

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

LORENZO BERNARD YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001948

APPENDIX

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1 got no way of knowing who searched for that
2 information?

3 A No, just the user of the device. I couldn't tell
4 you unless I was standing there who was actually
5 fingering the phone, per se.

6 Q Right. And in addition to that information that
7 we just talked about, the news searches, there's other
8 information on the phone, as well, correct?

9 A Yes.

10 Q So and you got a phone, correct?

11 A I'm sorry?

12 Q You've got a smart phone, correct?

13 A Yes.

14 Q And just using your phone as an example, when we
15 talk about this catch (sic) file?

16 A Cache.

17 Q Catch?

18 A Cache file.

19 Q Cache file, excuse me, it just stores things that
20 you look at, correct?

21 A Yes.

22 Q So for me, as an example, I like to look at
23 fishing pictures from my friends?

24 A Right.

25 Q So there would be a ton of my friends up there

1 holding fish that they just caught, and I don't know
2 if you search the news, but anytime you search the
3 news, it would take a picture and cache it, correct?

4 A Yes. If you click on the --- if there's an
5 extension or a hyperlink --- if you're just reading a
6 news article, it's not going to cache it. If there's
7 a hyperlink or executable file, which you can click
8 on, either a photo or video, then yes, it would.

9 Q So you would have to actually engage the file?

10 A Pretty much.

11 Q Touch it and it pops up to the photo and then it
12 caches it, right?

13 A That's correct.

14 Q Now, when you were looking at all the contents on
15 this phone, it wasn't just the news stuff, was it?

16 A No.

17 Q In fact, there was some song downloads?

18 A Yes.

19 Q There was other media.

20 Q Search for women's clothing?

21 A I believe so.

22 Q Search for other feminine products?

23 A I can't remember right offhand feminine products
24 but I mean, other than just this, just the news, then
25 yes, there was other search history of other items not

1 relevant to this case, but yes.

2 Q And, again, you can't tell who searched those
3 items or who clicked on the women's skirt or who
4 clicked on for instance a fish picture?

5 A I cannot. However, the phone was screen locked.
6 It had a screen pattern password. I was able to break
7 that decrypted --- so whoever had the phone would have
8 had to have known the screen pattern to unlock the
9 device.

10 Q Right. If it was an "S" and as long as the
11 person using the phone knew ---

12 A They would have to know what the screen lock
13 pattern was.

14 Q They're good to know go? There was no biological
15 or specific information that would identify the user?

16 A No.

17 MR. KRZYSTON: Thank you, Your Honor. That's all
18 I have.

19 MR. SCHNEE: No questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION:

22 BY MS. GARFIELD:

23 Q Investigator VanHouten, the other search history
24 that Mr. Krzyston just alluded to, are you able to
25 date that, as well?

1 A Yes. As long as it was not deleted from the
2 device, then yes.

3 Q Do you have those before you?

4 A I do. Is there something particular you're
5 looking for.

6 Q Just like, I guess, female searches that
7 Mr. Krzyston alluded to?

8 A Yeah. Bear in mind --- I believe the report was
9 almost 2,000 pages --- I'm sorry, 1,039 pages so it's
10 going to.

11 Q So the search history that you did ranged from
12 July 2013?

13 A No. The search history I did on the device once
14 I --- I had to pull a physical extraction, which
15 includes all deleted data, I had to search through all
16 search histories that were done on this device. I
17 just picked out what the media released that was on
18 the device that was relevant to this case, but yes, it
19 goes back further than July.

20 Q So you just picked out information that would
21 have been in close proximity to this incident?

22 A Right. Again, I did a timeline and I narrowed it
23 down to three or four days prior and then three or
24 four days after, but yes there's numerous other items
25 not relevant to the case that are on the phone as far

1 as internet history, photos, things of that nature.

2 MS. GARFIELD: Thank you. Nothing further.

3 MR. KRZYSTON: Briefly, Your Honor.

4 RECROSS-EXAMINATION:

5 BY MR. KRZYSTON:

6 Q You said that he was about 1,000 pages of data
7 you pulled off this device?

8 A Yeah, the forensic report I generated was over
9 1,000 pages --- I know it was over 1,000 pages. Yes,
10 it was 1,039.

11 Q And, again, those searches scan to include
12 everything from women's clothing to news articles?

13 A Yes, absolutely.

14 MR. KRZYSTON: Thank you. I have no further
15 questions.

16 THE COURT: Have a good day.

17 MS. GARFIELD: The State calls Christopher
18 Eunice.

19 THE COURT: Approach while he's walking in.

20 (WHEREUPON, a bench conference was held in the
21 presence, but not within the hearing of the
22 jury.)

23 CHRISTOPHER EUNICE,

24 after being duly sworn, testified as follows:

25 THE CLERK: Please have a seat. State your full

1 name for the record.

2 THE WITNESS: Christopher Lee Eunice.

3 DIRECT EXAMINATION:

4 BY MS. GARFIELD:

5 Q Mr. Eunice, please share with the jury where
6 you're employed?

7 A Lexington County Coroner's office.

8 Q How long have you been with the Lexington County
9 Coroner's office?

10 A Approximately four days.

11 Q Please share with the jury how you came about
12 that position?

13 A The newly elected coroner hired me as chief
14 deputy coroner in Lexington.

15 Q And when were you sworn in?

16 A Thursday.

17 Q Before that where were you employed?

18 A Columbia Police Department.

19 Q And was your rank an investigator?

20 A My rank was M.P.O., but I was assigned to
21 investigations.

22 Q And during your assignment with investigations,
23 did you have an opportunity to work on this case
24 involving the death of Kelly Hunnewell?

25 A I did.

1 Q Specifically on July 1st, 2013, what were you
2 tasked to do?

3 A July 1st, 2013, let me refer back.

4 Q Let me direct your attention. That would be the
5 morning of the murder.

6 A The morning of the murder, I responded several
7 hours after the murder actually took place. I didn't
8 arrive until approximately eight o'clock in the
9 morning. I went to headquarters. After arriving at
10 headquarters, I watched video that was already up
11 there. I later went back out, and I canvassed the
12 right side of Bonner Avenue. I made contact, knocked
13 on doors, made contact with individuals that I was
14 canvassing, advising them of the situation that had
15 taken place, if there was anything they heard, or saw
16 to please come forward, if they were afraid to come
17 forward to contact Crimestoppers.

18 Q Are you the only investigator doing this type of
19 canvassing?

20 A No, ma'am.

21 Q Particularly, you said you were doing this on
22 Bonner Avenue?

23 A I canvassed the right side of Bonner Avenue.

24 Q Are you familiar with area of the City of
25 Columbia?

1 A Yes, ma'am.

2 Q Is Bonner Avenue in close proximity to Lucille
3 Drive?

4 A Yes, ma'am.

5 Q And were there other law enforcement also
6 canvassing this area?

7 A Yes, ma'am, other investigators were canvassing
8 as well.

9 Q As well as the area around Tommy Circle?

10 A Yes, ma'am.

11 Q I want to direct your attention, kind of changing
12 gears on you. You're familiar with some video that
13 was obtained off a cell phone?

14 A Yes, ma'am.

15 Q And particularly that was a cell phone of a
16 number [REDACTED]-0890?

17 A Yes, ma'am.

18 Q And were you familiar with who that number was
19 associated with?

20 A Lorenzo Young.

21 Q Particularly, I want to show you what's already
22 been introduced into evidence as State's Exhibit
23 Number 441. Are you familiar with the video?

24 A I'm familiar with the video that was on the disc,
25 yes, ma'am.

1 Q You've had an opportunity to review the video
2 that was obtained off the phone?

3 A Yes, ma'am.

4 Q Let me ask you, do you have any personal
5 knowledge concerning Lorenzo Young?

6 A Yes, ma'am, I had done searches.

7 Q And particularly when you reviewed that video,
8 did you observe anyone in the video that you
9 recognized?

10 A Yes, ma'am.

11 Q And can you explain who that was?

12 A Mr. Lorenzo Young.

13 Q And what was he wearing?

14 A A gray hooded sweatshirt with the hood pulled up
15 over his head and camouflage pants.

16 MS. GARFIELD: Your Honor, at this time, I'd like
17 to publish State's Exhibit 441?

18 MS. BAMBACH: Objection. We renew our previous
19 objections.

20 THE COURT: All right.

21 MR. SCHNEE: I also renew my objections.

22 THE COURT: All right. You're allowed to
23 publish.

24 (WHEREUPON, the video was played for the jury.)

25 BY MS. GARFIELD:

1 Q Deputy Coroner, you may step down. If you'll get
2 to the other side, please, sir. If you would please
3 publish to the jury, the video you observed and
4 identified Lorenzo Young in.

5 (Complies.)

6 Q Since it's so short, show it one time.

7 (Complies.)

8 Q And the person that you identified as wearing
9 camouflage, who is that person?

10 A Lorenzo Young.

11 Q And that's the person you see on the video?

12 A Yes, ma'am.

13 Q Deputy Eunice, were you also shown pictures that
14 were taken from that same cell phone?

15 A Yes, ma'am.

16 Q I'll show you'll State's Exhibit Number 392 and
17 435 that have been introduced into evidence. Do you
18 recognize the individual in these two photographs?

19 A Yes, ma'am.

20 Q And please share with the jury who the pictures
21 are of in these two photographs?

22 A Mr. Lorenzo Young.

23 MS. GARFIELD: Your Honor, permission to publish
24 to the jury?

25 THE COURT: Yes, ma'am.

1 BY MS. GARFIELD:

2 Q Deputy Eunice, these pictures that you identified
3 as Lorenzo Young, do you see Lorenzo Young in the
4 courtroom?

5 A Yes, ma'am.

6 Q Can you identify him for the record?

7 A He is sitting right here.

8 Q What is he wearing?

9 A A blue shirt and multicolor pastel tie.

10 MS. GARFIELD: Your Honor, may the record reflect
11 Deputy Eunice has identified Lorenzo Young for the
12 record.

13 THE COURT: So reflected.

14 MS. GARFIELD: Please answer any questions
15 defense counsel may have for you.

16 MS. BAMBACH: I have no questions.

17 MR. SCHNEE: I have no questions.

18 THE COURT: Have a good day.

19 THE WITNESS: Thank you, sir.

20 THE COURT: All right.

21 MS. SIMPSON: The State calls Suzann Cromer. May
22 we approach briefly, Your Honor.

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held in the
25 presence, but not within the hearing of the

1 jury.)

2 THE COURT: Ladies and gentlemen, if you'll step
3 back to your jury room for just a short break. Do not
4 discuss the case. We won't keep you out too long.

5 Thank you.

6 (WHEREUPON, the jury left the courtroom at 4:30
7 P.M.)

8 THE COURT: Go ahead and get her in here.

9 MS. SIMPSON: She is coming in.

10 We just want to make sure Ms. Cromer was advised
11 regarding your pretrial rulings. I have not had a
12 chance to talk to her prior to her testifying now.

13 THE COURT: Okay.

14 MS. SIMPSON: If I can just show her the video
15 now.

16 I think Ms. Cromer is good to go as soon as
17 defense counsel is finished reviewing the charts.

18 THE COURT: Where did she go?

19 MS. SIMPSON: She is behind the TV.

20 THE COURT: Are you hiding?

21 MS. SIMPSON: Yep.

22 THE COURT: Okay. All right. Does she know what
23 she is doing?

24 MS. SIMPSON: Yes. She can walk back in or
25 however.

1 THE COURT: She can stay right there.

2 MR. KRZYSTON: Your Honor, we would have an
3 objection to those charts.

4 THE COURT: Okay. What's your objection?

5 MS. BAMBACH: I would argue that all of those
6 are ---

7 THE COURT: What are those?

8 MS. BAMBACH: All of the...

9 MR. KRZYSTON: Charts.

10 MS. BAMBACH: Charts.

11 THE COURT: What are the numbers?

12 MS. SIMPSON: I believe it's State's 444 through
13 450.

14 MS. BAMBACH: It's actually verbatim of the
15 report from SLED. It's not a summary whatsoever. It
16 is the actual verbatim with some words like glob and
17 cartridge highlighted or bolded. Under 1006, I do not
18 believe these would be a summary. They're actually
19 word for word of the record.

20 MS. SIMPSON: Your Honor, with respect to --- I
21 think it is pursuant to ---

22 THE COURT: 70 something. What are you on?

23 MS. SIMPSON: Oh, 703 with respect to what
24 experts relied and on, and she has reviewed the chart,
25 and these do contain her results from her testing.

1 There are a number of bench notes other things with
2 respect to her testing which are not documented on the
3 charts, as well. This is regarding the firearms and
4 tool marks identification field, which in this case is
5 extremely --- it's going to go in-depth and will
6 assist the jury in their understanding as well as her
7 testimony and presenting it to the jury. Be as I
8 stated, South Carolina Rules of Evidence, I believe,
9 1006 would allow this. And I believe they actually
10 objected with respect to DNA that it was not verbatim.

11 THE COURT: So what's your objection?

12 MS. BAMBACH: My objection is --- well, she is
13 not relying on that. She created that. She would have
14 relied on the testing and she would have relied on the
15 bench notes. That's the report that she actually
16 created.

17 THE COURT: So what's your objection?

18 MS. BAMBACH: That it's not a summary.

19 THE COURT: They're not offering it as a summary.

20 MS. BAMBACH: She would argue --- she doesn't
21 need to rely on that. She relies on her knowledge and
22 skills in the area of ballistics. That's what she
23 created.

24 THE COURT: What's your objection?

25 MR. SCHNEE: Judge, I object to the introduction.

1 I have no objection to using them as demonstratives,
2 but introducing that as her report --- which puts some
3 sort of special significance or on her actual report
4 compared to anyone else's reports that are clearly not
5 in evidence.

6 THE COURT: Whose would those be?

7 MR. SCHNEE: Well, any of the law enforcement
8 officers. We don't have the 1,036 page phone dump.

9 THE COURT: This is an expert.

10 MR. SCHNEE: Right. We also don't have the
11 autopsy report in evidence. All we have is a simple
12 hand drawn diagram that does aid the jury. The jury
13 is certainly capable of remembering what testimony is.
14 Certainly I hope they are anyway. I object to their
15 introduction as there is no valid purpose to introduce
16 her report in that form. I understand for
17 demonstrative purposes and I have no problem that. I
18 understand going in front of the jury in a room that
19 puts a huge emphasis on that, but that's not
20 admissible.

21 THE COURT: You haven't told me the reason it's
22 not admissible.

23 MR. SCHNEE: Well, Judge, it's not a summary of
24 her findings. It's her own report.

25 THE COURT: Right. She's available for

1 cross-examination and it contains no hearsay, so why
2 is it not admissible? It's her report. She
3 testifying to it. She is present. You're able to
4 confront her.

5 MR. SCHNEE: Judge, I'm not arguing about the
6 content. I'm arguing about the content, I'm arguing
7 about admissibility of just those charts. I think
8 that would be a cumulative introduction of evidence
9 compared to her own testimony. Entirely unnecessary
10 and I think it unfairly highlights that as important
11 testimony compared to anybody else's.

12 THE COURT: All right. Pursuant to the proper
13 foundation, it's admissible. She is an expert. It's
14 her report and I mean, it's not like there's --- I
15 mean, the difference between this and an autopsy
16 report is an autopsy report contains hearsay. It
17 contains information provided to the pathologist by
18 law enforcement, by the coroner's office or other
19 extraneous information that the pathologist would have
20 no way to know. I mean, I assume this is her actual
21 physical, for lack of a better scientific term that I
22 can think of at the moment of what she did.

23 MS. SIMPSON: That would be correct, Your Honor.

24 THE COURT: Why don't you let me see them so I
25 will can look at them?

1 I think it's different if they contain hearsay or
2 I mean, this obviously isn't an investigator's report
3 where they're taking statements from people or taking
4 notes.

5 THE COURT: Okay. My ruling stands.

6 MS. SIMPSON: Thank you, Your Honor.

7 THE COURT: All right. Bring them back in.

8 (WHEREUPON, the jury entered the courtroom at
9 4:41 P.M.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Call your next witness.

12 MS. SIMPSON: The State calls Suzann Cromer.

13 SUZANN CROMER,
14 after being duly sworn, testified as follows:

15 THE CLERK: Please have a seat and state your
16 full name for the record.

17 THE WITNESS: My name is Suzann Cromer,
18 C-R-O-M-E-R.

19 DIRECT EXAMINATION:

20 BY MS. SIMPSON:

21 Q Ms. Cromer, where are you employed?

22 A I'm employed with the South Carolina Law
23 Enforcement Division, commonly referred to as SLED.

24 Q And what is your position with SLED?

25 A I am a firearm and toolmark examiner in the

1 forensics services laboratory.

2 Q And what all is included in your forensic
3 laboratory as a whole?

4 A We have an evidence control department, a
5 firearms department, a question document department,
6 a latent prints department, a crime scene unit, a
7 toxicology department, a trace department, a DNA case
8 work and DNA CODIS unit or database unit.

9 Q You work in the firearms and tool marks
10 identification area.

11 A Yes, I do.

12 Q What exactly is a firearms and tool marks
13 identification examiner --- what do they do?

14 A What I do is we call firearms identification. I
15 look at ammunition components, bullets, cartridge
16 casings, shotgun shells, cartridges, wadding to
17 determine whether they were fired by or loaded into
18 and extracted out of a specific firearm. We also give
19 what we call GRC lists. That is a general rifling
20 characteristic list. If we do not have a firearm and
21 we have a projectile that's marked well enough to be
22 able to give an investigator that. What it is, it
23 takes all the information from that projectile. We
24 plug it into a database and it will give us a list of
25 possible firearms that could have fired that specific

1 projectile.

2 We also do tool mark identification, bolt cutters
3 on a padlock. Pry marks with a crowbar, pry marks on
4 a window. We also do serial number restoration where
5 we can raise or attempt to raise a serial number that
6 has been obliterated from a firearm. We have also
7 destroy firearms and ammunition for most of the state.

8 Q And with SLED, do you receive a number of, I
9 guess, different types of cases from different
10 counties all over the state?

11 A Yes, ma'am. We have received evidence from all
12 over the state.

13 Q So you work with a number of different law
14 enforcement agencies, not just the Columbia Police
15 Department?

16 A That is correct.

17 Q Tell the jury a little bit about your educational
18 background and training?

19 A Okay. I have a bachelors degree from Clemson
20 University. I went to the University of South
21 Carolina and did some graduate work there. I was
22 hired on at SLED and completed their in-house training
23 program, which is a three to five year intense study
24 program. It's more of an apprenticeship, if you will,
25 where I worked under five qualified firearms

1 examiners. We take written tests, oral tests,
2 practical exercises and prepare cases for examiners.
3 Upon completion of the course of study, we are given a
4 comprehensive final exam, which is graded by our
5 training officer and then by our lieutenant. I have
6 taken classes with the Association of Firearm and Tool
7 Marks Examinations, which is called AFTE. That is an
8 international organization for our profession that
9 meets once a year to talk about relevant issues in our
10 field. They meet for a week long seminar. Also, they
11 offer extra work shops. I've taken extra work shops
12 through AFTE like barrel making, machine gun
13 conversion, ethics.

14 I've also taken classes with the South Carolina
15 chapter of the International Association of
16 Identification. Most pertinent being two different
17 three day shooting reconstruction work shops. I've
18 taken classes with the Bureau of Alcohol, Tobacco and
19 Firearms on serial number restoration and the
20 integrated ballistics identification system. We call
21 it IBIS and it's a searchable database of images of
22 bullets and cartridge cases.

23 I am the state coordinator for our IBIS system.
24 I also have attended several conferences, user
25 conferences, with the ATF and represented North and

1 South Carolina. I've also taken classes and toured
2 firearm manufacturers. I've toured Smith and Wesson,
3 FN, Ruger. I've also been a certified Glock armorer,
4 which means I can work on and repair that firearm
5 since 2003.

6 Q Okay. So you said respect to Glocks you've
7 actually been --- what was it termed?

8 A An armorer.

9 Q So you can actually dismantle it?

10 A I can.

11 Q Describe what that is for the jury?

12 A That means I can take it apart, order parts for
13 it, fix it and put it back together.

14 Q So you're very familiar with Glocks?

15 A Yes, ma'am.

16 Q Have you ever testified as an expert in the field
17 of firearms and tool marks identification?

18 A Yes, ma'am, I have.

19 Q Approximately how many times have you testified
20 as an expert?

21 A Approximately 80.

22 Q And do you actually continue to participate in, I
23 guess, continuing educational requirements to keep
24 your training and education up to date?

25 A Yes. We --- well, there are no continuing

1 educational requirements for our field, but we are
2 always, you know, trying to take classes, looking at
3 classes and reading professional journals that come
4 out.

5 MS. SIMPSON: Your Honor, at this time I'd like
6 to offer Ms. Cromer as an expert in the field of
7 firearms and tool marks identification.

8 MS. BAMBACH: No objection.

9 MR. SCHNEE: No objection.

10 THE COURT: All right. Ladies and gentlemen,
11 this witness will be qualified as an expert in the
12 area of firearms and tool mark identification. She
13 will be allowed to give opinion testimony in that
14 area. That does not mean that you have to accept her
15 opinion but it is evidence for you to use in any way
16 you see fit and give it the weight and credibility you
17 deem as appropriate as you are required to do with
18 each and every witness.

19 Ms. Simpson.

20 MS. SIMPSON: Thank you, Your Honor, Your Honor.

21 BY MS. SIMPSON:

22 Q With respect to firearms and tool marks
23 identification, what actually makes it possible. We
24 heard some terms like rifling characteristics and
25 things of the nature.

1 A When you're talking about firearms ID, what we're
2 looking at are defects that can be imprinted on the
3 bullet or the cartridge case by the process of being
4 fired by that firearm.

5 As you can imagine, the manufacturing process has
6 hard steel tools working on a hard steel barrel or
7 breach face of a firearm. That can leave defects that
8 can be passed to those ammunition components. Also
9 wear and tear. Some people aren't nice to their
10 firearms and they don't clean them with the proper
11 things and they can leave defects inside of that
12 barrel that are unique to that firearm.

13 Q And, were you actually requested and did, in
14 fact, examine some evidence in this case?

15 A Yes, ma'am, I did.

16 Q How did this evidence come to you?

17 A It was submitted to our lab through Columbia PD.
18 I receive most of my evidence through either Amy
19 Stevens in our evidence control department or Betty
20 Butler, who is a technician, I believe, in our
21 evidence processing unit.

22 Q Okay. I want to show you what's been introduced
23 into evidence as --- let me get these. As State's
24 Exhibit 336, 335, 334, and 333. Do you recognize
25 these items as being some of the items that you were

1 asked to analyze?

2 A What I'm looking for is I actually scribe on the
3 evidence with an electric pencil, my lab number, my
4 item number and my initials. This was my Item (6),
5 and you can see it's still in a sealed container with
6 my initials and seal date.

7 Q And what are these items as you to through them?
8 My apologies.

9 A Okay. This is a fired 45 GAP caliber cartridge
10 case.

11 Q Okay. And if you need scissors to open anything,
12 let me know.

13 A Again, this was my Item (8) and it is still in a
14 sealed container with my initials and seal date. This
15 is another fired 45 GAP caliber cartridge case. Again
16 this is my Item (9) still in a sealed container with
17 my initials and seal date. It's another 45 GAP
18 caliber cartridge case.

19 This is my Item (10), again in a sealed container
20 with my initials and seal date, another 45 GAP caliber
21 cartridge case.

22 Q I'll also going to show you what's been
23 introduced as State's 331 and 332. Do you recognize
24 these items? While you're looking at that, when an
25 item of evidence comes to you, is it properly sealed

1 and packaging other than any processing that may have
2 been done for your purposes?

3 A Yes. Actually when I get evidence, I will take a
4 picture of container it comes in, I open it and then
5 take a picture of any internal packaging and check the
6 seals and I take notes on that, so all of this was
7 sealed when I received it.

8 This is my Item 12. It is a fired 40 caliber S&W
9 cartridge case, again still in a sealed container with
10 my initials and seal date, and this is my Item 11 also
11 another fired 40 S&W caliber cartridge case with my
12 initials and seal date.

13 Q And then in State's Exhibits 342, 341 and 338,
14 did you examine these item, as well? And again, do
15 you know --- well, let me ask you, do you necessarily
16 know where these items come from with respect to a
17 particular crime scene?

18 A Not unless it's labeled on the container that I
19 receive it in, I may not know where it came from or if
20 it's placed on our intake documents, but I believe in
21 this case, I was not --- I did not have any direct
22 indication of where they came from for these items.
23 Again, these are marked on the base with my lab
24 number, item number and initials. These were my Items
25 7, 13, and 16. Again, still all inside a sealed

1 envelope with my initials and seal date at the top.
2 These are three fired 45 caliber projectiles or fired
3 bullets.

4 Q And then also State's 339, 340 and 337?

5 A Let me double check my notes.

6 This was my Item 14. This is a fired bullet
7 jacket fragment. Again, it is in a sealed envelope
8 with my initials and seal date.

9 This is Item 15. Again, sealed container with my
10 initials and seal date. It is a lead fragment.

11 And this is my Item 17. Again, another fired
12 bullet jacket fragment in a container sealed with my
13 initials and seal date.

14 Q And then we're nearing the end, State's 401, 371,
15 and 346. Did you receive these items, as well?

16 A Yes. State's Exhibit 401 was my Item 13. Sorry,
17 my Item 37, which is an unfired 40 caliber cartridge
18 head stamped LDLELD.

19 State's Exhibit 371 was my Item 35. Again, it's
20 another unfired 40 caliber S&W cartridge headstamped
21 ELD. State's Exhibit 346 was my Item 20. It is a
22 fired projectile still in a container sealed with my
23 initials and seal date.

24 Q And then finally State's 370 and 372, did you
25 have these items, as well?

1 A Yes, ma'am, I did. State's Exhibit 372 was my
2 Item 38 and State's Exhibit 370 was my Item 36, and it
3 is an unfired 45 GAP caliber cartridge headstamp CBC.

4 Q And after you received these items, did you in
5 fact, conduct some testing on all of these items?

6 A Yes, ma'am, I did.

7 Q And did you formulate a report to document those
8 findings?

9 A Yes, ma'am, I did.

10 Q I'm going to show you what's been marked as
11 State's 444 through 450. Have you had a chance to
12 review these items?

13 A Yes, ma'am, I have.

14 Q And do they fairly and accurately depict your
15 results?

16 A Yes, ma'am, they to.

17 Q Would it assist you in testifying to the jury
18 about those results if you could use those charts and
19 diagrams?

20 A Yes, ma'am.

21 MS. SIMPSON: Your Honor, at this time the State
22 would offer State's 444 through State's 450 into
23 evidence?

24 THE COURT: Over defendant's objection.

25 MS. SIMPSON: Thank you, Your Honor.

1 (WHEREUPON, State's Exhibit Numbers 444 though
2 450 were admitted into evidence.)

3 MS. SIMPSON: Permission for the witness to step
4 down?

5 THE COURT: That's fine.

6 BY MS. SIMPSON:

7 Q Okay. We'll start. I'm going to show you.
8 Actually, if you'll stand on this side and speak up so
9 the court reporter can hear you. State's 444 will be
10 what we're referencing. Before we get there, can you
11 tell the jury just a little bit about what is
12 contained in an unfired, I guess, bullet?

13 A Well, what we have is when you have an unfired
14 piece of ammunition it's called a cartridge. A
15 cartridge contains a bullet, propellant powder, the
16 cartridge contains a bullet, propellant powder, the
17 cartridge case and a primed. That primer is struck by
18 the firing pin of the firearm, causing an initial
19 spark. It goes through a flash hole in the cartridge
20 case which ignites the gunpowder. It causes great
21 pressure, pushes the bullet down the barrel of the
22 gun, but also pushes that cartridge case back into the
23 breach base of the firearm. So that's the components
24 of a cartridge.

25 Once it's fired, you can have a bullet, which is

1 the actual round thing that's left and then you have a
2 cartridge case.

3 Q Is the bullet often referred to as a projectile
4 or the entire ---

5 A I've heard people refer to entire cartridge as a
6 bullet and then I've heard them refer to the actual
7 projectile as a bullet. People use that
8 interchangeably.

9 Q With respect to this case, I want to backtrack
10 just a little bit. Did you actually receive any
11 firearms to test?

12 A No, ma'am, I did not.

13 Q Is it uncommon to not get a firearm?

14 A No, sometimes we get a firearm. Sometimes we do
15 not.

16 Q Does it hinder your ability to test these items
17 with respect to identifying certain aspects of them
18 and coming to conclusions with respect to them?

19 A No. I can actually look at that cartridge case,
20 the fired case that's left behind and try to give
21 investigators an idea of how many firearms were fired.
22 Also, as I said before, I can look at those fired
23 bullets, get the information that the rifling gives to
24 me and possibly potentially give those investigators a
25 list of particular firearms that would be looking for.

1 Q We'll talk about these in a grouping. First with
2 respect to Items 6, 8, 9, and 10, all of these were
3 the fired 45 GAP caliber cartridge cases. Tell the
4 jury what exactly that was and what your findings---
5 what you did and what your findings were?

6 A When I am comparing ammunition, first off these
7 were four fired 45 GAP caliber cartridge cases,
8 meaning it's that shell that I talked about and we
9 first look at caliber and 45 GAP is a specific caliber
10 that refers to the dimension of the bullet that's in
11 it and the length of the cartridge case, so when you
12 see caliber it usually refers to more things than just
13 that ammunition.

14 So I look at those. I take notes from those,
15 what type of case was it. What type of primer did it
16 have? So then I mark all that down, and then I'll go
17 to my comparison microscope. I also look at the
18 firing pin impression itself. You can have different
19 class characteristics of firing pin impressions. You
20 can have hemispherical, you can have a Glock type, you
21 can have a circle type or a rectangular type. There
22 are different types.

23 First when I look at them I'll screen them and
24 see if they all have the same type of firing pin
25 impression and then I'll go to my comparison

1 microscope and I'll actually compare the markings on
2 those cartridge cases to each other.

3 Q And was that actually done in this case with
4 respect to these four items first?

5 A Yes, it was.

6 Q And you mention in your results also Item 12.
7 Before we get there let me show you State's 333. I
8 believe this is your Item 10. This is the casing that
9 we're talking about, as well, as Item 9 just as an
10 example of what you were looking at?

11 A Yes, ma'am.

12 Q And all these along with Item 6 and 8 were
13 actually compared to one another?

14 A Yes, ma'am, they were.

15 Q And what were your findings, with respect to the
16 comparisons that you made in the examination?

17 A Based on my microscopic examination of the firing
18 pin and the firing pin shear on these cartridge cases,
19 they were all fired by the same gun.

20 Q Okay. And with respect to 45 GAP caliber, as a
21 firearms expert tell us what that means to you?

22 A 45 GAP is not something I've seen very often.
23 I've been with SLED --- I've been in the firearms
24 department 16 years. I've been in the firearms
25 examiner training side and then as a firearms examiner

1 for over 14 years now. Typically, I think I've only
2 seen 45 GAP in non-police involved shootings once,
3 maybe twice. 45 GAP is a new caliber that came out in
4 about --- it was invented around 2002. It came out
5 for commercial use in 2003, and it was really marketed
6 towards the law enforcement community, so it's not
7 something that we see very often.

8 Q Okay. Then I'm going to show you State's 445
9 specifically referencing the other fired cartridge
10 cases that you received, Items 11 and 12, tell us
11 about those items, what they were and what your
12 testing showed with respect to comparison with the
13 other items?

14 A Okay. First off, 11 and 12 were two fired 40
15 caliber S&W fired cartridge cases. Right away I knew
16 they were not fired by the same firearm that fired the
17 45 GAP caliber cartridge cases.

18 40 S&W caliber is approximately about .40 in
19 dimension. 45 GAP is about .451 in dimension, so
20 right then and there --- and then your chamber, the
21 chambers of firearms are built specific to the size of
22 ammunition that they're going to fire because you want
23 those walls of the chamber to be tight to support that
24 cartridge case during the firing process.

25 These were not the same caliber, so they were not

1 the same size. They also had a different class of
2 firing pin so then I took them to the microscope. I
3 compared them to each other and determined that they
4 were fired by one firearm, but not the firearm that
5 fired the 45 GAPs.

6 Q So each Item 11 and 12, the 40 caliber cartridge
7 case, those were fired by the same weapon and the 45
8 GAP was fired by the same weapon, just two separate
9 weapons?

10 A That's correct.

11 Q Did you also --- tell the jury --- I want to turn
12 your attention to when you refer to Items 11 and 12
13 may be suitable for identification with the firearm
14 which they were fired or with another fired cartridge
15 case or casings, what is meant by that?

16 A That means that we had enough of those individual
17 markings for me to first off compare it to another
18 cartridge case, but if a suspect weapon was ever
19 identified, I want whoever is reading the report to
20 know that they can bring it to me, and I could try to
21 potentially match it to a specific firearm.

22 Q Are all casings that you receive necessarily
23 suitable for comparison?

24 A No, ma'am, they're not.

25 Q I want to turn your attention to Items 7 and ---

1 I keep going to the wrong stack. I'm sorry. State's
2 446, your examination of Items 7, 13, and 16. Just
3 move onto State's 446.1

4 A 713 and 16 are fired bullets. They're a little
5 different to look at than the cartridge case. What I
6 do is, I measure their diameter and determine their
7 caliber. I weigh them, and we weigh in grains, which
8 we measurement where it takes 7,000 grains to equal
9 one pound. I do all that and determine if they're the
10 same caliber. It's kind of like a step ladder. I
11 have to have the same caliber first, potentially.
12 Then I look at the rifling specification.

13 Q What is the rifling specification?

14 A Rifling, first off you have to understand
15 rifling. Rifling is what's put in the gun barrel by
16 the manufacturer to put rotary motion on that bullet.
17 Very similar to a quarterback who throws a football
18 that want to get it into a tight spiral, that's so it
19 will go a little more accurate towards the target.
20 That is the premise behind rifling. They want that
21 bullet to go into a tight spiral so it will go more
22 accurately through the air instead of tumbling end
23 over end. In rifling you can have --- it's made up of
24 lands and grooves. You can have any number of lands
25 and grooves. These three bullets all had what we call

1 eight lands and grooves with right twists meaning that
2 bullet is going to spin to the right. Also, there's
3 two types of rifling. There is what we call
4 conventional rifling that uses right angles or
5 polygonal rifling, which is more of a rounded type of
6 rifling. So these bullets were polygonal rifling
7 eight lands and grooves, right twist bullets.

8 Q I want to show you State's 341 and 342, two of
9 the items, I believe, this is what was you're
10 referring to as the projectile or fired bullet?

11 A Yes, ma'am. These were solid copper projectiles,
12 as well.

13 Q And I believe you noted hollow point bullets?

14 A Yes, ma'am.

15 Q What does that mean?

16 A That means in what we call the nose area, the
17 nose area of the bullet has a hallowed out cavity.
18 Typical design of a hollow point bullet is for it to
19 hit its target, extend its energy in that target and
20 stay. That's why it has the open nose cavity.

21 Q So it expands almost upon impact essentially?

22 A When it hits something it's supposed to expand or
23 mushroom, is what we call it.

24 Q And with respect to 7, 13, and 16, what did you
25 find as far as what they would be loaded into for

1 purposes of being loaded into. They were consistent
2 with being a 45 caliber bullet. The thing is,
3 45 caliber bullets can be loaded in 45 GAP or 45 auto,
4 so without a cartridge case, without it being loaded
5 in a cartridge case, I cannot tell you specifically it
6 was loaded in a 45 GAP or 45 auto.

7 Q Did you notice something with respect to once the
8 rifling characteristics, the type of firearms that
9 could have fired Items 7, 13, and 16?

10 A Yes, ma'am, when I went to my computer program
11 and plugged in 45 caliber eight right polygonal, the
12 only known manufacturer at this time to use that is a
13 Glock firearm.

14 Q Okay. So a Glock would have been the only gun
15 that could have fired this at the time of manufacture?

16 A At the time, yes.

17 Q And then with respect to fibers on 13.21, I guess
18 they were just collected?

19 A Yeah, they were embedded in the nose and I just
20 collected them.

21 Q And those were not actual analyzed?

22 A No.

23 Q Okay. Actually moving on to Item 14, the one
24 fired bullet jacket fragment, what was your finding
25 with respect to that one?

1 A First off, when I had this fragment, it was not
2 consistent with the fired bullets that I have because
3 the fired bullets, like I said, were a solid copper
4 projectile. This was a drawn copper jacket, so at
5 some point in time, it had a lead core. When I talk
6 about jacketed bullet, I think the easiest way for me
7 to describe it is an M M. You have your chocolate
8 inside and your hard candy shell on the outside. Very
9 similarly, you have your lead on the inside and your
10 copper jacket on the outside. So right away I knew
11 that this was different from the solid copper hollow
12 point bullets that I had and my Items 7, 13, and 16,
13 but it was so badly damaged that I couldn't --- let me
14 check my notes. I couldn't determine its caliber or
15 say that it was suitable, so it was unsuitable for
16 identification because of the limited markings from
17 the rifling that were on it.

18 Q And with respect to Item 15, the lead fragment, I
19 believe you also found that was unsuitable for
20 identification, as well?

21 A Yes, like I said, that lead core doesn't come in
22 contact because it has that jacket or that coating on
23 the outside so it never comes in contact with anything
24 that would mark it for identification purpose.

25 Q And then Item 17 one fired bullet jacket

1 fragment.

2 A Yes, this fragment was also more consistent with
3 being a part of a jacket instead of a solid copper
4 projectile. It did have markings on it that I could
5 use for identification purposes, but it was
6 inconclusive with any of my other bullets and also I
7 could not determine the caliber.

8 Q And that was just the nature of the condition you
9 received that item in?

10 A Yes, ma'am.

11 Q Moving on to State's --- I did it again. State's
12 447 and Item 20, the one fired bullet labeled as from
13 the deceased victim, Kelly Hunnewell. Tell us about
14 that item and your results?

15 A This is a copper jacketed hollow point bullet.
16 It was consistent with being either a 40, S&W or ten
17 millimeter auto caliber. Again, the same size bullet
18 could be loaded in either cartridge case. That's why
19 I have to say I can't differentiate.

20 Q But it is consistent with a 40 caliber Smith and
21 Wesson?

22 A Yes.

23 Q Similar to what you examined earlier with respect
24 to the casings?

25 A I'm sorry, I don't understand the question.

1 Q The same type caliber as the casings?

2 A Yes, ma'am.

3 Q Is that correct?

4 A Yes, ma'am.

5 Q And what were your findings?

6 A This --- let me review my notes really quick.
7 Okay. I found first off that this may be suitable for
8 identification. It was not fired by the same firearm
9 that fired those 45 GAP. I'm sorry, the 45 caliber
10 bullets that I had and spoke about earlier. This was
11 a 40 and like I said before very specific in size. I
12 tried to compare it to, I believe it was my Item 17,
13 that bullet jacket and then also with inconclusive
14 results.

15 Again, there was just not enough what we call
16 individual matching characteristics for me to say yes,
17 this was fired by the same firearm, but I also
18 couldn't rule it out. I did give them a list of
19 potential firearms that could have fired this bullet.

20 Q And what were those potential firearms? Are we
21 referring to manufacturers of the gun?

22 A Yes, we're referring to manufacturers, Glock,
23 Heckler and Koch, or H and K, IMI is military
24 industries, Carr and Bender.

25 Q Okay. Now you also, moving to Item 36, had an

1 unfired 45 GAP caliber cartridge?

2 A Yes, ma'am.

3 Q What were your findings, with respect to that
4 item?

5 A Again, I was asked to look at that cartridge to
6 see whether or not it was loaded into and extracted
7 out of the same firearm of the fired 45 GAP cartridge
8 cases that I had at the scene. I did not have enough
9 individual marks on this unfired piece of ammunition
10 to say that it was loaded into the same firearm. It
11 could have been because they were the same caliber,
12 but I could not say.

13 Q So it was with respect to Items 6, 8, 9 and 10,
14 which would have been the 45 GAP fired, still
15 consistent in caliber and construction, what is meant
16 by that?

17 A When I say consistent in caliber and construction
18 first off I'm talking caliber the 45 GAP.
19 Construction I'm talking about talking about the
20 material that makes that makes up that case. Is it
21 brass, is it nickel. In this case they were brass
22 cartridge cases. Primers also can be brass or nickel.
23 They were brass primers, premarked primers with a seal
24 on them, but they were consistent in construction from
25 the fired cartridge cases that I had.

1 Q And then on State's 449, your Item I believe
2 36.2, just a swab, that was actually returned without
3 analysis?

4 A Yes, I had 36.1 and 36.2, which items --- Item 36
5 came to me, and it was the only piece of they'd did
6 not go through evidence processing first, so I just
7 went ahead and swabbed it myself.

8 Q And then moving to Item 45 the unfired Smith and
9 Wesson cartridge case, and we'll talk about these
10 because you received both Item 35 and 37 which are the
11 same, correct?

12 A Correct. Again, 35 and 37 were unfired 40
13 caliber S&W cartridges. I was asked to look at them
14 to see whether they were loaded in and extracted out
15 of the same firearm as --- from evidence at the scene.
16 Whet I found were matching striations, but I could not
17 give an origin for them. So I cannot say where these
18 tool marks came from. Could it have been from being
19 in the same firearm? Yes. Could it have been from
20 the ammunition manufacturing process or when they're
21 the loading the powder or when they're loading the
22 cartridge into the cartridge trays from the
23 manufacturer? Yes. I just could not tell you where
24 these marks were, but I found matching striations tool
25 marks on 35, 37 and my Items 11 and 12 fired cartridge

1 casings from the scene.

2 Q So let's get to that. You actually learned
3 during the course of this that 11 and 12 were actually
4 collected from the scene itself?

5 A Yes.

6 Q And then these matched those items or excuse me,
7 matched with respect to striated tool marks?

8 A I found matching striated tool marks on all four
9 items.

10 Q And as I said your only other options, while you
11 can't be specific, would have been in the
12 manufacturing process with respect to loading,
13 handling or packaging?

14 A If it was from a firearm which I cannot rule out,
15 it could have been from the ammunition manufacturing
16 process.

17 Q And then finally getting to that Item 38 the one
18 Magtech First Defense ammunition box.

19 A Yes.

20 Q Tell us what you observed and what you did with
21 respect to that item.

22 A That ammunition box was consistent with the
23 ammunition that I received in this case, and the 45
24 caliber bullets that I had were all consistent with
25 the 160 grain solid copper hollow point projectiles.

1 Q These are the 45 GAP?

2 A Yes, ma'am.

3 Q And this box is actually consistent with that
4 type of ammunition, the Magtech First Defense.

5 A Yes.

6 Q Thank you. You can have a seat. And with
7 respect to all of your items, is that the extent of
8 your testing of the actual physical evidence that was
9 presented to you?

10 A Yes, ma'am. The only other thing I did is I put
11 Item 12, which is one of the fired 40 caliber
12 cartridge cases into the integrated ballistics
13 identification system.

14 Q And again the Glock, I guess 45 GAP, you said is
15 pretty rare to see with respect to outside of law
16 enforcement?

17 A That's correct and also I did not put one of
18 those into the IVIS and the integrated ballistics
19 identification system because at this time it wasn't
20 recognized by IVIS.

21 Q And I want to turn your attention --- were you
22 asked to also review a video in this case?

23 A Yes, ma'am, I was.

24 Q A video that contained a firearm.

25 A Yes, ma'am, I was.

1 Q And I'm going to show you what I believe has been
2 introduced as State's 425, 426 and 232. Do you
3 recognize those photos?

4 A Yes, ma'am, I do.

5 Q And you actually reviewed --- what are these
6 photos first?

7 A Yes. What are they of?

8 Q Yes.

9 A This is a photograph of what is State's 425.
10 This firearm is consistent with a Glock firearm.
11 It appears --- as you can see, it's very fuzzy, but it
12 appeared to look like the Glock symbol and that he is
13 potentially where it could be on the firearm. The
14 Glock symbol is, it looks like a big circular "c" with
15 Glock written in the middle of it. You can see the
16 Glock patented trigger safety mechanism, the slide
17 stop, the slide retainer and the grip, the grip
18 striations on this Glock.

19 Q And again you actually had a chance to review of
20 these. These are still shots from the video that you
21 reviewed, correct?

22 A That's correct.

23 Q And the video actually in addition --- was it
24 clear in the video or easier to identify?

25 A Yes, ma'am, it was.

1 Q And this weapon is consistent with a Glock,
2 correct?

3 A Yes.

4 Q And that's in State's 425 and what are we seeing
5 in State's 426?

6 A 426, again this is a picture of a firearm and it
7 is a little fuzzy, but it's consistent with a Glock.
8 Again, you have your slide stop, your Glock trigger,
9 trigger safety, your accessory rail.

10 Q That's a closer up version or, I guess, a fuller
11 version?

12 A Yes.

13 Q State's 432 actually you can see a little more
14 detail on this. You can see the Glock symbol, the
15 trigger safety, the slide stop. You can kind of see
16 writing in here. This is where the caliber of the
17 firearm would be.

18 Q Okay. And when you're pointing, you're saying
19 there is writing there, but you can't make it out just
20 due to the quality of the picture?

21 A That's correct. That's where the caliber would
22 be and what's the model would be.

23 Q And I'm going to show you --- and again this
24 firearm is consistent with?

25 A A Glock firearm.

1 Q And not having it in front of you, can you
2 actually say that this firearm is the one that fired
3 any of the items that you analyzed?

4 A No, I cannot.

5 Q But it is consistent with the firearm that could
6 have fired those items?

7 A Yes, ma'am, it is.

8 Q Let me show you briefly real quickly the video?

9 MS. BAMBACH: Your Honor, I'm going to object to
10 showing this video again. The jury panel has seen it
11 about four times now.

12 THE COURT: The still shots are sufficient. We
13 don't need to see the video again.

14 MS. SIMPSON: Okay. As long as she can refer to
15 the audio. It's also important.

16 THE COURT: It's been played three times. You
17 need to move on.

18 BY MS. SIMPSON:

19 Q With respect to the video, do you recall the
20 audio portion of it?

21 A Yes, I do.

22 Q What is being said that is of significance? Do
23 you remember?

24 A They talk about a Glock 45 which is consistent
25 with a Glock 45 caliber.

1 Q And that's consistent with shooting that Glock
2 GAP 45 ammunition?

3 A It's consistent with 45 GAP or 45 automatic.

4 Q And quickly too just to make a distinction with
5 respect to shell casings and how they're ejected what
6 is the difference between a revolver versus a
7 semiautomatic?

8 A A semiautomatic, if I may.

9 Q Yes.

10 A A semiautomatic has the slide. When you pull the
11 trigger, it releases the firing pin. The firing pin
12 strikes the primer. It strikes the ammunition. That
13 burning up of the pressure will push the slide
14 backwards. When the slide comes back, it's going to
15 eject that cartridge case. The cartridge case is held
16 into the slide by what we call an extractor and then
17 it will come back backwards, hit what we call an
18 ejector and it will turn it to come out the ejection
19 port.

20 We don't have a picture of an ejection port, but
21 it's whole other side of the slide. It's going to do
22 that. Then when the slide is under spring tension,
23 when it flies forward it's going to as, long as
24 there's other unfired cartridges in the magazine, it's
25 going to push another cartridge into the chamber so

1 you can fire again. That's a semiautomatic. One pull
2 of the trigger, it will fire a bullet, eject a
3 cartridge case and then as long as they are unfired in
4 the magazine, it will load another into the chamber.

5 A revolver is very similar to the cowboy movies
6 that you might have seen, Clint Eastwood, Dirty Harry.
7 A revolver has what we call a cylinder. It is a round
8 part that has several chambers in it that holds your
9 unfired cartridges. Those unfired cartridges rotate
10 around one and their not ejected when fired. They
11 stay in that cartridge until you dump them out or you
12 physically take them out.

13 Q Okay. So I would have to pull out the barrel and
14 essentially dump them on the floor for them to come
15 out of the revolver?

16 A Usually you push a cylinder release. Sometimes
17 you have an ejector rod or you just turn it upside
18 down and tap that.

19 Q Thank you. You can have a seat. Beg the Court's
20 indulgence.

21 (Pause.)

22 MS. SIMPSON: Thank you, Ms. Cromer.

23 THE COURT: Ms. Bambach.

24 MS. BAMBACH: Thank you, Your Honor.

25 CROSS-EXAMINATION:

1 BY MS. BAMBACH:

2 Q Ms. Cromer, you got some instructions for this
3 testing from Investigator McCoy and CPD, right?

4 A No, ma'am. I believe all of the evidence was
5 submitted by --- let me check my notes.

6 Q Well, SLED first, right?

7 A Excuse me?

8 Q SLED. I mean, through --- originally it came
9 from the investigation of the Tommy Circle?

10 A Yes. Well, it was dropped off and delivered to
11 the laboratory by an Officer Carol.

12 Q Okay. And you had --- I know you talked about
13 this before, but you had some bullets found at both 93
14 Tommy Circle and then some unfired bullets found at a
15 different location, right?

16 A Cartridges, yes, ma'am.

17 Q I'm sorry, with the cartridges, the bullets, the
18 casings. You have your reports with you, right?

19 A Yes, ma'am.

20 Q So --- and you began your testing on July 3rd,
21 right, 2013?

22 A Yes, ma'am, I did.

23 Q And at that point, you had the 45 GAP cartridge
24 casings, right?

25 A Let check my notes.

1 THE COURT: Ya'll approach real quick.

2 (WHEREUPON, a bench conference was held in the
3 presence, but not within the hearing of the
4 jury.)

5 THE COURT: Go ahead.

6 BY MS. BAMBACH:

7 Q Okay. I'm sorry. So to repeat, you knew the 45
8 GAP cartridge were found at this point?

9 A Yes, ma'am.

10 Q And the gun that shot these bullets was never
11 found, right, to your knowledge?

12 A Not to my knowledge.

13 Q All right. So you never had an actual gun to
14 compare to?

15 A No, ma'am I did not.

16 Q And then you tested some unfired bullets on
17 July 5th, right?

18 A Yes, unfired cartridges.

19 Q Unfired cartridges, sorry again. Then on
20 July 5th of 2013, you told Investigator McCoy that the
21 results were inconclusive and maybe if you had the gun
22 you might be able to do more examination?

23 A I don't recall that. Do you know the SLED
24 narrative where it says your log.

25 A Yes, ma'am.

1 Q Do you have that with you?

2 A No, I don't. Can I see that, please?

3 Q Sure.

4 Q Oh. Sorry. Permission to approach?

5 THE COURT: Yes, ma'am.

6 BY MS. BAMBACH:

7 Q I think it starts right there and goes on to the
8 next page.

9 A Okay.

10 Q I've got it on the top of page three?

11 A Yes, ma'am, I was just looking because I did not
12 specify what I was talking about with my inconclusive
13 results.

14 Q Uh-huh.

15 A That could have been for the fired bullets.

16 Q Oh, yes, this would have been before the unfired?

17 A Yes.

18 Q On your report, it's dated August 15th of 2013.
19 On page two, it states that the fired bullet is most
20 consistent with a 45 caliber sold under C.B.C.
21 Magtech, right?

22 A That's correct.

23 Q And on page three it states that the unfired 45
24 GAP cartridge was C.B.C. Magtech, right?

25 A That's correct.

1 Q Do you know you can purchase the 45 GAP Magtech
2 ammunition at Palmetto State Armory here?

3 A I'm not surprised by that.

4 Q Are you surprised you can purchase it at Academy
5 Sports and Outdoors at two locations in Columbia?

6 A I'm not surprised by that.

7 Q Are you surprised you can purchase the 45 GAP
8 Magtech at Lexington Firearms and Gun Works here in
9 Columbia?

10 A No, ma'am, I'm not surprised.

11 Q You can also purchase the 45 GAP ammo at Decker
12 Pawnshop here in Columbia?

13 A I'm not surprised. I'm not familiar with that
14 one, but I'm not surprised.

15 Q Would it surprise you that I personally spoke
16 with the district manager of C.B.C. Magtech and that
17 he was --- (talking over each other)

18 MS. SIMPSON: Objection, Your Honor.

19 MS. BAMBACH: Because ---

20 THE COURT: Sustained. Disregard that last
21 statement.

22 BY MS. BAMBACH:

23 Q Your report also states that the only known
24 manufacturer of 45 GAP caliber and all the 45 auto
25 caliber is Glock, right?

1 A The only potential firearm with those rifling
2 specifications that is known at this time is Glock.

3 Q Okay. And there are four different models of
4 Glock that can fire a 45 GAP, right?

5 A There's the 37, there is the Gen IV 37, which is
6 just a newer model of the 37. There is the 38 and the
7 39.

8 Q Okay. And all of those models have similar
9 external dimensions, don't they?

10 A Well, actually the 37 is the larger frame.

11 Q Uh-huh.

12 A The 38 is what they call the compact and then the
13 39 is the subcompact, the smallest.

14 Q And the 37 and the 37 Gen IV do have a few
15 inches --- a few millimeters difference?

16 A In size, yes.

17 Q Yes, and the 38 is not that much smaller. Seems
18 like about half an inch?

19 A I would have to check my notes.

20 Q You said that, let's see. Page three of your
21 report under Item 36, that's when you said due to the
22 limited marks, the value results of these comparisons
23 were inconclusive and that Item 36 could loaded into
24 the same firearm or firearms as 6, 8, 9, and 10 at
25 some prior time, right?

1 A Yes, ma'am.

2 Q But these were all similar to --- they're all
3 characteristics similar to Glock, right? We
4 specifically know Glock is --- has the same
5 characteristics?

6 A As fired bullets.

7 Q As fired cartridges and bullets?

8 A The fired bullets were eight right, polygonal
9 which is a characteristic with the known only
10 manufacturer at the time is Glock. The fired
11 cartridge cases had the firing pin impression
12 consistent with a Glock firing pin and that was on the
13 45 GAP caliber cartridge cases.

14 Q And the 45 auto caliber can also fire the 45
15 caliber GAP?

16 A Potentially, yes.

17 Q Okay.

18 A As long as the 45 GAP does not go further down
19 into the chamber where it will not be reached by the
20 firing pin.

21 Q So a Glock 21 could potentially fire a 45 caliber
22 GAP?

23 A Let me double check.

24 Yes, Glock 21 is the 45 caliber, 45 auto caliber
25 Glock. It could possibly fire the 45 GAP.

1 Q Also, the Glock 21 Gen IV could possibly fire ---

2 A Yes.

3 Q --- could have possibly fired it?

4 A Yes, ma'am.

5 Q The Glock 21 SF could possibly fire it?

6 A Yes, ma'am.

7 Q The Glock 30 could ---

8 A Can I finish my ---

9 Q Sure. I'm sorry.

10 A There could be problems with the loading and
11 extracting of sub sequential fires or shots.

12 Q Okay. The Glock 30 Gen IV could potentially fire
13 it?

14 A Yes, ma'am.

15 Q Glock 30 FN could potentially fire it?

16 A You said Glock 30?

17 Q SF?

18 A Yes, ma'am.

19 Q Glock 30 S could potentially fire it?

20 A Yes.

21 Q Glock 36 could potentially fire it?

22 A Potentially, yes

23 Q And Glock 41 Gen IV could potentially fire it?

24 A You said Glock 31?

25 Q Forty-one.

1 A Forty-one. I'm not as familiar with Glock 41.

2 MS. BAMBACH: I have nothing further at this
3 time.

4 MR. SCHNEE: May it please the Court.

5 CROSS-EXAMINATION:

6 BY MR. SCHNEE:

7 Q Is there anything from all the testing you've
8 done and comparisons you've done that would indicate
9 who fired any of these shots?

10 A No, sir.

11 MR. SCHNEE: Thank you.

12 MS. SIMPSON: I just have two brief redirect
13 questions, Your Honor.

14 REDIRECT EXAMINATION:

15 BY MS. SIMPSON:

16 Q Is it unusual for you not to have a firearm?

17 A No, it's not, ma'am.

18 Q With respect to everything she named out as a
19 possibility of firing that 45 GPA caliber ammunition,
20 what was the manufacturer of all those that she named?

21 A Glock Firearms.

22 Q Thank you, Ms. Cromer.

23 THE COURT: Okay. Ladies and gentlemen, we're
24 going to break for the evening. We ran a little bit
25 longer than normal tonight. I do apologize. We are

1 going to break for the evening. If you'll be in your
2 jury room tomorrow morning at 9:15 ready to go. You
3 are not to discuss the case with anyone in any way,
4 shape, or form. You are to keep an open mind about
5 the case. You have not heard all the testimony in the
6 case at this point that I know of and the lawyers have
7 not had a chance to make their closing arguments to
8 you and I have not told you what the law is, so you
9 are to still have an open mind about the case.

10 You will recall that previously I have told you
11 in great detail that you are to decide this case based
12 upon the evidence that is presented in this courtroom
13 and nothing more. Because we're about to take a
14 break, I'm going to remind you of that warning and ask
15 you to commit to each other, the parties and to the
16 court that you will not discuss this case with anyone,
17 read any news account about this cases, via print
18 paper, internet, radio, television or anything else as
19 you have done throughout this entire trial.

20 Thank you for your service. We'll see you
21 tomorrow morning at 9:15. Everyone remain seated
22 while the jury is dismissed.

23 (WHEREUPON, the jury left the courtroom at 5:44
24 P.M.)

25 THE COURT: Thank you, Ms. Cromer. You may step

1 down.

2 (WHEREUPON, there was an off-the-record
3 discussion.)

4 THE COURT: Any potential jury charges you want
5 you need get to me in the morning so I can look at it.
6 I already got copy from the State. Did you get a copy
7 of it?

8 MR. KRZYSTON: We did, Your Honor, somewhere over
9 here.

10 MR. SCHNEE: We did. I would like an opportunity
11 obviously to read through them.

12 THE COURT: Yes, sure.

13 MR. SCHNEE: I think my only objection would be
14 to any of those in terms of cumulative.

15 MS. CAMPBELL: There's a couple I've gone over
16 that are cumulative.

17 THE COURT: Some of them looked like different
18 wordings of the same issue. Anything you want to
19 submit, get that that to me in the morning so we can
20 look at it and go through it.

21 MS. GARFIELD: Judge, I just want to put
22 something on the record in response to Mr. Schnee's
23 discovery violation insinuation, as well, as having an
24 opportunity to review our notebook, I found an email I
25 sent to all counsel, including counsel for Mr. Young,

1 Barnes and Mr. Stevenson dated October 28th, 2014, at
2 11:29 A.M. where I said attached is a copy of
3 discovery that I personally did not have my notebook.
4 In that were Investigator McCoy's handwritten notes
5 where he does have entries through November and
6 December. The November entries are --- to the typed
7 entries of his report and the December entry is just
8 perceived statement from Lorenzo Young from Lieutenant
9 Williams. Mr. Schnee was provided a copy of that
10 statement. I also have a copy of an email from
11 Mr. Schnee dated October 27th, 2014, at 5:31 P.M.
12 where he acknowledges receiving it.

13 THE COURT: Okay.

14 MS. GARFIELD: Thank you.

15 MR. SCHNEE: In that regard yes, I did receive
16 the handwritten notes. My objection was purely for
17 the typed out report that I never received until in
18 court.

19 THE COURT: All right. Anything else?

20 MS. SIMPSON: Thank you.

21 MS. GARFIELD: Not from the State, Judge.

22 MR. KRZYSTON: Nothing for Mr. Young.

23 THE COURT: All right. Nine o'clock in the
24 morning.

25 NOVEMBER 18, 2014

1 THE COURT: Okay. Anything before we get started
2 this morning?

3 MS. GARFIELD: Actually, Judge, we have some
4 motions. Ms. Ambroziak and I got together last
5 evening to look at the exhibits, and I just want to
6 clarify some things. First of all, State's
7 Exhibit 379, 384 and 355 were marked and the State is
8 withdrawing those and then, just to clarify,
9 Ms. Ambroziak did not have State's Exhibit Number 398
10 into evidence. This was introduced. This was the
11 blow up of the phone log. It was introduced through
12 Sergeant Pegram and if my memory is correct, it was
13 introduced without objection from both trial counsel
14 after revisions were made before the witness
15 testified.

16 MR. SCHNEE: That's my recollection, as well.

17 THE COURT: You wanted some stuff taken off and
18 that was taken off.

19 MS. SIMPSON: And then lastly, Judge --- and I
20 think this is just simply my fault, Ms. Ambroziak had
21 426 marked. I moved 428 into evidence. That's
22 because I thought this was an eight. Ms. June tells
23 me it's her six, so that just needs to be corrected.

24 THE COURT: Let me see it.

25 MS. SIMPSON: This was introduced through

1 Investigator VanHouten. It was the still shot of the
2 firearm that was seen in the video taken from the cell
3 phone from Lorenzo Young.

4 THE COURT: So it's 426 not 428?

5 MS. GARFIELD: That's correct.

6 MR. SCHNEE: If I may ask, which is the other 428
7 --- is just to be sure?

8 MS. GARFIELD: I'll have to find it.

9 THE COURT: Okay. So 426 is in over defendant's
10 objections. What else I?

11 COURT REPORTER: So 426 is in. in addition to 428
12 or instead of?

13 MS. GARFIELD: Just 426.

14 (WHEREUPON, State's Exhibit Number 426 was
15 admitted into evidence replacing State's Exhibit
16 Number 428 due to unreadable exhibit number.)

17 MS. GARFIELD: Our records indicate that there is
18 not a 428 that's in. The number was ---

19 Judge, we believe with our next witness or one of
20 our next witnesses, Sergeant Reese, defense counsel
21 yesterday in their examination of Investigator McCoy
22 and counsel, being Mr. Young's counsel, did do into
23 questioning about still photos taken at Lexington
24 County. Your Honor ruled that's not admissible.
25 There's now been reference to those. We now believe

1 we can go into those.

2 THE COURT: Let me see them.

3 MS. GARFIELD: I don't want to go against any
4 prior rulings. Those are not marked.

5 THE COURT: Mr. Krzyston.

6 MR. KRZYSTON: Yes, Your Honor.

7 THE COURT: What's your position?

8 MR. KRZYSTON: I've not seen the photos.

9 THE COURT: The still photos from the bakery,
10 inside the bakery.

11 MR. KRZYSTON: What are they, just like a
12 snapshot, if you will?

13 (Pause.)

14 Judge, my position would be that I object to the
15 introduction of those photos based on the fact they
16 are cumulative evidence at this point. I believe they
17 were originally excluded based on their cumulative
18 nature, furthermore the only reason I mentioned
19 Lexington County is because Investigator McCoy brought
20 it up in answering one of my questions, so I don't
21 know that our referencing them defeats the fact that
22 they are still cumulative. The entire video is in
23 evidence and I tend to think that is the best evidence
24 of the actual event and again just no reason to throw
25 this additional evidence up there.

1 MR. SCHNEE: Judge, my recollection of McCoy's
2 testimony is essentially that it was brought to
3 Lexington County to attempt to enhance the quality to
4 see if they could get any more useful information. I
5 think he even testified that could not get anything
6 useful out of it, and I would also say that these
7 photos are cumulative and that's what I remember, Your
8 Honor, declaring as to why they are inadmissible. I
9 don't see how anything has changed.

10 THE COURT: Well, it changes because the
11 impression is out there that there's all these photos
12 that exist that the State hasn't bothered to put in of
13 the crime scene.

14 MS. GARFIELD: That's our contention.

15 THE COURT: I mean it was brought up in cross-
16 examination with little to no evidentiary basis in any
17 way, shape, or form, but the jury is left with the
18 impression that the government is in possession of all
19 these photos of the crime that haven't been admitted,
20 so all of them are in. Mark them.

21 MS. GARFIELD: Thank you, Your Honor.

22 THE COURT: All right. What else?

23 MS. GARFIELD: Judge, this is more of a asking
24 for guidance. There's been questioning by defense
25 counsel through our witnesses about several people

1 that were never interviewed and there's also a mention
2 of a Marcus Brown. As Your Honor is aware, Marcus
3 Brown is on our witness list. He was living at the
4 home of Lorenzo Young, I believe, in a relationship
5 with his mother at the time of this incident and did
6 give information to law enforcement. As Your Honor is
7 aware or as I will remind you, you signed a bench
8 warrant for his arrest last week. He is under
9 subpoena and has failed to come to court at this
10 point. I'm just seeking guidance, before I ask any
11 questions. I'd like to be able to ask Sergeant Reese
12 if Mr. Brown gave him information and has he appeared
13 in court so the jury is not just wondering where is
14 this person that's been referenced.

15 THE COURT: Okay.

16 MR. KRZYSTON: Judge, I believe the only
17 reference to Mr. Brown was the fact that it was a
18 question to a SLED agent. I believe that question
19 was, were you aware that Mr. Brown wears a size 12
20 shoe. That in no way alludes to the information that
21 Mr. Brown provided to police and simply points how
22 that another individual in the house could have been
23 the person to whom those shoes belong. I just do not
24 see any purpose at this point ---

25 THE COURT: Well, McCoy was cross-examined

1 extensively on Marcus Brown as being a witness and
2 Marcus Brown not being talked to.

3 MR. SCHNEE: No, Judge, we were talking about
4 Marcus Johnson.

5 THE COURT: Marcus Brown was mentioned too,
6 because there was a whole conversation where McCoy was
7 talking about that may be the stepfather or the
8 stepdad or the boyfriend or the old boyfriend or the
9 current boyfriend.

10 MR. KRZYSTON: I believe that was ---

11 MR. SCHNEE: That's Marcus Johnson.

12 THE COURT: That's Marcus Johnson?

13 MR. SCHNEE: That's Marcus Johnson, Your Honor.
14 Marcus Brown is Lorenzo Young's stepfather, who did
15 talk to law enforcement and did give a statement. We
16 haven't talked to any of the witnesses, but for
17 reference to shoe size, about Marcus Brown.

18 THE COURT: We may need pull up that testimony.
19 There's so many Marcuses that I may be a little lost.

20 MS. GARFIELD: And I certainly don't want to
21 mislead the court, but that was my recollection.

22 THE COURT: I thought that was all about ---

23 MR. KRZYSTON: No, Judge.

24 THE COURT: There's multiple Marcuses and there
25 is a Marquis, who people say his name wrong.

1 (WHEREUPON, the Court Reporter accessed the
2 requested testimony relating to Marcus Brown.)

3 THE COURT: It's not in Mr. Krzyston's cross.
4 It's in your direct that it comes up. In the litany of
5 people you were talking to, you did not go talk to
6 him. His name is not mentioned.

7 No, it's not that I don't believe anybody or
8 didn't believe anybody, there's just so many Marcuses.

9 MS. GARFIELD: I understand.

10 MR. SCHNEE: I understand, Judge.

11 THE COURT: The part about the stepfather or
12 father or dad or what ever he was, was on direct.
13 That's where my mind was triggering from. All right.
14 What else?

15 MS. CAMPBELL: Your Honor, at this point based on
16 things that developed yesterday, we would ask for a
17 Denno hearing and we would be intending on asking to
18 offer parts of Trenton Barnes' statements limited to
19 his participation in the crime.

