris Brown.

4 Q. And Mr. Haskell?

5 A. Yes, sir.

6 Q. Now, you obviously knew Mr. Haskell from before
7 this?

8 A. Yes, sir.

9 Q. Okay. And how do you know him?

10 A. I met him from his cousins.

11 Q. How long have you been knowing Mr. Haskell?

12 A. About three years.

13 Q. And how often would you see him?

14 A. I see him quite often.

15 Q. And, I mean, did you know him three years at the
16 time or have you known him three years now?

17 A. I just know him three years in a row, yeah, from
18 then to now.

19 Q. From then until now. Okay. So at the time you'd
20 known him about a year; is that what you are saying? Or at
21 the time you'd known him three years and now you know him
22 five?

23 A. I knew him three years prior to before the time.

24 Q. Okay. So now you've known him five years?

25 A. Yes, sir.

JANET BROWNLEE JACKSON - CROSS BY MR. ANTHONY

1 Q. And has your, I guess you'd say social relationship
2 with Mr. Haskell continued since this incident?

3 A. Yes, sir.

4 Q. And you continue to see him from time to time?

5 A. Once in a blue moon because I stay in Iva.

6 Q. But at the time when you were living in Abbeville?

7 A. Yes, sir.

8 Q. At Oakland apartments?

9 A. Yes, sir.

10 Q. When did you leave Oakland Apartments?

11 A. Last year of May.

12 Q. May of '05?

13 A. Yes, sir.

14 Q. So you lived in Oakland Apartments all of '04 and
15 almost half of '05?

16 A. Yes, sir.

17 Q. And during that time did you see Mr. Haskell pretty
18 often?

19 A. When I was staying in Oakland?

20 Q. When you were staying in Oakland.

21 A. Yes, sir.

22 Q. And do you know Clarence Harrison?

23 A. Yes, sir.

24 Q. And how do you know him?

25 A. From just being out.

JANET BROWNLEE JACKSON - CROSS BY MR. ANTHONY

1 Q. Did you see him there that night?

2 A. No, sir.

3 Q. And are you still close to Mr. Haskell's family?

4 You said you met him through his cousins?

5 A. Yes, sir. Yes, sir.

6 Q. Who are they?

7 A. Lakendra Gray, Neketa Gray.

8 Q. Okay. Those are the who women that had the
9 apartment across from yours?

10 A. Yes, sir.

11 Q. And do you still see them?

12 A. Yes, sir, when I come to Abbeville.

13 Q. And who was it contacted you about testifying in
14 this case or talking about what you knew about this?

15 A. Who contacted me?

16 Q. Yes.

17 A. Tripp.

18 Q. Okay. And when was that?

19 A. It was last month.

20 Q. Okay. And when did you become aware that

21 Mr. Haskell had been charged with this?

22 A. Not too long after it happened.

23 Q. And you said you were with him until a little after
24 eight. What happened a little after eight to separate things?

25 A. His girlfriend came to pick him up.

JANET BROWNLEE JACKSON - CROSS BY MR. ANTHONY

1 Q. And who was that?

2 A. Adrian Hill.

3 Q. And so after that did you see him any more that
4 night?

5 A. No, sir.

6 Q. Okay. Do you know Mario Adams?

7 A. Not by that name.

8 Q. Well, do you know who he is?

9 A. Yes, sir.

10 Q. Did you see him that night?

11 A. No, sir.

12 Q. Did you see Sherman Norman that night?

13 A. No, sir.

14 Q. And what were you doing during this period of time
15 from seven to eight?

16 A. We were sitting at Neketa's house, and we were
17 getting ready to watch Martin. He had to -- Alti had to use
18 the bathroom. So his cousin was in his shower. We went to my
19 apartment. My daughter was in the shower. And he went down
20 the steps, and we looked down the steps and after we heard the
21 man arguing he came back up the steps and we were outside on
22 the balcony.

23 Q. And where did he go then?

24 A. He stayed with us outside on the balcony until we
25 went back in his cousin's house.

JANET BROWNLEE JACKSON - REDIRECT BY MR. PADGETT

1 Q. And what time did Martin come in?

2 A. 7:30.

3 Q. Did you watch martin?

4 A. Yes, sir, a little bit of it.

5 MR. ANTHONY: If I could have one minute.

6 THE COURT: Yes, sir.

7 MR. ANTHONY: That's all on cross.

8 THE COURT: Mr. Grose?

9 MR. GROSE: No questions.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. PADGETT:

13 Q. Ma'am, do you recall about what time Mr. Haskell was
14 picked up?

15 A. It was about 25 after 8:00 or 8:30.

16 MR. PADGETT: I have nothing further, Your Honor.

17 THE COURT: Any recross, Mr. Anthony, on that point?

18 MR. ANTHONY: No, sir.

19 THE COURT: Mr. Grose?

20 MR. GROSE: No, sir.

21 THE COURT: You may step down, ma'am.

22 Any objection to this witness being released at this
23 time?

24 MR. PADGETT: No, Your Honor.

25 THE COURT: Any objection?

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 MR. GROSE: No, sir.

2 MR. ANTHONY: No, sir.

3 THE COURT: Ma'am, you are free to go. Thank you
4 very much.

5 THE WITNESS: Thank you, sir.

6 THE COURT: You may call your next witness.

7 MR. PADGETT: My next witness will be Jessica
8 Butler.

9 THE COURT: Mr. Bailiff, Jessica Butler, please.
10 Jessica Butler.

11 Ma'am, come forward to be sworn. You are you
12 Ms. Butler?

13 MS. BUTLER: Yes, sir.

14 JESSICA BUTLER, after having been duly sworn,
15 testified as follows:

16 THE COURT: Mr. Padgett, your witness.

17 DIRECT EXAMINATION

18 BY MR. PADGETT:

19 Q. Ma'am, would you state your full name for the
20 record, please.

21 A. Jessica Nicole Butler.

22 Q. And I should have introduced myself first. My name
23 is Tripp Padgett. I'm the attorney for Mr. Haskell.

24 A. Okay.

25 Q. Ms. Butler, where do you live?

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 A. I live on 506 Branch Street, Apartment 407.

2 Q. And that's where you live now?

3 A. Uh-huh.

4 Q. Where did you live on February 10th, 2004?

5 A. At 200 Virginia Drive, Apartment 406.

6 Q. Are you employed now?

7 A. Uh-huh.

8 Q. Where do you work?

9 A. Phoenix Cafe.

10 Q. How long have you worked there?

11 A. For two and a half years.

12 Q. How long have you known Mr. Haskell?

13 A. For about seven or eight years.

14 Q. You've grown up with him or just known him?

15 A. I've grown up with him. I knew him when I was a
16 little girl.

17 Q. Let me take you back to February 10th, 2004. At
18 that time, were you dating anybody?

19 A. Uh-huh, Patrick Wharton.

20 Q. Do you recall where you were the night of February
21 10th, 2004?

22 A. Earlier that day I was working. I got off --

23 Q. Where?

24 A. At the Phoenix Cafe. I got of around about 6:00,
25 6:30. I made a couple stops at some friends' house, went to

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 the store, went to pick my kids up, my little girl from my
2 mom's, got to my apartment around about 6:45, 6:50.

3 Q. And how do you know that period of time?

4 A. Because I got dropped off at my mom's house around
5 about 6:30 and it takes me like 5 minutes to walk through a
6 pathway to get to my house, and I conversated with my father
7 and he let me know my daughter was already at the apartment
8 complex, that somebody had already picked her up.

9 Q. At what apartment complex?

10 A. At the Hickory Heights Apartment where I stayed at.

11 Q. And so please describe later on where you went after
12 that. Did you go to Hickory Heights?

13 A. I went to my house, dropped my supplies off that I
14 ~~had, my purse. I left back down my steps, walked up the other~~
15 flight of steps and went to Ms. Brownlee's house and went to
16 the other apartment across the hall where we were, you know,
17 cooking and having -- just mingling there, and in and out the
18 door, standing on the porch.

19 Q. Okay, now. Hold on. Where are you now?

20 A. Now I'm at Ms. Brownlee's house.

21 Q. Okay. Where is that?

22 A. It's at 406.

23 Q. 406 what?

24 A. 406 Hickory Heights Apartments.

25 Q. Let me ask you. I'm going to hand you a black

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 marker. Now, if you would look at the illustration behind
2 you, could you point Oakland Apartments and then point out
3 Hickory Heights Apartments, please.

4 A. This is Oakland Apartments (indicated).

5 Q. Okay.

6 A. And this is Hickory Heights Apartments (indicated).

7 Q. Could you point out where the Grays live, Lakendra
8 Gray?

9 A. Here (indicated).

10 Q. And if you need to, you can step out of the chair
11 and mark it with your black marker.

12 A. Here (indicated).

13 Q. Okay. That's fine. Okay. So you got to that

14 apartment about what time?

15 A. It was around about 6:45.

16 Q. And who was there when you were there?

17 A. As I was going in the door Lakendra was coming in
18 the door behind me, and she went to take a shower. And she
19 was the only person there at the time, but about 5 minutes
20 later, 5 minutes later Jamie -- Janet comes from her
21 apartment.

22 Q. What's Janet's full name?

23 A. Janet Jackson Brownlee.

24 Q. Okay. So she came in?

25 A. Yeah, she came in.

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 Q. Okay.

2 A. And the owner of the apartment, she was there with
3 her kids.

4 Q. And who was that?

5 A. Neketa Gray.

6 Q. Okay. All right. So at that point who is in the
7 house?

8 A. Me, Neketa, Janet and Lakendra.

9 Q. And about what time is that?

10 A. When all of us were there together it was around
11 about 10 until 7:00.

12 Q. At any point in the evening did anybody else join
13 you in the house?

14 A. Christopher Brown.

15 Q. Okay. What did Christopher Brown have to do with
16 anything?

17 A. He was Lakendra's boyfriend. And she was in the
18 shower at this time, and he came in and asked where she was
19 and told us that, you know, let her know that she'll be
20 back -- he would be back.

21 Q. At any point in the evening did Mr. Haskell join
22 you?

23 A. It was around about 7:15, 7:20.

24 Q. How do you know 7:15?

25 A. Well, I could say around about 7:15 or 20 because at

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 that time it was like two episodes of Martin and the second
2 episode was coming on when he came in the door?

3 Q. Okay. Okay. Now, what were you doing when the
4 episodes of Martin were on?

5 A. I know when, you know, the first episode was on I
6 was in the kitchen. Me and Neketa was in the kitchen talking,
7 and I left out the kitchen to go downstairs to get a cigarette.

8 Q. Okay. So Mr. Haskell showed up about 7:15, as you
9 testified?

10 A. Uh-huh, 7:15.

11 Q. Was he in your presence? How long was he in your
12 presence?

13 A. Until around a little bit after 8 o'clock.

14 Q. What were you all doing? Where were you when --

15 A. We were back and forth from Janet's apartment to
16 Neketa's apartment. Just, you know, basically in the
17 apartment on the patio.

18 Q. And the patio, please describe that to me.

19 A. The patio is like a balcony. Janet's door is here
20 and Neketa's door is here (indicated).

21 Q. Okay. At any point did Mr. Haskell leave your
22 senses? Were you unable to see him or hear him?

23 A. No.

24 Q. And he was in your presence either earshot or you
25 could see him until you said a little after 8:00. Do you know

JESSICA BUTLER - DIRECT BY MR. PADGETT

1 how long after 8:00?

2 A. No. I know it was just a little after 8:00.

3 Q. Why do you know it was a little after 8:00? What
4 happened a little after 8:00?

5 A. Well, after it was a little after 8:00 Chris Brown
6 came in and said that someone had been shot in the Village.

7 Q. Okay. All right. I'm sorry. Go ahead.

8 A. And at the time, I was dating Patrick Wharton and he
9 has to be at work at 9:00. So I know I remember going to wake
10 him up to let him know that, you know, it was after 8 o'clock,
11 he got to get up. He was working at Pirelli at the time.

12 Q. Now, when Chris Brown -- when you heard Chris Brown
13 say what he said Mr. Haskell was still in your presence?

14 A. Uh-huh. Mr. Haskell was standing at the bottom of
15 the stairs.

16 Q. And had he left your presence?

17 A. No, sir.

18 Q. Since you got there?

19 A. No, sir.

20 Q. So in between the time he got there and Mr. Brown
21 coming up he was in your presence?

22 A. Uh-huh.

23 Q. At Oakland Apartments?

24 A. Uh-huh.

25 Q. Ms. Butler, have you ever been convicted of any

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 crimes?

2 A. Yes, sir.

3 Q. What was that?

4 A. Breach of trust.

5 Q. About how long ago was that?

6 A. About three years ago.

7 Q. Okay.

8 MR. PADGETT: We have nothing further, Your Honor.

9 THE COURT: Mr. Anthony, your witness.

10 CROSS-EXAMINATION

11 BY MR. ANTHONY:

12 Q. You said you grew up with Mr. Haskell?

13 A. Mr. Haskell is a little older than me, but I

14 remember Mr. Haskell from when I was a little girl from

15 hanging with some of my older cousins.

16 Q. Okay. Then if you don't mind my asking, how old are
17 you now?

18 A. I am 26 years old.

19 Q. Okay. All right. And how often do you see him now?

20 A. Every so often I might run into him in the store or
21 somewhere, or a neighborhood somewhere.

22 Q. So it's possible for you to have contact with him?

23 A. Not really.

24 Q. Well, you just said you run into him?

25 A. Yeah, I run into him. I mean, I run into a lot of

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 people. I see a lot of people.

2 Q. And has he ever talked to you about that night and
3 where he was and all that kind of thing?

4 A. No, sir.

5 Q. You've never had a conversation with him about it?

6 A. No.

7 Q. Who contacted you about coming here today?

8 A. I was subpoenaed by the sheriff's department.

9 Q. Okay. Well, has anybody -- I mean, did anybody ever
10 call you and talk to you about what had happened or anything?

11 A. No.

12 Q. So you never had a conversation with Mr. Padgett
13 until this morning?

14 A. No. I talked to Mr. Padgett about two months ago on

15 my job when, you know, I had talked to Ms. Brownlee and she
16 let me know what was going on because I had moved to
17 Greenville and I just recently moved back. And she let me
18 know what was going on and would I be interested in being a
19 witness, you know, to testify on Monte's behalf.

20 Q. And Ms. Brownlee was the lady that lived at -- did
21 she live at Oakland or --

22 A. Yes, we all lived at Oakland Apartments.

23 Q. She lived at Oakland, too?

24 A. Uh-huh.

25 Q. Okay. So Ms. Brownlee talked to you about coming to

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 court today and then Mr. Padgett spoke to you about it at your
2 job?

3 A. Uh-huh.

4 Q. But you never talked to Mr. Haskell?

5 A. No.

6 Q. Do you know Mario Adams?

7 A. Yes.

8 Q. Did you see him in Oakland that night?

9 A. No, I did not.

10 Q. And how did Mr. Haskell leave?

11 A. He was picked up by his lady friend, Ms. Hill.

12 Q. And at the time this happened how often would you
13 see Mr. Haskell?

14 A. I would see him like when I would be in Oakland
15 Apartments. You know, he would be at Ms. Gray's house.

16 Q. And was that pretty often?

17 A. No, because even though I stayed in Oakland
18 Apartments I wasn't there pretty often like that.

19 Q. Do you know Mr. Harrison?

20 A. Yes.

21 Q. How well do you know him?

22 A. I know him. We grew up together.

23 Q. Did you see him that night?

24 A. No.

25 Q. And you said there were two episodes of the TV

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 program that night?

2 A. Uh-huh.

3 Q. And you remember Mr. Haskell getting there while one
4 of them was on?

5 A. It was getting ready to go off and another episode
6 was getting ready to come on.

7 Q. Okay. Okay.

8 A. So that's why I could say it was between the time of
9 7:15 and 7:25 because the next episode comes on at 7:30.

10 Q. And what was Mr. Haskell doing while he is there?

11 A. He came in the house to use the restroom, but he
12 couldn't get in the restroom because someone was in the
13 shower. And he wasn't doing anything. We were just, you now,
14 kind of sitting around talking.

15 Q. So when he got there the first place he wanted to go
16 was to the bathroom?

17 A. To the restroom.

18 Q. And then after that he just kind of hung out there
19 until his girlfriend came and picked him up?

20 A. No. He asked Janet could he use her bathroom and
21 she told him to let her check because her little girl was in
22 the shower. Her kids were in between taking their baths. And
23 at that time, he wanted to go use another gentleman's bathroom
24 but he couldn't get in there, which was like right down the
25 stairs.

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 Q. So he went to two bathrooms and eventually got to
2 use one; is that correct? Did somebody eventually let him in
3 the bathroom?

4 A. I'm assuming he used the bathroom. He didn't say
5 anything else about the bathroom, unless he just held it.

6 Q. And then after he used the bathroom he just hung out
7 until his girlfriend came and picked him up?

8 A. Yeah, we were all just hanging out.

9 Q. You said that you woke your boyfriend up,
10 Mr. Wharton; is that right?

11 A. Uh-huh.

12 Q. And because he had to be at work at nine?

13 A. He had to be at work at nine.

14 Q. And was Mr. Haskell there when you did that?

15 A. Uh-huh. I went up the steps and woke him up and
16 came back out the house.

17 Q. All right. Because he lived at a different
18 apartment, I take it. He had his own apartment?

19 A. Who?

20 Q. Mr. Wharton?

21 A. No. Mr. Wharton was at my apartment.

22 Q. I see. So you went up the steps to your apartment
23 and woke him up?

24 A. Yes.

25 Q. And then when you came back down Mr. Haskell was

JESSICA BUTLER - CROSS BY MR. ANTHONY

1 still there?

2 A. He was still out there.

3 Q. And what time would that have been?

4 A. That was around about 5 after 8:00, and that's the
5 time I was coming out of my apartment. That's when the fellow
6 was coming and said that someone had been shot.

7 Q. And what time -- you said that at 5 after 8:00 when
8 you woke Mr. Wharton up that Mr. Haskell was still there.
9 What time did Ms. Hill come pick him up?

10 A. Might have been about 15 after 8:00, because at that
11 time Patrick was getting up to go to work. So it was probably
12 between 15 after 8:00, 8:30, somewhere along in there.

13 Q. Okay. So it could have been as late as 8:30?

14 A. Could have been.

15 MR. ANTHONY: That's all on cross for this witness.

16 THE COURT: Mr. Grose?

17 MR. GROSE: No questions.

18 THE COURT: Redirect?

19 MR. PADGETT: None, Your Honor.

20 THE COURT: Ma'am, you may step down. Thank you
21 very much.

22 Any objection to this witness being released?

23 MR. ANTHONY: No, sir.

24 MR. GROSE: No, sir.

25 THE COURT: Mr. Padgett, I assume you allow this

CHRISTOPHER BROWN - DIRECT BY MR. PADGETT

1 witness to be released?

2 MR. PADGETT: Yes, Your Honor.

3 THE COURT: Ma'am, you are free to go. Thank you
4 very much.

5 Mr. Padgett, you may call your next witness.

6 MR. PADGETT: Thank you, Your Honor. The defense
7 would call Christopher Brown.

8 MR. ANTHONY: May we approach, Your Honor?

9 THE COURT: Yes, you may. Attorneys come forward.

10 (WHEREUPON, a bench conference was had.)

11 THE COURT: Sir, come around and be sworn.

12 CHRISTOPHER BROWN, after having been duly
13 sworn, testified as follows:

14 THE COURT: Mr. Padgett, your witness.

15 DIRECT EXAMINATION

16 BY MR. PADGETT:

17 Q. Good morning, Mr. Brown. My name is Tripp Padgett.
18 I'm the attorney for Mr. Haskell. Would you state your full
19 name for the record, please, sir.

20 A. Christopher Vandarious Brown.

21 Q. You are currently in the Abbeville Detention Center?

22 A. Yes, sir.

23 Q. Do you recall any of the events of February 10th,
24 2004 where Mr. Rod Gartrell was shot?

25 A. All I know was --

CHRISTOPHER BROWN - DIRECT BY MR. PADGETT

1 Q. Well, no. Just do you recall that time period?

2 A. No, I don't really remember that.

3 Q. Do you remember hearing about it?

4 A. Yes, sir.

5 THE COURT: Sir, you're going to have to speak up
6 now. They've got to be able to hear you over there.

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 BY MR. PADGETT:

10 Q. Where were you when you heard about it?

11 A. I was in Oakland.

12 Q. You were in Oakland?

13 A. Yeah.

14 Q. Who told you about it? Or how did you find out
15 about it?

16 A. Like the next day or something somebody said that he
17 was shot.

18 Q. Okay. So you didn't find out about it that night?

19 A. No.

20 MR. PADGETT: I have nothing further, Your Honor.

21 THE COURT: Mr. Anthony, it's your witness.

22 MR. ANTHONY: No cross.

23 THE COURT: Sir?

24 MR. ANTHONY: No cross -- well, except for the
25 matter that we discussed.

1 THE COURT: That we discussed at side-bar, yes, sir.

2 MR. ANTHONY: I have no cross.

3 THE COURT: Thank you.

4 MR. GROSE: I don't have any questions, Your Honor.

5 THE COURT: Sir, you may step down.

6 Mr. Padgett, you may call your next witness.

7 MR. PADGETT: If it please the Court. If we could
8 take a quick recess.

9 THE COURT: Yes, we can take a break at this time.

10 Ladies and gentlemen of the jury, we're going to
11 take about a 10 minute break. It will probably turn into 15
12 minutes, but at any rate, it will be around 10 to 15 minutes.

13 As always I instruct you, do not begin any

14 discussions concerning this case until such time as you've
15 heard all the evidence and I've charged you concerning the law
16 and instructed you to begin your deliberations.

17 You may retire to the jury room.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 10:55 a.m.)

20 THE COURT: The Court is in recess for 10 minutes.
21 Thank you very much.

22 (WHEREUPON, a brief recess was taken.)

23 THE COURT: It's my understanding that none of the
24 parties require the presence of Ms. Cole at this time; is that
25 correct, Mr. Anthony?

1 MR. ANTHONY: Yes, sir.

2 THE COURT: Is that correct?

3 MR. PADGETT: That's correct, Your Honor.

4 MR. GROSE: Yes, sir.

5 THE COURT: Ms. Cole, you're free to go.

6 Is she in the courtroom? Tell Ms. Cole that she is
7 free to go. She's no longer under subpoena. She's released
8 from the case. Thank you.

9 Do you need further time for discussions?

10 MR. PADGETT: No, Your Honor. I think we had held
11 your warning of testifying in abeyance and now can go forward.

12 THE COURT: Well, at this point in time I believe
13 your client indicated -- this gentleman, Mr. Harrison, had
14 indicated he did not wish to testify. Of course, I'll let him
15 change that decision if he wishes to.

16 Now, Mr. Haskell, you've had an opportunity, I
17 assume, to fully consider the question of whether or not you
18 wish to testify in this case; is that correct?

19 DEFENDANT HASKELL: Yes, sir. I don't want to
20 testify. I have no need to testify.

21 THE COURT: Thank you very much. You can be seated.

22 THE COURT: Do you have any further witnesses? Are
23 you going to have any?

24 MR. PADGETT: No.

25 THE COURT: I'll bring the jury back and let you

1 rest.

2 Are you ready to begin?

3 MR. GROSE: Your Honor, we've had some additional
4 conversations about his decision not to testify and I think
5 we're in the same place that we were earlier. So when Mr.
6 Padgett rests we will rest immediately following that.

7 THE COURT: Okay. Does the State have any reply or
8 rebuttal testimony you wish to offer in?

9 MR. ANTHONY: Can I have a moment?

10 THE COURT: I know you may not have been expecting
11 that so I'll give you just a minute.

12 MR. ANTHONY: No. No, sir, I wasn't.

13 THE COURT: And, Mr. Harrison, just to confirm.

14 Your answer on the record, you still do not wish to testify;
15 is that correct?

16 DEFENDANT HARRISON: Yes, sir.

17 THE COURT: Thank you.

18 Do we have any specific requests for charge from the
19 parties?

20 MR. PADGETT: I do, Your Honor. I've handed those
21 up.

22 MR. GROSE: We have not handed anything up but we
23 request a mere presence charge.

24 THE COURT: I intend to give that.

25 MR. GROSE: I thought so. Thank you.

1 MR. PADGETT: Will Your Honor have some kind of
2 charge conference or something along those lines?

3 THE COURT: Well, what I expect to do now, since I
4 was not expecting you to rest, I'm looking at the clock. I'll
5 probably go ahead and get your resting on the record and then
6 allow you to begin the arguments and probably we'll take the
7 lunch break before I bring them back to charge and send them
8 out to do the deliberating. In the meantime, I'll let you
9 look over the verdict forms and things like that.

10 I'll let you know I am intending to charge assault
11 and battery of a high and aggravated nature as a lesser
12 included offense in the case as well unless there's some
13 strong objection to my doing so.

14 MR. GROSE: I think you have to based on the state
15 of the law.

16 THE COURT: I think I'm pretty much required to the
17 way the law is now.

18 MR. ANTHONY: Your Honor?

19 THE COURT: Yes, Mr. Anthony.

20 MR. ANTHONY: I did have a request, and I would
21 expect the Court probably intended to cover this, but I would
22 ask the Court to charge either -- what I'm going to hand up is
23 charge number 44 and 45 from Judge Irvin's criminal charge
24 book. It's the hand of one hand of all charge and the
25 liability for an accomplices act charge.

1 THE COURT: We'll take a look at those.

2 MR. ANTHONY: I would ask that that be charged or
3 something else that the Court has comparable to that.

4 THE COURT: I will take a look. I think it may
5 already be in there, the charge that I've prepared, but we'll
6 take a look at it.

7 MR. ANTHONY: And if I could have a moment on the
8 reply issue.

9 [PAUSE.]

10 THE COURT: Yes, sir?

11 MR. ANTHONY: I can tell the Court we would not
12 offer reply evidence. I would ask the Court for about 10
13 minutes before we argue though.

14 THE COURT: All right. We'll take it right now
15 while we've got them out. I'll just stay on the bench. Just
16 tell me when you're ready.

17 (WHEREUPON, there was a brief recess.)

18 THE COURT: Your client has not offered any evidence
19 in the case; is that correct?

20 MR. GROSE: We might have put a document in, Your
21 Honor.

22 THE COURT: You have not offered any testimony.

23 MR. GROSE: We have not offered any testimony.

24 THE COURT: Which is a little different position
25 from this defendant who has offered testimony. I'll be happy

1 to hear from you as to how you think we ought to handle that.

2 MR. GROSE: I'd sure like to get the last word, Your
3 Honor.

4 THE COURT: Well, I think you're probably entitled
5 to the last word since you haven't offered any evidence.
6 Probably we're going to have Mr. Padgett go first, then we'll
7 have the State go, then we'll let you go, is the way I think
8 we're probably going to let you do it.

9 MR. ANTHONY: Your Honor, I'd like to be heard on
10 that.

11 THE COURT: I will hear you on that.

12 MR. ANTHONY: I believe the law is, and I think I
13 can find the case along these lines, that in a case where more
14 than one defendant is tried --

15 THE COURT: If any of them presents evidence they
16 both have to go first.

17 MR. ANTHONY: Yes, sir. I'm very confident.

18 THE COURT: I hadn't looked that up because I was
19 expecting him to offer evidence. So I haven't checked into
20 it. I'll give you a minute, Mr. Anthony. In the meantime
21 we'll probably look ourself.

22 MR. ANTHONY: The case -- I believe the case is
23 State V. Crowe 188 S.E.2d 379.

24 THE COURT: All right. We'll take a look at that
25 while you get your thoughts together about your argument.

1 (WHEREUPON, a brief recess was taken.)

2 THE COURT: I have reviewed that case and I believe
3 the State is correct. So I will allow Mr. Padgett to go
4 first. Same batting order. You go second and then the State.

5 MR. GROSE: Thank you, Your Honor.

6 THE COURT: Yes, Mr. Anthony?

7 MR. ANTHONY: Your Honor, the only thing that I
8 think needs to be covered before we close the evidence is
9 Ms. Wharton, who was Mr. Padgett's first witness, she has a
10 2001 conviction for ABHAN.

11 THE COURT: And you wish to call her back and ask
12 her about that? I'll give you that right.

13 MR. PADGETT: I would stipulate.

14 MR. ANTHONY: I can do that or if they stipulate to
15 it.

16 THE COURT: Well, Mr. Grose, are you going to
17 stipulate to that?

18 MR. GROSE: I haven't seen the document.

19 MR. PADGETT: It was my witness and he had no
20 questions.

21 MR. GROSE: Actually --

22 THE COURT: I don't think he's waived his right. So
23 I'll let them do that.

24 MR. GROSE: My only question is, is this says Megan,
25 M-e-g-a-n, Wharton. I don't know if she testified what her

1 last name is. I'm not sure if it's the same person.

2 THE COURT: Well, she's still here. You want to
3 check with her before you make that stipulation?

4 MR. GROSE: I mean, if she says she did I'll
5 stipulate to that, Your Honor. So I can ask her about that?

6 THE COURT: Sure.

7 [PAUSE.]

8 Mr. Anthony, did you get that by social security
9 number as well?

10 MR. ANTHONY: Yes, sir, and birthday.

11 THE COURT: Birth date and social security number?

12 MR. ANTHONY: Yes, sir.

13 MR. GROSE: All right. I don't think she's out

14 there but I'll stipulate to it since the other information is
15 correct.

16 THE COURT: When I ask you if there's any reply or
17 rebuttal testimony just state that you have a stipulation and
18 put that on the record at that time.

19 MR. ANTHONY: Okay. And, Your Honor, is the Court,
20 as far as the charge the Court is going to give on the hand of
21 one hand of all, is it comparable to the one I handed up?

22 THE COURT: My law clerk did not have a chance to
23 review that yet. We will work on that. What we plan to do is
24 argue then we'll take lunch and we'll go over your proposed
25 charges, get it squared up. It's the one that's through the

1 standard charge book that's used by all the circuit judges.

2 MR. ANTHONY: What I was planning on doing is, I was
3 going to do a brief opening on the law.

4 THE COURT: Well, hold on just one second. We'll
5 look at it. Just one second.

6 MR. ANTHONY: Thank you, Your Honor.

7 [PAUSE.]

8 THE COURT: She tells me that ours is actually a
9 little longer as far as length, it has an example in it. But
10 it covers the same elements that your charge covers. You can
11 step around and read it, if you'd like.

12 MR. ANTHONY: Okay. Great. Thank you.

13 [PAUSE.]

14 MR. PADGETT: Your Honor, do you intend to charge
15 alibi?

16 THE COURT: Yes, sir.

17 MR. PADGETT: Thank you.

18 THE COURT: All right. The State ready?

19 MR. ANTHONY: Yes, sir, we are.

20 THE COURT: The defense ready?

21 MR. GROSE: Yes, sir.

22 THE COURT: Mr. Padgett, you ready?

23 MR. PADGETT: Yes, Your Honor.

24 THE COURT: Bring the jury back.

25 (WHEREUPON, the jury enters the courtroom at

1 approximately 11:38 a.m.)

2 THE COURT: The record should reflect that all
3 jurors have returned to the courtroom.

4 At this time, Mr. Padgett, you may call your next
5 witness.

6 MR. PADGETT: Your Honor, at this time Mr. Haskell's
7 defense rests.

8 THE COURT: At this point in time Mr. Harrison may
9 present his defense. Mr. Grose?

10 MR. GROSE: We also rest, Your Honor.

11 THE COURT: Does the State have any reply or
12 rebuttal testimony in the case?

13 MR. ANTHONY: Your Honor, the parties have

14 stipulated that Ms. Wharton, the first witness called by

15 Mr. Padgett this morning, has a 2001 conviction for assault
16 and battery of a high and aggravated nature. The State has no
17 reply evidence.

18 THE COURT: Is that correct, is that the
19 stipulation, Mr. Padgett?

20 MR. PADGETT: So stipulated.

21 THE COURT: Mr. Grose?

22 MR. GROSE: I agree.

23 THE COURT: That stipulation will be entered into
24 the record.

25 Ladies and gentlemen of the jury, we have now had

1 all of the evidence presented to you in the case. I told you
2 at the beginning of the trial once we have completed the
3 presentation of the evidence that the attorneys would be given
4 an opportunity to sum up their client's case before you.

