

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

DEMETRICE R. JAMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000887

APPENDIX

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1 photography. We then do microscopic examination. We use the
2 comparison microscope as our primary instrument.

3 It looks at -- it allows us to look at two items side by
4 side under the same lighting and magnification. So we would
5 put -- if we had two cartridge cases, we would put one on one
6 stage and one on the other, and that allows us to bring the
7 images together and look at their markings and then we come
8 to conclusions.

9 Q. When you say their markings, can you tell me what you
10 mean by that?

11 A. Sure. When a firearm is manufactured, it's designed to
12 have a set number of grooves that are either cut or formed
13 into the barrel. Those grooves will have either a right or a
14 left-hand twist and are known as the rifling for that
15 firearm. Much like a well-thrown football that, in part,
16 spin, the rifling gives the bullet spin to give it better
17 accuracy.

18 And so as the firearm is going through those machining
19 processes to get the rifling as well as just basic sanding
20 and smoothing of the barrel and the other interior surface of
21 the firearm, microscopic imperfections in the form of nicks,
22 burrs and cuts are left on all the interior surfaces. So as
23 the firearm is fired, the bullet and the cartridge case
24 become marked with those imperfections that are unique to
25 that firearm. So it's much like a fingerprint for that

1 firearm, and we're looking for those imperfections and the
2 unique pattern of striations that we can compare between
3 different items of evidence to see if they're there. If the
4 markings exist and are in agreement, then we can say that
5 they came from the same firearm.

6 Q. And you've talked about bullets and cartridge casings?

7 A. Yes.

8 Q. Can you tell me what those two things are?

9 A. Sure. Actually, a single piece of unfired ammunition -
10 so before a gun has been fired - is called a cartridge, and a
11 cartridge consists of the cartridge case that kind of houses
12 everything. Inside the cartridge case is the gun powder, the
13 primer that has the igniting substance, and then the bullet
14 that actually sits on the head of the cartridge.

15 During firing, the components separate. The bullet
16 travels down and out of the barrel towards the target, and
17 the cartridge case, depending on the type of firearm, stays
18 either inside the firearm or is extracted and ejected and
19 left at the scene.

20 Q. Those cartridge cases -- if I have like, let's say, like
21 a pistol or a revolver, are those two different types of
22 guns?

23 A. They are.

24 Q. If I have a revolver, what's going to happen to that
25 cartridge casing?

1 A. With revolvers, the revolver gets its name from the
2 revolving cylinder that's at the rear of the firearm. That
3 cylinder houses multiple chambers, and unfired ammunition is
4 in each of those chambers. During firing, the bullet --
5 again, it travels down the barrel, but the cartridge case
6 stays in that cylinder.

7 With a semiautomatic pistol, there's only one chamber
8 that's actually part of the barrel, and as part of the
9 sequence of firing, again the bullet travels down and out the
10 barrel, but the cartridge casing is actually extracted back
11 and out of the firearm. So with semiautomatic pistols,
12 you're likely to find the cartridge case at the scene.

13 Q. When you say revolver, that's kind of like the big guns
14 with the barrels you can---

15 A. Yes, the old western guns that you see frequently in
16 movies.

17 Q. Okay. If there are a large number of cartridge casings
18 at a scene, that indicates to you what?

19 A. Generally that would indicate that there was a
20 semiautomatic handgun that was used.

21 Q. Okay. I want to show you what's been marked as State's
22 Exhibit Number 15 and ask you if you recognize this. Let me
23 get you some scissors. I don't know if you need these or
24 not.

25 A. Would you like me to open this?

1 Q. Yes, please.

2 A. (The witness complies.) I recognize and identify
3 State's Exhibit 15 as seven fired .45 caliber cartridge
4 cases, four fired .45 caliber - I'm sorry - five fired .45
5 caliber bullets and two fired bullet fragments.

6 **Ms. Meghan Walker:** At this point, Your Honor, the State
7 seeks to move Exhibit Number 15 into evidence.

8 **Ms. Pinnock:** No objection.

9 **The Court:** In without objection.

10 (State's Exhibit 15 was received in evidence.)

11 By Ms. Meghan Walker:

12 Q. And let me also show you State's Exhibit Number 19 and
13 ask you if you can identify that.

14 A. I recognize and identify State's Exhibit 19 as one fired
15 .45 auto caliber cartridge case.

16 **Ms. Meghan Walker:** At this point, Your Honor, the State
17 seeks to move Exhibit Number 19 into evidence.

18 **Ms. Pinnock:** Without objection.

19 **The Court:** In without objection.

20 (State's Exhibit 19 was received in evidence.)

21 By Ms. Meghan Walker:

22 Q. And these are items you received when?

23 A. I actually received them on the 28th of January of 2013.

24 Q. And I think you said there were a number of fired
25 cartridge casings. I want to take from Exhibit Number 15

1 number six, and what is this?

2 A. That is a fired .45 caliber cartridge case.

3 Q. These are one of the items that you examined?

4 A. Yes.

5 Q. And you said a projectile as well?

6 A. An intact one.

7 Q. This is item number seven. And what is this?

8 A. That is a fired bullet. So before it's -- when they're
9 talking about the unfired piece of ammunition, before firing
10 those would actually be housed as -- together, the bullets
11 sitting in the head, as Meghan has it, and that would be an
12 unfired piece of ammunition or a cartridge. And then during
13 firing, they separate. The bullet goes down towards the
14 target, and the cartridge case is extracted and ejected with
15 a .45.

16 Q. And once you got these particular items of evidence, can
17 you tell me what you did with them?

18 A. With the cartridge cases, I examined all of them, one
19 against the other on the comparison microscope that I was
20 telling you about earlier, to determine if they all came from
21 one firearm, and then likewise with the bullets I would also
22 compare them one against the other to make -- to come to the
23 same conclusion as to whether they were all fired by one
24 firearm or not.

25 Q. And with these items of evidence that you were submitted

1 in this case, were you able to come to any conclusions?

2 A. I was.

3 Q. Can you tell the jury what those conclusions were?

4 A. Yes. All of the fired cartridge cases were fired by one
5 firearm, a .45 auto caliber pistol, and all of the bullets
6 and bullet fragments were also fired by one firearm,
7 consistent with being a .45 auto caliber pistol.

8 Q. And if you don't actually have the firearm that fired
9 those bullets, can you tell necessarily the manufacturer or
10 the maker of the gun?

11 A. We are able with the bullets, because of the rifling
12 characteristics -- the manufacturers, as part of their
13 design, will often have a certain width and number to those
14 rifling characteristics. I was able to come up with a
15 possible list of manufacturers but not a specific firearm.

16 Q. But in terms of the items of evidence that were
17 presented to you for testing, they were all fired from one
18 gun?

19 A. All the cartridge cases were fired by one gun, and then
20 all the bullets I could tell were fired by one gun.

21 Q. Thank you, Investigator Gleason.

22 A. Uh-huh.

23 Q. Let me hand those back to you.

24 A. Sure.

25 Q. Investigator Gleason, I don't have any further questions

1 for you at this time. Thank you very much.

2 A. Sure.

3 **Ms. Pinnock:** No questions, Your Honor.

4 **The Court:** All right. Thank you. We appreciate your
5 time. You can be excused.

6 **The Witness:** Thank you.

7 **The Court:** Call your next witness.

8 **Ms. Meghan Walker:** Your Honor, at this time the State
9 calls Troy Scott.

10 Troy Scott, after being duly sworn, testified as
11 follows:

12 **The Clerk:** Please have a seat in the witness stand, and
13 state your full name for the record.

14 **The Witness:** Troy Scott.

15 **The Court:** Can I see counsel up here just one minute?

16 **Ms. Meghan Walker:** Yes, Your Honor.

17 (Whereupon, a bench conference was held.)

18 **The Court:** Just doing some logistics.

19 Direct Examination

20 By Ms. Meghan Walker:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

23 Q. State your name again for me.

24 A. Troy Scott.

25 Q. Troy Scott? Mr. Scott, where -- how old are you?

1 A. Twenty-six.

2 Q. Where did you grow up?

3 A. In Columbia, South Carolina.

4 Q. Did you go to high school here?

5 A. Yes, ma'am.

6 Q. Where did you go to high school?

7 A. Columbia High.

8 Q. Where do you live?

9 A. [REDACTED] Williamsburg Drive.

10 Q. Is this your house here on State's Exhibit Number 44?

11 A. Yes, ma'am.

12 Q. Who do you live there with?

13 A. My mother and my stepfather and my little brother.

14 Q. What's your little brother's name?

15 A. Trenton Scott.

16 Q. I want to ask you about some people; I want you to tell
17 me if you know them. Okay? Did you know Joshua Williams?

18 A. Yes, ma'am.

19 Q. What about Brandon Jones?

20 A. Yes, ma'am.

21 Q. Vincent Nelson, Jr.?

22 A. Yes, ma'am.

23 Q. Did you know Demetrice James?

24 A. I don't know him; I've seen him.

25 Q. I want to take your attention back to January 25th of

1 last year. Where were you that night?

2 A. I was at the house with Trenton, Josh, Cari, and
3 Brandon.

4 Q. And who's Cari?

5 A. That was my girlfriend at the time.

6 Q. She's not your girlfriend anymore?

7 A. No.

8 Q. What were y'all doing?

9 A. We was just at the house relaxing.

10 Q. Was that common for you guys to be over there?

11 A. Yes, ma'am.

12 Q. What type of things would y'all do while y'all were over
13 there?

14 A. Play music, watch T.V., play video games.

15 Q. Were those the type of things y'all were doing that
16 night?

17 A. Yes, ma'am.

18 Q. Were you there the entire night?

19 A. Yes, ma'am.

20 Q. At any point did someone else come over to the house?

21 A. Yes, ma'am.

22 Q. And who was that?

23 A. Vincent.

24 Q. Did you know him by any other names?

25 A. Jay-School.

1 Q. Jay-School?

2 A. Yes, ma'am.

3 Q. Did you know Jay-School was going to come over that
4 night?

5 A. No, ma'am.

6 Q. Did he used to hang out with y'all a lot?

7 A. On and off, yes, ma'am.

8 Q. And how did you meet him?

9 A. I met him through a friend of mine, Teedo.

10 Q. And would he sometimes spend the night at y'all's house?

11 A. Yes, ma'am.

12 Q. Eat dinner with y'all?

13 A. Yes, ma'am.

14 Q. Was he kind of like a trusted friend?

15 A. At one point, yes, ma'am.

16 Q. Before -- before all this happened?

17 A. Yes, ma'am.

18 Q. Tell me about when you saw Jay-School that night.

19 A. He came in through the upstairs. I hadn't seen him in
20 about three months, so it was more of a surprise. And no one
21 comes over that late, so that was odd also.

22 Q. And did you talk to him?

23 A. Yes, ma'am.

24 Q. And where did he come when he came to your house? What
25 part of the house was he in?

1 A. He came from upstairs and went downstairs.

2 Q. Were the rest of y'all hanging out downstairs?

3 A. Yes, ma'am.

4 Q. What did he do once he got there?

5 A. Basically just went straight to the studio and just
6 basically said hey to everybody.

7 Q. Was he acting the way that you normally saw him to act?

8 A. No, ma'am.

9 Q. Tell me what was different.

10 A. One, he had a phone on him. He was pacing back and
11 forth. Limited with his words. Just weird.

12 Q. And how long did he stay inside the house?

13 A. No longer than about three minutes.

14 Q. Then what happened?

15 A. I was in a room with my girlfriend at the time. He
16 convinced Brandon to go outside with him. Josh proceeded to
17 follow behind them, so they all went outside to smoke.

18 Q. Who was left in the house when those three individuals
19 went outside?

20 A. Me, Trenton, and Cari.

21 Q. Cari?

22 A. Yeah.

23 Q. What happened next?

24 A. We were just chilling on the bed, and I just heard a
25 loud glass break.

1 Q. Was that odd to you?

2 A. Yes, ma'am.

3 Q. When you heard that glass break, what did you do?

4 A. I immediately walked to where I heard the sound was.

5 Q. And where -- what area of the house was that sound
6 coming from?

7 A. That was in the sports room.

8 Q. What did you see once you got to the sports room?

9 A. Two people rolling on the ground fighting.

10 Q. Did you recognize those two people?

11 A. One was my brother and I didn't recognize the other one.

12 Q. So tell me what you did once you saw -- once you saw
13 that.

14 A. Really I was -- I walked over to basically kind of break
15 it up, and that's when I realized it was Trent and some
16 random dude, and a second person came through the door.

17 Q. You said the -- is this the area of the house that you
18 went over to to break up the fight?

19 A. Yes, ma'am.

20 Q. This is State's Exhibit Number 141 that I just showed
21 you. You said you heard glass shattering?

22 A. Yes, ma'am.

23 Q. So at the point in which -- you said the random guy. Do
24 you know -- do you now know his name?

25 A. Yes, ma'am.

1 Q. What's his name?

2 A. Demetrice.

3 Q. The one that was on the ground with your brother?

4 A. No, that was Maurice that was on the ground with my
5 brother.

6 Q. Okay. And then a second person came in.

7 A. Uh-huh.

8 Q. At that point when your brother and Maurice are on the
9 ground, what are you doing?

10 A. I immediately start fighting the second one that came
11 through the door.

12 Q. The second one that came through the door, do you
13 remember what he looked like?

14 A. Yes.

15 Q. What did he look like?

16 A. Dark skin with dreads, about 5'6".

17 Q. And these two people, had you seen them before that
18 night?

19 A. Just one of them.

20 Q. And which one was that?

21 A. Demetrice.

22 Q. Where had you seen him before?

23 A. Just around, like the corner store or something like
24 that.

25 Q. But did you know him?

1 A. No, I didn't know him.

2 Q. This may be a dumb question, but were these people
3 invited into your home that night?

4 A. No, ma'am.

5 Q. And as you're fighting the second guy, what's going on
6 with your brother and the first guy?

7 A. At the time I didn't know that they was scrambling for a
8 gun until I guess the dude had got leverage over the gun, and
9 that's when I first seen it.

10 Q. You first saw the gun---

11 A. Yes.

12 Q. ---when the other guy got the gun.

13 A. Yes.

14 Q. And where are you and the second guy at that point?

15 A. Basically we're just like at the beginning section of
16 the sports room by the shop door when I first realized the
17 gun...

18 Q. And who had the gun the first time you saw it?

19 A. Demetrice.

20 Q. What was he doing with the gun?

21 A. He was pointing it.

22 Q. Where was he pointing it? Like in the air?

23 A. At me.

24 Q. Pointing the gun at you.

25 A. Yeah.

1 Q. What did you do once that gun was pointed at you?

2 A. I just basically -- Trent was still on the ground, so I
3 basically just wanted to get my brother up and get him out of
4 the harm's way.

5 Q. This is your little brother?

6 A. Yes.

7 Q. Okay.

8 A. And we ended up -- we ended up in the shop trying to
9 barricade the shop door. So they was desperately trying to
10 squeeze in the shop, so we knew we had to make a decision
11 real fast. There wasn't time to be scared or anything, so...

12 Q. So did your brother eventually stand up?

13 A. Yes, ma'am.

14 Q. And where was the first guy when your brother got up?

15 A. He was squeezing in the door, in the shop door.

16 Q. Did they make it back in? Did those two guys that were
17 trying to come back in eventually come back into the house?

18 A. No.

19 Q. At any point did your brother and -- it's been termed a
20 Full Nelson?

21 A. Yes.

22 Q. Okay. How -- tell me how that came about. Actually,
23 could you step off the stand? Your Honor, may the witness
24 step down?

25 **The Court:** Yes.

1 By Ms. Meghan Walker:

2 Q. Tell me how close everybody is when this fight is
3 happening. And do this for me: Stand on this side and speak
4 up so the court reporter can hear you. Okay?

5 A. Well, this is the door right here, and we were basically
6 just kind of holding the door.

7 Q. You and?

8 A. My brother, Trent.

9 Q. And where are the other two people?

10 A. They're -- Demetrice is on the outside of the door.
11 Maurice is trying to squeeze in the door. The gun is being
12 waved inside.

13 Q. The door?

14 A. The crack, yes.

15 Q. Okay. And how does your brother end up getting Maurice
16 in a Full Nelson?

17 A. It happened so fast. It just kind of, you know -- it
18 was just a reversal thing because he let off in the house.

19 Q. All right. Well, use me and show me what happened.
20 Just don't hurt me.

21 A. All right.

22 Q. Okay?

23 A. Well, it was -- it was more like this.

24 Q. Uh-huh.

25 A. And when he was trying to squeeze in the door, my

1 brother got him like this.

2 Q. Okay. Well, let me ask you this. Do y'all have any
3 sort of specialized fighting/training, you and your brother?

4 A. I'm a first degree black belt in Tae Kwon Do.

5 Q. And your brother?

6 A. Yes.

7 Q. Y'all are both first degree black belts in Tae Kwon Do.

8 A. Yes, ma'am.

9 Q. Okay. So he has Maurice in a Full Nelson. Is the gun
10 still being waved in the door?

11 A. Yeah.

12 Q. Okay. And at that point what happens?

13 A. The adrenaline was real high, so we somehow was just
14 really just pushing them from the shop door through the whole
15 sports room to the outside.

16 Q. To get out of the house?

17 A. Yeah.

18 Q. And were y'all able to successfully get them out of the
19 house?

20 A. Yes, ma'am.

21 Q. Did any gunshots go off inside of the house?

22 A. Yes.

23 Q. You can get back on the stand. Thank you.

24 A. Oh.

25 Q. Okay. Tell me about the gunshot that went off inside

1 the house.

2 A. I guess bro tried to tag him one time, and he hit him in
3 the arm.

4 Q. When you say "bro," who are you talking about?

5 A. Trenton.

6 Q. Okay. Your brother tried to do what?

7 A. He tried to tag him on the face, hit him.

8 Q. Tag him and hit him?

9 A. Yeah.

10 Q. Okay.

11 A. Sorry.

12 Q. You've got to talk to me.

13 A. Sorry. Yeah.

14 Q. Okay. So he tried to hit him, and then the gunshot went
15 off.

16 A. Yes, ma'am.

17 Q. At that point did you know if anyone had been hit?

18 A. Well, my brother, he just stormed off real fast as soon
19 as he got hit, so I was just really just trying to get the
20 door locked.

21 Q. Were you able to do that?

22 A. I got my peoples (verbatim) upstairs.

23 Q. Were you able to get the door locked?

24 A. Yes, ma'am.

25 Q. You said you had people upstairs. Who was upstairs?

1 A. My mother and my stepfather.

2 Q. And once you got the door locked, I guess the intruders
3 are on the other side of the door?

4 A. Yes, ma'am.

5 Q. What did you do?

6 A. As soon as I successfully got the door locked, I -- as
7 soon as I was running halfway in the middle of the sports
8 room, I just heard five shots went off.

9 Q. At that point in which you heard the shots go off, did
10 you know where Jay-School was?

11 A. No, ma'am.

12 Q. Did you know where Josh was?

13 A. No, ma'am.

14 Q. Did you know where Brandon was?

15 A. No, ma'am. I just know they was outside.

16 Q. What did you do once -- when you heard those shots go
17 off?

18 A. I ran upstairs to attend to my brother's wound. I'm a
19 medical assistant, so the first thing I was supposed to do is
20 put pressure towards the wound.

21 Q. And were you able to do that?

22 A. Yes, ma'am.

23 Q. What happened next?

24 A. My stepfather was really just looking for everybody, and
25 me and him ran out the front door and he ended up finding

1 Brandon. And there was a cop car that drove past my house,
2 so I ran up the hill to kind of flag him down.

3 Q. At that point had someone called 9-1-1?

4 A. Yes, ma'am.

5 Q. Who called 9-1-1?

6 A. Me and my mom.

7 Q. Okay. And were you able to flag down the cop car?

8 A. Yes, ma'am.

9 Q. Did you take them back to your house?

10 A. Yes, ma'am.

11 Q. Did you see Josh that night?

12 A. Yes, ma'am.

13 Q. Where was Josh when you saw him?

14 A. As soon as I went upstairs, probably about 60 seconds,
15 he came from downstairs. His head was swollen. He was
16 asking where Brandon was. That was about it.

17 Q. Did you see Brandon that night?

18 A. Yes, ma'am.

19 Q. Where was Brandon?

20 A. On the ground.

21 Q. Were you able to talk to him at that point?

22 A. Yes, ma'am.

23 Q. Was he able to say anything to you?

24 A. He was just saying, "Help."

25 Q. Could you help him?

1 A. Not really.

2 Q. Did ambulances arrive?

3 A. Yes, ma'am.

4 Q. And once the ambulances got there, what happened?

5 A. They was on both sides of the street, and so we hopped
6 on -- me and Cari went to the closest cop car, and they took
7 us to Two Notch at the sheriff's office.

8 Q. And what about Josh and Brandon and your little brother?

9 A. They all went in the ambulance.

10 Q. To the hospital?

11 A. Yes, ma'am.

12 Q. When you got to the sheriff's department, what did you
13 do there?

14 A. They were just basically just asking us what happened
15 and doing swabs and stuff like that.

16 Q. And were you able to tell them what happened that night?

17 A. Yes, ma'am.

18 Q. And over the course of this investigation, were you
19 shown a series of photo line-ups?

20 A. Yes, ma'am.

21 Q. And on some of them I guess you were able to pick people
22 and some of them you weren't.

23 A. Yes, ma'am.

24 Q. I want to show you State's Exhibits 4, -- 3, 4, and 5
25 and ask you if you recognize -- if you recognize these

1 exhibits.

2 A. Yes, ma'am.

3 Q. And how do you recognize these?

4 A. I just remember being shown them.

5 Q. You were shown these photo line-ups?

6 A. Yeah.

7 **Ms. Meghan Walker:** Your Honor, at this point the State
8 seeks to move Exhibits 3, 4, and 5 into evidence.

9 **Ms. Pinnock:** No objection.

10 **The Court:** Entered without objection.

11 (State's Exhibits 3 through 5 were received in
12 evidence.)

13 By Ms. Meghan Walker:

14 Q. And on these photo line-ups were you able to pick
15 anybody out?

16 A. No, ma'am.

17 Q. Okay. Were you just randomly picking people out when
18 you were shown photo line-ups?

19 A. No, ma'am.

20 Q. What were you trying to do when the police showed you
21 photo line-ups?

22 A. Pick who I saw.

23 Q. And State's Exhibit Number 8, let me show this one to
24 you. I ask you if you recognize this. How do you recognize
25 this?

1 A. Yes, ma'am.

2 Q. How do you recognize that?

3 A. Yes, ma'am.

4 Q. Did you sign it?

5 A. And initialed and dated it.

6 **Ms. Meghan Walker:** Okay. Your Honor, at this point the
7 State seeks to move Exhibit Number 8 into evidence.

8 **Ms. Pinnock:** Your Honor, I'd renew our previous
9 objection.

10 **The Court:** This has already been ruled on, and over the
11 objection it's in.

12 **Ms. Meghan Walker:** Thank you, Your Honor.

13 **Ms. Pinnock:** Yes, Your Honor.

14 (State's Exhibit 8 was received in evidence.)

15 By Ms. Meghan Walker:

16 Q. State's Exhibit Number 8, were you able to pick anyone
17 out of this photo line-up?

18 A. Yes, ma'am.

19 Q. And who did you pick out?

20 A. The sixth, Demetrice.

21 Q. And when you were picking him out, did you know his name
22 at that time?

23 A. No, ma'am.

24 Q. And when you were picking him out, who were you
25 identifying him as?

1 A. Who I was identifying him as? Just the dude with the
2 dreads.

3 Q. And where had you seen him?

4 A. Where have I seen him?

5 Q. In relation to this case.

6 A. I seen him at my house.

7 Q. And is that why you circled his picture?

8 A. Yes, ma'am.

9 Q. At some point in time -- do you know a Linard?

10 A. No, ma'am.

11 Q. Did the name Linard come up in this investigation?

12 A. Yes, ma'am.

13 Q. Tell me how that came up.

14 A. It was just a friend of mine, William, just helping out
15 the situation really because we didn't know anyone (verbatim)
16 name, so...

17 Q. Were you told that a Linard was involved?

18 A. Yeah.

19 Q. And did you think at that point that Linard was the
20 person that shot your brother or did you not know?

21 A. No, ma'am. I did not know.

22 Q. But the person you circled in that photo line-up that I
23 just showed you, that's the person who shot your brother.

24 A. Yes, ma'am.

25 Q. The person who came into your home uninvited and the

1 person who shot your little brother, do you see him in here
2 in the courtroom today?

3 A. Uh-huh.

4 Q. Can you identify him for me?

5 A. In blue.

6 **Ms. Meghan Walker:** Your Honor, can the record reflect
7 that this witness has identified the defendant? Thank you.
8 Sir, I don't have any further questions.

9 **The Court:** We're going to -- since it's 5:00, we're
10 going to stop for the day and start back at 9:30 with cross-
11 examination by the counsel for the defense. Have a pleasant
12 evening, and we'll see you back at 9:30 in the morning.

13 (Whereupon, the jury was excused from open court for the
14 day at 5:00 p.m.)

15 **The Court:** Mr. Scott, since you're -- you can obviously
16 go home for the evening, but since you're up for cross-
17 examination, don't discuss your testimony with the solicitor
18 or the defense attorneys. Don't even discuss it with your
19 family or friends or anybody else because usually we go
20 straight from direct into cross-examination, but because of
21 the hour we're going to split it.

22 So it's only fair and legally appropriate that you be
23 postured, that is, be in the same basic situation tomorrow
24 when we start at 9:30 as you are today without obtaining any
25 further information or discussion about the case. Do you

1 understand that?

2 **The Witness:** Yes, sir.

3 **The Court:** Do you think you can do that?

4 **The Witness:** Yes, sir.

5 **The Court:** Okay. Is there anything -- anything the
6 State wants me to cover with the witness?

7 **Ms. Meghan Walker:** No, Your Honor.

8 **The Court:** Defense?

9 **Ms. Pinnock:** No, Your Honor.

10 **The Court:** All right. We'll see -- before you leave --
11 before we leave, anything else we can cover today? I tell
12 you: Go ahead and step down, and we'll meet with the
13 attorneys just up here at the bench.

14 (Whereupon, a bench conference was held.)

15 **The Court:** We'll be at ease until 9:30.

16 (Whereupon, the trial concluded for the day at 5:03 p.m.
17 and resumed the following day, October 2, 2014, as follows.
18 State's Exhibit 206 was marked for identification only.)

19 **The Court:** We'll come to order. We had -- it was
20 brought to my attention that there's been some possible
21 discussion, maybe not of the case itself, but at least of a
22 witness and I'm not really sure because I haven't -- I wasn't
23 really privy to it, but Mr. Tolbert, the bailiff, and Mr.
24 Truitt, the court coordinator - I guess that's his official
25 title - both overheard some conversations through the door.

1 Mr. Tolbert heard them and alerted Mr. Truitt that there was
2 some discussion regarding, if not the case, at least a
3 witness.

4 I have done some research, and based on The State versus
5 Aldret, A-L-D-R-E-T, 333 S.C. 307, it's my contention in just
6 a few minutes -- I'll get Mr. Tolbert and Mr. Truitt to tell
7 us what they have heard. Bring the jurors in one at a time
8 and query them about whether or not they could still be fair
9 and impartial, that is -- well, that's what I'm going to ask
10 them.

11 I'm not going to let the attorneys -- I don't believe
12 the procedure requires and I think it would be very awkward
13 and just not -- not right for the attorneys to make any
14 inquiry. Here is basically what I intend to ask: Will any
15 discussions that have already taken place affect your ability
16 to be fair and impartial? And, of course, if that's a yes,
17 then we've got a problem. If it's no, then I'll move on to
18 number two. Will you now be able to base your verdict on all
19 the evidence as it exists at the time of my instructions to
20 you to deliberate? If that's a no, we've got a problem. And
21 then I'm going to tell them not to further discuss the case
22 until I instruct them to do so. Any comments from the State
23 as to anything else that should be included?

24 **Ms. Meghan Walker:** Not at this time, Your Honor.

25 **The Court:** All right.

1 **Ms. Meghan Walker:** I don't -- I don't...

2 **The Court:** Any objection to that line of questioning?

3 **Ms. Meghan Walker:** No, Your Honor.

4 **The Court:** I'll ask the same for the defense. Anything
5 else you want to include?

6 **Ms. Anastasia Walker:** And, Your Honor, are you going to
7 ask the nature of the conversation?

8 **The Court:** I'm going to ask what was heard, and I'm not
9 going to go into great detail. Well, I will get the foreman
10 in and get him to give us some idea of what the conversation
11 was. As I understand it from the bailiff, it had to do with
12 the fact -- well, I better not speculate. But I'll find out
13 from the foreman what was the nature. But as to my
14 questioning, do you have any comments?

15 **Ms. Anastasia Walker:** No, Your Honor, but prior to the
16 hearing, may I be heard on the record on this matter?

17 **The Court:** Well, if you'd like, now would be a good
18 time.

19 **Ms. Anastasia Walker:** Thank you, Your Honor. I would
20 move for a mistrial prior to the hearing. I feel that --
21 although I have read the case that Your Honor provided, I
22 think that this case does seem to be the authority on this
23 matter. I do feel that any sort of jury deliberation prior
24 to -- especially where we are in this case, that we haven't
25 finished the prosecution's side of the case, that that

1 violates my client's rights to a fair trial, his right to due
2 process. I don't believe that any -- whatever the jurors'
3 response would be that a curative instruction would be
4 sufficient in order to cure this matter so that my client
5 could have a fair trial from here on out.

6 Your Honor, furthermore, I do have a couple of other
7 concerns that there have been other jurors sleeping,
8 particularly I believe a Mr. Starkes. There has been -- and
9 unfortunately I don't know their names. I can give you
10 descriptions. There's been a younger black gentleman that's
11 been sitting in the back that has dozed off a couple of times
12 as well as the older black lady that was wearing the pink
13 shirt yesterday that's dozed off a couple of times. That's
14 also the further concern for my mistrial motion, Your Honor.

15 **The Court:** Well, that's taking two different -- one has
16 to do with the preliminary discussions and the other has to
17 do with jurors who you think were not attentive.

18 **Ms. Anastasia Walker:** Yes, Your Honor.

19 **The Court:** All right. Well, as to the latter, unless
20 it's called to my attention when it's observed, which has
21 already happened one time---

22 **Ms. Anastasia Walker:** Yes, Your Honor.

23 **The Court:** ---and she was released. There's not much I
24 can do about it, and I certainly don't intend to make it
25 sound like the defense is sandbagging because I certainly

1 don't believe that, but to see something that needs to be
2 corrected and not ask to be corrected at that time puts the
3 Court in a position of not being able to address it later.

4 **Ms. Anastasia Walker:** I understand.

5 **The Court:** So I'll try to monitor that and ask that if
6 that continues that it be called to my attention so I can
7 cure it at the time, which we readily did when we had that
8 issue and it was called to my attention.

9 **Ms. Anastasia Walker:** Certainly, Your Honor.

10 **The Court:** So we know how to do it and we still have an
11 alternate. If two go down, then we're in trouble, but
12 hopefully we can -- hopefully the attorneys can make the case
13 such that the jurors will want to pay attention and will pay
14 attention. All right. Mr. Tolbert, I'm not going to swear
15 you in unless---

16 **Ms. Anastasia Walker:** Do you want rule on my original
17 mistrial motion, Your Honor?

18 **The Court:** Oh, I want to take that under consideration.

19 **Ms. Anastasia Walker:** Thank you, Your Honor.

20 **The Court:** I'm not going to rule. I don't find at this
21 time manifest necessity to rule on -- I apologize. This is
22 to number two. I don't believe at this time that there's a
23 manifest necessity to grant a mistrial, but I will take it
24 under consideration. And don't let me forget to address it
25 after and let you renew it after we've queried the jury.

1 **Ms. Anastasia Walker:** Yes, Your Honor.

2 **The Court:** Mr. Tolbert?

3 **Bailiff:** Yes, sir.

4 **The Court:** You, of course, are a bailiff and you're
5 monitoring and escorting the jury, and it came to my
6 attention through Mr. Truitt that you heard some jurors
7 talking about -- I'm going to let you tell me in a minute.
8 And so you called your supervisor, Mr. Truitt, and he lent an
9 ear and heard some discussions also. What did you hear being
10 discussed by the jury?

11 **Bailiff:** They were discussing the two prisoners that
12 came in.

13 **The Court:** Do you recall any specific thing they said
14 about them?

15 **Bailiff:** All they said was the prisoners came in, and I
16 couldn't hear the rest of the discussion. It's just they
17 mentioned the two prisoners came.

18 **The Court:** Okay. All right. Oh, Mr. Truitt, do you
19 want to come forward?

20 **Mr. Truitt:** Yes, sir.

21 **The Court:** All right. You were alerted and went and
22 did your job.

23 **Mr. Truitt:** Yes, sir.

24 **The Court:** And then reported to me.

25 **Mr. Truitt:** Yes, sir.

1 **The Court:** Yesterday afternoon. And the reason we
2 didn't address it yesterday afternoon is because it was after
3 everybody had flown the coop, so to speak. In fact, I think
4 my clerk had even gone. I was working on some personal --
5 not personal but something unrelated to this, so I was
6 staying a little bit longer. What did you hear, if anything?

7 **Mr. Truitt:** Your Honor, I did not hear anything
8 specifically. It just sounded like they were talking about
9 the case. I couldn't tell you who or what they were talking
10 about.

11 **The Court:** Okay. All right. Thank you.

12 **Mr. Truitt:** Yes, sir.

13 **The Court:** All right. Any follow-up from the State on
14 the two -- Mr. Truitt and Mr. Tolbert?

15 **Ms. Meghan Walker:** Nothing from the State, Your Honor.

16 **Ms. Anastasia Walker:** Nothing, Your Honor.

17 **The Court:** All right. Let's call in first the foreman,
18 Mr. Crowell.

19 (Whereupon, the foreman, Mr. Crowell, was brought into
20 open court at 10:01 a.m.)

21 **The Court:** Good morning. You can just stand -- you can
22 just stand right there. I hate to put you on the spot, but
23 one of your jobs is to be the liaison between the jury and
24 myself. It's been reported to me that some of the staff
25 that's been working with the jury overheard some of the

1 jurors discussing the case yesterday. Particularly, they
2 were discussing, it appears, something about some witnesses.
3 Did any discussions in the jury room take place regarding
4 this case?

5 **Foreman:** We're discussing the testimony that we've
6 heard so far.

7 **The Court:** All right. Well, you really weren't
8 supposed to do that.

9 **Foreman:** Okay.

10 **The Court:** I told you at the beginning of the case that
11 you were not to discuss the case among yourselves or make up
12 your own mind until we reached a point in the trial where I
13 instructed you to jointly deliberate and return a unanimous
14 verdict. With that being said, having this discussion, could
15 you still, you yourself - I'll ask all the other jurors this
16 - still -- would this prior discussion affect your ability to
17 be fair and impartial to Mr. James in regard to your ultimate
18 deliberation?

19 **Foreman:** Yes. I think we can be impartial or I can;
20 yes, sir.

21 **The Court:** Okay. And would you still be able to base
22 your decision solely on the law and the evidence that you
23 receive at the end of the trial, that is, on all the facts
24 from all the witnesses and the law as I give it to you at
25 that time?

1 **Foreman:** Yes, sir.

2 **The Court:** And do you understand -- again, you're the
3 liaison. Go ahead and instruct the jurors that I -- there
4 should be no further discussions, but I will -- I'm going to
5 call all of them in and ask them the same type things. And
6 -- but go ahead and tell them to stop if they're doing it
7 now.

8 **Foreman:** Okay. Yes, sir.

9 **The Court:** Okay. So the bottom line is: Do you, in
10 spite of the prior discussions, think you could disabuse your
11 mind of that and base your -- and still be fair and impartial
12 and not be prejudiced by the discussions to date?

13 **Foreman:** Yes, sir.

14 **The Court:** Okay. Thank you. I'm going to have the
15 jurors come in. Thank you. And I would ask the bailiff to
16 bring in Ms. Watford.

17 (Foreman Crowell is excused from open court.)

18 **Ms. Pinnock:** Your Honor, if we could before the next
19 juror---

20 **The Court:** I can't hear you.

21 **Ms. Pinnock:** If we could, before the next juror comes
22 in. If I may, based on what Mr. Crowell said that they've
23 been discussing the testimony that they've heard up to this
24 point, would Your Honor be willing to ask them what they were
25 talking about? Because there's been a lot of testimony from

1 a lot of different people.

2 **The Court:** Well, we could be here 'til 12 -- no, I'm
3 not going to ask that. We have 13 people and two, three days
4 almost of testimony, two full days. If they've been
5 discussing it, we can assume they've discussed a little bit
6 of all of it, and from my perspective I'm treating it as
7 though they've been discussing everything. So -- and I think
8 if we bring them in and ask each one what they've been
9 discussing, we'll be here 'til midnight tonight.

10 **Ms. Pinnock:** Yes, Your Honor.

11 **The Court:** So -- but you're on the record as to that.
12 Bring Ms. Watford.

13 (Juror Watford was brought into open court at 10:05
14 a.m.)

15 **The Court:** Ms. Watford, I had instructed the jury at
16 the beginning not to discuss the case until I instructed you
17 jointly to deliberate and return a unanimous verdict. I
18 understand that that admonition has not been fully complied
19 with, that there has been discussions in the jury room about
20 the testimony to this time. That was improper, but I'm not
21 here to fuss. I'm here to see if we can get a fair trial.
22 Would the discussions that have already taken place affect
23 your ability to be fair and impartial in this case?

24 **Juror Watford:** No.

25 **The Court:** Would you, in spite of the discussions, be

1 able to base your ultimate decision on all the evidence that
2 comes in and consider it only after the end of the case,
3 after I've instructed you and submitted the case for your
4 deliberation? That is, would you be able to disabuse and
5 forget all the current and former discussion and base your
6 decision solely on -- on the law and the facts as I instruct
7 you to do at the end of the trial?

8 **Juror Watford:** Yes, sir.

9 **The Court:** Would the fact that -- or would any of the
10 discussions to this time prejudice you against Mr. James in
11 any way whatsoever?

12 **Juror Watford:** No.

13 **The Court:** Okay. Thank you.

14 **Juror Watford:** Thank you.

15 **The Court:** All right.

16 (Juror Watford leaves the courtroom.)

17 **The Court:** Mr. -- I mean Ms. Easterbrooks.

18 (Juror Easterbrooks is brought into open court at 10:07
19 a.m.)

20 **The Court:** Good morning. You can just stand right
21 there.

22 **Juror Easterbrooks:** Here?

23 **The Court:** I understand that the jury has been
24 discussing this case even though I had asked the jury not to
25 do that when I made my opening instructions. So I now have

1 to ask each of you whether or not - and you particularly at
2 this time because you're the one in here - whether or not the
3 discussions that you've had at this time would affect your
4 ability to be fair and impartial to Mr. James.

5 **Juror Easterbrooks:** No.

6 **The Court:** Would it prejudice you in any way what you
7 discussed at this point? Would that prejudice you in any way
8 against Mr. James?

9 **Juror Easterbrooks:** No.

10 **The Court:** Would you still be able to base your verdict
11 solely on the law and the evidence as it exists when I
12 instruct you at the end of the case?

13 **Juror Easterbrooks:** Yes, sir.

14 **The Court:** All right. Thank you. You may...

15 (Juror Easterbrooks leaves the courtroom.)

16 **The Court:** All right. Ms. Coples.

17 (Juror Coples is brought into open court at 10:08 a.m.)

18 **The Court:** You can just stand right there, Ms. Coples.
19 I understand there has been -- y'all have been -- not
20 necessarily you, but some of the jurors have already been
21 discussing the case in spite of the fact that I had earlier
22 indicated that you were not to discuss the case, to try to
23 make up your own mind until we reach a certain point in the
24 trial where we instruct you to do that. Would the
25 discussions that have already taken place affect your ability

1 to be fair and impartial to Mr. James?

2 **Juror Coples:** No, it would not.

3 **The Court:** Would it prejudice you in any way against
4 Mr. James?

5 **Juror Coples:** No, it would not.

6 **The Court:** Would you still be able to at the end of the
7 trial to take all the evidence that exists at that time,
8 applying the law as I charge it and return a fair verdict?

9 **Juror Coples:** Yes, sir.

10 **The Court:** All right. Thank you.

11 (Juror Coples leaves the courtroom.)

12 **The Court:** All right. Mr. Wing.

13 (Juror Wing is brought into open court at 10:09 a.m.)

14 **The Court:** Good morning.

15 **Juror Wing:** Good morning.

16 **The Court:** In spite of my instructing the jury not to
17 discuss the case, I understand the jury has been discussing
18 the case and the testimony at this point which was not
19 proper, and I'm not going to do anything about that other
20 than we need to make sure or find out whether or not that's
21 going to affect your ability to be fair at the end of this
22 trial. So I ask you: With the discussion that's taken place
23 to this point, would that affect your ability to be fair and
24 impartial to Mr. James?

25 **Juror Wing:** No, sir. No.

1 **The Court:** Would it prejudice you against Mr. James in
2 any way whatsoever?

3 **Juror Wing:** No. No.

4 **The Court:** Would you be able, at the end of the trial,
5 to take all the evidence that's presented to that point and
6 apply the law as I charge it and return a fair and impartial
7 verdict?

8 **Juror Wing:** Yes, sir.

9 **The Court:** Okay. Thank you.

10 (Juror Wing leaves the courtroom.)

11 **The Court:** All right. Ms. Charles. Charles.

12 (Juror Charles is brought into open court at 10:11 a.m.)

13 **The Court:** Mr. Charles, you can just stand right there.

14 **Juror Charles:** Okay.

15 **The Court:** In spite of the fact that I had told the
16 jury not to discuss the case until we reached the end of the
17 trial, I understand there have been discussions of the
18 testimony that has taken place at this point. So I need to
19 ask whether or not that discussion would affect your ability
20 in any way to be fair and impartial to Mr. James.

21 **Juror Charles:** No, it wouldn't.

22 **The Court:** Would you -- did -- would you be prejudiced
23 against Mr. James to any degree based on the discussions that
24 the jury has already entered into?

25 **Juror Charles:** No, I would not.

1 **The Court:** Would you be able to, at the end of the
2 trial, take all the evidence that was presented up to that
3 point and apply the law and at that time be fair and
4 impartial and render a fair and impartial verdict?

5 **Juror Charles:** I would be.

6 **The Court:** Okay. Thank you.

7 **Juror Charles:** Uh-huh.

8 (Juror Charles leaves the courtroom.)

9 **The Court:** All right. Ms. Jackson.

10 (Juror Jackson is brought into open court at 10:12 a.m.)

11 **The Court:** You can just stand right there, Ms. Jackson.

12 **Juror Jackson:** Okay.

13 **The Court:** I understand the jury has been discussing
14 the testimony to this point. I had asked y'all not to do
15 that, but I can't erase that. But I do need to ask: Based
16 on the fact that y'all have already been discussing the case,
17 would the discussions that have already taken place affect
18 your ability to be fair and impartial to Mr. James in
19 returning a verdict?

20 **Juror Jackson:** I can be fair.

21 **The Court:** Could you -- would the fact -- would the
22 discussions that have already taken place -- taken place
23 prejudice you against Mr. James in any way whatsoever?

24 **Juror Jackson:** No. No.

25 **The Court:** Would you be able, at the end of the trial,

1 to take all the evidence and the law that I charge you at
2 that time and return a fair and impartial verdict?

3 **Juror Jackson:** Yes, sir.

4 **The Court:** Okay. Thank you.

5 **Juror Jackson:** Okay.

6 (Juror Jackson leaves the courtroom.)

7 **The Court:** All right. Rhames.

8 **Bailiff:** Your Honor, that's the one that's been
9 excused.

10 **The Court:** Oh, okay. Then we'll move on - I'm sorry -
11 to Singletary.

12 (Juror Singletary is brought into open court at
13 10:13 a.m.)

14 **The Court:** You can just stand right there, Ms.
15 Singletary.

16 **Juror Singletary:** Yes, sir.

17 **The Court:** I had instructed the jury not to discuss the
18 case until we reached the point in the trial when I tell you
19 to do that, but I understand the jury has been discussing the
20 testimony. So I need to ask you whether or not the
21 discussions that you've already had, would that affect your
22 ability to be fair and impartial to Mr. James at the end of
23 this trial?

24 **Juror Singletary:** No, sir.

25 **The Court:** Would you -- would that prejudice you in any

1 way against Mr. James at all?

2 **Juror Singletary:** No, sir.

3 **The Court:** Would you be able, at the end of the trial,
4 to take all the evidence that's been presented at that time,
5 apply the law and return a fair and just verdict?

6 **Juror Singletary:** Yes, sir.

7 **The Court:** Okay. Thank you.

8 **Juror Singletary:** Uh-huh.

9 (Juror Singletary leaves the courtroom.)

10 **The Court:** All right. Karen Hutchinson.

11 (Juror Hutchinson is brought into open court at
12 10:14 a.m.)

13 **The Court:** You can just stand right there. In spite of
14 my instructions to the jury not to discuss the case, I
15 understand that the jury has been discussing the case and
16 discussing the testimony of the witnesses to this point.
17 Would that discussion that's already taken place affect your
18 ability to be fair and impartial to Mr. James?

19 **Juror Hutchinson:** No, sir.

20 **The Court:** Would you be able to base your verdict on
21 the law and all the evidence that's presented during the
22 whole trial and the law as I charge it to -- when I do
23 instruct you to deliberate, would you be able to return a
24 fair and impartial verdict?

25 **Juror Hutchinson:** Yes, sir.

1 **The Court:** Has the discussion that's taken place
2 prejudiced you in any way against Mr. James?

3 **Juror Hutchinson:** No, sir.

4 **The Court:** Okay. Thank you.

5 **Juror Hutchinson:** Yes, sir.

6 (Juror Hutchinson leaves the courtroom.)

7 **The Court:** All right. Cara Nicklin.

8 (Juror Nicklin is brought into open court at 10:16 a.m.)

9 **The Court:** Good morning. You can just stand right
10 there.

11 **Juror Nicklin:** Okay.

12 **The Court:** Ms. Nicklin, even though I had instructed
13 the jury not to deliberate or discuss the case or make up
14 their own mind until you were instructed to do that at the
15 end of the trial, I understand discussions of the testimony
16 has taken place. So I need to ask whether or not the
17 discussions that have taken place at this point, would that
18 affect in any way your ability to be fair and impartial to
19 Mr. James?

20 **Juror Nicklin:** No, sir.

21 **The Court:** Would you be prejudiced against Mr. James in
22 any way whatsoever based on the discussions that have taken
23 place to this point?

24 **Juror Nicklin:** No.

25 **The Court:** Would you be able, at the end of the trial,

1 to take the evidence that exists at that time, all of the
2 evidence, apply the law as I charge it and return a fair and
3 impartial verdict?

4 **Juror Nicklin:** I will.

5 **The Court:** Okay. Thank you. I appreciate it.

6 (Juror Nicklin leaves the courtroom.)

7 **The Court:** All right. McAbee.

8 (Juror McAbee is brought into open court at 10:17 a.m.)

9 **The Court:** Good morning. You can just stand right
10 there.

11 **Juror McAbee:** Okay.

12 **The Court:** I had asked the jury not to discuss the case
13 or enter into any deliberation or factor it into their own
14 mind to try to make up any decision until we reach the end of
15 the trial, but I understand the jury has been discussing the
16 case. So I need to ask whether or not the discussions that
17 have already taken place, would that affect your ability to
18 ultimately be fair and impartial to Mr. James?

19 **Juror McAbee:** Would it affect my ability?

20 **The Court:** Yes.

21 **Juror McAbee:** No, sir, it would not.

22 **The Court:** All right. Would you be prejudiced in any
23 way against Mr. James based on the discussions that have
24 already taken place?

25 **Juror McAbee:** No, sir, I would not.

1 **The Court:** Would you be able, at the end of the trial,
2 to take the evidence that exists at that time and apply the
3 law that I charge at that time and return a fair and
4 impartial verdict?

5 **Juror McAbee:** Yes, sir, I would.

6 **The Court:** Okay. Thank you.

7 **Juror McAbee:** Thank you.

8 (Juror McAbee leaves the courtroom.)

9 **The Court:** All right. Mr. Harmon. No, Mr. Starkes
10 first.

11 (Juror Starkes is brought into open court at 10:18 a.m.)

12 **The Court:** All right. Mr. Starkes, you can just stand
13 right there. I had instructed the jury not to deliberate or
14 not to discuss the case until we reach the point in the trial
15 where I told you to do that and return a unanimous verdict,
16 but I understand there have been discussions regarding the
17 case to this point. So I need to ask you: Would the
18 discussions that you've had in the jury room or heard in the
19 jury room - I'm not saying you were a part of it - would that
20 in any way affect your ability to ultimately be fair and
21 impartial to Mr. James?

22 **Juror Starkes:** No, it wouldn't. I would give a fair --
23 a fair answer.

24 **The Court:** All right. Would what you've heard
25 prejudice you in any way against Mr. James?

1 **Juror Starkes:** No. No, sir, it wouldn't.

2 **The Court:** Okay. Would you be able, at the end of the
3 trial, to take all the evidence that's been presented and the
4 law that I charge to you and at that time consider the case
5 and return a fair and unanimous -- a fair verdict?

6 **Juror Starkes:** Yes, I can. I would.

7 **The Court:** Okay. Thank you. You can go back.

8 **Juror Starkes:** Okay.

9 (Juror Starkes leaves the courtroom.)

10 **The Court:** All right. Mr. Harmon.

11 (Juror Harmon is brought into open court at 10:20 a.m.)

12 **The Court:** Mr. Harmon, I understand the jury has been
13 discussing the case even though I had instructed you not to
14 do so until we reached the point in the trial where I
15 instruct you to jointly deliberate and return a unanimous
16 verdict. You're only the alternate, but in the event - and
17 I'm not saying only the alternate - but you are the
18 alternate, so you're not on the 12-person jury at this time.
19 But were you to end up being involved in the deliberation,
20 would the discussions that have taken place to this point
21 affect your ability to be fair and impartial to Mr. James?

22 **Juror Harmon:** No, sir.

23 **The Court:** Would it prejudice you against Mr. James in
24 any way whatsoever?

25 **Juror Harmon:** No, sir.

1 **The Court:** Would you be able to take, at the end of the
2 trial, all the facts that are existing at that time, apply
3 the law as I charge it, and return a fair and just verdict?

4 **Juror Harmon:** Yes, sir.

5 **The Court:** All right. Thank you.

6 (Juror Harmon leaves the courtroom.)

7 **The Court:** All right. Thank you. All right. Any
8 further comments we've got from the State?

9 **Ms. Meghan Walker:** I think we'll defer to them, if
10 that's okay with Your Honor.

11 **The Court:** Okay. So I take it you have no position.

12 **Ms. Meghan Walker:** Not...

13 **The Court:** Well, I mean, you do or you don't.

14 **Ms. Meghan Walker:** Well, my issue, Your Honor, is---

15 **The Court:** Not your issue. Your position. Do you have
16 a position or not?

17 **Ms. Simpson:** Beg the Court's indulgence one moment.

18 **Ms. Meghan Walker:** Your Honor, at this point we don't
19 have -- we don't have a position.

20 **The Court:** Okay. That's fine. Thank you. All right.
21 Yes, ma'am, Ms. Walker.

22 **Ms. Anastasia Walker:** Thank you, Your Honor. May it
23 please the Court? Your Honor, I think there are serious
24 concerns with this jury's ability to follow instructions.
25 They have already blatantly disregarded the order of the

1 Court to not discuss this case and not deliberate. They have
2 already been discussing this case without being instructed on
3 the law.

4 The foreman came forward and said they have been
5 discussing, as we can assume, all the testimony that they've
6 heard thus far. We are now on the fourth day of trial. I
7 understand testimony only started on Tuesday, so we can
8 assume that what's been going on to this point has already
9 been a two-day conversation.

10 Your Honor, that bell has already been rung. I don't
11 think that the jury has the ability to forget that
12 conversation and move on from here. I think that they have
13 already violated the order of the Court and their oath. I
14 have serious concerns with them being able to follow further
15 orders from this Court, especially following instructions on
16 the law at the end of this trial, and I think that it further
17 violates my client's right to a fair trial and his due
18 process rights. I have serious concerns about this jury's
19 ability to follow instructions and to give my client a fair
20 trial.

21 **The Court:** And so you're moving for a mistrial?

22 **Ms. Anastasia Walker:** I am, Your Honor.

23 **The Court:** All right. I deny the motion. I find that
24 there's not any manifest necessity. I don't believe -- the
25 case law, the Aldret case, says it is up to the party

1 alleging the premature deliberation to establish prejudice.
2 We're not alleging premature deliberation; we know there was
3 premature deliberation. But I think the prejudice factor is
4 still one that the Court must consider and the courts have
5 set forth the procedure and -- to voir dire the jurors, as I
6 have, and it says, "If practicable, tailor a cautionary
7 instruction to correct the ascertained damage."

8 When the jury reconvenes, I will have a short -- I'm not
9 going to offer a curative instruction, but I'm going to have
10 an admonition. So I determine that the deliberation was not
11 prejudicial. I have to admit I've been doing this 20 years;
12 I'm not sure I've ever knowingly had this happen. It may
13 happen 90 percent of the time, 10 percent of the time or this
14 may be the first time in history other than this case, the
15 Aldret case, that it's happened. But I feel that the goal of
16 a trial is to see that the defendant receives a fair and
17 impartial verdict by a fair and impartial jury.

18 This jury was fair and impartial, vetted, when we
19 started the trial. They did fall off the precipice to some
20 degree in not following my instructions, but they have all
21 indicated to me that that would not -- that that
22 transgression would not affect their ability to be fair and
23 impartial nor would it prejudice them against Mr. James. So
24 I deny the motion.

25 **Ms. Anastasia Walker:** And, Your Honor, may I respond

1 briefly?

2 **The Court:** Well, I'm not going to debate, but you can
3 respond. You can put whatever you want on the record.

4 **Ms. Anastasia Walker:** Thank you, Your Honor. I
5 apologize and I'll be brief. Just without further
6 information about what they were discussing, especially with
7 Mr. -- with the bailiff indicating that specifically what he
8 heard was the two prisoners, that they were discussing that
9 testimony in particular which were basically the two factual
10 witnesses that have come in against my client, I believe that
11 the concern is without more information that I can only
12 assume that they've formed opinions at this point.

13 **The Court:** Well, I approached it -- I think I said
14 this, but I approached it from the standpoint that they
15 discussed everything.

16 **Ms. Anastasia Walker:** Certainly, Your Honor.

17 **The Court:** And that would include what Mr. Tolbert
18 heard, and so I've approached it from that standpoint that
19 they discussed it inside and out and up and down and right
20 and left. So, again, I know you aren't debating me and I---

21 **Ms. Anastasia Walker:** Certainly, Your Honor.

22 **The Court:** And I always -- this goes to both sides. I
23 always want everybody to put everything they want on the
24 record.

25 **Ms. Anastasia Walker:** And I appreciate that, Your

1 Honor.

2 **The Court:** I think that's the only fair way to handle a
3 trial, so don't...

4 **Ms. Anastasia Walker:** Thank you.

5 **The Court:** All right. Let's take a short -- yes,
6 ma'am, Ms. Walker?

7 **Ms. Meghan Walker:** Your Honor, our other -- there are a
8 series of instructions that Your Honor gave them before we
9 started: Not discussing the case and also not doing any
10 outside research into the case or discussing the case with
11 anyone else. So with their failure to comply with Your
12 Honor's ruling regarding not prematurely discussing the case,
13 I'm not sure we can believe that they haven't done any
14 outside research at this point, if they have just disregarded
15 all of Your Honor's rulings regarding what they are or are
16 not allowed to do before they receive the case after Your
17 Honor charges them.

18 Further, Your Honor, the other issue that Your Honor has
19 touched on that -- they deliberated amongst themselves and
20 they deliberated with the alternate, and I know that should
21 the alternate be in a deliberation room for a brief period of
22 time, then he can be removed and they can -- then they can
23 continue on, Your Honor, but it sounds like he's been in --
24 and that's---

25 **The Court:** What relief are you requesting?

1 **Ms. Meghan Walker:** Your Honor, my concern is---

2 **The Court:** No, not the concern. I can only grant
3 relief. I can't make you feel good and, of course, you know
4 what happens if the State requests a mistrial. So I'm -- I'm
5 -- be careful what---

6 **Ms. Meghan Walker:** Your Honor, I---

7 **The Court:** Be careful what you ask for; you may get it.

8 **Ms. Meghan Walker:** No, I understand that, Your Honor.

9 **The Court:** But you can't just get up -- I'm not being
10 critical, but you can't just get up -- I mean, if you're
11 asking me to make some further inquiry, if I do---

12 **Ms. Meghan Walker:** Yes, Your Honor. That's what I'm
13 asking.

14 **The Court:** Okay. Well, what relief do you want or do
15 you want to wait and see what happens?

16 **Ms. Meghan Walker:** I would like to see what they say
17 about whether or not they've done any independent research
18 into this case or discussed this case with people outside of
19 the jury.

20 **The Court:** Well, I'm not going to do any further
21 inquiry. I'm dealing with what we know to exist and...
22 Well, it might be when they come back in I'll ask them -- a
23 broad question to all of them as we bring them back in and
24 voir dire them again because nobody asked me to do this when
25 I was bringing them in individually, so I'm not going to go

1 through that exercise again. I could have done it earlier if
2 that was a concern earlier. But I'll do cautionary remarks
3 when the jury comes in. Anything further?

4 **Ms. Meghan Walker:** Nothing from the State, Your Honor.

5 **The Court:** Anything further?

6 **Ms. Anastasia Walker:** Just very briefly, Your Honor,
7 just for record purposes, of course, that I would like to put
8 on the record that we've asked Your Honor to further inquire
9 exactly what the discussions were and I know that Your Honor
10 said that you just assumed that it was everything. I just
11 would like to put on the record that you denied that we
12 inquire further on that issue specifically.

13 **The Court:** Well, okay.

14 **Ms. Anastasia Walker:** And what was the other -- one
15 more thing. I can't remember the other issue, Your Honor.

16 **The Court:** All right. Well, we're going to take about
17 a 10-minute break because we've been at it for awhile. I'm
18 going to give the jury what I call a two-minute warning so
19 they can get refreshed so we can come in and get started. Do
20 you have the witnesses ready to go?

21 **Ms. Meghan Walker:** Yes, Your Honor. There's a witness
22 that's on the stand that's being cross-examined.

23 **The Court:** That's right. Okay. I got sidetracked. So
24 we'll get Mr. Scott back on the stand as soon as we get in
25 here. So let's take about a 10-minute break, and I'll tell

1 the jury they've got time to get refreshed.

2 (Whereupon, a short break was taken.)

3 **The Court:** For participants' planning purposes, we are
4 ordering lunch for the jury in case y'all want to have
5 y'all's office order something. I guess my mind is that
6 we're not going to have a real long lunch so we can...

7 (Pause in proceedings.)

8 **The Court:** We can get Mr. Trenton Scott to come on up
9 and be seated.

10 **Ms. Simpson:** Troy.

11 **The Court:** Okay.

12 **The Clerk:** They're ready, Your Honor.

13 **The Court:** Is the State ready?

14 **Ms. Simpson:** The State's ready.

15 **The Court:** Defense ready?

16 **Ms. Anastasia Walker:** Yes, Your Honor.

17 **The Court:** Bring in the jury.

18 (Whereupon, the jury was brought into open court at
19 10:44 a.m.)

20 **The Court:** Members of the jury panel, I'm just going to
21 remind you what I've told each of you individually and I told
22 you at the first of the trial: That there will be no further
23 discussions of the case until I instruct you to jointly
24 deliberate and return a unanimous verdict. And I instruct
25 you now to disabuse your mind of all of the discussions

1 you've had to this point.

2 I can't say we're starting on a new slate because we've
3 got testimony in the record, but as far as your discussions,
4 that's a new slate. So you're not to discuss the case
5 further and you're to just disabuse your mind of any
6 discussions that you've already had and not let that come
7 into your deliberations in any way whatsoever.

8 I also instructed you not to discuss the case with
9 anyone outside the courtroom. Don't see if there's any news
10 coverage or use any devices to receive information about the
11 trial. Has anybody had any problem with that? That is, has
12 anybody discussed the case outside the courtroom with anyone,
13 accessed any information regarding the case through any
14 electronic devices or has anyone - I don't know that there
15 was any news coverage - been exposed to any news coverage?
16 If so, I need you to raise your hand. No one raises their
17 hand.

18 All right. Mr. Troy Scott is on the stand. He's still
19 under oath, and he's subject to cross-examination by counsel
20 for Mr. James.

21 **Ms. Pinnock:** May it please the Court, Your Honor?

22 **The Court:** Yes, ma'am.

23 Cross-Examination

24 By Ms. Pinnock:

25 Q. Good morning, Mr. Scott.

1 A. Good morning.

2 Q. You said you're Trenton's older brother; right?

3 A. Yes, ma'am.

4 Q. And on the 25th it's safe to say that there was a whole
5 lot going on at your house that day.

6 A. Yes, ma'am.

7 Q. And I just want to start with when you said you heard a
8 noise and you walked around the corner and you saw your
9 brother in a fight.

10 A. Uh-huh.

11 Q. And at that point you said he was on the ground with one
12 other person; right?

13 A. Yes, ma'am.

14 Q. And Ms. Pearson was standing beside you or in front of
15 you slightly.

16 A. No.

17 Q. No? She was standing somewhere with you?

18 A. She was in the room still.

19 Q. She was in the room?

20 A. Yeah.

21 Q. Okay. When you initially came out.

22 A. Yes, ma'am.

23 Q. And there's no question: You love your brother.

24 A. Yes, ma'am.

25 Q. Y'all are fairly close, I'm guessing?

1 A. Yes, ma'am.

2 Q. And when you see him on the floor fighting, your first
3 thought is to get whoever he's fighting with off of him.

4 A. Yes, ma'am.

5 Q. And you said that it was a split-second decision and you
6 were in there.

7 A. Yes, ma'am.

8 Q. And you were trying to pull Trenton away.

9 A. Yes, ma'am.

10 Q. And he's tangled up with somebody on the ground.

11 A. Yes, ma'am.

12 Q. And you didn't ask any questions before you went down
13 there.

14 A. No, ma'am.

15 Q. You just saw what was going on. Your adrenaline you
16 said had spiked?

17 A. Yes, ma'am.

18 Q. And you were at them; right?

19 A. Yes, ma'am.

20 Q. And when you got involved, again you were trying to pull
21 him back.

22 A. Yes, ma'am.

23 Q. Right? Because that was the right thing to do.

24 A. Yeah.

25 Q. And these people were fighting inside your house.

1 A. Yes, ma'am.

2 Q. You didn't know who Maurice Roberts was.

3 A. No, ma'am.

4 Q. You just saw him tangled up on the floor with your
5 brother, so you acted.

6 A. Yes, ma'am.

7 Q. No hesitation; right?

8 A. No hesitation.

9 Q. And the way you described when the shot was fired, you
10 said that you had gotten the two people at this point who
11 were in your house to the back door; right?

12 A. Yes, ma'am.

13 Q. And at some point something went wrong and the gun went
14 off; right?

15 A. Yes, ma'am.

16 Q. Okay. And that was at the back door---

17 A. The back door, yes, ma'am.

18 Q. ---that went outside. And at some point - I believe you
19 testified to it yesterday also - somebody's arm got stuck in
20 the door when you were trying to push it closed?

21 A. Yes, ma'am.

22 Q. Okay. Now, you did give a statement to law enforcement
23 on the 25th; right?

24 A. Yes, ma'am.

25 Q. Where did they talk to you? Was that at headquarters?

1 A. Yes, ma'am.

2 Q. And when you talked to them, you wanted to give them
3 every piece of information that you could.

4 A. Yes, ma'am.

5 Q. Because you're just trying to help.

6 A. Yes, ma'am.

7 Q. Right? They're trying to figure out what happened, who
8 these people were, and you tried to give them every piece of
9 information that you possibly could.

10 A. Exactly.

11 Q. And you did.

12 A. Yes, ma'am.

13 Q. And at the end of the day you signed a statement?

14 A. Yes, ma'am.

15 Q. Telling them everything you possibly could.

16 A. Yes, ma'am.

17 Q. Describing what you observed that night.

18 A. Yes, ma'am.

19 Q. And you went back on the 26th and gave another
20 statement; right?

21 A. Yes, ma'am.

22 Q. That was with a gentleman - Mr. Williams?

23 A. Mr. Williams? I'm not sure.

24 Q. Your friend---

25 A. Oh---

1 Q. I'm sorry. William Liberty.

2 A. Yes.

3 Q. Yes, Mr. Liberty. You went back with him because you
4 had been talking to him about what happened that night.

5 A. Yes, ma'am.

6 Q. And you described to him that night the people that you
7 observed in your house.

8 A. Yes, ma'am.

9 Q. So did you call the -- did you call the investigators to
10 meet back up with them?

11 A. Yes, ma'am.

12 Q. Okay. And you told them that you and Mr. Liberty wanted
13 to come in and give some more information.

14 A. Yes, ma'am.

15 Q. And, still, you were trying to help.

16 A. Yes, ma'am.

17 Q. You were trying to locate people that you were
18 describing in your house.

19 A. Yes, ma'am.

20 Q. And on that day they showed you a photo line-up, and you
21 were asked about that yesterday.

22 A. Yes, ma'am.

23 Q. And you didn't pick anybody out of that line-up; right?

24 A. It depends. Which line-up was it?

25 Q. With a Linard Gaston?

1 A. Yeah.

2 Q. You didn't pick him out.

3 A. I didn't pick him out.

4 Q. But you also gave a statement before you did that line-
5 up; right?

6 A. Yes, sir.

7 Q. And you told Investigator Faust that Linard Gaston was
8 the one at your house because that's what you believed at the
9 time.

10 A. That's what...

11 Q. That's what you believed at the time?

12 A. Yeah.

13 Q. And that's what you told them: This is the man that was
14 in my house.

15 A. Well, I didn't tell them that was them, but I did say,
16 you know, possibly.

17 Q. Your Honor, may I approach? Do you recognize this? Do
18 you recognize this? It's two pages. It's got your signature
19 at the bottom. It's a statement you gave to Investigator
20 Faust on the 26th?

21 A. (Witness nodded head up and down.) Yeah, that looks
22 familiar.

23 Q. Okay. Just read this for me, the highlighted portion.

24 A. This part right here?

25 Q. Yes, this highlighted portion right here and then---

1 A. Are you saying---

2 Q. Read it to yourself.

3 A. Oh, okay. (The witness complies.)

4 Q. Okay. And, Mr. Scott, I'm not trying to say that you
5 were accusing somebody else, but at the time you gave this
6 statement, that's what you believed, that Linard Gaston was
7 the one in your house.

8 A. Yeah, that's the name I was told.

9 Q. Okay. Again, you were trying to help law enforcement.

10 A. Yes.

11 Q. And that night at your house, everything happened really
12 quickly?

13 A. Yes, ma'am.

14 Q. You didn't ask any questions before you tried to help
15 your brother.

16 A. Yeah. No.

17 Q. You just got in there and you tried to pull him out of
18 that fight.

19 A. Yes, ma'am.

20 **Ms. Pinnock:** Begging the Court's indulgence. Thank
21 you, Mr. Scott. I have nothing further, Your Honor.