20 THE COURT: Okay.

21 MS. CAMPBELL: Your Honor, I'll call up Sergeant
22 Reese, and it would hand up this up to the court, Your
23 Honor, since it would be easier at this point to
24 follow transcripts.

25 THE COURT: Okay.

Direct of Reese by Campbell
(Denno)

1 MS. CAMPBELL: And I would also hand them to
2 defense counsel. I marked them (1), (2), (3).
3 They're all the same transcripts.

4 HE COURT: I'm confused as to what one, two, and
5 three are. Three different people transcribed ---

6 MS CAMPPELL: They are all the same, from one
7 interview. Those are just the order to keep them ---

8 MR. SCHNEE: Judge, there are three separate
9 portions. If you look at the titles, it says on
10 number(1) there is no title. On number (2) it says
11 Trenton Barnes' confession number two.

12 THE COURT: All right.

13 MR. SCHNEE: That is the second interview.

14 THE COURT: Okay.

15 MR. SCHNEE: Trenton Barnes' second recorded
16 transcript, that actually is a copy of one of them
17 essentially and the two ---

18 MS. CAMPBELL: There are two recorders, right.

19 THE COURT: I understand it now.

20 MR. SCHNEE: But I think they all picked up sight
21 different things.

22 MS. CAMPBELL: There were multiple different
23 recorders used.

24 SERGEANT KEVIN REESE,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION:

(DENNO)

BY MS. CAMPBELL:

Q Sergeant Reese, I want to turn your attention to Friday July 5th, did you come in contact with Trenton Barnes in this case?

A Yes.

Q Was he transported down to Columbia Police Department?

A Yes, he was.

Q At that point, did you and Investigator McCoy interview him?

A We did.

Q Prior to interviewing him or asking questions about what happened, were you present when he was advised of his rights?

A Yes, ma'am, I was.

Q Who actually was talking as far as the advice of rights went?

A It would have been Investigator McCoy.

Q McCoy?

A That's right.

Q And while you were there, referring to page two of the transcript, were those the rights that were advised to Mr. Barnes?

1 A It is.

2 Q And what rights specifically did Mr. McCoy advise
3 him of?

4 A His Miranda rights. Do you want me to read them?

5 Q Yes, for the record.

6 A Okay. McCoy told him that before we ask any
7 questions, you must understand your rights. He said,
8 "You have the right to remain silent." He said,
9 "Anything you say can and will be used against you in
10 court. You have the right to talk to a lawyer for
11 advice before we ask you any questions and to have him
12 with you during questioning." He also advised him
13 that him, "If you cannot afford a lawyer, one will be
14 appointed for you before any questioning if you wish.
15 If you decide to answer questions now without a lawyer
16 present, you still have the right to stop answering
17 questions at any time. You also have the right to
18 stop answering questions at any time until you talk to
19 a lawyer." He asked him, "Do you understand that?"

20 Q Did he then ask him to acknowledge that?

21 A Yes, he did and I also asked him did he
22 understand that and his reply --- Mr. Barnes' reply
23 was, "Yes, sir."

24 Q At that point what did Investigator McCoy ask him
25 to do?

1 A At that point he asked him to put his initials on
2 each line before each right that was read to him.

3 Q And at that point, did Trenton Barnes ask you a
4 series of questions about going to jail and things of
5 that matter?

6 A Yes, ma'am.

7 Q Were those answered for him?

8 A They were.

9 Q And on the next page, did he indicate that he
10 used to be in classes but he worked his way up?

11 A Yes, he did.

12 Q And then did Investigator McCoy read him a
13 statement of his rights?

14 A That's right, he did.

15 Q And what was that?

16 A He said, "I have read this statement of my
17 rights. I know what my rights are. I am willing to
18 make a statement and answer questions. I do not want
19 a lawyer at this time. I understand and know what I
20 am doing. No promises or threats have been made me
21 and no threats or coercion has been used against me."

22 We asked him do you agree with that? If you do,
23 sign right here. McCoy was showing him where to sign.

24 Q Now, at that point did you tell him to take his
25 time?

Direct of Reese by Campbell
(Denno)

1 A I told him to take his time and read it.

2 Q Did Trenton Barnes then ask you a question?

3 A Yes, he did.

4 Q And what question did he ask you?

5 A He asked, "Instead of a lawyer, can I have my
6 mama." Those were his words.

7 Q What did you tell him?

8 A I told him as soon as she gets there he could see
9 his mama.

10 Q And at that point were you waiting on his mom to
11 show up?

12 A We were waiting on his mom.

13 Q During that period of time, did he also ask you,
14 on the top of the next page, about whether he would
15 wait and sign it when his mother got there?

16 A Yes, he asked, "Can I sign it when my mama gets
17 here."

18 Q What did you indicate to him?

19 A I told him you can sign it when your mama gets
20 here. Do you want --- and I asked him, "Do you want
21 to talk to us now."

22 Q And was his mother brought into the room with him
23 when you all interviewed him?

24 A Yes, she was.

25 Q And I'm going to show you State's Exhibit Number

1 464. To you recognize this?

2 A I do. That is waiver form of the rights we
3 normally read.

4 Q And the rights that you read to him, do those
5 come off of this form at that point?

6 A Yes.

7 Q Did Trenton Barnes ever want to sign that form?

8 A No, he didn't want to sign it.

9 Q Did he agree to talk to you all once his mother
10 got there?

11 A Yes.

12 Q Was his mother made aware of what was going on?

13 A Yes, she was. She was informed.

14 Q Was Trenton Barnes, I believe, he was 16 at the
15 time of this interview?

16 A Sixteen.

17 Q Did he make the decision to talk to you?

18 A Yes.

19 Q And that was recorded?

20 A Yes, it was.

21 Q I want to move on to the reported transcript that
22 I've got marked number (2) on the top.

23 (this is not on the exhibit.)

24 And we're going to limit this specifically to
25 what Trenton said about his involvement in the robbery

1 was. Did he indicate to you what the plan was that
2 night, on page two?

3 A Yes, he did.

4 Q And what was the plan initially?

5 A The plan was they were going rob the Ale House.

6 Q Then was he asked what happened?

7 A When that question was asked, his answer was the
8 cars started pulling out.

9 Q Pulling out?

10 A Meaning the parking lot. The large parking lot
11 in front of the Ale House and that's what he was
12 talking.

13 Q And then was he asked what happened after that?

14 A Yes, and his answer was --- we're still on page
15 two?

16 Q Yes, sir. What was his role in the actual
17 robbery of the bakery?

18 A He said all he had to do was sit at the door and
19 to yell if he saw anybody. He just needed to yell.

20 Q Then he said --- and you can't go any further in
21 front of the jury about what he said everybody else
22 did --- moving on to page four. Did you ask him if he
23 watched what happened?

24 A McCoy asked him that and his answer was, "Yes,
25 sir."

1 Q And then finally moving to the third transcript,
2 did y'all ask him if he knew if anybody was inside
3 building?

4 A What page?

5 Q Page four.

6 A I asked him did he know if anybody was inside of
7 the building.

8 Q What did he indicate to you?

9 A He just said, "I was just supposed to sit and
10 lookout."

11 Q And then finally on page 17 of that transcript?

12 A Seventeen?

13 Q Uh-huh. Limit it to what he said he did?

14 MR. SCHNEE: Did you say 17?

15 MS. CAMPBELL: Seventeen of number three.

16 MR. SCHNEE: Oh, number three.

17 MS. CAMPBELL: I'm sorry. I'm on the next one.

18 I apologize.

19 BY MS. CAMPELL:

20 Q Did he indicate what the plan was?

21 A The plan was to rob the Ale House.

22 Q And then what happened?

23 A They argued and start to pull out.

24 Q And then at the top of the next page, does it
25 indicate what he was supposed to do in the bakery

1 robbery?

2 A Again, he indicated that he was just supposed to
3 sit by the door. If he saw anybody, yell.

4 Q And that was the statement that he gave you
5 back --- or the substance of what he said his
6 participation was back on July 5th when you
7 interviewed him?

8 A That's right.

9 Q And this was all audio recorded?

10 A Yes, ma'am.

11 MS. CAMPBELL: Your Honor, that would be the
12 substance of what we would be asking him. We will try
13 to be very careful about the Bruton issues here. We
14 would limit it to only his role in the robbery.

15 BY MS. CAMPELL:

16 Q The person that you interviewed, do you see him
17 in the courtroom?

18 A I do.

19 Q Can you point him out for the judge?

20 A He is at the end of the defense table with a
21 black and white grayish shirt.

22 Q Sitting next to his attorney?

23 A That's correct.

24 MS. CAMPBELL: Thank you.

25 MR. SCHNEE: May it please the Court.

CROSS-EXAMINATION:

BY MR. SCHNEE:

Q Investigator Reese, you were handed up State's 464. That's the advice of rights form?

A Yes.

Q If I understand you correctly, Trenton Barnes never signed the a waiver of rights?

A That would be correct.

Q Now these recorders that you have, there are actually two separate interviews, were there not?

A Yeah, that would be right.

Q Okay. So the first interview ---

A I'm sorry, one was just a continuation of the beginning of the interview.

Q Okay. Well, the first very one is when you do the advice of rights and he doesn't sign them?

A That's right.

Q At that point you and McCoy wait for his mother to get there?

A Yeah, but while we were in the room with him, his mother showed up downstairs.

Q Right. Okay. And there is a pause, right?

A Okay.

Q And if I'm understanding this correctly, there is quite a lengthy pause in the recording itself. There

Cross of Reese by Schnee
(Denno)

1 was an error with recording; is that right?

2 A An error, I believe so.

3 Q There is a huge chunk missing from essentially
4 the middle of this extended conversation?

5 A I don't really recall that.

6 Q You don't recall that?

7 A I don't know how much of a chunk that you're
8 talking about. I don't recall.

9 Q Well, let's see. You ended the first one while
10 still waiting for his mother, right. The first
11 recording ended while you're still waiting for his
12 mother to show up, right?

13 A I don't know when it ended, but here is how it
14 went. He asked again about his mom. At that point, I
15 got on the phone to start calling the officers that
16 were on the scene at the house that we picked him up
17 from ---

18 Q Uh-huh.

19 A --- to find out where his mother was, and then I
20 was informed that she was on the way. I then called
21 downstairs and realized that she had been there or she
22 was there at that time, but she was sitting out in the
23 lobby, and the officers didn't know what she was there
24 for. That was my understanding.

25 Q Okay.

1 A They said there was a lady sitting in the lobby.
2 I asked them to ask her name. Once we found out that
3 was her name, that would be that block that you're
4 probably talking about. Either I or McCoy went
5 downstairs to get her. I'm not sure.

6 Q Okay. In the first transcript I'd like you to
7 turn to the third to the last page. At the very top
8 it starts with you. It says you're on the phone. It
9 says this kid Trenton, has --- his mom left? Do you
10 see that?

11 A What? What page are you saying?

12 Q Third to the last. They're not actually
13 numbered, three from the end. Yeah, that's the one.
14 Okay. It even starts actually before that. You're at
15 this point calling to find out where Trenton's mother
16 is?

17 A Yes.

18 Q And while you're doing that, Investigator McCoy
19 is talking to Trenton about him being a Christian?

20 A Right.

21 Q And asking if he believes in God?

22 A Right.

23 Q Now, that conversation kind of continues for
24 awhile, does it not?

25 A It does, but the conversation wasn't going

1 anywhere.

2 Q Okay. The conversation between McCoy and Barnes
3 about God and religion continues for awhile, doesn't
4 it?

5 A Uh.

6 Q At the bottom of the next page, Investigator
7 McCoy asks are you a Baptist?

8 A Right, a couple minutes.

9 Q So it goes on for a couple of minutes. At that
10 point the first recording ends?

11 A I would assume so if that's what you're getting
12 at. Without sitting down and listening to where it
13 ended and where it picked up again, I'm not that sure.

14 Q Okay. That's the end of this transcript, though,
15 right?

16 A That would be correct.

17 Q And after that, there is a pause in the recording
18 for however long it is and then the next recording
19 starts. At this point, Mr. Barnes' mother is already
20 in the room?

21 A Yeah, she is.

22 Q I'd like ---

23 A Again, that would have been the time when you're
24 talking about the blank space where we went to get his
25 mother.

1 Q Okay. You don't remember if you went downstairs
2 or McCoy went downstairs?

3 A I'm not exactly sure. I don't recall which one.

4 Q Okay.

5 A I think it might have been me.

6 Q Okay. I'd like you to take a look at the
7 transcript that the State has written number (3) on?

8 A Okay.

9 Q During the time that there was no recording, did
10 Investigator McCoy continue to talk to Trenton Barnes?

11 A I'm sorry, say that again.

12 Q During the time that there was a pause in the
13 recording or a malfunction in the recording, you went
14 to get his mother or someone went to get his mother.
15 Was there still a conversation going on?

16 A I don't know what McCoy was saying to him, if
17 anything ---

18 Q Okay.

19 A --- while I was gone.

20 Q I'd like you to turn to page 12?

21 THE COURT: Of which one?

22 MR. SCHNEE: What's numbered (3) at very top,
23 second line, McCoy says, "We prayed together, didn't
24 we?" Barnes says, "Yes, sir," and McCoy says, "We
25 sure did. I told you what repent means, right,

Cross of Reese by Schnee
(Denno)

1 repentance, means, right.

2 Barnes, Yes, sir," McCoy, "okay." Reese, you
3 asked, you cold?" You're asking him if his microphone
4 is turned off, aren't you?

5 A That's right.

6 Q Because you know this is an improper line of
7 questioning, don't you?

8 A No, I asked him that because --- I didn't know
9 about this conversation. I don't know what he talked
10 about while I was gone. There was no way I could have.
11 I didn't ask him when I got back there. When I ask
12 another investigator, "Are you cold, are you hot?"
13 Yeah, there's no secret about that. I'm asking him if
14 he says he's cold, he doesn't have the recorders on.
15 If he says he's hot, he's got it on.

16 Q So you asked him specifically, "You cold, you
17 cold, are you cold?"

18 A Right.

19 Q Okay. You're trying to confirm whether he has
20 his recording on?

21 A Right.

22 Q Now, McCoy says he prayed with my client. You
23 weren't there for that, were you?

24 A No.

25 Q And somehow that's not on an audio recording, is

1 it?

2 A Apparently not.

3 Q And he never signed that waiver of rights?

4 A No, he didn't.

5 MR. SCHNEE: Judge, I have no further questions.

6 I do have some legal arguments about this.

7 THE COURT: All right. Redirect?

8 MS. CAMPBELL: No redirect on this witness, Your
9 Honor.

10 THE COURT: All right. Thank you very much. You
11 may step down.

12 THE WITNESS: Thank you.

13 MS. CAMPBELL: The State calls Investigator
14 McCoy.

15 THE COURT: All right.

16 INVESTIGATOR MATTHEW MCCOY,

17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION:

19 (DENNO)

20 BY MS. CAMPBELL:

21 Q Investigator McCoy, I want to turn your attention
22 back to July 5th. You were the one that advised
23 Mr. Trenton Barnes of his rights that day?

24 A That's correct.

25 Q Those were indicated in the transcript?

1 A That's correct, I read it off the form.

2 Q You read off the form?

3 A I read directly off the form, yes.

4 Q Which is State's Exhibit Number 464?

5 A That's correct.

6 Q And when you read him those rights, did he
7 indicate whether or not he understood them?

8 A He did. He indicated he understood.

9 Q In fact, instead of asking for a lawyer, he
10 actually just asked to see his mom?

11 A Correct, he just wanted his mom.

12 Q At that point this was being recorded; is that
13 correct?

14 A That's correct.

15 Q At some point, did the recorder quit working?

16 A It did. The recorder actually failed. In fact,
17 Sergeant Reese and I interviewed him for a length of
18 time without knowing the recording failed. When I
19 realized that, I pulled Reese out, let him know that
20 the recorder had failed and shut off, which is why I
21 brought two recorders in the next time when I came in
22 to interview him.

23 Q In fact, though, during the time that you were
24 interviewing him after he asked for his mother before
25 his mother got there, did you all ask him any

1 questions about the case?

2 A None whatsoever.

3 Q But did you mention religion to him?

4 A Yes, I did.

5 Q And at that point was his mother brought into the
6 room?

7 A She arrived shortly. While I was waiting ---
8 Reese, to my recollection, Reese went down to get his
9 mother. I was in the room with him waiting. The
10 recorder was still running at that point. Then when
11 Reese got back, we talked to his mother for some time
12 shortly, and then we talked to him. He agreed to talk
13 to us, and we began the interview.

14 Q Did he ever sign the waiver form?

15 A No, he didn't want to sign the waiver form.

16 Q Is that unusual?

17 A It's not unusual. I had a conversation. I said,
18 "Hey, you need to sign the waiver form if you want to
19 talk to us." He agreed that he understood and wanted
20 to talk.

21 Q And his mother was present during the time you
22 were interviewing him about the facts of the case?

23 A Yes, she was present the entire time we were
24 interviewing him.

25 Q At any point did he ever invoke any of his

1 rights?

2 A No, he did not.

3 Q At any point did he ever ask for a lawyer?

4 A No, he did not.

5 Q In fact, when he asked for his mother, did you
6 get his mother there?

7 A Yes.

8 Q At any point did he say he didn't want to talk
9 anymore?

10 A No, no, he never did.

11 Q Did anyone threaten him in any way?

12 A No, we did not.

13 Q Did anyone deprive him of any creature comforts?

14 A No, we did not.

15 Q In your opinion as an investigator, was he
16 talking to you voluntarily?

17 A He was.

18 Q Did he seem to understand his rights to the point
19 when he didn't want a lawyer, but instead wanted his
20 mom?

21 A That's correct, he did.

22 Q During the time period when he was there both in
23 the nonrecorded and recorded time, did he at any point
24 ever invoke any rights?

25 A No.

1 Q In fact, do you hear his voice and him telling
2 you what happened that night in the recordings that
3 have been transcribed?

4 A Yes.

5 Q And his mother was present?

6 A That's correct, she was there.

7 MS. CAMPBELL: That's all I have, Your Honor.

8 MR. SCHNEE: May it please the Court.

9 CROSS-EXAMINATION:

10 BY MR. SCHNEE:

11 Q If I'm understanding you correctly, you say you
12 realized at some point the recording had stopped
13 working?

14 A That's correct.

15 Q You left and came back?

16 A To the best of my recollection, as we're talking
17 and interviewing there's a button on the recorder that
18 I can press on it to see if it's still recording. It
19 wasn't on. It was turned off. I don't know if the
20 battery had died. We had many interviews that day,
21 but the recorder had stopped working. I went and
22 pulled Reese out, made some kind of excuse, hey, we
23 need go outside real quick. I advised him that the
24 recorder had quit working, I got two other recorders
25 and brought them back in as I recall, right.

Cross of McCoy by Schnee
(Denno)

1 Q Okay. So when you started a new recording, did
2 you put an introduction on the recording at all?

3 A Not that I recall.

4 Q Most of the recordings, you say this is
5 Investigator Matt McCoy, the Columbia Police
6 Department, the day and time and who your about to
7 interview, right?

8 A That's correct.

9 Q You do that most of the time before you even walk
10 into the interview room?

11 A That's correct.

12 Q But you didn't do that with the recordings here?

13 A No, because they were --- it was a continuation
14 of the same interview. I believe I introduced the
15 first interview or the first recording. So it was
16 just the same interview. When I realized the recorder
17 had quit, I went and got another recorder and came
18 right back.

19 Q Okay.

20 A I have didn't need to introduce it because it was
21 the same incident, just three different files.

22 Q So on the first interview, which is the first
23 part of your interview, you started talking to Trenton
24 about religion and God.

25 A Yes, I did.

1 Q If he believed in God?

2 A Yes.

3 Q If he's a Christian?

4 A Yes, I believe I noticed a cross on his neck he
5 was wearing, which is why I brought that up.

6 Q Okay. You started talking about going to
7 St. Baptist?

8 A I think he brought up. He brought up the church,
9 I believe is how that happened.

10 Q Now, during the time that the recording is not
11 working, that's apparently the time when you prayed
12 with him?

13 A I don't recall when exactly the recording shut
14 off.

15 Q Okay. But at some point you prayed with him?

16 A At some point, I asked him if he wanted to pray,
17 and he acknowledged, yes, yes, he did.

18 Q Okay.

19 A To the best of my recollection.

20 Q And this is before the second recording starts?

21 A It would have been during the original recording
22 if it had continued to operate.

23 Q So it was during the time the recorder
24 malfunctioned?

25 A That's correct. During the time the recorder was

1 malfunctioning with his mother there, we talked about
2 the whole incident. It was a good solid chunk that's
3 missing out of that first recording. That was the
4 operation of it.

5 Q Okay. So you don't have on audio that he ever
6 waived his rights, do you?

7 A I do --- I believe the first part of audio he
8 waives his rights. He is waiting for his mom.

9 Q He signs his rights, but he never actually waives
10 his rights, does he?

11 A He waives his rights. He agreed to talk to us
12 after being advised of his rights. All he wanted was
13 his mother.

14 Q Can you show me anywhere that he says, yes, I
15 agree to waive my rights?

16 A I don't have a copy of the transcript at all. If
17 you don't mind. I don't know if he ever said those
18 exact words.

19 Q Well, did you ever ask him specifically, do you
20 wish to talk to us, and he says I want my mother?

21 A Let's see, page two, I was talking to him. I
22 read him his rights. If you understand you have to
23 acknowledge. Reese asked, "Do you understand?" He
24 said, "Yes, sir." I asked him to put his initials on
25 the form indicating that he understood the rights.

1 Q Uh-huh. Okay.

2 A Which he did. He then asked about going to jail,
3 and I went on. I had advised him, you know, you're
4 not under arrest. Did I tell you were under arrest?
5 What did I say when we were at the house. I asked did
6 you mind coming down to headquarters. He answered
7 some questions, right, he acknowledged that's what
8 happened. I then advised him, did you ride in the
9 back of a police car? No, you rode in the front seat
10 with me. You were in an unmarked car. You weren't
11 handcuffed in a cage behind your back. He
12 acknowledged that I was correct in correct in saying
13 that he had voluntarily came down to headquarters to
14 answer some questions.

15 Then I read the statement, asked him to read
16 along with me the statement of the waiver of rights,
17 that's off the form. Reese tells him to take his
18 time. Then he says, "Instead of a lawyer, can I take
19 my mom. He is advised as soon as she got there he
20 could. We asked does he have to sign it. I
21 acknowledged if he wanted to talk to us, then yes, I
22 would like him to sign.

23 Q You said you have to sign this if you want to
24 talk to us?

25 A Let me finish. Let me finish.

1 Q I'm asking you is that what you said?

2 A My exact quote was "If you want to talk to us,
3 yes."

4 Q His question was, "Do I have to sign this?" That
5 was his question?

6 A His question was, "Do I got to sign this?" Was
7 his exact --- I acknowledged that if you want to talk
8 to us, yes.

9 Q Do you have a signed form?

10 A No. The form --- he refused to sign the form.

11 Q Okay. Well, he asked you do I have to sign this,
12 and you said yes and you don't have a signed copy?

13 A Well, there's nothing legally requiring him to
14 sign the form. He just has to acknowledge and agree
15 to talk to us, which he did.

16 Q He asked you a very specific question and you
17 told him yes, you needed to sign this. This is a
18 16-year-old?

19 A Yes.

20 Q That's what was said --- those are your words in
21 the transcript?

22 A That's correct.

23 Q Well, continue?

24 A Reese advised him, "No, you don't have to sign
25 it, just as long as you understand your rights. If

1 you want to talk to us, let us talk --- let's talk.
2 If you don't want to sign it, you don't have to worry
3 about signing it. Just write on there that you didn't
4 want to sign it." Then he asked does it mean that
5 I'll go to jail. I talked to him about that nobody in
6 this room told you that you were under arrest. He
7 acknowledged that we didn't tell him he was arrest.

8 He asked, "Can I sign it when my mama gets here,"
9 and Reese acknowledges, "Yes, you can sign it with
10 your mom when gets there."

11 Q Well, his mama got there?

12 A Yes.

13 Q Did ne ever sign it?

14 A No, he never signed it.

15 Q Did you ever ask him to sign or tell him about
16 his rights again with his mother present?

17 A I don't recall if we did or not.

18 Q Well, do you have it on audio that you did?

19 A On the audio recording, no, the recorder failed.

20 Q Oh, the recorder failed. Just like the recorder
21 failed while you were praying with him. What exactly
22 did you tell him that repent means?

23 A I don't recall. I don't recall what my exact
24 words when we talked.

25 Q What do you think you said?

1 A You're asking me ---

2 Q To paraphrase what you might have explained to a
3 16 year old kid what the word repentance means?

4 A Might have said?

5 Q What you would have explained to a 16-year-old?

6 A Well, I probably would have said taking
7 responsibility for your actions and asking for
8 forgiveness.

9 Q Okay. In relation to religion?

10 A Yes.

11 Q And as soon as you asked that question and talked
12 about --- I'm sorry, we're in the second transcript.
13 Is there anything else in the first transcript dealing
14 with an agreement to waive rights?

15 A I don't see anything on the first transcript, no.

16 Q Go to ---

17 A I don't have a second transcript. Can I get a
18 copy?

19 Q I don't have an extra copy.

20 A Go ahead. I'll give you your copy back. Thank
21 you, sir. Appreciate it.

22 Q Start with one that's titled number (3) I believe
23 that's actually the

24 A Got you. The number (3) on the top.

25 Q I believe that's actually the longer version just

1 because for some reason that one ---

2 A Yeah, it's front and back, so I got you.

3 Q We'll keep going, all right?

4 A Okay.

5 Q All right. Now, when this picks up, you're
6 talking about the incident, right?

7 A When this picks up, Reese and Mr. Barnes are
8 talking about the incident.

9 Q Okay. Are you in the room?

10 A I'm --- when I walked into the room, Reese and
11 Mr. Barnes are having that conversation.

12 Q So you are not in the room at this point?

13 A Well, when the first line picks up, "Why did they
14 tell you to --- what happened to make you start
15 shooting? You understand that better?" That's when I
16 had just walked into the room. That's when the ---
17 I'm wearing the recorder; it picks that up.

18 Q Okay.

19 A I'm not in the room prior to that. I was going to
20 get the recorders.

21 Q And you have both recorders in your hand at that
22 point?

23 A Yes, I have both. One is not in my hand, it was
24 --- I was wearing it on my shirt and the other one is
25 attached to a notebook, I believe.

1 Q Okay. So you go to get recorders and
2 Investigator Reese is sitting in there?

3 A Sergeant Reese, yes.

4 Q Okay. He is the one sitting in there talking to
5 Trenton?

6 A That's correct.

7 Q Okay. Can you show me anywhere in here where you
8 actually get a waiver of his rights, whether he says
9 it orally or ---

10 A Well, on this transcript, this was midway through
11 the interview, so you're not going to have anything
12 about --- he has already waived his rights before
13 this, so you're not going to have anything on this
14 transcript.

15 Q Who did he waive the rights to?

16 A Myself and Reese.

17 Q And we have your word to take for that?

18 A You have myself and Sergeant Reese.

19 Q Now you talked to him about repentance on page
20 12.

21 A That's correct.

22 Q You said you prayed together at some point?

23 A Like I said, yes.

24 Q Okay. And then Investigator Reese asked if
25 you're cold, meaning is your microphone off?

1 A What he's asking me is, if I have the recorders
2 and they're working properly, that they're hot,
3 basically. That's how I took what his statement was.

4 MR. SCHNEE: Well, when you walked in ---

5 MS. CAMPBELL: I'm sorry, what page are you on?

6 MR. SCHNEE: Page 12 and number three.

7 BY MR. SCHNEE:

8 Q You say you walked --- that number three starts
9 with you walking in the room while they're talking,
10 right?

11 A Yes.

12 A That's my ---

13 Q And Sergeant Reese knows that you left the room
14 to get working recorders, right?

15 A Right. He is aware the recorder had stopped
16 working. I had already advised him of that. I was
17 going to get --- I had to find some.

18 Q Okay.

19 A It took me some time. Everybody was out --- a
20 large group us were out doing search warrants. Reese
21 and I were the only two at headquarters. I had to
22 find somebody who had a recorder sitting on their desk
23 that was charged and ready to go. It took some time
24 to do that.

25 Q So you walked back in the room with recorders,

Cross of McCoy by Schnee
(Denno)

1 right?

2 A Yes, two.

3 Q This conversation that I'm talking about when he
4 asks are you cold or hot, that's on page 12?

5 A Right.

6 MR. SCHNEE: Judge, for the record, that
7 conversation starts, and we are more than happy to
8 provide the actual recording, that starts at --- that
9 question of what I told you about the age of
10 repentance for your sins, we prayed together ---that
11 starts at 12 minutes and 32 seconds into that
12 recording. Explain why it took 12-and-a-half minutes
13 for Sergeant Reese to even ask you if the recordings
14 are on?

15 A You want me to try to make some kind of
16 conjecture as to what was going on through his mind at
17 the time, why it took him so long?

18 Q He is in there with you?

19 A Uh-huh.

20 Q Coming back in with working recorders for 12 and
21 a half minutes and yet somehow he only asks are you
22 cold, are you cold as soon as you start talking about
23 the fact that you prayed together with a 16 year old?

24 A I believe that's my first --- where I begin
25 talking to him or if it's further back. I have no

1 idea why he would ask that.

2 Q You have no idea why he would ask that?

3 A No.

4 Q At that point in time?

5 A Well, you can't see the recorders. They're
6 small, so we hide them. We don't make it obvious that
7 we have a huge recorder sitting there.

8 Q That's the first time you remember talking?

9 A No, no, I said that was not --- I was wondering
10 --- and that's why I went back and was looking through
11 the transcript. That's not the first time I started
12 talking, no.

13 Q Because you start on page seven?

14 A Correct, I think it's six or seven, correct.

15 Q You're telling me in 12-and-a-half minutes the
16 fact that you were going specifically to get new
17 recorders that Reese didn't have the time to even ask
18 you this?

19 A I'm telling you that I have no idea why he asked
20 me that and you asked me to make some kind of
21 conjecture as to why he would ask me that. In my mind
22 that's why he asked me that. We ask that question
23 quite a few times, are you hot, are you cold just to
24 make sure, hey, are you recording now. He was aware
25 the recorder had stopped earlier. He was more than

1 likely trying to get me to check. When he asked me
2 that question, I checked the recorders to make sure
3 they were operating. We didn't want what happened
4 earlier to happen again where we missed his confession
5 and it was lost due to the recorder failure. We
6 wanted to make sure the recorders were still
7 operating.

8 Q It just happens to be right around the exact time
9 you start talking about religion, repentance and
10 praying. Very convenient. I have no further
11 questions?

12 A Was that a question you want me to answer?

13 MR. SCHNEE: No.

14 THE WITNESS: All right. I wanted to be sure.

15 REDIRECT EXAMINATION:

16 BY MS. CAMPBELL:

17 Q At this point --- on page 12 he asks if you're
18 cold, you tell him you're hot, right?

19 A I'm telling him the recorder is on, it's working,
20 it's functioning.

21 Q And after that on page 12, you also say are you
22 sorry for what happened?

23 A That's correct.

24 Q And you follow up on that and said, "Are you
25 sorry about what happened to that lady?" He says, "I

1 hate it. I wish it never happened."

2 A "That's right."

3 Q You follow up with, "What do you mean; do you
4 repent for what happened to that lady?"

5 A "Yes, sir."

6 Q "And are you sorry you went with those boys?"

7 A "Yes, sir."

8 Q So there is nothing about him asking about
9 whether the recording was working that stopped any
10 line of questioning?

11 A That's correct. I went on with it. There was
12 nothing to hide with the audio recorders. There's
13 nothing to hide here.

14 Q Then he asked you --- and then cut you off before
15 he got the part on the first transcript about whether
16 or not he waived his rights?

17 A Correct.

18 Q Going to the ---

19 A This is the one with the number (1) at the top?

20 Q Yes. And it's the fourth page?

21 A Okay.

22 Q He stopped you when you asked about you can sign
23 it when your mama gets here. Reese clearly told him
24 he doesn't have to sign anything as long as he
25 understands his rights, right?

1 A That's correct.

2 Q In response to that question, understanding his
3 rights, he even goes so far as to say instead of a
4 lawyer, can I have my mama so that's who he wants?

5 A That's correct. He makes the statement, he is
6 sniffing. He says, "Can me and my mama talk to you?"

7 Q Uh-huh.

8 A "...to talk to y'all," is what he says.

9 Q And then the next thing is Investigator Reese
10 says, "What did you say?"

11 A And then he says, "Can me and my mama --- I'll
12 talk to you when mama gets here."

13 Q And then Investigator Reese says what?

14 A "Okay. I don't have a problem with that, but we
15 are going to talk when your mom gets ---

16 Q That's not how it reads --- read it specifically
17 what it says.

18 A I'm sorry. "Investigator Reese: okay. I don't
19 have a problem with that, but you are going to talk
20 when your mom ---"

21 Q That's not how it reads. Read it word for word.
22 "But are you going to talk ---"

23 A "But are you going to talk when your mom get
24 here, son?"

25 Q And what is his answer?

1 A "Yes, sir."

2 Q At that point, what does Reese do?

3 A He goes and makes a phone call --- according to
4 the transcript, makes a phone call trying to get ahold
5 of his mom.

6 Q And do you get his mom there?

7 A Yes, we do. We made every effort to make sure
8 she was there.

9 Q I already asked you about what Trenton Barnes
10 himself --- did his mother ever say she didn't want
11 you to talking to her son?

12 A No.

13 Q Did he ever tell her son to quit talking to you?

14 A No.

15 Q In fact, was his mother fully cooperative?

16 A She was. She even encouraged him to tell the
17 truth while we were in there.

18 MS. CAMPBELL: That's all I have.

19 THE COURT: You can step down.

20 MR. SCHNEE: I have no other questions, Judge.

21 THE COURT: All right. Call your next witness.

22 MS. CAMPBELL: The State has no further witnesses
23 on this issue.

24 THE COURT: All right. Do you have anything on
25 this issue?

1 MR. SCHNEE: Just give me one minute, Your Honor.

2 (Pause.)

3 MR. SCHNEE: Judge, I don't have any witnesses.

4 THE COURT: Okay. Any arguments, Mr. Schnee?

5 MR. SCHNEE: Yes, Your Honor, I have a few
6 arguments. First of all, I believe this is a
7 completely inappropriate time to be having a Denno
8 hearing considering Investigator McCoy has already
9 finished his testimony. The State presented him as a
10 witness. He was the main investigator on this case.
11 He was doing --- you go through the substance, the
12 vast majority of his interview, he is conducting it.
13 At this point he has been called to the jury. He has
14 been cross-examined, redirected, recross-examined and
15 I would certainly object to him even being recalled at
16 this point to testify in front of the jury. However,
17 at this point now, I'm essentially prohibited from
18 being able to question Investigator McCoy in front of
19 the jury about it. Absent them recalling him, which
20 is a very odd and inappropriate thing for them to do
21 at this stage. If they wanted a Denno hearing, they
22 should have done this yesterday or the day before or
23 last week or three weeks ago when we had other
24 pretrial hearings. They've had more than enough
25 opportunities and I think at this stage in the trial

1 when they have announced that they have either two or
2 three witnesses left, they're going to just magically
3 illusion of, oh, by the way, we actually got a
4 statement from Trenton Barnes. I think that's
5 incredibly inappropriate.

6 If that's their intent and they think it's
7 necessary for their testimony and their efforts, then
8 they should ask for a mistrial and try to redo this.
9 If this evidence comes in, I'm going to be asking for
10 a mistrial. Specifically in terms of the Denno
11 issues, they are required to advise my clients of his
12 rights, make sure he understands them, get a valid,
13 free --- and have him waive them freely and
14 voluntarily absent coercion, threats or anything else.
15 In terms of coercion, I would direct your attention to
16 *Bruder v. Williams*, it's a US Supreme Court case.
17 It's commonly known as the Christian burial speech
18 case where the Supreme Court said essentially that
19 police were riding around in a car with a suspect
20 talking to him and what the Supreme Court said is the
21 content of the conversation dealing with religion and
22 saying you need to allow this family to bury their
23 loved one completely de-Mirandized him, and, Judge, I
24 would argue a very similar thing has happened here if
25 he ever been fully Mirandized and waived his rights.

1 I don't believe they presented evidence that he
2 actually waived his rights. He refused to sign that
3 document and magically, of course, the recorder breaks
4 when they say they do it and they never advised him
5 again knowing they have recording failures. After
6 12-and-a-half minutes, Investigator McCoy brings up
7 praying together and then Sergeant Reese says are you
8 hot, are you cold asking if the recording is on
9 because even Sergeant Reese knows the topic of praying
10 together and religion is completely inappropriate is
11 coercive and has been told by the US Supreme Court is
12 inappropriate and denies a fair opportunity for reason
13 and logic and that's why it counts as a de-Mirandizing
14 aspect. It eliminates the waiver.

15 For all of those reasons, I would object to any
16 of this testimony coming in. I don't believe they
17 have met they're burden of proof.

18 THE COURT: Just focus on the prayer.

19 MS. CAMPBELL: The prayer, Your Honor. Just
20 looking at State v. Hill, it's a South Carolina case
21 604 S.E. 2d 696.

22 THE COURT: Hold on. Let me find it. '

23 MS. CAMPBELL: Or it may be State v. Crawlly.

24 THE COURT: What year is the Crawlly?

25 MS. CAMPBELL: Crawlly is 2002, but Hill is 2004,

1 Your Honor, and I would also talk about in the
2 interest of Tracy v. --- which is a 2010 case as far
3 as juveniles talking about allowing a defendant to
4 speak with his mother.

5 MS. CAMPBELL: And then State v. Clinton.

6 THE COURT: Do you have a copy of the pursuer
7 case?

8 MS. BAMBACH: No, I don't, Judge. Frankly, I'm
9 not even getting a wi-fi signal that's working for me
10 certainly. If I can go back to my office, I'm more
11 than happy to start printing them, but I would like an
12 opportunity to read any of the cases that the State
13 mentioned since I don't know what they are.

14 THE COURT: Okay. This Christian burial case has
15 nothing to do with this issue at all. I mean, the
16 Christian --- the Brewer v. Williams --- in Brewer v.
17 Williams, this case is very clear. The defendant in
18 that case was accused or --- I guess he was convicted,
19 of kidnapping that began in one state and went to
20 another state, and he had been --- he already had a
21 lawyer. In fact, he already had two lawyers. Both of
22 which his Des Moines lawyer and his Davenport, Iowa
23 lawyer had both advised him not to make any statements
24 and he had already been arraigned and he had already
25 asserted his right to counsel, and the police officer

1 who had knowledge that the defendant was a former
2 mental patient and deeply religious sought to obtain
3 an incriminating remark from him by telling her he
4 should give the parents --- the parents were entitled
5 to a Christian burial for the victim. I mean, that's
6 in no way shape or form, in any way, shape, or form in
7 any way goes to the situation that we have here.

8 Okay. Tell me why you think recalling McCoy is
9 appropriate.

10 MS. CAMPBELL: I don't know that we have to
11 recall McCoy. We were planning on offering it through
12 Reese.

13 THE COURT: Okay.

14 MS. CAMPBELL: If you would like me to recall
15 McCoy, I can.

16 THE COURT: I don't think it's necessary.

17 MS. CAMPBELL: I don't think it's necessary to
18 put a statement in front of the jury to call McCoy.

19 THE COURT: Here is what concerns me. The
20 statement was given freely, knowingly, intelligently
21 and voluntarily. He was clearly advised of his
22 rights. He is having a very clear and intelligent
23 conversation with law enforcement, with two law
24 enforcement officers. There is no concept that you're
25 required to sign the waiver form. People refuse to

1 sign the waiver form all the time.

2 The issue is not do you sign the form or do you
3 not sign the form. The issue is did you know what was
4 going on. Were you aware of your rights? Do you
5 freely, voluntarily, knowingly and intelligently
6 without threat, coercion, force or pressure give a
7 statement to the police.

8 Mr. Barnes indicated to the police that he
9 clearly did understand his constitutional rights
10 because he said, "Instead of a lawyer, can I have my
11 mama?" So that means that he knew and understood that
12 all he had to say was, can I have a lawyer and the
13 questioning would have stopped. He didn't. He asked
14 for his mother, which I'm not even sure the police are
15 required to give him. I haven't read that line of
16 cases in a while, but they did, which was more than
17 appropriate in the situations --- under the situation
18 that they found himself in. He continued to talk with
19 his mother present. So this idea of whatever prayer
20 happened has violated, you know, makes a Miranda
21 waiver invalid based on the Brewer case, the Brewer
22 case is completely and totally different. The person
23 had two lawyers, had been arraigned, and the person
24 and the police had been advised by the lawyers not to
25 talk to the defendant. I mean, that's a completely

1 and totally different situation, I mean --- than the
2 situation we have here. At no point do I see him
3 saying, I don't want to talk anymore. I don't want to
4 answer your questions. I want a lawyer or anything of
5 that nature in any way, shape, or form. So the
6 statement is in based upon the totality of the
7 circumstances. Jackson v. Denno and its progeny.

8 Now, here is my bigger concern. My bigger
9 concern is what exactly is coming in, because we can't
10 use the word 'we,' so ...

11 MS. CAMPBELL: We would agree with that.

12 THE COURT: The word 'we' is out. There is no
13 'we.' There is no 'they.' There is no 'us.' There
14 is no 'them.'

15 I mean, we need --- we're going to have to go
16 through this with a fine tooth comb on what you want
17 to put in to make sure that we're not violating
18 Bruton.

19 I assume you don't want them to say we either; is
20 that right, Ms. Pinnock? Is that why you're standing
21 up.

22 MS. PINNOCK: Yes, Your Honor. That is part of
23 the reason. The concern we had is the State has
24 already introduced a letter that was written by
25 Barnes. That was introduced over our objection

1 because it fully implicates and pretty much places all
2 the blame on Lorenzo Young. That letter is already
3 into evidence. What our concern is now, with the
4 State trying to introduce a statement given to law
5 enforcement, with looking at the totality of
6 everything, the circumstances, the inference is going
7 to be even stronger against Mr. Young. Introducing a
8 second statement by Mr. Barnes when they already have
9 one in evidence. It was our understanding that was
10 their solution to, you know, any sort of Bruton issues
11 that did come up was they elected to use a written
12 letter to his mother instead of a statement through
13 law enforcement, but now it's going to be two separate
14 statements introduced against Mr. Barnes and I fail to
15 see or understand how the jury would not be making the
16 inference against Mr. Young, not using that evidence
17 against Mr. Young when it's not admissible against
18 him.

19 So that's our bigger concern is that they already
20 have that statement in there against them. It's
21 already in evidence. Through Ms. Barnes, you know,
22 she identified the handwriting. They call a
23 handwriting expert up there to identify the
24 handwriting again. It was published to the jury.
25 They already heard a statement by Mr. Barnes. Again,

1 that statement fully implicates Mr. Young, and so I
2 just --- at this point, I think it's --- it doesn't
3 get past a 4003 analysis for Mr. Young because that
4 inference is going to be so strong, he is going to be
5 prejudiced by it. So aside from them saying we were
6 going to do this or this was our plan, yes, we have an
7 obvious problem with that, but the inferences that are
8 going to be created towards Mr. Young is our bigger
9 issue and I don't know how we can avoid that from
10 happening.

11 THE COURT: What about that argument?

12 MS. PINNOCK: I'm sorry?

13 THE COURT: I was talking to the State.

14 MS. CAMPBELL: Your Honor, she references the
15 other thing, but I mean, you directly told this jury
16 you can't consider that letter against Mr. Young in
17 any way. We've already addressed you can't use that
18 against Mr. Young. You can only use that against
19 Mr. Barnes.

20 THE COURT: What she is saying is that because
21 that letter is out, the inference is going to be well,
22 it depends on --- let's start with you can't make that
23 argument until you understand what we're --- I can't
24 process through that argument until I understand what
25 you plan on introducing or want to introduce.

1 MS. CAMPBELL: If you can refer to the
2 transcript, Your Honor, page two, number (2).

3 THE COURT: Tell me which one.

4 MS. CAMPBELL: Instead of saying, we was planning
5 to rob the Ale House. It would be the plan was to rob
6 the Ale House. What happened? Okay. The car started
7 backing ---

8 THE COURT: Hold on.

9 MR. SCHNEE: I'm sorry. I'll completely lost.

10 MS. CAMPBELL: Oh, I'm sorry, number (2), page
11 two.

12 MR. SCHNEE: What exactly are you proposing to
13 introduce, a transcript of this or have just one.

14 MS. CAMPBELL: Have Sergeant Reese testify to
15 what was said.

16 MR. SCHNEE: Well, I have a real problem with him
17 reading from a transcript that's not actually a
18 transcript.

19 THE COURT: Okay.

20 MS. CAMPBELL: Well, then I would be glad to ---

21 THE COURT: We're not on that issue.

22 MS. CAMPBELL: I'll get to that issue.

23 THE COURT: Keep going.

24 MS. CAMPBELL: The car start pulling out. Then
25 on that page --- the only thing I had to do was sit by

1 door. If I saw anybody, yell. Or, if I see anybody
2 yell.

3 MR. SCHNEE: What's your proposal to that last
4 one that you just read?

5 MS. CAMPBELL: Limit it to, the only thing I had
6 to do was just sit by the door. If I see anybody
7 yell, and we would be very specific with Sergeant ---
8 you can only talk about what he said his role was.

9 MS. PINNOCK: Judge, that ---

10 THE COURT: She is not finished.

11 MS. PINNOCK: I'm sorry. I thought she was.

12 MS. CAMPBELL: Page four. Did you watch what
13 happened?

14 Yes, sir.

15 MR. SCHNEE: Where are you on page four?

16 THE COURT: Near the bottom.

17 MS. CAMPBELL: Near the bottom, did you watch
18 this happen, yes, sir.

19 MR. SCHNEE: Did you watch what happened, yes,
20 sir.

21 MS. CAMPBELL: And then finally, Your Honor,
22 moving to transcript (3) top of page four, did you
23 know if anybody was inside the building. I don't
24 know, I don't know. I was supposed just sit as
25 lookout.

1 MS. PINNOCK: I'm sorry, what page?

2 MS. CAMPBELL: Page four, the top of number
3 three, sorry, and then I was going to do something on,
4 but I think that just repeats what he said earlier.

5 THE COURT: Okay. I am not allowing Trenton
6 Barnes' statement in, not because it is not in
7 voluntary or not freely given or in violation of
8 Miranda. I'm not letting it in because I believe that
9 it's a Bruton violation. Here is my explanation.
10 This jury knows that there are three people who are on
11 video committing this crime, okay. I mean, that fact
12 is not in dispute. Everybody has seen the video. The
13 jury has seen the video, all the lawyers have seen the
14 video. All the parties somewhere seen the video.
15 Even with the --- I'll use, and this is my word, but
16 even with the sterilization of Mr. Barnes' statements
17 to law enforcement, I believe they were freely given,
18 they were voluntarily given. They were not in
19 violation of Jackson v. Denno, or Miranda or anything
20 else. That is not my basis of this argument. My
21 basis of this argument is --- "the only thing I have
22 to do is sit by the door. If I see anybody, yell."
23 Well, the jury clearly knows that two people went in
24 and somebody was by the door. So that implies two
25 other people are involved. There's only one other

1 person sitting in the room. "If I see anybody, yell."
2 Well, who would he be yelling to if he wasn't yelling
3 to the other people involved, and so the plan was to
4 rob the Ale House. The plan --- I don't know that it
5 100 percent means there's more than one person, but
6 that's certainly a leap, but the plan was to rob the
7 Ale House and maybe that's making too much of a leap,
8 but the plan was to rob the Ale House. We see three
9 people. We've seen three people from the Ale House
10 video. "You watched what happened, didn't you?"
11 "Yes, sir, that means that somebody else was
12 following." It's just implication after implication
13 that there were other people involved, and I don't
14 know that there is a way to sterilize it. So
15 Mr. Barnes' statement is out based upon Bruton and the
16 confrontation clause.

17 MS. PINNOCK: Thank you, Your Honor.

18 MS. CAMPBELL: Your Honor, is that --- and my
19 concern would be at this point, is based on
20 cross-examination yesterday of Investigator McCoy,
21 this jury is also fully aware that each defendant was
22 interviewed and the defense would be arguing in front
23 of this jury that you didn't get to hear all of what
24 the police interview and what you didn't get to hear.
25 That's my concern. Clearly they went in and based on

1 rulings, they went into --- and each defendant came
2 out --- Troy Stevenson was interviewed, you know,
3 specifically and they elicited part but not all of
4 what Troy Stevenson told police. Our concern is that
5 this jury now is aware that these three defendants ---
6 it's been testified that have been interviewed and
7 they don't have that information before them.

8 THE COURT: Well, there's a jury charge out there
9 on the State's failure to call witnesses and that the
10 State doesn't have to call every single witness that
11 has potential information to prove their case. If you
12 want that charge, I'll give it to you. I mean,
13 Mr. Barnes' statement is a Bruton violation, clear as
14 day.

15 MS. CAMPBELL: I'm not arguing with your ruling.

16 THE COURT: I know you're not arguing with the
17 ruling. There's no other person for the jury to think
18 was involved but Lorenzo Young based on the letter
19 that's already been admitted which, I told them to
20 disregard, and based upon just the nature of the
21 statements. The nature of the statements are that
22 other people are actively participating. So what ---
23 tell me what you.

24 MS. CAMPBELL: My concern is at this point, the
25 jury knows all three codefendants were interviewed.

1 That came out on cross examination.

2 THE COURT: Did it come out that Mr. Young was
3 interviewed?

4 MR. KRZYSTON: I don't believe so.

5 MS. PINNOCK: We never did.

6 MS. CAMPBELL: There was a reference to someone
7 being threatened with the death penalty, which was in
8 violation of your order.

9 THE COURT: Right. A suspect, right.

10 MR. SCHNEE: I believe the testimony was even
11 brought out on direct that they were all brought to
12 headquarters. I don't know that that's really much of
13 a dispute.

14 MS. CAMPBELL: No. We don't dispute they were
15 all brought to headquarters, but at this point they
16 know there was a statement by Troy Stevenson. They
17 know another suspect in the case was questioned and
18 quote unquote threatened with the death penalty. I'll
19 get back to that issue in a minute, so they know that.
20 My concern is that they're going to get up here and
21 argue that basically the State hadn't brought forth
22 all the evidence. The State has brought forth all the
23 evidence we can against these. Of course, Troy
24 Stevenson, and we can bring that out, has pending
25 charges and we can't, you know, he will have his day

1 in court. And that's testimony elicited by the
2 defense, and that was part of our argument just
3 yesterday as far as our concern that they hear part of
4 what was talked about with the Troy Stevenson
5 interview, but not the rest of it, and I guess I'm
6 just ---

7 THE COURT: What's your plan on arguing for
8 closing with to respect to what the State has done and
9 not done, Mr. Krzyston?

10 MR. KRZYSTON: What's my plan?

11 THE COURT: Yes.

12 MR. KRZYSTON: I'm not going to talk about Troy
13 Stevenson at all. I don't know that I even mentioned
14 any witnesses by name.

15 THE COURT: Are you going to say there were
16 witnesses they were not interviewed?

17 MR. KRZYSTON: That there were people with
18 potential information about this crime that were not
19 interview.

20 THE COURT: What about you, Mr. Schnee?

21 MR. SCHNEE: I'm certainly not going to mention
22 any specifics about Troy Stevenson or his interview.
23 I mean, I think the only questioning I did with
24 Investigator McCoy that got into that was in direct
25 response to answers to questions that I had asked him

1 that were trying to avoid bringing up who said what
2 and when. I'm certainly going to need bring up what
3 witnesses the State has not brought in or not
4 interviewed.

5 Certainly, I'll tell you right now, my plan is to
6 read off probably 3-quarters of the names on here that
7 they haven't called that are on their witness list.
8 They are all law enforcement. That's closing
9 argument. You know, the State has the burden of
10 proof. I'm certainly allowed to tell the jury that
11 they haven't proved their case. That's my general
12 plan.

13 MR. KRZYSTON: Judge, I'm not totally sure what
14 the issue is. I think there's an inference before the
15 jury that that Troy Stevenson was, in fact,
16 interviewed. Mr. Young, myself, and ---

17 THE COURT: But they haven't heard what that
18 interview was.

19 MR. KRZYSTON: Correct. We have alluded to the
20 fact that he was interviewed and there's been
21 discussion ---

22 THE COURT: You've done more than allude.

23 MR. KRZYSTON: There were discussions as to what
24 Investigator McCoy learned in March of this year. I
25 think they've gotten the bulk of that information in

1 through investigative hearsay. I don't think there is
2 much of an issue.

3 MS. CAMPBELL: What?

4 THE COURT: What? No one is allowed to say the
5 word investigative hearsay anymore. It doesn't exist.

6 MR. KRZYSTON: Yes, sir.

7 THE COURT: It doesn't exist. Okay.

8 MR. KRZYSTON: Okay. Your Honor.

9 THE COURT: So I don't understand what you just
10 said. They didn't get up there and ask Investigator
11 McCoy --- the State did not get up and ask
12 Investigator McCoy about Troy Stevenson's interview.
13 You and Mr. Schnee did.

14 MR. KRZYSTON: The Troy Stevenson interview?

15 THE COURT: Yes.

16 MR. KRZYSTON: Right, the substance of what he
17 was interviewed was discussed.

18 THE COURT: Right.

19 MR. KRZYSTON: That's the information that
20 they're seeking to admit through Trenton Barnes'
21 statement? I mean, I'm confused as to what we're even
22 arguing about at this point.

23 THE COURT: Here is the argument: The defense
24 and, that is both defendants, brought up the fact that
25 Troy Stevenson gave all these names to the police and

1 the police didn't do anything with them, okay.

2 MR. KRZYSTON: Yes, sir.

3 THE COURT: You did that, right?

4 MR. KRZYSTON: Yes, sir.

5 THE COURT: Okay. And Mr. Schnee did that,
6 right? So the jury is left with this fraudulent
7 impression. You have committed a fraud upon the jury
8 that Troy Stevenson sat down and gave all these names
9 and didn't give any other information, which is not
10 true, because Troy Stevenson has told police that both
11 of your clients actively participated in the crime.

12 So the issue is that the jury is left with this
13 impression that Troy Stevenson gave this statement to
14 police, but the impression of what the statement is
15 not accurate or even truthful.

16 MR. KRZYSTON: And, Your Honor, to remedy that
17 very assertion that we just made, Your Honor allowed
18 them great latitude on redirect yesterday.

19 THE COURT: As to why they did not interview
20 those people.

21 MR. KRZYSTON: Correct.

22 THE COURT: Right.

23 MR. KRZYSTON: So I think to an extent that issue
24 has been addressed.

25 THE COURT: Are you going to stand up and say

1 that Investigator McCoy didn't interview all those
2 people when he should have?

3 MR. KRZYSTON: I will not say all those people's
4 names, no. I will say that there are people who
5 potentially had information regarding this crime that
6 Investigator McCoy failed to investigate.

7 THE COURT: Okay. What about you, Mr. Schnee?

8 MR. SCHNEE: If Your Honor instructs me not to
9 list off those names, I won't. I'm also similarly
10 confused as to exactly what we're discussing. Cross
11 examining Investigator McCoy about information he
12 received about potential witnesses does not mean that
13 the State gets to somehow introduce Troy Stevenson's
14 statement or the content.

15 THE COURT: We're already past that. We already
16 ruled they couldn't do that.

17 MR. SCHNEE: I just don't understand because I
18 don't believe the jury has been misled.

19 THE COURT: Oh, the jury has been misled, but I
20 have allowed that to happen.

21 MR. SCHNEE: Well, I think the jury has been
22 informed about what Investigator McCoy did or did not
23 do in his investigation in that entire line of
24 questioning. I don't think that --- some of the
25 people that were even mentioned were discussed by

1 other witnesses, such as Latoya Barnes, Marcus Haley
2 Johnson. That came up in August of last year and that
3 witness has never been interviewed. Clearly there was
4 a lot of other content in Latoya Barnes' conversation
5 with McCoy, much of which came out. A lot of it
6 didn't, but I don't even believe there is an inference
7 to the jury that Troy Stevenson said anything other
8 than just a list of names.

9 THE COURT: Ms. Campbell?

10 MS. CAMPBELL: May it please the Court, Your
11 Honor. As you have noted, the jury has been misled
12 somewhat about what Troy Stevenson was saying.
13 Basically, he was saying --- to put it in context, he
14 was trying to give names of people who would put him
15 staying at the house longer than Trenton. That's the
16 extent of what those witnesses could have said, but
17 the inference before this jury, clearly, is completely
18 different. We did try to rehabilitate it somewhat,
19 but at this point --- and we tried to introduce the
20 entire statement to show. We aren't trying hide
21 anything, but at this point the jury thinks there is
22 all this information from Troy Stevenson that they
23 don't have and that he was giving these witnesses ---
24 and I believe the word alibi was even shown at one
25 point as far as that goes. We would just be --- I

1 don't know quite how to handle that, because we need
2 to cure the misinformation that's in front of this
3 jury to whatever extent we can.

4 I am concerned about how they plan on arguing
5 this to the jury since there is additional information
6 which they clearly know that these defendants were
7 interviewed and, you know, that that's not before
8 them. I don't know if we can do some ruling that's
9 basically --- I mean, if you can address it to the
10 jury that you have ruled what is admissible to be
11 presented in this case, but you know, the other thing.
12 Your Honor, with Sergeant Reese, too, basically all
13 the information that the police got in this case point
14 towards these three individuals, including all the
15 information that they got from two out of the three
16 codefendants. The only one that ever denied being was
17 Lorenzo Young and all the physical evidence, as well,
18 as the evidence from the witnesses they interviewed
19 point to these three individuals.

20 THE COURT: What are you asking? That's my
21 question.

22 MS. CAMPBELL: I guess I'm asking for some
23 guidance. We intend to offer through Sergeant Reese
24 the fact that they interviewed multiple people in this
25 case and that all the information they got indicated

1 that these were the three people that committed this
2 crime and they were the only three people there. And
3 the problem is, as much as they would like to, to say
4 somebody else was there, even with Marcus Johnson, the
5 only information they got was that he was going around
6 saying that these two people did it, but that's not
7 been presented to the jury and in Investigator McCoy's
8 defense, he was somewhat limited on what he could say
9 as to why he did not interview these people. One was
10 because they didn't have any additional information or
11 any information contradicting what we already had.
12 Two, his experience in dealing with people in gangs is
13 they just simple don't want to talk to the police, and
14 I believe that's why he was asking for defense counsel
15 to --- for Ms. Zmroczek to help him in trying to make
16 these people you know, talk to him, but I don't think
17 that's really come out before the jury.

18 THE COURT: Yes, sir?

19 MR. KRZYSTON: Judge, I would just repeat that
20 this very issue was discussed and addressed yesterday.
21 Again, she was allowed great latitude in redirecting
22 Investigator McCoy. To another extent, he did not go
23 into interview these --- this list of people. I don't
24 know what information he would have had, and I think
25 it's improper for us to speculate at this point.

1 Without knowing what relief she is granting and
2 really on what grounds she is requesting it, I don't
3 know how to respond.

4 MR. SCHNEE: Judge, I may be misunderstanding,
5 but I might be able to --- it seems the solicitor is
6 asking to call Investigator Reese to the stand and
7 question him about all the various witnesses that were
8 interview and then follow up with a question " ...and
9 then they all told you these are the three people that
10 did it. I can't imagine how that would remotely be a
11 valid question under any circumstances.

12 MS. CAMPBELL: No.

13 MR. SCHNEE: So I don't even understand what the
14 relief is that the State is asking if that's not it,
15 so I'm not sure how to respond, Judge.

16 THE COURT: I mean, the bottom line is McCoy
17 didn't go out and interview these witnesses, period.

18 MR. SCHNEE: Right. And that's the only --- I'm
19 sorry, Judge.

20 THE COURT: Right. The bottom line is McCoy
21 didn't go out and interview these witnesses. I don't
22 know what I'm supposed to do about that. He has his
23 reasons for not doing it. I would allow him to
24 explain more than 90 percent of his reasons for not
25 doing it, but he just didn't do it. I just can't fix

1 that. His decision to not go interview witnesses
2 whose names he was given is his decision and his
3 investigation of the case, period. I mean, I can't
4 imagine a scenario where a defense attorney can't say
5 he was given witness names and he didn't go interview
6 them. I mean, that's a fact.

7 MS. CAMPBELL: I understand, and I'm not trying
8 to say that. I mean, the bottom line is, we did try
9 to introduce and I understand the ruling. All we're
10 saying is that --- and I think you alluded to it
11 earlier, Your Honor, there is somewhat of a fraud in
12 front of this jury. I'm just try calculate to what
13 extent I can try to ---

14 THE COURT: Well, and I --- the misled statement
15 earlier --- I don't know that that was the best word,
16 but I mean that's one of the issues in having joint
17 trials is that there's codefendant statements out
18 there that are not going to be admissible under Bruton
19 if their made to law enforcement. That's just a
20 reality of life that we deal with when we're dealing
21 with --- when you want to try more than one person and
22 I don't know a way around that other than to sever
23 trials.

24 MS. CAMPBELL: Okay. Your Honor, moving on.

25 THE COURT: Okay.

1 MS. CAMPBELL: As far as yesterday, I believe you
2 instructed defense counsel, Mr. Schnee, not to mention
3 the death penalty.

4 THE COURT: I did.

5 MS. CAMPBELL: And then he asked a question and
6 he followed up with " ...you were threatening with the
7 death penalty," or something to that effect. I could
8 be paraphrasing.

9 THE COURT: Correct.

10 MS. CAMPBELL: We would ask for some kind of
11 instruction to this jury that this is not a death
12 penalty case and they are not to consider any kind of
13 sentencing on that.

14 THE COURT: Okay. I've been searching for ---
15 there is an instruction out there. I've used it
16 before. I've been searching for it since last night,
17 and for whatever reason, I cannot find it. There's an
18 instruction out there that tells the jury that they
19 are not allowed to consider sentencing in any way,
20 shape, or form. That is completely in the Court's
21 discretion. If you make it that far, if you find it,
22 you can add in any portion, anything that's relevant
23 about the death penalty.

24 MS. CAMPBELL: Thank you.

25 THE COURT: Mr. Krzyston.

1 MR. KRZYSTON: We would obviously get to a charge
2 conference and object or, you know, be happy with the
3 State's jury charge.

4 THE COURT: You'll get to see it, right.

5 MR. KRZYSTON: Right. Making sure. Thank you,
6 Your Honor.

7 THE COURT: All right, what else?

8 MR. SCHNEE: Judge, since we're on what's
9 apparently an extended break, do you want to address
10 the issue of jury charges now or do you want to deal
11 with that later?

12 THE COURT: We'll deal with that later.

13 MR. SCHNEE: I have nothing further.

14 THE COURT: Let's get through the testimony and
15 deal with all that stuff.

16 MS. PINNOCK: We put our request to charge up on
17 your bench. Just wanted to make sure you got that,

18 THE COURT: I did. Thank you. All right. Bring
19 them in.

20 (WHEREUPON, the jury entered the courtroom at
21 10:49 A.M.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: All right. Thank you very much.
24 Welcome back, ladies and gentlemen. I apologize for
25 the delay. I accept full responsibility for it. No

1 inference in any way, shape, or form should be drawn
2 against any of the parties in regard to the delay that
3 we had this morning, and I do apologize and thank you
4 for being on time and ready to go. You may call your
5 next witness.

6 MS. GARFIELD: Thank you, Your Honor. The state
7 calls sergeant Kevin Reese.

8 SERGEANT KEVIN REESE,
9 after being duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: My name is Kevin Reese. R-E-E-S-E.

13 DIRECT EXAMINATION:

14 BY MS. GARFIELD:

15 Q Sergeant Reese, where are you from?

16 A Where am I from?

17 Q Uh-huh.

18 A Columbia.

19 Q You've lived here all your life?

20 A Yes, ma'am.

21 Q And Sergeant Reese, where are you employed?

22 A Columbia Police Department.

23 Q And what are your duties for the Columbia Police
24 Department?

25 A I am a sergeant supervisor with the criminal

1 investigations division of the department.

2 Q How long have you been with the Columbia Police
3 Department?

4 A I started in 1980, left in '85 and came back in
5 '91, and I've been there ever since.

6 Q And Sergeant Reese, were these your same duties
7 back in the summer 2013?

8 A I was in investigations, yes.

9 Q And were you an on call supervisor on the morning
10 of July 1, 2013?

11 A I was.

12 Q And specifically did you have an occasion to
13 receive information concerning a homicide?

14 A Yes.

15 Q And do you know what about time you received the
16 information?

17 A Let me refer to my notes.

18 Q Yes, sir. Are those your notes you made back
19 when this happened?

20 A Yes, ma'am.

21 MS. PINNOCK: I'm sorry, Your Honor, would your
22 instruct the witness to speak up? I am having a hard
23 time hearing him.

24 THE COURT: Would you'll speak up, Sergeant
25 Reese?

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 THE WITNESS: At 4:05 A.M. on the 1st of July, I
4 received a call from the street sergeant, Sergeant
5 Smalls of the Metro unit. He did not inform me that
6 this was a homicide. He just told me that someone had
7 been shot, and that would be the reason I did not call
8 out anybody until I arrived on the scene myself.

9 Q So you just understood that someone had been
10 shot?

11 A That's right. I'm battling a cold, but that's
12 right.

13 Q But you didn't know if it was suicide or homicide
14 or anything?

15 A Not at that time, no.

16 Q And based on the information you received from
17 Sergeant Smalls, what did you do?

18 A I left my house, and I went to the scene. I
19 arrived there about five o'clock.

20 Q And I apologize. When you said you arrived on
21 the scene, where did you arrive?

22 A The scene is 93 Tommy Circle.

23 Q And ---

24 A And that's off of Beltline.

25 Q And what type of business is that that you

1 arrived to?

2 A It is a bakery, and they --- it's an offsite
3 bakery. They cook items for another bakery that's
4 located in the downtown area.

5 Q And Sergeant Reese, you can refer to your notes,
6 can you just share with the jury what were your
7 initial observations when you arrived?

8 A First of all when I arrived there, it was raining
9 very hard. From the outside I observed a Dodge van,
10 and I noted the license tag number, and this van was
11 parked --- I'm sorry, a Dodge van, and this van was
12 parked right out in front of the business. I also
13 observed that there was a Ford van and that was parked
14 outside of the business, as well, and right at the
15 doorway of the business.

16 The door, the front door to the business, was
17 standing open. You can --- it was propped wide open.
18 You can clearly see from the outside on the inside.
19 When I went into the building, prior to going into the
20 building, I talked to some of the officers and
21 particularly the supervisor, the street supervisor, to
22 get an overview of what they found when they got
23 there.

