

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-000848

Jacoby Jamar Gregory,.....Petitioner,

v.

State of South Carolina, ...Respondent.

APPENDIX VOLUME II OF II

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SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q So, when he came back and it was already dark
2 and he comes down the street, did you recognize the car
3 that he was in?

4 A Yes. I recognized that it was a car coming down
5 the street with the lights off. I didn't know who car it
6 was.

7 Q Had you ever seen that car before?

8 A No.

9 Q Okay. So, it's dark except for the lights and
10 you've got this car rolling down the street with no lights
11 on?

12 A Uh-huh.

13 Q Did that alarm you?

14 A Yes.

15 Q Did it alarm the other people that were there
16 with you?

17 A Yes.

18 Q What did you do?

19 A Well, we just -- we was just watching. There
20 was nothing we could do. We just watched.

21 Q Well, you could have run for cover.

22 A At that point in time when we seen the car, the
23 car was way down the street coming with the lights off.
24 It's relatively no traffic coming down this street at all,
25 so when you see a car come in there, you see the car

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 whether the lights on or lights off.

2 Q That's a very short street, correct?

3 A Yes.

4 Q Okay. You had had calls from Barry saying that
5 he was coming back over there and, specifically, you were
6 going to have some problems when he got there; is that
7 right?

8 A He made the threat to everybody.

9 Q And yet, when you see this car with no
10 headlights rolling down the street, no concern?

11 A Yes, it was concern. I told you there
12 definitely was concern when we seen the car coming with no
13 lights on.

14 Q But you didn't take cover?

15 A No, not at the time.

16 Q Is that because you were armed?

17 A No.

18 Q So, you weren't armed at the time?

19 A I wasn't armed at all.

20 Q But you weren't scared by somebody that had told
21 you that they were coming back and they were going to
22 shoot you?

23 A No.

24 Q Because that's what he had told you, right?
25 That he was going to shoot you?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A He said -- he didn't tell us that. He said he
2 was just coming back. At that time, he didn't tell us
3 what he was going to actually do.

4 He said, I'll be back at 8:00.

5 Q At one point, he had indicated to you that you
6 were a dead man walking?

7 A That was after the driveby.

8 Q So, at any rate, this car -- you didn't
9 recognize the car, but you did notice that it had its
10 lights off?

11 A Say that question again, sir.

12 Q You didn't recognize the car, but you noticed
13 that it had its lights off?

14 A Yes.

15 Q Did you recognize anybody in the car?

16 A No.

17 Q At any point, did you recognize anybody in the
18 car?

19 A No.

20 Q You didn't even recognize Barry as being in the
21 car?

22 A Barry was hanging out the window, sir.

23 Q So, you did recognize somebody in the car?

24 A Yeah.

25 Q You recognized Barry?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Yeah.

2 Q Did he have the door open or was it closed?

3 A The door was closed.

4 Q The door was closed and he was hanging out the
5 window. And when you say hanging out the window, I mean,
6 did he have like his torso --

7 A Yeah.

8 Q -- out the window? So, his torso was out the
9 window. And did he have anything in his hand?

10 A Yes.

11 Q What did he have in his hand?

12 A An object.

13 Q An object. Is that what you thought at that
14 time, he has an object in his hand?

15 A Yes, sir, a large black object.

16 Q A large black object. Did you have any thoughts
17 as to what that large black object might be?

18 A At the time, I thought it was a gun.

19 Q Thought it was a gun. Did you run for cover
20 then?

21 A Yes.

22 Q Did everybody else run for cover?

23 A Yes.

24 Q Did you see where the car went?

25 A Yes.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 18 2017

SC Court of Appeals

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOBY JAMAR GREGORY,

APPELLANT

APPELLATE CASE NO 2016-001533

RECORD ON APPEAL

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SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Where did it go?

2 A Like you said, the street is relative small, so
3 the street loops. When you go that way, it loops back to
4 Wall Street. So, he looped back to Wall Street.

5 Q All right. And so he left. Then what did
6 everybody do?

7 A You know, like talking amongst ourselves just
8 saying he took it too far. He's going too far. He's
9 going too much. This was all about fighting and now he's
10 doing fake drivebys.

11 Q Was it as casual conversation as you're doing
12 now?

13 A Not casual.

14 Q It was much more animated, wasn't it?

15 A Yes.

16 Q In fact, people were mad?

17 A That's correct.

18 Q I mean, Stacy Sullivan was particularly mad
19 because this whole thing started with his baby momma being
20 pushed to the ground, right?

21 A Correct.

22 Q And he remained extraordinarily mad throughout
23 this whole thing, correct?

24 A Correct.

25 Q You, obviously, were mad because you had been

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 threatened with death?

2 A Correct.

3 Q So, you had a great deal of anger about this
4 situation?

5 A Correct.

6 Q And probably more than anybody, you were scared
7 by this fake driveby that occurred, would that be fair to
8 say?

9 A Correct.

10 Q And so -- and there was a consensus, it seems,
11 that he had taken it too far?

12 A Correct.

13 Q And when all this is going on, Jacoby is still
14 not present, is he?

15 A No.

16 Q Jacoby is still at work, right?

17 A Correct.

18 Q But it seems like all y'all hang out, you text,
19 you call, it seems to me that y'all keep pretty much in
20 constant contact. Is that about the way things are
21 carried on?

22 A Correct.

23 Q I mean, you communicated through -- even through
24 Facebook and things like that, right?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q And because, as you discussed earlier, as far as
2 Barry's death, you said you knew that within 10 to 15
3 minutes of it happening, right?

4 A Correct.

5 Q Because people you knew immediately started
6 texting, calling, all that stuff was going on?

7 A Correct.

8 Q And that's how things were going when this fake
9 driveby occurred?

10 A Correct.

11 Q So, by the time Jacoby got there, he knew what
12 had happened?

13 A Correct.

14 Q And he asked y'all when he got there to kind of
15 fill him in on what's going on?

16 A I believe he was already filled in.

17 Q But again, he wasn't part of any of this, right?

18 A Not at the time.

19 Q He, you said, began to have some discussions
20 with Barry Norman, is that right?

21 A Correct.

22 Q And he and Barry are actually pretty good
23 friends, right -- or were pretty good friends, I should
24 say?

25 A Is that your opinion or you asking me a

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 question?

2 Q I'm asking you. I don't really have an opinion
3 on it. I'm asking you.

4 A I don't think he knew Barry more than three
5 months.

6 Q Well, let's go back to the Clarion Hotel. Are
7 you aware that Jacoby had actually rented the room?

8 MS. PAOLETTI: Objection, Your Honor.

9 THE COURT: On what basis?

10 MS. PAOLETTI: I --

11 THE COURT: He just asked him whether or not he
12 knew something.

13 MS. PAOLETTI: Yes, sir.

14 THE COURT: That doesn't mean it's true.

15 MS. PAOLETTI: Yes, sir.

16 BY MR. CHAMBERS:

17 Q Are you aware that Jacoby actually rented the
18 room that Barry was staying in at the Clarion?

19 A Not aware of it. I was not aware.

20 Q But there was nothing to lead you to believe,
21 certainly, that there was -- that they didn't like each
22 other, right?

23 A Correct.

24 Q Okay. And you already said that when these
25 discussions that he was having throughout his time with

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Barry, he was kind of acting as a mediator?

2 A Correct.

3 Q I mean, he was trying to take the violence down
4 a few steps and, basically, do it kind of the
5 old-fashioned way where you just get together and have a
6 fist fight and get it over with?

7 A Correct.

8 Q And that way, nobody's going to be mad at each
9 other anymore; is that right?

10 A Correct.

11 Q Kind of like what happened, I guess to a lesser
12 degree, at the Clarion when there was that fight and then
13 they kind of huffed it out and made up and everything was
14 okay?

15 A Correct.

16 Q It would be fair to say that that's what Jacoby
17 was trying to accomplish with Barry?

18 A Correct.

19 Q And that continued throughout the evening, is
20 that right?

21 A Correct.

22 Q And you had already indicated that Jacoby came
23 straight from work?

24 A Yeah.

25 Q I mean, he didn't go home, take a shower, change

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 clothes, right?

2 A Correct.

3 Q He was wearing what he wears to work?

4 A Correct.

5 Q And that's what you described to me as black
6 steel-toed work boots, right?

7 A From my understanding. I don't know what he had
8 on his feet. But, usually, when I see him from work, he
9 has like some steel-toed boots kind of.

10 Q Yeah, that would make sense if you were working
11 with steel, would that not be fair to say?

12 A Yeah.

13 Q And he had on the dark pants?

14 A Correct.

15 Q So, dressed like somebody who has been working
16 at a job like that?

17 A Correct.

18 Q Okay. And you said for sure that it was dark
19 when Jacoby got there, when he came?

20 A (The witness nods.) Correct.

21 Q You don't have any doubt about that, right?

22 A Correct.

23 Q At some point, you and Jacoby went somewhere
24 with James Williams; is that right?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q James was there at Bop's?

2 A Correct.

3 Q What had James been doing at Bop's during all of
4 this -- I mean, was he there for everything?

5 A For everything.

6 Q So, what had James been doing during that time,
7 do you know?

8 A Mainly, he was sitting in his car listening to a
9 Drake CD.

10 Q So, from the time that this first altercation
11 occurred until after the fake driveby, which is over, you
12 know, a pretty good little of bit of time, James Williams
13 was sitting in his car listening to Drake?

14 A Correct.

15 Q Did he ever get out of the car?

16 A Yes.

17 Q And what prompted you and Jacoby to get in the
18 car with him?

19 A Well, we decided to ride to the store!

20 Q Just ride to the store?

21 A To the Exxon.

22 Q Was James going there to pick something up and
23 he let y'all know that?

24 A Well, I decided I needed something from the
25 store. And he willing say he would take me and that's

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 when Jacoby say he'll ride with us.

2 Q What did you need from the store?

3 A Something to drink.

4 Q That was your reason for going, you were going
5 to get something to drink?

6 A Snack.

7 Q Do you remember Jacoby talking to James about
8 going to the Pizza Hut?

9 A No.

10 Q There is a Pizza Hut right there next to that
11 Exxon on North Main Street, isn't there?

12 A Correct.

13 Q So, you have no recollection about Jacoby
14 talking about going to the Pizza Hut?

15 A To get what, a pizza?

16 Q Yeah, a pizza. That's what they sell, right?

17 A I don't know.

18 Q But you don't recollect it?

19 A I don't recollect.

20 Q Do you recollect Jacoby getting out of the car
21 and going to the Pizza Hut only to find that it was
22 closed?

23 A Yeah, I do remember he got out of the car and
24 did something. I don't know what he did, though.

25 Q And as you've already indicated, Jacoby had come

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 straight from work, right?

2 A Uh-huh.

3 Q So, it might be reasonable to assume that he
4 would be hungry and want something to eat at that time?

5 A Possible.

6 Q All right. And if I heard you correctly when
7 you were talking to the solicitor, while you were there,
8 Landis Franklin drives up?

9 A Correct.

10 Q You had not talked to Landis Franklin before
11 then, had you?

12 A Yeah.

13 Q When did you talk to Landis?

14 A Me and Landis talk at Bop's house about going to
15 Cream.

16 Q Oh, okay. So, you were going to the club
17 together?

18 A Yeah.

19 Q Is that why you thought he was there, for y'all
20 to go to the club?

21 A Yeah.

22 Q But I thought you went to the store to get a
23 drink?

24 A I did, and a snack.

25 Q So, the plan was that you were going to get a

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 drink and a snack and that Landis was then going to come
2 by and pick you up there?

3 A No, the plan wasn't to pick me up at Exxon. It
4 just happened he stay right around the corner from the
5 Exxon.

6 Q How did he know you were there?

7 A That, I do not know. I do not know. Maybe he
8 might have been on his way back to Bop's house and seen us
9 parked at Exxon.

10 Q So, he was going to stop and when he stopped.
11 Did he say, Hey, let's go on to Club Cream?

12 A He didn't say nothing. I just got in the car
13 and I figured we been talking about it anyways, that's
14 where the location was.

15 Q So, Landis Franklin pulls in at the Exxon
16 unexpectedly while you're there to get a drink and a
17 snack?

18 A Correct.

19 Q And even though y'all had talked about going to
20 Club Cream before, you, without any discussion, get in the
21 car with him with the expectation that you were then going
22 to go to Club Cream?

23 A Correct.

24 Q Okay. And Smitty was in the car with him?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Okay. And was Smitty in the front passenger
2 seat?

3 A Correct.

4 Q Now, you also had Jacoby. And I believe you
5 indicated that Jacoby also got in the car?

6 A Correct.

7 Q Now, you said on the way over that while you
8 didn't remember any discussion about Pizza Hut, you did
9 tell the solicitor that you remember Jacoby, again, trying
10 to be the mediator with Barry talking about setting up
11 some kind of fistfight?

12 A Correct.

13 Q But when you got in the car with Landis, it was
14 to go to Club Cream?

15 A Correct, that could have been the location,
16 yeah.

17 Q But Jacoby also got in the car with you?

18 A Correct.

19 Q Was Jacoby going to go to Club Cream?

20 A He could wear his work clothes. Basically, what
21 I'm doing is freelancing. I'm just getting in the car
22 because I'm not the driver. If I was the driver, we would
23 go straight to Cream. But I'm in somebody's else's car,
24 so I have to abide by their rules wherever they're going.
25 But the destination was supposed to be Cream.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q All right. But you didn't discuss that except
2 earlier when you discussed going?

3 A Correct. And I seen Landis had changed his
4 clothes when he came to pick me up, but I also saw that
5 Smitty had on basketball shorts, so I knew he wasn't going
6 to the club. But it is possible to go to the club with
7 your work clothes on, sir, and get a drink on a Tuesday.

8 Q Well, I understand that's possible, but I'm just
9 asking if you got in the car?

10 A Correct.

11 Q All right. But he -- he wasn't discussing going
12 to Club Cream either, though, was he?

13 A Who.

14 Q Jacoby?

15 A I believe he was freelancing, too. He was going
16 to go wherever we was going to go.

17 Q So, basically, y'all were in the car with James,
18 but without -- I guess some sort of unspoken
19 communication, y'all get into the car with Landis where
20 you're just going to go whenever he takes you because it's
21 the driver's rules?

22 A Yes, sir.

23 Q Okay. Once you got in the car, though, I mean,
24 did you have -- did you ever gather any understanding from
25 where it is you were going to go?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A No understanding at all.

2 Q So, basically, I'm in this car and wherever this
3 car takes me, I will go?

4 A Correct. Because I know we not fixing to drive
5 to Mexico, sir.

6 Q I get that. Okay. So, where did you go?

7 A We went back towards Bop's house, back down on
8 Woodside, basically, in the direction going towards --
9 back to Bop house, but we never made it on Woodside.

10 Q Is that an easy way to get there?

11 A Yes, sir.

12 Q I mean, where Bop's house is on Bates Street is
13 probably less than a mile from Woodside Avenue, right? I
14 mean, in fact, you turn on Woodside from Bates Street,
15 right?

16 A Correct.

17 Q And then down the area of Third and Fourth
18 Street is less than a mile, would that be correct?

19 A Correct.

20 Q And the Exxon on North Main is also very close
21 to those two locations, right?

22 A North Main?

23 Q The Exxon where all of you were, it's also very
24 close, correct?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Now, do you have any recollection of while you
2 were at the Exxon on North Main, while James Williams was
3 there, that Bop and Jerell pulled up behind James?

4 A No, I didn't have no aware of that.

5 Q So, if that happened, you don't know anything
6 about it?

7 A Correct.

8 Q Did you tell James bye or anything?

9 A Yeah, because he had my phone.

10 Q Did you get your phone back from him?

11 A Yes, sir. I didn't tell him bye, but I got my
12 phone back from him.

13 Q Did you tell him, Hey, I'm not riding back with
14 you?

15 A Talking about when I left from the Exxon?

16 Q Yeah.

17 A Did I tell him what?

18 Q Did you just say anything to him about hey, man,
19 I appreciate the ride, but I'm not going back with you,
20 I'm getting in the car with Landis?

21 A No. Only thing I did was get my phone back and
22 said all right.

23 Q Okay. So, y'all started back down Woodside, and
24 then what happened?

25 A The music was kind of up a little bit --

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Were y'all talking?

2 A No, it was no talking. The music was up, not
3 too loud, but slightly, you know, medium. And I'm just
4 staring out the left side window because I'm sitting
5 behind the driver's seat. I'm just looking and playing on
6 my phone and stuff. And then the music come down a little
7 bit. It was like well --

8 Jacoby Gregory tell me Barry back there, we
9 fixing to go out, plus I been on the phone with him and he
10 saying we going to meet and squash -- meet to talk and
11 squash it out or whatever, like that. That conversation
12 was brief.

13 I said, All right, cool. Like I said, I
14 was freelancing. I said, Cool to Coby, squash it,
15 whatever.

16 So, that's when Landis said, Well, y'all
17 want to get dropped off right here because I got to run to
18 Bop house to drop Smitty off so we can go to the club? By
19 the time y'all done with whatever y'all doing, I'll be
20 back to pick y'all up.

21 Q So, if I understand what you're saying
22 correctly, there was never any plan between you and Jacoby
23 or anybody else to go over to that area of Woodside
24 Avenue?

25 A No, never no plan.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q That was just a random occurrence?

2 A Random occurrence.

3 Q And were you all aware of the fact that Barry
4 Norman would be over in that area?

5 A I did not know. I did not know truthfully.

6 Q Do you know either James Wright or Joshua
7 Kilgore?

8 A Not at all.

9 Q Did you have any idea that they been or were
10 with Barry Norman that day?

11 A Yeah. It was something said to me after the
12 fake driveby. After the fake driveby, somebody released
13 their names saying this is possibly people that he with
14 right now.

15 Q But at any rate, I don't want to just keep going
16 over this, but I want to make sure I'm clear on it. We
17 get this trip to the store to get a Coke and a snack, and
18 then you jump in the car with Landis Franklin to go
19 wherever he's going. But there was never a plan to go
20 over to this area of Woodside to confront Barry Norman?

21 A No.

22 Q Okay. Because had there been some kind of plan
23 to go that way -- I mean, for example, Jacoby had his own
24 car that he could drive, correct?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q But this was just a random thing and y'all told
2 Landis to let y'all out?

3 A Correct.

4 Q And he let you out where?

5 A At Woodside Apartments.

6 Q So, did you actually get out on Woodside?

7 A Yes.

8 Q And Woodside is where you could see Barry
9 Norman -- he was standing, is that correct?

10 A Could we see Barry Norman --

11 Q I'm talking about you. I mean, y'all said
12 that -- one of you spotted Barry Norman, so where was he
13 spotted?

14 A I believe on Third Street where he was standing.

15 Q But was it on the corner of Third and Woodside
16 or was it somewhere else on Third?

17 A Probably to the corner of Third. I wasn't the
18 one that spotted him, so I couldn't say, sir.

19 Q Did y'all drive by Third or were you coming down
20 by Fourth?

21 A We drive past Third.

22 Q So, you drove past it some, right?

23 A Correct.

24 Q And those are -- and which side were you sitting
25 on, were you sitting on the driver's side or the passenger

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 side?

2 A I was sitting behind the driver.

3 Q All right. So, you drove past. And those are
4 very short blocks out there, right?

5 A Correct.

6 Q So, you pass Third Street and you got out right
7 there at Fourth Street, is that right?

8 A No, we got out at Woodside Apartments.

9 Q Well, Woodside Apartments are just past Fourth
10 Street, right?

11 A But it's not Fourth Street.

12 Q I mean, there's that field that you talked about
13 earlier and then there's the Woodside Apartments.

14 A Pretty big field, sir.

15 Q I understand, but there is a field and there's
16 Woodside Apartments?

17 A Correct.

18 Q Is this whole street's not very long, right?

19 A Correct.

20 Q But at any rate, just randomly, you two get out
21 there because you said Jacoby spotted Barry Norman?

22 A It wasn't just about Jacoby spotting him. Like
23 I said, they was talking. He was the mediator talking
24 back and forth on the phone with Barry Norman or whatever.
25 And so it was like you said, it wasn't just like a plan to

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 go and do that, but it was something other than going to
2 club, too. It was told to me from Jacoby Gregory that at
3 some point in time, we might be able to just squash this
4 and let it alone.

5 Q Well, I understand that. But according to you,
6 I mean, nobody had ever communicated anything to Landis
7 Franklin. I mean, Landis was going -- you don't even know
8 where and you just got in the car with him and started to
9 drive and it just happened to be that he drove down
10 Woodside Avenue? I mean, that's what you testified to
11 just now. Am I right?

12 A Correct.

13 Q Okay. So, I mean, it's not like Jacoby said
14 hey, I've been talking to Barry, we're going to squash
15 this thing. Let's go over to Woodside Avenue because
16 Barry's going to be there, let's get over there. That was
17 not the case, was it?

18 A That was not the case.

19 Q No, you happened to be going down there and
20 that's when you say that you and Jacoby decided to get out
21 of the car, am I right?

22 A Just like -- what you saying now?

23 Q In other words --

24 MS. PAOLETTI: Your Honor, if he could answer
25 the question.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 THE COURT: Let him fully answer the question.

2 Go ahead, explain your answer.

3 THE WITNESS: I'm trying to get him to explain

4 the question again, sir.

5 THE COURT: Well, reask the question.

6 BY MR. CHAMBERS:

7 Q So, in other words, when the two of you -- as

8 all of you were driving down the street, at some point,

9 somebody asked Landis to the stop car?

10 A Correct.

11 Q That wasn't a planned thing?

12 A Nothing was planned, no.

13 Q So, then the two of you then got out, right?

14 A Correct.

15 Q So, you indicated, if I remember, that during

16 this entire time, that Jacoby was wearing the .45 and the

17 holster on his hip?

18 A Correct.

19 Q So, anybody that was around him would have seen

20 him wearing that gun?

21 A Correct.

22 Q Anybody that had been in contact with him -- he

23 had it on when he got there to Bop's house, right?

24 A Correct.

25 Q Had it on the entire time when he got in the car

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 with James Williams?

2 A Correct.

3 Q Had it on when he got in the car with Landis?

4 A Correct.

5 Q Had it the whole time?

6 A Correct.

7 Q I believe you said that -- was he wearing the
8 black hoodie that you ended up wearing or did he give it
9 to you before you got in the car with James?

10 A He gave it to me before we got in the car with
11 James.

12 Q So, you were already wearing the black hoodie,
13 right?

14 A Correct.

15 Q And your testimony today is that he was wearing
16 a white T-shirt.

17 A I believe.

18 Q Did he have it tucked into his pants?

19 A I don't know how he wore it, sir.

20 Q And when you get out, you thought y'all were
21 just going to go talk to him, right?

22 A Yes, sir.

23 Q But he's --

24 A Or fight.

25 Q Okay. But you said that right after getting

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 out, that for the first time, Jacoby produces for you a
2 9mm pistol?

3 A Correct.

4 Q Where was the pistol?

5 A Under his -- like in his pants area.

6 Q So, you're saying he had a gun on his hip in a
7 holster, 9mm stuck in his belt?

8 A And the two phones and keys, also.

9 Q Okay. Two phones and keys. And all of this to
10 ride with James Williams to get a drink and a snack?

11 A For me, it was.

12 Q Well, y'all hadn't talked about doing anything
13 else?

14 A Other than going out.

15 Q So, that's when you say that y'all started
16 walking down the street, and if I remember correctly,
17 you're walking in the direction from Fourth toward Third
18 Street on Woodside?

19 A Correct.

20 Q And if I remember correctly, if you're facing
21 that way with Fourth Street at your back, Third Street in
22 front of you, you were walking -- the sidewalk on the left
23 is where Jacoby was walking?

24 A Correct.

25 Q Okay. And that is a narrow sidewalk, is that

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 correct?

2 A Correct.

3 Q And then there's a small grassy area to the left
4 of that sidewalk?

5 A Correct.

6 Q And then there is the street that is to the
7 right of that sidewalk?

8 A Correct.

9 Q There's not a lot of traffic up and down that
10 street, is that correct?

11 A Correct.

12 Q And so, he's walking down this narrow sidewalk
13 and I believe you said that Barry Norman, after this other
14 heavysset fellow had looked down the street and pointed at
15 the two of you, that Barry Norman turned and was walking
16 toward the two of you and he was on the sidewalk?

17 A Correct.

18 Q Do you remember testifying to that a little
19 earlier?

20 A Yes.

21 Q So, when you said that, that is true testimony
22 and that is correct?

23 A Correct.

24 Q And he's looking right at the two you, right?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Does it appear that there was some concern that
2 the two of you were walking that way because somebody had
3 pointed at the two of you?

4 A Correct.

5 Q You said that you were walking out in the middle
6 of the street?

7 A Correct.

8 Q So, while Jacoby would have been facing Barry
9 the way that I'm facing you now, you would have been out
10 to Barry's left?

11 A Correct.

12 Q And as you walk down the street, you remain at
13 Barry's left?

14 A Correct.

15 Q With Barry always looking straight ahead in the
16 direction of Jacoby?

17 A Correct.

18 Q Had he turned to look at you, then the right
19 side of his head would have been facing Jacoby on the
20 sidewalk, am I correct?

21 A Could have been, yeah, depending on the angle of
22 his body.

23 Q Did you see him turn and look at you?

24 A No, I never seen if he turned and looked at me
25 or not. My focus was the guy in the dreads.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Were you -- where were you -- I know you were in
2 the road, but where were you in relation to Jacoby? In
3 other words, were you parallel to each other, in other
4 words, kind of side by side? Were you behind him? Were
5 you in front of him?

6 A Parallel.

7 Q So, you were pretty much even with him?

8 A Yeah.

9 Q All right. And were you even with him when you
10 heard shots?

11 A Yes.

12 Q So, you were standing even with him. And you
13 said that when you heard his shots, you then took the 9mm
14 and, for some reason, shot into the ground?

15 A Not directly into the ground, sir.

16 Q What did you do?

17 A I did -- it was like this type angle. Like, it
18 wasn't just directly into the ground, like, aiming for the
19 ground. It was kind of towards his direction, but not his
20 direction. It was like you shoot at somebody's foot type
21 thing. Basically, if I would have hit something, it would
22 have been a tire or a car or something.

23 Q So, why were you doing that?

24 A Like I said, I had nothing protecting me, sir.
25 like I said, I was in the middle of the street and nothing

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 was behind me, nothing to protect if anyone would have
2 ever shot.

3 Q And then you said you fired a shot as you took
4 off running?

5 A Correct.

6 Q Now, do you recall that you gave a statement to
7 the police prior to your testimony today?

8 A Correct.

9 Q And you gave that statement to the police on
10 October the 11th of 2013, is that accurate?

11 A Correct.

12 Q And this was after you had gone to Syracuse, New
13 York?

14 A Correct.

15 Q Now, you went to Syracuse knowing that you had
16 been involved in this shooting, correct?

17 A Correct.

18 Q And by the time that you returned, Jacoby had
19 been arrested?

20 A Correct.

21 Q And during this entire time, you talked about
22 you had a couple of conversations with Jacoby, but much
23 like you discussed earlier, you were in constant contact
24 with various friends and family members, correct?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q I mean, lots of texting, phone calls. I mean,
2 you pretty much knew everything that was going on here
3 in -- back in Fountain Inn, right?

4 A Not relative to the case.

5 Q But you knew that Jacoby had been arrested?

6 A That's all.

7 Q Could it be that you came back after he was
8 arrested because at that point, you figured I'm in the
9 clear. I can go back because they arrested him for it,
10 they didn't get me?

11 A We were never in the clear, sir. We had gotten
12 into an altercation over there earlier that day.
13 Eventually, they was going to find out who did this.
14 There was no running from it.

15 Q Well, you ran from it?

16 A No, I went to go see my children, sir.

17 Q And then when you came back, the U. S. Marshal
18 had to come down and arrest you?

19 A Because of cases between the lawyer and Fountain
20 Inn Police Department.

21 Q Well, I mean, you gave a statement with a
22 lawyer. You couldn't have just gone and turned yourself
23 in?

24 A No, no, sir. I gave that statement after I was
25 arrested.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Okay.

2 A And can I also make a comment?

3 Q Sure.

4 A One night before -- when I got arrested for
5 that, I did not know what gun killed Barry Norman at all
6 when I gave my statement. And when I went and told
7 Detective Peden where I was standing when the shots was
8 fired, I did not tell him that I had the 9mm at the time
9 due to me not having an attorney, but I told him exactly
10 where I was standing at when those shots was fired what
11 put me in that position of the 9mm where it was discharged
12 out. No, I wasn't truthful about me having the 9mm at the
13 time, but that's because I didn't have an attorney
14 present, but I did tell him when I was standing at when
15 shots was fired. And I did not know the murder weapon at
16 the time at all.

17 Q Well, you keep talking about the fact that you
18 lied because you didn't have a lawyer. I mean, they told
19 you didn't have to talk at all, didn't they?

20 A No, I didn't lie, sir, I just told half the
21 truth.

22 Q Okay. Well, let me ask you this, if you said in
23 your statement, he, talking about Barry Norman, reaches as
24 if he had gun pulled and then Coby began firing shots, is
25 that what you're referring to as only telling half the

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 truth?

2 A No, my half the truth is when I didn't implicate
3 me having a 9mm when shots was fired, sir.

4 Q But you did tell the police that you saw Barry
5 reaching for what you thought might be a gun; is that
6 correct?

7 A No, I was referring to the dreaded larger
8 figure. Maybe I wrote it kind of space -- I was talking
9 about the larger figure with the dreads that had pointed.

10 Q So, it would appear that you were trying to
11 indicate to the police then that anything that happened at
12 that point was self-defense?

13 A No. No, sir. I was simply stating the truth of
14 what happened.

15 Q So did you see somebody going for a gun?

16 A No, but I seen him walking towards us and I seen
17 whoever it was point in our direction and I immediately
18 heard shots firing.

19 Q Do you remember telling the police when you
20 talked to them back on October the 11th that Coby was
21 wearing a red hoodie?

22 A I said that?

23 Q You did say that? I'm asking you, did you say
24 that?

25 A I don't recall saying that he had a red hoodie

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 on.

2 Q It is possible that you said he was wearing a
3 red hoodie?

4 A It is possible that I could have said he had a
5 red shirt or white shirt or blue shirt.

6 Q But you're saying today that he was wearing a
7 white T-shirt?

8 A Yes.

9 Q And you don't know whether it was tucked in or
10 hanging out?

11 A It was -- he don't wear his shirt tucked in,
12 sir, at all.

13 Q You said when -- you testified a few minutes ago
14 when I asked you that you had actually gotten the hoodie
15 from Jacoby before you went to the store with James?

16 A Correct.

17 Q Do you recall that when the solicitor was asking
18 you questions that you actually said to her that Jacoby
19 had the 9mm in the hoodie pocket and gave it to you and
20 that he was wearing --

21 A I --

22 Q -- the .45 in a holster?

23 A I did make that mistake, sir. I made that
24 mistake when I said that.

25 Q So, he took the 9mm out of the hoodie that you

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 said you were wearing?

2 A No, sir, he had the 9mm under his shirt area,
3 but I got the time frames mixed up because so many things
4 happened through all this stuff. I can't pinpoint every
5 single detail.

6 Q Well, I understand, but, I mean, that's a
7 pretty big detail. He took a 9mm out of the pocket of the
8 hoodie and gave it to you, yet, you were wearing the
9 hoodie?

10 A That what I said, I was wrong, sir.

11 Q In what respect were you wrong?

12 A Because he did not have the hoodie on at all. I
13 had the hoodie on.

14 Q So, what part -- are you saying it's wrong that
15 he took the 9mm out of the hoodie pocket?

16 A Correct.

17 Q You're having trouble remembering this stuff,
18 aren't you?

19 A Not really, it's just a lot of stuff.

20 Q Okay. Then you -- let's see, you said that --
21 did he ever say anything to you about what he wanted you
22 to do with this gun when he handed it to you?

23 A Yeah, he told me to take it just in case. Like,
24 basically, just take it just in -- he said, Take it just
25 in case because Barry said he might have a gun, but, most

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 likely, we'll be talking it out.

2 Q Do you remember him telling the police that he
3 told you to stash it somewhere?

4 A Oh, you're talking about after the shooting now,
5 sir.

6 Q Well, you didn't stash it somewhere after the
7 shooting when y'all were running away?

8 A Yeah, when we was running. When he gave me the
9 .45, I was like, What am I going to do with this?
10 Because --

11 He was like, Just put it somewhere. Just
12 put it somewhere. Like fast talking me.

13 Q But when you testified today, you said that he
14 asked for your help and he just handed you something?

15 A No, I said earlier he handed me the gun.

16 Q By the way, I do want to backtrack. I hate to
17 get out of order here, but you indicated something earlier
18 about when Jacoby was talking to his -- was talking to
19 Barry that he made some comment about how he had already
20 lost a sister and he didn't want to lose you; is that
21 right?

22 A Yes, sir.

23 Q What happened to his sister?

24 A I don't know.

25 Q I mean, she didn't meet with foul play? Did she

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 just die --

2 A I believe health issue.

3 Q Health issue. Okay, so you did know, a health
4 issue?

5 A That's all I know.

6 Q All right. Now, the 9mm, I heard you say at
7 some point that -- I mean, was this Jacoby's 9mm?

8 A No, sir.

9 Q He got it from Hood?

10 A Jerell.

11 Q How would you know that?

12 A Because right -- Hood kind of pulled right
13 around the same time Coby pulled up to the scene. So, he
14 was late to the altercation and things like that. Hood
15 had got beat up by some boys in Gray Court prior to that
16 and he had just purchased that gun and was showing it to
17 us that day after he had -- when he pulled up after the
18 altercation and all that. He had pulled up and showed us
19 the gun, like, Oh, I just got this. I normally don't
20 carry a gun, but I got it in case the Gray Court boys jump
21 me.

22 That's about like that. So, that's how I
23 know whose gun it was.

24 Q Do you remember telling the police when you
25 talked to them when you finally came -- they got you on

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 the 11th, that instead of being parallel, that you were
2 actually walking ahead of Jacoby as y'all went down the
3 street?

4 A Yes, sir, I made that mistake.

5 Q So, that was a mistake. What you're saying
6 today is now the truth?

7 A Correct.

8 Q Did that have anything to do with the fact that
9 looking at the discovery you found out that the 9mm shell
10 casings were not in front of the .45 caliber shell
11 casings?

12 A I never got discovery on that behalf, sir.

13 Q You have looked at all the discovery in this
14 case, right?

15 A Actually, be honest with you, I only got
16 statements, sir. I never got to see any ballistics or
17 anything about pictures of the shell casings. I was in
18 the blind for three years.

19 Q So, you pled guilty to manslaughter without
20 having review any of the discovery in the case?

21 A Correct, sir.

22 Q Okay. All right. So, as I understand your
23 testimony today is that after this shooting occurred, the
24 two of you started running. It looked like you were the
25 faster one of the two because you were way out ahead,

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 right?

2 A Not way out, but I was in front.

3 Q And that is even as you said, you were even able
4 to go full speed because you had a 9mm tucked in the front
5 of your pants?

6 A Correct.

7 Q What kind of pants were you wearing?

8 A To be honest with you, I can't even -- they was
9 kind of so tight in the front, I didn't even need a belt.
10 I didn't have a belt on. That's how good it was to my --
11 but I had the same kind of pants as he would have, the
12 pants with the pockets by the knees.

13 Q Okay. And yet, he got out at that scene,
14 apparently, planning on or, at least, having some idea
15 that y'all were going to be involved in a shooting. And
16 you said he had one gun strapped on his hip and he had two
17 phones strapped on his hip and he had keys hanging on his
18 hip?

19 A Correct.

20 Q And he then shoots somebody, according to you,
21 and starts to run away. And because he's got all that
22 stuff, he needs your help?

23 A Correct.

24 Q All right. So, what you're saying is at some
25 point, you're ahead of him and that you turn around and

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 come back?

2 A Correct.

3 Q All right. It wasn't that he dropped something,
4 went some distance and then turned around to come back to
5 get it himself, right? In other words, you came back?

6 A Yeah, I did. I came back to him.

7 Q Okay. He told you he was about to drop
8 something?

9 A Yeah, that what he yelled out to me to get me to
10 come back, yes.

11 Q So, you came back?

12 A Correct.

13 Q And of all the things that he could have handed
14 you, he handed you the .45?

15 A Yes, instead of putting it in his holster, he
16 handed me the .45.

17 Q So, you're wearing his black hoodie?

18 A Correct.

19 Q And you're carrying his .45?

20 A Correct.

21 Q And y'all take off running as the video shows
22 and you're out ahead of him and he's somewhere behind you?

23 A Correct, playing on the phone or doing something
24 with his phone.

25 Q And then that's you that we see who comes

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 through, pulls off the hoodie, throws it over the fence,
2 and then it looks as though you walked around the fence,
3 reach into your pants and sort of lean over and lay down
4 the .45; is that right?

5 A No. I didn't reach in my pants to get the .45.

6 Q Well, where did you get it?

7 A (There was no response.)

8 Q I mean, because, listen, it would be unlikely
9 that you would be able, while holding a .45 pistol --

10 MS. PAOLETTI: Your Honor, I object.

11 THE COURT: Ask the question. This is not
12 closing arguments.

13 MR. CHAMBERS: Okay.

14 BY MR. CHAMBERS:

15 Q Were you holding the gun when you took off the
16 hoodie?

17 A My mind was racing, I don't know.

18 Q Pardon me?

19 A My mind was racing, I don't know where -- I
20 could have had it in my -- I was rotating it from hand to
21 hand or what, but my mind was racing, sir.

22 Q This is the gun that we're talking about, right?

23 A Correct.

24 Q That's a fairly -- I mean, that's a good sized
25 pistol?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q So, when you run up and you pull that hoodie
3 over and you throw it, you didn't have that .45 in your
4 hand, did you?

5 A I don't know if I had it in my hand or what, if
6 I had it on my side or what, I don't know what.

7 Q But then you just told -- on your side, when
8 would you have put it on your side?

9 A Like in the side area, right there in my side
10 area.

11 Q So, what I initially said to you is right then,
12 you did reach into your pants when you knelt down to put
13 the .45 down?

14 A Possible.

15 Q So, you decide to lay down the .45, the one that
16 belonged to Jacoby?

17 A Correct. The main thing that had dropped into
18 my mind is -- where this place took -- where this took
19 place at, the police station is right around the corner
20 and I'm thinking if they pull up right now and me with two
21 guns, it's going to look bad, real bad. So, I was
22 thinking discharge the gun he gave me, sir. The 9mm was
23 secure in my front area. That's all I was thinking.

24 Q So, you're telling me that your decision was to
25 lay down the .45 that belonged to Jacoby, but to continue

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 on with the 9mm that you had stuck in your pants?

2 A No, the .45 -- take a step. The .45 was in my
3 hand, sir. I never put it out of my hand. The .45 was in
4 my hand. When I took my hoodie off, I threw it in the
5 other hand. Had the .45 in my hand the whole time.

6 Q So, you were able to hold that .45 in your
7 hands --

8 A And slip the hoodie off.

9 THE COURT: We've been over this. This is asked
10 and answered.

11 MR. CHAMBERS: Your Honor, I understand, but
12 this is a murder case and I am trying to
13 cross-examine this witness on things that are wrong.

14 THE COURT: I know, Mr. Chambers. Move along.

15 BY MR. CHAMBERS:

16 Q So, after you laid down the .45, that's when we
17 see you running the rest of the way?

18 A Correct.

19 Q And Jacoby is behind you the entire time?

20 A Correct.

21 Q But that person that we see on the back, you're
22 saying that was Jacoby?

23 A Correct.

24 Q That wasn't anybody else?

25 A Correct.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q The -- you're positive that the shirt that
2 Jacoby was wearing was a white shirt?

3 A White or off gray. I know I keep changing
4 colors so much, but I didn't care what color shirt it was.

5 Q No chance that it was an orange or red shirt?

6 A No, no way it was orange or red.

7 Q Okay. You kept the 9mm with you, correct?

8 A Correct.

9 Q You did not dispose of it along the route as you
10 had claimed?

11 A In the video and things like that, no, I never.

12 Q But you did tell the police -- well, actually,
13 at some point later -- you gave that first statement that
14 we've already talked about, right?

15 A Correct.

16 Q And you later went in and spoke to the solicitor
17 in this case, is that correct?

18 A Correct.

19 Q Is that when you indicated for the first time to
20 anybody that you had the 9mm handgun?

21 A Correct.

22 Q And that is also when you told them that you had
23 dropped it along the route that night; is that correct?

24 A Correct.

25 Q That was not true, was it?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Why would you say that?

2 Q Well, because did you not testify just a little
3 bit earlier that you got in your car and drove somewhere
4 and discarded the gun?

5 A Correct.

6 Q So, that is not on the route where you were
7 running away --

8 A No. No.

9 Q -- after the shooting?

10 A No, I never dislodged the gun after the
11 shooting, the 9mm.

12 Q But you did indicate that to law enforcement,
13 correct?

14 A Correct.

15 Q So, when you told them that you dropped it along
16 the way, you were not telling the truth?

17 A Why would you say that?

18 Q Okay. I'll move along.

19 THE COURT: Wait a minute. Wait a minute. You
20 just answer questions. He ask you a yes or no
21 question, you say yes or no. And then you can
22 explain your answer, but don't you ask questions.

23 And we are not going to go ask the same
24 questions repeatedly, Mr. Chambers. I'm not going to
25 tell you again.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 MR. CHAMBERS: Just trying to get some
2 clarification from the witness, Your Honor.

3 BY MR. CHAMBERS:

4 Q So, when the solicitor indicated to you -- oh,
5 I'm sorry, let me ask you this, when you went in and you
6 first went to talk to the police and you gave this first
7 statement we talked about --

8 A From my understanding, I only wrote one
9 statement.

10 Q Well, that was the one -- you went in to talk to
11 the police on the 11th, correct?

12 A Correct.

13 Q You started writing a statement that you tore
14 up, is that correct?

15 A Just one page, sir.

16 Q You tore up one page. You then gave them
17 another statement after you made some phone calls?

18 A Correct, one phone call.

19 Q You called your --

20 A Uncle.

21 Q Uncle. Do you also remember calling a female
22 from the jail?

23 A My grandmother.

24 Q Your grandmother. So, you called your uncle and
25 your grandmother, so that's two calls?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q And I believe your grandmother is the one that
3 told you to just tell the truth?

4 A It was my uncle. I called my grandmother to get
5 my uncle number, that's why I said one call, sir. But she
6 gave me my uncle number and I called him and he told me to
7 tell the truth.

8 Q But as we discussed, you really didn't tell the
9 truth to the police, did you?

10 A I told half the truth, sir.

11 Q Half the truth. And as you've already
12 indicated, after you went to New York, you continued to
13 get updates and information from people, all these friends
14 that you called and texted and all those things that y'all
15 do?

16 A Nothing about the --

17 THE COURT: Mr. Chambers, your own question
18 indicates that you've already gone over that
19 material. So, move on to something new.

20 BY MR. CHAMBERS:

21 Q You also did that while you were in jail, is
22 that correct?

23 A Correct.

24 Q Do you ever go by the name Willie One Shot?

25 A No. No, sir. I'm sorry.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q You ever refer to yourself as a 44 King?

2 A No, sir.

3 Q Do you ever remember having a discussion with
4 anybody about telling a different version of this in
5 exchange for money?

6 A No, sir.

7 Q You don't have any recollection about saying
8 that you would take \$2,500 to basically take this charge?

9 MS. PAOLETTI: Your Honor, I object.

10 THE WITNESS: If --

11 THE COURT: Wait a minute. Wait a minute.

12 MS. PAOLETTI: I don't know where this is coming
13 from.

14 THE WITNESS: If you can --

15 THE COURT: Wait, wait, wait. There's an
16 objection.

17 THE WITNESS: I'm sorry, sir.

18 THE COURT: Where is this going, Mr. Chambers?
19 Are you going to -- are you trying to impeach him?
20 Are you going to build a foundation under this?

21 MR. CHAMBERS: I'm just trying -- I'm asking him
22 the question along the lines of impeachment. I just
23 want to see what he says, Your Honor.

24 THE COURT: Well, we're not going to go -- if
25 you've got something to back it up, ask the question,

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1 but you better have a foundation if you're going to
2 ask that kind of question.

3 THE WITNESS: Sir?

4 THE COURT: We can't talk. Do you need a break,
5 is that what you need?

6 THE WITNESS: No, sir.

7 THE COURT: Okay.

8 BY MR. CHAMBERS:

9 Q I realize this is a photocopy, but does that
10 appear to be your handwriting?

11 A That is not my handwriting, sir.

12 Q All right, sir, after talking -- oh, one other
13 thing. While -- during the course of this trial, have you
14 been communicating with people about what's been
15 transpiring here in court?

16 A Due to this trial you talking about?

17 Q During this trial?

18 A Yeah, correct.

19 Q You have?

20 A Yes.

21 Q Among those people, someone named Poo, who is
22 Terrell Cook?

23 A Correct.

24 Q So, people have been informing you while this is
25 going on as to what's been testified to in trial and how

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1 things have gone?

2 A Nothing was said about who testified, anything
3 of that nature. Only thing was said on the phone was
4 Coby's making a fool of himself up there.

5 Q So, you have had communications?

6 A That's it.

7 Q Were there some friends of yours in here a
8 little earlier that y'all were making hand gestures and
9 stuff back and forth to each other --

10 MS. PAOLETTI: Your Honor, I object to that.

11 THE COURT: Wait a minute. I sustain the
12 objection.

13 MS. PAOLETTI: Your Honor, I ask that be
14 stricken.

15 THE COURT: Yeah, I'm going to instruct the jury
16 to ignore that last question and comment.

17 BY MR. CHAMBERS:

18 Q So, at the end of the day, after everything
19 we've talked about, what you've testified to here today is
20 what you swear is the absolute truth?

21 A Absolute truth.

22 MR. CHAMBERS: Thank you very much.

23 MS. PAOLETTI: Your Honor, I don't have any
24 redirect examination.

25 THE COURT: All right. We're going to take a

1 short break, ladies and gentlemen. We'll get right
2 back with you. Please don't discuss the case.

3 (WHEREUPON, the jury left open court at
4 approximately 4:21 p.m.)

5 THE COURT: All right, Mr. Clemons, you can step
6 down. Thank you.

7 All right. What else does the State have?

8 MS. PAOLETTI: That's it, Judge.

9 THE COURT: All right. Okay. State rests.
10 Is the Defense going to put anything up?

11 MR. CHAMBERS: We are, Your Honor. First, for
12 the record, I'd like to make a motion for a directed
13 verdict.

14 THE COURT: Based on what?

15 MR. CHAMBERS: Well, first of all, I'm required
16 to do it in order to preserve things for appeal, but
17 beyond that, I would say that they haven't presented
18 evidence sufficient to send this to the jury at this
19 point.

20 THE COURT: Okay. Denied.

21 MR. CHAMBERS: Thank you, Your Honor.

22 THE COURT: All right. Mr. Gregory, the time
23 has come, have you made a decision about whether or
24 not you're going to testify?

25 MR. GREGORY: Yes, Your Honor.

1 THE COURT: What is that decision?

2 MR. GREGORY: I will, Your Honor.

3 THE COURT: All right. Do you want to ask me
4 any questions about it? Anything I can answer for
5 you?

6 MR. GREGORY: No, Your Honor.

7 THE COURT: Is this your free and voluntary
8 choice?

9 MR. GREGORY: Yes, Your Honor.

10 THE COURT: All right. How much do y'all intend
11 to put up?

12 MR. CHAMBERS: Your Honor, I have, counting
13 Mr. Gregory, probably four witnesses. I expect three
14 of them will be very short witnesses.

15 THE COURT: Can you do those today?

16 MR. CHAMBERS: I'm not sure they're all here. I
17 know some of them are here. We can go ahead and get
18 started if you can give me just a few minutes.

19 THE COURT: Okay. Yeah, we'll take a short
20 break.

21 (WHEREUPON, a short break was taken.)

22 (WHEREUPON, the jury came into open court at
23 approximately 4:37 p.m.)

24 THE COURT: Anything further from the State?

25 MS. PAOLETTI: Your Honor, that's the State's

1 case.

2 THE COURT: All right.

3 Mr. Chambers, call your first witness.

4 MR. CHAMBERS: Your Honor, I call Jacoby
5 Gregory.

6 JACOBY GREGORY, after being duly
7 sworn, testified as follows:

8 THE CLERK: Please have a seat. State your full
9 name for the record.

10 THE WITNESS: Jacoby Jamar Gregory.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. CHAMBERS:

14 Q Jacoby, how old are you?

15 A Twenty-seven.

16 Q Where are you from?

17 A Greenville, South Carolina.

18 Q All right. Have you lived in this area your
19 whole life?

20 A No, sir.

21 Q Where have you lived?

22 A Syracuse, New York.

23 Q When did you live in Syracuse?

24 A My childhood years.

25 Q So, when did you move here?

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

- 1 A December 24, 2008.
- 2 Q You lived here since then?
- 3 A Yes, sir.
- 4 Q Ever resided in Fountain Inn?
- 5 A Yes, sir.
- 6 Q What's your level of education?
- 7 A I'm Associate Degree in Building Construction
- 8 Technology. Well, actually a diploma. I'm actually going
- 9 back to school at this time to obtain my real estate.
- 10 Q At the time that -- the killing of Barry Norman
- 11 happened, where were you living?
- 12 A Boyd Street, Fountain Inn, South Carolina.
- 13 Q Okay. And with whom were you living with at
- 14 that time?
- 15 A My sister.
- 16 Q What's her name?
- 17 A Natisha Stoddard.
- 18 Q And that's in Fountain Inn?
- 19 A Yes, sir.
- 20 Q Were you working at the time?
- 21 A Yes, sir.
- 22 Q Where were you working?
- 23 A CMC Steel.
- 24 Q Where is that business located?
- 25 A That's in Taylors, South Carolina.

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 Q What kind of business is that?

2 A Pretty much in a nutshell we fabricate pipe fit
3 steel. Our biggest contract known to the public would be
4 Boeing. At that time we had a big contract with Boeing.
5 So, that's what we did.

6 Q Okay. So, at your job what sorts of things do
7 you do?

8 A I was a novice welder and pipefitter. I welded
9 the beams, painted the beams, loaded the beams that were
10 beside the crane onto the trucks, semis on inventory. And
11 that's pretty much it.

12 Q How long had you had that job when all this
13 occurred?

14 A Months.

15 Q Okay. And what were your hours that you were
16 working?

17 A 5:30 to 6:00 a.m.

18 Q So, 5:30 p.m. to 6:00 a.m.?

19 A Yes, sir.

20 Q And what was your normal work attire?

21 A Steel toe metatarsal boots, not regular normal
22 steel toes. Metatarsal boots, flame retardant jeans, due
23 to the fact that I didn't have -- at that time I had cargo
24 flame retardant jeans on. My undergarment would be a navy
25 blue flame retardant pullover clothes shirt. And my

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 overgarment would be a flame retardant button up shirt
2 with two pockets on it. One with my name tag and the
3 other with the place of business.

4 Q Are there rules about whether your shirt is to
5 be tucked in or out?

6 A There's a lot of clothing rules. Like I said, I
7 deal with steel and welding. All the clothes have to be
8 fitted, tucked in, no loose hair, nothing that can burn,
9 basically, that's why everything had to be flame
10 retardant. And yes, it had to be tucked in.

11 Q Do you -- I mean, you know all the people that
12 we've talked about in this case, is that correct?

13 A Yes, sir.

14 Q I'm not going to over all the names but you know
15 all those people?

16 A Yes, sir.

17 Q All right. I want to go back, was there a
18 party, as we've heard and discussed, at the Clarion Inn on
19 Augusta Road in Greenville?

20 A Yes, sir.

21 Q And when did that party occur?

22 A I'm not familiar on the dates but I can say
23 Friday and Saturday, was the weekend.

24 Q And what was the purpose of the party?

25 A It was the celebration of Bop's 21st birthday.

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 Q Were you involved in arranging the party or
2 securing the rooms or anything like that?

3 A I booked every room.

4 Q So, you're the one who called and booked the
5 rooms originally in your name?

6 A Every one of them.

7 Q How many rooms did you get?

8 A Three.

9 Q Where were these rooms located?

10 A The fifth floor of the Clarion Hotel.

11 Q Was Barry Norman there?

12 A Yes, sir.

13 Q Did you secure a room for him?

14 A Yes, sir.

15 Q So, his was one of the three rooms?

16 A Yes, sir.

17 Q Was this a block of rooms or were they separate
18 rooms?

19 A Well, I originally got the two rooms for me and
20 Bop and Vegas and so on and so forth. Barry was never
21 invited. After the club he got my number through
22 Facebook, called and asked me about the rooms.

23 I then asked him does he have the money to
24 pay for it?

25 He told me, Yes.

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1 I booked the room in his name. When he got
2 there, he gave his ID, got the room. So, his room was on
3 the corner of the same floor of our hotel.

4 Q When you say he wasn't initially invited when
5 you met him at the club, what club are you talking about?
6 Where did that happen?

7 A We went to Club -- Club Aquarius. He was
8 invited to Club Aquarius, just not the hotel.

9 Q Where is Club Aquarius?

10 A Pleasantburg Drive.

11 Q So, a group of you who were staying at the
12 Clarion go there?

13 A Yes, sir.

14 Q Were you planning to meet him there or you just
15 happened to meet him?

16 A Yeah, Barry actually left Bop's house with us.

17 Q And so, that's when the arrangement was made
18 that he would go back and he would have one of those
19 rooms?

20 A No.

21 Q No?

22 A No, the arrangement was made -- actually, when I
23 was at the Clarion, he was leaving Crocks and he hit me on
24 Facebook -- well, he messaged me on Facebook and asked me
25 for my number. I gave him my number and he asked me about

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 the room, how much it cost and I secured a room for him.

2 Q All right. At some point y'all went back to the
3 hotel?

4 A Yes, sir.

5 Q Rather than me try to lead you through it, why
6 don't you just tell the jury from that point on what
7 happened.

8 A Well, that night was calm. It was Friday night.
9 We left the Club Aquarius. Like I said, Barry got a room
10 with us. I was in a room, myself. It was my own room was
11 me, Vegas, Taylor Bovain, Tiajuana Davenport, some fat guy
12 I'm not sure of his name. And next door to us, adjoining
13 room, was Bop Thomas and Landis Franklin and some
14 girlfriend of Bop's and some girlfriend of Landis'. And
15 the next morning Smitty popped up. Nobody invited Smitty.
16 He was very angry at Barry. Because Barry, I guess, told
17 Smitty he didn't have enough money to get the room or
18 something, I don't know. Smitty wanted to fight Barry
19 right when he got to the hotel. I'm not sure how he got
20 there.

21 Basically, some girls left to go get some
22 money or something like that. We are at the hotel
23 drinking, smoking already. Smitty, he didn't approach
24 Barry or nothing violent at this time. Later on in the
25 evening, I say maybe about 7:00 o'clock, I had continued

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1 drinking, I felt a little bit over-tipsy edge. When I get
2 like that I usually get away from my pistol. Especially,
3 when I'm around a lot of people.

4 Q Let me slow you down right there. Were you at
5 that time a gun owner?

6 A Yes, sir.

7 Q And did you own a Springfield .45 GAP pistol
8 like this one?

9 A Yes, sir.

10 Q Did you at that point, did you have a concealed
11 weapons permit?

12 A Yes, sir.

13 Q And when you would normally -- with that
14 concealed weapons permit, would you normally carry your
15 weapon with you?

16 A Yes, sir.

17 Q And how would you carry it?

18 A Depends on which weapon I have. All my weapons
19 have holsters. And that particular weapon had a
20 Springfield XD 45, had a right-side holster attached to
21 my -- I had to loop it through my belt.

22 Q Is that a hobby of yours?

23 A Guns?

24 Q Yes.

25 A I don't really have time for hobbies but.

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1 Q Would you go to the range and shoot and do those
2 things?

3 A No, I can't really see.

4 Q But at any rate, you had that and you had your
5 holster?

6 A Uh-huh.

7 Q And you said you started to feel like you were
8 getting a little too drunk?

9 A Yes, sir.

10 Q So, tell us then what happened.

11 A Barry was in my room with me. And some -- I
12 forgot her name, I think her name was Kia. And I looked
13 over at Barry and I said, excuse my language, Dammit, I
14 got to put this fucking pistol up.

