

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Derham Cole, Circuit Court Judge

ROHAIME HOPKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001503

APPENDIX

CHELSEY F. MARTO

The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201
(864) 4045583
Bar No. 104191

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BRYAN T. HALL
Assistant Attorney General
1000 Assembly Street
Columbia, SC 29201
(803) 734-3737

ATTORNEYS FOR RESPONDENT

RECEIVED

Apr 21 2025

S.C. SUPREME COURT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED MAY 15-17, 2017.....	1
STATE’S EXHIBITS #7 - #9 (CELL PHONE RECORDS).....	675
FINAL BRIEF OF APPELLANT.....	680
FINAL BRIEF OF RESPONDENT.....	707
<i>STATE V. ROHAIME JAMAR HOPKINS</i> , OP. NO. 5766.....	748
APPLICATION FOR POST-CONVICTION RELIEF	760
STATE’S RETURN TO THE APPLICATION FOR POST-CONVICTION RELIEF.....	785
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	800
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 7, 2024.....	803
ORDER OF DISMISSAL.....	853
INDICTMENT.....	866
SENTENCING SHEET.....	868

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 Q And in what capacity do you work for SLED?

2 A I'm a firearm and tool marks examiner in the
3 forensics laboratory.

4 Q And what does that mean?

5 A What we do is called firearm examiner. I look at
6 ammunition components: Bullets, cartridge cases, shotgun
7 shells, wadding to determine whether they were fired by or
8 loaded into and extracted from a specific weapon.

9 Q Okay. And how long have you been with SLED?

10 A Seventeen years and five months.

11 Q Okay. So you had to have specialized training
12 throughout all that time?

13 A Yes, ma'am.

14 Q Okay.

15 MS. JONES: Mr. Lee has already stipulated to her
16 qualifications so --

17 THE COURT: Is that correct?

18 MR. LEE: That's correct.

19 THE COURT: Very well. Without -- in what field?

20 MS. JONES: Firearm examination.

21 THE COURT: Firearms examination, Counselor.

22 MS. JONES: Yes, Your Honor.

23 THE COURT: Recalling my earlier instruction,
24 ladies and gentlemen of the jury, concerning expert
25 testimony, the witness is qualified without objection.

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 You may proceed.

2 MS. JONES: Thank you, Your Honor.

3 BY MS. JONES

4 Q Were you asked to analyze some items in this case?

5 A Yes, I was.

6 MS. JONES: Permission to approach, Your Honor.

7 THE COURT: You may.

8 BY MS. JONES

9 Q Agent Cromer, I'm handing you SLED 29 and 33 which
10 are State's 56 and 57.

11 MS. JONES: And, Your Honor, at this time State
12 would move State's 56 and 57 into evidence.

13 MR. LEE: No objection.

14 THE COURT: Well, could you get her to identify
15 them first?

16 MS. JONES: Yes.

17 BY MS. JONES

18 Q Agent Cromer, can you identify those for me?

19 A Yes. State's Exhibit 57 was my item 29. It is an
20 unfired, 9 millimeter, Luger caliber cartridge.

21 State's Exhibit 56 was my item 33. Again,
22 it's another unfired .9 millimeter Luger caliber cartridge.

23 THE COURT: You now wish to move introduction?

24 MS. JONES: Yes, Your Honor.

25 THE COURT: Without objection, Mr. Lee?

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 MR. LEE: Without objection.

2 THE COURT: Ladies and gentlemen, State's Exhibits
3 56 and 57 will be admitted into evidence in the trial
4 of this case without objection.

5 You may proceed.

6 MS. JONES: Thank you, Your Honor.

7 *(Whereupon, State's Exhibit No(s). 56-57 marked*
8 *for identification and received in evidence.)*

9 BY MS. JONES

10 Q And were you able to determine any findings based
11 on those two items?

12 A Just that they were unfired 9 millimeter Luger
13 caliber cartridges.

14 Q Okay. I'm next going to hand you --

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

16 THE COURT: Absolutely.

17 BY MS. JONES

18 Q SLED item 39, I believe it says, as well as 36,
19 State's 61 and 62, can you identify those?

20 A State's 6 -- State's Exhibit 61 was my item 36.
21 This is a fired bullet most consistent with 9 millimeter
22 Luger caliber.

23 State's Exhibit 62 was my item 37. It is
24 another fired bullet most consistent with 9 millimeter Luger
25 caliber.

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 Q And those are the ones the -- you had that you
2 tested?

3 A Yes, it is.

4 MR. LEE: Your Honor, at this time the State moves
5 State's 61 and 62 into evidence.

6 THE COURT: As to 61 and 62?

7 MR. LEE: No objection.

8 THE COURT: Ladies and gentlemen of the jury,
9 State's Exhibits 61 and 62 will be admitted into
10 evidence in the trial of this case without objection.

11 *(Whereupon, State's Exhibit No(s). 61-62 marked*
12 *for identification and received in evidence.)*

13 BY MS. JONES

14 Q Agent Cromer, I'm now going to show you what has
15 been marked as State's 58, 59 and 60 which are your items
16 39, 40 and 41.

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

18 THE COURT: Absolutely.

19 WITNESS: Okay. State's Exhibit 59, 58 and 60
20 were my items 40, 41, and 39. Again, these are all
21 fired 9 millimeter Luger caliber most consistent with 9
22 millimeter Luger caliber bullets.

23 BY MS. JONES

24 Q Okay. And item 58 -- my apologies --

25 MS. JONES: State's Exhibits -- the State now

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 moves State's 58, 59 and 60 into evidence.

2 THE COURT: As to 58, 59 and 60?

3 MR. LEE: No objection.

4 THE COURT: Ladies and gentlemen of the jury,
5 State's Exhibits 58, 59 and 60 are admitted into
6 evidence in the trial of this case without objection.

7 *(Whereupon, State's Exhibit No(s). 58-60 marked*
8 *for identification and received in evidence.)*

9 MS. JONES: Thank you, Your Honor.

10 BY MS. JONES

11 Q Agent Cromer, as to items State's Exhibits 58, 59,
12 60, 61 and 62, which would be your SLED items 36, 37, 39, 40
13 and 41, what were your findings on those items?

14 A I found that they were all consistent with 9
15 millimeter Luger caliber projectiles, and I was inconclusive
16 as to whether they were all fired by one firearm due to poor
17 engagement of the rifling. Rifling is what is in the gun
18 barrel to fire the projectile. There just wasn't enough of
19 those individual riflings that I needed to draw a conclusion
20 either way. So it was inconclusive as to whether they were
21 all fired by one firearm or not.

22 Q But they are all 9 millimeter?

23 A That's correct.

24 Q Okay. Now moving on to -- Agent Cromer, these
25 would be your SLED items 30, 31, 32, 34 and 35, which have

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 been marked State's 51, 52, 53, 54 and 55.

2 MS. JONES: Permission to approach.

3 THE COURT: You may.

4 BY MS. JONES

5 Q And can you identify those items?

6 A State's Exhibit 55 is my item 32, and it's a fired
7 9 millimeter Luger caliber cartridge case.

8 State's Exhibit 54 was my item 30. Again, it
9 is another fired 9 millimeter Luger caliber cartridge case.

10 State's Exhibit 53 was my item 31. It's
11 another fired 9 millimeter Luger caliber cartridge case.

12 State's Exhibit 52 was my item 34. Again,
13 it's another fired 9 millimeter Luger caliber cartridge
14 case.

15 State's Exhibit 51 was my item 35. Again,
16 another fired 9 millimeter Luger caliber cartridge case.

17 MS. JONES: Your Honor, at this time the State
18 moves State's 51 through 55 into evidence.

19 THE COURT: As to 51 through 55 inclusive,
20 Counsel?

21 MR. LEE: No objection.

22 THE COURT: Ladies and gentlemen of the jury,
23 State's Exhibits 51, 52, 53, 54 and 55 will be admitted
24 into evidence in the trial of this case without
25 objection.

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 *(Whereupon, State's Exhibit No(s). 51-55 marked*
2 *for identification and received in evidence.)*

3 BY MS. JONES

4 Q Now, Agent Cromer, what were your findings
5 regarding those shell cases that were collected?

6 A I microscopically compared them to each other and
7 determined that there was enough that in my
8 opinion, these were all fired by one firearm.

9 Q So, all of the shell casings that were collected
10 came from one gun?

11 A That is correct.

12 Q Okay. And you weren't able to come to any
13 conclusions with regards to the bullets, correct?

14 A That's correct.

15 Q Except for they were the same ammunition?

16 A Yes, they were the same caliber ammunition. The
17 bores all had the same general rifling. They were all 9
18 millimeter Luger caliber. They all had the same number of
19 lands and grooves in that rifling, and they all had the same
20 number of the same direction of twist, which is how the
21 bullet is going to spin when it comes out of the barrel.

22 Q Okay. You kind of got a little confusing there
23 with rifling and grooves and twists. What does that mean?

24 A Rifling is what's put in the gun barrel by the
25 manufacturer to put a rotary like spinning motion on it.

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 Relating it somewhat to a quarterback who throws a football
2 who wants to have a tight spiral so that it goes more
3 accurately toward its target. Well, that's the premise
4 behind rifling. It'll put that bullet into a spiral so that
5 it's more accurate as it goes toward its target. So,
6 rifling is made up of lands and grooves, raised and
7 depressed areas. So, you can have any number and there's
8 different types of riflings.

9 So, when we talk about a general rifling
10 character exam, we're talking about looking at all those
11 different characteristics. So, first, are they the same
12 caliber? Yes.

13 Do they have the same type of rifling? There
14 are two types. There's conventional, and there is
15 polygonal. Conventional has right angles; polygonal is more
16 scalloped. They were all conventional.

17 How many number of lands and grooves are
18 there -- are displayed on those bullets? They were all
19 consistent with six.

20 What's the direction of twists? Which way is
21 that bullet going to spin? Will it spin to the left or the
22 right? They were all the same direction of twists.

23 Q Okay, so, throughout all of that part of your
24 examination they all matched?

25 A Well, up to that point.

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 Q Up to that point. Okay, and why couldn't you make
2 any more conclusions on those bullets?

3 A Because of the individual marks that were left on
4 the rifling, there just wasn't enough. I don't know if the
5 gun was not well rifled or it was poorly taken care of but
6 it didn't mark the bullets very well.

7 Q Okay. I want to ask you a little bit about these
8 9 millimeter guns in general. You didn't have a gun to
9 compare these bullets to, did you?

10 A No, I did not.

11 Q Had you had a gun would you have been able to --
12 to compare the two and see if they matched?

13 A I did not.

14 Q Okay. But you didn't get that opportunity here?

15 A That's correct.

16 Q Okay. Do 9 millimeter guns come in revolvers and
17 semiautomatic?

18 A They're commonly semiautomatic, but there are guns
19 or revolvers that are chambered for Luger caliber.

20 Q And what is the difference between a revolver and
21 semiautomatic?

22 A A semiautomatic is where you place a magazine full
23 of ammunition into the magazine well. You pull your slide
24 back. You pull the trigger. When you pull the trigger, it
25 fires one round, ejects the cartridge case, and loads the

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 next round. So, one pull, one fire.

2 Then a revolver is basically what you see in
3 your cowboy or western movies where you have a round device
4 with multiple chambers in it. It's called a cylinder. And
5 it rotates around one firing pin or one firing device. So
6 it doesn't eject cartridge cases. You have to actually
7 physically open the cylinder to dump out the cartridge
8 cases.

9 MS. JONES: Beg the Court's indulgence one second.
10 May we approach, Your Honor?

11 THE COURT: You may.

12 (Off-the-record discussion held.)

13

14 BY MS. JONES

15 Q After you were unable to get any further, your --
16 your analysis had to end on those bullets?

17 A That is correct.

18 Q Okay. I wanted to get back to the -- to the
19 semiautomatic and the revolver. You talked about the two
20 different types, and you talked about the semiautomatic
21 ejecting cartridge cases?

22 A That's correct.

23 Q Where did it eject from?

24 A It depends on the type of firearm it is.

25 Q Okay. So, you didn't have a firearm, so you don't

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 know in this case where it ejected from?

2 A That's correct.

3 Q Would you say that it's common that if a gun was
4 fired in a car the -- and it -- and it was semiautomatic,
5 the case would be found inside that car?

6 A As long as the gun ejected inside the car or --
7 with ejection patterns, which is what you're talking about
8 when you're talking about where a cartridge casing lands,
9 there are so many factors. How to -- the ejection port; is
10 it on the left or is it on the top? How the shooter is
11 holding the gun? Is he holding it pointing it out of a
12 window, if it's fired in the car, or is he holding it, you
13 know, face down or is he holding it in the proper
14 orientation. Also, cartridge cases are known to fly, so
15 they can hit things and bounce. So, really with the
16 ejection pattern, we just can't determine whether a firearm
17 was fired based on where the cartridge cases are.

18 Q Okay. If a gun is fired from a passenger seat
19 across the chest in a closed car, door shut, window shut to
20 the driver's side, would those cases be found inside the
21 car?

22 A I would assume so, yes.

23 Q And we have 9 millimeter ammunition here. How
24 many 9 millimeters are on the street today?

25 A 9 millimeter is very common. 9 millimeter Luger

DIRECT EXAMINATION OF SUZANNE CROMER BY MS. JONES

1 is a very common caliber. I would say hundreds of thousands
2 or even millions.

3 MS. JONES: Okay. Thank you. I have no further
4 questions for this witness, Your Honor.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION

7 BY MR. LEE

8 Q So, you were never provided a gun to compare the
9 casings to, right?

10 A That's correct.

11 Q And your job is a lot easier when you do have
12 that, right?

13 A Sometimes, yes.

14 Q Okay. All right. Now -- so, you cannot point to
15 a specific gun that the casings were fired from or the
16 bullets came from, right?

17 A That's correct.

18 Q However, you can, based on some of the common
19 characteristics, you can narrow your list down to a certain
20 make of gun, correct?

21 A Correct. I give -- I can give regulators, a
22 potential list. And that list is not all inclusive. That
23 has other firearms in that same caliber with those same
24 rifling characteristics.

25 Q Okay. And you put that in your report that you'd

CROSS EXAMINATION OF SUZANNE CROMER BY MR. LEE

1 be able to do that, but that it's numerous so you're not
2 going to write it in this report?

3 A That's correct.

4 Q How numerous are we talking about? Forty, fifty,
5 sixty?

6 A It was 58.

7 Q Fifty-eight, okay.

8 A Manufacturers.

9 Q Manufacturers, okay. Taurus on the list?

10 A Taurus was not on the list; but again, that list
11 was not all inclusive.

12 Q Hi-Point?

13 A Hi-Point was on the list.

14 Q The Hi-Point 9 millimeter was on the list?

15 A That is correct.

16 Q And it appears based upon the cartridge cases
17 being found that it was not a revolver but a semiautomatic
18 weapon?

19 A It does appear that way.

20 Q With a magazine?

21 A With a magazine, yes.

22 Q Did Agent Johnson -- well, your report was done
23 April 15, 2015, correct?

24 A Correct.

25 Q And you sent it to Agent Johnson with SLED?

CROSS EXAMINATION OF SUZANNE CROMER BY MR. LEE

1 A That's correct.

2 Q Okay. Did Agent Johnson ever ask you for that
3 list or talk to you about the possible makes of guns?

4 A I need to check my notes if that's okay.

5 I spoke to Agent Johnson several times about
6 the case. But I don't know if I spoke to him about
7 specifics about the guns that were on the AEDRC list.

8 Q Okay. Did he ever bring you any guns for
9 comparison purposes?

10 A No, sir, he didn't.

11 Q Okay. Thank you.

12 MR. LEE: That's all, I have, Your Honor.

13 THE COURT: Redirect?

14 MS. JONES: No, Your Honor.

15 THE COURT: As to this witness?

16 MS. JONES: She may be excused.

17 THE COURT: Very well, Ms. Cromer. Now,
18 Ms. Cromer, your items are now my exhibits; so, leave
19 the exhibits here with my court reporter. You can take
20 your file, but don't take my exhibits.

21 WITNESS: Thank you, Your Honor.

22 THE COURT: You are excused. You may leave the
23 courtroom.

24 Call your next witness.

25 MS. JONES: The State calls Karen Milbrodt.

CROSS EXAMINATION OF SUZANNE CROMER BY MR. LEE

1 Thereupon,

2 KAREN MILBRODT

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 THE COURT: Good afternoon. Make yourself
6 comfortable. Adjust the chair to your comfort and
7 adjust the microphone to your height, and you tell me
8 when you're ready.

9 WITNESS: Ready, Your Honor.

10 THE COURT: All right. State your full name and
11 spell your last name for the court reporter.

12 WITNESS: Karen Milbrodt, M-I-L-B-R-O-D-T.

13 THE COURT: Very well. Your witness, Counsel.
14 Direct examination.

15 MS. JONES: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. JONES:

18 Q Ms. Milbrodt, where do you work?

19 A Verizon Wireless out of our Tampa office.

20 Q And how long have you been with Verizon Wireless?

21 A For 18 years.

22 Q And what is your title at Verizon?

23 A I am an senior analyst in Executive Relations, and
24 one of my responsibilities is as a records custodian for
25 business records.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES.

1 Q Okay. And as the business record -- as custodian
2 of records, what does that mean?

3 A Well, that means when records are going to be
4 entered into evidence at a trial, whether civil or criminal,
5 sometimes we are subpoenaed to come to trials and
6 authenticate the records, make sure that they are in fact
7 our records, and then answer any questions that anybody,
8 either party may have about them.

9 Q Okay. How does Verizon keep records?

10 A They are stored electronically.

11 Q And you have access to these records?

12 A Yes, ma'am.

13 Q And are they kept daily, day-to-day?

14 A Day-to-day, real time, as the event happens.

15 Q How long are they kept for?

16 A Various records are kept for various time frames.
17 Some for only a few, few days; some for as long as ten
18 years.

19 Q Okay. In order to -- to get these records, do you
20 only pull them pursuant to requests from law enforcement and
21 whatnot?

22 A Yes, we have to receive a court order or a
23 subpoena in order to release records.

24 Q Okay. And did you receive a subpoena or court
25 order in relation to this case today?

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES.

1 A Yes, Verizon Wireless did.

2 Q And were you asked -- you said Verizon. But you
3 as a custodian of records has access to these records?

4 A Yes, ma'am.

5 Q Okay. And you're familiar with the records?

6 A Yes, I have seen them.

7 Q And they're kept day-to-day business?

8 A Yes, ma'am.

9 Q They're always kept in the ordinary course of
10 Verizon's business?

11 A Yes.

12 Q Okay. And you in fact provided records pursuant
13 to a subpoena in this case?

14 A Yes.

15 Q Okay. What sort of information is obtained on the
16 records that you provided?

17 A Sure. There was -- subscriber information was
18 released, the incoming and outgoing text log, incoming and
19 outgoing call log, and text content was released, cell tower
20 address locations, the cell tower key and then various keys
21 that go along with those records.

22 Q Okay. And all of those records are Verizon's
23 records kept in the ordinary course of business?

24 A Yes.

25 THE COURT: Counsel approach.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES.

1 (Off-the-record discussion held.)

2 THE COURT: Ladies and gentlemen of my jury panel,
3 a matter of law has arisen affecting the introduction.

4 Folks, go ahead and do what I asked you to do.

5 You have got them premarked, do you not?

6 MS. JONES: I do, Your Honor. They are State's 7,
7 8 and 9.

8 MR. LEE: I object, Your Honor.

9 THE COURT: There is an objection to exhibits
10 which are being proposed which is going to require me
11 to do a little bit of work. I realize the time.
12 Rather than keep you here tonight, ladies and
13 gentlemen, while I complete that work, I'm going to
14 stop at this point. I'm going to ask you to be back in
15 your jury room at 9:30 in the morning.

16 Please do not discuss this case overnight with
17 anyone. If somebody tries to talk to you, just say, I
18 can't talk. The Judge asked me not to. And if they
19 persist, get their name, give it to me and I'll handle
20 that problem for you, ladies and gentlemen.

21 Thank you for your patience. Thank you for your
22 service.

23 We will complete this trial tomorrow. I hope
24 everyone gets some rest tonight. Report to the jury
25 room in the morning. Do not come to the courtroom.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES.

1 You may leave the courtroom at this time.

2 Everyone else remain seated while the jury is
3 leaving.

4 (Jury exits the courtroom.)

5 MR. LEE: Your Honor, I'm not sure you told them
6 what time to come back.

7 THE COURT: 9:30.

8 MR. LEE: Okay. Neither one of us heard it so I
9 was just checking.

10 THE COURT: I told them.

11 MR. LEE: Okay.

12 THE COURT: But thank you so much. Lord knows I
13 could forget.

14 Now, Ms. Milbrodt, the solicitor -- I'm in the
15 middle of a legal issue?

16 WITNESS: Yes, sir.

17 THE COURT: And although I'm sure you would be
18 fascinated to listen to the arguments of Mr. Lee, not
19 to mention the fact that my excellent staff has just
20 handed me a four-page memorandum citing at least nine
21 different cases that I have to look at in connection
22 with this, because the solicitor may need you in the
23 morning, if I rule on this to explain the document
24 which she's offered, if I rule it's admissible, I'm
25 going to ask you if you would be so kind, like the jury

COLLOQUY

1 to go get rest and come back in the morning at 9:30, at
2 which time we intend to complete the trial of this
3 case.

4 WITNESS: Yes, sir.

5 THE COURT: All right. Because you're in the
6 middle of your testimony, I'm going to have to ask you
7 not to talk to the Solicitor. Not to talk to anyone
8 about your testimony. You are subject to cross
9 examination in this court and you can't discuss your
10 testimony with anyone. That doesn't mean you can't go
11 get dinner and enjoy the evening in beautiful Jasper
12 County, South Carolina. Ask Richard over there. He'll
13 tell you how wonderful it is to be in the Lowcountry of
14 South Carolina. I know you enjoy it more.

15 By the way, I was in Tampa on January the 17th of
16 this year --

17 WITNESS: Yes.

18 THE COURT: -- and I want you to know how much I
19 enjoyed your city. Bern's Steak House was worth the
20 trip in and of itself.

21 WITNESS: Good dessert bar there.

22 THE COURT: Good. All right.

23 WITNESS: So, we will see you at 9:30?

24 THE COURT: Pardon?

25 WITNESS: See you at 9:30?

COLLOQUY

1 THE COURT: 9:30 in the morning.

2 WITNESS: Yes, sir.

3 THE COURT: I want you to come right back to this
4 witness stand in the morning at 9:30.

5 WITNESS: Yes, sir.

6 THE COURT: All right.

7 WITNESS: Okay, I'll be here.

8 THE COURT: You are now excused from the trial of
9 this case.

10 WITNESS: Thank you.

11 THE COURT: All right. Ladies and gentlemen, I'm
12 going to meet with my lawyers in chambers for a moment
13 and with my excellent staff and then I'm going to come
14 back and place a ruling on the record this evening
15 concerning the objection which has been made by counsel
16 for the Defendant.

17 So, Mona, I'm going to have to ask you to stay a
18 little bit but I'm going to get you home tomorrow.

19 COURT REPORTER: Okay.

20 THE COURT: Okay. For those of you that would
21 like to stay, please do so. I need my lawyers in
22 chambers with my staff now. Hold on to the exhibits,
23 Solicitor, that you have. I assume you've shown those
24 to counsel for the Defendant; is that correct?

25 MS. JONES: Yes, Your Honor.

COLLOQUY

1 THE COURT: Please join me in chambers.

2 Yes, ma'am.

3 (Off-the-record discussion held.)

4 THE COURT: Where is he?

5 You now can leave until 9:30 in the morning. Be
6 back in that seat at 9:30 in the morning.

7 ALTERNATE JUROR: Yes, sir.

8 THE COURT: Lawyers in chambers.

9 (Brief recess.)

10 THE COURT: Thank you. Please be seated. The
11 time is now 6:40 p.m.

12 Mona, I want to say I don't know of any more
13 current issue that's circulating in the courts of the
14 United States, both state and Federal, than the issue
15 that's been presented in the trial of this case
16 concerning text messages. And I have reviewed a number
17 of cases. So, first I want to frame this issue.

18 The State seeks to admit a text message. There's
19 been previous testimony from Agent Johnson that he was
20 told by the Defendant that this was his old text --
21 telephone number from which the records say that the
22 text message emanated. I also have testimony from, was
23 it Angel? Is that right, who said that was his number
24 or was that the wrong witness?

25 MS. JONES: Agent Johnson said that he got the

COLLOQUY

1 number from Angel Simmons.

2 THE COURT: Did she also confirm?

3 MS. JONES: She did not say that.

4 THE COURT: All right. I also have, first of all,
5 the issue of Mr. Lee objects first under the
6 confrontation clause, and then he objects as hearsay.
7 He concedes authenticity and does not object on that
8 ground.

9 However, the first issue for the court, and I'll
10 put it on the record, the confrontation clause. I find
11 that the text message clearly is not testimonial. And
12 I cite as authority what I cited in a trial five weeks
13 ago, United States versus Alvarado, at 816 F.3d 242 and
14 service was denied by the United States Supreme Court
15 at 137 S.Ct. 492. It is a fourth circuit opinion which
16 surveyed all of the Federal circuits in the United
17 States.

18 It is undisputed, according to the Alvarado court,
19 that testimonial evidence does not include statements
20 made to friends in an informal setting. So I find that
21 the text message was not testimonial and it does not
22 implicate the confrontation clause in any way.

23 I next turned to the objection of Mr. Lee on
24 hearsay. I might add that the lawyers have done a lot
25 of work and so have the law clerks who have just been

COLLOQUY

1 such a great asset to me in this trial. And the first
2 issue for the court, the State argues that this is not
3 hearsay. Mr. Lee argues that it is hearsay and he does
4 not think any exceptions to the hearsay rule apply
5 which would permit the admissibility of this evidence.

6
7 I have carefully considered this. I point out to
8 both of you that the South Carolina Rules of Evidence,
9 Rule 801(c) defines hearsay. Hearsay is a statement,
10 other than one made by the declarant while testifying
11 at the trial or hearing, offered in evidence to prove
12 the truth of the matter asserted. That is the exact
13 language of 801(c).

14 I also find that in that same rule, which is our
15 hearsay rule in our Rules of Evidence, I find that
16 there is 801(d)(2), admission by a party-opponent. I
17 believe and my ruling is that this is not hearsay and
18 that it is admissible because of 801(d)(2). And that
19 is my ruling.

20 As an alternative sustaining ground, I will for
21 purposes of argument assume that if this were hearsay,
22 as contended by Mr. Lee, which I do not believe that it
23 is, and that is my ruling and my ground, then I turn to
24 whether or not if it were hearsay for purposes only of
25 argument to Rule 804, which contains -- 803 contains

COLLOQUY

1 exceptions but 804 contains the exceptions that I think
2 would apply.

3 Mr. Lee, I ask you now for purposes of this trial,
4 it is my understanding that at this time, and you're
5 not bound by this and you know you're not because the
6 State hasn't rested, but it's my understanding the
7 Defendant doesn't intend to testify at this time. Is
8 that correct?

9 MR. LEE: That's correct at this time, Your Honor.

10 THE COURT: And, therefore, he would at this point
11 if I were using this ground be unavailable which his
12 failure to testify constitutes unavailability under
13 Rule 804 of the Rules of Evidence. And because of
14 that, I think what applies is 804(b)(3), which is a
15 statement against interest, assuming for purposes of
16 argument only that this is hearsay, but I find as a
17 matter of law that it is not.

18 Therefore, the text message, having been properly
19 authenticated, is admissible in the trial of this case,
20 and we will resume with that evidence at 9:30 a.m. in
21 the morning.

22 MR. LEE: Your Honor, I understand your ruling.
23 And I do have a couple of other positions as far as why
24 that language should not be admissible, aside from
25 hearsay, but it goes to relevance. I would say that it

COLLOQUY

1 is not relevant --

2 THE COURT: And I'm sorry, you did argue to me and
3 I told you I would give up a chance to put it on the
4 record, and I wasn't trying to keep you from it. You
5 did argue relevance to me, and I'll be happy to allow
6 you to put that on the record, Mr. Lee, and give the
7 State an opportunity to respond.

8 MR. LEE: It would be our position, regardless of
9 whether it's a hearsay or not, exception or not,
10 that -- that -- the statement in the text, which says,
11 dat's done. Need to hollar at you, which I think we
12 all agree on is -- is so amorphous and so ambiguous.

13 THE COURT: Don't use too big of words, Mr. Lee.

14 MR. LEE: Biggest word --

15 THE COURT: Although I do have excellent law
16 clerks here.

17 MR. LEE: And the jury is not here, so, we can do
18 that.

19 But anyway, it's so confusing. It is our position
20 that it's not relevant because they cannot tie what
21 that means to what they say that it means because they
22 can't --

23 THE COURT: And I think you certainly have every
24 right to bring that out. I'm talking about
25 admissibility and not the weight of the evidence.

COLLOQUY

1 MR. LEE: I understand. My position is that they
2 cannot establish who that was sent to. Their only
3 testimony is going to be that the number that it was
4 sent to was a phone in the box, or burner phone,
5 whatever you want to call it, and the only connection
6 that they can make --

7 THE COURT: There's no way anyone can establish
8 who it was sent to, according to Verizon's records,
9 which is the basis they seek to admit it because we're
10 talking about burner phones.

11 MR. LEE: But what they're going to try to do is
12 tie it -- tie it to Trey Graves because that's their
13 authority -- or that's their theory rather. They will
14 try to tie it to Trey Graves by saying a guy named
15 Willy Newton has another phone number on that same
16 account.

17 THE COURT: Well, that is an inference argument
18 from the evidence. I understand that you think that's
19 what they're trying to do, but it would be up to the
20 jury to make that determination. Once again, I think
21 that goes to weight rather than admissibility.

22 MR. LEE: I understand. I also would -- would
23 follow that up, as we usually do, under 403, saying
24 that --

25 THE COURT: The prejudice outweighs the probative

COLLOQUY

1 value.

2 MR. LEE: Clearly the prejudicial value in the
3 particular way they're going to use it and couch it is
4 that this is a -- saying, I did the hit essentially.
5 That is so prejudicial when there's nothing to back
6 that up.

7 THE COURT: I don't think that the text says, I
8 did the hit. I think you're mischaracterizing the
9 text.

10 MR. LEE: Dat's done. I have no -- that's exactly
11 what they're trying -- where they're trying to go with
12 that.

13 THE COURT: I thought the text message said -- and
14 I've got it written down so I want to make sure.

15 MS. JONES: It says, dat's done. I need to hollar
16 at you.

17 THE COURT: It's done or dat's done. Let me
18 hollar at you.

19 MR. LEE: I need to hollar --

20 MS. JONES: I need to hollar at you.

21 MR. LEE: It's absolutely --

22 THE COURT: There's no hit in there.

23 MR. LEE: But the thing dat's done means the hit
24 is done. That's what --

25 THE COURT: That's argument. That's not evidence

COLLOQUY

1 at this point. That's inference. I understand your
2 argument on relevance. I understand your argument on
3 403. You made them for the record. Thank you very
4 much.

5 Solicitor, do you want to be heard?

6 MS. JONES: Briefly, Your Honor. The State would
7 argue that it is relevant evidence. The State's theory
8 of this case is that it was a murder for hire and the
9 hit was called on Mr. Johnson and that hit was carried
10 through at 9:37 p.m. And 19 minutes after that hit was
11 through, a phone number, who the defendant said was his
12 old phone number, sends this message, dat's done. I
13 need to hollar at you.

14 We are certainly allowed to argue that it was in
15 reference to the hit being finalized, and I feel that
16 that is relevant. It tells the whole complete story of
17 why we're here this week.

18 THE COURT: All right. I overrule your objection
19 on relevance and on 403. I think it is relevant. I do
20 not think the prejudice outweighs the probative value
21 or substantially outweighs it. I have considered it.
22 The actual text says -- as I understand and I'm
23 paraphrasing a little bit because of contractions --
24 it's done, which I -- and let me hollar at you or words
25 to that effect is the subject of the text, and I find

COLLOQUY

1 that it is not hearsay and I find that, as I pointed
2 out earlier, however, if it is, I think that exception
3 applies which would allow it to be admitted, and I
4 overrule the objection as to relevance in 403.

5 Now, it is 7:00 at night. I've kept Mona late
6 tonight because I want to finish tomorrow. My
7 understanding is you have this witness, the Verizon
8 witness, and then you have Dr. Presnell.

9 MS. JONES: And Dylan Hightower, if his testimony
10 is allowed.

11 THE COURT: Well, that's a separate objection.

12 MS. JONES: Yes.

13 THE COURT: And I want you to understand that.
14 It's one thing to put in -- Mr. Lee has objected
15 separately to Mr. Hightower and I haven't reached that
16 objection yet. So I want you to understand, I can't
17 promise you that Mr. Hightower is going to be doing any
18 visual aides at this point. But you need to have him
19 here in case I determine it's admissible.

20 MS. JONES: He will be here.

21 THE COURT: Court is in recess until 9:30 a.m.
22 tomorrow morning. And I will give y'all after trial
23 the complete memo that has been written to me.

24 (Court adjourned for the day.)

25

* * *

TITLE PAGE

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

3

4

5

6 Case No.: 2015GS2700144

7 State of South Carolina,

8 Plaintiff(s),

9 vs. Transcript of Record

10 Rohaime Hopkins,

11 Defendant(s).

12

13

14 TRIAL TRANSCRIPT

15

16

17

18 May 17, 2017

19 Ridgeland, South Carolina

20

21 BEFORE:

22 The Honorable Perry M. Buckner

23

24

25

TITLE PAGE

1 (The following proceedings take place on May 17,
2 2017.)

3 THE COURT: All right. Let me frame this issue.

4 Pretrial right at the last moment before we began
5 the trial, Mr. Lee made a motion concerning what has
6 been called sectional analysis in anticipation of
7 Mr. Hightower, who I don't see in the courtroom right
8 now, but who is here, testifying. I gave the lawyers
9 this morning -- I found Judge Norton's case from --
10 what year was it?

11 UNKNOWN SPEAKER: 2013.

12 THE COURT: 2013. I found a Tenth Third and
13 Seventh Federal Circuit case on sectional analysis, and
14 I believe you have brought to my attention a 2017 case
15 which -- hold on -- it is from the Second Circuit,
16 February 23rd, 2017, which is 849 F.3d 530. Which
17 holds the testimony about how a cell phone tower
18 operates must be offered by an expert witness. I
19 concur with those cases.

20 Because I concur, the State now seeks to qualify
21 this witness as an expert in compliance with the cases
22 that the lawyers and I have discussed in chambers this
23 morning. I have given, even though I instructed her
24 yesterday not to talk to anyone, I allowed the
25 Solicitor to talk to her because of this change in

COLLOQUY

1 strategy in light of the Defense's objection and I also
2 allowed the Defense attorney to talk to you, if you so
3 desired.

4 Have both of you had that opportunity?

5 MS. JONES: Yes, Your Honor.

6 MR. LEE: I have not, Your Honor.

7 THE COURT: Would you like to exercise it?

8 MR. LEE: I would, Your Honor, very briefly.

9 THE COURT: Step down, Ms. Milbrodt. Walk to the
10 back of the courtroom with Mr. Lee. Let him have a
11 discussion with you since this is a change in program,
12 and he's entitled to confront this situation. Talk to
13 him just as if you were talking to me, Ms. Milbrodt.
14 You are free to tell him anything you so desire.

15 WITNESS: Yes, Your Honor.

16 THE COURT: While we are waiting on that, because
17 I want to give the lawyers an opportunity in light of
18 this change, I need to tell the jury because this is
19 the second morning I have held them up. Do I have your
20 permission, Solicitor, to walk in the jury room and
21 just say, ladies and gentlemen, I have a matter of law
22 that's come up that I'm going to be required to take
23 testimony. Please be patient. I'm going to get to you
24 as soon as I can. Entirely my.

25 MS. JONES: Absolutely.

COLLOQUY

1 THE COURT: Open the door and tell Mr. Lee. I've
2 got to have his consent to do so.

3 (Brief recess.)

4 THE COURT: Scott, you don't need to come in.

5 I want to walk in the jury room. I have got
6 Mary's permission just to tell them that I have a
7 matter of law and that's going to delay us some. That
8 is entirely mine and I have got to take testimony.

9 Any objection?

10 MR. LEE: No objection.

11 THE COURT: Put it on the record, Mona. No
12 objection from either side.

13 (Judge talks to jury.)

14 THE COURT: This is the matter of law that I have
15 to proffer outside of the jury because the rules are
16 different in qualifying an expert. I am ordering food
17 for them at 12:45. Hopefully, we can conclude
18 testimony by then, even if I have to stop and let the
19 jury eat and then come back and do argument and charge.

20 All right. Ms. Milbrodt, I remind you that you
21 are still under oath. I remind you also that I have
22 ruled on the admissibility of State's -- what's the
23 exhibit number? And make sure Mona has it.

24 MS. JONES: They are State's 7, 8 and 9.

25 THE COURT: Wait a minute now. It is just one

COLLOQUY

1 document.

2 MS. JONES: All right.

3 THE COURT: Are we talking about the same thing?

4 Mona doesn't have it. No. No. No. No. No.

5 Yesterday, a document was presented for which there was
6 an objection.

7 MS. JONES: That was State's 7, 8 and 9. There
8 are three.

9 THE COURT: Oh, there were three numbers.

10 MS. JONES: Yes.

11 THE COURT: Show that to Mr. Lee.

12 MR. LEE: Yes, sir.

13 THE COURT: All right. Seven, eight and nine, all
14 right, are going to be admitted into evidence in the
15 trial of this case over objection. And I made my
16 ruling last night, kept you here to 7:00 to do so.
17 Please give 7, 8 and 9 to the court reporter.

18 *(Whereupon, State Exhibit No(s). 7-9 marked for*
19 *identification and received in evidence.)*

20 THE COURT: We now can begin a new issue. That
21 issue is Mr. Lee's motion to exclude evidence.
22 Although it raises other issues, this motion seeks to
23 exclude before the jury any testimony or evidence
24 related to the cell phone sector analysis, which was
25 created by, according to the Solicitor, Dylan Hightower

COLLOQUY

1 of the Solicitor's Office -- he is their
2 investigator -- and was sent to the Defense attorney
3 via email on May the 12th, 2017, at 3:17 p.m.

4 I am now going to hold a hearing on this matter,
5 which involves this witness, because Solicitor intends
6 to attempt to qualify this witness as an expert for
7 purposes of laying a predicate for the introduction of
8 the sectional analysis. And I have reminded them of
9 the case, which I have quoted. The one I put on the
10 record was Hector Natal, N-A-T-A-L, United States
11 versus Hector Natal, also known as Boom Boom, which was
12 849 F.3d 530.

13 All right. In light of that, Solicitor, this is
14 still direct examination concerning qualifications.
15 And, of course, Mr. Lee, I will give you an
16 opportunity, if you so desire, to cross-examine as to
17 qualifications so I can make a determination.

18 Proceed.

19 MS. JONES: Thank you, Your Honor.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. JONES:

22 Q Ms. Milbrodt, how long have you been with Verizon?

23 A It was 18 years in March.

24 Q And right now what is your title at Verizon?

25 A Yes, my title is I am a senior analyst in our

DIRECT EXAMINATION CONTINUED OF MILBRODT BY JONES

1 Executive Relations Department. And as I mentioned, one of
2 those responsibilities of a senior analyst is to be a
3 records custodian for business records.

4 Q As a senior analyst, what are some of your other
5 duties?

6 A I handle small claims lawsuits, so I would appear
7 and defend us in Small Claims Court. I also respond to
8 consumer complaints that have been sent through governmental
9 channels such as the SDC, Attorney General, Public Utilities
10 Commission and the like. I also do arbitrations, BBB and
11 help with ABA arbitrations.

12 Q Okay. And when you're helping with the claims,
13 what are some of the tasks that you have to complete?

14 A Sure. A consumer will file a complaint with an
15 experienced government agency, that is then routed to myself
16 or one of my coworkers. In doing so, I need to research, I
17 think, specifically, what I believe that is relevant to
18 this. It's similar to filing a complaint saying that they
19 cannot make a phone call at a specific place or that they
20 continue to drop calls. It is up to me to research that
21 information to find out what exactly is going on, what is
22 our network capability at any given location, respond back
23 to the consumer and also the governmental agency with my
24 finding and what, if anything, we can do to improve the
25 dispute.

DIRECT EXAMINATION CONTINUED OF MILBRODT BY JONES

1 Q And are these a lot of times resulting in cell
2 phone towers not working?

3 A Not necessarily not working, but what would happen
4 is that maybe the cell phone tower has a range of two and a
5 half miles and the particular address where the calls are
6 dropping is 3.2 miles. So, then, I would need to inform the
7 consumer that it is just out of the cellphone's range and
8 then I learn information from several things. We have
9 online tools that I use. I engage our tech support
10 department and the engineering department. We all come
11 together and determine what is happening. Maybe the phone
12 is out of date and needs to have an upgrade or an update to
13 its PRL, which is an acronym that means a primary roaming
14 list, et cetera. So, I engage these departments and that
15 way I can then inform the consumer and the government agency
16 what is happening.

17 Q Sorry to interpret you.

18 A No problem.

19 Q So, in order to get the right answer to the
20 government agency and consumers, you have to know how these
21 cell towers work?

22 A Absolutely.

23 Q And in order to have this information, have you
24 had to receive specialized training and education regarding
25 how cell phone towers work?

DIRECT EXAMINATION CONTINUED OF MILBRODT BY JONES

1 A Yes, ma'am. Throughout my entire 18 years, I
2 continue to receive training on our network. Our network
3 continues to evolve from 3G to 4G to LTE and to 5G. So, all
4 of that comes along with additional training to understand,
5 you know, a high overview of how the network works and in
6 some cases doesn't work.

7 Q Okay. And can you go into a little detail about
8 some of the training that was specifically related to how
9 cell phone towers work and specifically sectors of the cell
10 phone towers?

11 A Yes, I'll go -- to be your records custodian, I do
12 have to have an understanding of how the cell towers work
13 and what is a sector and how to look at my records and
14 determine to provide accurate information in trials. So, I
15 have had training, face to face with engineers. I have had
16 online training with certain, you know, I have to answer the
17 right questions that they place. I have had training with
18 our legal department on how to properly explain to a court
19 how -- what I can and cannot say. And so, I've had that.
20 Even from 18 years ago when I first answered phone calls, I
21 had to have training, which was classroom training, online
22 training, face-to-face training on how our network works, so
23 that if a customer calls me and says, Karen, my phone
24 doesn't work, I need to be able to help that customer.

25 Q So, for the past 18 years you have received

DIRECT EXAMINATION CONTINUED OF MILBRODT BY JONES

1 continuing training on all -- on most aspects of how the
2 network works, including cell phone tower analysis?

3 A Yes, ma'am.

4 Q And have you testified before the court?

5 A Yes.

6 Q Have you testified regarding how the towers
7 themselves work and different sectors of the cell phone
8 towers?

9 A Yes.

10 Q About how many times have you testified with that
11 information?

12 A Well, I have done this for probably more than
13 seven years. I'm in court at least once a week, sometimes
14 twice; so several hundred times I have testified about cell
15 towers, call detail, cell tower locations, and sector
16 locations and sector is a fairly simple explanation.

17 MS. JONES: Your Honor, I think right now that
18 would conclude her quali --

19 THE COURT: I can't hear you.

20 MS. JONES: I think right now that would conclude
21 my questions regarding just her qualifications.

22 MR. LEE: Very well. Cross examination.

23 CROSS EXAMINATION

24 BY MR. LEE

25 Q Ms. Milbrodt, how many times in court have you

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 ever been qualified as an expert at -- in cell towers?

2 A I don't recall that I have ever been asked if I
3 have to be an expert. I come as a records custodian with
4 knowledge of the business, so, I can't remember ever -- this
5 has never happened.

6 Q Has anybody attempted to offer you as an expert?

7 A Initially, people will send -- I would say maybe
8 three or four times either the Prosecution or Defense,
9 regarding whoever asked us to appear, have asked if I will
10 testify as an expert and I will simply say, I am a person
11 with the knowledge. I do not have a college degree in
12 engineering, so, that's up to the court to determine if I'm
13 considered an expert.

14 Q If -- if a lawyer -- if the State or Defense
15 called you and got your number or whatever and said, hey,
16 Karen, I need -- I need an expert in how cell towers
17 operate, who would you refer them to, Engineering or I think
18 you said technical support?

19 THE COURT: I'm sorry, what was the last part?

20 MR. LEE: Technical support.

21 WITNESS: Neither.

22 BY MR. LEE

23 Q Neither?

24 A No, neither. I would explain that that would be,
25 you know, their burden to -- to find whoever they want to

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 qualify as an expert. It's not up to us to refer.

2 Q Okay. Are you personally familiar with any of the
3 cell towers in Jasper County?

4 A No, I have no personal knowledge other than the
5 records that we produce.

6 Q You ever driven by and seen one or gone out to
7 visit one or gone to inspect one?

8 A No, sir.

9 Q Have you physically climbed up on any cell tower?

10 A No, sir.

11 Q Do you know the topography of Jasper County,
12 particularly around cell tower 216?

13 A No, sir.

14 Q Okay. Do you know the height of the antennas on
15 216?

16 A No, sir.

17 Q Do you know the height of the actual tower?

18 A No.

19 Q Do you know the carrying capability of the towers
20 in Jasper County?

21 A I do not.

22 Q Do you know how many calls have to be on a tower
23 for it to become overloaded and shoot the call to another
24 tower?

25 A No, sir.

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 Q Do you know other things in Jasper County that may
2 be unique that may cause issues with tower reception?

3 A I do not.

4 Q Do you have any formal education in engineering?

5 A Just internal informa -- internal training
6 provided by Verizon Wireless.

7 Q Okay. And when you get a call from somebody
8 saying, hey, my call got dropped, you say you can do some
9 additional research, for example, if they're outside the
10 range of the tower, correct, you can do that?

11 A Yes, we have maps that we carry internally that I
12 can investigate.

13 Q But if it isn't kind of a -- I hate to say simple
14 issue -- you call either the engineers or the technicians,
15 right?

16 A When I get these complaints, because of the level
17 that they have come to me, even like I say, through FYCC or
18 Attorney General, I do an extensive research in order to be
19 able to provide accurate information to not only to a
20 consumer, but to agencies that require us to do so. So,
21 part of that means I do pull in other resources such as tech
22 support and our Engineering Department so that my answer is
23 accurate and truthful.

24 Q Okay. So, it sounds like you're kind of a
25 jack-of-all-trades over there. You're going to court

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 representing the company. You're doing arbitration. You're
2 doing consumer complaints. You are handling disgruntled
3 customers, I guess, resolving complaints and then you
4 also -- or you have resources that you can use if it's
5 something that is technical in nature or engineering in
6 nature, right?

7 A Yes, there is quite a lot -- there's a lot more to
8 my job than just going to court.

9 Q Certainly. These people that -- the engineers and
10 the technicians that you call frequently, would they be
11 better able to explain to -- to me or someone else
12 physically how a cell phone tower works, the ones that are
13 out there in the field? Would they be better able to answer
14 questions and be able to explain to me as a layman how these
15 things work and how the network works?

16 A I can't really answer whether they would be
17 better. Maybe I could give you a very solid overview of how
18 our network works. Sometimes, when engineers get in, they
19 overspeak it and people lose what's happening. So the word
20 "better," I can't say better or worse.

21 Q But again, those are the people you tend to rely
22 on when you have questions that can't be solved pretty
23 quickly, right?

24 A Those are the people that I engage to make sure
25 that my response to the agency is accurate. So, as far as

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 again, quickly, I want to make sure that my responses are
2 accurate and that I'm giving the consumer the best possible
3 solution that's available.

4 Q Sure.

5 MR. LEE: Beg the Court's indulgence.

6 (Pause.)

7 BY MR. LEE

8 Q You ever heard of a computer program called
9 MapPoint?

10 A No, sir.

11 Q You haven't?

12 A No.

13 Q So it's safe to say that Verizon doesn't use the
14 MapPoint program to produce sector analysis or printouts or
15 anything like that?

16 A Not to my knowledge.

17 Q You ever heard of MapPoint?

18 A I've never heard of MapPoint.

19 Q In 18 years you've never heard of it?

20 A Never heard of it, no.

21 MR. LEE: Judge, that's all the questions I have
22 for her as to this issue.

23 EXAMINATION OF THE WITNESS BY THE COURT

24 THE COURT: Ms. Milbrodt.

25 WITNESS: Yes, sir.

EXAMINATION OF THE WITNESS BY THE COURT

1 THE COURT: Tell me a little bit about your
2 educational background. Where did you -- before you
3 went to work, let's start with college, where did you
4 go to college, if any?

5 WITNESS: I -- I currently go to a community
6 college in Florida.

7 THE COURT: So you're working on your degree now?

8 WITNESS: Yes, sir.

9 THE COURT: So, you're a high school graduate?

10 WITNESS: Yes, sir.

11 THE COURT: And before you worked for Verizon, who
12 did you work for?

13 WITNESS: I drove for Pepsi-Cola. I was a truck
14 driver for Pepsi-Cola.

15 THE COURT: So did I, Ms. Milbrodt.

16 WITNESS: I have driven for Federal Express. Had
17 some restaurant jobs.

18 THE COURT: And your job description now is senior
19 analyst and records custodian; did I hear you
20 correctly?

21 WITNESS: Yes, sir, those are my titles.

22 THE COURT: All right. Now, you -- other than
23 on-the-job training where you have got the experience
24 of the job, what type of specialized training, if any,
25 have you received in the operation of cell towers while

EXAMINATION OF THE WITNESS BY THE COURT

1 you have been employed by Verizon?