22 **The Court:** Redirect?

23 Redirect Examination

24 By Ms. Meghan Walker:

25 Q. The name -- was it Linard? What's the name?

1 A. I'm not sure.

2 Q. The person that you talk about, this Linard person,
3 where did you get that name from?

4 A. It was the name that my friend William gave me.

5 Q. And once you saw a picture of Linard, was he the person
6 who came into your house?

7 A. No, ma'am.

8 Q. Who came into your house that night?

9 A. That Maurice and Demetrice.

10 Q. And who was the person who shot your little brother?

11 A. In the blue right there.

12 **Ms. Meghan Walker:** Thank you, sir. I don't have any
13 further questions.

14 **The Court:** Recross?

15 **Ms. Pinnock:** No, sir, Your Honor.

16 **The Court:** You can step down. We appreciate your time.
17 Thank you. Call your next witness.

18 **Ms. Meghan Walker:** The State calls Dr. Amy Durso.

19 Dr. Amy Durso, after being duly sworn, testified as
20 follows:

21 **The Clerk:** Please have a seat there, ma'am. State your
22 full name for the record and please spell your last.

23 **The Witness:** My name is Amy Durso. D-U-R-S-O.
24
25

Direct Examination

By Ms. Meghan Walker:

Q. Good morning, Dr. Durso.

A. Good morning.

Q. Can you tell me where you're currently employed?

A. I'm employed at Professional Pathology Services.

Q. What is it that you do over at Professional Pathology Services?

A. My primary goal is as a forensic pathologist.

Q. And can you tell this jury what exactly a forensic pathologist is?

A. So a forensic pathologist is a medical doctor with training specifically in the field of forensic pathology which basically includes examinations of bodies after death.

Q. And how long have you been a forensic pathologist?

A. I finished my training a little over four years ago.

Q. And the training that you just spoke of, can you tell me a little bit about your education and background in forensic pathology?

A. So I received a Bachelor's Degree in Psychology at Emory University. After college, I went to the University of North Carolina in Chapel Hill School of Medicine where I got my four-year M.D. degree. After completing medical school, I went to Wake Forest University where I completed four years of training in general pathology, and then I stayed there for

1 an additional year of training specifically in the field of
2 forensic pathology.

3 Q. And have you testified as an expert before in the field
4 of forensic pathology?

5 A. Yes.

6 Q. How many times?

7 A. I think around nine or ten times now.

8 **Ms. Meghan Walker:** Your Honor, at this point the State
9 offers Dr. Durso as an expert in the field of forensic
10 pathology.

11 **Ms. Pinnock:** No objection, Your Honor.

12 **The Court:** All right. I find she's qualified.

13 By Ms. Meghan Walker:

14 Q. When you, I guess, first examine the people that are
15 brought to you, can you please tell the jury a little bit
16 about that process?

17 A. Sure. So first we make sure we have the right body. We
18 look for the identifying marks on the bags that usually is
19 put there by the coroner's office. After opening the bag,
20 usually the coroner or whoever, the investigating officers,
21 will take some pictures and then we'll start what we call our
22 external examination. So that includes looking at anything
23 from hair color, eye color, body length, body weight, looking
24 at any identifying marks, scars, and also looking for any
25 external signs of injuries or disease.

1 Q. And once you do the external examination, what do you do
2 after that?

3 A. So then we start our internal examination. So the first
4 thing we do is we make some large incisions over the body.
5 It starts at the shoulders and comes all the way down to the
6 sternum and then it goes straight down, so it's kind of a
7 Y-shaped incision. We can pull the skin and muscle back
8 here. Then we can remove the front of the rib cage, and at
9 that point we can basically see all of the major organs in
10 the body. These are removed, and one by one we'll weigh
11 them, examine them, and we also do the same thing for the
12 brain. We're able to remove the top of the skull and remove
13 the brain to examine that as well.

14 Q. And this process that you've just described, is it the
15 process that you use in all the cases that come before you?

16 A. Yes.

17 Q. I want to turn your attention back to January of last
18 year and ask you if you had the occasion to examine a Brandon
19 Jones.

20 A. Yes, I did that autopsy on January 26th of 2013.

21 Q. 26th?

22 A. Was the date of the autopsy I have.

23 Q. And where was that autopsy performed?

24 A. At Palmetto Health Richland Hospital in the morgue
25 there.

1 Q. When you were first presented with the body of Mr.
2 Jones, can you tell me what you saw or what you observed at
3 that point?

4 A. Right. He had multiple gunshot wounds that were obvious
5 from the external examination. He had also undergone some
6 emergency medical intervention with some large incisions that
7 were made by surgeons in an attempt to save his life.

8 Q. And how old was Mr. Jones at the time of his death?

9 A. He was 22 years old.

10 Q. Did you document the injuries that you saw?

11 A. I did.

12 Q. Let me show you, Dr. Durso, what has been marked as
13 State's Exhibit Number 206 and ask you if you recognize this.

14 A. I do.

15 Q. And how do you recognize this?

16 A. This is the -- the diagram that I made at the time of
17 the autopsy.

18 **Ms. Meghan Walker:** Your Honor, at this point the State
19 seeks to admit Exhibit Number 206.

20 **Ms. Pinnock:** Without objection, Your Honor.

21 **The Court:** In without objection.

22 (State's Exhibit 206 was received in evidence.)

23 **Ms. Meghan Walker:** Your Honor, may the witness step
24 down?

25 **The Court:** Yes, ma'am.

1 By Ms. Meghan Walker:

2 Q. If you'll stand on this side and speak back towards the
3 court reporter. Okay, Dr. Durso?

4 A. Okay.

5 Q. Okay. Now, you said you documented the injuries on this
6 diagram?

7 A. Yes.

8 Q. Can you explain these to the jury, please?

9 A. Yes. So I have each of my gunshot wounds listed. There
10 are a total of five entrance wounds and five exit wounds so
11 for a total of five exiting gunshot wounds that I noted.
12 I'll just go through them in the order that I documented them
13 in. I don't -- this isn't necessarily the order that they
14 occurred in, but it's the order that I documented them in.

15 So the first -- the entrance wound is here on the right
16 back. I have it labeled as Gunshot Wound H. So this entered
17 the back up here. It went through the ribcage, and then it
18 went through the right lower lobe of the lung. So it came in
19 back here along the right side, goes through the ribcage, the
20 right lung---

21 Q. Kind of like this?

22 A. Uh-huh. And then it actually exits through what is
23 labeled Gunshot Wound B. which is over here almost kind of in
24 the armpit area as you can see there. So it's going from
25 left to right is, back to front, and slightly downwards.

1 Q. Okay. So you were able to distinguish the entrance
2 wound to the back with the exit wound to the front.

3 A. Yes.

4 Q. Can you tell the jury the difference between an entrance
5 wound and an exit wound and how you are going to be able to
6 determine which is which?

7 A. All right. So when a bullet enters the body, it usually
8 comes out of the barrel of the gun. It's going to be
9 spinning. And as it comes in through the skin - it doesn't
10 matter where it is - it kind of pushes the skin just for a
11 split second before going in, and it causes a little abrasion
12 on the skin around the entrance wound, what we call an
13 abrasion collar. So that's kind of the hallmark of an
14 entrance wound.

15 Now, once the bullet enters the body and starts hitting
16 things, it doesn't necessarily keep going nose first. It
17 might start tumbling. And when it comes out, it actually
18 pushes the skin outward so we're not going to have that
19 abrasion collar typically, and typically it's not as nice and
20 round as an entrance wound, so we can tell the difference.
21 And there are some occasions where the exit wound might have
22 a little bit of an abrasion if the skin around the exit wound
23 is up against a hard object or another part of the body and
24 we call this a shored exit wound. But typically by following
25 the projectile path and looking at the entrance and exit,

1 it's usually very easy to distinguish which is the entrance
2 wound and which is the exit wound.

3 Q. And how are you able to follow the path of the
4 projectile?

5 A. So we document all of the wounds on the outside of the
6 body first, and then when we open up the body, before we
7 remove the organs we actually have plastic probes, these long
8 plastic sticks basically, and we start with the entrance
9 wound and work our way through and trace until we get to the
10 exit wound, documenting everything that the bullet passes
11 through.

12 Q. And so there is one gunshot wound to the back there.

13 A. Yes, to the back that goes through the ribcage through
14 the right lung and exits here on this side.

15 Q. Okay. Continue, Dr. Durso, please.

16 A. Okay. So the second gunshot wound I have documented is
17 here to the left back. I have labeled it as Gunshot Wound G.

18 Q. Okay.

19 A. And so this is on the left back, and then this goes
20 again through the ribcage and it goes through the left lower
21 lobe of the lung, so the other lung on the opposite side. It
22 then actually goes through the liver which is up here in the
23 right side of the body, so it's crossed the midline now, and
24 it also goes through the stomach which is sitting right kind
25 of in front of the liver and then it exits through what I

1 have labeled Gunshot Wound I.

2 Q. So kind of an entrance here and an exit here?

3 A. Right, on the opposite side of the body. So, again,
4 this one is also going left to right. It's also going back
5 to front and it's also going downwards like the last one was.

6 Q. Does the position -- does the fact that the pathway is
7 downwards, does that indicate anything to you?

8 A. Well, it means that either the shooter was above him or
9 he was bending downwards---

10 Q. Okay.

11 A. ---from the shooter.

12 Q. So the gun was above the victim.

13 A. Right, or the victim was, you know, bending in a way...
14 You know, once people get shot the way my diagram---

15 Q. Right.

16 A. So I'm not -- it's hard to tell exactly which position
17 the victim was in.

18 Q. Let me ask you this, Dr. Durso. The positioning of the
19 pathway of the projectiles, is that consistent with someone
20 on the ground and a shooter standing over them?

21 A. Yes.

22 Q. Okay. Continue.

23 A. Let's see. The third gunshot wound I'm going to
24 describe is -- I have Gunshot Wound C. as the entrance wound.
25 It's over here on the left hip, and it really just passes

1 through soft tissue before coming out the back of the left
2 upper leg kind of towards the midline here in what is labeled
3 Gunshot Wound F.

4 Q. Okay.

5 A. So this one is going again from left to right slightly
6 downward, and this one is actually going a little bit from
7 front to back.

8 Q. And the next gunshot wound.

9 A. The next gunshot wound I have labeled here as Gunshot
10 Wound A., and this is a very superficial wound. It really
11 only went through the neck soft tissue. So it kind of
12 entered. It was at such an angle that it basically just
13 exited right away. So it didn't hit any vital structures
14 meaning it didn't hit any major blood vessels. It really
15 didn't go much below the skin surface before it exits again.

16 And the last gunshot wound I have documented is here on
17 the right arm. The entrance wound is labeled Gunshot Wound
18 E., and that is on the back of the right lower arm and it
19 actually exits through what I have labeled as Gunshot Wound
20 D. which is here on the front of the arm kind of near the
21 midline, so right around here.

22 Q. Okay.

23 A. So it goes in down here and it comes out up here, and
24 the only major structure it really hit other than the
25 musculature there: It actually hit and fractured one of

1 these arm bones, this arm bone here called the ulna.

2 Q. Let me ask you about that gunshot wound. If a person --
3 let's say they're down on the ground and they're doing
4 something like that. Is that gunshot wound consistent
5 with---

6 A. It would have to be like that.

7 Q. Like this?

8 A. Uh-huh.

9 Q. Okay. And are those all the gunshot wounds that you
10 were able to---

11 A. Yes.

12 Q. ---detect on this -- on this victim?

13 A. And there were other superficial injuries here on the
14 forehead here where these red abrasions -- here on the
15 forehead and here just below the knee that are consistent
16 with someone maybe falling around the time of death and
17 striking their head and knee, but there were no underlying
18 injuries, no fractures or anything to the brain or to the leg
19 here.

20 Q. And what does N.G. on State's Exhibit 206 indicate?

21 A. So these are some of the medical interventions that he
22 underwent. So he has a nasogastric tube which is a nose -- a
23 tube running from the nose down to the stomach to kind of
24 suction any fluid out of the stomach while they were doing
25 the emergency surgery so he didn't vomit and aspirate.

1 There is also an endotracheal tube going down his
2 throat, trying to breathe for him. There is a very large
3 incision. It's called a thoracotomy and it went all the way
4 across the chest. The surgeons basically cut from here all
5 the way around in an effort to stop some of the bleeding, and
6 they also opened up his abdomen. As you can see here, it was
7 still open at the time of autopsy, this kind of elliptical-
8 looking incision here. And, again, they were going in trying
9 to see where the bleeding was coming from -- coming from and
10 trying to stop the bleeding.

11 Q. Okay. You can have a seat, Dr. Durso. Thank you. With
12 the type of injuries that you just described, how long could
13 someone survive those injuries?

14 A. With the lung and liver injuries, maybe 10, 20 minutes,
15 but they would be in significant distress.

16 Q. And with the autopsy that you performed, were you able
17 to come to a cause of death for Brandon Jones?

18 A. Yes. I gave the cause of death as multiple gunshot
19 wounds to the torso and extremities.

20 Q. And is that to a reasonable degree of medical certainty?

21 A. Yes.

22 **Ms. Meghan Walker:** Thank you, Dr. Durso. I don't have
23 any further questions for you.

24 **Ms. Pinnock:** Your Honor, I don't have any questions for
25 Dr. Durso.

1 **The Court:** Thank you. You can be excused.

2 **The Witness:** Thank you.

3 **The Court:** We appreciate your time. Thank you. Call
4 your next time.

5 **Ms. Simpson:** The State calls Sergeant Scott Faust.

6 S. Scott Faust, after being duly sworn, testified
7 as follows?

8 **The Clerk:** Please have a seat there, sir. State your
9 full name for the record and please spell your last.

10 **The Witness:** Steven Scott Faust. F-A-U-S-T.

11 Direct Examination

12 By Ms. Simpson:

13 Q. Sergeant Faust, where are you employed?

14 A. The Richland County Sheriff's Department.

15 Q. And how long have you been with the sheriff's
16 department?

17 A. Nineteen years September.

18 Q. And what is your position there?

19 A. I'm currently a supervisor over the Special Victims Unit
20 and investigations.

21 Q. And as a supervisor over the Special Victims Unit, tell
22 the jury a little bit about some of your duties and what that
23 entails.

24 A. I currently work what is criminal sexual conduct, also
25 known as rape. It involves adults, children. I deal with

1 incorrigible children, runaways, and missing persons. I'm
2 also -- sometimes it's every six weeks, seven weeks, eight
3 weeks -- currently right now it's eight weeks where I'm on
4 call as a supervisor. We have a team that handles from 3:30
5 in the afternoon 'til approximately 7:30 in the morning and
6 the weekends from 3:30 Friday in the afternoon until Monday
7 morning about 7. We have a team, sometimes three, four, five
8 investigators, to handle calls after hours.

9 Q. So even though you primarily work in a very specialized
10 unit as a supervisor, you have experience and actively
11 participate in other type of violent crime---

12 A. That's correct.

13 Q. Turning your attention to January of 2013, did you
14 become involved in this case?

15 A. I did.

16 Q. Can you tell the jury how that occurred?

17 A. At approximately 11:30 on January 25th, 2013, I was
18 called by our desk sergeant where the calls filter through
19 and was notified that we had a situation of what's commonly
20 referred to as a home invasion at [REDACTED] Williamsburg Drive in
21 which some shots were fired and some people were hit, one
22 possibly critically injured.

23 Q. Okay. And when you received that call as a supervisor,
24 what was your primary role with respect to other
25 investigators and assignments?

1 A. At that point I'm the supervisor. I basically start
2 figuring out where we need to staff people. In this
3 situation I had investigators that were actually in the area
4 and I had a couple that were in the building with me at
5 headquarters at 5623 Two Notch Road. And as information
6 comes in, witnesses, suspects, victims, I start assigning
7 people to go out and handle what needs to be handled such as
8 taking statements, interviewing people, and following up on
9 leads.

10 Q. And you had some information that the victim -- there
11 were multiple victims critically injured, possibly critically
12 injured; correct?

13 A. That's correct.

14 Q. As a result of that information, what did you do?

15 A. I had Investigator Bass near the scene helping out some
16 deputies on an unrelated matter, and they actually heard some
17 of the shots fired in this situation. I had -- Investigator
18 Boland started to head to the scene, and Investigator Hinson,
19 I sent him to the hospital to assess any of the victims that
20 were shot, their situation, and to get feedback on their
21 status.

22 Q. Okay. And without telling me all the information that
23 you obtained and what was said, did you gain some information
24 about this case with respect to what happened from one of the
25 victims?

1 A. Yes.

2 Q. Can you tell the jury about that?

3 A. At approximately -- I want to -- I have the time -- 2:15
4 on the 26th which is a few hours later, I was informed that
5 one of the victims, Brandon Jones, that was shot was
6 pronounced dead.

7 Q. Okay. And did you also learn some information from some
8 of the witnesses who were not injured and still present at
9 the scene?

10 A. That's correct. We had two witnesses, Troy Scott and
11 Cari Pearson, and they agreed to come speak to us in a
12 controlled environment where we can take a typed statement
13 from them, away from the scene, and it's a little bit more
14 comfortable and they agreed to come up to headquarters. So
15 we took statements from them.

16 Q. And after speaking with them, did you all develop a
17 potential subject that may be involved in this case---

18 A. It---

19 Q. ---known to them?

20 A. Yes, a person by the name of Jonathan, also known as
21 Jay-School.

22 Q. And those were -- were those the only identifying
23 factors that you had at that point?

24 A. At that particular time, as the night went on, we were
25 able to gather some other information.

1 Q. And were you ultimately able to determine the actual
2 identity of Jonathan or Jay-School?

3 A. We were, based off of Ms. Pearson. She was friends with
4 him on Facebook. She was -- I initially thought that he may
5 have de-friended her but found him under the name of Cali
6 Gii. It was spelled C-A-L-I. The second word was G-I-I. And
7 based off of that, one of our intel investigators, Linda
8 Houke (phonetic), was able to get a date of birth that was on
9 his Facebook page and positively identify him as Vincent
10 Phillip Nelson, Jr.

11 Q. Okay. And once he was developed as a suspect, what was
12 done?

13 A. We put him in photo line-ups to be identified.

14 Q. Okay. And were those photo line-ups actually shown to
15 several different individuals?

16 A. Yes.

17 Q. Who were those shown to?

18 A. I know I initially showed one to Troy and participated
19 in Ms. Pearson's. I was not there for her statement but I
20 was for the photo line-up.

21 Q. And did they, in fact, pick someone out of that photo
22 line-up?

23 A. They did. Mr. Nelson.

24 Q. And did they identify him as being someone that they
25 knew by name and sight?

1 A. Yes, that Troy had stated he had known him for
2 approximately a year and a half, had him over to his house,
3 actually gave him shelter, food and -- when he was in times
4 of need. So they had intimate knowledge of him.

5 Q. Okay. And Mr. Nelson was one of the few people you had
6 the identity of that was actually present at the scene;
7 correct?

8 A. He was the only person currently that we had positively
9 identified.

10 Q. Did you also receive some information -- and backing up
11 just a bit. As the supervisor, do you receive pretty much
12 every call that comes in about this case or a number of calls
13 regarding tips or stops, things of that nature?

14 A. I did. We -- typically in a situation like this, a
15 major event, we have people that will call in information,
16 sometimes commonly known or they will go through
17 Crimestoppers, but in this situation they were calling the
18 sheriff's department directly and -- but the -- are you
19 talking about the traffic stop?

20 Q. Yes.

21 A. In this situation the deputies out on the scene, when
22 they heard the shots, saw a car speeding away. So
23 immediately, you know, at that time of night, gunshots, car
24 speeding away, it was brought to their attention that, you
25 know, they wanted to stop this vehicle to see what was going

1 on. And Investigator, canine unit -- he's a former
2 investigator but Abraham stopped the vehicle and in this
3 vehicle there were some people that semi matched the possible
4 clothing. Also, again, when we early -- earlier in the
5 investigation we found that a guy named Jonathan may have
6 been involved, Jay-School. One person in this car was named
7 Jonathan.

8 So there was some things there that we felt that needed
9 to be looked into to either see if these people were involved
10 or could be ruled out, but there was also a weapon found in
11 the vehicle which is something else that when you -- you
12 know, we just had shooting and there's a weapon in the
13 vehicle, so we looked into this matter.

14 Q. And when looking into this matter, you actually -- did
15 you confirm the identity of all three individuals?

16 A. We did.

17 Q. And were they placed in line-ups as well?

18 A. We did. Two out of three I put in photo line-ups, and
19 then the person I believe that was going by Jonathan or that
20 was named Jonathan, I wanted to rule him out. I just showed
21 a direct picture of him, but there were reasons why I did
22 that versus a photo line-up.

23 Q. And I'm going to show you what's been marked as State's
24 Exhibit 3, 4, and 5 that's already into evidence. Are those
25 the line-ups that were shown to Mr. Scott?

1 A. These are the originals with my handwriting on them.

2 Q. And with respect to Jay-School and Jonathan, you said
3 you showed him an individual picture; correct?

4 A. This one on -- this person's name is Jonathan Sterling.

5 Q. And Mr. Scott indicated that he knew the person he was
6 referring to as Jonathan.

7 A. That is correct.

8 Q. And did he identify anybody out of those line-ups?

9 A. No. This person, Jonathan Sterling, he said was not
10 Jay-School, the person that he knew that was -- had been to
11 his house, that he had fed, let sleep in his house and was
12 not the person that was at his house on January the 25th of
13 2013. Neither were the other two people in the vehicle that
14 was stopped.

15 Q. Out of an abundance of caution, did a crime scene
16 investigator also respond to that traffic stop?

17 A. They did.

18 Q. And what did they do?

19 A. If I'm not mistaken, they did what's called G.P.R., gun
20 powder residue, where they check hands for -- if you shoot a
21 gun, some guns will flick gun powder -- will kick back gun
22 powder, and I believe all three of them voluntarily -- I was
23 not present, but they volunteered and submitted to this test.

24 Q. And a weapon was actually located in that car as well;
25 correct?

1 A. That's correct, a .380.

2 Q. And what about the caliber of that weapon became
3 significant in your investigation with respect to the murder?

4 A. Knowing that this gun was a .380, I asked some of the
5 lab units and our personnel that was on the scene if they
6 located any shell casings. In this case they did. I asked,
7 you know, without touching it, if they could get down and
8 look at the shell casing, and they discovered that it was a
9 .45 caliber shell casing. Obviously a .45 shell casing would
10 not come out of a .380, so we ruled this .380 out as being
11 involved with the shell casings at the scene.

12 Q. Okay. And so were you actually able to eliminate these
13 three individuals as being involved in the incident at
14 Williamsburg Drive?

15 A. We eliminated them as suspects.

16 Q. In an additional investigation, did that corroborate
17 their elimination as well?

18 A. That is correct.

19 Q. After identifying Vincent Nelson to be one of the
20 possible subjects, with respect to figuring out who else may
21 have been involved, what did you all do?

22 A. As the investigation continued on Saturday, the day
23 after that we had a person come forward that was not a
24 witness or a victim -- come forward with some information
25 after speaking to some of the parties that were involved, and

1 they gave us a name of somebody they believe could possibly
2 be one of the other three suspects, not named Jonathan or
3 Jay-School or Mr. Nelson.

4 Q. And what was the name of the individual that contacted
5 you with the information?

6 A. Mr. William Liberty.

7 Q. And did he, in fact, come and speak with you?

8 A. He did. He supplied us a statement and gave us some
9 information, verbal information.

10 Q. And did you, in fact, learn that William Liberty was a
11 friend of Troy Scott?

12 A. That is correct.

13 Q. And was he actually present at the scene when this
14 incident occurred?

15 A. Mr. Liberty was not present. He was not at the
16 Williamsburg address the night of the shooting.

17 Q. But he did give you the name of an individual he
18 believed might be one of the suspects, based on the physical
19 description that you had.

20 A. He did.

21 Q. And what name did he give you?

22 A. Linard Gaston. And there was some confusion on the
23 spelling of Linard. We would later learn that it's actually
24 L-I-N-A-R-D versus Leonard.

25 Q. Okay. And once you had developed the identity of Linard

1 Gaston, what did you do with that information?

2 A. We put him in a photo line-up. We learned a little bit
3 about him and based off the totality of William's confidence
4 that this guy may have been involved, based of off what he
5 had been told, we put him in a photo line-up and showed it to
6 Troy.

7 Q. Okay. And prior to that, had you also -- prior to
8 showing Mr. Scott the line-up, had he also given a statement
9 regarding Mr. Gaston?

10 A. I believe William -- I don't -- I didn't take the
11 statement from Mr. Liberty, but we -- I know with Troy, I
12 showed Troy a photo line-up before I took a statement from
13 him, but I do believe we did show William a photo line-up,
14 too.

15 Q. Okay. And actually, as noted in your report, I believe
16 you took the statement before showing him the line-up.

17 A. On Mr. Liberty.

18 Q. On Mr. Scott.

19 A. I believe the times -- Mr. Scott was after that.

20 Q. Okay. And did Mr. Scott actually identify Mr. Gaston as
21 being the person?

22 A. Mr. Gaston (verbatim) identified a person in the photo
23 line-up as being Linard Gaston or somebody that looked like
24 Linard.

25 Q. So backing up, you just said Mr. Gaston identified. So

1 Mr. Scott identified Mr. Gaston as what?

2 A. Troy Scott identified a photo line-up that had Linard
3 Gaston in it as being Linard or looking like Linard.

4 Q. Okay. But -- and then did he actually say whether or
5 not Linard was the person involved in the shooting?

6 A. And my question to him was: Was this the person at [REDACTED]
7 Williamsburg Drive on January 25th, 2013, that shot you or
8 shot at you or shot your brother or shot anybody there? Was
9 he there that night? And he stated, no, this is definitely
10 not the person that was -- he was fighting with nor did he
11 see this individual at his residence on the 25th of January.

12 Q. Okay. And then did you have further involvement with
13 respect to a non - I apologize for my pronunciation - an
14 anonymous tip that was received?

15 A. I did.

16 Q. Tell the jury about that.

17 A. The -- on the 28th of January, if I'm not mistaken, this
18 was a Monday, I received a call from one of our
19 investigators, Ty Jordan. He stated that he had received
20 some information from the Housing Authority, an officer named
21 Investigator Crews, and asked me to call him, that he may
22 have some information in reference to this case. So I did,
23 and he stated that he had received a tip from an individual
24 that there may be some evidence at Marlboro Street, the
25 apartment complex known as Hammond Village, and he stated

1 that somebody said a person by the name of J.G. and Maurice
2 Roberts put a shirt and some items behind Building 8 and that
3 they and the City of Columbia Police Department were out
4 there holding evidence for us to come look at and determine
5 whether or not it may have been involved.

6 Q. And did you actually respond to that scene, along with a
7 crime scene investigator as well?

8 A. I initially responded, and based off of what I found, I
9 felt that our lab needed to come out and respond and collect
10 it.

11 Q. I'm going to show you what's been marked as State's 208,
12 209, 210, 211 through 222.

13 **Ms. Anastasia Walker:** Without objection, Your Honor.

14 **The Court:** In without objection.

15 (State's Exhibits 208 through 222 were received in
16 evidence.)

17 By Ms. Simpson:

18 Q. All right. I'm going to show you what's in evidence as
19 State's 208 through 222. Can you take a look at those and
20 tell me was that what you observed when you arrived at the
21 apartments or after the crime scene investigator had
22 processed...

23 A. Yes, I actually arrived during the day when it was light
24 out, but this appears to be about right after dusk, not when
25 I recall when him taking the pictures, but these are accurate

1 of what I saw.

2 Q. And the location of this, the Hammond Village, is that
3 an apartment complex?

4 A. It is.

5 Q. I'm going to direct your attention to State's 209.

6 A. Yes.

7 Q. What is the building here?

8 A. That's the Building 8.

9 Q. Building 8?

10 A. And if you go to the side of that building, straight
11 back and to the left, maybe 20, 30 feet, that's where the
12 items were found.

13 Q. And I guess this is in State's 210, the back?

14 A. That's correct.

15 Q. That's the pathway you're referring to?

16 A. On the right of that picture where it looks like an A.C.
17 unit. It might be something to do with SCE&G. That's --
18 that's the location where we found the majority of the items.

19 Q. And I'm going to try to gather a picture... In State's
20 217, there's kind of a fence area. Can you describe for the
21 jury what that is?

22 A. It's just basically a wall I guess for erosion, and
23 that's the little electricity box that I was referring to.
24 That is actually -- that wooded area is three or four feet
25 behind that electrical box.

1 Q. Okay. And these items were kind of I guess just
2 discarded and strewn behind. I'm going to direct your
3 attention to 215 and State's 219.

4 A. That's correct.

5 Q. And exactly what were those items that were located?

6 A. There were multiple gray-in-color rubber gloves. There
7 was a blue-in-color baseball cap with a New York Yankees
8 emblem, and a black-in-color shirt.

9 Q. I'm going to show you what's been marked as State's
10 Exhibit 36. Are these the items that were collected by
11 Investigator Schroder? I believe the gloves have already
12 been---

13 A. Yes.

14 Q. ---separately...

15 A. This looks like the black shirt and the hat.

16 Q. And once collected, those items would have been properly
17 sealed and packaged by Investigator Schroder and placed into
18 evidence.

19 A. That's correct. That's one of the reasons why I called
20 him. They've got the equipment, the little markers, the
21 photography and... To eliminate the chain of custody, we
22 just allow him to collect them.

23 Q. And in addition to going out there and finding the
24 gloves and the hat, did you develop another possible known
25 associate of Mr. Nelson besides Maurice Roberts, without

1 going into what was said to you?

2 A. I did.

3 Q. Who was that?

4 A. Demetrice Roosevelt.

5 Q. All right. And was that actually the extent of your
6 involvement with respect to the investigation?

7 A. At this point. Again, when I -- when we take -- when we
8 start on the weekend, we usually start with a murder
9 investigation or any type of major event and we run with it
10 up until Monday when the 8-to-5 investigators come in and
11 then they pick up and run with it. So basically from the
12 start, 11:30 Friday night, there's somebody working that
13 case. You're going through Saturday, Saturday night, Sunday,
14 Sunday night, and then Monday morning when they come in and
15 they pick it up and run with it.

16 Monday evening when I got that call, that was the extent
17 of my involvement because I continued on evening shift. So
18 they already assigned investigators, and one was off on my
19 shift. They pulled him off since he started with it and then
20 assigned another investigator, and they have a team and they
21 just go work it from there while I continue on with the
22 evening shift duties.

23 Q. And all the information that you gathered during your
24 investigation, that's provided to the new investigators on
25 the case.

1 A. That is correct.

2 **Ms. Simpson:** Thank you.

3 **Ms. Anastasia Walker:** May it please the Court, Your
4 Honor?

5 **The Court:** Yes, ma'am.

6 Cross-Examination

7 By Ms. Anastasia Walker:

8 Q. Good morning, Sergeant Faust.

9 A. Good morning.

10 Q. Just briefly, you indicated that you spoke with Troy
11 Scott on the 26th; right?

12 A. The -- I don't believe he got there before midnight, but
13 I spoke to him late Friday night, technically probably early
14 Saturday morning, and then later on that afternoon Saturday.

15 Q. When he---

16 **The Court:** We've got a little hum coming through, if
17 anybody can... All right. Just go ahead. I don't know how
18 -- there's a little hum. Go ahead.

19 **The Witness:** I've heard it.

20 By Ms. Anastasia Walker:

21 Q. I'm talking about the second incident when Mr. Liberty
22 came with Mr. Scott.

23 A. That's correct. I did speak to him Saturday afternoon.

24 Q. Okay. And in that -- in that occasion you said that you
25 showed him the photo line-up with Linard Gaston in it first

1 before you took the statement from him.

2 A. With Troy, that's correct.

3 Q. Yes. And in that photo line-up he -- he didn't pick
4 anybody.

5 A. He identified the person that was being described as
6 Linard.

7 **The Court:** Let's see if we can stop and figure that
8 out.

9 **The Clerk:** Let me get Mr. Truitt. He's our sound tech.

10 **The Witness:** I can speak up louder, if necessary. I
11 can speak up louder and stay away from it.

12 **Ms. Anastasia Walker:** Are you talking about the echo?

13 **The Court:** Yes.

14 **Ms. Anastasia Walker:** I hear it.

15 **The Witness:** I did speak to him on Saturday.

16 By Ms. Anastasia Walker:

17 Q. And when he looked at the photo line-up, you said that's
18 -- he said that's Linard Gaston but not the person that was
19 at my house.

20 A. That is correct.

21 Q. But then he gave a statement subsequent to that.

22 A. That is correct.

23 Q. And in that statement he said, "Linard Gaston shot my
24 brother."

25 A. That is correct.

1 **Ms. Anastasia Walker:** Okay. Beg the Court's
2 indulgence. Thank you, Your Honor. I have no further
3 questions you.

4 **Ms. Simpson:** Brief redirect.

5 Redirect Examination

6 By Ms. Simpson:

7 Q. Linard Gaston -- you just stated -- I believe counsel
8 ended on a question of: He stated that Linard Gaston was the
9 person who shot his brother, but earlier you stated that when
10 the line-up -- he confirmed that it was not the person that
11 shot his brother.

12 A. That is correct. What -- what had -- what appeared to
13 happen is Liberty or, yeah, William Liberty had supplied a
14 name, and it appeared to me that Troy Scott had got that name
15 as the person who did the shooting. However, when he looked
16 at the photo line-up of Linard Gaston, he clearly said, "This
17 is not the guy who shot my brother that we were fighting
18 with." It was my opinion that he got this name in his mind
19 that that was the shooter and that's why he said that Linard
20 Gaston is the name. I believe that was supplied to him by
21 William Liberty, but it clearly shown when he looked at the
22 photo line-up that that's William (verbatim) Gaston, but
23 that's not the person that shot me. He went on to supply a
24 statement that that was it. I believe it was confusion on
25 his part, and that was influenced by William Liberty. But it

1 was later -- our investigation revealed that Linard Gaston
2 was clearly not involved.

3 **Ms. Simpson:** Okay. Thank you, Sergeant Faust.

4 **Ms. Anastasia Walker:** Your Honor, brief recross?

5 Recross Examination

6 By Ms. Anastasia Walker:

7 Q. Linard Gaston turned out not to be involved; correct?

8 A. That is correct.

9 **Ms. Anastasia Walker:** Thank you, Your Honor.

10 **The Court:** Thank you. You can step down and be
11 excused. We appreciate your time.

12 **The Witness:** Sure.

13 **The Court:** Call your next witness.

14 **Ms. Meghan Walker:** Your Honor, the State calls Sergeant
15 Kevin Isenhoward.

16 **Ms. Simpson:** Oh, briefly, Your Honor, may we approach?
17 (Whereupon, a bench conference was held.)

18 **The Court:** We're going to take care of a procedural
19 matter, so we'll let you go and have a short refresher break
20 in the jury room.

21 (Whereupon, the jury was excused from open court at
22 11:36 a.m.)

23 **The Court:** Ms. Simpson, what's the issue?

24 **Ms. Simpson:** Thank you, Your Honor. May it please the
25 Court? At this time the State -- we'd like to make a motion

1 out of an abundance of caution, too, and address several
2 issues that may come up through the course of the remaining
3 witnesses' testimony, specifically with respect to the
4 defendant's statements made to law enforcement. And I
5 believe during pretrial we learned that there were several
6 statements through the Denno hearing to include initial
7 denials as well as three written statements by the defendant.

8 We have no intention of going into those statements, as
9 they are self-serving as well, and we would ask that or make
10 a motion that the defense be precluded from going into or
11 presenting any information from his statements or that he
12 even gave statements to law enforcement because those
13 statements are, in fact, both self-serving. And,
14 additionally, Your Honor, that together with -- based on
15 counsel's opening statement, defense would essentially be
16 attempting to back-door in self-serving hearsay without
17 placing the client on the stand and making him subject to
18 cross-examination.

19 **The Court:** What's the defense position?

20 **Ms. Pinnock:** Your Honor, I don't know if it would be
21 proper to preclude us from asking the investigators if they
22 took a statement from our client. Their decision not to
23 introduce his statements into evidence, that's a strategy
24 that they have, and we have a right to present our defense.
25 We would obviously not be asking for hearsay testimony.

1 If our client decides to take the stand, he will take
2 the stand, but I think it would be improper to say we could
3 not ask the investigators if they took a statement from our
4 client as part of their investigation in this case because
5 they did. They took multiple statements from him. I don't
6 think it would be proper to bar us from asking those
7 questions.

8 As far as the meat of the statement, we obviously
9 wouldn't be eliciting -- trying to elicit hearsay testimony.

10 **The Court:** All right. What about that -- what about
11 that part of the equation?

12 **Ms. Simpson:** Your Honor -- and I would direct Your
13 Honor's attention to State versus Terry which is 339---

14 **The Court:** May I have a copy?

15 **Ms. Simpson:** Oh, yes.

16 **Ms. Pinnock:** Your Honor, if I could get a copy.

17 **Ms. Simpson:** 339, 352.

18 **The Court:** Remember: Whenever you have a case you want
19 us to look at, you need to have one for the Court and one for
20 the other side.

21 **Ms. Simpson:** Yes, Your Honor. With respect to what
22 defense counsel is attempting to do, even the questioning of
23 the officers about taking the statement or the fact that he
24 gave a statement essentially draws the inference, especially
25 based on their opening statement, that he cooperated with law

1 enforcement in giving these statements, and the jury is left
2 with an inaccurate and incomplete view of the testimony
3 and/or the defense's statements that were actually given.

4 It's improper because it leaves them thinking, like I
5 said, that he cooperated when, in fact, he gave statements
6 that were minimizing his own role in the incident in multiple
7 statements, after she has said he gave the same statement to
8 law enforcement at every venture. And then I'll address the
9 trial testimony as well in a moment.

10 **The Court:** Have you got anything to counter the holding
11 in Terry which is that the State is correct, the exclusion of
12 the fact that Mr. James gave the police a statement is
13 irrelevant to any issue in the trial and that it's,
14 therefore, inadmissible?

15 **Ms. Pinnock:** Your Honor, if you could give me one
16 moment so I could finish looking -- we had to pull it up.

17 **The Court:** All right. Why don't we take a brief --
18 this would probably be a good time to take a quick break
19 anyway and let them have an opportunity. Before we do that,
20 you said there were some other issues?

21 **Ms. Simpson:** Yes, and I actually want to go ahead and
22 put those issues up since we're taking a break.

23 **The Court:** That's why I was...

24 **Ms. Simpson:** In addition to that, with respect to the
25 trial testimony or the fact that Mr. James testified in the

1 previous trial, that information is improper to bring out
2 through these investigators as well. I don't know any
3 hearsay exception that it will qualify for or what relevance
4 it has to this case since we're not putting up any statements
5 or anything about the prior trial with respect to Maurice
6 Roberts and specifically Demetrice James.

7 **The Court:** I think kind of by extension, Terry covers
8 -- doesn't really cover that, but I think it makes it clear
9 even in that case where Terry wanted to indicate to the jury
10 or convey to the jury that he had cooperated -- and that
11 would be the purpose of saying, well, he testified in one
12 trial, so he cooperated. So it looks like under an extension
13 of Terry that that would be inadmissible also. We will get
14 back in a minute after the defense has had time to research
15 it.

16 **Ms. Simpson:** And then I have one additional matter with
17 respect to the co-defendants' statements that were made in
18 this case. Prior to trial, I know we had a hearing and the
19 defense requested that the State be limited and not make any
20 mention of any statements by non-testifying co-defendants or
21 co-defendants, period, as well as -- or I think that's the
22 extent of it. I did not do that and we -- I also know no
23 basis for them to be allowed to go into co-defendants'
24 statements through these investigators. They might can ask
25 did they give a statement, but as far as the details of those

1 statements, none of that I believe is proper.

2 We won't be eliciting it from our investigators and,
3 again, I go back to the statements themselves as far as each
4 defendant in this case, while admitting some culpability,
5 some guilt, minimizes their role - there's no doubt - and
6 gives multiple statements. So we would just ask up front
7 that they be precluded from going into the substance of any
8 co-defendants' statements.

9 **The Court:** Does the defense contend that they can get
10 that hearsay in?

11 **Ms. Anastasia Walker:** Your Honor, I don't believe we
12 have any intention of going into that. We asked them not to.
13 I certainly believe the reciprocal applies.

14 **The Court:** Okay. All right. Well, take a look at the
15 two issues that I think directly are addressed in Terry or
16 how the case is addressed in Terry, and we'll take a real
17 short break and we'll give the defense a chance to do some
18 research.

19 **Ms. Simpson:** Thank you, Your Honor.

20 **Ms. Meghan Walker:** Thank you, Your Honor.

21 **The Court:** And time for a refreshing break.

22 (Whereupon, a short break was taken.)

23 **The Court:** Take your seats. All right. We're back on
24 the record. We were discussing State versus Terry and its
25 application to the issue of I think the concession by the

1 defense that they can't go into the substance of the
2 statements, but we were looking at whether or not the fact
3 that he gave statements is admissible evidence. Did you find
4 anything else other than Terry that might address that?

5 **Ms. Pinnock:** Your Honor, that addresses that issue, no.
6 I do believe that there is a slight difference in Terry. I
7 understand what the holding says. I have reviewed it and a
8 few other cases that were cited in it and that distinguish
9 themselves from it. But I believe in Terry -- initially,
10 yes, he could go into the substance of the statement. We
11 have said we're not trying to do that. The Court did address
12 whether or not they could talk about, you know, a confession
13 that he gave or anything along those lines.

14 But I think that, Your Honor, if you were to allow us to
15 ask the investigators "Did you speak with Mr. James?" that
16 that's not suggesting any sort of truth or untruthful
17 statement. It's: Did you speak to him as a part of your
18 investigation?

19 The only argument that I have and it's not a small
20 argument: We have a right to put on a complete and full
21 defense. We do have a theory that we are working on, and the
22 process of the investigation does go to our theory of
23 defense. So I believe denying us the opportunity to even ask
24 an investigator if they spoke to Mr. James when he was
25 arrested would be violating our right to present a complete

1 and full defense for Mr. James at this point.

2 Again, we would not be going into the substance of the
3 statement. We would not be going into if it was a confession
4 or a denial or anything along those lines, just did they
5 speak to him.

6 **The Court:** All right. But you'll ask: Did you speak
7 to Mr. James? And if they say "yes," then that ends it.

8 **Ms. Pinnock:** Yes, sir.

9 **The Court:** All right.

10 **Ms. Simpson:** Your Honor, we would actually object to
11 that, too, and based on Terry I don't think that's the proper
12 method as well. Here, in this trial on these facts, we
13 absolutely have the indication and inference and implication
14 by the defense that the defendant was cooperative with
15 police. He spoke with police, and throughout this, from day
16 one, he has given the same story over and over, not only to
17 police but to the solicitor's office, my office, my
18 investigators as well as at the trial of Maurice Roberts.

19 So here any indication that he made a statement and that
20 he was advised of his rights or even that he was interviewed
21 and for the State to not put that evidence in because it is
22 self-serving leaves the defense with a very self-serving
23 interested inference and implication in place without having
24 the complete statements.

25 Now, once they do put up their defense and go with their

1 theory that's developing, we'll have, I believe, a different
2 ball game at that point. But at this point I don't think
3 they can back-door any type of thing or make any improper,
4 you know -- or leave impressions for the jury.

5 **The Court:** I sustain the objection. I don't believe
6 that you can even go into that. Maybe I'm reading Terry too
7 broadly, but the admission of the fact that Terry cooperated
8 with the police -- and I know you're not really asking that.
9 You're just saying: Did you talk to him?

10 **Ms. Pinnock:** Yes, sir.

11 **The Court:** "Without giving the substance of the
12 statement would, in our opinion, have been confusing and
13 misleading to the jury." So I think, following that, it's
14 just sort of dislogical (verbatim) or maybe you might contend
15 illogical conclusion is that the -- the fact that your client
16 talked to the police or -- that's conveying to the jury just
17 what Terry says is not -- not relevant and that is
18 cooperation. So I'm not going to allow you to go into that.
19 You can make a proffer with any of these witnesses that you
20 wish when we get to that point.

21 **Ms. Pinnock:** Yes, Your Honor. And to go along with
22 that, if we are not going to be able to ask the investigators
23 if they even talked to Mr. James, we would like you to
24 instruct the solicitor's office that they're not allowed to
25 go into the fact that he was advised of his rights, that he

1 did a six-person---

2 **The Court:** If they open that door up... If they open
3 the door...

4 **Ms. Simpson:** I can say, Your Honor, that we have
5 advised our investigators in our questions -- and we may lead
6 a little bit based on this ruling. It's just going to be
7 simply: Was he arrested? And that's it. We're not going
8 into whether he was advised---

9 **The Court:** I think that's at the time, but I can tell
10 you: If they open the door, then you know how to handle it.

11 **Ms. Pinnock:** Yes, Your Honor. Thank you.

12 **Ms. Simpson:** But the mere fact -- just so I'm clear,
13 the mere fact that we ask, "Was he arrested?" doesn't open
14 any doors.

15 **The Court:** I don't think that -- I don't think the fact
16 that he was arrested... It's pretty obvious he was arrested.

17 **Ms. Simpson:** Okay. Good. I'm just clarifying, Your
18 Honor.

19 **The Court:** Yeah.

20 **Ms. Simpson:** Thank you.

21 **The Court:** Bring in the jury.

22 (Whereupon, the jury was brought into open court at
23 11:58 a.m.)

24 **The Court:** Call your next witness.

25 **Ms. Meghan Walker:** Your Honor, at this time the State

1 calls Sergeant Kevin Isenhoward.

2 Kevin S. Isenhoward, after being duly sworn,
3 testified as follows:

4 **The Clerk:** Please have a seat in the witness stand, and
5 state your full name for the record.

6 **The Witness:** Kevin Scott Isenhoward.

7 Direct Examination

8 By Ms. Meghan Walker:

9 Q. Is it Sergeant Isenhoward?

10 A. It is.

11 Q. Sergeant Isenhoward, can you tell me where you're
12 currently employed?

13 A. I work for the Richland County Sheriff's Department.

14 Q. And how long have you been at the sheriff's department?

15 A. I've been with the sheriff's department for 17 years in
16 various roles.

17 Q. And what role are you serving in at this point?

18 A. I'm a supervisor in the Major Crimes Unit. Primarily we
19 handle assaults, robberies, shootings and murders and
20 suspicious deaths.

21 Q. In your role as a supervisor in that unit, what sort of
22 things do you do?

23 A. Well, it's my job to -- every day new cases come in. I
24 evaluate them, assign them to a particular detective or
25 investigator to look into. I also investigate cases myself

1 and in, you know, more important cases or cases where someone
2 has died, there might be several investigators working on it
3 and as well as supervisors to assist and to make sure the
4 train is rolling down the track.

5 Q. I want to turn your attention back to January 25th of
6 last year.

7 A. Yes.

8 Q. Did you become involved in a home invasion and homicide
9 that happened at [REDACTED] Williamsburg Drive?

10 A. I did.

11 Q. And that's here in Richland County?

12 A. It is.

13 Q. Tell me how you first became involved in that case.

14 A. The actual incident occurred -- I was on day shift, so
15 it had occurred in the night previous. And when I came in to
16 work, I was advised that we had one that occurred the night
17 before. So several of us sort of got together and just
18 prioritized what needed to be done and who was available to
19 assist, as some of the investigators who had worked on it had
20 been up all night. So I kind of jumped in at that point the
21 next day.

22 Q. And what was the first thing that you learned when you
23 became involved?

24 A. Well, I learned that some of the participants had been
25 identified and warrants had been obtained. So at that point

1 we start our -- you know, sort of looking for them.

2 Q. And do you remember the first suspect that you were
3 looking for at that point?

4 A. Yeah, Vincent Nelson.

5 Q. Did he have -- did he have any nicknames that you knew
6 of at that point?

7 A. Jay-School and Junior I believe is what we were told.

8 Q. And did you go about trying to locate Vincent Nelson,
9 Jr., or Jay-School?

10 A. We went to an address at -- on Stuccawa, [REDACTED] Stuccawa
11 Drive which is off of Broad River Road in Richland County.

12 Q. And what was the purpose of going to that particular
13 address?

14 A. I don't remember specifically, but we had some
15 intelligence that he had been located or living at that
16 address. We went there obviously trying to find him, and
17 initially there was no one there. However, somebody walking
18 down the street -- they obviously called and said the cops
19 are at your house and walked up and actually handed me the
20 cell phone. So I spoke with one of the residents at the
21 house and he sort of -- the ball started rolling from there,
22 I guess.

23 Q. What was your next step after realizing that Vincent
24 Nelson, Jr., was, in fact, not at [REDACTED] Stuccawa Drive?

25 A. We went to -- I believe Investigator Boland had an

1 address in Hammond Village. I'm not sure what from at this
2 point, probably from one of our law enforcement databases,
3 but this address in Hammond Village, I believe Apartment
4 [REDACTED], we went there.

5 Q. And who were you trying to make contact with in Hammond
6 Village?

7 A. Well, obviously we were looking for Vincent Nelson, and
8 sort of as we got there, some things sort of bloomed for us.

9 Q. And what -- what things were those?

10 A. Well, initially I went to the door. I went to the door.
11 I was asking for, you know, Vincent Nelson. I believe a man
12 named Maurice Roberts, Sr., maybe and his wife answered the
13 door. It was sort of unusual. I could tell they were
14 guarded. They didn't want me looking inside. You know, they
15 were kind of cracking the door, and I could see into the
16 apartment. It's a small apartment. It is two stories. But
17 I saw a man hiding on the couch, and I recognized him from
18 the picture as Vincent Nelson, so I forced my way in and
19 detained him.

20 Q. Was there anyone else in the home other than Vincent
21 Nelson, Jr., and Maurice Roberts, I guess, Senior, who
22 answered the door?

23 A. Yes, there were several people, and it sort of
24 progressed. You know, at that point I had somebody trying to
25 hide from me and there were people -- there was a female and

1 I don't recall her name off the top of my head right now, but
2 she was in the home. I asked if there was anyone else in the
3 home. They denied that anyone else was there. I believe
4 Investigator Tanner and I went to what we call clearing the
5 house, make sure, you know, there's nobody there that's going
6 to hurt us.

7 So we went upstairs and found another man hiding in the
8 closet under a giant Mickey Mouse stuffed animal. We could
9 barely see him until the stuffed animal moved a little bit,
10 so we were able to take him into custody. I believe we
11 identified him as Jwaun Duckett.

12 Q. And when Mr. Duckett was taken into custody, did he have
13 anything on his person that drew your attention?

14 A. Yes. Obviously when you have a man hiding from you in a
15 closet, you're worried about him having a weapon on him. So
16 I patted him down and I felt something in his pocket. I
17 asked what it was. He said it was a cell phone. I asked him
18 if I could take it out and look at it and he let me, and I
19 did. I removed a cell phone from him.

20 Q. Let me show you State's Exhibit Number 38. Is this the
21 cell phone that you removed from Mr. Duckett?

22 A. This is it. I remember the real-tree camouflage case.

23 Q. Okay. Thank you.

24 A. Uh-huh.

25 Q. And once Mr. Nelson and Mr. Duckett were located in the

1 home, what, if anything, happened next?

2 A. Well, at that point we had several investigators there,
3 and it's sort of the procedure to take whoever into custody
4 and try and find out, you know -- if you have warrants on
5 somebody, you take them into custody and identify any
6 witnesses or anybody that can give you information. So, you
7 know, you ask the people who may be involved or who may know
8 if they have any information that -- about the murder, and we
9 did that. We separated them and spoke with them.

10 Q. And that would have been Vincent Nelson, Jr., and Dwaun
11 (verbatim) Duckett?

12 A. Yes.

13 Q. I'm sorry. Jwaun Duckett.

14 A. Yes.

15 Q. And did -- without telling me what they said, did --
16 were you able to take further steps after speaking with them
17 in this investigation?

18 A. Yes.

19 Q. And what steps were those?

20 A. We were able to identify some of the players in the
21 murder.

22 Q. I want to turn your attention to January 29th of 2013.
23 Did your involvement with this case continue?

24 A. It did.

25 Q. And what was your involvement on that day?

1 A. Based on the information we had received, there are
2 various techniques we can use to try and identify people or
3 have witnesses identify people for us. One of those is a
4 photographic line-up, sometimes referred to as a six-pack,
5 who has a possible person who committed the crime in the
6 photographic line-up. We would then show those to witnesses
7 and see if they can identify the person that they saw at the
8 crime scene committing the crime, whatever it may be.

9 Q. And did you show a photo line-up to a Troy Scott?

10 A. I did.

11 Q. I want to show you what has been marked as State's
12 Exhibit Number 8 and ask you if you recognize that.

13 A. I do recognize this.

14 Q. And is this the photo line-up that you showed Troy
15 Scott?

16 A. It is.

17 Q. And was he able to pick someone out of this line-up?

18 A. He did.

19 Q. And who did he pick out?

20 A. He picked picture number -- the sixth picture in the
21 line-up. It's identified by number. He circled it and dated
22 it and put his initials on it, and it's a picture of
23 Demetrice James.

24 Q. Demetrice James. At the point in which he circled this
25 particular picture, did you influence him in any way in

1 circling the picture?

2 A. No.

3 Q. Did you suggest to him that one of the people involved
4 in this home invasion and murder was definitely in this
5 line-up?

6 A. Oh, no. I just show them the pictures and say, "Do you
7 recognize anybody?" I mean, if they rec---

8 Q. And once he was shown that picture, did he hesitate
9 before picking---

10 A. No.

11 Q. ---this picture?

12 A. No, he went right to the picture and identified it to
13 me.

14 Q. And once you had that information, did you take initial
15 steps in this investigation?

16 A. We did. At that point we would consider probable cause
17 to charge him with a crime and obtain warrants on him.

18 Q. And did you, in fact, obtain arrest warrants for
19 Demetrice James?

20 A. We did.

21 Q. And were you present when those warrants were actually
22 served on the defendant?

23 A. I was.

24 Q. And where did that take place?

25 A. At an address at [REDACTED] River Drive here in -- also here

1 in Columbia.

2 Q. The man who you arrested at [REDACTED] River Drive, do you see
3 him here in the courtroom today?

4 A. I do.

5 Q. Can you point him out for me?

6 A. Yes. He's sitting to my left. He's wearing a blue
7 shirt with a dark-colored tie, close-cut hair. His hair is a
8 little different now than it was then, but that's him.

9 Q. Thank you, sir. Please let the record reflect that the
10 witness has identified the defendant. I don't have any
11 further questions for you, Sergeant Isenhoward. Thank you.

12 A. Thank you.

13 **The Court:** Cross?

14 **Ms. Anastasia Walker:** Your Honor, may it please the
15 Court?

16 **The Court:** Yes, ma'am.

17 **Ms. Anastasia Walker:** Beg the Court's indulgence.

18 **The Court:** Yes, ma'am.

19 **Ms. Anastasia Walker:** Thank you, Your Honor. May it
20 please the Court?

21 Cross-Examination

22 By Ms. Anastasia Walker:

23 Q. You said initially that you found Mr. Duckett in a
24 closet when you went over to Maurice Roberts' house; right?

25 A. Yes.

1 Q. And Mr. Duckett spoke with you all about what he knew.

2 A. We talked, yes.

3 Q. We talked. And then Mr. Duckett actually showed you
4 where Demetrice James lived.

5 A. You know, I'm not -- he may have. I'm not sure about
6 that.

7 Q. Do you recall going over to Demetrice James' house prior
8 to arresting him---

9 A. Yes.

10 Q. ---at---

11 A. Yes.

12 Q. Okay. So the second time you went to Mr. James' house
13 is when you arrested him.

14 A. That's correct.

15 Q. So the first time he wasn't there.

16 A. There was no one there; we spoke with a neighbor.

17 Q. Okay. So the second time you went to arrest him, before
18 you went there you were actually contacted by his father.

19 A. Yeah. After the first time -- obviously the neighbor,
20 when the father came home, made contact with him, said we
21 were there. We left a card. So he actually called the main
22 number to the sheriff's office, and it was transferred
23 through some secretaries to my office. So he called me, yes.

24 Q. And they waited there until you came to their house.

25 A. They were -- I can just say they were there when I got

1 there. You know, I don't know if they were there---

2 Q. After the phone call---

3 A. Right.

4 Q. ---you were able to make it to the house.

5 A. Yes.

6 Q. Okay. Thank you.

7 A. It's not far.

8 Q. And then you arrested Mr. James.

9 A. Yes.

10 **Ms. Anastasia Walker:** Thank you. No further questions.

11 **The Court:** All right. Redirect?

12 **Ms. Meghan Walker:** None, Your Honor.

13 **The Court:** You can step down and be excused.

14 **The Witness:** Thank you.

15 **The Court:** We appreciate your time. Call your next
16 witness.

17 **Ms. Meghan Walker:** Your Honor, the State calls Captain
18 Scott McDonald.

19 Scott McDonald, after being duly sworn, testified
20 as follows:

21 **The Clerk:** Please have a seat in the witness stand, and
22 state your full name for the record.

23 **The Witness:** Scott McDonald.

24

25

Direct Examination

By Ms. Meghan Walker:

Q. Captain McDonald?

A. Yes, ma'am.

Q. Sir, can you tell me where you're currently employed?

A. Richland County Sheriff's Department.

Q. And what is it that you do for the sheriff's department?

A. I'm a captain in the Major Crimes Unit. I supervise and assist on all assaults, murders, robberies, those type crimes.

Q. And how long have you been with the Major Crimes Unit?

A. Approximately 10, 11 years now.

Q. When you say you supervise and assist on assaults and robberies and murders, can you kind of tell the jury a little bit about how you go about supervising and assisting the other investigators?

A. Some of the bigger cases -- obviously a murder case requires more manpower, so I'm in charge of assigning lead investigators, people to assist with the case, as well as myself and usually one of the sergeants or sometimes both of my sergeants, kind of a group effort. We jump in and, you know, assist in doing everything from interviewing, you know, taking statements, things like that, phone records which I delve into that and try to help the case with that oftentimes.

1 Q. I want to turn your attention back to January of last
2 year.

3 A. Uh-huh.

4 Q. Did you have the occasion to become involved in the
5 investigation of the home invasion and murder that happened
6 at [REDACTED] Williamsburg Drive?

7 A. I did. I received a phone call from Sergeant Faust
8 early the morning, I believe, of the 26th to advise me of the
9 murder and what he had at the time, and he and Investigator
10 Boland and I think other agents and shift investigators were
11 trying to piece things together as best they could that
12 night.

13 Q. And once you first got involved what, if any,
14 information did you have at that point?

15 A. I first got involved later that morning on the 26th
16 which was a Saturday. I came in about mid morning to kind of
17 go over statements from witnesses and things like that and to
18 see what we could get going on the case. Of course, at that
19 time our biggest lead that we had was the witnesses' and
20 victims' belief that a friend of theirs named Vincent Nelson,
21 who they didn't know his real name---

22 Q. What name did you have at that point?

23 A. Cali Gii and Jay-School. And so we were trying to get
24 him identified based on these nicknames, looking through
25 different databases and things like that. Later that morning

1 we were able to get a positive identification on him.

2 Q. On Vincent Nelson, Jr.?

3 A. Right.

4 Q. I want to turn your attention to January 28th.

5 A. Yes, ma'am.

6 Q. At that point in time did you guys have any of the
7 suspects in this case under arrest?

8 A. Not at that point. We had gotten positive
9 identification by the victims in this case to Vincent Nelson,
10 who was Jay-School, as being involved. So we were obtaining
11 warrants on him, I believe that morning, and a search warrant
12 to go try to search his residence.

13 Q. And there is a -- was there a particular piece of
14 evidence that Vincent Nelson, Jr., had that you guys were
15 interested in?

16 A. A cell phone.

17 Q. I want to show you what's been marked as State's Exhibit
18 Number 38 and ask you if during the course of this
19 investigation you ever came into contact with this phone.

20 A. I did. We located this phone actually at the residence
21 of Maurice Roberts, a co-defendant in this case.

22 Q. And do you remember who actually had this cell phone?

23 A. Vincent Nelson had that cell phone on the night of the
24 incident.

25 Q. And once you -- you said you get deeply involved in kind

1 of cell phone records?

2 A. Right.

3 Q. Why are the cell phone records important to you as an
4 investigator?

5 A. Nowadays just about everyone has a cell phone.

6 Communication -- oftentimes we find in these cases defendants
7 are talking back and forth, either with text messages or
8 phone calls, helping to plan the events of whatever crime
9 that might be occurring. In this particular case when we
10 interviewed Mr. Roberts, he laid out for us that there were
11 conversations going back and forth.

12 Q. Hold on one second. Let me stop you. Once you learned
13 that a cell phone was of value in this case, did you attempt
14 to get cell phone records?

15 A. Yes. We got cell phone records of Maurice Roberts' cell
16 phone.

17 Q. Okay. Did you, in fact, obtain the cell phone
18 records---

19 A. Yes.

20 Q. ---of this cell phone?

21 A. Right.

22 Q. I want to show you what's been marked as State's
23 Exhibit Number 234 which is already in evidence and ask you
24 if you recognize these cell phone records.

25 A. Yes. These are the ClearTalk Wireless phone records of

1 Maurice Roberts' cell phone.

2 Q. And do you remember which date those were obtained?

3 A. If I could refer to my notes possibly.

4 Q. Yes, sir.

5 A. I'm sorry. I don't seem to have the date that I

6 actually received these.

7 Q. But you did receive those cell phone records.

8 A. Yes, I did.

9 Q. And were there -- were there I guess text messages on
10 those cell phone records that became of value to you over the
11 course of this investigation?

12 A. Right. I knew from prior experience that ClearTalk
13 Wireless also captured content of cell phone -- I mean of
14 S.M.S. or text messages in their records. So we requested
15 that and the phone records.

16 Q. I know that you prepared a PowerPoint in this case?

17 A. Yes, ma'am.

18 Q. We'll get to that momentarily. After obtaining those
19 cell phone records, what was your next step in the
20 investigation?

21 A. Well, obviously the content on the text messages on
22 there was very -- very good evidence for us in this case.
23 After we learned the story, interviewing Maurice---

24 Q. Don't tell me what any of the people told you. Just
25 tell me: After you got those cell phone records, were you

1 able to -- did you go about identifying other defendants --
2 other suspects?

3 A. Right. We identified another co-defendant named Deshawn
4 McClary. Mr. Roberts' phone was contacting Mr. McClary's
5 phone.

6 Q. Okay. And so at that point you had how many of the
7 suspects identified?

8 A. We had -- we had all four, after speaking and learning
9 through interviews with co-defendants. We had all four of
10 them by that point.

11 Q. At what point -- at some point did you actually make
12 contact with Demetrice James?

13 A. Yes, I did.

14 Q. Where was this defendant when you made contact with him?

15 A. He was at his residence on River Drive.

16 Q. And do you remember the address of that...

17 A. Yes. It's -- I believe it's [REDACTED] River Drive. I'm
18 sorry. [REDACTED].

19 Q. [REDACTED] River Drive?

20 A. Right.

21 Q. And let me see if I can get this projection screen set
22 up. Let me -- I don't want that to block the judge. Those
23 phone records, did you actually put them on something that
24 would be visible to the jury?

25 A. Right. I've developed a PowerPoint to illustrate the

1 findings from the cell phones. Correct.

2 **Ms. Meghan Walker:** Your Honor, at this point permission
3 to publish the cell phone records that have been entered into
4 evidence to the jury?

5 **The Court:** Do you want to move over where you can see?

6 **Ms. Anastasia Walker:** I will, Your Honor.

7 **The Court:** Okay. Permission granted.

8 **Ms. Meghan Walker:** Thank you, Your Honor.

9 **Ms. Anastasia Walker:** And, Your Honor, Ms. Walker has
10 turned over this PowerPoint prior to today, just for the
11 Court's record.

12 **The Court:** Thank you.

13 **Ms. Meghan Walker:** Your Honor, may the witness step
14 down?

15 **The Court:** Yes.

16 By Ms. Meghan Walker:

17 Q. These -- is this just a representation of what the
18 actual cell phone records say?

19 A. Right. These are the actual records that I received
20 from ClearTalk Wireless. This is, you know, a lot of
21 gobbledegook from them, but it indicates it's a text message.
22 This is the date, 1/25/2013, and the time, 23:08 hours, which
23 would be 11:08 p.m. and 58 seconds. S.M.S. tells me it's a
24 text message. Some more numbers that they keep in part of
25 their system. And this is the actual number -- phone that

1 was sending the message, and this is the phone that received
2 the message which was Mr. Roberts' phone.

3 Q. So the phone that was sending the message -- you say you
4 have a sending number and a receiving number.

5 A. Right.

6 Q. Okay. And it looks like the same messages will be on
7 here twice? Why is that?

8 A. That's just the way their system records it. I don't
9 know why.

10 Q. Okay. The first text message that's in here -- and I
11 know it has some harsh language on here, but the language
12 and -- excuse me, y'all. These are language of the text
13 message, not mine. It's, "Fo nigga in here and dey dad."

14 **Court Reporter:** I'm sorry.

15 **The Court:** I couldn't understand what you said.

16 By Ms. Meghan Walker:

17 Q. It says -- it's fo, F-O, nigga, N-I-G-G-A, in here and
18 dey, D-E-Y, dad. What time was that message?

19 A. That was on -- at 22:58 hours which would be 10:58 p.m.
20 and 51 seconds and it's coming -- I made a mistake here.

21 It's coming from this number to this number which this is Mr.
22 Roberts' phone which Vincent Nelson had, sending it to
23 Deshawn McClary's phone.

24 Q. And then there's an additional -- an additional text
25 message?

1 A. Yes. The next one at -- also on the 25th at 23:08 which
2 is 11:08 p.m., once again coming from Vincent Nelson using
3 Maurice Roberts' phone to Deshawn McClary. The text: "Come
4 on. I got two outside."

5 Q. Okay. And what time was -- what time did you say that
6 was?

7 A. That was at 23:08 or 11:08 p.m.

8 Q. And was there a response to that text message?

9 A. There was a response from Mr. McClary's phone back to
10 the phone Vincent Nelson had at 23:11 hours which would be
11 11:11 p.m. where he responds: On da way.

12 Q. O-N-D-A-W-A-Y.

13 A. Right.

14 Q. And what is the final text message that's on there?

15 A. Final, it's at 23:12, 11:12 p.m., where once again
16 Vincent Nelson is texting: "Come on. I got two outside."

17 Q. Thank you, sir.

18 A. All right.

19 Q. Retake the witness stand. So those text messages --
20 those text messages were very important to the investigation
21 in this case?

22 A. Very important in this case, yes.

23 Q. And you said again that this defendant, Demetrice James,
24 was placed under arrest on what day?

25 A. On the 30th, January 30th.

1 Q. And the final defendant in this case, Deshawn McClary,
2 was he, in fact, placed under arrest as well?

3 A. He was, on February 1st.

4 **Ms. Meghan Walker:** Thank you, Captain McDonald. I
5 don't have any further questions.

6 **The Court:** Cross?

7 **Ms. Anastasia Walker:** Beg the Court's indulgence, Your
8 Honor?