15 And he was like, What you going to do with
16 it?

17 I said, I don't know, I got to put it up, I
18 got to put it somewhere.

19 And he was like -- a few minutes went by, I
20 say maybe two minutes. And he leaned down and was like,
21 Hey man, you can put it in my room, ain't nobody in my
22 room.

23 And nobody was in Barry room. So, um---

24 Q Now, was Barry somebody that you knew well? Did
25 you trust him?

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1 A I trusted him only for the fact that he didn't
2 get into a lot of trouble. And he wasn't in the mix.
3 When I say in the mix, he wasn't in the -- he wasn't -- he
4 wasn't a bad person. He wasn't always in peoples' faces,
5 people wasn't always in his face. I knew I didn't have to
6 worry about it if it was in his room. So, I made a
7 basically a executive decision to put it there.

8 Q So, you put it in his room?

9 A Yes, sir.

10 Q So, then tell us what happened after that.

11 A It was safely behind the mattress, the headboard
12 of his room. Like I said, everybody was in my room. As
13 the hours went on, the night progressed, more people came
14 to the hotel. It was about 100 people there. Needless to
15 say, Smitty wanted to show out. I wasn't in the room when
16 he began the initial fight. I just got the word that
17 everybody had migrated to Smitty's room -- Barry's room
18 because Smitty was trying to fight Barry.

19 When I got to Barry's room, Barry was the
20 one that opened the door. And from what I seen, the room
21 was packed with people. My first instinct, I kind of
22 shouldered up -- my first instinct was to get my gun. So,
23 I kind of shimmied over there without anybody kind of
24 seeing me. But I shimmied over to the bed, stand at the
25 head of the bed where a girl was sitting, actually.

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1 Either Taylor or Tia -- or I meant, Tiajuana or Tia. And
2 I sat down. And Smitty pushed Barry and Barry beat Smitty
3 up. I mean, it wasn't no push fight, Barry beat him up.

4 Q Barry was a, as we've heard earlier, Barry was a
5 large fellow?

6 A He was the same size as Smitty. I mean, yes.

7 Q Smitty's a big fella too?

8 A Yeah.

9 Q All right. So, go ahead with what you were
10 saying.

11 A As they were fighting, I think one of the girls,
12 I'm not sure which one, I don't want to recollect the
13 wrong name, but attempted to jump on Barry. And at that
14 time, she jumped up past me, off the bed and on to the
15 floor. When she did so, I grabbed the pistol, put it in
16 my pocket. When I put in my pocket, I kind of shimmied
17 out the room again. When I got to the hallway, I put it
18 in my holster, took the elevator down to my car. Keyless
19 entry to my car. Nobody was outside. I put it --
20 actually, I cut the light off in my truck. Because I have
21 keyless entry, all the lights come on in my truck. I cut
22 the light off in my truck, put the gun into -- inside the
23 console, shut the console, locked my car back, went back
24 upstairs like nothing happened. Nobody seen me, I guess.
25 And that was that.

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1 The next morning we eating breakfast, Barry
2 didn't come down for breakfast. Well, actually, it was a
3 fight with some girls. And that's why Taylor and Tia was
4 moved to Barry's room with Barry. And like three other
5 dudes. And some girls were moved to my room with me. We
6 ate breakfast that next morning and we checked out around
7 11:30, I want to say. When we checked out, Barry came to
8 my car door, he asked me did I have the thing?

9 I said, Yeah, why?

10 He said, It's missing, it's missing.

11 I was like, It's right here, I got it.

12 He was like, Okay, okay, man, I ain't
13 trying to play you or nothing. I'm saying, let me see it.

14 I showed him. You know what I'm saying?
15 In the console.

16 In the car with me was Savage, Mojo, Bop,
17 Vegas, one of Vegas' girlfriends, I'm not sure her name.
18 In Barry's car was Barry, Smitty, Tia, Taylor, Tiajuana --
19 no -- yeah, Tiajuana was in my car with me, I'm sorry.
20 And they roll back to Bop's house and we roll back. I
21 dropped the girl off, Vegas' female friend. And I went to
22 Bop's house. When I went to Bop's house, Barry rolled up
23 a blunt, smoked a blunt with all of us. But at the time
24 we were in my car. We wasn't windows rolled down like
25 that, we just had the doors opened listening to music. I

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1 was in the driver's seat, Shawndell was in -- Vegas was in
2 my passenger seat. Smitty was in my backseat. Barry was,
3 basically, in my door way. He had some left over vodka
4 and we were drinking it. It was real hot outside. And I
5 just remember Barry saying he had to go somewhere and do
6 something, tend to somebody, I can't remember, but he
7 left. And when he left Smitty just kept going on and on
8 about how he was still mad at Barry. He wasn't happy with
9 the outcome. I don't really, you know, get into -- I
10 don't really care.

11 Q What day was this?

12 A This was Sunday. Sunday around 1:00 or 2:00.
13 Like I said, we were listening to music. I got about --
14 like I said, it was hot. We were in the car, we were
15 drinking vodka. I got out of the car and sat on the porch
16 at Bop's house. When I sat on the porch, Vegas got in my
17 driver's side, Smitty got in my passenger side and they
18 shut back doors. I wasn't paying attention to what they
19 were doing or what not. Like I said, Vegas rolled back to
20 Fountain Inn with me, he asked me to drive my truck to his
21 grandma's house, which is -- I guess to switch clothes,
22 get clothes, I'm not sure.

23 I said, Yeah, go ahead.

24 He got out the car, went to his car. Got
25 something, a book bag, I think out of his car. He came

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1 back in my car, started my truck up -- I mean, not his
2 car, damn. He got in -- I don't know somebody Pollo, I'm
3 not sure whose it was, he got a book bag, I want to say it
4 was Terrell's or Pollo's, I'm not sure. He got a book
5 bag, got out of his car, got in my car and took off. He
6 was gone, I don't know how, long not though. As I said, I
7 was drinking so time kind of escapes me.

8 He came back. Like I said, we was still
9 listening to music in the driveway. My kid's mom called
10 me and said she was at my house. I forget what time this
11 was but I did leave Bop's house and went to my house to be
12 many my kid's mom and my son. I played with my son all
13 night. The next morning -- she stayed the night at my
14 house. The next morning I was supposed to go to work. I
15 got dressed. I was out of work for five days for inflamed
16 prostate. They gave me antibiotics and a painkiller. I
17 was supposed to go back Tuesday. But I called my
18 supervisor--

19 Q Let me ask this, you would normally have been
20 off on the weekend?

21 A Yes.

22 Q So, those -- those were days you would have
23 normally been off, that Saturday and Sunday?

24 A Yes, Saturday and Sunday would have normally
25 been off.

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1 Q Okay. But prior to that week you had missed
2 some work?

3 A Yes, the five days.

4 Q Now, were you -- by the time Monday rolled
5 around, were you feeling okay?

6 A I was feeling okay Sunday. Really, I mean, like
7 I said, they gave me antibiotics and painkillers so it
8 wasn't a big deal.

9 Q All right. So, then what happened on Monday?

10 A I was on the highway, I called my supervisor to
11 let him know that I was on my way in, that my doctor's
12 note actually said that I couldn't come back to work until
13 Tuesday but I felt fine and I wanted to come to work. He
14 informed me that it was against policy and I could not
15 come to work. And that they had to agree to -- they had
16 to adhere to my doctor's note because if something was to
17 happen to me they would be liable.

18 I said, Okay.

19 He said, Just wait until tomorrow and come
20 in.

21 I said, No problem.

22 So, I got off the exit, somewhere around
23 Hillcrest High and turned around. And on my way home, I
24 realized, Damn, I have my pistol on me. I cannot -- it's
25 against policy to bring a pistol -- to bring any firearms

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1 on work premisses. So, that was a big no no for me
2 anyway. Pistol permit or not. So, when I looked in the
3 console I didn't see it. It kind of, you know, I didn't
4 panic but I thought, Damn, what the hell did I do with it?

5 So, I went home, pulled up at my front
6 door, I parked my car. I got out, went in the house, I
7 looked in the place where I usually keep it. Which -- I
8 looked in the place which I usually keep it, it wasn't
9 there. I asked my sister and her boyfriend. I think they
10 were like half way asleep or something, I'm not sure, they
11 were in their room. I asked them from my room, Hey, did
12 y'all see my gun?

13 No.

14 The reason I asked them was because they
15 had access to my truck. I leave my keys on my dresser and
16 sometimes they might drive off and go to the store or go
17 to the club. And I know that Sunday night is fight
18 night -- one of the bike nights at JJ -- at one of the
19 local bars. And they like to just sometimes take my truck
20 and go out. So, that's why I asked them had they seen my
21 gun?

22 They said, No.

23 So, at this time I kind of begin to panic a
24 little bit. I'm tearing stuff up. I'm trying to retrace
25 my steps on where, you know, I could have possibly put it.

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1 At that time I said well my baby mother. So, I text her
2 and asked her, Have you seen my gun? She never text me
3 back. When she never text me back, basically I told -- I
4 left and I think somewhere around the time, a few hours
5 later she text me back and she said the last time she seen
6 it was at the hotel room.

7 And I text her back, I didn't want anybody
8 to know -- she probably knows but I didn't want anybody to
9 know that I didn't have a weapon on me. I didn't care who
10 it was. The only person that I was comfortable with that
11 knowing would be like my sister. Because if someone was
12 in the house, she would know that she could have any
13 protection. But other than that, I wouldn't let anybody
14 know when I didn't have a weapon. So, I told my kids mom
15 that I grabbed the other one. I'm pretty much sure she
16 knows the truth. But I left it alone.

17 Q When you say left it alone, what do you mean by
18 that?

19 A I didn't pressure. I didn't call the police.
20 The reason I didn't call the police because like I said, I
21 didn't want somebody in my family, which would be my
22 sister, her boyfriend or my kids mom to be caught with it.
23 Or myself to be caught with a weapon and have to go
24 through the process of it being stolen. Especially, me.
25 Well, why did you put your gun stolen when it's right

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1 here. And it was just a big issue. But later on that
2 night I did end up calling the Greenville County Sheriff's
3 Department and try to report it. And it was like a
4 automated service, I couldn't do it.

5 So, that Tuesday came around--

6 Q Well, let me ask you something. I may be
7 jumping a head of you. But you indicated on some phone
8 calls we heard earlier, that you had called the hotel.
9 Did you call the hotel looking for the gun?

10 A Yes, sir.

11 Q But why did you call the hotel if you knew where
12 the gun was?

13 A Just to make sure. Like I said, I was
14 backtracking. I knew for a fact that the gun was in my
15 console but just backtracking.

16 Q Did you ever say, as we heard on that phone,
17 that the gun had been -- that Barry had it?

18 A When Barry had it? I said--

19 Q When it was in Barry's room?

20 A Yeah, I said that was the last time I seen it.
21 The reason I said that is because like I said, I had been
22 drinking. And even though I know for a fact -- well, I
23 want to say 100 percent fact that I saw the gun in the
24 console. I was on Xanax and I was on weed and liquor so I
25 didn't want to say that I was just, you know, imagining

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1 it. So, just like I said, I just retraced my steps. Just
2 to cover all basis. I just retraced -- I did call the
3 Clarion, I think on Tuesday morning or Tuesday afternoon.
4 I did call the Clarion and ask then about it. I did call
5 the Greenville County Sheriff's Department Monday night
6 and Tuesday afternoon. After I called the Clarion, I
7 asked them. And we were trying to report it stolen, got
8 that same message.

9 That Tuesday I actually, got transferred
10 from Greenville County either Sheriff's Department or the
11 Greenville City Police to the Simpsonville Police
12 Department. And the Simpsonville Police Department gave
13 me, I think like, a different number for Greenville
14 County. And I just kept getting the run around so I
15 didn't call again.

16 Q Did you ever find that .45?

17 A No, sir.

18 Q All right. So, now I want to move to
19 October 1st. Did you go to work that day?

20 A I went to work, yes.

21 Q What time did you go?

22 A I got there maybe 5:00 something, 5:20 something
23 I clocked in at 5:24, something like that.

24 Q P.M.?

25 A Yes, sir.

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 Q And you were supposed to be there at 5:30, so
2 you were a few minutes early?

3 A Yes, sir.

4 Q Okay. You said you were supposed to be at work,
5 tell the jury, -- go through what you did and what
6 happened?

7 A Well, like I said, my doctor's not cleared me to
8 come to work Tuesday. I stopped -- before I went to work
9 I stopped at my sister's -- well, my father's car lot and
10 was talking to my sister and I had my doctor's note. She
11 was making fun of me because of the illness.

12 Q Enlarged prostate?

13 A Yeah.

14 Q Okay.

15 A So, I had that doctor's note there. Tiajuana
16 called me and asked me to come pick her up from school.
17 Which wasn't out of the blue. So, at the time, like I
18 said, I was getting ready to go to work. I told her no, I
19 couldn't pick her up. You know, she didn't have another
20 ride.

21 And her exact words was, Barry came and
22 picked up Taylor and Tia but left me here.

23 I said, Man, what the hell? So, I was
24 like, Man, where you at?

25 She was like, I'm outside.

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1 I said, I'll be there in a minute.

2 So, when I got there she actually had lied
3 to me and Taylor and Tia were still with her.

4 Q When you said pick her up from school, what
5 school are you talking about?

6 A Hillcrest High.

7 Q So, she's in high school?

8 A Uh-huh.

9 Q So, you went and picked her up?

10 A Uh-huh.

11 Q About what time was that?

12 A I forget what time they got out of school.
13 2:45, 3:40 -- three something, 3:15, 3:45, something like
14 that.

15 Q All right. You picked her up, just take it from
16 there.

17 A I cursed her out for lying to me first. Then
18 she asked to hear a song from [indiscernible]. Every time
19 she gets in my car she asks to hear the song, so I played
20 the song. Then I called Barry. Then when I called Barry
21 he rang through my car phone. And I was talking to him,
22 she was trying to curse him out and all that. And I was
23 like, Barry, man, the girl pregnant. You know you wrong
24 for that, man, she pregnant, don't do her like that.

25 He was like, Man, fuck her, fuck her. You

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1 need to stay away from her, she on house arrest, you get
2 caught with her in the car, something like that.

3 So, I just like, Man, all that's
4 irrelevant. You wrong for the B, you now know that.

5 And he was like, Man, whatever, Coby, where
6 you at?

7 I said, About to go to work.

8 He said, All right, Man.

9 And that was that. I -- I believe he
10 called me back and we talked about something, I'm not
11 sure. It might have been the girls again, I'm not sure.
12 But when he called me back I was dropping them off at
13 Tia's house. Got on the highway, went to work.

14 I got a call, actually, in my meeting. We
15 have about a 15 minute meeting before work. I got a call
16 in the meeting from Vegas that interrupted my meeting. I
17 silenced the phone. I keep my cigarettes in my right
18 pocket, my work pocket I keep my iPhone because I didn't
19 have a -- I have didn't have the holster at work. I have
20 Otter Box for my phones, I didn't keep my holster at work
21 with me. So, I keep it right here. At that time Vegas
22 called me, I silenced the phone. Outside the meeting, I
23 walked from the, not the restroom, the break area to my
24 area and I called Vegas back. And he was at home. He had
25 said that something about Smitty called him saying

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 Barry -- Smitty called him said Barry said that Vegas had
2 slept with Tiajuana at the hotel.

3 And I said, You did.

4 He was like, So what?

5 So, I didn't understand what the issue was.

6 And he just kept saying, Man, we about to
7 meet up the Bop's house, Barry's going to get his walking
8 papers.

9 Q Jacoby, did you remember what time you got that
10 call?

11 A Right after my meeting. Like I said, we have
12 about a 15, 20 minute meeting.

13 Q Is that first thing?

14 A Yes.

15 Q All right. So, it was in the -- right after you
16 got there?

17 A Yeah.

18 Q Okay.

19 A So, I like I said, I actually was on the phone
20 with him all the way up until, I guess, Barry pulled up.
21 Because his words to me -- no, not when Barry pulled up,
22 he called me back. And when he called me back I was -- I
23 think I was taking off my mask or putting it on or
24 something that.

25 Q What mask are you talking about?

JACOBY GREGORY-DIRECT BY MR. CHAMBERS

1 A Oh, my ventilation mask.

2 Q For what? I mean. . .

3 A I spray paint, spray paint the beams.

4 Q Something you wear when you paint?

5 A Just one of my masks, yes. I have a ventilation
6 mask, a granger mask, a welding mask. I can't remember if
7 I was taking it off or putting it on, my ventilation mask,
8 but when he called me, I picked up the phone, you know, I
9 answered it. And I did something with the mask. Took a
10 few second for me to talk to him. I started talking to
11 him and that's when he told me he was at Bop's house with
12 the girls and that Barry was about to pull up. Around he
13 eating something. And he was just talking to me casually,
14 you know, just having a regular conversation. We had
15 actually got off the Barry situation and I was outside
16 just talking to him.

17 He -- he was like -- he started laughing.
18 I think he said, This Barry right here or something like
19 that, I can't remember. He started laughing though. He
20 just hehe, hehe, hehe.

21 And like I said, I was just quiet on the
22 phone listening to him. He was like, It's about to go
23 down, it's about to go down.

24 So, I was like, Call me back.

25 He like, All right.

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1 So, I hung up and I went back to work. I
2 didn't have a beam to spray at the time. I think I went
3 to the second building and started talking to my uncle,
4 who's also a supervisor. He was busy. I went back to my
5 side of -- my side of the building. I wasn't doing too
6 much. Then maybe about between maybe 25, 30 minutes past
7 between the call from Vegas me walking around the
8 warehouse, I found a beam. I found a beam or a beam came
9 to me. I laid it down on the platform, I put my mask back
10 on and I started to spray.

11 At this time, I got another call from
12 Barry. Well, I got the first call from Barry in my
13 pocket. I felt the phone ring, seen the flash. So, I
14 silenced it, picked it up. I didn't take my mask off. I
15 answered it, I put the gun down and I walked -- I kept
16 yelling but I'm pretty sure he didn't hear me on the
17 phone --

18 Q You're talking about a paint gun?

19 A Yeah, of course, I was at work. Put the paint
20 gun down, with the nozzle, the spray pain nozzle down. I
21 ran outside, I took my mask off. And he was ecstatic on
22 the phone, just yelling.

23 I was like, Calm down, calm down. What
24 happened?

25 He was like, I just got jumped. I just got

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1 jumped.

2 And I was like, By who?

3 And he was like -- jumped me at Bop house.

4 So, I was being funny, like I was trying to
5 just really -- really just make a joke out of it and I
6 said, You mean you got jumped by some bitches?

7 And he was like, Man, shut up, man, calm
8 down, I got jumped by some niggers at Bop house.

9 Till this day I don't know who exactly
10 really jumped him because they all. ...

11 Q But you weren't there?

12 A No, I was at work.

13 Q Okay.

14 A Some 30 something, 40 minutes away. But anyway,
15 he was on the phone with me for a minute. I will say that
16 he went to somebody's house and he kept asking them for a
17 gun.

18 Q How do you know that?

19 A Because I was on the phone with him. It was
20 like a three minute conversation. And he was yelling.
21 And he said -- he had told me that Vague [verbatim] bust
22 his windows out.

23 I said, Who?

24 And he said, Vegas.

25 And at first I didn't believe him. But I

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1 was like, Vegas bust your windows out?

2 He was like, Yeah.

3 In a way I kind of felt some kind of way
4 like Vegas is stupid. But in a way I didn't believe
5 Barry. So, Barry, like I say, whoever he was around, he
6 just kept saying, you got a gun? Let me get a gun, let me
7 get a gun.

8 And I was like, What you need a gun for?

9 And he was like, I'm about to go spray the
10 house up.

11 And I was like, Who's at the house?

12 He was like, Man, [indiscernible].

13 And I was like, All right, man.

14 He was like, Man, I'll call you back.

15 I said, All right.

16 So, I text Vegas and I asked him did he
17 bust the windows out.

18 Q Let me ask you this, when you and Barry talk a
19 lot, is it common that the two of you talk to each other
20 and communicate? Were you friends all that well?

21 A He had just got my number that weekend.

22 Q All right.

23 A So, other than that it was Facebook. He might
24 comment on one of my post, like my status. I might
25 comment on one of his post. But other than that, if we

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1 seen each other in the streets, at the club, at Bop's
2 house. Neither one of us really chilled at Bop's house
3 unless it was like the weekend. And usually he had a
4 bottle, I had a bottle. We'd drink, have a few shots
5 together and that's that. Like I say, he was around my
6 age -- well, he is my age. So, that's kind of one of the
7 only reasons why I linked up with him because they're not
8 my age.

9 Q So, you hung up the phone and then what
10 happened?

11 A I hung up the phone. I text Vegas and I asked
12 him about it. Did you bust Barry windows out?

13 He said, Yeah. He said something else.

14 And I was like, Well, he's talking about
15 shooting the house up. And I said, LOL, he ain't got no
16 windows though.

17 Q Trying to be funny again?

18 A Yeah, I really just was laughing about the whole
19 time. But anyway, right after that text message, my
20 supervisor called my name over the loud speaker and I went
21 to his office. And he asked me for my doctor's note.

22 And I said, Damn, I forgot it.

23 And he was like, Well, you can't be here.
24 He asked me do I want to go get it or come back with it?

25 And I was like, I'll just bring it

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1 tomorrow.

2 And he was like, All right.

3 So, I left. Actually, I waited about five
4 minutes because I had to take off all my gear and
5 everything. I went to -- I went to my uncle's office and
6 I told him I was leaving.

7 He said, Okay. He asked me why?

8 I told him why.

9 He was like, You shouldn't have came in
10 anyway.

11 So, I left. When I left my normal ritual,
12 remote, open my door, start my car, get a cigarette, put
13 my phone clip back on. Sit outside the car, smoke a
14 cigarette, leave.

15 Q You said phone clip?

16 A Yes, sir.

17 Q How many phones did you have with you?

18 A Two phones.

19 Q Okay.

20 A Like I said, I have -- as you see, a iPhone and
21 a Nokia. The iPhone is pretty big so I can't keep both
22 the phones on the holster at one time, so I keep one phone
23 right here and I keep the other phone right here or right
24 here. Depends if I have my gun. And I don't have my gun
25 at work so I keep both the phones right there. When I'm

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1 at work, the iPhone is in the holster. When I'm, you
2 know, on break or on going out to get something to eat, I
3 keep the holster -- I mean, I keep the phone in the
4 holster right next to the Nokia. Like I said--

5 Q Did you change clothes before leaving work?

6 A No. I didn't have the time, really. I had a
7 hoodie -- I had a black Champion hoodie in my car. And I
8 had Vegas' clothes in my car, too. Vegas had some -- I
9 forget. He worked at Faurecia, he had some Faurecia, yeah
10 that was in my trunk.

11 Q Do you know -- I mean -- I mean, these are
12 pretty common, they sell more than one. Does that appear
13 to be your black Champion hoodie?

14 A Yes, sir.

15 Q All right.

16 A I didn't put the hoodie on then. I didn't put
17 the hoodie on until I got to Bop's house. One the way to
18 Bop's house I called Smitty. I called Barry. And I think
19 that was the only calls.

20 Q Why were you're going to Bop's house?

21 A Like I said, a free day, didn't have to go to
22 work. I didn't want to mess with my dad at his job.

23 Q You heard about all the trouble that was going
24 on?

25 A Uh-huh.

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1 Q Was that your motivation for going over?

2 A Really to be funny. You know, just to make
3 jokes about it. I was bored, really. That's it.

4 Q Did you take this as a serious situation before
5 you got there?

6 A Honestly, it had nothing to do with me. So, I
7 didn't care. I mean, just to be honest. I know what
8 happened was wrong, as far as they beating him up or
9 whatever, but it didn't have nothing to do with me.

10 Q What about your cousin?

11 A It didn't have nothing to do with me. He
12 shouldn't have busted his windows.

13 Q I thought he was your little cousin and you
14 looked out for him?

15 A Shouldn't busted his windows.

16 Q All right, go ahead. So, you headed over to
17 Bop's house, what happened?

18 A Yeah, headed over to Bop's house. I pulled in
19 the backyard, so my car could be nose faced. I reached in
20 the back seat--

21 Q I'm not sure I know what you mean, nose faced?

22 A Nose face the street.

23 Q In other words you backed in?

24 A No, I pulled in the backyard so the nose on --
25 the front of my car would be facing the street.

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1 Q Okay.

2 A So, I was in his driveway, nose of my car was
3 facing the street. I sat in my car with it running. I
4 put the hoodie on -- I got in the backseat, put the hoodie
5 on--

6 Q Did you have any kind of a weapon?

7 A Like I said, the only weapon I had was gone.

8 Q Okay.

9 A So, I got out the car. As soon as I got out of
10 the car -- oh wait, on my way to Bop's house I got a call
11 from Smitty on my iPhone telling me, Bring all the guns,
12 bring all the guns. Barry just came by with a gun out, he
13 tried to play us, bring all the guns.

14 I look at my phone, I don't even like
15 Smitty like that so I hung up on him. I put the phone
16 down, kept on driving. I called -- what's his name?
17 Vegas, What happened?

18 Man, this nigga just came out with a gun
19 out, he came out with a gun on us.

20 I said, What happened? Y'all ran?

21 Yeah, that was some scary ass niggers.

22 So, I hung up, I called Barry. And I was
23 like, Barry, what happened?

24 And he said, Man, I just went by there,
25 man, they scattered like roaches, man, they were some

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1 bitches.

2 I said, Listen, man, they real but you
3 fucking with them right now. What's going on, man? Like,
4 what can we do to sum up this?

5 He was like, Man, fuck that. Man, fuck
6 that.

7 I said, Look, man, what can you do to solve
8 this? I said, How about you fight all of them one on one.

9 He said he would fight all them one on one.

10 So, when I went over my whole -- and after
11 I got there my whole initiation -- my whole initial reason
12 for being there was to get them to fight one on one, all
13 of them. So, when I got out the car -- when I tried to
14 lock my car but I hadn't shut the door yet, I had my keys
15 in my hands, and Landis and Smitty ran up to my car and
16 searching for my car -- searching all through my car. I
17 was just looking at them. And I look at Bop and Vegas and
18 I was like, Barry said he just want to fight y'all one on
19 one.

20 And Smitty, I can't remember if he was on
21 the backside of my passenger or the front side of my
22 passenger, but he ran around the car and pushed me. And
23 when he pushed me, I kind of -- I didn't fall -- I didn't
24 fall but I like stumbled back to the corner panel of my
25 car.

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1 And he was real mad like, Man, what the
2 fuck you talking about? Who side's you on? Who side's
3 you on? And then he was like, Man, you act like -- and he
4 just came out with a gun out. That this in -- word go.

5 I'm like, Bro, I ain't nobody side to be
6 real with you but he just want to fight. Just fight the
7 man one on one. Y'all -- fight them one on one.

8 He was like, Fuck you, fuck that, fuck
9 that.

10 So, Smitty really was mad at me a little
11 bit, everybody was letting it go.

12 Q I just want to pause right now. Obviously,
13 you're fairly well educated but I hear a lot of what we
14 would refer to as street vernacular, is that just how you
15 and your friends talk to each other?

16 A That's just how -- yeah -- how re-enacting it to
17 you, that's how we was talking.

18 Q Is that normal?

19 A To talk like that?

20 Q Yeah.

21 A Yeah.

22 Q All right, go ahead, continue with what you were
23 talking about.

24 A I started -- Bop had a bottle of vodka in the
25 house and I had started to drink. So, I took my hoodie

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1 off and gave it to Taylor, she was cold.

2 Q Is that Taylor Bovain?

3 A Yeah, Taylor Bovain. Smitty kept pulling me to
4 the side, he kept asking me about a gun. Like I said, I
5 don't tell nobody, I ain't going to tell them my business,
6 I just kept saying, I ain't got no gun, I ain't give you
7 no, I ain't give you no gun. And he just kept getting
8 madder and madder. Landis ain't really had too much to
9 say. Vegas really was -- I could see in Vegas face, you
10 know, I know that, I could see in his face it was
11 disturbed him but he wasn't really just angry. I could
12 see it in his face though. Bop was pretty mad because I
13 guess it happened at his house or whatever.

14 So, everybody -- like I said, when I got
15 there everybody was coming up to me telling me what was
16 going on, what happened. I was asking questions and
17 getting everybody side of the story and where this person
18 was at when this happened and what did -- you know, asking
19 everybody questions. They say Barry was calling their
20 phones, I didn't hear nobody talking to Barry. I don't
21 know.

22 Q Did you continue to talk to Barry or text with
23 Barry or anything?

24 A I called Barry back. I text him and told him to
25 go ahead and give Vegas the -- actually no, I called him

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1 one more time and he answered the phone and he was like,
2 Be real, Jacoby, I take Vegas.

3 And I was like, You want to get it with
4 Vegas?

5 And he was like, Yeah, I'll fight Vegas and
6 that's that because he smashed my windows.

7 And I was like, All right--

8 So, I hung up and I told--

9 Q What was that last thing you said, Bet?

10 A Yeah.

11 Q What does that mean?

12 A It means, one, yeah, okay, good to go.

13 So, that was the plan. Vegas was supposed
14 to fight Barry one on one and they was supposed to kill
15 it. So, when I told Vegas, I said--

16 Q You said, Kill it. I'm not sure I know what
17 you're talking about.

18 A Supposed to quash the beef, there's supposed to
19 be no more problem.

20 Q Okay.

21 A So, I told Vegas and he was like -- at first he
22 was kind of ify and he was like, all right, okay.

23 So, I text Barry and I said, Give --
24 fair -- but I do know that Barry's phone was dying so he
25 never text me back. I did try calling him a few times, he

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1 didn't answer the phone. Like I said, Vegas said that he
2 had Barry had called his phone. But to the best of my
3 knowledge, Barry didn't have Vegas' number because Barry
4 would call me and ask to speak to Vegas a few times. And
5 I gave him the phone. None of these -- one of the calls
6 was on speaker phone and I'll get to that. The -- Barry
7 called me asked where I was at? I lied and told him I was
8 walking the football field with Taylor.

9 He said, Good. And he was like, Well, tell
10 Taylor that I'm about to drop her shoes off at Pam house.

11 And I said, Okay. And I was like, Whoa,
12 whoa, whoa, what you going to Pamela's?

13 He was like, Yes.

14 I said, With who?

15 He said, By myself.

16 I said, Barry, look, I'm about to bring
17 Vegas up there. You and Vegas going to fight, nobody
18 around, nobody no the outcome, y'all dead it.

19 He was like, You ain't got to say no more.

20 So, I went back to Vegas and told him, you
21 know, what the plan was.

22 And he was like, All right, bet, bet, bet.

23 So, we got out the car. When we got out of
24 the car, James walked up and Vegas --

25 Q You got out of what car, your car?

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1 A Out of my truck, yeah. And James walked up--

2 Q That's where y'all were -- where were you
3 planning on going when you--

4 A To Pam's house.

5 Q All right.

6 A And vegas said that he didn't want nobody to
7 know where we were going and what we were doing. So, when
8 James opened up my door and asked me where we were going--

9 Q Who is James?

10 A James Williams. He was looking at Vegas when he
11 said it but, you know, I answered. I was like, I guess no
12 where now. I looked at Vegas and Vegas opened the door
13 and got out the car. I don't know why we didn't make an
14 effort to get in the car leave but we didn't. Shortly
15 after that, I say 30 minutes after that, Taylor's mom came
16 speeding down the street.

17 Q Is that Taylor Bovain?

18 A Yeah, Taylor Bovain's mom, Pamela Suber, she
19 came speeding up the street in her truck and came to an
20 abrupt stop. And she jumped out, she told the girls to
21 get in her car. And everybody's like, what was going on?
22 Because that's unlike her. Usually, when she comes,
23 she'll pull up, and I guess she'll play around, I don't
24 know, but this was unlike her. So, everybody asking
25 questions and everything.

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1 And then she said that, Barry said he's
2 going to kill Vegas.

3 And I just looked at Pam and I was like,
4 For real?

5 And she was like, Yeah. So, she was like
6 get in the car, y'all get in the car, get in the car.

7 So, the girls left. She didn't get
8 Tiajuana at first. So, Smitty was kind of mad about that,
9 that she didn't get Tiajuana. So, I gave him my phone, he
10 called Pam back. Pam came to pick up Tiajuana and all the
11 girls now were gone. This was -- this had to be like 10
12 something, 10:20. So, now it's dudes out there, nothing
13 but dudes, guys.

14 So, at this time Barry called my phone
15 around 10:20 something. He asked to speak to Vegas. So,
16 I gave Vegas the phone. When Vegas got on the phone, he
17 snatched his neck back, he put the phone on speaker phone
18 and all I heard Barry say, I'm going to kill you, boy, I'm
19 going to kill you.

20 And I looked at Barry -- and I looked at
21 Vegas and Vegas was like, Keep it in the streets, homeboy
22 and hung up the phone. And I snatched the phone back.

23 I was like, You're a fucking clown. As
24 soon as -- almost like a soon as I said that, I was
25 putting the phone back in the hostler and it rang again,

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1 it was Barry.

2 I picked the phone up and I was like, Bro,
3 what the hell is wrong with you?

4 He was like, Man, fuck that. Fuck that,
5 man. That motherfucker smashed my windows, I'm going to
6 kill that nigger.

7 I said, Bro, that's my little cousin, what
8 the fuck is wrong with you?

9 He said, Man, don't be around today, man,
10 don't be around. You ain't got nothing to do with this.

11 I said, Barry, chill the fuck out, man,
12 just chill the fuck out. Just calm down. Calm down,
13 Barry, just chill the fuck out.

14 He was like, Coby, man, shut up, you ain't
15 got nothing to do with this shit, man. Bye. And he hung
16 up on me.

17 And I kept trying to call him back, he
18 wouldn't never pick up the phone. He did call me back
19 around 10, like 10 minutes, 15 minutes later.

20 And he was like, You still over there?

21 I said, Yeah.

22 He was like, Well don't be around at
23 11 o'clock because I'm coming to shoot the house up.

24 And I just bust out laughing. I was like,
25 Man, you scheduling driveby's?

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1 And he was like, Man -- he called me Kevin
2 Hart. He was like, Man, Kevin Hart, man, you always
3 motherfucking playing, man, I'm telling you, man, don't be
4 around at 11 o'clock.

5 I said, Yo -- just chill the fuck out.

6 He was like, Man -- but that's Bop's
7 mother.

8 Q Okay.

9 A He was like, Dude you better go, you better
10 leave.

11 I was like, Man, you're fucked -- I think I
12 said you're a terrorist or something like that. You're a
13 terrorist, something I said like that.

14 He was like, Whatever.

15 I was like, All right, I let everybody
16 know. And we hung up.

17 So, I really was like I said I told
18 everybody that was there, Barry scheduled a driveby so
19 y'all don't be here at 10:59 because he coming at
20 11 o'clock to shoot up the house.

21 And everybody was like -- well really Bop
22 was the maddest. Everybody else was kind of just think I
23 was playing.

24 But Bop kind of angry about it like, Man,
25 what the hell you keep setting times up to come to my

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1 house, man? My mother in bed sick -- it's --

2 So, Vegas at this time -- well I skipped a
3 part. When I gave -- when Taylor left, she gave me my
4 hoodie back and I put it in my truck. And when I put it
5 in my truck, I locked my door. When I locked my door,
6 Vegas asked to get my hoodie because he said it was cold.
7 When I opened up the door, he grabbed my hoodie.

8 So, at this time, Landis -- I seen James
9 and Vegas get in the car. I said, Where y'all about to
10 go?

11 He was like, To the store.

12 Q What time was that, do you know?

13 A This was right around the phone call time.
14 Right at the phone call time. The last time he called me
15 and told me to be there at 11 o'clock, this was right
16 then. So, like I said, my times might be a little off,
17 give me like 20, 30 minute interval, somewhere around
18 10:30, 10:20, somewhere around there.

19 Q Okay.

20 A So, I seen James and Vegas get in the car. And
21 I said, Well shit, where y'all about to go?

22 He said, I'm going to the store.

23 And James said something about getting some
24 cigarettes or something.

25 And I said, Well, let me go too, I'm trying

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1 to get away from all this bullshit.

2 He was like, Come on.

3 So, I got in. Vegas was real quiet. And I
4 just kept looking back at him, because I was in the front
5 seat, I just kept looking back at him, like -- like I
6 could tell something was wrong. Like he was real quiet.
7 Usually Vegas be more -- he's the life of the party. He
8 be making people laugh more than me. Like, he's just --
9 he's a jumpy one. And I could tell that he just -- he had
10 his hand in his hoodie and his phone, he kept messing with
11 his phone. He was doing -- squishing up his face. I
12 could tell that something was bothering him but I didn't
13 pay no attention to it. It is what it is, it's not my
14 problem.

15 So, we pull at the Exxon.

16 Q How far is that from Bop's house?

17 A Around the corner. Like. . .

18 Q A couple minutes in a car?

19 A Yeah.

20 Q All right.

21 A Yes, sir.

22 Q All right.

23 A We pulled up at the Exxon, to the sign, and I
24 been trying to get with this girl that worked at Pizza Hut
25 for some time. But I'm always at work at the time she's

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1 at work. So, now that I'm off, I went over there to
2 holler at her. My excuse was to buy a little -- at the
3 time they had like \$8.00 medium pizzas or something like
4 that. That was going to be my excuse to go in there to
5 talk to her. So, I went in there, they were closing,
6 something like that. Something, I can't remember, but
7 something happened. I can't remember if they were closing
8 or if it was going to take too long for a pizza or
9 something like that. So, I walked out.

10 Oh, before I left Vegas gave James his
11 phone and they was asking me for my phone. So, I unlocked
12 it for him and gave him the phone. When I came back,
13 Landis was pulling up and Vegas was giving me back my
14 phone. He had called Landis. James was on phone with his
15 baby mother. So, Vegas -- actually, Smitty was talking to
16 Landis in the car or whatever--

17 Q Was Smitty with Landis?

18 A Yeah. And they don't normally -- nobody likes
19 Smitty. So, for him to be with Landis was out of the
20 ordinary. But like I said, I didn't. . .

21 Q Was Landis driving?

22 A Yeah, Landis was driving his mother's BMW truck.

23 Q Where was Smitty?

24 A In the passenger seat.

25 Q Front passenger seat?

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1 A Yes, sir.

2 Q All right. So, he pulled up, then what
3 happened?

4 A He pulled up, they were talking. I opened up
5 the passenger door and I was like, I said -- I can't
6 remember what exact words I said but it was something to
7 the point of, What y'all doing here? What y'all got going
8 on? Or something. And Smitty just looked, just gave me
9 this evil look. I just looked back at him and gave him a
10 bird and I shut the door.

11 And Smitty opened the door back up and was
12 like, Give -- hold things, hold things. James get -- and
13 Vegas said, James got my phone. He just kept yelling at
14 James to give him his phone.

15 I'm like, James, drop me off at my truck,
16 man.

17 And he was like, I'm not going back, I'm
18 going to my baby mother house.

19 I said, Man, what the fuck?

20 So, I looked at -- told -- drop me off at
21 my truck.

22 He was like, Come on.

23 So, I got in the backseat and we were still
24 waiting on James to give Vegas back his phone. And Smitty
25 just kept spazzing out. About spazzing I mean, yelling,

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1 like kind of going crazy at James. And James, hurried up
2 on the phone, give the phone back to Vegas. Vegas got to
3 the other side of the car. We got in the car, we take
4 off. I had just gotten on the phone--

5 Q Did anybody else that you know pull into the
6 station while you were there?

7 A Not while we was there, no. Not that I was
8 paying attention, not that I seen. But I had to get off
9 the phone, the iPhone with my kids mom. So, it had to be
10 around like 10:40 that I was talking to be her. As soon
11 as I hung up the phone with her -- it might have been the
12 reason I hung up the phone her. Vegas had tapped me and I
13 was like, Hey man, call Barry and let's get this shit
14 settled right fast. So, I was like, Call to fight.

15 He was like, Yeah, just call him and see if
16 we can meet up right quick before we go to the club.

17 So, they were getting ready to go -- to the
18 best of my knowledge, Smitty wasn't going. Smitty don't
19 never have no money. So, I guess Smitty wasn't never
20 going to the club but Landis was supposedly going to Club
21 Cream. And Vegas said he was supposed to go to but
22 neither one of them was dressed to go to the club or
23 driving the right car for Landis to go to the club.

24 But I was like, All right, I'll call Barry.
25 I said, Hey, man, where you at?

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1 He was like, Why?

2 I said, Man, I got Vegas right here, man,
3 they're about to go to the club, you wanna go to the club?

4 He was like, Hell no, I don't want to go to
5 the club with them.

6 I said, You want to go to the club with me?

7 He was like, Nah, I don't want to go to the
8 fucking club with you Coby.

9 I was like, Damn, fuck you. You mad at me
10 too?

11 He was like, Man, shut the fuck up, man,
12 what, what, what?

13 I said, You -- you want to fight Vegas?

14 And he was like, Yeah, I'll fight him,
15 what's up?

16 I said, Oh shit, where you at?

17 He said, I'm at Tiger house, I'm at Tiger
18 house.

19 I said, All right, man, we'll be there in a
20 minute. And I hung up.

21 So, I told Landis they were at Tiger house.

22 And Landis said, okay. He said, I don't
23 know who Tiger is or where Tiger lives.

24 So, we going down -- we passing -- we going
25 down Woodside, we passing the baseball field.

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1 And Smitty kept saying, Pull over, pull
2 over.

3 I was like, Take me to my fucking truck.

4 So, Landis was like, Hold the fuck up -- so
5 he took me to my truck. He pulled onto Woodside, on Bates
6 Street, pulled into the driveway. His lights shined on
7 the front of my car. I got out the car. As soon as I got
8 out of the car, shut the door and they pulled off and left
9 the same way they came. I--

10 Q Let me stop you there. Who is they? Who was in
11 the car?

12 A Barry -- I meant -- sorry. Smitty, Landis and
13 Vegas. They left the same way they came.

14 I opened my car, went in my pocket, grabbed
15 one cigarette. When I opened up my car, my lighter was in
16 my little compartment. I grabbed the lighter, lit the
17 cigarette, took a puff, started the car. And I was going
18 to call Landis to go to the club. I go to the club, you
19 owe me \$15.00 for the room, pay my way. As I'm calling
20 Landis, like I said, my car phone picks up. So, I shut
21 the door, you know, I'm holding the phone to my ear but
22 I'm hearing him talking through the car phone. So, I look
23 at the phone, the bluetooth was on. I disabled the
24 bluetooth and I started talking to Landis.

25 I was like, What's up, man, you going to

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1 Club Cream?

2 He was like, Yeah.

3 I said, Fuck no, I'm going with you, man,
4 you're going to pay my way?

5 He was like, No, I ain't paying my own way.

6 And I was like, Well, who paying your way?

7 He said, I don't know yet.

8 I was like, When you leaving?

9 He said, Call me right back.

10 I said, Where y'all at?

11 He said, We right here, man, just call me
12 right back.

13 I said, All right, bet. So, I hung up.

14 As soon as I hung up the phone with him, my
15 sister called my iPhone. So, I put my phone, my Nokia
16 back on the holster, picked up my iPhone, answered the
17 phone from my sister. She asked where I was at? I told
18 her.

19 And she said, Was I aware that -- daddy --

20 I told her, Yeah. She asked me something,
21 did I want her to grab it and take it home with her? Or
22 did I want her to leave it something, something, something
23 about the Nokia.

24 And I told her, I get it tomorrow.

25 I hung up the phone with her. And almost

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1 immediately after hanging up the phone with her, I heard
2 boom, boom, boom, boom, boom, boom, boom, boom, boom, pop,
3 pop, pop, pop. And my heart dropped. Because the first
4 thing that came to my mind was Barry done shot my cousin.
5 So, I was just sitting there and I my phone rang. And
6 that scared me a little bit. It was Taylor. I picked up
7 the phone, it was Taylor. And the phone, the phone hung
8 up, I lost service. So, I got to the car. When I got to
9 the car, the phone rang again. This time I hit the car
10 phone, to answer the phone through the car phone, I said,
11 What's up? It was Landis.

12 He was like, Where you at? He was calm, he
13 wasn't yelling, he was just Landis. He said, Where you
14 at?

15 I was like, Sitting at Bop house.

16 He said, Hey man, come over here right now?

17 What's going on, man? What's up, man? I
18 just heard gunshots. What the fuck happened?

19 He said, We got to shooting.

20 I said, We who?

21 He said, Man, all of us, we got to
22 shooting, it was a shootout, what's up, man? Where you
23 at?

24 I said, Man, I'm at Bop's house.

25 He said, Man, come down here and come pick

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1 us up.

2 I said, Where y'all at?

3 He said, Where Bop use to work at.

4 I said, I don't know where Bop use to work
5 at.

6 He said, Just come around, you'll see us.

7 I said, All right.

8 So, I hung up the phone, I put the car in
9 gear. And I got to the edge of the driveway and something
10 in my mind just like, don't fuck with it. So, I made a
11 left, cut through Bojangles' parking lot -- well, I made a
12 left, made a right through Bojangles' parking lot. Went
13 to the stop, made a left to the light, made a right. And
14 Taylor kept calling my phone back to back to back.

15 And on my way home is woods, like a wooded
16 area. Everybody's phone lose service in this area, no
17 matter who you got. I had Sprint, my sister's T-Mobile
18 service. And phone just kept losing service in that area.
19 So, when I pulled up at home, Taylor was still calling the
20 phone, the phone was still hanging up on us. So, when I
21 finally sat down in one spot, we talked. And talked about
22 20 minutes. But I had called Vegas from my iPhone, I also
23 called my kids mom from my house phone.

24 I called Vegas from my iPhone and I asked
25 him, What happened?

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1 And he sound like he was in a tunnel. He
2 was in his car. I could tell he was in his car because
3 his car real loud. He was breathing a little hard but he
4 was calm. And he was like, We got in a shootout.

5 I was like, Who?

6 He was like, We did.

7 I was like, Why? What happened?

8 He was like, Man, where you at?

9 I was like, Home.

10 And he was like, Oh, shit, let me call you
11 back.

12 And I was like -- where y'all got the guns
13 from?

14 He was like, I had your gun.

15 I said, Where you get my gun from?

16 He was like, I grabbed it when I grabbed
17 the hoodie.

18 Which I knew was a lie but I didn't say
19 nothing about it. So, I was like, Where you going? You
20 going by Bop house?

21 He was like, Yeah.

22 I was like, All right, call me when you get
23 there.

24 So, at the time, we didn't know Barry was
25 there or nothing like that. So, I called Barry -- I text

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1 Barry phone and said something to the effect of, You
2 dead-ass wrong for doing that -- talking about 11 o'clock,
3 something like that. I never got a text back. So, Taylor
4 clicked over and was on the phone with Smitty. When she
5 clicked back over she was real irate.

6 She was like, Coby, what just happened?
7 What just happened? What just happened?

8 I was like, What you talking about?

9 And she was like, Smitty just said it just
10 went down, it just went down.

11 And I was like--

12 Q Let me stop you there because you're getting off
13 into a lot of ancillary conversations. So, you had that
14 last conversation with Vegas, did you remain at your
15 sister's house?

16 A No.

17 Q What did you do?

18 A When I found out that Barry had got shot, I got
19 a text from Landis. I was scared--

20 Q Did you walk into your sister's house?

21 A Oh, yeah, yeah. I was on the couch watching TV
22 in my basketball shorts.

23 Q All right. So, how long -- I mean, about what
24 time did you get to your sister's house?

25 A I say like around 10:50, 10:50, 10:40 something.

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1 Q All right. And that was after hearing these
2 shots?

3 A Yes, sir.

4 Q And that was after having these conversations
5 that you just had?

6 A Yes, sir.

7 Q So, you went in and you changed?

8 A Yes, this is a ritual. I go in, take whatever
9 clothes I got off, put my basketball shorts on, wash my
10 face, wash my hands. That's what I was doing. Taylor
11 just kept calling and calling me back to back to back.

12 Q What -- did you do anything other than all this
13 constant phone talk that was going on?

14 A No. Sat on the couch with my sister's
15 boyfriend. We watched a Eli Manning interview. But I
16 wasn't really interested because I'm not a Eli Manning
17 fan.

18 Q Did you remain there at her house the rest of
19 the night?

20 A No, sir.

21 Q What did you do?

22 A Once I got the news, I got scared and thought
23 that they were going to start retaliating. And--

24 Q They being who?

25 A Whoever -- whoever did the shootout. Like I

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1 said, I didn't find out yet who was there. They just told
2 me it was a shootout. So, I got in the car.

3 Q Why did you think somebody would retaliate
4 against you?

5 A Because I was on the phone with Barry at 10:29.
6 So, you know, kind of common sense that I was the last
7 person on the phone with him.

8 Q All right.

9 A So, I didn't want anything to be said about me
10 or nothing like that. So, I got scared. I thought they
11 were going to, you know, retaliate some way, some how.
12 And you know, everybody knows my truck. So, I was like
13 everybody knows -- my truck and try to retaliate me. So,
14 I got in my car, seen my nextdoor neighbor, I waived at
15 her, and I left. I picked up my home boy, he was walking
16 home from work. I dropped him off at home. We sat in the
17 driveway, smoked a cigarette. I cut him short, told him
18 about what happened. Also, text my kids mom and told her
19 that Dale [verbatim] had told me that he, you know, used
20 my gun and that my fingerprints was on the shells. And I
21 was scared. And that if anything was to happen, I love
22 you. And basically trying to get my mind together about
23 this gun.

24 But I went -- I called my girlfriend at the
25 time and told her I was coming to her house but I never

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1 went to her house, I have went to Taylor's house. And
2 when I got to her house--

3 Q Taylor Bovain?

4 A Yes, I went to Taylor Bovain's house.

5 When I got to her house, Vegas called me,
6 asked me where I was at? I told him. He came there. We
7 kind of had -- it was him, Tara and his girlfriend, Kia.
8 And we kind of had a talk about him killing himself. Like
9 he wanted to kill himself. Saying that he was going to
10 drive off a bridge. And he wanted to shoot himself. And
11 he just left jail, he wasn't going back. So, it was a bit
12 of time we just talked about trying to get him to calm
13 down. And after he calmed down I asked him where my gun
14 at?

15 And he says, It's safe, I go it.

16 So, I asked him, What happened?

17 He wouldn't ever tell me. He just kept
18 saying, They got to shooting, they got to shooting.

19 So, I asked him again, Where my gun at?

20 He was like, I left it at the -- I left it
21 at the -- I left it the -- something he said, I left it
22 somewhere.

23 And I was like, Um, you going to go back
24 and get it?

25 He was like, No.

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1 And we turned to the news and it had an
2 all-out man hunt, they had dogs and choppers and
3 everything. So, we started crying and everything. And I
4 put my head in my hands and he text me.

5 He said, 315.

6 And I just looked at him, I was like,
7 Yeah -- need to leave. So--

8 Q What's 315 mean?

9 A That's the area code of Syracuse, New York.

10 Q Okay.

11 A So, I just kept pressuring him to go get my gun.
12 And I let him know the importance of it. I was like, Bro,
13 like, I need you to go get my gun, I need you to go get my
14 gun. If you don't get my gun, man, like, they're going to
15 try to put me in this shit, motherfucker. People already
16 calling me--

17 Q Let me stop you right here. I understand that's
18 how y'all talk to each other. I've probably let you go
19 longer than you needed to, but let's tone down the
20 profanity.

21 A I'm sorry. I told him -- I told him to go get
22 my gun.

23 And he just kept saying, No, no, no, no.
24 He wun't [verbatim] going to get it.

25 So, he left around 4:00 in the morning.

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1 And I called him around 6:00. We met up at the Exxon on
2 418. I got in his car. And that's when he took me to the
3 crime scene, he told me where he was standing, he told me
4 where Barry was standing, he told me what happened. He
5 told me -- he kind of went around the corner and showed me
6 where he put the gun.

7 And when I looked, I said first, There's a
8 camera right there. Go get my gun, man.

9 He was like, No, man, I'm scared, I'm
10 scared.

11 I was like, Just put your hoodie on and act
12 like you're going to pay a bill or something and just grab
13 the gun.

14 He was like, No, man, no.

15 I just got scared at that time. I was
16 like, Bro, man, you just killed somebody, man. The gun is
17 going to come back to me as my gun, man. Think about
18 this, man, you're going to put me in this.

19 And he just like, Man, I'll get it later,
20 I'll get it later.

21 I said, All right.

22 We pulled off, he dropped me back off at my
23 truck. I went to my girlfriend's at the time house. I
24 told her about what happened, you know. I just kind of
25 stressing out about it. Put some pictures up on Facebook.

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1 Said a couple things. At that time, I was talking to
2 Shantea about whether or not I should go into the--

3 Q Okay, well, let's not -- I don't want to get to
4 far out there. You told us about what happened with
5 Vegas. Did you ever go back home that night?

6 A The night of the crime?

7 Q Yeah.

8 A No.

9 Q You stayed out all night long?

10 A Yes, sir.

11 Q So, the next day on October the 2nd, what did
12 you do?

13 A I called into the police station and that's when
14 I told them -- well, Vegas called my earlier that morning
15 and when I said, Hello.

16 He said, They found the gun, I'm gone.

17 I said, You gone?

18 And he was like, Yeah, I'm gone.

19 I said, Bro, you're to going leave me with
20 this shit? You're going to leave me with this?

21 Sorry.

22 And he was like, I ain't got no choice.

23 And I just sighed. I kind of started to
24 shed a couple of tears. And I was like, Man, I'm going to
25 call my gun in stolen. I'm going to tell them my gun's

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1 stolen.

2 And he was like, What?

3 And I said, I about to -- I ain't got no
4 choice about, bro. I'm about to tell them -- I got to
5 tell them the gun --

6 He was like, Man, you do that I'm going to
7 tell them you did it because my fingerprints on it.

8 I said, Bro, what's wrong with you?

9 He said, Man, I got to got. He hung up.

10 And I called the Fountain Inn Police
11 Department, I told them that I believe my gun might been
12 used in a crime. I didn't tell them that my cousin stole
13 the gun, I just told them that I figured that my gun was
14 used in a crime. He asked me to come in. I told him that
15 I would be in at that time. I got in the shower, I looked
16 at the time, it was time for me to go to work. So, I
17 didn't call in. I couldn't miss anymore days. He called
18 me back and left a message and I called him back. At that
19 time he asked me why didn't I come in or whatnot. And I
20 told him that -- told him that I would come in the next
21 day.

22 And the next day, which was a third -- I
23 had heard so many people went into the police station and
24 was telling these different stories and was saying all
25 these different things --

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1 THE COURT: All right, we're done with the
2 narrative. You're going to have to ask questions,
3 okay.

4 BY MR. CHAMBERS:

5 Q All right. Did you go into the police station
6 on October 3rd?

7 A Yes, I did.

8 Q Was that at the invitation of the police?

9 A No, sir.

10 Q Did you show up down there?

11 A Yes, sir.

12 Q Did you meet with the police officer?

13 A Yes, sir.

14 Q Who did you meet with?

15 A Detective Scott Hawkins and Chief Morton.

16 Q All right. Did you give a statement?

17 A Yes, I did, sir.

18 Q Did you give a written statement?

19 A Yes, I did, sir.

20 Q Did they go over your rights with you before you
21 gave that statement?

22 A No.

23 Q You just went in there voluntarily and gave a
24 statement?

25 A No, the -- Scott Hawkins told me that I was free

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1 to go and the chief. And when I was walking out, Scott
2 stopped me and said he needed me to write a statement.

3 And I told him I had to go to work.

4 And he said, If you don't write a
5 statement -- no, you can't go to work if you're in jail.

6 I said, What do you mean?

7 He was like, If you don't write a
8 statement, I'm going to take you to jail for something
9 about interfering with police or obstruction of justice
10 or--

11 Q You did write the statement?

12 A Yes, I did write a statement, yes, sir.

13 Q And the police now have that statement?

14 A Yes, sir.

15 Q What did you tell them? Briefly, because I know
16 you've gone through everything that happened. But what
17 did you tell them--

18 MS. PAOLETTI: Your Honor, I object to that.

19 THE COURT: Yeah.

20 How you going to introduce his statement,
21 Mr. Chambers?

22 MR. CHAMBERS: I just wanted to ask him what he
23 told them.

24 THE COURT: Well, he's already told the whole
25 story. If there's something else he hasn't told with

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1 respect to what happened, he can do that.

