

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 27 2025

S.C. SUPREME COURT

Certiorari to Jasper County

Honorable Kristi F. Curtis, Circuit Court Judge

NAIJUWUAN S. CHISOLM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000965

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

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

ATTORNEY FOR PETITIONER

I. MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
P.O. Box 1880
Bluffton, SC 29910
(843) 779-8729

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
INDICTMENTS	1
TRIAL TRANSCRIPT DATED FEBRUARY 21-23, 2017	5
SENTENCE SHEETS	382
APPLICATION FOR POST-CONVICTION RELIEF	384
RETURN.....	395
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 21, 2022	404
ORDER OF DISMISSAL.....	439

WITNESSES

N. Aiken - HPD

DOCKET NO. 2015GS2700258

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Naijuwuan S Chisolm

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: 2/23/15

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2015A2720100080

ACTION OF GRAND JURY

Muri

C. S. Rountree

2/23/15

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 2/23/17

Jeffrey P. Richardson

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)

INDICTMENT

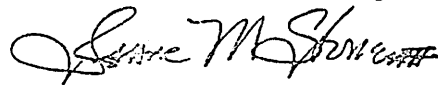
2015GS2700258

At a Court of General Sessions, convened on July 23, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about June 9, 2015, with malice aforethought, Naijuwan S Chisolm did kill and murder Sterling Jenkins by means of shooting him and that Sterling Jenkins did die in Jasper County as a proximate result thereof on June 9, 2015; in violation of Section 16-3-10 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 case made and provided.



Solicitor

TRUE COPY
 MARGARET BOSTICK
 CLERK OF COURT
 JASPER COUNTY, SC
 BY: 
 DATE: 9-4-2015

WITNESSES

N. Aiken - HPD

3

ARREST WARRANT NUMBER

2015A2720100081

ACTION OF GRAND JURY

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 2/23/17

Jeffrey P. Richardson

DOCKET NO. 2015GS2700259

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Naijuwan S Chisolm

Indictment for

Weapons / Possession of weapon during
commission of violent crime

SC Code: 16-23-0490

CDR Code:0549

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 7-23-15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)

INDICTMENT

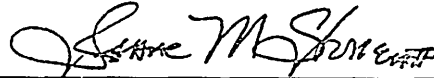
2015GS2700259

At a Court of General Sessions, convened on July 23, 2015, the Grand Jurors of Jasper County present upon their oath:

Weapons / Possession of weapon during commission of violent crime

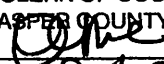
That in Jasper County, South Carolina, on or about June 9, 2015, the Defendant, Naijuwuan S Chisolm, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

TRUE COPY
 MARGARET BOSTICK
 CLERK OF COURT
 JASPER COUNTY, SC

BY: 
 DATE: 9.4.2015

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015-GS-2700258
 2015-GS-2700259

5 State of South Carolina,

6 Plaintiff(s),

7 vs. Transcript of Record

8 Naijuwuan S. Chisolm,

9 Defendant(s) .

10

11

12 **TRIAL TRANSCRIPT**

13

14

15 February 21-22, 2017

16 Ridgeland, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable Perry M. Buckner

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING PLAINTIFF(S) :

Mary Jones, Assistant Solicitor
Brian Hollen, Assistant Solicitor
14th Judicial Circuit Solicitor's Office
39 Sheridan Park Circle, Suite 2
Bluffton, SC 29910
843-255-5880

REPRESENTING DEFENDANT(S) :

Robert Hughes, Public Defender
1905 Duke Street, Room 260
PO Box 525
Beaufort, SC 29901-0525
843-255-5000

1	INDEX	
2	WITNESS:	PAGE:
3	NATASHA AIKEN	
	Direct Examination By Ms. Jones	8
4	Cross Examination By Mr. Hughes	16
5	JESNEISHA HOUSTON	
	Direct Examination By Ms. Jones	17
6	Cross Examination By Mr. Hughes	31
7	NATASHA AIKEN	
	Direct Examination By Ms. Jones	39
8	TROY LONG	
9	Direct Examination By Ms. Jones	48
	Cross Examination By Mr. Hughes	52
10	Redirect Examination By Ms. Jones	53
11	RUSSELL WELLS	
	Direct Examination By Ms. Jones	129
12	THOMAS LOVING	
13	Direct Examination By Ms. Jones	133
	Cross Examination By Mr. Hughes	142
14	AARON AGER	
15	Direct Examination By Ms. Jones	146
	Cross Examination By Mr. Hughes	148
16	JASON RONBERG	
17	Direct Examination By Ms. Jones	150
	Cross Examination By Mr. Hughes	154
18	NATASHA AIKEN	
19	Direct Examination By Ms. Jones	156
	Cross Examination By Mr. Hughes	170
20	Redirect Examination By Ms. Jones	175
21	JAMES TALLON	
	Direct Examination By Ms. Jones	178
22	Cross Examination By Mr. Hughes	189
	Redirect Examination By Ms. Jones	190
23	LUCRETIA JORDAN	
24	Direct Examination By Ms. Jones	193
	Cross Examination By Mr. Hughes	200
25		

1	(Contd)	
2	BARNESHA HOUSTON	
	Direct Examination By Ms. Jones	202
3	Cross Examination By Mr. Hughes	216
4	JESNESIHA HOUSTON	
	Direct Examination By Ms. Jones	218
5	Cross Examination By Mr. Hughes	234
	Redirect Examination By Ms. Jones	240
6	CHAD SMITH	
7	Direct Examination By Ms. Jones	244
	Cross Examination By Mr. Hughes	250
8	TROY LONG	
9	Direct Examination By Ms. Jones	252
	Cross Examination By Mr. Hughes	258
10	Redirect Examination By Ms. Jones	259
	Re-Cross Examination By Mr. Hughes	259
11	KAREN MILBRODT	
12	Direct Examination By Ms. Jones	266
	Cross Examination By Mr. Hughes	272
13	Redirect Examination By Ms. Jones	275
	Re-Cross Examination By Mr. Hughes	276
14	DYLAN HIGHTOWER	
15	Direct Examination By Ms. Jones	278
	Cross Examination By Mr. Hughes	286
16	Redirect Examination By Ms. Jones	288
17	ERIN PRESNELL	
	Direct Examination By Ms. Jones	290
18	NAIJUWUAN CHISOLM	
19	Right to Testify Given By the Court	299

20

21

22

23

24

25

1 INDEX AS TO EXHIBITS

2

3 Court's Exhibits: Marked: Received:

4 1-3 photos 14 14

5

6

7 State's Exhibits:

8 1 911 CD 131 131

2 apartment map 135 135

9 3-5 line-up 162 162

8 dish photo 167 167

10 6-10 photos 183 183

11, 11A-11D projectiles 188 188

11 12-13 photos 210 210

14 screenshot 221 221

12 15-16 photos 256 256

17 phone records 271 271

13 21 map 280 280

20 data map 281 281

14 22 shot wounds 295 295

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 THE COURT: Good morning. Please be seated.

3 All right. I have met with the attorneys this
4 morning, and the first thing that I told them that we
5 will do is hear pretrial motions in the first case to
6 try this morning. I understand from the Solicitor
7 that there are two matters that I have to hear in
8 order to be ready for the jury to come in at 2:00.
9 The first matter, I understand it was an out of court
10 identification issue; is that correct, Solicitor?

11 MS. JONES: That's correct, Your Honor.

12 THE COURT: Mr. Hughes, where is your client?

13 MR. HUGHES: They are bringing him from the
14 back, Your Honor.

15 THE COURT: Do I have any jurors in the
16 courtroom at this time? Anyone here for jury
17 selection, please stand at this time.

18 Let the record reflect no one is standing.

19 It is my understanding that there are no jurors
20 in the courtroom. Please hold the door for me, if
21 you would. No one in or out during this hearing.

22 All right. Solicitor, you may proceed on the
23 identification issue.

24 MS. JONES: Your Honor, I believe that we are
25 waiting for Mr. Chisolm.

PRE-TRIAL MATTERS

1 MR. HUGHES: They are bringing him right now,
2 Your Honor.

3 MS. JONES: State calls Naijuwan Chisolm, 258
4 and 259. Murder and possession of a weapon during a
5 violent crime.

6 THE COURT: Do I have the indictments?

7 MS. JONES: I have them here.

8 THE COURT: Hand them to the clerk, please.
9 Very well.

10 THE COURT: I understand that there's an issue
11 involving this case that counselor has briefed me on
12 this morning concerning an out-of-court
13 identification. I'll advice to counsel, that they
14 review the totality of all circumstances to determine
15 whether or not it is. Neal versus Biggers, as well,
16 which is a United States Supreme Court case as well
17 as state case, Cipro and Drayton (phonetic). The
18 factors to be considered by the Court will be whether
19 or not the opportunity of the witness to view the
20 accused, the degree of attention, the accuracy of any
21 prior description, the level of certainty
22 demonstrated by the witness at the confrontation, and
23 the length of time between the crime and the
24 confrontation.

25 Obviously, Solicitor, the introduction, which

PRE-TRIAL MATTERS

1 I'm sure you're not planning on doing, but I'll
2 remind you that the introduction of a mugshot is, of
3 course, reversible error unless there is some showing
4 that the State had a demonstrable need to introduce
5 such a photograph, and the photograph must not imply
6 any incarceration.

7 With that admonition, I'm ready to hear from you
8 at this time.

9 MS. JONES: Thank you, Your Honor.

10 Your Honor, we have two witnesses to call for
11 this hearing. The first will be Natasha Aiken. She
12 was the investigator that presented the photo line-up
13 to the Defendant.

14 THE COURT: Ms. Aiken, if you'd come around,
15 please, and be sworn by the clerk.

16 Thereupon,

17 NATASHA AIKEN

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 THE COURT: **Good morning. Have a seat, make**
21 **yourself comfortable. Adjust that mike.**

22 Would you state your full name and spell your
23 last name for my court reporter.

24 THE WITNESS: My full name is Natasha Christina
25 Aiken, and my last name is spelled A-I-K-E-N.

PRE-TRIAL MATTERS

1 THE COURT: Very well. Please speak up, give me
2 a verbal answer to the questions. Don't shake your
3 head, but verbally respond.

4 Your witness, Counsel, direct examination.

5 MS. JONES: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. JONES:

8 Q Ms. Aiken, in 2015, June 2015, where were you
9 employed?

10 A Hardeeville Police Department.

11 Q And in what capacity were you employed with the
12 police department?

13 A As an investigator.

14 Q And were you an investigator assigned to the
15 case we're here for today?

16 A Yes, ma'am.

17 Q The case against Naijuwuan Chisolm?

18 A Yes.

19 Q All right. And during the investigation of that
20 case, did you present a photo line-up to a witness?

21 A Yes, I did.

22 Q Okay. Who was that witness?

23 A The witness was Jesneisha Houston.

24 Q Do you remember what date and time that line-up
25 was presented to her?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 A That line-up was presented on the date of the
2 incident, which would have been June the 9th, 2015. And
3 it was presented at 1600 hours, 1558, which would have
4 been about 3:58, between 3:58 and 4:00.

5 Q And where was that line-up presented?

6 A At 154 Walsh Drive, apartment.

7 Q And do you know who lived there?

8 A Barnesha.

9 Q And who was Barnesha?

10 A Barnesha is Jesneisha Houston's twin sister.

11 Q How long after the murder itself was this
12 line-up presented?

13 A About five hours, approximately.

14 Q Who was present for this line-up?

15 A Agent -- SLED agent Chris Barfield.

16 Q Anybody else?

17 A No. Just Jesneisha, myself, and Agent Chris
18 Barfield.

19 Q Okay. Was anything said or presented to
20 Ms. Houston before the showing of the line-up?

21 A SLED's affidavit -- photo affidavit was
22 presented to her.

23 Q Okay.

24 MS. JONES: Permission to approach the witness,
25 Your Honor?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 THE COURT: You may.

2 BY MS. JONES:

3 Q Ms. Aiken, I want to show you what's been marked
4 as Court's Exhibit 3. Can you identify that?

5 A This is SLED's affidavit of photo -- photograph
6 identification.

7 Q Okay. Is that the one that was presented to
8 Ms. Houston that afternoon?

9 A Yes, ma'am, it was.

10 Q How do you know that?

11 A This is -- because I witnessed it, and I was
12 actually there and I actually saw it.

13 Q Okay. And was this read to Ms. Houston?

14 A Yes, ma'am, it was.

15 Q Okay. And did she indicate in any way that she
16 understood what was being read to her?

17 A Yes, she did.

18 Q What did this affidavit say?

19 A This affidavit says that, "I've been asked to
20 view a set of photographs. I understand that it is just
21 as important to clear innocent persons from suspicion as
22 to identify guilty parties. I understand that individuals
23 depicted in the line-up photos may not appear exactly as
24 they did on the date of the incident because features such
25 as head and facial hair are subject to change. I

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 understand that the person who committed the crime may or
2 may not be in the set of photographs being presented. I
3 understand that regardless of whether identification is
4 made, the police will continue to investigate the
5 incident. I understand that I shall state in my own words
6 how certain I am of the identification."

7 Q Okay. Did she place any markings on that form
8 to indicate she understood those?

9 A To the left of each of those statements that I
10 just read, she initialed her first and -- she placed her
11 first and last initial.

12 Q Okay. And while these were being read to her,
13 does she indicate in any way she doesn't understand this
14 affidavit?

15 A Yes, ma'am. She's identified on the left that
16 she understands.

17 Q Oh, she does understand? She doesn't not
18 understand.

19 A Yes.

20 Q Okay. So thank you.

21 And after this affidavit, was a photo --
22 was some sort of photo array presented to her?

23 A Yes, ma'am. A photo line-up with six
24 photographs were shown to her.

25 Q Where does this show -- who generated this photo

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 line-up?

2 A It came from SLED.

3 Q Do you know what sort of photos were used?

4 A They were photos that all looked similar to the
5 suspect.

6 Q Okay.

7 MS. JONES: Permission to approach, Your Honor?

8 THE COURT: You may.

9 BY MS. JONES:

10 Q Ms. Aiken, I'm now going to show you what's been
11 marked as Court's 1 and Court's 2. Can you identify
12 both of those, please.

13 A Oh, this is the photo line-up from -- Court 1 is
14 --

15 THE COURT: Hold on just one second, Ms. Aiken.

16 THE WITNESS: I'm sorry.

17 THE COURT: I thought the first document was
18 Court's 1.

19 MS. JONES: It was Court's 3, Your Honor.

20 THE COURT: Three. Are you seeking to introduce
21 it, Counsel?

22 MS. JONES: I will. I was going to introduce
23 all three of them at one time.

24 THE COURT: Very well. Is there going to be an
25 objection?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 MR. HUGHES: No, Your Honor.

2 THE COURT: Proceed.

3 THE WITNESS: Court 1 is the front of SLED's
4 photo line-up, and Court 2 is the back of SLED's
5 photo line-up. The back of SLED's photo line-up,
6 Court 2, states, "Jesneisha Houston was presented a
7 photo line-up six-pack and picked out number four as
8 the suspect at 1600 hours."

9 BY MS. JONES:

10 Q And out of all three of those exhibits I
11 presented to you, have they been altered or changed in any
12 way?

13 A No, ma'am.

14 Q Are they just as presented to Ms. Houston back
15 on June 9th of 2015?

16 A Yes, ma'am.

17 Q Those are actually copies of the line-up, a fair
18 and accurate depiction of the line-up and the affidavit?

19 A Yes.

20 MS. JONES: And, Your Honor, at this time, I
21 move Court's 1, 2, and 3.

22 THE COURT: As to Court's 1, 2, and 3, Mr.
23 Hughes.

24 MR. HUGHES: No objection.

25 THE COURT: Very well. They've been pre-marked,

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 Mona?

2 Court's Exhibits 1, 2, and 3 will be admitted
3 into evidence for purposes of this hearing, without
4 objection.

5 You may proceed.

6 *(Whereupon, Court's Exhibit No(s). 1-3 marked*
7 *for identification and received in evidence.)*

8 THE COURT: Ms. Aiken, let me see the documents,
9 please.

10 BY MS. JONES:

11 Q Ms. Aiken, this photo, the photo array, that's
12 presented after the affidavit?

13 A Yes, ma'am.

14 Q Okay. Does Ms. Houston, in fact, pick out
15 anybody in this photo array?

16 A Yes, she does.

17 Q And she picks out this person as being the
18 person who did what?

19 A That shot the victim. She picked out number
20 four without any hesitation.

21 Q Okay. And was number four the suspect?

22 A Yes, ma'am.

23 Q What is his name?

24 A His name is Naijuwuan Chisolm.

25 Q Do you see him in the courtroom today?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 A Yes, ma'am, I do.

2 Q Can you please point him out. Can you describe
3 what he's wearing?

4 A Black vest, black tie, with a white dress shirt.

5 MS. JONES: May the record reflect the witness
6 did identify the Defendant, Your Honor.

7 THE COURT: Proceed.

8 BY MS. JONES:

9 Q How long did it her to pick out number four?

10 A Immediately.

11 Q Did she -- immediately, there was no hesitation?

12 A No hesitation, no.

13 Q Did she have any sort of reaction when she was
14 shown this photo line-up?

15 A No. She just said, "that's him right there."

16 Q And did any other witnesses pick out any other
17 suspects as the shooter in the photo line-up?

18 A No, ma'am.

19 Q This was the only one?

20 A Yes, ma'am.

21 MS. JONES: I have no questions for you at this
22 time.

23 THE COURT: Cross examination.

24 MR. HUGHES: Thank you, Your Honor.

25 CROSS EXAMINATION

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 BY MR. HUGHES:

2 Q How was that photo line-up prepared?

3 A It was prepared at SLED.

4 Q Okay. Do you know where the photos came from?

5 A I can't tell you.

6 Q Did you show that photo line-up to anybody else?

7 A No, just Ms. Houston, with Agent Barfield.

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

9 THE COURT: Redirect.

10 MS. JONES: No further questions for this
11 witness.

12 THE COURT: Very well. Ms. Aiken, you may step
13 down.

14 Call your next witness.

15 MS. JONES: The State calls Jesneisha Houston.

16 THE COURT: Come right around, be sworn by the
17 clerk, please. Raise your right hand, left hand on
18 the Bible.

19 Thereupon,

20 JESNEISHA HOUSTON

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 THE COURT: Pull that chair up to the
24 microphone, it will amplify your voice. Speak up so
25 everybody in the courtroom can hear you. State your

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 full name and spell your last name for the court
2 reporter.

3 THE WITNESS: Okay. My name is Jesneisha
4 Houston. H-O-U-S-T-O-N, my last name. Oh.
5 Oh, God.

6 THE COURT: Are you ready?

7 MS. JONES: I am, your Honor.

8 THE COURT: Proceed, direct examination.

9 MS. JONES: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. JONES:

12 Q Ms. Houston, is it okay if I call you Jes?

13 A Yes.

14 THE COURT: Don't -- you going to have to give
15 me a verbal answer.

16 THE WITNESS: Yes.

17 THE COURT: No shaking of your head. Speak up.

18 THE WITNESS: Yes.

19 BY MS. JONES:

20 Q Okay. Thank you.

21 Have you ever testified in court before?

22 A No.

23 Q No. Have you ever been a witness to a crime
24 before?

25 A No.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q How far did you go in school?

2 A In 12th.

3 THE COURT: You got to speak up.

4 THE WITNESS: 12th.

5 BY MS. JONES:

6 Q The court reporter has to take down everything
7 you say. You got to speak up. Okay?

8 Do you remember June 9th of 2015?

9 A Yes.

10 Q What were you doing that morning?

11 A In my house with my son, getting ready to go to
12 the mailbox.

13 Q Is that what you were doing right before the
14 shooting?

15 A Uh-huh. (Indicating affirmatively.)

16 Q You were with your son. How old was he?

17 A Oh, he was three.

18 Q Where did this happen?

19 A At Walsh Drive in Hardeeville.

20 Q What is Walsh Drive?

21 A Apartments.

22 Q Okay. Is it fairly open? Is there any -- lots
23 of trees or cars or --

24 A Just apartments. A few cars.

25 Q Are these apartments that are multiple level, or

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 a single level?

2 A Single.

3 Q Is it one building or is it multiple buildings?

4 A One. One building. Just one.

5 Q Okay. And are they next to each other?

6 A Yes, ma'am.

7 Q Are any in front or behind?

8 A No, ma'am.

9 Q Okay. When did you first notice the Defendant?

10 A When he was peeking around the corner.

11 Q Where were you?

12 A Standing by the road, speaking, I throw my hand
13 up, to talk to my friend, Slim.

14 Q Okay. Does Slim have another name?

15 A I can't even think right now.

16 Q That's okay. That's all right.

17 And how far is away were you from the
18 Defendant when you first see him?

19 A From here to there (indicating). Like right
20 there.

21 Q About right here?

22 A Uh-huh. (Indicating affirmatively.)

23 Q And you can see fine, you don't have any vision
24 impairments?

25 A Uh-huh.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 THE COURT: Don't say "uh-huh." "Yes" and "no,"
2 please.

3 Solicitor, slow down, let the witness answer
4 when you ask a question. You don't talk over her,
5 I'm not going to let her talk over you. You
6 understand that?

7 THE WITNESS: Yes, sir.

8 THE COURT: Proceed.

9 MS. JONES: Thank you, Your Honor. My apology.
10

11 BY MS. JONES:

12 Q You could see clearly that morning?

13 A Yes, ma'am.

14 Q Was there anything in between you and the
15 Defendant blocking your view?

16 A No, ma'am.

17 Q You had a straight line of sight toward him?

18 A Yes, ma'am.

19 Q Did you recognize him?

20 A Yes, ma'am.

21 Q When did you recognize that person?

22 A After he get ready to took off, when he was
23 peeking around the corner.

24 Q When he was peeking around the corner?

25 A Uh-huh (indicating affirmatively.)

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q How did you recognize him?

2 A Because I went to school with him, and I know
3 him for a long period of time.

4 Q How long had you known him?

5 A Middle school, since middle school.

6 Q And how old were you when this happened?

7 A I was 22.

8 Q How many years would that have been?

9 A About a year.

10 Q A year. Are you sure about that? From middle
11 school to 22?

12 A Oh, you're saying from middle school. Oh, I'm
13 sorry. I was about 14 -- about 14, 13.

14 Q Okay. So, a few years?

15 A Yeah.

16 Q Okay. What did you know this man's name as
17 being? Did you know him by multiple names?

18 A Nike.

19 Q Nike. What else?

20 A Naijuwuan.

21 Q Okay. Did you know his last name?

22 A Chisolm.

23 Q Okay. What did he look like back then, in 2015?

24 A Looked like he was like a small little teen --
25 with dreads looking. Like little small dreads, like you

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 know, like those.

2 Q Okay. Did you describe him to the police?

3 A Yes.

4 Q How did you describe him?

5 A As him being like kind of skinny, about average
6 short, with little dreads.

7 Q Okay.

8 A Brown skinned.

9 Q Okay. So you knew him?

10 A Yes, ma'am.

11 Q Okay. Did he say anything to you as he's
12 peeking around the corner?

13 A No.

14 Q After he is peeking around the corner, what does
15 he do?

16 A Peeking, getting ready to, you know, like --

17 THE COURT: You got to speak up.

18 THE WITNESS: Like shoot, getting ready to
19 shoot. Getting ready to proceed.

20 BY MS. JONES:

21 Q Does he go around that corner eventually?

22 A Yes, ma'am.

23 Q And what does he do?

24 A Shot and then took off, and came back and shot a
25 couple more times.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Okay. How long did the shooting last?

2 A Oh, not that long. Like two minutes.

3 Q Were you watching it the entire time?

4 A Yes, yes.

5 Q Okay. Did he remain on -- did he stay there, or
6 did he go somewhere else?

7 A Took off running.

8 Q Okay. What direction did he take off running?

9 A To the right.

10 Q Is that away from you or towards you?

11 A Away.

12 Q All right. Did you call 911, or did somebody
13 else call?

14 A Somebody else did.

15 THE COURT: I couldn't hear you. What?

16 THE WITNESS: Somebody else did. Somebody else.

17 BY MS. JONES:

18 Q How quickly was 911 called?

19 A Probably after -- after he took off running,
20 because somebody else I didn't know was standing there and
21 made the call.

22 Q Okay. Did you talk to the police about this?

23 A Yes, ma'am, when they came to my house and
24 knocked on the door.

25 Q Was it after the shooting?

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 A Uh-huh. (Indicating affirmatively.)

2 Q Still the morning of?

3 A Uh-huh. (Indicating affirmatively.)

4 THE COURT: Don't "uh-huh."

5 THE WITNESS: Yes, ma'am. I'm sorry.

6 BY MS. JONES:

7 Q And did you give the police a description of the
8 man you saw shooting?

9 A Yes, ma'am.

10 Q Okay. And did you also give them a name?

11 A Yes, ma'am.

12 Q And what was that description?

13 A I can't remember right now. Nike.

14 Q You said "Nike"?

15 A Yes.

16 Q Did you describe if he was a black male? A
17 while male?

18 A A black.

19 Q Okay. How about his appearance, what did he
20 look like?

21 A Brown skinned, little twists.

22 Q Twists in his hair?

23 A Uh-huh. (Indicating affirmatively.)

24 Q Okay. You give them the name "Nike"?

25 A Yes, ma'am.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Did you also give the name Naijuwuan?

2 A Yes, ma'am.

3 Q Do you remember being shown some photographs
4 that day?

5 A Yes, ma'am.

6 Q Do you remember who showed these photographs to
7 you?

8 A No, ma'am. No.

9 Q Were they police officers or regular people?

10 A I'm not sure. It was --

11 MS. JONES: Your Honor, permission to approach
12 the witness?

13 THE COURT: You may.

14 BY MS. JONES:

15 Q Jes, I'm going to show you what's been marked as
16 Court's 1, 2, and 3. Okay?

17 Let's start with Court's 3. Do you
18 recognize that?

19 A Yes, ma'am. Yes, ma'am.

20 Q What is that?

21 A A photograph identification.

22 Q Okay. And what does that -- how do you
23 recognize that?

24 A Because I saw -- someone came in and asked me to
25 read this and to sign.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Okay. Did you sign on that?

2 A Yes.

3 Q And is that -- your signature is on that piece
4 of paper?

5 A Yes, ma'am.

6 Q Okay. Are there any other markings on that
7 piece of paper that you put? Initials?

8 A Yes, ma'am.

9 Q Okay. Do you see that before you were shown the
10 photo line-up?

11 A Yes, ma'am.

12 Q Okay. And what does that say, that piece of
13 paper? Where you put your initials, what does it say?

14 A "I have been asked to view a set of photographs.
15 I understand it's just as important to clear innocent
16 persons from suspicion as to identify guilty parties. I
17 understand that individuals depicted in the line-up photos
18 may not appear exactly as they did on the date of the
19 incident because features such as head and facial hair are
20 subject to change. I understand that the person who
21 committed the crime may or may not be in the set of
22 photographs being presented. I understand that regardless
23 of whether identification is made, the police will
24 continue to investigate the incident. I understand that I
25 shall state in my own words how certain I am of the

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 identification."

2 Q Did you initial that you understood each of
3 those lines?

4 A Yes, ma'am.

5 Q And you did, in fact, understand them?

6 A Yes, ma'am.

7 Q Okay. Was there another section on that form
8 where you handwrote something in?

9 A Yes, ma'am.

10 Q And what does that say?

11 A "I, Jesneisha Houston have reviewed a group" --

12 THE COURT: Speak up.

13 A "I, Jesneisha Houston, have reviewed a group of
14 six photographs. This is the 9th day of June, 2015, from
15 which I have positively identified Photograph Number 4
16 displayed to me by Detective Aiken."

17 Q Speak up. Could you read that last little
18 section, please?

19 A Photograph Number 4 displayed to me by Detective
20 Aiken of Hardeeville Police Department as being the person
21 who shot and killed Sterling Jenkins."

22 Q Okay. And that's your handwriting?

23 A Uh-huh. (Indicating affirmatively.)

24 Q Do you -- does it indicate on that form how
25 positive you were of the photo that you picked out?

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 A Yes, yes.

2 Q How positive were you?

3 A I was one hundred -- I was like a hundred
4 percent sure.

5 Q You were a hundred percent sure?

6 A Yes.

7 Q Okay. Permission to approach the witness?

8 THE COURT: You may.

9 BY MS. JONES:

10 Q Jes, I'm going to show you Court's 1 and Court's
11 2. Do you recognize both of those?

12 A Yes. Yes, ma'am.

13 Q What are those?

14 A A photo line-up. And this is just a charge
15 to -- stating my name.

16 Q I'm sorry?

17 A It's just a --

18 Q Okay. You don't recognize that. Do you
19 recognize that or no?

20 A I recognize this.

21 Q Okay. What is that in your hand?

22 A Photo line-up.

23 Q Okay. Is that the one you --

24 THE COURT: Refer to the exhibit number for the
25 record.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 BY MS. JONES:

2 Q Court's 2.

3 A Yes. Yes, I recognize this number four.

4 Q Okay. We'll start with the whole thing as a
5 whole, first. How do you recognize that piece of paper
6 with the six photographs on it?

7 A Because that's how you -- that's the same exact
8 dreads he had.

9 Q Is that the photo line-up you were shown back in
10 2015?

11 A Yes, in my house, in my room.

12 Q Okay. And did you, in fact, pick out a person
13 in that photo line-up?

14 A Yes, ma'am.

15 Q What number?

16 A Four.

17 Q Okay. And you identified number four as being
18 who?

19 A Yes, ma'am.

20 Q Who did you identify number four as being?

21 A Aiken.

22 Q That photo line-up in your hand right there.

23 A Yes.

24 Q Did you point to a man on that photo line-up?

25 A I did point to a man, but I don't know who shown

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 me this.

2 Q Okay. That's not what I'm asking you.

3 When you pointed to a picture on that photo
4 line-up, what number did you point to?

5 A Four.

6 Q Okay. Who is in position number four?

7 A Nike. Naijuwuan.

8 Q Okay. Nike and Naijuwuan. Is Nike, Naijuwuan?

9 A Yes, ma'am.

10 Q Naijuwuan Chisolm?

11 A Yes, ma'am.

12 Q Okay. When you were being presented that photo
13 line-up, when it was being shown to you, is anybody
14 suggesting who to point out?

15 A No, ma'am.

16 Q Is anybody influencing you to point to a certain
17 person?

18 A No, ma'am.

19 Q Are they tricking you, coercing you to picking a
20 certain person?

21 A No, ma'am.

22 Q Do you see the person that you pointed out in
23 that photo line-up, the one you identified as shooting
24 Sterling, in the courtroom today?

25 A Yes, ma'am. Yes, ma'am.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Can you please point him out?

2 A (Pointing.)

3 Q Can you describe what he's wearing?

4 A A white gray suit. Right there in the --
5 sitting next to his lawyer.

6 Q Okay.

7 MS. JONES: May the record reflect that the
8 witness did identify the Defendant.

9 THE COURT: Proceed.

10 MS. JONES: Thank you, Your Honor.

11 Jesneisha, I have no further questions for you.

12 MR. HUGHES: Just a couple quick questions.

13 CROSS EXAMINATION

14 BY MR. HUGHES:

15 Q How tall did you say the person was that shot
16 Sterling?

17 A Oh, kind of average. About average short.
18 About average short, because I'm taller than him, so ...

19 Q You're taller than him?

20 A Uh-huh. (Indicating affirmatively.)

21 Q Do you still have the pictures? Looking them
22 over, do you recognize anybody else besides number four?

23 A No, sir.

24 THE COURT: You have to say "yes" and "no."
25 Don't shake your --

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 THE WITNESS: I mean, yes, sir. Well, I
2 recognize.

3 BY MR. HUGHES:

4 Q Who else besides number four?

5 A Oh, no, I don't recognize nobody else.

6 Q Okay.

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

8 THE COURT: Redirect.

9 MS. JONES: I have no further questions, Your
10 Honor.

11 THE COURT: No further questions?

12 MS. JONES: No further questions.

13 THE COURT: All right. Give this to the court
14 reporter.

15 (Off-the-record discussion held.)

16 THE COURT: Call your next witness.

17 MS. JONES: Your Honor, that concludes the list
18 of witnesses the State has for this hearing.

19 THE COURT: Mr. Hughes, does the Defendant wish
20 to present any testimony or evidence for purposes of
21 this hearing?

22 MR. HUGHES: None, Your Honor.

23 THE COURT: Very well. Does the Defendant
24 object to the out-of-court identification?

25 MR. HUGHES: No, Your Honor.

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 THE COURT: Well, Solicitor, I'll hear from you.
2 I understand there's no objection.

3 MS. JONES: Well, Your Honor, if there's no
4 objection, the State would argue that it is
5 admissible.

6 THE COURT: Very well.

7 MS. JONES: Thank you.

8 THE COURT: Let the record reflect that I've
9 heard testimony and an issue in this case, apparently
10 it is the identification of the Defendant as the
11 person who is alleged to have committed the crime
12 that was charged. The State would have the burden of
13 proving identity beyond a reasonable doubt, and the
14 jury has to be satisfied of the actual identification
15 before they could convict the Defendant.

16 I will instruct the jury, even though there is
17 no objection, that the burden of proof is on the
18 State, and it extends to every element of the crime
19 charged, and this specifically would include the
20 burden of proving beyond a reasonable doubt the
21 identity of the Defendant as the person who committed
22 the crime.

23 I will also tell the jury, after examining all
24 the evidence in this case, if they have a reasonable
25 doubt as to the accuracy of the identification, they

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 must find the Defendant not guilty.

2 However, the out-of-court identification will be
3 admitted into evidence in the trial of this case for
4 what it was worth without objection.

5 Anything further, Solicitor, on the
6 identification issue?

7 MS. JONES: Not on the identification.

8 THE COURT: Mr. Hughes, anything further on the
9 identification issue?

10 MR. HUGHES: No, Your Honor.

11 THE COURT: That matter is now closed as far as
12 the record, Mona. Let the record reflect we've held
13 a Neal versus Biggers hearing, the Defendant was
14 present, along with his counsel. There is no
15 objection to the introduction of the out-of-court
16 identification.

17 Solicitor, I understand now that you have
18 another matter involving the witness that you wanted
19 to take up this morning due to your planning at the
20 beginning of the trial.

21 Is your witness present?

22 MS. JONES: Your Honor, that hearing is twofold.
23 It has two witnesses. One of them is present and one
24 of them is en route, about 15 minutes away.

25 THE COURT: All right. Then call your first

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 witness. Let the record reflect that in my chambers
2 this morning when I arrived, I asked for pretrial
3 motions by either the State or the Defendant. The
4 Defendant advised me that their first pretrial motion
5 was a Motion for Sequestration.

6 The Defendant also advised me that the Defendant
7 does not plan on calling any other witnesses other
8 than possibly the Defendant. Is that correct, Mr.
9 Hughes?

10 MR. HUGHES: Yes, Your Honor.

11 THE COURT: The State has given me three lists.
12 The first one had 39 witnesses, the second one had 25
13 witnesses. Actually, I didn't receive a third list,
14 I was orally advised about a third list, but I
15 understand that the list you gave me this morning is
16 your potential witness list; is that right?

17 MS. JONES: Yes, Your Honor.

18 THE COURT: All right. And that is the list
19 that I'm referring to, Mona, that has 25 names on it.
20 It's dated today, February 21st, 2017, and I have
21 that list in front of me for purposes of voir dire of
22 the jury.

23 I will grant the Defendant's Motion for
24 Sequestration. However, it applies equally to both
25 the State and Defendant. I will require the State to

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 have their witnesses located in a definitive area of
2 the courtroom, outside of the courtroom, with this
3 possible exception, or two actually.

4 Number one, who's your managing case officer?

5 MS. JONES: Your Honor, it would be Chief
6 Woodward who will be here this afternoon.

7 THE COURT: All right. And that's a he?

8 MS. JONES: Yes, Your Honor.

9 THE COURT: He will be allowed to remain. How
10 about victim?

11 MS. JONES: None of the victim's family is on
12 the witness list.

13 THE COURT: All right. So, there's no need then
14 under the victim's bill of rights for a member of the
15 victim's family to be present?

16 MS. JONES: No, Your Honor.

17 THE COURT: Obviously, the Defendant, even
18 though he is a potential witness, will be allowed to
19 remain in the courtroom, and with the exception of
20 your case management officers, Solicitor, you will be
21 required to designate your witnesses, where they're
22 to be located. Obviously I'm not sure how far we'll
23 get today, but I definitely want to try to select the
24 jury.

25 You understand we're not going on an Easter egg

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 hunt of witnesses once I grant sequestration. So you
2 need to let them know where to be so we can move to
3 wherever they're located and ask them to come into
4 the courtroom when you call them to testify.

5 It will also be your responsibility, as well as
6 yours, Mr. Hughes, because I've granted
7 sequestration, to advise your witnesses they're not
8 to have any conversation with any witness who has
9 testified in the trial of this case, or discuss any
10 testimony until authorized to do so by the Court.

11 You understand, Solicitor?

12 MS. JONES: I understand, Your Honor.

13 THE COURT: You understand, Mr. Hughes?

14 MR. HUGHES: Yes, Your Honor.

15 THE COURT: Your motion is granted for
16 sequestration and, Solicitor, I'll expect you to
17 advise your witnesses of my ruling since they're not
18 all present in the courtroom at this time.

19 That now brings us to the third motion for this
20 matter involving Mr. Chisolm. And that motion is an
21 objection by counsel for the Defendant concerning
22 testimony surrounding, as Mr. Hughes put it orally to
23 me this morning in my chambers, the Defendant's
24 arrest.

25 The Solicitor wanted me to hear this motion so

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 as to be able to plan the Solicitor's opening
2 statement to the jury.

3 I then asked the Solicitor if she had the
4 witnesses present to hear the motion, and she advised
5 me that her witness was in Hampton. So I advised the
6 Solicitor to get her witness here. She now tells me
7 the witness is 15 minutes away; however, she has
8 another witness she wishes to call for purposes of
9 this objection.

10 Have I accurately stated what occurred in
11 chambers insofar as counsel for the State is
12 concerned?

13 MS. JONES: Yes, Your Honor.

14 THE COURT: Insofar as counsel for the Defendant
15 is concerned?

16 MR. HUGHES: Yes, Your Honor.

17 THE COURT: Are there any other pretrial motions
18 other than this one concerning this matter from the
19 State?

20 MS. JONES: No, Your Honor.

21 THE COURT: From the Defendant.

22 MR. HUGHES: No, Your Honor.

23 THE COURT: Call your witness on this objection,
24 Solicitor.

25 MS. JONES: Thank you, Your Honor.

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 State recalls Natasha Aiken.

2 THE COURT: Ms. Aiken, come around again,
3 please.

4 You got to come down the middle aisle,
5 Ms. Aiken.

6 WITNESS: I'm sorry, I'm sorry.

7 Thereupon,

8 NATASHA AIKEN

9 was re-called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 THE COURT: Let the record reflect that
12 Ms. Aiken was previously sworn as a witness for
13 purposes of this case in the Neal versus Biggers
14 hearing, which we just concluded.

15 You understand you're under oath?

16 THE WITNESS: Yes, sir, I do.

17 THE COURT: State your name again, spell your
18 last name for the court reporter.

19 THE WITNESS: My name is Natasha Christine
20 Aiken. Last name is spelled A-I-K-E-N.

21 THE COURT: Your witness, Counsel.

22 MS. JONES: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. JONES:

25 Q Ms. Aiken, again, you were the lead investigator

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 on this case?

2 A Yes, ma'am.

3 Q And did you -- were you the affiant on the
4 warrant for Mr. Chisolm?

5 A Yes, I was.

6 Q And when were those sworn out?

7 A Those warrants were sworn out on -- initially on
8 the 9th, and then on the 11th.

9 Q Okay. The arrest warrant.

10 A The arrest warrants were on the 9th.

11 Q On the 9th?

12 A Yes, ma'am.

13 Q What were those warrants for?

14 A For murder and possession of a weapon during a
15 violent crime.

16 Q Okay. And were those warrants sworn out on
17 eyewitness testimony?

18 A Yes, ma'am.

19 Q How many eyewitnesses did you take statements
20 from?

21 A I took statements from two.

22 Q And what time of day was this?

23 A This was after 12:00 o'clock. About 12:30.

24 Q The murder itself, could it have been a little
25 earlier than that?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 A No. The murder itself happened before
2 11:00 o'clock that morning.

3 Q One of those witnesses you spoke to indicated
4 that she knew the Defendant?

5 A Yes.

6 Q What was her name?

7 A Her name was Jesneisha Houston.

8 Q And is she the one that provided the name of
9 Naijuwan Chisolm to yourself?

10 A Yes.

11 Q And you got arrest warrants that evening?

12 A Yes.

13 Q On the 9th, were you able to arrest the
14 Defendant?

15 A No, we weren't.

16 Q What were any efforts taken starting on the 9th
17 or 10th in order to locate the Defendant?

18 A We attempted to locate the Defendant on the 9th,
19 as well as the 10th. Posters were put up on the 10th.
20 News -- a press release was done as well. And there were
21 blasts done on the news for the Defendant.

22 Q What's a "blast"?

23 A Just notifying the public that we were in search
24 of him in reference to the incident that occurred.

25 Q Okay. Were any family members contacted?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 A On the 11th, his aunt was contacted, his father
2 was contacted, his sister was contacted. We also spoke
3 with his grandmother.

4 Q Were these relatives that he was known to
5 frequent?

6 A Yes.

7 Q And when you contact these relatives, what do
8 you say to them?

9 A That I was looking for Mr. Chisolm in reference
10 to the crime that occurred.

11 Q Okay. Did you find him on any of those days?

12 A No.

13 Q Okay. When was he ultimately arrested?

14 A He was ultimately arrested on the 15th.

15 Q Do you know where?

16 A In Beaufort.

17 Q Okay. By what agency; do you know?

18 A It was by the U.S. Marshals.

19 Q Okay. Were you, yourself, the one that reached
20 out to the marshals?

21 A Yes.

22 Q And why was that?

23 A In order to see if we were able to track his --
24 track his cell phone in an attempt to find him.

25 Q And he was found that afternoon, or on the 15th?

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 A Yes.

2 Q Okay. After -- after he is arrested, do you
3 receive some text messages from a cell phone carrier in
4 reference to this case?

5 A Yes, I do.

6 Q Okay. And what -- whose phone number were those
7 text messages from?

8 A Phone number that we were given for the
9 Defendant.

10 Q Okay. And in those text messages, does it
11 indicate that the owner is, in fact, Defendant?

12 A Yes.

13 Q Okay. In those text messages, is there anywhere
14 in there that indicates he knows he is being sought for
15 this crime?

16 A Yes.

17 Q What does it say?

18 A Text messages in reference to "12 is looking for
19 me."

20 Q What is "12"?

21 A Twelve is a street name for law enforcement.

22 Q Okay. So it says, "12 is looki8ng for me"?

23 A Yes.

24 Q Does it say anything else?

25 A The Feds are looking for him as well.

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 Q Okay. Does it say that one time or more than
2 one time?

3 A A number of times.

4 Q Okay. And are these messages that he is
5 sending?

6 A Yes.

7 Q And were those -- do you know what date those
8 were on? Were those on the date of the murder?

9 They were prior to his arrest, correct?

10 A Yes, they were prior to his arrest.

11 Q Okay. Where were the posters put up?

12 A Convenient stores in Walsh Drive and other areas
13 in Hardeeville.

14 Q Are these places or areas he was known to
15 frequent?

16 A Walsh Drive is where the incident actually
17 occurred, and the convenience stores were just areas in
18 Hardeeville that --

19 Q Okay.

20 MS. JONES: I have no further questions for this
21 witness at this time, Your Honor.

22 THE COURT: Cross examination.

23 MR. HUGHES: No questions.

24 THE COURT: Ms. Aiken, you may step down.

25 THE WITNESS: Thank you.

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 THE COURT: Just leave my exhibits for the court
2 reporter.

3 THE WITNESS: I don't have any.

4 THE COURT: Solicitor?

5 MS. JONES: Thank you, Your Honor. We are
6 waiting for the second witness for this hearing. My
7 co-counsel will --

8 THE COURT: Counsel approach.

9 (Off-the-record discussion held.)

10 MS. JONES: Your Honor, if I may step outside to
11 check on this witness?

12 THE COURT: And, Counsel, do not pull what I
13 call a Steve Plexico and make me have to send the
14 bailiff to find you. Walk out and come back.

15 MS. JONES: Absolutely not.

16 (Pause.)

17 MS. JONES: Your Honor, may I approach?

18 THE COURT: You may.

19 Bob, excuse me. Counsel wants to approach. I
20 need you.

21 (Off-the-record discussion.)

22 (Pause.)

23 MS. JONES: Your Honor, he said he is two
24 minutes away.

25 THE COURT: How many private attorneys do I have

DIRECT EXAMINATION OF N. AIKEN BY JONES

1 other than Mr. Bauer here? We got two?

2 All right. I'm going to get to you just as soon
3 as I finish this motion, which, of course, we're
4 waiting on the witness to arrive from Hampton.

5 MS. JONES: My apologies, Your Honor.

6 THE COURT: No problem. I don't expect you to
7 control them, unless you, of course, feel that it has
8 to be heard before we can begin.

9 MS. JONES: I would like it to be heard.

10 THE COURT: Always a good idea to bring the
11 people with you when you're going to tell that.

12 MS. JONES: It is. I didn't know this was an
13 issue to take up, Your Honor.

14 (Pause.)

15 THE COURT: Solicitor, is your witness here now?

16 MS. JONES: He is here, Your Honor.

17 THE COURT: Wonderful. Please come around, sir
18 and be sworn by the clerk. We've been waiting on
19 you.

20 Thereupon,

21 TROY LONG

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Good morning to you.

25 THE WITNESS: Good morning.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 THE COURT: If you'd adjust that chair and that
2 microphone, it's to amplify your voice. State your
3 full name, spell your last name for the court
4 reporter.

5 THE WITNESS: My name is Troy Long. L-O-N-G.

6 THE COURT: Mr. Long, it appears when I arrived
7 here this morning that I was informed by counsel for
8 the Defendant that he is objecting to some evidence
9 that, according to the Solicitor, only you possess.
10 I then said we'd take it up later, but the Solicitor
11 advised me that she wanted to discuss this evidence
12 in her opening statement. Because of that, it
13 required your presence.

14 I was then informed you were not here. So I
15 told the Solicitor you needed to be here because I
16 have to hear the motion in order to rule on the
17 request that she wants to decide whether or not she
18 can comment on this during her opening statement.

19 You understand?

20 THE WITNESS: Yes, sir.

21 THE COURT: That's the necessity of your
22 presence.

23 He's been sworn. Your witness, Counsel. Direct
24 examination.

25 MS. JONES: Thank you, Your Honor.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 My apologies, Captain Long. Thank you for
2 rushing over here.

3 THE WITNESS: No problem.

4 DIRECT EXAMINATION

5 BY MS. JONES:

6 Q I see you have on a captain's shirt, and a new
7 badge. Where are you working?

8 A I'm employed at the Town of Hampton Police
9 Department.

10 Q Okay. In what capacity?

11 A As the captain.

12 Q All right. Would you tell us, in June of 2015,
13 where were you working?

14 A I was employed with the Hampton County Sheriff's
15 Office, assigned to the U.S. Marshals' fugitive task
16 force.

17 Q Okay. And what were some of your duties as part
18 of the fugitive task force?

19 A We were assigned cases of fugitives. Guys on
20 the run are hard to find for local agencies. We assisted
21 local agencies in the finding and arresting these
22 subjects.

23 Q And were you asked to assist in locating a man
24 by name of the Naijuwuan Chisolm?

25 A That's correct.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 Q Do you remember what agency requested that
2 assist?

3 A Hardeeville Police Department.

4 Q Okay. Were you provided with some sort of
5 photograph to know what this individual looks like?

6 A That's correct.

7 Q Okay. Do you, in fact, go look for Mr. Chisolm?

8 A Excuse me?

9 Q Do you go look for Mr. Chisolm?

10 A Yes, I do.

11 Q Is he ultimately located?

12 A He is.

13 Q Do you remember what date that was on?

14 A Not right off, I do not.

15 Q Okay. If I show you your report, would that
16 help refresh the date?

17 A Yes.

18 MS. JONES: Permission to approach?

19 THE COURT: You may approach.

20 MS. JONES: There you go.

21 THE COURT: Take a moment, if you would,
22 Captain. I'll let you review that, then she's going
23 to ask you some questions about whether or not your
24 memory has been refreshed.

25 THE WITNESS: (Complies.)

DIRECT EXAMINATION OF TROY LONG BY JONES

1 BY MS. JONES:

2 Q Does that help you refresh your recollection?

3 A Yes, ma'am.

4 MS. JONES: Permission to approach, Your Honor?

5 THE COURT: Okay.

6 MS. JONES: Thank you.

7 BY MS. JONES:

8 Q Captain Long, what day did locate Mr. Chisolm?

9 A June the 15th, 2015.

10 Q Okay. And where did you first observe
11 Mr. Chisolm?

12 A He was standing in the back yard of a residence
13 at Hogarth and Second Street in Beaufort.

14 Q All right. What happened when you first spotted
15 eyes on Mr. Chisolm?

16 A As we pulled up to the residence, Mr. Chisolm
17 took off running. There was also another male in the back
18 yard. We detained him at the moment.

19 Q Did he run?

20 A No, ma'am.

21 Q Who was with you during this? Was it multiple
22 agencies or just U.S. Marshals?

23 A You had members of the task force, Beaufort
24 County Sheriff's Office members, and Beaufort City Police
25 Department members.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 Q Was it evident, based on y'all's appearance,
2 that you were law enforcement?

3 A Yes.

4 Q Okay. Y'all were in uniform?

5 A Ballistic vest marked "police."

6 Q Okay. Were there marked cars involved?

7 A I don't recall if there were any at the time.

8 Q That's fine. But what were you wearing?

9 A I wore a green vest that had "Police, U.S.
10 Marshal" written in bright yellow.

11 Q Okay. When he sees y'all, he runs?

12 A Correct.

13 Q What happens after he runs?

14 A A short manhunt happened. I'd say a block or
15 two over Mr. Chisolm was found underneath of an out
16 building in the back yard of a residence.

17 Q Okay. Can you describe this out building?

18 A It's just like a little portable type building
19 that you can buy, that a lot of people have in the back
20 yard.

21 Q Okay.

22 A He was underneath it.

23 Q Under it, trying to hide?

24 A Correct.

25 Q Did he say anything?

DIRECT EXAMINATION OF TROY LONG BY JONES

1 A No, ma'am, not to my knowledge.

2 Q Okay. Was he eventually removed from that out
3 building?

4 A He was -- he crawled out, and handcuffed, and
5 then placed in the back of a patrol car.

6 Q Okay.

7 MS. JONES: I have no further questions for you
8 at this time. Thank you.

9 THE COURT: Cross examination.

10 CROSS EXAMINATION

11 BY MR. HUGHES:

12 Q Okay. To begin with, did y'all recover any type
13 of evidence from him or that out building?

14 A No, sir.

15 Q Did he make any statements?

16 A Not to my knowledge.

17 Q What was the general reaction to you when you
18 pulled up to any place dressed as you were?

19 A The reaction?

20 Q Did a lot of people run?

21 A At this location?

22 Q No. At -- if you pulled up with a crowd of cops
23 dressed as y'all were, was the general reaction of people
24 scattering?

25 A In some locations, yes.

CROSS EXAMINATION OF TROY LONG BY HUGHES

1 MR. HUGHES: No further questions, Your Honor.

2 THE COURT: Redirect.

3 MS. JONES: Thank you, Your Honor. Just one.

4

5 REDIRECT EXAMINATION

6 BY MS. JONES:

7 Q The only person that ran when the police arrived
8 was the Defendant, correct?

9 A That's correct, on that day, yes.

10 Q Do you see him in the courtroom today?

11 A I do.

12 Q Can you point him out, please?

13 A He's sitting right next to Mr. Hughes.

14 MS. JONES: Let the record reflect the witness
15 identified the Defendant.

16 No further questions, Your Honor.

17 THE COURT: Recross limited to redirect.

18 MR. HUGHES: Nothing, Your Honor.

19 THE COURT: As to this witness, Solicitor? Are
20 you willing to excuse him, or does he need to remain
21 with us?

22 MS. JONES: He does not need to remain today.
23 He needs to come back tomorrow.

24 THE COURT: Captain Thomas (sic), you will -- we
25 are going to be starting this trial first thing in

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 the morning. I'll look forward to seeing you first
2 thing in the morning.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. Call your next witness.

5 MS. JONES: Your Honor, that's all the witnesses
6 the State has for this matter.

7 THE COURT: Mr. Hughes, does the Defendant wish
8 to put up any evidence for purposes of your objection
9 in this hearing?

10 MR. HUGHES: No, Your Honor.

11 THE COURT: I'll be happy to hear from you, Mr.
12 Hughes.

13 MR. HUGHES: Thank you, Your Honor.

14 Your Honor, the -- Officer Long testified that
15 it was a standard, or a common occurrence for people
16 to run when they saw him, not necessarily indicating
17 guilt. Matter of fact, in this situation, he
18 testified that 50 percent of the people there ran.