9 **The Court:** Yes. Yes, ma'am.

10 **Ms. Anastasia Walker:** Your Honor, may we approach?

11 **The Court:** Yes, ma'am.

12 (Whereupon, a bench conference was held.)

13 **The Court:** Do you have any questions?

14 **Ms. Anastasia Walker:** Oh, I'm sorry, Judge. Briefly.

15 Cross-Examination

16 By Ms. Anastasia Walker:

17 Q. I just have to find... Captain McDonald; right?

18 A. Correct.

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. You actually showed the line-up regarding Linard Gaston
22 to Cari Pearson; is that correct?

23 A. I was present when it was shown, yes.

24 Q. It was present (sic)? And may I approach the witness,
25 Your Honor?

1 **The Court:** Yes, you may.

2 By Ms. Anastasia Walker:

3 Q. And you recognize this?

4 A. I do.

5 Q. And it says that you showed it to her?

6 A. Right. "On this date Lieutenant McDonald showed me six
7 pictures at 5623 Two Notch."

8 Q. Okay. And in this line-up Ms. Pearson does identify an
9 individual. Is that correct?

10 A. She identifies -- yes.

11 Q. Okay. Beg the Court's indulgence. And the person that
12 she picked out, that person is Linard Gaston?

13 A. Correct.

14 Q. And that person turned out not to be involved in this
15 incident.

16 A. He is not involved in this whatsoever.

17 **Ms. Anastasia Walker:** Thank you very much. No further
18 questions.

19 **The Court:** Redirect?

20 **Ms. Meghan Walker:** No, Your Honor.

21 **The Court:** All right. You can step down and be
22 excused. Members of the jury panel, we're going to break for
23 lunch. I think your lunch is here. If not, it will be here
24 shortly, and we'll break 'til about quarter after 1 which
25 will give you 45 minutes to try and compress time at this

1 point. So have a pleasant lunch, and we'll send for you
2 around quarter after 1.

3 (Whereupon, the jury was excused from open court to go
4 to the jury room and eat lunch at 12:31 p.m.)

5 **The Court:** Ms. Walker, you had an issue you wanted to
6 put on the record?

7 **Ms. Anastasia Walker:** Your Honor, I just had an
8 objection to just -- according to -- prior to these
9 particular witnesses testifying, Your Honor instructed that
10 they shouldn't open the door by mentioning that they were
11 interviewing and speaking with co-defendants and the like.
12 Captain McDonald said that they were able to identify all
13 four suspects after speaking and interviewing with the
14 co-defendants. I would argue that that opens the door and I
15 understand that Your Honor disagrees, but I would like to put
16 that on the record.

17 **The Court:** And I ruled that that was not enough to open
18 the door to go forward with the issue involving statements
19 and Mr. James.

20 **Ms. Anastasia Walker:** Thank you, Your Honor.

21 **The Court:** All right. We'll be at ease.

22 **Ms. Meghan Walker:** Thank you, Your Honor.

23 **The Court:** 'Til quarter after 1.

24 (Whereupon, a lunch break was taken. Court's Exhibit 1
25 was marked for identification only.)

1 **The Court:** State ready?

2 **Ms. Simpson:** We are, Your Honor. We have one matter
3 though with respect to the evidence that we would like to
4 introduce. It was our understanding -- and I spoke with the
5 court reporter regarding certain items, and the defense has
6 looked at these. The witnesses testified to them, but they
7 weren't actually entered at that time. So we would be
8 seeking to enter State's Exhibit 14, 27, 18, 28, 17, 16, 224,
9 225, 226, 227, State's 20 and State's 197 into evidence.

10 **Ms. Anastasia Walker:** 20 -- Your Honor, I don't think
11 20 was actually introduced. They said they were going to
12 introduce it through the analyst, so I don't think they ever
13 actually introduced 20.

14 **The Court:** As to the others, any objection?

15 **Ms. Anastasia Walker:** No, Your Honor.

16 **The Court:** Okay. The others are in without objection.
17 20 is what?

18 **Ms. Simpson:** Actually I'm -- I'll withdraw that one.
19 She's correct on State's 20.

20 (State's Exhibits 14, 16 through 18, 27, 28, 197, and
21 224 through 227 were received in evidence.)

22 **The Court:** Now are you ready for the jury?

23 **Ms. Meghan Walker:** Yes, Your Honor.

24 **Ms. Anastasia Walker:** Yes, sir.

25 **The Court:** Bring in the jury.

1 (Whereupon, the jury was brought into open court at
2 1:26 p.m.)

3 **Ms. Anastasia Walker:** Your Honor, may we approach?

4 **The Court:** Yes, ma'am.

5 **Ms. Anastasia Walker:** I apologize.

6 (Whereupon, a bench conference was held.)

7 **The Court:** All right. Call your next witness.

8 **Ms. Simpson:** The State calls Investigator Tanner.

9 Flynn Tanner, after being duly sworn, testified as
10 follows:

11 **The Clerk:** Please have a seat in the witness stand, and
12 state your full name for the record.

13 **The Witness:** Flynn Tanner.

14 Direct Examination

15 By Ms. Simpson:

16 Q. Investigator Tanner, where are you employed?

17 A. Richland County Sheriff's Department.

18 Q. And how long have you been with the sheriff's
19 department?

20 A. About 17 years now.

21 Q. And tell the jury about your position and what some of
22 your duties and responsibilities are.

23 A. I'm an investigator in Major Assaults. I'm assigned
24 cases on a daily basis. I investigate, like I said, major
25 assaults. Might be shooting, stabbing, aggravated assault.

1 Q. And do you also work as an on-call investigator, too?

2 A. Yes, ma'am, I do.

3 Q. And do you assist other investigators with
4 investigations?

5 A. Yes, I do.

6 Q. Back in January of 2013, did you become involved in this
7 case?

8 A. I did.

9 Q. Tell us how you became involved. Who notified you?

10 A. The morning of January 28th at approximately 8:45, I was
11 contacted by my supervisor, Sergeant Lindler, to respond to
12 headquarters to assist Investigator Boland with a homicide
13 case.

14 Q. Okay. And when you arrived, did you learn about -- or
15 the identity of an individual who may be involved in the
16 case?

17 A. Yes, I did.

18 Q. And who was that individual?

19 A. The individual at that particular time was an individual
20 by the name of Vincent Nelson, Jr.

21 Q. And upon identifying him, did you all actually establish
22 possible locations where he could be found?

23 A. Yes, ma'am, we did.

24 Q. And once you had that information, what did you do?

25 A. I went with Sergeant Lindler to [REDACTED] Stuccawa Drive to

1 identify the house and obtain a description for a search
2 warrant.

3 Q. You said that was [REDACTED] Stuccawa Drive?

4 A. Yes, ma'am. Yes, ma'am.

5 Q. And did you actually respond to that location?

6 A. We did; yes, ma'am. Shortly thereafter, I went with
7 Lieutenant McDonald, Sergeant Lindler, Investigator Boland,
8 and Sergeant Isenhoward to serve a search warrant.

9 Q. And was Vincent Nelson present at that location?

10 A. No, ma'am, he was not.

11 Q. But did you speak with some family members?

12 A. We did.

13 Q. And after that, did you all proceed to another location?

14 A. Yes, ma'am, we did.

15 Q. Where did you go?

16 A. After that we went to Broad River Terrace. I believe it
17 was Apartment [REDACTED].

18 Q. And was Vincent Nelson located at that residence?

19 A. No, ma'am, he was not.

20 Q. Did you actually make contact with someone in that
21 residence?

22 A. Yes, ma'am.

23 Q. And did you speak with her?

24 A. Yes, ma'am, I did.

25 Q. And did she give you verbal consent to actually look

1 through the house?

2 A. Yes, ma'am, she did not -- I mean she did. He was not
3 there.

4 Q. And then did y'all proceed to a third location?

5 A. We did. We proceeded to Hammond Village, Apartment
6 [REDACTED].

7 Q. Okay. When you arrived -- and you said you're with
8 multiple investigators at this point?

9 A. Yes, ma'am.

10 Q. Okay. When you arrived, where did you go?

11 A. I went to the rear of the apartment to cover the back
12 door with Investigator Boland.

13 Q. Okay. And this is an apartment complex, so there are
14 front entries and rear entries.

15 A. Yes, ma'am.

16 Q. And you were with Investigator Boland?

17 A. Yes, ma'am.

18 Q. Were several individuals actually located at the home?

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

20 Q. Who all was located in the home?

21 A. The individual that we had the warrant for, Vincent
22 Nelson, Jr., was located there. There was also another
23 individual there by the name of Maurice Roberts, Jr., and
24 there was another individual there by the name of Jwaun
25 Duckett.

1 Q. And was Maurice Roberts, Jr.'s, father also present?

2 A. He was.

3 Q. When y'all -- and you were at the rear entry; correct?

4 A. To begin with, yes, ma'am.

5 Q. Okay. Did you learn that other investigators had
6 actually encountered someone at the front of the residence?

7 A. Yes, ma'am.

8 Q. Tell the jury about that.

9 A. When we first arrived at that particular apartment
10 complex, of course, you have to cover the front and -- and
11 rear of the residence. Investigator Boland and I went to
12 cover the rear of the residence. Sergeant McDonald and
13 Sergeant Isenhoward were at the front of the residence, and
14 it's a rather small apartment. I mean, you could hear what
15 was going on in the front or at least, you know, you could
16 hear a commotion and it was obvious there was raised voices
17 and commands and so forth, that someone was in there, and
18 once -- once the situation was under control, Investigator
19 Boland and I came around and we could see that -- we could
20 see that Vincent Nelson, Jr., was in custody, and we were
21 speaking with at that particular time Maurice Roberts, Jr.
22 and Maurice Roberts, Sr.

23 Q. And did Maurice Roberts, Sr., actually give you all
24 consent to search the residence?

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

1 Q. Upon gaining that consent, what did you do and who were
2 you with?

3 A. I was with Sergeant Isenhoward, and we went upstairs to
4 just do a protective sweep to make sure that, you know -- I
5 mean, obviously we were on a -- we were on a murder case with
6 -- you know, there's obviously a weapon still out there and
7 so forth. It could be a dangerous situation, so we did a
8 protective sweep to ensure that nobody came out on us as we
9 were in the apartment.

10 Q. Okay. And did you actually locate an individual during
11 the sweep?

12 A. Yes, ma'am.

13 Q. Who was that?

14 A. One of the upstairs bedrooms in one of the closets, an
15 individual by the name of Jwaun Duckett was hiding there.

16 Q. Okay. And without telling me what you said to him, did
17 you all actually obtain a certain item from his person?

18 A. Yes, ma'am, we did.

19 Q. And what was that?

20 A. It was a cell phone.

21 Q. A cell phone? I believe this is the same cell phone
22 that Sergeant Isenhoward spoke about earlier?

23 A. Yes, ma'am.

24 Q. And through the course of your investigation, did you
25 actually learn who that cell phone belonged to?

1 A. I learned that it belonged to Maurice Roberts, Jr.

2 Q. And without telling me what was said, did you all learn
3 how Jwaun Duckett came into possession of that phone?

4 A. Yes, ma'am.

5 Q. After identifying or finding Mr. Duckett in the closet,
6 what did you do?

7 A. Jwaun Duckett joined me in my vehicle.

8 Q. And was he ultimately transported to headquarters?

9 A. Yes, ma'am, he was.

10 Q. And then subsequent to that -- was he actually placed
11 under arrest at all for this incident?

12 A. He was placed under investigative detention at the time.
13 Obviously it can be a dangerous situation; we're out there
14 looking for suspects in a homicide. We know that one of the
15 individuals there at that location has known associates who
16 may be involved in this homicide. So we take the appropriate
17 precaution.

18 In a particular situation like this where certain things
19 were found in the house, we place them under investigative
20 detention. He was informed of such.

21 Q. Okay. And after being placed in investigative detention
22 for a period -- and like I said, y'all are interviewing
23 potential witnesses, anybody who might have any information;
24 correct?

25 A. Correct.

1 Q. Did you all transport him somewhere?

2 A. Yes, ma'am. He was transported to the Richland County
3 Sheriff's Department headquarters on Two Notch Road.

4 Q. And after that did you all actually go somewhere else
5 based on some information that you had?

6 A. Yes. After that I -- Jwaun Duckett rode with me, and en
7 route to taking him home he took me by a residence.

8 Q. And what was the address for that residence?

9 A. If you would bear with me just a moment. It was -- it
10 was [REDACTED] and [REDACTED] River Drive. It's a duplex at that
11 particular location.

12 Q. Okay. And through the course of your investigation, did
13 you actually learn about an individual who lived at that
14 location?

15 A. Yes, I did.

16 Q. Who was that?

17 A. The individual who lived at that location was Demetrice
18 James.

19 Q. Okay. And subsequent to this, as things go along, did
20 you actually develop Mr. James as a possible suspect?

21 A. Yes, ma'am.

22 Q. On -- moving to January 29th of 2013, at this point Mr.
23 Roberts and Vincent Nelson, were they in custody?

24 A. Yes, ma'am.

25 Q. And I want to turn your attention to January 30th of

1 2013. Were you tasked with another portion of this
2 investigation?

3 A. Yes, ma'am.

4 Q. What was that?

5 A. On January 30th I went with Sergeant Isenhoward and
6 Sergeant McDonald to Demetrice James' residence where he had
7 been arrested, and Investigator Boland and I transported
8 Demetrice James to headquarters.

9 Q. Okay. So at that point when y'all proceeded there, you
10 all had arrest warrants for the charges of murder?

11 A. Yes, ma'am.

12 Q. And attempted armed robbery?

13 A. Yes, ma'am.

14 Q. And burglary first?

15 A. Yes, ma'am.

16 Q. As well as attempted murder.

17 A. I'm sorry?

18 Q. As well as attempted murder.

19 A. Yes, ma'am.

20 Q. And he was arrested.

21 A. Yes, ma'am.

22 Q. On -- turning your attention to February 1st of 2013,
23 did you continue to search a location?

24 A. Yes, ma'am. On February 1st I met with Investigator
25 Boland, and before going to Hammond Village we met up at a

1 location and then went to Hammond Village. Investigator
2 Boland and I went there and continued to search.

3 Q. And at this point were all four individuals in custody
4 or at least identified by the 1st?

5 A. Identified, yes, ma'am.

6 Q. And what did y'all do at Hammond Village? And just to
7 be clear, this location is actually where Vincent Nelson was
8 located?

9 A. Yes, ma'am.

10 Q. And Maurice Roberts lived at this location.

11 A. That's correct.

12 Q. What did y'all do on the 1st?

13 A. We actually went back to the location there on Marlboro
14 Street or that apartment in Hammond Village. Investigator
15 Boland and I observed a large rollback trash can dumpster at
16 that location, and Investigator Boland and I looked in that
17 dumpster.

18 Q. And what did you all find in that dumpster that you
19 thought might be significant to your investigation?

20 A. Investigator Boland found an Army-type B.D.U. camouflage
21 shirt slash jacket in that rollback.

22 Q. I'm going to show you what's been marked as State's
23 Exhibit 207. Tell me if you recognize that, and you can pull
24 it out.

25 A. I do. That looks like the jacket.

1 Q. Okay. That's the jacket y'all recovered from the
2 dumpster?

3 A. Investigator Boland recovered from the dumpster, yes,
4 ma'am.

5 **Ms. Simpson:** Your Honor, at this time I would offer
6 State's 207 into evidence.

7 **Ms. Anastasia Walker:** Without objection, Your Honor.

8 **The Court:** In without objection.

9 (State's Exhibit 207 was received in evidence.)

10 By Ms. Simpson:

11 Q. In addition to searching the dumpster, were you all --
12 let me back up. Were you all still trying to locate a weapon
13 as well?

14 A. Yes, ma'am.

15 Q. And in those efforts, what did you do in this area?

16 A. We were trying to locate the weapon. We were looking in
17 grills in the back of apartments or in the front of
18 apartments, wherever a grill might be located.

19 Q. You actually spoke with the owners of the grill and
20 would---

21 A. Yes, ma'am, would knock on the door and ask them if they
22 would mind if we looked in their grill and so forth.

23 Q. And were y'all able to find anything?

24 A. No, ma'am.

25 Q. Then also on the 1st, was Deshawn McClary actually taken

1 into custody?

2 A. He was. We had received word that he was located in
3 Orangeburg, South Carolina, by S.L.E.D. He was taken into
4 custody and brought to Richland County Sheriff's Department
5 headquarters.

6 Q. And then finally, without going into detail, did you
7 respond back to Maurice Roberts' apartment on February 7th of
8 2013?

9 A. Yes, ma'am, we did.

10 Q. And was that the extent of your involvement with the
11 investigation?

12 A. More or less, yes, ma'am.

13 Q. And the person that you all ultimately arrested and took
14 into custody, do you see him in the courtroom today?

15 A. Yes, ma'am.

16 Q. Who is that?

17 A. Demetrice James.

18 Q. And he was again arrested because of your investigation
19 and what you knew about his planning and participation in the
20 robbery and home invasion?

21 A. Yes, ma'am.

22 Q. On January 25th?

23 A. Yes, ma'am.

24 **Ms. Simpson:** And let the record reflect he identified
25 the defendant. Thank you, Investigator Tanner.

1 **Ms. Anastasia Walker:** Your Honor, I have no cross for
2 this witness.

3 **The Court:** All right. You can step down. Thank you.
4 Call your next witness.

5 **Ms. Simpson:** The State calls Investigator Boland.

6 James Boland, after being duly sworn, testified as
7 follows:

8 **The Clerk:** Please have a seat in the witness stand, and
9 state your full name for the record.

10 **The Witness:** James Boland.

11 Direct Examination

12 By Ms. Simpson:

13 Q. Investigator Boland, where are you employed?

14 A. Richland County Sheriff's Department.

15 Q. And what is your position there?

16 A. I'm an investigator assigned to the Major Crimes Unit.

17 Q. How long have you been with Richland County?

18 A. Eighteen years.

19 Q. Eighteen years?

20 A. That's correct.

21 Q. As an investigator - and we've heard from several - tell
22 the jury what you do.

23 A. Much like Investigator Tanner spoke to you earlier, we
24 work together in the Major Crimes Unit. We're assigned
25 reports that need additional follow-up. Again, I work major

1 assaults, domestic assaults, anything in major crimes that
2 need following up on.

3 **Court Reporter:** I'm sorry. You're going to have to
4 speak up.

5 **The Witness:** Okay.

6 By Ms. Simpson:

7 Q. Say that last part one more time. You work major
8 assaults, major---

9 A. Major assaults, anything that needs additional follow-up
10 that's not handled by the line units as they respond.

11 Q. Okay. And on January 25th of 2013, did you become
12 involved in this murder investigation?

13 A. I did.

14 Q. And were you actually assigned to be the lead?

15 A. I was.

16 Q. And tell us how you were notified.

17 A. I was working the evening shift with Sergeant Faust that
18 you heard from earlier. One of my duties was to handle any
19 homicides that may occur while we're working the evening
20 shift. We had that shooting incident which unfortunately led
21 to Mr. Jones' death. So from the time I responded to the
22 scene 'til the final co-defendant was arrested, I have been
23 involved in this case.

24 Q. And once you were notified to respond, did you actually
25 head towards the incident location---

1 A. I did.

2 Q. ---in this case? And where was that location?

3 A. [REDACTED] Williamsburg Drive here in Richland County.

4 Q. And while en route to the incident location, did you
5 actually receive further information?

6 A. Yeah. It's not uncommon whenever people are going to
7 the hospital or to the scene or wherever their respective
8 duties will take them that you get additional information as
9 you're traveling there. I had gotten information that other
10 Richland County units were in the River Drive area conducting
11 an unrelated matter. Okay? For a local business in the
12 area. So they had units in the area at the time.

13 When this call went out, those units then moved, that
14 were just a block or two away, to the scene. It's whenever
15 the units were going towards Williamsburg Drive that a
16 vehicle was spotted leaving the area and subsequently stopped
17 by Canine Abraham.

18 Q. Okay. And with respect to that traffic stop, did you
19 actually go to the location?

20 A. I did.

21 Q. Where was that?

22 A. It was at the intersection of Williamsburg and McCray
23 right in front of E.E. Taylor School.

24 Q. And tell us a little bit about the individuals that were
25 located in that car and what was done while you were on the

1 scene.

2 A. Again, I was getting information while I was headed to
3 the scene; I was being updated. I understood that there had
4 been a car stopped with three individuals in it. I was given
5 a description of the individuals in the car, and I compared
6 that to the description of the individuals that I also
7 learned had fled from [REDACTED] Williamsburg, the shooting
8 incident.

9 Whenever I arrived there, they had three individuals
10 outside of the vehicle. I met with the officers at the
11 traffic stop. Obviously I could visually see the
12 descriptions of the three individuals. I learned that one of
13 them's name was Jonathan. While en route there, I had
14 learned that we were looking for a Jay-School that was
15 connected to the shooting incident at Williamsburg. So I
16 spent some time out there making sure that these people were
17 or were not involved in this shooting incident.

18 Q. And did -- once you identified -- were those individuals
19 actually placed into photo line-ups that we've heard some
20 about this week?

21 A. Yes. Their information was -- I communicated back to
22 Sergeant Faust who was at headquarters, and then as I
23 understand it, obviously you heard Sergeant Faust then
24 presented that information to the witnesses there at
25 headquarters.

1 Q. And none of the witnesses actually identified them as
2 being involved.

3 A. None.

4 Q. In addition to that, with respect to the weapon that was
5 found in the car---

6 A. Right.

7 Q. ---can you tell us about that?

8 A. The caliber of the gun that was found in the car was a
9 .380. I was just a couple of houses from the scene, having
10 spoken with Crime Scene who was actually on the scene as I
11 arrived. It was a different caliber of weapon that was used
12 than the shooting at Williamsburg.

13 Q. You don't actually process the scene; that is for the
14 crime scene investigators.

15 A. When Crime Scene is on the scene, it's their scene.
16 Okay? I don't -- that's -- I don't go into the scene unless
17 it's absolutely positively necessary for me to do so.

18 Q. And once you left the traffic stop location, where did
19 you go?

20 A. I then traveled back to -- are you talking about after I
21 left the scene or the traffic stop?

22 Q. Oh, I'm sorry. After you left McCray Street, where did
23 you respond to?

24 A. I then went down to the incident location at [REDACTED].

25 Q. And you said you made contact with the investigators who

1 were already there?

2 A. A couple of deputies were on the scene conducting the
3 crime scene log, and obviously Investigator Woods and Beeler
4 were processing at the time. I spoke with Mr. Davis who was
5 there as well.

6 Q. And as a result of responding to the scene, did you
7 gather additional information about this case?

8 A. Yeah. I had learned that the witnesses that had been
9 transported back up to headquarters were giving information
10 in reference to the Jay-School and that that individual was
11 subsequently identified.

12 Q. Okay. And none of the victims were actually present at
13 the scene when you arrived; correct?

14 A. The -- none -- no, the three victims that were there had
15 already been transported.

16 Q. But there were several witnesses at the location.

17 A. By the time I got done with that traffic stop?

18 Q. They were already transported?

19 A. Mr. Scott and Ms. Pearson had already been transported
20 to headquarters.

21 Q. After you had the information about Jay-School,
22 identifying him -- or were you able to confirm the actual
23 identity?

24 A. Yes.

25 Q. Who was it?

1 A. Vincent Nelson, Jr.

2 Q. And what did you do with that information?

3 A. I subsequently obtained arrest warrants.

4 Q. And then turning your attention -- this is pretty late
5 in the evening hours?

6 A. On which date, ma'am?

7 Q. I'm sorry. The 25th of 2013.

8 A. I worked all night the 25th into the 26th, but the
9 shooting incident, yes, that occurred approximately -- I
10 think dispatch time was 23:17 hours.

11 Q. So 11:17 in the---

12 A. 11:17 p.m. is the -- is what the dispatch log would say.

13 Q. So that's when 9-1-1 is called and you all actually
14 respond to the scene.

15 A. Correct.

16 Q. And then after finishing or working through the morning
17 hours of the 26th, did you actually go home for a period of
18 time?

19 A. Yes. I went home approximately 6, 6:30 the morning of
20 the 26th to return that afternoon about 1:30 in the
21 afternoon.

22 Q. And what did you do when you returned?

23 A. I went to headquarters, located Captain McDonald. He
24 was there searching several databases to try to garner more
25 information regarding the case.

1 Q. And did you make contact with the family of the deceased
2 victim, Brandon Jones?

3 A. Yes. I got a message to phone a Mr. Praylow (phonetic)
4 who is Mr. Jones' paternal grandfather, and he was just --
5 basically through that conversation and such I had learned
6 that Mr. Jones was brought to Columbia just a day or two
7 earlier to visit with the Scott brothers.

8 Q. Okay. And also on the 26th did you receive some
9 additional information from Sergeant Faust?

10 A. Yes. He indicated that there was an individual that
11 possibly -- that would like to speak to us and that -- about
12 trying to give us more information regarding the case. So we
13 met with Troy Scott and Mr. Liberty there at headquarters.

14 Q. Okay. And we've heard this - we've been here all week -
15 but they identified essentially a person, Linard Gaston---

16 A. Right.

17 Q. ---as a possible individual?

18 A. Right.

19 Q. And was he ultimately eliminated---

20 A. Yes.

21 Q. ---as being involved? Who else did you make contact
22 with on the 26th?

23 A. I spoke with Cari Pearson and Troy Scott.

24 Q. And what was your purpose of going to speak with them
25 again?

1 A. Obviously I had not had the opportunity to speak with
2 Ms. Pearson or Mr. Scott yet; obviously they were witnesses.
3 Me being the investigator on the case, I needed to speak with
4 them and get their information firsthand.

5 Q. And did you, in fact, speak with them?

6 A. I did.

7 Q. And then later in the day, did you actually make contact
8 with another victim in this case, Joshua Williams?

9 A. Yes. I spoke with Mr. Williams and Mr. Scott
10 approximately 10:00 the night of the 26th there at
11 headquarters on Two Notch Road.

12 Q. And they told you and gave you information about what
13 happened?

14 A. Right.

15 Q. And did they give you additional information regarding
16 individuals that might be involved?

17 A. Mr. Williams, who obviously was a victim that was there
18 in the middle of the driveway, he was privy to some of the
19 sights and sounds that he heard while in the driveway, and he
20 described what he had heard from the co-defendants and some
21 of the clothing description.

22 Q. Okay. And then moving to the 27th, did you actually go
23 back to the incident location with Sergeant Faust?

24 A. Right. Obviously if you remember all the pictures that
25 you've seen throughout this case, it's -- to try to describe

1 it and not be there is rather difficult. So to eliminate any
2 confusion to any other investigator that may be assisting me,
3 I thought it might be necessary that we go back to the scene
4 so we could do a walk-through. So I took Sergeant Faust back
5 to the home so he could understand better as we explained to
6 him the different rooms that were involved in this case.

7 Q. And this home actually had a lot of different rooms.

8 A. Yes.

9 Q. Correct? In the upstairs, down, I guess, level in the
10 driveway area.

11 A. Right.

12 Q. So you wanted to get a better perspective---

13 A. That is correct.

14 Q. ---of what happened. Then on the 28th did you respond
15 back to headquarters?

16 A. Yes. The morning of the 28th was a Monday. Much like
17 Sergeant Faust remarked earlier, we run with this all weekend
18 until additional personnel come in on Monday. I met with
19 supervisors. I met with other lab units, briefed them -
20 forensics, firearms - and just to kind of give them a basic
21 overview of what had happened over the course of the weekend,
22 and that's when we determined obviously that arrest warrants
23 would be obtained for Mr. Nelson.

24 Q. So in addition -- so the arrest warrants - and I
25 apologize; I think my question was worded awkwardly earlier -

1 weren't actually obtained for Vincent Nelson until the 28th.

2 Correct?

3 A. Correct.

4 Q. And did you also obtain a search warrant for a specific
5 location?

6 A. Yes.

7 Q. What location was that?

8 A. Over the course of the weekend obviously, doing research
9 on Jay-School, ultimately Mr. Nelson, Jr., we had been
10 directed to the Broad River Road area, particularly off of
11 Stuccawa Drive. So we got a search warrant for [REDACTED] Stuccawa
12 Drive. It's the known address of Mr. Nelson.

13 Q. And he wasn't actually located at that residence?

14 A. He was not.

15 Q. And Investigator Tanner was assisting you during this
16 process as well.

17 A. Yes.

18 Q. In addition to other investigators.

19 A. Right.

20 Q. So y'all went to another location.

21 A. Yes.

22 Q. And then finally you all ended up at Hammond Village.
23 Tell us what you observed when you arrived and what you did.

24 A. It's a small apartment complex there off Marlboro
25 Street. Again, Investigator Tanner and I went to the rear of

1 the residence because there was a back door to the apartment.
2 Captain McDonald and a couple of sergeants went to the front
3 door. Again, we could hear that they had made entry into the
4 home. We heard -- I could hear voices inside, and then by
5 the time I made it back around to the front of the building,
6 Mr. Nelson was being escorted out of the apartment
7 handcuffed.

8 Q. All right. And was another individual located in the
9 home?

10 A. Yeah. Whenever Mr. Nelson came out and I realized I
11 could recognize him from the pictures we had, he was
12 immediately escorted to my car. There I stayed with Mr.
13 Nelson, and then I understood -- I saw two other individuals,
14 one of them get into Captain McDonald's vehicle and the other
15 one into Investigator Tanner's vehicle. At that time I did
16 not know who they were.

17 Q. Okay. Did you subsequently learn who those individuals
18 were?

19 A. Yes. Ultimately I would learn that they were Maurice
20 Roberts, Jr., and Jwaun Duckett.

21 Q. And were all three individuals transported to
22 headquarters?

23 A. Yes.

24 Q. Moving to the 29th of 2013, did you participate in
25 additional investigation in this case?

1 A. Yes.

2 Q. Without going into details to what was said.

3 A. Sure. Investigator Tanner and I -- obviously by the
4 29th, Mr. Roberts, Jr., and Mr. Nelson, Jr., were under
5 arrest. They had been transported to the jail, and
6 Investigator Tanner and I traveled down to the jail to make
7 contact with both the individuals.

8 Q. And also on the 29th did you actually obtain some
9 additional warrants?

10 A. I did.

11 Q. For I guess individuals involved in this case?

12 A. That's correct.

13 Q. Who did you obtain the warrants for?

14 A. Up until that point, the investigation revealed that
15 warrants would be obtained for Deshawn McClary and Demetrice
16 James.

17 Q. And did you learn the location where Demetrice James
18 might be found?

19 A. Yes.

20 Q. What was that?

21 A. [REDACTED] River Drive.

22 Q. And were efforts made to locate him at that residence?

23 A. Yes, we went there; no one was home.

24 Q. Okay. And what happened after no one was home? What
25 did y'all do?

1 A. That's when we obtained a search warrant for the
2 residence.

3 Q. And then later on that day, did you actually learn that
4 the defendant's father had called you all?

5 A. Yes.

6 Q. And did you all respond back to his home?

7 A. Yes.

8 Q. And at that point who did you take into custody?

9 A. Investigator Tanner and I transported Mr. James back to
10 headquarters on Two Notch Road.

11 Q. And was he arrested?

12 A. He was.

13 Q. And then on the 31st, did you actually serve additional
14 warrants on Vincent Nelson?

15 A. Yes.

16 Q. Then moving to February 1st of 2013, what did you do?

17 A. Investigator Tanner and I traveled back over to Marlboro
18 Street which would be the residence of Maurice Roberts, Jr.,
19 to conduct further search.

20 Q. Of the location?

21 A. Yes.

22 Q. And can you tell us about that?

23 A. Yeah. We were looking for clothing that may have been
24 worn that could produce more evidence in the case. We hadn't
25 located the gun yet. So in an abundance of caution, we

1 wanted to try to search the residence for the weapon and/or
2 any clothing that might be associated with it.

3 Q. I'm going to show you what's been marked as State's
4 Exhibit 37. Tell me if you recognize that.

5 A. Yes.

6 Q. And what is contained in that?

7 A. That's clothing that was taken from Maurice Roberts',
8 Junior's, home.

9 Q. Okay. And you actually took that clothing?

10 A. I did.

11 Q. What's contained in this package or do you need scissors
12 to open it?

13 A. No. Do you want me to take it out?

14 Q. Yes.

15 **Ms. Pinnock:** Your Honor, I would object to this.

16 **Ms. Simpson:** Oh.

17 **Ms. Pinnock:** It's not been introduced into evidence.

18 **Ms. Simpson:** I apologize. Your Honor, at this time I
19 would offer State's 37 into evidence.

20 **Ms. Pinnock:** Is that the only thing in there?

21 **Ms. Simpson:** The jacket, the hoodie and---

22 **The Witness:** Pants.

23 **Ms. Simpson:** Pants.

24 **The Witness:** Camo pants.

25 **Ms. Simpson:** Camo pants.

1 **Ms. Pinnock:** Your Honor, I have no objection. Thank
2 you.

3 **The Court:** In without objection.

4 (State's Exhibit 37 was received in evidence.)

5 By Ms. Simpson:

6 Q. And these were just items that you collected based on
7 some of the descriptions?

8 A. Based on information we garnered throughout the
9 investigation, these items were of particular interest.

10 Q. Okay. And we see some markings on this hoodie. It
11 looks as though it may have been bleached or is this where it
12 was tested?

13 A. Whenever I took this, those marks were already on there.

14 Q. Okay. And then the next item?

15 A. Camouflage pants.

16 Q. All right. Thank you. And I also want to show you
17 what's been marked as State's Exhibit 223, and I believe this
18 was actually obtained prior to the 1st. Do you recognize
19 that?

20 A. This is going to be clothing that was taken from
21 Maurice, Jr.

22 Q. Okay.

23 A. At the time of the arrest.

24 Q. And the date of that was January 28th.

25 A. 28th.

1 Q. Correct? And a black jacket is also contained in that
2 item.

3 A. Right.

4 **Ms. Simpson:** Your Honor, at this time I would offer
5 State's 223 into evidence.

6 **Ms. Pinnock:** Without objection, Judge.

7 **The Court:** In without objection.

8 (State's Exhibit 223 was received in evidence.)

9 By Ms. Simpson:

10 Q. Then on the 1st, later that day, did you actually learn
11 about the location of another individual?

12 A. Yes. I was alerted that Deshawn McClary had been
13 located in Orangeburg County. State Law Enforcement Division
14 assisted in transporting him back to Richland County.

15 Q. And you all actually had the arrest warrants out for him
16 and he was in the system at that time.

17 A. That is correct.

18 Q. You were actively---

19 A. They were actively---

20 Q. ---looking for him.

21 A. Yes.

22 Q. Did you also participate in an additional search warrant
23 on the 7th of -- or February 7th of 2013 of Mr. Roberts'
24 home?

25 A. I did.

1 Q. And was that the extent of the active investigation in
2 this case?

3 A. Yes.

4 Q. However, you did during this investigation or in the
5 course of your investigation learn additional information
6 about cell phones?

7 A. Yes.

8 Q. What did you obtain with respect to that?

9 A. As far as the communication back and forth between the
10 co-defendants?

11 Q. Yes.

12 A. Yeah. That they -- that they had -- I don't quite
13 understand the question.

14 Q. Oh, I apologize. Did you actually get additional
15 information from phone records?

16 A. Yes, during the course of the investigation.

17 Q. Okay. And that was provided to you by which
18 investigator?

19 A. Captain McDonald.

20 Q. And the person -- one of the individuals that you've
21 identified as participating in the planning and armed robbery
22 and home invasion on the 25th, do you see him in the
23 courtroom today?

24 A. Yes.

25 Q. And what -- based on your investigation, who is that

1 individual?

2 A. Mr. Demetrice James.

3 Q. Can you point him out for the jury?

4 A. Sitting between his two counselors, blue shirt, black
5 tie.

6 Q. I'm going to show you one more item marked State's 199.
7 Do you recognize this?

8 A. I do.

9 Q. And does it fairly and accurately depict the location?

10 A. Yes.

11 **Ms. Simpson:** Your Honor, at this time I would offer
12 State's 199 into evidence.

13 **Ms. Pinnock:** Without objection.

14 **The Court:** In without objection.

15 (State's Exhibit 199 was received in evidence.)

16 **Ms. Simpson:** And permission for the witness just to
17 step down?

18 **The Court:** You can step down.

19 By Ms. Simpson:

20 Q. And if you'll stand on that side. I'm not very good
21 with maps, but can you point out the location -- the incident
22 location for the jury on here?

23 A. Yes. This is -- this is going to be Williamsburg Drive
24 right here.

25 Q. So that's the home of the actual shooting?

1 A. Correct.

2 Q. And then where -- I guess what area was Demetrice James
3 located in?

4 A. This is River Drive here.

5 Q. Okay.

6 A. And I believe that, excuse me, that residence is going
7 to be somewhere over in this area.

8 Q. And the Marlboro Street location for Hammond Village?

9 A. This is Marlboro Street here.

10 Q. We're looking at a map, but are these fairly close in
11 proximity---

12 A. Yes.

13 Q. ---all these locations?

14 A. Yeah. I mean, all you have to do is to go to River
15 Drive and a couple of blocks you're there at the scene.

16 Q. Thank you. Thank you, Investigator Boland.

17 A. Uh-huh.

18 **Ms. Pinnock:** May it please the Court, Judge, very
19 briefly?

20 Cross-Examination

21 By Ms. Pinnock:

22 Q. Investigator, you said you talked to Cari Pearson on the
23 26th; right?

24 A. Yes.

25 Q. And you took a written statement from her, and then you

1 showed her some line-ups.

2 A. I know I took a statement. If you'll let me refresh
3 myself on my notes... I did a lot in this case.

4 Q. Were you present when she looked at the line-up?

5 A. I was -- yeah, I think I was present.

6 Q. And she wasn't trying to mislead you in any way as far
7 as you knew; right?

8 A. Yeah.

9 Q. She was trying to provide you information?

10 A. Right.

11 Q. As best she could?

12 A. Right.

13 Q. And she did make an identification, you testified, of
14 Linard Gaston.

15 A. Right.

16 Q. As somebody she thought could have been there?

17 A. Correct.

18 Q. And she was just trying to give you all the information
19 that she could.

20 A. Correct.

21 **Ms. Pinnock:** Beg the Court's indulgence. Nothing
22 further. Thank you.

23 **Ms. Simpson:** Just briefly.
24
25

Redirect Examination

By Ms. Simpson:

Q. Was it determined that Linard Gaston was not involved in this?

A. Mr. Gaston was not involved in this in any way.

Ms. Simpson: Thank you.

The Court: Recross?

Ms. Pinnock: No, Your Honor.

The Court: All right. You can step down and be excused. We appreciate your time. Thank you. Call your next witness.

Ms. Meghan Walker: Your Honor, at this time the State rests.

The Court: All right. Members of the jury panel, the State is telling us they have presented their evidence. Under certain circumstances, they would have perhaps a right to present other evidence, but you've heard their what we call case in chief. That is, you've heard their case against Mr. James.

At this time we have to take up some matters outside your presence, so I'm going to let you go to the jury room while we take up some legal matters.

(Whereupon, the jury was excused from open court at 2:11 p.m.)

The Court: Anything from the State at this point?

1 **Ms. Meghan Walker:** Nothing at this point, Your Honor.

2 **The Court:** Defense?

3 **Ms. Pinnock:** Yes, Your Honor. May it please the Court?

4 Your Honor, at this time we would renew all of our previous
5 motions and objections: Specifically, Your Honor, our motion
6 for a mistrial that we made this morning based on the fact
7 the jury was discussing the facts of the case, all the
8 testimony they have heard up to this point. Against Your
9 Honor's explicit order not to do that, they have -- they did
10 start deliberating, prior to being instructed to do so, in
11 the jury room.

12 Your Honor, I don't believe that -- I don't believe that
13 we should or could go any further based on what was happening
14 this morning or yesterday evening at the end -- at the end of
15 the -- at the end of the day when they started talking and
16 discussing things. I don't believe we can get a fair trial
17 at this point. I think the jury has violated the oath that
18 they took when you swore them in on Monday or Tuesday.

19 They started discussing testimony. They started
20 discussing the case before you instructed them on the law. I
21 don't think it's too far to assume that they have formed
22 opinions based on this. I understand we had a hearing this
23 morning where Your Honor did question them if they could be
24 fair and impartial, continuing through the case and hear all
25 the evidence.

1 However, based on the disregard of their previous order
2 not to do that, I don't think it can be entrusted to them to
3 follow any more of Your Honor's orders. They have shown us
4 very clearly that they are not going to follow instructions.

5 So I do think Mr. James is being denied a fair trial,
6 and his due process rights are being violated because he
7 cannot get a fair trial at this point. So, Your Honor, I
8 would renew our motion for a mistrial and all of our previous
9 motions and objections, and I guess I will go to the directed
10 verdict---

11 **The Court:** Take a breather.

12 **Ms. Pinnock:** Yes.

13 **The Court:** All those motions are denied, including the
14 mistrial. I stick by the ruling earlier. And as to any
15 other objections and any other rulings, I confirm them or
16 affirm them, whatever... I know in the public defender's
17 classes or whatever they teach you to renew all these
18 motions. I'm not sure that's necessary, but then again
19 you're supposed to renew them or lose them. But I really
20 don't know what I'm supposed to do when you raise them other
21 than say I stick with what I already said.

22 **Ms. Pinnock:** Yes, sir. We want to make sure that the,
23 depending on what happens, the record is as preserved as we
24 can possibly get it.

25 **The Court:** All right. Then you have another motion?

1 **Ms. Pinnock:** Yes, sir, Your Honor. At this time we
2 would move for a directed verdict on all charges. In viewing
3 all the evidence in the light most favorable to the State, I
4 don't at this point believe that it is raising past a mere
5 suspicion that Mr. James was involved with any planning or
6 executing of a burglary on January 25th of last year.

7 **The Court:** We did hear some testimony that he went into
8 a house uninvited. I mean, there's some testimony -- I'm not
9 saying I believe it or you believe it, but isn't there some
10 testimony from which the jury could conclude that he invaded
11 this house?

12 **Ms. Pinnock:** There is some testimony---

13 **The Court:** And became armed.

14 **Ms. Pinnock:** There is some testimony on the record,
15 Your Honor, but I don't think it would reach the level of the
16 substantial -- substantial circumstantial evidence.

17 **The Court:** Well, why is that -- why is that
18 circumstantial evidence? I mean, it's not circumstantial
19 evidence if I say I see you with a gun; that's direct
20 evidence.

21 **Ms. Pinnock:** Yes, Your Honor. And yet I guess my
22 directed verdict motion is based on: I don't think it raises
23 past a mere suspicion to reach a jury for deliberations. So
24 we would move for a directed verdict on all charges against
25 Mr. James.

1 **The Court:** Let me hear the State's position.

2 **Ms. Meghan Walker:** Your Honor, I think there is direct
3 evidence from several witnesses that this defendant was
4 engaged in and planning at Maurice Roberts', the
5 co-defendant's house, of a home invasion that was to take
6 place at the incident location. Your Honor, there are two
7 witnesses who provided direct testimony to that.

8 Furthermore, Your Honor, there are two witnesses who
9 provided direct testimony that this individual was, in fact,
10 the individual who came into their home uninvited, became
11 armed, and then shot one of them in the arm, Your Honor, and
12 that all this was done in an attempt to steal the studio
13 equipment from them and that not only was this individual
14 armed during the home invasion but that it was approximately
15 11:30 at night in January of 2013. It would have been done
16 during the hours of darkness.

17 Your Honor, in the light most favorable to the State,
18 the State believes that we've met our burden in burglary in
19 the first degree, attempted murder with the shooting that
20 happened to one of the brothers that was inside, the shooting
21 that happened to Joshua Williams while he was outside, the
22 attempted armed robbery and the attempt to go in and steal
23 things from the home as well as the murder of Brandon Jones,
24 Your Honor, and we'd ask that you send this case forward to a
25 jury.

1 **The Court:** All right. I deny the motion. I find that
2 there's ample direct evidence for the charges. I also find
3 there is substantial circumstantial evidence not to the point
4 raised by Ms. Pinnock, but we do have concepts in this case:
5 The hand of one/the hand of all, felony murder, and I believe
6 there's circumstantial evidence in which the jury could
7 conclude that one or both of those -- substantial
8 circumstantial evidence in which the jury could conclude that
9 one or both of those would apply. So I deny the motions for
10 a directed verdict on all grounds.

11 Examination by the Court of Mr. James (in camera)

12 Q. Now, Mr. James, can you hear me?

13 A. Yes, sir.

14 Q. All right. We've reached the point in the trial where
15 you have a right to present a defense, but you do not have to
16 present a defense, but you can call witnesses or you can
17 testify. If you present a defense, the -- if you don't
18 present a defense, the State would have the right to make the
19 last argument. If you do present a defense, then -- I'm
20 sorry; I'm getting it backwards.

21 If you don't present a defense, then you would have the
22 right - your attorney would - to make the final argument to
23 the jury, that is, to be the last attorneys arguing to the
24 jury as to what the verdict should be. If you present
25 evidence, then the State would not be able to -- if you

1 present evidence, the State would have the opportunity to go
2 last. Do you understand that?

3 A. Yes, sir.

4 **The Court:** Have y'all explained it -- counsel, have you
5 explained that to him?

6 **Ms. Anastasia Walker:** Yes, Your Honor.

7 **The Court:** And you have the right to call witnesses,
8 and if the witnesses testify, they will be examined, cross-
9 examined by the State. You have a right to remain silent or
10 to testify. If you testify, the State will have the right to
11 cross-examine you and ask you questions under oath. Does he
12 have any impeachment?

13 **Ms. Simpson:** No, Your Honor. He only has a juvenile.
14 By the Court:

15 Q. All right. The State can ask you questions about the
16 events and your testimony, and you would, of course, be under
17 oath and you would have to answer truthfully. If you
18 exercise your constitutional right to remain silent, I will
19 tell the jury that you've done that, that you have the right,
20 that you are presumed innocent - I'll tell the jury that more
21 than once - and that you do not need to prove your innocence
22 but the State must prove your guilt beyond a reasonable
23 doubt, tell them that the fact that you chose to remain
24 silent cannot be used against them -- cannot be used by them
25 against you in any way whatsoever nor could they even discuss

1 in the jury room the fact that you've exercised your right to
2 remain silent nor can they factor it into their own
3 consideration in determining what verdict to assess or to
4 render. Do you understand all that?

5 A. Yes, sir.

6 Q. Do you have any questions about any of it?

7 A. No, sir.

8 **The Court:** Counsel, have you explained all that to him?

9 **Ms. Anastasia Walker:** We have, Your Honor.

10 By the Court:

11 Q. All right. And do you intend to testify or exercise
12 your right to remain silent?

13 A. I intend to testify.

14 **The Court:** Okay. All right. We're going to take a
15 break in just a minute. We had the issue about another
16 witness?

17 **Ms. Anastasia Walker:** Yes, sir.

18 **The Court:** You can sit down. Let's go ahead and cover
19 that before we take our break, so... There's apparently a
20 notary public that's...

21 **Ms. Anastasia Walker:** Yes, Your Honor. When we were
22 cross-examining Mr. Duckett, there was a letter that we
23 attempted to impeach him with. He denied writing the letter.
24 He said, "That's not even how I sign my name."

25 So we made attempts to contact the notary that was on

1 the letter. We were able to contact her today. Basically
2 she obviously cannot testify to the contents of the letter to
3 the truth or anything of it, but she can testify that she
4 witnessed him sign it and that he is the one that signed it.
5 So she would be an impeachment witness, and we would ask to
6 be able to call her just solely for those purposes.

7 **The Court:** All right. The State's position?

8 **Ms. Meghan Walker:** Your Honor, the witness said that he
9 didn't write the contents of that letter. It is my
10 understanding, Your Honor, from speaking with someone in my
11 office who's made contact with this witness, including
12 stating her name -- but before I even go there with that
13 point, Your Honor, this witness was not provided on their
14 witness list, despite them having had this letter and despite
15 them knowing that she was the notary in this case. So we
16 would ask that she be excluded from testifying on that
17 ground.

18 Furthermore, Your Honor, she indicates that she does not
19 read the letters, that she doesn't under -- she doesn't know
20 the content. She just looks at an I.D. and then notarizes
21 the statement or notarizes the letter. So as to the contents
22 of the letter that -- she can't testify that that's actually
23 what she notarized. She can say she notarized a signature at
24 some point in time.

25 So, Your Honor, maybe there seems to be some confusion I

1 guess on my part as to what exactly she plans on testifying
2 to. So maybe if we could proffer her testimony?

3 **The Court:** Yeah. I think we're going to have to have a
4 proffer one way or the other, regardless of how I rule.

5 **Ms. Anastasia Walker:** Certainly, Your Honor. And as I
6 said before, we're not -- I don't believe Ms. Jarvis can
7 testify that she knows the contents of the letter or as to
8 the truth of the letter; that's not the issue. Mr. Duckett
9 said that he did not sign the letter and that's not how he
10 signs his name. So that -- she would be solely to impeach
11 that one fact and that she notarized this letter and
12 witnessed him sign it.

13 So the contents of the letter are not at issue. The --
14 she would solely be put up to impeach about that one fact
15 only.

16 **The Court:** Was it not the State's position that this is
17 a violation of Rule 5 of the Rules of Criminal Procedure?

18 **Ms. Meghan Walker:** Yes, Your Honor. We weren't
19 provided with a copy of this -- a copy of this letter. We
20 did file a reciprocal Rule 5 in this case, and I did I think
21 speak with Ms. Walker one day this week via telephone and
22 asked her if there was anything that they needed to turn over
23 to us, and she told me that there was not.

24 **The Court:** All right. That would fall under 5(b)(1).

25 **Ms. Anastasia Walker:** And, Your Honor, we're not

1 offering the letter for the truth of the matter asserted.
2 We're not offering the letter as evidence. We are only --
3 this is solely an impeachment issue. On Monday we had no
4 idea that Mr. Duckett was going to deny signing it. We
5 weren't going to use -- this wasn't an issue that we were
6 going to necessarily need.

7 This is solely an impeachment witness. So this doesn't
8 fall -- I would argue that it doesn't fall under Rule 5 as we
9 are not -- as this is only impeachment and it's not any
10 evidence as to our case in chief.

11 **The Court:** What do you have to say about that,
12 Solicitor? I don't see any exception for impeaching a -- in
13 the rule. You can point that to me if you would.
14 Information subject to disclosure. I don't think there's any
15 question but that the letter, regardless of whether you knew
16 or did not know -- it's kind of a domino effect in a way
17 because you did not produce the letter. Is that true?

18 **Ms. Anastasia Walker:** We did not produce the letter.
19 We have no intention of introducing it in our case in chief.

20 **The Court:** All right.

21 **Ms. Anastasia Walker:** And we still do not intend to
22 introduce the contents of the letter in our case in chief.

23 **The Court:** Let's -- let's hear her testimony and then
24 we'll take a break and I'll give you a chance to -- and we'll
25 take just a quick look. I don't know that there's an

1 impeachment exception to discovery, but we'll see what we can
2 find out.

3 **Ms. Meghan Walker:** Thank you, Your Honor.

4 **The Court:** All right. Call the witness.

5 **Ms. Pinnock:** Your Honor, I apologize. We were under
6 the impression that the State was going to be a little bit
7 longer finishing up their case. I asked Ms. Jarvis to be
8 here at 3, so she's not here yet.

9 **The Court:** Well, let's take a break, and if she's not
10 here when we come back, can you start with your -- your
11 client is going to testify. He can testify first.

12 **Ms. Anastasia Walker:** Certainly, Your Honor.

13 **The Court:** All right. Let's take about a 10-minute
14 real quick break, and if she's here, we'll go forward.
15 Otherwise, we'll let you go forward with the other witness.

16 **Ms. Pinnock:** Thank you, Your Honor.

17 **The Court:** And I know both sides have a thousand things
18 to do, but if you have any requests to charge, if you would
19 start getting -- shoving them on up to us, we would
20 appreciate it.

21 **Ms. Anastasia Walker:** Certainly, Your Honor.

22 (Whereupon, a short break was taken.)

23 **The Court:** State ready?

24 **Ms. Simpson:** The State's ready, Your Honor.

25 **The Court:** Defense ready?

1 **Ms. Pinnock:** Yes, Your Honor.

2 **The Court:** Bring in the jury.

3 **Ms. Pinnock:** Your Honor?

4 **The Court:** Whoa. Whoa. Stop.

5 **Ms. Pinnock:** Quick thing real quick; I'm sorry. Ms.
6 Jarvis has arrived. Do you want to start with her?

7 **The Court:** Yeah. Why don't we go ahead since she's
8 here?

9 **Ms. Pinnock:** And, secondly, Your Honor, Mr. James has
10 indicated he's going to testify. He is shackled. What we
11 would ask Your Honor to consider is---

12 **The Court:** Yeah, I don't think he -- I think we can
13 unshackle him while he takes the stand, yes. Maybe we can do
14 that while the jury is out. Why don't we go ahead and do
15 that?

16 **Ms. Pinnock:** Thank you, Your Honor.

17 **The Court:** While they're doing that, what's the
18 witness's name?

19 **Ms. Pinnock:** Ms. Jarvis.

20 **The Court:** Could she be coming up?

21 **Ms. Pinnock:** Yes, sir.

22 Vanessa Jarvis, after being duly sworn, testified
23 as follows in camera:

24 **The Clerk:** Please have a seat in the witness stand, and
25 state your full name for the record.

1 **The Witness:** Vanessa Jarvis.

2 **Ms. Pinnock:** May it please the Court?

3 Direct Examination

4 By Ms. Pinnock:

5 Q. Ms. Jarvis, where are you employed?

6 A. Alvin S. Glenn Detention Center.

7 Q. How long have you been working there?

8 A. Twenty-one years.

9 Q. Are you also a notary for the State of South Carolina?

10 A. Yes.

11 Q. And how do you become a notary?

12 A. I sign my signature at the courthouse and do all the
13 paperwork and I'm a notary.

14 Q. And do you get any, I guess, special items when you
15 become a notary?

16 A. Yes. You get a seal and a stamp.

17 Q. Okay. And what does it mean when you notarize a
18 document?

19 A. I basically notarize their signature, make sure that
20 person is signing their signature.

21 Q. So you check an I.D.?

22 A. Yes.

23 Q. You make sure that I.D. is matching the signature that's
24 going on the document?

25 A. Yes.

1 Q. And then after you verify that the person who is signing
2 is who they say they are, what do you do?

3 A. I notarize it.

4 Q. You put your signature on it?

5 A. Yes, ma'am.

6 Q. Do you put the date that you witnessed the signature?

7 A. The date.

8 Q. And when your commission as a notary expires is also on
9 there.

10 A. Yes.

11 Q. Your Honor... Do you see your signature on that
12 document?

13 A. Yes.

14 Q. And why is your signature contained on that document?

15 A. This detainee, I notarized the signature, his signature.
16 He came up to me and I asked to see his I.D. and verified who
17 he was, and he signed it and I notarized it.

18 Q. And the date that you notarized that?

19 A. 16th of October, 2013.

20 Q. And the detainee's signature that you verified?

21 A. His name?

22 Q. Yes.

23 A. Brandon Jones.

24 Q. No problem.

25 A. Duckett. Jwaun Duckett.

25 Q. This is the first I've heard of it.

1 A. Okay.

2 Q. And at that point in time -- is this the only -- is -- I
3 guess Jwaun Duckett is who you're saying presented himself to
4 you?

5 A. Yes.

6 Q. And was there -- is that the only person who has ever
7 talked to you about this letter?

8 A. No.

9 Q. Who else has talked to you about this letter?

10 A. Well, the detainee, when he was in the law library, he
11 asked me about did I remember doing it.

12 Q. Okay. There are multiple detainees. Which detainee are
13 you talking about?

14 A. Mr. Demetrice James.

15 Q. That guy?

16 A. Yes.

17 Q. Okay. So he talked to you about this letter as well.

18 A. Yes.

19 Q. But you didn't witness the actual letter being written.
20 You witnessed someone sign it.

21 A. Yes.

22 Q. And when were you first contacted about this case by
23 like a lawyer or an investigator or anybody like that?

24 A. Today.

25 Q. And where were you when you notarized this letter?

1 A. In the unit.

2 Q. In the cell, in the unit. Who was -- when you say you
3 were in the unit, can you just kind of tell me what you mean
4 by that?

5 A. I was in the dormitory.

6 Q. Okay.

7 A. In the dormitory where the detainee stays.

8 Q. Okay. And then you saw a different detainee in the law
9 library.

10 A. Yes, but that was probably about a month or so ago.

11 Q. Which dorm was that? When you said you were in the
12 unit, which unit was that? And if you don't remember, that's
13 fine, too.

14 A. Yeah, I don't, because that's been about a year ago.

15 **Ms. Meghan Walker:** Okay. Thank you, sir (sic). We
16 don't have any further questions at this time.

17 **The Court:** You can step down and have a seat out there.
18 We're going to talk about you for a few minutes. State, have
19 anything on this issue? Anything else?

20 **Ms. Meghan Walker:** Your Honor, we just -- this violates
21 Rule 5. We'd ask that this testimony be excluded. It's an
22 improper impeachment, Your Honor, I believe as well. So we
23 would ask Your Honor to exclude this testimony at this time.
24 When I'm looking at this, Your Honor, I don't know when the
25 defense got this letter, but I know that it was allegedly

1 notarized on October 16th of 2013 which puts it at almost a
2 year ago that they've known about her or had possession of
3 this letter and have failed to turn it over. So we'd ask,
4 Your Honor, that this be excluded.

5 **The Court:** Anything else from the defense?

6 **Ms. Pinnock:** Yes, Your Honor. As far as the Rule 5
7 violation, Rule 5, part B., subsection (1)(a) addresses what
8 we are required to turn over when we are served with a
9 reciprocal Rule 5, and that is the only information that we
10 are planning on introducing into evidence during our case in
11 chief. It was said before that this was purely impeachment
12 evidence. It was provided to us by a potential defense
13 witness or prosecution witness when it was written. We're
14 under no obligation under the rules to turn that over because
15 we're not introducing it into evidence. It is purely for
16 impeachment. We never had any intention on marking the
17 letter---

18 **The Court:** I find there's no Rule 5 violation. The
19 next question is: How do you get it in? I mean, how is
20 it... It's impeaching. He said he didn't sign the letter.
21 You're not putting the letter in.

22 **Ms. Pinnock:** No, sir.

23 **The Court:** Because you can't put the letter in because
24 that would be a Rule 5 violation .

25 **Ms. Pinnock:** Yes, sir.

1 **The Court:** Well, maybe not because you weren't planning
2 to introduce it in your case in chief, but you're telling me
3 you're not going to put it in. So you've got somebody
4 testifying that he signed a letter that's not going into
5 evidence?

6 **Ms. Pinnock:** Yes, sir. And the issue with that is:
7 His testimony was that he didn't sign it. That's not my
8 signature; I didn't do that. For that small issue going
9 towards his credibility as a witness, the fact that the
10 letter was notarized by a notary for the state, I believe we
11 should be able to elicit testimony to impeach his credibility
12 as a witness.

13 **The Court:** Well, maybe I'm being a little technical and
14 I'll ask you to address this and also the State, but at that
15 time - and certainly not casting any kind of aspersions on
16 defense counsel because I know they wouldn't do this - but
17 what's in the record that identifies that document as being
18 the document he was shown? It wasn't put in as a Court's
19 exhibit or a defense exhibit for I.D. So what's -- how is
20 that testimony tied to that document other than---

21 **Ms. Pinnock:** Well---

22 **The Court:** ---other than that you say it's the same
23 one? And you're an officer of the court and I believe you,
24 but what's in the record to support that the letter she's
25 addressing is the letter you showed Mr. Duckett?

1 **Ms. Pinnock:** I believe Ms. Walker asked him if he
2 recognized the letter, if he recognized his signature, and
3 then I believe she asked him if -- I believe there was some
4 conversation or some question about, you know, this notarized
5 letter with your signature on it.

6 **The Court:** Well, it's not in evidence.

7 **Ms. Pinnock:** Yes, sir, and we -- we're not going to
8 introduce it into evidence but purely for impeachment
9 purposes.

10 **Ms. Meghan Walker:** But I guess is the question, Your
11 Honor: How do we know that this letter is the same letter
12 that he was shown and denied? Right?

13 **The Court:** That's right and I'm not saying -- I know as
14 an officer of the court you would never present anything that
15 wasn't the exact same letter, but I've got to look at the
16 record, and in the record there's nothing in Mr. Duckett's
17 testimony that identifies that letter that you're handing
18 this witness as the letter that was handed to Mr. Duckett and
19 he denied signing. So you've made a proffer, but I'm going
20 to deny the witness's testimony.

21 **Ms. Meghan Walker:** Thank you, Your Honor.

22 **The Court:** All right. Thank you. You may leave. All
23 right. Are you ready for the jury?

24 **Ms. Simpson:** The State's ready.

25 **The Court:** All right. Bring in the jury.

1 (Whereupon, the jury was brought into open court at
2 2:52 p.m.)

3 **The Court:** All right. Defense, call your first
4 witness, please.

5 **Ms. Anastasia Walker:** Thank you, Your Honor. The
6 defense would call Demetrice James.

7 Demetrice James, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Please have a seat in the witness stand, and
10 state your full name for the record.

11 **The Witness:** Demetrice James.

12 Direct Examination

13 By Ms. Anastasia Walker:

14 Q. Demetrice? Demetrice, where are you from?

15 A. Columbia, South Carolina.

16 Q. And who do you live with?

17 A. My dad and my little sister.

18 Q. And what about your mom?

19 A. She got killed when I was younger.

20 Q. Now, let's go back to January 25th, 2013, what we've
21 been talking about.

22 A. Yes, ma'am.

23 Q. Do you remember that day?

24 A. Yes, ma'am.

25 Q. And how did your day start?

1 A. Actually, at the time I was going to Benedict College.
2 It was Friday, and on Fridays we get out at 12:00. So I went
3 to school. I caught the bus home at 12:00, and I kind of
4 just was kind of like chilling around the house, you know. I
5 went to Hammond Village Apartments because I got kind of
6 bored, and I just came back home and kind of chilled out.

7 Q. What did you do at Hammond Village?

8 A. Kind of just chilled with some friends a little bit, you
9 know, kind of mingled around and came back home.

10 Q. So you know some people around Hammond Village.

11 A. Yes, ma'am.

12 Q. And then you said after you left there you went back
13 home?

14 A. Yes, ma'am.

15 Q. And then what did you do after you got back home?

16 A. I just kind of chilled around a little bit more, kind of
17 watched T.V., that sort of thing, until about like 9:00.

18 Q. And then what happened?

19 A. My ex-girlfriend, Carmisha Likens (phonetic), came to
20 pick me up, went to her house on Broad River Road, Pine
21 Valley, for a little bit and then she -- she brought me home
22 and she dropped me back off at the house.

23 Q. So she brought you all the way back home.

24 A. Yes, ma'am.

25 Q. And then when she brought you back home, what did you

1 decide to do?

2 A. Again, I stayed home for maybe 10 or 15 minutes, and I
3 decided to go buy some marijuana.

4 Q. You decided to go buy some marijuana.

5 A. Yes, ma'am.

6 Q. And how did you decide to go about that?

7 A. I walked to Hammond Village Apartments to purchase some
8 marijuana.

9 Q. And who were you going to do that through?

10 A. Maurice.

11 Q. All right. And Maurice who?

12 A. Roberts.

13 Q. Who we've been talking about.

14 A. Yes, ma'am.

15 Q. Okay. And so what did you do when you got over to
16 Hammond Village?

17 A. Well, I walked to Maurice's house. I knocked on the
18 door. No one came to the door, so I kind of walked around
19 the neighborhood a little bit, and I used someone's cell
20 phone. At the time mine's was broke, so I contacted him and
21 we talked about where to meet him at to buy the marijuana.

22 Q. Okay. And about how long had you known Maurice at this
23 point?

24 A. Maybe like two years.

25 Q. Okay. And so you decided to meet Maurice somewhere.

1 A. Yes, ma'am.

2 Q. And where was that?

3 A. Over by E.E. Taylor Elementary School.

4 Q. And so what did you do next?

5 A. Well, from that point I walked over there. As I was
6 walking, I saw Maurice in front of the school, and so I met
7 him over there.

8 Q. Was Maurice with anybody?

9 A. Yes, ma'am.

10 Q. Who was that?

11 A. Deshawn.

12 Q. And what's Deshawn's last name?

13 A. McClary.

14 Q. Okay. And so what did you do when you walked up on
15 Maurice and Deshawn?

16 A. I kind of greeted -- kind of greeted them. I bought the
17 marijuana from them. That's about it.

18 Q. You don't remember what you were wearing that night?

19 A. No, ma'am, I can't remember.

20 Q. All right. So after you bought the marijuana, what were
21 you going to do?

22 A. I was going to go back home back to my dad's house
23 actually.

24 Q. Okay. But -- and without saying what was said, you had
25 a conversation with Maurice and Deshawn; right?

1 A. Yes, ma'am.

2 Q. Okay. And you ended up doing something else.

3 A. Yes, ma'am.

4 Q. Pardon me. And what did you decide to do instead?

5 A. Head to the -- to the studio.

6 Q. And what were you going to do there?

7 A. Meet Junior at the studio.

8 Q. And Junior -- who is Junior?

9 A. Vincent Nelson.

10 Q. Okay. But you call him Junior?

11 A. Yes, ma'am.

12 Q. Did you know anything about the studio?

13 A. Just that perhaps they recorded music there.

14 Q. That's about it?

15 A. Yes, ma'am.

16 Q. Just because you know what a studio is?

17 A. Yes, ma'am.

18 Q. And did you know where it was?

19 A. No, ma'am.

20 Q. Had you ever been there?

21 A. Never.

22 Q. Had you ever heard anything about it before?

23 A. No, ma'am.

24 Q. And do you know -- so you started walking towards the

25 studio?

1 A. Yes, ma'am.

2 Q. Following Maurice?

3 A. Yes, ma'am.

4 Q. And how far was it from where you were at?

5 A. Maybe two or three houses down the street.

6 Q. Okay. So when you got to the studio, what did you see?

7 A. Like a house. It was a residence.

8 Q. It was a residence?

9 A. Yes, ma'am.

10 Q. Okay. And so you got to this residence. And is this at
11 nighttime?

12 A. Yes, ma'am.

13 Q. So it's dark.

14 A. Yes, ma'am.

15 Q. What were you able to see when you got to the residence?

16 A. When I got to the residence, I saw Junior outside with
17 two other guys. They were both like smoking, that type of
18 thing, kind of talking.

19 Q. Okay. And where were they?

20 A. In a parking lot or like the driveway area of the house.

21 Q. Can you tell me a little bit about this driveway?

22 A. It's -- there was like a, I think, a Jeep or something
23 like that in the driveway. It's kind of steep. It's like it
24 goes downhill.

25 Q. Okay. So what do you decide to do when you see -- when

1 you see Junior?

2 A. The first thing I was going to do was actually greet him
3 and introduce myself to the other guys.

4 Q. Did you know those other guys?

5 A. No, ma'am.

6 Q. So you weren't familiar with them.

7 A. No, ma'am.

8 Q. And so what do you do?

9 A. I walk down the driveway to pretty much introduce
10 myself, and at this point I'm just walking down the driveway
11 and...