2 MR. CHAMBERS: Okay.

3 BY MR. CHAMBERS:

4 Q Okay. All right. Were you arrested that day?

5 A Yes, I was.

6 Q All right. What was the charge?

7 A Murder and possession of a weapon during a
8 violent crime.

9 Q Did you at some point make bond?

10 A Yes, I did.

11 Q All right. And you were out on bond for some
12 time?

13 A Yes, I was.

14 Q Did you go back to jail?

15 A Yes, I did.

16 Q When did you go back to jail?

17 A February 3rd, 2014.

18 Q Was that for the house arrest violation that
19 we've heard about?

20 A Yes, sir, it was.

21 Q Did -- while you were there, did you make phone
22 calls? And I'm not going to get into all the phone calls,
23 but I want-- did you make phone calls to people from the
24 jail?

25 A Yes, I did.

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1 Q When you made those calls, were you aware that
2 those were monitored and taped?

3 A Yes, I was.

4 Q Were you aware that the police and other people
5 like that would likely have access to those calls?

6 A Yes, I was.

7 Q And you heard some specific calls that were
8 played by the solicitor in this case, that were made to
9 Landis Franklin, did you make those calls?

10 A Yes, I did.

11 Q Were you intending to threaten Landis Franklin
12 when you made those calls?

13 A By all means, no.

14 Q Okay. Had there been a lot of discussion, as
15 we've heard from Mr. Clemons when he was here, among
16 everybody about this case and what was going on with this
17 case?

18 A Yes, it was.

19 Q Okay. Were you aware of all those
20 conversations?

21 A Not everyone of them but they would sometimes
22 come back to me.

23 Q But was there a lot of information that was
24 getting back to you?

25 A Yes.

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 Q And were those the kinds of things that you
2 would call and talk to Landis Franklin about, as we've
3 heard on those phone conversations?

4 A Yes.

5 Q Those four calls that we heard, were those all
6 of the calls that you made to Landis Franklin?

7 A No.

8 Q But there were other times when you did talk to
9 Landis Franklin?

10 A Two more.

11 Q All right. And did you also talk to various
12 other people while you were there?

13 A Not in Fountain Inn.

14 Q I mean, while you were in jail?

15 A Oh, yes, sir.

16 Q This is what we're talking about.

17 A Yes, sir.

18 Q All right.

19 All right, Jacoby, I believe that we have
20 covered everything so I will now turn it over and ask that
21 you answer any questions that the Solicitor has.

22 THE WITNESS: Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. PAOLETTI:

25 Q Mr. Gregory, you've got a lot of information

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 about what happened to Barry Norman, don't you?

2 A Yes, ma'am.

3 Q How long have you been talking?

4 A I haven't been checking.

5 Q You gave a two page statement to law
6 enforcement?

7 A Yes, ma'am.

8 Q How many letters do you think you have written
9 me?

10 A A lot.

11 Q How many letters you think you've written to the
12 Fountain Inn police?

13 A About the murder?

14 Q Anything.

15 A About anything?

16 Q Yeah. Ten?

17 A No.

18 Q How many have you written me, 10?

19 A Maybe.

20 Q More?

21 A I don't know.

22 Q You been sitting down at the detention center;
23 isn't that right?

24 A Trying to talk to you.

25 Q That's right, you wanted to sit down and meet we

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 me?

2 A Yes.

3 Q And did your lawyer tell you that I was more
4 than happy to meet with you?

5 A No.

6 Q Did it ever occur to you, as you were sweating
7 it about your prints being on these shells, did it ever
8 occur to you to tell somebody the truth?

9 A I didn't know the truth until I came -- you
10 talking about who was there?

11 Q The truth.

12 A You talking about --

13 Q Read your statement, Mr. Gregory.

14 A Yes, ma'am.

15 Q Is there -- what is the truth in this statement?

16 A I just told it.

17 Q The story you just told?

18 A Yes.

19 Q Okay. Show me in this statement where you say
20 anything about what happened before Tuesday, October 1st?

21 A Before Tuesday, October 1st? I say right here.

22 On October 1st, I was--

23 Q Before Tuesday, October 1st?

24 A This statement, I don't think I did.

25 Q No, you didn't, did you? But you called

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 Fountain Inn police to tell them about what happened?

2 A Yes.

3 Q Before that weekend, right?

4 A They asked me not to speak about it, they just
5 wanted to know about October 1st.

6 Q They asked you not to talk about the party?

7 A When I wrote my statement, forcefully, they
8 asked me, Just tell us what happened on October 1st.

9 Q Mr. Gregory, were you under arrest when you gave
10 this statement?

11 A Obviously, I was. I wasn't. . .

12 Q Were you in handcuffs?

13 A No.

14 Q Had anybody said, Mr. Gregory, you're under
15 arrest for the murder of Barry Norman?

16 A After that statement, yes.

17 Q No, when you gave this statement?

18 A As soon as I signed it, yes.

19 Q You walked into Fountain Inn police?

20 A Yes.

21 Q Of your own freewill?

22 A Yes, ma'am.

23 Q And sat down?

24 A Yes, ma'am.

25 Q And wrote this statement?

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 A No, not on my freewill.

2 Q Okay.

3 A Like I said, he forced me.

4 Q You didn't want to write a statement?

5 A Yes, ma'am.

6 Q But you went down and you talked to them and you
7 told them--

8 A Yes, ma'am.

9 Q -- about what happened?

10 A Yes, ma'am.

11 Q Did it occur to you at that time to tell the
12 truth that you just told this jury.

13 A I did not know who was there at the time. Like
14 I said--

15 Q Didn't know who was where at the time?

16 A At the crime. They--

17 Q You just told this jury that you knew--

18 A I didn't find out until I came to jail. You
19 would have known that from the letters that I wrote you to
20 try to talk to you and tell you.

21 Q Mr. Gregory, you'll forgive me if I don't take,
22 what you write to me as truth for me to follow up with.
23 You sent text messages around the time of this incident,
24 didn't you?

25 A Yes, ma'am.

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 Q Whose phone number is -9413? And I know you
2 know them all.

3 A Taylor's number. Taylor Bovain.

4 Q Taylor?

5 A Yes, ma'am.

6 Q And she was your girlfriend?

7 A No, ma'am. Something -- no, ma'am.

8 Q To Taylor then, I got to find out what they
9 said. I hope they didn't say what I was wearing.

10 A The reason I said that because I know Fountain
11 Inn Police Department. I know once they said something
12 about he was wearing this, he was wearing that, that's it.
13 I know how the Fountain Inn Police Department works. And
14 I texted her about Smitty.

15 Q You don't have a record?

16 A No.

17 Q Who is -- oh, still Taylor -9413?

18 A Yes.

19 Q Tell him don't say nothing to nobody because
20 nobody know nothing. He was with Sosa, Landis, going to
21 Crocks.

22 A That's what Landis told me to text her.

23 Q That's what Landis told you to text Taylor?

24 A No, Landis told me to tell Smitty, because
25 Smitty wasn't picking up the phone for me --

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 Q I thought you didn't like Smitty? Why you
2 covering for Smitty now?

3 A Landis told me to tell that to Smitty.

4 Q So, you're taking orders from --

5 A The one --

6 Q Landis now? You're taking orders from Landis
7 now?

8 A I ain't taking orders, he asked me to do
9 something.

10 Q And you told Landis, Smitty don't know what
11 happened, Smitty wasn't there.

12 Isn't that what you told Landis on those
13 phone calls from the detention center?

14 A I told Landis, Smitty don't know what happened,
15 Smitty wun't there.

16 Q Yes, sir, you did. You clearly did not want
17 Landis here today or all week?

18 A No, actually I do.

19 Q You do?

20 A Like I said, I care about Landis. Not to the
21 point where I love him but I was just warning him. As far
22 as threatening him, I can care less if he came or not.
23 And I told him that in that conversation. I also had two
24 more conversations with him. I don't know why you didn't
25 play those ones to where he admitted to what he did. So,

JACOBY GREGORY-CROSS BY MS. PAOLETTI

1 why didn't you play those ones?

2 Q Well, your lawyer has them.

3 A Do you have them?

4 THE COURT: No, you don't get to ask questions.

5 THE WITNESS: Oh, I'm sorry.

6 BY MS. PAOLETTI:

7 Q Mr. Gregory, this is your gun?

8 A Yes, ma'am, it is.

9 Q And these are your phones?

10 A Yes, ma'am.

11 Q Nobody ever stole your phones, did they? They
12 were on your person the entire time that we're talking
13 about?

14 A Yes, ma'am.

15 MS. PAOLETTI: I don't have anything else.

16 THE COURT: All right, any redirect?

17 MR. CHAMBERS: No, Your Honor.

18 THE COURT: All right, you may stand down.

19 All right, ladies and gentlemen of the jury,
20 we're going to break for the evening. We've been
21 going for three days. And as I told you, and maybe
22 I'm wrong, but I think it's human nature, the more
23 you know, the more you want to know. And the more
24 you want to seek advice and help from whoever you
25 trust. You can't do it. Y'all have sacrificed an

1 awful lot up this point. And if it's violated, then
2 we have to start all over. So, keep it to yourself,
3 don't do any research, don't visit the scene and
4 we'll see you back at 9:30 in the morning. Okay.

5 (WHEREUPON, the jury left open court at
6 approximately 5:55 p.m.)

7 THE COURT: Do you anticipate you're going put
8 anything else up?

9 MR. CHAMBERS: I don't know, Your Honor.

10 THE COURT: Okay.

11 MR. CHAMBERS: Your Honor --

12 THE COURT: You want jury charges in the
13 morning, have them ready.

14 MR. CHAMBERS: Your Honor, I do, before we
15 break, I do need to put something on the record.

16 THE COURT: Okay.

17 MR. CHAMBERS: Your Honor, as I hope you know, I
18 have the upmost respect for the Court, I truly do.
19 But during most of my client's testimony, I could not
20 help but notice that you were making faces as though
21 you were in complete disbelief. And it was
22 abundantly clear to everyone in the courtroom and
23 most obviously to the jury. It couldn't have been
24 any worst as if you held up a sign that said you
25 didn't believe what my client was saying.

1 THE COURT: That's your opinion, Mr. Chambers.
2 Thank you, very much, I appreciate you saying that.
3 I was surprised at the narrative an experience trial
4 lawyer would allow their client to go through.

5 MR. CHAMBERS: Well, there was no objection to
6 it, Your Honor.

7 THE COURT: All right, well, we'll see you in
8 the morning.

9 (WHEREUPON, the proceedings were concluded for
10 the day to be reconvened on July 14, 2016.)
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1 July 14, 2016

2 THE COURT: All right, ready to go?

3 MR. CHAMBERS: Your Honor, the Defendant is
4 going to rest at this point. I can certainly do that
5 in front of the jury and would do that. I thought
6 for purposes of moving things along, I could go ahead
7 and rest, make the obligatory directed verdict
8 motion, and then we can just have the jury come in
9 and start with argument and charge after I rest.

10 THE COURT: Well, I don't know, do you have any
11 reply?

12 MS. PAOLETTI: No, sir, Judge.

13 THE COURT: Okay.

14 Whatever you want to do. You want to do it in
15 front of the jury?

16 MR. CHAMBERS: Well, I guess I should.

17 THE COURT: It's up to you.

18 MR. CHAMBERS: I'll do it in front of the jury,
19 Your Honor.

20 THE COURT: All right, move directly into
21 closings, but first let's discuss the charge.

22 Y'all have any requests to charge?

23 MS. PAOLETTI: Your Honor, the State request
24 that you charge the law the hand of one is the hand
25 of all. Based on the Defendant's testimony yesterday

1 about, even according to his testimony, his
2 involvement in the shooting, we would request that
3 you charge the jury on that.

4 THE COURT: Okay.

5 MR. CHAMBERS: I don't remember any testimony
6 that he was involved in the shooting, Your Honor. He
7 said he went home.

8 THE COURT: Well, put on the record what it is
9 you think.

10 MS. PAOLETTI: Well, Your Honor, first of all,
11 the Defendant says that he heard the gunshot, so he
12 was certainly not at home -- could not have been at
13 home when the shooting occurred. Additionally, Your
14 Honor, the evidence that was elicited on
15 cross-examination by the Defense was that the
16 co-defendant is trying to put the gun in this
17 Defendant's hands and say that this Defendant was the
18 shooter. When the Defense's position is certainly
19 going to be that the co-defendant was the shooter.

20 Both of these men were charged with murder. The
21 jury needs to understand why two people can be
22 convicted of murder of one victim. And the State
23 intends to inform them of the law on that in its
24 closing. I think it fits the evidence in the case.
25 There's also testimony by the Defense that Landis

1 Franklin was involved somehow, that Stacy Sullivan
2 was involved somehow. Under the facts as the
3 Defendant put them in front of the jury, the way that
4 he articulated it, all of them would be guilty of
5 murder under that theory, Your Honor.

6 THE COURT: All right. I think that entitles
7 you to a charge on the hand of one is the hand of
8 all.

9 Anything else?

10 MS. PAOLETTI: Not from the State, Judge.

11 MR. CHAMBERS: No, Your Honor, no special
12 charge.

13 THE COURT: Well, let me ask you, do you want a
14 charge on an expert witness? James Armstrong.

15 MS. PAOLETTI: Dr. Fulcher?

16 THE COURT: Dr. Fulcher, do you want the charge?

17 MS. PAOLETTI: Yes, sir.

18 THE COURT: Do you want circumstantial evidence?

19 MS. PAOLETTI: Absolutely.

20 THE COURT: Okay. All right. Well, we'll bring
21 them in --

22 MR. CHAMBERS: I'm sorry, Your Honor, I didn't
23 mean to interrupt. I just wanted to say that -- I
24 want to do this procedurally. My understanding about
25 preserving things for appeal is I have to renew my

1 motion for directed verdict, so I'm doing that now.

2 THE COURT: Okay. Yeah, that's fine. Same
3 ruling.

4 Y'all need a minute or are you ready to go?

5 MS. PAOLETTI: State's ready.

6 MR. CHAMBERS: I'm ready, Your Honor.

7 MS. PAOLETTI: Your Honor, the State intends to
8 waive its opening on the law.

9 THE COURT: Okay.

10 (WHEREUPON, the jury came into open court at
11 approximately 9:43 a.m.)

12 THE COURT: All right, Mr. Foreman, ladies and
13 gentlemen of the jury, welcome back. I hope y'all
14 had a pleasant evening.

15 All right, Mr. Chambers.

16 MR. CHAMBERS: Your Honor, at this time, the
17 Defense rests.

18 THE COURT: Okay. Ladies and gentlemen, if you
19 remember in my opening comments to you, I divided the
20 trial into five parts. The first part was the
21 opening statements of the attorneys. The second part
22 is the presentation of the testimony and the
23 evidence. So, we have concluded the second part of
24 the trial. All of the testimony, all of the evidence
25 is now before you. And we're going to move now into

1 the closing arguments of these attorneys. So, I ask
2 you -- you've paid close attention so far, I ask you
3 to continue to do so to these closing arguments.

4 All right.

5 MR. CHAMBERS: May it please the Court?

6 THE COURT: Yes, sir.

7 CLOSING STATEMENT

8 MR. CHAMBERS: Solicitor. Ladies and gentlemen,
9 it has seemed like a long few days. I'm sure it
10 seems that way to you. I've seen all of you over
11 here paying very close attention, taking notes. And
12 it requires a lot of focus and I've seen that from
13 all of you.

14 At the outset, I want to say that regardless of
15 what led up to this shooting, who may have been
16 involved in this shooting, it is nothing short of
17 tragic. It's the kind of thing that we hear about
18 almost every single day now it seems. And the real
19 tragedy about this is Barry Norman is dead and it was
20 so avoidable. I mean, this whole thing started over
21 something that was relatively silly in a lot ways.
22 It could have been solved by simply calling the
23 police and filing a report instead of all this back
24 and forth over social media and over phones and texts
25 and all the things that led up to it. I mean, it

1 just should have never happened. And it's sad. A
2 young man lost his life. And I don't want anything
3 that I have said or done or that my client has said
4 or done as we've gone through this trial to diminish
5 that in any way. But this trial is about whether or
6 not Jacoby Gregory is responsible for the death of
7 Barry Norman. And our assertion has been and
8 continues to be that he was not. That he was not
9 present when Barry Norman was shot and that he didn't
10 have anything to do with Barry Norman being shot and
11 killed.

12 Now, there are certain things that we know in
13 this case. They seem to have been agreed upon by
14 everybody. They don't seem to be in dispute. We
15 know that there was a weekend party that went on for
16 several days at the Clarion Inn on Augusta Road in
17 Greenville. We know that all of these names, all of
18 these people that we've heard about were present for,
19 at least, part of the time when all this was going
20 on. We know that there was an altercation between
21 Stacy Sullivan, who everybody seems to refer to as
22 Smitty, and Barry Norman. It didn't seem to be
23 extraordinarily serious, but there was, at least,
24 some display of bad blood when the two of them. They
25 apparently hugged it out, made up and then they went

1 on partying, everything was okay.

2 We also know because it doesn't seem to be any
3 dispute by anybody, that following that Barry Norman
4 became upset because there was some chatter about
5 somebody having slept with somebody and, you know,
6 they were upset. For whatever reason, he drives over
7 on that fateful day, that Tuesday, October 1st, in --
8 I think he's driving his car and he has Stacy
9 Sullivan with him and one other girl with him. He
10 gets over there and there's -- there are some
11 differences, depending on who you talk to about
12 exactly how it transpired and what happened, but it
13 seems to be undisputed that Barry Norman at some
14 point knocked Tiajuana Davenport to the ground. It
15 seems to not be in dispute that she was significantly
16 pregnant, seven or eight months. Everybody seems to
17 agree that Stacy Sullivan was her baby daddy, as
18 everybody refers to him, and that he was very upset
19 by that. And that he, along with some other
20 individuals, then, essentially -- some people say
21 attacked Barry Norman, some people say just got Barry
22 Norman off of Tiajuana, but there was an altercation
23 and nobody disputes that.

24 We know that Shawndell Clemons actually took a
25 tire iron and knocked the windows out of Barry

1 Norman's car. And you can see that in the evidence
2 that was submitted to you by the solicitor. All of
3 that is agreed upon.

4 It's also agreed upon that Jacoby Gregory was
5 not present for either of those events. We know it's
6 agreed upon that there was no animosity displayed at
7 the party between Jacoby and Barry. We know that
8 Jacoby was not present when this incident with
9 Tiajuana Davenport happened. We also know that there
10 was this -- well, what, I guess, I refer to as the
11 fake driveby, where Barry Norman said I'm coming back
12 over there and, in fact, he went back over there in
13 his car. One witness said that it was clear that it
14 was a cell phone. Other people said that it appeared
15 like it was a gun. The clear intention seemed to be
16 make people believe that he had a gun to scare them.
17 We know that happened. We also know that Jacoby
18 Gregory was not present.

19 Now, we know from his own testimony and from
20 others that, like they seem to do -- and this seems
21 to be a continuing theme throughout this whole case.
22 This whole group of people that know each other and
23 are friends with each other are constantly, it seems,
24 in contact with each other. It would drive me crazy,
25 personally, if I were to get that much information

1 from people and that many contacts and stuff, but
2 that seems to be what they do. So, clearly, he knew
3 about what had happened when he got over there.

4 There were no witnesses that testified to you
5 that when he got there, he was particularly mad about
6 anything. He wanted to know what was going on. The
7 people that you continued to hear were upset, Stacy
8 Sullivan was described as being very upset because
9 this involved his baby momma. And, of course,
10 Shawndell Clemons, who was upset enough that he
11 knocked the windows out of Barry Norman's car. Which
12 brings us back to something that I was talking about
13 at the very outset of this case, and that is motive.

14 Now, the solicitor posited to you when she got
15 up and gave her opening statement that the motive was
16 you're not going to kill my little cousin. That he
17 was looking out for Shawndell. But the facts, as
18 you've heard them, sort of belie that contention.
19 You heard throughout this that -- and you even heard
20 this from Shawndell Clemons that Barry at all -- I
21 mean, Jacoby at all times talking to Barry seemed to
22 be the mediator. That he was trying to work this
23 thing out. That he was trying to get this thing
24 settled in the old-fashioned way, to get together and
25 fistfight. Other than Shawndell Clemons, you never

1 heard anything about him having a gun, wearing a gun,
2 a gun being present. You didn't hear that from
3 anybody other than Shawndell Clemons when he said
4 that he was wearing his gun on his hip. We'll talk a
5 lot more about that later. But of all the people out
6 there, Jacoby's the one who seemed to have no motive.
7 He wasn't involved in any of the altercations that
8 led up to this. And his phone conversations with
9 Barry throughout this time were trying to reconcile
10 this, to mediate it.

11 All right. So, as we also discussed at the
12 outset, the State has the burden of proof. His Honor
13 is going to charge you on that a little bit later. A
14 that proof is proof beyond a reasonable doubt. Proof
15 that leaves you firmly convinced. Another way of
16 saying that proof that leaves you definitely sure.
17 Proof that when you leave here, you will be
18 comfortable with that verdict and you will not have
19 any doubts about it. When you have doubts, folks,
20 that is reasonable doubt. If you're not convinced of
21 something, that is reasonable doubt. And reasonable
22 doubt has to go in favor of Jacoby Gregory because he
23 is the one that is accused.

24 Now, there are few things in life worst than
25 being falsely accused of something. And Jacoby has

1 maintained and we have maintained that he has been
2 falsely accused in this case. Now, just because a
3 false accusation has been made doesn't mean that the
4 person making it doesn't believe it. There is no
5 doubt in my mind that the Fountain Inn Police
6 Department and the solicitor believe that Jacoby
7 Gregory was involved in the killing of Barry Norman.
8 They believe it. The problem is, folks, that it is
9 not supported by the evidence in this case. There is
10 a lack of evidence in many areas. And there is
11 actually evidence in this case that I would argue to
12 you proves conclusively that Jacoby Gregory was not
13 involved.

14 Now, they had almost three years to get ready
15 for trial. They make a choice about who you're going
16 to hear from and what you are going to see. So, what
17 I want to do now is just review a little bit. And I
18 promise I'm going to try not to take too much of your
19 time because it's been a long week. But there is a
20 good bit for me to cover. And I want to go through
21 what they have presented to you in an effort to
22 overcome their burden of proof in this case.

23 The centerpiece of the case was Shawndell
24 Clemons. He was the last witness they put up. He
25 was the last piece of evidence that they wanted to

1 come to you. And Shawndell, as we've already
2 discussed, is someone who had a motive to shoot Barry
3 Norman. Shawndell, we know, is somebody that as he
4 comes in here to testify has pleaded guilty to
5 manslaughter, a reduced charge. And he told you that
6 he had not been sentenced. And the reason for
7 deferring sentence is he's got to come testify first.
8 You can logically conclude that how he testifies is
9 going to go a long way toward the sentence that he
10 ends up getting.

11 He also indicated to you that he had prepared
12 for trial by meeting with the solicitor. And that
13 among other things, they had reviewed the video
14 footage together. So, when he came in here and sat
15 down to testify, he had already very recently seen
16 all of that and knew what was going to be shown and
17 had discussed what his testimony would be. And he
18 knew that he was expected to testify against Jacoby
19 Gregory because his sentence had been deferred. So,
20 you can consider all of that.

21 And you can also consider that as he sat down
22 there to testify, you can consider this for
23 impeachment purposes, that he has been convicted in
24 the past two burglary charges and a grand larceny
25 charge. That is permitted for impeachment only, but

1 you can consider that.

2 As you've heard, he has given by this point,
3 including his testimony here in court, several
4 difference statements. Now, he fled almost
5 immediately and went to Syracuse, New York. You can
6 consider someone fleeing as evidence of their guilt.
7 Now, obviously, he's not on trial. He's pleaded
8 guilty. So, that's not really an issue for you here,
9 but consider the fact that he did run to Syracuse.
10 And while he's in Syracuse, it's easy to conclude
11 that he is, as we've already heard, in contact with
12 all of these folks. I mean, within 10 or 15 minutes,
13 people were getting texts and calls about Barry
14 having been shot. So, we know that there is a
15 tremendous flow of information that goes on around
16 these people. So, he goes to Syracuse and it is easy
17 to conclude that he was in touch with these people
18 during that entire time.

19 He eventually comes back to South Carolina. But
20 he only does so after Jacoby Gregory is arrested on
21 the third. And he did indicate to you not only did
22 he know Jacoby was arrested, but he indicated to you
23 that he had gotten some idea from somebody that
24 Jacoby had identified him as somebody that was
25 involved in this. So, these were all things that he

1 knows when he comes back.

2 Now, he contacted the police, you heard that,
3 and he said that he was going to come in and meet
4 with them, but he didn't. They had to send the U. S.
5 Marshals out to arrest him. When they arrested him,
6 they took him to take a statement from him. And he
7 told you that he began to talk to them. He didn't
8 have a lawyer. He thought he was going to have a
9 lawyer. He didn't have a lawyer. They let him make
10 a couple of phone calls, so he called his uncle. He
11 called his grandmother. And based on talking to
12 those people and everything, he decided to go ahead
13 and give a statement. Said he gave a statement, for
14 whatever reason, tore the first page up. Then he
15 ended up, folks, giving a four-to-five-page
16 statement.

17 Now, in his own words, he only told the half
18 truth. Half truth. He indicated in that initial
19 statement to the police, as you heard, that this was
20 somehow maybe self-defense. That they had gone there
21 and they had seen Barry Norman reach for what they
22 thought was a gun. And that's when he said Jacoby
23 shot him. He indicated and was very certain about it
24 that he didn't have a gun. That the only person who
25 had a gun was Jacoby. So, he gets arrested, he's

1 been arrested, he's given that statement, and then as
2 he testified, he goes on to jail. And as you heard,
3 even in jail, we've got jail phone calls. We've got
4 all kinds of communication and stuff going on.

5 At some point, significantly later, several
6 months later, after he's had an opportunity to look
7 at discovery material in this case, after he's had an
8 opportunity to talk with all the people that provide
9 information and do all these thing, he and his
10 lawyer, as you heard, go in and they meet with the
11 solicitor. And this time, he says that he did have a
12 gun, and he has a 9mm gun. And the reason that's
13 important is because by that point, he knows that
14 they had found 9mm shell casings, so he knows that
15 there was another gun there. So, he is now telling
16 them that he had that and he says that Jacoby gave it
17 to him. He says that when they pulled up at the
18 scene -- well, he says something different, but I'll
19 talk that in mint.

20 Even then, though, folks, he tells the police or
21 tells the solicitor, as you heard, that he dropped
22 that 9mm somewhere on his route. You remember when
23 he was talking about he was running and they went
24 through the field and they went through Holly Oak
25 Chemical and to the gas company and then he went up

1 the street and eventually got picked up, almost at
2 Bop's house based on his testimony, that he dropped
3 that 9mm somewhere along the way. That's what he
4 told the police. But then, folks, when he comes in
5 to testify yesterday, he tells you that he got in his
6 car with it and he drove somewhere like Bryson Road
7 or something, I don't remember exactly, and that he
8 disposed of the gun. At no point is he telling the
9 truth. At no point is he telling the whole truth.
10 In fact, he continues to tell what he refers to as
11 the half truth. It's true that he was there. But
12 can you rely on anything else that he has had to say
13 about that?

14 Now, a couple of things about when they get
15 there. First of all, let's talk about he says -- his
16 testimony yesterday, folks -- and you get to judge
17 the demeanor of witnesses when they testify and the
18 way that they answer questions and the way that they
19 go through it. It was clear that he was having
20 problems. It was clear that he was having a hard
21 time keeping things straight in his head. There's a
22 reason that almost every statement he's made has been
23 inconsistent. It's because he's lying.

24 You know, folks, if you're telling the truth,
25 you don't have to remember anything. It's the

1 easiest thing in the world to tell the truth. But
2 when you are trying to tell a lie, a lie that will
3 match up with something that you wanted to happen,
4 that's when you get all these inconsistencies. And
5 even on the stand he would contradict himself. It
6 happened over and over. There's no way in the world
7 that I can stand here and count to you every
8 inconsistency, every time that he contradicted
9 himself. You sat here, you paid attention, you took
10 notes, you know. And I leave that to you and to your
11 consideration.

12 But there are a few things that really stand
13 out. One is he says that they went with James
14 Williams. And that on the way -- and the reason they
15 were going is he said he wanted to get a Coke and a
16 snack. And his testimony is that on the way over
17 there, there's not a lot of discussion, listening to
18 music, and they get to the Exxon on North Main. And
19 the thing to keep in mind is all these places that we
20 hear about are all within a mile or so of each other.
21 This is not a huge area. This is a very confined
22 area where all these things are happening.

23 They get to the Exxon. And you've got to ask
24 yourself, do I believe this? Do I believe what he
25 told me when he testified yesterday? And there was

1 apparently no discussion going over there about doing
2 harm to anybody. He did say after I started
3 questioning him on it that Jacoby was wearing his gun
4 in his holster on his hip, the holster that he has
5 that is like a police officer's holster. But he
6 didn't say anything about a 9mm or any other gun. He
7 didn't anything about any discussion about what
8 anybody is going to do to Barry Norman.

9 There was discussion and I can't remember if it
10 was in the car or not, but there was certainly
11 discussion off and on about how they were going to
12 set up this fight and, eventually, there was going to
13 be a fight between Shawndell Clemons and Barry
14 Norman. There was that discussion, but there was
15 never any discussion of any kind according to anybody
16 that, and certainly Shawndell Clemons said, they were
17 going to shoot anybody. He says that while they're
18 at the store with James Williams, that Landis
19 Franklin and Smitty, Stacy Sullivan, show up there.

20 Now, there apparently had been talk earlier in
21 the evening that they were going to go to Club Cream.
22 But according to Shawndell Clemons yesterday, he
23 didn't call Landis, he didn't know of anybody else
24 that called Landis. Landis apparently just showed up
25 there. And with no real discussion of any kind, he

1 just gets in the car and Jacoby gets in the car. And
2 he didn't even seem to know where they might be
3 going. He just got -- instead of getting back in
4 James's car, he got in Landis's car. And according
5 to what he said yesterday, I thought we might be
6 going to Club Cream because we talked about it
7 earlier, but no discussion about where we were going.
8 He said I was just kind of trapped at that point. I
9 was going wherever he took me. And again, they're in
10 there and there's, according to him, no discussion,
11 no plan, no nothing to go do harm to Barry Norman or
12 anybody else.

13 According to him, this whole thing happened, it
14 was just sheer happenstance. There was no plan that
15 went into it according to him. He and Jacoby didn't
16 get together and say, you know, we need to figure out
17 where we're going to go, that he's going to be here.
18 We need to know how we're going to get away when it's
19 over. Here's what we're going to do. These are the
20 guns we're going to use. You know, no planning, no
21 discussion. He just gets in a car not knowing where
22 he's going to go and just happened to be that they
23 went down Woodside. And he said that they went down
24 Woodside past Third Street going towards Fourth
25 Street and, apparently, he says that Jacoby said, I

1 see Barry. So, apparently, they just, according to
2 him, told Barry -- or not Barry, but Landis to just
3 let them out. And they got out somewhere up past
4 Fourth Street where the Woodside Apartments are.
5 Again, this is not a -- this is a fairly small area
6 we're talking about.

7 So, they get out. And, apparently, for the
8 first time ever, he says that Jacoby hands him a gun.
9 Now, here's where he crossed himself up on stand and
10 it's important. He had testified earlier -- and,
11 folks, if you have any doubts about any of this --
12 and trust me, I'm not trying to prolong this anymore,
13 but this is important. We have a record over here.
14 We can go back and listen to testimony at any point
15 if that's what you need to do in your deliberations.

16 But early on when I asked -- before we even got
17 to the part about the store, I asked what Jacoby was
18 wearing. He described as he came straight from work
19 and he said that he had steel-toed work boot, that he
20 had on his blue cargo-type pants and that he had on a
21 blue work shirt. He specifically said work shirt.
22 And I'm saying again, if there's some discussion
23 about that, don't take my word for it, go back and
24 listen to the testimony. I don't remember exactly
25 when that came, but it was sometime before the trip

1 to the store. Now, when I started pushing on that,
2 he said, Well, he had on a white T-shirt. He didn't
3 have on his work shirt, he had on a white T-shirt.

4 The other thing that he said, though, which is
5 important is, earlier he had gotten Jacoby's black
6 hoodie and he had put it on. He says initially,
7 until he realizes it's a mistake when they get there,
8 that Jacoby reached into the hoodie pocket and took
9 out the 9mm. When I pointed out to him that he
10 was -- had said that he was wearing the hoodie, he
11 said oh, no, he took it out of his pants and gave it
12 to him. Because he got caught.

13 He then says that they start down the street and
14 that's when he said he saw this husky fellow point at
15 him. All right. He indicates that Jacoby has his
16 .45 and that Jacoby is walking on this narrow
17 sidewalk, which y'all saw in the crime scene footage.
18 He indicates that he, Shawndell Clemons, with the 9mm
19 is walking out in the middle of the street and
20 they're parallel with one another. And they're
21 walking down the street and the guy had pointed at
22 him. He said that Barry Norman had turned and was
23 walking toward them. If you will recall, I ask him
24 several questions about it. I wanted to make sure --
25 I wanted to be as specific as possible with him about

1 what he recollected. Sometimes even when you're
2 trying to put something -- to frame somebody, you
3 tell things that are true, things that you remember
4 from when you were there.

5 So, he's saying he's out in the middle of the
6 road when he has the 9mm. Barry is coming -- walking
7 toward, he says, Jacoby Gregory on the sidewalk.

8 And I said, Is he looking forward? Is he
9 looking at Jacoby?

10 Yes.

11 Are you certain about that?

12 Yes.

13 Here's why that's important, folks. And it is
14 really important. When Dr. Fulcher testified, the
15 man who did the autopsy, he said that Barry Norman
16 was killed by a projectile. We know that that
17 projectile came from a .45 caliber pistol. Number
18 one, that Shawndell Clemons says Jacoby had. We know
19 from Dr. Fulcher that the entry wound was on the left
20 of the forehead. And you can look at the picture,
21 they have the picture. It goes in right here, that's
22 what Dr. Fulcher pointed to. It goes slightly up and
23 to the right. Barry Norman is approximately six-two
24 based on the testimony that we've heard. Shawndell
25 Clemons is approximately five-seven based on what he

1 said. Shawndell Clemons is out in the road to the
2 left of Barry Norman. If what he tells you is true,
3 there is no way that whoever was on the sidewalk,
4 whether it was Jacoby Gregory or anybody else, could
5 have made that shot. It is impossible. Don't forget
6 that. It's impossible.

7 That shot came from the person standing in the
8 middle of the road. And Shawndell Clemons says he
9 was that person. Shawndell Clemons had that .45.
10 There is absolutely no question about it. It is
11 beyond dispute. It is beyond any reasonable
12 argument. And based on the coroner's report -- or
13 the medical examiner's report alone, you know that to
14 be true. You know it to be true.

15 He says that he heard the shots. And then he
16 says, I took the 9mm and I kind of shot into the
17 ground, then I shot again as I was running away.

18 Why does he say that for the first time?
19 Because he knows that they found 9mm shell casings.
20 But again, he says they were parallel to one another.
21 When you look, you will hear that the 9mm shell
22 casings were found behind the 45mm shell casings.
23 That's just how it is. That's what happened. But he
24 had to say that because he knew that's what the
25 evidence in the case was. So, when he came in to

1 testify, that's what he did.

2 He then says that they took off running. And he
3 says he was ahead of Jacoby Gregory. He said Jacoby,
4 who, apparently, had some idea in his mind that he
5 was going to go shoot somebody because he had shown
6 up not only with a .45, but a 9mm, also, had two
7 phones clipped on his belt and keys on his belt.
8 That's a lot. But that's what he said happened. He
9 said they took off running. And he said they started
10 through that field.

11 Now, he indicated -- and I talked about the
12 shirts a little bit. He indicated and was pretty
13 clear that he had on a black hoodie and the black
14 hoodie was Jacoby's. I talked to him about when he
15 talked to the police and he said that he may have
16 said that there was a red hoodie that Jacoby was
17 wearing. He initially -- you heard him, he even said
18 he had on a blue work shirt. Then he said when they
19 were running away, that's when he said he had a white
20 T-shirt. Again, he has to say that because he knows
21 because he's watched the video footage that the other
22 person that was there was wearing, what appears to be
23 anyway, a white T-shirt. It's in black and white, so
24 all we know is it's a light-colored shirt. It could
25 have been some other shade. In fact, it could have

1 been an orange shirt. You can't tell.

2 So, they say they start to run through the field
3 and that -- and by the way, as far as that 9mm goes,
4 he says he even knows where Jacoby got it, that it
5 belonged to somebody named what they call Hood and
6 that's a guy named Jerell. You know, but nobody else
7 seems to know anything about him having gone to this
8 guy Jerell and having secured a 9mm. That's what
9 Shawndell says. Could be that Shawndell got it from
10 Jerell.

11 He testifies about them running through that
12 field. He says he's running ahead. And something
13 really significant about what he says is this, he
14 said that Jacoby yells at him and says, I'm about to
15 drop something.

16 So, he says he then turns around -- and
17 remember, he's ahead of Jacoby. He says he turns
18 around and runs back to Jacoby. And that's when, of
19 all the things that Jacoby could have handed him, he
20 hands him the .45. His gun. He didn't take the gun
21 and put it in his secure holster that he was supposed
22 to be wearing. He didn't hand him anything else that
23 might have been slowing him down. All the things he
24 could hand him, he hands him his .45. You've got to
25 ask yourself, does that make sense to you? Is that

1 something that somebody would do?

2 But more importantly than that, I want you to
3 think about Mr. Yatzeck, the neighbor out there. The
4 one that came out -- and if you see the picture, you
5 know it's a daytime picture. And you see the
6 picture, I mean, he has a clear shot of that field.
7 And he said he clearly saw -- he couldn't make out
8 who it was, but he said he saw two males running
9 through the field. He said one of them was wearing a
10 black hoodie. He said one of them was wearing an
11 orangish shirt. He was certain of that. He said he
12 could see an orangish shirt. He also said that he
13 saw one person running ahead and that person
14 continued to run. But he said he saw the person
15 lagging behind drop something and that person turned
16 around and went back and picked it up.

17 Folks, Mr. Yatzeck's got no reason to lie in
18 this case. No reason at all. He saw what he saw.
19 But Shawndell Clemons has reason to lie because he
20 has to explain somehow how he ended up with the
21 murder weapon, which he says Jacoby Gregory used to
22 kill Barry Norman. And so, that is the explanation
23 that he comes up with. Because, remember, he didn't
24 come back. It was like nine or 10 days later after
25 this happened before they got any kind of statement

1 from him. If you remember, Jacoby came in -- after
2 having called a couple of times, came in on the third
3 and gave a statement and was arrested. He
4 surrendered himself.

5 He then testifies that he -- after getting the
6 gun, he continues to run ahead. And, of course, we
7 can see them on the video. We can see them on the
8 video as they go through Holly Oak Chemical. We had
9 the one witness who said that he saw them running --
10 I mean, first heard the shots. I mean, he -- or when
11 he saw people coming at him after hearing those
12 shots, he ran back to take cover. I don't blame him.
13 But he saw those people running through. And then
14 that's what you see on the video. Okay.

15 And there's some things that are really
16 important about that video. First of all, I want you
17 to look is the times. The times are all over the
18 place. One of them, if I remember correctly, says
19 19:37. One of them says, like, 21:36. Another other
20 one says 10:53 p.m. None of these times are in sync.
21 We've heard a lot of discussion about times and see a
22 lot of different times. The bottom line is none of
23 these times that anybody has presented to you are in
24 any way reliable. And I don't even know that it
25 matters, but I throw that out there for you.

1 But here's what does matter. The man that was
2 there, Mr. Firpo, said that the person in the lead
3 had a gun in his hand. He saw that he had a gun in
4 his hand. I mean, you can see on the video as
5 Shawndell, he identified himself, in the black hoodie
6 when he first comes into view, he's wearing the black
7 hoodie, all right. Now, you can look, I don't know
8 that as he gets up there where he's going to take off
9 the sweatshirt that he has the .45 in his hand, okay.
10 We know that he takes off the sweatshirt. You can
11 watch him do it. He pulls the sweatshirt up with
12 both hands, then he throws it over. There is no way,
13 folks -- and this is the reason I was asking
14 questions about it on the stand. There's no way that
15 he could have taken that sweatshirt off while holding
16 the .45, which is what he said he did.

17 First, he said, Well, maybe I stuck it in my
18 pants. But the last thing he said was, I was holding
19 it and that's what I did.

20 He could not do that. He had it -- he had stuck
21 it down in his pants.

22 Here's why that's important. First of all, it
23 shows he's not telling the truth. But secondly, he
24 walks, not runs, you can see it on the video, over by
25 the fence and he kneels down. He doesn't throw it

1 like he did the sweatshirt. Even through he's on the
2 run, he kneels down. You can't quite see what he's
3 doing, but he kneels down very carefully. So, what
4 he's doing? I think it's reasonable to conclude that
5 he was taking that T-shirt that he was wearing, wads
6 the gun up and he lays it down. You can look at the
7 picture, that gun was just laying there. He didn't
8 throw it. He put it there.

9 Now, he also says he had the 9mm in his pants.
10 And watch him run on that video. Even if he had
11 tight pants, he said, I mean, he's moving. But why
12 would you dispose of one gun and not the other?
13 Well, one reason is it's Jacoby Gregory's gun.
14 You're not worried. You wiped it off. You put it
15 down. His -- Jacoby's sweatshirt's out there, that
16 .45's out there. The 9mm, he apparently keeps, the
17 one that he never told anybody about until months and
18 months and months later. And even then, didn't tell
19 the full truth.

20 But here's the other thing that's really
21 important about that video. I wanted to play it for
22 you, but I decided that I'd just let you watch it on
23 your own when you went back to deliberate. But you
24 see the other person come into view, and that person
25 is on the telephone. The only telephone call that we

1 know for sure that gets made, because we can see it,
2 is the person who is walking and has the phone.

3 Now, this is another one of those incidents
4 where I will tell you there is conclusive evidence
5 that has been presented to you to show you that
6 Jacoby Gregory was not that second person. We know
7 Jacoby came straight from work. We have heard
8 testimony from Shawndell Clemons and Jacoby Gregory
9 that he was wearing his work clothes. Now, at one
10 point, Shawndell said he had on his blue work shirt,
11 but then later, he said he had on a white T-shirt.
12 But he agreed that Jacoby was wearing his black
13 steel-toed work boots. The person you see on the
14 telephone is, first of all, wearing a big, baggy
15 T-shirt. It's one of these T-shirts that I see these
16 young men wearing around town all the time. It looks
17 almost like a dress. It is not a T-shirt that
18 anybody who was working, welding and painting steel
19 would have been wearing. It would be unsafe. You
20 would not be allowed to wear it. So, even if he took
21 off his work shirt that he was wearing when he got
22 over to Bop's house, he wouldn't be wearing some big,
23 blousy white shirt.

24 Even more importantly, folks, and I swear to you
25 I want you to look at this because it is conclusive

1 evidence that he wasn't there. The person in that
2 video was wearing white tennis shoes. It's black and
3 white, but you can tell it's not black work boots.
4 Those white tennis shoes almost shine. Folks, that
5 is not Jacoby Gregory. It was not. The other person
6 we know from Mr. Yatzeck was wearing an orange
7 T-shirt. Do you think he's wear an orange T-shirt to
8 work? The person in that video had on a blousy
9 T-shirt. Do you think he's wearing that to work?
10 The person in that video had white tennis shoes. He
11 certainly wasn't wearing tennis shoes. We know it
12 wasn't him.

13 The other thing is it would take an idiot to
14 have given the .45 to somebody else. And whoever was
15 there, I mean, I know they were a good distance
16 behind, but, surely, he saw what he was doing. He
17 wouldn't just leave the scene. They weren't worried
18 about it because it wasn't their gun. They didn't
19 care. It wasn't their sweatshirt. They didn't care.
20 So, that's the centerpiece, folks, of their case is
21 Shawndell Clemons: So, you've got to then -- if you
22 want to build a solid case, and I would hope that
23 you'd want to build a solid case when you have
24 accused somebody of murder. Then you have to bring
25 in corroborating evidence.

1 You heard from Joshua Kilgore. And he,
2 basically, confirmed things that we already knew. I
3 mean, he didn't know Shawndell. He didn't know
4 Jacoby. And he, basically, told you and -- told you
5 about the scene and what was going on. You heard
6 from Mr. Yatzeck, I've already talked about that. I
7 mean, he's an independent witness in this case. He's
8 just a citizen who came forward and told what he saw.
9 You can certainly rely on what he had to say about
10 what happened in this case. The same thing with
11 Robert Firpo. I mean, he told you which he saw. He
12 certainly has no motive to make anything up in this
13 case.

14 So, that brings us, I guess, to the police
15 investigation, all right. And this is important.
16 This is a murder, all right. They've come out there.
17 These people are trained to do this. So, you hope
18 that they're going to start and they're going to hit
19 the ground running and they're going to do thorough
20 investigation. Folks, this investigation was
21 anything but thorough. This investigation at some
22 point simply became a rush to judgment against Jacoby
23 Gregory.

24 The first officer who arrived out on the scene
25 was Officer Barnes. Now, listen, she's working. She

1 gets a call. She's the closest one there, she
2 responds. She was followed a little bit later by
3 Officer Snelgrove, who we did not hear from in this
4 case. And she gets there and she said there are ,
5 multiple individuals there, a dozen or so, at least.
6 And she obviously has some concern about her own
7 satisfy and she's just trying to maintain until some
8 other people get there. No complaints at all about
9 that. And, frankly, there's no complaints about
10 anything that she did. She did what she was told.

11 One of the things that she was told -- because
12 you heard that Detective Peden, who was the lead
13 investigator in this case, he got there within 10
14 minutes. He was then in charge. And they didn't
15 order any kind of -- he didn't order any kind of a
16 sweep through the neighborhood to go around and talk
17 to various people, didn't think that was necessary.
18 But, apparently, he did have Officer Barnes get names
19 and all contact information from the people that were
20 there. As you heard, I went through each one of them
21 with her, I went through each one of them with
22 Detective Peden. She got -- it was, at least, a
23 dozen names. She didn't follow up with any of them.
24 Detective Peden or other people, apparently, followed
25 through with a couple of them, that's about it.

1 Now, Detective Peden gets there 10 minutes
2 later, now he's in charge. They secure the scene,
3 which, basically, what they secured was Third Street
4 and Fourth Street, not anything beyond that. Not the
5 field across the street, not Holly Oak Chemical, none
6 of that. And they didn't contain anybody there,
7 those people that were there.

8 Now, there's one person that keeps kind of
9 standing out. They talked to a guy from Pike
10 Electric. The guy from Pike Electric said that he
11 saw a young man -- he said he heard shots,
12 immediately comes down off the pole that he's working
13 on. And as he does -- and again, where he is is very
14 close to where all this happens. He sees a young man
15 wearing dark pants and a white T-shirt. You heard
16 that testimony. Detective Peden said that person was
17 later identified as Shamar Luster. Guess what? That
18 fits the description that was given by Shawndell
19 Clemons, white T-shirt, dark pants. He, you've heard
20 testimony, was not known to be friends with Barry
21 Norman or any of those people over there. In fact,
22 he was said to have been involved in the altercation
23 or, at least, was there at the altercation that
24 occurred at Bop's house over on Bates Street. And
25 there he is. That was also one of the 12 names that

1 Officer Barnes took.

2 Folks, nobody followed up with Shamar Luster.
3 To this day, we don't know why Shamar Luster was
4 there. We don't know why he was there immediately
5 after these shots were fired. We don't know why he
6 was still on the scene when the police got there.
7 And we certainly don't know why anybody never thought
8 it was important enough to go talk to him. In fact,
9 why would you not talk to all of these people? Can
10 you have too much information in a case like this?
11 Is that even possible? Would you not want to talk to
12 everybody to find out exactly what happened? They
13 didn't do that. Once they arrested Jacoby Gregory on
14 October 3rd, they honestly had made up their minds
15 that they really weren't going to do anymore.

16 You heard that Mr. Kretschmar, Officer
17 Kretschmar from forensics came out there and was
18 directed to go around and collect evidence. The
19 evidence that he collected had, for the most part,
20 already been marked with those styrofoam cups that
21 you can see. Seven spent cartridges and a cell
22 phone. The cell phone that we found out was Barry
23 Norman's girlfriend's cell phone. And he knew about
24 them locating the gun and the sweatshirt, although he
25 didn't pick those up. Those were found by Chief

1 Morton, the Chief of Police at Fountain Inn Police
2 Department, someone whom you did not hear from. They
3 did not call him as a witness. Okay. He --
4 Kretschmar took DNA swabs all over the place. They
5 took DNA swabs on the .45, they took DNA swabs on the
6 clip that goes in the gun. They took DNA swabs on
7 everything.

8 But then, because they had arrested Jacoby
9 Gregory and they had decided who their shooter was,
10 Detective Peden, the lead investigator, said, I
11 didn't see any need to have it tested. I didn't have
12 it tested.

13 You know the only reason that anybody in this
14 case knows who that gun belonged to is because Jacoby
15 Gregory said that he had a gun like that. And Jacoby
16 testified yesterday that it was his gun. But you
17 know what folks, I mean, we still don't know that
18 conclusively. You heard James Armstrong say that
19 when he ran those tests on ballistics he could not
20 say conclusively that the shells were in that gun --
21 or the shells and cartridges they found came out of
22 that gun. They didn't do a check to see who had sold
23 or bought that gun. They didn't do anything at all
24 to try to trace it. Once they got the phone call
25 about the gun being lost or stolen, they decided

1 that Jacoby Gregory was the killer. And that's all
2 they needed. So, he didn't do any DNA.

3 And I guess the argument is, as he seemed to
4 say, that that wouldn't be important. But wouldn't
5 it be important to know if anybody else had been in
6 possession of that gun other than Jacoby? Frankly,
7 wouldn't it have been important to be able to say
8 conclusively his DNA and only his DNA were on the
9 gun? I don't know. They didn't dust for
10 fingerprints because they said had they done that,
11 that might have damaged their ability to test it for
12 DNA. But we will never know.

13 We know that the only car that they seemed
14 interested in looking for evidence in -- and again,
15 this is Detective Peden making this decision, was
16 Jacoby's. They got his keys, they got a search
17 warrant and they went through his car. And they
18 didn't find anything. They didn't think it was
19 important to look at Landis Franklin's car. They
20 didn't think it was important to look at Shawndell
21 Clemons's car. Could they not have found evidence in
22 those? They didn't check for gunshot residue in any
23 of those cars. Now, I'll give them the benefit of
24 the doubt on that, it doesn't last very long, but, at
25 least, you want to try. More importantly, do you

1 find DNA? What if you look in Landis Franklin's car
2 and you find Jacoby's DNA somewhere in the back seat?
3 I don't know. I mean, maybe they don't amount to
4 something. And I'm sure the solicitor is telling you
5 I'm just trying to put red herrings out there for you
6 to take a look at, but this is a murder
7 investigation. Why would you not do those things?
8 And, honestly, why would you not go back out to the
9 scene the next day when it was daylight -- I mean,
10 you saw how dark it was out there -- and look around
11 to see if there was anything else you could find?
12 They didn't do any of that. They didn't do any of
13 that.

14 Jacoby did take the stand and testify, folks.
15 He didn't have to. His Honor told you at the
16 beginning, we don't have to present anything. You
17 know, the burden of proof is squarely on them. But
18 he took the stand and he testified for a long time.
19 And it was probably more of a narrative than I would
20 typically have in a case, but, you know, he was
21 telling you as he remembered things. You can judge
22 whether or not -- what you thought about his demeanor
23 and those things. But here's the thing, he didn't
24 have to do it. And he knew when he did that, he was
25 subjecting himself to cross-examination from the

1 solicitor. She had the opportunity once he got up
2 there to ask him any questions that she wanted. But
3 she didn't ask a lot of questions.

4 She asked -- first of all, she said something to
5 him about having written a lot of letters. He wrote
6 a lot of letter to me. He wrote a lot of letters to
7 everybody else.

8 He said, Yes, I did.

9 Well, folks, he's sitting in jail accused of
10 something that he didn't do. Put yourself in that
11 position. You're going to want to scream to anybody
12 that will listen to you that you didn't do anything.
13 I mean, you heard those phone calls with Landis
14 Franklin. They want you to believe that he was
15 threatening Landis Franklin, that he didn't want
16 Franklin to come testify, but through all of those
17 conversations, Jacoby is never at any point says he
18 did anything wrong. In fact, says many times that he
19 didn't. He didn't do it. He made statements
20 repeatedly that he didn't shoot anybody, he didn't do
21 anything.

22 I mean, the only thing he said to him relative
23 to coming to court was, You might get charged, too.

24 Landis Franklin was the one driving the car.
25 The fact that they haven't been able to find Landis

1 Franklin cannot be related to Jacoby Gregory. Jacoby
2 Gregory has been in jail. The fact that any other
3 witness was -- did not want to come here and testify
4 cannot be related to Jacoby Gregory. Jacoby Gregory
5 was in jail. Now, granted he got to make phone
6 calls, but guess what? They get to listen to and use
7 every phone calls he makes if they want to. You know
8 from the testimony that you heard that Shawndell
9 Clemons had also been calling Landis Franklin.
10 Landis said so in the conversations.

11 But at any rate, she asked him about the
12 letters.

13 He said, Yeah, I wrote all those letters.

14 She asked him something along the lines of
15 you've got a bad feeling with the Fountain Inn Police
16 Department?

17 Yes, I do.. You know, they accused me of doing
18 something I didn't do. I have a very bad feeling
19 with them.

20 And we know that he gave a statement, came in
21 voluntarily and gave a statement. The one and only
22 thing she asked him about that statement was, In your
23 statement, you don't say anything about the party at
24 the Clarion.

25 And he said, you know, they didn't ask me about

1 that.

2 That wasn't in his statement. Folks, that's not
3 an inconsistency. I mean, first of all, that's
4 something that everybody agrees on. But what they
5 presumably were asking him about what happened that
6 day. And he told them. I mean, if that's the only
7 thing they've got to trip him up with with his
8 statement, then he's in pretty good shape.

9 Now, you are about to go back and deliberate.
10 You are the finders of fact. You know that the
11 burden of proof that you've got to hold them to is
12 proof beyond a reasonable doubt. I trust that you're
13 going to do that, that you will not render a verdict
14 that is not supported by the evidence in this case.

15 As you go back there, I just want to briefly
16 say -- briefly recall, think about all the
17 inconsistencies in their star witness's testimony,
18 Shawndell Clemons. Think about that. Think about
19 the various witnesses, particularly police witnesses,
20 who were not called. You've heard about Scott
21 Hawkins, who was one of the main investigators in
22 this case. Not called. We heard about Chief Keith
23 Morton, who found the gun, involved in this case,
24 chief of police. Not called. The only detective we
25 heard from was Detective Peden. And I'll leave you

1 to judge that investigation. Was it complete? Was
2 it thorough?

3 I also want you to recall the white shoes, the
4 baggy shirt that you see. It's proof conclusively
5 that he was not the person on that video. I want you
6 to recall the angel of that shot. It's proof
7 conclusively that he wasn't there. And finally, when
8 you look at this map that they put into evidence --
9 first of all, I'm not going to concede that, you
10 know, there's any accuracy in it because, as you've
11 heard, the person that introduced it simply operates
12 a computer program. Feeds data into it, gets a
13 report out. There are times and locations on here.
14 You've already heard the times are all over the
15 place.

16 But let's assume for the sake of argument -- and
17 the other thing is, these are approximations. All
18 this stuff happens in very close proximity. But
19 let's assume just for the sake of argument that this
20 is completely accurate. What you will see when you
21 look at this map is that -- and this is actually not
22 the one that's in evidence. It's just my copy, but
23 it's exactly the same -- that right over here is
24 Holly Oak Chemical. There is no call made on that
25 map from Holly Oak Chemical. So, the person that we

1 saw with the white shoes and the big floppy T-shirt
2 talking on the phone is not Jacoby Gregory.

3 Folks, we've reviewed all the evidence in this
4 case. As I said, you're going to go back there and
5 make your decision. You have to ask yourselves, am I
6 firmly convinced that Jacoby Gregory is guilty? And
7 you have to make that decision based on the evidence
8 in this case and nothing else.