2 WITNESS: There's been no specialized training
3 other than on the job.

4 THE COURT: On the job?

5 WITNESS: Yes, sir.

6 THE COURT: So, when you talk about that, you're
7 talking about the experience -- I listened to you
8 carefully, because you said, I need to know things in
9 order that my responses will be accurate. You're
10 talking about what you've learned as you've been in the
11 job for the past 18 years, sort of like on-the-job
12 training. Would that be a fair way of putting it?

13 WITNESS: Absolutely, yes, sir.

14 THE COURT: All right. Sit right there for me.

15 WITNESS: Yes, sir.

16 THE COURT: Don't move. Give me one minute,
17 Counselor. I don't need to hear any more argument at
18 this point.

19 (Whereupon, a brief pause was taken.)

20 THE COURT: All right. The issue before me is
21 whether or not this witness in a proffer is qualified
22 in the use of cell phone towers. And while I certainly
23 find that she's qualified as a records custodian, I
24 sustain the objection that she is not qualified in
25 giving opinion testimony on the use of cell phone

COLLOQUY

1 towers.

2 Now, I have already admitted 7, 8 and 9,
3 Solicitor, and that involves a predicate through
4 Ms. Milbrodt as to the text message. Do you understand
5 that or the text message?

6 MS. JONES: Yes, Your Honor.

7 THE COURT: Which is going to be admissible in the
8 trial of this case.

9 I would urge you to talk to Mr. Lee, because I'm
10 ready to bring the jury so we can go on with her.
11 Remember now, the jury has only heard a little bit of
12 her yesterday. They have not heard any of the other
13 things from her. You remember that, since sometimes
14 proffers can confuse people.

15 MS. JONES: Yes, sir.

16 THE COURT: I would urge you and Mr. Lee to take a
17 look, in light of my ruling, because I'm sustaining
18 Mr. Lee's objection on the basis of whether she's
19 qualified as an expert in the use of cell towers and
20 both of the documents you both showed me in my
21 chambers, one of which I will call a orange document,
22 which was a portion of one sector, because I perfectly
23 believe that Ms. Milbrodt has to make all sorts of
24 decisions in her job.

25 And the other was a document that showed all cell

COLLOQUY

1 phone towers from which there have been some ping, for
2 lack of a better term, involving this case. I would
3 consider, if offered, the introduction of a more
4 complete picture, which is assuming a proper predicate
5 is laid for MapPoint, which has not been laid at this
6 point for the introduction of that document. I base my
7 decision on this objection on the testimony that has
8 been proffered to me.

9 Do both of you understand my ruling? Solicitor?

10 MS. JONES: I do understand --

11 THE COURT: I don't want any more argument.

12 MS. JONES: I don't have argument. I have a
13 question, Your Honor.

14 THE COURT: Yes.

15 MS. JONES: On those documents that were admitted
16 yesterday, it does include the information as to what
17 tower --

18 THE COURT: I know it does. It has a tower
19 number.

20 MS. JONES: It has a tower number and --

21 THE COURT: And it also has the time.

22 MS. JONES: And it has the sector number as well.

23 THE COURT: Which is why I just said what I just
24 told you to talk to Mr. Lee about the documents. Do
25 you want a moment or are you ready to proceed?

COLLOQUY

1 MS. JONES: My question is the testimony from
2 Ms. Milbrodt, not for testimony from Mr. Hightower.
3 Would she be able to testify that this document as a
4 records custodian says at this time it was pinging off
5 of this tower and this sector?

6 THE COURT: Well, guess what? That would be
7 something I would have expected you to have asked her.

8 MS. JONES: That is the clarification.

9 THE COURT: All right. Talk to Mr. Lee first.
10 Counsel approach.

11 (Off-the-record discussion held.)

12 THE COURT: Ms. Milbrodt, they're never going to
13 finish with you. They like you so much, they want to
14 keep you here.

15 Without objection from counsel for the Defendant,
16 you permit her to ask an additional question concerning
17 the predicate for a document?

18 MR. LEE: Yes, sir.

19 MS. JONES: Permission to approach?

20 THE COURT: You may. Get 7, 8 and 9.

21 REDIRECT EXAMINATION

22 BY MS. JONES

23 Q I'm going to show you 7 and 8 -- State's 7 and 8,
24 which are the records providing the call logs. If you look
25 at those documents, State's 7 and 8, would you be able to

REDIRECT EXAMINATION OF MILBRODT BY JONES

1 look at this map and say that this map accurately reflects
2 the location of those towers indicated?

3 A There's one more document I would need. And this
4 is the document that we sent that has the cell tower address
5 location key. And with that I could then authenticate the
6 address corresponds with the information that we sent.

7 Q Okay. Thank you. So, no.

8 A The answer -- without that -- without the
9 supporting document I would need.

10 MS. JONES: Your Honor, based on your previous
11 ruling and her answer regarding that, we would not be
12 introducing any visual aids.

13 THE COURT: You're not going to introduce --

14 MS. JONES: I'm not going to use visual aids for
15 this. And Mr. Hightower will no longer be testifying.

16 THE COURT: Pardon?

17 MS. JONES: Mr. Hightower will no longer be
18 testifying.

19 THE COURT: Very well. All right. Are you ready
20 to proceed?

21 MS. JONES: Yes.

22 THE COURT: Bring us the jury, please.

23 (Jury enters the courtroom at 10:43 a.m.)

24 (Off-the-record discussion held.)

25 THE COURT: How long do we have?

REDIRECT EXAMINATION OF MILBRODT BY JONES

1 JUROR: We've got about an hour and a half.

2 THE COURT: I'll take care of that. I understand
3 completely. I'm diabetic.

4 JUROR: I forgot.

5 THE COURT: Counsel approach.

6 (Off-the-record discussion held.)

7 THE COURT: Mona, let the record reflect that I
8 have a situation with a juror in which he needs
9 medication. And with consent of the lawyers of both
10 parties, the juror has used the clerk's phone, called
11 his wife, who, like my wife, did not answer the
12 telephone. However, he left a voice mail message
13 asking her to bring him the medicine, which can be done
14 if she gets the message within a relatively short
15 period of time. I've advised the lawyers of that and
16 have no objection.

17 I have also advised the juror that if he begins to
18 feels ill in any way at any time, please let me know,
19 and I'll handle the situation in the event we don't
20 hear back from his wife. We have left a cell -- or a
21 telephone number for his wife to return his call to the
22 Clerk of Court of Jasper County to let them know that
23 she's going to bring the medicine.

24 In the meantime, we're going to proceed with the
25 trial of this case. However, the juror has been made

REDIRECT EXAMINATION OF MILBRODT BY JONES

1 aware if he needs assistance, he is to let me know.

2 And that is with consent of both sides.

3 (The jury enters the courtroom.)

4 All right. Counsel, this witness, ladies and
5 gentlemen, was previously sworn yesterday. She is
6 under oath and we are in direct examination of this
7 witness.

8 Thereupon,

9 KAREN MILBRODT

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

12 THE COURT: You may proceed. Bearing in mind that
13 we've done some things, counsel, outside of the
14 presence of the jury which you may need to repeat.
15 Please proceed.

16 MS. JONES: Absolutely. Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. JONES

19 Q Ms. Milbrodt, we were talking yesterday about your
20 working at Verizon Wireless?

21 A Yes, ma'am.

22 Q And as you are working with Verizon, you respond
23 to subpoenas?

24 A We do. I do.

25 Q Okay. And were you asked to respond to some

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 subpoenas in this case?

2 A Yes.

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

4 THE COURT: Absolutely.

5 THE COURT:

6 BY MS. JONES

7 Q Ms. Milbrodt, I am first going to hand you what
8 has been marked State's Exhibit 7 and previously admitted
9 State's Exhibit 7. Can you identify that?

10 A Yes, this is a portion of a record of what we call
11 incoming/outgoing cell phone log. So, this is a record of
12 calls made to or from a specific phone number.

13 Q Okay. And what is the phone number that that call
14 log is for?

15 A Phone number 843-415-3979.

16 Q 3979 previously testified to belong to Terrance --

17 THE COURT: Counsel, you can't talk to the board.
18 You've got to turn around.

19 THE COURT:

20 BY MS. JONES

21 Q Previously testified to belong to Terrance
22 Johnson.

23 MR. LEE: Is that I question, Your Honor?

24 THE COURT: Counsel, ask a question. Objection is
25 sustained. Don't make a statement. This is not

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 argument.

2 THE COURT:

3 BY MS. JONES

4 Q That phone, is there a -- a phone call to that
5 phone around 9:33 p.m. the night of November 12th?

6 A Can you ask your question once again just to make
7 sure I understand correctly?

8 Q Yes. Are there -- let me rephrase.

9 Are there -- is there an incoming phone call
10 to that phone number around 9:33 p.m. November 12th?

11 A Yes.

12 Q Okay. Is that call answered?

13 A Yes.

14 Q Okay. At 9:34 p.m., is there an incoming call?

15 A There is an incoming call, yes.

16 Q And is it answered?

17 A Yes.

18 Q At 9:37 p.m. is there an incoming call for that
19 phone number?

20 A There is an incoming call.

21 Q And what is the phone number from that incoming
22 call?

23 A Are you asking me what number dialed --

24 Q Yes.

25 A -- that number? Okay. The calling party number

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 is 843-480-5967.

2 Q Okay. How long does that phone call last?

3 A Twenty seconds.

4 Q And what phone tower is that call utilizing?

5 A The cell tower in use when the call began and
6 ended was 216. Hitting off of our Charleston switch.

7 Q Okay. And is there another -- on that record, is
8 there another indicator of where that -- what portion of
9 that tower the phone is utilizing?

10 A Yes. Our -- our cell towers have antennas on top
11 of them. They are known in our world as a sector and it
12 would be hitting off of sector one alpha.

13 Q After 9:37 the night of the 12th, are there any
14 more answered phone calls to that phone number?

15 A Can you ask your question once again? I just want
16 to make sure I respond factually.

17 THE COURT: Speak up.

18 WITNESS: I just want to make sure I respond
19 accurately.

20 WITNESS:

21 BY MS. JONES

22 Q For the night of November 12th, does that phone
23 number answer any more phone calls or do they go to voice
24 mail?

25 A There were a couple of calls that appear to have

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 been answered in between calls that are being forwarded to
2 voice mail. So, for example, at 2300 hours, 37 minutes, a
3 21-second phone call.

4 Q Could that have gone to voice mail?

5 A It is possible. But the record stops at that
6 time. So, yes, like -- in fact, looking at the records,
7 because these calls are identical to the phone at, let's
8 say, 2337 there's actually two, two records. One is the
9 direct -- the call and then going to voice mail. So, it
10 would be -- I would be assuming that it went to a voice mail
11 as opposed to being answered.

12 Q Okay. But you are able to tell the 9:37 was
13 answered?

14 A It is an identical time stamp of a call that was
15 forwarded to voice mail, so it is my assumption that it was
16 a call -- unanswered call that was routed to voice mail.

17 Q Okay. I want to show you now State's Exhibit 8.

18 MS. JONES: Permission to approach the witness,
19 Your Honor?

20 THE COURT: Absolutely.

21 THE COURT:

22 BY MS. JONES

23 Q Do you recognize what this is?

24 A Yes, ma'am.

25 Q And what is that?

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 A This is another incoming and outgoing call detail
2 record, different phone number, same time range.

3 Q What is the phone number?

4 A 470-725-9329.

5 Q And is that a fair and accurate copy of Verizon's
6 records for this phone number?

7 A Yes, ma'am.

8 MS. JONES: At this time State moves State's 8
9 into evidence previously admitted.

10 THE COURT: As to -- and in the presence of the
11 jury, you are also moving the introduction of 7?

12 MS. JONES: Yes, Your Honor.

13 THE COURT: As to 7 and 8, subject to your earlier
14 objection?

15 MR. LEE: Yes, sir.

16 THE COURT: Ladies and gentlemen of the jury,
17 State's Exhibit 7 and 8 will be admitted into evidence
18 in the trial of this case over objection.

19 Proceed.

20 (Previously admitted on Page 536.)

21 MS. JONES: Thank you, Your Honor.

22 BY MS. JONES

23 Q At 8:30 p.m. is there an outgoing call on those
24 records?

25 A Yes, ma'am.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 Q Okay. And what number is called?

2 A Area code 843-226-2198.

3 Q All right. At 9:37 is there a call?

4 A Yes, ma'am.

5 Q Okay. And what number is called at 9:37?

6 A 843-226-9189.

7 Q And what cell phone tower is being utilized for
8 that phone call?

9 A Cell phone tower 216 off of the Charleston switch.

10 Q Okay. And what side of the cell phone tower?

11 A Sector one alpha.

12 Q Are there -- is there an outgoing call on this
13 phone at 9:44 p.m., 9:52 p.m. and 9:56 p.m.?

14 A Yes, ma'am.

15 Q They are all outgoing calls?

16 A Yes, ma'am.

17 MS. JONES: Permission to approach?

18 THE COURT: Yes.

19 THE COURT:

20 BY MS. JONES

21 Q Ms. Milbrodt, I'm now showing you State's Exhibit
22 9. Without publishing that, can you identify that, please?

23 A I can.

24 Q What is that?

25 A This is one of a record of text message content.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 So, this is a record including -- of a text message that was
2 sent from a specific phone to another number and the actual
3 text content that was said in the message.

4 Q Okay. And is that a fair and accurate copy of
5 that text message from Verizon?

6 A Yes.

7 MS. JONES: Your Honor, at this time the State
8 moves Exhibit 9 into evidence.

9 THE COURT: As to State's 9?

10 MR. LEE: Subject to my previous objection.

11 THE COURT: Ladies and gentlemen of the jury,
12 State's Exhibit No. 9 will be admitted into evidence in
13 the trial of this case over objection.

14 You may proceed, Solicitor.

15 MS. JONES: Thank you, Your Honor.

16 *(Whereupon, State's Exhibit No(s). 9 marked for*
17 *identification and received in evidence.)*

18 BY MS. JONES

19 Q Ms. Milbrodt, what phone number sent that message?

20 A 470-725-9329.

21 Q At what time was this text message sent?

22 A We received the message 21:56, so 9:56 and six
23 seconds, and it was delivered to the recipient 21:56 and 11
24 seconds, so, 9:56 and 11 seconds.

25 Q Okay.

DIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 A And this date is November 12, 2014.

2 Q Thank you. What does that text message say? And
3 if you need to spell the words.

4 A Sure. Dats, D-A-T-S, done, need to Holla, capital
5 H, O-L-L-A at u, the letter "u," not spelled out.

6 Q That is it? That's the content of that text
7 message?

8 A Yes, ma'am. There's no period between the done
9 and need.

10 Q Okay. My apologies. Is that what it looks like?

11 A Yes.

12 Q Okay.

13 MS. JONES: Okay. Ms. Milbrodt, I have no further
14 questions for you at this time. Thank you.

15 WITNESS: Yes, ma'am.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION

18 BY MR. LEE

19 Q Hello, Ms. Milbrodt.

20 A Hello.

21 Q Your testimony earlier said that at 23:17, which
22 is 11:17 p.m., on November 12, 2014, it appeared that there
23 was a phone call that was answered at that first number that
24 we talked about. Is that correct?

25 A Can you give me the time once again, please?

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 Q 23:17, which is 11:17 p.m.?

2 A To me, it appears as if this call was forwarded to
3 voice mail.

4 Q Didn't you testify earlier that it appeared that
5 it was answered?

6 A This is one of the calls that have the two time
7 stamps of a incoming call that is forwarded.

8 Q Uh-huh. (Indicating affirmatively.)

9 A So, if I said that it appears to be answered, I
10 apologize, but it is a -- like I said, there's two, two time
11 stamps, if I could show you, I --

12 Q Okay. But then you said --

13 A It is an incoming call at the same time of a
14 forwarded call, which would indicate forwarded to voice mail
15 or another number that call forwarding may be on.

16 Q I think you said that you're assuming these
17 answers as far as these calls going to voice mail. You're
18 assuming that just -- but you have no way of knowing, do
19 you?

20 A I don't know if it's forwarded to voice mail or
21 forwarded to -- the consumer has call forwarded set up on
22 his phone. But because there's an F in the directional
23 column, that would indicate it was forwarded.

24 Q Okay. That was 11:37 p.m. that night?

25 A Well, I thought you said 11:17.

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 Q Well, it's -- it's military. It says 23:17, but
2 for those not military --

3 A But now you're saying 11:37, so are you
4 speaking --

5 Q No.

6 A I just want to make sure I'm on the same call that
7 you are.

8 Q No, 11:17.

9 A Yes, 11:17 appears to be forwarded.

10 Q Okay. Okay. Now, this text message we talked
11 about, there's no way for you to look in your records and
12 know who -- who -- who typed that, is there?

13 A No, sir.

14 Q Okay. Who was it sent to?

15 A I have a phone number. It is 912-755-0776.

16 Q And whose phone number is that?

17 A Our records would not indicate the recipient of
18 that by name, just number.

19 Q Subscriber information would say that, wouldn't
20 it?

21 A If a subscriber was our customer, if this number
22 belonged to our customer and that was subpoenaed, we would
23 have subscriber information.

24 Q Okay. Did anybody subpoena that information from
25 you?

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 A I'm not aware of it. I'm not aware of any
2 subpoena for that record.

3 Q If they did it wouldn't go to you, right?

4 A It would go to someone in my office who does the
5 production, yes.

6 Q So, we don't know who typed that. We don't know
7 who it was to. And then obviously if there was any way to
8 show whether or not it was actually received on their phone?
9 I know the records don't. But is there any way to show it
10 actually showed up on their phone?

11 A Not -- not by a record that Verizon would be able
12 to produce.

13 Q The Solicitor elicited some testimony asking what
14 tower a couple of phone calls came off of; is that right?

15 A Yes, sir.

16 Q Just in general, if a tower -- if you don't know
17 the answer, don't answer it -- if a tower is overloaded for
18 some reason or not working, won't a cell phone call go to
19 the next available tower?

20 A Yes.

21 MS. JONES: Objection.

22 THE COURT: Ms. Jones? Yes, ma'am?

23 MS. JONES: Objection.

24 THE COURT: Sustained.

25 MR. LEE: All right. No further questions.

CROSS EXAMINATION OF KAREN MILBRODT BY MR. LEE

1 THE COURT: Redirect.

2 MS. JONES: Thank you, Your Honor, briefly.

3 REDIRECT EXAMINATION

4 BY MS. JONES

5 Q So, Ms. Milbrodt, I'm looking at a copy of what
6 was admitted. Do you still have your copy?

7 A Yes, ma'am.

8 Q Okay. So, when we're looking at the same records,
9 and we have all these columns, if next to the phone number,
10 an F means it was forwarded?

11 A Yes, ma'am.

12 Q Okay. So, if you look at the phone records for
13 the phone number ending in 3979 --

14 A Yes, ma'am.

15 Q -- does it appear that from 9:38 p.m. to 1:53 a.m.
16 the next morning those phone calls were forwarded?

17 A Yes, ma'am.

18 Q Every single one?

19 A Every one, yes, ma'am.

20 MS. JONES: Thank you. I have no further
21 questions, Your Honor.

22 THE COURT: Recross, limited to redirect, Counsel.

23 MR. LEE: No further questions, Your Honor?

24 THE COURT: As to this witness, Solicitor?

25 MS. JONES: She may be excused.

REDIRECT EXAMINATION OF KAREN MILBRODT BY MS. JONES

1 THE COURT: Any objection?

2 MS. JONES: No, sir.

3 THE COURT: Ms. Milbrodt, thank you. Leave my
4 exhibits with me. Just leave them right there on the
5 thing. The court reporter will take them. Thank you
6 for your patience. Thank you for your time. You are
7 excused from the trial of this case and you may leave
8 the courtroom at this time. Please travel safe.

9 WITNESS: Thank you, Your Honor. Thank you, jury.

10 THE COURT: Call your next witness.

11 MS. JONES: The State calls Dr. Erin Presnell.

12 Thereupon,

13 SUSAN ERIN PRESNELL

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

16 THE COURT: Good morning, ma'am. Watch your step.
17 Have a seat. Make yourself comfortable. Pull the
18 chair up. Adjust the microphone to your height. Get
19 your glasses. Get your file. State your full name.
20 Spell your last name for the court reporter, please.

21 WITNESS: My name is Susan Erin Presnell,
22 P-R-E-S-N-E-L-L.

23 THE COURT: Your witness, Counsel. Direct
24 examination.

25 MS. JONES: Thank you, Your Honor.

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 DIRECT EXAMINATION

2 BY MS. JONES

3 Q Dr. Presnell, where do you work?

4 A I work at Medical University of South Carolina up
5 the road in Charleston.

6 Q And what do you do at MUSC?

7 A I am a forensic pathologist.

8 Q What does that mean?

9 A A forensic pathologist is a doctor that
10 specializes in pathology. And pathology is a study
11 of a disease. So, forensic pathology is a subspecialty of
12 that where, say, we are not looking at a tissue or biopsy
13 that your clinician would remove from a patient, but, we are
14 looking at the entire person that passed. That process
15 being the autopsy. We are looking for disease, but we also
16 evaluate trauma. And through that whole process, we are
17 ultimately coming up with a cause and manner of death.

18 Q How long have you been a pathologist?

19 A I've been a fingerprint pathologist board
20 certified since 1999.

21 Q Did you have to receive specialized education and
22 training to become a board certified pathologist?

23 A Yes, I went to college at Clemson, then medical
24 school at MUSC. Actually, I just stated at MUSC. After
25 that school I did my pathology training called residency at

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 MUSC and then an additional year, subspecialty in forensics,
2 and along the way I took an exam to have a medical
3 license -- a license to practice medicine in South Carolina
4 and general pathology as well as forensic pathology
5 subspecialty boards.

6 MS. JONES: Your Honor, at this time the State
7 moves Dr. Presnell in as an expert in forensic
8 pathology.

9 THE COURT: Any objection to her qualifications?

10 MR. LEE: No objection.

11 THE COURT: Ladies and gentlemen of the jury,
12 recalling my earlier instruction to you concerning
13 expert testimony, the witness is qualified without
14 objection in the field of forensic pathology.

15 You may proceed, Solicitor.

16 MS. JONES: Thank you, Your Honor.

17 BY MS. JONES

18 Q Dr. Presnell, did you have an opportunity to
19 perform an autopsy on Terrance Johnson?

20 A Yes. I did an autopsy on Mr. Johnson November 14,
21 2014, at MUSC.

22 Q Okay. How old was Mr. Johnson?

23 A He was 32 years old.

24 Q And how tall was Mr. Johnson?

25 A Let's see. He was six -- he was 70 inches, which

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 is 5, 10.

2 Q Okay. Thank you. What happens when you first
3 begin an autopsy?

4 A Well, the process of an autopsy pretty much
5 follows standards with certain ancillary study, depending on
6 what time the death is. So, what we will do is we will
7 receive a case referred to us by a coroner. We will do an
8 external exam, documentation, photographs as well and then
9 do a complete external exam, looking at, again, any kind of
10 disease, but also trauma.

11 Then, after that, we will do a complete
12 internal exam. We look at and remove all of the organs and
13 dissect them and then we also draw blood and urine for
14 toxicology. We may take sections of tissue that we may need
15 to look at under the microscope. It just depends on the
16 type of case, and then we put all of that information
17 together in a final autopsy report.

18 Q Did Mr. Johnson in this case have visible wounds
19 when he came to you?

20 A Yes, he did.

21 Q And what types of wounds were those?

22 A Well, he was shot and he had a couple of abrasions
23 or scrapes, but the predominant injuries were five gunshot
24 wounds to his body.

25 Q Okay. Were you asked to assist in a visualization

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 for this court?

2 A Yes.

3 Q And would that help aid your testimony?

4 A Yes, it would.

5 MS. JONES: Your Honor, I would ask Dr. Presnell
6 to step down from the stand.

7 THE COURT: Okay. Hold on a second. Margaret
8 is out of the courtroom. I need to get a portable
9 mike. Thank you.

10 You may come around to view anything that the jury
11 is going to be shown.

12 Now, hold on a second, Counsel. Step back, if you
13 would, please, sir.

14 Counsel approach.

15 (Off-the-record discussion held.)

16 BY MS. JONES

17 Q Prior to your testimony were you asked to place
18 these rods in?

19 A Yes.

20 Q Okay. And you actually put these in?

21 A Except for the one on the top that was supervised.

22 Q Okay. Okay. If you could go one by one, what
23 they are?

24 A Just in general. He had five gunshot wounds to
25 his body. Three were on the right and two were on the left.

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 And when we go through these, I'll talk about first, second,
2 third, fourth. It is not necessarily the order that he
3 received them in, but it is the way that we approached them.

4 So, one is to his right forearm. The
5 entrance wound is on the back of the right forearm and it
6 exits on the side, the inner side of his forearm. So it's
7 moving from his right to his left, in that direction.

8 And then he has two to the right side of the
9 chest. One enters in -- right at the top of the right
10 chest. It grazes the heart on the way through his body to
11 actually exit on the left side of his body. So, this is the
12 direction of the shot to the right upper chest.

13 The other one on the right side of the body
14 is also to the right of the mid chest. This time it is in,
15 goes through the heart, through the left lung and into the
16 right -- or the left armpit area where we retrieved the
17 bullet. Three to the right.

18 He also has the two to the left. One is
19 through to the left side of the abdomen. It goes in through
20 the intestines, through to the bladder and is to the right
21 buttock area where we retrieved the bullet.

22 The other, the fifth one, is to the right --
23 the left thigh. It goes through some soft tissue, soft
24 tissue of the thigh, and is also to the right buttock area.
25 So, the two on the left are going from his left over to the

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 right buttock area. The three to the right are going --
2 one's actually going downward, and the rest is going upward,
3 but both to the left.

4 Q Thank you, Dr. Presnell.

5 Dr. Presnell, these gunshot wounds, would any
6 of these be immediately fatal?

7 A Well, the one actually -- one skims the heart, and
8 the other one goes through to the heart. Yes, that would
9 be -- number three up there, that would not necessarily be
10 immediately fatal, but fatal with -- within minutes, perhaps
11 seconds.

12 Q Okay. After receiving these sort of wounds, would
13 a person be able to still move?

14 A For a short period of time, yes.

15 Q Okay. But they still would have movement in their
16 body?

17 A They -- they could. I mean, some -- some may not
18 but there's that potential, yes.

19 Q Okay. Does one's adrenaline start kicking in
20 during, say, when they're shot?

21 A It's called a fight -- fight-or-flight reaction,
22 and so, yes, it would.

23 Q Okay. During your autopsy of Mr. Johnson, did you
24 also find a large quantity of blood within his chest cavity?

25 A Yes, there was 1.4 liters, almost a liter and a

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 half in the left chest cavity. That's coming from the
2 gunshot wound labeled three over there that went through the
3 heart and the left lung.

4 Q Thank you. Sorry to interrupt you.

5 So, the majority of Mr. Johnson's blood loss
6 stayed internally?

7 A I don't know what was at the scene, but there was
8 a substantial amount inside.

9 Q Okay. How long does it take for the brain not
10 receiving oxygen to be declared dead?

11 A Well, so that general idea is when somebody's
12 heart stops or stops breathing is to resuscitate them and
13 get their oxygenation back within four minutes, and that is
14 just a soft number really, but in any case within four
15 minutes of not having oxygen to the brain, that brain
16 would -- death would occur.

17 Q And in these four minutes is when this adrenaline
18 could kick in?

19 A Yes.

20 Q Okay. A couple more questions.

21 Dr. Presnell, what was Mr. Johnson's cause of
22 death?

23 A I labeled the cause of death as gunshot
24 wounds to the torso and that the ones to the extremities
25 were contributory.

DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS.
JONES

1 Q And what was Mr. Johnson's manner of death?

2 A Homicide, meaning for us as a medical -- medical
3 sense, a death at the hands of another.

4 MS. JONES: I have no further questions for
5 Dr. Presnell.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MR. LEE

9 Q There's no way for you to tell who shot somebody?

10 A No.

11 Q Or exactly when?

12 A No.

13 Q And I think that I understand the -- but
14 essentially, there's three coming from this side, bullets
15 going in this way and two coming this way?

16 A Correct.

17 Q Okay.

18 A Although, I will say that the one to the right
19 firearm, that may have been a separate gunshot wound or it
20 may have been in the path of one of the others.

21 Q Are you talking about this right here?

22 A Yes.

23 Q Okay. But then there's one coming this way, it
24 goes into the abdomen and one into possibly the leg is then
25 one that way?

CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. LEE

1 A Correct, two from the left to the right in the
2 torso and two -- two from the right to the left.

3 MR. LEE: That's all I have, Your Honor.

4 THE COURT: Redirect.

5 MS. JONES: None, Your Honor.

6 THE COURT: As to this witness?

7 MS. JONES: She may be excused.

8 THE COURT: Any objection?

9 MR. LEE: No, sir.

10 THE COURT: Ma'am, you're excused from the trial
11 of this case. Drive carefully.

12 WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MS. JONES: Your Honor, at this time, the State
15 rests.

16 THE COURT: Very well.

17 Madam foreperson, ladies and gentlemen of the
18 jury, I am going to ask you to step to the jury room.
19 We have gotten in touch, sir, with your wife.
20 Hopefully, she's on the way, Margaret.

21 THE CLERK: It should be shortly. She will be
22 leaving shortly.

23 THE COURT: She will be here shortly. So I'm
24 taking a break. Please don't discuss the case. I'll
25 be back with you just as soon as I can.

CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. LEE

1 (Jury exits the courtroom.)

2 THE COURT: Are there any matters of law that I
3 need to take up from the Defendant at this time since
4 the State has rested?

5 MR. LEE: Yes, sir, briefly. At this time I would
6 renew all of my previous motions that I've made. My
7 recollection would be simply the motion to exclude
8 Robin Simmons' testimony about the Defendant's alleged
9 possession of a gun. And we argued, I won't rehash it,
10 but you ruled against me on that, and Robin Simmons was
11 allowed to testify that she saw Mr. Hopkins earlier at
12 some point with a gun. So, I renew that -- that
13 motion.

14 I also would renew my motion to exclude the phone
15 records, particularly the text message that
16 Ms. Milbrodt just testified to for the reason we argued
17 yesterday for the exclusion of that. So, I would renew
18 those motions, any other motions that I made previously
19 which you ruled against us.

20 I also would make motion for directed verdict on
21 the issue of -- on the charge of murder under Rule 19
22 of Rules of Criminal Procedure in that the State has
23 failed to produce evidence establishing each and every
24 element of murder. They have raised a -- I guess,
25 speculation, but it is our position that they have not

CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. LEE

1 shown enough to get past a directed verdict. So, for
2 those reasons, I would respectfully request a directed
3 verdict of not guilty and acquittal on the murder
4 charge.

5 THE COURT: First of all, Solicitor, I don't need
6 any further argument on the rulings that I have made
7 during the course of this trial. I want to hear you on
8 a directed verdict.

9 And, just for the record, I've already repeated
10 this, because of the proximity in time and location, I
11 did allow the witness to testify she saw a black pistol
12 in the possession of the Defendant, which was on the
13 day of the murder. A little bit discrepancy about
14 exactly how long because of memory; however, I thought
15 it was relevant and I overruled that objection.

16 As to the text messages, Mr. Lee knows that I have
17 exhaustively researched that issue and provided him, as
18 well as you, with every case I could find in the United
19 States on that issue. And as a result of which, I have
20 made my ruling very clear on this record, and I decline
21 to change either one of my rulings.

22 I'll now hear from you on a directed verdict.

23 MS. JONES: Thank you, Your Honor.

24 Respectfully, I disagree that the State did not
25 produce enough evidence to send it to the jury. We

CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. LEE

1 need direct evidence or circumstantial evidence.

2 Here we have two prior statements made by the
3 Defendant that he was going to kill the victim and that
4 he was waiting on a contract to be signed. We have a
5 jailhouse snitch where the Defendant confessed to him,
6 that he gave statements that only the killer could
7 know, the fact that the shooting occurred in the car
8 and why it happened, the 15,000-dollar hit.

9 We have the phone records, but the last
10 communication to Mr. Johnson was at 9:37 p.m. At 9:37
11 p.m. he was utilizing the very same cell phone tower
12 that Mr. Hopkins was utilizing.

13 We have evidence that he has the means to commit
14 the murder. There's testimony that he had a weapon on
15 him the day of the murder.

16 I think in combination of all of that he had the
17 means, he had the motive and he had the opportunity.
18 All of that evidence was presented and it was enough to
19 go to the jury.

20 THE COURT: Thank you very much.

21 As Mr. Lee and you both know, under Rule 19 of the
22 Rules of Criminal Procedure the court is to consider
23 only the existence or nonexistence of evidence and not
24 its weight on a motion for a directed verdict. At the
25 close of the State's case, the court can only direct a

CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. LEE

1 verdict in the Defendant's favor if there's a failure
2 of competent evidence tending to prove the charge in
3 the indictment. Your motion for a directed verdict,
4 Mr. Lee, at the close of the State's case is
5 respectfully denied.

6 I would ask, Mr. Lee, that you and your client
7 come forward.

8 Solicitor, I'm going to need -- and I'm going to
9 have your client sworn by the clerk.

10 You have had an opportunity to discuss this with
11 him?

12 MR. LEE: Yes, sir.

13 THE COURT: But I need to see the two of you first
14 at the bench before that.

15 (Off-the-record discussion held.)

16 THE COURT: Mr. Lee, would you and your client
17 please come forward.

18 Madam clerk, would you please swear the Defendant.

19 Thereupon,

20 ROHAIME JAMAR HOPKINS

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

23 EXAMINATION BY THE COURT

24 THE COURT: Would you state your full name for the
25 record.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 THE DEFENDANT: Rohaime Jamar Hopkins.

2 THE COURT: Mr. Hopkins, at this time, I'm going
3 to explain to you certain of your rights. If you do
4 not understand anything that I say, please let me know.
5 If you want me to explain anything in further detail,
6 please let me know.

7 Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: We have now reached the stage of the
10 trial where you may present your defense. You have the
11 right to testify in your own behalf. However, no one,
12 not this court, not your attorney, not anyone can make
13 you testify. In the event you have a criminal record
14 for any conviction involving dishonesty or false
15 statement or for any crime punishable by imprisonment
16 for more than one year, and this court makes a
17 determination as a matter of law that the probative
18 value of admitting this evidence outweighs its
19 prejudicial effect to you, the Solicitor would be able,
20 if I made such a ruling, to impeach you on your record
21 for purposes of trying to attack your credibility or
22 your believability.

23 Now, I understand from your attorney and from the
24 Solicitor that, number one, the Solicitor has provided
25 a certified copy of your record to your attorney in a

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 timely fashion. I further understand that your
2 attorney acknowledges that he received it, that you
3 have a previous conviction for voluntary manslaughter,
4 that you have a previous conviction for possession of a
5 weapon, and you have a previous conviction for
6 transportation of a weapon.

7 Is that correct, Mr. Lee?

8 MR. LEE: That's correct, Your Honor.

9 THE COURT: Is that correct, Solicitor?

10 MS. JONES: Yes, Your Honor.

11 THE COURT: Very well. Both, the Solicitor --

12 MR. LEE: Your Honor, he -- he's -- he's telling
13 me that his belief now is that those charges are still
14 pending, the two gun charges.

15 THE COURT: Well, the Solicitor says they're
16 convictions and you have a certified copy of his
17 record. Hold on a second. I want to make sure you get
18 complete information.

19 MR. LEE: Judge, there was some confusion about
20 which ones he was -- we were talking about.

21 THE COURT: Whether or not it's a pending charge
22 or a conviction.

23 MR. LEE: Yes, however my --

24 THE COURT: But you've had the certified copy of
25 his record and you've had the opportunity to go over

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 the certified copy of his record --

2 MR. LEE: Yes.

3 THE COURT: -- with your client; have you not,
4 Mr. Lee?

5 MR. LEE: Yes, sir, I have.

6 THE COURT: And you're satisfied of what I've
7 advised your client are convictions on the certified
8 copy of the record provided to you by the Solicitor?

9 MR. LEE: Yes.

10 THE COURT: All right. Now, Mr. Hopkins, I want
11 to make sure you understand, since I've been over your
12 record and what I could rule if I made that
13 determination, that is that the prejudice will
14 affect -- or that the probative value of admitting the
15 evidence outweighs its prejudicial effect to you.

16 If you elect not to take the witness stand in the
17 trial of this case, I will charge the jury that they
18 are not to give the fact that you did not testify any
19 consideration whatsoever, and there is to be absolutely
20 no prejudice to you because you did not testify. You
21 have the constitutional right to remain silent. The
22 burden of proof is on the State of South Carolina to
23 prove guilt beyond a reasonable doubt.

24 The decision as to whether or not you testify in
25 the trial of the case is not your lawyer's; it is only

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 yours. So, the decision as to whether or not you
2 testify will be left entirely up to you. You may talk
3 with your attorney but the decision is ultimately only
4 yours and not your attorney's.

5 Have you understood what I've just told you?

6 THE DEFENDANT: Yes, sir, I have.

7 THE COURT: Do you want a moment to talk to your
8 attorney?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you wish to testify in the trial of
11 this case?

12 THE DEFENDANT: I will not testify.

13 THE COURT: And is that your decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And no one else's decision?

16 THE DEFENDANT: No one else but mine.

17 THE COURT: No one forced you into that decision?

18 THE DEFENDANT: No, sir.

19 THE COURT: No one promised you anything?

20 THE DEFENDANT: No, sir.

21 THE COURT: No one coerced you in any way in
22 making this decision?

23 THE DEFENDANT: No, sir.

24 THE COURT: It is of your own freewill, your
25 decision?

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 THE DEFENDANT: Yes, it is.

2 THE COURT: Thank you. You may return to your
3 seat with counsel.

4 Mr. Lee.

5 MR. LEE: Yes, sir.

6 THE COURT: Anything else on that matter?

7 MR. LEE: Not on that matter.

8 THE COURT: All right. Before -- I'm going to ask
9 if you want a moment to talk to your client. Does the
10 Defendant intend at this point to present any evidence?

11 MR. LEE: We do not, Your Honor.

12 THE COURT: You do not.

13 MR. LEE: We do not, Your Honor.

14 THE COURT: All right. I need to take a longer
15 break. It is now 20 to 12:00 so I -- because I'm
16 waiting on insulin, an insulin pump for a juror, as you
17 both know. So we will take our break right now. Feel
18 free to stand up, stretch your legs, use the restroom.
19 I need to make sure the jury is okay before we can go
20 forward and then I'll call y'all back into chambers.

21 MR. LEE: Yes, sir.

22 THE COURT: Thank you very much.

23 (Brief recess.)

24 THE COURT: Thank you. Please be seated.

25 Let the record reflect that I have been over my

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 entire charge with the attorneys. They both are very
2 much aware of exactly what I intend to charge.

3 Let the record also reflect that the attorneys
4 have reviewed my proposed verdict form. They are
5 satisfied with the verdict form. The reason we took
6 this extended break is because obviously we were
7 waiting on insulin to be delivered to a juror. It has
8 now been delivered and the juror says that his pump is
9 now working or has been attached.

10 With that, we have also been over the order of
11 closing argument. This Defendant is going to rest,
12 which we will do in the presence of the jury. The
13 State will have the first argument in full and there
14 will be a reply argument by counsel for the Defendant,
15 then there will be a final reply by the State since the
16 State has the burden of proof. The State cannot
17 introduce any new matter in their final argument, can
18 only respond to the argument of the Defendant.

19 Both sides have asked for 30 minutes, which I have
20 agreed to. After 25 minutes, each side will hear a
21 familiar (tapping sound by the Court) to let them know
22 they've reached 25 minutes and to wrap it up within
23 five minutes.

24 Is the State ready to proceed?

25 MS. JONES: Yes, Your Honor.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 THE COURT: Is the Defendant ready to proceed?

2 MR. LEE: Yes, Your Honor.

3 THE COURT: Bring us the jury, please, ma'am.

4 (Jury entered the courtroom.)

5 THE COURT: Madam foreperson, ladies and gentlemen
6 of the jury, you have heard the evidence in this case
7 from the State of South Carolina. We will now hear
8 from the Defendant.

9 Mr. Lee, you may call your first witness.

10 MR. LEE: Your Honor, at this time, the Defense
11 rests.

12 THE COURT: Very well. Ladies and gentlemen of
13 the jury, you have heard all of the evidence in this
14 case. You will now hear the closing arguments of the
15 attorneys followed by my charge to you on the law in
16 this case. I ask that you give the attorneys your
17 careful consideration.

18 Solicitor.

19 MS. JONES: Thank you, Your Honor.

20 A scam artist, that's what Antoine Drake is, a
21 trickster, scam artist. If a scam artist is going to
22 murder somebody, are they going to leave behind
23 marijuana? It is certainly worth something. Are they
24 going to leave behind a pocket full of cash? No. A
25 scam artist, somebody who lives off of other people's

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 money is not going to do that. Cash money, marijuana
2 worth money. He's a lot of things, trickster, cocaine
3 user, but Antoine Drake is not a murderer.

4 Rohaime Hopkins, on the other hand, had the means,
5 the motive, and the opportunity. He was the only
6 suspect from day one. Not Antoine Drake. Here is how
7 we know this.

8 Two weeks before T.J. is killed, Daytron Simmons
9 over here, that man right there, Rohaime Hopkins, not
10 Antoine Drake say, I'm waiting on them boys to sign the
11 contract. I'm waiting on them boys to sign the
12 contract. He means Trey Graves. And you heard who
13 Trey Graves is. Trey Graves was a big time drug dealer
14 in Jasper County. Not any more. He's serving a
15 28-year Federal prison sentence. Trey learned that
16 Terrance Johnson was a snitch and Trey, what he said
17 was snitches are not tolerated. So, Trey called -- he
18 called a hit. He called a 15,000-dollar hit. That is
19 the hit that that man right there is referencing when
20 he says it in front of Daytron Simmons while looking at
21 Terrance Johnson. Rohaime needs his opportunity. He
22 has the motive and mode he needs to opportunity.

23 And you've heard both from Antoine Drake and Byron
24 Singleton to confirm this, that Rohaime tried to do it
25 earlier. He tried to kill T.J. earlier than the 12th,

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 but he got a phone call and whoever he was on the phone
2 call with, he said, I'm with Rohaime. Rohaime's cover
3 is blown. He can't do it then. So, he waits.

4 The time came on November 12th. Now,
5 November 12th, he knew that was the day. That was the
6 day that he was going to kill T.J. He goes to his
7 family gathering, T.J.'s fiancée, and is T.J.'s
8 fiancée's family. They had just lost their
9 grandmother. He knows T.J. is going to be there and
10 with him he brings his handgun, his pistol. He has it
11 in his hip. You heard Robin Simmons testify to that.

12 Now, Robin Simmons got on that witness stand. You
13 saw her. You saw she was nervous. She didn't really
14 want to be here. And something she said was real
15 important. Rohaime Hopkins is family. She didn't want
16 to be up here testifying against her family. But she
17 did, and she told you the truth. She told you that he
18 had that gun on his hip that day.

19 She also told you that that afternoon, that man,
20 the Defendant, Kevin insisted, take me to Roseland.
21 Take me to Roseland. Take me to Roseland. He didn't
22 ask anybody else to take him. He insisted T.J. take
23 him and he insisted T.J. take him alone. She also said
24 that she heard him say to the Defendant, say, he has to
25 go make a play, and I asked her a little bit about what

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 that meant. She said for weed. Well, there is the
2 marijuana that they were selling. They were selling
3 marijuana that day. Here it is right here, or what is
4 left of it.

5 And you heard this from Robin Simmons, who we have
6 no reason not to believe, and we heard it from Byron
7 Singleton who said, yes, Rohaime told me that they had
8 been selling weed all day long. Well, there it is and
9 they go to Tutu's house that afternoon, that night at
10 8:30.

11 Now, Robin is not the only person that
12 overheard the Defendant insist that T.J. take him to
13 Roseland. Antoine told you that, and we'll get to
14 Antoine later. Don't worry.

15 Daytron also said that. He heard it too. He
16 said, man, if you don't want to take him, don't take
17 him. T.J. took him.

18 Now, I want to get back to Rohaime. The Defense
19 made a big deal, a big to-do about Rohaime changing to
20 black. Yes, he did. He changed to black shirt, black
21 pants, black shoes and black hat. He knew that he was
22 going into the woods. He knew he was going to have to
23 walk out, and he knew he was going to have to remain
24 hidden. He changed into all black clothes.

25 They want you to think that there's no way that he

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 could keep a gun in the side of those pants. Well, you
2 know what, if he wanted that gun, he was going to have
3 it. Those pants had pockets and those pants had ample
4 places for him to put that gun. If he wanted that gun
5 he was going to have it on him. He did. Not only does
6 he have that gun, but he takes T.J. He makes T.J. go
7 to his home turf, nobody else's. This is his turf.

8 This is the map of Roseland that y'all were shown.
9 This is the dirt road where T.J. was killed. This
10 Shardaja, Tutu. And you know who lives here, whose
11 house that is? That is the Defendant's house. That is
12 where Rohaime Hopkins lives. He knew that he had
13 somewhere to go on foot.

14 He knew that he could shoot T.J. in his car, get
15 him on that secluded dirt road, shoot him in his car
16 and walk away. He knew that people -- people shoot
17 guns in Roseland. You heard Mr. Kesselring say that.
18 You heard Shardaja talk about that. Because that night
19 you heard them say they heard the shots. They didn't
20 think nothing of it. What they also said was these
21 were all of the gunshots that they heard that time.
22 Between 9:00 and 10:00 that night they hear five to six
23 gunshots. He knew that he could fire that gun and
24 nobody would say a thing. Nobody would come outside.
25 He could shoot him and walk away as if nothing ever

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 happened. And that is exactly what he did.

2 Now, Antoine Drake, he doesn't live over here.

3 None of those are his houses. He is not from Roseland.

4 He doesn't live here. What's his one connection to

5 Roseland? Tutu. You saw her. You met her yesterday.

6 You also learned that Antoine Drake is currently in

7 jail on a domestic violence charge against Tutu. She's

8 not even covering for him on a domestic violence

9 charge. You think that she's going to cover for him on

10 a murder charge? No.

11 Tutu starts asking, she is -- she is at the scene

12 because she lives so close to the scene. She starts

13 asking about a soda bottle. She's not concerned about

14 the soda bottle because it's Antwain's soda bottle.

15 You remember the pictures. This is a Mountain Dew

16 bottle on the passenger seat of T.J.'s car. You

17 remember her testimony. She got on that stand. She

18 didn't remember anything. You probably remember that.

19 So, I did ask her very specifically what she had

20 told the police. That is when Lieutenant Harley got on

21 the stand and he testified as to what she told him.

22 She's asking about the fingerprints on a soda bottle.

23 Because the Defendant has gone into her house and got a

24 soda bottle and he was concerned about it because it

25 came out of her house when the Defendant got it.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 Now, Antoine Drake, I told you that we would talk
2 about him again. Antoine Drake had an alibi that
3 night. We know he had nothing to do with this murder
4 because other people placed him at other areas in the
5 county. He was at Simmons Hill after T.J. and the
6 Defendant left.

7 He then goes way across town, about a 10- or
8 15-minute drive, to Wagon Branch to his girlfriend's
9 house, where he stayed until about midnight or so. We
10 know that it's at least until after 11:14 that night.
11 Because that's when the text message comes through from
12 Javare saying that Javare is going to come pick him up,
13 and then they go to the club and they are there until
14 early morning hours and he comes back to Simmons Hill
15 and essentially passes out. He's woken up the next
16 morning with the news that T.J. is dead.

17 Antoine Drake is not in Roseland when T.J. was
18 shot and killed. T.J. was not shot and killed at 9:30
19 that night. Later on, I'll tell you how I know it was
20 9:37. But he was not in Ridgeland. He was a 10-minute
21 or 15-minute drive away in Wagon Branch with
22 Shaquandulynn, but she told you that. Judge her
23 credibility, judge her demeanor. She has no reason to
24 lie to you. She's telling you the truth.

25 Then, we have this problem of Trey Graves and the

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 club. Antoine Drake, going up to Trey Graves and
2 taking credit for this murder. If I could pick my
3 witnesses, things would be different; but when you deal
4 with drug dealers, and murder for hire, and deal with
5 cocaine users, that is what you get. Other cocaine
6 users. Other drug dealers.

7 And do I wish that Antoine didn't do that? Of
8 course. But he had. And he told you the reason that
9 he went to Trey Graves is because he wanted to find out
10 the truth, if Rohaime really did it, and he did because
11 Antoine didn't get paid that day. He got a drink. And
12 Trey told him, Hopkins did it and he did it alone and
13 he's already been paid. That statement came straight
14 from the mouth of the man who ordered the hit on T.J.

15 Now, we talked about Antwain's alibi. Now I want
16 to talk about Rohaime, Mr. Hopkins' alibi. Well, he
17 gave a written statement to the police. And in this
18 written statement, he says, T.J. took me to get clothes
19 from Roseland about 6:00 p.m. and that took about 20
20 minutes. Then he dropped me off at Janeika's house,
21 Defendant which was around 6:30 or 7. And Janeika
22 dropped me off around 11:30 to 11:45 at Baytree
23 Apartments. I did not go back to Simmons Hill anymore
24 that day.

25 And then, he left Simmons Hill at 6:30 to 7:00 or

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 6:00 and he was done with Simmons Hill and he never
2 went back. Well, we know that's not true because Robin
3 took them back there. Trey Daytron Simmons and Antoine
4 Drake puts him back there. He wasn't going back and
5 forth from the Dupont's to Simmonsville. No. He
6 wasn't at the Simmons at 6:30 or 7:00 that night.
7 Nobody puts him there but himself. Nobody was there.
8 Rohaime was not there. At 6:30 to 7:00 he's still in
9 Simmons Hill at the gathering enjoying himself waiting
10 for the opportunity to get T.J. alone.