19 THE COURT: I understand what you're asking,
20 Mr. Hughes.

21 MR. HUGHES: Also, Your Honor, that --

22 THE COURT: I said "Thomas," but his name is
23 "Long," isn't it?

24 MR. HUGHES: Yes, sir.

25 THE COURT: I apologize. I didn't mean to fail,

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 I got another Thomas on my mind.

2 MR. HUGHES: I understand.

3 And there was no physical evidence recovered,
4 there was no statement given. There is no -- nothing
5 indicates any probative item was recovered. Nothing
6 indicates that any probative matter took place. I do
7 think, however, that the statement that he was hiding
8 --

9 THE COURT: Which you didn't object to during
10 this hearing.

11 MR. HUGHES: Right. But the hearing was because
12 I objected to --

13 THE COURT: Counsel approach.

14 (Off-the-record discussion held.)

15 THE COURT: Mr. Hughes, anything further on your
16 objection?

17 MR. HUGHES: No, Your Honor.

18 THE COURT: Solicitor, I'll be happy to hear
19 from you.

20 MS. JONES: Thank you, Your Honor. While I
21 appreciate all of Mr. Hughes' concerns about the lack
22 of evidence collected at this particular
23 apprehension, that's not the standard. We're here to
24 decide that under the totality of the evidence there
25 was inference that he had knowledge he was being

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 sought by the police. And that is pursuant to State
2 V Pagan, and I have copies for Your Honor as well as
3 Mr. Hughes.

4 THE COURT: Hand it up, please.

5 MS. JONES: I'm also handing up a copy of State
6 V Grant, which I believe -- actually, I think State V
7 Pagan is the case --

8 THE COURT: State versus Grant is 275 South
9 Carolina 404, Mona, and State versus Pagan,
10 P-A-G-A-N, is 369 South Carolina 201.

11 MS. JONES: And Your Honor, my apologies. I
12 will be directing argument toward State V Pagan, not
13 State V Grant.

14 THE COURT: All right.

15 MS. JONES: If you look at all of the evidence
16 we heard today regarding his knowledge that he was
17 being sought. The Hardeeville police department
18 contacted multiple family members, members' homes he
19 was known to frequent, and put up posters at Walsh
20 Drive, where the incident happened. They put up
21 posters at convenience stores. And we know
22 Hardeeville is not very big, so these had to be in
23 locations that Mr. Chisolm would go into. All of his
24 family knew he was being sought by the police for
25 this particular murder.

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 Additionally, it was a murder that happened in
2 front of at least one person that Mr. Chisolm knows.
3 She has already identified him by name, by street
4 name, by appearance, and she picked him out of a
5 photo line-up. She knows him, she was in the roadway
6 when he committed the murder, and her line of sight
7 obviously was his line of sight.

8 Additionally, the testimony from Natasha Aiken,
9 regarding the text messages, these are text messages
10 from a phone number believed to belong to Mr.
11 Chisolm. He repeatedly references that "the Feds are
12 looking for me; 12 knows it was me; and the 12 are
13 looking for me."

14 You heard Ms. Aiken testify that "12" is slang
15 for law enforcement. He repeatedly indicates in his
16 outgoing text messages that he knows he is being
17 sought.

18 When he is finally located six days later, he
19 sees the police, he sees Captain Long in his
20 ballistic vest with the giant yellow "police" on
21 front, and what does he do? He runs.

22 The guy that he's with stayed there. He didn't
23 run. He's not the one with the guilty conscience.
24 The one with the guilty conscience is Mr. Chisolm,
25 and that's the one who ran.

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 Not only did he run from the police at that
2 moment, he tried to elude them further by crawling
3 under a shed, or out house. They ultimately located
4 him.

5 But based on the Pagan case, that gives an
6 inference that he knew he was being sought. There's
7 no way to infer that evidence any other way. And we
8 would argue that it is absolutely admissible
9 testimony, and admissible evidence for the jury to
10 hear. Thank you.

11 THE COURT: Mr. Hughes, anything in reply?

12 MR. HUGHES: No, Your Honor.

13 THE COURT: First of all, and I told Counsel
14 this at the Bench. Solicitor elicited from Mr. Long,
15 who I incorrectly called Thomas, whether or not it
16 appeared that he was hiding. And that -- there was
17 no objection to that. And I have no jury, but I
18 would never allow that to be introduced as a state of
19 mind of the Defendant. He certainly can describe
20 what he saw, but not the state of mind. The jury
21 will have to draw its own inference from the
22 testimony as to what the evidence shows.

23 Flight from prosecution is admissible as guilt.
24 There's an interesting case on that. Mr. Hughes, I'm
25 sure you're familiar with it, the Thompson case.

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 Evidence of flight is admissible to show guilt.
2 A guilty knowledge is admissible to show criminal
3 intent, or that a defendant sought to avoid
4 apprehension.

5 The critical factor, Solicitor, you're correct,
6 is the admissibility of evidence, is whether the
7 totality of the evidence creates an inference that
8 the Defendant had knowledge that he was being sought
9 by the authorities. And here I have -- I had more
10 than one hearing this morning, Mona, on this case.
11 I've had a hearing under Neal versus Biggers, and
12 then I had a hearing on Mr. Hughes' objection
13 concerning whether or not Mr. Long should be allowed
14 to testify to the circumstances that arose at the
15 time of his arrest.

16 During the Neal versus Biggers hearing, or
17 actually maybe during this hearing, because you
18 actually called the same witness twice, if my memory
19 serves me correct. Just can't remember whether she
20 testified it to the first time or the second time.
21 And I'm referring to Ms. Aiken.

22 She testified that the Defendant was tweeting
23 that 12 was after him, and then she identified 12 as
24 being law enforcement. And that the tweet came from
25 the telephone number she had been given as the number

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 for the Defendant.

2 In addition to that, I have testimony from the
3 officer that he wore a bullet proof vest with the
4 words "police" on it, when he arrived.

5 And I also have factored in that Mr. Hughes
6 elicited on cross examination, that very often
7 people, when the police arrive, identified like that,
8 have a tendency, as Mr. Hughes put it, to scatter.

9 However, I find that the testimony under the
10 facts of this case, as presented to this Court, is
11 admissible as to whether or not it requires any
12 additional charge. We'll take that up once I hear
13 all of the evidence in this case. Based on what's
14 been presented to me during the hearing, Mr. Hughes,
15 your objection to exclude the evidence is
16 respectfully denied.

17 MR. HUGHES: Thank you, Your Honor.

18 THE COURT: Let the record reflect that I have
19 reviewed at the request of the Solicitor, State
20 versus Pagan, because the Solicitor wanted me to take
21 a look at that case. And I'm very aware that in that
22 case the Court found it to be error to admit the
23 testimony, although they found it to be harmless
24 error.

25 One of the grounds, as I recall in the Pagan

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 case, was it was evidence of a wrongful act, which
2 the Court didn't feel was related in that case to the
3 murder.

4 But I want it -- and it's clear to me that what
5 the Court pointed out was that circumstances justify
6 an inference that the Defendant's actions were
7 motivated as a result of a belief that police
8 officers were aware of the wrongdoing and were
9 seeking him for that purpose.

10 And although, as Mr. Hughes pointed out, it
11 could be that people scatter when police arrive,
12 there is evidence from which the jury could infer
13 that flight or evasion of arrest is a circumstance
14 that will go to the jury in this case, based on the
15 evidence in this case. Because there could be a
16 nexus between the flight and the offense charged and,
17 therefore, I will admit it into evidence.

18 All right. I understand there are no additional
19 pretrial motions. My jury comes in at 2:00 o'clock.
20 We will qualify the jury and we'll strike the jury.
21 I understand the strikes are ten and five, Solicitor.

22 MS. JONES: Yes, Your Honor.

23 THE COURT: We will also be drawing, Margaret,
24 so, that you know, this afternoon -- because of the
25 number of witnesses in this case, I'll be drawing

REDIRECT EXAMINATION OF TROY LONG BY JONES

1 three alternate jurors, just to be on the safe side,
2 so that I can ensure that we -- and the strikes will
3 be two and one on the alternates, ten and five on the
4 jury.

5 We've now concluded all pre-trial matters; is
6 that correct, Solicitor?

7 MS. JONES: Yes, Your Honor.

8 THE COURT: Is that correct, Mr. Hughes?

9 MR. HUGHES: Yes, Your Honor.

10 THE COURT: Thank you very much.

11 (Recess in the trial awaiting jury selection.)

12 THE COURT: State ready to proceed?

13 MS. JONES: Yes, Your Honor.

14 THE COURT: Defendant ready to proceed?

15 MR. HUGHES: Yes, Your Honor.

16 THE COURT: Call your case, Solicitor.

17 MS. JONES: Thank you, Your Honor.

18 The State calls Naijuwuan Chisolm, Indictment
19 2015-GS-27-00258, the charge of murder. And
20 2015-GS-27-00259, the possession of a weapon during
21 the commission of a violent crime.

22 THE COURT: All right. Ladies and gentlemen of
23 my jury panel, please give me your attention. I
24 remind you earlier this afternoon, I placed you under
25 oath. I'm now going to ask you questions in order to

JURY SELECTION

1 determine your impartiality to serve as a juror in
2 the trial of the case. I remind you, your responses
3 will also be under the oath that you took earlier
4 this afternoon from the Clerk of Court of Jasper
5 County.

6 The State has called for the trial of the case,
7 the State of South Carolina versus Naijuwan Chisolm.
8 He's charged in two indictments, which I hold in my
9 hand. I'll explain to you. The indictments are not
10 evidence of any of the allegations contained in the
11 indictments. The Defendant is charged with the
12 offense of murder and charged with the offense of
13 possession of a weapon during the commission of a
14 violent crime.

15 To these indictments, the Defendant has pled not
16 guilty. That places the burden on the State of South
17 Carolina to prove each and every element of the
18 offenses beyond a reasonable doubt. It will be your
19 duty, if you're selected as a juror, to determine
20 whether or not the State has met that burden.

21 Now, ladies and gentlemen, I want you to meet
22 the lawyers that are going to be trying this case, as
23 well as the case officer in charge of the case, as
24 well as the Defendant. Please, also, when you
25 introduce them, Solicitor and Mr. Hughes, please also

JURY SELECTION

1 introduce where they are from, and not just a name.

2 Beginning with counsel for the State of South
3 Carolina.

4 MS. JONES: Thank you, Your Honor. Good
5 afternoon. My name is Mary Jones, and I'm an
6 Assistant Solicitor here in Jasper County. Assistant
7 Solicitor is a fancy term for a prosecutor here in
8 Jasper County.

9 With me throughout the duration of this trial is
10 Brian Hollen. He is also an Assistant Solicitor in
11 our circuit. He generally works in Hampton and
12 Allendale Counties.

13 Also seated with me is Chief Stan Woodward. He
14 is the chief of police for Hardeeville Police
15 Department. Thank you.

16 THE COURT: Thank you. Mr. Hughes.

17 MR. HUGHES: Good afternoon, I'm Bob Hughes.
18 I'm a Public Defender assigned to Jasper County. I
19 also do defense work in Allendale and Hampton
20 Counties.

21 THE COURT: Please stand up and face my jury
22 panel.

23 MR. HUGHES: This is Naijuwuan Chisolm from
24 Hardeeville.

25 THE COURT: Mr. Chisolm is the Defendant, ladies

JURY SELECTION

1 and gentlemen, seated at counsel table with
2 Mr. Hughes. He's from Hardeeville, South Carolina.

3 Now, I ask: Is there any member of my jury
4 panel related by blood, connected by marriage, or a
5 close personal friend of the Defendant, Naijuwan S.
6 Chisolm, of Hardeeville, South Carolina? If so,
7 please stand at this time.

8 (No response.)

9 THE COURT: Let the record reflect no one is
10 standing.

11 Now, you've met the lawyers involved in the
12 trial of this case -- Ms. Jones, Mr. Hollen for the
13 State, Mr. Hughes for the Defendant. Is any member
14 of my jury panel related by blood, connected by
15 marriage, or a close personal friend of any of the
16 attorneys involved in this case? That would be Mary
17 Jones, Brian Hollen, or Bob Hughes. If so, please
18 stand at this time.

19 (No response.)

20 THE COURT: Let the record reflect no one is
21 standing.

22 Has any member of my jury panel ever been
23 represented in the past by Mary Jones, Brian Hollen,
24 or Bob Hughes, or currently represented by either of
25 the attorneys -- or any of the attorneys involved in

JURY SELECTION

1 the trial of this case? If so, please stand at this
2 time.

3 (No response.)

4 THE COURT: Let the record reflect no one is
5 standing.

6 All right. I told you that the indictments are
7 not evidence. They are not. They are simply the
8 formal written instruments by which the case is
9 brought into this court. But I need to tell you a
10 little bit about the allegations in order to ask you
11 questions about your impartiality.

12 It is alleged in the indictment for murder, that
13 it is alleged to have occurred in Jasper County on or
14 about June the 9th, 2015, it is alleged that the
15 Defendant, Naijuwuan S. Chisolm, did kill and murder
16 one Sterling Jenkins, J-E-N-K-I-N-S, by means of
17 shooting him, and that Mr. Sterling Jenkins died in
18 Jasper County as a result thereof on June the 9th,
19 2015.

20 In the second indictment, it is alleged that it
21 occurred also on June the 9th, 2015, in Jasper
22 County, it is alleged that Naijuwuan Chisolm did
23 possess a weapon or visibly display what appeared to
24 be a weapon during the commission of or attempted
25 commission of a violent crime. In this case, the

JURY SELECTION

1 violent crime is alleged to be the offense of murder.

2 Is there anyone here for jury duty who has read
3 about, heard about, or believes they know anything
4 whatsoever about the facts which are alleged in this
5 case? If so, please stand at this time.

6 (No response.)

7 THE COURT: Let the record reflect no one is
8 standing.

9 I am advised that the potential, and I emphasize
10 the term "potential," witnesses in the trial of this
11 case will be as follows: If any of these witnesses
12 are present in the courtroom when I call your name,
13 please stand and face my jury panel. I realize many
14 of them are not present, but we won't start until in
15 the morning.

16 Russell Wells, Jasper County Emergency Services.
17 That's W-E-L-L-S. Kelvin Grant, Hardeeville Police
18 Department. Aaron Ager, A-G-E-R, Hardeeville Police
19 Department. Jason Ronberg, R-O-N-B-E-R-G, Jasper
20 County Fire and Rescue. Natasha Aiken, Hilton Head
21 Island, South Carolina. Thomas Loving, L-O-V-I-N-G,
22 formerly Hardeeville Police Department.

23 Lieutenant Steven Thomas, Hardeeville Police
24 Department. Officer Dustin Creel, C-R-E-E-L,
25 Hardeeville Police Department. Officer Andrew Woods,

JURY SELECTION

1 Hardeeville Police Department. He's standing behind
2 you, ladies and gentlemen, raising his hand for you.
3 This is Andrew Woods, Hardeeville Police Department.
4 Thank you, please be seated.

5 Investigator Dylan Hightower, Fourteenth Circuit
6 Solicitor's Office. Agent James Tallon, T-A-L-L-O-N.
7 South Carolina Law Enforcement Division. Agent
8 Kimberly Mears, M-E-A-R-S, South Carolina Law
9 Enforcement Division. Agent Samuel Stewart,
10 S-T-E-W-A-R-T, South Carolina Law Enforcement
11 Division.

12 Agent Chad Smith, South Carolina Law Enforcement
13 Division. Erica Lewis, L-E-W-I-S, Hardeeville South
14 Carolina. Barnesha Houston, Hardeeville, South
15 Carolina. Jesneisha, Houston, J-E-S-N-E-I-S-H-A,
16 Houston, H-O-U-S-T-O-N, Hardeeville, South Carolina.

17 Frank Collins, Hardeeville, South Carolina.
18 Lucretia Jordan, Port Royal, South Carolina.
19 Dr. Erin Presnell, Medical University of South
20 Carolina. Captain Troy Long, now with the Hampton
21 Police Department, formerly with the United States
22 Marshals task force. Karen Milbrodt,
23 M-I-L-B-R-O-D-T, Verizon Wireless.

24 Special Agent Chris Barfield, South Carolina Law
25 Enforcement Division. Special Agent David Williams,

JURY SELECTION

1 South Carolina Law Enforcement Division. Chief Sam
2 Woodward, Hardeeville Police Department, standing in
3 front of you. Thank you, Chief. You may be seated.

4 Naijuwan Chisolm. Stand up, face my jury
5 panel, Hardeeville -- turn around so they can see
6 you. Hardeeville, South Carolina. Please be seated.

7 Any additional witnesses from -- potential
8 witnesses from the state of South Carolina?

9 MS. JONES: No, Your Honor.

10 THE COURT: Any additional witnesses from the
11 Defendant, potential?

12 MR. HUGHES: None, Your Honor.

13 THE COURT: Any member of my jury panel related
14 by blood, connected by marriage, or a close personal
15 friend of any of the potential witnesses in the trial
16 of this case, whose names I have just called? If so,
17 please stand at this time.

18 Hold on. Let me get everybody up that's going
19 to stand up. All right. Everybody up. All right.

20 Ma'am, I'll start with you. Your name and juror
21 number, please.

22 JUROR: Sheila Bryan, Number 24 -- 24.

23 THE COURT: Twenty-four. This is Sheila Bryan,
24 Counsel. Juror Number 24.

25 Ms. Bryan, give me a yes or no. Are you related

JURY SELECTION

1 by blood to any of the potential witnesses?

2 JUROR: Yes, sir.

3 THE COURT: You are?

4 THE BAILIFF: Yes, sir.

5 THE COURT: All right. How are you related by
6 blood? What degree of kinship?

7 JUROR: Dusty Creel is a cousin.

8 THE COURT: Pardon?

9 JUROR: Dusty Creel is my cousin. He's a
10 Hardeeville police officer.

11 THE COURT: Hold on a second.

12 What witness was it?

13 JUROR: Dusty Creel. Creel.

14 THE COURT: Creel. I'm sorry. I thought you
15 were saying Steel. All right.

16 So you are a cousin of Officer Dustin Creel with
17 the Hardeeville Police Department?

18 JUROR: Yes, sir.

19 THE COURT: The fact that he's a potential
20 witness and that you are his -- what degree of
21 kinship? First cousin? Second cousin? Third
22 cousin?

23 JUROR: He's like a second cousin.

24 THE COURT: Second cousin. The fact that he's
25 your second cousin, and he is a potential witness,

JURY SELECTION

1 would that in any way prevent you from giving the
2 State or the Defendant in this case, Mr. Chisolm, a
3 fair and an impartial trial?

4 JUROR: I do not believe that it would influence
5 me.

6 THE COURT: Can you give me a yes or no?

7 JUROR: No.

8 THE COURT: It would not.

9 JUROR: Yes.

10 THE COURT: Okay.

11 JUROR: My brain's all messed up.

12 THE COURT: The fact that he is your second
13 cousin, would that prevent you from giving -- he's a
14 potential witness. Would that prevent you from
15 giving either side a fair trial?

16 JUROR: No, sir.

17 THE COURT: Please be seated.

18 Your name and juror number, please. Yes, sir,
19 in the red shirt.

20 JUROR: Brian Rivers, 137.

21 THE COURT: Counsel, this is Juror Number 137,
22 Brian K. Rivers.

23 Mr. Rivers, yes or no, are you related by blood
24 to any of the potential witnesses?

25 JUROR: No.

JURY SELECTION

1 THE COURT: Are you connected by marriage to any
2 of the potential witnesses?

3 JUROR: No.

4 THE COURT: Are you a close personal friend of
5 any of the potential witnesses?

6 JUROR: I used to work with one of them.

7 THE COURT: All right. Who did you used to work
8 with?

9 JUROR: David Williams.

10 THE COURT: All right. Mr. Williams has been
11 identified as a potential witness. He is a Special
12 Agent with the South Carolina Law Enforcement
13 Division. The fact that he is a potential witness
14 and you used to work with him -- how long ago was it?

15 JUROR: Last -- late last year.

16 THE COURT: Late last year. Would that in any
17 way affect your ability to give the State of South
18 Carolina or the Defendant in this case a fair and an
19 impartial trial?

20 JUROR: No.

21 THE COURT: Thank you, sir. You may be seated.

22 Yes, sir. Your name and juror number. Speak
23 up.

24 JUROR: Thomas Beckett, Number 12.

25 THE COURT: Counsel, this is Juror Number 12.

JURY SELECTION

1 JUROR: Ten, I'm sorry.

2 THE CLERK: Ten, ten.

3 THE COURT: Number 10. Thomas Beckett.

4 Mr. Beckett, are you related by blood to any of
5 the potential jurors?

6 JUROR: No, sir.

7 THE COURT: Are you connected by marriage to any
8 of the potential -- not jurors, witnesses? Are you
9 related by blood to any of the potential witnesses
10 whose names I've called?

11 JUROR: No, sir.

12 THE COURT: Are you connected by marriage to any
13 of the potential witnesses whose names I've just
14 called?

15 JUROR: No, sir.

16 THE COURT: Are you a close personal friend of
17 any of the potential witnesses?

18 JUROR: Yes, sir.

19 THE COURT: Who?

20 JUROR: Steven Thomas.

21 THE COURT: Bear with me because I got to check
22 it.

23 MR. HUGHES: State Number 7, Your Honor.

24 THE COURT: Lieutenant Steven Thomas?

25 JUROR: Yes, sir.

JURY SELECTION

1 THE COURT: All right. With the Hardeeville
2 Police Department?

3 JUROR: Yes, sir.

4 THE COURT: All right. You're friends with him?

5 JUROR: Yes, sir.

6 THE COURT: The fact that you're friends with
7 Lieutenant Thomas, who is a potential witness -- I
8 have no way of knowing whether he'll actually
9 testify -- would that in any way, sir, affect your
10 ability to give the State or the Defendant,
11 Mr. Chisolm, a fair and an impartial trial?

12 JUROR: No, sir.

13 THE COURT: Thank you. You may be seated.

14 Don't do that to me, sir. I asked everybody to
15 stand up. Stand up so I know when I'm finished, so I
16 can move to the next one.

17 Is anybody else going to stand up in response to
18 this question? Don't sit there and wait on your
19 fellow jurors. Your name and juror number.

20 JUROR: Derrick -- Juror 138, Derrick Roach's.

21 THE COURT: Counsel, this is Derrick Roach,
22 Juror 138.

23 Mr. Roach, are you related by blood to any of
24 the potential witnesses?

25 JUROR: No, Your Honor.

JURY SELECTION

1 THE COURT: Are you connected by marriage to any
2 of the potential witnesses?

3 JUROR: No, Your Honor.

4 THE COURT: Are you a close personal friend of
5 any of the potential witnesses?

6 JUROR: Yes, Your Honor. I live -- Steven
7 Thomas, I'm a next door neighbor to him. I wasn't
8 sure it was relevant, to stand up or not to him. I'm
9 friends with him, and I'm next door neighbors with
10 him.

11 THE COURT: So Mr. Thomas is your next door
12 neighbor?

13 JUROR: That's correct.

14 THE COURT: And that's the reason you're
15 standing?

16 JUROR: Yes, sir. And I've known him for many
17 years.

18 THE COURT: All right. The fact that he's your
19 neighbor and you've known him for a good number of
20 years, would that in any way affect your ability to
21 give the State of South Carolina or the Defendant a
22 fair and an impartial trial?

23 JUROR: No, Your Honor.

24 THE COURT: It would not.

25 JUROR: No.

JURY SELECTION

1 THE COURT: You believe you can decide this case
2 solely on the evidence and put aside any relationship
3 to him?

4 JUROR: Yes, Your Honor.

5 THE COURT: Thank you. You may be seated.
6 Anyone else now?

7 All right. Let the record reflect no one else
8 is standing in response to my last question.

9 Has any member of my jury panel formed any
10 opinion about the facts which are alleged in this
11 case? If so, please stand at this time.

12 (No response.)

13 THE COURT: Has any member of my jury panel
14 formed any opinion about the alleged guilt or
15 innocence of the Defendant in this case, Mr.
16 Naijuwuan Chisolm? If so, please stand at this time.

17 (No response.)

18 THE COURT: Let the record reflect no one is
19 standing in response to my last two questions.

20 Any member of my jury panel formerly a member of
21 the Jasper County grand jury which found the
22 indictments in this case? If so, please stand at
23 this time.

24 (No response.)

25 THE COURT: Let the record reflect no one's

JURY SELECTION

1 standing.

2 THE COURT: Now, I've identified to you the
3 alleged victim in this case is one Sterling Jenkins.
4 Is any member of my jury panel related by blood,
5 connected by marriage, or a close personal friend of
6 Sterling Jenkins, who is the alleged victim of this
7 murder? If so, please stand at this time.

8 Yes, sir. Your name and juror number, please.

9 JUROR: I don't know my number. I'm Patrick
10 DuPont.

11 THE COURT: Margaret?

12 THE CLERK: Number 39.

13 THE COURT: Counsel, this is Juror Number 39,
14 Patrick DuPont.

15 Mr. DuPont, you've heard me identify
16 Mr. Sterling Jenkins. Are you related to him?

17 JUROR: Yes, yes.

18 THE COURT: Give him the microphone.

19 How are you related to him?

20 JUROR: Cousin.

21 THE COURT: It's not on.

22 JUROR: Cousin. Cousin.

23 THE COURT: Cousin.

24 JUROR: Yes.

25 THE COURT: What degree of kinship? First?

JURY SELECTION

1 Second? Third? Fourth?

2 JUROR: I'd say second.

3 THE COURT: I can't hear you.

4 JUROR: Second.

5 THE COURT: Second?

6 JUROR: Yes.

7 THE COURT: So, Mr. Jenkins is your second
8 cousin; is that what you're telling me, or a member
9 of his family?

10 JUROR: Yeah, second or third.

11 THE COURT: Second or third cousin.

12 JUROR: Yes.

13 THE COURT: Are you the second or third cousin
14 of Mr. Jenkins, or someone in his family?

15 JUROR: Him.

16 THE COURT: Yes?

17 JUROR: Yes. Yes, him.

18 THE COURT: Him.

19 JUROR: Yes.

20 THE COURT: The fact that Mr. Jenkins, who is
21 the alleged victim in this case, is your second or
22 third cousin, would that in any way affect your
23 ability to give the State of South Carolina or the
24 Defendant in this case a fair and an impartial trial?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: I'll excuse you from service in the
2 trial of this case. Be seated. I got other
3 business.

4 Hand the microphone to this lady standing,
5 please.

6 Your name and juror number.

7 JUROR: My name is Wanda Jenkins, and Juror
8 Number 76.

9 THE COURT: Counsel, this is Juror 76, Wanda R.
10 Jenkins.

11 Ms. Jenkins, I asked whether or not you were
12 related by blood or marriage to Sterling Jenkins, and
13 you stood. Would you tell me why you're standing.
14 You're related to him?

15 JUROR: Yes.

16 THE COURT: How are you related to him?

17 JUROR: Third cousin, by blood.

18 THE COURT: Third?

19 JUROR: Yes.

20 THE COURT: Is that what you're telling me?

21 JUROR: I am, yes.

22 THE COURT: The fact that Mr. Jenkins is your
23 third cousin, would that in any way affect your
24 ability to give the State or the Defendant in this
25 case a fair and an impartial trial?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: I'll excuse you from service in this
3 case. Please be seated.

4 Anyone else?

5 (No response.)

6 THE COURT: Let the record reflect no one else
7 is standing in response to my last question.

8 Does any member of my jury panel know of any
9 bias or prejudice they may have about the facts which
10 are alleged in this case? If so, please stand at
11 this time.

12 (No response.)

13 THE COURT: Let the record reflect no one is
14 standing.

15 Has any member of my jury panel ever been
16 themselves the victim of a violent crime, or a member
17 of their immediate family? And by "immediate
18 family," I mean your spouse or you -- okay -- or your
19 mother, father, sister, or brother. If you or a
20 member of your immediate family, as I have defined
21 it, ever been the victim of a violent crime, please
22 stand at this time.

23 It's coming to you. Your name and juror number
24 please.

25 JUROR: Brian Rivers, 137.

JURY SELECTION

1 THE COURT: Counsel, this is Juror Number 137,
2 Brian K. Rivers.

3 Mr. Rivers, were you or a member of your family
4 a victim of a violent crime?

5 JUROR: My mother.

6 THE COURT: Your mother. The fact that your
7 mother was a victim of a violent crime, would that in
8 any way affect your ability to give the State and the
9 Defendant in this case a fair and an impartial trial?

10 JUROR: No.

11 THE COURT: Thank you, sir. Pass the microphone
12 back, please. Back, please, I got a juror behind
13 you.

14 THE CLERK: Latrelle Mitchell.

15 THE COURT: You know your number?

16 JUROR: 114.

17 THE COURT: Counsel, this is Latrelle Mitchell,
18 Juror Number 114.

19 Ms. Mitchell, were you or a member of your
20 immediate family the victim of a violent crime?

21 JUROR: Yes, my mother.

22 THE COURT: Your mother.

23 JUROR: Yes.

24 THE COURT: The fact that your mother was a
25 victim of a violent crime, would that in any way

JURY SELECTION

1 affect your ability to give the State or the
2 Defendant in this case a fair and an impartial trial?

3 JUROR: Yes.

4 THE COURT: I'll excuse you from service in the
5 trial of this case.

6 JUROR: Norma Jones, I don't know my number.

7 THE COURT: What number?

8 THE CLERK: Norma Jones is Number 83.

9 THE COURT: Counsel, this Juror 83, Norma Lee
10 Jones.

11 Ms. Jones, were you or a member of your
12 immediate family the victim of a violent crime?

13 JUROR: Myself.

14 THE COURT: Yourself?

15 JUROR: Yes.

16 THE COURT: Has that case been concluded?

17 JUROR: Yes.

18 THE COURT: The fact that you were the victim of
19 a violent crime, would that in any way affect your
20 ability to give the State in this case or the
21 Defendant in this case a fair and an impartial trial?

22 JUROR: Yes, I think so.

23 THE COURT: I'll excuse you from service in the
24 trial of this case. Please be seated.

25 Does any member of my jury panel know of any

JURY SELECTION

1 reason whatsoever why they can't give the State of
2 South Carolina or the Defendant in this case a fair
3 and an impartial trial? If so, please stand at this
4 time.

5 (No response.)

6 THE COURT: Let the record reflect no one is
7 standing.

8 Any additional voir dire from the State?

9 MS. JONES: No, Your Honor.

10 THE COURT: From the Defendant?

11 MR. HUGHES: No, Your Honor.

12 THE COURT: Madam Clerk.

13 THE CLERK: Twenty-eight.

14 THE COURT: Counsel approach.

15 (Off-the-record discussion held.)

16 THE COURT: Let's proceed.

17 Madam Clerk, the strikes are ten and five.

18 Please give us a jury.

19 Now, what's happening right now, ladies and
20 gentlemen, exactly what I told you before, the
21 computer is randomly selecting a list from which the
22 clerk will read a name selected by the computer.
23 They'll ask you to bring your belongings with you.
24 That includes your coat and your pocketbook, if you
25 got one.

JURY SELECTION

1 Come forward and my bailiffs will direct you to
2 have a seat in the jury box.

3 If your name is called, you'll come down the
4 middle aisle, across the bar over here. So you're
5 going to have to come down the middle aisle. Come to
6 the clerk's desk and turn around and face the back of
7 the courtroom as I'm facing right now.

8 Please shut the door in the courtroom, no one in
9 or out during jury selection.

10 THE CLERK: Juror Number 134, Jeffrey
11 Richardson.

12 THE COURT: Come right on up here,
13 Mr. Richardson. Come on up. And just turn around
14 for me right here. There we go.

15 THE CLERK: How says the State?

16 MS. JONES: Please present the juror.

17 THE CLERK: How says the Defense?

18 MR. HUGHES: Please seat the juror.

19 THE CLERK: Have a seat in the jury box, sir.

20 Juror Number 10, Thomas Beckett. How says the
21 State?

22 MS. JONES: Please present the juror.

23 THE CLERK: How says the Defense?

24 MR. HUGHES: Please excuse the juror for the
25 trial of this case.

JURY SELECTION

1 THE CLERK: Have a seat in the jury box, sir --
2 I'm sorry, in the audience.

3 Juror Number 124, Tyler Pace. How says the
4 State?

5 MS. JONES: Please present the juror.

6 THE CLERK: How says the Defense?

7 MR. HUGHES: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, sir.

9 Juror Number 82, Lashea Johnson -- Lashea
10 Johnson. How says the State?

11 MS. JONES: Please present the juror.

12 THE CLERK: How says the Defense?

13 MR. HUGHES: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, ma'am.

15 Juror Number 80, James Johnson, Jr. How says
16 the State?

17 MS. JONES: Please present the juror.

18 THE CLERK: How says the Defense?

19 MR. HUGHES: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 Juror Number 157, Tyrone Sterling. How says the
22 State?

23 MS. JONES: Please present the juror.

24 THE CLERK: How says the Defense?

25 MR. HUGHES: Please seat the juror.

JURY SELECTION

1 THE CLERK: Have a seat in the jury box, sir.

2 Juror Number 21, Ronald Brown. How says the
3 State?

4 MS. JONES: Please present the juror.

5 THE CLERK: How says the Defense?

6 MR. HUGHES: Please excuse the juror from the
7 trial of this case.

8 THE CLERK: Thank you, sir. Have a seat back in
9 the audience.

10 Juror Number 137, Brian Rivers. How says the
11 State?

12 MS. JONES: Please present the juror.

13 THE CLERK: How says the Defense?

14 MR. HUGHES: Please excuse the juror from the
15 trial of this case.

16 THE CLERK: Thank you, sir. Have a seat back in
17 the audience.

18 Juror Number 8, Aldridge Beaton. How says the
19 State?

20 MS. JONES: Please present the juror.

21 THE CLERK: How says the Defense?

22 THE COURT: What say the Defendant?

23 MR. HUGHES: Please seat the juror.

24 THE CLERK: Have a seat in the jury box, sir.

25 Juror Number 2, Darien Anderson. How says the

JURY SELECTION

1 State?

2 MS. JONES: Please present the juror.

3 THE CLERK: How says the Defense?

4 MR. HUGHES: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 Juror Number 27, Lawrence Butler. How says the

7 State?

8 MS. JONES: Please excuse Mr. Butler.

9 THE COURT: Thank you, sir. Have a seat back in
10 the audience.

11 Juror Number 126, Etrenda Patterson. How says
12 the State?

13 MS. JONES: Please present this juror.

14 THE CLERK: How says the Defense?

15 MR. HUGHES: Please seat the juror.

16 THE COURT: Have a seat in the jury box, ma'am.

17 Juror Number 24, Sheila Bryan. How says the
18 State?

19 MS. JONES: Please present the juror.

20 THE CLERK: How says the Defense?

21 MR. HUGHES: Please excuse the juror from the
22 trial of this case.

23 THE COURT: Thank you, ma'am. Have a seat back
24 in the audience.

25 Juror number 138, Derrick Roach. How says the

JURY SELECTION

1 State?

2 MS. JONES: Please present the juror.

3 THE CLERK: How says the Defense?

4 MR. HUGHES: Please excuse the juror from the
5 trial of this case.

6 THE COURT: Thank you, sir. Have a seat back in
7 the audience.

8 Juror Number 106, Jaquan Manigo. How says the
9 State?

10 MS. JONES: Please present the juror.

11 THE CLERK: How says the Defense?

12 MR. HUGHES: Please seat the juror.

13 THE COURT: Have a seat in the jury box, sir.

14 Juror Number 95, Sara Lanier. How says the
15 State?

16 MS. JONES: Please present the juror.

17 THE CLERK: How says the Defense?

18 MR. HUGHES: Please excuse the juror from the
19 trial of this case.

20 THE COURT: Thank you, ma'am. Have a seat back
21 in the audience.

22 Juror Number 66, William Horry. How says the
23 State?

24 MS. JONES: Please present the juror.

25 THE CLERK: How says the Defense?

JURY SELECTION

1 MR. HUGHES: Please seat the juror.

2 THE COURT: Have a seat in the jury box, sir.

3 Juror Number 121, Michelle Oltman. How says the
4 State?

5 MS. JONES: Please present the juror.

6 THE CLERK: How says the Defense?

7 MR. HUGHES: Please seat the juror.

8 THE COURT: Have a seat in the jury box, ma'am.

9 Juror Number 154, Robin Smith. How says the
10 State?

11 MS. JONES: Please present the juror.

12 THE CLERK: How says the Defense?

13 MR. HUGHES: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: Thank you, ma'am. Have a seat back
16 in the audience.

17 Juror Number 144, Julieta Sanchez. How says the
18 State?

19 MS. JONES: Please present the juror.

20 THE CLERK: How says the Defense?

21 MR. HUGHES: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, ma'am.

23 Alternate Number 1.

24 THE COURT: Alternate Number 1, strikes are two
25 and one.

JURY SELECTION

1 THE CLERK: Juror Number 130, Demetrius
2 Pinckney. How says the State?

3 MS. JONES: Please present the juror.

4 THE CLERK: How says the Defense?

5 MR. HUGHES: Please seat the juror.

6 THE COURT: Have a seat in Alternate Chair
7 Number 1, sir.

8 Juror Number 75, Alternate Number 2, Samuel E.
9 Jenkins, Jr. How says the State?

10 MS. JONES: Please present the juror.

11 THE CLERK: How says the Defense?

12 MR. HUGHES: Please seat the juror.

13 THE CLERK: Have a seat in chair number --
14 Alternate 2, sir.

15 Juror Number 55, Katrina Green. How says the
16 State?

17 MS. JONES: Please excuse Ms. Green.

18 THE CLERK: Thank you, ma'am. Have a seat back
19 in the audience.

20 Juror Number 12, on Alternate 3, John C. Benton.
21 Does the State have cause for strike?

22 MS. JONES: No, Madam Clerk.

23 THE CLERK: How says the Defense?

24 MR. HUGHES: Please seat the juror.

25 THE COURT: Have a seat in Alternate Chair

JURY SELECTION

1 Number 3.

2 That's it.

3 (The jury is complete at 4:35 p.m.)

4 THE COURT: All right. Ladies and gentlemen of
5 my jury panel, we're not going to start the trial of
6 the case today. I promised you I'd get you home in a
7 timely fashion.

8 One point, Mr. Richardson, you're backed into
9 the corner on me, aren't you?

10 JUROR: Yes, sir.

11 THE COURT: I'm going to appoint you to be
12 foreperson. If you would trade places with this
13 gentleman right here in the foreperson's seat for me.

14 JUROR: Yes, sir.

15 THE COURT: He's one of my alternate jurors.
16 The alternates aren't eligible to be forepersons.

17 Have a seat for me. I'll tell you all about
18 your duties. Let this gentleman -- can y'all slide
19 down for me so he doesn't have to crawl over. There
20 we go.

21 Now, first of all, I want to address my
22 alternate jurors. You're just as important as a
23 member of the jury. Because, if for some reason
24 somebody becomes ill or for some valid legal reason
25 cannot continue to serve, you're going to be with the

JURY SELECTION

1 jury throughout the trial of this case. You're not
2 eligible to be the foreperson, but you very well may
3 become a member of the jury during the trial.

4 So you're going to be with the jury, and I ask
5 you to give me your special attention to my members
6 of the jury. Mr. Richardson is going to be your
7 foreperson of the jury.

8 Here are the duties of the foreperson: He has
9 one vote, just like the rest of you. His vote
10 doesn't count any more. But he speaks for the jury
11 in the courtroom should that need arise. The
12 foreperson speaks for you.

13 The foreperson will also sign the verdict for
14 the entire jury. I will prepare a verdict form for
15 you and give you instructions about that.

16 Now, you see my law clerk behind me, he knows
17 part of his job, whatever you sign on that verdict
18 form that I'll prepare, his job will be not to let
19 you leave the courtroom, Mr. Richardson, until you've
20 signed the exact same thing on the indictments.
21 Okay? There's a place on the indictment where it
22 says "verdict," and you will sign whatever you write
23 on the verdict form, exactly the same, and sign your
24 name and date it. You see me giving those
25 indictments to him? He knows what his job is. Okay?

JURY SELECTION

1 I don't want him to have to chase you down after the
2 trial is over. All right.

3 Now, you have not heard any evidence in this
4 case, so it would be improper for you to discuss this
5 case amongst yourselves or with anybody else. If
6 somebody tries to talk to you about the case, just
7 tell them you're on the jury, the Judge asked you not
8 to talk about it. If they persist in wanting to talk
9 to you about the case, you get their name. Just ask
10 them their name, and you bring it to me, and I'll
11 handle that problem for you, ladies and gentlemen.
12 And I promise you, that person won't bother you
13 anymore. All right? So please do not discuss the
14 case.

15 Now, I don't know whether there'll be anything
16 on television, radio, or in the newspaper about this
17 case. I'm asking you, don't read such, watch such,
18 and listen to such. You must decide this case solely
19 on the evidence that's introduced during the trial of
20 the case when both sides are present with the right
21 of cross examination. So don't try to decide the
22 case based on television, radio, or newspaper. Base
23 your decision solely and only on evidence.

24 Now, I don't know whether any of you have
25 computers or access to social media, and I'm going to

JURY SELECTION

1 ask you, please, do not try to do any research on
2 your own about this case. Don't try to look up
3 anything on computer or on your smart phone about
4 this case, or go to any Internet chat room and
5 discuss this case. You must decide this case only
6 and solely on the evidence that's presented during
7 the trial of this case when both sides are present.

8 Both sides have absolute right to know exactly
9 what information you're basing your decision on. So,
10 please don't try to do any research -- even if you
11 think it would help you in deciding the case, don't
12 try to do any research on your own or talk to anyone
13 else about the case.

14 All right. Now, in the morning, when we come
15 back, we're going to start promptly in the morning at
16 9:30 rather than as we did this morning. You weren't
17 here this morning, but we're going to start because
18 we want to get as much work done and I can get you
19 home in a timely fashion.

20 When you come back in the morning, I'm going to
21 ask you to report to your jury room, and I'm going to
22 send you there, and she's going to show you how you
23 can get in and out of the courtroom from your jury
24 room. Do not come to the courtroom.

25 I ask that each of you be in your jury room

JURY SELECTION

1 prior to 9:30 a.m. in the morning. If you're not
2 going to be here at 9:30, I would have expected you
3 to have called the Clerk of Court's office because
4 you had an emergency. Because I want to start at
5 9:30, so I can get you home in a timely fashion.

6 Now, are there any questions about my
7 instructions to any of you? Does everybody
8 understand? Don't talk to anybody, don't watch
9 television -- but I don't know that there'll be
10 anything on there. Or the newspaper or the radio or
11 any kind of computer research or any kind of social
12 networking research. Everybody understand that?

13 All right. It's now 19 minutes before five.
14 I'm going to get you home in a timely fashion, just
15 like I promised. Please be in your jury room prior
16 to 9:30 a.m. in the morning.

17 Ma'am, would you take them and show them the
18 jury room and show them how to leave the courtroom
19 from the jury room. Each of you may leave the
20 courtroom at this time. I'll see you in the morning.
21 Have a nice evening.

22 (Jury exits the courtroom.)

23 THE COURT: All right. Ladies and gentlemen,
24 those of you that were not selected as jurors in the
25 trial of this first case, each of you, according to

JURY SELECTION

1 my clerk, have a telephone number that you received.

2 What is it, Margaret?

3 THE CLERK: 726-7972.

4 THE COURT: If you don't have a piece of paper
5 with that number on it, raise your hand. Margaret
6 will get you one. Don't leave here without it.

7 Everybody got it? All right. I'm going to ask
8 you to call that number. All right? After 6 o'clock
9 tomorrow night. Not tonight. I will have taped
10 instructions on that number after 6 o'clock tomorrow
11 night telling you when I might need you to return and
12 what time. I may even tell you thank you for your
13 service, which means you're exempt for three years by
14 virtue of being here today.

15 I might tell you to be back at 10 o'clock the
16 next morning or 9:30 or whatever. I don't know yet.
17 We're going to be working while you're gone -- but
18 call -- don't call the number prior to 6 o'clock.
19 There's one message for all jurors. If the number's
20 busy, just redial until you get through. Wait until
21 after 6 o'clock tomorrow night and call the number on
22 the piece of paper that you have.

23 Any questions about the call-back procedure from
24 any of my jurors? Everybody understand what to do?

25 On behalf of Jasper County and this Court, thank

JURY SELECTION

1 you for your patience. If you are in role call jury
2 qualification and jury selection, you're now excused
3 for the rest of the day. Call the number after 6
4 o'clock tomorrow.

5 Counsel approach.

6 (Off-the-record discussion held.)

7 THE COURT: The Court's in recess until 9:30 a.m
8 tomorrow morning.

9 (The Court recessed for the day at 4:45 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JURY SELECTION

1 PROCEEDINGS OF 2-22-2017

2 THE COURT: Let the record reflect the Defendant
3 is present along with his counsel. First of all, are
4 there any matters of law pertaining to the selection
5 of the jury that need to be decided before the jury
6 is sworn from the State of South Carolina?

7 MS. JONES: No, Your Honor.

8 THE COURT: From the defendant?

9 MR. HUGHES: None, Your Honor.

10 THE COURT: Very well. I understand that the
11 jury is present. Is solicitor ready to begin?

12 MS. JONES: Yes, Your Honor.

13 THE COURT: Is the defendant ready to proceed?

14 MR. HUGHES: Yes, Your Honor. One matter for
15 the record, I've agreed to stipulate part of the
16 chain with the Solicitor's office, as far as the
17 bullets recovered from the deceased.

18 THE COURT: Is that correct?

19 MS. JONES: That's right. Your Honor. We have
20 them labeled and ready to go.

21 THE COURT: They are pre-marked.

22 MS. JONES: They are pre-marked.

23 THE COURT: There is no objection as to the
24 chain of custody.

25 MR. HUGHES: None whatsoever, Your Honor.

OPENING REMARKS BY THE COURT

1 THE COURT: All right. Would you bring us the
2 jury, please. Jury please.

3 (The jury enters the courtroom.)

4 THE COURT: Yesterday afternoon, in an attempt
5 to get you home in a timely fashion I started telling
6 you about your duties, Mr. Foreman, and talked to my
7 alternate jurors. Your duties would include the
8 following: I told you that you would be the
9 spokesperson for the jury and that you would be
10 writing the jury's verdict and that my law clerk
11 would want you to sign the documents with anything
12 that you would sign on the verdict form.

13 I also want you to understand, you are like the
14 chairperson of a committee, it is your job as
15 foreperson of the jury to see that each and every
16 member of the jury have a full opportunity to voice
17 their opinions in the jury room once the
18 deliberations begin.

19 You preside in the jury room just like the
20 chairperson of a committee would preside at a
21 committee meeting to see that everybody has an
22 opportunity to voice their opinions. Do you
23 understand?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: Very good. I thank you for that and

OPENING REMARKS BY THE COURT

1 your willingness to serve as the foreperson. With
2 that, please swear the jury.

3 (The jury was sworn.)

4 THE COURT: Let's go over housekeeping. Now,
5 that you have been sworn as jurors and until the case
6 is completed I'll ask you not to discuss this case
7 with others, including your fellow jurors except when
8 I have authorized you to do so. It's real important
9 that you not do that. Why? Because we call that
10 premature deliberations. And the reason is that the
11 very last thing in the trial might make a difference
12 as to how you feel about the evidence. And,
13 therefore, we ask that you not engage in any type of
14 discussion, even amongst yourselves, until I
15 authorize you to do so.

16 I'm going to ask you not to read or listen to
17 any news reports about the case or watch it. Please
18 don't use a computer, cell phone, or other electronic
19 device with communication capability during your
20 deliberations, even if you think that information
21 that you could obtain about a party or an attorney or
22 a witness, or any information collected through any
23 type of juror research on any topic that might be
24 raised, or testimony offered by any witness, any
25 information collected through any type of juror

OPENING REMARKS BY THE COURT

1 research on any topic, even if you thought it would
2 be helpful in deciding the case, I'm asking you not
3 to do that.

4 Both sides have the absolute right to know
5 exactly what information you're basing your decision
6 on and, therefore, it would be improper for you to
7 engage in any type of research or attempt to use any
8 electronic device in order to do some type of
9 research about the case.

10 So, please, while you're on the jury, don't try
11 to communicate with anyone on your cell phone or
12 through email or iPhone or text messaging, or any
13 other source, such as Twitter, or through any blog or
14 website or through any Internet chat room, or by the
15 way of any other social networking website, which
16 includes, ladies and gentlemen, Facebook, MySpace,
17 LinkedIn, YouTube, and any other electronic device.

18 Now, we've had problems with that, ladies and
19 gentlemen, so please adhere to my instructions in
20 that.

21 Now, before we begin this trial, I want to tell
22 you a little bit about what's going to happen. This
23 trial will probably be different than what many of
24 you expect. Most people do not have the chance, as
25 each of you are doing right now, to attend an actual

OPENING REMARKS BY THE COURT

1 court session. And many people think from watching
2 television or reading a book or going to a movie that
3 trials are always full of high drama and intense
4 action, and riveting and entertaining circumstances.

5 Many people have the concept from watching
6 television, ladies and gentlemen, that someone in a
7 white coat is going to walk in the back of the
8 courtroom and walk up on the witness stand and give
9 you some scientific answer to every question that
10 might be raised.

11 You know, ladies and gentlemen, an actual trial
12 is not for entertainment, like a television program
13 or a book or a movie. An actual trial, ladies and
14 gentlemen, is a fundamental part of our democracy.
15 It is an effort to make sure that justice is done
16 between the parties before the court.

17 Trying to make sure that justice is done and
18 trying to -- trying to make sure that we search for
19 the truth is the exact opposite of what you may have
20 seen on television, or read in a book or seen in a
21 movie.

22 This courtroom, ladies and gentlemen, is a place
23 of honor. It's dedicated to the protection and the
24 preservation of a citizen's rights, through what many
25 people have called the greatest justice system in the

OPENING REMARKS BY THE COURT

1 entire world.

2 The attorneys that are going to be appearing
3 before you, ladies and gentlemen, they're advocates
4 for the parties that they represent, either the State
5 of South Carolina or the Defendant.

6 But first and foremost, the attorneys are
7 officers of this court. And as officers of this
8 court, they took an oath, just as you just took an
9 oath, and in the oath they took and I took, each of
10 them swore in their oath to uphold the integrity,
11 they swore they would uphold the fairness of our
12 judicial system.

13 Now, you should expect the attorneys to be
14 courteous, to be professional, and to be ethical in
15 their representation of their client's interest.

16 Now, I'll remind each of you, that just like the
17 attorneys took an oath, and to become an officer of
18 this court, and I took an oath, you now have taken an
19 oath as jurors. And in that oath, you said you would
20 pay close attention to all the evidence in this case,
21 all the testimony that's going to be presented in
22 this case. So you also are considered to be, and
23 swore that you would be, professional, that you'd be
24 ethical, and that you would also be reasonable in
25 your responsibility as a juror.

OPENING REMARKS BY THE COURT

1 Before we even begin this trial, ladies and
2 gentlemen, on behalf of Jasper County and this Court,
3 I want to thank you in advance for accepting this
4 important responsibility of jury service. I want to
5 thank you for your contribution, as jurors, to our
6 justice system. Without you, ladies and gentlemen of
7 the jury, justice cannot be accomplished in a
8 courtroom, and I thank you for that service. And I
9 remind you of the oath that you just took from the
10 Clerk of Court.

11 All right. Mr. Foreman, ladies and gentlemen of
12 the jury, I hold in my hand the case we're about to
13 try. I pointed this out to you -- he has my notes --
14 I pointed this out to you yesterday. I hold in my
15 hand two indictments, they're both entitled the same
16 thing: State versus Naijuwuan S. Chisolm. One
17 indictment charges the Defendant with the offense of
18 murder. The other indictment charges the Defendant
19 with the offense of possession of a weapon during the
20 commission of a crime.

21 The indictments are entitled, "The State of
22 South Carolina versus Naijuwuan Chisolm," who is the
23 Defendant.

24 The Defendant is charged by these indictments
25 with these crimes. Now, I'm going to explain to you

OPENING REMARKS BY THE COURT

1 in my charge to you on the law at the conclusion of
2 the case, the elements of the crimes for which the
3 Defendant is charged. So don't you be concerned
4 about that at this point.

5 The reason we do the charge at the end, and I
6 have tried cases where we tried to change the timing
7 of it, we find it best to wait because I haven't
8 heard any of the evidence in this case. And you told
9 me, under oath, you don't know anything about this
10 case. I don't know anything about this case. So I'm
11 going to be hearing the evidence at the same time you
12 do.

13 Part of my job would be to rule on the
14 admissibility of evidence. And, therefore, it might
15 affect what charge I give you on the law at the
16 conclusion of the case.

17 And that is why we don't explain to you what
18 elements of a crime or any lesser-included offense
19 might be involved in a case. We'll explain that to
20 you at the conclusion of the trial. You should
21 understand that the indictments that I've shown you
22 are simply the formal charges by which the case is
23 brought into this court, the court of general
24 sessions. And it is not in any sense evidence of any
25 of the allegations contained in the indictment. I

OPENING REMARKS BY THE COURT

1 read to you those allegations yesterday.