12 Q. And then what happens?

13 A. Maurice pulls behind me at this point. He -- he like
14 took off in a sprint towards one of the other guys who were
15 in the driveway.

16 Q. Did you know what Maurice was doing?

17 A. No, ma'am.

18 Q. And what did Maurice do when he was taking off in a
19 sprint? Where does he go?

20 A. He goes to one of the other individuals standing there
21 at the side of the driveway and like he get into this fight,
22 like this scuffle-type thing with one of the guys in the
23 driveway.

24 Q. He's fighting him?

25 A. Yes, ma'am.

1 Q. Okay. So what do you do?

2 A. Well, me, I really didn't know what was going on, so
3 I -- I ran down the driveway to pretty much see what was
4 taking place at this point, and that's what I was really
5 doing.

6 Q. Okay. So when you got up to the fight, what happened?

7 A. By the time I made it to Maurice or where he was at, he
8 had taken off and he was more or less by the door by the time
9 I got to where he was with the first guy.

10 Q. And what are you talking about, a door?

11 A. There's like a door at the bottom of the driveway. It's
12 kind of at the bottom -- the right of the driveway, the
13 bottom right.

14 Q. Okay. So you get down to where he's fighting this guy
15 and you go and Mark, pardon me, and Maurice goes towards the
16 door.

17 A. Yes, ma'am.

18 Q. Okay. And so what do you do next?

19 A. Next, after I see him, you know, take off and he get by
20 the people by the driveway, he's fighting again. At this
21 point it kind of look like he's getting beat up from what I
22 could see, so I ran in that direction to, you know, try to
23 help.

24 Q. You ran towards the door.

25 A. Yes, ma'am.

1 Q. Okay. Are you paying attention to Junior or Deshawn at
2 this point?

3 A. No, ma'am.

4 Q. And are you paying attention to the other guys outside
5 at this point?

6 A. No, ma'am.

7 Q. Okay. And then so why do you think -- why do you think
8 Maurice is getting beat up?

9 A. At this point I really don't know. All I know is just,
10 you know, he's fighting some individuals by the door and
11 stuff. So that's really all -- I, you know, saw them
12 fighting and I really didn't know why but...

13 Q. When you say fighting, is he kicking? What's he doing?

14 A. Actually at the time it seemed to me that he was -- he
15 was like getting pulled in and out of the house. I saw him
16 kind of, you know -- he was swinging and they were swinging.
17 It was, you know, just kind of like a fight.

18 Q. Okay. And you said "they." Did you see more than one
19 person?

20 A. Yes, ma'am. It was him and two other guys.

21 Q. And they're kind of at the door.

22 A. Yes, ma'am.

23 Q. You can see into the door.

24 A. Yes, ma'am.

25 Q. Okay. So what do you do?

1 A. At this point I'm just thinking, you know -- well, who I
2 thought to be my friend at the time, I thought he was in
3 trouble and I saw him getting beat up, so I just, you know,
4 just really went over there to help kind of...

5 Q. Do you have any idea what's going on?

6 A. No, ma'am.

7 Q. Okay. And so when you -- are you able to get in the
8 house?

9 A. Yes, ma'am.

10 Q. Okay. And when you get in the house, what do you see?

11 A. When I get in the house, it's -- again, you know,
12 there's a lot of commotion going on. So I just really see a
13 lot of people fighting, and that was pretty much the extent
14 of it. It was just like everybody was kind of fighting.

15 Q. When you say everybody, what do you -- how many people?
16 Tell me a little bit. Describe that a little---

17 A. There was two guys in there and Maurice, and when I came
18 in, you know, they started fighting me, and so it was really
19 just a big scuffle between all of us.

20 Q. And did you know these people?

21 A. No, ma'am.

22 Q. So you didn't know the people that -- these other people
23 that Maurice is fighting either.

24 A. No, ma'am.

25 Q. Okay. And so what's going through your mind at this

1 point?

2 A. At this point it's really like, you know, I don't know
3 what's going on, but it seemed to me that Maurice was getting
4 beat up. So I'm thinking, you know, pretty much try to get
5 him out of the house, you know, and at the same time I had to
6 fend off the blows where I would -- because I was getting
7 hit, too. So, you know, that was kind of it.

8 Q. Okay. So you jumped in the fight.

9 A. Yes, ma'am.

10 Q. And during this fight do you see Maurice do anything?

11 A. At first I didn't, you know, other than him fighting.
12 And then in the middle of us fighting, a gunshot went off,
13 and I saw him like drop the gun out of his hand. So that's
14 what I saw him do.

15 Q. So what did you do?

16 A. When he dropped the gun, I kind of, you know, stopped to
17 make sure I wasn't shot or anything, and I think I remember
18 the other guys doing the same thing, stopping to make sure
19 they were shot (verbatim). When the gun hit the ground, I
20 made an attempt to get the gun because I really didn't want
21 this gun to get into the wrong hands and, you know, the wrong
22 thing... So that's -- I grabbed the gun and I tried to make
23 an escape out the door.

24 Q. So when you say you tried to make an escape out the
25 door, what door are you talking about?

1 A. The door that I had came in that's at the bottom right
2 side of the driveway.

3 Q. Okay. So the same door you had come in.

4 A. Yes, ma'am.

5 Q. So when you were trying -- when you were trying to run
6 out, what happens?

7 A. When I'm trying to run out of the door, some type of way
8 the door, it kind of -- it closed and my arm was stuck inside
9 of the door. So at this point I'm really trying to get my
10 arm outside of the door, and what ended up happening was like
11 the gun was snatched out of my hand and I heard another
12 gunshot while my -- when I'm trying to get my hand out of the
13 door. Then my arm just fell out.

14 Q. All right. And hold on. So when you say that -- that
15 your arm was caught in the door, you're running out of the
16 door; right?

17 A. Yes, ma'am.

18 Q. Okay. And you're talking about your right hand? Is
19 that correct?

20 A. It was my left hand.

21 Q. It was your left hand---

22 A. Yes, ma'am.

23 Q. ---that was caught in the door.

24 A. Yes, ma'am.

25 Q. And your body is on the outside of the door?

1 A. Yes, ma'am.

2 Q. Is that right? And this arm is caught in the door.

3 A. Yes, ma'am.

4 Q. And you're trying to get out.

5 A. Yes, ma'am.

6 Q. You're trying to get out of the house.

7 A. Yes, ma'am.

8 Q. And so what happens when you get -- are you able to get
9 your arm out?

10 A. Eventually.

11 Q. Okay. And you said that -- so when your arm is stuck in
12 the door, the gun is inside the house.

13 A. Yes, ma'am.

14 Q. Okay. But the rest of your body is outside.

15 A. Yes, ma'am.

16 Q. Okay. And what happens while your arm is stuck in the
17 -- the arm with the gun.

18 A. Someone snatched the gun out of my hand, and then the
19 gun went off.

20 Q. You heard it go off again.

21 A. Yes, ma'am.

22 Q. Okay. Were you able to get your arm out of the door?

23 A. Yes, ma'am.

24 Q. And then what happened?

25 A. At this point I'm just thinking, you know, I got -- I

1 got to get away. You know, I don't know what's going on, but
2 I really need to go, so I -- I just really ran. I was
3 telling Vincent and Deshawn to come on while I was running.

4 Q. Okay. You told them, "Let's go."

5 A. Yes, ma'am.

6 Q. All right. So where did you run?

7 A. Back to my dad's house.

8 Q. Now, while you're running, did you ever look back?

9 A. Yes, ma'am.

10 Q. What did you see?

11 A. When I got to the top of the driveway, I looked back and
12 I saw Maurice. Maurice was standing over this guy in the
13 driveway with like the gun out like aimed at him in the
14 driveway.

15 Q. And did you see him do anything after that?

16 A. I saw him -- I saw him shoot the guy in the driveway.

17 Q. And then what did you do?

18 A. I just ran to my dad's house.

19 Q. And then while you were running, did you hear anything
20 else?

21 A. When I got up the street, I heard a couple more shots.

22 Q. And what did you do?

23 A. I ran to my dad's house.

24 Q. You just kept running.

25 A. Yes, ma'am.

1 Q. Do you know how many shots you heard?

2 A. I really can't give like an exact number, but I know it
3 was like four or more.

4 Q. Okay. And you said you went back to your dad's house?

5 A. Yes, ma'am.

6 Q. That's where you live; right?

7 A. Yes, ma'am.

8 Q. And what did you do?

9 A. I laid on the couch. I was kind of like trying to get
10 my thoughts together a little bit, and I drifted off to
11 sleep.

12 Q. And what's going through your mind?

13 A. I was really scared kind of, nervous and scared at the
14 same time. I really didn't understand the situation. So I
15 just kind of wanted, you know, like to sleep it off and kind
16 of forget about it.

17 Q. Did you see Maurice after that?

18 A. Yes, ma'am.

19 Q. And when was that?

20 A. The next day it was at a party in Hammond Village.

21 Q. Whose party was that?

22 A. Jwaun.

23 Q. And did something happen at that party?

24 A. Yes, ma'am.

25 Q. What happened at the party?

1 A. I was threatened.

2 Q. Did that -- did that concern you?

3 A. Yes, ma'am.

4 Q. How do you know Maurice?

5 A. Just kind of hanging around Hammond Village and some
6 other thing.

7 Q. Does he know your family at all?

8 A. Yes, ma'am.

9 Q. How does he know your family?

10 A. Well, actually his dad used to work on my dad's truck at
11 the time. It was a Pathfinder. He used to work on the
12 truck, so that's kind of how he knew...

13 Q. Okay. And you were eventually arrested in this case;
14 right?

15 A. Yes, ma'am.

16 Q. And your dad actually called the police; right?

17 A. Yes, ma'am.

18 Q. And they came to your house and arrested you?

19 A. Yes, ma'am.

20 Q. And did you speak with the police?

21 A. Yes, ma'am.

22 Q. And you gave -- and did you give them a statement?

23 A. Yes, ma'am.

24 Q. And was your first statement exactly what happened?

25 A. No, ma'am.

1 Q. It wasn't.

2 A. No, ma'am.

3 Q. It wasn't the truth.

4 A. No, ma'am.

5 Q. Why didn't you tell them the truth?

6 A. Honestly, I just was scared. You know, I just saw
7 somebody get shot and I just was kind of scared, so I really
8 didn't want to... That sort of thing.

9 Q. And did you talk to the police again after that?

10 A. Yes, ma'am.

11 Q. You did. And when you talked to the police that time,
12 did you tell them what happened?

13 A. Yes, ma'am.

14 Q. Did you tell them everything you could remember?

15 A. Yes, ma'am.

16 Q. Did you tell them the truth?

17 A. Yes, ma'am.

18 Q. And do you remember in February of this year that you
19 testified in a trial?

20 A. Yes, ma'am.

21 Q. You testified in the trial of Maurice Roberts? Is that
22 right?

23 A. Yes, ma'am.

24 Q. And, Demetrice, did you ever plan a burglary---

25 A. No, ma'am.

1 Q. ---with Maurice Roberts?

2 A. Never.

3 Q. Did you plan a burglary with Deshawn McClary?

4 A. Never.

5 Q. What about Vincent Nelson?

6 A. No, ma'am.

7 Q. Did you ever talk to Jwaun Duckett about planning a
8 burglary?

9 A. No, ma'am.

10 Q. Did you ever overhear them planning a burglary?

11 A. No, ma'am.

12 Q. Did you plan with your friends to rob anybody?

13 A. No, ma'am.

14 Q. Did you have any intention of robbing a studio---

15 A. No, ma'am.

16 Q. ---on January 25th, 2013?

17 A. No, ma'am.

18 Q. Did you have any intention of robbing anybody on
19 Williamsburg Drive that night?

20 A. No, ma'am.

21 Q. Did you even know who lived there?

22 A. No, ma'am.

23 Q. Had you ever been there before?

24 A. No, ma'am.

25 Q. Why did you go in the house that night?

1 A. To help Maurice. It looked like he was getting beat up,
2 so I just really wanted to help.

3 Q. Beg the Court's indulgence. Demetrice, you said earlier
4 that you testified in Maurice Roberts' trial.

5 A. Yes, ma'am.

6 Q. And prior to testifying in that trial, did you speak
7 with somebody in the solicitor's office?

8 A. Yes, ma'am.

9 Q. You did? And who called you to the stand to testify?

10 A. I think the solicitor, I think.

11 Q. The solicitor's office called you to testify in their
12 behalf?

13 A. Yes, ma'am.

14 Q. Okay. Please answer any questions that the State has
15 for you; okay?

16 A. Okay.

17 **Ms. Simpson:** Thank you. May it please the Court?

18 Cross-Examination

19 By Ms. Simpson:

20 Q. Mr. James, I want to talk to you a little bit about who
21 you know---

22 A. Yes, ma'am.

23 Q. ---involved in this case. You know Vincent Nelson;
24 right?

25 A. Yes, ma'am.

1 Q. How do you know him?

2 A. Hammond Village.

3 Q. Hammon Village? And you actually call him Junior;
4 correct?

5 A. Yes, ma'am.

6 Q. And you'd known him for about several years prior to
7 this incident.

8 A. Probably. I really can't remember. Maybe like a year
9 or something.

10 Q. A year?

11 A. Yeah.

12 Q. More than a few months or a few days?

13 A. Yes, ma'am.

14 Q. And you also know Deshawn McClary.

15 A. Yes, ma'am.

16 Q. Right? Y'all are pretty good friends; right?

17 A. I just know him.

18 Q. You just know him?

19 A. Yes, ma'am.

20 Q. You actually knew him from back in 2006, '07?

21 A. I just saw him before at the time but...

22 Q. You just saw him before. So y'all never really hung out
23 together.

24 A. I just know him through other people at Hammond Village.

25 Q. Other people. Would some of those other people be

1 Maurice Roberts?

2 A. Yes, ma'am.

3 Q. And Maurice Roberts is actually really good friends with
4 both Vincent Nelson and Deshawn McClary, too; right?

5 A. Yes, ma'am.

6 Q. And you're friends with Maurice Roberts; right?

7 A. At the time.

8 Q. At the time? As a matter of fact, you said he was one
9 of your closest friends?

10 A. No, we were just friends.

11 Q. Just friends. He was one of your dearest friends?

12 A. I mean, at the time I kind of thought that.

13 Q. Kind of thought that. How often would y'all hang out?

14 A. Maybe a couple of times every week.

15 Q. A couple of times every week?

16 A. Yes, ma'am.

17 Q. And where would y'all hang out? Y'all hung out at his
18 house primarily; right?

19 A. Sometimes. Sometimes just around the neighborhood.

20 Q. And where is his house located?

21 A. At Hammond Village.

22 Q. Hammond Village. And you know other people in Hammond
23 Village, too.

24 A. Yes, ma'am.

25 Q. And Hammond Village is really close to River Drive.

1 A. Yes, ma'am.

2 Q. Where you live.

3 A. Yes, ma'am.

4 Q. And you said you were from Columbia and you grew up
5 here.

6 A. Yes, ma'am.

7 Q. So just so we're clear, you and Maurice are friends.

8 A. Were friends at the time.

9 Q. Were. And then Vincent Nelson, friends.

10 A. At the time, yes, ma'am.

11 Q. At the time. And Deshawn McClary.

12 A. At the time, yes, ma'am.

13 Q. And you've known them for awhile.

14 A. A year, two maybe.

15 Q. All of them only a year or two?

16 A. Yes, ma'am, around that.

17 Q. So these people that you knew only about a year, did you
18 actually hang out with all of them and do music together,
19 record music?

20 A. I have never done music with any of them. I really just
21 did my music by myself kind of.

22 Q. What kind of music do you do?

23 A. Hip-hop, rapping, lots of times R&B.

24 Q. But hanging out with them as much as you did, they did
25 music.

1 A. Not that I'm aware of.

2 Q. So you're not aware of any rap group called 600.

3 A. No, ma'am.

4 Q. And you're not aware of them being involved in any type
5 of recording or thing of -- things of that nature.

6 A. No, ma'am.

7 Q. So they would have no interest in studio equipment;
8 right?

9 A. No, ma'am.

10 Q. But you were involved in music.

11 A. Yes, ma'am.

12 Q. And you had studio equipment; right?

13 A. Yes, ma'am.

14 Q. But they didn't have any.

15 A. No, ma'am.

16 Q. Now, with respect to the victims in this case, Brandon
17 Jones, you didn't know him, did you?

18 A. No, ma'am.

19 Q. And you didn't know Trenton Scott.

20 A. No, ma'am.

21 Q. And you didn't know Troy Scott.

22 A. No, ma'am.

23 Q. You didn't know Cari Pearson.

24 A. No, ma'am.

25 Q. And you didn't know Chandler Davis.

1 A. No, ma'am.

2 Q. And you didn't know Mrs. Davis.

3 A. No, ma'am.

4 Q. Had you ever heard of them before?

5 A. No, ma'am.

6 Q. And you'd never been to their house before.

7 A. No, ma'am.

8 Q. And on this night though you went there; right?

9 A. Yes, ma'am.

10 Q. And it was really close to your house, too.

11 A. Yes, ma'am.

12 Q. I want to talk about what you said happened just to make
13 sure I've got this version of the events correct, based on
14 the testimony I've just heard. You were chilling pretty much
15 during the day.

16 A. Yes, ma'am.

17 Q. After you'd got out of school.

18 A. Yes, ma'am.

19 Q. And just chilling by yourself.

20 A. Yes, ma'am.

21 Q. And at some point your ex-girlfriend comes over.

22 A. Later on that night yes, ma'am.

23 Q. About what time was that?

24 A. Maybe 9, 9-ish.

25 Q. 9-ish? And then y'all went to Broad River where she

1 lives and y'all are chilling.

2 A. Yes, ma'am.

3 Q. And then when you -- at some point she decides to bring
4 you home?

5 A. Yes, ma'am.

6 Q. What time is that?

7 A. I really can't give a time. I can't really give a time.

8 Q. You can't give a time?

9 A. Huh-uh.

10 Q. How long do you think you were there chilling with her?

11 A. Maybe an hour and a half. Two hours maybe.

12 Q. Okay. So 10:30, 11-ish she brings you back home.

13 A. Yes, ma'am.

14 Q. And you're at home for awhile, chilling at your dad's
15 house?

16 A. Just for a little.

17 Q. For a little bit? At some point you decide you want
18 some marijuana.

19 A. Yes, ma'am.

20 Q. And why do you call Maurice?

21 A. Because he sells weed. That's where I usually get it.

22 Q. Okay. So he's just your drug dealer or he's your good
23 friend?

24 A. He's just a friend.

25 Q. He's just a friend. So you call him up because your

1 phone was broken.

2 A. I actually went to his house.

3 Q. Well, you went to his house because your phone was
4 broken. That's what you just testified to; right?

5 A. Yes, ma'am.

6 Q. Okay. So your phone was broken, so you went to his
7 house.

8 A. Yes, ma'am.

9 Q. How did you break your phone?

10 A. It just broke. I used to -- I was with a temp service
11 for the City of Columbia and I broke it at work.

12 Q. Okay. So you broke it at work? And how long had you
13 been without a phone?

14 A. Maybe probably like a week, I think.

15 Q. Okay. So you went over to his house to buy some weed.

16 A. Yes, ma'am.

17 Q. You knocked on the door.

18 A. Yes, ma'am.

19 Q. Did his dad come to the door---

20 A. No, ma'am.

21 Q. Because it's 5:30 or 11:30 at night?

22 A. No one came to the door.

23 Q. No one came?

24 A. No, ma'am.

25 Q. And do you know what time of night this was?

1 A. Not really. I just know it was nighttime.

2 Q. Nighttime. But it's after 10:30, close to 11, around
3 that time frame.

4 A. Around that time.

5 Q. So you go there, and then tell us exactly where you went
6 next.

7 A. I just walked around the neighborhood to find someone's
8 phone that I could use to call.

9 Q. And when you say the neighborhood, what area are you
10 referring to?

11 A. Hammond Village.

12 Q. So you just walked around.

13 A. Yes, ma'am.

14 Q. Do you know how long you were walking?

15 A. Not really. A couple of minutes maybe.

16 Q. A couple of minutes? And then you found somebody.

17 A. Yes, ma'am.

18 Q. Who did you find?

19 A. Just a guy in the neighborhood. I can't really recall
20 any names.

21 Q. You can't recall any names?

22 A. No, ma'am.

23 Q. Did he have his phone out? Like why did you go up to
24 him?

25 A. He had a phone, and I knew who he was. I just knew him

1 by face. I didn't know like a name or anything, so I used
2 his phone.

3 Q. Okay. So he had a phone, and you knew who he was. You
4 just happened to run into him. Were there other people out
5 that night?

6 A. Yes, ma'am.

7 Q. And this is January 25th of 2013. It's pretty cold;
8 right?

9 A. Yes, ma'am.

10 Q. And people are just hanging outside?

11 A. Yeah. Yes, ma'am.

12 Q. And you're walking around looking for a phone.

13 A. Yes, ma'am.

14 Q. And when you get that phone, who did you call?

15 A. Maurice.

16 Q. And did Maurice answer?

17 A. Yes, ma'am.

18 Q. And, again, this is after 11, around that time frame,
19 close to midnight? Closer...

20 A. Somewhere---

21 Q. It's dark.

22 A. Yes, ma'am.

23 Q. Especially dark since it's January and it's cold.

24 A. Yes, ma'am.

25 Q. And what did Maurice say to you on the phone?

1 A. He just told me pretty much to meet him on the road that
2 Willis lives at, over there by E.E. Taylor.

3 Q. So he told you to meet him on the road where Willis
4 lives at.

5 A. Yes, ma'am.

6 Q. Who is Willis?

7 A. A guy who we went to school with.

8 Q. Do you know a last name?

9 A. No, ma'am.

10 Q. What road did Willis live there?

11 A. I just know it's by E.E. Taylor.

12 Q. So how did you know how to get there?

13 A. Because I know where Willis lives at and...

14 Q. So you know where Willis lives; it's by E.E. Taylor.

15 A. Yes, ma'am.

16 Q. But you don't remember the road or anything like that.

17 A. I don't know the name of the road or anything.

18 Q. And how often did you go to Willis's house?

19 A. Probably like once a month, twice month, something like
20 that.

21 Q. Twice a month? And would you meet Maurice there?

22 A. No, ma'am.

23 Q. Okay. So this was the first time you actually met him
24 at Willis's house.

25 A. I didn't meet him at Willis's house.

1 Q. Well, you were going to. He told you to meet him there.

2 A. On the road that Willis lives on, he'll be right there.

3 Q. So the road that he lives on.

4 A. Yes, ma'am.

5 Q. Which is by E.E. Taylor.

6 A. Yes, ma'am.

7 Q. So you walk. How long does it take you?

8 A. A couple of minutes.

9 Q. A couple of minutes? So you're walking, and before you
10 get to Willis's house on the road, who do you encounter?

11 A. Maurice and Deshawn. I see them once I get by E.E.
12 Taylor.

13 Q. Okay. You see them by E.E. Taylor.

14 A. Yes, ma'am.

15 Q. Like standing by the school, in the schoolyard---

16 A. Like standing---

17 Q. ---basketball courts, what?

18 A. Like standing in front of the school by the sign.

19 Q. By the sign.

20 A. Yes, ma'am.

21 Q. So you walk up to them, and you were merely going to buy
22 weed.

23 A. Yes, ma'am.

24 Q. And your attention was to what? Buy a blunt?

25 A. Yeah.

1 Q. And you were just going to take it back with you.

2 A. Yes, ma'am.

3 Q. You had no intentions of hanging out with your friends.

4 A. No, ma'am.

5 Q. Even though you'd been bored all day just chilling.

6 A. Yes, ma'am.

7 Q. And so you get the blunt from Maurice.

8 A. Yes, ma'am.

9 Q. Tell me what happened. I notice you mentioned that -
10 let me make sure - that you had a conversation with Deshawn
11 and Maurice; right?

12 A. With Maurice.

13 Q. With Maurice? What was that conversation? What did
14 y'all talk about?

15 A. Pretty much he was like he was going to go to the studio
16 to meet Junior; would I like to come?

17 Q. So your drug dealer, not very close friend, asked you:
18 Do you want to go to the studio and hang out?

19 A. He was my friend and, yeah, he just asked me would I
20 want to go with him and meet Junior at the studio.

21 Q. So the studio -- they were interested in music.

22 A. I know we were supposed to meet Junior at the studio. I
23 didn't know, you know, other than that we was going to meet
24 him at the studio.

25 Q. So just meet at the studio. And, like you said, y'all

1 had never recorded together.

2 A. No, ma'am. I mean, they've like been around me doing
3 music, but we -- as far as us doing music together, no.

4 Q. And they don't rap?

5 A. Not that I'm aware of, no, ma'am.

6 Q. Okay. So the person who would be interested in going to
7 the studio the most would be you; right?

8 A. Yes, ma'am.

9 Q. So he asked: Do you want to come to the studio?

10 A. To meet Junior, yes, ma'am.

11 Q. To meet Junior. And he didn't tell you where you were
12 going.

13 A. No, ma'am.

14 Q. And you didn't know who all was going to be there.

15 A. No, ma'am.

16 Q. And you knew Vincent Nelson didn't live at a home with a
17 studio; right?

18 A. Yes, ma'am.

19 Q. He was actually living somewhere else.

20 A. I really didn't know where he lived at.

21 Q. He actually stayed with Maurice for awhile; right?

22 A. I didn't know. I know he used to be over there a lot
23 though.

24 Q. Over at Maurice's?

25 A. Yes, ma'am.

1 Q. And so y'all go over to the studio. And Deshawn, how
2 well do you know him?

3 A. He's just a friend, you know. I know him through
4 Hammond Village.

5 Q. Okay. So you walk over there. How long does it take
6 y'all to get from E.E. Taylor to Hammond Village?

7 A. To Hammond Village?

8 Q. Or, excuse me, to where y'all went, the studio.

9 A. Maybe two or three houses down, so it was really like a
10 minute or two.

11 Q. A minute or two?

12 A. Yes, ma'am.

13 Q. And during that time, tell me a little bit about the
14 walk. You've got a blunt; right?

15 A. Yes, ma'am.

16 Q. And your intention was initially to smoke some weed.

17 A. Yes, ma'am, and go home.

18 Q. Okay. So what are y'all doing during this walk? Are
19 y'all talking?

20 A. Not really. We were just walking.

21 Q. So you were just walking.

22 A. Yes, ma'am.

23 Q. You're not talking about what you're going to do.

24 A. No, ma'am. We was just going to meet Junior at the
25 studio.

1 Q. Okay. And you didn't really know why you were going
2 over there.

3 A. Just to meet Junior.

4 Q. Okay. So y'all were walking in silence.

5 A. Not really in silence but we -- there's nothing that I
6 can recall that we talked about, nothing that's significant
7 or anything.

8 Q. Okay. And do you remember what Maurice and Deshawn were
9 doing during that walk?

10 A. Kind of talking, you know, and Deshawn was on his phone.
11 I really can't remember.

12 Q. You can't really remember. You think he might have been
13 on the phone, but you don't know.

14 A. I really don't know.

15 Q. So you're just walking, kind of clueless.

16 A. Yes, ma'am.

17 Q. And then when you get there -- and you said earlier that
18 Maurice was in front leading the way?

19 A. Yes, ma'am.

20 Q. And at some point you walk up and you see -- who do you
21 see?

22 A. Junior and two other guys.

23 Q. And two other guys. And they were all standing
24 together.

25 A. Not necessarily together but they were all in the

1 parking lot.

2 Q. They were all in the parking lot?

3 A. Yes, ma'am.

4 Q. The driveway area?

5 A. Yes, ma'am.

6 Q. And they're all doing what? Smoking?

7 A. I saw Junior smoking and maybe one of the other guys.

8 Q. Okay. So you see them and you're thinking: I'm about
9 to go have a good time.

10 A. I just was really introducing myself to them, you know.

11 Q. So you were going -- and you actually walk at this point
12 in front of Maurice.

13 A. Yes, ma'am.

14 Q. And all of a sudden he just sprints off.

15 A. Yes, ma'am.

16 Q. And according to your testimony today, he engages in an
17 altercation.

18 A. Yes, ma'am.

19 Q. So he goes up to the guy and just hits him.

20 A. Yeah, something like that. There's, you know, just a
21 lot of commotion just like a fight.

22 Q. A lot of commotion. And now there's no warning.

23 Maurice isn't telling you who you're going to see; right?

24 A. Just meeting Junior.

25 Q. Meet -- meeting Junior.

1 A. Yes, ma'am.

2 Q. He doesn't tell you about anybody else.

3 A. No, ma'am.

4 Q. He doesn't mention that he's having problems with
5 anybody.

6 A. No, ma'am.

7 Q. He doesn't mention Brandon Jones.

8 A. No, ma'am.

9 Q. He doesn't mention Trey Scott.

10 A. No, ma'am.

11 Q. He doesn't mention Troy Scott.

12 A. No, ma'am.

13 Q. And you don't ever see him on his phone.

14 A. Maurice?

15 Q. Yes.

16 A. No, ma'am.

17 Q. So you didn't see him on his phone at all. And he
18 sprints past you and immediately engages in this altercation.
19 Which one of the guys did he engage in the altercation with?

20 A. I don't really know names. I think---

21 Q. What did he look like? Just give me a general
22 description.

23 A. It was at nighttime. I think he -- he was like kind of
24 a heavy-set guy kind of, and that's all I really remember. I
25 don't -- I know it was just like a fight.

1 Q. Just like a fight.

2 A. Yes, ma'am.

3 Q. Were both people in this fight actually fighting or just
4 Maurice?

5 A. Well, I mean, at first it seemed both of them was
6 fighting, and the other dude kind of like stumbled to the
7 ground kind of.

8 Q. Kind of? Kind of stumbled. Were any words exchanged
9 that you can remember?

10 A. No, ma'am.

11 Q. So nothing is said. He goes up and just -- they start
12 fighting. And Junior is there.

13 A. Yes, ma'am.

14 Q. What's Junior doing?

15 A. I don't know. He was more like towards the door area.
16 This was kind of like at the top of the driveway.

17 Q. So at the top of the driveway he's engaged in a fight
18 with one person.

19 A. Yes, ma'am.

20 Q. Even though you said they were all together at the
21 bottom of the driveway.

22 A. I just---

23 Q. I'm just trying to get this straight in my head.

24 A. I just said they were all in the parking lot together.

25 Q. In the parking lot together.

1 A. Yes, ma'am.

2 Q. And then he goes up and does what?

3 A. They just fight.

4 Q. They fight, but after they're fighting, the guy stumbles
5 to the ground. What happens next?

6 A. It's -- like there was a whole bunch of going -- whole
7 bunch of stuff going on, so I just made it there really to
8 kind of see what was going on like...

9 Q. Let me -- let me stop you. So a whole bunch of stuff is
10 going on.

11 A. Yes, ma'am.

12 Q. And by a whole bunch of stuff, are people yelling?
13 They're not yelling, are they?

14 A. Not really.

15 Q. There's no screaming.

16 A. No, ma'am.

17 Q. There's no kind of: Hey, I'm about to fight. None of
18 that.

19 A. No, ma'am.

20 Q. So your friend slash drug dealer, Maurice Roberts, just
21 brings you to this place; right?

22 A. Yes, ma'am.

23 Q. And then sprints off and starts fighting.

24 A. Yes, ma'am.

25 Q. Without any warning.

1 A. No, ma'am.

2 Q. To you.

3 A. No, ma'am.

4 Q. And Deshawn, where is he?

5 A. I think he was like behind me at this point in time. I
6 think he was like...

7 Q. Behind you? So what happened next after the guy is on
8 the ground?

9 A. Him and Maurice is fighting. I make it to---

10 Q. They're actually fighting on the ground in the parking
11 lot?

12 A. Yes, ma'am.

13 Q. Okay. So they're fighting, and the other guy is
14 actually fighting back?

15 A. It seemed to me at first he was until he stumbled to the
16 ground.

17 Q. Oh, so they're standing up fighting. Then he falls to
18 the ground.

19 A. Yes, ma'am.

20 Q. Then where does Maurice go?

21 A. He goes to the door area.

22 Q. To the door area?

23 A. Yes, ma'am.

24 Q. And you have a clear view? Where are you?

25 A. Like I'm where the first altercation took place at

1 between him and the first guy.

2 Q. And that's in front of the truck or behind the truck?

3 A. I think it was like at the top of the truck or by the
4 door of the truck.

5 Q. By the door of the truck?

6 A. Yes, ma'am.

7 Q. Do you remember which way the truck was facing or just
8 that it was parked in the driveway?

9 A. I just know that it was parked in the driveway.

10 Q. Okay. And then Maurice goes towards the door.

11 A. Yes, ma'am.

12 Q. And what do you do? You said you walked down to see
13 what was going on; right?

14 A. I kind of run down actually.

15 Q. I think earlier you said you walked down. There was a
16 lot of commotion; I just wanted to see what they were getting
17 into, what was going on.

18 A. I ran down after I saw them fighting.

19 Q. You ran down.

20 A. Yes, ma'am.

21 Q. Even though Maurice had just sprinted past you and hit
22 this guy that you didn't know for no reason.

23 A. Yes, ma'am.

24 Q. And at this point Maurice is not in distress; right?

25 He's actually up and going towards the door.

1 A. Now he is; yes, ma'am.

2 Q. And you follow him.

3 A. Yes, ma'am.

4 Q. You follow him, and you see him automatically start
5 fighting two other dudes.

6 A. Yes, ma'am.

7 Q. And they're at the doorway?

8 A. Yes, ma'am.

9 Q. So does Maurice go into the door?

10 A. I just saw him fighting at the door kind of.

11 Q. Well, you're right behind him after he leaves this first
12 altercation, and then these two guys -- Maurice just busts in
13 through the door; right?

14 A. I wasn't right behind him. I made it to the alter --
15 well, where he was fighting the other guy at. By the time I
16 got there, he had ran and started fighting the guys by the
17 door.

18 Q. Okay. So he was fighting them by the door. Did they
19 open the door and say like, "Hey, Maurice, come in," or did
20 they know Maurice was out there? Was the door open? Closed?

21 A. I really can't remember. I just know that they were
22 fighting like by the door.

23 Q. Okay. And, again, you didn't hear them say, "Hey, come
24 in."

25 A. No, ma'am.

1 Q. And you didn't hear them say any kind of cursing or
2 engage Maurice in any way.

3 A. I just saw them fighting; that's it.

4 Q. At what point did you see the gun?

5 A. In the house.

6 Q. In the house.

7 A. Yes, ma'am.

8 Q. So they're fighting, and you go in the house.

9 A. Yes, ma'am.

10 Q. And are you -- where are you in relation to Maurice?

11 A. I would say we were kind of close, but you know it was
12 just a fight really, so I really couldn't give you -- but we
13 were kind of close though.

14 Q. Okay. Why did you tell your counsel why you went in
15 there? What was the reason?

16 A. I just thought he was getting beat up, so I, you know,
17 really was trying to get him out of the house, that type of
18 thing.

19 Q. Okay. So he's going to this place and he's getting beat
20 up from a fight that he started.

21 A. I didn't know if he started it or not, but I know it
22 looked like he was getting beat up.

23 Q. Okay. And then he went in; right?

24 A. Yes, ma'am.

25 Q. And at this point -- when you hear one shot; right?

1 A. Yes, ma'am.

2 Q. Everybody freezes.

3 A. Yes, ma'am.

4 Q. And you, being the good Samaritan that you are, didn't
5 want the wrong thing to happen and the gun to get in the
6 wrong hands, so you pick up the gun.

7 A. After it was dropped, yes, ma'am.

8 Q. After it was dropped. And whose hand did it drop from?
9 Maurice; right?

10 A. Yes, ma'am.

11 Q. And you pick it up and you try to run out the door, and
12 then, bam, another shot fires off.

13 A. Actually my arm was caught in the door.

14 Q. Did you pull the trigger?

15 A. All I know was the gun was snatched out of my hand, and
16 at this point I heard it go off.

17 Q. And how are you -- how did you grab the gun? How are
18 you holding it?

19 A. I don't know. I just really grabbed it. I can't really
20 remember how I grabbed it. I just picked it up off---

21 Q. You just grabbed it. Do you have an idea about how you
22 grabbed it?

23 A. No, ma'am, I just---

24 Q. Like this? Your hand is stuck in the door?

25 A. I just know that I picked the gun up and ran, and my arm

1 -- my left arm got caught in the door.

2 Q. All right. And at some point then you just flee; right?

3 A. Yes, ma'am.

4 Q. After this you get out, but before leaving you hear more
5 shots.

6 A. No, ma'am. My arm was caught in the door. The gun was
7 snatched out of my hand, and I heard one shot.

8 Q. So you heard two shots inside the house.

9 A. Yes, ma'am.

10 Q. Okay. Two shots go off inside the house, but you're
11 able to get your arm out and you start hauling---

12 A. Yes, ma'am.

13 Q. ---looking down the street or up the driveway.

14 A. Yes, ma'am.

15 Q. What happened next? You actually see Maurice come out
16 of the house?

17 A. I didn't see him come out.

18 Q. Okay. But the next time you saw him he was standing
19 over somebody?

20 A. Yes, ma'am.

21 Q. With a gun.

22 A. Yes, ma'am.

23 Q. And that guy was laying on the ground.

24 A. Yes, ma'am.

25 Q. On his back.

1 A. Yes, ma'am.

2 Q. The same guy you said he got into an altercation with
3 the first time around.

4 A. I don't know if it's the same guy. I know it was -- it
5 may have -- well, it had to be one of the guys outside, but I
6 don't know if it was the first guy or the guy down by the
7 door.

8 Q. But they looked pretty different because you had a
9 chance to like sit through this. You know the evidence in
10 your case; right? You know who the victims are; you've seen
11 them.

12 A. Yes, ma'am, I saw them.

13 Q. And Brandon Jones and Joshua Williams that you now know
14 their names - you didn't know them then - they look pretty
15 different.

16 A. I never -- I can't really remember Brandon. I never,
17 you know...

18 Q. You just remember the other guy?

19 A. I really don't remember none of them. I mean, this has
20 been like 20 something months -- like a long time ago. I
21 really can't remember faces and every detail of each person.

22 Q. Okay. Twenty something months ago. But this was a
23 terrifying moment in your life.

24 A. Yes, ma'am.

25 Q. Right? And you were scared.

1 A. Yes, ma'am.

2 Q. Nervous. Nothing like this had ever happened before.

3 A. No, ma'am.

4 Q. And you didn't know what was going on, and you turned
5 around and saw Maurice do what?

6 A. Shoot. Shoot one of the guys in the parking lot.

7 Q. Shoot one of the guys in the parking lot.

8 A. Yes, ma'am.

9 Q. And then you go home. You run home and drift off to
10 sleep.

11 A. At first I just kind of laid there kind of thinking,
12 trying to get my thoughts together.

13 Q. I want to talk about now some of the stuff we didn't
14 talk about earlier. You've given actually several statements
15 to police; correct?

16 A. Yes, ma'am.

17 Q. And in those statements you didn't touch on them much
18 during your direct, but you initially deny any type of
19 involvement.

20 A. Yes, ma'am.

21 Q. And then, going to your first statement -- and you
22 talked to police freely and voluntarily; right?

23 A. Yes, ma'am.

24 Q. You wanted them to know what happened, your version
25 about what happened.

1 A. I just was talking to them, trying to -- let them know
2 what they needed to know.

3 Q. Let them know what they needed to know. And -- but you
4 didn't let them know what they needed to know at first,
5 right, because you initially denied it?

6 A. Yes, ma'am.

7 Q. And then you also told them you'd been at your
8 girlfriend's house during the time of this incident.

9 A. No, ma'am. I told them that she picked me up earlier
10 that night and then that she dropped me back off.

11 Q. But you never told them a second version where you had
12 actually been at her house when this occurred. That's your
13 testimony now.

14 A. Yes, ma'am.

15 Q. And then you gave them a third version; right?

16 A. No, ma'am. I think it was an add-on to the second
17 statement.

18 Q. It was an add-on to the second which is your initial
19 denial -- or let's see. Let's go in order. Verbal
20 statement, you deny.

21 A. Yes, ma'am.

22 Q. And then we disagree on whether -- you're saying that
23 you didn't tell law enforcement that you were with your
24 girlfriend during this incident.

25 A. I just told them that she picked me up and dropped me

1 off.

2 Q. Okay. And then you give another statement; right?

3 A. Yes, ma'am.

4 Q. And in that statement you wanted to tell them what you
5 knew.

6 A. Yes, ma'am.

7 Q. Because you were scared; right?

8 A. Yes, ma'am.

9 Q. And you already knew that a guy had lost his life.

10 A. At this point I did.

11 Q. And at what point did you kind of put it in your head
12 that Maurice may have been involved?

13 A. I mean, I saw it like -- I had saw it, so...

14 Q. You saw it, so you knew right then he'd probably killed
15 somebody.

16 A. No, ma'am.

17 Q. Well, when you went to the party the next day for Jwaun
18 Duckett, you knew then; right?

19 A. No, ma'am.

20 Q. No idea that somebody had been shot or lost their life.

21 A. I saw Maurice shoot the guy. I just didn't know that he
22 had died.

23 Q. Okay. But you went to this party the next day after
24 sleeping and thinking about all that had happened.

25 A. Yes, ma'am.

1 Q. And this party is where you had just been with -- you
2 knew you'd see Maurice Roberts?

3 A. I didn't know I'd see him; no, ma'am.

4 Q. Okay. But y'all hung out together. He was -- he hung
5 out with Jwaun Duckett; right?

6 A. Sometimes.

7 Q. You knew Jwaun.

8 A. Yes, ma'am.

9 Q. And Vincent Nelson would be there.

10 A. I didn't know he would be there, but he was there.

11 Q. And so you're partying with them.

12 A. Kind of. And I---

13 Q. And y'all don't talk about what happened.

14 A. No, ma'am.

15 Q. You didn't want to know why he went sprinting past you,
16 why he got in this altercation for no reason?

17 A. Honestly, I didn't.

18 Q. You didn't want to know why.

19 A. No, ma'am.

20 Q. But at the same time you just said you were threatened
21 by him.

22 A. Yes, ma'am.

23 Q. And -- but you didn't want to know why. You didn't ask
24 questions. You didn't speak on it.

25 A. No, ma'am.

1 Q. And you didn't go to the police.

2 A. No, ma'am.

3 Q. You didn't tell your dad. You didn't tell anyone.

4 A. No, ma'am.

5 Q. You just went about your day.

6 A. Yes, ma'am.

7 Q. But in your second statement to police -- and let's make
8 sure I get the correct time frames because you -- your memory
9 would have been better back then; right?

10 A. Back then, yes, ma'am.

11 Q. So you told them in that statement that you were with
12 your girlfriend and she dropped you off about 11 p.m.?

13 A. I gave a time, if that's...

14 Q. May I approach? Do you recognize this?

15 A. Yes, ma'am.

16 Q. And it says that 11 p.m.

17 A. Yes, ma'am.

18 Q. And you just said you had hung around your house for
19 awhile, but this says you went to Hammond Village to get some
20 weed.

21 A. Yes, ma'am.

22 Q. And you knocked on the door.

23 A. On Maurice's door.

24 Q. On Maurice's door.

25 A. Yes, ma'am.

1 Q. And you didn't have a phone.

2 A. No, ma'am.

3 Q. Okay. So this whole process has taken you a little bit
4 of time.

5 A. A little bit, yes, ma'am.

6 Q. Okay. And you see a commotion.

7 A. At the incident location? Yes, ma'am.

8 Q. And it's in the middle of the driveway. You just see
9 the guy already laying on the ground. That's your second
10 statement.

11 A. No.

12 Q. Would it help if I showed you?

13 A. Yes, ma'am.

14 Q. Where you said, "I knew there had to be a fight because
15 there was a guy laying on the ground in the driveway. He was
16 holding his head like he got beat."

17 A. Yes, ma'am.

18 Q. All right. And in this statement you didn't actually
19 walk with Maurice and Deshawn to the studio; right?

20 A. Would that be the first one?

21 Q. Let's see. You have so many. Hold on.

22 **Ms. Anastasia Walker:** Your Honor, if I could. I
23 believe there's some confusion. When Ms. Simpson is
24 referring to the first statement, she refers to the verbal
25 statement, and my client, I believe, is misunderstanding

1 that. So if we could just clarify the statements when we're
2 talking about them---

3 **The Court:** Try to---

4 **Ms. Anastasia Walker:** ---I think they'd be on the same
5 page.

6 **Ms. Simpson:** I'll be happy to attempt to clarify as
7 best I can.

8 By Ms. Simpson:

9 Q. Okay. So your second statement, after the verbal, your
10 first written statement -- are we clear? And I'll show you.
11 January 30th at 10:16.

12 A. Yes, ma'am.

13 Q. Right? So you actually just walked by the street and
14 you use a crackhead's phone. That's what you told them;
15 right?

16 A. I think.

17 Q. You don't remember what you told them.

18 A. No, ma'am.

19 Q. Okay. "I found a crackhead and I used his phone to call
20 Maurice."

21 A. Yes, ma'am.

22 Q. "I asked him where he was, and I told him I needed to
23 buy some weed."

24 A. Yes, ma'am.

25 Q. Okay. And at this point y'all start walking; right?

1 A. Yes, ma'am.

2 Q. Or you start walking. And you didn't go to E.E. Taylor
3 in this statement. You didn't tell police that you met him
4 there.

5 A. I think I told them that I was going to meet him there.
6 That's where we were supposed to meet at, I think. I told
7 them that, but when I got there I just saw a scuffle. That's
8 what I told them in my first statement.

9 Q. So you actually walked and then just happened upon
10 Maurice, Deshawn, and Vincent scuffling.

11 A. That was the first statement.

12 Q. The first statement.

13 A. Yes, ma'am.

14 Q. And that wasn't accurate.

15 A. No, ma'am.

16 Q. And at that point you told them Junior was tussling?

17 A. Ma'am?

18 Q. You told them that Junior was tussling.

19 A. I think. I really can't remember. I haven't seen that
20 in a long time.

21 Q. And let me show you... You told them you were tussling;
22 right?

23 A. That Junior---

24 Q. Junior is fighting.

25 A. Yes, ma'am.

1 Q. Maurice is fighting towards the door.

2 A. Yes, ma'am.

3 Q. Was engaged toward the door. And it's like they were
4 fighting through the door and stuff.

5 A. Yes, ma'am.

6 Q. And you went in because you saw his eye was swollen, and
7 there were two or three guys on the inside of the house.

8 A. Yes, ma'am.

9 Q. And at that point you get in because you're going in to
10 help your friend because it looks like he's beat up---

11 A. Yes, ma'am.

12 Q. ---in this statement. Right?

13 A. Yes, ma'am.

14 Q. But that's not really accurate as to what happened.

15 A. You know, parts of the first statement were accurate.

16 Q. Parts of them were.

17 A. Yes, ma'am.

18 Q. But parts of them weren't.

19 A. Yes, ma'am.

20 Q. And in this statement you actually say that you heard a
21 gunshot go off in the house.

22 A. Yes, ma'am.

23 Q. And then you also say that when it went off, you checked
24 yourself to make sure you weren't shot.

25 A. Yes, ma'am.

1 Q. Because you were concerned. And then -- let me make
2 sure I got this right. At that point you're like, "Let's
3 go."

4 A. Yes, ma'am.

5 Q. And you tell -- who are you telling, "Let's go"?

6 A. Actually that statement is not all the way accurate, but
7 if I said that, it would have had to have gone towards
8 Maurice, Junior, Deshawn.

9 Q. Towards Maurice and Deshawn. Okay. And then you also
10 told them when you ran out, "Junior was actually still
11 fighting," in this second statement.

12 A. Yes, ma'am.

13 Q. So Junior is still fighting.

14 A. Yes, ma'am.

15 Q. But that's not what you saw, according to your testimony
16 today.

17 A. Well, we really didn't get into all of it.

18 Q. You really didn't get into everything that happened
19 today?

20 A. I was just, you know, answering pretty much what I
21 remembered. I was telling them what I remembered.

22 Q. What you remember.

23 A. Yes, ma'am.

24 Q. In this most terrifying moment in your life, you just
25 remember generally chilling, kind of sort of a few things

1 here and there.

2 A. I just remember what---

3 Q. Well, let's see -- because this wasn't accurate. Right?

4 A. Yes, ma'am.

5 Q. And after that you said, "Let's go," and then you ran
6 out of the house first.

7 A. Yes, ma'am.

8 Q. And did you hear -- there was no shot inside the house;
9 right?

10 A. Yes, ma'am.

11 Q. Not a second shot, according to this statement.

12 A. According to the first one, no, ma'am, I didn't see...

13 Q. And in this statement you never admit to ever picking up
14 that gun.

15 A. No, ma'am.

16 Q. You never admit to having that gun and shooting that
17 gun.

18 A. No, ma'am.

19 Q. But in another version of your statement, you tell
20 police about the gun, right, that you had it?

21 A. That after it was dropped, I picked it up and made an
22 attempt to get out of the house.

23 Q. But you never actually told police that part.

24 A. No, ma'am.

25 Q. Right? No. You only testified to that at Maurice's

1 trial.

2 A. Yes, ma'am.

3 Q. Right. And then here today.

4 A. Yes, ma'am.

5 Q. That the gun -- it accidentally dropped and you just
6 didn't want it to get in the wrong hands.

7 A. Yes, ma'am.

8 Q. But still it's your testimony that you didn't fire that
9 shot, like Trey -- or you didn't fire that shot.

10 A. All I said was I ran out of the house. My arm was
11 caught in the door, and the gun was snatched out of my hand
12 and it went off.

13 Q. It was snatched out of your hand.

14 A. Yes, ma'am.

15 Q. So the person that snatched it in the process or do you
16 think you pulled the trigger?

17 A. I really -- honestly, I couldn't tell you. I just know
18 that as the gun was being snatched out of my hand it went
19 off.

20 Q. Okay. Based on the second statement that you say is not
21 completely accurate, you actually see the police cars and the
22 trucks and all this as you're running home.

23 A. I think the first statement is the one that's not
24 accurate. The second statement is accurate.

25 Q. Well, let's talk about your second statement because

1 your second statement was given a couple of hours later, and
2 this is the one where you actually admit to police about
3 going to a studio.

4 A. Yes, ma'am.

5 Q. Right? And in this statement you say, "Me, him,"
6 referring to Maurice, "And a light-skinned dude." Right?

7 A. Yes, ma'am.

8 Q. Even though you knew the light-skinned guy's name.

9 A. Yes, ma'am.

10 Q. And -- but you never told police that that was Deshawn
11 McClary.

12 A. No, ma'am, I just said a light-skinned guy.

13 Q. You left that out of your statement.

14 A. Yes, ma'am.

15 Q. And you actually knew Deshawn for about six years prior
16 to this.

17 A. No, ma'am. I had seen him before that, and like I said,
18 we became friends through people at Hammond Village.

19 Q. You'd seen him -- so y'all were friends at the time this
20 happened.

21 A. We were and he was---

22 Q. And you did know his name.

23 A. I knew his nickname.

24 Q. And you didn't tell police.

25 A. I knew his nickname and, no, ma'am---

1 Q. What's his nickname?

2 A. A lot of people call him D.

3 Q. D.?

4 A. Yes, ma'am.

5 Q. And 600?

6 A. I never called him that or heard anyone call him.

7 Q. You never saw his tattoo with 600.

8 A. I've seen the tattoo; yes, ma'am.

9 Q. And it's 600.

10 A. Yes, ma'am.

11 Q. But you're not associated with 600 in any way.

12 A. No, ma'am.

13 Q. And 600, do you know it to be a rap group?

14 A. Not a rap group, no, ma'am.

15 Q. Is it a group of individuals who just kind of hang out
16 together?

17 A. You know, there's a lot of people who have that tattoo
18 and -- around Hammond Village, and so it's kind of like I
19 guess you would call it a group of individuals who know each
20 other.

21 Q. And Jwaun is part of 600; right?

22 A. I don't know.

23 Q. Maurice is actually a part of 600; correct?

24 A. I don't -- I don't know.

25 Q. And Vincent Nelson is part of 600.

1 A. Yes, ma'am.

2 Q. And you're associated with 600.

3 A. I wouldn't say that.

4 Q. Okay. So you're the only one that does music, and
5 you're not associated with 600. That's your testimony.

6 A. Yes, ma'am.

7 Q. And y'all were friends, but y'all aren't really great
8 friends.

9 A. We were just friends.

10 Q. Just friends?

11 **Ms. Anastasia Walker:** Your Honor, all this testimony
12 has been asked and answered.

13 **The Court:** It's cross-examination. I'll allow it.

14 **Ms. Anastasia Walker:** Thank you, Your Honor.

15 By Ms. Simpson:

16 Q. So going to your second statement, at this statement you
17 don't really admit that there are two guys out there because
18 you said this was probably the most accurate one; right? The
19 one you gave to police.

20 A. This is the add-on to the second statement.

21 Q. The add-on to the second statement.

22 A. Because it says, "Is there any information that you
23 recall that wasn't included earlier?" So this---

24 Q. Yeah, because your first statement is the one you made a
25 couple of hours earlier saying that you just happened upon

1 them fighting and then went down there to see what was going
2 on and help your dear friend.

3 A. Yes, ma'am.

4 Q. Okay. And this statement is the accurate one.

5 A. Yes, ma'am.

6 Q. Okay. And in this statement you don't mention Deshawn.

7 A. I called him the light-skinned guy.

8 Q. And you actually admit that only -- that you saw Maurice
9 hit one guy; there's one altercation outside.

10 A. I tell them about pretty much the whole story, but I
11 said that. That was -- I saw him fight the first guy, and
12 the dude kind of stumbled to the floor -- I mean to the
13 ground.

14 Q. To be specific, you actually said you were walking
15 because Maurice did sprint past you. Didn't say anything;
16 right?

17 A. No, ma'am.

18 Q. And you didn't know what he was running for.

19 A. No, ma'am.

20 Q. And he got into a tussle.

21 A. Yes, ma'am.

22 Q. You saw Maurice actually hit the guy with something this
23 time.

24 A. Yes, ma'am.

25 Q. So they're not really fighting back and forth. Maurice

1 just hits him.

2 A. They were fighting back and forth until the guy stumbled
3 to the ground.

4 Q. And then he had his arm over the -- over his head.

5 A. I really can't remember that.

6 Q. So he had his arm over his head, and then Maurice just
7 runs towards the door, according to this accurate statement.

8 A. Yes, ma'am, by the time I get to the first guy he was
9 fighting.

10 Q. And all you could see was him falling out of the door
11 trying to swing.

12 A. Yes, ma'am.

13 Q. But you actually saw him go inside the house.

14 A. More or less like kind of pulled inside of the house.

15 Q. Pulled inside the house. And you're scuffling; right?

16 A. Me?

17 Q. Yeah.

18 A. Actually, I'm running towards them down there and...

19 Q. You also testified at trial; right?

20 A. Yes, ma'am.

21 Q. And that testimony was a little bit different, too.
22 Right?

23 A. I don't think so; no, ma'am.

24 Q. You don't think so? Well, let's talk about that
25 altercation, because in that testimony that's the first time

1 we hear about you having the gun in your hand; right?

2 A. Yes, ma'am.

3 Q. And you admit to being friends in that testimony with
4 Deshawn, pretty good friends.

5 A. I just said we were friends.

6 Q. And you admit to being Maurice's -- he's one of your
7 dearest, closest friends.

8 A. Friends.

9 Q. You're just friends. Beg the Court's indulgence for
10 just a second. Well, let me back up for a little bit. Okay.
11 The studio -- you do mention the studio in your trial
12 testimony; right?

13 A. Yes, ma'am.

14 Q. And you're---

15 **Ms. Anastasia Walker:** Your Honor---

16 **Ms. Simpson:** ---the only one who does recording
17 testimony (verbatim).

18 **Ms. Anastasia Walker:** ---if I could, what page are you
19 on in the trial testimony?

20 **Ms. Simpson:** 488.

21 **Ms. Anastasia Walker:** Thank you.

22 **The Witness:** Ma'am?

23 By Ms. Simpson:

24 Q. You mention the studio in your trial testimony.

25 A. Yes, ma'am.

1 Q. And that you were going there.

2 A. To meet Junior.

3 Q. To meet Junior. But you didn't know who lived there.

4 A. No, ma'am.

5 Q. And how long did this whole entire episode kind of last,
6 from the time you go to knock on Maurice's door and the fight
7 happens and you see your Brandon Jones shot?

8 A. Again, I couldn't really give you an accurate time
9 estimate.

10 Q. Give me a general. Twenty minutes?

11 A. Like 45 minutes to an hour maybe.

12 Q. Forty-five minutes to an hour.

13 A. Yes, ma'am.

14 Q. From the time you get back at 11.

15 A. Yes, ma'am.

16 Q. And the calls are made and the shots are fired in the
17 studio. Would you be surprised to learn that the text
18 messages in this case -- right?

19 A. Yes, ma'am.

20 Q. The texts -- and did you ever see those texts?

21 A. I never saw the text messages; no, ma'am.

22 Q. Okay. So you didn't know that Junior, Deshawn, and
23 Maurice had actually planned a robbery.

24 A. No, ma'am, I knew nothing about that.

25 Q. And you weren't paying attention to the texts he was

1 receiving on the phone.

2 A. No, ma'am.

3 Q. And your close, dear friend just kind of set you up for
4 what?

5 A. I don't know. I just know we were supposed to meet. I
6 met him to buy weed, and we were supposed to meet Junior at
7 the studio.

8 Q. Okay. But you don't know anything about a robbery.

9 A. Nothing. No, ma'am.

10 Q. And nothing about these text messages---

11 A. No, ma'am.

12 Q. ---that were going on. The last one being at 11:12---

13 A. No, ma'am, I know nothing about that.

14 Q. ---p.m. saying, "Come on inside. I got them out."

15 A. Yeah, I didn't know about that.

16 Q. You didn't know about that.

17 A. No, ma'am.

18 Q. And then would it surprise you to learn that in a matter
19 of five minutes 9-1-1 had been called?

20 A. I didn't know.

21 Q. You didn't know.

22 A. No, ma'am.

23 Q. And you didn't know that they were actually going there
24 to rob.

25 A. No, ma'am.

1 Q. You were just going to smoke weed and have a good time.

2 A. No, ma'am. I was going to meet Junior at the studio
3 after I bought the weed from Maurice.

4 Q. What did you think you were going to do at the studio?

5 A. At this point I really didn't know. I just knew we was
6 going to meet Junior at the studio, maybe record music. You
7 know, I just knew we were going to meet Junior; that's all I
8 knew at the time.

9 Q. But they didn't really record music.

10 A. Not that I know of.

11 Q. And you never had that gun in your hand except for the
12 two seconds before it was snatched.

13 A. When I grabbed the gun off of the floor, that's the only
14 time I had it, when I was running out of the door.

15 Q. So you didn't actually fire the gun.

16 A. Again, with me running out of the door and my arm was
17 caught in the door and the gun was snatched out of my hand
18 and it went off.

19 Q. So it was snatched. Let me make sure because I'm a
20 little confused about something that you're saying. You
21 actually know -- beg the Court's indulgence. Going back to
22 the phone, Maurice -- you called him from another person's
23 phone; right?

24 A. Yes, ma'am.

25 Q. Because yours was broken.

1 A. Yes, ma'am.

2 Q. And you -- how did you know his number?

3 A. It's just something that I kind of knew.

4 Q. You just kind of knew it even though you only
5 occasionally called him?

6 A. I buy weed from him all the time -- well, bought weed
7 from him all the time actually.

8 Q. All the time?

9 A. Yeah. He's the only person I would buy weed from.

10 Q. And you only hung out with him occasionally.

11 A. Like I say, you know, maybe one or two times a week.

12 Q. Did you memorize the number?

13 A. Yes, ma'am.

14 Q. What was it?

15 A. I can't remember it now, but at the time I did know.

16 Q. Okay. So you don't know it anymore.

17 A. No, ma'am.

18 Q. And it's still your position that -- and like I said,
19 we've had several versions and it's been a little confusing,
20 but you didn't participate in the robbery.

21 A. No, ma'am.

22 Q. You weren't present with Jwaun Duckett, Maurice Roberts
23 - right - and Deshawn?

24 A. Present, um?

25 Q. When they were talking about it.

1 A. No, ma'am.

2 Q. And you weren't present when Kyree was there - Golman.

3 A. No, ma'am.

4 Q. But you know Kyree.

5 A. I know Kyree.

6 Q. And you know Jwaun.

7 A. Yes, ma'am.

8 Q. And they do hang out at Maurice's house.

9 A. They're there sometimes. They're cousins actually.

10 They -- they go there sometimes.

11 Q. While you're there.

12 A. Sometimes I may see them there.

13 Q. And you also, after this, went to sleep. The next day
14 you go to a birthday party, and you still haven't gone to the
15 police or told anybody about what happened.

16 A. No, ma'am.

17 Q. And you haven't talked to anybody to find out what
18 happened.

19 A. No, ma'am.

20 Q. And you don't know why your drug dealer, your friend,
21 people you hung out with, did this.

22 A. I don't know.

23 Q. Now, you said at one point you told police that you
24 called to turn yourself in.

25 A. Yes, ma'am.

1 Q. But you didn't actually call.

2 A. Actually I told my dad to call because he had all the
3 correct information to call the people. I didn't know who to
4 call, but my dad did, so he called for me.

5 Q. He called. And in one of the statements you gave or one
6 of the stories you told, you actually said you called the
7 night before, that Tuesday.

8 A. Yes, ma'am.

9 Q. Right?

10 A. My dad.

11 Q. You said you called, but they told you that you needed
12 to call back tomorrow because it was too late to call the
13 police.

14 A. Yes, ma'am. It's like a time thing.

15 Q. It was a time thing, so it was too late to call them.
16 So you decide to tell your dad to call them tomorrow.

17 A. No, ma'am. Actually, me and my dad -- well, my dad
18 called or whatever that night, and they were like, I guess
19 because of the time: Call back tomorrow.

20 Q. Call back tomorrow to turn yourself in for murder.
21 That's how the conversation went.

22 A. I don't know if it was -- my dad talked to the -- I
23 think it was the secretary. So my dad talked to the people
24 over the phone. Then we called back the next morning and
25 they came to the house.

1 Q. Actually the next day, I believe, you had a doctor's
2 appointment?

3 A. No, I had a doctor's appointment Monday.

4 Q. Monday. Who is your doctor?

5 A. I don't have a doctor. I just had an appointment.

6 Q. You had an appointment---

7 A. Yes, ma'am.

8 Q. ---with the doctor? You don't know who it was?

9 A. I don't know his name; no, ma'am.

10 Q. And what hospital did you go to?

11 A. I think it was Richland, if I'm not mistaken. I think
12 -- I think it was Richland Memorial.

13 Q. And so -- but you don't remember.

14 A. The doctor?

15 Q. Yeah. Or why you went.

16 A. I mean, I know why I went.

17 Q. Why did you go?

18 A. Something about epididymis, swollen epididymis,
19 something like that. I really can't pronounce the word, but
20 it's something like that.

21 Q. Swollen epididymis.

22 A. Yes, ma'am.

23 Q. And you went. You knew some guy had been shot.

24 A. That night, yes, ma'am, I knew.

25 Q. And that Monday when the police were looking for you and

1 you found out, you called, but it was too late.

2 A. No, ma'am. Actually that Monday I was at the house
3 after I got back from the doctor's appointment. My dad, he
4 left and he came back. I think he was gone to get his car
5 done by Maurice's dad or something. He came back. He was
6 like, "Did you know Maurice is -- right now he -- they locked
7 him up for murder?" or something like that? And I was like,
8 "No, sir."

9 And so what happened was Tuesday I went to Benedict to
10 school, came home and then my neighbor told me that I think
11 the police had came by the house and asked about me or asked
12 about me or whatever. So we called that night and -- well,
13 actually my dad called, and then we called back that
14 Wednesday morning and they came to the house.

15 Q. Okay. And your dad -- you just said he was going to fix
16 Maurice's dad's truck?

17 A. No. No, ma'am. Maurice's dad actually fixes his car,
18 and I'm not sure that's where he went, but I think that he
19 went to go get his truck fixed.

20 Q. Okay.

21 A. And that's how he found out that Maurice was locked up
22 for murder.

23 Q. Okay. And you still hadn't really put two and two
24 together.

25 A. At this point it kind of came through my head.

1 Q. It kind of came through your head?

2 A. Yes, ma'am. I kind of connected the dots kind of.

3 Q. And when it came to your head -- and I want to talk
4 about the way you refer to the thing. Do you remember
5 telling the police about the fact that y'all didn't talk
6 about it after it happened?

7 A. Yes, ma'am.

8 Q. Do you remember you said, "We just didn't talk about
9 that junk no more"?

10 A. Yes, ma'am. I don't know if I said it like that, but I
11 remember telling them that we didn't talk about it...

12 Q. Where were you swollen?

13 A. Where was I swollen?

14 Q. You said you had epididymis or something. Where were
15 you swollen?

16 A. It's something I, you know, really don't want to go
17 into. It's like a medical problem.

18 Q. Medical problem?

19 A. Yes, ma'am.

20 Q. So you get treated frequently for that.

21 A. No, ma'am.

22 Q. It's a medical problem, but you went to a doctor that
23 you didn't know. You can't remember his name now.

24 A. No, ma'am. We just found this out. That Monday I found
25 out what was actually wrong. I had been going through it for

1 some time.

2 Q. So you'd been going through this for some time.

3 A. Yes, ma'am, actually still going through it now.

4 Q. Still going, but you're not really treated for it.

5 A. No, ma'am.

6 Q. You just happened to go to the doctor that day.

7 A. No, ma'am. I had went before then, but I had an
8 appointment Monday, that Monday.

9 Q. Okay. And this is the Monday after you'd been
10 threatened at a birthday party.

11 A. Yes, ma'am.

12 Q. And seen somebody shot.

13 A. Yes, ma'am.

14 Q. Seen somebody beaten.

15 A. Just a fight.

16 Q. And did you actually -- like I said, you talked to
17 police and gave them a total of three written statements.

18 A. I think it was two, and the other one was an add-on to
19 the second one.

20 Q. An add-on where you talk about Maurice seeing him
21 shot -- seeing him shoot Brandon Jones.

22 A. Yes, ma'am.

23 Q. And he actually -- you also hear somebody yell something
24 at that point. It's the only time you really hear any
25 yelling or screaming; right?

1 A. I really -- again, this happened, you know, almost two
2 years ago. I really can't recall everything.

3 Q. Beg the Court's indulgence. And defense counsel -- oh,
4 okay. I direct your attention to 492 of the transcript
5 because this whole time -- I mean Maurice -- you said he's
6 your drug dealer.

7 A. He's my friend, someone I bought weed from at the time.

8 Q. But you remember being questioned at trial.

9 A. Yes, ma'am.

10 Q. All right. And you said, "Well, when I saw them
11 fighting and, you know, I looked at him as a dear friend -- I
12 thought he was getting beat up, so my initial thoughts was I
13 was not going to go down there and let that happen."

14 A. Yes, ma'am.

15 Q. "So I went down there and I got involved in the
16 altercation myself."

17 A. Yes, ma'am.

18 Q. And in that trial you also said that Maurice went
19 towards the door. There was nobody outside the door inviting
20 him in, telling him to come in; right?