5 As I told you at the beginning of the trial
6 statements made by attorneys does not constitute evidence in
7 the case, however, it is useful to you and you can use it in
8 determining their client's positions in regard to the evidence
9 that you have heard in the case thus far.

10 At this point in time the defense will be allowed to
11 go first with its argument. Mr. Padgett, you may begin.

12 MR. ANTHONY: Your Honor, the State wanted to open
13 briefly on the law.

14 THE COURT: Oh, you do wish to open?

15 MR. ANTHONY: Yes, sir.

16 THE COURT: Okay, sir, you may proceed. I didn't
17 understand that.

18 MR. ANTHONY: I apologize.

19 THE COURT: That's quite all right.

20 MR. ANTHONY: Thank you very much, Your Honor.

21 I'm going to speak to you just for a minute about
22 part of the law that is very important to this case, and it's
23 something the Judge will instruct you about when he gives
24 instructions, but it's so important that I just want to talk.
25 to you about it for a minute.

1 The concept is called the hand of one is the hand of
2 all. And what that means is that when two people combine
3 together to commit a crime that each person is responsible for
4 the act of the another. The act of one person is the act of
5 both people and each person is responsible for the natural and
6 probable consequences of the acts of the other during the
7 commission of the crime that they are committing.

8 So if you decide that Clarence Harrison and Monte
9 Haskell acted together to rob Rod Gartrell then Clarence
10 Harrison is guilty of attempted armed robbery and possession
11 of a firearm during the commission of a violent crime even
12 though Monte Haskell had the gun.

13 And Monte Haskell is guilty of attempted armed
14 robbery even though Clarence Harrison was the one who was
15 actually trying to get the property off of Rod Gartrell.

16 And if you decide that Monte Haskell shot Rod
17 Gartrell and that that's a natural -- that shooting is a
18 natural and probable consequence of the crime that they, the
19 two of them, agreed to commit then you can find Clarence
20 Harrison guilty of assault and battery with intent to kill
21 even though he's not the one that fired the gun.

22 It sounds kind of awkward but that's the law that
23 you'll be given by the Judge.

24 At this time, I'm going sit down. The defense
25 attorneys will make their arguments then I'm going to come

1 back and talk to you about how the State believes that you as
2 the jurors should find the facts in this case. Thank you.

3 THE COURT: Now, Mr. Padgett, you may proceed for
4 Mr. Haskell.

5 MR. PADGETT: Thank you, Your Honor.

6 Good morning, ladies and gentlemen of the jury.
7 Thank you for your patience. I appreciate you sitting here
8 for about four days listening to everything.

9 And during that time, you've heard the evidence,
10 you've heard testimony come from the witness chair, you've
11 seen exhibits or will see exhibits, pictures, some boards, and
12 you also have a stipulation, something that we've agreed to
13 that you'll have to consider.

14 But I'd like to go over with you some of the
15 testimony, which you are free to recall the way you shall
16 recall it, but I'd just like to point some things out.

17 The first witness by the State was Sergeant
18 Vandiver. He testified that it was dark around there and that
19 there was a -- the lighting was by a pole on Defendant's 1,
20 Mr. Haskell's 1. He pointed out the light here and he said
21 that there was a light pole here but it might not be on. So
22 he testified it was dark.

23 He testified that the bullet couldn't be matched to
24 any type of gun. So we don't know what type of gun it was.
25 Sergeant Vandiver also testified that the shooter had a mask

1 on. So the identity of the shooter was hidden.

2 Now, there was also some testimony by Sergeant
3 Vandiver that there was no physical evidence, nothing tying
4 Mr. Haskell to this incident.

5 Then Mr. Gartrell spoke. He was the victim in this
6 matter. He said the same thing, that it's dark out there, the
7 shooter wore a mask. He didn't know who it was. He didn't
8 even know a name. He didn't even know my client, Mr. Haskell.

9 He also said it was like two or three seconds and
10 then there was a flash. So you've got a masked shooter, two
11 or three seconds to view this person's appearance and then a
12 flash which impairs the vision as well.

13 He also testified that he was the same height and
14 weight as Mr. Haskell. But he also said that Darren Howland

15 was the same weight and height as Mr. Howland [sic]. He was
16 actually with Mr. Howland during this period of time with
17 Mr. Harrison down by the dumpsters.

18 And Defendant's 2 shows his marks in red that he was
19 around Oakland Apartments, comes up and then he marked a D
20 there, and then he and Mr. Harrison walked through the parking
21 lot and down the stairs together. Mr. Harrison -- excuse me,
22 Mr. Howland wasn't anywhere around, but he had the same height
23 and build as Mr. Haskell.

24 And he said Darren Howland had the same height and
25 weight as Mr. Haskell when asked the question how many other

1 tall and slender black men are in the vicinity. He said
2 Darren Howland is the same, and he is an individual that's
3 unaccounted for. Mr. Gartrell further testified that he
4 didn't see Mr. Haskell that night of February 10th, 2004.

5 The State's next witness was Sherman Norman, the
6 individual that you saw on the witness stand. He said he was
7 never in Hickory Heights. His statement said that he was. He
8 said that he never saw Mr. Haskell in Hickory Heights because
9 he wasn't in Hickory Heights, of course, his statement said
10 otherwise. But he got on the stand and he said that the
11 statement was not willingly given.

12 So I would submit that the amount of weight to put
13 on Mr. Norman's testimony should be very little. Of course,
14 ~~that is your province, and I will not invade that. That is up~~

15 to you. Ms. Wharton, that you saw this morning, testified
16 that Sherman Norman was with her, somewhere else. So he
17 couldn't have been where he said he was on the statement.

18 Mario Adams. We all remember Mario Adams. He was
19 granted immunity by the State for his testimony. He said that
20 he never saw Monte, when his statement said that he did. He
21 said that he was threatened and coerced to make that statement
22 by law enforcement and that he was influenced by Torey Brown,
23 an individual whose name has been thrown around a lot in this
24 case.

25 Mr. Adams' position was he wasn't at Oakland

1 Apartments on the 10th of February, 2004. Therefore, I submit
2 to you, ladies and gentlemen, that he did not have anything to
3 add to your consideration.

4 Ms. Cole. Ms. Cole testified about the incident,
5 what she remembers, Mr. Harrison coming in the door,
6 Mr. Gartrell coming in the door bleeding.

7 And it is a horrible thing that happened to
8 Mr. Gartrell. It certainly should never have happened, but it
9 did. But Mr. Gartrell came to the door bleeding, and any
10 wound to the face bleeds profusely.

11 And on the stand she said Mr. Harrison came to the
12 door behind Mr. Harrison -- behind Mr. Gartrell. She had
13 given a statement prior about something that was said that she

14 said Mr. Harrison said prior to all this, me and Monte got
15 some business to take care of. She didn't testify to that
16 from the stand.

17 Now, the State brought up that statement to say on
18 the date that you gave the statement that's what you said.
19 Well, from the stand she says she didn't testify she said
20 that. I would submit to you, ladies and gentlemen, that
21 that's about all the State has, is one statement by an
22 individual who did not testify to that on the stand.

23 The State then brought up her statement to say well,
24 you said it at one point. She also testified in her response
25 to the question by me that she was afraid of the police.

1 Detective John Smith, he also testified there was no
2 physical evidence tying Mr. Haskell to what occurred. He
3 testified as to the statement that Torey Brown gave saying
4 that Torey Brown said Mr. Gartrell told him Monte shot me.

5 Okay. Let's get that clear. That's what Torey
6 Brown said Gartrell told him on the way to the hospital.
7 Mr. Gartrell already testified he didn't know Monte's name.
8 So how is he going to tell Torey Brown Monte did it when he
9 didn't know his name?

10 Mr. Gartrell also testified he didn't know anything
11 about Monte Haskell, and the man was masked anyway. There was
12 seconds to view his physique and the flash of the gun. So
13 again, how is he going to tell somebody else that Monte did it
14 when he didn't know Monte -- excuse me, who Monte is,

15 Mr. Haskell. Didn't know his name, the shooter was masked.
16 How is Mr. Brown going to get this information?

17 So the statements that Mr. Gartrell gave to
18 Mr. Brown that were subsequently taken by Detective Smith are
19 inconsistent with Mr. Gartrell's testimony in at least two
20 places. He never knew his name and he couldn't identify him
21 because he was masked. I already mentioned that the -- and
22 that was the end of the State's case, Detective John Smith.

23 Then this morning Meyun Wharton came to testify, and
24 she said that Sherman Norman, the man that said that he was in
25 Apartment 401, on any of these boards you can see where it was

1 marked with a blue marker on the Defendant's 2 that that was
2 the apartment that -- Ms. Wharton's apartment and that she was
3 with Mr. Norman that night.

4 She testified that they weren't in that apartment.
5 That he was with her somewhere else, and they couldn't get
6 back to the apartment because the police were there. So the
7 statement that Mr. Norman gave putting him in the apartment
8 saying that he heard certain conversations and heard shots,
9 I'd submit to you, ladies and gentlemen, should be given very
10 little weight.

11 Janet Jackson Brownlee. She was the woman that
12 testified right after Ms. Wharton, my second witness. She
13 testified that she was with Mr. Haskell at the Oakland
14 Apartments, which are on the bottom part of these boards, on
15 this one (indicated).

16 Ms. Brownlee testified that she was in Apartment 205
17 and then out on the balcony from a period of about 7:30'ish
18 until a little after 8:00. I think she said until about 8:30.
19 And that during the entire time Mr. Haskell was within her
20 view, within her presence. And she did testify when Chris
21 Brown come running up the stairs, said someone was shot,
22 Mr. Haskell was still there and had not left her presence.

23 Similarly, Ms. Butler testified, she was the third
24 witness. Ms. Butler testified very similarly to Ms. Brownlee
25 that she got to the apartment about 7:15, and Mr. Haskell

1 showed up a little bit later, but from about 7:00, 7:30'ish,
2 until when he was picked up a little after 8:00, 8:25 to 8:30,
3 I think is what she said, Mr. Haskell was in the presence of
4 Ms. Butler, either hear or see. She said he was at Oakland
5 Apartments. He was at Oakland Apartments at the time that
6 something else was taking place up here in Hickory Heights.

7 One other thing I'd point out about Mr. Gartrell's
8 testimony. He testified that he and Mr. Harrison were down by
9 the dumpsters and then walked back through the parking lot,
10 and he made these marks here that they were both side-by-side
11 walking down the stairs.

12 I submit to you, ladies and gentlemen, you saw him
13 testify, Mr. Gartrell. He's a big fellow. And to walk down

14 ~~stairs side-by-side with another large person doesn't seem~~

15 quite right. They wouldn't have been side-by-side as he
16 pointed out there.

17 Now, the State has submitted for your consideration
18 hand of one is the hand of all. We would submit that that too
19 is subject to the burden of proof, beyond a reasonable doubt.
20 And we talked about this in opening a little bit because I
21 wanted you to understand what you would be called upon to
22 weigh. Does the evidence prove to you, ladies and gentlemen,
23 making up a jury of Abbeville County prove beyond a reasonable
24 doubt that Mr. Haskell committed the crimes that the State
25 alleges that he's committed?

1 Now, beyond a reasonable doubt sounds like an easy
2 concept. It's not. It's very difficult. And I don't envy
3 you for having to weigh the evidence, but let me try to assist
4 just briefly. Beyond a reasonable doubt. Either you are
5 firmly convinced that the evidence presented to you by the
6 witness stand here, the exhibits and the stipulations, you are
7 firmly convinced that Mr. Haskell is guilty of the crimes that
8 he's charged of. So that's one.

9 You got another one. Do you hesitate to act because
10 of the evidence presented? Do you need something more? If
11 you hesitate to act the State has not reached that burden. I
12 submit to you when you go back to that jury room consider what
13 else do you need, but know it's needed but you didn't get it.

14 You can only consider what the State has given you.

15 Also going along with the burden of beyond a
16 reasonable doubt is they have to prove, the State of South
17 Carolina, the government has to prove beyond a reasonable
18 doubt that Mr. Haskell was at Hickory Heights, that he wasn't
19 at Oakland Apartments.

20 I submit to you, ladies and gentlemen, the State has
21 submitted no evidence beyond a reasonable doubt that he was
22 not at Oakland. There's in physical evidence, no
23 fingerprints, no footprints to prove beyond a reasonable doubt
24 that he was at Hickory Heights and not in Oakland. There are
25 two witnesses that sat before you, swore an oath to say he was

1 with us at Oakland during the time in which this crime took
2 place.

3 I would also point out to the you, ladies and
4 gentlemen, that when Ms. Cole testified she testified that she
5 and Torey Brown were in the back bedroom. Mr. Gartrell left.
6 Then about 5 minutes later Torey left. Then about 5 minutes
7 later was a gunshot and then Mr. Gartrell comes to the door
8 with Mr. Harrison behind him.

9 I'd submit to you, ladies and gentlemen, that there
10 are other possibilities in this case that law enforcement
11 didn't follow up on. Torey Brown is one of them. And with
12 her recollection of the events that leaves Mr. Gartrell
13 leaving about 10 minutes before the -- 10 or 15 minutes before
14 the shooting occurred.

15 He testified, Mr. Gartrell testified and wrote on
16 that board that he was down by that green dumpster for about
17 an hour. Mr. Norman testified differently but his statement
18 said that Mr. Gartrell was in the Apartment 402, came out of
19 the apartment then was shot.

20 There are multiple stories here, ladies and
21 gentlemen, that we really don't know what happen. And one of
22 things that we don't know is who committed the crime, who shot
23 him. I submit to you, ladies and gentlemen, it was not
24 Mr. Haskell. And I submit to you if you put the State to the
25 burden, that it is your duty to do, that you will find him not

1 guilty on all charges.

2 I so appreciate your patience. You have a big job
3 to do. Thank you for your service.

4 THE COURT: Mr. Grose?

5 MR. GROSE: Your Honor, may it please the Court.

6 We're going to talk about that in a minute
7 (indicated). But before I do that I want to talk about two
8 important things.

9 The first thing is make no mistake about it, I don't
10 think anybody does, that what happened to Rod Gartrell on
11 February 10th, 2004 was a horrible thing to have happened.
12 It's probably the worst thing that's ever happened to him in
13 his life. It's the type of thing that we don't want to happen
14 to ourselves, our families, our loved ones, our friends.

15 It's the type of thing that makes us angry at
16 citizens in this society. It's the type of thing that makes
17 us want to arrest somebody, to convict somebody and see them
18 punished in Court. There's no doubt about that. We all feel
19 that way, we all should feel that way because it's wrong.
20 It's absolutely wrong.

21 The second thing I want to talk about and we're
22 going to spend a little bit of time talking about this is when
23 you all were picked, somewhere in the process, I think it was
24 after you were already seated as jurors but it could have been
25 while you were still sitting out there, His Honor, the Judge

1 said that this justice system, our court system is the
2 greatest system ever designed.

3 It's not perfect. You know it's not perfect because
4 there's been lots of waiting around, lots of pauses. It seems
5 like not much was going on. His Honor warned you about that,
6 that this wasn't like TV. It's not something that can be
7 wrapped up in an hour and packaged. This was more deliberate,
8 and that it should be more deliberate.

9 Sometimes it's redundant. It should be redundant.
10 He warned you about that at in beginning. Because there's a
11 process that we go through, and I think you got to see the
12 process now because we're coming to the end. The only thing
13 left after I speak is for Mr. Anthony to make his argument,
14 the Judge to tell you about the law, and when he gives you the
15 signal you all decide the facts.

16 Everybody has a role. His Honor's role is to tell
17 you what the law is. You all, the jurors, are 12 judges of
18 the facts independent and separate from each other. That's
19 why you were told that you could not talk about this case with
20 each other or with your families or friends, not even talk
21 about it with each other because each and every one of you has
22 to make up your own mind about what happened. You've seen
23 that the lawyers have a role in this process.

24 All of this comes from the bill of rights, U. S.
25 Constitution. Other than talking about the government there

1 are only two professions, two jobs, two occupations that are
2 mentioned in the constitution.

3 The first one is freedom of the press. We have a
4 free press in this society because when we are going about our
5 daily lives, working, taking care of our families we need
6 somebody watching what's going on. Because if the government
7 is trying to do something or there's something important in
8 society that's happening we need to know about it. So things
9 don't happen behind closed doors, without any record, without
10 any documentation of it.

11 The second occupation is that when somebody is
12 charged with a crime in court they are entitled to have a
13 lawyer. So don't be fooled when they ask you questions, say
14 witness, was the first person you talked to Mr. Padgett. He
15 is doing his job for his client that's guaranteed by the
16 constitution.

17 They get up here and say the lawyers are asking
18 these questions, asking these witnesses, trying to do
19 something. Don't be fooled by that. We're doing our jobs
20 that are guaranteed by the constitution.

21 The same bill of rights that's responsible for this
22 system that's the greatest ever designed says that 12
23 independent jurors have to decide this evidence. So no matter
24 how horrible what happened to Mr. Gartrell is you have a job
25 and a responsibility to decide the evidence in this case, and

1 in particular, to decide whether or not the State has met
2 their burden of proof.

3 The judge is going to tell you that it's an
4 important and fundamental right that each and every person
5 who is charged with a crime is presumed innocent, the
6 presumption of innocence. And that is real, that existed when
7 we picked a jury, it exists now, it exists when you go back
8 there to begin talking about this case.

9 People are presumed innocent. It goes back to
10 everybody have a job, everybody having a role. Their role as
11 the prosecutors in this case, I'm talking about the solicitor
12 and the police officers, is to present evidence and try and
13 attempt to meet the burden of proof. The burden of proof is
14 beyond a reasonable doubt, the highest level of proof that we
15 have in the law.

16 And you hear about people going to court because of
17 an automobile accident or a slip and fall or some type of
18 contractual dispute. The burden of proof is preponderance of
19 the evidence, more likely than not. Just a simple way, a
20 little bit more likely than not.

21 If it's a serious allegation like fraud we require a
22 higher standard of proof. Clear and convincing evidence,
23 higher than preponderance of the evidence.

24 Beyond a reasonable doubt is as high as it gets
25 because it involves the government charging one of its citizen

1 with committing a crime. You have to be firmly convinced.
2 You have to not hesitate to act. The highest burden of proof
3 in the law, and it's on these people to prove that.

4 Like I said, your role as jurors is the judges of
5 the facts, 12 independent unique judges of the facts. Each
6 and every one of you is entitled to have your own view of the
7 evidence. Each and every one of you is entitled to have an
8 opportunity to express that view in the jury room and to be
9 heard by your fellow jurors.

10 The Judge had indicated that he wouldn't appoint a
11 foreperson until the end of the trial, and one of the reasons
12 for that is that all of you as jurors are equal with the same
13 rights, to have an opinion, to express the opinion, to be
14 heard and to listen.

15 And while you listen, nobody can ever ask you to do
16 anything that violates your conscious because you have the
17 right to that independence. You have the right to decide
18 whether or not the State has met that burden of proof. In
19 this case they have not.

20 Torey Brown is reasonable doubt. Torey Brown is
21 reasonable doubt.

22 The first officer who responded had a role. His
23 role was to secure the scene, see if there was any evidence to
24 collect, and you heard that he hadn't collected any physical
25 evidence other than the gold teeth that belonged to Rod

1 Gartrell. He took some pictures.

2 He talked with Ms. Cole. He knew that Gartrell,
3 Mr. Gartrell went to the hospital. We learned that he talked
4 to Torey Brown. Mr. Gartrell was eventually taken to
5 Greenwood and he turned the case over to John Smith for
6 investigation.

7 One of the things that's important is he also is not
8 up here, but he also filled out an incident report
9 documentation, documentation. Because one of things that
10 should disturb you in this case is, is that some of the things
11 that they are asking you to rely on were not documented.

12 Another thing that should disturb you in this case
13 is that other than Mr. Gartrell the three people they brought
14 in here to try to prove what happened to Mr. Gartrell, every

15 one of them told you that they were under some kind of
16 pressure in this case.

17 Ms. Cole told you that she felt pressured to testify
18 a certain way by the State. Sherman Norman told you that he
19 felt pressured to give a statement and say a certain thing by
20 John Smith. Mario Adams told you that he was coached and
21 threatened by Torey Brown. They want you to believe that all
22 three of them are liars.

23 One of the things that you have to decide when you
24 are jurors is the credibility of the witnesses. What to
25 believe, who to believe, what parts of it to believe when they

1 come in here and put a police officer on the stand to say that
2 when we gave a statement they said something else. When I met
3 with them at the jail on Monday night, the day this trial
4 began, they said something else. When I met with them in the
5 room back there on Tuesday morning, a day into this trial,
6 they said something else.

7 They want you to believe that they are not telling
8 the truth, that they are not credible. They are wanting you
9 to believe something that they said at another time. They are
10 wanting you to pick and choose what they want you to believe,
11 what they want you to believe.

12 I asked Mr. Vandiver, you got ways of documenting
13 things. I believe you are going to have State's Exhibit
14 Number 8 into evidence. That was a statement that documented

15 things. You are going to have a waiver of rights form that
16 documents things.

17 They told you that they can turn on a tape recorder
18 so that it can be played back and you can hear the questions
19 that were asked and the answers that were given. You could
20 also hear the tone of somebody's voice when they are asking
21 the question, the tone of somebody's voice when they are
22 giving the answer.

23 Also said you can just take a piece of paper.
24 You've seen everybody, Mr. Anthony is writing right now,
25 you've seen everybody writing in this trial to take down notes

1 of what was said. I asked him, When you met with Mr. Norman
2 in the jail on Monday night did you write an incident report?

3 No.

4 Did you write down a statement?

5 No.

6 Did you record it?

7 No.

8 You had pens your pocket, you had papers. Did you
9 make any notes?

10 No.

11 You've seen us throughout this trial and people
12 incident records, statements, other documents to refresh their
13 memory. We all have to refresh our memory sometimes on

~~14 everything. It's kind of like that freedom of the press I~~
15 talked about a little bit, that you want to know what's going
16 on so things aren't being done behind closed door and in
17 secret, and certainly there's an aspect of investigation that
18 has to be secret, has to be done.

19 Everybody is not going to be there, but they know
20 the stuff has to be turned over to the other side. And you've
21 seen us with documents, you've seen them with documents, and
22 they are coming in here and saying those witnesses didn't say
23 what they said before, they didn't say what they told me
24 Monday night at the jail, they didn't say what they told me
25 Tuesday morning back there.

1 I got nothing to show you, nothing for you to listen
2 to, nothing that I can look to to say yeah, my memory of what
3 they said is actually right. What's up with that? They've
4 got the ability to do it. They didn't do it. They chose not
5 to do it. They did that because of trying to pull the wool
6 over your eyes because they don't got a case.

7 John Smith, the detective, is in charge of the
8 investigation. We know that the incident date was February
9 2nd, 2004. He responded that night and he talked with
10 Ms. Cole. He received the stuff in the black, written in
11 black, he received from Mr. Vandiver, the officer respondent.

12 There was an incident report, talked with Ms. Cole.
13 There's information about Mr. Gartrell. The officer had
14 talked with Torey Brown. Another officer had taken a
15 statement from Ms. Cole that night.

16 The next morning, the 11th, 9:41 a.m. Detective
17 Smith interviewed Torey Brown and got warrants. We asked
18 Mr. Smith what information he had either from the incident
19 report or from the statement about Torey Brown. Torey Brown
20 claimed that Rod Gartrell told him that 3 people were involved
21 and that Monte Haskell was the shooter.

22 You might remember there was some discussion at the
23 time with the lawyers and the Judge this was not being offered
24 for the truth of the matter asserted but for what influence
25 Mr. Smith and his investigation.

1 I came back in the end and said -- asked him, you
2 relied on what was in the incident report about Torey Brown
3 and what was in that statement about what Rod Gartrell had
4 told Torey Brown. He relied on that to get the arrest
5 warrants. From the night before to the next day less than 24
6 hours have gone by and they've got arrest warrants for these 2
7 young men. Yet he tells you that his investigation continued
8 until last Friday, until last Friday.

9 Here it the problem. In red, February 12th, 2004
10 Clarence Harrison is arrested and put in jail. Then he talks
11 to Darren Howland, and he goes to the hospital and he talks to
12 Rod Gartrell. Talking to Rod Gartrell potentially was one of
13 the most important things to be done in this investigation and
14 he got important information from Rod Gartrell.

15 Now, he should have already known by the injuries
16 that Rod Gartrell probably couldn't talk very well because he
17 had been shot in the mouth. Ms. Cole testified that he was
18 trying to talk but you couldn't understand him, and that was
19 in her first statement to the police, which he had.

20 He goes to the hospital and his experience is, is
21 Rod Gartrell is having a hard time talking, that in order to
22 do an interview he had to ask him questions and then pick yes
23 or no off of a piece of paper or write on a piece of paper.
24 But he has relied on Torey Brown to get arrest warrants and
25 Clarence Harrison is already in jail.

1 He asked Rod Gartrell, do you know who shot you? He
2 doesn't know. Have you been given a name of the shooter who
3 shoot you? He doesn't know. Red flags, bells, whistles,
4 warning signs should be going off. I've relied on Torey Brown
5 and Rod Gartrell tells me something different. It's
6 inconsistent.

7 What do they do next, the 16th? This young man
8 right here, they put him in jail based on what Torey Brown had
9 said, not based on anything Rod Gartrell had said. They put
10 him in jail. Now they've got a problem. They've already
11 arrested people, which should be done at the end of an
12 investigation, now they've got to try to prove it. Now they
13 got to try to make it fit somehow, because if they don't they
14 can be sued. So that's what they set out to do.

15 Well, maybe, maybe because Rod Gartrell was hurt and
16 under medication, been through surgery, maybe he couldn't give
17 all the information they needed. So they interview him again
18 at the police station March 8th. He confirms what he told
19 them before. He doesn't know who shot him.

20 Now, yeah, Clarence Harrison was with him, next to
21 him. He said that he recalls him going into his pockets, but
22 he told you why, because if he had any dope he wanted to get
23 it because the police were coming.

24 I mean, it's bad to be shot. It would be a really
25 bad day if you get shot and they take you to the hospital and

1 they find drugs in your pocket, and he does have a drug
2 conviction for possession with intent in Georgia. He gave you
3 the explanation of what had happened, gave you the
4 explanation.

5 When we were going through the statements and they
6 were going through what Torey Brown had said he was the one
7 that tried to bring in this information and turn it into
8 something significant.

9 They went back to Ms. Cole on the 8th. Now,
10 Ms. Cole, they're going to try to say that because Clarence
11 was trying to clean up the blood that that's some type of
12 guilty knowledge, cover up or whatever. People who are guilty
13 and trying to cover up don't stay and wait for the police to
14 come.

15 Ms. Cole told you that she didn't want Rod Gartrell
16 coming down the hall, she didn't want him getting blood on the
17 floor. She didn't want him in the house. She was the one
18 worried about the blood and Officer Vandiver confirmed that.

19 When I cross-examined Ms. Cole we talked about her
20 first statement on the 10th and her second statement on the
21 4th -- I mean, sorry, on the 8th, almost a month later,
22 February 10th to March 8th.

23 And we asked her, were some of these important
24 details in your first statement? Because she claimed in here
25 that Clarence Harrison had come to her apartment and said lock

1 the door me and Monte have business. That wasn't in her
2 statement of February 10th.

3 She said in here that Clarence Harrison tried to say
4 he wasn't shot he was only punched. That wasn't in her
5 statement of February 10th. But she did say that between the
6 10th and the 8th she had an opportunity and did talk to Torey
7 Brown. Remember, Torey Brown is the one that gave the false
8 information that put these two boys in jail.

9 You can consider the demeanor of a witness when they
10 testify. She was uncomfortable testifying. She was
11 uncomfortable testifying and she told you why, because she
12 felt pressured by the State to testify a certain way.

13 MR. ANTHONY: Objection. That's not in record.

14 MR. GROSE: I believe that is in the record, Your
15 Honor.

16 THE COURT: Then you can consider it. I'm going to
17 overrule the objection.

18 MR. GROSE: Thank you, Your Honor. They want you to
19 rely on these people down here, Sherman Norman, Mario Adams.
20 They want you to rely on what they say, Sherman Norman told
21 them, particularly on Monday night over at the jail.

22 Sherman Norman told you that he was feeling pressure
23 about making a statement, feeling pressure from John Smith.
24 Why would he feel that pressure, or why would they put that
25 pressure? Two people had already been arrested and the case

1 was falling apart because Torey Brown had misled them and they
2 had relied on him.

3 Mario Adams, January 31st, 2006, February 1st, 2006
4 was when he gave the statements. Mario Adams was in jail,
5 told you that the statement was given when he was in jail. He
6 told you that Torey Brown was the one that brought his name
7 into it. This year Torey Brown brings his name into it.

8 The police even admit that they went and talked to
9 Mario Adams because of Torey Brown. Torey Brown told them to.
10 They also confirm that Torey Brown was in jail at the same
11 time Mario Adams was, January 31st, February 1st of this year.

12 When Mario Adams first came into this courtroom and
13 sat right here and the prosecutor started asking him questions
14 he said he wanted to take the Fifth, the Fifth Amendment to
15 the United States Constitution that says nobody can be
16 compelled to give testimony that could incriminate.

17 He left, the trial went on, on Monday or Tuesday.
18 He came back yesterday. He testified again from Tuesday to
19 Wednesday. He was appointed a lawyer, Mr. Callison. His
20 lawyer was sitting over there in that jury box across the way.
21 What they talked about was privileged between them, as it
22 should be. But he told you that he was testifying under a
23 grant of immunity.

24 Immunity means that he cannot be prosecuted for the
25 things that he says. It's a protection for him. That he was

1 being given immunity for the events involving Rod Gartrell. I
2 mean, right there, that should give you some pause or
3 hesitation. They are giving somebody other than the people on
4 trial immunity for these crimes.

5 But he also said that he was being given immunity
6 from being prosecuted for giving false statements, for giving
7 false statements. He was already in jail. He was wearing a
8 jail uniform. He didn't want more jail time for telling them
9 and you that his statement to the police was false, that his
10 statement to the police was false because Torey Brown coached
11 and threatened him, said that Torey was older than him.

12 He didn't want to be prosecuted for telling you that
13 he had been improperly influenced by the same witness that
14 Detective Smith relied upon to arrest these two people. He
15 didn't want to be prosecuted for telling you that Torey Brown
16 had coached and threatened him, the same Torey Brown who had
17 given false information himself.

18 Reasonable doubt. Torey Brown is reasonable doubt.
19 It said that a reasonable doubt is the type of doubt that will
20 hesitate, cause you to hesitate to act in your important daily
21 affairs. Because of Torey Brown's role in this case, because
22 of his relationship with Ms. Cole, who was one of their key
23 witnesses, because of his opportunity to influence her,
24 because the witness testified about him improperly influencing
25 him that should cause you to hesitate to act. That should

1 cause you not to be firmly convinced.

2 Why would Torey Brown want the police to rely on
3 something that he said that wasn't true? Remember, Torey
4 Brown is the one who went to Alberton, Georgia and brought Rod
5 Gartrell to Abbeville, brought Rod Gartrell to his
6 girlfriend's apartment, Ms. Cole's apartment. Torey Brown was
7 there when Rod Gartrell left.

8 Ms. Cole told you that Torey Brown was in the
9 bedroom with the door shut on the phone before this happened.
10 That right there should give you a pause and a hesitation.
11 Who was he talking to? What was he saying? What was he
12 setting up?

13 He's also the one, Torey Brown, because he brought
14 Rod Gartrell to her apartment knew he didn't have a ride back
15 to Alberton, knew he would have been coming back there, knew
16 he would eventually be coming back there.

17 He's gone off, but he just happens to be the person
18 who gets there so quick that he can take Rod Gartrell to the
19 hospital and claim that Rod Gartrell told him what happened,
20 and to affect this investigation so bad that the police get
21 warrants based on false information, that they put people in
22 jail based on false information, and that everybody gets a
23 motive, Torey Brown and the police, to try to put it off on
24 these two men.

25 I told you it was a horrible thing that happened to

1 Rod Gartrell. You didn't need me to tell you that. It's also
2 a horrible thing to convict and punish people who are not
3 guilty. I say it's the type of thing that makes you angry.
4 You want to arrest somebody, you want to convict them, you
5 want to punish.

6 I can't do anything as a lawyer about the arrest.
7 But we can come into this courtroom and put all of this
8 evidence through the scrutiny of the judicial process and put
9 it in your hands.