2 Now, the Defendant in this case has pled not
3 guilty to the indictment. The State of South
4 Carolina, therefore, has the burden of proving each
5 of the essential elements of the indictment beyond a
6 reasonable doubt. And it will be your duty, ladies
7 and gentlemen, to determine whether or not the State
8 has met that burden.

9 It is your solemn responsibility, ladies and
10 gentlemen, to determine the guilt or the innocence of
11 the Defendant, and your verdict must be based solely
12 and only on the evidence as it is presented to you in
13 this trial and on the law as I instruct it to you to
14 be during the trial and at the conclusion of the
15 trial.

16 Now, in just a minute, the Assistant Solicitor
17 will make what is called an opening statement, in
18 which she will explain to you the issues in this
19 case, or at least what she contends to be the issues
20 in this case as an advocate for the State of South
21 Carolina. And following her opening statement, the
22 attorney for the Defendant will make an opening
23 statement.

24 Now, I want to tell you that the attorneys have
25 worked hard to prepare the case. Both sides. And I

OPENING REMARKS BY THE COURT

1 certainly want you to listen to the attorneys. They
2 took an oath. They're here to assist you. But what
3 the attorneys tell you in opening statement, what the
4 attorneys suggest to you by questions they might ask,
5 what the attorneys argue to you in their closing
6 argument is not evidence in this case.

7 It is only their contention as to what they
8 believe the evidence shows, or what the issues in the
9 case actually are. The evidence in this case is
10 going to be presented to you by sworn testimony from
11 the witness stand. You'll notice that the witness
12 stand is located on the side of the bench in closest
13 proximity to you. Why? So you can observe the
14 witnesses, you can listen to the witnesses. You can
15 pay close attention to the witnesses.

16 Now, evidence may take a form other than sworn
17 testimony. It may be an exhibit, such as a
18 photograph. But as to any exhibit, you will hear one
19 of the attorneys offer it into evidence, you will
20 hear me ask if there's any objection to an exhibit,
21 which we'll place on the record with the court
22 reporter. And if you hear me say, "It is in
23 evidence," which is part of my job as the presiding
24 judge, the exhibit will be admitted into evidence,
25 and it will be with you in your jury room during your

OPENING REMARKS BY THE COURT

1 deliberations, if it is admitted into evidence in the
2 trial of this case.

3 So evidence may be sworn testimony, it might be
4 an exhibit. Evidence may even take the form of what
5 we call a stipulation, an agreement, an understanding
6 that a certain fact is true and, therefore, not
7 necessary for you, the jury, to decide that fact.

8 Now, I've told you, you have to base your
9 decision solely and only on the evidence in this
10 case. In the consideration of evidence, you should
11 remember that under the Constitution of the State of
12 South Carolina, you and you alone, the jury, are the
13 sole judges of the facts in this case. No one else
14 but you will be permitted to consider the evidence.

15 We call it weighing the evidence. I'll talk to
16 you about that. But it just means considering the
17 evidence that's going to be presented because you're
18 the only person in this courtroom who can determine
19 what the facts are based on evidence introduced
20 during the trial of the case. And the same law that
21 makes you the sole judges of the facts in the case,
22 based on evidence presented during the trial of the
23 case, makes me, the presiding judge, the sole judge
24 of the law.

25 I cannot invade your province, ladies and

OPENING REMARKS BY THE COURT

1 gentlemen, and suggest to you, comment to you, or
2 make any statement to you about what the facts are.
3 And you should not invade my province, ladies and
4 gentlemen, and differ with me about what the law is.

5 Everything that I say during the course of this
6 trial is being taken down by Mona Manley, my court
7 reporter right down here, right in front of you. And
8 if I make a mistake as to the law, to the detriment
9 of either side, they can appeal the case to an
10 appellate court. And if the appellate court agrees
11 I've made a mistake, they'll reverse on the law, they
12 will reverse the case and send it back for a new
13 trial.

14 So don't any of you on this jury worry about
15 whether or not I've told you the law correctly. That
16 is somebody else's worry, that is not your concern.
17 Your job is to take the law as I give it to you and
18 apply it to the facts as you find them to be, based
19 on evidence introduced during the trial of the case.
20 And that means testimony from the witness stand, any
21 exhibits which may be introduced into evidence, and
22 if we have any stipulation that might occur during
23 the course of the trial.

24 And after doing that, you, ladies and gentlemen
25 of the jury, at the end of the case, after all of the

OPENING REMARKS BY THE COURT

1 evidence has been presented, after the attorneys have
2 had closing argument and you've heard my charge on
3 the law that I feel applies to the evidence, you will
4 render your verdict, a true and just verdict based on
5 that solemn oath that each of you just took from the
6 Clerk of Court of Jasper County.

7 Now, from time to time during this trial you're
8 going to probably hear one of the lawyers say
9 something to me like, "Your Honor, I believe we have
10 a question of law or a matter of law we need to
11 discuss with you." Or "Your Honor, may we approach
12 the Bench?" And you might -- you've already seen me
13 probably say, "Counsel approach the bench."

14 So sometimes I, myself, might find it necessary
15 to ask the lawyers to approach the Bench. I might
16 even ask you, although, I try to avoid this just on
17 the basis of time, I might ask you to step in your
18 jury room. And you're going to probably wonder, why
19 in the world is Judge Buckner making us leave the
20 courtroom, and why is he talking to the people
21 outside of our earshot.

22 I'll tell you exactly why. I'm not trying to
23 hide anything from you. The reason is just what I
24 told you about our roles. You're the sole judges of
25 the facts, and I'm the sole judge of the law.

OPENING REMARKS BY THE COURT

1 Sometimes when I'm ruling on a matter of law, by
2 necessity, I have to make a comment to the attorneys
3 about whether or not a particular piece of law
4 applies to the case. And sometimes I have to make a
5 comment about the facts in order to rule on a matter
6 of law. And I'm not supposed to make any comment to
7 you about the facts in the case.

8 So the custom in this state is, I first try to
9 take it up in the courtroom outside of your presence,
10 if I can. Depending on what's involved, I might ask
11 you to step to your jury room so that you will not be
12 influenced by anything that I might say or do in
13 ruling on whether or not a particular piece of law
14 applies to this case.

15 And in that connection, let me emphasize to you,
16 and I'm going to tell you again, you, ladies and
17 gentlemen, and you alone, are the sole judges of the
18 facts in this matter. And if you should gather from
19 anything that I might say or do during the course of
20 this trial that you think I have any opinion
21 whatsoever as to the facts in this case, I'm going to
22 ask you to erase that from your mind because you and
23 you alone, ladies and gentlemen of the jury, are the
24 sole judges of the facts.

25 Obviously I've got to make some decisions about

OPENING REMARKS BY THE COURT

1 whether or not evidence is admissible. I might
2 sustain or overrule an objection, but that does not
3 mean that I am inferring that I have any opinion to
4 you about the evidence, because that is solely your
5 province and not mine.

6 Now, I'm asked this frequently. Well, Judge
7 Buckner, you say I'm the sole judge of the facts, how
8 will I know, as a juror, what the true facts are?
9 How will I determine from the evidence what the true
10 facts are in this case?

11 Well, ladies and gentlemen, part of your job as
12 jurors, you will, out of necessity, have to pass upon
13 the credibility or the believability of the witnesses
14 who are going to take an oath and sit on this witness
15 stand. It will be my responsibility to rule as a
16 matter of law whether or not certain testimony is
17 admissible at all or not.

18 But once I've allowed testimony to be admitted
19 into evidence in this case, so that you can hear it,
20 whether or not you as a jury believe the testimony is
21 solely a matter for you to determine. In passing
22 upon the credibility or the believability of the
23 witnesses who are going to testify in this case, you
24 have the right as a jury to take into consideration
25 the interest, if any, of any witness; the bias, if

OPENING REMARKS BY THE COURT

1 any, of any witness; the prejudice, if any, of any
2 witness; the opportunity for the witness to have
3 observed the matters and things about which he or she
4 may testify.

5 You may even take into consideration, ladies and
6 gentlemen, what we call the demeanor of the witness,
7 the appearance of the witness, while the witness is
8 on the witness stand. Anything that is in evidence,
9 ladies and gentlemen, you as the jury have the right
10 to consider in passing upon the credibility or the
11 believability of the witnesses who will testify
12 during the trial of this case.

13 Anything that is in evidence that you feel will
14 aid you and assist you in evaluating the testimony of
15 the witnesses who will testify, you have the right to
16 consider.

17 And that means, Mr. Foreman, and that means,
18 ladies and gentlemen of the jury -- and this is
19 important -- that under your duty and under that oath
20 you took as jurors, you have to pay close attention
21 to the witnesses. You're going to have to listen to
22 the witnesses.

23 Don't let your thoughts wander, but give strict
24 attention to the testimony of the witnesses so that
25 at the conclusion of all the testimony, after the

OPENING REMARKS BY THE COURT

1 final arguments of the attorneys, and my charge to
2 you on the law, that I feel applies to this case
3 after we both hear the evidence for the first time in
4 the case, you will have put yourself in a position by
5 listening, by observing. You will have put yourself
6 in a position to determine what you believe the true
7 facts are, and thus render a true and a just verdict.

8 Now, I've told you, and I emphasize, do not
9 consider anything that you may have read or heard
10 about this case outside of this courtroom, whether
11 before or during this trial. And until I submit this
12 case to you, you don't discuss it with anyone, not
13 even your fellow jurors. And when I submit it to
14 you, only discuss it in your jury room with your
15 fellow jurors when I authorize you to commence your
16 deliberations at the conclusion of the case.

17 It is most important, ladies and gentlemen, that
18 each of you keep an open mind and not decide the case
19 until the entire matter has been submitted to you
20 under my instructions at the conclusion of the case.

21 It will be your added duty, Mr. Foreman, to
22 preside in the jury room, and you will be the jury
23 spokesperson out here in the courtroom should that
24 need arise. The foreperson speaks for the entire
25 jury.

OPENING REMARKS BY THE COURT

1 It will also be your duty to write the jury's
2 verdict, sign your name for the jury, and date it.
3 And Skyler will be handing you these indictments that
4 I pointed out to you, for whatever you write on my
5 verdict form, you'll write on the indictments, as I
6 told you yesterday. But I'll give you further
7 instruction about that in my charge to you on the law
8 at the conclusion of the case.

9 A couple of housekeeping matters and we're ready
10 to start. I told you yesterday, I'm used to
11 projecting my voice. You can tell that, you can
12 listen to me. You're not having any trouble, sir,
13 back there on the back row hearing me, are you?

14 JUROR: No.

15 THE COURT: Are you, ma'am? Can you hear me
16 just fine?

17 JUROR: Yes, sir.

18 THE COURT: Well, you're going to find, and I'm
19 going to have some witnesses get up here that haven't
20 testified before, that have a tendency to (mumbling).
21 And if you can't hear what they say, raise your hand.
22 I want my jury to be able to hear at all times.
23 Don't hesitate, let me know. I'll be watching you.
24 It's very important that you be able to hear.

25 If an exhibit is introduced into evidence, and

OPENING REMARKS BY THE COURT

1 the attorneys love to do this, they like to walk up,
2 give an exhibit, then they turn around and walk back
3 to their table and talk with their back to you. And
4 you may not be able to understand them. And they are
5 famous for taking my exhibits sometimes, and taking
6 them back to their table, and they get somehow mixed
7 up in their file.

8 If you can't see an exhibit or if you can't hear
9 an attorney or a witness, raise your hand. I want my
10 jury to be able to see and to hear at all times
11 throughout the trial of the case. So if you can't
12 see or if you can't hear, you raise your hand and let
13 me know. I'll correct that for you, ladies and
14 gentlemen.

15 Now, I'm going to ask you this frequently. I'm
16 going to ask you not to take notes. And you see I
17 got a pen in my hand, got a pad, but I don't like --
18 because I've found that if the written note taker on
19 the jury makes an error with the notes, the notes can
20 be harmful rather than helpful in your jury room once
21 deliberations begin.

22 If you worry about remembering, don't. Mona's
23 making an audio recording. She can play back any
24 witness' testimony if you need it. You don't have to
25 worry about notes for that. And that's not a video

OPENING REMARKS BY THE COURT

1 recording, it's an audio recording. So, please, I
2 ask you, do not take notes. The time-tested system
3 is for each of you on this jury is to listen and
4 listen carefully.

5 Now, we do not allow the jury normally,
6 Mr. Foreman, to ask questions in the courtroom. But
7 if at any time a member of the jury has a question,
8 here's the procedure we have to follow. If you're
9 not already in your jury room, all of you will retire
10 to the jury room. You will write the question on a
11 piece of paper, you'll knock on the jury room door,
12 give it to my bailiff, they'll bring it out to me. I
13 then have to rule as a matter of law whether or not
14 the question can or cannot be answered, just as I
15 would any question asked by either one of the
16 attorneys during the trial of the case. You
17 understand?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: All right. Now, please, no cell
20 phones or beepers, ladies and gentlemen, while you're
21 on jury duty. If you got one -- I love to tell this
22 story, because I didn't realize this until I got --
23 this is an iPhone for those of you -- I'm certainly
24 not savvy when it comes to this. I have some lawyers
25 who think they are. But anyway, I didn't know this.

OPENING REMARKS BY THE COURT

1 And it wasn't Skyler, although he would have very
2 much enjoyed this. It was a previous law clerk.

3 I've never turned this phone -- I've owned it
4 for a year and a half, never turned it on ring.
5 Ever. There's a switch over here, and if you know
6 anything about iPhones, you turn it on. I've never
7 turned it on once. But I didn't know that if you
8 plug it into an AC wall outlet, it automatically
9 switches to ring.

10 So I was charging it when I first got it. And I
11 had it in my office while I was in Colleton County in
12 my office, and I walked out on the Bench. I put the
13 phone in my pocket like I have right now, thought it
14 was turned off. And I start court, and the phone
15 goes off. Again, and I told you I'm deaf -- I shot a
16 shotgun all my life. That's the reason I have a
17 hearing problem. I said, "All right, who's got a
18 phone?" Because the Supreme Court has a rule about
19 that, I'm supposed to confiscate cell phones. Nobody
20 moved.

21 The phone rang a second time. I said, "All
22 right, if you don't turn your phone off, I'm going to
23 have to take it." And my law clerk grabbed my robe,
24 pulled on it, said, "Judge, that's your phone."

25 So I learned that you have to be careful with

OPENING REMARKS BY THE COURT

1 phones, ladies and gentlemen. So I ask you to please
2 do the same thing I'm doing. I checked my phone
3 before I walk out here to make sure it's turned off.
4 We don't take telephone calls, and I ask you not to
5 use a cell phone or a beeper while you're on jury
6 duty.

7 Now, I do not intend for what I've said, ladies
8 and gentlemen, to be construed by you -- we have
9 rules for everything we do, so you know. Believe me,
10 I'm going to enforce them. Attorneys know that.

11 We have a rule as to who goes first. I told
12 you, Solicitor's going to give the first opening
13 statement because she's got the burden of proof. She
14 goes first. We have rules on who argues first. We
15 have rules on who presents evidence first. We'll
16 start with opening statements, the State will present
17 its case, then the Defendant, if the Defendant so
18 desires, will present their case. Then we'll have
19 closing argument, then we'll have a charge on the
20 law.

21 We'll follow those rules in the courtroom. But
22 I don't intend that what I've said to you should be
23 construed by you as a charge on the law. Because I'm
24 just trying to familiarize you with the procedure
25 that we're going to follow so you'll be familiar with

OPENING REMARKS BY THE COURT

1 how we're going to proceed during the trial of this
2 case. This has been an attempt on my part to briefly
3 explain to you some of the procedure that we will
4 follow in trial of the case, so hopefully you will
5 have a better understanding of what may be happening
6 during the trial from time to time.

7 But nevertheless, in order to preserve
8 everyone's rights, I will give the attorneys an
9 opportunity to object to anything that I've just said
10 to you, if there are any such objections.

11 Any exceptions or objections from the State of
12 South Carolina?

13 MS. JONES: No, Your Honor.

14 THE COURT: From the Defendant?

15 MR. HUGHES: No, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury, we
17 will now begin the trial of the case.

18 Solicitor, you may proceed.

19 MS. JONES: Thank you, Your Honor. May it
20 please the Court.

21 THE COURT: Proceed.

22 OPENING STATEMENT BY MS. JONES

23 MS. JONES: Naijuwuan Chisolm is a man who goes
24 by many names: Nike, Naijuwuan, Nai. But today,
25 regardless of how meek and mild he may appear, the

OPENING STATEMENT BY THE STATE

1 one name that he deserves today is "Killer". Because
2 on June 9th of 2015, that is what he becomes when he
3 executes 23-year-old Sterling Jenkins.

4 He executes him in broad daylight. It's morning
5 time. He fires one shot into Sterling's head, and
6 without hesitation fires four more and ends
7 Sterling's short life.

8 The morning of June 9th, 2015, Sterling is at a
9 friend, Lucretia Jordan's house. You may hear
10 Sterling referred to as "Glenn" throughout this
11 trial.

12 Now, Glenn and Lucretia have eaten breakfast.
13 They're on her porch, and she has a one-year-old baby
14 boy, Torrance with her. Inside, just inside that
15 front door, just inside that porch, is her
16 seven-year-old stepson, playing video games. So,
17 Torrance, the baby, the one-year-old, starts to get
18 fussy, so Lucretia goes inside to give him a bath and
19 put him down for his nap.

20 She goes inside, she takes her baby. But little
21 does she know that outside her door a killer lurks.
22 And in a moment, Sterling's short life will be over.

23 The warm water starts to run, and Lucretia hears
24 the gunshots. She hears the gun and then (knocks)
25 five total gunshots. She tries to open the front

OPENING STATEMENT BY THE STATE

1 door, but she can't open the front door. She looks
2 out the window, and when she looks out the window,
3 she knows why she can't open the front door.
4 Because, slumped in her doorway, right at the
5 doorstep, in a pool of his own blood, lies Sterling.
6 He's taking his last breaths.

7 Across the parking lot a little ways, part of
8 the apartment complex in Hardeeville on Walsh Drive,
9 it's kind of a U-shaped apartment complex. But
10 across from Lucretia's doorstep is where a family
11 named the Houstons live. Barnesha Houston, she lives
12 there with her three-year-old and her six-month-old,
13 both baby girls. Her twin sister, Jesneisha, who
14 lives a couple doors down, is over at Barnesha's that
15 morning. Jesneisha has the kids outside. Barnesha
16 is inside. She steps in the doorway to talk to her
17 sister and the children. About that same time,
18 Jesneisha looks across the parking lot, she
19 recognizes somebody. It's Glenn, it's her friend.
20 She knows him. It's Sterling. She grabs her
21 three-year-old son's hand and starts to walk across
22 the parking lot. And from the parking lot and from
23 the front porch of Barnesha's apartment, the sisters
24 see the same thing. They see a man. He's peeking
25 around the corner of the apartment where Sterling is

OPENING STATEMENT BY THE STATE

1 sitting. He keeps watching, he keeps peeking, he
2 keeps looking at Sterling.

3 Then he starts jumping up and down in what
4 Barnesha describes, pumping himself up, pumping
5 himself up. It's odd to both sisters. They see it
6 from two different angles, so they keep watching him.
7 Barnesha doesn't know this man, she's never seen him
8 before, and she never sees his face that day.
9 Because the whole time his face is watching Sterling.
10 But she sees him. He's a short black male. And at
11 that time he had twists or dreads in his hair.

12 Well, Jesneisha is watching the same thing as
13 she's holding her three-year-old son, Tan. She knows
14 him. She knows the man who's jumping up and down.
15 She knows the man who's peeking around the corner.
16 She went to school with him. She knows him. It's
17 Nai. She knows him as Nai. As Naijuwuan Chisolm.

18 He seems -- something's is out of place, but she
19 keeps watching him. She starts walking closer to
20 Sterling, and Nai is still jumping up and down. And
21 now she's holding her three-year-old son, Tan. Nai
22 jumps around the corner, fires one shot into
23 Sterling. Jesneisha freezes.

24 She then watches as Naijuwuan, the Defendant,
25 that man, fires four more shots.

OPENING STATEMENT BY THE STATE

1 And then, as any coward would do, he runs. And
2 he continues to run for six days, until the U.S.
3 Marshals locate him hiding under a shed over in
4 Beaufort. Jesneisha runs over to her friend,
5 Sterling, she watches as he takes his last breath.
6 It's too late. Sterling is gone and so is his
7 killer.

8 911 is called and the police come. Jesneisha
9 and Barnesha tell them what they have just seen.
10 Barnesha describes him. He's short black male, he
11 has twists or dreads in his hair, but she never tells
12 his name. He's short. He's about as tall as the
13 satellite dish he was hiding behind. Jesneisha named
14 him, Naijuwuan Chisolm. She knows him.

15 From that moment on, the search for Naijuwuan
16 starts. Posters are put up. His family members are
17 talked to. He's nowhere to be found. And six days
18 later he's found hiding under that shed in Beaufort.

19 Now, this is not TV. This is real life. This
20 is not CSI. This is not a DNA case. This is not a
21 fingerprint case. Because, when you listen to those
22 sisters testify, you will hear the only thing that
23 man touched was the trigger of a gun that was never
24 found.

25 This is not a who done it. We know who did it.

OPENING STATEMENT BY THE STATE

1 Barnesha saw him, and Jesneisha gave him a name.

2 Naijuwuan Chisolm. Jesneisha knows him.

3 How do we know she knows him? And he knows her?

4 The Defendant knows her because two days before the

5 murder, he sends her a Facebook message with his

6 brand new cell phone number. A cell phone number

7 that law enforcement is able to get records for.

8 Records that prove that phone was at the murder

9 scene. Records that prove the Defendant owned that

10 phone. Records that prove he knows the police are

11 looking for him, and records that prove he is the

12 killer.

13 Now, throughout this trial, you're going to hear

14 from the police who responded, you're going to hear

15 from the paramedic who knew he couldn't help

16 Sterling. You're are going to hear from SLED agents

17 who processed the crime scene. And you're going to

18 hear from pathologists who will tell you that

19 Sterling suffers five gunshot wounds to the head.

20 You're also going to hear from Lucretia, from

21 Barnesha, from Jesneisha. And I ask that you go back

22 to June 9th, 2015 with them, go back to that hot

23 summer morning. Go back to the sights and sounds,

24 hear the water running as Lucretia prepares the bath

25 for her baby boy. Hear the sounds of the video games

OPENING STATEMENT BY THE STATE

1 that her seven-year-old stepson is playing just
2 inside the door of where Sterling is sitting.

3 Hear the sound of Jesneisha walking up with her
4 three-year-old son to Sterling. And hear the sounds
5 of the Defendant sneaking around the corner. Hear
6 the sounds of him running up and ambushing Sterling.
7 Hear the sounds of five gunshots wounds that took his
8 life. And then hear the sounds of his last breath.

9 And I'm confident that after you do, you will
10 know that the only one name suits Naijuwuan Chisolm,
11 and that is killer. And there's only one verdict
12 that he deserves, and is that is guilty.

13 THE COURT: Mr. Hughes.

14 MR. HUGHES: May it please the Court.

15 THE COURT: Proceed.

16 OPENING STATEMENT BY MR. HUGHES

17 MR. HUGHES: Solicitor. Good morning.

18 We met yesterday, I'm Bob Hughes. I'm the
19 Public Defender in Jasper County, and I represent
20 Naijuwuan Chisolm on the charge of murder and use of
21 a weapon during the commission of a violent crime.

22 The Solicitor just described a beautiful picture
23 that she's going to be painting. A very detailed
24 picture that she says she's going to be painting.
25 Right now, I want you to put in your mind what that

OPENING STATEMENT BY THE DEFENSE

1 painting must look like at the end of this because
2 she's going to be trying to paint it, but she doesn't
3 have the colors she described. She doesn't have the
4 fine brush that she described. She doesn't even have
5 much of the canvas that she described.

6 Trials, and this is a secret that -- don't tell
7 anybody -- can be boring. I know you don't believe
8 that. I mean, this is a murder trial. Murder trials
9 can't be boring.

10 Murder trials, at times, can be boring. This
11 trial is going to go after lunch. You're going to go
12 eat lunch, you're going to come back here, it's
13 comfortable in here, and those are comfortable
14 chairs. These people keep droning on and on and on
15 about stuff. Please, please, pay attention. Stay
16 awake. Don't let that large meal y'all had lull you
17 into letting your mind wander.

18 The Solicitor is right, there's no CSI. But
19 maybe there should have been. See, the Solicitor can
20 get up and say things, but it's the people right here
21 that have to say it. We try to make it, the trial,
22 go as fast as possible so you don't get bored. We
23 try to keep the interruptions as little as possible.

24 Now, I have a very, very, very bad habit.
25 While, I talk well enough to project my voice, I will

OPENING STATEMENT BY THE DEFENSE

1 more than often or not, walk around. It drives her
2 crazy. And sometimes I think she wants to throw
3 things at me. Make sure that you -- the Judge knows
4 that you didn't hear something I said.

5 There are going to be witnesses, like the Judge
6 said, who mumble (indicating). You have to have
7 every bit of information because if you don't have
8 every bit of information, you might just assume the
9 Solicitor has painted the picture that she described
10 instead of the one that she actually comes up with.

11 When this is over, I'm going to come back and
12 I'm going to talk to you again, and I'm going to go
13 through what the witnesses said.

14 Now, some of these witnesses I'm not even going
15 to ask questions of, because you're the finders of
16 fact. And if they've gotten up there and given you
17 all the facts that they have, then there's nothing
18 for me to do, and that hurries things along. Others
19 I'm going to ask questions of because they gave the
20 facts that they think the Solicitor wanted to hear,
21 but not all the facts. And to come up with the right
22 decision, you have to have all the facts.

23 I'm going to come back and I'm going to talk to
24 you, the Solicitor is going to talk to you, and when
25 this is over, we'll see if the picture the Solicitor

OPENING STATEMENT BY THE DEFENSE

1 promised she was going to paint looked anything like
2 what she's actually painted. Thank you.

3 THE COURT: Call your first witness.

4 MS. JONES: Thank you, Your Honor. The State
5 calls Rusty Wells.

6 **Thereupon,**

7 RUSSELL WELLS

8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:

10 THE COURT: Make yourself comfortable, Mr.
11 Wells. Pull that chair up, adjust that microphone,
12 it's going to amplify your voice. I need you to
13 speak up so everybody can hear you. State your full
14 name, spell your last name for the court reporter.

15 THE WITNESS: My name is Russell Wells. Last
16 name is spelled W-E-L-L-S.

17 THE COURT: Can everybody hear all right now?
18 (Jurors indicate.)

19 THE COURT: Your witness, Counsel. Direct
20 examination.

21 MS. JONES: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. JONES:

24 Q Where do you work?

25 A Jasper County Emergency Services.

DIRECT EXAMINATION OF WELLS BY JONES

1 Q And in what capacity do you work in emergency
2 services?

3 A Deputy director.

4 Q Okay. And as deputy director, what are some of
5 your duties?

6 A Oversee emergency 911 communications, fire, EMS,
7 emergencies.

8 Q And how long have you been in that capacity?

9 A About six years now.

10 Q Did you receive a request to pull 911 calls in
11 this case?

12 A We did.

13 Q And did you respond to that request?

14 A Yes, ma'am, we did.

15 Q And in response to that response -- in response
16 to that, did you provide the 911 calls to the State?

17 A Yes, ma'am, we did.

18 THE COURT: Is it marked?

19 MS. JONES: Permission to approach?

20 Yes, it's marked, Your Honor.

21 THE COURT: As what?

22 MS. JONES: State's Exhibit 1.

23 THE COURT: Would you offer it? Are you
24 offering it?

25 MS. JONES: Yes.

DIRECT EXAMINATION OF WELLS BY JONES

1 THE COURT: Is there objection?

2 MR. HUGHES: None whatsoever, Your Honor.

3 THE COURT: Ladies and gentlemen, State's
4 Exhibit Number 1 will be admitted into evidence in
5 the trial of this case, without objection.

6 *(Whereupon, State's Exhibit No(s). 1 marked for*
7 *identification and received in evidence.)*

8 THE COURT: You may now publish to the jury.

9 MS. JONES: Thank you, Your Honor.

10 BY MS. JONES:

11 Q And what I'm about to publish, is that the 911
12 call from this case?

13 A Yes, ma'am.

14 Q Okay. And is this your signature on this?

15 A It is.

16 Q Okay.

17 (Audio of the 911 call published.)

18 MS. JONES: I have no further questions for you.
19 Thank you.

20 THE COURT: Give this to the court reporter.

21 Let the record reflect that State's Exhibit
22 Number 1 is admitted, without objection. The court
23 reporter has the disc of the tape which has been
24 published to the jury.

25 Cross examination.

DIRECT EXAMINATION OF WELLS BY JONES

1 MR. HUGHES: No questions, Your Honor.

2 THE COURT: As to this witness, Solicitor, may
3 he be excused?

4 MS. JONES: Yes, Your Honor.

5 THE COURT: Any objection, Mr. Hughes?

6 MR. HUGHES: No, Your Honor.

7 THE COURT: Mr. Wells, you may step down and
8 you're excused from the trial of this case. You may
9 leave the courtroom.

10 Call your next witness.

11 MS. JONES: State calls Thomas Loving.

12 THE COURT: Come around, be sworn by the clerk,
13 please.

14 Thereupon,

15 THOMAS LOVING

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 THE COURT: Have a seat. Make yourself
19 comfortable in that chair. Pull it back. Now, I
20 want you to use that microphone. It's going to
21 amplify your voice. I need you to speak up so
22 everyone in the jury can hear you and parties can
23 hear you. Do you understand?

24 THE WITNESS: Yes, sir.

25 THE COURT: Speak up. State your full name,

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 spell your last name for the court reporter.

2 THE WITNESS: My name is Thomas H. Loving,
3 spelled L-O-V-I-N-G.

4 THE COURT: Your witness, Counsel.

5 MS. JONES: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. JONES:

8 Q Mr. Loving, where do you work these days?

9 A Right now, I'm working as a general support
10 manager at Wal-Mart, which is located in Bluffton.

11 Q What were you doing in June, June 9th of 2015?

12 A I was a patrol supervisor for the Hardeeville
13 Police Department.

14 Q And how long had you been with the police
15 department?

16 A I had been with the police department, at that
17 time, a little over -- getting close to nine years.

18 Q What are some of your duties and
19 responsibilities?

20 A My duty as a patrol supervisor was to patrol and
21 provide security for the residents in -- within
22 Hardeeville, and also to enforce traffic regulations and
23 things that were set forth by the city and also the state.

24 Q Were you working in that capacity on June 9th of
25 2015?

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 A Yes, ma'am.

2 Q And did you respond to an incident at [REDACTED] Walsh
3 Drive?

4 A Yes, ma'am.

5 Q And what town is that in, or city?

6 A If you don't mind, I'd like to go off my report
7 that I have, so I can be accurate.

8 Q Okay.

9 A That was approximately around about 10:58 in the
10 morning. I was patrolling the baseball field behind town
11 hall when I heard a call come out to one of the officers
12 that I work with, which was -- I think at that point, was
13 PFC Grant.

14 Q Okay. And is this in Hardeeville?

15 A Yes, ma'am.

16 Q And is Hardeeville is Jasper County?

17 A Hardeeville is located in Jasper County.

18 Q Thank you.

19 Now, to stop you for a second. You said
20 you were behind the baseball field and a call came out,
21 and then you responded?

22 A Yes, ma'am.

23 Q And you responded to Walsh Drive?

24 A Yes, ma'am.

25 MS. JONES: Your Honor, permission to approach

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 the witness?

2 THE COURT: You may.

3 BY MS. JONES:

4 Q Now, Mr. Loving, do you recognize this?

5 A Yes, ma'am.

6 Q And what is this a photo of?

7 A That is an apartment complex in Walsh Drive
8 apartments.

9 Q Does it appear to be altered in any way?

10 A No, ma'am, it doesn't.

11 Q And it's a fair and accurate depiction of the
12 Walsh Drive apartment complex?

13 A Yes, ma'am, as much as I can remember.

14 MS. JONES: Your Honor, at this time, State
15 moves State's 2 into evidence.

16 THE COURT: As to State's Exhibit 2?

17 MR. HUGHES: No objections, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury.

19 State's Exhibit Number 2 will be admitted into
20 evidence in the trial of this case without objection.
21 State's 2 in evidence.

22 *(Whereupon, State's Exhibit No(s). 2 marked for*
23 *identification and received in evidence.)*

24 THE COURT: You may publish, Solicitor.

25 MS. JONES: Thank you, Your Honor.

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 May I have the witness step down so I --

2 THE COURT: Do you have a portable microphone?

3 Hold on a second.

4 Now, ladies and gentlemen, if you can't hear a
5 witness when they step down away from the microphone,
6 we're going to use the portable mic, let me know.

7 All right. Mr. Loving, step out of the box, use
8 the mic, please, because your back will be to the
9 court reporter.

10 Mr. Hughes, you may come around outside the jury
11 box so you can view what the jury is seeing on behalf
12 of the Defendant.

13 BY MS. JONES:

14 Q Now, Mr. Loving, where did you enter the Walsh
15 Drive apartment complex?

16 THE COURT: You got to speak up, Solicitor. Go
17 ahead.

18 THE WITNESS: Yes, ma'am. I entered the roadway
19 that comes into -- off of Plantation Drive, turns up
20 into Walsh Drive, goes right along and enter when you
21 get to it. The entrance, when you get to it, it's
22 like a dead end. At the dead end, you make a right,
23 which take me right into Walsh Drive. At that
24 particular time, I came in, turned around in the
25 driveway, came in at Apartment Number ■. I wanted

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 to basically place my car so that I could have a
2 better look at the car and also at the apartment.

3 When I came into the apartment, which was
4 located here across the street, it was Deer Run
5 Apartments. On my entry into it, as a police
6 officer, we're trained to when we're coming up the
7 steps, observation on everything that basically
8 surround you. At that particular time, because there
9 was a shots fired call with injuries, that made me a
10 little bit more alert. I wasn't sure on what I would
11 eventually find.

12 I came through at that time. In my report I
13 stated that I passed -- observed a light green color
14 model car, and there was some young black males in
15 it, and also another champagne car which was speeding
16 out.

17 I turned into here, came around, came to a stop.
18 And when I stopped here, I observed a black male
19 which was laying -- you could see his torso, his main
20 body, laying in front of an apartment.

21 THE COURT: Speak up, please, Mr. Loving. Hold
22 the microphone a little closer to your mouth.

23 And, Solicitor, you need to speak up, too, for
24 the court reporter.

25 BY MS. JONES:

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 Q When you see the victim lying in front of ■■■,
2 did you observe anybody else there?

3 A Yes, ma'am. There were certain people that were
4 standing along the side, up in here, and also people that
5 were standing up in here. When I approached the
6 individual which was laying, side like in front of the
7 door, I seen them walk up to him. And when walking up, I
8 seen him like take his last breath. And at that
9 particular time, when I see him take his last breath, one
10 of my other officers arrived at that particular time,
11 which was PFC Ager. I then at that time told him to tape
12 off everything, because we wanted to preserve whatever was
13 going on at that particular time.

14 At that particular time, also PFC Grant also
15 showed up at the scene. I told him, I said, "hey, we need
16 to search to see if there were any rounds left, casings."
17 We proceeded to do so. And as I proceeded to look for the
18 rounds, my first thought was, "wow, officer safety."

19 Whatever happened here, I needed to know if
20 there was somebody that was still in the apartment building
21 that was going to bring harm to myself and to the officers
22 that would be arriving on the scene.

23 And prior to that, we also, in sequence, as
24 far as notifying EMS to let them know, hey, we need you
25 here, but that the area is also clear for them to come in

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 also.

2 At that particular time, I talked to the
3 resident of that apartment, which was Ms. Lucretia Jordan.
4 And I asked her, hey, did she mind if we checked her
5 apartment. She gave us permission to actually go into the
6 apartment to check and make sure whatever was going on,
7 whoever it was, was not there in the residence. We cleared
8 the residence at that particular time.

9 Q Did you speak with any other potential witnesses
10 that morning?

11 A Yes, ma'am. At that particular time, usually,
12 when you go into an environment like that, you have a lot
13 of people that stand back, kind of standoffish, and they
14 were saying certain things. I was basically trying to
15 make sure that the scene was clear and that basically we
16 were getting the information. We were getting who was
17 coming in out of the scene from the people we were talking
18 to, to make sure that everybody who comes in and out of
19 the scene we have a name. So that way, when investigators
20 arrive, it gives them an opportunity who they could
21 actually talk to.

22 Q And were investigators called?

23 A Yes, ma'am. I notified dispatch and asked to
24 dispatch not only investigators, but also chief of police,
25 EMS, and things of that nature that I thought I was going

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 to need on that particular day.

2 Q All right. Did you speak with -- you spoke with
3 Ms. Jordan here, did you speak with anybody else in any of
4 the other apartments?

5 A Yes, ma'am. In the process of trying to block
6 everything off and get everything done, it was pretty
7 hectic. I had another person in which lived in this
8 apartment. Looking at it, like you're coming around,
9 there is an apartment that sits right there -- here. And
10 Ms. Houston lived in that apartment. She came up to --

11 THE COURT: Speak up, please. I know it's
12 difficult, but you got your back to the court
13 reporter.

14 THE WITNESS: Okay, sir.

15 Ms. Jesneisha Houston came out, but we was
16 trying to figure out -- I didn't know who the
17 gentleman was, or anything of that nature. At that
18 point, I wanted to know who he was that was actually
19 laying there, how old approximately he was, and
20 things of that nature. Just basic information. I
21 was doing an investigation, and I felt that the
22 investigator was going to want to know from me the
23 who, what, where, when, and how.

24 So in doing so, that's when Ms. Jesneisha
25 Houston approached me and asked me, "hey, Sergeant, I need

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 to talk to you."

2 So in the process of her telling me she needs
3 to talk to me, I instructed her to go back to her apartment,
4 wait until the investigators would show, and I gave them her
5 name, which I don't know if they talked to her or not.

6 BY MS. JONES:

7 Q Okay. And after that -- you can go back up.

8 A (Witness complies.)

9 Q Thank you, Mr. Loving.

10 And after that, did you remain on scene
11 until it was cleared?

12 A Yes. And when I arrived on scene, once the
13 investigator get there, my chief came, the news and
14 everybody else that showed, and the chief asked me was
15 there anything that he needed to do, could he be of
16 assistance to me.

17 At that particular time, I seen the news, so
18 I told him, "yes, you can handle the media for me. Keep
19 them out of my crime scene." So that's what he did, he
20 ended up doing.

21 And he kept coming back and forth asking me
22 if I needed anything.

23 Q But that concluded your involvement at the
24 scene?

25 A Yes, ma'am. That concluded my involvement.

DIRECT EXAMINATION OF THOMAS LOVING BY THE STATE.

1 MS. JONES: Thank you very much. No further
2 questions.

3 THE COURT: Cross examination.

4 MR. HUGHES: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. HUGHES:

7 Q You left the ballpark, going to the scene?

8 A Yes, sir.

9 Q Blue lights on?

10 A Yes, sir.

11 Q You were in a patrol car?

12 A Yes, sir.

13 Q Have a dash cam?

14 A Yes, sir. But at that time, I don't think my
15 dash camera was working at that particular time. We were
16 having problems with them.

17 Q Did you have a vest cam?

18 A I can't remember if I had it on or not, sir.

19 Q Okay. But you went to a crime scene and you had
20 a vest cam on, or you don't know if it was cut on, or you
21 were wearing it?

22 A I don't think I had it turned on, sir. Usually
23 I turn it on when I get out.

24 Q And you said you met two cars coming out of
25 Walsh Drive?

CROSS EXAMINATION OF THOMAS LOVING BY THE DEFENSE

1 A Yes, sir. I met two cars that was coming out.
2 And the older car was light green, I think, and the other
3 one was like a champagne-gold color. I couldn't make out
4 who the people were that was driving, but that that's me
5 trying to pick up my bits and pieces on the way, if they
6 asked me what I had to say.

7 Q And how did you describe the champagne car as
8 driving?

9 A If you don't mind, I'd like to go back to my
10 notes.

11 Q No problem, sir.

12 A The one was a light green color, older model
13 car, and the champagne colored car speeding across the
14 street, headed to Deer Run. Like I say, Deer Run
15 Apartments was directly across as you come out, as you go
16 into that apartment.

17 Q But the word I believe you used was "speeding"?

18 A What I mean by speeding, sir, is they were
19 coming out a little bit faster than I would take it.

20 Q Okay. The word you used was speeding, that's
21 the word you wrote down?

22 A Yes, sir.

23 Q Back on --

24 A On June the 9th.

25 Q How many people were around the apartment when

CROSS EXAMINATION OF THOMAS LOVING BY THE DEFENSE

1 you got there?

2 A I think maybe -- and I don't want to exaggerate,
3 sir, because I'd say everything was -- you had a lot of
4 people that was standing across the street from me, and I
5 think maybe one or two that I observed that was actually
6 standing kept coming back up to the apartment when I was
7 there.

8 Q And you heard them talking, but you really
9 didn't hear what they were saying?

10 A No, sir. I -- by me -- I served in Jasper
11 County nine years, and I was a school resource officer.
12 And kept hearing people walking back and forth when I
13 drove up. Tell Sergeant who it is, you know, who did it.
14 You know, they were like this, this, and this and this,
15 but it was like my concentration wasn't on what was going
16 on at that time. It was basically on me trying to get to
17 the scene and trying to work it that way, so they could
18 come in.

19 Q The vest cam that you had on, did it have a
20 microphone, and would it have picked up voices?

21 A Yes, sir, it should have. And I'm not sure --
22 like I said, most of a lot of things that were going on at
23 that particular time. My officers were arriving, which
24 was -- I know probably PFC Grant and Ager had come on,
25 because I did call and ask if their car had a camera in

CROSS EXAMINATION OF THOMAS LOVING BY THE DEFENSE

1 it.

2 MR. HUGHES: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MS. JONES: No redirect, Your Honor.

5 THE COURT: As to this witness?

6 MS. JONES: He may be excused.

7 THE COURT: May he be excused?

8 MS. JONES: Yes, Your Honor.

9 THE COURT: Any objection, Mr. Hughes?

10 MR. HUGHES: No, Your Honor.

11 THE COURT: Mr. Loving, you may step down from
12 the witness stand and you are excused from the trial
13 of this case.

14 WITNESS: Thank you, sir.

15 THE COURT: Thank you.

16 Call your next witness.

17 MS. JONES: The State calls Officer Ager.

18 THE COURT: Come around, be sworn by the clerk,
19 please.

20 Thereupon,

21 AARON AGER

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Make yourself comfortable. Adjust
25 the microphone, it's to amplify your voice. State

DIRECT EXAMINATION OF AARON AGER BY THE STATE.

1 your full name, spell your last name for the court
2 reporter.

3 THE WITNESS: Aaron Ager, A-G-E-R.

4 THE COURT: Your witness, Counsel.

5 MS. JONES: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. JONES:

8 Q Officer Ager, where do you work?

9 A Hardeeville Police Department.

10 Q And in what capacity do you work for the police
11 department?

12 A Patrol officer.

13 Q And how long have you been at Hardeeville PD?

14 A A little over two years.

15 Q So you were working at Hardeeville PD on
16 June 9th of 2015?

17 A I was.

18 Q And in what capacity were you working?

19 A Patrol officer still.

20 Q What were some of your duties as a patrol
21 officer?

22 A Community policing, patrolling areas.

23 Q And were you working in that capacity on
24 June 9th of 2015?

25 A I was.

DIRECT EXAMINATION OF AARON AGER BY THE STATE.

1 Q And did you respond to a call at [REDACTED] Walsh
2 Drive?

3 A I did.

4 Q And what was that in reference to?

5 A It came on as shots fired coupled with injuries.

6 Q All right. And you responded?

7 A I did.

8 Q And when you respond, what do you observe?

9 A I pulled up on the scene, and at the time the
10 first officer on the scene was Sergeant Loving. He was
11 talking to several individuals on scene already at that
12 time. I observed a black male lying in a pool of blood,
13 and at that time I set up a crime scene.

14 Q Did you speak with any witnesses or potential
15 witnesses?

16 A I did.

17 Q Who did you speak with?

18 A I believe her name was Barnesha Houston.

19 Q Okay. Thank you.

20 Were you able to get statements from
21 anybody else?

22 A I did receive a statement from her, from there.
23 No statements from anybody else.

24 Q And why is that?

25 A No one else wanted to cooperate.

DIRECT EXAMINATION OF AARON AGER BY THE STATE.

1 Q Okay. You've been working in law enforcement
2 for a little over two years now?

3 A In Hardeeville. A little over five all
4 together.

5 Q Okay. A little over five all together. Are
6 you -- do you know what the term "12" means in reference
7 to law enforcement?

8 A I do.

9 Q And what is that?

10 A It's a street or slang term for a police
11 officer.

12 Q Okay.

13 MS. JONES: I have no further questions for you.
14 Thank you.

15 THE COURT: Cross examination.

16 MR. HUGHES: Thank you.

17 CROSS EXAMINATION

18 BY MR. HUGHES:

19 Q Hello, Officer Ager. You were first -- second
20 on scene?

21 A Yes.

22 Q Blue lights, siren when you drove up?

23 A Yes, sir.

24 Q Dash cam on?

25 A I believe at that time I was in a Crown Vic. I

CROSS EXAMINATION OF AARON AGER BY THE DEFENSE

1 don't believe it had one.

2 Q In uniform?

3 A Yes.

4 Q Body cam?

5 A I believe so.

6 Q Was it on?

7 A Yes.

8 Q Okay. So when you said you set up the crime
9 scene, that means you took the tape around and moved
10 people back?

11 A Put the tape around, yes. The next officer
12 actually moved everybody else back.

13 Q I'm sorry?

14 A The next officer moved everyone else out,
15 because they were talking to me. Some of them.

16 Q And you had your vest camera on when you talked
17 to the person that gave the statement?

18 A I believe so.

19 MR. HUGHES: No further questions, Your Honor.

20 MS. JONES: No redirect, Your Honor.

21 THE COURT: As to the witness, Counsel?

22 MS. JONES: He may be excused.

23 THE COURT: Any objection?

24 MR. HUGHES: None, Your Honor.

25 THE COURT: All right. Mr. Ager, you may step

CROSS EXAMINATION OF AARON AGER BY THE DEFENSE

1 down. You're excused from the trial of this case.

2 You may leave the courtroom.

3 Call your next witness.

4 MS. JONES: State calls Jason Ronberg.

5 THE COURT: Good morning, Mr. Ronberg.

6 THE WITNESS: Good morning.

7 THE COURT: Be sworn by the clerk.

8 Thereupon,

9 JASON RONBERG

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 THE COURT: Bring that chair up, adjust it to
13 the mic. Then pull that microphone, it's going to
14 amplify your voice. I need you to speak up so
15 everybody on the jury can hear and parties can hear,
16 court reporter can hear.

17 State your full name, spell your last name for
18 the court reporter.

19 THE WITNESS: Jason Russell Ronberg.

20 R-O-N-B-E-R-G.

21 THE COURT: Your witness, Counsel. Direct
22 examination.

23 MS. JONES: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. JONES:

DIRECT EXAMINATION OF J. RONBERG BY JONES

1 Q Where do you work?

2 A Jasper County fire and rescue.

3 Q And what capacity do you work in fire and
4 rescue?

5 A Firefighter, paramedic.

6 Q Okay. Jasper County fire and rescue, do you
7 only respond to cases in Jasper County?

8 A Unless it's mutilated (sic) out to other
9 counties. But, yes.

10 Q Okay. Did you respond to [REDACTED] Walsh Drive at
11 Hardeeville --

12 A Yes.

13 Q -- on June 9th, 2015?

14 A Yes, ma'am.

15 Q And was that a Jasper County case?

16 A Yes, ma'am.

17 Q Thank you.

18 You said you're a paramedic. What are some
19 of your -- your training experience to become a paramedic?

20 A Advanced cardiac life support. Use of
21 medications to sustain life and/or resuscitate, CPR,
22 advanced airway procedures, I.V., things like that.

23 Q How long had been in fire and rescue?

24 A Fire and rescue, I've been there for two and a
25 half years. I've been doing this job since 2006.

DIRECT EXAMINATION OF J. RONBERG BY JONES

1 Q Okay. You've been a paramedic since 2006?

2 A Since 2009.

3 Q Since 2009. Great. Okay.

4 And were you working in your capacity with
5 fire and rescue on June 9th of 2015?

6 A Yes, ma'am.

7 Q And you had an opportunity to respond to [REDACTED]
8 Walsh Drive in Hardeeville?

9 A Yes, ma'am.

10 Q Why did you respond to that location?

11 A We were dispatched for a GSW.

12 Q What is "GSW"?

13 A I'm sorry. Gunshot wound.

14 Q Okay. And when you -- do you go to [REDACTED] Walsh
15 Drive?

16 A Yes, ma'am.

17 Q And when you get there, what do you observe?

18 A On that the specific call or --

19 Q Yes. When you respond for this particular
20 call --

21 A Okay. It was -- the PD was already on scene,
22 police department was already on scene. They already had
23 it taped off with crime scene tape, and they allowed one
24 medic to go in and assess the patient at that time, which
25 was myself.

DIRECT EXAMINATION OF J. RONBERG BY JONES

1 Q Okay. Were you able to -- did you learn the
2 identity of the patient?

3 A Not until later.

4 Q Okay. What was his name?

5 A His first name was Sterling. I can't remember
6 the last name.

7 Q Okay. When you get there, what do you attempt
8 to do with this patient?

9 A Basically --

10 THE COURT: Just a moment. You got to speak up
11 a little bit, Solicitor, for us. You're looking
12 down. You got to speak up. I want my jury to be
13 able to hear your questions.

14 Now, repeat your question and speak up for me.

15 BY MS. JONES:

16 Q When you respond to the victim, what is the
17 first thing you do?

18 A Assess to see if he was breathing and/or
19 conscious.

20 Q Is he breathing or conscious?

21 A He was not at the time.

22 Q Okay. What do you observe with this victim?

23 A This victim, he had about a liter of brain
24 matter and blood already coagulated. He was laying down,
25 non-responsive, not breathing. Single entrance gunshot

DIRECT EXAMINATION OF J. RONBERG BY JONES

1 wound to the right temple.

2 Q Did you attempt any life saving procedures?

3 A There was no -- there was no reason to attempt
4 any life saving procedures. That was a traumatic injury
5 to the brain that would not sustain life.

6 Q Okay. Was Mr. Sterling Jenkins ultimately
7 pronounced dead?

8 A Yes, ma'am.

9 Q In Jasper County?

10 A Yes, ma'am.

11 Q After that, does that -- do you leave; is that
12 it?

13 A We turned over the scene to the PD and the
14 coroner, and after that, our job was done. There was
15 nothing we could have done to preserve his life.

16 MS. JONES: I have no further questions for you.
17 Thank you.

18 THE COURT: Cross examination.

19 MR. HUGHES: Thank you.

20 CROSS EXAMINATION

21 BY MR. HUGHES:

22 Q Just a few quick questions. How far are you --
23 were you from the scene when you got the call?

24 A We were at Hardeeville Station 82, and -- off
25 Argent Boulevard. It's about a ten-minute response time.

CROSS EXAMINATION OF RONBERG BY HUGHES

1 We were the secondary truck for that area. The primary
2 truck for that area, which is about two miles away from
3 the scene, was on a different call.

4 Q Okay. And it took you about ten minutes to get
5 there?

6 A Yes, sir. Ten, 11 minutes.

7 Q And based upon what you described, I'm going to
8 assume that y'all could have driven 55 miles an hour and
9 the results would have been exactly the same?

10 A Yes, sir.

11 MR. HUGHES: No further questions, Your Honor.

12 MS. JONES: No redirect, Your Honor, and this
13 witness may be excused.

14 THE COURT: Any objection?

15 MR. HUGHES: No objection, Your Honor.

16 THE COURT: Mr. Ronberg, you may step down and
17 you're excused from the trial of this case. You may
18 leave the courtroom.

19 Call your next witness.

20 MS. JONES: The State calls Natasha Aiken.

21 Thereupon,

22 NATASHA AIKEN

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 THE COURT: Make yourself comfortable, pull that

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 microphone up to you.

2 State your full name, spell your last for the
3 court reporter.

4 THE WITNESS: My full name is Natasha Christine
5 Aiken. Last name's spelled A-I-K-E-N.

6 THE COURT: Your witness, Counsel. Speak up.
7 I'm going to get you a microphone if you're going to
8 stay there, Counsel.

9 MS. JONES: I will speak up, Your Honor. Thank
10 you.

11 THE COURT: Speak up.

12 DIRECT EXAMINATION

13 BY MS. JONES:

14 Q Ms. Aiken, what are you doing these days? Are
15 you employed?

16 A No, ma'am. I'm no longer employed. I am
17 completing my degree.

18 Q Okay. Your degree in what?

19 A Criminal justice.

20 Q Okay. And June of 2015, were you working?

21 A At Hardeeville Police Department.

22 Q And in what capacity were you working at
23 Hardeeville Police Department?

24 A As an investigator.

25 Q What were some of your duties as an

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 investigator?