24 I went inside, and one of the first things I
25 noticed, there was a chair overturned. I also noticed

1 that there were pots and plastic containers that
2 appeared to have been knocked over onto the floor.
3 When I say it appeared they had been knocked on the
4 floor, it's because it was clear that are those items
5 did not belong on the floor. They weren't just
6 sitting there in an orderly fashion, they were strewn
7 all over the place.

8 There were several shell casings on the floor.

9 I noticed Ms. Hunnewell's --- observed
10 Ms. Hunnewell's body and she was lying on the floor
11 near the sink, and I also noted that her body was
12 partially underneath the sink.

13 The gas to the equipment had been --- there was
14 some large stoves and I ascertained that --- you could
15 smell the gas. It was very strong, and I made sure
16 that that gas wasn't on. That was simply by my asking
17 and I was informed that the fire department had
18 already been there, and they had turned the gas off.

19 I also noticed what appeared to be bullet holes,
20 several bullet holes in the walls of the business, and
21 the lights were on in the inside of the business, as
22 well. I started to check around further, and I
23 realized that there were at least five cameras,
24 ceiling cameras. Of course, I just mentioned that the
25 smoke was --- the gas was pretty heavy in there. They

1 could also smell the smoke. That was an indication
2 there had already been some sort of activity going on
3 into that --- inside that business and you put it all
4 together, it just appeared that Ms. Hunnewell had
5 already been at work for some time period, and I also
6 noticed that there was a cell phone that we found, and
7 it was on a cookie rack that was just on the other
8 side of a large table that was about in the middle of
9 the business.

10 I walked around and at this point I had cleared
11 out the building because this now --- I arrived on the
12 scene. This is now an official crime scene. Not
13 everybody is supposed to be in this crime scene, so
14 I'm pretty much at this time walking around by myself
15 jotting down what I noted.

16 Inside an adjacent office, the lights were off.
17 It was --- you can see in it, but the only way you can
18 see in it, there was light from the part of the
19 building, the room where Ms. Hunnewell's body was
20 found.

21 I noticed on a desk of some sort, some time
22 cards, the punch time cards. One did belong to
23 Ms. Kelly, Ms. Hunnewell, I'm sorry.

24 I know that because it had her name on it. It
25 showed the stamp-in time was around three o'clock A.M.

1 There were other employee time cards that was also
2 found on this table near the punch clock. That at the
3 time would have been significant, important to me just
4 in case there had been any employees whose names came
5 up as a person of interest at some point in the
6 investigation.

7 I noticed that there were some keys to a Ford
8 vehicle. I found those on the counter. Inside that
9 room there was another room. Inside that room, there
10 was a security monitoring system.

11 Q And was that in relation to those cameras you had
12 initially scene?

13 A That's right.

14 Q And Sergeant Reese, you said when you arrived ---
15 are there many officers there?

16 A There were quite a few, yes.

17 Q Also, employees of the coroner's department?

18 A Yes, the coroners, a couple, few of the officers.

19 Q And eventually did Investigator McCoy arrive?

20 A Yes, I telephoned McCoy and told him that I
21 wanted him to come to the scene, and I'm not sure
22 whether I informed him over the phone that he was
23 going to take the lead. I believe I did or waited
24 until he got there, but I wanted him to be the lead on
25 this, so I assigned it to him.

1 Q Sergeant Reese, did you yourself engage any
2 canvassing of any the area neighborhoods?

3 A I did.

4 Q I'm sorry?

5 A I did, yes.

6 Q Do you recall what area you canvassed?

7 A I'm not sure of the block of Beltline, but we
8 canvassed the area of this street where this incident
9 happened at. We went there. We went to businesses
10 along Beltline, a nursing home.

11 We also crossed --- we actually crossed over to
12 other businesses. Of course, it had stopped raining.
13 After we had regrouped, we went across Beltline.
14 There's a community right across Beltline. From this
15 street here, we went to as many houses and talked to
16 as many people back up in that community as we could.

17 Q Just explain to the jury when you're walking
18 around knocking on these doors, what are you telling
19 residents in this community?

20 A I'm not giving them any information other than to
21 say there was a homicide that happened down the
22 street. I don't give them where it happened at or how
23 it happened or who was killed. They don't need know
24 that, but what they need to know, if you're going to
25 generate any kind of positive response, people want to

1 know well why are you asking us that information, so
2 we would knock on doors or we would simply see people
3 in their yards, backyards sitting down, side yard,
4 even if you walked down the street, we approached you.

5 Q You're not giving them any specific details of
6 what happened?

7 A No.

8 Q Why not?

9 A You --- if you do ---

10 MS. PINNOCK: Objection, Your Honor. He was
11 speculating.

12 THE COURT: As to why he said something?

13 MS. PINNOCK: Yes.

14 THE COURT: All right. Overruled.

15 BY MS. GARFIELD:

16 Q Go ahead.

17 A If you tell the public anything, you know, you
18 run the chance of diminishing the integrity of the
19 investigation.

20 Q Do you do that to preserve the investigation?

21 A I do.

22 Q Do you do that with all of the investigations you
23 participate in?

24 A I've been investigating homicides for nearly 15,
25 16 years. I don't change. It's always been that way.

1 Q And Sergeant Reese, did you continue to work on
2 this case or did you end that night?

3 A Because --- I was in investigations, but this was
4 what's called a VCAP case, a crime against persons.
5 In violent crimes against persons, Sergeant Pegram who
6 at that time --- now, I was at one time, I worked in
7 that unit for several years and I was the supervisor
8 in that unit.

9 I moved on from that unit to another unit at this
10 time, but I'm still in investigations. Sergeant
11 Pegram was the sergeant over that unit.

12 Generally, if one of the supervisors was gone on
13 vacation, you know, he has to find somebody else that
14 would be willing to take his place, and I was on call
15 anyway. So I also took his place while he was on
16 vacation.

17 I worked, supervised this case until Sergeant
18 Pegram got back. After that, I got back to the unit I
19 was assigned to.

20 Q At that time you were in a supervisory role with
21 the Columbia Police Department?

22 A Uh --- I'm sorry.

23 Q At that time were you in a supervisor role with
24 the Columbia Police Department?

25 A Yes, I was.

1 Q And you are today, as well?

2 A Yes, I am.

3 Q And do you recall about when Sergeant Pegram came
4 back from vacation?

5 A I believe it was sometime after the 5th.

6 Q July 5th?

7 A Fifth of July.

8 Q And let me just ask you so you can inform the
9 jury, when you're working this kind of case, is it a
10 nine to five job?

11 A Absolutely not. You ---

12 Q Explain to the jury what kind of manpower and
13 workload day-to-day is?

14 A I put the guys that was working, not only on this
15 case, but since we're talking about this case, they
16 put you --- for instance, I got this call at --- four
17 something in the morning. That first day, I believe
18 it was like three o'clock the next morning when I
19 finally got home. You never know how --- where your
20 investigation is going to take you, or how long you
21 got to be out there. Trust me when I say it pays to
22 have a good family when you have a job like this
23 because you're never home.

24 Q Sergeant Reese, is that the way it is with all
25 investigations that you participate in?

1 A All of them, yes.

2 Q So with that, Sergeant Reese, and you've been in
3 the courtroom this entire trial; is that correct?

4 A That's correct.

5 Q And you were there when Investigator McCoy
6 testified; is that correct?

7 A That's correct.

8 Q So, Sergeant Reese, you were also a party to the
9 interviews that were conducted in this case?

10 A Yes, I was.

11 Q Were you also present for the search warrants
12 that were conducted in this case?

13 A I supervised all that.

14 Q And you were obviously at the crime scene; is
15 that correct?

16 A Yes.

17 Q And you reviewed the video that was taken from
18 the bakery?

19 A Yes.

20 Q And were you also a party to viewing the video
21 from the Ale House?

22 A Yes.

23 Q And were you at a later time shown data
24 information, pictures, videos taken from cell phones
25 that were collected, from a cell phone that was

1 collected in this case?

2 A That's right.

3 Q I want to direct your attention a couple of
4 those. First of all, obviously the subjects of
5 Trenton Barnes and Lorenzo Young came into your
6 investigation; is that correct?

7 A That's right.

8 Q I'm sorry --- between the two of us. What was
9 your answer?

10 A That's correct.

11 Q And did you discover where Lorenzo Young lived?

12 A I did.

13 Q And did you also discover where Trenton Barnes
14 resided?

15 A I did.

16 Q And where did Trenton Barnes live?

17 A Trenton Barnes lived on Lucille Drive. I'm not
18 sure of the numbers right at this moment.

19 Q You're not sure what?

20 A Of the numbers, but he lived on Lucille.

21 Q And those homes, are they in close proximity to
22 the bakery?

23 A Across Beltline. Easy walking distance.

24 Q Did you in fact walk between Lucille Drive to the
25 bakery?

1 A I did.

2 Q And about how long does it take you to get there?

3 A From Lucille to the bakery, under ten minutes.

4 It doesn't take you long.

5 Q And you did that yourself?

6 A I just drove.

7 Q Were you also there when --- first let me back
8 up. You canvass a neighborhood. Do you provide
9 information on how anybody with information can get in
10 touch with law enforcement?

11 A That's right. Sometimes I will maybe give out
12 card or ask them to call Crimestoppers, that kind of
13 thing or any of the other investigators that might
14 have been with us when I came in contact with any
15 specific persons.

16 Q And so were you there when Donald Moore was
17 interviewed?

18 A I was.

19 Q And when Donald Moore came to the Columbia Police
20 Department and talked with you and investigator ---
21 other investigators, what was his demeanor like?

22 A Well, I found him to be very candid.

23 MS. BAMBACH: Objection, Your Honor. Bolstering.

24 MR. KRZYSTON: Bolstering.

25 THE COURT: She asked what his demeanor was. You

1 can answer that.

2 MS. PINNOCK: It was the answer that our
3 objection was on.

4 THE COURT: All right. Re-ask the question. I
5 thought the question was what was Donald Moore's
6 demeanor.

7 MS. GARFIELD: What was Donald Moore's demeanor
8 like?

9 THE COURT: You may answer that question.

10 THE WITNESS: I didn't find his demeanor to be
11 anything out of the ordinary.

12 BY MS. GARFIELD:

13 Q And he came to you on his own will?

14 A Yes, he did.

15 Q And in your experience in investigations,
16 sometimes witnesses change their cooperation?

17 MR. SCHNEE: Objection.

18 MS. PINNOCK: Objection, speculation.

19 THE COURT: Overruled.

20 MR. SCHNEE: Relevance.

21 THE COURT: You may answer.

22 THE WITNESS: I've had that to happen a few
23 times, yes.

24 BY MS. GARFIELD:

25 Q Now, you also had an opportunity to review

1 photographs taken from a phone associated with Lorenzo
2 Young. I'm going to hand you what's been marked as
3 State's Exhibit 392 and 435. Do you recognize these
4 those photographs?

5 A I do.

6 Q And do you know who the person is in those
7 photographs?

8 A It would be the defendant sitting in the middle
9 table, Lorenzo Young.

10 Q And you have personally knowledge concerning
11 Mr. Young?

12 A I do, yes.

13 Q Did you also have an opportunity to review a clip
14 of a video taken off that same phone?

15 A That's right.

16 Q I'm referring to State's Exhibit Number 441.
17 Sergeant Reese, were you able to review that video?

18 A Yes, ma'am.

19 Q And based on your personally knowledge, were you
20 able to identify anyone in the video?

21 A Lorenzo Young.

22 Q And as --- just kind of backtracking a little
23 bit, as Donald Moore came forward to talk to you,
24 witnesses that came forward with information, were
25 they interviewed by investigators or someone at the

1 Columbia Police Department?

2 A They were.

3 Q I'm going to direct your attention back to you
4 were testifying --- I believe you said that there were
5 several officers at the bakery who indicated they were
6 people from the coroner's office; is that correct?

7 A That's correct.

8 Q And besides that particular day, are there are
9 numerous officers involved?

10 A Beside that day?

11 Q Sure.

12 A That morning?

13 Q Yes, sir.

14 A Yeah, there were other officers and/or
15 investigators that's true.

16 Q But not everybody --- although they're working,
17 not everybody produces information that can be
18 contributed to the case; is that correct?

19 A Yeah, that's correct.

20 Q And is it unusual for --- or do all the
21 witnesses --- let me backtrack. All the officers that
22 are involved in the course of this investigation that
23 took several days, in your experience of 15, 16, 17
24 years of law enforcement --- or in homicide, do they
25 all come to court?

1 A No.

2 Q And also based on your experience working these
3 violent crimes against people, in your experience are
4 all witnesses willing to talk to police?

5 MR. SCHNEE: Objection. General relevance to all
6 witnesses.

7 THE COURT: Overruled.

8 THE WITNESS: No.

9 BY MS. GARFIELD:

10 Q Now, you have reviewed the video in the case from
11 the bakery?

12 A I have.

13 Q And the subjects that entered the bakery, what
14 are they wearing as far as types of clothing?

15 A The two that entered the establishment, one had
16 on a red, looked like a pull over kind of hoodie, a
17 sweatshirt kind of thing, and the other one was
18 wearing a gray colored hoodie.

19 Q And you were a party to or there for the search
20 warrants of Lucille Drive?

21 A I was.

22 Q And Bronx Road.

23 Q Yes. And were any red hoodies found?

24 A No.

25 Q Were any gray hoodies found?

1 A No.

2 Q Were there any hoodies found?

3 A There was one hoodie found. I think it was at
4 Mr. Barnes' house and that was a dark colored hoodie,
5 a navy blue, I believe.

6 Q And was there anything --- that hoodie was wet,
7 as well, when it was found?

8 A Yes, ma'am.

9 Q Did law enforcement in any way rush to make an
10 arrest in this case?

11 A Did we rush to make an arrest?

12 Q Yes, sir.

13 A Absolutely not, no.

14 Q Did you treat this investigation any differently
15 than you would any others?

16 A No. Here is what I do when I'm instructing
17 investigations on a case. The main thing is that
18 before you take a person's liberties away, that is
19 sign arrest warrants, arrest this person, take him off
20 the street, put him in jail, you make sure that you
21 have the reasons required to do so.

22 Q Sergeant Reese, did you also take that video from
23 the bakery to the Lexington County Sheriff's
24 Department?

25 A One of the investigators did, I believe McCoy,

1 yes, ma'am.

2 Q And from taking it to the sheriff's department in
3 Lexington County, were still photos produced?

4 A Yes.

5 Q I'm going to show you what's been marked as
6 State's Exhibit Number 451 through 463. If you'll
7 just take a moment to go through these photographs?

8 A All right.

9 Q Sergeant Reese, what are those photographs
10 contain?

11 A These photographs are from the video camera on
12 the inside of the bakery and it shows the initial
13 contact, which shows the subjects coming in at a
14 certain point that entered into the room of the video
15 camera. it shows their contact with Ms. Hunnewell.

16 MS. GARFIELD: Your Honor, at this time I'd like
17 to introduce 451 through 463 into evidence.

18 THE COURT: Over defense's objection.

19 MS. GARFIELD: Thank you, Your Honor, Your Honor.

20 (WHEREUPON, State's Exhibit Numbers 451 through
21 463 were admitted into evidence.)

22 BY MS. GARFIELD:

23 Q Thank you, Your Honor. Sergeant Reese, I want to
24 show you State's Exhibit Number 451, can you describe
25 what's in this still photograph?

1 A This is a --- if the camera that took this frame
2 would be behind me, Ms. Hunnewell would be in front of
3 me, and it shows Ms. Hunnewell with her back turned
4 toward that camera.

5 She is over at the sink. There's a large stove
6 to the left, and then a couple of the tables I
7 mentioned earlier.

8 Q And I believe --- you reviewed all of those
9 photographs and the evidence. Is the time accurate on
10 the photographs?

11 A No. From what my understanding of it was, the
12 clock was off an hour or so, I believe.

13 Q Okay.

14 MS. GARFIELD: Permission to the publish to the
15 jury as we go through these, Judge?

16 THE COURT: Yes, ma'am.

17 BY MS. GARFIELD:

18 Q Can you tell what Ms. Hunnewell is doing at this
19 time?

20 A You can't tell, put you can know that she is
21 standing at the sink. I can't really tell.

22 Q And State's Exhibit Number 452. Is that another
23 angle from the bakery?

24 A Yes, it is. It would be from Ms. Hunnewell's
25 rear, from the rear to Ms. Hunnewell and over to the

1 right side of Ms. Hunnewell, and she is --- it looks
2 like she is still at the sink at this point.

3 Q State's Exhibit Number 453. What does that
4 photograph reflect that is occurring in the bakery?

5 A Okay. First of all, you notice that
6 Ms. Hunnewell is not in this frame. It's not at the
7 sink. It reflects one of the individuals, who is now
8 on the inside of the business, and it will be the one
9 with the red hoodie on.

10 Q And referring to State's Exhibit Number 454, what
11 do you see in that photograph, Sergeant Reese?

12 A This frame shows just at the entry point to the
13 door, the entry door, and I say that because the other
14 subject the one with the gray hoodie on, is just a
15 couple of feet --- appeared to be just a couple of
16 feet on the inside of the business as you step through
17 that entry door.

18 Q Moving on to State's Exhibit 455, Sergeant Reese,
19 what does that picture reflect in the bakery?

20 A Ms. Hunnewell has her back turned toward where
21 the door is opened, and it shows the subject in the
22 red. It's clear that he has a firearm in his right
23 hand.

24 Apparently he is approaching her and she doesn't
25 know it yet, because it doesn't appear that at this

1 instant it look as if she is still --- she is working
2 at the stove and not even aware of what's behind her.

3 Q Sergeant Reese, I'll hand you State's Exhibit
4 Number 456. Can you please share with the jury what
5 you observed in that photograph?

6 A This looks like Ms. Hunnewell is still at the
7 stove and now the person in the red hoodie has engaged
8 her from behind. It appears that he has hands on at
9 this point.

10 Again, if the stove and the sink area would be
11 out here and the camera would be here, it also shows
12 the back of the subject in the gray hoodie. His arm
13 is extended, as well. He has something in his hand to
14 me from the investigation, obviously, that's a
15 firearm.

16 Q Sergeant Reese, I'll direct your attention to
17 State's Exhibit Number 457, can you share with the
18 jury what you observed in that photograph?

19 A This frame also shows a hands on type situation.
20 Ms. Hunnewell is still being engaged from the rear.
21 It appears that the subject now, in the red hoodie,
22 has the firearm up in this manner pointing it at her
23 head.

24 It also appears that the subject in the gray
25 hoodie is now making his move toward Ms. Hunnewell and

1 the subject in the red shirt, sweatshirt.

2 Q Sergeant Reese, State's Exhibit Number 458, what
3 do you see in that?

4 A I don't see the one in --- I don't see the gray
5 hoodie in this frame. The subject in the red hoodie
6 is still engaging Ms. Hunnewell. He has the gun. It
7 appears to be a little closer at this point. He
8 has his --- it looks as if he has his left hand now on
9 her --- on the rear from this side of her head and
10 neck area.

11 Q And I'll show you State's Exhibit Number 459.
12 What do you observe in that picture?

13 A Frame 459 shows --- still the cameras back here
14 is showing the rear of the person that's in the red
15 hoodie. Ms. Hunnewell is now facing him. There is
16 not a great distance between the two of them. They
17 are very close. Close enough to be touching, but she
18 is facing him and it looks as if he still has the gun
19 in his right hand pointing it at Ms. Hunnewell and now
20 has her hand up like this and her arm.

21 Q Sergeant Reese, if you'll share with the jury
22 what you observed in State's Exhibit 460.

23 A This frame here shows both subjects now in the
24 gray hoodie and a red hoodie facing Ms. Hunnewell.
25 She is now turned around toward the camera that would

1 be here and her left hand is up like this at some
2 point, and I really can't make her right hand out
3 except to say that it is somewhere in this manner
4 here, around the breast area here.

5 The subject in the gray hoodie is still using his
6 right hand. He is pointing the firearm at her in her
7 mid section area. It looks like there is now a --- a
8 bit more of a physical contact made between Ms.
9 Hunnewell and the one in the red. This looks like
10 there is a physical altercation at this point between
11 the two of them.

12 Q Sergeant Reese, if you can take a look at 461?

13 A Certainly.

14 Q And share with the jury what you observed.

15 A At this point, I do not --- in this frame I do
16 not see the subject in the gray hoodie, only it still
17 appears to be in the right hand of the subject in the
18 red hoodie. It's caught in this frame. but not very
19 much of him. You don't see him, you just see his arm
20 up to this point. You still see the firearm in his
21 hand. Ms. Hunnewell is still in the frame and I
22 cannot at this point tell you'll whether at this
23 juncture there has been any shots fired at this point.
24 I can't tell that from the photograph.

25 Q You can't tell that in the photographs?

1 A No.

2 Q Okay.

3 Q Sergeant Reese, if you'll share with the jury
4 what you see in State's Exhibit 462.

5 A In 462, the subject --- Ms. Hunnewell is not in
6 the frame. The subject with the red hoodie, it's
7 clear at this point that he is in flight. You can
8 tell by the different positions of his body and he is
9 on his way out toward the area that he came in
10 through.

11 Q What did you observe about his arm?

12 A His arm is up like this and it's behind him in
13 this fashion.

14 Q In the direction towards who?

15 A In the direction toward where Ms. Hunnewell was
16 standing a few moments ago.

17 Q And lastly State's Exhibit Number 463, what did
18 you observe?

19 A 463 shows the subject in the gray hoodie. He is
20 in the frame shot. Ms. Hunnewell is in the frame
21 shot. Unfortunately, she is --- you can't see all of
22 her, but you can see her legs. One foot. She is down
23 on the floor, and she is in that same area that the
24 subjects first engaged her. The subject with the gray
25 hoodie on, he still has the gun in his hand. He has

1 it down toward the floor and again, like the other
2 shot, it's clear that he is in flight, as well. He is
3 trying to get out of it.

4 Q Sergeant Reese, I'll just direct your attention
5 to both State's Exhibits 462 and 463. Are these taken
6 from the same camera angle?

7 A I would think that it was. I'm not too sure
8 except to say in 463 it looks as if the camera ---
9 it's the rear camera that would be to my back and a
10 little over to the left. I'm not clear where the
11 camera was situated at this point, but in 462 it looks
12 as if this camera would have been further down closest
13 to the door where they first encountered the doorway.

14 Q So captured by two different cameras?

15 A Two different cameras.

16 Q What are the times on those?

17 A 463, the time is showing 0:42:32 and 462 the time
18 is showing 02:42:31.

19 Q So the cameras captured the second part?

20 A Yeah.

21 Q It was just something I overlooked. I'm sorry.
22 463 it appears to have been recorded by camera 4 and
23 462 recorded by camera 2.

24 Q Sergeant Reese, you interviewed several witnesses
25 in this case, correct?

1 A Yes, ma'am.

2 Q And in your investigation, did that lead to
3 arrests?

4 A Yes, it did.

5 Q Did that lead to people being charged?

6 A That's correct.

7 Q And can you share with the jury who all was
8 charged in this case?

9 A Who all was charged in the case?

10 Q Yes, sir.

11 A Lorenzo Young was charged, Trenton Barnes was
12 charged and Troy Stevenson was charged. Those three
13 were people charged.

14 Q And were all three charged the same offenses?

15 A Yes, they were.

16 Q And the charges against Troy Stevenson, they're
17 still pending?

18 A That's right. He was charged with the same.

19 Q And he will have his day in court; is that
20 correct?

21 A Yes, ma'am.

22 MS. GARFIELD: Beg the Court's indulgence.

23 (Pause.)

24 BY MS. GARFIELD:

25 Q Sergeant Reese, do you see the defendant Lorenzo

1 Young in the courtroom today?

2 A I do.

3 Q Can you please point him out for the record to
4 the jury?

5 A He is in the middle of counsel table, has a blue
6 shirt on with striped tie.

7 Q Do you also see the defendant Trenton Barnes in
8 this case?

9 A I do.

10 Q Can you point him out for the record?

11 A He is sitting at the far right counsel table with
12 a black and white printed shirt on.

13 Q Thank you, Sergeant Reese.

14 MS. GARFIELD: Your Honor, may the record reflect
15 that Sergeant Reese has identified both defendants for
16 the record?

17 THE COURT: So reflected.

18 MS. GARFIELD: Sergeant Reese, please answer any
19 questions the defense counsel may have for you.

20 THE WITNESS: I will.

21 MS. PINNOCK: No questions, Your Honor.

22 MR. SCHNEE: No questions.

23 THE COURT: Have a good day.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Call your next witness.

1 MS. GARFIELD: Your Honor, at this time the State
2 of South Carolina rests its case.

3 THE COURT: All right. Ladies and gentlemen, at
4 this point in time, the State has rested its case in
5 chief. I have some matters of law that I have to take
6 up that I'm required to take up outside of prescience
7 so please return to your jury room. Do not discuss
8 the case in any way, shape, or form. Keep an open
9 mind and we'll be back with you in just a few minutes.
10 Thank you very much. Everyone remain seated while the
11 jury is dismissed.

12 (WHEREUPON, the jury left the courtroom at 11:38
13 A.M.)

14 THE COURT: All right. Who wants to go first?

15 MR. SCHNEE: I'll go first.

16 THE COURT: All right.

17 MR. SCHNEE: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 MR. SCHNEE: First I would renew all prior
20 motions and objections. Particularly all of the
21 motions dealing with the mistrial, severance,
22 804(b)(3), just all for the record. Second, Your
23 Honor, I'd move for a directed verdict on all charges
24 for my client particularly, other than the letter
25 which I would certainly argue is not really direct

1 evidence, that it's more circumstantial evidence. If
2 you look at the entire content of what we know is
3 factually untrue, compared to the video and all other
4 actual indisputable evidence, I don't believe the
5 State has gotten to the point of proving beyond a
6 reasonable doubt with any clear and convincing
7 evidence or circumstantial evidence. The standard is
8 substantial circumstantial evidence. I don't believe
9 they've gotten there. I believe they've gotten
10 Rolanda Coleman to pseudo identify my client by saying
11 that she knew it was his walk and his height. That's
12 the entire identification on the video itself and at
13 the same time refusing to admit that allegedly the
14 person in red would be Lorenzo Young, which is the
15 State's contention. Coming from Rolanda Coleman, I
16 think that highly suspect, at best. As to any other
17 direct evidence, there's no fingerprints, there's no
18 DNA There is nothing properly admitted. There is no
19 confession admitted by anyone. I just don't believe
20 the State has proved its case beyond the point that
21 Your Honor or even the jury should even consider it
22 and would I ask for a directed verdict.

23 THE COURT: All right. Who is talking?

24 MS. CAMPBELL: Your Honor, I believe in the light
25 most favorable to the State, the State has proven

1 case. There is substantial evidence as far as guilt
2 for Mr. Barnes, including his confession to which he
3 admits to going in and being one of the shooters. In
4 addition to that, there was identification by his own
5 mother, as well Rolanda Coleman as being in the video.
6 There is also his DNA at the scene. Your Honor, I
7 would respectfully ask you to deny his motion.

8 THE COURT: All right. All your previous motions
9 are noted for the record and my rulings on them will
10 remain the same.

11 As to your motion under Rule 19 under the South
12 Carolina rules of criminal procedure, for a directed
13 verdict, that motion is denied. I'm required to
14 consider the evidence in the light most favorable to
15 the State. I'm further required to view the existence
16 of the evidence and not the weight of the evidence.
17 Therefore, I'm ruling on this motion, you will be
18 denied. I believe there is --- in the case of
19 Mr. Barnes, there is direct evidence linking him and
20 connecting him to this crime and there is substantial
21 circumstantial evidence so your motion for a directed
22 verdict is denied.

23 Mr. Young?

24 MS. PINNOCK: May it please the Court, Your
25 Honor. Your Honor, at this time we would renew all of

1 our previous motions and objections as noted, Judge,
2 specifically, Judge, our objection to the introduction
3 of a letter written by Trenton Barnes. We would renew
4 all objections that we had to the trying of Mr. Young
5 and Mr. Barnes in a joint trial. We also renew our
6 objection to any items collected during search warrant
7 of Mr. Young's house and any testing done thereafter
8 on all those items and basically all of our objections
9 and motions that we made throughout the State's case.
10 We just renew all of those. We understand Your Honor
11 has ruled on them, but at this time we are renewing
12 all our objections and motions. Your Honor, we're
13 also asking Your Honor to grant a directed verdict in
14 viewing the evidence in the light most favorable to
15 the State, the standard is substantial circumstantial
16 evidence.

17 I would agree that they have introduced some
18 circumstantial evidence in this case, but I don't
19 believe it rises to the level of substantial. I don't
20 believe that they have presented enough evidence
21 against Mr. Young. The evidence that is per Your
22 Honor's ruling to be allowed to be considered against
23 Mr. Young. I don't think this case should reach the
24 jury for deliberation. We would ask Your Honor to
25 grant a directed verdict for Mr. Young on all charges

1 because the State has failed to meet their burden at
2 this point.

3 THE COURT: All right. All your previous motions
4 are noted for the record and my ruling upon them will
5 remain the same. As to the motion for a directed
6 verdict under South Carolina rules of criminal
7 procedure Rule 19 that motion is denied. In regards
8 to Mr. Young, there is both direct evidence against
9 him and there is substantial circumstantial evidence
10 against him and his case will go forth to the jury
11 viewed in the light most favorable to the State,
12 taking into account the existence of the evidence and
13 not the weight of the evidence.

14 All right. Now, we need to --- I need to advise
15 both of them, okay. Would both of you gentlemen
16 please stand up and raise your right hand, please,
17 both of you?

18 LORENZO YOUNG AND TRENTON BARNES,
19 each after being duly sworn, both testified as
20 follows:

21 THE COURT: All right. I'm going to carry on a
22 conversation with you here, okay. This is to each
23 defendant. Each defendant is standing, both with
24 their lawyers. Now, I mean, this. If you do not
25 understand what I'm saying or you're confused or you

1 need me to know explain something further just tell
2 me, that's perfectly fine. You're not going to upset
3 me or offend me or anything else. This is one of the
4 most important things we will cover. I want to handle
5 this with a full knowledge and understanding that you
6 understand what I'm saying and that you're following
7 what I'm saying. Do you understand that, Mr. Barnes?

8 DEFENDANT BARNES: Yes, sir.

9 THE COURT: Do you understand that, Mr. Young?

10 DEFENDANT YOUNG: Yes, sir.

11 THE COURT: Okay. All right. At this time, I'm
12 going to explain to both of you some of your rights.
13 If you do not understand anything that I say, please
14 let me know. If you want me to explain anything in
15 more detail to you, let me know. Do you understand
16 what I have said so far, Mr. Barnes?

17 DEFENDANT BARNES: Yes, sir.

18 THE COURT: And Mr. Young?

19 DEFENDANT YOUNG: Yes, sir.

20 THE COURT: We have now reached the stage of the
21 trial where you may present your defense. You have
22 the right to claim the protections given to you by the
23 Fifth Amendment to the Constitution of the United
24 States of America. This amendment states in part that
25 no person shall be compelled in any criminal case to

1 be a witness against himself. What this means is that
2 you cannot be required to testify in this case. You
3 have the right to testify on your own behalf, however,
4 no one can make you testify. This is a personal right
5 and no one can waive this right except you. If you
6 decide to testify, you will be subject to the same
7 rules that govern other witnesses and you may be
8 examined and cross-examined on any relevant issue in
9 this case. If you have any convictions that involve
10 dishonesty or false statement or for crimes punishable
11 by imprisonment for than one year and I determine that
12 the probative value of these --- admitting this
13 evidence outweighs its prejudicial effect, the
14 solicitor will be able to introduce your record to
15 attack your credibility. I know of none. Do you know
16 of any, Ms. Campbell?

17 MS. CAMPBELL: No.

18 THE COURT: Prior convictions that would fall
19 under 609?

20 MS. CAMPBELL: We aren't planning on using any.

21 THE COURT: Okay, so there are no criminal
22 convictions that the State would attempt to introduce
23 during your cross-examination. Do you understand
24 that, Mr. Barnes?

25 DEFENDANT BARNES: Yes, sir.

1 THE COURT: And Mr. Young?

2 DEFENDANT YOUNG: Yes, sir.

3 THE COURT: If you decide to testify this
4 decision on your part must be made freely and
5 voluntarily and intelligently with the knowledge of
6 the protections that are given to you by the Fifth
7 Amendment and the consequences of your decision to
8 testify. If you decide not to testify, I will
9 instruct the jurors that cannot give the fact that you
10 did not testify any consideration whatsoever and that
11 there is to be absolutely no prejudice to you because
12 you did not testify. It is left entirely up to you
13 whether or not you testify.

14 You may talk with your attorney or your family or
15 anyone else, but the final decision will be left
16 entirely up to you. Do you understand what I have
17 explained to you so far? Mr. Barnes?

18 DEFENDANT BARNES: Yes, sir.

19 THE COURT: Mr. Young?

20 DEFENDANT YOUNG: Yes, sir.

21 THE COURT: Do you have any questions about what
22 I have explained to you, Mr. Barnes?

23 DEFENDANT BARNES: No, sir.

24 THE COURT: Mr. Young?

25 DEFENDANT YOUNG: No, sir.

1 THE COURT: Have you discussed this --- now,
2 don't tell me what the discussion is, but have you
3 discussed this with your lawyer, Mr. Barnes?

4 DEFENDANT BARNES: Yes, sir.

5 THE COURT: Now, don't tell me what the
6 discussion is, but Have you discussed it with your
7 lawyer, Mr. Young?

8 DEFENDANT YOUNG: Yes, sir.

9 THE COURT: Do you need to talk anymore to your
10 lawyer at this time?

11 DEFENDANT BARNES: No, sir.

12 THE COURT: Counsel, do you request more time,
13 Mr. Schnee?

14 MR. SCHNEE: Can I have five seconds?

15 THE COURT: Mr. Krzyston?

16 MR. KRZYSTON: I'll just take five seconds while
17 he is, as well.

18 THE COURT: Okay.

19 MR. SCHNEE: I'm good.

20 MR. KRZYSTON: We're good, Your Honor.

21 THE COURT: So do you need any more time to talk
22 to anybody, Mr. Barnes?

23 DEFENDANT BARNES: No, sir.

24 THE COURT: And Mr. Young?

25 DEFENDANT YOUNG: No, sir.

1 THE COURT: Okay. At this point in time, do you
2 wish to testify, Mr. Barnes?

3 DEFENDANT BARNES: No, sir.

4 THE COURT: Okay. And do you wish to testify,
5 Mr. Young?

6 DEFENDANT YOUNG: No, sir.

7 THE COURT: Okay. All right. Thank you very
8 much. You may be seated.

9 THE COURT: Let's talk about scheduling. Mr.
10 Krzyston, how many witnesses are you planning on
11 calling?

12 MR. KRZYSTON: Your Honor, we're not putting up a
13 case.

14 THE COURT: Mr. Schnee?

15 MR. SCHNEE: No witnesses, Judge.

16 THE COURT: Okay. Very well. Let's talk about
17 scheduling a little bit for --- go ahead, stand up?

18 MR. KRZYSTON: Since we just formally rested, I
19 would again renew all motions and objections, pre and
20 post trial, as well as throughout the trial and just
21 everything that we brought to the court.

22 MR. SCHNEE: As officially resting, I would also
23 renew all prior motions and objections based on the
24 same issues.

25 THE COURT: All right. Those motions are noted

1 for the record, my rulings upon them will remain the
2 same. Let's talk about scheduling --- how do you
3 all --- we have to talk about charges. We have to eat
4 lunch and we have to argue and charge. Are what are
5 your thoughts?

6 MS. CAMPBELL: It takes about 20 to 30 minutes to
7 talk about the charges at least, and then whatever you
8 think is appropriate for lunch and then we'll be
9 ready.

10 MR. SCHNEE: Judge, I agree. It's probably about
11 a 15 to 20 minute discussion about actual charges.
12 The only other issue i.e. obviously we have to go
13 through all the evidence and make sure all the
14 exhibits are there. Particularly the CDs, I want to
15 through them and just stick them in a laptop and make
16 sure what's on them. I think we can do all that while
17 the jury is actually at lunch. We can do our ---
18 everything else after that.

19 THE COURT: Okay.

20 MR. SCHNEE: I don't mind not eating. It's not
21 like I have had much to eat during lunches anyway
22 during this trial.

23 MR. KRZYSTON: We're at the court's disposal,
24 Your Honor.

25 THE COURT: All right. Well, let's do this.

1 Let's take a little break because I think that
2 everybody --- the jury hasn't been in here all
3 morning, but most all of have without break and I know
4 Karen is looking at me like she really needs a break.
5 Let's take about a ten minute break. Everybody
6 stretch your legs, kind of regroup. Come back. We'll
7 do the charge conference on the record.

8 MR. KRZYSTON: Thank you, Your Honor.

9 MR. SCHNEE: Thank you, Your Honor.

10 THE COURT: We will stop the charge conference,
11 break for lunch and then argue and charge after lunch,
12 okay?

13 MR. SCHNEE: Thank you, Your Honor.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: Okay. The multiple defendant charge
16 you requested is the one that's in the charge book.
17 Do you have an objection to that?

18 MS. CAMPBELL: No, Your Honor, it's appropriate.

19 MR. KRZYSTON: Thank you, Your Honor.

20 THE COURT: I'm charging multiple defendants and
21 multiple charges and so let's move to Mr. Barnes just
22 for these I and he wants the Logan circumstantial
23 evidence charge. What's your position on that?

24 MS. CAMPBELL: I think if he requested it, he
25 gets it.

1 THE COURT: So that would be the circumstantial
2 evidence charge, his charge. As to reasonable doubt,
3 I charge Victor v. Nebraska and Mr. Barnes' and then
4 malice, we're going to do malice here in just a
5 second. Criminal intent ---

6 MS. CAMPBELL: Your Honor, we would request
7 criminal intent in the charge book.

8 THE COURT: Yeah, the criminal intent that one is
9 almost identical to the one in the charge book; it's
10 very close.

11 MR. SCHNEE: Okay.

12 THE COURT: I will be charging criminal intent
13 and multiple defendants, the verdict --- I'm going to
14 tell them --- I'm going to do this at the beginning
15 and I'm going to do it at the end when I come to the
16 verdict form, which I'll show you all a copy of. I'm
17 going to say you have to consider each and every
18 single one of these independent of each other. One
19 decision can't be based upon the other decision, you
20 can acquit them all, find them all guilty, find none
21 of them guilty, find some, partial whatever it may be.
22 I will go into detail about the multiple defendants
23 and multiple charges in the beginning and at the end
24 when I go through the verdict form. Okay.

25 MR. SCHNEE: Yes, sir. Judge, there are a couple

1 of other charges that I didn't actually print out
2 because I knew they were in your charge book that I
3 would request. First, I would request a mere presence
4 charge. I think there is substantial evidence, or at
5 least there's been enough testimony that we didn't ---
6 the person, which is outside whose identity is an
7 obvious issue, could be merely present and not
8 actually a participant. I'd ask for that.

9 Additionally, based on the letter that the State
10 introduced with the actual content of that, first I
11 would be requesting a voluntary manslaughter charge
12 based on the lack of malice that's expressed in that
13 letter and second I would be objecting to any inferred
14 malice by using deadly weapon as a result of the
15 letter the State introduced.

16 THE COURT: All right. Your request for a
17 voluntary manslaughter is denied. Tell me why you
18 think Belcher applies.

19 MS. CAMPBELL: We'll withdraw that.

20 THE COURT: You'll withdraw ---

21 MS. CAMPBELL: We'll be glad to not use Belcher.
22 I'll agree to that.

23 THE COURT: You're okay with not saying infer
24 from a deadly weapon.

25 MS. CAMPBELL: Everybody know it's not --- I just

1 the it's safer to not use it.

2 THE COURT: Okay. That's fine. Do you want to
3 respond to the mere presence?

4 MS. CAMPBELL: Your Honor, the only testimony
5 before this jury is that the three of them went down
6 there and participated in this crime. Out of an
7 abundance of caution, I don't have a problem with
8 mere presence.

9 THE COURT: Okay. Say that again.

10 MS. CAMPBELL: I don't have a problem with it.

11 THE COURT: Okay, you don't have a problem with
12 it?

13 MS. CAMPBELL: With just the fact mere presence
14 alone is not enough.

15 MR. SCHNEE: It's one or two sentences. That was
16 the one I was referring to.

17 THE COURT: Yes, and it's in the --- hold on, let
18 me find that.

19 (Pause.)

20 THE COURT: Here is what I was already planning
21 on saying. However, mere presence at the scene of a
22 crime is not sufficient to convict one as a principal
23 on theory of aiding and abetting. So I was going to
24 talk about it anyway.

25 MS. CAMPBELL: That's fine.

1 MR. SCHNEE: That's fine.

2 THE COURT: That's part of the hand of one
3 charge.

4 THE COURT: Okay.

5 MR. SCHNEE: The only other thing, the reasonable
6 doubt language, really the only request I'm making is
7 the hesitate to act charge. I believe that's probably
8 in there.

9 THE COURT: It's in your request to charge. I'm
10 charging Victor v. Nebraska, which is firmly
11 convinced.

12 MR. SCHNEE: Okay. So you're not charging the
13 hesitate to act?

14 THE COURT: Correct.

15 MR. SCHNEE: Okay. Well, that's --- for the
16 record, yes, I understand. Thank you.

17 THE COURT: You can still say that. You
18 understand that?

19 MR. SCHNEE: Yes, Your Honor.

20 THE COURT: There are two charges that are
21 available for reasonable doubt. One is hesitate to
22 act, one is firmly convinced. I charge firmly
23 convinced. Hesitate to act as is correct statement of
24 the law, so you can say it.

25 MR. SCHNEE: Yes, Your Honor. I just wanted to

1 make sure that you were not saying it because I
2 normally tell the jury that the judge is about to
3 instruct you.

4 THE COURT: That's fine. I understand. That's
5 why I was telling you that.

6 MR. SCHNEE: Thank you.

7 MR. KRZYSTON: Judge, I was just wondering, are
8 you going to reissue the limiting instruction in
9 regard to the handwriting sample?

10 THE COURT: I was going to, yes.

11 MR. KRZYSTON: Okay.

12 THE COURT: Do you have an objection to me doing
13 that?

14 MR. KRZYSTON: Again, I'm in that weird position
15 where I've got this objective sufficiency of the
16 overall charge, but ask for it anyway so only to that
17 extent.

18 THE COURT: All right. Ms. Campbell. Let's go
19 through yours.

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: Let's start with the kidnapping one.
22 Is there any objection to the kidnapping one? Hold
23 on. Let me go to that part of my charge.

24 MR. SCHNEE: Judge, I have no particular
25 objection to that one sentence. That's covered in the

1 elements that you're going to read anyway, but I'm not
2 going to object to it.

3 THE COURT: Mr. Krzyston.

4 MR. KRZYSTON: We have no objection, Your Honor.

5 THE COURT: All right. So the kidnapping
6 addition will be added in.

7 I have to reorganize this so that I'll have to
8 retype it out. All right. So now, the next one ---
9 let's move to the hand of one is the hand of all.

10 MS. CAMPBELL: Are you using that one or a
11 different one?

12 THE COURT: I have three hand of one hand of all
13 from you so let's start with which one? They all kind
14 of say the same thing, but they're all a little bit
15 different.

16 MR. SCHNEE: Judge, I think there's one that kind
17 of looks like a combination of some of the others. It
18 starts out with two or more combined together. Blah
19 blah blah. It's one solid very large paragraph.

20 THE COURT: Right.

21 MR. SCHNEE: Obviously out of the charged, that
22 one covers all the rest. I would ask that ---

23 MS. CAMPBELL: Are you talking about the Ralph
24 King Anderson one?

25 MR. SCHNEE: Yes.

1 MS. CAMPBELL: I have no problems with that.

2 THE COURT: How about you, Mr. Krzyston?

3 MR. KRZYSTON: Just so we're clearly talking
4 about the one --- the correct one, it's King's charge
5 as well as State v. Avery.

6 THE COURT: Yes.

7 MR. KRZYSTON: We would object to that charge on
8 the basis of the totality of the circumstances. I
9 don't know that the State has offered any evidence to
10 indicate that Mr. Young --- certainly offered any
11 direct evidence to indicate that Mr. Young is part of
12 an accomplice. Based on that, Judge, we object to the
13 charge at issue.

14 THE COURT: You're objecting to hand of one, hand
15 of all period. Is that your objection?

16 MR. KRZYSTON: Yes, Your Honor.

17 THE COURT: If I give the State's version of it,
18 then the mere presence comes out. Do you understand
19 that, Mr. Schnee?

20 MR. SCHNEE: Well, I don't understand, no, I
21 don't.

22 THE COURT: Okay. The hand of one is the hand of
23 all from the charge book includes the language of the
24 mere presence, which I read to you just a minute ago.
25 If you give the --- if I give the Ralph King Anderson

1 charge, mere presence is not in there.

2 MR. SCHNEE: Well, Your Honor, I would ask that
3 you either charge what's in your book or just add a
4 separate mere presence charge. I'm fine with Your
5 Honor doing it either way. I understand the State is
6 entitled to that charge and I'm entitled to a mere
7 presence charge, Judge.

8 MS. CAMPBELL: If he wants that mere presence
9 added in, we have no problem with you adding at the
10 scene is not sufficient.

11 THE COURT: Here is my question. On the Ralph
12 King Anderson hand of one charge. My question if I
13 say if two or more combine together to commit an
14 unlawful act, such as robbery, and then halfway down
15 it says, as for instance to break in and steal, both
16 of those, I think inserting those factors in there
17 gets close to commenting on the facts of the case
18 because that is the allegations.

19 MS. CAMPBELL: How about to commit an unlawful
20 act or a crime. Does that help?

21 THE COURT: What about that, Mr. Schnee, do you
22 have an objection to that?

23 Do you see what I'm saying.

24 MR. SCHNEE: Yes, Your Honor.

25 THE COURT: What I'm --- there's warnings all

1 over the charge book that says --- that say don't give
2 an example that fits the facts of your case.

3 MR. SCHNEE: Right.

4 THE COURT: Right. Because you don't want to be
5 in a position of commenting on the facts of your case.
6 So if I change that --- are you looking at the State's
7 request to charge on this?

8 MR. SCHNEE: Yes.

9 THE COURT: If I change, if two or more combine
10 together to commit an unlawful act and/or a crime,
11 instead of saying such as robbery, which is an
12 allegation here and then the execution of that
13 criminal act, blah blah blah, and then halfway down
14 where it says, as for instance, if it was unlawful.

15 MS. CAMPBELL: Just take out that language of,
16 for instance to break in and steal.

17 MR. SCHNEE: You take out the, as for instance to
18 break in and steal.

19 THE COURT: The common purpose may not have been
20 to kill...and if it was unlawful and in the execution
21 of this common purpose --- but, if it was unlawful and
22 or criminal, right?

23 MS. CAMPBELL: Unlawful and/or criminal?

24 THE COURT: And/or criminal, and in the execution
25 of this common purpose.

1 MS. CAMPBELL: That's good.

2 THE COURT: I think that prevents the court from
3 commenting on the facts.

4 MR. SCHNEE: I would agree with that, Your Honor.

5 THE COURT: You're objecting altogether to the
6 hand of one, hand of all, right?

7 MR. KRZYSTON: Correct.

8 THE COURT: And then where is the mere presence?

9 (Pause.)

10 Mere presence at the scene not sufficient to
11 prove someone guilty of a crime in a defendant's
12 presence where a crime is being committed or mere
13 association with a person who commits a crime does
14 make a defendant an accomplice or aider and abettor of
15 the person committing the crime.

16 MR. SCHNEE: That's pertinent.

17 THE COURT: Do you have an objection to that?
18 Okay. Do you have an objection to the mere presence
19 charge, Mr. Krzyston?

20 MR. KRZYSTON: No, Your Honor.

21 MS. CAMPBELL: So that would be the only hand of
22 one.

23 THE COURT: That would be the only hand of one,
24 yes.

25 MR. SCHNEE: Judge, as for malice, I think ---

1 THE COURT: Hold on.

2 MR. SCHNEE: I'm sorry.

3 THE COURT: I'm trying to keep everything
4 organized so when I go back and retype it so it makes
5 sense to me what I've done.

6 MR. SCHNEE: Yes, sir, I understand.

7 THE COURT: Just one second. Let me get to
8 malice in my charge. Okay. So we're all agreeing
9 that inferring malice from the use of a deadly weapon
10 is out?

11 MS. CAMPBELL: Out, yes.

12 THE COURT: Do you agree to that?

13 MR. SCHNEE: Yes.

14 THE COURT: Do you agree to that?

15 MR. KRZYSTON: Yes.

16 THE COURT: Let's talk about these other malice
17 requests.

18 MS. CAMPBELL: I was going to withdraw that one
19 anyway.

20 MR. SCHNEE: Judge, the one that I see that is
21 probably most inclusive and fits, there is one that's
22 very long and single spaced.

23 THE COURT: Right.

24 MR. SCHNEE: It includes the appropriate language
25 of essentially the inference is only a permissive

1 inference and not a requirement. I think that would
2 probably most accurately discusses this out of all of
3 them.

4 MS. CAMPBELL: I'm withdrawing that.

5 THE COURT: You are withdrawing the single spaced
6 one?

7 MS. CAMPBELL: Yes, the one that talks about
8 malice may be inferred from the use of a deadly
9 weapon.

10 MR. SCHNEE: I'm talking about the really long
11 one.

12 MS. CAMPBELL: The really long one, the second
13 paragraph.

14 MR. SCHNEE: Oh, the second paragraph. Okay. I
15 was talking about the rest of them.

16 MS. CAMPBELL: Oh. You were reading the
17 permissive inference?

18 MR. SCHNEE: Well, there is a permissive
19 inference from malice in general. I think there is
20 something in there.

21 MS. CAMPBELL: No. That's just from the use of a
22 deadly weapon.

23 MR. SCHNEE: Oh, in that case --- never mind.
24 I'm sorry.

25 THE COURT: So you're withdrawing the single

1 spaced one; is that right?

2 MS. CAMPBELL: I think most of that language in
3 is in the other ones, other than the deadly weapon.

4 THE COURT: Okay. What's the next one we to look
5 at?

6 MS. CAMPBELL: The aforethought, Your Honor.

7 THE COURT: It needs a first line.

8 MS. CAMPBELL: Malice may not exist for any
9 appreciable period of time.

10 THE COURT: Okay. Let me see what's in the
11 charge. Here's what's in the charge. Malice
12 aforethought, in the charge book, does not require
13 that malice exists for any particular time before the
14 act is committed.

15 The malice must exist in the mind just before
16 and at the act is committed. Therefore there must be
17 a combination of previous evil intent in the act.

18 MS. CAMPBELL: Okay. I'll use that language.

19 THE COURT: I can add in --- I've checked this
20 site and it's still good law. I can add in the
21 sentence, Malice may be conceived at the very moment
22 the fatal blow is given.

23 MS. CAMPBELL: That would be good.

24 THE COURT: Because the evil intended act is
25 already in there.

1 MS. CAMPBELL: Thank you.

2 THE COURT: So any objection to that?

3 MR. SCHNEE: No, Your Honor.

4 MR. KRZYSTON: No, Your Honor.

5 THE COURT: All right. What else, Ms. Campbell?

6 MS. CAMPBELL: Your Honor, the --- we can take
7 the popular sentence (unintelligible) aids in ill
8 will.

9 THE COURT: You want to take that out?

10 MS. CAMPBELL: No, I want it.

11 THE COURT: I'm sorry. I didn't hear you
12 correctly. Hold on one second.

13 (Pause.)

14 Go ahead, Mr. Krzyston.

15 MR. KRZYSTON: Judge, I think the language that
16 the solicitor seeking in this instance is probably
17 cumulative and unnecessarily repetitive, so on that
18 basis, I would object to the addition of that
19 language.

20 THE COURT: Okay. Mr. Schnee.

21 MR. SCHNEE: Judge, I'm not entirely sure what's
22 in your charge book.

23 THE COURT: Here's what it says. Malice is
24 hatred, ill will, hostility toward another person. It
25 is the intentional doing of a wrongful act without

1 just cause or excuse and with an intent to inflict an
2 injury or under circumstances that the law will infer
3 an evil intent. Then it goes on to the part that I
4 just read to you.

5 MR. SCHNEE: I think that would sufficiently
6 cover it. I think this would be a cumulative charge.

7 THE COURT: So the first line of this is already
8 in there.

9 MS. CAMPBELL: It's already in it.

10 MR. SCHNEE: Looks like the second one actually
11 has a typo in it.

12 THE COURT: Is that the typo?

13 MR. SCHNEE: I would think it should "but
14 signifies" instead of "by".

15 THE COURT: Pull up State v. Mouzon.

16 MS. CAMPBELL: It should be, "but" sorry. I
17 apologize, Your Honor.

18 THE COURT: That's okay. It says 1957; is that
19 right?

20 MR. SCHNEE: Yes, Your Honor.

21 MS. CAMPBELL: I believe there is similar
22 language in the Israel Wilds case, too.

23 THE COURT: There's a 1997 Mouzon. That's why I
24 said that.

25 (Pause.)

1 That should be "but signifies;" is that right?

2 MS. CAMPBELL: Yes, sir.

3 (Pause.)

4 THE COURT: Okay. And then move to the ---

5 MS. CAMPBELL: Last line?

6 THE COURT: Yes.

7 MS. CAMPBELL: That's what you're charge is.

8 THE COURT: So you want to --- you're okay with
9 it stopping at fatally bent on mischief?

10 MS. CAMPBELL: I believe the language after that
11 is already in your charge.

12 THE COURT: Right. It is.

13 MS. CAMPBELL: Okay. We're good with that.

14 THE COURT: Any objection other than adding in
15 that sentence other than cumulative?

16 MR. SCHNEE: No, Your Honor.

17 MR. KRZYSTON: No, Your Honor.

18 THE COURT: Okay.

19 THE COURT: All right. What else?

20 MS. CAMPBELL: I believe this was one handed up,
21 brutal conduct. I handed that one up late.

22 MR. SCHNEE: Oh, the brutal conduct.

23 THE COURT: Anybody want to take a position on
24 that?

25 MR. KRZYSTON: Certainly, Your Honor. We would

1 object and to introduction of that charge. I believe
2 the charge we just went over conveys the general
3 language contained in that charge and there are no
4 attending circumstances indicating any brutal acts
5 other than what they're charged with

6 THE COURT: Okay.

7 MR. SCHNEE: Judge, I would join in that
8 objection. I think it is cumulative. It draws a
9 little too much attention --- in terms of crimes, I
10 don't think anybody is going to actually start --- the
11 acts physically contained in here aren't significantly
12 brutal compared to any run-of-the-mill robbery,
13 homicide. This isn't a beating death. There is no
14 torture. I think it's probably the misstatement of
15 the laws that apply in this particular case.

16 MS. CAMPBELL: Your Honor, if we can go into the
17 felony inference.

18 THE COURT: Okay. I have two on those.

19 MS. CAMPBELL: I believe it's three.

20 THE COURT: Okay. I have three. I'm sorry.
21 Norris, Norris and Lourie.

22 MS. CAMPBELL: I think the short Norris is
23 included in the longer Norris, so I apologize about
24 that.

25 THE COURT: All right.

1 MS. CAMPBELL: And Your Honor, in these two, I
2 didn't even put in the words attempted armed robbery,
3 but it also applies to kidnapping and burglary. Where
4 it's underlined. Your Honor, I think the Lourie case
5 is just close to Norris case. We may have to narrow
6 it down to the longer Norris case.

7 THE COURT: And Lourie is a PCR.

8 MS. CAMPBELL: Yes.

9 THE COURT: Where they brought the jury back out
10 and just read that charge and didn't read everything
11 else.

12 MS. CAMPBELL: I think Norris would be the one
13 that's longer.

14 MR. SCHNEE: I'm sorry. For some reason I didn't
15 get a copy of that one.

16 MS. CAMPBELL: I can get it for you.

17 MR. SCHNEE: If I can just take a look at it.

18 MS. CAMPBELL: Here you go.

19 MR. SCHNEE: I just want to look at it. Thank
20 you.

21 Judge, the only thing I'd say about the longer
22 one is the attempted armed robbery would be a felony
23 under the law. I know you want to stay away from
24 charging on the facts.

25 MS. CAMPBELL: That's not factual. That is the

1 law.

2 MR. SCHNEE: I know.

3 THE COURT: That's correct. That's like
4 possession of a weapon during the commission of a
5 violent crime. If they're always charged, making this
6 up, with the burglary, you also have to tell the jury
7 the burglary.

8 MS. CAMPBELL: We would just ask Your Honor that
9 you include the kidnapping and burglary.

10 MR. KRZYSTON: And, Judge, we would join in with
11 Mr. Barnes' objection on those.

12 THE COURT: Okay. And I am going to do the
13 Norris charge. I'll add it somewhere; I haven't
14 figured out where in the definition of malice.

15 MS. CAMPBELL: As part of that, you'll charge
16 them to that a those three offenses are considered
17 felonies?

18 THE COURT: Yes.

19 MS. CAMPBELL: Thank you.

20 THE COURT: Are you withdrawing brutal conduct?

21 MS. CAMPBELL: I'll withdraw brutal conduct.

22 THE COURT: All right. Okay. I'm going to tell
23 you the headings of the sections so you know. Number
24 one, I start with this is what they're charged with.
25 The fact they're not charged or is not charged is not

1 evidence. Number two, I will go into multi
2 defendants. Each has to be considered separately and
3 independently. The next thing I'll go into is
4 multiple charges same date, separate and independent,
5 separate and distinct offenses. I'll then go on to
6 their duties. Duties of the judge, duties of jury. I
7 then go to presumption of innocence. I then go to
8 reasonable doubt.

9 I then go to direct and circumstantial evidence
10 and I'm giving the --- I'm just going to call it the
11 LOCE (phonetic) "lack of circumstantial evidence"
12 charge for lack of a better term. Is what is and
13 what's not evidence in here? At some point I'll do
14 what is evidence, what is not evidence. Credibility
15 of the witnesses, expert witnesses, failure of the
16 defendant to testify. Criminal intent. And then I'll
17 go into murder and then I'll go into --- I'm not
18 saying anything about inferring malice from the use of
19 a deadly weapon. I'm not defining deadly weapon or
20 anything else. Then I'll go into kidnapping. I'll
21 then go into attempted armed robbery. Let me read
22 this real quick.

23 (Pause.)

24 THE COURT: All right. Part of that charge does
25 contain the definition of deadly weapon. I'm not

1 charging fist as a deadly weapon or ordinary objects
2 or toy guns or B.B. guns. Any objection to me taking
3 all of that out?

4 MS. CAMPBELL: No, sir.

5 MR. KRZYSTON: No, Your Honor.

6 MR. SCHNEE: No, sir.

7 THE COURT: And then burglary second degree.

8 Again, I'm not doing ordinary objects, toy gun or
9 B.B. gun in the definition of deadly weapon and I'm
10 not going to charge if the defendant has a prior
11 record of two or more convictions of burglary; is that
12 okay with you?

13 MR. KRYZSTON: Yes, Your Honor.

14 MR. SCHNEE: Yes, Your Honor.

15 THE COURT: Ms. Campbell, any objection?

16 MS. CAMPBELL: No objection, Your Honor.

17 THE COURT: That will take out the paragraph that
18 says the prior convictions that --- I'm taking out
19 anything about prior convictions. Nobody has a prior
20 conviction so I'm taking all of those paragraphs out.
21 It explains how far you use that or how you are not to
22 use that.

23 This does define nighttime as the period between
24 sunset and sunrise, which there is not enough daylight
25 to recognize a person's face. Blah, blah, blah. Okay.

1 Hand of one is the hand of all. The State gave adding
2 mere presence at the end of it.

3 All right. I'm going to read you the limiting
4 instruction and then I go into the duty to deliberate,
5 then go over the verdict form. Okay. Somewhere ---
6 did you come up with a proposed charge on sentencing?

7 MS. CAMPBELL: Your Honor, as far as sentencing,
8 I believe the jury in a criminal proceeding may not
9 presume any punishment the court may impose and then
10 just follow up with this is not a potential death
11 penalty case or the penalty is not being sought in
12 this case, whatever the defense would rather have.

13 THE COURT: Somebody want to take position on
14 that?

15 MR. SCHNEE: Judge, I don't have a position
16 either way. I'm certainly not going to be arguing to
17 the jury that this is a death penalty.

18 THE COURT: All right.

19 MR. KRZYSTON: Judge, to clarify, we have the
20 right to talk about any of the sentences that the
21 witnesses might receive, but not specifically,
22 Mr. Young, obviously.

23 THE COURT: Here is my interpretation of what you
24 can say. This is an example. You heard from a
25 witness who was facing life without parole and that

1 can go to his credibility or his believability.

2 MR. KRZYSTON: Correct.

3 THE COURT: Certainly, but not as to Mr. Young is
4 going to be locked up for the rest of --- none of
5 those kind of comments about people are going to be
6 locked up for the rest of their lives or anything
7 else. What this says is the length of the prison
8 sentence rests in the discretion of the trial court.
9 You have heard testimony concerning the penalty a
10 person can serve for the crimes alleged in the
11 indictments. In determining the guilt or innocence of
12 the defendant, you cannot consider any possible
13 penalty for any particular crime. The punishment for
14 crimes is a matter for me to determine and should
15 never be considered by you in any way whatsoever in
16 arriving at an impartial verdict as to the guilt or
17 innocence of the defendants.

18 Tell me what you want me to add.

19 MS. CAMPBELL: The only thing is in this case the
20 death penalty --- the State not seeking the death
21 penalty.

22 THE COURT: Okay. I won't put that at the end.
23 I mean, I'm putting that line at the end. I'll slide
24 sentencing somewhere back in the middle of the charge
25 somewhere.

1 MS. CAMPBELL: Back.

2 THE COURT: Okay. Anything else?

3 MR. SCHNEE: Not with regard to charging, Your
4 Honor.

5 THE COURT: Okay.

6 MS. CAMPBELL: Your Honor, I don't think we
7 addressed was one of Mr. Schnee's --- it was one on
8 malice or did we address it and I missed it?

9 THE COURT: It's the one on the required mental
10 State is malice aforethought?

11 MS. CAMPBELL: Uh-huh. If you look at the case
12 on Findley, Your Honor, it goes back and quotes
13 basically what your criminal---

14 THE COURT: Yes, I'm not charging that.

15 MS. CAMPBELL: That's what I needed to know.

16 THE COURT: I'm going to explain to them the
17 mental state of malice aforethought.

18 Okay. The verdict form, it lists the indictment
19 numbers. It lists both defendant's names. We did
20 them in alphabetical order for lack of a better way to
21 do it. As to the charge of murder: not guilty,
22 guilty; burglary second degree: not guilty, guilty;
23 kidnapping: not guilty, guilty; attempted armed
24 robbery: not guilty, guilty, and it says by unanimous
25 consent find, and then it goes on to Mr. Young murder,

1 burglary, kidnapping, attempted armed robbery and a
2 place for the foreperson to sign, and it starts ---
3 not guilty is the first one listed in each and guilty
4 is the second. I tell them there is no significance
5 as to that. I merely --- I'll tell them that about
6 the order of the people, too. Somebody has got to go
7 first and somebody has got to go second. I have to
8 write one first and I have to write one second. There
9 is no magic to any of that, nor does that mean
10 anything, nor are they to draw any conclusion to
11 anything. Anything else?

12 MS. CAMPBELL: No, sir.

13 MR. KRZYSTON: No, sir.

14 MR. SCHNEE: No, Your Honor.

15 THE COURT: All right. Do you want to flip the
16 coin on who goes first?

17 MR. SCHNEE: I'll defer to them.

18 MR. KRZYSTON: We'll allow Mr. Schnee to go
19 first.

20 MR. SCHNEE: I think Your Honor needs to flip a
21 coin.

22 THE COURT: Okay.

23 MR. SCHNEE: Neither of us are going to agree.

24 THE COURT: I don't have a coin. I'm a judge,
25 I'm broke.

1 MR. SCHNEE: Well, I had to go first in Opening.
2 I think they should go first in Closing.

3 THE COURT: All right. I have one exhibit up
4 here. I don't want you to lose sight of that one and
5 then make sure you go through exhibits and look at
6 whatever you want to look at before anybody plays it.

7 MR. SCHNEE: Right, Judge. I've already started
8 it. I don't know if it's just this laptop, but
9 there's already one CD that's not working.

10 MS. CAMPBELL: Judge.

11 THE COURT: Oh, look at that. She has money.
12 Who did you borrow it from?

13 MR. KRZYSTON: Tails no fails, Your Honor.

14 THE COURT: You taking heads?

15 MR. SCHNEE: I'll go with heads.

16 THE COURT: All right. Whoever wins gets to
17 pick.

18 MR. SCHNEE: Fair enough.

19 THE COURT: Heads.

20 MR. SCHNEE: I'm last.

21 THE COURT: All right.

22 MR. SCHNEE: Thank you.

23 MS. CAMPBELL: Do you have a problem with me
24 opening on the law and then Ms. Simpson go over the
25 facts?

1 THE COURT: No, that's fine.

2 MS. CAMPBELL: Thank you.

3 THE COURT: All right. Anything else?

4 (There was no response.)

5 THE COURT: Okay. Now, once we're done with the
6 closing --- so when the jury comes back in, this is
7 how it's going to work. When the jury comes back in,
8 I want to say Mr. Krzyston, do you have anything to
9 present? We rest. Mr. Schnee, we rest. I'll tell
10 them that they have rested. You have rested and we're
11 at the point of closing arguments. Then we'll go
12 right into it. When we finish and they're out before
13 the jury goes back. Now, this is the lawyer's
14 responsibility, just don't get up and leave and walk
15 out of the room where I can't find you, okay. You
16 need to stay and make sure you go over with the court
17 reporter what's going back and what's not going back
18 so we don't have any dispute with what's back there
19 and what's not back there. I will tell them they
20 cannot begin deliberations until the evidence comes in
21 the room. So you need to stay and make sure that
22 what's going back there is what you believe is in
23 evidence, okay, and then you need to make sure that
24 Ms. Pendegrass has your phone numbers so that I don't
25 have to run all over the world looking for you or try

1 to find you. Okay. Anything else?

2 MS. CAMPBELL: No, sir.

3 MR. KRZYSTON: Judge, just for clarification, we
4 have already officially rested our case and renewed
5 our motions to ---

6 THE COURT: You don't need --- I will put on the
7 record that --- you all don't need to go through
8 renewing your motions. You have rested in front of
9 the court and you have renewed your motions and have
10 done so appropriately and I believe you have protected
11 the record on those issues, and that applies to
12 Mr. Young and Mr. Barnes. We don't need go through
13 that whole recitation when the jury comes back in. I
14 understand what you've done and understand that you
15 have renewed your motions and I've ruled on that.

16 MR. KRZYSTON: Thank you, Judge.

17 THE COURT: Are you okay with that, Mr. Schnee?

18 MR. SCHNEE: Yes, sir.

19 MS. CAMPBELL: Just one other thing, usually in
20 the morning you ask them if you have seen any media or
21 anything of that nature. I don't think you did it
22 this morning.