21 A. Right.

22 Q. And no one was really yelling; right?

23 A. No, ma'am.

24 Q. That wasn't it.

25 A. No, ma'am.

1 Q. And Maurice actually went towards the door into the
2 house; right?

3 A. Again, it wasn't like -- he didn't go directly into the
4 house. He was -- he was fighting outside of the house, and
5 he ended up getting pulled in from what I saw.

6 Q. Okay. So he didn't just -- so the two people were
7 fighting outside the house with him, and then he gets pulled
8 in.

9 A. Kind of like in the doorway.

10 Q. So they -- Maurice comes up, immediately altercation,
11 then jumps in, and two guys start fighting him and pull him
12 into their house; right? And you follow.

13 A. Again, they're like in the doorway, kind of fighting
14 like in the doorway slash outside. It's kind of like in and
15 out, and he ended up in the house.

16 Q. You weren't invited in.

17 A. No, ma'am.

18 Q. And Vincent, he was over there, but he wasn't in the
19 house; right?

20 A. Not that I could remember.

21 Q. He was either beating somebody up or wasn't beating
22 somebody up; right?

23 A. Yes, ma'am.

24 Q. Based on your versions. And Deshawn McClary, he was
25 either -- where was he?

1 A. I don't know. Somewhere like behind me. I didn't see
2 him.

3 Q. You didn't see the other guy either; right?

4 A. What other guy?

5 Q. You said there were two guys outside.

6 A. Yes, ma'am.

7 Q. You didn't really see him or Deshawn.

8 A. I mean, these guys ended up inside with Maurice.

9 Deshawn, I don't know where he was at.

10 Q. But two guys are on the outside and two guys are on the
11 inside.

12 A. Yes, ma'am.

13 Q. But you don't really see one of the guys except the one
14 who gets shot outside.

15 A. Yes, ma'am.

16 Q. And you don't really see any of what's going on.

17 A. Not really, no, ma'am.

18 **Ms. Simpson:** I don't have anything further for this
19 witness.

20 **The Court:** Redirect?

21 **Ms. Anastasia Walker:** Briefly, Your Honor. May it
22 please the Court, Your Honor?

23 Redirect Examination

24 By Ms. Anastasia Walker:

25 Q. When you were called to testify at Maurice Roberts'

1 trial, who questioned you?

2 A. Ms. Simpson.

3 **Ms. Anastasia Walker:** No further questions, Your Honor.

4 **The Court:** All right. Recross?

5 **Ms. Simpson:** No, Your Honor, no redirect -- or recross.

6 **The Court:** You can go back. Mr. James, you can go back
7 and have a seat at counsel table. Anything else on behalf of
8 the defense?

9 **Ms. Anastasia Walker:** No, Your Honor. At this point
10 the State -- or the defense rests.

11 **The Court:** All right.

12 **Ms. Anastasia Walker:** Pardon me.

13 **The Court:** Any reply?

14 **Ms. Simpson:** No reply, Your Honor.

15 **The Court:** All right. Members of the jury panel,
16 you've now received all of the evidence, and we're going to
17 stop for the day and we'll start back at 9:30 in the morning.
18 I'm going to meet with the lawyers earlier than that to cover
19 some last-minute things. We're going to work some this
20 evening to get prepared, but there are always things that pop
21 up in the morning. So be back at 9:30.

22 Now, keep in mind you're still not supposed to discuss
23 the case among yourselves. You're still not supposed to let
24 anyone discuss the case outside the courtroom with you.
25 You're still not supposed to let yourself be exposed to any

1 news coverage or go on any electronic device to learn
2 anything about anything to deal with this trial, the law, the
3 lawyers, the judge, the trial procedure. Anything like that,
4 that would be improper.

5 So have a pleasant evening, and we'll see you back at
6 9:30 in the morning.

7 (Whereupon, the jury was excused from open court for the
8 day at 4:09 p.m.)

9 **The Court:** I know I said I'll have you come back at 9,
10 but I think I'll probably let you go over it and look at the
11 charge tonight. We'll have our charge conference and then
12 finalize the charge. We'll get together at 9. Anything from
13 the State at this point?

14 **Ms. Simpson:** Nothing from the State.

15 **The Court:** Anything from the defense?

16 **Ms. Anastasia Walker:** Your Honor, now taking the
17 defense's case into consideration, I would renew all motions
18 and renew our D.V. motion, mistrial motion, and other
19 motions, objections, at this point in the trial.

20 **The Court:** All right. All prior motions are denied,
21 unless there's some that were granted, but I stand by all the
22 previous rulings including the denial of a directed verdict
23 at the end of the State's case, and I again deny the defense
24 motion for a directed verdict at this point. Yes, ma'am.

25 **Ms. Simpson:** Your Honor, may we approach?

1 (Whereupon, a bench conference was held.)

2 **The Court:** We'll see y'all at 9.

3 (Whereupon, the trial concluded for the day at 4:14 p.m.
4 and resumed the following day, October 3, 2014, as follows.)

5 **The Court:** Good morning. State ready?

6 **Ms. Simpson:** State's ready.

7 **The Court:** Defense ready?

8 **Ms. Anastasia Walker:** Yes, Your Honor.

9 **The Court:** For the record, we've had an in-chambers
10 conference regarding the charge. We're going to talk about
11 that later because the State tells me they've got one reply
12 witness. Before we bring the jury in, I understand that the
13 defense has some issue with that.

14 **Ms. Pinnock:** Yes, Your Honor. May it please the Court?
15 Your Honor, it was our understanding from yesterday that the
16 one witness the State intends to call today is Investigator
17 Boland to introduce statements taken by law enforcement by
18 Mr. James when he was arrested. The purpose of a reply
19 witness is to address new information that was brought up
20 during the defense case in chief.

21 Mr. James was cross-examined on the details of that
22 statement, on all of his statements that were given. The
23 State had an opportunity to introduce the statements in their
24 case in chief. They chose not to, which is how they decided
25 to try their case, but there -- our issue is there's no new

1 information being elicited that has not already been covered.

2 It's my memory of the cross that -- I mean, it was
3 pretty detailed going through each and every one of the
4 statements, so I don't think it's proper at this point to
5 call the investigator back up on the stand just to introduce
6 Mr. James' statement on the record.

7 **The Court:** Well, I'll be glad to hear from the defense,
8 but I do recall quite an extensive just dialogue with Mr.
9 James about the statements through cross. What's the State's
10 position?

11 **Ms. Simpson:** Our position is, Your Honor, and with
12 respect to the statements, I did cross him on portions. He
13 actually has multiple statements, and the purpose of a reply
14 is to address new testimony or new issues. We did not
15 introduce the statements or his statements in our case in
16 chief because we did deem them to be self-serving with
17 respect to his role and his involvement. So our position
18 there is that's why we did not introduce them in our case in
19 chief.

20 On cross-examination, Mr. James actually denied his
21 initial denials and specifically one where he told law
22 enforcement that he was actually at his girlfriend's during
23 the time this incident occurred. And I did not cross
24 extensively through each statement, as there were multiple
25 ones, to include the written statements, specifically the

1 third statement.

2 I think, based on his testimony now, we need the law
3 enforcement as a witness, and it is our burden of proof and
4 especially with the route that, you know -- we bear the
5 burden of proof in this case, and we deem this essential to
6 proving our case because what's been elicited, too, is that
7 he just was cooperative with law enforcement. He gave these
8 statements just essentially supplementing one another and
9 that's how it came about when, in fact, he only gave these
10 statements after being confronted with more information,
11 confronted with more information, and his versions change.
12 And we do want to introduce the actual physical statements
13 through Investigator Boland as well as the circumstances
14 surrounding those statements since Mr. James denied them.

15 **The Court:** All right. Briefly.

16 **Ms. Pinnock:** Yes, Your Honor. I don't recall Mr. James
17 ever saying that he was not truthful with law enforcement.
18 This is not a -- if the purpose of the witness is to try to
19 impeach him, I think it's an improper impeachment because he
20 was confronted with the fact that he gave multiple
21 statements. He was asked about it on direct and cross, and
22 he acknowledged that, yes, he did that. So I'm not quite
23 sure if it's for impeachment purposes. I don't think it's
24 proper because he has not denied doing anything. He admitted
25 to all of it.

1 The information was elicited through both direct and
2 cross; it's not new information. And the statements have
3 not -- the State's position is that the statements were
4 self-serving during their case in chief. The statements are
5 still self-serving. His rendition of not being involved in
6 these events is constant throughout. So I'm not sure how the
7 statements now could change from self-serving to now we want
8 to introduce them for the State's case in chief when his
9 testimony was consistent with the statements he gave
10 originally which they elected not to introduce because they
11 claimed they were self-serving.

12 **The Court:** Help me with what was new.

13 **Ms. Simpson:** And essentially, too, with respect to the
14 characterization of Mr. Demetrice James' statements being
15 consistent with the statements that he gave law enforcement,
16 that is not the case. And as I said, the new information
17 here is really how the versions of the statements came about
18 because based on his testimony, he was just cooperating with
19 law enforcement and I just want to tell the truth or sort of
20 the truth or half the truth, and he did deny making certain
21 statements to law enforcement.

22 Investigator Boland can testify to this, and I believe,
23 as I said, as the State we bear the burden of proof. I
24 understand that reply is in Your Honor's discretion as to
25 whether to allow it.

1 **The Court:** And you just stated to me that he -- that
2 there were certain denials.

3 **Ms. Simpson:** Yes.

4 **The Court:** That may -- that, in fact, could be
5 controverted by this evidence?

6 **Ms. Simpson:** Yes.

7 **The Court:** I'll allow it in.

8 **Ms. Simpson:** Thank you, Your Honor.

9 **The Court:** All right. Bring in the jury.

10 **Ms. Pinnock:** Thank you, Your Honor.

11 (Whereupon, the jury was brought into open court at
12 10:03 a.m.)

13 **The Court:** Good morning. I told you yesterday when the
14 State rested that under certain circumstances they could call
15 -- they could present other evidence. Those circumstances
16 have evolved such that they have the right to call an
17 additional witness in what's -- legally called reply. That
18 is, after they presented their case, then -- trials are
19 structured sort of like a ball game. Somebody goes first.
20 Somebody goes second. And under some circumstances the
21 person who went first can go another time, and that's what
22 we've got here.

23 So I'm going to allow the State -- again, the State's
24 going to call a witness. This will be the last witness. We
25 will, after this witness, take a short break because we'll

1 have some legal matters, and after that we'll do arguments
2 and charge. Call your witness.

3 **Ms. Simpson:** Thank you, Your Honor. The State calls
4 Investigator Boland.

5 **Bailiff:** Do he have to be swear (verbatim) again?

6 **The Court:** You're still under oath for the purpose of
7 this trial.

8 James Boland, having been previously sworn and
9 remaining under oath, testified as follows:

10 Direct Examination

11 By Ms. Simpson:

12 Q. Investigator Boland, I want to turn your attention to
13 the date that Mr. James was arrested. Did you actually
14 transport him from the residence to headquarters?

15 A. I did.

16 Q. And when you arrived at headquarters, was he advised of
17 his rights?

18 A. He was.

19 Q. I'm going to show you what's already been marked for
20 I.D. as State's Exhibit 30 (sic). Do you recognize this?

21 A. Yes.

22 Q. And what is that document?

23 A. This is an interrogation advice of rights form that we
24 use when someone is in our custody when we wish to talk to
25 them about a crime that they're involved in. We give them

1 what's known as the Miranda rights. We tell them that --
2 would you like for me to read this?

3 **Ms. Simpson:** Well -- and, Your Honor, at this time I
4 would actually offer State's 230 into evidence.

5 **Ms. Pinnock:** No objection, Your Honor.

6 **The Court:** All right. In without objection.

7 **Ms. Simpson:** Okay.

8 **Court Reporter:** Is it 230 or 30?

9 **Ms. Simpson:** 230.

10 **The Witness:** 230.

11 (State's Exhibit 230 was received in evidence.)

12 By Ms. Simpson:

13 Q. Yes. And this is from your conversation with Mr. James;
14 correct?

15 A. Right.

16 Q. Tell the jury how you advised him or how that process
17 went about.

18 A. Essentially obviously we're interested in speaking with
19 him about something that he's involved in. So we then read
20 him his rights to let him know what his rights are. The form
21 includes Mr. James' name, the location where his rights were
22 read which is going to be the headquarters, 5623 Two Notch
23 Road. Myself, Investigator Boland and Tanner were present.
24 It has the date, January 30th, and the time of 9:32 a.m.

25 Q. Okay. And how do you go through -- do you read it and

1 then check off, initial? What process do you use or did you
2 use in this case?

3 A. I typically put the form in front of the subject. Okay?
4 And as I read the lines to them, I will check them off.

5 Q. And did Mr. James acknowledge these rights in some way?

6 A. Yes, he did by signing it.

7 Q. Okay. Go through those rights, if you would.

8 A. The first one: "Before we ask you any questions, you
9 must understand your rights. You have the right to remain
10 silent. Anything you say can be used against you in court.
11 You have the right to talk to a lawyer for advice before we
12 ask you any questions and to have a lawyer with you during
13 any questioning."

14 Q. And beneath that portion of the advisement, is there
15 also a waiver?

16 A. Yes.

17 Q. Can you read that for us as well? And what does it mean
18 when they waive their rights?

19 A. This is saying that they understand the rights that we
20 have just went through, and they are now acknowledging
21 they're willing to talk to me. The waiver of rights reads:
22 "I have read this statement of my rights and understand what
23 my rights are. I am willing to talk and answer questions. I
24 understand and know what I am doing. No promises have been
25 made to me and no pressure or coercion."

1 Typically I circle the word "coercion." I ask them do
2 they know what that means, and I'll interject the word
3 "force" so they understand what coercion is. So no pressure
4 or coercion or force of any kind has been used against me.
5 And then he -- he signs that as well.

6 Q. Okay. And when you read him his rights, you didn't
7 threaten or coerce him in any way.

8 A. No, I did not.

9 Q. Or pressure him to talk to you.

10 A. No.

11 Q. He talked to you all freely and voluntarily.

12 A. Yes.

13 Q. And you also noted that he wasn't under the influence of
14 any alcohol or drugs?

15 A. Yes. We ask them if they've had any alcohol or drugs in
16 the last 24 hours, indicated---

17 Q. And -- I apologize.

18 A. He indicated, no, he had not.

19 Q. And his education level as well.

20 A. Right, twelfth grade.

21 Q. So he appeared to be intelligent and understand---

22 A. Correct.

23 Q. ---his rights. After advising him, did you all I guess
24 advise him of the nature of what he was being arrested for
25 and what you wanted to talk about?

1 A. Yeah. Essentially we tell them why we're here -- why
2 we're there to talk to him, that his name had come up in the
3 incident, and see if he had any information regarding this.

4 Q. Okay. And what did he first tell you during those
5 verbal conversations?

6 A. Initially he acknowledged that he didn't have
7 anything -- no nothing -- no knowledge of it whatsoever.

8 Q. And then, after a period of time, did he make another
9 statement about his involvement, verbally?

10 A. Yes.

11 Q. Okay. And what was that? And you participated in this
12 interview with Investigator Tanner as well; correct?

13 A. Correct. He indicated that -- he initially denied it
14 and then he said that, well, I heard about it on the street
15 and then he indicated to us that, well, he had been with his
16 girlfriend that night, and then that's whenever he led into
17 trying to locate Maurice.

18 Q. Okay. And so he actually claims to have been at his
19 girlfriend's house when this incident occurred---

20 A. Correct.

21 Q. ---as well? At some point do you all begin confronting
22 him with the information you already have from the
23 investigation and other witnesses?

24 A. Yes. By the time we spoke with Mr. James, we'd already
25 talked with Mr. Nelson and Mr. Roberts to include visiting

1 Mr. Nelson and Mr. Roberts, and we confronted him with the
2 fact that they were implicating him in this as well.

3 Q. And did you also have the victim's testimony and photo
4 line-ups to assist you as well?

5 A. Yes.

6 Q. And as you confronted him with this information, did a
7 new statement evolve?

8 A. Yes.

9 Q. And was that statement actually reduced to written form?

10 A. It was.

11 Q. I want to show you what's been marked as State's 231.
12 Do you recognize this?

13 A. Yes.

14 Q. And what is that document?

15 A. This is the first statement that I reduced to writing of
16 Mr. James.

17 Q. And he agreed to put the statement in typed written
18 form---

19 A. Yes.

20 Q. ---for you all? Your Honor, at this time I would offer
21 State's 231 into evidence.

22 **Ms. Pinnock:** No objection, Your Honor.

23 **The Court:** In without objection.

24 (State's Exhibit 231 was received in evidence.)

25 By Ms. Simpson:

1 Q. Okay. And, again, if you could just publish this
2 statement to the jury in a question-and-answer format as to
3 what questions were asked and how Mr. James answered.

4 A. This is a statement that was taken January 30th, 2013,
5 at 5623 Two Notch Road at approximately 10:16 a.m. The first
6 question I asked was: "What can you tell me about what
7 happened on January 25th, 2013, on Williamsburg Drive?"

8 Answer, his answer: "I woke up and went to school. I go to
9 Benedict College. I get out of school on Fridays at 12:00.

10 I caught the city bus back home. I took Bus 16 to Lil
11 Cricket, and I walked home. I watched some television. I
12 made some music. I went to Hammond Village around... I
13 walked through to see who was out. It kind of got boring, so
14 I went back to my house.

15 "I was chilling all day just watching T.V. My dad's
16 girl came over around 9 p.m., and my girl, Qymesha Watkins,
17 came to my house and picked me up. We went back to her house
18 off Broad River Road. We were there 'til about 11 p.m. She
19 would drop me off after 11 p.m. I went straight to Hammond
20 Village to get some weed. I knocked on Maurice's door, but
21 no one came to the door. I had to get in contact with him.

22 "I walked around and I found a crackhead, and I used his
23 phone to call Maurice. I asked him where he was at and that
24 I needed to buy some tree, meaning weed. He told me to come
25 over to the road that Willis lives on and I would see him.

1 "I walked down by the club Crush and then turned on the
2 road by E.E. Taylor. I got to there and then took a left on
3 the road in front of Taylor.

4 "I didn't have a phone to call Maurice, so I just kept
5 walking to Willis's house. I was walking and I got halfway
6 to the middle of the road -- in the middle of the road and I
7 saw a commotion with people fighting. I knew it had to be a
8 fight because there was a guy laying on the ground in a
9 driveway. He was holding his head like he had been beat. He
10 was holding his head on his arm like he had lost the fight.

11 "After that, I looked down the same driveway the guy was
12 laying in to see what was happening. I saw Junior in a
13 tussle. I had seen Maurice in a tussle, too. Junior was
14 more away from the door and he was fighting. I went down the
15 driveway when I saw Maurice was more towards the door.
16 Maurice was engaged with people in the house. It's like he
17 was halfway in the door and the other people, like they were
18 fighting through the door and stuff.

19 "While they were fighting, I see Maurice's eye that was
20 swollen up. It was two sizes bigger than it usually is. I
21 went inside to help Maurice fight the people inside. There
22 were two or three guys, and I definitely seen a girl. While
23 we were fighting, the girl was watching. She wasn't really
24 doing anything.

25 "So in the middle of us fighting, I heard a gunshot go

1 off in the house. When the gunshot went off, nobody dropped.
2 So I checked myself to see that I wasn't shot. After that
3 right there, I was like, "Let's go." I ran out of the house
4 first. Junior was still outside tussling with those dudes.
5 I was just trying to run away. I told them to, "Let's go."
6 I took off and I really didn't look behind me. I ran back to
7 where I came from.

8 I heard a couple more shots, but I kept on going. I
9 didn't stop. I ran back towards my house, and when I got
10 next to the church I seen all the police cars and fire truck
11 and I went back to my house."

12 Question: "Did you speak with Maurice later that
13 night?" Answer: "No. I saw him the next day at a party in
14 Hammond Village." Question: "Did you and Maurice talk about
15 what happened that night before?" Answer: "No." Question:
16 "Have you ever seen Maurice with a gun?" Answer: "I seen
17 him with one a long time before he went to D.J.J. He wasn't
18 even 17 yet." Question: "Did you see Maurice with a gun
19 Friday night during the fight?" Answer: "No." Question:
20 "Did you see anyone that night with a gun?" Answer: "Not
21 really. It was really a big commotion. I didn't really see
22 a gun. I just heard the gun go off, and I got out of there."

23 Question: "Do you recall what you were wearing that
24 night?" Answer: "I had on some jeans. I had their shoes,"
25 which is a typo. It should be "these shoes." "It was pretty

1 chilly out there, so I had on my black leather coat."

2 Question: "Do you recall what Maurice was wearing that

3 night?" Answer: "I think he had on an overall suit. It was

4 black overall, the kind that you have to step into. He had a

5 black skull cap on his head." Question: "Did you have a gun

6 that night?" "No, I don't own no gun."

7 Q. Okay. And after he gave you that statement, did you, in

8 fact, confront him with some more information about the

9 investigation that was inconsistent with what he'd said.

10 A. Yes. Having spoken with the co-defendants and the

11 witnesses, obviously we had garnered information. So I felt

12 that that statement right there was not accurate in telling

13 the truth.

14 Q. And---

15 **Ms. Pinnock:** Objection, Your Honor. May we approach?

16 (Whereupon, a bench conference was held.)

17 **The Court:** I'm going to ask you to disregard the last

18 question and answer, and the State will go forward with

19 another question.

20 By Ms. Simpson:

21 Q. Okay. After you confronted him with some additional

22 information, did he present you with another version about

23 what happened?

24 A. He did.

25 Q. I'm going to show you what's been marked as State's 232.

1 Do you recognize that?

2 A. Yes.

3 Q. And what is that document?

4 A. This is the second statement I took from Mr. James.

5 **Ms. Simpson:** Okay. And, Your Honor, at this time I
6 would offer State's 232 into evidence.

7 **Ms. Pinnock:** No objection, Your Honor.

8 **The Court:** In without objection.

9 (State's Exhibit 232 was received in evidence.)

10 By Ms. Simpson:

11 Q. And, again, he's still under that same advisement, and
12 are his rights actually indicated in a paragraph on each
13 statement?

14 A. Yes.

15 Q. But he spoke with you freely and voluntarily during this
16 time as well.

17 A. Yes.

18 Q. Okay. Can you publish this statement to the jury,
19 please?

20 A. This statement was taken January 30th, 2013,
21 approximately 12:02 p.m., still at headquarters on Two Notch
22 Road.

23 Q. Oh, you may have to sit up a little closer to the...

24 A. Question -- the first question was: "Regarding the
25 previous statement that you provided earlier, was that

1 information accurate?" He answered, "Yes." Question: "Was
2 there any information that you may recall at this time that
3 wasn't included earlier?" His answer: "I was going over to
4 meet Maurice to buy a blunt over by E.E. Taylor. When I saw
5 him over on a side street by Williamsburg, I paid him \$5 for
6 the blunt. That is when he said Junior was at -- down there
7 at the studio and asked me -- and asked if I wanted to come
8 and I said, 'Sure. Let's go.' Me, him, and a light-skinned
9 guy that he was with went down the street that was on the
10 side of Williamsburg Drive. It was really only about three
11 houses away.

12 "We walked down the driveway. That is when I seen
13 Junior right there on the side of the driveway smoking a
14 cigarette with another guy. From that point, Little Maurice
15 took off in a sprint. I was still walking, and I didn't know
16 what he was running for.

17 "When he got to the end of the driveway, him and a guy
18 that was by the truck down there got into a tussle. That is
19 when Maurice hit the dude with something. I didn't really
20 see what he had, but he had the motion like he was clutching
21 something when he hit the guy. The dude dropped to the
22 ground and stayed there with his arm over his head.

23 "Maurice went toward the door. By the time I got down
24 there, Maurice had gone inside. All I could see was him
25 falling out the door and him trying to swing. That is when I

1 saw the scuffle. I went down to the door and I started
2 trying to help Maurice. That is when I saw his eye was
3 swollen, so I tried to help him.

4 "While I was at the door, I was trying to punch the
5 dudes off Maurice, and they were trying to pull him in the
6 house and I was trying to pull him out the door by his coat
7 to get him out the house. After that, they actually pulled
8 him in the house. One of the guys acted like he was trying
9 to close the door, so I put my foot in the door so he
10 couldn't close it. After I did that, I pushed my way in the
11 house to get Maurice.

12 "They were jumping him, so I started fighting both of
13 the dudes. In the middle of that, I heard a gunshot, and
14 when I heard that, everybody kind of stopped and started
15 checking themselves to make sure they weren't shot. I was
16 like, 'Oh, snap. Let's go.'

17 "When I looked at Maurice, I saw him put a silver pistol
18 back in his overall jumpsuit. I'm not sure what color the
19 handle was, but I think it was black. After that, we got
20 outside the house. Everybody was kind of taking off at that
21 time. Little Maurice was kind of lagging behind. I saw him
22 standing over a dude that looked like the same guy he had hit
23 earlier that was in the driveway. The guy still had his arm
24 over his head.

25 "I was kind of taking off saying, 'Let's go. Let's go.'

1 I heard the gunshots and saw the flash from the gun. The
2 flash came from Maurice's gun where he was still standing
3 over the guy in the driveway."

4 Question: "Was the guy in the driveway when Maurice
5 shot him?" Answer: "The guy was in the driveway with his
6 arm over his head lying on his back when Maurice shot the
7 guy. I don't know who said it, Maurice or the guy, but I
8 heard someone say, 'Pussy nigger.'"

9 Question: "Did they say that after the shots?" Answer:
10 "Yeah, I heard it after a couple of shots. I heard it loud
11 down the street. It was said angry like." "What happened
12 after that" - question. Answer: "After that, I ran and
13 didn't look back, but I guess everyone went their separate
14 ways because I didn't see anyone after that."

15 Question: Who was -- who was the light-skinned guy you
16 say was with Maurice?" "See, I don't even know who that guy
17 is," was his answer. Question: "Did you see -- did you ever
18 see the guy before?" Answer: "I had seen his face before
19 from Club Fusions from like '06 or '07. I don't even know
20 him like that. I gave him dap (phonetic), but I didn't talk
21 to him."

22 Question: "Is there anything else you wish to tell me
23 regarding this incident?" Answer: "I can tell you that we
24 didn't even discuss that junk after that. I did see them at
25 a party the next day. That is the last time I saw any of

1 them." Question: "Is there anything else you wish to tell
2 me?" Answer: "No."

3 Q. And subsequent to taking that statement, did you
4 actually follow up with him again and he provided another
5 statement to you?

6 A. Yes.

7 Q. And this one was, in fact, supplementary. I'm going to
8 show you what's been marked as State's 233.

9 A. Yes.

10 Q. Do you recognize that document?

11 A. I do.

12 Q. What is it?

13 A. It's an additional statement I took from Mr. James.

14 **Ms. Simpson:** Your Honor, at this time I would offer
15 State's 233 into evidence.

16 **Ms. Pinnock:** No objection to the statement.

17 **The Court:** Admitted without objection.

18 (State's Exhibit 233 was received in evidence.)

19 By Ms. Simpson:

20 Q. Can you please publish this statement as well---

21 A. This statement---

22 Q. ---the date and time, too? All these are happening on
23 the same date; correct?

24 A. Right. This statement was taken January 30th. The time
25 is 15:25 which will be 3:25 p.m. The first question I asked

1 Mr. James: "Regarding the previous statement, when you were
2 running from the house, did you see Maurice standing over a
3 male in the driveway?" His answer: "Yeah."

4 Question: "Did you hear any more shots after that?"

5 Answer: "Yeah, it was the one. Then there was multiple
6 shots, about four or five seconds." Question: "Did you hear
7 anything after multiple shots?" Answer: "I heard, 'Pussy
8 nigger.'"

9 Question: "When you saw Maurice standing over the guy
10 in the driveway, where were you at?" Answer: "I was
11 probably standing by the car that was parked up on the
12 street." Question: "While you were up on the street near
13 the parked car, did you see Maurice move from the guy in the
14 driveway?" Answer: "No, because I didn't look back; I was
15 just running."

16 Question: "About where you -- when you heard someone
17 heard someone say, 'Pussy nigger?'" Answer: "I was like two
18 or three houses down the street, almost to the stop sign."

19 Question: "Did you recognize the voice that said, 'Pussy
20 nigger?'" Answer: "No."

21 Q. Okay. And in that statement you were actually following
22 up with respect to Maurice's actions; correct?

23 A. Correct.

24 Q. And it's not uncommon for you to encounter people who---

25 **Ms. Pinnock:** Objection, Your Honor. May we approach?

1 **Ms. Simpson:** I'll rephrase.

2 **The Court:** I sustain the objection.

3 **Ms. Simpson:** I'll rephrase. Some mention has been made
4 regarding Maurice Roberts in this case. With respect to the
5 information that Demetrice James gave you as to Maurice
6 Roberts' role---

7 **Ms. Pinnock:** Objection, Your Honor.

8 **The Court:** That's leading. I sustain the objection.

9 **Ms. Simpson:** Your Honor, with respect to -- may we
10 approach? The leading.

11 (Whereupon, a bench conference was held.)

12 By Ms. Simpson:

13 Q. Okay. Maurice Roberts was arrested on what charges?

14 A. Murder.

15 Q. As well as?

16 A. Attempted robbery, attempted murder, attempted murder,
17 burglary.

18 Q. And you all did identify him as the actual shooter of
19 Brandon Jones; correct?

20 A. Yes.

21 Q. And with respect to Vincent Nelson, what charges---

22 A. Murder---

23 Q. ---did he receive?

24 A. ---attempted murder, attempted murder, burglary, and
25 attempted armed robbery.

1 Q. And he was not identified as the shooter.

2 A. Correct.

3 Q. And with respect to Deshawn McClary, what charges did he
4 receive?

5 A. Murder, burglary first, attempted murder, attempted
6 murder, attempted armed robbery.

7 Q. And with respect to Demetrice James, what charges did he
8 receive?

9 A. Murder, attempted murder, attempted murder, attempted
10 armed robbery, and burglary.

11 Q. And this -- these charges were based on your
12 investigation as to their participation and planning of these
13 events---

14 A. Yeah.

15 Q. ---of an armed robbery; correct?

16 A. Yes.

17 Q. And with respect to Mr. James' statements, he never told
18 you or admitted at any point to you that he had a gun or was
19 ever in possession of the pistol that night.

20 A. Any time I spoke to him on January 30th, he never
21 mentioned taking possession of a gun.

22 Q. And he also -- did he ever admit or confirm the identity
23 of Deshawn McClary?

24 A. No, he did not.

25 Q. He actually distanced himself and didn't know who it

1 was.

2 A. Correct.

3 **Ms. Simpson:** Thank you, Investigator Boland.

4 **The Court:** Cross?

5 **Ms. Pinnock:** May it please the Court, Your Honor?

6 Cross-Examination

7 By Ms. Pinnock:

8 Q. Investigator Boland, can you look at Page 2 of the first
9 statement that you took from Demetrice on the 30th?

10 A. Okay.

11 Q. And about halfway down the first paragraph, the sentence
12 actually starts with, "And." Do you see that? "And I
13 started?"

14 A. Why don't you show me what you have there?

15 Q. Yeah.

16 A. Is it the second statement or the first?

17 Q. The second.

18 A. The second statement.

19 Q. Yes. Right here. You just read a statement to the jury
20 and his statement says, "I went to the door and I started
21 trying to help Maurice." Right?

22 A. Correct.

23 Q. It says that he saw his eye swollen?

24 A. Correct.

25 Q. It said it looked to him like he was trying -- they were

1 trying to pull him? After that, they actually pulled him
2 into the house?

3 A. That's what it says.

4 Q. "After I did that, I pushed my way into the house to get
5 Maurice?"

6 A. Yes.

7 Q. "They were jumping him, so I started fighting both
8 dudes."

9 A. Yes.

10 Q. That's what he told you January 30th?

11 A. Yes.

12 Q. At 12:02 p.m.

13 A. Yes.

14 Q. Okay. The follow-up statement you took from him, you're
15 just following up with more information about what he saw
16 Maurice do; right?

17 A. Correct.

18 Q. There is no question in anybody's mind that Maurice
19 Roberts stopped and killed Brandon Jones; right?

20 A. Correct.

21 Q. At no time did Demetrice tell you that he planned a
22 burglary?

23 A. No, he didn't. No.

24 Q. At no time did he tell you he planned to go in there and
25 rob anybody?

1 A. No.

2 Q. Were you present in the courtroom in February when
3 Maurice Roberts was on trial?

4 A. Yes.

5 Q. You saw Demetrice get on the stand?

6 A. Yes.

7 Q. You heard him testify?

8 A. Yes.

9 Q. You saw Ms. Simpson ask him questions?

10 A. Yes.

11 Q. And you heard his testimony yesterday; right?

12 A. Yes.

13 Q. And at no point did he ever say he was involved with the
14 burglary?

15 A. Correct.

16 Q. At no point did he say he was involved with an attempted
17 murder?

18 A. Correct.

19 Q. At no point did he ever say he was involved with the
20 murder.

21 A. Correct.

22 **Ms. Pinnock:** Beg the Court's indulgence. Thank you,
23 Your Honor. I have nothing else.

24 **Ms. Simpson:** Brief redirect.
25

Redirect Examination

By Ms. Simpson:

Q. One question: Did you, in fact, have evidence to the contrary regarding his participation in the planning of an armed robbery?

A. Yes.

Q. And burglary and home invasion?

A. Yes.

Ms. Simpson: Thank you.

Recross Examination

By Ms. Pinnock:

Q. And that came from Mr. Nelson?

A. That came from---

Ms. Simpson: Objection.

The Witness: That came from the other three co-defendants.

By Ms. Pinnock:

Q. Okay. Thank you.

A. And the witnesses.

Ms. Pinnock: All right. Thank you.

The Court: You can step down. Anything further?

Ms. Simpson: No. Nothing further, Your Honor.

The Court: You can step down and be excused. We appreciate your time.

Members of the jury panel, you now have received all the

1 evidence. You would think that we would have gotten
2 everything done while y'all were out, and we have been
3 working since 8:00 this morning to get everything in order
4 for the arguments and charge.

5 I used the analogy of a ball game earlier. There are
6 certain things that can't be taken up until a certain point
7 in the trial. So we've reached the point in the trial where
8 we have some matters that we have to take up procedurally at
9 this point, so I'm going to let you go back out.

10 When you come back in -- get refreshed because when you
11 come back in, you'll hear their opening -- the closing
12 arguments and statements of the attorneys. I told you
13 earlier when they made the opening statements they were
14 giving you blueprints of the trial. At this point they will
15 actually be taking the evidence and the law - and that's what
16 we've been working on this morning is what law I'm going to
17 charge you is - and tell you why, based on the facts,
18 applying the law as I charge it, your verdict should be a
19 certain verdict.

20 So I'm going to let you go to the jury room. When you
21 come back, we'll have the statements.

22 (Whereupon, the jury was excused from open court at
23 10:33 a.m.)

24 **The Court:** Motions?

25 **Ms. Anastasia Walker:** Thank you, Your Honor. May it

1 please the Court? Your Honor, after receiving new evidence,
2 we would again renew our motions up until this point,
3 including directed verdict. Your Honor, at this point I
4 would also renew our objection to the rebuttal witness. I
5 believe this witness did not testify to anything new that was
6 not already provided through our case in chief. I don't
7 think that anything new came up.

8 Our client was on the stand. He testified to his
9 statements and what he was honest about and what he was not
10 honest about. All that came out, and Ms. Simpson had a
11 meaningful opportunity to cross him about those things. She
12 impeached him, using the actual statements, and had that
13 opportunity. So I would renew my objection to their rebuttal
14 witness.

15 Your Honor, I would also renew my objection, and at this
16 time I would renew my objection for a mistrial specifically.
17 As I understand, between argument and charge you won't send
18 the jury out. I certainly have concerns about this jury's
19 ability to follow instructions. I certainly understand
20 there's a difference between can't and won't, but they've
21 obviously shown a blatant disregard for following Your
22 Honor's instructions to not deliberate.

23 So we do have serious concerns that they will follow the
24 instructions regarding Your Honor's directions on the law.
25 So we would renew our motion for a mistrial at this point as

1 well, and I believe that's all.

2 **The Court:** Motion for a directed verdict is denied.
3 Motion for mistrial is denied. Again, I do not see any
4 manifest necessity to dismiss it -- to grant a mistrial. We
5 have had trial -- I mean a charge conference. Let's go ahead
6 and take care of that. Anything that the State wants to put
7 on the record regarding my -- what I intend to charge?

8 **Ms. Simpson:** No, Your Honor.

9 **The Court:** All right. The defense?

10 **Ms. Pinnock:** Yes, Your Honor. I provided a copy to
11 Your Honor of my requested jury charges, and I'll just make
12 them part of the court's record.

13 **The Court:** All right.

14 **Ms. Pinnock:** We would request that you do include the
15 charge of defense of others. I believe that there is
16 evidence on the record that would support that, based on
17 information, mainly Mr. James' testimony and the statements
18 that have now been introduced by the State. So I would make
19 a special request for that, and I understand Your Honor's
20 already informed us as to what you are charging, but I would
21 just ask you to include our request number three.

22 **The Court:** Okay. What did you say about number three?

23 **Ms. Pinnock:** I believe that's the defense-of-others
24 charge.

25 **The Court:** That I'm not going to charge.

1 **Ms. Pinnock:** Yes, sir.

2 **The Court:** Okay. Yes. The Long case -- State versus
3 Long -- and I don't have the cite. I'll ask that that be put
4 on the record at a later time. Convinced me that the one to
5 whom aid is being supposedly rendered must have been in a
6 position where they themselves could defend themselves and
7 that's -- the evidence in this case does not reflect that the
8 individual being assaulted was a dear friend allegedly or
9 arguably, as testified to, of Mr. James, had it been a
10 situation where he was not at fault in bringing about the
11 encounter.

12 So I find that Mr. Roberts did not have -- that -- I
13 keep getting the names confused. Mr. Roberts did not have
14 the right to defend himself and, therefore, Mr. James did not
15 have the right to enter in on his behalf and defend Mr.
16 Roberts. Yes, ma'am.

17 **Ms. Pinnock:** If I could, just some case law for record
18 purposes, Your Honor. The State provided State v. Cook.
19 It's 78 South Carolina 253; it's a 1906 case. The majority
20 does also go along with what Your Honor just cited, the Long
21 case, that Mr. Roberts did not have the right to defend
22 himself. So unfortunately that means Mr. James could not
23 defend him.

24 The dissent in that case actually agrees that that is
25 not a fair position for Mr. James to be put into, and because

1 of the dissent and what that -- what that judge was saying, I
2 would also put on the record State v. Jackson. That is 227
3 South Carolina 271. And State v. Stearns, it is 340 South
4 Carolina 312. Both address the issue of the defendant in
5 that case acting on his impressions.

6 I do think it is not a fair position for Mr. James to be
7 in based on Long and Cook, that his impressions of what's
8 going on do not account for what his actions were. So I
9 would just put that on the record. Again, it goes along with
10 our request to charge on defense of others based on Jackson
11 and Stearns.

12 **The Court:** Okay. All right. And a couple of other
13 things. Since we did have the reply, I didn't know what it
14 was going to be on. We did not discuss in chambers my charge
15 on the voluntariness of a statement. I'm going to add that.
16 Of course, the jury -- while I'll allow it based on the
17 preponderance of the evidence, the jury must analyze whether
18 or not Mr. James actually gave the statement and, if he did,
19 was it freely and voluntarily, knowingly and intelligently
20 made? So I'm going to add that charge. We have not gone
21 over that.

22 This may sound superfluous, but for future reference I
23 want the record to reflect that I did as to the murder of --
24 I don't know why names are escaping me this morning.

25 **Ms. Simpson:** As to the attempted murder charge?

1 **The Court:** No, the murder. The murder.

2 **Ms. Simpson:** The murder. Oh, the murder of Brandon
3 Jones?

4 **The Court:** Yeah. No. Yeah, Brandon Jones. As to his
5 murder, I did consider whether or not there was any charge of
6 voluntary manslaughter applied -- to be applied, and I found
7 that there was nothing to -- relative to that -- based on the
8 facts, nothing relative to the evidence that would warrant
9 including a lesser included. Also, I took into consideration
10 the fact that Mr. James' charges are based on the hand of one
11 and the hand of others, not the particular -- not direct
12 participation in the murder. So I did consider voluntary
13 manslaughter as a lesser included of murder and determined
14 that it was not appropriate. I just want the record to
15 reflect that.

16 The only other unique thing that's relative to the
17 charge is -- and I -- of course, I'll charge it -- is that
18 this has a little wrinkle in that it is my feeling and I will
19 charge that the jury can infer malice from the use of a
20 deadly weapon as to the murder of Mr. James (verbatim) but
21 cannot use malice -- the inference of the use of a deadly
22 weapon in regard to the shooting of -- the shooting of Mr.
23 Scott and firing the weapon as it relates to both Mr. Scotts.

24 That -- it sounds -- it's a little wrinkle, as I said,
25 but the reason I'm not charging or I'm differentiating the

1 two is that as I read the current Section 16-3-600, I believe
2 it is, armed -- assault and battery of a high and aggravated
3 nature is, in fact, a -- is by statute a lesser included
4 offense of assault -- of attempted murder. And so there --
5 by virtue of that statute, that's interplay. Factually I'm
6 not sure it gives rise to the right to have such a charge,
7 but factually based on -- based on the statute -- as I read
8 the statute, since I'm charging a reduced charge as to
9 attempted murder, then the inference of malice based on the
10 use of a deadly weapon would not apply. So I just want the
11 record to reflect how I arrived at that right thereon. All
12 right. Let's take---

13 **Ms. Pinnock:** And for the record, we would just object
14 to that part of the charge on the inference as a whole
15 pursuant to Belcher and my understanding in our reading of
16 Belcher.

17 **The Court:** Okay.

18 **Ms. Pinnock:** Thank you.

19 **Ms. Simpson:** Nothing from the State, Your Honor.

20 **The Court:** All right. We'll take a real quick
21 refresher break. And how long do you think the State will
22 need to argue, Ms. Walker?

23 **Ms. Meghan Walker:** Your Honor, I think I can get it
24 done in 45 minutes to an hour.

25 **The Court:** Okay.

1 **Ms. Meghan Walker:** I know we'll argue last. So if she
2 says some things I'm not expecting during her argument that I
3 have to reply to, then I may just be a few minutes longer.

4 **The Court:** All right. And the State does waive
5 opening.

6 **Ms. Meghan Walker:** Yes, Your Honor.

7 **The Court:** And the defense will take?

8 **Ms. Anastasia Walker:** I estimate about 30 minutes, Your
9 Honor.

10 **The Court:** Thirty?

11 **Ms. Anastasia Walker:** I believe so.

12 **The Court:** Okay. All right. We'll probably take a
13 break between arguments and charge just simply because we've
14 got the time to do it. So let's take about a 10-minute
15 break, and then we'll get into arguments.

16 (Whereupon, a short break was taken.)

17 **The Court:** Keep your seats. All electronic devices
18 off. The State ready?

19 **Ms. Meghan Walker:** Yes, Your Honor.

20 **The Court:** Defense ready?

21 **Ms. Anastasia Walker:** Yes, Your Honor.

22 **The Court:** Bring in the jury.

23 (Whereupon, the jury was brought into open court at
24 10:56 a.m.)

25 **Ms. Anastasia Walker:** May it please the Court, Your

1 Honor?

2 **The Court:** Yes, ma'am.

3 **Ms. Anastasia Walker:** Good morning, ladies and
4 gentlemen. Brandon Jones should be here with us today.
5 There is absolutely no reason in the world that he should
6 have been murdered in cold blood, and I will not tell you for
7 one second that January 25th, 2013, was not terrifying and
8 horrifying and scarring for the Davises, the Scotts, Mr.
9 Williams, Ms. Pearson, and the family of Brandon Jones.

10 But what we do know is who the trigger-happy person is
11 responsible for murdering Brandon Jones, and that person is
12 Maurice Roberts. He stood over a young man who had his
13 entire life ahead of him and took his life without a second
14 thought.

15 Now, ladies and gentlemen, that being said, the person
16 that didn't kill Brandon Jones and the person that isn't
17 responsible for the murder of Brandon Jones and the person
18 that's not guilty for taking the life of Brandon Jones is
19 Demetrice James.

20 Now, we've heard a lot of testimony from a lot of people
21 that were there that night. We heard from Troy Scott,
22 Trenton Scott who they call Trenton or they call Trent or
23 Trey. We heard from Josh Williams, Cari Pearson, and
24 Chandler Davis, their stepfather, and they all got on the
25 stand and very emotionally told you what they saw and what

1 happened to them that night. And I wouldn't disagree with
2 them for a second, and we don't disagree with what happened
3 to them. It's going to follow them for the rest of their
4 lives.

5 But, ladies and gentlemen, this is where the State is
6 eliciting emotion and trying to divert your attention from
7 reason. Each and every one of you walked in here with the
8 tools to evaluate this case. Each and every one of you is a
9 reasonable person, and you have the tools to evaluate this
10 case: Common sense and personal experience.

11 You have your chance to develop your own thoughts about
12 this case, and we all agree, everybody in this courtroom
13 agrees, that this case is overwhelmingly and unbelievably sad
14 and should never have happened. But we all have to take a
15 step back and look at the facts.

16 All the eyewitnesses that took the stand that night all
17 agree that their adrenaline were pumping. These events took
18 place quickly. All of a sudden there were people in the
19 house. They had to react. I believe it was Trenton -- he
20 said, "There wasn't time to ask questions; we just had to go.
21 I think somebody said it was go time."

22 There's a gun involved. Their thought is there's a gun,
23 and we've got to keep it from going off. We've got to get
24 these people out of our house. And if you listened to their
25 testimony, you heard tiny differences and that's not to say

1 that any of these differences were intentional. People see
2 different things. Events are stressful. The events happened
3 quickly, and people perceive things differently. People can
4 misperceive things.

5 And that's not to say in any fashion or form that any of
6 this is intentional, that anybody is trying to be dishonest,
7 that anybody is trying to be misleading, but that is what
8 happens. That is just human nature when things are
9 stressful, when things happen quickly, when you're terrified,
10 and when you're reacting quickly.

11 Memories change over time. Stories change over time.
12 The human memory fills in gaps. When a stressful event
13 happens, you deal with it and you ask questions later. Troy
14 and Trent were thinking: Get these people out of my house.
15 I don't know these people. Out. And they even told you: My
16 parents are upstairs. My girlfriend is in the bedroom. I
17 have friends outside. We've got to get these people out.
18 They don't know what's going on.

19 Troy even later ended up telling the police that Linard
20 Gaston was a guy that was a shooter in the house, and that
21 wasn't him being dishonest and that wasn't him trying to tell
22 a lie and that wasn't him trying to get Linard in trouble.
23 He had a friend who honestly thought that this guy, Linard
24 Gaston, was involved. So he told Troy; it was information
25 that was suggested to him. So Troy, in trying to be helpful,

1 told the police that information, that that's what he
2 honestly believed. And Cari Pearson even picked Linard
3 Gaston out of a line-up as somebody that she thought was
4 there that night, and this isn't any attempt to mislead or be
5 dishonest. This is just the human nature of memories under
6 stress of quick events. Events can be misperceived, a lot
7 like Demetrice misperceived what was going on with his
8 friend.

9 He went to hang out with his friends at a studio or at
10 least people he thought were his friends. And then he gets
11 to the studio, sees his friend Junior who is there with
12 Maurice, Deshawn. All of a sudden, bam, pure chaos,
13 fighting. What do you do? You react. And what he does is
14 he thinks: My friend is getting beat up; I've got to help
15 him.

16 He doesn't know these people. He's never been to the
17 house. He doesn't know what's going on. He doesn't know why
18 Maurice is fighting or who is fighting or why. He just knows
19 at this point "I've got to react," and his reaction is: A
20 friend's in a fight; I've got to help. He doesn't know these
21 people, if they have any ulterior motives, anything like
22 that.

23 He tells you that while they're at the door that it
24 looks like Maurice is getting pulled in, and so he's trying
25 to pull him out and he's not sure what's happening and

1 Maurice gets pulled in. So the only reason he goes in the
2 house is because Maurice gets pulled in and he's trying to
3 get Maurice back out.

4 He tells you in the commotion that he sees a gun and it
5 gets dropped, and he doesn't want it to get in the wrong
6 hands. He doesn't know who the wrong people are or the right
7 people are in this situation. He just knows there's a fight.
8 He knows: I've got to get the gun; I've got to get out of
9 here.

10 So we heard testimony that Demetrice gets the gun, goes
11 out the door, and his arm gets caught in the door, and you
12 heard that from Trent, Troy, Vincent, and Demetrice. You
13 heard it from all four of them, and you even heard from Troy
14 that that's when Trent got shot, that he got shot at that
15 door that's leading to the outside. And Demetrice told you
16 before he could get his arm out, the gun is snatched from his
17 hand. And how do we know that the gun is snatched from his
18 hand? Because it ends up in Maurice's hand when Maurice
19 fires five shots into Brandon Jones, ending his life.

20 Now, ladies and gentlemen, I know we've spent together
21 an entire week at this point and, you know what we've
22 basically heard? We've heard the State versus Maurice
23 Roberts. What about the State versus Maurice -- I mean
24 Demetrice James? I'm going to venture to guess that the name
25 that we've heard least in this courtroom is Demetrice James.

1 On February 26th, 2014, Assistant Solicitor Nicole
2 Simpson called Demetrice James to this witness stand to
3 testify in the trial of Maurice Roberts. They called him as
4 a witness on the State's behalf to assist in the conviction
5 of Maurice Roberts, and he testified and he testified to a
6 jury much like he did to you all yesterday, and he told them
7 what he told you all yesterday. And you saw the same exact
8 solicitor get up here yesterday and attempt to discredit him.

9 And then we heard about a plan, a plan about a studio.
10 What plan? Well, we don't have really a lot of information
11 about that. Basically we have the word "plan." We know that
12 it involved studio equipment, but you heard from Demetrice on
13 cross when Nicole Simpson asked him: "I have studio
14 equipment; I record music at my house." He doesn't need
15 studio equipment.

16 Vincent Nelson, Maurice Roberts, and Deshawn McClary
17 committed a half-cocked burglary. They took a gun to a
18 fistfight and they got beat up. They lost, and they're
19 trying to take down everyone they can with them.

20 Demetrice thought these guys were his friends. You
21 noticed his hesitation to answer those questions about them
22 being his friends. They were his friends. Imagine how he
23 feels now about them. With friends like those, who needs
24 enemies?

25 Now, the State brought you two people to attempt to show

1 you that Demetrice was involved in this plan of sorts, and
2 first we had Jwaun Duckett. He was the first inmate that was
3 brought in, currently doing time for purse snatching, the
4 same Jwaun Duckett who doesn't do licks but apparently purse
5 snatching seems to be okay. This is also the same Jwaun
6 Duckett who was hiding in the closet with incriminating
7 evidence of Maurice's, a cell phone, because, quote, who
8 doesn't hide from the police?

9 This is also the guy that just started talking to police
10 because, one, he didn't want to get in trouble for drugs and,
11 two, he felt intimidated by the police. Those are the exact
12 words that he told you. And let's not forget that he is the
13 same guy that ever so politely asked me to hurry up with my
14 questions so he could hurry back to prison and get done with
15 his bid. Let's get on board with Jwaun Duckett.

16 And then we have Vincent Nelson who got a deal for
17 testifying against his friend, Maurice Roberts. These great
18 friends. And surely he isn't hoping for any sort of benefit
19 for testifying this week. It doesn't matter to him.

20 And then he told you about this rap group, 600, but he
21 told you he doesn't record songs with Demetrice. So it's a
22 rap group, but they don't record songs.

23 He is the ultimate in betrayal. He set up a burglary of
24 a family that took him in as their own for what I would call
25 simple electronics. They clothed him, fed him, took him to

1 church, gave him spending money. I would venture to guess
2 that that family would have given him those electronics had
3 he asked. But, no. But we should believe Vincent, too.
4 Those are the two witnesses that we have that you should
5 believe that Demetrice was involved in some sort of plan.

6 Ladies and gentlemen, we had a bunch of other witnesses.
7 We had D.N.A. come up here. Mr. Barron told you that Vincent
8 Nelson had some latex gloves at some time. We had ballistics
9 come tell you that all shots were fired from one gun. We had
10 latent prints come tell you that Brandon left a print on a
11 beer can. We had a forensic examiner come and tell you that
12 Brandon tragically died from gunshot wounds. We had EMS
13 come. They told you that they tried to save Brandon's life
14 and that they treated wounds.

15 None of that's in dispute. We know all that happened.
16 That's exactly why we had no questions for any of those
17 witnesses. None of that proves that Demetrice James had
18 anything to do with this.

19 That, ladies and gentlemen, is where we're on the same
20 page with the State, but here's where we differ. Demetrice
21 James took the stand for you all yesterday. He told you he
22 spoke with the police. He admitted to you all that he wanted
23 to purchase marijuana and that he frequently purchases
24 marijuana.

25 He even admitted to you all that he wasn't honest with

1 police more than once. He was honest with you all about
2 that, and he told you why. He told you he was scared and he
3 told you that he had been threatened. He witnessed his
4 friend murder another human being.

5 Demetrice got up here and told you exactly what happened
6 that night, and he didn't have to. The State: They have the
7 burden of proof. They're the ones that have to prove their
8 case beyond a reasonable doubt, and that's a high burden. I
9 know they welcome it, but make no mistake: It's a high
10 burden.

11 We as the defense, we have no burden. We don't have to
12 prove anything. Demetrice James sits before you an innocent
13 man until proven guilty, proven guilty beyond a reasonable
14 doubt. And I'm -- I'm not going to talk to you too much
15 about the law. That's the judge's job, so I'll only touch on
16 it just a little bit.

17 But this case is resting on this theory of hand of
18 one/hand of all. It was touched on a little bit in opening,
19 and I'm sure Ms. Walker will go into it further in her
20 closing, but this is my last opportunity to speak with you
21 all. This is the defense's last opportunity to speak with
22 you all.

23 The State has to prove each and every element of their
24 case to you beyond a reasonable doubt. Not just a probably.
25 Not just a, "yeah, I think so," but beyond a reasonable

1 doubt, a doubt that would cause a reasonable person - that's
2 each and every one of you - to hesitate to act. If you
3 hesitate for one moment when you choose to vote guilty or not
4 guilty, that's a hesitation to act. They have to prove that
5 he knew what was going to go down at that house on
6 Williamsburg Drive that night and they have to prove that he
7 actively participated in assisting in order for him to be
8 guilty of the actions of Maurice Roberts or Vincent Nelson or
9 Deshawn McClary.

10 Very simply, Demetrice James went over there to hang out
11 with his friends, his friends, and maybe record a song.
12 Instead, he ended up trying to help a friend and got
13 implicated in a murder. The only reason he entered that
14 house that night was to try to help Maurice, Maurice with the
15 swollen eye, Maurice that looked like he was getting pulled
16 into the house.

17 Demetrice James told you out of his own mouth that he
18 never had any intention to rob anybody or harm anybody or
19 commit any crimes that night. He just wanted to hang out
20 with people that he thought were his friends.

21 Demetrice James is not guilty of attempted murder, and
22 Demetrice James is not guilty of attempted armed robbery, and
23 Demetrice James is not guilty of burglary in the first
24 degree, and Demetrice James is certainly not guilty of the
25 murder of Brandon Jones.

1 Thank you so much for your attentiveness, ladies and
2 gentlemen. Your Honor, may we approach?

3 **The Court:** Yes, ma'am.

4 (Whereupon, a bench conference was held.)

5 **The Court:** Thank you. You may---

6 **Ms. Meghan Walker:** May it please the Court, Your Honor?

7 **The Court:** Yes, ma'am.

8 **Ms. Meghan Walker:** Good morning. Before I start to
9 talk to y'all about this case, I want to thank you for your
10 time, for your attention, for your attentiveness, and for the
11 patience that you've shown here this week. I know we've
12 shuffled you in and out. We've kept you in the jury room
13 waiting for extended periods of time, and for those things I
14 want to apologize. I will take responsibility for those
15 things. They are not to be put on the Scott brothers, on
16 Cari Pearson, on Joshua Williams or on Brandon Jones'
17 parents.

18 I know that when you were driving to the courthouse on
19 Monday morning you were probably anticipating what type of
20 trial you would be sitting on, perhaps a wreck or some
21 shoplifting. On Monday morning there was no way for any of
22 you to know that you would sit for a week and listen to a
23 story about how young men are in their home hanging out with
24 their friends when intruders came in, when one of them was
25 shot, and when on the way out someone stood over their friend

1 as he begged for his life saying, "Please don't shoot me.
2 Please don't shoot me. Please don't shoot me," and then
3 shoots him five times. There was no way for you to
4 understand what you were walking into.

5 Ms. Walker, the other Ms. Walker, and I both agree that
6 this was a tragedy, that people should not be subjected to
7 it, but you've done your duty as -- duties as jurors and
8 listened, and for that I want to thank you. As you guys were
9 trying to figure out what type of trial you may with on, Ms.
10 Simpson and I were preparing this case and preparing the
11 evidence that we were going to put forward. And in doing so,
12 we were trying to anticipate the type of defense that could
13 be used.

14 How do you defend your actions in this case? How do you
15 defend going into someone's home to take something that
16 doesn't belong to you? How do you defend telling the people
17 in the home, "I'm about to shoot," and then shooting one of
18 them in the arm? How do you defend in getting together with
19 your friends to do this and one of them is standing over an
20 unarmed child begging for his life - I'm sorry - a young man
21 begging for his life and shooting him five times? How do you
22 defend something that is so utterly indefensible? Especially
23 in this case; right? Because there's so much evidence
24 pointing towards that defendant's guilt.

25 Don't let Ms. Walker confuse you. This is not the State

1 versus Maurice Roberts; that's been done. He's in prison.
2 People are protected from him. This is the State versus his
3 buddy, his friend, the man he trusted to go into the house
4 with him that night. This is the State versus Demetrice
5 James.

6 And in this case people came in and said: He was with
7 us when we planned it; I heard them planning it. How do you
8 defend against that? When you leave surviving witnesses who
9 you've shot and fought and they can come in and get on the
10 witness stand and point and say what he had on? The one in
11 the blue shirt, he's the one that did it? He's the one who
12 shot me. He's the one who shot my little brother. How do
13 you defend against that? When your co-defendant comes in and
14 testifies, how do you defend against that?

15 And I was at a loss, quite honestly, until he took the
16 stand yesterday and we heard yet another version of events
17 from Mr. James because, remember, the first version: Wasn't
18 there, don't know anything about it, you got the wrong guy.
19 He's confronted with the fact that that simply can't be the
20 case because there are people putting you in the house,
21 people who have picked you out of photo line-ups.

22 Okay. Well, let's make the story evolve a little bit.
23 I was there. I saw something going down when I was walking
24 down the street, and I just happened upon my close friend who
25 was getting in a fight and so I went to help. That story is

1 problematic because there are co-defendants who were saying
2 he was planning this with us.

3 Evolve the story again. I saw them right beforehand
4 because I called Maurice, and keep that in mind. Remember he
5 called Maurice so Maurice could figure out where to meet him;
6 right? Because he was going to buy some weed. I think he
7 refers to it as trees. Remember that. He called Maurice.
8 He can't remember his cell phone number. He knew it then; he
9 doesn't know it now. Borrowed it from a crackhead. Borrowed
10 a cell phone from I guess the Hammond Village crackhead and
11 he used that phone to call Maurice. That is key to his
12 defense at this point because he wasn't at Maurice's house
13 planning this. He happened upon Maurice at Willis's house or
14 Willis's street, something along that. You've got to keep in
15 mind that this story is evolving, but he definitely wasn't
16 there for the planning.

17 And then they go to perform music, to record music, but
18 they're not a music group but maybe they are a music group,
19 and some of them perform and some of them don't. Can't
20 really nail him down on that. And that's when this home
21 invasion breaks out, and no one is more surprised than
22 Demetrice James who sees his friend getting kidnapped, I
23 guess at that point, because he's getting pulled into a house
24 and he has to go save him. That's the story that we were
25 left with in his last written statement and then again an

1 additional story that you heard yesterday. Keep evolving the
2 story to fit your needs so that you can quite literally get
3 away with murder.

4 The defense in this case is the Demetrice Roosevelt
5 James' theory of evolution: Keep evolving the story until it
6 fits your needs and can't hold you accountable for what you
7 actually did that night. But, ladies and gentlemen, in this
8 case with these facts and the laws of South Carolina, that
9 defense isn't going to work because, number one, what he said
10 he did is impossible to have done and, number two, because of
11 the laws of this state -- and those are what I want to talk
12 to you about just briefly.

13 In order to prove our case, we've brought forth
14 evidence: The witness testimony and the physical exhibits
15 that you will have back there with you. There are two types
16 of evidence which are generally presented during a trial:
17 Direct evidence and circumstantial evidence. Direct evidence
18 directly proves the existence of a fact and does not require
19 deduction. Direct evidence: I saw him shoot my little
20 brother. That's direct evidence.

21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact. Crimes may
23 be proven by circumstantial evidence. The law makes no
24 distinction between the weight or value to be given to either
25 direct or circumstantial evidence. However, to the extent

1 the State relies on circumstantial evidence, all the
2 circumstances must be consistent with each other and, when
3 taken together, point conclusively to the guilt of the
4 accused beyond a reasonable doubt.

5 If these circumstances merely portray the defendant's
6 behavior as suspicious, the proof has failed. The State has
7 the burden of proving the defendant guilty beyond a
8 reasonable doubt. This burden rests with the State
9 regardless of whether the State relies on direct evidence,
10 circumstantial evidence, or some combination of the two.

11 The majority of the evidence in this case is direct
12 evidence: People who saw and heard the things that Demetrice
13 Roosevelt James did that night, people who were with him in
14 the planning of it, the people who were in the home when he
15 came in behind Maurice Roberts, people who saw him take the
16 gun from Maurice or get it off of the floor and shoot Trent
17 Scott.

18 There are several charges that this defendant has been
19 charged with. The defendant has been charged with attempted
20 murder. In order prove this crime, the State must prove the
21 defendant attempted to kill another person with malice
22 aforethought, either express or implied. You heard that
23 there were two individuals that were shot during this home
24 invasion. Joshua Williams, he actually showed you the scar.
25 You heard from the EMS worker who treated him. And then

1 Trent Scott who was shot as well and you heard from the EMS
2 worker who treated him as well.

3 With attempted murder, the State is not required to
4 prove that the person need actually have almost loss his
5 life. It's the intent. It's the shooting of an individual.
6 It's actually honestly the shooting at an individual. A
7 person can be shot at and be the victim of an attempted
8 murder. So they can most definitely be the victim of an
9 attempted murder when they are actually shot and struck.
10 What other purpose did he have for shooting people that
11 night? Three people were shot and two survived.

12 The judge is going to charge you on the lesser included
13 offense for those two attempted murders. It's called assault
14 and battery of a high and aggravated nature. If you don't
15 think that he was attempting to kill with malice aforethought
16 -- although I think that malice in this case is everywhere.
17 As Ms. Simpson told you in her opening, this case reeks of
18 malice. They got together, armed themselves, put on gloves
19 and invaded someone's home. Acts do not become anymore
20 malicious than that.

21 If you don't think that malice can be implied from the
22 home invasion or from the gun going off and them shooting at
23 people that night, the judge will charge you on assault and
24 battery of a high and aggravated nature. A person commits
25 the offense of assault and battery of a high and aggravated

1 nature if the person unlawfully injures another person and
2 the act is accomplished by means likely to produce death or
3 great bodily injury. It takes the malice out of it, and I'm
4 going to get to what malice actually means in a little bit.
5 But it's: You've done something to someone and whatever
6 you've done to them can cause great bodily injury, not that
7 it did but that it had the potential to, like shooting
8 someone. The attempted murder and assault and battery of a
9 high and aggravated nature charges go towards Joshua Williams
10 and Trenton Scott who were shot that night by this defendant
11 and his friends but managed to survive and come in here and
12 tell the story to y'all.

13 Attempted armed robbery. You heard testimony from
14 Vincent Nelson, Jr., that they were going in to get studio
15 equipment. Jwaun Duckett told you that they were going in to
16 get studio equipment. They got in there. They didn't have
17 all of the information, and I agree with Ms. Walker on
18 another point. This plan was terrible. This was the worst
19 plan that they could have ever come up with. They walked to
20 commit an armed robbery, planning to get studio equipment out
21 of a house and then walk back.

22 This was not the plan of a group of rocket scientists,
23 but this was the plan that they came up with. The fact that
24 they did not actually achieve their goal, the fact that they
25 didn't have all of the information -- because what Vincent

1 Nelson, Jr., when he was telling them about the studio
2 equipment failed to tell them was that the people who lived
3 in the home were ninjas. They were black belts. So when you
4 go in the home -- they didn't realize that they were going to
5 get their behinds kicked. And so that stopped them from
6 being able to accomplish their goal which is why they are
7 charged with attempted armed robbery as opposed to armed
8 robbery.

9 A person who commits attempted robbery while armed with
10 a pistol - which is what we had in this case - dirk,
11 slingshot, metal knuckles, razor or other deadly weapon or
12 while alleging either by actions or words he is armed while
13 using a representation of a deadly weapon or any object which
14 a person present during the commission of the robbery
15 reasonably believed to be a deadly weapon is guilty of
16 attempted armed robbery. They had the gun. They were
17 pointing the gun around. The gun was passed back and forth
18 between Maurice Roberts and Demetrice James. They were just
19 unsuccessful in their goal. This is why this is an attempted
20 armed robbery as opposed to an armed robbery, had they
21 actually accomplished their goal and taken the studio
22 equipment away from the home that night.

23 All these defendants have been charged with burglary in
24 the first degree, as you've heard. Maurice Roberts has been
25 convicted of this. Vincent Nelson, Jr., pled guilty to it.

1 It's his turn this week. A person is guilty of burglary in
2 the first degree if the person enters a dwelling without
3 consent and with the intent to commit a crime in the
4 dwelling.

5 They discussed with their client on direct examination
6 yesterday that he did not have permission to go in that home.
7 Trenton and Troy Scott told you that he did not have
8 permission to go in that home. Without consent and with the
9 intent to commit a crime therein. The crime that they were
10 attempting to commit inside of the home was the attempted arm
11 -- was the armed robbery.

12 When in effecting entry or while in the dwelling or in
13 immediate flight he or an accomplice in the crime is armed
14 with a deadly weapon. He tells you: I got the gun. I was
15 heading out of the house with the gun because he didn't want
16 the gun to get into the wrong hands. That's almost
17 laughable; right? The home intruder did not want the gun to
18 get into the wrong hands. He -- he has the wrong hands.

19 Or when in effecting entry while in the dwelling or the
20 immediate flight, he or an accomplice of the crime causes
21 physical injury to a person who is not a participant in the
22 crime. You'll notice that there are "or's" here as opposed
23 to "ands," which only one of these must be present for it to
24 be a burglary in the first degree. We have two so far.
25 Trenton Scott was shot during this burglary.

1 When in effecting entry or while in the dwelling or in
2 immediate flight, he or an accomplice in the crime uses or
3 threatens to use a dangerous instrument. "I'm about to
4 shoot. I'm about to shoot." That's when he threatened to
5 use the dangerous instrument.