9 Now, I'm going to have to go over there and sit
10 down. I say this every time, it's the hardest thing
11 I ever have to do. Because the solicitor because she
12 has the burden of proof -- remember, she got to go
13 first, she also gets to go last. And she's going to
14 say a lot of stuff that I don't agree with and I
15 don't get to stand up and respond because she's got
16 the burden of proof. Those things that I talked to
17 you about, these inconsistencies and those other
18 things that were conclusive evidence that Jacoby
19 Gregory is innocent -- and remember, Jacoby doesn't
20 have to prove anything. There's nothing that she can
21 say that can change those. The record is the record.
22 The evidence is in. You can watch the video. You
23 can listen to the transcripts. You can do whatever
24 you want to do. The one thing that gives me solace
25 as I'm going over to sit down knowing that I have to

1 listen to her give her argument is that I know that
2 my client's fate is in good hands. Because I know
3 that you people took your oath seriously and I know
4 because I've watched you that you are going to
5 consider things openly and honestly.

6 And the last thing I want to say is this, he did
7 use a lot of profanity yesterday and the more he
8 thought about it, it might have been offensive. He
9 was simply trying to recount things the way they
10 happened. He wanted me to be sure to tell the
11 members of the jury that he was very sorry.

12 Thank you, ladies and gentlemen. I appreciate
13 your patience in this case, appreciate your being
14 here. I look forward to your verdict. The proper
15 verdict in this case, I would submit to you, is not
16 guilty. They have not proven their case. Thank you
17 very much.

18 THE COURT: Yes, ma'am.

19 CLOSING STATEMENT

20 MS. PAOLETTI: Thank you, Your Honor, may it
21 please the Court?

22 Mr. Chambers.

23 But what it is is, Vegas, when I first went to
24 jail, Vegas send me a text message and said please
25 don't --

1 MR. CHAMBERS: Objection, Your Honor. This is
2 not a document or anything that was in evidence.

3 MS. PAOLETTI: Your Honor, this is a transcript
4 of the call that's placed in evidence.

5 THE COURT: It's demonstrative. I'm going to
6 allow it. Go ahead.

7 MS. PAOLETTI: And if there is any part of what
8 is written down that you recall differently, we'll
9 play the phone call from the Defendant to make sure
10 that what I'm representing is accurate. We can
11 certainly do that.

12 What it was, like, the whole plan. I'm going to
13 keep this shit one thousand. The whole plan that if
14 I went down first, I was supposed to tell them, I was
15 supposed to throw one of all, Landis. If he went
16 down first, he was supposed to throw one of all.
17 That was the whole plan. Period, point, blank. It
18 was never to throw me. But as far as Smitty, I
19 didn't have no problem with Smitty. They saying I
20 didn't -- I didn't include Smitty's name in none of
21 my shit. Smitty included my name. Smitty wasn't
22 there. Smitty don't know what happened.

23 That's the plan. And the plan is in motion as
24 we're sitting here. And the only question left to
25 answer is, is it going to work? Plan hit a road bump

1 when Shawndell Clemons had sense to talk to his
2 family and heed their advise to tell the truth. And
3 the plan needs to come to an end.

4 Let me say something before I start talking to
5 you about the evidence in this case that proves the
6 Defendant's guilt beyond a reasonable doubt. What
7 Barry Norman did to Tiajuana Davenport was
8 inexcusable. And like Mr. Chambers, I sometimes
9 think what would have happened if somebody had just
10 called the police when that happened. We wouldn't be
11 here. But they didn't and we're all here because,
12 regardless of what he did, we still have the rule of
13 law in this country. While no one would fault
14 Shawndell Clemons or Landis Franklin or Smitty from
15 doing what they did to defend her in any way
16 necessary what unfolded cannot be accepted in an
17 orderly society.

18 Let me take one minute just to address a couple
19 of arguments that the Defense has made to you.
20 Mr. Chambers is a very skilled defense attorney and
21 every time we come in here, he throws everything he
22 has at it. And a lot of his arguments are
23 interesting, but the problem is that his client's own
24 testimony has really handicapped him in this case.
25 And if you'll think about the Defendant's own words,

1 these theories that Landis or Shamar or Smitty or
2 someone else was with Shawndell are completely
3 contradicted by the Defendant's testimony and his
4 phone calls. So, if you want to clear up anything
5 with testimony, I would strongly urge you to listen
6 to what he had to say first.

7 And it occurred to me when Mr. Chambers was
8 speaking to you that his own attorney has asked you
9 not to believe some of the things that he said when
10 he said that that gun was his. His own lawyer said
11 you shouldn't believe it.

12 I want to talk a little bit about the decisions
13 that were made during this investigation. Like
14 Detective Peden told you, there's always more that
15 you can do in a case when you get to look back at the
16 way an investigation unfolded. But what they have to
17 do is make decisions that are based on the evidence
18 that they have at the time, the time and resources
19 that they have as these investigations unfold. They
20 have to use their best judgment and use their
21 discretion.

22 And understanding that -- and this is something
23 I did not have a full appreciation for before I
24 started on this case because most of my cases come
25 from Greenville County, Greenville city. Did you

1 hear how many police officers are on the road in
2 Fountain Inn at night sometimes? Three. Could you
3 imagine what would happen here in Greenville County
4 if we had three officers on the road? Or detective
5 who were working every single kind of investigation?
6 That's what they do.

7 And let me assure you of this, had Fountain Inn
8 Police done every single thing that the defense wants
9 them to have done, we would still be here. If the
10 Defendant's DNA had been found on that gun, we would
11 still be here. If the Defendant's DNA had not been
12 found on that gun, we would still be here. If
13 Shawndell Clemons's DNA had been found on that gun,
14 we would still be here. The Defendant would have an
15 explanation for any part of the investigation that
16 the Defense would have them do in retrospect.

17 Regarding what the Defendant was wearing that
18 night, again, I take you back to the Defendant's
19 words.

20 Text message to Taylor Bovain. I got to find
21 out what they said. I hope they didn't say what I
22 was wearing.

23 If he was not there, why in the world would he
24 care? And I will be frank with you about the
25 Defendant's testimony about what happened after he

1 left work and when he said all this flurry of
2 activity happened when he said he heard the shooting,
3 I would encourage you to go back and listen to what
4 he said about what opportunity he may have had to
5 change his clothes after work. Let me say this,
6 also, the Defense took some real good reviews when
7 recounting to you what some of these witnesses said.
8 The way that I recall Shawndell Clemons's testimony
9 is about what the Defendant would normally wear to
10 work. He did not testify that on that night, he saw
11 the Defendant in his work clothes. But again, I
12 would encourage you to go listen to what the
13 Defendant had to say about what he did after he left
14 work. Because, frankly, it was hard for me to keep
15 it straight.

16 Finally, the location of the victim's wound to
17 the head. There is no evidence that the first shot
18 fired from that .45 caliber is the one that struck
19 the Defendant [sic] in the side of the head. The
20 evidence is that that .45 was fired four times. And
21 I don't like to show these photographs and I'm not
22 going to project it, but you can look at this
23 photograph from State's Exhibit 40 and see the
24 location of that bullet wound. It's on the left-hand
25 side. It's not up here. It's up by the victim's

1 ear. And had he been facing the Defendant head on
2 when the first shot was fired, that's not where you
3 would expect the wound to be. But if from out of the
4 dark down towards Fourth Street shots start ringing
5 off from this direction and the Defendant goes
6 towards his cousin's house to take cover, would you
7 expect a bullet here? I think you would.

8 The location of the shell casings. The
9 testimony from Shawndell Clemons, who was there, was
10 that the Defendant started firing first and that he
11 was firing into the ground as he was trying to run
12 away. And that is the explanation for where the
13 location of the shell casings are. I also encourage
14 you not to believe that the weapons were being held
15 like this, but possibly like this when they were
16 being fired.

17 So, let's talk about the direct evidence that
18 this Defendant murdered Barry Norman. His gun was
19 used to kill Barry. In his own words, he described
20 to Fountain Inn Police the stolen gun being a very
21 rare weapon. And he wants you to believe that the
22 gun had been stolen. And I'll be honest with you,
23 I'm not sure which story about how the weapon got
24 stolen the Defendant is going with here at trial.
25 Again, I would redirect you to his testimony. The

1 best I could understand is that he said Vegas stole
2 it out of his car on September 30th when they were
3 drinking vodka in the car. But then it was stolen
4 from the hotel. Then -- it's difficult to follow.
5 Again, I direct you back to what he had to say about
6 that.

7 He assures Lieutenant Nelson that he's not
8 worried about it because he has other pistols. But
9 then yesterday, he told you that when he texted his
10 child's mother that he had grabbed the other one, he
11 was lying to her because he didn't like people to
12 know that he was going around unarmed. His child's
13 mother. He was concerned about her knowing that he
14 was unarmed. He wants you to think he didn't care
15 about it being stolen, a \$650, according to James
16 Armstrong, very rare gun that uses expensive
17 ammunition.

18 And I still don't -- I'm still not completely
19 sure about what the Defendant's position is on where
20 his .45 went, but we have a .45 caliber pistol, a
21 Springfield XD-45 gap. The bullet taken from Barry
22 Norman's skull is a .45 caliber bullet. And James
23 Armstrong told you that that gun cannot be ruled out
24 as the weapon that fired the bullet from the victim's
25 head. And the shell casings that we, fortunately

1 have, Shawndell Clemons told you it was the
2 Defendant's gun.

3 And his telephone activity places him where the
4 shooting happened and when it happened. And what
5 Mr. Chambers wants you to conclude from the cell
6 phone map that's been placed into evidence is that
7 these points here on the map are the phone calls.
8 And both the Verizon Wireless representative and
9 Sergeant Kelly were very clear to point out this is
10 not phone calls, okay. That -- maybe when I first
11 had a cell phone, that's all you could do on cell
12 phones, but what we know now is that cell phones are
13 constantly sending information. Constantly. This is
14 cell phone activity, not just phone calls. And yes,
15 Holly Oak Chemical, right here about the back of
16 Holly Oak Chemical, where Shawndell says that Landis
17 picked them up, cell activity, 22:53 10:53 p.m.

18 10:48. Do you remember the pangs that the
19 Defense took to establish with Officer Barnes about
20 the estimated time of the incident based on the 911
21 call and pinned her down on her report what time the
22 incident had occurred? 22:48. That's what's on your
23 report? Yes, sir, 22:48. And here's the Defendant,
24 22:48:10 by Third Street. 22:48:25 by Fourth Street.
25 22:53 by Third and Wall Street. And even at 22:59,

1 when all this time, he wants you to believe he was at
2 home, he's still not home. I encourage you to look
3 at this map when you get back there. The Defendant
4 told you or Shawndell Clemons told you that he lived
5 at Boyd Street. Both of them told you they lived at
6 Boyd Street. And that's on this map. All the way
7 over here.

8 Let's talk about the record of the actual phone
9 calls that we do have. Y'all are going to have this
10 back in the back here. And I wish there was an
11 easier way to present this to you. And maybe some of
12 you have seen these before and, thankfully, we have
13 an explantation for them on the front so you can go
14 through and locate these phone calls. Between
15 4:00 p.m. and 11:39, which was the last time that
16 this Defendant was on the phone with Barry Norman,
17 you will count 26 phone calls from this Defendant to
18 Barry Norman. Then after 11:39, right before the
19 shooting, zero phone calls from this Defendant to
20 Barry Norman. And, obviously, zero phone calls from
21 Barry Norman to this Defendant. Then the very next
22 phone call, the very next phone call after the last
23 call to Barry Norman, Landis Franklin for a ride.

24 All right, let's talk about Shawndell Clemons
25 now and why you should believe him. Again, I would

1 encourage you to recall his testimony based on your
2 memory and not the Defense's characterization of what
3 he said. Regardless of what details he initially
4 withheld -- and let me just go ahead and say this.
5 Yeah, he did not tell us that he had the 9mm and that
6 he fired it, but we knew that. We didn't need for
7 him to tell us that after he put himself there at the
8 scene. We knew that we had two guns. So, this was
9 not earthshattering information for him to come
10 forward and tell us that, Oh, I did have the 9mm and
11 I fired it.

12 But what his statement is and what he has done
13 and he -- he's pled guilty. He is looking at up to
14 30 years in jail. And what -- he confessed to his
15 role in the murder. And in life and in the law, when
16 somebody confesses to something, we give that a high
17 degree of reliability because why would somebody lie
18 and incriminate themselves? It does not make sense.
19 You don't lie and put themselves in a spot to go to
20 jail for 30 years.

21 He also told police who had the .45 not knowing
22 that that was the gun that killed the victim. He
23 really wanted to point that out to y'all. And this
24 is why that's important. Whether or not he told us
25 from the beginning he had a 9mm, we knew that. And

1 so, if it had been the 9mm pistol that had killed the
2 victim, it was in his hands. And he did not know
3 that when he told the police who was firing that .45.
4 And he actually tells police that he thinks the
5 Defendant started shooting because Mr. Wright raised
6 his arm. And that's not in dispute. Mr. Kilgore
7 said that the other man standing there pointed down
8 the street. He doesn't say that this Defendant went
9 out there and tried to make him out to be an
10 executioner, that he just walked up and start
11 shooting. He said it was in response to something.

12 He's, of course, hoping to get less than 30
13 years in jail. And you heard him say that he held
14 back the information about the 9mm to try to give
15 himself some leverage because in his 22-year-old
16 mind, he thought he may have been creating something
17 that he knew that he would need because he was
18 confessing to a murder. And he was charged with
19 murder and arrested with murder when he told all
20 that.

21 Let me take the time here to talk about a little
22 bit of South Carolina law that explains why two
23 people, one of whom may have pulled the trigger on
24 the gun that fired the bullet that killed the victim
25 and one didn't can both be charged with the murder of

1 the same person. Judge Miller is going to tell you
2 that the law in South Carolina that two or more
3 people combine together to commit an unlawful act,
4 like an assault, like if I go and fight it out, and
5 in the execution of that act, a homicide is committed
6 by one of the actors as a probably and natural
7 consequence of the acts, all present participating
8 are as guilty as the one who committed the fatal act.
9 Both of them were there. Both of them fired a gun at
10 the victim. And under the law, they both committed
11 murder.

12 Don't think that the State -- that because the
13 State has allowed him to plead to voluntary
14 manslaughter does not believe that Shawndell Clemons
15 committed a murder? Had he not pled guilty and
16 accepted responsibility, he'd be sitting right over
17 there next to the Defendant looking at the exact same
18 charges. And like law enforcement has to exercise
19 their discretion, make judgment calls about what type
20 of investigations they do, who they charge with what
21 based on the information that they have at any time,
22 the State has to exercise discretion, too. And
23 sometimes people are permitted to plead guilty to a
24 reduced crime even though the facts establish they're
25 guilty of what they were originally charged with.

1 But when two defendants are in the same boat and one
2 agrees to accept responsibility and admit what he did
3 was wrong, then we can extend the benefit. If doing
4 that means that everyone who was involved is held
5 accountable, then that is an exercise of discretion
6 that the State is willing and able to make.

7 And be clear -- and Mr. Clemons told
8 Mr. Chambers on cross-examination that the only thing
9 the State required of him was for him to tell the
10 truth. Please don't let the Defense make you think
11 that there is something wrong with sitting down with
12 and going over the evidence with witness. It would
13 be irresponsible for me to come in and present a case
14 to you without knowing what these witnesses would say
15 without telling them to tell the truth.

16 And remember what Shawndell said that the
17 Defendant said before they were getting out, Hey,
18 man, you keep threatening my little cousin, I lost my
19 sister and I'm not going to lose anyone else.

20 If you go listen to those phone calls, you will
21 hear Jacoby Gregory saying to Landis Franklin
22 something about Swear on my sister's grave. He has
23 her name on his car, a memorial. It corroborates
24 what Shawndell Clemons said that this Defendant said
25 in the car that day. It has what we call the ring of

1 truth to it. And Shawndell's testimony corroborates
2 about the pistol evidence, the phone call records,
3 the phone location records and the gun evidence. And
4 more than anything, I want you to recall his demeanor
5 on the stand versus the Defendant's demeanor on the
6 stand. Judge Miller is going to tell you how you can
7 evaluate and the way that you judge the credibility
8 of witnesses. And I ask you to keep that in mind
9 when you're trying to decide why you can believe
10 Shawndell Clemons and what he told you. He also
11 didn't have a convenient excuse for everything the
12 Defense wanted to cross-examine him about.

13 Judge Miller is going to charge you on the law
14 of murder. And I know that it's been a long week. I
15 just want to remind you what I told you about what
16 murder is, it's the killing -- unlawful killing of
17 another person with malice aforethought. Malice is
18 dark heart and bad intentions. This Defendant fired
19 a deadly weapon four times at multiple people in a
20 residential neighborhood area. He refused to let the
21 argument go. He was being encouraged, man, just let
22 it go, quit answering the phone. Twenty-six times,
23 he couldn't quit answering the phone because he
24 wasn't going to let the victim have the last word.
25 He set up a fistfight and then took two guns to it.

1 A tense-charged atmosphere where everybody was on
2 edge and he went to Barry. Barry didn't go to him.
3 He went to him. But peacemaker? The mediator? He
4 has perpetuated this. Everybody else said quit
5 answering the phone. He's a hot head. And I
6 encourage you, listen to him when he doesn't know
7 that you're going to be listening to it and ask
8 yourself, does that sound like a peacemaker?

9 And also malice, the coverup, the lies, the
10 manipulation of this case. Whole separate issue.
11 This is all evidence of malice. And then again,
12 forethought. The Defendant got out of Landis
13 Franklin's car looking for a fight, going to a fight.
14 He had bad intentions for more than just a split
15 second before he started firing that gun. His malice
16 had been building since Barry called him at 4:00
17 o'clock and started threatening his little cousin.
18 He was not going to let it go.

19 The Defendant did not have to testify, but he
20 waived his rights against self-incrimination and
21 confirmed in doing so, I believe, that you can't
22 believe a single thing that comes out of his mouth
23 after he says his name. The plan was to throw
24 somebody else in it. That was the plan. And that's
25 still his plan.

1 I will tell you this, in 16 years of practicing
2 law, I have never had officers have to do more to try
3 and find the witness that they were not able to find
4 in the case of Landis Franklin. I'm sorry, ladies
5 and gentlemen, not a mystery. Because Landis isn't
6 here so the Defendant can now throw him. Landis
7 isn't here to testify about what happened. Landis
8 isn't here for the Defendant to cross-examine him
9 because the Defendant does not want him here. And
10 that is a fair inference that you can draw from the
11 evidence that's in this record because the Defendant
12 is so adamant that he not be here that Landis
13 Franklin has nothing that would be beneficial to this
14 Defendant. And Landis isn't here, you can throw him
15 right next to Smitty. But the Defendant forgot
16 something.

17 As far as Smitty, I didn't have no problem with
18 Smitty. I didn't include Smitty's in none of my
19 shit. Smitty included my name. Smitty wasn't there.
20 Smitty don't know what happened.

21 Play it. Here.

22 (WHEREUPON, a CD was played.)

23 MS. PAOLETTI: That's the plan.

24 I also need to point out all the very convenient
25 explanations that the Defendant offered for the

1 evidence that came in during the State's case. And
2 it was patently obvious that the Defendant sat there
3 from the time we started on Monday and listened to
4 the evidence the State put in and the wheels were
5 turning about what he was going to say to you when he
6 came up to explain away everything. He can't see, so
7 he couldn't have been the one to shoot Barry. You
8 might have missed that. He has a CWP, a holster for
9 every pistol he has. He paid 600 or more for a very
10 rare pistol that he doesn't take to the range to
11 shoot because he doesn't have time.

12 After the evidence of where his cell phone was
13 that night comes in, he has a convenient explanation
14 for why he was in the area that no one has ever heard
15 before yesterday. He testified he was close enough
16 to the scene to hear the shots, although he testified
17 to a number of shots that no one else in the case
18 testified to. Not Mr. Yatzeck, not Josh Kilgore, who
19 was there, Bop. Remember Bop, he said he heard the
20 gunshots. Nobody heard eight to 10 or however many
21 this Defendant said. And the phone calls made from
22 his phones during the daily times of this whole
23 thing, he wants to put the phone in somebody else's
24 hands saying they're making the phone calls. It was
25 just clear that this Defendant crafted his story as

1 the evidence was presented by the State. And he had
2 lot to explain.

3 In conversations with Landis, he's talking to
4 this friend and a witness in this case for the first
5 time in almost two years. And these are some of the
6 things he says.

7 Vegas telling on me.

8 Not, Vegas is going to lie about what I did.

9 Change your statement. You got to change your
10 statement, Landis. You got to change your statement.

11 Not, Landis, tell the truth.

12 I wasn't there, I didn't do it. We had our shit
13 established.

14 Not, I don't know why everybody lied and said I
15 did things I didn't do.

16 So, we're back to the only question left, is the
17 plan going to work? It's your turn to speak the
18 truth. That's what the Latin word veredicto that we
19 get verdict from means, to speak the truth. I think
20 we need that in this courtroom.

21 JURY CHARGE

22 THE COURT: All right, ladies and gentlemen of
23 the jury, during this trial, you and I have certain
24 duties to perform. As the trial judge, it's my
25 responsibility to preside over the trial of the case

1 and rule on the admissibility of the evidence offered
2 during the trial. It's also my duty to charge you
3 the law applicable to the case. And it is your duty
4 as jurors to accept and apply the law as I now state
5 it to you. If you think you have any idea as to what
6 the law is or what the law ought to be and it
7 disagrees with what I now tell you the law is, you
8 have sworn an oath to set aside your own opinion and
9 apply the law precisely as I state it to you.

10 I also remind you that in every case tried in
11 this court before a jury, the jury is the sole and
12 exclusive judge of the facts. A trial judge cannot
13 comment on or have an opinion about the facts, so
14 don't think by anything I said or did throughout the
15 course of the trial I have such an opinion. I do
16 not.

17 I also instruct you that the fact that the
18 Defendant was arrested, charged and indicted in this
19 case is not evidence of guilt, nor does it create any
20 presumption or inference of guilt. These documents
21 are simply the formal written instruments which
22 contain the charge made against the Defendant. They
23 serve as the formal documents by which the case is
24 processed and brought into court.

25 Now, necessarily, you must determine the

1 credibility or believability of the witness who have
2 testified. And it becomes your duty as jurors to
3 evaluate the evidence and determine which evidence
4 convinces you it is true. And in determining the
5 believability of a witness, you may believe one
6 witness over several or several over one. You may
7 believe a part of the testimony of a witness and
8 reject the remaining part. You may believe the
9 testimony of a witness in its entirety or reject that
10 testimony in its entirety. You may consider whether
11 the witness has an interest in the result of the
12 trial, whether the witness is prejudice towards
13 either the State or the Defendant, the opportunity
14 for the witness to have seen the matters and things
15 about which that witness has testified, and the way
16 the witness acts on the witness stand, or what we
17 call a witness's demeanor.

18 Now, you've heard evidence that a witness has a
19 past criminal record. So, a person who has a past
20 criminal record is competent to testify during a
21 trial. And a past record does not affect the ability
22 of that witness to testify. The past record may only
23 be considered by you, if at all, in determining the
24 witness's believability. Remember, you are the sole
25 judges of the facts in this case and of the

1 believability of any and all of the witnesses.

2 Now, the rules of evidence normally do not allow
3 or permit witnesses to testify to opinions or
4 conclusions. An exception to this rule exists for
5 witnesses we call experts. So, a witness, who by
6 education and experience has become expert in some
7 art, science or profession, may give an opinion as to
8 the subject the witness claims to be an expert or has
9 been qualified as an expert in and may also give the
10 reasons for the opinion. And you should consider any
11 expert opinion given by a witness, and like all of
12 the other evidence, give it the weight you think it
13 deserves.

14 Now, there are two types of evidence which are
15 generally presented during a trial, direct evidence
16 and circumstantial evidence. Direct evidence
17 directly proves the existence of a fact and does not
18 require deduction. Circumstantial evidence is proof
19 of a chain of facts and circumstances indicating the
20 existence of a fact. So, crimes may be proven by
21 circumstantial evidence. And the law makes
22 absolutely no distinction between the weight or the
23 value to be given to either direct evidence or
24 circumstantial evidence. However, to the extent that
25 the State relies on circumstantial evidence, all of

1 the circumstances must be consistent with each other
2 and when taken together, point conclusively to the
3 guilt of the accused beyond a reasonable doubt. If
4 these circumstances, under the circumstantial
5 evidence rule, merely portray the Defendant's
6 behavior as suspicious, the proof has failed.

7 The State has the burden of proving the
8 Defendant guilty beyond a reasonable doubt. The
9 burden rests with the State regardless of whether the
10 State relies on direct evidence, circumstantial
11 evidence or some combination of the two.

12 Now, the Defendant has pled not guilty to this
13 two-count indictment. And that plea puts the burden
14 on the State to prove the Defendant guilty. A person
15 charged with committing a criminal offense in South
16 Carolina is never required to prove themselves
17 innocent. So, I charge you that it is a cardinal and
18 important rule of the law that a Defendant in a
19 criminal trial will always be presumed to be innocent
20 of the crime for which an indictment has issued
21 unless guilt has been proven by evidence satisfying
22 you, the jury, of guilt beyond a reasonable doubt.

23 Now reasonable doubt is the kind of doubt which
24 would cause a reasonable person to hesitate to act.
25 And reasonable doubt may arise from the evidence

1 which is in the case or from the lack or absence of
2 evidence in a case. And you, the jury, must
3 determine whether or not reasonable doubt exists as
4 to the guilt of this Defendant. I remind you the
5 State has the burden of proving each and every
6 element of a crime beyond a reasonable doubt.

7 Now, the indictment in this case is a two-count
8 indictment and it alleges two separate offenses.
9 They are murder and possession of a weapon during the
10 commission of a violent crime. Each count of the
11 indictment charges a separate and distinct offense.
12 And you must decide each count separately on the
13 evidence and the law applicable to it uninfluenced by
14 your decision as to any other count in the
15 indictment. The Defendant may be convicted or
16 acquitted on each, any or all of the offenses
17 charged. And you will be asked to write a separate
18 verdict of guilty or not guilty for each count of the
19 indictment.

20 Now, if a crime is committed by two or more
21 people who are acting together in committing a crime,
22 the act of one is the act of all. A person who joins
23 with another to accomplish an illegal purpose is
24 criminally responsible for everything done by the
25 other person which occurs as a natural consequence of

1 the acts done in carrying out the common plan and
2 purpose. For example, two people can be guilty of
3 killing another person when only one of the two had a
4 gun, there was only one bullet and only one of the
5 two fired the shot that caused the death. So if two
6 or more people are together, acting together,
7 assisting each other in committing the offense, the
8 act of one is the act of all, or as it is sometimes
9 said, the hand of one is the hand of all.

10 The first count of the indictment charges the
11 Defendant with murder. The State must prove beyond a
12 reasonable doubt that the Defendant killed another
13 person with malice aforethought. Malice is hatred,
14 ill will or hostility toward another person. It is
15 the intentional doing of a wrongful act without just
16 cause or excuse and with an intent to inflict an
17 injury or under circumstances that the law will infer
18 an evil intent. Malice aforethought does not require
19 that malice exist for any particular length of time
20 before the act is committed. But malice must exist
21 in the mind of the Defendant just before and at the
22 time the act is committed. Therefore, there must be
23 a combination of the previous evil intent and the
24 act.

25 Malice aforethought may be expressed or

1 inferred. And these terms, expressed and inferred,
2 do not mean different kinds of malice, but merely the
3 manner in which malice may be shown to exist. That
4 is either by direct evidence or by inference from the
5 facts and circumstances which are proved. Expressed
6 malice is shown when a person speaks words which
7 express hatred or ill will for another or when the
8 person prepared beforehand to do the act which was
9 later accomplished. Malice may be inferred from
10 conduct showing a total disregard for human life. If
11 facts are proved beyond a reasonable doubt sufficient
12 to raise an inference of malice to your satisfaction,
13 the inference would be simply an evidentiary fact to
14 be considered by you along with the other evidence in
15 the case and you give it the weight that you think it
16 deserves.

17 The Defendant is also charged in count two of
18 the indictment with possession of a weapon during the
19 commission of or attempt to commit a violent crime.
20 The State must prove beyond a reasonable doubt that
21 the Defendant was in possession of a firearm or
22 visibly displayed what appeared to be a firearm
23 during the commission of a violent crime. A firearm
24 means any machine gun, automatic rifle, revolver,
25 pistol or any weapon which will, is designed to or

1 may be readily convert to expel a projectile.

2 In order to find the Defendant guilty of
3 possession of a weapon during the commission of
4 violent crime, you must first find the Defendant
5 guilty of either committing a violent crime or
6 attempting to commit a violent crime. And under our
7 law, murder is violent crime.

8 Now, ladies and gentlemen, there are two
9 possible verdicts which you may reach in this case.
10 There's no significance in the order in which I state
11 them to you, one has to be said first. And they are
12 guilty or not guilty. And it is guilty or not guilty
13 as to each count of the indictment. We've prepared a
14 verdict form which we will send back into the jury
15 room with you. And I think it's self-explanatory.

16 And when you all have reached a verdict, I would
17 ask you, Mr. Foreman, to please indicate
18 appropriately what the verdict is, sign it and we'll
19 receive you back.

20 I want to tell you that all 12 of you must agree
21 on your verdict. It must be a unanimous verdict as
22 to each separate count of the indictment. Your
23 verdict cannot be based on sympathy, passion,
24 prejudice, emotion or any other consideration that is
25 not in evidence in this case. You have no friends to

1 reward and you have no enemies to punish.

2 So, at this time, ladies and gentlemen, I would
3 excuse you all back to your jury room, ask you not do
4 begin your deliberations just yet. I've got to go
5 over my charge on the law to make sure that I didn't
6 misstate something or omit something. So, when the
7 verdict form comes back with the evidence, then you
8 all can begin your deliberations at that time.

9 So, I excuse everyone with the exception of
10 Ms. Carter and Ms. Miller. Okay. Thank you.

11 (WHEREUPON, the jury left open court at
12 approximately 11:31 a.m.)

13 THE COURT: Boy, this is always hard for me
14 whenever we have alternates to tell you that you paid
15 the same sacrifices that each of those other 12 have,
16 you're just as qualified, just as good and I wish I
17 could let y'all participate in the deliberations.
18 You may be happy not to be participating, but in any
19 event, the law doesn't allow but 12. So, I want to
20 thank for your participation this week and sacrifices
21 you've made. I trust that you all will have a deep
22 sense of satisfaction for the work you've performed
23 for the members of Greenville County and I want you
24 to know how deeply we appreciate it.

25 You're free to stay, go, whatever you'd like to

1 do. You're free to talk about it with whoever you
2 want to. If you don't want to talk about it and
3 someone persist and bothers you about that, let the
4 clerk of court's office know and we will fix that
5 because we're not going to have you be intimidated or
6 harassed in any way because of your service. So,
7 thank you very much. Stay, go, whatever you all
8 would like to do.

9 All right, any exceptions or objection to the
10 charge from the State?

11 MS. PAOLETTI: No, sir.

12 THE COURT: From the Defense?

13 MR. CHAMBERS: No, Your Honor.

14 THE COURT: Okay, y'all go through the evidence.

15 (WHEREUPON, deliberations began at approximately
16 11:30 a.m.)

17 (WHEREUPON, court was in recess awaiting a
18 verdict.)

19 THE COURT: All right, we got a document from
20 the jury entitled deliberations questions. Number
21 one, More clarification on James's testimony on
22 clothing that was worn by the Defendant. Two, Want
23 to watch surveillance videos again. Three, coby's
24 testimony review again. Four, Want to look at
25 accused without coat standing in front of the bench

1 to be able to compare his likeness with video. Copy
2 of Judge's instructions. Six, What is Landis
3 Franklin's phone number?

4 Is that in evidence?

5 MS. PAOLETTI: Yes, sir.

6 THE COURT: Okay. Well, any input?

7 MS. PAOLETTI: Your Honor, I know that Landis'
8 phone number came in through Detective Peden.

9 THE COURT: Okay. You.

10 MS. PAOLETTI: We can try to locate that. We
11 can, obviously, play the surveillance videos again.

12 THE COURT: How long are they?

13 MS. PAOLETTI: They're not long at all. It'll
14 probably, I mean, I guess maybe take me five to 10
15 minutes to get through playing all of them again.

16 THE COURT: Coby, who is Coby?

17 MR. CHAMBERS: That's Jacoby Gregory, Your
18 Honor.

19 THE COURT: Bring them back in.

20 Can you start queuing up the --

21 THE CLERK: The CD's in the back.

22 THE COURT: Well, can you all agree on what
23 Landis Franklin's phone number is?

24 MS. PAOLETTI: Sure.

25 THE COURT: Can you agree on what Landis

1 Franklin's phone number is?

2 MR. CHAMBERS: If it's in the testimony.

3 MS. PAOLETTI: It's in the testimony with

4 Detective Peden when he's talking about doing the
5 search for phone calls through the Securus system for
6 that phone number. He testifies that he searched for
7 that phone number.

8 MR. CHAMBERS: Yeah, I mean, whatever's in the
9 transcript, I don't have any problem agreeing to, I
10 just don't know what it is.

11 MS. PAOLETTI: And I can get my notes and see
12 about at which point during his testimony we got into
13 that. If April's going to start --

14 THE COURT: That will be good. I tell you what
15 I'll do. I'm going to bring them back and answer
16 their questions as best I can. James's clothing, is
17 that the co-defendant?

18 MS. PAOLETTI: No, sir, that's James Williams,
19 who -- with the dreadlocks.

20 THE COURT: Okay.

21 THE BAILIFF: Do you want me to bring that piece
22 of evidence or no?

23 THE COURT: Yeah, bring the surveillance disks.

24 (WHEREUPON, the jury came into open court at
25 approximately 1:05 p.m.)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, let me have your questions and
3 go through them one at a time.

4 More clarification on James's testimony on
5 clothing that was worn by Defendant. What we can do
6 for you with that is try to locate that in the
7 recording and play it back for you. It's going to
8 take some time. If you want to watch the
9 surveillance videos again, we'll get those queued up
10 for you. Number three, Coby's testimony review
11 again. I presumed you mean the Defendant, Jacoby
12 Gregory, is that right?

13 MR. FOREMAN: Correct, Your Honor.

14 THE COURT: Okay. I will tell you that we'll
15 play it back for you. It is an hour and a half.

16 Four, you want to look at accused without coat
17 standing in front of the bench to be able to compare
18 his likeness with the video. We cannot do that.
19 That is not something we do. It's not in evidence so
20 we're not putting it in evidence.

21 Three, I have prepared six copies of the
22 instructions, which I'm going to send back to you.
23 It's almost verbatim. I generally read them. There
24 may be a few, just, you know.

25 And five, What is Landis Franklin's phone

1 number? Conferring with the attorneys, we believe
2 that came into evidence in Detective Peden's
3 testimony, we'll try and find that.

4 But this is going to take a little time to do.
5 So, we're going to give you the instructions and
6 we'll try to queue this stuff up for you.

7 MR. FOREMAN: Thank you.

8 THE COURT: Would you like to go ahead and eat
9 your lunch and then come back and get as much of it
10 ready for you as we can?

11 MR. FOREMAN: Please, Your Honor.

12 THE COURT: Okay. All right. Very good. Thank
13 you.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:06 p.m.)

16 (WHEREUPON, Court's Exhibit No. 1 was marked for
17 identification and received into evidence.)

18 (WHEREUPON, deliberations continued.)

19 (WHEREUPON, court was in recess awaiting a
20 verdict.)

21 (WHEREUPON, the jury came into open court at
22 approximately 2:24 p.m.)

23 THE COURT: All right, ladies and gentlemen,
24 first thing I want to tell you is that we were unable
25 to locate any evidence that would include Landis

1 Franklin's phone number. Now, we're going to go
2 right into James Williams's testimony. We think we
3 have located what y'all are interested in.

4 (WHEREUPON, a portion of James Williams's
5 testimony was played.)

6 THE COURT: Okay. Is that all y'all want to
7 hear on that?

8 MR. FOREMAN: Thank you, Your Honor.

9 THE COURT: Now, we'll go to the Defendant's --
10 we're going to wait on the surveillance videos.
11 We'll go to the Defendant's testimony.

12 (WHEREUPON, a portion of Jacoby Gregory's
13 testimony was played.)

14 MS. PAOLETTI: Judge, I think that's what they
15 asked for.

16 THE COURT: Y'all satisfied with that?

17 MR. FOREMAN: Yes, sir, Your Honor.

18 THE COURT: All right.

19 Surveillance videos.

20 (WHEREUPON, the surveillance videos were
21 played.)

22 THE COURT: All right. Anything else? All
23 right. Thank y'all.

24 (WHEREUPON, the jury left open court at
25 approximately 2:47 p.m.)

1 (WHEREUPON, deliberations continued.)

2 THE COURT: All right. Be at ease.

3 (WHEREUPON, court was in recess awaiting a
4 verdict.)

5 (WHEREUPON, Court's Exhibit No. 2 was marked for
6 identification and received into evidence.)

7 THE COURT: All right, next question, Does hand
8 of one apply to both charges?

9 The simple answer is, Yes. Okay.

10 (WHEREUPON, Court's Exhibits Nos. 3 & 4 were
11 marked for identification and received into
12 evidence.)

13 THE COURT: All right.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:45 p.m.)

16 THE COURT: All right, Mr. Foreman, I understand
17 you've reached a verdict?

18 MR. FOREMAN: We have, Your Honor.

19 THE COURT: Would you hand it to the bailiff for
20 me, please?

21 All right. Publish it for us, please.

22 VERDICT

23 THE CLERK: In the case 2014-GS-23-0409, the
24 State vs. Jacoby Jamar Gregory, as to the charge of
25 murder, we, the jury, find the Defendant guilty. As

1 to the charge of possession of a weapon during the
2 commission of a violent, the jury finds the Defendant
3 guilty.

4 THE COURT: All right. If this is your verdict
5 so say you all, please signify by raising your right
6 hand.

7 (WHEREUPON, all members of the jury raised their
8 right hand.)

9 THE COURT: Thank you.
10 Anything further from the jury from the State?

11 MS. PAOLETTI: No, sir, Judge.

12 THE COURT: From the Defense?

13 MR. CHAMBERS: No, sir, Your Honor.

14 THE COURT: All right. Ladies and gentlemen,
15 thank you very much. A long, hard week. And again,
16 I want to express my sincere thanks to you for your
17 hard work and responsibility y'all have shouldered.
18 I hope that when you look back on this, you do so
19 with a deep sense of civic pride. And please know
20 that you have done an invaluable service for the
21 citizens of Greenville County.

22 With that, ladies and gentlemen, you are free to
23 go, stay, whatever you want to do. I will tell you
24 that you are free to talk about it now with anybody
25 you like to. And you're also free not to talk about

1 it. And my point there is if someone contacts you
2 and is bothering you about it, just get their name,
3 report it to the clerk of court's office and we will
4 not allow anyone to be harassed or intimidated
5 because of their service as a juror. So thank you
6 very much.

7 (WHEREUPON, the jury was dismissed.)

8 THE COURT: Any motions?

9 MR. CHAMBERS: Motion for a new trial, Your
10 Honor.

11 THE COURT: Okay. Respectfully, denied.

12 SENTENCING

13 All right. Have any jail days on this
14 Defendant?

15 MS. PAOLETTI: Your Honor, I do not. I don't.

16 THE COURT: They'll just have to figure it out.

17 MS. PAOLETTI: I can get that information or
18 will they calculate it?

19 THE COURT: How long will it take you to
20 calculate?

21 MS. PAOLETTI: It's going to take us a minute,
22 Your Honor. He was incarcerated originally, got out
23 on home incarceration, then back in. So, I can't say
24 continuously since one certain arrest date or
25 anything and I just didn't check that.

1 THE COURT: Okay. All right. I heard you say
2 no criminal history.

3 MS. PAOLETTI: He has no criminal history. He
4 does have some charges pending, forgeries, DUI, and
5 false information to police, Your Honor, that will
6 presumably be dismissed at this point.

7 THE COURT: All right. Anything you want to
8 tell me?

9 MR. CHAMBERS: Your Honor, at this point, I
10 think you've heard it all. I don't think there's
11 anything that I can add.

12 THE COURT: Anything from the victim's family?

13 MS. PAOLETTI: Ms. Norman would like to speak,
14 Your Honor.

15 THE COURT: All right.

16 MS. NORMAN: I'm Cynthia Norman, I'm Barry's
17 mother, Barry Norman's mother. I always believed in
18 the jury system and I want to thank the Fountain Inn
19 Police and the solicitor's office because all I been
20 doing is walking in silence and praying that justice
21 will prevail. Thank you, Your Honor.

22 THE COURT: Yes, ma'am. Thank you.

23 Anything you want to say?

24 MR. GREGORY: Your Honor, I would like to say a
25 few things to the family.

1 THE COURT: Well, you have to say it to me, but
2 they can hear you. Go ahead.

3 MR. GREGORY: I would like to say that this is
4 very unfortunate what happened. Like I said, it's
5 very unfortunate. It did get provoked to the highest
6 degree by whoever did whatever. I apologize on
7 behalf of everyone involved, everyone that had
8 anything to do with anything. Anyone that was there
9 or not. I apologize for making phone calls. I
10 apologize for trying to get things worked out. I
11 apologize on my behalf, like I said. I understand --
12 I was in jail for the birth of my daughter and best
13 of my knowledge, Barry had a daughter on the way. I
14 was out on bail, Barry had his daughter in January
15 and it touched me. I couldn't say anything due to
16 the case or whatever, but I do want to let his family
17 know that I do -- I feel that. Like I said, I was in
18 jail when my daughter was born, so I've never got to
19 touch my daughter either. I have full remorse for
20 what happened.

21 As far as his mother, she says justice prevail.
22 I stand tall in that. Like I said, I believe others
23 should have been charged. They weren't. Justice,
24 you know, should have still been fulfilled. Like I
25 said, I'm sorry. You know, you can't take anything

1 back. My family is also losing, as you see. I just
2 got found guilty of something that, you know...

3 THE COURT: That what?

4 MR. GREGORY: The trial speaks for itself, I
5 guess. I don't want to talk about it, Your Honor. I
6 believe that I was dealing with a stacked deck. I'm
7 not going to talk about that. Like I said, I'm
8 sorry. It is what it is.

9 THE COURT: Stack deck, what do you mean?

10 MR. GREGORY: I mean, the solicitor obviously
11 had a personal feeling towards me and that played a
12 small part in a lot of this. Like I said, my
13 family's losing, too, as you see back there.

14 THE COURT: You think you've been treated
15 unfairly?

16 MR. GREGORY: Very unfairly, Your Honor. Like I
17 said --

18 THE COURT: You want to tell me the specifics of
19 it?

20 MR. GREGORY: My child's momma is back there
21 right there. She was eight and a half months
22 pregnant when Ms. Paoletti called her down to talk
23 about quote, unquote me. She hears my phone calls
24 and she hears that my child's mom -- how she feels,
25 that she's kind of suicidal. Like I said, she was

1 eight and a half months pregnant with my daughter.
2 She told my kid's mom -- and she's out there, she can
3 testify to this, that I will never come home. That
4 she has massive evidence against me. What is my
5 kid's momma going to do? I have other girlfriends,
6 why does she hang in there with me? Why does anybody
7 hang in there with me? You know, when you say
8 something like that to an eight and a half month
9 pregnant, what do you do, you know?

10 So, like I said, I wrote a letter to the bar
11 association on her that she's said numerous times at
12 my bond hearing and to my co-defendant -- she told my
13 co-defendant before this that I was going to get
14 found guilty and -- for my co-defendant to ask me to
15 plead to 10. And I told my lawyer this, that I
16 wasn't going to plead to this, I was totally not
17 guilty. I don't know she knew or he knew that they
18 would found me guilty, especially based on all the
19 evidence, but like I said, I felt like this had a lot
20 to do with Ms. Paoletti, like I said. But my kid's
21 mom, my family, we all filed paperwork.

22 Ms. Paoletti, I guess, felt that was -- I don't
23 know, I don't know how she felt, but, obviously, it
24 was very -- to me, it was very unethical, but she got
25 what she wanted. She got a guilty verdict. I guess

1 that's all that matters at the end of the day. Like
2 I said, Judge Miller, you're the judge. Like I said,
3 I apologize. That's how I felt. I felt like I was
4 dealing with a stacked deck from day one. Once I
5 wrote that letter to the bar association, she got my
6 co-defendant to testify, that was all that she
7 needed.

8 THE COURT: Apparently, yeah.

9 Anything on sentencing, Mr. Chambers?

10 MR. CHAMBERS: No, Your Honor.

11 THE COURT: I don't see this -- this is just a
12 terrible comment on a way of life, but I don't see it
13 as a maximum, but it's extraordinarily serious and
14 it's way too common. Guns.

15 MS. PAOLETTI: Your Honor?

16 THE COURT: Yeah.

17 MS. PAOLETTI: If I could just put on the record
18 in response to that. I think what became obvious
19 during this trial, as evidenced by the number of lay
20 witnesses that we were able to get to come and
21 testify at this trial against the Defendant, that it
22 was the State who was up against the stacked deck.

23 THE COURT: Okay. Well, we don't need to go
24 there. It's just a real unfortunate situation.

25 Forty years on murder, five on the other one

1 consecutive. Good luck.

2 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)

6

7

8 I, APRIL P. HERRON, Official Court Reporter for

9 the Thirteenth Judicial Circuit of the State of South

10 Carolina, do hereby certify that the foregoing is a true,

11 accurate and complete Transcript of Record of the

12 proceedings had and evidence introduced in the trial of

13 the captioned case, relative to appeal, in the Court of

14 General Sessions for Greenville County, South Carolina, on

15 the 11th-14th day of July, 2016.

16 I do further certify that I am neither of kin,

17 counsel nor interest to any party hereto.

18

19 February 9, 2017

20

21

22

23

24 APRIL P. HERRON, Court Reporter

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT.# 27
DATE: 7-14-16

PERGAD 800-631-6393

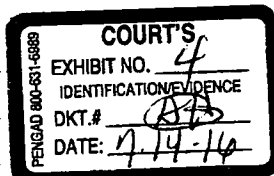
7/14/16

DELIBERATION QUESTIONS

1. MORE CLARIFICATION ON JAME'S TESTIMONY ON CLOTHING THAT WAS WORN BY DEFENDANT.
2. WANT TO WATCH SURVEILLANCE VIDEO'S AGAIN
3. COBY'S TESTIMONY REVIEW AGAIN.
4. WANT TO LOOK AT ^{ACCUSED} ~~WITNESS~~ WITHOUT COAT STANDING IN FRONT OF BENCH TO BE ABLE TO COMPARE HIS ~~TEST~~ LIKENESS WITH VIDEO.
5. COPY OF JUDGE'S INSTRUCTIONS.
6. WHAT IS LANDIS FRANKLIN'S PHONE NUMBER?

Guy E. Lisker MZC #111

PLEASE REVISE REQUEST
FOR JACORY'S TESTIMONY
TO THE PORTION FROM
WHEN LEAVES WORK TIL
TIME HE GOT TO BOB'S
HOUSE



Guy E. Luk SEC
TWT

WITNESSES

Joshua Peden *(JP) 9/16/14*

Fountain Inn Police Department

10/4/2013

ARREST WARRANT NUMBER

2013A2320200306-Count I

2013A2320200307-Count II

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Hall

FOREMAN GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

000409

LBP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014

THE STATE

vs.

JACOBY JAMAR GREGORY

Indictment for

0116/0549

**MURDER AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

VIOLATION § 16-03-0010 and § 16-23-0490

**ENTERED
ACCT**

FILED

JAN 24 2014

Clerk of Court
Greenville County

A. 721

713

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 MURDER AND POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **SEP 16 2014** the Grand Jurors of Greenville
 County present upon their oath:

COUNT I - MURDER

That JACOBY JAMAR GREGORY did in Greenville County, on or about the 1st day of October, 2013, unlawfully and with malice aforethought kill BARRY NORMAN by means of shooting him, and that BARRY NORMAN died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JACOBY JAMAR GREGORY did in Greenville County, on or about the 1st day of October, 2013, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. 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.

Erin B. Queth
 SOLICITOR

1003310

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Jacoby Jamar Gregory

AKA: _____

Race: BLACK Sex: M Age: 27

DOB: _____ SS#: _____

Address: Boyd StCity, State, Zip: Fountain Inn, SC 296442406

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder (gs)INDICTMENT/CASE#: 2014GS2300409A/W#: 2013A2320200306Date of Offense: 10/1/2013S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Pauletta Leigh B. 69114
 Pauletta, Leigh B. 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:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00 pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 129.75

☐ 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.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

A. 723

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Jacoby Jamar Gregory

AKA:
 Race: BLACK Sex: M Age: 27

DOB: SS#
 Address: Boyd St.
 City, State, Zip: Fountain Inn, SC 296442406
 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: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Paoletti, Leigh B. 69114
 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine: \$
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 61.6 (Public Def/Probation) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Hevin

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2130

Sentence Date: 7/14/16

☐ 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.

RECEIVED

717

AUG 18 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of August, 2017.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2018-CP-23-02957
	)	
	)	
JACOBY GREGORY	)	
	)	APPLICANT)
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE	)	
	)	RESPONDENT)

September 19, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE GRACE KNIE, Judge.

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

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

TOMMY EVANS, JR., ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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» > ○ < «

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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Skidemore CV	12	12
2	Report	18	18
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COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Trial Exhibit No. 50	146	

All exhibits were retained by the
Greenville County Clerk's Office.

1 THE COURT: Counsel, can y'all approach just a
2 minute to confirm a couple of things with y'all,
3 okay? Then we'll get started.

4 (WHEREUPON, an off-the-record bench conference
5 was held.)

6 THE COURT: Okay. We are now on the record in
7 the matter of Jacoby Jamar Gregory, The Applicant,
8 vs. The State of South Carolina, Respondent. And
9 this is civil action number 18-CP-23-02957. I am
10 Judge Grace Knie. I am a Circuit Court Judge from
11 the Seventh Judicial Circuit, which is Spartanburg
12 and Cherokee County. It is my sincere pleasure to be
13 assigned to Greenville. This is my first week of
14 ever being officially assigned to Greenville. And I
15 enjoy coming over here so much, this facility is so
16 wonderful. This is a term of post-conviction relief
17 hearings this week. And so I will allow counsel for
18 The State, for The Respondent, to identify himself
19 for the record. And then counsel for The Applicant
20 as well as identifying The Applicant, who is present.

21 MR. EVANS: Thank you, Your Honor, good morning.
22 May it please The Court, my name is Tommy Evans. I am
23 an assistant attorney general at the Attorney
24 General's Office.

25 THE COURT: Thank you.

1 MS. BLANCHETTE: May it please The Court, Tricia
2 Blanchette here on behalf of The Applicant, Jacoby
3 Gregory, who is present in the courtroom today.

4 THE COURT: Okay, thank you very much.

5 Good morning, sir.

6 All right. And so I inquired of counsel at a
7 bench conference as to whether or not there would be
8 any motion for exclusion of witnesses, sequestering
9 of witnesses. I was told there will not be. I've
10 also been told that there are some potential exhibits
11 that have been shared regarding witnesses and that
12 those exhibits concerning the experience and
13 credentials of experts will not be excluded, they
14 will not be challenged.

15 And so have those exhibits already been marked,
16 Ms. Blanchette?

17 MS. BLANCHETTE: They have not, Your Honor.

18 THE COURT: Do you want to go ahead and
19 pre-mark? Would that save you a little bit of time?

20 MS. BLANCHETTE: Your Honor, I can do it pretty
21 fluidly in the presentation of the case, if that is
22 fine with you.

23 THE COURT: Okay, that will work. Okay. And so
24 are we waiting on any other witnesses?

25 MR. EVANS: Not from The State, Your Honor.

1 THE COURT: Okay. All right. And so let me
2 then have The Respondent place on the record just a
3 basic procedural background and then we will begin
4 with The Applicant's case.

5 MR. EVANS: Thank you, Your Honor, may it please
6 The Court. As you said earlier, this is civil case
7 18-CP-23-02957, Jacoby Jamar Gregory vs. The State of
8 South Carolina, a post-conviction relief action.

9 Mr. Gregory was convicted for the offenses of murder
10 and possession of a weapon during a crime of
11 violence. On July 14, 2016, he was given a 40 year
12 sentence by The Honorable Edward W. Miller. He went
13 through the public process, the appeals courts from
14 circuit court. Then he filed a post-conviction
15 relief action on May 18th, 2018. A return was filed
16 and also a motion for a [indiscernible] which
17 resuscitation of allegations filed. Then a second
18 amendment to the application was filed by
19 Mr. Gregory's counsel on September 5th, 2023. And we
20 are prepared to go forward on this matter, Your
21 Honor.

22 THE COURT: Okay. Thank you very much.
23 Counsel, Ms. Blanchette.

24 MS. BLANCHETTE: Yes, Your Honor. And I have
25 communicated this with Respondent's counsel via email

1 but there was an amendment recently submitted. And
2 there were just minor revisions made to that. And I
3 do have a copy of that if it's not in the packet.

4 THE COURT: If you will, please, show that to
5 opposing counsel.

6 MS. BLANCHETTE: Yes.

7 And, Your Honor, the date on that, on the cover
8 sheet, it's actually wrong, that's what I was just
9 looking at. It's typed May 1st, 2023, that was
10 actually just submitted on September 5th and it was
11 filed on September 15th. Does Your Honor have a copy
12 of that amendment?

13 THE COURT: Let me see what you're referring to.

14 MS. BLANCHETTE: Okay. It was just recently
15 filed and provided to the Attorney General's Office.

16 THE COURT: Okay, any objection, Counsel?

17 MR. EVANS: No objection. We received a copy
18 via email when it was filed. It probably wasn't in
19 the packet. The packet was created in August by our
20 law clerk and our paralegal. Your Honor, I've had an
21 opportunity to look at the packet, review it, find
22 out what was in it. So we have no objection, we have
23 received a copy of this amended application, Your
24 Honor.

25 THE COURT: Okay, thank you. And so this will

1 be allowed and it's already been made part of the
2 court's file, apparently. All right, thank you.

3 Anything else, Ms. Blanchette, before you
4 proceed?

5 MS. BLANCHETTE: No, Your Honor.

6 THE COURT: Okay. I am happy for you to begin,
7 I am happy for you to make an opening, if that is
8 your wish, you're not required to. But if you want
9 to, it's fine with me for you to tell me where you're
10 headed.

11 MS. BLANCHETTE: Yes, Your Honor. Since you do
12 have the recently filed amendment and I do just
13 confer the difference. It's just a minor difference.
14 Some language has been struck in two of the
15 allegations. And so we're going forward,
16 essentially, on the same amendment, just some
17 revisions. Some tweaking that has happened over
18 time.

19 Your Honor, the roadmap for today is I plan to
20 call Peter Skidmore, Jr., as a cell phone expert.
21 Then Bob Tressel, also as a expert, and then I will
22 call trial counsel. I will be calling these three
23 witnesses and introducing the exhibits and
24 referencing to the trial exhibits to support the
25 allegations set forth in the amendment. I'm going to

JACOBY GREGORY-EXAMINATION BY THE COURT

1 go through each of those and I'll let Your Honor know
2 when I'm addressing each of those with each witness.
3 Your Honor, I do not intend to call Mr. Gregory.
4 That has been previously communicated to The State.
5 I didn't have a chance to reference it to you this
6 morning, so I apologize. I did not know if The Court
7 wants to do any questioning of him to ensure that he
8 is understanding of what is happening here today and
9 we're going forward before I call my first witness.

10 THE COURT: Okay, I certainly can.

11 And so, Mr. Gregory is not going to be called?

12 MS. BLANCHETTE: That is correct, Your Honor.

13 THE COURT: All right, sir, just please rise and
14 let me have the clerk swear you where you are, okay.

15 Madam Clerk, if you'd swear the witness.

16 THE CLERK: Please raise your right hand.

17 EXAMINATION

18 BY THE COURT:

19 Q Okay, sir, please remain standing for me for
20 just a minute. You are Jacoby Jamar Gregory; correct?

21 A Yes, Your Honor.

22 Q And sir, you're represented in this matter by
23 Ms. Blanchette; correct?

24 A Yes, Your Honor.

25 Q And you've heard the statements thus far in the

JACOBY GREGORY-EXAMINATION BY THE COURT

1 proceeding?

2 A Yes, Your Honor.

3 Q And do you have any questions so far regarding
4 what's going on?

5 A No, Your Honor.

6 Q And do you understand that Ms. Blanchette has
7 stated that you will not be testifying today?

8 A Yes, Your Honor.

9 Q And you have an opportunity to testify. This
10 isn't like a criminal case where I have to tell you to
11 talk to your family and friends about it before you go
12 forward and but this is serious. And, sir, if you want
13 some more time to think about whether or not you would
14 testify, I'm happy for you to talk to your lawyer about it
15 or anyone else that you want to. Do you understand?