23 THE COURT: Okay.

24 MS. CAMPBELL: If we could have that general
25 question.

1 THE COURT: Okay. Two o'clock.

2 MR. SCHNEE: Thank you.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Yes, ma'am.

5 MS. GARFIELD: Your Honor, at the break,
6 Mr. Schnee and I went over all the videos, CDs that
7 were --- there were a couple of issues. We have
8 changed them where they do reflect what was properly
9 introduced into evidence with the exception of State's
10 Exhibit 325. Your Honor, this would be the CD that
11 was introduced with the Ale House video on it. The
12 jury did see Ale House video on the outside. However,
13 this CD contains surveillance video also from the
14 inside. It would be the inside bar with the lights
15 off. There is no activity inside the bar. I am
16 informed by Mr. Brown of our office, who much more
17 savvy in the IT area that it is impossible to take the
18 video off this. It would have to be re-recorded by
19 SLED in order to do that and I don't have in order to
20 take it off. I've informed Ms. Pinnock, as well as
21 Mr. Schnee. They are in agreement with it all going
22 back to the jury since it doesn't add or take anyway
23 anything.

24 THE COURT: It just shows the closed bar?

25 MS. CAMPBELL: It just shows inside a closed

1 establishment with the lights off, yes.

2 MS. PINNOCK: We have no problem with that.

3 MR. SCHNEE: Yes, Your Honor, I agree with that.

4 The only other option we have is to have the jury come
5 outside to the courtroom ---

6 THE COURT: Right.

7 MR. SCHNEE: --- which with that type of video, I
8 felt that would be a bad idea. I doubt they want to
9 come out just to see that.

10 THE COURT: Do we've clean computer to go back?

11 MS. CAMPBELL: We do, Your Honor. It's at
12 Mr. Schnee's desk.

13 THE COURT: What else?

14 MS. GARFIELD: Actually there are two CDs in
15 here. One CD is what you need to make the video
16 actually play on that laptop. It's just a player.

17 MR. SCHNEE: Have you tried it in that laptop? I
18 want to make sure.

19 MS. GARFIELD: We will.

20 THE COURT: Before we send it back, we need to
21 make sure it works.

22 MR. SCHNEE: We didn't try.

23 MS. GARFIELD: We will before it goes back

24 THE COURT: Anything else?

25 MS. CAMPBELL: Nothing from the State, Judge.

1 MR. KRZYSTON: Nothing from Mr. Young.

2 MR. SCHNEE: Nothing from Mr. Barnes.

3 THE COURT: All right. Everybody out here in the
4 audience, I don't want a lot of commotion, a lot of
5 moving around, getting up and down and all that good
6 stuff. These attorneys, I don't know what day of
7 trial we're on, but they have all been working very
8 diligently, very hard since this trial began. It's
9 not fair to any of the parties involved for this jury
10 to lose any focus because somebody can't sit still and
11 stay in here during the closing arguments. Nobody in
12 the room except for attorneys and me should have a
13 phone on them. Whoever has a phone on them, it must
14 be on off or on silent. I do not want to hear it go
15 off in this courtroom. That's also not fair to the
16 attorneys or the parties regardless of which side of
17 the case we're referring to.

18 Now, for those of you who don't do closing
19 arguments every week of your life, the order will be
20 that the State will go first, and then Mr. Barnes.

21 MR. SCHNEE: I chose last.

22 THE COURT: And then Mr. Young's counsel will be
23 allowed to go, and then Mr. Barnes' counsel will be
24 allowed to go. Once Mr. Schnee stops talking, okay, I
25 am then going to charge the jury on the law. That's

1 going to take I don't know, 30, 40 minutes at least,
2 okay.

3 During the time the back door will be locked and
4 no one will be allowed in or out of this courtroom
5 period. If you don't need to hear everything that I
6 have to say or you don't want to hear it, which is
7 perfectly fine with me, then when Mr. Schnee stops
8 talking, you just need to quietly walk outside. Then
9 once it's over, you will be allowed back in. The law
10 requires that I lock the back door during the jury
11 charge and no one will be allowed to stand up or
12 anything. If you don't want to hear me go on for 30
13 or 45 minutes about the law, you don't have to, but
14 you'll need to excuse yourself when Mr. Schnee is
15 finished speaking so that you can wait outside. Okay.
16 All right. So when we come back in, we're going to
17 rest and go straight into it. Who is starting?

18 MS. CAMPBELL: I am.

19 THE COURT: Who is finishing?

20 MS. SIMPSON: I am, Your Honor.

21 THE COURT: Okay. All right. Don't let me forget
22 to pull the alternates.

23 Yes, sir.

24 MR. SCHNEE: And I believe Your Honor was going
25 to inquire if they have looked at any media coverage.

1 THE COURT: Yeah, I was going to. Thanks for
2 reminding me of that. I forgot. All right. Let's
3 bring them in.

4 (WHEREUPON, the jury entered the courtroom at
5 2:19 P.M.)

6 THE BAILIFF: The jury is seated.

7 THE COURT: Thank you very much. Welcome back.
8 Thank you for being on time. Is there any member of
9 the jury panel who has viewed any media in this case
10 in any way or shape since the trial began. If so,
11 please raise your hand. That's any form of media,
12 social media, news accounts, internal, radio,
13 television, print newspaper or anything.

14 THE JUROR: Talking about just this case?

15 THE COURT: Specifically about this case,
16 correct.

17 (There was no response.)

18 THE COURT: Okay. Thank you very much.

19 Mr. Krzyston.

20 MR. KRZYSTON: Your Honor, we rest at this time.

21 THE COURT: All right. Thank you very much.

22 Mr. Schnee.

23 MR. SCHNEE: The defense of Trenton Barnes rests
24 at this time, Judge.

25 THE COURT: Thank you very much. Ladies and

1 gentlemen, at this point, you have heard the entire
2 testimony that you are going to hear in this case, the
3 evidence that you are going to hear in the case. We
4 have reached the point of the trial known as closing
5 arguments, and just the order so that you will know
6 for the afternoon of what's going to happen is the
7 State is going to go first, and they will do what we
8 call an opening on the law, and I believe Ms. Campbell
9 will be giving that to you and then Ms. Simpson will
10 be finishing their closing argument to you. At that
11 point in time, Mr. Young's lawyers will be allowed to
12 give a closing argument and then Mr. Schnee will have
13 the final argument. Now, once Mr. Schnee finishes his
14 final closing argument, you may see a mass exodus of
15 people from the courtroom.

16 That's because I have to instruct you on the law.
17 Okay. That takes about 30 to 45 minutes. There's no
18 exact science to that, but the law require that the
19 back door be locked, and no one be let in or out
20 during that time. Usually we have a group of people
21 that will get up and leave. That's normal. That
22 happens in every single case I've ever tried in my
23 whole life. I'll take a little bit of a break, let
24 you stand up, stretch your legs. Then we'll sit back
25 down and I'll tell you what the law is and what your

1 instructions are from that point forward.

2 Ms. Campbell.

3 MS. CAMPBELL: May it please the Court.

4 THE COURT: Yes, ma'am.

5 CLOSING STATEMENT:

6 BY MS. CAMPBELL:

7 Q Good afternoon. The first thing I'd like to do
8 on behalf of the State of South Carolina, the citizens
9 of Richland County and the family of Kelly Hunnewell
10 is to thank you for your service in this case.

11 I know when you showed up for court last week,
12 you might have wondered if you might be on say a wreck
13 case or a contract dispute or something of the nature.
14 I'm sure you probably envisioned that it would not be
15 a case that quite literally is as bad and as horrific
16 as this one has been, but we want to thank you for
17 your willingness and your attention and paying
18 attention to each and every witness.

19 As you know, this is a very important case for
20 the State of South Carolina, for the citizens and it's
21 a very important case for the defendants, as well.

22 Now, as the judge just told you, I'm going to get
23 up here --- if my voice doesn't go. I'm sorry. I
24 don't know what's in this courtroom. I'm going to
25 talk to you a little bit about the law in this case as

1 it applies, and then you're going to hear from
2 Ms. Simpson. That will be the last time you hear from
3 anyone on behalf of the State. You will then hear
4 arguments from Mr. Krzyston and arguments from
5 Mr. Schnee.

6 As I talk about the law in this case, if I say
7 anything, say anything or state anything different
8 from what the law is that ultimately the judge will
9 charge you on or give to you, you take it as the judge
10 gives it to you. It's not intentional on my part.
11 There may be some verbiage that's slightly different.
12 In that same vein, if either side mischaracterizes or
13 misstates facts, you remember because the roles in
14 this courtroom are very well defined and there is a
15 reason for that. The role of the prosecution is to
16 bring forth to you all of the admissible relevant
17 evidence that is allowed by law for you to consider,
18 and the defense's job is very simple. It's to defend
19 their client to the best of their ability.

20 The judge's law is to determine what actual
21 evidence you're allowed to hear. You've been sitting
22 in and out of this courtroom and I want to apologize
23 and I'll get back to that about what's admissible and
24 what's not admissible and what you can consider. No
25 one is going to get up here and say that anyone's job

1 is more important than yours.

2 Each of you've individually and then once the
3 judge charges you on the law collectively when you get
4 back there, and if anyone says any different, that's
5 simply not true, because your role, ladies and
6 gentlemen, is to determine what happened back on those
7 early morning hours on July 1st when Kelly Hunnewell
8 showed up at work at three in the morning to support
9 her children.

10 What happened that night? In this case, some of
11 that is not as much in dispute because in this case
12 there is a video. Now, you have heard all the
13 evidence that you are allowed to consider.

14 What you must base your verdict on is the
15 evidence before you. As the judge has already told
16 you, what is evidence? Evidence is the sworn
17 testimony, the exhibits that are allowed to go back to
18 you. That is evidence. More importantly, ladies and
19 gentlemen, is the judge told you what's not evidence,
20 any argument by any lawyer, opening, closing whatever,
21 questions by counsel, fishing expeditions,
22 speculation, conjecture, just plain wishful thinking
23 doesn't make it a fact.

24 If a person is asked a question and they have no
25 further knowledge, the question itself is not

1 evidence. The answer is, so that's what you must
2 consider. Now, you have all the evidence you can
3 consider in this case.

4 Now, I want to apologize if over the last week we
5 have done anything to offend you. At times there have
6 been legal wrangling back and forth. What wasn't
7 admissible, may become admissible. You've heard about
8 hearsay. You've heard all kind of legal terms. At
9 times the questioning, especially on my part, has been
10 inartful, clumsy, sloppy. Please don't hold that
11 against the State or against this victim's family. It
12 was not intentional.

13 There have been times when you have been forced
14 to go back in that jury room and sit for literally
15 hours, and I apologize on behalf of the State. It was
16 not intentional on our part.

17 Now, in criminal cases, they are unique because
18 in criminal cases, the burden of proof is on the State
19 of South Carolina. The defendant has, as he should by
20 our constitution, the absolutely right to confront
21 each and every witness that comes before him.

22 You have heard references to statements, to audio
23 recordings, to documents that were done by experts,
24 things of that nature. If you have noticed, none of
25 those have come before you. There were no depositions

1 that were read to you. There were no video
2 depositions that were played for you, and the reason
3 for the, ladies and gentlemen, is very clear because
4 that's the defendant's right, as it should be, to
5 confront each and every witness against him. So in
6 criminal cases, every witness, the pathologist, the
7 DNA expert, the responding officer, it doesn't matter,
8 they have to come before you and testify.

9 The reason for that is so that you can judge
10 credibility, because that's your role so that you can
11 actually see person that is asserting to have
12 knowledge or expertise in an area and to judge their
13 credibility. You've also heard from a number of
14 witnesses that you have heard us ask these questions
15 over and over. Did anyone tamper with anything? It's
16 our burden to prove that no one tampered with any
17 evidence, no one altered anything or comingled things
18 that weren't already comingled, so that the chain of
19 evidence is such before it's admissible for you to
20 consider that the integrity of that evidence has been
21 preserved. You've heard from a number of those
22 witnesses. You've also heard references to other
23 witnesses that may have been, say at the scene, other
24 police officers and as Sergeant Reese told you today,
25 not every police officer comes before you, but what

1 has the State done in this case. We have brought
2 before you all the witnesses that have had admissible
3 relevant testimony that can come before you.

4 Now, as I said earlier, the burden of proof is on
5 the State of South Carolina to prove this defendant
6 guilty beyond a reasonable doubt, and let me repeat
7 that. That is the highest level of proof we have in
8 our nation, and that's where it should be. We must
9 prove the guilt of Lorenzo Young and Trenton Barnes
10 beyond a reasonable doubt that's what the constitution
11 guarantees them and that's the way it should be.

12 Ladies and gentlemen, in this courtroom, in this
13 courthouse with this evidence, that is a burden the
14 State welcomes. Now, listen carefully as the judge
15 defines for you what is reasonable doubt.

16 I'm going to go through some definitions because
17 there are going to be a lot of legal terms that are
18 going to be put before you. In this case there are
19 four separate indictments. They all arise out of the
20 same event, that's not unusual, on each defendant. As
21 the judge will instruct you, you must reach a verdict
22 as to each indictment independently of each other on
23 each defendant. But what is proof beyond a reasonable
24 doubt? Our courts have defined it as such and listen
25 to the judge as he defines it for you, because proof

1 beyond a reasonable doubt is proof that leaves you
2 firmly convinced of the defendant's guilt. Let me
3 repeat that. Proof beyond a reasonable doubt is proof
4 that leaves you firmly convinced of the defendant's
5 guilt.

6 There are very few things in this world that we
7 know with absolute certainty. In criminal cases the
8 law does not require proof that overcomes every
9 possible doubt.

10 If based on your consideration of the evidence,
11 you are firmly convinced that the defendant is guilty
12 of the crime charged, you must find him guilty. If on
13 the other hand you think there is a real possibility
14 he is not guilty, you must give him the benefit of the
15 doubt and find him not guilty.

16 Firmly convinced of the defendant's guilt. The
17 law even recognizes that no one can overcome every
18 possible doubt. It is only that reasonable. In
19 listening to the judge in his charge, will use the
20 word reasonable over and over.

21 Now, before you are going to be the indictments
22 on each defendant for the first crime. I'm just
23 taking them in whatever order; the judge may take them
24 in a different order. The first crime I want to talk
25 to you about is murder. To be the most heinous crime

1 committed in our society, it has probably the shortest
2 definition, at least in South Carolina. Listen
3 carefully. You're not going to hear about different
4 degrees of murder. You're not going to hear about
5 lesser included offenses.

6 The crime charged here is murder in 16-3-10 of
7 our Code of Laws, murder is the killing of any person
8 with malice aforethought, either expressed or
9 inferred. Sometimes they refer to it as expressed or
10 implied.

11 I want to talk to you a little bit about what
12 those terms mean. The killing of another person with
13 malice aforethought either expressed or inferred. The
14 first term I want to talk to you about is what is
15 malice. What makes a killing a murder?

16 The judge will instruct you, and again he may
17 instruct you in a little bit different manner, but the
18 gist of what he's going to tell you is this. In its
19 popular sense the term malice conveys the meaning of
20 hatred, ill will, or hostility towards another. In
21 its legal sense, however, malice does not necessarily
22 mean ill will toward the individual injured, but
23 signifies a general malignant recklessness of the
24 lives and safety of others or a condition of the mind
25 which shows a heart regardless of social duty and

1 fatally bent on mischief.

2 A heart regardless of social duty and fatally
3 bent on mischief. All the State asks is that you look
4 at the events of that night. Look at the information
5 before you and I submit that when two young men
6 combine together with another young man for the
7 purpose of robbing an establishment, even if they
8 didn't intend --- and I'll get back to this, to murder
9 anyone at the onset, the fact that this occurs during
10 the robbery or the burglary or the kidnapping in this
11 case, it reeks of malice. It doesn't get any more
12 malicious. In other words, a malicious killing is
13 where the act was done without legal justification. I
14 submit nobody --- and I could be wrong --- is going to
15 get up here and argue this is not a measure. Excuse
16 or extenuation and malice has been frequently
17 substantially so defined as consisting of the
18 intentional doing of a wrongful act towards another
19 without legal justification or excuse. I submit --- I
20 could be wrong, that no one will get up here and argue
21 that going in to rob a person or kidnap them or doing
22 a burglary is a legal justification or excuse.

23 No one will get up here and say their actions
24 were not criminal.

25 The law goes a little bit further than that

1 because they're --- you remember, it says express or
2 inferred. What's the difference in that? It's not
3 that there are two different kind of malice.
4 Expressed malice is if I walk up to another person and
5 I pull out a gun and I look at them and I say I am
6 going to kill you, that is expressed malice.
7 Sometimes lying in wait to prepare ahead of time.
8 Like in this case, it is expressed malice. Even if
9 the intent, and I'll get back to that, was to do the
10 armed robbery, not the original intent was to do the
11 murder.

12 Those are ways that you can define express
13 malice, but law recognizes that generally when murders
14 occur, you may have to infer from the acts and the
15 conduct that surround what happened.

16 So you look at what the people were doing, what
17 they were trying to do. Did they act maliciously? In
18 inferring malice, you look at the conduct.

19 Very simply, as the judge will charge you, malice
20 may be inferred from conduct showing a total disregard
21 for human life. Remember the video, how they rushed
22 up on her, gun to the head. We don't know what they
23 said, but we don't need to because you can watch what
24 they did. The second young man ran up to make sure
25 she can't escape out the other side. As both of them

1 point the guns towards her, she does the only thing
2 she can think to do, and she swipes at one of them
3 with that spoon to protect herself. You heard earlier
4 about how one of the defendants was talking about the
5 Castle Doctrine. This isn't the Castle Doctrine for
6 them. She had the right to defend herself when being
7 attacked and a gun forced to her head. Is that
8 conduct showing a total disregard for human life?

9 Then when one starts shooting, the other one
10 joins in and they're shooting at her and it's not like
11 these guns, these locks where you pull the trigger and
12 it keeps firing. Remember what the experts said, one,
13 two, three, four. Is that a total disregard for human
14 life. Now, in that same definition of murder you also
15 heard the term aforethought. Malice must be
16 aforethought. Sometimes when considering murder you
17 may wonder does someone have to plan this for days
18 ahead of time. Do they have to sit and wait outside
19 for 30 minutes. No, listen carefully to the judge
20 because he will tell you malice aforethought does not
21 require that malice exists for any particular time
22 before the act is committed. Malice must exist in the
23 mind of the defendant just before and at the time the
24 act is committed.

25 Therefore, there must be a combination of the

1 previous evil intent in the act. However, malice may
2 be conceived at the very moment the fatal blow is
3 given. How dare she fight back? They showed her.
4 Malice. There is also another concept of law that
5 applies here as the judge will tell you. That's
6 felony murder rule. What is that ladies and
7 gentlemen? Listen to the judge, okay.

8 The law says if someone intentionally kills and I
9 submit pulling a trigger of a gun and pointing it at a
10 person, which ultimately dies as a result of that,
11 regardless of if you miss several times, killing
12 another during the commission of a felony the
13 inference of malice may arise if the facts are proven
14 beyond a reasonable doubt, sufficient to raise an
15 inference of malice to your satisfaction, this
16 inference would simply be an evidentiary fact to be
17 taken into consideration by you the jury along with
18 other evidence in the case and you may give it as much
19 weight as you determine it should receive. The law
20 also allows the jury to infer malice if you conclude
21 that the homicide was a proximate direct result of the
22 commission of a felony.

23 Were they in the commission of a burglary, a
24 kidnapping, a robbery being attempted? For that
25 regard, attempted armed robbery, kidnapping and

1 burglary second degree would be felonies under our
2 law. One of them is a felony. These are three
3 felonies.

4 You can imply malice existed if the person is in
5 the commission of a felony at the time of the fatal
6 blow.

7 Now, the second indictment --- there are two, one
8 on each, that's going to go before you and you're
9 going to be asked to reach a separate verdict on is
10 kidnapping. Very simply, ladies and gentlemen, our
11 definition of kidnapping under our Code of Laws is
12 very simple. Whoever shall unlawful seize, confine,
13 inveigle, decoy, kidnap, abduct or carry away any
14 other person by any means whatsoever without authority
15 of law, that person is guilty of kidnapping.

16 Now, what are all those terms? We don't have to
17 prove all of them. There's an or. So we have to
18 prove that one of these actions occurred, and the
19 judge will define either some of them or all of them
20 to you. And specifically, if you should seize or
21 confine any other person by any means whatsoever
22 without authority of law. Traditionally when you
23 think of kidnapping, you think of somebody coming into
24 the state, putting them into the trunk of a car,
25 driving them across state lines. There may or may not

1 be a ransom note, but traditionally that is what some
2 people think of as kidnapping. The law recognizes
3 kidnapping is more expansive than that. All we have
4 to prove is that for some period of time that Kelly
5 Hunnewell was not able to leave of her own free will.

6 The definition of seize confine, ladies and
7 gentlemen. Seize means to take hold of suddenly or
8 forcibly. Was she free to go once he put that gun to
9 her head? Why did she have to fight back if she was
10 free go. Confine means to limit, restrict, enclose or
11 imprison within bounds or shut to keep in. Was she
12 able to move? That's the basis of the kidnapping
13 charge. Now, with kidnapping, does it have to happen
14 over a day, a week, a month? The law is specific as
15 to that.

16 Kidnapping in our State is continuing offense.
17 It commences when one is wrongly deprived of their
18 freedom and continues until freedom is restored. So
19 from the moment that Lorenzo Young came up behind her,
20 put a gun to her head and forced her back the other
21 way toward where he thought maybe there was a safe,
22 money, her money --- when one is wrongfully deprived
23 of their freedom and continues until her freedom is
24 restored. This happened quickly. Listen carefully to
25 the judge. He will not instruct you that we have to

1 prove that it lasted for any particular amount of
2 time. One second, two seconds, three seconds is
3 sufficient if you find that her ability to leave of
4 her own free will and volition, she couldn't do it.

5 Now, getting back to the murder for a second, one
6 thing I didn't --- in this state, as far as murder
7 goes, the State of South Carolina does not have to
8 prove premeditation to the murder. I submit in this
9 case there is evidence of premeditation to the armed
10 robbery they were attempting, to the burglary they
11 were attempting, to the kidnapping, but we do not have
12 to prove premeditation to prove the elements of
13 murder. Listen carefully to that. At the same time,
14 we don't have to prove motive. However, in this case,
15 the motive is clear. It's to enter unlawfully and
16 rob. So we have murder, but we don't have to prove
17 those things.

18 The next crime I want to talk to you about and
19 there's one indictment on each defendant on this, is
20 attempted armed robbery. Now attempted armed robbery
21 is defined in our state as a person who commits or
22 attempts to commit a robbery while armed with a
23 pistol, dirk, slingshot, metal knuckles, razor or
24 other deadly weapon. In this case, ladies and
25 gentlemen, there is no dispute both of them, even one

1 of them would have been sufficient were armed or while
2 alleging either by actions or words he was armed while
3 using a representation of a deadly weapon or any
4 object which a person present during the commission of
5 a robbery reasons to be a deadly weapon. The law even
6 recognizes to be an armed robbery, they don't even
7 have to have a real pistol. They just have to use a
8 representation that they may have a weapon. The
9 reason for that is clear because the law recognizes
10 that bad things can happen when people think that they
11 are in fear of their lives. So it recognizes that
12 just the representation and in this case however, you
13 don't even have to go there, because there is no
14 dispute. There were two guns and both of them worked
15 just fine. They worked well enough to kill Kelly
16 Hunnewell.

17 Now, what is robbery? The simplest way to put it
18 and I don't know how the judge will define this to
19 you. Robbery is very simply stealing. If you think
20 of it. It's a larceny or a stealing from another
21 person. What elevates a larceny or a stealing up the
22 a robbery, it's done from the persons or presence of
23 another with some type of force or violence in order
24 to make them give up their things or this is an
25 attempt now. No one is saying this was successful

1 because she fought.

2 That makes it a robbery or a strong arm robbery.
3 What elevates it to armed robbery or an attempted
4 armed robbery is the use of the deadly weapon and
5 those are very simply the elements of attempted armed
6 robbery.

7 Now, the Judge is also going to instruct you on
8 the law of burglary in the second degree. A person is
9 guilty of burglary in the second degree. The person
10 is guilty of burglary in the second degree if the
11 person enters a building without consent and with the
12 intent to commit a crime therein. That's the element
13 of burglary. What makes it burglary in the second
14 degree is when it's dwelling involved are some of
15 these other aggravating circumstances, but a you
16 notice in the definition of this, they don't have to
17 break down the door because there was no dispute the
18 door was wide open that night. They don't have the
19 right, no one has the right to enter another person's
20 place of business, in this case the bakery, if they
21 enter with intent to commit a crime.

22 Watch the video. Not much of a dispute that they
23 enter with intent to commit a crime. Kelly Hunnewell
24 never sees them coming. She doesn't even know they're
25 there until the gun is already to her head. To make

1 it burglary in the second degree when it's a dwelling,
2 we have to also prove that when effecting entry or
3 while in the building or in immediate flight there
4 from, he or another participant because the law
5 recognizes it can be more than one, is armed with a
6 deadly weapon or explosive or we don't have to prove
7 all of these just one, although I submit all of these
8 apply, causes physical injury to any person who is not
9 a participant in the crime. There's no dispute Kelly
10 Hunnewell was shot and killed, or uses or threatens
11 the use of a dangerous instrument, or displays what is
12 or appears to be a knife, pistol, revolver, shotgun,
13 machine gun or other firearm or just if the entering
14 occurs during the nighttime.

15 Any one of those is enough to make this burglary
16 second. Nobody is going to get up here and argue this
17 wasn't a burglary second. Now, the law goes a little
18 bit further than that. I will explain that concept,
19 since Mark told you in his opening argument, the hand
20 of one is the hand of all in this state. However, let
21 me assure you that mere presence at that scene is not
22 sufficient to make a person guilty of a crime. If you
23 find that the State has proved that the defendant was
24 only present at the scene for a crime and they have
25 not proved any other participation in the crime, then

1 you must find the defendant not guilty. Along that
2 same vein, the judge are instruct you that if two or
3 more combine together to commit an unlawful act or
4 crime --- so two or more people and in this case,
5 three combine together to commit an unlawful act or
6 crime, in this case a robbery, a burglary and
7 ultimately a kidnapping with the intent and in the
8 execution of that criminal act a homicide is committed
9 by one of the actors as a probable or natural
10 consequence of the acts done in pursuant to the common
11 design and there's no dispute the two that go in, one
12 is the lookout. The two that go in, these two are
13 there for one purpose. The video speaks volumes. All
14 present participating in the unlawful undertaking are
15 as guilty as the one who committed the fatal act. So
16 it does not matter if Lorenzo Young is the shooter
17 when it comes to Troy Stevenson and Trenton Barnes.
18 Here today, you are only concerned with these two.
19 Remember Troy's charges are still pending. He will
20 have his day in court.

21 The common purpose may not have been to kill and
22 murder, but if it was unlawful and/or criminal and in
23 the execution of this common purpose a homicide is
24 committed by one as a probable or natural consequence
25 of the acts done in pursuant to the common design,

1 then all present to participate in the common design
2 are as guilty as the slayer.

3 If I join in with one or two other people and I
4 say my role is --- I'm only going to be the lookout.
5 Even if I look at the person going with the gun and
6 say no matter what you do don't shoot anybody. Under
7 the law because I am participating in a criminal act,
8 no matter what happens in there even if my role is
9 lookout, outside, down the block, the hand of one is
10 the hand of all and that's the law in our state. The
11 judge will also instruct you that in every case we
12 must prove criminal intent. Ladies and gentlemen, it
13 doesn't get any more criminal than this.

14 In order to establish criminal liability,
15 criminal intent is required. For example, the mental
16 state for a particular crime might be purpose, intent,
17 knowledge, recklessness or even just criminal
18 negligence. Let me repeat that. What must be proved
19 by the State for a particular crime might be purpose,
20 intent, knowledge, recklessness or criminal
21 negligence. Criminal intent must be proven by the
22 State beyond a reasonable doubt. It is always a
23 matter that must be determined by the jury from the
24 circumstances surrounding the situation. There is no
25 way to prove intent to a mathematical certainty.

1 There is no way medical science can dissect a person's
2 brain and determine what the person has in mind. The
3 law says that criminal intent may be inferred from the
4 circumstances shown to have existed. This is how you
5 make a determination as to whether or not the element
6 requiring intent was present. It is not necessary to
7 establish intent by direct and causative evidence, but
8 intent may be established by inference the same way as
9 any other fact by taking into consideration the acts
10 of the parties and all the facts and circumstances of
11 the case.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It's up to you to determine what the
14 defendant intended to do based upon the circumstances
15 shown to have existed. Criminal intent can be
16 determined by action or failure to act. In this case
17 and listen carefully to the judge, he is not going to
18 tell you it's okay to go in and shoot people because
19 somebody else tells you to do it. Criminal intent can
20 arise from action or a failure to act. It may arise
21 from negligence, recklessness or an indifference to
22 duty or to consequences that is considered by law to
23 be the equivalent of criminal intent.

24 Now, in our state there are two different kinds
25 of evidence that can be used to determine guilt or

1 innocence. What is said --- we refer to as direct and
2 circumstantial evidence, and what are those? Direct
3 is the type of evidence you get through the senses,
4 what you see, smell, hear, touch, what you actually
5 observe. In this case there was a review of the video
6 so people had direct evidence as to who those people
7 were and they were able to identify them. That's
8 direct evidence. Eyewitness testimony typically. In
9 addition to that, there is also circumstantial
10 evidence. In this case like the DNA evidence where
11 you see Ms. Hunnewell and these two defendants' DNA on
12 a spoon that happened to be in the center of this
13 crime. That is circumstantial evidence that you can
14 consider, and very simply the law says that direct
15 evidence directly proves the existence of a fact and
16 does not require deduction. Circumstantial evidence
17 is proof of a chain of facts or circumstances
18 indicating the existence of a fact. In this case
19 another type of circumstantial evidence is the GAP 45
20 ammunition at his home. Does that give you an
21 inference that he may have been involved in this.
22 Crimes may be proved by circumstantial evidence. The
23 law makes no distinction between the weight to be
24 given to either. There is no weight or distinction.
25 To the extent the State relies on circumstantial

1 evidence, all the circumstances must be consistent
2 with each other and when taken together point
3 consistently to the guilt of the accused beyond a
4 reasonable doubt. If they merely portray the
5 defendant's behavior suspicious, proof has failed. In
6 this case, ladies and gentlemen, luckily there really
7 isn't, not luckily, but in this case there doesn't
8 happen to be that much circumstantial evidence. The
9 majority of what the State is bringing before you is
10 direct evidence, but what circumstantial evidence is
11 there is helpful, very helpful in this case. It
12 totally and completely corroborates what other
13 witnesses were actually able to tell you, even those
14 witnesses who were so reluctant to be in here who
15 didn't want to be in here, but it was their testimony
16 or their initial statement corroborated by everything
17 else, the phone dump, the letters written by the
18 defendants later. The DNA. The gunshot residue and
19 it goes on and on. These are just a few of the
20 things. What you have is testimony from witnesses,
21 such as Rolanda Coleman who didn't want to be here.
22 Such as Donald Moore, who really didn't want to be
23 here and finally Latoya Barnes. Give her credit. The
24 circumstantial evidence corroborates what each and
25 every one of those witnesses told you. That's why

1 it's particularly useful in this case as far as that
2 goes.

3 You also heard from another witness and the Judge
4 instructed you, I think, every single time one of them
5 got up here to testify, expert witnesses. The law
6 recognizes that some people, such as myself are what
7 we call lay witnesses. We don't have any expertise in
8 any area. I wouldn't be able to get up there and give
9 an opinion about anything, but certain people because
10 of their training, because of their education are able
11 to get up there and give you information, testing that
12 they actually did. The DNA, the gunshot residue, the
13 pathologist, the bullets, the firearms expert person.
14 Those were all experts and the reason for that is very
15 simply, they have the training. They're able to do
16 it. Now, when judging their credibility, you judge
17 credibility with them the same way you do everyone
18 else and that's important. Do they have a basis? Do
19 they have the experience? Have they testified before?
20 All these are factors in considering whether a person
21 is able to render an opinion, and I submit, ladies and
22 gentlemen, if you take even just the testimony of one
23 of the lay witnesses and couple it with the expert of
24 the testimony in this case, that alone is
25 overwhelming. The judge will also instruct you that

1 in this case there has been some mention of the death
2 penalty. The State is not seeking the death penalty
3 in this case. The judge will tell you the
4 determination of any punishment should not even enter
5 y'all's mind.

6 All your role is to determine guilt or innocence,
7 and that is what your role is, but the State is not --
8 - this is not a death penalty case. The final thing I
9 want to talk to you a little bit about is credibility.
10 What is credibility or believability? The judge will
11 instruct you. You can believe one witness against
12 many, many against one. You can believe part of what
13 a witness says, none of what a witness says, all. It
14 doesn't matter. It's up to you. When considering
15 what to believe as far as credibility of the evidence
16 we put before you, do they have a bias or prejudice?
17 Do they have something to gain or something to lose?
18 Is the testimony corroborated by other testimony or
19 contradicted? Do they have some fear of testifying in
20 credibility, believability, and the defense got up
21 here in their opening statement and they talked about
22 how this courtroom is packed. There's a pressure
23 everywhere, a rush to judgment, pressure. I submit,
24 ladies and gentlemen, think about Donald Moore. He
25 had to come before you because he was under subpoena.

1 Did he want to testify? No. Do you blame him? No.
2 Did he make up, oh I just told lies those lies that
3 happened to be corroborated by all the evidence in
4 this case. Was what he told police initially the
5 truth? Even Trenton Barnes wrote his mother a letter
6 saying it was the truth. Do they have something to
7 gain or to lose? The defense will get up here and
8 argue oh you can't believe any of the witnesses. You
9 can't believe any of the evidence.

10 They will read out lists of who you didn't hear
11 from. That's all an attempt to divert your attention
12 from the relevant admissible evidence that you did
13 hear as to what happened that night because each and
14 every witness was corroborated by the physical
15 evidence, even by the telephones and give Latoya
16 Barnes credit, ladies and gentlemen. I beg you to
17 judge her credibility. She got up here and it could
18 not have been easy, and I felt horrible, but she got
19 up here and she told you what she told police about
20 what she knew and she didn't want to admit that, yeah,
21 she saw Trenton with a gray hoodie. Do you blame her?
22 I can't. But she told you everything else, but when
23 she went to the police and I think I asked her this
24 question, she just wanted to make sure the truth came
25 out, that the right people were held responsible. She

1 deserves a lot of credit.

2 Again, if I have said anything different from
3 what the judge instructs you on the law, it wasn't
4 intentional. All the State asks for is justice.
5 Nothing more, nothing else. Thank you.

6 MS. SIMPSON: May it please the Court.

7 THE COURT: Yes, ma'am.

8 CLOSING STATEMENT:

9 MS. SIMPSON: Well, I shouldn't have shot that
10 bitch. That, members of the jury, those words of
11 Lorenzo Young. I didn't mean to do it, the words of
12 Trenton Barnes.

13 No, no, no. The screams of terror heard by
14 Theresa Baskin, screams that she will never forget.
15 The final words, those pleas for mercy from the victim
16 in this case, Kelly Hunnewell. No, no, no.

17 The final words, the words, the voice of a
18 daughter, a sister, a friend and more importantly a
19 voice that her children ages 13, 10, 6 and 8 will
20 never hear again and for what? Nothing, absolutely
21 nothing because nothing is the value that the
22 defendants, Lorenzo Young and Trenton Barnes placed on
23 human life that day. Let's be clear. Make no mistake
24 about it. As Ms. Campbell alluded to earlier, the
25 only person who should have been able to come in this

1 courtroom, take this witness stand and testify that
2 she was acting in self-defense is the victim, Kelly
3 Hunnewell.

4 Unfortunately, she never got that chance. Her
5 life ended far, too soon at the young age of 33. Why?
6 Because the defendants, along with their codefendant,
7 Troy Stevenson, had a plan. They were going to rob
8 someone that night, and when the first lick went
9 wrong, they saw a crime of opportunity.

10 MR. KRZYSTON: Objection, Your Honor.

11 MS. SIMPSON: Unfortunately ---

12 THE COURT: What's your objection?

13 MR. KRZYSTON: Can we approach?

14 THE COURT: Yes.

15 (WHEREUPON, a bench conference was held in the
16 presence, but not within the hearing of the
17 jury.)

18 THE COURT: You may continue. I'm sorry.

19 MS. SIMPSON: Her life ended far too soon.

20 Unarmed, alone in that building where she worked the
21 early morning shift starting at 3:00 A.M. so she could
22 spend more time with her children, but what good was
23 that metal spoon against two armed men with guns.

24 The only victim in this case is Kelly Hunnewell.
25 Now, this is contrary to what the defense might have

1 you believe because as I've listened to their opening
2 statements and the information they've attempted to
3 elicit through their cross examination, they would
4 have you believe that Lorenzo Young and Trenton Barnes
5 are the victims in this case. They are the victims of
6 police. They are the victims of the State. They are
7 the victims of SLED analysts. They are the victims of
8 their own family members, Latoya Barnes. They're own
9 friends, Donald Moore. The mother of his child,
10 Rolanda Coleman. They are victims of pressure and a
11 rush to judgment.

12 Poor, poor Lorenzo Young and Trenton Barnes.
13 Well, no, members of the jury, that just simply is not
14 true, and that is not what the facts and the evidence
15 in this case show because we are here today for one
16 reason, because when these two men armed themselves
17 and went to that bakery during those early morning
18 hours and went in, they became burglars, attempted
19 armed robbers. When they encountered Kelly Hunnewell,
20 they became kidnappers, and when they pulled that
21 trigger, each of them multiple times, ending her life,
22 causing her to drown in her own blood, they became
23 killers, murderers, and that's why we are here today.

24 Now, members of the jury, good afternoon. It's
25 been a long few weeks, and as you've learned during

1 the course of this trial, my name is Nicole Simpson.
2 I along my co-counsel, represent the State and the
3 victims in this case.

4 I want to echo my colleague, as well, because
5 this is my one and only opportunity to address you
6 directly and I want to thank each and every one of you
7 now, for your time, your patience and your service in
8 this case. It is often said that jury service is
9 perhaps the most important service that a man or woman
10 can render his or her country during times of peace.

11 Well, that's true here today, and in a few
12 moments, defense counsel is going to get up and
13 present their closing arguments. Then the judge will
14 instruct you on the law that you are to apply to the
15 facts of this case, and then it will be turned over to
16 you for a decision, so on behalf of the State and the
17 victim's family, I thank you.

18 I want to talk to you about the facts in this
19 case. First let's go ahead and get something out of
20 the way because I want to address a few things that
21 defense counsel said in their opening statements. And
22 here in this case, you have two defendants, Lorenzo
23 Young and Trenton Barnes, and you will consider each
24 of their guilt independently, but as I listened to
25 their opening statements, the essence of it all kind

1 of boiled down to the good old classic defense, when
2 you have nothing else, attack the police. Blame the
3 police and they kind of vary a little bit, and I want
4 to make sure that I get the quote right. I believe
5 Ms. Bambach, defense counsel for Mr. Young said in her
6 opening statement that you would not hear one piece of
7 evidence in the case. They had to make the pieces
8 fit. You won't see anything definitively connecting
9 Young to the shooting and the normal things you would
10 see in a murder case just aren't here. The arrest of
11 Young was based on the statement of one witness.

12 Well, that's just flat out wrong and inaccurate, and I
13 don't know exactly what a normal murder case is
14 because murder is far from normal, but I submit that
15 this is exactly what's in a murder case because here
16 what we have is defendants with time to dispose of the
17 evidence. What we have here is forensic evidence. We
18 have direct evidence linking them to it, and we also
19 have attempts to justify their actions with respect to
20 informants and I'll get to them in a moment. Even
21 this is a heinous crime and yeah, Trenton may be sorry
22 now.

23 I wasn't there, I didn't do it. That's Lorenzo
24 Young's defense and attack the police. The moving to
25 Trenton Barnes and this one was kind of all over the

1 place because I believe Mr. Schnee began along the
2 lines of police misconduct. One big conspiracy. And
3 at some point it evolved to well, Trenton did it, but
4 you won't find malice because he is only 16, and then
5 it evolved just a little bit more and changed again.
6 Well, he's really only taking the rap protecting his
7 older brother Troy Stevenson, who he loves dearly.
8 That's all he is doing and then we went to another
9 defense.

10 Again, the investigation, no forensics.
11 Threatening, coercion, I don't know. The
12 investigation. All over the place. One of the age
13 old defenses, if you can't defend it --- if the
14 actions are indefensible, if I throw enough stuff out
15 there, maybe something will stick. Maybe they'll fall
16 for one of them. Well, the problem is that the
17 evidence and the facts in this case don't support any
18 of those. We'll get to that.

19 So let's start with the grand conspiracy as I
20 like to call it. I apologize. I'll talk loud. I
21 know words are small, but I wanted to bring this up to
22 get it out of the way so we can get to the witness
23 testimony and facts in this case.

24 The defense wants you to focus on what the police
25 didn't do. Who they didn't interview. I believe a

1 list of names, such as Azo, Smiley, Marcus Shorty
2 Johnson, Marcus Haley Johnson, Ashley Carter, Marquis
3 Johnson. Darryl Samuels, Anthony Nelson, what about
4 those people. Well, you heard the information that
5 could have been obtained through those people, those
6 people whose names were primarily provided by Troy
7 Stevenson and his attorney while at Mr. Stevenson was
8 actually cooperating with the police and attempting to
9 corroborate his story that he was at the house, that
10 he wasn't with them and nicknames. What are they
11 going to do with that?

12 Azo, Smiley, how do you find those people? Well,
13 counsel for Troy Stevenson was going to do that nearly
14 a year later, but never did, and these people,
15 remember, let's go back to the initial day this
16 happened. They canvassed the area initially during
17 the early morning hours. Even Investigator Moorner,
18 the businesses weren't open yet, but they were
19 knocking on doors and they went back to those
20 businesses attempting to talk to people, to find out
21 what evidence was available.

22 And then when they found people, you know, I
23 can't give you details about what's going on, but if
24 you have any information about this incident, contact
25 police. Maybe leave a card or let you know you can

1 contact Crimestoppers, and some people came forward
2 like Donald Moore, Mary Brown and the confidential
3 informant from Richland County.

4 Azo doesn't come forward. Smiley didn't come
5 forward. Marcus Haley Johnson didn't come forward.
6 You heard that this incident happened where the
7 defendants lived. This was their neighborhood, their
8 friends, associates, family members.

9 This is where they live. People hesitant to
10 talk, and we'll get to those people. Rolanda Coleman,
11 Donald Moore, Mary Brown, the witnesses in this case
12 and you heard testimony. People generally don't talk,
13 especially in a case like this.

14 Observe and we'll get to the witness's demeanor
15 on the stand, Donald Moore, Mary Brown, Rolanda
16 Coleman and Latoya Barnes. Now, investigators didn't
17 pick these witnesses. The State didn't choose these
18 witnesses. The defendants did. These are their
19 friends, their family members.

20 If we could have picked, do you really think we
21 would have picked Donald Moore? No. But then moving
22 on, jailhouse informants. Oh, the police they coerce
23 everybody, they do these terrible terrible things.

24 Well, the Columbia Police Department didn't even
25 interview them. Those people sent letters to our

1 office and then those people came before you. No one
2 coerced or threatened them or made any promises to
3 them. Note taking and audio recording. This comes up
4 in just about every case we do, but sometimes it's the
5 reverse because a lot of agencies don't audio record
6 and instead just take notes. If that were the case,
7 they would be saying where is the audio? Why is this
8 not recorded. You have notes for it, but where is a
9 real document, but when we do have audio recordings,
10 well, where are your notes? They're irrelevant.

11 And then there's been an insinuation. This is
12 just based on what I observed and what I believe may
13 come out, because there's been kind of an inference on
14 police misconduct. Maybe they'll plant evidence.
15 They'll lie. They'll threaten, they will not
16 investigate.

17 Well, if you're going to go to all that trouble,
18 put your work, your job, everything on the line, then
19 why not make it better. If you're going to plant
20 evidence, then put the hoodies there, plant the guns.
21 If you can plant the shell casings and unfired
22 bullets, just go ahead and plant the guns. Make it
23 easy. Pick your witnesses.

24 Ms. Baskin, maybe she will identify them if we
25 press her hard enough. But no, she told you only what

1 she knew. DNA, fingerprints, plant it. Make the case
2 better. That just didn't happen, but everybody is in
3 on it, and you heard and I'm going to go --- all this
4 pressure. All this pressure. Pressure from the
5 media. Pressure from the people. Pressure from the
6 community.

7 Well, members of the jury, all this pressure, it
8 doesn't lead to a quick arrest. It doesn't help to
9 have a shoddy investigation because with all this
10 pressure, with all these headlines, you better get it
11 right.

12 What good does it do them to arrest the wrong
13 people. No good, and their job isn't just to arrest.
14 It's to keep the communities safe. So you want the
15 people that committed these crimes off the streets,
16 and that's what they did in this case. They got the
17 right people and it's not a rush to judgment. Now,
18 the incident happens on the first of July 2013. As I
19 believe Sergeant Reese may have defined it best, you
20 never know which way an investigation is going to go.
21 Your hours are not day-to-day, typical nine to five.
22 You might work 18 to 24 days, 12 hour shifts. You go
23 where it leads you. Well, the evidence is collected.
24 They find a video. Video. Do you know how rare that
25 really is? And it kind of directs their

1 investigation. It's very helpful on what evidence may
2 be relevant, on what to process. What are we looking
3 for, we get descriptions early, quickly because but
4 for that video, we might not be here, but then you had
5 more, some tips they received quickly. The tips are
6 coming in fast once this is released. They don't
7 release everything to the media. Why? Those details
8 will be important down the road. Those details for
9 witnesses like Donald Moore and we'll get back to
10 Donald Moore because he had information that was not
11 released to the media and it became very important and
12 they were able to garner more.

13 So they got search warrants, and they executed
14 them at the homes of both Lorenzo Young and Trenton
15 and Troy --- Trenton Barnes and Troy Stevenson. That
16 didn't occur until the 5th. Trenton Barnes at the
17 search warrant. He ends up going with law enforcement
18 at that time. Lorenzo Young is taken into lawful
19 custody where he was found hiding on that day in a
20 closet with a phone that will become very important in
21 this case, with a phone that the defense may try to
22 essentially distract you from, tell you to discount
23 everything that's on that phone, and we'll get back to
24 that.

25 Troy Stevenson comes to CPD headquarters and then

1 with all this information on the 6th , Trenton Barnes,
2 Lorenzo Young and Troy Stevenson are all arrested and
3 charged in this case, equally charged, same charges,
4 murder, attempted armed robbery, kidnapping, burglary
5 second degree violent.

6 Members of the jury, after the arrest, was their
7 job done? Oh, we got an arrest, all this pressure.
8 Let's just call it quits. We've got our people. No,
9 the investigation continued after the arrest and what
10 did it do? It only corroborated and further
11 implicated the defendants in this crime. DNA, GSR,
12 phone examinations, the letter from Trenton Barnes
13 himself about his conduct, the firearms report and
14 additional jailhouse informants. All that evidence
15 corroborates and implicates three individuals and only
16 those. Two that are here before you today. So you
17 can't believe the police, Azo, Marcus, Marquis all
18 these --- Ashley Carter, all these people who like I
19 said who by the testimony you heard really didn't have
20 any information about what happened, but ignore what
21 they did do. Ignore the witnesses they did talk to.
22 Ignore their investigation as a whole because you just
23 can't believe it, and you heard from another witness
24 or witnesses, and I'm going to touch on a few in
25 depth, but you remember the testimony, you heard it.

1 You heard from Officer Brayboy who responded to
2 Ms. Baskin's home because she wasn't sure where those
3 shots actually came from.

4 Ms. Baskin just gave them the information that
5 she knew, and he went on his search to find out where
6 the shots may have come from, and then he came upon
7 Kelly Hunnewell in the bakery, and at that point,
8 crime scene investigators start responding. EMS
9 responds. You heard from the EMT worker Mary Ellen
10 Swain who came in. She was dead on arrival. They
11 didn't even move her.

12 You heard from Columbia fire department Adam ---
13 I always mispronounce his name, Lofstetler, who had to
14 come in and turn off the heat, the gas, because it was
15 so hot in there. All of these witnesses and we'll get
16 to them specifically, the crime investigators, Donald
17 Moore, Rolanda Coleman and Latoya Barnes, all these
18 witnesses, just ignore them. You can't believe
19 anything that they said. So who did you hear from?
20 I'll leave this one out. Investigator Wise you heard
21 from one of the investigators in this case,
22 Investigator Valerie Moorner. What did she do? She
23 told you --- there are investigators involved in this
24 case and a number of people because manpower is
25 important in a case like this. If information is

1 coming in quickly, you need to be able to get to it,
2 and after a period of time, there is kind of a narrow
3 window. The investigation begins to go stale, so yes,
4 they were involved and this is a murder.

5 They canvassed --- she canvassed the area. She
6 is one of the ones who went to the businesses and
7 they're ultimately able to gain surveillance footage
8 from the Ale House, which you'll have before you back
9 there. So she did her job looking for evidence,
10 looking for cameras and she found some. She spoke
11 with business owners. She made contact with the
12 owners of the bakery. She attended the autopsy which
13 was conducted in this case, and the victim's cause of
14 death determined. You heard Dr. Durso's testimony.

15 Yes, they have meetings. There's kind of a big
16 deal made about VCAP, this 1:30, 12:00 o'clock,
17 whatever time. I don't know. It doesn't matter. I'm
18 glad they meet to discuss where the case is going,
19 that they stay briefed and apprised because at that
20 point things are rolling quickly. Information is
21 coming in, and people are getting assigned to
22 different tasks because it's a lot to check out.

23 Crimestoppers tips, information received
24 testified regarding Lucille Drive, which is the home
25 of Lorenzo Young and Troy Stevenson. They also get

1 information to look into Lorenzo Young, and yes, on
2 the 2nd, they hear from Officer Kai Tull --- well,
3 Sergeant Shuler, who is contacted by Officer Kai Tull
4 because Donald Moore who he had a relationship with
5 who he knew had approached him and said I have some
6 information about this case. Now, Donald Moore who
7 clearly didn't want to be here who distanced himself,
8 like I said at that hearing on November 3rd, which I'm
9 sure they're going to talk about and before you in
10 this case.

11 As Ms. Campbell said, that was the first time
12 that they had to --- he had to get up here to face
13 Lorenzo Young and face Trenton Barnes and talk about
14 his cooperating with police.

15 So judge his credibility. They reviewed the
16 video and what did they learn? Two shooters, one with
17 a red hoodie, one with a gray hoodie and another
18 person, a third person involved as a lookout at the
19 door wearing a dark in colored shirt because that
20 person never comes in. That too is important and
21 we'll get to that.

22 Wears? What does she tell you? She wears the
23 Holister brand, so she recognizes that hoodie as a
24 gray Holister hoodie. Investigator Moorer.

25 Now, you also heard from Investigator Matthew

1 McCoy who is assigned as the lead investigator in this
2 case by Sergeant Reese who is his supervisor.

3 Now, this is just general. I'm sure they're
4 going to take some time here. He was assigned. He
5 went to the crime scene. At that point things begin.
6 Investigators are coming out. He is going over what
7 we observed and clearly, this is even before the
8 video, there are two calibers of shell casings on the
9 ground, at least two guns, two firearms were used and
10 then thank goodness for that video because we also
11 have two individuals and a description of those
12 individuals and we have what happened in this case
13 because as Ms. Campbell said, for once, what happened
14 really isn't in dispute with respect to the struggle,
15 the men coming in with the guns.

16 It's on video. Video which I beg you to review.
17 So they get the video. They canvass the area, follow
18 up on tips, and he is kind of overseeing this together
19 with Sergeant Reese, who you heard from, and they're
20 interviewing witnesses, recording conversations. Once
21 they get the physical evidence, the requested testing
22 begins, and we'll get to why they did or did not do
23 certain things.

24 Then they obtain search warrants for the homes,
25 issued by a judge. We're going to talk about what

1 came about in the search warrants because what they
2 did find may not have even been as important as what
3 they didn't find.

4 As he went through the course of this
5 investigation after the arrest as I said, the evidence
6 led to these defendants' guilt. It only further
7 corroborated. It didn't point to another person, and
8 all those names just put those out of your mind, all
9 they would have done is corroborate Troy Stevenson,
10 potentially, maybe, if they're even identifiable real
11 people, they didn't have any direct knowledge of what
12 happened . then we have the crosses and I'm not going
13 to go through this and he did and who he didn't
14 interview. I believe defense counsel for Mr. Young
15 got up here and he was like, oh, you didn't interview
16 this person; where are your notes. Where are your
17 notes? No. They can tick off a little list all they
18 want to. He didn't take notes because he didn't
19 interview them, bottom line, but he did take notes
20 from Rolanda Coleman and that's recorded. He recorded
21 the interview with Donald Moore. He recorded the
22 conversations with Latoya Barnes, but let's not talk
23 about those because that stuff isn't very helpful.
24 And again, anyone can contact the police at any time.
25 It's not like they shut down 24/7. Levels of

1 cooperation and I say this and it's been emphasized
2 and I know you're probably tired of hearing about it.
3 It does change. That is a fact. That's a reality.
4 Donald Moore, cooperative in the beginning and then
5 moving to Sergeant Reese, Kevin Reese, who you heard
6 from, the supervisor of this investigation, he
7 responded to the scene. He was one of the first
8 because he didn't even know it was a homicide. He
9 just knew that someone had been shot and went out
10 there. At that point he made his observations, which
11 he spoke to you about, the signs of a struggle and he
12 went through what he did taking down the information
13 that he had initially and then he called out
14 investigators.

15 EMTs are responding. The county coroner's office
16 becomes present. He is at the scene. There is a lot
17 going on. Keep it secure. Get the perimeter secure
18 because this is a homicide.

19 They canvass the area, knock on doors, go to
20 people's yards. Key point. No details in order to
21 preserve the integrity of the investigation. Let them
22 know who they can contact. He was present for many of
23 those interviews with Investigator McCoy and
24 witnesses. He spoke with Donald Moore and what did he
25 say, that he was cooperative. Nothing out of the

1 ordinary. He came on his own free will, and again
2 which we all know, but it must be said not all
3 witnesses want to talk to the police, especially if it
4 involves friends, family, neighbors present for the
5 execution of search warrants and we'll get back to
6 this point. I'm going to reemphasize them a good bit.
7 No firearm or hoodies were found in Bronx Road or
8 Lucille Drive and then he went through the still
9 photos of what you could observe from the crime scene
10 because they were doing everything they could to
11 identify and make sure they had the right people and I
12 submit to you the evidence supports that they did.

13 Now, the crime scene. We start with Tommy
14 Circle. What did Investigation George Wise testify
15 that he found that would become very important in this
16 case? 45 GAP caliber fired shell casings, the spent
17 shell casings, four of them, at least four shots fired
18 from that firearm. Then the 40 caliber Smith and
19 Wesson shell casings. Two of those --- at least two.
20 Projectiles, three of them. Lead projectile. I
21 believe a projectile fragment, and then also the
22 victim's time card. We knew she got there at
23 3:00 A.M. because then the timeline is also important
24 in this case. It corroborates what happened in the
25 testimony and the evidence against Mr. Young and

1 Mr. Barnes.

2 Then we move to the home of Trenton Barnes and
3 Troy Stevenson. Now, remember this search warrant,
4 July 1st, 2013. Then we move to Lucille Drive. It's
5 not conducted until nearly five days later, July 5th,
6 2013. Key evidence or that would be key, isn't found.
7 Firearms, none to be found and importantly that gray
8 hoodie. You'll hear it mentioned several times during
9 my closing right now. That gray hoodie, that gray
10 hoodie that Ms. Barnes said her son wore all the time,
11 his older brother had ripped it. That gray hoodie
12 wasn't present. No gray hoodie was present or red
13 hoodie, but they did find that dark in colored hoodie,
14 and I want to talk just a bit about it because I
15 believe it was elicited at some point during
16 cross-examination, oh, you didn't submit that one for
17 testing for DNA. The person in the dark hoodie didn't
18 go into the bakery. It wouldn't have the victim's
19 blood on there and, of course, they can claim it's
20 Troy or Trenton's DNA because it's their home. Their
21 DNA is present all over the home so what does it
22 really show, nothing. Then we go to Bronx Road.
23 Investigator Gaston. We found several --- or
24 investigators were there are first because they were
25 actually executing a search warrant which is not

1 uncommon. It's actually quite typical, and then crime
2 scene gets called in because they find some key
3 evidence, and that's documented. What did they find?
4 Ammunition box, Magtech 45 GAP. That's the same ammo
5 that was found at the bakery, same type of ammo,
6 consistent with, where was it --- and this becomes
7 important, too, under the bed. Also under the bed an
8 empty ammo tray and 45 GAP unfired bullet, the same
9 markings as those in the murder at Tommy Circle in a
10 plastic cup under the bed. Forty caliber unfired
11 bullets, two of them in the dresser drawers. Like
12 Rolanda Coleman said where he puts his ammunition.
13 Two unfired bullets also consistent and you heard
14 Ms. Cromer's testimony, which we'll get to. Glock
15 magazine. Glock magazine in Rolanda Coleman's purse
16 where it was found I believe near the bed. Then the
17 gloves box in the top of the closet containing GSR
18 gunshot residue. Now, what they didn't find, again,
19 was a red hoodie or a gray hoodie, and they didn't
20 find a firearm and first about those hoodies, I submit
21 and I turn your attention to that web search on the
22 phone, that media release.

23 They know what they're looking for are gray and
24 red hoodies. Let's get rid of them all, and
25 especially with Lorenzo, you're going to have those

1 photographs from the cell phone, those red hoodie
2 selfies from just days before the murder. Not one red
3 hoodie found and the baseball cap is found and firearm
4 during the cross. Again, we get back to that phone
5 and you'll have that video clip where Lorenzo Young is
6 identified as being the person in the camo and the
7 jacket and what's he saying? They have their guns.
8 He is pulling it out. Put that 45. Put that Glock or
9 we Glock boys. I don't know. You'll have it around
10 there. Put it up to the camera. Firearm. And you
11 heard Ms. Cromer's testimony that is consistent with
12 the Glock. Now, because of the quality of it, you
13 couldn't make out the caliber but that's a Glock just
14 days prior to this incident that Lorenzo had, and
15 we'll get back to the Glock. Was that firearm
16 anywhere to be found? No. You know why? It could
17 connect him to the scene. He knew about it. He knew
18 about the shell casings.

19 The gloves with GSR. Now, the gloves, those
20 aren't very identifying. Might not --- we are didn't
21 say he was a rocket scientist. He might not think to
22 get rid of everything just like that ammo box that
23 happened to be under the bed or a couple of casings
24 that --- or unfired bullets that he missed, and
25 remember, they had five days to dispose of the

1 evidence in this case so let's talk about some of the
2 witnesses. I apologize, my voice, too. It must be
3 the courtroom.

4 Donald Moore, very important. Ignore him, but he
5 is Trenton Barnes' friend. He told you that's my boy,
6 and now he claims only to have met Lorenzo Young one
7 time even though it's clear from the testimony from
8 Ms. Barnes, Trenton's own mother that Troy, Trenton
9 and Lorenzo hung out together. It wasn't uncommon for
10 them to stay at the house, but he only met him one
11 time.

12 July 2nd. I believe Ms. Campbell asked do you
13 remember meeting with police and telling them about
14 seeing Mr. Young with a gun because right now he just
15 claims he lied. I lied, I lied, I lied about
16 everything. But back on July 2nd what did he tell
17 police? What did he tell police that would be
18 corroborated by other evidence in this case. Thursday
19 prior to the incident he saw --- he kind of heard
20 about a plan to rob the Ale House.

21 Then the night before the incident he saw Young
22 with a Glock. Kids in the street, he said go in the
23 house and follow them in. Lorenzo was in the red
24 hoodie that night, didn't even believe at that time
25 that he should get paid for this information because

1 again if you get to the informants, even this wasn't
2 okay, under anybody or by anyone's standards. I
3 shouldn't even get paid for this.

4 Video, initially he said he recognized the hat
5 snap back, baseball cap, and the red hoodie that
6 Lorenzo always wears, shown the lineup, picks out
7 Lorenzo, a/k/a Shyne, Lorenzo's nickname. Told police
8 that Trenton Barnes and Lorenzo Young were the
9 shooters. But then on October 20th you heard this
10 testimony, too. He met with investigators from our
11 office, an attorney present. At that point he said
12 oh, just one little lie or claimed to. Then on
13 November 3rd in front of these two men it's all a lie.
14 I only lied because my nickname is Shorty at this.
15 Then there's the stepfather whose name is Shorty. I
16 thought I might be implicated in some way. The
17 problem is he had information that was not released to
18 the media about the struggle, about what happened and
19 what actually occurred inside the bakery. He knew a
20 lot. Then November 4th in a meeting, he finally says,
21 oh, it was all lie. Remember, too, and I believe it
22 was testified to that after this, he actually became a
23 real informant for the police, Donald Moore. Judge
24 his credibility. Like I said, we didn't pick him.
25 That's his friend.

1 Rolanda Coleman, the mother of Lorenzo's two
2 children. You saw how hesitant she was to take this
3 stand under subpoena court order. Didn't want to be
4 here, didn't want to testify, but she did. And what
5 did she have to tell you, because this is important,
6 too. She knew Trenton and Troy Stevenson. They hang
7 out with Lorenzo. On the night of the incident, she
8 was sleeping at her house and Lorenzo Young had her
9 phone. You have the phone records in this case.

10 We'll get to that. She knew he was at Troy's house
11 also corroborated by the other information in this
12 case. The house just up the street from the bakery.

13 So Lorenzo's mom went and picked him up around
14 five, 6:00 A.M., whatever, and he came in with a
15 t-shirt. Now this is the morning of the murder.
16 We're talking July 1st. The morning of the murder,
17 with a t-shirt, and he had a gun when he came home.
18 He took off his shirt, wrapped that gun and put it in
19 the baby's crib. She doesn't know much about guns, but
20 Young had said the gun was a 45. She didn't know what
21 meant, but now you have a better idea about what it
22 means.

23 Remember, she was hesitant to tell you about when
24 she had seen the gun or when she talked about the gun
25 but then finally she admitted yes, it was the day

1 before and he had brought that gun. He had that gun
2 the night, the morning he came home. Then how
3 convenient is this. Lorenzo and Rolanda go to work
4 together. Then when they come home, that gun is just
5 mysteriously missing. No one can find it, but she
6 also testified no one would know where it was, but
7 Lorenzo or someone he told.

8 He told you there was an argument --- she told
9 you there was an argument between Young his mother
10 about the gun; that he often hid them in the dresser
11 drawers and the day after the incident; they saw this
12 on the news and Young's mother told him to find that
13 gun and get it out of the house. Identifies Trenton
14 in the hoodie, but yet says I can't ID the person in
15 the red hoodie. With as much information as she came
16 forward with, she was still protecting the father of
17 her children. Still protecting him and what helps
18 corroborate that? On the day of the search warrant
19 and she admitted in her testimony that initially said
20 she didn't know when Lorenzo was last seen. Why did
21 she lie about that? Because she was scared he would
22 get in trouble and I believe Ms. Bambach referred to
23 credibility. You either believe somebody or you
24 don't. It's not --- it's just as simple as that.
25 Well, the reality is you can believe some of what a

1 witness says. You can believe all of what a witness
2 says or you don't have to believe anything that a
3 witness says, and yes, I agree, consider her motives.
4 Consider her bias. Consider her demeanor on the
5 stand.

6 She also says I seen Trenton with a gun before,
7 too, but it's a different one than the one I saw
8 Lorenzo with. The cell phone in the grandmother's
9 name is Aretha Coleman, but Lorenzo used it.

10 Latoya Barnes. As Ms. Campbell said, give her
11 credit because she has two sons charged with this
12 crime and their actions, their choices, it's not her
13 fault and she wanted the person responsible held
14 accountable to a certain extent. She is the mother of
15 them. She lives at Lucille Drive with them. It's not
16 uncommon for Lorenzo Young to come and stay over just
17 as he did on this night.

18 Lorenzo and Trenton were together night.
19 However, Troy went to the club with his friends. The
20 defendants were not at the house. I can't remember
21 the time period, but it's several hours before this
22 incident occurs. Then she gets a phone call which you
23 will have those records. We'll talk about that call
24 from Young to the house phone. At that point She
25 states that she picks up and Lorenzo wanted to talk to

1 Marquis Johnson and she handed him the phone. Then
2 she gets a second call about ten, 15 minutes later,
3 somewhere in that timeframe from Young, and Young says
4 they are down the street.

5 At that point she says, well, tell Trenton he
6 needs to come home. She stated that Troy went to get
7 his brother all three were back at the house and when
8 she got up in the morning, that Young left and
9 corroborates what Rolanda Coleman said, someone picked
10 them up. Now, the clothing they were wearing that
11 night, she was able to describe to police and to you.
12 It was a red hoodie that Lorenzo was wearing and
13 Trenton that gray jacket that he always wears, it has
14 a tear. Troy didn't want it anymore. And then that
15 dark colored shirt, which look at that person in the
16 video, I submit the actual lookout in this case who
17 doesn't come in, hoodie wrapped up tight, dark colored
18 shirt. The bakery is within walking distance. She
19 knows because she goes to the Ale House bar. She saw
20 the video. She remembers police coming to the house
21 with a search warrant. Why? Probably to arrest her
22 kids and Trenton went with them, but then she went to
23 the police station to be with Trenton and tells Troy
24 come along too because they're looking for him.

25 There is the recorded phone call between

1 Investigator McCoy and Ms. Barnes in August. Now, on
2 the stand she claimed it wasn't Trenton. Difficult,
3 but then when questioned, she admitted on redirect ---
4 she admitted --- no. I apologize. It was introduced
5 later through Investigator McCoy's portion of the
6 recorded phone call where he's inquiring about the
7 about the video and she states, I know my kids. It
8 was Trenton in the gray hoodie. I know my kids. I
9 know them from they fingers to they [sic] toes. She
10 also said, I believe, she recognized Lorenzo in the
11 video she received a letter from Trenton. Now, this
12 letter that you'll have before you, she turned it over
13 to Troy's attorney where Trenton confesses what he
14 did. That's his handwriting. That's how he signs his
15 letters, and then the informants. Like I said, I'm
16 only getting to some of the witness testimony you have
17 before you. You heard from Alfred Wright who
18 testified that Young approached him in the law
19 library. I believe he was researching this stand your
20 ground for another inmate. At that point he said he
21 learned that three people went to rob a club. Three
22 people, but it was closed, so they went to rob the
23 bakery next door. Young and Stevenson, A/K/A Trigg
24 entered with guns. She resisted and Young shot two
25 times. They didn't get any money. Said Little Trap,

1 A/K/A Trenton was the lookout. It's here I'll remind
2 you because this is the testimony that will become
3 important. It doesn't matter if Trenton was just the
4 lookout. Although, I submit the other evidence in
5 this case shows that he actually is the one, by his
6 own admission, that went into that bakery, but either
7 way, it doesn't matter. The hand of one is the hand
8 of all.