10 The Judge said it is the greatest system ever
11 designed, and it is. And it's great because we have 12 people
12 from the community who have no friends to reward and no
13 enemies the punish to do a job, to do a job, and that job is
14 to determine whether or not the State has met their burden of
15 proof beyond a reasonable doubt. This system is great because
16 jurors like you every day in every county in this State and
17 every state in the Country do their job and hold the
18 government to their burden of proof.

19 Torey Brown is reason to hesitate to convict. Torey
20 Brown is a reason that you should not be firmly convinced at
21 the State's case. Torey Brown and how he affected this
22 investigation and influenced people improperly is reasonable
23 doubt, and you should find both of these young men not guilty.

24 THE COURT: Mr. Anthony for the State.

25 MR. ANTHONY: Thank you, Your Honor.

1 In thinking about this case the one image that stays
2 with me is that of Clarence Harrison in Nini Cole's apartment
3 right after this happened trying to mop Rod Gartrell's blood
4 up off of Nini Cole's floor trying to get rid of it, trying to
5 erase what he had just been a part of.

6 And a lot of what you've seen this week has been
7 just a continuation of that same thing two years later.
8 Witnesses who just want this whole thing to go away, who just
9 want to erase what happened, who just want to erase what they
10 said about what happened. But fortunately, the truth, in like
11 that blood, the truth doesn't go away.

12 It's like that old country song, the trouble with
13 the truth is it's always the same old thing. It's hard to
14 forget and it's impossible to change. Because unlike Rod
15 Gartrell's blood, the truth can't just be washed away. You
16 just can't get some Mr. Clean and a mop and a bucket of hot
17 water and change what you've said. What you've said stays the
18 same, and that's part of what we have the police for, is to
19 record things that people say.

20 So what I'd like to do is go through each of the
21 four witnesses we've called who were at the apartments that
22 night and talk about how their testimony applies to the
23 charges against each defendants, or each of the defendants.

24 First of all, we're going to take Mr. Gartrell.
25 Mr. Gartrell says he was asked to go back around to Nini

1 Cole's apartment by Clarence Harrison and that Clarence
2 Harrison stood there while he got shot, and then Clarence
3 Harrison followed him into Nini Cole's apartment, started
4 reaching in his pockets and told him to give him what he had.

5 Now, that's evidence that Mr. Harrison participated
6 with a man who shot Rod Gartrell in trying to rob him. It's
7 proof that Clarence Harrison is guilty of all the crimes that
8 he's charged with. So Rod Gartrell's testimony goes to prove
9 the guilt of Clarence Harrison.

10 Now, Mr. Gartrell's testimony doesn't go to
11 incriminate Monte Haskell because Mr. Gartrell didn't see who
12 shot him. There may have been a statement taken earlier in
13 the investigation from Torey Brown where Torey Brown said that
14 Rod Gartrell said that Monte Haskell shot him but Rod Gartrell
15 has never given a statement to the police where he said that
16 he saw who shot him.

17 He says that Monte Haskell had a similar build to
18 the man who shot him, but that's as far as he can go. And
19 that's as far as he's going to go because all Rod Gartrell is
20 doing is telling what he saw.

21 He's not looking to put any more responsibility on
22 anybody for this than what needs to be put on them. And what
23 that means is since he's not putting this on Monte Haskell,
24 since he's not trying to say something that isn't true about
25 Monte you know when he tells you what Clarence Harrison did

1 you know you can believe because you didn't hear one time
2 where Rod Gartrell didn't say that Clarence Harrison lured him
3 to the back of Ms. Cole's apartment to get shot.

4 Now, as to Torey Brown, all the evidence in this
5 case is that he wasn't there. Mr. Gartrell said he had gone,
6 Ms. Cole said he had gone. She called him right after
7 Mr. Harrison came to her door and said what he said. She said
8 I called Torey Brown and told him what Clarence Harrison said.

9 She called him right after the shooting, he came
10 back to the apartment and took Mr. Gartrell, his friend, to
11 the hospital. So them saying that somebody who wasn't there
12 had something to do with this just doesn't make any sense.

13 Let's go to the second witness, Mario Adams. Mario
14 Adams was the young man who got up on the stand Tuesday
15 afternoon and said he wanted to take the Fifth.

16 So what we did is we gave him immunity because
17 that's the only way that you can make someone answer questions
18 after they've taken the Fifth Amendment. You have to give
19 them a guarantee that they won't be prosecuted.

20 So that's what we did because we wanted you to hear
21 the statements that he had given in the past. And the only
22 way we could compel him to answer questions about those
23 statements was to say we won't prosecute him about the subject
24 of those statements.

25 So Mr. Adams got on the stand yesterday morning and

1 denied knowing anything about this. But on February 1st
2 Mr. Adams had written out a statement himself. This is a
3 statement he wrote himself. It wasn't written for him, saying
4 that he was in Oakland Apartments, which is right beside the
5 Village, and Monte Haskell came through the woods with a
6 pistol under his shirt, and Monte Haskell went to his cousin's
7 house and he said somebody got shot.

8 And then Mr. Adams said that Mr. Brown, Torey Brown
9 called him and he told Torey Brown what he had seen. And that
10 would explain why Mr. Brown would have told the police that
11 Mr. Haskell did it because he had been told by Mario Adams
12 what Mario Adams had seen that night.

13 Now, that's the statement that Mario Adams wrote,
14 and that's what he was saying as late as last Friday. But
15 last Friday he also said that he was afraid. He said that he
16 was afraid to testify. And by Tuesday, he said he just wasn't
17 going to say anything.

18 But what he wrote down in that statement, that
19 hasn't been washed away, and that is evidence that Monte
20 Haskell was the one who shot Rod Gartrell. Because he was
21 coming out of the woods at the apartment building right beside
22 the Village carrying a gun talking about somebody getting
23 shot. So the testimony of Mario Adams goes to prove that
24 Monte Haskell shot Rod Gartrell.

25 The third witness that I want to discuss is Nini

1 Cole. Ms. Cole's testimony incriminates both Clarence
2 Harrison and Monte Haskell, and it's probably the most
3 important testimony in the case.

4 She's in her kitchen cooking and Clarence Harrison
5 comes to her door and says lock your door because I'm fixing
6 to take care of some business, and he'll be coming to your
7 door because he knows you.

8 And Ms. Cole wouldn't admit this on the stand --

9 MR. GROSE: Objection. That was never stated.

10 THE COURT: What was never stated?

11 MR. GROSE: He'll be coming to your door. He knows
12 you. That wasn't even in what they proffered.

13 MR. ANTHONY: It's in the record of her testimony.

14 THE COURT: I'll overrule the objection.

15 MR. ANTHONY: And Ms. Cole wouldn't admit this on
16 the stand Tuesday, but Tuesday morning in Sergeant Vandiver's
17 presence she said that Mr. Harrison didn't just say that he
18 had some business. He said that Monte and me are going to
19 take care of some business.

20 That's what Mr. Harrison said when he came to her
21 door, Monte and me are going to take care of some business.
22 And in March of 2004, which was less than a month after this
23 happened, Ms. Cole told John Smith that Mr. Harrison, when he
24 came to her door, he told her Monte and me got some business
25 to take care of.

1 That's evidence against Mr. Harrison and
2 Mr. Haskell. It shows that Mr. Harrison was preparing to
3 participate in a crime, he was planning his move. He was
4 trying to cut off Mr. Gartrell's escape.

5 And it's also evidence that Mr. Haskell was the one
6 that he was going to commit the crime with. Because why would
7 Mr. Harrison have come to her door and use Mr. Haskell's name
8 if Mr. Haskell wasn't there? Why would he have said that? So
9 Monte Haskell has to be the shooter, nothing else makes sense.

10 The last witness I want to discuss is Sherman
11 Norman. Now, Mr. Norman got up on the stand Tuesday afternoon
12 and said he didn't know anything about this, but in March of
13 2004 he got word to John Smith that he wanted to talk to him.

14 And he told John Smith that he had seen Mr. Haskell
15 that night with a gun, and that he had been outside
16 Ms. Wharton's apartment, which was right beside Ms. Cole's
17 apartment, and he had seen Mr. Haskell and Mr. Harrison
18 talking. They split up and then Mr. Harrison knocked on
19 Ms. Cole's door. That's what his statement to John Smith in
20 March of 2004 said.

21 And the night before he testified, on Monday night,
22 Sherman Norman had said in Sergeant Vandiver's presence that
23 he had seen Mr. Harrison hand Mr. Haskell a firearm that night
24 and that Mr. Haskell had told Mr. Harrison to get him to come
25 around the corner, then Mr. Haskell had gone behind the bushes

1 there at Ms. Cole's apartment. That's evidence against Mr.
2 Harrison and Mr. Haskell. It shows that the two of them were
3 acting together to commit the robbery and the assault and
4 battery with intent to kill of Rod Gartrell.

5 And this is very important again. Mr. Norman says
6 now I wasn't even there that night, but Sergeant Vandiver was
7 there that night. He got there right after this happened, and
8 who does he see getting out of there headed towards Oakland
9 Apartments when he's there? He sees Sherman Norman. So you
10 know Sherman Norman was there because a police officer saw him
11 leaving the scene of the crime.

12 Now, what happened when Mr. Norman is proof that
13 even during this trial Mr. Harrison is still trying to mop up
14 the mess that he made two years ago? They take him to jail
15 Tuesday afternoon. Sergeant Vandiver starts counting up his
16 money. When he gets to the holding area he gets his money
17 again, Mr. Harrison does. He spreads it out.

18 He takes his money and spreads it out in front of
19 who else except good old Sherman, good old Sherman Norman who
20 just a couple of hours ago recanted a very damaging statement
21 against Clarence Harrison. And then he tells Mr. Norman keep
22 cool. Now, what do you think of that?

23 And then Mr. Haskell gets in on it because Detective
24 Belcher said that when Mr. Norman asked Mr. Harrison for some
25 money Mr. Haskell told Mr. Harrison to leave Mr. Norman 20

1 dollars. Now, what does that sound like to you? Mr. Norman
2 had just came in here Tuesday afternoon and brought them a big
3 bottle of Pine Sol. He just helped out with this mop-up
4 operation and now it was time for them to pay up, and they
5 were more than willing and more than able to do that.

6 They want to talk about witnesses getting pressured.
7 Well, if the Abbeville Police Department and the solicitor's
8 office are pressuring witnesses to say what we want them to
9 say we are really doing a pretty sorry job of it because of
10 these four people on this list the only one who said what they
11 told the police is the fellow who got shot.

12 Of the other three, Mr. Adams and Mr. Norman, they
13 completely recanted. And Ms. Cole partially recanted,
14 partially recounted. So the witnesses in this case apparently
15 weren't feeling any pressure from our side of the courtroom
16 when they testified in this trial.

17 Then after we finished our case Mr. Haskell came in
18 here this morning and he decided to conduct his own little
19 mop-up operation. He brought in these two little witnesses,
20 Ms. Butler, Ms. Jackson, and they came in here and they said
21 well, Mr. Haskell was with me when this happened. He was in
22 Oakland Apartments looking for a bathroom.

23 And they both know this because Chris Brown came in
24 a little later saying somebody's been shot. You know, Chris
25 Brown came in and he said well, somebody has been shot. And

1 that's what he said that night. And Mr. Haskell couldn't have
2 been the one to do the shooting because Mr. Haskell was there
3 when Chris Brown came in saying somebody had been shot.

4 But then Mr. Brown got up and Mr. Brown, when his
5 lawyer asked him well, when did you find out that Rod Gartrell
6 had been shot? He said I found out the next day. Now, what
7 does that tell you? Mr. Brown is the only person that you
8 heard this morning who wouldn't pick up his mop and get with
9 the program. But his testimony lets you know the value of all
10 those other witnesses that Mr. Haskell called.

11 Mr. Haskell did go to the apartments. Mario Adams
12 saw him in Oakland Apartments. But he went to Oakland
13 Apartments after he shot Rod Gartrell, and he may have been
14 there looking for a bathroom, but he is there looking for a
15 bathroom after he shot Rod Gartrell.

16 There's two more things I want to say to you about
17 this case. First of all, this is your county. The defense
18 wants you to do the same thing today that Clarence Harrison
19 wanted Ms. Cole to do that night. They want you to --

20 MR. PADGETT: I'd object, Your Honor. Burden
21 shifting.

22 THE COURT: Sustained.

23 MR. ANTHONY: Don't do the same thing today that
24 Mr. Harrison asked Nini Cole to do that night. Don't just go
25 back there and then just go home and lock your doors. Don't

1 leave the Village to Clarence Harrison and Monte Haskell.

2 Don't let --

3 MR. GROSE: Objection. That's an improper comment.

4 Move to strike.

5 THE COURT: Sustained. Comment struck. Jury will
6 disregard the solicitor's last comment.

7 MR. ANTHONY: The second thing I'd ask you to
8 remember is that blood that was on Nini Cole's floor, that was
9 real blood. That was real blood that came out of Rod
10 Gartrell. Rod Gartrell got shot in the face. He had a bullet
11 tear through his mouth, rip out his teeth, rip out his gums,
12 lodge in the back of his throat to where they had to cut a
13 whole in his throat so he could breathe.

14 Rod Gartrell deserves a jury to look at this case.
15 He deserves a jury to go back there and take its time and sort
16 through this evidence and figure out what happened and give
17 him justice. And when you go back to that jury room --

18 MR. GROSE: Objection. The giving the justice to
19 the victim is an improper argument because it's a burden
20 shifting argue and it is not proper to our procedures. I
21 mean, the burden of proof is on them.

22 THE COURT: I'll charge that. That obviously is the
23 law, but I'm not sure, I don't agree that that shifts the
24 burden if he asks a jury to do justice. I'll overrule the
25 objection.

1 You may proceed.

2 MR. ANTHONY: When you go back to that jury room I'd
3 ask that you give a verdict that lets -- that tells Clarence
4 Harrison and Monte Haskell no, we're not going to lock our
5 door. No, we're not going to be part -- we're not just going
6 to forget about that blood on the floor and no, you can't go
7 around Abbeville County shooting and robbing people.

8 Find them guilty of the attempted armed robbery,
9 assault and battery with intent to kill and possession of a
10 firearm during the commission of a violent crime. Thank you.

11 THE COURT: Ladies and gentlemen of the jury, we
12 have now reached the stage of the trial where you have heard
13 all of the evidence and the arguments of counsel. I told you
14 the next stage of this trial will be my charge on the law.

15 I also am cognizant of the fact that it is now
16 almost one o'clock and you have not had a lunch break at this
17 point in time. So we are going to take a lunch break at this
18 point in time. I'm going to give you the same charge that I
19 have given you at every break during this trial.

20 You should not discuss this case with anyone,
21 including your fellow jurors until such time as you have heard
22 all the evidence, the arguments of counsel and you have been
23 charged with the law and I have instructed you to begin your
24 deliberations.

25 You should also not attempt to gather or learn any

1 information outside of the courtroom concerning this case.
2 That includes watching, listening to, reading any media
3 reports, making any internet searches. Anything of that
4 nature would be highly improper at this time or any other time
5 during the trial.

6 Again, do not place yourself in such a position that
7 you might overhear participants in this case discussing the
8 case should you be eating in an establishment where one of
9 those people may be located.

10 Should anyone attempt to contact you concerning your
11 participation in this trial during our break I would ask that
12 you please report that upon your return to the courthouse. I
13 will take appropriate action should that occur.

14 At this point in time, we're going to break for the
15 lunch break. I will ask that you be back in the jury room at
16 two o'clock, two p.m. At that point in time, I'll be in a
17 position to charge you concerning the law and give you further
18 instructions.

19 You are free to go for lunch at this time. Thank
20 you very much.

21 (WHEREUPON, the jury leaves the courtroom at
22 approximately 12:58 p.m.)

23 THE COURT: Court is in recess until two o'clock.
24 Thank you very much.

25 MR. PADGETT: Your Honor, I have one thing.

1 THE COURT: Yes, sir.

2 MR. PADGETT: And this may be highly unusual, but to
3 the extent it's necessary I would renew my motion for directed
4 verdict at this time. I know I probably should have done it
5 before closing but --

6 THE COURT: That's all right. The Court will note
7 that and will make the same ruling.

8 MR. GROSE: Judge, I was trying to look for some
9 cases real quick about improper argument, the objection I
10 made. I'm going to have to look more at lunch, but I did find
11 State vs. Bazsquez, B-a-z-s-q-u-e-z, 364 S.C. 293, 2005.

12 In keynote 5 in that it says that a curative
13 instruction removed any prejudice caused by solicitor's
14 closing argument at penalty phase at capital murder trial
15 encouraging jury to impose death penalty because the defendant
16 might escape and kill witnesses on State's witness list which
17 solicitor referred to as a hit list.

18 That's getting kind of similar to what Mr. Anthony
19 said, they should convict these two people so they don't go
20 around Abbeville committing armed robberies.

21 THE COURT: I struck that comment. I sustained your
22 objection at to that comment. I struck it --

23 MR. GROSE: I don't know that --

24 THE COURT: Let me finish.

25 MR. GROSE: I'm sorry.

1 THE COURT: As to what he was saying in your last
2 objection, the only one I think that I overruled, as far as
3 your objections to his argument, was that he was asking the
4 jury to go out and do justice, is what I remember his last
5 statement immediately prior. I'll check it to be sure, but
6 before that your previous objections I sustained and struck.

7 MR. GROSE: Well, I'm not sure that I'd objected
8 when he made that statement, which was the very last
9 statement.

10 THE COURT: I don't remember anything about a hit
11 list or anything of that nature in this case.

12 MR. GROSE: Well, not a hit list but about stopping
13 them from going out and committing other armed robberies.

14 THE COURT: I don't remember that statement being
15 made.

16 Mr. Anthony, do you recall making that statement?

17 MR. ANTHONY: I didn't say anything about any other
18 crimes.

19 THE COURT: I'll be happy for you to review the
20 record if you'd like during lunch and you can point it out to
21 me when we come back.

22 MR. GROSE: Thank you.

23 THE COURT: Court is in recess until 2:00 p.m.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: I see you are on your feet. You must

1 have something you want to take up with the Court.

2 MR. GROSE: I do. Your Honor, during the objection
3 that was not sustained during closing arguments I would cite
4 Van Dohlen vs. State, 360 S.C. 598, 602 S.E.2d 738 S.Ct.
5 August 30, 2004 and State vs. Reese, 359 S.C. 260, 597 S.E.2d
6 169 Ct.App. May 3rd, 2004.

7 Reese was a death penalty case. Van Dohlen was a
8 death penalty case involving the sentencing phase. And the
9 argument that Mr. Anthony made was advocating the jurors to
10 get justice for the victim. Not just do justice but to get
11 justice for the victim, and that violates the golden rule, is
12 what these two cases talk about.

13 THE COURT: I don't recall. Did we look that up in
14 the lunch break? I asked you to.

15 MR. GROSE: I went back and listened to part of it
16 and also listened to the other thing I raised an objection to
17 did happen after that. It was a little ambiguous.
18 Mr. Anthony talked about telling these defendants no, they
19 can't go around Abbeville County committing armed robberies.
20 Arguably, it implies convict them so they don't do something
21 in the future as opposed to what they did in this case. I
22 mean, it's near the end. She had it before lunch.

23 THE COURT: I'm going to have to hear it. It
24 doesn't comply where I recall the objection was that I did
25 sustain.

1 So I'll ask you to find that and let me listen to
2 it.

3 (WHEREUPON, the record was reviewed.)

4 THE COURT: I'm looking at Von Dohlen. In Von
5 Dohlen, apparently the solicitor asked the jurors to put
6 themselves in the victim's shoes.

7 MR. GROSE: I think there is -- the Reese dealt
8 with, I think, some questioning. But let me get back on
9 Reese. I'm sorry. The question was a different issue. I'm
10 looking at the keynote.

11 [PAUSE.]

12 I mean, I think Mr. Anthony basically asked them to
13 advocate for the victim and get the victim justice when the
14 trial was to determine whether or not these two people, one or
15 both committed this crime. Von Dohlen is a little different
16 because it started getting into some of the comparative worth
17 with the victims.

18 THE COURT: I'm reading Reese now. His argument was
19 that the victim deserved a jury that would carefully consider
20 the evidence, as I recall. I'm not going to quote it word for
21 word here because I don't remember it word for word, and his
22 argument was that they should go back and see that justice is
23 done.

24 MR. GROSE: My recollection was different. I think
25 the verdict does deserve them to consider it but when he said

1 -- I think his argument --

2 THE COURT: These all refer to the golden rule
3 argument is, is to put yourself in the position of the
4 defendant or do onto others as you would want them to do onto
5 you. That type of an argument, as I understand, is not
6 permitted. I'm trying to see how that argument rises to that
7 level.

8 MR. GROSE: Well, he said to give the victim
9 justice, and I'm paraphrasing, too.

10 THE COURT: Well, you probably asked for justice as
11 well in your statement. But go ahead, for your clients. I
12 mean, I'm not sure I understand how that's due -- I'm having
13 trouble making that leap.

14 MR. GROSE: He talked about the injuries that the
15 victim had and they were serious injuries, and we all have
16 acknowledged that. And when he's talking about that, the
17 victim has a right to have them consider the evidence and seek
18 the truth, I mean, everything in society has that right.

19 But when he says -- makes the argument to give the
20 victim justice I think he's making an argument to convict them
21 because something happen to this victim, and it's appealing to
22 their passions, their emotions, their prejudice to try to do
23 something to help this victim of this horrible crime.

24 THE COURT: Mr. Anthony, I'll be happy to hear from
25 you.

1 MR. ANTHONY: Well, the context of the remark was
2 exhorting the jury to consider the case carefully, and I did
3 use the wording give him justice but I did that in an
4 exhortation to ask them to make a careful examination of the
5 case, and I don't think that that rises -- I don't think that
6 rises to the level of anything close to a situation where I am
7 asking them to put themselves in the victim's shoes.

8 I was making an argument that this was a serious
9 thing that happened to the victim. He deserves to have the
10 case carefully considered and deserves the jury to give him
11 justice, and that's what I said.

12 I don't think that that is an infraction of any of
13 the case law that's being cited here in court because I didn't
14 ask the jury to think of themselves as the victim or to speak
15 for the victim or anything along those lines. I asked the
16 jury basically to give the victim justice.

17 MR. GROSE: Your Honor, Mr. Padgett gave me a cite
18 to look at. Can I have just a moment?

19 THE COURT: Sure.

20 [PAUSE.]

21 MR. GROSE: Your Honor, in State vs. White, 246 S.C.
22 502, 144 S.E.2d 481, 1965, it looks like it might have been a
23 death penalty trial and talked about when the solicitor was
24 arguing against mercy asking the jurors to put themselves, you
25 know, sort of -- or imagine their wives or daughters in a

1 place that the victim was.

2 THE COURT: That would be specifically against the
3 golden rule argument. I agree with that.

4 MR. GROSE: But I think it gets to this idea of -- I
5 mean, this case talks about inflaming the passions of the
6 jury, which I think is what Mr. Anthony was trying to do with
7 that argument.

8 THE COURT: Your objection is as to burden and
9 improper as to procedures?

10 MR. GROSE: And that it was improper, and the
11 procedures.

12 THE COURT: That's pretty broad. All right. I'm
13 going to step back in chambers. I'll be back.

14 (WHEREUPON, a brief recess was taken.)

15 THE COURT: Mr. Grose, I've had an opportunity to
16 review the record on the last objection you made to the
17 solicitor's argument. At that time, the objection was stated
18 as the comment was a burden shifting argument, which I don't
19 find the comment to be a burden shifting argument.

20 However, since that time, of course, you made a
21 general objection, and I think it's your obligation to make a
22 specific objection at the time. However, since that time you
23 have raised the question of whether or not that objection
24 would violate what is known in this State as the golden rule
25 argument or an effort to try to have the jurors become

1 advocates for a particular party.

2 To the extent that the solicitor stated that he
3 deserved a jury to do him justice, I will strike that portion
4 of the comment and instruct the jury that it is their job to
5 do justice for all parties before this Court.

6 Do you have any further objection?

7 MR. GROSE: May I have a moment, Your Honor.

8 THE COURT: Certainly.

9 [PAUSE.]

10 MR. GROSE: I think Mr. Padgett suggests that tying
11 that into the burden of proof or --

12 THE COURT: Well, I'm not making this part of my
13 charge. This is your objection to his argument, and I'll be
14 happy to grant your objection to his argument. I'll certainly
15 charge what I intended to charge to begin with, which I think
16 includes burden of proof, what burden they have to meet, and I
17 think it includes those things. I'm not going to specifically
18 mention that part of the argument in the charge.

19 MR. GROSE: Well, how about do justice for all
20 parties without being influenced by prejudice, passion or
21 caprice?

22 THE COURT: Well, again, the question was the
23 comment of the solicitor. Isn't that what you are objecting
24 to?

25 MR. GROSE: Yes, sir.

1 THE COURT: I'm striking it.

2 MR. GROSE: Thank you. And I would just --

3 THE COURT: And I will instruct them that it's not
4 their obligation to be an advocate for either side, that they
5 are to do justice for all parties. None of that will go into
6 my charge. That's my ruling.

7 MR. GROSE: Thank you.

8 THE COURT: Any objection to that?

9 MR. ANTHONY: No, sir.

10 THE COURT: All right. I'd ask the attorneys to
11 come forward and look at the verdict form, please.

12 [PAUSE.]

13 MR. GROSE: I think that looks fine, Your Honor.

14 MR. ANTHONY: Okay.

15 THE COURT: All right. You can bring the jury back.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 2:27 p.m.)

18 THE COURT: The record should reflect that all
19 jurors have returned to the courtroom. I trust everyone had a
20 good lunch break and are ready to begin with the trial.

21 When we broke earlier I had told you that I was
22 going to begin with my charge. However, I have received
23 additional objections to the solicitor's argument and I have
24 made an additional ruling in that regard. I will make you
25 aware of that.

1 During the solicitor's comments to the jury he made
2 the statement to the affect that the victim deserved a jury
3 that would do him justice. To the extent that he made that
4 comment I am striking that comment from the record and ask
5 that you disregard that comment in reaching your verdict.

6 I instruct you, and I think through my charge you
7 will be aware, that it's your responsibility to do justice for
8 all parties in this case, and I think that will certainly be
9 borne out after you've heard the charge. But that's my ruling
10 in regard to that particular objection.

11 Now, ladies and gentlemen of the jury, this is my
12 opportunity to charge you concerning the law in this case. As
13 I told you at the beginning of the case, there are several

14 indictments that have been issued by the grand jury here in
15 Abbeville County.

16 Those indictments charge the defendants in this
17 case -- charge each of the defendants with the offenses of
18 assault and battery with intent to kill, attempted armed
19 robbery and possession of a weapon during the commission of a
20 violent crime.

21 I'll remind you that I have advised you that the
22 fact that a defendant is arrested, charged, indicted in this
23 case is not evidence in this case. It cannot be used by you
24 in any fashion in determining the guilt or the innocence of a
25 defendant before this Court.

1 Those indictments are simply documents that bring
2 the charges before this Court. They contain the charges made
3 against the defendants and it is the formal document which
4 brings the charges before this Court for trial.

5 Again, the indictments in this case are for assault
6 and battery with intent to kill, attempted armed robbery and
7 possession of a weapon during the commission of a violent
8 crime. Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on the
10 evidence and the law applicable to it uninfluenced by your
11 decision as to any other indictment in the case.

12 A defendant may be convicted or acquitted on any or
13 all of the offenses charged. You will be asked during your
14 deliberations to write a separate verdict of guilty or not
15 guilty for each indictment for each defendant in the case.

16 I charge you that there are two defendants in the
17 case, each of whom is charged with the same offenses. The
18 case of each defendant and the evidence and the law concerning
19 that defendant should be considered by you separately and
20 individually. Your verdict does not have to be the same for
21 both defendants in this case.

22 The fact that you may find one defendant guilty or
23 not guilty should not control your verdict as to the other
24 defendant. Again, where more than one person is charged with
25 a crime if the evidence warrants it you may convict one and

1 acquit the other, or you may acquit both, or you may convict
2 both. It will depend on your view of the testimony and the
3 evidence presented in this trial.

4 You must take each defendant and consider the
5 evidence as to that defendant and my instructions to you on
6 the law separately for each defendant. And, again, you will
7 be asked to write a separate verdict of guilty or not guilty
8 for each individual defendant in the case.

9 Now, to the indictments that are presented to this
10 Court the defendants have pled not guilty. That plea places
11 the burden upon the State to prove each defendant guilty of
12 each and every allegation contained in the indictments before
13 this Court. A person who is charged with the commission of a
14 crime or offense in this State is the never required to prove
15 himself innocent.

16 I charge you that it is an important rule of law
17 that a defendant in a criminal case, no matter what the
18 seriousness of the offense might be, will always be presumed
19 to be innocent of the crime for which the defendant is charged
20 and the indictment was issued unless guilt has been proven to
21 you by evidence which satisfies you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence does not end when you
24 begin your deliberations. The presumption of innocence stays
25 with the defendant throughout the trial and throughout your

1 deliberations until you are satisfied of that defendant's
2 guilt by proof beyond a reasonable doubt.

3 The presumption of innocence sometime has been
4 described as like a robe placed around a defendant's shoulder
5 somewhat like the robe that I wear into this courtroom each
6 day. That robe remains about the defendant's shoulders until
7 such time as it has been stripped from the defendant by proof
8 which satisfies you of that defendant's guilt beyond a
9 reasonable doubt.

10 The presumption of innocence is not a mere legal
11 theory. It's not a mere legal phrase. It is a substantial
12 right that every defendant is entitled to until you, the jury,
13 are satisfied from the evidence presented to you of that
14 defendant's guilt beyond a reasonable doubt.

15 Now, as you can probably tell from my charge thus
16 far that the concept of reasonable doubt is an important
17 concept in our criminal justice system. You may ask yourself
18 just what is meant by the legal phrase reasonable doubt. A
19 reasonable doubt is that kind of doubt which would cause a
20 reasonable person to hesitate to act.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt. Some of you may have served
23 as jurors in civil cases at some other time, and in civil
24 cases there's a different standard or burden of proof. That's
25 a case where someone is seeking monetary damages from another

1 person. In those cases the standard of proof is proof by the
2 greater weight or the preponderance of the evidence.
3 Sometimes described as tipping the legal scales ever so
4 slightly in one direction or another.

5 That's not the standard of proof in this case. The
6 standard of proof in a criminal case in this State is proof
7 beyond a reasonable doubt. It is a more powerful burden of
8 proof than that contained in a civil case. Proof beyond a
9 reasonable doubt is that proof which would leave you firmly
10 convinced of the defendant's guilt.

11 Now, we realize that in our day-to-day lives there
12 are very few things that can be proven beyond any doubt, and
13 that's not the standard of proof to which the State is held.

14 The standard of proof is proof beyond a reasonable doubt.

15 If based on your consideration of the evidence you
16 are firmly convinced of the defendant's guilt of the crime
17 charged then you must find the defendant guilty. If on the
18 other hand, if you think there's a real possibility that the
19 defendant is not guilty then you must give the defendant the
20 benefit of that doubt and find him not guilty.

21 I'll remind you that during this trial you and I
22 have had different roles to play in this courtroom, different
23 jobs and duties to perform. As the trial judge it's been my
24 responsibility to preside over the trial of the case. I also
25 have the duty of ruling on the admissibility of evidence

1 offered during the trial. You are to consider only the
2 competent evidence in the record before you.

3 If there was any testimony or any other thing that
4 was offered during this trial that I ordered stricken from the
5 record in this case you must disregard that information, that
6 testimony or that statement.

7 You are to consider only the testimony which has
8 been presented from the witness stand and any exhibits which
9 may have been made a part of the record of this case and any
10 stipulations which have been made by counsel.

11 I also have the duty of charging you concerning the
12 law which is applicable to this case, and as the presiding
13 judge I have told you at the beginning of the trial and I

14 charge you now that I am the sole judge of the law to be
15 applied in this case. It's your duty under our law to take
16 the law as I give it to you and apply it to the facts as you
17 find them to be.

18 If you came into this courtroom with any ideas as to
19 what the law is or what the law ought to be you should leave
20 that notion outside of the jury room. It is your
21 responsibility as jurors in this case to accept the law as I
22 give it to you, apply it to the facts as you find them to be
23 and thereby reach a just and a true verdict in this case.