2 A I investigated major crimes. I investigated
3 most of all the cases that we had at Hardeeville Police
4 Department at the time.

5 Q How many investigators did Hardeeville have at
6 the time?

7 A Just myself, and there was a supervisor that
8 also investigated cases as needed.

9 Q Did you have to have some sort of specialized
10 training to become an investigator?

11 A Yes, ma'am.

12 Q And what did that entail?

13 A I completed basic detective and a couple of
14 other classes at the South Carolina Criminal Justice
15 Academy.

16 Q Okay. As a member of law enforcement, do y'all
17 have to have continued education?

18 A Yes, ma'am, we do.

19 Q And did you keep up with that?

20 A Yes, I did.

21 Q In June of 2015, how many years had you been in
22 law enforcement total?

23 A June of 2015, almost ten years.

24 Q Okay.

25 A A little over ten years. I'm sorry. Over ten

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 years.

2 Q All right. Thank you.

3 Were you at another agency before
4 Hardeeville?

5 A Yes, ma'am.

6 Q And what agency was that?

7 A Denmark Police Department.

8 Q What did you do there?

9 A I worked as a patrol officer, worked as an SRO
10 and an investigator.

11 Q Okay. At Hardeeville PD, what positions did you
12 have?

13 A I worked at patrol, school resource officer,
14 sergeant, and investigator.

15 Q Okay. Were you working in your capacity as an
16 investigator on June 9th of 2015?

17 A Yes, ma'am, I was.

18 Q And were you called to respond to a shots fired
19 call?

20 A Yes, I was.

21 Q Can you tell us where you responded and what
22 time you got there?

23 A I responded to [REDACTED] Walsh Drive. I received a
24 call for this incident at 1105 from Sergeant Loving.

25 Q And where were you?

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A I was on Parris Island investigating a case. So
2 it took some time. And when I arrived on scene, it was a
3 little -- it was at 1206 when I arrived on scene.

4 Q Okay. At that time, do you know who the victim
5 is?

6 A Yes, he had already been identified. I got that
7 information from Sergeant Loving.

8 Q Who was the victim?

9 A Sterling Jenkins.

10 Q Okay. Do y'all have a name of a suspect at this
11 time?

12 A The name that he gave was the Defendant.

13 Q And what name was that?

14 A Naijuwuan Chisolm.

15 Q Okay. When you're on the scene, do you speak to
16 some potential witnesses?

17 A Yes, I do.

18 Q Who do you speak with?

19 A I spoke with Erica Lewis, Barnesha Houston, and
20 Jesneisha Houston.

21 Q Okay. Did you speak with somebody else at [REDACTED]
22 Walsh Drive?

23 A Lucretia Jordan. Sorry.

24 Q Okay. When you're speaking with Jesneisha
25 Houston, do you have the opportunity to present something

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 to her?

2 A Yes. We initially interviewed Jesneisha Houston
3 and then when we spoke with her she stated that she would
4 be able to ID who the suspect was. And we presented her
5 with a line-up approximately five hours later.

6 She was presented a photo identification
7 affidavit from SLED, and she was read the statements on the
8 identification form. She initialed to state that she
9 understood each statement, and she was presented the line --
10 when she was presented the line-up, she immediately picked
11 out the -- the number four -- person number four on the
12 six-pack of pictures, which was the actual suspect.

13 Q Okay. And that person's name is?

14 A Naijuwuan Chisolm.

15 Q When you are --

16 MS. JONES: Your Honor, permission to approach
17 the witness?

18 THE COURT: You may.

19 MS. JONES: Thank you, Your Honor.

20 BY MS. JONES:

21 Q Ms. Aiken, I'm going to show you what has been
22 marked for identification only as State's 3, 4, and 5.
23 Can you identify those for the Court, please?

24 A Number 3 is SLED's affidavit of photograph
25 identification. Number 4 is the front page of the

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 six-pack photo line-up sent from SLED. And Number 5 is
2 the back of the photo line-up from SLED that has a
3 statement that I wrote on the back -- "Jesneisha Houston
4 was presented photo line-up six-pack, picked out Number 4
5 as the suspect at 1600 hours."

6 Q Okay. Who is with you when you're presenting
7 these items to Ms. Houston?

8 A SLED Agent Barfield.

9 Q And is your -- did you mark on those forms in
10 any way?

11 A On the affidavit from SLED?

12 THE COURT: Refer to the exhibit number.

13 THE WITNESS: I'm sorry. Exhibit No. 3, I
14 witnessed that form.

15 BY MS. JONES:

16 Q Okay. And do you recognize four and five as
17 being true copies of the photo line-up and the backside of
18 the photo line-up?

19 A Yes, ma'am.

20 Q Do they appear to be altered in any way?

21 A No.

22 Q And they're fair and accurate depictions of the
23 line-up you showed that morning --

24 A Yes, ma'am.

25 Q -- to Jesneisha?

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A Yes.

2 MS. JONES: Permission to publish to the -- at
3 this time, the State moves State's 3, 4, and 5 --

4 THE COURT: As to State's Exhibits 3, 4, and 5?

5 MR. HUGHES: No objection.

6 THE COURT: Ladies and gentlemen of the jury,
7 State's Exhibits 3, 4, and 5 will be admitted into
8 evidence in the trial of this case without objection.
9 Three, four, and five in evidence.

10 *(Whereupon, State's Exhibit No(s). 3-5 marked*
11 *for identification and received in evidence.)*

12 THE COURT: You may publish to the jury,
13 Solicitor.

14 MS. JONES: Thank you, Your Honor.

15 BY MS. JONES:

16 Q Ms. Aiken, on the affidavit, what does it say?

17 A The affidavit states --

18 THE COURT: Slow down for me when you read it.

19 THE WITNESS: Yes, sir.

20 "I have been asked to view a set of photographs.
21 I understand it is just as important to clear
22 innocent persons from suspicion as to identify guilty
23 parties. I understand that individuals depicted in
24 line-up photos may not appear exactly as they did on
25 the date of the incident because features such as

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 head and facial hair are subject to change. I
2 understand that the person who committed the crime
3 may or may not be in the set of photographs being
4 presented. I understand that regardless of whether
5 identification is made, the police will continue to
6 investigate the incident. I understand that I shall
7 state in my own words how certain I am of the
8 identification."

9 BY MS. JONES:

10 Q And does Ms. Houston appear to understand all of
11 those statements?

12 A Yes, ma'am, she does.

13 Q Does she indicate she understands in any way?

14 A Yes. She initialed her first and last initials
15 to the left of each statement.

16 Q At the time you're presenting this to her, do
17 you coerce her into signing this form?

18 A No, ma'am.

19 Q Do you trick her into identifying a picture?

20 A No.

21 Q Do you suggest a photo to her?

22 A No, ma'am.

23 Q Do you demand that she pick a photo out of the
24 six-pack photo line-up?

25 A No, ma'am.

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 Q She did it on her own freewill?

2 A Yes.

3 Q How quickly did she pick out a photo?

4 A Immediately.

5 Q Immediately. And how positive was she?

6 A A hundred percent positive.

7 Q And is that indicated on that form?

8 A Yes, it is.

9 Q Okay. I'm going to direct your attention to the
10 television.

11 Can you see, Ms. Aiken?

12 THE COURT: Can everybody in the jury see the
13 screen? If you can't, let me know.

14 Speak up, Solicitor.

15 BY MS. JONES:

16 Q Is this the photo line-up?

17 A Yes, ma'am, it is.

18 Q State's 4?

19 A Yes, ma'am, it is.

20 Q This is the exact photo line-up you showed to
21 Ms. Houston?

22 A Yes, ma'am.

23 Q And what number did she identify as the shooter?

24 A Number 4.

25 Q This individual right here?

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A Yes, ma'am.

2 Q And what is this person's name?

3 A That person's name is Naijuwuan Chisolm.

4 Q Okay. Did you know Naijuwuan Chisolm?

5 A Yes, ma'am. I'm familiar with Naijuwuan.

6 Q Do you know any other names he goes by?

7 A Nai, Nike, and Naiji.

8 Q Do you see this man in the courtroom today?

9 A Yes, ma'am, I do.

10 Q Can you please point him out?

11 A (Witness complies.)

12 MS. JONES: May the record reflect the witness
13 pointed to the Defendant?

14 THE COURT: Proceed.

15 MS. JONES: Thank you, Your Honor.

16 BY MS. JONES:

17 Q After speaking with these witnesses, you're
18 given a name, but are you also given a description?

19 A Yes, ma'am.

20 Q Okay. When you get that description, as a
21 result, do you instruct the SLED agent to do something in
22 particular?

23 A Yes, I do. The description given was that the
24 person appeared to be -- the person appeared to be as tall
25 as satellite dish in the -- on the left side of the

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 building, where the victim was shot at. And spoke with
2 agent -- Special SLED Agent Tallon and asked him to
3 measure the satellite dish.

4 Q Ms. Aiken, I'm going to show you what's been
5 marked as State's 8.

6 MS. JONES: Permission to approach the witness?

7 THE COURT: You may.

8 MS. JONES: Thank you, Your Honor.

9 BY MS. JONES:

10 Q Do you recognize that picture?

11 A Yes, ma'am, I do.

12 Q What is that a picture of?

13 A This is the picture of [REDACTED] Walsh Drive.

14 Q Okay. Is that a fair and accurate depiction of
15 [REDACTED] Walsh Drive?

16 A Yes, ma'am, it is.

17 Q Does it appear to be altered in any way?

18 A No, ma'am, it doesn't.

19 MS. JONES: At this time, State moves State's 8
20 into evidence.

21 THE COURT: As to the State's 8.

22 MR. HUGHES: No objection.

23 THE COURT: Ladies and gentlemen of the jury,
24 State's Exhibit Number 8 will be admitted into
25 evidence in the trial of this case, without

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 objection.

2 *(Whereupon, State's Exhibit No(s). 8 marked for*
3 *identification and received in evidence.)*

4 THE COURT: You may publish to the jury.

5 MS. JONES: Thank you, Your Honor.

6 BY MS. JONES:

7 Q Ms. Aiken, is this the photo you're looking at?

8 A Yes, ma'am.

9 THE COURT: It is?

10 THE WITNESS: Yes, yes.

11 BY MS. JONES:

12 Q Is the satellite dish you were referencing in
13 this photograph?

14 A Yes, ma'am, it is.

15 Q Which one is it?

16 A It's that one.

17 Q This darker one?

18 A Yes, ma'am.

19 Q Okay. And you were told to measure it because
20 the suspect was as tall as the satellite dish?

21 A Yes, ma'am.

22 Q Do you know how tall that satellite dish
23 measured?

24 A It measured out to be five-one.

25 Q Five-one.

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A Yes, ma'am.

2 Q How tall is Naijuwuan Chisolm?

3 A Five-two.

4 MS. JONES: Permission to approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MS. JONES:

8 Q After you leave the crime scene, what do you do?

9 A Go back to the police department and work on a
10 letter of preservation for -- I received a number for -- a
11 possible number for the suspect and went back to police
12 department to work on a letter of preservation for his
13 cell phone and a search warrant for his cell phone.

14 Q Why do you have to do a letter of preservation?

15 A To preserve the data that's contained within the
16 phone. Most cell phone companies, within a certain amount
17 of time, they get rid of that data. It's time sensitive.
18 So we have to send a letter of preservation to preserve
19 that data.

20 Q What was the phone number that you got the
21 letter of preservation and search warrant for?

22 A The phone number was [REDACTED]-8048.

23 Q Okay. Thank you.

24 When did you get arrest warrant for
25 Naijuwuan Chisolm?

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A On that same -- that afternoon. That day.

2 Q The day of the murder?

3 A Yes, ma'am.

4 Q Did you find him that day?

5 A No, ma'am, we did not find him that day.

6 Q Did you find him the next day?

7 A No, ma'am, we didn't find him the next day.

8 Q What measures did you take in trying to find
9 Naijuwuan?

10 A There were posters put up. There were news --
11 press releases done. There were -- his picture was put on
12 news media. There were posters put up in Hardeeville at
13 convenient stores. There were posters put up in Walsh
14 Drive. Spoke to a number of people attempting to locate
15 Mr. Chisolm and was unable to find him.

16 I spoke directly with -- went to Bluffton,
17 and spoke with his aunt. I spoke with his father. I met
18 with his sister. I went to his uncle's house. I spoke with
19 his grandmother. In all, we never found him.

20 Q Did you tell these people you were looking for
21 him?

22 A Yes, ma'am.

23 Q And why you were looking for him?

24 A Yes, ma'am.

25 Q When is he arrested?

DIRECT EXAMINATION OF NATASHA AIKEN BY THE STATE.

1 A He's arrested on June -- June 15th.

2 Q And where is he arrested?

3 A In Beaufort, by the U.S. Marshals.

4 Q Okay. Did you ask the U.S. Marshals to help
5 locate him?

6 A Yes, I did. Asked for assistance.

7 Q And they ultimately found him six days later?

8 A Yes, ma'am.

9 MS. JONES: Ms. Aiken, I have no further
10 questions for you at this time. Thank you.

11 THE WITNESS: Yes.

12 THE COURT: Cross examination.

13 MR. HUGHES: Thank you.

14 CROSS EXAMINATION

15 BY MR. HUGHES:

16 Q Good morning.

17 A Good morning.

18 Q Would you mind putting Number 4 back up for this
19 one?

20 THE COURT: What exhibit number?

21 MR. HUGHES: Exhibit Number 4.

22 THE COURT: State's Exhibit 4.

23 MR. HUGHES: State's Exhibit Number 4.

24 THE COURT: Make sure, Mona, you've got them,
25 don't you?

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 Hold up four.

2 BY MR. HUGHES:

3 Q Can you see the screen?

4 THE COURT: Mona, hand the exhibit to the
5 witness, if you would, please.

6 BY MR. HUGHES:

7 Q Now, how long were you an officer in
8 Hardeeville?

9 A Almost nine years.

10 Q So you know the people of Hardeeville?

11 A Yes. Not all of them.

12 Q And -- but you recognize most of them?

13 A Yes.

14 Q Okay. And who's Number 1?

15 A I'm not sure who Number 1 is.

16 Q Had you ever seen him before?

17 A I can't say that.

18 Q You don't recognize him?

19 A No.

20 Q Who's Number 2?

21 A Not sure who Number 2 is either.

22 Q Don't recognize him?

23 A No.

24 Q Number 3?

25 A I don't recognize Number 3 either.

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 Q Number 5?

2 A I don't recognize Number 5.

3 Q And is Number 6?

4 A I don't recognize Number 6.

5 Q Matter of fact, one, two, three, five, and six
6 were created -- these pictures came from SLED, and those
7 could be -- those are people from somewhere in South
8 Carolina; correct? That's how SLED does it?

9 A I don't know how they generate the photographs.
10 SLED does their own photo line-up.

11 Q Okay. But basically, you contact -- you had
12 SLED create this, correct?

13 A No, I didn't have SLED create this. I think it
14 was Agent Barfield that had them create this photo
15 line-up.

16 Q So, Agent Barfield has a name, Naijuwuan
17 Chisolm. He puts a picture of Naijuwuan Chisolm with five
18 people that a person who was in -- in Hardeeville for nine
19 years doesn't recognize. The only person on that picture
20 that you recognize is the person that was already named,
21 correct? The person --

22 A Can you repeat the question?

23 Q Okay. I'm sorry. That was kind of convoluted.
24 I understand.

25 The only person on that six-pack that you

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 recognize was the person whose name y'all already had,
2 correct?

3 A Yes.

4 Q So, you could have just shown her a picture of
5 Naijuwuan Chisolm and said, "Is this the person?" Because
6 that's --

7 A No, I wouldn't have done that.

8 Q Okay. But that's basically what you did.

9 A No. I was given -- this came -- this was
10 generated from SLED, state law enforcement.

11 Q How many other people did you show this six-pack
12 to?

13 A That was the only one.

14 Q Did anybody else identify Naijuwuan Chisolm?

15 A There was no one else that actually said that it
16 was him except for that one witness.

17 Q Did y'all go back to Walsh Drive and ask if this
18 was the person? Did y'all show the picture to Walsh Drive
19 and say, "Look, is this the person?"

20 A No.

21 Q So, you were the lead investigator, correct?

22 A Yes, sir.

23 Q And now, I know the Solicitor is going to be
24 bringing this out even more, but was there any forensic
25 evidence recovered at Walsh Drive or in Beaufort that ties

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 Naijuwuan to this case?

2 MS. JONES: Your Honor, objection.

3 THE COURT: Counsel approach.

4 (Off-the-record discussion held.)

5 THE COURT: Objection is sustained in part and
6 overruled in part.

7 Mr. Hughes, you will comply with my ruling in
8 asking the question. Rephrase your question in
9 compliance with my ruling.

10 MR. HUGHES: Thank you. Thank you, Your Honor.

11 BY MR. HUGHES:

12 Q As lead investigator on this case, do you know
13 of any fingerprints recovered at the crime scene?

14 A No, sir.

15 Q Do you know of any DNA recovered at the crime
16 scene?

17 A No, sir.

18 Q Do you know of any gunshot residue test that was
19 created based upon this crime scene?

20 A No, sir.

21 Q Now, when you interviewed the sole witness in
22 this, was the interview recorded?

23 A Yes, sir, it was.

24 Q Audio, or audio and video?

25 A Audio.

CROSS EXAMINATION OF N. AIKEN BY HUGHES

1 Q Why didn't you go back to Walsh Drive to ask
2 more questions?

3 A Because she positively identified him as being
4 the suspect.

5 Q You had one witness amongst a crowd identify
6 him, and that was what you went with, correct?

7 A I went with the witness stating that she
8 positively identified Mr. Chisolm as the shooter.

9 MR. HUGHES: No further questions, Your Honor.

10 THE COURT: Redirect.

11 MS. JONES: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. JONES:

14 Q Ms. Aiken, how many people saw the shooter's
15 face that day?

16 A How many people saw the shooter's face?

17 Q That gave you a statement?

18 A There were three people that gave me a statement
19 that saw the shooter. I can't say that they saw -- there
20 was one person that saw -- actually saw the shooter's
21 face.

22 Q One person saw his face.

23 A Yes, ma'am.

24 Q And who was that person?

25 A Jesneisha Houston.

REDIRECT EXAMINATION OF N. AIKEN BY JONES

1 Q And that's the person you showed the photo
2 line-up to?

3 A Yes, ma'am.

4 Q And the photo line-up contained six young black
5 males with similar complexion and hair?

6 A Yes, ma'am.

7 Q Okay. She only points to one person, correct?

8 A Yes, ma'am.

9 Q What did these witnesses report that Naijuwan
10 Chisolm touched before he shot Sterling?

11 A I don't recall.

12 Q Did they report he touched anything?

13 A No.

14 Q He ran up and shot him?

15 A Yes.

16 MS. JONES: Your Honor, permission to approach?

17 THE COURT: Counsel approach.

18 (Off-the-record discussion held.)

19 MS. JONES: Beg the Court's indulgence.

20 Actually, Your Honor, the State has no further
21 questions for this witness at this time.

22 THE COURT: Recross limited to redirect.

23 MR. HUGHES: Nothing, Your Honor.

24 THE COURT: Is she going to remain with us?

25 MS. JONES: Yes, Your Honor.

REDIRECT EXAMINATION OF N. AIKEN BY JONES

1 THE COURT: Now, inside the courtroom in light
2 of my ruling?

3 MS. JONES: I don't think -- I don't plan on
4 recalling this witness.

5 THE COURT: Counsel approach.

6 (Off-the-record discussion held.)

7 THE COURT: Any objection to this witness being
8 excused, from the State?

9 MS. JONES: No, Your Honor.

10 THE COURT: From the Defendant?

11 MR. HUGHES: No, Your Honor.

12 THE COURT: Very well. Ms. Aiken, you are
13 excused from the trial of the case. You may leave
14 the courtroom. Thank you very much.

15 Call your next witness.

16 MS. JONES: State calls Trey Tallon.

17 Thereupon,

18 JAMES TALLON

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE COURT: Mr. Tallon, if you'd come around and
22 by sworn by the Clerk of Court, please.

23 WITNESS: Yes, sir.

24 THE COURT: Good morning.

25 THE WITNESS: Good morning, sir.

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 THE COURT: Speak up for me. Make yourself
2 comfortable. Pull that microphone down to you and
3 adjust it. It's going to amplify your voice. Adjust
4 the chair to your comfort. State your full name,
5 spell your last name for the court reporter.

6 THE WITNESS: James Tallon, T-A-L-L-O-N.

7 THE COURT: Speak up for me, Mr. Tallon, so my
8 jurors at the end and everybody can hear you.

9 Counsel, your witness. Direct examination.
10 Please speak up.

11 MS. JONES: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. JONES:

14 Q Agent Tallon, where do you work?

15 A The South Carolina Law Enforcement Division,
16 commonly known as SLED.

17 Q In what capacity do you work with SLED?

18 A I'm a crime scene agent.

19 Q And what does that entail?

20 A Basically it entails responding to crime scenes
21 throughout the entire state of South of Carolina, whether
22 it be homicides or suicides, officer involved shootings,
23 several different kinds to assist other agencies with the
24 investigation of their scenes.

25 Q How long have you been a crime scene analyst

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 with SLED?

2 A Crime -- three years with SLED.

3 Q Prior to that, did you receive some specialized
4 training and education?

5 A Yes, ma'am. I responded -- or went to the South
6 Carolina Criminal Justice Academy in 2009. I did five
7 years with the City of Sumter Police Department on patrol.
8 Worked my way up to detective, did crime scene there for
9 about three and a half of those years. And all the while,
10 I was going to several different schools taking different
11 classes in forensics.

12 Q On June 9th of 2015, were you working as a crime
13 scene agent with SLED?

14 A Yes, ma'am, I was.

15 Q Okay. As a crime scene agent do you -- what is
16 your goal when you report to a crime scene?

17 A To document the scene as we found it, and to
18 collect as much evidence as we find probative.

19 Q Okay. You said "probative," but at the time,
20 you don't necessarily know, right?

21 A That is correct. It's just based on what the
22 scene tells us when we get there as to what may or may not
23 be relevant.

24 Q Right. So you collect and photograph whatever
25 you can?

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 A That is correct.

2 Q Okay. Sometimes it's evidence, sometimes it's
3 irrelevant?

4 A Correct.

5 Q Did you respond to a scene in Hardeeville on
6 June 9th?

7 A Yes, ma'am, I did.

8 Q And where was that?

9 THE WITNESS: May I refer to my notes, sir?

10 THE COURT: You may.

11 THE WITNESS: It was [REDACTED] Walsh Drive.

12 BY MS. JONES:

13 Q Is that here in Jasper County?

14 A Yes, ma'am, I believe so. In Hardeeville.

15 Q Okay. Thank you.

16 What time do you get there?

17 A We arrived approximately at 2 o'clock in the
18 afternoon.

19 Q What was the delay?

20 A We have to -- in crime scene, we're all
21 stationed in Columbia, so we have to respond from Columbia
22 to anywhere in the state of South Carolina. So we have to
23 drive the interstates, just like everybody else.

24 Q Okay. When you get to Walsh Drive, what do you
25 observe? What do you see?

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 A When I arrived on scene, the scene was secured
2 by Hardeeville Police Department officers with yellow
3 barrier tape, the crime scene tape you'd see wrapped
4 around the scene. The victim had been covered with a
5 sheet. And initially we saw two bicycles in the immediate
6 area, and the victim was underneath a porch-like area of
7 an apartment complex.

8 Q You mention the bicycles. Do you -- did you
9 later learn who those belonged to?

10 A We did. The first bicycle, which was the -- it
11 was a -- I believe it was a blue bicycle, yes, ma'am. It
12 was a blue bicycle, it was closest to the scene. That one
13 was later determined to be of someone who stopped to try
14 to help the victim. And then the red bicycle that was out
15 in the middle of the driveway, that was later determined
16 to be some child's at the apartment complex.

17 Q Okay. So not belonging to the Defendant?

18 A No, ma'am, it was not.

19 Q What is the first thing you do when you get to
20 the crime scene?

21 A The first thing we do when we get to the crime
22 scene is get out and speak with the local agents, anyone
23 of our own, our own field agents to determine what we know
24 so far to kind of try to help us determine what we need to
25 do next.

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 But after we get our main information, we're
2 going to start with the photograph, and we're going to
3 photograph as much as possible.

4 Q Okay. Did you take photographs in this case?

5 A I did not. But Special Agent Brittany Burke,
6 who was working alongside of me, took the photograph.

7 Q But you're familiar with how the scene looked
8 that day?

9 A Yes, ma'am.

10 MS. JONES: Your Honor, permission to approach?

11 THE COURT: You may.

12 BY MS. JONES:

13 Q Agent Tallon, I'm showing you what has been
14 marked State's 6, 7, 9, and 10. Can you identify those?

15 A Yes, ma'am. These are all photographs of the
16 scene area.

17 Q And are those fair and accurate depictions of
18 the scene that day?

19 A Yes, ma'am.

20 Q They don't appear to be altered in any way?

21 A No, ma'am.

22 MS. JONES: Your Honor, at this time, State
23 moves six, seven, nine, and ten into evidence.

24 MR. HUGHES: Without objection.

25 THE COURT: Ladies and gentlemen of the jury,

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 State's Exhibits 6, 7, 9, and 10 will be admitted
2 into evidence in the trial of this case, without
3 objection.

4 *(Whereupon, State's Exhibit No(s). 6-7, 9-10*
5 *marked for identification and received in evidence.)*

6 THE COURT: You may now publish to the jury.

7 MS. JONES: Thank you, Your Honor.

8 THE COURT: Please refer to the exhibit number
9 for the record.

10 MS. JONES: State's 6.

11 THE COURT: Just a moment. Let Mr. Hughes go
12 around outside the jury box so he can view what the
13 jury is seeing.

14 What exhibit number is on the screen, Counsel?

15 MS. JONES: This is State's Exhibit 6.

16 THE COURT: Ask the question.

17 BY MS. JONES:

18 Q Agent Tallon, what does this photograph show?

19 A This photograph is showing more of a -- this is
20 from the south, photograph heading north. It is a
21 photograph showing the red bicycle that was later
22 determined to be someone in the apartment complex's. And
23 also, if you kind of look between the mailbox area -- you
24 see the mailbox? There you go. Thank you.

25 And that Chevy right there? In between

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 there, there's the blue bicycle that was also located. And
2 then between the light pole and the mailbox, that is where
3 the victim was located.

4 Q Okay. And both of these bicycles had nothing to
5 do with the murder. You said one was a child's, and one
6 was somebody's who tried to help?

7 A Correct. That is what was told to me. That is
8 correct.

9 Q State's 7. What does this picture show?

10 A This is showing basically the same direction,
11 just a little closer to the scene. The victim is going to
12 be to the right of the scene, correct, and then that blue
13 bicycle on the sidewalk, that's going to be the other one.

14 Q What is this right on the corner of that
15 building?

16 A That is a satellite dish, I think, you're
17 pointing at?

18 Q Yes.

19 A Yes, ma'am. That was a satellite dish.

20 Q Were you asked to measure that satellite dish?

21 A Yes, ma'am, I was.

22 Q And how tall was it?

23 A It was 5 feet, 1 inch.

24 Q Thank you.

25 State's 9?

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 A It's going to be --

2 THE COURT: State's 9.

3 THE WITNESS: Oh, sorry.

4 THE COURT: Speak up, Counsel.

5 THE WITNESS: That's going to be the satellite
6 dish on the right. That one right there, closest to
7 the residence, where the victim lay to the right.

8 BY MS. JONES:

9 Q Okay. And this is Mr. Jenkins, the victim?

10 A Yes, ma'am.

11 Q Okay. And State's 10?

12 A This is a photograph of the front of the
13 residence.

14 Q Okay. And that shows that this was [REDACTED] Walsh
15 Drive?

16 A Correct.

17 Q Okay. After leaving this crime scene -- well,
18 I'm going to backtrack a second.

19 At this crime scene, did you recover some
20 evidence?

21 A Yes, ma'am, I did.

22 Q Okay. And did you recover any bullet fragments?

23 A Yes, ma'am, we did.

24 Q Did you recover those from the scene as well as
25 someplace else?

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 A Yes, ma'am. They were collected also at
2 autopsy.

3 Q Okay. And did you attend that autopsy?

4 A Yes, ma'am, I did.

5 Q When was that?

6 A That was on the 10th, which would have been the
7 day after.

8 Q And where was that?

9 A That was at MUSC in Charleston, Medical
10 University of South Carolina.

11 MS. JONES: Permission to approach?

12 THE COURT: You may.

13 BY MS. JONES:

14 Q Agent Tallon, I'm going to show you what has
15 been marked as State's 11. Inside State's 11 is 11-A, B,
16 C, and D. Can you please identify that.

17 A The package itself is a package that I placed
18 the evidence into and sealed at the top with the date and
19 my initials. And then filled out the front with our item
20 numbers, which is different from the State's item numbers.

21 Then inside of this package are the items
22 that I collected from autopsy, also with my initials on
23 them.

24 Q And what are those items?

25 A There's different types of items, but there are

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 projectiles and some fragments.

2 Q When you say "projectiles" and "fragments," what
3 do you mean?

4 A Bullets, in simple term. Just a bullet.

5 Q Okay. And what number -- that was State's 11-D?

6 A That is correct. That's 11-D.

7 Q Okay.

8 A Eleven-C are some more fragments from the victim
9 that were collected at autopsy. That was 11-C. 11-B is
10 also another fragment.

11 Q Okay.

12 A And the same for 11-A, that is also fragments.

13 Q And you collected those from the scene -- from
14 the crime scene or from autopsy?

15 A That is correct.

16 MS. JONES: Your Honor, at this time, State
17 moves State's 11, 11-A, 11-B, 11-C, and 11-D into
18 evidence.

19 MR. HUGHES: No objection.

20 THE COURT: Just so the record's clear. Is it
21 11-A, B, C, and D, or 11 and 11-A, B, C, and D. So
22 there are five exhibits rather than four?

23 MS. JONES: Correct. There's 11 and 11-A.

24 THE COURT: Without objection, Mr. Hughes?

25 MR. HUGHES: No objection.

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 THE COURT: State's Exhibits 11, 11-A, 11-B,
2 11-C, and 11-D will be admitted into evidence in the
3 trial of this case without objection.

4 *(Whereupon, State's Exhibit No(s). 11, 11A-11D*
5 *marked for identification and received in evidence.)*

6 THE COURT: You may publish to the jury if you
7 so desire.

8 MS. JONES: Your Honor, permission to approach
9 the witness?

10 THE COURT: You may.

11 BY MS. JONES:

12 Q Agent Tallon, you collected some other items
13 from the crime scene as well, didn't you?

14 A Yes, ma'am, we did.

15 Q And what was that?

16 A We collected two cigarette butts, a Swisher
17 Sweets wrapper, it's a cigar wrapper, a grape soda can, a
18 red-in-color grill lighter, a black-in-color hair pick.
19 And we took two swabs for touch DNA from the bicycle that
20 was in the roadway, the red bicycle.

21 Q Which turned out to belong to a child not
22 involved?

23 A Correct. So that was not sent to be processed.
24 And we also took two swabs from the plastic chair.

25 Q The items -- those items you collected, are they

DIRECT EXAMINATION OF JAMES TALLON BY JONES.

1 collected from the immediate crime scene or the
2 surroundings?

3 A From the surrounding area. I would still call
4 it the immediate crime scene, it was within the tape, but
5 within that immediate area.

6 Q But as we saw in the photographs, the tape
7 contained a rather -- a pretty large area?

8 A Correct.

9 Q Okay. To your knowledge, did those items have
10 any value to this case?

11 A I did not process them, so I'm not sure what
12 evidence was obtained from them.

13 Q But, again, you collect anything and everything?

14 A Correct. I collect anything that could possibly
15 lead us to suspect.

16 MS. JONES: I have no further questions. Thank
17 you.

18 THE COURT: Cross examination.

19 MR. HUGHES: Thank you.

20 CROSS EXAMINATION

21 BY MR. HUGHES:

22 Q How many shell casings did you recover?

23 A We did not collect any, sir.

24 Q Were any turned over to SLED by other law
25 enforcement?

CROSS EXAMINATION OF TALLON BY HUGHES

1 A Not that I am aware of. It wouldn't come
2 through me.

3 MR. HUGHES: No further questions, Your Honor.

4 THE COURT: Redirect.

5 MS. JONES: Thank you, Your Honor.

6

7 REDIRECT EXAMINATION

8 BY MS. JONES:

9 Q Do all guns project a case?

10 A No, they do not.

11 MR. HUGHES: Your Honor.

12 THE COURT: Just a moment. Is there an
13 objection?

14 MR. HUGHES: Yes, sir.

15 THE COURT: Counsel approach.

16 (Off-the-record discussion held.)

17 THE COURT: Objection overruled.

18 BY MS. JONES:

19 Q Thank you, Agent Tallon.

20 Do all guns produce a shell casing?

21 A They do not. Not all guns eject shell casings,
22 that is correct.

23 Q What kind of gun does not eject a shell casing?

24 A That would be a revolver.

25 MS. JONES: Thank you. No further questions.

REDIRECT EXAMINATION OF TALLON BY JONES

1 THE COURT: Recross limited to redirect.

2 MR. HUGHES: Nothing, Your Honor.

3 THE COURT: As to this witness, Solicitor?

4 MS. JONES: He may be excused.

5 THE COURT: Any objection, Mr. Hughes?

6 MR. HUGHES: No, sir.

7 THE COURT: Mr. Tallon, you may step down from
8 the witness stand. And you are excused from the
9 trial of the case, but leave my exhibits with me.
10 Just take your box.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Thank you very much.

13 Mr. Foreperson, and ladies and gentlemen of the
14 jury, we're going to take our mid-morning break at
15 this time and let you stretch your legs, use the
16 restroom. Please do not discuss the case. I'll be
17 back with you in just a few moments.

18 You may retire to your jury room.

19 (Jury exits the courtroom at 11:40 a.m.)

20 (Brief recess.)

21 THE COURT: All right. On the record. State
22 ready to proceed?

23 MS. JONES: Yes, Your Honor.

24 THE COURT: Defendant ready to proceed?

25 MR. HUGHES: Yes, Your Honor.

REDIRECT EXAMINATION OF TALLON BY JONES

1 THE COURT: It's just before noon. We're going
2 to work until 1 o'clock. We stop at 1 o'clock until
3 2:30 for lunch, so the jury can leave today for
4 lunch.

5 Margaret will have lunch served at 1 o'clock
6 tomorrow up here in the courtroom. Be mindful of
7 that, so I would prefer not having the jury eat cold
8 food tomorrow. Today we let them go out.

9 Do you understand?

10 With that, would you bring us the jury, please,
11 ma'am.

12 (Jury enters the courtroom.)

13 THE COURT: Mr. Foreman, ladies and gentlemen of
14 the jury, we'll now continue with testimony in the
15 trial of this case.

16 Solicitor, you may call your next witness.

17 MS. JONES: Thank you, Your Honor. State calls
18 Lucretia Jordan.

19 Thereupon,

20 LUCRETIA JORDAN

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 THE COURT: Have a seat for me, make yourself
24 comfortable in that chair. Pull the chair up to the
25 microphone, adjust the microphone to your height.

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 That microphone is going to amplify your voice.

2 State your full name and spell your last name
3 for the court reporter, please.

4 THE WITNESS: Lucretia Jordan, J-O-R-D-A-N.

5 THE COURT: Ms. Jordan, pull that microphone
6 down a little bit to your height. Speak into it --
7 speak up, ma'am, so everybody can hear you. Okay?

8 THE WITNESS: Okay.

9 THE COURT: Your witness, Counsel. Direct
10 examination.

11 MS. JONES: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. JONES:

14 Q Ms. Jordan, is it okay if I call you Lucretia?

15 A That's fine.

16 Q That's what you go by?

17 A Yes.

18 Q Okay. Lucretia, where are you from?

19 A Hardeeville.

20 Q And how old are you?

21 A Twenty-six.

22 Q Have you lived in this area your whole life?

23 A Correct.

24 Q Where do you live now?

25 A In Beaufort.

DIRECT EXAMINATION OF L. JORDAN BY JONES.

- 1 Q Okay. Where do you work?
- 2 A At McDonald's.
- 3 Q In Beaufort?
- 4 A Yes.
- 5 Q Back on June 9th of 2015, where did you live?
- 6 A On Walsh Drive.
- 7 Q What was your address?
- 8 A [REDACTED].
- 9 Q Okay. And that's -- where is that?
- 10 A Walsh Drive in Hardeeville.
- 11 Q Okay. In Jasper County?
- 12 A Yes, ma'am.
- 13 Q Who were you living at Walsh Drive with?
- 14 A Me and my kids.
- 15 Q And how old were they?
- 16 A My son was one.
- 17 Q Okay. On the morning of June 9th, was anybody
- 18 else there?
- 19 A On my porch, or inside my house?
- 20 Q Inside your house.
- 21 A My sister.
- 22 Q Okay. Anybody else?
- 23 A And my stepson.
- 24 Q How old was he?
- 25 A Nine now.

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 Q He's nine now. So how old was he?

2 A He was eight.

3 Q Do you know Naijuwuan Chisolm?

4 A Yes.

5 Q How do you know him?

6 A I grew up with him.

7 Q Okay. Did you see him on the morning of
8 June 9th?

9 A Walking around, yes.

10 Q What time do you think you saw him?

11 A Around 7 or 8.

12 Q In the morning?

13 A Yes.

14 Q What would you describe Naijuwuan Chisolm as
15 looking like?

16 A A regular person.

17 Q Short? Tall?

18 A He's short.

19 Q How about his hair back in 2015?

20 A I don't remember.

21 Q Okay. Do you see him today in the courtroom?

22 A Yes.

23 Q Can you please point him out?

24 A I don't have my glasses on, I really can't see
25 far.

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 Q Okay. Can you see -- I mean, do you see him
2 today?

3 A Yes.

4 Q Okay. Can you tell what he's wearing?

5 A Black.

6 Q Okay.

7 MS. JONES: May the record reflect that

8 Ms. Jordan did point out Naijuwuan Chisolm.

9 THE COURT: Proceed.

10 BY MS. JONES:

11 Q And that's the man you saw walking around on
12 Walsh Drive around 7 or 8 that morning?

13 A Yes.

14 Q Okay. You didn't see him again that day,
15 though, did you?

16 A No, ma'am.

17 Q That morning, about 10 o'clock, what are you
18 doing?

19 A We was on the porch.

20 Q Who was on the porch with you?

21 A It was me, Slim, and Slick. And my sister and
22 my baby.

23 Q Who is Slim?

24 A That's my friend. My home boy.

25 Q Okay. Do you know his real name?

DIRECT EXAMINATION OF L. JORDAN BY JONES.

- 1 A Sterling.
- 2 Q Sterling?
- 3 A Yes.
- 4 Q And who is Slick?
- 5 A Frank Carter.
- 6 Q Okay. They're on your porch?
- 7 A Yes.
- 8 Q And what are y'all doing?
- 9 A We chilling like normal. I cooked breakfast
- 10 that morning.
- 11 Q Okay. Do you eat breakfast that morning?
- 12 A Yes, ma'am.
- 13 Q Where do you eat breakfast?
- 14 A Well, that morning, that particular morning, we
- 15 sat at my house, but we sat on the front porch normal and
- 16 just chilling and talking.
- 17 Q Who was on the porch with you eating breakfast?
- 18 A Me and Slim and Slick.
- 19 Q Okay. Does Slick stay very long?
- 20 A After he got his food, he left out.
- 21 Q Do you know where he went?
- 22 A I want to say Deer Run.
- 23 Q Okay. So after Slick leaves, who's on the porch
- 24 with you?
- 25 A Me, Slim, my sister, and my baby.

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 Q Okay. And how old was your baby?

2 A One.

3 Q What happened on the porch?

4 A We was just chilling and talking. My baby got
5 fussy. I told Slim that I'm going in the house and give
6 him a wash and a nap. I put him in -- when we walked in
7 the house, he asked for my lighter before I went in. I
8 gave him my lighter so he could light a cigarette. I went
9 inside the house and turned the water on and I heard a
10 gunshot.

11 Q When you left, who was on the porch with Slim?

12 A Just him.

13 Q He had your lighter?

14 A Correct. It was a blue Torch.

15 Q Okay. How many gunshots did you hear?

16 A I want to say three to five.

17 Q You knew they were gunshots?

18 A Yes.

19 Q After you hear -- were they fast, or were they
20 delayed?

21 A It was like -- boom, boom, boom. Like a crazy
22 sound. Like I can't even like say how it was.

23 Q Was there a window in your bathroom?

24 A No, ma'am.

25 Q So you couldn't see what was happening?

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 A No, ma'am.

2 Q Do you eventually go find a window?

3 A After I heard -- after I thought it was over, I
4 went to my door.

5 Q And what did you do at your door?

6 A I opened my door, and I looked down and that's
7 when I seen Slim was down.

8 Q At that time, do you -- can you tell that Slim
9 has already been shot?

10 A Yes, because he was on the ground with blood
11 coming out his mouth.

12 Q Okay. And when You see that, what do you do?

13 A I immediately call 911.

14 Q Okay. Do you stay inside your apartment?

15 A I got my kids in and went out the back door when
16 I got off the phone with 911.

17 Q Why did you go out the back door?

18 A Because the front door, where his body was, I
19 couldn't move the door.

20 Q Where was your stepson when this shooting
21 happened?

22 A In his room watching TV.

23 Q And is that close to the front door?

24 A Yes, ma'am.

25 Q How close?

DIRECT EXAMINATION OF L. JORDAN BY JONES.

1 A Close.

2 Q Does the front door open into the living room?

3 A Yes, ma'am.

4 Q One more question, Lucretia. Do you know what
5 the term "12" means?

6 A Police.

7 Q It means "police," as far as you know?

8 A Um-hmm. (Indicating affirmatively.)

9 Q Okay.

10 THE COURT: You got to say "yes" or "no."

11 THE WITNESS: Yes, sir. Yes, ma'am.

12 BY MS. JONES:

13 Q Thank you, Lucretia.

14 A You're welcome.

15 MS. JONES: I have no further questions for this
16 witness, Your Honor.

17 THE COURT: Cross examination.

18 MR. HUGHES: Thank you.

19 CROSS EXAMINATION

20 BY MR. HUGHES:

21 Q You called 911?

22 A Yes, sir.

23 Q Did you talk with them?

24 A Yes.

25 Q How long did you talk with them?

CROSS EXAMINATION OF L. JORDAN BY HUGHES

1 A I'm not sure.

2 Q Did you --

3 MR. HUGHES: Beg the Court's indulgence.

4 Could I see Number 1, please.

5 BY MR. HUGHES:

6 Q Were you still talking to them when the police
7 got there?

8 A Talking to?

9 Q 911.

10 A No. I already got off the phone with them once
11 they was coming.

12 MR. HUGHES: No further questions, Your Honor.

13 THE COURT: Redirect.

14 MS. JONES: No redirect, Your Honor.

15 THE COURT: As to the witness.

16 MS. JONES: She may be excused.

17 THE COURT: Any objection, Mr. Hughes?

18 MR. HUGHES: None whatsoever.

19 THE COURT: Ma'am, you may step down from the
20 witness stand. You are excused from the trial of
21 this case.

22 Call your next witness.

23 MS. JONES: State calls Barnesha Houston.

24 Thereupon,

25 BARNESHA HOUSTON

CROSS EXAMINATION OF L. JORDAN BY HUGHES

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 THE COURT: Good afternoon.

4 THE WITNESS: Good afternoon.

5 THE COURT: I need you to speak up. I need you
6 to pull that microphone down so it's adjusted to your
7 height. Speak into the microphone, speak up so
8 everybody can hear you. State your full name and
9 spell your last name for the court reporter.

10 THE WITNESS: Okay. My name is Barnesha
11 Houston. And spell my last name?

12 THE COURT: Spell your last name.

13 THE WITNESS: H-O-U-S-T-O-N.

14 THE COURT: Slow down just a little bit now.
15 Okay?

16 All right. Your witness, Counsel.

17 MS. JONES: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. JONES:

20 Q Ms. Houston, can I call you Barnesha?

21 A Yes.

22 Q Thank you. How old are you?

23 A Twenty-three.

24 Q And where do you live?

25 A In Walsh Drive.

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 Q How long have you lived at Walsh Drive?

2 A For about two, three years.

3 Q Were you living at Walsh Drive on June 9th,
4 2015?

5 A Yes.

6 Q Who did you live with?

7 A Just me and my two daughters and my boyfriend.

8 Q How old were your daughters on June 9th, 2015?

9 A I think Hermonie was about three, and Miller was
10 probably about one or nine months or so.

11 Q Okay. A baby?

12 A Yeah, she was a baby.

13 Q Okay. Do you work, Ms. Houston?

14 A Yes, I do.

15 Q Where do you work?

16 A I work at Wal-Mart.

17 Q Do you do anything else?

18 A Yes. Work at the daycare center as well.

19 Q Are you in school?

20 A Yes.

21 Q What school are you in?

22 A Technical College of the LowCountry.

23 Q What address -- what was your apartment number
24 on Walsh Drive?

25 A [REDACTED].

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 MS. JONES: Permission to approach the witness?

2 THE COURT: You may.

3 MS. JONES: Permission for the witness to step
4 down, Your Honor?

5 THE COURT: Give her a microphone.

6 Ma'am, you're going to have your back to the
7 court reporter, so it's real important that you speak
8 up. All right?

9 WITNESS: Okay.

10 THE COURT: Now, hold the microphone up when you
11 speak.

12 THE WITNESS: Okay.

13 BY MS. JONES:

14 Q Barnesha, do you recognize this neighborhood?

15 A Yes, ma'am.

16 Q And what is this?

17 A Walsh Drive.

18 Q And is that where you were living on June 9th,
19 2015?

20 A Yes, ma'am.

21 Q And do you know which one of these apartments
22 was your home?

23 A (Indicating.)

24 Q That one right there?

25 A Yes, ma'am.

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 Q Okay. And what number is that?

2 A [REDACTED].

3 Q Okay.

4 THE COURT: Step back a little bit so the jury
5 can see, too.

6 BY MS. JONES:

7 Q What are you doing when you're at this
8 apartment?

9 A Well, me and my family was sitting on the porch.
10 Just sitting on the porch, just, I guess, lying back and
11 talking.

12 Q Okay. Who is on the porch with you?

13 A Me, my boyfriend. My daughters was playing in
14 the yard, like right in front of --

15 Q Can you point where they were playing?

16 A Like right here in the triangle.

17 Q Okay.

18 A And my oldest sister was right there and my son.

19 Q What's your oldest sister's name?

20 A Erica Lewis.

21 Q And where is she?

22 A She lives somewhere in North Carolina.

23 Q Today, she lives in North Carolina?

24 A Um-hmm. (Indicating affirmatively).

25 Q Okay. And what's your twin sister's name?

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 A Jesneisha Houston.

2 Q Okay. And she lived here?

3 A Um-hmm. (Indicating affirmatively.)

4 Q Okay. You're on the porch, and does something
5 catch your eye?

6 A Yes.

7 Q What?

8 A A guy standing on the side of the building.

9 Q Now, what building is he standing on the side
10 of?

11 A He's standing right here (indicating).

12 Q Okay. And you are at this porch right here
13 (indicating)?

14 A Yes.

15 Q Okay. And your children are here (indicating).

16 A Um-hmm. (Indicating affirmatively.)

17 Q Okay. You can take a seat.

18 A (Witness complies.)

19 Q What do you see this man doing?

20 A He's just standing there peeking around the
21 corner.

22 Q Okay. When you say "peeking," what is he
23 peeking at?

24 A Sterling.

25 Q Is there anybody else around?

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 A No.

2 Q What did this man look like?

3 A He was short. He was black. He had short
4 dreads. About the height of the satellite dish.

5 Q Okay. The satellite dish that was on the side
6 of the building?

7 A Yes.

8 Q Was he -- where was he standing in relation to
9 that satellite dish?

10 A Close up on the side of the building.

11 Q Okay.

12 MS. JONES: Permission to grab a picture from
13 the court reporter?

14 THE COURT: You want to approach?

15 MS. JONES: Yes, to get a piece of evidence,
16 Your Honor.

17 Permission to approach the witness?

18 THE COURT: You may.

19 BY MS. JONES:

20 Q Barnesha, I'm going to show you what's been
21 already admitted as State's Exhibit 9. Do you recognize
22 that?

23 A Yes.

24 Q Okay. And what do you recognize in that
25 picture?

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 A Well --

2 Q What is this a picture of?

3 A The side of the building.

4 Q Okay. The side of what building?

5 A In Walsh Drive, that's where he was standing on
6 the side of the satellite dish.

7 Q This satellite dish, or this one?

8 A The same -- yeah.

9 Q That one?

10 A Yes.

11 Q Okay. And where is he in relation to the
12 satellite dish? Is he on this side of it, or is he on
13 this side of it?

14 A That side (indicating).

15 Q This side?

16 A Yes.

17 Q In between the satellite dish and the building?

18 A Yes, ma'am.

19 Q Okay. And do you see where Slim is?

20 A Yeah. He's sitting in a white chair.

21 Q In one of those white chairs.

22 Okay. And this man, again, what was he
23 doing?

24 A He was peeking.

25 Q Okay. As he's peeking, does he do anything

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 else? Any other movements?

2 A To me, it seem like he was jumping, like this,
3 up and down.

4 Q Okay.

5 A Like, I don't know, we call it "hyping yourself
6 up," but I don't know.

7 Q What does that mean? I don't know what that
8 means.

9 A I don't know. It's like when you're nervous
10 about doing something, but, I mean, when you're jumping up
11 and down, like you're getting your body prepped to do
12 something.

13 Q Okay. And that's what this man was doing?

14 A Yes.

15 Q And you -- again, what did he look like?

16 A He was short. He was black. He had dreads. He
17 wore dark clothing.

18 Q Dark clothing?

19 A It was black.

20 Q Okay. I'm going to show you a couple pictures
21 that have been marked State's 12 and State's 13.

22 MS. JONES: Permission to approach, Your Honor?

23 THE COURT: You may.

24 BY MS. JONES:

25 Q Barnesha, do you recognize these pictures?

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 A Yes.

2 Q And what do those pictures show?

3 A Lucretia apartment.

4 Q Okay. From where?

5 A From my apartment.

6 Q Okay. So that's the view from your apartment to
7 Lucretia's apartment?

8 A Yes.

9 Q Is that view, that's how it looks?

10 A Yes.

11 Q It hasn't been changed in any way?

12 A No.

13 MS. JONES: Your Honor, at this time, State
14 moves State's 12 and 13 into evidence.

15 THE COURT: As to 12 and 13.

16 ATTORNEY1: No objection.

17 THE COURT: Ladies and gentlemen of the jury,
18 State's Exhibits 12 and 13 will be admitted into
19 evidence in the trial of this case, without
20 objection. State's 12 and 13 in evidence.

21 *(Whereupon, State's Exhibit No(s). 12-13 marked*
22 *for identification and received in evidence.)*

23 THE COURT: You may publish.

24 MS. JONES: Thank you, Your Honor.

25 BY MS. JONES:

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 Q Barnesha, this is State's 12, the photograph I
2 just showed you.

3 THE COURT: Mona, please hand the witness the
4 photographs so the witness can look at the photograph
5 rather than having to look across the courtroom and
6 strain.

7 BY MS. JONES:

8 Q And, Barnesha, where is this photograph taken
9 from?

10 A It looks like the view from my apartment.

11 Q Okay. And where is Lucretia's apartment? Is it
12 this one?

13 A In -- in front of the black car.

14 Q It's this apartment?

15 A Yes.

16 Q And where was Slim sitting?

17 A He was sitting on the porch. He -- no, move
18 your finger back a little bit. Yeah, like there
19 (indicating).

20 Q This porch, not this porch?

21 A Yes.

22 Q Okay. And the man came from right here?

23 A Yes.

24 Q Okay. And is this the view as it was that day?

25 I mean, was there anything in your way from

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 seeing Lucretia's porch?

2 A Not that I can remember.

3 Q You had a clear shot?

4 A Um-hmm (indicating affirmatively.)

5 Q You could see everything?

6 A It just seemed awkward for somebody standing
7 there so long.

8 Q So you watched?

9 A Yeah.

10 Q Okay. And what is that?

11 A That's the satellite dish.

12 Q Okay. And that's just a closer view?

13 A Um-hmm (indicating affirmatively.)

14 Q And, again, the man was right here (indicating)?

15 A Yes, ma'am.

16 Q And you said he was about as tall as the
17 satellite dish?

18 A Yes, ma'am.

19 Q Okay. What does the man, who is about the same
20 size as the satellite dish, do?

21 A He ran on the porch, then I don't know if he
22 said anything to Sterling or not. But when he stood in
23 front of him, Sterling got up and tried to open Lucretia's
24 door, but it didn't budge. And he shot him in the head.