9 Then you have Michael Peterson A/K/A Big Unc.
10 Young telling them, asking them, you already know a
11 lot about the law. What did he say? Not too much,
12 but, you know, if you want to talk. Young said don't
13 tell nobody about this, but I set up a sweet lick in
14 and out job. Told the lady to give me the money,
15 right. She said the money was in the back. She acted
16 like she was calling the police, so I started
17 shooting. Well, I didn't mean to, I guess. I got
18 scared, so little homie with me seen the blood and
19 started running, so I ran, too.

20 Peterson's response? You didn't have to kill
21 her. Young: I panicked and they can't prove nothing
22 because we had gloves and masks on. And all they
23 found --- all they got were the shell casings and I
24 think that some people in the hood told them what
25 clothes we had on.

1 Mr. Peterson also overhears the conversation
2 between Troy and Lorenzo while they're in lock-up, and
3 you heard about Young's responses and defense counsel
4 I believe got up here and attempted to draw out the
5 lock-up dorm, the SHU, whatever, but she didn't really
6 want to draw out what wasn't convenient for her.
7 Let's be clear. You've been taught. It's easy to
8 hear through these walls and again, what did he
9 testify to in Young's responses? All they got is the
10 shell casings man, all they got is the shell casings.

11 Michael Schaefer, Young. Same dorm, played
12 cards. Young told them that he along Trap and Trigg,
13 we later learned their names, went out to rob a club,
14 said he was wearing a red hoodie, Schaefer told him
15 too, now they're talking. I robbed a bank and let's
16 be clear. Who would you confide in. Who would you go
17 to? Mr. Wright is charged with murder. Peterson,
18 charged with murder, kidnapping. Another armed
19 robber. Michael Schaefer actually doing 12 years now,
20 which he pled guilty to. They're talking about it.

21 Then Schaefer said about New Years he felt kind
22 of bad, and he said to Young, you know, I really wish
23 I hadn't robbed that bank and Young responded I
24 shouldn't have shot that bitch.

25 What was his demeanor like? Well, he was cool,

1 calm and collected. It was like he wasn't even in
2 jail. Assess their credibility. Their stories aren't
3 the same. They varied because --- who is telling
4 them? Mr. Young, different versions, yes. That's
5 what happens and what's he do? With each of these, he
6 is kind of seeking out advice and he is also having to
7 justify his actions. She resisted. I guess I got
8 scared. I didn't mean to. Well, those two, and then
9 what else and then what else did Mr. Peterson tell
10 you, you know, he was asked repeatedly, do you
11 remember this. You're not hoping for anything. You
12 don't really want anything. He was like not
13 necessarily, not necessarily, and then finally the 4th
14 or 5th time when Mr. Schnee I believe asked him, well,
15 why? Why did you do this? Why are you saying this?
16 Well, because I know how it feels to lose your mom. I
17 lost my mom when I was 13 years old. All these
18 people, fellow murderers, colleagues, even this crime,
19 he needed to justify why he did it to them. Judge
20 their credibility and if they were going to make up
21 something just to help themselves, why not make it
22 easy.

23 Remember, I believe counsel crossed him. This
24 was on the media, this was on the news. Okay well,
25 say they told me two went in. There was a brief

1 struggle, leave it at that. That's what he told me.
2 That's what he said, but he knew names. They had
3 different stories about going into the back room with
4 a cell phone, calling the police.

5 Mr. Young is telling him these things.

6 Now, the forensics in this case and basically I
7 believe both defense counsel kind of said there is no
8 forensics. There are no forensics and what they don't
9 have is problematic. Well, as Ms. Garfield stated in
10 her opening, this isn't CSI. We're not on TV, but we
11 do actually have some forensic evidence in this case.
12 Evidence that points to who? Lorenzo Young and
13 Trenton Barnes.

14 I'll start with DNA. Jennifer Clayton at SLED,
15 and she was crossed extensively. Specifically about
16 the spoon and who was included in that spoon? Whose
17 DNA is on that spoon? Lorenzo Young, Trenton Barnes
18 and Kelly Hunnewell. What else did she tell you and
19 I'm --- numbers aren't my thing, but 76 percent to
20 86 percent I believe of the entire population in the
21 world is eliminated as having contributed to that
22 mixture of DNA on the spoon, and this number, this big
23 number he wrote out, I believe she said that's only
24 when we have a complete profile. I'm never going to
25 get this kind of number when I have a mixture.

1 Then he referred to one and three, went down the
2 table, Ms. Simpson, Ms. Garfield, Ms. Campbell, one in
3 three, pick them, Ms. Campbell eel elementary school
4 is going to be on that spoon. Well, remember all the
5 swabs that were taken in this case. Out of the 15 or
6 so, who is included on that spoon? Trenton Barnes,
7 Lorenzo Young and Kelly Hunnewell who we know touched
8 the spoon and let's think about this spoon. It's at a
9 bakery. She is using it probably its been washed
10 after a previous use and then it's sterilized because
11 that spoon is in a pot of hot boiling water before she
12 uses it to fend off her attackers.

13 And we know --- I believe that he said at some
14 point --- I'm not sure what he said about the victim's
15 DNA only the spoon, but we know she touched it and
16 what a big coincidence that Lorenzo Young and Trenton
17 Barnes are included on that spoon, but you know who
18 else is not or who is not on that spoon who was
19 excluded? Troy Stevenson.

20 He was eliminated. Just like that 76 to 86
21 whatever it was percent of the entire population, and
22 the entire population wasn't at Tommy Circle. They
23 didn't live in close proximity. The friends and
24 family hadn't testified because this evidence comes
25 out later.

1 She did also there was a 40 caliber shell casing
2 that she found with unidentified DNA on it. Transfer.
3 Shell casings get kicked around the scene, things of
4 that nature. Just because you have one doesn't
5 necessarily mean you're going to put your DNA on it or
6 it will be there. That's a shell casing. Not a spoon
7 that we see on the video that was absolutely used in
8 the crime which during that struggle, sweat, things of
9 that nature that hot room, that hot bakery, Trenton
10 Barnes, Lorenzo Young, Kelly Hunnewell. Now, are we
11 saying you just have to rely on the DNA evidence? No,
12 because no one piece of evidence are we telling you to
13 rely on when you make this decision. You consider all
14 the evidence in this case, all the testimony in this
15 case and you determine who it points to.

16 Fingerprints, also a big deal in a lot of cases. It's
17 not unusual for this argument. Well, you didn't dust
18 for prints. You didn't find any fingerprints. They
19 means they didn't do it.

20 Well, what did you have in this case?
21 Investigators told you they had the video. It didn't
22 appear that the defendants had touched anything in a
23 way that fingerprints would actually be recovered from
24 that item because you heard the testimony, smudge
25 marks, a number business, the length of time you touch

1 something, the nature of touching something itself,
2 all that matters because they're volatile. While
3 they're unique and individual to us, they're easily
4 contaminated for lack of a better word, but that's not
5 so important because remember the defendants had on
6 gloves, so I submit even he knew the best way not to
7 leave fingerprints. They had on gloves and anything
8 else that touched --- you see the video, not long
9 enough to leave a fingerprint. Conversation overheard
10 by Peterson. Again, they ain't got nothing but the
11 shell casings, nothing but the shell casings. He knew
12 the concept of fingerprints so well. Why else would
13 you wear gloves in July.

14 Then you had the testimony of Ila Simmons, one of
15 the analysts in the trace evidence department at SLED.
16 She talking you about gunshot residue. Yes, gunshot
17 residue is very particular. The particles and the
18 nature of gunshot residue when they find it is only
19 found in I guess gunshot residue. Gunpowder. It
20 means you fired a gun, around a gun, in close
21 proximity of a gun. Now, it can be transferred from
22 item to item. Now, on people and this was important
23 testimony.

24 You have to collect that gunshot residue within
25 six hours of a person firing the firearm or handling

1 something when it has gunshot residue on it. If it's
2 not within that six hour time period, they won't even
3 test people. So remember, doing any kind of GSR
4 testing on the defendants in this case wouldn't have
5 told them anything. It wouldn't have even being done,
6 and what did she find? That each individual glove
7 on --- or each individual know that was packaged
8 together had GSR on it.

9 Again, access to black gloves, gunshot residue,
10 but what wasn't present in that home? A firearm. A
11 firearm we know Lorenzo had. He had access to
12 firearms, and you heard from an expert, and I didn't
13 put everything up here, but what are a few things that
14 she told you, Ms. Cromer, regarding firearms and tool
15 marks examinations. It's unusual --- I left out the
16 not --- to not have a firearm at least two firearms,
17 the number two, were present she found that a 45 GAP
18 shell casings were from a GLOCK and a 45 GAP had the
19 same markings, shell casings at the scene, bullet in
20 Mr. Young's home along with that ammo box with the
21 Magtech ammunition which was which was found at the
22 scene and the Glock 45, she testified regarding those
23 still shots that you have before your consistent with
24 the Glock. When I talk about Glocks, I go to
25 Ms. Bambach's cross-examination. She said you can buy

1 a Glock anywhere. You can get it at Academy Sports
2 and she named off all the different places and the
3 makes of them, Glock, Glock, Glock, I don't know how
4 long the list was, but all of them were Glock
5 manufactured. Remember, we're not saying that they
6 can't be purchased by people just generally. What
7 Ms. Cromer testified to is that she usually doesn't
8 see it. The cases she sees it in are involving law
9 enforcement, which we definitely don't have in this
10 case and these are high end firearms. Like I said,
11 what a big coincidence for Mr. Young that that Glock
12 or that a Glock is in his possession and these caliber
13 shell casings and bullets are in his home.

14 Now, the timeline of events for when this
15 incident happened, now, remember, I don't know if a
16 big deal would be made of it, but this is my one and
17 only opportunity to address you. You have several
18 videos in this case and you have records. You have
19 phone records for the phones. The key ones being for
20 Lorenzo Young with those calls to Lucille Drive where
21 Troy was staying at the home of Trenton and Troy. You
22 also have the Ale House video where it was testified
23 that the timestamp was just a little bit off from the
24 bakery as well as the phone records will probably not
25 be exact, but what you do know from the timeline in

1 case is that at 3:00 A.M. Kelly Hunnewell arrived to
2 work. At 3:05 she got a call or Lorenzo Young called
3 Lucille Drive --- because remember, they're staking
4 out the Ale House, but unfortunately you heard
5 Mr. Spain testify they didn't always close at a
6 specific time. So they got there and is when they're
7 getting there, that final vehicle, employees are
8 leaving at 3:09, too many people, that final vehicle
9 departs at 3:12 A.M, which you can see on the video.
10 Then at 3:14 A.M. what's seen is a subject wearing a
11 hooded sweatshirt comes from behind the building and
12 walks down the exterior bakery wall. A second hooded
13 subject joins him several moments later. Two subjects
14 remain there for several minutes looking toward he
15 open front door of the bakery. One of the subjects
16 walks to the other side of the building while the
17 other remains at the corner kind of facing the camera.
18 I believe at this point, too, around 13, 14:00 A.M.,
19 and like I said, the times may vary just a bit, but
20 they're close in proximity. You get a call from
21 Lorenzo Young to Lucille Drive. Then what happens
22 within minutes later, 3:17 a third subject appears to
23 be in a hooded sweatshirt. Now, he comes up from the
24 street versus from behind the building. They remain
25 outside the building walking back and forth and

1 attempting to peer in a window. At 3:21 two of the
2 subjects walk toward the front of the building behind
3 the parked vehicles. At 3:36 A.M. two of the subjects
4 are observed fleeing the scene, and as I said the
5 bakery times around 3:40 is when you'll see the murder
6 occurred, and they're a little bit off. What does
7 this do, when that third person arrives, there's 15
8 minutes. We don't have audio outside of what's going
9 on and what's being talked about, but we know that
10 people are leaving the Ale House, more testimony
11 corroborated. This lick, the one they plan, it
12 failed, and Kelly Hunnewell, she is there at work.
13 And that bakery door remember was open. A light was
14 on. Crime of opportunity. And at 3:44 A.M. Officer
15 Brayboy was dispatched to the scene. Fifteen minutes
16 after that third individual arrives and you see him in
17 the video, the lookout, and the lookout, remember the
18 lookout, the shooters or at least the people with the
19 firearms and the person that caused the fatal shot I
20 submit based on the evidence and testimony you've
21 heard from Dr. Durso in the video, that is all
22 consistent with that being Trenton Barnes, the person
23 in that gray hooded sweatshirt, the person with the
24 40 caliber pistol, evidence that the defendants were
25 at the at the scene. What do you have them there.

1 Well, you have a lot. You have the video of the
2 crime. What else do you have? Rolanda Coleman,
3 Trenton is in the gray hoodie. I don't know who is in
4 the red hoodie. I submit again who is she protecting,
5 the father of her children. Still doesn't want to get
6 him in trouble.

7 Lorenzo Young is identified. I'm sorry. Still
8 protecting. Alfred Wright, Lorenzo Young, three
9 people, he's told three people they went to rob a
10 club. It was closed at Ale House, corroborated, so we
11 went to the bakery next door. Young and Stevenson
12 A/K/A Trigg, entered with guns, she resisted and Young
13 shot two times. They didn't get any money. Little
14 Trap A/K/A Trenton was the lookout. Again, three
15 individuals, the hand of one is the hand of all. It
16 doesn't matter if it was Trenton or Troy, but in this
17 case I submit supports Trenton as the shooter.

18 Let me go back. I'm getting ahead of myself.

19 Michael Schaefer what did he say that Young said,
20 and he said it several times. You heard him. Well, I
21 shouldn't have shot that bitch. Michael Peterson.
22 Lorenzo Young don't tell nobody I set up a sweet lick.
23 She acted like she was calling the police so I shot.
24 Can't prove nothing because we had gloves and masks
25 on. All they found were shell casings. I think some

1 people in the hood told them the clothes we had on.
2 What else puts them there, Trenton Barnes' own letter
3 confessing, admitting and then finally to Latoya
4 Barnes, yeah, it was Trenton with the gray on; like I
5 said, I know my kid's build. I know them from they
6 [sic] fingers to they toes. I know my kids and the
7 DNA on that spoon.

8 Like I said, it's not one thing or two things.
9 It's the evidence in its totality that we're asking
10 you to consider. With respect to Lorenzo Young who
11 says it wasn't me, I wasn't there. There is nothing
12 connecting me to this crime whatsoever. That's their
13 defense. Latoya Barnes. She puts Trenton and Lorenzo
14 together. Those phone calls that she testified to,
15 3:05, 3:15 just before this crime. She puts him in
16 the red hoodie. He is at the house. He goes, he
17 leaves and he is there the next morning.

18 You also have Donald Moore, and I I'm not going
19 to go through all the details of their testimony
20 again, but you heard it and we went through it.
21 Donald Moore said Lorenzo is one of the shooters.
22 Evidence from the search warrant at [REDACTED] Bronx Road.
23 What did they find? We went through it. The shell
24 casings or the unfired bullets were consistent with
25 the shell casings. The ammunition and what they

1 didn't find. Not one red hoodie, gray hoodie, or
2 firearm, and we know he had it based on the evidence
3 you have in this case. Rolanda Coleman, that gun he
4 had that morning that mysterious goes missing. That
5 gun he wrapped up and put in the baby's crib, just
6 gone. Yeah, he has nothing do with it. Alfred
7 Wright. We went through that. Michael Schaefer.
8 Michael Peterson's testimony.

9 The phone records in this case. Video, the GSR
10 on the gloves, the DNA on the spoon, the video from
11 the phone examination, the Glock 45 that he discusses,
12 the red hoodie selfies.

13 Now, remember that video 6/25/2013 the red hoodie
14 selfies just two days before the crime or three on the
15 phone, the search history, finding our, I submit, what
16 police know. What do I need to get rid of.

17 Q They know --- he knows they're looking for him.
18 I submit he knows kind of what the word on the street
19 is.

20 Now, the evidence with respect to Trenton Barnes
21 you have the letter. I'll get to that, to his own
22 mother confessing to the crime, and what does he say?
23 I'm sorry for blaming Troy.

24 Video, and I point this out because one of
25 defense counsel's argument for Mr. Barnes is that if

1 you actually believe he was there and that this isn't
2 some terrible investigation and police misconduct and
3 rush to judgment or pressure, if you believe he was
4 there, then it isn't malice, and oh, yeah, he is just
5 protecting his brother. He was only 16 at the time,
6 but you look at that video and Sergeant Reese went
7 through those actions. They came in. Trenton came in
8 behind Lorenzo. Nobody forced him to go in and he had
9 his gun out, too, in seconds. Lorenzo goes straight
10 to the woman. He knows something happened, but rather
11 than turn around and go out that door they came from,
12 he proceeds around, gets up to her and fires at least
13 two shots, one of them killing her and no one forced
14 him to pull that trigger. As Ms. Campbell
15 demonstrated one, two, with Lorenzo, three, four,
16 five, multiple shots.

17 No one was forcing him.

18 This goes to that letter that you read.

19 The DNA on the spoon. Again, Alfred Wright,
20 Michael Schaefer and Rolanda Coleman identifies him as
21 being the person on the video in the gray hoodie.

22 Again, evidence that would link them to the
23 description of what was released on the media, no gray
24 hoodie or red hoodie or guns found at the house, but
25 by his own admission, Troy had a gun. Nothing found

1 at the house, and then mother --- his mother, Latoya
2 Barnes, hesitantly reluctantly identified him on the
3 stand. Now, back when she talked to police, she
4 identified him quickly, but her hesitation is
5 understandable.

6 Then letter from Trenton Barnes. Remember the
7 date of this letter, March 31st, 2014, and in this
8 letter it's kind of --- it cuts both ways because he
9 is saying well, I didn't really want to do it. Renzo
10 was hanging out at the house. My brother Troy ---

11 MR. KRZYSTON: Objection, Your Honor.

12 THE COURT: Overruled.

13 MR. KRZYSTON: Thank you.

14 MS. SIMPSON: And you can only use this testimony
15 with respect to Trenton Barnes' guilt. You'll be
16 instructed that you can only consider it as to him and
17 his actions, and what you read in the letter is he
18 ends up going. He was like I really didn't want to do
19 it. I didn't want to go, but I was being told, come
20 on, let's do it. There is really nothing better to
21 do. And what were they going to do, make some easy
22 money and he said that they go down and again, he was
23 like damn, they're closed, referring to the Ale House.
24 I apologize I didn't read the line on the last letter.
25 And he says that said, come on let's go back to my

1 house, then he said you see that lady over there. I
2 said no I don't see nobody. He was like come on man,
3 and we was by the door, and I seen a lady walk past
4 and I looked back and then I see Troy waving his hand
5 telling me to come back. Then Renzo walked into the
6 place. I went in behind him. Then he grabbed her and
7 put the gun to her and told to get in front of her.
8 Then she swung at me and I closed and I jumped and I
9 got scared ma. I didn't mean to do it. I'm sorry. I
10 said it was Troy because I was scared. He admits to
11 being there and going in.

12 Again, is he maybe trying protect his brother
13 some, yes, is he minimizing his own role, yes because
14 the evidence in this case doesn't support that Lorenzo
15 forced him to do it. He wasn't just a victim. He
16 went there willingly and when they arm themselves,
17 like I told you earlier, Trenton Barnes. Like I said
18 earlier, they are young men, but when they arm
19 themselves, they became attempted armed robbers,
20 burglars, kidnappers and when they we want into that
21 room or that bakery, that business, guns out face
22 masks, gloves on hands and they chose to pull the
23 trigger, they became killers and murderers. Their
24 actions caused the death of Ms. Hunnewell.

25 And let's be clear. She did not have to die.

1 There was no way and nothing has been testified to
2 that she would have been able to identify them. He
3 said they got nothing. If it was a robbery gone
4 wrong, they could have just ran out the door, the open
5 door they came in, and they saw her before with the
6 spoon.

7 I submit they knew she didn't have a gun. She
8 was working at a bakery and they saw it, and they went
9 in, but they didn't have to kill her. There's no
10 evidence that she could identify them and finally, and
11 I know I've said it several times, but some of the
12 most powerful information and evidence that they want
13 you to ignore is yes, it's sad, but judge its
14 credibility especially with respect to Trenton Barnes.
15 His own mother, Latoya Barnes, identified him as being
16 the person in that gray hoodie who committed this
17 crime. In response to Investigator McCoy's question,
18 I mean, yeah, it was Trenton with the gray hoodie on.
19 Like I said, I know my kid's build. I know them from
20 they [sic] fingers to they toes. I know my kids.

21 Now that's just some of the evidence that you
22 heard in this case. I submit that it is more than
23 enough. It is proof that should leave you firmly
24 convinced of each of these defendant's guilt and
25 consider the evidence admissible to them relevant to

1 them regarding their actions and is the roles they
2 played, because in this case how else do you defend
3 the indefensible? That classic defense, attack the
4 police. I wasn't there. Shoddy investigation. You
5 can't believe the witnesses. All that just doesn't
6 work, so I beg you, review this evidence in its
7 totality. Again, it doesn't matter if Trenton was the
8 lookout or the person in the door. The hand of one is
9 the hand of all. The act of one is the act of all and
10 each of them is responsible specifically before you
11 today Lorenzo Young is responsible for the actions of
12 Trenton Barnes, and Trenton Barnes responsible for the
13 actions of Lorenzo Young.

14 It doesn't matter which gun killed her. It
15 doesn't matter who went in first.

16 I submit that the defendants are guilty of
17 murder, attempted armed robbery, burglary second
18 degree violent and kidnapping, and when you go back in
19 that jury room, you will do here in just a few moments
20 and deliberate, I ask you to remember a famous quote
21 from President Theodore Roosevelt. He said that no
22 man is above the law. No man is below it and we ask
23 no man's permission when we require him to obey it.

24 Now, it is said that truth is the mother of
25 justice, and it is your job, your duty here today in

1 this case with these facts to seek justice and find
2 the truth, and I submit that after you have reviewed
3 all the evidence in this case, there will be only one
4 just verdict as to each Lorenzo Young and Trenton
5 Barnes and that is a verdict of guilty, guilty of
6 murder, attempted armed robbery, kidnapping and
7 burglary second degree violent. Guilty for Trenton
8 Barnes of murder, kidnapping, attempted armed robbery
9 and burglary second degree violent. Thank you.

10 THE COURT: Thank you Ms. Simpson. All right.
11 Ladies and gentlemen, we've been going for about two
12 hours. We're going to take a quick a five to ten
13 minute break you still have not heard all the closing
14 arguments or my charge on the law. You are not
15 allowed to discuss this case in any way, shape or
16 form. Keep an open mind. Do not discuss the case.
17 We'll be back with you in just a few minutes.

18 THE JUROR: Thank God.

19 (WHEREUPON, the jury left the courtroom at 4:30
20 P.M.)

21 THE COURT: All right. Let's take about a five
22 minute break.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Yes, sir.

25 MR. KRZYSTON: As the hour is growing late, we

1 thought it might be helpful to suggest that we finish
2 closings, finish Mr. Schnee's closing, finish my
3 closing, allow the jury to be released for the day,
4 charge them in the morning and proceed with
5 deliberations tomorrow morning.

6 My closing could take 20 to 30 minutes. I'm not
7 sure how long Mr. Barnes' closing will be, but just as
8 we approach the witching hour for the courthouse
9 deputies, I just want to offer that for the court.

10 THE COURT: All right. We'll cross that bridge
11 when we get there. Okay.

12 (WHEREUPON, the jury entered the courtroom at
13 4:39 P.M.)

14 THE BAILIFF: The jury is seated, Your Honor.

15 THE COURT: Okay. Thank you. Mr. Krzyston.

16 MR. KRZYSTON: Thank you, Your Honor. May it
17 please the Court.

18 THE COURT: Yes, sir.

19 CLOSING STATEMENT:

20 MR. KRZYSTON: An ancient Greek thinker once
21 said, the law is reason free from passion. He said
22 that because it underlines a basic idea that all good
23 justice systems seek to follow, and that idea is that
24 a person should be tried on a case on the facts of the
25 case and not the emotions that drive the case.

1 This same idea is important to our case today,
2 and the reason that this same idea is important to our
3 case today is because each and every one of you
4 sitting in this box swore an oath to render a verdict
5 on the evidence and law alone.

6 Rendering a verdict on the law and evidence alone
7 requires us to temporarily put aside our feelings for
8 Ms. Hunnewell. Be sure there is not one single person
9 in this courtroom that doesn't feel pain and sorrow
10 for Ms. Hunnewell, for her children, and for her
11 family, but ladies and gentlemen, your duty requires
12 that we put that aside for the moment; that we render
13 the verdict on the evidence and law that is before
14 you.

15 Now, in a moment, the Judge is going to instruct
16 you on the law, and you will hear that murder is
17 defined as the killing of any person with malice
18 afterthought (sic) express or implied or inferred.

19 What you don't see in this definition is a line
20 that says but only if the victim is a mother or but
21 only if the victim has a family and the reason that
22 you don't see that in this definition and in the law
23 is because those things have nothing to do with
24 whether Lorenzo Young is guilty of breaking the law.

25 Those are things that are sad. Those are things

1 that touch our emotions, every single one of us, but
2 those are exactly the things that we have to put aside
3 temporarily. Those are exactly the things that we
4 cannot consider when we render a verdict on the guilt
5 or innocence of Mr. Young.

6 You've heard a great deal about the emotional
7 side of this case. The side of this case that causes
8 us all to shudder, and the reason that you've heard
9 all about that emotion, all about her children, all
10 about her family is because the government is light on
11 fact, plain and simple.

12 We've heard from a large number of witnesses and
13 they introduced an entire table of evidence. None of
14 which --- I repeat, none of which can definitively
15 connect Mr. Young to this crime scene at 93 Tommy
16 Circle. This case boils down to a couple sets of
17 facts, a couple sets of facts that show us the
18 government has failed to meet its burden in this case.
19 We can start with what you heard in opening. The
20 testimony of Theresa Baskin. You heard about the
21 cries and screams of terror, but what you didn't hear
22 is that there is any science definitively connecting
23 Mr. Young to this scene.

24 You were promised a witness in Mary Brown who
25 knew Lorenzo Young who supposedly saw him hours before

1 the crime in a red hoodie, but what you were given
2 when she took the stand was far short of what the
3 government promised.

4 They promised to bring you in witnesses and
5 evidence which would leave you firmly convinced of
6 Lorenzo's guilt. They brought in two or three
7 investigators to go over on that \$5,000 television,
8 and show you the video of the incident time and time
9 and time again. And just this morning, they brought
10 another investigator up here to show you still
11 pictures that were captured from the same video that
12 you've seen time and time and time again.

13 Why is that? Because the government is light on
14 fact. They promised witnesses, but what you got were
15 jailhouse snitches. What you got was a girlfriend
16 looking at 15 to life. Every single one of their
17 witnesses had something to gain. Who was Rolanda
18 protecting? Herself, because any reasonable person
19 facing 15 to life does what's necessary to stay home
20 with their children, ladies and gentlemen.

21 They're black, said the prosecution. You can
22 tell from the video. You can see their hands in the
23 video. Yet the lawyers can't stop talking about
24 gloves and this is despite the fact that SLED has
25 tested those at gloves for blood and then because they

1 didn't test positive for blood, they didn't test them
2 for DNA, ladies and gentlemen, in this courtroom with
3 this evidence, actions speak louder than words and
4 their actions and the State's actions tell us that is
5 they have failed to meet their burden.

6 The government said it did a complete
7 investigation; that they talked to everybody they
8 needed to talk to and that the 12 or 13 witnesses we
9 talked about didn't have anything to add to the
10 investigation. That's common sense, ladies and
11 gentlemen. How do you know what those people were
12 going to say? I can't read your minds. If I could,
13 this would be so much easier for me. It would be so
14 much easier for them, but nobody can read anyone's
15 mind.

16 The fact of the matter is they can get up here
17 and make excuse after excuse after excuse, but the
18 fact remains that they failed to do their job.

19 Again, actions speak louder than words, and their
20 actions tell us they failed to investigate and failed
21 to meet their burden. They showed you pictures of
22 Lorenzo in a sweatshirt and those pictures show the
23 upper third of that sweatshirt.

24 Those pictures can't tell us if that sweatshirt
25 is a red and white striped sweatshirt. Those pictures

1 can't tell us if that sweatshirt is solid red and
2 those pictures can't tell us if that sweatshirt is
3 consistent with the one that they paraded on the video
4 in front of you time and time again.

5 Again, they have introduced a table full of
6 evidence, a stack of poster boards that's no less than
7 six or seven inches and the reason they done that and
8 the reason they paraded that video in front of you
9 time and time again is because they are light on
10 facts.

11 They claim Lorenzo had a Glock. They introduced
12 no weapon, and even if he did have a weapon, there are
13 13 models of Glock firearm at a minimum that fired the
14 projectile that was located at 93 Tommy Circle on that
15 fateful morning.

16 The bullet that they found there, the bullet from
17 which that projectile left can be purchased at no less
18 than five locations in and around Columbia.

19 The says we excluded 70 percent of the population
20 from being at the crime scene (clapping.) good job.
21 That's a one to three match. That's as close as they
22 come to placing Lorenzo Young at the scene of the
23 crime.

24 Of the 300 million people in America today,
25 100 million are statistically likely to match the DNA

1 profile that they found at the scene. That's one
2 third of everybody in this courtroom. That's one
3 third of everybody in that jury box. You are
4 statistically likely to match the DNA that they have.

5 Ladies and gentlemen, that is not reasonable
6 doubt. One out of every three people, that by
7 definition is reasonable doubt, and what's more,
8 what's more, they found the DNA profile of an
9 unidentified male at the crime scene at 93 Tommy
10 Circle. Do not let them gloss over that fact. That
11 means they have the DNA profile of somebody at the
12 scene who they never arrested. They want to tell you
13 those 12 or 13 people didn't have any additional
14 information? When I was a young boy, my father gave me
15 some words of wisdom. He looked me in the eye, and he
16 said son, any job worth doing is worth doing
17 correctly. You could be a stock boy at the grocery
18 store or you could be president of the United States,
19 but son, whatever you want to do, if it's worth doing
20 at all, it's worth doing correctly and those are words
21 of wisdom that the government failed to put in its
22 pocket when investigating this case.

23 To convict Lorenzo Young in this matter would be
24 to ignore the fact, to ignore the evidence and the
25 science and to embrace the emotion that they have

1 flaunted in your face since they stepped foot in this
2 courtroom. There is nothing that they have introduced
3 that definitively connects Lorenzo to the crime scene
4 at 93 Tommy Circle and is no amount of excuse making,
5 no amount of glossing over the facts can change that,
6 ladies and gentlemen. The government failed to
7 establish beyond a reasonable doubt that Lorenzo Young
8 was there at 93 Tommy Circle. The government failed to
9 establish beyond a reasonable doubt that Lorenzo Young
10 was involved in this incident and the government
11 failed to meet its burden in this matter because of
12 it. Ladies and gentlemen, looking at the evidence or
13 lack thereof, the government failed to prove beyond a
14 reasonable doubt that Lorenzo is guilty of murder,
15 that Lorenzo is guilty of attempted armed robbery or
16 that Lorenzo is guilty of guilty of kidnapping or that
17 Lorenzo is guilty of burglary in the second degree.

18 Ladies and gentlemen, you deserve a better case.
19 We all do, but it's for precisely that reason that you
20 cannot convict Lorenzo Young. They failed to prove
21 their burden. They're pawning it off on you.

22 Ladies and gentlemen, you can't judge the case
23 you wish the government had given you. You must judge
24 the case that the government gave you, and it's
25 precisely for that reason that you cannot convict

1 Lorenzo Young on any of the counts as charged.

2 Thank you.

3 THE COURT: Mr. Krzyston.

4 Mr. Schnee?

5 MR. SCHNEE: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 CLOSING STATEMENT:

8 MR. SCHNEE: A few minutes ago, Ms. Simpson
9 claimed that the defense picked the witnesses in this
10 case. This is the State's witness list. Their chosen
11 witnesses to testify in this case. Officer Bowling,
12 Officer Bunton, Investigator Scott, Investigator
13 Rickburg, Investigator McKeller, Sergeant Smalls,
14 Officer Bracket, Captain Marsh, Captain Eargle,
15 Investigator Hilton, Lieutenant Smith, Assistant Chief
16 Riser, Officer Carol, Sergeant Adams --- the second
17 Sergeant Adams. This is a different one. Officer
18 Steadly, Officer Gilliam --- I'm sorry, Investigator
19 Gilliam, Sergeant Shuler, Sergeant Brown, Officer
20 Martin, Officer Ford, Deputy Linfert from the
21 sheriff's department, Sergeant Walls, Officer Labonte,
22 Investigator Reeves, Officer Webster, Officer Newman,
23 Officer Wiley, Officer Moore, Officer Beckman. The
24 list goes on. These are all the police officers that
25 the State put on the list and never called to the

1 stand (throwing paper down.)

2 But I picked those witnesses, right? Did my
3 client pick those witnesses? Did we pick Investigator
4 McCoy.

5 Let's talk about the State's chosen witnesses and
6 I'm going to start with DNA and I'm going to start
7 with one piece of evidence and we've talked about a
8 lot. It's this spoon right here.

9 This spoon that they are saying is definitively
10 linked to Kelly Hunnewell, Trenton Barnes and Lorenzo
11 Young.

12 Well, we certainly know Ms. Hunnewell is holding
13 those. We're certain of that. You have it right
14 here. You have it on video that she is holding that
15 spoon. Now, what did the DNA person actually say? She
16 did not say that Kelly Hunnewell is included in it,
17 that Trenton Barnes is included as a possible
18 contributor, that Lorenzo Young is included as a
19 possible contributor. Now, I suggest that you
20 probably watch this again. You'll notice that
21 Ms. Hunnewell swings it, hits one of them, not both
22 but one, so their theory that both of their DNA is on
23 here as is preposterous, as a matter of fact. What
24 the DNA expert actually said is that they could not be
25 excluded as a possible contributor.

1 She said that Kelly Hunnewell possibly her DNA
2 isn't even on there because it's such a tiny part of
3 the profile. That is the closest physical object that
4 you can see that both Ms. Hunnewell and whoever is
5 inside of that bakery have touched and the best that
6 they can come up with is well, there are 100 million
7 people in the United States who are just as likely or
8 unlikely to have contributed that sample. That's
9 their idea of solid forensics, of corroboration.
10 Fingerprints, never tested for any of them apparently.
11 Although in November of 2013, Investigator McCoy said
12 oh we absolutely tested for fingerprints. He
13 testified to that after swearing the same oath he
14 swore up there. Not only did he say he tested for
15 prints, he corrected himself on the transcript and
16 said I'm sorry, dusted for prints. That's not
17 misspeaking. I don't know if he's wrong or if they
18 just didn't find them. It doesn't really matter.
19 That's their chosen witness. Their chosen lead
20 investigator. The defendants didn't choose any of
21 that.

22 Now, let's get back to this corroboration issue
23 that they love to talk about.

24 The State says that they did not release a lot of
25 details from the video so they could determine if

1 witnesses are being truthful, that they actually have
2 independent knowledge. So what does the State present
3 to you? Let's see. We've got Michael Peterson. He
4 has a pending murder charge. Among other things, and
5 he says that Lorenzo confessed and said that they were
6 all going to the back room and she pulled out a cell
7 phone and he got scared and he shot her. Watch the
8 video. Watch it as many times as you want. It's
9 never going change. None of those things ever
10 happened. They claim corroboration. Yes, look for
11 corroboration, what is factually true that we can all
12 agree on. We can all agree that two people went into
13 that bakery. I think we can all agree that
14 Ms. Hunnewell never touched her cell phone. She
15 didn't pick it up and try to call anyone. I think we
16 can all agree they didn't walk towards the back room
17 to open up a safe that doesn't exist. Michael
18 Peterson is a liar. He made it up.

19 He has the same information that almost anyone
20 else on the street does, what the media policed, what
21 the police released to the media. Now, they began
22 getting nicknames from word at the jail in yeah, sure.
23 So what. That was how long afterwards? Who doesn't
24 know those names that has any idea about anything?
25 Anyone can find that out. Even said he watched it on

1 TV when he heard about it. So he knows the names of
2 who is arrested. Relevance. There is no
3 corroboration there. What does Michael Schaefer say?
4 Oh, he just says Lorenzo confessed. Lorenzo
5 confessed, Trenton is outside, Troy is inside. That's
6 fine because that's exactly what the news had said
7 from July 7th of last year on. That's not
8 corroboration. There is not a single unique fact, not
9 a single fact.

10 The State, they chose him as a witness. They put
11 him up. Alfred Wright, also pending murder charge,
12 same thing, not one single detail that wasn't released
13 to the media or anyone who doesn't have an internet
14 connection couldn't have looked up. Everything that
15 was hidden from the public is still hidden from all
16 these jailhouse snitches. Why? Because they didn't
17 talk to anyone. They made it up because they want a
18 deal and who gives them the deals? Them. The State
19 of South Carolina. The solicitor's office that is
20 prosecuting this case, and yet I'm going to point to
21 them a whole bunch. You know why. They love pointing
22 over here. Oh, let the record reflect someone
23 identified Lorenzo Young or someone identified Trenton
24 Barnes. Did you see a single witness get up on that
25 stand and say I watched Trenton Barnes shoot that

1 woman? No.

2 The closest thing they have is Rolanda Coleman.
3 She says well, he's small and is moving in a sneaky
4 way, so it must be him. That's her identification of
5 Trenton Barnes. The same woman who is facing 15 to
6 life for burglary, the same woman who is being
7 prosecuted by that office. The same woman who clearly
8 doesn't want to go to prison for 15 years to life with
9 a one-year-old and an eight month old child.

10 Investigator McCoy. On the stand, he listed
11 someone as a quote criminal informant that apparently
12 contacted the sheriff's department and then he had a
13 conversation with whoever this informant is. To this
14 day, I have no idea who it is. I asked him five
15 times. Who is it? Only answered it was an informant.
16 I don't even know what that person said. I don't know
17 that that the person exists.

18 They concealing it. Still concealing it.
19 Concealing it from the jury here today, more than year
20 afterwards, and they won't even give a name. We're
21 the ones to put witnesses up? Let's talk about who
22 else Investigator McCoy did or didn't do.

23 What he did clearly as he admitted on the stand,
24 is threaten Lorenzo Young with the death penalty, with
25 a needle in his arm. Am I the only one in this entire

1 world that thinks that is improper? Do you know what
2 that is, that's called a felony and guess who chooses
3 who prosecutes? That table right there. Do you think
4 they're going to end his career and throw every single
5 case he has ever worked on or will ever work on? He
6 knew it was improper. I don't think there is a single
7 person in the State of South Carolina would say that
8 when you're interrogating someone, you're allowed to
9 threaten them with a needle in their arm,
10 preposterous.

11 When he interviews Troy Stevenson in March 2014,
12 he even said hold on, hold on. I'm writing this down.
13 Where are the notes? He said they don't exist even
14 though clearly, as he admitted, he is on audio
15 recording saying he is writing it down. Now, he just
16 says well, he was saying that so he can process it.
17 Okay. Let me see a single thing from him that says he
18 even interviewed someone from March of 2014. He
19 didn't write that down in his case notes past December
20 of last year. What happened this entire year? Let's
21 see. They had a sweatshirt that they got at Trenton's
22 house. It was a dark blue sweatshirt, which they say
23 was wet. They found Trenton there. Well, they didn't
24 find a gray sweatshirt. They didn't find a gun and
25 they didn't find Troy Stevenson either. I'd be really

1 curious to see whose DNA is on the inside of that blue
2 sweatshirt. They never checked. They had a
3 year-and-a-half to check it. They could have done it
4 any day. They still haven't done it. Investigator
5 McCoy said he didn't even bother to follow up on it.

6 The gloves that allegedly have gunshot residue on
7 them, even though we've heard lots of testimony, see,
8 there were hands touching items. That's why they
9 dusted for fingerprints. That's why they did all of
10 these DNA tests. Great, they have GSR on a number of
11 sets of gloves from someone's closet. I have a set of
12 gloves on there. I guarantee there's GSR on those. I
13 go shooting all the time. So what. Do you know what
14 they didn't bother to do? Test the gloves on the
15 inside for DNA to see actually wore them, if anybody
16 ever wore them. Now, could I guarantee that would
17 actually result in useful information? I have no
18 idea. It's not my job to check that. It's theirs.
19 It's the State's job to try and they didn't try and
20 they didn't try for one of the most important reasons
21 why we're all here right now.

22 Ms. Campbell said it best during he closing
23 remarks, she begged you, begged you not to hold it
24 against the victim's family for anything the lawyers
25 have done that may have on offended you as jurors.

1 Well the victim's family, they're not on trial. Not a
2 single one of them even testified. Why would she be
3 concerned about you holding them responsible or
4 blaming them?

5 That is nothing short of a pathetic attempt get
6 to your emotions stirred up. That's all it is.
7 Emotion from you as jurors because they don't have the
8 facts, so they want emotion.

9 I already told you in my opening statement that I
10 expected this to be an emotional trial, and I don't
11 blame anyone for having emotions, but this is the
12 closing argument. This is the time when we're all
13 having to think about facts and analyze it with the
14 law. Emotion has no place in this room. Certainly
15 doesn't have any place in your deliberation room.
16 Yes, you're going to have emotions. Your job, and you
17 took an oath to push that to the side and think about
18 facts. Now when you're thinking about facts, let's
19 talk a little bit about what the law really is.

20 The State has the burden of proving each and
21 every element of each separate offense. They have to
22 convince you beyond a reasonable doubt.

23 Now, the judge will instruct you that a
24 reasonable doubt is something that if you doubt that
25 would not be reasonable based on if you are firmly

1 convinced. Another way of saying that is if it would
2 cause you to hesitate to act.

3 Now, this morning just like almost every morning,
4 wake up, take a shower. I start a pot of coffee. I
5 walk outside, take my dog out and let him do his
6 thing. This morning was faster than normal because it
7 was a little bit freezing. I walked back inside,
8 poured a cup of coffee and try to get ready for the
9 morning. I go to the refrigerator, bring the half and
10 half out. The past two weeks I've been in here, half
11 and half haven't done a lot. It expired on Sunday.
12 The milk expired on Sunday. Well, I had some
13 apparently yesterday, didn't even realize that it was
14 expired. I opened it up and I sniffed it. That
15 sniff, that's hesitation. I mean, I had used it the
16 day before. It's half and half, it's ultra
17 pasteurized and usually lasts quite a while anyway. I
18 still sniffed it. Your job as jurors is to sniff all
19 this and what I'll tell you right now that you need
20 to sniff is pretty much this, and you can throw out
21 almost all of these items, all of these photographs,
22 all of these diagrams, all of these other documents.
23 What does this really tell you? A woman was shot.
24 There were two guns, six bullet casings, two different
25 calibers. That's what all of that shows you. All of

1 that and not a single bit of it is in dispute. Your
2 job is to figure out who did it.

3 Well, actually I should rephrase that. That's
4 not your job. Your job to is to figure out if they
5 proved their case. You want to figure out who did it
6 and what happened, as curious animals that we are, we
7 always do, but that is not your job as jurors. Your
8 job is to hold them to their burden.

9 Now, you heard from Latoya Barnes that in August
10 of last year, she had a phone conversation with
11 Investigator McCoy and he told her unequivocally one
12 of your sons is going down for this. Well, at the
13 time they were both in jail. They were both charged
14 with the same things. What do you do? Well, you
15 wait. You see what the State has. You see where
16 they're going, and then you discuss it as a family.
17 You make a decision. Then in March 2014, Troy
18 Stevenson goes, talks to law enforcement. That was on
19 the 24th and then you have a letter, a letter from
20 Trenton Barnes dated March 31st. Seven days later,
21 seven days later he writes a letter saying he did it
22 all and that Troy had nothing to do with it.

23 Huh. That's rather convenient for Troy, isn't
24 it. It's rather convenient for Troy that he wasn't
25 home when his house was searched. It's rather

1 convenient for Troy that there was no gun found when
2 the house was searched, no gray hoodie nor him, and he
3 is also the one that's not on trial. That's rather
4 curious, isn't it? Why is he not on trial.

5 Because, you know, if the State believes that
6 letter as they want you to believe it, that it's the
7 truth, then why is Troy Stevenson still in jail. Why
8 are those charges still pending. Read that letter.
9 He didn't do anything. According to that letter, he
10 went down to stop everything and bring Trenton back.
11 The government is putting that letter up for you as
12 jurors. They want do you believe it, but they don't
13 believe it. If they believed it, they would be
14 required, as attorneys. We take an oath ourselves.
15 They would be required to dismiss all the charges
16 against Troy Stevenson. They would be required to do
17 it the minute they got that letter if they actually
18 believed it. They haven't done.

19 In just a few minutes, the judge is going to read
20 you what the law is and how to apply it in the case.
21 Thankfully, you won't have to hear anymore from me.
22 I'm almost done. When you go back to the jury room
23 and you're sitting there and you're waiting for all
24 this evidence to come in and you're tearing up all
25 those little pieces of paper to take an initial vote,

1 I want you to keep one thing in mind. This is the
2 only thing from the State that I actually agree with.
3 It came from Kevin Reese. I want to make sure I got
4 this, right. Before you take someone's liberty, you
5 need to be sure you have it right. Well, members of
6 the jury, you need to make sure you have this one
7 right. There is a 16-year-old child on trial for a
8 murder that he didn't do, for a burglary he didn't do,
9 for attempted armed robbery that he didn't do and a
10 kidnapping that he didn't do. Take the blame to save
11 his brother? He didn't do it. This is no evidence he
12 did it. The State knows it and that's why they have
13 all this, almost 450 exhibits and not a single one of
14 them that says anything about who is actually inside.

15 THE COURT: Thank you very much. Already.
16 Ladies and gentlemen. The time is now 5:20,
17 approximately, and I'm going to let you all make the
18 next decision. You're not going to make decision out
19 here. You're going to make it back in the jury room.
20 Here are your two choices. I'm giving you these
21 choices because I don't ever limit attorneys on time
22 because I want --- I don't want them to ever feel
23 pressure from me about how long you're allowed to talk
24 or not to. That's their opportunity to make closing
25 arguments. I want everybody to not feel any pressure

1 from me on keeping anybody to a specific time limit,
2 but I also don't want you to feel any pressure in
3 getting out of here tonight either, so your options
4 are this. I'll do whichever one you want to. It does
5 not matter to me. In my mind I'm probably 50/50 on
6 doing it either way. It doesn't matter to me. I'll
7 let you be the decisions on this. You are the
8 citizens of our community who have given up time from
9 your family, friends, and work to be here so you will
10 make the decision.

11 Option number one is I charge you on the law
12 right now, okay. That will take roughly 30 minutes.
13 That's not an exact number. That's just an average of
14 how long it takes me. Once that happens, you would go
15 back to your jury room. You would still not be
16 allowed to deliberate until all of the exhibits come
17 back in the jury room. Best case scenario that's
18 probably going to take at least 20 or 30 minuets
19 because of the number of exhibits that are involved.
20 You wouldn't be allowed to discuss the case at all
21 until those exhibits came in the room. Okay. At that
22 point in time, we would order you some kind of dinner
23 and you could deliberate for as long tonight as you
24 want to. It doesn't matter to me. I'm happy to stay
25 here as long as I need to, okay. That's option number

1 one. And then at some point tonight we would reach a
2 point in time where I kind of call it for the evening
3 and I say let's go home and come back tomorrow morning
4 and start again.

5 Option number two is for me to send you home now,
6 okay. So I can give you my normal evening
7 instructions, you're not allowed to discuss the case
8 with anybody. You're not allowed to do any research,
9 all these things. We come back and tomorrow morning
10 the first thing that happens is I charge you on the
11 law and between now and then we would be able to get
12 the exhibits together before we started and then you
13 would go back into your jury room and start
14 deliberating once exhibits come back.

15 Okay. So Mr. Foreman, I want you to go back to
16 your jury room. Do not discuss the case and come to a
17 consensus on whether or not you want to come back in,
18 get charged and keep working tonight or whether or not
19 you want to go home for the evening and come back
20 tomorrow morning to start with a jury charge and then
21 move into deliberations and then when you're --- when
22 you've made that decision, just come back in. You can
23 just write it on a note, give it to the bailiff and
24 we'll go from that point. Okay. Take however much
25 time you need. We're all going to be right here.

1 Just let us know when you're ready. Everyone remain
2 seated while the jury is excused.

3 (WHEREUPON, the jury left the courtroom at 5:24
4 P.M.)

5 THE COURT: All right. We're going to be bring
6 them back in. They want to go home. I think that's
7 reasonable given the hour and the amount of
8 information they collected today and the length of the
9 trial. You can bring them back in, Mr. Tolbert.

10 (WHEREUPON, the jury entered the courtroom at
11 5:27 P.M. and they handed a note to His Honor.)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, I
14 got your note that said you want to go home tonight.
15 That's perfectly fine. We're going do that. I was
16 joking with the attorneys. Some of the judges, I
17 would say in the old days, but that would make myself
18 older than I want to be, but they would just keep you
19 here all night long. I think it's reasonable under
20 the amount of time that you've been here and the
21 amount of evidence that you've heard in the case to go
22 ahead and go home for the evening and start afresh
23 tomorrow morning when everybody has had a good night's
24 sleep and is ready to go. So I will let you go home
25 for the evening Now, you will recall that I have

1 previously instructed you in great detail that you
2 must decide this case solely on the evidence presented
3 in this courtroom. Because we're about to take a
4 break for the evening, I'm now reminding you of that
5 warning and I want you to once again if you will
6 commit to each other, to the parties in case and to
7 the court that you will not use any type of cell
8 phone, television, electronic device, computer, radio,
9 print media or anything else to get information about
10 this case, send information about this case, read,
11 view, listen to, look up, anything and I know I've
12 said this over and over and over again and I know
13 you're tired out of hearing me say this, but that's
14 how important it is. You are to decide this case
15 solely on the evidence presented in the courtroom.

16 There is one final thing you that you need to
17 hear about this case and that's why you still can't
18 discuss it and you still can't talk about it amongst
19 yourselves is because you have not heard what the law
20 is as it applies to this case from the Court. So that
21 will be the first thing that we will do tomorrow
22 morning. We will do our best to have all the exhibits
23 already organized out and laid out so they're packaged
24 and ready to come back to you. As to your second
25 request that you made tonight, I will work on that. I

1 cannot promise it, Mr. Foreman, but I will do my best
2 to work on that and see what is available. All right.
3 Thank you very much. Everyone remain seated while the
4 jury is dismissed.

5 THE BAILIFF: What time, Your Honor?

6 THE COURT: Oh. Let's do 9:30, 9:30. Thank you
7 very much.

8 (WHEREUPON, the jury left the courtroom at 5:31
9 P.M.) anything before we break for the night?

10 MS. CAMPBELL: Your Honor, we think have a
11 scheduling matter. May I just approach in.

12 THE COURT: Sure.

13 MR. KRZYSTON: Nothing, Your Honor.

14 MR. SCHNEE: I don't have anything.

15 (WHEREUPON, there was a bench conference.)

16 THE COURT: All right. Now, let's --- if the
17 attorneys can be here tonight. The let's meet at nine
18 in the morning. All the attorneys or at least one
19 attorney from each party to the case, meet to organize
20 all the evidence so we have that part of it ready to
21 go. Okay.

22 (WHEREUPON, the proceedings were adjourned.)

23 (WHEREUPON, Court's Exhibit Numbers 17 and 18
24 were marked for identification only.)

25 NOVEMBER 19, 2014

1 THE COURT: All right. Now, have you been
2 through the evidence?

3 MS. GARFIELD: Our office has been through it.
4 Everything is clear, Judge.

5 THE COURT: Have you ---

6 MS. PINNOCK: Yes, we went through it.

7 THE COURT: Okay.

8 MR. SCHNEE: Yes, Your Honor. We fixed the
9 issues with the CDs. This is still the exterior of
10 the Ale House. The CDs are fine. They just work
11 on the laptop the solicitors have.

12 MS. GARFIELD: If they want to review it, they
13 have to come back in here.

14 MR. SCHNEE: I don't know if you want to tell
15 them ahead of time or wait and see if they ask.

16 MS. GARFIELD: It will play on this just not the
17 laptop.

18 THE COURT: How mobile is that thing?

19 MS. CAMPBELL: Very.

20 THE COURT: I'm sorry. I couldn't hear you.

21 MS. GARFIELD: It's easily.

22 THE COURT: Okay. Maybe we can just move that.
23 I mean, they need be able to watch it and discuss what
24 they want to discuss without the fear of everybody
25 seeing it. We'll cross that bridge when we get there.

1 All right. Now, listen, everybody that's out in
2 the audience I'm happy for you to be here. When they
3 come in, I'm going to charge them on what the law is.
4 I don't know how long that is, but it will be
5 approximately 30 minutes and the back door will be
6 locked. Don't get up, don't move, don't try to leave.
7 You're welcome to stay in here. I don't have a
8 problem with that. I'm just telling you, if you think
9 hey I think I may need to get up in the next 30 or 40
10 minutes, just go ahead and you may need to leave now.
11 I'm going to tell them what the law is they're going
12 to go out. If you want to leave now, just ahead and
13 leave. If not, once they come in, just stay seated
14 until I finish. All right. Let's bring them in.

15 (State's Exhibit Number 396 was withdrawn because
16 the State said it was not in evidence.)

17 (WHEREUPON, the jury entered the courtroom at
18 9:45 A.M.)

19 THE COURT: Good morning, ladies and gentlemen.
20 Welcome back. Has anybody viewed any news media, any
21 type of story about this case in any way, shape, or
22 form? If so, please raise your hand.

23 (There was no response.)

24 JURY CHARGE

25 THE COURT: Okay. At this point in time, as I

1 told you, I'm going to charge you. That's actually
2 the term on what the law is in South Carolina as it
3 pertains to this case. Now, this document that I'm
4 about to read to you is about 25, 26 pages, okay. So
5 as I go through it I will do my best to keep you with
6 me and keep you awake. I think it's actually good
7 that we came back this morning. That way you're fresh
8 and ready to go and ready to pay attention. Just stay
9 with me. As we go through it, then at the end, I'll
10 come down and give you the verdict form and all the
11 different things that you need.

12 The indictments have charged the defendants with
13 murder, attempted armed robbery, kidnapping and
14 burglary in the second degree. I remind you that the
15 fact that the defendants were arrested, charged and
16 indicted in this case is not evidence in this case,
17 and it cannot be considered by you as evidence of
18 guilt in this case, nor does it create any presumption
19 or inference of guilt. These documents are simply the
20 formal written instruments which contain the charges
21 made against the defendants. They are the formal
22 documents by which this case is brought into this
23 court.

24 I charge you that there are two defendants in
25 this case, each of whom is charged with murder,

1 attempted armed robbery, kidnapping and burglary in
2 the second degree.

3 The case of each defendant and the evidence and
4 the law concerning that defendant should be considered
5 separately and individually. Your verdict does not
6 have to be the same for both defendants.

7 The fact that you may find one defendant guilty
8 or not guilty should not control your verdict as to
9 the other defendant. Where more than one person is
10 charged with a crime, if the evidence warrants it, you
11 may convict one and acquit the other or you may acquit
12 both or you may convict both. It will depend on your
13 view of the testimony and the evidence. You must take
14 each defendant and consider the evidence as to that
15 defendant and my instructions to you on the law.

16 You will then write a separate verdict of guilty
17 or not guilty for each individual defendant, and I
18 will explain that to you at the end.

19 The indictments in this case allege several
20 different offenses against the defendants. The
21 charges are murder, attempted armed robbery,
22 kidnapping and burglary in the second degree.

23 Each indictment charges a separate and distinct
24 offense. You must decide each indictment separately
25 on the evidence and the law applicable to it

1 uninfluenced by your decision as to any other
2 indictment. The defendants may be convicted or
3 acquitted on any or all of the offenses charged.

4 You will be asked to write a separate verdict of
5 guilty or not guilty for each indictment. I remind
6 you that during this trial you and I have certain
7 duties to perform. As the trial judge, it is my
8 responsibility to preside over this trial, and I also
9 have the duty to rule on the admissibility of the
10 evidence offered during the trial. You are to
11 consider only the competent evidence before you.

12 If there was any testimony ordered stricken from
13 the record in this case during this trial, you must
14 disregard that testimony. You are to consider only
15 the testimony which has been presented from this
16 witness stand, any exhibits which have been made part
17 of the record in this case or any stipulations of
18 counsel.

19 I have the additional duty to charge you the law
20 applicable to this case. As the presiding Judge, I am
21 the sole judge of the law in this case, and it is your
22 duty as jurors to accept the law and apply the law as
23 I now state it to you. If you already have an idea as
24 to what the law is or what the law ought to be or
25 should be, and it does not agree with what I now tell

1 you the law is, you must abandon your own idea because
2 you are sworn. The oath that you took at the very
3 beginning of this trial to accept the law and apply
4 the law exactly as I state it to you.

5 In every case tried in this court before a jury,
6 the jury becomes the sole and exclusive judge of the
7 facts.

8 A trial judge, that is me, I cannot state,
9 comment on or make any statement to a trial jury about
10 the facts in a case since you the jury are the sole
11 judge of the facts in this case, you are not to from
12 anything that I have said during this trial or done
13 during this trial in ruling upon the admissibility of
14 the evidence or otherwise or anything that I say now
15 and during the course of this instruction to you that
16 I have any opinion about the facts in this case. The
17 law doesn't allow me to have an opinion about facts of
18 this case. This is a matter solely for you to
19 determine.

20 As jurors, it is your duty to determine the
21 effect, the value, the weight and the truth of the
22 evidence presented during this trial. Now, to these
23 charges the defendants have pled not guilty and that
24 plea puts the burden on the State to prove the
25 defendants guilty.

1 A person charged with committing a criminal
2 offense in South Carolina is never required to prove
3 himself innocent. I charge you that it is an
4 important rule of law that a defendant in a criminal
5 trial, no matter what the seriousness of the charge
6 may be will always be presumed to be innocent of the
7 crime for which the indictment was issued unless guilt
8 has been proven by evidence satisfying you of that
9 guilt beyond a reasonable doubt.

10 This presumption of innocence does not end when
11 you begin your deliberations, but it accompanies the
12 defendant throughout the trial until you reach a
13 verdict of guilt based upon evidence satisfying you of
14 that guilt beyond a reasonable doubt.

15 The presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the
17 defendant which remains with the defendant until it
18 has been stripped from the defendant by evidence that
19 satisfies you of the defendant's guilt beyond a
20 reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory. It is not just a legal phrase. It is a
23 substantial right to which every defendant is entitled
24 unless you the jury are satisfied from the evidence of
25 the defendant's guilt beyond a reasonable doubt.

1 Now, I just explained to you that the State has
2 the burden of proving the defendants guilty beyond a
3 reasonable doubt. Some of you may have served as
4 jurors in civil cases where you were told that it is
5 only necessary to prove that a fact is more likely
6 true than not true, such as by the greater weight or
7 the preponderance of the evidence.

8 In criminal cases the State's proof must be more
9 powerful than that. It must be beyond a reasonable
10 doubt. Proof beyond a reasonable doubt is proof that
11 you leaves you firmly convinced of the defendant's
12 guilt. There are very few things in this world that
13 we know with absolute certainty. In criminal cases
14 the law does not require proof that overcomes every
15 possible doubt.

16 If based upon your consideration of the evidence,
17 you are firmly convinced that the defendants are
18 guilty of the crime charged, you must find them
19 guilty. If on the other hand you think there is a
20 real possibility that the defendants are not guilty,
21 you must give the defendants the benefit of the doubt
22 and find them not guilty.

23 Again, you are to consider each defendant and
24 each charge separately and individually from each
25 other. Now, there are two types of evidence which are

1 generally presented during a trial: Direct evidence
2 and circumstantial evidence.

3 Direct evidence is the testimony of a person who
4 claims to have actual knowledge of a fact. For
5 example, an eye witnesses. It is evidence which
6 immediately establishes the main fact to be proved.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a
9 fact. Crimes may be proven by circumstantial
10 evidence. The law makes no distinction between the
11 weight or the value to be given to either direct or
12 circumstantial evidence. However, to the extent that
13 the State relies on circumstantial evidence, all of
14 the circumstances must be consistent with each other
15 and when taken together point conclusively to the
16 guilt of the accused beyond a reasonable doubt.

17 If these circumstances merely portray the
18 defendant's behavior as suspicious, the proof has
19 failed. The State has the burden of proving the
20 defendants guilty beyond a reasonable doubt. This
21 burden rests with the State regardless of whether the
22 State relies on direct evidence, circumstantial
23 evidence or some combination of the two.

24 Now, as I told you in the very beginning of this
25 trial, you must determine the credibility of the

1 witnesses who have testified in this case.

2 Credibility simply means believability. It becomes
3 your duty as jurors to analyze and to evaluate the
4 evidence and determine which evidence convinces you of
5 its truth.

6 In determining the believability of the witnesses
7 who have testified in this case, you may believe one
8 witness over several witnesses, or several witnesses
9 over one witness. You may believe a part of the
10 testimony of a witness and reject the remaining part
11 of the testimony of that same witness. You may
12 believe the testimony of a witness in its entirety or
13 reject the testimony of a witness in its entirety.

14 You may consider whether any witness has
15 exhibited to you any interest, bias, prejudice or
16 other motive in this case. You may also consider the
17 appearance and the manner of a witness while on the
18 witness stand.

19 Now, as I told you in the beginning, and I have
20 told you throughout this trial, there are certain
21 things that have happened in this case that are not in
22 evidence, and you must not consider them as evidence
23 in deciding the facts of this case: Number one, the
24 statements and the arguments of the attorneys. Number
25 two, the questions and the objections of the

1 attorneys, and number three, the testimony that I have
2 ordered you to disregard throughout this trial.

3 Now, the Rules of Evidence ordinarily do not
4 permit witnesses to testify to opinions or
5 conclusions. An exception to this rule exists for
6 witnesses that we call expert witnesses. This is a
7 witness who by education and experience has become an
8 expert in some art, science, profession or other
9 calling and may state an opinion as to relevant and
10 material matter in which the witness claims to be an
11 expert and may also state the reasons they claim to
12 give that opinion.

13 You should consider any expert opinion received
14 in evidence in this case and like any other evidence,
15 give it the weight you think it deserves. If you
16 decide that the opinion of an expert witness is not
17 based on sufficient education or experience or if you
18 conclude that the reasons given in support of the
19 opinion are not sound or that the opinion is
20 outweighed by other evidence, you may disregard the
21 opinion entirely. An expert witness's testimony is to
22 be given no greater weight than that of any other
23 witness simply because the witness is an expert.
24 Further, you are not required to accept an expert's
25 opinion even though it is not contradicted.

1 Now, I instruct you and emphasize to you that the
2 fact that the defendants did not testify in this case
3 is not a factor to be considered by you in any way in
4 your deliberations and in the consideration on the
5 question of the guilt or innocence of the defendants.
6 A defendant has the constitutional right to remain
7 silent. The assertion of this right must not be
8 considered by you in your deliberations. I repeat, you
9 are to draw no conclusion whatsoever from the fact the
10 defendants in this case did not testify. The fact
11 that these defendants did not testify should not even
12 be discussed in the jury room. The burden of proof as
13 I have told you from the very beginning of this case,
14 is on the state. The defendants are not required to
15 prove their innocence. The burden of proof remains on
16 the State to prove guilt beyond a reasonable doubt.

17 Now, in order to establish criminal liability,
18 criminal intent is required. For example, these are
19 examples, the mental state required to be proven by
20 the state for a particular crime might be purpose,
21 intent, knowledge, recklessness or criminal
22 negligence.

23 Criminal intent must be proven by the State
24 beyond a reasonable doubt. Criminal intent is always
25 a matter that must be determined by the jury from the

1 circumstances surrounding the situation.

2 There is no way to prove intent to a mathematical
3 certainty. There is no way that medical science can
4 dissect a person's brain and determine what that
5 person had in mind so the law says that criminal
6 intent may be inferred from the circumstances shown to
7 have existed. This is how you make a determination of
8 whether or not the element that requires intent was
9 present.

10 It is not necessary to establish intent by direct
11 and positive evidence, but intent may be established
12 by inference in the same way as any other fact by
13 taking into consideration the acts of the parties and
14 all the facts and circumstances of the case. Criminal
15 intent is a mental state, a conscious wrongdoing. It
16 is up to you to determine what the defendant intended
17 to do based upon the circumstances that are shown to
18 have existed.

19 Criminal intent can arise from an action or a
20 failure to act. It may arise from negligence,
21 recklessness or an indifference to duty or to
22 consequences that are considered by the law to be the
23 equivalent of criminal intent. The next thing I'm
24 going to do is go through each charge that the
25 defendant is charged with, each separate crime, and

1 explain each one of them to you and the elements of
2 those crimes each of them individually.

3 Now, the defendant are both charged with murder.
4 The State must prove beyond a reasonable doubt that
5 the defendants killed another person with malice
6 aforethought. Malice ask is hatred, ill will or
7 hostility towards another person. It is the
8 intentional doing of a wrongful act without just cause
9 or excuse and with the intent to inflict an injury or
10 under circumstances that the law will infer, an evil
11 intent. In its legal sense, however, malice does not
12 necessarily mean ill will toward the individual
13 injured, but signifies a general malignant
14 recklessness for the lives and safety of others or a
15 condition of the mind which shows a heart regardless
16 of social duty and fatally bent on mischief. Malice
17 aforethought does not require that the malice exists
18 for any particular time before the act is committed,
19 but malice must exist in the mind of the defendant
20 just before and at the time of the act that the act is
21 committed. Therefore, there must be a combination of
22 previous evil intent and the act. Malice may be
23 conceived at the very moment the fatal blow is given.

24 Malice aforethought may be express or inferred.
25 These terms express and inferred do not mean different

1 kind of malice, but merely the manner in which malice
2 may be shown to exist. That is either by direct
3 evidence or by inference from the facts and
4 circumstances which are proved. Express malice is
5 shown when a person speaks words or which express
6 hatred or ill will for another or when a person
7 prepared beforehand to do the act which was later
8 accomplished, for example, lying in wait for a person
9 or any other acts of preparation going to show that
10 the deed was within the defendant's mind would be
11 expressed malice. Malice may be inferred from conduct
12 showing a total disregard for human life. The law
13 says if one intentionally kills another during the
14 commission of a felony, the implication of malice may
15 arise. If facts are proved beyond a reasonable doubt
16 sufficient to raise an inference of malice to your
17 satisfaction, this inference would be simply an
18 evidentiary fact to be taken into consideration by you
19 along with other evidence in the case, and you may
20 give it the weight, such weight, as you determine it
21 should receive. The law allows the jury to infer
22 malice if you conclude the homicide was a proximate
23 direct result of the commission of a felony. For the
24 purposes of this case and for that regard, kidnapping
25 and burglary and attempted armed robbery would be

1 considered felonies under our law. You can imply that
2 malice existed if a person is in the commission of a
3 felony at the time of the attempted fatal blow.