24 Now, in every case tried before this Court the jury
25 is the sole and exclusive judge of the facts of the case. As

1 the trial judge I told you at the beginning of the trial that
2 I cannot indicate to you in any fashion whatsoever that I have
3 any opinion as to how you should determine the facts in this
4 case.

5 If you take from any of my actions or any of my
6 rulings in the trial of this case that I have any opinion
7 whatsoever as to how you should determine the facts in this
8 case to be you should disregard that notion all together. The
9 law does not allow me to have an opinion on that subject, and
10 I can assure you I have no opinion as to how you determine the
11 facts in this case.

12 It is your job solely to determine the affect, the
13 value, the weight and the truthfulness of the evidence
14 presented before you in this trial.

15 Now, in every trial there are two types of evidence
16 which are generally admissible before the Court. The first
17 kind is what we call direct evidence. The other kind is what
18 we call circumstantial evidence.

19 Direct evidence is testimony by a witness who claims
20 to have actually scene, heard, tasted, experienced the matter
21 about which that witness testifies. That is direct evidence.

22 The other type of evidence which comes into a trial
23 is what we call circumstantial evidence. Circumstantial
24 evidence is proof of a chain of facts or circumstances
25 indicating the existence of another fact. It is evidence

1 which immediately establishes collateral facts from which a
2 main fact might be inferred. Circumstantial evidence,
3 therefore is based upon inferences and not on personal
4 knowledge or observation.

5 The law makes absolutely no distinction between the
6 weight or the value to be given to either direct or
7 circumstantial evidence. Nor is there a greater degree of
8 certainty required of circumstantial evidence than that of
9 direct. It is your job as jurors to weigh all of the evidence
10 that's presented in the case.

11 After weighing all of the evidence if you are not
12 convinced of the guilt of the defendants beyond a reasonable
13 doubt then you should find that defendant not guilty.

14 Necessarily in the process that I've just described
15 to you it will be your job to determine the credibility or the
16 believability of the witnesses who have testified in this
17 trial. Credibility simply means that, believability. It is
18 your duty to analyze and evaluate the evidence which you have
19 heard and decide which evidence convinces you of its truth.

20 In determining the believability of the witnesses
21 who have testified in this case you have the right to believe
22 one witness against many or many against one. You have the
23 right to believe all of what a witness told you or none of
24 what a witness told you. You have the right to believe part
25 of what a witness may have told you.

1 You may consider whether the witness has exhibited
2 to you any interest or bias or prejudice or any other motive
3 in the case. You may also consider the appearance and the
4 manner in which the witnesses have testified while on the
5 witness stand.

6 I instruct you and I emphasize to you the fact that
7 the defendants did not testify in this case is not a factor
8 which can be considered by you in any way in your
9 deliberations and in your consideration of the question of
10 guilt or innocence of a defendant. It must not be considered
11 by you in any manner whatsoever.

12 A defendant and every defendant has the
13 constitutional right to remain silent, and the assertion of
14 ~~this right must not be considered by you in any fashion in~~
15 your deliberations.

16 I'll repeat to you that under your oath you are to
17 draw no conclusion whatsoever from the fact that the
18 defendants did not testify in this case. The fact that a
19 defendant did not testify should not even be discussed by you
20 in the jury room.

21 The burden of proof in this case is upon the State
22 and it remains upon the State throughout the trial. The
23 defendant is not required to prove himself innocent. The
24 burden of proof remains upon the State to prove guilt beyond a
25 reasonable doubt throughout the trial.

1 Now, in this State if a crime is committed by two or
2 more people who are acting together in the committing of a
3 crime, the act of one is the act of all. A person who joins
4 with another to accomplish an illegal purpose is criminally
5 responsible for everything done by the other person which
6 occurs as a natural consequence of the acts done in carrying
7 out the common plan and purpose.

8 For example, two people can be guilty of killing
9 another person when only one of the two had a gun, there was
10 only one bullet and only one of the two fired the shot that
11 caused the death. If two or more people are together acting
12 together assisting each other in the commission of an offense
13 the act of one is the act of all. Or it is sometimes said the
14 hand of one is the hand of all.

15 Prior knowledge that a crime is going to be
16 committed without more is not sufficient to make a person
17 guilty of that crime. Mere knowledge that another person is
18 going to commit a crime even if the defendant is present when
19 the crime is committed is not sufficient to convict the
20 defendant as a principal.

21 Guilt as a principal is shown by actual or
22 constructive presence at a scene as a result of a prior
23 arrangement. Therefore, a finding of a prior arrangement
24 plan or common scheme is necessary for a finding of guilt as
25 a principal. The State must prove beyond a reasonable doubt

1 by competent evidence the theory of the hand of one is the
2 hand of all.

3 A principal in a crime is one who either actually
4 commits a crime or who is present aiding, abetting or
5 assisting in the commission of a crime. When a person doesn't
6 act in the presence of and with the assistance of another the
7 act is done by both.

8 Where two or more acting with a common plan or
9 scheme or intent are present at the commission of the crime it
10 does not matter who actually commits the crime, all are
11 guilty, the hand of one is the hand of all.

12 Present at the commission of a crime means to be
13 sufficiently near to aid, abet and assist in the commission of
14 the crime. However, mere presence at the scene of a crime is
15 not sufficient to convict one as a principal on the theory of
16 aiding and abetting.

17 Intent is also a necessary element. There must have
18 been a common design or intent to commit a crime and the crime
19 must have been committed pursuant thereto with the person's
20 aiding and abetting by some overt act.

21 Intent means intending the result which actually
22 occurs, not accidentally or involuntary. Intent may be shown
23 by acts and conduct of the defendant and other circumstances
24 from which you may naturally and reasonably infer intent.
25 Again, the State must prove the elements of the hand of one

1 being the hand of all by proof beyond a reasonable doubt.

2 An issue in this case has been the identification of
3 the defendant as the person who committed the crime charged.
4 The State has the burden of proving identity beyond a
5 reasonable doubt. You must be satisfied by proof beyond a
6 reasonable doubt of the accuracy of the identification of the
7 defendant before you may convict a defendant.

8 Identification testimony is an expression or belief
9 or an impression by a witness. You must determine the
10 accuracy of the identification of the defendant. You must
11 consider the believability of each identification witness in
12 the same way you evaluate any other witness in the case.

13 You may consider whether the witness had the
14 adequate opportunity to observe the offender at the time of
15 the offense. This will be affected by things like how long or
16 short of time was available, how far or how close was the
17 witness from the offense, what were the lighting conditions,
18 whether the witness had the chance to see or know the person
19 in the past before.

20 Once again, I instruct you that the burden is on the
21 State and it extends to every element of the crime charged,
22 and this specifically includes the burden of proving beyond a
23 reasonable doubt the identity of a defendant as the person who
24 committed the crime. If after examining the testimony you
25 have a reasonable doubt as to accuracy of the identification

1 you must find the defendant not guilty.

2 Now, in every criminal offense it is necessary for
3 the State to prove criminal intent. The State must prove the
4 mental state to be required by the State for a particular
5 crime and that might be purpose, intent, knowledge, reckless
6 or criminal negligence.

7 Criminal intent must be proven by the State by proof
8 beyond a reasonable doubt. Criminal intent is always a matter
9 that must be determined by you, the jury, from the
10 circumstances surrounding the situation.

11 Now, we realize there's no way to prove someone's
12 intent directly. We can't cut someone's head open, look in
13 their brain to see exactly what they intended to do. So,
14 therefore, criminal intent may be proven from the

15 circumstances that were shown to have existed and the
16 inferences that might be drawn from those circumstances. This
17 is how you make a determination as to whether or not the
18 element requiring intent was present.

19 It's not necessary to establish intent by direct and
20 positive evidence but intent may be established by the
21 inferences the same way any other fact may be proven, taking
22 into consideration the acts of the parties and all of the
23 facts and circumstances of the case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It's up to you to determine what the defendants

1 intended to do based on the circumstances which were shown to
2 have existed at that time.

3 Criminal intent could also arise from a failure to
4 act. It may arise from negligence, recklessness or an
5 indifference to duty or consequences that are considered by
6 the law to be the equivalent of criminal intent.

7 I mentioned this earlier but I will mention it
8 again, that mere presence at the scene of a crime is not
9 sufficient to prove someone guilty of a crime. A defendant's
10 presence where a crime is being committed or mere association
11 with a person who commits a crime does not make the defendant
12 an accomplice or aider or abetter of the person who commits
13 the crime.

14 The burden is on the State to prove every element of
15 the crime charged, and if you find after reviewing all of the
16 evidence that the State has proved that the defendant was
17 merely present at the scene of a crime and that they have not
18 proved beyond a reasonable doubt any other participation in
19 the crime then you must find that defendant not guilty. The
20 law is that proof of a person at the scene of a crime is not
21 sufficient to find someone guilty of that crime.

22 Now, there have been placed into evidence testimony
23 of several witnesses who have made prior statements which were
24 not consistent with the witness's present testimony. You may
25 use this evidence to decide whether or not to believe that

1 witness. You may also use evidence of the earlier
2 contradictory statements to determine the truth of those
3 statements. It is up to you, the jury, to decide whether to
4 believe the earlier statements or the statements which were
5 given at trial.

6 If a witness has shown to have knowingly testified
7 untruthfully concerning any matter you may consider this in
8 determining whether to trust that witness's testimony as to
9 other matters. You may reject all testimony of that witness
10 or give all or part of the testimony the weight that you think
11 that it deserves.

12 A person who has a past criminal record is competent
13 to testify during a trial. A past record does not affect the
14 ability of that witness to testify. The past record may be
15 considered by you if at all only in determining the witness's
16 believability. Remember, you are the sole judges of the facts
17 of the case. You are also the sole judges of the credibility
18 or the believability of each and every witness who has
19 testified in this trial.

20 Now, the specific charges that the defendants have
21 each been charged with, the first charge I'll go over with you
22 is assault and battery with intent to kill. In order to prove
23 assault and battery with intent to kill the State must prove
24 beyond a reasonable doubt that the defendant committed an
25 unlawful act of a violent nature to the person of another with

1 malice aforethought.

2 An assault occurs when a person unlawfully attempts
3 or offers to commit a violent injury to another person and has
4 the present ability to complete this attempted injury. An
5 assault is the intentional creation of a reasonable fear of
6 immediate bodily harm.

7 It is not necessary that the attempted injury or
8 bodily harm actually take place in order for an assault to
9 occur. To give you an example. If I were to walk up to you
10 out in the hall, walk up to within just a few feet of you,
11 draw back my hand as if to hit you then I will have at that
12 point in time committed an assault.

13 A battery is the unlawful touching of another person
14 by a person who has committed an assault. An unlawful

15 touching can be caused by a part of the accused body or by any
16 object that accused person puts in motion. A battery is the
17 completion of the assault by using or applying force to
18 another person however slight in a rude angry or resentful
19 manner without legal justification for doing so.

20 Using the earlier example that I gave you, if I
21 walked up to you out in the hall, got within a couple of feet
22 from you, draw back my hand as if to hit you then I will have
23 committed the assault. If I then bring my hand forward and
24 touch you however slightly in a rude, resentful or angry
25 manner that is the battery that would complete the assault

1 and battery.

2 Malice is hatred, ill will or hostility toward
3 another person. It is the intentional doing of a wrongful act
4 without just cause or excuse and with the intent to inflict
5 injury under circumstances that the law will infer evil
6 intent.

7 Malice aforethought does not require that the malice
8 exists for any particular time before the act is committed but
9 malice must exist in the mind of the defendant just before and
10 at the time that the act is committed. Therefore, there must
11 be a combination of previous evil intent and the act.

12 Malice aforethought may be expressed or inferred as
13 other facts may be. These terms express and infer do not mean
~~14 different kinds of malice it merely means the manner in which~~
15 the malice might be shown to have existed, that is either by
16 direct evidence or by inference from the facts and
17 circumstances which have been proved in the case.

~~18~~ Express malice is shown when a person speaks words
19 which express ill will or hatred for another or when the
20 person prepared beforehand to do the act which was later
21 established. For example, lying in wait for a person or any
22 other acts of preparation going to show that the deed was
23 within the defendant's mind would be express malice.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise when

1 the deed is done with a deadly weapon. A deadly weapon is any
2 article or instrument or substance which is likely to cause
3 death or greater bodily harm. Whether the instrument has been
4 used as a deadly weapon depends on the facts and circumstances
5 of each case.

6 The following are examples of items which have been
7 taken by this Court and our Courts to be deadly weapons. Such
8 things as a pistol, shotgun, rifle, dirk, dagger, knife,
9 slingshot, metal knuckles, razor, gasoline, firebombs, lighter
10 fluid, Molotov cocktails. A gun may be a deadly weapon even
11 if it is not operating.

12 If facts are proved beyond a reasonable doubt
13 sufficient to raise an inference of malice to your
14 satisfaction this inference would be simply an evidentiary
15 fact to be considered by you along with the other evidence in
16 this case and you may give it the weight that you think that
17 it should have.

18 A specific intent to kill is not an element of
19 assault and battery with intent to kill, but there must be a
20 general intent to commit serious bodily injury. Intent means
21 intending the result which actually occurs, not accidentally
22 or involuntary. Intent may be shown by acts and conduct of
23 the defendant and other circumstances from which you may
24 naturally and reasonably infer intent.

25 Evidence of character, the character of the assault,

1 the character of the instrument used, the manner in which it
2 was used, the purpose to be accomplished and the resulting
3 wounds or injuries may be considered in determining the intent
4 with which the assault was committed. Intent may be inferred
5 when it is demonstrated that the defendant voluntarily and
6 willfully commits an act, the natural tendency of which is to
7 destroy another's life.

8 Now, under our law there are certain what we call
9 lesser included offenses. That means you have a charge of a
10 main offense and within that offense is what is known as a
11 lesser included offense. The main offense of assault and
12 battery with intent to kill has a lesser included offense of
13 assault and battery of a high and aggravated nature.

14 If you find that the State has not proven that the
15 defendant is guilty of assault and battery with intent to kill
16 then you must determine whether the State has proved that the
17 defendant is guilty of the lesser included offense of assault
18 and battery of a high and aggravated nature.

19 Assault and battery of a high and aggravated nature
20 includes all of the elements I just discussed concerning an
21 assault and battery with intent to kill with the exception of
22 malice aforethought.

23 In addition, the State must prove beyond a
24 reasonable doubt an aggravating circumstance. Included within
25 the offense of assault and battery with intent to kill is that

1 lesser included offense of assault and battery of a high and
2 aggravated nature.

3 Now, circumstances of aggravation can include the
4 use of a deadly weapon, the intent to commit a felony, the
5 infliction of serious bodily injury, a great disparity between
6 the ages and physical conditions of the parties, a difference
7 in the gender of the parties, the taking of indecent liberties
8 or familiarities with a female through the use of force, the
9 purposeful infliction of shame and disgrace and the resistance
10 of lawful authorities. These are all circumstances of
11 aggravation which must be shown along with the elements of
12 assault and battery in order for there to be an assault and
13 battery of a high and aggravated nature.

14 The defendants are also charged with attempted armed
15 robbery. In order to prove this offense the State must prove
16 beyond a reasonable doubt that the defendant attempted to take
17 personal property from the person or presence of another
18 person. Property is in the presence of a person if it is
19 within their reach, inspection, observation or control so that
20 that person cannot -- if not overcome with violence or
21 prevented to by fear keep possession of the property.

22 The State must also prove beyond a reasonable doubt
23 that the defendant attempted to carry the property away
24 intending to permanently deprive the owner of the property and
25 to keep the property for the defendant's own use.

1 The slightest removal of the property or the
2 complete possession of the property or even for an instance by
3 the defendant is sufficient to show a taking and carrying away
4 of the property. The attempted taking and carrying away of
5 property must have been done with violence or by putting the
6 owner of the property in fear of violence.

7 Finally, the State must prove beyond a reasonable
8 doubt that the defendant was armed with a deadly weapon during
9 the attempted armed robbery. A deadly weapon, again, is any
10 article or instrument which is likely to cause death or great
11 bodily harm. Whether an instrument has been used as a deadly
12 weapon in any case depends upon the facts and circumstances of
13 each case.

14 An attempt is an effort to accomplish a crime which
15 does not succeed. An attempt includes specific intent to do a
16 particular criminal act along with an act falling short of the
17 act intended. The State must show more than mere preparation
18 and intent. There must be some overt act committed in the
19 effort to commit the crime. Intent means intending the result
20 which actually occurs not accidentally or involuntarily.

21 Intent, again, may be shown by conduct of the
22 defendant s and other circumstances from which you might
23 naturally infer or reasonably infer intent.

24 The defendants are also charged with possession of a
25 weapon during the commission or the attempt to commit a

1 violent crime. The State must prove beyond a reasonable doubt
2 that the defendant was in possession of a firearm or visibly
3 displayed what appeared to be a firearm during the commission
4 of a violent crime.

5 A firearm means any machine gun, automatic rifle,
6 revolver, pistol or any weapon which will if designed to or
7 may be readily converted to expel a projectile.

8 In order to find the defendant guilty of possession
9 of a weapon during the commission of a violent crime you must
10 find the defendant guilty of either committing a violent crime
11 or the attempt to commit a violent crime first. Assault and
12 battery with intent to kill and attempted armed robbery are
13 defined under our laws as violent crimes.

14 Now, one of the defendants in this case has raised
15 the defense of alibi. In order to establish an alibi it must
16 be shown that the defendant was in another specified place at
17 the time the crime was committed and it was therefore
18 impossible for the defendant to have been at the scene of the
19 crime. Mere denial of presence at the scene of the crime does
20 not constitute an alibi defense.

21 There is no burden upon a defendant to prove alibi.
22 The burden is upon the State to prove beyond a reasonable
23 doubt that the defendant was actually present at the scene of
24 the crime and actually participated in it and was not
25 somewhere else. In other words, the State has the burden of

1 disproving the defendant's alibi defense.

2 Now, ladies and gentlemen of the jury, in just a
3 moment I am going to ask you to retire to the jury room. I
4 will tell you at that time not to begin your deliberations.
5 I will bring you back into the courtroom and give you final
6 instructions and tell you to begin your deliberations at that
7 time.

8 However, when you go back into your deliberations,
9 sir, your name and number?

10 MALE JUROR: 95, Robert McClain.

11 THE COURT: Mr. McClain, I am appointing you as the
12 foreperson of this jury. That means that you will be the
13 person who is responsible to conduct the deliberations of the
14 jury. That appointment gives you no greater say in the
15 outcome of this case than any other juror sitting on the jury.
16 It simply means that you will preside over the discussions of
17 the jury.

18 If it becomes necessary during deliberations for the
19 jury to communicate with this Court in any fashion I would ask
20 that you put that communication, question in writing, have all
21 the jurors agree as to the question or the communication to be
22 submitted, knock on the door and inform the bailiff that the
23 jury has a question or a communication. The bailiff will see
24 that that's delivered to me.

25 I will caution you that during your deliberations I

1 cannot answer each and every question that you may have
2 concerning your deliberations. I remind you, you are the sole
3 judges of the facts in this case. I am the Judge of the law.
4 I will to the extent allowed answer your question if at all
5 possible or I will do so after consulting with the attorneys
6 in considering what response is appropriate.

7 Now, before you can reach a verdict in this case it
8 is necessary on any of the issues I present to you it is
9 necessary that each and every one of you must agree upon that
10 verdict. This means the verdict must be the unanimous verdict
11 of the jury. Until such time as a unanimous verdict has been
12 reached then a verdict has not yet been reached.

13 Now, once a verdict has been reached on all
14 ~~questions submitted to the jury it will be the foreperson's~~
15 responsibility to record that on the appropriate forms that I
16 will supply to you when I tell you to begin your
17 deliberations. Again, you would knock on the door and inform
18 the bailiff that a verdict has been completed and reached.
19 The bailiff then will return you to the courtroom for me to
20 receive those verdicts.

21 Now, at this point in time there's still some
22 matters that I need to discuss with the attorneys before I
23 tell you to begin your deliberations. I'm going to ask you to
24 return to the jury room for just a few minutes and I'll ask
25 you to come back into this courtroom and give you your final

1 instructions before you are to begin your deliberations.

2 At this time, I'd ask that you please retire to the
3 jury room.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 3:03 p.m.)

6 THE COURT: Any exceptions to the charge from the
7 State?

8 MR. ANTHONY: No, sir.

9 THE COURT: Any from the defense, Mr. Padgett?

10 MR. PADGETT: I have none, Your Honor.

11 THE COURT: Mr. Grose?

12 MR. GROSE: I have a couple, Your Honor.

13 THE COURT: Yes, sir.

14 MR. GROSE: The first one is in regards to your
15 instruction on the crime of assault and battery with intent to
16 kill. I think that the state of the law was a little bit
17 confusing despite or Supreme Court efforts to try to resolve
18 it a little bit.

19 State vs. Wild, which is a Court of Appeals case,
20 355 S.C. 269, 584 S.E.2d 138, 2003, they summarize the law of
21 assault and battery with intent to kill including the element
22 of malice, which I think you charged correctly.

23 Where the confusion comes into place is on this
24 general intent, specific intent. They do say in that case,
25 furthermore, A. B. I. K. requires the intent to kill. They

1 cite Foust, which is one of the most important cases on the
2 subject from the Supreme Court, a number of other cases.

3 Then they talk about it is adequate if the general
4 intent is established, specific intent is not necessary. They
5 cite more cases and indeed some of the same language that I
6 believe you used about intent. But I do think that intent to
7 kill, all be it a general intent, is an element of assault and
8 battery with intent to kill and the jury was not told that.

9 Also, I believe that Your Honor charged that -- when
10 you charged that assault and battery of a high and aggravated
11 nature is a lesser included I believe that you charged that it
12 contained all of the elements except for malice.

13 THE COURT: I think I said all the elements of
14 assault and battery. I don't think I said with intent to
15 kill.

16 MR. GROSE: I thought there was something about
17 except for malice. If I'm mistaken, I'm mistaken.

18 THE COURT: Go ahead and make your objection.

19 MR. GROSE: The Pilgrim, case, State vs. Pilgrim --
20 and I've got to get to the right case. I keep pulling up the
21 Court of Appeals case. The cite is 326 S.C. 24, 482 S.E.2d
22 562, 1997. That was overruled by Foust on the issue of Foust
23 but I think it's still good law on the fact that you can have
24 an assault and battery of a high and aggravated nature that
25 doesn't involve malice.

1 Also, and I'm trying to remember back to the --

2 THE COURT: Actually the word was malice
3 aforethought, I think.

4 MR. GROSE: Right, and they talk about that the
5 absence of malice is not required for ABHAN. That you can
6 have ABHAN with the malice.

7 THE COURT: The exact charge was assault and battery
8 of a high and aggravated nature includes all of the elements
9 of assault and battery with intent to kill except malice
10 aforethought.

11 MR. GROSE: And I think you can have assault and
12 battery of a high and aggravated nature with malice
13 aforethought. And if I decide -- forgive the example, but if

14 I decide well, I want to bash in your kneecap with a baseball
15 bat I may not be trying to kill you but I'm certainly doing
16 that with malice, and if I thought about it ahead of time
17 that's the aforethought.

18 THE COURT: Anything else?

19 MR. GROSE: Not on that but there is one other
20 objection.

21 THE COURT: Go ahead.

22 MR. GROSE: At some point in your charge, maybe it
23 was with the hands of one hands of all you gave an example
24 involving a shooting. I would cite the Court to State vs.
25 Huey, 339 S.C. 439, 529 S.E.2d 271 S.Ct. 2000.

1 In that case the trial judge was affirmed for
2 refusing to give specific examples of voluntary manslaughter
3 as a lesser included because those specific examples amounted
4 to a comment of the facts which violates that provision of the
5 State Constitution.

6 THE COURT: So you are saying that my comments
7 constituted a comment on the facts?

8 MR. GROSE: Yes, sir.

9 THE COURT: It was a killing. It wasn't a shooting.
10 Of course, they used a gun in the killing but it wasn't an
11 example of a robbery where somebody was shot.

12 MR. GROSE: It's awful close because, I mean, they
13 have to prove every element but the killing.

14 THE COURT: Overruled.

15 MR. GROSE: Thank you.

16 THE COURT: Anything else?

17 (There was no response.)

18 THE COURT: All right. I'd ask the attorneys to get
19 together, review the exhibits to be submitted to jury, please.

20 [PAUSE.]

21 Bring the jury back.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 3:14 p.m.)

24 THE COURT: Mr. Foreman, I have in my hand the
25 verdict forms that I'm going to submit to the jury. One of

1 the verdict forms has to do with the Defendant Haskell, but
2 the verdict forms are identical because they are charged with
3 the same offenses. But one you'll see at the top the caption
4 is for Mr. Haskell and it identifies the indictments in his
5 case, but as I go over the forms you'll find that the forms
6 for both defendants will be the same.

7 The first question you'll be asked to respond to is
8 as to the indictment for assault and battery with intent to
9 kill. It has a question for you to determine whether or not
10 in this case Mr. Haskell is not guilty or guilty of that
11 offense. If you find him not guilty then you would check the
12 blank that says not guilty. If you find him guilty then you
13 would check the blank that says guilty.

14 Do not take from the fact that I have put one

15 verdict above the other or in particular order that I have any
16 opinion as to how you determine the facts in that case.
17 Again, there's either a guilty or not guilty verdict, two
18 choices, they've got to be placed in some order. This is the
19 order that I have placed them in.

20 Now, if you find the Defendant Haskell not guilty of
21 the offense of assault and battery with intent to kill then
22 you would be required to answer question 1-B, which is as to
23 the offense of assault and battery of a high and aggravated
24 nature. Again, that's the lesser included offense. Again,
25 the choices are not guilty or guilty.

1 Question number two has to do with the events of
2 attempted armed robbery. Again, that offense carries two
3 possible choices, not guilty or guilty.

4 The third question or the third indictment to be
5 considered is for the possession of a firearm or knife during
6 the commission of a violent crime. Again, the choices are not
7 guilty or guilty.

8 So again, to go back over it. The first question
9 has to do with the offense of assault and battery with intent
10 to kill. If you find the defendant not guilty you must answer
11 the question then concerning assault and battery of a high and
12 aggravated nature.

13 As to the other offenses, there is a choice of not
14 guilty or guilty on questions two and three. Once you've
15 completed the verdict forms as to that defendant then you
16 would sign it on the place for foreman, date it, and that will
17 conclude your verdict in that case.

18 As to Defendant Harrison, the questions are the same
19 since the charges are the same. Again, you will have to fill
20 out a verdict form for each defendant on each and every
21 indictment presented to you before you have rendered a verdict
22 in the entire case.

23 The exhibits which have been admitted into evidence
24 will be delivered to you in the jury room. You'll have them
25 in the room so that you can consider them at your leisure.

1 Again, should there be any question that arises during
2 deliberations, please put that question in writing, inform the
3 bailiff that you have a question and then that will be
4 presented to us.

5 Once you have reached a verdict in the case, again,
6 complete the verdict forms, sign them and date them, and
7 again, inform the bailiff of the fact that you have reached a
8 verdict.

9 Now, at this time, I'm going to ask you to retire to
10 the jury room. Begin your deliberations until such time as
11 you've been able to reach a verdict on the charges presented
12 before the Court.

13 I'd ask that the alternate remain seated.

14 The remainder of the jurors can retire to the jury
15 room. Thank you very much.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 3:18 p.m.)

18 THE COURT: Sir, we're going to ask that you have a
19 seat in a separate room. Should any of the jurors not be able
20 to complete the deliberations you would be asked to join the
21 jury and enter the deliberations at that point in time.

22 If you would, see the bailiffs at the back of the
23 courtroom, they'll show you where you can be seated and we'll
24 call you if we should need you. Thank you very much.

25 (WHEREUPON, the alternate leaves the courtroom.)

1 THE COURT: Mr. Bailiff, the verdict forms and the
2 exhibits are here. If you'll deliver those to the jury,
3 please.

4 Any objections from the State to my final comments?

5 MR. ANTHONY: No, sir.

6 THE COURT: Any from the defense, Mr. Padgett?

7 MR. PADGETT: No, sir, Your Honor.

8 THE COURT: Mr. Grose?

9 MR. GROSE: None other than our previous objections.

10 THE COURT: They have all been noted I'm sure.

11 Court will at ease until such time as a verdict has
12 been reached.

13 (WHEREUPON, the trial of this case was recessed at
14 approximately 3:20 p.m. while awaiting a verdict from the
15 jury.)

16 THE COURT: Is the State ready?

17 MR. ANTHONY: The State is, Your Honor. I'd ask the
18 Court alongside of the response to the question to tell the
19 jury that they can rehear testimony if they wanted to.

20 THE COURT: Okay. You ready, Mr. Padgett?

21 MR. PADGETT: I am, Your Honor.

22 THE COURT: You ready, Mr. Grose?

23 MR. GROSE: I have no objection to Mr. Anthony's
24 request.

25 THE COURT: Bring the jury back, please.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 3:30 p.m.)

3 THE COURT: I have received a request from the jury.
4 That request is that you need Ms. Cole's statement,
5 Mr. Norman's statement. The only statement we have is
6 Mr. Adams.

7 Mr. Foreman, the evidence that has been submitted to
8 you are the only things that have been placed into the record
9 of this case by way of evidence. The other statements were
10 not introduced. They were numbered and identified, given a
11 number for identification but were not introduced into
12 evidence.

13 If during your deliberations, however, that you
14 think you need to review some of the testimony or the
15 statements that we can do that. That is a fairly lengthy
16 process but I will tell you that it is available if it becomes
17 important for you to do that. There are arrangements by which
18 we can allow you to listen to or review the testimony of
19 particular witnesses, however, you would have to come back
20 into the courtroom to do that. We don't have the ability to
21 transmit that into the jury room.

22 But the documents which you currently have are the
23 only documents that were placed into evidence. The others may
24 have been testified to. To the extent that they were
25 testified to that testimony is evidence in the case:

1 All right. You can return to your jury room for
2 deliberations. Thank you very much.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 3:32 p.m.)

5 THE COURT: Any objections to my response, from the
6 State?

7 MR. ANTHONY: No, sir.

8 THE COURT: Mr. Padgett?

9 MR. PADGETT: No, Your Honor.

10 THE COURT: Mr. Grose?

11 MR. GROSE: No, sir.

12 THE COURT: The question will be made a Court's
13 exhibit. The Court will remain in recess until such time as a
14 verdict has been reached.

15 (WHEREUPON, Court's Exhibit No. 5, a Note From The
16 Jury, was marked and made a part of the record.)

17 (WHEREUPON, the trial of this case was recessed
18 while awaiting a verdict from the jury.)

19 THE COURT: All right. The record should reflect
20 all the attorneys are present. I received an inquiry from the
21 jury to listen to the testimony of two witnesses. I've
22 instructed the court reporter to get that information ready
23 for the jury. Once it's prepared we will be in a position to
24 replay that testimony for the jury.

25 If any of the attorneys would like to see the

1 request from the jury it is available with the court reporter.

2 We're going to take about a five-minute break, give
3 her a chance to get that ready then hear from you if there's
4 any problems. Court will be in recess.

5 (WHEREUPON, Court's Exhibit No. 6, a Note From The
6 Jury, was marked and made a part of the record.)

7 (WHEREUPON, a brief recess was taken.)

8 THE COURT: The State ready?

9 MR. ANTHONY: Yes, sir.

10 THE COURT: Defense?

11 MR. PADGETT: Yes, Your Honor.

12 MR. GROSE: Yes, sir.

13 THE COURT: All right. I have received a request
14 from the jury that says the jury needed to hear the testimony
15 of N. Cole by the State and the defense and the testimony of
16 Sherman Norman elicited by the State.

17 I have conferred with the court reporter.
18 Apparently, Mr. Norman's testimony falls in the sequence
19 actually first. So I intend to have that portion of the
20 testimony replayed. And then replay the testimony requested
21 for Ms. Cole.

22 Any objection to that, from the State?

23 MR. ANTHONY: No, sir.

24 THE COURT: Any objection from the defense,
25 Mr. Padgett?

1 MR. PADGETT: I have no objection. But my
2 recollection is -- and maybe your tapes or the court reporter
3 needs to do that, but I thought Ms. Cole testified before
4 Mr. Sherman.

5 THE COURT: I'm just saying the sequence it is on
6 her tapes. That's just what she told me.

7 [PAUSE.]