16 A Yes, Your Honor.

17 Q And we are just beginning with the hearing so if
18 you do desire to testify later you can let your lawyer
19 know, okay?

20 A Yes, Your Honor.

21 Q And as I've stated to the lawyers, we've got
22 plenty of time, all right. So I don't want anybody to
23 feel rushed or feel like they're being pushed in any way.
24 And this is very informal because it's in front of me,
25 there's no jury here, okay. Do you have any questions?

JACOBY GREGORY-EXAMINATION BY THE COURT

1 A No, Your Honor.

2 Q All right. Well, if you do you can send them
3 through your counsel, okay?

4 A Yes, Your Honor.

5 THE COURT: Okay, anything else?

6 MS. BLANCHETTE: No, Your Honor.

7 THE COURT: Of this gentleman before you begin?

8 MS. BLANCHETTE: No, Your Honor. Thank you.

9 THE COURT: All right, Counsel, anything else
10 before we begin?

11 MR. EVANS: No, Your Honor.

12 THE COURT: All right.

13 Thank you, ma'am, if you will proceed.

14 MS. BLANCHETTE: Yes, Your Honor, I'm prepared
15 to call Peter Matthew Skidmore to the stand.

16 THE COURT: Okay, if you would please come
17 forward.

18 THE CLERK: Mr. Skidmore, please place your
19 left hand on the Bible, raise your right hand.

20 PETER SKIDMORE, after being duly
21 sworn{,}testified as follows:{F}

22 THE CLERK: Thank you, you may be seated. State
23 your name for the record.

24 THE WITNESS: Peter Matthew Skidmore.

25 MS. BLANCHETTE: Your Honor, may I approach the

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 witness?

2 THE COURT: Yes.

3 MS. BLANCHETTE: Your Honor, should I ask to
4 continue to approach throughout the day?

5 THE COURT: I'm sorry?

6 MS. BLANCHETTE: Would you like me to ask every
7 time I approach the witness through the remainder of
8 the day?

9 THE COURT: No, you don't have to. I don't
10 think it will be in a threatening manner.

11 MS. BLANCHETTE: I will try my best not to.

12 DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q Mr. Skidemore, could you please identify what
15 that is for the record?

16 A This is my CV.

17 Q Okay.

18 Your Honor, at this time, I would move
19 Peter Matthew Skidemore's CV in as Applicant's No. 1.

20 THE COURT: Any objection?

21 MR. EVANS: No objection, Your Honor.

22 THE COURT: Okay, without objection.

23 (WHEREUPON, Applicant's Exhibit No. 1 was marked
24 for identification and received into evidence.)

25 MS. BLANCHETTE: Your Honor, would you like a

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 copy?

2 THE COURT: Yes.

3 BY MS. BLANCHETTE:

4 Q Mr. Skidemore, if you could just briefly -- The
5 Court has a copy of your curriculum vitae, The State does
6 as well. But if you can just summarize your experience
7 for us.

8 A I've been doing private investigations since
9 2001. Had some time off from that to go to Iraq back in
10 2003, 2004. Then I finished up my Bachelor's Degree. And
11 I was going through a nasty divorce so took time from
12 that. And went from that to private investigations since
13 2001.

14 Q Okay. And you have previously been qualified in
15 this case by Judge Hayes, as a cell phone expert; is that
16 correct?

17 A That's correct.

18 Q Okay. And could you explain to us some of your
19 qualifications and certifications regarding cell phones in
20 you work there?

21 A Yes. I began doing cell phone forensics back in
22 2015. From there I went through training through a
23 company called Cellebrite. They're the leading forensic
24 mobile cellular extraction company in the world. They're
25 out of Israel. When I began my training I was the only

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 civilian there. And throughout all the training I've gone
2 through, I've always been the only civilian. There was
3 homeland security, there was people from the department of
4 defense, there was military, there was foreign agencies
5 that were also going through that training.

6 Q And have you been previously qualified in family
7 or circuit court in South Carolina as a cell phone expert?

8 A Yes, I have.

9 Q Okay. And how many times have you been
10 qualified in circuit court?

11 A Three times.

12 Q And does that include Judge Hayes back in
13 November 2022 in this matter?

14 A It does.

15 Q Okay. And how many times have you been utilized
16 to either work with cell phones or consult regarding cell
17 phones in family or circuit court cases?

18 A Hundreds of times.

19 Q Okay. And as it is referenced in the motion
20 transcript and order from the proceedings involving Judge
21 Hayes in this matter, you have reviewed all of the
22 materials that were provided in this case regarding the
23 cell phones; is that correct?

24 A That is correct.

25 Q And then pursuant to that order, you attempted

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 to conduct extractions here at the Greenville County
2 Courthouse on two cell phones that were collected in this
3 case?

4 A That is correct.

5 Q And in the order issued -- well, in the motion
6 that was filed and the order issued by Judge Hayes, it was
7 also understood that you were going to be working with
8 mapping, a potential group coordinance or any data, that
9 could be obtained from the extraction and/or the records
10 that we already have; is that correct?

11 A That is correct.

12 MS. BLANCHETTE: Your Honor, at this time, I
13 would move Mr. Skidemore in as an expert in both the
14 cell phone extraction and mapping as he's going to
15 testify to today.

16 THE COURT: Is there any objection?

17 MR. EVANS: No objection, Your Honor.

18 THE COURT: Okay. Again, so he will be duly
19 qualified in those areas.

20 Please continue.

21 BY MS. BLANCHETTE:

22 Q All right. Mr. Skidemore, if you could just
23 kind of go back a little bit now for us. I know I asked
24 you this but how did you become involved in this case with
25 Jacoby Gregory?

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 A Back in 2022 my father, whom I work with, asked
2 me to look at a report that was from the victim's phone.
3 And so I looked at the report and told him what I thought
4 just by going through it and spending some hours on it.

5 Q Okay. And just to be clear for the record, who
6 is your father?

7 A Peter Cordon Skidemore.

8 Q And what is his occupation?

9 A He is a private investigator.

10 Q And what was his connection to this case?

11 A He's been working with you and Mr. Gregory on
12 it.

13 Q Okay. And so you reviewed that cell phone
14 report at the request of your father, Mr. Skidemore?

15 A That is correct.

16 Q Okay. And you had a chance to also look through
17 the transcripts and the trial exhibits as well; is that
18 correct?

19 A That is correct.

20 Q Okay. Did you have the opportunity -- you know,
21 it may be easier, let me hand you this just to identify it
22 for the record. What does that appear to be for the
23 record?

24 A This is a report that I provided to you.

25 Q Okay. And is this report dated?

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 A I do not believe it is dated.

2 Q Okay. But how many pages are contained therein,
3 just for identification purposes?

4 A Four pages.

5 Q Okay.

6 Your Honor, at this time, I would move
7 Mr. Skidemore's report that's been previously provided to
8 The State as Applicant's No. 2.

9 MR. EVANS: If I can take a look at that. No
10 the one he has, moving that one in?

11 MS. BLANCHETTE: Yes.

12 THE COURT: Let counsel review.

13 MR. EVANS: No objection, Your Honor.

14 THE COURT: Okay. And so Applicant's No. 2,
15 which if you can tell me, again, exactly what that
16 is.

17 MS. BLANCHETTE: Your Honor, it's a four-page
18 report issued by Mr. Skidemore.

19 THE COURT: This is regarding cell phone data on
20 whose phone?

21 MS. BLANCHETTE: The two cell phones that were
22 in evidence in this case. And he'll be referencing
23 those items.

24 THE COURT: Who owned the cell phones?

25 MS. BLANCHETTE: They were attributed to

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1 Mr. Jacoby Gregory. And they're introduced as
2 exhibits and they're actually here in the courtroom
3 with us today.

4 THE COURT: Okay. So not the victim's cell
5 phone?

6 MS. BLANCHETTE: No, Your Honor.

7 THE COURT: So this would be The Applicant's
8 alleged cell phone?

9 MS. BLANCHETTE: Correct. They were introduced
10 as cell phones taken off of him at trial. I mean,
11 not taken off him at trial but obtained from him.

12 THE COURT: Okay, is it in dispute that he owned
13 them? Or can I refer to them as his?

14 MS. BLANCHETTE: You can refer to them as his.

15 THE COURT: Okay. Applicant's cell phone.
16 Okay.

17 So Applicant 2 is in without objection. And it
18 is a report of Peter Skidemore, Jr.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: All right. Okay, thank you.

21 (WHEREUPON, Applicant's Exhibit No. 2 was marked
22 for identification and received into evidence.)

23 THE COURT: So this -- let me make sure that I
24 understand what I'm looking at. All right.
25 Applicant's Exhibit 1 is the CV and 2 is the

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1 four-page report?

2 MS. BLANCHETTE: That's correct, Your Honor.

3 THE COURT: Okay.

4 And, Madam Court Reporter, I have been provided
5 duplicates, I'm afraid I'll spill coffee on these,
6 I'm going to give them back to you. Okay, I have
7 copies. Thank you.

8 Please continue.

9 BY MS. BLANCHETTE:

10 Q Mr. Skidemore, we have admitted and The Court
11 has a copy of your report to reference, but I just kind of
12 want to take you through and have you explain to us the
13 work that you did in this case. If you could start first
14 with just an explanation of the information that we had
15 prior to you doing the extraction and what you were able
16 to obtain from some of the records therein.

17 A So in looking at the information I saw cellular
18 reports that reflected latitude the longitude location of
19 Mr. Gregory's cellular device ending in 9074. I looked
20 at -- it was Excel format. I looked at that report and
21 compared it to Exhibit 50 that had latitude and the
22 coordinance mapped out and started digging through that
23 from there.

24 Q Okay. Before we jump into Exhibit No. 50, which
25 we have here in the courtroom, did you also look at any of

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1 the data that was provided in discovery and was part of
2 the trial exhibits regarding the victim's phone and the
3 records obtained therein?

4 A Yes.

5 Q And is that reflected in the very beginning of
6 your report?

7 A That is correct.

8 Q And could you explain to us what you determined
9 with that?

10 A The victim's cellular report was provided in a
11 PDF format. And that is probably the least desirable
12 format for anybody to review. There is something called a
13 Cellebrite reader report. With that reader report you're
14 able to quickly search for material, you're able to go
15 into subcategories. For example, if you looked at all the
16 messages, you can pull up the messages then you can look
17 for particular messages from individuals or phone numbers.
18 And it allows you to quickly access that information
19 versus looking at a report that's several hundred pages.

20 Q Okay. Let's talk a little bit about the cell
21 phone evidence presented at trial. You're familiar with
22 the transcript; is that correct?

23 A I am, correct. That is correct, excuse me.

24 Q Okay. The Investigator Josh Peden, specifically
25 on Page 189 of the transcript, testified that he took two

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1 phones into custody from Mr. Jacoby Gregory; is that
2 correct?

3 A That is correct.

4 Q And do you know the last four digits of those
5 two phone numbers?

6 A I know one is 9074. And I'm not sure about that
7 Iphone.

8 Q Okay. And then those were introduced on Page
9 190 as State's No. 37 and 38; is that correct?

10 A Yes.

11 Q Okay. And then Karen Milbrodt, if I'm saying
12 her name correctly, beginning on Page 383 was called as a
13 Verizon records custodian; is that correct?

14 A That is correct.

15 Q And you had a chance to review her testimony as
16 well?

17 A I have.

18 Q And going through her testimony, a disk was
19 admitted as State's Exhibits No. 41, this is Pages 384
20 through 388. Subscriber information was admitted as
21 State's Exhibits 42 and 43. She testified regarding the
22 records for the two numbers attributed to State's 37 and
23 38--

24 MR. EVANS: Your Honor, I'd like a question to
25 be asked. This is direct, I think this is --

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1 THE COURT: Leading --

2 MR. EVANS: -- she's testifying.

3 THE COURT: Okay. Ma'am, I will sustain that
4 objection. I understand that you are very familiar
5 with this information but if you will, just let your
6 question be a question, okay.

7 MS. BLANCHETTE: Yes, Your Honor.

8 Can I ask The Court just to take notice of
9 transcript Pages 384 through 388?

10 THE COURT: It's there--

11 MS. BLANCHETTE: These are exhibits that were
12 introduced, I will move on.

13 THE COURT: Yes, ma'am. So that will be
14 Exhibits 40 -- wait a minute, 40--

15 MS. BLANCHETTE: State's Exhibit 41 through 49
16 and we do have those here in the courtroom today.

17 THE COURT: Okay.

18 Any problem with that, Counsel?

19 MR. EVANS: No, objection, Your Honor.

20 THE COURT: Okay. And I am seeing that that was
21 in the direct examination of Karen Milbrodt, if I'm
22 saying that correctly, by Ms. Say or Seay.

23 MS. BLANCHETTE: That's correct, Your Honor.

24 THE COURT: Okay, during the trial conducted by
25 The Honorable Judge Miller, State vs. Jacoby Jamar

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1 Gregory and I'm looking for the dates, July the 11th,
2 2016 through July the 14th of 2016; right?

3 MS. BLANCHETTE: That is correct, Your Honor.

4 THE COURT: Okay, yes, ma'am.

5 MS. BLANCHETTE: Thank you, then I'll move on.

6 BY MS. BLANCHETTE:

7 Q Mr. Skidemore, you had the opportunity through
8 discovery received, and going to the clerk's office
9 yourself, to review all those exhibits that is referenced
10 in that portion of the transcript; is that correct?

11 A That is correct.

12 Q And you conducted your work on those exhibits?

13 A That is correct.

14 Q Okay. And specifically, as a result of the
15 court order issued by Judge Hayes, you were allowed to
16 attempt to conduct extractions to obtain any and all
17 digital information available in State's Exhibits No. 37
18 and 38?

19 A Yes.

20 Q Okay. Now, if you could just explain to us and
21 with reference to your report, if you'd like, that the
22 work that you did in reference to State's Exhibit No. 37
23 and 38?

24 A Yes. I arrived here at the courthouse, I went
25 to the clerk's office. I was able to open up the

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1 evidence, physically hold it, review it. I began by
2 taking the Samsung device, connecting it to the forensic
3 tool to attempting to do an extraction. When I began
4 doing that there was battery issues, so I needed to charge
5 the device. From there I realized that I probably needed
6 to charge the other device because it had been
7 approximately nine plus years that they had been sitting
8 there. So I took the Iphone and I connected that and I
9 also connected the Samsung device.

10 After 30 or so minutes I saw there was a
11 charge on the Samsung, I connected it to the forensic tool
12 through Cellebrite and began to attempting to do an
13 extraction. I was able to do a very low level extraction,
14 which is a logical extraction. Which will, essentially,
15 get what you can see on the surface of the cellular
16 device. As I was proceeding through that I began to have
17 issues with the cellular device and battery by taking the
18 charge when it was connected to the forensic tool, there's
19 charging issues even though it was connected to a computer
20 that has a charge. So I began trying to troubleshoot
21 that. I was not able to do any other additional computer
22 extractions with the Samsung device because of the battery
23 issue.

24 From there I went to the Iphone of
25 Mr. Gregory's. I began trying to do extractions and that

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1 phone also had battery issues. That would not allow it to
2 hold a charge. So I plugged it into a power port and
3 began mainly going through Mr. Gregory's Iphone. From
4 there I was able to see that his Iphone was not locked.
5 That's all you had to do was swipe it to gain access to
6 the phone. I then went to look at the settings to verify
7 that it appeared -- that it was Mr. Gregory's. During
8 cell phone forensics, what we always want to do is put a
9 individual behind or multiple individuals behind a device
10 to validate their information. When I was able to look at
11 the settings, I was able to see Mr. Gregory's information,
12 what appeared to be his information, pictures, that
13 appeared to be Mr. Gregory's. I did not see any other
14 device information that would reflect anyone else.

15 And I looked at location services. I saw
16 that location services was active and on. From there,
17 shortly thereafter, the device turned off and would not
18 turn back on because of the battery.

19 Q And, Mr. Skidemore, did you have the opportunity
20 to take any photos or anything during the course of this?

21 A I didn't. I documented going through the
22 settings because I recognized there were battery issues.
23 I didn't know how much time I had. So I did go through
24 and document the process and show that location services
25 was turned on.

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1 Q And I just wanted to make a record of this, as
2 provided in the order issued by Judge Hayes, there was a
3 representative of law enforcement that The State provided
4 and was present during the course of all your work; is
5 that correct?

6 A Yes, that is correct.

7 Q And a copy of any and all information that you
8 were able to obtain was turned over to The State as well?

9 A That is correct.

10 Q Okay.

11 Your Honor, if I could beg the Court's
12 indulgence one moment?

13 THE COURT: Yes, ma'am.

14 MS. BLANCHETTE: Your Honor, Mr. Skidemore has
15 prepared some digital exhibits that were previously
16 provided to The State. They have been placed on a
17 USB device. He's prepared to put that in his
18 computer and show those to The Court. I have a copy
19 for Your Honor, I have a copy for The State as well.
20 I just wanted to see if that's how you would like to
21 proceed before I jumped into any of those exhibits.

22 THE COURT: Any objection?

23 MR. EVANS: I have no objection.

24 THE COURT: Okay. Then let's proceed that way.
25 I would rather look at them with guidance than

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1 without guidance, okay.

2 MS. BLANCHETTE: Yes, Your Honor.

3 THE COURT: Thank you.

4 BY MS. BLANCHETTE:

5 Q Mr. Skidemore, are there pictures that you took
6 that you would like to explain to The Court at this time?

7 A Yes.

8 Q Okay. Could you please prepare those for us?

9 A (The witness complies.)

10 THE COURT: And is this going to be marked?

11 MS. BLANCHETTE: Your Honor, I was thinking
12 after he concluded then we could mark the USB.
13 Unless you have a different preference.

14 THE COURT: Okay. Do you have one for the Court
15 Reporter or is this going to be hers?

16 MS. BLANCHETTE: I was just going to take the
17 one that we're showing in court to mark.

18 THE COURT: Any objection to that, Counsel?

19 MR. EVANS: No objection.

20 THE COURT: Okay.

21 All right, please continue.

22 THE WITNESS: This is--

23 MS. BLANCHETTE: Mr. Skidemore, maybe turn it
24 just enough angle so we can see and so The Court can
25 still see.

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1 THE COURT: I can see.

2 Y'all just -- can The Applicant see this? I
3 don't object to him being able to stand and come
4 forward.

5 THE BAILIFF: Can we move the computer to the
6 system?

7 THE WITNESS: I was told that wasn't an option,
8 that it has to be done from one of the tables.

9 THE BAILIFF: You can't move it to the table?

10 MS. BLANCHETTE: Well, we didn't quite know how
11 to do that, I apologize.

12 THE COURT: That's fine.

13 Do you know how to do that?

14 MS. BLANCHETTE: We're all visitors.

15 THE BAILIFF: If I know the problem I can do it.

16 THE COURT: That's fine with me if y'all want to
17 take a minute to see if -- because I think it's
18 important for Mr. Gregory to be able to see well,
19 okay.

20 MS. BLANCHETTE: Yes, thank you, Your Honor.

21 THE WITNESS: May I step down, Your Honor?

22 THE COURT: Yes.

23 Why don't we take about 10 minutes, let y'all
24 get situated. Use the restroom.

25 (WHEREUPON, a short break was taken.)

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1 THE COURT: Okay, so we are back on the record.

2 MS. BLANCHETTE: We are, Your Honor. Would it
3 be all right if Mr. Skidemore came around to where
4 his computer is to resume his testimony?

5 THE COURT: Sure, that is fine. Okay, and so I
6 do have one question. How do we turn that on? What
7 I'm going to do then, I do this sometimes in trial
8 where there is a jury, I come and stand by the jury
9 box to see what they're seeing. And so I will -- if
10 those screens are working, I'll just go over there
11 and sit. Are they working?

12 MS. BLANCHETTE: They are, Your Honor. And I
13 think he's going to zoom in on each of these --

14 THE COURT: Yeah --

15 MS. BLANCHETTE: -- so it'll take the whole
16 screen.

17 THE COURT: -- it's just the angle of all the
18 screens. I'm having trouble seeing this one. So I'm
19 okay to just move down a little bit. All right. So
20 okay.

21 And so, Mr. Skidemore, if you would continue.

22 THE WITNESS: Yes, Your Honor.

23 BY MS. BLANCHETTE:

24 Q Mr. Skidemore, if you could just take us through
25 the photos that you took, that you have compiled for today

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1 while you were doing the extraction and explain those for
2 the record. And the reasoning for taking those.

3 A Throughout the process of doing cell phone
4 forensic, documentation is important. And when I
5 recognized that there would be battery issues, as you can
6 see it says that the battery is at 100 percent, as soon as
7 I disconnected from a power source, the phone would die.

8 Q And, Mr. Skidmore, if I can interrupt you. Can
9 you identify which phone this is?

10 A This is Mr. Gregory's. I'm sorry, it came from
11 State's Exhibit 38.

12 Q Okay. And on the screen, what do you have a
13 picture of?

14 A The packaging that I received from evidence.

15 Q Okay. And now you're going to go through some
16 of the screens -- or the pictures you took of the screens
17 as State's Exhibit's No. 38; is that correct?

18 A That is correct.

19 Q Okay, thank you.

20 A So this is the Iphone that I observed. And I
21 took it out of the packaging. This is documenting the
22 device and showing the battery had 100 percent. As I
23 said, as soon as I disconnected it from the power source,
24 it would turn off. It would not hold a charge, the
25 battery wouldn't. This also shows that at the very bottom

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1 of the screen, that it says, Slide to unlock. There are
2 options with cellular devices for pass codes. This device
3 did not have a pass code. As soon as I slid the bar at
4 the bottom to the right, it unlocked the phone to where I
5 was able to again access.

6 This is picture that I took showing the
7 device information from the Iphone. It shows the model
8 number, carrier, version that it was running. Also, the
9 serial number to identify the device. This is all, as you
10 can see at the top, through settings. One thing that I
11 didn't mention is previously the device was searching for
12 a network to connect. You can see that in the top left
13 corner of the device. Whenever I activated or turned the
14 device on, I put it into airplane mode. You will see that
15 later right here in this picture. The time also wasn't
16 accurate because it was trying to connect to a network.
17 From there it was able to connect to a network, it would
18 reflect the accurate time. This is not the accurate time.
19 I went further into the settings and I looked and saw that
20 the location services was turned on. And I documented
21 that from the device. Regarding the Iphone, these are the
22 last photos that I took.

23 Q Okay. Mr. Skidemore, would you like to resume
24 your place on the stand and come back to reference your
25 other items on this disk or on this USB?

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1 A That's fine.

2 Q All right. And, Mr. Skidemore, we've gone
3 through the pictures that you were able to take and you
4 talked through the process. But can you just be very
5 clear for us and let us know what information you were
6 able to obtain, if any, from attempting these two
7 extractions?

8 A Very limited information. What I was able to
9 observe, to me that was important, was the location
10 services was turned on for the Iphone. And so by my
11 attempts to connect it to the forensic tool to do the
12 extraction of data, I was not able to do that because of
13 the battery. And when I was able to mainly look through
14 the phone, I was able to observe that the location
15 services was turned on so I wanted to document that. But
16 as far as data extraction, it was very limited. I was not
17 able to do an extraction whatsoever regarding the Iphone.
18 Regarding the cellular device that was a Samsung, I was
19 able to do very minimum extraction. And only one -- I
20 wasn't able to do extensive extraction.

21 Q Beyond the information that you obtained from
22 the screens, was there any useable information that you
23 incorporated into your findings here today?

24 A No.

25 Q Let's turn back then to the information that was

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1 provided in discovery, was admitted during trial, that The
2 state had in their possession and turned over to Defense
3 Counsel. Now, you're familiar with the fact that Sergeant
4 Dan Kelly testified from the Greenville County Sheriff's
5 Department; is that correct?

6 A That is correct.

7 MS. BLANCHETTE: And, Your Honor, his testimony
8 is reflected on Page 405 of the transcript.

9 BY MS. BLANCHETTE:

10 Q Now, after Sergeant Dan Kelly, beginning on Page
11 406, explains that he's with the technical services
12 department and he goes through and explains Geo Time and
13 RTT data. A map is introduced for number 9074, are you
14 familiar with that map?

15 A I am.

16 Q And let me show you what the clerk has
17 graciously provided from the general sessions file, that
18 is marked as State's Exhibit 50, with the date of 7/16
19 [indiscernible] on the back, can you identify that?

20 A This is Exhibit 50.

21 Q Okay. And that was introduced during the course
22 of Sergeant Dan Kelly's testimony; is that correct?

23 A That is correct.

24 Q Okay. And you reviewed his testimony as well as
25 all the exhibits including that number 50?

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1 A I have.

2 Q Okay. Now, in regards to the data that was
3 provided in discovery in State's Exhibit 50, were you able
4 to do work and reach some opinions and findings?

5 A I was.

6 Q And do you need to return to your computer to go
7 through that?

8 A I can, yes.

9 MS. BLANCHETTE: Your Honor, if he may come back
10 around?

11 THE COURT: Yeah, that's fine.

12 MS. BLANCHETTE: I apologize for giving
13 everybody their exercise today.

14 THE COURT: Go ahead.

15 BY MS. BLANCHETTE:

16 Q If you could please proceed, Mr. Skidemore, with
17 the work that you did regarding State's Exhibit 50 and the
18 information and data obtained in the discovery and the
19 previously marked exhibit.

20 A This is a scanned copy of Exhibit 50. The right
21 corner you can see where it says State's, the exhibit part
22 is cut off, but it reflects the coordinance that were
23 provided. And that The State testified to. This is a
24 Goggle map reflection of Exhibit 50. With the added
25 address of where the incident took place. You see there's

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1 a pin that is a yellow right here. There's one, a second
2 one here, a third one here and a fourth one. All of these
3 are gray coordinance that were taken, were reflected of
4 Exhibit 50. And the access time of Mr. Gregory's phone
5 ending in 9074.

6 This is the same picture but with a map
7 turned. You see access time 22:48:10, access time
8 22:48:25. The address where the incident took place,
9 access time 22:53:27, access time 22:59:58. This is the
10 same reflection of the map, just it is turned. And the
11 difference here is one does not have the Third Street --
12 excuse me, this picture right here does not have Third
13 Street, this picture right here does have Third Street.

14 Q So the final two reflective exhibits that you
15 put up the difference is the address where the incident
16 took place?

17 A That is correct.

18 Q And you took this information from map No. 50
19 and underlining exhibit, Exhibit No. 49; is that correct?

20 A Yes, that is correct.

21 Q Now, utilizing Exhibit 49, were you able to add
22 a pinpoint or whatever you'd like to call that, I'm sorry,
23 to this map?

24 A I was.

25 Q Okay. Could you please explain that?

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1 A May I review or refer to my--

2 Q Yes, I can give him my copy, if you don't mind.

3 A I received a file that had the name as net dort
4 underscore Greenville underscore 9074, that's M, as in
5 Mike, E, as in Echo, V, as in Victory, D, as in Delta, O,
6 as in Oscar, R, as in Romeo, T, as in Tango. For
7 [indiscernible] underscore Greenville underscore 9074. I
8 looked at the gray coordinance that were provided and I
9 matched them up to Exhibit 50. And they were all accurate
10 and a proper depiction of Exhibit 50.

11 I was able to determine that the gray
12 coordinance that were provided for access time 22:48:10,
13 22:48:25, access time 22:53:27 and access time 22:59:58
14 were from rows 501 through 596. When I reviewed that
15 information, I was -- they're six rows. What's going on
16 with the two rows that was left out. One of those rows
17 for 97, there was no latitude onto information to provide
18 a location. So I could understand where that road was
19 left out. I looked at row 499 and there was latitude and
20 longitude information provided. I then proceeded to
21 include that into the map with the other gray coordinance.
22 And it showed a different picture of what the map would
23 look like. And that access time was 22:49:06. I believe
24 it was 41 seconds after the last access time that was
25 given.

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1 This is a picture that I took, a screen
2 shot of Exhibit 50. All of the locations are the same
3 that are on Exhibit 50 that are also reflected in the
4 Excel file that I was reviewing. You can see 22:48:25,
5 22:48:10, 22:53:27, 22:59:58 access times. I did add
6 access time 22:49:06. When I did that, it made me begin
7 to question what was going on with this picture. And with
8 the time difference of 41 seconds, made me question the
9 accuracy of these coordinance and reliability. When
10 putting the location of the victim, where the shooting
11 took place, 101 Third Street, to access time 22:49:06, my
12 recollection, from just looking this morning, was 1.6
13 miles. And it would take five minutes driving. So even
14 if someone is speeding at a very high rate, it would be
15 difficult to get there in 41 seconds.

16 So further added issue that the accuracy
17 and reliability should be questioned. And why was this
18 coordinate not included, why was it not questioned and
19 what was going with the other information.

20 Q And, Mr. Skidemore, you're familiar with Mr. Dan
21 Kelly's testimony; is that correct?

22 A That is correct.

23 Q And while he was on the stand, he was asked
24 about the number of rows and where he pulled the data
25 from. And specifically on Page 410, he's asked about what

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1 would happen if you hook at line 16.

2 He's asked, Can you describe what this map
3 would like if all the cell activity for that time period
4 were included on this map?

5 And his answer is, It would be unreal.

6 Did anyone, as far as you're going over
7 this transcript, ask him about just adding this one
8 additional time on the map?

9 A I never saw that.

10 Q Okay. And in your expert opinion, what does
11 adding this one additional time to the map do?

12 A Brings into question the reliability, the
13 accuracy of the other gray coordinance that were provided.
14 If access time 22:49:06 is not accurate, needs to be left
15 out, how can the others one be included?

16 Q And on cross-examination, Mr. Chambers actually
17 asked and Mr. Kelly admitted that he had no underlining
18 knowledge of the cell phone towers or locations, this is
19 on Page 414. But he wasn't asked about the data and these
20 other rows that you analyzed; is that correct?

21 A That is correct.

22 Q Mr. Skidemore, do you have anything more
23 regarding these exhibits or would you like to retake the
24 stand at this point?

25 A I made a movie that reflects the way -- if you

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1 were doing an aerial overview of when access time 22:49:06
2 was left out versus when it was included. I don't know if
3 that's necessary.

4 Q That was provided to The State and if you'd like
5 to take us through that, at this time, that is on USB, as
6 well?

7 A Yes.

8 Q Okay. If you wanted to take us through that, at
9 this time.

10 A Right here, this is the beginning of the movie.
11 This is all done from Goggle earth. It has the gray
12 coordinance that I've been working off. I've not changed
13 anything, everything is copied and paste to Goggle Earth
14 to reflect Exhibit 50. So I began presentation by showing
15 the latitude and longitude of each of those locations that
16 were reflected in Exhibit 50. All I did from here was
17 take out the access times and just reflect the location
18 where the incident took place. I provided the first
19 access time that was reflected now. There's the second
20 access time.

21 This is the third access time, 22:53:27.
22 And this is the last access time, 22:59:58. And then this
23 is zooming out showing the larger picture of everything.
24 Again, this is zoomed out. The reason that I show this is
25 it makes it appear that these gray coordinance, these

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1 locations of these access times where the incident took
2 place, the cellular devices was in that area, left the
3 area and then proceeded away from that area. And what
4 would be considered probably reasonable amounts of time.

5 The next video that I made, again, was from
6 all of the gray coordinance that were from Exhibit 49,
7 reflected in Exhibit 50. Except this has access time
8 22:49:06 and this is the interview. And I will do the
9 same procedure as I did with the last video. Showing all
10 the access times and then I'll take this off and then I'll
11 walk through. This is the first access time. Second
12 access time. Now, the third access time, which is
13 22:49:06, shows the ping, the gray coordinance across the
14 Interstate approximately 1.6 miles away. Approximately
15 five minute drive, according to Goggle maps, at a high
16 speed know that it would be less than that. But that is
17 what is reflective in this.

18 This is the forth access time, 22:53:27.
19 Which was previously the third access time. The fifth
20 access time. And then zooming out showing the entire map
21 area and the access times. That's everything that I
22 provided.

23 Q Okay. Would you mind retaking the stand again?

24 A (The witness complies.)

25 MS. BLANCHETTE: Your Honor, at this time, I

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 would move the USB device that Mr. Skidemore has been
2 utilizing that has been reviewed by everyone here in
3 the courtroom as Applicant's No. 3.

4 THE COURT: Any objection?

5 MR. EVANS: No objection, Your Honor.

6 THE COURT: Okay. So Applicant's 3 will be
7 admitted without objection.

8 (WHEREUPON, Applicant's Exhibit No. 3 was marked
9 for identification and received into evidence.)

10 THE COURT: So mine is a copy that I can retain
11 and you've given Ms. Herron the original that was
12 played?

13 MS. BLANCHETTE: That's correct, Your Honor.

14 THE COURT: Okay, thank you.

15 BY MS. BLANCHETTE:

16 Q Mr. Skidemore, again, you reviewed the entire
17 transcript in this case; is that correct?

18 A That is correct.

19 Q And are you familiar with, on Page 674, where
20 The State argues in their closing, his telephone activity
21 places him where the shooting happened and when it
22 happened. And then they start going through this map No.
23 50; is that correct?

24 A That is correct.

25 Q Okay. And based upon the work that you've done

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 in this case, do you agree with their argument there?

2 A I do not.

3 Q And if you haven't had the chance to explain,
4 would you like to explain kind of what your issues are
5 with that position?

6 A By adding the other access time, it places the
7 device in another location around the time of the
8 incident. And by looking at -- to me that's an issue.
9 The other second issue would be that it was left out and
10 that it wasn't questioned. And it does not -- it's a
11 different depiction. It looks from the first video that I
12 showed that the devise was leaving the area going on what
13 would be a normal route where it ends up going. With
14 having the access time that I provided that was left out,
15 it makes it look like it was across the interstate. And
16 brings out the reliability and accuracy. If you question
17 that one access time then you would have to question all
18 the other access times. Which would then say that's not
19 an accurate statement to say that it places the device
20 there in that area.

21 Q And if you had been contacted by counsel prior
22 to the trial in this case, would you have been willing to
23 attempt to do the work that you've done prior to today's
24 hearing?

25 A Yes.

PETER SKIDEMORE-DIRECT BY MS. BLANCHETTE

1 Q And, at that time, do you have an opinion as to
2 whether or not you could have potentially been successful
3 with attempting the extractions of the phones?

4 A Because of the amount of time that's gone by and
5 reflecting on capabilities of Cellebrite during that time
6 period, I feel like we could have got more information, at
7 minimum a logical from the Iphone. There was nothing
8 obtained from the Iphone at all. And also, the Samsung
9 device. There was nothing. So yes, I believe that good
10 amount of information could have been obtained.

11 Q So the data that you were working with was just
12 for the 9074, which was also discussed by Sergeant Kelly
13 at trial. You did not have the opportunity to map or
14 review any data for the second phone 9893; is that
15 correct?

16 A That is correct.

17 Q And would you have recommended that that be done
18 prior to the trial in this case?

19 A Yes, I would have.

20 Q Okay. And in your expert opinion, is it best to
21 have the raw data or the data that you had available in
22 this case?

23 A Raw data -- when I think of raw data, I think of
24 the data that comes from the cellular devise. To me
25 there's a difference between records and referring to that

PETER SKIDEMORE-CROSS BY MR. EVANS

1 as data versus the data and the raw data that comes from
2 the actual extraction. So I would have recommended
3 getting all of that, yes.

4 Q And was that done in this case?

5 A No, it was not.

6 Q All right.

7 MS. BLANCHETTE: Your Honor, if I could beg the
8 Court's indulgence one moment?

9 THE COURT: Yes.

10 BY MS. BLANCHETTE:

11 Q Mr. Skidemore, as I already discussed, you
12 prepared a written report in advance of today. Is there
13 anything further, as far as your expert opinions from that
14 report that I have failed to ask you about?

15 A No.

16 MS. BLANCHETTE: Your Honor, I have no further
17 questions of this witness.

18 THE COURT: Cross-examination?

19 MR. EVANS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. EVANS:

22 Q Mr. Skidemore, you're being compensated for your
23 testimony today; correct?

24 A I hope I am.

25 Q And any time that you testify or you do aide for

PETER SKIDEMORE-CROSS BY MR. EVANS

1 a person that asked for the expertise, you're compensated
2 for those also, isn't that correct?

3 A Generally, yes. I said I hope I am because
4 Mr. Gregory's funds have run out.

5 Q Okay. But you do this for a living so you're
6 normally compensated for what you're doing; isn't that
7 correct?

8 A Normally. But, in this case, I don't know if I
9 will be.

10 Q Okay. Now, in your report you mentioned that
11 you read the discovery that was given to you by attorney
12 Blanchette; isn't that correct?

13 A That is correct.

14 Q And part of this is the trial transcript; isn't
15 that correct?

16 A That's correct.

17 Q All right. And so you read the testimony of
18 Sergeant Dan Kelly of the Greenville County Sheriff's
19 Department?

20 A Yes.

21 Q Okay. And Sergeant Kelly testified that the
22 Applicant's phone was located on Third and Fourth Streets;
23 isn't that correct?

24 A Yes, I believe so.

25 Q Okay. And the incident occurred on Third

PETER SKIDEMORE-CROSS BY MR. EVANS

1 Street?

2 A That's correct.

3 Q Okay. Did you read the testimony of his
4 co-defendant, Shawndell Clemons?

5 A I read through it, yes.

6 Q And Mr. Clemons testified that The Applicant
7 called a man named Landis Franklin in the field right near
8 Fourth Street; isn't that correct?

9 A I believe so, yes.

10 Q Okay. The phone was also located at Bate
11 Street, remember reading that?

12 A Vaguely, yes.

13 Q Okay. Do you remember reading the testimony of
14 Bobby Thomas, also known as Bot [ph] who testified in this
15 case?

16 A It's been a while but if you say it's there, I
17 believe you.

18 Q Okay. And Mr. Thomas testified he lived on Bate
19 Street; isn't that correct?

20 A I guess, yes.

21 Q Okay. And Mr. Thomas also testified that after
22 this incident occurred, that Mr. Clemons and The Applicant
23 came to his house and tried to go inside; isn't that
24 correct?

25 A I believe so, yes.

PETER SKIDEMORE-CROSS BY MR. EVANS

1 Q Okay.

2 I have nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MS. BLANCHETTE: No, Your Honor.

5 THE COURT: Okay, thank you.

6 Any objection to Mr. Skidmore being excused?

7 MR. EVANS: No objection, Your Honor.

8 THE COURT: Okay.

9 MS. BLANCHETTE: No, Your Honor.

10 THE COURT: All right, thank you. Anything that
11 has been marked as an exhibit, if you'll leave it
12 right here with the Court Reporter, sir.

13 MS. BLANCHETTE: And, Your Honor, I think he was
14 showing me this because this goes back in the general
15 sessions file.

16 THE COURT: Okay.

17 MS. BLANCHETTE: Do you mind if I place that
18 over here?

19 THE COURT: Give that back to Ms. White. Thank
20 you.

21 MS. BLANCHETTE: Your Honor, if you could be so
22 kind, my client has indicated to me he needs to use
23 the restroom.

24 THE COURT: Sure.

25 MS. BLANCHETTE: If we can take a brief break?

1 THE COURT: Sure, we'll take 10 minutes and come
2 back, okay.

3 MS. BLANCHETTE: Thank you, Your Honor.

4 (WHEREUPON, a short break was taken.)

5 (WHEREUPON, Applicant's Exhibits Nos. 4 and 5
6 were marked for identification only.)

7 THE COURT: Okay, we're back on the record. If
8 you all are ready.

9 MS. BLANCHETTE: Thank you, Your Honor, The
10 Applicant would call Ralph Robert Tressel to the
11 stand.

12 THE COURT: Please come forward.

13 THE CLERK: Mr. Tressel, please place your left
14 hand on the Bible and raise your right hand.

15 ROBERT TRESSEL, after being duly
16 sworn{,}testified as follows:{F}

17 THE CLERK: Thank you, you may be seated.
18 Please state your full name for the record.

19 THE WITNESS: Ralph Robert Tressel, I go by Bob.

20 THE COURT: How do you spell your last name?

21 THE WITNESS: T-R-E-S-S-E-L.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q And, Mr. Tressel, I'm going to show you a

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 document that has previously been marked as Applicant's
2 No. 4. Can you identify what that appears to be for the
3 record?

4 A Yes, it's a copy of my CV.

5 MS. BLANCHETTE: Your Honor, at this particular
6 time, I'd move Mr. Tressel's CV in as Applicant's No.
7 4.

8 THE COURT: Any objection?

9 MR. EVANS: No objection, Your Honor.

10 THE COURT: Okay, Applicant's No. 4 is in
11 without objection.

12 (WHEREUPON, Applicant's Exhibit No. 4 was
13 admitted into evidence.)

14 BY MS. BLANCHETTE:

15 Q Now, Mr. Tressel, we have admitted your rather
16 lengthy CV for The Court's review and as an exhibit in
17 this case. Could you take us through kind of how you got
18 here today, through your education, experience and your
19 background and then explain to us what it is that you're
20 doing today?

21 A Sure. I started my law enforcement career with
22 Cobb, C-O-B-B, County Police Department in Georgia 1973.
23 I was a uniform patrol officer. In February 1975 I was
24 promoted to the rank of detective and transferred to -- we
25 were titled Crimes Against Persons Unit. Which is

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 commonly referred to as the robbery/homicide division. In
2 1979 I obtained the rank as a detective/sergeant and was
3 left in the Crimes Against Persons Unit. I stayed in the
4 Crimes Against Persons Unit until February of 1985. Yeah,
5 1985 is when I transferred to Cobb County Medical
6 Examiner's Office as a death scene investigator. In 1989
7 I was promoted to the operations of manager as a chief
8 investigator of the medical examiner's office. I remained
9 as the medical examiner's office until 1999. Actually,
10 December 1998 when I left law enforcement and I went into
11 private consulting with a company called Burton and
12 Associates. We primarily did homicide investigations for
13 defense attorneys along with product liability.

14 In 2008, I was brought back to Cobb County
15 as the chief investigator of the Cobb County District
16 Attorney's Office. I stayed in the District Attorney's
17 Office until -- if I said 2008, I was wrong, 2011, my
18 apologies. In 2019 I took retirement from Cobb County
19 after 34 years of service with the county. And over 40
20 years of investigating homicide cases.

21 I received my training as a police officer
22 in 1973 and I've attended multiple various schools. Some
23 of the best ones that I talked about, The University of
24 Georgia in death investigation. University of Miami
25 School of Medicine in medical legal -- MDICO, legal death

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1 investigation. I took the course study at the St. Louis
2 School of Medicine in medical legal death investigation.
3 I took two rounds of blood spatter interpretation classes,
4 National Law Enforcement Institute in Santa Rosa,
5 California. And in St. Petersburg through the medical
6 examiner's office out of Seminole County, I believe it
7 was.

8 I have attended multiple other law
9 enforcement classes including supervision classes, crime
10 scene processing, evidence collection, evidence
11 preservation and classes on that nature. I've been
12 classified as a expert in 14 states and in federal courts.
13 I have testified probably close to a thousand times. I've
14 been involved in well over 600 homicide investigations
15 during my career. I currently provide consulting
16 services, both on active homicide investigations and on
17 post-conviction cases throughout the United States.

18 As I said, I've testified in 14 different
19 states and I've taken cases from about -- the last count
20 from around 22 states. Some of which are still pending
21 hearings.

22 Q And every time you are brought on in a case, do
23 you always testify and get qualified in court?

24 A No. I testify in maybe three, four times a year
25 at the most. This year is little bit different. Because

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 the federal courts have finally opened up from the COVID
2 issues and this will be, I think, my sixth testimony this
3 year so far.

4 Q Have you previously been qualified as a expert
5 in this state or circuit courts in South Carolina?

6 A I have. I've testified probably five or six
7 times in the circuit courts in active homicide
8 investigations and in post-conviction relief.

9 Q And have you also been qualified in federal
10 courts in South Carolina?

11 A Not in South Carolina, no.

12 Q But in other states?

13 A Yeah. Georgia, Connecticut, Texas and Kansas
14 come to mind.

15 MS. BLANCHETTE: Your Honor, at this time, I
16 would offer Mr. Tressel as a expert in the area of
17 forensic crime scene investigation.

18 THE COURT: Any objection?

19 MR. EVANS: No, Your Honor.

20 THE COURT: He will be duly qualified.

21 BY MS. BLANCHETTE:

22 Q Mr. Tressel, if you could just explain for us
23 how you come on board with this case?

24 A Well, I was contacted sometime in July --
25 probably June of 2020 by your office to take a look at the

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 available discovery that had been provided in trial
2 testimony. Involving this case that occurred on 10/1 of
3 2013 in Forrest Acers.

4 Q And I'm going to hand you a document, if you can
5 identify that for the record. Also use this to,
6 potentially, refresh your memory. Can you identify what
7 that appears to be for the record?

8 A Yes, this is a report on this case that I wrote.

9 Q Okay.

10 Your Honor, at this time, I would move
11 Mr. Tressel's report in as Applicant's No. 5.

12 MR. EVANS: No objection, Your Honor.

13 THE COURT: Okay, Applicant's No. 5 is in
14 without objection.

15 (WHEREUPON, Applicant's Exhibit No. 5 was
16 admitted into evidence.)

17 BY MS. BLANCHETTE:

18 Q And, Mr. Tressel, if you can look there on the
19 first page of your report, you said this took place in
20 Forrest Acres, does that refresh your memory as to where
21 the incident took place?

22 A Fountain Inn, I'm sorry. I was thinking about
23 Fountain Inn last night because I was involved when I was
24 at the DA's office with a jewelry store robbery that was a
25 gang that hit jewelry stores and I was looking it up last

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1 night to see if they had convicted him. So my apologizes.

2 Q So to be clear, this is--

3 A This is Fountain Inn.

4 MS. BLANCHETTE: And, Your Honor, I'm not sure
5 if the Court Reporter needed a moment for this
6 exhibit.

7 THE COURT REPORTER: No, I'm good. Thanks.

8 BY MS. BLANCHETTE:

9 Q Now, Mr. Tressel, you said you had the
10 opportunity to review discovery that my office provided to
11 you. Did you also have the opportunity to review the
12 transcript?

13 A I did, yes, ma'am.

14 Q Did you also have the opportunity to go review
15 anything in person?

16 A Yes, I came here to the Greenville courthouse
17 and examined the evidence that was in the custody of the
18 clerk's office.

19 Q And did you also have the opportunity to go
20 to -- I apologize, the Fountain Inn Police Department to
21 review the evidence that was in their custody?

22 A Yes, we do that on the same day.

23 Q Okay. Now, if you could explain to us a little
24 bit as your report goes into about crime scene
25 investigations.

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1 A Well, whenever we think about a crime scene
2 where any type of criminal act has occurred, especially,
3 in homicides, processing of the crime scene is probably
4 the most vital aspect of the homicide investigation. When
5 we document a crime scene, we do it by photographs,
6 diagrams and written notes. Anticipating that we're going
7 to possibly have to recreate this crime scene. If we
8 can't recreate it then nobody can evaluate our work. So
9 processing of a crime scene is vital to being able to
10 replace all items of evidence. Which would help us
11 understand where the victim was actually standing, where
12 witnesses were standing. Where evidence is recovered,
13 shell casings, bullets, handgun, things of that nature.
14 So I always call it the heart and soul of any homicide
15 investigation is your crime scene.

16 Q All right. And the information that you
17 provided in your report, that's what you're kind of using
18 as your background information in reaching your opinion
19 regarding the crime scene investigation in this case; is
20 that correct?

21 A Yes, homicide investigations are pieces --
22 everything's a piece of the puzzle. Crime scene's a part
23 the puzzle. Interviews are part of the puzzle.
24 Evaluation of the evidence that's recovered is part of the
25 puzzle. When I was trying to do is put the pieces of the

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1 puzzle together to get you a good picture of what actually
2 took place when and how it could have taken place.

3 Q Okay. Now, we have already discussed and your
4 report reflects the actual material that you reviewed, it
5 addresses those in more detail. The next section in your
6 report is entitled, Discussion. Can you take us through
7 that in your discussion of this case?

8 A Well, when I put in discussion of the case I
9 usually start with first responding officers who arrived
10 on the scene. Officer Barnes was the first Fountain Inn
11 police officer on the scene at approximately 10:50. She
12 testified that she was in close proximity to the incident.
13 And therefore, arrived very quickly after the dispatch
14 went out. She was confronted by a chaotic situation with
15 multiple people out on the streets. Probably all of them
16 trying to talk at the same time and directing her towards
17 where The Deceased, Barry Norman, was lying in the
18 roadway.

19 One of the things that we talk about in
20 crime scenes is the first thing we do as responding
21 officers is number one provide aide to the injured.
22 Regardless of the imminent threat to you personally. What
23 can I do to help this person that's injured? She did
24 observe that he had significant gunshot wound, apparently
25 to his head. Then she tried to maintain the people that

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1 were there. Detective Peden arrived shortly thereafter.
2 There were other police officers on the crime scene that
3 were helping her try to gain control.

4 At some point in time, once control of the
5 crime scene is controlled, you then start what we call a
6 crime scene log. Who is present on the crime scene? What
7 time did they enter in the crime scene and what time did
8 they leave? Usually, I hate to say this, it's usually the
9 low man on the totem pole officer that gets stuck with
10 that job. And he's to document when do people come in,
11 when do they leave. I always think of it that when you
12 get a crime scene technician or the person that's going to
13 be processing the crime scene, they may walk out of the
14 crime scene going back to their vehicle to obtain
15 equipment or tools, measuring device, what they need to
16 process this crime scene.

17 So normally, we don't enter them and exit
18 them and then reenter them. We just leave it because
19 they've been there the entire time until they leave at the
20 end. They documented that there's no crime scene log on
21 this case. So we don't know which officers showed up, we
22 don't know who entered into the crime scene area. We have
23 a list of names of witnesses that, potentially, were
24 there. And things of the nature.

25 You know, then we talk about the gunshot

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1 wound to Mr. Norman. Gunshot wound in the left temporal
2 area without an exit. Which means that the left side of
3 his head is exposed to the shooter. The autopsy recovered
4 a 45 caliber projectile, there's no powder burn or
5 stippling around the entry gunshot wound, indicating it's
6 a indetermined. In other words, it was fired from a
7 distance with a 45 caliber. It, probably, in excess of 36
8 inches away -- the barrel had to be at least 36 inches or
9 further away. No way of determining distances.

10 The next thing that I noted when I go into
11 the discussion was that Fountain Inn requested the
12 Greenville County Department of Public Safety and
13 Forensics Division to collect the evidence. And in quotes
14 I put collect. Because all their reports indicate that's
15 all they were asked to come to the crime scene and do is
16 to collect the evidence. When you have multiple
17 jurisdictions on a crime scene, you have to have well
18 defined job descriptions. What are your tasks? What is
19 each agency going to be providing? Fountain Inn is in
20 custody of the crime scene. So they're going to have the
21 lead detective, who turns out to be Detective Peden, is
22 going to handle that.

23 Then when Greenville County gets involved,
24 you have to delineate who's responsibility is to do what
25 on this crime scene. If I'm just here to collect

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1 evidence, I'll photograph it and I'll collect it. If I'm
2 here to map or diagram the crime scene, somebody needs to
3 be responsible for that. And one of the things I noted in
4 looking in the discovery, there's no diagram of this crime
5 scene. One of the problems that developed in reviewing
6 the file is there's no measurements of where any of these
7 shell casings are recovered. There's four 45 caliber
8 shell casings and three 9mm shell casings.

9 It is documented by deputy, I believe you
10 pronounce his name as Kretschmar, that the 45 caliber
11 shell casings are closer to where Barry Norman was. And
12 the nine millimeters were further back. But it doesn't
13 tell us how far back. There's one note in the file, in
14 the report that it was three quarters of a block. Well, I
15 don't know how long this block is. There's no measurement
16 of it. Nobody took a measurement of it. Then we run into
17 the discussion that after that evidence was collected, as
18 it's being transferred to Greenville County evidence unit,
19 that one of the 45 caliber shell casings fell out of a
20 evidence bag. Kretschmar admitted that he only folded the
21 bags over, didn't seal them with evidence tape, didn't
22 mark them with evidence tape, tied and collected. No
23 information pertaining to it.

24 It brings up the issue that if he did this
25 with one shell casing, I'm sure he did it with all seven

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1 shell casings that were recovered and any other evidence
2 that was recovered. He didn't use evidence tape to seal
3 his evidence bags. We don't know if anybody else entered
4 into any of those bags or anybody else has access to those
5 bags. And I believe that he was reprimanded for that.

6 At a later date, let me see -- da, da, da,
7 da, yeah, the 45 caliber Springfield handgun was
8 recovered. It was subsequently, at some point in time,
9 swabbed for fingerprints. Excuse me, not fingerprints,
10 for DNA. The back strap and trigger area was swabbed for
11 DNA. My experience is handguns aren't the greatest things
12 to get DNA off of. They're smooth metal. Depending on
13 the condition on the weapon, if they've been well serviced
14 or well cared for, they're going to have oils on them.
15 And DNA will not be there. The more logical source from
16 DNA with a handgun, especially a semi automatic, is on the
17 magazine and on the bullets themselves. Where you have to
18 mainly load the bullets into the magazine. That was not
19 swabbed.

20 Let's see what else. Then subsequently,
21 the recovered hoodie sweatshirt was swabbed for DNA by
22 Kretschmar. The DNA was only swabbed on a area on the
23 front and on the back. Unless it was on the inside
24 portion of the sweatshirt, that DNA could have come from
25 anywhere by anybody wearing it. When you think of someone

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1 wearing a jacket or a shirt, you think of the logical
2 areas. Where is DNA going to be deposited? It's usually
3 around the collar, the cuffs and usually the arm pits.
4 And with a hoodie it would be the inside of the hood part
5 of the sweatshirt.

6 Q And, Mr. Tressel, are you familiar with the
7 subsequent DNA application that was filed and the results
8 therefrom and those records were in the clerk's office for
9 you to review?

10 A Yes. The only thing I didn't have was the
11 actual order as to how it was supposed to be done. But
12 yeah, I'm familiar that there was a post request for DNA,
13 yes.

14 Q And based upon your discussion of what you
15 reviewed and ascertained, what information were you able
16 to ascertain regarding the 9mm weapon?

17 A Other than it's a 9mm, I think they gave a
18 listing of the weapons that it could be. I don't remember
19 the exact number of weapons that were on that list. But
20 other than that, all you can tell it was a 9mm.

21 Q Did they actually recover that 9mm?

22 A No, it was never recovered.

23 Q And in your discussion you also talk about the
24 grid search or the strip search done around the crime
25 scene area, is there any information on that you'd like to

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1 share?

2 A Well, yeah, Deputy Peden was asked in
3 cross-examination if they did a grid search of the crime
4 scene. And he said, no, we simply did a strip search.
5 Which is people walking together down a crime scene, some
6 people may be off the road and some people may be on the
7 road. But you have to remember, this was somewhere
8 probably around midnight when they were doing this. The
9 shooting occurred somewhere around 10:50 p.m. It's
10 nighttime, you're using flashlights. Ideally, should have
11 been a grid search. Ideally, could have secured this
12 location until daylight hours where you could see it.
13 There's no rain mentioned in any of the reports, there
14 wasn't anything that was going to get washed away if we
15 don't do it right now. You could have waited until the
16 next morning to do a grid search. And there was a report
17 that they went back out later and looked at the area again
18 but didn't find anything.

19 Q Now, Mr. Tressel, based upon everything you
20 reviewed and the discussion of the facts that you just
21 offered, were you able to reach opinions in this case?

22 A Well, the first opinion that I came to was,
23 again, the problem with multiple agencies. It doesn't
24 appear to be coordination between agencies and who's
25 responsibility it was to document this crime scene

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1 properly. I did mention in the report that I've only had
2 11 crime scene photographs. Which I find highly unusual.
3 I think the question became, who is going to be taken the
4 photographs? I've seen upwards of 50 to 100 photographs
5 on a simple homicide. On a complicated homicide where you
6 have multiple victims, I have seen as many as 300
7 photographs. But they only have 11 that have ever been
8 turned over, seems abnormal. Detective Peden should have
9 been the lead investigator and should have been
10 instructing who would be responsible for what activities.

11 Q And did the multiple agencies being involved
12 without detailed coordination, did that impede your
13 ability to reconstruct and analyze this crime scene?