4 Now, the defendants are also charged with
5 kidnapping. The State must prove beyond a reasonable
6 doubt that the defendant knowingly and unlawfully seized
7 or confined another person without authority of law.
8 To do a thing lawfully is to do it willfully against
9 the law. Knowingly means with knowledge and
10 consciously, not accidentally. The word seize means to
11 take hold of suddenly or forcibly. The word confine
12 means to limit, restrict, confine within bounds,
13 imprison, or shut, or keep in. The State does not
14 have to prove that the defendant did all of these
15 things, that being seize and confine. Instead if you
16 mind beyond a reasonable doubt that the defendant did
17 any of these things, you may find the defendant guilty
18 of kidnapping.

19 Something done without authority of law is
20 something which the law does not sanction, permit,
21 allow, condone or provide justification for.

22 Now, the kidnapping does not have to be for any
23 personal or monetary gain or any illegal purpose, but
24 may be for any reason whatsoever. Kidnapping is a
25 continuing offense which commences when one is

1 wrongfully deprived of freedom and continues until the
2 freedom is restored.

3 The next crime that the defendants are charged
4 with and these are in no particular order, is
5 attempted armed robbery. The defendants are charged
6 with attempted armed robbery. An attempt is an effort
7 to accomplish a crime, which does not succeed. An
8 attempt includes a specific intent do a particular
9 criminal act along with an act falling short the act
10 intended. The State must show more than mere
11 preparation and intent. There must be some overt act
12 committed in the effort to commit the crime. Intent
13 means intending the result which actually occurs, not
14 accidentally or involuntarily. Intent may be shown by
15 the acts and the conduct of the defendant and other
16 circumstances from which you may naturally and
17 reasonably infer intent.

18 In order to prove this offense, the State must
19 first prove beyond a reasonable doubt that the
20 defendants attempted to take personal property from
21 the person or presence of another person. Property is
22 in the presence of a person if it is in --- within the
23 person's reach, inspection, observation or control so
24 that the person could, if not overcome with violence
25 or prevented by fear, keep possession of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant carried the property away
3 intending to permanently deprive the owner of the
4 property and to keep the property for the defendants'
5 own use. The slightest removal of the property or the
6 complete possession of the property even for an
7 instant by the defendant is sufficient to show a
8 taking and caring away of the property. The taking
9 and carrying of the property must have been done with
10 violence or by putting the owner of the property in
11 fear of violence.

12 Finally the State must prove beyond a reasonable
13 doubt that a defendant was armed with a deadly weapon
14 during the robbery. A deadly weapon is an article, an
15 instrument or a substance which is likely to cause
16 death or great bodily harm. Whether an instrument has
17 been used as a deadly weapon depends on the facts and
18 circumstances of each case. The following are
19 examples of instruments which may be deadly weapons, a
20 pistol, a shotgun, a rifle, a knife, a sling shot,
21 metal knuckles, a razor, gasoline, lighter fluid.

22 A gun may be a deadly weapon even if it is not
23 operating.

24 Now, the last charge that the defendants are
25 charged with is burglary in the second degree. To

1 prove burglary in the second degree, the State must
2 prove beyond a reasonable doubt that a defendant
3 entered a building without consent and with the intent
4 to commit a crime in the building.

5 A building is defined as any structure, vehicle,
6 water craft or aircraft where any person lodges or
7 lives or where people assemble for the purpose of
8 business, government, education, religion,
9 entertainment, public transportation or public use or
10 where goods are stored.

11 Finally, the State must prove beyond a reasonable
12 doubt that when entering the building --- excuse me.
13 When entering while in --- excuse me.

14 (Pause.)

15 When entering while in the building or when
16 fleeing, the defendant or an accomplice was armed with
17 a deadly weapon or explosive. A deadly weapon as I
18 have explained to you before is an article, instrument
19 or substance which is likely to cause death or great
20 bodily harm. Whether an instrument has been used as a
21 deadly weapon depends upon the facts and circumstances
22 of each case. The following are examples of deadly
23 weapons, a pistol, shotgun, a knife, sling shot, metal
24 knuckles, razor, gasoline, lighter fluid and a gun may
25 be a deadly weapon even if it is not operating.

1 So finally the State must prove beyond a
2 reasonable doubt that number one when entering the
3 defendant or an accomplice was armed with a deadly
4 weapon or when entering or while in the building or
5 when fleeing the defendant or an accomplice caused
6 physical injury to anyone not participating in the
7 crime or when entering or while in the building or
8 when fleeing the defendant or an accomplice used or
9 threatened to use a dangerous object or when entering
10 or while in the building or when fleeing the defendant
11 or an accomplice displayed what appeared to be a
12 knife, pistol, revolver, rifle, shotgun, machine gun
13 or other firearm or the defendant entered or remained
14 in the building in the nighttime. Nighttime is the
15 period between sunset and sunrise during which there
16 is not enough daylight to recognize a person's face
17 except by artificial light or moon light.

18 Now, if two or more people combine together to
19 commit an unlawful act or a crime and in the execution
20 of that criminal act, a homicide is committed by one
21 of the actors as a probable or natural consequence of
22 the acts done, in pursuance of the common design, all
23 present, participating, all people who are present and
24 participating in the unlawful undertaking are as
25 guilty as the one who committed the fatal act.

1 The common purpose may not have been to kill and
2 murder, but if it was unlawful and criminal and in the
3 execution of this common purpose a homicide is
4 committed by one as a probable or natural consequence
5 of the acts done in pursuance witness of a common
6 design, then all present participating in the common
7 design are as guilty as the slayer. Mere presence at
8 the scene is not sufficient to prove someone guilty of
9 a crime. A defendant's presence where a crime is
10 being committed or mere association with a person who
11 commits a crime does not make a defendant an
12 accomplice or aider and abettor of a person committing
13 the crime.

14 Now, during this trial, you heard testimony about
15 a purported written statement made by defendant
16 Trenton Barnes. This evidence is admitted solely
17 against Defendant Barnes. It is not to be considered
18 by you in any way, shape, or form to indicate the
19 guilt of the codefendant indeed, you cannot consider
20 that evidence against the codefendant. It can be
21 considered by you only in connection with your
22 determination of whether or not the Defendant Barnes
23 is guilty or not guilty of these offenses. It is
24 limited solely to him and is admissible only against
25 him at this trial.

1 Now, the length of the prison sentence rests in
2 the sole discretion of the trial court. You have
3 heard testimony concerning the penalty a person can
4 serve for the crimes alleged in these indictments. In
5 determining the guilt or innocence of these
6 defendants, you cannot consider any possible penalty
7 for any particular crime.

8 The punishment for crimes is a matter for me to
9 determine and should never be considered by you in any
10 way whatsoever in arriving at an impartial verdict as
11 to the guilt or innocence of these defendants.

12 In this case, the State of South Carolina is not
13 seeking the death penalty against either defendant.
14 Now, we're on page 23, okay. Just a couple more
15 minutes and I'll be done.

16 Let me say something to you about your
17 deliberations. Deliberation is defined as a careful
18 consideration weighing up with a view to a decision.

19 The genius of our jury system is it allows 12
20 good men and women from 12 totally different
21 backgrounds, life experiences and perspectives to
22 consider the evidence, talk about it and ultimately
23 reach a verdict. We call them deliberations for a
24 reason. You are to consider the evidence in this case
25 carefully and deliberately and discuss it in a calm,

1 thorough and courteous manner. Remember, you are not
2 partisans or advocates for either side favoring one
3 side over the other. You are essentially a judge.

4 You are the judge of the facts. Your sole
5 interest is to find the truth from the evidence you
6 have heard in this courtroom. Listen to the views of
7 all of your fellow jurors. Consider other people's
8 points and their points of view and talk through and
9 discuss the evidence.

10 Remember, if you are doing something
11 deliberately, you should not be in a hurry and you
12 should not be in a hurry here. This case is very
13 important to all sides and this is their only day in
14 court. When you retire to the jury room you should
15 discuss with your fellow jurors to reach agreement if
16 you can. Your verdict must unanimous. Each of you
17 must decide the case for yourself, but you should do
18 so only after you have impartially considered the
19 evidence, discussed it fully with each other and
20 listened to the views of your fellow jurors. Do not
21 be afraid to change your opinion if the discussion
22 persuades you that you should, but do not come to a
23 decision simply because other jurors think that it is
24 right. It is very important that you attempt to reach
25 a unanimous verdict but, of course, only if each of

1 you can do so after having made your own decision.

2 Do not change an honest belief about the weight
3 and the effect of the evidence simply to reach a
4 verdict. In other words, do not change your opinion
5 solely for the sake of reaching a unanimous verdict.

6 Now, okay the last final instruction. In just a
7 few moments, you're going to go back to your jury
8 room. You are still not going to be allowed to
9 discuss the case, okay. Because I have one more
10 matter of law that I'm required to take up with the
11 attorneys. Your sign that you may start deliberating
12 is when all of this comes back in your room, okay. So
13 that's the sign. So when all the evidence has been
14 admitted comes back in your room, that's your sign
15 Mr. Foreman, that you may begin deliberations.

16 Now, my three alternates, you are going to come
17 out of the jury room, okay. You will be placed in a
18 separate room. Okay. You are not allowed to discuss
19 the case period. You can talk about how cold it was
20 this morning or what's going on with our football team
21 or whatever else you want to, but you cannot discuss
22 the case, okay. My three alternates, Mr. Dye,
23 Ms. Sutton, they know. They're going to keep you in a
24 completely separate room.
25

1 Okay. Now, I have my notes to make sure I tell
2 you everything. One thing juries like to do is they
3 like to tell the judge their counts, okay. I don't
4 ever want to know the counts. There is no reason you
5 should ever tell me your count. Your count is your
6 count. It is not for me or anybody else to know. So
7 if you need to communicate with me, you should never
8 communicate to me your specific count, okay.

9 Number two, every single one of you 12 must be in the
10 room to deliberate, okay. So if someone goes to the
11 restroom, someone need a smoke break, somebody needs
12 to step out and stretch their legs, deliberations have
13 to stop. All 12 of you must be in the room to be
14 actively deliberating on the case.

15 Now, there have been videos that are played in
16 this case. Okay. Some of those videos are in
17 evidence, Okay. We worked diligently last night and
18 this morning to get those to play on a computer so I
19 could just give you a computer in the room. That's
20 not going to work, okay. So what I'm going to do is I'm
21 going to have the TV moved into your jury room so that
22 you can play something if you need to play it, okay.
23 So if you need to play something or you say I want to
24 see this or I want to see that, we will do what we
25 need to maneuver that around. Just let the bailiffs

1 know we want to watch videos and we'll coordinate what
2 we need to coordinate to set that up.

3 Remember, you're not allowed to deliberate until your
4 exhibits come back in the room and the alternates come
5 out. Okay. Now, last thing. This is your verdict
6 form, okay.

7 Now, listen, I told you in the very beginning,
8 and I told you today and I'm going to tell you again.
9 You have to consider each of these defendants
10 individually from each other. Okay. You have to
11 consider one defendant, and then you have to consider
12 the charges for that defendant separately and
13 individually.

14 Consider the second defendant and consider the
15 charges for that defendant separately and
16 individually.

17 Now, I have to create a verdict form, okay. So
18 there is no priority to whose name is on here first
19 and whose name is on here second. I simply have to
20 put somebody first and somebody second. You can go
21 through it in whatever order you want to. What I've
22 done is --- and I'm going to show this to you,
23 Mr. Foreman. I've gone through each charge with each
24 defendant. We the jury by unanimous consent find the
25 defendant Trenton Barnes --- there is no significance

1 at all to him being first. I have to put somebody
2 first, okay. Then I go through each charge, murder,
3 kidnapping, burglary, attempted armed robbery and then
4 not guilty and guilty under each. There is no
5 significance to not guilty being first and guilty
6 being second. I have to put one first and I have to
7 put one second. Don't read anything into it. It's
8 simply we have to fill out a form that makes sense
9 that's easy to use.

10 Okay. On the second page, we the jury by
11 unanimous consent find the defendant Lorenzo Young and
12 each of the four charges are listed and a block for
13 each and then there is a spot for you to sign, Mr.
14 Foreperson. Okay. So this is your verdict form. You
15 will take this with you. At this point in time, I
16 want you to retire to your jury room. Do not discuss
17 the case. Your sign that you may begin deliberations
18 is when the bailiffs bring in the evidence. Okay.
19 Thank you very much.
20 Everyone remain seated.

21 (WHEREUPON, the jury left the courtroom at 10:22
22 A.M.)

23 THE COURT: Okay. Any exception to the charge
24 other than those previously stated?

25 MS. CAMPBELL: Your Honor, the only thing we

1 would have is in the definition of attempted armed
2 robbery when you talk about the taking and carrying
3 away, the term attempt wasn't in that part of it. It
4 basically came across as there had to be an actual
5 taking and carrying away. The only other thing we
6 have is we did email you last night, I believe, about
7 just adding in the language of the hand of one, hand
8 on that charge. I noticed after I closed actually
9 that that verbiage hand of one, hand of all is not in
10 there.

11 THE COURT: Right.

12 MS. CAMPBELL: That's typically in there.

13 I believe in attempt armed robbery, you define,
14 attempt in the beginning of it, but then you define
15 that there had to be a taking and caring away
16 permanently depriving, that language.

17 THE COURT: How do you want me to cure the hand
18 of one?

19 MS. CAMPBELL: If you could bring them back and
20 talk about, refresh that about one part we talked a
21 about two or more people combining together to do an
22 act and also refer to the of hand of one is the hand
23 of all. I would prefer, but I imagine they would
24 object, to reading the whole thing. I imagine they
25 wouldn't want that. Mr. Schnee?

1 MR. SCHNEE: Judge, I have absolutely no comment
2 on the attempted armed robbery. I honesty didn't hear
3 or not hear what the State says, so I'll defer to
4 what's in your notes. As to the hand of one, hand of
5 all, I would object to adding any such verbiage. The
6 hand of one is the hand of all is not a law in South
7 Carolina. It is merely a way of defining accomplice
8 liability and your charge as a whole has explained
9 accomplice liability. To bring the jury back out to
10 explain just that would be clearly overemphasizing
11 something that is not even in the law in this state.
12 I'm asking Your Honor not to recharge them on
13 anything.

14 THE COURT: That's why we should have just used
15 the charge in the charge book because it says that.

16 MS. CAMPBELL: I'm sorry.

17 THE COURT: Ms. Pinnock.

18 MS. PINNOCK: Your Honor, we just would have the
19 same objection Mr. Schnee does. Bringing them back in
20 to say that one thing would be putting emphasize on
21 that one charge. I can recite exactly what you used,
22 but you say a number of times that one person would be
23 responsible for the other person's actions. I think
24 you said it at least twice. Not that that covers any
25 issues, but we should have the same concerns that it

1 would be putting emphasize on that charge. I believe
2 Your Honor's charge covered it sufficiently and I have
3 no opinion or position with the attempted armed
4 robbery because I didn't notice that.

5 THE COURT: All right. Bring them back in.

6 (WHEREUPON, the jury entered the courtroom at
7 10:27 A.M.)

8 THE BAILIFF: The jury panel is present, Judge.

9 THE COURT: Okay. Ladies and gentlemen, I'm
10 going to go back over one of the crimes with you that
11 I discussed earlier. It was brought to my attention
12 that I may have misstated something, so I'm going to
13 read this one more time to make sure that you
14 understand it. That's the charge of attempted armed
15 robbery. Both defendants are charged with attempted
16 armed robbery. An attempt is an effort to accomplish
17 a crime which does not succeed. An attempt includes a
18 specific intent to do a particular criminal act along
19 with an act falling short of the act intended.

20 The State must show more than mere preparation
21 and intent. There must be some overt act committed in
22 the effort to commit the crime.

23 Intent means intending the result which actually
24 occurs not accidentally or involuntarily. Intent may
25 be shown by the acts and conduct of the defendant and

1 other circumstances from which you may naturally and
2 reasonably infer attempt. In order to prove this
3 offense, the State must prove beyond a reasonable
4 doubt that the defendant attempted to take property
5 from the presence of another person. Property is in
6 the person or presence of a person if it is within the
7 person's reach, inspection, observation or control so
8 that the person could, if not overcome with violence
9 or prevented by fear, keep possession of the property.

10 The State must also prove beyond a reasonable
11 doubt that the defendant attempted to carry away the
12 property intending to permanently deprive the owner of
13 that property intending to presently deprive the owner
14 of that property and to keep the property for the
15 defendant's own use.

16 The slightest removal of the property or the
17 attempted slightest removal of the property or the
18 complete possession of the property even for an
19 instant by the defendant is sufficient to show a
20 taking and carrying away of the property.

21 The attempted taking and carrying away of the
22 property must have been done with violence or by
23 putting the owner of the property in fear of violence.

24 Finally the State must prove beyond a reasonable
25 doubt that the defendant was armed with a deadly

1 weapon during the robbery. A deadly weapon is any
2 article, instrument or substance which is likely to
3 cause death or great bodily harm.

4 Whether an instrument has been used as a deadly
5 weapon depends on the facts and circumstances of each
6 case. The following are examples of instruments which
7 may be deadly weapons, a pistol, a shotgun, a rifle, a
8 knife, a sling shot, metal knuckles, gasoline, lighter
9 fluid and a gun may be a deadly weapon even if it is
10 not operating.

11 I also explained to you the law concerning where
12 two or more people combine together to commit an
13 unlawful act or a crime. This is commonly known in
14 our law as the hand of one is the hand of all or the
15 act of one is the act of all. All right.

16 Thank you very much. Return to your jury room.
17 Do not begin deliberations until the evidence comes
18 back.

19 (WHEREUPON, the jury left the courtroom at 10:31
20 A.M.)

21 THE COURT: All right. Any exceptions other than
22 those I already stated?

23 MS. CAMPBELL: No, sir.

24 MS. PINNOCK: Your Honor, just one thing
25 previously stated. We take exception to the

1 recharging of hand of one is the hand of all.

2 THE COURT: Any exceptions other than those
3 already stated?

4 MR. SCHNEE: No, Your Honor, other than the
5 recharge. Thank you.

6 THE COURT: All right. Make sure the clerk has
7 your phone number, and let's get the evidence back and
8 the alternates out.

9 (WHEREUPON, the jury began deliberations at
10 10:33.)

11 (WHEREUPON, the jury sent out a note at 11:09.)

12 THE COURT: So we've got a note requesting the
13 definition of all the charges so my general practice
14 is just to send the entire charge back. Does anybody
15 have an objection to that.

16 MS. CAMPELL: No, sir.

17 MR. SCHNEE: No, Your Honor.

18 MR. KRZYSTON: No, objection.

19 THE COURT: There's an instruction that usually
20 goes with that when you do it on the front end like
21 when I tell them it's going back in the beginning, and
22 that instruction says I will give you a copy of these
23 instructions in written form. During your
24 deliberations, you may refer to these instructions to
25 guide your decision making. You must consider the

1 instructions as a whole and not follow some and ignore
2 others. Please return these instructions at the time
3 your verdict is rendered.

4 Do you have a problem with me sending that back
5 just as a little note instead of bringing them back in
6 here and telling them that?

7 MR. SCHNEE: I think you should probably just
8 change the language at the beginning of it to say you
9 are now receiving ... Other than that I'm fine with
10 that.

11 THE COURT: I'll change to you are now receiving
12 a copy of these instructions in written form. Is that
13 okay?

14 MR. SCHNEE: That works for me.

15 MS. CAMPBELL: That includes the attempt language
16 you included?

17 (WHEREUPON, Court's Exhibit Number 19 was
18 marked for identification only.)

19 THE COURT: I fixed that when I went back. You
20 can't send part of it back. The law is pretty clear
21 that sending part of charge or recharging on just one
22 section is completely inappropriate, because if I just
23 sent that back, I wouldn't have anything about
24 reasonable doubt or presumption of innocence or trying
25 to influence one thing over another. That's why we

1 have to send it all back. Do you want to agree with
2 that? I think that's the status of the law.

3 MS. CAMPBELL: That's it.

4 THE COURT: Is that your understanding,
5 Mr. Schnee?.

6 MR. SCHNEE: In terms of sending it back, I think
7 you have to send it all back. Only other question I
8 have is do you have page numbers on that?

9 THE COURT: Yes.

10 MR. SCHNEE: In addition to that getting mis---
11 you know, messed around.

12 THE COURT: I have all the pages numbered and let
13 me go through to make sure they're all here.

14 (Pause.)

15 But I've looked up that issue before,
16 r. Krzyston, and I think the appellate courts are
17 pretty clear that when in doubt --- you can't go wrong
18 with sending it all back.

19 MR. KRZYSTON: I understand, Judge.

20 THE COURT: It's when you start picking stuff out
21 ---

22 Okay. So I'm going to change the front language
23 to you are now receiving a copy of these instructions.

24 MS. GARFIELD: Just for the record, Judge, we
25 have the TV where you asked for it.

1 THE COURT: Okay.

2 MS. GARFIELD: It has been cleaned. Defense
3 counsel.

4 THE COURT: How are they going to know how to use
5 it?

6 MS. GARFIELD: That's my concern. It's like a
7 computer. It has to be plugged up.

8 THE COURT: Can you show my law clerk how to do
9 that?

10 UNIDENTIFIED WOMAN: Yes, sir.

11 THE COURT: If they want to see something on the
12 big screen the law clerk can do it. All right. Thank
13 you very much.

14 MS. BAMBACH: Thank you.

15 THE COURT: Thanks for everybody being close by.
16 I appreciate it.

17 VERDICT

18 THE COURT: Okay. It's my understanding that we
19 have a verdict in the case. I gave this warning at
20 the beginning of the trial. Let me give this again.
21 I understand that this is a very emotional case
22 regardless of what side of the case you're on. I have
23 the deepest respect for all families involved in this
24 case and the situations that you must be going
25 through. However, if you cannot contain yourself or

1 control your emotions during this process, now is your
2 opportunity to leave the courtroom. I will not
3 tolerate any outbursts or anything else of that
4 nature. This is a courtroom, and we are going --- all
5 of us are going to be respectful to this jury in
6 whatever decision that they have made. So being
7 emotional is understandable. Crying is
8 understandable. Any type of outburst, clapping,
9 screaming, making statements, anything like that is
10 going to be completely and totally inappropriate and
11 more than likely I'm just going to take you into
12 custody if you do it, okay.

13 So if you can't leave --- if you cannot follow
14 that instruction, please leave now. No one will think
15 of less of you in any way, shape, or form and somebody
16 will be able to tell you what happened in a matter of
17 minutes, so if there's anybody that doesn't believe
18 they can follow that instruction, please leave now.
19 All right. We have a verdict; is that correct,
20 Ms. Pendergrass?

21 THE CLERK: Yes, Your Honor.

22 THE COURT: Okay. Let's bring them in.

23 (WHEREUPON, the jury returned to open court with
24 a verdict at 1:30 P.M.)

25 THE COURT: All right. Thank you, Ms. Sutton.

1 All right. Mr. Foreman. It's my understanding you
2 have a verdict.

3 THE FOREMAN: Yes, sir.

4 THE COURT: Is that correct?

5 THE FOREMAN: Yes, Your Honor.

6 THE COURT: Is it unanimous?

7 THE FOREMAN: Yes.

8 THE COURT: If you would please fold it and hand
9 it to Ms. Sutton.

10 All right. I find the jury is in its proper
11 form. Ms. Pendegrass, if you will please publish.

12 THE CLERK: The State of South Carolina versus
13 Trenton Barnes and Lorenzo Young. Indictments 754,
14 755, 756, 745, 746, 747, 749. We the jury by
15 unanimous consent find the defendant Trenton Barnes as
16 to the charge of murder on indictment 2014-GS-40-752,
17 guilty. As to the charge of kidnapping on
18 indictment 2014-GS-40-754, guilty. As to the charge
19 of burglary second on indictment 2014-GS-40-755,
20 guilty. As to the charge of attempted armed robbery
21 on indictment 2014-GS-40-756, guilty.

22 We the jury by unanimous consent find the
23 defendant Lorenzo Young as to the charge of murder on
24 indictment 2014-GS-40-745 guilty. As to the charge of
25 kidnapping on indictment 2014-GS-40-746, guilty. As

1 to the charge of burglary second degree on
2 indictment 2014-GS-40-747, guilty.

3 As to the charge of attempted armed robbery on
4 indictment 2014-GS-749 guilty. This is signed
5 foreperson, juror number 54, November 19th, 2014.
6 Mr. Foreman, are these your verdicts and the verdicts
7 of the entire jury?

8 THE FOREMAN: Yes, ma'am.

9 THE COURT: All right. Polling?

10 MR. KRZYSTON: Please, Your Honor.

11 MS. BAMBACH: Please, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, the
13 clerk is going to ask you two questions. She will
14 call out your juror number first. The first question
15 will be is this your verdict and is it still your
16 verdict --- or are these your verdicts and are they
17 still your verdicts. As your number is called, if you
18 would please respond out loud to Ms. Pendegrass.

19 THE CLERK: Juror number 54, are these your
20 verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Juror number 99, were these your
25 verdicts?

1 JUROR: Yes.

2 THE CLERK: Are these still your verdicts?

3 JUROR: Yes.

4 THE CLERK: Juror number 214, were these your
5 verdicts?

6 JUROR: Yes, ma'am.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes, ma'am.

9 THE CLERK: Juror number 171 are these your
10 verdicts?

11 JUROR: Yes.

12 THE CLERK: Are they still your verdicts?

13 JUROR: Yes.

14 THE CLERK: Juror number 33, were these your
15 verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes, ma'am.

19 THE CLERK: Juror number 283 were these your
20 verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Juror number 283, were these your
25 verdicts?

1 JUROR: Yes, ma'am.

2 THE CLERK: Are they still your verdicts?

3 JUROR: Yes, ma'am.

4 THE CLERK: Juror number 74, were these your
5 verdicts?

6 JUROR: Yes.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes.

9 THE CLERK: Juror number 250, were these your
10 verdicts?

11 JUROR: Yes.

12 THE CLERK: Are they still your verdicts?

13 JUROR: Yes.

14 THE CLERK: Juror number 41, were these your
15 verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Are these still your verdicts?

18 JUROR: Yes, ma'am.

19 THE CLERK: Juror number 258, were these your
20 verdicts?

21 JUROR: Yes, ma'am.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes, ma'am.

24 THE CLERK: Juror number 220, were these your
25 verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdicts?

3 JUROR: Yes.

4 THE CLERK: Juror number 303, were these your
5 verdicts?

6 JUROR: Yes.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes.

9 THE CLERK: The jury has been polled, Your Honor.

10 THE COURT: Thank you very much. Ladies and
11 gentlemen, as I told you from the very beginning of
12 this trial, and I think one of the first things I
13 probably said to you was thank you on behalf of
14 everybody present. Jury duty is a very important
15 service that you pay to your community.

16 Jury service is right up there with voting and
17 other things or part of your responsibility as a
18 citizen within our community, and you have been here
19 for an extended period of time. It's really almost
20 eight days. We had one of those days was a holiday,
21 but you have given a significant portion of your life
22 and time away from your family, your work and your
23 friends to be a contributing member of our society and
24 on behalf of all the circuit court judges here in the
25 courthouse, I want to say thank you for service. I

1 know I've done that before. You are probably tired of
2 hearing me say that, but do want you to know how much
3 your service means to me. You have all been
4 attentive. You have all been on time. This is the
5 first trial I can remember in a long time where I
6 haven't lost one or two jurors throughout the trial
7 due to a family event or a sickness or something like
8 that. You all have stayed with me, paid attention,
9 paid close attention to everything that has been done,
10 and I want to personally say thank you.

11 Now, the prohibition against talking to anybody
12 in this case or anybody at all about this case is now
13 lifted upon you, and you are welcome and free to
14 discuss this case with anyone that you see fit. Let
15 me do say this to you, though.

16 Sometimes lawyers want to contact jurors to say
17 what did I do that you liked or didn't like. What
18 would have been more effective, what would have
19 helped. That's perfectly normal and natural for them
20 to do this. If you want to speak with one of the
21 lawyers about the case, you are welcome and free to do
22 so. However, if you do not, you just simply to say I
23 choose not to talk to you. You have the right to not
24 be harassed by anybody about your jury service. If
25 you inform somebody you to not want to talk with them

1 about jury service, and they continue to harass or
2 bother you, you call the clerk of court's office and
3 they get a circuit court judge on that quickly and
4 we'll deal with that situation. If you'll retire to
5 your jury room and thank you very much for your
6 service. Everyone remain seated while the jury is
7 dismissed.

8 (WHEREUPON, the jury left the courtroom at 1:36
9 P.M.)

10 THE COURT: All right. We're going to take a
11 five minute break and come back in for post-trial
12 motions and sentencing.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: All right. Post-trial motions?

15 MR. KRZYSTON: Your Honor, Mr. Young would move
16 for a retrial based on the brevity of deliberations.
17 In this case there were over 450 exhibits. The jury
18 deliberated for a total of under three hours. Based
19 on the brevity of those deliberations, we would ask
20 for a new trial. We would also request a new trial on
21 the basis that these trials were joint trials. Prior
22 to coming to trial on this matter with Mr. Barnes, we
23 requested that the trials be severed and that we
24 proceed alone. That motion was denied. During the
25 life of the trial, evidence was admitted against

1 Mr. Barnes which inculpated Mr. Young. It is our
2 contention that that evidence was incorrectly admitted
3 and we would move again for a new trial based on the
4 admission of that evidence, the denial of our
5 severance motion and the denial of any objections and
6 requests to keep that evidence out of the trial
7 altogether.

8 Judge, we would also move for a new trial based
9 on the fact that the limiting instruction --- the
10 limiting instruction that was given in regard to the
11 previously mentioned materials are insufficient as,
12 Your Honor, is aware and as I have objected a number
13 of times. I did indicate that I was in a position
14 where I must request relief, but object to the
15 sufficiency of that relief. I feel compelled to draw
16 the court's attention to the fact I feel in no way can
17 that limiting instruction had any effect on the jury.
18 I think it's an impractical request of the jury to
19 sever the consideration of evidence in that manner,
20 and for that reason, I move for a new trial.

21 I would also review --- excuse me, renew all
22 previous motions and objections made during and before
23 the life of this trial. I would reassert those
24 motions and objections and move for a new trial based
25 on the motions and objections.

1 THE COURT: All right. Your motions are denied.
2 Mr. Schnee.

3 MR. KRZYSTON: Thank you, Judge.

4 THE COURT: Mr. Schnee.

5 MR. SCHNEE: Thank you, Your Honor. May it
6 please the Court. I too renew all my prior motions
7 and objections. I also request a new trial based on
8 the admission of substantial of amounts of information
9 that would not been admitted had these been separate
10 trials, particularly there were a number of jailhouse
11 snitches who all testified that Lorenzo Young
12 confessed to them. The jurors heard all that. It
13 inculcated Trenton Barnes. Absent Lorenzo being here
14 in trial as a joint trial, those would not be
15 admissible. I still believe those are inadmissible
16 under 804(b)(3) as I but in my brief that I submitted
17 last week to Your Honor.

18 All the other issues that we have raised
19 throughout the trial of mistrials or severance even
20 part way through, I renew all of those.

21 THE COURT: Thank you very much.

22 MR. SCHNEE: One other issue as a matter for the
23 sentencing, I direct Your Honor's attention to Aiken V
24 Byers. It was a South Carolina Supreme Court case
25 that actually came out last week dealing with juvenile

1 offenders convicted of murder and other offenses where
2 he is facing life without parole.

3 It essentially explains the Miller holding from
4 the US Supreme Court. What I'm asking for, Your
5 Honor, is a deferred sentencing for Trenton Barnes. I
6 need to be able to present proper mitigating evidence
7 dealing with my client's age and particular
8 circumstances. I would like to have some of his
9 mental health doctors be able to present Your Honor
10 with a full understanding that I could not provide
11 myself.

12 I would like to get a couple of his school
13 teachers in. I do not believe this would be a very
14 long delay. I know next week is a no court week. I'm
15 sure I would be able to get the witnesses available by
16 then. I don't know if Your Honor would even have a
17 court reporter or not. If not, any time after that at
18 the Court's convenience just dealing with scheduling,
19 but I am asking for deferred sentencing.

20 THE COURT: All right.

21 MR. SCHNEE: I have a copy of the case printed
22 out if Your Honor ---

23 THE COURT: I'm reading it. Your other motions
24 are hereby denied.

25 MR. SCHNEE: Thank you, Your Honor.

1 MS. GARFIELD: Judge, our interpretation of the
2 case that Mr. Schnee is referencing, we agree with his
3 assessment.

4 THE COURT: I'm sorry. I didn't hear you.

5 MS. GARFIELD: We agree with Mr. Schnee in our
6 interpretation of the case. We agree that he does
7 need to have a hearing.

8 THE COURT: So you have no objection to deferred
9 sentencing for Mr. Barnes based upon the new Supreme
10 Court case that came out a week ago.

11 MS. GARFIELD: No, sir.

12 THE COURT: So with the consent of the State and
13 at the request of Defendant Barnes, his sentencing
14 will be deferred. How long do you think you need to
15 do it, Mr. Schnee?

16 MR. SCHNEE: My main concern would be his mental
17 health doctor just in terms of scheduling with
18 whatever he has to do. I don't believe his testimony
19 would be very lengthy. It would probably no more than
20 fifteen or twenty minutes.

21 THE COURT: How long to you need prepare, not how
22 long do you need for the hearing. I'm sorry if I
23 misspoke.

24 MR. SCHNEE: I think I can get everything done
25 within a week or two in terms of having all the

1 witnesses.

2 THE COURT: Okay.

3 MR. SCHNEE: Just in terms of scheduling an
4 actual hearing, my only concern would be the doctor's
5 schedule in particular. No matter what, we can get
6 this done within the month of December. I can't see
7 any reason why we wouldn't.

8 THE COURT: Do you want to talk about scheduling?

9 MS. CAMPBELL: Yes, Your Honor. We would like it
10 to be sooner rather than later. I don't know what
11 your schedule is and your court reporter's schedule
12 is. There is no court next week, however, he
13 indicated to me he could be ready next week just
14 depending on your schedule.

15 THE COURT: I mean, we could get a court reporter
16 next week. Getting a court reporter is not hard.

17 MS. CAMPBELL: We'll ask ---

18 THE COURT: Do you think you could be ready be
19 ready by Tuesday or Wednesday of next week?

20 MR. SCHNEE: Judge, if you give me an opportunity
21 the next couple of days to contact the witnesses to
22 see if they are available, I would not have a problem
23 with that at all.

24 MS. GARFIELD: I prefer Tuesday, just for some
25 child care issues.

1 MR. SCHNEE: I don't want to give, Your Honor a
2 definite day.

3 THE COURT: Okay. At this point in time let's
4 plan on next Tuesday and Mr. Schnee, you need to let
5 my office know quickly. By quickly I define quickly
6 as by the end of the day tomorrow if that's not going
7 to work.

8 MR. SCHNEE: Yes, sir.

9 THE COURT: Okay. If there's some major
10 scheduling issue, otherwise we'll do Tuesday once we
11 get confirmation from Mr. Schnee that Tuesday works
12 then we can pick a time.

13 MS. CAMPBELL: Only other thing that we would
14 request, is there is anything that he intends to use
15 in mitigation, if we could get a copy of that at some
16 time before the hearing so we would have an
17 opportunity to review it.

18 THE COURT: Sure.

19 MR. SCHNEE: If I actually get a report or
20 anything, I will. I'm sure I'll be able to get school
21 records and things. I'll turn that over.

22 All right. Mr. Barnes' sentencing --- do you
23 understand what we're doing?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And do you understand why we're doing

1 it.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. So with the consent of
4 the State and at the request of Defendant Barnes and
5 pursuant to the new South Carolina Supreme Court case
6 on point, according to the attorneys, we are going to
7 defer Mr. Barnes' sentencing and this time is
8 tentative scheduled for next Tuesday. We're not
9 setting a time. Mr. Schnee is going to inform us by
10 the --- inform the court and the solicitor's office by
11 the end of the day tomorrow if there is not a time
12 that works next Tuesday, next Tuesday is a no court
13 week, so the sooner I know the better so we can
14 arrange a time and the court reporter.

15 MR. SCHNEE: Yes, sir. Thank you.

16 THE COURT: Is that clear, Ms. Garfield?

17 MS. GARFIELD: Yes, sir.

18 THE COURT: All right. Mr. Barnes can go ahead
19 and be taken out.

20 SENTENCING

21 (WHEREUPON, Mr. Barnes left the courtroom.)

22 THE COURT: All right. Bring Mr. Young forward
23 for sentencing.

24 THE COURT: Okay. Ms. Simpson.

25 MS. SIMPSON: Thank you, Your Honor. May it

Sentencing

1 please the Court. With respect to Mr. Lorenzo Young
2 and the facts of the case and what your sentence will
3 be, I think they speak for themselves. We leave it in
4 your discretion. I would like to tell Your Honor that
5 he was out on bond for charges from four separate
6 incidents, from one incident burglary second degree
7 nonviolent, as well as grand larceny, a second
8 incident date, another burglary second nonviolent, as
9 well as grand larceny.

10 Then from June 6th of 2012, he was out on bond. I
11 believe all of these are currently pending in our
12 office, Your Honor, burglary first degree, possession
13 of a weapon during the commission of a violent crime,
14 one count of criminal conspiracy, three counts of
15 kidnapping, three counts of armed robbery, another
16 count of kidnapping, as well as assault and battery
17 first degree and then finally, Your Honor, from I
18 believe just a short period within the week prior to
19 this murder occurring, he was out on bond for burglary
20 first degree and that charge is still pending, as
21 well. His juvenile record, I'll just hand up for Your
22 Honor to review. It's fairly minimal.

23 THE COURT: Have you seen this, Mr. Krzyston?

24 MR. KRZYSTON: I have, Your Honor.

25 MS. SIMPSON: And, Your Honor, as far as victim

Sentencing

1 impact, Chandra Cleveland Jennings is present with the
2 family in this case and is going to speak on behalf of
3 Ms. Kelly Hunnewell's family.

4 I believe she will be introducing them as they
5 stand. Whenever Your Honor is ready.

6 THE COURT: Just one moment.

7 (Pause.)

8 THE COURT: What does the burglary carry?
9 Fifteen?

10 MS. SIMPSON: Fifteen to life.

11 THE COURT: And the attempted arm robbery is 20;
12 is that correct?

13 MS. SIMPSON: Yes, Your Honor.

14 THE COURT: You said the burglary carried what?

15 MS. GARFIELD: Burglary first, fifteen to life.
16 You're talking about what he's convicted of,
17 burglary second is nonviolent.

18 MS. SIMPSON: Oh, I thought you were speaking of
19 his pending charges.

20 MR. KRZYSTON: Up to fifteen.

21 THE COURT: That was my understanding. I just
22 want to double check.

23 Okay. Who would like to speak?

24 MS. SIMPSON: This is Chandra Cleveland Jennings.

25 MS. Jennings: Thank you, Your Honor. This is

Sentencing

1 the Hunnewell family. Two of the children have been
2 separated from the family since this whole incident.

3 Today I would like to read to you a letter that's
4 written by her daughter Amber and her son.

5 It says to my mother's killers, thank you for
6 taking every piece of love I ever had. Not only did
7 you take my mother, but what you did led to my baby
8 sister being taken away, as well.

9 I do not want you to get the death penalty. I
10 want you to rot in jail. I want you to think about
11 this every day of your guilt.

12 Try reversing the situation. What if it were
13 your --- turn it the other way around. Think for a
14 couple of years.

15 My mother did everything. My mother did not do
16 anything to you, so why would you kill her? She did
17 everything to make sure we were safe. She worked
18 early in the morning so that she could wake us up in
19 the morning.

20 So what was your motive? Whatever it was, I hope
21 you know you have left a six-year-old girl, an
22 eight-year-old girl, an 11-year-old boy and a
23 14-year-old girl alone in this harsh world.

24 My mom was my best friend, the one I could always
25 go to. I just wanted to make her proud in life, to

Sentencing

1 see her face when I graduated from high school, but
2 thanks to you, I can't. You have no idea how many
3 nights I stay up crying wishing you didn't do what you
4 did.

5 I can still hear my little sister crying when we
6 got the news. I remember my six-year-old sister
7 asking me when will mommy be home, and I cried knowing
8 the answer but could not tell her. I did not have the
9 heart to tell her.

10 I hope you're happy with yourself. Your mother
11 should be proud. Sincerely, Amber.

12 THE COURT: Thank you, ma'am. Thank you all for
13 being here. Thank you for being here throughout the
14 trial.

15 MS. SIMPSON: Your Honor, I would just like to
16 note her mother --- I know they stood and were
17 recognized, but her mother Nancy, as well as her
18 brother, as well Anthony Vaughn, sister April and
19 sister-in-law Mary Vaughn were present in that group,
20 as well. And one more thing I neglected, Your Honor,
21 this defendant while he's been incarcerated has had a
22 number of disciplinary issues at the Alvin S. Glenn
23 Detention Center to include things such as spitting on
24 officers and things of that nature.

25 Even during the course of this trial it's my

Sentencing

1 understanding that he spit on one of the deputies
2 working in this courthouse, and that would be all for
3 the State.

4 THE COURT: All right. Mr. Krzyston.

5 MR. KRZYSTON: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, sir.

8 MR. KRZYSTON: Thank you. Your Honor, Mr. Young
9 has maintained his innocence since he was initially
10 arrested on this matter. When he was initially
11 arrested, he was 18 years of age. At the time he had
12 two kids, still has two children, and was holding
13 doing two jobs. Again, Mr. Young main takes his
14 sentence. We ask for a sentence to be imposed in the
15 range of 30 years.

16 THE COURT: All right. Mr. Young, you do not
17 have to, but you are welcome to tell me anything you
18 wish to. It's your decision.

19 MR. KRZYSTON: He does not wish to speak, Your
20 Honor.

21 THE COURT: Very well. Thank you very much. I
22 understand that.

23 All right. We're going to start with the
24 kidnapping charge. I know I explained this during the
25 trial. I'm going to explain this again. Under South

Sentencing

1 Carolina code section 16-3-910, the kidnapping charge,
2 the conviction will stand. However, the sentence will
3 be vacated and that is pursuant to 16-3-910, when
4 there is a charge --- a case that involves kidnapping
5 and murder in the same incident, then the sentences
6 are not allowed to run together and the sentence must
7 be vacated so I'm beginning by vacating the kidnapping
8 section. I did not create that law. I'm merely
9 enforcing that law, and I have read multiple cases on
10 the issue, and I am confident that I am required to
11 vacate any kidnapping sentence. I'm not vacating the
12 conviction. The conviction will stand. I'm merely
13 vacating the sentence imposed. On the burglary in the
14 second degree, the sentence of the Court is that you
15 be committed to the State Department of Corrections
16 for 15 years. You are not allowed to have any contact
17 with the victim's family. On the attempted armed
18 robbery, the sentence of the Court is that you be
19 committed to the State Department of Corrections for
20 20 years. You're not allowed to have contact with the
21 victim's family. On both of those charges, you will
22 be given credit for time served that you have
23 currently done.

24 On the murder charge, the sentence of the Court
25 is that you be committed to the State Department of

1 Corrections for a sentence of life without the
2 possibility of parole. All of these sentences are to
3 be run consecutive to each other. Thank you very
4 much.

5 MS. SIMPSON: Thank you, Your Honor, Your Honor.

6 THE DEFENDANT: I didn't do shit. I didn't do
7 nothing.

8 (WHEREUPON, Court's Exhibit Number 20 was
9 marked for identification only.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Vicki Everhart, Transcriptionist for 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 General Sessions for Richland County, South Carolina, on the 10th through 19th days of November, 2014.

February 26, 2015

/s/ Vicki Everhart

Vicki Everhart,
Transcriptionist for

Karen Ambroziak,
Circuit Court Reporter

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT

APPELLATE CASE NO. 2014-002548

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting an unredacted letter written by appellant's co-defendant that implicated appellant by name in the murder over appellant's hearsay objection, and in not granting a mistrial after appellant's objections that no limiting instruction could be sufficient?

STATEMENT OF THE CASE

On February 19, 2014, a Richland County grand jury indicted appellant for murder, kidnapping, second-degree burglary, and attempted armed robbery. R.1619 Appellant was indicted along with Trenton Barnes ("Barnes") and Troy Stevenson ("Stevenson"). Barnes and Stevenson are brothers. On November 10, 2014, Appellant and Barnes were tried together before the Honorable Robert Hood and a jury. R 1. Dolly Garfield, Luck Campbell, and Nicole Simpson represented the State. R 1. Tracy Pinnock, Stephen Krzyston, and Jacqueline Bambach represented appellant. R 1. Mark Schnee represented Barnes. R 1. The jury convicted both defendants on all charges. R. 1593, l. 8 – 1594, l. 8. Judge Hood sentenced appellant to consecutive terms of fifteen years' imprisonment for burglary, twenty years' imprisonment for attempted armed robbery, and life imprisonment without the possibility of parole for murder. R. 1612, l. 13 – 1613, l. 4. This appeal follows.

ARGUMENT

The trial court erred in admitting an unredacted letter written by appellant's co-defendant that implicated appellant by name in the murder over appellant's hearsay objection, and in not granting a mistrial after appellant's objections that no limiting instruction could be sufficient.

Introduction

Despite a multi-day trial, a parade of witnesses, and a video of the murder, the evidence against Lorenzo Young ("Young") was scant. The best evidence the State could produce against Young for the murder of Kelly Hunnewell ("Hunnewell") was from the mouths of jailhouse snitches. The State chose to try Young jointly with his co-defendant, Trenton Barnes ("Barnes"). From jail, Barnes wrote a letter to his mother minimizing his participation in the burglary and murder and implicating Young by name as the ringleader. State's Ex. 404. Barnes did not testify. The unredacted letter was admitted over Young's hearsay objection, objection to the limiting instruction, and Young's motion for a mistrial was denied. R. 637, ll. 9 – 22. R. 673, l. 10 – 677, l. 6.

The Evidence Against Young other than the Barnes Letter

In the middle of the night on July 1, 2013, Teresa Baskin ("Baskin") woke up to go to the bathroom. R. 259, ll. 16 – 22. She went to the kitchen to get some water and looked out of her window. R. 259, ll. 19 – 25. She looked across the street where a bar called the Ale House Lounge and a bakery were located. R. 260, ll. 1 – 6. R. 255, ll. 2 – 6. The lights of the bar were off and there were no cars in the parking lot. R. 260, ll. 1 – 6. She could see the light from the open bakery door. R. 260, ll. 1 – 6.

Baskin went back to bed and as “soon as I sat on the edge of the bed, I heard a woman scream.” R. 260, ll. 9 – 12. She then heard gunshots. R. 260, ll. 13 – 17. She called the police and they arrived within “two to three minutes.” R. 260, l. 24 – 307, l. 10. Baskin looked out the window while she was waiting on the police and saw nobody outside. R. 264, ll. 8 – 13.

The first officer on the scene responded to Baskin’s house. R. 248, ll. 14 – 21. It was approximately 3:44 AM. R. 248, ll. 13 – 21. The officer noticed the door to the bakery was open. R. 249, ll. 16 – 19. He walked inside the building and saw a woman “laying on the floor to my right in a pool of blood.” R. 250, ll. 6 – 11. The woman was Hunnewell. R. 268, ll. 13 – 14. She was an employee of the bakery. R. 364, ll. 20 – 23. The officer secured the scene and waited on investigators and EMS. R. 250, l. 12 – 253, l. 24. He noticed shell casings in the room. R. 252, l. 17 – 253, l. 7.

The crime scene investigator collected a DVR from the bakery. R. 288, ll. 15 – 22. He also collected six shell casings and projectiles and pieces of projectiles. R. 322, l. 14 – 323, l. 22. Some of the shell casings were .45 caliber GAP. R. 304, l. 9 – 309, l. 10. The other shell casings were .40 caliber. R. 304, l. 9 – 309, l. 10. After viewing surveillance video from the DVR that depicted “the actual shooting incident” the crime scene investigator swabbed items that it appeared the suspects had touched for DNA evidence. R. 326, l. 16 – 335, l. 13. The police collected a large spoon that, from the video, it appeared Hunnewell used to strike one of the suspects and also swabbed the spoon for DNA evidence. R. 333, ll. 7 – 17. The police did not attempt to collect any fingerprints from the scene. R. 344, ll. 17 – 19.

The video from the bakery was played for the jury. R. 446, ll. 9 – 15. State's Exhibit 323. There is no audio. State's Exhibit 323. Four different angles are shown on the bakery video. State's Exhibit 323. One angle shows the door to the bakery. State's Exhibit 323. A man wearing a red hooded sweatshirt walks into the bakery. State's Exhibit 323. Another man wearing a gray hooded sweatshirt follows behind him. State's Exhibit 323. Neither man's face can be seen. State's Exhibit 323. The two men disappear from this camera angle. State's Exhibit 323. While these two men are off-screen, another man wearing a dark hooded sweatshirt can be seen in the bakery's doorway. State's Exhibit 323. He appears to leave. State's Exhibit 323. The man in the red sweatshirt then runs out of the bakery. State's Exhibit 323. The man in the gray sweatshirt follows, running. State's Exhibit 323.

Another camera angle shows the kitchen area of the bakery. State's Exhibit 323. Hunnewell can be seen working. State's Exhibit 323. She is stirring a pot on the stove with a long-handled spoon. State's Exhibit 323. The man in the red sweatshirt comes up behind her and points a gun at her head. State's Exhibit 323. The man in the gray sweatshirt also has a gun and approaches Hunnewell. State's Exhibit 323. Hunnewell fights the two men with the spoon. State's Exhibit 323. Hunnewell is shot and collapses immediately to the floor. State's Exhibit 323. The two men flee. State's Exhibit 323. A police investigator testified that the sweatshirts were "Hollister" brand which she knew because she also wore that brand of clothing. R. 450, ll. 7 – 11. Just as in the other camera angle, neither man's face can be seen. State's Exhibit 323.

The police tested the spoon for DNA. R. 928, ll. 8 – 10. The State's expert testified that the DNA profile was a mixture of "at least three individuals." R. 928, l. 11

– 929, l. 7. Hunnewell, Young, and Barnes could not be excluded from the mixture. R. 928, ll. 11 – 15. Neither could one-third of the planet's population be excluded from the mixture on the spoon; the DNA expert testified that the “probability of randomly selecting an unrelated individual that could have contributed to this mixture is approximately one in three.” R. 928, ll. 12 – 18. On cross-examination, the expert admitted that she could not “definitively say that they contributed DNA. I can say that they are included as possible contributors, but I can't definitively say that [they] are contributors.” R. 969, ll. 12 – 18.

The State called Donald Moore (“Moore”) as a witness and impeached him with a prior statement that Moore testified was a complete lie. R. 570, ll. 10 – 16. Moore testified, “I told them I lied about all that. There wasn't nothing in that confession true.” R. 570, ll. 10 – 14. He reiterated, “None of it” was true. R. 570, ll. 15 – 16. Moore said he made up his statement because he thought “word on the street” was that he was a participant in the murder. R. 595, ll. 5 – 7. Moore admitted that he originally told police that Young and Stevenson had been talking about robbing the Ale House. R. 572, ll. 9 – 12. Moore also told the police that he saw Young with “a Glock 40.” R. 573, ll. 17 – 25. Moore watched the video from the bakery and originally told police he thought the two men who entered the bakery were Stevenson and Young, with Young wearing the red hoodie. R. 577, ll. 21 – 23. R. 581, ll. 24 – 25. Moore eventually admitted on cross-examination that he made up his story and incriminated Young and Stevenson to clear his own name. R. 594, l. 3 – 595, l. 18.

The police obtained surveillance video from the Ale House, located next door to the bakery. R. 402, ll. 5 – 20. State's Exhibit 325. The bakery can be seen from the Ale

House video. State's Exhibit 325. Two people can be seen standing outside of the bakery. State's Exhibit 325. R. 445, l. 20 – 446, l. 8. They cannot be identified because of the video's poor quality. State's Exhibit 325.

Three jailhouse snitches claimed Young confessed to the murder. The first snitch was Alfred Wright ("Wright"). Wright claimed he met Young one time in the library at the jail. R. 698, ll. 15 – 22. Despite only meeting Wright this one time, Young supposedly told Wright that he, Barnes, and Stevenson originally intended to rob a club, but then robbed the bakery because the club was closed. R. 700, ll. 3 – 20. When the woman in the bakery resisted "and swung a knife at them," Young "shot her two times." R. 700, ll. 5 – 13. Wright had pending charges for murder, first-degree burglary, criminal conspiracy, and armed robbery. R. 703, ll. 9 – 11. As can be seen on the video, Hunnewell never has a knife.

The second jailhouse snitch to testify was Michael Peterson ("Peterson"). Peterson also claimed to have encountered Young in the law library at the jail. R. 788, ll. 3 – 10. According to Peterson, Young confessed to robbing the bakery and shooting Hunnewell after she started to use her cell phone to call the police. R. 788, l. 3 – 789, l. 13. Peterson had a pending charge for murder. R. 799, ll. 15 – 19. As can be seen on the video, Hunnewell never uses a cell phone.

The last jailhouse snitch to testify was Michael Schaefer ("Schaefer"). Schaefer claimed he met Young on several occasions at the jail. R. 873, ll. 17 – 22. Young supposedly told Schaefer that they intended to rob the night club, but when it was closed they entered the bakery. R. 874, ll. 8 – 17. When the woman in the bakery struggled, Young shot her twice and fled the scene. R. 874, ll. 8 – 17. Young supposedly admitted

wearing a red hoodie and jeans. R. 874, ll. 8 – 17. At the time Schaefer supposedly heard the statements from Young, he had three counts of armed robbery pending. R. 879, ll. 5 – 9. Schaefer pled guilty and received a twelve year sentence. R. 879, ll. 12 – 18.

The Barnes Letter

Latoya Barnes was the mother of Barnes and Stevenson. R. 602, ll. 12 – 19. She testified she received a letter from Barnes that was sent from jail. R. 617, ll. 1 – 22. When the State offered the letter into evidence, appellant objected. R. 617, l. 23 – 618, l. 1. Judge Hood sent the jury out and heard argument on the admissibility of the letter. R. 618, l. 2 – 637, l. 22.

The letter was written by Barnes to his mother and blames Young for the robbery and murder. State's Ex. 404. The letter is dated March 31, 2014, and reads in full as it was eventually admitted by the trial court:

Your Son

Trenton. B

Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis **and renzo was on the phone** with his baby mama we was the only two up and **he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick** and then I was like I don't know bruh I'm koolin talking to my lady **and he was like money come first.** I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me **renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing** then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me

do I have a gun and I said no but I know way one at he said way at and I said I know way Shorty be putting his gun at out side so I took him to it and he pulled out his gun and said which one you won't and I said the small one then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped's and drit bikes and **he was like just a lul lick so we was at the bar down the street** from the house it started raining hard and I was like I'm bout to go home **and he said hold on lul bruh then he was like damm they closed** so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody **he was like come on then we was by the door and I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back **then renzo walk into the place and I went behind him then he grabed her and put the gun to her head** and told me to get in front of her and she swang at me and I closed my and jump I got scared ma I didn't want to do it. I'm sorry. I said it was troy because **I was scared to go to jail with renzo by myself** im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me im going to prison for a long time love you mama I just wanna come home real soon not no grown man.

Love You MAMA
Your BaBy Boy
Trenton

State's Exhibit 404 (errors in original) (emphasis added).

Young argued the letter was hearsay and, while possibly admissible as a statement against interest against Barnes, was not admissible against Young.¹ R. 618, ll. 7 – 619, l. 13. R. 620, ll. 6 – 621, l. 17. Counsel argued that, “The statement against interest for Mr. Barnes does not apply to Mr. Young.” R. 623, ll. 15 – 21. The State argued the letter was “not hearsay because it’s an issue against interest against Mr. Barnes.” R. 624, ll. 17 – 19. The solicitor said she would “have no problem with” a limiting instruction. R. 624, ll. 17 – 23.

After extensive argument on hearsay, the trial judge ruled, “The letter is in.” R. 627, l. 15 – 637, l. 22. The court ruled that the letter “falls under a hearsay exception, that being 804(b)(3).” R. 637, ll. 9 – 22. “It has an inherent level of trustworthiness and based on the corroborating circumstances, the [letter] is in over Defendant Young’s objection.” R. 637, ll. 9 – 22.

Citing to Bruton v. United States, 391 U.S. 123 (1986), appellant argued that no curative instruction could remedy the prejudicial effect of the letter against Young. R. 637, l. 25 – 638, l. 5. The trial judge disagreed and directed appellant to draft a limiting instruction. R. 638, ll. 8 – 17. When the jury returned, the letter was admitted into evidence over objection. R. 639, ll. 20 – 25. Latoya Barnes testified the letter was in Barnes’ handwriting and that she recognized her son’s signature. R. 640, ll. 4 – 7.

The State’s next witness was a handwriting expert. R. 653, l. 22 – 655, l. 22. The expert read the letter to the jury. R. 657, l. 23 – 661, l. 2. Using “blow-ups” of the letter and handwriting samples from Barnes, the expert testified that Barnes wrote the letter. R. 662, l. 8 – 669, l. 4.

Following the expert’s testimony, appellant renewed his objection and moved for a mistrial. R. 673, l. 6 – 675, l. 20. Again citing Bruton, trial counsel also explained that while he wanted a limiting instruction, he objected to its sufficiency because it was insufficient to cure the prejudice. R. 674, l. 11 – 675, l. 22. The trial judge denied the mistrial motion and stated he would give the limiting instruction. R. 676, ll. 10 – 18. The trial judge gave the following limiting instruction when court began the next morning:

¹ Appellant did not argue that the letter was testimonial for Confrontation Clause purposes under Crawford v. Washington, 541 U.S. 36 (2004). Tr. 668, l. 16 – 669, l. 21.

Members of the jury, the State has introduced a letter purported to be written by Trenton Barnes. Now, you heard about this letter last night. The admission of this evidence, the admission of the letter is only to be considered against Trenton Barnes. This evidence cannot be considered against Mr. Young at all.

You are not to weigh this evidence whatsoever when considering if the State has met their burden of proof against Lorenzo Young, so that's a further instruction that I'm giving you on things that are not evidence. Essentially the letter would not be evidence against Mr. Young, and so you are to disregard the letter in regards to Mr. Young's involvement.

R. 696, l. 22 – 697, l. 11.

Discussion

The trial judge erred in admitting the Barnes letter and in not granting a mistrial when the limiting instruction was wholly insufficient. The trial judge admitted the letter under Rule 804(b)(3). Rule 804(b)(3), SCRE. Under this exception to the hearsay rule, even if a witness is unavailable, a statement against the declarant's interest is admissible. Rule 804(b)(3), SCRE. Included as a statement against interest is a statement that subjects the declarant to criminal liability. Rule 804(b)(3), SCRE.

While the Barnes letter would satisfy these grounds for admissibility in a trial solely against Barnes, it is not admissible against Young. In a case cited by appellant to the trial court, the United States Supreme Court singled out statements made by a co-defendant as unreliable and inadmissible in these circumstances. Williamson v. United States, 512 U.S. 594 (1994). In Williamson, a man named Harris was arrested with a car full of cocaine. Id. at 596. Shortly after his arrest, Harris told police the cocaine belonged to Williamson and he was transporting the cocaine to Atlanta for Williamson. Id. at 596-97. During Williamson's trial, Harris refused to testify. Id. at 597. The government called the police officer to whom

Harris had confessed and implicated Williamson. Id. at 597-98. The district court ruled the officer could testify about Harris' statements under Rule 804(b)(3). Id.

The United States Supreme Court reversed. Id. at 598-605. The Court observed that the "fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts." Id. at 599. "One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature." Id. at 599-600. "And when part of the confession is actually self-exculpatory, the generalization on which Rule 804(b)(3) is founded becomes even less applicable." Id. at 600. "The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, **and this is especially true when the statement implicates someone else.**" Id. at 601 (emphasis added).

Quoting Lee v. Illinois, 476 U.S. 530, 541 (1986), the Williamson Court stated, "[T]he arrest statements of a codefendant have traditionally been viewed with special suspicion. Due to his strong motivation to implicate the defendant and exonerate himself, a codefendant's statements about what the defendant said or did are less credible than ordinary hearsay evidence." Williamson at 601. In concurrence, Justice Scalia noted, "A person arrested in incriminating circumstances has a strong incentive to shift blame or downplay his own role in comparison with that of others, in hopes of receiving a shorter sentence and leniency in exchange for cooperation." Id. at 607-08 (Scalia, J., concurring). See also Lilly v. Virginia, 527 U.S. 116 (1999).

Our Supreme Court interpreted Rule 804(b)(3), Lilly, and Williamson in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). In Fuller, the Court ruled a third-party accomplice's confession that implicated the defendant was not admissible. Fuller at 243-45, 523 S.E.2d at 172. The Court stated, "The U.S. Supreme Court has held that third-party statements such as the one involved in this case are inherently unreliable." Id. Fuller distinguished the Federal Rules of Evidence as containing a "catchall exception" which South Carolina has expressly chosen not to adopt. Id.

The Barnes letter contains all of the problems recognized by Williamson and Fuller. In the letter, Barnes tries to downplay his own role. State's Exhibit 404. He repeatedly portrays himself as reluctant to do anything with "renzo." State's Exhibit 404. The plan is Young's. State's Exhibit 404. The guns are Young's. State's Exhibit 404. The decision to go into the bakery is Young's. State's Exhibit 404. Just as observed by Justice Scalia in Williamson, Barnes tries to minimize his role and blame Young.

Barnes also has another powerful motivation that makes the letter unreliable: protecting his brother, Stevenson. The letter purports to exonerate Stevenson. State's Exhibit 404. In the letter, Stevenson merely shows up as Young is entering the bakery and is waving at Barnes. State's Exhibit 404. Barnes retracts earlier statements implicating his brother because he was scared of going to jail with "renzo" by himself. State's Exhibit 404. Because of the triple motivation of minimizing his own role, blaming Young, and exonerating his brother, the Barnes letter is inherently unreliable and should not have been admitted in Young's trial.

The State's decision to try Young and Barnes together created this problem that the trial judge's limiting instruction could not solve. There can be no dispute that the

letter fully blames Young for the murder. The letter was not redacted. The court's limiting instruction was insufficient—as any limiting instruction would have been.

In Bruton v. United States, 391 U.S. 123 (1986), the trial court gave a limiting instruction that “a codefendant’s confession inculcating the defendant had to be disregarded in determining his guilt or innocence.” Bruton at 123-24. In reversing, the Court held that a limiting instruction was insufficient when dealing with a codefendant’s confession in a joint trial. Id. at 130-32. The Court held:

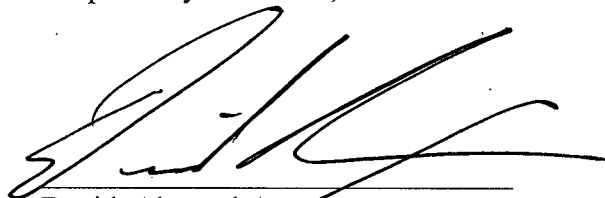
In joint trials, however, when the admissible confession of one defendant inculcates another defendant, the confession is never deleted from the case and the jury is expected to perform the overwhelming task of considering it in determining the guilt or innocence of the declarant and then of ignoring it in determining the guilt or innocence of the any codefendants of the declarant. A jury cannot segregate evidence into separate intellectual boxes. It cannot determine that a confession is true insofar as it admits that A has committed criminal acts with B and at the same time effectively ignore the inevitable conclusion that B has committed those same criminal acts with A.

Id. at 130-31 (internal quotations omitted). The exact problem the Court held could not be solved with a limiting instruction in Bruton exists in this case. The jury could not reasonably be expected to ignore the Barnes letter with respect to Young’s guilt. The prejudice to Young was enormous. See, e.g. State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014) (holding that even a redacted confession by a codefendant mandated reversal). The trial judge should have recognized that the extreme prejudice to Young could not be cured by any limiting instruction and granted a mistrial after the letter’s admission. This Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

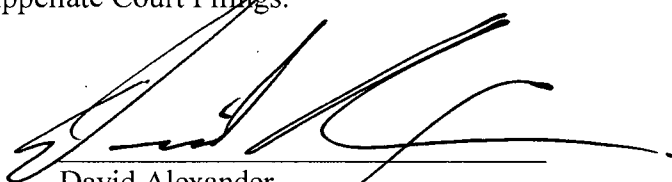
ATTORNEY FOR APPELLANT

This 3rd day of February, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 3rd, 2016



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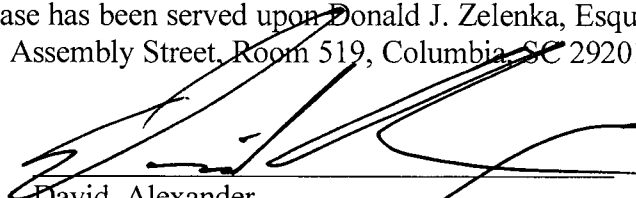
V.

LORENZO BERNARD YOUNG,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of February, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2016



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

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ORIGINAL

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in admitting an unredacted letter written by appellant's co-defendant that implicated appellant by name in the murder over appellant's hearsay objection, and in not granting a mistrial after appellant's objections that no limiting instruction could be sufficient?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

The trial judge did not abuse his discretion in admitting a nontestimonial inculpatory statement of a co-defendant when the statement was an exception to the hearsay rule pursuant to 804(b)(3) and was independently corroborated by other evidence. Because the letter was admissible against both defendants, the judge's limiting instruction caused no prejudice to Appellant.

RESPONDENT'S STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant, Lorenzo Young, in February 2014, for murder, kidnapping, second degree burglary, and attempted armed robbery. (Indictments.) The grand jury also indicted Trenton Barnes (Barnes) and Troy Stevenson (Stevenson). (R. p. 1.)

On November 10, 2014, Appellant's case was called to trial before the Honorable Robert Hood. (R. p. 1) Appellant and Trenton Barnes were tried jointly. (R. p. 1). Steven Krzyston, Esquire, represented Appellant during the trial. (R. p. 1). Mark Schnee, Esquire, represented Barnes. (R. p. 1) Assistant Solicitors Dolly Garfield, Kathryn Campbell, and Nicole Simpson represented the State. (R. p. 1.) The jury returned verdicts of guilty as to all charges. (R. p. 1593, line 8 - p. 1594, line 8.) Judge Hood sentenced Appellant to life imprisonment without the possibility of parole for murder, and consecutive terms of fifteen years' imprisonment for burglary and twenty years' imprisonment for attempted armed robbery. (R. p. 1612, line 13 – p. 1613, line 4.)

Appellant filed a timely notice of appeal. This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

In the early morning hours of July 1, 2013, Theresa Baskin heard screams of terror from thirty-three year old Kelly Hunnewell, who worked the early morning shift in the off-site bakery for the Carolina Café. (R. p. 259, line 13 – p. 260, line 20.) Baskin, who lived across the street from the bakery on Tommy Circle, heard the dying words of the mother of four after she was shot by Lorenzo Young (Appellant) and his co-defendant Trenton Barnes (Barnes) in a robbery (R. p. 258, lines 21-23; p. 260, lines 15-20.)