11 When Michael Taylor is picked up at 9:00 from his
12 job and taken back home, Rohaime Hopkins is not there.
13 From his written statement it reads as if he says he
14 was. He is lying. This is a lie. He was not at the
15 Taylor's house, at Janeika Dupont's house. He wasn't
16 there. He needed an alibi and that is the first place
17 that came to mind. Michael Taylor was adamant he was
18 not there after work. He didn't get there until
19 Michael was next door and when he came home about 20
20 minutes later, that is when Rohaime was there. He does
21 come to Dupont's, to Janeika Dupont's house, though,
22 about 10:00. It is not 6:30 or 7:00.

23 And when he gets there, what does he do? Well,
24 that is the new information that we all learned
25 yesterday on the witness stand. He burns his clothes.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 Now, he already asked for bleach from Tutu and she
2 wouldn't tell you that that's what he asked for. We
3 had to get Lieutenant Harley to tell you that that's
4 what he asked for. It wasn't to clean his clothes and
5 whatnot. That's what the Defendant wants you to think.

6 He knew that he had evidence on his hand and he
7 needed to get rid of it. The best way he could think
8 was bleach. And now he's taking care of his clothes.
9 He didn't tell anybody that, two and a half years ago
10 after this happened. He didn't tell anybody that. He
11 tells it yesterday and he said that it took him over
12 and over and over for him to remember every detail.
13 That makes sense. At the time he didn't think anything
14 of it. He had a few drinks. He didn't think anything
15 of it. It makes sense now, why did Rohaime burn his
16 clothes. It makes total sense now.

17 We have Byron Singleton. Byron Singleton is a
18 confessed murderer. You saw him in shackles in his
19 jail garb. You saw him yesterday on that stand and you
20 heard him say, I'm guilty. I'm guilty of my crime.
21 I'm guilty. And he is guilty and he is going to prison
22 for a very long time. And he is in jail as a murderer
23 in Charleston County. He is from Jasper County.

24 Well, he meets a man in jail, the only other
25 inmate from Jasper County, another murderer, Rohaime

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 Hopkins. So, a friendship emerges. They start talking
2 and they essentially become roommates in the same pod
3 together and over a few months they are close. And it
4 is during this time that Rohaime confides in Byron with
5 what happened. Byron got on that stand and told you
6 specifics about the crime that nobody could have known
7 but the killer.

8 And now the Defense wants you to think that he got
9 that information from Antoine Drake on that short bus
10 ride between jails. He didn't get that information
11 then. There's no way that somebody is going to confess
12 a murder to a stranger on a bus ride surrounded by the
13 jail transport people, other inmates. It is just not
14 going to happen. You tell that kind of information to
15 somebody you trust, somebody who you gained a
16 friendship with, somebody that you know was also in
17 jail on the same thing that you are, not a stranger on
18 a bus.

19 So, how do we know Byron is telling the truth?
20 Well, he knows things that he shouldn't know. He knows
21 that T.J. was killed in Roseland. Byron is from
22 Hardeeville. He doesn't know anything about Ridgeland.
23 He doesn't know anything about this area. He knows
24 that T.J. was killed in Roseland on a dirt road. He
25 knows also that someone very important lives nearby.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 He told you that's why he did it there because that's
2 where Rohaime's mom lives. He is right. Right here.
3 Right at the end of the road. How else would he know
4 this? He wouldn't know this. He got that information
5 from Rohaime Hopkins. He knew about the 15,000-dollar
6 hit, and he knew that the hit was for T.J. being a
7 snitch. The only other time that we hear this
8 information is from that man right there when he says
9 it when Daytron overhears it. No other person ever
10 says that. That is how we know Byron is telling the
11 truth.

12 He also knew that T.J. was shot inside of his car.
13 Now, you saw the pictures. T.J. was found outside of
14 the car and inside of that car were shell casings and
15 you heard testimony from Suzanne Cromer, the expert of
16 firearms from SLED, who talked to you a little bit
17 about handguns and how semiautomatic guns eject shell
18 casings. And even though we don't have a gun in this
19 case, we can't tell you exact patterns, but they eject.
20 We know that it was a semiautomatic, they eject. And
21 we know that we found shell casings. They are inside
22 the car.

23 Now, they are inside the car because T.J. was shot
24 inside the car. Now somebody coming up on that scene
25 wouldn't know that. That is not information that the

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 public or onlooker would know. That is something that
2 the killer would know. T.J.'s body was outside of that
3 car but he was shot inside.

4 And Dr. Presnell came up and told you that three
5 of his wounds were right to left. And when Rohaime
6 Hopkins was in that passenger's seat, he held that gun
7 across his chest and fired. He hit him here. He hit
8 him here, and he hit him here before T.J. can react.
9 T.J. reacted. You heard Dr. Presnell say that your
10 adrenaline kicks in. You have four minutes until
11 oxygen is no longer available. You have four minutes
12 to react and he reacts.

13 And you hear Byron say, he kind of bowed up. He
14 kind of turned. Well, he turned all right. He turned
15 and those are the other two shots. You also heard
16 Byron say that he tried to get the gun. He did try to
17 get the gun. You heard about fight or flight. T.J. is
18 in shock. His adrenaline is pumping and he goes after
19 that gun. And we see that with the blood smears in the
20 car. It's on the back passenger's seat, on the back of
21 the seat. It is on the front. There's droplets in the
22 middle. He went across those seats and he went out
23 that passenger door after the man who was shooting him.
24 How do we know that he didn't get out of his door? It
25 was never opened. Because when crime scene got there,

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 they opened that door, shell casing fell down.

2 He was shot inside that car by Rohaime Hopkins who
3 was sitting in the passenger's seat and T.J. went after
4 him. But T.J. was dying. But T.J. let us know that he
5 was still moving when he got out of that car, because
6 if you look at this picture you can see where his hand
7 was moving in that dirt because he's slowly losing his
8 life.

9 Now, we talked about how Dr. Presnell's testimony
10 lines up with what Byron told you. Lines up with the
11 locations of the shell cases. But we also have the
12 Defendant's handprint, palm print on the car, on T.J.'s
13 car, and he says that he was in the car earlier. He
14 said that because he knew that his palm print,
15 fingerprint, DNA was going to be left behind. He's
16 covering his tracks.

17 And you also have, more importantly, the five
18 cigarette butts. Cigarette butts in that car. No
19 other cigarette butts in that car. They are from that
20 night. They are from the victim's DNA and the
21 Defendant's. They belong to two people and they belong
22 to the last two people in that car. They belong to
23 T.J. who was shot and killed and the man who killed
24 him.

25 Now, when I first said to you, I told you about

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 the people who would be testifying and how most of
2 them, they don't want to be here. They don't want to
3 cooperate. They certainly don't want to get on that
4 witness stand and confront a murderer. Now, I want you
5 to ask yourself why. Why don't these people want to
6 cooperate? Why would you -- you know something about a
7 murder case, you cooperate; you testify; you tell the
8 truth.

9 Think about it. T.J. was killed for being a
10 snitch. There's no way that those people are going to
11 get up on that stand on their own accord and testify
12 against a man who was hired to kill a snitch. What are
13 they doing up there now? They have now turned
14 themselves. They're snitches. They are terrified.
15 They are scared. They don't want to be here. We had
16 to force him to be here. You heard me ask if I had to
17 subpoena them. They're testifying in this entire case
18 against a hired hit man. Of course they're scared. Of
19 course they are not cooperating.

20 One of them, for example, Tutu, I think that she
21 was the most obvious that she didn't want to be here.
22 She was very defiant from her walk in the courtroom.
23 You can just tell that woman didn't want to be here.
24 But remember what Lieutenant Harley told us. She
25 didn't want to talk to them at the scene and she kept

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 motioning to some woman. She kept motioning over
2 there. Who did Lieutenant Harley tell you that she was
3 motioning to? The Defendant's mother.

4 Why on earth would she be scared to talk to a
5 police officer in front of the Defendant's mother?
6 There's only one reason, because she's about to give
7 the police information that her son committed the
8 murder that they are investigating. Of course she's
9 scared. She won't even talk to them at a later date in
10 Jasper County. She meets them in Walterboro at their
11 secure office, brings her mother with her. She's
12 terrified. She was defiant on that witness stand, but
13 she's scared.

14 And finally we have the cell phone records. We
15 know this is Terrance Johnson -- this was his phone
16 number, 843-415-3979. Angel told you that was his
17 phone number. We know that at 9:37 p.m. he gets a call
18 from Angel. She testified that was her phone number.
19 Here are the phone numbers. We know that it lasted 20
20 seconds and we also know that Angel told you that
21 around 9:30. She heard a scuffle and her and T.J. got
22 disconnected and she called back, over and over and
23 over with no answers. All of these Fs next to the
24 phone number starting at 9:38, 21:38, all went to voice
25 mail because T.J. is no longer alive to answer his

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 phone.

2 What else do we know? We know that at 9:37 the
3 last phone call he answers, he is pinging or utilizing
4 or hitting off of cell phone tower 216 and the one
5 alpha is the side of the tower that he's hitting off
6 of. Sector one alpha.

7 We also know Rohaime has phone records. This is
8 Rohaime's phone number. Agent Johnson told us this.
9 We know that at 8:30, he calls Tutu. That is Tutu's
10 number. She testified to it. Shaun Harley testified
11 to it. Now, he wants you to -- Rohaime wants you to
12 think that his little drug deal with Tutu was earlier.
13 It was at 8:30. It was at 8:30, right before he killed
14 T.J. We know that at 9:37, he calls another number and
15 ironically at 9:37 he is pinging off of the same tower.
16 Not only the same tower as T.J., but the same side of
17 the tower as T.J. They are together and they are alone
18 when Rohaime murders T.J.

19 And finally, we have the text message sent from
20 Rohaime's phone. We all know who it is sent to. We
21 don't know who it was sent to. But we know it came
22 from Rohaime's phone, the phone number he gave Richard
23 Johnson as his phone number. It's sent 19 minutes
24 after T.J. is killed and what did it say? Dats done,
25 need to Holla at u. Dats done. Dats done. I need my

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 money. I need to talk to you. Dats done. Nineteen
2 minutes. People don't even know T.J. is dead yet
3 before that man wants his money.

4 We know, between 6:30 and 7:00, Rohaime is not at
5 the Dupont house. We knew that at 8:30 he calls Tutu.
6 We know that around 9:15 to 9:30, they go to Tutu's
7 house alone. And we know that at 9:37 they are using
8 the same cell phone tower, the same side of the cell
9 phone tower, and they are using their phones. We know
10 that at 9:37 he disconnected from the phone. And after
11 9:37, he doesn't place calls. He doesn't text.
12 Because he's dead.

13 We know that about 9:40 or so, Rohaime is back at
14 Tutu's house on foot. We know he's on foot because she
15 doesn't see a car and we also know that he's on foot
16 because, if you remember Justin Kesselring, he said, I
17 heard the shots, looked out the window, but I didn't
18 see the car headlights. There's no car. There's no
19 headlights because the car that Rohaime was in was
20 T.J.'s car.

21 We know that between 9:44 and 9:56 Rohaime is at
22 Tutu's house making those phone calls, looking for a
23 ride. And then we know, that at 10:00, give or take,
24 Rohaime Hopkins is finally dropped off at Shaquina
25 Hopkins' house. It is not 6:30 or 7:00.

EXAMINATION OF ROHAIME JAMAR HOPKINS BY BY THE COURT

1 Rohaime Hopkins is guilty of the murder of
2 Terrance Johnson. No one else. Simplify it. All
3 signs point to him. He said that he was going to do
4 it. He waited for his opportunity. He got T.J. alone.
5 He did it in his home area where he can walk away, and
6 he shot him inside his car. And then he bragged about
7 it. He bragged about it to Byron Singleton and when
8 it's all said and done, all Rohaime wanted to do is get
9 paid. Dats done, need to Holla at u. Because, like I
10 said, from day one, Terrance Johnson was worth more to
11 Rohaime Hopkins dead than he was alive.

12 THE COURT: Mr. Lee.

13 CLOSING ARGUMENTS BY MR. LEE

14 MR. LEE: Yes, Your Honor. May it please the
15 Court, Ms. Jones, Mr. Hollen land.

16 Sorry, I don't want to trip over anything.

17 When we started 48 hours ago, it seems like a lot
18 longer than that we have been together, we started 48
19 hours ago, I came in front of you and I started talking
20 about Sherlock Holmes, and I got some real quizzical
21 looks on your face. And -- and what I said was this
22 story about the -- about the dogs barking and I told
23 you what is most important in finding the truth is not
24 what you see or hear, but what you don't see and you
25 don't hear. And I told you how that related to this

CLOSING ARGUMENTS BY MR. LEE

1 case.

2 And I think it's safe to say that a lot of what --
3 there is a lot of things that you didn't see and you
4 didn't hear from the State. The State with all of its
5 resources, you heard about the SLED resources, the law
6 enforcement resources, the -- everything. Subpoena
7 power, search warrant power, everything. You heard
8 about that, but what did you not hear about?

9 Well, I could -- the list could go on forever and
10 I'm sure that I'm going to forth something and I hope
11 that each of you jurors when you go back to the jury
12 room, say, if you will -- it's all about reasonable
13 doubt. Let's be talking about some reasonable doubts
14 we have and see if we can resolve them. And if we have
15 reasonable doubt, then obviously the correct verdict is
16 not guilty. So, I would encourage you when you go back
17 to start talking about some reasonable doubts.

18 So, so, let's start talking about some. Well, the
19 place to start in this case, clearly, the Hollywood,
20 Antoine Drake. Because, if you think about it,
21 everything goes through Hollywood. There is a
22 Hollywood filter on everything. And you know, why he's
23 named Hollywood, I can only speculate. Think about
24 Hollywood. Hollywood is a lot different than Jasper
25 County. Hollywood is the land of airbrush, plastic

CLOSING ARGUMENTS BY MR. LEE

1 surgery, special effects, smoke and mirrors. And we
2 know what comes out of Hollywood and it's not reality.
3 The whole place is not reality.

4 Hollywood Drake is not reality, if that's his last
5 name. You know, he lied about his last name trying to
6 scam a cop. He is not about reality. He can't be. He
7 admits that he can't be believed. He admits scamming.
8 I mean, he tried to scam the officer, gave him the
9 wrong name. He -- I would suggest, did a heck of a
10 scam job on Agent Johnson, which we'll talk about. I
11 mean who -- who is it, who is it in this court has an
12 active sentence waiting on him who says, hey, I'll talk
13 to you but you can't run me into jail on my active
14 warrant. Okay. That takes some -- takes some doing,
15 some real doing.

16 And there's even testimony that Detective Wright
17 saw him and said, hey, man, you know, you're wanted but
18 I'm not going to take you in. And that guy is the
19 entire foundation of the State's case. And if you
20 don't believe him, without question, without
21 hesitation, you cannot convict my client because
22 everything goes through Drake.

23 We know that he -- also when he lied to the -- he
24 lied to the cop when he had his cocaine charge, but he
25 didn't show up for court. But it didn't really matter

CLOSING ARGUMENTS BY MR. LEE

1 because the cops weren't going to run it. He was
2 supposed to turn himself in. He got caught again in
3 December, six weeks after this happened, with what? A
4 gun. What kind of gun was it? They don't know. Same
5 gun that was used to kill Terrance Johnson? We don't
6 know.

7 How would that have been examined? The SLED agent
8 or somebody, SLED agent would say, hey, this guy has
9 been -- we have been talking in this case. Antoine
10 Drake got arrested in Jasper County, the same place
11 where this murder happened with a gun. I could run --
12 they could run his name. And then they see that he's
13 arrested with a gun, wouldn't it have been nice to say,
14 why don't we go down there and see what gun was seized
15 from Hollywood six weeks later, and maybe that's the
16 murder weapon. He didn't do it.

17 To whom much is given, much is expected. Is that
18 expecting too much? I don't think so. Could that have
19 led to the solving of this case early on? Possibly,
20 but we don't know. The State wants you to ignore that,
21 among other things. They have got excuses. They don't
22 have reasons; they have excuses.

23 So then, Drake, when he gets in jail, he says,
24 well, I have some information on some other case. So,
25 he gets moved to Orangeburg. So, he's -- he's hanging

CLOSING ARGUMENTS BY MR. LEE

1 out at Orangeburg Detention Center and, I guess his
2 lucky day -- well, let's back up before he got
3 arrested.

4 A week after this happened, what happened? Well,
5 I was at Club Pluto, the strip club where they go until
6 4:00 in the morning, I guess. I was at Club Pluto and
7 I saw Trey Graves, and I scammed -- I tried to get
8 money off of him. Well, essentially, we look at -- I
9 mean, he's got a reason -- he's got an excuse for
10 everything. He's got an excuse for that.

11 Maybe somebody heard him. Maybe he was worried
12 about somebody saying, hey, we were all in the club
13 drinking, Rimmy and Martin, and Drake came in and
14 told -- told Trey Graves, hey, I did it. Where is my
15 money? He knew somebody might have heard that, but so
16 he has got to fix that. The scammer has got to fix
17 that. So his story is, man, I was just scamming him.
18 I was just trying to find out on my own, investigate
19 this murder, to find out whether Hopkins really did it
20 or not. He's got an answer for everything.

21 You know what else he's got an answer for? He has
22 got an answer for being at Michael Taylor's house --
23 I'm sorry, Phil Simmons' house, who was not called by
24 the Solicitor, even though in my opening I said, that
25 would be a really good witness. I hope they call him.

CLOSING ARGUMENTS BY MR. LEE

1 Although we got -- I got it in through one of the
2 officers.

3 Phil Simmons' house the day after the shooting,
4 Phil Simmons is there. Hollywood is there and a guy
5 named Anthony Singleton, who they didn't bother to put
6 on the stand either. Drake's story. Hollywood's
7 story. Yes, Singleton showed up with a black gun, and
8 he tried to sell it to me for -- for 250. I looked at
9 it and I handled it and I decided I didn't want it. So
10 I -- so then, of course, I wiped my fingerprints off of
11 it. Well, he's got a reason why about that. Why is he
12 saying that? Maybe because he knew Phil Simmons saw
13 him cleaning a gun, a -- described as a 9 millimeter
14 with two magazines gun the day after in his yard. Phil
15 Simmons saw that. Drake, the next day is cleaning a
16 9 -- cleaning his prints off of a 9 millimeter pistol.
17 What does Phil Simmons have -- he doesn't have any --
18 any -- any skin in the game. He doesn't have a dog in
19 the fight. And they -- they said that. They got up
20 there. So, Drake has an answer for that as well. But
21 everything comes back to him.

22 Oh, something else. Drake and T.J. two weeks
23 before this get in a fight. Of course, he said, oh, it
24 is just a dispute. Well, I don't have a lot of -- I
25 don't know a lot of disputes where knives are pulled.

CLOSING ARGUMENTS BY MR. LEE

1 And then Michael Taylor says, oh, there was a gun too.
2 Well, we don't -- who had a gun? So, they are at the
3 point where they are having a knife fight two weeks
4 before and possibly a gun involved. We don't know
5 because I think Taylor was -- was not in his right mind
6 or whatever, however he described that.

7 They have a -- they're having a knife fight two
8 weeks before. So, we know that Drake doesn't like T.J.
9 We know that. And the Solicitor just said, Antoine
10 Drake, Hollywood, was not a murderer. He's a scam
11 artist or shyster, whatever she said, but he's not a
12 murderer.

13 Because remember, the Solicitor, her entire case
14 is based on these witnesses that came in here and I
15 challenge you, other than the guy that made the 911
16 call, I challenge you to name one witness, other than
17 law enforcement, who you trust. Who, if they, if they
18 can -- if they applied for a baby sitter job, you'd
19 trust them. If they were trying to sell you something,
20 you'd trust them. Not a single one of those clowns
21 they put up on the stand.

22 And that's their evidence in a murder case. That
23 is their proof beyond a reasonable doubt. That's how
24 they get their time line. That's how they get their
25 theory about everything. It doesn't -- it doesn't add

CLOSING ARGUMENTS BY MR. LEE

1 up because it all comes through Drake. She said --
2 he's a -- he's a shyster and he's a scam artist and
3 everything, but he's not a murderer. Antoine Drake, I
4 guess, is just a loveable guy who just, you know, who
5 is out to help investigate and just be a good dude.
6 Antoine Drake, no murderer, good guy.

7 (Playing audio.)

8 MR. LEE: Why would Antoine Drake come in here? I
9 mean, you know, why would he come here and testify and
10 put himself up to, you know, to the scrutiny of the
11 Court and be a snitch and all that kind of stuff? Why
12 would he do that? That doesn't make any sense. Not --
13 not -- not Hollywood. Not Hollywood. Hollywood had
14 truth and justice and civic duty on his mind.

15 (Playing audio.)

16 MR. LEE: There's -- there's a bunch of different
17 ways to get people gone and what you're seeing here
18 is -- is what. None of it's true. Solicitor made a
19 big argument about, well, Byron Singleton, he's --
20 he's, you know, he's up in Charleston. Rohaime's up in
21 Charleston. They strike up a friendship. And -- and
22 according to Singleton, Rohaime -- who hadn't even been
23 charged with this by the way. Hadn't been charged with
24 anything until sometime in March.

25 Rohaime -- this guy is so convincing and so, you

CLOSING ARGUMENTS BY MR. LEE

1 know, Dr. Phil or -- he gets him to open up to admit to
2 a -- to a murder of his best friend who he'd been with
3 all day, who tons of people had seen them together.
4 It's his best friend. Everybody had seen them. And --
5 oh, he -- he -- he said it before. He said he's going
6 to kill the guy. He is going to do it right by his
7 house. Nobody is that dumb if they plan something.

8 And so, Singleton -- well, Singleton -- I wrote it
9 down. Singleton knew about Roseland, about a dirt
10 road, about Rohaime's mom lives down there. There was
11 15,000-dollar hit, that T.J. was a snitch, and he was
12 shot inside the car. And her reason why that's true is
13 because only the murderer could have known that
14 information and given it to Singleton. Well, I agree
15 with a lot of that but that doesn't prove that Rohaime
16 gave it to him. It proves that either somebody who did
17 it or knew an awful lot about it gave the information
18 to Singleton.

19 Where does it all come back to? Hollywood. And
20 remember, you talked -- we heard from Singleton. He
21 told his story. He did his little song and dance. He
22 says he's hoping to get help. He's got kids at home.
23 And he's hoping it's going to be a lot lesser charge.
24 He's really hoping, hoping, hoping to get some help.
25 Well, obviously, he is. When he finished testifying,

CLOSING ARGUMENTS BY MR. LEE

1 what did the Solicitor not tell you not to ask him?

2 What did he not volunteer about this statement? What
3 you don't see and you don't hear.

4 He said nothing about that bus ride with Antoine
5 Drake that happened six days before he talked to Agent
6 Johnson. Sure was lucky he knew Agent Johnson was the
7 guy to call. The one who's yucking it up with Antoine
8 Drake. But who's laughing it up about being a scam
9 artist, who isn't arresting him on a bench warrant.
10 The Solicitor seems to think that it doesn't make sense
11 because Antoine Drake -- Antoine Drake didn't confess
12 to Singleton.

13 So just, you know, it doesn't -- it doesn't make
14 any sense. Antoine Drake -- he didn't confess on a bus
15 with all of these people around to Singleton. That
16 isn't the point. Antoine Drake did not confess.
17 Antoine Drake who had already talked to the cops, who
18 already had the heat on him, who was already blaming
19 Rohaime Hopkins who couldn't stand the you-know-who and
20 wants to kill him and just wants him gone, by a stroke
21 of luck, I think, runs into Byron Singleton. They
22 start talking whatever. Hey, man, who are you up in
23 Charleston with? Rohaime Hopkins, you know, he's from
24 Ridgeland.

25 The scam artist starts working his magic. Hey,

CLOSING ARGUMENTS BY MR. LEE

1 man, I have already talked to the cops about an
2 unsolved murder and they're still putting heat on me.
3 This is Hollywood talking. They're still putting heat
4 on me. I need -- I just want him gone. We know that
5 he said that because it is on the tape.

6 Other than their people, based on what people who
7 we don't trust say. We've got it, his voice.
8 Singleton, you can help me out and I can help you out.
9 That's what scam artists do, isn't it? Here is what I
10 can do. You can help me, and I can help you. Here is
11 how you can help me, Singleton. I'll give you
12 information about an unsolved murder. And guess what,
13 we can blame Hopkins, and here is all the information
14 that you need, that I happen to know. It happened in
15 Roseland. It was for a hit. It was a snitch. It was
16 near Rohaime Hopkins' mom and all the stuff that he
17 said only a killer would know. I will give you that
18 information, Singleton. I know you're in trouble on a
19 murder charge. You call Agent Johnson, my buddy here,
20 and just tell him that you need to talk to him. He'll
21 talk to you and they will help you because, guess what,
22 they'll help you out.

23 I have dealt with the Solicitor's Office before.
24 They've done plenty of favors for me. They changed a
25 sealed sentence from three years in prison to

CLOSING ARGUMENTS BY MR. LEE

1 probation. They did -- dismissing a gun charge. It
2 all works out. Everybody wins.

3 That is -- not that we have to prove anything.
4 I'm not here to prove -- can't prove anything. But
5 that makes so much more sense than the tortured time
6 line that they rely on that is based beyond people
7 who -- I don't know of anybody out at that party wasn't
8 drunk and high and everything else. Nobody could
9 figure out any times. Nobody. You can't rely on any
10 of that stuff.

11 What the problem -- and the State's version and it
12 starts from the beginning and the Solicitor said he
13 goes, Rohaime Hopkins, subject from -- suspect from day
14 one. Isn't that the approach that they took, the
15 State, the investigators? They came with a theory and
16 they started putting their facts into it.

17 What you're supposed to do is take all of the
18 facts, investigate them fully, follow-up on things and
19 then you get all of your facts and then you come up
20 with a theory that is consistent with all of the facts
21 that you have developed, and you have done a fair
22 investigation and you have talked to people. You have
23 been skeptical about some things because getting a
24 theory and then having to put the facts in it is like
25 the toy, that thank goodness we threw out the other

CLOSING ARGUMENTS BY MR. LEE

1 day, because my four year old is too old for it. He
2 had this game, and he was try -- if you try to put a
3 round peg into a square with a hammer, it ain't going
4 to work. And that's exactly what they're trying to do.
5 It just -- they think the harder they hit it, the more
6 it's going to appeal to you and show up.

7 Let's talk about somebody else. Tutu.
8 Hollywood's girlfriend. They have a child with her,
9 has another one on the way. They're living together.
10 Yes, they had a domestic violence but they're living
11 together. When he gets his domestic violence charge
12 earlier this year, they search -- they go to arrest
13 him. What do they find? A 9 millimeter pistol. Where
14 is that? That's the same caliber that T.J. was shot
15 with. Yup, did you look into that? No. It doesn't
16 matter.

17 Well, okay, well, then let's get back to Tutu.
18 Tutu who's on the scene the next morning asking
19 questions about a soda bottle. Asking for Drake,
20 probably, or maybe herself. Who knows? But she's
21 there. Of course, she's high and everything else too.
22 So, yeah, I'm tweaking, you know, how much we can pay
23 attention to that.

24 Let's talk about the investigation. And I have
25 great respect for law enforcement. I deal with them

CLOSING ARGUMENTS BY MR. LEE

1 all of the time. Some of my best friends are law
2 enforcement. But when you get to this point when
3 you're in front of the jury and the State is asking you
4 to do a very, very difficult thing, which is return a
5 guilty verdict, particularly on a case like this. You
6 deserve and you should demand a lot more than what you
7 saw and what you got.

8 And it's not asking too much to do some of the
9 things that I had to point out that didn't come off the
10 stand, the things that you didn't see and didn't hear.
11 Because we put tremendous faith and power in the hands
12 of law enforcement. But we also are entitled to
13 something in return, and that is respect and that is
14 them doing a fair, impartial, unbalanced -- balanced
15 job. To whom much is given, much is expected.

16 But when you focus in on one thing and ignore
17 everything else, it's like a horse running with
18 blinders on going straight down the track, can't see
19 anything else. And that's the problem, a huge problem.
20 Stuff that causes reasonable doubt that causes you to
21 hesitate to act.

22 Two requests from the DNA lab, which arguably the
23 best evidence out there, two requests from the DNA lab,
24 please send Antoine Drake's DNA to us. Nope. Ignored
25 it. Cellphones, you have heard all of these cell phone

CLOSING ARGUMENTS BY MR. LEE

1 records and I'm not sure of the significance of them.
2 Cell phone records, cell towers, they -- he knew --
3 Agent Johnson knew Drake's, Hollywood's, phone number
4 when he talked to him on December 9th. He gave him the
5 phone number, December 9th, 2014.

6 Now, two and a half years later, has that -- have
7 the cell phone records ever been asked for or received
8 by SLED? No. For Antoine Drake. Come on. Who is he
9 talking to? Who is he texting? Where is his cell
10 tower, whatever that means, pinging off of? I don't
11 know how many cell towers they got in Ridgeland. I
12 never get good phone service here because, you know, if
13 you go through some areas, it's just like in Beaufort
14 County, you just lose. And so, who knows what cell
15 tower things are going off of. Well, we will never
16 know what Antoine Drake's was because they didn't
17 bother to go get it, and that's not asking -- that's
18 not asking too much. Not in a case like this.

19 Never followed up with a gun that was -- that
20 he -- that Drake was found with. Never followed up on
21 a 9 millimeter.

22 Never followed up about the -- the fight, the
23 knife fight two weeks before, showing motive. You want
24 to talk about motive? You had a knife fight with some
25 guy two weeks before. And he -- Drake certainly has

CLOSING ARGUMENTS BY MR. LEE

1 motive against Rohaime Hopkins. You don't use that
2 kind of language. You don't talk like that unless you
3 are serious.

4 And they're talking about, well, one of these guys
5 who didn't really want to be here, who we are -- they
6 are apologizing for the quality of their witnesses,
7 that guy, who also went to Club Pluto till 4:30 that
8 night, that guy said Hopkins told him two weeks ago,
9 I'm gonna -- I want to kill that guy. That is their
10 proof. We -- us, who have no burden of proof
11 whatsoever; we could sit there and be quiet. But we
12 didn't. Our proof about whether somebody is a threat
13 or threatened somebody is his own words, that he
14 admitted are his.

15 So, take -- look at the two. I mean, arguably,
16 there's a lot more, a lot more evidence against Antoine
17 Drake than there is anybody else, and he was completely
18 ignored from the get-go even though he knew he was a
19 scam artist and that is what is so crazy. Somebody
20 tells you that you're a scam artist and he still scams
21 you. He scammed police. SLED. Didn't get arrested
22 from two of them. He has scammed the Solicitor's
23 Office, getting these sweetheart deals, getting charges
24 dismissed. But you know where scamming stops and it's
25 no longer funny? And this -- because, again, this guy,

CLOSING ARGUMENTS BY MR. LEE

1 no job, no car, no money. He even said that's how I
2 make a living is scamming. That's fine, Hollywood.
3 Hollywood is fine if you like watching movies and you
4 know what it is. But Hollywood and games and scamming
5 have no place in this court, not in a case like this.

6 And y'all should be ticked off as jurors. You
7 have an oath to uphold. We have all got better things
8 to do. You ought to be ticked off that this is what's
9 put in your lap as an excuse for a case asking you to
10 do one of the most difficult things in the world, and
11 that is to find someone guilty of murder. You know,
12 that's not fair.

13 And they had -- they have all of the resources.
14 We saw doctors and chemists and fingerprints and
15 bullets and everything else, experts, and they have
16 access to all of that and they want to ignore the scam
17 artist. But you know what, the scamming stops right
18 here. It has to. Because Byron Singleton is going to
19 get his wish. He's going to be a winner. He's going
20 to get his wish for a reduced sentence so he can go see
21 his kids. And who's blaming him? If somebody gave me
22 an option like that, who's -- I mean, Byron Singleton,
23 he's doing what a lot of people would do, taking
24 advantage of an opportunity. The problem is that he's
25 lying about it. But he's got kids at home. He wants

CLOSING ARGUMENTS BY MR. LEE

1 to do it. So good luck to Byron. He's a winner.

2 Antoine Drake surely is a winner. He hasn't been
3 charged. He's gotten his charges dis -- a couple of
4 charges dismissed. He's gotten his sentence reduced
5 from three years to probation, and he's out walking
6 around, free as can be, scamming -- scamming whoever is
7 coming next.

8 You know, it's easy to talk about winners. You
9 know when South Carolina, we have been lucky. Clemson
10 won the National Football Championship. The men's
11 basketball team of Carolina got to the Final Four. The
12 women won the National Championship. So it's easy for
13 us to -- to kind of talk about winners. And sometimes
14 when you're in court, you need to think about, well,
15 who's going to be a winner and who will be the losers
16 based on what our verdict is.

17 So, I can tell you, me, and Ms. Jones, and
18 Mr. Hollen, Special Agent Johnson and Judge, when this
19 case is over, we're going to go do what we usually do,
20 try cases and whatever else, and the Judge is going to
21 have court next week somewhere else. And we're going
22 to do -- because this is what we do. But this isn't
23 what y'all do all the time. When y'all get out of
24 here, you can go back to your normal lives and
25 everything else, thank goodness.

CLOSING ARGUMENTS BY MR. LEE

1 But what you're going to have to think about is --
2 what you have to think about is how am I going to feel
3 about my verdict later on? Because I can tell you, if
4 the jury gets it wrong and it convicts somebody and
5 it's wrong, it doesn't get overturned. I mean, we --
6 we can technically do an appeal but it has to be a
7 mistake that the Judge made as a matter of law. You
8 can't appeal that a -- that a jury got something wrong.

9 So, what y'all do is going to have a lasting,
10 lasting effect on Mr. Hopkins. You know, you need to
11 feel good about it. There's no going back or there is
12 no saying I changed my mind. And that's why the
13 standard is so high that the State has to prove a case
14 beyond a reasonable doubt which is a type of doubt that
15 causes you to hesitate to act when making one of life's
16 important decisions.

17 I'm sure I've left out a lot of stuff and I would
18 ask that y'all think about the stuff that -- first of
19 all, text, Dats done, need to Hollar at u. We don't
20 know who that is to. We don't know what it means. We
21 don't know even who wrote it. But I would suggest to
22 you that kind of sounds like somebody might have just
23 sold somebody a little bit of weed or bought some.
24 Dats done.

25 And they want to say, oh, this is a great

CLOSING ARGUMENTS BY MR. LEE

1 admission that Hopkins either completed the contract --
2 which by the way the testimony of their witness said,
3 Hopkins was waiting for them -- for them boys to sign
4 the contract. I -- I wasn't aware that you had to sign
5 a hit contract. I mean, maybe you need to sign it so
6 that it if you go -- if you guys go to court -- I'm
7 being sarcastic. But you need to take it to court, and
8 say, well, he didn't live up to his end of the
9 contract. I have a signed contract right here. That
10 doesn't make any sense him saying that. It doesn't
11 make any sense at all.

12 So, in closing, let me tell you a couple of
13 things. Number one, reasonable doubt is the type of
14 doubt that causes a reasonable person to hesitate to
15 act. Let me walk you through something. You're
16 sitting in your house, go to a door, and who is there.
17 Hello, my name is Antoine Drake, otherwise known as
18 Hollywood. I'm a scam artist. I threaten people. I,
19 you know, but no one wants to know. He goes, let me
20 tell you what. Let me tell you the truth. I have this
21 great investment opportunity where I can double,
22 triple, maybe quadruple your money. Knowing what you
23 know about Antoine Drake, how much money are you going
24 to give him? Not a dime. Because why, because you
25 don't trust him and because you hesitate to act. I

CLOSING ARGUMENTS BY MR. LEE

1 understand that you may hesitate, you just met me.

2 Tutu, come on over here. So, she walks up to the
3 door. Hey, this is my -- this is my friend, Tutu.
4 And, you know what you know about Tutu. Tutu, tell
5 them what a great deal. Oh, it is a great deal. You
6 can trust me and you can trust Hollywood. How much
7 money are you going to give this great investment
8 opportunity? For this deal. Zero. Why? Because you
9 hesitate to act.

10 But the scam, he says, hey, this will do it. Hey,
11 Byron Singleton, come on over here. Byron, tell them
12 what a great investment opportunity. Oh, yeah, yeah,
13 we do. And Byron knows some things that people don't
14 normally know. So you can trust them. How much money
15 are you going to give those three clowns sitting at
16 your door? Not a penny. If you can't give them a
17 penny, how can you use their testimony to convict
18 somebody beyond a reasonable doubt? You can't. The
19 only verdict that upholds your oath is a verdict of not
20 guilty.

21 And the last thing I'll say is, this weekend my
22 four year old son loves to help me mow the grass and he
23 has a little plastic, push-along lawn mower that blows
24 bubbles out. So, I'm mowing the grass this Saturday
25 and he's pushing his little lawn mower behind me well

CLOSING ARGUMENTS BY MR. LEE

1 back and this grasshopper is going everywhere. He
2 loves to get them.

3 So, he's well behind me and he keeps grabbing
4 these grasshoppers. And he runs up to me, and I had to
5 shut the lawn mower off. He goes, Daddy, Daddy, Daddy,
6 guess what I got? Guess what I got. Guess what's in
7 my hand. A grasshopper. He says, Yeah, a grasshopper.

8 So he does that about three or four or five times.
9 You have to act kind of surprised, but I know he's
10 always got a grasshopper. So the last time he comes up
11 to me, and he's like, Daddy, Daddy, Daddy, guess what,
12 guess what I have in my hand. A grasshopper. And he
13 goes, Yes, but is it dead or is it alive? And I stood
14 back for a second and I said, Carter, the life of that
15 grasshopper is in your hands and he looked at it and,
16 of course, it was alive. But I told him that. I said,
17 Carter, the life of that grasshopper is in your hands.
18 So too, ladies and gentlemen, my client's life in your
19 hands. Thank you.

20 THE COURT: Solicitor.

21 MS. JONES: When y'all come out of that door with
22 your verdict, when that happens there are no winners in
23 this courtroom. Regardless of what the paper says,
24 T.J. is never coming home.

25 This case is not about Antoine Drake. I put

CLOSING ARGUMENTS BY MR. LEE

1 Antoine Drake on that witness stand because he had
2 information you deserved to know. You deserved to know
3 that Rohaime Hopkins said, I'm going to kill him. You
4 deserved to know there was the last -- that Rohaime
5 Hopkins was the last person with T.J. You deserved to
6 know that Rohaime Hopkins insisted they go alone to
7 Roseland. That's why I put him up there.

8 But it's not just Antoine. Other people
9 corroborated that: Robin Simmons, Daytron Simmons,
10 Janeika Dupont and Michael Taylor refute the alibi
11 given by Rohaime Hopkins.

12 Tutu doesn't want to cooperate. You saw her.
13 Defiant is the best word I can think of for her. But
14 her phone records are what we have that corroborate
15 what she initially told Shaun Harley. What she did not
16 want to tell you -- why didn't she want to tell you?
17 Because that man right there, a hired hit man is
18 staring her in the face while she testifies against
19 him. She's not going to tell you the truth.

20 So, we rely on her phone records. At 8:30 p.m.
21 that man calls her. Him and T.J. go to her house alone
22 in T.J.'s car. They are there for a little while.
23 They hang out. He goes inside. He gets a drink. They
24 leave in T.J.'s car. A few minutes later he comes back
25 on foot. That man right here. Not Antoine Drake.

CLOSING ARGUMENTS BY MR. LEE

1 Antoine Drake doesn't come back on foot because Antoine
2 Drake is across town in Wagon Branch with Shaquandulynn
3 Chaneyfield. And she told you that.

4 The reason Antoine Drake is not a suspect is
5 because he had an alibi. Because he didn't kill T.J.
6 That man did. He got him alone. He had a gun on him.
7 He took him to his home turf and shot him in his own
8 car.

9 Byron Singleton. You may be thinking the only
10 reason Byron got on that witness stand and that's what
11 he said is because he's looking for number one. He's
12 watching out for himself, nobody else. He doesn't care
13 about T.J. or anything. He just cares about getting
14 home to his kids. Maybe. Maybe so. He doesn't care
15 about anything else.

16 Why not just say, Hollywood told me this story?
17 Why blame it on somebody else? Because he didn't get
18 the information from Antoine Drake. He got the
19 information from the man who pulled the trigger. The
20 man who knows he shot T.J. in the car. The man who did
21 it. The hit man who was waiting on that contract.
22 That contract that only two people referenced, Byron
23 Singleton and this individual. Just think about that.
24 If Byron Singleton is looking out for himself, why
25 leave Antoine Drake out of the picture as the person

CLOSING ARGUMENTS BY MR. LEE

1 who told him. Because Antoine didn't tell him that.
2 Rohaime Hopkins told him what he did.

3 And this is a time line case. This is not an
4 Antoine Drake case. This is a time line. Rohaime
5 Hopkins is not at the Taylors when he says he was. He
6 calls Tutu at 8:30. The phone records show us that.
7 They go over there alone in T.J.'s car with T.J.
8 driving. At 9:37 they're together. They're ping-
9 off of the same side of the same cell phone tower, and
10 T.J. is disconnected from Angel.

11 That is the last time that anyone heard T.J.'s
12 voice because he shoots him five times. Rohaime
13 Hopkins walks back to Tutu's house because he doesn't
14 have a car. He came in T.J.'s car. He makes phone
15 calls and gets a ride away from the area, and he goes
16 to the other side of town to his girlfriend's house, to
17 one of his girlfriend's house.

18 There was one set of gunshots heard that night.
19 Shardaja Singleton and Justin Kesselring heard one set
20 of shots. Those were the shots at 9:37. Those were
21 the shots fired by Rohaime Hopkins and those were the
22 shots fired in Terrance Johnson's car that took his
23 life. In 19 minutes later, the only thing on Rohaime
24 Hopkins's mind is money. Dats done, I need to Holla at
25 u. Contract is satisfied. He wants to get paid.

CLOSING ARGUMENTS BY MR. LEE

1 THE COURT: Madam foreperson, ladies and gentlemen
2 of the jury, now my duty is to charge you on the law of
3 this case. The State of South Carolina is charging the
4 Defendant, Rohaime Hopkins, with murder in indictment
5 number 2015-GS-2700144.

6 I remind you that the fact that the Defendant was
7 arrested, the fact that the Defendant was charged, the
8 fact that the Defendant was indicted is not evidence in
9 this case nor does it create any presumption of guilt.

10 An indictment, ladies and gentlemen, is simply the
11 formal written instrument by which it contains the
12 charges made against the Defendant, but it is the means
13 by which the case is brought into this court, the Court
14 of General Sessions.

15 The Defendant has pled not guilty to the
16 indictment and that plea of not guilty puts the burden
17 on the State of South Carolina to prove the Defendant
18 guilty beyond a reasonable doubt.

19 A person charged with committing a criminal
20 offense in South Carolina is never required to prove
21 himself innocent. I charge you, ladies and gentlemen
22 of the jury, that it is an important rule of the law
23 that a defendant in a criminal trial, no matter what
24 the seriousness of the charge may be, will always be
25 presumed to be innocent of the crime for which the

CLOSING ARGUMENTS BY MR. LEE

1 indictment was issued unless guilt has been proven by
2 evidence satisfying you of that guilt beyond a
3 reasonable doubt.

4 The presumption of innocence, ladies and
5 gentlemen, does not end when you begin your
6 deliberations but it accompanies the Defendant
7 throughout the trial until you, the jury, reach a
8 verdict of guilt based on evidence satisfying you of
9 that guilt beyond a reasonable doubt.

10 The presumption of innocence is not just a legal
11 theory. It is not just a legal phrase. It is a
12 substantial right to which every defendant is entitled
13 unless you, the jury, are satisfied from the evidence
14 of the Defendant's guilt beyond a reasonable doubt.

15 What is a reasonable doubt in the law? A
16 reasonable doubt is the kind of doubt that would cause
17 a reasonable person to hesitate to act. The State has
18 the burden of proving the Defendant guilty beyond a
19 reasonable doubt.

20 Some of you may have served before in a civil case
21 such as a contract case or a wreck case where you were
22 told in a civil case like that that it was only
23 necessary to prove that a fact is more likely true than
24 not true. We call that burden of proof in a civil case
25 by the greater weight or the preponderance of the

CLOSING ARGUMENTS BY MR. LEE

1 evidence.

2 In a criminal case, such as the case here, the
3 State's proof must be more than that. It must be
4 beyond a reasonable doubt. Proof beyond a reasonable
5 doubt, ladies and gentlemen of the jury, is proof that
6 leaves you firmly convinced of the Defendant's guilt.

7 Now, ladies and gentlemen, there are very few
8 things in this world that any of us know with absolute
9 certainty. And in a criminal case the law does not
10 require proof that overcomes every possible doubt. If
11 based on your consideration as a jury of the evidence
12 you are firmly convinced that the Defendant is guilty
13 of the crime charged, you must find the Defendant
14 guilty.

15 On the other hand, if you think that there's a
16 real possibility that the defendant is not guilty, you
17 must give the Defendant the benefit of the doubt and
18 find the Defendant not guilty.

19 I remind you, ladies and gentlemen, that during
20 this trial, you and I have had certain duties to
21 perform. As the trial judge it's been my
22 responsibility to preside over the trial of this case,
23 and I also have the duty to rule on the admissibility
24 of any evidence that's been offered during the trial of
25 this case.

CLOSING ARGUMENTS BY MR. LEE

1 You are to consider only, ladies and gentlemen,
2 the competent evidence before you that has been
3 introduced into evidence during the trial of this case.
4 If there was any testimony ordered stricken from the
5 record in this case during this trial, you must
6 disregard any such testimony.

7 You are to consider only the sworn testimony from
8 the witness stand which has been presented to you
9 during this trial, any exhibits which have been
10 introduced into evidence during the trial of this case
11 and any stipulations or agreements which have been made
12 a part of the record in this case between counsel.

13 I also have the additional duty, ladies and
14 gentlemen, as the presiding judge to charge you the law
15 that applies in this case. As the presiding judge, I
16 am the sole judge of the law of the case and it is your
17 duty, as I told you at the outset, to accept and to
18 apply the law as I now state it to you.

19 If any of you already have any ideas as to what
20 you think the law is or what you feel the law ought to
21 be and it does not agree with what I now tell you the
22 law is, you must abandon any of your preconceived
23 opinions or any of your preconceived ideas, because
24 each of you, when we started this trial, took an oath
25 from the Clerk of Court of Jasper County. And in that

CLOSING ARGUMENTS BY MR. LEE

1 oath you swore or you affirmed, which means that you
2 promised to tell the truth, that you would accept and
3 you would apply the law exactly as I now state it to
4 you.

5 In every case tried in this courtroom before a
6 jury, the jury becomes, as I told you at the outset,
7 the sole and the exclusive judges of the facts in the
8 case based on evidence introduced during the trial of
9 the case. A trial judge, such as myself, cannot
10 intimate it, comment on, make any kind of statement
11 whatsoever to a trial jury about the facts or the
12 evidence in a case.

13 Since you, ladies and gentlemen of the jury, are
14 the sole judges of the facts in this case, you are not
15 to infer from anything that I have said during the
16 progress of this trial or anything that I might say now
17 to you in my charge to you on the law that I have, or
18 ruling upon the admissibility of evidence during a
19 trial, that I have any opinion whatsoever about the
20 facts in this case.

21 The law does not allow me to have an opinion about
22 the facts in this case. This is a matter, ladies and
23 gentlemen, the facts based on the evidence solely for
24 you, the jury, to determine. As jurors then, I charge
25 you that it now becomes your duty as a juror to

CLOSING ARGUMENTS BY MR. LEE

1 determine the effect, the value, the weight and
2 ultimately the truth of the evidence that has been
3 presented during the trial of this case.

4 Now, there are two types of evidence that are
5 presented during a trial. And like many things in the
6 law, ladies and gentlemen, we have names for these two
7 general types of evidence. We call the two types of
8 evidence which are presented, direct evidence and
9 circumstantial evidence.

10 Direct evidence is the testimony of a person who
11 claims to have actual knowledge of a fact, such as an
12 eye witness to an event. Direct evidence is evidence
13 which immediately establishes the main fact to be
14 approved.

15 Circumstantial evidence, as contrasted with direct
16 evidence, is proof of a chain of facts and
17 circumstances indicating the existence of a fact.
18 Circumstantial evidence is evidence which immediately
19 establishes collateral facts from which the main fact
20 may or may not be inferred. Circumstantial evidence,
21 ladies and gentlemen of the jury, is based on inference
22 and not on personal knowledge or personal observation.

23 Cases can be proven by circumstantial evidence.
24 The law makes absolutely no distinction between the
25 weight or the value to be given to either direct

CLOSING ARGUMENTS BY MR. LEE

1 evidence or circumstantial evidence. Nor is a greater
2 degree of certainty required by certain circumstantial
3 evidence or direct evidence.

4 However, to the extent that the State relies on
5 circumstantial evidence, all of the circumstances must
6 be consistent with each other, and when taken together
7 point conclusively to the guilt of the accused beyond a
8 reasonable doubt. If the circumstances merely portray
9 suspicious behavior, the proof has failed. The State
10 has the burden of proving the Defendant guilty beyond a
11 reasonable doubt. This burden rests with the State
12 regardless of whether the State relies on direct
13 evidence, circumstantial evidence or some combination
14 of the two.

15 You, ladies and gentlemen of the jury, must review
16 and consider all of the evidence in this case, both
17 direct and circumstantial. After reviewing all the
18 evidence in this case, if you are not convinced of the
19 guilt of the Defendant beyond a reasonable doubt, you
20 must find the Defendant not guilty. On the other hand,
21 after viewing all of the evidence in this case, both
22 direct and circumstantial, if you are convinced of the
23 guilt of the Defendant beyond a reasonable doubt, you
24 must find the Defendant guilty.

25 Now you have heard the term in this case and I

CLOSING ARGUMENTS BY MR. LEE

1 have used it for you, stipulation, with regard to
2 certain matters in the case. The State and the
3 Defendant can stipulate. They can agree that some
4 facts are true. As to any stipulation that may have
5 occurred during the trial in this case you should
6 accept the stipulation as a fact as true.