25 Q Okay. Was the man standing when he shot

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 Sterling?

2 A Both of them were standing.

3 Q Okay. What happens when that first shot is
4 fired?

5 A Sterling falls.

6 Q And then what happens?

7 A He stood over him and shot him about four more
8 times.

9 Q Stood over him?

10 A (Nods in the affirmative.)

11 Q Okay. And then what does he do?

12 A He shot at him four more times, then he ran. He
13 runs.

14 Q Okay.

15 MS. JONES: Permission to approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 BY MS. JONES:

19 Q Ms. Houston, I'm going to show you this picture
20 again.

21 THE COURT: Refer to it as exhibit number for
22 the record.

23 MS. JONES: It's State's 2.

24 BY MS. JONES:

25 Q What direction -- it may help --

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 MS. JONES: May the witness step down, Your
2 Honor?

3 THE COURT: She may.

4 You may come around. Hold on. Now, I'm
5 referring to Ms. Houston. Go right on up to her.

6 Margaret, you'll have to give her a microphone
7 again.

8 BY MS. JONES:

9 Q After he shoots Sterling, what direction does he
10 run?

11 THE COURT: Ms. Houston, you got to step back a
12 little bit so my jurors can see the exhibit.

13 BY MS. JONES:

14 Q What direction does he run?

15 A Back through here, back around right there,
16 through here.

17 Q Through here?

18 A Yes.

19 Q Does he go this way or this way?

20 A I can't see past that far after he runs through
21 there.

22 Q Okay. But he goes this way?

23 A Yes.

24 Q Do you know what roads are over here?

25 A Outside of the woods is a -- it's a road called

DIRECT EXAMINATION OF B. HOUSTON BY JONES.

1 Jenkins Avenue.

2 THE COURT: Ma'am, I can't hear you. You have
3 to speak up.

4 THE WITNESS: I'm sorry. I just had a wisdom
5 tooth pulled. I'm trying.

6 But outside of that apartment complex, from the
7 trees, is Jenkins Avenue.

8 BY MS. JONES:

9 Q Okay. Thank you, Ms. Houston. You can take a
10 seat back on the witness stand.

11 A (Witness complies.)

12 Q Did you ever see the shooter's face?

13 A No.

14 Q You only saw the back of his head?

15 A Yes.

16 Q And what did his hair look like?

17 A He had dreads.

18 Q Long or short?

19 A A lot of short.

20 Q A lot of short ones?

21 A Um-hmm. (Indicating affirmatively.)

22 MS. JONES: Ms. Houston, I have no further
23 questions for you. Thank you.

24 THE COURT: Cross examination.

25 MR. HUGHES: Thank you.

CROSS EXAMINATION OF B. HOUSTON BY HUGHES

1 CROSS EXAMINATION

2 BY MR. HUGHES:

3 Q So you never saw the person's face?

4 A No, sir.

5 Q You didn't recognize him?

6 A No, sir.

7 Q How far was your sister from you?

8 A She was actually standing in front of the
9 apartment where Sterling got shot.

10 Q Now, how many people were on your porch? How
11 many adults were on your porch?

12 A Three.

13 Q Three?

14 A Yes.

15 Q What type of cell phone do you have?

16 A A Galaxy 11.

17 Q Did you have it with you?

18 A At the time, do you know what type it was? I
19 don't know.

20 Q Did you have a cell phone with you?

21 A No.

22 Q Your sister did, though, correct?

23 A My boyfriend did. He was listening to music.

24 Q And who is he?

25 A Darius Parker.

CROSS EXAMINATION OF B. HOUSTON BY HUGHES

1 Q And your sister -- Erica is your sister also?

2 A Um-hmm. (Indicating affirmatively.)

3 Q And she had a cell phone with her?

4 A I don't know if she had a -- I don't know if my
5 sister had a cell phone. I know what I had on me.

6 Q Okay. That's fine.

7 You gave a statement to law enforcement?

8 A Yes, sir.

9 Q Did law enforcement ever come back to talk to
10 you?

11 A Yes, sir.

12 Q Did they show you any pictures?

13 A No. I spoke with Ms. Mary and the detective,
14 but I don't remember them showing me any pictures.

15 MR. HUGHES: No further questions, Your Honor.

16 THE COURT: Redirect.

17 MS. JONES: No redirect.

18 THE COURT: As to the witness.

19 MS. JONES: She can be excused.

20 THE COURT: Ms. Houston, you may step down.

21 Leave my pictures here. You're excused from the
22 trial of this case.

23 Call your next witness.

24 MS. JONES: State calls Jesneisha Houston.

25 THE COURT: Come around to the clerk, please,

CROSS EXAMINATION OF B. HOUSTON BY HUGHES

1 Ms. Houston.

2 Thereupon,

3 JESNEISHA HOUSTON

4 was called as a witness, having been first duly sworn,
5 was examined and testified as follows:

6 THE COURT: Have a seat here. Adjust that
7 microphone. State your full name and spell your last
8 name for the court reporter. You got to speak up.

9 WITNESS: My name is Jesneisha Houston. My last
10 name, H-O-U-S-T-O-N.

11 THE COURT: Slow down just a little bit for me
12 so they can understand you.

13 Your witness, Counsel. Direct examination.

14 MS. JONES: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. JONES:

17 Q Jesneisha, can I call you Jes?

18 A Yes, ma'am.

19 Q How old are you?

20 A I'm 23.

21 Q And Barnesha, who is she to you?

22 A My twin sister.

23 Q Twin sister. Where do you live?

24 A [REDACTED] Walsh Drive.

25 Q Is that where you lived on -- in 2015?

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

- 1 A Yes, ma'am.
- 2 Q Who did you live there with?
- 3 A Me and my mate and my kids.
- 4 Q How old were your kids?
- 5 A Three and one.
- 6 Q All right. Do you know Sterling Jenkins?
- 7 A Yes, ma'am.
- 8 Q Do you know him by another name?
- 9 A Slim.
- 10 Q Do you know Naijuwan Chisolm?
- 11 A Yes, ma'am.
- 12 Q How do you know him?
- 13 A By going to school with him.
- 14 Q How long have you known him?
- 15 A Since I was like in middle school, like 14.
- 16 Q Fourteen. So in 2015 you were 21?
- 17 A Yes, ma'am.
- 18 Q So you'd known him from 14 to 21?
- 19 A Yes, ma'am.
- 20 Q Was he someone that you saw often?
- 21 A Not that often.
- 22 Q But you knew him?
- 23 A Yes, ma'am.
- 24 Q You knew what he looked like?
- 25 A Yes, ma'am.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q And you knew his name?

2 A Yes, ma'am.

3 Q Did you know any other names he went by?

4 A Nike.

5 Q Okay. What else? Any other names?

6 A Naiji. Nai.

7 Q Okay. And you knew that from?

8 A Just like just being around in the streets.

9 Q Okay. Would you say you were friends with him?

10 A Not really.

11 Q Okay. Did you ever talk to him on the phone?

12 A No, ma'am.

13 Q Did you ever talk to him on Facebook?

14 A Yes, ma'am.

15 MS. JONES: Permission to approach the witness,

16 Your Honor?

17 THE COURT: You may.

18 BY MS. JONES:

19 Q Jes, I'm going to show you what's been marked as
20 State's Exhibit 14. Okay? Do you recognize that?

21 A Yes, ma'am.

22 Q What is that?

23 A Facebook messages.

24 Q And who is it a Facebook message from?

25 A From Nai. Naijuwuan.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q And who is it a Facebook message to?

2 A Me.

3 Q And is that a screen shot of those messages?

4 A Yes, ma'am.

5 Q Who took that screen shot?

6 A Me and my brother.

7 Q Did you -- has it been changed in any way?

8 A No, ma'am.

9 Q That's how the messages looked on your phone?

10 A Yes, ma'am.

11 MS. JONES: At this time, State moves State's 14
12 into evidence.

13 THE COURT: As to 14.

14 MR. HUGHES: No objection.

15 THE COURT: Ladies and gentlemen of the jury,
16 State's Exhibit 14 will be admitted into evidence in
17 the trial of this case.

18 *(Whereupon, State's Exhibit No(s). 14 marked for*
19 *identification and received in evidence.)*

20 THE COURT: Just hold that in your hand. Ms.
21 Houston, you can look at it as they put it on the
22 screen.

23 BY MS. JONES:

24 Q Ms. Houston, is this what you have in your hand?

25 A Yes, ma'am.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Okay. And what is this up at the top?

2 A Naijuwuan Chisolm.

3 Q And what does that mean? Does that mean that
4 the conversation was with this person? With Naijuwuan?

5 A Um-hmm.

6 THE COURT: You got to say "yes."

7 THE WITNESS: Yes, ma'am.

8 BY MS. JONES:

9 Q And what is the date on this message?

10 A June 6th, 2015.

11 Q Okay. And then how about down here?

12 A June 7th, 2015.

13 Q And the messages on the side closest to me, who
14 sent those?

15 A This side?

16 Q Yes.

17 A Nai. Naijuwuan.

18 Q Okay. And the message in blue, who sent that?

19 A Me.

20 Q You did? Okay.

21 What is this message down here, "WRDHMU."

22 Do you know what that means?

23 A Hit me up.

24 Q HMU is "hit me up"?

25 A Yes.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q How about WRD?

2 A It's word.

3 Q "Word, hit me up." And what is that behind it?

4 A Just a thumbs up.

5 Q No, no, no, no. These numbers.

6 A Oh, that's his phone number.

7 Q That's his -- he's giving you his phone number?

8 A Yes, ma'am.

9 Q Saying, "word, hit me up, here's my number."

10 A Yes, ma'am.

11 Q Okay. So you knew Naijuwuan, and Naijuwuan
12 knows you?

13 A Yes, ma'am.

14 Q Do you remember June 9th, the morning of
15 June 9th, about 10:50 in the morning?

16 A Yes, ma'am.

17 Q Where were you?

18 A Coming from my apartment with my son, walking to
19 the mailbox.

20 Q Okay.

21 MS. JONES: Your Honor, permission for the
22 witness to come off the stand.

23 THE COURT: Okay. They're going to give you a
24 portable microphone.

25 Margaret.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 You're going to have your back to the court
2 reporter -- you can put that right there. So you're
3 going to have to speak into the microphone so the
4 court reporter can understand what you're saying.

5 Tap it for me. Tap the microphone for me,
6 Ms. Houston.

7 THE WITNESS: (Complies.)

8 BY MS. JONES:

9 Q Okay. This is -- do you recognize this as Walsh
10 Drive?

11 A Yes, ma'am.

12 Q Okay. And where were you that morning?

13 A Right here. This is my apartment (indicating).

14 Q Okay. So that morning, where do you go?

15 A I was coming from out with my daughter -- with
16 my son walking towards the mailbox right here. And about
17 the time I got like right here, that's when Sterling put
18 his hands up and said "What up, Nai?" And he was peeking
19 around the corner.

20 Q Who was peeking around the corner?

21 A Nai.

22 UNIDENTIFIED SPEAKER: I'm sorry, the jurors are
23 indicating they can't hear.

24 THE WITNESS: Oh, I'm sorry.

25 I was coming from my apartment, and when I was

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 coming from my apartment, I walked to the mailbox.
2 When I walked to the -- before I got to the mailbox,
3 Slim threw his hand up, said, "What up, Nai?" And
4 all I know is Nai was peeking around the corner. And
5 all I know is, before I even know it, and Nai shot.

6 BY MS. JONES:

7 Q Okay. I'm going to ask you one more question,
8 and we're going to go back. After you said Nai shot,
9 after he shot, where did he go?

10 A He ran to the right. Well, he -- he shot and
11 came back, and then he shot four more times, and took --
12 started running off to the right.

13 Q He left and came back. Where did he go?

14 A Like -- like this is -- right here is my door,
15 so he go like hop back come --

16 Q So he didn't leave the apartment, he just moved?

17 A Yes.

18 Q Okay. And he ran this way?

19 A Yes.

20 Q Okay. Jes, you can go back to the stand.

21 A (Witness complies.)

22 Q Okay. Jes, I want to go back to the shooting
23 itself. When do you first see Naijuwuan Chisolm?

24 A Right after I had waved back at Slim. I seen
25 him, you know, coming from around the corner.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Who is with you?

2 A My son, my three-year-old son.

3 Q Okay. How far away are you from Slim?

4 A Like probably like somewhere like -- like right
5 there (indicating.)

6 Q Right here?

7 A Um-hmm. (Indicating affirmatively.)

8 Q Okay. And you can see fine, you don't have any
9 vision problems, do you?

10 A No, ma'am. I can see fine.

11 Q And you knew that was Slim?

12 A Yes, ma'am.

13 Q Do you immediately recognize Naijuwan?

14 A Yes, ma'am.

15 Q How?

16 A Because I went to school with him. I've known
17 him a long time.

18 Q You knew what he looked like?

19 A Yes.

20 Q And what's he doing when you first see him?

21 A Peeking.

22 Q Around what?

23 A The building, the apartment.

24 Q Okay. What's he peeking at?

25 A Slim.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q Is there anybody else out there that he's
2 peeking at?

3 A No, ma'am.

4 Q Do you see anybody else?

5 A No, ma'am.

6 Q You just see the two of them?

7 A Yes, ma'am.

8 Q What are you doing when he's peeking?

9 A I'm just looking, like confused. Like, what's
10 about to happen.

11 Q And do you know keep watching?

12 A Yes, ma'am.

13 Q What do you see happen next?

14 A My friend Slim got shot.

15 Q Your friend got shot?

16 A Yes.

17 Q Okay. I want to -- I want to hear a little bit
18 more about that.

19 What does Naijuwuan do after he --

20 A He came -- he came around the corner and shot
21 him. And took off a little, then came back and shot him a
22 few more times and -- I guess to make sure he was dead.

23 Q Where did he shoot your friend?

24 A In the head.

25 Q And what happens -- what happens with that first

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 shot?

2 A He dropped.

3 Q Who did?

4 A Slim.

5 Q Okay. And then after that, what does Naijuwuan
6 do?

7 A Took off to the right, to his right.

8 Q Well, after he shot him the first time --

9 A Well, he came -- he took off and came back and
10 then shot him some more times and then took off to the
11 right.

12 Q Okay. Was Slim on the ground when you --

13 A Slim already on the ground.

14 Q After the four shots, Slim was on the ground?

15 A Yes, ma'am.

16 Q Do you remember what Naijuwuan was wearing that
17 day?

18 A No, ma'am.

19 MS. JONES: Permission to approach the witness,
20 Your Honor.

21 THE COURT: Okay.

22 BY MS. JONES:

23 Q Jesneisha, I'm going to show you something, and
24 I want you to take a look at it to yourself and see if
25 that refreshes your memory.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 A Yes, ma'am.

2 Q Okay. And what is that I just handed you?

3 A Voluntary statement. A statement.

4 Q Your statement?

5 A Yes, ma'am.

6 Q Okay.

7 MS. JONES: Permission to approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 MS. JONES: Thank you.

11 BY MS. JONES:

12 Q And is this the statement you gave -- when did
13 you give this statement?

14 A The ninth.

15 Q After witnessing the murder?

16 A Yes, ma'am.

17 Q Okay. After reading that, do you remember what
18 you described Naijuwuan as wearing?

19 A A black tee and long jeans on.

20 Q Okay. You described him as wearing a black tee
21 and short -- and he was short. How else did you describe
22 him?

23 A Short, long, brown-skinned, with little twists.

24 Q What does that mean, "little twists"?

25 A Like dreads.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q In his hair?

2 A Yes.

3 Q Okay. Did you see the gun?

4 A Yes, ma'am, but I don't know nothing about that.

5 So I don't know what type of gun it is.

6 Q Was it small or big?

7 A It was kind of small. I'm not sure.

8 Q Okay. Do you remember meeting with an

9 investigator and Natasha Aiken?

10 A Yes.

11 Q Did she show you some pictures?

12 A Yes, ma'am.

13 Q Okay.

14 MS. JONES: Permission to approach the witness,

15 Your Honor.

16 THE COURT: You may.

17 BY MS. JONES:

18 Q Ms. Houston, I'm going to hand you what has been

19 admitted as State's 3, 4, and 5. Can you look at those,

20 please?

21 A Yes, ma'am.

22 Q Do you recognize those?

23 A Yes, ma'am.

24 Q And what is State's 3?

25 A "I have been asked to view this photo for

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 identification."

2 Q Okay. Is your signature or your --

3 A On all of them, yes, ma'am.

4 Q Okay. And what is that? Do you remember seeing
5 that?

6 A Yes, ma'am.

7 Q And what is it?

8 A It's a photo -- a photograph identification.

9 Q Okay. Does that form have some words on it?

10 A Yes, ma'am.

11 Q Okay. Did you initial by that?

12 A Yes, ma'am.

13 Q And what do those words say?

14 A "I have been asked to view a set of photographs.

15 I understand it is just as important to clear innocent

16 persons from suspicion as to identify guilty parties. I

17 understand that individuals depicted in the line-up photos

18 may not appear exactly as they did on the date of the

19 incident because features such as head and facial hair are

20 subject to change. I understand that the person who

21 committed the crime may or may not be in the set of

22 photographs being presented. I understand that regardless

23 of whether identification is made, the police will

24 continue to investigate the incident. I understand that I

25 shall state in my own words how certain I am of the

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 identification, hundred percent positive."

2 Q It says, One hundred percent positive?

3 A Yes, ma'am.

4 Q Did you handwrite anything else on that form?

5 A Yes, ma'am.

6 Q What else did you write?

7 A "I, Jesneisha Houston, have viewed a group of
8 six photographs this 9th day of June 2015, from which I
9 have positively identified Photograph Number 4 displayed
10 to me by Detective Aiken of Hardeeville Police Department
11 as being the person who shot and killed Sterling Jenkins
12 on June 9th, 2015," Signed by me.

13 Q And the "hundred percent positive," what does a
14 hundred percent positive mean?

15 A That I'm sure.

16 Q You're a hundred percent positive --

17 A Yes, ma'am.

18 Q -- that it was Naijuwan Chisolm who shot
19 Sterling Jenkins?

20 A Yes, ma'am.

21 Q Okay. I'm going to pull up State's 4 for you.

22 A (Nods head.)

23 Q Okay. Is this the photo line-up you were shown?

24 A Yes, ma'am.

25 Q Okay. And who did you identify as the shooter?

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 A Number 4.

2 Q This one right here?

3 A Yes, ma'am.

4 Q And what's his name?

5 A Naijuwuan.

6 Q And how positive are you?

7 A One hundred percent positive.

8 Q And how far away were you again?

9 A A little farther back, like right there

10 (indicating).

11 Q Okay. No vision problems?

12 A (No audible response.)

13 Q Okay. Does Naijuwuan Chisolm, do you see him

14 today in the courtroom?

15 A Yes, ma'am.

16 Q And is where is he seated?

17 A Right there (pointing.)

18 Q Okay.

19 MS. JONES: May the record reflect the witness

20 did point to Naijuwuan Chisolm, to the Defendant.

21 THE COURT: Proceed.

22 BY MS. JONES:

23 Q And is the man that you saw shoot Sterling

24 Jenkins in the courtroom today?

25 A Yes, ma'am.

DIRECT EXAMINATION OF J. HOUSTON BY JONES.

1 Q And can you please point to him?

2 A (Witness points.)

3 MS. JONES: May the record reflect the witness
4 did point to the Defendant.

5 BY MS. JONES:

6 Q And in any way, has Mr. Chisolm's appearance
7 changed from June 9th, 2015?

8 A His -- his hair.

9 Q His hair?

10 A Yes, ma'am.

11 Q What's the difference?

12 A It's cut.

13 Q Today?

14 A Yes, ma'am.

15 MS. JONES: I have no further questions for this
16 witness.

17 THE COURT: Cross examination.

18 MR. HUGHES: Thank you.

19

20 CROSS EXAMINATION

21 BY MR. HUGHES:

22 Q She showed you a statement that you made?

23 A This one?

24 Q No, it looks like this. A voluntary statement.

25 I don't think it was entered into evidence. But --

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 THE COURT: It's not into evidence.

2 BY MR. HUGHES:

3 Q Okay. Yeah, if you would just hand this,
4 everything else, back to the court reporter.

5 But do you remember when you made this
6 statement?

7 A Um-hmm, yes, sir.

8 Q How soon after the shooting?

9 A How soon they asked me? It was probably like 30
10 minutes later.

11 Q Thirty. Would you say your memory of the
12 shooting was better now or 30 minutes after it happened?

13 A Now.

14 Q Two years -- almost two years later you think
15 your memory's better than it was at the time of the
16 shooting?

17 A Because I remember like yesterday.

18 Q Okay. Didn't you write, "I was standing in the
19 road and they was sitting on the porch"?

20 A Yes, sir.

21 Q "And Slim tried to get up and go in the house."

22 A Yes, sir.

23 Q When you say "they," you meant Slim and the
24 person that shot him, right?

25 A Yes, sir.

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 Q "Dude," I assume that means the shooter, "Dude
2 got up and shot him. He stopped as he'd been running, he
3 shot him four more times and took off running."

4 A Yes, sir.

5 Q Okay. So what you remembered 30 minutes after
6 it happened was Slim and Dude were sitting on the porch,
7 Slim gets up, Dude gets up and shoots him?

8 A Yes.

9 Q That's not what you testified to today, is it?

10 A Yes.

11 Q It is? You didn't say that the shooter was
12 sitting on the porch with Slim.

13 A Yes. Nobody asked the question.

14 Q Okay. Was the person who shot --

15 THE COURT: Turn around, Mr. Hughes, if you're
16 going to ask a question.

17 MR. HUGHES: I'm sorry, Your Honor.

18 BY MR. HUGHES:

19 Q Was the person who shot Slim sitting on the
20 porch with him?

21 A He wasn't sitting on the porch.

22 Q Why did you say 30 minutes after it happened
23 that he was?

24 A I wasn't understanding the question.

25 Q Thirty minutes after the shooting, did you write

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 on a voluntary statement, "and they was sitting on the
2 porch, and Slim trying getting up and go in the house.
3 Dude got up and shot him"?

4 A Yes, sir.

5 Q Okay. And you testified earlier that Slim and
6 Dude were sitting on the porch, right?

7 A Yes, sir.

8 Q Okay. Now, you say you didn't know what the gun
9 looked like.

10 A No, sir. I don't do guns.

11 Q Why did you say "black, small, it looked like a
12 nine"?

13 A That's what they asked me. I was just
14 demonstrating, so they told me that it probably was a
15 nine, so that's why.

16 Q Oh, so they told you what answers to put down on
17 here?

18 A No. They asked me what the gun look like, how
19 the guns -- they know what a gun looked like. I don't.
20 I'm just demonstrating it was small and black, and they
21 say probably like a nine. So --

22 Q You were shown six pictures.

23 A Yes, sir.

24 MR. HUGHES: May I approach, Your Honor?

25 THE COURT: You may.

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 BY MR. HUGHES:

2 Q I'm going to hand you what's been previously
3 marked as State's Exhibit No. 4. Do you remember those
4 pictures?

5 A Yes, sir.

6 Q Okay. You identified Number 4, correct?

7 A Yes, sir.

8 Q Who's Number 1?

9 A I don't know.

10 THE COURT: Give him the microphone.

11 BY MR. HUGHES:

12 Q Never seen him before?

13 A No.

14 Q Who's Number 2?

15 A I don't know.

16 Q You never seen him before?

17 A (No audible answer.)

18 THE COURT: You got to say "yes" or "no."

19 THE WITNESS: No, sir.

20 BY MR. HUGHES:

21 Q Number 3, have you ever seen him before?

22 A No, sir.

23 Q Number 5, have you ever seen him before?

24 A No, sir.

25 Q Number 6, have you ever seen him before?

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 A No, sir.

2 Q You told them that you thought it was Naijuwan
3 Chisolm, correct?

4 A I told them -- yes, that it was Naijuwan.

5 Q And they showed you a picture of Naijuwan and
6 you picked it out, correct?

7 A Yes.

8 Q Did they show you anybody else other than those
9 six people?

10 A No, sir.

11 Q Did you ever see law enforcement back around
12 there showing those pictures to anybody else?

13 A No, sir.

14 Q When they asked you to identify the gun, did
15 they show you their guns?

16 A No. It was -- I was demonstrating. The
17 officers know what a gun look like.

18 Q I understand that, but did they try to get you
19 to --

20 A No, no.

21 Q They didn't show you a gun?

22 A No.

23 Q And you heard them say it might have been a
24 nine, and that's what you went with?

25 A Yes, yes.

CROSS EXAMINATION OF J. HOUSTON BY HUGHES

1 Q And --

2 MR. HUGHES: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MS. JONES: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. JONES:

7 Q You were shown that photo line-up?

8 A Yes.

9 Q And you picked out one picture, correct?

10 A Yes, ma'am.

11 Q And you picked out the picture of the person
12 that did what?

13 A Shot Slim.

14 Q And whose picture did you pick out?

15 A Nai.

16 Q And who did you see that day shoot Slim?

17 A Nai.

18 Q And how positive are you that the person you
19 know as Nai, Naijuwan Chisolm, is the person that shot
20 Slim?

21 A A hundred percent.

22 Q Did you ever say anybody else shot him?

23 A No.

24 Q It's always been Naijuwan?

25 A Yes.

REDIRECT EXAMINATION OF J. HOUSTON BY JONES

1 MS. JONES: Thank you. No further questions.

2 THE COURT: Recross limited to the redirect.

3 MR. HUGHES: No questions.

4 THE COURT: As to this witness, Solicitor.

5 MS. JONES: She may be excused.

6 THE COURT: Any objection, Mr. Hughes?

7 MR. HUGHES: None whatsoever.

8 THE COURT: You may step down, Ms. Houston. You
9 are excused from the trial of the case. Leave my
10 exhibits here. You may leave the courtroom.

11 Counsel approach.

12 (Discussion off the record.)

13 THE COURT: Mr. Foreman, ladies and gentlemen of
14 the jury, we're going to stop at this time for lunch.
15 During lunch break, I'm going to ask you, please, not
16 to discuss the case.

17 And we don't ever know when exactly to break.
18 So I'm trying to make sure we get through in a timely
19 fashion. We have some more witnesses, and we're
20 going to work after lunch. I'm going to give you
21 from now to 2:30 for lunch. So you can go out, have
22 lunch, take time to take a break. Be back in your
23 jury room, come back in your jury room by 2:30.

24 Tomorrow, so you won't have to make any lunch
25 plans, we're going to try to serve lunch at 1:00

REDIRECT EXAMINATION OF J. HOUSTON BY JONES

1 o'clock. We have to have a lot of notice when we
2 don't know how long something's going to take. When
3 we have this many witnesses, we try to plan a lot of
4 schedules. I'll be serving lunch for you here
5 tomorrow, but not today. So I'm giving you extra
6 time for lunch.

7 During the lunch break, if somebody tries to
8 talk to you, just tell them you're on the jury, can't
9 talk about it. If they persist, get their name, give
10 it to me.

11 Hope everybody has a pleasant lunch. Be back in
12 your jury room about 2:30. You may leave the
13 courtroom at this time.

14 Everyone else remain seated while the jury is
15 leaving.

16 (Jury exits the courtroom at 12:52 p.m.)

17 THE COURT: All right. Counsel, we're going to
18 be in recess for lunch until 2:30. I need to see
19 y'all briefly just at the Bench before you take your
20 lunch break.

21 Court's in recess until 2:30 this afternoon.

22 (Lunch recess.)

23 THE COURT: My understanding is the State is
24 ready to proceed; is that correct?

25 MS. JONES: Yes, Your Honor.

REDIRECT EXAMINATION OF J. HOUSTON BY JONES

1 THE COURT: And you have all of your witnesses
2 here? We are already behind schedule. Is defendant
3 ready to proceed?

4 MR. HUGHES: Yes, sir.

5 THE COURT: Bring us the jury.

6 (The jury enters the courtroom.)

7 THE COURT: I hope that everybody had a pleasant
8 lunch. We will now continue with the testimony and
9 trial in this case. Call your next witness,
10 Solicitor.

11 MS. JONES: Thank you, Your Honor. The State
12 calls Chad Smith.

13 Thereupon,

14 CHAD SMITH

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE COURT: Come around, make yourself
18 comfortable. Pull the microphone down. It will
19 amplify your voice.

20 State your full name and spelling your last name
21 for the court reporter.

22 THE WITNESS: My name is Chad Smith. S-M-I-T-H.

23 THE COURT: Your witness counselor. Direct
24 examination.

25 MS. JONES: Thanks you, Your Honor.

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 DIRECT EXAMINATION

2 BY MS. JONES:

3 Q Agent Smith, where are you employed?

4 A Employed with the South Carolina State Law
5 Enforcement Division, commonly known as SLED.
6 Specifically, I work in SLED's forensic laboratories in
7 Columbia in the firearms department.

8 Q And what are some of your duties in the firearms
9 department?

10 A Majority of what I do is examination of
11 firearms, ammunition components, such as cartridge cases
12 and bullets and other ammunition related items. Typically
13 what I'm asked to do is try to determine whether a
14 specific ammunition component was fired by a particular
15 firearm.

16 Q Did you have to receive some sort of specialized
17 education and training for this position?

18 A Yes, ma'am. Well, first of all, I attended
19 Clemson University where I got a Bachelor of Science in
20 biological sciences. And I started my employment with
21 SLED in November of 2008 in the firearms department, and
22 began my training as a firearms examiner. The training
23 program lasts between three to five years. It is
24 Supervised by other court-qualified examiners of the
25 firearms department. It requires extensive reading and

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 studying. There's a lot of examinations and practical
2 tests given during this period.

3 I had the opportunity to attend various
4 seminars and classes during my training. Later in my
5 training I helped other examiners prepare their own
6 casework. And at the end of my training I received a
7 comprehensive, multi-part examination, which I sucessfully
8 passed and then I began to receive my own casework.

9 Q Have you ever testified in court bbefore?

10 A Yes, ma'am.

11 Q Approximately how many time?

12 A Thirty-five times.

13 MS. JONES: Your Honor, at this time I move
14 Agent Chad Smith in as an expert in firearms.

15 THE COURT: Any objections as to his
16 qualifications.

17 MR. HUGHES: No objections, whatsoever, as to
18 Agent Smith.

19 THE COURT: Ladies and gentlemen of the jury,
20 normally the law does not permit witnesses to get on
21 the witness stand and testify to opinions or
22 conclusions. An exception to that rule is a rule
23 that we have for those witnesses whom we call expert
24 witnesses. Those are witnesses who are qualified by
25 the Court and are permitted to give an opinion as an

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 expert in matters that they claim to be experienced
2 in.

3 You should consider the qualifications and the
4 credibility or the believability of the expert and
5 the reasons given for his opinion. You are not bound
6 by any expert opinion. You give it the right, if
7 any, you deem it should be entitled. This witness is
8 qualified without objection. You may proceed.

9 MS. JONES: Thank you, Your Honor.

10 BY MS. JONES:

11 Q Agent Smith, were you asked to analyze some
12 bullet fragments in this case?

13 A Yes, ma'am.

14 MS. JONES: Permission to approach the witness.
15 Permission to approach.

16 (Pause.)

17 Q I'm going to show you what's already been
18 admitted as State's 11 and contained within State's 11 is
19 11A, 11B, 11C and 11D. Do you know recognize those items?

20 A Yes. This is the evidence that was submitted
21 for my examination.

22 Q Okay. And you, in fact, examined those items?

23 A Yes, ma'am.

24 Q And what are those items?

25 A Specifically I received six fired bullet

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 fragments, ten led fragments, and two fired bullets.

2 Q And these fragments, when you say "fragments,"
3 just so we understand, they are fragments of what?

4 A Well, the bullet fragments I could tell were
5 fragments from bullets. They had the rifling impressions.
6 When I say "rifling," what I mean is when a bullet has
7 been fired from a barrel that's been rifled it leaves an
8 imprint on the rifling of the bullet. Rifling is a
9 manufacturing process that they put into the barrell
10 itself in order to give the bullet a spin as it travels
11 down the barrel. What that does is once it leaves the
12 barrel it helps to make it more accurate when it's going
13 towards its target.

14 So, it's synonymous to a quarterback throwing
15 a nice tight spiral in football to his target. And that
16 rifling leaves marks on the bullet and we can use those
17 marks to help identify it back to a particular firearm. So,
18 the bullet fragments themselves had some rifling marks on
19 them but they were not whole bullets, they were just
20 portions of the bullets. And the led fragments, I couldn't
21 tell they had any rifling on them. So, I just called them
22 led fragments. So, they could have been actually parts of
23 the bullets.

24 Q Were you able to come to any conclusion as to
25 what type of firearm these bullets could have come from?

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 A With -- specifically there were two -- the two
2 bullets, the two which were mostly whole, I was able to
3 measure the diameter of these bullets to try to get what
4 kind of particular caliber they could have been fired
5 from. Also, just the characteristics of the bullet and
6 the weight of the bullet I can use.

7 So, those particular bullets turned to be
8 most consistent with either 38 Special or 357 magnum
9 caliber. And with respect to the other fragments, I
10 couldn't determine the caliber.

11 Q Okay. And that is because they were too
12 fragmented?

13 A Right, too damaged.

14 Q Okay. You mentioned a 38 Special and 357. Are
15 there certain different sorts of handguns? Can you
16 explain the difference between an automatic and
17 semi-automatic and a revolver?

18 A Right. Typically there are two classes of
19 handguns. One, you have a revolver. And the other class
20 would be a semi-automatic pistol. The revolver, if you
21 have ever watched the old western movies or anything like
22 that, the revolver has kind of the cylinder in the middle
23 of it. So, the cylinder has multiple chambers or holes,
24 so that is where you put the cartridges or rounds of
25 ammunition into those holes of the chamber in the cylinder

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 itself. So, when you fire the revolver, basically it just
2 rotates to the next chamber so you can fire it. So, that
3 is why they call it a revolver, it just revolves around
4 that chamber or cylinder.

5 With respect to a semi-automatic pistol, you
6 have got typically a magazine which the cartridges are
7 loaded into. It is a separate unit from the pistol. That
8 magazine is inserted into the pistol. And then you chamber
9 a cartridge from the magazine into the firearm. Typically
10 you have to slide a reciprocating part of the firearm. So,
11 when you fire, basically, the action of that round when you
12 are firing operates that slide. And it is like a machine,
13 basically, it just fires and then it extracts, ejects that
14 cartridge case and then loads another cartridge into the
15 chamber ready for firing. So, every time you pull the
16 trigger you get another round to fire and the cycle repeats
17 itself until you are out of ammunition.

18 So, those are the typical types of handguns.
19 So, with a revolver you actually have to manually load those
20 cartridges into the chamber or cylinder and you fire them.
21 And then after all of those are fired, then you manually
22 have to extract them out of the pistol. But with a
23 semiautomatic pistol there is an action and firing, that
24 cartridge case is ejected from the firearm.

25 Q Thank you. And typically when you are dealing

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 with a 38 Special or 357, what sort of guns are those
2 typically?

3 A There are some pistols that they are chambered
4 for those rounds, but typically that is a revolver
5 caliber. And a 38 Special can be fired -- and a 357
6 magnum is typically -- those are typically revolvers as
7 well.

8 MS. JONES: Thank you. I have no further
9 questions for this witness.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. HUGHES:

13 Q If a person who didn't know guns was looking at
14 a revolver, could it be mistaken for an automatic?

15 A I assume if someone who wasn't familiar with the
16 different types of guns or just saw it briefly or
17 whatever, they could probably have mistaken it.

18 Q Okay. And I want the jury to understand this, a
19 357 is generally more powerful than a 38 Special.

20 A Correct. What you have with a 357 magnum is
21 basically a lengthened or longer 38 Special. So the 357
22 holds more powder, so if it is higher pressure it is more
23 powerful than a 38 Special.

24 Q And what would cause a bullet to fragment?

25 A Hitting an object, whether it be a vehicle, or a

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 dwelling or even a person it would -- are our most common
2 types of fragmenting. It has to hit some kind of object
3 and it just kind of breaks apart.

4 Q Were these full led bullets, or were they
5 jacketed?

6 A All of the bullets, the bullet fragments and
7 just the general fragments themselves were most consistent
8 with being led construction.

9 Q Okay. They weren't jacketed?

10 A No, sir.

11 MR. HUGHES: Okay, no further questions.

12 THE COURT: Okay.

13 MS. JONES: Nothing further, Your Honor.

14 THE COURT: As to this witness?

15 MS. JONES: He may be excused.

16 THE COURT: Thank you. You may be excused from
17 the trial of this case. You may leave the courtroom.
18 Call your next witness.

19 MS. JONES: The State calls Troy Long.

20 Thereupon,

21 TROY LONG

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Have a seat for me. Make yourself
25 comfortable. Pull that microphone down to your

DIRECT EXAMINATION OF CHAD SMITH BY JONES

1 height. State your full name and spell your last
2 name for the court reporter.

3 THE WITNESS: Troy Long, L-O-N-G.

4 THE COURT: Mr. Long, yesterday I called you
5 Thomas and I want you to know that I know better.
6 So, I know that you are Mr. Long. I appreciate you
7 forgiving that I called you by the wrong name. All
8 right, Solicitor, your witness.

9 MS. JONES: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. JONES:

12 Q Captain Long, where do you work?

13 A I am employed at the Hampton Police Department.

14 Q And in what capacity do you work there?

15 A As the Captain.

16 Q Okay. Back on June 9th of 2015, where did you
17 work?

18 A I was employed at the Hampton County Sheriff's
19 Office assigned to the U.S. Marshal's Fugitive Task Force.

20 Q And what were some of your duties at the
21 fugitive task force?

22 A We were assigned cases to help local agencies to
23 apprehend fugitives for violent crimes.

24 Q Okay. Did you receive a request to assist
25 Hardeeville Police Department back in June of 2015?

DIRECT EXAMINATION OF TROY LONG BY JONES

1 A I did.

2 Q And what was that request?

3 A We had a warrant for a murder case for Naijuwuan
4 Chisolm.

5 Q Okay. And with this, are you given a copy of
6 the warrant?

7 A That's correct.

8 Q And are you given some sort of photograph or
9 information?

10 A Yes.

11 Q Okay. Which are you given?

12 A I get a copy of the warrant and we get
13 photographs of the suspect.

14 Q So you know who you are looking for?

15 A That's correct.

16 Q Okay. When did you get requests to assist?

17 A I'm not exactly sure what date it was.

18 Q Did you eventually find Mr. Chisolm?

19 A I did.

20 Q What date was that?

21 A I believe it would have been June the 15th.

22 Q Of?

23 A 2015.

24 Q Okay. Thank you. And can you describe when you
25 first see Mr. Chisolm that day?

DIRECT EXAMINATION OF TROY LONG BY JONES

1 A We had information that he was at an address at
2 the corner of Second and Hobart Street in the Beaufort
3 area. As we approached the residence, Mr. Chisolm was in
4 the backyard accompanied by another gentleman.
5 Mr. Chisolm took off running. A couple of blocks over we
6 eventually found Mr. Chisolm hiding under an out-building
7 in the backyard of the residence.

8 Q When you say "we," who were you with?

9 A There were probably ten U.S. Marshals, Beaufort
10 City Police, Beaufort County Sheriff's Office.

11 Q Are y'all in marked patrol cars, or a variety of
12 cars?

13 A A variety of vehicles.

14 Q Okay. And what are you wearing?

15 A The U.S. Marshals, we wore green vests. It has
16 yellow placards on it, bright yellow that says Police,
17 U.S. Marshal.

18 Q Okay. Did the other individual who was observed
19 with Mr. Chisolm, did he stay at that residence or did he
20 run as well?

21 A He stayed there.

22 Q Okay. How far over was Mr. Chisolm ultimately
23 found?

24 A I would say two blocks.

25 Q Okay.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 MS. JONES: Permission to approach the witness,
2 Your Honor.

3 Q Captain Long, I'm going to show you what's been
4 marked State's 15 and State's 16. Can you identify those
5 please?

6 A This is the residence, the front of the
7 residence --

8 Q Captain Long, if you could keep it to yourself
9 right now, it hasn't been admitted. Thank you.

10 A Okay. Yes, it is a picture of the residence
11 where we located him in the backyard.

12 Q Okay. How about the second photograph, 16?

13 A The photograph is a photograph of the backyard
14 where the shed was, where he was hiding under.

15 Q Okay. And are those fair and accurate
16 depictions of that location?

17 A Yes, from my recollection.

18 Q Have they been altered in any way?

19 A Not that I'm aware of.

20 MS. JONES: Your Honor, at this time State moves
21 15 and 16 into evidence.

22 THE COURT: State's 15 and 16?

23 MS. JONES: Yes.

24 THE COURT: Any objection to 15 and 16?

25 MR. HUGHES: No, Your Honor. May we approach?

DIRECT EXAMINATION OF TROY LONG BY JONES

1 THE COURT: Counsel approach.

2 (Off-the-record discussion held.)

3 THE COURT: As to the 15 and 16?

4 MR. HUGHES: No objection at all.

5 THE COURT: Fifteen and 16 will be admitted in
6 the trial of this case, without objection. You may
7 now publish them to the jury, Solicitor.

8 MS. JONES: Thank you, Your Honor.

9 *(Whereupon, State's Exhibit No(s). 15-16 marked*
10 *for identification and received in evidence.)*

11 BY MS. JONES:

12 Q Captain Long, if I could direct your attention
13 to State's Exhibit 15.

14 THE COURT: Wait a minute, let him come around.

15 (Pause.)

16 BY MS. JONES:

17 Q State's 15, what does this photograph depict;
18 what does it show?

19 A That is the front of the residence where we
20 located Mr. Chisolm.

21 Q Okay. And State's 16?

22 A That is a picture of the back of the residence
23 where he was found underneath the out-building.

24 Q Okay. When you say out-building, are you
25 referencing this building right here? Can you see?

DIRECT EXAMINATION OF TROY LONG BY JONES

1 A I believe that is the one, yes.

2 MS. JONES: Your Honor, may the witness step
3 down from the stand?

4 THE COURT: Absolutely. Margaret, could you get
5 him the portable mike, please? Just a minute, Mr.
6 Long, let me get you a portable microphone because
7 your back is to the court reporter and she needs to be
8 able to hear you, so speak up for me.

9 BY MS. JONES:

10 Q Can you point on here where you located the
11 defendant?

12 A I believe that it would be underneath this
13 building.

14 Q Okay. Underneath this right here?

15 A Yes.

16 Q There you go. Can you point again so that the
17 jury can see?

18 A (Pointing.)

19 Q Okay. Thank you. You can take a seat back up.
20 Thank you.

21 (Pause.)

22 BY MS. JONES:

23 Q Do you see in the courtroom today the man who
24 came from under that out-building?

25 A I do.

DIRECT EXAMINATION OF TROY LONG BY JONES

1 Q Can you please point him out?

2 A It is the gentleman sitting to Mr. Hughes'
3 right.

4 Q May the record reflect that the witness pointed
5 to the defendant.

6 THE COURT: Proceed.

7 MS. JONES: I have no further questions for this
8 witness. Thank you.

9 CROSS EXAMINATION

10 BY MR. HUGHES:

11 Q You were dressed how again?

12 A More than likely, BDUs. I had a ballistic vest,
13 green in color, across the front and the back it says,
14 Police, US Marshal in bright yellow.

15 Q Okay. So, most people would say, It is the cops
16 or po-po just pulled up?

17 A That's correct.

18 Q And you have been to other places dressed like
19 that?

20 A Yes, I have.

21 Q About how many times would you say people run
22 away from you, just seeing that it is the cops, not for
23 any other reason?

24 A It happens. I can't say a number.

25 Q But generally, it is not unusual for people to

CROSS EXAMINATION OF TROY LONG BY HUGHES

1 scatter when y'all hop out of yours cars?

2 A At some locations, no, it's not.

3 MR. HUGHES: No further questions, Your Honor.

4 THE COURT: Redirect.

5 MS. JONES: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. JONES:

8 Q Captain Long, how many individuals are in that
9 backyard when you initially see Mr. Chisolm?

10 A As far as law enforcement?

11 Q No, no, as far as civilians.

12 A Where we actually apprehend him?

13 Q At the first location when you first spot him.

14 A Two people. It was Mr. Chisolm and one other
15 subject.

16 Q Okay. How many people ran from the police that
17 day?

18 A Just one.

19 Q Who was that that ran from the police?

20 A Mr. Chisolm.

21 MS. JONES: I have no further questions.

22 THE COURT: Recross limited to redirect.

23 RE-CROSS EXAMINATION

24 BY MR. HUGHES:

25 Q So, you would basically say that 50 percent of

RE CROSS EXAMINATION OF TROY LONG BY HUGHES

1 the people there ran?

2 A I can't say -- oh, yes, at that time, yes.

3 THE COURT: Anything further?

4 MS. JONES: Nothing further.

5 THE COURT: As to this witness?

6 MS. JONES: He may be excused.

7 MR. HUGHES: No objections whatsoever.

8 THE COURT: Mr. Long, you are excused from the
9 trial of this case and may leave the courtroom. Call
10 your next witness.

11 MS. JONES: The State calls Dr. Erin Presnell.
12 Your Honor, may we appraoch?

13 THE COURT: You may.

14 (Off-the-record discussion held.)

15 THE COURT: Mr. Foreman, ladies and gentlemen, I
16 have to take up a matter of law and I will be back
17 with you as soon as I can. Please do not discuss the
18 case and I'll be back with you as soon as I can.
19 Thank you very much.

20 (Brief recess.)

21 THE COURT: All right. It's now 3:30, and we've
22 got a lot more work to do. But let me put on the
23 record, first of all, when I got back here from lunch
24 at 2 o'clock, to start back at 2:30, I was confronted
25 with a stack of documents by the Solicitor and

RECROSS EXAMINATION OF TROY LONG BY HUGHES

1 Mr. Hughes, with Mr. Hughes raising an objection,
2 which the Solicitor said is for the first time, to
3 the introduction of Verizon text messages which have
4 been reduced to paper.

5 The Solicitor was concerned they were not in
6 chronological order, and she had her staff put them
7 in chronological order.

8 Mr. Hughes objected on the wrong grounds. He
9 objected on hearsay. But my concern was not hearsay.
10 My concern was Crawford versus Washington. And the
11 reason is that whenever any type of testimony is
12 being offered by the State, when we're in a criminal
13 case, and a witness is going to give some statement
14 that a person cannot testify as to what the witness
15 said unless the Defendant had a prior opportunity to
16 cross-examine the witness, and there is no witness
17 available for trial, it does not matter that the
18 statement falls into one of the exceptions to the
19 rule against hearsay.

20 If the witness or the statement is introduced at
21 trial, then there is an issue of whether or not it
22 violates the confrontation clause of the Sixth
23 Amendment. To admit a statement made in a criminal
24 trial where the statement was given, and because the
25 Defendant did not have the opportunity to

RECROSS EXAMINATION OF TROY LONG BY HUGHES

1 cross-examine nor can the Defendant cross-examine a
2 piece of paper, despite the fact that maybe the
3 statement could fall into an exception to the rule
4 against hearsay, which the State argued with an
5 admission.

6 The question comes in whether or not that
7 testimony is testimonial versus non-testimonial.
8 Mr. Hughes tells me the Defendant will not testify in
9 this case. I have to look at whether or not, number
10 one, if it's -- in a criminal case, if it's
11 non-testimonial, the confrontation clause requires
12 that the statement fall within a firmly rooted
13 hearsay exception and/or bears a guarantee, a
14 particularized guarantee of trustworthiness.

15 Mr. Hughes has argued that I can pick up
16 anyone's cell phone and text, and although we know
17 that it might have come from the number, we don't
18 know it came from an individual. And he can't
19 cross-examine that off a piece of paper which the
20 Solicitor seeks to introduce.

21 The Solicitor argues that it's non-testimonial.
22 The Solicitor takes the position that it falls within
23 an admission, an exception to the hearsay rule, and
24 that she can put up a witness from Verizon that will
25 authenticate that this is the actual records of a

RECROSS EXAMINATION OF TROY LONG BY HUGHES

1 phone number or text records.

2 However, if it is testimonial versus
3 non-testimonial, when the prosecution attempts to
4 introduce testimonial hearsay, the confrontation
5 clause requires, one, the Defendant had the
6 opportunity to cross-examine, which Mr. Hughes argues
7 he does not from a piece of paper, and that means the
8 declarant, which in this case is, in part, the
9 Defendant.

10 And, two, it has to be that the declarant is
11 unavailable. It is a close question, because I've
12 never had this arise with cell phone records as to
13 whether or not this evidence that wants to be
14 introduced is testimonial versus non-testimonial.

15 I can see, and the Solicitor has now made an
16 argument that it is testimonial. At the first, both
17 of my lawyers were on hearsay when they should have
18 been on Crawford versus Washington. I have decided
19 to exclude that evidence on the basis that I feel
20 that we have a potential confrontation clause
21 problem.

22 However, I've asked them, since no one could
23 cite me a single case in support of either position,
24 to research the issue to see if they could find a
25 case involving cell phone records to determine

RE CROSS EXAMINATION OF TROY LONG BY HUGHES

1 whether any appellate court had breached the issue of
2 whether it was testimonial versus non-testimonial.
3 They told me they would, a rule on that.

4 Then the Solicitor told me that she had
5 witnesses here who could, one, show where the number
6 of the cell phone was located, by longitude and
7 latitude, or a localized server -- location service.
8 And that she would like to introduce that.

9 She also has a witness who has done a map of
10 where the cell phone was located, and she would like
11 to introduce that map, which I felt was an entirely
12 different issue than the issue of the statements of
13 the Defendant, who I am told will not take the
14 witness stand in this case, according to his
15 attorney, although he recognizes that is the
16 Defendant's decision.

17 For that matter, I think it is admissible, and I
18 will allow it. My understanding, now, Mr. Hughes, is
19 that you have no objection to that now. Knowing my
20 feeling on it, you don't have any objection?

21 MR. HUGHES: No.

22 THE COURT: So we will proceed on those grounds.
23 Have I accurately covered, Solicitor, what
24 occurred in chambers?

25 MS. JONES: Yes, Your Honor.

RECROSS EXAMINATION OF TROY LONG BY HUGHES

1 THE COURT: Mr. Hughes, have I accurately
2 covered it?

3 MR. HUGHES: Yes, Your Honor.

4 THE COURT: All right.

5 MS. JONES: Your Honor, if I may have a couple
6 minutes so I could let these witnesses know that
7 their testimony is now limited.

8 THE COURT: Absolutely.

9 (Pause.)

10 MS. JONES: Okay. They said no problem.

11 THE COURT: Are you ready?

12 MS. JONES: Yes.

13 THE COURT: All right. Solicitor, my
14 understanding, the State is now ready to proceed.

15 MS. JONES: Correct, Your Honor.

16 THE COURT: Is the Defendant ready to proceed?

17 MR. HUGHES: Yes, Your Honor.

18 THE COURT: All right. Solicitor, if you'll
19 call your next witness, please.

20 MS. JONES: Your Honor, we need a jury.

21 THE COURT: But you can go ahead and get your
22 witness out here. We'll swear them in front of the
23 jury.

24 MS. JONES: Karen Milbrodt.

25 (Jury enters the courtroom at 3:41 p.m.)

RECROSS EXAMINATION OF TROY LONG BY HUGHES

1 Thereupon,

2 KAREN MILBRODT

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 THE COURT: Come around. Have a seat for me,
6 make yourself comfortable. Adjust the microphone to
7 your height. It's going to amplify your voice. I
8 need you to use that so they can hear you.

9 I would like you to begin by stating your full
10 name and spelling your last name for the court
11 reporter.

12 THE WITNESS: My name is Karen Milbrodt. And
13 Milbrodt is M-I-L-B-R-O-D-T.

14 THE COURT: Very well. Your witness, Counsel.

15 MS. JONES: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. JONES:

18 Q Ms. Milbrodt, where do you work?

19 A I work for Verizon Wireless.

20 Q And what is your duty at Verizon?

21 A Yes. My title is Senior Analyst in the
22 executive relations department. And one of my
23 responsibilities is as a records custodian for the
24 business.

25 Q Okay. And as a records custodian, what are some

DIRECT EXAMINATION OF MILBRODT BY JONES

1 of your duties?

2 A When business records are either subpoenaed or
3 that they have entered into evidence at a trial, a records
4 custodian will review the records, authenticate them, and
5 answer questions that either party may have about the
6 records.

7 Q Okay. How long have you been at Verizon?

8 A Eighteen years.

9 Q And how long as a records custodian?

10 A Six.

11 Q Have you testified in court before?

12 A Yes, ma'am.

13 Q About how many times?

14 A Hundreds.

15 Q Okay. Great.

16 Where are these records stored?

17 A Records are stored electronically. In a virtual
18 database. Various records, various databases.

19 Q And how are they eventually transferred to
20 whoever may request them, say law enforcement?

21 A We'll either send a subpoena or we will fax a
22 paper copy to them. Most of the time it's a-- I'm sorry,
23 I said "subpoena," but most of the time it's a CD. An
24 encrypted CD.

25 Q Okay. That's how you get the records to whoever

DIRECT EXAMINATION OF MILBRODT BY JONES

1 requests them?