8 MR. GROSE: My mistake.

9 THE COURT: Is that correct?

10 MR. GROSE: Yes.

11 THE COURT: So there's no objection from the
12 defense; is that a correct statement?

13 MR. PADGETT: No objection from the defense, Your
14 Honor.

15 MR. GROSE: No objection.

16 THE COURT: All right. Bring the jury back.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 5:10 p.m.)

19 THE COURT: The record should reflect the jury has
20 returned to the courtroom.

21 I have received a request to review the testimony of
22 Sherman Norman and Ms. Cole. We're going to go over the
23 testimony of Mr. Norman first. It falls in the tape sequence
24 at the first location. That's going to be the evidence or
25 testimony elicited by the State. Then we'll play the second

1 request in its entirety, both the State and the defense.

2 The court reporter has set this up as good as she
3 can. Now, it will come off of her machine here. We'll turn
4 it up as loud as we can turn it up. If any of you have a
5 problem in hearing or can't hear it we can try to run it
6 through the loud speaker system or by just putting the
7 microphone over there. But we're going to try it first coming
8 off of her equipment.

9 Madam Court Reporter, you can begin.

10 (WHEREUPON, the requested testimony was played for
11 the jury.)

12 THE COURT: Mr. Forman, I believe that completes the
13 portion of the testimony you requested to re-hear. At this
14 point in time, I am going to ask you to return to the jury
15 room and continue your deliberations. Thank you very much.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 6:05 p.m.)

18 THE COURT: Any objection to the process, from the
19 State?

20 MR. ANTHONY: No, sir.

21 THE COURT: Any from the defense?

22 MR. PADGETT: No, Your Honor.

23 MR. GROSE: Nothing, Your Honor.

24 THE COURT: All right. We'll remain at ease until
25 such time as the verdict is returned.

1 (WHEREUPON, Court was in recess while awaiting a
2 verdict from the jury.)

3 THE COURT: gentlemen, I'm going to call the foreman
4 in and explain to him the procedure that we're going to follow
5 in ordering dinner for the jury.

6 Also, I'm going to explain to him that if there's
7 any member of the jury who wishes to have their family called
8 and have explained to them their whereabouts that they provide
9 a phone number and a person to call to the clerk and we'll get
10 in the touch with family members and let them know that they
11 are in deliberations and will be here for awhile.

12 So if you would bring the foreman only, please.

13 (WHEREUPON, the Foreman enters the courtroom at
14 approximately 6:30 p.m.)

15 THE COURT: Mr. Foreman, come in and just have a
16 seat right over there will be fine, over there.

17 Sir, I wanted to let you know, what we are going to
18 do is I'm going to send the bailiff in shortly to take orders
19 for dinner for the jury. I will tell you and you should
20 instruct the other members of the jury that they should only
21 communicate with the bailiff concerning that order and that
22 order alone.

23 When you return to the jury room also you might want
24 to inquire of any of the members of jury panel if they would
25 like for the clerk to call someone at their home and explain

1 their whereabouts. We'll be happy to do so. If they can just
2 give us a phone number and a contact name we'll see that the
3 clerk's office calls them and lets them know that they are in
4 deliberations and may be here for a little while until a
5 verdict is reached.

6 MR. FOREMAN: Yes, sir.

7 THE COURT: So shortly the bailiff will come in;
8 he'll go about getting those dinner orders. And, again, ask
9 them to, if they would, please give us a contact number if
10 they wish for us to call someone concerning there whereabouts.
11 Thank you. You can return to the jury room.

12 (WHEREUPON, the foreman leaves the courtroom.)

13 THE COURT: Any objection to my communication with
14 the foreman, from the State?

15 MR. ANTHONY: No, sir.

16 THE COURT: Any from the defense?

17 MR. GROSE: No, sir.

18 MR. PADGETT: No, Your Honor.

19 THE COURT: We'll remain at ease until we receive a
20 verdict. I'll instruct the clerk to begin to gather dinner
21 orders. Thank you very much.

22 (WHEREUPON, Court was in recess while awaiting a
23 verdict from the jury.)

24 THE COURT: I've received a question from the jury.
25 The question is can we find one guilty on a lesser charge or

1 does the hand of one is the hand of all apply?

2 I've given it some thought. It's an interesting
3 question. And I'll give you gentlemen a minute to think about
4 it before we call the jury back in. In fact, I'm going to
5 distribute the food before we try to answer the question.

6 But at any rate, it would appear to me in
7 considering that that each indictment has to stand on its own,
8 each defendant has to be judged on each indictment separately
9 from the others, that a jury could find one of the defendants
10 not guilty on all charges and find one of the defendants
11 guilty on all charges, if they find that the other defendant
12 did not participate in the crime at all.

13 So I will think that, again, I have to charge them
14 concerning the fact that each indictment has to stand on its
15 own, each allegation has to stand on its own and each
16 defendant has to be judged separately from the other and
17 separately from all verdicts in the other case, and the hand
18 of one hand of all only applies if the Court were to find that
19 both defendants participated in the alleged crime to the
20 extent required by the charge.

21 But I'll give you a moment to think about that.
22 It's kind of an interesting question and I want to be sure
23 that you've had a moment to think about it. I'll instruct the
24 clerk to go ahead and distribute the dinners that have been
25 received, and once that's been done we'll consider answering

1 the question.

2 Do want to read the question?

3 MR. GROSE: Yes, sir.

4 THE COURT: You're welcome to take a look at it.

5 Let's make it a Court's exhibit. If you'll hand it to the
6 court reporter, and you can review that. I'll step back into
7 chambers. We'll be in recess for a few minutes.

8 (WHEREUPON, Court's Exhibit No. 7, a Note From The
9 Jury, was marked and made a part of the record.)

10 (WHEREUPON, there was brief recess.)

11 THE COURT: Bring the jury back.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 8:25 p.m.)

14 THE COURT: The record should reflect that all
15 jurors have returned to the courtroom.

16 I've received a question from the jury panel. I'll
17 go over the question. It says can we find the one guilty on a
18 lesser charge or does the hand of one is the hand of all
19 apply?

20 Let me go over just a couple of things in the charge
21 that I gave you earlier. I'm going to go back over that
22 charge with you. Maybe this will answer the question. When
23 I've completed my explanation I'll ask you if this will take
24 care of the question that you had.

25 First of all, there are multiple indictments in this

1 case. The indictments in the case allege several different
2 offenses against the defendants. The three charges against
3 each defendant is assault and battery with intent to kill,
4 attempted armed robbery and possession of a weapon during the
5 commission of a violent crime.

6 Each indictment charges separate and distinct
7 defenses. You must decide each indictment separately on the
8 evidence and the law applicable to it unaffected by your
9 decision as to any other indictment.

10 A defendant may be convicted or acquitted on any or
11 all of the offenses charged. You are asked to write a
12 separate verdict of guilty or not guilty as for each
13 indictment and as to each defendant..

14 The case of each defendant and the evidence and the
15 law concerning that defendant should be considered separately
16 and individually. Your verdict does not have to be the same
17 for both or all defendants. The fact that you may find one
18 defendant guilty or not guilty should not control your verdict
19 as to the other defendant.

20 Where more than one person is charged with a crime
21 if the evidence warrants it you may convict one and acquit the
22 other, or you may acquit both, or you may convict both. It
23 will depend upon your view of the testimony and the evidence.
24 You must take each defendant and consider the evidence as to
25 that defendant and consider my instructions to you on the law

1 separately. You will write a separate verdict of guilty or
2 not guilty for each individual defendant.

3 Now I'm going to give you again the charge on the
4 law for the hand of one is the hand of all. If a crime is
5 committed by two or more people who are acting together in
6 committing a crime the act of one is the act of all.

7 A person who joins with another to accomplish an
8 illegal purpose is criminally responsible for everything done
9 by the other person which occurs as a natural consequence of
10 the acts done in carrying out the common plan and purpose.

11 Prior knowledge that a crime is going to be
12 committed without more is not sufficient to make a person
13 guilty of that crime. Mere knowledge that another person is
14 going to commit a crime even if the defendant is present when
15 the crime is committed is not sufficient to find the defendant
16 guilty as a principal.

17 Guilt as a principal is shown by actual or
18 constructive presence at the scene as a result of a prior
19 arrangement, therefore a finding of a prior arrangement or
20 plan or common scheme is necessary for the finding of guilt as
21 a principal. The State must prove beyond a reasonable doubt
22 by competent evidence the theory of the hand of one is the
23 hand of all.

24 A principal in a crime is one who either actually
25 commits the crime or who is present aiding, abetting or

1 assisting in the committing of the crime. When a person
2 doesn't act in the presence of and with the assistance of
3 another the act is done by both.

4 Where two or more acting with a common plan or
5 intent are present at the commission of a crime it does not
6 matter who actually commits the crime, all are guilty, the
7 hand of one is the hand of all.

8 Present at the commission of a crime means to be
9 sufficiently near to aid, abet and assist in the commission of
10 the crime. However, mere presence at the scene of a crime is
11 not sufficient to convict one as a principal on the theory of
12 aiding and abetting.

13 Intent is also a necessary element. For there must
14 have been a common design or intent to commit the crime and
15 the crime must have been committed pursuant thereto with the
16 person aiding and abetting by some overt act.

17 Intent means intending the result which actually
18 occurs, not accidentally and not involuntarily. Intent may be
19 shown by acts and conduct of the defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent. The State must prove these elements beyond a
22 reasonable doubt. That was my charge on the hand of one is
23 the hand of all.

24 Mr. Foreman, did that answer the question that you
25 had?

1 MR. FOREMAN: Yes, sir.

2 THE COURT: You may return to the jury room. I
3 understand that dinner has arrived, it will be delivered
4 shortly. You should resume your deliberations.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 8:30 p.m.)

7 THE COURT: Any objection to my remarks, from the
8 State?

9 MR. ANTHONY: No, sir.

10 THE COURT: From the defense, Mr. Padgett?

11 MR. PADGETT: No, Your Honor.

12 THE COURT: Mr. Grose?

13 MR. GROSE: No, sir.

14 THE COURT: We'll remain at ease until a verdict is
15 reached. Thank you very much.

16 (WHEREUPON, Court was in recess while awaiting a
17 verdict from the jury.)

18 THE COURT: I've been informed that the jury has
19 reached a verdict. Is the State ready?

20 MR. ANTHONY: Yes, sir, we are.

21 THE COURT: The defendant ready, Mr. Padgett?

22 MR. PADGETT: Yes, Your Honor.

23 THE COURT: Mr. Grose, the defendant ready?

24 MR. GROSE: Yes, sir.

25 THE COURT: Bring the jury back.

1 Before the jury comes in I'll inform the persons
2 present in the courtroom that the Court will not tolerate any
3 outburst upon the announcement of the verdict.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 9:10 p.m.)

6 THE COURT: The record should reflect that all
7 jurors have returned to the courtroom.

8 Mr. Foreman, I've been informed the jury has reached
9 a verdict; is that correct?

10 MR. FOREMAN: Yes, sir.

11 THE COURT: If you'll pass the verdict to the
12 bailiff, please.

13 Madam Clerk, you may announce the verdicts.

14 THE CLERK: State of South Carolina vs. Clarence A.
15 Harrison, the second, indictment number 06-GS-01-194,
16 06-GS-01-195, 06-GS-01-196.

17 As to indictment number 06-GS-01-194, assault and
18 battery with intent to kill, we, the jury, unanimously find
19 the defendant, Clarence A. Harrison, the second, guilty.

20 As to indictment 06-GS-01-195, attempted armed
21 robbery, we, the jury, unanimously find the defendant,
22 Clarence A. Harrison, the second, guilty.

23 As to indictment 06-GS-01-196, possession of a
24 firearm or knife during the commission of a violent crime, we,
25 the jury, unanimously find the defendant, Clarence A.

1 Harrison, the second, guilty.

2 I certify that this is a unanimous decision of the
3 jury, Robert P. McClain, foreman, March the 23rd, 2006.

4 State of South Carolina vs. Alti Monte Livingston
5 Haskell, indictment number 04-GS-01-118, 06-GS-01-191.

6 As to indictment number 06-GS-01-191, assault and
7 battery with intent to kill, we, the jury, unanimously find
8 the defendant, Alti Monte Livingston, guilty.

9 As to indictment number 04-GS-01-118, attempted
10 armed robbery, we, the jury, unanimously find the defendant,
11 Alti Monte Livingston Haskell, guilty.

12 As to indictment 04-GS-01-118, possession of a
13 firearm or knife during the commission of a violent crime, we
14 the jury, unanimously find the defendant, Alti Monte
15 Livingston Haskell, guilty.

16 I certify that this is the unanimous decision of the
17 jury, Robert P. McClain, March 23rd, 2006.

18 Mr. Foreman, ladies and gentlemen of the jury, if
19 this be your verdict so say you all, please signify by raising
20 your right hand.

21 (All hands were raised.)

22 THE COURT: Anything further from the State before I
23 release the jury?

24 MR. ANTHONY: Nothing for the jury, Your Honor.

25 THE COURT: Anything further from the defense,

1 Mr. Padgett or Mr. Haskell?

2 MR. PADGETT: No, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. GROSE: Your Honor, we didn't think that all 12
5 raised their hands. We would ask that the jury be poled.

6 THE COURT: All right. The jury will be poled.

7 (WHEREUPON, the jury was poled.)

8 THE CLERK: Your Honor, the jury has been poled and
9 the verdict has been affirmed.

10 THE COURT: Anything further from the defense before
11 I release the jury?

12 MR. GROSE: No, sir.

13 THE COURT: Anything further, Mr. Padgett?

14 MR. PADGETT: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, I have instructed you throughout this trial that you are
17 not to discuss this case with anyone. At this point in time,
18 I will advise you you have the right to discuss this case with
19 anyone if you so choose.

20 You also have the right not discuss your verdict
21 with anyone. You have completed your duty under the law and
22 you owe no one an explanation for your service on the jury.
23 Should anyone harass you or bother you concerning your service
24 on this jury please report that fact to the clerk's office and
25 the appropriate action will be taken for that harassment.

1 This will end your service for this week and as you
2 learned earlier in the week it ends your service for several
3 years, if you so choose, on a jury in the circuit court.

4 I want to thank you very much for rendering the
5 important service that you have rendered to the State of South
6 Carolina and the County of Abbeville by your service on this
7 jury at this time.

8 You have the right, this is a public courtroom, to
9 stay for sentencing, although you are not required to do so.
10 Sentencing is taken care of by the Court. So at this point in
11 time you're free to go.

12 Anyone who needs a statement concerning your work,
13 please check with the clerk before you leave.

14 I will need the foreman to sign the back of the
15 indictments for the verdicts, and you'll need to stay for just
16 a minute and see the clerk about signing those.

17 Otherwise, the remainder of the jury is free to go.
18 Thank you very much.

19 (WHEREUPON, all jurors were excused.)

20 THE COURT: All right. I'd ask that the defendants
21 and their lawyers approach, please, right over here.

22 MR. GROSE: Your Honor, if we may, prior to
23 sentencing.

24 THE COURT: Sure.

25 MR. GROSE: Based on the previous motions and the

1 fact that the State failed to present sufficient evidence the
2 jury could convict beyond a reasonable doubt we'd move for a
3 new trial on all three counts.

4 MR. PADGETT: And I would join in that, Your Honor.

5 THE COURT: I'll note that the motion has been made
6 and the motion has been denied in both cases.

7 Now, Mr. Haskell, I'll be happy to hear from you or
8 Mr. Padgett, you represent him.

9 MR. PADGETT: I do, Your Honor.

10 THE COURT: I'll be happy to hear from you, sir.

11 MR. PADGETT: Your Honor, Mr. Haskell is a 31 year
12 old. With a conviction of these crimes he faces a maximum of
13 45 years. We would ask that Your Honor take into account all
14 the testimony in the trial and be as lenient as possible on
15 Mr. Haskell in this situation.

16 THE COURT: Mr. Haskell, anything you'd like to say
17 to the Court?

18 DEFENDANT HASKELL: Just take into consideration
19 what my lawyer said.

20 THE COURT: Okay, sir. I assume --

21 MR. BUERGEY: I'll be speaking on behalf of
22 Mr. Harrison.

23 THE COURT: All right. I'll be happy to hear from
24 you.

25 MR. BUERGEY: Your Honor, Clarence Harrison is a

1 native of Abbeville, Abbeville County. He's been here this
2 week with his mother, Betty. She's been here with him all
3 week. He lives at 210 Gray Rock Estates.

4 He's done a variety of different types of work in
5 the past. He's done mostly roofing work but some other sorts
6 of things. He does have one young daughter and has one more
7 child on the way.

8 Your Honor, Mr. Harrison served almost a year in the
9 local county jail before bonding out on these charges. We
10 just ask that, obviously, that he be given credit for all that
11 and just ask that you be as merciful as possible, Your Honor.
12 He is a young man who still has most of his life ahead of him
13 and we just ask that you fashion a sentence that will give him
14 another chance.

15 THE COURT: How much time has your client served on
16 this? Do you have any idea?

17 MR. PADGETT: It was just a few days, Your Honor. I
18 do not have that information right now but we would ask for
19 credit for time served, of course.

20 THE COURT: I understand.

21 MR. BUERGEY: With Mr. Harrison, and S. C. D. C.
22 will compute this automatically anyway, but it's actually more
23 than -- it was a little bit of a complicated situation with
24 him because he had a bond that was revoked at one point. In
25 total it was actually over a year, but if S. C. D. C. doesn't

1 give him the proper credit Mr. Harrison can -- I'll instruct
2 him to contact me and we'll make sure that gets straightened
3 out because that happens from time to time.

4 THE COURT: Mr. Anthony?

5 MR. ANTHONY: Yes, sir, Your Honor. First, I'd like
6 to give the Court the criminal histories of the two
7 defendants.

8 THE COURT: Yes, sir, please do.

9 MR. ANTHONY: I'll start with Mr. Harrison. He has
10 a 1997 conviction for simple assault and battery; 1999
11 conviction for criminal domestic violence; 2001 conviction for
12 possession of marijuana; 2001 convictions for trespassing and
13 giving false information; a 2003 conviction for driving under
14 suspension, actually three 2003 convictions for driving under
15 suspension; and he has a 2003 conviction for distribution of
16 an imitation controlled substance which he received a one year
17 sentence in S. C. D. C. for that.

18 As to Mr. Haskell, he has a 1991 conviction for
19 breaking into a motor vehicle -- I'm sorry, 1991, I apologize.
20 A 1992 conviction for breaking into a motor vehicle and grand
21 larceny; a 1992 conviction for possession of cocaine with
22 intent to distribute and possession of cocaine -- well,
23 apparently just two convictions for possession of cocaine
24 with intent to distribute on the same day.

25 He has a 1992 conviction for receiving stolen goods;

1 a 1992 conviction for distribution of crack. He has a 1993
2 conviction for resisting arrest, open container and carrying a
3 concealed weapon. He has a 1994 conviction for giving false
4 information to the police.

5 He was convicted in 1995 of possession of crack
6 cocaine with intent to distribute and he received for that a
7 14 year sentence in the department of corrections in 1995.

8 He was also convicted at the same time of possession
9 of crack within the proximity of a school and escape. And at
10 that time, he received 14 years in the department of
11 corrections. He was released from that sentence in 2003 and
12 since his release he was convicted in 2004 for driving under
13 suspension and simple possession of marijuana.

14 Those are the criminal records.

15 Mr. Gartrell has advised me that if the Court would
16 hear from him that he would like to address the Court at this
17 time.

18 THE COURT: Mr. Gartrell, if you'll stand, please.

19 Yes, sir, I'll be happy to hear from you, sir.

20 THE VICTIM: My name is Rod Gartrell. Ever since
21 that night I've been thinking about this, how I got shot. I
22 wake up every morning and look in the mirror and look at my
23 face, my appearance and I ain't the same no more. I be in
24 severe pain every day, all day long. I go to mental health.
25 It really put a hold on my life.

1 I got metal in my face from here one side to the
2 other with screws. I got 36 screws in my bottom jaw. I ain't
3 got no teeth, no gum on that side. I went and had three
4 plastic surgeries. I mean, I laid in the hospital and I like
5 to die. I was in critical condition. I'm still going through
6 stuff. I got to have another surgery. They going to take a
7 bone out my head or a bone out my hip and put it in my face.
8 I ain't even did that yet.

9 I mean, I got bullet fragments all over my face
10 floating around. Every time they surface I have to go under
11 the table again and get operated on. I mean, they surface
12 like -- whenever they do surface, like one surfaced and they
13 cut me again right there up under my chin when one surfaced
14 again. I mean, all my life, this is the rest of my life I got
15 to go through this.

16 I mean, I hate because it happened that night,
17 though. I really do. I really hate that it happened because
18 me and Clarence we was -- I'm talking about we were buddies,
19 good friends. I got love for him. I did. I really do. I
20 got to let it go I guess though.

21 But I like to have maximum punishment for them
22 hurting me because I got to go through this for the rest of my
23 life. I'll be in severe pain.

24 Every time I go outside I'm in caution thinking that
25 somebody out to get me. I mean, I don't care about having no

1 friends or nothing like that. I take medication for
2 post-traumatic stress disorder. I mean, it really did put a
3 hurt on my life.

4 THE COURT: Thank you, sir.

5 MR. ANTHONY: Your Honor, the only other thing I'd
6 just advise the Court is that along those lines there was a
7 SOVA award in this case in excess of \$16,000, and it's my
8 understanding --

9 THE COURT: There was a what?

10 MR. ANTHONY: A State Office of Victim Assistance
11 award in excess of \$16,000, and it's my understanding that
12 that's just because they reached their maximum as far as what
13 they can pay. And I understand that Mr. Gartrell's medical
14 bills are basically just -- the sky is the limit on them as
15 far as what it's costing to treat him for these injuries.

16 THE COURT: Anything else?

17 MR. ANTHONY: No, sir. That's everything from the
18 State. Thank you, Your Honor.

19 THE COURT: Mr. Padgett?

20 MR. PADGETT: May I be heard on one thing. The
21 State mentioned a conviction of Mr. Haskell of carrying a
22 concealed weapon in 1993. Just for the Court's information,
23 the concealed weapon there was a stick that had tape around
24 it. It wasn't any kind of firearm. It was some sort of a
25 stick.

1 THE COURT: Yes, sir.

2 Anything else, gentlemen, concerning the record?

3 DEFENDANT HASKELL: Yeah. I would like to say
4 something. I would like --

5 THE COURT: I'm asking you do you have anything
6 you'd like to say about the record? I gave you an opportunity
7 to speak earlier. I just need to know concerning the record
8 that's been related by the Court do you have anything you'd
9 like to say about that, other than what your attorney has
10 said?

11 DEFENDANT HASKELL: No, sir.

12 MR. BUERGEY: Nothing concerning the prior record,
13 Your Honor.

14 THE COURT: All right. I'll ask that counsel and
15 the defendants have a seat. Let me go over the sentencing
16 sheets.

17 [PAUSE.]

18 THE COURT: Mr. Padgett and Haskell, please stand.
19 It is the order of the this Court that you be confined for the
20 offense of assault and battery with intent to kill in the
21 State Department of Corrections for a period of 20 years. I'm
22 going to run that concurrent with the other sentences given on
23 today's date. You'll be given credit for time served.

24 As to the charge of attempted armed robbery, it's
25 the sentence of the Court you be confined to the State

1 Department of Corrections for a period of 20 years. I'll run
2 it concurrent with the other sentences given on today's date.
3 You'll be given credit for time served.

4 As to the offense of possession of a weapon during
5 the commission of a violent crime, it's the order of the Court
6 you be confined to the State Department of Corrections for a
7 period of 5 years. I'll run that concurrent with the other
8 sentences given on today's date and you will be given credit
9 for time served. That's the order of the Court, and good luck
10 to you, sir.

11 As to you, Mr. Harrison, if you'll please stand.
12 The offense of assault and battery with intent to kill, it's
13 the order of the Court you be confined to the State Department
14 of Corrections for a period of 20 years. I'll run that
15 concurrent with other sentences given on today's date. You
16 will be given credit for time served.

17 As to the offense of attempted armed robbery, it's
18 the order of the Court you be confined to the State Department
19 of Corrections for a period of 20 years. That will run
20 concurrent with the other sentences given on today's date.
21 You'll be given credit for time served.

22 As to the possession of a weapon during the
23 commission of a violent crime, it's the order of the Court you
24 be confined to the State Department of Corrections for a
25 period of 5 years. It will run concurrent with the other

1 sentences given on today's date. You'll be given credit for
2 time served. Good luck to you, sir.

3 Court is adjourned.

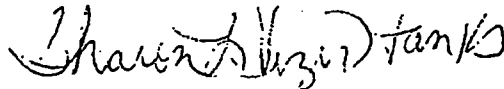
4 (WHEREUPON, the trial of this case was concluded.)
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 8th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 22nd and 23rd day of March 2006.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

August 12, 2006



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ARBEVILLE)

VERIFICATION

I, Clarence Harrison, 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.

Clarence Harrison

Sworn to and subscribed before me

This 24 day of March, 2010.

Ray E. Gorman L.S.

Notary Public for South Carolina

My Commission Expires May 12th, 2014

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, Clarence Harrison, 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 or 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 proceeding or give security therefor.

Clarence Harrison
 Applicant

Sworn to and subscribed before me

This 24 day of March, 2010.

Ray E. Gorman L.S.

Notary Public for South Carolina

My Commission Expires: May 12th, 2014.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Alex Buergey (Office of the Public Defender, Suite 208 Park Plaza)
- ii. Charles Grose - (See The Bottom of this Page)
- iii. Kathrine H. Hudgins (See the Bottom of this Page)

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Trial
- iii. Court Of Appeals

18. State clearly the relief you seek in filing this application.

See Pro-se Brief

19. Are you now under sentence from any other court that you have not challenged?

NO

(17)

i. W. Alexander Buergey
Office of the Public Defender
Greenwood and Abbeville Counties
Suite 208, Park Plaza
600 Monument St. Box P-133
Greenwood, SC 29646
(864) 229-9505

ii Charles Grose
Office of the Public Defender
Greenwood and Abbeville Counties
Suite 208, Park Plaza
600 Monument St. Box P-133
Greenwood, SC 29646
(864) 229-9505

iii KATHRINE H. HUDGINS: Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. BOX 11589
Columbia, SC 29211-1589
(903) 734-1343

STATE OF SOUTH CAROLINA)

County of Abbeville)Clarence Austin Harrison #29461)

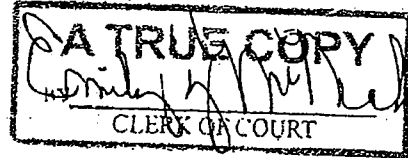
Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

In the Court of Common Pleas



APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-01-374INSTRUCTIONS - 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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Abbeville County Courthouse
PO Box 99 Abbeville, SC 29620
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Indictment # 06G501-194 ASSAULT and Battery with Intent to Kill
 - (b) Indictment # 06G501-195 ATTEMPTED ARMED ROBBERY
 - (c) Indictment # 06G501-196 Possession of Fire arm or Knife During the Commission of a Violent Crime
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 23rd 2006 20 years ABWIK
 - (b) March 23rd 2006 20 years ATT. ARMED ROBBERY
 - (c) March 23rd 2006 5 years Pass. Weapon During Commission Via Crime

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓ _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals (SC)
 - ii. Supreme Court
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. ORDER Denied
 - iii. _____
 - (c) the date of each such result:
 - i. 2-2-09
 - ii. 4-08-10
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See PRO-se Brief
 - (b) _____
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See PRO-se Brief

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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 application with respect to this conviction, which you filed? _____

THE State of South Carolina
County of Abbeville

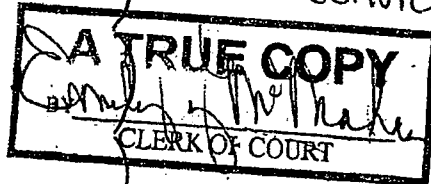
Clarence Harrison
Applicant

STATE of South Carolina
Respondent

In THE Court of Common PLEAS
CASE NO. 2010-CP-01-374

Motion to Amend Pro-Se
Brief;

Application for Post-
Conviction Relief



FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 APR 25 10:08 AM
EMILY Y. BOGART
CLERK OF COURT

The applicant hereby amends answers to number 9 of Application for Post-Conviction Relief to State the following:

9.) State concisely the grounds on which you base your allegations you are being held in custody unlawfully:

A. INEFFECTIVE ASSISTANCE of Trial Counsel

B. Confrontation Clause Violation

10.) State concisely and in the same order the facts which support each of the grounds set out in (9):

- (A)⁽¹⁾ Applicant was denied the effective assistance of Trial Counsel in violation of the 6 and 14th Amendments to the US Constitution and Articles 193 and 194 of the South Carolina Constitution when Counsel Charles Grose moved to enter Hearsay statements for the purpose of showing the State of mind of investigating officer.
- TR. 423, 9-13) However, the course taken by Det. Smith and his state of mind were not relevant as this evidence did not make anything of consequence to the action more or less probable. STATE V. Beckham, 513 SE 2d at 615. The statements from Torey Brown a witness who did not testify, but his statements was used to obtain arrest warrant(s) for Applicants arrest (TR. 422, 12-9) Both Counsels Padgett for Haskell and Anthony for the State objected to the statements as hearsay. (TR. 422, 14-17, 423, 3-7)
- The statements prejudice Applicant in which the statements alleged criminal activity that was not contested, because Torey Brown did not testify so that the jury did not observe him to find facts. The jury was left with statements as it was. Strickland v. Washington 466 US at 694. The trial strategy used by Counsel Grose to bring in Torey Brown's statements was far more prejudicial than helpful. Applicant states that Counsel cannot assert trial strategy as a defense in which constitutes an error of law and are inherently prejudicial.
- B) Applicant was denied the effective assistance of counsel in violation of the 6 and 14th Amendments to the US constitution and Articles 193 and 194 of the 1895 Constitution of South Carolina provides:

SWORN to AND subscribed before me this 20
day of April 2011.

Glenda A. Thompson (L.S.)
NOTARY Public

My Commission Expires Dec. 13, 2014.

682 In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him;

THIS Constitutional Right is Restated in Section 17-506 of the 1952 Code of Laws of South Carolina which provides;

Every person accused shall, at his trial have a right to meet the witnesses produced against him face to face.

Torey Brown had a major impact in Applicants proceedings due to his connections to all of the states witnesses.

A Personal Examination of Torey Brown was needed to give Applicant the opportunity not only of testing the recollection and sifting the conscience of the witness, and compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief. 333 SE2d 354 at 359

Applicant was denied the effective assistance of Trial Counsel in violation of the 6 and 14th amendments to the US constitution and Articles 13 and 14 of the South Carolina Constitution when counsel denied applicant due process to effective assistance when he fail to object to Sgt. Raymond Vandiver was recalled to the stand for impeachment of the states witnesses who under oath recanted the out-of-court statements that was given to Law-enforcement.

Counsel for Haskell which was Attorney Padgett made a sequestration motion in which the court allowed Sgt. Vandiver to stay in the courtroom, because Prosecutor Anthony gave the impression that Sgt. Vandiver would be the first witness called and would not be called again. However counsel Grose informed the court that the defense had an issue to take up with Sgt. Vandiver. Counsel should have objected to Sgt. Vandiver remaining in the courtroom as well in the interest of justice counsel should have lodged an objection to Sgt. Vandiver being recalled for impeachment purpose, because he heard all of the testimony from the states witnesses and was able to tailor the needed testimony to strengthen the state's case once their witnesses recanted.

Applicant alleged Blatent prejudice, and ask that his conviction and sentence be Reversed and Remanded for a new trial.
"Open to Amend"... *Lawrence Harrison*

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 APR 25 AM 8 59
EMILY Y MCMAHAN
CLERK OF COURT

Open to AMEND

THE STATE OF South Carolina
County of Abbeville

Clarence Harrison
Applicant

In The Court of Common Pleas 683
Case NO. 2010-CP-01-374

Motion to Amend PRO-Se Brief
Application for Post-Conviction
Relief

TRUE COPY
ABBEVILLE COUNTY CLERK OF COURT

V.