7 Necessarily I told you your job in part will be to
8 determine the credibility or believability of the
9 witnesses who have testified in this case. It becomes
10 part of your duty as a juror to analyze, to evaluate
11 the evidence and determine which evidence you find to
12 be true, to be credible, to be believable.

13 In determining the believability of witnesses who
14 have testified in this case, you may believe one
15 witness over several witnesses, or you may believe
16 several witnesses over one witness. You may believe
17 part of the testimony of a witness and you may reject
18 the remaining part of the testimony of that same
19 witness. You may believe the testimony of a witness in
20 its entirety or you may reject the testimony of a
21 witness in its entirety.

22 You may consider whether any witness has
23 any interest, any bias, any prejudice or other motive
24 in this case. You may also consider what I told you we
25 call the demeanor of the witness, the appearance, the

CLOSING ARGUMENTS BY MR. LEE

1 manner in which the witness appears on the witness
2 stand.

3 I charge you, ladies and gentlemen, that a person
4 who has a past criminal record is competent to testify
5 during the trial. A past criminal record does not
6 affect the ability of a witness to testify. The past
7 criminal record may be considered by you, if at all, in
8 determining the Defendant's credibility or the
9 Defendant's believability.

10 Remember, ladies and gentlemen, you, the jury, are
11 the sole judges of the facts in this case. You are the
12 sole judges of the believability or the credibility of
13 the witnesses who have testified during this case based
14 on the evidence introduced during the trial in this
15 case.

16 Now, normally, ladies and gentlemen, as I told you
17 in the trial, neither side of the case can call a
18 witness to the witness stand who looks at you and says
19 under oath, my opinion is this. The Rules of Evidence
20 ordinarily do not permit witnesses to testify to
21 opinions or conclusions. An exception to this opinion
22 rule exists for those witnesses we call expert
23 witnesses, a witness who by education, experience,
24 training claims to have become an expert in some art,
25 science, profession or calling may state an opinion as

CLOSING ARGUMENTS BY MR. LEE

1 to matters the court deems relevant in which the
2 witness claims to be an expert and may state the
3 reasons for his or her opinion.

4 You should consider any expert opinion received in
5 evidence in this case, and like any other evidence, you
6 give it the weight you think it deserves as a jury. If
7 you decide that the opinion of an expert witness is not
8 based on sufficient education or experience or if you
9 should conclude that the reasons given in support of
10 the expert's opinion are not sound or that the opinion
11 is outweighed by the other evidence in the case, you
12 may disregard an expert's opinion entirely.

13 An expert witness's testimony is to be given no
14 greater weight than that of other witnesses simply
15 because the witness is an expert. Further, you are not
16 required to accept an expert's opinion, even though
17 it's not contradicted.

18 I charge you, ladies and gentlemen, that a
19 statement alleged to have been made by the Defendant
20 has been admitted into evidence in this case. While
21 the Court has determined that the statement is
22 admissible as a matter of law, I instruct you that you,
23 ladies and gentlemen of the jury, make the ultimate
24 decision of whether or not the Defendant made the
25 statement. If you determine the Defendant did make the

CLOSING ARGUMENTS BY MR. LEE

1 statement, you must determine whether the statement was
2 made by the Defendant voluntarily and of his own
3 freewill. This means that the statement wasn't caused
4 by pressure, force, fear, threat, coercion,
5 intimidation or by hope or promise of leniency or
6 reward of any kind.

7 In determining whether a statement is voluntary,
8 you can consider based on the evidence the
9 characteristics of the Defendant, the detail of the
10 questioning.

11 Some of the factors that were introduced into
12 evidence you may consider would be the age of the
13 Defendant, the education or lack thereof, the
14 Defendant's mental ability or capacity, the Defendant's
15 IQ or intelligence, the Defendant's background and
16 environment, the place and length of detention, the
17 nature of the questioning and the advice or lack
18 thereof to the Defendant of his constitutional rights
19 including but not limited to the right to remain
20 silent, that any statement could be used against him in
21 a court of law, the right to have a lawyer present. If
22 he could not afford a lawyer, a lawyer would be
23 appointed to represent him without any cost, that he
24 can stop making the statement at any time.

25 You as the jury must consider all the surrounding

CLOSING ARGUMENTS BY MR. LEE

1 circumstances before you give any weight to any alleged
2 statement. The State has the burden of proving beyond
3 a reasonable doubt that the alleged statement was
4 voluntary. If you determine it was, you as the jury
5 can give the statement any further consideration that
6 you deem proper. You must decide what weight, if any,
7 should be given to the alleged statement. If you
8 determine the alleged statement was not the free and
9 voluntary statement of the Defendant, you should not
10 consider the statement at all.

11 Now, in order to establish criminal liability,
12 criminal responsibility, criminal intent is required.
13 Let me give you some examples of criminal intent.
14 Criminal intent must be proven, ladies and gentlemen,
15 in many cases. Examples of criminal intent would be
16 purpose, just normal examples, not necessarily this
17 case, purpose, intent, knowledge, recklessness,
18 negligence. Those are examples of criminal intent.

19 Criminal intent must be proven by the State beyond
20 a reasonable doubt. Criminal intent is always a matter
21 that must be determined by the jury from the
22 circumstances surrounding the situation based on
23 evidence introduced during the trial of the case.

24 Now, we know, ladies and gentlemen, there is no
25 way to prove intent to a mathematical certainty. There

CLOSING ARGUMENTS BY MR. LEE

1 is no way medical science can dissect a person's brain
2 and tell what that person had in mind. So, what
3 happens? The law says, ladies and gentlemen, that
4 intent may be inferred from the circumstances shown to
5 have existed based on evidence introduced during the
6 trial of the case.

7 This, ladies and gentlemen, is how you as a jury
8 make a determination as to whether or not any element
9 in any crime requiring intent was present. It is not
10 necessary for the State to establish intent by direct
11 or positive evidence. But intent may be established by
12 inference in the same way as any other fact by taking
13 into consideration the acts of the parties and all the
14 facts and circumstances of the case based on evidence
15 introduced during the trial of the case.

16 Criminal intent, ladies and gentlemen, is a mental
17 state, a conscious wrongdoing. It is up to you, the
18 jury, from the evidence to determine what the Defendant
19 intended to do based on the circumstances shown to have
20 existed from evidence introduced during the trial of
21 the case.

22 I charge you, ladies and gentlemen, that an
23 issue in this case is the identification of the
24 Defendant as the person who committed the crime
25 charged. The State also has the burden of proving

CLOSING ARGUMENTS BY MR. LEE

1 identity beyond a reasonable doubt. You must be
2 satisfied beyond a reasonable doubt of the accuracy of
3 the identification of the Defendant before you may
4 convict a Defendant.

5 I instruct you, ladies and gentlemen, that the
6 burden of proof is on the State of South Carolina. It
7 extends to every element of the crime charged and this
8 specifically includes the burden of proving beyond a
9 reasonable doubt the identity of the Defendant as the
10 person who committed the crime. If after examining all
11 the evidence in this case you have a reasonable doubt
12 as to the accuracy of the identification, you must find
13 the Defendant not guilty.

14 I instruct you, ladies and gentlemen, that the
15 fact the Defendant did not testify in this case is not
16 a factor to be considered by you in any way in your
17 deliberation and in your consideration on the question
18 of the guilt or innocence of the Defendant. It must
19 not be considered by you in any manner whatsoever in
20 your jury room. A defendant has the constitutional
21 right to remain silent and the assertion of that right
22 must not be considered by you, the jury, in your
23 deliberations.

24 I repeat and under that oath each of you took, my
25 charge to you on the law is, you are to draw no

CLOSING ARGUMENTS BY MR. LEE

1 conclusion whatsoever from the fact that the Defendant
2 in this case did not testify. It should not even be
3 discussed in your jury room.

4 The burden of proof as I have stated to you is on
5 the State of South Carolina. The Defendant is not
6 required to prove his innocence. The burden of proof
7 remains on the State to prove guilt beyond a reasonable
8 doubt.

9 Now, as I told you I read you the allegations in
10 this indictment. And, madam foreperson, I remind you,
11 Skyler is holding the original. Whatever you write on
12 the verdict form, don't leave without also writing the
13 same words on the indictment.

14 The indictment in this case charges the Defendant
15 with the criminal offense of murder. For this offense,
16 ladies and gentlemen of the jury, the State must prove
17 beyond a reasonable doubt that the Defendant killed
18 another person with malice aforethought.

19 Malice is hatred, ill will, hostility towards
20 another person. It is the intentional doing of a
21 wrongful act. Without just cause, without any excuse
22 and with an intent to inflict injury, malice
23 aforethought does not require that malice exist for any
24 particular time before the act is committed. But
25 malice, hatred, ill will, hostility must exist in the

CLOSING ARGUMENTS BY MR. LEE

1 mind of the Defendant just before and at the time the
2 act is committed. Therefore, there must be a
3 combination, ladies and gentlemen, of this malice or
4 evil intent or hatred or ill will or hostility and the
5 act itself.

6 Malice aforethought may be expressed or implied.
7 These terms "express" and "implied" do not refer to
8 different kinds of malice but merely the manner in
9 which malice may be shown to exist. That is either by
10 direct evidence or by inference from the facts and
11 circumstances which have been proven to you based on
12 evidence introduced during the trial of the case.

13 Expressed malice is shown when a person actually
14 speaks words which express hatred or ill will or
15 hostility towards another person.

16 Malice may also be inferred from conduct showing a
17 total disregard for human life. If facts are proven
18 beyond a reasonable doubt sufficient to raise an
19 inference of malice to your satisfaction, ladies and
20 gentlemen, this inference would be simply an
21 evidentiary fact to be considered by you along with all
22 of the other evidence in this case, and you may give it
23 the weight you decide it should receive.

24 Now, ladies and gentlemen, I have prepared a
25 verdict form for you. Wrong one.

CLOSING ARGUMENTS BY MR. LEE

1 I have prepared a verdict form for you. I put the
2 name of the case. I've got the State of South
3 Carolina, County of Jasper, in the Court of General
4 Sessions. I have the indictment number of 2015 at 144.
5 I have got the State of South Carolina versus Rohaime
6 Hopkins, Defendant. Got the word "verdict" written in
7 the caption at the top.

8 There's only one question on your verdict form.
9 Pay absolutely no attention to the order in which the
10 form of the verdict are written. We obviously had to
11 write one before the other, ladies and gentlemen, and
12 the order has no significance whatsoever.

13 Question one: We, the jury, by unanimous consent
14 find the Defendant, Rohaime Hopkins, in indictment
15 number 2015-GS, means General Sessions, 27, that means
16 Jasper County, 00144. And the first form of verdict
17 under that question is guilty of murder.

18 Madam foreperson, if that be your form of verdict,
19 you would place a checkmark on the line beside that
20 form of verdict on the verdict form.

21 The second form of verdict under question one is
22 not guilty of murder. Madam foreperson, if that be the
23 jury's form of verdict, you would place a checkmark
24 beside the line on that form of verdict.

25 You must find one form of verdict or the other.

CLOSING ARGUMENTS BY MR. LEE

1 You cannot find both. Either guilty or not guilty.

2 When you have reached a verdict, madam foreperson,
3 you will place a checkmark for the entire jury on the
4 appropriate line reflecting the jury's verdict and then
5 you will sign your name on the line where it says
6 foreperson at the bottom of the verdict form.

7 Your verdict must be unanimous. That is it must
8 be the verdict of each and every one of you. All 12 of
9 you must agree on a verdict. When you have reached a
10 verdict, you will knock on the jury room door, inform
11 my bailiff that you have reached a verdict, and we will
12 bring you back in the courtroom to publish your
13 verdict.

14 Now, madam foreperson, ladies and gentlemen of the
15 jury, I have now charged you on the law to hopefully
16 help guide you to a fair result in this case. You are
17 the judges of the facts in this case and based on your
18 determination of the facts and on the law as I have
19 explained it to you, you are soon going to begin your
20 deliberations.

21 You have been selected, each of you, as fair and
22 impartial jurors. You took an oath to fairly and
23 impartially try and determine the facts of this case.
24 And when you comply with that oath, no one can
25 criticize your verdict. But you are to decide this

CLOSING ARGUMENTS BY MR. LEE

1 case based only and solely on the evidence that has
2 been presented to you in this case. That means sworn
3 testimony from the witness stand, exhibits and any
4 stipulation.

5 You will have most of the exhibits with you in
6 your jury room. There are a couple that I have got to
7 keep out here because you need equipment in order to
8 use them. However, if you so desire to listen to them,
9 I will be happy to let you come back and we will set up
10 the equipment out here for you in order to utilize any
11 exhibit that you so desire.

12 You must decide this case, ladies and gentlemen,
13 without any bias, without any prejudice toward either
14 party in this case. You cannot allow yourself to be
15 governed by prejudice for or against any person. You
16 can't allow yourself to be governed by public opinion
17 or by emotion or any other arbitrary factor that is not
18 in evidence in this case.

19 Both the State of South Carolina and the Defendant
20 have the absolute right to expect that each of you on
21 this jury will carefully and impartially consider all
22 of the evidence in this case and that you will follow
23 the law as I have instructed you to be in reaching your
24 verdict in this case.

25 Now, ladies and gentlemen, I'm going to ask you if

CLOSING ARGUMENTS BY MR. LEE

1 you would retire to your jury room. Do not -- one
2 second. Do not begin your deliberations. It may be
3 necessary for me to bring you back for some brief
4 additional instructions. When it is time for you to
5 begin your deliberations, I'll send your verdict form
6 into you along with all of the exhibits which I can
7 send to you without equipment into your jury room and
8 have the bailiff tell you you may then commence your
9 deliberations.

10 Mr. Alternate Juror, please remain with me.

11 Would my other jurors please retire at this time
12 to the jury room.

13 (Jury exits the courtroom.)

14 THE COURT: No one became ill or for some reason
15 could not continue to serve in this case. I want to
16 thank you for your service in this case.

17 ALTERNATE JUROR: Yes, sir.

18 THE COURT: I very much appreciate your patience.
19 This concludes your jury service for the entire week.
20 You are now exempt from jury service for three years as
21 a result of being here. Happy if you'd like to stay.
22 Margaret probably will even see that you get a piece of
23 pizza, which is probably a little cold by now. If you
24 need a work excuse from serving on the jury, we will be
25 happy to provide that to you through the clerk's office

CLOSING ARGUMENTS BY MR. LEE

1 and we will be mailing your big exorbitant check that
2 we pay jurors for their service at the address that she
3 sent your summons to.

4 Sometimes the parties like to talk to jurors. If
5 you would like to talk to the parties, you may do so
6 about how you felt about the case. If you do not wish
7 to talk to the parties, you do not have to do so. That
8 is entirely up to you. If someone persists in asking
9 you to talk about it and you don't want to talk about
10 it, get the name, give it to me and let me handle that
11 problem for you.

12 ALTERNATE JUROR: Okay.

13 THE COURT: Thank you so much for your service.

14 ALTERNATE JUROR: Thank you.

15 THE COURT: You may leave the courtroom at this
16 time.

17 Any exceptions or additions to the charge from the
18 State of South Carolina?

19 MS. JONES: Not from the State, Your Honor.

20 THE COURT: From the Defendant?

21 MR. LEE: No, sir.

22 THE COURT: I would ask that counsel come forward
23 to my good court -- my excellent court reporter, Mona
24 Manley. I want you to certify, number one, that you're
25 satisfied the court reporter has all the exhibits.

CLOSING ARGUMENTS BY MR. LEE

1 I want you to certify what exhibits you believe
2 need to remain out here because of equipment.

3 I also want you to tell me whether or not you
4 agree that the court reporter has all of the exhibits,
5 which ones, which ones remain, and that you have no
6 objection to the bailiff taking the exhibits and the
7 verdict form into the jury and telling the jury they
8 may now commence their deliberation.

9 Please come forward. Go through them.

10 (Pause.)

11 All right. Is the State satisfied that the court
12 reporter has all exhibits?

13 MS. JONES: Yes.

14 THE COURT: Is the Defendant satisfied that the
15 court reporter has all exhibits?

16 MR. LEE: Yes, sir.

17 THE COURT: Have y'all agreed on which exhibits
18 should remain in the courtroom and which should go to
19 jury?

20 MS. JONES: Yes, Your Honor, State's 1.

21 MR. LEE: And Defendant's 1.

22 THE COURT: State's 1 and Defendant's 1 will
23 remain in the courtroom. All other exhibits that have
24 been introduced into evidence will go into the jury
25 room; is that correct from the State?

CLOSING ARGUMENTS BY MR. LEE

1 MS. JONES: Yes, sir.

2 THE COURT: Correct from the Defendant?

3 MR. LEE: Yes, sir.

4 THE COURT: Does the State have any objection to
5 the bailiff taking the verdict form and those exhibits
6 you have agreed upon into the jury room and telling the
7 jury they may now commence their deliberations?

8 MS. JONES: No, sir.

9 THE COURT: Does the Defendant have any objection
10 to the bailiff taking the exhibits you have agreed
11 upon, the other two -- the two will remain here -- with
12 the verdict form and telling the jury they may now
13 commence their deliberation?

14 MR. LEE: No objection.

15 THE COURT: I'm also going to send them a pad and
16 pencil and I'm instructing the bailiff that they are
17 not to throw anything in the trash can. Sometimes,
18 they will ask questions and then throw it away.
19 Everything is to be returned back out to us even if
20 it's a question they write during deliberations.

21 Very well. How about that right there?

22 MS. JONES: This needs to go back.

23 THE COURT: All right. Box and picture.

24 Is that everything?

25 MS. JONES: That's everything.

CLOSING ARGUMENTS BY MR. LEE

1 THE COURT: All right.

2 (Pause.)

3 THE COURT: All right. Counsel, the bailiff has
4 taken the verdict form into the jury along with the
5 exhibits, other than the two you agreed to remain out
6 here and those that were marked for identification only
7 remain out here.

8 We will be at ease while we await the jury's
9 verdict.

10 I have instructed the jail to bring people over.

11 We will start back, if we can, with non jury at
12 3:30, which is one hour from now.

13 I will be available and should the jury have any
14 questions; otherwise, we will be at ease.

15 Thank you very much. The Court is in recess.

16 (Jury deliberating.)

17 (The jury returns a verdict at 3:10 p.m.)

18 THE COURT: Anything from the State before we
19 publish the verdict?

20 MS. JONES: No, Your Honor. The victim advocate
21 has been went to find Mr. Johnson's parents.

22 THE COURT: Are they outside? Look and see.

23 MS. JONES: Yes, here they are right here.

24 THE COURT: Get them to come in.

25 (Pause.)

VERDICT

1 THE COURT: Now, ladies and gentlemen, I do not
2 tolerate any emotion or outburst when the jury verdict
3 is published. If you cannot control your emotions,
4 please leave the courtroom at this time. I'll enforce
5 that with contempt powers of the Court. So, if you
6 feel like you can't control yourself, regardless of
7 what the verdict is, please excuse yourself from the
8 courtroom. This jury deserves respect.

9 Very well. Anything from the Defendant?

10 MR. LEE: No, Your Honor.

11 THE COURT: Bring us the jury.

12 (The jury enters the courtroom at 3:13 p.m.)

13 THE COURT: Madam foreperson, has the jury reached
14 a verdict?

15 FOREPERSON: Yes, Your Honor.

16 THE COURT: Will you give it to the clerk, please.
17 Do you want me to publish it?

18 THE CLERK: Go ahead.

19 THE COURT: Will Defendant and counsel please
20 rise. The State of South Carolina versus Rohaime
21 Hopkins, indictment number 2015-GS-2700144, we the jury
22 by unanimous consent find the Defendant, Rohaime
23 Hopkins, in indictment number 2015-GS-2700144 guilty of
24 murder.

25 Ladies and gentlemen of the jury, if this be your

VERDICT

1 verdict would you please indicate by raising your right
2 hand.

3 (All jurors raise their hands.)

4 THE COURT: Thank you. Let the record reflect
5 that all hands were raised.

6 Mr. Lee, anything further for the jury before I
7 excuse the jury from the Defendant?

8 MR. LEE: I would ask that the jury be polled,
9 Your Honor.

10 THE COURT: Madam Clerk, I'll ask you to poll the
11 jury.

12 Please be seated. Ladies and gentlemen of the
13 jury, the clerk is going to call your name. As your
14 name is called please stand. She will ask you two
15 questions. Was that your verdict as published by the
16 Court. You answer yes or no. Is that still your
17 verdict. You would answer yes or no.

18 THE CLERK: Denise Smith. Is this your verdict?

19 JUROR: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: John Bouchillon.

23 Was this your verdict?

24 JUROR: Yes.

25 THE COURT: Is it still your verdict?

POLLING OF THE JURY

1 JUROR: Yes.

2 THE CLERK: Lawanda Long.

3 Was this your verdict?

4 JUROR: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Randy Lambert.

8 Was this your verdict?

9 JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Sonia Dugan.

13 Was this your verdict?

14 JUROR: Yes.

15 THE COURT: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Donna Semken.

18 Was this your verdict?

19 JUROR: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Jose Flores.

23 Was this your verdict?

24 JUROR: Yes.

25 THE COURT: Is it still your verdict?

POLLING OF THE JURY

1 JUROR: Yes.

2 THE CLERK: Timothy Wyld.

3 Was this your verdict?

4 JUROR: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Jaconna Brooker.

8 Was this your verdict?

9 JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Carl Tillman.

13 Was this your verdict?

14 JUROR: Yes.

15 THE COURT: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Shalonda Toomer.

18 Was this your verdict?

19 JUROR: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Robert Young.

23 Was this your verdict?

24 JUROR: Yes.

25 THE COURT: Is it still your verdict?

POLLING OF THE JURY

1 JUROR: Yes.

2 THE COURT: Counsel, the jury has been polled.

3 The jury stands. Anything further from the Defendant
4 or the State before I excuse the jury?

5 MR. LEE: No, Your Honor.

6 MS. JONES: Not from the State, Your Honor.

7 THE COURT: Ladies and gentlemen of the jury, all
8 that a judge can do is ask a jury to listen, and I
9 watched each of you during the trial of this case and
10 that is exactly what you did on behalf of Jasper County
11 and this court, and I want to thank you for your
12 service.

13 This concludes your service for the entire week.
14 I told you that I would get you home early. Now, let
15 me tell you a couple of things so that you will know.
16 Sentencing in this case is going to occur in just a
17 moment. I invite you to stay, if you would like to
18 stay for sentencing. That is a province of the Court,
19 not the jury.

20 If you would like to stay, you can remain in the
21 jury box, where you are, and you can leave after
22 sentencing is through. We will be mailing you -- or if
23 you would like, you can have a seat out in the
24 courtroom if you would like to stay. You don't have
25 to, but I want you to know that you are invited to.

COMMENTS TO THE JURY FROM THE COURT

1 The courtroom is a public place. Now, we are
2 going to be mailing you your check. Your exorbitant
3 money -- how much are we paying, Margaret?

4 THE CLERK: Ten dollars a day, Your Honor.

5 THE COURT: Ten dollars a day. And we will be
6 mailing you a check at the address that we sent the
7 subpoena to. You can be expecting your check, probably
8 next week. Margaret?

9 THE CLERK: Yes, sir.

10 THE COURT: Next week. Sometimes folks will want
11 to talk to you, they want to improve the way that they
12 try cases or they are just curious about what you
13 thought, because you have been here several days. If
14 you want to talk about your jury service, you are free
15 to do so. If you don't want to talk about it, you
16 don't have to do so. If someone persists to talk to
17 you about it and you don't want to talk about it, what
18 you do is give their name to me and I will handle that.

19 Now, if you need a work excuse for this week, we
20 have those in the clerk's office so you can show your
21 employer you were here on the jury. Now, because you
22 have served you are exempt for three years if the
23 computer were to choose you for your service.

24 On behalf of Jasper County and this court, I want
25 to thank you very much for your service. The reason

COMMENTS TO THE JURY FROM THE COURT

1 that I come down from the Bench after a trial is over
2 is I like to shake my jurors' hands.

3 (Judge shaking all of the jurors' hands.)

4 THE COURT: Thank you, sir. I appreciate your
5 service. Now, if you would like to leave the
6 courtroom, you may do so. If you would like to stay
7 because sentencing is going to occur right now, in just
8 a few moments. We have got to fill out paperwork and I
9 have to hear if there are post-verdict motions, and
10 I'll be happy for you to remain.

11 This concludes your service. For those of you
12 that would like to leave, you are now excused for the
13 balance of the week and you are exempt for three years.
14 Thank you very much. Jurors exit the courtroom.

15 (Some jurors remain for sentencing.)

16 THE COURT: All right. Mr. Lee, are there any
17 post-verdict motions from the Defendant?

18 MR. LEE: I would like to make the standard motion
19 for a new trial based upon the in-trial motions that we
20 made. I guess the denial of my directed verdict motion
21 at the close of the State's case. I didn't make one at
22 the end of your case, no evidence was presented. But I
23 make a motion for a new trial.

24 THE COURT: Solicitor, do you wish to be heard on
25 the request of the new trial?

COMMENTS TO THE JURY FROM THE COURT

1 MS. JONES: I think that there was enough evidence
2 to take it to the trial and I think that the jury made
3 the correct decision.

4 THE COURT: I agree. Your motion for a new trial
5 is respectfully denied.

6 Solicitor, I'll ask you and counsel for the
7 Defendant and the Defendant to please come forward for
8 sentencing.

9 MS. JONES: And Your Honor, I do have a sentencing
10 sheet on the way. Mr. Hollen went to my office to grab
11 one, my apologies.

12 THE COURT: Tell Mr. Hollen to chop chop,
13 Solicitor.

14 MS. JONES: He knows to chop chop. There he is
15 right there.

16 THE COURT: For those of you that are still here,
17 you asked me about the time line, it was used as a
18 demonstrative exhibit and not entered into evidence,
19 therefore I couldn't allow you to review a
20 demonstrative exhibit. So you can base it on the
21 exhibits. That was argument, ladies and gentlemen, not
22 evidence.

23 MS. JONES: Because of the technologies these
24 days, Your Honor, they have to be filled out by hand.
25 Our new program does not --

SENTENCING BY THE COURT

1 THE COURT: The age of technology. We are going
2 backwards, it appears.

3 I'm not going to say one thing since my law clerk
4 has never seen a book or a book on a computer. Well,
5 he does have one.

6 MR. LEE: He's never had a driver's license, so I
7 put NA.

8 THE COURT: Mr. Scott, I am going to need a full
9 name, date of birth and Social Security number at a
10 bear minimum. All right. And obviously you are very
11 aware -- which the jury is not -- Mr. Lee, you are very
12 aware of your client's criminal record.

13 MR. LEE: Yes, sir.

14 THE COURT: Which the jury is not aware of. The
15 Solicitor will publish it for me at the appropriate
16 time. And if a member of the victim's family wishes to
17 address the Court, I will be happy to hear from them.

18 Solicitor, would you like to go first? Give me
19 his record and tell me whether any member of the family
20 wishes to address the Court at the appropriate time.

21 MS. JONES: Yes, sir, Mr. Hopkins does have a
22 prior record. In 2017 he was convicted of voluntary
23 manslaughter.

24 In 2010, he has two Federal convictions, felon in
25 possession of a firearm as well as unlawful

SENTENCING BY THE COURT

1 transportation of a firearm. He was on Federal
2 probation when he committed this murder, Your Honor.

3 Present this week, for the whole trial, is
4 Terrance's mother, Ricky Johnson, as well as his
5 stepdad, for all intents and purposes, his father,
6 Reverend Green. I do not believe that either of them
7 wish to speak. Okay. Mrs. Johnson would like to speak,
8 Your Honor.

9 THE COURT: Please come forward.

10 MRS. JOHNSON: I'm not used to this. I don't know
11 what to do.

12 THE COURT: Okay. Let the Solicitor talk to you
13 for a minute. Solicitor, explain to her what is going
14 on so she understands, she is not familiar with this.

15 MRS. JOHNSON: Judge, first I just wanted to --

16 THE COURT: Hold on one second. For the record, I
17 need you to speak up so the court reporter can hear.
18 Would you give me your name?

19 MS. JONES: Yes, sir, my name is Ricky Johnson.

20 THE COURT: Ms. Johnson, I understand that you are
21 the mother of Terrance Johnson?

22 MRS. JOHNSON: Yes, sir.

23 THE COURT: Now, we are here for sentencing. I am
24 going to hear from both sides. I'll be happy to hear
25 anything that you want to tell me about the sentence.

SENTENCING BY THE COURT

1 There is a minimum sentence in South Carolina for the
2 offense of murder. It is 30 years imprisonment and you
3 serve day for day. If I say 30, you serve 30. There
4 is no good time. There is no parole. The maximum
5 sentence is life imprisonment. I don't know whether
6 the Solicitor has been over it. But it's entirely in
7 the discretion of the Court. I will be happy to hear
8 anything that you would like to tell me.

9 MRS. JOHNSON: First, I want to thank you, Your
10 Honor.

11 THE COURT: I thank you for being here.

12 MRS. JOHNSON: I just want to thank everybody.
13 Terrance Johnson was my only child. He was not the
14 best child but he was my child. And he had a big
15 heart, unfortunately. He just loved doing, doing,
16 doing for others. And when he was taken away from me,
17 instead of celebrating my husband's birthday, November
18 the 12th, I'm constantly reminded that my son was taken
19 away from me on November the 12th.

20 He has left a couple of children that I know of
21 for sure and I just want you to know that it really
22 hurt me because I can't have any more children, that
23 was my only child and I loved him very dearly.

24 THE COURT: Thank you for taking the time to
25 express your feelings to me.

SENTENCING BY THE COURT

1 MRS. JOHNSON: Thank you.

2 THE COURT: All right, solicitor, you have told me
3 his record. Tell me the State's position.

4 MS. JONES: Your Honor, prior to trial, the State
5 did serve upon Mr. Hopkins through his attorney LWOP
6 notice.

7 THE COURT: I'm aware of that, but of course you
8 are aware that he was facing life without a LWOP
9 notice.

10 MS. JONES: I understand absolutely, Your Honor.
11 He has a very violent history. He has already been to
12 prison once before for voluntary manslaughter. He
13 served ten years in prison for that and didn't,
14 obviously, learn any sort of lesson from that time. He
15 was not rehabilitated. He came out of prison and
16 immediately went back to this life of crime.

17 He was arrested on Federal gun charges in 2010 for
18 which he was on Federal probation for. This case was
19 unlike no other that I have ever been a part of. A
20 murder for hire is the scariest and the most injustice
21 thing that I could possibly think of. This man was
22 killed for telling the truth and for cooperating.

23 And it took, regardless of what caliber of person
24 I had to put on that witness stand to prove that
25 Mr. Hopkins was the one who committed this murder, they

SENTENCING BY THE COURT

1 were testifying against a hit man for killing a snitch.
2 Anybody that can do that, that thinks any life is worth
3 any sort of dollar amount and can follow through with
4 that crime deserves to spend the rest of their life in
5 prison.

6 THE COURT: Very well. Is there anything further
7 from the State or any victim before I hear from
8 Mr. Lee?

9 MS. JONES: I don't believe so, no, Your Honor.

10 THE COURT: Mr. Lee, I'll be happy to hear from
11 you in mitigation.

12 MR. LEE: Thank you, Judge. This is always the
13 toughest part of your trial when you have fought so
14 hard for your client and got to know him pretty good
15 and thought you got a fair trial from the Judge, and
16 certainly Mrs. Jones, the Solicitor, and from the jury.
17 And we respect what the jury verdict is. We may not
18 necessarily at this time agree with it, but we respect
19 that they heard everything and that sort of thing.

20 Judge, there's not a whole lot of options as far
21 as the sentencing and we knew that going in. We never
22 got an offer that was palatable and went forward. And
23 I will tell you, I have been on this case for six
24 months or so. I was the second lawyer involved in it.
25 And I have got to spend quite a bit of time with

SENTENCING BY THE COURT

1 Rohaime, talked to his brother a lot. His brother,
2 ironically enough, has been on the other side of a
3 criminal case, because his, Rohaime's nephew, seven
4 years old, was killed in the cross fire shooting on
5 Hilton Head a few years ago. I guess things come full
6 circle sometimes and life is cruel. But I have enjoyed
7 getting to know Rohaime.

8 I don't know what happened. We may never know.
9 But I just want him to know that I did everything for
10 him and certainly sorry I couldn't make a deal, but
11 he's always been polite and he has always really been
12 into his case. We have had good discussions together.
13 And he's put on his lawyer hat quite a bit and helped
14 me. And I have enjoyed getting to know him, which may
15 seem ironic considering, you know, his prior history.
16 But deep down he has a family and can sympathize with
17 loss.

18 And I'm just really sorry to the victim's family
19 for their loss. And I don't think that you have a
20 whole lot of discretion because they put us on notice
21 of life without patrol.

22 THE COURT: Tell me exactly what you think my
23 discretion is Mr. Lee.

24 MR. LEE: I don't think that you have any
25 discretion.

SENTENCING BY THE COURT

1 THE COURT: You think that it is a mandatory LWOP
2 sentence?

3 MR. LEE: Isn't it based on two most serious?

4 MS. JONES: Based on his prior record, Your Honor.

5 THE COURT: I think that makes him eligible. But
6 does the statute include mandatory language?

7 MS. JONES: I believe it does, Your Honor.

8 THE COURT: Let me see it.

9 (Pause.)

10 THE COURT: He was eligible for life whether they
11 noticed you or not. But she is saying the fact that
12 there's two prior serious or most serious offenses
13 makes it mandatory.

14 MR. LEE: I think that there's one prior most
15 serious, and this is a most serious.

16 THE COURT: I do not dispute its eligibility. But
17 because you said there's no options in this case, I
18 want to look at the statute.

19 MR. LEE: Well, I hope that I'm wrong.

20 THE COURT: I am not saying that you are.

21 MR. LEE: But I'm just being candid with the
22 Court.

23 MS. JONES: It says, Must be sentenced Your Honor,
24 the statute does.

25 THE COURT: Let me see it. If you give me the

SENTENCING BY THE COURT

1 statute he can pull it in the book.

2 MS. JONES: 17-25-45.

3 THE COURT: 17 what?

4 MS. JONES: 12-25-45. And, Your honor, if I
5 may --

6 THE COURT: Hold on a second, Solicitor. Let me
7 read and then you can talk.

8 MS. JONES: Absolutely.

9 (Pause.)

10 THE COURT: Mr. Lee, you are correct, the statute
11 says, Notwithstanding any other provision of law,
12 except in cases in which the death penalty is imposed
13 upon a conviction of a most serious offense as defined
14 by this section, a person must be sentenced to a term
15 of imprisonment for life without the possibility of
16 patrol if that person has one or more prior convictions
17 for a most serious offense. And it includes other
18 things, which it includes Federal or out of state
19 convictions for an offense that would be classified as
20 a most serious. So you are correct, there is no
21 discretion.

22 MR. LEE: Yes. Can --

23 THE COURT: Anything else that you want to tell
24 me?

25 MR. LEE: Yes, sir.

SENTENCING BY THE COURT

1 THE COURT: I am going to hear from your client.

2 MR. LEE: I know. I made a mistake earlier and
3 they may have made one too. 1996, I believe, is when
4 the voluntary manslaughter charge occurred, and he was
5 convicted at trial. HE was Seventeen years old. He
6 was convicted at trial and got 30 years and then it was
7 ultimately reversed, PCR, whatever it was,
8 approximately 10 years later he went back to court,
9 entered a plea and got time served.

10 So I thought that they were saying 2007 he got a
11 voluntary. It was 1996 I believe.

12 THE COURT: You are talking about the date of the
13 offense rather than the conviction.

14 MR. LEE: I'm talking about the date of the
15 offense.

16 THE COURT: She was referring to the date of
17 conviction.

18 MR. LEE: There was so much time between the two.
19 I just wanted to let you know. I mean, he is 37, it
20 happened 20 years ago.

21 THE COURT: I'm aware that your client is advising
22 you that the events which led to his ultimate pleading
23 guilty to time served he tells you occurred in 1996.
24 The Solicitor reported the record, and gave you a
25 certified copy of his record showing that that

SENTENCING BY THE COURT

1 conviction was in 2007.

2 And you are right, Mr. Lee, there's no time limit
3 in the statute, regardless. At least if there is, I
4 don't see it. Are you telling me that you think that
5 there is?

6 MR. LEE: No, I'm just saying, I think that that
7 two strikes, three strikes started, I think generally,
8 first in 1996, the ominous crime reduction act,
9 whatever they call it.

10 THE COURT: Actually, the first act was 1982, Act
11 No. 358 and it was codified in '86 as Act Number 462.
12 It was re -- it was either changed in '95, '97, '98,
13 and actually there is a change in the 2016 supplement
14 that deals with defining the prior offenses.

15 MR. LEE: Yes, sir.

16 THE COURT: Which I have reviewed for purposes of
17 your telling me that you don't think that there's any
18 discretion.

19 MS. JONES: Additionally, Your Honor, going
20 through his record I failed to mention that while in
21 prison serving that initial voluntary manslaughter
22 sentence, he was convicted of assaulting a corrections
23 officer and received a conviction of assault and
24 battery with intent to kill in 2002.

25 THE COURT: Very well. And that was given to

SENTENCING BY THE COURT

1 Mr. Lee when you gave him his certified record?

2 MS. JONES: Yes, sir.

3 THE COURT: Because Mr. Lee advised me, and I
4 obviously trust both of y'all, when I advised the
5 Defendant of his right not to testify or to testify in
6 this case, Mr. Lee advised me that you are providing
7 him with his record, certified copy. And even though
8 there were some disputes about the dates that he was
9 convicted of possession of a firearm and transportation
10 of a firearm, those were in fact convictions. Although
11 he has other charges concerning that pending at this
12 time; is that correct?

13 MS. JONES: He has one more state charge pending,
14 Your Honor, not connected.

15 THE COURT: Which is?

16 MS. JONES: He has a assault and battery second
17 degree.

18 THE COURT: All right. Mr. Lee, anything else
19 that you want to tell me?

20 MR. LEE: Nothing from me. Do you have anything?

21 THE DEFENDANT: (Nods in the negative.)

22 THE COURT: All right. Mr. Hopkins, I'll be happy
23 for you to tell me anything else before sentencing.
24 You are talking to me now, not to anybody in the
25 courtroom, not to the jury, to me, but I'll be happy to

SENTENCING BY THE COURT

1 listen to you.

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: Anything further from the State of
4 South Carolina?

5 MS. JONES: No, Your Honor.

6 THE COURT: Anything further from the Defendant?

7 MR. LEE: No, sir.

8 THE COURT: Very well. On Indictment
9 2015-GS-2700144, the State versus Rohaime Hopkins, the
10 jury has convicted you of the offense of murder. The
11 sentence of this Court is: Defendant is committed to
12 the State Department of Corrections for the remainder
13 of your life without the possibility of patrol. The
14 Defendant is to be taken into custody at this time.

15 (Pause.)

16 THE COURT: Ladies and gentlemen of my jury panel,
17 I want to thank you for your service. Once again, I
18 thank you for your patience. I realize that it took a
19 while. I want you to know, that although in every case
20 and Mr. Lee was right to tell you that they don't
21 necessarily agree with the jury's verdict but he
22 respects the jury's verdict and I do too. I can tell
23 you that I believe that there was evidence in which you
24 could reach the conclusion of guilty. Obviously, I
25 wouldn't have submitted the case to you for your

SENTENCING BY THE COURT

1 consideration had I not felt so. Thank you on behalf
2 of Jasper County and this state for your service. You
3 may leave this courtroom through this door right here.
4 God speed to you.

5 (The jury exits the courtroom at 3:43 p.m.)

6 THE COURT: Would my lawyers in this case approach
7 the Bench?

8 (Off-the-record discussion held.)

9

10 (Whereupon, the trial was concluded.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SENTENCING BY THE COURT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 28th day of September, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

16

mmanley@sccourts.org

17

18

19

20

21

22

23

24

25

26

Charleston_MTX4	8434153979	9126310426	1	11/12/2014 17:08	119	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434153979	0	11/12/2014 17:14	81	208 3 = Gamma	208 3 = Gamma	9126310426
Charleston_MTX4	8434153979	8434411240	1	11/12/2014 17:16	90	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8432266801	1	11/12/2014 17:18	57	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434411240	1	11/12/2014 17:25	5	289 3 = Gamma	289 3 = Gamma	8434153979
Charleston_MTX4	8434153979	2266263	3	11/12/2014 17:28	7	289 3 = Gamma	289 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8432268626	2	11/12/2014 17:29	48	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434411240	3	11/12/2014 17:32	2	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434411240	1	11/12/2014 17:40	185	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434417415	2	11/12/2014 17:46	98	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	3384917	1	11/12/2014 17:48	76	208 3 = Gamma	208 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8432269241	1	11/12/2014 17:52	37	289 3 = Gamma	289 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434153979	5	11/12/2014 17:55	60	0	0	0
Charleston_MTX4	8434153979	321	0	11/12/2014 17:55	58	208 3 = Gamma	208 3 = Gamma	8433384917
Charleston_MTX4	8434153979	8434153979	5	11/12/2014 18:16	43	0	0	0
Charleston_MTX4	8434153979	37	0	11/12/2014 18:16	33	289 3 = Gamma	289 3 = Gamma	8434411240
Charleston_MTX4	8434153979	8434411240	3	11/12/2014 19:03	2	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	8434417415	2	11/12/2014 19:11	36	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	8432582076	1	11/12/2014 19:13	88	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	8434410568	1	11/12/2014 19:18	46	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	6702114	1	11/12/2014 19:20	43	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	4707259329	1	11/12/2014 19:23	27	289 1 = Alpha	289 1 = Alpha	8434153979
Charleston_MTX4	8434153979	8434411240	1	11/12/2014 19:23	5	289 1 = Alpha	289 1 = Alpha	8434153979
Charleston_MTX4	8434153979	8434153979	2	11/12/2014 19:24	36	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	8434153979	8434153979	2	11/12/2014 19:25	28	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	8434153979	9126310426	1	11/12/2014 19:32	118	289 3 = Gamma	289 3 = Gamma	8434153979
Charleston_MTX4	8434153979	8434153979 F		11/12/2014 19:33	75	0	0	0
Charleston_MTX4	8434153979	8434411240	1	11/12/2014 20:13	65	288 2 = Beta	288 2 = Beta	8434153979
Charleston_MTX4	8434153979	8436840096	2	11/12/2014 20:30	57	271 1 = Alpha	271 1 = Alpha	8434153979
Charleston_MTX4	8434153979	8434153979	5	11/12/2014 20:31	42	0	0	0
Charleston_MTX4	8434153979	427	0	11/12/2014 20:32	31	271 1 = Alpha	271 1 = Alpha	8434411240
Charleston_MTX4	8434153979	2582689	1	11/12/2014 21:10	42	289 2 = Beta	289 2 = Beta	8434153979
Charleston_MTX4	8434153979	8434153979 F		11/12/2014 21:31	27	0	0	0
Charleston_MTX4	8434153979	8434153979	5	11/12/2014 21:33	46	0	0	0



Charleston_MTX4	8434153979		505	0	11/12/2014 21:33	45	231 2 = Beta	231 2 = Beta	8434805967
Charleston_MTX4	8434153979	8434153979		5	11/12/2014 21:34	32	0	0	8434805967
Charleston_MTX4	8434153979		370	0	11/12/2014 21:34	31	231 2 = Beta	231 2 = Beta	8434805967
Charleston_MTX4	8434153979	8434153979		5	11/12/2014 21:37	22	0	0	8434805967
Charleston_MTX4	8434153979		536	0	11/12/2014 21:37	20	216 1 = Alpha	216 1 = Alpha	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:38	25	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:40	29	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:45	20	0	0	8434805967
Charleston_MTX4	8434153979		986	5	11/12/2014 21:45	15	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:46	31	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:47	118	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 21:58	32	0	0	8434805967
Charleston_MTX4	8434153979		156	0	11/12/2014 21:58	26	216 1 = Alpha	216 1 = Alpha	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 22:24	33	0	0	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 23:16	35	0	0	9126310426
Charleston_MTX4	8434153979		493	0	11/12/2014 23:16	26	216 1 = Alpha	216 1 = Alpha	9126310426
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 23:17	36	0	0	8434805967
Charleston_MTX4	8434153979		51	0	11/12/2014 23:17	28	216 1 = Alpha	216 1 = Alpha	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 23:30	36	0	0	9126310426
Charleston_MTX4	8434153979		371	0	11/12/2014 23:30	30	216 1 = Alpha	216 1 = Alpha	9126310426
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 23:36	35	0	0	8434805967
Charleston_MTX4	8434153979		31	0	11/12/2014 23:36	28	216 1 = Alpha	216 1 = Alpha	8434805967
Charleston_MTX4	8434153979	8434153979	F		11/12/2014 23:37	66	0	0	8434805967
Charleston_MTX4	8434153979		705	0	11/12/2014 23:37	29	208 1 = Alpha	208 1 = Alpha	8434805967

Charleston_MTX4	4707259329	8432271239	1	11/12/2014 17:02	32	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432265850	3	11/12/2014 17:02	1	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432582093	1	11/12/2014 17:03	57	289 2 = Beta	289 2 = Beta	4707259329
Charleston_MTX4	4707259329	8432582093	1	11/12/2014 17:04	34	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432582093	1	11/12/2014 17:05	55	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432264869	2	11/12/2014 17:12	160	289 2 = Beta	289 2 = Beta	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 17:32	90	0	0	8432580522
Charleston_MTX4	4707259329	8439019528	0	11/12/2014 17:32	89	289 2 = Beta	289 2 = Beta	8432580522
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 17:34	33	0	0	8432582093
Charleston_MTX4	4707259329	8439019500	0	11/12/2014 17:34	31	289 2 = Beta	289 2 = Beta	8432582093
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 19:23	25	0	0	8434153979
Charleston_MTX4	4707259329	8439019588	0	11/12/2014 19:23	24	289 1 = Alpha	289 1 = Alpha	8434153979
Charleston_MTX4	4707259329	8434153979	2	11/12/2014 19:24	36	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8434153979	2	11/12/2014 19:25	28	289 1 = Alpha	289 1 = Alpha	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 19:42	86	0	0	9126653680
Charleston_MTX4	4707259329	8439019536	0	11/12/2014 19:42	84	290 1 = Alpha	271 1 = Alpha	9126653680
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 20:27	33	0	0	8435217869
Charleston_MTX4	4707259329	8439019534	0	11/12/2014 20:27	32	271 2 = Beta	271 2 = Beta	8435217869
Charleston_MTX4	4707259329	8439019534	5	11/12/2014 20:27	32	0	0	8435217869
Charleston_MTX4	4707259329	8432262198	1	11/12/2014 20:30	8	271 1 = Alpha	271 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432262198	3	11/12/2014 20:30	2	271 1 = Alpha	271 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432269189	2	11/12/2014 20:30	170	271 1 = Alpha	289 3 = Gamma	4707259329
Charleston_MTX4	4707259329	8437265742	1	11/12/2014 20:37	56	208 3 = Gamma	208 3 = Gamma	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 20:40	84	0	0	8432265850
Charleston_MTX4	4707259329	8439019500	5	11/12/2014 20:40	83	0	0	8432265850
Charleston_MTX4	4707259329	8439019500	0	11/12/2014 20:40	83	208 3 = Gamma	208 3 = Gamma	8432265850
Charleston_MTX4	4707259329	8435055196	1	11/12/2014 20:48	16	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8435055196	1	11/12/2014 20:55	39	289 2 = Beta	289 2 = Beta	4707259329
Charleston_MTX4	4707259329	9126653680	1	11/12/2014 21:02	26	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432266695	1	11/12/2014 21:03	51	289 1 = Alpha	289 1 = Alpha	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 21:03	75	0	0	8432265850
Charleston_MTX4	4707259329	8439019531	0	11/12/2014 21:03	72	289 1 = Alpha	289 1 = Alpha	8432265850
Charleston_MTX4	4707259329	8439019531	5	11/12/2014 21:03	73	0	0	8432265850
Charleston_MTX4	4707259329	9126311429	1	11/12/2014 21:06	33	289 1 = Alpha	289 1 = Alpha	4707259329

Charleston_MTX4	4707259329	8435217869	1	11/12/2014 21:07	55	289 1 = Alpha	289 1 = Alpha	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 21:10	95	0	0	9126311429
Charleston_MTX4	4707259329	8439019531	5	11/12/2014 21:10	93	0	0	9126311429
Charleston_MTX4	4707259329	8439019531	0	11/12/2014 21:10	93	289 1 = Alpha	289 1 = Alpha	9126311429
Charleston_MTX4	4707259329	8437265742	1	11/12/2014 21:28	22	216 1 = Alpha	216 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432269189	2	11/12/2014 21:36	24	216 1 = Alpha	216 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432269189	2	11/12/2014 21:37	16	216 1 = Alpha	216 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432266695	1	11/12/2014 21:44	28	231 2 = Beta	231 2 = Beta	4707259329
Charleston_MTX4	4707259329	8432265850	2	11/12/2014 21:52	51	231 2 = Beta	231 2 = Beta	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 21:56	45	0	0	9127550776
Charleston_MTX4	4707259329	8439019529	5	11/12/2014 21:56	44	0	0	9127550776
Charleston_MTX4	4707259329	8439019529	0	11/12/2014 21:56	44	231 2 = Beta	231 2 = Beta	9127550776
Charleston_MTX4	4707259329	8435217869	1	11/12/2014 21:59	68	247 3 = Gamma	247 3 = Gamma	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 22:00	37	0	0	8432265850
Charleston_MTX4	4707259329	8439019531	0	11/12/2014 22:00	36	208 1 = Alpha	208 1 = Alpha	8432265850
Charleston_MTX4	4707259329	8439019531	5	11/12/2014 22:00	36	0	0	8432265850
Charleston_MTX4	4707259329	8435217869	1	11/12/2014 22:11	30	289 1 = Alpha	289 1 = Alpha	4707259329
Atlanta_MTX03	4707259329	4707259329	5	11/12/2014 22:12	71	0	0	8435217869
Charleston_MTX4	4707259329	8439019539	0	11/12/2014 22:12	69	289 1 = Alpha	289 1 = Alpha	8435217869
Charleston_MTX4	4707259329	8435217869	1	11/12/2014 22:16	80	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8439866591	1	11/12/2014 22:24	26	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8439866591	1	11/12/2014 22:24	44	289 2 = Beta	289 2 = Beta	4707259329
Charleston_MTX4	4707259329	8432271239	1	11/12/2014 22:31	34	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432271239	1	11/12/2014 22:32	41	289 2 = Beta	289 2 = Beta	4707259329
Charleston_MTX4	4707259329	8432262018	1	11/12/2014 22:37	180	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8435217869	1	11/12/2014 22:41	104	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432271239	1	11/12/2014 22:47	30	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8437838387	1	11/12/2014 22:48	37	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432266887	1	11/12/2014 22:49	79	289 1 = Alpha	289 1 = Alpha	4707259329
Charleston_MTX4	4707259329	8432262018	1	11/12/2014 22:51	169	289 2 = Beta	289 2 = Beta	4707259329
Charleston_MTX4	4707259329	8435217869	1	11/12/2014 23:35	62	289 3 = Gamma	289 3 = Gamma	4707259329
Atlanta_MTX03	4707259329	4707259329	F	11/12/2014 23:52	40	0	0	8432271239
Charleston_MTX4	4707259329	8439019563	0	11/12/2014 23:52	31	208 3 = Gamma	208 3 = Gamma	8432271239

```
=====
Search Target          Duluth221_FDA
Log Written            11/12/2014 21:56:11  Number of attempts      1
Message arrival        11/12/2014 21:56:06  Last Cause Code         256
Final Disposition      11/12/2014 21:56:11  Message Final Status    Delivered
Message Source         MO_AlphaPg          Input Label              AUX2
Source Protocol        MO                  Output Protocol          SS7
Input Port             0                  Output Port              0
Operation Type         new_msg_arrival      HLR Address              full_digits
Orig. MSC PC           204.223.057        Message Dest. Address    204.223.57
Call Back number      -----
Originating DN         4707259329         Terminating DN          9127550776
Originating MSID       4049833213         Terminating MSID        9123320944
Originating COS        210                Terminating COS         210
Originating Num. Plan  2                  Terminating Num. Plan   2
Originating Num. Type  2                  Terminating Num. Type   2
Billing Id             0                  Billable                 true
Delivery Init. Method  Default            Broadcast message        false
Priority               0                  Data Header Indicator     false
Subscriber Rating      0                  Message Rating           0
Message ID             21301036024917    Message TeleService       4098
Length of text message 28                  Data Coding              0
Message Text
[ Dats done need to Holla at u ]
=====
```

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROHAIME JAMAR HOPKINS,

APPELLANT

APPELLATE CASE NO. 2017-001224

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW.....	3
ARGUMENT	
1.	
The court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury.....	4
Introduction.....	4
Relevant Facts.....	4
Burned clothes surprise allegation.....	9
Verizon Wireless evidence.....	12
Closing Argument.....	14
Discussion.....	14
2.	
The court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time -- which violated fundamental fairness since it was "trial by ambush" -- and the court had the inherent authority, and duty, to ensure appellant received a fair trial.	17
Relevant Facts.....	17
Discussion.....	18
CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

<u>Chambers v. NASCO, Inc.</u> , 501 U.S. 32 (1991).....	19
<u>Ex Parte Kent</u> , 379 S.C.633, 666 S.E.2d 921 (Ct. App. 2008)	18, 20
<u>Howard v. State Farm Mut. Auto Ins. Co.</u> , 316 S.C. 445, 450 S.E.2d 582 (1994).....	19, 20
<u>Poston v. Poston</u> , 331 S.C. 106, 502 S.E.2d 86 (1998).....	19
<u>State v. Alexander</u> , 303 S.C. 377, 401 S.E.2d 146 (1991).....	15
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	3
<u>State v. Galbreath</u> , 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004).....	20
<u>State v. Gregory</u> , 198 S.C. 98, 16 S.E.2d 532 (1941).....	15
<u>State v. King</u> , 422 S.C. 46, 810 S.E.2d 18 (2017)	15
<u>State v. Landis</u> , 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004).....	3
<u>State v. Langford</u> , 400 S.C. 421, 735 S.E.2d 471 (2012)	20
<u>State v. Mansfield</u> , 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000)	3, 21
<u>State v. Patterson</u> , 367 S.C. 219, 625 S.E.2d 239 (Ct. App. 2006).....	3
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000).....	3
<u>State v. Williams</u> , 326 S.C. 130, 485 S.E.2d 99 (1997).....	3
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	3
<u>State v. Wood</u> , 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).....	3
<u>United States v. Providence Journal Co.</u> , 485 U.S. 683 (1988).....	19
<u>Williams v. Bordon's Inc.</u> , 274 S.C. 275, 262 S.E.2d 881 (1980).....	20

Rules

Rule 403, SCRE.....	passim
Rule 5(c), SCRCrimP.....	19
Rule 5, SCRCrimP.....	19

STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?