Hunnewell arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (R. p. 364, line 2 - p. 365, line 6.) She would typically work until 11:00 am so she could go home and care for her four young children. (R. p. 365, lines 1-18.) On the morning of the murder, Appellant and Barnes intended to rob the nearby Original Ale House. (R. p. 255, lines 2-16.) However, when they realized the bar was closed, Appellant and Barnes chose the next most convenient victim. Hunnewell was in the bakery next door with the lights on and the door propped open. (R. p. 260, lines 3-6.) The men approached Hunnewell, who was working at the stove and had her back to the door. (R. p. 1401, line 20 – p. 1402, line 2.) The suspect in the red hoodie pointed his gun at her head. (R. p. 1402, line 19 – p. 1403, line 19.) After a struggle in which Hunnewell tried to defend herself, the men shot her multiple times. (R. p. 1403, line 17 – p. 1404, line 24.) Kelly Hunnewell collapsed on the floor with a bullet lodged in her back, drowning in her own blood. (R. p. 1009, line 16; p. 1016, lines 2-21.)

Hunnewell's neighbor heard her screams and called the police. (R. p. 261, lines 1-8.) The police arrived within minutes and found Hunnewell dead on the floor. (R. p. 261, lines 9-10; p. 248, line 14 - p. 250, line 11; p. 266, lines 15-20.) The police processed the

scene, collecting four .45 Glock Automatic Pistol (G.A.P.) shell casings, two .40 caliber Smith and Wesson casings, projectiles and video surveillance footage. (R. p. 252, line 5 - p. 253, line 9; p. 281, lines 3-11; p. 305, lines 10-14; p. 307, lines 20-25; p. 326, line 16- p. 327, line 11; p. 1281, line 22 - p. 1283, line 10.) The bakery's security cameras recorded the murder from several different points of view. (R. p. 388, line 6 - p. 389, line 4.) In the video, Hunnewell is seen working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (R. p. 446, line 9 - p. 447, line 3.) The suspects point guns at her and shoot her. A third suspect comes to the door as the shooting begins, and the three suspects flee.

Investigators canvased the area around the bakery to look for witnesses. (R. p. 418, line 11 - p. 419, line 24.) The police released the video to the media in an effort to gain more information about the perpetrators. (R. p. 1100, line 21 - p. 1101, line 9.) Police received tips identifying Appellant and brothers Trenton Barnes and Troy Stevenson as the men who committed the crime. (R. p. 409, line 14 - p. 410, line 14; p. 420, line 4 - p. 422, line 4; p. 1103, line 21 - p. 1104, line 21; p. 1108, lines 6-18.) All three suspects lived near the bakery. (R. p. 611, lines 12-17; p. 1093, lines 15-24; p. 1149, line 11 - p. 1150, line 20.)

Donald Moore, a friend of Trenton Barnes and Troy Stevenson, testified under subpoena for the State. (R. p. 568, line 1 - p. 569, line 22; p. 587, lines 11-14.) Though he recanted his story later, he testified he contacted the police after he saw the story about the murder on television. (R. p. 570, line 10 - p. 571, line 15.) Moore told police Young and Stevenson talked about robbing the Ale House before the murder. (R. p. 572, lines 9 - 15.) Moore also told police he saw Young showing off a Glock gun prior to the murder,

and told Young to put the gun away because of the nearby children. (R. p. 573, line 17 – p. 575, line 17.) Moore also identified Young in the video as the man wearing the red hoodie. (R. p. 576, line 19 – p. 577, line 23.)

Based upon Moore's information, the police obtained and executed a search warrant for Appellant and his girlfriend Rolanda Coleman's home, in which they found ammunition of the same caliber as those found near the body of Hunnewell. The search produced live rounds from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (R. p. 736-739.) Crime scene analysts also found a Glock magazine in Coleman's purse and several pairs of black gloves. (R. p. 734-735.) Furthermore, the police confiscated a pair of black, Nike shoes and a scan disc, camcorder, laptop, and two cell phones. (R. p. 746-749.) Testing later revealed gunshot residue on the black gloves. (R. p. 772, lines 7-14.)

Rolanda Coleman, told police Appellant spent the evening before the murder with Troy Stevenson, and he called his mother the morning after to pick him up from Stevenson's home. (R. p. 477, line 18 – p. 480, line 25.) She stated Appellant returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (R. p. 471, lines 17-24; p. 481, line 21 – p. 482, line 24.) Shortly after seeing a news video about the murder, Coleman overheard a conversation between Appellant and his mother in which his mother told Appellant to get rid of the gun. (R. p. 488, lines 1-9.) Coleman also testified she recognized the man wearing the grey hoodie in the video as Trenton Barnes. (R. p. 488, line 10 – p. 489, line 15.)

Barnes' mother testified her sons were at her house with Appellant the night of the murder. (R. p. 603, lines 1-24.) She testified Barnes and Appellant left the house

around midnight. (R. p. 604, lines 5-14.) She stated around three in the morning, she received a phone call from Appellant, asking to talk to another man staying at her house. (R. p. 605, line 14 – p. 606, line 8.) Cell phone records confirmed these calls. (R. p. 1047, line 8 – p. 1048, line 3.) The second time Appellant called, Ms. Barnes told Appellant to send her son, Barnes, home. (R. p. 606, line 21 – p. 607, line 7.) She testified after a few minutes, she sent her other son, Troy Stevenson, to locate the men to bring his brother home. (R. p. 608, lines 2-20.) Ms. Barnes testified Appellant was wearing a red hoodie when he left the house and Barnes was wearing a grey hoodie, which she could identify from a tear in the fabric. (R. p. 610, lines 3-19.) When Stevenson left to look for his brother, he was wearing a dark jacket. (R. p. 610, line 23 – p. 611, line 8.) After Barnes was arrested he wrote a letter to his mother implicating himself and Appellant in the crime. (R. p. 617, lines 1-22.)

Mary Brown, a neighbor and acquaintance of Appellant, Barnes and Stevenson, also saw the men wearing the red and grey hoodies the night of the robbery. (R. p. 846-849.) Brown saw the video released to the news media and recognized Appellant and his codefendant, but did not know their names. (R. p. 851, line 6 – p. 854, line 18.)

Following his arrest, Appellant approached inmate Dominique Wright to assist him in the defense of his case. (R. p. 698, line 17 – p. 699, line 10.) Wright was helping another inmate with some legal work when Appellant overheard the men discussing the “stand your ground law.” (R. p. 701, lines 7-10.) Appellant told Wright he and two other men intended to rob a club, but because the club was closed, they went next door to a bakery. (R. p. 700, lines 5-13.) Appellant told Wright when the woman in the bakery resisted, he shot her twice. (R. p. 700, lines 10-13.) Wright testified Appellant sought his

advice to discuss how he could use the victim's efforts to defend herself as an advantage in reducing his charge. (R. p. 701, lines 13-15.) Wright documented what Appellant told him and sent the information to an investigator, who passed it on to the solicitor's office. (R. p. 702, line 19 – p. 703, line 5.)

Another inmate, Michael Peterson, testified Appellant discussed the murder with him while they were in the law library together. (R. p. 787, line 11 – p. 788, line 8.) After Appellant heard Peterson was familiar with the law, he asked for help. (R. p. 788, lines 7-10.) Appellant explained to Peterson he “went on this lick.” (R. p. 788, lines 18-19.) When Peterson asked Appellant if he meant the bakery job on Beltline, Appellant confirmed, saying, “yeah, it was all over the news.” (R. p. 788, lines 18-20.) Appellant told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (R. p. 789, lines 1-4.) Appellant told Peterson, “The police don't have nothing. We had on masks and gloves.” (R. p. 789, lines 10-13.) Appellant told Peterson he was not concerned because the police only found shell casings and identified him from the clothing he wore that night. (R. p. 790, line 7 – p. 791, line 1.) Peterson testified he later overheard Troy Stevenson and Appellant discussing the robbery in the prison showers. (R. p. 797, lines 1-11.) Peterson said Appellant was nervous, though he reassured Stevenson the police only had shell casings. (R. p. 797, lines 1-25.)

Michael Schaefer, another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Appellant while they were housed together in the same dorm. (R. p. 872, line 13 – p. 873, line 19.) Schaefer and Appellant discussed their respective cases, and Schaefer testified to the following:

Okay, he said him and two other people by the name of Trap [Stevenson] and Trigg [Barnes] went out to rob a nightclub in the area, but

it was closed. They saw the bakery was opened. They took that as an opportunity to go in.

The woman was in there. He said she went for a knife she was struggling so he shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

(R. p. 874, lines 10-17; 875, lines 7-15.) Schaefer told his lawyer about the exchange, and his lawyer advised him to turn the information over to the solicitor's office. (R. p. 877, lines 11-24.) Schaefer also testified he spoke to Appellant around the holidays, expressing remorse for his own crime of robbing a bank. Schaefer testified Appellant responded, "Well, I shouldn't have shot that bitch." (R. p. 878, lines 1-7.)

Investigator VanHouten, of the Columbia office of the Secret Service, performed the data analysis of the cell phone associated with Appellant. (R. p. 1234, line 13 – p. 1237, line 4.) VanHouten was able to recover video and photos of Appellant wearing a red hoodie and jeans. (R. p. 1239, line 1 – p. 1240, line 7.) VanHouten was also able to recover web searches from Google Chrome in which Appellant searched for the media released videos of the murder of Kelly Hunnewell. (R. p. 1242, lines 3-11.) Vanhouten found cached images from the video released to the media of the suspect in the red hoodie and blue jeans, as well as the kitchen crime scene. (R. p. 1244, line 11 – p. 1245, line 25.)

Samples taken from the crime scene and the victim's body did not produce a large enough DNA sample suitable for comparison to a full DNA profile. (R. p. 914 – 941.) However, a small portion of DNA found on the front of the large metal spoon Hunnewell used to defend herself could not exclude the DNA of Appellant and Barnes. (R. p. 333, lines 12-17; p. 928, lines 8-18.)

ARGUMENT

The trial judge did not abuse his discretion in admitting a nontestimonial inculpatory statement of a co-defendant when the statement was an exception to the hearsay rule pursuant to 804(b)(3) and was independently corroborated by other evidence. Because the letter was admissible against both defendants, the judge's limiting instruction caused no prejudice to Appellant.

Introduction

Co-defendant Barnes' nontestimonial letter to his mother qualifies as a statement against interest under 804(b)(3) because Barnes sufficiently inculpatates himself in the same criminal activity as Appellant. Viewed in context, as opposed to a testimonial confession or statement to police, Barnes had no reason believe he would incur favor or leniency by writing the letter to his mother. Though the letter incriminated Appellant as well as Barnes, other independent evidence corroborated the statement and implicated both men as the perpetrators of the crime. S.C.R.E. 804(b)(3) does not limit a statement to use only against the party making the statement. Thus, the letter is an exception to the hearsay rule as a statement against interest, and may be offered against the declarant and his co-defendant.

How the Issue Was Raised at Trial

The State sought to introduce the letter written by co-defendant Barnes to his mother while Ms. Barnes was on the stand. (R. p. 617.) Counsel for Appellant objected to the introduction of the letter, and the court excused the jury. (R. p. 618, lines 2-4.) Counsel for the State and defense submitted case law to the judge supporting their arguments for and against the admissibility of the letter. (R. p. 619, line 15 – p. 620, line 12.) Defense counsel objected to the letter on the basis of hearsay not falling within the the S.C.R.E. 804 (b) (3) exception as it applied to his client. (R. p. 623, line 22 – p. 624,

line 10.) Contrarily, the State argued the letter was non-testimonial, and as such, should be admitted as an exception under the Rule 804 (b)(3) against Barnes. The following is an excerpt of the pertinent portions of the arguments:

MS. PINNOCK: May it please the Court, Your Honor. The item that the solicitor is attempting to introduce is a letter written by Trenton Barnes to his mother that includes Lorenzo Young in the body of the letter. This was brought to Your Honor's attention earlier this week in chambers. There was mention of them trying or suggesting it be redacted to remove any mention of Mr. Young, but it is a statement written by Mr. Barnes. We are not going to be cross-examining about Mr. Young and think that he did or alleged to have done, and it's a – it's a due process violation at this point.

It's not a statement was taken by law-enforcement, but it is still a statement against our client offered by a witness that we do not have the opportunity to cross-examine, so it is a due process issue at this point and a fundamental fairness violation with our right to a fair trial. They're introducing the statement written by a non-testifying witness. So as far as Mr. Young's case, that letter in its entirety is hearsay.

I understand it's admissible against Mr. Barnes, but is not admissible against Mr. Young. The only solution I can come up with is either excluded from evidence because we are being tried jointly, it is a violation of his constitutional rights to have that introduced into evidence. I don't believe that any curative instruction would be able to only get a jury to consider that only against Mr. Barnes and not Mr. Young, so our right to a fair trial at this point is going to be violated when that letter is introduced.

THE COURT: Ms. Campbell.

MS. CAMPBELL: May it please the Court. This was nontestimonial. This was not taken by police officers. This was mentioned in court the other day. Quite frankly, I thought they might make a motion on this, but there was no pretrial motion to exclude this. We did hand of case law. We handed up United States Supreme Court, I believe, in the Garvin case.

THE COURT: 4th Circuit Court of Appeals.

MS. CAMPBELL: I'm sorry, yes, 4th Circuit.

MS. PINNOCK: Your Honor, can I see your copy so I can –

MS. CAMPBELL: I gave it to you.

THE COURT: US vs. Garvin 738 – – –

MS. PINNOCK: That was a few days ago.

MS. CAMPBELL: I believe, pursuant to that case, Your Honor, the letter would comment in its entirety.

MS. PINNOCK: And, Your Honor, I would cite *Williamson v. United States*. It's a US Supreme Court case 512 U.S. 594, as well as *State v. Fuller*. The Supreme Court of South Carolina 1999. Its 337 S.C. 236 and

Lilly v. Virginia. I do apologize. I don't have the cite for that one, but I could get the site. I can't seem to find it.

THE COURT: Do any of those deal with — — — are those all statements to law enforcement?

MS. PINNOCK: no, sir, these are statements made — — — they are inculpatory as to one person's involvement, but still references the codefendant. They are not any statements given to law enforcement. That's not a situation these cases deal with.

There are situations where just because a statement may be considered a statement against interests with the person who is making the statement, it does not necessarily mean it's admissible against the other people who were involved. This was brought up Wednesday morning, I believe.

Your Honor did say that you would address these issues because they came up during the course of the testimony from the witnesses.

I believe Mr. Schnee actually submitted a written motion on this, but this is a situation that we all predicted was going to come up.

Your Honor, this letter — — — again, I admit that yes, everybody can agree that this letter is admissible against Mr. Barnes, but the body of the letter, I would ask Your Honor to review it.

It fully implicates our client. We would not have an opportunity to cross-examine Mr. Barnes, so it is inadmissible against Mr. Young. If there are being tried separately, this letter would not be introduced in evidence.

The only reason it's got the possibility of being introduced as because Mr. Barnes is here with us.

MS. CAMPBELL: Can I get a copy of the cases you just mentioned?

MS. PINNOCK: I only have one.

MS. CAMPBELL: You don't have them?

MS. PINNOCK: I only have one.

MS. CAMPBELL: Your Honor, could I just make copies real quick of their cases?

THE COURT: Sure.

MS. PINNOCK: You can have those.

THE COURT: I need copies of those cases

MS. PINNOCK: I want you to have these.

Your Honor, we can — — — we are going to print copies for you.

THE COURT: My question is — — — the Garvin case wasn't a joint trial.

MS. CAMPBELL: But I believe it addresses even if it is a joint trial in the body. I guess I'm a little bit at a loss as to why this wasn't brought up in pretrial matters.

MS. PINNOCK: Your Honor, I did actually bring this up about evidence that would be introduced that was admissible against Mr. Barnes that was not introducible against Mr. Young in our motion to sever.

THE COURT: So how is the statement testimonial?

MS. PINNOCK: Your Honor, I'm not saying the statement itself is testimonial. The only reason — — —

THE COURT: It has to be testimonial for the confrontation clause to apply.

MS. PINNOCK: Your Honor, the only reason that the statement is admissible against Mr. Barnes is because of the interviews and the statement against interest.

The interest that — — — the interest that is at issue is Mr. Barnes's interest. The exceptions to hearsay do not apply to Mr. Young when they are using the exceptions to the hearsay rule against Mr. Barnes and that's the situation we have. It is not admissible against Mr. Young. It fully implicates him, but they're going about it through any exception to the evidence rules that allows them to get it in against Mr. Barnes.

THE COURT: So how is the statement testimonial or is it your position that it's not?

MS. PINNOCK: I'm not arguing that its testimonial.

THE COURT: Your position is that it's not testimonial.

MS. PINNOCK: No. I'm not arguing that the statement itself is testimonial. I'm acknowledging that it's not given to law enforcement. It's a letter that was written by Mr. Barnes and sent to his mother. The letter is admissible with Mr. Barnes's case under the hearsay exceptions. The statement against interest for Mr. Barnes does not apply to Mr. Young.

In those cases, Judge — — — and again, I apologize. I don't have extra copies, but *Lilly vs. Virginia* was—*Lilly vs. Virginia*, Judge, was reversed.

All of these cases that were going to be providing you in just a moment all deal with the 804 (3) exception to the hearsay rule in dealing with statements against interest with multiple parties, so I for guess for clarity purposes my objection is hearsay for Mr. Young.

THE COURT: So your objection is hearsay?

MS. PINNOCK: Yes, sir, the objection to that letter for Mr. Young is hearsay, and for his situation it does not fall under any of the exceptions to the hearsay rule.

THE COURT: Is somebody going to get those copies?

MS. PINNOCK: Yes, sir, Mr. Krzyston just ran downstairs to speed things up a bit.

THE COURT: What's your response to the hearsay argument?

MS. CAMPBELL: Your Honor, it's not hearsay because it's an issue against interest against Mr. Barnes. It is non—testimonial. She's admitted that. Therefore it comes in its entirety the same way a jail phone call would, Your Honor. It's been offered against Mr. Barnes. If she wants a limiting instruction, I have no problem with that.

MS. PINNOCK: Your Honor, to cite Lilly, the court said that when dealing with the admission against penal interest we have taken great care to — — —

THE COURT: That's not the rule she cited.

MS. PINNOCK: I'm sorry?

THE COURT: That's not the rule she is saying. She is saying is not hearsay because its admission by a party opponent. She is not even making it to 804.

MS. CAMPBELL: You're right.

MS. PINNOCK: It has to fall under some exception.

THE COURT: Well, it can be just not hearsay.

MS. PINNOCK: For Mr. Barnes, yes, but not for Mr. Young. This is one of the reasons we were asking for a severance because there is evidence they are trying to introduce this. It's not admissible against Mr. Young. Being admitted as presented in its entirety denies us the right to a fair trial. He has been implicated by a letter — — —

THE COURT: You can't just say a fair trial. Courts have held over and over again that you have to point to a specific constitutional right. You can't just say fair trial. Specific constitutional right is the confrontation clause, which is not implicated because the statement is not testimonial according your own admission and the law is very clear that non—testimonial statements do not invoke the confrontation clause. Therefore, there is no *Bruton* issue.

MS. PINNOCK: He is being denied due process, Judge.

THE COURT: You can't just say due process.

MS. PINNOCK: It's a fundamental fairness.

THE COURT: You can't just say due process. The law says you have to point to a specific constitutional right. You just can't say due process, fair trial. It's like answering fundamental fairness on the bar exam. It doesn't work. There has to be some than concrete. See argument is that it falls under — — — or doesn't fall under 804(d)(3). Is that it?

MS. PINNOCK: Your Honor, the objection is hearsay. As applied to Mr. Young, it is hearsay.

(R. p. 618, line 7 – p. 626, line 17.)

The Trial Court's Finding of Admissibility

Following a lengthy discussion concerning whether the statement was testimonial, inculpatory or exculpatory, or a statement by a co-conspirator in furtherance of a conspiracy, the trial judge admitted the statement, subject to a limiting instruction, stating:

All right. The letter is in. I find — — — I'm going to overrule the hearsay objection. It's non – testimonial, thus there is no confrontation clause issue. Thus there is no *Bruton* issue. I don't even know that they're arguing that, but I'm ruling that anyway, and I find that it falls under a

hearsay exception, that being 804(b)(3). It has an inherent level of trustworthiness and based on the corroborating circumstances, the States 404 is in over Defendant Young's objection.

(R. p. 637, lines 13-22.)

Standard of Review

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). The standard of review is limited to determining whether the trial court's ruling is supported by **any evidence**. *State v. Breeze*, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) (emphasis added).

Confrontation Clause Applies to Testimonial Statements

Though the trial judge ruled the letter from co-defendant Barnes was not a violation of *Bruton v. United States*, 391 U.S. 123 (1968), a review of that holding provides clarification of the State's position the letter was admissible against both Barnes and Appellant, which supports the proposition the limiting instruction to the jury was unnecessary.

In *Bruton*, the Supreme Court found the admission of a codefendant's confession implicating a defendant at a joint trial constituted prejudicial error, even though the trial judge gave a limiting instruction stating the confession could only be used against the

codefendant and must be disregarded with respect to defendant. *Id.* at 131. (“In joint trials, however, when the admissible confession of one defendant inculcates another defendant, the confession is never deleted from the case and the jury is expected to perform the overwhelming task of considering it in determining the guilt or innocence of the declarant and then of ignoring it in determining the guilt or innocence of any codefendants of the declarant. A jury cannot ‘segregate evidence into separate intellectual boxes.’”) The *Bruton* court made it clear that the admission of testimonial statements of a codefendant in a joint trial infringed on the non-confessor’s right of confrontation. *Id.* at 133-134.

The Court later recognized *Bruton*’s narrow exception to the invariable assumption that jurors follow their instructions in the situation when the incriminating confession of a non-testifying codefendant is introduced at a joint trial, and the jury is instructed to consider the confession only against the co-defendant. *See Richardson v. Marsh*, 481 U.S. 200 (1987). In *Richardson*, the Court distinguished the redacted, admissible statement from the “narrow exception *Bruton* created” because the statement was not incriminating on its face and required linkage of other evidence. *Id.* at 200. The Court refused to extend the reach of *Bruton* to confessions incriminating by connection, citing the impossibility to predict the admissibility of those confessions prior to trial. *Id.* at 209. The narrow application of *Bruton* to facially incriminating statements recognized the significance of the judicial economy of joint trials, noting:

One might say, of course, that a certain way of assuring compliance would be to try defendants separately whenever an incriminating statement of one of them is sought to be used. That is not as facile or as just a remedy as might seem. Joint trials play a vital role in the criminal justice system, ... It would impair both the efficiency and the fairness of the criminal justice system to require, in all these cases of joint crimes where

incriminating statements exist, that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last-tried defendants who have the advantage of knowing the prosecution's case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability—advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations, joint trials generally serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts. The other way of assuring compliance with an expansive Bruton rule would be to forgo use of codefendant confessions. That price also is too high, since confessions “are more than merely ‘desirable’; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law.” *Moran v. Burbine*, 475 U.S. 412, 426, 106 S.Ct. 1135, 1143, 89 L.Ed.2d 410 (1986) (citation omitted).

Richardson v. Marsh, 481 U.S. 200, 210 (1987). The *Richardson* court suggested the deference to the co-defendant's rights pursuant to the Confrontation Clause in *Bruton* be limited to the precise facts of that case.

Later, the Court examined the nature of out of court statements offered against a defendant in *Crawford v. Washington*, 541 U.S. 36, 50, (2004). In *Crawford*, the Court examined whether the statements made by a suspect's wife to law enforcement violated the Confrontation Clause, when the wife was precluded from testifying because of marital privilege. The Supreme Court examined the historical evolution of the Confrontation Clause, and concluded these inferences:

First, the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused.

...

The historical record also supports a second proposition: that the Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.

Crawford at 53-54. The Court stated the Confrontation Clause focused primarily on testimonial statements, and noted the distinction between statements made to law enforcement and those made to an associate. *Crawford* at 51 (“An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. The constitutional text, like the history underlying the common-law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement.”). The Court further offered this definition of a testimonial statement:

Various formulations of this core class of “testimonial” statements exist: “*ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially,” Brief for Petitioner 23; “extrajudicial statements ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions,” *White v. Illinois*, 502 U.S. 346, 365, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992) (THOMAS, J., joined by SCALIA, J., concurring in part and concurring in judgment); “statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial,” Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 3.

Id. at 51-52. The *Crawford* Court clarified that certain kinds of statements made to others would not invoke the Confrontation Clause and would thus be controlled by the Rules of Evidence regarding hearsay. *Id.* at 68. (“Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law... and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether.”) Thus, the *Bruton* rule does not apply when the codefendant's statement is nontestimonial. *See, e.g., Smith v. Chavez*, 2014 WL 1229918, at *1 (9th Cir. March 4, 2014) (holding because the out-of-court

statement by the non-testifying codefendant—an account of the crime given to his girlfriend in a motel—“was clearly not testimonial,” it was reasonable for the state court to reject a *Bruton* claim, “given that *Bruton*’s core holding relies on the Confrontation Clause” and *Crawford* teaches that the Confrontation Clause bars only testimonial out-of-court statements); *United States v. Vasquez*, 766 F.3d 373, 378–79 (5th Cir. 2014) (observing that “[m]any circuit courts have held that *Bruton* applies only to statements by co-defendants that are testimonial under *Crawford*,” including the First, Second, Third, Fourth, Sixth, Eighth, Ninth, and Tenth Circuits); *United States v. Figueroa*, 729 F.3d 267, 276 n. 14 (3d Cir. 2013) (“The protections of the Confrontation Clause and *Bruton* apply only to testimonial statements.”); *United States v. Figueroa–Cartagena*, 612 F.3d 69, 85 (1st Cir. 2010) (“[I]t is thus necessary to view *Bruton* through the eyes of *Crawford* and *Davis*. The threshold question in every case is whether the challenged statement is testimonial. If it is not, the Confrontation Clause has ‘no application.’” (internal citation omitted)); *United States v. Smalls*, 605 F.3d 765, 768 n. 2 (10th Cir. 2010) (“the *Bruton* rule, like the Confrontation Clause upon which it is premised, does not apply to nontestimonial hearsay statements”); *United States v. Dale*, 614 F.3d 942, 958 (8th Cir. 2010) (“Reading *Bruton* in light of *Crawford*, we conclude that a *Bruton* violation must be predicated on a testimonial out-of-court statement implicating a co-defendant.”); *United States v. Johnson*, 581 F.3d 320, 326 (6th Cir. 2009) (“Because it is premised on the Confrontation Clause, the *Bruton* rule, like the Confrontation Clause itself, does not apply to nontestimonial statements.”); *United States v. Taylor*, 509 F.3d 839, 850 (7th Cir. 2007) (finding no *Bruton* error, because the challenged remarks were nontestimonial under *Crawford*).

Co-defendant's Letter is Nontestimonial

Turning to the facts of the case at hand, co-defendant Barnes' letter to his mother clearly falls outside the scope of testimonial statements contemplated by *Crawford*, thus falling short of Confrontation Clause protections. The Supreme Court has recognized this distinction between testimonial and non-testimonial statements, finding non-testimonial statements admissible as long as the statements fall within a recognized hearsay exception or statutory allowance. In *Davis v. Washington*, 547 U.S. 813 (2006), for example, the Court determined the recording of the victim's 911 call in which she identified her attacker was nontestimonial and, therefore, admissible.

Other jurisdictions have followed suit, finding statements made to third parties not prohibited by the Confrontation Clause. *See, e.g., U.S. v. Mayhew*, 380 F. Supp.2d 961 (S.D. Ohio 2005) (finding letters written from victim to family and boyfriend were non-testimonial, and admissible to show state of mind); *State v. Rice*, 844 P.2d 416 (1983) (co-defendant's letter to girlfriend admitting guilt admissible as a statement against interest); *People v. Arceo*, 195 Cal App 4th 556, 577 (2011) (co-defendant's bragging to fellow gang members about his role in murder of two women admissible against defendant as declaration against interest.) . In *U.S. v. Dargan*, 738 F.3d 643 (2013), the Fourth Circuit found a co-defendant's statements to other inmates implicating himself and defendant were nontestimonial and admissible pursuant to 804(b)(3). Specifically with respect to a *Bruton* challenge, the *Dargan* court said, "*Bruton* is simply irrelevant in the context of nontestimonial statements. *Bruton* espoused a prophylactic rule designed to prevent a specific type of Confrontation Clause violation. Statements that do not

implicate the Confrontation Clause, *a fortiori*, do not implicate *Bruton*.” *Dargan*, at 651. *See also United States v. Dale*, 614 F.3rd 942, 956 (8th Cir. 2011) (holding a defendant’s statement to an inmate informant who was wired was nontestimonial because the defendant did not believe his statement would later be used at trial.)

Appellant does not argue the admission of co-defendant Barnes’ letter to his mother violates *Bruton*, or its progeny. Indeed, during the extensive discussion concerning the admissibility of the letter, defense counsel acknowledged the letter was non-testimonial;

I’m not arguing that the statement itself is testimonial. Although acknowledging that it’s not given to law enforcement. It’s a letter that was written by Mr. Barnes and sent to his mother. The letter is admissible with Mr. Barnes’s case under the hearsay exceptions. The statement against interest for Mr. Barnes does not apply to Mr. Young.

(R. p. 623, lines 15-21.) Appellant’s argument does, however, intertwine the elements of a typical *Bruton* violation allegation by suggesting the trial judge’s decision to allow the joint trial prejudiced Appellant. The argument is misplaced because co-defendant Barnes’ letter is admissible against both Barnes and Appellant.

The Letter is Admissible under S.C.R.E. 804(b)(3)

Following the *Richardson* Court’s conclusion that *Bruton* created a narrow Confrontation Clause prohibition of **testimonial** statements offered in **joint** trials, and the trial judge’s ruling no *Bruton* issue existed because of the nontestimonial nature of the letter, the decision to try Appellant and Barnes together caused no undue prejudice to Appellant because the letter is admissible against both defendants under S.C.R.E. 804(b)(3). Rule 804(b)(3) provides:

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest,

or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

SCRE 804. The statement against interest provision is an exception to the hearsay rule because the statement has inherent indicia of trustworthiness, *i.e.*, the reasonable declarant would not implicate himself of criminal wrongdoing if it were not true. The statement against interest exception does not contain the limitation that the statement must be offered only against the declarant, as does for example, Rule 801(d)(2), which says:

(2) Admission by Party-Opponent. The statement is offered **against a party** and is (A) **the party's own statement** in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

SCRE 801(d)(2) (emphasis added). Despite defense counsel's assertion to the contrary, a statement against interest, which is sufficiently inculpatory, may be admitted against the declarant himself (Barnes) and his co-defendant (Appellant). *See, e.g., United States v. Jordan*, 509 F.3d 191, 203 (4th Cir. 2007) (finding statements of co-conspirator to friend in an effort to relieve herself of guilt before her suicide subjected her to criminal liability for a drug conspiracy and murder and were admissible against defendant under Rule 804(b)(3)); *People v. Taylor*, 759 N.W.2d 361, 368 (Michigan 2008) (finding a co-defendant's statement to a third party admissible against defendant under 804(b)(3))

Again, contrary to Appellant's argument, had the trials been severed, Barnes' letter to his mother could have been admitted against Appellant under the same 804(b)(3) exception.

The Letter was Inculpatory

Appellant correctly argues case law disfavors admitting unreliable self-exculpatory statements, though portions of the statement may include inculpatory statements against interest. Courts have also found collateral exculpatory statements inadmissible, though the purported statement of the declarant was sufficiently inculpatory. Appellant misapplies the case law to the facts at hand, however. Barnes' letter to his mother fully implicated him, along with Appellant, in the murder of the victim.

According to *Williamson v. United States*, 512 U.S. 594, 600-601 (1994), Rule 804(b)(3) does not allow admission of non-self-inculpatory statements even if they are made within a broader narrative that is generally self-inculpatory. In that case, a co-defendant confessed to a police officer that he was involved in criminal activity and also gave details about Williamson's separate criminal activity. The Court concluded;

In our view, the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory. The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, and this is especially true when the statement implicates someone else. "[T]he arrest statements of a codefendant have traditionally been viewed with special suspicion. Due to his strong motivation to implicate the defendant and to exonerate himself, a codefendant's statements about what the defendant said or did are less credible than ordinary hearsay evidence."

Williamson at 600-01. The confession implicated Williamson in joint criminality with the co-defendant, as well as criminality in which Williamson acted alone. The co-defendant thus made discrete non self-inculpatory statements within a “broader narrative” that was only “generally self-inculpatory.” *Id.* The statements of the co-defendant pertaining to Williamson exclusively were, therefore, inadmissible as not self-inculpatory, as required by Rule 804(b)(3).

The *Williamson* Court went on to clarify its position on 804(3)(b) saying, “There are many circumstances in which Rule 804(b)(3) does allow the admission of statements that inculcate a criminal defendant. Even the confessions of arrested accomplices may be admissible if they are truly self-inculpatory, rather than merely attempts to shift blame or curry favor.” *Id.* at 603. The Court acknowledged the determination of whether a statement is inculpatory or exculpatory can be made by “viewing it in context.” *Id.* at 603. Furthermore, the Court distinguished the portions of the declarant’s statement that were admissible from those that were not, finding the exercise a “fact intensive inquiry.” *Id.* at 604.

In the case *sub judice*, the letter from Barnes to his mother implicates the declarant and the defendant in the **same** criminal act, rather than “separate criminal activity,” as did the statement in *Williamson*. The letter from Barnes read:

Your Son
Trenton. B
Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis and renzo was on the phone with his baby mama we was the only two up and he got off the phone was like let me talk

tew you when you done. Then he was like I got this lul lick and then I was like I don't know bruh I'm koolin talking to my lady and he was like money come first. I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on th phone then Ty had text me renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me do I have a gun and I said no but I know way one at he said way at and I said **I know way Shorty be putting his gun at out side** so I took him to it and he pulled out his gun and said which one you won't and **I said the small one** then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped' s and drit bikes and he was like just a lul lick so we was at the bar down the street from the house it started raining hard and I was like I'm bout to go home and he said hold on lul bruh then he was like damm they closed so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody he was like come on then we was by the door and **I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back then renzo walk into the place and I went behind him then he grabed her and put the gun to her head and told me to get in front of her and **she swang at me and I closed my and jump I got scared ma I didn't want to do it.** I'm sorry. I said it was troy because I was scared to go to jail with renzo by myself im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me **im going to prison for a long time** love you mama I just wanna come home real soon not no grown man.
 Love You MAMA
 Your BaBy Boy

Trenton

(State's Exhibit 404) (Errors in original). In Barnes' statement to his mother, Barnes admits telling Appellant where he can find a gun ("I know way Shorty be putting his gun out side"); he admits choosing which gun he wants to use in the robbery ("the small one"); he admits he knows the victim is inside the bakery ("I seen a lady walk pass"); and he admits shooting the victim after she resisted him ("she swang at me and I closed my and jump I got scared ma I didn't want to do it"). Barnes also admits he was complicit in

Appellant's actions ("I should never listen to renzo"), and he recognized the likely consequences of his actions ("im going to prison for a long time").

Though the letter seems to express regret for his actions, the statement is not exculpatory. Barnes admits his willing participation in the crime-- placing a gun in his hand and himself at the crime scene during the murder. The only exculpatory statements in the letter are those applicable to his brother, Troy Stevenson, and not Barnes, himself. Unlike the declarant in *Williamson*, Barnes recognizes his culpability, along with Appellant's, in the commission of the crime. The statement is sufficiently self-inculpatory because Barnes implicates himself in the same criminal activity with Appellant. See *United States v. Saget*, 377 F.3d 223, 231 (2d Cir. 2004) (finding no abuse of discretion in the district court's admission of statements by a co-conspirator describing criminal conduct that the co-conspirator and the defendant had engaged in together).

Appellant compares his circumstances to those in *State v. Fuller*, 337 S.C. 236, 523 S.C. 2d 168 (1999). The South Carolina Supreme Court found a defendant's collateral statement to law enforcement containing the inculpatory statement of a decedent was inadmissible against his co-defendant because the defendant's collateral statement was exculpatory. In *Fuller*, co-defendant McKinney testified one of Fuller's accomplices told McKinney he and Fuller, along with another, committed the attempted robbery and murder of the victim. *Id.* at 243, 523 S.E.2d at 171-172. The accomplice was killed in another attempted robbery and was unavailable to testify. *Id.* at 239, 523 S.E.2d at 169. According to McKinney, he was supposed to aid Fuller and his accomplice on the night of the robbery, but he was at a friend's house instead. McKinney learned the robbery proceeded without him from the statement of the now deceased accomplice. *Id.*

at 243, 523 S.E.2d at 171-172. The Court cited *Lilly v. Virginia* for the proposition that such third party statements were unreliable. *Id.* at 244, 523 S.E.2d at 172, citing *Lilly v. Virginia*, 527 U.S. 116, 118-119 (1999) (finding the confession of the accomplice not a declaration against penal interest, but instead part of a custodial confession viewed with suspicion given the strong motivation to implicate the defendant and exonerate himself).

Both *Fuller* and *Lilly* involved the testimony of an admitted accomplice who attempted to distance himself from the crime charged by making inculpatory statements concerning some less significant criminal activity and exculpatory statements concerning the more serious criminal activity of the defendant. In *Fuller*, the accomplice's collateral statement to police removed himself from the murder of the victim on the night of the crime and provided the accomplice with an alibi. In *Lilly*, the accomplice admitted to stealing alcohol but implicated defendant and another in the theft of guns and the shooting of the victim. Both the South Carolina and the United States Supreme Courts found these types of self-serving statements unreliable. In *Fuller* the Court noted, however, "it may very well be that a statement which qualifies under Rule 804(b)(3) may also be used against a criminal defendant. For example, an accomplice's self-inculpatory statement combined with other independent evidence can inculcate a criminal defendant." *Fuller* at 245, 523 S.E.2d 168, 172 (1999). The Court also said, "a statement is not per se inadmissible simply because the declarant names another person. Nevertheless, such statements must meet the strict requirements of Rule 804(b)(3). *Id.* at 245.

Barnes' letter to his mother is distinguishable from the statements in *Williamson* and *Fuller* because the statement was in no way self-exculpatory. It should also be noted

in *Williamson* and *Fuller*, the statements were made to police (in the case of *Williamson*), or to a third party, but related to the police by an accomplice in a collateral statement (in the case of *Fuller*). When viewed in context, these testimonial statements to law enforcement are less reliable than those made by Barnes to his mother in a purportedly private correspondence. While the statements to law enforcement may have been induced by a desire for leniency, Barnes could expect no such deal from his mother.

The Letter was Independently Corroborated

In addition to finding the inherent indicia of trustworthiness of the statement made against his penal interest, the trial judge correctly found other independent evidence corroborated the reliability of Barnes' letter to his mother. First, multiple witnesses testified Barnes and Appellant were together late the night before the murder. (R. p. 846-849.) Barnes' own mother testified the two men were together at her house before leaving later that night, and she sent her son Troy out to look for Barnes following Appellant's phone call to her house. (R. p. 605 – p. 607.) The video surveillance showed two suspects with guns firing at the victim. (R. p. 1404 - p. 1405.) Two different types of shell casings were found at the scene of the crime. (R. p. 736 - 739.) Rolanda Coleman testified she saw Appellant hiding his gun the following morning, and she identified Barnes in the surveillance video. (R. p. 471 - p. 489.) Appellant's description of the crime to inmate Dominique Wright matched Barnes' account to his mother: two men attempted to rob the club, but because it was closed decided to rob the woman at the bakery next door -- shooting her when she resisted. (R. p. 698 - p. 703.) Furthermore, inmate Michael Schaefer also testified Appellant told him a similar story. (R. p. 874, lines 10-17.) Inmate

Michael Peterson overheard Appellant and Troy Stevenson discussing the murder in the showers. (R. p. 794, lines 4-13; p. 797, lines 1-25.)

The details contained in Barnes' letter to his mother were fully corroborated with the evidence at trial: The two men intended to rob the Ale House, but it was closed. The men chose the bakery because they saw an opportunity. Two men entered the bakery with guns. The victim swung at the men. Finally, Barnes' statement, "I closed my and jump I got scared ma I didn't want to do it" refers to the moment he shot the victim. (State's Exhibit 404.)

Barnes' statement to his mother qualifies as a statement against interest under 804(b)(3) because he sufficiently inculpatates himself in the same criminal activity as Appellant. Viewed in the context of a letter to his mother, as opposed to a testimonial confession or statement to police, Barnes had no reason to believe he would incur favor or leniency by making the statement. Though the letter incriminated Appellant as well, other independent evidence corroborated the statement and inculpated Appellant as an accomplice. S.C.R.E. 804(b)(3) does not limit the use of a statement only against the party making the statement. Thus, the letter is an exception to the hearsay rule as a statement against interest, and may be offered against the declarant or his co-defendant.

The Limiting Instruction was Beneficial to Appellant

Because the letter was properly admissible against both Barnes and Appellant, the trial judge's efforts to issue the limiting instruction to the jury to protect Appellant was in no way prejudicial. In fact, Appellant was afforded a benefit he did not deserve. Appellant's argument the judge should have granted a mistrial because a limiting instruction was insufficient is based on the holding of *Bruton* and *State v. Henson*, 407

S.C. 154, 754 S.E. 2d 508 (2014). As thoroughly discussed in the previous sections, *Bruton* is inapplicable to these facts because no testimonial statement was given. In the *Henson* case, the redacted testimonial confession to the police used against the co-defendant in a joint trial was held to be a *Bruton* violation. Neither case is applicable to the facts at hand, in which a sufficiently inculpatory nontestimonial statement that is independently corroborated is offered against a codefendant.

While the jury's actual attention to the limiting instruction is unknown, the assumption the jury properly followed the instruction resulted in one less piece of evidence considered against the Appellant. Moreover, even if the jury did consider the letter against Appellant, it was proper for them to do so. Therefore, the sufficiency of the limiting instruction offers no basis for reversible error.

Harmless Error

Even if, as Appellant argues, the letter was admitted in violation of S.C.R.E. 801, its admission was harmless beyond a reasonable doubt. In *Chapman v. California*, the Supreme Court held error of even a constitutional magnitude may be deemed harmless if, “considering the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict.” 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *see also Taylor v. State*, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993). Similarly, our Supreme Court has intimated that any error in the failure to suppress a statement deemed inadmissible hearsay is subject to a harmless error analysis. *State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985); *see also State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971) (Stating error is harmless when it “could not reasonably have affected the result of the trial.”)

Here, considering the entire record on appeal, any error in admitting Barnes' letter to his mother was harmless beyond a reasonable doubt. The State presented compelling evidence of Appellant's guilt of murder, sufficiently proving Appellant and his co-defendant were the perpetrators of the crime, even without Barnes' letter. The State presented the following evidence against the co-defendants:

- The bakery's security cameras revealed two armed perpetrators, one wearing a red hoodie and the other wearing a grey hoodie;
- A third suspect entered the doorway as the shooting begins;
- .45 G.A.P. and .40 caliber shell casings were found at the scene;
- Appellant and Barnes lived within walking distance of the bakery;
- Police discovered ammunition of the same caliber at that at the scene of the crime in Appellant's home.
- Police also discovered a Glock magazine in the purse of Appellant's girlfriend;
- Rolanda Coleman testified Appellant returned the morning after the murder with his gun, which he attempted to hide in his baby's crib;
- Coleman overheard a conversation in which Appellant's mother instructed him to get rid of the gun;
- Coleman identified Trenton Barnes in the video as the man in the grey hoodie;
- Donald Moore overheard Appellant and Stevenson planning the robbery of the Ale House before the murder;

- Donald Moore saw Appellant with a Glock prior to the murder;
- Donald Moore identified Appellant in the video as the man wearing the red hoodie;
- Barnes' mother placed the three men together the night of the murder;
- Cell phone records corroborated Ms. Barnes story Appellant called the house before she sent her son out to find the men;
- Ms. Barnes testified Appellant wore a red hoodie, Barnes wore a grey hoodie, and Stevenson wore a dark jacket the night of the murder;
- Mary Brown also placed the two men together the night of the crime, and described the red and grey hoodies the men wore. Brown also recognized the men in the video;
- Dominique Wright testified Appellant told him about the murder in an effort to discuss possible defenses to the crime. Wright's testimony contained details corroborated by the security video;
- Michael Peterson testified Appellant sought him out in the library to discuss his case. Appellant admitted his involvement to Peterson;
- Peterson overheard Appellant and Stevenson discussing the murder, with Appellant stating the police only had shell casings;
- Michael Schaefer testified Appellant described the night of the murder, and later stated to him, "I shouldn't have shot that bitch;"

- Police found gunshot residue on Appellant's black gloves;
- Analysts discovered internet searches of the crime from Appellant's phone data, including images released by the media with the perpetrators' descriptions; and
- DNA found on the spoon Hunnewell used to defend herself could not exclude Appellant and Barnes.

The State's case against Appellant was compelling. Indeed, Appellant's own statements to others in which he described the killing may have been the evidence most convincing to the jury. Even excluding Barnes' letter to his mother, the record supports the jury's verdict of murder beyond of reasonable doubt. Any error in its admission by the trial court judge was harmless.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

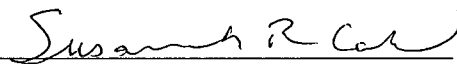
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ATTORNEY FOR RESPONDENT

January 25, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

RECEIVED
JAN 25 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT,

Appellate Case No. 2014-002682.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully submitted,

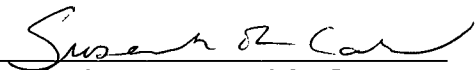
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STATE OF SOUTH CAROLINA
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THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT,

Appellate Case No. 2014-002548

PROOF OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the within Final Brief of Respondent on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to her attorney of record:

David Alexander
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 25th day of January, 2016.



Susannah R. Cole
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Lorenzo Bernard Young, Appellant.

Appellate Case No. 2014-002548

Appeal From Richland County
Robert E. Hood, Circuit Court Judge

Opinion No. Op. 5501
Heard April 17, 2017 – Filed July 19, 2017

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Assistant Attorney
General Susannah Rawl Cole, and Solicitor Daniel
Edward Johnson, all of Columbia, for Respondent.

HILL, J.: After a joint trial, Lorenzo Young and Trenton Barnes were convicted by a jury of murder, kidnapping, second-degree burglary, and attempted armed robbery. On appeal, Young argues the trial court abused its discretion in (1) admitting a letter written by Barnes as a statement against penal interest, Rule 804(b)(3), SCRE; and (2) failing to grant his motion for mistrial. We find the letter was admitted in error, and the error was not cured by the trial court's instruction to

disregard the letter. We conclude, however, that the error in admitting the letter and any error in failing to grant a mistrial was harmless. We therefore affirm Young's convictions and sentences.

I.

Kelly Hunnewell worked for Carolina Cafe in Columbia as a baker and cook. Hunnewell's shift started early in the morning, and she baked at a remote kitchen located at 93 Tommy Circle. The kitchen was next door to the Ale House Lounge, and both buildings were equipped with video surveillance.

According to the surveillance video and other evidence, Hunnewell arrived at the kitchen at 3:00 a.m. on July 1, 2013. It was raining hard outside, and she left the door to the kitchen propped open. At 3:40 a.m., while Hunnewell was stirring potatoes, a man wearing a red-hooded sweatshirt entered the open door, followed closely by a man wearing a gray-hooded sweatshirt. Both men had their sweatshirts pulled tightly around their faces. Each held a gun in what appeared to be a gloved hand. At the same time, a third man, wearing a dark-hooded sweatshirt, appeared at the door. The man in the red sweatshirt immediately ran up behind Hunnewell and placed his gun to her head. The man in the gray sweatshirt ran to the other side of Hunnewell, blocking any means for her escape. A brief struggle ensued, and Hunnewell attempted to fend off her assailants with a large spoon. During the struggle, both men fired their weapons. Hunnewell fell to the ground, and at 3:41 a.m., the men fled.

A neighbor who heard the gunshots and Hunnewell's screams called the police. Officer Jonathan Brayboy received the call from dispatch at 3:44 a.m., and arrived promptly to find Hunnewell lying on the floor. It was later determined she had died almost instantly from a .40 caliber gunshot wound to her chest and neck. Police officers discovered six bullet casings at the scene—four .45 caliber GAP casings and two Smith & Wesson .40 caliber casings. Police swabbed for DNA, canvassed the neighborhood for information related to the crime, and released portions of the surveillance video to the media.

Tips began to trickle in. Mary Brown, a resident of the neighborhood where Barnes and Young lived, called the police tip line after seeing the surveillance video on the news. Brown testified that on the afternoon before the shooting, she was at a cookout also attended by two young men: one was wearing a gray-hooded

jacket or hoodie, the other a red one. At the time, she did not know who the men were but later identified them to police.¹

Donald Moore, who knew Young "from the street" and described Barnes and Troy Stevenson, Barnes' brother, as his friends, approached the police on July 2nd. In his statement, Moore informed the police that a few days before the shooting, he was present when Troy and Young were discussing a plan to rob the Ale House. He stated Young had acquired a Glock 40 and was showing it on the street. Moore stated Young wore the red-hooded sweatshirt seen on the video, and Troy often wore the gray one. Finally, Moore stated that after viewing the surveillance video, he believed Troy and Young were the shooters. At trial, Moore recanted his entire statement, testifying he had lied to police.

On July 5th, Investigators executed a search warrant at Young's house and recovered five gloves from Young's closet that later tested positive for gunshot residue, two unfired .45 caliber GAP rounds of ammunition, an empty Glock magazine, and a .40 caliber Smith & Wesson unfired round. Police searched Barnes' home pursuant to warrant the same day, recovering a "soaking wet" dark hoodie. Barnes, who was sixteen at the time, was arrested at his home, which was within walking distance of the scene. Young was arrested later that evening, found hiding in an upstairs closet of his cousin's home.

Latoya Barnes, Barnes' mother, testified she was home the night of the shooting and her two sons, Barnes and Troy, were there as well. According to Latoya, around 11:00 p.m. or midnight, Barnes and Young left the house together, while Troy had departed earlier with another group of friends. Latoya testified Young was wearing a red sweatshirt, Troy was wearing a dark sweatshirt, and Barnes was wearing a gray one. Troy eventually returned home with his friends, but Barnes and Young had still not returned at 2:00 or 3:00 a.m. Around that time, Latoya stated Young called and asked to speak with one of Troy's friends who was present at Latoya's home; she gave the friend the phone. Later, Latoya received another call from Young, asking for that same friend. Latoya testified she asked Young, "Where is [Barnes]?" Young replied Barnes was with him "right down the street." Latoya asked Young to tell Barnes to come home. When Barnes did not immediately return home, Latoya told Troy to go "get your brother." Troy then left the house and Latoya went to bed. Latoya testified that when she awoke at 6:00 or

¹ Due to a sustained objection, Brown was not permitted to testify to the actual identities of the men, just that she was able to identify them to the police.

7:00 in the morning, Barnes, Young, and Troy were all at her home. Shortly thereafter, someone came by and picked Young up.

At trial, the State questioned Latoya about a statement she gave to police after her sons were arrested, identifying Barnes as the person in the video wearing the gray hoodie. Latoya denied identifying Barnes. Later in the trial, the State played a portion of Latoya's recorded statement to police in which she identified Barnes as the person in the video, stating, "Yeah, I mean it was [Barnes] with the gray on. Like I said, I know my kids' build. I know them from their fingers to their toes. I know my kids."

Additionally, Latoya testified she received a letter from Barnes dated March 31, 2014, while he was in the detention center. Over Young's objection that it was inadmissible hearsay and violated *Bruton v. United States*,² the letter was entered into evidence. In the letter, Barnes admitted his role in the shooting and implicated Young. A handwriting expert testified the letter was written by Barnes. After an overnight recess, the trial court instructed the jury the letter could not be used as evidence against Young. Young objected to the instruction and moved for a mistrial.

Young's girlfriend, Rolanda Coleman, testified that at the time of the shooting, she and Young were living together with their infant daughter. Speaking with police a week after the shooting, Coleman stated Young had acquired a gun a month or two before the incident. Coleman testified that on the night of the shooting, she was at her home and Young was at Latoya's home. According to her statement, Coleman received a call from Young the next morning asking for a ride home. Young's mother picked him up from Barnes' home, and when he returned, Young had a gun that he wrapped in a shirt and placed in the baby's crib.³ Young described the gun to Coleman as a "45." Coleman and Young then went to work; when they returned home, the gun was gone. After Young and his mother saw the surveillance video of the shooting on the news, Coleman overheard Young's mother tell him to get rid of the gun. Coleman also testified Barnes often wore a gray-hooded sweatshirt, and she had previously seen Barnes with a gun. Upon seeing the video of the shooting, Coleman identified Barnes as the person wearing the gray sweatshirt. She testified she could not identify the person in the red sweatshirt. Coleman admitted that at the time of trial, she had pending charges for burglary in the first

² 391 U.S. 123 (1968).

³ Coleman testified the baby was staying with her grandmother at the time.

degree but claimed the State had made no promises to her in exchange for her testimony.⁴

Evidence from Young's cell phone was also admitted. The call log corroborated Latoya's and Coleman's testimony regarding calls made by Young on the evening and morning of the shooting. The phone also contained several cached photographs from internet searches beginning the day of the shooting, including portions of the video and still pictures of the man in the red sweatshirt from the police media release. Investigators also discovered a video on the cell phone recorded five days before the shooting. This video, which was published for the jury, depicted Young in a gray sweatshirt displaying a gun—which he called a "Glock 4-5"—for the camera.

Next, the State presented the testimony of three jailhouse informants. Alfred Dominique Wright testified Young approached him in the jail's law library asking for help with his case. According to Wright, Young told him what happened the night of the shooting, implicating both himself and two brothers nicknamed "Trigg and Trap." Wright testified he later learned Trigg and Trap were Troy and Barnes.

Michael Peterson testified that while he and Young were housed in the same unit of the detention center, Young approached him to talk about his case. Peterson testified Young described the shooting incident, implicating himself and another person Young called "his little homey." Peterson further testified that later, while in the shower, he overheard a nervous-sounding Young "hollering back and forth" with Troy about evidence collected in the case, explaining that all the police had recovered were shell casings.

Michael Schaefer testified he knew Young because they were housed in the same dorm in jail. Schaefer testified Young told him about the shooting, implicating himself and "Trap and Trigg." According to Schaefer, on one occasion, Young told him, "I shouldn't have shot that bitch."

Finally, the State presented testimony from a firearms and tool marks examination expert and a DNA expert. The firearms expert testified GAP .45 bullets, like the ones found at the scene and at Young's house, were typically used by law enforcement rather than civilians and could only be fired by a Glock-manufactured gun. The DNA expert testified she could not exclude either Barnes or Young from

⁴ Young and Coleman were codefendants for the burglary charges, but the trial court did not permit reference about Young being charged.

a DNA sample recovered from the spoon Hunnewell used to hit her assailants. However, on cross-examination, the expert admitted one-third of the world population could not be excluded as contributors. Neither the guns nor the red and gray hoodies were ever found.

Neither Barnes nor Young presented evidence, and instead challenged the State's proof. At the close of trial, the trial court charged "hand of one, hand of all" liability in addition to murder, kidnapping, second-degree burglary, and attempted armed robbery. After deliberating around three hours, the jury found Barnes and Young guilty of all counts. Young received consecutive sentences of life without the possibility of parole for murder, twenty years for attempted armed robbery, and fifteen years for burglary. Barnes was sentenced consecutively to fifty years for murder, twenty years for attempted armed robbery, and fifteen years for burglary.

II.

Young argues the trial court erred in admitting Barnes' letter to his mother as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, which provides:

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

. . . .

(3) *Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Williamson v. United States, 512 U.S. 594 (1994), is the starting point for considering admissibility of statements against penal interest. The case involved lengthy statements made by Williamson's accomplice, Harris, which had been

admitted as evidence against Williamson in his separate trial. *Id.* at 596-98. The Court began by holding that the term "statement" as used in the text of Federal Rule of Evidence 804(b)(3) refers to a "single declaration or remark." *Id.* at 599-600. Rejecting the broader construction that a "statement" can encompass a narrative or extended declaration, the Court reasoned:

Rule 804(b)(3) is founded on the commonsense notion that reasonable people, even reasonable people who are not especially honest, tend not to make self-inculpatory statements unless they believe them to be true. This notion simply does not extend to the broader definition of "statement." The fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts. One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature.

Id. *Williamson* recognized that Rule 804(b)(3) is an attempt to reconcile two creeds of witness reliability courts have long sustained. The first is the principle upon which the rule was founded: that people do not often falsely accuse themselves or say things that harm their interests, so such statements are naturally credible. The second is the belief that an accomplice's statement that accuses another is inherently unreliable. *See, e.g., Lee v. Illinois*, 476 U.S. 530 (1986). *Williamson* confronts the issue of what courts should do when the same person makes both types of statements. Wigmore believed that because the declarant was speaking while in a trustworthy state of mind indicating his "sincerity and accuracy," then whatever a declarant says when "under that influence" should be admitted. 5 J. Wigmore, *Evidence* § 1465, p. 339 (J. Chadbourn rev. 1974). *Williamson* avoided Wigmore's hypnosis-like view, which seems designed more for a circus tent than a tribunal, and crafted an approach that more realistically accounts for human nature: that when speaking of their criminal activity, people often speak out of both sides of their mouth. *Williamson* instructs how to apply Rule 804(b)(3) when a remark considered so reliable as to be naturally credible (i.e., no one would say it unless it was true) is coupled with one long held to be conspicuously unreliable (i.e., no one who says that can be trusted):

In our view, the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader

narrative that is generally self-inculpatory. The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, and this is especially true when the statement implicates someone else.

512 U.S. at 600–01.

Our supreme court adopted the *Williamson* approach in *State v. Fuller*, 337 S.C. 236, 244–45, 523 S.E.2d 168, 172 (1999). We interpret the rule allowing statements against penal interest stringently. *Fuller* emphasized the "strict requirements" of the rule. *Id.* at 245, 523 S.E.2d at 172. *State v. Holmes* reaffirmed *Fuller* and stressed the rule is to be applied "very narrowly to only those portions of a hearsay statement which are plainly self-inculpatory." 342 S.C. 113, 117, 536 S.E.2d 671, 673 (2000).

Rule 804(b)(3), SCRE, requires the trial judge to view the disputed evidence in light of the surrounding circumstances and discern whether each particular remark is plainly self-inculpatory. This entails a searching examination of both content and context.

Viewing Barnes' letter through this lens, we conclude it is replete with statements that do not directly incriminate him, but instead seek to curry favor with his mother or shift blame to Young. Barnes assures his mother at least four times that his brother Troy's involvement was minimal (e.g., "Troy [] had nothing to do with it. I should of told them that Troy really came down there to get me [Troy] said hell no don't go with [that] man I looked back and seen Troy waving his hand telling me to come back."). Even the State in its closing acknowledged Barnes' underlying motivations in writing the letter, conceding he was "maybe trying [to] protect his brother" and "minimizing his own role." The focus on downplaying Troy's role is significant, for in an earlier recorded statement that the trial court excluded, Barnes had told police that he—and not Troy—had been the "lookout" for the two others who had gone inside the bakery. This underscores the notorious unreliability common to statements implicating accomplices and why they by definition almost always fall outside the tight boundaries of Rule 804(b)(3).

Barnes also paints himself in the letter as a reluctant participant manipulated by Young into the robbery and murder. He repeatedly describes Young as the organizer and instigator, offering a "mere presence" defense for himself. Once a declarant begins shifting blame to another, there is a corresponding shift away

from the admissibility requirements of the rule. See *Williamson*, 512 U.S. at 603; *McCormick on Evidence*, § 319 at 534 (7th ed. 2013). Like the declarant in *Holmes*, Barnes "repeatedly depicts himself as [being] caught up in the crime." 342 S.C. at 117 n.3, 536 S.E.2d at 673 n.3. Barnes wrote he was planning on spending the evening with his girlfriend, until bowing to Young's relentless pressure to accompany him on his planned robbery of the Ale House. When they found the Ale House closed, Barnes wrote "so I said come on let's go back to my house then [Young] said you see that lady over there" Barnes describes the fatal moment as orchestrated entirely by Young: "I got scared ma I didn't want to do it . . . I should never listen to [Young]." These blame-spreading remarks should have not been presented to the jury. *Id.* ("Confessions' which shift blame to co-conspirators cannot reasonably be viewed as self-inculpatory."); see *State v. Dinkins*, 339 S.C. 597, 602, 529 S.E.2d 557, 559 (Ct. App. 2000) (attempts to absolve blame and other self-serving statements do not qualify as statements against penal interest).

Placing Barnes' statements in context does not translate into admitting the entire narrative to demonstrate the backdrop. There is no *res gestae* rider to Rule 804(b)(3). Nor can we accept the State's position that the entire letter, except the references to Troy, is against Barnes' penal interest. To be sure, "a statement is not *per se* inadmissible simply because the declarant names another person." *Fuller*, 337 S.C. at 245, 523 S.E.2d at 172. Nevertheless, we have never found a statement in which a declarant implicates—rather than merely names—another admissible under Rule 804(b)(3). The rule only grants admission of statements against the declarant's penal interest. Statements that are against the penal interest of an accomplice do not qualify for the simple fact that the accomplice is not the declarant. To explain proper application of the rule, the *Williamson* Court furnished an illuminating example:

[O]ther parts of his confession, especially the parts that implicated Williamson, did little to subject Harris himself to criminal liability. A reasonable person in Harris' position might even think that implicating someone else would decrease his practical exposure to criminal liability, at least so far as sentencing goes. Small fish in a big conspiracy often get shorter sentences than people who are running the whole show, especially if the small fish are willing to help the authorities catch the big ones.

512 U.S. at 604 (citations omitted). The Court dismissed the position that "an entire narrative, including non-self-inculpatory parts (but excluding the clearly self-serving parts . . .), may be admissible if it is in the aggregate self-inculpatory." *Id.* at 601. *See generally Weinstein's Federal Evidence*, § 804.06 (4)(d) (2d ed. 2017) ("[A] statement which shifts a greater share of the blame to another person (self-serving) or which simply adds the name of a partner in the crime (neutral) should be excluded even when closely connected to a statement that assigns criminality to the declarant.").

The State also mischaracterizes *Williamson* as drawing a distinction between statements made by Harris regarding the same criminal activity undertaken by both Harris and Williamson and statements by Harris about Williamson's "separate criminal activity." *Williamson* does not say this. In his narrative confessions, Harris implicated both himself and Williamson in the same drug conspiracy; the opinion depicts no unilateral "separate" criminal conduct by Williamson. *Williamson*, 512 U.S. at 596–97. The fact that Williamson's exposure to criminal prosecution was "separate" from Harris' is precisely what removed declarant Harris' statements implicating his accomplice Williamson from the rule: he had made a statement not against his own penal interest, but against the interest of Williamson. *Id.* at 604. As *Williamson* noted:

The question under Rule 804(b)(3) is always whether the statement was sufficiently against the declarant's penal interest "that a reasonable person in the declarant's position would not have made the statement unless believing it to be true," and this question can only be answered in light of all the surrounding circumstances.

Id. at 603–04; *see also McCormick on Evidence*, § 319 at 533 ("The result is that only the specific parts of the narrative that inculcate qualify.").

Nor are we persuaded by the State's reliance on *United States v. Dargan*, 738 F.3d 643 (4th Cir. 2013). *Dargan* was tried separately for a robbery committed with two others. *Id.* at 645–46. The Fourth Circuit affirmed admission of a statement one of *Dargan's* co-defendants, Harvey, had made to a cellmate confessing to the crime and mentioning his two accomplices without identifying them other than to say they were incarcerated in the same facility. *Id.* at 649–50. The court found the statements were against the declarant's penal interest and satisfied Rule 804(b)(3) because they demonstrated an insider's knowledge of the crime and exposed him to conspiracy liability. *Id.*

We are not convinced *Dargan* is compatible with *Williamson*. There is no "insider's knowledge" exception to the hearsay rule. *Dargan* and other courts that see such a mirage, *see, e.g., United States v. Volpendesto*, 746 F.3d 273, 288 (7th Cir. 2014), may be misreading *Williamson*'s reference to how *otherwise neutral* statements may, depending on context, be self-inculpatory if they "give the police significant details about the crime." *Williamson*, 512 U.S. at 603. But this does not mean, as Justice Scalia's solo concurrence implies, that statements revealing inside knowledge of a crime are automatically admissible even if they implicate others besides the declarant. *Id.* at 605–07.

We also find it difficult to see how any of Harvey's remarks in *Dargan*, other than the admission of his own involvement, were individually self-inculpatory. One who says "I killed X and did it with Y" would certainly be subject to conspiracy liability, and the statement would also be admissible against the declarant in his separate trial as a statement of a party-opponent. But almost *any* remark implicating both the declarant and an accomplice in a joint crime also incriminates the declarant in a conspiracy, and to use such logic to meet 804(b)(3) would be an end run around *Williamson* as well as render that decision unintelligible, as many of the statements the Court described as non-self-inculpatory to Harris surely connected him to a conspiracy with *Williamson*.⁵

Significantly, Federal Rule of Evidence 804(b)(3) was amended in 2010 to require that a statement against penal interest be "supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability." Our Rule 804(b)(3) only requires corroboration when the statement is offered to exculpate the accused. Because this protective layer of corroboration is not extended to statements offered by the State to inculcate the accused, the need to rigorously

⁵ Rule 801(d)(2)(E), SCRE, classifies "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy" as not hearsay. But remarks made by a co-conspirator once the conspiracy has ended or that do not advance the conspiracy's aims do not enjoy the same aura of reliability. Consequently, they are treated like any other hearsay, mirroring the treatment Rule 804(b)(3) accords the non-self-inculpatory statements of accomplices. *See State v. Sims*, 387 S.C. 557, 566, 694 S.E.2d 9, 14 (2010) (finding co-conspirator statements that do not further the conspiracy but simply "spill the beans" inadmissible).

restrict admission to plainly self-inculpatory remarks in such circumstances is even more urgent. Confining the statement against interest exception to such declarations is consistent with the text of the rule and the wariness with which our courts have treated this strand of hearsay, which was altogether barred from admission in criminal trials until *State v. Doctor*, 306 S.C. 527, 529–30, 413 S.E.2d 36, 38 (1992), and the adoption of the South Carolina Rules of Evidence in 1995. Before that, the common law only tolerated it in civil cases, and then only if the declarant was dead. *See, e.g., Gilchrist v. Martin*, 8 S.C. Eq. 492 (1831).

We find the trial court erred in admitting Barnes' letter without conducting the careful examination required by Rule 804(b)(3). The portions of the letter that did not plainly inculcate Barnes were rank hearsay inadmissible against Young.

III.