STATE OF South Carolina

EMILY MCMILLAN
CLERK OF COURT

2012 FEB 9 PM 4:25

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

The applicant hereby amends answers to numbers
Application for Post-Conviction Relief to the following:

9.) State concisely the grounds on which you base your
being held in custody unlawfully:

- A) Ineffective Assistance of trial Counsel
- B) Confrontation Clause Violation

10.) State concisely and in the same order the facts which support each of
the grounds set out in (9):

(A) #1. Applicant was denied the effective assistance of Trial Counsel in violation
of the 6 and 14th Amendments to the US constitution and Articles 1§3 and
1§14 of the South Carolina Constitution when Counsel Charles Grose moved
to enter Hearsay Statements for the purpose of showing the state of mind
of investigating officer.

TR.423,9-13) However, the course taken by Det. Smith and his state of mind were not
relevant as this evidence did not make anything of consequence to the action
more or less probable. STATE V. Beckham, 513 SE 2d at 615.
The statements from Torey Brown a witness who did not testify, but his
statements was used to obtain arrest warrant(s) for Applicants arrest (TR.42
12-9) Both Counsels Padgett for Haskell, and Anthony for the state objected
to the statements as hearsay. (TR.422,14-17,423,3-7)
The statements prejudice Applicant in which the statements alleged criminal
activity that was not contested, because Torey Brown did not testify so the
jury did not observe him to find facts. The jury was left with statements
as it was. Strickland v. Washington 466 US at 694. The trial strategy used by
Counsel Grose to bring in Torey Browns statements was far more prejudicial
→ (Continued at bottom of PG 3)

(A) #2. Applicant was denied the effective assistance of Trial Counsel in violation
of 6 and 14th Amendments to the US constitution and Articles 1§3 and 1§14
of the South Carolina Constitution when counsel denied applicants due
Process to effective assistance when he fail to object to Sgt. Raymond
Vandiver was recalled to the stand for impeachment of the state's
witnesses who under oath recanted the out-of-court statements that
was given to the Law-enforcement.

Counsel for Haskell which was Attorney Padgett made a sequestration

motion in which the court allowed Sgt. Vandiver to stay in the courtroom because Prosecutor Anthony gave the impression that Sgt. Vandiver would be the first witness called and would not be called again. However Counsel Grose informed the court that the defense had an issue to take up with Sgt. Vandiver. Counsel should have objected to Sgt. Vandiver remaining in the courtroom as well in the interest of justice counsel should have lodged an objection to Sgt. Vandiver being recalled for impeachment purpose, because he heard all of the testimony from the State's witnesses and was able to tailor the needed testimony to strengthen the State's case once their witnesses recanted.

A) #3. Applicant was denied the effective assistance of Appellate Counsel in violation of the 6th and 14th Amendments to the US Constitution and Article 1814 of the South Carolina Constitution when ~~Appellate Counsel~~ Appellate Counsel fail to raise an issue on Direct Appeal that Prosecutor made an improper closing argument. (Southland v. State, 524 SE 2d 933 (1999). Patrick v. State 562 SE 2d 609. (2001). In closing arguments Prosecutor Anthony stated:

"She in her kitchen cooking and Clarence Harrison comes to her door and says lock your door, because I'm fixing to take care of some business, and he knows you". **Burden shifting Argument.**

On Direct Examination this question was asked several times. Cole did not make the statement that Prosecutor Anthony stated in closing arguments. The improper closing argument of the prosecution promotes motive to the theory of the state that Applicant was preparing to participate in a crime, he was planning his move. He was trying to cut off Mr. Gartrell's escape (TR 607, 1-4) An Argument that discusses facts not in evidence is improper. State v. Homewood, 128 SE 2d 98 (1962). When making closing arguments Counsel must keep strictly within the record and may only argue inferences fairly deducible from the evidence in the case. State v. Dildine 410 SE 2d 597 (Ct. App 1991) See also State v. Linder, 278 SE 2d 335 (1991).

The improper closing arguments shifts the burden of proof in which Applicant must overcome.

Error must be viewed in the context of the entire trial Record. State v. Gaskins, 326 SE 2d 132 (1985) (Over ruled on other ground by State v. Torrence 406 SE 2d 315 (199) See also State v. Durden 212 SE 2d 587 (1975).

Test for granting new trial on basis of improper closing argument by opposing counsel is whether complaining party was prejudiced to the extent he or she was denied a fair trial.

Applicant was denied the right to fair trial by prosecutor Anthony making statements outside of the record and arguing evidence not in the record. For the foregoing reason(s) Applicant's conviction should be reversed and remanded for a New trial.

A) #4. Applicant was denied the effective assistance of counsel in violation of the 6th and 14th Amendments to the US and Article 1 §14 and Article 1 §10 of the SC Constitution when Counsel Grose failed to ask the trial court to dismiss the statements allegedly given by state's witnesses a day before, and the morning of trial. The said statements were not disclosed to applicant as authorized by SCRC pursuant to Rule 5, (b) (2) (c) continuing duty to disclose additional evidence prior to or during trial, that is pertinent to comply with trial preparation. However prosecutor John Anthony fail to comply with the said rule. Counsel Grose motioned the state to produce the statements since both witnesses has testified. The state alleged they did not have any documentation of the statements. Counsel was ineffect when he fail to ask the trial court to exclude the testimony of Sgt Vandiver whom testified that the witnesses made the alleged statements. TR 480, 25, 481, 482, 1-8. State v. Glenn 330 SE2d 285. State v. Schumpert 435 SE 2d 859. PARR v. Gaines 424 SE2d 515 (Ct. App 1992)

The testimony was prejudicial and denied applicant the right to a fair trial.

For the fore going reason applicant's conviction should be reversed and remanded for a new trial.

(B) #1. Applicant was denied the effective assistance of counsel in violation of the 6 and 14th Amendments to the US constitution and Articles 1 §3 and 1 §18 of the 1895 Constitution of South Carolina provides:

"In all criminal prosecution the accused shall enjoy the right to be Confront with the witnesses against him."

This Constitutional Right is restated in Section 17-506 of the 1957 Code of Laws of South Carolina which provides:

Every person accused shall at his trial have a right to meet the witnesses produced against him face to face.

Torey Brown had a major impact in Applicants proceedings due to his connections to all of the states witnesses.

A personal Examination of Torey Brown was needed to give Applicant the opportunity not only of testing the recollection and sifting the Conscience of the witness, and compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner, in which he gives his testimony whether he is worthy of belief. 333 SE2d 354 & 3

(continued from) Pg 3. than helpful. Applicant states that counsel cannot assert trial strategy as a defense in which constitutes an error of law and are inherently prejudicial.

Applicant alleged Blatent prejudice, and ask that his conviction
and sentence be Reversed and Remanded for a new trial
Open to Amend.... Clarence Harrison

OPEN to AMEND

SWORN to AND subscribed before me this 2nd
day of February 2012

James T. McCreath (L.S.)
NOTARY Public

My Commission Expires November 7, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-01-0374

Clarence Harrison,)
Petitioner,)

v.)

State of South Carolina,)
Respondent.)

**AMENDMENT TO APPLICATION FOR
POST-CONVICTION RELIEF**

The Petitioner, by and through his attorney, Jennings B. Anderson, hereby amends his answers to numbers 9 and 10 of his Application for Post-Conviction Relief to add the following:

9. State concisely the grounds on which you base your allegations you are being held in custody unlawfully:

(a) Petitioner's right to effective assistance of counsel was deprived by counsel's failure to properly investigate the case prior to going to trial and by failing to make proper objections and motions during the trial.

10. State concisely and in the same order the facts which support each of the grounds set out in (9).

(a) Counsel failed to effectively represent Petitioner by: failing to call a subpoenaed witness who had information regarding Torey Brown's connection to the state's witnesses; bringing in a prejudicial statement that implicated Petitioner in criminal activity; failing to object to reference to prior bad acts in the indictments; and failing to raise issue on appeal involving an overruled objection to a statement made by the prosecutor during closing argument.

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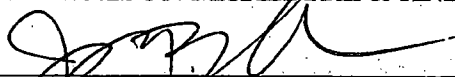
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CLERK OF COURT

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FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

NICHOLSON MEREDITH & ANDERSON



Jennings B. Anderson, S.C. Bar No. 74900

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Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	
	)	2010-CP-01-0374
	)	
Clarence Austin Harrison, #291401,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 16, 2010, and amended on April 25, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Abbeville County. He was indicted at the March 2006 term of the Abbeville County Grand Jury for Assault and Battery with Intent to Kill ("ABWIK") (2006-GS-01-0194), Attempted Armed Robbery (2006-GS-01-0195), and Possession of a Weapon During the Commission of a Violent Crime (2006-GS-01-0196). He was represented by Charles Grose, Esquire, and Alex Buergey, Esquire. From March 20-23, 2006, the Applicant proceeded to a jury trial and was found guilty as indicted of all charges. The Honorable Roger L. Couch sentenced him to incarceration for twenty (20) years for both ABWIK and attempted armed robbery, and five (5) years for the weapon possession charge, all concurrent.

A Notice of Appeal was timely filed on the Applicant's behalf, and an appeal was perfected by Kathrine H. Hudgins, Esquire. The S. C. Court of Appeals affirmed. State v.

Harrison, 2009-UP-079 (Ct. App. filed Feb. 11, 2009). The Applicant's Petition for Rehearing was denied by Order dated March 24, 2009. The Remittitur was sent on April 13, 2010.

Attached herewith and incorporated herein by reference are the records of the Abbeville County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel
 - a) "Counsel Charles Grose moved to enter hearsay statements for the purpose of showing the state of mind of investigating officer"
2. Confrontation Clause violation

III.

Respondent interprets each of the Applicant's claims to be allegations he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d at 814 (quoting Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland at 690, 466 U.S. 2066. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry at 117, 386 S.E.2d at 625 (quoting Strickland at 688, 104 S.Ct. at 2065). Second, counsel's deficient performance must have 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 at 117-18, 386 S.E.2d at 625.

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 18, 2011.

State of South Carolina)
)
 County of Abbeville)

In the Court of Common Pleas
 Eighth Judicial Circuit
 2010-CP-01-0374

Clarence Austin Harrison,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

Transcript of Record

June 7, 2012
 Greenwood, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Jennings B. Anderson, Esquire
 Attorney for the Applicant

J. Rutledge Johnson, Esquire
 Attorney for the Respondent

Maryann S. Nevers, CVR-M
 Circuit Court Reporter

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No exhibits introduced.

TRANSCRIPT OF RECORD

(WHEREUPON, the proceeding was commenced at 11:05 a.m.)

THE COURT: All right, sir.

MR. JOHNSON: Thank you, Your Honor. May it please the Court: This case is *Clarence Harrison v. State of South Carolina*. It's Case No. 2010-CP-01-0374. Mr. Harrison was indicted the March 2006 term of the Abbeville County Grand Jury for assault and battery with intent to kill, attempted armed robbery, and possession of a weapon during the commission of a violent crime. On March 20 through 23rd, 2006, Mr. Harrison proceeded to a jury trial, by which he was found guilty of -- as indicted of all charges.

The Honorable Robert [sic] L. Couch sentenced him to incarceration for 20 years for both the ABWIK and the attempted armed robbery and 5 years for the weapon charge, all running concurrent. A notice of appeal was timely filed on his behalf, and the appeal was perfected by Kathrine Hudgins. The South Carolina Court of Appeals affirmed his conviction and sentence. His petition for rehearing was denied by order; remittitur was issued April 13th, 2010.

Mr. Harrison then filed a timely PCR application on December 16th, 2010, and amended it on April 25th, 2011.

1 The state filed its return on August 18th, 2011. He is
2 represented here today by Mr. Jennings Anderson.

3 THE COURT: All right. Mr. Anderson?

4 MR. ANDERSON: Judge, I'm Jennings Anderson; I
5 represent Mr. Harrison. He has -- he asked me to make a
6 late amendment to his PCR application, which I did, filed
7 on May the 25th, which I assume Your Honor has a copy of
8 ---

9 THE COURT: All right. Let me see ---

10 MR. ANDERSON: --- and which ---

11 THE COURT: --- make -- make sure.

12 MR. ANDERSON: --- has been sent to the attorney
13 general as well. And at that time he asked me to move for
14 a continuance. I believe Your Honor was privy to some e-
15 mails with Judge Addy that we were all on as to the motion
16 for a continuance. Judge Addy suggested -- and -- and --
17 and the reason for the continuance was not only this late
18 amendment to the application, but also, as we've discussed
19 this morning, there was a witness that -- that Mr. Harrison
20 feels is necessary now to have that -- to complete his
21 defense here. Judge Addy suggested that rather than
22 continue the case, we move to conform the pleadings to this
23 -- to comply with any testimony as to the -- the recent
24 application or recent allegations in that application.

25 This morning I -- after talking with Mr. Harrison, he

1 renews wanting to renew our motion for a continuance. He
2 does not feel that he is ready to go forward today. And so
3 we would ask to continue this case as well, Judge.

4 THE COURT: All right.

5 MR. JOHNSON: And one of the reasons that we'll oppose
6 that -- that motion is that this case has been continued
7 twice. The first one was back in November, and it was our
8 fault. We -- somehow our printer messed up, and Mr.
9 Anderson didn't get the full transcript to prepare. The
10 second one was called, I believe -- when was that:
11 January? And the reason for continuing that was Ms. Hudgin
12 [sic] was not available -- our witness was not available.

13 And so this is the third time this case has been
14 called, and we would oppose that motion. We have all the
15 witnesses here. And the state is ready to proceed.

16 THE COURT: Well, what witness are we lacking?

17 MR. JOHNSON: We were ---

18 MR. ANDERSON: Sir?

19 MR. JOHNSON: --- lacking Ms. Kathrine Hudgins with
20 appellate defense. But she is here in the audience today.

21 THE COURT: You -- you had ---

22 MR. JOHNSON: Oh, his ---

23 THE COURT: --- mentioned something about a witness
24 today.

25 MR. ANDERSON: Yes, sir. My client wanted to -- a

1 witness -- person who was not called at trial, but somebody
2 that he thought -- a Mr. Monroe Thompson, a witness that he
3 thought could help contribute to his defense today. I was
4 unable to locate him, and so wanted to continue in order to
5 give us a chance to do that, Judge.

6 THE COURT: If -- Mr. Anderson?

7 MR. ANDERSON: Yes, sir.

8 THE COURT: In your conversations with Mr. Harrison
9 and -- and I'm sure he's shared with you -- it -- is it
10 your belief that that is a necessary witness to his PCR
11 application?

12 MR. ANDERSON: Well, there are a number of issues that
13 he has brought up and that -- that -- in his multiple
14 applications, Judge. And that witness's testimony would
15 certainly bear on a few of those. So I -- I believe,
16 although it's not the central issue, what that witness
17 would talk about, it certainly bears on a number of them.

18 THE COURT: Here -- I'm -- I'm just -- both
19 continuances -- and -- and I'm not saying the state's
20 fault. You admit the first one was -- was?

21 MR. JOHNSON: (Nods head up and down.)

22 THE COURT: But the second one is actually a -- a --
23 kind of a state's issue as well, in -- in that your witness
24 wasn't present.

25 MR. JOHNSON: Right. But it -- it's a witness that we

1 will both use for ---

2 THE COURT: Right.

3 MR. JOHNSON: --- testimony. Our -- our position is
4 -- let me just put on the record -- is that Mr. Harrison
5 has had more than ample time to find this witness. He
6 certainly had -- and -- and I've been in communication with
7 Mr. Anderson. This case was put on -- over a month ago on
8 the roster and has had more than ample time to find this
9 witness. We would ask that this case go ahead and move
10 forward.

11 THE COURT: What's been the issue with the witness --
12 in locating the witness?

13 MR. ANDERSON: Just inability to find him, Judge.

14 THE COURT: All right. I -- I'm going to respectfully
15 deny the motion to continue. I -- I think we'll go --
16 we'll go forward and I -- there's no -- there's just no
17 guarantee that -- I mean, I haven't heard any efforts to
18 find that -- find that witness. The witness may not even
19 be in the state. And -- and so if we continue it on -- on
20 that basis and -- and come November, the witness is gone,
21 we -- we've just wasted all this time. So -- all right.
22 So, Mr. Anderson ---

23 MR. ANDERSON: Thank you, Judge.

24 THE COURT: --- you may call your witness.

25 MR. ANDERSON: If it please the Court, I'd like to

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 9

1 call Clarence Harrison.

2 THE COURT: All right. Mr. Harrison, please, if you'd
3 come around to the witness stand and be placed under oath,
4 sir.

5 THE WITNESS: (Complied.)

6 DEPUTY CLERK OF COURT: (To the Court) You want him
7 up there, or you want me to do it right here?

8 THE COURT: You can do it right there.

9 DEPUTY CLERK OF COURT: Okay.

10 CLARENCE HARRISON, having been first duly sworn,
11 testified as follows:

12 THE COURT: All right. Come around to the witness
13 stand, please.

14 THE WITNESS: (Complied.)

15 DIRECT EXAMINATION

16 BY MR. ANDERSON:

17 Q Would you state your name, please?

18 A Clarence Harrison.

19 Q And, Clarence, where -- what is your current place of
20 residence?

21 A Perry Corrections.

22 Q This -- the reason we're here stems out of an incident
23 that I believe occurred on February 10th, 2004; is that
24 correct?

25 A That's correct.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 10

1 Q All right. And your -- your convictions, as stated by
2 Mr. Johnson, were attempted armed robbery, assault and
3 battery -- battery with intent to kill, and possession of a
4 weapon during the commission of a violent crime; is that
5 right?

6 A That's right.

7 Q At trial you had a -- a couple of appointed attorneys;
8 is that right?

9 A Yes.

10 Q And those were who?

11 A Alex Buergey and Charles Grose.

12 Q Okay. And If you could speak up to -- to make sure
13 everybody ---

14 A Alex Buergey ---

15 Q --- can hear you.

16 A --- and Charles Grose.

17 Q All right. And at -- this case was also appealed, and
18 Kathrine Hudgins, I believe, represented at that appeal; is
19 that right?

20 A Yeah, that's correct.

21 Q All right. And we're here today because you take
22 issue with a number of things that they either did or did
23 not do, in your estimation, in defense of your case; is
24 that right?

25 A That's also correct.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 11

1 Q Okay. And I want to go through these individually and
2 just get you to talk about them a little bit as we ---

3 A Uh-huh.

4 Q --- as we go. One of the first things you wanted to
5 talk about in your PCR applications is about a man named
6 Torey Brown.

7 A Yeah.

8 Q Now, who is Torey Brown?

9 A Torey Brown was a guy who initially gave statement
10 that got arrest warrants for me and my codefendant.

11 Q Okay. So he is a person who was a witness in this
12 case?

13 A Nah, he wasn't. But he gave statements.

14 Q He never testified?

15 A Never.

16 Q Okay. He gave a statement to the police; is that
17 right?

18 A That's true.

19 Q And in that statement he suggested what?

20 A Me and my codefendant committed these crimes.

21 Q So he pointed the finger at you and your codefendant?

22 A That's correct.

23 Q Now, Mr. Brown was present at the week of trial, was
24 he not?

25 A He was in the county -- the county jail.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 12

1 Q Okay. He was available to be called as a witness,
2 though; is that right?

3 A That's correct.

4 Q Okay. And was he ever called as a witness?

5 A Never.

6 Q So he didn't ever testify?

7 A Never.

8 Q And you're saying that -- what is it that you're
9 saying about not calling Torey Brown that affected your
10 case?

11 A Well, during the trial the -- the statements that he
12 gave was brought up. We never got a opportunity to cross-
13 examine him.

14 Q Okay. So he gave a statement to the police, but never
15 testified?

16 A Never testified.

17 Q And if he had testified, you would've been able to do
18 what?

19 A Basically, test his recollection and contest the
20 statements that he made.

21 Q And, I assume, give a picture to the jury of ---

22 A Yeah.

23 Q --- him?

24 A Yeah.

25 Q Okay.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 13

1 A His whole demeanor, so they could see during cross-
2 examination.

3 Q I'm sorry. You're -- you're going to have to speak up
4 some.

5 A Oh, I'm sorry. To see his whole demeanor during
6 cross-examination.

7 Q Okay. All right.

8 THE COURT: Let me -- I don't mean to interrupt, Mr.

9 ---

10 MR. ANDERSON: Yes, sir.

11 THE COURT: --- Anderson. Was -- was the statement
12 that Mr. Brown gave to law enforcement, was that admitted
13 in trial?

14 MR. ANDERSON: It was admitted for -- not for the
15 truth of the matter, but to show state of mind of the
16 police officer at the time.

17 THE COURT: All right.

18 MR. ANDERSON: And that's one of the issues we're
19 getting to next, as a matter of fact.

20 Q Now, along those lines, that statement that Mr. Brown
21 gave to police, that was a statement that your attorneys
22 entered into evidence; is that right?

23 A That's true.

24 Q Okay. Now, what -- and again, what were the
25 statements that Mr. Brown made?

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 14

1 A That me and Mr. Haskell committed these here crimes
2 against Roderick Gartrell.

3 Q Okay. Roderick Gartrell was ---

4 A --- was our ---

5 Q --- the victim?

6 A --- victim.

7 Q Okay. And he was shot in the mouth; is that right?

8 A That's correct.

9 Q All right. And was he able to identify the person who
10 shot him?

11 A No, he wasn't.

12 Q Okay. But Mr. Brown said it was you?

13 A Yes.

14 Q The statement that he made to -- that Mr. Brown made
15 was to Lt. John Smith of the Abbeville Police; is that
16 right?

17 A Yes, sir.

18 Q Okay. Now, Mr. Grose and -- and your attorneys
19 entered those statements to -- for what purpose?

20 A Could you repeat yourself? I didn't hear you.

21 Q I'm sorry.

22 A Say they entered these statements for what?

23 Q Your -- your attorneys entered that statement that Mr.
24 Brown made. For what purpose? What was he trying to show
25 when he put those statements into ---

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 15

1 MR. JOHNSON: Objection: speculation. I think that
2 can come out through Mr. Grose himself.

3 THE COURT: All right. Your -- so your question is:
4 What was Mr. Grose's purpose for putting the statements in?

5 MR. ANDERSON: Yes, sir.

6 THE COURT: All right. Yeah. That's sustained.

7 MR. ANDERSON: I can ---

8 THE COURT: It ---

9 MR. ANDERSON: --- I can ask Mr. Grose. Thank you.

10 THE COURT: Yeah.

11 Q Now, what was your opinion about these statements
12 coming on?

13 A They shouldn't have been brought in because he wasn't
14 there to get cross-examined.

15 Q Okay. So how do you think the entering of these
16 statements affected your case?

17 A I think it was highly presidential -- prejudicial,
18 like I say, because he wasn't there to cross-examination.
19 And if he was, he probably would've admitted that they was
20 false or sky's the limit.

21 Q So you what do you think the jury made of these?

22 A He probably -- the jury probably believed they were
23 true.

24 Q Okay. Did your attorney discuss with you at some
25 point whether these issues were going to be -- that --

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 16

1 whether the statement was going to be entered or not?

2 A Never.

3 Q Okay. Did you ask him about these?

4 A No, I didn't.

5 Q Okay. All right. You also indicate, in your
6 application and in the amendments, that there was a
7 subpoenaed witness, and that's Monroe Thompson; is that ---

8 A Yes.

9 Q --- right?

10 And now, he never testified either, did he?

11 A He never testified.

12 Q Okay. What was Mr. Thompson's involvement in the
13 case?

14 A Mr. Thompson gave me a statement that -- well, he told
15 me that he witnessed Torey Brown tell the victim, Roderick
16 Gartrell, that me and my codefendant committed this crime.
17 And he basically built a scenario of what happened.

18 MR. JOHNSON: Objection, Your Honor. That's hearsay
19 at -- of -- of what Mr. Thompson told him. Mr. Thompson's
20 not here. If he is, he -- he can say that statement, but I
21 don't believe Mr. Harrison ---

22 THE COURT: Well, I ---

23 MR. JOHNSON: --- can bring ---

24 THE COURT: --- I think ---

25 MR. JOHNSON: --- it in.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 17

1 THE COURT: --- his response to the question is what
2 was your -- I -- was your question: What was Mr.
3 Thompson's -- what was the reason for subpoenaing Mr.
4 Thompson?

5 MR. ANDERSON: My question was: What was Mr.
6 Thompson's role in this case? And -- and I'm not trying to
7 get him to say exactly what Mr. Thompson ---

8 THE COURT: All right.

9 MR. ANDERSON: --- said or what Mr. Brown said.

10 THE COURT: All right.

11 MR. ANDERSON: I'm just ---

12 THE COURT: Overruled.

13 MR. ANDERSON: --- trying to establish Mr. Thompson
14 from the outset.

15 THE COURT: All right. Overruled.

16 MR. ANDERSON: Thank you, Judge.

17 Q So Mr. Thompson knew Torey Brown; is that what you're
18 saying?

19 A Yes.

20 Q Okay. And was Mr. Thompson someone that you wanted to
21 testify?

22 A Yes.

23 Q Okay. And you communicated that to your attorneys?

24 A Yes, I did.

25 Q Okay. Now, Mr. Thompson didn't testify; is that

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 18

- 1 right?
- 2 A No, sir.
- 3 Q And what do you think the effect on the case was?
- 4 A That he didn't testify?
- 5 Q The fact that he did not testify, how do you think
- 6 that affected your case?
- 7 A Basically, his testimony alone would showing to prove
- 8 that Torey Brown do the scenario that I was basically
- 9 innocent.
- 10 Q Okay. And you think that was prejudicial to your case
- 11 ---
- 12 A Sure.
- 13 Q --- the fact that Monroe Thompson did not testify?
- 14 A Did -- did not testify.
- 15 Q This case involved a good number of witnesses, didn't
- 16 it?
- 17 A Yes, it did.
- 18 Q Okay. And one of your claims that we're talking about
- 19 today is regarding the testimony, I believe, of Sgt.
- 20 Vandiver ---
- 21 A Uh-huh.
- 22 Q --- of the Abbeville Police Department?
- 23 Now, he testified, I believe, about discussion he and
- 24 the solicitor had with a certain witness; is that right?
- 25 A Yeah.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 19

1 Q And these discussions did not take place on the stand.
2 They were outside of court; is that right?

3 A Yes, sir.

4 Q All right. Now, your attorney, Mr. Grose, asked for
5 notes from any of these discussions, didn't he?

6 A That's true.

7 Q Okay. And what -- Mr. Anthony and the sergeant
8 testified that there were no notes made from these
9 discussions; is that right?

10 A Yeah, that's right.

11 Q Okay. So your -- and what is your contention that Mr.
12 Grose should have done at that point?

13 A Should've moved to suppress them or -- or strike
14 anything that was -- that was spoken of during trial that
15 they could not turn over any statements.

16 Q Okay. Were notes from these statements ever given to
17 you under a Rule 5 discovery motion?

18 A They wasn't.

19 Q Okay. Another of your claims in this case involves
20 the indictments; is that right?

21 A Yes, it does.

22 Q Okay.

23 (Whereupon, Mr. Anderson conferred with Mr. Johnson.)

24 MR. ANDERSON: Judge, if I could approach the witness?

25 THE COURT: Yes, sir.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 20

1 Q I'm going to show you, Mr. Harrison, the indictment,
2 Count 1. Now, is this the indictment that you have an
3 objection to?

4 A Yes, sir.

5 Q Okay. And this is an indictment for possession of a
6 firearm or knife during the commission of a violent crime;
7 is that right?

8 A Yes, sir.

9 Q All right. Now, what is your particular objection to
10 this indictment?

11 A That it's stating I was or were convicted of
12 committing a crime or attempting to commit a crime; said
13 the violent crime, assault and battery, intent to kill;
14 attempted robbery; and possession of a firearm, commission
15 of crime.

16 Q All right. To quote that exact language, you're
17 talking about the portion of the indictment that says,
18 quote: And the said defendants was/were convicted of
19 committing or attempting to commit the said violent crime:
20 assault and battery with intent to kill and/or attempted
21 armed robbery or any lesser-included violent offense, end
22 quote. Is that right?

23 A Yes, sir.

24 Q All right. Now, you heard the judge tell the jury
25 that they couldn't use these indictments to infer your

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 21

1 guilt, didn't you?

2 A Yes.

3 Q Okay. Now, despite that, what do you think the effect
4 of this indictment was on the jury?

5 A In my transcript it's a guy that, through the jury
6 pool or whatever, he got up and he said that: "Already got
7 you guys. Judge, I hate a thief," something along those
8 lines. So hearing these indictments alone, from my
9 understanding that it's implement [sic] me in a crime that
10 I had never committed before. So being that the jury is
11 ignorant to the law, they led to believe that me and my
12 codefendant had already committed these crime before and we
13 probably would do it again.

14 Q And that's based on what you heard a potential juror
15 say during the drawing of the jury; is that right?

16 A Yes.

17 Q Okay. All right. Let me ask for that back from you.

18 A (Complied.)

19 Q Thank you.

20 Now, as we said, there were multiple witnesses to this
21 case and there were multiple police officers involved in
22 this investigation, correct?

23 A Yes.

24 Q And one of your objections in your -- or one of your
25 items in the application you wanted to talk about was a

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 22

1 sequestration order?

2 A Yes.

3 Q Now, Mr. Padgett, who was the attorney for your
4 codefendant in this case, he made a motion to sequester the
5 witnesses; is that right?

6 A Yes, he did.

7 Q And he asked that one -- or -- actually, Mr. Grose
8 joined in on that motion with him, did he not?

9 A Yes, he did.

10 Q And -- and your attorney asked that one of the two
11 officers, either Officer Vandiver or Detective Smith,
12 needed to be sequestered; is that right?

13 A That's correct.

14 Q One of them needed to be out of the courtroom while
15 the other was testifying; is that right?

16 A That's right.

17 Q All right. Now, you have an objection to what Mr.
18 Grose should have done after that, I believe; is that
19 right?

20 A Uh-huh.

21 Q All right. And what is that objection? What do you
22 think he should have done?

23 A Should've never allowed Vandiver to be there inside
24 the courtroom during testimony.

25 Q And that -- can you repeat that?

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 23

1 A Should've never allow Vandiver to be in the courtroom
2 during testimony.

3 Q Officer Vandiver?

4 A Right. Officer Vandiver.

5 Q Okay. He shouldn't allowed him ---

6 A Yeah.

7 Q --- to be in the courtroom?

8 A Uh-huh.

9 Q So you're saying that you think Mr. Grose should have
10 specifically said which of the police officers should have
11 been ---

12 A Yes.

13 Q --- allowed to remain in the courtroom; is that ---

14 A Yeah.

15 Q --- what you're saying?

16 A Yeah. He should've placed Vandiver under the
17 sequestering order.

18 Q I -- I can't understand ---

19 A He should've placed Vandiver under the sequestering
20 order.

21 Q Okay. So you think he should've specifically said:
22 "Officer Vandiver should be the one outside the courtroom"?

23 A He should've been. Yes.

24 Q Okay. And obviously, that didn't happen; Officer
25 Vandiver was allowed to remain in the courtroom. How do

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 24

1 you think that affected your case?

2 A Because he sat there during all the testimony and when
3 it was time for him to testify, he basically tailored his
4 testimony for the -- the solicitor's liking to -- to
5 strengthen his case.

6 Q Okay. Now, you didn't testify at this -- at your
7 trial, did you?

8 A That's correct.

9 Q Okay. Now, you had a conversation with your attorneys
10 about whether you should -- whether or not you should
11 testify, didn't you?

12 A That's true.

13 Q Okay. And tell the Court and tell us how not
14 testifying may have affected your case.

15 A By me not testifying, basically, the jury had a
16 outlook during other guys' testimony or other state
17 witnesses' testimony. And by me not testifying, that
18 would've tested the things that -- that were said against
19 me; never had the opportunity.

20 Q So you had a discussion with your attorneys, and they
21 said, "Don't testify; it won't help you." Is that right?

22 A They said my criminal record could be detrimental to
23 me.

24 Q And did you continue on and say, "No. I think I need
25 to testify; it'll help"?

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 25

1 A Yeah, I did say that. They advised me not to.

2 Q Okay. And what do you think the jury could have
3 gleaned from your testimony that would've helped you?

4 A I mean, it could've helped me out a lot and
5 strengthened my case. Because like I said, witnesses said
6 things against me, and I could've contested that by my
7 testimony alone.

8 Q Okay. In fact, your attorneys didn't call any
9 witnesses in your defense, did they?

10 A That's correct.

11 Q Okay. Or present any evidence when it was their turn
12 to do so?

13 A That's right.

14 Q Okay. And how do you think this lack of witnesses in
15 your defense affected your case?

16 A It's showing proved to be ineffective.

17 Q You think that was ineffective assistance of counsel?

18 A True.

19 Q Okay. Now, at one point Mr. Anthony, the solicitor,
20 was asking a witness named Sherman Norman about a statement
21 he made outside of trial; is that right?