2.

Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time -- which violated fundamental fairness since it was "trial by ambush" -- and the court had the inherent authority, and duty, to ensure appellant received a fair trial?

STATEMENT OF THE CASE

Appellant was indicted for murder by the Jasper County Grand Jury. R. 529 – 530. His case was called to trial on May 15, 2017, before the Honorable Perry M. Buckner, and a jury. R.

1. Scott Lee represented appellant. Mary Jones and Brian Hollen were the assistant solicitors.

R. 2.

On May 17, 2017, the jury found appellant guilty of murder. R. 521. Judge Buckner sentenced appellant to life imprisonment. R. 522. This appeal follows.

This appeal follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). Appellate courts are bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 454, 527 S.E.2d 105, 111 (2000); State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997); State v. Patterson, 367 S.C. 219, 224, 625 S.E.2d 239, 241 (Ct. App. 2006); State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004).

The admissibility of evidence is within the sound discretion of the trial judge. State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000); State v. Patterson, 337 S.C. 215, 228, 522 S.E.2d 845, 851 (Ct. App. 1999). Evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. Mansfield, 343 S.C. at 77, 538 S.E.2d at 263.

ARGUMENT

1.

The court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury.

Introduction

This is a strange circumstantial case which teetered out of control as the state attempted to prove that appellant Rohaime Hopkins was the shooter, and where the jury also heard elaborate evidence that admitted "scammer" Antoine Drake was likely the murderer allegedly paid by Trey Graves to kill the decedent. Further, the state's case was largely made through the impeachment of its own witnesses, and through the testimony of suspect Drake, and an admitted murderer, Jailhouse Snitch Byron Singleton, who acknowledged he wanted sentencing consideration for claiming appellant confessed to him in the local jail.

Relevant Facts

Antoine Drake said Trey Graves was the man who put out "a hit on Terrence Johnson, [the decedent.]" R. 139, ll. 8-10. Drake acknowledged that he saw Graves at the Club Pluto, a strip club, a week after the decedent was murdered. Drake admitted he told Graves he wanted "to collect the money" for the hit because the decedent was dead. Drake claimed he was only trying to scam Graves out of the "hit" money, and he denied that he committed the murder. R. 138, l. 22 – 141, l. 7.

Drake later explained he got arrested at the Club Pluto with a gun, and that he went to jail on December 27, 2014, following the November 12, 2014, murder of the decedent. Drake denied the gun he was arrested with was the “same caliber gun that was used to shoot Terrance Johnson.” R. 149, l. 4 – 150, l. 17.

Drake admitted he said, referring to appellant, “I can’t stand that motherfucker,” and that he would kill appellant. R. 169, ll. 4-20. Drake also make the self-serving claim that at the Club Pluto when Graves refused to pay Drake the fifteen thousand dollars for killing the decedent, that Graves said, “Hopkins told me he did it alone.” Drake said Graves only bought him a drink that evening, and did not pay him any money. R. 172, l. 4 – 173, l. 13.

Drake denied that he fled to Philadelphia after the murder, and after talking to Graves. R. 173, l. 18 – 174, l. 16. However, Drake’s girlfriend, Tutu, who was pregnant with another of Drake’s children, as will be seen infra, admitted she went to Philadelphia after the murder. She claimed it was just an annual visit -- apparently every November -- and had nothing to do with the murder.

The state’s theory of the case was that the decedent was killed between nine and ten o’clock on November 12, 2014. Justin Kesselring lived at 349 Knowles Island Road. Justin remembered that “we hear shots around there all the time. People clinging around with guns.” However, on this rural island, Justin remembered on November 12, 2014, that “a little after nine” he heard multiple gunshots. He looked out his window but he did not see anything. R. 27, ll. 1-23.

The next morning as he was leaving for work, “there was a car across the street and there was a body laying next to it.” Justin called 911. R. 27, l. 19 – 28, l. 6.

Shardaja Singleton lived at 44 Knowles Island Road. Singleton remembered on the morning of November 13, 2014, she missed the school bus, and she saw the decedent's body laying "in the dirt road." The passenger door of the car right next to the decedent's body was open. She remembered the night before at around nine p.m. she heard six gunshots. R. 31, l. 1 – 34, l. 2. The murder weapon was never recovered.

Robin Simmons lived on "Simmons Hill," and she remembered November 12, 2014, because they had a family gathering "because my grandmother had passed." Robin remembered seeing both the decedent and appellant at the gathering which lasted all day, from morning to night. Robin saw appellant around eight o'clock that evening. R. 79, l. 7 – 82, 11.

Robin Simmons testified that the decedent was dating her sister, Angel Simmons. She referred to appellant as "a family member" whom she had known all her life. She contended appellant had a black pistol tucked into his pants that evening. R. 79, l. 7 – 81, l. 4.

Robin admitted that appellant and the decedent left together "a couple of times," and came back. R. 81, ll. 20-25. Robin said when appellant returned with the decedent he was wearing a "black T shirt and black jogging pants." She did not claim to see appellant with a gun after he changed clothes. Robin acknowledged that appellant and the decedent were very close personal friends. She said they left together from Simmons Hill a second time at about eight o'clock that night. R. 82, l. 4 – 83, l. 25.

Latanya Singleton was called "Tutu" by everyone involved. R. 189, l. 7 – 190, l. 9. Tutu lived at 474 Knowles Island. She said she did not remember November 12, 2014 at all. Tutu was pregnant with Antoine Drake's child. She had another child by Drake. R. 190, ll. 7-20

Tutu remembered that she drove to Walterboro to talk to law enforcement at their request. She said she did not remember what she told them. "I don't want to lie, I really don't

remember because I was high then.” “I’m high almost everyday.” She claimed she was “straight” on the day of appellant’s trial because she was pregnant. R. 192, l. 1 – 193, l. 10.

Tutu remembered that Drake asked her whom she had texted on the day of the murder. There were two murders that happened that same November day. As will be seen infra, Byron Singleton committed the other murder, and, as will be seen infra, he attempted to tell the jury he got a jailhouse confession to the present murder from appellant.

Tutu, Drake’s girlfriend, admitted she had a 9 mm High Point gun, which would have been consistent with the murder weapon that was never found, but she claimed she did not have the gun in November of 2014, when the murder occurred. Tutu admitted she went to Philadelphia that November after the murder, but she claimed she went to Philadelphia in November of every year. R. 198, l. 18 – 201, l. 5.

Angel Simmons also lived on Simmons Hill. She remembered the gathering after her grandmother died. Simmons had a criminal record for various thefts and bad checks. She said she was engaged to be married to the decedent at the time he was killed. She had known the decedent about a year. R. 212, l. 3 – 213, l. 7.

Angel said she was resting on November 12, 2014, because she and the decedent had been up “all night the night before.” R. 215, ll. 3-15. Simmons said in her last conversation with the decedent she said: “‘T.J., where are you?’ And I said, ‘T.J., where you at?’ And I was like, ‘I love you,’ like that. And I kind of hear like a little scuffle and the phone hung up. And I kept calling.” Simmons said all of her calls to the decedent went to voicemail after 9:30 that evening. R. 216, ll. 9-17.

Richard Johnson was the SLED agent involved. He went to Knowles Island Road in Jasper County on November 13, 2014. R. 223, ll. 11-24. Johnson remembered that both Tutu,

Drake's girlfriend, and appellant lived within five hundred yards of where the decedent's body was found. R. 227, l. 3 – 229, l. 3.

Johnson said he later learned that Drake, appellant, "and others that he didn't identify were at Michael Taylor's house. He was also referred to as Mike-Mike." "When Hopkins stated to them that he was waiting on 'them boys,' Daytron Simmons said he was referring to Trey Graves to sign a contract." The allegation was apparently that there was going to be a written contract entered into to kill the decedent because he was "snitching." Johnson offered that Trey Graves was in federal prison. Johnson testified that he learned that both appellant and the decedent both liked cocaine, and they were using it on the night the decedent was killed. R. 229, l. 14 – 231, l. 8. When the solicitor asked Johnson about phone numbers he received during his investigation, the defense hearsay objection was sustained. R. 231, ll. 9-13.

Johnson admitted he executed an affidavit for Tutu's phone records because "Tutu has provided information to others that only a participant would know or witness." R. 247, ll. 3-25. Johnson admitted that Tutu abruptly left town and she went to Philadelphia. Johnson was not able to talk to her in person until February 1, 2015. R. 248, ll. 1-20.

Johnson said he knew Drake was "on the run" from other charges. However, Johnson did not arrest him because he said he wanted information from Drake. R. 249, l. 2 – 252, l. 10.

Johnson said after interviewing Drake, he continued investigating Drake and appellant. Johnson testified that Drake confirmed "if Trey Graves had any connection to this as well." R. 252, l. 11 – 253, l. 9. Johnson refused to admit that he was "scratching Drake's back," and Drake was "scratching his back," so they both would get what they wanted. R. 252, l. 18 – 255, l. 20.

Johnson begrudgingly admitted on cross-examination he was aware of a “knife incident” between Drake and the decedent at Mike Taylor’s house. R. 268, l. 18 – 270, l. 6. Johnson admitted that Drake told him he hated appellant and wanted him gone. R. 270, l. 17 – 271, l. 19.

Johnson said from the information he received there was jealousy between appellant and the decedent because “both of them were seeing Angel Simmons.” R. 276, l. 24 – 277, l. 5.

Burned clothes surprise allegation

Michael Taylor was living in Jacksonville, Florida at the time of the trial. He had a criminal record for theft. R. 283, l. 4 – 284, l. 7.

On the night of the alleged murder, November 12, 2014, Taylor remembered getting off work from the Waffle House at nine p.m.. He came home to change clothes to go to the sister of his wife’s house, but he did not see his wife or son once he got home. However, Taylor said appellant was inside his house sitting in his chair. Taylor maintained he did not know why appellant came to his house that night. R. 284, l. 13 – 286, l. 12.

Taylor said appellant was wearing all black. Taylor woke up his son and his wife. He claimed he asked his wife why appellant was sitting in their living room, and sitting in his chair. Taylor maintained his wife said she had been asleep, and she did not even know appellant was in their house. R. 286, l. 9 – 288, l. 22.

Taylor now testified that appellant asked him if he cared if he changed his clothes. Taylor maintained he told appellant “go ahead, change them.” He offered that he did not know if appellant had gotten dirty walking to his house. Taylor claimed appellant changed his clothes, *and burned the clothes he had been wearing “in my barrel.”* Defense counsel Lee immediately objected to the lack of notice of this claim and testimony. The judge said he would put his ruling on the objection on the record “at a later point in time.” R. 289, l. 13 – 290, l. 5.

The following then occurred between the solicitor and Taylor:

Q: Mr. Taylor, you spoke to the police a while ago back in 2014, didn't you?

A: Yes.

Q: Okay. **Why didn't you tell them about the burning clothes then?**

A: I didn't -- you know, to tell the truth, I didn't -- I didn't think about it to be honest with you. And it really -- it really never really crossed my mind that it was him. **I never would have thought that it was Rohaime until -- until after I made the statement and then I started contemplating things.** Because, I'll be honest, I wasn't really myself. You know, I had a little something to drink or whatever. But I know that -- that everything that I'm saying is true. He wasn't with me. He wasn't with me during the day, none of that. He wasn't at home when I came home from work. I go next door an hour and half later, you are in my house. **No, I didn't like that. He never was in my house before like that. He never really was my friend.** I only met you through T.J.

R. 290, l. 9 – 291, l. 2. (emphasis added).

Taylor said he was aware of an incident of violence between Drake and the decedent, but Taylor claimed after it was over Drake and the decedent shook hands and were friends again. Taylor said he did was not injured that knife incident. R. 291, l. 13 – 292, 15.

Byron Singleton appeared for trial in prison garb. Singleton admitted he was incarcerated for another murder that also occurred on November 12, 2014. He had not gone to trial or pled guilty to that murder yet, and he openly admitted he wanted leniency in exchange for his testimony.¹ R. 321, l. 1 – 322, l. 18.

¹ Singleton got the sentencing consideration he was seeking. This Court can take judicial notice of the fact that Singleton was sentenced to 30 years imprisonment for voluntary manslaughter. The Department of Correction Inmate Search Detail Report has Singleton being released on December 13, 2031, after 16 years of incarceration.

Singleton claimed that he became friends with appellant in the Charleston County jail because they were both from Jasper County. R. 321, l. 13 – 323, l. 22.

Singleton admitted he contacted SLED agent Richard Johnson, and he told Johnson that appellant allegedly admitted to him that he shot and killed the decedent. R. 324, l. 4 – 328, l. 3. Singleton also maintained appellant told him it was a “murder for hire” involving “Trey.” R. 328, ll. 4-21.

Singleton acknowledged that he was on a prison bus ride with Antoine Drake. Singleton agreed that he, in fact, spoke with Drake but he denied he received the details of the decedent’s murder from Drake. Even though Singleton openly admitted he wanted sentencing consideration, which he ultimately received, he denied receiving details of the murder from Drake, and that he agreed to testify against appellant for that sentencing consideration. R. 333, l. 13 – 336, l. 15; r. 337, l. 3 – 340, l. 15.

Singleton claimed all Drake ever told him was to tell appellant: “You got me hot. You got me hot. Police started knocking on my door. That’s how the conversation started between me and Rohaime.” R. 339, ll. 9-19.

As stated, the murder weapon was never found. The DNA of an unidentified male was found in the decedent’s car. Appellant’s palm print was on the car, which was not unusual since it was undisputed that appellant and the decedent were friends, and that appellant had ridden in his car. R. 366, ll. 7-12. Kimberly Mears, the SLED fingerprint expert, said that there were inconclusive findings on the prints of Antoine Drake, and she admitted she never received clear and complete fingerprint and palm prints of Drake’s to compare. R. 367, l. 15 – 368, l. 19.

Verizon Wireless evidence

Karen Milbrodt was the business custodian out of the Tampa, Florida, office. R. 398, l. 18 – 400, l. 14. She provided the cell phone records in this case pursuant to a subpoena. Defense counsel objected to the cell phone records on numerous grounds. The trial judge ruled the cell phone records did not violate the confrontation clause, and they were not hearsay. R. 406, l. 4 – 408, l. 2.

The trial judge also ruled that the cell phone exhibits in this case were admissible as a statement against appellant's penal interest. R. 408, l. 10 – 409, l. 7. Defense counsel noted that the text message, in particular, which stated "Dats done need to holla at u" was "so amorphous and so ambiguous and confusing" that it should be excluded under Rule 403, SCRE. R. 409, l. 8, - 411, l. 20.

The judge replied that "There's no hit in there." Defense counsel Lee correctly noted the state would try and argue that the text message "means the hit is done." The judge said that that was a legal argument, but that was not the evidence itself revealed. The judge overruled all of appellant's objections, including his Rule 403, SCRE objection. R. 411, l. 25 – 413, l. 4.

The question then became whether the witness had the requisite expertise to give cell tower testimony. Milbrodt testified she did not recall ever being asked to be an expert in cell tower evidence. She said that she had talked with engineers about the operation of cell towers.

However, on cross-examination, she admitted she was not familiar with any of the cell towers in Jasper County, she had never driven by or inspected one, she was unaware of the topography of Jasper County, or the height of the towers, or the antennas. R. 424, ll. 2-25. Milbrodt was also not aware of any problems with Jasper County cell towers. R. 425, l. 1 – 427,

1. 3. Milbrodt admitted she was not aware of a computer program called “MapPoint.” R. 427, ll. 8-20.

The judge questioned Milbrodt about her training. Milbrodt said she had no specialized training other than “on the job training.” R. 428, l. 22 – 429, l. 18.

As to her education, Milbrodt said she was a high school graduate, and she was currently going to a community college. She had previously driven trucks for Pepsi Cola and Federal Express. R. 428, l. 5 – 429, l. 18.

The judge ruled that Milbrodt was not qualified to give any opinion testimony that pertained to cell phone towers evidence. R. 430, ll. 2-6.

In the presence of the jury, the judge then allowed the solicitor to question Milbrodt about State’s Exhibit 7, 8, and 9, and admit them over all of the defense’s earlier objections. R. 440, ll. 8-20; R. 523 – 527.

As to State’s Exhibit 9, Milbrodt testified, over objection, that the text message was delivered to the recipient at 9:56 p.m. and eleven seconds. R. 442, ll. 7-24. The November 12, 2014 message stated: “dats done, need to Holla at u.” See State’s Exhibit 9, R. 527. R. 443, ll. 1-5. The document, and other information on it are before this Court, and defense counsel argued that it was confusing, and that its probative value was substantial outweighed by its undue prejudice. See Rule 403, SCRE. See Text message document. R. 527.

Milbrodt testified that a later call at 11:17 p.m. it appeared all phone calls were forwarded to voicemail. R. 443, l. 21 – 446, l. 2. Milbrodt said Verizon did not have any records they could produce that would show whether the call actually “showed up on their phone.” R. 446, ll. 6-12. The following occurred on cross-examination of Milbrodt:

Q: Just in general, if a tower -- if you don't know the answer, don't answer it -- if a tower is overloaded for some reason or not working, won't a cell phone call go to the next available tower?

A: Yes.

MS. JONES: Objection.

THE COURT: Ms. Jones? Yes, ma'am?

MS. JONES: Objection.

THE COURT: Sustained.

MR. LEE: All right. No further questions.

R. 446, ll. 16-25.

On redirect examination, Milbrodt said it appeared to her that every call from 9:38 p.m. to 1:53 a.m. the next morning was forwarded to voice mail. R. 447, ll. 5-19.

Dr. Susan Presnell, the pathologist, testified the thirty-two-year-old victim was five foot ten, and he was shot five times. R. 450, l. 18 – 454, l. 3.

Closing argument

The solicitor argued the cell phone records in her closing. The solicitor said that the text message showed appellant was wanting to talk to “[Graves] because he wanted his money.” “People don’t even know T.J. is dead yet before that man wants his money.” R. 475, l. 19 – 476, l. 3.

Discussion

Defense counsel correctly argued that the cell phone evidence and text message, State’s Exhibit 7-9, were going to be confusing to the jury, unduly prejudicial under Rule 403, SCRE, and that they were not sufficiently tied to appellant. See R. 523 – 527. The cell phone witness from Verizon, not only lacked any engineering experience, she was just a high school graduate,

and a former truck driver.² The judge correctly found she was not qualified to analyze the cell phone tower evidence. Yet, the state was allowed to introduce these records over the defense objections. State's 7-8 are confusing given the lack of an expert explanation. R. 527. State's exhibit 9, the text message, invites sheer speculation that it supports the state's \$15,000.00 murder for hire theory.

The solicitor would use the records to argue that they showed the decedent was with appellant, and a call was taken just before the decedent was killed. The solicitor would argue that "Dats done need to Holla at u" in the text message meant that appellant was saying he had killed the decedent and that he wanted to talk about collecting his money. The judge correctly stated that was a legal argument and not contained in the text message document itself. That was all the more reason why the text message document, State's Exhibit 9, should have been excluded as confusing, and unduly prejudicial under Rule 403, SCRE. The probative value of this confusing evidence was also substantially outweighed by its unduly prejudicial effect.

This was a very close case and the solicitor successfully used the text message evidence to bolster its weak case that appellant killed the decedent, and that he killed him as a "murder for hire." See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) (relevant evidence may be excluded where its probative value is substantially outweighed by the danger of undue prejudice); State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) (trial judge properly limited the defendant's presentation of certain evidence to guard against confusion of the jury).

In State v. King, 422 S.C. 46, 69, 810 S.E.2d 18, 29-30 (2017), the Supreme Court held that the probative value of recorded jail calls were outweighed by their unfair prejudice to the defendant. The calls had the undue tendency to suggest a decision on an improper basis.

² All work is honorable, but the witness simply was not qualified as the court correctly ruled. She nonetheless was able to do the damage with these exhibits and her testimony.

Here, the judge recognized that the text message evidence on its face did not support an argument that appellant or the person messaging was saying that they had killed the decedent, and that they wanted to talk to the person who hired them to kill the decedent so they could collect their money. The document itself does not reveal how it pinpoints appellant as the sender and Graves as the recipient. R. 527. This was only a legal argument which piled inference upon inference to argue appellant had consummated the “murder for hire,” and wanted to be paid.

The jury had earlier heard that Antoine Drake claimed that Graves told him in the strip club that Graves refused to pay Drake the fifteen thousand dollars, and he allegedly, and self-servingly for Drake, said: “Hopkins told me he did it alone.” R. 172, l. 13 – 173, l. 5. Drake’s testimony is as suspect as any witness’s testimony could possibly be in a criminal trial. Drake was an admitted liar and scammer who had every reason to implicate appellant in the murder to save himself.

Moreover, the cell phone evidence, State’s Exhibits 7 and 8, which went to the jury during their deliberations, are almost incomprehensible, and they invite speculation, without the required requisite expert witness analysis of these records. R. 523 – 526. Without that expert analysis, the records are not relevant, and any relevance the state can argue that the records had, was substantially outweighed by their unduly prejudicial effect under Rule 403, SCRE, and their tendency to confuse. These evidentiary errors were very prejudicial to appellant in this slim case, and appellant should be granted a new trial.

2.

The court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time -- which violated fundamental fairness since it was "trial by ambush" -- and the court had the inherent authority, and duty, to ensure appellant received a fair trial.

Relevant Facts

As seen, Michael Taylor testified he came home from working at the Waffle House, and he got to his house between 10:15 and 10:30. He saw appellant sitting in his chair. R. 285, l. 3 – 286, l. 14. Taylor said he woke up his wife, and he asked her how appellant got in the house. His wife responded, "I don't know. I was asleep. So I came -- I went and had conversation with him. I guess it went over his head a little bit. But other than that, we just had conversations." R. 286, ll. 13-23.

Taylor claimed that appellant asked if he could change his clothes, and Taylor told him he could. Taylor then testified that appellant changed clothes and *burned the clothes he had been wearing "in my barrel."* R. 289, ll. 9-21. (emphasis added). Defense counsel objected and argued that this burning his clothes claim had never been timely disclosed to him. The judge said he would put his ruling on that objection on the record at a later point. R. 289, l. 19 – 290, l. 5.

As seen, Taylor admitted that he talked to the police back in 2014. Taylor told the solicitor he did not tell the police about his burning the clothes allegation during that interview because "I didn't think about it to be honest with you. And it really -- **it really never really**

crossed my mind that it was him. I never would have thought that it was Rohaime until -- until after I made the statement and then I started contemplating things. Because, I'll be honest, I wasn't really myself. You know, I had a little something to drink or whatever. But I know that -- that everything that I'm saying is true. He wasn't with me. He wasn't with me during the day, none of that. He wasn't at home when I came home from work. I go next door an hour and half later, you are in my house. *No, I didn't like that. He never was in my house before that. He never really was my friend.* I only met you through T.J.” R. 290, l. 12 – 291, l. 2. (emphasis added). In essence, Taylor later decided he thought appellant was guilty so he made this devastatingly prejudicial addition to that interview.

Thus, it was undisputed that the defense was never provided with this extraordinary accusation from Taylor in any of the discovery, and it was sprung on them on the day of trial.

After the testimony of Haley Quam Nelson, the judge noted that defense counsel objected to Taylor's testimony about appellant allegedly burning his clothes due to the lack of any notice. The judge reasoned that defense counsel should not have even objected to Taylor's surprise testimony about appellant allegedly burning his clothes because the solicitor “rightly went to Mr. Lee to give him the same notice she received about the content of that testimony,” which was on the day of the trial. The judge said he therefore “did not sustain Mr. Lee's objection.” R. 359, l. 9 – 360, l. 14.

Discussion

It has been noted, for example that a trial judge has the inherent authority to grant a new trial for any prejudicial error committed during the trial as a matter of fundamental fairness. See Ex Parte Kent, 379 S.C.633, 666 S.E.2d 921 (Ct. App. 2008); Howard v. State Farm Mut. Auto

Ins. Co., 316 S.C. 445, 449, 450 S.E.2d 582, 584-85 (1994). Trial judges have the inherent authority in many respects to ensure that a defendant receives a fair trial.

Another example, it is widely recognized that courts have the inherent authority to punish disobedience and vindicate its authority, and this inherent authority “has been many times decided and may be regarded as settled law.” See United States v. Providence Journal Co., 485 U.S. 683, 704-705 (1988). Further, courts are universally acknowledged to be vested with the inherent authority to impose, silence, respect, and decorum in their presence, and submission to their lawful mandates. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); Poston v. Poston, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998).

Rule 5, SCRCrimP, provides that the court upon a sufficient showing may require the production of any statement of any prospective witness prior to the time such witness testifies. However, it is the practice, as occurred in this case, to disclose such statements in the possession of the prosecution upon request.

Further, Rule 5(c), SCRCrimP, provides that if additional evidence which is subject to discovery or inspection should later be discovered, the party shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

In this case, it is undisputed that the witness, Michael Taylor, chose to claim appellant burned his clothes in a barrel at Taylor’s house for the first time at trial. The solicitor apparently notified defense counsel of this devastating claim on the day of trial. However, even if the solicitor made a timely disclosure under Rule 5(c), SCRCrimP, that was not the end of the evidentiary analysis.

As seen above, Taylor’s reason for not revealing his claim that appellant burned his clothes in a barrel on the night of the murder was incomprehensible. Again, it appears at some

point Taylor decided he believed appellant was guilty, and that this “burned his clothes” assertion would sway the jury to believe that appellant was guilty also. The judge had the inherent authority to assure appellant received a fair trial, and not a trial by absolute ambush. Ex Parte Kent, 379 S.C.633, 666 S.E.2d 921 (Ct. App. 2008); Howard v. State Farm Mut. Auto Ins. Co., 316 S.C. 445, 449, 450 S.E.2d 582, 584-85 (1994)(The court can even order a new trial given its inherent power to assure a defendant receives a fair trial).

Indeed, on a much broader scale more recently, the Supreme Court in State v. Langford, 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012), held “[a] court's power to hear and decide cases carries with it the inherent power to control the order of its business.” *citing* Williams v. Bordon's Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (The “adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.”)

Once the solicitor chose to allow Taylor to make this extraordinary claim he never revealed before, the judge here abused his discretion under the extraordinarily unusual facts of this case by not sustaining the defense objection, and then ordering the jury to disregard this incompetent evidence. The evidence was incompetent because it was inherently unreliable, and the Rules of Evidence are based on what has proved inherently reliable over the years. Appellant was denied a fair trial in violation of fundamental fairness.

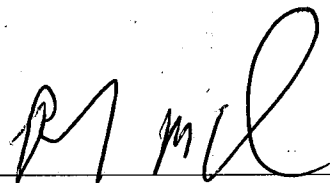
This Court in State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004), noted a new trial may be granted if fundamental fairness was violated because of a misunderstanding of the law. Judges have broad discretion in the admission of evidence and that must include the inherent authority to exclude evidence which by its nature is unreliable and denies a defendant his right to due process and fundamental fairness. The sound discretion of the trial judge to

exclude such evidence should be beyond question. See State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000).

The trial judge, respectfully, in this case reasoned that because the solicitor disclosed the surprising explosive evidence, which undisputedly was devastatingly prejudicial, to the defense when she discovered it on the day of trial that it was admissible. The judge said he therefore refused to sustain the defense objection. That, under the exceptional actual circumstances of this case, constituted an abuse of discretion for failing to exercise available discretionary authority. Defense counsel correctly objected to the fundamental unfairness of this lack of notice. The judge had broad discretion to exclude this evidence if he found it a discovery violation that violated appellant's right to a fair trial, and the defense's right to expect fundamental fairness from the court. Appellant respectfully should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Jasper County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

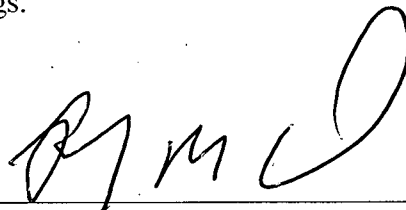
ATTORNEY FOR APPELLANT

This 20th day of November, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 20, 2018



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

NOV 20 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

Appeal from Jasper County
The Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ROHAIME JAMAR HOPKINS,

APPELLANT

Appellate Case No. 2017-001224

FINAL BRIEF OF RESPONDENT

RECEIVED

NOV 20 2018

SC Court of Appeals

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DUFFIE STONE
Fourteenth Judicial Circuit Solicitor

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUES ON APPEAL.....	1
RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	3
STANDARD OF REVIEW.....	3
SUMMARY OF ARGUMENT	4
STATEMENT OF FACTS	5
ARGUMENT	18
I. Appellant's failure to object to the introduction of information from State's Exhibits 7 and 8 renders the issue unpreserved for appellate review, and is otherwise meritless, or at most constitutes harmless error.....	18
a. The recitation of cell phone tower data by Ms. Milbrodt was properly admitted.....	23
b. If error can be found in admitting Ms. Milbrodt's recitation of cell phone tower data, such would merely constitute harmless error.....	24
II. The trial court acted within its discretion when he admitted the text message evidence contained in State's Exhibit 9.....	25
a. Text message evidence constituted an admission of a party opponent.....	26
b. The court properly conducted a 403 balancing test and was within his discretion to admit the text message evidence.....	29
III. The trial court acted within its discretion when it permitted Michael Taylor to testify, regardless of the witness's change in his testimony not made known to the parties until the day of trial.....	31
CONCLUSION.....	35
DESIGNATION OF MATTER	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

State Cases

<i>Bridges v. Wyandotte Worsted Co.,</i> 239 S.C. 37, 121 S.E.2d 300 (1961)	3, 26
<i>Gibson v. State,</i> 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999).....	33
<i>State v. Adams,</i> 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App. 2003)	29
<i>State v. Alexander,</i> 303 S.C. 377, 401 S.E.2d 146 (1991).....	3
<i>State v. Garner,</i> 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2010).....	3
<i>State v. Gaster,</i> 349 S.C. 545, 564 S.E.2d 87 (2002).....	25
<i>State v. Gathers,</i> 295 S.C. 476, 369 S.E.2d 140, (1988)	34
<i>State v. Gentry,</i> 363 S.C. 93, 610 S.E.2d 494 (2005).....	4, 29
<i>State v. Goodwin,</i> 250 S.C. 403, 158 S.E.2d 195 (1967).....	24
<i>State v. Gray</i> 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014)	30
<i>State v. Hamilton,</i> 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001)	4, 25, 29
<i>State v. Jeffcoat,</i> 279 S.C. 167, 303 S.E.2d 855 (1983).....	3
<i>State v. Johnson,</i> 324 S.C. 38, 476 S.E.2d 681 (1996).....	24
<i>State v. Johnson,</i> 363 S.C. 53, 609 S.E.2d 520 (2005).....	24
<i>State v. Jones,</i> 325 S.C. 310, 319, 479 S.E.2d 517, 521 (Ct. App. 1996)	34
<i>State v. Myers,</i> 359 S.C. 40, 596 S.E.2d 488 (2004).....	3
<i>State v. Osborn,</i> 291 S.C. 265, 353 S.E.2d 276 (1987)	34
<i>State v. Pagan,</i> 369 S.C. 201, 631 S.E.2d 262 (2006).....	24

<i>State v. Pauling</i> , 322 S.C. 95, 470 S.E.2d 106 (1996).....	24
<i>State v. Prioleau</i> , 345 S.C. 404, 548 S.E.2d 213 (2001).....	24
<i>State v. Rogers</i> , 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013).....	26, 27, 30
<i>State v. Von Dohlen</i> , 322 S.C. 234, 471 S.E.2d 689 (1996).....	33

Federal Cases

<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)	33
<i>Kyles v. Whitley</i> , 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)	33
<i>United States v. Bagley</i> , 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481, 490 (1985)	34
<i>United States v. Natal</i> , 849 F.3d 530 (2d Cir.), cert. denied, 138 S. Ct. 276, 199 L. Ed. 2d 177 (2017).....	20, 23
<i>United States v. Green</i> , 887 F.2d 25 (1st Cir.1989)	4
<i>United States v. Long</i> , 574 F.2d 761 (3d Cir.1978).....	4, 29

Rules

Rule 403, SCRE	29
Rule 801(d)(2), SCRE.....	26
Rule 804(b)(3), SCRE.....	28

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred by admitting the cell phone and text message evidence (State's Exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?
2. Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was a “trial by ambush” – and the court had the inherent authority, and duty, to ensure appellant received a fair trial?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. Whether the admission of testimony regarding the recipient cellphone tower locations listed in previously admitted and authenticated State's Exhibits 7 and 8 is procedurally barred for appeal, as defense counsel did not raise any objection and elicited additional testimony on the complained-of topic during cross examination?
- II. Whether the court properly admitted State's Exhibit 9 containing text message evidence that was sent from Appellant's cell phone within minutes of the time of murder, and which the content of the text stating, “Dats done”, can be reasonably

inferred as a statement that the murder for hire had been completed?

- III.** Whether the trial court acted within its broad discretion to admit the testimony of Michael Taylor regarding Appellant burning his clothes on the night of the murder, when such information was not made known to either party until the day of trial, where both parties had equal time to prepare for the new testimony before it was presented to the jury, and where Defense counsel was able to cross-examine and impeach the witness as to his new testimony?

STATEMENT OF THE CASE

Appellant was indicted for the murder of Terrence Johnson (hereinafter referred to as “victim”) by Jasper County Grand Jury (2015-GI-2700144). (R. p. 3, lines 3-5; p. 6, line 20 through p. 7, line 4; p. 8, lines 2-4). Assistant Solicitors Mary Jones and Brian Hollen represented the State at trial, and Defendant Rohaime Hopkins (hereinafter “Appellant”) was represented by attorney Scott Lee (hereinafter “Defense Counsel”). (R. p. 4, lines 12-24). The case was called to trial before the Honorable Perry M. Buckner, and a jury, on May 15, 2017. (R. p. 1). The jury returned a guilty verdict for murder against Appellant on May 17, 2017, and Judge Buckner sentenced Appellant to life imprisonment. (R. p. 521, 522). This appeal follows.

STANDARD OF REVIEW

“Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant.” *State v. Garner*, 389 S.C. 61, 65, 697 S.E.2d 615, 617 (Ct. App. 2010). An abuse of discretion “means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore, in the circumstances, amounted to error of law.” *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). A trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991); *State v. Jeffcoat* 354, 279 S.C. 167, 303 S.E.2d 855 (1983). A trial court’s rulings pursuant to a 403 balancing test are subject to an abuse of discretion standard and great deference is given to the trial court’s decision. *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004). “A trial judge’s balancing decision under Rule 403 should not be reversed simply because an appellate

court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” *State v. Hamilton*, 344 S.C. 344, 358, 543 S.E.2d 586, 594 (Ct. App. 2001), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing *United States v. Long*, 574 F.2d 761 (3d Cir.1978)). A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in “exceptional circumstances.” *Hamilton*, at 593 (citing *United States v. Green*, 887 F.2d 25, 27 (1st Cir.1989)).

SUMMARY OF ARGUMENT

Appellant’s conviction should be affirmed. Defense Counsel did not object to the introduction of the call log information contained in State’s Exhibits 7 and 8. The objections raised by Defense Counsel addressed only the introduction of the text message and the sectional analysis testimony. Neither objection addressed the call log information, which merely listed the phone number in question and its corresponding outgoing and incoming calls and texts, the time and duration of those calls, whether the calls were forwarded, and the cellphone tower and sector that connected the communication. Appellant’s claims under Issue 1, concerning cellphone tower testimony and the contents of State’s Exhibits 7 & 8 are not preserved.

The text information introduced as State’s Exhibit 9 was properly admitted by the trial court, as the timing and content of the message could be reasonably inferred as a confirmation that Appellant had carried out the hit against victim and desired to be paid. Such a communication constitutes an admission by party opponent, or at a minimum a statement against penal interest, as both were sustaining grounds set forth by the trial court for admission of the evidence. Finally, the text message fits precisely within the State’s theory of the case, and by reasonable inference links the Appellant’s communications to the crime committed. The trial

court was therefore correct in ruling that text message was admissible, and that its probative value was not substantially outweighed by the prejudice to Appellant.

The testimony of Michael Taylor was likewise properly admitted at trial. As discussed by the trial court, witnesses often change or elaborate upon their prior testimony, and such is not a basis for excluding the evidence from trial. Given that the Solicitor properly notified Defense Counsel immediately upon learning of the new testimony, that both parties had equal notice as to the change in testimony prior to the presentation of the testimony at trial, and that Defense Counsel was able to cross-examine and impeach the witness specifically on his failure to introduce his new testimony sooner, there was no error by the court, no prejudice against Appellant, and no basis to exclude Michael Taylor as a witness for the State.

STATEMENT OF FACTS

The Crime

On the night of November 12, 2014, the victim was murdered. The victim's body was found at the entrance of a dead end dirt road at 350 Knowles Island Road the next morning by Mr. Justin Kesselring. Mr. Kesselring called 911 to report the crime. (R. p. 28, lines 1-6; p. 35, line 19-23). The Knowles Island Road area is commonly referred to as the "Roseland" area. (R. p. 31).

Law enforcement arrived and found the deceased victim lying face down beside the passenger side of his vehicle, with the passenger door open. (R. p. 35-37). The autopsy report showed that the victim was shot five times, three of which struck the victim in the chest and abdomen area. (R. p. 451-453). Forensics concluded that the ammunition used to kill the victim were all .9 millimeter luger rounds, and that based on the casings recovered, appeared to have been fired from the same weapon. (R. p. 388, lines 11-21; p. 390, line 4-8). Forensics recovered

finger prints of both Appellant and witness Antoine Drake from the vehicle, and a DNA match for Appellant was recovered from cigarette butts in the victim's car ashtray. (R. p. 380, line 16 through p. 381, line 11).¹

SLED Agent Richard Johnson headed up the investigation into victim's murder. (R. p. 223). The investigation led to the discovery that a "hit" had been placed on victim for snitching by a drug dealer named Trey Graves, and that multiple witnesses confirmed that Appellant was the individual who carried out the hit for the \$15,000.00 reward. (R. p. 172-173; p. 324-329). The efforts of that investigation led to the following pertinent testimony and evidence presented at trial:

JUSTIN KESSELRING AND SHARDAJA SINGLETON

Witnesses Justin Kesselring and Shardaja Singleton, who both lived in close proximity to the murder scene, each testified that they heard multiple gunshots around 9:00pm or later on November 12, 2014. (R. p. 27, lines 6-18; p. 33, lines 3-16). However, no one witnessed the shooting occur. Ms. Shardaja Singleton also commented that she heard around six shots at that time, but did not hear any other gunshots that night. (R. p. 33, line 15-19).

ROBIN SIMMONS

Ms. Simmons testified that she knew the victim, as he was dating her sister, Angel Simmons. (R. p. 79). She recalled the events of November 12, 2014, as her family was holding a family gathering (hereinafter "wake") for her recently deceased grandmother. (R. p. 79, lines 24-25; p. 80, lines 1-7). This wake took place at a location referred to consistently as Simmons Hill, as all of the Simmons family lived there. (R. p. 79). At the wake, she saw both the victim and Appellant, and acknowledged that they were friends. (R. p. 80, lines 10-15; p. 84, lines 14-23).

¹ DNA analysis was not performed for Antoine Drake, as his alibi was corroborated by multiple witnesses. (R. p. 261-263).

She commented that she has known Appellant her entire life, as he is a family member, and that on November 12, 2014, she saw him in possession of a black pistol tucked into his military fatigue pants. (R. p. 80, line 16 through p. 81, line 19). Ms. Simmons was cross-examined on the fact that she did not originally mention the gun she saw that afternoon, when interviewed by police on November 17, 2014. (R. p. 85, line 10 through p. 87, line 19).

She testified that the victim and Appellant left together a couple of times during the day, but came back that evening. (R. p. 81, lines 20-24; p. 83, lines 24-25). When they returned that evening, Appellant had changed clothing and was wearing black jogging pants, a black t-shirt, black shoes, and a black hat. (R. p. 82 line 1 through p. 83, line 3). At approximately 8:00pm, she overheard Appellant ask the victim to take him to an area called Roseland to see a girl named Latanya (consistently referred to by witnesses as "Tutu", and so, hereinafter referred to as "Tutu") so that the victim could "make a play," which was explained to mean hustling or selling drugs. (R. p. 83, lines 4-25).

DAYTRON SIMMONS

Witness Daytron Simmons confirmed that he also witnessed the victim and Appellant leave together in victim's car that night, accompanied by no one else. (R. p. 113, lines 8-21). Daytron was questioned by the Solicitor as to his previous discussions with Agent Johnson, on March 24, 2014. However, Mr. Simmons claimed that, due to a head injury, he had no memory of the conversation occurring. He also denied having any recollection that he informed Agent Johnson that Appellant was waiting on Trey Graves to sign a contract for a hit to be put out on victim because he was snitching. (R. p. 114-116). However, he did remember that Appellant and victim left together from Simmons Hill on November 12th and agreed that Appellant and victim were friends. (R. p. 116, lines 10-12; p. 118, lines 1-6).

ANTOINE DRAKE

Antoine Drake (hereinafter "Drake") was familiar with both victim and Appellant. He testified to being friends with both victim and Appellant. (R. p. 122, lines 7-19; p. 122, line 22 through p. 123, line 7). However, Defense Counsel cross-examined Drake to show that he hates Appellant. (R. p. 168-169). Drake testified that he was with both victim and Appellant on the night of November 11, 2014, as they were on their way to Hardeeville to pick up some cocaine and marijuana. During this trip, while in the back seat of victim's car with Appellant, the boys got into a disagreement over gas money and he heard Appellant repeatedly say that he wanted to kill the victim. (R. p. 124, lines 2-9; p. 124, line 13 through p. 125, line 10).

On November 12, 2014, Drake testified that he was at the Simmons wake, and that he saw victim and Appellant at the wake together that day and evening. (R. p. 125-126). Drake testified that a man named A.J. Singleton tried to sell a black handgun to him at Simmons Hill, but that he ultimately turned it down. (R. p. 132, line 6 through 133, line 24). He commented that people commonly try to sell guns around Simmons Hill. (R. p. 132, 15-22). He also testified that he did some cocaine with the victim from the inside of victim's car door, but that Appellant came by at that time and told victim he had to go do something and needed to get some clothes. (R. p. 126, lines 9-13). Appellant stated that he wanted to go to his mother's house, at which point Drake asked if he could come along. (R. p. 126, lines 14-15). Appellant declined to let Drake come with him, claiming he had to go take care of some business, but would be right back with some coke and weed. (R. p. 126, lines 16-25). Drake testified that he did not own a car, but that he left the wake a while later when his cousin took him to the home of his girlfriend, Quan Chaneyfield's, which was about fifteen minutes away. (R. p. 127, lines 2-19). He testified that he stayed there until around midnight or 12:30, when his friends Javare Shuler and Brittany

Patterson came and picked him up. (R. p. 127, line 22 through p. 128, line 17). The three drove to a club called Pluto for a while and then back to Simmons Hill, to the home of Latran and Durrell. (R. p. 128, line 18 through 130, line 24). The testimony of Shaquandalynn "Quan" Chaneyfield, and Javare Shuler each corroborated Drake's testimony as to his whereabouts and actions on the night of November 12, 2014; this testimony also included the admission of a text message to Javare requesting they come get him. (R. p. 176-187). Both of these witnesses provided statements to investigator Richard Johnson which were equivalent to their testimony at trial. (R. p. 176, line 15 through p. 177, line 22; p. 185-187). Drake testified that victim's fiancé, Angel Simmons, woke him up the next morning and informed him that victim had been killed. (R. p. 131). Drake was already incarcerated by the time of trial, but Drake's testified that despite his outstanding warrant for arrest, he agreed to meet with Agent Johnson in a remote location to discuss victim's murder and what information he had about the crime. (R. p. 134, line 3 through p. 135, line 14). He stated that he desired to meet in a remote location because he did not want to be seen talking to police. (R. p. 135, lines 6-9).

On cross examination, Drake admitted that he was a scam artist and that he had a deceitful past, to both law enforcement and other citizens. (R. p. 137-138). He also admitted that he was not employed, and in large part relied on conning people for his income. (R. p. 143-144). On cross examination, Drake confirmed that he said Trey Graves put out a hit on victim (R. p. 139, lines 5-10). He also confirmed that he ran into Trey Graves at Club Pluto a week after the victim was killed, and tried to take credit for the victim's murder so that he could collect the bounty. (R. p. 139, line 5 through p. 249, line 12). Drake explained that he did so in order to see what really happened, and to see if it was true that Appellant had killed the victim. (R. p. 141, line 14-23).

On cross-examination, defense counsel attempted to contradict that Drake and the victim were friends by referencing a dispute over their girls that involved a knife; Drake denied the use of a knife and said it was merely a verbally dispute. (R. p. 157-159). Drake was successfully cross-examined as to his alleged friendship with Appellant via the use of prior recordings given to police which indicate that he did not like Appellant, wanted him gone, and would kill him if he could. (R. p. 167-169). On redirect, Drake confirms that he approached Trey Graves to try and take credit for the victim's murder, and receive the \$15,000 bounty, but Graves turns him down and says "Hopkins told me he did it alone." (R. p. 172, lines 7 through p. 173, line 13).