14 A Well, I can't reconstruct this crime scene. I
15 got no information where shell casings were found, other
16 than approximately three quarters of a block up from the
17 intersection. I can't tell you whether they're on the
18 right-hand side of the road or the left-hand side of the
19 road based on the photographs. I have an idea but I'm not
20 positive about it. The other thing I can't tell you
21 because of the two cousins that were Mr. Barry Norman,
22 never gave statements until they testified. So therefore,
23 I don't know where they were actually standing, what they
24 saw other than that the two people walking up towards
25 them.

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 Q Now, this kind of springboards into this issue
2 of reconstruction. Have you reached an opinion as to
3 whether the crime scene was properly documented?

4 A Well, no I don't have a crime scene diagram, I
5 don't have any measurements. I have had cases before
6 where I have a measurement sheet that tells me the
7 measurements but they didn't produce a diagram. Well, if
8 I got a measurement sheet that has proper measurements,
9 then I can go back out and try to recreate it. Some
10 officers do fall into the habit of using two fixed points
11 as their measurement. On a outside scene like this where
12 you're dealing with a roadway, the easiest is do what we
13 call a linear measurement. A linear measurement is like
14 take it from the pavement transfer, you know, where you
15 got two roads that come together in a T-intersection, you
16 get a change in pavement. You take that payment mark and
17 you run a line straight up through your crime scene. And
18 then you measure your evidence off of it. North, South,
19 East and West, off of that main line. So that you can
20 properly place it back where it was. Again, I can't
21 recreate it, I can't even tell where Barry Norman was
22 found lying in the roadway other than approximation.

23 Q Did you reach an opinion regarding the evidence
24 handling in this case?

25 A The evidence, it's a combination of it wasn't

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 secured at the crime scene. Not even bagged --
2 apparently, one bag was left opened, I assumed the rest of
3 them were left opened. They weren't sealed with evidence
4 tape properly. Usually, when you seal it, you mark it
5 with your initials across the tape so if the tape gets
6 pulled off later, you'd be able to see markings that it's
7 been removed. You put the date and time and usually on
8 the bag you put location. So that you know this is shell
9 casing number one, shell casings number two and so forth.
10 So the evidence wasn't packaged and handled properly.

11 Q And finally, did you reach an opinion regarding
12 the DNA sampling that was conducted?

13 A Yeah, as I mentioned earlier, the DNA areas that
14 were swabbed on the handgun I don't think were sufficient.
15 You have to understand how a weapon is utilized in order
16 to look for DNA. And when you're looking at a gun that
17 holds eight in the magazine and one in the chamber, you
18 got to mainly push eight shell casings into the magazine.
19 And you have to hold the magazine in order to do that.
20 That's the most logical place, other than the back strap
21 and the trigger guard. Trigger and trigger guard that you
22 can, potentially, find DNA. And that wasn't done. Like I
23 said with the sweatshirt, the DNA sampling was limited to
24 two areas of the sweatshirt and not common areas where
25 skin follicles can be rubbed off and placed onto the

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 garment for DNA analysis.

2 Q Now, upon review of your transcript and just
3 your familiarity with this case, would you agree that the
4 Defense Attorney's strategy appeared to be addressing
5 inconsistencies in the testimony of The State's witness
6 and trying to attack The State's investigation in this
7 case?

8 A Yes.

9 Q And if he had reached out to you before trial,
10 would you have been willing to work with him either as a
11 consultant and/or testify at trial regarding the matters
12 you raised today?

13 A Certainly would. But the first thing that I
14 would have mentioned, the fact that did anybody take any
15 handwritten notes or make any handwritten small diagram
16 that we got any measurements of that we can try to
17 recreate the scene. And also, I would recommend -- would
18 have recommended in the beginning of DNA, comprehensive
19 DNA analysis, of the handgun and the hoodie sweatshirt
20 prior to trial.

21 Q And you have, though, been able to review the
22 DNA results that came from the subsequent DNA application;
23 is that correct?

24 A That's correct, yes.

25 Q Okay. Now, as part of the discovery process you

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 were provided everything that I was provided through the
2 discovery orders. You also had the opportunity to go
3 physically look at the evidence at the sheriff's
4 department; is that correct?

5 A That's correct, yes.

6 Q I'm sorry, the police department in Fountain
7 Inn.

8 A You're correct. Police department and the
9 clerk's office.

10 Q Okay. And so as far as you understand and
11 pursuant to the court orders, we have been provided
12 everything that's of evidentiary value in this case?

13 A That's my understanding, yes.

14 Q Okay. Now, you had the opportunity leading up
15 to today to interact with Mr. Peter Skidmore, Jr. that
16 testified prior to you; is that correct?

17 A Yes.

18 Q Okay. And you've had the opportunity to hear
19 his testimony today and review his report?

20 A Yes.

21 Q Okay. Do you have any further opinions to offer
22 regarding the information that he provided?

23 A No. His observation was the same thing I had
24 observed when he actually plotted the location of the cell
25 tower location -- or not cell tower location, the ping

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 locations. Is the oddball wanted to be able to cross the
2 interstate, you know, 1.5 miles away. And I questioned
3 him about that. As to is there anything logical that
4 could being obtained from that? I do agree with him that
5 it was purposefully left off of the diagram that was
6 presented at the time of trial for some reason. Most
7 likely because it didn't fit the scenario of the
8 prosecution.

9 MR. EVANS: Your Honor, I object to that
10 opinion.

11 THE COURT: I'm sorry?

12 MR. EVANS: I object to that opinion given by
13 the witness.

14 THE COURT: And what is the ground?

15 MR. EVANS: Well, I mean, it's prejudicial, Your
16 Honor. Basically, giving the opinion that the
17 solicitor's office left out evidence on purpose. So
18 it wouldn't match their story, that's prejudicial,
19 Your Honor. We really don't know why that was left
20 off. Or could have present an illegal defense, I
21 don't know. I object to that, Your Honor.

22 THE COURT: Okay. Is that included in the
23 report?

24 MS. BLANCHETTE: It is not. I did give
25 Ms. Melody Brown notice, who was handling the case

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 before he was and made sure that he was aware today
2 before Mr. Tressel testified to it, that I was going
3 to ask him about Mr. Skidemore's report, as well, and
4 his exhibits here in the courtroom.

5 MR. EVANS: I have no objection to him
6 testifying about the actual report but his opinion
7 about being left out on purpose in order to fit the
8 narrative, I think is prejudicial. And I think that
9 it should be stricken from the record and not be
10 considered, Your Honor.

11 THE COURT: Okay. State again what it is that
12 you said concerning evidence being left out, is that
13 what it is?

14 MR. EVANS: Yes.

15 MS. BLANCHETTE: Your Honor, I could restate
16 that question to if that would help.

17 THE COURT: Well, it will. If this isn't
18 something that has been contained in a report, I just
19 want to hear specifically what it is. Go ahead.

20 MS. BLANCHETTE: Would you like me to start
21 reasking?

22 THE COURT: Yes, ma'am.

23 BY MS. BLANCHETTE:

24 Q Mr. Tressel, I'll rephrase the question. As an
25 expert in the area of forensic crime scene investigation,

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 did you find the information that Mr. Skidmore provided
2 today and previously in his report relevant?

3 A Yes.

4 Q To your findings?

5 A Yes.

6 Q And if you were consulting with his trial
7 counsel prior to trial or in this proceeding today, why
8 did you find that relevant?

9 A Because there's a missing ping that's not
10 presented on the map that was used at trial, which
11 indicates the documentation leading up to that map being
12 created, is not contained within the discovery.

13 Q And as you're working this case and as an expert
14 in forensic crime scene investigation, is that something
15 you would have addressed with counsel leading up to trial,
16 your concern regarding that?

17 A Yes. Once it came -- once it was identified by
18 the other expert, by Mr. Skidmore, yes, I had some very
19 serious questions about why this one is so far out of
20 line, giving the timeframe.

21 Q And does that relate back to your opinions that
22 you have offered regarding the credibility of this crime
23 scene investigation?

24 A And the documentation, yes. Was it processed
25 appropriately and, you know, the question was why was it

ROBERT TRESSEL-DIRECT BY MS. BLANCHETTE

1 left out? I can't answer that other than to say that it
2 was not included in the trial exhibit.

3 MS. BLANCHETTE: Your Honor, I'm not sure if The
4 State's objection is still standing or if I should
5 take a pause for a ruling.

6 THE COURT: Okay. And so is that what the
7 response--

8 MR. EVANS: I'm satisfied with those answers,
9 Your Honor.

10 THE COURT: Okay. And so you are--

11 MR. EVANS: Yes, ma'am.

12 THE COURT: And so -- okay, all right. And so
13 now with the rephrasing the objection has been
14 withdrawn?

15 MR. EVANS: Yes, ma'am.

16 THE COURT: Okay, we'll continue on.

17 MS. BLANCHETTE: Thank you, Your Honor.

18 BY MS. BLANCHETTE:

19 Q Mr. Tressel, you've been working on this case
20 for quite some time, you traveled to The State of South
21 Carolina to review the evidentiary items on prior
22 occasions. Is there anything further that you would like
23 to offer that's either is in your report or that I failed
24 to ask you today?

25 A Nothing that I can think of, at this time.

RALPH TRESSEL-CROSS BY MR. EVANS

1 MS. BLANCHETTE: Your Honor, I have no further
2 questions of this witness.

3 THE COURT: Okay, cross-examination.

4 MR. EVANS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. EVANS:

7 Q And, Mr. Tressel, you're being compensated for
8 your testimony and work on this case too; isn't that
9 correct?

10 A I have been compensated this far.

11 Q Okay. And because that's what you do for a
12 living, you do this for a living, that's how you make your
13 money?

14 A I do this part-time.

15 Q Okay.

16 A This not is not my sole source of income.

17 Q All right. Now, you testified earlier that The
18 Applicant's attorney gave you discovery to review and also
19 the transcripts?

20 A Yes.

21 Q And you read the whole transcript of the trial?

22 A I'm not going to say I read every word of the
23 transcript --

24 Q Okay.

25 A -- but yes I have reviewed the transcript.

RALPH TRESSEL-CROSS BY MR. EVANS

1 Q Okay. Are you familiar with the testimony of
2 Shawndell Clemons, who was the co-defendant of The
3 Applicant?

4 A Yes.

5 Q Okay. Mr. Clemons testified that they were
6 walking down the streets and saw the victim and The
7 Applicant began shooting at them from a distance; isn't
8 that correct?

9 A Yes, I believe you're correct.

10 Q And there was no stippling found on the wound of
11 the victim?

12 A No.

13 Q Okay. So that will match that what Shawndell
14 Clemons stated, that the gunshots came from a distance
15 away; isn't that correct?

16 A Yes.

17 Q Okay. You also reported that four 45 caliber
18 shell casings were found at the scene?

19 A Yes.

20 Q Okay. And also three 9mm shell casings were
21 found at the scene, also?

22 A Yes, sir.

23 Q Okay. And Mr. Clemons testified the fact that
24 he was given the 9mm weapon by The Applicant, during his
25 testimony?

RALPH TRESSEL-CROSS BY MR. EVANS

1 A Yes, sir.

2 Q And The Applicant had a 9 -- 45 caliber weapon
3 on his person?

4 A The shooter did, yes.

5 Q Okay. And there was also a black hoodie found
6 at Fountain Inn National Gas?

7 A Yes, along the fence line.

8 Q Okay. And also the 45 caliber weapon?

9 A Yes.

10 Q Is that correct? And the 45 caliber weapon
11 belonged to The Applicant; isn't that correct?

12 A Yes, sir.

13 Q Okay. Now, you discussed that the hoodie had
14 The Applicant's DNA inside; isn't that correct?

15 A Never understood from the report whether it was
16 a swab from the inside or the outside --

17 Q -- okay --

18 A -- of the sweatshirt.

19 Q Okay, my fault. But The Applicant's DNA was
20 found on the hoodie?

21 A Yes.

22 Q Okay. And you discussed in your report that
23 that the area of the sleeves, cuff, neck opening and
24 inside the hoodie was not swabbed?

25 A That's correct.

RALPH TRESSEL-CROSS BY MR. EVANS

1 Q Okay. But The Applicant himself testified that
2 only three people wore that hoodie. Himself, Shawndell
3 Clemons and some woman named Taylor; isn't that correct?

4 A Yes.

5 Q Okay. And isn't it true that the gun and hoodie
6 was hidden by Shawndell Clemons and that was shown on
7 surveillance video?

8 A From the video you can't tell who took the
9 hoodie and who put the gun down.

10 Q I'll repeat that. Shawndell Clemons admitted
11 that was him and The Applicant; isn't that correct?

12 A Yes.

13 Q And at that area, law enforcement did find a 45
14 caliber weapon and the hoodie?

15 A Yes.

16 Q Okay. All right. And 45 caliber weapon was
17 used to kill the victim; isn't that correct?

18 A Yes.

19 Q Okay. And 45 caliber shells were found at the
20 crime scene; isn't that correct?

21 A Four of them, yes, sir.

22 Q Okay. And The Applicant owned a 45 caliber that
23 he reported stolen after the incident; isn't that correct?

24 A Yes.

25 Q Okay. And that was the same weapon that was

RALPH TRESSEL-CROSS BY MR. EVANS

1 dumped by the Co-defendant, Shawndell Clemons?

2 A Yes.

3 Q That was his weapon. And these shell casings
4 were found on Woodside near Third and Fourth Avenue; isn't
5 that correct?

6 A Yes, sir.

7 Q Okay. And the pings from the cell phones were
8 found on Third Avenue and Fourth Avenue? Near Third
9 Avenue and Fourth Avenue; is that correct?

10 A Near that area, yes.

11 Q Okay. And the testimony you've given today is
12 from the reading records, transcripts and reviewing the
13 evidence from law enforcement; isn't that correct?

14 A Yes.

15 Q You weren't there to do an actual crime scene
16 investigation?

17 A Oh no, I wasn't there.

18 Q Okay. So you have no personal investigation in
19 this case?

20 A No.

21 Q Okay. Now you said [indiscernible] crime scene
22 photographs, were there photographs entered into evidence?

23 A Those were the ones that I have.

24 Q You have?

25 A Eleven in evidence.

RALPH TRESSEL-REDIRECT BY MS. BLANCHETTE

1 Q Okay. So there could be more than that that was
2 actually taken?

3 A Then they were in the custody of The State and
4 they never turned over.

5 Q Okay. Okay.

6 MR. EVANS: Nothing further, Your Honor.

7 THE COURT: Okay, thank you.

8 Any redirect?

9 MS. BLANCHETTE: Very briefly, Your Honor.

10 THE COURT: Yes, ma'am.

11 REDIRECT EXAMINATION

12 BY MS. BLANCHETTE:

13 Q The State asked you about the pings, those were
14 the three that they used at trial, the additional one that
15 I addressed today, that was outside of that exact crime
16 scene area; is that correct?

17 A That's correct.

18 Q And I wanted to ask you just to clarify, the DNA
19 testing that you're being asked about, that was done after
20 the trial pursuant to a DNA application; is that correct?

21 A That is correct.

22 Q And do you recall at trial they explained that
23 they only had three officers so it was very difficult for
24 them to do DNA testing?

25 A I do remember that. I never quite understood if

RALPH TRESSEL-REDIRECT BY MS. BLANCHETTE

1 the crime scene, the forensic unit as they call it, only
2 has three personnel for Greenville County. I'm not sure
3 who they were referring as only having three employees.

4 Q But at the time of trial, the DNA testing had
5 not been done and that was done subsequently, via a
6 application filed by Mr. Gregory?

7 A Correct.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: Okay, thank you.

11 Any objection -- I'm sorry, anything else, sir?

12 MR. EVANS: No, Your Honor.

13 THE COURT: Okay. Any objection to this witness
14 being excused?

15 MS. BLANCHETTE: I do not, Your Honor.

16 MR. EVANS: Not from me.

17 THE COURT: Okay, thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. All right, the next
20 witness is?

21 MS. BLANCHETTE: Your Honor, my next witness
22 will be Mr. Chambers, he is my lengthiest witness, I
23 just thought I'd let The Court know just in case any
24 brief recess was needed.

25 THE COURT: I'm okay right now, is everybody

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 else okay right now? Okay. If we need to break we
2 can, even if it's during his testimony. Mr. Chambers
3 will be instructed not to discuss his testimony if we
4 do that, okay. All right. Thank you.

5 Before we get to the point, let me just ask, it
6 would be my preference to keep going rather than
7 breaking for lunch and then coming back. Does that
8 suit everybody?

9 MR. EVANS: Yes, Your Honor.

10 MS. BLANCHETTE: Yes, Your Honor.

11 THE COURT: Okay. Okay.

12 Madam Court Reporter, are you okay with that?

13 THE COURT REPORTER: Yes, ma'am.

14 THE COURT: Okay. All right. If it gets to be
15 a problem, y'all let me know.

16 All right, thank you for being here, sir.

17 THE CLERK: Mr. Chambers.

18 RANDALL CHAMBERS, after being duly

19 sworn{,}testified as follows:{F}

20 THE CLERK: Thank you, you may be seated. State
21 your full name for the record.

22 THE WITNESS: My name is Randall Lee Chambers.

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q Mr. Chambers, what's your current occupation?

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 A I'm an attorney.

2 Q Okay. And how long have you been an attorney?

3 A About 35 years.

4 Q What has been the primary focus of your
5 practice?

6 A For the majority of it, criminal defense.

7 Q And do you have any idea approximately how many
8 criminal defense cases you've handled?

9 A I mean, it's many hundreds of cases.

10 Q And how is it that you came to be involved in
11 the case of Jacoby Gregory?

12 A I honestly don't recall. I think I told you
13 when we talked on the phone, I couldn't remember if this
14 was a retained case or an appointed case. Speaking out in
15 the hallway with attorney general and he told me that it
16 was a retained case, he believed. But I don't recall.

17 Q And, Mr. Chambers, before I get further into my
18 questioning, do you have a copy of the transcript there
19 with you?

20 A I don't. I actually didn't get a chance to
21 review it recently because I had that stuff all boxed up
22 and I'm in the process right now of shutting down my
23 office. I'm closing my practice and have taken a job and
24 I couldn't find it. I was going to look at it over the
25 weekend. So I haven't reviewed it. It's probably been a

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 couple of years because this case has been pending for a
2 while, as I recall.

3 MS. BLANCHETTE: It's my understanding The State
4 does not object. I can provide Mr. Chambers a copy
5 that I have on the transcript.

6 MR. EVANS: I have no objection, Your Honor.

7 THE COURT: Do you want him to review the entire
8 500 pages, wait a minute, it's more than that.

9 MR. EVANS: Seven pages.

10 THE COURT: Longer than that, 717 pages before
11 he testifies?

12 MS. BLANCHETTE: No, Your Honor. There will be
13 some specific instances where there's going to be
14 some transcript citations, I was going to give it to
15 him just in case he needed it as a point of
16 reference.

17 THE COURT: Okay, any objection?

18 MR. EVANS: No objection, Your Honor.

19 THE COURT: Okay. Well, we'll do the best we
20 can, Mr. Chambers.

21 THE WITNESS: Okay.

22 MS. BLANCHETTE: I apologize, I had to print
23 this.

24 BY MS. BLANCHETTE:

25 Q Mr. Chambers, did you have the opportunity to

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 meet with Mr. Gregory, go over the discovery, leading up
2 to his trial in this case?

3 A Yeah, I'm sure I did. Like I said, the other
4 thing, this case is so old that I went back and looked in
5 my -- I have a case management system, MyCase that I use.
6 And it -- his case wasn't in there. So I sort of assumed
7 it was an appointed case. Because I was doing, at that
8 time, I was doing part-time work for the Public Defender's
9 Office. And then the file, of course, given the age of
10 the case, I didn't have any longer. And I think you said
11 you had my original case. But, I mean, you know, I've
12 never had a case where I didn't meet with the client
13 multiple times, especially, if we're going to be going to
14 trial. I review all the discovery with them, discuss it
15 with them. You know, prepare for trial, do all those
16 things. I can't say that I have a specific recollection
17 of any of those interactions. But I know that I did that
18 because I've done it in every case that I have ever been
19 involved in.

20 Q And did you have any issue communicating with
21 Mr. Gregory? Were you able to communicate with him as
22 much as you needed to?

23 A As far as I can recall.

24 Q Okay. Now, I'm going to take you through the
25 amendment and each allegation. And I'm going to go a

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 little bit out of order. I first want to talk with you
2 about amendment allegation number four. Where he alleges
3 that you failed to make a complete record, make a motion
4 or move for a mistrial on some specific instances in the
5 trial. The first point of reference I would make is on
6 Page 132 beginning on Line 4. The jury was out. And the
7 Judge begins discussing with you how long the case is
8 going to take. And he indicates on Page 132, he doesn't
9 remember a case taking more than five days. At that
10 point, did you feel that the Judge was placing any time
11 limits on you as far as the trial itself?

12 A That is sort of Judge Miller's MO. I mean, I
13 certainly felt that, I'm sure. Again, I don't have a
14 specific recollection. But he -- he does that. I have
15 had him stop me in the middle of closing arguments before
16 and tell me that I needed to finish up. I normally tell
17 him that I'm going to take as long as necessary to get it
18 done. But, you know, I don't know that I felt
19 particularly under the gun. But yeah, he made it clear
20 that he wanted to finish the case up. I imagine, just
21 based on what's here.

22 Q All right. And at that juncture and anywhere
23 throughout the course of the trial, did you feel it was
24 necessary to make a motion or make a record regarding the
25 amount of time he was allowing you in either arguing the

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 case or presenting your case?

2 A In regard to the time, no.

3 Q All right. Then if I could direct your
4 attention, I'll give you a second to get there, Page 621
5 beginning on Line 17.

6 THE COURT: Page number again, please?

7 MS. BLANCHETTE: 621.

8 THE COURT: Thank you.

9 BY MS. BLANCHETTE:

10 Q And just let me know when you had a chance to
11 get there.

12 A Yes, I remember this part very well.

13 Q All right. And here it appears -- and The Court
14 has the transcript so I won't cite it, but you're trying
15 to bring a matter to The Court's attention regarding faces
16 that he was making during The Applicant's trial testimony.
17 Can you take us through what's happened here, what your
18 recollection is?

19 A Yeah, I mean, it was -- it was pretty egregious.
20 Jacoby had testified. And just as a little background, my
21 recollection is, again, this was a long time ago. I think
22 that I was leaning toward him not testifying but he had
23 indicated to me that he wanted to do that. And we
24 prepared for it and I'd gone through question and answer
25 with him. But during his -- during his testimony he,

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 essentially, took off on sort of a narrative. And I was
2 trying to rein him in and just wasn't able to do that.

3 And during the course of his testimony,
4 Judge Miller became quite demonstrative in his actions as
5 to his displeasure as to what was going on. He was making
6 faces, I mean, I know this won't be reflected in the
7 record but as he sat at the bench he was going like
8 [indicating]. And he would throw his head down, look at
9 his watch. You know, he would literally throw his hands
10 up. It got to be pretty egregious. And to the point that
11 I said something to him about it. My regret, and assume
12 you're going to jump ahead to this, I thought about that a
13 lot, I should have made a motion for a mistrial at that
14 point. I'm certain that it would not have been granted.
15 But I regret that I didn't do that in that instance.
16 He -- I'm typically, especially given a number of years
17 that I've done this and even back then, I've tried
18 hundreds of cases, am not intimidated by Judges. I
19 certainly respect them and their authority but I'm not
20 intimidated by them.

21 But he was -- once I raised this issue, I
22 mean, he was furious to the point that I believe I was a
23 little bit intimidated that day and I didn't bring the
24 motion. And I even discussed that with people afterward
25 that I regretted not doing that in this case. It would

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 have preserved it for the record better and could have
2 been raised on appeal and I didn't do that.

3 Q And that's what I was going to ask. Even you
4 felt that wasn't something Judge Miller would have granted
5 in that moment, then you would have preserved this issue
6 for the higher court--

7 A That's exactly right, yes.

8 Q And would you agree in looking at Page 621
9 through 622, you didn't make a record, you didn't explain
10 as much as you've explained here today?

11 A Probably not as adequately as I needed to. Like
12 I said, he was -- he was very upset about it. And I think
13 he was upset with me for quiet a while after that, if I'm
14 being honest about it.

15 Q And The Judge, specifically, says at the top of
16 Page 622, that he was surprised at the narrative an
17 experienced trial lawyer would allow their client to go
18 through. I know the jury wasn't in, what kind of reaction
19 did you have to that statement from him regarding
20 Mr. Jacoby Gregory's testimony?

21 A I mean, I -- I -- you know, I don't know that I
22 agreed with him but I certainly -- it was, the testimony,
23 was sort of went off the rails. It wasn't the way things
24 had gone when we had practiced for it. And I just wasn't
25 able to rein him in. I mean, the testimony did not go

RANDALL CHAMBERS-DIRECT BY MS. BLANCHETTE

1 well. It didn't go well at all.

2 Q And I wanted to talk to you about the allegation
3 regarding his testimony. What all did you do to prepare
4 him to take the stand?

5 A Again, I don't remember, specifically, but my
6 normal practice, and I imagine we did this in this case,
7 is that as I recall, I believe he was out on bond. So he
8 was able to come to my office. But even if he were in
9 jail, I mean, I would, actually, go through -- not
10 line-by-line because I don't want anybody to ever sound
11 practiced, but I would go through the -- at first, you
12 know, go through and tell me what happened. And then I
13 would start breaking it down a little bit and guide him
14 and talk about how he needed to do that. Talk about
15 things he needed to avoid and look out for when he was
16 going to be questioned by the solicitor. I have a lot of
17 things that I typically go through. So yeah, I'm certain
18 we spent some sometime preparing for it.

19 MS. BLANCHETTE: And, Your Honor --

20 THE WITNESS: It certainly would never have
21 involved just him spilling a narrative like that out.
22 Or even using the type of language that he used quite
23 a bit throughout the testimony.

24 MS. BLANCHETTE: And, Your Honor, I should have
25 asked this sooner, I have been provided an unredacted

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1 full transcript, that's the page numbers I'm using.
2 I never get to see what's in your packet. There's
3 also a record on appeal in this case. So I just
4 wanted to make sure these numbers that I'm stating
5 are making sense to you --

6 THE COURT: They are.

7 MS. BLANCHETTE: -- and to The State?

8 THE COURT: They are.

9 MS. BLANCHETTE: Okay.

10 THE COURT: And if they weren't, I would let you
11 know.

12 MS. BLANCHETTE: I figured as much, I just
13 wanted to make sure. Because I have the record on
14 appeal and this other investigation.

15 THE COURT: I love a complete transcript too, it
16 just helps me piece it all together a lot better.
17 And I will review it all.

18 MS. BLANCHETTE: Okay, thank you, Your Honor. I
19 will proceed then.

20 BY MS. BLANCHETTE:

21 Q Referring to the transcript, if you would just
22 flip back to 620, we were just on 621 and 622. At the
23 close of Mr. Jacoby Gregory's testimony, the transcript
24 reflects that you were asked if you had any redirect and
25 you responded, No. Is there any reason you didn't try to

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1 redirect his testimony after cross-examination?

2 A I don't recall.

3 Q Okay. Now, in The State's closing arguments,
4 this is reflected on Pages 668 through 669, they argue
5 that Mr. Gregory's testimony handicapped The Defense. And
6 that Defense Counsel doesn't even believe him. And at 668
7 beginning on Line 18, I'll give you a chance to look over
8 that.

9 A What lines did you say?

10 Q 668 beginning at Line 18.

11 A Okay. Okay.

12 Q And they indicate there, it appears that you
13 don't even believe him.

14 A Yeah, I mean, I -- I guess that's what she's
15 arguing. She's talking about the issue with the gun and I
16 don't know what she is alluding to. The thing that I
17 remember about the gun, which was a problem with the case,
18 was that Jacoby, as I recall now, it seems like he had
19 gone in unsolicited and told the police that he had
20 reported that gun and he reported that gun stolen. Sort
21 of identifying as his gun. And it could be that during
22 the course of the case or in argument that I was -- I was
23 trying to downplay that somehow. But I honestly don't
24 recall that but.

25 Q Now, towards the end of this transcript, 697,

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1 the jury asked to rehear Mr. Gregory's testimony and
2 they're afforded that opportunity. And then after their
3 afforded that opportunity, they reached a verdict in about
4 an hour?

5 A Yeah. Which I've seen that happen in plenty of
6 trials. They have some specific matter that they want to
7 hear about. And it usually leads to them pretty quickly
8 being able come to a decision. Because it settles, I
9 guess, whatever argument they had with each other back in
10 the deliberation room.

11 Q And as Mr. Gregory's trial attorney, do you find
12 his testimony to have been damaging to The Defense?

13 A I think it was, yeah.

14 Q Okay. And again, how was that decision reached
15 to put him on the stand?

16 A My recollection is, and again, I'm not 100
17 percent on this, is that he wanted to testify. My thought
18 was that I, actually, didn't want him to testify in this
19 case because I didn't think he could do anything to help
20 himself. But it seems to me that he was pretty vehement
21 wanting to testify.

22 Q Now, another person that testified in this case
23 was Shawndell Clemons, his Co-defendant; is that correct?

24 A That's correct.

25 Q And he was his cousin?

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1 A I'm not sure.

2 Q Okay. And Mr. Clemons, in very detailed
3 testimony, referring to videos that were introduced into
4 evidence, testified that Mr. Jacoby Gregory was present
5 and was the second person on the video at the time of the
6 shooing in this case?

7 A I remember that but I don't remember how
8 detailed everything was. Because again, I went through
9 this transcript when I first got it back years ago. And I
10 was going to review it this weekend, I just couldn't find
11 it. But I just recall that he had identified -- that he
12 identified Jacoby as being there and being the shooter in
13 the case. That's what I can tell you that I recall.

14 Q And was one of your -- or was your trial
15 strategy to try to attack his testimony and attack The
16 State's witnesses to show inconsistencies?

17 A I'm sure it was, yes.

18 Q Okay. Did you also try to attack the
19 investigation put forth by The State?

20 A As much as possible. I mean, this wasn't, in my
21 opinion, really a forensics driven case. It came down --
22 because -- and again, this is -- what I recollect is that
23 Jacoby had been working that day. Which I think was, you
24 know, unrefuted. He had gotten a call while he was at
25 work that there was something going on at a friend's or it

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1 could be that he was just going over to a friend's and he
2 found out later. But he was going to a friend's house, at
3 a different location from where the shooting occurred in
4 Fountain Inn. But it seems to me that prior to Jacoby
5 getting there, that the victim, in this case, along with
6 some other people, had driven by this location had done
7 something to cause a disturbance. That part I don't
8 remember, maybe flashed a gun, maybe said something to
9 them or did something.

10 And so everybody was kind of riled up when
11 Jacoby got over there. And Jacoby, as I recall, indicated
12 that he never went to that second location where the
13 shooting occurred. And he wasn't there. So, you know,
14 like there almost always is, yeah, there were
15 inconsistencies and insufficiencies and things with the
16 way that the crime scene was handled. And the way the
17 evidence was collected and those sort of things. I've
18 seen that in just about every case I've ever been involved
19 in. But this wasn't, in my view, a forensic's driven
20 case. You know, maybe I was wrong about that. But my
21 focus was more on just casting as much doubt as I could on
22 what evidence they put in there.

23 And on the testimony of the co-defendant --
24 because the one thing that stands out, as I recall, there
25 was a witness on the scene that they talked to, I don't

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1 remember the name, that had given a description of people
2 that he saw running away from the scene. And my
3 recollection was that it didn't match up with Jacoby. And
4 I thought that was a fairly key piece of evidence and one
5 that I wanted to stress. Again, as I recall. And I think
6 that's another reason that I kind of really wasn't keen on
7 him testifying.

8 Q Now, based upon some of those inconsistencies
9 and recollections that you have, would you agree though
10 that Shawndell Clemons was utilized to place Mr. Gregory
11 at the scene of the shooting and being involved in the
12 shooting?

13 A Absolutely, yes.

14 Q Okay. I want to ask you about a matter that
15 came up on July 13th when you were a couple of days into
16 trial, it's reflected on Page 360 of the transcript. And
17 I'll give you chance to get there and look over that page
18 to 361 and just let me know when you're ready.

19 A 360 to 361?

20 Q Yeah, just to refresh your memory.

21 A Okay.

22 Q Have you had the opportunity to refresh your
23 memory to the matter that you brought to The Court's
24 attention?

25 A Yeah, I'm reading it here. I honestly don't

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1 have a independent recollection of that whatsoever but,
2 obviously, I did.

3 Q Okay. And you agree that the transcript
4 reflects that several days into the trial, you explained
5 to The Judge that in pretrial prep last week, Mr. Gregory
6 had brought up a concern regarding a conflict with Scott
7 Robinson representing Shawndell Clemons?

8 A Yeah, based on what's in the transcript, that's
9 apparently what happened.

10 Q Okay. And there in the transcript you,
11 actually, apologize to The Judge for bringing it up so
12 late in time. Do you have any recollection as to why it
13 was brought up so late?

14 A I don't know. I mean, I would surmise from
15 reading the transcript that I probably had forgotten about
16 it and Jacoby reminded me.

17 Q Okay. And then after the Judge says on Page
18 361, Line 10, This is a serious matter. He subsequently
19 then, if you flip through the transcript, calls The
20 Applicant and he testifies and then it takes some time but
21 Scott Robinson is, actually, put on the stand as well.

22 A Okay. Do you know what page Scott--

23 Q Yeah, that -- Scott Robinson is called on Page
24 393, I apologize. Because it takes a little time to get
25 him over to the courthouse. Now, Jacoby Gregory testifies

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1 that he went over all the discovery, he discussed the case
2 in great detail?

3 A Uh-huh.

4 Q When Mr. Robinson testifies, he just says
5 typically he goes over fees and different things like that
6 to avoid a conflict, but he doesn't specifically recall
7 but states he would not have gone over the discovery like
8 Mr. Gregory stated. After they both testified, then
9 you're given the opportunity by The Judge to make an
10 argument. And The Judge, essentially, asks you to explain
11 where the prejudice is. And I'm going to have you flip
12 forward to Page 398. I apologize for the length of this
13 question. And Page 398, beginning on Line 18, is your
14 response to the Judge. If you could review that.

15 A (The witness complies.)

16 Okay.

17 Q And do you agree that you, essentially, don't
18 make an argument that there's any prejudice?

19 A Yeah, I mean, I just reasserted what my client
20 had said regarding his innocence. And that -- but yeah, I
21 mean, I didn't assert any prejudice.

22 Q Okay.

23 A And that may have been as a result of what Scott
24 had testified to.

25 Q If you can flip back to Page 39 -- I'm sorry, on

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1 Page 397, I apologize. I'm trying to use an electronic
2 copy. If you can give me just a moments indulgence to
3 make sure I have the right cite.

4 A What do you want me to look at on 397?

5 Q Just one moment, if I can beg even your own
6 indulgence. If you could flip back to Page 397, beginning
7 on Line 15. When The Judge has asked about the statements
8 given by Mr. Clemons and your response goes through the
9 middle of Page 398.

10 A Okay.

11 Q Would you agree that your, essentially,
12 asserting to The Court that there hasn't been a change in
13 Mr. Clemons story?

14 A That's what I appear to be doing. And I would
15 imagine that's based on conversations I had with those
16 parties that I alluded in my testimony -- not my testimony
17 but in my statement to The Court.

18 Q Now, we've established that you didn't argue
19 there was prejudice, you make the statement to The Judge
20 as far as Clemons statements and consistency. Is there a
21 reason why you didn't move to exclude a [indiscernible]
22 conflict issue?

23 A Maybe for the reasons I stated there. I mean, I
24 have to have a good faith basis for my motion that I make.
25 And if there was a statement made before Scott's

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1 involvement in the case that was consistent with his
2 testimony at trial, I don't think that I, ethically, could
3 have argued otherwise.

4 Q And would you agree, and it begins on Page 633,
5 a mainstay of your closing arguments is that Mr. Clemons
6 is the center piece of The State's case. And you go
7 through reasons that they, the jury, should not believe
8 him. You focus on Pages 633 through 645 regarding all the
9 changes to his story. The reasons he had to make his
10 story work. And changes about information such as the
11 guns.

12 A Okay.

13 Q If the focus of your closing argument, you know,
14 over the course of those that we have in pages, but it
15 would have time, was to try to discredit Mr. Clemons and
16 show all the changes in his story. Why were you arguing
17 to The Judge that he had been consistent? Are you telling
18 The Judge he'd been consistent?

19 A I don't know. I guess maybe it was just matters
20 of degree. You know, I don't think I've ever had a case
21 where somebody's testified against my client, that I
22 didn't in closing arguments point out inconsistencies.
23 Not only the things they may have said before but just
24 inconsistencies in what they said and what matches up with
25 the other aspects of the evidence in this case. So, you

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1 know, I can't say that, specifically. That was a while
2 back. And all I can do, at this point, just like you or
3 anyone else, is read the transcript. So but, yeah, I
4 mean, there's nothing -- that's a pretty standard argument
5 you can make in a case like this. And I made that
6 statement to The Judge. Again, that was probably based
7 on -- and I think I said the gist of what he had to say.
8 No every minutia of everything that he had to say.

9 Q And would you agree that the transcript
10 reflects, beginning on Page 529 through your
11 cross-examination of him on 545, you go through a series
12 of all the different inconsistencies and lies that he has
13 told?

14 A Sure.

15 Q And that was a focus of your cross-examination
16 of him as well; is that correct?

17 A Yes.

18 Q Okay. Was Mr. Clemons testimony damaging at
19 trial?

20 A I imagine so, yeah.

21 Q Now, at the close -- kind of jumping back to
22 when the conflict issue comes up. But at the close, The
23 Judge said, let me know if an issue comes up during the
24 course of Mr. Clemons trial, you know -- I'm sorry,
25 testimony. We need to address this, this is serious. Do

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1 you recall any reason why you didn't reraise the conflict
2 issue during the course of Mr. Clemons testimony?

3 A I don't recall. I mean, you know, I can sit
4 here and speculate. I mean, it could be because based on
5 Scott's testimony. I mean, to -- to assume, at this
6 point, that Scott was privy to all that information would
7 mean that a licensed attorney got on the stand and lied
8 about what he discussed with Mr. Gregory. So I don't
9 know. I mean, I really -- all I can do, at this point,
10 would be to speculate.

11 Q Okay. And we talked a little bit about the
12 investigation and about you saying, you know, to you it
13 wasn't a forensics focused case. I want to talk with you
14 a little bit about the allegation that's made regarding
15 your investigation and failure to use witnesses and
16 experts to attack The State's case or corroborate
17 Mr. Gregory. In support of that today we called two
18 experts. What investigation did you do leading up to the
19 trial in this case?

20 A I don't recall, specifically. I don't remember
21 that, you know, I was concerned about the cell phone --
22 the cell phone evidence that was going to come in. And I
23 do recall that I consulted with an expert. I was going to
24 talk Tom Slivinski, who's a guy here in Greenville. And I
25 ended up not being able to talk to him. I'm trying to

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1 recall this guy's name, there was a guy from Columbia that
2 I had met at a SCACDL meeting sometime before. And I'd
3 gotten on the phone and had some conversations with him.
4 So I had some interest in having an expert and I recall
5 even calling one. And then I had an associate who was
6 working with me at the time, a guy named Chris Maddox, who
7 had also done some research and stuff for me to try to get
8 some things together for cross-examination. But I don't
9 recall why we didn't call an expert. It could be -- it
10 could have been a funding issue. Because if this was, as
11 the attorney general told me, a retained case, it could
12 have been that Mr. Gregory just didn't have the money. I
13 don't remember. But again, I don't want to speculate on
14 that. But that was a concern of mine was the cell phone
15 testimony.

16 Q And The State argues in closing, it's already
17 been referenced here today, Page 674, I apologize,
18 essentially, that the cell phone activity places
19 Mr. Gregory at the scene. And they use an exhibit,
20 State's No. 50. And let me just provide that to you. And
21 my question is this, did the cell phone testimony, as it
22 was utilized at trial, do you remember that playing in
23 your decision as to whether or not Mr. Gregory should take
24 the stand?

25 A I don't recall. Like I said, my recollection,

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1 and I could be wrong at this point, my recollection is I
2 didn't want him to testify.

3 Q All right. Now, The State through Investigator
4 Josh Peden introduced two phones that were taken off of
5 Mr. Gregory, they introduced records marked as exhibits,
6 the Verizon records through Karen Milbrodt. And then
7 Sergeant Dan Kelly ended up testifying regarding that map
8 there that you have in your hand.

9 A All right.

10 Q Prior to his testimony, if you could turn back
11 to Page 389.

12 A 389?

13 Q Uh-huh. And there it's Ms. Milbrodt actually
14 testifying.

15 A Okay.

16 Q At the bottom of the page, beginning on Line 15,
17 The State moves these cell phone exhibits, the records
18 that Ms. Milbrodt had provided, in as State's 49, 46, 47,
19 48, 44, 45, 41, 43 and 42. And at that point, it appears
20 your associate objects to those. And I'll give you a
21 chance to look through Page 392. And if you can just let
22 me know when you're done reading.

23 A Okay.

24 Q And, essentially, it appears that you all are
25 trying to enter an objection to the map, No. 50; is that

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1 correct?

2 A It appears that way.

3 Q Okay. And do you agree that that concludes what
4 The State is, essentially, saying, we're not trying to
5 admit that at this time?

6 A Again, it appears that from the transcript that
7 that's true.

8 Q Okay. Later on in the transcript, when The
9 State introduces the exhibit, you all don't object. Is
10 there any reason that an objection wasn't entered when The
11 State, actually, goes to enter the Exhibit 50?

12 A I don't recall. I mean, it could be that we
13 thought at that point they laid a proper foundation for
14 it.

15 Q Okay. Now, the records that are introduced and
16 are referenced there with all those numbers I just listed,
17 those all relate back to phone 9074. And there were two
18 cell phones obtained from Mr. Gregory. One ending in 9074
19 and 9893. Did you ever look into why there were no
20 records for the second phone?

21 A I don't recall that at all.

22 Q Okay. These experts or consultants that you
23 talked to, was that issue ever discussed with them?

24 A I didn't get into a lot of specifics with them,
25 because, again, for whatever reason we didn't hire

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1 anybody. I would have like to have hired one on the case.
2 It must have been a funding issue, would be my guess--

3 Q And if it wasn't --

4 A -- but I don't remember.

5 Q All right. I apologize for cutting you off. If
6 it was a funding issue, did you ever bring that to The
7 Court's attention an attempt to get funds?

8 A I did not because this was a private case. And
9 usually The Court's not going to give you money.

10 Q But you didn't make -- let The Court know that
11 that was necessary?

12 A I did not, no.

13 Q Now, did you ever go through those records
14 either yourself or with your associate and consider those
15 in light of map item number 50 or sorry, State's Exhibit
16 50?

17 A I don't recall that. I think that I had Chris
18 focused on that a lot more than I did.

19 THE COURT: Who is Chris?

20 THE WITNESS: Chris --

21 MS. BLANCHETTE: Maddox --

22 THE WITNESS: Yeah, Chris Maddox. He was an
23 associate I had, at the time, working for me.

24 THE COURT: If you'll remember to refer to the
25 full name.

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1 THE WITNESS: I'm sorry.

2 THE COURT: Thank you.

3 Okay, please continue.

4 BY MS. BLANCHETTE:

5 Q And he was, actually, as the record reflects
6 here, it appears that Mr. Maddox was the one that entered
7 that objection?

8 A That's correct.

9 Q Okay. Now, I want to ask you a little bit about
10 Sergeant Dan Kelly's testimony. Is there any reason why
11 you all did not object to his qualifications about making
12 this map and about testifying about the cell phone data?

13 A I mean, I don't recall why I didn't object.

14 Q And he testifies -- and I can give you a second
15 to look there on Page 410. And if you want to just let me
16 know when you're there, then I'll ask you the question.

17 A Okay.

18 Q All right, 410, right about Line 19. That if he
19 put all the data on the map it would be unreal. Today
20 during Mr. Skidmore's testimony, he added one more
21 pinpoint to the map that in his expert opinion he offered,
22 called into question, the reliability of the other
23 pinpoints. Did you ever look into just placing one more
24 pinpoint or looking at one more point of data to add to
25 that map?

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1 A Apparently not.

2 Q And in his cross-examination, if you'll look at
3 Page 414.

4 A Okay. I'm sorry, is there something specific --

5 Q You ask him -- I'm sorry, go ahead.

6 A Is there something specific you want me to look
7 at?

8 Q Yeah, if you can look at Line 16. You ask him
9 he doesn't have any underline knowledge about cell tower
10 locations or anything like that and he just feeds data
11 into a program, do you see that there?

12 A Yes.

13 Q But did you raise any concerns regarding the
14 work that he was doing prior to him testifying?

15 A I mean, if it's not in the record, then no, I
16 did not.

17 Q Okay. Now, did you ever consider getting an
18 expert or consulting with anyone regarding the crime scene
19 investigation that was done in this case?

20 A No.

21 Q Did you look into that yourself?

22 A No. I mean, I just -- I went through all the
23 discovery and everything myself but I, obviously, didn't
24 see a need for an expert.

25 Q And what was the basis for that conclusion?

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1 A I don't know. I mean, I never used -- I never
2 had a reason to use a crime scene expert in a case. And
3 if I recall, I didn't see any reason to use one in this
4 case.

5 Q Okay. Would you agree, though, instead of
6 putting Mr. Gregory on the stand you could have called
7 experts in your case?

8 A I mean, I don't know. I mean, again, I don't
9 think I wanted Mr. Gregory to testify to begin with. But
10 I don't know -- I didn't -- clearly, didn't see a need for
11 a crime scene expert in this case. You know, maybe
12 another attorney would, I didn't.

13 Q But that is something that you evaluated and
14 considered?

15 A No, I never thought of using a expert in the
16 case, I didn't think there would be any need for it. It
17 never dawned on me to do that.

18 Q Okay. And what would you say was your overall
19 strategy in the defense of this case?

20 A I would assume my overall strategy was to raise
21 as much reasonable doubt as I could based on the evidence
22 that was presented.

23 Q Now, one issue that has been discussed today
24 through the expert testimony is that Mr. Gregory filed a
25 subsequent DNA application, which is part of the record in

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1 this case and DNA testing was done. At trial, The State,
2 essentially, used the argument in their closing arg-- I'm
3 sorry, they argued that they have limited officers so they
4 couldn't do the DNA. Is there any reason why you didn't
5 push to have the DNA tested prior to trial?

6 A I don't recall that but it sounds like once you
7 had it done, it didn't work out very well. Because of his
8 sweatshirt or at least he had been in contact
9 [indiscernible]. I was trying to establish as much as I
10 could that my client wasn't there and that neither of
11 those items belonged to him. Although, again, he pretty
12 much identified himself as the owner of the gun.

13 Q Now, moving on, The Applicant has made an
14 application regarding an objection you should have entered
15 under State v. Sierra, are you familiar with that case?

16 A No.

17 Q Okay. In that case there's an issue of when an
18 attorney kind of crosses the line and becomes both an
19 attorney and a witness. Could you look at Page 306 to
20 307?

21 A (The witness complies.) Okay.

22 Q Okay, if you can --

23 I can beg the Court's indulgence one moment
24 while I get there electronically.

25 All right, in there Bobby Thomas is

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1 being -- having direct examination by The State.

2 A Okay.

3 Q And beginning on Line 11, The solicitor's asking
4 him questions about talking to her a couple of weeks ago.

5 A Okay.

6 Q And goes on to offer information that he told
7 her and asked her about that. Is there any reason, and
8 you can have a chance to review it if you need to, that
9 you did not object to that line of questioning?

10 A I don't recall the reason. Perhaps, I should
11 have objected.

12 Q And do you agree that she's offering her
13 testimony about what he previously told her?

14 A Well, it sounds like she's trying to refresh his
15 memory as to that what he said. She did it in a leading
16 fashion so perhaps I should have objected on the basis
17 that her question was leading. But I wouldn't say that
18 she was offering her own testimony, no.

19 Q Okay. And just to be fair, I don't want to
20 mislead you in any way. If you look back, let's see here.
21 Do you recall that Mr. Thomas was, actually, declared a
22 hostile witness?

23 A Oh, okay, I didn't recall that. So, I guess,
24 she could ask leading questions then.

25 Q I wanted to make sure you gave a fair answer to

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1 that with that information.

2 A Okay.

3 Q Now, if you can turn to Page 614 of the
4 transcript.

5 A (The witness complies.)

6 Q Okay. Beginning on Line 11, the same solicitor
7 is asking Mr. Gregory about letters he's written to her,
8 how many times he's contacted her. And then through the
9 course of the next page, she begins asking him about, did
10 your lawyer tell you this, did your lawyer tell you that I
11 said this? If you want to review that 614 to 615, please
12 let me know when you've had a chance.

13 A Okay.

14 Q Is there any reason -- did you find anything
15 objectionable in that section of the testimony?

16 A Not just reading what's on the page, no.

17 Q Okay. But you --

18 A -- apparently, she's referencing letters that he
19 had written to her. And maybe he was expressing a desire
20 to talk to her. Which, obviously, I would not want him to
21 do. So when she says, Did your lawyer tell you that I was
22 more than happy to meet with you?

23 He says, No.

24 I probably didn't tell him that she was
25 happy to meet with him because I didn't want him to meet.

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1 Q Would you agree, though, that she's offering
2 testimony about what she knows in this case and that facts
3 that she has in this case by asking these questions?

4 A I mean, I guess that's an interpretation that
5 you can take from that.

6 Q Okay. Is there any reason that you didn't
7 object to those questions?

8 A Either I thought it wasn't objectionable or I
9 just, you know, failed to make the objection.

10 Q And then I want to ask you about his final
11 allegation about failing to object to bolstering and
12 vouching during The State's closing arguments.

13 A Okay.

14 MS. BLANCHETTE: Beg the Court's indulgence just
15 one moment while I get the cite.

16 BY MS. BLANCHETTE:

17 Q Beginning at Page 675 on the bottom, The State
18 says, And now let's talk about Shawndell -- I'm sorry,
19 let's talk about Shawndell Clemons now and why you should
20 believe him. And The State then goes through his
21 testimony. Did you recall any reason to object to any
22 bolstering or vouching regarding Shawndell Clemons?

23 A Well, no, that doesn't seem like bolstering to
24 me. You know, it's something that I do, every lawyer does
25 when you're trying to get a jury to believe one witness as

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1 opposed to another witness, you point to other items of
2 evidence and things that corroborate what they had to say
3 to make what they had to say more reliable. That didn't
4 strike me as bolstering.

5 Q Okay. And then when they go through the
6 sentence that he's going to receive and why he would not
7 lie, you just don't recall any basis on which to object
8 during The State's argument regarding Mr. Clemons?

9 A No, again, that's a pretty common argument.

10 Q Okay. And then if I can have you look at one
11 more citation. And this is something I referenced before.
12 On Page 670, they're talking about the gun and not doing
13 the DNA testing.

14 A Is there a particular line you want me to look
15 at?

16 Q Yeah, just one moment.

17 Beg the Court's indulgence one moment.

18 Beginning on line -- Line 7, The State is
19 giving argument about why the DNA's not done. And it's
20 also discussed at another point in the closing argument.
21 The State even goes as far as to say maybe they can't, you
22 know, based upon the number of officers.

23 A Okay.

24 Q Is that information that was, actually, in the
25 record for the state to be arguing at that point?

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1 A I don't recall but I don't think I would have
2 been too bothered by it because even the fact that they
3 hadn't swabbed the gun for DNA is something that I'm
4 certain that I argued. And something that I probably
5 attacked on cross-examination because it shows that they
6 did a incomplete investigation on part of the police
7 department. I mean, I don't think I've ever had a case
8 where they've located an item of evidence where if they
9 haven't done fingerprints or swabbed for DNA or done those
10 types of things. I raised those and I attacked the
11 prosecution for not doing that. And I'm certain that
12 that's what I did in this case.

13 MS. BLANCHETTE: Your Honor, if I could beg the
14 Court's indulgence one moment to confer with my
15 client?

16 THE COURT: Yes, ma'am.

17 MS. BLANCHETTE: Your Honor, I have no further
18 questions of this witness.

19 THE COURT: Okay, thank you.

20 Cross-examination or do y'all need a break?

21 THE WITNESS: I'm fine.

22 MR. EVANS: I'm fine, Your Honor, I won't be
23 long.

24 THE COURT: Well, I don't want you to feel
25 limited, I just wanted to make sure that everybody

RANDALL CHAMBERS-CROSS BY MR. EVANS

1 was okay to move forward, okay.

2 MS. BLANCHETTE: Thank you, Your Honor.

3 THE COURT: Thank you.

4 CROSS-EXAMINATION

5 BY MR. EVANS:

6 Q Now, Mr. Chambers, you don't remember being
7 retained to represent Mr. Gregory?

8 A Like I said, it was a long time ago, I don't
9 recall. You told me I was retained, I'll take your word
10 for it.

11 Q Okay. But he was charged with the murder; isn't
12 that correct?

13 A Yes.

14 Q A very serious case?

15 A Yes.

16 Q You were prepared to go to trial once the trial
17 started?

18 A I've never started a trial without being
19 prepared. At least, in my opinion.

20 Q Okay. Were there any plea offers that were made
21 by the solicitor's office to Mr. Gregory?

22 A I don't recall. Without having any notes or
23 my -- or my case file I couldn't tell you. I assume there
24 was. I mean, there's always some sort of offer in the
25 case.

RANDALL CHAMBERS-CROSS BY MR. EVANS

1 Q Do you remember how many times you saw
2 Mr. Gregory prior to trial?

3 A I couldn't give you the exact number but I'm
4 certain it was whatever I thought was sufficient.

5 Q Okay. Now, The Applicant asked you about a
6 possible conflict with a Scott Robinson. Do you know,
7 personally, Mr. Robinson?

8 A I know Scott well.

9 Q Okay. He never discussed with you this case at
10 all; did he?

11 A He did not.

12 Q Okay. And -- and you wasn't aware that
13 Mr. Robinson spoke to your client until not long before
14 the trial?

15 A Yeah, I don't remember when that came to my
16 attention. But yeah, I know Jacoby told me about it.

17 Q Okay.

18 A And I only know that because from reading the
19 transcript just a few minutes ago. But I'm certain that
20 if -- I think I even said in there that that information
21 came from my client.

22 Q Okay. And you raised The Court's attention into
23 the trial because you simply forgot that he told you that;
24 isn't that correct?

25 A I surmise that that's what happened, yes.

RANDALL CHAMBERS-CROSS BY MR. EVANS

1 Q Okay.

2 A I think probably, at some point, Jacoby reminded
3 me about that issue and then I raised it with The Court.

4 Q Okay. If you will look at the transcript, Page
5 396, Lines 18 through 13?

6 A Lines 18 through 14?

7 Q Thirteen?

8 A Thirteen.

9 Q And you stated to The Court, I reassert to The
10 Court the way this came to me -- I mean, obviously, a
11 murder trial, spending long hours, many, many days getting
12 ready for this trial, I was over in the jail talking to
13 him on Saturday. We had about a four hour discussion
14 where we discussed a lot of stuff getting ready for trial.
15 So that's when he told you about this conflict?

16 A That's what it appears from here.

17 Q Okay.

18 A If I said that, then that's accurate.

19 Q Okay. Now, the four hours you spent with
20 Mr. Gregory, was that also preparing him for his
21 testimony?

22 A I'm certain that was that part of it.

23 Q Okay.

24 A I don't have any independent recollection of it
25 but I'm certain that was part of it.

RANDALL CHAMBERS-CROSS BY MR. EVANS

1 Q And it wasn't your idea for him to testify, it
2 was his; isn't that correct?

3 A I don't believe it was. I think I did not want
4 him to testify.

5 Q Okay. And his testimony may not hurt his case
6 but it didn't help; did it?

7 A Certainly didn't help.

8 Q Okay. And he has the right to testify, isn't
9 that correct?

10 A He has an absolute right to testify.

11 Q Okay. And you cannot not make him not testify
12 if he wants to testify? You can advise him not to but if
13 he wants to testify, you have to put him on the stand?