22 A That's true.

23 Q Okay. And the judge instructed Mr. Anthony to ask
24 those questions a certain way, did he not?

25 A That's correct.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 26

1 Q And what was it about that conversation that the judge
2 was -- felt it was necessary to give instructions?

3 A Could you repeat yourself?

4 Q Why did the -- okay. Let me rephrase that. That was
5 a conversation between a witness and the solicitor that was
6 outside of court; is that right?

7 A That's right.

8 Q Okay. And at some point did the judge instruct Mr.
9 Anthony to ask his question to that witness a certain way?

10 A Yes, he did.

11 Q Okay. And did he -- did Mr. Anthony ask those
12 questions in that fashion?

13 A Yeah, he did.

14 Q Okay.

15 A Well, after the judge told him like 12 times.

16 Q Okay. So ---

17 A Well, he did 12 times.

18 Q Okay. And -- and maybe I'm not making my questions
19 clear. But what I'm driving at is: The judge made an
20 instruction to the solicitor about how to ask a certain
21 question?

22 A That's right. Yeah.

23 Q Because it involved a conversation the witness had had
24 with the solicitor; is that right?

25 A That's true.

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 27

1 Q Okay. And the point was trying to make sure the
2 solicitor wasn't going to be testifying; is ---

3 A Uh-huh.

4 Q --- that right?

5 A That's ---

6 Q Now ---

7 A --- true.

8 Q --- after the judge made this instruction to the
9 solicitor ---

10 A Yeah.

11 Q --- did the solicitor continue to ask questions in the
12 inappropriate fashion?

13 A Yes, he did.

14 Q And specifically, what word did he use that kept
15 coming up in these questions?

16 A If I'm not mistaken, he was saying, "Did you tell us"
17 -- or -- yeah, it was "us" -- "did you tell us this?"

18 Q So he was talking -- when he said "us," who was he
19 talking about?

20 A Me and Officer Vandiver, if I'm not mistaken.

21 Q He was talking about himself, Solicitor ---

22 A Himself ---

23 Q --- Anthony ---

24 A --- yeah.

25 Q --- and ---

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 28

1 A --- Vandiver.

2 Q --- police officer?

3 A Yeah.

4 Q And do you know about how many times he used the word
5 "us" after ---

6 A Us ---

7 Q --- being instructed not to do so?

8 A It was like 12 times.

9 Q Okay. Was that something that your attorney objected
10 to?

11 A If I'm not mistaken, no.

12 Q Okay. In fact, finally, the judge had to instruct the
13 solicitor not to keep phrasing the question that way; isn't
14 that right?

15 A Yeah. That's true.

16 Q Okay. And what do you think the effect of that was?

17 A I think when he kept saying "us," he was pro-offering
18 [sic] himself as a -- a witness, putting his credibility on
19 the line. So the jury was left to believe him more than
20 the state witness.

21 Q Okay. Now, this case was appealed, and Kathrine
22 Hudgins handled your appeal; is that right?

23 A That's true.

24 Q Okay. Now, what is it that you're alleging that she
25 did or did not do that constituted ineffective assistance

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 29

1 of counsel?

2 A She didn't bring one of my trial issues out on appeal.

3 Q Okay. And that issue involved a closing argument, did
4 it not?

5 A Yes, sir.

6 Q All right. Now, during the closing argument, what
7 happened?

8 A John Anthony -- well, Solicitor Anthony, he -- he
9 brought in prejudicial evidence of statements in closing
10 argument.

11 Q Now, Mr. Anthony was talking about what another
12 witness had said; is that right?

13 A That's true.

14 Q And your attorney, I believe, objected to Mr.
15 Anthony's remarks, did he not?

16 A That's accurate.

17 Q And your attorney made a point that Mr. Anthony was
18 misquoting the witness; is that right?

19 A That's true.

20 Q Okay. That objection was overruled?

21 A Yes, it was.

22 Q And that was an -- an overruled objection that was not
23 brought up on appeal; is that right?

24 A That's right.

25 Q Okay. So you're saying today that Mrs. Hudgins should

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 30

1 have appealed that issue?

2 A That's true.

3 Q All right. The fact that she did not appeal that
4 issue, how do you think that affected your case?

5 A I think she should've brought that out -- that issue
6 on -- on appeal. Because when he offered that to evidence
7 in his closing argument, it shifted the burden.

8 Q Okay. How do you mean?

9 A I mean, I'm supposed to be tried on -- or found guilty
10 on reasonable doubt, if I'm not mistaken. Am I saying that
11 right? But beyond reasonable doubt. And by him entering
12 that, it -- it hurt me more than it helped. I mean ---

13 Q You think ---

14 A --- it was -- she never said that.

15 Q Okay. You think it shifted the burden on you?

16 A Yeah.

17 Q Okay. What are you telling the Court today about the
18 effect of all of these different errors, in your mind?

19 A If these -- if I have never -- if we didn't have these
20 errors in my trial, I probably would never got found
21 guilty.

22 Q Okay. You think the effect of these errors is that
23 you were prejudiced?

24 A That's true.

25 Q And you think that it was unreasonable to take these

DIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 31

1 particular courses of action or to not take the particular
2 courses of action?

3 A That's true.

4 Q All right. And you're telling the Court today if not
5 for those particular errors, the outcome in your case would
6 have been different?

7 A Yes, sir.

8 Q Either at the trial level or at the appellate level?

9 A Appellate level too.

10 Q Okay.

11 A Yeah.

12 Q And today you're asking the Court to grant you a new
13 trial; is that right?

14 A Yes, sir.

15 Q Okay. Thank you. Please answer any questions that
16 Mr. Johnson or the judge may have.

17 (Whereupon, Mr. Anderson conferred with Mr. Johnson.)

18 Q And, Mr. Harrison, you and I spoke about this earlier.
19 But most of the -- I believe all the allegations in your
20 application for PCR were against Charles Grose; is that
21 right?

22 A Yes, sir.

23 Q Okay. Is it -- and is it fair ---

24 A And ---

25 Q --- to say that Mr. -- you're alleging same things

1 against Mr. Buergey or not?

2 A I think they both trial -- represented me at trial.

3 Q Okay.

4 A So I guess it stand for both of them.

5 Q Okay.

6 A I'm not sure.

7 Q So would you be willing to waive this -- this and
8 allow Mr. Buergey to be excused, or do you think this is --
9 he's part of this as much as Mr. Grose?

10 A I'm saying he could be excused.

11 Q And you don't have any problem with him not ---

12 A No.

13 Q --- being a witness, not testifying?

14 A No.

15 Q No questions you want me to ask him?

16 A I have no problem with that.

17 Q Okay.

18 THE COURT: All right.

19 MR. JOHNSON: Would that be appropriate with you ---

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: --- Your Honor?

22 THE COURT: I'm sorry?

23 MR. JOHNSON: He just waived the claims against Mr.
24 Alex Buergey. Could we excuse Mr. Buergey?

25 THE COURT: Any objection to Mr. Buergey being

CROSS-EXAMINATION BY MR. JOHNSON - CLARENCE HARRISON 33

1 excused?

2 MR. ANDERSON: No objection, Judge.

3 THE COURT: All right. That's fine.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. Harrison, I just have a few questions for you.
7 You claim this statement about Torey Brown was highly
8 prejudicial to your case; isn't that right?

9 A Yes, sir.

10 Q But wasn't there other statements that linked you to
11 this crime that came out in testimony in trial?

12 A Yes, sir.

13 Q Ms. Cole made a statement that you came into her
14 apartment right before the alleged incident occurred?

15 A Yes. She also recanted that statement.

16 Q And -- but she made that statement and it came ---

17 A Yeah.

18 Q --- out in trial, right?

19 A Yeah.

20 Q Okay. And the victim actually -- you know Mr. -- is
21 it Gartrell?

22 A True. Yeah.

23 Q And he made a statement identifying that you were
24 there, did ---

25 A That's ---

1 Q --- he not?

2 A --- true.

3 Q And testified at trial that after the incident
4 happened, that you were rifling through his pockets?

5 A Yes, sir.

6 Q Okay. So there was other evidence that you were at
7 the location when this incident occurred?

8 A It was testimony given, but it wasn't true.

9 Q But there was testimony given?

10 A Of course.

11 Q And that's for the -- the jury to decide, right?

12 A Yeah.

13 Q Okay. You also say that Mr. -- your counsel, Mr.
14 Grose, should have asked for the notes to be turned over
15 from Sgt. Vandiver; isn't ---

16 A Yes, sir.

17 Q --- that right?

18 A Yes, sir.

19 Q But you are aware that the testimony given was based
20 on only oral statements and there was no written
21 recollection of those statements, and that came out at
22 trial?

23 A Yeah.

24 Q Okay. And you also allege that Mr. Grose should've
25 specifically asked for Mr. Vandiver to be out of court ---

CROSS-EXAMINATION BY MR. JOHNSON - CLARENCE HARRISON 35

1 A That's right.

2 Q --- when everybody else testified; is that right?

3 A That's right.

4 Q Okay. And are -- are you aware that the solicitor
5 agreed to have Mr. Smith out of the courtroom and that Mr.
6 Vandiver was lead counsel on this case?

7 A Yes, sir.

8 Q Okay. And you also say that you spoke with your
9 attorneys about not testifying; isn't -- is that correct?

10 A Yes, sir.

11 Q But it was your choice not to testify, wasn't it?

12 A Yes, it was.

13 Q And the judge actually asked you whether or not you
14 wanted to testify and you told him no?

15 A Yeah.

16 Q But it was your choice?

17 A They advised me not to testify, so ---

18 Q But the judge ---

19 A --- I agreed.

20 Q --- asked you -- sorry. I don't ---

21 A I agreed ---

22 Q --- mean to interrupt you.

23 A --- not to testify, but he advised me not to testify.

24 Q Okay. And you also say the solicitor should've
25 objected to -- or your counsel should've objected to the

1 way the solicitor was asking the questions to Mr. Sherman
2 Norman; is that correct?

3 A Yes, sir.

4 Q Are you also aware that Mr. Norman never would give up
5 his position? He didn't answer the way the solicitor
6 wanted him to?

7 A Yes, sir.

8 MR. JOHNSON: That's all I have at this time, Your
9 Honor.

10 THE COURT: Anything on redirect?

11 MR. ANDERSON: I just had a few questions, Judge.

12 REDIRECT EXAMINATION

13 BY MR. ANDERSON:

14 Q Mr. Harrison, when you talked with your attorneys
15 about whether you should testify or not ---

16 A Yes, I did.

17 Q --- you trusted their judgment?

18 A Yes, I did.

19 Q Are you yourself an attorney?

20 A No, sir.

21 Q Okay. So you listened to the advice of your attorneys
22 as to not to testify?

23 A That's true.

24 Q Okay. And going back to the question about Mr.
25 Vandiver -- or Officer Vandiver, was the point there that

REDIRECT EXAMINATION BY MR. ANDERSON - CLARENCE HARRISON 37

1 was it your -- is it your claim now that Officer Vandiver
2 specifically should have been excluded from the courtroom

3 ---

4 A That's true.

5 Q --- rather than just either one of them?

6 A Yes, sir.

7 Q Okay. And just to be clear, Mrs. Cole recanted the
8 statement she made, did she not?

9 A She did.

10 Q Okay. Thank you.

11 MR. ANDERSON: I don't have any other questions,
12 Judge.

13 THE COURT: Thank you very much, sir. You may step
14 down.

15 (Whereupon, the witness exited the witness stand.)

16 MR. ANDERSON: Judge, I don't have any other witnesses
17 at this time.

18 THE COURT: All right. Mr. Johnson?

19 MR. JOHNSON: The state would call Charles Grose to
20 the stand.

21 THE COURT: Mr. Grose, if you'd please come around to
22 be sworn, sir.

23 DEPUTY CLERK OF COURT: Good morning.

24 THE WITNESS: How you doing?

25 CHARLES GROSE, having been first duly sworn, testified

1 as follows:

2 THE WITNESS: (To the bailiff) Can I have a cup of
3 water, too, please?

4 THE BAILIFF: (Complied.)

5 THE WITNESS: Thank you.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Mr. Grose, just some basic questions: How long have
11 you been practicing law?

12 A Since 1993.

13 Q And is it fair to say that 100 percent of that is
14 criminal law?

15 A Not since 1993. I -- I worked for a law firm in
16 Charleston that had primarily a civil practice, although I
17 did handle a -- a PCR case for an applicant during that
18 period of time. Since 1996 it's been exclusively criminal
19 defense.

20 Q And you are the public defender for the eight circuit

21 ---

22 A That -- that's ---

23 Q --- the head ---

24 A --- correct.

25 Q --- public -- chief public ---

DIRECT EXAMINATION BY MR. JOHNSON - CHARLES GROSE

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1 A Yeah --

2 Q --- defender?

3 A --- yes, sir.

4 Q How did you become involved in this case?

5 A I -- I don't remember exactly. This is a case that
6 was assigned to Mr. Buergey originally. I imagine what
7 happened, as -- as time went on and it looked like it was
8 going become a trial, that I became more and more involved.
9 And, you know -- but I -- I know I became involved for the
10 trial, but I don't remember the exact sequence of events or
11 when it took place.

12 Q And do you remember how many times you met with Mr.
13 Harrison?

14 A I do not.

15 Q But ---

16 A I mean ---

17 Q --- did you meet ---

18 A --- Mr. Buergey would've been meeting with him. And
19 then, when I got involved, I -- I would've met with him.
20 And -- and it's probably fair to say that my meetings with
21 him began at -- near the time of trial, because Mr. Buergey
22 would've been handling that initially.

23 Q So he would've -- Mr. Buergey would've discussed all
24 the indictments, the defenses, the crimes, the penalties
25 with Mr. Harrison?

1 A I'm sure he would. For some reason I remember there
2 being some sort of late reindictment. So, you know, I
3 might've been involved in some of those discussions on the
4 eve of trial.

5 Q Did you formulate a trial strategy in this case?

6 A I did --

7 Q And ---

8 A --- or we did.

9 Q Can you explain to the Court a little bit about that
10 strategy?

11 A Well, you know, it's -- it's been six years. And --
12 and obviously, we got a lot of stuff here. And -- and I've
13 not read the entire transcript. But I've read some
14 significant parts of the transcript.

15 And -- and -- and I think that, you know, a lot of the
16 strategy centered around Torey Brown and -- and whether or
17 not the investigation and the state's theory of the case
18 should be believed. One of the things that came out was --
19 is that it was Torey Brown and not the victim in the crime
20 that was feeding information to the Abbeville Police
21 Department about what had happened and that Torey Brown had
22 lied to the police department; that that information came
23 from the victim who had gotten shot. And the police made
24 an arrest based on that lie.

25 And then, I believe, as Mr. Smith testified during the

DIRECT EXAMINATION BY MR. JOHNSON - CHARLES GROSE

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1 in-camera hearing, once he found out that was a lie, he had
2 a trip -- he had to figure out how to try to put these two
3 guys at the scene that he had already arrested and was
4 aware of the potential liability of this police department
5 for -- for making an arrest based on information that
6 wasn't true.

7 Q So ---

8 A And then -- then, even to go a step further, the
9 solicitor's office took the position that they could
10 prosecute a case that was based on a false arrest; that
11 none of that mattered. And so we were trying to, you know,
12 expose, basically, that, you know, Torey Brown's lies and
13 the conspiracy between the solicitor's office and the
14 police department to continue with a -- an arrest that was
15 based on false information.

16 Q And so I guess I'll jump right to it: You brought Mr.
17 Smith's statement in on cross-examination of Mr. -- well,
18 you actually brought Mr. Brown's statements in on cross-
19 examination of Mr. Smith; is that right?

20 A That -- that's correct.

21 Q And ---

22 A And -- and -- and there was -- there was a lengthy
23 hearing about that, because the -- the state was trying to
24 -- to keep that information out and keep the jurors from
25 finding out what really had gone on.

1 Q And did you feel that should've been exposed to the
2 jury?

3 A Yes.

4 Q And was there an argument that you made in order to
5 get that into evidence?

6 A Yes. And -- and that's reflected in the transcript.

7 Q Okay. And that argument is based on -- I think the
8 solicitor objects and Mr. Haskell's counsel objects based
9 on hearsay. And that -- can you explain what your
10 reasoning was that it was not hearsay?

11 A Well, I -- the -- the argument that we made and that
12 Judge Couch accepted was -- is that it -- it went to the
13 state of mind of the police officer, Detective Smith.

14 Q Were you trying to prove this was a faulty -- that all
15 the arrest warrants were based on the faulty information
16 from Mr. Brown?

17 A Well, not faulty information; false information.

18 Q False information?

19 A Yeah.

20 Q Okay. And basically, the questions -- were you able
21 to cross-examine all the witnesses that the state put up?

22 A Yes. I believe so. I -- I mean, certainly, we had
23 that right. I don't remember if we actually cross-examined
24 every single witness. But I know we cross-examined some of
25 them aggressively.

DIRECT EXAMINATION BY MR. JOHNSON - CHARLES GROSE

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1 Q And Mr. Harrison alleges that you should've called a
2 Mr. Thompson to the stand?

3 A Yeah. You know, I -- I -- he -- he said that Mr.
4 Thompson was there and available. I don't have any
5 recollection of -- of Mr. Thompson. But I will tell you
6 that I would like to know more about what Mr. Thompson
7 said, because the -- the testimony from Mr. Harrison was --
8 is -- is if I -- and -- and this courtroom is hard to hear
9 in. So if I misstate it, it -- it probably relates to
10 that.

11 But my understanding was -- is that Mr. Harrison was
12 saying that Mr. Thompson witnessed Torey Brown telling the
13 victim what had happened to him and who had done it to him.
14 And -- and that evidence would, I think, be entirely
15 relevant to our defense and would have proven that --
16 pretty conclusively, if believed by the jury -- that the
17 allegations made by Mr. -- well, that these statements made
18 by Mr. Brown -- Torey Brown were being introduced by him
19 that he -- because -- because the testimony at trial was --
20 is that Mr. Brown was not a witness to this; that he was in
21 the house -- or in the apartment in the bedroom when all of
22 this happened at his -- at his girlfriend's house. You
23 know, she was a witness.

24 But, you know, if -- if Torey Brown, who wasn't a
25 witness was actually telling the victim what had happened,

1 that -- that would've been significant evidence. And --
2 and so I don't know if -- if -- if we should've called him
3 and that would've fit into our case. If we didn't know
4 about him, that may be newly discovered evidence. That --
5 that is something that, I think, was -- would -- would be
6 very relevant.

7 Q And just let me correct you on just a few things, Mr.
8 Grose: Isn't the testimony that Mr. Brown actually picked
9 up the victim? He wasn't actually in the house when the
10 incident occurred. He was there previously, but then he
11 had left.

12 A Well, I think there was some testimony that he was --
13 well, yeah. He had picked -- he had brought the victim
14 there. This happened at Ms. Cole's apartment. I -- I
15 remember reading somewhere in the transcript that he
16 might've been in the bedroom.

17 But either way, I mean, the point is -- is he didn't
18 see who shot the victim. But then, he's telling the victim
19 and the police who shot the victim. I mean, that's
20 extraordinarily -- I -- I mean, one theory here is -- is
21 that Torey Brown's the one who actually did this and then
22 was putting it off on these other two people to protect
23 himself. And this information that Mr. Harrison testified
24 to, I think, would be important to prove that point.

25 Q You didn't present any evidence or have Mr. Harrison

1 -- or Mr. Harrison chose not to testify; isn't that right?

2 A Right. Yeah. I -- I don't think that either of the
3 defendants testified. But I could be wrong about Mr.
4 Haskell.

5 Q And were you allowed to get the last argument?

6 A I -- I don't remember. I don't think so.

7 Q Okay.

8 A I think that we -- we didn't get the last argument
9 because Mr. Haskell presented alibi witnesses or some --
10 some witnesses. I didn't read Mr. Anthony's closing
11 argument for today. But I think it came after mine in the
12 transcript. But I'm not 100 percent sure.

13 Q Is there a reason that you would've have presented
14 evidence?

15 A Well, you know, preserving the final argument wouldn't
16 have been an issue in this case because the codefendant was
17 going to be presenting evidence. So I don't know that
18 there really was any, you know -- anything to gain by not
19 presenting evidence if it was -- if it was available to be
20 presented. Now, I'm -- I'm taking that question as
21 separate from the decision about whether Mr. Harrison
22 testified.

23 Q Okay.

24 THE COURT: Let me ask -- and I don't mean to
25 interrupt. But -- because just -- just this line of

1 questioning confused me a little bit. I thought earlier
2 the testimony was that the statements by Mr. Brown to law
3 enforcement were actually entered into by Mr. Grose.

4 THE WITNESS: They -- they were.

5 THE COURT: All right. So you did put in evidence?

6 THE WITNESS: Well, no -- well, I -- I -- I took the
7 "putting in evidence" to mean calling witnesses or
8 presenting documents or tangible objects. I don't think we
9 did any of that. But we did present that by ---

10 THE COURT: --- the testimony?

11 THE WITNESS: --- through cross-examination.

12 THE COURT: Okay.

13 THE WITNESS: And -- and I -- I don't think the actual
14 documents were put in.

15 THE COURT: Got you.

16 THE WITNESS: But the substance of the statements came
17 in through -- through that cross-examination.

18 THE COURT: Okay. Okay.

19 THE WITNESS: That's -- was a good question. I was --
20 can see how that wasn't clear.

21 MR. JOHNSON: Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 Q Mr. Harrison makes the allegation that you didn't
24 object during the solicitor asking Mr. Norman, I guess,
25 inappropriate questions. Is there a reason that you didn't

1 object to those -- that line of questioning?

2 A You know, I -- I -- I haven't read that transcript,
3 because I didn't know that was an issue until today. If
4 you want me to look at that, I'd be happy to. Is there a
5 page or something that ---

6 Q Yeah. Let ---

7 A --- that's on?

8 Q --- me grab one for you.

9 (Whereupon, Mr. Johnson conferred with Mr. Anderson.)

10 Q Mr. Anderson has informed me it's 243.

11 A Yeah. I -- I -- I -- just looking back that -- before
12 that -- and I haven't read this part of the transcript but
13 -- in full. But it looks like the judge was telling -- on
14 page 241: "I think it's correctly stated the way you
15 should approach this is he actually made the statements
16 last night in the presence of Officer Vandiver."

17 And then, he does include himself in the conversation,
18 not in every question. But it does happen on -- in -- in a
19 couple places. I think I should've objected to that.

20 I mean, the -- the point is -- I mean, there's some
21 case law about solicitor turning himself into a -- a
22 witness by -- by talking about statements that were made to
23 them.

24 Q Will -- will you agree with me that the witness -- I
25 think it was -- it was Mr. Norman -- didn't give up his

1 position throughout the questioning? He wouldn't admit to
2 what the solicitor wanted him to?

3 A Yeah. He's -- he's saying that he -- that he didn't.
4 Yeah. But I think the -- the problem becomes -- is -- is
5 -- you know, the solicitor sort of interjecting his
6 credibility. You know, he's denying it but saying, "Well,
7 you told me X." Mr. Norman's denying it.

8 But the solicitor -- and sort of the -- the quasi-
9 judicial role clouding the -- the role in front of the
10 jury. I think that's the Sierra case.

11 I -- and I imagine that that was some of why the --
12 the judge wanted him not to ask the questions in that way.
13 And -- and every question wasn't that way. But the -- at
14 least a couple that I see here were.

15 Q One last line of questioning: He -- Mr. Harrison
16 alleges you should've specifically asked for Mr. -- for
17 Sgt. Vandiver to be sequestered during testimony.

18 A Yeah.

19 Q But, I guess, would you agree with me that the
20 solicitor agreed to take Mr. Smith out of the courtroom and
21 that Mr. Vandiver would be the lead ---

22 A Yeah.

23 Q --- investigator?

24 A I -- I -- again, I didn't know that that was -- well,
25 no. I take that back. I -- I knew that that was an issue,

1 but I didn't understand until today exactly what they were
2 getting at.

3 And I was looking at pages -- you know, around 82 in
4 the transcript, where -- and -- and it may have been that
5 at one point, Mr. Anthony was asking to keep both officers
6 in there and we were -- and -- and the idea was -- is that
7 Mr. Vandiver was going to be his first witness, apparently.
8 And we were talking about expecting that Mr. Vandiber
9 (phonetic) might have to be recalled as a witness because
10 we had him on a witness list and that certain testimony
11 might not become relevant or admissible until later in the
12 trial. And that's when Mr. Anthony, it -- it appears,
13 offered to sequester Detective Smith and keep Mr. Vandiver
14 in the courtroom.

15 Now, I do think it's true -- you know, just -- just
16 looking at it, we were trying to, you know -- you know, I
17 think we wanted him to be -- well, at one point I say:
18 "One of the two needs to be sequestered."

19 You know, I -- I think we probably -- well, I don't
20 know. I don't know -- looking back, I don't know we can
21 say we would've preferred which one would be sequestered.
22 But I do think it's true that Mr. Vandiver, being present
23 during the trial, was then able to tailor his later
24 testimony and do things during the trial to -- to help the
25 state's case along.

1 Q But at the time that's what the solicitor agreed to
2 and the judge allowed Mr. ---

3 A Right.

4 Q --- Smith ---

5 A Right.

6 Q --- and Mr. Vandiver to become ---

7 A Right.

8 Q --- lead counsel?

9 MR. JOHNSON: I think that's all the questions I have
10 at ---

11 A Well, not lead counsel, but the ---

12 Q --- lead investigator. Excuse me.

13 A The lead investigator. Yeah.

14 MR. JOHNSON: That's all the questions I have right
15 now, Your Honor.

16 THE COURT: All right.

17 MR. JOHNSON: (To the witness) Please answer any
18 question Mr. Anderson may have.

19 THE COURT: Mr. Anderson?

20 CROSS-EXAMINATION

21 BY MR. ANDERSON:

22 Q Mr. Grose, just a few things, a few ---

23 A All right.

24 Q --- questions for you: You said you didn't -- you
25 didn't remember whether it was you or Mr. Buergey that met

1 with Mr. Harrison or how many times? Was that what you
2 didn't remember?

3 A You know, I -- I -- I would've met with him less than
4 Mr. Buergey did. And -- and it's very possible that I met
5 with him very little before we got on the eve of trial. I
6 -- I just ---

7 Q Right.

8 A --- I just don't -- I mean, it was sort of a -- I
9 guess, when it was becoming a trial, it became more of a --
10 a team approach.

11 Q Right. And when you were talking about Monroe
12 Thompson, you said that -- well, let me back up. You said
13 you didn't remember about Monroe Thompson ---

14 A I -- I don't ---

15 Q --- but ---

16 A --- I don't have any recollection of that. I -- you
17 know ---

18 Q Do you remember if he was subpoenaed as a witness?

19 A I -- I don't. I mean, and -- and -- and if I -- I --
20 I -- I just -- I just -- I -- I didn't realize that he was
21 going to be an issue today. And so I haven't looked
22 through my file ---

23 Q Right.

24 A --- regarding anything on him.

25 Q And it's possible that Mr. Buergey met with him

1 without --- and that might be the reason it slipped your
2 mind; is that possible?

3 A I -- I -- a lot of things are possible why it might've
4 slipped my mind.

5 Q Yeah.

6 A It's been six years since we tried this case.

7 Q Yeah. But I believe you did say that his absence,
8 given what he could have testified to would be pertinent
9 ---

10 A Well, I mean, from what I heard, I mean, I would like
11 to -- I -- I -- I mean, I have no recollection of this. I
12 would like to -- to know more about what Mr. Thompson would
13 -- would say. I mean, we would obviously have to evaluate
14 that before we decided to put him on the witness stand.
15 But what Mr. Harrison testified here to today, you know,
16 seemed consistent with the -- the theory that I was
17 advancing and that we had that long, you know, discussion
18 before I finished my cross-examination of -- of Mr. Smith
19 about Torey Brown's statement.

20 I mean, the point we were trying to make is -- is that
21 Torey Brown was infecting the trial and the investigation
22 of the case with -- with statements that he made about what
23 happened that proved to -- to be not true. And -- and if
24 it turns out that -- it -- it -- well, basically, it turns
25 out to be exactly the reverse of what Mr. Brown was telling

1 the -- the officers the night that this happened. Mr.
2 Brown was telling the officers that the victim who got shot
3 told him that Mr. Harrison and Mr. Haskell had done it.

4 And what this new witness would say would -- would
5 flip that around and say that it was Mr. Brown that was
6 telling the victim what happened. It -- it's undisputed
7 that the victim did not identify the shooters and that they
8 then had to change their investigation when they found out
9 about Mr. Brown's lie.

10 So if -- if -- if Mr. Thompson were to testify the way
11 Mr. Harrison outlined it, that would be sort of the missing
12 link that would prove that -- that Torey Brown, who was not
13 a witness -- nobody ever said he was an actual -- I mean,
14 he was a witness to collateral events, but he was not a
15 witness to the shooting. That would -- that -- that would
16 expose that he was, in fact, infecting the investigation
17 and then thus the trial about -- of -- of -- of what
18 happened.

19 Because you've got to remember -- I don't know that
20 this has come out completely. You've got to remember that
21 I think it was Mr. Norman -- I could have these mixed up.
22 But Mr. Norman testified that, you know, his testimony was
23 improperly influenced by law enforcement; that Mr. Adams
24 would not testify until he was given immunity; and that Ms.
25 Cole had actually gone to the solicitor and asked to assert

1 her right to remain silent and was told that she couldn't.
2 And that was never disclosed to us until after she had
3 testified. And that became an issue on appeal.

4 So all of these key witnesses that the state was
5 relying on had questionable problems about whether or not
6 they were really telling the truth or whether or not they
7 were being improperly influenced.

8 Q And when you found out ---

9 A And -- and -- and let me go back. Mr. Adams, I
10 believe, had testified that he was being improperly
11 influenced by Torey Brown. And so that's why ---

12 Q Okay.

13 A --- your witness would be, you know, extremely
14 critical.

15 Q And Torey Brown was available to testify at the time,
16 was he not?

17 A Right. But ---

18 Q But he -- but ---

19 A --- but ---

20 Q --- he never testified?

21 A He never testified. And -- and -- and neither side
22 called him. I'll just ---

23 Q Right.

24 A --- leave it at that.

25 Q Right. And going back to what you just said about Ms.

1 Cole, I mean, she let the Court know that she had attempted
2 to assert her right not to testify. And that was brought
3 out -- I believe Solicitor Anthony let the Court know about
4 that. You -- you did at that point move for a mistrial,
5 did you not?

6 A I -- I don't recall. I probably did. I mean, I
7 remember being extremely upset about that.

8 Q Yes, sir.

9 A And -- and I remember that that was a -- an issue on
10 appeal.

11 Q And, in fact, after Sgt. -- or Officer Vandiver
12 testified the first time, he was recalled twice after that
13 to testify; is that right?

14 A At -- at least twice. Yeah. He ---

15 Q Okay.

16 A --- he came back multiple times.

17 Q Which, as you said, it allowed him to tailor his
18 testimony later ---

19 A Right.

20 Q --- on?

21 And I believe you said that you should have objected
22 to Sherman Norman's -- or the line of questioning that
23 Solicitor Anthony was taking with Sherman Norman?

24 A Yeah. I haven't gone back and read all of that. But,
25 you know, it -- it was -- and I haven't read all of the

1 discussion. But it -- it looks like that Judge Couch was
2 telling the solicitor to present the questioning that it
3 was statements that made -- were made to the officer,
4 because he was the one who could testify about the
5 statements.

6 And there was at least a couple of times, maybe more
7 -- I don't know. The record would reflect -- well, Mr.
8 Anthony did indicate that he was present at the meeting and
9 -- and at least once I saw he said "us." I don't know how
10 ---

11 Q Right.

12 A --- many times that happened. I haven't ---

13 Q Right.

14 A --- read everything ---

15 Q And if you ---

16 A --- back.

17 Q --- look at page 244 ---

18 A Page ---

19 Q --- of that transcript ---

20 A --- 244?

21 Q --- for --- 244. Yes, sir.

22 Two thirds of the way down, the -- the Court says to
23 Mr. Anthony to conform with the previous instructions. And
24 then he says: "What, on line 18?" Solicitor ---

25 A "Did you tell us that?" "No, sir."

1 Q Right. "Us."

2 A Yeah.

3 Q And then, on line 20 he says ---

4 A --- "us" ---

5 Q --- "us" again. And then, if you'll flip over to page
6 ---

7 A Well, he's -- he says -- the -- what the Court says
8 is: "I'm going to ask you to make your questions to the
9 witness" -- on lines 16 and 17.