6 Or when in effecting entry or while in the dwelling or
7 in immediate flight, he or an accomplice is entering or
8 remaining occurs in the nighttime. Here the evidence is that
9 it was after 11:00 when this was done in January, so those
10 would be hours of darkness. It would be nighttime.

11 Lastly, they've been charged with murder. Vincent
12 Nelson, Jr., pled guilty to voluntary manslaughter. Maurice
13 Roberts was convicted of murder. Murder is the killing of
14 any person with malice aforethought, express or implied. And
15 when it says express or -- I'm sorry. Express or inferred.
16 When it says that here, that doesn't mean there are two
17 different types of malice. It's just the way in which malice
18 presents itself.

19 Malice is hatred, ill will or hostility towards another
20 person. It is the intentional doing of a wrongful act
21 without just cause or excuse and with an intent to inflict or
22 injure -- with an intent to inflict an injury or under
23 circumstances that the law will infer an evil intent.

24 Malice may be inferred from conduct showing a total
25 disregard for human life, and malice applies to both that

1 attempted murder and the murder. A total disregard for human
2 life. Going into someone's home and shooting them, shooting
3 their friend as he lays in the driveway and begs for his
4 life, that's malice.

5 Malice aforethought does not require that malice exist
6 for any particular time and before the act is committed. It
7 doesn't mean that they had to say when they were on the way
8 to the house: "We are going over there to commit the robbery
9 and to kill someone."

10 Malice aforethought does not require that malice exist
11 for any particular time before the act is committed, but
12 malice must exist in the mind of the defendant just before
13 and at the time the act is committed. Therefore, there must
14 be a combination of the previous evil intent and the act.
15 When he's standing over him and shooting, that evil intent,
16 the intent to go in and to commit a crime and then shoot
17 someone in the process of committing that crime...

18 The judge will also charge you on felony murder. If one
19 intentionally kills another during the commission of a
20 felony, like a burglary in the first degree, an attempted
21 armed robbery, the inference of malice may arise. If facts
22 are proven beyond a reasonable doubt sufficient to raise an
23 inference of malice to your satisfaction, this inference
24 would be simply an evidentiary fact to be taken into
25 consideration by you, along with all of the other evidence in

1 this case. Under South Carolina state laws, burglary and
2 attempted robbery are felonies. So you can infer malice from
3 the fact that they were going over there to commit felonies
4 and in doing so killed someone in the process of committing
5 those felonies.

6 You've heard a lot about the hand of one being the hand
7 of all. Here is the legal explanation for that. If two or
8 more combine together to commit an unlawful act such as a
9 robbery and in the execution of that criminal act a homicide
10 is committed by one of the actors as a probable or a natural
11 consequence of the acts done - once you go into someone's
12 house with a gun to take things - the probable or natural
13 consequence of that act done in pursuance of the common
14 design, all present participating in the unlawful
15 undertakings are as guilty as the one who committed the fatal
16 act. Once you invade someone's home and their safety and
17 their security and then kill them... Why else go in with a
18 gun?

19 The common purpose may not have been to kill or murder,
20 but if it was unlawful as, for instance, to break in and
21 steal and in the execution of this common purpose a homicide
22 is committed by one as a probable or natural consequence of
23 the acts done in pursuance of the common design, then all
24 present participating in the unlawful common design are as
25 guilty as the slayer. Once you get together with a group of

1 people and decide that you're going to go kick in someone's
2 door, force your way in, pistol-whip people outside -- all to
3 steal radio equipment? People getting injured, people
4 getting killed, that gun being used as it was meant to be, is
5 a probable or natural consequence of that act.

6 You've heard some testimony from the defendant about
7 that phone call he made to Maurice, adamant about that phone
8 call he made to Maurice, because it was to buy some weed. If
9 he smoked it before going down there and that clouded his
10 judgment, that does not matter because voluntary intoxication
11 is never an excuse or a defense to a crime.

12 A person who voluntarily renders himself intoxicated is
13 no less responsible for his acts while in such condition. If
14 a person voluntarily drinks intoxicating liquors and becomes
15 intoxicated and if, while in that condition, commits an act
16 which would be a crime if it had been committed by a sober
17 person, the fact of drunkenness, or in this case of his being
18 high from marijuana, would not relieve the intoxicated person
19 from responsibility. Voluntary intoxication is not an excuse
20 for or a defense to a crime. This rule also extends to the
21 voluntary ingestion of drugs.

22 Those are the charges that he's been faced with -- that
23 he's been charged with and how they all come together when
24 four people are charged with a crime. And just as was the
25 case with Maurice Roberts, the burden in this case is proof

1 beyond a reasonable doubt. Proof beyond a reasonable doubt
2 is proof that leaves you firmly convinced of the defendant's
3 guilt. There are very few things in this world that we know
4 with absolute certainty, and in criminal cases the law does
5 not require proof that overcomes every possible doubt. If,
6 based on your consideration of the evidence, you are firmly
7 convinced that the defendant is guilty of the crime charged,
8 you must find him guilty. If, on the other hand, you think
9 there's a real possibility that he is not guilty, you must
10 give him the benefit of the doubt and find him not guilty.

11 And in order to do this, in order to prove this
12 defendant's guilt beyond a reasonable doubt, in order to
13 leave each and every single one of you firmly convinced of
14 this defendant's guilt, we brought forth witness testimony.
15 We brought forth physical evidence in order to explain to you
16 what happened that night.

17 You heard from Vincent Nelson, Jr. I think Ms. Walker
18 said he got a deal. Vincent Nelson, Jr., is very serving
19 30 years in prison. That's the deal she referred to. He
20 didn't pull the trigger. No one has ever alleged that he
21 pulled the trigger, and despite what he said, no one has ever
22 alleged that he was in a tussle with anyone that night, but
23 he was the guinea pig. That's what he told you.

24 He told you that he was sent into the house, that he had
25 Maurice's cell phone, this cell phone right here, that he was

1 sent into the house, that Chandler Davis let him in, that it
2 was around 11:00, that he went downstairs to see the rest of
3 the boys to see what was going on and that he sent text
4 messages.

5 Text messages came in at 10:58:51. And excuse my
6 language. These are what the text messages said. These are
7 not words that I want to use with y'all. It's, "Fo nigga in
8 here and dey dad." 11:08. Vincent Nelson has that cell
9 phone. He's sending text messages to Deshawn Steven's
10 telephone. "Come on. I got two outside." You'll have these
11 text message records with you right here. You'll have the
12 date and the time with military hours right here.

13 They get a call back. "On da way." It's at 11:11:59.
14 So we know that from 10:58 to well after that Vincent Nelson
15 is in the house, being the guinea pig, being a trojan horse,
16 the ultimate betrayer, with Maurice's cell phone.

17 Demetrice James testified yesterday and he made a fatal
18 mistake. That's what I want to get to in a moment. I don't
19 even think he realizes he's made a mistake yet.

20 You heard from Jwaun Duckett, that he was at Maurice's
21 house. He saw and heard the plan. He said Demetrice was
22 there. Vincent was there. Deshawn was there, and Maurice
23 was there. He was the first person that actually talks to
24 police and laid out all of these people.

25 He got no deal for that. He told them what happened.

1 He told police officers what he knew. He said that they were
2 going to go get some studio equipment, that he didn't go,
3 that he knew Beezy (phonetic) - Brandon Jones. They went to
4 high school together, that he didn't go.

5 And Ms. Walker made a big deal in her closing argument
6 about the fact that these people are -- they're in jail.
7 He's a purse snatcher. This one got a deal. You can't trust
8 any of them. They're in jail. They're bad guys.

9 They're not my friends. I didn't choose the witnesses
10 in this case. Had I chosen the witnesses in the case, I
11 would have gotten a bunch of nuns and priests together to
12 bring them in here and testify about what happened. He chose
13 the witnesses in this case. He chose who he was hanging out
14 with. These are his friends that are the murderers and the
15 purse snatchers that he hangs out with, that he commits
16 crimes with.

17 But judge -- judge their credibility on this. What do
18 they have to gain? They're already in prison. They're not
19 avoiding going to prison with their testimony. They're there
20 for decades.

21 He said that Maurice gave him the cell phone because
22 there was incriminating information on it when the police
23 came to the house to pick him up, the text messages that
24 Vincent Nelson had been sending that night. He told him to
25 flush it, but he didn't flush it. The police recovered that

1 cell phone, got the text messages that you'll have right
2 there. The cell phone is so important.

3 You heard from Cinnamon Wright who treated Brandon
4 Jones. By the time she got to him, he could only give her
5 his name. He had multiple gunshot wounds. He was in the
6 driveway laying in a puddle of his own blood, that she
7 transported him from the house to the hospital.

8 Trenton Scott and Joshua Williams, you heard from the
9 EMS worker who transported that -- them. Her name is Mary
10 Ellen Swain. Trent was shot in the arm; Josh was shot in the
11 side.

12 And then you heard through -- from a number of people
13 who went to the crime scene, a number of investigators who
14 went to the crime scene, to collect evidence that could be
15 used in determining what actually happened that night. You
16 heard from Stan Richards. You heard from Kristen Polis. You
17 heard from Michael Beeler. You heard from Yvonne Woods --
18 that they went to the house that night and that the things --
19 and that's -- and that's what's key in this case:
20 Corroborated evidence versus uncorroborated evidence.

21 The things that the defendant testified to, some of them
22 are corroborated; most of them are not. It was corroborated
23 that Maurice shot somebody that night. Trenton and Troy
24 Scotts' testimony, Joshua Williams' testimony is corroborated
25 through and through: Brandon went. He got an Icehouse. He

1 was standing outside drinking it when all this started. You
2 can see where the EMS workers had taken off their gloves, the
3 bandages, his shoes.

4 Corroborated evidence. For the first time yesterday we
5 heard of two gunshots that went off in the house; right? Up
6 until -- everyone else that testified, testified that there
7 was one shot that went off in the house. Demetrice James
8 testified that there was two. There was one. He checked
9 himself to see if he'd been hit; he hadn't been hit. So then
10 he's running out the door, and then his arm gets caught in
11 the door which is kind of weird and it doesn't make any sense
12 - I'll get to that in a little bit - and then a second
13 gunshot goes off in the house.

14 The testimony was that there was one projectile found in
15 the house. Do you remember Terry Gleason's testimony, that
16 you're going to have the shell casing and the projectile that
17 come out of the gun when it's fired? There was one,
18 corroborating Troy and Trent Scotts' testimony, and
19 completely contradicting the testimony of the defendant in
20 this case that there were two gunshots.

21 There was one projectile found in that house because
22 only one gunshot went off in that house, and here is the
23 projectile. It's marker R. You've got a far-away picture of
24 it and a picture up close.

25 Trenton Scott said at that point in time he realized

1 he'd been shot. He was trying to get away. He was trying to
2 get help. He does what a lot of people go do when they are
3 in distress. He went to go find his mom and dad. The
4 intruders had been put out of the house at that point in
5 time, and you can see this kid's blood tracked throughout the
6 house. Corroborated testimony. You see the blood start
7 downstairs, go all the way through until he gets upstairs and
8 is going towards his mom and dad's bedroom. Corroborated
9 testimony.

10 Brandon Jones was left outside after Maurice Roberts
11 stood over him and shot him. On this dark, cold January
12 night in this driveway -- remember Chandler Davis? He says
13 he comes around the house and he finds him here and that the
14 only thing he could say was, "Help me," that he tried to get
15 him help and he got him an ambulance.

16 More evidence that corroborates what Troy and Trent
17 Scott say happened and completely contradicts what this
18 defendant says happened. Remember he says he's -- depending
19 upon which version you listened to, either he wasn't there or
20 he's walking down the driveway and he sees Troy and Trent
21 Scott and he can't see who is on the other side, but somebody
22 is pulling Maurice into the house.

23 Remember when he testified though? The young man said
24 he was coming down the stairs with hangers and that once he
25 saw the hangers, he dropped them because someone was charging

1 him? The hangers are dropped right here. Maurice Roberts is
2 inside of the house. They're fighting on this coffee table
3 that glass shatters on. You can see the coffee table in this
4 picture right here. That's how far inside of the house they
5 were.

6 He didn't see anybody pulling Maurice into the house
7 because it didn't happen. Who pulls the intruder into the
8 house when they were first coming in? But he can't be part
9 of it. He can't know what was happening because then even he
10 understands that he's guilty under a hand of one/hand of all
11 theory, so he has to distance himself from it.

12 I didn't know what was happening; I was confused. They
13 were beating my close, dear friend, depending upon when he
14 testifies, because they're either really dear friends or he's
15 his dope man and he sells him weed every now and then. But
16 either way, what he said is contradicted by the pictures that
17 I have in my hand. Those are State's Exhibits Number 142 and
18 144. The front door is here. This is where the hangers
19 were. This is where the glass breaks.

20 Now, you see the blood that's dropping -- that's
21 dripping this way; right? In one version of the story he's
22 walking down the street, so he's on this way, but he can see
23 everything that's happening over here that's blocked by the
24 rest of the house? That's one version of the story.

25 One version is he's coming down here, and then Maurice

1 runs past him and starts pistol-whipping people, and so then
2 he decides to join in the fight. Sometimes when you keep
3 changing your story to try to get out of trouble, you put
4 yourself in a worse position than you were in the first place
5 because this story makes less sense than it did when he
6 started about him saying he wasn't there. He should have
7 stuck to that. Those are the pieces of evidence that Kristen
8 Polis, Michael Beeler, Yvonne Woods, and Stan Richards
9 brought to you.

10 In addition to that though, Ms. Polis took some pictures
11 of the defendant because they had a description of him from
12 the people inside the home: Short, darker complexion with
13 little twisties in his hair. That's what they said. Now, he
14 doesn't look like that now. It's inconvenient to come to
15 court looking the same way you did when you committed the
16 home invasion. Here's how he looked then though. Here are
17 the twisties that were in his hair.

18 He can change his appearance all he wants, but he cannot
19 change what he did that night. Those are pieces of evidence
20 that the crime scene investigators brought to you.

21 You heard from a series of expert witnesses, and the
22 judge will give you a charge on expert witnesses. They are
23 people who can give their opinions based upon their studies,
24 based upon their training. I can't come in here and give you
25 my opinion on what happened or on what a piece of evidence

1 suggests, but John Barron can. He's the D.N.A. expert. He
2 talked about finding Brandon's D.N.A. at the crime scene. He
3 talked about finding D.N.A. on other pieces of evidence.

4 Trisha Odom talked about the fingerprints on the beer
5 can. Terry Gleason said that all the shots that were fired
6 were fired from one gun that night and it was a .45. And
7 then Dr. Durso came in and she told you about the injuries
8 that were sustained to the victim in this case, Brandon
9 Jones, that caused his death. He died because of five
10 gunshot wounds.

11 You heard from the people who were actually at the house
12 that night. You heard from Cari Pearson. She was dating one
13 of the Scott brothers; she was in the bedroom. They heard a
14 crash. They heard them going through that table, and they
15 ran outside to see what was happening. That she panicked.
16 She stayed behind her boyfriend and that she couldn't really
17 tell what was going on. And she told you on the stand that
18 she couldn't really identify anybody because she was so
19 scared, that she heard that Linard was involved and that she
20 told people that she heard that but that she could not
21 identify Linard as one of the people in the house because he
22 wasn't.

23 You heard from Chandler Davis. He let Vincent Nelson
24 in. He sent him downstairs. He knew him as Jay-School. He
25 sent him downstairs to hang out like he had done many other

1 times, that his stepson comes knocking on his door, that he's
2 panicked and he's bleeding, and then at that point he's
3 wondering where his other two boys are. Where are Brandon --
4 where's Josh? Where are Brandon and Josh? And then he sees
5 Josh and he's asking, "Where is Brandon? Where is Brandon?"
6 And Josh can only tell him he doesn't know. And he goes
7 around the house and he finds the boy laying on the floor,
8 bleeding and asking for help. He said it was around 11:00
9 when Vincent Nelson, Jr., got there. We know it was a little
10 bit before then because at 10:58 that's when he starts
11 sending those text messages from Maurice Roberts' cell phone.

12 You heard from Troy and Trent Scott. They told you
13 about being downstairs, hanging out with their friends, that
14 the door rushes in. He drops his hanger. He tells you he
15 drops his hangers, that they start fighting, that they're
16 pushing. They're trying to get them out. His mother, his
17 brother's girlfriend, and his stepfather are upstairs.
18 They're trying to get them out of the house. They don't know
19 these two people. They don't know why they're there. And
20 that as they're fighting and getting them out of the house --
21 they successfully get them out of the house but not before
22 the shot goes off and his little brother is shot in the arm.

23 Troy's little brother is shot in the arm, and they both
24 came in here and they both independently were able to
25 identify the man who shot him. Lo and behold, it's Demetrice

1 James because this is the State versus Demetrice James; make
2 no mistake about it.

3 You heard from Joshua Williams. He is an emotional
4 young man. He said Brandon was like his brother, that people
5 were walking past the house, walking back and forth. No one
6 walked by, turned around, said hello to them and then other
7 people ran past him. They didn't happen. People were
8 walking back and forth, and then he got hit in the head.
9 That he went down and that all he could do at that point in
10 time was play dead, that his vision was a little blurry but
11 that he could hear what was going on. And he heard a
12 gunshot, that his best friend whom he considered to be a
13 brother was begging for his life and that then he heard five
14 more shots rang out.

15 You heard from the investigators in this case, Kevin
16 Isenhoward who was present -- Sergeant Kevin Isenhoward who
17 were present when this defendant was arrested. Scott
18 McDonald who was also present when this defendant was
19 arrested and he's the one who went over the phone records
20 because he -- the phone records from Maurice Roberts' cell
21 phone that Vincent Nelson, Jr., had inside the house that
22 night where he's sending text messages out to Deshawn
23 McClary's phone telling them what to do.

24 You heard from Steven Faust. You heard from
25 Investigator Faust. Investigator Faust talked about some of

1 the items of clothing that were found. There was a
2 camouflage jacket similar to the one described as having been
3 worn by one of the defendants in this case, that he was
4 notified of that piece of evidence. It was behind a
5 dumpster. Someone was trying to get rid of it, and he
6 collected it.

7 And then you heard from Flynn Tanner and Hal Boland,
8 these two investigators. Judge their credibility. They told
9 you about how this investigation proceeded, that they
10 understood from the witnesses in this case that Vincent
11 Nelson, Jr., walked in the house with a cell phone and that
12 was odd to them because he never had a cell phone. Vincent
13 Nelson, Jr., corroborated that. "I didn't have a cell phone;
14 it was Maurice's cell phone. He was letting me borrow it. I
15 had Maurice's cell phone in the house that night, sending
16 text messages out so I could tell them what to do."

17 That they go and they make contact with Vincent Nelson,
18 Jr., and Jwaun Duckett. They both start implicating this
19 defendant and the other defendants in this plot to go into
20 this house and steal studio equipment, that they then make
21 contact with other defendants, and the very last thing that
22 Investigator Boland said when he was on the stand was that
23 Demetrice James was arrested because of what all of the
24 co-defendants and the victims in this case said about his
25 involvement in the planning and execution of this plot. I'm

1 almost done. And that that's why he was arrested.

2 And then you heard about a series of statements that
3 this defendant gave. They can call them continuations. They
4 can call them add-ons. They can call them whatever they
5 like. What they are is wholly inconsistent with one another.

6 You'll have back there with you the advice of rights.
7 Demetrice James -- the officers that are questioning him are
8 Investigator Boland and Tanner. They read him his rights
9 here. They tell him he has the right to remain silent, that
10 anything he says can be used against him in court, that he
11 has a right to talk to a lawyer for advice before we ask you
12 any questions and that you have a lawyer during and
13 throughout any questioning.

14 If you cannot afford a lawyer, one will be appointed to
15 you before any questioning, that he says that you can answer
16 questions now without a lawyer present, but you still have
17 the right to stop answering. He signs that he understands
18 that. He waives his rights. He explains what coercion means
19 to him.

20 Demetrice James says: I want to talk to you. No
21 alcohol, no drugs, twelfth grade. Remember, he's a student
22 at Benedict College. He understood his rights and he waived
23 them.

24 The first thing he says before it's reduced to
25 writing -- and he acknowledged saying on the stand: I wasn't

1 there; I don't know what you're talking about. Then he's
2 questioned. He says he woke up and went to school. He goes
3 to Benedict College, that he gets out on Fridays at 12:00.
4 He caught the city bus back home, went to a Lil Cricket. He
5 went to the Hammond Village to walk around. "I walked
6 through to see who was out. It kind of got boring, so I went
7 back to my house. I was chilling all day, just watching T.V.
8 My dad's girl came over around 9:00 p.m. My girl, Qymesha
9 Watkins..." There's a lot of talk about Qymesha because
10 Qymesha is kind of an alibi in this; right? Because he was
11 with her when all the plotting would have been going on.
12 Where is Qymesha? He says he was with her. Where is she
13 now?

14 They called witnesses to the stand. Uncorroborated
15 testimony. Qymesha Watkins came to my house and she picked
16 me up. We went back to her house off Broad River Road. We
17 were there 'til about 11. That time is important because he
18 says himself that he is at the house, that he is with
19 Qymesha---

20 **The Court:** We need to take a break. We'll take a break
21 at this time. We'll take a break. Jury, we'll go to the
22 jury panel (verbatim). We were going to have to take a break
23 in the intermediary anyway. We'll go ahead and take a break.

24 (Whereupon, the jury was excused from open court at
25 12:09 p.m.)

1 **The Court:** One of the jurors had gotten up and was
2 basically asking the bailiff to let her exit. I didn't see
3 her or I would have gone ahead and called for a break. We'll
4 take a break.

5 **Ms. Meghan Walker:** I'm be wrapping it up now, Judge.

6 **The Court:** Okay. We'll take about a 10-minute
7 refresher break.

8 **Ms. Meghan Walker:** Thank you.

9 (Whereupon, a short break was taken.)

10 **The Court:** State ready?

11 **Ms. Meghan Walker:** Yes, Your Honor.

12 **The Court:** Defense ready?

13 **Ms. Pinnock:** Yes, Your Honor.

14 **The Court:** All right. I have told the bailiffs to
15 bring the jury when they are ready. If they're not ready, it
16 might be a couple of minutes, but when they're ready, we're
17 ready. Bring in the jury. Because I don't want to...

18 (Whereupon, the jury returned to open court at 12:22
19 p.m.)

20 **The Court:** You may proceed.

21 **Ms. Meghan Walker:** Thank you, Your Honor. You'll have
22 this back there with you. Off Broad River Road. She dropped
23 me off after 11 p.m. 11:00 p.m. is when he first makes his
24 way back.

25 "I went straight to Hammond Village to get some weed. I

1 knocked on Maurice's door, but no one came to the door. I
2 had to get in contact with him. I walked around and I found
3 a crackhead. I used his phone to call Maurice."

4 Remember, he knew Maurice's cell phone number then. On
5 the stand he can't really remember. Didn't really actually
6 try, just said, "I don't know right now." "He told me to
7 come over to the road that Willis lives on and I will see
8 him." Doesn't really know who Willis is, what Willis's last
9 name is or what the road is, but he knew what road Willis was
10 on and I would see him.

11 "I walked down by the club Crush and then turned on the
12 road by E.E. Taylor. I got there, took a left on the road by
13 Taylor. I didn't have a phone to call Maurice, so I just
14 kept walking to Willis's house. I walked there. I got
15 halfway in the middle of the road, and I saw a commotion with
16 people fighting. I knew it had to be a fight because there
17 was a guy laying on the ground in the driveway. He was
18 holding his head like he had -- like he had beat (verbatim).
19 He was holding his head on his arm like he had lost the
20 fight. After that, I looked down the same driveway and the
21 guy was laying and could see what was happening. I saw
22 Junior in a tussle." There's no testimony that Junior -
23 Vincent Nelson, Jr. - or Jay-School ever fought anybody.

24 "I had seen Maurice in a tussle, too. Junior was more
25 away from the door and he was fighting. I went down the

1 driveway when I saw Maurice was more towards the door," and
2 that door though is blocked by the rest of the house if
3 you're just coming down the street. You can't see the door
4 from the street.

5 "Maurice is engaged with people in the house. It was
6 like he was halfway in the door, and the other people, it
7 looked like they were fighting through the door and stuff.
8 While they were fighting, I seen Maurice's eye that was
9 swollen up." Maurice's eye got swollen pretty quickly,
10 according to his testimony; right? Because Maurice isn't
11 even in the house. His eye is already swollen.

12 "It was two sizes bigger than it usually is. It swoll
13 quickly and it swoll dramatically. There were two or three
14 guys, and I definitely seen a girl. While we were fighting,
15 the girl was watching. She wasn't really doing anything.

16 "So in the middle of us fighting I heard a gunshot go
17 off in that house. When the gunshot went off, nobody
18 dropped, so I checked myself to see if -- that I wasn't shot.
19 After that right there, I was like, 'Let's go.' I ran out of
20 the house first, and Junior was still outside tussling with
21 the dudes. I was just trying to run away."

22 Remember, the dudes that Vincent was supposed to be
23 tussling with at this time, according to all the testimony,
24 never got up off the ground once the first time they were
25 hit. So I don't know if there were just some more people

1 that he's adding to the story at this point or who exactly it
2 is that Vincent Nelson, Jr., is supposed to be tussling with.

3 "I told them, 'Let's go.' I took off and I really
4 didn't look behind me. I ran back to where I came from. I
5 heard a couple more shots, but I kept on going. I didn't
6 stop. I ran back towards my house when I got next to the
7 church. I seen all the police cars and fire trucks. I went
8 back to my house."

9 "Did you speak with Maurice later that night?" "No, I
10 saw him the next day at a party at Hammond Village." "Did
11 you and Maurice talk about what happened the night before?"
12 "No."

13 His friend has been attacked at this point, according to
14 what he says. They've gotten into a fight. A gun has gone
15 off. His friend's eye has been swollen. And they don't
16 discuss it? Does that ring true to you? Does that sound at
17 all credible?

18 "Have you ever seen Maurice with a gun?" "I seen him
19 with one a long time before he went to D.J.J. He wasn't even
20 17 yet." "Did you see Maurice with a gun Friday night during
21 the fight?" "No." "Did you see anyone with a gun?" "Not
22 really. It was a really big commotion. I didn't really see
23 a gun. I just heard the gun go off when I got there." No
24 mention that he actually had the gun in this story.

25 "Do you recall what you were wearing that night?" "I

1 had on some jeans. I had shoes. It was pretty chilly out
2 there, so I had on my black leather coat." "Do you recall
3 what Maurice was wearing that night?" "He had on an overall
4 suit, black, the kind that you step into, black skull cap."
5 "Did you have a gun that night?" "No. I don't own no gun."
6 Wholly different than what he testified to yesterday.

7 He's confronted with the fact that the witnesses have
8 him with a gun that night and have it -- having it discharge.
9 11:00 he goes over to get weed. Maurice isn't there, so he
10 calls his dear friend on the cell phone that he has
11 memorized. Here is the problem with that story, and I think
12 just about everybody in the courtroom except for maybe
13 Demetrice has figured it out.

14 He talked to Maurice on his cell phone? Maurice didn't
15 even have this cell phone at that point because at 10:58
16 Vincent Nelson, Jr., is sending text messages from inside the
17 home. There was no conversation with Maurice Roberts that
18 night on this cell phone or any other cell phone, because
19 this is the only one Maurice Roberts had, about meeting him
20 by Willis's house, about buying weed, because it is purely
21 and simply impossible for that to have happened, according to
22 the witnesses inside, according to Vincent Nelson, Jr., and
23 according to these text messages themselves.

24 Maurice Roberts did not have the cell phone Demetrice
25 James claims that he called him on. When he was evolving his

1 story, he should have evolved it to having called someone
2 else's story (verbatim), but he was adamant about that
3 yesterday. I called Maurice on his cell phone. I don't
4 remember the number, but I called Maurice on his cell phone
5 because I needed to get weed that night. Talked to Maurice
6 on his cell phone that Maurice didn't even have.

7 The whole crux of his defense is that he didn't know,
8 that he happened upon them because of this cell phone
9 conversation, and it's purely impossible that it happened
10 that way. It's not a mistake. He just didn't think this
11 whole thing through when he was making up a story.

12 He talked to him. "When I saw him over on the side
13 street by Williamsburg" -- because at this point he didn't
14 just see them at the house. He sees them on a side street by
15 Williamsburg. "I paid him \$5 for the blunt. That is when he
16 said Junior was down there at the studio and asked me if I
17 wanted to come, and I said, 'Sure. Let's go.' Me, him, and
18 a light-skinned guy that he was with," because at that point
19 he's still distancing himself, so he's not admitting to
20 having known Deshawn Stevens - I'm sorry - Deshawn McClary
21 like he did yesterday. He's just a light-skinned dude at
22 that point.

23 "Went down the street that was on the side of
24 Williamsburg Drive. It was really only about three houses
25 away. We walked down the driveway. That's when I seen

1 Junior right there on the side of the sidewalk smoking a
2 cigarette with another guy. From that point, Little Maurice
3 took off in a sprint. I was still walking, and I didn't know
4 what he was running for.

5 "When he got to the end of the driveway, him and a guy
6 that was by the truck down there got into a tussle. That is
7 when Maurice hit the dude with something. I didn't really
8 see what he had, but he had a motion like he was clutching
9 something when he hit the guy. The dude dropped to the
10 ground and stayed there with his arm over his head. Maurice
11 went towards the door." In this story also there's no
12 mention of Vincent Nelson, Jr., being in with a tussle with
13 anybody outside at that point.

14 "By the time I got down there, Maurice had gone inside."
15 He wasn't being pulled inside like he mentioned the first
16 time, but Maurice had actually just gone inside. "All I
17 could see was him falling out of the door and him trying to
18 swing. That is when I saw the scuffle. I went down to the
19 door and I started to try to help Maurice. That is when I
20 saw his eye was swollen, so I tried to help him.

21 "While I was at the door, I was trying to punch the
22 dudes off of Maurice. When they were trying to pull him in
23 the house, I was trying to pull him out the door by his coat
24 to get him out of the house. After that, they actually
25 pulled him in the house. One of the guys acted like he was

1 trying to close the door, so I put my foot in the door so he
2 couldn't close it."

3 And that is part of the story; right? And it's a little
4 bit out of sequence, but that part of the story is
5 corroborated by Troy and Trent, that once they get them out
6 of the house, right, that somebody's foot comes in the door.
7 This defendant's foot comes in the door and he's pushing in
8 and he has the gun inside the door and he's waving it, right,
9 because if you're pushing your way inside a door, that's how
10 your arm gets caught in a door. Your arm doesn't get caught
11 if you're actually exiting the door because your arms are in
12 front of you. They're not behind you waving a gun around
13 like that. That doesn't happen. That doesn't make any
14 sense. It's not credible.

15 "I started fighting both of the dudes. In the middle of
16 that, I heard a gunshot, and when I heard that, everybody
17 kind of stopped and they started checking themselves to make
18 sure they weren't shot. I was like, 'Oh, snap. Let's go.'
19 When I looked at Maurice, I saw him put a silver pistol back
20 in his overall jumpsuit."

21 The first time -- this is when he starts acknowledging
22 having seen a gun that night. "I'm not sure what color the
23 handle was, but I think it was black. After that, we got
24 outside the house. Everybody was kind of taking off at that
25 time. Little Maurice was kind of lagging behind. I saw him

1 standing over a dude that looked like the same guy he had hit
2 earlier that was in the driveway. The guy still had his arm
3 over his head. I was kind of taking off saying, 'Let's go.
4 Let's go.' I heard the gunshots and saw the flash from the
5 gun." The first time he's mentioned this. "The flash came
6 from Maurice's gun where he was still standing over the guy."
7 "Was the guy in the driveway when Maurice shot him?" "The
8 guy was in the driveway with his arm over his head laying on
9 his back when Maurice shot the guy. I don't know who said
10 it, but I heard" -- and it has this language here.

11 "Do they say that after the shots?" "Yeah, I heard it
12 after a couple of shots. I heard it loud down the street.
13 It was angry like." And you have the rest of his statement.
14 I'm not going to go over that with you. You'll have it back
15 there. That's his evolving story which is totally different
16 from the story that he told here yesterday and which is
17 completely refuted by the cell phone records and this cell
18 phone that Vincent Nelson, Jr., had.

19 This case, ladies and gentlemen, like any other case
20 that is tried in this courthouse, including the State versus
21 Maurice Roberts, comes down to credibility. Who do you
22 believe? You either believe one of this defendant's five or
23 six versions of the facts, whichever one he chooses to put
24 forth, all of which is contradicted by the evidence in this
25 case, or you believe the corroborated, credible testimony of

1 the witnesses in this case. And if you believe the
2 defendant's version of events, it is your duty to let him go,
3 to find him not guilty of all of those crimes. Give him his
4 jacket back. Send him and his camo on its way. Walk him out
5 of this courthouse.

6 If, on the other hand, you believe the corroborated,
7 credible evidence, the eyewitness testimony, the cell phone
8 records, hold him accountable for what he and his co-
9 defendants chose to do that night. Find him guilty of two
10 counts of attempted murder, one count of attempted armed
11 robbery, one count of burglary in the first degree, and one
12 count of murder in the killing of Brandon Jones. Thank you
13 very much. I appreciate your attention.

14 **The Court:** Ms. Walker, remove this stand.

15 **Ms. Meghan Walker:** Yes, Your Honor.

16 **The Court:** Members of the jury, I appreciate the
17 attention you've given to everybody: The witnesses, the
18 attorneys, and myself and the court staff during this trial.
19 It's now my duty to charge you on the law that you are to
20 apply to the charges and to the facts in this case.

21 As you've heard, Mr. James is charged with attempted
22 armed robbery, burglary, two counts of attempted murder, and
23 a charge of murder. The attempted murder victims are
24 Scott -- Trenton Scott and Joshua Williams. The alleged
25 murder victim is Brandon Jones. And the burglary and the

1 attempted armed robbery is alleged to have occurred at the
2 address on Williamsburg Drive here in Richland County.

3 These indictments, which you will have in the jury room
4 with you, are not evidence. They simply contain the charges
5 against Mr. James. The way our system works is if someone is
6 charged -- or thought to have committed an offense, they are
7 arrested, charged. Their case is processed, they are
8 indicted, and they go to trial. The indictment contains the
9 charges which is not evidence, and it also will be ultimately
10 where the jury's verdict, unanimous verdict, will be enrolled
11 and kept as a record.

12 The fact that there are more than one charge, the fact
13 that there are five charges, is of no moment. That is,
14 you're not to weigh this case based on the number of charges,
15 but you are to examine each charge on its own. That is, the
16 State has a duty, as I will go over momentarily, to prove a
17 charge beyond a reasonable doubt, and that goes as to each
18 charge. You may convict Mr. James on one or more of the
19 charges or you may acquit him on one or more of the charges.

20 Mr. James, like anyone charged with any offense in our
21 legal system, is presumed innocent of the charge against him.
22 This presumption of innocence attached to Mr. James at the
23 time of his arrest, has remained with him as this case has
24 processed through our court system, and at this moment
25 remains with him.

1 The presumption of innocence in Mr. James' favor is
2 removed if and when and only if and when you determine that
3 the State has proven his guilt beyond a reasonable doubt.
4 That is, the presumption of innocence remains with him as you
5 deliberate, and only if you determine unanimously that he is
6 guilty of one or more of the offenses will that presumption
7 of innocence be removed.

8 Now, the presumption of innocence is a substantial
9 right. It's not just a legal theory or a legal phrase. It
10 is a substantial right that, as I said, inures to anyone
11 charged with any offense and in this case a charge -- it
12 inures to the benefit of Mr. James. That presumption of
13 innocence is removed only if the State proves as to a charge
14 his guilt beyond a reasonable doubt.

15 Our courts have described a reasonable doubt as the kind
16 of doubt that would cause a reasonable person to hesitate to
17 act. Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of someone's guilt. There are, of
19 course, very few things in our world that we can know with
20 absolute certainty, and our law does not require that in
21 cases such as this.

22 If, based on your consideration of the evidence, you're
23 firmly convinced that Mr. James is guilty of one or more of
24 the charges, you would find him guilty. On the other hand,
25 if you think there's a real possibility that he is not guilty

1 as to one or more of the charges, you would give him the
2 benefit of that doubt and find him not guilty. He is
3 entitled to any reasonable doubt you have as to any issue in
4 this case.

5 I remind you that I'm the sole judge of the law in this
6 case, and you must take, accept, and apply the law as I
7 charge it. This is true even if you think I charged the law
8 in error or even if you think the law should be different.
9 Your oath requires you to take, accept, and apply the law as
10 I charge it.

11 You're not to infer from anything I have said or done at
12 any time during this trial or anything I now say or do as
13 indicating an opinion of mine on the facts. Our law does not
14 allow a trial judge to formulate or express to a jury any
15 opinion on the facts. It is solely your duty to examine the
16 evidence and give to the evidence the effect, the value, the
17 weight, and the truth you believe it should have. In doing
18 this, you may believe one witness as opposed to several or
19 several witnesses as opposed to one. You may believe all,
20 part, or none of a witness's testimony. In analyzing the
21 evidence, use your common sense, your sense of logic, your
22 sense of reason, and use your experiences in life.

23 As judges of the facts, you necessarily must use the --
24 must view and determine the believability and the credibility
25 of the witnesses who have testified. In assessing

1 credibility, use the things I have just talked to you about.
2 Use the things that you find in your day-to-day life as
3 indicating truthfulness in individuals, and you can use
4 certain evaluators: Whether a witness is hesitant or
5 straightforward. Look at consistencies or consistencies
6 (verbatim) in a witness's testimony when compared with
7 earlier statements or within the testimony given here at
8 trial. You can look at any bias or prejudice a witness may
9 have, that is, whether a witness would wish to help or hurt
10 one side or the other. You may look at and consider the
11 opportunity the witness had to actually know those things
12 about which they testified. And you may consider in the
13 matter of credibility whether an individual has any criminal
14 record.

15 In this case we've had some individuals who were
16 qualified to testify as experts. I told you then and remind
17 you that generally individuals can only testify as to
18 something they've observed with one of their five senses.
19 However, where an individual has certain training,
20 experience, education, that person can take facts and from
21 those facts render an opinion. These opinions of experts are
22 allowed into evidence to assist you. They're not binding on
23 you. You can accept them or you can reject them, in whole or
24 in part.

25 Now, you look at these experts who have testified sort

1 of through the same lens as you look at any witness. You
2 judge their credibility. You use the same factors that I've
3 talked about. In addition as to an expert, even though I
4 qualified them as an expert, you determine whether you think
5 they had the expertise to render the opinion they reached,
6 and you may also consider whether or not or you may look at
7 the reasons they gave for reaching the opinion they reached.
8 Again, their testimony is allowed into evidence to assist you
9 and is not binding on you.

10 An issue in this case is the identification of Mr. James
11 as the person who committed these offenses. The State has
12 the burden of proving the identity of an individual charged
13 beyond a reasonable doubt. You must be satisfied beyond a
14 reasonable doubt of the accuracy of the identification of the
15 defendant, Mr. James, before you may convict him.

16 Identification testimony is an expression of a belief or
17 impression by a witness. You must determine the accuracy of
18 the identification of the defendant. You must consider the
19 believability of each identification witness in the same way
20 you look at all other witnesses, as I have already talked
21 about.

22 You may consider whether the witness had an adequate
23 opportunity to observe the offender at the time of the
24 offense. This will be affected by things like how long or
25 short a time was involved during the incident, how far or

1 close the witness was to the alleged offender at the time of
2 the incident, the lighting conditions there. And I instruct
3 you that the burden of proof extends to the State as to every
4 element, as I have told you earlier, including and
5 specifically including the burden of proving beyond a
6 reasonable doubt the identity of Mr. James as the person who
7 committed these alleged offenses. If, after examining the
8 testimony, you have a reasonable doubt as to the accuracy of
9 the identification, you would give that benefit of the doubt
10 to Mr. James and find him not guilty.

11 There are two types of evidence that are generally
12 presented in trials such as this: Direct and circumstantial.
13 Direct evidence is evidence which directly proves the
14 existence of a fact and does not require deduction.
15 Circumstantial evidence is proof of a chain of facts and
16 circumstances which indicate the existence of a fact. Crimes
17 may be proven by circumstantial evidence. Our law makes no
18 distinction between the weight or value to be given either
19 direct or circumstantial evidence. However, to the extent
20 the State relies on circumstantial evidence, all of the
21 circumstances must be consistent with each other and, when
22 taken together, point conclusively to the guilt of the
23 accused beyond a reasonable doubt.

24 If these circumstances merely portray the defendant's
25 behavior as suspicious, that proof has failed. The State has

1 the burden of proving a defendant's guilt beyond a reasonable
2 doubt, and this burden rests with the State, whether it
3 relies on direct, circumstantial -- direct evidence,
4 circumstantial evidence, or a combination of the two.

5 In this case there have been statements discussed and
6 introduced made allegedly by Mr. James. I earlier admitted
7 these. They are now -- even though I have admitted them into
8 evidence, I instruct you that the ultimate decision of
9 whether or not he made -- whether or not Mr. James, in fact,
10 made those statements and whether he made them freely and
11 voluntarily is up to you to determine beyond a reasonable
12 doubt.

13 You must determine that he made the statements and that
14 they were made voluntarily and of his own free will. This
15 means that any statement given was not caused by pressure,
16 force, fear, threats, coercion or intimidation or by hope or
17 promise of leniency or a reward of any kind.

18 In determining whether a statement was voluntary, you
19 may consider the characteristics of the defendant and the
20 details of the questioning. Some of the things and factors
21 you may consider are the defendant's age -- and sometimes I
22 say Mr. James and sometimes I use the word defendant, but, of
23 course, Mr. James is the defendant. The age of the
24 defendant, the education level or lack of education of a
25 defendant, the defendant's mental ability or capacity, his

1 I.Q. or intelligence, his background and environment.

2 You may also consider the place and length of the
3 detention, the nature of the question, and you may consider
4 the advice or lack thereof to him of his constitutional
5 rights including, but not limited to, the right to remain
6 silent, the right or the acknowledgment by the State that any
7 statement he made could be used against him in a court of
8 law, the right to have an attorney present and that if he
9 could not afford one that the State would appoint an attorney
10 to represent him without cost to him and that he could stop
11 making a statement at any time.

12 You must consider all of the surrounding circumstances
13 before you can give any weight at all to an alleged
14 statement. The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was given by Mr.
16 James and was given voluntarily.

17 If you determine it was, you may give a statement such
18 further consideration as you deem proper and appropriate.
19 You, as the trial jury in this case, must decide what weight,
20 if any, should be given to an alleged statement. If you
21 determine the alleged statement was not the free and
22 voluntary statement of Mr. James, you would not consider the
23 statement at all.

24 You've heard the attorneys mention the legal theory of
25 the hand of one is the hand of all. It is a viable, legal

1 principle in our law. If a crime is committed by two or more
2 people who are acting together in committing a crime, the act
3 of one is the act of all. A person who joins with another to
4 commit an unlawful act is criminally responsible for
5 everything done by the other person which happens as a
6 probable or natural consequence of the acts done in carrying
7 out the common plan or purpose. If two or more people are
8 acting together, assisting each other in committing an
9 offense, the act of one is the act of all or, as I've said
10 and it's been referred to, the hand of one is the hand of
11 all.

12 Prior knowledge that a crime is going to be committed
13 without more is not sufficient to make a person guilty of
14 that crime. Mere knowledge that another person is going to
15 commit a crime, even if the defendant is present when the
16 crime is committed, is not sufficient to convict one as a
17 principal.

18 Guilt as a principal, that is, under the-hand-of-one-is-
19 the-hand-of-all concept, is shown by actual or constructive
20 presence at the scene where the incident occurred as a result
21 of prior arrangement. Therefore, a finding of a prior
22 arranged plan or a common scheme is necessary for a finding
23 of guilt as a principal. The State must prove beyond a
24 reasonable doubt by competent evidence the theory of the hand
25 of one is the hand of all.

1 A principal in a crime is one who either actually
2 commits the crime or who is present aiding, abetting, or
3 assisting in committing the crime. When a person does an act
4 in the presence of and with the assistance of another, the
5 act is done by both. Where two or more acting with a common
6 plan or intent are present at the commission of a crime, it
7 does not matter who actually commits the crime. All are
8 guilty. The hand of one is the hand of all.

9 Present at the commission of a crime means to be
10 sufficiently near to aid and abet and assist in the
11 commission of the crime. However, mere presence by one at
12 the scene of a crime is not alone sufficient to convict one
13 as a principal on this theory of aiding and abetting.

14 Intent is also a necessary element, for there must have
15 been a common decision or intent to commit the crime and the
16 crime must have been committed pursuant thereto with the
17 person aiding and abetting by some overt act. Intent means
18 intending the results which actually occurred. Intention --
19 intent means something that is not accidental or
20 involuntarily. Intent may be shown by acts or other
21 circumstances or the conduct of the defendant from which you
22 may naturally and reasonably infer intent, and the State must
23 prove these elements beyond a reasonable doubt.

24 As I said, a person at the scene of the crime who was
25 present and intentionally or through a common plan aided,

1 abetted or assisted in the commission of that crime through
2 some overt act is guilty as an accomplice. To be liable as
3 an accomplice, one must have knowledge of the principal's
4 criminal conduct. Again, mere presence at the scene where a
5 crime is alleged to have occurred is not sufficient to
6 establish guilt as an accomplice.

7 The defendant is charged with murder. As to this
8 charge, the State must prove beyond a reasonable doubt that
9 the defendant killed another person with malice aforethought.
10 Malice is hatred, ill will or hostility towards another
11 person. Malice is the intentional doing of a wrongful act
12 without just cause or excuse and with an intent to inflict an
13 injury or under circumstances from which the law would infer
14 an evil intent.

15 Malice aforethought does not require that malice exist
16 for any particular time before an act is committed, but
17 malice must exist in the mind of the defendant just before
18 and at the time the act is committed. Therefore, there must
19 be a combination of a previous evil intent and the act.

20 Malice aforethought may be express or inferred. These
21 terms "express" and "inferred" do not mean different kinds of
22 malice but merely the manner in which malice may be shown to
23 exist, that is, either by direct evidence or by inference
24 from the facts and circumstances which are proven.

25 Express malice is shown when a person speaks words which

1 express hatred or ill will for another or when the person
2 prepared beforehand to do the act which was later
3 accomplished. Malice may be inferred from conduct showing a
4 total disregard for human life, and as to the charge of
5 murder, inferred malice may also arise when the deed is done
6 with a deadly weapon.

7 This inference of malice which arises from a deadly
8 weapon applies only to murder, not to any of the other
9 charges. A deadly weapon is an article, instrument or
10 substance which is likely to cause death or great bodily
11 harm. Whether something has been used as a deadly weapon
12 depends on the facts of the case, and the inference that
13 arises from the showing of a total disregard for human life
14 or from the use of a deadly weapon are just that: They are
15 inferences to be taken into consideration by you along with
16 the other evidence in the case.

17 If one intentionally kills another during the commission
18 of a felony, that falls under what is called the Felony
19 Murder Doctrine. Where one kills another during the
20 commission of a felony, the inference of malice may arise.
21 If facts are proven beyond a reasonable doubt sufficient to
22 raise an inference of malice to your satisfaction, this
23 inference would be simply an evidentiary fact to be taken
24 into consideration by you, along with other evidence in this
25 case, and you may give it the weight that you -- that you

1 decide it should receive.

2 As I said, this is called the felony murder inference,
3 and it arises from the commission of a felony and burglary
4 first, armed robbery -- burglary first and attempted armed
5 robbery and attempted murder are felonies. This inference of
6 malice that arises from the use of a deadly weapon, as I just
7 mentioned, applies only to the charge of murder. It does not
8 apply, as I said, to the other four charges. And I remind
9 you that you may accept or reject the inference.

10 The second charge I'm going over is first degree
11 burglary. Mr. James is charged with first degree burglary.
12 Here the State must prove beyond a reasonable doubt that he
13 entered a dwelling without consent. A dwelling is described
14 by our law for the purposes of burglary as any building or a
15 portion of a building in which a person ordinarily sleeps.

16 In order to prove that the defendant entered the
17 dwelling, the State does not have to show that his entire
18 body actually entered the dwelling. The smallest entry is
19 sufficient. It may be any part of a body such as a hand or a
20 foot. In addition, the State does not have to prove that
21 force was used to gain entry.

22 Next, the State must prove beyond a reasonable doubt
23 that the defendant intended to commit a crime, either a
24 felony or a misdemeanor, at the time of the entry into the
25 dwelling. The mere entry into a dwelling without consent

1 alone is not burglary. If the intent to commit a crime was
2 formed after the entry, it is not a burglary.

3 On the other hand, if the defendant intended to commit a
4 crime at the time of the entry, it is a burglary even if the
5 intent was abandoned after the entry. It does not matter
6 that the intended crime was not completed. Intent may be
7 shown by acts and conduct of a defendant and other
8 circumstances from which you may naturally and reasonably
9 infer intent.

10 Next, the State must prove -- and finally the State must
11 prove beyond a reasonable doubt at least one of the following
12 circumstances: The State does not have to prove all but only
13 one of these circumstances. One, that while entering or
14 while in the dwelling or when fleeing the dwelling, the
15 defendant or an accomplice was armed with a deadly weapon.
16 As I told you, a deadly weapon is any article or instrument
17 which is likely to cause death or great bodily harm. Whether
18 an instrument was used as a deadly weapon depends on the
19 facts and circumstances of each case.

20 Second, when entering, while in the dwelling or when
21 fleeing, the defendant or an accomplice caused physical
22 injury to anyone not participating in the crime. Third, when
23 entering, while in the dwelling or when fleeing, the
24 defendant or an accomplice displayed what appeared to be a
25 knife or a firearm. Or, finally, the defendant entered or

1 remained in the dwelling in the nighttime. Nighttime is the
2 period between sunset and sunrise during which there's not
3 enough daylight to recognize a person's face except by
4 artificial light or moonlight. The State, of course, must
5 prove burglary beyond a reasonable doubt.

6 The next charges as to attempted armed robbery and
7 attempted murder are, of course, attempts. An attempt is an
8 effort to accomplish a crime which does not succeed. An
9 attempt includes a specific intent to do a particular
10 criminal act along with an act falling short of the intended
11 act.

12 The State must show more than mere preparation and
13 intent. There must be some overt act committed in an effort
14 to commit the crime. Intent again means something that is
15 not accidental or involuntarily. It is something that
16 actually occurs. Intent may be shown by acts and conducts of
17 a defendant and from other circumstances from which you may
18 naturally and reasonably infer intent.

19 As to the charge of armed robbery, in order to prove
20 this offense, the State must first prove beyond a reasonable
21 doubt that the defendant attempted to take personal property
22 from the person or residence of another person. Property is
23 in the presence of a person when it is within that person's
24 reach, inspection, observation or control so that the person
25 could, if not overcome by violence or prevented by fear, keep

1 possession of that property.

2 The State must prove beyond a reasonable doubt that Mr.
3 James attempted to carry the property away, intending to
4 permanently deprive the owner of the property and to keep the
5 property from -- for his own use. The attempt to take and
6 carry away property must have been done with violence in --
7 with violence, I'm sorry, or by putting the owner of the
8 property in fear of violence. Finally, the State must prove
9 beyond a reasonable doubt that the defendant was armed with a
10 deadly weapon during the robbery.

11 I define a deadly article -- deadly weapon for you as
12 any article or substance likely to cause great death or
13 bodily harm. The State must prove the elements of armed
14 robbery beyond a reasonable doubt.

15 Now, there are two charges of attempted murder, one for
16 Mr. Scott and one for Mr. James -- Joshua Williams. Trenton
17 Scott and, yeah, Joshua Williams. Here the State must prove
18 that Mr. James attempted to kill another person with malice
19 aforethought, either express or implied, and I have already
20 defined for you malice.

21 I tell you at this time that as to malice in this
22 regard, there is no -- you're not allowed to draw any
23 inference from the use of a deadly weapon. That applies
24 again -- I know I'm repeating it. That inference can only be
25 applied, if you determine to apply it at all, as to the

1 charge of murder.

2 As to an attempt to commit murder, a specific intent to
3 kill is not an element of attempted murder, but there must be
4 a general intent to commit serious bodily injury. Intent
5 means intending the results. As I have said, something that
6 is not accidental or involuntary.

7 Intent may be shown by acts and conducts of the
8 defendant and from other circumstances from which you may
9 naturally and reasonably infer intent. Evidence of the
10 character of the act, the character of the instrument used in
11 the act, the manner in which it was used, the purpose to be
12 accomplished and any resulting wounds or injuries may be
13 considered in determining the intent with which an act was
14 committed. Intent may also be inferred when it is
15 demonstrated that the defendant voluntarily and willfully
16 committed an act, the natural tendency of which is to destroy
17 another person's life. Now, of course, the State has to
18 prove that beyond a reasonable doubt, the elements of
19 armed -- of attempted murder.

20 Now, as to attempted murder, there are -- there is what
21 is known as a lesser included offense. That is, he is
22 charged with attempted murder. By our law, there is a second
23 lower level offense. I look at it like stairs. The top step
24 would be that with which he is charged: Attempted murder.
25 You step down one step lower or to a less serious charge.

1 That would be for your consideration, as I'll charge it to
2 you in just a moment, whether or not the State has failed to
3 prove Mr. James guilty of attempted murder but has proven him
4 guilty of assault and battery of a high and aggravated
5 nature.

6 A person commits the offense of assault and battery of a
7 high and aggravated nature if that person unlawfully injures
8 another person and the act is accomplished by means likely to
9 produce death or great bodily injury. Great bodily injury
10 means bodily injury which causes a substantial risk of death
11 or which causes serious permanent disfigurement or a
12 protracted loss or impairment of the function of a bodily
13 member or organ.

14 An assault is an unlawful attempt or offer to commit a
15 violent injury to another person, and it is committed when a
16 person has the ability to follow through on the attempt. An
17 assault is the intentional creation of a reasonable fear of
18 immediate bodily harm in another. It is not necessary that
19 the attempted injury or harm actually take place.

20 My best example of an assault is: If I'm struck --
21 close enough to strike you and I rare back my fist in an
22 angry manner and I'm close enough to put you in fear of being
23 hit, I have assaulted you. A battery is the unlawful
24 touching of another person by a person who has committed the
25 assault. An unlawful touching can be caused by a part of the

1 accused's body or any object the accused puts in motion. A
2 battery is the completion of the assault by using or applying
3 force to another person, however slight, in a rude, angry or
4 resentful manner without legal justification for doing so.

5 Using my earlier example, if I rare back and I'm close
6 enough and I've assaulted you and followed through and
7 actually made contact with you, I have assaulted you and I
8 have committed a battery by touching you. The State must
9 prove assault and battery as to this lesser charge and that
10 it was accomplished by means likely to produce death or great
11 bodily injury before you could convict Mr. James of those
12 lesser -- that lesser included offense.

13 Your verdict must be unanimous. All 12 jurors must
14 agree. Mr. Foreman, you will preside over the jury's
15 deliberation and ultimately sign on behalf of the jury a
16 unanimous verdict. Your verdict cannot be based on sympathy,
17 passion, public opinion or matters outside the record.

18 While you're deliberating, if you have questions, write
19 them down and send them out by the bailiff. I will go over
20 any message I receive from you with the attorneys. I will
21 reply -- it may be that I can write an answer on the note.
22 If that is the case, I'll send it back in and, Mr. Foreman,
23 if you'll turn any notes that you get back from me in with
24 the evidence, because they have to be part of the record. It
25 may be that I'll have to bring you back out here into open

1 court and answer a question, if you have any.

2 We do not have a written charge to send in to you, but
3 if you wish me to go over any part or all of my charge on the
4 law, let me know and I will bring you back out here in open
5 court and recharge whatever part of the law you wish me to.
6 We also can have testimony read back or replayed if you wish.
7 Just let us know. If you do that, please let us know with as
8 much particularity as you can as to what you want to hear
9 because there's an awful lot to go through to isolate it, but
10 we can do it.

11 When you have reached your verdict, knock on the door
12 and tell the bailiff. The bailiff will come and get us, and
13 as soon as we're available - and we're not starting anything
14 else on Friday afternoon - so I'll be able to send for you
15 promptly once you've reached a verdict.

16 Lunch should be here in just a few minutes. You can
17 work during lunch or you can take a break during lunch.
18 However, since your verdict must be unanimous, all 12 of you
19 are working or all 12 of you are on break. So that's --
20 that's -- that's up to you at this time.

21 Now, when you first go out, everybody but Mr. Harmon --
22 who will remain with us as the alternate; I'll be with you
23 more in just a moment. Do not yet start deliberating. I
24 have to go over my charge with the attorneys. If I have made
25 an error, left anything out or misstated something, I'll have

1 to bring you back in and correct it here in open court. So
2 don't start deliberating until the bailiff tells you.

3 The key to your starting deliberation will be when the
4 bailiff arrives and tells you to start deliberating and turns
5 over to you the exhibits in this case, but don't start
6 deliberating until we reach that point. And don't -- when
7 you go in this time, don't get too comfortable or don't start
8 eating lunch because if I have to send for you, it will be
9 pretty promptly. So follow the bailiffs out at this time.

10 Oh, whoa, whoa, whoa. I'm getting ahead of myself. I
11 apologize. Let me do this.

12 Mr. Foreman, you will enroll the jury's verdict. On the
13 burglary indictment, the attempted armed robbery and the
14 murder, you'll simply use the indictments. On the bottom
15 part of the indictment on the back left at the bottom, you
16 will see the word "verdict" and there are four lines below
17 it. The bottom line is for your signature, and you will sign
18 that and date it. And on one of the other lines above your
19 name as to these three indictments, you will write the jury's
20 unanimous verdict. If that is that you find unanimously the
21 State has failed to prove Mr. James' guilt as to an offense,
22 you would write the two words "not guilty." If, on the other
23 hand, the jury unanimously determines that the State has
24 proven Mr. James guilty of an offense, you would write the
25 one word "guilty."

1 As to the attempted murder charge, as I told you, there
2 were lesser includeds, so I have verdict forms. They have
3 three options on them, and the order the options are in is of
4 no importance. I always put them in this order.

5 If the State has proven Mr. James guilty of
6 attempted armed - I'm sorry - attempted murder, attempted
7 murder, you would use the first line on that verdict form and
8 just put a check or an X. If the State has failed to prove
9 attempted murder beyond a reasonable doubt but has to the
10 unanimous satisfaction of the jury proven the defendant
11 guilty of assault and battery of a high and aggravated
12 nature, you would put an X. or a check in the second line
13 which simply says that. If you find the State has failed to
14 prove his guilt as to either of those offenses, you would put
15 an X. or a check on the final line that says, "We find the
16 defendant not guilty," and, again, that has to do with the
17 two attempted murder charges, and there is a place for you to
18 sign and date on that. Now I'll let you go in, but don't
19 start deliberating.

20 (Whereupon, the jury was excused from open court at
21 1:08 p.m.)

22 **The Court:** You can just have a seat. I'll be with you
23 in just a minute. Anything from the State regarding the
24 charge?

25 **Ms. Simpson:** No, Your Honor.

1 **The Court:** Anything from the defense?

2 **Ms. Pinnock:** Your Honor, just renewing our previous
3 objections that we discussed before you gave the charge.

4 **The Court:** Okay. So you're just renewing the
5 exceptions---

6 **Ms. Pinnock:** Yes, sir.

7 **The Court:** ---that you made prior to the charge.

8 **Ms. Pinnock:** Yes, sir.

9 **The Court:** Okay. Well, check the verdict forms and the
10 indictments and the exhibits, and we'll send them in and
11 allow them to start deliberating. We'll check things first.

12 (The alternate is excused from the trial.)

13 **Ms. Anastasia Walker:** Your Honor, we did have one issue
14 with multiple exhibits going back to the jury. Regarding the
15 line-up -- I'll wait until the door is closed.

16 **The Court:** Okay. All right. Yes, ma'am.

17 **Ms. Anastasia Walker:** Just regarding the line-ups,
18 we've made such painstaking efforts to keep the jury from
19 knowing that Mr. James is in jail regarding shackling and
20 dressing him for trial. Regarding the line-ups, they all
21 have the jail website that's indicated at the bottom of them,
22 and as I argued before, they are obviously mugshots. That
23 would be my only concern about pieces of evidence going back
24 to the jury.

25 **The Court:** Well, they're in evidence, so they go back.

1 And I don't think, even if they wanted to, that I could allow
2 the State to alter any evidence by whitening out what's on
3 there. So I rule that they're in, either right or wrong. So
4 they do go back.

5 **Ms. Anastasia Walker:** Certainly, Your Honor.

6 **The Court:** All right. Be at ease. Just make sure we
7 know -- my clerk knows how to get in touch with you.

8 (Whereupon, the jury began deliberating at 1:28 p.m.)

9 **The Court:** Take your seats. We need to get Mr. James
10 in, so we'll need a minute.

11 (Pause in proceedings.)

12 **The Court:** We have a note from the jury that they want
13 me to recharge the hand of one is the hand of all. So we'll
14 bring in the jury and do that.

15 (Whereupon, the jury was brought into open court at
16 3:03 p.m.)

17 **The Court:** Members of the jury panel, I received your
18 note and I appreciate it. I'm going to recharge you what I
19 told you about this legal theory, legal principle. More than
20 a theory, it's a principle: The hand of one is the hand of
21 all. And that's just sort of a catchy name that's been given
22 to it. It's sometimes referred to as accomplice liability.

23 Where a crime is committed by two or more people who are
24 acting together in committing the crime, the act of one is
25 the act of all. A person who joins with another to commit an

1 unlawful act is criminally responsible for everything done by
2 the other person which happens as a probable or natural
3 consequence of the acts done in carrying out the common plan
4 or purpose.

5 If two or more people are acting together -- the two or
6 more people are together, acting together, assisting each
7 other in committing an offense, the act of one is the act of
8 all. Again, as I said, we call that principle the hand of
9 one is the hand of all.

10 Prior knowledge that a crime is going to be committed
11 without more is not sufficient to make a person guilty of the
12 crime under that principle. Mere knowledge that another
13 person is going to commit a crime, even if the defendant is
14 present when the crime is committed, is not sufficient to
15 convict the defendant as a principal. Guilt as a principal
16 is shown by actual or constructive presence at the scene as a
17 result of a prior arrangement. Therefore, a finding of a
18 prior arrangement of a common scheme is necessary for a
19 finding of one guilty as a principal under this principle.

20 The State must prove beyond a reasonable doubt by
21 competent evidence the theory of the hand of one is the hand
22 of all. A principal in a crime is one who either actually
23 commits the crime or who is present aiding, abetting or
24 assisting in committing the crime. When a person does an act
25 in the presence of and with the assistance of another, the

1 act is done by both.

2 Where two or more acting with a common plan or intent
3 are present at the commission of a crime, it does not matter
4 who actually commits the crime. All are guilty. The hand of
5 one is considered the hand of all. Present at the commission
6 of a crime means to be sufficiently near to aid, abet, and
7 assist in the commission of the crime. However, one's mere
8 presence at the scene of a crime is not sufficient to convict
9 one as a principal under the theory of aiding, abetting, and
10 assisting.

11 Intent is a necessary element also. There must have
12 been a common design or intent to commit a crime, and the
13 crime must have been committed pursuant thereto with the
14 person aiding and abetting by some overt act, that is, the
15 person who is thought to be held under this principle.
16 Intent meaning intending the result which actually occurs.
17 Something intentional is something that's not accidental or
18 involuntary. Intent may be shown by acts and conducts --
19 acts and conduct of the defendant and other circumstances in
20 which you may naturally and reasonably infer intent. The
21 State must prove these elements beyond a reasonable doubt.

22 A person who is present at the scene of a crime and
23 intentionally or through a common plan aided, abetted, or
24 assisted in the commission of that crime through some overt
25 act is guilty as an accomplice. To be liable as an

1 accomplice, the defendant must have knowledge of the
2 principal's criminal conduct. Mere presence, as I've said,
3 at the scene of a crime is not sufficient to establish guilt
4 as an accomplice.

5 Again, I told you what the term intent means. That is,
6 something that's not accidental but is something that's
7 willful. So I'm going to let you go back and continue to
8 deliberate.

9 (Whereupon, the jury was excused from open court to
10 resume deliberations at 3:09 p.m.)

11 **The Court:** All right. Anything from the State?

12 **Ms. Meghan Walker:** Nothing from the State, Your Honor.

13 **The Court:** Anything from the defense?

14 **Ms. Anastasia Walker:** Nothing from the defense, Your
15 Honor.

16 **The Court:** Thank you. We'll be back at ease, and I'm
17 going to make the note a Court's Exhibit.

18 (Pause in proceedings while the jury continues to
19 deliberate. Court's Exhibit 2 was marked for identification
20 only.)

21 **The Court:** Counsel and Mr. James are present. We
22 received a note from the jury that indicates that they have
23 reached unanimous verdicts on all but one of the charges and
24 are deadlocked on that one. I'm going to bring them in and
25 give them an Allen charge regarding the request basically

1 that they try to resolve the last one. Any comments before
2 the jury comes in? From the State?

3 **Ms. Meghan Walker:** None from the State, Your Honor.

4 **The Court:** Any from the defense?

5 **Ms. Anastasia Walker:** Beg the Court's indulgence.

6 Nothing from the defense, Your Honor.

7 **The Court:** Okay. All right. Bring in the jury.

8 (Whereupon, the jury was brought into open court at
9 5:09 p.m.)

10 **The Court:** Members of the jury panel, I've got your
11 note and I appreciate you sending it out. You've worked
12 awful hard for a good period of time. Keeping in mind, of
13 course, that we do -- your verdict must be unanimous, which
14 you've indicated you have reached some unanimous verdicts.

15 I'm going to, in just a minute, ask you to continue to
16 try to resolve the remaining matter. When matters are in
17 dispute, it's hard for two people to agree, let alone 12. In
18 most cases, absolute certainty cannot be required. However,
19 jurors have a duty to make every reasonable effort to reach a
20 unanimous verdict.

21 In considering what verdict to reach, you should consult
22 with each other, express your own views, and listen to the
23 opinions of your fellow jurors. Tell each other how you feel
24 and why you feel the way you feel and discuss your
25 differences with open minds. Although the verdict must be

1 unanimous, every one of you has a right to your own opinion.
2 The verdict you agree on must be, in addition to a unanimous
3 verdict, must be your own verdict, the result of your own
4 conviction, and you should not give up any firmly-held belief
5 merely to be in agreement with your fellow jurors.

6 The majority should consider the minority's opinion, and
7 the minority should consider the majority's position. You
8 should carefully consider and respect the opinions of each
9 other and reevaluate your positions for reasonableness,
10 correctness, and impartiality. You must lay aside all
11 outside matters and reexamine the questions before you based
12 on the law and the evidence in the case.

13 If you do not or are unable to agree on a verdict in
14 this case, I -- as to that charge, there would be a mistrial
15 and that means that someone in the future, another jury
16 panel, would sit where you are, hear probably the same
17 witnesses - it would probably be a different judge - and the
18 same lawyers would basically ask the same questions, make the
19 same arguments, and send a different jury to the -- to the
20 jury room to deliberate. We are not asking that the jury
21 return a verdict for the sake of convenience, but I am asking
22 that you continue to deliberate based on what I have been
23 talking to you about at this point.