2 A Yes.

3 Q How are they requested?

4 A A subpoena or a court order.

5 Q Okay. Did you receive a request for records in
6 the case we're here for today?

7 A Me, personally, no; but Verizon Wireless did.

8 Q Okay. And you're familiar with Verizon's
9 records?

10 A Yes, ma'am.

11 Q Did you have an opportunity to review records
12 that had been provided?

13 A Yes, ma'am.

14 MS. JONES: Permission to approach?

15 THE COURT: You may approach.

16 BY MS. JONES:

17 Q Ms. Milbrodt, I'm showing you what has been
18 marked for identification as State's 17. Do you recognize
19 that?

20 A I do.

21 Q And what is that?

22 A This is the CD that our production department
23 sent. And I recognize it because -- the CD itself, but I
24 also initialed and dated it. I saw it yesterday.

25 Q Okay. And those are the records that came

DIRECT EXAMINATION OF MILBRODT BY JONES

1 directly from Verizon?

2 A Yes, ma'am.

3 Q And from what you reviewed yesterday, they
4 haven't been altered in any way?

5 A No, ma'am. I compared them to the records that
6 were sent to me, and they are identical.

7 Q Okay. What phone number are those records for?

8 A I don't have it to memory. I think the last
9 four are 8048, but that's just me guessing. I didn't --

10 Q Did you just get one request in this case?

11 A One mobile number request?

12 Q Yes.

13 A Yes.

14 Q Okay. And you believe it ended in 8048.

15 Do you remember the dates for those
16 records?

17 A No, I don't, sorry.

18 Q What is contained in -- is there any records on
19 that disc that deals with possible locations of a cell
20 phone number?

21 A Yes.

22 Q And what are those?

23 A These are called RTT records. So an RTT record,
24 real time tool is a log that we keep for all activity
25 going to or from the device, and in that -- one of -- some

DIRECT EXAMINATION OF MILBRODT BY JONES

1 of the columns include the latitude and longitude of where
2 our service believes the device is located during that
3 activity.

4 Q Okay. And "activity," what does that mean?

5 A A text message, a phone call.

6 Q But you said, "RTT."

7 A Yes.

8 Q Is that picked up when the phone is not in use?

9 A No, it's not. We don't have a log on it. Some
10 type of activity has to happen for us to record it.

11 Q Okay. Okay. And for this case, those records
12 in there include RTT activity?

13 A Yes, ma'am.

14 Q And are these records kept in the ordinary
15 course of business?

16 A They are.

17 Q Have they been altered in any way?

18 A No.

19 Q Question about these records --

20 MS. JONES: Well, Your Honor, at this time,
21 State moves State's 18 --

22 THE CLERK: Seventeen.

23 MS. JONES: Seventeen. My apology, 17 into
24 evidence.

25 THE COURT: As to State's 17.

DIRECT EXAMINATION OF MILBRODT BY JONES

1 MR. HUGHES: No objections.

2 THE COURT: Ladies and gentlemen of the jury,
3 State's Exhibit Number 17 will be admitted into
4 evidence in the trial of this case, without
5 objection.

6 *(Whereupon, State's Exhibit No(s). 17 marked for*
7 *identification and received in evidence.)*

8 THE COURT: Solicitor, it's my understanding
9 that you wish to waive publishing; is that correct?

10 MS. JONES: Correct, with another witness, Your
11 Honor.

12 THE COURT: State's 17 is in evidence and you
13 can publish at a later time, if you so desire.

14 MS. JONES: Thank you, Your Honor.

15 BY MS. JONES:

16 Q I have a couple of specific questions about
17 these records.

18 When Verizon is getting the latitude and
19 longitude, is there an accuracy rating on these locations?

20 A Correct. It's an estimate, it's not a GPS
21 10-point, but we do -- the system does record an accuracy
22 of either low, medium, and high. So --

23 Q And high being the best?

24 A High is best, better than medium, better than
25 low. So it's not a --

DIRECT EXAMINATION OF MILBRODT BY JONES

1 Q Do you have a vicinity of how close to that
2 location that device could be?

3 A No.

4 Q Is it in relation to a tower?

5 A Yes. It would be a tower that was in use during
6 that activity. So it would be near the tower.

7 Q So it's -- it's highly accurate?

8 A Yes, that would be -- in our world, we believe
9 high would be high. I don't have a way to describe it any
10 differently.

11 Q Okay. Great.

12 MS. JONES: I have no further questions for you
13 at this time. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Cross examination.

16 MR. HUGHES: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. HUGHES:

19 Q To start off with, does your magical tool tell
20 you who had the phone?

21 A No, sir.

22 Q Do you know how accurate they are, or do you
23 just go low, medium, high, you can't say within a
24 five-mile radius, a ten-mile radius, or a 15-mile radius?

25 When you say something is a high

CROSS EXAMINATION OF MILBRODT BY HUGHES

1 probability, what -- how far away from where you point
2 could it possibly be?

3 A I do not have a range to provide you with. Our
4 system is coded as high, medium, and low.

5 Q Okay. And why do you have that service? Why do
6 you have RTT on phones?

7 A We use it for various records, billing accuracy.
8 We use it for engineering records. We use it for tech
9 support. A customer calls and says, I can't make a phone
10 call when I hit Jackson and State Road 54, we can look at
11 these logs and determine what's happening on Jackson and
12 State Road 54.

13 Q Is there a way to cut it off?

14 A Not to my knowledge.

15 Q So anybody that has a Verizon phone can be
16 tracked by Verizon?

17 A Yes. If you're using your phone, we keep a log
18 of when and where it's in use.

19 Q Any phone?

20 A Pardon?

21 Q Any phone?

22 A If it's a phone on our network and it's in use,
23 we do have a record of it. We're not in the business of
24 --

25 Q This is a Verizon phone.

CROSS EXAMINATION OF MILBRODT BY HUGHES

1 A -- necessarily tracking --

2 Q I'm sorry. Go ahead.

3 A We're not in the business, that's not our goal
4 to track our subscribers, but we do keep business records
5 for that.

6 So you have a Verizon phone. Were you going
7 to ask me a question about your Verizon phone?

8 Q I'm just asking, you can track any Verizon
9 phone?

10 A If it's in use, we can. We keep a record of
11 what tower was in use. We keep a record of where those
12 towers are located, and the RTT has an estimate, how far
13 away from the tower that activity was.

14 Q Okay. So the RTT measures how far away from the
15 tower?

16 A How far away your phone is from whatever cell
17 tower that was used. Yes, latitude and longitude.

18 Q Okay. I -- you're confusing me here.

19 Does it return the actual latitude and
20 longitude, or does it return how far away it is from the
21 tower?

22 A The RTT log has both. It has a mileage column,
23 it also has a lat and long.

24 Q Okay. And that is -- the lat and long are from
25 the phone itself? The GPS in the phone? Or is that from

CROSS EXAMINATION OF MILBRODT BY HUGHES

1 the tower?

2 A It's from the tower to the phone and back again.

3 Some people call the RTT the range to tower. How long it

4 takes it to come back from tower to phone and back.

5 Q So it doesn't give you the direction from the

6 tower, it just gives you the range from the tower?

7 A There's a log that tells you -- they have what

8 antenna was used, which would give you direction. So

9 there's also a column for that as well.

10 Q And it doesn't go from a second tower for

11 triangulation purposes, it is primarily somewhere along

12 that line?

13 A Yes, sir.

14 MR. HUGHES: No further questions, Your Honor.

15 THE COURT: Redirect.

16 Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. JONES:

19 Q So in the records that you provided, there's a

20 latitude and longitude column?

21 A Yes, ma'am.

22 Q That is the latitude and longitude of the device

23 in use?

24 A That's approximately, yes. That is where that

25 device was in use.

REDIRECT EXAMINATION OF MILBRODT BY JONES

1 Q Okay. And these records, it was high -- Verizon
2 believed they were highly accurate.

3 A There were many columns and rows that had high
4 accuracy, yes.

5 Q Okay. And that's the location of the device,
6 not a tower?

7 A Correct.

8 Q Device in use.

9 A Device in use.

10 MS. JONES: Okay. I have no further questions.

11 THE COURT: Recross limited to Redirect.

12 MR. HUGHES: Okay.

13 RE-CROSS EXAMINATION

14 BY MR. HUGHES:

15 Q And you don't know what makes it high as opposed
16 to medium?

17 A No.

18 Q But RTT is where the antenna is pointed, and is
19 trying to get the signal to come back?

20 A Yes. There is an antenna column and there is --
21 I'm sorry. Maybe I misunderstood your question. Forgive
22 me.

23 Q You don't tap into the phone's GPS to get the
24 longitude and latitude that the GPS on the phone is
25 recording to.

RECROSS EXAMINATION OF MILBRODT BY HUGHES

1 A No.

2 Q Thank you.

3 THE COURT: As to this witness?

4 MS. JONES: She may be excused, Your Honor.

5 THE COURT: Any objection, Mr. Hughes?

6 MR. HUGHES: None whatsoever.

7 THE COURT: Very well. You may step down, and
8 you are excused from the trial of this case, Ms.
9 Milbrodt. Thank you very much. You may leave the
10 courtroom at this time.

11 THE WITNESS: Thank you very much.

12 THE COURT: Call your next witness.

13 MS. JONES: State calls Dylan Hightower.

14 **Thereupon,**

15 DYLAN HIGHTOWER

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 THE COURT: Good afternoon. Have a seat, make
19 yourself comfortable. Pull the chair up, adjust the
20 microphone to your height. State your full name and
21 spell your last name for the court reporter.

22 THE WITNESS: My name is Dylan Hightower. Last
23 name is H-I-G-H-T-O-W-E-R.

24 THE COURT: Your witness, Counsel. Direct
25 examination.

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 MS. JONES: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. JONES:

4 Q Mr. Hightower, where do you work?

5 A I currently work in the Fourteenth Circuit
6 Solicitor's Office as an investigator. I also supervise
7 the Criminal Intelligence Unit.

8 Q And as part of the Criminal Intelligence Unit,
9 what are some of your duties?

10 A My -- well basically, I help local agencies,
11 local, state, federal, local agencies, with intelligence
12 related issues, items. Do a lot of cellular forensics,
13 assist in investigation any way that I can.

14 Q You mentioned cellular forensics. Were you
15 asked to analyze some records received in this case?

16 A I was.

17 Q Who sent you that request?

18 A Sergeant Natasha Aiken, who was an investigator
19 with the Hardeeville Police department at the time of
20 this.

21 Q And when did she send this request to you?

22 A I received the records on June 22nd, 2015.

23 Q What number did these records belong to?

24 A The target number in these records belonged to
25 [REDACTED]-8048.

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 Q Okay. And with these records, what did you do?

2 A I -- basically I had done what's called a real
3 time tool, or range to tower tool. And I also saw it
4 where I map the points to where the handset was located
5 during the time frame of the incident.

6 Q Okay.

7 MS. JONES: Your Honor, permission for the
8 witness to step down?

9 THE COURT: Absolutely.

10 Margaret, I need the portable mic, please.

11 Mr. Hightower, you're going to be with your back
12 to the court reporter. So hold the mic up so the
13 court reporter can hear you. If she's going to ask
14 you to look on the screen, please don't watch the
15 jury. She's going to ask you to talk to her, and the
16 court reporter's going to look at me and say, "I
17 can't hear him."

18 THE WITNESS: Yes, sir.

19 BY MS. JONES:

20 Q Mr. Hightower, without showing this to the jury
21 just yet, what is this?

22 A This is an overview of my analysis, the RTT
23 analysis.

24 Q Okay. And this is State's Exhibit 1 -- State's
25 Exhibit 21, my apologies for Madam Court Reporter.

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 And is this a map you created?

2 A It is.

3 Q And does it fairly and accurately depict the map
4 you created?

5 A It is.

6 Q Is it altered in any way?

7 A It is not.

8 MS. JONES: Your Honor, at this time, State
9 moves State's 21 into evidence.

10 THE COURT: As to State's 21.

11 MR. HUGHES: No objection.

12 THE COURT: Ladies and gentlemen of the jury,
13 State's Exhibit 21 will be admitted into evidence in
14 the trial of this case, without objection.

15 *(Whereupon, State's Exhibit No(s). 21 marked for*
16 *identification and received in evidence.)*

17 (admit evidence.)

18 THE COURT: You may now publish 21 to the jury.
19 Proceed.

20 MS. JONES: Thank you, Your Honor.

21 BY MS. JONES:

22 Q As to State's 20, Mr. Hightower, what is this?

23 A These are just zoomed-in versions of the
24 overview map to show the actual data involved within each
25 of the track points.

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 Q Okay. And then you created this?

2 A I did.

3 Q With the information received from Verizon?

4 A Yes.

5 Q Okay. And is this a fair and accurate
6 description of the map you created?

7 A It is.

8 MS. JONES: At this time, State moves State's 20
9 into evidence.

10 THE COURT: As to State's 20, Mr. Hughes.

11 MR. HUGHES: No objection.

12 THE COURT: Ladies and gentlemen of the jury,
13 State's Exhibit Number 20 will be admitted into
14 evidence in the trial of this case, without
15 objection.

16 *(Whereupon, State's Exhibit No(s). 20 marked for*
17 *identification and received in evidence.)*

18 THE COURT: You may now publish 20 and 21 to the
19 jury.

20 MS. JONES: Thank you, Your Honor.

21 BY MS. JONES:

22 Q Mr. Hightower, if you can stand over here.

23 THE COURT: Tap that microphone.

24 THE WITNESS: Yes, it's on.

25 THE COURT: Everybody get around where you can

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 see.

2 Do y'all got an easel you can put it on so you
3 don't have to hold it?

4 Yeah, behind you, Solicitor.

5 Can everybody in the jury see the board? If you
6 can't, I'll have them turn it. Can you see back
7 here, sir? Everybody can see?

8 (Jury indicates.)

9 THE COURT: Hold the microphone up close, Mr.
10 Hightower, so that the court reporter can hear you.

11 All right. Solicitor, speak up.

12 MS. JONES: Thank you, Your Honor.

13 BY MS. JONES:

14 Q So Mr. Hightower, this is a map of records
15 generated from the real time tracking, or real tool
16 tracking?

17 A Yes. It's referred to as --

18 THE COURT: Exhibit number for the record.

19 MS. JONES: Exhibit 21.

20 THE WITNESS: It's referred to as range to tower
21 or real time tool analysis.

22 BY MS. JONES:

23 Q Okay. And this map, Exhibit 21, what does it
24 show? What is this?

25 A So this is just for reference point to show

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 where the incident occurred. But I didn't put it into the
2 mapping software. This is -- the red dots here recognize
3 the location of the handset as it's in use. It has to be
4 in use in order for that to show a location on here.

5 When I say "in use," as in making a phone
6 call, using some type of data transaction, any type of SMS
7 transaction, text messages, things of that nature.

8 Q So if it's not in use, it's just in your pocket,
9 you won't get a latitude and longitude?

10 A Correct.

11 Q Okay. And now, I'll show you State's 20. What
12 does State's 20 show?

13 A So State's 20, if I may refer to this.

14 Q Yes.

15 A So all this is, if everyone can see, this
16 cluster here is a cluster on top, and this cluster down
17 here is the cluster below here. Okay?

18 Q So it's a close-up view of that one there?

19 A It is. It just makes it to where -- I cannot --
20 I can't zoom in to this portion here on Exhibit 21. So I
21 have to zoom in here to actually show what the data shows.
22 If there was a phone call, text message, things of that
23 nature, and then the last two logs show the location.

24 Q Okay. And up here again is [REDACTED] Walsh Drive,
25 where the incident happened?

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 A That's right. is.

2 Q Okay. What is the first latitude and longitude
3 you were able to pinpoint?

4 A So the time frame that I conducted on this
5 analysis was 10:57 in the morning until 11:39 in the
6 morning. So the top map here shows 10:59 --

7 THE COURT: Please, refer to the exhibit number
8 when you say "top map," so the record's clear.

9 THE WITNESS: So the top map on this particular
10 point, this documents times 10:57 through 11:02. So
11 the first one here was a 3G voice call at 10:57. The
12 next one was a voice call here at 10:59. A voice
13 call here at 11:00, eight seconds. A voice call here
14 at 11:00, 50 seconds. A voice call here at 11:01
15 with 41 seconds. A voice call here at 11:02 with 54
16 seconds.

17 BY MS. JONES:

18 Q Okay. And we move down the road, and what are
19 the next latitude and longitude points you were able to
20 pick up?

21 A So the location information referring to Exhibit
22 20, the bottom map on Exhibit 20, which is the smaller
23 cluster down -- I called it 173 and Parkway, which is an
24 intersection in Hardeeville.

25 This is a zoomed-in version of that again.

DIRECT EXAMINATION OF HIGHTOWER BY JONES

1 And this is in reference to the times 11:19 a.m. to 11:39
2 a.m. And, again, these just kind of show a cluster as to
3 the type of transaction that took place, a 3-2 voice call,
4 3-2 data. Again, going through, if you were going to get on
5 an app or search the web or things of that nature. That's
6 what a 3GD stands for. And that's again from 11:19 a.m. to
7 11:39 a.m.

8 Q Okay. I see another marker on each of these
9 rectangles, call location confidence. What does that the
10 "H" stand for?

11 A The "H" stands for a high caller's location
12 confidence.

13 Q All right. And that is created by Verizon?

14 A Correct. This is all exported data I get from
15 Verizon in an Excel spreadsheet. They basically send a
16 large amount of raw data in an Excel spreadsheet, and all
17 I do is map it. I import it into a mapping software and
18 basically put on a picture, you know, to see where it is
19 on the map.

20 MS. JONES: I have no further questions for you
21 at this time. Thank you.

22 THE COURT: You passing the witness?

23 MS. JONES: Yes, Your Honor.

24 THE COURT: Cross examination.

25 CROSS EXAMINATION

CROSS EXAMINATION OF HIGHTOWER BY HUGHES

1 BY MR. HUGHES:

2 Q Mr. Hightower, come on back down, please, with
3 the microphone.

4 A (Witness complies.)

5 THE COURT: Come around, Solicitor, so you can
6 see.

7 BY MR. HUGHES:

8 Q This appears to be an amazing tool. And you say
9 it's very accurate?

10 A I can't say that. All I can say is I mapped the
11 data that I was provided by Verizon.

12 Q Okay. Let's look at, I think it's Number 21
13 first. And your second set of dots down there at the
14 bottom, that's on the Jasper/Beaufort line, I believe? Up
15 by the River?

16 A It's near there, yes, sir. It's more actually
17 in this vicinity here, yes.

18 Q Okay. And I believe where 40 -- excuse me -- 68
19 and 170 meet, there's a gas station there. That's in the
20 Levy Lighthouse area?

21 A That's Highway 46.

22 Q Oh, 46, I'm sorry.

23 A Yes. There is a Citgo gas station right here.

24 Q And behind that is woods, right?

25 A Yeah. I mean, that whole -- I would agree with

CROSS EXAMINATION OF HIGHTOWER BY HUGHES

1 that, yes.

2 Q Okay. Now, let's look on Number 20, and I,
3 believe you have high probability of accuracy on each one
4 of those dots?

5 A Yes, sir, I do.

6 Q And that's walking a straight line through the
7 woods, correct?

8 A I can't say that. It's whatever the handset
9 shows and whatever Verizon offers in their data, and I
10 again, plot the points from the data I was provided.

11 Q Okay. But if you look at this dot, this dot,
12 this dot, and this dot, they are in a straight line,
13 correct?

14 A More or less, yes.

15 Q And we're talking 1125 for this one, 1129 for
16 this one, 1119 and 1120. So walking back and in a
17 straight line. And what's the distance between this dot
18 here and that dot there?

19 A I mean, 50, 60 yards, probably. I'm not exactly
20 sure.

21 Q Is there a scale?

22 A No, sir. Well, here, so a hundred yards would
23 be -- yeah, it would be about probably 100 to 150 yards.

24 Q Okay. Here and here?

25 A Well, to there, you could probably say 600, 700

CROSS EXAMINATION OF HIGHTOWER BY HUGHES

1 yards.

2 Q So it's not exactly what you'd call pinpoint
3 accurate as far as on a map, saying --

4 A I can't say for sure. I'm provided a set of
5 latitude and longitude, and I map it.

6 Q But you're the one that put the points on this
7 map, right?

8 A Well, I generate them through the points that I
9 was provided by Verizon.

10 MR. HUGHES: Thank you. You can have a seat.

11 (Witness complies.)

12 BY MR. HUGHES:

13 Q One final question for you, sir. Based upon all
14 of your information that you have plotted and everything,
15 what's the name of the person that held that phone?

16 A I mean, all I know is the phone was provided to
17 me --

18 Q No. Wasn't my question, sir.

19 A I mean, there is no way of me knowing.

20 MR. HUGHES: Thank you. No further questions,
21 Your Honor.

22 THE COURT: Redirect.

23 MS. JONES: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. JONES:

REDIRECT EXAMINATION OF HIGHTOWER BY JONES

1 Q What phone number were those marks pinpointing?

2 A The phone number was provided by the target
3 number [REDACTED]-8048.

4 MS. JONES: Thank you, Mr. Hightower. I have no
5 further questions.

6 THE COURT: Recross limited to redirect.

7 MR. HUGHES: Nothing, Your Honor.

8 THE COURT: As to this witness, Solicitor.

9 MS. JONES: He may be excused.

10 THE COURT: Any objection, Mr. Hughes?

11 MR. HUGHES: None, whatsoever.

12 THE COURT: Mr. Hightower, you may step down,
13 and you're excused from the trial of this case.

14 Call your next witness.

15 MS. JONES: State calls Dr. Erin Presnell.

16 THE COURT: Dr. Erin Presnell.

17 Thereupon,

18 ERIN PRESNELL

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 MR. HUGHES: Your Honor, for the record, I do
22 not mind -- I will stipulate that Dr. Presnell is an
23 expert, and I do not mind the Solicitor having her
24 state her qualifications.

25 THE COURT: I'll let the Solicitor decide. She

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 has the right to present her credentials, if she so
2 desires. But thank, Mr. Hughes, for your willingness
3 to stipulate.

4 Good afternoon, Erin. How are you?

5 THE WITNESS: Good. Thank you. I'm good, thank
6 you.

7 THE COURT: You got glasses and you got your
8 file.

9 THE WITNESS: I'm good.

10 THE COURT: All right. State your full name for
11 the record, spell your last name.

12 THE WITNESS: My name is Susan Erin Presnell,
13 P-R-E-S-N-E-L-L.

14 THE COURT: Your witness, Counsel. Direct
15 examination.

16 MS. JONES: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. JONES:

19 Q Dr. Presnell, where do you work?

20 A I'm a forensic pathologist at the Medical
21 University of South Carolina up in Charleston.

22 Q And how long have you been a forensic
23 pathologist?

24 A I became certified in 1999, and that's when I
25 started working at MUSC as a forensic pathologist.

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 Q And did you have to receive some special
2 training and education to become a forensic pathologist?

3 A Yes, I have high school, and Clemson. I have a
4 microbiology degree. Went to medical school. Decided
5 after medical school that I would choose the pathology
6 specialty as opposed to like pediatrics or family
7 medicine. And then -- so I did pathology training for
8 five years, and then I sub-specialized in forensic
9 pathology for another year. And then that's when I took
10 the boards to then practice medicine and also board
11 certified in the general pathology and forensic pathology.

12 Q And what is forensic pathology?

13 A Well, forensic pathology, I think that's the one
14 everyone is a little more familiar with it these days, but
15 it's a sub specialty of the field of pathology. It's a --
16 most pathologists diagnose disease. So if you go to a
17 regular doctor, and they take a biopsy or a surgeon
18 removes some tissue, that tissue will go to a pathologist,
19 and the pathologist will look through the microscope, they
20 diagnose disease, whether it's cancer or not, infection or
21 not. So that's general pathology.

22 Forensic pathology is a sub specialty of
23 that. We're not just looking at the tissue, we're looking
24 at a whole entire body of somebody that's deceased. We are
25 looking for disease. A lot of times that may be the cause

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 of death. But we are ultimately finding trauma.

2 And also we look at the outside, the inside,
3 and ultimately come up with the cause and manner of death.

4 Q And have you testified in court before?

5 A Yes. It would be an estimate for me to say
6 around a hundred-ish.

7 Q Okay. Thank you.

8 MS. JONES: Your Honor, at this time, the State
9 moves Dr. Presnell in as an expert in forensic
10 pathology.

11 THE COURT: Without objection?

12 MR. HUGHES: No objection whatsoever.

13 THE COURT: Ladies and gentlemen, recalling my
14 earlier instruction to you concerning expert witness
15 testimony, the witness is qualified as an expert in
16 the field of forensic pathology.

17 You may proceed.

18 MS. JONES: Thank you, Your Honor.

19 BY MS. JONES:

20 Q Dr. Presnell, did you perform an autopsy in the
21 case we're here for today?

22 A I performed an autopsy on Mr. Sterling Jenkins
23 on June 10th, 2015.

24 Q And how old was Mr. Jenkins?

25 A At the time, he was 23 years old.

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 Q Where did the autopsy take place?

2 A I'm started at -- I'm at MUSC and that's where
3 my autopsy room is. So, in this instance, the coroner
4 would decide who would get autopsies, and they would send
5 them to do the autopsy at MUSC.

6 MS. JONES: Your Honor, permission for the
7 witness to step down.

8 THE COURT: Absolutely.

9 Hold the microphone, please.

10 BY MS. JONES:

11 Q Do you have a highlighter in your hand?

12 A I do.

13 Q What is this that I'm putting here?

14 A This right on the stand is a copy of a blank
15 diagram. Something that we might use at autopsy to
16 document our findings.

17 Q Is this something that you used in this case?

18 A This is a copy of a blank diagram that I used in
19 this case.

20 Q And if you could, using this diagram for a
21 reference, if you could cover the wounds that you observed
22 on Mr. Jenkins.

23 A Okay. First, what I'll do is just review them
24 quickly, on me, because on this diagram there's so many
25 different views sometimes it gets confusing, at least to

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 me, what is exactly where.

2 And basically, Mr. Jenkins, has five gunshot
3 wounds to his head. He has a gunshot wound in front of the
4 ear, right in front of the ear, right there. He has a
5 gunshot wound on the right cheek. He has a gunshot wound on
6 the right chin. He has a gunshot would on the left
7 forehead, and he has a gunshot wound on the back of the
8 head, just a little bit to the right of midline. (Indicates
9 on drawing.)

10 So the black spots are the entrance gunshot
11 wounds. Again, we have wound run to the right side of the
12 face. This bullet actually goes up and to the left. Pretty
13 much everything is going to the left of him. To his left.

14 This gunshot wound that's on the side of his
15 face goes up into the base of the skull and into the brain.
16 And we recovered the bullet inside the brain. And as one of
17 the five, this is one of the fatal injuries.

18 This gunshot wound to the right face goes
19 across to the -- to up a little bit, going to the left, and
20 it breaks the facial bone going across. And we get the
21 bullet on the right temple side -- excuse me, the left
22 temple side.

23 This gunshot wound to the right chin goes
24 across the chin bone, or the mandible, fractures that, and
25 we recovered the bullet on the other side of the chin.

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 The gunshot wound to the left forehead is
2 actually superficial. It just goes to the temple -- from
3 the muscle that's on left temple area, and we get the bullet
4 from there.

5 And then finally, the gunshot wound to the
6 back of the head also enters the head and goes up and
7 forward on skin and into the brain, and we get that bullet
8 from the inside of the brain as well. Of the five, that was
9 the second one that was considered a fatal gunshot wound.

10 Q And these markings that you just made, do these
11 fairly and accurately depict the gunshot wounds you
12 located on Mr. Jenkins that morning?

13 A Yes. These are locations of the entrance
14 gunshot wounds.

15 MS. JONES: Your Honor, at this time, State
16 moves State's 22 into evidence.

17 THE COURT: As to State's 22.

18 MR. HUGHES: No objection.

19 THE COURT: Ladies and gentlemen of the jury,
20 State's Exhibit 22 will be admitted into evidence in
21 the trial of this case, without objection.

22 *(Whereupon, State's Exhibit No(s). 22 marked for*
23 *identification and received in evidence.)*

24 THE COURT: In evidence. Proceed.

25 MS. JONES: Thank you, Your Honor.

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 BY MS. JONES:

2 Q Dr. Presnell, what was Sterling Jenkins' cause
3 of death?

4 A Well, I -- it was kind of generalized. I
5 generalized it to his cause of death was four of the five
6 gunshot wounds to his head, and the manner of death was
7 homicide.

8 Q Thank you.

9 MS. JONES: I have no further questions for this
10 witness, Your Honor.

11 MR. HUGHES: No questions.

12 THE COURT: As to this witness, Solicitor?

13 MS. JONES: She may be excused.

14 THE COURT: Any objection?

15 MR. HUGHES: None whatsoever.

16 THE COURT: Dr. Presnell, you are excused from
17 the trial of this case, and you may leave the
18 courtroom. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MS. JONES: Your Honor, at this time, the State
22 rests.

23 THE COURT: Counsel approach.

24 Mr. Foreman, ladies and gentlemen of the jury,

25 I'm informed that I have a quick matter of law that I

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 have to take up. I'm going to have to ask you to
2 step into your jury room. I'll be right back with
3 you. Please don't not discuss the case. Thank you.

4 (Jury exits the courtroom.)

5 THE COURT: The jury is outside the courtroom at
6 this time. Mr. Hughes, I understand you have a
7 matter of law you wish to address the Court on.

8 MR. HUGHES: Yes, Your Honor. At this time, I
9 wish to move for a directed verdict. I do not
10 believe the State has met all the elements of murder,
11 or for that matter, use of a weapon during the
12 commission of a violent crime.

13 I don't see any evidence of the weapon other
14 than maybe a projectile was fired by something.

15 THE COURT: Solicitor.

16 MS. JONES: Your Honor, respectfully, I disagree
17 with Mr. Hughes. I believe the evidence that a gun
18 was used came out multiple times in the recovery of
19 the fragments and the bullets, as well as
20 Dr. Presnell testifying that cause of death was five
21 gunshot wounds, which could only have been produced
22 by a gun.

23 THE COURT: I agree. Mr. Hughes, your motion
24 for directed verdict is respectfully denied.

25 Would you and your client please come around and

DIRECT EXAMINATION OF PRESNELL BY JONES.

1 be sworn by the Clerk of Court.

2 Thereupon,

3 NAIJUWUAN CHISOLM

4 was called as a witness, having been first duly sworn,
5 was examined and testified as follows:

6 THE COURT: State your name for the record,
7 please.

8 THE WITNESS: Naijuwuan Chisolm.

9 THE COURT: Mr. Chisolm, at this time I'm going
10 to explain to you certain of your rights. If you do
11 not understand anything that I say, let me know. If
12 you want me to explain anything in further detail,
13 please let me know. Do you understand?

14 THE WITNESS: Yes, sir.

15 THE COURT: We've now reached the stage in the
16 trial where you may present your defense. You have
17 the right to testify on your own behalf. However, no
18 one can make you testify.

19 In the event that you have any record for any
20 conviction involving dishonesty or false statement or
21 for a crime punishable by imprisonment of more than
22 one year, and this court determines that the
23 probative value of admitting this evidence outweighs
24 its prejudicial effect to you, the Solicitor would be
25 able to introduce your record for impeachment

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 purposes to attack your credibility or your
2 believability.

3 Solicitor, does Mr. Chisolm have such a record?

4 MS. JONES: He has no convictions, Your Honor.

5 THE COURT: Very well. That does not apply
6 here.

7 If you elect not to take the witness stand, I
8 will charge the jury that they are not to give the
9 fact that you did not testify any consideration
10 whatsoever. And there is to be absolutely no
11 prejudice to you because you did not testify.

12 The decision as to whether or not you testify
13 will be left entirely up to you. You certainly can
14 talk with your attorney, but it is not your
15 attorney's decision. It is your decision. No one
16 can force you to testify.

17 The ultimate decision as to whether or not you
18 testify in the trial of this case will be left
19 completely and entirely up to you.

20 Have you understood what I've just told you?

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you want a moment to talk to your
23 lawyer, or are you ready to make a decision at this
24 time as to whether you wish to testify in the trial
25 of this case?

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 THE WITNESS: I'm ready to make a decision.

2 THE COURT: And what is your decision?

3 THE WITNESS: I won't testify.

4 THE COURT: And is that your decision and no one
5 else's?

6 THE WITNESS: Yes, sir.

7 THE COURT: No one forced you into that
8 decision?

9 THE WITNESS: No, sir.

10 THE COURT: You made that decision of your own
11 freewill and your own accord?

12 THE WITNESS: Yes, sir.

13 THE COURT: Very well. You may return to your
14 seat with Mr. Hughes.

15 Mr. Hughes, does the Defendant wish to present
16 any evidence?

17 MR. HUGHES: No, Your Honor.

18 THE COURT: Counsel approach.

19 (Off-the-record discussion held.)

20 (Jury enters the courtroom.)

21 THE COURT: Thank you, ladies and gentlemen. We
22 will now continue with the trial.

23 You've heard the evidence from the State of
24 South Carolina. We will now hear from the Defendant,
25 if he so desires.

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 Mr. Hughes, you may call your first witness.

2 MR. HUGHES: Your Honor, the Defense rests.

3 THE COURT: Ladies and gentlemen, you have heard
4 all of the evidence in this case, but you have not
5 heard the closing arguments of the attorneys or my
6 charge on the law.

7 Because it's almost 4:30 in the afternoon, Judge
8 Buckner's rule is, I never keep a jury here late
9 intentionally. We will finish this trial in the
10 morning. We will start promptly at 10:00 a.m. in the
11 morning. Please be in your jury room at 10:00 a.m.
12 This trial will conclude tomorrow.

13 We will serve lunch to you. I told you 1
14 o'clock, but my best estimate now is that we will
15 probably be serving you lunch around noon.

16 Over the overnight recess, please do not discuss
17 this case with anyone, as I've instructed you
18 throughout this trial. If somebody tries to contact
19 you, just say, "I'm on the jury." I know people are
20 curious and you get home and they say, "oh, you're on
21 the jury." Just say, "I can't talk about it."

22 Obviously, if someone really approaches you and
23 tries to talk to you about it, just get their name
24 and give it to me. I'll handle it for you, I promise
25 you that.

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 We want to thank you for your service, ladies
2 and gentlemen. It's very important that we have
3 people that are willing to give up their time and
4 serve on a jury.

5 And I told you I'd get you home early this week,
6 I'm going to keep my word to you, ladies and
7 gentlemen. But be on time in the morning, report to
8 your jury room, not to the court room. Be here prior
9 to 10:00 a.m.

10 If anyone has a problem overnight or in the
11 morning, please contact the Clerk of Court of Jasper
12 County, let her know. She'll get a message to me.
13 Otherwise, I'll expect each of you here prior to
14 10:00 a.m. in the morning.

15 Thank you very much. You may leave the
16 courtroom at this time.

17 (Jury exits the courtroom.)

18 THE COURT: Anything on the record outside the
19 presence of the jury from the State of South Carolina
20 before we adjourn for the evening?

21 MS. JONES: No, Your Honor.

22 THE COURT: From the Defendant?

23 MR. HUGHES: Yes, Your Honor. I renew my
24 motions made at the close of the State's case.

25 THE COURT: So noted. And for the reasons I

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 stated at the closing of the State's case, your
2 motion is noted for the record at the close of all
3 the evidence, and my ruling remains the same. It is
4 respectfully denied.

5 MR. HUGHES: Thank you, Your Honor.

6 THE COURT: Thank you. Anything else from the
7 Defendant outside the presence of the jury before we
8 adjourn for the evening?

9 MR. HUGHES: No, Your Honor.

10 THE COURT: Very well.

11 All right, counsel, I don't -- Brian, have
12 anything y'all want to call now?

13 MR. HOLLEN: No, sir, I don't. I can talk to
14 Ms. Muesser and see if she's got anything, but I
15 don't believe or think so.

16 THE COURT: Ms. Muesser, do you have anything?

17 MS. MUESSER: No, Your Honor.

18 THE COURT: All right. Here's to my best
19 effort, so y'all can plan for tomorrow.

20 Margaret's going to have food here at 12:00
21 o'clock. We think we can do argument and charge in
22 two hours in the morning. So that means that lunch
23 is going to be from 12 to 1 or 1:30. Y'all plan on
24 having every bit of work y'all want to call at 2
25 o'clock tomorrow afternoon, ready to go.

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1 Jail cases take priority over walk-ins. You
2 understand? Solicitor? Ms. Muesser?

3 MS. MUESSER: Yes, sir.

4 THE COURT: All right. Now, I've been asked
5 about Friday. Whatever I don't finish tomorrow, I'll
6 come back and work until we finish Friday. I
7 understand there's a ceremony -- is it on the grounds
8 of the courthouse?

9 THE CLERK: It's in the courtyard.

10 THE COURT: In the courtyard. But it's not
11 until 2 o'clock, right? And I hope that I'm going to
12 be able to adjourn and allow all of us an opportunity
13 to attend that. But I'll be here.

14 However, until I've done every jail case, there
15 will be no walk-in cases. Now, once I've exhausted
16 anybody in jail that wants their cases disposed of,
17 I'll be happy to take walk-ins. But I'm not here --
18 walk-ins go home. Jail cases start and, therefore,
19 they have priority with me.

20 Court's in recess until 10:00 a.m. tomorrow
21 morning.

22 (The court recessed for the day. The remaining
23 portions of the trial transcript are typed by another
24 reporter and filed separately.)

25

RIGHT TO TESTIFY GIVEN TO DEFENDANT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
9 and complete record of my stenographic notes.

8

DATED this 9th day of November, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

16

mmanley@sccourts.org

17

18

19

20

21

22

23

24

25

26

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF JASPER 2015-GS-27-00258
 2015-GS-27-00258

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) February 23, 2017
NAIJUWUAN S. CHISOLM,)
) Ridgeville, South Carolina
) Defendant.)

B E F O R E:

The Honorable Perry M. Buckner, III, Judge.

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

Mary Concannon Jones, Assistant Solicitor
Attorney for the State

Robert Milton Hughes, Esquire
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X				
WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Dylan Hightower	13	16	--	--

1	E X H I B I T S			
2	NUMBER	DESCRIPTION	MARKED	ADMITTED
3	Exhibit 23	Verizon Wireless		
4		records	11	15
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (February 23, 2017.)

2 THE COURT: We got all the jury?

3 THE CLERK: Yes, sir.

4 THE COURT: Let me say, yesterday I ruled on
5 a matter subject to an objection, a couple of objections,
6 by the defendant under the confrontation clause, that
7 certain text messages allegedly coming from a telephone
8 number which has been identified, at least, by a witness
9 as being a phone number attributable to the defendant;
10 however, there is no direct evidence the defendant sent
11 the text messages other than they emanated from the
12 number. I ruled it was not admissible because of
13 Crawford v. Washington as being testimonial and
14 prohibited by the confrontation clause in the Sixth
15 Amendment.

16 Overnight, my law clerk, Skyler Hutto, and I
17 researched this issue to ensure the accuracy of my
18 ruling. In addition, counsel for the State texted me, as
19 well as counsel for the defendant, a Fourth Circuit case.
20 That case is 816 Fed. 3d 242. It is United States v.
21 Alvarado. In that case, Mr. Alvarado -- and this is a
22 Fourth Circuit case where the district court erred in
23 admitting hearsay, that a person had said he purchased
24 heroin from Fat Boy, Fat Boy being a street name for the
25 defendant, Alvarado.

1 The Fourth Circuit held that Alvarado's
2 confrontation clause was unpersuasive and the clause to
3 enjoy the right to be confronted with the witnesses
4 against him, but it is undisputed that, according to the
5 Fourth Circuit, that testimonial evidence cannot include
6 statements made to friends in an informal setting.

7 They cited United States v. Jordan, which is
8 at 509 f.3rd 191, also a Fourth Circuit case, from 2007.
9 The Alvarado case is a 2016 case, and the Fourth Circuit
10 went on to say to their knowledge, in 2016 in Alvarado,
11 no Court has extended Crawford v. Washington to
12 statements made by a declarant through friends or
13 associates.

14 Accordingly, in the Alvarado case, the
15 challenged testimony included statements that were made
16 to his fiancée and one of his best friends in an informal
17 setting that he had purchased heroin from Fat Boy, who
18 was the nickname of the defendant, Alvarado, was
19 admissible because such statements were not testimonial;
20 therefore, their admission did not implicate the
21 confrontation clause of the Sixth Amendment.

22 Having reviewed that case as well as the
23 cases cited in the Alvarado case as well as cases from
24 other Federal Circuit Court of Appeals, recognizing that
25 it is not binding authority but persuasive authority, I

1 have revisited my ruling yesterday in light of this case
2 law.

3 It is now my understanding, after meeting
4 with the attorneys, that the State is moving to reopen
5 their case, which is in the Court's discretion, for the
6 purpose of entering into evidence through a witness who
7 will be subject to cross-examination by a defendant three
8 text messages excerpts which should have been prepared by
9 now and shown to Mr. Hughes.

10 MS. JONES: We may not be able to get that.

11 THE COURT: Go get it. I got a jury waiting.

12 (Brief recess.)

13 THE COURT: Please advise the solicitor that
14 Court's in session and to come back into the courtroom
15 now. Brian, you can go out. You can get it done, but
16 we're not sitting here waiting while -- all right.

17 MS. JONES: Your Honor, would you like a copy
18 of it?

19 THE COURT: Counsel approach. Come on up
20 here, Brian.

21 (Discussion held at sidebar.)

22 THE COURT: You're satisfied now they're
23 going to print it as you requested?

24 MR. HUGHES: Yes, Your Honor, and it was just
25 a miscommunication.

1 THE COURT: I understand.

2 MR. HUGHES: Your Honor, for the Court's
3 expedience, while you have ruled that it is testimony or
4 non-testimonial matter, I would also object to this under
5 the authentication of the sender under hearsay and under
6 probative versus prejudicial.

7 THE COURT: All right. Let's deal with it
8 one at a time.

9 First of all, what's your position on her
10 motion to reopen?

11 MR. HUGHES: I have no problem with her
12 moving to reopen, Your Honor.

13 THE COURT: Then the motion to reopen the
14 State's case is granted, which is vested in the trial
15 Court's discretion.

16 Now we deal with the issue of whether or not
17 the -- first of all, I believe I'm persuaded by the
18 Alvarado case. I believe it is non-testimonial now, even
19 though yesterday I ruled it was testimonial because I had
20 no case law provided to me by either party. We had to
21 research it last night.

22 Now, because it's non-testimonial, it is --
23 yesterday we had two witnesses. Solicitor, you correct
24 me if I'm wrong. You called Mrs. Milbrodt, am I
25 pronouncing that correct?

1 MS. JONES: Milbrodt.

2 THE COURT: Who said these were records -- at
3 that point, we were in the middle of my deciding whether
4 or not I was going to allow data from text, but I had
5 already told you I would allow data compiled from
6 location in the trial, and that was the reason that you
7 called, I believe, Dylan Hightower to the stand, for
8 purposes of location services which was a data
9 compilation from Verizon.

10 I overruled your objection, Mr. Hughes, on
11 the grounds of hearsay. I believe it falls within
12 several exceptions. One: It could possibly be an
13 admission against interest because it goes to criminal
14 intent, or it could be inferred that that's the case. I
15 recognize that you have several arguments there, but
16 those are for you to explain to the jury. There's also
17 an exception to the hearsay rule for business records,
18 and although -- I reread that rule to you in chambers.

19 She said -- she, meaning the witness from
20 Verizon -- yesterday testified that these records, this
21 data compilation, was kept by Verizon in the ordinary
22 course of business. I recognize the fact that there is
23 no testimony that the defendant sent the text. All they
24 can say is that this was text from a telephone number
25 which allegedly belonged to the defendant.

1 For those reasons, I believe it has some
2 probative value. It has out outweighed the prejudice. I
3 believe it falls within the exception to the hearsay
4 rule, and it is not precluded now in light of the
5 Alvarado case by the confrontation clause, so your
6 objections are respectfully overruled.

7 The State will be permitted to reopen without
8 objection by you, and I will allow the redacted
9 versions -- we've been over -- this started with 35 pages
10 of texts. We're now down to three, and we've redacted
11 the rest. The three are now supposedly to be shown to
12 you corrected.

13 Do you have them now, Solicitor?

14 MS. JONES: I do, Your Honor.

15 THE COURT: Show them to Mr. Hughes. You got
16 a whole copy?

17 MS. JONES: I have the middle one, Your
18 Honor.

19 THE COURT: Which one of these three is --

20 MS. JONES: The one in the middle should be
21 647.

22 THE COURT: 159-00755.

23 MS. JONES: No, first column, that says 647.

24 THE COURT: Oh, 647. It is noted. All
25 right.

1 Mr. Hughes, have you had a chance to review
2 it now?

3 MR. HUGHES: Yes, sir.

4 THE COURT: And it is now consistent with the
5 agreement you reached with counsel in chambers regarding
6 the redacted version?

7 MR. HUGHES: Yes, sir.

8 THE COURT: Very well. I've also been over
9 the verdict form with the lawyers. They've agreed to the
10 verdict form, have no objections. I've also been over my
11 entire charge to the jury with the lawyers, and they did
12 have one additional request, which I've added, which
13 deals with expert testimony. Other than that, they have
14 no other additional requests for charge.

15 Have I accurately stated what occurred in
16 chambers as far as the verdict form and charge, from the
17 State?

18 MS. JONES: Yes, Your Honor.

19 THE COURT: From the defendant?

20 MR. HUGHES: Yes, Your Honor.

21 THE COURT: Very well. We've also been over
22 the order of closing arguments. I gave the solicitor,
23 and I hope my law clerk has given Mr. Hughes, a copy of
24 the Beatty case which is the latest case from the South
25 Carolina Supreme Court, decided at the very end of 2016.

1 Because the defendant did not put up any
2 evidence in this case and because of an 1802 case which
3 adopts a common law rule that the defendant gets closing
4 argument where the defendant presents no evidence, do
5 both sides agree that the order of the closing argument
6 will be the State argues first and the defendant argues
7 last because the defendant did not put up any evidence?

8 Is that correct, Solicitor?

9 MS. JONES: That's correct, Your Honor.

10 THE COURT: Is that correct, Mr. Hughes?

11 MR. HUGHES: Yes, sir.

12 THE COURT: All right. With that, and with
13 the fact that I'm allowing you to reopen without
14 objection, I now believe we're ready for the jury.

15 MS. JONES: If I could just ask Madame Court
16 Reporter which exhibit that will be, and I will pre-mark
17 it 23.

18 (State's Exhibit No. 23 was marked for
19 identification.)

20 (In open court, jury present.)

21 THE COURT: Mr. Foreman: Good morning,
22 ladies and gentlemen. I take full responsibility for the
23 fact it is 20 minutes to 11:00 rather than 10 o'clock.
24 That does not mean we've been out here drinking coffee
25 and smoking cigarettes. We've been working. In fact, I

1 worked last night till after 10 o'clock. I told you
2 yesterday there would be matters of law that come up, and
3 that happens, and when that happens, I have to send you
4 to the jury room. A matter of law arose, and I had to
5 send you to the jury room.

6 I told you yesterday both sides have
7 completed their case and we would have argument and
8 charge; however, in your absence this morning, I granted
9 a motion for the State to reopen their case. They have
10 one additional witness which you will now hear before we
11 go to argument and charge.

12 I want to thank you for your patience this
13 morning, because it was entirely my responsibility. I
14 try to run on time, but very often matters come up that
15 require research, and that's exactly what happened this
16 morning. We had to do some research in order to
17 determine a matter of law, which I've ruled on, so I
18 thank you for your patience.

19 Solicitor, you may call your witness.

20 MS. JONES: Thank you, Your Honor. State
21 calls Dylan Hightower.

22 THE COURT: Mr. Hightower, I remind you that
23 you are still under oath in the trial of this case.

24 Please come around. This witness was
25 previously sworn in the trial of this case, ladies and

DYLAN HIGHTOWER - DIRECT EXAMINATION

1 gentlemen.

2 DYLAN HIGHTOWER,

3 having been previously duly sworn,

4 was re-examined and testified as follows:

5 THE WITNESS: Dylan Hightower,

6 H-i-g-h-t-o-w-e-r.

7 THE COURT: Direct examination, counselor.

8 MS. JONES: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. JONES:

11 Q. Mr. Hightower, you were here yesterday, and you
12 talked about some phone records. As part of your
13 examination, did you examine some text messages?

14 A. Yes, ma'am, I did as well.

15 Q. Who did you receive these text messages from?

16 A. On June 22, 2015, I received these text messages
17 in a PDF format from Sergeant Natasha Aiken with the
18 Hardeeville police department.

19 Q. Where did she receive them from?

20 A. She received them in a ZIP file which you would
21 receive from Verizon Wireless that would include the
22 information in it.

23 Q. So it came straight from Verizon?

24 A. Yes, ma'am.

25 Q. What did you do with these text messages?

1 A. So, basically, when they come in, they come in a
2 PDF format. I extract it, put it in a TXT and put it in
3 a system called Pen-Link. Pen-Link then puts them in
4 chronological order where it's a lot easier to read and
5 understand what's happening, what's being said, in
6 chronological order from the target phone number.

7 Q. That's what you did in this case?

8 A. Yes, ma'am.

9 MS. JONES: Your Honor, permission to
10 approach the witness?

11 THE COURT: You may.

12 BY MS. JONES:

13 Q. Mr. Hightower, I'm going to show you what's been
14 marked State's 23. Can you identify those documents,
15 please.

16 A. Yes, ma'am, I can.

17 Q. What are they?

18 A. This is my working copy from the extraction that I
19 performed for Verizon Wireless records of the text
20 message contents.

21 Q. And from what phone number were these text message
22 contents from?

23 A. [REDACTED]-8048.

24 Q. And that's a document you created it in?

25 A. Yes, ma'am, it is.

DYLAN HIGHTOWER - DIRECT EXAMINATION

1 MS. JONES: At this time, the State moves
2 State's 23 into evidence.

3 THE COURT: As to State's 23?

4 MR. HUGHES: Subject to our prior objections.

5 THE COURT: Subject to your prior objections,
6 it's admitted over your objection. State's 23 is in
7 evidence, Solicitor.

8 MS. JONES: Thank you, Your Honor.

9 (State's Exhibit No. 23 was admitted into
10 evidence.)

11 BY MS. JONES:

12 Q. Those text messages -- how many text messages are
13 you looking at?

14 A. It's a total of three text messages.

15 Q. Are they incoming or outgoing?

16 A. They are all outgoing text messages from the
17 target phone number, [REDACTED]-8048.

18 Q. Could you please read the first text message and
19 what time it was sent out.

20 A. This occurred -- this is an outgoing message,
21 again, on June 9, 2015, at 1453 hours, which is 2:53 p.m.
22 in the afternoon. There was an outgoing message and the
23 message stated this: 12, one, two, number 12, proolly
24 l-u-k-n for me, s-u-m-b-d-y, proolly, t-l-d-d-e-m who it
25 was.

1 Q. How about the second text message?

2 A. The second text message was again on June 9th of
3 2015. This was an outgoing message that was sent out at
4 1532 hours, which was 3:32 in the afternoon. Again, an
5 outgoing message that stated: Keep watxhn nd let me
6 kno if my name came up plz or find out if 12 k-n-o it was
7 me.

8 Q. And how about the third text message?

9 A. The third text message was, again, an outgoing
10 message on June 9 of 2015 at 1535 hours, which is 3:35
11 p.m., as an outgoing message that stated: Damn so, the
12 number 12, k-n-o it was me.

13 MS. JONES: I have no further questions for
14 you. Thank you, Mr. Hightower.

15 THE COURT: Cross-examine?

16 MR. HUGHES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. HUGHES:

19 Q. On the second message, there is a symbol behind
20 the word me. Is that a question mark?

21 A. Basically, what that says, as text comes in, or
22 data comes in, so --

23 Q. Sir, just answer my question.

24 A. I'm trying to explain it.

25 Q. Is that a question mark that is on that paper?

1 A. Not necessarily.

2 Q. Okay.

3 A. It shows it on the paper, but what happens is the
4 data is transmitted from Verizon Wireless and it comes in
5 a text format. Anything in a data format is extracted
6 into what you would see as a symbol in the records.

7 So I can't say for sure that's a question mark
8 that was sent inside the text message or if it was a
9 symbol that was extracted from the data from Verizon
10 Wireless.

11 Q. Sir, that wasn't my question. On that piece of
12 paper in front of you, is there a question mark in a box
13 in front of that statement?

14 A. There is a question mark in a box. That would be
15 established as a symbol from what text message wireless
16 records would represent, but yes, I'm looking at it. It
17 does show an actual question mark within a box after the
18 message is sent.