10 Q Right.

11 A But he had given that other instruction earlier. But
12 -- I'm sorry. Go ahead.

13 Q No. That's fine.

14 And if you look on page 247, at lines 4, 6, and 8, he
15 uses the word "us" again there, doesn't he?

16 A Yes, he does.

17 Q Okay. And then, finally, on line 9 the Court
18 reiterates its instructions to Mr. Anthony about how ---

19 A Right.

20 Q --- he's to ask these questions; is that right?

21 A Right.

22 Q Okay. Mr. Harrison didn't -- didn't testify, and he
23 said y'all discussed that -- or I believe he testified that
24 they -- y'all discussed whether or not he should testify.

25 A Right.

1 Q He could have testified about some bribery allegations
2 against him during this trial, could he not?

3 A (No audible response.)

4 Q Were there some allegations that he was bribing
5 witnesses during this trial?

6 A Yeah. I'm trying to think back to that. I think that
7 was some of the testimony that -- that at -- at the jail,
8 there was an offer of money or something like that; that
9 those were the things that the state was trying to say ---

10 Q Uh-huh.

11 A --- to -- to try to clean up things. Yeah. He
12 could've -- if he had testified, he could've responded to
13 those. Yeah. Yeah.

14 Q Okay. Thank you.

15 MR. ANDERSON: That's all the questions I have.

16 MR. JOHNSON: Court's indulgence, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q Just one quick question, Mr. Grose: The -- you
20 testified there on cross about Mr. Norman being -- his
21 statement being influenced by law enforcement and Adams;
22 there might -- had -- had immunity; could've, you know,
23 provided false information; and Cole told the solicitor she
24 didn't want to testify. But aren't issues for the jury to
25 decide?

1 A Yeah.

2 Q Credibility ---

3 A But -- well -- well, I mean, yeah. They -- they --
4 they -- they are credibility issues for the -- for the jury
5 to decide. And -- and that goes to the weight of the
6 evidence. But if -- if -- if there was subornation of
7 perjury, that would be a matter for the Court too.

8 Q Okay.

9 MR. JOHNSON: That's all I have at this point, Your
10 Honor.

11 THE COURT: All right. Anything further, Mr.
12 Anderson, of this witness?

13 MR. ANDERSON: Yes ---

14 A Well -- and -- and -- and -- and to pick up on your
15 question, though, partly, that didn't become an issue for
16 the jury because -- with regard to Ms. Cole. It didn't
17 become an issue for the jury because the solicitor didn't
18 disclose that conversation until after she testified. So
19 that is a -- also a Brady due process issue by not being
20 able to present that credibility issue.

21 Q Okay. And just about Ms. Cole's statement: Did you
22 ask for the investigator to turn over any notes that he
23 had? Did you object to that?

24 A Yeah. I think that they didn't take any notes, which
25 was also part of the whole sketchy nature of -- of this.

1 Q But you made an objection?

2 A Yeah.

3 Q Thank you.

4 A I believe -- yeah, I believe I did.

5 Q All right. Thank you, sir.

6 MR. ANDERSON: Just a couple more questions, Judge.

7 THE COURT: Yes, sir.

8 RE CROSS-EXAMINATION

9 BY MR. ANDERSON:

10 Q Mr. Grose, if you look in the transcript at page 454.

11 A 454?

12 Q Yes, sir.

13 A That's going to be ---

14 Q This is Officer Vandiver's testimony.

15 MR. ANDERSON: If I could approach, Judge, I could
16 just hand him ---

17 THE COURT: Yes, sir.

18 MR. ANDERSON: --- I could just ---

19 A Yeah. Okay. Be easier than digging through that ---

20 Q Yeah.

21 A --- stack. Thank you.

22 Q At the bottom of that page, the highlighted or
23 underlined portion is discussing Officer Vandiver -- what
24 -- he's discussing what he saw in the jail that day,
25 related to the bribery allegation; is that right?

1 MR. JOHNSON: Your Honor, this is outside of the scope
2 of recross -- or redirect.

3 MR. ANDERSON: Judge, we had asked about it
4 previously. And Mr. Grose ---

5 THE COURT: I'm ---

6 MR. ANDERSON: --- had testified ---

7 THE COURT: --- I'm going to allow it.

8 MR. ANDERSON: --- to it.

9 THE COURT: Overruled. I'll allow it.

10 A Yeah. He's testifying his -- about his opinion ---

11 Q Okay.

12 A --- of what he saw.

13 Q Right. And -- and you, in fact, asked him that:
14 That's your opinion, right?

15 A Yeah.

16 Q And what did he say prior to that? At the bottom of
17 454, what opinion did he express?

18 A (As read): "My opinion, as long as I've been in law
19 enforcement, you flash somebody money and they hold up the
20 amount and they are incarcerated; the deal has been cut."

21 Q Okay. And ---

22 A And then I, you know, asked him that: "That's your
23 opinion?" He says: "That's your opinion?" I say: "You
24 don't have any direct evidence that a deal had been cut?"
25 And he admitted that he didn't.

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1 Q Right. Okay. Thank you.

2 MR. ANDERSON: I don't have any other questions,
3 Judge.

4 THE COURT: All right.

5 (Whereupon, the witness exited the witness stand.)

6 MR. JOHNSON: The state calls Ms. Kathrine Hudgins.

7 THE COURT: All right. Thank you very much, Mr.
8 Grose.

9 MR. GROSE: Let me grab all this stuff.

10 KATHRINE HUDGINS, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JOHNSON:

14 Q Ms. Hudgins, can you explain how you became involved
15 in this -- or have you become involved in this case?

16 A I was the appellate counsel.

17 Q So you received this case on appeal?

18 A Correct.

19 Q And, I guess, tell the Court -- although Judge Russo
20 knows this process pretty well, but will you please, for
21 the record, explain: When you first get a file assigned to
22 you, what do you do in preparation for your appeal?

23 A Typically, what I will do is read through the entire
24 trial transcript. I will take notes of what I believe to
25 be pertinent issues that need -- may need to be raised on

1 appeal. I try to, in those notes, note pertinent facts
2 that may enable me to help make my arguments, in terms of
3 the law and the issues that I'm going to be raise.

4 So as I'm reading the transcript, I'm taking notes and
5 trying to figure out what issues I'm going to raise to the
6 appellate court.

7 Q And how long have you been appellate defender?

8 A Seven years -- at -- at appellate defense. I handled
9 appeals in private practice before I went and worked for
10 appellate defense.

11 Q Do you have any idea how many appeals you've done?

12 A Whew. I ran my caseload yesterday. And based on
13 averages, if I was in it -- I mean, we handle about 200
14 cases a year. I'll let you do the math.

15 Q So in this case what issues did you feel that were
16 pertinent to Mr. Harrison's case?

17 A I raised three issues in Mr. Harrison's case. I'm
18 just going to refer to my brief, if -- if that's all right.

19 MR. JOHNSON: I believe you have a copy, Your Honor,
20 in your package.

21 THE COURT: I do. I read it earlier.

22 MR. JOHNSON: Okay.

23 A The first ---

24 THE COURT: I've got it.

25 A --- issue had to do with the mistrial about a witness

1 testifying that Mr. Harrison had just been released from
2 prison or from jail. The second issue went to the mistrial
3 motion involving Ms. Cole's -- and this -- this has to do
4 with -- and this is a really -- frankly, a very strange --
5 strange trial. But Ms. Cole had asked the solicitor about
6 whether or not she could assert her fifth amendment
7 privilege against self-incrimination, and he had told her
8 no; she could not. That was not revealed to the judge
9 until later. So I raised that as an issue on appeal.

10 And then, the third issue has to do with the jury
11 charge. What -- the jury charge wasn't exactly correct, in
12 terms of ABHAN and ABWIK, in regard to malice.

13 Q I guess I'll cut right to it: Mr. Harrison's alleging
14 that you did not bring up an issue that Mr. Grose objected
15 to in the closing argument concerning the solicitor
16 possibly shifting the burden that was overruled. Can you
17 explain why you wouldn't have brought that up?

18 A You know, in -- in reviewing my notes, it looks like I
19 did take some notes, in terms of some improper closing-
20 argument issues and some objections that were made to those
21 improper closing arguments. I'm not sure that I
22 specifically noted that as one of the issues.

23 You know, there was -- while standing alone, that
24 issue may not have been something that I thought needed to
25 be raised, looking back on this, there were so many

1 instances that perhaps I should've made a cumulative-error
2 argument on these -- on those grounds. But I did not.

3 Q Will you agree with me that we have a case, *Green v.*
4 *State*, about the cumulative error; that the Supreme Court
5 has yet to hold that to show prejudice?

6 A Perhaps this could've been the case that they decided
7 it would be allowable.

8 Q That's a bit of a stretch, isn't it?

9 A Oh, well, I don't think so at all.

10 Q Don't think so?

11 A Unh-unh.

12 Q But in your professional opinion, you didn't that was
13 the strongest issue in the case?

14 A You know, obviously, if it's an issue that Mr.
15 Harrison should have prevailed upon on appeal and I did not
16 present it, then he would be entitled to relief.

17 MR. JOHNSON: I think that's all I have right now,
18 Your Honor. Thank you.

19 THE COURT: Mr. Anderson?

20 MR. ANDERSON: Judge, if I could have one second?

21 THE COURT: Yeah. Sure.

22 CROSS-EXAMINATION

23 BY MR. ANDERSON:

24 Q Ms. Hudgins, I'm Jennings Anderson. I believe we
25 spoke on the phone earlier?

1 A We have.

2 Q How many times did you talk with Mr. Harrison?

3 A I don't ---

4 Q Do you ---

5 A --- believe ---

6 Q --- remember?

7 A --- I ever spoke with Mr. Harrison.

8 Q Okay. And I understand you have a large caseload and
9 are very busy.

10 A I wish that that was not the case. I wish that we had

11 ---

12 Q Right.

13 A --- more contact with our clients. But we -- but we
14 do not.

15 Q I understand.

16 You said that standing alone, the -- the issue that he
17 says should have been appealed, the improper closing
18 argument, did you say that standing alone, that might not
19 have overturned -- have ---

20 A It didn't stand out to me, I think as we discussed on
21 the phone. I -- I had noted an objection to the closing
22 argument on page -- I -- I think my note said page 619.

23 And as we were going through the transcript over the phone,
24 it appears that that was a different objection to an -- an
25 improper part of that closing argument. And perhaps I

1 should've combined all of those and made that an Issue No.
2 4.

3 Q And what do you think the effect would be, had -- had
4 that, along with these other issues, been combined?

5 A I don't know. This -- this -- this transcript was --
6 this was a very interesting trial, and there were a lot of
7 problems, I think, with the state's case. I think as a
8 result of that, respectfully, I would have to say that the
9 state was overreaching.

10 Q Okay. And I believe you said this might be a case in
11 which cumulative effect of all of these errors could have
12 been presented?

13 A We're waiting on the Court to -- to decide that so ---

14 Q Okay. Thank you.

15 MR. ANDERSON: I don't have any other questions.

16 MR. JOHNSON: No further questions.

17 THE COURT: All right.

18 MR. JOHNSON: The state has ---

19 THE COURT: Thank you ---

20 MR. JOHNSON: --- no further ---

21 THE COURT: --- very much.

22 MR. JOHNSON: --- witnesses.

23 THE COURT: All right.

24 (Whereupon, the witness exited the witness stand.)

25 MR. JOHNSON: The state has no further witnesses, Your

1 Honor.

2 THE COURT: All right. Mr. Anderson, would you like
3 to make a -- some final remarks to ---

4 MR. ANDERSON: Yes, sir.

5 THE COURT: --- the Court?

6 MR. ANDERSON: Thank you. Judge, I would submit that
7 Mr. Harrison faced numerous obstacles to fair
8 representation and numerous errors that would constitute
9 ineffective performance and that his -- his case -- he was
10 prejudiced; and that but for these errors, the result of
11 the proceeding would have been different. You've heard
12 witnesses, including Mr. Grose, saying that there were
13 things that should have been brought up at trial that were
14 not; witnesses that probably would have helped, had they
15 testified, that were not called. And we ask that you
16 consider all of these and find that based on the *Strickland*
17 and *Cherry* standards that Mr. Harrison should have a new
18 trial to -- to give him a fair shake at this time, Judge.

19 THE COURT: All right, sir. Mr. Johnson?

20 MR. JOHNSON: Thank you, Your Honor. May it please
21 the Court: Just a -- first off, about Mr. Thompson -- and
22 I know that Mr. Grose testified that he would probably like
23 to talk to him. But the applicant has plenty -- has had
24 plenty of time to come up with Mr. Thompson. He's not
25 here; he hasn't testified today. Therefore, there's no

1 prejudice, because his testimony is nothing but
2 speculation. So there is no -- there's a case -- and I'll
3 have to bring it to you and -- and cite it for you -- that
4 shows that if Mr. Harrison is going to prove prejudice, he
5 must have that witness testify. And clearly, he has not
6 done that today.

7 The state's position is that in this case, as far as
8 Mr. Harrison's case is concerned, there's overwhelming
9 evidence, as far as statements. The victim identifies him;
10 the victim knows him; is able to testify that after he was
11 shot -- that Mr. Harrison was with the victim before the
12 incident; after he was shot, he was found rifling through
13 his pockets, asking for -- if he had weed or money. Ms.
14 Cole's statements put Mr. Harrison at the -- the incident
15 scene. So based on that overwhelming evidence, there's no
16 resulting prejudice.

17 Third is that -- the issue about Mr. Vandiver being
18 allowed to stay in court and tailor his testimony to the
19 testimony he's heard. But Mr. Vandiver was chosen as the
20 lead investigator in the case. And as far as I know,
21 they're allowed to stay in the courtroom throughout the
22 proceedings.

23 The issue about questioning Mr. -- the solicitor
24 questioning Mr. Norman and becoming a witness in this case:
25 The state position is that there's no prejudice because he

1 didn't give up any -- Mr. Norman didn't give up any
2 position. And I don't think any testimony will support --
3 or anything was proved through Mr. Norman and with Norman's
4 testimony.

5 THE COURT: Well, isn't the -- isn't the danger there,
6 though, that the solicitor is basically pitting himself
7 against the witness?

8 MR. JOHNSON: That -- that would be the danger, Your
9 Honor.

10 THE COURT: And -- and -- and so the danger there is,
11 depending on how a jury views the power and the authority
12 of the solicitor's office, as being more trustworthy than a
13 layperson. I don't know.

14 MR. JOHNSON: Right. I guess our position would be
15 that the -- that trial judge correctly instructed the
16 solicitor to tailor his -- his questioning to the way that
17 the -- if you -- once -- once you read the transcript --
18 the way he instructed. So we don't find there's any
19 resulting prejudice, and applicant has failed to meet his
20 burden on that issue.

21 As far as the issue of Mr. Harrison not testifying,
22 whether or not Mr. Grose -- and -- and this is not what
23 we're claiming -- misadvised him not to testify, the
24 colloquy of the Court asked Mr. Harrison whether or not he
25 wanted to testify. That is his choice. Any misadvice is

1 cured by the colloquy between the Court and Mr. Harrison.

2 As far as the appellate issue is concerned, Ms.
3 Hudgins, I believe, stated in her professional opinion that
4 she picked the most meritorious issues and, therefore,
5 there's no ineffective assistance of appellate counsel.
6 She, in her professional opinion, is -- is allowed to do
7 that. And there are also -- our argument -- and, you know,
8 Ms. Hudgins may dispute me -- is that this -- this -- this
9 state has not held that a cumulative-error-analysis exists.
10 The -- in *Green v. State*, they say that it still hasn't
11 been held by the state.

12 So we would ask that this application be denied
13 because the applicant has not proven the *Strickland* test in
14 this matter. Thank you.

15 THE COURT: All right. Obviously, I've got a almost-
16 700-page transcript that I have to -- to look at. So I'm
17 going to review that, in light of the issues that have been
18 raised, and -- and then I'll have a answer for y'all.

19 Okay?

20 MR. JOHNSON: Thank you, Your Honor.

21 MR. ANDERSON: Thank you.

22 THE COURT: Thank you.

23 (WHEREUPON, the proceeding was concluded at 12:24
24 p.m.)

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, OFFICIAL COURT REPORTER
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN
THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CIRCUIT COURT FOR ABBEVILLE COUNTY,
SOUTH CAROLINA, ON THE 7TH DAY OF JUNE, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M

COLUMBIA, SOUTH CAROLINA

NOVEMBER 20, 2012

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Clarence Austin Harrison, #291401,

2010-CP-01-0374

Applicant.

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 16, 2010, amended on April 25, 2011, and amended again on May 29, 2012. Respondent made its Return on August 18, 2011. An evidentiary hearing into the matter was convened on June 7, 2012, at the Greenwood County Courthouse. Jennings B. Anderson, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. E. Charles Grose, Esquire, and Katherine Hudgins, Esquire, also testified. This Court had before it a copy of the records of the Abbeville County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Abbeville County. He was indicted at the March 2006 term of the Abbeville County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) (2006-GS-01-0194), Attempted Armed Robbery (2006-GS-01-0195), and Possession

of a Weapon During the Commission of a Violent Crime (2006-GS-01-0196). He was represented by Charles Grose, Esquire, and Alex Buergey, Esquire¹. From March 20-23, 2006, Applicant proceeded to a jury trial and was found guilty as indicted of all charges. The Honorable Roger L. Couch sentenced him to incarceration for twenty (20) years for both ABWIK and attempted armed robbery, and five (5) years for the weapon possession charge, all concurrent.

A Notice of Appeal was timely filed on Applicant's behalf, and an appeal was perfected by Katherine H. Hudgins, Esquire. The S. C. Court of Appeals affirmed. State v. Harrison, 2009-UP-079 (Ct. App. filed Feb. 11, 2009). Applicant's Petition for Rehearing was denied by Order dated March 24, 2009. The Remittitur was sent on April 13, 2010.

In his current Application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel
 - a. "Counsel Charles Grose moved to enter hearsay statements for the purpose of showing the state of mind of investigating officer"
2. Confrontation Clause violation

In his amended Application, Applicant alleged he is being held unlawfully for the following reasons:

1. "Petitioner's right to effective assistance of counsel was deprived by counsel's failure to properly investigate the case prior to going to trial and by failing to make proper objections and motion during the trial."
 - a. "Counsel failed to effectively represent Petitioner by: failing to call a subpoenaed witness who had information regarding Torey Brown's connection to the state's witnesses; bringing in a prejudicial statement that implicated Petitioner in criminal activity; failing to object to reference to prior

¹ At the PCR hearing, Applicant waived claims of Ineffective Assistance of Counsel against Alex Buergey.

bad acts in the indictments; and failing to raise issue on appeal involving an overruled objection to a statement made by the prosecutor during closing argument."

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel and ineffective assistance of appellate counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's and Appellate Counsel's testimony credible.

Failure to call witnesses

Applicant alleges Counsel failed to call certain witnesses at trial. Applicant testified Counsel failed to call Monroe Thompson. He claimed this witness would have testified about Torey Brown's connection to the State's witnesses, that Mr. Brown was a liar and that Applicant was innocent. Counsel testified he was unaware of this witness, as Applicant did not inform him of Mr. Thompson, but would have liked to have had the chance to interview him.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Additionally, "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly... on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

Applicant claims Counsel failed to call a witness at trial that would have testified on his behalf. However, Applicant failed to present Mr. Thompson as a witness at the PCR hearing, and therefore, no prejudice can be shown pursuant to Underwood. Furthermore, because Applicant did not make Counsel aware of Mr. Thompson, Counsel cannot be held ineffective for information not furnished to him by Applicant pursuant to Strickland. Thus, this allegation is denied.

Torey Brown's Statement

Applicant alleges Counsel was ineffective for introducing a statement from Mr. Brown, who did not testify at trial, which named Applicant and co-defendant, Monte Haskell, as the perpetrators of the crime. Applicant testified he was not afforded the opportunity to cross-examine Mr. Brown, and this resulted in prejudice.

Counsel testified he introduced this statement during the cross-examination of John Smith, one of the State's witnesses who investigated this case. Counsel stated he believed Mr. Brown relayed false information to law enforcement, and this information was the basis of the arrest warrants for Applicant and co-defendant. (*See transcript pp. 424-432; 593-94*). Counsel testified his strategy was to show the State was prosecuting a crime based on false information and a false arrest. Counsel also stated he introduced the statements not to prove that co-defendant shot Victim, but to show John Smith's state of mind in obtaining the arrest warrants

for Applicant and Haskell.

Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel testified he introduced this statement to prove the State was prosecuting a crime based on a false arrest. Counsel also stated and argued at trial this statement was offered to show the investigator's mindset when procuring an arrest warrant in this case. I find Counsel articulated valid reasons for introducing this statement on the cross-examination of John Smith, and Applicant has not shown that Counsel was deficient in that choice of tactics. I, therefore, find Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Sergeant Raymond Vandiver

Applicant has two claims concerning Sgt. Vandiver. The first is Counsel was ineffective for not filing a Brady/Rule 5 motion to obtain notes Sgt. Vandiver had concerning his interviews with Robert Norman and Nini Cole. The other claim concerns not objecting to Sgt. Vandiver's presence in the courtroom during all of the testimony when he testified twice, once at the beginning of trial, and once toward the end of the trial.

In evaluating post-trial Brady claims, Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). Implicit in this is the existence of the evidence itself.

This Court finds Applicant's Brady rights were not violated. Sgt. Vandiver testified at

trial the conversations he had with Mr. Norman and Ms. Cole were not memorialized in writing. He testified that although he and Solicitor Anthony had the capability of taking notes during these conversations, they did not. Counsel thoroughly cross-examined Sgt. Vandiver concerning this lack of note-taking. (*See transcript pp. 488-493*). Because there were no written notes as evidence, no evidence was suppressed, thus defeating the Wolf test. Since there was no Brady violation, Counsel cannot be ineffective for not objecting based on Brady. Furthermore, Counsel thoroughly and competently cross-examined Sgt. Vandiver on this issue. Therefore, this allegation is denied.

Additionally, during pre-trial motions, Counsel and counsel for co-defendant Haskell moved to have the witnesses sequestered. However, Solicitor Anthony requested both Sgt. Vandiver and John Smith remain in the courtroom during the testimony. Counsel argued one of them had to be sequestered. (Transcript p. 82 ll. 14-23). The Court agreed, and Solicitor Anthony requested Sgt. Vandiver remain in the courtroom and agreed to the sequestration of John Smith.

At the PCR hearing, Applicant testified Counsel should have objected to Sgt. Vandiver remaining in the courtroom because he was allowed to hear the testimony of other witnesses before being recalled to testify by the State. Counsel testified he believed Sgt. Vandiver was able to tailor his later testimony by hearing the other witnesses.

The Court first finds the allegation that Sgt. Vandiver tailored his testimony by listening to the testimony is purely speculative. Second, this Court finds Counsel was not ineffective for not objecting to Sgt. Vandiver being allowed to remain in the courtroom throughout the trial. Even, assuming *arguendo*, if Counsel's representation was deficient, Applicant was not prejudiced because there was overwhelming evidence of Applicant's guilt in this case. Where

there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991).

Here, there were multiple witnesses that testified against Applicant. First, Victim testified before the incident that Applicant was acting paranoid, "like something was up." (Tr. p. 178 ll. 1-2). Victim then testified Applicant followed him into Ms. Cole's apartment immediately after Victim was shot in the face and proceeded to rummage through Victim's pockets to try and get money and/or drugs. (Tr. p. 180 ll. 21-23; p. 181 ll. 4-11; p. 226 ll. 9-13). Ms. Cole testified that just before the incident, Applicant approached her inside her apartment and asked her to lock the door because Applicant "[had] something to do." (Tr. p. 265 ll. 2-23). Ms. Cole later testified she told John Smith when Applicant told her to lock her door, it was because Applicant stated "me and Monte got some business we need to handle." (Tr. p. 271 ln 10- p. 272 ln 4). Victim, further, testified after Ms. Cole inquired what happened, Applicant lied and claimed Victim was punched in the mouth, while Victim was trying to explain that he was actually shot in the mouth. (Tr. p. 181 ll. 18-23). Ms. Cole confirmed this made-up story (Tr. p. 268 ll. 7-14). Additionally, Sgt. Vandiver testified when he arrived on the scene, he found Applicant mopping up the blood from Ms. Cole's floor. (Tr. p. 127 ll. 11-12). This Court finds all of this evidence together overwhelmingly places Applicant at the scene and proves his involvement in this case sufficient for the jury to convict him beyond a reasonable doubt. Therefore, any prejudice resulting from Counsel's alleged error in not objecting to Sgt. Vandiver's presence in the courtroom is erased by the evidence. Accordingly, this allegation is denied.

Sherman Norman

Applicant also claims Counsel was ineffective for not objecting to Solicitor Anthony's line of questioning of Mr. Norman concerning their prior conversation about a statement Mr. Norman gave to police. Applicant alleges Solicitor Anthony became a witness in the trial and this, in turn, made the jury believe Mr. Norman's testimony. Counsel testified at the hearing, after reviewing the transcript, he should have objected to this line of questioning as there is case law which disfavors a Solicitor making himself a witness.

This Court finds, after a full review of the transcript, Counsel did properly object to Solicitor Anthony's examination of Mr. Norman. Starting on page 235, there was in camera hearing concerning this issue. Counsel argued that State v. Sierra² stands for the proposition that a prosecutor should not become a witness as it confuses his duties between being an officer of the court and a witness. The trial court overruled Counsel's objection, basing its ruling on State v. Lee.³ In Lee, the South Carolina Supreme Court held, although disfavored, there is no prohibition against a prosecutor essentially becoming a witness for the State. The trial court then allowed Solicitor Anthony to treat Mr. Norman as a hostile witness and ask him leading questions.

In this case, Counsel made a proper objection, thus preserving the issue for appellate review. Additionally, because of the trial court's ruling on this issue, it would have been superfluous to object Solicitor Anthony's questions. Furthermore, this Court finds no prejudice resulted as Mr. Norman refused to answer Solicitor Anthony's questions in a manner which was satisfactory to Solicitor Anthony. Moreover, on cross-examination of Mr. Anthony, Mr. Buergey allowed Mr. Norman to explain he was under pressure when he signed his statement to police and that at trial was not the first time Mr. Norman explained to Solicitor Anthony that his

² 337 S.C. 368, 523 S.E.2d 187 (1999).

³ 203 S.C. 536, 28 S.E.2d 402 (1943).

statement contained false information. Lastly, Mr. Norman's testimony was only cumulative to Victim and Ms. Cole's testimony. As above, the overwhelming evidence in this case alleviated any resulting prejudice from Counsel's alleged errors. Accordingly, this allegation is denied.

Ineffective Assistance of Appellate Counsel

Applicant claims he also received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983).

Applicant claims he received ineffective assistance of appellate counsel because Ms. Hudgins did not brief an issue to which Counsel objected in closing argument. Applicant stated he believed Solicitor Anthony's comments shifted the burden of proof and were prejudicial.

Ms. Hudgins testified at the hearing when she briefs issues for appeal, she first reads the transcript and takes detailed notes of the issues she believes to be meritorious. She then researches these issues thoroughly and writes her brief. In this case, Ms. Hudgins stated she briefed three issues: judicial error for not granting a mistrial after there was testimony about Applicant being released from jail, judicial error for not granting a mistrial concerning Ms. Cole's testimony that Solicitor Anthony told her she could not assert her Fifth Amendment Right

against Self-Incrimination, and judicial error for a jury charge concerning the definition of Malice as it relates to Assault and Battery with Intent to Kill. She further testified she briefs the issue she believes to be the most meritorious.

This Court finds the Applicant's testimony regarding Appellate Counsel's ineffectiveness is not credible while also finding Ms. Hudgins' testimony credible. I find Ms. Hudgins was not ineffective for not pursuing the issue which Applicant alleges she failed to brief. Additionally, I find Ms. Hudgins, in her professional judgment, decided to brief the issues according to their potential merit. Furthermore, Applicant has failed to demonstrate that any alleged errors on appeal by appellate counsel prejudiced the Applicant. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are

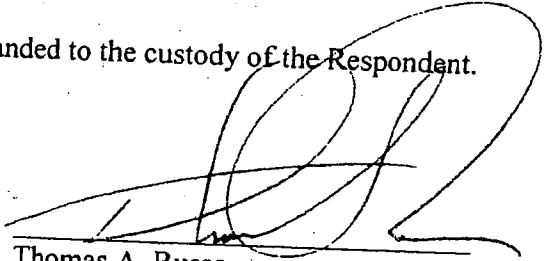
denied and dismissed.

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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 Respondent.

AND IT IS SO ORDERED!



Thomas A. Russo
Presiding Circuit Court Judge
Eighth Judicial Circuit

8/6, 2012

Flourens, South Carolina

WITNESSES

Raymond Vandiver

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

WARRANT NUMBERS

4 INFO

RE-INDICT OF 04-118

COURT OF GENERAL SESSIONS

March Term, 2006

Indictment # 06GS01-194

THE STATE

VS.

CLARENCE A. HARRISON, II

Foreman of the Grand Jury

Jeff Coacke

Date:

MAR 17 2006

VERDICT

True Bill

INDICTMENT FOR

ASSAULT AND BATTERY WITH INTENT TO KILL

Foreman

Enley
Robert B. McDaniel 3/23/06

At a Court of General Sessions, convened on the 7th day of March, 2005, in
County present upon their oath:

COUNT ONE

That CLARENCE A. HARRISON, II, along with Alt Monte Livingston Haskell, aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 10th day of February, 2004, wilfully, unlawfully, and intentionally, with malice aforethought, commit an unlawful act of violent injury upon Rod Gartell in violation of Section 16-3-620 of the South Carolina Code of Laws, 1976, as amended

Ernest J. Mitchell

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Joseph H. Peace
Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

March Term, 2006

Indictment # 06GS01-195

THE STATE

vs.

CLARENCE A. HARRISON, II

Grand Jury

INDICTMENT FOR

ATTEMPTED ARMED ROBBERY

Foreman 3/23/06

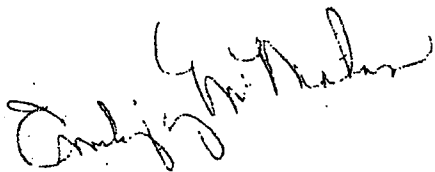
**THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE**

**INDICTMENT FOR
ATTEMPTED ARMED ROBBERY**

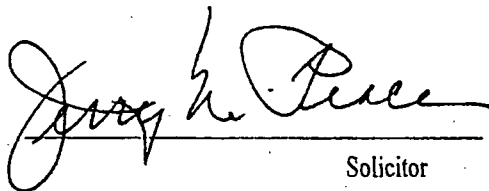
At a Court of General Sessions, convened on the 17th day of March, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That CLARENCE A. HARRISON, II, along with Alti Monte Livingston Haskell, aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 10th day of February, 2004, wilfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Rod Gartell by means of force or intimidation, goods or monies, with intent to deprive the owner permanently of such property in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended



Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

March Term, 2006

Indictment # 06GS01-196

THE STATE

vs.

CLARENCE A. HARRISON, II

Grand Jury

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

Foreman

3/23/06

**THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE**

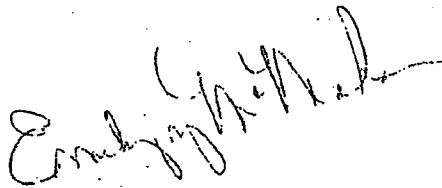
INDICTMENT FOR

**POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on the 17th day of March, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That CLARENCE A. HARRISON, II, along with Alti Monte Livingston Haskell, aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 10th day of February, 2004, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Assault and Battery with Intent to Kill, and/or Attempted Armed Robbery, or any lesser included violent offense, said offense being defined as a violent offense in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said defendant(s) was/were convicted of committing or attempting to commit the said violent crime, Assault and Battery with Intent to Kill, and/or Attempted Armed Robbery, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended



Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