24 Again, any future jury will be selected just as you, and
25 there's no reason to believe that any wiser, more competent,

1 more conscientious jurors would not be seated than what we
2 already have here. So I'm going to ask that you continue to
3 deliberate at this time, and let me know how you progress.
4 Thank you.

5 (Whereupon, the jury was excused from open court to
6 resume deliberations at 5:15 p.m. Court's Exhibit 3 was
7 marked for identification only.)

8 **The Court:** Anything from the State?

9 **Ms. Meghan Walker:** Nothing from the State, Your Honor.

10 **The Court:** Defense?

11 **Ms. Anastasia Walker:** Nothing from the defense, Your
12 Honor.

13 **The Court:** All right. We'll be at ease again.

14 (Pause in proceedings while the jury continues to
15 deliberate. Court's Exhibit 4 was marked for identification
16 only.)

17 **The Court:** Let's come to order. We've gotten a note
18 from the jury. They want to know whether the hand of all
19 applies to murder and also they want a copy of the one
20 hand -- the hand of one is the hand of all. And so I'm going
21 to bring them in and I'm going to recharge them on the --
22 what we -- what you do with multiple charges, and I'm going
23 to recharge them on hand of one/hand of all.

24 The State has asked - and I'll let them put on the
25 record - that I recharge, since they mentioned murder in the

1 note, that I recharge the entire charge on murder, but I
2 don't believe -- I know I'm not going to do that, but do you
3 want to say anything about that?

4 **Ms. Meghan Walker:** Yes, Your Honor. Just the note that
5 the jury sent out in its entirety specifically talks about
6 how this charge is tied specifically to the murder charge.
7 So I think if you just charge them simply on a portion of the
8 charge as opposed to actually applying the charge -- applying
9 hand of one/hand of all to the question that they asked -- to
10 the charge that they asked about, I think it kind of dissects
11 the question a little bit and allows -- and can be confusing
12 and misleading to the jury.

13 So in order to kind of put that question, Your Honor, or
14 the answer to that question, rather, in proper context, I
15 think it would be important to frame that so that you are
16 answering that hand of one/hand of all question as it applies
17 to the charge that they asked about. And that's what we
18 request of Your Honor, and we understand your ruling.

19 **The Court:** All right. Anything from the defense?

20 **Ms. Anastasia Walker:** No, Your Honor. We would just
21 obviously disagree.

22 **The Court:** Yeah. I don't think it's necessary and
23 that's -- I'll go ahead and put on the record: I usually --
24 when I get jurors' questions, unless it's absolutely
25 necessary, I try to answer it directly. If I branch off, I

1 may cause more confusion, plus they're the ones deliberating.
2 They are the ones who know what they want addressed, and they
3 ask me and I address what they ask. So, anyway, I'm not
4 going to go over the charge of murder. Bring in the jury.

5 (Whereupon, the jury was brought into open court at
6 6:01 p.m.)

7 **The Court:** Members of the jury panel, I received your
8 note, and I'm going to answer it the best I can. I'm not
9 going to send a copy of my charge in. I've been doing this a
10 long time and my charges get all marked up and I just --
11 they're kind of a mess, and only I can understand them.

12 But, first, as to the fact that there are five charges,
13 the indictments are, as I told you earlier, simply the
14 paperwork by way of which this case is processed through our
15 court system, contain the charge and the allegations that the
16 State alleges to be a crime against Mr. James. The fact that
17 there are several indictments has no weight. That is, you're
18 not to give weight to the fact that there are five charges as
19 opposed to one or two.

20 Each charge must stand or rise on its own. Each
21 indictment charges a separate and distinct offense. You must
22 decide each indictment separately on the evidence and the law
23 applicable to that indictment, uninfluenced by your decision
24 as to any other indictment. The defendant may be convicted
25 or acquitted on any or all of the offenses charged.

1 You have been -- and I'm going to ask you again for you
2 to write separate verdicts of guilt or not guilty on each
3 indictment. So the bottom line is you examine and apply the
4 law to the facts as to each indictment as you determine
5 unanimously is correct.

6 As to the hand of one being the hand of all, I'm going
7 to go through it again. I'll go through it slow. I've
8 charged you and will remind you that the hand of one is a
9 principle or a theory of law that states and applies in South
10 Carolina: If a crime is committed by two or more people who
11 are acting together in committing a crime, the act of one is
12 the act of all. A person who joins with another to commit an
13 unlawful act is criminally responsible for everything done by
14 the other person which happens as a probable or natural
15 consequence of the acts done in carrying out the common plan
16 and purpose. If two or more people are together, acting
17 together, assisting each other in committing an offense, the
18 act of one is the act of all or, as I've referred to it, the
19 hand of one is the hand of all.

20 Prior knowledge that a crime is going to be committed
21 without more is not sufficient to make a person guilty of
22 that crime. Mere knowledge that another person is going to
23 commit a crime, even if the defendant is present when the
24 crime is committed, is not sufficient to convict the
25 defendant as a principal.

1 Guilt as a principal is shown by actual or constructive
2 presence at the scene as a result of prior arrangement.
3 Therefore, a finding of a prior arranged plan or common
4 scheme is necessary for a finding of guilt as a principal.
5 The State must prove beyond a reasonable doubt by competent
6 evidence the theory of the hand of one is the hand of all.

7 A principal in a crime is one who either actually
8 commits the crime or who is present aiding, abetting, or
9 assisting in committing the crime. When a person does an act
10 in the presence of and with the assistance of another, the
11 act is done by both. Where two or more acting with a common
12 plan or intent are present at the commission of a crime, it
13 does not matter who actually commits the crime. All are
14 guilty. The hand of one is the hand of all.

15 Present at the commission of a crime means to be
16 sufficiently near to aid and abet and assist in the
17 commission of the crime. However, mere presence at the scene
18 of a crime is not sufficient to convict one as a principal on
19 the theory of aiding, assisting, and abetting.

20 Intent is also a necessary element, for there must have
21 been a common design or intent to commit the crime and the
22 crime must have been committed pursuant thereto with the
23 person aiding and abetting by some overt act. I told you
24 intent means intending the results. That is, something
25 that's intentional is not something that is accidental or

1 involuntary. The State, of course, must prove the theory of
2 the hand of one being the hand of all beyond a reasonable
3 doubt just as it must prove every other element of every
4 offense in these five indictments.

5 A person who was present at the scene of a crime and
6 intentionally or through a common plan aided, abetted, or
7 assisted in the commission of that crime through some overt
8 act is guilty as an accomplice. To be liable as an
9 accomplice, the defendant must have knowledge of the
10 principal's criminal conduct. As I said, mere presence at
11 the scene of the crime is not sufficient to establish guilt
12 as an accomplice and, again, intention must -- means, as I
13 said, something that is not accidental or involun -- is not
14 accidental.

15 Now, I'm going to let you go back to continuing your
16 deliberation, and let me hear from you. Thank you.

17 (Whereupon, the jury was excused from open court to
18 resume deliberations at 6:08 p.m.)

19 **The Court:** Anything from the State?

20 **Ms. Meghan Walker:** Nothing, Your Honor.

21 **The Court:** Anything from the defense?

22 **Ms. Anastasia Walker:** Nothing from the defense, Your
23 Honor.

24 **The Court:** We'll be at ease.

25 (Pause in proceedings while the jury continues to

1 deliberate.)

2 **The Court:** All right. Thank you. Take your seats. We
3 need to get the defendant now.

4 (Pause in proceedings.)

5 **The Court:** All right. We're back in order in Mr.
6 James' case, the State versus Mr. James. We've received word
7 that the jury has received -- has reached verdicts on four of
8 the five charges and they're deadlocked on one which they say
9 with no expectation of reaching a unanimous verdict. I could
10 not give them an Allen charge if I wanted to. You can't give
11 it twice. So I'm going to bring them in, and we'll take the
12 four verdicts and grant a mistrial on whichever one that's
13 left.

14 I want -- there are quite a few people in here. I want
15 everybody to understand: I don't know what the verdicts are,
16 but whatever the verdicts are, if you don't think you can
17 control your emotions based on the verdict, then you'll have
18 to leave now because if there are any outbursts, one of these
19 ladies and gentlemen in blue I'll have to ask to escort you
20 to a holding cell because you'll be in contempt of Court and
21 I'll make you spend some time in jail. We can't tolerate any
22 outbursts.

23 So if you don't think you can tolerate whatever the
24 verdict may be, I suggest you vacate now rather than have a
25 less-than-comfortable weekend. All right. Let's bring in

1 the jury.

2 **Deputy:** Your Honor, can we have just a minute to
3 restrain the prisoner?

4 **The Court:** Yeah. Yeah. Okay. I understand.

5 **Ms. Anastasia Walker:** He has to be in chains for the
6 verdict?

7 **Deputy:** Yes.

8 **Ms. Anastasia Walker:** Okay.

9 (Whereupon, the defendant is shackled.)

10 **The Court:** All right. Bring in the jury.

11 **Bailiff:** May I approach, Your Honor?

12 (Whereupon, a bench conference was held between the
13 bailiff and the judge.)

14 **The Court:** While the jury is coming in - I won't have a
15 chance later - I want to thank the attorneys for the
16 courtesies they've shown me and thank all the staff for all
17 the kindness they've shown me this week. It's been a long
18 week and a hard trial for everybody. So I want to thank
19 everybody for the way they have---

20 **Ms. Meghan Walker:** Thank you, Judge.

21 **Ms. Simpson:** Thank you, Your Honor.

22 **Ms. Meghan Walker:** We -- we appreciate your patience.

23 **Ms. Anastasia Walker:** Certainly.

24 (Whereupon, the jury was brought into open court at
25 7:05 p.m. with their verdicts.)

1 **The Court:** Members of the jury panel, I got your note
2 that you've reached verdicts on four of the five and are
3 deadlocked on the fifth. I'm going to ask if you'll hand the
4 indictments up to me and the verdict forms at this time.

5 All right. I'm going to keep the one in which a verdict
6 has not been rendered and ask the clerk to publish the
7 verdicts. And, Mr. Foreman, before you leave, as to the two
8 that you used verdict forms, I'll get you to actually put
9 that information on the indictment itself before you leave.
10 The clerk will help you with that.

11 **Foreman:** Yes, sir.

12 **The Clerk:** Indictment number 2013-GS-40-1432, the State
13 of South Carolina versus Demetrice Roosevelt James: We find
14 the defendant guilty of attempted murder.

15 Indictment number 2013-GS-40-1433, the State of South
16 Carolina versus Demetrice Roosevelt James: We find the
17 defendant guilty of attempted murder.

18 Indictment number 2013-GS-40-1480: The State of South
19 Carolina versus Demetrice Roosevelt James, indictment for
20 attempted armed robbery: We, the jury, find the defendant
21 guilty.

22 Indictment number 2013-GS -40-1448, the State of South
23 Carolina versus Demetrice Roosevelt James, indictment for
24 burglary in the first degree: We, the jury, find the
25 defendant guilty, signed Number 58, Stephen Crowell,

1 foreperson, October 3rd, 2014. Mr. Foreman, was this your
2 verdict and the verdicts of the entire jury?

3 **Foreman:** Yes, ma'am.

4 **The Clerk:** Thank you.

5 **The Court:** Members of the jury panel, if this is -- is
6 this your verdict? Please raise your right hand as to all.
7 All right. All 12 acknowledge that these verdicts are
8 theirs. You may take your hand down. Anything from the
9 State before the jury is dismissed?

10 **Ms. Meghan Walker:** Nothing from the State, Your Honor.
11 Thank you.

12 **The Court:** Anything from the defense before the jury is
13 dismissed?

14 **Ms. Anastasia Walker:** Nothing further, Your Honor.

15 **The Court:** All right. Members of the jury panel, with
16 the exception of the foreman who the clerk will help you get
17 -- show you where you need to sign, I want to thank you.
18 This was a hard case. While you were out, we had a lot of
19 tough legal issues to deal with. We've all worked real hard,
20 you especially. So I appreciate your kindness.

21 I'm not going to keep you and give you a speech because
22 I know it's Friday night and y'all are ready to go home, but
23 y'all have worked hard and I appreciate on behalf of Richland
24 County and the citizens of this state the work that you've
25 done. So you can be excused.

1 (Whereupon, the jury was excused from the trial at
2 7:11 p.m.)

3 **The Court:** All right. Anything -- the jury has been
4 dismissed. Anything from the State?

5 **Ms. Meghan Walker:** Nothing at this point, Your Honor.

6 **The Court:** Anything from the defense?

7 **Ms. Anastasia Walker:** Yes, Your Honor. May it please
8 the Court? Your Honor, at the close of the trial we would at
9 this time again renew all motions, all objections that were
10 previously denied by Your Honor, specifically the mistrial
11 motion.

12 I understand that the murder charge was ended in a
13 mistrial and ultimately ended in a mistrial. However, I
14 still would move for a mistrial in this case based on the
15 actions of the jury earlier in this case, their failure to
16 regard the instructions of the Court, and I believe that that
17 resulted in a failure of my client to get a fair trial and
18 the results of that failure of them able to -- was a
19 violation of his due process rights, Your Honor, and at this
20 time we'd move for a new trial based on all those reasons.

21 **The Court:** All those motions are denied, and I grant a
22 mistrial on the murder charge since this jury was unable to
23 reach a verdict. And to some degree, while it's kind of in
24 hindsight, the fact that they could not reach a verdict on
25 murder indicates that they were serious in their

1 deliberations and that they didn't reach some verdict during
2 the middle of the week. They went from 1:10 'til about 7:10.
3 So I thought the motions -- I mean, I stand by the rulings
4 that I've made in the trial up to this point, and all motions
5 by the defense are denied.

6 And now we bring -- we'll have sentencing. Does the
7 solicitor have the sentencing sheets?

8 **Ms. Meghan Walker:** Your Honor, the defense counsel and
9 the defendant are signing those now.

10 **The Court:** Okay.

11 (Pause in proceedings.)

12 **The Court:** All right. I'll hear from the solicitor
13 first. I now have the sentencing sheets, and I'll hear the
14 solicitors on sentencing. And I'll be glad to hear from any
15 of the victims' families that wish to speak.

16 **Ms. Meghan Walker:** Your Honor, before I start on the
17 sentencing, there were a series of charges that the State
18 tried to work out with a global resolution in this case with
19 the defendant. He still has pending in our office an armed
20 robbery, kidnapping, and criminal sexual conduct in the first
21 degree. We did offer 25 years for all of these charges
22 together. Your Honor, we think that the 25 years would be an
23 appropriate sentence for this -- for this case.

24 There was -- there was a home invasion, Your Honor, in
25 which multiple people were shot. He was found guilty for

1 those. And this was a -- this wasn't something that happened
2 spur of the moment. This wasn't, you know, a fight that
3 happened the way he alleged. This was him getting together
4 with his friends and planning to go invade someone's home,
5 and that is a very serious crime, Your Honor, for which he's
6 been found guilty.

7 The family, Your Honor -- multiple family members are
8 here. They're present in the courtroom. They were present
9 throughout the trial. They were present throughout the trial
10 of this defendant's co-defendant, Maurice Roberts, who did
11 receive a 45-year sentence. Of course, he was also, under
12 everyone's theory of the case, Your Honor, the triggerman in
13 this horrific crime. But we would, Your Honor, ask for
14 something -- offer something in that 25 to 30-year range,
15 Your Honor.

16 **The Court:** All right. So no one wants to speak on
17 behalf of the victims?

18 **Ms. Simpson:** Your Honor, I will -- I would like to
19 state Joshua Williams, one of the attempted or attempted
20 murder victims in this case, he was very emotional during the
21 first trial, as were the other victims, Trenton Scott and
22 Trey Scott, as well as his brother, Troy Scott, so much so
23 that they could not be present in the courtroom for part of
24 the trial.

25 During this trial, Mr. Williams has not been able to be

1 in the courtroom. He wanted us to indicate to Your Honor
2 that he is very -- while, you know, I guess glad or gracious
3 for the verdict as to his charge, nothing will change the
4 loss -- how the loss of his best friend has affected him,
5 especially in the tragic way that it happened. He is and has
6 been, I mean by our own personal knowledge -- had a lot of
7 difficulty dealing with the death of Brandon Jones.

8 As for Mr. Jones' parents, they actually have been
9 present throughout this matter and for certain reasons could
10 not be here at this time---

11 **The Court:** Well, they didn't -- that charge hasn't been
12 resolved.

13 **Ms. Simpson:** Oh. Thank you.

14 **Ms. Meghan Walker:** Yeah, the victims are present, Your
15 Honor, Mr. Jones' family members. That's why they're not
16 saying anything at this point.

17 **The Court:** Okay. All right. Ms. Walker, I'll be glad
18 to hear from you on behalf of your client. And also, if you
19 could, tell me if he's entitled to any time, and the reason I
20 ask if: Since there's quite a few charges, I don't know
21 whether he's been serving time on all of those or some of
22 those or... Anyway, do you have a figure that you contend is
23 the time that -- jail time he's already -- that he's entitled
24 to?

25 **Ms. Anastasia Walker:** Your Honor, he has been

1 incarcerated since he was arrested on this offense which I
2 believe was on January 30th, 2013, and he has been
3 consistently incarcerated and is entitled to that credit.

4 **Ms. Meghan Walker:** The State agrees with that, Your
5 Honor.

6 **The Court:** All right. Since what date?

7 **Ms. Anastasia Walker:** I believe it's January 30th, Your
8 Honor. If you'll give me two seconds, we can give you an
9 exact day count. January 30th. 611 days, Your Honor.

10 **The Court:** All right. Ms. Walker - this Ms. Walker -
11 or Ms. Pinnock, I'm sorry, either one of you.

12 **Ms. Anastasia Walker:** Thank you, Your Honor. May it
13 please the Court?

14 **The Court:** Yes, ma'am.

15 **Ms. Anastasia Walker:** I will tell Your Honor that it
16 has been a pleasure to represent Demetrice James throughout
17 this matter. He's a very intelligent young man. It's a
18 surprise that he's ended up in a situation like this.

19 He grew up in a single-parent home. As he said on the
20 stand, his mother was murdered when he was about five years
21 old. His father raised him as a single parent. His father
22 is a hard worker. And he has a 14-year-old sister that he's
23 been looking after as the older brother, them being raised by
24 their father, and he's been working out of the home most of
25 their life.

1 Your Honor, he has been making the most of his time
2 while he has been in jail. He did engage in a number of
3 programs while he's been there, and certainly I know it's
4 taught him a lesson while he's been there. It's not a place
5 that he ever wants to be or has ever wanted to be.

6 He told you he was at Benedict College before this
7 incident happened. He was in their G.E.D. program. Your
8 Honor, he was 17 years old when this happened. He's a very
9 young man. I would venture to say that he was in shock when
10 this happened.

11 I understand it's a very serious event. I understand
12 what the jury's verdict was. But you heard Mr. James'
13 testimony. You heard what Demetrice said, and that is what
14 Demetrice has always maintained.

15 I certainly believe that Demetrice really is a good
16 person. This has been a very difficult situation for him,
17 and I know that he certainly feels remorse for the family and
18 what they've had to go through.

19 Considering his age when this occurred, Your Honor,
20 considering the fact that he has no prior record other than a
21 juvenile record -- he does have some charges pending in the
22 solicitor's office. However, he's always maintained his
23 innocence regarding those charges as well and we've always
24 considered those charges as another trial, and that will be
25 another matter for another day in court.

1 But, Your Honor, considering those factors of Mr. James,
2 I would ask for the minimum of 15 years to be served
3 concurrent for a sentence for Mr. James, if Your Honor would
4 be so inclined to consider it. Ms. Pinnock?

5 **The Court:** Ms. Pinnock?

6 **Ms. Pinnock:** Nothing at this time.

7 **The Court:** Mr. James, anything you want to say before I
8 sentence you?

9 **Mr. James:** Yes, sir. Yes, sir. Well, growing up in a
10 single-parent home, you know, my mother got killed maybe back
11 in 2001/2002. With that being said, you know, I've been the
12 victim of a, you know, a shooting incident, too. Someone
13 shot and killed my mother when my sister was probably about
14 two years old. My daddy is 64 now. He's all I got left.

15 So I want to speak to the family of the victims. I
16 never really got a chance to speak to them, and I'm going to
17 let y'all know that I would never bring that type of harm to
18 someone or I would never want anyone else to go through what
19 I went through as far as, you know, bringing just any type of
20 death or any harm to anyone.

21 So now, you know, I still maintain my innocence. I'm
22 going to still stick to the story; I am innocent. Kind of
23 hanging with the wrong people.

24 As I said before, my daddy is 64. My sister is 14. You
25 know, someone killed my mother. I would never bring that

1 type of bodily harm or any type of harm to anyone. I want to
2 let the mother of Brandon Jones know that I'm very sorry that
3 she had to go through this situation. I've been through a
4 similar situation.

5 I want to let, you know, Trent and Troy Scott know that
6 again, man, you know, if I shot one of you fellows in the
7 arm, you know, I ain't tried to do that. You know, wrong
8 place at the wrong time and I was just -- thought I was
9 defending my friend. I'm sorry. But y'all just keep doing
10 y'all's music and keep y'all's head straight, bro, and don't
11 take life for granted, please, bro.

12 **Ms. Anastasia Walker:** Thank you, Your Honor.

13 **The Court:** All right. Well, this crime is about as
14 heinous as it gets. On the attempted murder, both those
15 charges and on the burglary, both sentences -- where did my
16 notes go? Excuse me one moment.

17 **Ms. Meghan Walker:** Yes, Your Honor.

18 **The Court:** On the attempted armed robbery, both, and on
19 the burglary first degree, those sentences - and all these
20 are to run concurrent - are 30 years. Give him credit for
21 611 days on each of those. On attempted armed robbery, the
22 sentence is 20 years. Again, that's to run concurrent with
23 the other charges. I'm giving you credit for 611 days.
24 Thank you.

25 **Ms. Anastasia Walker:** Thank you, Your Honor.

1 **Ms. Meghan Walker:** Thank you, Your Honor.

2 (Court's Exhibit 5 was marked for identification only.

3 Whereupon, the proceedings were concluded.)

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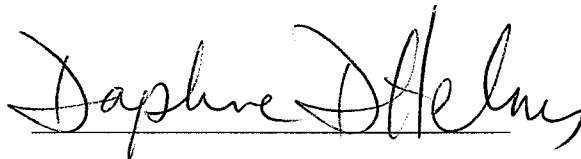
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 29th of September through the 3rd of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 27, 2015

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

FORM 5

2018CP400 3876

STATE OF SOUTH CAROLINA)

COUNTY OF *Richland*)*Demetrius James*
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFRICHLAND COUNTY
FILED
2018 JUL 24 AM 10:10
JEANNETTE W. MCNEIDE
C.C.P. & C.S.**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention *Lieber Correctional Institution*
Ridgelyville, SC 29472
2. Name and location of Court which imposed sentence *Richland county General session*
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) *2013 GS 4001448 Burglary 1st Degree*
 - (b) *2013 GS 4001433 Attempted murder*
 - (c) *2013 GS 4001432 Attempted murder, 2013 GS 4001480 Attempted Armed Robbery*
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *Oct 3rd 2014, 30 Years*
 - (b) _____

- (c) _____
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:
- South Carolina Court of appeals
 - South Carolina Supreme Court
 - _____
- (b) the result in each such Court to which you appealed:
- South Carolina Court of appeals (Affirmed)
 - South Carolina Supreme Court (Writ Granted)
 - South Carolina Supreme Court (Imprudently Granted)
- (c) the date of each such result:
- South Carolina Court of appeals (Affirmed) January, 11 2017
 - South Carolina Supreme Court (Imprudently Granted) May 23, 2018
 - South Carolina Supreme Court (Writ of Cert Granted) November 15, 2017
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- _____
 - _____
 - _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N-A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel, not turning over to the state evidence
- (b) Unconstitutional Grand Jury Proceeding
- (c) Jury Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to object and to investigate and give to the state notarized document by state witness and alleged co-defendants
- (b) Grand Jury Proceeding Abused by Prosecutor
- (c) Premature Deliberation by Jury

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(b) the name and location of the Court in which each was filed:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA

iv. NA

(d) the date of each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

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. NA

ii. NA

iii. NA

(b) the proceedings in which each ground was raised:

i. NA

ii. NA

iii. NA

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) NA

(b) NA

(c) NA

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Tracy Pinnock
- ii. Anastasia Walker
- iii. Katherine Hudgins

- (b) the proceedings at which each such attorney represented you:

- i. Trial and sentencing (Tracy Pinnock, Anastasia Walker)
- ii. Direct Appeal (Katherine Hudgins)
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

)

VERIFICATION

County of Richland

)

)

I, Demetria James, 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.

Demetria James

SWORN to and subscribed before me this 3
day of July, 2018.

Leuchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Demetria James, 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.

Demetria James

Applicant

SWORN or affirmed to and subscribed before me this

3 day of July, 2018.

Leechman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
 DEMETRICE JAMES,	)	 CASE NO.: 2018-CP-40-03876
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

RICHLAND COUNTY
 FILED
 2022 MAR 21 AM 10:57
 JEANETTE W. MCBRIDE
 C.C.P., G.S., & F.C.

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed July 24, 2018, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Anastasia Walker , Tracy Pinnock and Tiffany Butler and Katherine Hudgins as follows:

1. Appellate counsel Tiffany Butler and Katherine Hudgins (p168, Lines 8-10) failed to appeal the trial courts decision to not declare a mistrial following an objection by the defense to the state defining inferred malice during her opening to the jury stating "I

submit that malice may be inferred when someone goes over there to commit an armed robbery or burglary, when someone is armed with a deadly weapon” (p168, Lines 8-10, p 170 Line 125) or following the courts charge for Murder that included this as well(p. 853, lines 3-6) *STATE V BELCHER* 385 S.C. 597.

2. Appellate counsel Tiffany Butler and Katherine Hudgins (p168, Lines 8-10) failed to appeal the trial courts decision to allow the testimony of Joshua Williams following the objection to hearsay testimony by defense counsel (p.195, lines 1-5) under SC Rules of Evidence, Rule 801 (d)(2)(e).
3. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to hearsay testimony from Joshua Williams regarding Patsys answer to the question “you’ve got to tell me what’s wrong?”, “I’m sorry your friend is dead” (p 205, Lines 9-11).
4. Applicants counsel Anastasia Walker and Tracy Pinnock failed to call Deshawn McClary as a witness to testify for the defense regarding a letter he wrote.
5. Applicants counsel Anastasia Walker and Tracy Pinnock failed to review evidence with Applicant and meet with Applicant a sufficient number of times to prepare for trial.
6. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to a leading question by the solicitor to Inv. Beeler “so metal art on the outside, and I go back to states 58, as if when the door was open it had fallen off the wall?” (P 262 lines 11-13).

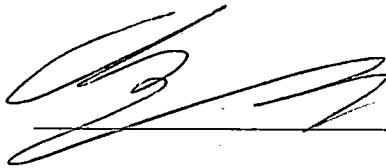
7. Appellate counsel Tiffany Butler and Katherine Hudgins (p330, Lines 23-25) failed to appeal the trial courts decision to allow the testimony of Jwaun Duckett regarding a statement by co-defendant Maurice Roberts over the defense hearsay objection.
8. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to a hearsay statement by Jawaun Duckett testifying regarding a statement by Maurice Roberts and a cell phone "He was like bro flush it, bro flush it" (p335, Lines 2-3).
9. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to a leading question by the state "this is the phone call where Maurice Roberts, Demetrice James, Vincent nelson and Deshawn McClary agree that they were going to rob a studio?" (p. 338, Lines 13-16).
10. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to a leading question by the solicitor to Trenton Scott "at that point, Demetrice comes in ?" (P375, lines 9-10) "and Demetrice, his hairstyle is a little different now ?" (p 387, Lines 6-7).
11. Applicants counsel Anastasia Walker and Tracy Pinnock failed to bring to the courts attention that two members of the jury were falling asleep until later in the trial and the court refused to inquire about this stating that this should have been brought to the courts attention sooner (p528, lines 6-25 to p529 lines 1-3).
12. Applicants counsel Anastasia Walker and Tracy Pinnock failed to comply with South Carolina Rule of Evidence, Rule 5 to allow them to move into evidence a letter by the states witness Jwaun Duckett that was exculpatory and they failed to properly mark and

identify the letter during cross examination of Duckett to allow them to bring in the testimony of Vanessa Jarvis as the notary who witnessed Duckett sign the letter for impeachment. (p. 677 line 20 to p. 680 line 20).

13. Applicants counsel Anastasia Walker and Tracy Pinnock failed to object to the portion of the photo lineups containing the jail website and these were given the jury in evidence. (P.864, lines 17-25).

14. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

olajohnsonlaw@gmail.com

This 21 day of March, 2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
 DEMETRICE JAMES ,	)	 CASE NO.: 2018-CP-40-03876
	)	
Applicant,	)	
 v.	)	 SECOND AMENDMENT TO
	)	APPLICATION FOR POST
	)	CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

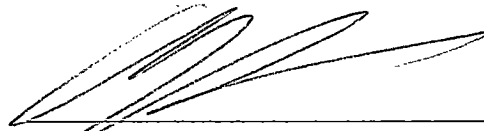
FILED
2022 MAY 17 AM 10:30
JESSIE W. MORRIS
CLERK

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed July 24, 2018, by Applicant and the Amendment to Application filed by Applicants counsel Ola Johnson on March 21, 2022. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Anastasia Walker, Tracy Pinnock and Tiffany Butler and Katherine Hudgins as follows;

1. Trial counsel failed to argue that applicant should have been exempt from having to prove prejudice regarding the early deliberation by members of the jury so this issue was not preserved for appeal.

2. Trial counsel failed to request a new trial based on the letter by Deshawn McClary.
3. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

This 13 day of May, 2022.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Demetrice James, #361608,

) Case No.: 2018-CP-40-3876
)

) Applicant,
)

) v.
)

) **RETURN AND PARTIAL MOTION TO**
) **DISMISS AND MOTION FOR A**
) **MORE DEFINITE STATEMENT**
)

) State of South Carolina,
)

) Respondent.
)
_____)

RICHLAND COUNTY
FILED
2018 NOV -8 PM 1:58
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on July 24, 2018, would respectfully show this Court:

I. Procedural History

Demetrice James (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2013, the Richland County Grand Jury indicted Applicant for two counts of attempted murder (2013-GS-40-1432, -1433), and one count each of murder (-1434), attempted armed robbery (-1480), and first-degree burglary (-1448). Tracy Pinnock and Anastasia Walker, Esquires, represented Applicant. Assistant Solicitors Nicole Simpson and Meghan Walker, Esquires, prosecuted the case for the State. Applicant proceeded to trial before the Honorable John C. Hayes. The jury found Applicant guilty as indicted to all charges except murder. Judge Hayes declared a mistrial as to the murder charge. On October 3, 2014, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of thirty years each for attempted murder and first-degree burglary and twenty years for attempted armed robbery.

Applicant filed a timely notice of appeal. Tiffany Butler and Katherine Hudgins, Esquires, of the South Carolina Commission on Indigent Defense - Appellate Defense Division perfected

the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on January 11, 2018. Applicant filed a petition for rehearing which was denied by order dated February 23, 2017. Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was granted. After briefing and oral argument, the South Carolina Supreme Court dismissed the writ as improvidently granted and affirmed Applicant's conviction on May 23, 2018. The remittitur was returned to the circuit court on May 29, 2018.

Attached to this Return and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Summary Facts Adduced At Trial

On the evening of January 25, 2013, Trenton Scott was spending some at time at his parents' home with his brother, Troy Scott, Troy's girlfriend Cari Pearson, and friends Joshua Williams and Brandon Jones. R. pp. 292-93. Trenton and Troy Scott lived with their mother, Sugar Davis, and their step-father, Chandler Davis. R. p. 288. The downstairs area of the Davis home contained a salon where Mrs. Davis conducted her business, as well as a music studio and a game room. R. p. 290. While the group was hanging out in the studio room, Vincent Nelson came by the home. R. p. 294. Nelson previously stayed with the Davis family for a period of time before disappearing. R. p. 229. Chandler Davis testified he and his wife occasionally help out less fortunate children from the neighborhood by giving them a place to stay, clothing, and food. R. pp. 228-29. When Nelson showed up to the Davis family home, Trenton Scott had not seen him in

three months. R. p. 294. Scott testified Nelson came in around 11:00 PM, which was unusual because they normally do not allow guests to come over at such a late hour. R. p. 295.

Trenton Scott noticed Nelson making a series of phone calls. R. p. 294. During one of the phone calls, Scott overheard Nelson say he was in the house. R. p. 294. Following the phone calls, Nelson began pressuring Jones to go outside and smoke a cigarette with him. R. p. 295. Eventually Nelson, Jones, and Williams proceeded outside to smoke. R. p. 296. Once they were outside, someone walked by and giggled. R. p. 200. That person then turned around and approached Jones, telling him, "Don't move. Get down on the ground if you want to live." R. p. 200. Williams slowly put his hands up and looked at his attacker. R. p. 200. Williams was then struck in the head. R. p. 200. While Williams was on the ground, he heard Jones begging for his life. R. p. 201.

Williams testified there were three more individuals coming down the hill. R. p. 201. Williams heard a scuffle going on between Jones and the assailants. R. p. 202. Williams also heard the door to the house open and the sounds of glass breaking inside. R. p. 202. Williams remained on the ground and pretended he was dead. R. p. 203. Williams then heard doors slamming and someone shouted, "Six hundred, don't do it. Don't do it." R. p. 203. Following the exclamation, a gun went off several times, and Williams felt a jolt of pain hit his side. R. p. 203. Williams realized he had been shot in his side. R. p. 204. Williams further testified after the gunshots he didn't hear Jones anymore. R. p. 203.

Williams then ran to the upstairs of the Davis home to seek help. R. p. 204. Mr. Davis rushed downstairs and found Jones bleeding by the back door. R. p. 232. Davis testified Jones had been shot, and there was a lot of blood. R. p. 233. Cinnamon Wright, one of the paramedics who responded to the scene, testified Jones suffered five gunshot wounds. R. pp. 373-74. Jones subsequently died at the hospital of his injuries. R. p. 436.

While Williams, Jones, and Nelson stepped outside to smoke, Trenton Scott went upstairs to pick up some hangers. R. p. 297. When he arrived back downstairs, Maurice Roberts entered the room with a gun pointed forward. R. p. 298. Scott testified the gun was pointed at his head. R. p. 298. Roberts pistol-whipped Scott, who then hit Roberts in the face, causing him to fall onto a glass table. R. p. 299. During the struggle, Roberts dropped his gun on the floor. R. p. 299. Scott and Roberts began fighting to get to the gun on the floor. R. p. 299. While they were fighting for the gun, Applicant walked in. R. p. 299. Scott did not know who Applicant was at the time; however the room was well lit, and he was able to get a clear look at both intruders' faces. R. pp. 299-300. Upon hearing the commotion downstairs, Troy Scott rushed into the room to aid his brother. R. p. 381.

Eventually, Roberts was able to outmaneuver Trenton Scott and pick up the gun. R. p. 300. Roberts then passed the gun to Applicant. R. p. 375. Roberts then tried to make further progress into the house. R. p. 301. Scott was able to slam Roberts to the floor. R. p. 301. Applicant was standing in the door way with the gun, warning "I'm about to shoot. I'm about to shoot." R. p. 301. Trenton and Troy Scott were eventually able to overpower their assailants and force them to retreat towards the back door. R. p. 304. As they were fleeing, Trenton Scott attempted to grab Applicant by the dreadlocks. R. p. 304. Applicant then fired a shot. R. p. 304. The bullet struck Trenton Scott in his left arm. R. p. 307.

While he was at the hospital, police showed Trenton Scott a photo line-up from which he identified Vincent Nelson. R. p. 313. Police later came to the Davis home and showed Trenton Scott another photo line-up. R. p. 315. In this lineup, Scott identified Maurice Roberts as one of the intruders. R. p. 316. Trenton Scott was later shown yet another photo line-up where he identified Applicant as the second intruder in the home and the man who shot him. R. p. 319.

Police also showed a photo line-up to Troy Scott, who identified Applicant as the man who shot his brother. R. pp. 392-93.

Vincent Nelson testified at Applicant's trial. R. pp. 330-71. Nelson previously pleaded guilty to burglary in the first degree, two counts of attempted murder, and voluntary manslaughter. R. p. 330. Nelson was in a rap group called "600" with Deshawn McClary, Maurice Roberts, Jwaun Duckett, and Applicant. R. p. 332. On the night of the incident, Nelson, Applicant, Roberts, McClary, and Duckett were spending time together at Roberts' home. R. p. 333. Nelson began telling the group about the recording studio at the Davis home. R. p. 334. Upon hearing about the studio equipment, Applicant, Nelson, McClary, and Roberts decided to go over to the Davis home and steal the studio equipment. R. p. 334. Roberts invited Duckett to join in the robbery, however Duckett declined.¹ R. p. 274.

The group decided to use Nelson to get into the house because he knew the Davis family. R. p. 335. Once he was inside the house, Nelson texted the others. R. p. 337. After obtaining a cigarette from Jones, Nelson walked outside with Jones and Williams to smoke. R. p. 338. Once they were outside, Roberts came up with his gun pointed forward. R. p. 339. Roberts then hit Jones in the nose with the gun. R. p. 340. Once Jones fell to the ground, McClary stood over him. R. p. 340. Applicant and Roberts then disappeared into the house. R. pp. 34-41. Nelson heard a gunshot from inside the home and began running back to Roberts' house. R. p. 341.

¹ At trial, Duckett testified that he was in a rap group named "600 squad" with Applicant, Roberts, McClary, and Nelson. R. p. 248. Duckett was at the Roberts home with Nelson and Roberts the Sunday after the robbery. R. p. 257. When police arrived, Roberts threw Duckett his phone and told him to flush it. R. p. 260. Instead of flushing the phone, Duckett threw it in the bathroom. R. p. 260. Police subsequently found Duckett hiding in a closet. R. p. 290. Duckett told police he was not at the scene of the attempted robbery, but he knew who did it. R. p. 263. Duckett knew about a phone call where Roberts, Applicant, Nelson, and McClary agreed to rob a studio. R. p. 263. Duckett said he was invited to participate in the robbery, however he told Roberts "I don't do licks." R. p. 274.

On January 28, police officers came and spoke to Nelson about the incident. R. p. 344. Nelson waived his rights and told police what happened. R. p. 345. Nelson was shown photo line-ups. R. p. 345. In one of the line-ups, Nelson identified Applicant. R. p. 353.

III. Allegations

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel failed to object and to investigate and give to the state notarized [illegible] exonerating me by states witness and alleged co- defendants"
2. "Unconstitutional grand jury proceeding"
 - a. "Grand jury proceeding abused by prosecutor"
3. "Jury misconduct"
 - a. "Premature deliberation by jury"

As requested relief, Applicant is seeking to "vacate conviction."

IV. Response and Motion for More Definite Statement as to Allegation of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent also hereby moves for a more definite statement as to this ground. Applicant has failed to set forth any facts to support this allegation or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response and Motion for More Definite Statement as to Allegation of Unconstitutional Grand Jury Proceeding

Applicant alleges the prosecutor abused the grand jury process, but he offers no facts or details to support this claim. Respondent interprets this as an allegation of prosecutorial misconduct, which may or may not be a proper allegation for PCR depending on the nature of the allegation. *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (holding a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal); *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974) (holding post-conviction relief is not a substitute for an appeal).

Accordingly, Respondent hereby moves for a more definite statement as to this ground. Applicant has failed to set forth any facts to support this allegation or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Regardless, it is Applicant’s burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794 (1989).

VI. Response and Motion for More Definite Statement as to Allegation of Jury Misconduct

Finally, Applicant alleges juror misconduct occurred in that the jury began deliberation early, but he has wholly failed to set forth any facts to support this allegation. Depending on the circumstances, juror misconduct may be an issue for direct appeal rather than PCR. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (holding defendant was barred from raising juror

misconduct issue on appeal where it was discovered during trial, but not raised to the trial court on the record). Juror misconduct discovered post-trial is not properly considered “newly discovered evidence,” for purposes of obtaining post-conviction relief; rather it is a separate basis for a new trial. McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). In any event, Applicant must demonstrate “such deliberations affected the jury’s verdict.” Aldret, 333 S.C. at 313, 509 S.E.2d at 813.

Respondent hereby moves for a more definite statement as to this ground. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Applicant has failed to explain with any specificity whatsoever the facts upon which this claim is based. Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the ground on which this claim is based.

VII. Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. 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 Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, 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, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent 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 Respondent.

VIII. All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

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IX. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

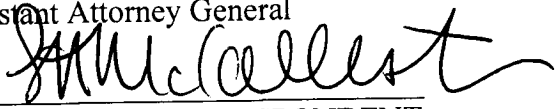
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10/23, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2018-CP-40-3876

DEMETRICE JAMES, #361608)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

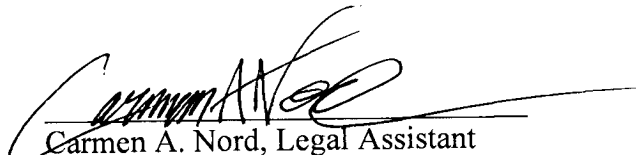
AFFIDAVIT OF SERVICE BY MAIL

RICHLAND COUNTY
FILED
2018 NOV - 8 PM 1:58
JEANNETTE M. MCBRIDE
C.C.P. & G.S.

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, 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:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this the 23rd day of October, 2018.


Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2018-CP-40-03876
	)	
DEMETRICE JAMES,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

January 11, 2023
Columbia, South Carolina

BEFORE:

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE.

APPEARANCES:

DANIELLE DIXON, ASSISTANT ATTORNEY GENERAL
Attorney for the State

OLA JOHNSON, ESQ.
Attorney for the Applicant

KAREN AMBROZIAK
Official Court Reporter

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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	letter	13	
2	Letter	18	

1 MS. DIXON: May it please the Court. Danielle Dixon,
2 Assistant Attorney General for the State of South
3 Carolina. This is the case of Demetrius James v. State,
4 docket number 2018-CP-40-3876.

5 Mr. James is serving a 30-year sentence. He was
6 indicted by the Richland County Grand Jury in February
7 of 2013 for murder, attempted murder -- and that's two
8 charges of attempted murder, attempted armed robbery and
9 first degree burglary.

10 These all arose from a home invasion involving the
11 home of Trenton and Troy Scott on January 25, 2013. There
12 were three codefendants involved. They were Victor
13 Nelson, Maurice Robertson, Deshawn McClary.

14 At trial, the State submitted evidence that the four
15 codefendants had conspired to rob the Scotts of studio
16 equipment, and in the process Brandon Jones who was over
17 visiting was fatally shot.

18 At trial, codefendant Vincent Nelson testified
19 against Demetrius James. Additionally, the victims
20 Trenton and Troy Scott both identified him from a
21 photographic lineup.

22 Juwaan Duckett's, who was not a codefendant,
23 testified he was at Maurice Roberts' home earlier that
24 evening when the four codefendants planned a robbery.
25 James himself testified at trial he did admit to being

1 there.

2 He admitted to going there with Maurice Roberts prior
3 to the shooting, but he claimed he didn't know it was
4 going to be a robbery; that he only got involved because
5 he thought Maurice Roberts was being attacked.

6 He did proceed to a jury before the Honorable John
7 Hayes in September and October of 2014. He was
8 represented by Anastasia Walker and Tracy Pinnock. Nicole
9 Simpson and Meghan Walker represented the State.

10 The jury was hung as to the murder conviction so the
11 judge did declare mistrial as to that, but he was
12 convicted on all other charges. He got 30 years each for
13 the attempted murder charges and the burglary first and 20
14 years for attempted armed robbery. Those are all
15 concurrent.

16 He did file a direct appeal. It was affirmed on the
17 merits and the issues raised were whether the court erred
18 in denying a motion for mistrial after the jury engaged in
19 premature deliberations and whether the Court erred in
20 allowing the State to call a rebuttal witness.

21 The Court of Appeals affirmed. The Supreme Court did
22 initially grant cert but later dismissed it as
23 improvidently granted. The remittitur was sent May 23rd,
24 2018.

25 This PCR application was timely filed July 2018. It

1 has been amended twice. This case has also been
2 previously continued in May of 2022 and October of 2022.

3 At this time, our understanding of the allegations
4 are ineffective assistance of counsel based on a failure
5 to request a new trial based on a letter from Deshawn
6 McClary, failure to call a Deshawn McClary as a witness
7 regarding the letter, failed to review evidence to meet
8 sufficient times, failed to object to various instances of
9 hearsay and leading, failed to raise an issue regarding a
10 sleeping juror, failed to comply with Rule 5 in order
11 introduce a letter from Duckett or ultimately to properly
12 ID it, failed to object to a portion of the lineup
13 containing the jail website and failed to argue that he
14 should not have to prove prejudice regarding early
15 deliberations of the jury.

16 There are also three allegations related to appellate
17 counsel, failed to appeal the denial of mistrial after an
18 objection regarding the State defining inferred malice
19 incorrectly, failed to appeal decision to allow Josh
20 Williams' testimony over a hearsay objection and failed to
21 appeal a decision to allow Juwaan Duckett's testimony
22 about a statement by a codefendant.

23 And we would ask, at the end, just if we could point
24 out some case law to Your Honor that may go directly to
25 some of these claims that make, perhaps, this decision

1 easier.

2 THE COURT: Yes, ma'am. By all means.

3 MR. JOHNSON: Your Honor, hold on one second.

4 (Pause).

5 Your Honor, I just want to put on the record, there
6 are -- on my original amendments application for Post
7 Conviction Relief, some of them are referring to some --
8 well, there's some minor things that I probably will
9 withdraw at this point. One of them would be number three
10 where it says Applicant's counsel, Anna Walker kind of
11 failed to object to hearsay of Joshua Williams saying,
12 "You've got to tell me what's wrong. I'm sorry your
13 friend is dead." That is number three. I'm not going to
14 proceed on that. That doesn't seem like something we
15 would want to include.

16 Number six, Walker and Pinnock failed to object to
17 leading question by Solicitor and the investigator about
18 some metal art on the outside, and I go back to State's
19 number 58. That is number six. We're going to withdraw
20 that one. It's something we would not want to include.

21 Also, number eight, it's Applicant's counsel, Walker
22 and Pinnock failed to object to hearsay statement by
23 Juwaan Duckett, as well as number ten, failed to object to
24 leading question by Solicitor of Trenton Scott. That one
25 coming to the end of page 375, that's number ten.

1 So on those four things, we would withdraw those, and
2 we're just going focus our attention on the other ones,
3 Judge.

4 THE COURT: All right. Ready?

5 MR. JOHNSON: I'm ready, Judge. I'd call my client
6 to testify at this time.

7 THE COURT: Sir.

8 DEMETRICE JAMES, after being duly
9 sworn, testified as follows:

10 THE BAILIFF: State your full name for the record,
11 spell your last name.

12 THE WITNESS: Demetrice Roosevelt James, J-A-M-E-S.

13 DIRECT EXAMINATION:

14 BY MR. JOHNSON:

15 Q Mr. James, do you recognize -- are the attorneys who
16 represented you in the courtroom today?

17 A Yes, sir. Her name is, I think, Anastasia Walker and
18 then Tracy Pinnock. I don't know where Tracy was. I
19 thought I saw Tracy in here. I don't see her no more, but
20 I see Anastasia.

21 Q These are the attorneys that represented you at
22 trial?

23 A Yes.

24 Q And when they represented you -- let excuse me you,
25 starting out with our amended application regarding

1 allegations, do you recall having a conversation with --
2 well, let's start out with number one. Let's reference
3 your appellate counsel Tiffany Butler and Katherine
4 Hudgins. Do you recall an explanation from them or did
5 they explain why they failed to appeal the trial court's
6 decision to not declare a mistrial following an objection
7 to the defense -- by the defense to the State in finding
8 inferred malice during the opening to the jury stating, "I
9 submit that malice may be inferred when someone goes over
10 there bent on robbery and burglary when someone is armed
11 with a deadly weapon." That would be page 168 lines eight
12 through ten on the transcript, 178 line one to 25 order
13 following the Court's charge for murder that included
14 this, as well.

15 Do you recall any explanation or conversation with
16 appellate counsel Tiffany Butler and Katherine Hudgins as
17 to why they do not appeal that?

18 A Initially, I thought that something about Belcher did
19 come up about the inference of malice, a mandatory
20 presumption. It wasn't the inference of malice.

21 I think -- I don't remember Tiffany and Katherine
22 discussing it, but I remember, I believe Tracy had brought
23 it up or whatever. I believe Tracy Pinnock brought it up.

24 She said that what it was, it was the inference of
25 intent that we were looking at. I guess for the initial

1 argument, Tiffany may have brought up -- well, no.
2 Tiffany did fail to appeal the trial court's decision not
3 to declare a mistrial about it, but the thing was -- the
4 issue was the inference of intent.

5 It was inference as a whole, and that's what Tracy
6 had brought up. So with the inference as a whole, it was
7 basically just -- and so I guess that was the
8 distinguishing factor between either or -- I guess
9 initially that's Tiffany Butler and Katherine Hudgins did
10 fail to appeal the trial court's decision about the
11 inference of malice, but when Tracy had initially brought
12 it up, it was the inference as a whole, and not only that,
13 I believe that when it was initially brought up about
14 Tiffany and Katherine, it was something about the
15 prosecutor -- I believe that the prosecutor had related to
16 the jury that -- that malice can be inferred or whatever
17 before the judge had charged the jury on the inference of
18 malice.

19 And so that's -- I believe that's when Tracy had said
20 something about it. She'd like you just allow the
21 Solicitor to relate that malice may inferred or whatever
22 and that's not -- that's not applicable law in South
23 Carolina or whatever.

24 So again, I don't think Tiffany Butler and Katherine
25 Hudgins -- I don't think that that they appealed the trial

1 court's decision not to declare a mistrial when Tracy had
2 initially said that they should have but again, the
3 distinguishing factor between the two, that was
4 essentially different.

5 Again, it was the inference as a whole, and then it
6 became something about the inference of intent, but it was
7 the inference as a whole that Tracy had brought up. But
8 again, she brought it up from the fact of the Solicitor
9 relating to the jury that the inference of malice may be
10 inferred, but what the jury -- what the judge had charged
11 the jury on the inference of malice, and I don't think
12 that Tiffany Butler, Katherine Hudgins had declared a
13 mistrial as to either.

14 Q Okay. Number two, do you have any memory of
15 appellate counsel, Tiffany Butler, Katherine Hudgins
16 failing to appeal trial court's decision to allow
17 testimony of Joshua Williams following the testimony of
18 defense counsel on page 195, lines one through five?

19 A Shall I turn?

20 Q Well, yeah. You can reference page 168, or you can
21 reference page 195.

22 A 168 or 195, let me see. Pages 168 -- 168 and you
23 were saying what about page 168?

24 Q Was that an objection, did you have a conversation,
25 to ever receiving any --

1 A This is still in regards to -- in regards to the --
2 or in relation to the first question, right, about --

3 Q Right. This is a -- well, this is a question about
4 appellate counsel, Tiffany Butler, did you ever have a
5 conversation or explanation from them why they failed to
6 appeal the trial court's decision to allow testimony of
7 Joshua Spaulding's objection, hearsay testimony by defense
8 counsel. That's listed on page 195, lines one through
9 five.

10 A Let's see. Because I only spoke to Tiffany once or
11 twice. As a matter of fact, I spoke to Tiffany a few
12 times. As a matter of fact, we had a few recorded
13 conversations.

14 Me and Tiffany Butler, I spoke to her, I believe on
15 January 25th of 20-- of 20-- they make it -- I believe it
16 was 2015 from Lee Correctional Institution. I want to say
17 it was January 25th.

18 If I'm wrong, then forgive me, but I'm pretty sure I
19 think January 25th of 2015, me and Tiffany had spoke -- me
20 and Katherine had spoke, but when I spoke to Tiffany, the
21 only thing that I recall speaking to Tiffany about was
22 about putting in a new trial motion or whatever, a new
23 trial motion regarding -- regarding evidence from the
24 State's key witness, Juwaan Duckett, where Juwaan Duckett
25 states he went to the same -- Juwaan Duckett who testified

1 against me at trial and said that -- who said that I was a
2 part of this conspiracy, but the only -- the only
3 conversation I recall between me and Tiffany was again, I
4 want to say January 25th, but if it wasn't, basically I
5 told -- I was asking Tiffany Butler because she put in a
6 motion for a new trial or whatever because I had some
7 evidence where Juwaan Duckett -- evidence that I had --
8 that I had received my trial counsel where Juwaan Duckett
9 had -- had written a letter that was stamped --

10 MS. DIXON: Objection to hearsay.

11 THE WITNESS: I'm --

12 THE COURT: Sustained.

13 THE WITNESS: That means I can continue or do that --

14 BY MR. JOHNSON:

15 Q Well, I think you have --

16 A That's the only time I remember speaking to Tiffany
17 Butler.

18 Q Okay.

19 A But Juwaan Duckett was writing this letter -- writing
20 this letter that was stamped and notarized --

21 Q I think you answered my question.

22 A Huh?

23 Q I'm going to move on to another question. I think
24 you answered it.

25 A Okay. All right. Thank you.

1 Q All right. Moving on -- and, Judge, we withdrew
2 number three, so I'm going to move on to number four of
3 the original amended application. There -- it says
4 Applicant's counsel, Anastasia Walker, in the case of the
5 defendant failed to call Deshawn Clary as a witness to
6 testify as a witness regarding a letter.

7 Now, I'm going show you -- Judge, at this time --
8 actually, I guess at this point I would have it marked, if
9 possible, just to identify what I'm talking about.

10 MS. DIXON: He can mark it for ID.

11 MR. JOHNSON: Mark it for ID.

12 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
13 identification only.)

14 BY MR. JOHNSON:

15 Q So marked Plaintiff's Exhibit 1. Is that the letter
16 you're referring to from Mr. McClary?

17 A Deshawn McClary, stamped by Jeanette W. McBride filed
18 August 18th, 2014 at 10:59 A.M., yes, sir.

19 Q Okay.

20 A This is the letter from Juwaan -- from Deshawn
21 McClary. Excuse me, yes, sir. This is the letter from
22 Deshawn McClary.

23 Q And when you referenced number four when I say
24 Anastasia Walker and Tracy Pinnock failed to call Deshawn
25 McClary to testify regarding a letter, that's the letter

1 that we're referencing?

2 A Yes, sir.

3 Q And what is it about that letter you felt was
4 beneficial?

5 A Well --

6 MS. DIXON: Object to hearsay.

7 THE WITNESS: I can read the letter then. Can I read
8 what's marked and then --

9 THE COURT: Hold on, hold on, please.

10 Sustained.

11 BY MR. JOHNSON:

12 Q All right.

13 And when did you receive that letter?

14 A I received this letter before I went to trial. I
15 went to trial -- I forgot the date that I went to trial.
16 I'm pretty -- I hope that y'all can get that date, but
17 before I went to trial, Tracy Pinnock had given me a
18 copy -- I don't know if it was Tracy or Anastasia Walker.
19 I'm pretty sure it was Tracy, though.

20 Tracy had given me a copy of this letter before I had
21 went to trial before -- yep, before I went to trial, so
22 she was already in possession of this letter, had given me
23 a copy of this letter before I went to trial.

24 As a matter of fact, it's dated before my court --
25 before I went to trial. This is dated from -- it's

1 Richland County filed, and it's stamped by Jeanette W.
2 McBride on the 18th of August, 2014.

3 When did I go to court? I don't think I went to --
4 when did I go to court? I don't -- I think -- let me see.
5 If I can look. If I can beg the Court's indulgence to
6 check the date just to make sure.

7 Let me see. I went to court -- I think I went to
8 court -- I believe it was September the -- September --
9 oh. When did I go to court? I don't know. You can help
10 me that type of information, but I know she had -- she was
11 in possession of this letter before I went to court and so
12 that's -- I know that for a fact. She was in possession
13 of this letter before I went to court.

14 Q Okay. Now, this letter -- before you went to trial
15 September 29th, you had a conversation with her about the
16 letter?

17 A Yes, sir.

18 Q Okay. Did you give her that letter, or did she bring
19 it to you?

20 A She brought this letter to me.

21 Q Okay. And you felt like they should have called
22 McClary as a witness?

23 A Yes, sir.

24 Q Why is that?

25 A Because the letter says basically -- in a portion of

1 the letter --

2 MS. DIXON: Object to hearsay.

3 THE WITNESS: In it -- in a portion of this letter --

4 MR. JOHNSON: Stop talking a minute.

5 THE WITNESS: -- it says -- oh, my fault. My fault.

6 THE COURT: Sustained.

7 MR. JOHNSON: Your Honor, you sustained that?

8 THE COURT: Yes, sir.

9 BY MR. JOHNSON:

10 Q It's been sustained. You can't keep talking. So did
11 you get a copy or you just looked at it?

12 A She gave me a copy of it, and again, I -- it is just
13 basically staying I wasn't --

14 Q You can't read it.

15 A I'm not reading it. I'm not reading it.

16 Q Okay.

17 A I'm saying the reason why I thought it's -- I thought
18 I was answering the question that you asked. I don't --

19 Q Right. But if you can't read it -- the Judge has
20 ruled. You can't read it. So did you have a conversation
21 with Deshawn McClary?

22 A No.

23 Q Okay. So you can't read the letter.

24 Moving on to number five, the allegation in the
25 original amended application regarding Ms. Walker and

1 Ms. Pinnock reviewing the evidence and meeting with you a
2 sufficient number of times, do you feel like they met with
3 you a sufficient number of times to prepare properly
4 before trial?

5 A No, I don't feel like they did.

6 Q How much times did they meet with you?

7 A I can recall -- I can recall twice where we sat down,
8 and again, the second time we sat down I had -- you know,
9 I was kind of inquisitive or whatever. I was -- I was
10 asking questions about the letter from Deshawn McClary and
11 the letter from Juwaan Duckett, and that was the second
12 time that we sat down that I could recall. So if I was --
13 I would say two times.

14 Q Okay. Did they ever have a private investigator come
15 talk to you to work on your case?

16 A As far as I could remember, I don't remember any
17 investigators speaking to me. I believe -- no, I don't
18 recall an investigator speaking to me. I don't.

19 Q Okay. Now I want to show you a letter real quick.

20 Judge --

21 A That is -- let me just look through my trial
22 transcript briefly. I want to make sure that I have
23 received it. That's vanessa Jarvis. That's page 673.

24 MR. JOHNSON: Your Honor, if you don't mind, I'm
25 going to talk to my client real quick, just double check

1 something.

2 THE WITNESS: Page 673, page 673, page 673. Page
3 673. It might not have been page 673. Let's see. Maybe
4 it was 675. Let me just -- yeah, page 673, Vanessa
5 Jarvis, that is the notary that's referenced, yep.

6 BY MR. JOHNSON:

7 Q Okay. Now, I'm going to have it marked first and
8 we'll talk about it.

9 A All right.

10 Q Judge, I'm going to have this marked as Plaintiff's
11 2. This is a letter.

12 MS. DIXON: No objection to ID.

13 THE COURT: Okay.

14 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
15 identification only.)

16 BY MR. JOHNSON:

17 Q Now, Plaintiff's 2, did you receive that from Public
18 Defenders' Office?

19 A Yes, sir. I had -- I got a copy of that before I
20 went to court. Before I went to trial, I got a copy of
21 that which would be Plaintiff's Exhibit number 2 with --
22 with the notary. Her name is Vanessa Jarvis. I received
23 -- I got that before I went to court from Tracy Pinnock,
24 my trial counsel.

25 Q Okay. Who is the letter from?

1 A This letter is written by -- well, I don't know.
2 It's stamped and notarized by Vanessa Jarvis, and Juwaan
3 Duckett is the one who wrote this one.

4 MS. DIXON: I'm going to object to hearsay as to who
5 wrote the letter.

6 THE WITNESS: Well, his name is -- it's just --

7 THE COURT: Wait, wait, wait. Slow down, slow down.

8 THE WITNESS: Okay. I apologize.

9 THE COURT: May I speak to y'all outside, please?

10 MR. JOHNSON: Yes.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Proceed, sir.

13 MR. JOHNSON: Thank you, Judge.

14 BY MR. JOHNSON:

15 Q So not talking about the content of the letter, but
16 the second one, Plaintiff's Exhibit 2, when did you
17 receive that?

18 A Before I went to trial. Because again, I don't
19 really want to be like -- I really don't remember the
20 exact date that I started trial, but I know that I
21 received that before I received that letter --

22 Q Okay.

23 A -- before I went to trial.

24 Q And you go it from the Public Defender?

25 A From my Public Defender.

1 Q Okay. That's the question I had. Thank you.

2 And moving on to -- one moment, Your Honor.

3 (Pause).

4 Now, we went through a number of times, number six we
5 withdrew on the original, so I'm skipping that.

6 THE COURT: Yes, sir.

7 BY MR. JOHNSON:

8 Q And then on number seven, did you have any
9 conversation within appellate counsel Tiffany Butler or
10 Katherine Huggins -- and I'm referencing page 330 lines 23
11 through 25.

12 Did they ever explain to you why they failed to
13 appeal the trial court's decision to allow the testimony
14 of Juwaan Duckett regarding a statement by codefendant
15 Maurice Roberts over the defendant's hearsay objection?

16 A No, sir. They never -- we never discussed that.
17 They never discussed with me.

18 Q Perfect. Thank you.

19 Okay, Judge, we withdrew number eight, so I move on
20 to number nine.

21 Your counsel, Ms. Walker and Ms. Pinnock, failed to
22 object to a leading question, and did they explain why
23 they failed to object to this leading question by the
24 State.

25 This is the phone call where Maurice Roberts and

1 Demetrius James, Vincent Nelson and Deshawn McClary agreed
2 they were going to rob the studio. Did they explain to
3 you why they failed to object to that question?

4 A No, sir. They never explained to me that. We never
5 spoke about that.

6 Q Okay.

7 Judge, we withdrew number ten.

8 THE COURT: All right.

9 BY MR. JOHNSON:

10 Q So I'm skipping that, and on number 11, counsel
11 Ms. Walker and Ms. Pinnock, did they ever explain to you
12 why they failed to bring to the Court's attention two
13 members of the jury were falling asleep until later in the
14 trial, and the Court refused to inquire about this saying
15 it should have been brought to the Court's attention
16 sooner. I'm referencing page 528, lines six through 25.
17 Did they ever explain that to you?

18 A I remember Tracy -- Tracy Pinnock, she brought up
19 something about a juror going to sleep or something like
20 that, and then something about premature jury
21 deliberations came into play about the jury prematurely
22 discussing the case about two State's witnesses that had
23 come in testified or whatever.

24 Q Okay.

25 A And a juror had went to sleep. So I remember her

1 saying something about that, about a juror going to sleep
2 or whatever, but I'm not -- yes, she -- I'm pretty sure
3 that she may have -- that she may have mentioned -- I
4 think we had to get an alternate juror. So we switched
5 one juror for another one --

6 Q Okay.

7 A -- if I'm not mistaken.

8 Q That's okay. Thank you for answering the question.

9 Moving on to number 12, did they talk to you or
10 explain about why counsel Walker and Pinnock failed to
11 comply with Rule 5 to allow -- it says failed to comply
12 with Rule 5 and try to get in a letter by State's witness
13 Juwaan Duckett that was exculpatory, and they failed to
14 properly mark and identify the letter during the
15 cross-examination of Mr. Duckett to allow him to bring in
16 testimony of Vanessa Jarvis as a notary who witnessed the
17 Duckett letter, page 677, did they have an explanation for
18 you as to why they failed to do that?

19 A From what I understood, Tracy had said -- as a matter
20 of fact, if I can go to the page briefly -- let's see. It
21 wouldn't be -- basically page 678, the thing about it,
22 Duckett said on the stand after they told members of the
23 jury to step out that he didn't sign the letter, but
24 Vanessa Jarvis is the notary, and that is -- you go back
25 to 12, it says the notary who witnessed Duckett sign the

1 letter for impeachment.

2 The thing was, Tracy was saying that she didn't plan
3 on introducing the letter as evidence. It's her case.
4 She said she wanted to use it just for impeachment
5 purposes; that she didn't plan on introducing the letter
6 as evidence itself or whatever so the judge was like --
7 this is page 678.

8 Q Well, let's limit it to answering my question,
9 though. Did they explain to you why they failed to
10 properly identify the letter so they could then use it by
11 bringing in the testimony of Vanessa Jarvis?

12 A All she told me was that she wasn't planning on
13 introducing the evidence -- or introducing it as evidence.
14 She just was planning on using it purely for impeachment
15 purposes.

16 Q Okay.

17 A And she was saying that, I guess, under the Rule 5
18 subsection part, whatever, I guess that if you don't plan
19 on -- that's only type of evidence that you don't have to
20 introduce or whatever, I guess it's impeachment evidence
21 or whatever.

22 So Vanessa Jarvis basically wasn't able to come in
23 front of the -- in front of the jury and basically confirm
24 that she's the one who stamped and notarized and witnessed
25 Juwaan Duckett sign his name on that letter where Duckett

1 said it wasn't his signature. He didn't sign it at all.

2 Q Is that referencing the letter, Plaintiff's Exhibit
3 2?

4 A Yes, that's a referencing -- yeah.

5 Q Okay. Okay, thank you. And the -- moving on to 13,
6 did they explain, Attorneys Walker and Pinnock, did they
7 explain to you why they failed to object to the portion of
8 the photo lineups containing the jail website, although
9 they attempted an objection to that later, and they failed
10 to object to it, and this -- these were later given to the
11 jury in evidence. Did they explain to you why they failed
12 do that?

13 A If I remember correct, I believe Anastasia Walker may
14 have pointed it out, brought it up at some point in the
15 trial about how the jail website was -- which would have
16 been prejudicial. The jail website was on -- something
17 about the jail website being at the bottom of the photo
18 because basically when you're in trial, you want the jury
19 to see, I guess, the defendant in handcuffs. You don't
20 want them to know that he's incarcerated while he's --
21 while he's in trial.

22 So if you were to show them a photo lineup that had
23 the jail website, then it's more obvious or more evident
24 that he's incarcerated or that he had been incarcerated.
25 So I believe Anastasia Walker had pointed that out or

1 whatever.

2 That's the same thing we were trying to prevent just
3 for the purposes of having a fair trial, why they allowed
4 me to take the handcuffs off of my wrist or whatever so
5 that the jurors could not see that I was -- that I was in
6 the Alvin S. Glenn Detention Center.

7 Q Okay.

8 A Or that I was detained until a pending trial or
9 whatever before trial.

10 MR. JOHNSON: Your Honor, moving on, I have a Second
11 Amendment to Application for Post Conviction Relief. I
12 think based on my understanding of the law, both of those
13 allegations -- we're not moving forward on them. So on
14 the Second Amendment to the Application, my amendments one
15 and two, I'm going to withdraw those.