LATANYA ("TUTU") SINGLETON

Tutu lived at 474 Knowles Island Rd, near the crime scene, and testified that she came out to the murder scene on the morning of November 13, 2014. (R. p. 189-190). She spoke briefly with SLED Agent Shaun Harley at the scene, but did not speak with him in depth, and did not want to speak with him that day. (R. p. 190, line 24 through p. 191, line 9). She testified that on February 1st, 2015, Agent Harley demanded to speak with her again under threat of escort by U.S. Marshalls, so she drove to meet him in Walterboro. (R. p. 192, lines 1-12). She testified that she was high at the time and could not remember much of what she told them, or whether she informed them that Appellant came to her home around 8:20 on November 12th. (R. p. 192, line 20 through p. 194, line 9). She did comment that Appellant and victim were common visitors at her home.

During her testimony she denied the contents of her report provided to police, which included Appellant asking her for bleach on the night of the murder, telling agents that Appellant grabbed a soda while the victim tried to sell her marijuana, and that "about 20 minutes later, Hopkins walked back to your house, but Johnson was not with him." (R. p. 194, line 13 through

195, line 3; p. 195-196; p. 197, lines 10-19). Tutu confirmed that she went to Philadelphia in November, denied that Drake went with her, and testified that she did not purchase her .9 millimeter Hi-Point pistol until approximately March of 2015. (R. p. 199-200).

AGENT SHAUN HARLEY

Agent Harley testified that as SLED Lowcountry Region Supervisor, he assisted Agent Johnson in the victim's murder investigation. In doing so he spoke briefly with Tutu on November 13th, but noted that she acted like she did not want to talk with so many people in the parking lot around her. (R. p. 203). He also noticed that she was repeatedly looking at Appellant's mother, who also lived in the same area as the murder scene, and is also the home of Appellant. (R. p. 203; p. 227, lines 4-7). Agent Harley testified that Tutu specifically did not want to be interviewed in Jasper County because she was afraid, and agreed to drive to Walterboro to meet them at the SLED Lowcountry office. (R. 204, lines 13-24). Agent Harley testified that Tutu provided a statement to them on February 1, 2015, and testified that she informed him of the following:

Between 8:20 and 8:30 the Defendant, Mr. Hopkins, had called her, stated that he was going to come over to her house, I guess to sell her some marijuana or say he had marijuana. He then showed up. The victim, Terrance Johnson, was also with him, the Defendant, Mr. Hopkins. The Defendant came in – from what she said, the Defendant came into her house, got a soda. She didn't know the victim, Terrance Johnson, was outside, so she went outside and talked to him for a minute, and bought some marijuana. Mr. Hopkins then left her house and they drove off together. Her, him, and the victim, Terrence Johnson.

I believe it was the victim's vehicle, Terrence Johnson.

After 20 minutes later, the Defendant, Hopkins, came back to her – walked back to her house. And she opened the door, she looked out, but she did not see the victim, Terrence Johnson, with him. So he stayed there approximately about five minutes and somebody came to pick her up – pick him up, I'm sorry.

(R. p. 205, line 3 through p. 206, line 2). Agent Harley also confirmed that Tutu informed him that when Appellant arrived alone the second time, he asked for bleach. (R. p. 206, lines 13-15).

ANGEL SIMMONS

Angel Simmons testified that she was the fiancé of victim and that her grandmother had passed away, so they were at Simmons Hill together on November 12, 2014. (R. pp. 211-213). Angel testified that she called the victim several times that night around 9:00pm, close to 10:00pm, and that he answered twice. (R. p. 215, lines 18-22). However, on her third call at close to 10:00pm, the phone picked up, she heard a scuffle and the phone hung up. She kept calling all through the night, but her calls were all going to voicemail. (R. p. 216, line 6 through p. 217, line 14). Angel confirmed that her phone number was xxx-xxx-5976, and that victim's number was xxx-xxx-3979. (R. p. 215, line 25; p. 216, line 3).

SLED AGENT RICHARD JOHNSON

SLED agent Richard Johnson was lead investigator in victim's murder. (R. p. 223, lines 14-15). During his testimony, Agent Johnson first discussed his unsigned memorandum interview with Daytron Simmons. (R. p. 228, line 18 through p. 229, line 13). Approximately two weeks prior to victim's murder, Daytron Simmons informed Agent Johnson as to a gathering of he, Drake, Appellant, and victim, at a home belonging to Michael Taylor (also referred to as Mike-Mike). (R. p. 229, lines 16-21). There, he heard Appellant state that he was waiting on "them boys," which was a reference to Trey Graves, to sign the contract, was looking at victim while saying this, and confirmed that Trey Graves had a hit out on victim for snitching. (R. p. 229, line 22 through p. 230, line 3).² Daytron was also at the November 12th wake and witnessed

² Agent Johnson testified that Trey Graves was a significant drug dealer in the Jasper County area, but is now serving a twenty year sentence in federal prison. (R. p. 230, lines 19-21).

Appellant ask the victim to drive him to the Roseland area. Daytron noted that victim did not want to drive him, but ultimately agreed to do so. (R. p. 230, lines 4-15).

Agent Johnson also had an opportunity to speak with Appellant prior to his indictment in the case at hand. On December 8th, 2014, Agent Johnson spoke with Appellant at the Chatham County Detention Center in Savannah, Georgia.³ Following this discussion, Appellant provided a voluntary hand written statement to Agent Johnson, who read the statement into the record:

Around 4:00pm on the day of Ms. Simmons' death, we were located in the yard with family members. T.J. arrived. We talked in the yard. T.J. is Terrance Johnson. He took me to get some clothes and took me back to Janeika DuPont house and dropped me off. I did not talk back with him or seen him anymore that night. T.J. took me to get clothes from Roseland around 6:00pm, and that took about 20 minutes. Then he dropped me off at Janeika DuPont's house when we was finished, which was around 6:30 to 7:00pm, and Janeika dropped me off around 11:30 to 11:45 in Baytree apartments. I did not go back to Simmons Hill anymore that day.

(R. p. 237, lines 10-21; State's Exhibit 13). Agent Johnson also testified that he brought up the 470 cell phone number that was provided to him through Angel Simmons, that she said belonged to Appellant. (R. p. 238, lines 1-3). Appellant confirmed that was an old number of his, but that he no longer used that number. (R. p. 238, lines 1-21). Agent Johnson confirmed that this number was xxx-xxx-9329. (R. p. 238, lines 4-18).

Agent Johnson confirmed some of the other matters already addressed by certain witnesses at trial. He confirmed that Tutu asked whether finger prints could be lifted off of a soda bottle, and that she seemed to know more than someone could who was not at the scene of the crime. (R. p. 245, lines 13-18; p. 247, lines 12-22). Johnson also revealed that Tutu's phone

³ A *Jackson v. Denno* hearing was conducted to determine the admissibility of statements given by Appellant to Richard Johnson. The trial court deemed the statements admissible, and Appellant has not raised any issues concerning this ruling. (R. p. 93-109).

records revealed that she and Appellant communicated all night on November 12, 2014. (R. p. 272, lines 17-25). He confirmed the meeting with Antoine Drake on Driggers Road, and commented that due to the corroboration of Drake's whereabouts and story, he was not pursued as suspect. (R. p. 249; p. 262 line 21 through p. 263, line 3; pp. 275-276). He also addressed the alleged dispute between Drake and victim, and noted that his understanding was that there was no physical confrontation between the two, and that the knife involved was never wielded in a violent manner. (R. p. 268, line 22 through p. 269, line 18).

MICHAEL TAYLOR

Michael Taylor testified that he recalls the events of November 12, 2014. He got off work at about 9:00pm and came home, but only his son and daughter in law were home so he went next door to his wife's family's home. (R. pp. 284-285). He returned home around 10:15 or 10:30 and found Appellant in his home. (R. p. 285, line 7-18). Mr. Taylor commented that it was strange to find Appellant at his home and was not happy about it, given that Appellant did not have a key, that he was not home to allow Appellant in, and that they were not friends. (R. p. 285, line 17 through p. 287, line 1). The victim and Mr. Taylor were very close friends, but he only knew Appellant through his friendship with victim. (R. p. 299, lines 12-15; p. 291, lines 1-2).

Mr. Taylor needed to pick up his step-son and, at Appellant's request, agreed to give him a ride. (R. p. 288, lines 17-22). According to Mr. Taylor, Appellant was wearing all black clothing and asked Mr. Taylor if he could change clothing before leaving. (R. p. 286, lines 13-14; p. 289, lines 2-11). Mr. Taylor did not think much of the request, and then witnessed

Appellant burning his clothes in his outside burn barrel. (R. p. 289, lines 8-17).⁴ Mr. Taylor moved to Florida shortly after victim's death and acknowledged that he had never mentioned this detail to police in his prior testimony, and testified that at the time "it never really crossed my mind that it was him" and that he did not really think Appellant could have killed his own friend. (R. p. 290, lines 14-19; p. 296, p. 299). However, he had been contemplating things since receiving his subpoena, realized the importance of that detail, and made it known to Solicitor on the day of his testimony. (R. p. 299, line 18 through p. 300, line 7). Mr. Taylor was also questioned regarding the altercation between Drake and victim, and was adamant that it was not a violent altercation, and that both individuals shook hands and were fine soon after. (R. p. 291).

JANEIKA DUPONT

Ms. DuPont is the former wife of Michael Taylor. (R. p. 302). She corroborated the testimony of her husband coming home and then going over to her family's house next door. (R. pp. 302-312). She has known Appellant for a long time, from school and family. (R. p. 303). In direct contradiction to Appellant's voluntary statement, she testified that there was no one home when she arrived home after 9:00pm and that Appellant did not arrive at their home until after 10:30. (R. p. 311, lines 6-18). She did take Appellant to the Baytree apartment complex when she went to pick up her son from work at about 11:30pm.⁵ (R. pp. 311-312).

BYRON SINGLETON

Byron Singleton was an inmate charged with murder. He confirmed that he had not been promised anything by law enforcement or the Solicitor, but was hoping for leniency in return for his cooperation. Singleton was housed with Appellant in Charleston County and they developed

⁴ This testimony was objected to by Defense counsel, a bench conference was held off the record and the Court noted he would put his ruling on the record at a later time. (R. pp. 289-290).

⁵ Given their respective testimonies, Ms. DuPont and Mr. Taylor seem to have gone together to pick up their son. The issue was not delved into further by either party.

a friendship of sorts as both individuals were from Jasper County. (R. pp. 322-323). He testified that while incarcerated together, they were almost like roommates. (R. p. 338).

Singleton testified that Appellant somehow already knew about his criminal charges and began talking to Singleton about his charges. (R. 232). Appellant then began to talk about his own charges, and originally said he was in jail for federal gun charges. (R. p. 324). However, he later tells Singleton about his murder of victim. (R. p. 324). Singleton testified that Appellant informed him about Agent Johnson's repeated efforts to talk to him; at the time Singleton had never heard of Agent Richard Johnson. (R. p. 324). Appellant then tells Singleton that he and victim were riding around together selling marijuana, and that he tried to kill him before November 12, but Angel called the victim and placed Appellant at the scene, so he had to wait for another time. (R. p. 325).

Singleton then testified: "He said they was ride – said they was riding together in the car and he had the gun right here and he said he saw him with the gun. He said he shot him two times. He said, 'no, man, we are cool. I [F] with you. I [F] with you' and he shot him two times." (R. p. 326, lines 18-22). He then testified that after the first two shots the victim fought to get the weapon and Appellant then shot him again. (R. p. 327 line 18 through p. 328, line 3).

After the shooting, Singleton testified that Appellant told him he went to his mother's house. Singleton was permitted to demonstrate how he was told the murder was carried out, and noted that the victim was driving while Appellant was in the passenger seat. (R. p. 326; p. 327, lines 8-11). He testified that Appellant told him that it was a murder for hire that came from "somebody named Trey", and that Appellant received \$15,000 for the murder. (R. p. 328, lines 9-21). He also recalled Appellant informing him that someone at the scene asked about fingerprints off a bottle. (R. p. 329, lines 1-6). Lastly, Singleton testified that while Appellant did

not tell him precisely where the murder occurred, he was able to testify that it occurred at a stop sign close to his mom's house. (R. p. 329, line 23 through p. 330, line 2).

KAREN MILBRODT

Ms. Milbrodt was a senior analyst in executive relations, including responsibilities as a records custodian for Verizon Wireless. (R. p. 398). She was not qualified as an expert witness to offer opinion testimony as to the how cell phone towers work. (R. p. 429). She did however provide and describe Verizon Wireless records pursuant to the State's subpoena, which included cell phone log data for cell phone number xxx-xxx-3979,⁶ (State's Exhibit 7), cell phone log data for cell phone number xxx-xxx-9329,⁷ (State's Exhibit 8), and a text message sent from xxx-xxx-9329. (State's Exhibit 9). (R. p. 400; p. 436, lines 7-15; R. p. 439, line 17 through p. 440, line 7; p. 441, line 21 through p. 442, line 24).

Consistent with the testimony of Angel Simmons, the call logs from victim's phone showed that that there were two answered phone calls at 9:33 and 9:34pm, on November 12th, then a third call from xxx-xxx-5967⁸ which lasted only twenty seconds. (R. p. 437, line 9 through p. 438, line 3). Ms. Milbrodt noted that from the information in Exhibit 7, these calls utilized cell tower number 216, and were from sector (clarified to mean "antenna") one alpha. (R. p. 438, lines 4-12). Ms. Milbrodt then confirmed that there were multiple additional calls to that cell phone after 9:37, but all appeared to be forwarded to voicemail. (R. p. 438, line 13 through p. 439, line 16; pp. 443-445). The same November 12th information was recited from State's Exhibit 8, confirmed to be an old cell phone number of Appellant. *That call log demonstrated a*

⁶ Previous testimony showed this to be the cell phone of victim. (R. p. 266).

⁷ Previous testimony, including confirmation from Appellant, established this number to be an old telephone number of Appellant. (R. p. 238).

⁸ Previous testimony demonstrated that this was the telephone number of Angel Simmons. (R. p. 215). However, it appears that the Solicitor may have misspoken when confirming Ms. Simmons phone number, as the last two numbers are reversed. (R. p. 215; pp. 437-438).

call at 9:37pm to Tutu's old number, xxx-xxx-9189, which also utilized cell tower 216, sector one alpha. (R. p. 441, lines 3-11; p. 191, lines 15-19; p. 204, lines 5-12).

Lastly, Ms. Milbrodt testified as to State's Exhibit 9, which was a November 12th text message sent at 9:56pm from Appellant's old cell phone number to an unknown recipient. (R. p. 441-442; p. 445, line 10 through p. 446, line 12). The content of the text message stated: "Dats done, need to Holla at u". (R. p. 443, lines 2-11).

ARGUMENT

IV. Appellant's failure to object to the introduction of information from State's Exhibits 7 and 8 renders the issue unpreserved for appellate review, and is otherwise meritless, or at most constitutes harmless error.

In Issue 1, Appellant raised a broad claim concerning the improper introduction of evidence through States Exhibits 7-9, part of which argued that the cell phone tower evidence was improper for lack of necessary expertise of the witness. The cell phone tower evidence complained of was not properly objected to by Defense Counsel, and was contributively elicited by Defense Counsel, such that the issue has not been preserved for appellate review. Moreover, the limited testimony introduced by the State concerning cells phones towers was within the scope of the record custodian's responsibilities, and therefore properly admitted. Appellant's conviction should be affirmed as to the introduction of cell phone tower testimony.

This issue originates from objections raised by Defense Counsel concerning the State's intended introduction of Exhibits 7, 8, and 9, as well as testimony and visual aids concerning "sectional analysis" via witness Dylan Hightower. However, the purposes of those objections by Defense counsel do not coincide with the cell phone tower testimony introduced at trial. Defense counsel's objections to the introduction of State's Exhibits 7-9 *concerned only the admissibility*

of text message data from Appellant's old cell phone. (R. p. 404-413).⁹ The matter was initially discussed by the parties in chambers, and Judge Buckner put the matter on the record and recited that the Defense Counsel's objection argued that admission of the text constituted inadmissible hearsay, would violate the Confrontation Clause, and was otherwise not relevant under a Rule 403 analysis. The Court ultimately held that the text message evidence was admissible.¹⁰ (R. p. 404-412). The trial court learned the following day that there were three separately numbered Exhibits, States Exhibits 7, 8, and 9, which were presented for the purposes of determining admissibility. (R. p. 416, line 20 through p. 417, line 17). The trial court's ruling as to the admissibility of the Exhibits 7-9 was not altered, no further objections to these documents were raised, and the trial court collectively entered them into evidence over objection based on his ruling from previous evening. (R. p. 417, line 13-17).¹¹

⁹ The text message evidence was only present in State's Exhibit 9.

¹⁰ The merits of the Court's admission of this evidence argument is also part of Appellant's Issue 1, but is addressed separately in Section II of this Brief.

¹¹ The trial court's discussion as to admissibility of State's Exhibits 7-9 was limited strictly to the text message information contained in State's Exhibit 9. (R. p. 401; p. 404-413). It is unclear from the trial proceedings, or from Appellant's Brief, what objections were raised as to the admission of the *call log information*, set forth in State's Exhibits 7 and 8. Appellant argued generally in his brief that information in Exhibits 7 and 8 would be confusing to the jury, but then ultimately narrowed his discussion to specifically address text message in State's Exhibit 9. He then concludes that Exhibits 7 and 8 are "almost incomprehensible", and invite speculation without the requisite expert witness analysis, which would again seem to only correlate to the tower and sector information.

The cell tower information has been specifically addressed in Respondent's Issue I, the remaining information in Exhibits 7 and 8 is strictly incoming and outgoing phone call data from select phone numbers at the time of the murder was argued to occur. The trial court confirmed that Ms. Milbrodt could serve as record custodian, and she recited that information from the call log exhibits, and explained that duplicate call entries indicated that the call was forwarded to voicemail. This was well within her province as records custodian and was absolutely relevant, as Exhibit 7 corroborated the timing of Angel Simmons last communications with victim and Exhibit 8 confirmed that Appellant's phone number was active following the time of the murder, that that phone call log indicated that Appellant called Tutu after victim's death. Respondent can find no objection or argument for the exclusion of call log data, which would be necessary for

Following his ruling as to the introduction of the text message, the Court next addressed Defense Counsel's objection concerning the introduction of testimony and visual aids from witness Dylan Hightower. (R. p. 413, lines 9-19). In addressing this matter of law the trial court discussed the introduction of testimony referred to at trial as "sectional analysis". (R. p. 418, lines 4-12). Sectional analysis, which appears to be an equivalent term to refer to "historical cell-site analysis," refers to the use of cell phone tower usage to triangulate the location of a certain cell phone at a certain time.

In the trial stage of *U.S. v. Natal*, the records custodian, *in addition to giving a recitation of the call log information admitted at trial*, was permitted to offer lay opinion testimony as to the manner in which cell phone towers work, and specifically analyzed the facts presented in the case to say whether or not there was possible movement by an alleged suspect to the crime. *United States v. Natal*, 849 F.3d 530, 535 (2d Cir.), cert. denied, 138 S. Ct. 276, 199 L. Ed. 2d 177 (2017). He also offered an opinion as to other factors that could dictate which tower is used by a given cell phone. *Id.* at 535. The State in turn used this testimony at closing to conclude that the alleged suspect was not anywhere near the crime, thereby leaving the defendant as the only possible culprit. The decision reached by the Second Circuit ultimately reversed the conviction, as it was concluded that the testimony offered by the records custodian could only be properly offered by an expert in cell phone tower operations. *Id.* at 537.

As a predicate matter, Judge Buckner, citing *U.S. v. Natal*, ruled that the sectional analysis information intended to be offered by the State required an expert in cell phone tower operation. In response, the State attempted to qualify the record custodian, Karen Milbrodt, as an expert in "the use of cell phone towers". (R. p. 429, lines 20-22). After proffering testimony as to

preservation of the issue for appeal. Nevertheless, Respondent has responded to and disproven the merits of such an argument, if such an argument was intended by Appellant.

Ms. Milbrodt's qualifications, education, and experience in the field, Judge Buckner ruled that she was not qualified to serve as an expert for purposes of sectional analysis, and sustained Defense Counsel's objection. The trial court's specific ruling stated: "The issue before me is whether or not this witness in a proffer is qualified in the use of cell phone towers. And while I certainly find that she's qualified as a records custodian, I sustain the objection that she is not qualified in giving opinion testimony on the use of cell phone towers." (R. p. 429, line 20 through p. 430, line 1).

Following this ruling, the Solicitor endeavored to make clarifications as to what could and could not be addressed at trial, and the Solicitor specifically noted to the court that the admitted call log exhibits (States Exhibits 7 and 8) reference the tower and sector numbers that each cell phone used to connect each listed call. The Solicitor asked the court if Ms. Milbrodt could recite that information from the records, and the court acknowledged the issue and instructed the Solicitor to discuss the issue with Defense Counsel. (R. p. 4320, lines 1-9). The Solicitor presumably did so, as further off the record discussions were held, and further questioning of the witness was permitted. At the conclusion of these efforts the Solicitor proactively informed the trial court that given the ruling, *she would not introduce any visual aids and would not be calling Dylan Hightower to testify*. (R. p. 432, line 10 through p. 433, line 21). Defense Counsel did not put any discussion on the record regarding the cell phone tower data in Exhibits 7 and 8.

Following the ruling of these legal matters, Ms. Karen Milbrodt testified. As part of her testimony concerning State's Exhibits 7 and 8, she recited from the documents the tower and sector number that certain communications utilized. (R. p. 438; p. 441). However, at no time did Defense Counsel raise an objection to this testimony or the exhibits being in conflict with the

sustained objection reached by the trial court concerning sectional analysis. Furthermore, no new objections were raised to any portion of State's Exhibits 7-9, and the prior objections cited by the court in admitting the evidence concerned only the text message data. In the record, there is absolutely no objection to Ms. Milbrodt's testimony wherein she recited the tower and sector numbers listed in the records for which she served as custodian.

The law in South Carolina concerning issue preservation is well settled. "To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (citing *State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996)). "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *Id.* (citing *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001)). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *Id.* at 59 (citing *State v. Pauling*, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996)).

There is no objection within the record to address any testimony offered by Ms. Milbrodt concerning State's Exhibit's 7 and 8. Respondent argues that in order to preserve the issue for appeal, Defense Counsel was required to object specifically to Ms. Milbrodt's testimony, as it was distinguishable from "sectional analysis" testimony. Nevertheless, for purposes of preservation, Defense Counsel should have *at least* objected to this testimony on the grounds that her testimony was within the confines of the previously sustained objection. This is especially so, given that this specific issue was discussed before it was presented to the jury. (R. p. 432, line 1 through p. 433, line 21). It is clear from the record that Defense Counsel did not find Ms. Milbrodt's testimony objectionable, as he made efforts during cross examination to elicit additional information from Ms. Milbrodt regarding the effect of a malfunctioning or overloaded

cell phone tower which drew a sustained objection from the Solicitor. (R. p. 446, lines 13-25). Defense Counsel then abruptly ended his cross examination.

Defense Counsel had notice of the complained of issue beforehand, and while outside the presence of the jury. However, Defense Counsel did not raise an objection to the introduction of the call log data, or the tower and sector numbers. As this information constitutes the entire content of State's Exhibits 7 and 8, there is nothing within the record to argue that their admission at trial was an issue preserved for appeal.

a. The recitation of cell phone tower data by Ms. Milbrodt was properly admitted.

In the alternative to Respondent's preservation argument, Appellant's argument simply lacks merit. The trial court's admission of the cell phone tower data was proper.

The crux of the *U.S. v. Natal* decision is that a qualified expert is needed *to provide opinion testimony* regarding the operation of cell phone towers in order for a party to discuss sectional analysis. *Id.* at 537. Ms. Milbrodt provided absolutely no opinion testimony as to how these cell phone towers work, or what relationship those listed towers would have concerning the ability to pinpoint the location of a connected cell phone. Her testimony was limited to a recitation of the tower and sector identification numbers listed in the exhibits. The Solicitor likewise did not misrepresent the testimony of Ms. Milbrodt by arguing that the identical cell phone tower and sector data for victim and Appellant's cell phone records definitively placed Appellant at the scene of the crime. (R. p. 475; p. 476, lines 4-12). Ms. Milbrodt's testimony did not rise to a level that would necessitate the use of an expert witness as discussed by the Judge Buckner, in reliance upon *U.S. v. Natal*. Moreover, Appellant should be barred from raising an unpreserved issue of appeal on the basis of Ms. Milbrodt's testimony, given that Defense Counsel's own cross examination of Ms. Milbrodt drew closer to the inadmissible area of

opinion testimony than any testimony elicited by the Solicitor. (R. p. 446, lines 13-24); See *State v. Goodwin*, 250 S.C. 403, 406, 158 S.E.2d 195, 197 (1967) (holding that the admission of an oral confession was proper when the witness's testimony was responsive to the question asked by counsel who later sought to contest its admission on appeal. Such response should have been expected by experienced counsel and defendant is in no position to complain now of the admission of testimony he elicited).

As Ms. Milbrodt was confirmed as the records custodian for Verizon Wireless, the court did not err in permitting Ms. Milbrodt to recite the various call log data set forth in State's Exhibits 7 and 8. Appellant's claim lacks merit and his conviction should be affirmed.

b. If error can be found in admitting Ms. Milbrodt's recitation of cell phone tower data, such would merely constitute harmless error.

In the alternative to the Respondent's previous arguments, if the admission of the tower and sector numbers is found to be in error, the admission would constitute harmless error. In light of the remaining evidence presented, there is substantial evidence of guilt admitted against Appellant in this matter, and the circumstances of the case in particular minimize the importance of the tower and sector data admitted.

The trial record provided considerable evidence of guilt against Appellant, including but not limited to testimony that he was last seen leaving the company of the victim less than two hours before the murder, was seen in possession of a black pistol just hours before the murder occurred, confessed to the crime to his cellmate, and burned his clothes on the night of the murder. Reference to tower and sector similarities was harmless in light of the other evidence of guilt. Moreover, tower and sector information is of minimal influence for the jury given that Appellant, his mother, and Tutu all lived near the scene of the crime, and that Simmons Hill was only a few minutes' drive apart. (R. p. 131, lines 11-16); *State v. Pagan*, 369 S.C. 201, 212, 631

S.E.2d 262, 267 (2006) (noting that when “guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,” a minor error that does not influence the result of the trial is considered harmless).¹²

The admission of the cell tower data is of little importance given the remaining evidence. It is, at a minimum, harmless error by the court and Appellant’s conviction should be affirmed.

V. The trial court acted within its discretion when he admitted the text message evidence contained in State’s Exhibit 9.

Appellant’s Issue 1 also asserts that the trial court erred by admitting the text message evidence contained in State’s Exhibit 9, as such evidence was inadmissible hearsay and substantially more prejudicial than probative under Rule 403.¹³ The trial court ruled specifically on this matter and correctly found that the evidence was not hearsay, but instead constituted an admission by party opponent. The trial court was likewise within its discretion in finding that the probative value of the text message was not substantially outweighed by its prejudice to Appellant under a Rule 403 analysis.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, and the trial judge’s ruling will not be reversed on appeal absent an abuse of discretion or the commission of prejudicial legal error. *State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Hamilton*, 344 S.C. 344, 543 S.E.2d 586 (Ct.App.2001). An abuse of discretion “means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore, in the circumstances, amounted to

¹² By Appellant’s own statements to law enforcement (State’s Exhibit 13), he was in the general area on the night of the murder. As the evidence does not distinguish precise location, it ultimately cannot be viewed as proof that Appellant was at the scene of the crime committing the murder. It does however provide to the jury an additional piece to the puzzle, however small, that is consistent with and bolstering to the evidence already presented.

¹³ At trial, Defense counsel also argued that the evidence was in violation of the confrontation clause. However, this argument was not raised or addressed in any way by Appellant.

error of law.” *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). In the given case, Judge Buckner was within his discretion and committed no error of law when he admitted the text message evidence from Appellant’s phone.

a. Text message evidence constituted an admission of a party opponent.

The trial court did not err in admitting the text message evidence introduced through Verizon Wireless records in State’s Exhibits 9. Appellant’s text message was sent from Appellant’s phone, was sent mere minutes after the murder was argued to have occurred, and the content of the text could reasonably be interpreted to mean that the hit against the victim had been carried out. The text message could be reasonably inferred as an admission by party opponent and was therefore not inadmissible hearsay evidence.

The trial court denied Defense counsel’s objection to exclude the text message “Dats done, need to Holla at u” as inadmissible hearsay, and found that it was an admission by party opponent under Rule 801. South Carolina Rule of Evidence 801(d)(2) dictates that an admission by party-opponent does not constitute hearsay. Specifically, Rule 801(d)(2) states in pertinent part that an admission of a party opponent occurs if “the statement is offered against a party and is (A) the party’s own statement in either an individual or a representative capacity. . .” Rule 801(d)(2), SCRE. It does not articulate that such a statement by the party opponent be so clear and specific as to not require any degree of inference by the jury to be considered an admission. Such is the distinction between circumstantial evidence and direct evidence, *but both forms of evidence are admissible*.

This issue is most closely addressed by the South Carolina Court of Appeals analysis in *State v. Rogers*. Therein, and notwithstanding the using of “slang” terminology, the Court addressed a practically identical statement to the one at issue in this case. The Court addressed

the statement, "It's done," made by the defendant during a phone call to a witness and co-conspirator named Sherry. *State v. Rogers*, 405 S.C. 554, 564, 748 S.E.2d 265, 270 (Ct. App. 2013). The Court of Appeals scrutinized the issue of guilt based entirely on circumstantial evidence in relation to the trial court's denial of directed verdict. In consideration of Sherry's testimony, the appellate court had to determine whether a jury could properly convict the defendant based solely on whether they believed Sherry's testimony, as opposed to the need for the jury to make an additional inference from the evidence. *Id.* The court ruled that the testimony was circumstantial evidence, which with an additional inference, certainly tended to prove guilt, but could not be independently relied upon to prove murder. *Id.* Therefore the "substantial circumstantial evidence" standard applied. *Id.*

Moreover, the Court of Appeals' continued discussion showed that it found the statement "It's done." to be a strong inculpatory statement, as it "did not merely reveal Engels' death, but tied itself to Roger's elaborate scheme of murder because it informed his co-conspirator that he had executed their plan to kill Engel." *Id.* at 571. The Court of Appeals also noted that the statement was corroborated by other details of that conversation, particularly Rogers being out of breath and in the woods, and was consistent with the State's theory that Rogers killed Engel and then dragged his body into the woods." *Id.*

Admittedly, the Court of Appeals in *Rogers* did not directly address the admissibility of the admission, but it did explicitly acknowledge the inculpatory nature of the statement. *Id.* Its analysis and ruling are tantamount to a confirmation that such a statement is admissible as circumstantial evidence of an admission by party opponent. The fact that an additional inference is needed from the jury did not render the evidence inadmissible, it merely influences the potential weight that the jury might attribute to that evidence given that it was not direct proof of

murder. See *Id.* at 564.

The trial court came to the same conclusion when ruling on Defense counsel's objection that the text message constituted hearsay. In response to follow up arguments of Defense Counsel, the court found that the use of "Dat's done" as an indication by Appellant that he had completed the murder for hire was an "inference argument from the evidence" that would be up to the jury to determine. (R. p. 410, lines 17-21). The court concluded that such an argument goes to the weight of the evidence, not its admissibility.¹⁴ (R. p. 410, lines 20-21).

Given the analysis set forth in *State v. Rogers*, the Solicitor was entitled to present that text message evidence to the jury, and if convincing, argue to the jury that it is reasonable to infer that this text represents Appellant's effort to inform Trey Graves that the murder for hire had been completed. The reasonableness of that inference is bolstered by the fact that Appellant confirmed that the number from which this text originated was his old cell phone number, and that the text was sent at 9:56pm; the time of this text was a mere nineteen minutes after victim's last phone call with his fiancé was cut short, and is consistent with the time frame that witnesses heard gunshots coming from the vicinity of the crime scene. The remaining portion of the text stating, "need to Holla at u" is also bolstering, as it fits into the State's theory of the case that Appellant wanted to be paid for completing the hit.

The trial court did not err in admitting the test message evidence contained in State's Exhibit 9. South Carolina law supports the trial court's conclusion that this text message could be inferred as an admission by Appellant that he had completed the murder for hire, and the surrounding circumstances bolster the reasonableness of that inference. Appellant's conviction

¹⁴ The same analysis is equally applicable to the trial court's alternative sustaining ground under 804(b)(3), that the text message, if deemed hearsay, would constitute a statement against penal interest. (R. pp. 407-408).

should be affirmed.

b. The court properly conducted a 403 balancing test and was within his discretion to admit the text message evidence.

In addition to defense counsel's argument that the text message evidence was inadmissible hearsay, Defense counsel also argued that it was not relevant under SCRE 403, and that the prejudice to defendant would substantially outweigh the probative value for the State. The trial court disagreed and admitted the text message evidence. Appellant argues that the trial court erred in finding the text message relevant and admissible under Rule 403.

"Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App. 2003). However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the opposing party. *Id.*; Rule 403, SCRE. The trial court's judgment in performing a Rule 403 balancing test must be given great deference and should only be reversed in exceptional circumstances. *Id.* "A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." *State v. Hamilton*, 344 S.C. 344, 358, 543 S.E.2d 586, 594 (Ct. App. 2001), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing *United States v. Long*, 574 F.2d 761 (3d Cir.1978)). In light of this deferential standard, and in consideration of the evidence in question, the trial court properly concluded under Rule 403 that the text message evidence was relevant and not substantially outweighed by unfair prejudice to Appellant.

State v. Rogers demonstrates that under the right circumstances, statements nearly identical to "Dats done," even when additional inference is needed, can constitute inculpatory

statements tending to show that the speaker has committed a murder. *Id.* That is precisely the purpose for which the State sought to introduce the text message evidence, and the State likewise provided supporting circumstances to link the text message to the crime charged. The State confirmed that the number from which the text originated was Appellant's old number, and the timing of the text would place the communication occurring just minutes after the murder. The State also presented argument that the text message fits within the *res gestae* of its case. The Solicitor argued that State's theory of the case is that Appellant killed the victim in an effort to satisfy a murder for hire worth \$15,000. The Solicitor commented that the text message tells the whole complete story because it is a reference to the completion of the murder and Appellant's effort to be paid for killing the victim. All of which is supported by the testimony of other witnesses at trial.

Unlike common circumstances where the disputed Rule 403 evidence is a separate prior bad act, the text message in question directly relates to the crime for which Appellant is charged. Rule 403 balancing is a protection against *unfair prejudice*, not inherent prejudice that simply damages the strength of a defendant's case. *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014). The trial court acknowledged that the recipient of the text could not be identified, and that the text is not so explicit as to clearly reference victim's murder. However, he noted that inference and argument from admitted evidence is permitted, and while that may dictate the weight of the evidence given by the jury, it does not address its admissibility. (R. p. 410). After hearing the arguments of Defense Counsel and the Solicitor, the trial court specifically ruled that he found the evidence relevant, and that its prejudice did not substantially outweigh the probative value. (R. p. 412, lines 18-21).

There is nothing within the record which demonstrates that the trial court abused its discretion or committed legal error in finding the text message relevant and admissible after performing a Rule 403 balancing test. The State's argument that the evidence fit precisely within its theory of the case was compelling, and the evidence itself is directly related to the charges against Appellant. Given the deference granted to a trial court's Rule 403 analysis, and the exceptional circumstances needed to reverse the decision of the trial court, there is no merit to Appellant's claim. The ruling of the trial court was proper and the Appellant's conviction should be affirmed.

VI. The trial court acted within its discretion when it permitted Michael Taylor to testify, regardless of the witness's change in his testimony not made known to the parties until the day of trial.

Appellant argues that the trial court erred in permitting Michael Taylor to testify that he saw Appellant burn his clothes on the night of the murder. As this was new testimony, not previously made known to the parties until the day of trial, Appellant argues that the introduction of his testimony constituted a "trial by ambush" and should have been excluded so as to guarantee a fair trial to Appellant. There is no merit to Appellant's claim, as there is neither applicable legal support for such an argument, nor a demonstration of prejudice by Appellant concerning the State's disclosure of this evidence or the circumstances in which he was able to examine and impeach the witness.

On the second day of trial, the State called witness Michael Taylor to testify. Mr. Taylor was the best friend of the victim and had met Appellant on prior occasions through his relationship with victim. Michael Taylor testified that he had encountered Appellant in his home on the night of November 12, 2014, around 10:30pm, but had not previously seen him at his home in the hours beforehand. Appellant was not a close friend or familiar acquaintance of Mr.

Taylor, which made his presence peculiar. All of which was expected testimony from Mr. Taylor. However, in discussing the later events of the night, Mr. Taylor testified that Appellant requested an opportunity to change his clothes before leaving. (R. pp. 288-289). He then witnessed Appellant burning his clothes in the burn barrel he had outside his home. (R. p. 289, lines 13-17).

Mr. Taylor's testimony raised a speaking objection from Defense counsel as to not having been provided this testimony in advance of trial. (R. p. 289, lines 19-21). The Court held an off the record discussion with counsel and stated for the record that his ruling in the matter would be placed on the record at a later time. (R. p. 289, line 22 through p. 290, line 8). Following the conclusion of the Michael Taylor's testimony, Judge Buckner went on the record outside the presence of the jury to provide his ruling concerning Defense counsel's objection. The Court stated for the record that the Solicitor learned of this new testimony at the beginning of the day of trial and immediately informed Defense counsel, and that the parties then jointly informed the Court. (R. p. 360). The trial court then stated:

Because witnesses often change their testimony and often give surprise testimony, there was absolutely no reason for Mr. Lee to stand up other than to evoke sympathy for his client in front of the jury and talk about the notice he got, because he got the exact same notice that the solicitor got as to the content of Mr. Taylor's testimony. And the solicitor, just as Mr. Lee rightfully went to her with the juror problem, the solicitor rightfully went to Mr. Lee to give him the same notice she received about the content of that testimony. For that reason, I did not sustain Mr. Lee's objection.

(R. p. 360, lines 3-14). No further objections or arguments of any kind were placed on the record regarding this matter.

As was correctly noted by the Court, there are no legal grounds to *exclude* a witness's change in testimony simply because it differs from his prior testimony. This is precisely why our

procedural rules allow for cross-examination, impeachment, the use of prior inconsistent statements, and the ability to declare a witness hostile. The system also provides rules to ensure the proper disclosure of exculpatory evidence under *Brady* and the Rule 5 of the South Carolina Rules of Criminal Procedure. Aside from tangentially related maxims of fairness, Appellant has not offered any direct legal authority which would support the exclusion Mr. Taylor's new testimony. Appellant has also failed to demonstrate why, under such maxims of fairness, the trial court abused his discretion in permitting the testimony when Defense Counsel had an opportunity to cross-examine and impeach the witness as to his new testimony. Lastly, Appellant has failed to demonstrate that the Solicitor failed to properly or timely disclose this new evidence.

To the extent Appellant argues that the Solicitor committed some form of *Brady* violation or Rule 5 violation, the facts do not support such an allegation. Moreover, the fact that Defense Counsel had *equal notice* of the new testimony before it was presented to the jury and was able to effectively cross-examine and impeach Mr. Taylor as to his inconsistent testimony is especially detrimental to any claim asserting improper disclosure.

A *Brady* claim is based upon due process requirements, and "such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (citing *Kyles v. Whitley*, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 1565-69, 131 L.Ed.2d 490, 505-10 (1995); *Brady v. Maryland*, 373 U.S. at 87, 83 S.Ct. at 1196, 10 L.Ed.2d at 218; *State v. Von Dohlen*, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996) . This rule applies to both

exculpatory evidence and impeachment evidence. *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481, 490 (1985)).

Mr. Taylor's testimony is certainly not exculpatory, but could arguably constitute impeachment evidence. However, the facts presented at trial clearly do not support the conclusion that the Solicitor had advanced notice of this new testimony and failed to properly disclose it. Quite the opposite, as the Court commended Solicitor for bringing this new information to light as soon as he discovered it so as to give the defense equal notice and time to prepare. These circumstances demonstrate that the elements necessary to constitute a *Brady* violation are completely unsupported by the record.

Additionally, a *Brady* violation requires a showing of prejudice by the accused. In *State v. Gather*, our Supreme Court ruled that a failure to disclose information only warrants a reversal is the omission deprived the defendant of a fair trial. *State v. Gathers*, 295 S.C. 476, 481, 369 S.E.2d 140, 143 (1988), *aff'd*, 490 U.S. 805, 109 S. Ct. 2207, 104 L. Ed. 2d 876 (1989) (citing *State v. Osborn*, 291 S.C. 265, 353 S.E.2d 276 (1987)). The Court in *Gathers* concluded that since Appellant was able to successfully cross-examine the witness at trial, that no prejudice arose from the nondisclosure. *Id.* The same conclusion was reached in *State v. Jones*, wherein defense counsel was able to impeach a witness with a prior statement who provided surprising testimony not previously provided by the prosecution. *State v. Jones*, 325 S.C. 310, 319, 479 S.E.2d 517, 521 (Ct. App. 1996).

The record shows that Defense counsel had ample time to prepare a cross-examination concerning the new testimony that Appellant burned his clothing. Defense counsel was likewise able to impeach Mr. Taylor as to why such an important fact was left out of his prior statement to

police and never mentioned in the interim before trial. As such, Appellant can show no prejudice in the fact that the new and damaging testimony was only made known to him on the day of trial.

Appellant has failed to demonstrate that the introduction of Michael Taylor's testimony was in any way in error by the trial court. There is no basis to exclude relevant and highly probative testimony, absent a *Brady* violation. The facts convincingly show that the Solicitor was timely in disclosing the new testimony and that Appellant was not prejudiced by the testimony as Defense Counsel had a full and fair opportunity to cross-examine and impeach the witness. Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

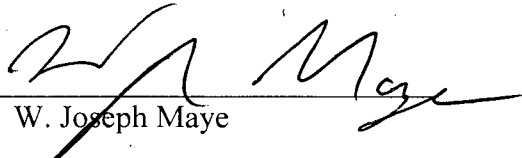
W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

DUFFIE STONE
Fourteenth Judicial Circuit Solicitor

BY: 

W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

November 20, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 20 2018

SC Court of Appeals

Appeal from Jasper County
The Honorable Perry M. Buckner, III, Circuit Court Judge
Appeal Case No. 2017-001224

THE STATE

RESPONDENT,

- V.

ROHAIME JAMAR HOPKINS,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 20th day of November 2018.


W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Rohaime Jamar Hopkins, Appellant.

Appellate Case No. 2017-001224

Appeal From Jasper County
Perry M. Buckner, III, Circuit Court Judge

Opinion No. 5766
Submitted November 1, 2019 – Filed August 19, 2020

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General W. Jeffrey Young, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody Jane Brown, Assistant
Attorney General William Joseph Maye, all of Columbia;
and Solicitor Isaac McDuffie Stone, III, of Bluffton, all
for Respondent.

WILLIAMS, J.: In this criminal appeal, Rohaime Jamar Hopkins appeals his conviction for murder. On appeal, Hopkins argues the trial court erred in (1) admitting State's Exhibits 7 and 8 (the Cell Phone Records), (2) admitting State's

Exhibit 9 (the Text Message), and (3) allowing Michael Taylor's testimony. We affirm.

FACTS/PROCEDURAL HISTORY

On November 12, 2014, Terrance Johnson (Victim) was shot and killed in Jasper County. Hopkins was indicted for Victim's murder and tried by a jury. The State's theory was that Victim was murdered at approximately 9:37 P.M.

Several witnesses saw Hopkins and Victim leave a wake together on the night of the murder, and one witness testified that during the wake, she saw Hopkins with a gun tucked into his pants. Lieutenant Shaun Harley, a supervisor with the South Carolina Law Enforcement Division (SLED), testified Latanya Singleton told him that on the night of the murder (1) Hopkins and Victim came to her house, (2) Hopkins and Victim left her house in Victim's car, and (3) approximately twenty minutes later, Hopkins walked back to her house alone before being picked up by someone.¹ Agent Richard Johnson, a SLED investigator, testified Latanya lived approximately five hundred yards from where Victim's body was found.

Hopkins's written statement to police indicated he saw Victim at the wake and Victim took him to get clothes. After Victim dropped him off at Janeika DuPont's house around 6:30 or 7:00 P.M., he did not see or speak to Victim anymore that day. DuPont testified that Hopkins was not at her house at 6:30 or 7:00 P.M. but he arrived at 10:30 or 11:00 P.M.

On the first day of trial, Michael Taylor, DuPont's husband, informed the State he was going to testify that when Hopkins arrived at their house on the night of the murder, he changed his clothing and proceeded to burn the clothing in a burn barrel. Upon learning this information, the State immediately informed Hopkins and the trial court. During the trial, Taylor testified that on the night of the murder, he returned home at approximately 9:07 P.M. and Hopkins was not there. He stated he went next door until approximately 10:15 or 10:30 P.M. and when he returned home, Hopkins was unexpectedly inside. Taylor testified that after he and Hopkins talked for a while, Hopkins changed his clothes and burned them in Taylor's burn barrel. Hopkins objected to this testimony because it was not previously provided to him. A discussion was held off the record, and the trial court indicated it would state its ruling on the objection on the record later. When the trial resumed, Taylor

¹ At trial, Latanya testified she did not remember telling Lieutenant Harley any of the aforementioned information because she was high when she spoke to him.

stated that when he spoke to police in 2014, he did not think to mention that Hopkins burned his clothing because he did not believe Hopkins killed Victim. It was only when Taylor was asked to testify at trial that he began to consider Hopkins's specific actions on the night of the murder. The trial court overruled Hopkins's objection to Taylor's testimony. The court noted (1) the State informed Hopkins about Taylor's statement as soon as it became aware of it and (2) because witnesses often change their testimony or give surprise testimony, Hopkins only objected to Taylor's testimony to evoke sympathy from the jury about the amount of notice he received.

At trial, there was evidence presented that a drug dealer put "a hit" on Victim. Agent Johnson testified Daytron Simmons (Simmons) told him that (1) approximately two weeks before the murder, Hopkins was looking at Victim when Hopkins told Simmons he was waiting on the drug dealer to sign "the contract" and (2) Hopkins told Simmons the drug dealer put a hit on Victim because Victim was "snitching."² Antoine Drake testified there was a hit out on Victim and he attempted to collect the hit money for killing Victim in an effort to scam the drug dealer and find out if Hopkins killed Victim. However, Drake clarified he was not paid because the drug dealer said "Hopkins told me he did it alone" and Hopkins had already been paid. Byron Singleton testified he and Hopkins were "basically roommates" in jail and Hopkins told him that he killed Victim because the drug dealer offered him \$15,000 to kill Victim in a murder for hire.³ Angel Simmons (Angel), Victim's fiancé, testified she called Victim several times on the night of the murder and Victim answered her two calls close to 10:00 P.M. She stated the last time Victim answered her call, she asked where he was a couple of times and told him she loved him. Angel heard a little scuffle and the phone call abruptly ended. Angel stated she kept calling Victim's phone but it went straight to voicemail.

State's Exhibit 7 was a portion of Victim's cell phone record, and State's Exhibit 8 was a portion of Hopkins's cell phone record (collectively, the Cell Phone

² At trial, Simmons testified he has trouble with his long-term memory because he was shot in the eye in 2006, so he did not remember saying these things or speaking with Agent Johnson on March 24, 2015.

³ Singleton previously met Drake on a prison bus ride, but he denied receiving information about Victim's murder from Drake. At the time of trial, Singleton had a pending murder charge. He admitted he hoped he would receive leniency for testifying but agreed there was no agreement with the Solicitor.

Records), both from the night of the murder.⁴ Each record listed the phone number associated with the record, its corresponding outgoing and incoming calls and text messages, the time and duration of those calls, whether the calls were forwarded to voicemail, and the cellphone tower and sector that connected the communication. State's Exhibit 9 was the record of a text message (the Text Message) sent from Hopkins's old cell phone number, which stated, "Dats done need to Holla at u."

During the direct examination of Karen Milbrodt, a senior analyst in Executive Relations and a records custodian for Verizon Wireless, Hopkins made a general objection to the introduction of the Cell Phone Records and the Text Message. A discussion was held off the record. On the record, the trial court stated, "The State seeks to *admit a text message*," and the court noted Hopkins objected based on the Confrontation Clause and hearsay. (emphasis added). Hopkins conceded the authenticity of the Text Message. The trial court overruled Hopkins's objection, finding the Text Message (1) did not violate the Confrontation Clause, (2) was not hearsay because it was an admission of a party opponent, (3) in the alternative, met the exception for hearsay as a statement against interest, (4) was relevant, and (5) was not unfairly prejudicial. Following the court's ruling on Hopkins's hearsay objection, Hopkins reminded the court he had "a couple of other positions as far as why *that language* should not be admissible."⁵ (emphasis added). Hopkins argued the language in the Text Message was confusing and not relevant because (1) the State could not tie the language in the Text Message to its argument that the Text Message meant Hopkins killed Victim and (2) the State could not prove to whom the Text Message was sent.⁶ The trial court conveyed that Hopkins's concerns related to a potential inference from the evidence, which would go to the weight rather than admissibility of the evidence and would be for the jury to determine. Hopkins then argued the prejudice outweighed the probative value under Rule 403, SCRE, because the State was going to use it to say Hopkins carried out a "hit" on Victim without any evidence to support that assertion. The court stated the Text

⁴ Angel testified the phone number associated with Exhibit 7 was Victim's phone number. Agent Johnson testified Hopkins admitted the phone number associated with Exhibit 8 was his old phone number.