14 A And normally, I mean, I normally, after -- the
15 way that I would phrase it to clients is this. I make
16 sure they know they have a right to testify. I will tell
17 them my opinion. But I also tell them that they need to
18 make the decision independent of me. Because, you know,
19 one of the things -- you know, as I said, I've tried a lot
20 of cases over the years. And I have won probable more
21 than my share. But I lose cases too, like I lost this
22 one. Never had a case that I've lost that I don't second
23 guess myself about everything. And one of the worst
24 things is if I tell somebody not to testify, who wanted to
25 testify, and we end up -- you know, I talk them into not

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1 testifying and we lose the case, then I'm going to second
2 guess myself about that. So, you know, ultimately, he
3 gets to make that decision. I will make it clear but, you
4 know, there's usually -- it's one of those things that you
5 struggle over.

6 Q Okay. Now, this supposed [indiscernible]
7 Mr. Robinson representing the co-defendant did not effect
8 you at all regarding your ability to represent
9 Mr. Gregory?

10 A It didn't effect me but, obviously, the concern
11 would be if he had information that he would then share
12 with Shawndell, who would then use that to get himself a
13 good deal and testify at trial. And I think that's why we
14 raised the issue to begin with.

15 Q Okay. But as far as Mr. Robinson stated, he
16 never got any information regarding discovery from
17 Mr. Gregory?

18 A That's what he indicated, yeah.

19 Q Okay. And since he's an officer of the court,
20 you would assume that he would not lie to a circuit court
21 Judge?

22 A With, beyond him being an officer of The Court,
23 I mean, he's somebody that I know to be an honorable
24 person. And somebody I've known for a long time. I
25 wouldn't categorize us as friends, we didn't hang out

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1 together or anything but he's somebody I've known for
2 quite some time and have talked to in court on various
3 days.

4 Q So personally you didn't believe there was a
5 conflict regarding Mr. Robinson, that's why you didn't ask
6 to be removed from the case?

7 A I imagine that's true.

8 Q Okay. Now, you was retained as a lawyer in this
9 case and being a retained attorney, if you're going to
10 hire an expert, of course, the expert wants to be paid;
11 isn't that correct?

12 A Absolutely, yeah.

13 Q Okay. And since this is -- you're a private
14 attorney represented client has retained you. It's very
15 seriously hard for you to get funds from The Court
16 regarding this case. That only happens when you've been
17 appointed for the public defender?

18 A Typically. I've done that on appointed cases a
19 lot. On retained cases, my clients have always either
20 come up with the money or we didn't get the expert. Now,
21 I have learned recently, just from being on our Listserv,
22 that, apparently, there are lawyers who do and have been
23 able to get funding from The Court. I had never done
24 that, never heard of anybody doing that. And, apparently,
25 it's met with some disfavor. But there was sort of an

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1 ongoing discussion on that Listserv that I'm on a while
2 back.

3 Q Okay.

4 A But yeah, on an appointed case, generally, I
5 look at it as the client's responsibility to come up with
6 the money to hire an expert.

7 Q Okay. And if the client doesn't come up with
8 the money to hire an expert, it would be up to you to pay
9 an expert, which you're not obligated to do?

10 A Yeah, that's right. But, you know -- and I want
11 to make clear, though, I'm not saying that that happened
12 in this case. I'm not saying that that -- I'm just
13 speculating that that could be one reason. Because I was
14 concerned about the cell phone testimony. And I wanted to
15 undercoat it as much as I could. And I remember talking
16 to the expert about it and having my associate do a good
17 bit of research on the issue to prepare as best we could.
18 So I think I would have wanted to use a expert if I had
19 one. But I'm going to be honest with you and tell you
20 that I don't recall precisely why we didn't call an
21 expert. I just know that -- that that surmise -- you
22 know, I'm speculating, again, that it could have been a
23 cost issue.

24 Q Okay. Now, The Applicant's attorney asked you
25 about getting a expert on the crime scene that was done,

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1 the investigation of the crime scene?

2 A Yeah.

3 Q Okay. And you didn't hire an expert in that
4 regard?

5 A I did not hire one, didn't consult one and never
6 really thought that I needed one.

7 Q Because you felt that this was not a forensics
8 case?

9 A Yeah, I mean, I just felt -- I didn't feel like,
10 that I -- I mean, you know, maybe it would have been of
11 some benefit. But it didn't -- it didn't seem to me that
12 it would be. And it's not anything that I ever
13 considered.

14 Q And you don't think it was a forensics case
15 because there were three 45 caliber shell casings found at
16 the scene, there's no doubt about that; isn't that
17 correct?

18 A I assume that's in the record or you wouldn't be
19 saying that.

20 Q But there's no doubt about that, that was found
21 at the crime scene. The gun and the hoodie, belonging to
22 The Applicant, was found not far away from the crime
23 scene; there's no doubt about that either?

24 A I know that the gun, you know, clearly was
25 established to belong to him. If for no other reason

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1 because of his own statement. I can't recall that that
2 hoodie was positively identified as his hoodie at the
3 trial.

4 Q But he testified that it was his and he gave it
5 to Shawndell.

6 A Well, then okay, I guess it was his.

7 Q Okay. And there was no doubt about that; is
8 there?

9 A Not if he testified to it, no.

10 Q So hiring somebody to do a crime scene, expert
11 in crime scene analysis, wouldn't have changed those facts
12 at all; were they?

13 A I wouldn't think so, no.

14 Q Now, DNA, you didn't hire a DNA expert to
15 examine the weapon; did you?

16 A I didn't. I mean, I was happy with the fact
17 that, I guess, that they -- they hadn't done DNA on it,
18 meant I could raise that issue of them not doing a
19 thorough investigation.

20 Q Okay. Because if you had hired a DNA expert,
21 that DNA expert would have to get possession of the gun to
22 do the actual test; isn't that correct?

23 A Yeah, I mean -- and if it comes back with a
24 positive result, then I have to turn that over to The
25 State.

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1 Q Exactly. If it comes back a positive result,
2 your case is done; isn't it?

3 A Well, yeah. It just makes their case a lot
4 stronger.

5 Q Right. So it makes sense not to get DNA testing
6 done so you can argue to the jury, they didn't do DNA
7 testing and didn't find anything--

8 A That's certainly, my view on it, yeah.

9 Q Okay. Now, The Applicant raised some issues
10 about you declaring a mistrial. And one issue they raised
11 on Page 132.

12 A Well, I couldn't declare one. But I should
13 have -- I will say that I should have moved for one.

14 Q Okay.

15 A I regret that I didn't do that.

16 Q Okay. Well, Page 132, Line 10 through 14, The
17 Court asks The Solicitor, Ms. Paoletti, I think that's how
18 you pronounce her name. So your next witness is who?

19 And she answers, He is Dustin Kretschmar
20 with the Department of Public Safety Forensics Division.

21 And The Court states to her, Well, I can't
22 remember a case taking five days so we're going to make
23 sure it doesn't. So that was referenced to her and not
24 you; isn't that correct?

25 A That would appear to be true from what you just

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1 said.

2 Q Okay. And the case, actually, took four days to
3 try; isn't that correct?

4 A I don't recall but I'll take your word for it.

5 Q Started on the 11th and ended on the 14th,
6 that's four days?

7 A That would be four days, yes, sir.

8 Q Okay. Now, do you even remember The Judge
9 saying this during trial?

10 A I don't remember it independently, no.

11 Q Okay. And, at the time, did you think about
12 declaring a mistrial because of that statement?

13 A Well, obviously, not. And I don't think I would
14 have. Not just based on that. Listen, I've had plenty of
15 judges concerned with time over the years.

16 Q I was once a public defender, yeah, I know how
17 that is, some judges are like that. Did you ever feel
18 rushed during this trial?

19 A I don't recall feeling rushed. I've had cases
20 with Judge Miller where I felt like I was being rushed but
21 I don't think I felt rushed in this case.

22 Q Okay. And you rested after The Applicant
23 testified; isn't that correct?

24 A I assume so.

25 Q Okay. You didn't have anymore witnesses you had

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1 available to testify after The Applicant?

2 A No.

3 Q Okay. So it's not that you didn't call anybody
4 not to testify because you was worried about a time
5 constraint?

6 A No, just didn't have anybody.

7 Q Okay. Did you feel rushed by the trial Judge
8 when The Applicant was testifying?

9 A No. I was just more concerned with the way the
10 testimony was going at the time, more than anything.

11 Q Okay. The Judge didn't rush you during your
12 closing arguments, did he?

13 A If you don't see it in the transcript, then he
14 didn't. Again, he has done that before.

15 Q But not in this case?

16 A Apparently, he did not do it in this case.

17 Q Now, also a situation came up where you brought
18 to The Court's attention that he was making faces during
19 your client's testimony?

20 A I did.

21 Q Okay. And you felt that it was leading the jury
22 into believing The Judge did not believe him?

23 A I think I may have even said, I'd have to look
24 at the transcript to verify, that he couldn't indicated my
25 client's guilty anymore than if he held up a sign that

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1 said he's guilty.

2 Q Okay.

3 A I mean, that's really how I felt about it.

4 Q And but Judge Miller said he was doing this
5 because he couldn't believe you were allowing him,
6 allowing the appellant -- I mean, The Applicant, to go
7 into a narrative like that?

8 A Yeah, I think that was what he said.

9 Q Okay. Now, could you turn to Page 685 of the
10 transcript?

11 A (The witness complies.)

12 Q And this is -- this is during The Judge's jury
13 instructions. If you look at Line 10 through 16, Judge
14 Miller stated, I also remind you every case tried in this
15 court before a jury, the jury are the sole and exclusive
16 judges of the facts. A trial judge cannot comment on or
17 have an opinion about the facts. So don't think anything
18 I said or did throughout the course of this trial, I have
19 such an opinion, I do not.

20 So he tried to cure your objection to this
21 face making through his jury instructions; isn't that
22 correct?

23 A Well, that's a standard jury instruction, they
24 say that in every case.

25 Q But this was an attempt to cure what was said?

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1 A I mean, I don't know. Like I said, that's a
2 standard jury instruction. They say that in every case.

3 Q Okay.

4 A I mean, listen, I want to be clear about this,
5 if I can testify about it. And that is, I think that --
6 and I have a great deal of respect for Judge Miller so I
7 don't want to indicate otherwise. But I think that his
8 facial expressions were highly prejudicial. I felt that
9 way then, I feel that way now. And I would say again,
10 that wished I had moved for a mistrial in this case.
11 That's something that I have should have done. I think
12 that is something that was very hard for us to recover
13 from.

14 Q Okay. Now, also, The Applicant talked about
15 bolstering or vouching, but you said earlier in your
16 testimony that the arguments you made is the typical
17 argument that's made by most criminal attorneys?

18 A Yeah, it didn't seem like bolstering to me.

19 Q Okay.

20 A Again, another attorney may have a different
21 opinion, but it didn't strike me as bolstering. And,
22 generally, unless something is really egregious, I don't
23 like to object during the closing arguments anyway.
24 Because I think that it leaves a bad impression on the
25 jury. Now, my job, which again, I think I'm pretty good

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1 at, is to persuade those 12 people sitting over there in
2 the box to find reasonable doubt and find my client not
3 guilty. And, you know, you don't want to, you know, you
4 don't want to over object, you only want to object when
5 you have to.

6 Q And also, she talked about this, The Solicitor
7 actually testifying during cross-examination. But those
8 were instances where she was trying to impeach a witness,
9 like your client. She was trying to impeach your client's
10 prior statement?

11 A Yes, sir.

12 Q And those were statements he gave to law
13 enforcement and not to her; isn't that correct?

14 A I believe that's true.

15 Q And her cross-examination or direct examination
16 of Mr. Thomas, she was referring to statements he gave to
17 law enforcement, not to her directly?

18 A That would appear to be true.

19 Q And she was trying to refresh his memory with
20 prior statements that he gave to law enforcement?

21 A And again, based on the transcript, that would
22 appear to be true.

23 Q And there's nothing wrong with that, there's
24 nothing illegal about doing that?

25 A I don't think so, no.

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1 Q Okay. There's nothing illegal about trying to
2 impeach a witness on cross-examination with a prior
3 statement; isn't that correct?

4 A That's one of the things you do.

5 Q Okay.

6 I don't have anything further, Your Honor.

7 THE COURT: Any redirect?

8 MS. BLANCHETTE: No, Your Honor.

9 THE COURT: Any objection to this witness
10 stepping down?

11 MS. BLANCHETTE: I have none.

12 MR. EVANS: No objection, Your Honor.

13 THE COURT: Thank you, you're excused, sir. If
14 you'll return that document to its proper owner.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you. Good luck in your future
17 career, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Okay, next witness.

20 MS. BLANCHETTE: Your Honor, The Applicant has
21 no further witnesses. I have some cases that I would
22 like to hand up in support of his allegations. I'd
23 also like to ask The Court to take judicial notice,
24 just of the ethnics rule that it's not, specifically,
25 referenced in the transcript regarding duties to

1 perspective clients, that's ethics rule 1.18. It
2 wasn't in the transcript, so I just wanted to make
3 that was part of the record as well.

4 THE COURT: The reference was in the transcript
5 by Judge Miller.

6 MS. BLANCHETTE: Oh, he does state the rule, I
7 apologize, Your Honor.

8 THE COURT: I think he said when Mr. Chambers
9 was -- after Mr. Chambers testified, I thought he
10 said -- was it rule 403(1)(1)(8)?

11 MS. BLANCHETTE: He very well may have.

12 MR. EVANS: He did, Your Honor.

13 THE COURT: Y'all know y'all read those at night
14 when you get bored.

15 MR. EVANS: I actually read the rule --

16 THE COURT: Okay, anyway--

17 MR. EVANS: -- I didn't know the rule exist, I
18 remember reading the rule after he mentioned it in
19 the transcript, so.

20 THE COURT: Well --

21 MS. BLANCHETTE: And it may be the reason I
22 pulled the rule. But I just want to make sure --

23 THE COURT: Okay, the rule itself was not part
24 of the transcript but Judge Miller refers to it. And
25 I do need to state, with regard to the transcript, it

1 is complete as to what you have referred to
2 throughout the trial, both of you. But it is not the
3 complete transcript. There are -- like parts of the
4 opening statements were not in and that kind of
5 thing. But the numbers that you have been referring
6 to are the same. And, you know, when they reprint
7 for the binding for appellate review, there are two
8 sets of numbers. And the original numbering that
9 Ms. Herron did when she typed the transcript, is
10 still there. And so I'm able to follow along. And
11 the numbers -- I have all the pages that y'all have
12 referred to, okay.

13 MS. BLANCHETTE: Yes, Your Honor. The
14 unredacted full transcript that The State provided me
15 is 709 pages. And that was provided and I was -- my
16 understanding that would be in your packet but it
17 appears that's not what you have.

18 THE COURT: Well--

19 MR. EVANS: I think you have the direct appeal
20 that has the transcripts.

21 THE COURT: Well, this is 717 pages but there
22 are some exhibits attached, like the questions for
23 the jury -- you know, the jury questions, the
24 sentencing sheets, the indictments, the court's
25 exhibits are part of this. So that might be why. I

1 mean, I don't know there's much left out but if I
2 need it I can get it, okay.

3 MS. BLANCHETTE: And, Your Honor, not to be a
4 bother, but as a matter of putting together the
5 appellate record, the rule provides that we can only
6 put those documents that were presented to, Your
7 Honor, in the appellate record. And to ensure that
8 our court, the appellate court, has the full record,
9 would we be allowed to supplement or The State maybe
10 provide maybe the file they gave me with the full
11 transcript?

12 MR. EVANS: Well, she has the full transcript.

13 THE COURT: I don't think it is the full
14 transcript.

15 MS. BLANCHETTE: The record on appeal does not
16 have sections of the transcript.

17 MR. EVANS: Okay. We will provide The Court a
18 full transcript. My apologies, I didn't think the --
19 I didn't know that it wasn't in there. I thought --
20 I will give you the full transcript.

21 THE COURT: And, you know, if you're looking at
22 it, I mean, it's -- it's a lot. So, I mean, but
23 the -- that's fine so that all of that would be part
24 of any appeal in the future.

25 MS. BLANCHETTE: Thank you, Your Honor, I

1 appreciate that. I do, like I said, we don't have
2 any further witnesses. When the time is appropriate
3 because I know The State has the right to present
4 their case, I just have some case law that I'd like
5 to offer in support of our allegations.

6 THE COURT: Okay. Why don't we take about 10
7 minutes and we'll come back and start with The
8 State's --

9 MR. EVANS: We're not presenting any witnesses,
10 Your Honor.

11 THE COURT: Okay.

12 MR. EVANS: The only witness we would present
13 was the counsel, which was called by The Applicant.
14 So we don't have anything to present.

15 THE COURT: Okay. So we'll take about 10
16 minutes and come back for any motions.

17 Are you going to rest?

18 You've rested?

19 MR. EVANS: She rested.

20 MS. BLANCHETTE: Yes, Your Honor.

21 MR. EVANS: We rested also, Your Honor.

22 THE COURT: Okay. So she rested so any motions
23 based on that?

24 MS. BLANCHETTE: No, Your Honor.

25 MR. EVANS: No, Your Honor.

1 THE COURT: Okay. He's rested any motions based
2 on that?

3 MS. BLANCHETTE: If I can just -- if I can just
4 ask my other expert if he sees a need to recall him,
5 then I can answer that question.

6 THE COURT: Okay, but no motions?

7 MS. BLANCHETTE: No motions.

8 THE COURT: Okay.

9 MR. EVANS: No motions.

10 THE COURT: Y'all understand the importance of
11 why I'm doing this?

12 MR. EVANS: Yes, ma'am.

13 THE COURT: The good news is we don't have to
14 send a jury in and out every time we do it, okay. So
15 it seems to be moving faster. But -- all right.
16 So -- but now I -- so The State, The Respondent --
17 has The Respondent put in any exhibits?

18 MR. EVANS: No, we haven't, Your Honor.

19 THE COURT: Okay. All right. Did you mean to?

20 MR. EVANS: No.

21 THE COURT: All right. So when I come back I'll
22 hear from you.

23 MS. BLANCHETTE: Yes, Your Honor.

24 THE COURT: About any reply testimony, okay?

25 MS. BLANCHETTE: I do not have any reply

1 testimony. I was able to sort that out so it will
2 just be whatever argument The Court would like.

3 THE COURT: Okay. We'll be back in about 10
4 minutes, okay.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 MR. EVANS: Thank you, Your Honor.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: All right, Counsel, if you all are
9 ready -- and with regard to the full transcript, is
10 it possible -- you said that you have a copy of it
11 here?

12 MS. BLANCHETTE: No, I have it electronically
13 that I received. I have the big one that was on the
14 stand with him, it does have some notes and
15 highlights in it.

16 THE COURT: Okay.

17 MR. EVANS: Your Honor, we have a full copy in
18 our computer system. I can email it to you.

19 THE COURT: Okay. And then --

20 MR. EVANS: That's going to be sent to her. I
21 thought you had that.

22 THE COURT: So but the business end of it, the
23 nuts and bolts of it is, I've got to get it to the
24 Court Reporter so it can be made an exhibit, okay.
25 And so I can email it to Madam Court Reporter, if

1 y'all are in agreement with that. And it will be
2 made a Court's Exhibit at that point, as opposed to a
3 Applicant's Exhibit.

4 MS. BLANCHETTE: That's fine, Your Honor.

5 MR. EVANS: That's fine, Your Honor.

6 THE COURT: Okay. All right.

7 All right yes, ma'am.

8 MS. BLANCHETTE: Yes, Your Honor, I have seen
9 you very attentive today, you've given us plenty of
10 time and I'm not going to rehash everything. I tried
11 to be very unclear [verbatim] about what issues in
12 the amendment I was talking about at certain portions
13 of the testimony. The experts we've introduced, both
14 their reports, I wasn't going to go back over all of
15 that. What I do have are just some specific cases
16 that are on point to some of our allegations, not
17 providing you all of the [indiscernible] Cato and
18 Lowndes [ph] and all the different cases that support
19 PCR allegations, just some specific ones that -- not
20 saying that The Court's not aware of but I would like
21 to bring to your attention today as to our issues.
22 And then I'm happy to answer any questions or provide
23 any argument or anything further that The Court would
24 like.

25 Your Honor, I have paper clipped all these

1 together, I provided all the citations to The State,
2 I'll just briefly go over them. I'm submitting the
3 case of Matthews as to the issue of the bolstering
4 and vouching that was raised. I have a copy of State
5 v. Sierra, which is also referenced in the amendment
6 but I have a hard copy of that for Your Honor. As to
7 the matter of some of the -- I would deem them
8 admissions, specifically, regarding the mistrial
9 issue that counsel made from the stand. I have the
10 case of Pauling, I have the case of Martinez
11 regarding the prejudice analysis and how this court
12 can consider admissions made by counsel regarding
13 deficiencies.

14 And then, Your Honor, an issue that was rather
15 complexed for me, I'll just be candid, I have not run
16 across too much in my career up to this point, was
17 the issue of the mistrial. Specifically, for The
18 Judge, as counsel explained, making faces under the
19 testimony of Mr. Gregory. I do have for Your Honor a
20 copy of State vs. Lowndes. It's an unpublished case.
21 And something that I only submit in these reasons.
22 The reason why I'm submitting it to The Court is it
23 gives two really nice string [verbatim] cites. It
24 addresses the majority of the case law that we have
25 in South Carolina on mistrials for judicial conduct.

1 So instead of printing out all those cases, I
2 thought -- I understand a unpublished case can't be
3 relied upon so I'm not asking you to rule under
4 Lowndes, but just to provide this with these two very
5 lengthy string cites that our appellate court put
6 together in Lowndes.

7 I'm also providing a copy of Howard and Jackson,
8 which are in the string cites and referenced in that
9 case, that are both South Carolina cases. And then,
10 cases that I thought were instructed, even though not
11 directly on point, People vs. Walker, out of The
12 State of Illinois. In the case of Alan Minor vs.
13 David Harris, which is a New York district court
14 case. All of those cases I'm submitting to Your
15 Honor in support of our position that counsel was
16 ineffective for not moving for a mistrial. And,
17 specifically, under the matter of judicial conduct
18 during Mr. Gregory's testimony.

19 Your Honor, I do not have anything further to
20 submit on behalf of The Applicant. Again, Your Honor
21 has the entire record, you've allowed us to go into
22 all of our allegations here today. But if there's
23 anything further that I can provide for The Court,
24 I'll be happy to do that.

25 THE COURT: No, ma'am. I do believe that I do

need to make inquiry of Mr. Gregory one more time
just to make sure on the record.

EXAMINATION

BY THE COURT:

Q Sir, you're already under oath but if you can rise, just rise. Sir, you have not testified today. And I just want to make sure that you're still okay with that, you don't need to talk with your lawyer anymore about that?

A Yes, Your Honor.

Q Okay. And you understand that the record is getting ready to close?

A Yes, Your Honor.

Q Okay. And understanding all of that, you still wish for this to be concluded without your testimony?

A Yes, Your Honor.

Q Okay, thank you.

Any other questions regarding those or statements?

MR. EVANS: No, Your Honor.

THE COURT: Okay. So let me -- let me hear then from The Respondent, any summation, sir?

MR. EVANS: Basically, of course, The Court is aware of Strickland v. Washington, a supreme court case where people need to follow to make a

JACOBY GREGORY-EXAMINATION BY THE COURT

1 determination of whether or not counsel was
2 ineffective. Of course, the two prong test in
3 Strickland is one there must be ineffectiveness to
4 the point of where it's a violation of the Sixth
5 Amendment. The person did not have effective
6 assistance of counsel. And two, that the mistakes
7 made by counsel did not give the applicant a fair
8 trial.

9 It is our opinion that the evidence that was
10 raised in this case, one, revealed that effective
11 assistance of counsel. Counsel was effective, very
12 experienced, he knew what he was doing, he was
13 prepared to go to trial. He even gave The Applicant
14 advice that he did not follow that may have had an
15 effect on his case, first of all. Second of all, the
16 evidence that was raised by The Applicant wouldn't
17 have changed the outcome in our opinion. The expert
18 witnesses that testified, testified to matters where
19 there were things that were corroborated by the
20 co-defendant that testified in this case. There were
21 things that experts testified to that was, obviously,
22 found on the scene, crime scene. And there was no
23 question about the actual items found at the actual
24 scene of the case.

25 As for the mistrials that were stated, the first

JACOBY GREGORY-EXAMINATION BY THE COURT

1 statement that was given by the trial judge was
2 untimely, there was no evidence that Judge Miller
3 rushed any side in this case. He wanted the case to
4 end in five days, less than five days, it was a
5 four-day trial. And there's no evidence that he
6 rushed any testimony, any arguments, anything of that
7 matter. And also, as for the making faces. Judge
8 Miller cured that, in our opinion, with his jury
9 instruction regarding anything he does does not
10 effect the actual juries [verbatim] of the jury to
11 make a determination as to the question of fact.

12 As to conflict, wish I had that cite with me,
13 Your Honor. I made a copy of the case and left in
14 Columbia. But Fuller v. State, South Carolina
15 Supreme Court case, the supreme court decided that a
16 so called conflict did not effect counsels ability to
17 represent the applicant. Therefore, there's no
18 conflict. Mr. Chambers simply said that -- well, he
19 didn't even know that Mr. Robinson talked to his
20 client prior to him representing him until right
21 before the trial. It had no effect on him and his
22 ability to represent Mr. Robinson -- I mean, The
23 Applicant. It had no effect on the evidence he
24 presented to them. And Mr. Robinson testified that
25 he would not give him anything. So we would have to

JACOBY GREGORY-EXAMINATION BY THE COURT

1 rely, as to him being an officer of the court, that
2 he did not lie to The Court regarding that matter.

3 As for State v. Sierra, which they did mention
4 in their application, Sierra does not apply to the
5 present case. It's not -- it doesn't apply to the
6 present case. In Sierra, there were actual
7 statements made by the solicitor to the defendant,
8 where she's talking about on cross-examination where
9 she denied making. That made her a witness. In this
10 case, Your Honor, on direct testimony, the solicitor
11 only use a prior statement that he gave to law
12 enforcement to refresh his memory, which is perfectly
13 legal under rules of evidence. And as for
14 cross-examination of The Applicant, she used his
15 prior testimony to impeach him. Which is perfectly
16 legal under the rules of evidence.

17 So we would ask that -- that you not rely on
18 that -- on that case, Your Honor. I think that's all
19 I have for The Court today. We would just reiterate
20 that we would ask The Court to deny his application
21 because one, counsel showed that he was effective.
22 And two, there was nothing that was presented by The
23 Applicant that revealed or changed the outcome of
24 this trial. Or did not give him a fair trial.
25 That's all I have, Your Honor, thank you.

JACOBY GREGORY-EXAMINATION BY THE COURT

1 THE COURT: Thank you.

2 Anything else?

3 MS. BLANCHETTE: Your Honor, I apologize, I
4 failed to address a case that I believe counsel was
5 attempting to reference, which is Reeves vs. State,
6 that came out in 2015. In that case the denial of
7 PCR relief was actually reversed by the appellant
8 court. There the attorney had given the excuse that
9 he was retained and did not seek indigent funding.
10 And Reeves goes into the issue of counsel, even
11 though being retained under the statutes, being able
12 to get indigent funding for experts. So I'd also
13 would just like to submit that for The Court's
14 consideration. And I'm happy to email that citation
15 to opposing counsel as well to your law clerk so that
16 everyone has that. But that is Reeves vs. State, was
17 the case that we were kind of discussing through his
18 testimony, Your Honor.

19 THE COURT: Okay. Thank you.

20 Anything else? We're very informal because we
21 don't have a jury. If anything pops into your brain,
22 okay.

23 MS. BLANCHETTE: I had one more pop.

24 THE COURT: Okay.

25 MS. BLANCHETTE: See being way too informal. I

JACOBY GREGORY-EXAMINATION BY THE COURT

1 typically order the transcript. When I receive that,
2 it's my understanding I can provide that to The
3 Court. I notified opposing counsel when I order it
4 so they can order their own copy. But I will be
5 doing that and then I'll provide it to The Court upon
6 receipt. Not saying that it will take The Court that
7 long to make her decision, I just wanted to make you
8 aware that I would put in that request.

9 THE COURT: Okay. Anything else?

10 MS. BLANCHETTE: Just need to hand these up.

11 THE COURT: Okay. Thank you.

12 All right. And so, I say this for Mr. Gregory's
13 benefit but also for counsel.

14 Because, Mr. Gregory, to my knowledge, I don't
15 know that I've ever met these folks before and if I
16 have, it hasn't been very memorable to me, okay. And
17 so, they --

18 I routinely issue my instructions in writing.
19 No matter what type of hearing I have. So there's no
20 confusion about what I've done or what I intended,
21 okay. And that will be the same here. I'm going to
22 either issue a written order or written instructions.
23 And I've got something else I've got to read and rule
24 on from -- this is the second day of the term from
25 yesterday. And so, I, generally, like to do things

JACOBY GREGORY-EXAMINATION BY THE COURT

1 in the order that they're heard, okay.

2 So I do know this is important to you, sir. And
3 I take it very seriously. Even though I appear to be
4 extremely informal in the courtroom, I just try to
5 make everybody feel at ease about being here, okay.
6 But I do wish you the very best.

7 Thank you, Counsel, for your very efficient
8 presentations to The Court. I know how hard it is to
9 get this stuff lined up, get up here, get your
10 witnesses up here, make sure that The Applicant is
11 here, that their family members are here.

12 And thank you, sir, for taking over on the file.
13 I guess, who is listed -- you were listed and
14 Ms. Brown or you're handling--

15 MR. EVANS: Ms. Brown, she had a doctor's
16 appointment, Your Honor.

17 THE COURT: Okay.

18 MR. EVANS: She said it took her six months to
19 get the appointment, she's not going to wait six more
20 months.

21 THE COURT: Right.

22 MR. EVANS: So I was volun [verbatim] told.

23 THE COURT: Well, I do appreciate it so we could
24 go forward.

25 Okay. And so I think I've gotten everything

JACOBY GREGORY-EXAMINATION BY THE COURT

1 that I need. The total number of Applicant's
2 exhibits, again, were -- was it five?

3 MS. BLANCHETTE: I believe it was five, Your
4 Honor. And then we referenced the trial Exhibit 50.
5 If Your Honor would like, I have a copy of that, I
6 can provide to everyone. Because that went back into
7 the general sessions file.

8 THE COURT: Okay. And so you gave that back to
9 Madam Clerk, Ms. White?

10 THE CLERK: Yes, ma'am, I have it.

11 THE COURT: Okay. I understand everybody's
12 rested but I don't object to that coming in as an
13 additional exhibit.

14 You said you have a copy of it?

15 MS. BLANCHETTE: I was looking, Your Honor.
16 Well, Your Honor, just for review. I was going to
17 leave it at the clerk's request, as the general
18 sessions exhibit. And that's part of the record, is
19 my understanding.

20 MR. EVANS: Yes, it is. I see no reason why The
21 Court can't have that.

22 THE COURT: Okay. So Applicant's Exhibits 1
23 through 5. And then it will be one Court's Exhibit
24 which is going to be the transcript.

25 MR. EVANS: Yes, ma'am.

JACOBY GREGORY-EXAMINATION BY THE COURT

1 MS. BLANCHETTE: Yes, Your Honor.

2 THE COURT: Okay. And I'm fine to review a copy
3 of State's Exhibit 50.

4 MS. BLANCHETTE: Yes, Your Honor.

5 THE COURT: But that won't be coming in as an
6 exhibit?

7 MS. BLANCHETTE: No, Your Honor. My
8 understanding that would help keep the record clean.

9 THE COURT: Okay. All right, thank you.

10 MS. BLANCHETTE: Thank you.

11 MR. EVANS: Thank you, Your Honor.

12 THE COURT: Mr. Gregory, sir, I do wish you the
13 best. All right.

14 (WHEREUPON, Court's Exhibit1 No. 1 was marked
15 for identification only.)

16 (WHEREUPON, the proceedings were concluded.)
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18
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JACOBY GREGORY-EXAMINATION BY THE COURT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
19th day of September, 2023.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 8, 2024

April P. Herron_____

APRIL P. HERRON, Court Reporter

Peter Matthew Skidmore

9.19.28

3555 #D Centre Circle, Fort Mill, SC 29715

(803) 579-3020

petejr@piskidmore.com

EXPERIENCE:

SKIDMORE INVESTIGATIONS, INC.

DECEMBER 2001 – 2018

OWNER OPERATOR/PRIVATE INVESTIGATOR

Licensed Private Investigator through South Carolina Law Enforcement Division for over 14 years with Skidmore and Associates, a private investigative firm practicing since 1993. Bought Skidmore and Associates in 2012 and rebranded the company as Skidmore Investigations, Inc. Licensed in North and South Carolina.

SKIDMORE AND ASSOCIATES

April 2021 – Present

PRIVATE INVESTIGATOR

Licensed Private Investigator through South Carolina Law Enforcement Division. Investigate criminal cases. Investigate cases involving cell phones.

KEY ACCOMPLISHMENTS:

- **DOMESTIC CASE MANAGEMENT**– managed independent contractors and employees while overseeing daily operation of company and case management. Has worked on and managed over 1,000 cases where covert surveillance was needed, including domestic and workman's compensation cases.
- **CRIMINAL CASES** – worked on over 75 murder cases and assisted in at least four state death penalty cases. Has also worked on two federal death penalty case as well as numerous other criminal cases including, but not limited to, drug trafficking, assault and battery with intent to kill, criminal sexual conduct, and arson.
- **DUI CASES** – worked with clients and attorneys regarding the Standardized Field Sobriety Test. Has been qualified as an expert by judges in magistrate and circuit court.
- **COMPUTER/CELL PHONE FORENSICS** – worked and trained on cell phone and computer forensics. Has conducted over 200 cell phone/tablet extractions. Reviewed over 50 cell phone extractions conducted by others.

UNITED STATES ARMY

FEBRUARY 2001 – AUGUST 2018

ARMY VETERAN IN THE SC NATIONAL GUARD

SERGEANT, TEAM LEADER AND SQUAD LEADER 178TH ENGINEER BATTALION CHESTER COMPANY
Served overseas in 2003 during Operation Iraqi Freedom and Operation Enduring Freedom.
Assisted in mentoring new soldiers.

Honorable Discharge

Medically retired from the US Army in August 2018

EDUCATION:

THE CITADEL, CHARLESTON SC

AUGUST 2001– MAY 2002

WINTHROP UNIVERSITY

May 2012

Bachelor of Science in Sociology with a concentration in Criminology

CERTIFICATIONS:

DUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING

MAY 4-6, 2012

Completed the 24-hour course recognized by the National Highway Traffic Safety Administration.

DUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING INSTRUCTOR COURSE AUGUST 23-24, 2018

872

Completed the 32-hour course recognized by the National Highway Traffic Safety Administration and the International Association of Chiefs of Police.

ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT (ARIDE)

Completed the overview of the 16-hour course recognized by the National Highway Traffic Safety Administration.

COMPLETED CELLEBRITE CERTIFIED LOGICAL OPERATOR, COMPLETED CELLEBRITE CERTIFIED PHYSICAL ANALYST, COMPLETED CELLEBRITE CERTIFIED MOBILE EXAMINER – 2015

COMPLETED THE INTERNATIONAL ASSOCIATION OF COMPUTER INVESTIGATIVE SPECIALIST (IASCIS) BASIC COMPUTER FORENSIC EXAMINER TRAINING - 2017

CELLEBRITE CERTIFIED OPERATOR – FEBRUARY 2022

CELLEBRITE CERTIFIED PHYSICAL ANALYST- FEBRUARY 2022

QUALIFICATIONS

APPROVED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) to teach continuing education related to Standard Field Sobriety Tests.

QUALIFIED AS AN EXPERT IN GENERAL SESSIONS COURT REGARDING CELL PHONES

QUALIFIED AS A CELL PHONE EXTRACTION EXPERT IN GENERAL SESSIONS BY JUDGE G.D. MORGAN JR- FEBRUARY 25, 2022

QUALIFIED AS A CELL PHONE EXTRACTION IN FRONT OF CIRCUIT COURT JUDGE MARK HAYES NOVEMBER 1, 2022

QUALIFIED AS A CELL PHONE EXTRACTION EXPERT IN GENERAL SESSIONS BY JUDGE DANIEL COBLE ON MAY 18, 2023.

SOUTH CAROLINA PUBLIC DEFENDER INVESTIGATOR ASSOCIATION

2016-2018

President for two years and has taught continuing education during conferences for the organization.

2 9.19.23



My name is Pete Skidmore Jr. I am licensed through SLED as a private investigator. I have been working as an investigator for over 16 years, primarily on criminal cases involving individuals charged with murder. I have also worked on hundreds of domestic cases. I have been qualified as an expert regarding cellular device extractions/acquisitions. I have been doing cellular device extractions/acquisitions and examinations since 2015.

I got involved in the Jacoby Gregory case mid-2022 timeframe. The following is a summary of what has been provided to me, observations, and my opinion as an investigator and as a previously qualified expert in cellular device extractions/acquisitions.

I have reviewed the discovery provided by Attorney Blanchette and I have concluded, from what I have reviewed, the following:

- There was an extraction on the victim's phone.
- The extraction report that I reviewed was in a PDF format.
- To my knowledge, Attorney Blanchette did not, nor did the prior defense counsel for Mr. Gregory, receive the "raw" data from the original extraction/acquisition of the victim's phone.

I am prepared to provide and/or testify to the following at a hearing regarding cellular devices:

- The differences between a PDF report for a cellular device and a UFDR report. The disadvantages of a PDF report compared to a UFDR Reader report and why the prior defense should have requested the victim's cellular report in a different format than PDF at the very minimum.
- The format that was provided, the PDF format, makes it difficult to properly review and analyze the data that is provided. At the time of the extraction/acquisition of the victim's phone data, there could have been an electronic copy of the data that mirrored the report that law enforcement was reviewing. The report that could have been provided is a "UFED Reader" report. The UFED Reader report would have given the defense a better understanding and opportunity to review the data on the victim's phone. It is my understanding that that the "UFED Reader" report was not provided. The format that the data was given in PDF format. The PDF format put the prior defense for Mr. Gregory at a disadvantage.
- The prior defense counsel did not request for the original "raw" data from the extraction/acquisition of the victim's phone. If this had been requested, the defense could have analyzed the data and verified that all data from the extraction was provided. Without analyzing the original raw data, the prior defense team could not have known if they had everything related to the victim's cellular device.
- I have previous experience where a cellular device extraction/acquisition of data was conducted by the State and provided to the defense in a report. It was not until I conducted an independent review of the extraction/acquisition of raw data that I was able to determine that all the data was not provided to the defense of the defendant in that case.

- It is my experience and opinion that the only way for the defense to have all the evidence from the State is for the defense to receive the raw data from the cellular device extraction conducted by the State or Law Enforcement.

I have reviewed the discovery provided by Attorney Blanchette and I have concluded, from what I have reviewed, the following:

- There was an iPhone collected by Law Enforcement.
- The iPhone was placed in discovery.
- The defense team for Mr. Gregory had access and knowledge of the iPhone.
- The defense team for Mr. Gregory's original trial never attempted to obtain or extract data from the iPhone.

I am prepared to provide and/or testify to the following at a hearing regarding Mr. Gregory's cellular iPhone device:

- Documentation of Mr. Gregory's iPhone, model MD440LL/A with Serial Number C8QJRZGVDPNG, was unlocked and the State and the defense had the opportunity to extract data from the device.
- Documentation of Mr. Gregory's iPhone, model MD440LL/A with Serial Number C8QJRZGVDPNG, had Location Services turned on.
 - That the prior defense should have extracted Mr. Gregory's iPhone, model MD440LL/A with Serial Number C8QJRZGVDPNG, for the device's raw data. Because the device's Location Services was turned on, there could have been exculpatory data that was not investigated.

I have reviewed the discovery provided by Attorney Blanchette and I have concluded, from what I have reviewed, the following:

- There was a Samsung Galaxy Note II collected by Law Enforcement
- The Samsung Galaxy Note II was placed in discovery.
- The defense team for Mr. Gregory had access and knowledge of the Samsung Galaxy Note II.
- The defense team for Mr. Gregory's original trial never attempted to obtain or extract data from the Samsung Galaxy Note II.

I am prepared to provide and/or testify to the following at a hearing regarding Mr. Gregory's cellular Samsung Galaxy Note II:

- That the prior defense should have extracted Mr. Gregory's Samsung Galaxy Note II, Model: SCH-1605, with IMEI: 990003348069358, and MEID: 256691486808415541, for the device's raw data. There could have been exculpatory data that was not explored or investigated by the previous defense of Mr. Gregory.

I have reviewed the discovery provided by Attorney Blanchette and I have concluded, from what I have reviewed, the following:

- There are cell phone records showing grid coordinates in latitude and longitude format.

- The only records showing latitude and longitude were for only one of Mr. Gregory's cell phones; the cell phone ending in 9074.
- To my knowledge, Attorney Blanchette, nor the prior defense counsel for Mr. Gregory received any other records that indicated grid coordinates for other cell phones.
- There were 4 grid coordinates, regarding Mr. Gregory's phone ending in 9074, that were given/provided during the trial regarding the location of the phone ending in 9074. These 4 grid coordinates were plotted on a map showing the location of the phone ending in 9074, the date of the call, and the time of the call. During the trial, these 4 mapped grid coordinates were presented as evidence in Exhibit 50.

*I have previously testified as an investigator in a murder trial regarding State Evidence that was provided to the defense regarding cellular records and grid coordinates. I have a background in grid coordinates during my time in the Army. I have an extensive background and experience using grid coordinates as a private investigator related to domestic and criminal cases.

I am prepared to provide and/or testify to the following at a hearing regarding Mr. Gregory's cellular phone location, ending in 9074, from the data excel sheet "mevdort_Greenville_9074" and Exhibit 50:

- A copy of Exhibit 50
- A reflective copy of Exhibit 50 in Google Earth
- A reflective copy of Exhibit 50 in Google Earth with a label of 101 3rd Street added.
- A reflective copy of Exhibit 50 in Google Earth with a label of 101 3rd Street and row 499 added, reflecting the grid coordinates at 22:49:06 that was left out and was not questioned by the prior defense.
- A video reflection of state Exhibit 50 with the added label of 101 3rd Street.
- A video reflection of state Exhibit 50 with the added label of 101 3rd Street and row 499, reflecting the grid coordinates at 22:49:06 that was left out and was not questioned by the prior defense.

I believe that the other phone coordinates should have been provided, or at minimum, requested from the prior defense counsel.

It is my opinion that picking these 4 grid coordinates does not properly display an accurate depiction of where the phone, ending in 9074, was located during the timeframe in question: When reviewing the data excel sheet "mevdort_Greenville_9074" and reviewing rows 501 through 496, row 497 and 499 were left out of the map exhibit that the state presented. Row 497 did not provide any grid coordinate data. Row 499 date is 1-Oct, Access time is 22:49:06, and release time is 22:49:06. When reviewing row 499 data, the grid coordinates for this row/time, places the phone, ending in 9074, across from the interstate a minute or two before the shooting. By leaving this out and the prior defense counsel not questioning or inquiring further about these grid coordinates, it allows for a misrepresentation of the data, which is very misleading, in my opinion.

When thoroughly reviewing rows 501 through 496, it brings into question several things. First, the accuracy of the data that was provided. When row 499 is added with the grid coordinates to map exhibit 50, it brings into question the accuracy and reliability that row 499 has when added to Exhibit 40. Secondly, if the reliability/accuracy is in question of row 499; can the reliability/accuracy of the other rows be trusted? Lastly, why did the original defense not hire an expert to review the accuracy of the

data. Most importantly, why did the original defense not question or investigate why row 499 was not included in the map exhibit 50? Did the original defense even know that row 499 was not included in Exhibit 50?

Also, when reviewing the data from this excel sheet and the data that was used, there were a total of 1984 rows in the spreadsheet; only 4 of those rows were reflected in the map exhibit 50 that the state presented in the case against Mr. Gregory. It is my further opinion that these rows should have been investigated by the prior defense counsel.

In conclusion, it is my opinion that, at minimum, the prior defense counsel should have further investigated, requested, and even extracted/acquired the "raw" data from not only the victim's phone, but also from both of Mr. Gregory's phones.

The prior defense counsel should have also further investigated the grid coordinates regarding excel sheet "mevdort_Green_9074" for the rows/cells that were not included in the map exhibit that the state presented. I also believe that the prior defense counsel should have requested for the same type of data and grid coordinates with latitude and longitude, for the other cell phones that were involved in the case. If the prior defense counsel had requested these things, they would have multiple sources of information to verify and validate extremely relevant information.

Peter M Skidmore

CURRICULUM VITAE
RALPH ROBERT TRESSEL

DATE OF BIRTH: -----

NATIONALITY: U.S. CITIZEN

MARITAL STATUS: MARRIED

WIFE: ✓

THREE MARRIED CHILDREN – ONE ADULT CHILD SINGLE

HOME ADDRESS:

HIRAM, GEORGIA 30141

PROFESSION: **FORENSIC INVESTIGATOR/CONSULTANT FORENSIC
EVIDENCE AND INVESTIGATION**

TITLE: OWNER – *FORENSIC INVESTIGATIVE SERVICES*

EDUCATION:

GRADUATED: SPRAYBERRY HIGH SCHOOL 1971

KENNESAW JR. COLLEGE – 1971-1972

SPECIALIZED TRAINING:

**BASIC RECRUIT TRAINING
COBB REGIONAL POLICE ACADEMY
1973 80 HOURS**

**BASIC MANDATE TRAINING
GEORGIA POLICE ACADEMY
1973 120 HOURS**

**ROBBERY & BURGLARY SEMINAR
COBB REGIONAL POLICE ACADEMY
1974 16 HOURS**

**RAPE INVESTIGATION COURSE
COBB REGIONAL POLICE ACADEMY
1975 16 HOURS**

**GOVERNOR'S CRIME AWARENESS PROGRAM
COBB REGIONAL POLICE ACADEMY
1976 16 HOURS**

**SEX CRIMES WORKSHOP
GEORGIA STATE UNIVERSITY
1977 40 HOURS**

**ARSON & BOMB WORKSHOP
COBB REGIONAL POLICE ACADEMY
1978 40 HOURS**

**BASIC HOSTAGE NEGOTIATIONS
F.B.I. – ATLANTA, GEORGIA
IN ASSOCIATION WITH F.B.I., QUANTICO, VIRGINIA
1977 40 HOURS**

**ADVANCED CRIMINOLOGY
GEORGIA POLICE ACADEMY
IN ASSOCIATION WITH F.B.I., QUANTICO, VIRGINIA
1978 50 HOURS**

**HOMICIDE INVESTIGATION
UNIVERSITY OF GEORGIA
1979 40 HOURS**

**TERRORISM SEMINAR
UNIVERSITY OF GEORGIA
1979 40 HOURS**

**POLICE SUPERVISION
UNIVERSITY OF GEORGIA
1979 40 HOURS**

**INTERVIEWS AND INTERROGATIONS
GEORGIA POLICE ACADEMY
1979 40 HOURS**

**POLICE DISCIPLINE
COBB COUNTY POLICE DEPARTMENT
1980 4 HOURS**

**FIREARMS INVESTIGATION TECHNIQUES
DEPARTMENT OF THE TREASURY
1981 40 HOURS**

**STRESS MANAGEMENT
COBB COUNTY POLICE DEPARTMENT
1981 4 HOURS**

**BLOOD STAINS/SPATTER WORKSHOP
FLORIDA INSTITUTE OF LAW ENFORCEMENT
ST. PETERSBURG, FLORIDA
1981 40 HOURS**

**SEX CRIMES
GEORGIA POLICE ACADEMY
1981 40 HOURS**

**INTERVIEWS AND INTERROGATIONS
LEVEL II
GEORGIA POLICE ACADEMY
1981 40 HOURS**

**HOSTAGE NEGOTIATIONS
COBB REGIONAL POLICE ACADEMY
1982 40 HOURS**

**SEARCH AND SEIZURE
COBB REGIONAL POLICE ACADEMY
1982 16 HOURS**

**COMPUTER APPLICATIONS IN LAW ENFORCEMENT
GEORGIA POLICE ACADEMY
1984 40 HOURS**

**SEARCH WARRANTS & AFFIDAVITS
GEORGIA POLICE ACADEMY
1984 16 HOURS**

**LAW ENFORCEMENT SUPERVISION
GEORGIA POLICE ACADEMY
1984 120 HOURS**

**MEDICO-LEGAL DEATH INVESTIGATION
ST. LOUIS UNIVERSITY SCHOOL OF MEDICINE
ST. LOUIS, MISSOURI
1985 40 HOURS**

**ARSON INVESTIGATION SEMINAR
ATLANTA, GEORGIA
1986 16 HOURS**

**HOMICIDE INVESTIGATION
NATIONAL LAW ENFORCEMENT INSTITUTE
ATLANTA, GEORGIA
1986 16 HOURS**

**POLICE MEDICO-LEGAL INVESTIGATION OF DEATH
UNIVERSITY OF MIAMI SCHOOL OF MEDICINE
MIAMI, FLORIDA
1986 40 HOURS**

**BLOODSTAIN EVIDENCE SEMINAR
NATIONAL LAW ENFORCEMENT INSTITUTE
SANTA ROSA, CALIFORNIA
1988 40 HOURS**

**SATANIC & CULT INFLUENCES IN HOMICIDE
VALENCIA COMMUNITY COLLEGE
1989 28 HOURS**

**SECOND NATIONAL CONFERENCE ON CHILD FATALITIES AND
PHYSICAL ABUSE
NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE
AMERICAN PROSECUTOR'S RESEARCH INSTITUTE
SAN DIEGO, CALIFORNIA
1991 32 HOURS**

**FORENSIC SYMPOSIUM 2011
FORENSIC EXAMINATION & CRIME SCENE PROCESSING
NORTH GEORGIA COLLEGE & STATE UNIVERSITY
DAHLONEGA, GEORGIA
MARCH 2011, 16 HOURS**

**CRIME SCENE RECONSTRUCTION
PATTERN INJURY INTERPRETATION
DR. JOSEPH L. BURTON
MARIETTA, GEORGIA
1985 - 2010**

**EXECUTIVE TRAINING
GEORGIA CHIEFS OF POLICE
DULUTH, GEORGIA
OCTOBER 2011 60 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
ATLANTA, GEORGIA
JANUARY 2012 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA 14 HOURS
JULY 2012**

**GEORGIA CHIEFS OF POLICE CONFERENCE
ATHENS, GEORGIA
JANUARY 2013 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GA
JULY 2013 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
ATLANTA, GEORGIA
JANUARY 2014 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA
JULY 2014 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
ATLANTA, GEORGIA
JULY 2015 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
ATLANTA, GEORGIA
JANUARY 2016 14 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA
JULY 2016 20 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA
JULY 2017 20 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA
JULY 2018 20 HOURS**

**GEORGIA CHIEFS OF POLICE CONFERENCE
SAVANNAH, GEORGIA
JULY 2019 20 HOURS**

**BIOMECHANICS AND OCCUPANT KINEMATICS
DR. JOSEPH L. BURTON
MARIETTA, GEORGIA
1990 – 2010**

PREVIOUS EMPLOYMENT:

**CHIEF CRIMINAL INVESTIGATOR
COBB COUNTY DISTRICT ATTORNEY'S OFFICE
70 HAYNES STREET
MARIETTA, GA. 30090
2011-2019
Retired Sept 27, 2019**

**SENIOR FORENSIC INVESTIGATOR
BURTON & ASSOCIATES
ALPHARETTA, GEORGIA
1998 – 2010**

**OPERATIONS MANAGER
COBB COUNTY MEDICAL EXAMINER'S OFFICE
MARIETTA, GEORGIA
1985 – 1997 (RETIRED)**

**SERGEANT, CRIMES AGAINST PERSONS UNIT
COBB COUNTY POLICE DEPARTMENT
MARIETTA, GEORGIA
1978 – 1985**

**DETECTIVE, CRIMES AGAINST PERSONS UNIT
COBB COUNTY POLICE DEPARTMENT
MARIETTA, GEORGIA
1975 – 1978**

**POLICE OFFICER – PATROL DIVISION
COBB COUNTY POLICE DEPARTMENT
MARETTA, GEORGIA
1973 – 1975**

ADDITIONAL INFORMATION:

MEMBER:

FRATERNAL ORDER OF POLICE (inactive)
POLICE OFFICER'S ASSOCIATION OF GEORGIA (inactive)
GEORGIA CHIEFS OF POLICE ASSOCIATION
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
ATLANTA METROPOL

INSTRUCTOR:

DEATH INVESTIGATION
NORTH CENTRAL GEORGIA LAW ENFORCEMENT ACADEMY
1983 – 1998

HOMICIDE INVESTIGATION
NORTH CENTRAL GEORGIA LAW ENFORCEMENT ACADEMY
1983 – 1998

CRIME SCENE PROCESSING
NORTH CENTRAL GEORGIA LAW ENFORCEMENT ACADEMY
1990 – 1998

INMATE AND JAIL DEATHS
NORTH CENTRAL GEORGIA LAW ENFORCEMENT ACADEMY
1990 – 1998

DRUG DEATHS
COBB COUNTY DISTRICT ATTORNEY'S DRUG AWARENESS PROGRAM
1985 – 1998

ADVANCED CRIME SCENE PROCESSING
NORTH CENTRAL GEORGIA LAW ENFORCEMENT ACADEMY
1993 – 1998

ADVANCED CRIME SCENE PROCESSING
NORTH WEST GEORGIA LAW ENFORCEMENT ACADEMY
1995 – 1996

CONSULTANT

- **ABUSED AND BATTERED CHILDREN**
- **BLOOD SPATTER INTERPRETATIONS**
- **CRIME SCENE RECONSTRUCTION**
- **HOMICIDE INVESTIGATIONS**

- **TRAFFIC ACCIDENT RECONSTRUCTION**
- **INJURY PATTERN INTERPRETATIONS**
- **CRIME SCENE EVIDENCE COLLECTION**
- **EVIDENCE COLLECTION/RETENTION**

APPOINTMENTS:

JANUARY 1990
ELECTED BOARD OF DIRECTORS
NATIONAL SUDDEN INFANT DEATH SYNDROME
GEORGIA CHAPTER

MAY 1990
APPOINTED
COBB COUNTY CHILD ABUSE PROTOCOL COMMITTEE PURSUANT TO
GEORGIA H.B. 1318

JULY 1990
RECIPIENT
INSTRUCTOR'S CERTIFICATE TO TEACH DEATH INVESTIGATION TO
LAW ENFORCEMENT OFFICERS OF THE STATE OF GEORGIA (RENEWED
1995)

JANUARY 1991
ELECTED
BOARD OF DIRECTOR'S OF SUDDEN INFANT DEATH RESEARCH
FOUNDATION
ASSISTED WITH INCORPORATION OF SAME

5 9.9.23



Forensic Investigative Services

R. Robert Tressel

26 Belgrant Ct

Hiram, Georgia 30141

(404)735-3687

August 1, 2023

Tricia Blanchette
Law Office of Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
803-908-3266

Dear Ms. Blanchette,

I have been asked to review the investigative and crime scene reports from the Fountain Inn Police Department and the Greenville County Crime Scene unit regarding the death investigation of Barry Norman on 10/01/2013 at 103 Third Street and Woodside Avenue in Fountain Inn, South Carolina. I have been asked to address the following issues:

- Investigative process
- Documentation of Crime Scene
- Chain of custody of evidence

Professional Background

My curriculum vitae is attached to this report and details my training and employment history. Briefly, however, I began my training in 1973 when I went through basic police training at the Cobb County, Georgia, Regional Police Academy, followed by basic training conducted by the Georgia Police Academy. I worked in different capacities for the Cobb County Police Department for twelve years, including detective and sergeant in the Crimes Against the Person Division. I spent the subsequent thirteen years as Operations Manager for the Cobb County

Medical Examiner's Office. From 1985 to the present, I have worked in a private capacity as a forensic investigator and consultant in the field of forensic evidence and investigation. In April 2011, I was appointed as the chief criminal investigator for the Cobb County (Georgia) District Attorney's Office. I retired from service with Cobb County in October 2019 after serving for 34 years.

My specialized training is in the fields of criminal investigatory practices and crime and accident scene reconstruction. I first spent some twenty years doing this in various capacities exclusively on behalf of various law enforcement agencies. While I continue to work as a consultant to law enforcement agencies, I have also worked for almost thirty years as a consultant for insurance agencies to help reconstruct accidents of various kinds, and for prosecuting authorities and criminal defendants, helping to analyze and reconstruct crime scenes.