19 Q. Now, I don't want to know what telephone number
20 this came from. I just want you to tell me who sent it.

21 A. All I know is that this was an outgoing message
22 from [REDACTED]-8048.

23 Q. Okay. I'm not asking what telephone number it
24 came from. I want you to tell me who sent it.

25 A. There is no way of me knowing.

1 MR. HUGHES: Thank you. No further
2 questions, Your Honor.

3 THE COURT: Redirect?

4 MS. JONES: None, Your Honor.

5 THE COURT: As to the witness?

6 MS. JONES: May he be excused?

7 THE COURT: Any objection, Mr. Hughes?

8 MR. HUGHES: No, Your Honor.

9 THE COURT: In light of this witness, I
10 understand that's the State's case; is that correct?

11 MS. JONES: Yes, Your Honor. The State
12 rests.

13 THE COURT: Your prior motions are made for
14 the record. Let me ask you, Mr. Hughes, does the
15 defendant wish to present any additional evidence in
16 light of the State's additional witness?

17 MR. HUGHES: The defense rests, Your Honor.

18 THE COURT: Very well, and your motions made
19 yesterday at the close of the State's case and at the
20 close of all the evidence are noted for the record.

21 MR. HUGHES: Thank you, Your Honor.

22 THE COURT: All right. Very well.

23 Ladies and gentlemen: You have now heard all
24 the evidence in this case. You will now hear the closing
25 arguments of the attorneys, followed by my charge to you

1 on the law which applied to the case. I ask that you
2 give the attorneys your careful consideration. If we
3 need a break, Mr. Foreman, after the closing, just tell
4 me. Your lunches are coming in around noon. I don't
5 want you to have cold food, but the other side is if we
6 try to work it so we finish our work and you eat lunch as
7 you continue your deliberations, but you let me know
8 after the closing arguments, all right?

9 THE FOREPERSON: Yes.

10 THE COURT: All right. Solicitor?

11 MS. JONES: Thank you, Your Honor. May it
12 please the Court, Mr. Hughes:

13 A blank canvas. That is what the defense
14 told you you came here with, a blank canvas. And they
15 said by the end of the trial, it would remain blank,
16 maybe partially painted, but I would try to provide you
17 the beautiful paint strokes that paint you a pretty
18 picture.

19 Unfortunately, this doesn't happen often, I
20 agree with Mr. Hughes. I agree I didn't paint you a
21 pretty picture. There is no beautiful colors on that
22 blank canvas. I didn't do it because what I did show you
23 was scary. It was ugly. It was sad. It was the truth.

24 On June 9th of 2015, 911 was called. Erica
25 Lewis is the name of the girl who called 911. We later

1 learned she's in North Carolina today. She calls 911 and
2 she described what happened. She just saw somebody
3 murdered. She says, Slim has been shot. He's dead, and
4 it was a short black man. He had short twists, dreads in
5 his hair. He had on dark clothing, and he ran. He took
6 off. He shot Slim and he ran.

7 Hardeeville police department arrives, and
8 you hear from Mr. Loving, who at the time was Sergeant
9 Loving, and Officer Agar. They say they rode over to the
10 crime scene, they start looking for evidence, and they
11 start looking for witnesses. What's important about what
12 they told you was Sergeant -- or Mr. Loving said that
13 someone kept coming up and saying, Y'all tell Sergeant
14 Loving what you saw. Tell Sergeant Loving what you saw.

15 They could only get three people to talk to
16 them. Officer Aiken told you, he went around. He
17 knocked on doors. No one wanted to cooperate, but we did
18 have people that would cooperate. We had Lucretia
19 Jordan, and we had the twins, Barniesha and Jesniesha
20 Houston, and why did they cooperate? Because they lived
21 it.

22 They lived it, and they were brave enough to
23 come in here, face the man who they just saw murder
24 somebody, and tell you what happened. They were brave
25 enough because Lucretia is inside bathing her baby boy.

1 Her seven-year-old stepson is feet away from the bullets
2 that take Sterling's life. Barniesha is on her porch.
3 Her three-year-old and six-month-old baby girl are very
4 close to that killer, lurking and hiding, and Jesniesha,
5 she's holding the hand of her three-year-old little boy
6 as they watch from feet away Sterling be gunned down.
7 They told you what happened because they lived it.

8 Now, the defense tried to fault the police
9 and the investigation, and they brought up the lack of
10 body cameras or dash cams. That's the cameras in front
11 of the police cars, which I'm sure y'all have seen on the
12 news or on YouTube. That's great. He can do that. He
13 can bring that up, but we had one better. We had one
14 better. We didn't need cameras. We didn't need videos
15 because we had the girls that watched it, and they got in
16 here. They sat on that witness stand, and they told you
17 the truth. They told you exactly what they saw.

18 Now, in the 911 call, and from what Barniesha
19 told you and from what Jesniesha told you, you get the
20 same description. You get a short black male -- you get
21 a short black male. He's about as high as a satellite
22 dish, which is about five foot one inch. We later learn
23 that he's five-two. If that's not a close description, I
24 don't know what is. He had twists or dreads in his hair,
25 and -- well, today he's cut his hair. You learned that

1 from Jesniesha, but if you look at the photo lineup, what
2 are those? That is the person all three of them
3 described. That's him.

4 Now, another thing that the defense may have
5 you believe is that the State lacked in its investigation
6 because we didn't give you any DNA. We didn't give you
7 any fingerprints. No, we didn't. I agree. There was
8 none, but the reason there was none is because if you
9 listened to what those girls said when they took that
10 stand and when you listened to the 911 call, that man,
11 the only thing he touched was the trigger of the gun.

12 He didn't walk up to Slim and have a
13 conversation. He didn't walk up to him and share a
14 cigarette. They didn't drink; they didn't play cards;
15 they didn't hang out. He lied in wait. He peeked around
16 that corner until Sterling was alone, and then he
17 ambushed him. He shot him and he ran, and he shot him
18 with the only gun that doesn't leave any evidence. There
19 was no shell casings found at that scene. Why was that?
20 Why use a revolver? Why? Because you don't want to be
21 caught.

22 Barniesha gives you the height. She says
23 he's as tall as that satellite dish. You have this
24 picture. You can take it back with you. He's not tall.
25 You saw him stand up. He's not tall. Five-one,

1 five-two. Doesn't get much closer than that. She gave
2 us a great description with that point of measurement
3 right there. Barniesha gave us the height.

4 Jesniesha took us one farther. She gave us
5 the name. She tells the police that from the moment she
6 sees that man jumping and peeking and watching from this
7 side of this building, watching as Sterling sits in one
8 of these chairs, alone, she knows him. She told you she
9 was from me to her, and I was right about at that --
10 where you come in the courtroom right there, not far.

11 She doesn't wear glasses. She knows him.
12 She knew him from middle school, she knew him from high
13 school, and she knew him that day. Now, the defense
14 wanted to confuse things and bring up her written
15 statement, about how her statement, which she gave
16 30 minutes after watching him gunned down in front of
17 her, her emotions are heightened. She's distraught.
18 She's trying to hold her three-year-old son's hand when
19 she sees this happen.

20 She gives a very brief written statement, and
21 in it, it said, He got up and shot Slim. She's not being
22 inconsistent. She's not differing on what she told you.
23 He got up, yeah. He got up from around that corner, from
24 around that corner, from hiding behind what he thought he
25 was hiding behind. He got up from around that corner and

1 shot him.

2 She's not changing her story, and just to
3 make it even more certain, as if there was any doubt that
4 maybe Jesniesha had the wrong person, they show her the
5 photo lineup. This is the very photo lineup she is
6 shown. This is what we call a six-pack because it is
7 young black males, similar hair, similar facial features,
8 similar complexion, and the defense said: You don't know
9 one. You don't know two. You don't know three. You
10 don't know five, and you don't know six.

11 No, she didn't. Ms. Aiken didn't know them
12 either. No matter. This is a lineup to ensure the
13 person that she saw shoot Sterling was the name she had
14 given, and that is this person right here, this person
15 who matches the description given by every person who
16 took that stand, given by the 911 caller, given by
17 Barniesha, and given by Jesniesha.

18 The very reason the defense wants you to
19 think that this is no good is why it is good. We all
20 have the power of recognition. She had known him for
21 eight years. She sees him. She recognizes him, and
22 that's how she knows that was the murderer, and that is
23 how she knew that when she sat on that witness stand and
24 I asked her to point out who shot Sterling. She pointed
25 to that man right there. She did not hesitate. She told

1 you she was 100 percent positive.

2 Not only did the sisters give the same
3 description along with the 911 caller about the shooter,
4 but they also said he did the same thing after he
5 murdered Sterling: He ran, and Jesniesha told you he ran
6 diagonal. He ran this way. Barniesha told you the same
7 thing except she gave a street name. She said, He ran
8 this way, towards Jenkins Avenue.

9 Some of you may not be familiar with
10 Hardeeville, but I'm going to show you where Jenkins
11 Avenue is. Giant boards are a bit cumbersome. Okay.
12 Here is Jenkins Avenue. It's right there. This is where
13 he murdered Sterling and he ran diagonal. He ran right
14 towards Jenkins Avenue.

15 That's what she told you. And how do we know
16 she's telling the truth? Because these pinpoints
17 corroborate that. Now, Ms. Milbrodt from Verizon got up
18 on that witness stand and said, No, Verizon is not in the
19 business of tracking. We don't track phones. That's not
20 what we do. We keep records.

21 And these pinpoints are not exact locations.
22 I'll tell you that. They are close estimates based on
23 measurements between towers, and there are cellphone
24 towers everywhere, and these are GPS coordinates,
25 latitude and longitude, coordinates between the towers

1 with a high accuracy. They rate their accuracy low,
2 medium, high. These are high. They're confident about
3 these. This phone is in this area, and this phone is in
4 this area.

5 Right after the murder, he does run to
6 Jenkins Avenue. He runs, and he's frantic. He's
7 panicking. He's going back and forth and back and forth.
8 He doesn't know what to do, so what does he do? He keeps
9 running. He runs farther, over here. Which is right
10 here, and I'm glad Mr. Hughes brought this out. This is
11 woods.

12 What's he doing in the woods? What is he
13 doing in the woods? He just shot somebody in broad
14 daylight, in front of witnesses, in front of someone he
15 knows. He runs, and he's hiding and he's hiding, and
16 another thing is you may wonder, well, why aren't there
17 any pinpoints up to the time? Why isn't he right there?

18 There are no pinpoints when the phone is
19 inactive. If the phone is in someone's pocket, not being
20 used, not calling people, not receiving, not sending text
21 messages, no pinpoints. That phone was in his pocket
22 while he waited. He's not using it. He's waiting to
23 kill Sterling. He starts using it after, though, because
24 he's frantic and he's panicking and he's running. That
25 is what this shows.

1 The day of the murder, the two warrants are
2 signed out for Naijuwan Chisolm. We have murder and
3 possession of a weapon during the commission of a violent
4 crime.

5 That day, the police start looking for him.
6 They don't find him that day. So Ms. Aiken, she goes and
7 talks to his dad. She goes and talks to his sister. She
8 goes and talks to his aunt. She puts up posters around
9 town. There's a news blast put out. Nobody knows where
10 Naijuwan Chisholm is. Why does nobody know where he is?
11 Because he's hiding in the woods. He's hiding.

12 So the U.S. marshals get involved, and
13 six days later, almost a whole week later, they find him.
14 He's not in Hardeeville anymore. He's over in Beaufort.
15 He's gone out of the county. He's on the run. We have
16 the U.S. marshals; we have Beaufort County sheriff's
17 office; we have Beaufort police department. All these
18 people are in police attire. Captain Long told you he
19 had on a ballistics vest with bright yellow lettering
20 that said "police" on the front of it. Some of them are
21 in marked cars; some of them are in unmarked cars.

22 There is no question about it: All these
23 people zeroing in on this one little tiny street in
24 Beaufort, that's the police, and they're looking for
25 someone, and they see the person they're looking for.

1 They're looking for that man right there, and they see
2 him in the back yard of a house in Beaufort. He's with
3 one other person.

4 That other person, he stays still. He sees
5 the police. He ain't moving. He stays right there. But
6 the one person they're looking for, what does he do? He
7 runs. He runs because he sees the police, because he is
8 on the run because he knows that six days earlier he had
9 just killed Sterling, and people knew it and people told.
10 They find him a couple streets over, hiding in this
11 little tiny space under this shed.

12 Why on earth would anybody crawl under that?
13 Why would you crawl under that? The police are out
14 there, dozens of them, ballistics vests. They're ready
15 to find you. You have a warrant for murder. You hide.
16 He's hiding. He doesn't want to be found because he
17 knows he's guilty.

18 Now, this morning y'all thought you were
19 almost done, but we brought one person back to y'all, and
20 he talked to you about some text messages, and now he
21 read those text messages, and some of them were just a
22 bunch of letters put together, but I'm going to show you
23 how those text messages -- how they're typed.

24 I'm going to tell you right now, we have a
25 phone number for these text messages. No subscriber

1 information. We have a phone number, but it's a phone
2 number that the defendant gave to his good friend
3 Jesniesha two days before the murder, [REDACTED]-8048. Here
4 it is, right here. That is the number that these text
5 messages came from. All three of them came from that
6 phone number, a phone number that, ironically, the
7 defendant claimed was his.

8 So what do these texts say? The first one,
9 the day of the murder, at 2:53 p.m. says 12, and you
10 heard multiple witnesses tell you that 12 is a slang term
11 for the police. Prolly, prolly, is 12 prolly looking for
12 me? Somebody prolly ttld them who it was. I don't think
13 there is any other way to interpret that. 12: The
14 police, they're looking for me. Someone told them who it
15 was.

16 After that one, he sends another one. This
17 one is sent at 3:32, afternoon of the murder. Keep
18 wtxhn and let me know if my name come up or please find
19 out, again, if 12 know it was me. If the police know it
20 was me. If the police know I killed Sterling. Let me
21 know if they find out that I did it.

22 And, finally, same afternoon of the murder,
23 3:35, this final text says -- I don't think there is any
24 way to interpret that but one way: Damn, so 12 know it
25 was me. I'm on the run. Police are probably looking for

1 me. Find out if the police are looking for me. Damn.
2 12 knows it was me. The police know it was me. That's a
3 message sent from the number Naijuwuan gave Jesniesha.

4 Now, June 9, 2015 was the day that that man,
5 that defendant, planned it and murdered Sterling. He
6 finds Sterling. He watches Sterling, and he waits until
7 Sterling is alone. He has zero regard for who's around.
8 He has zero regard for the children in the neighborhood.
9 He's killed here. There are children here.

10 He has zero regard for Jesniesha, standing
11 feet away with her three-year-old son holding her hand.
12 He has zero regard for the baby boy inside that
13 apartment, that he knows was inside that apartment,
14 because he was watching. He has zero regard for anybody.
15 He waits for Sterling to be alone, and he ambushes him.
16 He executed him in broad daylight while families are just
17 starting their day.

18 Now, please, that man right there, he is a
19 grown man. Regardless of how meek and mild he might
20 appear, his power on June 9th of 2015, it didn't come
21 from his size. It didn't come from his stature. It
22 didn't come from his words. It came from the gun he was
23 holding in his hand when he fired those five bullets into
24 Sterling's head, and he runs. As any coward would do, he
25 runs, but today his running is over.

1 He can no longer run from the truth. It is
2 staring him in the eyes, and the truth is that while
3 others call him Naijuwan or Knight or Nike, the only
4 name he deserves is killer, and the only verdict he
5 deserves is guilty.

6 THE COURT: Take the easels down, please.

7 Mr. Hughes?

8 MR. HUGHES: If it please the Court --

9 THE COURT: Proceed.

10 MR. HUGHES: -- solicitor:

11 She paints pretty pictures, doesn't she? I
12 don't want to give the solicitor a mole hill because
13 she'll make a mountain out of the rest of it. She has
14 tried to make this seem like a lot better case than it
15 is, and -- excuse me just a second, please. It all goes
16 back to a lie that the police told.

17 This is the affidavit of photographic
18 identification. It has to do with the six-pack, the
19 photo lineup. The lie is, I understand that regardless
20 of whether identification is made, the police will
21 continue to investigate the incident.

22 They didn't. As far as they were concerned,
23 they had a person. They were done. They didn't look on
24 Walsh Drive for anything else. They didn't talk to
25 anybody else. They went with one person who said, and I

1 asked her about this: I was standing in the road, and
2 they was sitting on the porch.

3 Okay. Well, that just shows that her memory
4 was better now than it was a year and eight months ago,
5 because there's nothing about, I saw somebody standing on
6 the side of the building peeking around and jumping up,
7 getting psyched up. No. Thirty minutes after the
8 incident.

9 The solicitor thinks she wouldn't have put
10 the child someplace while she talked to law enforcement?
11 No. Law enforcement wouldn't let her do that. They want
12 to talk to her. They don't want to talk to a mother
13 who's keeping her child, and there are other people in
14 that place that would be more than happy to take care of
15 the child long enough for her to write out what she saw
16 because it is important to get it down on paper
17 immediately because memories change and people forget.
18 Impressions from when it happened are the best
19 impressions.

20 Now, they was sitting on the porch, and Slim
21 tried getting up to go in the house. That matches the
22 forensics. That matches where he was found. Dude got up
23 and shot him. They was sitting on the porch. Slim gets
24 up to go inside. Dude gets up and shoots him.

25 Now, that's not what she and her sister have

1 testified, her sister who lives in the same house as she
2 does, her sister whose statement was remarkably similar
3 to what she said. So the third sister has called 911 and
4 reported seeing someone run away, a short person.

5 I'll be the first to admit Mr. Chisholm is
6 not a tall man, but he's not the only short person in
7 Hardeeville. Shot him four more times. That matches the
8 forensics. That shows that she was telling the truth
9 here. It matched what the good doctor said happened, and
10 he took off running, which is what the person on the 911
11 call said. Black T, jean shorts. Yeah, that's what was
12 said on the 911 call. This is what was written
13 30 minutes after it happened.

14 Then she mentioned the gun. She doesn't know
15 guns, but she writes down black, small. It looks like a
16 nine, and I asked her why she said that if she didn't
17 know guns? Do you remember what she said? Because
18 that's what law enforcement told her. That's what law
19 enforcement told her. That's what she heard law
20 enforcement say.

21 So now we have a problem. She's written a
22 statement, I was standing in the road, something she said
23 before, and they was sitting on the porch and Slim tried
24 getting up to go in the house. Dude got up and shot him.

25 That wasn't what she said on the stand. That

1 wasn't what her sister said after a year and eight
2 months, the sister that lives with her, and I'm sure they
3 probably talked about this case a number of times.

4 Now, the solicitor wanted to make a big deal
5 about the phone, about how it's all over the place, like
6 he's running around. Now, what I thought they did was I
7 thought that Verizon, when you use your phone, tapped
8 into the GPS and got the GPS location. In that case,
9 they're right: Running around.

10 No. That's the reason I was wondering about
11 that, because that actually scares me that Verizon would
12 do that. Now, what it does is they get a tower, and the
13 tower tells what direction and the quality of the signal,
14 and it must be very, very accurate, gives how far it is
15 from the tower, and from that they can draw a line out
16 from the direction and then, based on the quality, say
17 where it was. Now, that doesn't take into account things
18 like walls, interference, atmosphere, or anything like
19 that. All that does is just somewhere on this line,
20 based upon this signal strength, that's where the phone
21 is.

22 Now, I'm not going to try to explain how this
23 works, but the one that really bothers me, or the bunch
24 that really bothers me, is this line right here. This is
25 New River. This line is a straight line. There is a

1 service station over here. There is a housing
2 development here. Now, I'm sure, based upon this, that
3 the tower is somewhere over here, or over there, so what
4 has happened is instead of somebody running through the
5 woods, across the marsh, and into New River and then
6 back, back and forth, a distance of about two miles, and
7 what you have is a signal that is being blocked by
8 something.

9 Now, the phone left one area and then went to
10 another area in about 30 minutes. Now, that other area
11 is about seven miles apart. So Mr. Chisholm didn't run
12 seven miles in half an hour. So what happened? The
13 phone went there. And then where did it go?

14 See, the solicitor's office -- the solicitor
15 kept saying, Sent the text messages. The phone was here;
16 the phone was there. I'm not going to argue that the
17 phone was there. Where is the phone? If he had had the
18 phone when he was arrested, wouldn't you be looking at
19 the phone for the last day in here? Wouldn't the
20 solicitor have loved to have shown you the phone?

21 Now, wouldn't it get thrown away? You don't
22 put your common sense at the door in a box and leave it
23 there. You bring it in here with you. A 20-year-old
24 throwing a phone away is like me throwing my glasses
25 away. Now, I don't have a smart phone. I have a flip

1 phone. I don't know how to text. I don't know how to
2 read text. I am old and behind the times, but if someone
3 has borrowed a phone, or if someone buys a phone for
4 someone else or someone is on someone's account, there
5 are a number of ways that you can have someone's phone.
6 I'm sure that most of y'all have asked to borrow a phone.

7 Now, I don't know what a 20-year-old would do
8 today, but you do. You're the jury. You're the finders
9 of fact. The solicitor and I agree on one thing: Poor
10 Slim was murdered, but no matter how big a mountain the
11 solicitor wants to tell you is in that painting, it all
12 boils down to one witness and a police officer that lied
13 when she promised to continue the investigation.

14 The reason I wanted to find out about the
15 videos is because a video is a fantastic way of putting
16 you there. Videos and audio pick up things that people
17 don't listen to at first. I wasn't trying to show that
18 the cops weren't doing their job. Hardeeville has got a
19 great police force, but, you know, you review the tape.
20 If someone is saying, I saw this and this happened, why
21 didn't we see it? Or, you know, Tell them what you saw.
22 Why didn't we see it? Why didn't we know who this was?
23 You're the finders of fact. You need all the information
24 to find the facts.

25 Natasha Aiken picked up one fact and ran with

1 it, and that's why we're here today. Now, the reason why
2 I made a lot to do about the six-pack is because if
3 you're wanting to identify somebody as the person that
4 you've already said, why not just hold up a picture and
5 go, Is this who you're talking about? Yes, that's who
6 I'm talking about.

7 By hiding it in what's called a SLED
8 six-pack, you make it seem more legitimate, and if one,
9 two, three, five, and six were people from Hardeeville,
10 then it would be legitimate: Yes, that's who I was
11 talking about; not John, James, George, Tom, and Harry.
12 No, I was talking about four, Naijuwan. But no; one,
13 two, three, five, and six probably don't even know where
14 Jasper County is.

15 Ladies and gentlemen: I don't know what
16 happened that day. The one person that wrote a statement
17 that was on the stand and said, Yes, that's what I wrote
18 30 minutes after it happened was was Ms. Jordan, and I'm
19 not going to try to mess up her name. The solicitor got
20 permission to call her Jesse. I was standing in the
21 road, and they was sitting on the porch and Slim tried
22 getting up to go in the house. Dude got up and shot him.
23 He dropped as if he had been running. He shot him four
24 more times and took off running.

25 I think that was the truth because it was

1 made near the time of the incident. It was made before
2 her opinion could be changed. Remember, she wrote down
3 it was a nine, and she didn't know anything about guns
4 because law enforcement said it. And then Natasha Aiken
5 at that time worked for Hardeeville police department, at
6 that time was their investigator, lied: I understand
7 that regardless of whether identification is made, the
8 police will continue to investigate the incident.

9 I sometimes think I have an easy job because
10 I don't have to prove anything. The State has to prove
11 beyond a reasonable doubt. The reason why I don't have
12 to prove anything is because it is next to impossible to
13 prove a negative. Did you eat that cookie? No. How can
14 you prove you didn't eat the cookie? The cookie's gone.
15 You're there.

16 That's the reason why the State has the
17 burden of proof, and the State made a mountain out of a
18 molehill. You have to find guilt beyond a reasonable
19 doubt. Reasonable doubt is doubt that would make a
20 prudent man hesitate to act. That is how I learned that
21 in law school, and since then, I have tried to explain it
22 to a number of people, and this is my opinion. This is
23 not a legal opinion, it's my opinion. I call it the hose
24 across the sidewalk at night.

25 You walk out at night, and there is a long,

1 thin, dark thing across your sidewalk, in front of the
2 door. It is that split second hesitation where you go,
3 oh, yeah. That is the hose. It's not a snake, but it's
4 that hesitation, and if you hesitate, you must find
5 Naijuwuan Chisholm not guilty. It's as simple as that,
6 and the fact that this is a one witness case and a half a
7 witness of a sister who has basically parroted the story
8 that the sisters told on the stand, that is reasonable
9 doubt. That means you don't have a choice. If you
10 cannot go beyond reasonable doubt, you have to find my
11 client not guilty.

12 It's 20 minutes to lunchtime. The judge is
13 going to be charging the jury. He usually takes about 20
14 to 25 minutes. Thank you for your attention. Thank you
15 for your time. Thank you for your patience, and I was
16 right. It could be boring at times, couldn't it?

17 THE COURT: Exhibits to the court reporter.

18 MR. HUGHES: They are, Your Honor. This is
19 mine.

20 THE COURT: Mr. Foreman, would the jury like
21 a break before I give you the charge? It won't take that
22 long, probably fifteen or twenty minutes, or would you
23 like to go ahead and finish?

24 THE FOREPERSON: I think we're ready to move
25 on, forward.

1 THE COURT: All right.

2 All right. Mr. Foreman and ladies and
3 gentlemen of the jury: It is now my duty to charge you
4 on the law of this case. The State of South Carolina has
5 charged the defendant, Naijuwuan Chisholm, with murder in
6 one indictment as indictment 2015-GS-27-00258, and --
7 take your seat -- has also charged the indictment in
8 2015-GS-27-00259 with the offense of possession of a
9 weapon during the commission of a violent crime.

10 Now, I remind you, ladies and gentlemen, that
11 the fact that a defendant was arrested, the fact that the
12 defendant was charged and indicted in this case is not
13 evidence in this case, nor does it create any presumption
14 or inference of guilt. These documents I hold in my hand
15 are indictments. They are simply the formal written
16 instruments by which the case is brought into this court.
17 They are the formal documents which give the Court the
18 power to hear the case, and you'll notice I'm handing,
19 Mr. Foreman, the indictments to the law clerk, Skyler
20 Hutto. They want you to sign whatever you write on my
21 verdict form on the indictments.

22 To the indictments the defendant has pled not
23 guilty, and that plea of not guilty places the burden on
24 the State of South Carolina to prove the defendant guilty
25 beyond a reasonable doubt. A person charged with

1 committing a crime or any criminal offense in South
2 Carolina is never required to prove himself innocent.

3 I charge you, ladies and gentlemen, that it
4 is an important rule of the law that the defendant in a
5 criminal trial, no matter what the seriousness of the
6 charge may be, will always be presumed to be innocent of
7 the crime for which the indictment was issued unless you,
8 ladies and gentlemen, feel that guilt has been proven by
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 The presumption of innocence does not end
12 when you begin your deliberations, but it accompanies the
13 defendant throughout the trial until you, ladies and
14 gentlemen of the jury, reach a verdict of guilt based on
15 evidence satisfying you of that guilt beyond a reasonable
16 doubt.

17 The presumption of innocence is not just a
18 legal theory. It's not just a legal phrase. It is a
19 substantial right to which every defendant is entitled,
20 unless you, the jury, are satisfied from the evidence of
21 the defendant's guilt beyond a reasonable doubt.

22 Now, what is a reasonable doubt in the law?
23 A reasonable doubt is the kind of doubt that would cause
24 a reasonable person to hesitate to act. The State has
25 the burden of proving the defendant guilty beyond a

1 reasonable doubt. Some of you may have served in the
2 past in a civil case or been a juror in a civil case such
3 as a contracts case or a wreck case. Those are examples
4 of civil cases where you were told that it was only
5 necessary to prove that a fact is more likely true than
6 not true. In civil court, we call the burden of proof to
7 be by the greater weight or the preponderance of the
8 evidence.

9 In a criminal case such as the case here, the
10 State's proof must be more than that. It must be beyond
11 a reasonable doubt. Proof beyond a reasonable doubt is
12 proof that leaves you, the jury, firmly convinced of the
13 defendant's guilt.

14 Now, there are very few things in this world
15 that any of us know with absolute certainty, and in
16 criminal cases, the law does not require proof that
17 overcomes every possible doubt. If, based on your
18 consideration of the evidence, you are firmly convinced
19 that the defendant is guilty of the crime or crimes
20 charged, you must find the defendant guilty. On the
21 other hand, if you think there is a real possibility that
22 the defendant is not guilty, you must give the defendant
23 the benefit of the doubt and find the defendant not
24 guilty.

25 I remind you that during this trial, ladies

1 and gentlemen, you and I have certain duties to perform.
2 As the trial judge, it has been my responsibility to
3 preside over the trial of the case, and I also have the
4 duty now to charge you the law that applies to the case
5 and to rule on the admissibility of evidence offered
6 during the trial.

7 You are to consider, ladies and gentlemen of
8 the jury, in your deliberations only the competent
9 evidence that was introduced in this trial before you.
10 If there was any testimony ordered stricken from the
11 record in this case during the trial, you are to
12 disregard that testimony. You are to consider only
13 testimony that was presented from the witness stand, any
14 exhibits which have been introduced and are made a part
15 of the record in the evidence in this case, and if there
16 were any stipulations or agreements of counsel in the
17 case.

18 As the trial judge, I also have, as I told
19 you, the additional duty to charge you the law that
20 applies to this case, and as I told you throughout the
21 trial, I'm the sole judge of the law, and it is your duty
22 as jurors to accept and to apply the law as I now state
23 it to you. If any of you have any preconceived opinions
24 or preconceived ideas about what you think the law is or
25 what you feel the law ought to be and it does not agree

1 with what I now tell you the law is, you must abandon, or
2 give up, any of your preconceived opinions or ideas
3 because each of you took an oath, and in that oath from
4 the Clerk of Court, you swore or affirmed that you would
5 accept the law and apply the law exactly as I now state
6 it to you.

7 In every case tried in this courtroom before
8 a jury, the jury becomes the sole, exclusive judges of
9 the facts in the case. A trial judge such as myself
10 cannot intimate, state, comment on, or make any comment
11 to you, a trial jury, about the facts in the case.

12 Since you, ladies and gentlemen of the jury,
13 are the sole judges of the facts in this case, you are
14 not to infer from anything that I have said during the
15 progress of this trial in ruling upon the admissibility
16 of evidence or otherwise or anything that I say now
17 during the course of this charge to you that I have any
18 opinion whatsoever about the facts in this case. The law
19 does not allow me to have an opinion about the facts in
20 this case. This is a matter that is solely for you, the
21 jury, to determine.

22 As jurors then, it becomes your duty as a
23 juror to determine the effect, the value, the weight, and
24 ultimately what you believe to be the truth of the
25 evidence which has been presented during the trial of

1 this case. Now, there are two types of evidence that are
2 generally presented in a trial, and, like many things in
3 the law, we have names for those general types of
4 evidence. We call the two types of evidence direct
5 evidence and circumstantial evidence.

6 Direct evidence, ladies and gentlemen, is the
7 testimony of a person who claims to have actual knowledge
8 of a fact, such as an eyewitness to an event. Direct
9 evidence is evidence that immediately establishes the
10 main fact to be proved.

11 Circumstantial evidence, as contrasted with
12 direct evidence, is proof of a chain of facts and
13 circumstances indicating the existence of a fact.
14 Circumstantial evidence is evidence that immediately
15 describes or establishes collateral facts from which the
16 main fact may or may not be inferred. Circumstantial
17 evidence is based on inference and not on personal
18 knowledge or personal observation.

19 The law makes absolutely no distinction
20 between the weight or the value to be given to either
21 direct evidence or circumstantial evidence, nor is a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence.

24 You, ladies and gentlemen of the jury, should
25 weigh or consider or evaluate all the evidence in this

1 case, both direct and circumstantial. After considering
2 all the evidence in this case, if you are not convinced
3 of the guilt of the defendant beyond a reasonable doubt,
4 you must find the defendant not guilty.

5 On the other hand, after considering,
6 weighing, evaluating all the evidence in this case, both
7 direct and circumstantial, if you are convinced of the
8 guilt of the defendant beyond a reasonable doubt, you
9 must find the defendant guilty.

10 Necessarily, as I told you at the outset,
11 you're going to have to determine the credibility of the
12 witnesses who have testified in this case. Credibility
13 simply means believability. It becomes your duty as
14 jurors to analyze, to evaluate the evidence and determine
15 which evidence you, as the jury, convinces you of its
16 truth.

17 In determining the believability or
18 credibility of the witnesses who have testified in this
19 case, you may believe one witness over several witnesses,
20 or several witnesses over one witness. You may believe
21 part of the testimony of a witness and reject the
22 remaining part of the testimony of that same witness.
23 You may believe the testimony of a witness in its
24 entirety or you may reject the testimony of a witness in
25 its entirety. You may consider whether any witness has

1 exhibited to you any interest, any bias, any prejudice or
2 other motive in the case. You may also consider in
3 determining the credibility or believability of the
4 witnesses the appearance of the witness, the manner in
5 which the witness appeared on the witness stand. We call
6 that the demeanor of the witness. Anything that is in
7 evidence, ladies and gentlemen of the jury, you, as the
8 jury, have the right to consider in passing upon the
9 credibility or the believability of the witnesses who
10 have testified during the trial of this case.

11 Now, I told you during the trial normally the
12 witness cannot take an oath and sit on the witness stand
13 and say, My opinion is this, because the rules of
14 evidence do not permit witnesses to testify to opinions
15 or conclusions. An exception to this rule exists with
16 witnesses whom we call expert witnesses. A witness who
17 by education, training, or experience claims to have
18 become an expert in some art, science, profession, or
19 calling may, if qualified by the Court, state an opinion
20 as to matters in which they claim to be an expert and may
21 also state the reasons for their opinion.

22 You should consider any expert opinion
23 received in evidence in this case, and, like any other
24 evidence, you give it the weight you think it deserves.
25 If you decide that the opinion of an expert witness is

1 not based on sufficient education and experience, or if
2 you conclude that the reasons given in support of the
3 opinion are not sound or that the opinion is outweighed
4 by other evidence, you may disregard the opinion
5 entirely. An expert witness's opinion is to be given no
6 greater weight than that of any other witness simply
7 because the witness is an expert.

8 Now, in order to establish criminal
9 liability, or criminal responsibility, criminal intent is
10 required. For example -- and I will give you some
11 examples of criminal intent. We're talking about the
12 mental state required to be proven by the State for any
13 type of particular crime. Let me give you some examples.

14 Purpose would be an example of criminal
15 intent, or knowledge would be an example of criminal
16 intent. Recklessness would be an example of criminal
17 intent. Criminal intent must be proven by the State
18 beyond a reasonable doubt. Criminal intent is always a
19 matter that must be determined by the jury from the
20 circumstances surrounding the situation, based on
21 evidence introduced during the trial of the case.

22 Now, there is no way, ladies and gentlemen,
23 to prove intent or criminal intent to a mathematical
24 certainty. There is no way, ladies and gentlemen, that
25 medical science can dissect a person's brain and

1 determine what that person had in mind, so the law says,
2 ladies and gentlemen, that criminal intent may be
3 inferred from the circumstances shown to have existed,
4 based on the evidence introduced during the trial of the
5 case. This, ladies and gentlemen, is how you, as a jury,
6 make a determination of whether or not any element in any
7 crime requiring intent was present.

8 It is not necessary to prove criminal intent
9 by direct or positive evidence, but intent may be
10 established by inference in the same way as any other
11 fact, by taking into consideration from the evidence the
12 acts of the parties and all the facts and circumstances
13 of the case based on evidence introduced during the trial
14 of the case.

15 Criminal intent is a mental state, ladies and
16 gentlemen. It is a conscious wrongdoing. It is up to
17 you to determine what the defendant intended to do based
18 on the circumstances shown to have existed from evidence
19 introduced during the trial of the case.

20 An issue in this case ladies and gentlemen,
21 is the identification of the defendant as the person who
22 committed the crime charged. The State has the burden of
23 proving identity beyond a reasonable doubt. You must be
24 satisfied beyond a reasonable doubt of the accuracy of
25 the identification of the defendant before you may

1 convict the defendant. I instruct you, ladies and
2 gentlemen, in this charge that the burden of proof is on
3 the State of South Carolina, and it extends to every
4 element of the crimes charged, and this specifically
5 includes the burden of proving beyond a reasonable doubt
6 the identity of the person or the defendant as the person
7 who committed the crime.

8 If after examining the evidence in this case
9 you have a reasonable doubt as to the accuracy of the
10 identification, you must find the defendant not guilty.
11 I instruct you, ladies and gentlemen, and emphasize that
12 the fact that the defendant did not testify in this case
13 is not a factor to be considered by you in any way in
14 your deliberations and in your consideration as to the
15 question of the guilt or innocence of the defendant. It
16 must not be considered by you in any way whatsoever.

17 A defendant has the constitutional right to
18 remain silent, and the assertion of this right must not
19 be considered by you in your deliberations. I repeat
20 that under your oath, you're to draw no conclusion
21 whatsoever from the fact that the defendant in this case
22 did not testify. The fact the defendant did not testify
23 should not even be discussed in your jury room. The
24 burden of proof, as I've stated, is on the State of South
25 Carolina. The defendant is not required to prove his

1 innocence. The burden of proof remains on the State to
2 prove guilt beyond a reasonable doubt.

3 I will now define for you the offenses for
4 which the defendant is charged. In one indictment, the
5 defendant, Naijuwuan Chisholm, is charged with the
6 offense of murder. For this offense, the State must
7 prove beyond a reasonable doubt that the defendant killed
8 another person with malice aforethought. Malice is
9 hatred, ill will, or hostility towards another person.
10 It's the intentional doing of a wrongful act without just
11 cause or excuse and with the intent to inflict an injury
12 or under circumstances the law could infer intent.

13 Malice aforethought, ladies and gentlemen,
14 does not require that malice exists for any particular
15 time before the act is committed, but malice must exist
16 in the mind of the defendant just before and at the time
17 the act is committed; therefore, there must be a
18 combination of this malice or evil intent and the act
19 itself. Malice aforethought may be express or implied.
20 These terms, express and implied, do not mean different
21 kinds of malice but merely the manner in which malice may
22 be shown to exist; that is either by direct evidence or
23 by inference from the facts and circumstances based on
24 evidence introduced during the trial of the case.

25 Express malice, ladies and gentlemen, is

1 shown when a person speaks words which express hatred or
2 ill will or hostility towards another person or when the
3 person prepares beforehand to do the act, such as lying
4 in wait. On the other hand, ladies and gentlemen, malice
5 can also be inferred. Malice may be inferred from
6 conduct based on evidence introduced during the trial of
7 the case showing a total disregard for human life.

8 If all facts are proven beyond a reasonable
9 doubt sufficient to raise an inference of malice to your
10 satisfaction, this inference would be simply an
11 evidentiary fact to be considered by you along with the
12 other evidence in the case, and you may give it the
13 weight you decide it should receive.

14 The defendant is also charged in addition to
15 murder with the offense of possession of a weapon during
16 the commission of a violent crime, or commission of or
17 attempt to commit a violent crime. The State must prove
18 for this offense, beyond a reasonable doubt, that the
19 defendant was in possession of a firearm, or visibly
20 displayed what appeared to be a firearm, during the
21 commission of a violent crime. A firearm means any
22 machine gun, automatic rifle, revolver, pistol, or any
23 weapon which will be designed to or may be readily
24 converted to expel a projectile.

25 In order to find the defendant guilty of

1 possession of a weapon in the commission of a violent
2 crime, you must first find the defendant guilty of
3 committing a violent crime, or attempting to commit a
4 violent crime. I charge you that under the law of the
5 State of South Carolina, murder is a violent crime.
6 Under the laws of the State of South Carolina, the State
7 must prove beyond a reasonable doubt that the weapon
8 further advanced or helped in the commission of the
9 violent crime.

10 Now, ladies and gentlemen, I have prepared a
11 verdict form for you, Mr. Foreman. Pay absolutely no
12 attention to the order in which I wrote the forms of
13 verdict. We obviously had to write one before the other,
14 so the order of the form's verdict has no significance
15 whatsoever. I have on the verdict form placed the name
16 of the case in the caption. It says State of South
17 Carolina, County of Jasper, in the Court of General
18 Sessions which means criminal court.

19 I placed the indictment numbers on your
20 verdict form, and I placed the title of the case State of
21 South Carolina versus Naijuwuan Chisholm, defendant, and
22 I wrote the words verdict.

23 Question one on your verdict form: We, the
24 jury, by unanimous consent, find the defendant, Naijuwuan
25 Chisolm, in indictment number 2015-GS-27-00258, first

1 form of verdict is guilty of murder. Mr. Foreman, if
2 that be your form of verdict, you would place a checkmark
3 for the entire jury by that form of verdict.

4 The second form of verdict, under question
5 one, is not guilty of murder. If that be your form of
6 verdict, Mr. Foreman, you would place a checkmark by that
7 form of verdict. You must find one form of verdict or
8 the other under question one. You cannot find both. It
9 must be either guilty or not guilty of the offense of
10 murder.

11 On the second page of your verdict form, I
12 wrote instructions for you at the top of the page. The
13 instructions are: The jury may only find the defendant
14 guilty of possession of a weapon during the commission of
15 a violent crime if it has already found the defendant
16 guilty of murder. If the defendant is found not guilty
17 of murder, the jury cannot -- or the defendant cannot be
18 found guilty of possession of a weapon during the
19 commission of a violent crime because you have to first
20 find the defendant guilty of a violent crime, and I've
21 charged you that murder is a violent crime under the laws
22 of the State of South Carolina.

23 The second question after those instructions
24 says, we, the jury, by unanimous consent, find the
25 defendant, Naijuwan Chisholm, in indictment number

1 2015-GS-27-00259, the first form of verdict under
2 question two is guilty of possession of a weapon during
3 the commission of a violent crime. If that be your form
4 of verdict, Mr. Foreman, you would place a checkmark
5 beside that form of verdict for the entire jury. The
6 section form of verdict under question two is not guilty
7 of possession of a weapon during the commission of a
8 violent crime. If that be your form of verdict, you
9 would check beside that form of verdict, with the caveat
10 you can only find the defendant guilty of possession of a
11 weapon during the commission of a violent crime if you
12 have found the defendant guilty of murder.

13 I then have a line for your signature,
14 Mr. Foreman. It says foreperson, has today's date, in
15 Ridgeland, South Carolina. I then put instructions at
16 the end of your verdict form by writing, Please indicate
17 your findings for the entire jury by checking the
18 appropriate lines, certify your findings by your
19 signature, Mr. Foreman, and when you've reached the
20 verdict, you will knock on your jury room door, inform
21 the bailiff that you've reached a verdict, and we would
22 then bring you back into the courtroom to publish your
23 verdict.

24 You will have the verdict form with you in
25 the jury room. Whatever you write on the verdict form,

1 Skyler will want to see you, so that you write the exact
2 same words on the indictment that you've written on the
3 verdict form, on each indictment. He will have those for
4 you following the trial.

5 Now, ladies and gentlemen, your verdict must
6 be unanimous; that is, it must be the verdict of all 12
7 of you. Each of you must agree on a verdict.

8 Mr. Foreman, ladies and gentlemen: I've now charged you
9 on the law in order to help guide you to resolving this
10 case. As I told you repeatedly, only you are the judges
11 of the facts and the evidence in this case, and based on
12 your determination of the facts in this case and the law
13 as I've explained it to you, you are soon going to begin
14 your deliberations.

15 You've been selected, ladies and gentlemen,
16 as fair and impartial jurors. You have taken an oath and
17 sworn, or affirmed, to fairly and impartially try and
18 determine the facts in this case from the evidence, and
19 when you complied with that oath, ladies and gentlemen,
20 no one can criticize your verdict, but you are to decide
21 this case solely on the evidence, not on your feelings
22 about either side, not on any emotion, not on any prior
23 prejudices or opinions.

24 You're to base your decision only and solely
25 on the evidence which has been presented during the trial

1 of this case. You must decide the issue in this case
2 without any bias or prejudice toward either party. You
3 didn't allow yourself to be governed by public opinion or
4 by any other arbitrary factor not in evidence. Both the
5 State of South Carolina and the defendant have the
6 absolute right to expect that each of you on this jury
7 will carefully, fairly, and impartially consider all of
8 the evidence in this case and that you will follow the
9 law as I've instructed it to you in reaching your verdict
10 in this case.

11 Now, Mr. Foreman and ladies and gentlemen of
12 the jury: I'm going to ask you to retire to your jury
13 room. My alternates, I'm going to ask you to remain with
14 me. Please do not start your deliberations. I may have
15 to bring you back out for some further instructions, so
16 do not begin yet. When it is time for you to begin your
17 deliberations, I will have my bailiff send the verdict
18 form that I've explained to you in along with all the
19 exhibits which have been introduced into evidence during
20 the trial of the case with the exception of an exhibit
21 that has to be played in the courtroom, because we don't
22 have that capability in the jury room. If you want to
23 review that exhibit, you'll have to come back into the
24 courtroom so that we can replay it exactly as you heard
25 it during the trial, if the jury so desires.

1 Please retire to your jury room at this time.

2 (In open court, jury not present.)

3 THE COURT: All right. To my alternate
4 jurors, first of all, on behalf of Jasper County, I thank
5 you when. I do this. I leave the bench and come down
6 because I like to thank you personally because I realize
7 you gave your time this week. You left your homes and
8 your family and your job.

9 We can't, as I told you, have justice without
10 you. No one became ill. No one, for some legitimate
11 reason, could not continue to serve, so this concludes
12 your service on this case, and I've got good news for
13 you. You're now excused for the balance of the week, and
14 I have further good news for you: You're exempt from
15 jury service for three years by virtue of you serving on
16 the case.

17 Of course, if you would like to remain with
18 us, I would love for you to. I can't let you go back in
19 the jury room now, but I really appreciate your service,
20 and to show you my appreciation, I thank you. We'll be
21 sending you a big check for you service.

22 Any exceptions or additions to the charge,
23 from the State of South Carolina?

24 MS. JONES: Not on the charge your honor but
25 on the verdict form I believe you wrote the Colleton

1 County code instead of the Jasper County code.

2 THE COURT: Well, you checked the form and
3 you approved it.

4 MS. JONES: I know I did. That's Allendale.
5 We're 27.

6 THE CLERK: That's what it has on it.

7 THE COURT: It's got 27. You're right. He
8 wrote the separate one.

9 Anything else, Solicitor?

10 MS. JONES: Nothing, Your Honor.

11 THE COURT: Any exceptions or additions to
12 the charge from the defendant?

13 MR. HUGHES: None, Your Honor.

14 THE COURT: I would ask that counsel come
15 forward with our new court reporter. I expect you both
16 to certify the record you're satisfied the court reporter
17 has all the exhibits that can be sent into the jury room,
18 keeping the exhibits that cannot be sent into the jury
19 room, particularly, since it has to be redacted, and that
20 you're satisfied she has all the exhibits and that you
21 authorize me to send the changed verdict form, which will
22 have the correct county code on it, as well as the
23 exhibits that have been entered in to the jury, telling
24 the jury they may now commence their deliberations.

25 Please come forward. All right. Is the

1 State satisfied that we have all exhibits?

2 MS. JONES: Yes, Your Honor.

3 THE COURT: Does the State have any objection
4 to sending the corrected verdict form and all the
5 exhibits, with the exception of State's 1 and 17, into
6 the jury room and telling the jury they may now commence
7 their deliberations?

8 MS. JONES: No, Your Honor.

9 THE COURT: Mr. Hughes, is the defendant
10 satisfied that we have all exhibits?

11 MR. HUGHES: Yes, sir.

12 THE COURT: Does the defendant have any
13 objection, with the exception of State's 1 and 17, and 17
14 being the redacted version of 17, by agreement of
15 counsel, sending all the remaining exhibits into the jury
16 room, along with the corrected verdict form, and telling
17 the jury they may now commence their deliberations?

18 MR. HUGHES: No, sir.

19 THE COURT: Very well. All right. Tell the
20 jury they may now commence the deliberations. They know
21 that? Thank you.

22 (At 12:22 p.m., jury begins deliberations.)

23 THE COURT: I understand from the clerk the
24 jury has reached a verdict. Anything from the State
25 before we publish the verdict?

1 MS. JONES: Nothing from the State.

2 THE COURT: From the defendant?

3 MR. HUGHES: No, Your Honor.

4 THE COURT: Bring us the jury, ma'am.

5 (At 1:23 p.m., in open court, jury present.)

6 Mr. Foreman, has the jury reached a verdict?

7 THE FOREPERSON: Yes, sir. The jury has
8 issued a verdict.

9 THE COURT: You don't have to publish it.
10 Just give it to the clerk first. Defendant will rise.

11 State of South Carolina vs. Naijuwuan
12 Chisholm, we, the jury, by unanimous consent, find the
13 defendant, Naijuwuan Chisholm, in indictment number
14 2015-GS-27-00258 guilty of murder. We, the jury, by
15 unanimous consent find the defendant, Naijuwuan Chisholm,
16 in indictment number 2015-GS-27-00259 guilty of
17 possession of a weapon during the commission of a violent
18 crime, signed by the foreperson dated today.

19 Ladies and gentlemen of the jury: If this be
20 your verdict, would you please indicate by raising your
21 right hand. Thank you. Let the record reflect 12 hands
22 were raised.

23 Mr. Hughes, anything further from the jury?

24 MR. HUGHES: Yes, Your Honor. I would like
25 them individually polled.

1 THE COURT: Madame Clerk, will you please
2 poll the jury.

3 Ladies and gentlemen of the jury: The clerk
4 is going to call each juror's name. As your name is
5 called, please stand. She is going to ask you two
6 questions: Was this your verdict as published by me from
7 your verdict form and you answer yes or no, and is it
8 still your verdict, yes or no.

9 Madame Clerk, please poll the jury.

10 (Whereupon, the jury was polled, and all
11 jurors indicated their agreement with the verdict.)

12 THE COURT: Mr. Hughes, the clerk has polled
13 the jury. Verdict stands. Anything further from the
14 defendant in regards to the jury?

15 MR. HUGHES: No, Your Honor.

16 THE COURT: Mr. Foreman and ladies and
17 gentlemen of the jury: First of all, on behalf of Jasper
18 County, I want to thank you for your service. I told you
19 I would get you home early. I promised you I would.

20 You're now finished for the week, and if you
21 listened to me during jury qualifications, you're exempt
22 from jury service now for three years by virtue of your
23 service this week on the jury, if you choose to claim
24 your exemption. Without you, ladies and gentlemen,
25 justice can't be performed in the courtroom.

1 Now, sentencing in this case is getting ready
2 to occur. I'm directing the solicitor to pick out
3 sentence sheets right now, and I'm going to sentence the
4 defendant, which is my province. It's not the jury's
5 province. I invite you and if you would like to stay for
6 sentencing, you can either stay, if you so desire, in the
7 jury box and watch or you can take a seat in the
8 courtroom or you can leave.

9 If anyone needs a work excuse for serving on
10 a jury, does anybody need one? We got four Margaret,
11 five. All right. Margaret, where do they want to go?

12 THE CLERK: Go down in the clerk's office and
13 they'll prepare an excuse.

14 THE COURT: And down in the clerk's office
15 and see who?

16 THE CLERK: Quatrell.

17 THE COURT: And the office will provide an
18 excuse for you. We'll be mailing you an exorbitant
19 check. This concludes your service for the entire week,
20 so you're excused for the balance of the week. If you
21 would like to remain with me, either in the box or seated
22 in the courtroom, I'll be happy for you to do so because
23 I'm getting ready to sentence the defendant, and I'll be
24 happy for you to remain.

25 For those of you that would like to leave,

1 you may leave the courtroom at this time. If you need a
2 work excuse, please go downstairs.

3 One last thing: Sometimes people are
4 curious, all right, and this is one way that people
5 believe they can learn how to improve the way they handle
6 cases. They like to ask you questions. If you want to
7 discuss the case with someone now, you can, if you so
8 desire.

9 If you do not want to discuss it, tell them
10 no. If a person persists in wanting to talk to you about
11 the case, get their name and give it to me, and I'll
12 handle that problem for you, ladies and gentlemen,
13 because you don't have to talk to anybody about anything
14 if you don't want to. That matter is entirely up to you.
15 Does everyone understand that?

16 On behalf of Jasper County and this Court, I
17 thank you for your service. For those that want to leave
18 at this time, you may leave through this door and go
19 downstairs, or you can leave through the backdoor and go
20 upstairs to the clerk's office and get your work excuse
21 or you may remain where you are for sentencing.

22 All right, Mrs. Solicitor. Mr. Hughes, are
23 there any post-verdict motions?

24 MR. HUGHES: No, Your Honor.

25 THE COURT: Very well. Solicitor?

1 MS. JONES: Thank you, Your Honor.

2 I don't need to hash out the facts with you.
3 You heard all the testimony this week, these past two
4 days. I think what we need to focus on here today is how
5 brazen this attack was and how planned this attack was.
6 The defendant here, who stands before you convicted, he
7 waited. He waited until Sterling was alone, until
8 Sterling was helpless, until Sterling was a victim, just
9 lying and waiting there, and that's when he took action
10 and took his life.

11 He did not take into account all the children
12 that were around, the seven-year-old, feet away, the
13 one-year-old who had just gone inside, or the
14 three-year-old that Jesniesha is holding the hand of,
15 feet away from him. If she saw him, he saw them.