⁵ Because the preceding discussion of Hopkins's objections only mentioned the Text Message, we find "that language" refers to the language in the Text Message.

⁶ Hopkins argued the State would attempt to argue the Text Message was sent to the drug dealer. The trial court agreed with Hopkins that there was no way to establish to whom the Text Message was sent because it was sent to a burner phone.

Message did not mention a "hit" and that any connection to the "hit" would be based upon an argument or an inference.

The next day, the court indicated it believed it only ruled on one exhibit, but the State clarified there were three exhibits. Hopkins agreed, and the Cell Phone Records and the Text Message were admitted into evidence. The court then turned to "a new issue" related to Hopkins's pretrial motion to exclude any testimony or evidence related to the cell phone sector analysis created by Dylan Hightower, an investigator for the State.⁷ The State sought to qualify Milbrodt as an expert to lay a foundation for Hightower's cell phone sector analysis and proffered her qualifications outside of the presence of the jury. The court found Milbrodt was not qualified to provide expert testimony on the use of cell phone towers but she was qualified as a records custodian. Hopkins did not object.

Milbrodt recited from the Cell Phone Records when asked which phone tower a call in the Cell Phone Records utilized. Milbrodt stated that if the Cell Phone Records showed two identical time stamps for an incoming call that meant the call was unanswered and forwarded to voicemail. Milbrodt testified that on the night of the murder, Victim's cell phone record indicated there were two answered incoming phone calls at 9:33 P.M. and 9:34 P.M.⁸ She stated that a third incoming phone call came in at 9:37 P.M., lasted twenty seconds, and utilized cell tower 216 and sector one alpha.⁹ Milbrodt testified Victim's cell phone record indicated every call made to his cell phone from 9:38 P.M. until 1:53 A.M. was forwarded to voicemail. Milbrodt also testified Hopkins's cell phone records indicated there was an outgoing call at 9:37 P.M. that utilized cell phone tower 216 and sector one alpha. Milbrodt further testified the Text Message record indicated it was sent from Hopkins's old cell phone number at 9:56 P.M. on the night of the murder. Hopkins did not object to any of the aforementioned testimony. When Hopkins asked Milbrodt whether a call would go to the next available towers if the usual tower was overloaded or not working, Milbrodt answered affirmatively; the State objected, and this objection was sustained.

⁷ Neither the pretrial motions nor Hopkins's specific objection to the cell phone sector analysis are included in the record on appeal.

⁸ Milbrodt noted the phone number that was associated with each Cell Phone Record, but she did not specifically refer to the Cell Phone Records or the Text Message as belonging to either Hopkins or Victim.

⁹ This call was received from the number that Angel testified belonged to her.

Hopkins was convicted and sentenced to life imprisonment without the possibility of parole. This appeal followed.

ISSUES ON APPEAL

- I. Did the trial court err in admitting the Cell Phone Records?
- II. Did the trial court err in admitting the Text Message?
- III. Did the trial court err in allowing Taylor's testimony?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). The decision to admit or exclude evidence is within the sound discretion of the circuit court. *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). An appellate court will not disturb the circuit court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

LAW/ANALYSIS

I. The Cell Phone Records

Hopkins contends the trial court erred in admitting the Cell Phone Records, arguing (1) the Cell Phone Records were not statements against penal interest, (2) the Cell Phone Records were prejudicial under Rule 403, SCRE, and (3) the Cell Phone Records were confusing to the jury. We find these arguments are not preserved for our review.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised to and ruled upon in the trial court will not be considered on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). "Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review." *State v. Simpson*, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). "[T]o preserve for review an alleged error in admitting evidence[,] an objection should be sufficiently

specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge." *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). "The failure to raise specific grounds for an objection will not prevent the appellate court from addressing an issue when the record indicates that the trial court and the State understood the basis for the objection." *State v. Bowers*, 428 S.C. 21, 29, 832 S.E.2d 623, 627 (Ct. App. 2019). "[A] party may not argue one ground at trial and an alternate ground on appeal." *Prioleau*, 345 S.C. at 411, 548 S.E.2d at 216.

At trial, Hopkins's objections to the trial court solely pertained to the admission of the Text Message and to the separate sector analysis created by Hightower. He did not specifically object to the Cell Phone Records before they were admitted into evidence, and we find the trial court did not understand Hopkins's objection to additionally encompass the Cell Phone Records. *See id.* ("[T]o preserve for review an alleged error in admitting evidence[,], an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."); *Simpson*, 325 S.C. at 42, 479 S.E.2d at 60 ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review."). Furthermore, Hopkins's objection to Milbrodt's testimony occurred after the Cell Phone Records were admitted into evidence and was related to the separate matter of her ability to lay a predicate for the sector analysis created by Hightower. Hopkins did not object when the trial court found Milbrodt could testify as to the Cell Phone Records as a records custodian. *See Prioleau*, 345 S.C. at 411, 548 S.E.2d at 216 ("[A] party may not argue one ground at trial and an alternate ground on appeal."). Accordingly, we find Hopkins's arguments regarding the Cell Phone Records are not preserved for our review.¹⁰

II. The Text Message

¹⁰ It is not clear if Hopkins made specific objections to the Cell Phone Records during an off-the-record discussion, but even if he did, such an objection would be abandoned because it was not put on the record. *See York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review.").

Hopkins argues the trial court erred in admitting the Text Message because it was confusing and its probative value was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE.¹¹ We disagree.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury" Rule 403, SCRE; *see also State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). "All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." *State v. Bratschi*, 413 S.C. 97, 115, 775 S.E.2d 39, 49 (Ct. App. 2015) (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)). "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). The burden is "on the opponent of the evidence to establish inadmissibility" under Rule 403. *State v. King*, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018). "A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Sledge*, 428 S.C. 40, 55, 832 S.E.2d 633, 641–42 (Ct. App. 2019) (alteration in original) (quoting *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)). "Circumstantial evidence, . . . , is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." *State v. Rogers*, 405 S.C. 554, 563, 784 S.E.2d 265, 270 (Ct. App. 2013).

¹¹ Hopkins also contends the trial court erred in admitting the Text Message because it erroneously found the Text Message met the hearsay exception for a statement against penal interest. However, that finding was an alternative sustaining ground to the trial court's finding that the Text Message was not hearsay because it was an admission of a party opponent pursuant to Rule 801(d)(2), SCRE. Hopkins does not appeal that finding, and thus, it is the law of the case. *See State v. Fripp*, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (stating the appellant's failure to challenge the trial court's ruling in the appellate brief renders the unchallenged ruling the law of the case); *see also Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 474, 477 (1996) (holding that when the ruling of the trial court is based on more than one ground, the appellate court will affirm unless appellant appeals all the grounds).

Hopkins argues the Text Message was "so amorphous and so ambiguous and confusing" that it should have been excluded under Rule 403. In support of this argument, Hopkins avers that on its face, the Text Message did not support the State's argument that he sent the Text Message because he killed Victim and wanted to collect the money for completing the "hit." We disagree, and we find the Text Message provides circumstantial evidence of Hopkins's guilt. In *State v. Rogers*, this court pointed to the defendant's statement, "It's done," as circumstantial evidence of his guilt because the jury had to infer what he meant by the words "it" and "done" before it could determine whether he confessed to murder even though the circumstances in the case persuasively indicated the statement meant he killed the victim. *Id.* at 564, 748 S.E.2d at 270. Although that case dealt with whether there was enough circumstantial evidence to affirm the trial court's denial of the defendant's directed verdict motion rather than the admissibility of the statement, it shows such an inference could be drawn from the statement even though the statement on its face did not specify the defendant killed the victim. Likewise, we find the Text Message provides circumstantial evidence of Hopkins's guilt from which the jury could properly infer "Dats done need to Holla at u" meant Hopkins killed Victim and was seeking to collect money for the "hit." *See id.* at 563, 784 S.E.2d at 270 ("Circumstantial evidence, . . . , is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred."). This is especially true when considering evidence was admitted that indicated (1) Hopkins was hired to kill Victim, (2) multiple witnesses saw Hopkins with Victim shortly before the murder, (3) Hopkins's story differed from other witnesses's recall of his whereabouts on the night of the murder, (4) the Text Message was sent nineteen minutes after the State argued Victim was killed and within the time frame that Angel testified her call to Victim was disconnected, (5) Hopkins had a gun on the night of the murder, and (6) Hopkins burned his clothing on the night of the murder. Thus, we find the trial court did not err in admitting the Text Message.

As to Hopkins's unfair prejudice argument, based on the facts listed above, we find the danger of unfair prejudice from any inference or speculation the jury could draw from the Text Message is slight compared to its relevance and thus does not outweigh its probative value. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury"); *Bratschi*, 413 S.C. at 115, 775 S.E.2d at 49 ("All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998))); *see also State v. Thompson*, 420 S.C. 286, 398–99, 803 S.E.2d 44, 50 (Ct. App. 2017) (finding the trial court did not

err in ruling the potential prejudicial value of a letter did not substantially outweigh its probative value even though the letter invited speculation).¹²

Based on the foregoing, we find the trial court did not err in admitting the Text Message.

III. Taylor's Testimony

Hopkins argues the trial court erred in failing to properly exercise its discretion to exclude Taylor's testimony that Hopkins burned his clothes in a barrel outside of Taylor's home on the night of the murder. Specifically, Hopkins contends the admission of this evidence on the first day of trial, without sufficient notice, amounted to "trial by ambush." We disagree.

Rule 5(a)(2), SCRCrimP, does not authorize the discovery of

statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

Rule 5(c), SCRCrimP provides that "[i]f, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material."

¹² Hopkins also argues the Text Message did not pinpoint him as its sender. However, before the trial court, Hopkins solely argued the State could not prove to whom he sent the Text Message. Thus, we find this argument is unpreserved because it was not raised to the trial court. *See Prioleau*, 345 S.C. at 411, 548 S.E.2d at 216 ("[A] party may not argue one ground at trial and an alternate ground on appeal."); *Simpson*, 325 S.C. at 42, 479 S.E.2d at 60 ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.").

On appeal, Hopkins admits that "it is undisputed that [Taylor] chose to claim [Hopkins] burned his clothes in a barrel at Taylor's house for the first time at trial" and further acknowledges that the State notified him the same day. The trial court also specifically noted that Hopkins got the same notice of the content of Taylor's testimony as the State because the State informed him immediately after it found out Taylor was going to testify to such. Thus, even though Taylor revealed this information for the first time on the first day of the trial, we find there was no violation of Rule 5 because the State provided Hopkins with immediate notice of the information when it learned of it.

Hopkins argues that even if there was a timely disclosure under Rule 5(c), the evidentiary analysis was not complete because the trial court had the inherent duty to ensure he received a fair trial and not a trial by ambush. We find *Sheppard v. State* instructive due to its examination of the timing of the disclosure of witness statements. 357 S.C. 646, 657–60, 594 S.E.2d 462, 469 (2004), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). In *Sheppard*, the defense was not provided with two prior statements of a State's witness until after the State concluded its direct examination of the witness.¹³ *Id.* at 657, 594 S.E.2d 462, 469 (2004). Our supreme court found that because the petitioner "was given [the witness's] statements in time for cross-examination, there [was] not a reasonable probability the outcome of the trial would have been different had the statements been disclosed prior to trial." *Id.* at 660, 594 S.E.2d at 470; *see also State v. Grantham*, 224 S.C. 41, 45, 77 S.E.2d 291, 293 (1953) (finding that the appellant was not denied a fair trial when a police officer testified the appellant told him he planned the homicide for a long time but the officer did not mention that statement in his testimony at a previous coroner's inquest because the appellant was able to cross-examine the officer about why he did not testify earlier as to the appellant's statement). Although *Sheppard* and *Grantham* did not specifically identify and analyze the issue as one of fundamental fairness, the results of *Sheppard* and *Grantham* suggest that fundamental fairness was not violated in this case because Hopkins was able to cross-examine Taylor about why he did not

¹³ The witness testified at trial that (1) the petitioner admitted an officer was chasing him and told him to freeze, (2) the petitioner froze but stated, "Man, I can't go to jail," and (3) the petitioner made a motion to indicate that he shot the officer. 357 S.C. at 658, 594 S.E.2d at 469. Following the police officer's murder, the witness made two statements to the police. *Id.* In the first statement, he did not make the assertions he testified to regarding the killing, but after his attorney told him it would benefit him to cooperate, he made another statement that correlated with his trial testimony. *Id.* at 658–59, 594 S.E.2d at 469.

previously mention the burning of the clothing. Thus, we find the trial court did not abuse its discretion in allowing Taylor's testimony. *See Adkins*, 353 S.C. at 326, 577 S.E.2d at 468 (stating an appellate court will not disturb the circuit court's admissibility determinations absent a prejudicial abuse of discretion).¹⁴

CONCLUSION

Based on the foregoing, Hopkins's conviction is

AFFIRMED.¹⁵

HUFF and MCDONALD, JJ., concur.

¹⁴ Hopkins also argues that "it appears at some point Taylor decided he believed [Hopkins] was guilty, and that this 'burned his clothes' assertion would sway the jury to believe that [Hopkins] was guilty also." However, we find no evidence in the record to support this assertion, and "bias or other defects in a witness's testimony—revealed primarily through cross-examination—affect a witness's credibility and may be weighed by the finder of fact." *State v. King*, 367 S.C. 131, 137, 623 S.E.2d 865, 868 (Ct. App. 2005).

¹⁵ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of JASPER

IN THE COURT OF COMMON PLEAS

2021-CP-2700-378Rohaima-Jamar Hopkins
Full name and prison number (if any) of Applicant

#235915

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2021 SEP -7 AM 9:17

JASPER COUNTY
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CIE 990 WISKEYHolly Bishopville SC 290102. Name and location of Court which imposed sentence JASPERCounty Court of General Sessions

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015-GS-270-0144 MURDER(b) N/A

1 of 24

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 17, 2017
- (b) 4
- (c) u

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 19, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. SEE CASE 2017-001224
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 4th, 5th, 6th, 13th, 15th Amendment Violations
- (b) TOUE PROCESS VIOLATIONS! Subject matter Jurisdiction!
- (c) FRAUD UPON THE COURT! PROSECUTORIAL MISCONDUCT!
INDEMNITY ASSISTANCE OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Amended, PER will follow and
- (b) SEE ATTACHED PAGES
- (c) 4
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. APPEAL UNDER 2017-001224
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i.

ii.

iii.

iv.

Appeal Affirmed conviction

(d) the date of each such disposition:

i.

ii.

iii.

iv.

August 19, 2020

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

STATE CASE 2017-001224

U

U

U

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

N/A

U

U

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

U

U

U

4 of 24

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) counsel was ineffective, did
 (b) not discover issues until now,
 (c) they ARE jurisdictional in nature

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. SEE CASE 2017-001224
U
 ii. U
U
 iii. U
U

(b) the proceedings at which each such attorney represented you:

i. U
U
 ii. U
U
 iii. U
U

I give the court and parties judicial notice that I intend to amend this PCR application to fully place forth the issues that are to be presented to this court once a case number is assigned and forwarded to me to address the claims listed in the grounds under (10) of this document.

Inasmuch, it is beyond dispute that the stipulating sheet(s) are this state's equivalent to a commitment

~~ORDER~~. This Application is also
 filed under the independent
 Action Rule for Fraud upon the
 court in producing that commit-
 ment order. The applicant gives
 the court and all parties judicial
 notice. This PCR is not merely
 filed to attack the indictments
 and other structural due process
 errors that exist in this case.
 This is a collateral attack upon
 the sentencing sheets which are
~~also~~ legally designated as
 commitment orders, as well as

FOR FRAUD UPON THE COURT AND
 CHALLENGE TO THE TRIAL COURT'S
 JURISDICTION TO ISSUE SUCH ORDERS
 OF COMMITMENT. THIS WOULD ALSO
 AUTOMATICALLY ESTABLISH CHALLENGE
 TO THE JURISDICTION TO APPLY SUB-
 SEQUENT COURT THAT WOULD HEAR
 APPEAL RELATED TO THESE MATTERS,
 WHETHER THE APPEAL WAS DIRECT
 OR COLLATERAL IN REVIEW, DUE TO
 ANY FINAL ORDERS BEING ISSUED
 FROM THE CRIMINAL COURT BEING
 JURISDICTIONAL REQUISITE TO APPLY
 SUBSEQUENT REVIEW. IT WOULD BE
 AN ABUSE OF DISCRETION, OB-
 STRUCTION OF JUSTICE AND AN ACT

of FRAUD upon the court for the
 PCR court or state court to
 determine that the applicant
 is procedurally barred when many
 of the issues involved in this case
 are indeed jurisdictional in
 nature where I am arguing
 against the precedent established
 by State v Gentry 2005 and State
v Langford 2012 pursuant to Rules
 of Appellate Procedure, Rule 217
 involving legal issues which
 cannot be waived or forfeited,
 which can be raised at any stage,

At any time, even after a
 final order or judgment has
 been entered, Steel Co. v Citizens
For a Better Environment, 523 US
 83, 118 S.Ct 1003 (US 1998); Jamm v
Cincinnati Ins. Company, 2020 WL
 60932 (SDNY 2020); Chase v Anderson
Logistics LP, 2019 WL 5847879, *2
 WDJEX.; United States v Valladares,
 2019 WL 4888629 *1, WDJEX.;
Arbaugh v Y & H Corp., 546 US 500,
 126 S.Ct 1235 (US 2006); Stevens E.
Hecker plaintiffs v The State of
Washington, defendant, 2020 WL
 134168 (Fed Cl. 2020); Henderson Ex

Red Henderson v Shipes, 131 S Ct
1197, 1198 US; BURGESS v United
States, 2019 WL 7293400 *10 md;
Kosciusko v. PARHAM, 428 SC 401,
836 SE2d 362 (SC App. 2019); First
Citizens Bank and Trust Company
Inc. v Taylor, 431 SC 149, 847 SE2d
249 (SC App. 2020).

The sentencing sheet(s) as
commitment orders, establish an
order or decree from the General
Sessions Court to commit the Applicant
to the SC Dept of Corrections
pertaining to my conviction which
is a jurisdictional requisite to

11 of 24

Appeal or direct review. It
 is coming under fire due to
 the unconstitutional action that
 shall be asserted in the
 amended per that is forthcoming,
 also due to circumventing and
 failure to hear jurisdictional
 issues violating due process,
 which cannot be waived or for-
 feited by the applicant where
 the hired and or appointed
 attorney conspired under color of
 state law with the prosecutor
 violating my constitutional right
 of autonomy to prevent the

ISSUES FROM BEING HEARD VIOLATING⁷⁷²
US SUPREME COURT HOLDINGS UNDER
MECOY V LOUISIANA, -SCOT-, 2018 WL
2106174 (US 2018). SUCH UNCONSTITI-
TUTIONAL ACTION AND FRAUD UPON THE
COURTS INVOLVED WHERE THE COURT
WAS PRIVY TO THESE INJUSTICES,
REPEALS THE COMMITMENT ORDER
AT THE TRIAL LEVEL VOID FOR
UNCONSTITUTIONAL ACTION INTENDED
TO BE ARGUED IN THE APPEALMENT
TO COME. ANY CLAIM OF STATUTE
OF LIMITATIONS BAR WOULD NOT
PREVENT REVIEW UNDER THIS PRESENTLY
SUBMITTED PCR APPLICATION UNDER THE

~~Independent~~ Action Rule due to
 such claims being procedural
 limitations bar for which a
 collateral attack for fraud upon
 the court is free of such procedural
 bar which such a claim would clearly
 be. Fraud vitiates everything
 that it enters and a judgment
 procured by fraud may be collaterally
 attacked for that fraud upon the
 court. This applies to all acts,
 orders, judgments or decrees of
 all courts on record, which the
~~separating~~ sheets, as commitment
 orders represent, see citings of
 law that will be listed in the

Amended PCR. Also see Myles v. Dominos Pizza, LLC, 2017 WL 238436 (DC Miss 2017); United States v Conrad, 675 Fed Appx. 263, 265 (CA4 (Mo) 2017); Loumiel v United States, 65 F.Supp3d 19 (2014); 000-Rm Invest v First Element International, Inc., F.Supp. 2014 WL 12613282 (SD Fla. 2014).

Inasmuch, this filing is filed under the independent Action Rule for Fraud upon the court involved where the judge was privy to all that occurred. Due to attacking the "sentencing sheet", which are the legal equivalent

to a "commitment order" which also establish a jurisdictional challenge to any subsequent appeal that can potentially occur at the state level. Therefore, the court of common pleas, the SC Attorney General or Solicitor's office, cannot fairly or legally assert that I am "time barred"

where the order in question would be deemed unconstitutional and a violation of DUE PROCESS law designating that the commitment order be deemed void which is this PER's aim. It is the

applicants claim that it is an Act
 of FRAUD upon the General Sessions
 Court to sign the commitment
 order(s) abusing the courts
 discretion when these jurisdictional
 challenges existed which cannot
 be waived or forfeited where
 the court and prosecutor knew
 good and well, conspiring under
 color of state law, that these
 DUE PROCESS AND UNCONSTITUTIONAL
 structural errors argued in this
 document and the intended
 subsequent amended PCR existed
 in this case, SANDERS V.

777

SAVANNAH Highway Automotive
Company - SE 2d -, 2020 WL 6154305
(SC App-2020); Nationstar Mortg. LLC
v MEISNER, SE 2d, 2016 WL 1700516
(SC App. 2016).

Therefore, the GENERAL
SESSIONS COURT signing the
commitment order is unconstitutional
and void which include
the court's jurisdiction for signing
it which corrupts these proceedings
in their entirety as well as
the conviction attached to it
being a nullity and is as if there
were no commitment order.

OR CONVICTION ATTACHED TO IT OR
JUDICIAL DETERMINATION MADE
AT ALL PLACING THE STATE IN
FORFEITURE ON ANY CAUSE OF
CONVICTIONS ATTACHED THERETO.
IT IS WELL SETTLED IN LAW ALSO
UNDER THE INDEPENDENT ACTION
RULE, THAT A COLLATERAL ATTACK
FOR FRAUD UPON THE COURT IS FREE
OF ALL PROCEDURAL LIMITATIONS
SUCH AS ANY CLAIM OF STATUTE OF
LIMITATIONS, SUCCESSIVE FILING OR
THAT ANOTHER ACTION IS PENDING,
DUE TO THE FRAUD UPON THE COURT
AND JURISDICTIONAL CLAIMS THAT

~~ARE~~ NOW ARGUED AND WHICH
 WILL APPEAR IN THE AMENDED
 PCR APPLICATION FORTHCOMING,
 WHERE ALL THE FOREMENTIONED
~~ARE~~ ALL FORMS OF PROCEDURAL
 LIMITATIONS. IN RE GENTESYS DATA
TECHNOLOGIES INC., 204 F3d 124
 (4th Cir 2000); MONTGOMERY V
LOUISIANA, 136 S Ct 718, 193 L Ed2d
 599 (US 2016); UNITED STATES V LIBOVS,
 858 F3d 64 (2d Cir 2017).

SUBJECT MATTER JURISDICTION
 IS THE POWER TO DECLARE LAW.
 THEREFORE, IT CANNOT BE WAIVED
 OR FORFEITED. THUS, WHEN IT

20 of 24

~~CEASE~~ to exist. The only thing
 left for the court to do is
~~announce~~ it and dismiss the
 cause of conviction which can
 be raised at anytime ~~even~~ after
 the commitment order or final
 order is issued. In this case
 there is nothing left for the
 court to do except ~~announce~~ it
 and dismiss the cause of the
 conviction, especially in light of
 the fact that we have fraud
 upon the court attached to the
 jurisdictional claims made,
Sanders v. Saurappan Highway
Automotive Company supra;

Nationstar Mortg, LLC v. Meyer
supra; Wells Fargo Bank N.A. v
H.M.H. Roman Two LLC, 859
 Fed 295 (4th Cir 2017); Moseley v
United States, 2018 WL 1187778
 (4th Cir 2018); Sebelius v Auburn
Regional Medical Center, 133 S Ct
 817, 184 LEd2d 627, 81 USLW 4053
 (US 2013); Sizward v Riddle, ESupp2d,
 2013 WL 707018 (DSC 2013); Grupo
Dataflux v Atlas Global L.P., 541 US
 567, 124 S Ct 192, 158 LEd2d 866
 (US 2004); 24 Senatorial Dist Republican
Committee v Alcorn, 820 Fed 624
 (4th Cir 2016). Equitable tolling
Attaches.

19. State clearly the relief you seek in filing this application:

SENTENCE AND CONVICTION VACATED;
ORDER ISSUED EXPUNGING RECORD

20. Are you now under sentence from any other court that you have not challenged?

no

2021 SEP 17 07:09:15

STATE OF SOUTH CAROLINA)

County of

JASPER

VERIFICATION

I, Rohaima Tamar Hopkins, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

R-H

SWORN to and subscribed before me this 30th
 day of Aug, 2021.

[Signature] (L.S.)
 Notary Public

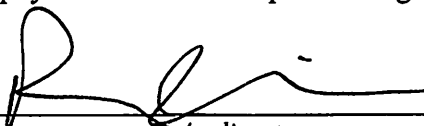
My Commission Expires: 09/04/2029

23 of 24

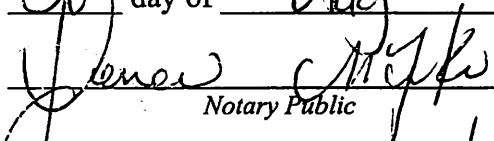
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Rohaine Tamar Hopkins hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
30th day of Aug, 2021.


Notary Public

My Commission Expires: 09/04/2029

2021 SEP 1 10:16

ROHAIME JAMAR HOPKINS
#235915 F3B. RM. 2248
LEE C.I. 990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

784

IN RE: FILING A PCR APPLICATION

TO: THE JASPER COUNTY CLERK OF COURT,

ATTACHED YOU WILL FIND A COPY OF MY INITIAL PCR APPLICATION. PLEASE FILE IT, ASSIGN THE PLEADING A CASE NUMBER, THEN RETURN TO ME A CLACKED STAMPED COPY OF THE DOCUMENT TO ALLOW ME TO SEND IN THE SUBSEQUENT AMENDMENT. FOR YOUR ASSISTANCE I WOULD BE TRULY GRATEFUL. THANK YOU IN ADVANCE.

RESPECTFULLY,
RAHAIME J. HOPKINS

AUGUST 24, 2021

2021 AUG 24 1 16 PM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT	
	)		
Rohaime Jamar Hopkins, SCDC #235915,	)	Case No. 2021-CP-27-00378	
	)		
Applicant,	)	RETURN TO THE APPLICATION	
	)	FOR POST-CONVICTION RELIEF	
v.	)	PARTIAL MOTION TO DISMISS,	
	)	AND MOTION FOR A MORE	
State of South Carolina,	)	DEFINITE STATMENT	
	)	(Counsel Already Appointed)	
Respondent.	)		

2021 DEC 20 PM 9:42

FILED
CLERK OF COURT
JASPER COUNTY
SOUTH CAROLINA

Respondent the State of South Carolina, making its return¹ to the application for post-conviction relief filed by Applicant Rohaime Jamar Hopkins² on September 7, 2021, and received by the South Carolina Attorney General's office on September 10, 2021, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Jasper County Clerk of Court. Applicant was arrested on April 8, 2015, following an investigation into the shooting death of Terrance D. Johnson (Victim). During its June 2015 term, the Jasper County Grand Jury indicted Applicant for murder (2015-

¹ Respondent's return was due to be filed on December 9, 2021, or ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

² Applicant filed this post-conviction relief application *pro se*. Counsel, James K. Falk, Esquire, has since been appointed.

GS-27-00144). On May 15-17, 2017, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner. Scott Lee, Esquire, represented Applicant. Assistant Solicitors Mary Jones and Brian Hollen of the Fourteenth Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial, the jury found Applicant guilty of murder. Following the verdict, Judge Buckner sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal and was represented by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense – Division of Appellate Defense perfected Applicant's appeal by filing a brief with the Court of Appeals on the following two issues:

1. Whether the court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by [Applicant] was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury? and
2. Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that [Applicant] burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was "trial by ambush" – and the court had the inherent authority, and duty, to ensure [Applicant] received a fair trial?

Following further briefing, the Court of Appeals affirmed Applicant's conviction and sentence in a published opinion filed on August 19, 2020. *State v. Hopkins*, 431 S.C. 560, 848 S.E.2d 368 (Ct. App. 2020). The case was remitted back to the circuit court on September 9, 2020.

II. Summary of Factual History

On the night of November 12, 2014, Victim was shot and killed in Jasper County. The Victim's body was found at the entrance of a dead end dirt road at 350 Knowles Island Road the next morning by Mr. Justin Kesselring. Mr. Kesselring called 911 to report the crime. (Tr. p. 127, lines 1-6; p. 134, line 19-23).

Law enforcement arrived and found the deceased Victim lying face down beside the passenger side of his vehicle, with the passenger door open. (Tr. p. 134-136). The autopsy report showed that the Victim was shot five times, three of which struck the victim in the chest and abdomen area. (Tr. p. 569). Forensics concluded that the ammunition used to kill the Victim were all .9 millimeter luger rounds, and that based on the casings recovered, appeared to have been fired from the same weapon. (Tr. p. 505, lines 11-21; p. 507, line 4-8). Forensics recovered finger prints of both Applicant and witness Antoine Drake from the vehicle, and a DNA match for Applicant was recovered from cigarette butts in the Victim's car ashtray. (Tr. p. 497, line 16 through p. 498, line 11).³

The South Carolina Law Enforcement Division (SLED) led an investigation into Victim's murder. (Tr. p. 331). The investigation led to the discovery that a "hit" had been placed on Victim by a drug dealer for snitching and multiple witnesses confirmed that Applicant was the individual who carried out the hit for the \$15,000.00 reward. (Tr. p. 280-281; p. 439-444).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on September 7, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel;
 - a. 4th, 5th, 6th, 13th, 15th amendment violations;

³ DNA analysis was not performed for Antoine Drake, as his alibi was corroborated by multiple witnesses. (Tr. p. 369-371).

- b. "Appointed attorney conspired under color of state law with the prosecutor violating [Applicant's] constitutional right of autonomy to prevent the issues from being heard";
- 2. Due process violations;
- 3. Subject matter jurisdiction;
 - a. "Counsel was ineffective. [D]id not discover issues until now. [T]hey are jurisdictional in nature";
- 4. Prosecutorial misconduct/fraud upon the court;
 - a. "It is an act of fraud upon the general sessions court to sign the commitment order(s) abusing the court's discretion when these jurisdictional challenges existed".

Applicant requests relief as follows:

"sentence and conviction vacated; order issued expunging record."

Attached to this return and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Partial Motion to Dismiss

Applicant's allegations of prosecutorial misconduct and subject matter jurisdiction should be summarily dismissed pursuant to section 17-27-70 of the South Carolina Code because there is no genuine issue of material fact which would necessitate an evidentiary hearing on this claim. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) ("A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Welch v. MacDougall*,

246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing).

Response to Allegations of Prosecutorial Misconduct and Fraud upon the Court

Applicant alleges the State engaged in misconduct and committed “fraud upon the court” when it allowed the Court “to sign the commitment order(s) abusing the court’s discretion when these jurisdictional challenges existed” and “where the court and prosecutor knew good and well, conspiring under color of state law, that these due process and unconstitutional structural errors ... existed”. Applicant further alleges trial counsel and the State conspired to violate Applicant’s “constitutional right of autonomy to prevent the issues from being heard”. To the extent the above-mentioned allegations can be interpreted as prosecutorial misconduct, they should be summarily dismissed.

Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is “discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” *State v. Langford*, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use “punishment of the offender” as a proper motivation behind their behaviors and punitive motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that “the prosecutor acted with genuine animus toward the defendant” and “the defendant would not have been prosecuted but for that animus.” *State v. Odom*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001))

(quotations omitted). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Though Applicant claims the solicitor committed “fraud upon the court”, he does not state why the prosecutor’s conduct rose to the level of prosecutorial vindictiveness, show how but for the vindictiveness he would not have been prosecuted, or otherwise substantiate this claim with any supporting facts or evidence. Respondent submits this allegation is without merit.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. Based on Applicant’s unsupported allegations of prosecutorial misconduct and fraud upon the court, there is no genuine issue of material fact which would necessitate a hearing on Applicant’s claim. Accordingly, this allegation should be summarily dismissed pursuant to section 17-27-70.

Response to Allegation the Circuit Court Lacked Subject Matter Jurisdiction

The State further submits Applicant’s allegation that “jurisdictional issues existed” and that the circuit court lacked subject matter jurisdiction is meritless, and therefore should be summarily dismissed. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Jasper County Grand Jury of murder. That indictment was true-billed and signed by the foreman of the Grand Jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. On May

15, 2017, Applicant proceeded to trial before the Honorable Perry M. Buckner and a jury. Following a multi-day trial, Applicant was found guilty of the originally indicted offense – murder. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Respondent submits Applicant cannot show any irregularity, because the indictment in question is sufficient on its face. Therefore, the Court should summarily dismiss this allegation.

V. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of trial counsel. Without more specific facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to these allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended return with specific allegations.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations

by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges his conviction, he must

show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

As discussed, it is impossible for Respondent to reply specifically to Applicant's claims without more facts and detail. Therefore, Respondent moves for Applicant, through appointed counsel, to file an amended return.

VI. Response to Allegations of Due Process Violations and Motion for a More Definite Statement

Applicant further alleges due process violations. However, as with Applicant's allegations of ineffective assistance of counsel, it is impossible for the State to adequately respond to Applicant's allegation because he has failed to provide specific facts and details supporting his claim. Because Applicant has failed to set forth facts to support each ground or to explain with any specificity the facts upon which his claims of due process violations are based, Respondent hereby moves for a more definite statement.

The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRCP, provides appointed PCR counsel "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

Here, Applicant has failed to state with any specificity the facts giving rise to his allegation of due process violations and gives no other relevant facts to support the allegation. Therefore, the State moves pursuant to Rule 12(e), SCRCP, and Rule 71.1(d), SCRCP, to require Applicant, through PCR counsel, to provide a more definite statement of his allegations of due process violations and ineffective assistance of counsel.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Accordingly, the State moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss the application for failure to state a claim.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from

the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Conclusion

WHEREFORE, the State moves to dismiss the allegations of prosecutorial misconduct and fraud upon the court, as well as the allegation the circuit court lacked subject matter jurisdiction. Additionally, Respondent respectfully requests this Court grant its motion for a more definite statement and allow Respondent the opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held.

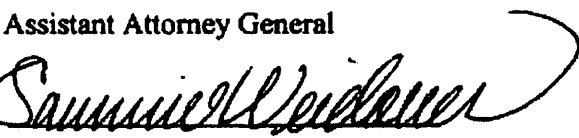
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 15, 2021

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Rohaime Jamar Hopkins, #235915

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2021-CP-27-00378

CERTIFICATE OF SERVICE BY MAIL

2021 DEC 20 PM 3:42

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss, and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
 Falk Law Firm, LLC
 Post Office Box 1058
 Charleston, SC 29402

DATED this 15th day of December, 2021.


Vickie Hall, Legal Assistant
 For Respondent

FILED
JASPER COUNTY
CLERK OF COURT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) FOR THE FOURTEENTH JUDICIAL CIRCUIT
2021 MAY -6 AM 9:24

Rohaime Hopkins, #235915,

Applicant,

v.

State of South Carolina,

Respondent.

Case No.: 2021-CP-27-00378

APPLICANT'S AMENDED APPLICATION

NOW COMES Applicant, Rohaime Hopkins, amending his application filed September 7, 2021. In addition to the allegations raised in his initial application, Mr. Hopkins, through PCR Counsel, submits the following:

1. Ineffective assistance of trial counsel for failure to argue that Applicant's police statement was involuntary and unknowing.
2. Ineffective assistance of trial counsel for failure to object to Richard Johnson commenting on what Simmons said on the grounds of hearsay. (Tr. 337-38).
3. Ineffective assistance of trial counsel for failure to timely object to cell phone records being entered.
4. Ineffective assistance of trial counsel for failure to timely object to Milbrodt's testimony as a records custodian.
5. Ineffective assistance of trial counsel for failure to effectively cross-examine the State's witnesses concerning inconsistencies in their statements.
6. Ineffective assistance of trial counsel for failure to attack Applicant's pod-mate's credibility concerning what he says Applicant told him about the crime.
7. Ineffective assistance of appellate counsel for failure to appeal the Court's decision to allow the text messages into evidence because the Court erroneously found that the texts were an admission by a party opponent.

Conclusion

Based upon the above, Mr. Hopkins requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Rohaime Hopkins

April 29, 2024

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Rohaime Hopkins, #235915,
Applicant,

) Case No.: 2021-CP-27-00378
)

v.

) Affidavit of Service by Mail
)

State of South Carolina,
Respondent.

)

)

)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Bryan Hall, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

April 29, 2024

FILED
JASPER COUNTY
CLERK OF COURT
2024 MAY -6 AM 9:24

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 2021-CP-27-00378

Rohaine J. Hopkins,)
)
 Plaintiff,)
)
 vs.)
)
 State of South Carolina,)
)
 Defendant.)
 -----)

TRANSCRIPT OF HEARING

May 7, 2024
 Beaufort, South Carolina

B E F O R E:

The Honorable Derham Cole, Judge Presiding

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

For the Applicant -
 Chelsey Marto, Esquire
 1122 Lady Street, Suite 206
 Columbia, South Carolina 29201
 864-404-5583

For the State -
 Bryan Hall, Esquire
 1000 Assembly Street
 Columbia, South Carolina 29201
 803-734-3970

Cathy L. Young, CVR-M
 Official Circuit Court Reporter
 Post Office Box 4604
 Beaufort, South Carolina 29903

I N D E X

	PAGES
Proceedings	03
Examination of Witnesses:	
Rohaime J. Hopkins	
Direct Examination by Ms. Marto	07
Cross-Examination by Mr. Hall	16
Scott Lee	
Direct by Ms. Marto	18
Cross-Examination by Mr. Hall	25
Robert Dudek (via Webex)	
Direct by Ms. Marto	31
Cross-Examination by Mr. Hall	35
Mary Jones	
Direct by Ms. Marto	39
Cross-Examination by Mr. Hall	47
Closings:	
By Ms. Marto	47
By Mr. Hall	48
Judge's Ruling (Took under advisement.)	49
Certificate of Reporter	50

I N D E X O F E X H I B I T S

No exhibits were marked in this hearing.

* * * * *

7 - 7 through 9, and whether the Court erred by not

1 exercising its discretion to exclude Michael
2 Taylor's testimony. The Court of Appeals affirmed
3 the conviction and sentenced by published opinion.
4 That citation is State v. Hopkins, 431 S.C. 560.
5 The remittitur was sent on September 9th of 2020,
6 and this PCR was timely filed on September 7th of
7 2021. On December 20th of 2021 the State filed its
8 return and moved for a more definite statement on
9 the allegations. Mr. Hopkins was previously
10 represented by Jim Falk, who filed an amendment to
11 the application. Mr. Hopkins is currently
12 represented by Chelsey Marto, who amended his
13 application, and they're proceeding on the following
14 allegations: ineffective assistance of counsel for
15 failure to argue Mr. Hopkins' police statement was
16 voluntary, and made -- was made -- excuse me, let me
17 rephrase, failure to argue that Mr. Hopkins' police
18 statement was involuntary and made unknowingly,
19 failure to object to Richard Johnson's commenting on
20 what Simmons said on hearsay grounds, failure to
21 timely object to the cell phone records being
22 entered as State's Exhibits 7 and 8, failure to
23 object to Milbrodt's testimony, as the record --
24 records custodian, failure to effectively cross-
25 examine the State's witnesses concerning

1 inconsistencies in their statements, and failure to
2 attack the credibility of Mr. Hopkins' pod mate
3 concerning what he said to Mr. Hopkins about the
4 crime. Mr. Hopkins is also raising an allegation of
5 ineffective assistance of appellate counsel, for
6 failure to raise on appeal the Court's discretion in
7 allowing the text message into evidence, State's
8 Exhibit 9, because the Court erroneously found the
9 text messages were an admission by a party opponent.
10 Mr. Hopkins is present and represented by Chelsey
11 Marto. The State is ready to proceed, and I believe
12 that Mr. Hopkins has a motion to make.

13 MS. MARTO: Yeah, good morning, Judge.

14 THE COURT: Good morning.

15 MS. MARTO: May it please the Court? I
16 spoke with Mr. Hopkins about this maybe five or six
17 times. I talked with him late last week at which
18 time he told me he wanted a continuance, so that he
19 could -- because at Lee he was in lock up and is now
20 being permitted to use the law library, so he's
21 looking to be given the opportunity for the next
22 couple of months to dive into the law library and
23 the books themselves, to ---

24 THE COURT: To learn the law?

25 MS. MARTO: What was that, Judge?

1 THE COURT: To learn the law?

2 MS. MARTO: Yes, sir, that ---

3 THE COURT: I thought that's what you were
4 for.

5 MS. MARTO: I -- I understand, Judge, I --
6 I respect that. I mean I've read through his case,
7 I've prepared it, I've amended it, but on behalf of
8 my client that is his request, that this case be
9 continued. And it is my understanding that the
10 State does object, which is why we're doing it on
11 the record, but ---

12 THE COURT: The State does object?

13 MS. MARTO: Yeah.

14 THE COURT: Yeah. All right, he needs to
15 study the law, is that what I understand?

16 MS. MARTO: That was my understanding,
17 Judge.

18 THE COURT: All right. Are you prepared to
19 go forward today?

20 MS. MARTO: I'm personally prepared to go
21 forward today.

22 THE COURT: All right, the motion to
23 continue is denied.

24 MS. MARTO: Thank you, Judge. We would
25 call Mr. Hopkins to the stand.

* * * * *

Rohaime J. Hopkins,
having been duly sworn,
testifies as follows:

* * * * *

DIRECT EXAMINATION

BY MS. MARTO:

Q. Good morning, sir. So what was the
underlying charge back in the trial?

A. Excuse me?

Q. What -- what were you charged with?

A. I initially was charged with a federal
gun charge.

Q. For this case what were you charged
for?

A. Murder.

Q. Murder?

A. Yes, ma'am.

Q. Okay. And who were you represented by?

A. Scott Lee.

Q. And how long did Mr. Lee have your case
before you went to trial?

A. I don't exactly remember, 'cause I was
locked up on two separate charges, so I want to say
maybe close to -- close to a year.

1 Q. And how many times did y'all meet?

2 A. Several. Quite a few.

3 Q. Now, what did y'all talk about during
4 those meetings?

5 A. Just, you know, things dealing with the
6 witnesses in the case that were in my case.

7 Q. And he represented you at trial,
8 correct?

9 A. Yes, ma'am.

10 Q. Okay. And how do you feel he did at
11 trial?

12 A. I mean now that I'm looking at some
13 things I feel that it could have been better, it
14 should have been better.

15 Q. Okay. Now, we talked about this
16 amended application, correct?

17 A. Yes.

18 Q. So I'm just going to kinda run you
19 through these issues. Did counsel ever argue in a
20 motion to suppress your police statement?

21 A. Did he -- say it one more time.

22 Q. Did counsel ever move to suppress your
23 police statement because it was involuntary?

24 A. No, not to my knowledge.

25 Q. Okay. Do you wish he did that?

1 A. Yes.

2 Q. And how do you think it would have
3 impacted your case?

4 A. It probably would have helped the
5 outcome of my trial.

6 Q. Do you think that your statement was
7 favorable to you?

8 A. Yes. Now, at the time that he was even
9 -- he came to ask me the questions, it was after
10 another transportation where I had just came from,
11 and I want to say that the federal people had told
12 him that he had to stop coming to see me because I
13 requested it. The way that they was -- they kept
14 coming to the County Jail, and at that time I didn't
15 know the exact time, you know, that I gave him in
16 the -- in the statement, so I felt that kinda
17 affected me a little bit.

18 Q. Now, please tell me how the cell phone
19 records that were entered impacted your case.

20 A. I feel that it -- it impacted it a lot,
21 because I felt like it was kind of used to place me
22 -- place me at a certain place at a certain time.

23 Q. And did counsel timely object to those
24 records coming in?

25 A. Well, I see -- I see an objection that

1 was made, but they were saying that the objection
2 was for something else.

3 Q. And was this issue raised on appeal; do
4 you recall?

5 A. Yes, ma'am.

6 Q. And what did the Court find on that
7 issue?

8 A. I've got to go back through it, but I
9 want to say that they -- they were saying that he
10 didn't -- my trial lawyer didn't object to it in a
11 timely fashion.

12 Q. Okay. So it wasn't preserved on
13 appeal?

14 A. Yeah, it wasn't preserved for appeal.

15 Q. And they also found that he didn't
16 object to the cell phone records before they were
17 admitted into evidence; is that correct?

18 A. Yes.

19 Q. Okay. Now, you also rose the issue of
20 failure to timely object to Milbrodt's testimony as
21 a records custodian; do you recall that?

22 A. Yes, ma'am.

23 Q. Okay. And can you speak a little bit
24 on how Milbrodt's testimony impacted your case?

25 A. Yes, because as a -- as a records

1 custodian I felt like she gave expert testimony
2 where she shouldn't have, because she wasn't
3 qualified to do so. And she was, basically,
4 bringing down the towers placing me at -- near the
5 scene of the crime.

6 Q. And we also talked about how counsel
7 didn't effectively cross-examine the State's
8 witnesses; is that correct?

9 A. Yes, ma'am.

10 Q. And I think we had specifically
11 mentioned Singleton as being the prime example,
12 right?

13 A. Yes, ma'am.

14 Q. Okay. How did Singleton fit into your
15 case?

16 A. Singleton was a -- he was an inmate
17 that was charged for murder. I was in a federal
18 holding. I don't know why they brought him in. And
19 he's the person who -- who made them issue the
20 warrant for murder. I wasn't locked up for murder.
21 I was locked up for a federal gun charge. And he
22 went on a bus ride with the suspect who they was
23 looking at for the charge that they charged him
24 with, and he came back and contacted the SLED agent
25 on the case, and said he had some information about

1 a murder, which put me in that equation.

2 Q. And what do you wish counsel had done
3 with Mr. Singleton's testimony?

4 A. Get him to discredit it, because none
5 of that -- what he was saying was true, and he got
6 up there and lied. He lied about going on the -- on
7 the run with the dude the first day, and that's how
8 he found out about the whole case. He -- I never
9 even knew this guy. I never met him before in my
10 life.

11 Q. So you're saying you didn't confess to
12 him about murder?

13 A. No. Why would I confess to a charge
14 I'm not even charged with? That don't even make
15 sense.

16 Q. Is there any other witnesses that you
17 wish counsel had cross-examined better?

18 A. Well, he did -- I want to say Singleton
19 was the main hit.

20 Q. Now in looking at page 337 of the
21 transcript, I think we also talked about how counsel
22 failed to object to hearsay?

23 A. Yes, ma'am.

24 Q. Do you recall that? Starting on page
25 337 onto page 338.

1 MS. MARTO: Judge, it's come to my
2 attention that the State hasn't provided you with
3 the Judge's packet yet, so they wanted to interrupt
4 direct for a brief moment to do so.

5 THE COURT: Okay. Thank you.

6 BY MS. MARTO:

7 Q. Now, on page 337, starting with line 16
8 onto page 338, starting -- ending with line 12, I'm
9 not going to read that entire passage into the
10 record, but do you have a copy of the transcript,
11 sir?

12 A. No, I don't.

13 Q. Okay.

14 MS. MARTO: If I may approach, Your Honor?

15 BY MS. MARTO:

16 Q. Do you want to just read that kind of
17 quietly to yourself?

18 A. (Reviews document.)

19 Q. And do you wish counsel had objected to
20 that portion of the transcript?

21 A. Yes, ma'am.

22 Q. Okay. On what basis do you wish he had
23 objected?

24 A. Just like there's a whole bunch of
25 hearsay.

1 Q. Okay.

2 A. That's all it is.

3 Q. And do you think that that hearsay was
4 favorable to you or unfavorable?

5 A. Unfavorable.

6 Q. Now, circling back to counsel's failure
7 to cross-examine, I know we talked at great length
8 about how there was some testimony about clothes
9 being in a burn barrel?

10 A. Yes, ma'am.

11 Q. Okay. And what did you find out about
12 all that?

13 A. That they had a trial.

14 Q. Okay. And what -- what was the
15 testimony; do you recall?

16 A. Yes, that Michael Taylor said that I
17 burned some clothes in -- in his barrel outside.

18 Q. Okay. And the first time you heard
19 about it was at trial?

20 A. Yes, the first time anybody heard about
21 it.

22 Q. And how do you feel like counsel
23 handled that?

24 A. That it shouldn't have even been
25 allowed.

1 Q. Do you think that he should have
2 objected to that testimony?

3 A. Yes, ma'am.

4 Q. Do you think he should have cross-
5 examined these witnesses about the new information?

6 A. Yes, ma'am.

7 Q. And then we also talked about how
8 appellate counsel was ineffective as well, correct?

9 A. Yes, ma'am.

10 Q. Okay. I think the issue we had with
11 that was in the Court of Appeals' opinion, they
12 basically found that counsel didn't raise the issue
13 of, you know, the Court ruling wrong when it came to
14 the text messages on the basis that they were an
15 admission by a party opponent; is that correct?

16 A. Yes, ma'am.

17 Q. And that was addressed in the order as
18 well, correct?

19 A. Yes.

20 Q. And you wish that appellate counsel had
21 raised that claim?

22 A. Yes, ma'am.

23 Q. Do you think that that could have led
24 to a different outcome?

25 A. Yes, ma'am, it could have.

1 Q. Do you want to back that up, sir? It
2 sounded like you wanted to say something else on top
3 of that.

4 A. No, I just said I felt like the outcome
5 could have been different if ---

6 Q. Okay. Are there any other issues
7 concerning trial counsel and appellate counsel in
8 this case that you feel constituted ineffective
9 assistance of counsel?