I have more than forty years of training and experience working for the police and other law enforcement agencies, and for private clients, collecting and examining evidence, directing investigators in the proper methods of collecting evidence (including interviewing witnesses) to obtain a full picture of what transpired during a crime or accident, and reconstructing crime and accident scenes from evidence such events typically generate. This includes witness accounts, ballistics, blood spatter, vehicle placement, crime scene photographs, police and autopsy reports, and numerous other factors. Once an accident or a crime has occurred, it is often necessary to examine and reconcile multiple sources of information to determine how the events unfolded. The available evidence may lead to a single narrative of events or may narrow the field of possibilities without leading to a conclusive picture of what happened. By the same token, without careful examination, the available or known evidence may seem to lead to a particular narrative but, while plausible, is one of only many possibilities as to what happened.

My goal in reviewing all available sources of evidence is to determine from this evidence what plausibly may have occurred. In some cases, this may result in ruling out a suggested sequence of events; in other cases, my review and analysis may confirm a suggested sequence. In yet other cases, this review may demonstrate that several or many scenarios could explain the forensic evidence, not just the scenario offered by law enforcement.

Crime Scene Investigations

A thorough crime scene investigation is the heart and soul of any criminal investigation.

The physical evidence recovered and documented from any crime scene is the pivotal point of a criminal investigation. The direction the criminal investigation takes is based on what evidence has been recovered and documented, where this evidence is located and how does this evidence assist the Investigator in determining the sequence of events that led to the incident.

Investigation of the crime scene is the only opportunity the Investigator has to preserve, recover, and these physical clues analyzed. Other case information, such as that gathered from Interviews or Witness statements must be carefully evaluated as to their validity based upon the physical evidence obtained from the crime scene. Details of the crime scene initially thought to be irrelevant, may become crucial in understanding exactly how the incident occurred.

In Homicide cases, proper crime scene investigation is not just a process of documenting the physical evidence found, it is to provide a sound basis for the Investigator or Prosecutor to explain through a comprehensive evaluation of all aspects of the crime scene investigation why certain pieces of evidence were found in the locations they were in.

A violent crime scene presents special aspects that the Investigator must be aware of. It is not just where evidence is found, but what can this evidence tell us about how the incident occurred, where victims and/or witnesses were located when injuries occurred and what might be the sequence in which events occur. The crime scene is merely a piece of the "puzzle" that must be evaluated with other components of the incident to thoroughly understand how a crime was committed.

Other pieces of this "puzzle" include but are not limited to:

- Wounds or injuries received during the event.
- Laboratory evaluation of the evidence recovered (projectiles, knives, blood stains etc.)
- Witness statements and/or interviews.

If the incident involves the death of an individual, the postmortem and autopsy of the deceased becomes a vital piece of the "puzzle". Location of wounds, directionality of these wounds, and determining entry and exits of wounds must be evaluated with all other components of the crime scene evaluation to assist the Investigator in determining the significance of each piece of evidence recovered.

Documentation of the crime scene is done through three (3) primary steps.

- Written or verbal description of the crime scene, including location of items of evidence.
- Photographs or videotapes of the crime scene to depict exactly what was observed at the crime scene.
- Diagram of the scene with measurements showing the location of evidence. (This is done so that if the crime scene needs to be reconstructed, an accurate depiction of where and what was recovered can be done)

Failure to document the crime scene properly and precisely can hinder any prosecution and sometimes invalidate conclusions reached from the overall assessment of the crime scene.

As a consultant on crime scenes, I am often asked to evaluate the opinions and/or conclusions reached by Investigators and Prosecutors. In evaluating these opinions and/or conclusions I must rely on the documentation they relied on to reach their conclusions or opinions. If certain pieces of this "puzzle" are missing or documentation is not thorough, then validation of these conclusions or opinions cannot be confirmed. Additional scene information becomes necessary to complete this evaluation process and if that information was not gathered at the time of the scene investigation, then only possible scenarios can be postulated.

The validity of possible scenarios cannot be performed without the proper processing and documentation of any crime scene. Attempting to reconstruct or evaluate a crime scene without proper documentation and without evaluating all available pieces of the "puzzle" and how they portray the sequence of events leads to misleading and inaccurate conclusions and/or opinions that can be detrimental to any prosecution or defense of a criminal offense.

Materials Reviewed

- Fountain Inn incident report with supplementals
- Greenville County SC crime scene report with chain of custody of evidence
- Crime Scene Photographs
- Crime Scene Video
- Autopsy Report for Barry Norman
- Trial Transcripts from July 11-14, 2016
- Evidence Inspection Fountain Inn Police Department 10/28/2021
- Evidence Inspection Greenville County Clerk's Office 10/28/2021

Discussion

On 10/01/2013 at approximately 10:48 PM a 911 call was received reporting a person shot on Third Street at Woodside Avenue in Fountain Inn, SC. Officer Seri Barnes of the Fountain Inn Police Department was the first officer on the scene at 10:50 PM. Officer Barnes was close in proximity to the incident location and testified that she arrived within 30 seconds of the dispatch being received.

Officer Barnes was confronted by a significant number of people who were on the scene. Officer Barnes observed that Barry Norman had a significant head wound. Witness stated that two black males were observed running towards Woodside Park.

No Crime Scene log was established to identify officers that entered the crime scene, the time they entered the crime scene, and the time they exited the crime scene.

The victim, Barry Norman, was transported from the scene and subsequently expired at Greenville Hospital. An Autopsy was performed on 10/02/2013 by Dr. Fulcher, Medical Examiner. Barry Norman had a single gunshot wound to his left temple area without an exit. A .45 caliber projectile was recovered at autopsy. The range of fire was listed as indeterminate due to the absence of stippling and gunshot residue. Dr. Fulcher testified the weapon had to be several feet from the victim at the time it was fired.

Fountain Inn Police contacted the Greenville County Department of Public Safety Forensic Division to collect and photograph the evidence at the crime scene. At trial only 11 photographs were admitted into evidence. Any additional photographs taken to document the crime scene have not been made available. Deputy Dustin Kretschmar was assigned to the crime scene.

The available photographs of the crime scene taken by Deputy Kretschmar show that Fountain Inn police had marked the location of shell casings they had found at the crime scene with Styrofoam cups. Four (4) .45 cal shell casings were recovered along with three (3) 9mm shell casings. No measurements were taken to document their locations other than an observation that they were $\frac{3}{4}$ of a block away from where the victim, Barry Norman, was found. The only other observation by Deputy Kretschmar was that the .45 cal shell casings were closer to the victim than were the 9mm shell casings.

Deputy Kretschmar testified at trial that a grid search was not performed and that only a "strip" search done around the crime scene with negative results. Kretschmar was also directed to photograph and collect a black sweatshirt and a .45 cal. Springfield pistol that had been located at the fence line of Fountain Inn Natural Gas and the Fountain Inn city impound lot.

After collecting and photographing the evidence found, Deputy Kretschmar returned to the Greenville County Department of Public Safety Forensic Division to log in and secure the recovered evidence. After Deputy Kretschmar had completed his work shift and left the Crime Scene Office, Forensic Technician Davis located a spent shell casing on the ground just outside the front entrance to the Crime Scene Office. Investigation into where this shell casing came from revealed that one of the .45 cal shell casings (DK-7) from the crime scene had fallen out of its unsecured evidence bag. The .45 cal shell casing was then placed back into evidence.

The Springfield 45 cal pistol was examined and found to have a live round in the chamber and 4 live rounds in the magazine. With four (4) fired shell casings recovered from the scene and five (5) live rounds in the weapon when recovered indicate that the Springfield pistol was fully loaded with its maximum capacity of nine (9) cartridges (8 in the magazine and 1 in the firing chamber).

The weapon that fired the 9mm shell casings has not been recovered based on police supplemental reports.

Subsequent post-conviction DNA testing of swabs taken by Deputy Kretschmar in 2013, of the sweatshirt and the 45 cal Springfield pistol revealed the DNA of Jacoby Gregory on the sweatshirt, but analysis of the 45 cal Springfield was inconclusive.

Opinions

- Multiple Agencies at crime scene require detailed coordination.

Whenever a police agency requests assistance from an outside agency there must be defined roles, each agency is going to be responsible for. As enumerated in the crime scene investigation section of this report, the crime scene is the heart and soul of any investigation. In this case, the Fountain Inn Police reports indicate that Greenville Forensic Division was requested to "collect" the scene evidence. The on-scene investigator (Detective Peden) should have ensured that every

aspect of documenting the scene was performed, i.e., taking measurements of evidence locations, photographing each item, and having a scene diagram prepared. The purpose for these important investigative steps is to enable the crime scene to be reconstructed to analyze where participants might have been located during the incident. The exact roles of Fountain Inn Police or the Greenville Forensic Unit are not documented in any of the police reports.

This was not done in this case. There are no measurements to relocate any of the evidence.

- The crime scene was not properly documented.

Greenville Forensics reports only contain estimates for the location of the fired shell casings. Photographs clearly show that the fired shell casings are grouped together but are spread out along the roadway and curb area. There are no measurements of any of the evidence locations. There is no crime scene drawing to rely on to evaluate potential locations of involved parties.

In my experience, photographs used by the prosecution do not include every photograph taken by the scene investigators. Often there are additional photographs that assist the defense analysis of a crime scene.

This crime scene cannot be reconstructed due to the lack of measurements and the non-existent crime scene diagram. The additional photographs that should exist have not been turned over for review and analysis.

- Evidence was not properly packaged and secured.

Deputy Kretschmar dropped item DK-07 while transporting evidence into the Greenville Forensic Unit from an unsealed evidence bag. At trial Deputy Kretschmar described how he merely folded over the top of the evidence bag without securing the closure with evidence tape. Deputy Kretschmar received a written warning and has since changed his procedure to include sealing of the evidence bag before transporting.

Deputy Kretschmar's description of how he only folded over the top of the evidence bag insinuates that all of the evidence bags obtained from this crime scene were handled the same way, allowing anyone to open the bags and handle the evidence.

- DNA sampling was limited on the Springfield Pistol and the black sweatshirt.

At trial, Det Peden was questioned at length about the processing of the Springfield pistol for DNA. The grip and backstrap of the weapon are common areas to test for DNA. The magazine and bullets (not swabbed) are also common areas to swab for DNA as these areas are the most "handled" areas of the weapon during loading of the magazine. Choosing to swab but not test is counterproductive.

It was reported that the Springfield pistol may have been handled by another individual. Thorough testing for DNA in areas not swabbed by Deputy Kretschmar possibly could reveal an additional involved party.

Deputy Kretschmar chose to swab two areas of areas on the sweatshirt: one area on the front and one area on the back. No swabs were taken from the area of the sleeve cuffs, the neck opening, nor the inside of the hoodie, the area's most often prone to DNA transfer,

Additionally, there is no record of any examination of the inside of the hoodie for hair transfer which could be utilized for DNA analysis.

This report was prepared utilizing the materials provided. Should additional material become available I reserve the right to amend this report.


R. Robert Tressel

24 JAN 6 PM 3:45
Brice Barrett CDC SUL SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	C/A No.: 2018-CP-23-2957
Jacoby Jamar Gregory, SCDC# 368934,	)	
	)	
Applicant,	)	
	)	
vs.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter came before this court by way of application for post-conviction relief filed on May 18, 2018, by Mr. Jacoby Jamar Gregory (Applicant). The State filed a return and a motion for a more definite statement on September 10, 2018. The State requested a hearing on the merits. Applicant's counsel Ms. Tricha A. Blanchette filed an amendment to application for post-conviction relief on August 19, 2022. Applicant issued a second amendment dated September 5, 2023, and filed on September 15, 2023. An evidentiary hearing was convened on September 19, 2023, at the Greenville County Courthouse before the Honorable Grace Gilchrist Knie. Present at this hearing was the Applicant represented by his counsel Tricia A. Blanchette. Respondent was represented by Assistant Attorney General Tommy Evans, Jr. of the Office of the Attorney General.

Following a thorough review of the record in its entirety, the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations that would afford him the granting of post-conviction relief. This Court denies this application with prejudice.

PROCEDURAL HISTORY

Records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Greenville County

Clerk of Court. On October 1, 2013, Applicant was charged with murder and possession of a weapon during the commission of a violent crime. On September 16, 2014, the Greenville County Grand Jury Indicted Applicant for both offenses. (Indictment No. 2014-GS-23-000409). This case was assigned to be prosecuted by Assistant Solicitors Leigh B. Paoletti, and Brywa Seay of the Thirteenth Circuit Solicitor's Office. The Applicant was represented by attorneys Randall L. Chambers and Christopher Maddox.

After four days of testimony, a jury of his peers found Applicant guilty of murder and possession of a weapon during the commission of a violent crime. After announcement of the verdict Applicant appeared before Judge Miller for sentencing. For the offense of murder Applicant was sentenced to a forty (40) year period of incarceration, and for possession of a weapon during a crime of violence Applicant received a five (5) year period of incarceration. Judge Miller ordered these sentences to be served consecutively.

Upon conviction, Applicant filed a timely notice of appeal. In this appeal, Applicant was represented by Laura R. Baer, Appellate Defender for the South Carolina Commission on Indigent Defense. Ms. Baer filed an *Anders* brief on August 18, 2017. On April 18, 2018, the South Carolina Court of Appeals in an unpublished opinion accepted the *Anders* claim and dismissed Applicant's appeal. *State v. Gregory*, Op. No. 2018-UP-156 (Ct. App. filed April 18, 2018).

On May 18, 2018, Applicant filed an application for post-conviction relief (PCR). Within his initial application the Applicant's allegations were only that he was being unlawfully held in custody based on an ineffective assistance of counsel.

On September 10, 2018, the State filed a return and a motion for a more definite statement. The State also requested that a hearing be held on the merits. On August 19, 2022, Applicant's appointed counsel Tricia A. Blanchette, filed an Amendment to the Application for PCR. Applicant

filed a second amended application on September 15, 2023. This amended application raised the following allegations:

1. Applicant alleges trial counsel was ineffective for failing to conduct a complete investigation and utilize an investigator and/or expert(s) prior to and during trial. As a result of counsel's ineffectiveness, witnesses to include lay and/or expert(s) and evidence were not properly utilized to corroborate Applicant or attack the State's case.
2. Applicant alleges trial counsel was ineffective for failing to address the conflict issue involving Scott Robinson, Esquire, pre-trial for failing to effectively address it when the issue came up at trial and for failing to make a complete record.
3. Applicant alleges trial counsel was ineffective for how he prepared Applicant to testify and handled Applicant's testimony at trial.
4. Applicant alleges trial counsel was ineffective for failing to make a complete record, make a motion and/or move for mistrial in the following instances:
 - a. When the court placed a time limit on trial. Trial transcript p. 132.
 - b. When trial counsel addressed the Court making faces that made it "abundantly clear" that he did not believe Applicant during his trial testimony. Trial transcript p. 621 ln. 17- p. 623 ln. 8.
5. Applicant alleges that counsel was ineffective for failing to make an objection under *State v. Sierra*, 337 S.C. 368, 523 S.E.2d 187 (Ct. App. 1999) during the State's examination of Bobby Thomas and Applicant.
6. Applicant alleges that trial counsel was ineffective for failing to object to bolstering and vouching during the State's closing argument.

STATEMENT OF FACTS RAISED DURING TRIAL

On October 1, 2013, co-defendant Mr. Shawndell Clemmons with other individuals got into an altercation with Barry Norman (victim). This altercation started due to the fact victim slapped Ms. Tiajuana Davenport, who at that time was seven months pregnant.

After this occurred the Applicant was informed of the altercation by Shawndell. During the rest of the night Applicant was in constant conversations with the victim in an attempt to calm things down. It was ultimately decided that Shawndell and the victim would settle this by fighting

it out. On the way to meet the victim the Applicant fired upon the victim shooting him once in the head causing his death.

During the investigation law enforcement found .45 caliber shell casings at the crime scene. Law enforcement also found at a warehouse near the crime scene a .45 caliber handgun which the Applicant later admitted was his. However, he informed law enforcement the gun was previously stolen. Along with the gun, law enforcement also found a hoodie which had the Applicants DNA on it.

The autopsy later revealed victim was shot with a .45 caliber weapon. Law enforcement later recovered video surveillance revealing two individuals hiding something at the location where the weapon and hoodie were found. Shawndell later testified that the individuals on the video were himself and the Applicant.

During trial Sergeant Dan Kelly of the Greenville County Sheriff's Office testified as to the coordinates of the Applicant's cell phone that night. Sergeant Kelly testified that the Applicant's cell phone was located near the crime scene around the identical time when people heard shots fired. Sergeant Kelly also testified that Applicant's cell phone was located at a location where Applicant and Shawndell were picked up by a friend named Landis Franklin. Applicant's cell phone was also located on the street of the home of another friend Bobby Thomas who testified that Applicant and Shawndell came to his house after the shooting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the application and return, other pertinent documents, and all exhibits presented at the hearing including Applicant's Exhibit 1, Peter Skidmore CV; Exhibit 2, Mr. Skidmore's report; Exhibit 3, content on submitted USB; Exhibit 4, Ralph Tressel CV; and Exhibit 5, Mr. Tressel's report. This Court also reviewed Court Exhibit 1, the trial transcript, and

State's trial Exhibit #50. This Court has also taken into consideration all testimony presented at the post-conviction relief hearing including witness testimony from Peter Matthew Skidmore, Ralph Robert Tressel, and Randall L. Chambers, Esq. This Court has set forth below the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantees the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), *Taylor v. State*, 404 S.C. 350, 745 S.E.2d 97, 101 (2013).

In a post-conviction relief action, Applicant always bears the burden of proving the allegations by a preponderance of the evidence – a mere allegation of ineffective assistance of counsel is not sufficient to warrant granting relief. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813, 814 (1985). Pursuant to *Strickland*, the reviewing court must apply the two-prong test to make a determination as to whether trial counsel's conduct "was so ineffective as to require reversal" of the Applicant's conviction or sentence. *Strickland*, 466 U.S. at 687. First, Applicant must show that counsel's performance was deficient; second, this deficient performance must prejudice the Applicant. *Id.*

The first prong requires that the Applicant must reveal that counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117-118, 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, “does not guarantee perfect representation – only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110, 131 S.Ct. 770, 791, 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.

Judicial scrutiny of counsel’s performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission by counsel was unreasonable. *Strickland*, 466 U.S. at 689. In *Strickland* the U.S. Supreme Court stated:

A fair assessment of attorney performance required that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and the evaluate the conduct for counsel’s perspective at the time. Because of difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action, “might be considered sound trial strategy.”

Id.

The second prong of *Strickland* is rooted in the very purpose of the Sixth Amendment’s guarantee of counsel – to ensure the defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* 466 U.S. at 691-492. 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 1170118, 386 S.E.2d at 625. A reasonable probability is a probability, “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough, “to show the errors had some conceivable effect” on the outcome of the proceeding – counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” *Id.*, 466 U.S. at 687. Moreover, the South Carolina Supreme Court has repeatedly held that a PCR applicant must produce testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at a PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Applicant failed to produce any evidence revealing that the outcome of the case would have been different but for the ineffectiveness of counsel.

Expert Witnesses'

One accusation raised during the hearing was that trial counsel was ineffective due to him not hiring an expert in the field of cell phone extraction. During the hearing the Applicant called Mr. Pete Skidmore who was accepted as an expert in cell phone extraction and mapping without objection. Mr. Skidmore testified that there was an area where the cell phone of the Applicant was located that was away from the crime scene during the event. However, during cross-examination it was revealed during trial that Applicant’s cell phone was located at the crime scene, the area where he was picked up in order to elude law enforcement, and the home where he retreated to after the incident occurred. Each of these locations were corroborated by witness testimony. The location of this single ping would not negate all the other locations discovered by law enforcement. These locations were corroborated by testimony that the Applicant was present at or around the time the crime occurred.

Applicant also called to testify, Mr. R. Robert Tressel who was accepted without objection as an expert forensic crime scene investigator. Mr. Tressel testified about certain aspects of the crime scene that were not examined by law enforcement. Mr. Tressel also claimed that Law enforcement should have swabbed other areas of the hoodie for DNA. During cross-examination Mr. Tressel did admit that he was not at the crime scene at or near the time of the crime. He also admitted that there were .45 caliber shell casings found at the scene, that the victim was killed with a .45 caliber weapon, and the Applicant admitted owning a .45 caliber handgun. Mr. Tressell also admitted that the hoodie found near the crime scene had the Applicant's DNA inside; however, the Applicant admitted that only 3 people wore the hoodie that day. In this Court's opinion the extra swabs would have been unnecessary.

Although law enforcement did not do a perfect job in their investigation, no law enforcement agency has ever had a perfect investigation. The evidence collected and the testimony provided was sufficient in proving that the Applicant committed this crime beyond a reasonable doubt and the use of this expert during trial would not have changed the outcome.

The last person who testified was Applicant's trial counsel Mr. Randall L. Chambers. Mr. Chambers appeared credible during his testimony. During his testimony Mr. Chambers stated that he did contact an expert on cell phone extraction only to get a knowledge of his expertise and to get some advice on what to raise to the State's expert during cross-examination. Mr. Chambers did not think hiring an expert was necessary, nor did the Applicant inform him he wanted an expert or that he could afford one. Mr. Chambers key strategy was to reveal through cross-examination that the Applicant was not present when the crime occurred. This is the reason he never hired a DNA expert to examine the weapon that was recovered. If Applicant's DNA was found on this weapon

it would have seriously damaged the defense. It is this Court's opinion the hiring of these experts would not have changed the final outcome of this case. Applicant failed to satisfy *Strickland*; therefore, I find that trial counsel was not ineffective as it pertains to not hiring experts.

Applicant's Testimony

Within his amended application Applicant alleges that trial counsel was ineffective as to how he prepared Applicant for this testimony. Mr. Chambers testified that he advised the Applicant not to testify, however, the Applicant insisted that he testify. Mr. Chambers explained that he cannot deny a person a right to testify at his own trial. Mr. Chambers testified that he properly prepared Applicant for his testimony.

I find Mr. Chambers testimony credible regarding his preparation of the Applicant to testify. I believe that Mr. Chambers did everything possible in order to prepare Applicant. Mr. Chambers cannot be held at fault if the Applicant made statements during his testimony that could have jeopardized the Applicant's case. I find there exists no ineffective assistance of counsel regarding how Applicant was prepared to testify.

Mistrial

There were also issues raised that the Applicant believed trial counsel should have requested a mistrial. Applicant argued that trial counsel was ineffective due to not motioning for a mistrial on two occasions. When the trial judge referred to the Assistant Solicitor regarding the time he felt necessary to complete this trial, and trial judge making faces during the Applicant's testimony, which trial counsel raised concerns of possible prejudice. A mistrial should be granted only when absolutely necessary. *State v. Hill*, 382 S.C. 360, 369, 675 S.E.2d 769, 768 (2009).

I find in neither instance an ineffective assistance of counsel. In the first instance the trial judge raised time concerns to the Assistant Solicitor not to trial counsel. During his PCR testimony,

Mr. Chambers stated that he never felt rushed in conducting this trial, nor during the Applicant's testimony. As for the second instance, after being raised to his attention, the trial judge within his jury instructions cured any possible prejudice that might have occurred. Within his jury instructions the trial judge specifically stated:

"I also remind you that in every case tried in this court before a jury, the jury is the sole and exclusive judge of the facts. A trial judge cannot comment or have an opinion about the facts, so don't think by anything I said or did throughout the course of the trial I have such an opinion. I do not." R. p. 685 lines 10-16.

Any possible prejudice that might have occurred by the trial judge's actions was cured by this jury instruction.

From the evidence presented there is no prejudice in the actions of the trial court inquiring about the length of trial, or his reactions during the Applicant's testimony. Since the Applicant could not reveal any prejudice he was not entitled to a mistrial. To receive a mistrial a defendant must show both error and resulting prejudice. *Id.* The possibility of receiving a mistrial is very slim; therefore, this Court finds no ineffective assistance of counsel by trial counsel in not requesting a mistrial during these two events.

Conflict of Interest

The co-defendant Shawndale Clemmons was represented by Mr. Scott Robinson who once spoke to the Applicant about representing him when he was initially incarcerated. However, Applicant eventually decided to hire Mr. Chambers. Applicant now alleges that trial counsel was ineffective by not raising this possible conflict pre-trial nor properly addressing this issue when it came up during trial.

This issue was raised by trial counsel and resolved through testimony given by co-defendant's counsel Mr. Robinson. Since there was no showing of any conflicting interest between

Mr. Robinson and the defendant no conflict existed. The South Carolina Supreme Court determined what criteria must exist in order for the court to declare that a conflict of interest exists:

When a defense attorney places himself in a situation inherently conducive to divided loyalties ... If a defense attorney owes duties to a party whose interests are adverse to the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be determinantal to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984).

Mr. Robinson testified that he only saw the Applicant once and there was never any discussion about the case itself and he was never given any discovery by the Applicant. In reading the transcript and hearing the PCR testimony of Mr. Chambers, I find Mr. Robinson's testimony credible, there exists no conflict. The fact that Mr. Chambers raised this to the trial court's attention reveals that he was truly effective in getting the court to address this matter.

State v. Sierra

The Applicant argues that trial counsel was ineffective for failing to make an objection pursuant *State v. Sierra*, 337 S.C. 368, 523 S.E.2d 187 (Ct. App. 1999) because of Assistant Solicitor's direct examination of Bobby Thomas and cross-examination of the Applicant.

In *Sierra*, the South Carolina Court of Appeals determined that the trial judge committed reversible error by allowing an assistant solicitor to impeach a defense witness during cross-examination with a prior inconsistent statement that was actually made to that assistant solicitor. It is this Court's opinion that *Sierra* does not apply to the present case.

During trial the Assistant Solicitor mentioned letters written to her by the Applicant. (R. p. 614 line 8 – p. 615 line 5). Applicant argues that the mentioning of these letter falls under *Sierra*. There was never any reference as to what these letters contained nor were they used by the Assistant Solicitor to impeach this witness. *Sierra* does not apply.


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Applicant also referenced statements made to law enforcement by witness Bobby Thomas. (R. p. 305 – p. 306 line 11). These statements were made to law enforcement. There was no impeachment made by the Assistant Solicitor regarding a conversation made between her and Mr. Thomas. The conversation pertained to the statement Mr. Thomas made to law enforcement. So, Mr. Thomas was being impeached regarding a statement he previously made to law enforcement, not directly to the Assistant Solicitor.

During the direct examination of Mr. Thomas and the cross-examination of the Applicant the assistant solicitor used written statements given to law enforcement to impeach or refresh the memory of the witnesses. That is perfectly legal since it was a statement given to law enforcement and not to the assistant solicitor herself. In *Sierra*, the Court of Appeals found:

When the prior inconsistent statement was allegedly made to the prosecuting attorney, the availability of extrinsic evidence to establish the statement is directly linked to the ability of the prosecuting attorney to appear as a witness in the trial.

Sierra, 337 S.C. at 376, 523 S.E.2d at 191.

The statements used by the Assistant Solicitor were made to law enforcement, not directly to that Assistant Solicitor. To establish these statements there was no need for the Assistant Solicitor to become a witness. The law enforcement officer who took these statements would have been called to verify these statements. In this Court's opinion, *Sierra* does not apply so there is no ineffective assistance of trial counsel by not objecting to the line of questioning by the Assistant Solicitor.

Bolstering and Vouching

Within his application Applicant alleges, trial counsel was ineffective by not objecting to the Assistant Solicitor's closing argument when she made references to the believability of Shawndell Clemmons. Within her closing argument the Assistant Solicitor stated:

"All right, let's talk about Shawndell Clemons now and why you should believe him. Again I would encourage you to recall his testimony based on your memory

and not the defense's characterization of what he said." (R. p. 675 line 24 – p. 676 line 3).

Within her closing argument the Assistant Solicitor also stated:

"And in life and in the law, when somebody confesses to something, we give that a high degree of reliability because why would somebody lie and incriminate themselves. (R. p. 676 lines 15-18).

Applicant argues that trial counsel should have objected to these statements because it could be considered bolstering or vouching by the Assistant Solicitor. The prosecution should not bolster the testimony of a witness unless they are doing so in order to rebut the defense's argument that the witness is not being truthful due to certain deals witnesses have made for his testimony. Within his closing argument Applicant's trial counsel stated:

"Shawndell, we know, is somebody that as he comes in here to testify has pleaded guilty to manslaughter, a reduced charge. And he told you that he had not been sentenced. And the reason for deferring sentence is he's got to come testify first. You can logically conclude that how he testifies is going to go a long way toward the sentence that he ends up getting." (R. p. 634 lines 5-10).

Applicant's trial counsel also stated:

"And he knew that he was expected to testify against Jacoby Gregory because his sentence had been deferred. So, you can consider all that." (R. p. 634 lines 17-20).

And finally, within his closing argument Applicant's trial counsel stated:

"At no point is he telling the whole truth. In fact, he continues to tell what he refers to as the half truth. It's true that he was there. But can you rely on anything else that he has had to say about that?" (R. p. 638 l. 9-13).

Statements made by Applicant's trial counsel within his closing argument clearly were made to cast doubt to the testimony of Shawndell Clemmons. In the Fourth Circuit case of *U.S. v. Meacham*, 799 F.2d 751 (1986) the Court of Appeals found:

We do not view as improper the prosecutor's closing argument reference to the plea bargain promise of truthfulness in this case, since it was in response to defense

counsel's use of the plea bargains during their closing argument, to attack the credibility of the cooperating government witness.

Id.

During their closing argument the Applicant's trial counsel argued numerous times regarding the reliability of Mr. Shawndell Clemmons. It was only fair that the State be allowed to argue his reliability due to the fact he confessed and he would be facing a thirty-year prison sentence for his involvement in this crime.

Applicant also argues that his trial counsel failed to object while the Assistant Solicitor was bolstering law enforcement. Applicant claims statements during the Assistant Solicitor's closing arguments bolstered law enforcement which should have drawn an objection from Applicant's trial counsel. Applicant feels that this failure to object should be considered ineffective assistance of counsel.

Applicant is referring to the section of the Assistant Solicitors closing argument where she states about the limited resources available within the Fountain Inn Police Department. Assistant Solicitor also revealed details mentioned by the Applicant's trial counsel that law enforcement overlooked, and if law enforcement had done everything this trial would have still commenced. (R. p. 670). This statement does not bolster any findings or statements made by law enforcement, so this statement did not warrant an objection from Applicant's trial counsel.

Therefore, the fact trial counsel failed to object during the Assistant Solicitor's closing argument cannot be considered ineffective.

CONCLUSION

Upon review of the transcript of the jury trial, the application, the return and all of the other pertinent documents and exhibits, this Court concludes that the Applicant did not meet the required standard articulated in *Strickland* for this Court to grant post-conviction relief. The Applicant is

required to meet the preponderance of the evidence standard that trial counsel was deficient and was prejudiced by this deficiency. The Applicant has failed to meet that proof.

Therefore, 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 this application. This application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See, Rule 203 SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 4090 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if applicant wishes to seek appellate review, post-conviction relief counsel must serve a file a notice of appeal on Applicant's behalf. Applicant is then directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

IT IS SO ORDERED this 2 day of January, 2024



The Honorable GRACE GILCHRIST KNIE
Circuit Court Judge
Resident Judge, Seventh Judicial Circuit

Spartanburg
Greenville, South Carolina

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Copy mailed to

Attorney General and Tricia Blanchette

on 1 / 9 / 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2018-CP-23-02957
Jacoby Jamar Gregory,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	MARCH 22, 2024
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

B E F O R E:

Honorable Grace G. Knie
Spartanburg County Courthouse
Spartanburg, South Carolina
VIA WEBEX REMOTE HEARING

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

Tricia A. Blanchette, Esquire
Attorney for Applicant

Tommy Evans, Jr., Esquire
Attorney for State

Sallie Beth Todd
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

(THERE WERE NO WITNESSES CALLED DURING THIS HEARING)

Certificate of Court Reporter..... 22

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>

(THERE WERE NO EXHIBITS OFFERED DURING THIS HEARING)

1 **THE COURT:** Okay. Good afternoon, everybody. I'm Judge
2 Knie. This is a term of Common Pleas non-jury. I am in my
3 courtroom in Spartanburg and the hearing is being conducted
4 via WebEx with the consent of counsel, but we do have a court
5 reporter. And I would ask the court reporter to please
6 identify herself for the record.

7 **COURT REPORTER:** Good afternoon, my name is Sallie Beth
8 Todd.

9 **THE COURT:** Did you mute it?

10 **COURT REPORTER:** Can you hear me?

11 **THE COURT:** I can.

12 **COURT REPORTER:** Okay. My name is Sallie Beth Todd.

13 **THE COURT:** Okay. Thank you, Ms. Todd; and thank you for
14 accommodating us on a Friday afternoon. I appreciate it.

15 **COURT REPORTER:** You're welcome.

16 **THE COURT:** My hearings, my other hearings this week have
17 been on WebEx with the WebEx record function as is the norm
18 for Common Pleas non-jury, but in that this is a Post-
19 Conviction Relief matter and it is a motion for
20 reconsideration, I thought it best to have a court reporter.

21 All right. So this is civil action number 18-CP-23-2957,
22 and this is the matter of Jacoby Gregory versus the State.
23 And counsel for Mr. Gregory, the applicant, is Tricia A.
24 Blanchette, B-L-A-N-C-H-E-T-T-E, not Patricia, but Tricia.

25 Ms. Blanchette, if you would identify yourself for the

1 record.

2 **MS. BLANCHETTE:** Yes, Your Honor. Tricia Blanchette on
3 behalf of Jacoby Gregory, the applicant.

4 **THE COURT:** Thank you.

5 And present for the respondent, South Carolina Attorney
6 General's Office, is Assistant Attorney General Mr. Tommy
7 Evans, Jr., E-V-A-N-S, Jr.

8 Mr. Evans, if you would identify yourself for the record.

9 **MR. EVANS:** Yes, Your Honor. I'm Tommy Evans and I'm
10 representing the State of South Carolina.

11 **THE COURT:** Okay. Thank you.

12 So, Ms. Blanchette, when we scheduled this earlier, you
13 indicated that your client would find this method of having
14 the hearing acceptable, so we are on WebEx and I am in
15 Spartanburg. He is at the Lee County Detention facility as I
16 understand the title under his name. You look like you're in
17 your chambers, which I believe is in Batesburg or Leesville;
18 and Mr. Evans looks like he is in his office in Columbia. So
19 first of all, is all of that correct?

20 **MS. BLANCHETTE:** Yes, Your Honor. Tricia Blanchette
21 speaking. I met with Mr. Gregory in person, and he gave his
22 consent and I do see that he is present here today. If he has
23 any reason that he does not consent, I would ask that he be
24 given the opportunity to state that at this time.

25 **THE COURT:** Okay. So, Mr. Gregory, raise your right

1 hand.

2 **JACOBY GREGORY, HAVING BEEN DULY SWORN TESTIFIES AS**
3 **FOLLOWS:**

4 **THE COURT:** Thank you, sir. I can hear you just fine.
5 You can put your hand down. Do you agree for the hearing to
6 be conducted this way, sir?

7 **MR. GREGORY:** I do.

8 **THE COURT:** And technically, I guess, even though I have
9 jurisdiction throughout the state, venue -- do you waive venue
10 because you have a right to have this heard in Greenville
11 County?

12 **MR. GREGORY:** Yes, Your Honor.

13 **THE COURT:** Okay. Ms. Blanchette, do you agree?

14 **MS. BLANCHETTE:** Yes, Your Honor. I appreciate you
15 making a record on that matter.

16 **THE COURT:** Okay. And do you agree, I'm sorry?

17 **MS. BLANCHETTE:** Yes, Your Honor, I do.

18 **THE COURT:** Okay. And I believe there's just a slight
19 delay, Ms. Blanchette, it's just one or two seconds, almost
20 like you're in another country or something, okay. So if it
21 sounds like I'm not responding immediately, that is why, okay.

22 **MS. BLANCHETTE:** Your Honor, I apologize. I do have high
23 speed fiber internet, but there's a thunderstorm happening
24 right now so I don't know if that has any impact.

25 **THE COURT:** Okay. I'll let you know. All right. And I

1 do have a phone number for you that is shown on your
2 letterhead, and if we have a problem my law clerk will call
3 that number ending in 3266.

4 **MS. BLANCHETTE:** That is correct.

5 **THE COURT:** Okay. All right. Well, in that this is Mr.
6 Jacoby Gregory's motion I will turn it over to Ms. Blanchette.

7 And, Mr. Gregory, please understand that at this type of
8 hearing, sir, testimony is not taken and so this is arguments
9 of counsel. All right. Okay.

10 **MS. BLANCHETTE:** Thank you, Your Honor. And please let
11 me know if there is an issue with my internet connection
12 whereby I need to get on a different form of audio.

13 **THE COURT:** Yes, ma'am.

14 **MS. BLANCHETTE:** Yes, Your Honor. You have before you a
15 copy, I assume, of the motion that was filed January 24th,
16 2022. I will rely upon that and just hit some of the
17 highlights. There are certain portions that I do want to
18 specifically read. The motion does give a detailed procedural
19 history, but I will just note for the record that this PCR was
20 filed on May 18th of 2018. The applicant, through my
21 assistant, did a final amendment on September 5th, 2023 that
22 was filed on September 15th, 2023 and that amendment is
23 reflected on pages 2 and 3 of the motion that is before the
24 Court today.

25 **THE COURT:** Okay. And let me point out, Ms. Blanchette,

1 you did, pursuant to Rule 56, you did send me a copy as the
2 rule requires and my copy is not clocked, but it is dated
3 January the 16th of 2024. So I am looking at an unclocked copy
4 of that, okay.

5 **MS. BLANCHETTE:** That is correct, Your Honor, as far as
6 the date submitted. I do have a clocked copy that I can
7 provide to all parties. It was clocked in on January 22nd of
8 2024. And I'll just send that to make sure everyone has it
9 after the hearing today.

10 **THE COURT:** Yes, ma'am. I understand that lots of times
11 it's hard, the rule is a little ambiguous and to get it sent
12 to the Judge within tens days, lots of times you just have to
13 send that clean copy, so I understand. Yes, ma'am. And I do
14 have the transcript.

15 **MS. BLANCHETTE:** Very good, Your Honor. Then I will
16 continue.

17 Your Honor, as you know, conducted a hearing on September
18 19th of 2023. During that hearing the applicant introduced
19 five exhibits and an original and a copy of trial exhibit 50.
20 The witnesses that were called on behalf of the applicant were
21 Pete Skidmore, Jr. and Robert Trestle as expert witnesses, and
22 Randall Chambers, Esquire, prior trial counsel was called.

23 At the close of that hearing, I informed Your Honor that
24 I'd be ordering the transcript; and Your Honor took the matter
25 under advisement. On November 8th of 2023 via email, it was

1 requested that the state prepare a proposed order to submit to
2 Your Honor. In line with your instructions the order was
3 provided to me prior to being submitted to the Court, that was
4 several days beforehand. And when it was submitted to the
5 Court I indicated that I had provided some concerns to the
6 state and indicated those to Your Honor as well. At that
7 point Your Honor informed the parties that we should try to
8 work together on further revisions and the order should be
9 resubmitted. I worked along with Mr. Evans and sent him
10 several emails with additional concerns. He was very gracious
11 and addressed a lot of those concerns, but we reached a point
12 where he indicated that that was all of the revisions he was
13 going to make. Therefore, the order was submitted to Your
14 Honor and I submitted an email along with it indicating that
15 the applicant still had concerns with the order and would be
16 filing a 59.

17 After notice of entry of the order, the order was
18 submitted -- I'm sorry, a 59 motion was submitted on January
19 16th, as Your Honor indicated. I did provide Your Honor a copy
20 of the evidentiary hearing transcript that I unfortunately did
21 not get until January 8th of 2024 due to a misfiling issue with
22 the court reporter. But Your Honor has indicated that you do
23 have a copy of that.

24 Turning to the arguments set forth in the motion, Your
25 Honor, as already indicated, I stand by the written motion. I

1 ask the Court to review the evidentiary hearing transcript and
2 the complete record and reconsider a denial of relief on all
3 of the issues. But I would like to address the specific
4 issues also set forth in the motion itself.

5 **THE COURT:** Yes, ma'am.

6 **MS. BLANCHETTE:** And, Your Honor, I was just pausing to
7 make sure that everybody -- the delay was not an issue.

8 Your Honor, turning to number 1 as set forth, it's really
9 a cumulative claim that we have concerns with the completeness
10 and accuracy of the order because it does not site the
11 evidentiary hearing transcript itself when addressing the
12 evidentiary hearing testimony. Specifically, as noted in the
13 written motion, the expert testimony the applicant submits is
14 not properly reflected.

15 Additionally, in the section entitled Findings and
16 Conclusions of Law it references the trial transcript and
17 that's also done without citations. As noted in the motion,
18 we use citations throughout the evidentiary hearing, so I
19 would just ask as a matter of appellate review, or I would
20 submit as a matter of appellate review that it may be best to
21 include citations instead of the summations. And, Your Honor,
22 that primarily goes to issues of the 59(a) and asking for the
23 order to be addressed in its entirety, not asking for
24 reconsideration of relief.

25 As to issue 2, there we address the heading entitled

1 Expert Witnesses. And, Your Honor, if you don't mind I'm
2 actually going to read from the motion now just because it
3 would be hard to summarize. But as stated in the motion this
4 heading Expert Witnesses appears to address the expert
5 witnesses that were called in support of allegation 1. It
6 summarizes some of the testimony offered by trial counsel, but
7 we submit that the discussion thereafter and findings don't
8 properly address issue 1 as it was stated in the amendment and
9 presented to the Court. As reflected in our motion, issue 1
10 stated that applicant alleges trial counsel was ineffective
11 for failing to conduct a complete investigation and utilize an
12 investigator and/or experts prior to a jury trial. As a
13 result of counsel's ineffectiveness, witnesses to include lay
14 and/or expert and evidence were not properly utilized to
15 corroborate applicant (inaudible).

16 Now, under this heading the discussion of the testimony,
17 we submit, is incomplete and the findings regarding the same.
18 As to Mr. Skidmore, we submit that the order fails to properly
19 address his testimony and make complete findings. Throughout
20 the motion I give citations, I'm not going to read those
21 because the Court has those. Specifically, his testimony
22 regarding his findings and opinions that are going to address
23 the reliability of the information and arguments by the state
24 at trial are not properly addressed in the order. More of his
25 report in exhibit 2 relied upon in presenting his testimony.

1 The order also fails to address the limitations placed on
2 Mr. Skidmore's (inaudible) due to the passage of time,
3 condition of the evidentiary items, and information available.
4 To summarize that, Your Honor, we submit that counsel could
5 have utilized an expert in his capacity prior to and during
6 trial. He could have consulted with him to help craft his
7 cross examination of the state's witness. And in so doing he
8 would have been able to show that the state selectively
9 utilized data to support their theory; and they did not use
10 the cell phone data that Mr. Skidmore testified to. We submit
11 that if that would have been done, that evidence -- that data
12 was favorable to the defense, and it could have changed the
13 outcome. We submit that the order does not address in
14 entirety his testimony misses the allegation almost entirely.

15 Additionally, the order failed to properly address the
16 testimony of Mr. Trestle and make complete findings of fact
17 and conclusions of law as to his testimony and exhibits. As
18 to motion 6, Your Honor, we submit that the order fails to
19 properly address his report and his testimony offered
20 regarding it to include his specific expert opinions. What is
21 completely absent from the order, we submit, is his testimony
22 that he offered, and this is found on pages 66 through 70, of
23 how the testimony offered by Mr. Skidmore would have impacted
24 his expert work and potential testimony. I would like to note
25 that on page 69 after some back and forth is where I

1 specifically ask him if he had reviewed the information
2 provided by Mr. Skidmore, was it relevant, and why he found it
3 to be relevant. And he explained there that it's the
4 importance of this additional data and how it could have been
5 used in his expert work and tied into attacking the state's
6 case, such as cross examining the state's witness and the
7 defense as a whole, Your Honor.

8 Now, finally the order failed to properly address the
9 testimony of Mr. Chambers, we submit, on this issue. He
10 testified that he was concerned about the cell phone evidence.
11 He testified about (inaudible) as an expert and his
12 explanation that he could not recall why he did not utilize an
13 expert and did not want to speculate on it. When asked about
14 the testimony and evidence introduced at trial regarding the
15 cell phones and the work he did regarding the cell phone
16 records, he testified that he could not recall what was done
17 and why he did not make objections. We submit that that is
18 opposite to what is found in this order where the Court relies
19 upon Mr. Chambers, finds him credible, finds that all of the
20 work that he had done was reasonable whereby he actually
21 testified that he could not recall. The order also fails to
22 address Mr. Chambers explanation of the investigation that he
23 undertook and that he did not consider getting a crime scene
24 expert such as Mr. Trestle.

25 Finally, this section of the order also fails to

1 incorrectly reflect his testimony regarding his strategy which
2 he clearly stated, and I put in quotes, I wanted to raise as
3 much reasonable doubt as I could based upon the evidence that
4 was presented. That's found on page 105, lines 18 through 22
5 of the evidentiary hearing transcript.

6 Your Honor, we submit if the Court properly considers
7 what his strategy was, the work that he did to prepare, and
8 what he did actually in the courtroom, and then consider the
9 testimony of Mr. Trestle and Mr. Skidmore along with that
10 testimony that was provided by Mr. Chambers that it supports
11 the granting of relief on this issue, so we would strongly ask
12 the Court to reconsider and ask the Court to make sure to make
13 the complete findings of fact and conclusions of law are
14 entered.

15 Turning to number 3 of the motion, Your Honor, under
16 applicant's testimony your order appears to address allegation
17 number 3, but also appears to miss a portion of the issue
18 regarding the handling of applicant's testimony. In the order
19 there are three sentences without citation that summarizes
20 trial counsel's testimony on this, but I would ask the Court
21 to review pages 83 through 89 of the transcript where he does
22 testify about this issue. He goes so far as to call
23 applicant's testimony egregious. He explains how the Judge
24 became (inaudible) in his actions, and he says that the
25 testimony completely went off the rails. Furthermore, on page

1 88 during his redirect, I'm sorry, on page 88 he says that he
2 has no recollection why he didn't redirect. That can't be
3 found to be effective or reasonable if he has no recollection,
4 Your Honor. So therefore what is in the motion and what I
5 stated today and the complete record, we ask Your Honor to
6 reconsider this issue and to make sure it's properly
7 addressed.

8 Now, turning to number 4, Your Honor, there I will read
9 from the motion. Under the heading Mistrial we submit that
10 the brevity and nature of the discussion of the issue raised
11 under allegation 4 results in countless testimony and the
12 issue itself not being properly addressed. Specifically,
13 regarding the comments of the trial Court during applicant's
14 testimony, notably after counsel's testimony that he should
15 have moved for a mistrial so the issue could be preserved and
16 raised on appeal. Your Honor, in the motion I give federal
17 citations to support that, but I would like to read from page
18 125 of the evidentiary hearing transcript. There Mr. Chambers
19 had been asked about the standard jury instruction that this
20 Court actually relies upon in finding that that there was no
21 prejudice. And after he responds to the questions about that
22 he says beginning on line 4, "I mean listen, I want to be
23 clear about this if I can testify about it, and that is I
24 think that (pause, pause) I have a great deal of respect for
25 Judge Miller so I don't want to indicate otherwise, but I

1 think his facial expressions were highly prejudicial. I felt
2 that way then, I feel that way now. And I will say again that
3 I wish I had moved for a mistrial in this case. That's
4 something I should have done. I think that's something that
5 was very hard for us to recover from."

6 Your Honor, I have also cited to a case that I did not
7 hand up at the evidentiary hearing, but in total we would ask
8 that the Court reconsider this issue. Mr. Chambers was very
9 forthright in his testimony that this was an error. This is
10 an error that we submit that the Court should not excuse
11 because even Mr. Chambers said in the section that I read, and
12 he said it repeatedly, this was highly prejudicial. And we
13 would ask that on this issue that you strongly reconsider
14 granting a new trial so that Mr. Jacoby Gregory has the
15 opportunity to have a fair trial that's absent from this
16 prejudice that Mr. Chambers even himself testified about.

17 And finally, Your Honor, this is also more of a
18 conclusionary claim or argument, but again there are concerns
19 that there are findings of facts and conclusions of law that
20 are made based upon trial counsel's testimony without specific
21 citations to the record. Specifically, the order fails to
22 address counsel's admission that he had been unable to review
23 his file and the limits he placed on his responses as a result
24 and in the motion I give citations to that.

25 Your Honor, I appreciate your time today in allowing me

1 to go over this motion in person to offer further argument and
2 explanation. And if there's anything further from me, I would
3 be happy to provide that.

4 **THE COURT:** Okay. Let me hear from Mr. Evans.

5 **MR. EVANS:** Thank you, Your Honor. May it please the
6 Court.

7 According to Section 17-24-80 of South Carolina Court of
8 Laws, the PCR section, it specifically states that the PCR
9 hearing Judge within the order should state a finding of fact
10 and conclusion of law for each issue presented. It does not
11 mention that it has to be citations from the actual
12 transcript, and the reason being is because the transcript is
13 not prepared yet. The Court, once they make a decision, would
14 like to have the order completed and signed so the case can be
15 finalized. So this is a situation where she's asking for
16 actual statements verbatim from the record that, you know, we
17 didn't have at the time and the Court wanted to have this case
18 (inaudible). There is nothing in case law that specifically
19 states that actual statements from the record be mentioned in
20 the actual order. The actual order was provided to the Court
21 and the Court signed it. Specifically, it summarized each
22 witness and the testimony that they gave, which is the only
23 thing that is needed. It also summarized at the end of each
24 issue, three of which she doesn't even mention in her motion,
25 the conclusions of law and the reasoning why counsel was not

1 found to be ineffective.

2 In the (inaudible) decision that opposing counsel stated
3 in her motion, I did some research on that actual order. That
4 order was three pages long. It did not mention any issues, it
5 did not mention any conclusions of law, and it did a blanket
6 conclusions of law regarding the issues and did not mention
7 the actual case itself. In this case the order was 15 pages
8 long. It mentioned or summarized the statements made or
9 testimony made by each witness and it also concluded at the
10 end why there was no actual ineffective assistance of counsel.

11 Now, defense counsel on the motion for mistrial, he
12 simply said that he should have requested a mistrial and he
13 didn't. That didn't mean that he was ineffective. Any
14 defense attorney will have second thoughts about certain
15 things they did or didn't do in their case. There was
16 actually no evidence that was shown that any faces were made
17 by the Court was prejudicial. There was no actual evidence
18 that was shown that the jury even saw the faces that was
19 supposedly made by the Court. And as the order stated, and
20 as I mentioned in cross examination during the hearing, that
21 was remedied in his jury instructions.

22 Now, I think that opposing counsel mentioned a case
23 called (inaudible) v state which the Supreme Court ruled that
24 the jury instructions did not relieve the prejudice given by
25 the Court. This case is different than that case. Supposedly

1 the Judge actually made statements bolstering one of the
2 witnesses. This was a case where trial counsel supposedly
3 made faces that he didn't believe the defendant's statements,
4 but there's no evidence that the jury even saw these faces he
5 made.

6 And also I think that the Court in the order has to
7 consider the ability to have a mistrial granted. Mistrials
8 are very difficult to be granted. Most of the time Judge's do
9 not grant them and there has to be no other remedy available
10 for a mistrial to be granted and there were other remedies
11 available, like the instruction that was given to the jury
12 remedied that possible prejudice if one was actually done. We
13 still don't know if one was actually made.

14 Opposing counsel and the defendant are asking for a
15 reconsideration in this case. However, I have heard no new
16 evidence that has been presented to the Court that wasn't
17 presented in the original hearing and therefore it's our
18 interpretation that the Court made a reasonable finding that
19 counsel was not ineffective and the defendant was never
20 prejudiced. And even if counsel was ineffective, there was
21 nothing that was brought up that would change the outcome of
22 this case. There was ample and overwhelming evidence of guilt
23 that was presented by the state against the defendant in order
24 to find his guilt. So it's our position that the order was
25 fine, the order was 15 pages long. It specifically stated out

1 the statements made by witnesses and the conclusions of law
2 that this Court found. And also there was no new evidence
3 that was presented to the Court to allow this Court to make a
4 reconsideration for a new trial or a new hearing regarding the
5 ineffectiveness of trial counsel. So we would ask the Court
6 to dismiss this motion and if counsel on the other side wants
7 to proceed with an appeal, they have that right to do so.
8 However, I don't think that there was nothing in the order or
9 nothing in this case that would allow the granting of a 59 (e)
10 or 59 (a) motion in this case. I thank you for your time,
11 Your Honor.

12 **THE COURT:** Yes, sir.

13 Anything else, Ms. Blanchette?

14 **MS. BLANCHETTE:** Your Honor, since I would typically be
15 at a table with my client, can I just ask virtually here if
16 there is anything further? I do not have anything further,
17 but the prison does have a way for him to communicate with me
18 if needed. I just wanted to make sure that we've protected
19 that right of his.

20 **THE COURT:** Okay. Mr. Gregory -- well, Ms. Blanchette,
21 can he message you privately, is that what you mean, or do you
22 need to call him?

23 **MS. BLANCHETTE:** I think he could just answer publicly
24 now if he did need to consult with me or if we can move
25 forward. Like I would lean over the table and ask that, if I

1 could just ask that and if he does, then I can make
2 arrangements.

3 **THE COURT:** Sure.

4 **MS. BLANCHETTE:** Mr. Gregory, do you need to discuss
5 anything with me?

6 **MR. GREGORY:** Not at this time.

7 **MS. BLANCHETTE:** Thank you, Your Honor, for allowing us
8 to have that discussion.

9 **THE COURT:** Okay. All right. Well thank you very much
10 for y'all's arguments. I do, of course, remember the hearing,
11 I remember the case, and I will review the transcript, and I
12 will of course review the order and the motion again before I
13 issue my order. So, Mr. Gregory, the way that you received my
14 initial order on the PCR is the way that your lawyer is going
15 to receive the order again this time, okay, and then she'll
16 get it to you so you'll know the outcome, okay. All right.

17 Thank you very much. I know y'all love having hearings
18 on Friday afternoon. It seems to be the only time that we can
19 work these kinds of things in when my term of court ends where
20 we were. And so I actually have some other matters that I'm
21 hearing this afternoon of a different nature here in the
22 courtroom. So thank you, and y'all timed it perfectly because
23 my next matter starts at 2:30.

24 **MR. EVANS:** Okay. Thank you, Your Honor.

25 **MS. BLANCHETTE:** Thank you, Your Honor.

1 **THE COURT:** Thank y'all. And thank y'all for your hard
2 work on the order too. All right.

3 And good luck to you, Mr. Gregory.

4 **(COURT IS ADJOURNED)**

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

24 APR 24 AM 11:44
Brice Barrett CDD@JUL SC

Jacoby Jamar Gregory, 368934,)
Applicant,)

-vs-

ORDER REGARDING APPLICANT'S
MOTION FOR RECONSIDERATION

The State of South Carolina,)
Respondent.)

Case No.: 2018-CP-23-02957

Hearing Date: Friday, March 22nd, 2024, @ 2:00 p.m.
Hearing Judge: Grace Gilchrist Knie
Counsel for Applicant: Tricia A. Blanchette
Counsel for Defendant/s: Tommy Evans, Jr.
Court Reporter: Sallie B. Todd (via WebEx)

A Rule 59(a)&(e) SCRCPP motion to reconsider and to alter or amend has been received from the Applicant dated and served on the Court on January 16th, 2024. The Motion to Reconsider was timely and properly served on The Court per Rule 59(g) SCRCPP. Present was the Applicant Jacoby Jamar Gregory, and present representing the Applicant was Tricia A. Blanchette, Esq. Tommy Evans, Jr., Esq. of the SC Attorney General's Office was present representing the Respondent. The Court Reporter was Sallie B. Todd. The hearing was conducted via Judge Knie's Virtual Courtroom by consent. Specifically Applicant's Motion is requesting that the Court alter, amend or reconsider its Order filed on January 8th, 2024 which denied Applicant's May 18th, 2018 Application for Post Conviction Relief (including all amended Applications.)

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Applicant's Motion for Reconsideration dated and forwarded to the Court on January 16th, 2024, made pursuant to Rule 59, SCRCP, requesting that the Court reconsider its decision denying the Applicant's Application for Post Conviction Relief is respectfully denied.

IT IS SO ORDERED.



Grace Gilchrist Knie, Judge
Circuit Court, Seventh Judicial Circuit

April 9th, 2024

Copy mailed to
Attorney General (TE) T. Blanche
on 4/20/2024