We next consider whether the trial court cured the error by instructing the jury the next morning to not consider the letter against Young. We start by presuming the cure worked, for we also presume juries follow their instructions. *See State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999); *see also Richardson v. Marsh*, 481 U.S. 200, 206 (1987) (noting "the almost invariable assumption of the law that jurors follow their instructions"). This presumption has long been assailed, most famously by Justice Jackson's disdainful appraisal of "[t]he naive assumption that prejudicial effects can be overcome by instructions to the jury, [which] all practicing lawyers know to be unmitigated fiction." *Krulewitch v. United States*, 336 U.S. 440, 453 (1949) (Jackson, J., concurring) (citation omitted). Others have defended jurors' ability to perform their duties conscientiously. *See United States v. Mazzone*, 782 F.2d 757, 764 (7th Cir. 1986) ("We are not quite so naive as to believe that telling jurors not to think about something will cause them to forget it, but we trust juries to behave responsibly and to put aside as considerations bearing on their judgment matters that the judge tells them to put aside."); *see also Sklansky, Evidentiary Instructions and the Jury as Other*, 65 Stan. L. Rev. 407, 424–28 (2013) (reviewing thirty-three empirical studies of the effect of limiting instructions on mock juries and contending instructions can be effective if prudently delivered).

Limiting instructions are deemed to cure error unless "it is probable that, notwithstanding the instruction, the accused was prejudiced." *State v. Smith*, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986). The instruction given here was well-crafted, as far as limiting instructions go, which is not far amidst the dense gravity

of a *Bruton*-like error.⁶ *Bruton* held the admission, in a joint trial, of a nontestifying defendant's confession implicating a co-defendant violated the Confrontation Clause. 391 U.S. at 126. The Court then took the remarkable step of adopting a *per se* rule that the violation could not be cured by a limiting instruction. *Id.* at 135–36. The Court found:

[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial.

Id. (citations omitted).

Relying on this same language, our supreme court recently reaffirmed that a limiting instruction cannot fix a *Bruton* violation. *State v. McDonald*, 412 S.C. 133, 142, 771 S.E.2d 840, 844 (2015). We perceive no practical difference between *Bruton*, *McDonald*, and the wrongful admission of Barnes' letter against Young that would justify a different result. We do not believe the limiting instruction given here in a joint trial magically gains potency by labeling the error it was designed to target as inadmissible hearsay rather than lack of confrontation. The concepts are close cousins. *Dutton v. Evans*, 400 U.S. 74, 86 (1970) ("[T]he Sixth Amendment's Confrontation Clause and the evidentiary hearsay rule stem from the same roots."). Nor can we sensibly say the magnitude of prejudice varies with whether the tainted confession was testimonial or not. It was an out-of-court

⁶ We leave for another day the issue of what impact, if any, *Crawford v. Washington*, 541 U.S. 36 (2004) has on *Bruton*. Many federal circuits have found that because *Crawford* limited the reach of the Confrontation Clause to testimonial statements, *Bruton* no longer applies to the admission of non-testimonial statements in a joint trial. See *Dargan, supra*; *United States v. Vasquez*, 766 F.3d 373, 378–79 (5th Cir. 2014). Our focus is solely whether, on the record before us, the presumption that curative instructions work can, in a joint trial, withstand the admission of an out-of-court statement by a nontestifying co-defendant that violates the hearsay rule. Rules 801–805, SCORE.

statement that came in as evidence against the accused without the benefit of cross-examination, and the limiting instruction could not take it out.

IV.

Having decided the error in admitting Barnes' hearsay statements was not cured, we must address whether it was nevertheless harmless. The improper admission of hearsay is harmless when it could not have reasonably affected the result of the trial. *State v. Brewer*, 411 S.C. 401, 408–09, 768 S.E.2d 656, 660 (2015). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). For example, "[i]mproperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless." *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93–94 (2011) (citing *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978)). If it appears beyond a reasonable doubt that the error did not contribute to the verdict, then the error may be deemed harmless. *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012).

While we have not based the error here on *Bruton* or other constitutional grounds, the analysis for ascertaining the harmfulness of a *Bruton* error remains useful, and is not functionally different from the test for trial errors outlined above. The violation of the Sixth Amendment right to confrontation is not *per se* reversible error. In *McDonald* and *State v. Henson*, 407 S.C. 154, 167, 754 S.E.2d 508, 515 (2014), our supreme court quoted *Schneble v. Florida*, 405 U.S. 427, 430 (1972): "In some cases the properly admitted evidence of guilt is so overwhelming, and the prejudicial effect of the codefendant's admission is so insignificant by comparison, that it is clear beyond a reasonable doubt that the improper use of the admission was harmless error." Whether a *Bruton* error is harmless depends upon numerous factors including "the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case." *State v. Jenkins*, 322 S.C. 360, 364–65, 474 S.E.2d 812, 815 (Ct. App. 1996).

We recognize it may seem counter-intuitive to find the hearsay error so prejudiced Young that no curative instruction could save it, yet also find the error harmless beyond a reasonable doubt. We are also mindful that a confession (sometimes called "the Queen of proofs") is among the most explosive and incriminating of

evidence, and often profoundly impacts the jury. But it must be remembered that the jury also had before it three separate confessions made by Young himself rather than his accomplice. Although these statements were recounted by fellow prisoners facing serious pending charges, and whose motives and recall were questioned extensively, it was up to the jury to gauge credibility. It is probable the collective impact of this testimony was more damaging to Young than Barnes' letter, which after all was written by a minor in lockup to his mother. *See Harrington v. California*, 395 U.S. 250, 254 (1969) (finding admission of two co-defendants' confessions in violation of *Bruton* harmless when Harrington also confessed and evidence of his guilt was overwhelming; "Our judgment must be based on our own reading of the record and on what seems to us to have been the probable impact of the two confessions on the minds of an average jury."). The statements attributed to Young by his fellow inmates were largely consistent with each other, and corroborated other key pieces of the State's case. *See Schneble*, 405 U.S. at 431 (finding a *Bruton* violation to be harmless error when the "details of petitioner's [confession] were internally consistent, were corroborated by other objective evidence, and were not contradicted by any other evidence in the case"); *accord McDonald*, 412 S.C. at 143–44, 771 S.E.2d at 845. We note *McDonald* found a limiting instruction wanting in light of *Bruton*, yet still found the *Bruton* error harmless.⁷ 412 S.C. at 142–44, 771 S.E.2d at 844–45.

Although the decision dealt with a defendant's confession improperly admitted against him in his separate trial, Justice Kennedy's concurrence in *Arizona v. Fulminante*, 499 U.S. 279, 313 (1991), emphasized that a court

conducting a harmless-error inquiry must appreciate the indelible impact a full confession may have on the trier of fact If the jury believes that a defendant has admitted the crime, it doubtless will be tempted to rest its decision on that evidence alone, without careful consideration of the other evidence in the case. Apart, perhaps, from a videotape of the crime, one would have difficulty finding evidence more damaging to a criminal defendant's plea of innocence.

⁷ We understand that in *Henson* our supreme court found a *Bruton* error not to be harmless. *See Henson*, 407 S.C. at 167, 754 S.E.2d at 515. There, however, the evidence of guilt was not overwhelming. Unlike the situation here, there was no physical evidence linking the defendant to the crime and he had not confessed to third parties. *See id.*

We have such a videotape here. Three witnesses, including his mother, identified Barnes as one of the people on the video shooting at Hunnewell. Numerous witnesses placed Young together with Barnes at Barnes' mother's house shortly before and after the crime occurred, wearing a red sweatshirt like that seen on the video. This house was within walking distance of the scene. Donald Moore stated that Young had discussed his planned robbery of the Ale House and that Young had a Glock .40. Three witnesses related confessions by Young that corroborated details from the video. Portions of the video were found on his cell phone, along with a depiction of him brandishing what he described as a Glock .45. Shell casings from the scene matched the make and type as those found at Young's home. The gloves recovered from Young's home bore gunshot residue. Young's girlfriend observed him hiding a gun he described as a .45 when he arrived home a few hours after the murder, and she also heard his mother later warn him to get rid of the gun.

We therefore find it clear beyond a reasonable doubt that a rational jury would have found Young guilty absent the error.⁸ *Neder v. United States*, 527 U.S. 1, 18 (1999). To be sure, there are instances when the improper hearsay heard by the jury is so prominent that "[t]he reverberating clang of those accusatory words would drown all weaker sounds." *Shepard v. United States*, 290 U.S. 96, 104 (1933) (Cardozo, J.). But here there was a deafening drumbeat of substantial testimonial and physical evidence far more resonant than Barnes' letter.

We do not make this finding lightly, but in keeping with the view that "[t]he harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) (citation omitted); cf. Murray, *A Contextual Approach to Harmless Error Review*, 130 Harv. L. Rev. 1791 (2017) (noting "some degree of procedural error is virtually inevitable in all but the most straightforward of criminal trials," but advocating reform of harmless

⁸ In light of this disposition, we find that if any error occurred in denying Young's motion for a mistrial, it was also harmless. See *State v. Howard*, 296 S.C. 481, 485, 374 S.E.2d 284, 286 (1988).

error doctrine to account more for the nature of the right infringed by the trial error rather than its effect on result).

We remain concerned—not to mention perplexed—by the State's use of evidence the Supreme Court forbade a generation ago in *Williamson*, and in a manner condemned a generation before that in *Bruton*. We echo Justice Kittredge's reminder of the "cautionary warning from almost three decades ago" that the State should seek the expediency of joint trials only after considering the often insoluble evidentiary problems they pose. *McDonald*, 412 S.C. at 144 n.4, 771 S.E.2d at 845 n.4. These problems, as common as they are elementary, appear to have escaped the State's attention here. Although we have found Young's trial fundamentally fair, the State's decision to jointly try him with Barnes needlessly jeopardized that fairness.

V.

Because any error in his trial was harmless beyond a reasonable doubt, Young's convictions are affirmed.

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT

APPELLATE CASE NO. 2014-002548

Appeal from Richland County

The Honorable Robert E. Hood, Circuit Court Judge

Opinion No. 5501

PETITION FOR REHEARING

RECEIVED
AUG 03 2017
SC Court of Appeals

Appellant Lorenzo Young (“Young”) petitions this Court for rehearing on its harmless error holding. While the Court initially states the correct legal standard for a harmless error analysis, the **application** appears to use the standard of review from a directed verdict case—viewing the evidence in the light most favorable to the State. Weighing the evidence in the State’s favor in its harmless error analysis removed the jury’s power to judge the credibility of the witnesses against Young. Furthermore, the error in this case was a creature of the State’s own making and relying on harmless error to affirm will fail to deter such conduct.

Conspicuously absent from the Court's opinion is the full text of the erroneously admitted letter from co-defendant Barnes. The letter, reproduced in full below, contains multiple claims that Young planned the robbery and murdered Hunnewell:

Your Son

Trenton. B

Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis **and renzo was on the phone** with his baby mama we was the only two up and **he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick** and then I was like I don't know bruh I'm koolin talking to my lady **and he was like money come first.** I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me **renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing** then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me **do I have a gun** and I said no but I know way one at he said way at and I said I know way Shorty be putting his gun at out side so I took him to it and **he pulled out his gun** and said which one you won't and I said the small one then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped's and drit bikes and **he was like just a lul lick so we was at the bar down the street** from the house it started raining hard and I was like I'm bout to go home **and he said hold on lul bruh then he was like damm they closed** so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody **he was like come on then we was by the door and I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back **then renzo walk into the place and I went behind him then he grabed her and put the gun to her head** and told me to get in front of her and she swang at me and I closed my and jump I got scared ma I didn't want to do it. I'm sorry. I said it was troy because **I was scared to go to jail with renzo by myself** im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just

wanna come home and be with you people keep telling me im going to prison for
a long time love you mama I just wanna come home real soon not no grown man.

Love You MAMA
Your BaBy Boy
Trenton

R. 1617-18 (emphasis added). If the erroneous admission of a co-defendant's letter like this can be harmless, then the Court's published opinion should include its full text for the benefit of bench, bar, and legal scholars. See State v. Collins, 709 S.C. 524, 540 S.E.2d 22, 31 (2014) (Pleicones, J., dissenting) ("In my opinion, the only way we can educate the bench and bar as to that which is and is not beyond the pale is to publish these horrific photographs with our opinion.").

Respectfully, the Court erred in determining that the State's evidence overcomes what it already found to be a jury prejudiced by and rendered partial by admission of the Barnes letter. This conviction was based on the testimony of three jailhouse snitches and DNA evidence that marginally incriminated Young and one-third of the people on the planet. The Court should grant rehearing and reverse and remand this case for a new, fair trial for Young.

1. The Court's Harmless Error Analysis Is Inherently Flawed

The Court acknowledged the logical inconsistency in its own opinion. The Court wrote that finding harmless error after deciding that the jury had been so prejudiced that it could not follow a limiting instruction was "counter-intuitive." Op. at 14. On the facts of this case, the Court's harmless error analysis denies Young his right to a trial by an impartial jury. The Court's analysis discusses whether it was "probable" that other evidence, particularly jailhouse snitch testimony, swayed their verdict. Op. at 14. Equally probable is that the Barnes letter contributed to the verdict. See State v. Brewer, 411 S.C. 401, 408-09, 768 S.E.2d 656, 660

(2015) (stating that errors are harmless when they “could not have reasonably affected the result of a trial” and reversing a conviction after criticizing the State, calling it “chilling” that the Court had to remind the executive branch that “an accused is presumed innocent”). Because these assessments of probabilities from a cold record necessarily involve the forbidden practice of weighing evidence and credibility in an appeal, the error in this case cannot be harmless. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016) (holding that an error could not be harmless because the “case hinged on credibility”).

The jury had to discuss the Barnes letter in the jury room. They had to read it and discuss it when they deliberated Barnes’ guilt. If the letter was part of Barnes’ guilt, then the jury also had to discuss it regarding Young’s guilt because of other instructions. The trial judge charged the jury on hand of one, hand of all. Furthermore, as recognized by the Court, the jury could not have followed the limiting instruction. The prejudicial effect of a letter repeatedly blaming “renzo” for Hunnewell’s murder cannot be overstated. On the facts of this case, it was impossible for Young to receive a fair trial with the Barnes letter in evidence. Young’s trial was not “fundamentally fair” and the only way to reach such a conclusion was to ignore the harmless error standard and weigh the evidence, both of which are errors. Op. at 17.

2. The Court Improperly Weighed the Evidence

The Court begins its harmless error analysis by reciting the proper standard—that errors must be harmless beyond a reasonable doubt. Op. at 13-14. However, the Court’s analysis ignores this standard and persistently views the evidence in the light most favorable to the State. This constitutes a legal error. The evidence cited by the Court as overwhelming is deeply flawed and the Court’s decision denies Young of his right to have the jury consider the credibility of the witnesses and the State’s evidence.

a. The Snitches

The Court places great emphasis on the testimony of three jailhouse snitches, stating it is “probable” their testimony damaged Young more than the Barnes letter. The Court’s analysis necessarily assumes that the snitches’ testimony is credible. Assuming the snitches’ testimony is credible means that the Court has viewed their testimony in the light most favorable to the State, which is improper. In fact, snitch testimony is suspect as a matter of law. United States v. Luck, 611 F.3d 183, 186-90 (4th Cir. 2010) (holding trial counsel ineffective and reversing conviction for failing to request a jury instruction that informant testimony “must be examined and weighed by the jury with greater care than the testimony of an ordinary witness.”).

Snitch Wright was represented by Barney Giese, who was present in the courtroom during his testimony. R. 704, ll. 5 – 14. Snitch Wright had pending charges for murder, first-degree burglary, criminal conspiracy, and armed robbery. R. 703, ll. 9 – 11. The same solicitor’s office was prosecuting both Young and Snitch Wright. R. 709, ll. 3 – 17. Snitch Wright was no longer at the Richland County jail and had been moved to another facility. R. 707, ll. 18 – 22. Snitch Wright knew Snitch Schaefer. R. 707, l. 23 – 708, l. 17.

Snitch Wright claimed he heard Young confess in the law library on February 28, 2014. R. 706, ll. 20 – 25. Young supposedly confessed this horrific crime to Snitch Wright even though they only met one time. R. 707, ll. 3 – 4. On cross-examination, Snitch Wright admitted that jail policy did not allow inmates to go to the law library thirty days after their release from the SHU. R. 710, ll. 3 – 6. He stated he was surprised to learn that Young was released from the SHU on February 19, which meant that jail policy would not have allowed him to be in the library. R. 713, ll. 1 -15.

Snitch Schaefer pled guilty to three counts of armed robbery in July 2014 (a possible 90 year sentence, or LWOP) and received concurrent twelve year sentences. R. 879, ll. 5 – 20. In April 2014, months before his guilty plea, he reported Young’s alleged confession with the assistance of his attorney, William Hodge. R. 883, ll. 4 – 14. Snitch Schaefer admitted knowing Snitch Wright. R. 882, ll. 16 – 17.

Snitch Peterson faced life in prison for murder and kidnapping. R. 799, ll. 15 – 24. He was being prosecuted by the same solicitor’s office. R. 799, ll. 15- 24. He was represented by Victor Li, who was present in the courtroom during his testimony. R. 800, ll. 14 – 21. He relayed his allegations to the solicitor’s investigator with the help of his attorney. R. 800, ll. 22 – 24. Snitch Peterson had written letters to the solicitor’s office on another occasion in an attempt to testify against another defendant. R. 811, ll. 12 – 20.

Importantly, all three snitches testified after the Barnes letter was introduced into evidence. With the Barnes letter already indelibly implanted in their minds, the jury was likely to find the snitches’ testimony simply confirmed the letter’s version of events instead of assessing the snitches’ dubious credibility. All three snitches admitted they had access to televisions and Hunnewell’s murder received extensive media coverage. R. 708, l. 20 – 709, l. 2 (Snitch Wright). R. 882, l. 22 – 883, l. 3 (Snitch Schaefer). R. 802, l. 4 – 803, l. 1 (Snitch Peterson). Weighing the snitches’ testimony in the light most favorable to the State to find harmless error ignores the proper standard of review.

b. Donald Moore

The Court improperly relies on the testimony of Donald Moore, who went to the police to incriminate Young because the “word on the street” was that he was the police’s chief suspect. R. 595, ll. 5 – 7. Moore admitted on cross-examination that he made up his statement to police

incriminating Young in order to clear his own name. R. 594, l. 3 – 595, l. 18. Relying on Moore’s testimony in its harmless error analysis requires believing his first statement, which Moore said was a lie. The Court may not weigh Moore’s testimony in the State’s favor in conducting its harmless error analysis.

c. The “Physical Evidence”

The Court relies on what it calls “physical evidence” against Young to distinguish his case from the Bruton error in State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014). First and foremost, the Court relies on the videotape. None of Hunnewell’s assailants can be identified on the videotape. State’s Ex. 323. All wear common articles of clothing and their faces are obscured. State’s Ex. 323. While Barnes’ mother could supposedly identify him on the videotape, Young was never identified. As the Court noted in its examination of the letter, Barnes and his family had a strong motive to attempt to deflect blame from Stevenson and incriminate Young. Relying on the videotape in conducting a harmless error analysis in this case necessitates weighing the evidence and inferences in the State’s favor, which is improper.

The Court also relies on the State’s worthless DNA evidence. The State’s DNA expert could not even definitively say that Young’s DNA was **included** as a contributor—only that he could not be **excluded** as a contributor. R. 969, ll. 12 – 18. Along with Young, one third of the world’s population fell into this same unilluminating category. DNA evidence in most cases speaks in terms of matches with probabilities so high that the numbers sound invented. This DNA evidence had virtually no probative value and the Court erred by improperly weighing it in the State’s favor against Young.

3. *The State's Willingness to Use Blatantly Inadmissible Evidence to Secure Young's Conviction Further Proves this Error Cannot be Harmless*

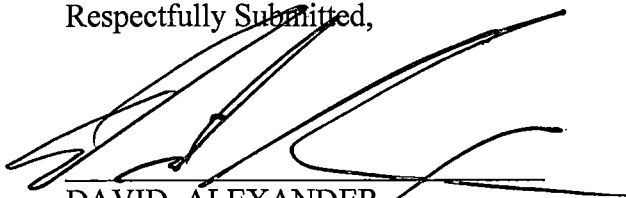
The State's willingness to use the Barnes letter in the first place demonstrates that this error cannot be harmless. The Court chastises the solicitors for using evidence they should have known was inadmissible. Op. at 16-17. Appellant submits that the solicitors knew their case against Young was weak and they were willing to go to extraordinary lengths to secure his conviction in this high-profile case. The Court's admonishment proves the value of the Barnes letter against Young.

As the Court points out, the State created this error when it chose to try Young and Barnes together. Op. at 16-17. The State knew that if it tried Young alone, it would be forced to do so without this letter and made the decision to set a trap for the court with this joint trial.

The Court should heed the cautionary advice of Justice Brennan, who, in a case cited by this Court in its opinion, warned of the diminishment of appellate courts' role in deterring police and prosecutors' conduct if the harmless error doctrine was applied indiscriminately. See Harrington v. California, 395 U.S. 250, 255-57 (1969) (Brennan, J., dissenting). Listing the landmark cases upon which our modern criminal law is based (including Bruton), Justice Brennan wrote that "[T]he deterrent effect of such cases . . . on the actions of both police and prosecutors, not to speak of trial courts, will be significantly undermined." Id. at 255. "By its nature, the issue of substantiality of evidence admits of only the most limited kind of appellate review." Id. at 256. If the Court's harmless error analysis stands in this case, Justice Brennan's

fifty-year old prediction will be proved correct. Aggressive solicitors will read this opinion and see not what is forbidden, but what they can get away with.

Respectfully Submitted,



DAVID ALEXANDER
Appellate Defender

This 3rd day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

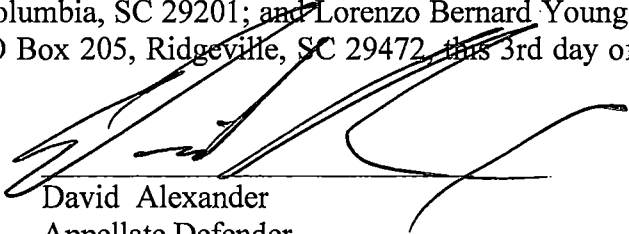
V.

LORENZO BERNARD YOUNG,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lorenzo Bernard Young, #362169, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of August, 2017.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 3rd day of August, 2017.


_____(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023

The South Carolina Court of Appeals

The State, Respondent,

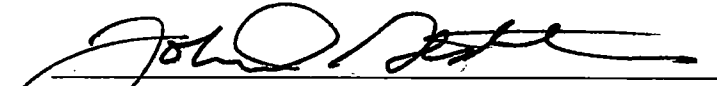
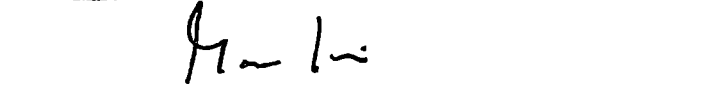
v.

Lorenzo Bernard Young, Appellant.

Appellate Case No. 2014-002548

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

David Alexander, Esquire

Susannah Rawl Cole, Esquire

FILED

September 21, 2017

1954

Daniel Edward Johnson, Esquire
The Honorable Robert E. Hood

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 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

NOV 13 2017

Opinion No. Op. 5501 (S.C. Ct. App. filed July 19, 2017)

S.C. SUPREME COURT

2014-GS-00745, 00746, 00747, 00749

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

PETITIONER

APPELLATE CASE NO. 2017-002191

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 21, 2017.

QUESTION PRESENTED

Whether, the Court of Appeals erred in finding harmless the trial court's error in admitting an unredacted letter written by petitioner's co-defendant that implicated petitioner by name in the murder over petitioner's hearsay objection, and in not granting a mistrial after petitioner's objections that no limiting instruction could be sufficient?

STATEMENT OF THE CASE

On February 19, 2014, a Richland County grand jury indicted petitioner Lorenzo Young for murder, kidnapping, second-degree burglary, and attempted armed robbery. R.1619. Petitioner was indicted along with Trenton Barnes (“Barnes”) and Troy Stevenson (“Stevenson”). Barnes and Stevenson are brothers. On November 10, 2014, petitioner and Barnes were tried together before the Honorable Robert Hood and a jury. R 1. Dolly Garfield, Luck Campbell, and Nicole Simpson represented the State. R 1. Tracy Pinnock, Stephen Krzyston, and Jacqueline Bambach represented petitioner. R 1. Mark Schnee represented Barnes. R 1. The jury convicted both defendants on all charges. R. 1593, l. 8 – 1594, l. 8. Judge Hood sentenced petitioner to consecutive terms of fifteen years’ imprisonment for burglary, twenty years’ imprisonment for attempted armed robbery, and life imprisonment without the possibility of parole for murder. R. 1612, l. 13 – 1613, l. 4. On April 17, 2017, a panel of the Court of Appeals consisting of Judges Geathers, McDonald, and Hill heard oral argument on petitioner’s appeal. App. 1. On July 19, 2017, the court issued a published opinion affirming petitioner’s convictions. App. 1. On September 21, 2017, the court denied petitioner’s petition for rehearing. App. 28. This petition for certiorari follows.

ARGUMENT

The Court of Appeals erred in finding harmless the trial court's error in admitting an unredacted letter written by petitioner's co-defendant that implicated petitioner by name in the murder over petitioner's hearsay objection, and in not granting a mistrial after petitioner's objections that no limiting instruction could be sufficient.

Introduction

By affirming petitioner's conviction, the Court of Appeals stretched the harmless error doctrine past its breaking point. The court held that an error so prejudicial that no limiting instruction could cure its effect on the minds of jurors was nevertheless harmless because of jailhouse snitches and DNA evidence that implicated one-third of the planet's population. The opinion acknowledged that this result was "counter-intuitive." App. at 14. The court reached this "counter-intuitive" result by merely reciting without applying the "beyond a reasonable doubt" standard for finding errors harmless. In actuality, the opinion views the evidence in the light most favorable to the State. Finding this error harmless removes from the jury the ability to fairly weigh the State's evidence and credibility of its witnesses. The error here cannot be harmless without the appellate court substituting its judgment regarding witness credibility for the jury's.

The error in this case was the State's fault. App. at 17. The court chastised the State's decision to use evidence "forbade a generation ago" and "condemned a generation before that." App. at 17. The State chose to use this forbidden evidence because it needed the forbidden prejudice that would accrue in the jurors' minds to get its conviction in this highly publicized trial. By applying harmless error, the Court of Appeals ignored the "beyond a reasonable doubt" standard and rewarded the State, its cautionary words likely falling on deaf ears. This Court should grant

certiorari to reaffirm that errors must be harmless beyond a reasonable doubt and to remind the State that its actions at trial still have consequences on appeal.

The Error: The Barnes Letter

The Court of Appeals failed to include text of the erroneously admitted letter in its opinion. See State v. Collins, 709 S.C. 524, 540 763 S.E.2d 22, 31 (2014) (Pleicones, J., dissenting) (“In my opinion, the only way we can educate the bench and bar as to that which is and is not beyond the pale is to publish these horrific photographs with our opinion.”). Reading the whole letter—like the jury did—is necessary to see why its admission cannot be harmless. Petitioner Lorenzo Young’s co-defendant, Trenton Barnes (“Barnes”), wrote his mother the following letter from jail accusing “renzo” of planning the robbery of the Carolina Café bakery and murdering Kelly Hunnewell:

Your Son

Trenton. B

Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I’m down here with troy and renzo. I talk to troy about the case. I’m ready to talk back with them people and tell them the truth ma tell that troy ain’t had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis **and renzo was on the phone** with his baby mama we was the only two up and **he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick** and then I was like I don’t know bruh I’m koolin talking to my lady **and he was like money come first**. I ain’t tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don’t go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me **renzo got off the phone and was like you ready and I told him I’m koolin then he started talking bout how much money was go be there then he said let’s go scoope it out we ain’t got to do nothing** then we went outside and I said bruh I ain’t tryna go to jail and he said on my baby you ain’t going to jail lul bruh he ask me **do I have a gun** and I said no but I know way one at he said way at and I said I know way Shorty be putting his gun at out side so I took him to it and **he pulled out his gun** and said which one you won’t and I said the small one

then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped's and drit bikes and **he was like just a lul lick so we was at the bar down the street** from the house it started raining hard and I was like I'm bout to go home **and he said hold on lul bruh then he was like damm they closed** so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody **he was like come on then we was by the door and I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back **then renzo walk into the place and I went behind him then he grabed her and put the gun to her head and told me to get in front of her** and she swang at me and I closed my and jump I got scared ma I didn't want to do it. I'm sorry. I said it was troy because **I was scared to go to jail with renzo by myself** im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me im going to prison for a long time love you mama I just wanna come home real soon not no grown man.

Love You MAMA
Your BaBy Boy
Trenton

R. 1617-18 (emphasis added). The "troy" referenced in the letter is Barnes' brother Troy Stevenson, who was also charged in Hunnewell's murder, but was not tried with Young and Barnes.

The Court of Appeals correctly held that admission of this hearsay letter from a non-testifying co-defendant was error, applying our state's well-established hearsay rules and Williamson v. United States, 512 U.S. 594 (1994). The Court of Appeals then correctly held that the trial judge's limiting instruction not to consider the Barnes Letter against Young did not cure the error, applying the reasoning of Bruton v. United States, 391 U.S. 123 (1986) and our state law. What requires the intervention of this Court is to correct the harmless error analysis that followed.

*The Evidence Against Young Other than the Barnes Letter Cannot Support a Legal Conclusion
of Harmless Error Beyond a Reasonable Doubt*

Errors in a criminal trial must be harmless beyond a reasonable doubt. State v. Henson, 407 S.C. 154, 166-67, 754 S.E.2d 508, 515 (2014) (holding that the Bruton error in a case was not harmless). “That requires a court to determine ‘whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.’” Id. quoting Fahy v. Connecticut, 375 U.S. 85, 86 (1963). The deeply flawed evidence cited by the Court of Appeals is insufficient to extinguish the possibility that the Barnes Letter contributed to Young’s conviction.

a. The Snitches

The Court of Appeals placed great emphasis on the testimony of three jailhouse snitches. As the United States Supreme Court has observed, informers pose “serious questions of credibility.” Banks v. Dretke, 540 U.S. 668, 701-02 (2004) (internal quotations omitted). The court here stated it was “probable” the snitches’ testimony damaged Young more than the Barnes Letter. The court’s analysis necessarily assumed that the snitches’ testimony was credible. Assuming the snitches’ testimony to be credible means that the Court viewed their testimony in the light most favorable to the State, which is improper.

Snitch Wright was represented by Barney Giese, who was present in the courtroom during his testimony. R. 704, ll. 5 – 14. Snitch Wright had pending charges for murder, first-degree burglary, criminal conspiracy, and armed robbery. R. 703, ll. 9 – 11. The same solicitor’s office was prosecuting both Young and Snitch Wright. R. 709, ll. 3 – 17. Snitch Wright was no longer at the Richland County jail and had been moved to another facility. R. 707, ll. 18 – 22. Snitch Wright knew Snitch Schaefer. R. 707, l. 23 – 708, l. 17.

Snitch Wright claimed he heard Young confess in the law library on February 28, 2014. R. 706, ll. 20 – 25. Young supposedly confessed this horrific crime to Snitch Wright even though they only met one time. R. 707, ll. 3 – 4. On cross-examination, Snitch Wright admitted that jail policy did not allow inmates to go to the law library thirty days after their release from the SHU. R. 710, ll. 3 – 6. He stated he was surprised to learn that Young was released from the SHU on February 19, which meant that jail policy would not have allowed him to be in the library. R. 713, ll. 1 -15.

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Importantly, all three snitches testified after the Barnes Letter was introduced into evidence. With the Barnes Letter already indelibly implanted in their minds, the jury was likely to find the snitches' testimony simply confirmed the letter's version of events instead of assessing the snitches' dubious credibility. All three snitches admitted they had access to televisions and Hunnewell's murder received extensive media coverage. R. 708, l. 20 – 709, l. 2

(Snitch Wright). R. 882, l. 22 – 883, l. 3 (Snitch Schaefer). R. 802, l. 4 – 803, l. 1 (Snitch Peterson). Relying on the snitches' testimony to find harmless error ignores the proper standard of review by weighing their testimony in favor of the State.

b. Donald Moore

The court improperly relied on the testimony of Donald Moore, who went to the police to incriminate Young because the “word on the street” was that he was the police’s chief suspect. R. 595, ll. 5 – 7. Moore admitted on cross-examination that he made up his statement to police incriminating Young in order to clear his own name. R. 594, l. 3 – 595, l. 18. Relying on Moore’s testimony in its harmless error analysis requires believing his first statement, which Moore said was a lie. The court erred by weighing Moore’s testimony in the State’s favor.

c. The “Physical Evidence”

The court relied on what it called “physical evidence” against Young to distinguish his case from the Bruton error in State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014). First and foremost, the court relied on the videotape. None of Hunnewell’s assailants can be identified on the videotape. State’s Ex. 323. All wear common articles of clothing and their faces are obscured. State’s Ex. 323. While Barnes’ mother could supposedly identify Barnes on the videotape, Young was not identified. As the court noted in its examination of the letter, Barnes and his family had a strong motive to attempt to deflect blame from Stevenson and incriminate Young. Relying on the videotape in conducting a harmless error analysis in this case required weighing the evidence and inferences in the State’s favor, which was improper.

The Court of Appeals also relied on the State’s worthless DNA evidence. The State’s DNA expert could not even definitively say that Young’s DNA was **included** as a contributor—only that he could not be **excluded** as a contributor. R. 969, ll. 12 – 18. Along with Young, one-

third of the world's population fell into this same unilluminating category. DNA evidence in most cases speaks in terms of matches with probabilities so high that the numbers sound invented. This DNA evidence had virtually no probative value and the court erred by improperly weighing it in the State's favor against Young.

Errors in Convictions Dependent Upon Witnesses with Shaky Credibility and Little Physical Evidence Are Not Harmless

The unreliable evidence in Young's case is similar to other cases in which this Court has rejected the State's contention that the error was harmless. In Henson, the Bruton error was not harmless because the chief witnesses "both faced charges for their participation in the crimes and thus, had an incentive to downplay their involvement and shift blame onto others." Henson at 167, 754 S.E.2d at 515.

In State v. Gracely, 399 S.C. 363, 375-77, 731 S.E.2d 880, 886-87 (2012), the Confrontation Clause error was not harmless. This Court wrote in Gracely, "Given the State's heavy reliance on circumstantial evidence, and the abysmal credibility of the State's witnesses, the error in this case was not harmless." Gracely at 375, 731 S.E.2d at 886. The witnesses in Gracely "cooperated following arrest" and faced "the possibility of long prison terms." Id. at 377, 731 S.E.2d at 887. In State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), the State's chief witness faced life in prison and the error was not harmless.

Like in Henson, Gracely, and Mizzell, the credibility of the State's witnesses was too suspect to render the error harmless. Moore was the original suspect for the murder and admitted lying on the witness stand. The three snitches all faced serious charges. If the jail's rules were followed, one snitch's testimony could not be true. Also like Henson, Gracely, and Mizzell, the

physical evidence against Young was scant. Young could not be identified on the videotape and the State's DNA evidence was nearly worthless.

This Court should also consider the State's willingness to use the Barnes Letter despite its patent inadmissibility as evidence of its importance in this case. The court stated the solicitors should have indisputably known the Barnes Letter was inadmissible and it was "perplexed" by the State's decision to seek its admission. App. 16. Petitioner submits there is nothing perplexing about the State's need for this letter: the solicitors knew their case against Young was weak and they **were counting on the jurors not following the limiting instruction**. As the Court of Appeals candidly observed, seasoned trial lawyers know that jurors cannot follow limiting instructions of this sort. The State knew that if it tried Young alone, it would be forced to do so without this letter and made the decision to pursue a joint trial despite the fact that the letter was inadmissible against Young. An affirmance based on harmless error rewards the State's strategy. The Court of Appeals' chastisement unaccompanied by reversal is insufficient to discourage solicitors in future cases.

Finally, it must be remembered that the error here was not insubstantial: it went to the very heart of the case and was so prejudicial the jury could not, as a matter of law, put it aside. Appellate standards of review are constructed to ensure that cases are not needlessly taken away from the ambit of trial judges and juries. A reversal of a conviction takes a case away from the jury. But an affirmance on harmless error does the same thing—it takes a case away from a future, fair jury untainted by error and replaces it with a hypothetical reasonable jury. In this case dependent upon snitch testimony and circumstantial evidence, Young is entitled to more than a hypothetical jury. This Court should grant certiorari and reverse so that an untainted,

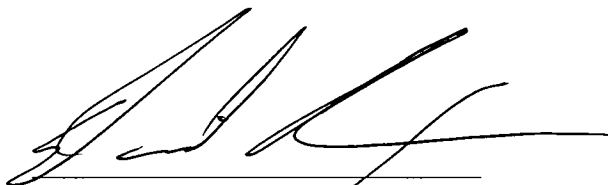
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impartial jury may determine Young's guilt and judge the believability of the State's evidence against him.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and remand this case for a new trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2017.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

Certiorari to Richland County
Honorable Robert E. Hood, Circuit Court Judge

Opinion No. Op. 5501 (S.C. Ct. App. filed July 19, 2017)
2014-GS-00745, 00746, 00747, 00749

THE STATE,

RESPONDENT,

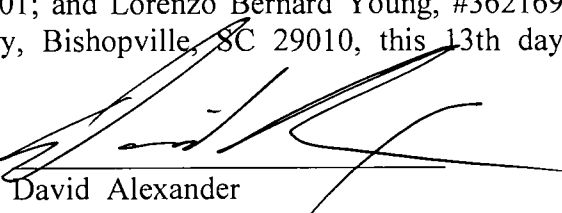
V.

LORENZO BERNARD YOUNG,

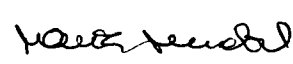
PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lorenzo Bernard Young, #362169, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 13th day of November, 2017.


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 13th day of November, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023

1971

STATE OF SOUTH CAROLINA
IN THE SUPRME COURT

Appeal from Richland County
The Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

PETITIONER,

Appellate Case No. 2017-002191

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTION PRESENTED

Whether the Court of Appeals erred in finding harmless error in admitting an unredacted letter written by petitioner's co-defendant that implicated petitioner by name in the murder over petitioner's hearsay objection, and in not granting a mistrial after petitioner's objections that no limiting instruction could be sufficient?

RESPONDENT'S COUNTER QUESTIONS PRESENTED

The Court of Appeals correctly found any alleged error in the admission of a nontestimonial statement of a co-defendant was harmless beyond a reasonable doubt when the State presented overwhelming evidence of Petitioner's guilt and the statement was independently corroborated by other evidence.

RESPONDENT'S STATEMENT OF THE CASE

A Richland County grand jury indicted Petitioner, Lorenzo Young, in February 2014, for murder, kidnapping, second degree burglary, and attempted armed robbery. (Indictments.) The grand jury also indicted Trenton Barnes (Barnes) and Troy Stevenson (Stevenson). (R. p. 1.)

On November 10, 2014, Petitioner's case was called to trial before the Honorable Robert Hood. (R. p. 1) Petitioner and Trenton Barnes were tried jointly. (R. p. 1). Steven Krzyston, Esquire, represented Petitioner during the trial. (R. p. 1). Mark Schnee, Esquire, represented Barnes. (R. p. 1) Assistant Solicitors Dolly Garfield, Kathryn Campbell, and Nicole Simpson represented the State. (R. p. 1.) The jury returned verdicts of guilty as to all charges. (R. p. 1593, line 8 - p. 1594, line 8.) Judge Hood sentenced Petitioner to life imprisonment without the possibility of parole for murder, and consecutive terms of fifteen years' imprisonment for burglary and twenty years' imprisonment for attempted armed robbery. (R. p. 1612, line 13 – p. 1613, line 4.)

Petitioner filed a timely notice of appeal. Following briefing and oral argument, the Court of Appeals affirmed Petitioner's conviction and sentence in Unpublished Opinion No. 5501 (Ct. App. July 19, 2017). (App. pp. 1-17.) A Petition for Rehearing followed and was denied on September 21, 2017 (App. pp. 18-28.)

Petitioner next timely sought a Petition for Writ of Certiorari, to which Respondent makes the instant Return.

WHY CERTIORARI SHOULD BE DENIED

Respondent maintains certiorari should be denied because the Court of Appeals properly found any error in the admission of the unredacted letter from Young's co-defendant to his mother was harmless in light of the overwhelming evidence of Young's guilt, including the numerous statements he made to other parties implicating himself in the murder of Ms. Hunnewell.

Petitioner argues the decision by the Court of Appeals applied the wrong standard for determining whether an error is harmless, despite the Court's recitation of the proper standard of beyond a reasonable doubt. Petitioner merely disagrees with the Court's holding, however. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this case. Although the Court of Appeals found error in the admission of the letter, the Court properly viewed the materiality and prejudicial character of the alleged error and its relationship to the entire case when it concluded beyond a reasonable doubt a rational jury would have found Young guilty absent the error. *See State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93-94 (2011) (citing *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978)). Therefore, Respondent respectfully requests the Petition for a Writ of Certiorari be denied and dismissed.

RESPONDENT'S STATEMENT OF FACTS

In the early morning hours of July 1, 2013, Theresa Baskin heard screams of terror from thirty-three year old Kelly Hunnewell, who worked the early morning shift in the off-site bakery for the Carolina Café. (R. p. 259, line 13 – p. 260, line 20.) Baskin, who lived across the street from the bakery on Tommy Circle, heard the dying words of the mother of four after she was shot by Lorenzo Young (Petitioner) and his co-defendant Trenton Barnes (Barnes) in a robbery (R. p. 258, lines 21-23; p. 260, lines 15-20.)

Hunnewell arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (R. p. 364, line 2 - p. 365, line 6.) She would typically work until 11:00 am so she could go home and care for her four young children. (R. p. 365, lines 1-18.) On the morning of the murder, Petitioner and Barnes intended to rob the nearby Original Ale House. (R. p. 255, lines 2-16.) However, when they realized the bar was closed, Petitioner and Barnes chose the next most convenient victim. Hunnewell was in the bakery next door with the lights on and the door propped open. (R. p. 260, lines 3-6.) The men approached Hunnewell, who was working at the stove and had her back to the door. (R. p. 1401, line 20 – p. 1402, line 2.) The suspect in the red hoodie pointed his gun at her head. (R. p. 1402, line 19 – p. 1403, line 19.) After a struggle in which Hunnewell tried to defend herself, the men shot her multiple times. (R. p. 1403, line 17 – p. 1404, line 24.) Kelly Hunnewell collapsed on the floor with a bullet lodged in her back, drowning in her own blood. (R. p. 1009, line 16; p. 1016, lines 2-21.)

The police processed the crime scene, collecting four .45 Glock Automatic Pistol (G.A.P.) shell casings, two .40 caliber Smith and Wesson casings, projectiles and video surveillance footage. (R. p. 252, line 5 - p. 253, line 9; p. 281, lines 3-11; p. 305, lines 10-14; p. 307, lines 20-25; p. 326, line 16-p. 327, line 11; p. 1281, line 22 – p. 1283, line 10.) The bakery's

security cameras recorded the murder from several different points of view. (R. p. 388, line 6 – p. 389, line 4.) In the video, Hunnewell is seen working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (R. p. 446, line 9 – p. 447, line 3.) The suspects point guns at her and shoot her. A third suspect comes to the door as the shooting begins, and the three suspects flee.

Donald Moore, a friend of Trenton Barnes and Troy Stevenson, testified under subpoena for the State. (R. p. 568, line 1 – p. 569, line 22; p. 587, lines 11-14.) Though he recanted his story later, he testified he contacted the police after he saw the story about the murder on television. (R. p. 570, line 10 – p. 571, line 15.) Moore told police Young and Stevenson talked about robbing the Ale House before the murder. (R. p. 572, lines 9 - 15.) Moore also told police he saw Young showing off a Glock gun prior to the murder, and told Young to put the gun away because of the nearby children. (R. p. 573, line 17 – p. 575, line 17.) Moore also identified Young in the video as the man wearing the red hoodie. (R. p. 576, line 19 – p. 577, line 23.)

Based upon Moore's information, the police obtained and executed a search warrant for Petitioner and his girlfriend Rolanda Coleman's home, in which they found ammunition of the same caliber as those found near the body of Hunnewell. The search produced live rounds from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (R. p. 736-739.) Crime scene analysts also found a Glock magazine in Coleman's purse and several pairs of black gloves. (R. p. 734-735.) Furthermore, the police confiscated a pair of black, Nike shoes and a scan disc, camcorder, laptop, and two cell phones. (R. p. 746-749.) Testing later revealed gunshot residue on the black gloves. (R. p. 772, lines 7-14.)

Rolanda Coleman, told police Petitioner spent the evening before the murder with Troy Stevenson, and he called his mother the morning after to pick him up from Stevenson's home.

(R. p. 477, line 18 – p. 480, line 25.) She stated Petitioner returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (R. p. 471, lines 17-24; p. 481, line 21 – p. 482, line 24.) Shortly after seeing a news video about the murder, Coleman overheard a conversation between Petitioner and his mother in which his mother told Petitioner to get rid of the gun. (R. p. 488, lines 1-9.) Coleman also testified she recognized the man wearing the grey hoodie in the video as Trenton Barnes. (R. p. 488, line 10 – p. 489, line 15.)

Barnes' mother testified her sons were at her house with Petitioner the night of the murder. (R. p. 603, lines 1-24.) She testified Barnes and Petitioner left the house around midnight. (R. p. 604, lines 5-14.) She stated around three in the morning, she received a phone call from Petitioner, asking to talk to another man staying at her house. (R. p. 605, line 14 – p. 606, line 8.) Cell phone records confirmed these calls. (R. p. 1047, line 8 – p. 1048, line 3.) The second time Petitioner called, Ms. Barnes told Petitioner to send her son, Barnes, home. (R. p. 606, line 21 – p. 607, line 7.) She testified after a few minutes, she sent her other son, Troy Stevenson, to locate the men to bring his brother home. (R. p. 608, lines 2-20.) Ms. Barnes testified Petitioner was wearing a red hoodie when he left the house and Barnes was wearing a grey hoodie, which she could identify from a tear in the fabric. (R. p. 610, lines 3-19.) When Stevenson left to look for his brother, he was wearing a dark jacket. (R. p. 610, line 23 – p. 611, line 8.) After Barnes was arrested he wrote a letter to his mother implicating himself and Petitioner in the crime. (R. p. 617, lines 1-22.)

Mary Brown, a neighbor and acquaintance of Petitioner, Barnes and Stevenson, also saw the men wearing the red and grey hoodies the night of the robbery. (R. p. 846-849.) Brown saw the video released to the news media and recognized Petitioner and his codefendant, but did not know their names. (R. p. 851, line 6 – p. 854, line 18.)

Following his arrest, Petitioner approached inmate Dominique Wright to assist him in the defense of his case. (R. p. 698, line 17 – p. 699, line 10.) Wright was helping another inmate with some legal work when Petitioner overheard the men discussing the “stand your ground law.” (R. p. 701, lines 7-10.) Petitioner told Wright he and two other men intended to rob a club, but because the club was closed, they went next door to a bakery. (R. p. 700, lines 5-13.) Petitioner told Wright when the woman in the bakery resisted, he shot her twice. (R. p. 700, lines 10-13.) Wright testified Petitioner sought his advice to discuss how he could use the victim’s efforts to defend herself as an advantage in reducing his charge. (R. p. 701, lines 13-15.) Wright documented what Petitioner told him and sent the information to an investigator, who passed it on to the solicitor’s office. (R. p. 702, line 19 – p. 703, line 5.)

Another inmate, Michael Peterson, testified Petitioner discussed the murder with him while they were in the law library together. (R. p. 787, line 11 – p. 788, line 8.) After Petitioner heard Peterson was familiar with the law, he asked for help. (R. p. 788, lines 7-10.) Petitioner explained to Peterson he “went on this lick.” (R. p. 788, lines 18-19.) When Peterson asked Petitioner if he meant the bakery job on Beltline, Petitioner confirmed, saying, “yeah, it was all over the news.” (R. p. 788, lines 18-20.) Petitioner told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (R. p. 789, lines 1-4.) Petitioner told Peterson, “The police don’t have nothing. We had on masks and gloves.” (R. p. 789, lines 10-13.) Petitioner told Peterson he was not concerned because the police only found shell casings and identified him from the clothing he wore that night. (R. p. 790, line 7 – p. 791, line 1.) Peterson testified he later overheard Troy Stevenson and Petitioner discussing the robbery in the prison showers. (R. p. 797, lines 1-11.) Peterson said Petitioner was nervous, though he reassured Stevenson the police only had shell casings. (R. p. 797, lines 1-25.)

Michael Schaefer, another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Petitioner while they were housed together in the same dorm. (R. p. 872, line 13 – p. 873, line 19.) Schaefer and Petitioner discussed their respective cases, and Schaefer testified to the following:

Okay, he said him and two other people by the name of Trap [Stevenson] and Trigg [Barnes] went out to rob a nightclub in the area, but it was closed. They saw the bakery was opened. They took that as an opportunity to go in.

The woman was in there. He said she went for a knife she was struggling so he shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

(R. p. 874, lines 10-17; 875, lines 7-15.) Schaefer told his lawyer about the exchange, and his lawyer advised him to turn the information over to the solicitor's office. (R. p. 877, lines 11-24.) Schaefer also testified he spoke to Petitioner around the holidays, expressing remorse for his own crime of robbing a bank. Schaefer testified Petitioner responded, "Well, I shouldn't have shot that bitch." (R. p. 878, lines 1-7.)

Investigator VanHouten, of the Columbia office of the Secret Service, performed the data analysis of the cell phone associated with Petitioner. (R. p. 1234, line 13 – p. 1237, line 4.) VanHouten was able to recover video and photos of Petitioner wearing a red hoodie and jeans. (R. p. 1239, line 1 – p. 1240, line 7.) VanHouten was also able to recover web searches from Google Chrome in which Petitioner searched for the media released videos of the murder of Kelly Hunnewell. (R. p. 1242, lines 3-11.) Vanhouten found cached images from the video released to the media of the suspect in the red hoodie and blue jeans, as well as the kitchen crime scene. (R. p. 1244, line 11 – p. 1245, line 25.)

ARGUMENT

The Court of Appeals correctly found any alleged error in the admission of a nontestimonial statement of a co-defendant was harmless beyond a reasonable doubt when

the State presented overwhelming evidence of Petitioner's guilt and the statement was independently corroborated by other evidence.

Despite finding error in the admission of the unredacted letter written by co-defendant Trenton Barnes to his mother, in which he also named Young in the murder of Hunnewell, the Court of Appeals recognized Young was implicated far more by numerous witnesses who identified Young as one of the shooters in the surveillance video or as confessing to the crime after the fact. Although Petitioner refers to these witnesses as unreliable "snitches," a review of the record reveals no shortage of witnesses who testified about Young's confessions to the crime. Further, the testimonies of Rolanda Coleman, Ms. Barnes, the neighbors who saw the men together that night, and the analysis of Young's cell phone were all powerfully damning for Young's case. In light of the State's overwhelming evidence against Young, the Court of Appeals properly found "the deafening drumbeat of substantial testimonial and physical evidence far more resonant than Barnes' letter." (App. p. 16.)

The Legal Preference for Joint Trial of Co-defendants

The State tried Lorenzo Young and Trenton Barnes jointly for the murder of Ms. Hunnewell. Petitioner suggests the State purposefully tried the defendants together with the intention of introducing otherwise inadmissible evidence against Young because it lacked sufficient evidence against Young. This argument ignores the preferences our courts have expressed for joint trials, saying joint trials "play a vital role in the criminal justice system." *Richardson v. Marsh*, 481 U.S. 200, 209 (1987). They promote efficiency and "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." *Id.*, at 210. Moreover, criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. *State v. Kelsey*, 331 S.C. 50, 73, 502 S.E.2d 63, 75 (1998); *State v. Garrett*, 350 S.C. 613, 620, 567 S.E.2d 523, 526 (Ct.App.2002). There is no clearly defined rule for

determining when a defendant is entitled to a separate trial, because the exercise of discretion means that the decision must be based upon a just and proper consideration of the particular circumstances which are presented to the court in each case. *State v. McIntire*, 221 S.C. 504, 504, 71 S.E.2d 410, 415 (1952); *State v. Avery*, 374 S.C. 524, 533, 649 S.E.2d 102, 107 (Ct.App.2007).

Here, the State's strategy was reasonable given the clear presence of two men in the graphic surveillance video and the numerous witnesses who saw Young and Barnes together the night of the murder. Petitioner's claim the State orchestrated this scenario for its benefit ignores the clear breadth of evidence against Young from entirely reliable witnesses, not just inmates. The Court of Appeals correctly found Young was not entitled to a reversal of his conviction because he could not show prejudice from the introduction of the letter against Barnes.

How the Issue Was Presented at Trial

The State sought to introduce the letter written by co-defendant Barnes to his mother while Ms. Barnes was on the stand. (R. p. 617.) Counsel for Petitioner objected to the introduction of the letter, and the court excused the jury. (R. p. 618, lines 2-4.) Counsel for the State and defense submitted case law to the judge supporting their arguments for and against the admissibility of the letter. (R. p. 619, line 15 – p. 620, line 12.) Defense counsel objected to the letter on the basis of hearsay not falling within the S.C.R.E. 804 (b) (3) exception as it applied to his client. (R. p. 623, line 22 – p. 624, line 10.) Contrarily, the State argued the letter was non-testimonial, and as such, should be admitted as an exception under the Rule 804 (b)(3) against Barnes. Following a lengthy discussion concerning whether the statement was testimonial, inculpatory or exculpatory, or a statement by a co-conspirator in furtherance of a conspiracy, the trial judge admitted the statement, subject to a limiting instruction, finding the letter had an

“inherent level of trustworthiness based on the corroborating circumstances.” (R. p. 637, lines 19-22.) The Court of Appeals disagreed.

Harmless Error

Assuming the Court of Appeals was correct and the letter was admitted in violation of S.C.R.E. 801, its admission was harmless beyond a reasonable doubt. In *Chapman v. California*, the Supreme Court held error of even a constitutional magnitude may be deemed harmless if, “considering the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict.” 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *see also Taylor v. State*, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993). Similarly, our Supreme Court has intimated that any error in the failure to suppress a statement deemed inadmissible hearsay is subject to a harmless error analysis. *State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985); *see also State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971) (Stating error is harmless when it “could not reasonably have affected the result of the trial.”).

Here, considering the entire record on appeal, any error in admitting Barnes’ letter to his mother was harmless beyond a reasonable doubt. The State presented compelling evidence of Petitioner’s guilt of murder, sufficiently proving Petitioner and his co-defendant were the perpetrators of the crime, even without Barnes’ letter. The State presented the following evidence against the co-defendants:

- The bakery’s security cameras revealed two armed perpetrators, one wearing a red hoodie and the other wearing a grey hoodie (R. pp. 388-389, 446-447.);
- A third suspect entered the doorway as the shooting begins (R.pp. 215, 447);

- .45 G.A.P. and .40 caliber shell casings were found at the scene (R. pp. 252-253, 281, 305-307, 326-327);
- Petitioner and Barnes lived within walking distance of the bakery(R. pp. 21, 446);
- Police discovered ammunition of the same caliber at that at the scene of the crime in Petitioner's home (R. pp. 736-739).
- Police also discovered a Glock magazine in the purse of Petitioner's girlfriend (R. pp. 734-735);
- Rolanda Coleman testified Petitioner returned the morning after the murder with his gun, which he attempted to hide in his baby's crib (R. pp. 471-482.);
- Coleman overheard a conversation in which Petitioner's mother instructed him to get rid of the gun (R. p. 488);
- Coleman identified Trenton Barnes in the video as the man in the grey hoodie; (R. pp. 488-489)
- Donald Moore overheard Petitioner and Stevenson planning the robbery of the Ale House before the murder (R. p. 572);
- Donald Moore saw Petitioner with a Glock prior to the murder (R. pp. 473-475);
- Donald Moore identified Petitioner in the video as the man wearing the red hoodie (R. pp. 576-577.);
- Barnes' mother placed the three men together the night of the murder (R. pp. 603-604);

- Cell phone records corroborated Ms. Barnes' story Petitioner called the house before she sent her son out to find the men (R. pp. 1047-1048);
- Ms. Barnes testified Petitioner wore a red hoodie, Barnes wore a grey hoodie, and Stevenson wore a dark jacket the night of the murder (R. p. 610);
- Mary Brown also placed the two men together the night of the crime, and described the red and grey hoodies the men wore. Brown also recognized the men in the video (R. pp. 846-854);
- Dominique Wright testified Petitioner told him about the murder in an effort to discuss possible defenses to the crime. Wright's testimony contained details corroborated by the security video (R. pp. 698-703);
- Michael Peterson testified Petitioner sought him out in the library to discuss his case. Petitioner admitted his involvement to Peterson (R. pp. 787-788);
- Peterson overheard Petitioner and Stevenson discussing the murder, with Petitioner stating the police only had shell casings (R. pp. 788-789);
- Michael Schaefer testified Petitioner described the night of the murder, and later stated to him, "I shouldn't have shot that bitch" (R. pp. 872-878.);
- Police found gunshot residue on Petitioner's black gloves (R. p. 772); and
- Analysts discovered internet searches of the crime from Petitioner's phone data, including images released by the media with the perpetrators' descriptions (R. pp. 1234-1245).

The State's case against Petitioner was compelling. Indeed, Petitioner's own statements to others in which he described the killing may have been the evidence most convincing to the jury. Even excluding Barnes' letter to his mother, the record supports the jury's verdict of murder beyond of reasonable doubt. Any error in its admission by the trial court judge was harmless. The Court of Appeals correctly affirmed Young's conviction for murder.

The Letter was Independently Corroborated and Was Therefore Cumulative

The corroboration of Barnes' letter to his mother by other independent evidence further supports the Court of Appeals' finding the admission was harmless beyond a reasonable doubt. First, multiple witnesses testified Barnes and Petitioner were together late the night before the murder. (R. p. 846-849.) Barnes' own mother testified the two men were together at her house before leaving later that night, and she sent her son Troy out to look for Barnes following Petitioner's phone call to her house. (R. p. 605 – p. 607.) The video surveillance showed two suspects with guns firing at the victim. (R. p. 1404 - p. 1405.) Two different types of shell casings were found at the scene of the crime. (R. p. 736 - 739.) Rolanda Coleman testified she saw Petitioner hiding his gun the following morning, and she identified Barnes in the surveillance video. (R. p. 471 - p. 489.) Petitioner's description of the crime to inmate Dominique Wright matched Barnes' account to his mother: two men attempted to rob the club, but because it was closed decided to rob the woman at the bakery next door -- shooting her when she resisted. (R. p. 698 - p. 703.) Furthermore, inmate Michael Schaefer also testified Petitioner told him a similar story. (R. p. 874, lines 10-17.) Inmate Michael Peterson overheard Petitioner and Troy Stevenson discussing the murder in the showers. (R. p. 794, lines 4-13; p. 797, lines 1-25.)

The details contained in Barnes' letter to his mother were fully corroborated with the evidence at trial. When viewed through the lens of harmless error, that corroboration becomes cumulative evidence against Young such that the letter offered no new information to the jury.

The Court of Appeals' Finding Admission of Inadmissibility Under Rule 804(b)(3) Was Error

The Court of Appeals found Barnes' letter to his mother inadmissible against Young because the Court viewed the letter as blame shifting and self-serving. (App. p. 9.) Respondent did not petition the Court of Appeals for rehearing because the Court of Appeals concluded the admission of the letter was harmless beyond a reasonable doubt. While Respondent agrees the letter had no significant bearing on the conviction of Young for the murder of Hunnewell, Respondent respectfully disagrees with the Court's interpretation of the letter. Rather than as an attempt to shift the blame away from him, Respondent construes Barnes' words to his mother as an expression of regret and as recognition of his own bleak future. The trial court recognized Barnes' letter shared the blame for the murder, not shifted it to someone else. The heartbreaking reality of Barnes' letter is this: If everything Barnes claimed in the letter were true, he would still be guilty of murder. The letter, which certainly sealed Barnes' fate, in no way exculpated him in Hunnewell's murder and should have been deemed admissible under SCRE 804(b)(3). However, a new trial was properly denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

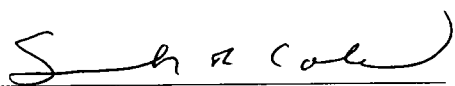
DONALD J. ZELENKA

Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Circuit

BY: 
SUSANNAH R. COLE
SC Bar No. 68383

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

ATTORNEY FOR RESPONDENT

December 12, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPRME COURT

RECEIVED

DEC 12 2017

Appeal from Richland County
The Honorable Robert E. Hood, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

PETITIONER,

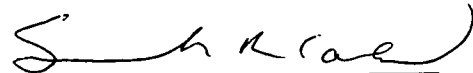
Appellate Case No. 2017-002191

PROOF OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the Return to Petition for Writ of Certiorari by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, David Alexander, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 12th day of December, 2017.



SUSANNAH R. COLE

Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State, Respondent,

v.

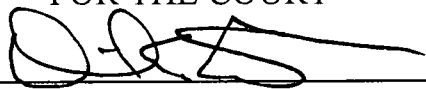
Lorenzo Bernard Young, Petitioner.

Appellate Case No. 2017-002191

Trial Court Case No. 2014-GS-40-00745, 2014-GS-40-00746, 2014-GS-40-00747, 2014-GS-40-00749

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT
BY  _____
CLERK

Columbia, South Carolina

March 7, 2018

cc:

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

Susannah Rawl Cole, Esquire

Daniel Edward Johnson, Esquire

David Alexander, Esquire

The Honorable Jeanette W. McBride

The Honorable Jenny Abbott Kitchings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 15, 2018

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Lorenzo B. Young
Lower Court Case No. 2014GS4000745, 2014GS4000746,
2014GS4000747, 2014GS4000749
Appellate Case No. 2014-002548

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
David Alexander, Esquire
Susannah Rawl Cole, Esquire
Daniel Edward Johnson, Esquire

FORM 5

2019CP4001119

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Richland)Lorenzo B Young #362169)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
JAN 25 AM 10:07
COLUMBIA, S.C.

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 Broad River Correctional Institution,
4460 Broad River Rd., Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Richland County
Judicial Courthouse, 1701 Main Street, Columbia, S.C. 29201
3. Name(s) of co-defendant(s) (if any) Trenton Barnes
Troy Steveson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-40-00745 Murder
 - (b) 2014-GS-40-00747 2nd Burglary

- (c) 2014-GS-40-00749 Attempted Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 19, 2014; Murder • Life w/o Parole
- (b) 2nd Burglary • 15 years
- (c) Attempted Armed Robbery • 20 years
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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appealed Denied • Convictions Affirmed
- ii. Supreme Court of South Carolina • Denied
- iii. _____
- (c) the date of each such result:
- i. Court of Appeals • July 19, 2017
- ii. Supreme Court of South Carolina • Denied March 7, 2018
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel fail to investigate facts of my case
- (b) Trial counsel fail to challenge credibility of witnesses
- (c) Trial counsel fail to properly investigate Applicants prior Mental Health Issue
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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. no
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. no
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. no
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. no
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. no
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) no
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Stephen Krzyston • Richland County Public Defender Office
Columbia, South Carolina 29202 P.O. Box 192 (Trial - Sentences)
 ii. David Alexander • Appellate Defender
1330 Lady Street Suite 401 Columbia SC 29201-3332
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Stephen Krzyston • Trial Counselor / Sentencing
 ii. David Alexander • Appellate Defender
 iii. _____

19. State clearly the relief you seek in filing this application:

Reverse, Remand, & Vacate sentence and Conviction

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Lorenzo Young, 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.

[Signature]

SWORN to and subscribed before me this 29th day of January, 2019.

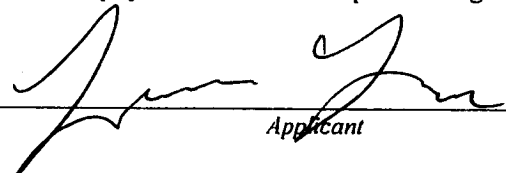
[Signature] (L.S.)
Notary Public

My Commission Expires: March 8, 2028

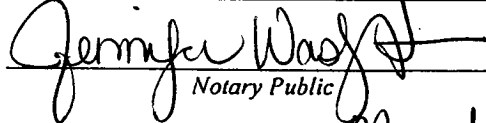
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Lorenzo Young, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
29 day of January, 2019.


Notary Public

My Commission Expires: March 8, 2028

JEFFREY M. HICBRIDE
 CLERK OF COURT
 JAN 29 2019 10:07 AM
 2019 JAN 26

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Lorenzo B. Young, #362169,	)	Case No.: 2019-CP-40-01119
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

RICHLAND COUNTY
FILED
2019 OCT 23 AM 9:26
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Lorenzo B. Young (Applicant) on February 26, 2019, and received by Respondent on February 28, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

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 2014, the Richland County Grand Jury indicted Applicant for murder (2014-GS-40-0745), kidnapping (-0746), second-degree burglary (-0747), and attempted armed robbery (-0749). The charges arose from an incident in which Applicant, along with two codefendants, shot the victim, Kelly Hunnewell, in the bakery where she worked. Applicant and his codefendants broke into the bakery armed with handguns, intending to rob it. The incident was captured on the bakery's video-surveillance system.

Stephen Kryzston, Esquire (Kryzston); Tracey Pinnock, Esquire (Pinnock); and Jacqueline Bambach, Esquire (Bambach), represented Applicant. Assistant Solicitors Dolly Garfield, Kathryn Luck Campbell, and Nicole Simpson prosecuted the case on behalf of the State. On November 10-19, 2014, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. The jury

convicted Applicant as indicted, and Judge Hood sentenced him to imprisonment for consecutive terms of life without parole for murder, twenty years for attempted armed robbery, and fifteen years for burglary.¹

Applicant filed a timely notice of appeal, and David Alexander, Esquire (Alexander), of the South Carolina Commission on Indigent Defense – Appellate Defense Division, perfected the appeal on Applicant's behalf with the filing of a merits brief. Alexander raised one issue on appeal: whether the trial court erred in admitting an unredacted letter written by Applicant's codefendant implicating Applicant in the murder. After briefing and oral argument, the Court of Appeals affirmed Applicant's conviction by order filed July 19, 2017. On September 21, 2017, the Court of Appeals denied Applicant's petition for rehearing. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari. The Supreme Court denied the petition by order March 7, 2018. The case was remitted to the circuit court on March 15, 2018.

Attached to this Return and incorporated 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. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
 - a. Trial counsel failed to investigate the facts of the case;
 - b. Trial counsel failed to challenge the credibility of witnesses;

¹ The judge did not impose a sentence for the kidnapping conviction pursuant to S.C. Code Ann. § 16-3-910. Tr. pp. 1657-58.

- c. Trial counsel failed to properly investigate Applicant's prior mental health issues.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

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. 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 submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does