10 A. No, just with the testimonies of
11 witnesses because that's the only thing that put me
12 near this, nothing else.

13 Q. So you think that he should have just
14 impeached them better; is that correct?

15 A. Yes, ma'am.

16 Q. Okay.

17 MS. MARTO: No further questions, Your
18 Honor.

19 **CROSS-EXAMINATION**

20 BY MR. HALL:

21 Q. Mr. Hopkins, ---

22 A. Yes, sir.

23 Q. -- isn't it true that on the day of the
24 murder you were last seen with the victim, Terrence
25 Johnson?

1 A. I don't know if I was last seen with
2 him, but I was seen with him.

3 Q. Okay. And isn't it true that the
4 victim gave you a ride in his car at ---

5 A. Yes.

6 Q. -- some point during that night?

7 A. Yes, sir.

8 Q. Okay. And that night you went to a
9 Latanya Singleton's house with the victim; is that
10 correct?

11 A. Yes, sir.

12 Q. Okay. And then shortly after leaving
13 Latanya Singleton's with the victim in his car,
14 about 20 minutes later you walked back to Latanya
15 Singleton's house on foot; is that right?

16 A. Yes, my mother stays two doors down.

17 Q. Okay. But you arrived at -- at Ms.
18 Singleton's house with the victim in his car, right?

19 A. Yes.

20 Q. And then 20 minutes later you walked
21 back to her house on foot, right?

22 A. Yes, because his sole purpose was to
23 drop me off at my house to get clothes.

24 Q. Okay. And isn't it true that the next
25 day Terrence Johnson was found dead in his car?

1 A. Yes.

2 Q. Okay. And that was a few feet away
3 from Ms. Singleton's house, right?

4 A. They say approximately, like 500 yards.

5 Q. Okay.

6 MR. HALL: No further questions, Your
7 Honor.

8 MS. MARTO: No redirect.

9 THE COURT: You may step down.

10 MS. MARTO: Judge, we'd call Scott Lee.

11 * * * * *

12 **Scott Lee,**

13 **having been duly sworn,**

14 **testifies as follows:**

15 * * * * *

16 **DIRECT EXAMINATION**

17 BY MS. MARTO:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. So you represented Mr. Hopkins, right?

21 A. I took over his case from the Assistant
22 Public Defender Bob Hughes towards the end of
23 December of 2016. Mr. Hopkins was served a LWOP
24 notice on April 17th, and a month later, we tried it
25 in May of that same year, so I represented him about

1 six months. The trial was six months after I got
2 retained, but I did represent him at trial, yes.

3 Q. Roughly, how many times did you meet
4 with him; do you recall?

5 A. In those six months I would estimate
6 five to eight times at the jail.

7 Q. Now -- and you were prepared to go to
8 trial; is that correct?

9 A. Yes.

10 Q. Okay. So concerning his plea
11 statement, do you recall having a Jackson vs. Denno
12 hearing on this?

13 A. We did.

14 Q. Okay. And at the end of that did you
15 move to have his statements suppressed?

16 A. Well, a couple things, one is I don't
17 remember any evidence whatsoever that the statement
18 was obtained through coercion, duress, or anything
19 that Jackson vs. Denno states has to be shown as far
20 as being an involuntary statement, number one.
21 Number two, as he said, I think the statement
22 actually was -- was favorable to him, and I don't
23 think it was inculpatory at all. There may have
24 been some discrepancies as to the time, but it
25 actually -- I don't think we even minded it coming

1 in quite frankly.

2 Q. So you're saying that was a strategic
3 decision?

4 A. It -- it was, and, again, I didn't see
5 any evidence that the police had in any way forced
6 him to make a statement or overcame his will to
7 indicate that it an involuntary statement.

8 Q. Do you recall Singleton's testimony in
9 this case?

10 A. Yes.

11 Q. And what was your approach when it came
12 to cross-examining him?

13 A. Well, he's a pretty typical snitch.
14 Quite frankly, he was getting a deal from the
15 prosecutor's office. His testimony was very suspect
16 at best. We even were able to figure out that he
17 had taken a bus ride with the guy named Hollywood or
18 Antwon Drake who was one of the main witnesses for
19 the State, who I think we impeached quite
20 effectively. And, again, I don't -- I'm not a human
21 lie detector, I certainly thought Singleton was
22 lying, and I think we did everything we could to
23 show the motive he had, and really the improbability
24 of what he was saying being true.

25 Q. Did Mr. Hopkins ever indicate to you

1 that he was lying -- Singleton was lying?

2 A. Sure.

3 Q. Now, do you recall testimony --
4 concerning the burn barrel coming in?

5 A. Yes.

6 Q. Okay. And when did you find out about
7 that?

8 A. During the trial, I was quite upset.
9 Judge Buckner even got on me, because I said in
10 front of the jury we had just gotten this
11 information, and it wasn't fair, and it should be
12 suppressed; and he actually told me that I was
13 trying to pander favor with the jury by objecting,
14 but we vigorously argued for suppression of that
15 evidence, because of the lateness of turning it
16 over. In all fairness, the Solicitor had just
17 gotten that information I think right before we did,
18 so it wasn't -- it wasn't an issue about -- it
19 wasn't a Brady violation, they'd just gotten the
20 information.

21 Q. Do you feel like you cross-examined
22 that witness about that new information coming in at
23 the eleventh hour?

24 A. Yes, as good as we could, yes.

25 Q. Now, have you had an opportunity to

1 review this Court of Appeals opinion?

2 A. Yes.

3 Q. Okay. And so you recognize that
4 several of these issues were not preserved on
5 appeal, correct?

6 A. Yes, which is the best lawyer's
7 nightmare when an appeal case comes out.

8 Q. Okay. So kind of running through
9 those, they deem that you didn't object to the cell
10 phones coming in in a timely fashion, right?

11 A. That's what the opinion says, that's
12 right.

13 Q. Okay. And because of that that issue
14 wasn't preserved on appeal, correct?

15 A. That's what it says.

16 Q. And also there was no objection to
17 Milbrodt's testimony as a records custodian,
18 correct? They also found that?

19 A. They found that -- I would probably
20 take issue with that. There was extensive
21 discussion and argument, some in chambers, some out
22 of chambers, with Judge Buckner about that. They --
23 their approach was to have Milbrodt essentially be
24 the custodian -- as the custodian to lay the
25 foundation for the records. They then wanted to use

1 Dylan Hightower who was the investigator with the
2 Solicitor's Office to do a cell sector or a vector
3 analysis to try to pinpoint the location. I've had
4 plenty of cases where Hightower's testimony has, in
5 fact, come in. In that case, however, it was -- it
6 was suppressed, which we thought was kind of a
7 victory for us to keep out the expert from the
8 Solicitor's Office in testifying about the cell
9 phones. The records custodian I didn't think was
10 terribly harmful to our case. There -- there's
11 argument to be made about the accuracy of the
12 locating services, and that sort of thing, although
13 my -- my question of that was overruled when the
14 Solicitor objected when I asked if the -- if a cell
15 tower is overloaded, does the signal go to the
16 adjoining cell tower, which it does, but that -- we
17 -- we asked that question, and it was objected to
18 and sustained, but I didn't think that Milbrodt's
19 testimony, quite frankly, was very harmful to us.
20 There's no question, he had been with the victim at
21 some point that day, quite frankly, I didn't think
22 it was very harmful testimony that the records
23 custodian from Verizon who was just reading records,
24 that her testimony came in; but I did object to it,
25 and I can't independently remember whether there

1 were conversations that weren't renewed that were in
2 Judge's chambers or not. So I didn't think that
3 testimony was terribly harmful in light of the
4 defense -- overall defense of the case.

5 Q. But you acknowledge that the Court of
6 Appeals found that another issue wasn't preserved
7 because of that, correct?

8 A. Correct.

9 Q. And then concerning Richard Johnson
10 commenting on what Simmons had said, you didn't
11 object to that hearsay coming in, correct?

12 A. I did not.

13 Q. Okay. And do you have any basis for
14 failing to object to that?

15 A. My recollection about that was Datron
16 Simmons testified anyway, and I guess technically if
17 you look at it, it is a hearsay statement, but my
18 recollection was that a good portion of his
19 testimony involved an incident that happened a
20 couple weeks before. And my recollection is, that
21 we actually wanted some of that in to evidence to
22 show that Antwon Drake was present at something that
23 happened two weeks before, but we essentially blamed
24 this on Antwon Drake, who was the -- I believe the
25 State's star witness. We impeached him very well, I

1 think, to the point the Solicitor in her closing
2 argument, said that he may be a con artist or a
3 shyster, but he's not a murderer essentially how she
4 got around that; but to answer your question, is it
5 technically hearsay? Yes, but I -- my recollection
6 is that there was a reason for not objecting to it
7 being a text statement, because I believe that it
8 went along with what our general theory of what our
9 defense was, and that it was not harmful and perhaps
10 even helpful to the story that we were trying to get
11 to the jury.

12 MS. MARTO: One moment, Your Honor. No
13 further questions.

14 **CROSS-EXAMINATION**

15 BY MR. HALL:

16 Q. How are you doing, Mr. Lee?

17 A. Fine, thank you.

18 Q. Mr. Lee, how long have you been
19 practicing law?

20 A. Over 30 years.

21 Q. And how much of that time has been
22 devoted to criminal law?

23 A. Over 30 years.

24 Q. Okay. And when you met with Mr.
25 Hopkins, did you review discovery with him?

1 A. Yes, sir.

2 Q. Okay. Can you briefly just tell us
3 what evidence the State had on him?

4 A. Well, to cut to the chase the most
5 damning evidence that they had against Mr. Hopkins
6 was a text that was sent to a fellow named Tray
7 Graves, and it said, "Dats done need to holla at u."
8 And the State's theory was that that was essentially
9 an admission by Mr. Hopkins that he had, in fact,
10 killed the victim, and that it appeared that this
11 Tray Graves fellow had put a hit out on Mr. Johnson,
12 who's the victim, because he was a snitch, and he'd
13 put out there that \$15,000 for anybody that kills
14 Mr. Johnson. And shortly after Mr. Johnson was
15 killed there is -- there was a text from Mr. Hopkins
16 number saying, "Dats done need to holla at u." And
17 I think that was the -- the -- that was -- that was
18 the most difficult evidence to overcome, and I
19 believe what ultimately and unfortunately led to the
20 jury finding him guilty.

21 Q. Okay. And you testified on direct that
22 you were prepared for trial. Can you tell us what
23 your defense was for trial or your theory of
24 defense?

25 A. That although Rohaime was around and

1 knew the players involved, he had nothing to do with
2 the crime. And, in fact, Antwon Drake, who again
3 was a big time witness for them who was a self-
4 admitted con man, that Antwon Drake had actually
5 been the trigger man, and had done this. And, in
6 fact, we had evidence that Antwon Drake had been on
7 a bus with the Byron Singleton guy who was the
8 snitch from the jail. They had traveled on a bus
9 together. We felt that was a source of Singleton's
10 information. Antwon Drake, in fact, even went to a
11 place called Club Pluto at -- I think at 4:00 a.m.,
12 and when we got all this stuff out, and he went up
13 to Tray Graves and claimed credit for the -- for the
14 murder and actually wanted the -- the bounty that
15 Mr. Graves had put on Mr. Johnson. Drake's response
16 to that was that he was trying to investigate
17 independently the murder, and to try to find out who
18 did it, and then he just used that statement to try
19 to get in, I guess, Tray Graves favor to find out
20 who had really pulled the trigger.

21 Q. And just to ask you a question related
22 to what you just told me, on transcript page --
23 pages 337 through 338 -- do you have a copy of the
24 transcript?

25 A. Yes, sir. 337, sir?

1 Q. Yes, it's record on appeal 229 through
2 230, and transcript 337 through 338.

3 A. All right, I'm there.

4 Q. So regarding the testimony from Richard
5 Johnson on what Datron Simmons said, you testified
6 on direct that you didn't object to that for hearsay
7 because you believed that it helped with your theory
8 in this case?

9 A. Yes, sir.

10 Q. Okay. And regarding Byron Singleton's
11 testimony, you had cross-examined him at trial,
12 didn't you?

13 A. Yes, sir.

14 Q. And cross-examined him on any potential
15 deals he might receive from the Solicitor?

16 A. Yes, sir.

17 Q. And do you believe -- did you also --
18 I'm sorry, did you also cross-examine him on the
19 fact that he rode a bus with Antwon Drake?

20 A. Yes.

21 Q. Okay. And do you believe that cross-
22 examination was effective?

23 A. I believe that it was.

24 Q. Okay. Regarding his statement to law
25 enforcement, you testified that you didn't believe

1 that it was hurtful to your case -- to his case?

2 Sorry.

3 A. I didn't believe it was really harmful
4 to our case, but more importantly, Mr. Attorney
5 General, I don't believe that there was any evidence
6 whatsoever that that statement was obtained in
7 violation of the law as far as any type of force or
8 promises or coercion or, you know, overcoming his
9 will so much that it wasn't freely and voluntarily
10 made. I wish he hadn't made it, but I don't think
11 it was as a result of -- of any constitutional
12 police actions.

13 Q. Okay. And regarding Milbrodt's
14 testimony as the records custodian, you testified on
15 direct that you didn't believe that her testimony
16 was harmful to the -- to the case; is that right?

17 A. I don't think it was close to being the
18 determining factor in the case. I mean the phone
19 records, they are what they are. It doesn't mean he
20 killed anybody, so I -- I did not see the absolute
21 significance of those -- those records. And quite
22 frankly, keeping out the -- the factor analysis we
23 considered that a victory. So all things considered
24 as far as cell phones, I -- I thought we came out of
25 that pretty well.

1 Q. Okay. And is your testimony that
2 Milbrodt was testifying -- she was just reading the
3 record, she wasn't testifying as an expert, right?

4 A. My recollection is that Judge Buckner
5 did not -- did not qualify her as an expert. She
6 was therefore not entitled to give any type of
7 opinion.

8 Q. And she didn't give any opinion
9 testimony in this case, did she?

10 A. Not that I'm aware of.

11 Q. Okay.

12 MR. HALL: No further questions, Your
13 Honor.

14 MS. MARTO: No redirect.

15 THE COURT: Thank you, you may step down.

16 MS. MARTO: We'd call Robert Dudek. He's
17 the virtual witness.

18 THE COURT: All right, we'll see what we
19 can do with it.

20 MS. MARTO: Okay. Thank you. Yeah, and,
21 Judge, they subpoenaed the prosecutor to testify in
22 this case. I don't see any reason for them to
23 testify and the State concurs, so if we could just
24 release her?

25 THE COURT: Okay.

1 MR. HALL: Judge, do you mind if we take a
2 brief five-minute recess to see if I can let him
3 know that we're ready for his testimony?

4 THE COURT: That's fine, yes.

5 MS. MARTO: Thank you, Judge.

6 (RECESS)

7 MR. HALL: Judge, he said he's in the
8 waiting room waiting for you guys to let him in. Is
9 this the sealed virtual courtroom?

10 * * * * *

11 Robert Dudek,
12 having been duly sworn,
13 testifies as follows:

14 * * * * *

15 DIRECT EXAMINATION

16 BY MS. MARTO:

17 Q. Hey, Mr. Dudek, how are you doing
18 today?

19 A. I'm doing well, thank you.

20 Q. Good. So what role did you play in Mr.
21 Hopkins' case?

22 A. I'm sorry?

23 Q. What role ---

24 A. Can you repeat that?

25 Q. Yeah. What role did you play in Mr.

1 Hopkins' case?

2 A. Okay. I was his attorney on his direct
3 appeal.

4 Q. And how did you go through trying to
5 identify issues to raise on appeal?

6 A. Okay. Well, what I do is I read the
7 transcript, we order all the exhibits from the Clerk
8 of Court, which should all be in by the time I start
9 reading the transcript. I take good notes of
10 witness-by-witness testimony, and a separate page or
11 here at the top of my legal pad, I keep a running
12 list of objections and motions. And then after I've
13 read the entire transcripts and going back over my
14 notes, I choose the issue or issues that I think
15 give me the best chance of winning on -- on appeal.

16 Q. And so how -- you decided to raise the
17 issue concerning the cell phone records, correct?

18 A. That's correct.

19 Q. Okay. And how did -- what was the
20 result of that?

21 A. Well, the Court found that the text
22 messages that I had argued should not come in as
23 statements against penal interest, or -- and because
24 they were potentially confusing and ambiguous. The
25 Court in its opinion, the Court of Appeals disagreed

1 with -- with my argument, and said that the text
2 messages were circumstantial evidence of Mr.
3 Hopkins' guilt, that they were -- they were the
4 admission, they were admissible as the admission of
5 a -- of a party statement against interest. So in
6 essence, the -- the Court -- the Court disagreed
7 with me substantively.

8 Q. So ---

9 A. As to ---

10 Q. Yeah.

11 A. Go ahead, I'm sorry.

12 Q. Yeah, so concerning the text messages,
13 they disagreed, but they also found that you didn't
14 raise on appeal the Trial Court's finding that the
15 text messages were not hearsay, because it was an
16 admission of a party opponent; is that correct?

17 A. That is correct.

18 Q. Okay. And then concerning the cell
19 phone records, the Court found that that issue
20 wasn't preserved on appeal, correct?

21 A. Yes, that is correct. As to the cell
22 phone records, the Court did find that that issue
23 was not preserved for appellate review.

24 Q. Okay. Do you think that that
25 negatively impacted your appeal?

1 A. Well, I mean it means, obviously, the
2 Court's not going to address the merits of the
3 argument, so, yes, I mean it's -- any time an
4 issue's not preserved for appellate review, you
5 don't even get in the door.

6 Q. And did you think that the cell phone
7 records issue was the best issue on appeal -- to be
8 raised on appeal?

9 A. I think to answer that I would say that
10 -- that I thought they were, you know, all were
11 about -- frankly, were about equal importance. I
12 think the, you know, my memory of it is the text
13 messages, you know, certainly were very damaging,
14 and, you know, the Court concluded -- in other --
15 very briefly, you know, the Court put in support of
16 its argument, Hopkins appears that on its face the
17 text message did not support the State's argument
18 that he sent the text message because he killed the
19 victim and wanted to collect the money for
20 completing the hit. And then as the Court just
21 said, "We disagree, and find the text message
22 provides circumstantial evidence of Hopkins' guilt."
23 And then they cited a few other cases where kind of
24 slang language they found to be tantamount to an
25 admission of guilt of having done the crime.

1 MS. MARTO: One moment, Your Honor.

2 Nothing further, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. HALL:

5 Q. Mr. Dudek, how are you doing?

6 A. I'm doing well, Mr. Hall, thank you.

7 Q. Mr. Dudek, how long have you been
8 practicing law?

9 A. For 38 years.

10 Q. Okay. And how much of that time has
11 been spent practicing appellate law?

12 A. Thirty-four.

13 Q. Okay. And what's your current title?

14 A. Chief Appellate Defender.

15 Q. And just to clarify what you testified
16 to on direct, when you get cases, you review the
17 record and conduct legal research; is that right?

18 A. That's correct. I take witness-by-
19 witness notes of what the witnesses are saying.
20 It's in shorthand, but the -- 'cause it means
21 something to me is what I say in my notes, and then
22 I keep a separate running list of objections and
23 motions.

24 Q. And you raised the issues that you
25 believe are -- are the most likely to be successful

1 on appeal?

2 A. Yes. I mean I'm -- again, not to be
3 flip, but I'm trying to win the case, so I mean I
4 raised the issue, or legal issues, that I think give
5 me my best chance to win in the Appellate Court for
6 my client.

7 Q. And I want to ask you about some of the
8 issues here in this case. The text message that was
9 entered as State's Exhibit 9, did you believe that
10 that issue would have been successful on appeal?

11 A. Yes. I mean that's -- that's one of
12 the reasons I raised it is because I thought that
13 that text message the way it was being portrayed was
14 as an admission of guilt afterwards, after the --
15 after the murder, which is, obviously,
16 extraordinarily prejudicial. And I thought that
17 that would be -- it would be confusing to the jury
18 also, and that even if they let me, you know, if it
19 came in that under a Rule 43 analysis, it still
20 should be excluded even if it was deemed relevant.

21 Q. Mr. Dudek, what did the Court of
22 Appeals ultimately decide regarding that text
23 message evidence?

24 A. Well, they -- they held that the --
25 they disagreed with me on the text -- the text

1 message being so ambiguous and confusing, it should
2 have been excluded under 403, and they disagreed
3 with my argument that the text message did not
4 support the State's argument that Mr. Hopkins sent
5 the text message 'cause he killed the victim and
6 wanted to collect the money for completing the quote
7 "hit" unquote. So the Court disagreed with me on
8 the merits, and they did also say as Ms. Marto
9 pointed out, that -- that as an additional standing
10 ground, I had not taken it on as a statement against
11 interest, although I had taken it on as not being a
12 statement against penal interest, 'cause my memory
13 is the Judge ruled Mr. Hopkins was not available
14 because he was not going to testify. But anyway the
15 Court said that it was -- it was not hearsay, if it
16 came in under the hearsay exception of, as I read
17 it, a statement against penal interest, and as a
18 statement against interest, which I did not argue;
19 but anyway long story short, the way I read the
20 opinion, the Court disagreed with me on the merits
21 of the issue.

22 Q. And just one last question. Because
23 the Court disagreed with you on the merits, do you
24 believe that raising the issue of the Trial Court
25 admitting it as an admission by the party opponent

1 would have been successful on appeal?

2 A. My memory, and check behind me, Mr.
3 Hall, I think in this case, and please check behind
4 me, I thought I even went Senator Riley [sic] on
5 this to the State Supreme Court. I believe that's
6 correct, but you can -- you can check behind me on
7 that, but I -- I, for what it's worth, not much I
8 guess, but at the time, you know, I certainly felt
9 pretty strongly that, you know, this was a good
10 issue, and the Court of Appeals disagrees with me --
11 disagreed with me. You know, that happens, but,
12 yeah, I mean I thought it was a good meritorious
13 issue when I raised it, and the Court disagreed.

14 MR. HALL: No further questions, Your
15 Honor.

16 MS. MARTO: No redirect, and no further
17 witnesses.

18 THE COURT: Can this witness be excused?

19 MS. MARTO: Yes, sir.

20 THE COURT: Thank you, Mr. Dudek, you're
21 excused.

22 WITNESS: Thank you very much.

23 MR. HALL: Judge, the State's going to call
24 Mary Jones.

25 THE COURT: Are you done, Ms. Marto?

1 MS. MARTO: Yes, Your Honor.

2 * * * * *

3 Mary Jones,

4 having been duly sworn,

5 testifies as follows:

6 * * * * *

7 DIRECT EXAMINATION

8 BY MR. HALL:

9 Q. How are you doing, Ms. Jones?

10 A. I'm good, how are you?

11 Q. Good. How long have you been
12 practicing law?

13 A. Since 2012, March 2012.

14 Q. Okay. And how much of that time has
15 been as a solicitor?

16 A. All of it.

17 Q. Okay. And did you prosecute Mr.
18 Hopkins?

19 A. I did.

20 Q. Okay. And can you tell us what
21 evidence the State had against Mr. Hopkins?

22 A. Certainly. I believe I called 26
23 witnesses during that trial. They started with the
24 911 call, that pretty much just gave us time and
25 venue. It segwayed into some neighbors, Mr.

1 Keserling, (Ph) and I can't remember the other --
2 the other neighbor, but both of them stated that
3 they heard gunshots the night previous to Mr.
4 Johnson's body being found. They heard about five
5 or six gunshots around 9:00 or 10 o'clock that
6 night. After they testified, we went into -- oh,
7 goodness, this is seven years ago, so I'm trying to
8 remember. We had lay witnesses who were at the
9 sitting up or the wake where Mr. Hopkins was on the
10 day before. A family member, a neighbor, friend,
11 their grandmother had passed away, so most of these
12 people were together that -- that day going into the
13 evening. One was a Robin Simmons, she testified
14 that she saw a gun/pistol on Mr. Hopkins' hip that
15 evening around 8 o'clock, and throughout the trial
16 the State always contends that the shots happened
17 about 9:37 that night, so it was a little over an
18 hour and a half before Mr. Johnson was murdered when
19 Mr. Hopkins was seen with a gun on his hip. We also
20 had Mr. Datron Simmons, Mr. Datron Simmons testified
21 to -- and I don't know how close in time this was to
22 the actual shooting, maybe a week or so before to
23 hearing Mr. Hopkins say that he was waiting for them
24 boys to sign the contract, and that was interpreted
25 as waiting for the -- the hit by Tray Graves to be

1 finalized. And also that it was, in fact, a \$15,000
2 hit on Mr. Johnson for being a snitch. We then had
3 Mr. Antwon Drake, who was also known as Hollywood.
4 Mr. Drake was actually, I believe, in custody at the
5 time of his testimony. He was brought over from the
6 Detention Center in full jail garb, handcuffed, the
7 whole nine. He testified that he knew Mr. Hopkins
8 and knew Mr. Johnson. That I believe the night
9 before, and that may be -- my days may be off, but I
10 believe the night before the wake he was in a car
11 with Mr. Johnson, Angel Simmons, who was Mr. Johnson
12 -- who was Mr. Johnson's fiancé, Mr. Hopkins and
13 himself, and he overheard Mr. Hopkins repeatedly say
14 that he was going to kill the victim, kill Mr.
15 Johnson. Mr. Drake then went onto testify that he
16 -- the night before he had been at the -- at the
17 family member's house, at the sitting up, the wake,
18 and he had wanted to go with Mr. Johnson and Mr.
19 Hopkins to the Roseland area, which is the community
20 where Mr. Hopkins wanted to go. It's the area where
21 he was from. Ultimately, it was where Mr. Johnson's
22 body was found.

23 Q. Okay.

24 A. And that Mr. Hopkins would not let Mr.
25 Drake go with them. That he was very adamant. That

1 it was just to be Mr. Hopkins and Mr. Johnson on
2 that trip from Simmonsville, which is where the
3 gathering was over to Roseland. Mr. Drake then also
4 testified that he -- after it was all said and done,
5 and after he learned that Mr. Johnson had, in fact,
6 been killed -- been killed, some time after that in
7 the days following, he went back to Club Pluto, saw
8 Tray Graves, who the State believes did in fact call
9 a hit on Mr. Johnson's head, and went up to Mr. Tray
10 Graves and said that he had done it, and he was
11 there to collect, to which testimony was elicited
12 that Tray Graves told him, no, Hopkins had already
13 done it. And in exchange he didn't give Mr. Drake
14 any money, he gave him a bottle of Remy Martin
15 liquor. After that we did have -- we did have Mr.
16 Byron Singleton, Mr. Byron Singleton was in custody
17 on his own murder charge, a possession of a weapon.
18 He testified that he was incarcerated in the
19 Charleston County Detention Center with Mr. Hopkins,
20 that they were the only two inmates in Charleston
21 from the Jasper area. Mr. -- Mr. Singleton was from
22 the Hardeeville area, Mr. Hopkins from the Ridgeland
23 area, and because of their just commonality of being
24 from the same area, they struck up a friendship. He
25 did say that Mr. Hopkins had told him that he was in

1 on federal gun charges, which was his original
2 charge and what put him in the Charleston Detention
3 Center, but that throughout their friendship they
4 did open -- he did open up to him, and tell him
5 about how he did kill Mr. Johnson. He told him that
6 they were going and selling marijuana, which was
7 consistent with marijuana being located on Mr.
8 Johnson's body when he was found deceased. That
9 they did it -- that he did it in the -- the Roseland
10 area, which is his home turf, essentially. That his
11 mother lives nearby, that it happened at a stop
12 sign, it happened on a dirt road. All things that
13 were very specific to -- to the actual shooting of
14 Mr. Johnson. He also -- Mr. Hopkins also told Mr.
15 -- Mr. Singleton that he shot him five times. He
16 shot him while they were both in the car, and then
17 out of the car. Forensics were consistent with
18 that. Shell casings were located inside the
19 vehicle, as well as outside the vehicle. The
20 pathologist, Dr. Presnell, who was our last witness
21 to testify, she did testify that he was shot five
22 times. That two of the shots were on his -- the
23 right side of his torso, which would have been
24 consistent with somebody in the passenger seat
25 pointing the gun across their body and firing twice

1 at him as he sat in the driver's side seat. He then
2 was shot, I believe the other -- the other shots
3 went maybe on his arm, and then on his left side,
4 which, again, corroborated with what Mr. Singleton
5 said, because Mr. Singleton said that after the
6 first couple of shots, according to Mr. Hopkins, the
7 victim reacted, kind of bowed up to him, turned to
8 him, and that would have put his left side facing
9 Mr. Hopkins, which could have explained the -- the
10 shots to his left side. We also have the cell phone
11 evidence. The cell phone -- the State intended to
12 call Mr. Hightower -- Investigator Hightower of the
13 Solicitor's Office to further explain the cell phone
14 records. Judge Buckner ruled that we were unable to
15 do so. At the time Mr. Hightower had not been
16 declared an expert in any circuit court. Since then
17 he has multiple times been qualified as an expert.
18 However, Ms. Milbrodt testified as a records
19 custodian, we have the cell phone records from
20 Verizon for Mr. Hopkins' phone number, a phone
21 number that he provided to law enforcement, as well
22 as Mr. Johnson's phone number. Both of those call
23 detail records were call details of outgoing and
24 incoming calls. And I believe those were State's 7
25 and 8. In those, for lack of a better word, Excel

1 spreadsheets is what they essentially look like, it
2 has the numbers that are called, the times, the
3 towers that are being utilized by the calls, as well
4 as what sector. Ms. Milbrodt was able to testify to
5 the times these calls were made, what cell phone
6 tower was being pinged off of, and what sector. She
7 essentially was publishing the records that were
8 admitted through her as being the Records Custodian,
9 and being business records of Verizon. Previous --
10 let me see here, we had -- Mr. Hopkins did give two
11 different statements to law enforcement. One
12 actually I believe was a written statement he did
13 summarize his statement in writing. In those
14 statements he does admit to being with Mr. -- Mr.
15 Johnson, however, he says that he hadn't -- that he
16 ended his night with him about 6:30 or 7:00 p.m.
17 that night, and actually about that time was when he
18 went to Michael and Janika (Ph) Taylor's house.
19 Michael and Janika Taylor testified as well. Both
20 of them were adamant that he was not at their house
21 at 6:30 or 7:00 that night, and that, in fact, he
22 came later about 10:30 or 11 o'clock that night, and
23 they, in turn, gave him a ride around 11:30 or
24 midnight to an apartment complex. I believe it was
25 called Baytree (Ph) Apartments. Actually their son,

1 Jacoby Grant, let them -- or let Mr. Hopkins in.
2 Mr. Grant testified, not willingly. A lot of these
3 witnesses didn't come in willingly. He had to be
4 impeached on the time that he let Mr. Hopkins in.
5 Mr. Taylor also added, which this came up earlier I
6 this hearing, Mr. Taylor also added that he -- Mr.
7 Hopkins asked him, if he could change his clothes at
8 his house, Mr. Taylor said yes, and Mr. Taylor then
9 found Mr. Hopkins burning his clothes in the burn
10 barrel out back. That was information provided to
11 -- to me that morning, provided to the defense
12 immediately thereafter, and the Judge allowed it in
13 after argument for both sides. We had DNA -- I
14 think I'm almost done, we had DNA from cigarette
15 butts collected in the car. It matched Mr.
16 Johnson's DNA and Mr. Hopkins' DNA. We had a palm
17 print on the driver's doorframe of the vehicle,
18 because Mr. Johnson was found outside of his
19 vehicle. It matched Mr. Hopkins' palm print, and
20 the five -- five shell casings all fired from one
21 gun. I think that's it.

22 Q. Okay. One last question for you, Ms.
23 Jones. In light of all of the evidence that the
24 State had, if the cell phone records had been
25 excluded, do you believe there was sufficient

1 evidence for the State to convict Mr. Hopkins beyond
2 reasonable doubt?

3 A. Yes.

4 MR. HALL: No further questions, Your
5 Honor.

6 **CROSS-EXAMINATION**

7 BY MS. MARTO:

8 Q. You would agree that the transcript is
9 the best record of what happened and what evidence
10 was presented, correct?

11 A. Certainly.

12 Q. Okay.

13 MS. MARTO: Nothing further, Your Honor.

14 THE COURT: Thank you, step down.

15 MR. HALL: Your Honor, may she be excused?

16 THE COURT: She may be, thank you.

17 MR. HALL: No further witnesses from the
18 State, Your Honor. At this time the State rests.

19 THE COURT: Any reply?

20 MS. MARTO: No, Your Honor.

21 THE COURT: Any arguments?

22 MR. HALL: Ms. Marto can go first.

23 MS. MARTO: Yeah, just briefly, Your Honor.

24 **ARGUMENTS BY MS. MARTO**

25 BY MS. MARTO: And I think a lot of today

1 can kind of trace back to the Court of Appeals'
2 opinion and the findings that certain issues that
3 Mr. Dudek acknowledges being the strongest, most
4 important issues in the case were not preserved. I
5 haven't heard any reason why these objections
6 weren't made in a timely fashion, so I think that
7 deficiency has certainly been established; and we
8 would also argue that because this case was highly
9 circumstantial, and because I think counsel
10 acknowledged that the cell records were an important
11 part of the case, as did my client, we would also
12 argue and, you know, prejudice has been established
13 as well. So we would just request you grant relief
14 on those bases. Thank you.

15 **ARGUMENTS BY MR. HALL**

16 MR. HALL: Judge, regarding the unpreserved
17 issues, counsel testified he gave strategic reasons
18 for not objecting to some of these issues. He
19 testified that he believed that not objecting the
20 testimony actually helped Mr. Hopkins' case and
21 helped the theory of defense, and so Mr. Hopkins
22 can't prove prejudice in that regard. Regarding --
23 regarding the appellate issues, Mr. Dudek testified
24 that he raised the issues that he believed were --
25 would be the most successful based on his experience

1 -- his 30 plus years of experience in the appellate
2 practice. And, Your Honor, regardless of what Mr.
3 Hopkins' claims counsel should or shouldn't have
4 done, the testimony and this evidence was overly --
5 overwhelmingly in favor of a finding of guilt, such,
6 that the jury found Mr. Hopkins guilty, and so Mr.
7 Hopkins can't prove prejudice on any of his
8 allegations.

9 MS. MARTO: Nothing further, Your Honor.

10 THE COURT: I'll review it and issue an
11 order.

12 MS. MARTO: Thank you, Judge.

13 MR. HALL: Thank you, Judge.

14 (Whereupon, the hearing was concluded.)

15 - - -END OF TRANSCRIPT- - -

16

17

18

19

20

21

22

23

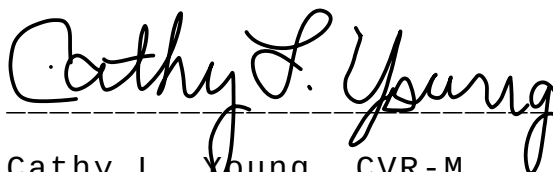
24

25

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Beaufort County, South Carolina, on the 7th day of
May, 2024.

I do further certify that I am neither of
kin, counsel nor interest to any party herein.

A handwritten signature in black ink, reading "Cathy L. Young", is written over a horizontal line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS)
The FOURTEENTH JUDICIAL CIRCUIT)

Rohaime Jamar Hopkins, SCDC #235915,)

Applicant,)

v.)

The State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

Civil Action No. 2021-CP-27-00378

This matter came before the Court on May 7, 2024 for an evidentiary hearing pursuant to an application for post-conviction relief ("PCR") filed September 7, 2021 by Rohaime Jamar Hopkins ("Applicant"). Applicant was present with counsel Chelsey F. Marto, Esq. Assistant Attorney General Bryan T. Hall appeared for the respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a life sentence. During its June, 2015 term, the Jasper County Grand Jury indicted Applicant for murder (2015-GS-27-00144). This charge arose from an incident in which Applicant shot and killed Terrence Johnson ("Victim") to collect a cash reward for a hit that was placed on Victim.

Applicant proceeded to a jury trial May 15-17, 2017 before Circuit Judge Perry Buckner. Assistant Solicitors Mary Jones and Brian Hollen prosecuted the case. Scott W. Lee, Esq. ("Counsel") represented Applicant. The jury convicted Applicant as indicted and he was sentenced to life imprisonment. On May 25, 2017, a timely notice of appeal was filed on Applicant's behalf by Counsel. On appeal, Applicant was represented by Chief Appellate Defender Robert M. Dudek ("Appellate Counsel") who filed a brief raising the following issues.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: 
DATE: 8-20-2024

 Page 1 of 13

2021-CP-27-00378

1. Whether the court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statement against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?
2. Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was 'trial by ambush' – and the court had the inherent authority, and duty, to ensure appellant received a fair trial?

On August 19, 2020, following briefing and without oral argument, the Court of Appeals affirmed Applicant's conviction and sentence determining (1) the argument regarding the cell phone records was not preserved for appellate review; (2) the trial court did not err in admitting the text message because the text was circumstantial evidence of guilt and its probative value was not substantially outweighed by prejudice or confusion to the jury; (3) there was no violation of

Rule 5 because the State provided the defense with immediate notice of the information from Taylor when the State learned of it. *State v. Hopkins*, 431 S.C. 560, 848 S.E.2d 368 (Ct. App. 2020). The Remittitur was sent on September 9, 2020.

CURRENT APPLICATION

Applicant timely commenced this PCR action on September 7, 2021, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Conspiring under color of law with the prosecutor to violate Applicant's constitutional right of autonomy to prevent issues from being heard.
- b. Failure to discover jurisdiction issues

Due Process Violation

Lack of Subject Matter Jurisdiction

Prosecutorial misconduct and fraud upon the court for signing commitment orders when jurisdictional challenges existed.

On December 20, 2021, Respondent filed a return and moved for a more-definite statement on Applicant's claims. Applicant amended his application to raise the following allegations:

Ineffective Assistance of Counsel

- a. Failure to argue Applicant's police statement was involuntary and made unknowingly.
- b. Failure to object to Richard Johnson commenting on what Simmons said on hearsay grounds. [Tr. 337-38]

- c. Failure to timely object to the cellphone records being entered (St.'s Ex. 7 & 8).
- d. Failure to object to Milbrodt's testimony as a records custodian.
- e. Failure to effectively cross-examine the State's witnesses concerning inconsistencies in their statements.
- f. Failure to attack the credibility of Applicant's pod-mate concerning what he said Applicant told him about the crime.

Ineffective Assistance of Appellate Counsel

Failure to raise on appeal the court's decision to allow the text message into evidence (St.'s Ex. 9) because the court erroneously found texts were an admission by a party opponent.

At the evidentiary hearing, Applicant proceeded *solely* on the allegations contained in his amended application, and only those issues are before this Court for consideration. Before this Court are the Jasper County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate record; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that he met with Counsel a few times, during which they discussed witnesses, but Applicant believed Counsel's representation could have been better. Applicant testified that Counsel did not move to suppress Applicant's statement to police, and averred such motion would have helped the outcome of trial. Applicant testified Counsel's objection to the cellphone records was untimely, and the cellphone records affected the case

because it placed Applicant at a certain place and time. Applicant averred the cellphone records custodian gave expert testimony without being qualified. Applicant further averred that Counsel did not effectively cross-examine witness Byron Singleton, his pod-mate, and wished Counsel had discredited Singleton. Applicant testified that he wished Counsel would have objected to Richard Johnson's testimony regarding what Drayton Simmons said, and Applicant averred the testimony was unfavorable. Applicant testified that he heard for the first time at trial Michael Taylor's testimony regarding the burning clothes, and Applicant believed Counsel should have objected. Regarding his appeal, Applicant testified that he wished Appellate Counsel would have raised the issue of the trial court's decision to allow the text messages into evidence as an admission by a party opponent and believed exclusion of the text messages could have resulted in a different outcome.

Trial Counsel's Testimony

Scott Lee ("Counsel") testified that Applicant was served with notice of the State's intent to seek life without parole, and trial was held six (6) months after Counsel was retained. Counsel testified that he met with Applicant approximately five (5) to eight (8) times while Applicant was in jail, and was prepared for trial. Counsel testified that his defense theory and strategy for trial was to argue that Antoine Drake committed the murder, not Applicant.

Counsel testified that he moved for a *Jackson v. Denno* hearing to exclude statements Applicant made to police but there was no evidence that Applicant's statement was coerced or made involuntarily. Counsel further testified that he believed Applicant's statement to police was helpful to Applicant. Regarding Byron Singleton, Counsel testified that Singleton's testimony was suspect, and Counsel tried to cross-examine him on his motive for testifying. Regarding the burn barrel, Counsel testified that although he was upset that the information came out at trial, the

solicitor received the information at trial as well, and Counsel objected. Regarding the cellphone records, Counsel testified the court excluded expert testimony from the cellphone expert. Counsel testified that Karen Milbrodt read the cellphone records and was not testifying as an expert, and Counsel did not think her testimony was harmful to the case. Regarding Richard Johnson's hearsay testimony, Counsel testified that he did not object because the testimony involved information from an incident that occurred weeks ago, and Counsel believed the Johnson's testimony supported Counsel's defense theory that Antoine Drake committed the crime.

Appellate Counsel's Testimony

Chief Appellate Defender Robert Dudek ("Appellate Counsel") testified that he has over thirty (30) years of appellate experience. Appellate Counsel testified that when he receives a case, he takes notes, reads the trial transcript, and conducts legal research to determine which issues have the best chance of winning on appeal. Appellate Counsel testified that the Court of Appeals found the text messages were circumstantial evidence of guilt. Appellate Counsel testified that the Court of Appeals disagreed with Appellate Counsel substantively on the issue that the text message was a statement against interest. Appellate Counsel testified that the cell phone records issue was unpreserved but he believed the issue was of equal importance.

Solicitor's Testimony

Assistant Solicitor Mary Jones testified that the State's evidence included testimony from several witnesses who saw Applicant, with a gun, leave a wake service with the Victim on the night of the murder. Jones testified that there was testimony from Latanya Singleton, who testified that Applicant came to her house with Victim on the night of the murder. Jones testified Applicant later returned to Singleton's house asking for bleach. Jones testified that the Victim's body was found in the Victim's car several yards away from Singleton's house. Jones testified Applicant's

fingerprints were found in Victim's car. Jones testified that the State entered into evidence cellphone records that showed Applicant's and Victim's cellphones were pinging from the same cell tower around the time of the murder. Jones testified that the trial judge excluded expert testimony about the cellphone records, and Karen Milbrodt read what the records stated and did not give expert testimony. Jones testified that the State entered evidence of a text message from Applicant to Trey Graves, who put the hit on Victim, stating "dats done, need to holla at you." Jones also testified that she believed there was sufficient evidence for the jury to convict Applicant beyond a reasonable doubt even if the cellphone records had been excluded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence

demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant.”). Judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689.

Failure to Argue Applicant’s Statement to Police was Involuntarily and Unknowingly

This Court finds Applicant failed to prove counsel was ineffective for failing to argue Applicant’s statement to police was made involuntarily and unknowingly. This Court finds credible Counsel’s testimony that a *Jackson v. Denno* hearing was held by the trial court, and there was no evidence that the statement was made involuntarily. This Court also finds credible Counsel’s testimony that he believed the statement was helpful to Applicant’s defense. Further, this Court finds the record reflects the trial court held a hearing pursuant to *Jackson v. Denno* and

found that Applicant knowingly and intelligently waived his Fifth Amendment right to remain silent. (R. 93-109). Applicant has failed to meet his burden.

Failure to Make Objections to Richard Johnson's Testimony on Statements by Daytron Simmons on Hearsay Grounds

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Richard Johnson's testimony on Statements by Daytron Simmons on hearsay grounds (R. 229:14-330:1-3; Tr. 337:14-338:1-3). Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court finds credible Counsel's testimony that he did not object to the hearsay statements because Counsel believed the statements supported the defense's theory that Antoine Drake committed the murder, instead of Applicant. This Court finds Counsel articulated a reasonable strategic decision for not objecting. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had objected. Thus, Applicant failed to meet his burden.

Failure to Timely Object to the Admission of Cellphone Records

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to object to the admission of cellphone records (St.'s Ex. 7-8). Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge*, 422 S.C. at 374, 811 S.E.2d at 800-01 (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court finds credible Jones' testimony that she believed the State had sufficient evidence for the jury to convict Applicant beyond a reasonable doubt even if the records had been excluded. Further, upon review of the entire record,

this Court finds there was sufficient evidence for the jury to convicted Applicant beyond a reasonable doubt even if Counsel had objected and the cellphone records were excluded. Thus, Applicant failed to meet his burden by showing a reasonable probability the result of trial would have been different if Counsel had object to the admission of the cellphone records.

Failure to Object to Karen Milbrodt's Testimony as a Cellphone Records Custodian

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Karen Milbrodt's testimony as a records custodian. (R. 438). This Court finds credible Counsel and Jones' testimonies that the trial court did not qualify Milbrodt as an expert to give an opinion on the use of cellphone towers but ruled Milbrodt could testify as a records custodian. (R. 429). This Court also finds credible Counsel and Jones' testimonies that Milbrodt did not give expert testimony but merely read the cellphone records as a records custodian. (R. 238). Additionally, this Court finds Applicant failed to prove he was prejudiced by showing a reasonable probability the result of trial would have been different if Counsel had objected to Milbrodt's testimony. Thus, Applicant failed to meet his burden.

Failure to Effectively Cross-Examine the State's Witnesses for Inconsistent Statements

This Court finds Applicant failed to prove Counsel was ineffective for failing to effectively cross-examine the State's witnesses for inconsistent statements. Upon review of the entire record, this Court finds Counsel's cross-examination of witnesses was reasonable under prevailing professional norms, and thus was not deficient. Further, Applicant failed to specify which of the State's witnesses he believed Counsel should have cross-examined more effectively, and Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had developed a different strategy for cross-examination. Thus, Applicant failed to meet his burden.

Failure to Attack the Credibility of Applicant's Pod-mate, Byron Singleton, Concerning Statements Applicant Made to Him about the Crime

This Court finds Applicant failed to prove Counsel was ineffective for failing to attack the credibility of Byron Singleton, Applicant's pod-mate, concerning statements Applicant made to Singleton about the crime. Singleton testified at trial that Applicant told him that Applicant shot and killed Victim. (R. 327). On cross-examination, Counsel questioned Singleton about his motives and bias including Singleton's hope that he would receive a deal from the solicitor's office. (R. 330-34). Counsel also cross-examined Singleton regarding Singleton's conversations with Antoine Drake, consistent with the defense's theory that Antoine Drake committed the murder. (R. 333-34). This Court finds credible Counsel's testimony that he attempted to cross-examine Singleton regarding his motive for testifying. This Court finds Counsel's cross-examination of Singleton was reasonable under prevailing professional norms, and thus was not deficient. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had developed a different strategy for cross-examining Singleton. Thus, Applicant failed to meet his burden.

Ineffective Assistance of Appellate Counsel

Failure to Raise as an Issue on Appeal the Court's Decision to Admit a Text Message from Applicant as an Admission by a Party Opponent

This Court finds Applicant failed to prove Appellate Counsel was ineffective for failing to raise and argue the admission of the text message as an admission by a party opponent as an issue on appeal. In analyzing ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (providing applicant must prove appellate

counsel's performance was deficient and must prove prejudice by showing a reasonable probability the result of the proceeding would have been different but for counsel's errors).

This Court finds Appellate Counsel's performance was reasonable under prevailing professional norms, and thus was not deficient. The trial court ruled a text message from Applicant to Trey Graves shortly after the murder was admissible as an admission by a party opponent. (St.'s Ex. 9; R. 405-08). This Court finds credible Appellate Counsel's testimony that, in his experience as an appellate attorney, he did not believe the appellate court would have ruled in Applicant's favor if Appellate Counsel had raised as an issue the trial court's admission of the text message as a party opponent admission because the appellate court disagreed with Appellate Counsel substantively on the admissibility of the text message. This Court also finds, as a matter of law, that the text message was admissible under Rule 801(d)(2), SCRE as an admission of a party opponent because Applicant was a party to the criminal trial. Further, Applicant failed to prove prejudice by showing a reasonable probability the result of his appeal would have been different but for Appellate Counsel's failure to raise the issue. Thus, Applicant failed to meet his burden.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This application is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State for satisfaction of the sentence imposed.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED!


J. DERHAM COLE
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina

WITNESSES

R. Johnson - SLED

ARREST WARRANT NUMBER

2015A2710200075

ACTION OF GRAND JURY

NO BILL

FOREMAN

DATE

6/25/15

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS2700144

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

June Term 2015

THE STATE

vs.

Rohalme Jamar Hopkins

Indictment for

Murder / Murder

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

CDR Code:0116

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

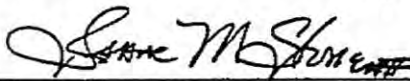
INDICTMENT
2015GS2700144

At a Court of General Sessions, convened on June 25, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about November 12, 2014, with malice aforethought, Rohaime Jamar Hopkins did kill and murder Terrance Johnson by means of shooting him, and that Terrance Johnson did die in Jasper County as a proximate result thereof on November 12, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

AKA:

Race:

Sex:

Age:

DOB:

Address:

City, S

DL#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

In violation of §

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s Initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act to be exceed years and/or to pay a fine of \$ IMPRISONED WITHOUT FINE provided that upon the service of IMPRISONED WITHOUT FINE days/months/years and or payment of \$ IMPRISONED WITHOUT FINE; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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 Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)		\$	0
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	0
\$56-5-2995 (DUI Assessment)	\$12	\$	0
\$56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 61.6 (Public Def/Probation)	\$500	\$	0
\$14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$	0
\$50-21-114 (BUI Breath Test Fee)	\$50	\$	0
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	0
3% to County (if paid in installments)		\$	3.98

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees

Presiding Judge

Judge Code:

Sentence Date