16 He took none of that into account and put all
17 of their lives in danger when he took these actions. He
18 executed Sterling, and the amount of years he receives
19 will never do justice because Sterling received a death
20 sentence on that day, and the State believes that
21 Mr. Chisholm here is a dangerous man.

22 He has zero regard for the safety of anybody.
23 He has no prior record, Your Honor. He is young. He has
24 no prior record, and it's amazing that somebody with no
25 prior record can just commit an act like this; however, I

1 think that shows just how dangerous he is. It took
2 nothing that we know of for him to just commit this act
3 and execute Sterling.

4 I do have Ms. Kim Jenkins is here in the
5 courtroom. She is Sterling's mother and she would like
6 to address Your Honor.

7 THE COURT: I'll be happy to hear from her.

8 All right. Move that microphone, would you?

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: If you state your name for the
11 record.

12 THE WITNESS: My name is Kim Jenkins, the
13 mother of Sterling Jenkins, the deceased. Your Honor,
14 Sterling came from a blended family. He has six sisters
15 and five brothers and lots nieces and nephews, you know.
16 My son, my first son.

17 I'm a traditional type person, so when
18 Sterling was born, I cut his cord from me. I had -- you
19 know, for him to be 23 years old, he was executed that
20 day. I was on my job. I am a manager at Walmart. I am
21 the least effective manager there today because of what
22 happened on June 9th. I prided myself on being the
23 manager of the hour, always the person to depend on. I
24 barely can depend on myself.

25 I don't know what happened that day for that

1 to occur, because I still have the same friends from
2 first grade, and I found out later that they were
3 supposed to be friends. I don't know if he could ever
4 find it in his heart to write me a note and just give me
5 one valid reason to do what he did, but it's no leniency
6 for him. I'm all for people changing, but this child
7 here, I don't know what happened. I don't know if it's
8 mental. I don't know what it is, but I know it snatched
9 something out of me, and I'm not the same person. I'm
10 about to be 48 years old, but my life is like an
11 80-year-old.

12 He executed my child, execute; not one, but
13 five times. I sleep on that autopsy. In the middle of
14 night I read it, for whatever reason, because I think
15 that I'm in a dream. It's nothing that nobody can tell
16 me; counselors, I got plenty, on speed dial; my employer
17 makes sure that I have that, but my life has never been
18 the same. Our life as a family will never be the same.

19 Today I still don't feel like justice will
20 ever be served, but no leniency, please. Thank you.

21 MS. JONES: That's all from the State, Your
22 Honor.

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

25 MR. HUGHES: Thank you, Your Honor. At the

1 time of this incident, Mr. Chisholm was 20 years old. As
2 the State has pointed out, he has no record.
3 Unfortunately, the family that was sitting behind him for
4 most of the trial didn't come back from lunch. They know
5 Mr. Chisholm. I just know him -- he is now 22. He is
6 looking at a mandatory minimum sentence of 30 years.

7 THE COURT: No less than 30, Mr. Hughes.

8 MR. HUGHES: No less than 30.

9 THE COURT: Up to life.

10 MR. HUGHES: His life will be put on hold for
11 at least the next three decades. I'm asking that because
12 of his young age, because of his lack of record, and
13 because there's a possibility that some day in the future
14 he will get out and be a citizen, a productive citizen,
15 he be given the mandatory minimum.

16 I explained to him about the use of a weapon
17 with a violent crime charge, Your Honor. He fully
18 expects that. We're asking for the minimal sentence in
19 this, Your Honor.

20 THE COURT: Mr. Chisholm, I'll be happy to
21 hear anything you'd like to tell the Court prior to
22 sentencing. Anything you want to tell me?

23 THE DEFENDANT: No, sir.

24 THE COURT: Anything further from the State?

25 MS. JONES: Nothing further, Your Honor.

1 THE COURT: Anything further from the
2 defendant?

3 MR. HUGHES: No, Your Honor.

4 THE COURT: Mr. Chisholm, I couldn't agree
5 with the jury more. From the evidence I heard in this
6 case, I felt the State proved your guilt beyond a
7 reasonable doubt.

8 I recognize that you're 22 years of age,
9 according to your lawyer. I also recognize the fact that
10 you have no record. Your lawyer wants me to give you the
11 minimum sentence. I cannot do so, simply because of the
12 evidence that was adduced in this case. When you take
13 the life of another human being in the fashion it was
14 shown to this Court, in this manner, you deserve to be
15 punished, and you deserve a sentence commensurate with
16 the act.

17 The other side of that fence, Mr. Chisholm --
18 and I understand that you're young. I would hope that
19 you use the time that you're going to be in jail to
20 change your life; however, I recognize that is a matter
21 entirely up to you and no one else.

22 On indictment 2015-GS-27-00258, the State vs.
23 Naijuwuan F. Chisholm, sentence of the Court is defendant
24 is committed to the State Department of Corrections for a
25 term of 40 years. On indictment 2015-GS-27-00259,

1 possession of a weapon during the commission of a violent
2 crime, the sentence of the Court is defendant is
3 committed to the State Department of Corrections for a
4 term of five years. Sentences will run consecutively to
5 each other. Thank you very much.

6 - - -

7 (Whereupon, the proceedings were concluded.)

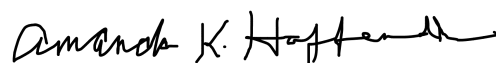
8 - - -

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Jasper County, South Carolina, on the February 23, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 2, 2017



Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Jasper

STATE

Naijuwan vs. S. Chisolm

AKA:

Race:

B

Sex:

M

Age:

20

DOB:

SS#:

Address:

City, State, Zip: Hardeeville, SC 29927

DL#

* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

Murder

In violation of § 16-3-10; 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

May C. Jones 100353

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-GS-27-00259☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$	0
\$14-1-206 (Assessments 107.5%)		\$	0
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
\$56-5-2995 (DUI Assessment)	\$12	\$	0
\$56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
\$14-1-212 (Law Enforce. Funding)	\$25	\$	25
\$14-1-213 (Drug Court Surcharge)	\$150	\$	0
\$50-21-114 (BUI Breath Test Fee)	\$50	\$	0
\$56-5-2942(J) (Vehicle Assessment) - PUNISHER	\$40/ea	\$	40.00
3% to County (if paid in installments)		\$	4.95

TOTAL

\$ 169.95

Clerk of Court/Deputy Clerk

Court Reporter: MONA MANLEY 2/21-2/22

Amanda Napfden 2/23

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2015-GS-27-00258

A/W#: 2015A2720100080

Date of Offense:

6/9/2015

S.C. Code §:

16-3-10; 16-03-20

CDR Code #:

0116

SENTENCE SHEET

Attend Voc. Rehab. Or Job Training ☐

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

0413.

383

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Jasper

STATE

Nejma S. Chisom vs.

AKA:

Race:

B

Sex:

M

Age:

20

DOB:

SS#:

Address:

City, State, Zip:

Hardeeville, SC 29927

DL#

* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

Possession of a Weapon during Commission of a Violent Crime

In violation of §

16-23-0490

of the S.C. Code of Laws, bearing CDR Code #

0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Mary C. Jones

100353

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

2015-GS-27-00258

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)		\$	0
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
§56-5-2995 (DUI Assessment)	\$12	\$	0
§56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
§14-1-212 (Law Enforce. Funding)	\$25	\$	25
§14-1-213 (Drug Court Surcharge)	\$150	\$	0
§50-21-114 (BUI Breath Test Fee)	\$50	\$	0
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Margaret Bostick
AMANDA HOPKINSON

INDICTMENT/CASE#:

2015-GS-27-00259

AW#:

2015A 27201 00081

Date of Offense:

6/9/15

S.C. Code §:

16-23-0490

CDR Code #:

0549

SENTENCE SHEET

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date

2122

2/23/17

Perry M Buckner

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
DATE: 8/9/15

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Jasper)

Naijuwan S. Chisolm) 371466

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

Office of Attorney General)

IN THE COURT OF COMMON PLEAS

2020-CP-27-397

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr Inst
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-2700258
 - (b) 2015-GS-2700259
 - (c) —
5. The date upon which sentence was imposed and the terms of the sentence:
 - (1) Feb 23, 2017
 - (2) —

 FILED
JASPER COUNTY
CLERK OF COURT
2020 MAR 17 PM 3:06

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Oct 1, 2019

ii. Nov 6, 2019

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2019-uP-352

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) both

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) "see Memorandum of Law in Support Post(b) Conviction Relief Application

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. AD

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. AD

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) "see Memorandum of Law Support Post-

conviction Relief Application

(c) _____

17. 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 applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Robert Milton Hughes Esq.
 - ii. Susan Barber Hockett, Esq.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

NO

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, N.C., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Najman Chahal
Applicant

SWORN or affirmed to and subscribed before me this
30th day of JUNE, 2020

Linda K. B.
Notary Public

My Commission Expires: 6-20-26

FILED
JAN 17 PM 3:00
CLERK OF COURT

STATE OF SOUTH CAROLINA

County of Jasper

VERIFICATION

I, N.C., 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.

Raymond Chisolm

SWORN to and subscribed before me this 30th
day of JUNE, 2020

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

RECEIVED
JUN 17 PM 3:08
CLERK OF COURT

State of South Carolina
County of Jasper

Narjuwan S. Chrisolm
Applicant

Vs

State of South Carolina,
Respondant's

In The Court of Common Pleas
1 CA 2020-CP-27397

Memorandum of Law In
Support of Post-Conviction
Relief Application

FILED
JUN 17 2020
CLERK

Now comes applicant before this Honorable
Court pursuant to S.C. Code of Law Ann §
17-27-45, § 17-27-80, Post Conviction Relief
Application on grounds ~~in~~ ineffective assistance
of counsel.

Statement of the Case

On June 9, 2015, in the city Hartselle/
County of Jasper a shooting occurred, and
the applicant was charged with offense
of murder, and possession of weapon
during violent crime, and was found guilty
sentence to (40) years by Honorable
Judge M. Bucker III.

Argument 1

Applicant contends that counsel prejudice
applicant by failure to object to sentence
Forty years.

The applicant contends that trial counsel prejudice the applicant by failure to object to the sentence of (40) years which is a violation of the Legislature intent statute S.C. Code of Law Ann 16-3-20) subsection (c) No person sentenced to mandatory minimum term of imprisonment for thirty (30) years.

The applicant contends that sentences Judge Honorable Perry M. Buckner sentence applicant to Max sentence of (40) year which is due process of Law Violation of Legislature intent statute S.C. Code of Law Ann 16-3-20). The applicant contends that trial counsel prejudice applicant by failure to object to sentences which counsel did provide ineffective assistance of counsel may come in the form that counsel was deficient for not objecting to

the defendant's sentence. "See cite at State v Sidell 262 S.C. 377, 205 SE2d 21974).

A. Ineffective Assistance of Counsel

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." Strickland v Wash- ington, 466 U.S. 668, 104 S.Ct. 2052 2064, 80 L.Ed2d 674, 692 (1984); Butler v. State, 286 S.C. 441 334 S.E2d 813 (1985).

First, the 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, 325 SE2d at 625 citing Strickland. 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, 306 S.C. at 117-18, 306 SE2d at 625.

Conclusion

Wherefore Applicant Request that PCR hearing should be scheduled by the Respondent to correct his conviction and sentences.

Dated Oct 24 2020

Natjuwan S. Chisolm
 Natjuwan S. Chisolm
 371665
 136 Wilborn Ave
 Ridgenville, S.C. 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Naijuwuan S. Chisolm, SCDC #371665,	)	Case No. 2020-CP-27-0397
	)	
Applicant,	)	
	)	RETURN TO THE APPLICATION
v.	)	FOR POST-CONVICTION RELIEF
	)	(Counsel Already Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) application and supporting memorandum filed by Applicant Naijuwuan S. Chisolm on August 17, 2020, and received by Respondent the State of South Carolina on August 25, 2020 and December 16, 2020, Respondent makes this return:

I. PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections. On June 9, 2015, Sterling “Slim” Jenkins was gunned down on his front porch while his girlfriend was inside bathing her baby; witnesses identified Applicant as the shooter and he was arrested for Slim’s death on June 15, 2015. In July 2015, a Jasper County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime. On February 21, 2017, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. Applicant was represented by Robert Hughes, Esquire. Assistant Solicitors Mary Jones and Brian Hollen of the Fourteenth Circuit Solicitor’s Office prosecuted the case. The jury convicted Applicant as indicted. Judge Buckner sentenced Applicant to forty years’ imprisonment for murder and a consecutive term of five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who submitted a Brief of Appellant pursuant to Anders v. California, 386 U.S. 738 (1967) and a petition to be relieved as counsel. Applicant then submitted his own *pro se* response. Following a review pursuant to Anders, the South Carolina Court of Appeals dismissed the appeal. State v. Naijuwan Chisolm, Unpub. Op. No. 2019-UP-352 (Ct. App. filed Nov. 6, 2019). The remittitur was returned to the circuit court on November 22, 2019. Thereafter, Applicant initiated the current action with the filing of an application for post-conviction relief on August 17, 2020; Respondent received a copy of the application from the Jasper County Clerk of Court on August 25, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

(a) “6th: See memorandum of law in support of post-conviction relief application.”

In his supporting memorandum, Applicant states counsel was ineffective for failing to object to his sentence of forty years, which he asserts was above the statutory maximum sentence that the court could impose.

As his requested relief, Applicant states that he is requesting a new trial.

Attached herewith and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records (including the Anders briefs, Applicant’s *pro se* brief, and the record on appeal containing the entire trial transcript), and the records of the current PCR action. The State reserves the right to amend this Return upon receipt

of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant asserts trial counsel was ineffective for failing to object to his sentence of forty years of imprisonment, which he erroneously asserts exceeds the statutory maximum sentence for murder. Respondent submits these claims of ineffective assistance of counsel are without merit and refuted by the record.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense

to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an

adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and

forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant alleges trial counsel was ineffective for failing to object to his sentence of forty years imprisonment, which he asserts exceeded the statutory sentencing maximum. Respondent submits this allegation is without merit. Pursuant to the South Carolina Code of Laws, “A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.” S.C. Code Ann. § 16-3-20 (A). Applicant was sentenced to forty years, which is clearly within the statutorily proscribed range of thirty years up to life imprisonment. Accordingly, counsel cannot be ineffective for failing to object to this proper sentence.

Respondent submits Applicant cannot satisfy either requirement of *Strickland*. However, the additional testimony may be needed to resolve Applicant’s allegation, and accordingly, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not

conclusively refuted by the record before the lower court”).

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Love* (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in

undue prejudice to the State.

V. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 17, 2020.

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT

4 Naijuwuan Chisolm,
5 Petitioner,

6 vs. Transcript of Record
2020-CP-27-00397

7 State of South Carolina,
8 Respondent.

9
10
11 July 21, 2022
12 Beaufort, South Carolina

13 B E F O R E:

14 The HONORABLE KRISTI F. CURTIS

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

16
17 James K. Falk, Representing the Petitioner
18 Lauren Mims, Representing the State of South Carolina

19
20
21 SHARON G. HARDOON, CSR
22 Official Circuit Court Reporter, III
23
24
25

1 THE COURT: Okay. Mr. Chisolm, we're here on
2 your application for PCR. And, Mr. Falk, you've
3 talked with him about the pros and cons of going
4 forward with the action today?

5 MR. FALK: I really didn't do the pros
6 and cons. He has a significant sense that he
7 needs to go forward.

8 THE COURT: I do this with pretty much
9 with everybody on the record who didn't get the
10 absolute max. I understand that you have a
11 45-year sentence, I think is what I'm looking at,
12 which is certainly a significant sentence. You
13 understand I can't -- in a PCR action, I can't cut
14 your time. I can't dismiss the charges against
15 you. So, just like I told the last gentlemen,
16 there's only two things I can do in a PCR. I can
17 grant the PCR, in which case you go back to as if
18 the trial never took place, same charges, same
19 potential sentences. So, in your case, that goes
20 all the way up to life, but I understand you did
21 get a significant sentence. Possession of a
22 weapon during the commission of a violent crime,
23 of course, carries just the five years. You
24 understand that?

25 MR. CHISOLM: (Witness nods head up and

1 down.)

2 THE COURT: If you'll answer out loud for
3 me.

4 MR. CHISOLM: Ma'am?

5 THE COURT: If I could get you to answer
6 out loud for me.

7 MR. CHISOLM: Oh, yes, ma'am.

8 THE COURT: And it's your decision to go
9 forward today with your application?

10 MR. CHISOLM: Yes, ma'am.

11 THE COURT: Do you need a few minutes?

12 MS. MIMS: No.

13 THE COURT: If you don't mind just
14 starting us off, Miss Mims.

15 MS. MIMS: May it please the Court? For
16 the record, I'm Lauren Mims, and I'll be
17 representing the State of South Carolina. This is
18 the post-conviction relief matter on Naijuwuan
19 Chisolm, docket number 2020-CP-27-27-00397. This
20 matter is before the Court based on an application
21 for post-conviction relief filed by Mr. Chisolm on
22 August 25th in Jasper county.

23 Applicant is currently incarcerated in
24 the South Carolina Department of Corrections. On
25 June 9th, 2015, Sterling Jenkins was shot.

1 Witnesses identified applicant as the shooter and
2 he was arrested on June 15, 2015.

3 In July 2015 a Jasper County grand jury
4 indicted applicant for murder and possession of a
5 weapon during a violent crime.

6 February 24th, 2017, applicant proceeded
7 to a jury trial before the Honorable Perry M.
8 Buckner, 3rd Circuit Court Judge. The applicant
9 was represented by Robert Hughes, Esq. Assistant
10 Solicitor Mary Jones and Bryant Heil with the 14th
11 Circuit Solicitor's Office prosecuted the case.
12 The jury convicted applicant as indicted.

13 Judge Buckner sentenced applicant to 40
14 years in prison for murder and a consecutive term
15 of five years for possession of a weapon during
16 the commission of a violent crime.

17 Applicant filed a timely notice of appeal
18 and was represented by public defender Susan B.
19 Hackett with the South Carolina Commission of
20 Indigent Defense, Office of Appellate Defense who
21 submitted a brief pursuant to *Anders v. California*
22 and a petition to be relieved as counsel.

23 Applicant then submitted his own pro se
24 response pursuant to *Anders*. The South Carolina
25 Court of Appeals dismissed the appeals. The

1 remitter was returned to the circuit court on
2 November 22, 2019. Applicant then initiated his
3 current action with the filing of an application
4 for post-conviction relief.

5 And, at this time, I asked Mr. Falk to
6 place his allegations on the record.

7 THE COURT: Mr. Falk.

8 MR. FALK: Yes, Your Honor. My client is
9 going to assert that he had ineffective assistance
10 of counsel, that his counsel didn't sufficiently
11 investigate the case or seek out reasonable plea
12 offers in this case. And we also have a -- we
13 think this is a case that could have used a *Logan*
14 charge instead of the circumstantial evidence
15 charge that was used.

16 One issue that Mr. Chisolm raised in his
17 PCR application that we're not going forward with
18 is whether or not a 40-year sentence is lawful --
19 or a 45-year sentence is a lawful sentence for
20 murder.

21 There is -- there was -- there is a
22 notion with some people at SCDC that the only
23 permissible outcomes out of a conviction for
24 murder are 30 years, life, or death, and that it
25 doesn't allow for anything in between. I don't

1 know if that was prior wording of the statute or
2 what, but we're certainly not going forward on
3 those grounds.

4 THE COURT: Okay.

5 MR. FALK: I want to call Mr. Chisolm to
6 the stand.

7 THE COURT: Come on up, Mr. Chisolm.

8 THE CLERK: If you please just raise your
9 right hand. Do you solemnly swear or affirm that the
10 testimony you give in this trial shall be the truth so
11 help you God?

12 MR. CHISOLM: Yes, ma'am.

13 THE CLERK: Have a seat.

14 WHEREUPON:

15 NAIJUWUAN CHISOLM,
16 after having been sworn to tell the truth, testified
17 as follows:

18 THE COURT: Go right ahead.

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q Can you state your name?

22 A Naijuwuan Chisolm.

23 Q Okay. Mr. Chisolm, how did Mr. Hughes come about
24 representing you on this case?

25 A I think he did a terrible job because --

1 Q No, no, no, no. Back up.

2 Did you retain Mr. Hughes, or was he
3 appointed to represent you?

4 A Appointed.

5 Q And so I think you were going to start talking
6 about you think Mr. Hughes didn't do a sufficient job
7 on this case?

8 A Yes, sir.

9 Q All right. So, how many times did he meet with
10 you in the detention -- let me -- did you ever make
11 bail?

12 A No. No, sir.

13 Q How often did he meet with you in the detention
14 center?

15 A Not that much times. He met a couple time
16 and a few times before I had to go to trial, but
17 they always rescheduled it. It wasn't that much
18 times.

19 MR. FALK: Can the court reporter hear?
20 Do you want him to remove his mask?

21 COURT REPORTER: Please.

22 THE WITNESS: Not that much times.

23 BY MR. FALK:

24 Q Okay. So what did you think the evidence was
25 against you in this case?

1 A Probably the main one was with the witness.

2 Q Okay. And did he go over the discovery with
3 you?

4 A He went over not the whole motion of --

5 Q Discovery?

6 A Yeah. Just most of everything that he really
7 had. So he really didn't have a complete
8 documents or whatever.

9 Q So what -- did you-all have any conversations on
10 what the trial strategy was going to be?

11 A What you mean?

12 Q Well, that's actually a very telling answer.

13 How -- did he tell you -- did Mr. Hughes tell
14 you what his plan was for defending you?

15 A No, sir.

16 Q I mean, did he say you were going to -- it was
17 going to be an alibi case? I mean, did you-all talk
18 about possible defenses that you might have?

19 A The only thing we probably talked about is
20 trying to get somebody to talk, but that didn't go
21 nowhere.

22 Q What do you mean get somebody to talk?

23 A On my behalf.

24 Q Oh, like a character witness or an alibi witness?
25 It's important.

1 A Yes, sir.

2 Q What, somebody who would say you're a nice guy and
3 not violent, or somebody who would say he was with me
4 that night?

5 A Both.

6 Q Okay. And did you give him some potential names
7 of people who could say they were with you at the
8 time?

9 A No, sir.

10 Q Did you give him some names of people who could
11 come in and say that you were a nice guy, not a
12 violent person?

13 A No, sir. But I could have, but no.

14 Q Okay.

15 All right. Was there any discussion about
16 trying to get a plea in this case?

17 A No. The only plea that I had got was when I
18 going to trial, or before I was getting ready to
19 go to trial.

20 Q Okay. But what do you mean getting ready to go to
21 trial? Like, the day before he told you about the
22 plea offer, or what?

23 A I don't know if it was the day before or a
24 couple weeks before, but, like, when he came, it
25 was one plea deal.

1 Q He came to you with one plea deal?

2 A Yeah, and that was then we went to trial.

3 Q So did he talk with you -- so were you brought to
4 the courthouse several times and then brought back?

5 A Yes. Yes, sir.

6 Q Because your trial was scheduled but then it
7 didn't go forward?

8 A Yes, sir.

9 Q So what did he talk to you about at those times?
10 What did he tell you about the case?

11 A Basically, nothing. Basically just saying
12 things that we previously talked about.

13 Q That you what?

14 A Talked about before.

15 Q Okay. So when did he bring you a plea offer in
16 this case?

17 A As soon -- not right before trial, but a
18 couple weeks before trial -- or a couple months.

19 Q And what was the offer?

20 A Thirty years.

21 Q And what was your thought on a 30-year offer?

22 A No.

23 Q And why that was?

24 A Because I -- well, me, I felt like he
25 probably could have did better and probably tried

1 to -- couldn't get a manslaughter plea or
2 something that was less.

3 Q Than a murder?

4 A Yes, sir.

5 Q Because murder carries -- he told you that 30
6 years, that that was the minimum for a murder charge,
7 right?

8 A I believe so, yes, sir.

9 Q So you thought that under the facts he should have
10 been able to get you a voluntary manslaughter plea?

11 A Yes, sir.

12 Q What kind of discussions did you have with him
13 about that?

14 A I really did not talk to him about it. Not
15 really.

16 Q So what would you have wanted Mr. Hughes to do in
17 this case?

18 A Cross-examine the witness a little bit better
19 than what he did.

20 Q Which witness was that?

21 A The main witness that pointed me out.

22 Q Okay. That's the one that said he saw you peaking
23 around the side of the house?

24 A Yeah.

25 Q Okay. Is there anything else that you think he

1 could have done better on your behalf?

2 A Probably -- all right. Whenever I had went
3 to trial, they started bringing up more -- I
4 wouldn't say -- all right. Mostly the things that
5 was not in -- outside my Rule 5, they had started
6 bringing it up, and I felt like he could have done
7 something towards that.

8 Q What kind of stuff were they talking about that
9 was outside your Rule 5?

10 A The phone records, the photos. That
11 basically was it, I think.

12 Q Did anyone ever show you the telephone calls or
13 the cell phone records?

14 A No. Not until after one of the times that I
15 was supposed to have went to trial.

16 MR. FALK: Your Honor, I have no further
17 questions.

18 THE COURT: Miss Mims.

19 CROSS-EXAMINATION

20 BY MS. MIMS:

21 Q Good afternoon, Mr. Chisolm. How are you?

22 A Good.

23 Q How many times did you meet with your attorney?

24 A Not that much times.

25 Q Okay. And so -- if you could, give me a number.

1 How many times?

2 A Three or four time maybe at the most.

3 Q Three or four times.

4 Okay. And so what did you-all discuss in
5 those meetings?

6 A Basically, what he already had and that was
7 it really.

8 Q And by that, what do you mean what he already
9 had?

10 A The statements, the incident report. That
11 was all he had.

12 Q Okay. And so you testified a little bit earlier
13 that you didn't get to see the photos that were
14 introduced at trial?

15 A Yeah. Not until, like, a couple times before
16 I was scheduled to go to trial.

17 Q Okay. But you did, in fact, see them though
18 before you went to trial?

19 A Yeah.

20 Q Okay. And you had the opportunity to plea in this
21 case, correct?

22 A Yeah.

23 Q And it was your decision to not plea in this
24 case?

25 A Yes.

1 Q Okay. And did you -- I think you testified a
2 little bit earlier that you never gave Mr. Hughes any
3 one to investigate on your behalf, correct?

4 A No.

5 Q Okay. So no alibi witnesses, correct?

6 A (Witness moves head from side to side.)

7 Q I'm sorry. You have to --

8 A No, ma'am.

9 Q And no character witnesses or anything like that,
10 correct?

11 A No.

12 Q So did you -- what more could Mr. Hughes have done
13 for you?

14 A What more could he have done?

15 Q Or what could he done more as far as
16 investigation? He had all of the Rule 5 discovery
17 that he --

18 A He did not have all the Rule 5 discovery
19 until I went to trial. That's when they started
20 bringing more.

21 The only thing he had at first was the
22 incident report and the witness statement. That was
23 it.

24 Q And that was at the beginning -- when was that
25 when he had just the incident report and the

1 statement?

2 A For the whole time that I been inside county.

3 Q Okay. And then when you-all got closer to trial,
4 there was more evidence that was presented? Is that
5 your testimony?

6 A Yes, ma'am.

7 Q And that you were able to see that evidence,
8 correct?

9 A No. The only thing that I did got to see was
10 the phone, was the phone texts -- or phone
11 messages.

12 Q So you got to see the phone messages.

13 A Yeah, like, a couple times, if I went through
14 it.

15 Q Okay.

16 MS. MIMS: Beg the Court's indulgence.

17 BY MS. MIMS:

18 Q You testified a little bit earlier that you-all
19 talked about a defense, correct?

20 A No. What defense?

21 Q You-all never talked about a defense at trial?

22 A No. Not that I know of, no.

23 Q Okay.

24 MS. MIMS: Beg the Court's indulgence.

25 BY MS. MIMS:

1 Q Let's talk a little bit about your trial. Did you
2 ever express to Mr. Hughes that you were unhappy with
3 his representation at trial?

4 A No.

5 Q Okay. Before trial?

6 A Not that I can recall.

7 Q Okay. Did you ever express any concerns about
8 discovery, or anything like that before trial?

9 A Yes.

10 Q And so during trial, when you seen the photos that
11 you said you had seen a couple weeks before, did you
12 express any concerns about those?

13 A No, because I think they had let it go
14 through. So, no, not really.

15 Q So you didn't express any concerns about the
16 things that you said you had seen right before
17 trial?

18 A No.

19 Q And did you express any concerns about his
20 cross-examination of the witness?

21 A Yes. I mean, I tried to point out some key
22 facts that he could did or said.

23 Q Okay. When did you do that?

24 A Uh?

25 Q When did you do that?

1 A At trial.

2 Q So you could have leaned over and tell him, I
3 think you should do X, Y, and Z?

4 A Yeah. I have stuff written down.

5 Q Okay. And you gave it to him?

6 A I showed him at trial.

7 Q Okay.

8 MS. MIMS: No further questions, Your
9 Honor.

10 REDIRECT EXAMINATION

11 BY MR. FALK:

12 Q What did you ask him to do?

13 A Basically to look more into the statements.

14 Q That the --

15 A -- main witness had wrote.

16 Q Yeah. You didn't think they adequately identified
17 you?

18 A The way, how she wrote her two statements,
19 it's like it's kind of not credible to me. To me,
20 it's not credible.

21 Q Okay. And you wanted him to, sort of, challenge
22 her with those statements, right?

23 A Yeah, I tried to get her impeachment too, but
24 they wouldn't let it go through.

25 Q Okay. You had talked about the phone messages

1 that came from that burner phone, right?

2 A Yes, sir.

3 Q And they tried to say it was your phone, right?

4 A Yes, sir.

5 Q When did you know that they had those text
6 messages?

7 A Not until before my first or second trial.

8 Q You mean your trial date, right? You only had one
9 trial.

10 A Yes, sir.

11 Q Okay. Here's the question, though: Did you know
12 about the text messages after you were given a 30-year
13 offer or before you were given a 30-year offer?

14 A After. I believe after.

15 Q Okay. So there was an offer and then you found
16 more evidence -- then they gave more evidence,
17 right?

18 A Yes, sir.

19 Q And how about the evidence of -- do you remember
20 how there was a witness that, sort of, tracked where
21 that cell phone went, right? Sort of went through the
22 woods. I mean, you remember that testimony?

23 A Yes, sir.

24 Q When did you know that that testimony would be
25 coming out?

1 A At trial.

2 Q Okay. Had you known that they had the -- those
3 text messages, would that have changed your decision
4 to plead guilty?

5 A No, sir.

6 MR. FALK: No further questions.

7 MS. MIMS: No further questions.

8 THE COURT: Thank you, sir. You can step
9 down.

10 MR. FALK: I would like to call
11 Mr. Hughes.

12 THE CLERK: If you could raise your right
13 hand. Do you solemnly swear or affirm to
14 truthfully answer all questions asked of you by
15 this court so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat and state your
18 first name and spell out your last name for the
19 court reporter.

20 THE WITNESS: My Robert Hughes,
21 H-u-g-h-e-s.

22 WHEREUPON:

23 ROBERT HUGHES,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. FALK:

2 Q Mr. Hughes, when did you -- were you the only
3 public defender appointed to Mr. Chisolm's case?

4 A Yes, I was.

5 Q And about how long did you have the case before it
6 was first called for trial?

7 A I do not have the file anymore. The file has
8 been destroyed. I could not begin to tell you.

9 Q Is it years or is it months?

10 A It was over a year.

11 Q Okay.

12 A I never had a murder trial go before a
13 year.

14 Q I beg your pardon?

15 A I never had a murder trial that was called
16 before a year was passed.

17 Q You never had one called quicker than 12 months.

18 A Correct.

19 Q Okay. And what kind of efforts did you make as
20 far as getting a plea offer in this case?

21 A They offered a minimum sentence on the murder
22 charge. I could not get anything lower because he
23 never told me he did it. I couldn't go fishing
24 for manslaughter or anything like that because he
25 always maintained his innocence and I could not in

1 good faith try to negotiate something that he
2 would not admit to.

3 Q Because he couldn't stand up and plead guilty to
4 the manslaughter charge at a plea hearing?

5 A Correct.

6 Q What was your -- what was the defense going to be
7 in this case?

8 A Until they introduced the cell phone records,
9 the closest thing I could come to a possible
10 defense would be impeaching the eyewitness.

11 Q Okay. And Mr. Chisolm testified that he gave you
12 some suggestions on some areas that you could have
13 impeached her with?

14 A The only thing he advised me of was -- and
15 this was very early and he kept harping on this,
16 she said it was Naiki and my name is Naiji. And
17 that's sounds remarkably like a confession.

18 Q Tell me this: When did you-all get the
19 information about the text messages from that phone?

20 A The solicitor's office was very good about
21 getting me information when they got it. They
22 would never do surprise prosecution. And my
23 philosophy was always, when I got something, he
24 got it as soon as possible. So I could not begin
25 to tell you. I will not contradict him and say we

1 got it before a trial date.

2 But they always made sure that any evidence
3 they had, I got it as soon as possible. And it always
4 came in willy-nilly with the solicitor's office as far
5 as when they got it, I got it.

6 Q What did you tell him about the strength of the --
7 excuse me. What did you tell him about how
8 incriminating those text messages might be?

9 A I told him that it would depend on the jury.
10 I don't like text messages because they cannot be
11 proven to come from them. I will always object to
12 them. But I showed them to him and told him, you
13 know, they're going to ask for this to come in.
14 They may have a leg to stand on. I don't like it.
15 Here's what they say.

16 Q Because this was not -- these text messages
17 weren't coming from the phone that was registered in
18 his name, right?

19 A No. Plus, there's no way to show who did it.
20 I always thought they were hearsay.

21 Q Yeah, I do too.

22 A I argued many times with Judge Buckner
23 exactly that point.

24 Q Is this a case where Judge Buckner originally
25 agreed that they were hearsay and then --

1 A No, no, no.

2 Q I've read so many transcripts.

3 A I would love -- Judge Buckner has always
4 maintained that they were not hearsay. That they
5 were the ordinary course of business and then I've
6 always objected to it.

7 Q This is an aside, and I apologize. There was one
8 transcript I read where Judge Buckner was going to say
9 that they were hearsay, and then he cites this Alvarez
10 case out of the 4th circuit which holds the
11 proposition that they're from a friend and they're
12 using, like, jargony, and that was not testimonial. I
13 don't know if that was your case or not.

14 A I don't know if it was or not. I have seen
15 Alvarez and --

16 Q It's neither here or there. I'm sorry.

17 A Yeah, that's beside the point.

18 I showed him the messages and told him for
19 what it was worth.

20 Q And because the State was arguing that his flight
21 was an indication of guilt, right?

22 A They always do.

23 Q And these text messages certainly made it look
24 like somebody was running because they were guilty.

25 A Somebody who had access to a phone, doing

1 some texts saying such and such, you know. And I
2 would point that out to every jury that I could ad
3 nauseam.

4 Q Did you think that there was some -- did you think
5 that there was circumstantial evidence in this case?

6 A The closest they could come would probably be
7 the cell phone tower location thing, which I
8 thoroughly loved because that was garbage.

9 Q Sure. But, would you agree that the text messages
10 are really circumstantial evidence because the jury
11 has got to make the connection that that text message
12 came from him on a phone that he owned, right?

13 A Yeah. Excuse me. Yes, sir, they do. That
14 was -- like I said, I despise allowing text
15 messages in.

16 Q I guess my question is: Did you consider asking
17 for that *Logan* circumstantial evidence charge, because
18 that's not the charge that was given in this case?

19 A No. Judge Buckner's circumstantial evidence
20 charge has always been great. I don't remember
21 what it was, but I went through -- shortly after I
22 went in front of Buckner, I pulled up his charges,
23 went through his charges with a fine-tooth comb,
24 and my general response to Judge Buckner is, *I've*
25 *read your charges, Your Honor, I have no problems*

1 with them.

2 Q So, I'm going to --

3 MR. FALK: If I could approach the
4 witness?

5 BY MR. FALK:

6 Q I'm going to show you where the circumstantial
7 charge was. Is that the one where you said --

8 A Yes.

9 Q Yeah, okay.

10 A And I have read *Logan*, but it was six to one,
11 half a dozen or the other.

12 Q You don't like that language in *Logan* where it's
13 got -- everything has got to connect up, and, if it
14 doesn't all connect up, they got to find the client
15 not guilty?

16 A I'm not thrilled with it.

17 Q I'm paraphrasing.

18 A I agree you're paraphrasing, but that's -- I
19 like Buckner's. Buckner has a good one.

20 MR. FALK: Your Honor, you know, I cited
21 *Logan* that last time. For the cite, so we know
22 the charge, just to make the record -- I don't
23 really think it needs to be read again. But this
24 is the circumstantial evidence charge from *State*
25 *vs. Logan*, which is 405 S.C. 83, and I guess it

1 starts on page 99 where they put in the language
2 I'm talking about.

3 BY MR. FALK:

4 Q It's your testimony you like Buckner's charge
5 better?

6 A Yes. It flows. With these other charges,
7 the circumstantial evidence flows. The jury hears
8 what I want them to hear.

9 Q Okay.

10 A I also will use that in closing, even if
11 hinted at.

12 Q I beg your pardon?

13 A I'll use that in my closing, because I know
14 Buckner's, and I will hint around it and let the
15 jury draw their own inferences.

16 MR. FALK: I have no further questions.

17 THE COURT: Miss Mims.

18 MS. MIMS: Thank you.

19 CROSS-EXAMINATION

20 BY MS. MIMS:

21 Q Good afternoon, Mr. Hughes.

22 A Good afternoon.

23 Q How long have you been practicing law?

24 A Since 2004.

25 Q Okay.

1 A So that would be 18 years.

2 Q Okay. How much of your practice has been criminal
3 law?

4 A With the exception of one year where I worked
5 for Citizen's Opposed to Domestic Abuse, I started
6 out as an assistant solicitor then went into the
7 public defender's office.

8 Q And what is your recollection about how many times
9 you met with the applicant?

10 A My policy was always show up at the jail once
11 a month with a list of my clients, and those that
12 wanted to talk to me, anybody else that wanted to
13 talk to me, feel free. But what I would do is,
14 once a month I would show up in the morning,
15 making my plans to be there all day long. Anybody
16 charged with a capital crime, murder or armed
17 robbery, anything like that, I made sure I talked
18 to. I also made sure they got their discovery as
19 fast as possible.

20 Q And what is your recollection of the discovery
21 that was given by the State in this case?

22 A Like I told opposing counsel, the solicitor's
23 office got discovery, they passed it on to me, and
24 I passed it on to him. It came in willy-nilly.
25 We would start off with basic -- any witness

1 statement and incident report. And than if they
2 got anything else, I would get a copy. If they
3 got, you know, photos, phone records, anything
4 like that, I'd get a copy and I'd make a copy to
5 give to the client. It never came in -- I never
6 got a packet to start off with.

7 Q So it just kind of trickled in throughout your
8 representation?

9 A Yes.

10 Q And it's your testimony that whenever you got it,
11 you provided it to the --

12 A Of course.

13 Q And, in your discussions with Mr. Chisolm, what
14 was your discussing surrounding the defense of this
15 case?

16 A I'm sorry?

17 Q What were the discussions surrounding the defense
18 of this case?

19 A I kept looking for one. He pointed out that
20 the eyewitness was impeachable by very nebulous
21 aspects of it -- of what he thought her testimony
22 was going to be. He would give me no alibi
23 witness, nothing that I could use to help him. He
24 was basically, *I didn't do it, you defend me.*

25 Q Okay. And I think you testified a little bit

1 about the plea offer earlier. Was it only one plea
2 offer?

3 A I do not remember.

4 Q Okay.

5 A Whatever Mr. Chisolm said, I will be willing
6 to accept.

7 Q Okay.

8 A But that sounds like the standard offer.
9 They -- the solicitors would have loved to have
10 gotten a conviction and they would be willing to
11 give minimum sentence. And with murder, 30. And
12 if they were willing to toss in the weapon during
13 a violent crime as a concurrent, that's
14 fantastic.

15 Q And it was always his indication that he wanted to
16 go to trial, correct?

17 A He never admitted guilt, so there was no
18 question. I mean, if I have a client that says, I
19 did it, then I can try to work with trying to get
20 a better offer. I didn't do it, that's a trial.

21 Q Okay.

22 MS. MIMS: Beg the Court's indulgence.

23 BY MS. MIMS:

24 Q Did you ever have any indication that
25 Mr. Chisolm was unhappy with your representation?

1 A He wanted a bond. I remember that much. Was
2 upset he couldn't get bonded out. And wanted to
3 see me every other day. But other than that -- he
4 never came out and actually said, I don't think
5 you're a good lawyer, or I don't like what you're
6 doing. He never said that.

7 Q And do you have any recollection of him speaking
8 with you about the witness outside of what you already
9 testified to?

10 A No.

11 Q And let's talk a little bit about the
12 circumstantial evidence jury charge. It was your
13 testimony that you liked that charge, correct?

14 A I like Buckner's charge, yes.

15 Q So that would be the charge that you would want to
16 go forward on?

17 A Correct.

18 Q And it was also your testimony that in your
19 general practice you kind of tailor your closing
20 arguments surrounding that charge?

21 A I knew what the jury was going to hear as the
22 last thing they heard before they went back in the
23 room, and I wanted them when they recalled that to
24 recall that I said something similar and I wanted
25 them to tie it together.

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

2 No further questions.

3 MR. FALK: No redirect.

4 THE COURT: Thank you, sir. You can step
5 down.

6 MR. FALK: We have no further
7 witnesses.

8 MS. MIMS: None from the State.

9 THE COURT: I'm glad to hear anything
10 you-all want to tell me in summary.

11 MR. FALK: Your Honor, we heard my
12 client's testimony that he was not satisfied with
13 the amount of preparation that Mr. Hughes did for
14 the case, and we heard his testimony that he
15 thought the whole case would hinge upon the
16 testimony from the eyewitness and he wasn't
17 satisfied with the way that -- well, I don't know
18 if we'd call her the eyewitness, but the witness,
19 and he wasn't satisfied with the way that
20 Mr. Hughes impeached her testimony because she had
21 made prior statements that seemed too
22 inconsistent. And a case that's going to be a
23 case like this where eyewitnesses are going to
24 be -- the jury loves eyewitnesses, and any
25 opportunity not to adequately impeach an

1 eyewitness is going to be prejudicial.

2 I guess reasonable minds can differ. I
3 certainly think the *Logan* charge is clearly more
4 favorable to defendants in cases than Mr.
5 Buckner's charge. It seems like Mr. Hughes's
6 testimony is he likes Buckner's charges because
7 he's used to it, but not necessarily that it is a
8 charge that draws the jury's attention to the fact
9 that circumstantial evidence is not the same as
10 direct evidence.

11 So for the those reasons we think he has
12 satisfied the burden.

13 THE COURT: Miss Mims.

14 MS. MIMS: Your Honor, we would ask the
15 Court to deny the PCR application of Mr. Chisolm.
16 First and foremost regarding the failure to object
17 to the jury charge, in *State v. Logan*, it states
18 that the circumstantial evidence provided can be
19 used upon the request of the defense, but the
20 language that's provided in *State vs. Grippon*,
21 which is equivalent to what Judge Buckner charged
22 is still good law and still can be used as a jury
23 charge. And Mr. Hughes indicated that he was
24 happy with the circumstantial evidence charged as
25 it was written.

1 Furthermore, you know, to be entitled to
2 post conviction relief, the applicant has to show
3 that counsel was deficient according to
4 professional norms, and that he was prejudiced by
5 these deficiencies such to the extent that there
6 was a reasonable probability that he would have
7 not been convicted but for counsel's errors or
8 omissions. He cannot meet the requisite burden of
9 proof.

10 He testified that he did not -- well, it
11 was applicant's allegation that Mr. Hughes didn't
12 do an adequate job in investigating. However,
13 applicant testified that he did not provide
14 Mr. Hughes with any alibi witnesses or any fact --
15 any alibi witnesses or character witnesses or
16 anything that could help Mr. Hughes in his
17 investigation.

18 Furthermore, Mr. Hughes testified that
19 the avenue that applicant asked him to go down for
20 the impeachment of the alibi witness was an avenue
21 that he did not think would be fruitful for
22 Mr. Chisolm's trial.

23 So for those reasons, Your Honor, I ask
24 the Court to deny Mr. Chisolm's PCR.

25 THE COURT: I'm going to take it under

1 advisement. I will let you-all know of my ruling
2 by email.

3 MS. MIMS: And, Your Honor, did you need
4 a citation for Grippon? I know I said it without
5 the citation.

6 THE COURT: No, that's fine. Thank you.

7 MR. FALK: Thank you, Judge.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

June 26, 2023

A handwritten signature in black ink, reading "Sharon G. Hardoon". The signature is written in a cursive, flowing style with a large initial 'S'.

Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

Naijuwuan S. Chisolm, SCDC #371665,)

Case No. 2020-CP-27-0397)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

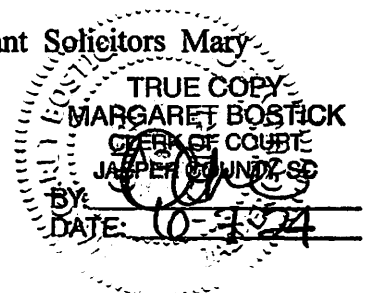
FILED
JASPER COUNTY
CLERK OF COURT
2024 JUN -7 AM 9:20

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Naijuwuan S. Chisolm (Applicant) on August 25, 2020. On July 21, 2022, an evidentiary hearing convened before the Honorable Kristi F. Curtis. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Robert Hughes, Esquire. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections serving an aggregate forty-five-year sentence. In July 2015, a Jasper County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime. These charges arose from the death of Sterling "Slim" Jenkins on June 9, 2015, who was fatally shot on his front porch. Witnesses identified Applicant as the shooter.

On February 21, 2017, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. Robert Hughes, Esquire, represented Applicant, and Assistant Solicitors Mary



Jones and Brian Hollen prosecuted the case. The jury convicted Applicant as indicted, and Judge Buckner sentenced him to consecutive terms of forty years for murder and five years for the weapon charge.

Applicant filed a timely notice of appeal that was perfected by Appellate Defender Susan B. Hackett, who submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then submitted his own *pro se* response. Following a review, the Court of Appeals dismissed the appeal pursuant to Anders. State v. Naijuwuan Chisolm, Op. No. 2019-UP-352 (Ct. App. filed Nov. 6, 2019). The remittitur was sent November 22, 2019.

CURRENT APPLICATION

On August 17, 2020, Applicant timely filed this PCR application alleging:

Ineffective assistance of counsel: counsel did not object to his forty-year sentence, which was above the statutory maximum the Court could oppose.

As relief, Applicant requested a new trial. At the PCR hearing, Applicant waived his allegation related to the sentence and proceeded on the following grounds of ineffective assistance of counsel:

1. Counsel failed to sufficiently investigate;
2. Counsel failed to seek out reasonable plea offers;
3. Counsel failed to request a Logan charge; and
4. Counsel did not adequately cross-examine the State's main witness, Jesnesiha Houston.¹

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of

¹ Applicant raised this allegation during his testimony without objection.

Applicant's PCR application. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to Investigate

Applicant first contends counsel was ineffective for not sufficiently investigating. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel met with him three or four times and reviewed some of the discovery. He stated they discussed “trying to get somebody to talk, but that didn’t go nowhere.” When asked whether he gave counsel any names of potential alibi or character witnesses, Applicant relayed he did not. Trial counsel testified the solicitor’s office was good about providing discovery, and he reviewed discovery with Applicant as soon as possible after receiving it. Counsel explained he kept looking for a possible defense, but Applicant never provided the name of an alibi witness or another witness, or anything that could help him.

This Court finds credible counsel’s testimony that Applicant never provided the names of any witnesses to investigate. This Court notes this is consistent with Applicant’s own testimony. Based on this, counsel’s failure to further investigate was reasonable under prevailing professional norms and not deficient. Applicant has not set forth with specificity what more counsel should have investigated and thus did not meet his burden of proving deficiency. Likewise, Applicant did not introduce any evidence at the PCR hearing of what counsel would have uncovered upon a further investigation and thus did not meet his burden of proving prejudice. Thus, this claim is denied.

Failed to seek reasonable plea offer

Applicant next contends counsel was ineffective for not seeking a reasonable plea offer. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel relayed a thirty-year plea offer to murder a few weeks or months before trial, which Applicant turned down. He averred counsel “probably

could have did better and probably tried to—couldn't get a manslaughter plea or something that was less." Applicant stated he did not discuss with counsel a plea to a lesser-included offense. He agreed it was his decision to turn down the plea offer.

Counsel testified the solicitor offered a plea to the minimum sentence for murder. He explained he could not negotiate a plea to a lesser-included offense because Applicant never told him he shot the victim. Counsel testified, "I couldn't go fishing for manslaughter or anything like that because he always maintained his innocence and I could not in good faith try to negotiate something that he would not admit to."

This Court finds counsel's foregoing testimony credible. Counsel articulated a valid reason for not negotiating a plea to a lesser-included offense in that Applicant never indicated he shot the victim—making it difficult to negotiate a plea to a lesser-included offense. This Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds that based on counsel's credible testimony, it is not reasonably likely further plea negotiations would have yielded a better offer. Thus, Applicant has not shown deficiency or prejudice, and this claim is denied.

Failed to request Logan Charge

Applicant next contends counsel was ineffective for not requesting the circumstantial evidence charge set forth in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). This Court finds Applicant has failed to meet his burden of proof in this regard.

In Logan, the Court recommended the following circumstantial evidence charge:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99, 747 S.E.2d at 452.

At trial, the Court provided the following circumstantial evidence charge:

Direct evidence, ladies and gentleman, is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness to an event. Direct evidence is evidence that immediately establishes the main fact to be proved.

Circumstantial evidence, as contrasted with direct evidence, is proof of a chain of facts and circumstances indicating the existence of a fact. Circumstantial evidence is evidence that immediately describes or establishes collateral facts from which the main fact may or may not be inferred. Circumstantial evidence is based on inferences and not on personal knowledge or personal observation. The law makes absolutely no distinction between the weight or value to be given to either direct evidence or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You, ladies and gentlemen of the jury, should weigh or consider or evaluate all evidence in this case, both direct and circumstantial. After considering all the evidence in this case, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

On the other hand, after considering, weighing, evaluating all the evidence in this case, both direct and circumstantial, if you are convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant guilty.

(R. 351-52).

At the PCR hearing, counsel testified he reviewed Judge Buckner's charges and liked Judge Buckner's circumstantial evidence charge. He stated he was familiar with the Logan circumstantial evidence charge, but he liked Judge Buckner's charge better because it flowed and the jury heard "what I want them to hear."

This Court finds counsel articulated a valid reason for not requesting the Logan charge in that he liked the flow of Judge Buckner's charge better. This Court further finds the charge given was substantially correct and adequately covered the law. Thus, counsel was not deficient for not objecting. Further, it is not reasonably likely the outcome would be different had counsel requested and received the Logan circumstantial evidence charge. Critically, although the State relied on some circumstantial evidence in proving Applicant's guilt, this was not a purely circumstantial evidence case. Rather, eyewitness Houston testified she knew Applicant from middle school and she saw him shoot the victim. The State thus had some direct evidence—in addition to circumstantial evidence—of Applicant's guilt, and it is not reasonably likely the outcome would have been different had counsel requested and the court charged the Logan charge. Thus, this claim is denied.

Failed to adequately cross-examine Janesiha Houston

Finally, Applicant contends counsel was ineffective in his cross-examination of Janesiha Houston, who identified him as the shooter at trial. Applicant did not prove this ground.

At the PCR hearing, Applicant averred Houston's two statements were not credible. He stated he tried to point out some things for counsel to cross-examine her on and attempted to impeach her, "but they wouldn't let it go through." Counsel testified the only thing Applicant asked him to cross-examine Houston about was that "she said it was Naiki and my name is Naiji."

This Court finds credible counsel's foregoing testimony that the only thing Applicant asked him to cross-examine Houston about was calling him Naiki when his name was Naiji. This Court further finds counsel was not deficient for not cross-examining Houston on this point. Specifically, Houston testified she knew Applicant from middle school and identified several nicknames he went by, including Naiji, Nai, and Nike. (R. 221). This Court finds it is not reasonably likely further cross-examination on Applicant's nickname would have changed the outcome of trial. Finally, this Court finds counsel's cross-examination of Houston was reasonable under prevailing professional norms and not deficient. (R. 235-41). Applicant did not point out what more counsel should have done that would reasonably change the outcome of trial and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

[Conclusion and signature page follows]

CONCLUSION

Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application is denied and dismissed with prejudice.

Should Applicant wish to seek appellate review, he must file and serve a notice of appeal within thirty days of written notice of the entry of this order. See Rule 203, SCACR. Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on his behalf. Rule 71.1 (g). SCRCP. Attention is directed to Rule 243, SCACR, for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to custody of Respondent.

AND IT IS SO ORDERED this 29th day of May, 2024.

Kristi F. Curtis
 KRISTI F. CURTIS
 Presiding Judge
 Fourteenth Judicial Circuit

Sumter, South Carolina.