16 THE COURT: Yes, sir.

17 THE WITNESS: Oh, oh, oh. Can I object to that, Your
18 Honor, because that's a conflict interest. If you're
19 saying you're objecting to --

20 THE COURT: Wait, wait, wait.

21 THE WITNESS: -- the first one --

22 THE COURT: Sir, don't. Please.

23 Do you need to talk to your client?

24 MR. JOHNSON: I'll talk to my client.

25 THE WITNESS: Yeah.

1 (Whereupon, there was an off-the-record discussion
2 between Applicant and his Counsel).

3 MR. JOHNSON: Your Honor, I think -- I guess I need
4 to clarify.

5 (Pause).

6 I think my client is trying to move to represent
7 himself. He is trying to move to represent himself in the
8 PCR because I made my decision on that. I don't know if
9 you want to question him on the record about that or how
10 you want to --

11 THE COURT: It's overruled.

12 MS. DIXON: Your Honor, we're going to object to pro
13 se representation. I don't know that's really appropriate
14 in a PCR like this.

15 THE COURT: I won't honor that objection. You're his
16 lawyer here today.

17 MR. JOHNSON: Yes, sir.

18 THE COURT: All right.

19 MR. JOHNSON: I'll just put that on the record
20 regarding the withdrawing the Second Amended Application
21 of Post Conviction Relief.

22 That's all we have.

23 MS. DIXON: Your Honor, may we have about five
24 minutes?

25 THE COURT: Yes, ma'am.

1 MS. DIXON: Okay.

2 (WHEREUPON, a short break was taken.)

3 CROSS-EXAMINATION:

4 BY MS. DIXON:

5 Q All right. Mr. James, how are you today?

6 A I'm all right. And yourself?

7 Q I'm good. Thanks for asking.

8 A Yeah.

9 Q Just real quickly, you're currently serving what
10 sentence?

11 A They gave me a 30-year sentence for attempted murder,
12 attempted murder, burglary in the first degree and
13 attempted armed robbery.

14 Q Got you. And you recall that jury was hung as to the
15 murder charge, correct?

16 A Yes, ma'am.

17 Q And did the State ever come back and try you on that?

18 A No. The State dismissed that charge along with the
19 pending case. They dismissed it. They said they
20 dismissed it without prejudice because Juwaan Duckett had
21 reached a plea agreement.

22 Q Right.

23 A Not Juwaan Duckett but Deshawn McClary had reached an
24 agreement and Luck Campbell, the Solicitor who was -- she
25 had agreed dismiss it. I believe it was "nolle prosequere" or

1 something.

2 Q Regarding the charges we are here on today, you
3 understand the only relief the judge can give you is a new
4 trial, correct?

5 A I believe I had asked for a vacate. I don't know if
6 that's same thing because I'm not familiar.

7 Q So basically, if he gives you relief today, it will
8 vacate your convictions, but the State can come back and
9 retry you on all of those charges. Do you understand
10 that?

11 A Yes, ma'am.

12 Q And if convicted of first degree burglary, do you
13 know what sentence you would face?

14 A I guess whatever it carries, the minimum or the max,
15 not to say whatever. I really don't know.

16 Q It's 15 to life --

17 A Fifteen to life?

18 Q -- if you are convicted of first degree burglary, and
19 in terms of attempted murder -- and you had two of those,
20 correct?

21 A Attempted murder, attempted --

22 Q And if you were retried and convicted of those, you
23 could face up to 30 years for each one. Now, if the judge
24 ran them consecutively, that would be 60 years. Do you
25 understand that you could face up to 20 years for

1 attempted armed robbery?

2 All total, if you were to get a new trial, you could
3 potentially be facing life plus, let's see, 80 years if
4 you are convicted at a murder trial. That's taking away
5 the murder charge. You could potentially be facing life
6 plus 80. Do you understand that?

7 A You know I wasn't convicted of murder, right?

8 Q I do know you weren't convicted of murder, but you
9 weren't acquitted of it either.

10 A They dismissed it.

11 Q Okay. So setting aside the murder charge, you do
12 understand that with the remaining charges, if you get a
13 new trial, you could be facing life plus 80 years if you
14 were convicted. Do you understand that?

15 A I understand what the charges carry.

16 Q Okay. And knowing that, you wish to proceed?

17 A Oh yes, ma'am.

18 Q And you recall testifying at trial?

19 A At my trial, yes, ma'am, I do.

20 Q And you testified that you were, in fact, at the
21 victim's home when the shooter occurred?

22 A I testified that I had -- it was more so by
23 happenstance. I just so happened to be there.

24 Q You were there, though.

25 A I was more so invited.

1 Q You don't deny being there?

2 A Ma'am?

3 Q You don't deny being there?

4 A I don't deny being there, no.

5 Q Okay. You were going with -- you didn't know
6 victims, correct?

7 A No, ma'am, I didn't know them.

8 Q And you were going with Maurice Roberts, the
9 codefendant?

10 A No. I actually had met Maurice Roberts, and if you
11 go back to the testimony, I had met Maurice Roberts to buy
12 a nickel bag of marijuana. I was about to buy some
13 marijuana, and I had met him. And he was there with
14 Deshawn McClary, and then I was invited to go to a studio.

15 Q Got you. Okay.

16 A So that's how I happened to be there.

17 Q And then moving on, you have raised an issue with the
18 jail site being on your photo lineup, the website to the
19 jail detention center. Do you recall your lawyer raising
20 this argument at trial?

21 A Like I said, I believe Anastasia may have said
22 something about the jail website being on it, but I --

23 Q Okay.

24 A It's been so long.

25 Q And, Your Honor, just for the record, the pretrial

1 Biggers hearing begins at page 35. The cross-examination
2 about the jail website is 53, 57, 83 and 84.

3 Se did argue it made it unduly suggestive at 91. At
4 page 95, it was renewed. On page 394, 522, there was
5 another hearing held before a different witness. It was
6 raised again on page 461, and the Court again found the
7 website did not make it unduly suggestive on page 462. It
8 was renewed at a different stage at the close of the
9 defense's case and after the State's rebuttal.

10 THE COURT: Yes, ma'am.

11 MS. DIXON: And with that, we have no further
12 questions.

13 THE COURT: All right. Mr. Johnson?

14 MR. JOHNSON: No, nothing further, Your Honor.

15 THE COURT: Thank you.

16 Thank you, sir.

17 Mr. James, you may step down, sir.

18 MR. JOHNSON: No further witnesses, Your Honor.

19 THE COURT: You may step down, sir.

20 MS. DIXON: Your Honor, we would call Tracy Pinnock.

21 TRACY PINNOCK, after being duly sworn,
22 testified as follows:

23 MS. PINNOCK: Have a seat. Watch your step up, full
24 name for the record, spell your last.

25 THE WITNESS: Tracy Pinnock.

DIRECT EXAMINATION:

BY MS. DIXON:

Q How are you today?

A Good. How are you?

Q Good. Do you recall how you became involved with Mr. James' case?

A I am not the lead counsel for Mr. James. I was asked by Ms. Walker to work with her on the case. I don't have the exact date. Actually, I might be able to -- sometime maybe October, November of 2013 is when I got involved.

Q Okay. So you were kind of second chair?

A Yes.

Q Okay. And do you recall about how many times you met with Mr. James?

A Bear with me. I'm just going through the notes that I have.

(Pause).

At least five that I have documentation of being at. I don't -- they weren't -- it wasn't my case, so I wasn't the person.

Q Okay. So you met with him at least five times?

A Yes.

Q Okay. And then do you recall briefly the evidence the State had against him?

A Briefly. Do you want me to go through it? What I

1 have?

2 Q Just real quickly. Yeah, just briefly, the primary
3 evidence that you think the State had.

4 A What I can remember, there were four -- at least four
5 individuals charged. It was reported that there was some
6 conversation prior to the shooting where there was a plan
7 or something to go do a lick or some sort of robbery.

8 They were alleging that there was a struggle at the
9 door between two people who resided at the home and two of
10 the individuals who were charged. At that point, a weapon
11 was involved.

12 Mr. Roberts, I believe, was the person who ended up
13 shooting and killing the deceased. I apologize, I don't
14 remember individual's name, and then there were multiple
15 statements taken by -- you know, from people were charged,
16 I believe, and then there were identifications made from
17 the folks inside the home.

18 Q Got you. Okay.

19 A Best I can recall.

20 Q Okay. So do you recall a codefendant testifying
21 against him?

22 A Yes.

23 Q Okay. And then two of the victims identified him
24 from a photo lineup?

25 A I believe that's correct.

1 Q And did y'all discuss the evidence with him?

2 A At the meetings that I was at, we did -- we did
3 discuss things because we were, you know, leading up to
4 the trial. What was discussed at meetings that I was not
5 present at, I can't speak to.

6 Q Got you.

7 (Pause.)

8 Let's see. I think that's all we have for
9 Ms. Pinnock, Your Honor.

10 THE COURT: Mr. Johnson?

11 CROSS-EXAMINATION:

12 BY MR. JOHNSON:

13 Q Thank you.

14 Okay. You're Ms. Pinnock?

15 A Yes.

16 Q Okay. Did you have any conversations about calling
17 Deshawn McClary as a witness?

18 A I don't having conversations about calling Mr.
19 McClary.

20 Q Did you ever review what's been marked as Plaintiff's
21 Exhibit 1?

22 A I honestly don't recall this. It's in the file. It
23 was clocked in the Clerk of Court's Office, but I don't
24 recall if I pulled it from the Clerk's Office or Ms.
25 Walker pulled it from the Clerk's Office. It's in the

1 file. It's just I don't remember who got it.

2 Q Do you have any memory of when you might have
3 received it, before or after trial?

4 A No.

5 Q Okay. And the -- did you make an attempt -- you said
6 you were not aware of an attempt to interview Deshawn
7 McClary?

8 A I do not recall attempts to interview Mr. McClary,
9 and I apologize.

10 Q How many times did you meet with Mr. James to review
11 evidence?

12 A I was in the meetings at least five times according
13 to the notice that I have with dates on them. It could be
14 more than that, but it was a minimum of five.

15 Q Okay. Did you do all those meetings? Were they at
16 the Richland jail?

17 A The majority of them were. I do believe we met with
18 Mr. James in the holding cell here. I don't remember why
19 he was at the courthouse, but the majority of our
20 conversations would have been at Alvin S. Glenn.

21 Q Okay. Did you have an investigator meet with
22 Mr. James?

23 A I don't recall. I know we had an investigator on his
24 case, but I don't recall if he went down to the jail to
25 speak with him or not.

1 Q Okay. Now, do you recall -- and I'm referencing
2 number nine at this point on the original amended
3 application a leading question by the State asking this is
4 the phone call with Mr. Maurice Roberts and Demetrius
5 James, Vincent Nelson, Deshawn McClary agreed they were
6 going to rob a studio. I'm referencing page 338 lines 13
7 to 16. Do you recall why you did not object to that
8 question?

9 A You said page -- I'm sorry, page 338?

10 Q Uh-huh, 338. So starting lines 13.

11 A Okay. I can't answer that because it appears from
12 the transcript that Ms. Walker was handling that with us,
13 so I would not have been the one --

14 Q Okay.

15 A -- objecting to things.

16 Q Okay. And on page 375, this is referencing Trenton
17 Scott. Would that have been a witness that you would have
18 objected to questions on?

19 MS. DIXON: I thought that you waived him.

20 MR. JOHNSON: I'm sorry. I'm sorry. I'm jumping to
21 -- all right. You're correct. I'm sorry.

22 Judge, we withdrew number ten, and that was then
23 number ten. That's the previous.

24 BY MR. JOHNSON:

25 Q I'm sorry, Miss. My mistake.

1 I'm referencing now -- okay. I'm jumping to number
2 11 because 10 was withdrawn.

3 THE COURT: All right.

4 BY MR. JOHNSON:

5 Q All right. I'm referencing number 11. There was an
6 incident in the trial where two members of the jury fell
7 asleep, and the Court refused to inquire.

8 I'm referencing page -- lines six through 25, but it
9 also jumps to page 529. There was an incident where two
10 members of the jury had fallen asleep, and the Court
11 refused to inquire and saying that this should have been
12 brought to the Court's attention sooner. Do you recall
13 that incident?

14 A Yes. I recall this being an issue that came up.

15 Q Okay. Do you recall why you did not bring that to
16 the Court's attention earlier?

17 A I do not but Ms. Walker might be a better person to
18 ask about that. It appears from the transcript that she
19 was the one that was arguing it --

20 Q Okay.

21 A -- to the judge at that time.

22 Q Okay. Moving on from number the 12, this was the
23 issue regarding a letter by the State's witness Juwaan
24 Duckett, and I'll hand you what was marked as Plaintiff's
25 Exhibit number 2, and this was referencing the exchange

1 with the Court. I think this is going to reference page
2 677, line 20.

3 This is a situation where the testimony of Vanessa
4 Jarvis, the notary, basically was not allowed in because
5 the Court indicated that during the testimony of the
6 witness, Mr. Duckett, that the defense failed to properly
7 mark and identify the letter during the cross-examination
8 of Duckett to allow him to bring it in and identify the
9 letter.

10 Do you recall why defense counsel, either you or
11 co-counsel, failed to identify that properly in the
12 previous testimony?

13 A No. I remember this coming up, and I recall having
14 the notary present to try to introduce it. We wanted to
15 use it for impeachment, and we made the attempt. The
16 Solicitor's Office objected. We argued that it was not a
17 Rule 5 violation, and then the judge sustained their
18 objection.

19 Q Okay.

20 A I would have to go back and review the testimony of
21 Mr. Duckett to see for sure if we tried -- if we did or
22 did not identify it during that time. Off the top of my
23 head, I don't remember. So the short answer is no.

24 Q Okay. And I'm just referring -- if you want to read
25 the Court's explanation of why they were not allowed in,

1 it is on that page 677 following through to page 680 where
2 the Court explains that.

3 It's my understanding the reason that defense
4 counsel, both of you, were trying to work on using that
5 letter was because it was useful to impeach the testimony.
6 Is that --

7 MS. DIXON: I object to the argument.

8 MR. JOHNSON: Well --

9 MS. DIXON: That's kind of crossing a line. I don't
10 know.

11 THE COURT: Mr. Johnson, just ask her why.

12 BY MR. JOHNSON:

13 Q Why was this letter useful? Why were you trying to
14 use Mr. Duckette's letter?

15 A Give me just one moment to read it.

16 (Pause).

17 Okay. So the letter that we were attempting to use
18 for impeachment against Mr. Duckett pretty much says that
19 Demetrius James didn't have anything to do with any sort
20 of plan.

21 MS. DIXON: Object to hearsay.

22 THE COURT: Sustained.

23 THE WITNESS: Sorry. It was -- it would have been
24 beneficial to our defense if we had been able to use the
25 letter for impeachment.

1 BY MR. JOHNSON:

2 Q Okay. Very good.

3 I'll move on to number 13. Do you recall -- this is
4 page 864, line 17. Regarding the photo lineup, do you
5 recall why the defense failed to object to the portion of
6 the photo lineup up from the jail website, and these were
7 given to the jury in evidence. Do you recall that?

8 A I do not recall if we addressed it before this point.
9 It is being addressed by Ms. Walker at this point, but I
10 don't have any recollection of us making any motions prior
11 to that.

12 MR. JOHNSON: Okay. Well, those are all the
13 questions I have, Judge.

14 THE COURT: Redirect examination?

15 MS. DIXON: Quickly in response to what he just
16 cross-examined Ms. Pinnock about.

17 REDIRECT EXAMINATION:

18 BY MS. DIXON:

19 Q Regarding this letter from Deshawn McClary, do you
20 recall a trial for the codefendant, Maurice Roberts?

21 A Vaguely. I believe Mr. James testified in that
22 trial.

23 Q Do you recall whether McClary testified at that
24 trial?

25 A I believe on all of the charges they both testified.

1 Q Okay.

2 A I think that's how it happened.

3 Q Do you recall whether Mr. McClary implicated

4 Mr. James during Maurice Roberts' trial?

5 A My recollection is all of the statements -- all of

6 the testimony, I mean implicated everybody, I believe.

7 Q Okay. That McClary implicated everybody?

8 A I believe so, yes.

9 Q Based upon your recollection?

10 A Yes.

11 Q Turning to the direct letter. I think -- do you

12 recall that your primary purpose for using that was for

13 impeachment purposes?

14 A Yes, we were going to use it for impeachment.

15 Q And do you recall actually finding a Discovery

16 violation? I can direct you to -- hold on a second, page

17 678 line 18.

18 A 678, you said line 18?

19 Q Yes.

20 A Yes, it says the Court did find there was a Discovery

21 violation.

22 Q And in terms of impeaching, do you recall Duckett

23 denying ever having seen the letter or having written the

24 letter or signed the letter when it was presented to him

25 at trial, and that was on page 358?

1 A Is that 358?

2 Q Yes.

3 A The transcript reflects that he denied ever seeing
4 it, denied signing it.

5 Q Okay. And then in terms of the sleeping juror, do
6 you recall there being a discussion -- and the judge
7 actually did release a juror in a pink shirt for
8 sleeping -- and that's on page 404 to 410 of the
9 transcript?

10 A I do recall it being an issue that came up. You said
11 404 to --

12 Q 404 and 410 is where you had the discussion.

13 A Okay. Well, I do remember it being an issue, and
14 that juror was replaced with an alternate.

15 MS. DIXON: Got you.

16 Okay. Nothing further.

17 MR. JOHNSON: Nothing further, Your Honor.

18 THE COURT: Okay. Thank you, ma'am.

19 MS. DIXON: The State would call Anastasia Walker.

20 ANASTASIA WALKER, after being duly
21 sworn, testified as follows:

22 THE COURT: All right.

23 THE BAILIFF: Step right up. State your full name
24 for the record and spell your last name.

25 THE WITNESS: Anastasia Walker, W-A-L-K-E-R.

DIRECT EXAMINATION:

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BY MS. DIXON:

Q Ms. Walker, how are you today?

A Good.

Q Good. And do you recall how you got involved in Mr. James' case?

A Yes. I believe another attorney had left our office very early into the case, and it was sent to me, transferred to me.

Q Okay. And do you recall how many times you met with him?

A No, quite a few.

Q Okay. More than -- more than five?

A Yes.

Q Okay.

A Yes.

Q And did you have time to review the Discovery with him?

A Yes.

Q And let's see. I'm just going to -- in terms of this letter that y'all had from Mr. Duckett, there's been some testimony that it was primarily -- y'all were intending to use it for impeachment purposes. Is that your recollection?

A Yes. We had -- the reason we didn't turn it over is

1 because we were going to use it as impeachment purposes if
2 Mr. Duckett testified contrary to the contents of letter
3 which he did.

4 In hindsight, we should have turned it over as part
5 of reciprocal Rule 5 so we wouldn't run into the issues
6 that came forward.

7 Q But you would agree you had not intended to use it in
8 your case in chief prior to trial?

9 A We knew that -- I wouldn't say that we didn't intend
10 to use it. If Mr. Duckett testified we were going use it
11 for impeachment, but because we thought there was pretty
12 high likelihood that it would come up and that he was
13 going to testify, so we should have put it in. We should
14 have turned it over to the State rather than held onto it
15 in case of impeachment.

16 Q Okay. All right. And going back -- and I believe
17 that Mr. Johnson questioned Ms. Pinnock about a leading
18 question that occurred on page 338 of the transcript at
19 lines 13 through 16 -- and let's go back to the phone
20 call. This is the phone call where she names the
21 codefendants agreed they're going to rob a studio. That
22 was question presented by the State, correct?

23 A Uh-huh.

24 Q Okay. If you'll go back to page 324, 325, 326, 327
25 and 328 and just review that. And let me know when you

1 had a chance to review that.

2 (Pause.)

3 A You said up to 328, correct?

4 Q Yes. Yes, and my question would be based on your
5 review of the transcript, had Duckett previously testified
6 about this phone call.

7 A (There was no response.)

8 Q And I will direct you to page -- starting at 324, he
9 says he's at Maurice's house?

10 A Oh you're talking about where Maurice received a
11 phone call?

12 Q Yes, yes. Where Duckett was testifying that Maurice
13 received a phone call?

14 A Yes.

15 Q Okay. And so Duckett had already testified that
16 Maurice had received a phone call, and that he testified
17 about the phone call itself. If you want to look at page
18 325 lines 12 through 16, 12 through 20.

19 A Yes, I see where he's talking about a phone call
20 Maurice had received.

21 Q What was -- and what was his testimony about the
22 substance of the phone call?

23 A It appears that Maurice received a phone call and he
24 was not -- he didn't hear the other party, but after the
25 phone call, Maurice asked him a question regarding --

1 Q What did Maurice ask him based on the testimony?

2 A I'm sorry?

3 Q What did Maurice ask him based on the testimony?

4 A It looks like to participate in a robbery or a lick.

5 Q Okay. Do you recall making several objection to this

6 testimony?

7 A It appears that I made some -- quite a few objections

8 on leading --

9 Q Okay. And then --

10 A -- during --

11 Q And then moving on to the issue with the jail website

12 being on the lineup, do you recall a pretrial Biggers

13 hearing?

14 A I do.

15 Q And do you recall raising this argument to the judge?

16 A I believe I did raise the argument regarding the jail

17 website and that there were numbers at the bottoms of the

18 photograph and that Mr. James' -- Mr. James' photograph

19 had more numbers than all the other photographs.

20 Q And that in addition to that, you recall raising the

21 issue of the website being there -- and I'll direct you to

22 page 91 lines 11 through 17; 94 lines two through six.

23 A Yes.

24 Q All right.

25 A It appears I -- that was part of my argument.

1 MS. DIXON: All right. Nothing further from the
2 State.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: Just briefly, Your Honor.

5 CROSS-EXAMINATION:

6 BY MR. JOHNSON:

7 Q The -- did you recall ever trying to speak with
8 Deshawn McClary in preparation for trial?

9 A If I remember correctly, he -- out of the four
10 defendants in this case, McClary's case was the only one
11 left after Mr. James went to trial. I reached out to his
12 counsel since he was represented, and I was -- I believe
13 he opted to not speak with me. I don't believe he
14 testified, if I remember correctly.

15 Q Okay. How many times did you say you met with
16 Mr. James?

17 A If you give two seconds, I can tell you, roughly.

18 Q Okay.

19 (Pause).

20 A Around 15, it looks like, give or take.

21 Q Okay.

22 A Just scanning through my notes.

23 Q Okay. Did you have a private investigator meet with
24 him to work on the case?

25 A I don't know if he met with Mr. James. We had

1 Investigator Joseph Best look at a couple of issues, but
2 I'm not sure if he met with Demetrius himself.

3 Q Okay. Let's see. Referencing the allegation number
4 nine on the amended application, this question -- did you
5 intentionally -- did you know you were failing to object
6 to this leading question regarding the phone call, was
7 that intentional? Do you remember if that was an
8 intentional thing or did you -- should you have objected
9 to that as a leading question.

10 A It was a leading question. I should have also
11 objected to it. I did it previously --

12 Q Okay.

13 A -- and failed to do it at that point.

14 Q Okay. And on number 11, the Court indicates when
15 jurors are falling asleep, that this should have been
16 brought up earlier. Do you know why you failed to bring
17 that up earlier to the Court's attention?

18 A I don't.

19 Q Okay.

20 A I have no idea why we didn't bring it up earlier than
21 moment we did.

22 Q And moving on to number 12 of the allegations, this
23 Duckett letter, that is something that the Court indicated
24 you did not properly identify it during the testimony of
25 Mr. Duckett. So therefore, they could not identify it for

1 use with the notary's testimony, correct?

2 A Can you say it one more time?

3 Q Well, Vanessa Jarvis, the testimony of Vanessa
4 Jarvis -- I'm referencing page 677, line 20 to 680, where
5 the Court indicates since there was no testimony -- you
6 didn't bring any testimony out on cross-examination to
7 identify the letter earlier, you couldn't use it at that
8 point to be identified by Ms. Jarvis, correct?

9 A Yes, because I believe I attempted to show the letter
10 to Mr. Duckett who denied it was his signature and so then
11 when we called in the -- or we attempted to call in the
12 notary to get it in that way, and then the State objected.

13 Q Okay. Do you know why you did not identify it
14 properly during Mr. Duckette's testimony?

15 A I attempted to go to use to it go over with
16 Mr. Duckett who denied it was his signature.

17 Q But when the Court indicates that there was no
18 identification, proper identification of it, so they're
19 not -- I'm sorry?

20 A I am so sorry. Tell me what lines again.

21 Q I'm starting on the conversation starting on 677,
22 line 20. It flows through page 680, line 20. It's my
23 understanding that the Court is saying it -- you can't ID
24 the letter because no questions were asked of
25 Mr. Duckette's ID it.

1 So now to try to use the letter in the testimony of
2 Ms. Jarvis would not be proper, and it should have been
3 identified on the record. That is what I am asking about
4 that procedure.

5 A I see. Yeah, it appears that in my attempt with
6 Mr. Duckett to review the letter, and then when he denied
7 it, I failed to enter it as an exhibit for identification
8 so -- to bring it up later and lay that foundation. So
9 yes, it appears that I did do that.

10 Q Okay. And do you feel like maybe in retrospect you
11 should have identified the letter so you should have used
12 it?

13 A Absolutely.

14 Q Okay.

15 A We should have turned it over as part of Rule 5, so
16 more than one failure there.

17 Q Okay. And under 13, allegation number 13, you said
18 this jail website, this was something you did object to
19 previously with those numbers?

20 A I identified -- yes. There were six numbers under
21 Mr. James' photo, and the other photos in the lineup had
22 only five digits.

23 Q But this specific objection, I'm referencing page
24 864 -- and this would be lines 17 through 25 where --
25 Judge, I'm sorry. I'm going to try get to that real

1 quick.

2 THE COURT: That's fine, sir.

3 THE WITNESS: Yes, I see that.

4 BY MR. JOHNSON:

5 Q Okay. So it appears you objected to the website on
6 this lineup, correct?

7 A Uh-huh.

8 Q And the judge said, "Well, it's already gone back to
9 the jury."

10 A That is what it appears the judge said.

11 Q Under -- starting on line 17, 864, you say, "Just
12 regarding lineups, we made such painstaking efforts to
13 keep the jury from knowing Mr. James is in jail, regarding
14 shackling or dressing at the trial, regarding the lineups,
15 they all have the jail website that is indicated at the
16 bottom. And as I argued before, that would be my only
17 concern about the piece of evidence going back to the
18 jury."

19 He said, "Well, they're in evidence. They're going
20 back." Are you saying you specifically objected to the
21 jail website prior to trial?

22 A In the Biggers hearing, I believe I went over my two
23 objections regarding the Biggers lineup at that time.

24 Q Was it specifically this portion of the lineup that
25 was the jail website?

1 A I believe so, in my Biggers hearing that I identified
2 that issue that the jail website was at the bottom of it.

3 Q Okay. And when the Court said, "It's already in",
4 he's indicating that it's already been ruled on?

5 A Yes.

6 Q Okay.

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

8 REDIRECT EXAMINATION:

9 BY MS. DIXON:

10 Q Just one point for clarification. On page 91 -- this
11 is part of the Biggers hearing, page 91 of the transcript,
12 lines 11 through 15, you say, "Clearly, on the bottom of
13 each page, there is a website for the Alvin S. Glenn
14 Detention Center that those photographs were taken from
15 the jail. I think that's unduly suggestive."

16 Would you agree that you did, in fact, raise this as
17 part of your Biggers argument?

18 A It appears that I did.

19 Q Okay.

20 A I'm not sure if I renewed it later on other than --

21 Q We can look through that if you like. Go to --
22 during Troy Scott's testimony pages 394, lines three
23 through four, review that and let me know if y'all
24 reviewed your pretrial objection at that time.

25 (Pause).

1 A It appears that we did.

2 Q And during Troy Scott's testimony, page 522, lines
3 nine through 10, can you review that and let me know if
4 y'all renewed that again?

5 (Pause).

6 A Yes. It appears Ms. Pinnock did renew the objection,
7 as I pointed to --

8 Q Okay.

9 A -- regarding --

10 Q Right before Vincent Nelson's testimony, can you look
11 at page 457 through -63 and see you can recall whether
12 there was another Jackson v. Denno hearing held as to
13 Nelson's identification?

14 (Pause).

15 A Wait. Do you mean Biggers?

16 Q I do mean Biggers. I'm sorry.

17 A That's okay.

18 Q Thank you.

19 A No, that's okay. I was...

20 (Pause).

21 Okay. Yes. It appears we reviewed the issue
22 regarding the previous objection at the pretrial hearing.

23 Q And then if you look at pages 461, lines four through
24 nine, did you again bring the issue up of the jail website
25 making it unduly suggestive?

1 A Yes.

2 MS. DIXON: Okay. Nothing further.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: Nothing further, Your Honor.

5 THE COURT: Thank you, ma'am.

6 MR. JOHNSON: Thank you, sir.

7 THE COURT: Thank you, ma'am.

8 Anyone else?

9 MS. DIXON: Your Honor, we don't have any more
10 witnesses. I did ask at the beginning if I could just
11 point the Court to two cases --

12 THE COURT: Yes, ma'am.

13 MS. DIXON: -- that I think are applicable to some
14 issues raised. The first would be State v. Aldret.
15 That's -- the cite for that is 333 SC 307. It's a 1999
16 case.

17 This case goes to his argument about the premature
18 jury deliberations, and I would just note that in that
19 case, the Court did find that a defendant must show
20 prejudice from premature deliberations in order for to it
21 constitute any kind of reversible error.

22 I will also note for the record that the Court did,
23 in fact, go through the jury and poll them all as to
24 whether they would have any prejudice from this, and
25 that's on page 532 through 46 of the transcript.

1 THE COURT: Can you give me the South Carolina
2 number?

3 MR. JOHNSON: Yes, sir. It's 333 SC 307.

4 THE COURT: Okay.

5 MS. DIXON: That's State v. Aldret.

6 The other case I want to bring to your attention is
7 State v. Belcher. That's 385 SC 597. That's a 2009 case.
8 That was controlling law at the time of the 2014 trial,
9 and under that case we would submit that the charge
10 related to analysis was proper law at that time.

11 For further evidence of that, State v. Burdette when
12 later overruled it in 2019 but does reference it, I
13 believe, but footnote three talks about how that was, in
14 fact, the law in South Carolina was.

15 THE COURT: Okay.

16 Mr. Johnson, anything further?

17 MR. JOHNSON: I don't have anything further, Judge.

18 THE COURT: All right. Y'all have been mighty
19 patient with me. I appreciate that.

20 Mr. James, I don't know how I'm going rule yet, but
21 regardless, I wish you the best, sir.

22 THE APPLICANT: Thank you, Your Honor.

23 MR. JOHNSON: Thank you, Judge.

24 (Whereupon, the proceedings were concluded.)
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 11th day of
January, 2023.

January 13, 2025

Karen Ambroziak

Karen Ambroziak
Circuit Court Reporter



8-11-14

DEAR; MRS. JEANETTE W. MCBRIDE

ON February the 1st of 2013, I Deshawn McClary was arrested in Orangeburg South Carolina for murder, upon arriving in Columbia South Carolina at the headquarters on two notch road I was clueless as to who I allegedly murdered, after being read my rights the investigators explained to me what was going on. I know I didn't murder anyone so I asked for my lawyer. The investigators sent me to a holding cell where I was to be taken to A.S.G.D.C, before leaving the investigators told me to contact them when I was ready to go home. I later returned to the investigators office where Deshawn McClary was told by investigators Boland and Tanner, that if I went along and said that myself, Maurice Roberts, Denetrice James, and Vincent Nelson went to Williamsburg to commit a robbery I would be free to go after conviction, I didn't know much about the law then and I was ready to go home so I went with it, I was told I would be used as a witness and later be released. After studying my case laws, I realized I was lead by investigator's Tanner & Boland to implicate myself & others in a robbery that was never planned. Myself, Maurice, and Vincent left Maurice's house with the intent to go to the studio on Williamsburg. on the way there Maurice recieved a Phone call, after hanging up he said Denetrice would be meeting us at

RICHLAND COUNTY
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E.E Taylor, when we got to the school, Demetrice & Maurice walked off, when they returned Maurice said Demetrice was coming to the studio also. Vincent asked Maurice to hold his phone & said he would call if they said we could all come. 9 minutes later my phone rang and it was Vincent, he asked to speak ~~to~~ with Maurice, Maurice walked off and when he came back he said Vincent and the owners of the studio were coming out to meet us. My phone rang again and it was a text from Vincent, it said we outside, I showed it to Maurice and he took off down the driveway. By the time Demetrice and myself made it to the bottom, Maurice and one of the guys had gotten in a scuffle, Demetrice ran to help him and they ended up fighting in the house, during all the commotion a gun shot went off, Demetrice came running out of the house followed by Maurice who lifted a gun and shot several times, I then took off running back to Maurice's house where I called a ride and left, I didn't see Maurice, Demetrice, or Vincent after that night, and I wasn't aware that someone had died until I was arrested in Orangeburg South Carolina.

Shawn McCarty

P.S - I would like for a copy of this letter too be sent to each of my CO-Defendants lawyers.
Thank you

The Day of Brandon Jones getting Killed on Williamsburg Drive, Demetrice James wasn't at Maurice Roberts house, when they plan to do whatever they planned, It was Maurice Roberts, Deshaun McClary, Vincent Nelson, and one of Vincent home boy, when I walked in on the conversation. When I was at Headquarter The SD ask me plenty time who was all their when the plan whatever they plan and I told them 3 different story, I was nervous!!! I wasn't force or threatening to write this at ALL!!

11-16-13 James D. Puckett

SWORN AND SUBSCRIBED BEFORE ME
THIS 16th DAY OF October, 20 13

Vanessa Janis (L.S.)

MY COMMISSION EXPIRES: 2014



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Demetrice R. James, SCDC #361608,)

Case No. 2018-CP-40-3876

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2025 APR -9 AM 11:52
EMMETTE W. McBRIDE
CLERK, G.S. & F.C.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Demetrice R. James (Applicant) on July 24, 2018. Respondent filed a return requesting an evidentiary hearing. On January 11, 2023, an evidentiary hearing convened before the Honorable George M. McFadden Jr. Applicant was present and represented by Ola Johnson, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the beginning of the hearing, Applicant withdrew allegations (3), (6), (8), and (10) from the amended application.¹ In support of the remaining claims, Applicant testified on his behalf. Respondent called as witnesses trial counsel Tracy Pinnock and Anastasia Walker, Esquires. After hearing the testimony and reviewing the records before this Court, this Court finds Applicant failed to meet his burden of proof. Thus, this application is denied and dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is serving an aggregate thirty-year sentence in the South Carolina Department of Corrections. In February 2013, the Richland County Grand Jury indicted Applicant for murder (2013-GS-40-1434), two counts of attempted murder (-1432, -1433), attempted armed robbery (-

¹ Although counsel for Applicant waived the allegations of the second amended application, Applicant objected to that waiver. This Court will address those allegations.

1480), and first-degree burglary (-1448). These charges arose from a home invasion on January 25, 2013, that resulted in the fatal shooting of Bandon Jones and the non-fatal shootings of Trenton Scott and Joshua Williams.

On September 29-October 3, 2014, Applicant proceeded to a jury trial before the Honorable John C. Hayes. Tracy Pinnock and Anastasia Walker, Esquires, represented Applicant. Assistant Solicitors Nicole Simpson and Meghan Walker prosecuted the case. The jury was hung as to the murder charge but convicted Applicant as indicted to the remaining charges. Judge Hayes declared a mistrial on the murder charge and sentenced Applicant to concurrent terms of thirty years for each attempted murder and first-degree burglary, and twenty years for attempted armed robbery.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defenders Kathrine Hudgins and Tiffany Butler. On appeal, Applicant argued the court erred in (1) refusing to declare a mistrial based on premature jury deliberation and (2) allowing the State to call an investigator as a rebuttal witness. The Court of Appeals affirmed on the merits. Applicant filed a petition for rehearing, which was denied. Applicant then filed a petition for a writ of certiorari on issue one in the South Carolina Supreme Court, which was granted. After oral argument, the Supreme Court dismissed the writ as improvidently granted. The remittitur was sent May 29, 2018.

EVIDENCE PRESENTED AT TRIAL

At trial, Trenton Scott testified he was hanging out at his home on January 25, 2013, with his brother Troy Scott, Troy's girlfriend Cari Pearson, and friends Joshua Williams and Brandon Jones. Trenton testified Vincent Nelson stopped by around 11:00 p.m., which was unusual. Trenton noticed Nelson making several phone calls; during one of the calls, Trenton overheard Nelson say he was in the house. Thereafter, Nelson began pressuring Jones to go outside to smoke, and Nelson, Jones, and Williams went outside. (R. 293-96).

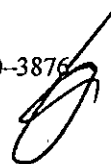
Williams likewise testified that Nelson showed up unexpectedly. Williams overheard Nelson say on the phone, "I'm outside. I'll be out there in a minute." (Tr. 196). He testified once outside, he heard someone walk by and giggle; that person then turned around, approached Williams, and said, "Don't move. Get down on the ground if you want to live." Williams stated he slowly put his hands up and looked at his attacker; he was then hit in the head. While on the ground, Williams heard Jones begging for his life. (Tr. 200-01).

Williams testified three more individuals approached, and Williams heard a scuffle. Williams also heard the door open and glass breaking inside. Williams remained on the ground, pretending to be dead. He heard someone shout, "Six hundred, don't do it. Don't do it."² Following the exclamation, Williams heard several gunshots and felt a jolt of pain before realizing he had been shot. Williams testified he didn't hear Jones anymore after the gunshots. (R.201-04). Jones later died from gunshot wounds. (R. 436).

While Williams, Jones, and Nelson were outside, Trenton testified Maurice Roberts entered the room with a gun pointed at Trenton's head. Trenton testified he and Roberts began fighting, and Roberts fell onto a glass table. Roberts dropped the gun, and Trenton and Roberts began struggling over the gun. Applicant walked in while they were fighting, and Roberts—who had recovered the gun—passed it to Applicant. Trenton testified Applicant stood in the doorway saying, "I'm about to shoot. I'm about to shoot." Trenton testified he and Troy eventually forced Roberts and Applicant towards the back door. Trenton attempted to grab Applicant by the dreadlocks, and Applicant fired a shot—striking Trenton. (R. 297-307).

Troy testified similarly. He recalled entering the room and seeing Trenton and Roberts

² According to trial testimony, Nelson, Applicant, Roberts, Deshawn McClary, and Jwaun Duckett were in a rap group called the "600 squad." (R. 248, 332).

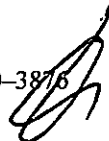


fighting; Troy testified he was in the process of breaking up the fight when Applicant entered the room. Troy testified he began fighting Applicant. Troy first noticed the gun when Applicant was holding and pointing it at Troy. Eventually Troy and Trenton forced Roberts and Applicant outside; they attempted to barricade the door to keep them out but "the gun [was] being waived" in the door crack. (Tr. 515). Troy testified Trenton tried to hit Applicant in the face, and the gun discharged. (Tr. 515-17). Troy and Trenton later identified Applicant from photo-lineups as the shooter. (R. 319, 393-93). Trenton also identified Nelson and Roberts as intruders. (R. 313, 316)

Nelson testified that on the night of the incident, he was hanging out with Roberts, Applicant, McClary, and Jwaun Duckett. Nelson, who had been friends with Troy and Trenton, told the group about the recording studio at their home. Upon hearing about the studio, Applicant, Nelson, McClary, and Roberts decided to rob the home. (R. 330-34). The group used Nelson to get into the home because he knew Trenton and Troy. Nelson testified he texted the others once he was inside the home. After obtaining a cigarette from Jones, Nelson walked outside with Jones and Williams to smoke. Once they were outside, Roberts approached and hit Jones in the nose with a gun. Jones fell, McClary stood over him, and Roberts and Applicant went inside. Nelson heard a gunshot inside the home and began running back to Roberts' house. (R. 330-35, 337-41).

Duckett testified he was hanging out with Roberts, Applicant, and McClary, when they began discussing a robbery. Duckett left because he did not want to be involved. He later told police he was not at the scene of the robbery but he knew who did it. (R. 247).

Applicant testified in his defense. He stated he was with Roberts and Duckett that evening, and they went to meet Nelson at a house he wasn't familiar with. He testified he was planning to introduce himself to the others when Roberts began fighting one of them. Applicant stated he went to help Roberts, who was near a door at the bottom of the driveway. (Tr. 684-89). Applicant



testified, “[I]t seemed to me that [Roberts] was—he was like getting pulled in and out of the house . . . [H]e was swinging and they were swinging.” (Tr. 689). Applicant ended up inside the house, where he saw “a lot of people fighting,” and two of the guys began fighting Applicant. He testified he defended himself while attempting to pull Roberts out of the house. (Tr. 689-91). He testified, “[I]n the middle of us fighting, a gunshot when off, and I saw [Roberts] drop the gun out of his hand.” (Tr. 691). He continued, “When the gun hit the ground, I made an attempt to get the gun because I really didn’t want this gun to get into the wrong hands and, you know the wrong thing So that’s—I grabbed the gun and I tried to make an escape out the door.” (Tr. 691). Critically, Applicant testified, “[T]he gun was snatched out of my hand and I heard another gunshot while—when I’m trying to get my hand out of the door.” (Tr. 692).

CURRENT APPLICATION

On July 24, 2018, Applicant filed an application for PCR alleging:

1. Ineffective assistance of counsel: “Counsel failed to object and to investigate and give the State notarized [illegible] exonerating me by State’s witness and alleged co-defendants.”
2. Unconstitutional Grand Jury proceeding: Grand jury proceeding abused by prosecutor.”
3. Jury misconduct: “Premature deliberation by jury.”

As relief, Applicant requested the Court vacate his conviction.

On March 21, 2022, Applicant filed an amended application alleging counsel was ineffective based on the following:

1. Appellate counsel failed to appeal the Court’s denial of a mistrial following an objection by the defense to the State defining inferred malice during opening (Tx. 168) or the Court’s charge that malice could be inferred by the use of a deadly weapon (Tr. 853);
2. Trial counsel failed to appeal the Court’s decision to allow Williams to testify to hearsay (Tr. 195 ln. 1-5);

3. Trial counsel failed to object to hearsay from Joshua Williams regarding Patsy's answer to the question, "You've got to tell me what's wrong. I'm sorry your friend is dead." (Tr. 205);
4. Trial counsel failed to call Deshawn McClary as a witness to testify about a letter he wrote;
5. Trial counsel failed to review evidence and meet with Applicant a sufficient number of times to prepare for trial;
6. Trial counsel failed to object to the solicitor's leading question to Investigator Beller, "So metal art on the outside, and I go back to State's 58, as if when the door was open it had fallen off the wall?" (Tr. 262);
7. Appellate counsel failed to appeal the Court's decision to allow Duckett to testify about co-defendant Maurice Roberts's statement over a hearsay objection;
8. Trial counsel failed to object to Duckett's hearsay testimony about Maurice Roberts's statement about a cell phone, "He was like bro, flush it, bro flush it." (Tr. 335).
9. Trial counsel failed to object to leading during Duckett's direct examination, when the solicitor asked, "This is the phone call where Maurice Roberts, Demetrice James, Vincent Nelson and Deshawn McClary agree that they were going to rob a studio?" (Tr. 338);
10. Trial counsel failed to object to leading during Trenton Scott's direct examination, when the solicitor asked, "At that point, Demetrice comes in?" (Tr. 375), and "Demetrice, his hairstyle is a little different now?" (Tr. 387).
11. Trial counsel failed to bring to the Court's attention that two jurors were falling asleep until later in the trial, and the Court refused to inquire about this stating that this should have been brought to the Court's attention sooner. (p. 528-29);
12. Trial counsel failed to comply with Rule 5, SCCrimP, which would have allowed them to enter an exculpatory letter by Duckett, and counsel failed to properly mark and identify the letter during cross so they could introduce the testimony of Vanessa Jarvis as the notary who witnessed Duckett sign the letter for impeachment. (p. 677-80);



13. Trial counsel failed to object to the portion of the photo lineups containing the jail website, which were provided to the jury in evidence. (p. 864).

On May 17, 2022, Applicant filed a second amended application alleging the following claims of ineffective assistance of counsel:

1. Trial counsel failed to argue that Applicant should have been exempt from proving prejudice regarding the early deliberation by members of the jury, leaving this argument unpreserved; and
2. Trial counsel failed to request a new trial based on McClary's letter.

At the hearing, Applicant did not provide testimony or evidence on allegation (2) of his initial application, and thus did not meet his burden of proving this ground. Further, at the start of the hearing, Applicant waived allegations (3), (6), (8), and (10) of the amended application. This Court thus denies and dismisses with prejudice allegation (2) of the initial application and allegations (3), (6), (8), and (10) of the amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Richland County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.³ 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).

³ This Court will reference PCR testimony where relevant below.

Ineffective assistance of trial counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

*Deshawn McClary*⁴

Applicant contends counsel was ineffective for not calling Deshawn McClary as a witness to testify about a letter he wrote. He likewise avers counsel was infective for not filing a motion for a new trial based on McClary's letter. Applicant did not prove this claim.

At the PCR hearing, Applicant did not call McClary as a witness—thus leaving this Court to speculate about what McClary would have testified to and what impact such testimony would have had at trial. Applicant thus did not prove prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995 (providing a PCR applicant must present the testimony of a witness at the PCR

⁴ This section combines a portion of allegation (1)(a) of the initial application, allegation (4) of the amended application, and allegation (2) of the second amended application. Allegation (1)(a) is further discussed later in the section entitled "Jwaun Duckett."

hearing to show prejudice from counsel's failure to call the witness at trial). Further, this court finds counsel was not deficient for not calling McClary as a witness. At the PCR hearing, counsel testified McClary was also charged in this crime and his charges were pending at the time of Applicant's trial. She reached out to McClary's attorney about speaking to him McClary "opted not to speak with" her. (Tr. 47). This Court finds Walker's testimony here credible. Under these circumstances, counsel's performance was reasonable under prevailing professional norms and not deficient. Specifically, because McClary was represented by counsel and had pending charges from these crimes, counsel could not ethically speak with him about the case without his attorney present. Further, because counsel was not permitted to speak with McClary, her decision to not call him as a witness was reasonable under prevailing professional norms and not deficient.

Likewise, Applicant did not prove counsel was ineffective for not filing a motion for a new trial based on the letter. Applicant acknowledged at the PCR hearing that trial counsel had the letter in advance of trial, and Applicant himself was aware of this letter in advance of trial. (Tr. 13-15). Applicant thus did not prove this was newly-discovered evidence or counsel was ineffective. See State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999) (providing a defendant seeking a new trial based on after discovered evidence must prove *inter alia* the evidence "***has been discovered since the trial***" and "could not in the exercise of due diligence have been discovered prior to the trial" (emphasis added)).

*Juror misconduct*⁵

Applicant alleges the jury engaged premature deliberations, and counsel was ineffective for not arguing that Applicant did not need to prove prejudice. Applicant did not prove this ground.

⁵ This section addresses allegation (3) of the initial application and allegation (1) of the second amended application.

Initially, the issue of premature deliberations was raised to the trial court, who polled the jury and concluded that although they jury engaged in premature deliberation, Applicant did not establish prejudice. (Tr. 525-52). This was the primary issue raised on appeal, and the Court of Appeals affirmed on the merits. Applicant now contends counsel was ineffective in not arguing that he should not have to prove prejudice. This contention lacks merit when, under the law, a criminal defendant *must* prove prejudice from premature jury deliberations. See State v. Aldret, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999) (“[W]e hold the burden is on the party alleging premature deliberations to establish prejudice.”); id. at 314, 509 S.E.2d at 814 (“Our decision is consistent with the majority of jurisdictions which hold a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial.”). Further, counsel was not ineffective for failing to make an argument that was contrary to established law. Cf. Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (“[R]easonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law.”). Applicant thus failed to establish deficiency or prejudice, and this claim is denied.

Failed to review evidence and advise Applicant⁶

Applicant next contends counsel was ineffective for failing to review evidence and meet with Applicant sufficient times to prepare for trial. This Court finds Applicant did not prove this ground. At the PCR hearing, Applicant testified he did not feel like counsel met with him sufficient times to prepare for trial. He stated they only met twice, and during the second meeting he asked them about letters from McClary and Duckett. (PCR 17). In contrast, Tracy Pinnock testified she met with Applicant at least five times, and Anastasia Walker testified she met with Applicant

⁶ This section addresses allegation (5) of the amended application. Allegations (1) and (2) of the amended application are addressed below under Ineffective Assistance of Appellate Counsel. Applicant waived allegation (3) of the amended application. Allegation (4) is discussed above in “Deshawn McClary.”

around fifteen times. (PCR 32, 47). Walker further she had sufficient time to review the discovery with Applicant. (PCR 43). This Court finds Pinnock and Walker's testimony here credible. This Court further finds counsel met with Applicant sufficient times and adequately reviewed discovery. The trial transcript reflects counsel was well-prepared in their defense of Applicant and familiar with the facts of the case and the law. Finally, Applicant did not present "any evidence of how additional preparation or communication would have resulted in a different outcome"; thus, Applicant did not prove prejudice, and this claim is denied. Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see also Harris, 377 S.C. at 75, 659 S.E.2d at 145 (finding counsel cannot be ineffective when evidence shows counsel met with applicant to prepare for trial, and applicant didn't show how additional preparation would have affected the outcome).

Failed to object – Leading⁷

Applicant next asserts counsel was ineffective for failing to object to leading during the State's direct examination of Duckett. Specifically, he contends counsel should have objected when the solicitor asked, "This is the phone call where Maurice Roberts, Demetrice James, Vincent Nelson and Deshawn McClary agree that they were going to rob a studio?" (Tr. 338). This Court finds Applicant did not prove this ground.

"Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony." Rule 611(c), SCRE. In Brice v. Miller, 35 S.C. 537, 15 S.E.2d 272, 277 (1892), the Court concluded it was not error for a party to ask leading questions about information the witness had already testified about. See id. ("As to leading questions, we see no error. Those specially indicated seem to be mere repetitions of what the

⁷ This section addresses allegation (9) of the amended application. Applicant waived allegations (6) and (8), and allegation (7) is discussed below under Ineffective Assistance of Appellate Counsel.

witness had previously stated, and this does not render the questions amenable to such objection.”); see also United States v. Graham, 643 Fed. Appx. 268 (finding the district court did not abuse its discretion in allowing the government to ask the victim a leading question when the question “was merely summarizing the witness’ answer to that point”).

Here, Duckett had previously testified he was with Roberts, Applicant, and McClary, when Roberts received a phone call. He stated Roberts began discussing robbing someone that Duckett knew “for some studio equipment.” (Tr. 324-25). The material information—that Duckett overheard Applicant and others plan a robbery—was already before the jury. Thus, counsel’s failure to object was reasonable within prevailing norms and not deficient. Further, it is not reasonably likely an objection would have changed the outcome because the material information was already before the jury, and any objection likely would have led to the solicitor rephrasing her question. Applicant did not prove deficiency or prejudice, and this claim is denied.

*Sleeping juror*⁸

Applicant contends counsel was ineffective for failing to bring to the court’s attention that two jurors were falling asleep until later in the trial. (Tr. 528-29). This Court finds Applicant did not prove this allegation.

At trial, the solicitor raised an issue regarding a juror that appeared to be sleeping. (Tr. 404-05). Trial counsel stated, “[U]nfortunately it was hard for me to see her in my line of sight. Just—there’s another juror sitting right in front of her. I mean, we can move an alternate if it’s . . . I have no objection to that honestly if that’s really a concern of the . . .” (Tr. 405). The solicitor asked the court to seat the alternate, and trial counsel did not object. (Tr. 408). Thereafter, the court and

⁸ This section addresses allegation (11) of the amended application. Applicant waived allegation (10) of the amended application.

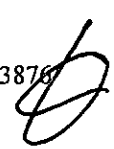
trial counsel identified the jury as the one wearing a pink shirt. (Tr. 408). However, when that juror was brought out, the solicitor stated that was not the correct juror. (Tr. 409). The solicitor identified a different juror, who was brought out and questioned by the court. After questioning, the judge released the juror. (Tr. 409-10). Later, while arguing a mistrial motion based on premature jury deliberations, trial counsel added,

I do have a couple of other concerns that there have been other jurors sleeping, particularly I believe a Mr. Starks. There has been—and unfortunately I don't know their names. I can give you descriptions. There's been a younger black gentleman that's been sitting in the back that has dozed off a couple of times as well as the older black lady that was wearing the pink shir yesterday that's dozed off a couple of times. That's also the further concern for my mistrial motion, Your Honor.

(Tr. 528). The trial court responded, “Well, that's taking two different—one has to do with the preliminary discussions and the other has to do with jurors who you think were not attentive. . . . [A]s to the latter, unless it's called to my attention when it's observed, which has already happened one time—” (Tr. 528-29). After polling the jury about premature deliberation, the court denied the mistrial motion. (Tr. 529). Trial counsel never raised another issue with a sleeping juror.

At the PCR hearing, Applicant recalled an issue about a juror falling asleep and that the court replaced that juror with an alternate. (PCR 21-22). Applicant did not raise any other issue with a sleeping juror or allege any deficiency by counsel in this regard. Pinnock recalled the judge replacing the juror with an alternate. (PCR 42). Walker testified that she did not know why she did not raise the issue earlier. (PCR 48).

This Court finds Applicant did not meet his burden. Initially, the issue with the jurors arose during the State's case and did not come up during Applicant's case. Further, Applicant's PCR testimony was merely that the court addressed this issue and replaced the juror with an alternate. Although the record reflects there *may* have been an issue with another juror, Applicant did not



overcome the strong presumption that counsel's performance was reasonable under prevailing professional norms and not deficient. When the issue was initially brought up, trial counsel did not take a strong position. (Tr. 408-10). In fact, when the solicitor indicated the deputy brought out the wrong juror, trial counsel did not indicate she *also* wanted the juror in the pink shirt removed. Under Strickland, this Court must engage a strong presumption that counsel's decision was based on sound strategy. See Strickland, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984) ("A fair assessment of attorney performance requires that 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. Because of the difficulties inherent in making the evaluation, ***a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.***" (emphasis added)). Counsel did not ask the court to question the juror in the pink shirt when the issue was initially raised, and Applicant did not overcome the presumption that counsel had a valid strategy in not further pursuing the issue at that time. Based on context, this Court finds counsel only raised this issue later to buttress her motion for a mistrial. Counsel never raised another issue with a sleeping juror—suggesting this was not an ongoing issue. Thus, Applicant did not prove deficiency.

Further, Applicant did not prove prejudice. See State v. Smith, 338 S.C. 66, 74-75, 525 S.E.2d 263, 267-68 (examining cases involving juror misconduct and concluding the defendant bears the burden of proving prejudice when the defendant alleges a juror was asleep); Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("In PCR proceedings, a defendant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense. There has

been no such showing in this case. Therefore, we reverse the PCR court[‘s finding that counsel was ineffective for not striking a juror].”). Specifically, Applicant did not present the testimony of this juror and thus did not meet his burden. In other words, without more, it is merely speculative whether this juror even was asleep. Applicant has not met his burden of proving deficiency or prejudice, and this claim is denied.

Letter from Duckett⁹

Applicant alleges counsel was ineffective for not producing as part of Rule 5 a letter written by Duckett. This Court finds Applicant did not prove this ground.

During Duckett’s cross-examination, trial counsel showed him a letter and asked if he recognized it; Duckett testified he had never seen it and denied the signature was his. (Tr. 357-58). After the State rested, counsel attempted to call Vanessa Jarvis, who notarized the letter, but the State objected because the letter was not disclosed as part of Rule 5, SCRCrimP. Counsel responded the letter wasn’t subject to Rule 5 because they didn’t intend to introduce it into evidence. (Tr. 667-70). Walker further stated she did not expect Duckett to deny the letter. (Tr. 670). Although counsel was permitted to proffer Jarvis’s testimony, the court did not allow her to testify to the jury. (Tr. 670-80).

At the PCR hearing, Applicant testified Pinnock told him (1) she did not plan to introduce the letter as evidence but would use it for impeachment, and (2) Rule 5 does not require disclosing impeachment evidence. (PCR 23). Pinnock testified she wanted to use the letter for impeachment, but the solicitor objected. (PCR 39). Likewise, Walker testified they did not produce the letter because they planned to only use it for impeachment if necessary. (PCR 44). Walker testified that

⁹ This section addresses allegation (1)(a) of the initial application and allegation (12) of the amended application.

in hindsight, they should have produced the letter. (PCR 44, 50).

This Court finds trial counsel credibly testified they did not produce the letter because they planned to use it only for impeachment, and they believed Rule 5 did not require its production. In fact, this testimony is supported by the trial transcript. (Tr. 667-70). This Court finds counsel's decision to not produce the letter was reasonable under prevailing professional norms and not deficient. Although Walker testified that in hindsight they should have produced the letter, her decision-making must be analyzed as of the time of trial and not in hindsight. See Strickland, 466 U.S. at 689 ("A fair assessment of attorney performance requires that 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.").

At trial, Walker stated she did not expect Duckett to say he did not recognize the letter. (Tr. 670). Based on this statement and credible evidence that counsel did not intend to introduce the letter, counsel's decision not to produce the letter was reasonable under prevailing professional norms and not deficient. See Rule 5(b)(1)(A) (providing a criminal defendant must, upon request, permit the prosecutor to inspect and copy papers and documents in his possession that he "*intends to introduce as evidence in chief at the trial*" (emphasis added)).

Further, Applicant did not prove prejudice. Even if Jarvis had testified at trial, it is not reasonably likely the outcome would be different. Although Jarvis testified she notarized the letter after an inmate asked her to, she also recalled Applicant asking her about the letter about a month before trial. (Tr. 676-77). Based on Jarvis's testimony that Applicant asked about the letter, Duckett's denial of the letter, and the consistencies between Duckett's testimony and Nelson's testimony regarding the planning of the robbery, this Court finds it is not reasonably likely the jury would have reached a different conclusion *had* counsel been able to present Jarvis's testimony. In

other words, the jury could have reasonably inferred from the foregoing that Applicant himself was involved in the writing of the letter—either by coercing Duckett to sign it or in some other manner. At trial, Duckett remained steadfast in his testimony that Applicant was involved in the conversation about the robbery (Tr. 346-49, 353-60), and this Court finds it is not reasonably likely the jury would have concluded his testimony about the conversation was not true had it heard Jarvis’s testimony—especially when Duckett’s testimony was consistent with Nelson’s testimony. This Court further notes both Troy and Trenton identified Applicant as the shooter, and Applicant himself admitted to being in the home when the shooting occurred. Thus, it is not reasonably likely the outcome would have been different had Jarvis testified, and this claim is denied.

*Photo lineups*¹⁰

Applicant alleges trial counsel was ineffective for failing to object to the portion of the photo lineups containing the jail website. The Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant recalled Walker raising an issue about the jail website being on the bottom of the lineup, which would have been prejudicial. (PCR 24). Walker testified she raised the issue as part of her Neil v. Biggers argument. (PCR 46, 52). She also recalled renewing the objection multiple times at trial. (PCR 53). The record shows counsel raised this issue during the pretrial hearing (Tr. 91-94) and before the jury began deliberating (Tr. 864), and she renewed her pretrial objection when the lineups were entered into evidence (Tr. 394, 457-61, 522). Applicant did not set forth what more counsel should have done that would have reasonably changed the outcome and thus did not prove deficiency or prejudice. This claim is thus denied.

¹⁰ This section addresses allegation (13) of the amended application.

Ineffective Assistance of Appellate Counsel

Just as a defendant is entitled to effective representation during trial, a defendant is also entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). To prove ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. 259, 288 (2000).

*Inferred Malice*¹¹

Applicant first contends appellate counsel was ineffective for not raising on appeal the trial court’s denial of his motion for a mistrial after the solicitor stated during opening, “I submit that malice may be inferred when someone goes over there to commit an armed robbery, when someone is armed with a deadly weapon.” (Tr. 168, 170). He likewise contends appellate counsel was ineffective for not raising an issue with the Court’s jury charge on inferred malice. Applicant has not proved this ground.

At trial, counsel objected and moved for a mistrial after the solicitor stated during opening that the jury could infer malice from the use of a deadly weapon. After reviewing Belcher, the Court found the argument was proper and denied the mistrial motion. During its charge on murder, the court charged the jury, “[I]nferred malice may also arise when the deed is done with a deadly weapon. *This inference of malice which arises from a deadly weapon applies only to murder,*

¹¹ This section addresses allegation (1) of the amended application.

not to any of the other charges.” (Tr. 853, emphasis added). Later, when charging attempted murder, the Court clarified,

I tell you at this time that as to malice in this regard, there is no—*you’re not allowed to draw any inference from the use of a deadly weapon.* That applies again—I know I’m repeating it. *That inference can only be applied, if you determine to apply it at all, as to the charge of murder.*

(Tr. 857-58, emphasis added).

Initially, under these facts and the law that existed at the time of Applicant’s trial, it was proper to charge juries that malice could be inferred from the use of a deadly weapon.¹² See State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009) (“[W]here evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon.” (*overruled by State v. Burdette*, 427 S.C. 490, 503, 832 S.E.2d at 575, 582 (2019))). Here, there was no evidence Applicant fired the gun in self-defense or that it was an accident; rather, Applicant’s testimony was that although he briefly held the gun, it did not discharge while he was holding it. (Tr. 691-94). Because no evidence reduced, mitigated, excused, or justified this homicide, there was nothing improper about this inference at the time of this trial.

Although Burdette subsequently prohibited *courts* from charging that malice could be inferred from the use of a deadly weapon, that opinion came out *after* Applicant’s appeal. Because attorneys are not required to anticipate changes in the law, appellate counsel was not deficient for not raising these issues. See Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) (“[W]e do not require attorneys to be clairvoyant in anticipating changes to the law . . .”). Further, Applicant cannot show prejudice. Initially, there was nothing objectionable about the solicitor’s

¹² Trial counsel objected to the Court’s inclusion of this language, thus preserving this issue. (Tr. 792, 864).

argument—even under Burdette, which clarified *attorneys* could argue this inference to the jury. Burdette, 427 S.C. at 503, 832 S.E.2d at 582 (“Of course, whether the deed was done with a deadly weapon or not, the State and the defendant are free to argue the existence or nonexistence of malice based on the evidence in the record. For example, *if evidence is introduced that the deed was done with a deadly weapon, the State is free to argue to the jury that it should infer the existence of malice based on that fact and any other facts that would naturally and logically allow a jury to conclude the defendant acted with malice aforethought.* (emphasis added)). Further, Applicant cannot show prejudice from the inferred malice charge because the judge specifically charged the jury that the inferred malice charge *only* applied to murder, and Applicant was not convicted of murder. (Tr. 853, 857-58). Because the judge clarified the inferred malice charge did NOT apply to any of the other charges, there is no reasonable probability these convictions would have been reversed had this issue been raised on appeal. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

*Hearsay testimony – Joshua Williams*¹³

Applicant next contends appellate counsel was ineffective for failing to appeal the trial court’s decision to allow Joshua Williams testify to hearsay over counsel’s objection. This Court finds Applicant did not meet his burden of proof.

During Williams testimony, counsel objected based on hearsay when the State asked, “When you said that he was on the phone, could you hear what he was saying?” (Tr. 189). During an in-camera hearing, the State argued this was a statement of a co-conspirator in furtherance of the conspiracy and was thus admissible under Rule 801(d)(2)(E). Trial counsel asserted that rule did not apply because Applicant was not charged with conspiracy. After reviewing a Fourth Circuit

¹³ This section addresses allegation (2) of the amended application.

opinion, the Court concluded the statement was admissible. (Tr. 189-95). Williams then testified he overheard Nelson say on the phone, “I’m outside. I’ll be out there in a minute.” (Tr. 196).

Here, the statement was admissible under Rule 801(d)(2)(E), which provides, “A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” Specifically, Nelson testified about the group’s plan to rob the home; as part of that plan, they used Nelson—who knew the family—to enter the home. Once inside, Nelson contacted the others. He then went outside with Jones and Williams. Once he was outside, Applicant, Roberts, Duckett came down the driveway with a gun, and Applicant and Roberts entered the home (Tr. 445-53). This statement was in furtherance of the conspiracy and thus was not hearsay under Rule 801(d)(2)(E). Although counsel argued at trial that the parties had to be charged with conspiracy for this rule to apply, the plain language of the rule does not include that requirement, and Applicant has not pointed to any caselaw (nor is this Court aware of any) that adds that requirement. Because counsel is not required to argue novel issues, Applicant has failed to meet his burden of proving deficiency or prejudice. Cf. Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (“[R]easonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law.”). This claim is thus denied.

*Hearsay testimony – Jwaun Duckett*¹⁴

Applicant asserts counsel was ineffective for not appealing the trial court’s decision to allow Duckett to testify to a statement by Maurice Roberts over counsel’s hearsay objection. This Court finds Applicant did not meet his burden of proof.

¹⁴ This section addresses allegation (7) of the amended application.

At trial, Duckett testified he was at Roberts's home on January 24—the day before the robbery—when Roberts, Applicant, and McClary began talking about robbing someone. Duckett left because he did not want to be involved. Duckett stated Roberts called him around 12:30 a.m. the following day; when asked what Roberts said, trial counsel objected based on hearsay, and the court overruled the objection. (Tr. 324-30). Thereafter, Duckett testified, I don't remember word for word what he told me, but it was like—it was about basically, you know what I'm saying, they're about to go do whatever. You know what I'm saying? They were about to go do” (Tr. 331). After reviewing his statement to police, Duckett testified, [H]e's saying, ‘Man, you don't want to come.’ He was like, ‘Man, you don't want to come down here, man. We got too much going on.’” (Tr. 331).

Here, the statement was admissible under Rule 801(d)(2)(E) as a statement of a co-conspirator (Roberts) in furtherance of the conspiracy. As set forth above, Applicant has not pointed to any caselaw to support the proposition that this testimony would *not* be admissible under Rule 801(d)(2)(E). Further, this Court finds that even if this testimony was excluded, there was sufficient testimony of the conspiracy (through Nelson and other testimony by Duckett) such that it is not reasonable likely the outcome would be different had this portion been excluded. Applicant thus has not met his burden of proving deficiency or prejudice, and this claim is denied.

CONCLUSION

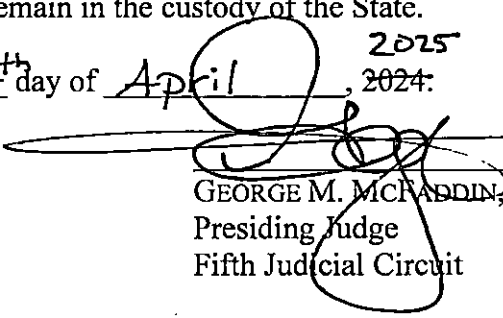
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty 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 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 appellate procedures.

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.

AND IT IS SO ORDERED THIS 17th day of April, ~~2024~~ ²⁰²⁵.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina

WITNESSES

(S) J H Boland – Richland County
Sheriff

ARREST WARRANT NUMBER

2013A4010500069

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

FEB 13 2013

VERDICT

Guzley

Foreperson of Petit Jury
Date:

10-3-14

DOCKET NO. 2013GS4001432

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

42

**THE STATE
vs.**

Demetrice Roosevelt James

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED**
Janette W. McBride
**C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

666

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 13, 2013, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Demetrice Roosevelt James did in Richland County on or about January 25, 2013, did with the intent to kill, attempt to kill Joshua Williams with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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


DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA