

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI-PCR-COMMON PLEAS  
Appeal from Richland County  
Hon. William A. McKinnon, Circuit Court Judge

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Appellate Case No. 2025-001597  
Lower Case No. 2021-CP-40-01788

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Ricardo L. Middleton, ..... Petitioner,

vs

State of South Carolina, ..... Respondent

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APPENDIX  
VOLUME II

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D. Russell Barlow, II  
SC Attorney General Office  
PO Box 11549  
Columbia, SC 29211  
803-734-3737  
[russbarlow@scag.gov](mailto:russbarlow@scag.gov)  
SC Bar No. 105228

C. RAUCH WISE  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010  
[rauchwise@gmail.com](mailto:rauchwise@gmail.com)  
S.C. Bar No. 6188

Attorney for Respondent

Attorney for Petitioner

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1 and Sydni, the person that had the conversation with the  
2 24/7 member?

3 A. Right.

4 Q. And can you describe that person?

5 A. He's short, clean cut -- I mean, clean face.

6 Q. Like me? No facial hair?

7 A. Right.

8 MR. SHELLBERG: No further questions, Your Honor.  
9 Thank you.

10 THE COURT: Mr. Sutherland.

11 MR. SUTHERLAND: Thank you, Your Honor. May it please  
12 the court?

13 THE COURT: Yes sir.

14 CROSS-EXAMINATION BY MR. SUTHERLAND:

15 Q. Mr. Montgomery, did you just, did you just testify  
16 that it was Tiptoe that hit you, that you were sure it was?

17 A. Absolutely. I saw him.

18 Q. Okay. Well, did you tell police that you were not  
19 sure in your -- on the 29th of July a couple of days after  
20 the incident?

21 A. I probably did because men in the outlaw motorcycle  
22 club, you're not supposed to talk to officers and stuff,  
23 and after thinking about it for a while, that was my friend  
24 and his wife and, and my brother. So, I decided to, to  
25 tell what I saw.

1 Q. Okay. Do you remember telling police: I want to say  
2 it was Tiptoe because he was in a rage when he approached  
3 my guys at the club. Do you remember telling the officers  
4 that?

5 A. I don't member exactly but it's possible.

6 Q. Okay. So per your testimony just now, you're not  
7 supposed to do that, but you did it in an unsure fashion.  
8 So, is it okay when you're in an outlaw motorcycle club to  
9 be unsure and to cooperate with police, and then you think  
10 about it a little while and then you can be sure? How does  
11 that work?

12 A. I don't know how it work, but that's how it worked.

13 Q. That's how ---

14 A. That's how it went down.

15 Q. That's how it worked? Okay. How many firearms did  
16 you have with you that evening?

17 A. I had a .9 millimeter in my saddlebag.

18 Q. Just one?

19 A. Just one.

20 Q. Okay, I want to ask you about the guy who was  
21 following you and on right. So, when you're talking about  
22 the guy who was on the bike that you described as  
23 clean-shaven, this is the guy that you all were gathered  
24 around talking to over here, it wasn't him?

25 A. Yeah. That was, that was the guy.

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1 Q. And how long do you believe that you were unconscious,  
2 or do you have any idea?

3 A. I'm not sure. Maybe ten minutes, five, ten minutes.

4 Q. Okay. Five, ten minutes.

5 MR. SUTHERLAND: Okay. Thank you, sir.

6 No further questions, Your Honor.

7 THE COURT: Anything on redirect?

8 MR. SHELLENBERG: Briefly.

9 REDIRECT EXAMINATION BY MR. SHELLENBERG:

10 Q. Mr. Montgomery, what did being in a motorcycle club  
11 mean to you?

12 A. Well, it's -- I'm an only boy, and for me it was  
13 brotherhood, a bunch of guys sharing a passion for riding  
14 motorcycles. Not just, like, riding around the corner or  
15 to the next town. Actually riding, going to different  
16 states.

17 Q. And did you have to sacrifice that to be here?

18 A. Yeah, I did.

19 MR. SHELLENBERG: Thank you. Nothing further.

20 THE COURT: Anything further?

21 MR. SUTHERLAND: Nothing further, sir.

22 THE COURT: You may step down, sir.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Call your next witness.

25 MR. STEADMAN: State calls Sara Humphries.



1 did you do?

2 A. Before becoming a crime scene investigator, I worked  
3 on the road, and then I was here at the courthouse.

4 Q. And since your time as a crime scene investigator,  
5 what's your primary duties and responsibilities?

6 A. My duties and responsibilities are to respond to crime  
7 scenes, document them, photograph them, collect evidence,  
8 and I also respond to autopsies and photograph as well.

9 Q. And is that what you did in this case, you responded  
10 to an autopsy?

11 A. Correct.

12 Q. And so when you respond to an autopsy, there's a  
13 pathologist there doing the actual autopsy. Well, what is  
14 your role?

15 A. So, my role is to photographs the body. I collect  
16 anything that the pathologist may give to me, such as any  
17 important pieces of evidence. I also do collect DNA swabs  
18 from the victims, and I also collect any other types of  
19 piece of evidence.

20 Q. So, let's go ahead and move to what you did in this  
21 case. What were you asked to do in this case?

22 A. For this case, I was asked to go down. Do you mind if  
23 I look at my notes?

24 Q. Yes. Feel free to refer to your report.

25 A. For this case, I was asked to go down and photograph

1 and I was to collect DNA swabs, as well as gunshot residue,  
2 nail scrapings, standard head hairs, and fingerprints, and  
3 palm prints.

4 Q. And who were the deceased victims? What were their  
5 names?

6 A. The deceased victims were Sydni Collins and Aaron  
7 Collins.

8 Q. And did you attend Sydni's autopsy first, or was it  
9 Aaron's autopsy first?

10 A. It was Sydni's autopsy first.

11 Q. Okay. Well, let's go ahead and talk about Sydni's  
12 autopsy. What did you -- what was your role in that  
13 autopsy, and what did you observe?

14 A. So, my role, I took photographs. Anything the  
15 pathologist may have asked me to photograph, I photographed  
16 it as well. Like I said, I collected the evidence such as  
17 DNA swabs, hair, fingerprints, palm prints, gunshot  
18 residue. I also received, like, all of the clothing, I  
19 believe some projectiles, as well as jewelry from, from the  
20 pathologist.

21 Q. So with Sydni's, the photos, I think you mentioned  
22 that sometimes the pathologist directs you what pictures  
23 are significant. And what are you looking for when you  
24 take the pictures? Are you taking pictures of the body as  
25 well and also the clothing?

1 A. Correct. So at the autopsy, I took pictures of the  
2 body. When they open the bag with the clothing on it, I  
3 just take general pictures, and then I also take pictures  
4 of any types of injuries that I may observe. In this  
5 instance, I did not take photographs of the photo -- or of  
6 the clothing at the autopsy. I waited until later to.

7 Q. So, you collected the clothing at the autopsy, then  
8 take -- took pictures of it later?

9 A. Correct.

10 Q. Okay. I'm going to show you what's been marked as  
11 State's 132. Have you had a chance to look at the pictures  
12 on this disk?

13 A. I have.

14 Q. And are these the pictures you took in this case?

15 A. Yes.

16 MR. STEADMAN: Your Honor, at this point we'd  
17 introduce State's 132 into evidence.

18 THE COURT: No objection, Judge.

19 THE COURT: All right.

20 (DVD CONTAINING PHOTOGRAPHS MARKED INTO EVIDENCE AS  
21 STATE'S EXHIBIT NUMBER 132.)

22 BY MR. STEADMAN:

23 Q. And before we show the pictures, what injuries did you  
24 observe to Sydney Collins?

25 A. I observed injuries to her face, her chest, and her

1 neck.

2 Q. And you took pictures of those injuries as well?

3 A. Correct.

4 Q. And if you don't mind, I'll have you step down and  
5 look at these pictures.

6 (COUNSELORS CONFER.)

7 THE COURT: And you've seen these pictures? Is that  
8 correct?

9 MR. SUTHERLAND: Yes, sir. Just making sure one  
10 issue.

11 THE COURT: All right.

12 MR. STEADMAN: And, Your Honor, there's two files on  
13 State's 132. These are the pictures of Sydni's clothing.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 132 IS PLAYED  
15 THROUGHOUT THE FOLLOWING EXAMINATION.)

16 BY MR. STEADMAN:

17 Q. Is that your report?

18 A. That is my report.

19 Q. And ---

20 A. That is, yeah.

21 Q. These, are these the picture -- are these the clothing  
22 that Sydni was wearing?

23 A. That is the clothing that Sydni was wearing.

24 Q. And is this just another picture of the jacket she was  
25 wearing?

1 A. That is another picture of the jacket she was wearing.

2 Q. And what can we see in this picture, a closer-up view  
3 of her jacket?

4 A. There is a defect. You mind if I point to it?

5 Q. Yeah. Go ahead.

6 A. It's right -- that that I observed.

7 Q. And you're looking for a defect. Was that, was that  
8 consistent with the injuries that you observed during the  
9 autopsy?

10 A. That was consistent with the injuries I observed  
11 during autopsy.

12 Q. And that was consistent with a gunshot?

13 A. I can't say that it was consistent with gunshot but it  
14 is ---

15 Q. Consistent with injuries ---

16 A. --- consistent with the injuries that I observed.

17 Q. And what is this?

18 A. That's another defect that I observed on her shirt. I  
19 believe that was marker number 2.

20 Q. And, and what is this?

21 A. That's her bra, and once again there's another defect  
22 that I observed right there.

23 Q. And is this defect consistent with the defect that we  
24 just saw in the earlier picture? Are they in ---

25 A. Correct.

1 Q. --- the same area?

2 A. Correct.

3 Q. This is a closer-up view of the same defect?

4 A. Yes.

5 Q. Now, what are we seeing here in this picture?

6 A. This is the shirt that I collected off of Aaron.

7 Q. Okay, so these are, these are now Aaron's pictures?

8 A. Yes.

9 Q. Okay. All right, why don't you tell us -- now at  
10 Aaron's autopsy, what injuries did you observe during the  
11 autopsy?

12 A. I observed injuries to his chest, his torso. I  
13 believe it was his back area.

14 Q. You need your report?

15 A. Yeah, I need my report.

16 (A PAUSE.)

17 Q. And did you also photograph these, those injuries as  
18 well?

19 A. I did.

20 Q. And then did you do the same thing you did with Sydni  
21 Collins and photograph the clothing once you collected it?

22 A. Correct.

23 Q. And what do we see here in this picture with several  
24 markers?

25 A. Okay, so in this picture, I observed several defects,

1 and those would be markers A, B, C, D, E, F, and G. Marker  
2 number 4 was a metal fragment that I observed on the  
3 T-shirt as I was photographing it.

4 Q. And the metal fragments, are those normally something  
5 that's given to you by the pathologist?

6 A. Correct. If it's found on the body or in the body,  
7 they will give it to me.

8 Q. And do you mean bullet fragments? Is that what you  
9 mean by metal fragment?

10 A. It was just metal fragments.

11 Q. Okay, and you collected those, and then you submitted  
12 those into evidence?

13 A. I did.

14 Q. I'm going to show you what's been marked as State's  
15 134. Is that the metal fragment you were referring to?

16 A. That is.

17 Q. And this, and you submitted this metal fragment into  
18 evidence?

19 A. I did.

20 Q. For further testing?

21 A. I did.

22 MR. STEADMAN: Your Honor, at this point we would  
23 introduce State's 134 into evidence.

24 MR. SUTHERLAND: Without objection.

25 THE COURT: Without objection.

1 (METAL FRAGMENT MARKED INTO EVIDENCE AS STATE'S  
2 EXHIBIT NUMBER 134.)

3 BY MR. STEADMAN:

4 Q. I'm also going to show you what's been marked as  
5 State's 135. What are these?

6 A. These are projectile fragments that I received from  
7 the pathologist that came from Aaron Collins.

8 Q. So, these were the metal fragments that she removed  
9 from his body?

10 A. Correct.

11 MR. STEADMAN: Your Honor, at this point we'd  
12 introduce State's 135 into evidence.

13 MR. SUTHERLAND: Again, no objection, Judge.

14 THE COURT: Without objection.

15 (PROJECTILE FRAGMENTS MARKED INTO EVIDENCE AS STATE'S  
16 EXHIBIT NUMBER 135.)

17 BY MR. STEADMAN:

18 Q. And State's 136, what are these?

19 A. These are the projectiles that I received from the  
20 pathologist that came from Sydni's body.

21 Q. And is it a total of two projectiles?

22 A. Correct, two.

23 Q. And, and these came from within Sydni's body?

24 A. Correct.

25 Q. And you submitted these into evidence?

1 A. I did.

2 MR. STEADMAN: Your Honor, at this point introduce  
3 State's 136 into evidence.

4 MR. SUTHERLAND: No objection, sir.

5 THE COURT: All right.

6 (PROJECTILES MARKED INTO EVIDENCE AS STATE'S EXHIBIT  
7 NUMBER 136.)

8 (CLOTHING OF A. COLLINS MARKED AS STATE'S EXHIBIT  
9 NUMBER 137 FOR IDENTIFICATION.)

10 BY MR. STEADMAN:

11 Q. Investigator Humphries, can you tell us what this is?

12 A. Okay. So, these are the clothing items I collected  
13 from Aaron Collins.

14 Q. And these are the clothing items that you also  
15 photographed and that we're viewing now?

16 A. Correct.

17 MR. STEADMAN: Your Honor, at this point we'd  
18 introduce State's 137 into evidence.

19 MR. SUTHERLAND: No objection, sir.

20 THE COURT: All right.

21 (CLOTHING OF A. COLLINS MARKED INTO EVIDENCE AS  
22 STATE'S EXHIBIT NUMBER 137.)

23 (CLOTHING OF S. COLLINS MARKED AS STATE'S EXHIBIT  
24 NUMBER 138 FOR IDENTIFICATION.)

25 BY MR. STEADMAN:

1 Q. Investigator Humphries, showing you 138, and what is  
2 this?

3 A. These are the clothing items I collected from Sydni  
4 Collins. They're also the same clothing items that I  
5 photographed.

6 Q. And same clothing items that we're viewing the  
7 photographs now?

8 A. Right. Correct.

9 Q. And you submitted these into evidence?

10 A. I did.

11 MR. STEADMAN: Your Honor, we'd admit State's 138 into  
12 evidence at this time.

13 MR. SUTHERLAND: No objection, sir.

14 THE COURT: All right.

15 (CLOTHING OF S. COLLINS MARKED INTO EVIDENCE AS  
16 STATE'S EXHIBIT NUMBER 138.)

17 BY MR. STEADMAN:

18 Q. All right, Investigator, let's continue to go through  
19 some of these pictures, and just tell us what they are.  
20 And what do we see here in this picture?

21 A. I believe this is the back of Aaron's shirt. This is  
22 the back of Aaron's shirt, and I observed two defects in  
23 this, and that's marker I and marker J.

24 Q. And specifically what kind of defects?

25 A. They were holes.

1 Q. And this is one of the defects you just mentioned?

2 A. It is.

3 Q. And basically a hole?

4 A. Yes.

5 Q. In the shirt? And did you observe any defect in this  
6 jacket?

7 A. Yes. I have one that's got markers on it.

8 Q. Okay.

9 A. It's a better -- okay. So, right here I observed  
10 three defects on this side of the jacket, and that would be  
11 marker M, K, and L.

12 Q. Is this just a closer-up picture of K and L?

13 A. It is.

14 Q. And marker M, what does this indicate?

15 A. It's, it's a defect right in this area.

16 Q. And what kind of defect is this?

17 A. It's not a hole but it's more elongated.

18 Q. And what do we observe in this marker?

19 A. There is another defect. It's a really small hole. I  
20 believe it's right there.

21 Q. And is this is a closer-up image of the same defect?

22 A. It is.

23 Q. And what are we observing in this picture?

24 A. It's another defect. It's marker O.

25 Q. Yes, and point ---

1 A. Right there.

2 Q. And is this also a hole in the clothing?

3 A. Correct.

4 Q. All right, thank you, Investigator. You can take the  
5 witness stand, please.

6 And after you completed the autopsy, you went back the  
7 sheriff's department, you photographed the clothing, did  
8 that conclude your involvement in this case?

9 A. No.

10 Q. What else did you do?

11 A. I responded out with Investigator Jordan in reference  
12 to searching for a weapon.

13 MR. STEADMAN: Thank you, Investigator. No further  
14 questions.

15 THE COURT: Mr. Sutherland.

16 CROSS-EXAMINATION BY MR. SUTHERLAND:

17 Q. And briefly, ma'am, according to your testimony, you  
18 collected GSR kits from Aaron and Sydni?

19 A. Correct.

20 MR. SUTHERLAND: Thank you. No further questions,  
21 Judge.

22 THE COURT: All right, anything further for this  
23 witness?

24 MR. STEADMAN: No, Your Honor.

25 THE COURT: You may step down.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: We're going to take a short break.  
3 Members of the jury, I think y'all probably could use one  
4 right now. Just don't talk this case. We'll bring you  
5 back out soon.

6 (THE JURY EXITS AT 10:43 A.M.)

7 (OFF THE RECORD.)

8 (GSR KIT MARKED AS STATE'S EXHIBIT NUMBER 139 FOR  
9 IDENTIFICATION.)

10 THE COURT: I think we need to resolve the issue of  
11 the autopsy photographs.

12 MR. SHELLENBERG: We can go ahead and take it up, Your  
13 Honor. I believe Mr. Sutherland is objecting to these  
14 pictures that we have. We tried to minimize any ---

15 THE COURT: He's objecting to all of them or some of  
16 them?

17 MR. SUTHERLAND: Well, what, what I am requesting is  
18 that they just substitute diagrams. And the case law that  
19 had been submitted to the court, *State vs. Kornahrens* and  
20 *State vs. Tucker*, all, all of that in, in support of that,  
21 you know ---

22 THE COURT: Do you have any, do you have a case, any  
23 authority that says that these photos cannot go in under  
24 any circumstances?

25 MR. SUTHERLAND: Not under any circumstances, but

1 under *State vs. Kornahrens* and *State vs. Tucker*, they were  
2 prejudicial ---

3 THE COURT: Okay, *Kornahrens*, that's where the father  
4 killed the son, right? Remember that case?

5 MR. SUTHERLAND: Yes, sir.

6 THE COURT: It's gruesome.

7 MR. SUTHERLAND: Yes, sir.

8 THE COURT: That was thirty-some years ago, I think.

9 MR. SUTHERLAND: Yes, sir.

10 THE COURT: What was the date of *Kornahrens*?

11 MR. SUTHERLAND: And I understand ---

12 THE COURT: He got convicted. He actually escaped  
13 from prison, you know that?

14 MR. SUTHERLAND: I did not know that.

15 THE COURT: Well, now you do. Fred Kornahrens.

16 MR. SUTHERLAND: And I do understand these were death  
17 penalty and guilt phase cases.

18 THE COURT: Oh, yeah, that was a death penalty case.

19 MR. SUTHERLAND: Yes, sir, but I, I don't see why they  
20 couldn't just substitute diagrams if they're going to say  
21 it went in here, just like they're submitting diagrams with  
22 the coroner's testimony. And just my view is the less  
23 prejudicial route is always ---

24 THE COURT: My question was, sir, do you have any  
25 authority to say these cannot go in?

1 MR. SUTHERLAND: No, sir, not on point.

2 THE COURT: Now, Solicitor, do y'all want to introduce  
3 all of these or some of those? What do y'all want to do?

4 MR. SHELLENBERG: All these, Your Honor.

5 THE COURT: And what authority do you have to support  
6 your position that they should go in?

7 MR. SHELLENBERG: Your Honor, we've cleaned them up.  
8 They're not, they're not particularly gruesome in any way.  
9 We want to put in the ---

10 THE COURT: That's an argument, not an authority. Can  
11 you cite a case for me?

12 MR. SHELLENBERG: I cannot, Your Honor.

13 THE COURT: Y'all come up here.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: We're going to premark them so you can  
16 specifically object to the exhibit number.

17 (PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBIT  
18 NUMBERS 140, 141, 142, 143, 144, 145, 146, 147, 148 FOR  
19 IDENTIFICATION.)

20 THE COURT: Now once again for the record, you are  
21 objecting to Exhibits 140 through 148 for the reasons so  
22 stated?

23 MR. SUTHERLAND: Yes, sir.

24 THE COURT: You want to repeat one more time just for  
25 the record?

1 MR. SUTHERLAND: Yes, sir. Just to object to exhibits  
2 140 through 148 on the grounds that they are unnecessarily  
3 gruesome and that they -- there's a danger that it might  
4 prejudice the jury by inflaming their passions.

5 THE COURT: Thank you, sir.

6 MR. SUTHERLAND: Yes, sir.

7 THE COURT: Anything further before I bring the jury  
8 back?

9 MR. FYALL: Not from the state, Your Honor.

10 THE COURT: All right, bring the jury in. We're  
11 ready.

12 (THE JURY ENTERS AT 11:07 A.M.)

13 THE COURT: Welcome back, Madame Forelady, and once  
14 again I want to thank you for your courtesy and attention  
15 to this matter.

16 And, solicitor, you may call your next witness.

17 MR. STEADMAN: State calls Ms. Hattie Baylock.

18 HATTIE P. BAYLOCK, BEING DULY  
19 SWORN, TESTIFIES AS FOLLOWS:

20 CLERK: Please have a seat in the witness stand, and  
21 state your full name for the record.

22 WITNESS: Hattie Perry Baylock.

23 DIRECT EXAMINATION BY MR. STEADMAN:

24 Q. And, Ms. Baylock, if you don't mind, just speak up so  
25 everybody can hear you.

- 1 A. Okay.
- 2 Q. What part of the state do you live in?
- 3 A. Summerville, South Carolina.
- 4 Q. And were you living in Summerville, South Carolina,  
5 back in July and August of 2017?
- 6 A. Yes.
- 7 Q. And do you live by yourself?
- 8 A. Yes.
- 9 Q. And do you know somebody named Kevin Hunt?
- 10 A. Yes.
- 11 Q. And who is Kevin Hunt to you?
- 12 A. He's my nephew.
- 13 Q. And how close do you live to Kevin Hunt?
- 14 A. His front yard connects with my backyard.
- 15 Q. So, if you walk out the back door of your house,  
16 you're then in the front yard of his house?
- 17 A. Yes.
- 18 Q. And does Kevin live with anybody?
- 19 A. No.
- 20 Q. And is Kevin in any motorcycle club?
- 21 A. Yes.
- 22 Q. What motorcycle club is Kevin in?
- 23 A. Thunderguards.
- 24 Q. And I want to go ahead and take your attention back to  
25 July 27, 2017. Did you notice a strange car parked at

1 Kevin's house that weekend?

2 A. Yes.

3 Q. And what kind of car was that?

4 A. It was a little gray Toyota.

5 Q. And do you remember when you saw that car show up at  
6 his house, when you first saw it?

7 A. It was on a Friday.

8 Q. Okay. I'm going to show you what's marked as State's  
9 120. Does that car look like the car that you saw show up  
10 at Kevin's house that weekend?

11 A. Yes.

12 Q. Did you ever see anybody driving that car over the  
13 weekend?

14 A. No.

15 Q. And did you know if somebody was staying with Kevin  
16 that weekend?

17 A. Well, I saw another vehicle and a person getting out,  
18 going into the house. So, I would say yes.

19 Q. And did you know the nickname of the person that you  
20 saw or that you knew was staying with Kevin that weekend?

21 A. Yes.

22 Q. And what was the nickname of that person?

23 A. Tippy.

24 Q. Tippy?

25 A. Yes.

1 Q. Okay, and do you know if he was in the same motorcycle  
2 club as Kevin?

3 A. I don't know that.

4 Q. And when -- you said you also noticed -- you didn't  
5 notice that small Toyota move at any time?

6 A. It didn't.

7 Q. Did you notice Tippy drive any other car?

8 A. Yes.

9 Q. And what kind of car was that?

10 A. A black Hummer.

11 Q. Had you ever seen a black Hummer at Kevin's house  
12 before?

13 A. No.

14 Q. And now eventually the police came and talked to you.  
15 Is that correct?

16 A. Yes. They was park in my yard.

17 Q. Okay, and, and they eventually came and got a  
18 statement from you?

19 A. Yes.

20 Q. And your nephew, Kevin?

21 A. Yes.

22 Q. Okay.

23 MR. STEADMAN: Thank you, ma'am. No further questions  
24 and, ma'am, hang tight. The defense may have some  
25 questions for you.

1 WITNESS: Okay.

2 CROSS-EXAMINATION BY MR. SUTHERLAND:

3 Q. Ma'am, my name is Tivis. How are you?

4 A. All right.

5 Q. Okay. Good. Good. Just a couple of questions. Did  
6 you see what time the car was there, or did you just kind  
7 of come out and it was sitting right there, or look out and  
8 it was sitting right there?

9 A. It was there.

10 Q. It was just there. You're not, not sure when?

11 A. No.

12 Q. Okay, and it just did not move between then and  
13 throughout the weekend or?

14 A. I didn't see it move.

15 Q. Okay.

16 MR. SUTHERLAND: That's it. Thank you very much.

17 THE COURT: Anything?

18 MR. STEADMAN: No, Your Honor.

19 THE COURT: You may step down, Ms. Baylock.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Call your next witness.

22 MR. FYALL: State calls Kevin Hunt.

23 KEVIN HUNT, BEING DULY SWORN,

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please have a seat in the witness stand.

1 Please state your full name for the record.

2 WITNESS: Kevin Hunt.

3 DIRECT EXAMINATION BY MR. FYALL:

4 Q. Mr. Hunt, what part of South Carolina do you live in?

5 A. Summerville.

6 Q. All right, and do you know someone named Hattie  
7 Baylock?

8 A. Yes. That's my aunt.

9 Q. And who is that?

10 A. That's my aunt.

11 Q. And where do you live in reference to your aunt?

12 A. I live behind her.

13 Q. Okay. So, you can see your -- her property from your  
14 property?

15 A. Yes. Yes.

16 Q. Do you know the defendant in this case, Ricardo  
17 Middleton?

18 A. Yes.

19 Q. Did you call him by any other name?

20 A. We call him Tippy Toe.

21 Q. All right, and do you see him here in court here  
22 today?

23 A. Yes.

24 Q. Can you point him out for me?

25 A. (THE WITNESS COMPLIES.)

1 Q. And what's he wearing?

2 A. The blue suit.

3 MR. FYALL: Let the record affect the witness has  
4 identified the defendant.

5 THE COURT: All right.

6 BY MR. FYALL:

7 Q. I want to sort of rewind back to end of July, early  
8 August 2017, specifically the weekend July 28th, Friday.  
9 Did you hear from Tiptoe around that time?

10 A. Yes. He called me that morning and said hey, man,  
11 what are you doing. He said, he said, hey, I'm coming  
12 down.

13 Q. Okay. He just told you he was coming down?

14 A. Yes.

15 Q. Now, were you home when he arrived?

16 A. No. I was, I think I was in Home Depot, something.  
17 I, I do construction work?

18 Q. Okay.

19 A. I think when he called me, I wasn't home.

20 Q. Now when you got home, was there a car there in the  
21 yard?

22 A. Yes.

23 Q. Okay. Do you remember what kind of car it was?

24 A. It was a little compact car; it was small.

25 Q. All right, and did -- was that car driven since it got

1 there?

2 A. No.

3 Q. Okay. What was Tippy Toe, as you call him, what was  
4 he driving?

5 A. I saw him that Sunday afternoon. I was getting ready  
6 to go to my, my friend's house and he pulled up in a black  
7 Hummer.

8 Q. Do you know whose Hummer that was?

9 A. We called the guy named Onyx.

10 Q. Onyx is his club name?

11 A. Yes.

12 Q. All right, and your club is the Thunderguards, right?

13 A. Well, I'm not a member anymore.

14 Q. Okay. You were a member of Thunderguard but not  
15 anymore?

16 A. Right.

17 Q. Is that how you met Tippy Toe?

18 A. Yes.

19 Q. All right. At some point when you got -- were you  
20 alerted that law enforcement was at your residence?

21 A. Yeah. Well, that was -- I forgot the date when it  
22 was, but I was to my friend's house, and she and I had ran  
23 some errands, and she said your phone is buzzing or  
24 something. I had it on vibrate, and she said look like  
25 your phone was buzzing, going off. So, she said I think

1 it's going off now. I said, well, let me, let me hold it.  
2 She gave it to me, and I had numerous, numerous phone calls  
3 from my family.

4 Q. All right. After those phone calls, you went back to  
5 your residence?

6 A. Yeah. My brother said that they had instructed to get  
7 ahold of me, tell me I need to get there soon as possible.

8 Q. All right. Then when you got there, did you interact  
9 with law enforcement?

10 A. Yes. When I -- it was a lot of cars up there. When I  
11 got there, they -- I got out, and I forgot the gentleman.  
12 He was kind of short, the gentleman. He came to me and he,  
13 he told me, said you didn't do anything wrong, blah, blah,  
14 blah, blah, blah.

15 Q. So, they were nice to you?

16 A. Yes, and he asked me a few questions, and from that  
17 point we just sat around. I sat around. We sat in the  
18 yard with my family and stuff for five, six hours, whatever  
19 it was.

20 Q. All right. I think that's all I have for you.

21 One question. Does, does Ricardo Middleton, did he  
22 live at your house?

23 A. No. He would come by periodically, like I said; my  
24 house was open to him. We were good friends as well as  
25 being in the club with him. He would just call me. Say

1 hey, man, I'm coming. I'd say sure. Go ahead.

2 Q. All right.

3 A. And go in my house.

4 Q. Thank you, but that wasn't his residence?

5 A. No. No. No, no, no.

6 MR. FYALL: No further questions.

7 MR. SUTHERLAND: Please the court, sir?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION BY MR. SUTHERLAND:

10 Q. Sir, how are you?

11 A. I'm fine.

12 Q. My name is Tivis. Just a couple of questions for you.  
13 That vehicle that was parked out there, the compact, it did  
14 not move or it was not disturbed from when it got there  
15 until the police got to it? Is that correct?

16 A. Right. I -- yeah, I don't think about till that.

17 Q. Okay, and your just testimony was that your house is  
18 open to him any time?

19 A. Any time.

20 MR. SUTHERLAND: Thank you, sir. No further  
21 questions.

22 THE COURT: Anything further, Mr. Solicitor?

23 MR. FYALL: No, sir.

24 THE COURT: You may step down, Mr. Hunt.

25 (THE WITNESS EXITS THE STAND.)

1 MR. SHELLENBERG: The state calls Dr. Amy Durso.

2 AMY DURSO, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please have a seat on the witness stand, and  
5 state your full name for the record, and please spell your  
6 last name.

7 WITNESS: Amy Durso, D-u-r-s-o.

8 VOIR DIRE EXAMINATION BY MR. SHELLENBERG:

9 Q. Good morning, Dr. Durso. How are you?

10 A. Good. How are you?

11 Q. Where are you employed?

12 A. I'm employed at Professional Pathology Services as a  
13 forensic pathologist.

14 Q. And what does a forensic pathologist do?

15 A. So, I'm a medical doctor that has specialized in the  
16 field of forensic pathology. So, I basically perform  
17 autopsies, which is an examination of the body after death,  
18 in order to determine not just the cause of death but also  
19 just to document injuries, illnesses, and so forth.

20 Q. Well, Dr. Durso, before we get going further, can you  
21 tell the court a little bit about your educational and  
22 training, background?

23 A. Sure. So, I got a bachelor's degree in psychology  
24 from Emory University. I then got my four-year medical  
25 degree, my MD, from the University of North Carolina-Chapel

1 Hill. After medical school, I did a four-year residency  
2 training program at Wake Forest University in the fields of  
3 anatomic and clinical pathology, and then I stayed an  
4 additional year at Wake Forest University to do a  
5 fellowship in forensic pathology.

6 Q. And how many times have you testified as an expert in  
7 court?

8 A. I'd say about forty-five times maybe.

9 MR. SHELLBERG: Your Honor, at this time we'd offer  
10 Dr. Durso as an expert in forensic pathology.

11 THE COURT: Any *voir dire*?

12 MR. SUTHERLAND: No objection.

13 THE COURT: Without objection.

14 MR. SUTHERLAND: No *voir dire*. No objection.

15 MR. SHELLBERG: Your Honor, may I approach?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION BY MR. SHELLBERG:

18 Q. Dr. Durso, I am going to show you what's been marked  
19 as State's 129 and 130. Do you recognize these?

20 A. I do.

21 Q. And what do you recognize those as?

22 A. Those are enlarged versions of the diagrams I made at  
23 the time of autopsy of the two decedents.

24 MR. SUTHERLAND: No objection.

25 THE COURT: No objection to those, and for the record

1 it's 140 through 148 that you object to?

2 MR. SUTHERLAND: Yes, sir. Yes, sir.

3 THE COURT: All right. Go ahead.

4 MR. SHELLENBERG: So, move State's 129 and 130 into  
5 evidence.

6 THE COURT: All right.

7 (AUTOPSY DIAGRAMS INDIVIDUALLY MARKED INTO EVIDENCE AS  
8 STATE'S EXHIBIT NUMBERS 129, 130.)

9 BY MR. SHELLENBERG:

10 Q. At this time, I show you what has been marked State's  
11 140 through 148. Do you recognize those?

12 (A PAUSE.)

13 A. Yes. These are photographs taken at autopsy of the  
14 two decedents.

15 Q. And, Dr. Durso, will those photographs help you  
16 explain some of the distances and entry wounds and things  
17 of that nature in addition to the diagrams?

18 A. Yes.

19 MR. SHELLENBERG: Your Honor, at this time we move  
20 State's 140 through 148 into evidence.

21 MR. SUTHERLAND: Just renew ---

22 THE COURT: All right, so admitted over your previous  
23 objection.

24 MR. SUTHERLAND: Previous objections.

25 THE COURT: All right.

1 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS  
2 STATE'S EXHIBIT NUMBERS 140, 141, 142, 143, 144, 145, 146,  
3 147, 148.)

4 BY MR. SHELLENBERG:

5 Q. Dr. Durso, did you perform an autopsy in this case of  
6 a Sydni Collins?

7 A. I did.

8 Q. Do you have a copy of your report there?

9 A. I do, yes.

10 Q. Okay.

11 MR. SHELLENBERG: Your Honor, may she step down?

12 THE COURT: Yes

13 BY MR. SHELLENBERG:

14 Q. I'm going to show you what has been marked as State's  
15 130, and will you tell the jury what that is?

16 A. So, this -- so, whenever I do an autopsy, anyone, no  
17 matter what they're -- I do an autopsy for, we have these  
18 generic diagrams, male and female, where I write a lot of  
19 my notes. This is one of those diagrams where I basically  
20 was trying to sum up the gunshot wounds only. And so this  
21 is a diagram I did on Sydni Collins, and so here I'm  
22 documenting where the gunshot wound entrances and exits  
23 were that I found at autopsy.

24 So in this one, I kind of just give letters on  
25 external exam, so when I just scout the outside and then I

1 kind of match stuff up after we open up the body. And we  
2 can follow the paths that the bullets took through the body  
3 and see what kind of damage it did inside. So, the first  
4 gunshot wound ---

5 Q. Dr. Durso, you want -- can you start with the gunshot  
6 wound B to the chest?

7 A. Right. So, gunshot wound B. So, this is an entrance  
8 wound and had the characteristics of an entrance wound,  
9 which was a little abrasion collar. So, when a bullet  
10 enters the skin, it's going to, for a fraction of a second,  
11 just push it before it breaks through. So, it leaves this  
12 little ring.

13 Q. Dr. Durso, I'm going to show you what's been marked as  
14 State's 141.

15 A. Right. So, this is the entrance wound, and this is  
16 her head up here. This is the right breast. So, this  
17 right here is the entrance wound. It's rounded and it has  
18 this little dried collar around it. That's called an  
19 abrasion collar, so this is a classic entrance wound.

20 Q. Now with this entrance wound, can you tell the  
21 distance that it was fired from?

22 A. Right. So, the things we look for for distance is  
23 soot and stippling. So, soot is when the gun's, you know,  
24 within 6 inches or so. You'd actually have the soot come  
25 out from another gun and deposit either around the wound on

1 the skin or within it. Stippling is when the tiny little  
2 pellets of gunpowder are able to still hit the body, and  
3 they leave actually these tiny abrasions on the body.  
4 That's within 18 to 24 inches. So, if it's just bare skin,  
5 you know, that's -- that holds true. If there's thick  
6 clothing like thick leather clothing or if it goes through  
7 a window, something like that, well, that's going to stop  
8 both the soot and stippling, right? The bullet will keep  
9 going.

10 In this case for gunshot wound B, there was no soot or  
11 stippling, so I can't really say because I don't know if it  
12 went through thick clothing or anything else. So, I listed  
13 it as indeterminate, so I cannot say.

14 Q. Now, can you tell me the direction that this gunshot  
15 wound B took when it entered Sydni's body?

16 A. Right. So, it goes through the right breast. It then  
17 goes into the actual chest cavity on this right side. It  
18 then goes through the right upper lobe of the lung. It  
19 then goes through the ascending aorta and pulmonary artery.

20 So, off your heart comes a very large vessel. It's  
21 about, if you went with your hands like this, that's about  
22 how big your aorta is. So, it is filled with all the blood  
23 that is meant to go to your, pretty much, entire body,  
24 right? So, it is high pressure and high volume.

25 So, it hit the aorta right as it comes off the heart,

1 so this is going to bleed very quickly. It also hit the  
2 pulmonary artery, which is the main artery coming out of  
3 the heart to go to the lungs. So, this is going to cause a  
4 lot of bleeding very quickly.

5 It then goes through the left bronchus. So, the left  
6 airway, the main windpipe. It then hits the esophagus, you  
7 know, where you swallow. The food goes down. It then hits  
8 the aorta again on -- because the aorta actually comes up,  
9 makes, like, a U-turn, and goes back down. So, it hits it  
10 on the way up and it also hits it on the way down. So, now  
11 the aorta has been hit twice.

12 And then it goes into vertebral body, T4, so the  
13 vertebrae in the back pretty high up. And it hits there  
14 kind of within the body, and then it's not -- it doesn't  
15 have enough energy, the projectile at this point. So, I'm  
16 able to recover the projectile from the left pleural  
17 cavity. So, the left space around the lungs. So, this is  
18 going from, basically from front to back and from right to  
19 left. So, kind of ---

20 Q. So, I guess if you were going to ---

21 A. This way.

22 Q. --- demonstrate, how would that be?

23 A. So, pretty much like that.

24 Q. And that's why it went through the aorta?

25 A. Right.

1 Q. Esophagus?

2 A. Right. It's kind of like -- right, going sideways but  
3 also front to back.

4 Q. And when a bullet enters, it doesn't, doesn't  
5 necessarily just go straight in and stop or straight in and  
6 stay. It get...

7 A. Well, typically it doesn't bounce around unless it's a  
8 really small bullet like a .22 in the scalp, you know, will  
9 bounce around. But this is going to stay pretty true.  
10 Now, I can't say if she's twisted or anything like that,  
11 but this was a pretty straight path.

12 Q. Okay, and the second gunshot wound.

13 A. So, gunshot wound A is another entrance wound. It's  
14 right here, kind of near this nasal fold on her, so ---

15 Q. I'm going to also show you what's been marked as  
16 State's 140.

17 A. So, State's 140 is a picture of Ms. Collins's face at  
18 autopsy. You can see this gunshot wound right here. It  
19 has the same thing. It has the abrasion collar, and if you  
20 look really carefully -- it's kind of hard to see; the  
21 picture is a little dark -- there are these tiny, little  
22 dots on her face, even on her upper chest, and this is  
23 actually stippling. This is what I was talking about where  
24 within about two feet of the gun firing, you would have  
25 that little bits of gunpowder scraping along the skin. So,

1 if I was really close and shot somebody, the gunpowder  
2 wouldn't be able to disperse as much, right? So, it would  
3 be very clustered, but if I'm further away, it has more  
4 time to spread out before it hits the body.

5 So, this is pretty sparsely spread out. You know,  
6 it's all over her face. So, this is probably closer to the  
7 18 to 24 inches away.

8 Q. Which is, I guess, roughly?

9 A. Roughly.

10 Q. 2 feet, and when this went into ---

11 MR. SHELLENBERG: Your Honor, permission to publish to  
12 the jury and permission to publish 141?

13 THE COURT: Yes, sir.

14 BY MR. SHELLENBERG:

15 Q. Now, when gunshot -- when the gunshot wound that went  
16 into her -- next to her nostril, what happened with that?

17 A. So, it goes through the -- you have a big sinus cavity  
18 back here, so it went through the sinus cavity. It then  
19 goes through the upper airways, so back behind where your  
20 nose -- kind of when you take a deep breath, you're going  
21 to feel the air dripping back there. It then hits her  
22 brainstem; it completely severs her brainstem. So, that is  
23 going to cause her to drop immediately. She's going to be  
24 completely paralyzed and have no drive to breathe.

25 Q. So, at that point when her brainstem is severed, are

1 all of her involuntary, I guess, breathing and ---

2 A. All of her voluntary and even breathing, you know, is  
3 driven from the brain. So, she has no drive to breathe,  
4 nothing. This is also a fatal wound, as was the last one.

5 So, this actually then goes through the upper neck  
6 vertebrae, so it goes through here through the upper neck  
7 vertebrae. And then part of it, the jacket around the  
8 bullet actually I was able to recover near the back of the  
9 neck, but the other part, the lead core part, was not in  
10 the body.

11 Q. And I'm going to show you what has been marked as  
12 State's 142. Is this the jacket that you were able to  
13 recover?

14 A. Yes. So, this is from this gunshot wound A entrance.  
15 So, this is the part of the jacket I got from the back of  
16 the neck that I pulled out at autopsy. That was still in  
17 the body, and this is the one that enters here, B. That  
18 goes across and hits the aorta twice that I got from the  
19 left chest cavity.

20 Q. Now, Dr. Durso, are you able to tell which gunshot,  
21 which bullet hit Sydni first and which hit her second?

22 A. I'm almost never able to tell that. But in her case,  
23 because this upper one severs her brainstem -- she did have  
24 a lot of aspiration of blood, which means that she was  
25 taking breaths and bleeding at the same time, which means

1 that this gunshot wound B had to have come first because  
2 gunshot wound A, she would not have had any respiratory  
3 drive, and there was blood aspirated into her lungs.

4 Q. So, and gunshot A is from, you said, 18 to 24 inches?

5 A. Yes.

6 Q. And either of the gunshot wounds were fatal?

7 A. Right. Either one of them alone would have been  
8 fatal. Just this one would have been fatal, and just that  
9 one would have been fatal.

10 Q. And so the cause of death is gunshot wound?

11 A. Yes.

12 Q. Thank you. Let's do -- let me show you what's been  
13 marked as State's 129.

14 A. I need to get my notes for ---

15 Q. Yes, absolutely.

16 (A PAUSE.)

17 Q. And if you want to, we can start with entrance wound

18 E.

19 A. Sure. So, so, this is the same thing as with Sydni  
20 Collins. Mr. Collins, again, this one I have a generic  
21 male template, and at the end I just kind of tried to  
22 summarize all the gunshot wounds on one place to kind of  
23 organize everything.

24 So for Mr. Collins, there was a total of seven gunshot  
25 wounds. So, the first one I'll talk about, then, is this

1 gunshot wound entrance E here on the left lower abdomen.

2 Q. I'm going to show you what has been marked as State's  
3 146. Dr. Durso, what is that?

4 A. So, that's showing the entrance wound that I labeled E  
5 on my diagram. So, his head is up here, feet down here.  
6 There's his bellybutton, and this is the entrance wound  
7 right here. It has an abrasion collar. It's hard to see  
8 because it's kind of small, but you can also see there's a  
9 little bruising about -- around it, and there's also early  
10 decompositional changes, which is because it hit the gut.  
11 And once the gut spills out its contents, bacteria have a  
12 field day and starts breaking down the tissues almost  
13 immediately.

14 So -- and there was no soot, not stippling in any of  
15 his wounds, so all of these I have listed as indeterminate  
16 range. I cannot tell, because there is no soot or  
17 stippling, and I do not know if it went through something  
18 else first.

19 Q. And if he was wearing thick clothing?

20 A. Right. It wouldn't -- it would block the soot and the  
21 stippling, so I cannot tell.

22 So, this one enters this left lower abdomen and hits  
23 the, the large valley and the small bowel. It then hits  
24 the right iliac artery and the inferior vena cava. So, the  
25 inferior vena cava -- we talked about the aorta being the

1 major artery. The vena cava is the big vein. So, it's  
2 bringing all the blood back up from the lower part of the  
3 body, the right. So, the -- it's bringing the blood up  
4 from both legs. It's, again, about the same size as the  
5 aorta only it's not under as much pressure. So, it  
6 wouldn't bleed quite as fast, but it's still going to have  
7 a large volume of blood in it, and veins tend to rip apart  
8 pretty easy. They're thinner walled than arteries. But it  
9 also hits the right iliac artery, which is the main artery  
10 coming off the artery, going towards the right leg. So,  
11 it's carrying all the blood under high pressure going to  
12 the right leg.

13 So, these two vessels bleeding together, and plus it's  
14 mixing with bowel contents. That's not good either. So,  
15 this is very much a potentially fatal wound and would  
16 typically be fatal.

17 There was over 3 liters of liquid, unclotted blood.  
18 So, when you think of a 2-liter soda bottle, one and a half  
19 of those soda bottles was filled with blood that I got from  
20 this gunshot wound here. So, he bled quite a bit.

21 Q. How long would he have been able to live with the  
22 gunshot wound?

23 A. Maybe twenty minutes or so, thirty. You know, I mean,  
24 he wouldn't -- it wouldn't have been as immediately fatal,  
25 but you're bleeding very quickly. So, unless you're, like,

1 literally right outside of a hospital and they can clamp it  
2 immediately and close off the valve, it's pretty much going  
3 to be a fatal wound. So -- but it doesn't bleed as fast as  
4 the aorta, and it didn't hit his brainstem. So, not as  
5 fast as the other one.

6 So this one, I actually did get -- the projectile  
7 comes back. I actually got part of the projectile from the  
8 abdominal cavity and part of it from the soleus muscle in  
9 the back, right muscle, that big, thick muscle you kind of  
10 have back there.

11 Q. I'm going to show you what's been marked as State's  
12 147. Is that what you got from the abdomen?

13 A. Yes. So, his -- the kind of projectile that went  
14 through him broke apart a lot. So, these were all the  
15 pieces I was able to recover from that particular one. And  
16 so that one's going from left to right and from front to  
17 back.

18 So, it doesn't matter what order I go in now.

19 Q. Whichever one you'd like.

20 A. Okay. So, gunshot wound H entrance up here on the  
21 left upper back. This one thing, again, has no soot or  
22 stippling. It goes through the soft tissue. Does not hit  
23 any major vessels, any major organs, and it exits through A  
24 here. So, this really with proper medical care and  
25 prevention of infection could have been survivable if that

1 had been the only gunshot wound.

2 Q. But so Aaron Collins was shot both in the front and  
3 the back?

4 A. Yes, because that's an entrance wound on the back  
5 here, and that's an entrance wound here.

6 Q. Okay.

7 A. And there's entrance, entrance. Yeah, so there's  
8 multiple on both sides.

9 Entrance wound B, we're going back to the chest. On  
10 the left chest here is another entrance wound, and it had  
11 the abrasion collar. There's no soot or stippling. It  
12 goes through the left fifth and sixth rib. So, it goes  
13 through the rib cage, but the angle it's going at, it's  
14 going downwards as well as slightly left to right. So,  
15 it's kind of just almost grazing, but it doesn't -- and  
16 ends up going through the abdominal soft tissue. So, it's  
17 really just kind of grazing fairly superficially along. It  
18 kind of, like, goes off the ribs and keeps going down, so.

19 Q. I'm going to show you what's been marked as 143.

20 A. Okay. So, this is a picture Mr. Collins. The gunshot  
21 wound I'm talking about right now, which is B on my  
22 diagram, and you can see this is an incision made in the  
23 hospital trying to cut open his chest and pump his heart by  
24 hand. But this entrance wound here, so you can see once  
25 again it's round. It has the abrasion collar, and there's

1 no soot or stippling. This is from another graze wound I'm  
2 going to talk about soon, and his head would be up here.  
3 His feet are down here.

4 So, again this actually doesn't enter -- this would  
5 have been painful, but there's no -- it did not hit any  
6 major organs. It did not hit any major vessels, and it's  
7 going downwards very slightly from left to right and up  
8 slightly front to back, but mainly downwards, and it, it's,  
9 it's quite a steep angle that one went in at.

10 Q. Now, does that mean it's coming downwards, that he was  
11 shot from above, or does it depend where his body's  
12 positioned?

13 A. Right. So, people do not stand in a humble position  
14 like we document it when they're shot. So, he could have  
15 been bending down. The person could have been above him.  
16 I can only tell you the angle it went through his body. I,  
17 I cannot tell you where the gunman was or where -- you  
18 know, which position he was in. I have no way of telling  
19 that scientifically.

20 So, okay, so that one -- all right, we'll go to  
21 entrance wound I, which is the right back one here near the  
22 midline. The same deal: no soot or stippling, has an  
23 abrasion collar. And this goes through the back of the rib  
24 cage. It's also -- it's going back to front but only  
25 slightly downwards and from left to right. So, it's kind

1 of going this way through him.

2 But the projectile just kind of just broke up, I  
3 think, after it hit the ribs, and so I was able to get the  
4 fragmented projectile. It did enter the pleural cavity,  
5 but it did not hit the lung. So, the pleural cavity is the  
6 chest cavity on the right side.

7 Okay, the fifth gunshot wound I'm going to talk about  
8 -- again, I do not know what order these came in; I have no  
9 way of telling -- is gunshot wound F is the entrance. So,  
10 that's here on the arm. And so this really just is very  
11 superficial. It just goes through the skin. So, this is  
12 the exit here, G. So, it really just kind of goes right  
13 through the arm. And again I don't know which angle his  
14 arm was at, but in anatomical position, which is how we  
15 document things, it's going upwards and just really doesn't  
16 hit, again, any major vessels. It would have been painful  
17 but not necessarily fatal with proper medical care.

18 Let's see, number 6 I have listed is, is a graze  
19 wound, and I will ---

20 Q. And I'm going to show you what's been marked ---

21 A. Sure.

22 Q. --- as 145.

23 A. Okay. So, this is C. So as you can see, this is one  
24 long graze wound coming all the way down there. So, right.  
25 So, right. So, this is his head up here, feet down here on

1 both of these. You can see the incision again, and so you  
2 can see this is gunshot wound A where the exit's -- that's  
3 entrance wound B, but this right here is just a graze  
4 wound. So, it appears to graze this way, and actually you  
5 can see the top of it on the abdomen. So, it just kind of  
6 skirts along there, but it doesn't really enter the body.  
7 So, it's a graze wound. So, again it would have hurt, but  
8 it wouldn't have killed him as long as it was cleaned and  
9 taken care of, and there's another graze wound. So, C and  
10 then D are the graze wounds, so.

11 Q. And did you recover any projectiles or any pieces of  
12 bullet from Mr. Collins?

13 A. Several pieces, yes. So ---

14 Q. Let me show you what has been marked as State's 148.  
15 Is this another?

16 A. Right. So, this is from the right chest. So, this  
17 one -- hold up. I've got to figure which -- right. So,  
18 this one comes from I. So, these are the ones that -- it  
19 goes into the right chest superficially. Doesn't really  
20 hit the lung but does go into the right chest cavity, and  
21 those are the pieces I was able to get from that one.

22 Q. And you said ---

23 A. And I showed you some of the ones I got from -- you  
24 showed me already ---

25 Q. Yes, ma'am.

1 A. --- one that had broken up from the I -- or, no, from  
2 E that I got from the abdomen.

3 Q. And you said gunshot wound E, if not properly treated,  
4 would have been fatal, but what about a combination of all  
5 the gunshot wounds?

6 A. Right. So, all of them -- so, he's bleeding out  
7 quickest from gunshot wound E. That's the one that hits  
8 these big vessels, but anywhere he's losing blood is going  
9 to contribute towards the blood loss and accelerate his  
10 death even faster. So, so, I, I put the cause of death as  
11 multiple gunshot wounds, but the most significant one is E  
12 because without E, I think he would have likely survived.

13 MR. SHELLENBERG: Your Honor, permission to publish  
14 140 through 148 to the jury?

15 THE COURT: Yes, sir.

16 BY MR. SHELLENBERG:

17 Q. And, yeah, if you'll take the stand, I have one  
18 question I don't think that I asked on Ms. Collins.

19 A. Yes.

20 Q. On gunshot wound B the one to the face.

21 A. Yes.

22 Q. Can you tell me again what direction is that?

23 A. Right. So, the one to the face is going front to  
24 back, slightly downwards, and right to left because the  
25 exit, the partial exit of the lead core is on the back of

1 her neck. So, it's going like this.

2 Q. So, could that be consistent with being shot from  
3 above?

4 A. Consistent with that, yes.

5 Q. Okay.

6 MR. SHELLBERG: Beg the court's indulgence.

7 Thank you, Dr. Durso. No further questions.

8 WITNESS: Thank you.

9 THE COURT: Mr. Sutherland.

10 MR. SUTHERLAND: Please the court, sir?

11 CROSS-EXAMINATION BY MR. SUTHERLAND:

12 Q. Doctor, how are you?

13 A. Good. How are you?

14 Q. I'm doing well, doing well. Just had one question for  
15 you about gunshot wound D on ---

16 A. On ---

17 Q. --- Sydni.

18 A. Sydni Collins, yes.

19 Q. And it's just as I understood your testimony, it was  
20 front to back, right to left?

21 A. Yes.

22 MR. SUTHERLAND: Okay. That's it.

23 WITNESS: That's it?

24 MR. SUTHERLAND: Thank you.

25 No further questions, Judge.

1 THE COURT: Any further questions for this witness?

2 MR. SHELLENBERG: Yes, Your Honor.

3 REDIRECT EXAMINATION BY MR. SHELLENBERG:

4 Q. As you testified, even if the gunshot is front to  
5 back, right to left, that does not mean you can't tell  
6 where the gunshot came from?

7 A. True. People twist around. I can't tell you, you  
8 know, where the gunman, you know...

9 Q. And where they were in relation to ---

10 A. Necessarily was, correct.

11 MR. SHELLENBERG: Thank you. No further questions.

12 THE COURT: Anything further?

13 MR. SUTHERLAND: Nothing further, Judge.

14 THE COURT: You may step down.

15 WITNESS: Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: You may call your next witness.

18 MR. FYALL: The state calls Jennifer Nates. May we  
19 approach before this witness, Your Honor?

20 THE COURT: Sure.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 JENNIFER NATES, BEING DULY SWORN,

23 TESTIFIES AS FOLLOWS:

24 CLERK: Please have a seat in the witness stand, and  
25 state your full name for the record.

1 WITNESS: My name is Jennifer Nates, N-a-t-e-s.

2 VOIR DIRE EXAMINATION BY MR. FYALL:

3 Q. All right, Ms. Nates, where do you work?

4 A. I work for the South Carolina Law Enforcement Division  
5 in the Trace Evidence section of the forensic laboratory.

6 Q. All right, and what is your role or rank, if you will,  
7 at SLED?

8 A. I'm classified as a lieutenant, which means that I am  
9 the supervisor of over the trace section. The lab is  
10 divided up into many different sections: toxicology, drugs,  
11 crime scene, DNA, trace, and several others. So, I am the  
12 supervisor over that one section within the lab.

13 Q. All right, and how long have you -- well, just can you  
14 tell us your training and experience as far as the trace  
15 evidence analysis?

16 A. I started work at SLED in 1997 in drug analysis, where  
17 I successfully completed the police academy and the drug  
18 training program. I worked drug and poison cases for  
19 approximately one year, after which I transferred into the  
20 Trace Evidence section. At that time, I began a four-year  
21 training program under the lieutenant at that time of the  
22 department and the senior analyst. This training include  
23 -- included hands-on training, shadowing casework as they  
24 did it, outside courses and classes dealing with the  
25 instrumentation that I would need to use, and on the types

1 of results and interpretations you could come to from those  
2 results.

3 I completed the training program and began taking  
4 casework in gunshot residue. Gunshot residue training is  
5 typically the first type of training you begin in trace  
6 evidence. After that, you train in paint, fibers, glass,  
7 explosives, bank dye, fracture fit analyses, and fire  
8 debris analyses.

9 Q. All right. So, just back up. You said started in  
10 1990 what?

11 A. '97.

12 Q. '97 and then a year after that. So, '98 you started  
13 with trace evidence?

14 A. Yes.

15 Q. And you've been doing trace evidence now since 1998?

16 A. Yes.

17 Q. Have you ever been qualified as an expert in court  
18 before?

19 A. I have been, yes.

20 Q. Do you know approximately how many times?

21 A. 135.

22 Q. All right.

23 MR. FYALL: Your Honor, at this time tender Lieutenant  
24 Jennifer Nates as an expert in trace evidence analysis.

25 MR. SUTHERLAND: No, *voir dire*, Your Honor.

1 THE COURT: All right.

2 MR. SUTHERLAND: No objection.

3 THE COURT: So admitted without objection.

4 MR. FYALL: Thank you.

5 DIRECT EXAMINATION BY MR. FYALL:

6 Q. Lieutenant Nates, I'm going to hand you what's marked  
7 as State's 139. Do you recognize that?

8 A. I do. This is packaging. Typically when evidence is  
9 submitted to the laboratory, it will come in a manila  
10 envelope, a heat-sealed pouch, a bag, or box. When it is  
11 submitted to the laboratory, it's assigned what is called a  
12 lab number. It starts with an L, the year, and then the  
13 sequential number for each case we received in that year.

14 In this case, it was L1711536, and it signifies which  
15 item number is within this package. My initials are on it  
16 when I received it, which means when I opened it, I placed  
17 my initials and date on the packaging.

18 Q. All right. Tell us what is inside that packaging.

19 A. Inside this packaging was a GSR kit collected from a  
20 2007 Toyota Yaris.

21 Q. And did you analyze that GSR kit?

22 A. I did.

23 Q. All right.

24 MR. FYALL: Your Honor, at this time the state offers  
25 139 into evidence.

1 MR. SUTHERLAND: No objection, sir.

2 THE COURT: Without objection.

3 (GSR KIT MARKED INTO EVIDENCE AS STATE'S EXHIBIT  
4 NUMBER 139.)

5 BY MR. FYALL:

6 Q. All right, but before we get to that, just by way of  
7 background, the victims in this case, Aaron and Sydni  
8 Collins, when there is sort of close quarters gunshots  
9 case, does SLED typically do GSR analysis on victims?

10 A. We currently do analysis on victim kits, but there is  
11 very limited value to GSR kits collected from victims who  
12 have sustained a gunshot wound in general.

13 Q. Tell the jury about that.

14 A. When we analyze for gunshot residue, we're looking for  
15 the presence or absence of gunshot residue to potentially  
16 say that a person fired a weapon, was near a weapon when it  
17 was fired, or handled an object with gunshot residue on it.  
18 Those are the three scenarios that we can deduce from  
19 someone having gunshot residue on their person.

20 If you have a shooting victim, someone who has  
21 sustainable a bullet wound, you already know they have  
22 something related to gunshot residue in their bodies, so we  
23 expect to find GSR on their hands. If we find residue on,  
24 say, a suicide victim's hands, we can't tell you if it was  
25 from them firing the gun or if it was someone else firing

1 the gun. We can only tell you it's present and it got  
2 there one of three ways.

3 Q. All right. Now let's talk about this case, the GSR  
4 from the Toyota Yaris. What were the results of that  
5 analysis?

6 A. I didn't hear your question. I'm sorry.

7 Q. What were the results of the analysis from the kit on  
8 the Toyota Yaris?

9 A. In the samples that were submitted from the Toyota  
10 Yaris, I did not find any particles characteristic of  
11 gunshot residue. This means that I did not find any  
12 particle I could state was a particle of gunshot residue.

13 Q. Now, tell the jury a little bit about the -- some of  
14 the staying power of gunshot residue. How long does it  
15 last? What could affect whether or not it shows up in a  
16 test upon analysis?

17 A. Gunshot residue is produced when a firearm is  
18 discharged. It's a high heat, high pressure event that  
19 takes place. The gunshot residue is produced and exits the  
20 firearm in any of the openings that are present. In a  
21 revolver, it will exit the firearm where the cylinder gap  
22 is, the trigger, and of course the barrel of the gun. In a  
23 semiautomatic, you will have the slide that goes back where  
24 the gunshot residue can be released from. It will form in  
25 a cloud and will deposit on anything in close vicinity to

1 that discharge.

2 It -- sometimes we like to equate it to if you're  
3 baking and you get flour on your hands. Now, of course you  
4 can't see gunshot residue on your hands, but you can brush  
5 it off of your hands. If you wash your hands, you can  
6 remove it. Anything you touch your hands to can remove  
7 that residue. If I fire a gun and touch this, touch this,  
8 touch my hands, I'm removing it from my hands.

9 It is very fragile, and on a living person, if I  
10 collect a GSR kit from a living individual, it has to be  
11 collected within six hours of that event. So, if I fire a  
12 weapon and they collect a GSR kit from my hands seven hours  
13 later, we will not analyze it because there's no reasonable  
14 expectation for it to remain on your hands that so long.

15 Q. All right. What type of impact would weather have on  
16 gunshot residue? Heat, humidity, those type things?

17 A. Heat and humidity, it may make a person sweat more,  
18 which will cause sweat to form on the hands and it can  
19 remove the GSR. Rain, of course, can wash it away. Wind  
20 can blow it. Anything that -- since it is so fragile,  
21 anything that you do to touch your hands or anything that  
22 has GSR on it can remove it.

23 Q. All right. So, if you touch your hands or the surface  
24 of something that has GSR on it, it can be easily removed?

25 A. It is easily removed.

1 Q. All right. Do you have any sort of comparisons as far  
2 as how likely or unlikely it is to find GSR? What do you  
3 -- the -- I'm sorry, the size of it is part of what you're  
4 searching for?

5 A. Gunshot residue usually is submicron particles. So,  
6 the majority of them are possibly a micron; some are even  
7 500 to 600 nanometers. So, what that is in real life  
8 thinking is if you would take two football fields and place  
9 them by side to side, you would be looking for a pea in  
10 those two football fields. That would be how small the GSR  
11 is in what we're looking for.

12 Q. Now in this case, the GSR was taken from the surface  
13 of this Yaris about nine, ten days after the incident.  
14 Would it surprise you in a situation like that that no GSR  
15 was found?

16 A. Would it surprise me? I don't know circumstances of  
17 this case. If I was told a firearm was discharged from  
18 within this car, that would mean a lot of GSR would be  
19 discharged and have the capability to deposit within the  
20 vehicle.

21 If you are looking at, say, someone firing a weapon  
22 and then driving the vehicle, which involves transfer from  
23 their hands to the vehicle, it would not surprise me at  
24 that timeframe to not have any left after nine days.

25 MR. FYALL: Thank you. No further questions.

1 MR. SUTHERLAND: Please the court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION BY MR. SUTHERLAND:

4 Q. Ma'am, my name is Tivis. How are you doing?

5 A. Yes, sir. Good. How are you?

6 Q. I am well. I kind of liked the ---

7 A. What was your name?

8 Q. Oh. Tivis, Tivis.

9 A. I'm sorry.

10 Q. It's T-i-v-i-s. I wrote it up there earlier.

11 A. Okay. Thank you.

12 Q. Because my people from up in the mountains.

13 I like the, the baking flour analogy, but if you don't  
14 really know the particular facts -- you know, because it  
15 would be one of transfer because it's -- the items that  
16 were scrubbed seemed were, like, a steering wheel, a  
17 gearshift, and the interior. Oh, you may have ---

18 A. I have notated where they said they were collected  
19 from, so I do have that.

20 Q. Yes, ma'am. Okay. Now, on, on an object -- there was  
21 some questioning about GSR on a hand, but on an object,  
22 like the baking power analogy, if that were just left  
23 undisturbed, the GSR could sit forever ---

24 A. If ---

25 Q. --- or ---

1 A. If I -- let's say I fired a weapon and I got into a  
2 car and drove so my hands are on the steering wheel and if  
3 I deposit GSR on that steering wheel, get out of the car,  
4 windows are up, car is sitting, it should be undisturbed if  
5 anything was transferred. But it is a random process, so  
6 there's -- there aren't actual studies on how much will  
7 transfer if you fire this gun versus this gun and how you  
8 touch it. It all depends on very many factors. How do you  
9 hold the steering wheel? Do you turn it around and around?  
10 Do you hold it with your thumbs, one handed? So, if GSR  
11 was deposited and then undisturbed, I would expect to see  
12 it there.

13 Q. Okay. Great.

14 MR. SUTHERLAND: No further questions. Thank you.  
15 Thank you, ma'am.

16 THE COURT: Anything further from this witness?

17 MR. FYALL: Nothing from the state, Your Honor.

18 THE COURT: You may step down.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Call your next witness.

21 MR. FYALL: May we approach Your Honor?

22 THE COURT: Members of the jury, we're going to take  
23 our lunch break now. Your food is here, and I hope you  
24 dine well. I think it's Jimmy Johns. I'm not sure which  
25 one, but enjoy your meal. Just don't talk about the case.

1 Thank you all so very much.

2 Let's see, it's 12:00. 1:30 we'll resume.

3 MR. SUTHERLAND: Yes, sir.

4 MR. FYALL: Thank you, Your Honor.

5 (THE JURY EXITS AT 12:03 P.M.)

6 (OFF THE RECORD.)

7 (DVD OF CELL PHONE RECORDS MARKED AS STATE'S EXHIBIT  
8 NUMBER 149 FOR IDENTIFICATION.)

9 (CELL PHONE ANALYSIS MARKED AS STATE'S EXHIBIT NUMBER  
10 150 FOR IDENTIFICATION.)

11 (PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBIT  
12 NUMBER 151 THROUGH 168 FOR IDENTIFICATION.)

13 MR. FYALL: Ready to go, Your Honor.

14 THE COURT: You may invite the jury to come in.

15 (THE JURY ENTERS AT 1:42 P.M.)

16 THE COURT: Welcome back, Madame Forelady, members of  
17 the jury.

18 You ready?

19 MR. FYALL: Yes, Your Honor.

20 THE COURT: Call your next witness.

21 MR. FYALL: State calls Ron Witt with T-Mobile.

22 RONALD WITT, BEING DULY SWORN,  
23 TESTIFIES AS FOLLOWS:

24 CLERK: Please have a seat in the witness stand.

25 State your full name for the record, and please spell your

1 last name.

2 WITNESS: Ronald Witt, W-i-t-t.

3 DIRECT EXAMINATION BY MR. FYALL:

4 Q. Mr. Witt, how are you doing this afternoon?

5 A. Afternoon.

6 Q. Can you tell us where you are employed?

7 A. I work for T-Mobile.

8 Q. All right. How long have you been employed there?

9 A. I am in the middle of my fifteenth year.

10 Q. All right, and what are some of your duties at

11 T-Mobile?

12 A. I am part of what's known as Law Enforcement Relations  
13 Group, and in our group the bulk of our work is production  
14 of records when we receive an appropriate legal demand. We  
15 also provide assistance on a 24/7 basis to 911 and law  
16 enforcement with emergencies involving cell phones, and  
17 then I work as a testifier where I appear in court to  
18 verify and attest to T-Mobile records.

19 Q. All right, and tell us about Metro PCS in relation to  
20 T-Mobile.

21 A. Metro PCS, that was our -- the old name. They were --  
22 we merged back in 2013. They came under the umbrella of  
23 T-Mobile. They've remained a separate brand name, and it's  
24 still one company, T-Mobile, but the Metro has been  
25 retained, again, as a separate brand name. All the

1 records, all the activity, everything shows on one network.

2 Q. Okay. So would activity on a Metro PCS phone, would  
3 it be captured, if you will, on a T-Mobile tower?

4 A. Correct.

5 Q. I show you what's been marked as State's 149. Can  
6 tell me if you recognize that document?

7 A. Yes.

8 Q. Can you tell me what it is?

9 A. It's a CD that contains electronic version of records  
10 that are copied and provided in response to a legal demand.

11 MR. FYALL: Your Honor, at this point we seek to admit  
12 State's 149 into evidence.

13 MR. SUTHERLAND: No objection, sir.

14 THE COURT: All right.

15 (DVD OF CELL PHONE RECORDS MARKED INTO EVIDENCE AS  
16 STATE'S EXHIBIT NUMBER 149.)

17 BY MR. FYALL:

18 Q. All right, Mr. Witt, I'm going to pull this up on the  
19 big screen here. I'm just going to ask you a few questions  
20 for the jury, okay?

21 A. Okay.

22 Q. All right, if you can look at this screen, can you  
23 tell me what you see here?

24 A. We refer to that as a subscriber information page for  
25 the number that was requested.

1 Q. Okay, and if you can read down here, who was this  
2 particular record? Who was the, who was ---

3 A. Can I step down?

4 Q. --- the subscriber name?

5 A. Can I step down?

6 Q. Yes, you may. I'm going to swap sides with you here.  
7 You stand on that side and talk towards the court reporter.

8 A. Okay. Yeah, the name for this account shows as a  
9 Ricardo Middleton.

10 Q. All right, and how did y'all get that information as  
11 far as getting a name on an account?

12 A. This information will be provided at point of sale  
13 when the account is established and opened up.

14 Q. All right. So, whoever opens up the account gives you  
15 that name?

16 A. Yes.

17 Q. All right. Thank you, sir. I'm going to move on to  
18 this file here. It's called CDR Mediations. Can you just  
19 generally describe what that is, and I'll ask you some  
20 specific questions.

21 A. Can I move it over?

22 Q. Yes, we can.

23 A. We were -- we refer this as a Call Detail Report for  
24 that same number that was requested. This is a historical  
25 summary of incoming and outgoing voice calls and text

1 activity, again for the number requested and for the  
2 timeframe shown on the records.

3 Q. All right. Now for everyone's knowledge, if you look  
4 at column -- I'm sorry, column B here, that says time.  
5 What time is that in?

6 A. Two things about the time for our records that we  
7 provide. First, they're provided what's known as UTC time,  
8 which is Coordinated Universal Time. That is a time  
9 standard; it is not a time zone. To adjust to your local  
10 time zone, you have to do a little math of what's shown on  
11 the records. For Eastern Time Zone, which we are in South  
12 Carolina, and if it's during Daylight Savings times, these  
13 records are from July, so it would be during Daylight  
14 Savings times, you would subtract four hours from the time  
15 that's shown. If it's not During Daylight Savings Time,  
16 then you would subtract five hours.

17 Q. All right.

18 A. And the second thing about our records is we also  
19 utilize 24-hour clock, sometimes referred to as military  
20 time.

21 Q. All right. So, I'm just going to scroll down here a  
22 little bit. So, right here in column number 51 here, that  
23 says July 28, 2017, and the time is 1:18, which a 24-hour  
24 clock would be 1 a.m.?

25 A. Correct, 1:18 a.m., correct.

1 Q. And correcting that for Eastern Standard Time here in  
2 Richland County, what would that time be?

3 A. That would actually be 9:18 p.m. on the 27th of July.

4 Q. Okay, and this column T and column U, now can you tell  
5 the jury what that is?

6 A. Okay, column T and column U, part of the records that  
7 we provide when authorized and requested, we provide what's  
8 known as cell site information. When a call or text is  
9 made, the phone records are on a specific cell site, and  
10 then that information from that cell site is recorded in  
11 the records. And part of that information that's provided  
12 in column T like tango and U like unicorn is a latitude and  
13 longitude. Using a standard mapping program, when you plot  
14 that location, that latitude and longitude, that will show  
15 you is specific location of where that antenna is located  
16 that's emitting the radio frequency that's connecting to  
17 the handset for the call or text that's shown on the  
18 records.

19 Q. Okay, and can you also use these records to determine  
20 as far as the antenna, which sector of the antenna is  
21 capturing the call or activity?

22 A. Yes. That would be column S like Sierra. What you  
23 have here, you see numbers and these are numbers and  
24 decrease. So, the first line you see is 300 degrees. So,  
25 using a standard circle 360 degrees, this is the midpoint,

1 the center of that particular sector. So, for the first  
2 line entry that you see, 300 degrees, which is north,  
3 northwest, that would be, again, the midpoint for that  
4 particular sector. So, you know the handset is somewhere  
5 within that, that area.

6 Q. Okay.

7 A. From that location and that direction.

8 Q. Got it. Thank you, and so the -- there's some  
9 addresses listed here. Do those addresses necessarily  
10 match the longitude and latitude here in T and U?

11 A. Not necessarily.

12 Q. Okay.

13 A. They, they may be in the general, in the general area,  
14 but they are used for administrative purposes.

15 Q. All right. Thank you. You may have a seat.

16 MR. FYALL: No further questions, Your Honor.

17 THE COURT: Mr. Sutherland.

18 MR. SUTHERLAND: And please the court?

19 CROSS-EXAMINATION BY MR. SUTHERLAND:

20 Q. And briefly, sir, the subscriber information, do you  
21 recall where in South Carolina the subscriber lived, or do  
22 they ---

23 A. There was an address listed on the records. I didn't  
24 commit it to memory.

25 Q. Was it Moncks Corner?

1 A. Again, I, I looked at it briefly. I apologize. I  
2 just focused on the name.

3 (COUNSELORS CONFER.)

4 Q. It's up.

5 A. At the top, yeah. The address that's shown in 126  
6 Middle Lane in Moniks.

7 Q. Moncks, Moncks Corner.

8 A. Moncks.

9 Q. Yes, sir.

10 A. Moncks Corner, South Carolina.

11 Q. Okay.

12 MR. SUTHERLAND: Thank you. No further questions,  
13 Judge.

14 THE COURT: All right, anything further of this  
15 witness?

16 MR. FYALL: None from the state, Your Honor.

17 THE COURT: You may step down.

18 (THE WITNESS EXITS THE STAND.)

19 MR. FYALL: State calls Linda Houck.

20 LINDA HOUCK, BEING DULY SWORN,

21 TESTIFIES AS FOLLOWS:

22 CLERK: Please have a seat in the witness stand, and  
23 state your full name for the record, and please spell your  
24 last name.

25 MR. FYALL: Linda Houck, H-o-u-c-k.

1 VOIR DIRE EXAMINATION BY MR. FYALL:

2 Q. All right, Ms. Houck, can you tell us where you are  
3 employed?

4 A. At the Richland County Sheriff's Department.

5 Q. And how long have you been employed there?

6 A. About thirteen years.

7 Q. All right. Can you tell us about your career, from  
8 where you started to where you are now?

9 A. I am a senior crime analyst at the sheriff's  
10 department. I do statistics and part of my  
11 responsibilities include cell phone analysis.

12 Q. Includes what?

13 A. Cell phone analysis.

14 Q. Can you tell us about some of your training and  
15 experience as relates to cell phone analysis?

16 A. Yes. I attended several training with the -- with  
17 various agencies and companies that do cell phone analysis  
18 training, including PenLink, back in -- starting in 2011.  
19 I've done training regularly, most recently here in  
20 Columbia. In 2018, a company did investigations into  
21 cellular investigations.

22 Q. And what type of things do you learn in this training?

23 A. We learn how cell phones -- how the cell phone works,  
24 how we can map out cell phone records using the information  
25 that's provided from the cell phone companies to us as far

1 as the data that's given, and the tower or cell site  
2 location information that they provide to us.

3 Q. All right, and how many years have you been doing  
4 that?

5 A. I've been doing that approximately eight years.

6 MR. FYALL: Your Honor, at this point I would tender  
7 Investigator Houck as an expert in cell phone analysis.

8 MR. SUTHERLAND: No *voir dire*, no objection, Judge.

9 THE COURT: All right.

10 DIRECT EXAMINATION BY MR. FYALL:

11 Q. All right, were you asked to do some cell phone  
12 analysis in regard to this case?

13 A. I was.

14 Q. Just, can you give us a little bit of background  
15 information on that?

16 A. Investigator Laurita provided me with the phone  
17 records from T-Mobile back in September 2017 to map out the  
18 phone records as far as the locations of where the phone  
19 the -- that was done with the warrant was -- where it was  
20 during the time.

21 Q. I'm going to hand you what's been marked as State's  
22 150. Do you recognize that?

23 A. Yes, sir.

24 Q. Can you tell the jury what that is?

25 A. It's a PowerPoint explaining how cell phones work and

1 the results of the phone analysis.

2 Q. All right, and would that aid you here in your  
3 testimony today?

4 A. Yes, sir.

5 MR. FYALL: Your Honor, at this time the state seeks  
6 to admit 150 into evidence.

7 MR. SUTHERLAND: No objections.

8 THE COURT: All right.

9 (CELL PHONE ANALYSIS MARKED INTO EVIDENCE AS STATE'S  
10 EXHIBIT NUMBER 150.)

11 MR. FYALL: All right, permission to publish, Your  
12 Honor?

13 THE COURT: Yes, sir.

14 (A PAUSE.)

15 THE COURT: Do you need something?

16 DEFENDANT: No, no. Thank you.

17 BY MR. FYALL:

18 Q. Could you step down for us? Just talk loudly so the  
19 court reporter right here can hear you.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER 150 IS PLAYED  
21 THROUGHOUT THE FOLLOWING EXAMINATION.)

22 Q. All right, can you just explain to the jury a little  
23 bit how a cell phone works?

24 A. This is just the basics of how a cell phone works. A  
25 cell phone will get a -- it connects to a cell site or cell

1 tower. They're used interchangeably often. It will make a  
2 connection to the tower. It will do an NTSO, which is,  
3 like, a building that transfers that signal so that another  
4 cell phone can obtain that -- the phone call itself. And  
5 then eventually the phone call will go to a signal -- a  
6 tower or cell site that that second cell phone has a signal  
7 to so that the cell phone phone call itself can be  
8 connected and the people can hear each other.

9 Q. Slide 2. Go ahead.

10 A. So, a cell phone is -- a cell phone tower, rather, or  
11 cell site is generally broken into three sectors. That's  
12 what they're called, and each sector covers approximately  
13 120 degrees to make a full circle of 360 degrees. But  
14 obviously depending on the actual cell site itself, the  
15 sector may cover a narrower area, but it will still cover  
16 the area surrounding that cell sector. And then each cell  
17 phone company will -- they'll label their sectors depending  
18 on their own company, either ABC, 123, 234, just depending.

19 Q. All right, and this is slide 4. Can you describe  
20 that?

21 A. This is just a, a quick example of how we can map out  
22 the phone records. Call detail records from the companies  
23 are obtained from the, from the company themselves. The  
24 information essentially leaves kind of a paper trail to  
25 show where the general area was on the phone based on the

1 cell site that it was using at the time of -- a phone call  
2 was made. We can map out the phone records based on the  
3 cell site location to determine the cell site that was used  
4 at a specific time that a phone call was made.

5 Q. All right, and what do we have here?

6 A. There are the phone records for the phone number that  
7 I was provided referencing this. These are the phone  
8 records that occurred between 9 p.m and 11 p.m. in July 27,  
9 2017.

10 Q. All right, and so just by way of background, this is  
11 based on the records you got from T-Mobile?

12 A. Correct.

13 Q. All right, and via Investigator Laurita?

14 A. Right.

15 Q. All right. Can you just start with about, around 9:30  
16 here and tell us what you see?

17 A. So, in addition to the phone records themselves with  
18 who -- the interaction between one phone and the other,  
19 we're provided the cell site information that was used for  
20 each of those calls, and that's what the green pie shapes  
21 are depicting.

22 So, about 9:30 the phone is down here; it's an  
23 outgoing voice call to the second phone number. It was  
24 using a cell site down here in the down -- downtown  
25 Columbia area near Bull Street. You can see the, the phone

1 was used at this same cell site twice, once at 9:30 and  
2 once at 9:33.

3 The phone again was used up here. If you're looking  
4 at the times, the times in 24-hour time format. So, this  
5 is at 9:50 p.m. The phone is hitting off of a cell site  
6 right over here in the Dentsville area of Richland County  
7 in the area of the My House bar.

8 Q. All right, and so you have these two points here. So,  
9 the red pin and blue pin, and just tell the jury what those  
10 are.

11 A. The blue pin is the My House bar located over off Two  
12 Notch Road. The incident location, the red pin is the  
13 incident location.

14 Q. All right, that's the Parklane and Claudia ---

15 A. Yes, that's ---

16 Q. --- intersection?

17 A. --- Parklane and Claudia intersection.

18 Q. All right, and so we have the phone, Mr. Middleton's  
19 phone there at 9:50?

20 A. Yes.

21 Q. All right. When is the next phone call that's outside  
22 of the incident location?

23 A. Approximately 10:03. Actually at 10:03. I believe  
24 the phone is using a cell site just outside of the area.  
25 The green areas that are, are depicted are approximate

1 areas. The way the phones are provided gives us the  
2 direction that the sector is facing. And so with this, we  
3 know that the phone would have been facing this sector  
4 that's facing the southerly direction up here at 10:03.

5 Q. All right. So these, these sort of arrows you have  
6 here, the ends of your shapes here, those aren't finite?

7 A. The point is finite. That where -- that's the  
8 location of the actual cell site. The, the green line or  
9 the green coloring is not finite, no.

10 Q. Got it. All right, and so here a call happens at sort  
11 of 10:01?

12 A. Yes.

13 Q. Right, and that's right there. Could that sector  
14 possibly still cover that, that area where your pins are?

15 A. The cell sites aren't going to have a lot of overlap,  
16 but because this area is very populated, there's quite a  
17 few T-Mobile cell towers in that area. And depending on  
18 other, like, buildings or anything like that, there could  
19 be an issue. But you're still going to be in this general  
20 area. Your, your phone's not going to hit off of a tower  
21 if you're not in the area where the tower is located.

22 Q. Got it, and why are there more tower -- towers here  
23 near the incident location than, say, in more a rural area?

24 A. Phone companies want to provide service to their  
25 customers. So in a populated area, you're likely going to

1 have more towers so that they can provide service to  
2 people. So, in a, in a area where there's a higher  
3 population like in Columbia, you're going to have more  
4 than, say, in a rural area where there may not be as many  
5 people, and a single tower can cover a larger area because  
6 there's -- it's just not being used as much.

7 Q. All right, and just, I know it sounds crazy, but if  
8 the phone is not being used to call, make a call or there's  
9 not a call coming in, can you -- do you have any idea where  
10 the phone is at that point?

11 A. On these phone records, no.

12 Q. All right. Can you explain to the jury what this is?

13 A. This is the same map that was on the previous slide.  
14 This is just zoomed in a bit more with the incident  
15 location and My House zoom centered on the map. And these  
16 are just, again, the green is the cell sites or cell towers  
17 that were used at each of the times listed.

18 Q. Got it. So, here we have a call at 9:54?

19 A. Yes.

20 Q. Outgoing and incoming and roughly 9:54, and that's  
21 within the area of the incident location?

22 A. Right. The -- this, the cell site, is at the vertex  
23 of this pie shape, and so this is the general direction, or  
24 this is the direction of the sector. And so those phone  
25 calls were hitting off of this sector of that tower at the

1 time.

2 Q. All right, and then just 8 minutes later, 10:02, it's  
3 sort of heading over to the left there?

4 A. It's using a cell tower in the same location, just a  
5 different sector of it.

6 Q. Got it, and again you have down here 2150. That's in  
7 the cell tower where My House is?

8 A. Yes. So, there's a cell's sector off of Decker  
9 Boulevard that is facing the direction. Obviously it still  
10 has three sectors on it. The sector that was used was  
11 facing, facing, and the, the sector that was used was in  
12 the direction of My House.

13 Q. Okay. So, you have the phone moving from the sector  
14 that incorporates My House to the sector that incorporates  
15 the incident location from two different towers?

16 A. Right.

17 Q. All right. Can you explain what this is to the jury?

18 A. Yes. This is just another map, same general area of  
19 the My House and incident location. The orange circles  
20 that are faint in the middle are sites of other T-Mobile  
21 cell sites in the area. Just depicting that there are  
22 other cell sites, cell tower locations in the area that the  
23 phone would be using if that phone was in an area that  
24 would be serviced by that sector. The pastel colors, the  
25 pie shapes, if you will, are the sectors off of each of

1 those towers that are located.

2 Q. All right. All right, can you tell the jury about  
3 this particular slide?

4 A. Yes. This is just a zoomed out map of the cell phone  
5 call detail records again. The -- this is the Columbia  
6 area. This is the Summerville, North Charleston area. So,  
7 from -- I just have it listed so that from July 27th at  
8 noon, about -- a little after noon through July 28th a  
9 little after 9 a.m. The phone was hitting off of cell  
10 sites up in the Columbia area, and then down here in the  
11 Summerville, North Charleston area the phone was hitting  
12 off of cell sites down here from July 28th about 10 a.m.  
13 until July 29th at 3 a.m. And then again the phone was  
14 hitting in Columbia on the 29th into the 30th, and then  
15 back down in Summerville the 30th into the -- through 1st  
16 of August.

17 Q. All right. Thank you. You can take your seat.

18 All right, and again, you can't say exactly where the  
19 phone is in between one call to another. Just when it's  
20 captured in a cell tower, you can say the phone was  
21 captured by this tower in this sort of sector?

22 A. Correct.

23 MR. FYALL: No further questions, Your Honor.

24 MR. SUTHERLAND: Please the court?

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION BY MR. SUTHERLAND:

2 Q. Ma'am, how are you? My name's Tivis. I think while  
3 this is being sort of pulled around, I recall your  
4 testimony that there is a cone, and the cone in the graphic  
5 has a limit, but that's not really finite?

6 A. The, on the PowerPoint, the -- what's drawn is the  
7 direction of the cell site.

8 Q. Yes, ma'am, and it's just got to stop somewhere?

9 A. It's just, it's set so that there's -- otherwise, we  
10 would just have a...

11 Q. Because when the solicitor -- I noticed that those two  
12 particular cell towers, it looked on there like the  
13 incident location and the club were about that far apart.  
14 And I was thinking that as he was saying it was moving, it  
15 looked, appeared that to me that it was overlapping cell  
16 towers. So, it could have not been doing moving and  
17 hitting off of one or hitting off another?

18 A. The call detail records tell us which cell site was  
19 used. So, for each of those calls, based on the call  
20 detail records, we know that, that at 9:50, it was using  
21 one tower versus at 9:54 it was using a different tower.

22 Q. But it's two -- if you have a tower here and a tower  
23 here, they're both -- you know, the signal is coming from  
24 somewhere in between, and I recall your testimony that it  
25 doesn't necessarily -- that -- I, I believe he was pointing

1 to something outside. You know, one call, remember, that  
2 was kind of out to the right, and that you testified that  
3 it's not necessarily out of the area of the other group.  
4 That the tower may have picked it up and sort of overlaps.  
5 Well, see if we can -- trying to get as much of this done  
6 before we have to mess around with this thing.

7 (A PAUSE.)

8 Q. Okay, when you all were discussing ---

9 (A PAUSE.)

10 (WHEREUPON, STATE'S EXHIBIT NUMBER 150 IS PLAYED  
11 THROUGHOUT THE FOLLOWING EXAMINATION.)

12 Q. Okay, when you all -- when this one came up, I thought  
13 that I recalled some testimony about it -- potentially that  
14 the phone could have been in the same place, and you could  
15 have hit off of this tower. Was that, was that mistaken?

16 A. The, the, the cell phone -- the cell towers have a  
17 specific area that they're going to cover. And because  
18 there -- on one of the other slides, there's other cell  
19 phone towers for T-Mobile in the area. So, a phone is  
20 going to use a site that has the strongest signal at the  
21 time that the phone call is made. It's not going to skip  
22 a, a, a tower just because it wants to use a different  
23 tower. It's going to use the tower that has the best  
24 signal, which is usually the closest tower to the phone.

25 Q. Okay. So, this one's just kind of hanging out here, I

1 guess. I may have misunderstood the testimony.

2 All right, now where is it? 9:33. Do you have the  
3 information about the length of, of these telephone calls?

4 A. Yes, sir.

5 Q. U there? Okay. Okay, so we're got 9:33, and I  
6 believe the testimony was that there was another one at  
7 9:50 or was it -- I thought it was 9:50. Was it 9:54?

8 A. There is one at 9:50 p.m. and 9:54.

9 Q. Okay, 9:50, and this is going down. This is Bull  
10 Street, so that would be Taylor and all. That's about --  
11 well, you were thirteen years with the sheriff's  
12 department. That's about a fifteen-minute drive from here  
13 to here, you think?

14 A. I am not sure.

15 Q. Okay. All right. How long, how long did this one at  
16 2133 last?

17 A. That phone call lasted 64 seconds.

18 Q. Okay. So, question. I'm genuinely interested in  
19 this. I used to do DF against the Soviets a long time ago,  
20 so getting up to speed on minor stuff. If a person has a  
21 60-something second call and they're moving along, wouldn't  
22 it -- would there be sort of a cascading effect, if that  
23 makes sense? Like if I'm driving to Texas and I stay on  
24 the phone the whole time, different towers are going to be  
25 relaying that. Does that make sense?

1 A. Yes, sir.

2 Q. So, this, this -- am I to take it that the whole  
3 60-something seconds was just spent in this one?  
4 Otherwise, if he was driving, it would be that sort of  
5 cascade up there?

6 A. T-Mobile provides their phone records. They provide  
7 the first tower that was used and the last tower that was  
8 used, not the towers in between.

9 Q. I gotcha.

10 A. So if a, a call starts and ends, then it would be...

11 Q. So, we, we shall never know ultimately. All right.  
12 Let me see. The last call -- I believe this incident was  
13 around 2157 and 58 or 59 seconds or maybe 2158. So, we've  
14 got 2154 here. I'm wondering if that is the last call.  
15 Oh, how, how long was the 2154 incoming call?

16 A. That was a 91 second call.

17 Q. 91 seconds, okay. Now, is it -- and I believe that  
18 was in your testimony. You said 2201 is the next telephone  
19 call?

20 A. Yes, sir.

21 Q. Okay, so we've got 54 that goes up to 55. Now, again  
22 I wanted to ask about this area in here. All of these  
23 calls in here it looks like are within the scope of a  
24 couple of -- is it two different cell towers or is it...

25 A. Overlapping the, the icons.

1 Q. Yes, ma'am.

2 A. It's two cell sites or two cell towers. It's multiple  
3 sectors, though, on one of those cell sites.

4 Q. Okay. So, again let me ask you this. You had  
5 testified that a signal could maybe go off of, I thought,  
6 of a different cell tower than the one you were closest to  
7 depending on the signal. Is that, is that right or?

8 A. If there's a building or mountain or something in the  
9 way of you and the closest cell tower, it could bounce off  
10 of another one.

11 Q. Okay, but you can safely assume that everything is  
12 within -- since it's coming from towers from two different  
13 directions, basically all these calls were in between --  
14 were, were in that area?

15 A. Right. Based on this, the phone would have been  
16 between those two, between those two towers because the  
17 sectors that are used are actually facing each other as  
18 well.

19 Q. Okay.

20 MR. SUTHERLAND: I have no further questions at this  
21 time. Thank you.

22 MR. FYALL: I have a brief redirect, Your Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION BY MR. FYALL:

25 Q. All right, I just wanted to go back to what Mr.

1 Sutherland was talking to you about earlier, this phone  
2 call at 10:01, and I just wanted to zoom in. So, can you  
3 tell us this 9:50 phone call, which one of your points is  
4 incorporated in that sector?

5 A. Can you repeat the question?

6 Q. Phone call here at 9:50 and 15 seconds, that  
7 incorporates your blue pin right here, which is My House?

8 A. Right.

9 Q. All right, and have another phone call at 9:54 --  
10 actually two calls made -- and that is -- incorporate the  
11 incident location?

12 A. Yes.

13 Q. Right, and just -- you have sort of three sectors  
14 here, right?

15 A. Right.

16 Q. And one tower, and so that phone call specifically is  
17 in the sector of the incident location?

18 A. The phone was in the, the, the sector that's covering,  
19 yes, the incident location.

20 Q. Okay 9:54 and again 9:54?

21 A. Yes.

22 MR. FYALL: No further questions.

23 MR. SUTHERLAND: No further questions, Judge.

24 THE COURT: All right. Members of the jury, I've done  
25 this a long time.

1           You're finished with this witness?

2           MR. FYALL: Yes, Your Honor. No more questions.

3           THE COURT: If you need something to drink right now  
4 -- the most difficult time you have is right after lunch.  
5 Y'all need a little, short break? Y'all okay? You need  
6 something to drink? Want a little, short break? Are y'all  
7 good? Okay.

8           You may step down, Investigator.

9           (THE WITNESS EXITS THE STAND.)

10          (A PAUSE.)

11          THE COURT: You ready? Who's the next witness?

12          MR. FYALL: Yes, Your Honor. State calls Amanda Metz.

13                                AMANDA METZ, BEING DULY SWORN,

14          TESTIFIES AS FOLLOWS:

15          CLERK: Please have a seat in the witness stand, and  
16 state your full name for the record.

17          WITNESS: Amanda Metz, M-e-t-z.

18          VOIR DIRE EXAMINATION BY MR. FYALL:

19          Q. All right, Ms. Metz, where are you employed?

20          A. I work at the Richland County Sheriff's Department in  
21 the Forensic Sciences laboratory.

22          Q. All right. What specifically do you do in the  
23 Forensics Science laboratory?

24          A. I am a firearm and toolmark examiner.

25          Q. And what does that job entail?

1 A. So, basically my main job is to examine firearms and  
2 ammunition components, as well as other tools and their  
3 markings for forensic evidence, and then I present it to  
4 the court.

5 Q. And do you have any training and experience as it  
6 relates to that?

7 A. I do. I'll go back. I have a Bachelor's of Arts in  
8 both anthropology and in art history, as well as a Master's  
9 in forensic archaeology and international crime scene  
10 investigation. I started in the laboratory in July of  
11 2011. At that time, I started a very extensive three-year  
12 training program, during which I completed the Alcohol,  
13 Tobacco, and Firearms, the ATF, their school for firearm  
14 and toolmark examiners called the National Firearm and  
15 Toolmark Examiners Academy. After that, I then completed  
16 courses and cases underneath a trained firearm and toolmark  
17 examiner. During that time, I completed approximately 400  
18 supervised cases, and then in August of 2016 -- 2014, I was  
19 qualified as an expert witness in the courts of South  
20 Carolina. Since then, I have done approximately 650, 700  
21 cases and have testified a few times. I am also a  
22 professional -- member of our professional organization,  
23 the Association of Firearm and Toolmark Examiners.

24 MR. FYALL: Your Honor, at this point I tender Ms.  
25 Metz as an expert in firearms and toolmark examination.

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THE COURT: What now? Firearms?

MR. FYALL: And toolmarks examination.

MR. SUTHERLAND: No *voir dire*, no objection.

THE COURT: All right. So admitted.

DIRECT EXAMINATION BY MR. FYALL:

Q. All right, this might be pretty lengthy, but can you just give us an overall description of what you were -- the items you were asked to test and examine in this case?

A. That is very lengthy. I was given, let's see, three firearms and a slew of fired cartridge cases and fired projectiles.

Q. All right.

A. We can go into more maybe one at a time.

Q. All right. So, can you tell us about the firearm specifically that you were given and asked to test?

A. So, I was actually given three fire -- four firearms. Is there a specific item number you'd like me to ---

Q. Yes.

A. --- talk about or just as a generality what I do with a firearm?

Q. Yes.

A. Okay.

Q. Generally.

A. So when I get a firearm on a case, the first thing I do is examine it, do a visual examination for any defects.

1 I do a mechanical examination for -- make sure the safeties  
2 are working, make sure it is functioning properly just for  
3 case notes as well as my own safety. I then will take that  
4 firearm and test fire it into a 500 gallon tank of water.  
5 The reason we do that is because the water slows and stops  
6 the projectiles or the bullets without imparting any marks  
7 on it.

8 The reason we test fire that firearm is so that -- we  
9 have what's called known standards. So, I know that this  
10 specific firearm fired these bullets and these cartridge  
11 cases. And then from there we look at them under the  
12 comparison microscope, which is essentially just two  
13 microscopes that you would have had in science class, and  
14 they're combined by an ocular bridge, which is just a big  
15 hunk of metal, and what that allows me to do is to look at  
16 two separate items under the same lighting and  
17 magnification.

18 So, I'll put our test fires, or known standards, under  
19 the comparison microscope and begin looking for what we  
20 call microscopic -- or individual characteristics that are  
21 microscopic. The reason we do that is to see if that  
22 firearm is producing, what it's reproducing, and just to  
23 see if we can identify it test to test to say that, yes,  
24 they are from the same firearm. Even though we know it, we  
25 have to verify in case it doesn't reproduce well.

1 Q. All right. So, and you said individual  
2 characteristics. There's also a phrase called class  
3 characteristics. Can you tell the jury about that?

4 A. Yes. So, you'll hear me talk about class  
5 characteristics as well as individual characteristics. So,  
6 everybody wears shoes. Shoes is an overlying thing. I  
7 could say put on a pair of shoes. It means a lot of  
8 things. Class characteristics help us differentiate. Are  
9 they heels? Are they sneakers? Are they boots? Are they  
10 wedges? From there you have your brands. What brand is  
11 it? Is it a Sketcher? Is it Converse? I don't know  
12 whoever else has shoes, Nike, and the class characteristics  
13 just help us kind of narrow the field.

14 From there, individual characteristics are what they  
15 are. They are individual to that shoes, that cartridge  
16 case, that firearm, and those are microscopic.

17 So, for instance, let's say you walk in your shoes a  
18 little bit differently. You'll get individual  
19 characteristics on the bottom of your shoe. Where have you  
20 been, how do you walk, et cetera? The same is for  
21 firearms. How was it manufactured? Where did it get  
22 manufactured? How do you treat said firearm? And so all  
23 of those make the firearm have essentially a fingerprint,  
24 have individual characteristics.

25 Q. All right. Just to talk about how individualized that

1 is, if you have two firearms of the same model.

2 A. Sure.

3 Q. That were manufactured at the same place, let's say  
4 one right after the other one.

5 A. Sure.

6 Q. Could you tell the difference between those two guns?

7 A. Yes. So, actually our science has done quite a bit of  
8 exactly that. We've done quite a bit of research on if we  
9 took -- so, for instance, a barrel of a firearm where the  
10 bullet comes out of and when it strikes your target -- the  
11 barrel of the firearm is made to have rifling, and what  
12 rifling is, it's just lands and grooves, highs and lows  
13 that the manufacturer has put in there. Number, direction  
14 of twist, whatever, it's their choice. They choose to do  
15 that. When they do that, they do it in a long piece of  
16 steel and it's just one tool goes from start to finish and  
17 does the rifling.

18 Our science has taken the one long -- sectioned it off  
19 into barrels like they normally would be. The finishing  
20 process is made. We track that, so essentially they're  
21 called consecutively rifled barrels. So, it's just been  
22 all rifled at the same time with the same tool, and we are  
23 able to tell the differences between barrels.

24 Q. All right. So, we're going to sort of narrow down to  
25 some of the testing you did in this case. I'm going to

1 hand you State's Exhibit 116, which is ---

2 THE COURT: You said 116, Solicitor?

3 MR. FYALL: Yes, Your Honor.

4 BY MR. FYALL:

5 Q. Which is item number 2. Can you tell the jury what  
6 that is? Well, first, do you recognize it?

7 A. Sure. I recognize and identify State's Exhibit 116 as  
8 my item 2, which is a Glock model 23-40 Smith and Wesson  
9 caliber pistol. Serial number should be LGX468, which it  
10 is, and I received a magazine assembly which is what holds  
11 unfired cartridges, and then also received twelve unfired  
12 cartridges.

13 Q. Twelve unfired cartridges along with the magazine?

14 A. When I got them, they were separate.

15 Q. Gotcha. All right, and take that back from you.

16 A. Sure.

17 Q. And so when you compared item number 2 -- well, one,  
18 did you compare item number 2 to any of the bullets, fired  
19 cartridge casings, projectiles in this case?

20 A. So, yes. We'll go back to class characteristics. One  
21 class characteristic that we use is caliber. In this  
22 instance, this firearm is a .40 Smith and Wesson caliber  
23 pistol, and I only had one cartridge case that was of that  
24 caliber. You'll hear me probably talk later that a .40  
25 Smith and Wesson can be fired in a .10 millimeter auto but

1 not the other way around. So, my only option was the 140  
2 was what I was going to be comparing to that .40 Smith and  
3 Wesson Glock.

4 Q. All right, and I have a lot of items collected during  
5 this case. I'm going to hand them up to you, let you look  
6 at them and then ask you about them ---

7 A. Do you have scissors.

8 Q. --- after, afterwards. Yes.

9 (WITNESS AND COUNSEL CONFER.)

10 Q. And while you're doing that, some of these are --  
11 items are labeled by, I think, a marker number at the crime  
12 scene. So, I'm going to just put State's 116 just for  
13 reference purposes for the jury.

14 (WITNESS AND COUNSEL CONFER.)

15 A. So, everything is here except for the one sent to  
16 SLED.

17 Q. All right.

18 A. So, yes, I identify everything -- is that the one  
19 number for everything?

20 Q. Yes.

21 A. I, I identify State's Exhibits 134, 135, 136, 113, and  
22 114.

23 Q. All right, and are these all items you used for your  
24 analysis in this case?

25 A. Yes.

1 Q. All right, going to narrow this down a little bit.  
2 Let's start with item number 19. Can you tell us what item  
3 number 19 is?

4 A. Yes. Item number 19 is the one fired .40 Smith and  
5 Wesson caliber cartridge case. That is the item I compared  
6 to State's Exhibit 116 firearm.

7 Q. All right, and what did you determine about item  
8 number 19?

9 A. That item number 19 was fired by item, my item 2,  
10 State's Exhibit 116.

11 Q. All right, and just on the label, on the evidence  
12 marker here, there's a ---

13 A. Yes. So, what I was discussing with him was when we  
14 do our comparisons of cartridge cases, if we don't have a  
15 firearm, we'll send it over to SLED, our state crime lab,  
16 and they'll put in the system called NIBIN. And what NIBIN  
17 does is essentially it's like AFIS for fingerprints. So,  
18 if you've watched any sort of crime show, you've heard of  
19 AFIS where the fingerprint database can link people to  
20 crimes. Essentially it's like that for firearms. So, each  
21 firearm has its own specific fingerprint, and what the  
22 database does is it takes an image of a head of a cartridge  
23 case and puts it in the database, the computer database.  
24 It has both test fires from firearms as well as evidence  
25 cartridge cases.

1           So in this case, at the time I did not have a firearm,  
2           and I believe still don't have a firearm, for the fire --  
3           or the fired .10 millimeter auto cartridge cases. And so  
4           we just put that unknown gun into NIBIN to see if it would  
5           hit anything or just for future comparisons.

6           Q. All right, and so item number 19 for you is labeled as  
7           number 7?

8           A. Yes.

9           Q. All right, and did that item number 2, based on your  
10          analysis, fire any of the other bullets or shell casings  
11          either from the scene or from the autopsy?

12          A. No. The only thing I identified to that firearm was  
13          item 19, cartridge case.

14          Q. All right. Now, I think I want to go to the unknown  
15          firearm here, and that's items 10, 12, 14, 15, 57, and 58.  
16          Can you tell us about those items?

17          A. Okay. So items 10, 12, 14, 15, 57, and 58 are bullets  
18          and bullet jackets. So far you've only heard me talk about  
19          cartridge cases. A piece of ammunition is comprised -- or  
20          known as a unfired cartridge -- is comprised of a cartridge  
21          case and a bullet or projectile, what goes down the barrel  
22          and strikes your target. And in this instance, we're  
23          talking about bullets and some pieces of bullets, or  
24          they're called bullet jackets. Some bullets are -- will  
25          have a lead core with a copper or brass jacket around it so

1 that it won't break apart as easily. In this case, I have  
2 some of those, just, bullet jackets.

3 So, items 10, 12, 14, 15, 57, and 58 were all fired by  
4 the same firearm. I do not have that firearm, and they are  
5 common -- they are commonly found loaded in .40 and .10  
6 millimeter auto caliber cartridges. So, what that means is  
7 the, the Glock is a .40. Somebody somewhere decided to use  
8 the same exact bullet -- weight, size, everything -- and  
9 take it from the .40 Smith and Wesson caliber cartridge and  
10 then just put it in a slightly longer cartridge case with  
11 slightly more power and call it a .10 millimeter auto.

12 They are the exact same size bullet, and so I, therefore,  
13 can't tell you whether it's a .40 or a .10 millimeter auto.

14 Q. All right, and just again for reference, items 10 and  
15 12 are labeled as marker 4, item 14 is listed as marker 18,  
16 and item 15 is listed as marker 20, and can you tell us  
17 where 57 and 58, where those came from?

18 A. I have that 57 and 58 were from autopsy from a Sydni  
19 M. Collins.

20 Q. All right, kind of stay with that. Same brand here.  
21 Can you describe to the jury items 20 through 25?

22 A. So, 20 through 25 are cartridge cases, and these I can  
23 tell you a caliber because as I said earlier, .40 Smith and  
24 Wesson can be only be fired in .40 Smith and Wesson and in  
25 .10, but the .10 can't go on the .40, .22. The .10 is too

1 long; it's too big. It won't fit in the .40 and won't fire  
2 safely. It won't even close; the breach won't even close.

3 So, these have what's called a head stamp, and so  
4 they're stamped with the caliber, as well as if it didn't  
5 have a head stamp or the manufacturer chose not to put the  
6 caliber on the head stamp, I could measure it. And there  
7 are certain specifications, certain measurements that  
8 would, would make it -- make me realize that it's a .10  
9 millimeter auto. And so 20 through 25 cartridge cases were  
10 fired in one firearm, the same firearm, and are consistent  
11 with being fired by a .10 millimeter auto caliber pistol.

12 Q. All right. So ---

13 A. Sorry.

14 Q. Go ahead.

15 A. Glock pistol.

16 Q. Glock pistol, all right. So, the bullets from -- the  
17 bullet from autopsy, you narrowed down to which two guns  
18 again? The items 10, 12, 14, 15, 57, 58?

19 A. So, so, the bullets are narrowed down to a .40 caliber  
20 or a .10 caliber, .10 millimeter auto caliber, and I could  
21 not identify or eliminate them to item 2 firearm or -- we  
22 haven't talked but it yet, but there's another firearm,  
23 item 88, that I compared it to.

24 Q. All right, and, all right, now I'm going to talk about  
25 items 26 through 32. Can you tell us about those?

1 A. So, items 26 through 32 are cartridge cases, and they  
2 are a caliber that is 5.7 by .28 millimeter. They were all  
3 fired by one firearm. And I later received that firearm,  
4 item 156 firearm, and that firearm fired items 26 through  
5 32, cartridge cases.

6 Q. All right, and so -- and what was the caliber of those  
7 cartridge casings?

8 A. The caliber is 5.7 by .28 millimeter.

9 Q. All right, and just for reference, that is marker  
10 numbers 2, 3, 5, 13, 14, and 19?

11 A. 2, 3, 5, 13.a, 13.b., 14, and 19, yes.

12 Q. All right. Going back to autopsy, can you talk to us  
13 about items 37 and 38.1, 38.2, and 38.3?

14 A. So, items 37, 38.1, 38.2, and 38.3, and the reason  
15 it's 38.1, 38.2, 38.3 is because it had fragmented. They  
16 had -- Crime Scene, I believe, had put it in under one  
17 number. And because I can't -- I couldn't make it one  
18 bullet, I didn't know if it was one bullet, I gave them  
19 individual numbers, sub-itemized numbers. So, that's what  
20 38.1, 38.2, 38.3 means.

21 Those items are bullet jacket and bullet jacket  
22 fragments and were identified to item 156, firearm.

23 Q. All right.

24 (FIREARM, MAGAZINES, AND CARTRIDGES MARKED AS STATE'S  
25 EXHIBIT NUMBER 169 FOR IDENTIFICATION.)

1 Q. I'm going to show you State's 169. Tell me if you  
2 recognize that.

3 A. Yes, I recognize State's Exhibit 169, 169 as my items.  
4 156 is the firearm, 157 are the magazines, and 158 are the  
5 unfired cartridges.

6 MR. FYALL: State would seek to admit 169 into  
7 evidence, Your Honor.

8 MR. SUTHERLAND: No objection, sir.

9 THE COURT: Solicitor, 168? 169?

10 MR. FYALL: 169.

11 THE COURT: That's a Glock?

12 MR. FYALL: What is 169?

13 WITNESS: It's an FN.

14 THE COURT: Thank you.

15 (FIREARM, MAGAZINES, AND CARTRIDGES MARKED INTO  
16 EVIDENCE AS STATE'S EXHIBIT NUMBER 169.)

17 BY MR. FYALL:

18 Q. And with respect to State's 169, which is again your  
19 156, you were to determine that that fired item was 26  
20 through 32?

21 A. Yes. So, it fired items 26 to 32, cartridge cases, as  
22 well as items 37, 38.1, 38.2, and 38.3 bullet, bullet  
23 jackets and bullet jacket fragments.

24 Q. All right. Can you tell us where items, 37, 38.1,  
25 38.2, and 38.3, where those items came from?

1 A. So as I said, item 38 was packaged as one item, and  
2 both items were labeled Aaron L. Collins and for -- were  
3 from autopsy.

4 Q. All right. So, so, just to summarize again or just to  
5 sort of get you into that, item number -- I keep forgetting  
6 it --- 156, outside of the items you already said that were  
7 fired by that weapon, did it fire any of the other bullets  
8 or fired cartridge casings involved in this case?

9 A. No. It's a completely different caliber. Not even  
10 close to a .40 or a .10.

11 Q. All right. So going back here, we have marker number  
12 7, which is your item number 19?

13 A. Correct.

14 Q. Was fired by item number 2?

15 A. Correct.

16 Q. Which is the gun, and that is -- and that gun, that  
17 was the only thing in this crime scene or from the autopsy  
18 that was fired by that gun?

19 A. Yes, item 19, correct.

20 Q. All right, and you've already talked about which were  
21 fired by the FN pistol. Can you tell us about how unique  
22 that sort of caliber is?

23 A. Sure. The 5.7 by .28 millimeter was actually designed  
24 specifically by FN for the military. It only recently  
25 branched out into where civilians could buy it. It was

1 designed to replace the .9 millimeters Luger which is, it's  
2 a pistol round. So, they wanted something kind of smaller,  
3 but they were seeing a lot of body armor being worn by  
4 insurgents, and so it just didn't have the stopping power,  
5 and a .9 millimeter can be stopped by body armor. And so  
6 they designed it as a smaller caliber to be shot in either  
7 a rifle or a pistol and has the capabilities of being armor  
8 piercing.

9 One of the nicer things, the reason they liked .9  
10 millimeter Luger was because it didn't have a lot of muzzle  
11 rise, a lot of kickback, a lot a recoil. And so the nice  
12 thing about the 5.7 is that it's very small, and so you can  
13 put more into a magazine. And because it's so small, it  
14 has almost zero muzzle rise, so it's very accurate, as well  
15 as it still has the velocity of a .9 millimeters Luger.  
16 So, it still has the speed of a larger caliber but with the  
17 accuracy, accuracy of being a small caliber, and allows  
18 them to carry more ammunition with them.

19 Q. All right. Good. All right. So, we have the one  
20 shell casing was fired by item number 2. We have the one  
21 fired by the FN pistol. The shell casings, I think they're  
22 items -- or fired cartridge casings as you call them, I  
23 think they're items 20 through 25?

24 A. Correct.

25 Q. You were able to determine that those were fired from

1 a firearm?

2 A. Yes. Yes. They are ---

3 Q. Can you tell us how you did that?

4 A. So, when there is no firearm present, it doesn't  
5 really matter. We're still looking at the same, the same  
6 thing. We're still looking at the individual  
7 characteristics. So, the same thing that will tell us a  
8 cartridge case is fired by a particular firearm will tell  
9 us that a slew or a set of cartridge cases are fired by the  
10 same firearm.

11 Q. All right, and those are consistent with, you said, a  
12 .10 millimeter Glock?

13 A. Yes. So, Glock is specific because when we use class  
14 characteristics, like we were talking about with shoes,  
15 guns do the same thing. What shape is the firing pin?  
16 What shape is the hold that the firing pin comes out of  
17 that we call -- it's called an aperture. How do they  
18 finish their breach face mark -- or their breach face? Are  
19 they gross and thick? Are they fine and fine parallel  
20 lines? Are they arches?

21 So, we use all these class characteristics to help  
22 narrow down to specific firearm manufacturers. And Glock  
23 is a manufacturer that does a rectangle aperture and an  
24 elliptical. So, it's kind of like a -- ladies who get  
25 their nails done -- a squoval. So, it's a square oval, and

1 there's very few manufacturers that choose to have that  
2 shape firing pin, as well as that same aperture. It's  
3 proprietary to Glock.

4 There actually was a lawsuit over it between them and  
5 Smith and Wesson, and Glock won out. And so there are some  
6 that have that same firing pin shape and aperture shape  
7 that were made by Smith and Wesson. However, Glock has a  
8 specific ejector. So, when we see cartridge casers --  
9 cases with an ejector mark close to the primer, we know  
10 that that's Glock. So, Glock has a certain look to it, and  
11 so it helps us let out investigators know that they're  
12 looking for a pistol manufactured by Glock.

13 Q. All right, and items 10, 12, 14, and 15, which were  
14 bullets and/or bullet jackets, could those also be fired by  
15 a Glock .10 millimeter?

16 A. Yes. So, what's special about those bullets is that  
17 they are polygonally rifled. So, most firearm  
18 manufacturers choose to have what's called conventionally  
19 rifled firearms. What that means is the rifling is more  
20 cut. So, it's got sharp edges. There are lands and  
21 grooves, so they almost look square, whereas the Glock, as  
22 well as other manufacturers who do polygonal rifling, are  
23 more hills and valleys. They're kind of more rounded out.  
24 So, the problem with polygonal rifling, though, is because  
25 it's hills and valleys and not quite so cut, the bullet

1 doesn't engage very well. And the whole point of rifling  
2 is to engage that bullet and impart a spin on it. Much  
3 like a well-thrown football, the more spin that's on a  
4 bullet, the more accurate it is.

5 So, the problem with those bullets being from a  
6 polygonally rifled firearm is that they are usually very  
7 hard to identify. These were easily identified to each  
8 other, but when I compared them to item 2, firearm, as well  
9 as I received another Glock, item 88, I was not able to say  
10 that they were not fired by that firearm, but I also wasn't  
11 able to say that they were.

12 All that means is that either those firearms didn't  
13 work -- mark well enough, which, since I was able to  
14 compare the bullets to each other and say these are all  
15 from one firearm, the cases, they just didn't look good to  
16 those two firearms. But there wasn't enough for me to say  
17 that those aren't the firearms. They very could be or they  
18 couldn't be. It's sort of a gray area that we call  
19 inconclusive.

20 Q. All right. So, just to sort of put this together for,  
21 I think, myself and the jury, that items 10, 12, 14, 15 --  
22 which are markers 4, 18, and 20 -- those are the bullets,  
23 the cartridge casings which are your items 20 through 25,  
24 those bullets fit into those cartridge casings that could  
25 potentially be fired by?

1 A. So, I cannot say that a specific bullet came from a  
2 specific cartridge case but, yes, those bullets can be  
3 loaded in those cartridge cases. And so having six bullets  
4 that all ID to each other, there should be six cartridge  
5 cases that go with it.

6 Q. All right. Thank you very much. Item 57 and 58  
7 recovered from, I believe, the autopsy of -- is that Sydney?

8 A. Yes. Correct.

9 Q. All right. Same thing for those. Those fit into 23  
10 through 25? Those bullets can be fired from those  
11 cartridge casings?

12 A. One more time.

13 Q. 57 and 58.

14 A. Uh-huh.

15 Q. In relation to the items 20 through, 20 through 25?

16 A. Yes, yes. Items 10, 12, 14, 15, 57, and 58 were all  
17 fired by one firearm. And, therefore, they can all be  
18 found loaded in items 20 through 25 cartridge cases because  
19 they can be loaded in a .10 millimeter auto caliber  
20 cartridge case.

21 Q. All right. Thank you.

22 MR. FYALL: Court's indulgence.

23 No further questions.

24 THE COURT: Before you do your cross, I'm going to  
25 give the ladies and gentlemen of the jury a break.

1           If you need anything, please request it from the  
2           bailiffs. They'll be happy to accommodate any wishes you  
3           may have. Just don't talk about the case once again.

4           (THE JURY EXITS AT 2:58 P.M.)

5           (OFF THE RECORD.)

6           THE COURT: Thank you. Please take your seats. Y'all  
7           ready?

8           MR. SHELLENBERG: Yes

9           MR. SUTHERLAND: Yes, sir.

10          THE COURT: All right, bring the jury in.

11          (THE JURY ENTERS AT 3:21 P.M.)

12          THE COURT: Welcome back, Madame Forelady, members of  
13          the jury. I guess y'all feel a little bit better now,  
14          don't you, after that break? This case will resume with  
15          the solicitor calling the next witness on behalf of the  
16          state.

17          MR. SHELLENBERG: Cross-examination.

18          MR. SUTHERLAND: Brief, brief cross.

19          THE COURT: Oh, yeah, that's right. You've got to  
20          cross. I do apologize. Go ahead, Mr. Sutherland.

21          CROSS-EXAMINATION BY MR. SUTHERLAND:

22          Q. Ma'am, items 10, 12, 14, 15, 57, and 58, again, could  
23          have been fired from a .40 caliber weapon?

24          A. Yes. Correct.

25          Q. And item 57 and item 58 were from Sydni's autopsy?

- 1 A. I believe that's correct, yes.
- 2 Q. Okay, and there were four firearms in this case?
- 3 A. Three.
- 4 Q. Three?
- 5 A. Three.
- 6 Q. Was it the, the FN, the -- there were two Glocks, two  
7 Glock .40s?
- 8 A. Oh, I'm sorry. The number of firearms I examined or  
9 how many were on -- how many were ---
- 10 Q. Oh, how many ---
- 11 A. --- at the scene?
- 12 Q. How many did you examine?
- 13 A. I examined four but at scene, based on the fired  
14 evidence, only three ---
- 15 Q. Only three.
- 16 A. --- were used.
- 17 Q. And based on your examination of all of the evidence,  
18 there's at least one firearm that's missing. Is that,  
19 that ---
- 20 A. Yes.
- 21 Q. --- right?
- 22 A. So, we have two of the firearms used at scene. One is  
23 missing.
- 24 Q. Okay. Great. Thank you.
- 25 MR. SUTHERLAND: No further questions.

1 THE COURT: Anything on redirect?

2 MR. FYALL: No, Your Honor.

3 THE COURT: You may step down.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Yes, sir.

6 MR. SHELLENBERG: Thank you, Your Honor. State calls  
7 Investigator Michael Laurita.

8 MICHAEL LAURITA, BEING DULY SWORN,  
9 TESTIFIES AS FOLLOWS:

10 CLERK: Have a seat in the witness stand, please.  
11 State your name for the record.

12 WITNESS: Michael Laurita, L-a-u-r-i-t-a.

13 DIRECT EXAMINATION BY MR. SHELLENBERG:

14 Q. Good afternoon, Investigator Laurita. How are you?

15 A. Good. How are you?

16 Q. What do you do for the sheriff's department?

17 A. I am currently assigned to the Major Crimes Unit under  
18 robbery; I also am a homicide primary.

19 Q. And how long have you been doing that?

20 A. I've been doing robberies now for about two years.

21 I've been with the Department for just under thirteen  
22 years. I've worked in investigations six of those years.

23 Q. And what all encompasses major crimes?

24 A. Major crimes encompasses assaults, robberies,  
25 shootings, stabbings, pretty much anything that involves

1 anything serious in nature.

2 Q. And how are cases assigned to Major Crimes?

3 A. They're basically assigned to a -- they come in  
4 through a sergeant. The sergeant then assigns it to a  
5 person within that unit.

6 Q. And who is the sergeant over Major Crimes?

7 A. We have several sergeants over Major Crimes. We have  
8 a Sergeant John Carwell who's over robbery. We have  
9 Sergeant Dalway who is over assaults, along with Sergeant  
10 Caldwell.

11 Q. And back in 2017, who was the sergeant that assigned  
12 you a case that day?

13 A. Back in 2017, this case specifically, I believe, was  
14 assigned to me by -- the captain at that time was Captain  
15 McDonald, who was captain over Major Crimes.

16 Q. And how did your involvement begin in this case?

17 A. This began with me on a Friday. I came in. I was  
18 notified by Captain McDonald that there was a homicide the  
19 night prior, and that they were going ahead and assigning  
20 it to me, which at that time I then began my investigation.

21 Q. And so this was the day -- the morning after the  
22 incident?

23 A. Correct.

24 Q. And as your investigation began, were you able to  
25 develop -- were you -- did you receive any tips?

1 A. We did. Initially we had received several tips, some  
2 of them naming an individual by the nickname of Tiptoe  
3 having been involved in the incident. There was another  
4 tip individual of an individual by the name of Special K  
5 who was supposedly involved in it. I believe I received  
6 several tips on the individual Tiptoe, and I believe only  
7 one tip came of a Special K.

8 Q. What did you do with both the name -- the nickname  
9 Special K and the nickname Tiptoe when they came in?

10 A. So what I do, which is what I do most of the time, is  
11 just try to find out some information. I input those names  
12 in a law-enforcement database that would -- keeps people,  
13 you know, IDs of people that may have had contact, keep  
14 nicknames of potential people involved in that. When I put  
15 those nicknames in, the nickname Tiptoe came back to a  
16 phone number that was in the system. I then ran that  
17 number through a database. It came back potentially  
18 registered to an individual by the name of Ricardo  
19 Middleton.

20 I also put in Special K. The only one I could find  
21 out was an individual by the name of Kevin Doe. Ultimately  
22 when I looked into it, I wasn't sure if that was going to  
23 be the same Special K, or if it was going to be another  
24 person with the name Special K or whatnot, so.

25 Q. You developed two names. What did you do from there?

1 A. From there I began to work with our Gang Unit, who was  
2 also assigned to the case to help me out due to the nature  
3 of the victims having been involved in a motorcycle club.

4 Q. Did you find out what clubs were involved?

5 A. Yes. Well, the victims were a member of the out --  
6 the outlaw motorcycle club. We had received several tips  
7 from confidential informants from the Gang Unit and  
8 everything stating that some individuals from a club called  
9 Thunderguard were involved in it as well.

10 Q. Outlaw or Outcast?

11 A. Outcast. I'm sorry, Outcast.

12 Q. No problem. So, it was Outcast Motorcycle Club?

13 A. Correct. Sorry

14 Q. So once you developed that, those two groups, did you  
15 go to the -- or did you learn anything about My House Bar  
16 and Grill?

17 A. I learned that they had been having a -- I guess you  
18 could call it a night there called bike night where several  
19 people who ride motorcycles can go there. It was my  
20 understanding they were having a rather large gathering  
21 that night. We received some information there was a fight  
22 there that night. I believe the cops were actually called  
23 out to that fight right before the incident took place at  
24 Parklane and Claudia.

25 Q. And at that point, did you attempt to get any video

1 from My House?

2 A. I did, and we contacted the owner of My House and  
3 asked him to get us the video from the incident that night.

4 Q. And while you were waiting on that video, did you get  
5 any tips regarding a Circle K nearby and any, anybody who  
6 may be involved from there?

7 A. Yes. We received a tip that there was an individual  
8 that came into a Circle K on Parklane and had said -- made  
9 a comment as far as something, that he was running from the  
10 police. I did go out to the Circle K. I looked at the  
11 video from the Circle K of the individual that they said  
12 was the one who had made the joke -- I'm sorry, who had  
13 made the comment.

14 When I looked at the video, he didn't seem -- this  
15 individual didn't seem to be in a rush. He wasn't  
16 sweating, didn't look like he was on the run from anything.  
17 He bought several items and even sat there and paid it,  
18 talking with the clerk. In the video, you can even  
19 actually see the part where he kind of says something. He  
20 kind of looks like he chuckles, almost like he was kind of  
21 making a joke about it.

22 I did attempt to try to locate this individual. Tried  
23 to see if they had any information as far as his debit card  
24 that he had paid with, but they didn't keep any  
25 information. The only thing they keep, I think, is, like,

1 the last couple of digits of a debit card. They don't  
2 actually keep the card or the name associated with it.

3 Q. At any point, did you speak with the investigator,  
4 officers who responded to the scene?

5 A. I'm sorry. Repeat the question.

6 Q. At any point, did you speak with the investigator,  
7 Investigator Taylor, any of the officers that responded to  
8 the scene that evening?

9 A. I did. I spoke with Investigator Taylor, who had  
10 responded out there that night and had talked to Natasha  
11 Coad originally at the incident location.

12 Q. And based on that information, what came next in your  
13 investigation?

14 A. Well, I then tried to attempt to contact Natasha Coad  
15 to try to get some more information from her. We had run  
16 an address for her, which when we went out there, turned  
17 out to not be the address she was at. I then made contact  
18 with her by telephone, which time she kind of gave me a  
19 brief summary of what had happened that night. And we had  
20 made an appointment to -- for her to come in and give us an  
21 official statement.

22 Q. Did you attempt to get video from the surrounding  
23 businesses of the incident location?

24 A. Yes. We, we got video from the AM/PM gas station  
25 which sits right there at a corner, not far from Claudia

1 and Parklane.

2 Q. Did you have a chance to review that video?

3 A. I did.

4 Q. And based on watching that video, what did you learn?

5 A. In the video, you can see the motorcycles pull up to  
6 the intersection. We can see the vehicle, a gray vehicle,  
7 pull up, later identified as Ms. Coad's vehicle. We also  
8 see a white truck pull up behind individuals, again later  
9 identified as Ronnie Scott's vehicle. We did observe a  
10 black SUV that pulls up to the location, which initially we  
11 had received information that the individuals involved in  
12 the shooting may have come from that vehicle, but when we  
13 watched the video, we could see that there was nobody that  
14 exits the black SUV at any time. In the video, we can also  
15 see ---

16 Q. Investigator Laurita, I'm going to ---

17 A. Okay.

18 Q. --- get you to step down, and I'm going to show you  
19 what has been marked as State's 9. I believe that's the  
20 video you just referred to.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER 9 IS PLAYED  
22 THROUGHOUT THE FOLLOWING EXAMINATION.)

23 A. So here, in this you'll see pull up, see these two  
24 motorcycles believed to be the two victims' motorcycle, and  
25 we see another set of motorcycles pulled up here. This

1 vehicle here, Ms. Coad's vehicle. So, here we see the  
2 vehicle belonging to Mr. Scott, and Ms. Coad's vehicle is  
3 right here. This is the black SUV right here, and this is  
4 the Jeep belonging to Ms. Summers right here. Right here  
5 you can see some sort of commotion going on. You can see  
6 there's a car in the left far lane here. You see a  
7 motorcycle there drive off, and you see an individual here  
8 coming back, getting into that vehicle in the left-hand  
9 lane.

10 Q. And were you able to find out in the course of your  
11 investigation who drove off here?

12 A. Yes. This is Mr. Phillip Coates.

13 Q. Okay, and over here, I believe you said you see  
14 somebody getting back into their car?

15 A. Yeah, there was -- I can back it up a little bit here.

16 Q. Okay.

17 A. So, right here you can see there's a car in the far  
18 left lane, and you can see an individual getting into the  
19 vehicle there. And it actually skips because this is  
20 motion sensed. So, you see just there, you catch the  
21 vehicle driving off from the location right about here.  
22 And you see here this is the SUV that nobody ever gets out  
23 of it, never exits it at any time during the incident. And  
24 in a couple minutes, you can actually catch the vehicle  
25 coming back through the intersection right here.

1 Q. And it's not until after the incident that someone  
2 gets out of the car?

3 A. Correct. See here? And then it drives off,  
4 continuing -- this is Parklane heading towards Two Notch.

5 Q. Okay. Thank you, sir. And after that, did you find  
6 out anything about the -- any encounters that the victim  
7 and the defendant may have had at the -- at My House the  
8 evening of the incident?

9 A. We heard that there was an encounter with some of the  
10 Outcast members and some of the Thunderguard members in  
11 reference to an incident that had taken place a week prior  
12 at a different bike night.

13 Q. And then after that, in the course of your  
14 investigation, did you receive any more tips?

15 A. We did. We received a couple more tips from different  
16 informants, basically through the Gang Unit, that again the  
17 individual involved in the incident goes by the name of  
18 Tiptoe.

19 Q. Did you find out any other possible tips about  
20 possible names, perhaps Onyx?

21 A. Yeah. We received -- I'm sorry -- we did receive tips  
22 that a guy by the name of Onyx or Taz may have been  
23 involved, or may have been the one who hit Mr. Montgomery  
24 to knock him out. And again, I did the same thing like I  
25 did with the other nicknames is I ran them through the

1 database to see if any names pop up. I didn't find any  
2 names associated with Onyx or Taz.

3 Q. But you still attempted to run them down?

4 A. I did.

5 Q. Did you attempt to get any video from the My Place  
6 bar?

7 A. We attempted to get video from the My Place bar, which  
8 is the bar that Mr. McNeely owns. I believe at that time  
9 they didn't have any video working, and I believe they  
10 still don't have any outside cameras that work at that  
11 location.

12 Q. Did you get a chance to speak with Mr. McNeely at that  
13 point?

14 A. I did. I did speak with Mr. McNeely in reference to  
15 what he saw that night.

16 Q. And based on your conversation with him, what did you  
17 do?

18 A. Based off my conversation, I looked back at the video  
19 and I could see a similar car as the one he described  
20 seeing that night in the video driving away from that  
21 location, the one that pulls into the left-hand lane in the  
22 video.

23 Q. What, if any, video did you attempt to get from  
24 Mobay's restaurant?

25 A. After speaking with Mr. McNeely and his statement, we

1 then got video from the Mobay's to see if their video had  
2 caught anything where the vehicle may have turned around or  
3 any other vehicles that had gone up the street toward  
4 Farrow Road on Parklane.

5 Q. So at the time Mr. McNeely gave his statement, you did  
6 not have the Mobay's video?

7 A. Correct.

8 Q. So, did Mr. McNeely ever see the Mobay's video?

9 A. He did not.

10 Q. Did he ever see the AM/PM video?

11 A. He did not.

12 Q. And so you were able to get the AM/PM and the Mobay's  
13 video?

14 A. Correct. You want me to step down again?

15 Q. Yes, please.

16 (PLAY OF STATE'S EXHIBIT NUMBER 9 RESUMES THROUGHOUT  
17 THE FOLLOWING EXAMINATION.)

18 A. So, in the video you can see there, that's the  
19 motorcycle again seen leaving the scene. That's Phillip  
20 Coates drive -- driving off. Here we can see the vehicle  
21 -- again seen in the left lane -- making a U-turn, cutting  
22 of its lights, and this is heading back towards the  
23 incident location, which is Parklane and Claudia.

24 Q. Is that consistent with what Mr. McNeely said?

25 A. It is.

1 Q. You can take the stand again, please.

2 At any point, were you able to speak with Ricky  
3 Montgomery?

4 A. Yes. Me and Investigator Jordan were able to talk to  
5 Mr. Montgomery. He did come in to provide us with a  
6 statement as far as what he saw that night.

7 Q. And in the course of speaking with Mr. Montgomery,  
8 without saying what he said, did any names come up?

9 A. He did mention that an individual by the name of  
10 Tiptoe was involved.

11 Q. And so at that point, what did you do with that  
12 information?

13 A. At that time, I then looked in -- again, Tiptoe, was  
14 trying to find out who this -- name Tiptoe, again the name,  
15 the only name I could find associated with it was from that  
16 phone number, which was for Ricardo Middleton.

17 Q. Were you able to get the license plate off the white  
18 truck that you saw on the video?

19 A. Yes. We were able to watch the AM/PM video, which is  
20 the side video where you see the white truck. We were  
21 actually able to zoom in the picture enough to get a little  
22 bit of a tag, and we were able to find out the tag. Comes  
23 back to a company, Carolina Bridge Company. We then  
24 contacted the Carolina Bridge Company, found out who was  
25 actually driving that specific a car, which then they gave

1 us the name Ronnie Scott.

2 Q. And that's the same Ronnie Scott that was here this  
3 week?

4 A. Correct.

5 Q. And did you contact him?

6 A. We did, and he agreed to come in and talk to us.

7 Q. And after speaking with him, did you get a name to  
8 continue with your investigation?

9 A. We did. He, in his statement, he mentioned an  
10 individual by the name of Tiptoe. He also said that he  
11 knew his first name as Ricardo, which then kind of  
12 solidified my, my guess that Tiptoe was the individual  
13 Ricardo Middleton.

14 Q. And at that point, did you show Mr. Scott a lineup?

15 A. We did. We showed him a lineup of Mr. Middleton to  
16 see if he recognized that as the individual that he knows  
17 as Tiptoe.

18 Q. I'm going to show you what has been marked as State's  
19 5, and how did you get a photograph of Mr. Middleton for  
20 the lineup?

21 A. The photograph was taken from his driver's license  
22 photo, and it was -- what it -- what was done here is they  
23 actually remove the backgrounds so that only the faces of  
24 the individuals are present so that you can't tell  
25 basically from background that an individual may be from a

1 jail or from a DL photo.

2 Q. And how do you develop the lineup?

3 A. So, we take the one person that we feel may be a  
4 potential suspect, we put them into the lineup. We then  
5 take -- we look to our jail database or we sent it to SLED  
6 and have them do it, which they can pull jail databases  
7 from the whole state. We attempt to find people who have  
8 similar characteristics, similar hair types, you know,  
9 beard types, size, shape of face, even skin color so that  
10 -- and we put them in a six-person lineup similar to this,  
11 and we then show it to an individual. Don't give any kind  
12 of hint or anything like that. Literally just place it on  
13 the table, say do you see anybody here that you recognize.

14 Q. And did Mr. Scott see somebody he recognized?

15 A. He did.

16 Q. And who did he see?

17 A. The individual there I believe was marked number 4,  
18 which is Ricardo Middleton.

19 Q. And how did he memorialize that he picked Mr.  
20 Middleton?

21 A. He circled it and put his initials and the date next  
22 to it.

23 Q. And did you fill out the top sheet, or does he fill  
24 out the ---

25 A. Normally what I'll do is I'll fill out this top

1 portion just because it's, you know, investigators' names,  
2 addresses, where we showed the lineup, and then we have  
3 them sign it right here signifying that this is their  
4 information. They gave it. That, you know -- basically  
5 saying that that's what they saw.

6 Q. And so who did he identify Ricardo Middleton as?

7 A. Tiptoe.

8 Q. And did he identify him as the shooter?

9 A. He did.

10 Q. And so at that point, with that information, what did  
11 you do?

12 A. At that time, we then -- actually, I'd done a quick  
13 research of Mr. Middleton in the DMV system to see if he  
14 had any vehicles registered under his name. I then notice  
15 that he did have a Toyota Yaris registered in his name,  
16 which is similar size, shape, and characteristics of the  
17 vehicle seen on the video, again, making the U-turn and  
18 being in the left-hand lane at the AM/PM video.

19 Q. I'm going to show you what's as State's 120. Is that  
20 the vehicle that you found?

21 A. Yeah, that is.

22 Q. So, you found that he had a Toyota Yaris registered in  
23 his name?

24 A. Correct. Based off the information, we then got, we  
25 then got warrants for Mr. Middleton for the two counts of

1 murder and the one count of attempted murder.

2 Q. What did you do with those warrants?

3 A. I gave those to our Fugitive Task Force, which they  
4 are tasked with trying to find people who are fugitives and  
5 have active warrants.

6 Q. Who did you speak with next?

7 A. We then were able to get in contact with Ms. Coad,  
8 Natasha Coad, who -- she came in and gave give us a  
9 statement, a more detailed statement than she had given Mr.  
10 Taylor the night before as far as what she saw that night.

11 Q. Did you show her a photo lineup at that time?

12 A. We did. We showed her a photo lineup that we had made  
13 containing Mr. Middleton.

14 Q. I want to show you what's been marked as State's 3.  
15 Is that it?

16 A. That's is.

17 Q. And was she able to select anybody?

18 A. She was not able to select anybody in this lineup.

19 Q. And why not?

20 A. Later she said that the, the photos were too blurry  
21 and that they were too distorted for her to be able to  
22 possibly identify anybody.

23 Q. And did you speak with Lori Ann Summers?

24 A. I did. I spoke with her over the phone initially,  
25 which she had kind of told me what she had saw on that

1 night, and we had set up an appointment for her to come in  
2 as well as to get a statement from her as to what she saw.

3 Q. And based on speaking with her, what did you learn?

4 A. She kind of -- she, again, kind of corroborated what  
5 was shown in the videos, as well as Mr. McNeely's statement  
6 as, as far as what they saw that night.

7 Q. At some point, did you get a -- get notified by the  
8 Fugitive Task Force?

9 A. I did. I got notified that they had had some  
10 information that Mr. Middleton was in the Summerville area,  
11 and that they were heading down to try and locate him.

12 Q. Did they -- did you receive any information about what  
13 he was driving at that point?

14 A. I believe they told me that he was driving around in a  
15 H2 Hummer at that time.

16 Q. And did they know what was -- where the Yaris was at  
17 that point?

18 A. They did not know where it was at that time.

19 Q. Did you go to Summerville?

20 A. I did.

21 Q. And when you went down to Summerville, what happened?

22 A. We went down to Summerville. We were able to locate  
23 Mr. Middleton at a house belonging to Mr. Hunt. He was  
24 taken into custody there, and he was read his Miranda  
25 rights, and he was actually transported by Investigator

1 Jordan back to Columbia. I had stayed around to do a  
2 search warrant of the house belonging to Mr. Hunt and the  
3 H2 Hummer that was there, as well as the Yaris was found  
4 parked in the yard at the address belonging to Mr. Hunt.

5 Q. Show you what's been marked as State's 157. Do you  
6 recognize that?

7 A. I do.

8 Q. And what is that?

9 A. This is the side of Mr. Hunt's house, and you can just  
10 kind of make out the back side of this Yaris that was  
11 parked there. The front would be kind of sitting on this  
12 side there.

13 MR. SHELLENBERG: Your Honor, at this time we would  
14 move State's 157 into evidence.

15 MR. SUTHERLAND: If I may?

16 THE COURT: Just let him see it.

17 (COUNSELORS CONFER.)

18 MR. SUTHERLAND: No objection, Judge.

19 THE COURT: All right.

20 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT  
21 NUMBER 157.)

22 BY MR. SHELLENBERG:

23 Q. Can you tell the jury what that is?

24 A. So, this is the side of Mr. Hunt's house. This is the  
25 back end of the Yaris right here.

1 Q. And did you know how long that car had been parked  
2 there?

3 A. After we spoke to Mr. Hunt, we learned that it had  
4 been parked there since the 29th of February, which was the  
5 Friday after the incident, I believe -- or was the 28th of  
6 February, I'm sorry. Sorry, 28th of July, I'm sorry.

7 Q. And you said you helped execute a search warrant?

8 A. I did.

9 Q. And in executing the search warrant, I'm going to show  
10 you what's been marked State's 151, 152 through 158. Do  
11 you recognize those?

12 A. I do. These are some tickets that were found inside  
13 the H2 Hummer with Mr. Middleton's name on them. This is a  
14 tag taken from the H2 Hummer.

15 Q. And this is the car that -- who was driving this car?

16 A. Mr. Middleton. Side view of the Hummer. This was a  
17 note, handwritten note that was found inside the Hummer.

18 Q. And what does that handwritten note say?

19 A. We need money to house the two boys. We are  
20 playing the shell game.

21 Q. All right.

22 A. This is a picture of a box that was found in a room.  
23 It was the back left bedroom in Mr. Hunt's house where  
24 right there you can make out a cell phone.

25 Q. In the box? Is it the black thing in the box right

1 there?

2 A. Yeah. This is a closer up video of it -- sorry,  
3 picture of it right here. The cell phone was sitting in  
4 the box there.

5 Q. Did you collect the cell phone?

6 A. We did, and then this is a, it's a handwritten note.  
7 It's got different chapters and phone numbers on it.

8 THE COURT: Are these matters already in evidence?

9 MR. SHELLENBERG: Your Honor, I move 151 through 158  
10 into evidence.

11 THE COURT: Without objection?

12 MR. SUTHERLAND: That's what I was wondering. No, no  
13 objection, though.

14 MR. SHELLENBERG: We talked about it.

15 THE COURT: Okay.

16 MR. SHELLENBERG: I just don't think I moved them in.

17 THE COURT: They've been marked already?

18 MR. SHELLENBERG: Yes, sir.

19 THE COURT: Okay.

20 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS  
21 STATE'S EXHIBIT NUMBERS 151, 152, 153, 154, 155, 156,  
22 158.)

23 BY MR. SHELLENBERG:

24 Q. Okay, we talked about this picture?

25 A. Yes, sir.

1 Q. Okay. When you returned to Columbia, did you meet  
2 with Natasha again?

3 A. I did. I was contacted by her attorney that she  
4 wished to come back in and speak to me as far as the lineup  
5 she was shown and actually requested if we could do a more  
6 clear lineup of the individual we believed to be involved  
7 in the shooting.

8 Q. So, how did you make the second lineup?

9 A. The second lineup, since we wanted to be more clear, I  
10 actually sent it to SLED and had them, their Fusion Center,  
11 take it and make a lineup. And they're able, like I said,  
12 they're able to pull everything from the whole state and  
13 pull it. So, they can make a more comprehensive lineup,  
14 make it a lot clearer looking.

15 Q. And I'm going to show you what has been marked as  
16 State's 4. Do you recognize that, sir?

17 A. This is, this is the lineup that I had sent or I  
18 requested that SLED make for me.

19 Q. And was Ms. Coad able to select anybody in the lineup?

20 A. She was.

21 Q. And how did she -- who did she select?

22 A. She select the individual number 5, who was -- the  
23 picture of Ricardo Middleton.

24 Q. And how did she memorialize that?

25 A. She circled it, the number there, put her initials,

1 and the date that she was shown the lineup.

2 Q. And did you fill out the information on the front of  
3 this?

4 A. Yes. So, again like before, I fill out the top part  
5 of this and she signs it, signifying that this is what she  
6 picked.

7 Q. And so what did you -- what, what does it say? Can  
8 you read it to the jury?

9 A. It says:

10 On this, on this date, Investigator Laurita --  
11 who was me -- showed me a six-pictures -- showed  
12 me six pictures at 5623 Two Notch Road.

13 Which is our sheriff's department headquarters orders.  
14 I picked out picture 5, which is the person, male  
15 black, who committed the crime of homicide at  
16 6720 -- should be 7720 -- Claudia or Parkland  
17 Drive, Columbia, South Carolina, on 7/27/2017.

18 Q. And I believe that evening or the evening before, was  
19 a news release done?

20 A. Yes. Berkeley County had actually taken a picture of  
21 Mr. Middleton and had released it to the media, unbeknownst  
22 to the sheriff's department at that time.

23 Q. And so Berkeley County sent this out?

24 A. Yes.

25 Q. I'm going to show you what has been marked as State's

1 131.

2 A. Yeah, 131.

3 Q. Do you recognize that?

4 A. Yeah. This is the picture that was sent out by  
5 Berkeley County Sheriff's Department.

6 Q. And this is a photo -- was this a photo of Mr.  
7 Middleton from that time?

8 THE COURT: Wait.

9 (A PAUSE.)

10 MR. SHELLENBERG: Oh, I'm sorry. At this time, we  
11 move State's 131.

12 THE COURT: That's all right.

13 MR. SUTHERLAND: Without objection.

14 THE COURT: Without objection. Is that correct, sir?

15 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT  
16 NUMBER 131.)

17 MR. SHELLENBERG: Permission to publish to the jury,  
18 Your Honor?

19 THE COURT: You may do so.

20 BY MR. SHELLENBERG:

21 Q. Let me take you back to the search warrant. Do you  
22 recognize this?

23 A. Yeah. So, these are the two phones that we recovered  
24 from Mr. Hunt's house.

25 (TWO CELL PHONES MARKED AS STATE'S EXHIBIT NUMBER 170

1 FOR IDENTIFICATION.)

2 MR. SUTHERLAND: Without objection, Judge.

3 THE COURT: All right.

4 BY MR. SHELLENBERG:

5 Q. I show you State's 170. What's that?

6 A. So, this is the LG cell phone that was found in the  
7 box that the pictures were taken of, and this is a track  
8 phone that was found in a front living room that Mr. Hunt  
9 stated did not belong to him.

10 MR. SHELLENBERG: Your Honor, at this time we move 170  
11 into evidence.

12 THE COURT: All right. Without objection?

13 MR. SUTHERLAND: Without objection.

14 (TWO CELL PHONES MARKED INTO EVIDENCE AS STATE'S  
15 EXHIBIT NUMBER 170.)

16 BY MR. SHELLENBERG:

17 Q. And what did you do with those phones after you  
18 collected them?

19 A. I then took them to our headquarters and placed them  
20 into evidence, and I did get a -- I believe I got search  
21 warrants for them to try to get them downloaded.

22 MR. SHELLENBERG: Beg the court's indulgence, Your  
23 Honor.

24 THE COURT: Yes, sir.

25 (A PAUSE.)

1 BY MR. SHELLENBERG:

2 Q. In the course of your investigation, did you develop  
3 Marquez Johnson as a suspect as well?

4 A. We did.

5 Q. And what happened to him?

6 A. Warrants were issued for him, and he was subsequently  
7 arrested at a later date.

8 Q. And what warrants does he have pending?

9 A. The same warrants as Mr. Middleton: two counts of  
10 murder and attempted murder.

11 MR. SHELLENBERG: Court's indulgence, Your Honor?

12 No further questions. Thank you, Investigator.

13 THE COURT: Mr. Sutherland.

14 MR. SUTHERLAND: May it please the court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION BY MR. SUTHERLAND:

17 Q. All right, sir, how are you?

18 A. Good. How are you?

19 Q. I am well enough. Just want to run back through your  
20 testimony.

21 A. Sure.

22 Q. I think ultimately you did testify there had been tips  
23 with, with additional names?

24 A. Yes.

25 Q. There was -- I think initially it was Tiptoe, Two

1 Shoes, Special K, then maybe I think at least in the report  
2 it was -- it may have been a misspelling, but Onyx and Taz.  
3 Was, was that all of them?

4 A. Yeah. I believe Tiptoe and Two Shoes were said to be  
5 the same person. It was -- they weren't sure if it was --  
6 the nickname was Tiptoe or Two Shoes. That's -- so, it was  
7 kind of the same person in reference to that.

8 Q. Okay, and one thing I wanted to check on, no one who  
9 has testified during this trial was a source for any of  
10 these tips, were they?

11 A. Not to my recollection. I don't know who sourced the  
12 tips. I mean, if they came in through Crimestoppers,  
13 that's anonymous. I wouldn't know.

14 Q. Okay. Oh, now I've got -- I was just following along.  
15 Now we have Natasha. Her -- you testified that she was  
16 speaking with Investigator Taylor that first night?

17 A. The original night, yeah, she spoke to ---

18 Q. Right.

19 A. --- Investigator Taylor.

20 Q. And that was the source of the first statement, the  
21 one that was written down that she refused to sign. Is  
22 that ---

23 A. Correct.

24 Q. --- right? Okay. Oh, and also let's move down to the  
25 AM/PM video. I don't think we need to recue it because

1 we've been through it a couple of times. They've probably  
2 seen it four or five times already. But you testified that  
3 it was a motion-activated camera, and that's why there were  
4 cuts?

5 A. Correct.

6 Q. Okay. You also testified that you reviewed the video  
7 and that no one got in and out of fired any shots from the  
8 black SUV?

9 A. Correct.

10 Q. But this is a motion-activated camera and there are,  
11 there are cuts. It doesn't cover the entire time period,  
12 does it?

13 A. It, it, it doesn't cut during the actual incident  
14 that's taking place. You can actually see in the video the  
15 black SUV when, when the shooting starts, it starts backing  
16 up. And, I mean, it doesn't cut from them going to the  
17 intersection to, to that SUV backing up or anything. So,  
18 the whole time you can see that SUV there.

19 Q. How, how many cuts were or jump cuts, whatever, how  
20 many cuts were in, in the entire video?

21 A. I didn't count how many cuts were actually there.

22 Q. Okay. All right, and you have probably watched that  
23 video a lot?

24 A. A bunch of times, yes.

25 Q. And there were two individuals that fit the

1 description of the person that you were looking for in that  
2 area immediately after. And in this respect, black guys in  
3 a white T-shirt with a beard or something on their head, I  
4 think there were two different guys?

5 A. There may have been one at the gas station. I didn't,  
6 I didn't -- I wasn't really paying too much attention to  
7 the gas station. I was more looking at the actual incident  
8 that was happening.

9 Q. I gotcha.

10 A. Yeah.

11 Q. No need to retread anything at this point that --  
12 we've, we've seen that.

13 Okay. Now, the Mobay's video, have you watched that?

14 A. Several times.

15 Q. Okay. Now, would you agree with me that at any given  
16 point -- I mean, you've been through the whole thing a  
17 bunch of times?

18 A. Correct.

19 Q. At any given point, you could pause it and there is  
20 anywhere from maybe three black dudes in white T-shirts  
21 with low hair fitting that description or eleven or twelve.  
22 There's a bunch in that picture of all those bikers down  
23 there. Is that -- do you agree with that?

24 A. I don't remember seeing any bikers in the Mobay's  
25 video.

1 Q. Or not the Mobay's. Good lord. The My House, My  
2 House.

3 A. Okay.

4 Q. Sorry, but would you agree with me that there's  
5 anywhere -- that there's just a bunch of people in there in  
6 white T-shirts that fit the description generally?

7 A. Sure. I mean, sure. Black male in a white T-shirt,  
8 sure.

9 Q. Okay, and Ricky Montgomery, you took the statement  
10 from him?

11 A. Correct.

12 Q. And in that statement, in your case file, he had said  
13 that he wasn't sure but he wanted to say that it was  
14 Tiptoe?

15 MR. SHELLENBERG: Objection, Your Honor.

16 THE COURT: What did he say?

17 MR. SHELLENBERG: If he's asking something about what  
18 Ricky Montgomery said, he should have asked Ricky  
19 Montgomery instead of going through this ---

20 MR. SUTHERLAND: I actually did.

21 THE COURT: Stop. Repeat the question, please.

22 MR. SUTHERLAND: Yes, sir.

23 MR. SHELLENBERG: Then it's hearsay. It's going to be  
24 hearsay, Your Honor.

25 BY MR. SUTHERLAND:

1 Q. In your statement in your case file, you have Ricky  
2 Montgomery saying that I'm not 100 percent, but I want to  
3 say that it's Tiptoe because of the way that he was  
4 behaving earlier approximately. Do you, do you remember  
5 that in the statement that you took?

6 A. I do. Yeah, I remember that.

7 Q. Right.

8 A. That question and statement.

9 Q. So, just that he wasn't sure but he wanted to say that  
10 it was Tiptoe?

11 A. That's what was said in the statement, correct.

12 Q. Okay. Good. Sorry. Getting ready to close.

13 A. Take your time.

14 Q. Okay, did you take the statement or Ronnie Scott's  
15 statement? Was that you or was that Investigator Jordan?  
16 But you all were -- sort of jointly took some?

17 A. We were both there for it.

18 Q. Okay. Ronnie Scott at first denied that he saw him?

19 A. First he -- so, the way it went is he first said that  
20 he didn't see anything, and after several minutes said that  
21 this wasn't worth losing his family for, and then he made a  
22 statement.

23 Q. And just in the interim between the I didn't see  
24 anything, I believe that you all had maybe confronted him  
25 with maybe some inconsistencies or the, the truck video.

1 There was something. I don't -- it may not have been in  
2 your report. It may have been Investigator Jordan but, I  
3 mean, if you all were both there, you all were confronting  
4 him with inconsistencies in his story or, or -- in that  
5 interim period of time?

6 A. I don't remember that, but it may -- if it's in  
7 Investigator Jordan's, you can ask him about that.

8 Q. Yeah. Sure.

9 A. Yeah.

10 Q. That's...

11 (A PAUSE.)

12 Q. Ah, then we have the meeting with Natasha and the, the  
13 no pick.

14 A. Correct.

15 Q. The no pick lineup.

16 MR. SUTHERLAND: And if I may, Judge, I'd like to ---

17 THE COURT: Yes, sir.

18 MR. SUTHERLAND: --- go through the exhibits.

19 BY MR. SUTHERLAND:

20 Q. Is this one first?

21 A. I believe this is the second one.

22 Q. Okay, the second one, and this may be...

23 MR. SUTHERLAND: I beg the court's indulgence.

24 THE COURT: Yes, sir.

25 (A PAUSE.)

1 BY MR. SUTHERLAND:

2 Q. And I believe you testified she said something  
3 slanted, fuzzy, something along the lines of the, of the  
4 first one?

5 A. Correct.

6 Q. Now, isn't ---

7 MR. SUTHERLAND: Oh, may I approach the witness, Your  
8 Honor?

9 THE COURT: Since you're already there.

10 MR. SUTHERLAND: Yes, sir.

11 BY MR. SUTHERLAND:

12 Q. That's the same -- isn't that the same picture?

13 A. It's the same picture.

14 MR. SUTHERLAND: Okay, and that was Exhibits 3 and 4,  
15 State's Exhibits 3 and 4.

16 Q. We talked about Ricky. We talked about Ronnie. We  
17 talked about Natasha. Oh, after the no-pick lineup, there  
18 was a picture admitted during your testimony of him that  
19 was released to the media.

20 A. Correct.

21 Q. Is that right? Okay, and that was between the no pick  
22 and the pick?

23 A. Correct.

24 MR. SUTHERLAND: Beg the court's indulgence.

25 THE COURT: Yes, sir.

1 (A PAUSE.)

2 MR. SUTHERLAND: No further questions, Judge.

3 MR. SHELLENBERG: No redirect, Your Honor.

4 THE COURT: You may step down.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Call your next witness.

7 MR. FYALL: I have a very brief matter of law, Your  
8 Honor.

9 THE COURT: All right. Members of the jury, the only  
10 way I can take up a matter of law is in your absence. So,  
11 please return to your jury room, and do not discuss this  
12 case. Thank you all so very much.

13 (THE JURY EXITS AT 4:08 P.M.)

14 THE COURT: Do y'all need to discuss this among  
15 yourselves for a minute?

16 MR. SUTHERLAND: We're actually squared away.

17 THE COURT: Okay.

18 MR. SUTHERLAND: It's about an affidavit.

19 THE COURT: I'm going to get some ice. I'll be right  
20 back. So, everything's fine?

21 MR. FYALL: Yes, Your Honor.

22 (OFF THE RECORD.)

23 (DMV AFFIDAVIT MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
24 NUMBER 3.)

25 (VEHICLE REGISTRATIONS INDIVIDUALLY MARKED AS STATE'S

1 EXHIBIT NUMBERS 171, 172 FOR IDENTIFICATION.)

2 MR. FYALL: Yes, Your Honor. I think I'd like Your  
3 Honor to review -- are we back on? I think I'd like Your  
4 Honor to review Court's Exhibit 3, those that -- the  
5 affidavit from the Department of Motor Vehicles  
6 authenticating State's 171 and 172. I shared that with Mr.  
7 Sutherland. I don't think he had any objections.

8 THE COURT: All right.

9 MR. SUTHERLAND: That's without objection.

10 THE COURT: Okay.

11 MR. FYALL: So, I want to put the affidavit into  
12 evidence as Court's 3.

13 THE COURT: All right.

14 MR. FYALL: And introduce these two into evidence.  
15 Thank you, Your Honor. That's it.

16 THE COURT: Is everybody ready?

17 MR. SUTHERLAND: Yes, sir?

18 THE COURT: Bring the jury back in.

19 (THE JURY ENTERS AT 4:23 P.M.)

20 THE COURT: Welcome back, Madame Forelady, members of  
21 the jury.

22 You may call your next witness.

23 MR. FYALL: State calls Investigator Taima Jordan.

24 TAIMA JORDAN, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

1 CLERK: Have a seat in the witness stand, please.

2 State your name for the record.

3 WITNESS: Taima Jordan.

4 DIRECT EXAMINATION BY MR. FYALL:

5 Q. Investigator Jordan, can you tell us where you're  
6 employed?

7 A. Richland County Sheriff's Department.

8 Q. How long have you been there?

9 A. Approximately sixteen years.

10 Q. When you first got there, what did you start out  
11 doing?

12 A. I was on the road answering calls for service in the  
13 Lower Richland community, which is known as Region 1. From  
14 there I was promoted to the Drug Suppression Team, and from  
15 there I was promoted to the Community Action Team, and then  
16 from there I was promoted to Investigations, where I've  
17 been since 2006.

18 Q. All right. What's the Community Action Team?

19 A. It's the CAT team. So, we're assigned neighborhoods  
20 within our assigned districts, and we handle complaints the  
21 community may have. That goes from speeding to burglaries,  
22 things of that nature, to help investigations.

23 Q. And what is your role as an investigator?

24 A. Now I'm assigned to the Major Crimes Unit, which  
25 encompasses robbery, assault, and homicides.

1 Q. And were you in that role on July 28, 2017?

2 A. No, sir, I was not.

3 Q. All right. On July 28, 2017, tell us how you got  
4 involved in this case.

5 A. I was contacted by Captain McDonald about a homicide  
6 that had taken place the day before. I was actually on  
7 vacation in the airport, and I was told that once I got  
8 back, I would be assigned to help Investigator Laurita with  
9 the case.

10 Q. And that day you were contacted by Captain McDonald,  
11 were you also contacted by someone not in law enforcement?

12 A. Yes, a confidential informant within the biker  
13 community.

14 Q. All right, and they gave you information about the  
15 case?

16 A. They did.

17 Q. And tips and all that stuff?

18 A. Yes.

19 Q. All right, and at some point you contacted  
20 Investigator Laurita. The two of you got together?

21 A. We did.

22 Q. All right. Tell us what you did going forward.

23 A. Provided Investigator Laurita with the information  
24 that I received. He, in turn, told me what information  
25 that he had, and we formulated a game plan.

1 Q. All right, and so that's the 28th. Tell me how you  
2 started your investigation on the 29th.

3 A. 29th, myself and Investigator Laurita, we interviewed  
4 Mr. Montgomery, one of the victims in the case.

5 Q. Okay. What was his -- so, what was he like physically  
6 when you went to interview him?

7 A. He was not doing very well. He had been knocked out.  
8 His leg was still injured from where his motorcycle had  
9 fell on his legs when -- he was limping. Was not in the  
10 best physical condition.

11 Q. All right, and you got a statement from him?

12 A. We did.

13 Q. And did he provide you with the nickname as well?

14 A. Yes, Tiptoe.

15 Q. All right. After you interviewed Mr. Montgomery, tell  
16 us what else happened.

17 A. I was contacted by another colleague or coworker that  
18 told, told me that we needed to speak to Mr. Jayrell --  
19 can't think of his last name -- who was a member of a  
20 support club, 24/7 Boyz.

21 Q. All right, and did you speak to Mr. Jayrell Johnson to  
22 question him?

23 A. Yes, I did.

24 Q. And after that conversation with Mr. Johnson, can you  
25 tell us what you did?

1 A. Spoke with the family, both families, to let them know  
2 how the investigation was going. Also to introduce myself,  
3 as well as Investigator Laurita. And we were, in turn,  
4 given information of people that we may need to talk to in  
5 regards to the incident.

6 Q. All right, and what were some of those people whose  
7 names you received?

8 A. Ashley Hill and Natasha Coad.

9 Q. And which one of them were you able to reach out to  
10 first?

11 A. We were able to talk to Ms. Hill first.

12 Q. Okay. You got a statement from her as well?

13 A. We did.

14 Q. And did she also help you get in contact with Natasha  
15 Coad?

16 A. Yes.

17 Q. And did you speak to Natasha Coad?

18 A. We did.

19 Q. And she provided in that initial statement and on the  
20 second statement she gave the two lineups we've talked  
21 about in evidence?

22 A. Right. Yes.

23 Q. And before she gave you that second lineup, just  
24 fastforwarding a little bit, you asked her about any media  
25 coverage she had ---

1 A. Correct.

2 Q. --- seen, and what did she say?

3 A. She had not see any.

4 Q. I want to back up just a little bit as well. On the  
5 20 -- going back to late July, did you attend a  
6 Thunderguard event?

7 A. Yes. So, the same weekend as this incident that  
8 happened, the Thunderguard had an anniversary party in  
9 Richland County. So, being as I was assigned to the Gang  
10 Unit, myself and several other investigators attended that  
11 party in a covert manner, meaning that we were not to be  
12 seen, but we let the road units know that we were in the  
13 area and that if anything happened, that we would call to  
14 let, let them know. It was mainly for protection of them,  
15 to make sure that there were no -- there was no retaliation  
16 in regards to what had happened since they had been deemed  
17 suspects in the, in the case.

18 Q. All right, and then catching back up. You said you  
19 went to Sydni Collins's family. You got the information  
20 about Ashley Hill and Natasha Coad. You talked to both of  
21 them?

22 A. We did.

23 Q. All right. Can you tell us what you did after those  
24 conversations?

25 A. From then, then on we got the video from the AM/PM

1 where the white truck was seen backing up several times,  
2 and we were able to get the partial tag number, which later  
3 found out that it came back to the Bridge Company. We made  
4 contact with the owner of the Bridge Company, who told us  
5 that Ronnie Scott was, was the one that was driving the  
6 particular truck. We made contact with Mr. Scott, who then  
7 came in to speak with us.

8 Q. All right, and did you get a chance to watch that  
9 video?

10 A. Yes.

11 Q. AM/PM video?

12 A. I did.

13 Q. How many times do you think you've seen it at this  
14 point?

15 A. A bunch.

16 Q. You came in and talked to Mr. Scott, and you got a  
17 statement from him?

18 A. Yes.

19 Q. Correct? And initially what did he, he tell you?

20 A. That he was on the way to work in Lumberton, North  
21 Carolina, and that he was going to see a female friend  
22 before he, before he went to North Carolina. Then that he  
23 got behind some of his brothers, being that he was part of  
24 Thunderguard. And then a shooting took place, but he  
25 didn't see anything but he heard the gunshots.

1 Q. All right. After he told you he didn't see anything,  
2 what did you tell him?

3 A. We try to explain to victims and witnesses that -- and  
4 especially with Mr., Mr. Scott, we knew the One Percent  
5 biker culture. They do not like to talk to the police.  
6 It's kind of frowned upon to talk to the police. We knew  
7 that he may have been afraid and scared and didn't want to  
8 give up his brothers. But during that time, he told us it  
9 was not worth his, his freedom or his job, and that's when  
10 he told us that he saw Mr. Tiptoe fire.

11 Q. You talk about One Percent biker culture, to not --  
12 you said it's not common for them to talk to police. Even  
13 more so, is it common for them to show up to court and  
14 testify?

15 A. Correct.

16 Q. So, that's not common either?

17 A. I'm sorry?

18 Q. It's not common for them to come to court ---

19 A. No, it's not.

20 Q. --- and testify?

21 A. No, it's not.

22 Q. Now, when he provided you with the Tiptoe nickname,  
23 did you tell him, hey, we know you saw Tiptoe, or did he  
24 provide that information to you?

25 A. He provided the information to us.

1 Q. And again, that Tiptoe alias, that was consistent with  
2 the other tips you had seen, heard?

3 A. Yes.

4 Q. And was the statement he gave you consistent with what  
5 you saw in the AM/PM video?

6 A. Yes.

7 Q. All right, let's go to August 1st and tell us about  
8 that. Go ahead.

9 A. I'm sorry. We went to Summerville, South Carolina, to  
10 try and locate Mr. Middleton.

11 Q. And did you find Mr. Middleton?

12 A. We did.

13 Q. When you arrived, what was his -- were there any  
14 vehicles there?

15 A. Yes, a Hummer and a Toyota Yaris.

16 Q. Okay, and was Mr. Hunt there when you got there?

17 A. No, he was not.

18 Q. He just showed up sometime later?

19 A. He did.

20 Q. And got a statement from him as well?

21 A. I didn't. I think Investigator Laurita got a  
22 statement from him.

23 Q. Got it, and you're aware that a cell phone was found  
24 in this -- in the search warrant of that residence?

25 A. I am.

1 Q. I'm going to show you -- which should tie things up  
2 here -- which is State's 170. This is the -- 149, the  
3 T-Mobile records, can you read that number for me?

4 A. Yes. IMEI. That's the, the item number. Then it  
5 says 355266-0A-647854-0.

6 Q. All right. Thank you, sir, and did you stay on scene  
7 for the entire execution of that search warrant?

8 A. I did not.

9 Q. What did you do?

10 A. Mr. Middleton was placed in my car handcuffed; he was  
11 taken back to Richland County. He was -- I was followed by  
12 Captain Lanier.

13 Q. Before he was placed in the car, what happened?

14 A. He was read his Miranda rights by Investigator  
15 Laurita.

16 Q. And you stood by while he was read those rights?

17 A. Yes, sir, I did.

18 Q. And what were those rights?

19 A. This is the actual card that we use when we're out on  
20 the scene. This is the actual card. It's says:

21 Miranda Warning. Before I ask you any questions,  
22 you must understand your rights. You have the  
23 right to remain silent. Anything you say can be  
24 used against you in court. You have the right to  
25 talk to a lawyer for your rights before we ask

1           you any questions and to have a lawyer with you  
2           during questing. If you cannot afford a lawyer,  
3           one will be appointed before you're questioned if  
4           you wish. If you decide to answer questions now  
5           without a lawyer present, you still have the  
6           right to stop answering at any time. You also  
7           have the right to stop answering at any time to  
8           talk to a lawyer. Do you understand these  
9           rights? Knowing your rights, will you speak with  
10          us, speak with us now?

11 Q. All right, and did he agree to speak with you?

12 A. He did.

13 Q. And when did -- where and when did that conversation  
14 take place?

15 A. We talked on the way back from Summerville to Richland  
16 County.

17 Q. So, just sort of small talk?

18 A. Small talk, yes.

19 Q. Can you tell me the -- what you asked him and how he  
20 responded?

21 A. We talked about his family, where he was from, kids,  
22 things of that nature. Then about midway through, I asked  
23 him had he had been Columbia -- had he been to Columbia the  
24 last two weeks. He told me he had not. Said the last time  
25 he was in Columbia, he was there at a pool party with a

1 female, but he couldn't tell me the female's name. I then  
2 asked him was he part of a bike club. He stated he was not  
3 a part of any bike club.

4 Q. All right. Did you talk to him about his name being  
5 brought up in a shooting?

6 A. Correct, and I also asked him was his name Tiptoe. He  
7 said no, and he didn't know anything about any shooting.

8 Q. All right. At any point during that time, did he say  
9 I don't want to talk to you?

10 A. He did not.

11 Q. Did he say I want a lawyer, I want to remain silent,  
12 any of those things?

13 A. He did not.

14 Q. All right, and tell us what you did the next day,  
15 starting with August the 2nd.

16 A. The next day, myself and Investigator Laurita went  
17 back or went -- excuse me -- to go talk to Mr. Middleton  
18 again. He was once again read his Miranda rights, which he  
19 did not waive or ask for an attorney.

20 During the conversation, he stated he wanted to talk  
21 to us but he feared for his safety. Excuse me. He feared,  
22 feared for his safety. He needed to talk to his brothers  
23 in the club before he could talk to us. It was during that  
24 time that he did tell us that his nickname was Tiptoe and  
25 that he was a part of the Thunderguards bike club.

1 Q. So, he was read those statement of Miranda rights  
2 again?

3 A. He was.

4 Q. And he didn't tell you -- did he tell you anything  
5 about not wanting to speak or wanting an attorney?

6 A. He did not.

7 Q. Except this time he told you that he was in the  
8 Thunderguards?

9 A. He was, right.

10 Q. And that his name was Tiptoe?

11 A. He did.

12 Q. That was the last time you spoke to him?

13 A. Correct.

14 Q. All right, and can you tell us the next time you spoke  
15 to Mr. Ronnie Scott?

16 A. I believe it was on the 3rd. We spoke with him in  
17 regards to Mr., Mr. Johnson, Marquez Johnson, codefendant  
18 in the case.

19 Q. Okay, and did you show him a lineup pertaining to Mr.  
20 Johnson?

21 A. Yes. During the first interview, Mr. Scott provided  
22 us with the club -- excuse me, a list of the club members,  
23 and he also had them by the -- their club name. So, we  
24 were able to identify the codefendant through Mr. Scott.

25 Q. All right. Can you tell us what you did after you

1 talked to Mr. Scott?

2 A. Once again, warrants were obtained for two counts of  
3 murder and attempted murder.

4 Q. For whom at that point?

5 A. For Mr. Johnson. Excuse me.

6 Q. All right. I'm going to move you along to August the  
7 8th, if you will. Can you tell us what happened that day?

8 A. Yes. We conducted a search warrant at the residence  
9 of Mr. Marquez Johnson.

10 Q. All right. I'm going to show you what's been marked  
11 as State's 159 through 168.

12 MR. SUTHERLAND: No objection.

13 THE COURT: Without objection,

14 BY MR. FYALL:

15 Q. Can you tell me if you recognize those and what they  
16 are?

17 A. Yes.

18 Q. All right. What are they?

19 A. Photographs of a firearm, FN firearm, along with hole  
20 and a plastic bag that was located in the woods, and a  
21 picture of a house.

22 Q. All right.

23 MR. FYALL: We offer 159 through 168, Your Honor, I  
24 believe without objection.

25 MR. SUTHERLAND: In without objection.

1 THE COURT: All right.

2 MR. SUTHERLAND: I thought it was already in.

3 THE COURT: All right. He's correct.

4 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS  
5 STATE'S EXHIBIT NUMBERS 159, 160, 161, 162, 163, 164, 165,  
6 166, 167, 168.)

7 BY MR. FYALL:

8 Q. You said you had a search warrant for Mr. Johnson's  
9 home?

10 A. Initially, yes, on the 8th, yes.

11 Q. What sort of alerted you that something might be  
12 there?

13 A. Well, initially we did the search warrant right after  
14 -- he was arrested after talking to Mr. -- Investigator  
15 Laurita, so we did it for forensic evidence to look for the  
16 firearm that was used in the, in the incident, as well as  
17 other evidence that may pertain to the case.

18 Q. All right, and so in that initial search warrant, did  
19 you find anything?

20 A. Yes, we did.

21 Q. What did you find?

22 A. We found 5.7 ammo, along with paperwork with a serial  
23 number for a 5.7 gun, Thunderguard vest, a outlaw Bible, a  
24 helmet that had One Percent on it, and some other items  
25 pertaining to the bike club.

1 Q. All right. So, at this time were you aware that a 5.7  
2 weapon was used?

3 A. Yes. Yes, we were. Yes, I was.

4 Q. All right, but at that point you couldn't -- the gun,  
5 you couldn't find the gun at the residence?

6 A. Correct.

7 Q. All right, and going forward to August 9th, you  
8 interviewed Mr. Scott again?

9 A. Yes.

10 Q. And what was that in reference to?

11 A. There was another person that was with Mr. Johnson on  
12 a motorcycle. He told us that it was Phillips Coates, or  
13 Red Con was his bike club name.

14 Q. Phillips Coates who testified ---

15 A. Phillip Coates correct.

16 Q. Now, was Mr. Scott happy about coming back to do that?

17 A. No. Once again, with the biker culture they're not --  
18 they kind of frown upon talking to the police. So, he felt  
19 uncomfortable coming back to the sheriff's department to  
20 talk to us for fear that someone may see him at the  
21 sheriff's department.

22 Q. All right. Did you get the chance to talk to Mr.  
23 Coates?

24 A. Yes, we talked to him.

25 Q. And where was he was when you talked to him?

- 1 A. He was in Augusta, Georgia, at Fort Gordon.
- 2 Q. Do you know why he was there?
- 3 A. I believe he had some combat issues from serving  
4 during some combat time.
- 5 Q. Did he give you a statement as well?
- 6 A. I believe he did.
- 7 Q. Now, going back to Mr. Johnson's house, tell me how  
8 you arrived at the gun that's in evidence as State's 169.
- 9 A. So, back in April of last year, there was a phone call  
10 that was listened to via our jail where Mr. Johnson was  
11 being housed, and during that conversation he was talking  
12 with his wife and ---
- 13 Q. All right, and don't go into ---
- 14 A. Excuse me. I'm sorry. He was talking to someone, and  
15 there was some number.
- 16 Q. Okay, just ---
- 17 A. Okay. I'm sorry.
- 18 Q. Yeah. So, you listened to that call?
- 19 A. Right.
- 20 Q. And based on that, where did you go?
- 21 A. We went to Mr. Johnson's house, behind his house.
- 22 Q. All right, and what were you looking for?
- 23 A. The weapon that was used in the, the homicide.
- 24 Q. And I'm going to show you State's 169. Is that the  
25 weapon you're referring to?

1 A. Yes.

2 Q. And what caliber firearm is this?

3 A. 5.7.

4 Q. And where was this found?

5 A. Behind Mr. Johnson's house, buried.

6 Q. And that was the same gun that was turned over to  
7 Amanda Metz?

8 A. Yes.

9 Q. I'm going to show the jury State's 166. Is that Mr.  
10 Johnson's house?

11 A. Yes, it is.

12 Q. And 165 and 159. This is the area where the gun was  
13 found?

14 A. Yes, it is.

15 Q. And 167, 168, you were able to find the spot where it  
16 was buried?

17 A. Yes, we were.

18 Q. And 163 and 164 -- I'm sorry, 163 and 161, that's the  
19 gun case when it was -- 163 is the gun case when you took  
20 it from out of the ground, and 161 is once it's opened?

21 A. Yes.

22 Q. Now, do you know whether or not Mr. Johnson was a  
23 civilian?

24 A. He was in the Army.

25 Q. And when y'all first made contact with him, did you

1 have to go through the Army?

2 A. We did.

3 Q. And just going back a little bit, when you first  
4 talked to Mr. Middleton and gave him -- at Mr. Hunt's  
5 house, you said there were two cars in the yard?

6 A. Correct. Yes.

7 Q. And what were those?

8 A. Black Hummer and a silver Toyota Yaris.

9 Q. All right. I'm going to show you 171 and 172.

10 MR. FYALL: I believe are already admitted.

11 THE COURT: All right.

12 MR. FYALL: Madame Court Reporter says it isn't, so at  
13 this time I'd like to offer 171 and 172 into evidence.

14 THE COURT: All right. Without objection?

15 MR. SUTHERLAND: No objection. No objection.

16 (VEHICLE REGISTRATIONS INDIVIDUALLY MARKED INTO  
17 EVIDENCE AS STATE'S EXHIBIT NUMBERS 171, 172.)

18 BY MR. FYALL:

19 Q. State's 172, what is that?

20 A. It's the DMV registration for a 2007 Toyota Yaris  
21 registered to Ricardo Laroy Middleton.

22 Q. And what is 171?

23 A. DMV for 2004 H2 Hummer registered to Cedric Enrico  
24 Barnes.

25 Q. All right. Are you familiar with Mr. Barnes?

1 A. I am not.

2 Q. Do you know what his club name is?

3 A. Through an investigation, Onyx, yes.

4 Q. And in your investigation of this case, you had  
5 opportunities to take some statements from some witnesses,  
6 and you also had the opportunity to compare those  
7 statements with the video?

8 A. Correct. Yes.

9 Q. And were the statements you were given involving  
10 Tiptoe or Mr. Middleton consistent with the video?

11 A. Yes, they were.

12 Q. There's been a lot to talk about a lot of black males  
13 in white shirts. Did anybody say that a black man in a  
14 white shirt shot somebody and then walked to the  
15 convenience store?

16 A. No, they did not.

17 Q. And one of the black males in white shirts had some  
18 shorts on. Was that in anybody's description?

19 A. No. No, sir.

20 Q. And you were able to watch the Mobay's video?

21 A. Yes, I was.

22 Q. You were able to watch AM/PM video?

23 A. I was.

24 Q. My House video?

25 A. Correct.

1 Q. And we've had several witnesses identify Mr. Middleton  
2 in the My House video, correct?

3 A. Yes.

4 Q. And also being at the scene of this shooting in the  
5 AM/PM video?

6 A. Yes.

7 Q. Can you see the same car in all three of those videos?

8 A. Yes, you do.

9 Q. It's My House, AM/PM, and also Mobay's?

10 A. Yes.

11 Q. All right, I'm going to pull up the AM/PM video. Just  
12 step by step if you -- a little slower than before.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER 9 IS PLAYED  
14 THROUGHOUT THE FOLLOWING EXAMINATION.)

15 Q. All right. So, I'm going to start here.

16 MR. FYALL: And I'm sorry, Your Honor. Just for the  
17 record this is State's 9.

18 THE COURT: All right.

19 BY MR. FYALL:

20 Q. All right, going to pause it. All right, how many  
21 bikes are pulling up to the intersection right here?

22 A. Four.

23 Q. All right. From your investigation, who are on those  
24 bikes?

25 A. Mr. Coates, Mr. Johnson, Mr. Montgomery, and the two

1 victims, Mr. and Ms., Sydni Collins and Aaron Collins.

2 Q. Okay. Can you sort of point them out?

3 A. Mr. Coates would be, Mr. Coates would be on the  
4 outside here. Next to him would be Mr. Middleton.

5 Q. You mean Mr. ---

6 A. I'm sorry. So, here would be Mr. Coates, Mr.  
7 Middleton -- I'm sorry. I mean, excuse me, Mr. Johnson.  
8 Excuse me, Mr. Johnson. Then Sydni and Aaron Collins, and  
9 then Mr. Montgomery.

10 Q. All right, and when you see this, as the video goes  
11 forward, I'll have you identify some more people. Whose  
12 car is that?

13 A. Natasha.

14 Q. Okay. So, Natasha Coad pulls up behind?

15 A. Ricky, Sydni, and Aaron.

16 Q. Okay, and if you look closely just past this SUV here,  
17 what are you going to see in that gap?

18 A. A little, small, compact car.

19 Q. All right, I'm going to play that. Right there?

20 A. Yes.

21 Q. All right, that car is in the left turning lane?

22 A. It is.

23 Q. All right, and whose truck is that right there?

24 A. Ronnie Scott.

25 Q. So, Ronnie Scott's is behind Johnson and Coates?

1 A. Yes, it is.

2 Q. Okay. So, not trying to box in Ricky and Aaron and  
3 Sydni?

4 A. No.

5 Q. All right. Now, we have here about 9 and 57 and some  
6 -- 9:57 and 28 seconds here, 28.409 seconds. Then the  
7 video skips, and tell me what you can see up here. Go  
8 ahead.

9 A. Like you see, somebody get off a bike here. There's  
10 some kind of commotion going on there.

11 Q. All right, and what does Phillip Coates do?

12 A. You see him take off.

13 Q. All right. That's Mr. Coates right there going up the  
14 road?

15 A. Yes.

16 Q. All right. I'm going to rewind just a little bit. I  
17 want you to look back at that car you pointed out swing  
18 into the left lane. What do you see right there?

19 A. Somebody getting inside of it.

20 Q. Okay. See that again?

21 A. Yes. Somebody getting inside of it.

22 Q. On, on the driver's side?

23 A. Yeah, on the driver's side.

24 Q. Okay, and you were told by some people -- Mr.  
25 Sutherland mentioned that they told you that someone got

1 out of the passenger side of the black SUV right there and  
2 did some shooting?

3 A. Yes.

4 Q. Is that evident on the video at all?

5 A. No, it's not.

6 Q. All right, and you can see, you know, two people still  
7 outside right there, and that's Mr. Scott's truck?

8 A. Yes.

9 Q. All right, have seat.

10 Now, you can look at this screen while I show the  
11 jury. Where does that car go that speeds up after that  
12 point?

13 A. Goes towards Farrow Road.

14 Q. All right, and does what?

15 A. A U-turn.

16 Q. And goes where?

17 A. Goes back past the scene with the lights off.

18 Q. Okay. So, that car is -- and you can see it on both  
19 videos -- I'm not going to replay it -- but the AM/PM and  
20 the Mobay's video?

21 A. Yes, you can.

22 Q. So, I want to talk to you about this, I guess one of  
23 the black guys Mr. Sutherland pointed out earlier. Is it  
24 possible for him to be in that car doing a U-turn and  
25 walking in this parking lot at the same time?

1 A. No. No, sir.

2 Q. All right, and that gentleman has on gold chain, hat,  
3 and in some shorts, right?

4 A. Yes, he does.

5 Q. What about this, another black guy walking around? Is  
6 it possible for him to be walking through a parking lot  
7 while also doing a U-turn in a car?

8 A. No, it's not.

9 Q. And he also has on shorts, right?

10 A. Correct.

11 Q. All right, let's talk about some other, I guess, black  
12 guys in white shirts. I'm going to show you the My House  
13 video here.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 7 IS PLAYED  
15 THROUGHOUT THE FOLLOWING EXAMINATION.)

16 Q. All right, I want you to look right around here where  
17 that sort of trailer is. You're going to see a car pull  
18 up. Did you see a gentleman getting out of that car?

19 A. Yes, I did.

20 Q. All right, that same gentleman is walking across the  
21 parking lot right here?

22 A. Yes.

23 Q. And I believe Ricky Montgomery said he was hanging out  
24 around here?

25 A. Yes.

- 1 Q. That gentleman is talking to him and other Outcast  
2 members?
- 3 A. Yes.
- 4 Q. Okay. All right, up back here, what can you see?
- 5 A. White truck with a cab on the back.
- 6 Q. And whose truck is that?
- 7 A. Ronnie Scott.
- 8 Q. All right, and see the gentleman coming back, correct?
- 9 A. Yes, sir.
- 10 Q. I think you're going to see him get into -- well,  
11 after he stomps around a little bit more. All right, you  
12 see him back get into that car there?
- 13 A. Yes.
- 14 Q. All right. So, again, Mr. Sutherland talked about a  
15 lot of black men in white shirts. How many of them get  
16 into that car?
- 17 A. Just one.
- 18 Q. Okay, and you saw one get out of that car?
- 19 A. Correct.
- 20 Q. Okay. Not eleven, twelve?
- 21 A. No, I did not.
- 22 Q. Not in that small car right there?
- 23 A. No.
- 24 Q. All right. We're going to see that car, I think, go  
25 this way. It's going to show up back around here, and

1 whose truck is that back there?

2 A. Ronnie Scott.

3 Q. Okay. There we are. If you follow the lights, you  
4 can see it starting to make a right turn right there. Is  
5 that Ronnie Scott with his lights on?

6 A. Yes.

7 Q. And that car did the U-turn, exits?

8 A. Yes.

9 Q. And does that look like the same car you see on the  
10 AM/PM video and on the Mobay's video?

11 A. Yes, it is.

12 Q. And it gets there around the same time as Ronnie  
13 Scott, correct?

14 A. Yes, it does.

15 Q. And these two cars leave around the same time as well,  
16 correct?

17 A. Yes.

18 Q. And again, there's still a lot of other black males in  
19 white T-shirts just ---

20 MR. SUTHERLAND: I'm sorry. Just too much leading,  
21 Judge.

22 MR. FYALL: Okay.

23 THE COURT: You are correct. Sustained.

24 BY MR. FYALL:

25 Q. Do you see the black males in white T-shirts hanging

1 out here?

2 A. I do.

3 Q. And did any of them get in that car?

4 A. Did not.

5 Q. They're still there?

6 A. Yes.

7 Q. And this, just for everybody's clarification, that  
8 says 8:50. Is that time accurate?

9 A. Yes, to the best of my knowledge, yes.

10 Q. Well.

11 A. Far as -- yes.

12 Q. We can sort that out later, but that says 8:50. This  
13 incident happened around 9:50, so about an hour behind?

14 MR. SUTHERLAND: Judge.

15 A. Yes.

16 MR. SUTHERLAND: He's been leading for about ten  
17 minutes.

18 THE COURT: You are correct. Sustained.

19 BY MR. SUTHERLAND:

20 Q. All right. So, Mr. -- Investigator Jordan, just to  
21 clear up here. You had individuals pick Mr. Middleton out  
22 of a lineup?

23 A. We did.

24 Q. And were you able to get Mr. Middleton's car?

25 A. We were.

1 Q. Were you able to compare that car to the car in all  
2 three of these videos?

3 A. Yes, we were.

4 MR. SUTHERLAND: That's continuous leading, Judge.

5 Q. Tell us what you concluded about that car.

6 THE COURT: That's a better question.

7 A. That the car in the videos was the same car that we  
8 found in Summerville that belonged to Mr. Middleton.

9 MR. FYALL: Beg the court's indulgence.

10 No further questions.

11 CROSS-EXAMINATION BY MR. SUTHERLAND:

12 Q. Okay, Investigator Jordan, you were just testifying  
13 that that's the same car in these three videos. Were you,  
14 were you at the AM/PM because we're going to cue that  
15 video.

16 A. No, I was not.

17 Q. You don't know what kind car that is, do you?

18 A. I said that appeared to be the same car based on the  
19 size.

20 Q. Well, I think, in answering to the leading questions  
21 which I eventually had to object to, you said that it was  
22 correct that it's the same car in all three videos. You  
23 don't, you don't know that, do you?

24 A. Based on the size, and the color, also from Mr.  
25 Scott ---

1 Q. Well, certainly not ---

2 A. --- it appears to be the same car.

3 Q. Well, you don't know that. People are telling you  
4 that, and really did anybody -- let me ask you. Did any of  
5 the witnesses say that it was a Toyota, Toyota Yaris?

6 A. They referred to it as the egg car.

7 Q. Did they refer to it as an egg car on the stand?

8 A. That was what Mr. Scott told us during his interview,  
9 and that's he what he referred ---

10 Q. Well, see ---

11 A. --- to it as. Until we ---

12 Q. Okay, so, but that's not ---

13 A. Can I finish?

14 Q. See, that's not testimony, so that's not evidence.  
15 So, that's not what they've heard, so it's not in the  
16 record okay? I hate to have to get up here and be a little  
17 mm-hmm, but you all are just sitting here fooling around,  
18 screwing around, and this is a murder trial. It's not a  
19 freaking circus.

20 MR. FYALL: Object, Your Honor.

21 THE COURT: Sustained.

22 MR. SUTHERLAND: Yes, sir.

23 THE COURT: You need to ask the question and not argue  
24 with the witness and to the jury. You'll get your time at  
25 the end of this trial, sir.

1 MR. SUTHERLAND: Yes, sir.

2 THE COURT: Calm down.

3 MR. SUTHERLAND: Yes, yes, sir.

4 THE COURT: I understand. That's okay.

5 MR. SUTHERLAND: I just don't want any -- I'm sorry,  
6 Judge.

7 BY MR. SUTHERLAND:

8 Q. The description, those two guys in the AM/PM video  
9 actually do fit the description as far as, you know, black  
10 dude in a T-shirt with a low cut. You, you testified the  
11 shorts don't match but, you know, you're watching this  
12 video from My House and you have information that it's dark  
13 sweat pants or dark jeans and, you know, there are light  
14 jeans in there. You do agree that there's twenty,  
15 twenty-five people in that video that generally fit the  
16 description, right?

17 A. Correct.

18 Q. Okay. See, there's no need to play it that way.

19 Okay, what I was going to ask, now we're going to  
20 that. The initial tips -- I asked this of Investigator  
21 Laurita also. Was there any witness in this case that  
22 testified that was the author of any of these tips in the  
23 case?

24 A. No.

25 Q. Okay, and let's see. Oh, there was one thing. It was

1 you who had stated in your report that you had confronted  
2 Ronnie Scott about ---

3 A. Correct.

4 Q. --- denying that he saw anything?

5 A. Well, once again, being that he's a outlaw biker, it's  
6 in their culture that they do not talk to the police. Once  
7 again, he was a vice president, held a very high rank  
8 within the club. So, we know that he probably feared for  
9 his safety and feared for his family's safety. So, he may  
10 be somewhat apprehensive about being forthcoming or  
11 withholding information. So, we asked him if that was the  
12 case, at which time he didn't -- it wasn't worth his  
13 family, losing his family, or his job, at which time he  
14 told us what he told us.

15 Q. Okay. Your report says, going back a bit, your report  
16 says that you confronted him about his story. It doesn't  
17 say that you confronted him about One Percent bikers and  
18 how it's very dangerous, and they don't like to cooperate  
19 with police, and they don't want to testify, and they don't  
20 want to do this, that, and the other. That's not what's in  
21 your report.

22 What's in your report is you confronted him about his  
23 story, not about whatever that was about One Percent  
24 bikers. You confronted him about his story, or is your  
25 report just wrong?

*OBJECTION*

1 A. Can I look at my report to see if that's the case?

2 Q. Sure.

3 A. Once again about his story, I did say that and that  
4 was because, once again, he's involved in a One Percent  
5 biker culture. He fears for his safety, fears for his  
6 life, fears for his family's life. So, he may not be  
7 telling everything or withholding things. So, we wanted to  
8 make sure that we had everything out before he left. That  
9 was the reason why we confronted him: to make sure he had  
10 everything out, that he understood that we needed  
11 everything, not just some of the story.

12 Q. So, you confronted him about his story because -- not  
13 that his story wasn't true, but because he was the vice  
14 president? That's a boss, isn't it?

15 A. No, sir. We wanted to make sure that he had  
16 everything out, that he didn't leave, leave the sheriff's  
17 department without telling us everything. So, it wasn't to  
18 say that he was lying or telling the truth. Just to make  
19 sure that he got everything out before he left.

20 Q. Okay. It's just when the movie strays too far from  
21 the book, it just, it just doesn't make sense.

22 Okay. Oh, oh, the conversation on the way back.  
23 Since you -- I've heard you testify that you mirandized  
24 him, but what about cameras? Don't y'all have interior  
25 cameras? Is there any audio or video of this conversation

1 between you and Mr. Middleton?

2 A. I did not mirandize Mr. Middleton. Investigator  
3 Laurita did. I have an unmarked car that is not equipped  
4 with cameras or any kind of audio devices. During that  
5 time, we were not allowed to record anyone in our vehicles.  
6 We still aren't allowed to do so, but we do have a  
7 audio/video recording room that we take witnesses and  
8 suspects into to audio/video record now.

9 Q. Okay. So, the answer is no?

10 A. Correct.

11 Q. Okay. Let me see. Okay, then according to you, the  
12 conversation was that he needed to check with his club  
13 because he was afraid to talk to you?

14 A. Correct. Once again, in outlaw culture, it's frowned  
15 upon to talk to the police because of the culture that  
16 they're in. So, he feared for his life and his safety. He  
17 wanted to make sure everything was okay first.

18 Q. So, I'm guessing he had to check with Ronnie Scott,  
19 who was his boss?

20 A. I can't answer that. He said club members.

21 Q. Okay. Okay, we've really been over and over and over  
22 this stuff. Were there any guns found on him, linked to  
23 him throughout your investigation?

24 A. No.

25 Q. Were there any fingerprints on any of all of these

1 exhibits that were linked to him from the, the crime scene  
2 in this case?

3 A. No.

4 Q. Of all of the swabs, I think they said the alcohol  
5 swabs, all of the evidence that they swabbed for DNA, is  
6 there any DNA anywhere in all of this that is connected to  
7 Mr. Middleton?

8 A. No.

9 Q. Okay. No DNA, no prints. That's, that's enough for  
10 now. I want to make sure I don't forget anything.

11 THE COURT: Your client needs to speak to you.

12 MR. SUTHERLAND: Oh. Okay.

13 (COUNSELOR CONFERS WITH DEFENDANT.)

14 BY MR. SUTHERLAND:

15 Q. Okay. So, I think we went through no DNA, no  
16 fingerprints. Aha, gunshot residue. Is there any gunshot  
17 residue that was tested -- of all of the gunshot residue  
18 kits that were collected and not tested -- I know the one  
19 from his car was. Was there any gunshot residue from all  
20 of this stuff that is connected to him?

21 A. No.

22 Q. Okay.

23 MR. SUTHERLAND: I think that's it. Thank you very  
24 much.

25 THE COURT: Redirect?

1 MR. FYALL: Just very briefly, Your Honor.

2 REDIRECT EXAMINATION BY MR. FYALL:

3 Q. Mr. Tivis Sutherland talked about GSR and fingerprints  
4 and all that stuff. Were there people who saw him there?

5 A. Yes.

6 Q. And did those people ID him?

7 A. Yes.

8 Q. Via photo lineups?

9 A. Yes.

10 Q. And here in court?

11 A. Yes.

12 MR. FYALL: No further questions.

13 THE COURT: Anything further, Mr. Sutherland?

14 MR. SUTHERLAND: No, sir.

15 THE COURT: You may step down, sir.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Members of the jury, that concludes the  
18 testimony you'll hear today. I've been informed we have  
19 maybe one or two witness tomorrow morning, and that should  
20 wrap everything up.

21 Once again I need to remind you not to discuss this  
22 case, and I trust and hope you will have a pleasant and  
23 restful evening. We'll see you tomorrow morning at 9:30.

24 And you're going to be able to pick up your 6:30 kid?  
25 Who was that? You're in good shape?

1 JUROR: Already taken care of.

2 THE COURT: Okay. Good luck. I'll see y'all in the  
3 morning.

4 (THE JURY EXITS AT 5:17 P.M.)

5 THE COURT: Anything further this afternoon?

6 MR. SUTHERLAND: No, sir.

7 THE COURT: All right. Wait a little while. Wait  
8 until everybody's gone before they take him.

9 MR. SUTHERLAND: Oh. Yeah, yeah.

10 THE COURT: See y'all in the morning.

11 (WHEREUPON, THE CASE IS AT EASE.)

12 THURSDAY, AUGUST 22, 2019

13 (COURT RESUMES AT 9:52 A.M.)

14 THE COURT: Thank you very much. Please take your  
15 seats.

16 MR. SUTHERLAND: May it please the court? Judge, that  
17 issue has been resolved between the parties.

18 THE COURT: Well, I was glancing at that, and in that  
19 case it was murder, voluntary manslaughter, several  
20 different less-included offenses, but y'all resolved it?

21 MR. SUTHERLAND: It has been resolved, yes.

22 THE COURT: Okay. That's good. I'll bring the jury  
23 in. We'll rest. It's probably going to take thirty  
24 minutes. It might take forty-five minutes to get through a  
25 jury charge conference with y'all. We'll see. Then we'll

1 bring them back out to argue and charge. Is that okay?  
2 Everything's good?

3 MR. SUTHERLAND: Yes, sir.

4 THE COURT: Bring the jury in.

5 (THE JURY ENTERS AT 9:53 A.M.)

6 THE COURT: Welcome back, Madame Forelady, members of  
7 the jury. I can look at y'all, Y'all all got a good  
8 night's sleep, didn't you. You look well rested.

9 Even you, right?

10 Solicitor.

11 MR. FYALL: At this time, the state rests, Your Honor.

12 THE COURT: All right. Y'all looked rested, and the  
13 state just rested. That means you have received all the  
14 evidence you will hear in this case. What I've got to do  
15 now, I've got to send you back to the jury room. I've got  
16 to hear some arguments on the law, the different attorneys,  
17 and then we have what we call a charge conference. So, it  
18 might be forty-five minutes or so before we actually come  
19 get you to hear the final arguments and my charge to you on  
20 the law.

21 So, brought you in. They decided to rest this  
22 morning. So, some issue of law I've got to take up, and  
23 it's going to take a while, maybe thirty, forty-five  
24 minutes, somewhere in that range. So, I'm going to ask  
25 that you go back to the jury room. You can't talk about

1 this case at all. If you need some extra coffee or  
2 something, I'm sure the bailiffs will be more than happy to  
3 accommodate that request. Thank you all so very much.

4 (THE JURY EXITS AT 9:54 A.M.)

5 THE COURT: So, I'll invite -- I always do it in  
6 chambers. We'll kick it around. I'll show you the charge  
7 I have, anything you want me to consider. Y'all ready?

8 MR. SUTHERLAND: Yes, sir.

9 MR. FYALL: I think you have to advise Mr. Middleton  
10 of his rights.

11 THE COURT: Oh, yeah. I'm sorry. You've got to make  
12 your motions. Yes, sir.

13 MR. SUTHERLAND: Yes, sir. Should I go ahead and make  
14 a directed verdict motion or?

15 THE COURT: Okay.

16 MR. SUTHERLAND: Yes, sir. Specifically with respect  
17 to the attempted murder, it is a specific intent crime, so  
18 a higher degree of, of proof is required.

19 And, if I may, the testimony of, the testimony of Mr.  
20 Montgomery, sorry, was that he was sitting on his bike. He  
21 was listening to music.

22 THE COURT: What now? I'm sorry.

23 MR. SUTHERLAND: Mr. Montgomery.

24 THE COURT: Yes. I remember him very well.

25 MR. SUTHERLAND: The victim in the attempted murder.

1 THE COURT: Somebody came and slugged him. He was on  
2 the ground. He thought he was knocked out for a period of  
3 time.

4 MR. SUTHERLAND: For five to ten minutes. For them to  
5 prove attempted murder, they need specific intent to  
6 murder. Hitting someone in the face with an object that he  
7 said was hard ---

8 THE COURT: I thought he was also additionally shot at  
9 when he was on the ground.

10 MR. SUTHERLAND: He said that -- he was asked by the  
11 solicitor were you shot at, and he said I think so. I  
12 heard three guns. I heard, I heard three guns shooting.  
13 So, in that he would -- they would have to prove that Mr.  
14 Middleton was shooting at him in order to prove an  
15 attempted murder, they don't, they don't have the evidence  
16 that's required to go to the jury on that specific intent  
17 because all of the allegations are is that he hit him in  
18 the face with an object. He heard three guns shooting.  
19 That he, he wasn't sure if he was being shot at, and it's,  
20 it's ---

21 THE COURT: Well, doesn't that create a factual issue  
22 as to whether or not they attempted to kill him? I mean,  
23 he shot at him.

24 MR. SUTHERLAND: Well, that's not what the -- but  
25 his ---

1 THE COURT: Well, I think the evidence can be  
2 inferred. Go ahead. I'm sorry.

3 MR. SUTHERLAND: Well, the testimony was I think so.  
4 It wasn't that I was being shot at. So, if he does not  
5 know that he's been shot at, how can the jury be expected  
6 to know that he's being shot at?

7 THE COURT: Because shots were fired, two people are  
8 dead, and he's one of the three people that were being shot  
9 at, I think. But anyway ---

10 MR. SUTHERLAND: Well?

11 THE COURT: --- let me hear the arguments ---

12 MR. SUTHERLAND: Yes, sir. Yes, sir.

13 THE COURT: --- from the solicitor. Your point is  
14 well made.

15 Yes, sir.

16 MR. FYALL: It's not just Mr. Montgomery's testimony.  
17 We know from the facts from Amanda Metz specifically that,  
18 one, there was a group of shell casings located on the  
19 right side of the crime scene that were tied to his  
20 codefendant, Mr. Johnson. One shell casing tied to Ms.  
21 Sydni Collins, the victim. The rest of the shell casings  
22 -- Mr. Sutherland may disagree -- state's position is  
23 belong to Mr. Middleton. Two of those shots were fired at  
24 Ms. Collins. The rest of those shots, the state contends,  
25 were fired at Mr. Montgomery. The only reason he survived

1 is because his bike was on top of him. And one of those  
2 rounds fired from that third gun was found ---

3 THE COURT: Let me help you both out. I think it's an  
4 issue of fact to be resolved. You can argue that point,  
5 but I don't think it's a matter of law I can give you a  
6 directed verdict on.

7 MR. SUTHERLAND: Yes, sir.

8 THE COURT: And with all due respect.

9 MR. SUTHERLAND: Yes, sir. Thank you.

10 THE COURT: But a fine argument, but you can argue  
11 that to the jury that's why he shouldn't be charged with or  
12 convicted of attempted murder or anything else.

13 What's the next motion? Is that it?

14 MR. SUTHERLAND: With -- I must make an argument.

15 THE COURT: Yes.

16 MR. SUTHERLAND: With respect to the murder of Sydney  
17 -- of Aaron Collins, they -- their witness states, Natasha  
18 Coad, that he got off the bike and that he shot Aaron  
19 rather than their theory that he got out of the car and  
20 shot Sydney. So, in that light, I do not believe that they  
21 have established accomplice liability, which is what they  
22 have argued in the beginning for Sydney, for Mr. Middleton,  
23 and that's, that's the position of the defense, sir.

24 THE COURT: Beg your pardon?

25 MR. SUTHERLAND: That's the position of the defense,

1 that they haven't established.

2 THE COURT: Solicitor, what's your response?

3 MR. FYALL: Well, Your Honor, our response is Ms.  
4 Natasha Coad simply for some reason has the events flipped  
5 in her mind. All the others have Mr. Middleton getting out  
6 of her car -- got -- getting out of his car, punching or  
7 hitting Mr. Montgomery with something hard, and then  
8 shooting Ms. Collins. This is right after the codefendant,  
9 Mr. Johnson, pulls up next to them on the right side and  
10 shoots Aaron Collins. I think there is sufficient evidence  
11 to show that this was a coordinated attack by both parties,  
12 specifically given the short amount of time in which this  
13 incident occurred.

14 MR. SUTHERLAND: And just briefly, no one says that he  
15 shot Sydni, sir.

16 THE COURT: What now?

17 MR. SUTHERLAND: No one said, no one testified that he  
18 shot Sydni.

19 THE COURT: Well, the jury can draw certain inferences  
20 from the facts ---

21 MR. SUTHERLAND: Yes, sir.

22 THE COURT: --- that they've heard, and I think as a  
23 matter of law I cannot grant that request. It's denied.  
24 Anything further?

25 MR. SUTHERLAND: No, sir.

1 THE COURT: All right. Well, let's go down. Let's  
2 get these charges straight, and it might take thirty  
3 minutes, might be a little longer.

4 MR. FYALL: One last thing, Your Honor.

5 THE COURT: Oh. I'm sorry.

6 MR. FYALL: You need to advise Mr. Middleton of his  
7 rights.

8 THE COURT: Oh, yes. That's right. Hold on. Thank  
9 you. I'm in such a rush.

10 Mr. Middleton, raise your right hand, sir.

11 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

12 THE COURT: All right. Now, Mr. Middleton, at  
13 this time I'm going to explain to you the -- explain to you  
14 certain of your rights. If you do not understand anything  
15 I say, please let me know. If you want me to explain  
16 anything in more detail, please let me know. Do you  
17 understand so far?

18 DEFENDANT: Yes.

19 THE COURT: Now, we have now reached the stage of the  
20 trial where you may present your defense. You have the  
21 right to claim the protections given to you by the Fifth  
22 Amendment to the Constitution of the United States. This  
23 amendment states in part: No person shall be compelled in  
24 any criminal case to be a witness against himself. This  
25 means that you cannot be required to testify in this case.

1 You have the right to testify on your own behalf; however,  
2 no one can make you testify. This is a personal right and  
3 no one else can waive this right except you.

4 If you decide to testify, you will be subject to the  
5 same rules that the -- same rules that govern other  
6 witnesses, and you may be examined and cross-examined on  
7 any relevant issue in this case.

8 In addition, if you have any convictions involving  
9 dishonesty or false statements or for crimes punishable by  
10 imprisonment for more than one year, and this court  
11 determines that the probative value of admitting the  
12 evidence outweighs the prejudicial effect to you, the  
13 solicitor will be able to introduce your record to attack  
14 your credibility. If you decide to testify, this decision  
15 on your part must be freely, voluntarily, knowingly --  
16 freely, voluntarily, and intelligently made with knowledge  
17 of the protections given to you by the Fifth Amendment and  
18 the consequences of your decision to testify.

19 If you decide not to testify, I will instruct the  
20 jurors that they cannot give the fact that you did not  
21 testify any consideration whatsoever, and that there is to  
22 be absolutely no prejudice to you because you did not  
23 testify. It is left entirely up to you whether or not to  
24 testify. You may talk with your attorney, your family  
25 members, friends, or anyone else, but the final decision

1 would be left entirely up to you. Do you understand what  
2 I've explained to you so far?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what I  
5 have explained to you?

6 DEFENDANT: No.

7 THE COURT: Have you discussed with your lawyer  
8 whether you should or should not testify?

9 DEFENDANT: Yes.

10 THE COURT: Do you wish to talk to your lawyer any  
11 more at this time?

12 DEFENDANT: Yes, sir.

13 THE COURT: You do?

14 DEFENDANT: Yes.

15 THE COURT: Okay. I'll let you do so. I'll come back  
16 and I'll go through it again if I need to, okay?

17 DEFENDANT: Yes, sir.

18 THE COURT: Y'all want to go to a conference room, or  
19 can you talk right here?

20 MR. SUTHERLAND: Yeah, we're, we're, we're ---

21 THE COURT: Okay. We'll just be at ease.

22 (OFF THE RECORD.)

23 THE COURT: Now, Mr. Middleton, you had an additional  
24 opportunity and time to talk to your lawyer about whether  
25 or not you should testify. Is that correct?

1 DEFENDANT: Yes, sir.

2 THE COURT: Have you had enough time?

3 DEFENDANT: Yes, sir.

4 THE COURT: And what is your decision, sir?

5 DEFENDANT: No, sir.

6 THE COURT: All right. So, you do not wish to  
7 testify?

8 DEFENDANT: No, sir.

9 THE COURT: All right. Thank you very much.

10 DEFENDANT: Thank you.

11 THE COURT: Anything further on this issue?

12 MR. SUTHERLAND: No, sir.

13 THE COURT: That covers everything?

14 MR. FYALL: Yes, sir.

15 THE COURT: All right, let's go back in chambers.  
16 I've got an order. I've got two or three. We'll go over  
17 them, and the verdict forms, and we'll be at ease for a  
18 while.

19 (OFF THE RECORD.)

20 THE COURT: All right, Mr. Sutherland, you only, you  
21 marked one thing for ID and you never introduced anything,  
22 did you?

23 MR. SUTHERLAND: I did not introduce anything, Judge.

24 THE COURT: So, State, y'all want to open and close?  
25 How do y'all want to do it?

1 MR. SHELLENBERG: I think open in full.

2 THE COURT: Y'all going to dissect it?

3 MR. SHELLENBERG: I think we've got to open in full.

4 THE COURT: Yeah, open in full. Who's going to?

5 MR. FYALL: Mr. Shellenberg, and then Mr. Tivis gets  
6 the last argument, right?

7 THE COURT: So, you're going to do the argument?

8 MR. FYALL: Yeah.

9 THE COURT: No one else?

10 MR. FYALL: Correct, open.

11 THE COURT: Open in full, do your argument, and then  
12 Mr. Sutherland, right?

13 MR. SUTHERLAND: Yes.

14 MR. FYALL: Correct, Your Honor.

15 THE COURT: All right. Is everybody ready?  
16 Bring the jury in.

17 MR. SHELLENBERG: Yes, sir.

18 MR. SUTHERLAND: Yes, sir.

19 (THE JURY ENTERS AT 11:00 A.M.)

20 THE COURT: Welcome back, Madame Forelady, members of  
21 the jury. I want to thank you all on behalf of everybody  
22 involved for your patience and attention during the course  
23 of this trial.

24 Now, we're at the point where you hear final  
25 arguments. We'll first hear from the state. That's going

1 to be Mr. Shellenberg.

2 MR. SHELLENBERG: Yes, Your Honor.

3 THE COURT: And then we'll hear Mr. Tivis Sutherland  
4 on behalf of the defendant. I invite your keen and close  
5 attention to the final arguments of the parties, and  
6 afterwards I will tell you the law that applies to this  
7 case.

8 Mr. Shellenberg.

9 MR. SHELLENBERG: Thank you, Your Honor. May it  
10 please the court?

11 THE COURT: Yes, sir.

12 MR. SHELLENBERG: On Claudia and Parklane, the  
13 defendant got into the turn lane in his Toyota Yaris, and  
14 he got out, and he walked around in front of his car, and  
15 he drew a weapon, and he shot and he killed Sydni Collins.  
16 And he pistol whipped Ricky Montgomery, and then he tried  
17 to kill Ricky Montgomery, too. And while that was going  
18 on, his codefendant had gotten their attention and was  
19 shooting and killing Aaron Collins. Because of that, the  
20 defendant is charged with murder and attempted murder, and  
21 now I'm going to talk to you briefly about the law before  
22 we get into the facts.

23 And as in all criminal cases, the state has the burden  
24 of proof. We must prove our case beyond a reasonable  
25 doubt. And what that means -- not quite as technologically

1 savvy to use the big computer -- proof beyond a reasonable  
2 doubt is proof that leaves you firmly convinced of the  
3 defendant's guilt. There are very few things in this world  
4 that we know with absolute certainty: that's death and  
5 taxes, two things we know with certainty. And in a  
6 criminal case, the law does not require proof that  
7 overcomes every possible doubt. There can be doubt. If,  
8 based on your consideration of the evidence, you are firmly  
9 convinced the defendant is guilty of the crime charged, you  
10 must find him guilty. If, on the other hand, you think  
11 there's a real possibility that he's not guilty, you must  
12 give him the benefit of the doubt and find him not guilty.

13 Now, the defendant is charged with murder. In South  
14 Carolina, murder is defined as the unlawful killing of any  
15 human being with malice aforethought. And we know the  
16 defendant committed murder because he got out of that car  
17 with malice. He walked around the front. You heard from  
18 John McNeely, who told you he said what are you going to do  
19 now, bitch. He pistol whipped Ricky Montgomery, and then  
20 he shoots Sydni Collins. He shoots her once in the chest,  
21 as you heard from Dr. Durso, and then gets closer and  
22 within 2 feet, 24 inches, shoots her again in the face.  
23 And while that is going on, the man who was on the  
24 motorcycle, distracting everybody to give the defendant  
25 time to get his car to that intersection, is shooting and

1 killing Aaron Collins. The unlawful killing of any person  
2 with malice aforethought. Killed two people.

3 He's also charged with attempted murder. In South  
4 Carolina, attempted murder, similarly to murder, it's  
5 unlawful with the intent to kill, to attempt to kill any  
6 human being with malice aforethought.

7 The specific intent to kill. When he got out of his  
8 car and he walked around the front and he pistol whipped  
9 Ricky Montgomery because he had to have the gun out because  
10 Sydni Collins tried to draw, and she was shot before she  
11 could get a shot off. He had the gun out already. And  
12 then while Ricky is on the ground, he tried to shoot him,  
13 and how do we know? Because the ballistics, which I'll get  
14 into a little bit later, showed that the same bullets that  
15 were found in Sydni Collins were found underneath the  
16 motorcycle of Ricky Montgomery. The shots, other than the  
17 two that hit Sydni Collins, were intended for Ricky  
18 Montgomery. The only thing that saved him, his life, was  
19 being pinned underneath the motorcycle.

20 Now, the defendant is charged with the murder of Aaron  
21 Collins as well because in South Carolina, we have what's  
22 known as the hand of one is the hand of all. And what that  
23 means is if a crime is committed by two or more people who  
24 are acting together and committing a crime, the act of one  
25 of them is the act of all of them.

1           So, when Aaron and Sydni and Ricky are sitting at that  
2 first light and Marquez Johnson is over there trying to get  
3 their attention and buying time for the defendant to get  
4 his Yaris and come meet them, and then they go to the  
5 second light and he's trying to get their attention again,  
6 and Ricky is looking over and Aaron is looking over,  
7 Sydni's looking over. And the defendant is able to pull  
8 into the turn lane and get the drop on Ricky and hit him  
9 with a gun and then shoot and kill Sydni while his  
10 codefendant shot and killed Aaron Collins. They are both  
11 equally guilty as if they were the ones who took the fatal  
12 shots on each person. The hand of one is the hand of all.

13           Now, I read you the definitions, murder and attempted  
14 murder: the unlawful killing of anybody with malice  
15 aforethought. And then the question is what is malice.  
16 Well, malice need not exist for any appreciable period of  
17 time before the commission of the act of killing occurs.  
18 It also may be conceived at the very moment the fatal blow  
19 was given, and is sufficient law -- is sufficient in the  
20 law if the combination of the evil and the act result.

21           Additionally, you can infer malice based on the fact  
22 the defendant used a deadly weapon, used a gun when he shot  
23 and he killed Sydni Collins and he tried to kill Ricky  
24 Montgomery.

25           MR. SUTHERLAND: Objection. That's a misstatement of

1 law. Objection. Misstatement of the law.

2 THE COURT: All right.

3 MR. SHELLENBERG: Thank you, Your Honor.

4 THE COURT: Noted.

5 MR. SHELLENBERG: Malice is the hatred, ill will,  
6 hostility towards another person. It is the intentional  
7 doing of a wrongful act within a just cause. When the  
8 defendant got out of his car, intentionally walks around  
9 the front, drawing a weapon so that he can shoot and kill  
10 one person, try and shoot and kill a second person, ladies  
11 and gentlemen, that is malice, a heart fatally bent on  
12 mischief.

13 Now, how do we prove murder and attempted murder? Two  
14 types of evidence: direct evidence and circumstantial  
15 evidence. Direct evidence is the testimony of a person who  
16 asserts or claims to have actual knowledge of a fact, such  
17 as an eyewitness.

18 In this case, we have a lot of direct evidence. You  
19 saw a lot of people who were there that took this stand and  
20 told you that that man sitting at that table is the one who  
21 shot and killed Sydni Collins. They told you. Ricky  
22 Montgomery told you that this man is the man he saw right  
23 before he got hit with something hard. Natasha Coad told  
24 you that that man is the man that she saw shoot her friend.  
25 Ronnie Scott, who was in the same motorcycle gang as the

1 defendant -- and we'll talk about motorcycle gangs in a  
2 minute -- came in and pointed the defendant out as the one  
3 who shot at Sydni Collins.

4       Additionally, there's circumstantial evidence.  
5 Circumstantial evidence, proof of a chain of facts and  
6 circumstances indicating the existence of a fact. The law  
7 makes absolutely no distinction between the weight or value  
8 to be given to either direct and circumstantial evidence,  
9 nor is a greater degree of certainty required of  
10 circumstantial evidence than of direct evidence. You  
11 should weigh them both equally, and after weighing the  
12 evidence, if you're not convinced of the defendant's guilt,  
13 you find him not guilty. On the other hand, if you are  
14 convinced of the defendant's guilt, find him guilty.

15       Additional evidence, we had Linda Houck come in, and  
16 she talked to you about the triangulation of the phones,  
17 how he's -- able to put the defendant's phone in the area  
18 of My House right before the time of the shooting and at  
19 the incident location at the time of the shooting. The  
20 defendant, who told police for the two weeks he had not  
21 been in Columbia, and the phone put him there and the  
22 people put him there.

23       Additionally, evidence of flight is admissible to show  
24 guilt, knowledge, intent in that the defendant sought to  
25 avoid apprehension. In this case, the defendant fled to

1 Summerville, South Carolina.

2 MR. SHELLENBERG: Judge, I'm going to object. There's  
3 no jury charge on flight.

4 THE COURT: Specifically what's your objection?

5 MR. SUTHERLAND: There's no jury charge on flight,  
6 sir.

7 THE COURT: Will y'all approach for a second?

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 MR. SHELLENBERG: Thank you, Your Honor.

10 THE COURT: You may resume, sir.

11 MR. SHELLENBERG: Again, evidence of flight is  
12 admissible to show guilt, knowledge, intent in that the  
13 defendant sought to avoid apprehension. In this case, the  
14 defendant fled to Summerville, where he went and stayed  
15 with one of his Thunderguard brothers. Got out of his car.  
16 He left it in the yard. He removed himself. He removed  
17 anything that could tie him to what happened in Columbia.  
18 He took his wallet with his identification and all of his  
19 debit and credit cards, and he left it in the yard while he  
20 was driving another Thunderguard member's black Hummer,  
21 without an identification, without a debit card because he  
22 was attempting to conceal himself and to avoid being  
23 apprehended by police. But they found him.

24 And, finally, credibility of witnesses. In this case,  
25 credibility of witnesses is a big deal. We had members of

1 the outlaw motorcycle clubs come in and testify here, and  
2 they told you what outlaw motorcycle club rules are. You  
3 don't talk to the police; you don't cooperate with police.

4 We had people who had to leave the club to come  
5 forward and testify. I want you to judge the way they came  
6 in. Is their testimony consistent? And I really want you  
7 to look and see. Is their testimony corroborated? Is it  
8 corroborated with each other, and is it corroborated with  
9 the videos that you saw all this week?

10 The first witness that you heard from was John  
11 McNeely. Little John McNeely came in here, and he sat  
12 down, and I would -- I want you to judge John McNeely as  
13 being consistent and being corroborated.

14 He took the stand, and he told you he was at My Place  
15 where he worked, and he was outside and he was picking up  
16 trash. And John McNeely is not a member of any motorcycle  
17 gang. He doesn't have any affiliation to anything in this  
18 case, and he came in here and he told you that he saw a man  
19 in jeans and a white T-shirt and a do-rag get out of the  
20 car, walk around the front of it, and say what you going to  
21 do now, bitch, and then he heard shooting. Ran back  
22 towards the bar. He told them to call 911, and then he saw  
23 that same man get in the car, drive up to Mobay's, cut his  
24 lights off, and turn around, drive back. And instead of  
25 turning into the AM/PM, goes straight. And we showed him

1 the videos, and the first time that he saw those videos was  
2 -- the first time we ever showed them to him was right here  
3 in this courtroom two days ago, and he picked everything  
4 out like that. Judge his credibility. What he says is  
5 corroborated with the witnesses and is corroborated by what  
6 you see in the video.

7 Then you heard from Ashley Hill. She came in here and  
8 she said she was at My Place -- My House on the 20th, and  
9 that she saw the interaction between the defendant and  
10 Jayrell Johnson. And, ladies and gentlemen, we're dealing  
11 with outlaw motorcycle gangs, and we can't make people like  
12 Jayrell Johnson come in and testify if they don't want to.

13 She said she saw him have an interaction with the  
14 defendant and then leave. And then she told you she was at  
15 My House on the night of the 27th and saw the defendant  
16 there, which corroborates what Ricky Montgomery said,  
17 corroborates what you're going to see in the video. And  
18 she said after AC and Coco, after Sydni and Aaron go to  
19 leave, the defendant walks quickly across the parking lot.  
20 And in that video, after we've watched it however many  
21 times, after you see the defendant talking to Ricky  
22 Montgomery, you see him walk quickly across the parking  
23 lot. It's consistent and it's corroborated by video.

24 And then she says that as soon as she saw the news, as  
25 soon as she saw the news, she knew this was the guy that

1 she saw at My House. Now, how does she know? She had a  
2 bad feeling about him. When you have a bad feeling about a  
3 person, you tend to clock them, you tend to keep an eye on  
4 them, and she did that when she was at My Place. And she  
5 knew that this was the guy she saw. Corroborated by the  
6 other witnesses, corroborated by the video that you saw.

7 Next you heard from Natasha Coad. Natasha came in  
8 here, and Natasha told you that she was in shock. She told  
9 you that she was devastated. She had watched her best  
10 friends of thirty years that she'd spent god knows how many  
11 hours with murdered in front of her. And she came in here  
12 and she told you the story exactly as she remembered it,  
13 exactly as she told the police, and she had everything  
14 right. But in her head, she has flip-flopped Marquez and  
15 the defendant, but she knows, because she was feet away  
16 when her friends were murdered, that the man who did it was  
17 the defendant, Ricardo Middleton. And she came in here and  
18 she pointed him out to you.

19 Then you heard from Ronnie Scott, and Ronnie Scott was  
20 in the exact same motorcycle gang as the defendant, and we  
21 heard all about motorcycle gang culture. You don't talk to  
22 police; you don't cooperate with police. Everybody keeps  
23 to their own, but Ronnie Scott came forward against his own  
24 club member because of what he saw. He left the  
25 Thunderguard and came forward to tell you what he saw. And

1 he said that he saw the defendant get out of his car, walk  
2 around the front of the car, hit Ricky Montgomery in the  
3 face with something, and then saw a gunshot come from the  
4 direction the defendant was standing. And he came in and  
5 he took the stand and he pointed out the defendant as the  
6 one that he saw. That corroborates what Natasha Coad said,  
7 it corroborates what Ricky Montgomery said, and it's  
8 corroborated by the video where he shows you where he was  
9 at the bar at My House when he's parked out back, and he  
10 meets up and passes by the defendant's car when they all  
11 leave.

12 And he told you that he didn't see Aaron Collins and  
13 Sydni Collins on the ground. And defense counsel made a  
14 big fuss about it: that the only reason that he came in was  
15 to protect himself.

16 Well, even that is consistent with what you heard from  
17 Lacosha Smith. Lacosha came in, took the stand, and she's  
18 the nice lady who was coming home from church. And she  
19 took the stand, and she told you that she pulled up and  
20 called 911, and she thought it was an accident. She, too,  
21 didn't see the two people that were dead on the ground.  
22 Ronnie Scott's testimony is corroborated. She said she saw  
23 Ricky pinned under the motorcycle. Corroborates Ricky's  
24 testimony. It's consistent and it's corroborated.

25 Then you heard from Lori Ann Summers, who said she was

1 coming home from playing tennis. She was in the Jeep. In  
2 the video she's a few cars back, and she says she saw a guy  
3 in a white T-shirt and jeans get out of a car, and she goes  
4 and makes a point to say and he didn't have on a bandana or  
5 a hat but something on his head. In a white T-shirt and  
6 jeans and didn't have on a bandana but had something on his  
7 head, and then she heard gunfire.

8 And a lot was made about this black SUV and did  
9 somebody get out or didn't somebody get out. The video  
10 doesn't, doesn't show anybody get out. Defense counsel was  
11 all up in arms about it. Well, Lori Ann Summers also  
12 testified that nobody got out of the black SUV, which is  
13 corroborated by the video from the AM/PM. All of the, all  
14 of the testimony is consistent and corroborated.

15 Then you heard from Yvonne Woods, who went down and  
16 took the pictures of the Toyota Yaris. And when you go in  
17 the back, look at these pictures, at this black part here  
18 and compare it to the video. You'll have the videos back  
19 there; you'll be able to watch exactly where the defendant  
20 goes throughout the night. And compare this to when you  
21 watch the Mobay's video and you watch the AM/PM video and  
22 look.

23 Then you heard from Ricky, and Ricky told you what  
24 being in a motorcycle club meant to him. Said he was an  
25 only child. This was the brotherhood. This meant a lot to

1 him, and Ricky told you that he told the police, but he  
2 didn't want to tell the police who he saw hit him because  
3 that's not what you do in the motorcycle culture.

4 In motorcycle culture, what you're supposed to do is  
5 what Ricardo Middleton did, and you're supposed to take  
6 care of it yourself. You're just supposed to kill whoever  
7 wrongs you, but he didn't. He came forward. He left the  
8 club so that he could come in here and he could testify.  
9 And he got on the stand and he told you. He turned and he  
10 saw Ricardo Middleton hit him with something hard, and then  
11 he collapsed and said he was knocked out.

12 If he's going to make up a story, why doesn't he just  
13 come in here and say he saw the whole, entire thing?  
14 Because he came in here and he told you the truth. Told  
15 you what he saw. Told you what happened, and his testimony  
16 is corroborated by Natasha and corroborated by Ronnie  
17 Scott, Ronnie Scott, who was in another motorcycle club at  
18 that time, who was in a rival motorcycle club at that time,  
19 and his testimony was consistent with Ricky Montgomery and  
20 Natasha Coad's testimony, two rival motorcycle clubs.

21 Then you heard from Dr. Durso, and Dr. Durso told you  
22 about all the gunshot wounds, and we have some pictures.  
23 We didn't put them on the big screen. And she told you the  
24 first gunshot wound to Sydni was to the chest, and it was  
25 front to back and right to left, but she couldn't tell you

1 where Sydni was standing. And she told you the reason she  
2 can tell that the second gunshot -- or that the gunshot to  
3 the face was the second gunshot was because she was  
4 aspirating on her own blood.

5 And because of the soot and stippling, she could tell  
6 you the second shot was from 18 to 24 inches away.  
7 Defendant walked over and he shot her at nearly point blank  
8 range, and she was dead like that.

9 Next thing, Jennifer Nates came in and talked to y'all  
10 about GSR, about gunshot residue, and it's fragile and they  
11 don't even check for it after six hours. But Mr.  
12 Sutherland asked if a car was kept in pristine condition,  
13 if you essentially sit down, touch the steering wheel,  
14 slide out, close it, don't do anything, would you expect to  
15 find gunshot residue, and she said sure. But of course,  
16 you know, if you drive with one hand, if you turn, it's  
17 going to come off. Well, we know for a fact because we see  
18 it on the video the defendant makes at least one U-turn,  
19 and then he drives the car all the way down to Summerville.  
20 And then there's over a week between the time it gets down  
21 there and the time that it gets processed, over a week when  
22 the defendant can do anything in that car. And I submit to  
23 you that it seems like it was wiped down because there's  
24 also no DNA found, no DNA found in a car that belongs to  
25 him where you would expect to find DNA. Of course there

1 was no forensics in the car.

2 Then Linda Houck took the stand, and she walked you  
3 through the towers and the -- where they ping and where  
4 they are. And the defendant told you -- or the defendant  
5 told Taima Jordan that he wasn't in the -- in Columbia for  
6 the two weeks prior except for, you know, his phone records  
7 put him in there, and that corroborates what all the  
8 witnesses say.

9 She made you a handy map that shows you a little red  
10 dot for the incident location and the blue dot that's My  
11 Place, and she said the phone pings off the closest,  
12 strongest tower. And the only way it wouldn't ping off  
13 that tower is if there was a mountain in the way, is what  
14 she said. We have no mountains in Columbia.

15 And then Amanda Metz, and Amanda Metz got on the stand  
16 and she told you a whole bunch about firearms and  
17 toolmarks, shoes and class characteristics. But what it  
18 boiled down to is that she could tell that all of the  
19 bullets in this case were fired from three guns. She could  
20 tell 5.7 by .28s were fired from the gun that was recovered  
21 in the backyard of Marquez Johnson. And then Investigator  
22 McLary's handy map, 5 -- 2, 3, 5, 13, 14, 19 -- fired  
23 cartridge casings from the 5.7 by .28 are consistent with  
24 being on that side of the street, as she testified.  
25 Then they know one .40 cartridge casing was found, and a

1 .40 was found on Sydni Collins's chest, number 7, which  
2 means all of the rest were fired from a .10 millimeter. 6,  
3 8, 9, 10, and 16 are on this side. The defendant's gun.  
4 Two of them went into Sydni Collins and the rest were meant  
5 for Ricky Montgomery.

6 Then you heard from the investigators, the lead  
7 investigators, and they told you that, contrary to what Mr.  
8 Sutherland would have you believe, Tiptoe doesn't just get  
9 magically dropped into this case and they stop everything  
10 and are, like, let's just make this work. Once it's on  
11 paper, there's nothing we can do about it. No.

12 They take statements. They get video. They talk to  
13 people. They run his name through a law-enforcement  
14 database. They get statements from different motorcycle  
15 clubs, from Natasha, Ronnie, Ricky. They talk to John  
16 McNeely and Lori Ann Summers. They go and they find that a  
17 Yaris that looks just like the car you saw in the videos is  
18 owned by Ricardo Middleton, and then they charge them.

19 And then you heard about the defendant's statement.  
20 The defendant said that he had not been in Columbia, South  
21 Carolina, in two weeks, and everything else that you have  
22 seen contradicts that. The statements, the video, the  
23 phone records, all of it contradicts.

24 Now, you can go in the back -- and we'll do this one  
25 final time -- and you can watch the defendant's night. I

1 want to make sure everybody can see.

2 (WHEREUPON, UNIDENTIFIED STATE'S EXHIBIT IS PLAYED FOR  
3 THE COURT.)

4 MR. SHELLENBERG: There he is pulling in to My House.  
5 Walks around. Speaks to a few people. Here he comes.  
6 Yaris is exactly where Ricky Montgomery told you it was.  
7 You see Ricky walk over, corroborating Ricky's testimony.  
8 And they leave like Ricky said. He walks around. Gets in  
9 the car. There's Ronnie Scott. There's Tiptoe. You see  
10 him come up. Turns around, and he leaves. Natasha,  
11 Ronnie. Back in the car. Pulls off. Same thing  
12 corroborates what John McNeely said, what Ronnie Scott  
13 said, and what Ricky Montgomery said, what Lacosha Smith  
14 said. Turned around. Corroborating what witnesses said.

15 You heard all of the testimony. Members of different  
16 clubs, random citizens all came in and said consistent and  
17 corroborated testimony. They picked the defendant out as  
18 the man who committed the murder. You have video. You  
19 have the phones. They corroborate everything. Ladies and  
20 gentlemen, you have all the tools to go in the back and  
21 find the defendant guilty of the crimes he committed: the  
22 murder of Aaron Montgomery, the murder -- or Aaron Collins,  
23 the murder of Sydni Collins, and the attempted murder of  
24 Ricky Montgomery. Thank you.

25 THE COURT: All right, Mr. Sutherland.

1 MR. SUTHERLAND: May it please the court?

2 THE COURT: Yes, sir.

3 (WHEREUPON, UNIDENTIFIED STATE'S EXHIBIT IS PLAYED FOR  
4 THE COURT.)

5 MR. SUTHERLAND: Okay, I decided to just have this  
6 running. Just have this run in the background during  
7 closing.

8 A lot of times, people ask me about this, about the  
9 court process and what it's like. This week you all have  
10 had a lot of first-hand exposure to it that nobody really  
11 has the opportunity to get. I welcome questions from  
12 people. They are from anything like is this like TV or  
13 like the movies, and the answer is no. Maybe for about ten  
14 minutes late yesterday afternoon, but generally no.

15 It's, it's a serious matter. It's a solemn matter, I  
16 ultimately tell them. I think what people want to hear  
17 from me whenever they ask me any questions about this is  
18 they want me to describe our justice system. And the best  
19 description is really a paraphrase of Winston Churchill.  
20 Our system is the worst in the world except for all the  
21 others, and what that translates to is that we are the best  
22 we can do. This is the best that we can do because it's a  
23 system that is based on human beings. It's become  
24 increasingly, increasingly based on science, and I'm going  
25 to talk about the science in this case because the science

1 is critical in this case.

2 But we all individually have our flaws. You've seen  
3 them on display. You've seen them on display from some  
4 witnesses, but it's that human element versus the science  
5 element that allows people to make judgments that may be  
6 contrary to what the government wants, to what the  
7 government's theory is, and I'll just step over here for a  
8 second. Let's see, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, stop at  
9 10 just to make that point.

10 The science in this case that indicates that he is  
11 what they say he is -- let's say a murderer and attempted  
12 murderer -- is nonexistent. It does not exist. Solicitors  
13 often times can see where I'm going. Sometimes they get it  
14 wrong. I may talk about that a little bit, but coming up,  
15 talk about the car.

16 The car is very significant. I wonder why they didn't  
17 test, you know, the, the shirt or why the only item that  
18 they tested was the GSR kit from the car. It could be that  
19 that testing was done about six, completed about six days  
20 ago. Maybe they didn't have time, but none of the science  
21 in this case points to Ric as having done this because he  
22 didn't.

23 See if I can get this right.

24 (A PAUSE.)

25 MR. SUTHERLAND: When we see it, watch. I think it

1 was a little earlier than that actually. Watch for the guy  
2 that they say is him. I'll try and keep an eye on this,  
3 but you all have seen it several times. You've had the  
4 opportunity to view it, and I think what's significant  
5 about that when you look up close and you catch him coming  
6 in to frame, just look.

7 You know, we talk about the reliability of eye --  
8 eyewitness, eyewitnesses. Are there any reasons that you  
9 might doubt them? Was it, was it dark? Well, it was dark.  
10 They have an axe to grind? There's a motorcycle club over  
11 here. Did somebody, you know, drive somebody away from a  
12 shooting or something along those lines?

13 But the first guy, and maybe that -- I don't even  
14 remember out of these fifteen, maybe that is the guy that  
15 they said. But John McNeely, was interesting when I heard  
16 the solicitor extolling his virtues because that was the  
17 first witness that I was going to go to.

18 And full disclosure: I ran into him outside. We had a  
19 smoke and we, we talked a little bit, but his view was  
20 interesting because his description -- where is this, this  
21 -- is that the guy that was from me maybe to you, ma'am, I  
22 believe was, was his testimony.

23 Or to you, sir? I don't think it was all the way back  
24 to you, sir. Or, or to any, certainly not to any of the  
25 alternates.

1 I believe his testimony was from here to maybe here.  
2 You all heard that, but it was not a great distance. This  
3 is, this is not what he saw. He didn't see somebody with a  
4 full beard, and he and I went through that. I pressed on  
5 my face and, and certainly he had a long one. He saw  
6 someone with a short beard. And unlike this person -- and  
7 I wish I knew how to loop this thing because -- I'm just  
8 going to leave it up here.

9 But this person, if you look, looks to me like khakis.  
10 It's not dark blue jeans, which was the description. Also,  
11 light blue car from here to here. Short beard, not this.

12 And then they talked about Lori Ann Summers. 6 feet  
13 tall. Did she say 222, 225? I'm 6 feet tall. You have  
14 seen my guy stand with me at various points during this  
15 trial. He is far, far -- no offense -- from 6 feet tall.  
16 Comes up may -- maybe here. I don't know, 5/6, 5/5. I  
17 mean, y'all can use your recollection while standing  
18 together to make that judgment.

19 I know the certainty and the certitude that we all  
20 just heard, and look at this and, and look at that and all  
21 of, all of this is correct. Well, I mean, if all of this  
22 is correct -- and they, they hit on it.

23 Why wasn't the flour on the door handle? Why wasn't  
24 the flour -- you didn't hear anybody testify that they  
25 tested the swabs that they took from in there for D -- I

1 didn't hear that. The only test that I've seen other than  
2 the toolmarks was the gunshot residue test -- what's  
3 today's, today's date? My life is one long day. I know it  
4 was the 15th, however long ago that was. Five, five, six  
5 days ago. That's the only real test we're talking about  
6 here that could have potentially linked him.

7 If they wanted to come into court and say there was no  
8 DNA in this car, they kind of, should have put somebody up  
9 there that said we tested those swabs, and there was no DNA  
10 in it, in the car.

11 And these little cracks in the structure of these  
12 ironclad cases are what we need to look for because there's  
13 got to be an understanding here. You know, this is the  
14 government. I'm a guy, right? He has a right to me in  
15 this country, and I'm pleased to do that for him. I don't  
16 know how to break this thing. Well, I'm learning. I'm  
17 learning.

18 The point is if they wanted to come into court and  
19 they want to make these claims, they should back it up from  
20 the stand, right? See the citizen? I'm with the citizen.  
21 I don't have to back anything up because they are going  
22 after him. I am not. I am standing between the government  
23 and between the government and him.

24 You'll hear a jury instruction: you don't take it  
25 against him that he doesn't testify. Anybody who's seen --

1 and speaking of TV, one thing that is like TV, you do have  
2 the right to remain silent. You do not have to talk to  
3 police officers, and you'll receive an instruction on that.

4 And speaking of our system being the worst except for  
5 all the others, in the United Kingdom, the country that we  
6 had the revolution from and broke away from, if you remain  
7 silent, they hold it against you in court. They hold it  
8 against you in court.

9 There was talk about a conversation with Investigator  
10 Jordan, who was having a little fun up here yesterday, all  
11 right? And he says well, now, or whatever he said, we  
12 don't have cameras in these cars. You can take that for  
13 what it is, but one thing that was interesting to me is his  
14 testimony about what my guy has said to him. Oh, no, no,  
15 no. Okay, now, listen. I got to go to my club and I'll  
16 tell you what I know. I got to go to my club, and I'll  
17 tell you what I know. And I was thinking, so, he's got to  
18 go to Ronnie Scott to ask if he can talk to the cops when  
19 Ronnie Scott is throwing him under the bus.

20 The solicitor is correct: they didn't charge him with  
21 any crime. But I think as a matter of common sense, you  
22 can't drive somebody away from a shooting when you're,  
23 you're right there.

24 And look at that video and again look at the tactical  
25 argument that I had with Ronnie Scott because he wants to

1     come up here and he wants to play Marine now. He wants to  
2     be Mr. Outlaw, Mr. Outlaw until he gets under the gun, and  
3     then he wants to revert back to, to being a Marine. And  
4     I'm watching his testimony and I'm thinking, you know,  
5     that's kind of dishonorable, to me. But I thought if you  
6     want to play Marine, we'll play Marine.

7             And you all can watch that video. You've seen it a  
8     million times of that truck creeping, and notice how he --  
9     no, no, I wasn't creeping. You know, creeping has a, a  
10    meaning. Just use your common sense experiences. If  
11    you've never heard of it, just imagine what creeping on  
12    someone with a firearm or a weapon, what might mean.

13            But speaking to myself, oh no. He's playing Mr.  
14    Marine. I wonder if they're going to buy it, if they're  
15    going to believe it. And so I said, well, let me see if I  
16    can just go up now. Army, Marine Corps abrasive. Said let  
17    me go up and see if I can play this little tactical game.

18            I said, now, don't you agree that boxing somebody in  
19    for an ambush, that those are sound -- that that's sound  
20    tactically? No, no, no. That, that, that's not sound, or  
21    maybe he was thinking no, no, no, no, that's not what I was  
22    doing. Well, that is what he was doing with him. I mean,  
23    it's, it's clear unless on the way to a midnight  
24    construction job -- look. It's possible. My dad used to  
25    work construction when I was a kid. He wasn't running

1 anywhere at midnight. I do know that, or maybe working on  
2 a skyscraper. I don't know. But on the way to this  
3 midnight construction job in Lumberton, he just so happens  
4 to slide right into this. It's just a happy coincidence.

5 You know, they talk about circumstantial evidence  
6 charge. Well, that cuts both ways. You know, you can use  
7 a chain of facts to make an inference. Well, how about the  
8 chain of facts of Ronnie Scott? His truck's over there.  
9 His testimony, oh, I'm just checking out, making  
10 everything, you know, making every -- everybody's okay, you  
11 know, and then he's rolling up and he's boxing these people  
12 in.

13 And they're saying, well, this little car looks like  
14 that car. I actually said Toyota when -- in opening, if  
15 you recall, I said Toyota, everybody's got a Toyota. I  
16 said if you pull up to a light, why don't you try counting  
17 the Toyotas. Who said it was a -- I figured somebody was  
18 going to come in here and say the car was a Toyota. They  
19 could have had other people. You know, I don't control the  
20 witnesses that they call. They could have had somebody  
21 come in here and, I don't know. I think we could have  
22 called it a Ford Focus. Of course, that wouldn't be  
23 helpful. He was on the list. I was expecting him to  
24 testify. You know, it is what it is.

25 The note about this -- they're kind of throwing me

1 under the bus about this black SUV. There's a great irony  
2 in that because when I -- speaking about it, just going to  
3 keep running it back, folks, if you want to count the  
4 shirts in there or...

5 Speaking of black SUVs, it's a big thing. Why is Mr.  
6 Sutherland saying this and he's saying that and, you know,  
7 no one got out of the SUV. So, like, look. My attention  
8 didn't just magically point to some black SUV. You know, I  
9 got a witness list yesterday morning, all right, and I  
10 looked on the witness list and I thought okay.

11 MR. SHELLBERG: Object, Your Honor.

12 MR. SUTHERLAND: I don't know why, but I thought okay.

13 THE COURT: Yes?

14 MR. SHELLBERG: May we approach?

15 THE COURT: Yes, sir.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 MR. SUTHERLAND: Okay, so I will certainly leave it at  
18 that, but I didn't just miraculously decide, hey, the  
19 people -- there's a theory out there that the people in the  
20 SUV did it. It doesn't come out, it just doesn't fall out  
21 of the sky.

22 And speaking of -- I think, I think the best witness  
23 to this incident, at least standing here now and going  
24 through all, all the witnesses, John McNeely has nothing to  
25 do but smoke outside. You know, the best witness in this

1 case, the best witness with the view of, of this case has  
2 it about right. You know, you're given this description.  
3 You say -- oh, okay. Hold on. You're given the  
4 description of -- oh good lord, come on. When they say  
5 whoever the guy in the khakis is that's walking around here  
6 -- and again you can take it, examine it up close with a  
7 magnifying glass. It's not dark blue jeans. Ain't nobody  
8 making dark blue jeans.

9 The bad thing about a video like this with one, two,  
10 three, four, five, six, seven, eight, nine, ten, eleven,  
11 twelve, thirteen -- the light is obscuring it -- fourteen.  
12 I'll just stop, but you get the point. The bad thing --  
13 and they were making fun of this -- about fourteen bald  
14 black dudes with beards from this distance in a grainy  
15 video is that you wouldn't be able to tell if it was  
16 fourteen white dudes with one of these or fourteen that --  
17 you just can't tell who it is from looking at the video.  
18 And you can't certainly tell a car that, that they never  
19 identified.

20 So our, our friend Mr. McNeely, the, the light blue  
21 car, that's your best bet, you know, because he could have  
22 said -- and Lori Ann Summers, I think she said it was light  
23 blue or gray. But if she's right there, the T thing -- all  
24 right, that's the side. Well, I was going to go through  
25 and grab -- they've got one but, you know, the back of a

1 Toyota I think everybody kind of knows or has an idea, you  
2 know, what that symbol, what that symbol looks like.

3 So, you get these tenuous connections. They're able  
4 to string those together. They're able to say, well, that  
5 is him and this thing, and the car that's making the  
6 U-turn, well, that's certainly him because somebody said  
7 that was his car. Well, who said it? Nobody said that.

8 And when the government is trying to -- accusing a  
9 citizen of murder, you want to be sure. The only real test  
10 here is there, is there a real possibility that he is  
11 wrong. That's it because if there is a real possibility --  
12 you'd be sitting there thinking, man, look at all this  
13 stuff and, you know, look at all this business here. But  
14 if you sit and, well, I don't know. There's, there's  
15 something there. That's, that's, that's, that's a  
16 reasonable doubt.

17 I can go through -- you know, Natasha took the stand  
18 and kind of made, made my whole point. She changed her  
19 story. Now, they say it's because of XYZ, you know, this,  
20 that happened two years ago. They, you know, they can say  
21 that and they can argue, they make it whatever it was.

22 I had no -- when I was speaking with you initially, I  
23 had no expectation -- I was going to argue something  
24 completely different because I knew something -- I was  
25 going to ask her completely different questions which

1 turned into a little tussle there but, I mean, it is what  
2 it is. People are people.

3 No, when she says -- what do they say now? Well, just  
4 imagine if they just went for the bike and the bike theory.  
5 Of course, that's not -- if they went -- they could go for  
6 a bike theory, they could go picking through here and  
7 looking, look at all these bikes, look for a guy that fits  
8 that description. If they rolled with just her as the  
9 witness, and she says he jumps and got off the bike, and  
10 they come in here tooling around and they say, look, there  
11 he is. Get someone who doesn't like him. Yeah, yeah,  
12 there he is, and just get on the bike and slide off on out  
13 of there. What's the difference really between that and  
14 this?

15 Then all of those people at the scene -- and you can  
16 look at the video. You'll see the bodies here. There's a  
17 ton of people out there. Then you go around to all the  
18 people at the scene and somebody -- let me -- and somebody  
19 out there is going to say that there was somebody on a bike  
20 because a lot of people said a lot different things. And a  
21 lot of people with no axe to grind said a lot of different  
22 things because we're all human beings.

23 We could all see the same thing. We could see, say,  
24 the same traffic collision and none of our stories -- our  
25 stories are going to be a little bit different. It's dark.

1 If it's at night or something like that, they're going to  
2 start to diverge a little bit more.

3 It's not -- what I told you in the beginning is true,  
4 you know, with respect to these officers, with respect to  
5 people. It's not -- I'm not saying there's any corruption  
6 going on here, even though they're taking it personally.  
7 I'm saying they got a theory and they want to make it work.  
8 I'm saying they don't have any science to back it up. So,  
9 they bring outlaws in and they make this big point.

10 I think the, the best thing about Ricky Montgomery's  
11 testimony is -- I didn't really get to, I didn't really --  
12 if I did, it was a two, it was a two-part question that I  
13 had for him. It's like, you know, didn't you say you  
14 weren't sure? He testified he's not -- but didn't you say  
15 that you weren't sure to the police because there's a  
16 second half of that that I followed up with and I asked  
17 about. Let's see, didn't you -- but when I got to that, I  
18 said didn't you tell them you thought it was him because he  
19 was really mad at the club, which is what he told at least  
20 in the statement that, that they wrote.

21 But he jumps in and -- was it the One Percent? Oh,  
22 yeah, he jumps in with the One Percent refrain, which we've  
23 heard throughout this thing. Well, as a One Percenter, you  
24 know, as an outlaw, he -- which it is.

25 And look. I'm not digging at bikers, okay? People

1 come back from overseas or whatever and they can't readjust  
2 to society. That's the problem. Hells Angels were founded  
3 by World War II veterans. I understand it, but it's not, I  
4 mean, it's not cool, but it gets -- you can't live in both  
5 worlds. They got one foot in one world, one, one foot in  
6 the other. You know, I understand that, but you can't be  
7 both.

8 In the case of Ronnie Scott, you know, you can't be a  
9 Marine and you can't be an outlaw. You know, you swear an  
10 oath to protect and defend this country or, or be outside  
11 the law. You just can't, you can't, you can't be both.  
12 That's certainly my view, but I think it's a common, common  
13 sense view.

14 But his first answer was, well -- and this is going to  
15 be a generalized version of it -- that, you know, us, we  
16 One Percenters, don't like to cooperate with police --  
17 Investigator Jordan said it over and over and over --  
18 because of, of various reasons. When the, the follow up  
19 was the case, I was, like, wait a minute. Didn't you tell  
20 them it was because he was acting out, was in a rage or  
21 whatever at that club, that that's why you thought it was  
22 him? He said, well, I may have said that. You all heard  
23 the testimony. I've got the transcript I've got receipts  
24 for, but, you know, it's not about what I say or what I  
25 have. It, it's what you remember.

1 I don't, I don't want you to mistake -- to mistakenly  
2 believe that I have any sort of ill will or anything  
3 against these witnesses when I'm, when I'm criticizing  
4 their testimony. You know, everybody's a human being,  
5 right, but this is about the government trying to warehouse  
6 somebody over something that is not true. And they have a  
7 startling capacity to make it look like it is true by  
8 stringing this together, by stringing that together.

9 You know, take any little string and just pull on it.  
10 You know, is this supposed to be there? Why, why should it  
11 come out if that's supposed to be there? Take any little  
12 string and pull on it. Take, take McNeely, the guy that,  
13 that we can rely on and just start with him. This is not  
14 the guy.

15 The GSR, please disregard that business about there  
16 being no DNA or prints in there. They didn't do anything  
17 that -- they would have put it on the stand. The testimony  
18 that you have about the science in this case is that it's  
19 like flour and everything you touch, it transfers. I said  
20 ma'am, left under -- you know, undisturbed -- and that was  
21 my point, again, I made about, so, it just sat there and  
22 nobody touched it with, with Hattie and with, with Kevin  
23 and it just sat there undisturbed, did not move throughout  
24 the week, but -- so what that ultimately means is it goes  
25 from here to there and sits, right? They make a big deal

1 about six, seven, eight days until law enforcement goes and  
2 they, they process the scene. But -- and when they need  
3 seven or eight days, they mean they take it into the -- you  
4 know, they towed the thing, and then they get around to  
5 doing it in seven or eight days. They had this thing a  
6 couple of days later.

7 It sat there undisturbed. And I said, ma'am, if, if  
8 the gunshot residue is undisturbed, how long can it sit? I  
9 said forever? And you, you heard the answer. Pretty much,  
10 yes.

11 And the stuff is like flour that you can't see and  
12 that you can't feel, and they want to say that a citizen  
13 has the wherewithal to understand this, you know, electron  
14 microscopy, what they use to view these particles. Was it  
15 antimony, lead, and barium? You know, that we understand  
16 transfer for gunshot residue. I mean, who -- as a  
17 layperson, if you discharge a firearm, you're probably not  
18 even going to think that you have it. But I don't think  
19 you would imagine if I've got it and, oh, that, that right  
20 there, guess what? It's going to be there because it's a  
21 ton of particles, just a ton of tiny particles that we just  
22 can't see, that we just can't sense.

23 So, through the individual witnesses, I don't know --  
24 you know, I'm not disparaging people, again, but the  
25 credibility of witnesses is about bias. You can assume

1 bias when the rivalry has been announced. They -- it's  
2 part of their theory that the rival biker gangs are  
3 conflicting against one another. That's something that  
4 causes bias. If you're prejudiced against someone or  
5 something, if you have an interest, let's say if -- you  
6 could be charged with a crime potentially.

7 Ultimately, the case should be about science. It  
8 should not be about unreliable eyewitness identifications.  
9 It should be about science. We have the means; we have the  
10 capacity. They decide not to test things. Is that the  
11 citizen's fault? Everything that -- all the thing -- all  
12 the stuff that they collected, it's the, it's the  
13 government's responsibility to do this and to prove this  
14 tight beyond a reasonable doubt.

15 And what -- again, all that I want you to think -- and  
16 you can listen to the instructions and see if I'm, if I'm  
17 being straight, and I'm always straightforward with people,  
18 but you can check behind me with the instructions from the  
19 court. If there is a real possibility that he is not  
20 guilty, let him go. You may not like it. You may not like  
21 bikers. You may not like looking at my guy through the  
22 trial. You say, oh, something I don't like about him. One  
23 of their things, there's something wrong about that dude.

24 Put those things out of your mind and just keep it in  
25 the context of, you know, justice and striving for justice,

1 bringing the science along from leeching and whatever it  
2 was that's discredited and used to do bite marks. Well,  
3 now, you know, you've got an electron microscope and you're  
4 looking at particles that nobody even knows is there.  
5 Okay, that's something. When they test a shirt that they  
6 took and they're saying he tried to conceal ---

7 I almost left this out. This Hummer, they're, like,  
8 well, he only had -- he left his ID or his debit card or --  
9 you have pictures of travel tickets in a Humvee with his  
10 name on it. So, what, what was that all about?

11 In flight, considering flight, you know, listen to the  
12 judge on the law. But, you know, going home, you know, I  
13 mean, you all saw Moncks Corner. You see Columbia on the  
14 driver's license but, you see, you know, going home is  
15 flight? It's, it's not flight. It's going home. It's  
16 going, you know -- hey, Kevin. Hey, come on, bro, you  
17 know, any time, any time. They're brothers in that sense.

18 Take the time, please, and make the effort to bring  
19 this system a little bit higher. We've got witnesses up  
20 here who are just dubious. There's no way around that.  
21 There's nothing credible about these witnesses. If they  
22 corroborate each other, well, they're all saying the same  
23 thing. They're all saying the same thing that fits this  
24 theory. Doesn't fit this other theory or the first or the  
25 second or the fourth I think we're on with, with her

1 testimony. You know, this, this, this is what they want  
2 this to be. McNeely, from me to the bailiff. No, not  
3 that.

4 If you can bear it, watch that video again. Watch the  
5 car video again. Nobody ever said it was a Toyota. Nobody  
6 ever identified this car. I don't think I need to go  
7 through this rigmarole about there's Toyotas all over the  
8 place because there are.

9 But please be scrupulous about this, and if it's in  
10 your mind, if you are hesitating -- another definition of  
11 reasonable doubt, a reasonable doubt is a doubt that would  
12 cause a reasonable, rational person to hesitate to act.  
13 The hesitation, the I don't know. You go in. You get some  
14 expired juice by date. I, you know, I don't know. What,  
15 whatever that, that hesitation, if you can't make the call,  
16 make the call for the citizen because that's our rules and  
17 that's who we are trying to be. And that's how we're  
18 bettering ourselves as a community.

19 I know it's a serious crime. I know it's a tragedy.  
20 It wasn't him. Please don't compound this tragedy. Thank  
21 you kindly for your attention.

22 THE COURT: Members of the jury, y'all need a short  
23 break? Anyone? Y'all are good?

24 *JURY CHARGE*

25 THE COURT: Now, Madame Forelady and members of the

1 jury, I remind you that during this trial, you and I have  
2 certain duties to perform. As the trial judge, it is my  
3 responsibility to preside over the trial of this case, and  
4 I also have the duty to rule on the admissibility of the  
5 evidence offered during this trial.

6 You are to consider only the competent evidence before  
7 you. If there was any testimony ordered stricken from the  
8 record in this case during the trial, you must disregard  
9 that testimony. You are to consider only the testimony  
10 which has been presented from the witness stand, any  
11 exhibits which have been made a part of the record in this  
12 cases, and any stipulations of counsel.

13 I have the additional duty to charge you the law  
14 applicable to this case. As the presiding judge, I am the  
15 sole judge of the law in this case, and it is your duty as  
16 jurors to accept and apply the law as I state it to you.  
17 If you already have any idea as to what the law is or what  
18 the law ought to be and it does not agree with what I now  
19 tell you the law is, you must abandon this idea because you  
20 are sworn to accept the law and apply the law exactly as I  
21 state it to you.

22 Now, in every case tried in this court before a jury,  
23 the jury becomes the sole and exclusive judge of the facts  
24 in this case. A trial judge cannot intimate, state,  
25 comment on, or make any statement to a trial jury about the

1 facts in a case. Since you, the jury, are the sole judge  
2 of the facts in this case, you are not to infer from what I  
3 have said during the progress of this trial, any ruling  
4 upon admissibility of evidence or otherwise, or anything  
5 that I say now during the course of this instruction to you  
6 that I have any opinion about the facts of this case. The  
7 law does not allow me to have an opinion about the facts of  
8 this case. This is a matter solely for you, the jury, to  
9 determine. And as jurors, it is your duty to determine the  
10 effect, value, and weight of the evidence presented during  
11 this trial.

12 Now, members of the jury, there are two types of  
13 evidence: direct evidence and circumstantial evidence.  
14 There are two types of evidence which are generally  
15 presented during a trial, direct and circumstantial  
16 evidence. Direct evidence is the testimony of a person who  
17 claims to have actual knowledge of a fact, such as an  
18 eyewitness. It is evidence which immediately establishes  
19 the main fact to be proved.

20 Circumstantial evidence is proof of a chain of facts  
21 and circumstances indicating the existence of a fact. It  
22 is evidence which immediately establishes collateral facts  
23 from which the main fact may be inferred. Circumstantial  
24 evidence is based on inference and not on personal  
25 knowledge or observation.

1           The law makes absolutely no distinction between the  
2 weight or value to be given to either direct or  
3 circumstantial evidence, nor is a greater degree of  
4 certainty required of circumstantial evidence than of  
5 direct evidence. You should weigh all the evidence in the  
6 case. After weighing all the evidence, if you are not  
7 convinced of the guilt of the defendant beyond a reasonable  
8 doubt, you must find the defendant not guilty.

9           Necessarily, you must determine the credibility of  
10 witnesses who have testified in this case. Credibility  
11 simply means believability. It becomes your duty as jurors  
12 to analyze and to evaluate the evidence and determine which  
13 evidence convinces you of its truth. In determining the  
14 believability of witnesses who have testified in this case,  
15 you may believe one witness over several witnesses or  
16 several witnesses over one witness. You may believe a part  
17 of the testimony of a witness and reject the remaining part  
18 of the testimony of that same witness. You may believe the  
19 testimony of a witness in its entirety or reject the  
20 testimony of a witness in its entirety. You may consider  
21 whether any witness has exhibited to you any interest,  
22 bias, prejudice, or other motive in this case. You may  
23 also consider the appearance and manner of the witness  
24 while on the witness stand.

25           Now, there have been three experts admitted that gave

1 testimony in this case: Dr. Durso, I think a pathologist;  
2 Lieutenant Jennifer Nates of SLED; and Linda Houck for cell  
3 phone. Now, the rules of evidence ordinarily do not permit  
4 witnesses to testify to opinions or conclusions. An  
5 exception to this rule exists for witnesses we call expert  
6 witness. A witness who by education and experience has  
7 become expert in some art, science, profession, or calling  
8 may state an opinion as to relevant and material matters in  
9 which the witness claims to be an expert, and may also  
10 state the reason for the opinion.

11 You should consider any expert opinion received in  
12 evidence in this case and like other evidence, give it the  
13 weight you think it deserves. If you decide that the  
14 opinion of an expert witness is not based on sufficient  
15 education and experience, or if you conclude that the  
16 reasons given in support of the opinion are not sound, or  
17 that the opinion is outweighed by other evidence, you may  
18 disregard the opinion entirely.

19 An expert witness's testimony is to be given no  
20 greater weight than that of other witnesses simply because  
21 the witness is an expert. Further, you are not required to  
22 accept an expert's opinion even though it is not  
23 contradicted.

24 Now, members of the jury, the indictments charge the  
25 defendant, Mr. Middleton, with two counts of murder and one

1 count of attempted murder. I remind you that the fact that  
2 the defendant was arrested, charged, and indicted in this  
3 case is not evidence in this case and cannot be considered  
4 by you as evidence of guilt in this case, nor does it  
5 create any presumption or inference of guilt. The document  
6 is simply the written, formal instrument which contains the  
7 charges made against the defendant. It is the formal  
8 document by which the case is brought into this court.

9 I instruct you and emphasize that the fact that the  
10 defendant did not testify is not a factor to be considered  
11 by you in any way in your deliberations and in your  
12 consideration of the question of the guilt or the innocence  
13 of the defendant. It must not be considered by you in any  
14 manner whatsoever. A defendant has the constitutional  
15 right to remain silent, and the assertion of that right, of  
16 this right must not be considered by you in your  
17 deliberations.

18 I repeat. Under your oath, you are to draw no  
19 conclusions whatsoever from the fact that the defendant in  
20 this case did not testify. The fact that the defendant did  
21 not testify should not even be discussed in the jury room.  
22 The burden of proof, as I have stated to you, is on the  
23 state. The defendant is not required to prove his  
24 innocence. The burden of proof remains on the state to  
25 prove guilt beyond a reasonable doubt.

1           The defendant pled not guilty to the indictments, and  
2 that plea puts the burden on the state to prove the  
3 defendant guilty. A person charged with committing a  
4 criminal offense in South Carolina is never required to  
5 prove himself innocent. I charge you that it is an  
6 important rule of the law that the defendant in a criminal  
7 trial, no matter what the seriousness of the charge may be,  
8 will always be presumed to be innocent of that crime for  
9 which the indictment was issued unless guilt has been  
10 proven by evidence satisfying you of that guilt beyond a  
11 reasonable doubt.

12           This presumption of innocence does not end when you  
13 begin your deliberations, but it accompanies the defendant  
14 throughout the trial until you reach a verdict of guilt  
15 beyond a reasonable doubt, satisfying you of guilt beyond a  
16 reasonable doubt. The presumption of innocence is like a  
17 robe of righteousness placed about the shoulders of the  
18 defendant which remains with the defendant until it has  
19 been stripped from the defendant by evidence satisfying you  
20 of the defendant's guilt beyond a reasonable doubt.

21           The presumption of innocence is not mere legal theory;  
22 it is not just a legal phrase. It is a substantial right  
23 to which every defendant is entitled unless you, the jury,  
24 are satisfied from the evidence of the defendant's guilt  
25 beyond a reasonable doubt.

1           Now, what is a reasonable doubt, members of the jury?  
2           What is a reasonable doubt in the law? A reasonable doubt  
3           is the kind of doubt that would cause a reasonable person  
4           to hesitate to act. The state has the burden of proving  
5           the defendant guilty beyond a reasonable doubt. Some of  
6           you may have served as jurors on civil cases where you were  
7           told that it is only necessary to prove that a fact is more  
8           likely true than not true, such as by the greater weight or  
9           the preponderance of the evidence. In criminal cases, the  
10          state's proof must be more powerful than that. It must be  
11          beyond a reasonable doubt.

12          Proof beyond a reasonable doubt is proof that leaves  
13          you firmly convinced of the defendant's guilt. There are  
14          very few things in this world that we know with absolute  
15          certainty. And in criminal cases, the law does not require  
16          proof that overcomes every possible doubt.

17          If, based on your consideration of the evidence, you  
18          are firmly convinced that the defendant is guilty of the  
19          crimes charged, you must find the defendant guilty. If, on  
20          the other hand, you think there is a real possibility that  
21          the defendant is not guilty, you must give the defendant  
22          the benefit of the doubt and find him not guilty.

23          Now, members of the jury, in order to establish  
24          criminal liability, criminal intent is required. For  
25          example, the mental state required to be proven by the

1 state for a particular crime might be purpose, intent,  
2 knowledge, recklessness, or criminal negligence. Criminal  
3 intent must be proven by the state beyond a reasonable  
4 doubt.

5 Criminal intent is always a matter that must be  
6 determined by the jury from the circumstances surrounding  
7 the situation. There is no way to prove intent to a  
8 mathematical certainty; there is no way medical science can  
9 dissect a person's brain and determine what the person has  
10 in mind. So, the law says that criminal intent may be  
11 inferred from the circumstances shown to have existed.

12 This is how you make a determination of whether or not  
13 the element requiring intent was present. It is not  
14 necessary to establish intent by direct and positive  
15 evidence, but intent may be established by an inference in  
16 the same way as any other fact: by taking into  
17 consideration the acts of the parties, and all the facts  
18 and circumstances of the case. Criminal intent is a mental  
19 state, a conscious wrongdoing. It is up to you to  
20 determine what the defendant intended to do based on the  
21 circumstances shown to have existed.

22 Criminal intent arises -- criminal intent can arise  
23 from action or a failure to act. It may arise from  
24 negligence, recklessness, or an indifference to duty, or to  
25 consciousness that is considered by the law to be the

1 equivalent of criminal intent.

2 Two counts of murder. What is murder, members of the  
3 jury? The defendant is charged with murder. The state  
4 must prove beyond a reasonable doubt that the defendant  
5 killed another person with malice aforethought. Malice  
6 aforethought is a legal term implying wickedness and  
7 excluding a just cause or excuse. The term malice  
8 indicates an informed purpose and desire to do a wrongful  
9 act under circumstances that exclude any legal right to do  
10 it. It is something which springs from wickedness, from  
11 depravity, from a heart devoid of social duty, and fatally  
12 bent on mischief.

13 Malice may be expressed or implied. Malice is hatred,  
14 ill will, or hostility toward another person. It is the  
15 intentional -- excuse me -- it is the intentional doing of  
16 a wrongful act without just cause or excuse, and with an  
17 intent to inflict an injury, or under circumstances that  
18 the law will infer an evil intent.

19 Malice aforethought does not require that malice exist  
20 for any particular time before the act is committed, but  
21 malice must exist in the mind of the defendant just before  
22 and at the time the act is committed. Malice may be  
23 conceived at the very moment the fatal blow is given.  
24 Therefore, there must be a combination of the previous evil  
25 intent and the act.

1 Malice aforethought may be expressed or inferred.  
2 These terms expressed and inferred do not mean different  
3 kinds of malice, but merely the manner in which malice may  
4 be shown to exist. That is, either by direct evidence or  
5 by inference from the facts and circumstances which are  
6 proved.

7 Expressed malice is shown when a person speaks words  
8 which express hatred or ill will for another, or when the  
9 person prepared beforehand to do the act which was later  
10 accomplished. For example, lying in wait for a person, or  
11 any acts or preparation going to show that the deed was  
12 within the defendant's mind would be expressed malice.

13 Malice may be inferred from conduct showing a total  
14 disregard for human life. Malice may be inferred from the  
15 fact that -- and circumstances surrounding the case.  
16 Malice does not necessarily impart ill will toward the  
17 individual injured, but signifies, rather, a general  
18 malignant recklessness of the lives and safety of others,  
19 or a condition of mind which shows a heart regardless of  
20 social duty and fatally bent on mischief.

21 What is attempted murder? The defendant is charged  
22 with attempted murder. Murder is the killing of another  
23 person with malice aforethought. Malice is hatred, ill  
24 will, or hostility toward another person. It is the  
25 intentional doing of a wrongful act without just cause or

1 excuse, and with the intent to inflict injury or under  
2 circumstances that the law will infer an evil intent.

3 Malice aforethought does not require that malice exist for  
4 any particular time before the act is committed, but malice  
5 must exist in the mind of the defendant just before and at  
6 the time the act is committed. Therefore, there must be a  
7 combination of the previous evil intent and the act.

8 An attempt is an effort to accomplish a crime which  
9 does not succeed. An attempt includes a specific intent to  
10 do a particular criminal act, along with act falling short  
11 of the act intended. The state must show more than mere  
12 preparation and intent. The state must be -- there must be  
13 some overt act committed in the effort to commit the crime.  
14 To prove attempted murder, the state must prove beyond a  
15 reasonable doubt the defendant attempted to kill another  
16 person with malice aforethought.

17 Now, we have a concept, a theory of law: the hand of  
18 one. Now, if a crime is committed by two more people who  
19 are acting together in committing a crime, the act of one  
20 is the act of all. A person who joins with another to  
21 commit an unlawful act is criminally responsible for  
22 anything done by the other person which happens as a  
23 probable or natural consequence of the act, acts done in  
24 carrying out the common plan or purpose. If two or more  
25 people are together, acting together, assisting each other

1 in committing the offense, the act of one is the act of  
2 all. Or, as it is sometimes said, the hand of one is the  
3 hand of all.

4 Now, prior knowledge that a crime is going to be  
5 committed without more is not sufficient to make a person  
6 guilty of that crime. Mere knowledge that another person  
7 is going to commit a crime, even if the defendant is  
8 present when the crime is committed, is not sufficient to  
9 convict the defendant as a principal.

10 Guilt as a principal is shown by actual or  
11 constructive presence at the scene as a result of prior  
12 arrangement. Therefore, a finding of a prior arranged plan  
13 or common scheme is necessary for a finding of guilt as a  
14 principal. The state must prove beyond a reasonable doubt  
15 by competent evidence the theory of the hand of one is the  
16 hand of all.

17 A principal in a crime is one who either actually  
18 commits the crime or who is present aiding, abetting, or  
19 assisting in committing a crime. When a person does an act  
20 in the presence of and with the assistance of another, the  
21 act is done by both. Where two or more, acting with a  
22 common plan or intent, are present at the commission of a  
23 crime, it does not matter who actually commits the crime.  
24 All are guilty. All are guilty. The hand of one is the  
25 hand of them all.

1 Present at the commission of a crime means to be  
2 sufficiently near to aid and abet and assist in the  
3 commission of the crime. However, mere presence at the  
4 scene of a crime is not sufficient to convict a person as a  
5 principal on the theory of aiding and abetting. Intent is  
6 also a necessary element for there must have been a common  
7 design or intent to commit the crime, and the crime must  
8 have been committed pursuant thereto with the person aiding  
9 and abetting by some overt act.

10 Intent means intending the result which actually  
11 occurs, not accidentally or involuntarily. Intent may be  
12 shown by acts and conduct of the defendant and other  
13 circumstances from which you may naturally and reasonably  
14 infer intent. The state must prove these elements beyond a  
15 reasonable doubt.

16 Members of the jury, the law requires that a jury be  
17 unanimous, which means that the jurors must, all of you  
18 must agree. The only two forms of verdicts are guilty and  
19 not guilty.

20 Madame Forelady, once the jury reaches a verdict of  
21 guilty or not guilty, circle the verdict on the face of the  
22 verdict form and sign under the verdict form to signify  
23 that you have circled in the verdict of all the jurors.  
24 Then notify us that you have reached a verdict by knocking  
25 on the door.

1           Now, members of the jury, the state and the defendant  
2 are entitled to the individual opinion of each juror on the  
3 issues of fact in this case. It is the duty of each of you  
4 to consider and weigh all of the evidence in the case and  
5 from such evidence to determine, if you can, the question  
6 of the guilt or innocence of the defendant.

7           There is nothing particularly different in the way a  
8 jury should consider the evidence in a criminal case from  
9 that in which all reasonable persons treat any question,  
10 depending upon evidence presented to them. You are  
11 expected to use your good sense, consider the evidence in  
12 the case for only those purposes for which it has been  
13 admitted, and give it a reasonable and fair construction in  
14 light of your common knowledge of the natural tendencies  
15 and inclinations of human beings. If the accused be proved  
16 guilty beyond a reasonable doubt, say so. If not proved,  
17 say so.

18           Now, your verdict in this case will be one of two  
19 forms. If from the evidence and the law you find the  
20 defendant is not guilty, you should circle not guilty on  
21 the verdict form, and I will give you and the foreman will  
22 sign his or her name. If, on the other hand, you find the  
23 defendant is guilty based upon the evidence and the law  
24 which you have heard, you will circle guilty on the verdict  
25 form.

1           And, Madame Forelady, will sign your name, and the  
2 verdict must be unanimous. It must be guilty or not  
3 guilty.

4           And, Madame Forelady, members of the jury, I have  
5 three verdict forms that I will submit to you. I will read  
6 one of them. The first one is *The State of South Carolina*  
7 *vs. Ricardo Laroy Middleton*, verdict form. It says:

8                   We, the jury, by unanimous consent find the  
9 defendant, Ricardo Middleton, on the charge of  
10 attempted murder of Ricky Montgomery guilty or  
11 not guilty.

12           And the next one, *The State of South Carolina vs.*  
13 *Ricardo Middleton*, verdict form:

14                   We, the jury, by unanimous consent find the  
15 defendant, Ricardo Laroy Middleton, on the charge  
16 of the murder of Sydni Collins guilty or not  
17 guilty.

18           And finally, *State of South Carolina vs. Ricardo*  
19 *Middleton*:

20                   We, the jury, by unanimous consent find the  
21 defendant, Ricardo Laroy Middleton, on the charge  
22 of the murder of Aaron Collins guilty or not  
23 guilty.

24           Once again, ladies and gentlemen, your verdict must be  
25 unanimous; that means all twelve of you must agree.

1           Now, what I need to do is ask you to go into the jury  
2 room. Don't begin discussing this case. The time to begin  
3 your deliberations will be once all the evidence that have  
4 introduced in this case -- the exhibits, photos, and  
5 whatever -- is handed to you by the bailiff, along with  
6 these three verdict forms. That will be your signal to  
7 begin your deliberations. Until then, I've got to ask one  
8 more time that you not begin any discussion of this case,  
9 okay? Please go to the jury room and await the evidence  
10 and the verdict forms.

11           (THE JURY EXITS AT 12:38 P.M.)

12           THE COURT: All right, any exceptions or additions  
13 from the state?

14           MR. FYALL: No, Your Honor.

15           MR. SUTHERLAND: No, sir.

16           THE COURT: Gentlemen, y'all need to go check all the  
17 exhibits. If there was one marked for ID by you that  
18 shouldn't have gone in, just double check those. Take  
19 another look at the verdict form and once that's been done,  
20 we'll give it to the jury. Then I'll bring the alternates  
21 out.

22           (COURT REPORTER REVIEWS EXHIBITS WITH COUNSEL.)

23           THE COURT: All right, I received two notes, and I've  
24 got to share them with you all.

25           Quiet, please.

1           The first one is from juror 254:

2                   Do y'all believe we will be done by 5:30? I have  
3                   a doctor's appointment at 6:20.

4           I would say do the best you can. Don't worry about  
5           it. Who knows? I don't know, but it's too bad if, you  
6           know. I'll be kind about it. I can bring him out, or I  
7           can just tell him at the door. What do you want me to do?

8           MR. SHELLBERG: You can just tell him.

9           THE COURT: I'll just tell him, and the other is the  
10           second part of that: Is what is the role of the alternate?

11           They come out.

12           The second note was from the three alternates: Where  
13           is our lunch? So if that's okay, I'll just talk to them.

14           (OFF THE RECORD.)

15           THE COURT: All right, one more thing. I spoke with  
16           juror number 254. He's a young kid, a young man. I said  
17           it's going to take how long it takes. If you have an  
18           issue, if you haven't reached a decision by then, we'll  
19           call your doctor and let him -- I said I'd stop, let him  
20           call the doctor.

21           (A PAUSE.)

22           THE COURT: All right, y'all can go eat or whatever,  
23           and we got your cell phone numbers.

24           (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
25           NUMBER 4.)

1 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
2 NUMBER 5.)

3 (JURY DELIBERATIONS BEGIN AT 12:51 P.M. ALTERNATES  
4 DISMISSED OFF THE RECORD.)

5 (OFF THE RECORD.)

6 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
7 NUMBER 6.)

8 THE COURT: The first question is this:

9 Is there something -- some -- is there sworn  
10 testimony of the witnesses available for us to  
11 review?

12 Of course the answer is no. And: Could we have law  
13 statute on attempted murder?

14 I'll be happy to tell them, read it again for them.  
15 I'd like to hear your positions, but I don't think they  
16 need the sworn testimony of a witness. What do they need?  
17 I'm going to call them out here. Do they need one witness,  
18 all witnesses? You've got to base your decision on what  
19 you heard basically. And can we have the statute? I'll be  
20 happy to reread what I did to them about attempted murder,  
21 or if y'all give some suggestions, I'll be willing to  
22 consider it.

23 MR. FYALL: Could we get just the specific witness  
24 that they want to ---

25 THE COURT: Well, well, we'll see. That's why we'll

1 bring them out and say all witnesses, one witness, two,  
2 three.

3 MR. SUTHERLAND: Is my guy ---

4 MR. FYALL: They're bringing him out.

5 THE COURT: They've gone to get your client. We're  
6 waiting on him.

7 (OFF THE RECORD.)

8 THE COURT: We all ready?

9 Mr. Middleton, there's two questions. We were  
10 waiting; we had to wait for you to get here. I've already  
11 shared them with your lawyer. The first question is this:

12 Is the sworn testimony of the witnesses available  
13 for us to review?

14 Question, and: Can we have the law statute of  
15 attempted murder?

16 I'm going to bring them out here and eyeball them and  
17 see exactly what they want before I make any decision, but  
18 do they want to see one, all of it? We'll find out, and  
19 I'll happy to reread the definition of attempted murder  
20 that they want.

21 (A PAUSE.)

22 THE COURT: And didn't I give y'all copies of the  
23 charge?

24 MR. SHELLENBERG: Yes, sir.

25 MR. SUTHERLAND: Yes, sir.

1 THE COURT: Well, bring the jury in.

2 (THE JURY ENTERS AT 2:08 P.M.)

3 THE COURT: Welcome back, Madame Forelady, members of  
4 the jury. I received a note that had two questions on it,  
5 of course. The first one:

6 Is the sworn testimony of the witnesses available  
7 for us to review?

8 The answer is not really because it's been taken down.  
9 If there's some specific witness, we could go back and  
10 replay that testimony for you, or was the question in  
11 general can you listen to everything? I don't know, so I  
12 had to bring you back out here and look you in the eye and  
13 ask you. What exactly are you asking for when you say:

14 Is the sworn testimony of the witnesses available  
15 for review?

16 What do you, what do you want to hear? Is there some  
17 particular witness you want to hear? Which one?

18 FOREPERSON: The witness, the testimony of Mr. Scott.

19 THE COURT: Mr. Scott?

20 FOREPERSON: Ronnie Scott. Ronnie Scott.

21 THE COURT: Which one is he?

22 FOREPERSON: He was the one that -- he was the member  
23 of the, the Thunderguard.

24 JUROR: From the Upstate.

25 THE COURT: Hold on a minute.

1 Do y'all remember that?

2 MR. FYALL: Yes, Your Honor.

3 MR. SHELLBERG: Yes, sir.

4 THE COURT: Ronnie Scott. You all want to hear this.  
5 Is that correct?

6 FOREPERSON: Yes.

7 THE COURT: Well, she'll have to find it over there on  
8 the machine, and: Could we have the law statute for  
9 attempted murder?

10 I'll be happy to read you again the definition of  
11 attempted murder, but we can find his testimony and let you  
12 listen to that. And when you think you've heard what you  
13 need here, just let me know, okay?

14 We'll be at ease until she finds it.

15 (A PAUSE.)

16 (WHEREUPON, THE TESTIMONY OF RONNIE SCOTT IS PLAYED  
17 FOR THE COURT.)

18 THE COURT: Yes?

19 FOREPERSON: I think we've heard enough.

20 THE COURT: Are you satisfied with what you've heard?

21 FOREPERSON: Yes.

22 THE COURT: Madame Forelady? The answer is yes?

23 FOREPERSON: Yes.

24 THE COURT: Now would you like for me to read you the  
25 definition of attempted murder again?

1 FOREPERSON: Yes.

2 THE COURT: All right. Attempted murder. The  
3 defendant is charged with attempted murder. Murder is the  
4 killing of another person with malice aforethought. Malice  
5 is ill -- malice is hatred, ill will, or hostility toward  
6 another person. It is the intentional doing of a wrongful  
7 act without just cause or excuse, and with the intent to  
8 inflict any injury, or under circumstances that the law  
9 will infer an evil intent.

10 Malice aforethought does not require that malice exist  
11 for any particular time before the act is committed, but  
12 malice must exist in the mind of the defendant just before  
13 at the time of the act committed. Therefore, there must be  
14 a combination of the previous evil intent and the act.

15 An attempt is an effort to accomplish a crime which  
16 does not succeed. An attempt includes a specific intent to  
17 do a particular criminal act, along with an act falling  
18 short of the act intended.

19 The state must show more than mere preparation in  
20 intent. There must be some overt act committed in the  
21 effort to commit the crime. To prove attempted murder, the  
22 state must prove beyond a reasonable doubt that the  
23 defendant attempted to kill another person with malice  
24 aforethought.

25 Now, that's what I read to you before. Is that

1       satisfactory?

2               Now, what I want you to do is go back to the jury  
3 room. Don't resume your deliberations until the bailiff  
4 invites you to, okay? Go back. Don't talk about the case  
5 until you get word to do it again.

6               (THE JURY EXITS AT 2:33 P.M.)

7               THE COURT: All right, any exceptions or additions  
8 from the state?

9               MR. FYALL: No, sir.

10              THE COURT: Mr. Sutherland?

11              MR. SUTHERLAND: No, sir.

12              THE COURT: All right, go tell them -- wait about two  
13 minutes. Then go tell them they can resume their  
14 deliberations.

15              MR. FYALL: We do have a computer, Your Honor. I  
16 don't think they have one back there.

17              THE COURT: What now?

18              MR. FYALL: We have the computer we talked about  
19 earlier. I don't think the jury, they have one back there.

20              THE COURT: You have the computer?

21              MR. FYALL: I don't think the jury, jury has a  
22 computer.

23              THE COURT: Well, they haven't asked for one, have  
24 they?

25              MR. FYALL: No, Your Honor.

1 THE COURT: Okay. Well, if they ask for one, we'll be  
2 happy to provide one. Until then, let's not give them  
3 something they haven't asked for.

4 Tell them to resume their deliberations.

5 And I think what will happen, if they want to view  
6 something, they'll come back out and say can we see this on  
7 a computer. Having not asked, I don't want to give them  
8 something, like I said, they haven't asked for.

9 We've got your cell numbers.

10 (A PAUSE.)

11 THE COURT: I would wait a few minute before you went  
12 anywhere. We can disperse and come back later on. If I  
13 need to call you, I will.

14 MR. SUTHERLAND: Yes, sir. Thank you, Your Honor.

15 THE COURT: Did you tell them to resume?

16 BAILIFF: Yes.

17 THE COURT: Thank you, sir.

18 (OFF THE RECORD.)

19 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
20 NUMBER 7.)

21 THE COURT: Are you ready?

22 MR. FYALL: State's ready, Your Honor.

23 MR. SUTHERLAND: The defense is ready, sir.

24 THE COURT: Bring the jury in.

25 (THE JURY ENTERS AT 3:41 P.M.)

1 THE COURT: Welcome back, Madame Forelady, members of  
2 the jury. I received this note a few moments ago, and it  
3 says: Could you please explain the hand of one, hand of all  
4 statute?

5 That's what you want to -- I'll reread the definition  
6 to you, or what I told you earlier. It will be the same  
7 thing.

8 Hand of one. If a crime is committed by two or more  
9 people who are acting together in committing a crime, the  
10 act of one is the act of all. A person who joins with  
11 another to commit an unlawful act is criminally responsible  
12 for everything done by the other person which happens as a  
13 probable or natural consequence of the acts done in  
14 carrying out the common plan or purpose. If two or more  
15 people are together, acting together, assisting each other  
16 in committing the offense, the act of one is the act of  
17 all, or as it is sometimes said, the hand of one is the  
18 hand of all.

19 Prior knowledge that a crime is going to be committed  
20 without more is not sufficient to make a person guilty of  
21 that crime. Mere knowledge that another person is going to  
22 commit a crime, even if the defendant present -- is present  
23 when the crime is committed, is not sufficient to convict  
24 the defendant as a principal.

25 Guilt as a principal is shown by actual or

1 constructive presence at the scene as a result of prior  
2 arrangement. Therefore, a finding of a prior arranged plan  
3 or a common scheme is necessary for a finding of guilt as a  
4 principal. The state must prove beyond a reasonable doubt  
5 by competent evidence the theory of the hand of one is the  
6 hand of all.

7 A principal in a crime is one who either actually  
8 commits the crime or who is present aiding, abetting, or  
9 assisting in committing the crime. When a person does an  
10 act in the presence of and with the assistance of another,  
11 the act is done by both. Where two or more acting with a  
12 common plan or intent are present at the commission of a  
13 crime, it does not matter who actually commits the crime.  
14 All are guilty. The hand of one is the hand of all.

15 Present at the commission of a crime means to be  
16 sufficiently near to aid and abet and assist in the  
17 commission of the crime. However, mere presence at the  
18 scene of a crime is not sufficient to convict one as a  
19 principal on the theory of aiding and abetting.

20 Intent is also a necessary element, for there must  
21 have been a common design or intent to commit the crime,  
22 and the crime must have been committed pursuant thereto  
23 with the person aiding and abetting by some overt act.

24 Intent means intending the result which actually  
25 occurs, not accidentally or involuntarily. Intent may be

1 shown by acts and conduct of the defendant and other  
2 circumstances from which you may naturally and reasonably  
3 infer intent. The state must prove these elements beyond a  
4 reasonable doubt.

5 Does that make sense to you? That helps you out?  
6 Okay. Once again, is there anything else right now? You  
7 just wanted me to do that. Is that correct?

8 So, go back to the jury room. I'll have a discussion  
9 with the lawyers, and when the bailiff says you may resume  
10 your deliberations, you can start again. Thank you all so  
11 very much.

12 (THE JURY EXITS AT 3:45 P.M.)

13 THE COURT: Any exceptions or additions from the  
14 state? Mr. Sutherland?

15 MR. FYALL: None from the state, Your Honor.

16 THE COURT: You know, sometimes when I reading these  
17 charges, I feel like I'm reading *Beowulf* all over again.

18 Anyway, you can tell the jury to resume now.

19 (A PAUSE.)

20 All right, we'll be at ease until further notice.

21 (OFF THE RECORD.)

22 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT  
23 NUMBER 8.)

24 THE COURT: Are y'all ready?

25 MR. SUTHERLAND: Yes, sir.

1 MR. FYALL: Yes, sir.

2 THE COURT: All right, the last note I received from  
3 the jury reads as follows:

4 If we agree on two charges but not on the third,  
5 what happens with the two we agree upon?

6 There's all kind of ways I can do this. I can write  
7 it down, I can call them back out or, or whatever. But  
8 obviously the ones they agree on, if it's unanimous, we  
9 accept that. If they disagree on something, then it's a  
10 mistrial on that particular charge. I don't know any way,  
11 any other way to look at it.

12 MR. FYALL: I think that's what the law is, Your  
13 Honor.

14 THE COURT: Huh?

15 MR. FYALL: I think that's what the law is.

16 THE COURT: Yes.

17 MR. FYALL: Whatever they agree on, they fill out that  
18 form.

19 THE COURT: Yes. So, do y'all ---

20 MR. FYALL: I think, I think we have to ---

21 THE COURT: --- want me to just write the answer down?

22 MR. FYALL: I think they're going -- once -- the  
23 verdicts they agree on, once they fill out the form, I  
24 think they have to stop deliberating on that particular  
25 charge.

1 THE COURT: Well, they've agreed on two.

2 MR. FYALL: Yes, but once they -- once we receive the  
3 verdict on those two, I think they have to be instructed  
4 they have to cease deliberating on those two.

5 THE COURT: You confuse me. What did you not  
6 understand about what I just said? The two they agree on,  
7 we accept; the one they can't agree on is a mistrial.

8 MR. FYALL: If they can't agree on it, if they can't  
9 agree on it, but they should keep deliberating.

10 THE COURT: Well, this is what they said. I'm taking  
11 them at their word. Y'all want me to give an Allen charge  
12 or something?

13 MR. FYALL: No, I don't.

14 THE COURT: I'm happy to listen to both of you.

15 MR. FYALL: No, I don't want an Allen charge.

16 THE COURT: Mr. Sutherland.

17 MR. SUTHERLAND: And my view is that as far as  
18 stopping deliberating, they can change their mind in the  
19 box when they're being polled, sir.

20 THE COURT: What now?

21 MR. SUTHERLAND: As far as ordering them to start  
22 deliberating, they can change their mind in the box when  
23 they're being polled, so.

24 THE COURT: Well, they could. They could.

25 MR. SUTHERLAND: Yes, sir.

1 THE COURT: So, I think we accept what they've decided  
2 on, and it's a mistrial on the one they can't decide on.  
3 Do you want me to write it on this sheet, or bring them  
4 back out and look at them in the eye and tell them that?

5 MR. FYALL: I'd rather you...

6 THE COURT: Bring the jury in.

7 It's good to eyeball them. You know, you can  
8 speculate but nobody knows but them what the verdict is.  
9 It could be not guilty, could be guilty. I don't know what  
10 it is, but we know they've agreed on two of the counts.

11 (THE JURY ENTERS AT 4:45 P.M.)

12 THE COURT: Welcome, Madame Forelady, members of the  
13 jury. This is the latest note I received. I've shared it  
14 with the lawyers. I will read it for the record again:

15 If we agree on two charges but not on the third,  
16 what happens with the two we agree upon?

17 If you unanimously agreed on two of the three charges,  
18 we would accept that verdict on those two charges. The  
19 third one would be a mistrial. That make sense?

20 Now, the question is this. Do you need to further  
21 deliberate on the third charge, or have you reached an  
22 *impasse*?

23 FOREPERSON: I think we've reached...

24 THE COURT: You've reached an *impasse*? Okay. All  
25 right. Do you have the verdict? You don't have the

1 verdict forms with you, do you?

2 FOREPERSON: No.

3 THE COURT: All right, return to your jury room.

4 Don't do anything further until I give you instructions,  
5 either to come back out or remain in, okay? Thank you so  
6 very much. Just don't talk about the case in the meantime.

7 (THE JURY EXITS AT 4:46 P.M.)

8 THE COURT: Any exceptions or additions from the  
9 state?

10 MR. SUTHERLAND: No, sir.

11 THE COURT: That's just the way it is. I'll give them  
12 a few minutes, and then we'll bring them back out.

13 I think it would be good to go tell them we're ready  
14 to accept their verdicts, and tell them -- get the verdict  
15 forms, bring everything out, okay? The verdict forms.  
16 Tell them we're ready to accept the verdicts that they've  
17 reached.

18 (A PAUSE.)

19 THE COURT: Folks, we've been here since Monday. I  
20 don't know what the verdict is. Nobody knows but the jury  
21 right now. So, I caution you and invite you to remain  
22 calm, whatever it might be one way or the other.

23 (THE JURY ENTERS AT 4:50 P.M.)

24 THE COURT: All right, Ms. Falcone.

25 CLERK: Yes, Your Honor.

1 Madame Forelady, has the jury reached a verdict?

2 FOREPERSON: Yes.

3 CLERK: Please pass the verdict forms to the bailiff.  
4 please.

5 (A PAUSE.)

6 THE COURT: All right, you may publish it.

7 CLERK: Thank you, Your Honor.

8 VERDICT

9 Indictment number 2017-GS-40-5854, *The State of South*  
10 *Carolina vs. Ricardo Laroy Middleton*, we, the jury, by  
11 unanimous consent find the defendant, Ricardo Laroy  
12 Middleton, on the charge of murder of Sydni Collins guilty.  
13 Signed number 96, Foreperson, August the 22nd 2019.

14 Indictment number 2017-GS-40-05852, *The State of South*  
15 *Carolina vs. Ricardo Laroy Middleton*, we, the jury, by  
16 unanimous consent find the defendant, Ricardo Laroy  
17 Middleton, on the charge of attempted murder of Ricky  
18 Montgomery not guilty. Signed number 96, Foreperson,  
19 August the 22nd 2019.

20 Madame Forelady, were these your verdicts and the  
21 verdicts of the entire jury?

22 FOREPERSON: Yes.

23 CLERK: Thank you.

24 THE COURT: All right, anything further from the  
25 state?

1 MR. FYALL: No, Your Honor.

2 THE COURT: Mr. Sutherland?

3 MR. SUTHERLAND: No, sir.

4 THE COURT: All right.

5 So, as we discussed a moment ago, Madame Forelady,  
6 members of the jury, you could not decide on the guilt or  
7 innocence regarding the victim Aaron Collins. Is the  
8 correct? But it was unanimous of guilty against -- for the  
9 murder of Sydni Collins and not guilty on the attempted  
10 murder of Ricky Montgomery. That is your verdict. It  
11 still remains the same? All right.

12 Well, ladies and gentlemen, it's not easy to sit in  
13 judgment of your fellow citizens. I've watched you all  
14 since Monday, and I want to thank you for being attentive,  
15 conscientious in trying your very best to reach a fair  
16 result. I think you've accomplished that. You know, no  
17 decision is better than a bad one. So, you couldn't  
18 decide. That's still good.

19 So on behalf of everybody involved, I want to thank  
20 you for your patriotic participation in this process. You  
21 can go to the jury room.

22 And Mr. Truett, is he here? Or Pat will give you  
23 further instructions.

24 I hope I meet you all again somewhere along the way.  
25 Thank you all so very much.

1 (THE JURY EXITS 4:53 P.M.)

2 THE COURT: Let me suggest this to everyone. It's  
3 been a fairly long week. It's the end of the day. I'll  
4 leave everything open for motions for me to decide. Ten  
5 days?

6 MR. SUTHERLAND: Yes, sir, and just want leave to  
7 file ---

8 THE COURT: What now?

9 MR. SUTHERLAND: Just leave to file within the ten day  
10 period.

11 THE COURT: Well, yeah, yeah. All right.

12 MR. SUTHERLAND: Thank you, sir.

13 THE COURT: All right, is that fair enough for  
14 everybody?

15 MR. FYALL: Yes, Your Honor.

16 THE COURT: I will notify everyone when we shall meet  
17 again.

18 MR. SUTHERLAND: Yes, sir.

19 THE COURT: Thank you all so very much.

20 --- END OF TRANSCRIPT OF RECORD ---

## CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING EXCERPT IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 19TH, 20TH, 21ST, AND 22ND DAYS OF AUGUST, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

OCTOBER 31ST, 2019

State of South Carolina., ) In the Court of General  
 ) Sessions of Columbia  
 )  
County of Richland. ) Case No.: 2017-GS-40-05854

State of South Carolina., )  
 )  
 )  
Plaintiff., )  
 )  
-vs- ) Transcript of Record  
 ) Sentencing  
Ricardo Laroy Middleton., )  
 )  
Defendant. )  

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 )  
September 26, 2019  
Columbia, South Carolina

B-E-F-O-R-E:

The Honorable L. Casey Manning, judge.

B-E-F-O-R-E:

Mr. Lamar Jerell Fyall  
Fifth Circuit Solicitor's Office  
1701 Main Street, Suite 302  
Columbia, South Carolina 29202  
[fuall@scgov.us](mailto:fuall@scgov.us)  
Attorney for the Plaintiff

Mr. Tivis Colley Sutherland, IV  
1522 Lady Street  
Columbia, South Carolina 29201  
[tivissutherland@bellsouth.net](mailto:tivissutherland@bellsouth.net)  
(803) 237-9747  
Attorney for the Defendant

Wanda S. Nelson, CVR-M  
Certified Verbatim Reporter,  
Merit  
Official Court Reporter for the  
State of South Carolina, Retired

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	No Exhibits were entered into the record.		

1 (GENERAL SESSIONS TERM OF COURT FOR RICHLAND COUNTY IN  
2 SESSION ON THURSDAY, SEPTEMBER 26, 2019 IN THE MATTER OF  
3 *THE STATE OF SOUTH CAROLINA VERSUS RICARDO LAROY MIDDLETON*  
4 AT 09:37 A.M.)

5 THE COURT: Thank you very much, ladies and gentlemen.  
6 Please take your seats.

7 SOLICITOR FYALL: The State calls Ricardo Middleton.

8 (WHEREUPON, RICARDO  
9 MIDDLETON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
10 FOLLOWS:)

11 *THE COURT:* I'm assuming we're back on the record in  
12 *State versus Ricardo Middleton?*

13 SOLICITOR FYALL: Yes, your Honor.

14 THE COURT: Particular on Indictment 2017-5854. All  
15 right, there were three charges; the jury reached a verdict  
16 of guilty on one count of murder involving Sydney Collins.  
17 They mistried the other count against her husband I believe  
18 and he was not guilty on attempted murder; is that correct?

19 SOLICITOR FYALL: That's accurate, your Honor.

20 THE COURT: All right. Solicitor, you may proceed.

21 SOLICITOR FYALL: Thank you, your Honor. Obviously  
22 your Honor heard the facts of the case so at this point I  
23 want to defer to the victims. I believe a few of them  
24 would like to speak --

25 THE COURT: All right. Be happy to hear from any of

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1 you. You need to stand up and tell me your name please.

2 You all from Missouri; is that right?

3 You from Missouri?

4 A. Correct.

5 A. Columbia.

6 THE COURT: Okay, you're from Missouri.

7 Yes, ma'am, your name please.

8 A. Yes, your Honor, my name is Tommy Martin McMillan.

9 THE COURT: Yes, ma'am.

10 MS. MCMILLAN: Last name is spelled M-c-M-i-l-l-a-n.  
11 I'm from Columbia. I'm the mother of Sydney McMillan  
12 Collins and I'm here to briefly talk about what my  
13 daughter's death meant to my family and me and to ask you  
14 to consider a plea for Ricardo Middleton to receive a life  
15 sentence without parole.

16 On July 27, 2017 Mr. Middleton gun down my daughter  
17 with two potentially fatal shots and he left the scene of  
18 the murder. This occurred two days after her birthday.

19 In addition he tried to cover up this crime and during  
20 the entire two years after the murder he has shown no  
21 remorse for this senseless killing. His actions also  
22 showed malice and premeditated intent because of what he  
23 did and allegedly said to my daughter as he attached  
24 another person and killed my daughter that night.

25 I've heard that a parent is not supposed to bury his

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1 or her child and I believe this to be true. On that tragic  
2 night of 2017 if I could have taken my daughter's place I  
3 would have gladly given my life so that she could live.

4 Sydney Collins was a beautiful, smart, kind-hearted  
5 person who would offer to help anyone in need. On several  
6 occasions she would take others into her home when they had  
7 no place to stay. She loved people, she loved God, and as  
8 they say she never met a stranger.

9 In addition, because she learned first hand of the  
10 negative effects that could come from a divorce, Sydney was  
11 a devoted wife who tried to be by her husband's side as  
12 often as she could. She was a loving wife, a kind mother,  
13 helpful sister to her twin brothers and a very thoughtful  
14 and supportive daughter.

15 During the last two years since she was brutally  
16 murdered her death has taken a mental and emotional tole on  
17 all of our family members and close friends. My grandson,  
18 Sydney's son, who has high functioning autism, aspergers,  
19 was devastated and not able to look at his mother's picture  
20 for two years. One of her brother's had to go in for  
21 counseling because of his depression that resulted from  
22 Sydney's death. I've also had to go to Grief Share  
23 meetings to help me work through the anger and sadness and  
24 emptiness that comes with each passing day. We miss  
25 everything about her because she was such a bright light.

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1           It hurts so much that I did not get to tell my  
2 daughter goodbye, give her a hug, and remind her how much I  
3 loved her. I find myself trying to hold onto anything and  
4 everything she's ever owned, touched, or loved in order to  
5 feel close to her once more. I will never get over it but  
6 I hope my faith will bring me through it. Hopefully  
7 Sydney's legacy of kindness and love will live on in the  
8 hearts and minds of all who knew her.

9           The only thing that has sustained our family is our  
10 strong faith in God and we could not have made it without  
11 him. As I was going through and old purse I found a card  
12 that was part of the spiritual set that my daughter had  
13 given me years ago. The card reads, "When you become a  
14 parent children" -- remember this -- "Children are sent  
15 through us not to us."

16           I try to remember this in order to get through each  
17 day but the cruel murder and the pain and suffering he has  
18 caused my family Ricardo Middleton needs to have a life  
19 sentence to think about his life and all the pain and  
20 suffering he has caused others.

21           Thank you for allowing me to speak.

22           THE COURT: Thank you, ma'am.

23           A. Jacqueline Smith, Victim Advocate. I'm reading this  
24 on behalf of Mrs. McMillan's son Grant, Sydney's son, her  
25 grandson for Heath Hamilton, Junior and it reads,

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1           " Losing my mother at that time was extremely  
2 disruptive and was a violent upheaval in my life. I wanted  
3 to keep growing with her in my life and I wasn't done  
4 needing her guidance."

5           And her brother sent a statement and it reads,

6           "Your Honor, in this brief letter I'm making a  
7 conscious choice not to acknowledge the Defendant in any  
8 way. The fact that he committed such a heinous act  
9 demonstrates that he is a social-path with no empathy or  
10 regard for human life. This individual has absolutely no  
11 remorse or attrition for what he has done. I just humbly  
12 request that you show him the same compassion he showed my  
13 beloved sister on that night two years ago when he executed  
14 her. Thank you in advance for allowing me to take this  
15 declaration."

16       A. My name is Cynthia Collins and I'm the mother of  
17 Aaron Collins and the mother-in-law of Sydney Collins.

18           Ricardo, I want you to know, I truly want you to  
19 understand that you didn't know the wonder of God's  
20 creation on the night that you took the life of Sydney  
21 Collins. I want you to know that she was truly a gift  
22 from God and in that came love. One thing that you should  
23 know that you should love your neighbor as yourself. And  
24 to know, please know, that God makes no mistakes so in your  
25 sentences today do not let this life that you have taken be

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1 in vain. Save your life by accepting the Lord Jesus Crist  
2 and be real with your own self and ask him for forgiveness.

3 THE COURT: Thank you, ma'am. Anything further from  
4 the State?

5 SOLICITOR FYALL: Be just one more statement, your  
6 Honor.

7 A. My name is Sydney Collins, C-o-l-l-i-n-s.

8 THE COURT: Yes, ma'am.

9 MS. COLLINS: I did not prepare anything. I was ask a  
10 while ago to have an impact statement. Sydney Collins was  
11 my sister-in-law and Aaron Collins was my brother. It's  
12 even strange to say his name because I never called him  
13 that. I just called him Brother. That's who he was that's  
14 all he had to be. And it's hard to distinctly say what it  
15 does to a person when that constant is removed from their  
16 life. I'm still just walking through life finding places  
17 where surety is now shaky ground.

18 It's one of the constants that I know is that Sydney  
19 and Aaron were very supportive people and I knew that from  
20 my own experience. And it's been bitter sweet to hear  
21 always that they have impacted others sewing seeds of  
22 growth into lives that they touch. I can't say what it  
23 does to any person to know that the choices that you make,  
24 the good that you try to commit into the world can just end  
25 by actions of another person.

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1           What I can say is that you expect the sadness of  
2 missing your family members, you can't expect the pain of  
3 having all this love and not having a way to express it to  
4 those people.

5           What I am constantly thrown by is those moments of  
6 happiness when I achieve something that is just covered  
7 with sadness that I cannot share that with my family; that  
8 I cannot show these people how those seeds of growth have  
9 taken root. That's all I can say.

10           SOLICITOR FYALL: Thank you, your Honor. That's all  
11 from the victim's, your Honor.

12           As far as his prior record, your Honor, he has a 1993  
13 assault and battery with a dangerous weapon out of  
14 Massachusetts. Your Honor obviously heard the facts of the  
15 case which was a murder at an intersection; a very brazen  
16 incident, your Honor. I would just ask that your Honor  
17 give those facts just render the appropriate sentence.

18           THE COURT: Thank you, sir.

19           SOLICITOR FYALL: Thank you.

20           THE COURT: Mr. Sutherland.

21           MR. SUTHERLAND: Thank you, your Honor. May it please  
22 the Court.

23           THE COURT: Yes, sir.

24           MR. SUTHERLAND: And, Judge, for the record, I've  
25 advised Rick to remain silent.

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1 MR. MIDDLETON: Oh, no, I want to speak.

2 MR. SUTHERLAND: Okay. But I've advised him to remain

3 ---

4 THE COURT: I understand.

5 MR. SUTHERLAND: --- to remain silent. We have  
6 another matter that we have to deal with and issues on  
7 appeals; statements against interest can be held against  
8 him so I've advised him to remain silent.

9 Your Honor, I'm going to, for the most part, lean on  
10 his family for the mitigation. The personal matter about  
11 him there really was -- the testimony during the trial that  
12 would tend to mitigate the act I guess came from Ronnie  
13 Scott who stated that Mrs. Collins had stepped out  
14 aggressively and went for her firearm and that's how the  
15 gun fight ultimately occurred.

16 Beyond that, Judge, I will leave the mitigation to the  
17 family and look forward to post-trial, sir.

18 THE COURT: All right, sir.

19 MR. SUTHERLAND: And who would like to speak first?

20 Nakisha? Just first and last name for the record.

21 A. Barbara Hutchinson.

22 THE COURT: Yes, ma'am.

23 MS. HUTCHINSON: I'm Ricardo Middleton's aunt. He was  
24 always raised around me and later after my sister died me  
25 and him got to be real close. He was more son than a

1 nephew.

2 I can't say anything bad about my nephew. Number One:  
3 He has an eleven-year-old daughter. He's a electrician.  
4 Wherever he had to go to go on a job he would go to prepare  
5 for that daughter to make sure that she was fine. Other  
6 than that wherever he would be he would go to church. You  
7 can be a Methodist, Baptist, he's in somebody's church.  
8 Never know anything bad of him. If I had ever hurt he is  
9 going to be there. He will. Never can say anything bad  
10 about him.

11 As he would call me from the jail he'd say, Auntie,  
12 stop worrying because I get so emotional. He'd say Auntie  
13 stop worrying. I'm praying for people. I am praying. I'd  
14 say, Honey, I'm praying for you too. He'd say don't worry,  
15 God will take care of it. Don't worry. And so all I'm  
16 saying is I don't -- I'm not saying I don't care what  
17 people think about him because God knows that's not true,  
18 but for how the opinion to be he's not that.

19 He is not that. He have helped elderly people. He  
20 don't even know their name. He would say such and such  
21 that lady over there seems like she needs to have some type  
22 of help. That's the type of person Ricardo Middleton is  
23 and was and I dearly, I dearly miss him from the family, I  
24 do, because he was a good asset to our family.

25 Your Honor, thank you so kindly to give me a chance.

COPY

1 THE COURT: Thank you, ma'am.

2 A. Good morning, Judge.

3 THE COURT: Good morning.

4 A. My name is LouAnn Fraizer and I'm one of his aunts  
5 also. And I been knowing Ricky all his life and he is a  
6 carrying person. Truly he is. He was raised in a  
7 spiritual environment. He does go to church and he does do  
8 good deeds. So, all I'm asking you, sir, your Honor, sir,  
9 is to please have mercy.

10 THE COURT: Thank you, ma'am.

11 Yes, ma'am. Your name please?

12 A. Nakisha Walker, I'm Ricardo's cousin. He was always  
13 a carrying cousin. He always helped me out if I needed him  
14 to help me out, and his presence is missing from our  
15 family. I'm just asking the Court to have mercy on him  
16 upon his sentencing. Thank you.

17 THE COURT: All right. Thank you, ma'am.

18 Yes, sir, Mr. Sutherland, anything further?

19 MR. SUTHERLAND: I do believe --

20 THE COURT: You've advised him not to talk but it's  
21 his right to speak if he wants too.

22 MR. SUTHERLAND: Yes, sir.

23 THE COURT: Mr. Middleton, I'd be happy to hear  
24 anything you'd like to tell me.

25 MR. MIDDLETON: Yes, sir. I was trying to speak the

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1 whole time but I want you to understand but me and my  
2 lawyer was arguing the whole time and you gave us the  
3 opportunity to say -- long story short, your Honor, I have  
4 a right to a fair trial. It's my Constitutional right.  
5 This was not a fair trial.

6 THE COURT: Stop. I'm not here to hear -- this is for  
7 purposes of sentencing.

8 MR. MIDDLETON: But this is -- but, sir.

9 THE COURT: Let me finish, okay? Can you listen for a  
10 minute, sir? This is for purposes of sentencing. I  
11 advised your lawyer to file post-trial motions that I'll  
12 hear at a later time. Now we can do this the easy way or  
13 the hard way.

14 MR. MIDDLETON: Sir.

15 THE COURT: But if you want to talk about mitigation  
16 I'll be happy to hear from you but I'm not going over your  
17 trial with you. Do you understand that, sir?

18 MR. MIDDLETON: Sir, every time I speak to anybody I'm  
19 being yelled at and not being able to get what I'm trying  
20 to say out.

21 THE COURT: I understand.

22 MR. MIDDLETON: All I'm saying, sir, is they said that  
23 it was me. They said my vehicle. But the news states  
24 there was a black SUV that shot and sped off. I don't  
25 drive a black SUV, sir. I wasn't the one on the scene that

COPY

1 was surrounded with the guns. That wasn't me. I don't  
2 have no motive, sir.

3 THE COURT: Mr. Middleton, I appreciate your position.

4 MR. MIDDLETON: I'm innocent.

5 THE COURT: On Indictment 2017-5854 the *State versus*  
6 *Ricardo Middleton*, its an indictment for murder, the  
7 sentence, life. Good luck to you, Mr. Middleton.

8 This matter is concluded.

9 SOLICITOR FYALL: Thank you, your Honor.

10 (COURT AT EASE AT 09:45 A.M.)

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STATE OF SOUTH CAROLINA

COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

Ricardo Laro Middleton vs. Murder

INDICTMENT/CASE#: 2017-GS-40-5854

AKA: \_\_\_\_\_

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

AW#: 2017A400202705

Date of Offense: July 23 2017

S.C. Code §: 16-03-0810

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or  PLEADS

TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45 (CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 101910 [Signature] 6965

Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 18 months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-85 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%) \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-211 (A)(1)(Conv. Surcharge) \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-211 (A)(2)(DUI Surcharge) \_\_\_\_\_ \$ \_\_\_\_\_

§56-5-2895 (DUI Assessment) \_\_\_\_\_ \$ \_\_\_\_\_

§56-1-286 (DUI Breath Test) \_\_\_\_\_ \$ \_\_\_\_\_

Proviso (Public Def/Probation) \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-213 (Drug Court Surcharge) \_\_\_\_\_ \$ \_\_\_\_\_

§50-21-114 (BUI Breath Test Fee) \_\_\_\_\_ \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \_\_\_\_\_ \$ \_\_\_\_\_

3% to County (if paid in installments) \_\_\_\_\_ \$ \_\_\_\_\_

TOTAL \_\_\_\_\_ \$ 128.75

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Clerk of Court/Deputy Clerk Jeanette W. McBride

Court Reporter: C. Harris

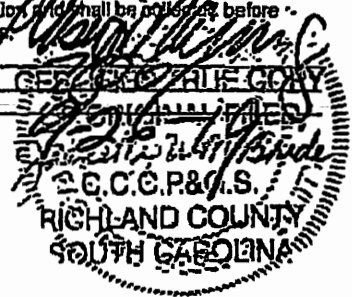
Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge \_\_\_\_\_

Judge Code: \_\_\_\_\_

Sentence Date: \_\_\_\_\_

SCCA/217 (04/2018)





Judge	<u>        </u>	Name:	<u>        </u>
on	<u>8-2-17</u>	Address:	<u>        </u>
Type and Amount:	<u>Bond Sub. in C.S.</u>	Telephone:	<u>        </u>
Name of Surety:	<u>        </u>	Name:	<u>        </u>
		Address:	<u>        </u>
	<b>PRELIMINARY HEARING held by</b>	Telephone:	<u>        </u>
Judge	<u>        </u>	Name:	<u>        </u>
on	<u>        </u>	Address:	<u>        </u>
Defendant Attorney:	<u>        </u>	Telephone:	<u>        </u>
Declarer:	<u>        </u>	Name:	<u>        </u>
		Address:	<u>        </u>
	<b>DISPOSITION before</b>	Telephone:	<u>        </u>
Judge	<u>        </u>	Name:	<u>        </u>
on	<u>        </u>	Address:	<u>        </u>
by	<u>        </u>	Telephone:	<u>        </u>
	<small>(plaintiff, jury trial, bench trial, plea, not. pros., etc.)</small>	Name:	<u>        </u>
Disposition:	<u>        </u>	Address:	<u>        </u>
Sentence:	<u>        </u>	Telephone:	<u>        </u>
	<b>JURORS</b>	Name:	<u>        </u>
		Address:	<u>        </u>
		Telephone:	<u>        </u>
		Name:	<u>        </u>
		Address:	<u>        </u>
		Telephone:	<u>        </u>



CODEPENDANTS

**WITNESSES**

**(S) Michael V Laurita**  
-- Richland County Sheriff Dept

**ARREST WARRANT NUMBER**

**2017A4010202705**

**ACTION OF GRAND JURY**  
**TRUE BILL**

*Ketil BZ*  
Foreperson of Grand Jury **OCT 12 2017**  
Date:

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2017GS4005854**

**The State of South Carolina**  
County of  
**Richland**

**COURT OF GENERAL SESSIONS**

**OCTOBER TERM 2017**  
**154**

**THE STATE**  
**vs.**

**Ricardo Laroj Middleton**

**Indictment for**  
**MURDER / MURDER**

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

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

Defendant

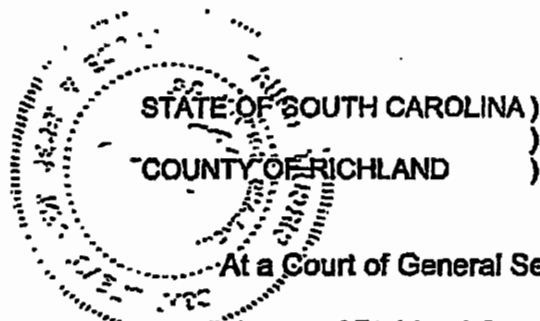
I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.





**INDICTMENT**

At a Court of General Sessions, convened on October 11, 2017, the Grand Jurors of Richland County present upon their oath:

**MURDER**

That Ricardo Laroy Middleton did in Richland County, on or about July 27, 2017, kill the victim, Sydni Collins, with malice aforethought, either express or implied, by means of Gunshot(s), and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S.C. Code of Laws, (1976, as amended).

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

  
DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Ricardo Laroy Middleton, No. 00381526 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

FILED  
 2021 APR 16 PM 1:05  
 CLERK OF COURT  
 RICHLAND COUNTY  
 SOUTH CAROLINA

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence: General Sessions Court, Richland County, Columbia, SC
3. Name(s) of co-defendant(s) (if any): Marquez Johnson

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2017-GS-40-5854
  - (b) -
  - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9/26/2019 Life sentence
  - (b) -
  - (c) —
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_
  - (b) after a plea of not guilty
  - (c) after a plea of nolo contendere \_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
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. —
    - iii. —
  - (b) the result in each such Court to which you appealed:
    - i. Appeal was withdrawn
    - ii. —
    - iii. —
  - (c) the date of each such result:
    - i. December 23, 2020
    - ii. —
    - iii. —
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:

Revised 3/2003

- i. None as the appeal was withdrawn
  - 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) Trial counsel was ineffective in preparing for the trial
  - (b) Applicant has learned of after dicovered evidence which is important to his innocence
  - (c) Trial counsel called attention to the fact that the Defendant did not testify in his closing argument
  - (d) Trial counsel failed to make a motion to prohibit the state from referring to the biker clubs as gangs and permitting a witness to refer to the gang of which Applicant was a member as an "outlaw" motorcycle club.
  - (e) Trial counsel failed to object to the "hand of one is the hand of all" charge when there was no evidence Applicant and the co-defendant participated together in the alleged attack.
  - (f) Trial Counsel failed to request a self-defense charge as the testimony supported such a charge
  - (g) Trial counsel improperly advised Applicant not to testify in his own defense.
  - (h) Trial counsel failed to object to the improper testimony of Taima Jordan when the witness testified statements given by the witnesses were consistent with the video. Trial counsel failed to object to hearsay testimony by the witness.
  - (i) Trial counsel failed to object to the opinion testimony of Taima Jordan as the witness had not been qualified as an expert.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to properly prepare the cell phone tower information to

Revised 3/2003

establish that the applicant was not in the vicinity of the incident. Trial counsel failed to properly show to the jury that the automobile he was in that was shown on the video tape, at a different time from the time of the shooting. Trial counsel failed to properly use the inconsistent statements previously given by the witnesses. Trial counsel did not meet with applicant in sufficient time to adequately prepare for trial.

(b) Since the trial of the case, Marquez Johson, the co-defendant, has been tried and acquitted. He is now available as a witness who will aid the case for the applicant.

(c) During closing argument, trial counsel mentioned that in England the failure to testify is held against a defendant. (Page 490 of the transcript). This statement called to the jury's attention the fact the Applicant did not testify and was prejudicial to the applicant.

(d) During the trial the state made several references to the club to which the applicant belonged as a "gang" but did not use the same word to describe the other club involved in this matter. Also, Ronie Scott was permitted to testify that the Applicant belonged to an "outlaw" gang.

(e) Trial counsel did not object to "the hand of one is the hand of all" charge when there was no evidence the two shooters were working together. This is born out by the acquittal of Marquez Johnson. If the shooting had been planned, Mr. Johnson would not have been successful in his self-defense claim.

(f) Trial counsel did not request a self defense charge. Under the facts of this case, the evidence establishes that one person killed, for whom the Applicant was convicted, had fired her weapon before she was shot and killed.

(g) Applicant desired to testify in his own defense. Trial counsel improperly encouraged Applicant not to testify in his own defense.

(h) Trial counsel failed to object to the opinion testimony of Taima Jordan that the statements of the witnesses were consistent with the video. This opinion testimony by the witness invaded the province of the jury. Also, the witness had not been qualified as an expert in such comparisons.

(i) Taima Jordan was permitted to testify during cross examination as to his opinion of motorcycle club culture when he had not been qualified as an expert. Trial counsel should have objected to the testimony and moved to strike it.

12. Prior to this application have you filed with respect to this conviction:

Revised 3/2003

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. —
- ii. —
- iii. —
- iv. —

(b) the name and location of the Court in which each was filed:

- i. —
- ii. —
- iii. —
- iv. —

(c) the disposition thereof:

- i. —
- ii. —
- iii. —
- iv. —

(d) the date of each such disposition:

- i. —
- ii. —
- iii. —
- iv. —

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. —

ii. \_\_\_

iii. \_\_\_

iv. \_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_

ii. \_\_\_

iii. \_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_

ii. \_\_\_

iii. \_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The issues could not be raised on direct appeal as none were preserved for review.

(b) The issue could not be raised on direct appeal and his testimony was not available

at the time of trial as he was the co-defendant. Also other witnesses have now given contradictory statements.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(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? Yes

18. If you answered "yes" to one or more parts of (17), list:

Revised 3/2003

- (a) the name and address of each attorney who represented you:
- i. Tivis C. Southerland, IV, 1522 Lady Street, Columbia, SC 29201
  - ii. Same
  - iii. C. Rauch Wise, 305 Main Street, Greenwood, SC 29646
- (b) the proceedings at which each such attorney represented you:
- i. All pre-trial matters and the trial of the case
  - ii. —
  - iii. The appeal which was withdrawn

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

No



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, \_\_\_\_\_, 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.

\_\_\_\_\_  
*N/A*  
*Applicant*

SWORN or affirmed to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

*@ Rauch Wise  
has been retained;  
-as counsel.*

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 Ricardo Middleton, #381526 )  
                                   Applicant, )  
                                   v. )  
 State of South Carolina, )  
                                   Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No: 2021-CP-40-1788

**RETURN  
 (Counsel Retained)**

RECEIVED  
 2021 JUL 27 AM 11:10  
 DEANETTE M. MORGAN  
 CLERK OF COURT  
 150 S. MAIN ST.  
 COLUMBIA, SC 29201

In response to Applicant Ricardo Middleton’s action for post-conviction relief (PCR) commenced April 16, 2021, Respondent, the State of South Carolina, makes this return:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections (SCDC). During the October 2017 term, the Richland County Grand Jury indicted Applicant for murder (2017-GS-40-5854). Applicant was represented by Tivis C. Sutherland. Assistant Solicitors Lamar J. Fyall, Jeremiah J. Shellenberg, and John W. Steadman prosecuted the case.

Applicant’s case proceeded to a jury trial August 19-22, 2019, before the Honorable L. Casey Manning. The jury convicted Applicant as indicted. On September 26, 2019, Judge Manning sentenced Applicant to serve life imprisonment without parole. Post-trial motions were denied on February 21, 2020. Applicant did appeal. On December 16, 2020 Applicant withdrew his direct appeal with the help of his counsel, C. Rauch Wise, Esquire and decided to proceed with a Post-Conviction Relief petition. He signed an affidavit understanding that he would not be able to raise in a Post-Conviction Relief any issue that could have been raised in the direct appeal. The Remittitur was issued January 27, 2021.

## II. FACTS GIVING RISE TO THE CONVICTION

Applicant was part of a motorcycle club called the Thunderguards, and on July 20, 2017, approached members of the support club of another biker gang, the Outcast, at a bike night event at My House Bar and Grill. (Tr. 98). The following week on July 27, 2017, members of the Outcast group were approached by a member of Applicant's club about the incident, upsetting Applicant. The victims left then left the bar and grill on their motorcycles and traveled down Parklane road. (Tr. 98). Shortly after, Applicant and his accomplices also left the bar and drove his Toyota Yaris in the far-left running lane when he got out of the car at the intersection of Parklane and Claudia. (Tr. 99). Applicant then pistol whipped one of the victims, Ricky Montgomery, knocking him off his bike and causing the bike to fall on top of him. (Tr. 99). Then, victim, Sydni Collins, got off the back of her husband's bike, located next to Mr. Montgomery, and pulled out her firearm to defend herself. (Tr. 99). Applicant shot Sydni Collins in the chest, Mrs. Collins returned one shot before Applicant approached her and fatally shot her in the face. (Tr. 99). Applicant then shot Mr. Montgomery several times, however he was protected by the bike that fell on top of him. (Tr. 99). At the same time, Applicant's accomplice shot and killed the husband of Sydni Collins' husband, Aaron. (Tr. 99). Applicant then fled to Summerville, South Carolina before law enforcement finally caught him. (Tr. 99).

## III. CURRENT APPLICATION

Applicant timely commenced this PCR action on April 16, 2021. Applicant asserts he is being held in custody unlawfully, alleging verbatim:

1. Trial Counsel was ineffective in preparing for the trial
  - a. Trial Counsel failed to properly prepare the cell phone tower information to establish that the applicant was not in the vicinity of the incident. Trial counsel failed to properly show to the jury that the automobile he was in that was shown on the video tape, at at [sic] a different time from the time of the shooting. Trial counsel

- failed to properly use the inconsistent statements previously [sic] given by the witnesses. Trial counsel did not meet with applicant in sufficient time to adequately prepare for trial.
2. Applicant has learned of after discovered evidence which is important to his innocence
    - a. Since the trial of the case, Marquez Johson [sic], the co-defendant, has been tried and acquitted. His is now available as a witness who will aid the case for the applicant.
  3. Trial Counsel called attention to the fact that the Defendant did not testify in his closing argument
    - a. During closing argument, trial counsel mentioned that in England the failure to testify is held against a defendant. (Page 490 of the transcript). This statement called to the jury's attention the fact the Applicant did not testify [sic] and was prejudicial to the applicant.
  4. Trial Counsel failed to make a motion to prohibit the state from referring to the biker clubs as gangs and permitting a witness to refer to the gang of which Applicant was a member as an "outlaw" motorcycle club.
    - a. During the trial the state made several references to the club to which the applicant belonged as a "gang" but did not use the same word to describe the other club involved [sic] in this matter. Also, Ronie Scott was permitted [sic] to testify that the Applicant belonged to an "outlaw" gang.
  5. Trial Counsel failed to object to the "hand of one is the hand of all" charge when there was no evidence Applicant and the co-defendant participated together in the alleged attack.
    - a. Trial counsel did not object to "the hand of one is the hand of all" charge when there was no evidence the two shooters were working together. This is born out by the acquittal of Marquez Johnson. If the shooting had been planned, Mr. Johnson [sic] would not have been successful in his self-defense claim.
  6. Trial counsel failed to request a self-defense charge as the testimony supported [sic] such a charge.
    - a. Trial counsel did not request a self defense [sic] charge. Under the facts of this case, the evidence establishes that one person killed, for whom the Applicant was convicted, has fired her weapon before she was shot and killed.
  7. Trial counsel improperly advised Applicant not to testify in his own defense.
    - a. Applicant desired to testify in his own defense. Trial counsel improperly encouraged Applicant not to testify in his own defense.
  8. Trial counsel failed to object to the improper testimony of Taima Jordan when the witness testified statements given by the witnesses were consistent with the video. Trial counsel failed to object to hearsay testimony by the witness.
    - a. Trial counsel failed to object to the opinion testimony of Taima Jordan that the statements of the witnesses were consistent with the

video. This opinion testimony by the witness invaded the providence of the jury. Also, the witness had not been qualified as an expert in such comparisons.

9. Trial counsel failed to object to the opinion testimony of Taima Jordan as the witness had not been qualified as an expert.
  - a. Taima Jordan was permitted to testify during cross examination as to his opinion of motorcycle club culture when he had not been qualified as an expert. Trial counsel should have objected to the testimony and moved to strike it.

Applicant requests relief in the form of a new trial.

Attached herewith and incorporated herein are the Richland County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, the appellate records, and the records of this PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

#### **IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL**

Respondent submits that Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

“The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

*Strickland* requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. 86, 105 (2011) (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional

norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added). Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Applicant claims trial counsel was ineffective in failing to prepare for trial and specifically alleges counsel failed to properly prepare cell tower information to establish Applicant was not in the vicinity of the incident. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing *Strickland*, 466 U.S. at 691). “A criminal defense attorney has

the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 633 (citing *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted).

Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense. *Harrington*, 562 U.S. at 110. The Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options; however, counsel’s investigatory decisions must be “assessed in light of the information known at the time of the decisions, not in hindsight, . . .” *Strickland*, 466 U.S. at 680. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to

reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689.

Applicant additionally raises several allegations of ineffective assistance related to trial counsel's trial performance, including: alleging trial counsel failed to make various motions, failed to request a self-defense charge, referenced Applicant not testifying in closing argument, improperly advised Applicant not to testify in his own defense, and failed to object to opinion testimony of a witness. Judicial scrutiny of counsel's performance must be highly deferential. *Strickland*, 466 U.S. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

"A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't have to personally identify his or her thinking. It is enough that the record shows a basis for strategy, not that counsel announce that strategy on the record. *See Wood v. Allen*, 558 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); *Koon v. Rushton*, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); *McNair v. Campbell*, 307 F.Supp.2d 1277, 1312 (M.D.Ala 2004) ("Generally, courts have found that where counsel had an *articulable* strategy at

sentencing, and where mitigation evidence at issue contradicted or weakened that strategy, counsel's decision not to enter the mitigation evidence was reasonable.") (emphasis added).

Respondent submits Applicant cannot satisfy either requirement of *Strickland* and cannot meet the requisite burden of proof necessary for relief. However, the allegations of ineffective assistance of trial counsel likely raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### **V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, Respondent will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all

potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

#### VI. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

#### VII. CONCLUSION

**WHEREFORE**, Respondent requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,


ALAN WILSON  
Attorney General

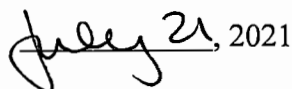
W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

 July 21, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Ricardo L. Middleton, #381526

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-40-01788

) **ORDER OF DISMISSAL**  
) **WITH PREJUDICE**

Presiding Judge: Hon. William A. McKinnon  
Applicant's Attorney: C. Rauch Wise, Esq.  
Respondent's Attorney: Russell Barlow, Esq.  
Trial Counsel: Tivis C. Sutherland, IV, Esq.  
Date of Hearing: September 26, 2024  
Court Reporter: Maria DiScioscia

FILED  
2025 JUL 18 AM 11:59  
RICHLAND COUNTY  
COURT CLERK  
C.C. [unclear]

This matter comes before the Court by way of Ricardo L. Middleton's (Applicant) application for post-conviction relief (PCR) filed on April 16, 2021. Respondent, the State of South Carolina, filed its Return on July 27, 2021, requesting an evidentiary hearing to resolve the claims as set forth in the application.

On September 26, 2024, an evidentiary hearing was convened virtually over WebEx before the Honorable William A. McKinnon. Applicant was present and represented by C. Rauch Wise, Esquire. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on all but one of the claims set forth in his application. In support of his claims, Applicant testified on his own behalf and presented testimony from Marquez Johnson (Johnson). Respondent presented testimony from Tivis C. Sutherland, IV, Esquire (Trial Counsel), and Assistant Solicitor Lamar Fyall (Solicitor Fyall).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

### **PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During the October 2017 term, the Richland County Grand Jury indicted Applicant for two counts of Murder (2017-GS-40-5854; -5855) and one count of Attempted Murder (2017-GS-40-5852). Applicant was represented by Trial Counsel. Fifth Circuit Assistant Solicitors Lamar J. Fyall, Jeremiah J. Shellenberg, and John W. Steadman prosecuted the case.

On August 19–22, 2019, Applicant's case proceeded to a jury trial before the Honorable L. Casey Manning. The jury convicted Applicant of the murder of Sydni Collins, not guilty of the attempted murder of Ricky Montgomery, and could not decide guilt as to the murder of Aaron Collins. His sentencing was deferred. On September 26, 2019, Judge Manning sentenced Applicant to serve life imprisonment.

On September 26, 2019, Applicant renewed his motion and objections from trial and made a Motion for a New Trial. On October 3, 2019, Applicant prematurely filed a notice of appeal. On November 13, 2019, Applicant moved to dismiss the appeal as premature, as Applicant's post-trial motions had not been disposed of. The South Carolina Court of Appeals granted Applicant's Motion to Dismiss the appeal as premature on January 3, 2020. The Remittitur was returned to the lower court on January 24, 2020. On February 21, 2020, Judge Manning denied Applicant's motion for a new trial.

Applicant filed a timely Notice of Appeal. On December 1, 2020, Applicant moved to withdraw his direct appeal through counsel, C. Rauch Wise, Esquire, so that he could proceed with a PCR action. On December 21, 2020, Applicant filed a signed affidavit stating he was advised of the pros and cons of continuing the appeal in his case, that based on discussions with counsel, he believed it was in his best interest to proceed with PCR, and that he understood that he would not be able to raise direct appeal issues on PCR. The Remittitur was returned to the lower court on January 27, 2021.

#### **CURRENT ACTION BEFORE THIS COURT**

On April 16, 2021, Applicant filed his PCR application alleging he was being held in custody unlawfully for the following reasons:

- (1) Ineffective Assistance of Counsel
  - (a) ~~Trial Counsel failed to properly prepare the cell phone tower information to establish that the applicant was not in the vicinity of the incident.<sup>1</sup>~~
  - (b) Trial counsel failed to properly show to the jury that the automobile he was in that was shown on the video tape, at at [sic] a different time from the time of the shooting.
  - (c) Trial counsel failed to properly use the inconsistent statements previsouly [sic] given by the witnesses.
  - (d) Trial counsel did not meet with applicant in sufficient time to adequately prepare for trial.
  - (e) Trial Counsel called attention to the fact that the Defendant did not testify in his closing argument. During closing argument, trial counsel mentioned that in England the failure to testify is held against a defendant. (Page 490 of the transcript). This statement called to the jury's attention the fact the Applicant did not tetify [sic] and was prejudicial to the applicant.
  - (f) Trial Counsel failed to make a motion to prohibit the state from referring to the biker clubs as gangs and permitting a witness to refer to the gang of which Applicant was a member as an "outlaw" motorcycle club. During the trial the state made several references to the club to which the applicant belonged as a "gang" but did not sue the same word to describe the other club involved [sic] in this matter. Also, Ronie Scott was permitted [sic] to testify that the Applicant belonged to an "outlaw" gang.

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<sup>1</sup> Applicant withdrew this allegation at his evidentiary hearing. (PCR Tr. p. 10).

- (g) Trial Counsel failed to object to the "hand of one is the hand of all" charge when there was no evidence Applicant and the co-defendant participated together in the alleged attack. Trial counsel did not object to "the hand of one is the hand of all" charge when there was no evidence the two shooters were working together. This is born out by the acquittal of Marquez Johnson. If the shooting had been planned, Mr. Johnson [sic] would not have been successful in his self-defense claim.
  - (h) Trial counsel failed to request a self-defense charge as the testimony supported [sic] such a charge. Trial counsel did not request a self defense [sic] charge. Under the facts of this case, the evidence establishes that one person killed, for whom the Applicant was convicted, has fired her weapon before she was shot and killed.
  - (i) Trial counsel improperly advised Applicant not to testify in his own defense. Applicant desired to testify in his own defense. Trial counsel improperly encouraged Applicant not to testify in his own defense.
  - (j) Trial counsel failed to object to the improper testimony of Taima Jordan when the witness testified statements given by the witnesses were consistent with the video. Trial counsel failed to object to hearsay testimony by the witness. Trial counsel failed to object to the opinion testimony of Taima Jordan that the statements of the witnesses were consistent with the video. This opinion testimony by the witness invaded the providence of the jury. Also, the witness had not been qualified as an expert in such comparisons.
  - (k) Trial counsel failed to object to the opinion testimony of Taima Jordan as the witness had not been qualified as an expert. Taima Jordan was permitted to testify during cross examination as to his opinion of motorcycle club culture when he had not been qualified as an expert. Trial counsel should have objected to the testimony and moved to strike it.
- (2) Newly Discovered Evidence
- (a) Since the trial of the case, Marquez Johson [sic], the co-defendant, has been tried and acquitted. His is now available as a witness who will aid the case for the applicant.

Before this Court are the Richland County Clerk of Court records from the underlying conviction and sentence, Applicant's records from SCDC, the trial transcript, the appellate records, and the records of this PCR action.

## STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>2</sup> provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

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<sup>2</sup> S.C. Code Ann. §§ 17-27-10 *et seq.*

813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and

"evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective

assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel, and a claim of newly discovered evidence, through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

#### *INITIAL FINDINGS*

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

#### *INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS*

**Allegation 1b: Trial counsel failed to present to the jury that the videotape of Applicant's automobile showed a different time from the time of the shooting.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to present to the jury that the videotape of Applicant's automobile showed a different time

from the time of the shooting. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems this allegation abandoned.

**Allegation 1c: Trial counsel failed to use the inconsistent statements given by the witnesses.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to use the inconsistent statements previously given by the witnesses. This Court finds this allegation is without merit.

**Trial**

On direct examination, Natasha Coad (Coad) testified that she was with Sydni and Aaron Collins the night of the shooting at bike night, and Ricky Montgomery (Montgomery) was with her, as well. (Trial Tr. p. 206). Coad testified that there was an incident that had taken place, and they all left; Sydni and Aaron on one bike, Ricky Montgomery on his motorcycle, and she followed behind. (Trial Tr. p. 207). Coad testified that they stopped at the first stoplight, and two riders came up on the right of them, Applicant being one of them. (Trial Tr. pp. 208–10). Upon stopping at the second stoplight, Coad testified that a vehicle came up on their left side. (Trial Tr. p. 211). At that point, Coad testified Applicant got off his bike and started shooting at Aaron.<sup>3</sup> (Trial Tr. p. 211). Coad testified that someone got out of the vehicle, pistol-whipped Montgomery, and

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<sup>3</sup> From the record, it is apparent that Coad had mixed up who was on the motorcycle and who exited the vehicle. This was brought out at trial and corrected that Applicant exited the vehicle and was not on a motorcycle.

Montgomery fell, and his bike fell on top of him. (Trial Tr. p. 211). The person who exited the vehicle then started shooting. (Trial Tr. p. 212).

On cross-examination, Trial Counsel impeached Coad with her previous statements to law enforcement on three different occasions. (Trial Tr. pp. 215–25).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that witness Coad provided an affidavit in a civil suit against him. (PCR Tr. pp. 37–38; App. Exhibit 1). Applicant testified that the testimony in the affidavit was completely different from Coad's testimony at trial, which would have been helpful at trial to impeach Coad during cross-examination. (PCR Tr. pp. 38–39). Applicant testified that his trial took place several months after the civil suit, during which the affidavit was provided. (PCR Tr. p. 39). Additionally, Applicant testified that there was testimony in his case about a run-in he had with Jayrell Johnson (Jayrell). (PCR Tr. p. 39). Applicant testified that on page three of Jayrell's affidavit, Jayrell stated that he and Applicant had a conversation, shook hands, and walked away. (PCR Tr. p. 40; App. Exhibit 4). Applicant testified that Jayrell 's affidavit would have been helpful in the cross-examination of witnesses to show that there was no problem between him and Jayrell. (PCR Tr. p. 41).

On direct examination, Trial Counsel testified that he discussed Coad's inconsistent statements in his opening and closing arguments at trial. (PCR Tr. pp. 60–61).

On cross-examination, Trial Counsel agreed that the differences in the affidavit would have been helpful. (PCR Tr. p. 76). Trial Counsel testified he was not a party to the action involving Coad's affidavit and had nothing to do with that case. (PCR Tr. p. 85). Trial Counsel testified that the affidavit became a public record on April 22, 2020, and Applicant's trial was in August or September of 2019. (PCR Tr. p. 85). Trial Counsel testified that he would not have been privileged

to this affidavit before trial if it was not filed until April of 2020, and he stated it was "unsurprising that Natasha has another story." (PCR Tr. p. 85). Furthermore, Trial Counsel testified that his recollection was that something about the Applicant's interaction with Jayrell wasn't good, and that he had a negative impression of Jayrell. (PCR Tr. p. 80). Trial Counsel agreed that the affidavit would have been helpful to the defense. (PCR Tr. p. 80).

On direct examination, Solicitor Fyall testified that the State wanted Jayrell to testify, but they were unable to locate him and serve the subpoena. (PCR Tr. p. 93). Solicitor Fyall testified that Jayrell helped their case because it put Applicant at the bar the week before with a pattern of activity. (PCR Tr. p. 93). Solicitor Fyall testified that witness Ashley Hill also testified that Applicant was at the bar the week before. (PCR Tr. p. 93).

On cross-examination, Solicitor Fyall testified that he disagreed with PCR Counsel's assertion that Applicant and Johnson parted on "good terms," given what happened subsequently. (PCR Tr. p. 95). Solicitor Fyall testified that he agreed with the statement that they parted respecting each other's position. (PCR Tr. p. 95).

### **Findings**

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel **credibly** testified that he used Coad's inconsistent statements to law enforcement to impeach her testimony at trial and

to attack her credibility in opening and closing arguments.<sup>4</sup> Additionally, Trial Counsel **credibly** testified that he could not have used Coad's civil trial affidavit filed on April 22, 2020, to impeach Coad, as it was not publicly available until after the trial.<sup>5</sup> Trial Counsel cannot be deemed deficient in failing to use an affidavit to impeach a witness where it was not available at the time of Applicant's trial.

Regarding Jayrell's affidavit, Trial Counsel testified that at the time of the trial, he remembered having a reason for not involving Jayrell. Notably, Applicant focused on page 3 of the affidavit, where Jayrell states that he and Johnson shook hands and then walked away; however, later in the statement, Jayrell mentions a confrontation between him and the same man he had shaken hands with earlier that week. See Applicant's Exh. 4 at p. 5. Although Trial Counsel could not independently recall why he did not use Jayrell's statements to challenge the testimony of other witnesses, it is clear from Solicitor Fyall's **credible** testimony, the record, and the affidavit that there was some animosity between Johnson and Jayrell. Importantly, Ashley Hill's testimony about the interaction between Johnson and Jayrell aligns with Jayrell's statement. (Trial Tr. pp. 188–89).

Moreover, Solicitor Fyall testified that they wanted Jayrell to testify, but were unable to locate him for service of a subpoena. This Court finds that even if Trial Counsel wanted to use Jayrell's statement, he would first have had to move the statement into evidence without any objections to authentication or hearsay. Assuming that Trial Counsel did get the statement in and

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<sup>4</sup> Trial Tr. pp. 104-108, 215-225, 495.

<sup>5</sup> In her affidavit, Coad stated she witnessed a shooting, that one of the shooters exited the vehicle, the shooter pistol-whipped Montgomery, and Montgomery fell to the ground, and the motorcycle fell on top of him. (App. Exhibit 4). This is consistent with Coad's testimony at trial (Trial Tr. pp. 206–12). However, in her affidavit, she provided that the car door of the vehicle struck Montgomery's motorbike, causing it to fall. (App. Exhibit 4).

used it, this Court cannot find that the result of the trial would have been different but for the isolated portion of the statement Applicant wants this Court to focus on. Instead, this Court has read the statement in its entirety and finds that it would have likely been more problematic for Applicant than helpful. This Court cannot find Trial Counsel deficient for not using a statement that would not have come into evidence because the person who wrote it was not available for cross-examination on the statement. Nor can this Court find any prejudice flowing from the alleged deficient performance.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1d: Trial Counsel failed to sufficiently meet with Applicant to prepare him for trial.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to sufficiently meet with Applicant and prepare him for trial. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been

pursued. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836. Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte).

"Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.). South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack

of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that he and Trial Counsel never discussed any trial strategy because Trial Counsel stated that the burden was on the State to prove the Applicant was there. (PCR Tr. p. 32). Applicant testified that he told Trial Counsel he wanted to pursue self-defense, and Trial Counsel didn't think it was a good idea. (PCR Tr. p. 33). Applicant testified that Trial Counsel did not prepare him for trial and that he wrote the court clerk multiple times that he never received his discovery. (PCR Tr. p. 37). Applicant testified that he and Trial Counsel didn't discuss anything in particular, and Trial Counsel focused solely on the burden of proof they had to establish. (PCR Tr. p. 37).

On direct examination, Trial Counsel testified that he was fairly certain he had reviewed all the discovery with Applicant and that he remembered watching all the body cameras with him. (PCR Tr. p. 56). Trial Counsel testified he recalled Applicant telling him he was not there when the shooting happened, and it was a misidentification, and that was the defense at trial. (PCR Tr. p. 57). Trial Counsel testified that he and Applicant "met a good bit," but he could not say the exact number of times. (PCR Tr. pp. 58–59). Trial Counsel testified he was prepared for this case. (PCR Tr. pp. 59–60). Trial Counsel testified he did not prepare Applicant to testify. (PCR Tr. p. 82). Trial Counsel testified he did not believe Applicant was at the crime scene until Applicant's testimony at this PCR hearing. (PCR Tr. p. 82). Trial Counsel testified that he talked to Applicant

about how Applicant was not there and that the witnesses were lying. (PCR Tr. pp. 82–83). Trial Counsel testified that he never discussed with Applicant what Applicant would say if he took the stand, because there would not be anything to add except that he was not there. (PCR Tr. p. 84).

### **Findings**

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. As an initial matter, this Court finds Trial Counsel's testimony **credible** on this issue and Applicant's testimony **not credible**. Trial Counsel **credibly** testified that he did not specifically recall the number of meetings, but that he and Applicant went over discovery, watched the body cam footage, and discussed trial strategy. Trial Counsel **credibly** testified that Applicant never told Trial Counsel he was at the scene of the shooting and shot the victim in self-defense.

Further, Applicant failed to provide how more time spent in consultation and preparation would have resulted in a different outcome. Applicant testified that had Trial Counsel spent more time with him in preparation, he would have pursued self-defense and been prepared to testify to the events that took place. However, as found *supra*, Applicant's testimony that he advised Trial Counsel he acted in self-defense is **not credible**. Moreover, contrary to Applicant's assertion, the facts do not support the existence of self-defense (discussed in detail *infra*, **Allegation 1h**). Based on this, Trial Counsel advised Applicant not to testify, as his testimony would not have added to his defense, and therefore, did not prepare him to testify. Notably, the trial court conducted a

thorough colloquy with Applicant concerning his right to testify, and at no point did he indicate that he wished to testify or that he was coerced into not doing so. (Trial Tr. pp. 463–66).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1e: Trial Counsel called attention to the fact that Applicant did not testify.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for calling attention to the fact that Applicant did not testify. This Court finds this allegation to be without merit.

### **Trial**

In closing, Trial Counsel stated the following:

You'll hear a jury instruction: you don't take it against him that he doesn't testify. Anybody who's seen -- and speaking of TV, one thing that is like TV, you do have the right to remain silent. You do not have to talk to police officers, and you'll receive an instruction on that. And speaking of our system being the worst except for all the others, in the United Kingdom, the country that we had the revolution from and broke away from, if you remain silent, they hold it against you in court.

(Trial Tr. pp. 489–490).

## PCR Evidentiary Hearing

On cross-examination, the following colloquy occurred with Trial Counsel:

- Q. You think it was a good idea to call the attention to the jury that: In England you hold it against people that don't testify?
- A. I think -- and look, sometimes I go through more amendments depending on the circumstances. But I think the distinction between us and the rest of the world. 'Cause I saw it, it's a Winston Churchill quote. "We've got the worst judicial system in the world, except for all the others." I think and this is just my view, the distinction between the way we treat each other and the way other countries treat each other, is a good thing. Like it's an elevated thing. Basically, I'm doing a scrutiny argument on the government's case and it's sort of a why. It could have been a bad idea. That's not the first time, I can tell you that.
- Q. Okay. You thought it was an appropriate thing to do to tell the jury that: In some countries you hold it against the defendant if they don't testify?
- A. Yes, sir. They got a jury instruction on it.

(PCR Tr. pp. 81–82).

### Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel **credibly** testified that he strategically presented this argument to distinguish the justice system in the United States as better than the justice systems of other countries. Considering Trial Counsel's comment in closing at face value, Trial Counsel merely made reference to the following jury instruction given to the jury:

I instruct you and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration of the question of the guilt or the innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent, and the assertion of that right, of this right must

not be considered by you in your deliberations. I repeat. Under your oath, you are to draw no conclusions whatsoever from the fact that the defendant in this case did not testify. The fact that the defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the state. The defendant is not required to prove his innocence. The burden of proof remains on the state to prove guilt beyond a reasonable doubt.

(Trial Tr. p. 508). The trial court's standard jury instruction emphasized the right of Applicant to remain silent to the jury, and Trial Counsel preemptively explained this to the jury to paint Applicant's decision not to testify in the best light possible. See U.S. Const. Amend. V; S.C. Const. Art. I, § 12. Applicant misconstrues the context of Trial Counsel's comments in an effort to obtain relief where Trial Counsel acted in his best interest—explaining in a simplistic manner the rights afforded to Applicant under the constitution to the jury. While this Court may not agree that it was the best way of doing so, this Court cannot find Trial Counsel's action deficient under Strickland, nor can this Court find any prejudice flowing from the alleged deficiency.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1f: Trial Counsel failed to make a motion to prohibit references to the biker clubs as "gangs."**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to make a motion to prohibit references to the motorcycle clubs as "gangs." This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

In general, character evidence is not admissible to prove that a defendant acted "in conformity therewith on a particular occasion." Rule 404(a), SCRE. However, such evidence can be admissible if there is a legitimate purpose that proves "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

If . . . the trial court concludes the prior bad act evidence serves some purpose other than to show the defendant's proclivity for criminal conduct . . . then the evidence is admissible unless its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Johnson v. State, 433 S.C. 550, 556, 860 S.E.2d 696, 699 (2021) (citing Rule 403, SCRE). "Logically relevant gang evidence" can be admitted to prove motive and intent. Johnson v. State, 433 S.C. at 557 ("The trial court was well within its discretion in finding this evidence was logically relevant to prove criminal conspiracy and accessory before the fact of murder."); See Armstrong v. State, 310 Ga. 598, 852 S.E.2d 824 (2020) ("As we concluded in Worthen, here 'the prosecutorial need for the other acts evidence showing gang membership was high' because,

without it, it is unclear what motive Armstrong would have had to shoot Parrish in a crowded park merely because Parrish was in a dispute with Worthen."").

### **PCR Evidentiary Hearing**

On cross-examination, Johnson testified that he was involved in a motorcycle club called the Thunderguard Motorcycle Club. (PCR Tr. p. 20). Johnson testified he was permitted to be in a motorcycle club and the military at the same time, but not this particular club, which was a "One Percent club." (PCR Tr. pp. 20–21).

On direct examination, Applicant testified he was in a motorcycle club with Johnson called the Thunderguards. (PCR Tr. p. 28). Applicant testified that Montgomery and AC Collins were in the motorcycle club called "Outcast." (PCR Tr. p. 28). Applicant testified there were numerous references to "gangs" at trial. (PCR Tr. p. 34). Applicant testified that the Thunderguards and Outcast were clubs. (PCR Tr. p. 34). Applicant testified that the motorcycle clubs have charity events, free giveaways with children, free haircuts, and a lot of things that can be looked up with the mayor. (PCR Tr. p. 34). Applicant testified he thinks the numerous references to him being in a motorcycle gang absolutely hurt his defense because it painted him as a bad person. (PCR Tr. p. 34). When asked if this shooting was in any way a gang related shooting, Applicant testified, "Not at all. We didn't even – they didn't know me and I didn't know them. I didn't find out until later what the initial problem was over." (PCR Tr. p. 42).

On cross-examination, Applicant testified the word "gang" was used all through his trial. (PCR Tr. p. 49). Applicant testified it wouldn't surprise him that the word "gang" was used only 14 times, and only 9 of those times referred to the "biker gang." (PCR Tr. p. 49). Applicant testified that a "club" and a "gang" are two different things. (PCR Tr. p. 49). When asked to explain the difference, Applicant testified, "A 'club' is something like a 'country club' and a 'gang

bar,' is a 'gang bar.' And you will pick and choose which one you go to." (PCR Tr. p. 50). Applicant testified that, upon reviewing the entire situation, he was there without family because his attorney had advised them not to attend, which led the jury to conclude that he was unloved and associated with a biker gang. (PCR Tr. pp. 50–51).

This Court *sua sponte* questioned Applicant, as follows:

- Q. Sir, you've testified that there's a difference between a motorcycle club and a motorcycle gang. But I heard the previous witness describe the Thunderguards as a "One Percent Club", what does that mean?
- A. A 99 and 1 percent -- for me -- a "One Percent" for me, it equals more girls. Girls like the One Percent, that's what it was.
- Q. Isn't there a reference to One Percent as outlawed bikers from that quote from the 1960s?
- A. Yeah, but it's not like that no more. But if that's the case, Outcast, which was the Collins is also One Percent. So One Percent, One Percent.

(PCR Tr. pp. 52–53).

On direct examination, Trial Counsel testified that his idea with the term "gang" being used was that there was an "elephant in the room," but he thinks he should have objected to that because it was a "close case." (PCR Tr. p. 62).

On cross-examination, Trial Counsel agreed that there was a big difference between referring to a group of people as a "motorcycle gang" and "motorcycle club." (PCR Tr. p. 69). Trial Counsel acknowledged he would prefer for this to be a motorcycle club. (PCR Tr. p. 69). Trial Counsel testified he thinks it was a mistake in retrospect for him to say "biker gang" in his opening statement. (PCR Tr. p. 70). Trial Counsel testified he should have objected several times when people referred to the "gang unit" investigating this case. (PCR Tr. p. 70). Trial Counsel agreed it would have been best to leave the word "gang" out. (PCR Tr. p. 70). Trial Counsel testified that no expert on "gang activity" testified in this case. (PCR Tr. p. 77). Trial Counsel

testified that whenever the witnesses wanted to explain their differing stories, they would fall back on the "One Percent" concept. (PCR Tr. p. 78).

On redirect examination, Trial Counsel again testified that he decided to talk about the gang issue because it was the "elephant in the room." (PCR Tr. pp. 87–88).

On direct examination, Solicitor Fyall testified that a motion or hearing concerning the use of the term "gang" was not pursued because they decided themselves not to overuse it. (PCR Tr. p. 92). Solicitor Fyall testified that they didn't think it was a problem to say "gang" because that was part of the motivation for the shooting, but they just decided not to overdo it. (PCR Tr. p. 92).

During cross-examination, Solicitor Fyall testified that the State made a conscious decision not to overemphasize the term "gang." (PCR Tr. p. 100). Solicitor Fyall testified that generally bringing up gang testimony is prejudicial; however, it was the State's theory that the whole motive for the shooting was gang-related. (PCR Tr. p. 101). Solicitor Fyall testified that had there been an argument concerning suppressing the term "gang," it likely would not have been suppressed. (PCR Tr. p. 100). Solicitor Fyall testified that he believed they did not argue about the use of the term gang pre-trial because of that, but the State decided not to overuse the term, regardless. (PCR Tr. p. 100).

### **Findings**

As an initial matter, this Court finds Trial Counsel's self-assertions that he should have moved to suppress any reference to gangs and not mentioned it in his opening statement does not automatically determine that Trial Counsel was ineffective. Dows v. Wood, 211 F.3d 480 (9th Cir. 2000) (Counsel's self-serving statement need not be accepted as true.); United States v. Eyman, 313 F.3d 741 (2d Cir. 2002) ("It is the magnitude of those errors that is determinative; trial counsel's admission that his performance was deficient is not dispositive."). Additionally,

counsel's performance is not assessed with the advantage of hindsight, but what they believed was correct at the time. See Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial").

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel testified that he decided to talk about the gang issue because it was the "elephant in the room." Solicitor Fyall **credibly** testified that the State's theory was that the shooting was motivated by a dispute between the motorcycle gangs. Solicitor Fyall **credibly** testified that he believed that had there been a motion to suppress reference to gangs, the trial court would have likely ruled it was admissible, as the probative value of the testimony substantially outweighed its prejudicial effect. See Johnson, *supra*, citing State v. Lyle, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923) ("If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime."); See also Armstrong, *supra* (prosecutorial need for other acts evidence of gang membership was high because of unclear motive).

Therefore, Trial Counsel is not deficient for failing to move to suppress reference to gangs, as the motion likely would not have been successful, as gang testimony was necessary to prove motive to an otherwise inexplicable and random shooting. See Miller v. Keeney, 882 F.2d 1428,

1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Additionally, as noted by Respondent, the word "club" was used in reference to the motorcycle gang one hundred forty-seven (147) times, while there were fourteen (14) instances of the word "gang," only nine of which were used to refer to the "biker gang." This corroborates Solicitor Fyall's testimony that a conscious decision was made to limit the prejudicial effect of the necessary testimony concerning gang affiliation.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1g: Trial Counsel failed to object to the "hand of one is the hand of all" charge when there was no evidence that the two shooters were working together due to the acquittal of Marquez Johnson.**

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the "Hand of One, Hand of All" charge. Specifically, Applicant argued this

allegation is supported by the acquittal of Johnson, Applicant's co-defendant. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than

sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

To avoid a finding of ineffectiveness, and where counsel articulates a strategy, counsel must also articulate a valid reason for employing a particular strategy. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Thereafter, that strategy is measured under an objective standard of reasonableness. Id.; see also Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges."). When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010).

"Under [the hand of one, the hand of all] theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). It does not matter whether a co-defendant or co-defendants were acquitted in separate trials; what matters is what evidence was presented at the defendant's trial regarding whether accomplice liability applies. See Butler v. State, 435 S.C. 96, 866 S.E.2d 347 (2021).

### PCR Evidentiary Hearing

On direct examination, Applicant testified he did not recall any evidence in his trial that the shooting was "Hand of One, Hand of All." (PCR Tr. p. 35). Applicant testified that the jury came back with a question about "Hand of One, Hand of All," and the trial judge defined it for them again. (PCR Tr. p. 36).

On cross-examination, Applicant testified "Hand of One, Hand of All" was used for both Sydni Collins and AC Collins' murders. (PCR Tr. p. 51). Applicant testified he received a mistrial on AC Collins and was found "not guilty" on the Ricky Montgomery attempted murder charge. (PCR Tr. pp. 51–52).

On direct examination, the following colloquy occurred with Trial Counsel:

- Q. Let's see, there's an allegation of, Hand of One is the Hand of All. How did you go about handling that?
- A. Well again, you got people riding up on either side and one person -- and again, the standard is "any evidence" for it. So it didn't really make sense to really try to fight that thing. Ultimately, I tried to preserve -- a lot of folks would just argue every little thing and fight every little thing. I tried to preserved fighting for things that are legit. You have more credibility that way with judges. With my pretrials typically, instead of a day, maybe half a day. But it's legit -- I think just being straight forward is the best way to go. So it did not occur to me to try to get up there and try to argue against that under the facts and circumstances of this case.

(PCR Tr. pp. 62–63).

On cross-examination, Trial Counsel testified that the evidence to support "Hand of One, Hand of All" was that people were riding up on the left and the right, and a shooting in the middle. (PCR Tr. pp. 70–71). Trial Counsel testified that he did not remember hearing any testimony of "preplanning" with Johnson. (PCR Tr. p. 71). Trial Counsel testified that if there were any evidence, even circumstantial evidence, the jury would get the charge. (PCR Tr. p. 71). Trial Counsel testified that witnesses talked about being ambushed, although he did not believe what

they said. (PCR Tr. pp. 71–72). Trial Counsel testified that there was video evidence of them coming up on both sides, with a truck creeping up in the back, and that he did not see the point of objecting to a "Hand of One" charge under those circumstances. (PCR Tr. p. 72).

In response to the point about a judge acquitting Johnson, Trial Counsel responded that he did not think Coad testified at that proceeding. (PCR Tr. p. 72).

On direct examination, Solicitor Fyall testified to the following:

Based on the evidence and the testimony, even prior to the testimony, it was our theory that Ricardo Middleton struck Ricky Montgomery, shot Sydni Collins, and that Marquez Johnson, as a part of that planned attack, shot Aaron Collins or AC. The Hand of One, Hand of All theory, as it relates to Mr. Middleton, was only as to Aaron Collins, because the forensic evidence was very clear that Marquez Johnson had shot him -- the forensics evidence. And also very clear that Ricardo Middleton had shot Sydni Collins.

(PCR Tr. p. 90).

Additionally, Solicitor Fyall also testified to the following:

- Q. What was the distinction between the Middleton case and the Johnson case?  
A. The biggest distinction was that the case against Johnson was, I would say was purely circumstantial. All of the witnesses testified that the shooting started and they, sort of, ducked down. Before that happened, most of the witnesses were able to identify Ricardo Middleton at the scene. You can see at least a portion of his actions. Nobody was there when we testified to what Marquez Johnson had done. It was obvious to us that he had shot Aaron Collins. We found the gun in his yard that shot Aaron Collins and that gun matched the shell casings at the scene and the bullets that had shot Aaron Collins. But nobody was able to testify as to what he did until after all the shooting was done. So Ronnie Scott was able to say: After the shooting, he got in my car. He was shaken up. He went back to get his bike. But no one was able to testify to his actions prior to the first shot, except him. And that only occurred for the first time at a Stand Your Ground Hearing.

(PCR Tr. p. 91).

On cross-examination, Solicitor Fyall testified that although the jury was not told "Hand of One, Hand of All" only applied to AC Collins, it was clear to Solicitor Fyall that they "got it."

(PCR Tr. p. 97). Solicitor Fyall testified that there was not only circumstantial evidence, but also Ronnie Scott's testimony about the text and the surveillance video of them talking in the parking lot before leaving. (PCR Tr. pp. 97–98).

### **Findings**

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court finds Trial Counsel **credibly** testified that he saw no reason to object where there was evidence for the charge of "Hand of One, Hand of All." See Butler v. State, 435 S.C. 96, 97-98, 866 S.E.2d 347, 348 (2021) ("Under the theory the 'hand of one is the hand of all,' when two people join together to commit a crime, and during the commission of that crime one of the two commits another crime, both may be criminally liable for the unplanned crime if it was a natural and probable consequence of their common plan to commit the initial crime.").

The record and Solicitor Fyall's **credible** testimony establish that evidence was presented that Applicant and Johnson orchestrated this shooting, presenting testimony from various witnesses—including Coad—that they pulled up on either side of the victims and started shooting after a gang-related dispute. Regardless, as Solicitor Fyall testified, the "Hand of One, Hand of All" theory applied to the shooting and killing of AC Collins, and Applicant was not found guilty of his killing. Therefore, there was no legal basis to object to the "Hand of One, Hand of All"

charge, and Applicant cannot establish that Trial Counsel was deficient or any resulting prejudice.<sup>6</sup> See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Furthermore, this Court finds that the acquittal of Johnson is not dispositive to the conviction of Applicant. In Butler v. State, the South Carolina Supreme Court held that the validity of Butler's conviction based on the theory of "the hand of one is the hand of all" and a subsequent acquittal of his co-defendant in a later trial was irrelevant to Butler's conviction. 435 S.C. at 98, 866 S.E.2d at 348–349. The Butler Court further held that it was unnecessary to consider the reasons that his co-defendant was acquitted, and that Butler's guilt was based on the evidence presented and proven at his trial. 435 S.C. at 98, 866 S.E.2d at 349, fn. 2. Here, there was sufficient evidence presented at Applicant's trial to submit to a jury the charge of accomplice liability. Thus, what happened in a later proceeding of Applicant's co-defendant is irrelevant to Applicant's conviction. See Butler v. State, 435 S.C. 96, 866 S.E.2d 347 (2021).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

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<sup>6</sup> Notably, while Trial Counsel did not object directly to the charge, he did attempt to argue a lack of evidence for "Hand of One, Hand of All" to the trial court in his motion for a directed verdict, and the trial court rejected his argument and denied his motion. (Trial Tr. pp. 461–462).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**

**Allegation 1h: Trial Counsel failed to request a self-defense charge.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to request a self-defense charge. This Court finds this allegation is without merit.

A defendant must establish four things in asserting self-defense:

- (1) First, the defendant must be without fault in bringing on the difficulty.
- (2) Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
- (3) Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and
- (4) Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (providing suggested self-defense jury instructions where the case calls for a self-defense charge).

### **PCR Evidentiary Hearing**

On direct examination, Johnson testified that he and Applicant never had any plans together to pursue the people who surrounded Johnson in the parking lot. (PCR Tr. p. 15). Johnson testified there was no plan amongst anyone to cause any problems with AC Collins. (PCR Tr. p. 16). Johnson testified that he was in a conversation with AC Collins because he wanted them to pull over and talk. (PCR Tr. p. 17). Johnson testified that it seemed like AC Collins was getting aggravated, so he put his bike in neutral and put his hand in his vest. (PCR Tr. p. 17). Johnson

testified that it was when Sydni Collins got off the bike and raised her hand, so Johnson ducked and heard shots. (PCR Tr. p. 17). Johnson testified that when he looked up, he saw Sydni Collins on the ground. (PCR Tr. p. 17). Johnson testified that there was no contact between him and AC Collins before the shooting started, and that AC Collins had not reached over towards him or anything like that. (PCR Tr. p. 18). Johnson testified he had a hearing before the Honorable G. Thomas Cooper and was exonerated as a result of that hearing. (PCR Tr. pp. 18–19).

On cross-examination, Johnson testified that he did not see anything in Sydni Collins' hand or arm at the time when she raised it before the shooting started. (PCR Tr. pp. 21–22).

On direct examination, Applicant testified he was at the Bike Night at My House when he got a text and someone was in trouble, "so we all went." (PCR Tr. p. 25). Applicant testified that by the time he arrived, everybody was leaving, so he walked out and saw Johnson. (PCR Tr. p. 25). Applicant testified that he asked Johnson what happened, and Johnson briefly told him he got surrounded, "but it was nothing." (PCR Tr. p. 25). Applicant testified that Johnson was familiar with the club with which he had a run-in, but initially did not know the individuals. (PCR Tr. p. 25). Applicant testified that he left Bike Night, but due to heavy traffic, he turned around. (PCR Tr. pp. 25–26). Applicant testified he did not want to sit in traffic, so he went around in the turning lane, and then he saw what was going on with Johnson. (PCR Tr. p. 26). Applicant testified that he was driving his Toyota Yaris, which was his work vehicle. (PCR Tr. p. 26). Applicant testified that he and Johnson never discussed anything about going after the people with whom he had a run-in. (PCR Tr. p. 26).

Applicant testified that by the time he pulled up to the intersection, they "already had something going on." (PCR Tr. pp. 26–27). Applicant testified that he pulled up, looked to the right, "and it looked like they was wrestling or something." (PCR Tr. p. 27). Applicant testified

they definitely appeared to be agitated. (PCR Tr. p. 27). Applicant testified he was sitting there for a minute, but then he saw Montgomery get up, so he got out of his car and went over to him. (PCR Tr. pp. 27–28, 29). Applicant testified that Montgomery and AC Collins were in the Outcast motorcycle club, and that Applicant and Johnson were in the Thunderguards. (PCR Tr. p. 28). Applicant testified his purpose in going over to Montgomery was "to ask him to go over here so we can stop this from happening, because they were about to fight and I didn't want them to fight." (PCR Tr. p. 28).

The Court *sua sponte* questioned Applicant concerning his version of the events of the shooting. (PCR Tr. pp. 28–30). Applicant testified that when he got to the traffic light, Johnson and "the deceased" were "going at it," like "wrestling." (PCR Tr. p. 29). Applicant testified that when he saw Montgomery getting up, he said, "Listen, let's go over there and stop this." (PCR Tr. p. 29). In response to this Court asking whether there was physical contact between them that Applicant saw from his car, Applicant testified, "Yeah. Like they was arguing, like going back and forth. And that's what he kind of testified too, like, he was going back and forth." (PCR Tr. p. 29).

Applicant testified that Montgomery told Applicant to get away from him and pulled out a gun, and Applicant was surprised, so Applicant punched him in the face, and he fell. (PCR Tr. p. 30). Applicant testified that at that time, the "female" was off the bike and shooting, and he shot back. (PCR Tr. pp. 30–31). Applicant testified that after the shooting, he got in his car and left. (PCR Tr. p. 32). Applicant testified that he discussed self-defense with Trial Counsel, and Trial Counsel told him, "Let them prove it." (PCR Tr. p. 33). Applicant testified that he stated he wanted to assert self-defense, and Trial Counsel said no, stating that he did not see it as a good idea. (PCR Tr. p. 33). Applicant testified that he discussed what happened that night with Trial

Counsel, which was the same as what he was saying at this PCR hearing. (PCR Tr. p. 34). When asked if he would have pulled a gun out and fired if Sydni Collins had not pulled a gun out, Applicant responded, "Not at all. Not at all." (PCR Tr. p. 42). Applicant testified that he "absolutely" felt that a self-defense charge would have helped him. (PCR Tr. p. 42).

On cross-examination, Applicant testified that he got out of his car at a red light due to the altercation. (PCR Tr. p. 46). Applicant testified he was carrying a gun with him. (PCR Tr. p. 46). Applicant testified that the situation involved him because "if they're my friends, I'm trying to stop them." (PCR Tr. p. 46). Applicant testified that he did not have a gun in his hand when he got out of his car and hit Montgomery. (PCR Tr. p. 47). Applicant testified that Sydni Collins shot a few times because "her gun was jammed," and said it would surprise him that there was only one shot fired from her gun. (PCR Tr. p. 47). Applicant testified that Sydni Collins was shooting at him, and he shot back. (PCR Tr. p. 48).

On direct examination, Trial Counsel testified that he recollected that his discussions with Applicant were that Applicant was not at the shooting, and it was a misidentification. (PCR Tr. p. 57). Trial Counsel testified that there was no discussion concerning self-defense that he remembered. (PCR Tr. p. 57).

The Court *sua sponte* questioned Trial Counsel whether Applicant ever advised Trial Counsel that he was at the scene or that he shot the victim in self-defense. (Trial Tr. p. 60). Trial Counsel testified Applicant never told him he was at the scene of the shooting, nor that he shot the victim in self-defense. (PCR Tr. p. 60).

On cross-examination, Trial Counsel testified that he did not believe or know that Applicant was at the scene of the shooting until he heard Applicant's testimony at the PCR hearing. (PCR Tr. p. 66). Trial Counsel testified that the government had to prove Applicant was there, so

his defense did not require him to know precisely where Applicant was at every moment; he just was not at the shooting when it happened. (PCR Tr. p. 68). Trial Counsel testified there was evidence that Sydney Collins discharged her firearm, and that he argued the medical testimony showed she would not have had much time to shoot after she was shot. (PCR Tr. pp. 73–74). When asked if Applicant would have a plausible self-defense charge with evidence that Sydney Collins fired first, Trial Counsel stated, "You can say that. It's just, my argument was: It wasn't him, he wasn't there." (PCR Tr. pp. 74–75).

Trial Counsel reiterated that this PCR hearing was the first time he had heard that the Applicant was present at the shooting. (PCR Tr. p. 82). Trial Counsel testified that "everything is my guy's decision." (PCR Tr. p. 82). Trial Counsel testified that he did not believe Applicant was present and that he had discussed the trial with the Applicant. (PCR Tr. p. 83). Trial Counsel testified that he did not discuss what Applicant would say if he took the stand, because if Applicant was not present at the shooting, he could not add anything. (PCR Tr. p. 84).

Furthermore, Trial Counsel testified that there was a significant amount of "cell tower" testimony in this case and stated that he did not believe the cell tower testimony proved anything. (PCR Tr. p. 64). Trial Counsel testified Applicant told him he was "over there partying" at Bike Night the night of the shooting, which is consistent with the cell tower information placing Applicant in the area. (PCR Tr. p. 66). Trial Counsel testified that his argument at trial was that Applicant was clearly at Bike Night, but he's not a murderer. (PCR Tr. p. 65). Trial Counsel testified he did not have any written notes of his interview with Applicant, where Applicant stated where he was at the time of the shooting. (PCR Tr. p. 67). Trial Counsel agreed it was essential to know where Applicant was at the time of the shooting if the defense strategy was that he was

not there, but that it was also crucial that they could not prove he was at the shooting. (PCR Tr. p. 67).

### **Findings**

As an initial matter, this Court finds Trial Counsel's testimony **credible** on this issue and Applicant's testimony **not credible**. Trial Counsel **credibly** testified that Applicant did not tell him he was present at the shooting or that he shot in self-defense. Trial Counsel **credibly** testified that the first time he heard about Applicant acting in self-defense was at the PCR hearing before this Court. Therefore, Trial Counsel is not deficient for failing to request a charge on self-defense, as Applicant never advised Trial Counsel that he was present at the scene or acted in self-defense. See Strickland, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.").

Further, this Court finds Applicant's testimony concerning the events giving rise to the shooting and killing of the victims **not credible**:

First, Johnson's and Applicant's testimony are in conflict. Johnson testified that there was no altercation with AC Collins prior to the shooting, while Applicant testified that he saw Johnson and AC Collins wrestling, and that is why he got involved. At Johnson's Stand Your Ground hearing, Johnson testified that AC Collins lunged at him *after* he heard a volley of shots fired, and that he shot AC Collins when he lunged at him. (App. Exhibit 7). Johnson did not testify to any wrestling match between him and AC Collins before the Applicant shot Sydney, nor was there any testimony that Johnson was afraid for his life.

Second, Deputy Alexander Laird testified that the magazine from Sydni Collins' firearm had twelve bullets in it, her finger was not on the trigger, the slide was completely back, and there were no bullets in the barrel. (Trial Tr. pp. 118–22). Eyewitness testimony, namely Coad and Montgomery, testified that Applicant shot first. Additionally, Ronnie Scott—a member of Thunderguard at the time—testified that he saw Johnson and the victims having a short conversation, and then Applicant pulled up in his vehicle, exited the vehicle, and punched Montgomery. (Trial Tr. pp. 234 – 35). Ronnie testified that after Applicant punched Montgomery, he saw a muzzle flash coming toward him. (Trial Tr. p. 235).

Third, Investigator Taima Jordan testified that the witness statements concerning Applicant's involvement and role in the shooting were corroborated by surveillance video. (Trial Tr. p. 439).

Fourth, while Applicant now testifies to his recollection of events on that night, at his sentencing hearing, Applicant told the sentencing court that he was not present at the scene where AC Collins and Sydney Collins were killed. (Sentencing Tr. pp. 14–15). Applicant reiterated to the sentencing court that he was not the person present at the scene of the shootings. (Sentencing Tr. p. 15).

Lastly, in support of his self-defense theory, Applicant merely offered self-serving testimony that was not corroborated by Johnson, the forensic evidence, video, or eyewitnesses. Critically, in his statement to law enforcement after he was read his Miranda rights, Applicant advised law enforcement he had not been in Columbia, South Carolina, at the time of the shooting and did not know anything about the shooting. (Trial Tr. pp. 430–31). Based on the incredible nature of Applicant's testimony, this Court cannot ascertain any semblance of a possibility that the trial court would have granted Applicant's request for a self-defense charge. This is further

supported by the fact that Applicant would not be able to show that he was in a place he was legally allowed to be—outside of his running vehicle at a red light and two lanes over—or that he did not bring on the difficulty when he got out of his car and inserted himself into the situation. Thus, Applicant did not show any prejudice as a result of any deficiency by Trial Counsel.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1i: Trial Counsel improperly advised Applicant not to testify in his own defense.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for improperly advising Applicant not to testify in his defense. This Court finds this allegation is without merit.

### **Trial**

At trial, the following colloquy occurred between Applicant and the trial court under oath:

THE COURT: All right. Now, Mr. Middleton, at this time I'm going to explain to you the -- explain to you certain of your rights. If you do not understand anything I say, please let me know. If you want me to explain anything in more detail, please let me know. Do you understand so far?

DEFENDANT: Yes.

THE COURT: Now, we have now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This amendment states in part: No person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case. You have the right to testify on your own behalf; however, no one can make you testify. This is a personal right and no one else can waive this right except you. If you decide to testify, you will be subject to the same rules that the -- same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statements or for crimes punishable by imprisonment for more than one year, and this court determines that the probative value of admitting the evidence outweighs the prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility. If you decide to testify, this decision on your part must be freely, voluntarily, knowingly -- freely, voluntarily, and intelligently made with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever, and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not to testify. You may talk with your attorney, your family members, friends, or anyone else, but the final decision would be left entirely up to you. Do you understand what I've explained to you so far?

DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I have explained to you?

DEFENDANT: No.

THE COURT: Have you discussed with your lawyer whether you should or should not testify?

DEFENDANT: Yes.

THE COURT: Do you wish to talk to your lawyer any more at this time?

DEFENDANT: Yes, sir.

THE COURT: You do?

DEFENDANT: Yes.

THE COURT: Okay. I'll let you do so. I'll come back and I'll go through it again if I need to, okay?

DEFENDANT: Yes, sir.

THE COURT: Y'all want to go to a conference room, or can you talk right here?  
MR. SUTHERLAND: Yeah, we're, we're, we're ---  
THE COURT: Okay. We'll just be at ease.  
THE COURT: Now, Mr. Middleton, you had an additional opportunity and time to talk to your lawyer about whether or not you should testify. Is that correct?  
DEFENDANT: Yes, sir.  
THE COURT: Have you had enough time?  
DEFENDANT: Yes, sir.  
THE COURT: And what is your decision, sir?  
DEFENDANT: No, sir.  
THE COURT: All right. So, you do not wish to testify?  
DEFENDANT: No, sir.  
THE COURT: All right. Thank you very much.  
DEFENDANT: Thank you.  
THE COURT: Anything further on this issue?  
MR. SUTHERLAND: No, sir.  
THE COURT: That covers everything?  
MR. FYALL: Yes, sir.

(Trial Tr. pp. 463–466).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that he wanted to testify in his case. (PCR Tr. p. 36). Applicant testified that he and Trial Counsel went back and forth about it to the point where the judge asked them multiple times if they needed a moment. (PCR Tr. pp. 36, 37). Applicant testified that he was very upset with Trial Counsel until this PCR hearing, because he now knew he was not prepared to testify. (PCR Tr. p. 36). Applicant testified that he was not prepared because he did not have time to prepare himself to take the stand. (PCR Tr. p. 36). Applicant testified that in his meetings with Trial Counsel, there was never a serious discussion about him testifying in the trial. (PCR Tr. p. 36). Applicant testified that he told the judge it was his decision not to testify because his attorney told him he was not prepared, and Applicant listened. (PCR Tr. p. 37).

On cross-examination, Trial Counsel testified he did tell Applicant that Applicant would "blow this" if he got up and testified. (PCR Tr. p. 63). Trial Counsel testified that he did not prepare Applicant to testify, because Applicant told him he was not present. (PCR Tr. p. 82). Trial Counsel testified that "everything is my guys decision." (PCR Tr. p. 82). Trial Counsel testified that during trial, Applicant advised him that he wanted to testify to contradict inconsistencies in the State's case, specifically, where his gun was found. (PCR Tr. p. 83). Trial Counsel testified that they did not discuss testifying because Applicant was not there and his testimony would not have added anything. (PCR Tr. p. 84).

### **Findings**

This Court finds the combination of the record and testimony provided at the evidentiary hearings that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel and Applicant both testified that there was never any serious discussion between them about Applicant testifying in his own defense. As found *supra*, Applicant's contention that he advised Trial Counsel that he acted in self-defense is **not credible**. Trial Counsel **credibly** testified that a claim of self-defense would not have helped him, considering that the defense was that he was not present and misidentification. Additionally, Trial Counsel **credibly** testified that it was Applicant's decision whether to testify or not. Therefore, Trial Counsel is not deficient for failing to prepare Applicant to testify that he acted in self-defense, where Applicant never advised Trial Counsel of his present version of events. Additionally, Applicant was advised of his right to

testify, was given an opportunity to elect to testify, and knowingly and intelligently opted not to do so. (Trial Tr. pp. 463–466)

Moreover, Applicant failed to show the outcome of his trial would have been different had he testified. As found *supra* in **Allegation 1h**, Applicant's version of events, which he presented at the PCR evidentiary hearing, is **not credible** considering all the evidence. Therefore, it is highly unlikely that had Applicant testified, the outcome of his proceeding would have been different. See Foye v. State, 335 S.C. 586, 592, 518 S.E.2d 265, 268–69 (1999) (affirming the PCR judge's finding that the outcome of petitioner's trial would not have been different because the jury likely would not have found petitioner credible).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

- Allegation 1j:** Trial Counsel failed to object to the improper testimony of Taima Jordan when the witness testified statements given by the witnesses were consistent with the video.
- Allegation 1k:** Taima Jordan was permitted to testify during cross-examination as to his opinion of motorcycle club culture when he had not been qualified as an expert.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to opinion testimony from Investigator Taima Jordan (Investigator Jordan).

Specifically, Applicant avers Trial Counsel was ineffective for failing to object to Investigator Jordan's testimony about Applicant's behavior in the video footage and his opinion about motorcycle club culture. This Court finds this allegation to be without merit.

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or influences is limited to those opinions or influences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE. A lay witness's testimony based on perceptions and interactions, as it does not require specialized knowledge, skill, experience, or training. See Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 826 S.E.2d 609 (2019) (Officer's testimony regarding employee's communications with law enforcement concerning his sense of urgency about a criminal investigation into stolen property from the electric utility company, could not be excluded on basis it constituted expert testimony, as the testimony was based on officer's perceptions of their interactions with employee, and did not require special knowledge, skill, experience, or training.).

### **Trial**

At trial, Investigator Jordan testified as follows regarding her investigation of the shooting:

- Q. I want to back up just a little bit as well. On the 20 -- going back to late July, did you attend Thunderguard event?
- A. Yes. So, the same weekend as this incident that happened, the Thunderguard had an anniversary party in Richland County. So, being as I was assigned to the Gang Unit, myself and several other investigators attended that party in a covert manner, meaning that we were not to be seen, but we let the road units know that we were in the area and that if anything happened, that we would call to let, let them know. It was mainly for protection of them, to make sure that there were no -- there was no retaliation in regards to what had happened since they had been deemed suspects in the, in the case.

(Trial Tr. p. 425)

- Q. You came in and talked to Mr. Scott, and you got a statement from him?
- A. Yes.
- Q. Correct? And initially what did he, he tell you?
- A. That he was on the way to work in Lumberton, North Carolina, and that he was going to see a female friend before he, before he went to North Carolina. Then that he got behind some of his brothers, being that he was part of Thunderguard. And then a shooting took place, but he didn't see anything but he heard the gunshots.
- Q. All right. After he told you he didn't see anything, what did you tell him?
- A. We try to explain to victims and witnesses that – and especially with Mr., Mr. Scott, we knew the One Percent biker culture. They do not like to talk to the police. It's kind of frowned upon to talk to the police. We knew that he may have been afraid and scared and didn't want to give up his brothers. But during that time, he told us it was not worth his, his freedom or his job, and that's when he told us that he saw Mr. Tiptoe fire.
- Q. You talk about One Percent biker culture, to not -- you said it's not common for them to talk to police. Even more so, is it common for them to show up to court and testify?
- A. Correct.

(Trial Tr. pp. 426–27).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Investigator Jordan testified in the case about motorcycle club culture, and that no objection was made. (PCR Tr. p. 41).

On cross-examination, Trial Counsel testified that Investigator Jordan testified about motorcycle club culture and "not talking to the cops." (PCR Tr. p. 77). Trial Counsel testified that when witnesses changed their stories or wanted to explain inconsistent statements, they would fall back on the "One Percent," not talking to the cops. (PCR Tr. p. 78). Trial Counsel testified that his view was that Investigator Jordan could talk about it because it had already been testified to by Montgomery. (PCR Tr. pp. 77–78). Trial Counsel testified that Investigator Jordan gave an opinion about what members of those motorcycle clubs do, but he did not object because he did not "want to look like a jerk." (PCR Tr. pp. 78–79). Trial Counsel testified that he probably should have cut him off earlier. (PCR Tr. p. 79).

During redirect examination, Trial Counsel testified that if someone is not an expert and they are providing opinion testimony, you should ask for a mistrial; otherwise, you should obtain a curative instruction. (PCR Tr. p. 87). Trial Counsel agreed it was possible to have someone qualified as an expert, and testified that "[Investigator Jordan's] been doing this stuff." (PCR Tr. p. 88). Trial Counsel testified again that his view was "this is the elephant in the room, so I'm just gonna talk about it," although he testified that it was probably a mistake in retrospect. (PCR Tr. pp. 87–88).

On direct examination, Solicitor Fyall testified Investigator Jordan was not qualified as an expert because he was testifying about why he took specific actions based on his general knowledge, like the idea that "gangs generally don't like to cooperate with the police." (PCR Tr. pp. 92–93). Solicitor Fyall testified that in his mind, that's not testimony that would require Investigator Jordan to be qualified as an expert. (PCR Tr. p. 93).

During cross-examination, Solicitor Fyall testified that Investigator Jordan had testified to Applicant's behavior in the video footage. (PCR Tr. p. 99). Solicitor Fyall testified that Investigator Jordan was not at the scene; however, his testimony was a reasonable conclusion based on the video. (PCR Tr. p. 99).

### **Findings**

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814. This Court finds Trial Counsel **credibly** testified that he strategically chose not to object because

of how it would look to the jury, and because he wanted to address the fact that witnesses were using the "gang" excuse to change their testimony. Trial Counsel credibly testified that he believed Investigator Jordan could testify to gang knowledge, as Montgomery had already testified to the same, and several witnesses referred to the "One Percent" club. Further, this Court finds the testimony would have otherwise been admissible under SCRE Rule 701, as Investigator Jordan testified to his personal knowledge of "One Percent biker culture" and how his investigation progressed. Investigator Jordan's testimony did not stray into the realm of expert testimony, and therefore, it was permissible lay witness opinion testimony.

Additionally, Investigator Jordan's testimony concerning Applicant's behavior observed in the video is permissible testimony. See State v. Pickrell, 435 S.C. 417, 867 S.E.2d 465 (Ct. App. 2021), aff'd as modified, 443 S.C. 497, 905 S.E.2d 374 (2024) (Investigator's testimony in murder trial regarding interview with defendant about why she shot victim was not improper lay testimony, as investigator conveyed perceptions about what the defendant was conveying took place.); United States v. Dorsey, 122 F.4th 850 (9th Cir. 2024) (Detective's testimony about details in surveillance video was admissible lay opinion, as he provide narrative testimony based on his extensive out-of-court review of surveillance video, which allowed him to highlight details that the jury would have otherwise missed). Based on this, there was no legally objectionable basis for Trial Counsel to object to this testimony. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

*NEWLY DISCOVERED EVIDENCE ALLEGATIONS*

**Allegation 2(a):      The now-available testimony of Marquez Johnson, the former co-defendant, would have overcome the circumstantial evidence against Applicant.**

Applicant alleges that the now available testimony of his co-defendant Johnson constitutes newly-discovered evidence and is a sufficient basis for granting a new trial. This Court finds this allegation to be without merit.

Under the Uniform Post-Conviction Procedure Act, a person may institute a PCR action "if there exists evidence or material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

A party requesting a new trial based on newly discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;

- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

#### **PCR Evidentiary Hearing**

See Allegation 1h, PCR Evidentiary Hearing section, *supra*, for summary of Johnson's testimony.

#### **Findings**

This Court finds that the testimony of Johnson does not meet the five Clark factors to constitute newly discovered evidence. First, the order granting Johnson immunity from prosecution was filed December 19, 2019. Applicant filed his PCR application alleging newly discovered evidence on April 16, 2021. Johnson's testimony could have been discovered through reasonable diligence in December 2019, requiring Applicant to raise this allegation on or before December 2020. However, assuming *arguendo* that Applicant had timely raised this allegation, Johnson's testimony is merely cumulative and not material to Applicant's guilt or innocence. Johnson testified to the same version of events presented at Applicant's trial, but from his

perspective. Relevantly, Johnson testified that he ducked his head before shots were fired, and he only lifted his head after the shots were fired, and Sydni Collins was dead on the ground.

Applicant's assertion that because Johnson was acquitted, he should now be acquitted disregards the facts and circumstances of the shooting. Johnson's testimony was corroborated by video, showing AC Collins lunging at him after various shots were fired, and testimony was presented that AC Collins had threatened Johnson's life just before the shooting. Applicant shot and killed Sydni Collins after shooting her in the chest and then in the face when she was on the ground. Johnson's testimony does not establish that Applicant acted in self-defense or in defense of others. Nevertheless, this Court finds Johnson's testimony is not helpful or useful where Applicant was found not guilty of the killing of AC Collins.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove Clark factors one, three, four, and five. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.") Accordingly, this allegation must be **DENIED** and **DISMISSED**.

**[CONCLUSION PAGE FOLLOWS]**

**CONCLUSION**

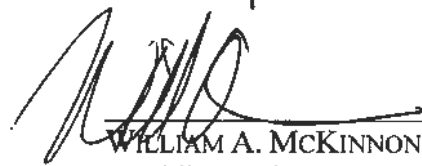
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry to judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15<sup>th</sup> day of July, 2025.

  
\_\_\_\_\_  
WILLIAM A. MCKINNON  
Presiding Judge  
Fifth Judicial Circuit

Richland, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Case № 2021-CP-40-01788

RICHLAND COUNTY  
FILED  
2025 AUG 14 PM 2:29  
JENNIFER W. MORGAN  
CLERK OF COURTS

Ricardo L. Middleton #381526, ..... Petitioner,

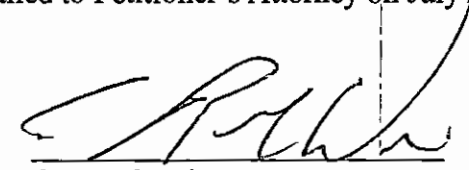
vs.

State of South Carolina, ..... Respondent.

NOTICE OF INTENT TO APPEAL

Ricardo L. Middleton appeals the Order of the Honorable William A. McKinnon dated July 15, 2025 and filed July 18, 2025. This Order was mailed to Petitioner's Attorney on July 29, 2025.

August 11<sup>th</sup>, 2025



C. Rauch Wise  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010  
[rauchwise@gmail.com](mailto:rauchwise@gmail.com)  
SC Bar No. 6188

Attorney for Petitioner

OTHER COUNSEL OF RECORD

D. Russell Barlow, IV  
SC-Attorney General Office  
PO Box 1159  
Columbia, SC 29211-1549  
(803) 734-3737  
[russbarlow@scag.gov](mailto:russbarlow@scag.gov)  
SC Bar No. 105228

STATE OF SOUTH CAROLINA )  
COUNTY OF Richland )

**AFFIDAVIT OF  
NATASHA COAD**

Personally appeared before me, Natasha Coad, who, being duly sworn, deposes and states as follows:

1. My name is Natasha Coad and I reside at \_\_\_\_\_ in Columbia, South Carolina.

2. I have personal knowledge of the facts stated in this affidavit and the information stated herein is true and accurate to the best of my knowledge.

3. On July 27, 2017, I witnessed a shooting on the corner of Parklane Road and Claudia Drive while waiting at a traffic light.

4. Prior to the shooting, I witnessed one of the shooters exit the passenger side of a vehicle.

5. As this person exited the vehicle, the car door opened and struck Ricky Montgomery's motorcycle while Mr. Montgomery was on the motorcycle.

6. As this same person exited the vehicle, he struck Mr. Montgomery in the head with the handle of his gun.

7. The encounter caused Mr. Montgomery to fall to the ground with his motorcycle falling on top of him.

8. Two shooters, including the one who struck Mr. Montgomery, shot two other people, Aaron Collins and Sydni Collins, who were with Mr. Montgomery.

9. I tried to help Mr. Montgomery and move the motorcycle off of his motionless body and saw that he was injured in the head, the mouth and leg.

10. I saw damage to Mr. Montgomery's motorcycle caused by the car door.

11. Mr. Montgomery eventually regained consciousness and I waited with him for transport to the hospital.

12. I certify and acknowledge that I am signing this affidavit under oath and under penalty of perjury.

FURTHER AFFIANT SAYETH NOT.

Natasha Coad  
Natasha Coad

SWORN TO before me this  
23 day of May 2019.

[Signature]  
Notary Public

My Commission Expires 4-7-2025













STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

The State of South Carolina,

vs.

Marquez Johnson,

Defendant.

IN THE COURT OF GENERAL SESSIONS  
FOR THE FIFTH JUDICIAL CIRCUIT

Indictment No.: 2017-GS-40-06536

2017A4011206497

ORDER GRANTING IMMUNITY FROM  
PROSECUTION UNDER THE PROTECTION  
OF PERSONS AND PROPERTY ACT

2019 DEC 12 AM 8:40

RICHLAND COUNTY  
FILED

Procedural Posture

On October 12, 2017, the Richland County Grand Jury returned a true-bill on Indictment 2017-GS-40-06536, which alleges the Defendant committed the Murder of Aaron Collins by means of a gunshot wound. Thereafter, the Defendant notified the State of his intent to claim immunity under the Protection of Persons and Property Act hereinafter "the Act," codified in § 16-11-410 *et seq.* of the S.C. Code of Laws, as amended, and a hearing was convened before the Court on November 25, 2019, pursuant to the Supreme Court's holding in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).

Importantly noted is the fact that the Defendant was also indicted during the October 2017 Grand Jury term for the Murder of Sydni Collins in Indictment 2017-GS-40-06535, and the Attempted Murder of Ricky Montgomery in Indictment 2017-GS-40-06537. Additionally, the State sought and obtained an indictment of the Defendant on September 27, 2018, for the offense of Misprison of a Felony in Indictment 2017-GS-40-05857. Indictments 2017-GS-40-06535, 06537, and 05857 were not before the Court.

Appearing for the Defendant was Jonathan Harvey, of the Law Office of Jonathan M. Harvey, and Stephen Krzyston, of Cavanaugh and Thickens, both in Columbia, South

1.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
*Janetta W. McBride*  
C.C.C.P.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

Carolina. Appearing for the State were Assistant Solicitors for the Fifth Circuit: Lamar Fyall, Jacqueline Li, and Jazmon Kearse. This order follows.

Statement of Facts

The Defendant, in addition to testifying, introduced multiple exhibits including surveillance videos from the AM/PM Gas Station and My House, both establishments located along Parklane Road in Richland County. Additionally, Defendant called two Richland County Sherriff's Department personnel to testify regarding the crime scene investigation and forensic analysis of physical evidence. Specifically, Kerri McClary, a crime scene investigator, provided testimony regarding the location and recovery of fired cartridge casings, the location of motorcycles, the location and collection of projectiles, and other physical evidence. Amanda Metz, an expert in firearm and toolmark evidence, provided testimony regarding forensic analysis of casings and projectiles found on scene.

Both parties stipulated to the Court's consideration of the Final Anatomical Diagnosis of Aaron Collins which was authored by Amy Durso, M.D., and included anatomical charts that illustrated the locations of the victims' injuries. Also stipulated was the consideration of a "screenshot" from a responding officer's body camera. The "screenshot" depicted Sydni Collins laying supine in the roadway with a pistol in her hand.

The Defendant established through testimony that at the time of the July 27, 2017, incident, he was an active duty Staff Sergeant assigned to the United States Army base at Fort Jackson. Also established was the fact that the Defendant was a "nomad" affiliate of the Thunderguards Motorcycle Club, the holder of a concealed weapons permit, and that he was



lawfully occupying and operating his motorcycle at the time the incident arose.

Earlier that evening, July 27, 2017, in close temporal proximity to the incident, Defendant testified he had been the target of a hostile confrontation with Aaron Collins and other Outcast Motorcycle Club members during a "Bike Night" event at My House, a bar off of Parklane and Two Notch Road. Defendant testified that Aaron Collins, a member of the Outcast Motorcycle Club, accompanied by multiple Outcast members, encircled him and conveyed death threats and threats of bodily harm to the Defendant while both were at My House. Defendant testified that the threats were to be acted upon the next time Aaron Collins saw him.

Surveillance video from My House showed Defendant at My House and depicted several individuals, purported to be Outcast Motorcycle Club members, approaching the Defendant and encircling him for a significant period of time. The State called Ricky Montgomery, an Outcast member, who testified that he observed Aaron Collins speaking with Defendant in this manner at My House. Given the context of the threats made by Aaron Collins, the Defendant testified that he believed the threats to be viable and realistic threats to his safety and his life.

Shortly after Collins' threats, Defendant testified that he left the My House premises and went back to his motorcycle in the parking lot before going home. Defendant then testified that he left My House and undertook a route of travel to his residence via O'Neil Court to Parklane Road. He further testified that Aaron Collins and Sydni Collins, driver and passenger on the same motorcycle, and Ricky Montgomery, operator of another motorcycle, were on the same roadway. Defendant testified that all parties stopped at the traffic light at Parklane Road and O'Neil Court. Defendant indicated that he unequivocally recognized the operator of the motorcycle

3.

CE 3

with the female passenger as Aaron Collins. Defendant testified that he attempted to engage Aaron Collins for the purpose of a discussion to diffuse the threats to his safety and life. While trying to engage Aaron Collins in conversation, the light changed and all parties turned on to Parklane Road, continuing on towards the next traffic light at the intersection of Parklane Road and Claudia Drive.

Defendant testified that all parties proceeded up Parklane Road until arriving at the traffic light located at the intersection of Parklane Road and Claudia Drive. The Defendant's testimony and the AM/PM Gas Station video clearly show that all parties stopped at the traffic light at Parklane Road and Claudia Drive. The testimony of Defendant and Defense Exhibit 3 (AM/PM video) depict the arrival of the parties on motorcycles position abreast of each other.

The testimony of Defendant coupled with the content of the AM/PM video make clear that Aaron Collins was the operator of the motorcycle which was to the left of the Defendant's motorcycle and Sydni Collins was the passenger on Aaron Collin's motorcycle. Moreover, the Defendant's uncontroverted testimony indicates he attempted to speak with Aaron Collins during the time the motorcycles were stopped at the traffic light at Parklane and Claudia. Ricky Montgomery testified for the State and corroborated both that the Defendant was to the right of Aaron Collins' motorcycle, and Defendant was attempting to talk to Aaron Collins while stopped at the traffic light.

Defendant then testified that during the conversation, Aaron Collins simultaneously turned toward Defendant and reached a hand into his vest. Due to the prior threats, Defendant believed he was reaching for a weapon. Contemporaneously with Aaron Collins' action, Defendant testified that, through peripheral vision, he observed that Sydni Collins was off the



Collins' motorcycle and was engaged in a movement toward Defendant with her arm extending into what he perceived as an offensive pointing stance. Defendant testified that this action forced him to duck his head while holding his clutch and supporting his motorcycle. Next, Defendant indicates he heard a single shot followed by a volley of shots in rapid succession. Defendant testified he thought he had been shot, however, quickly realized he had not been injured by the shots. Kerri McClary, the crime scene investigator, testified that she collected three different types of casings from the scene. These fired cartridge casings included a .40 caliber fired cartridge casing, multiple 10mm fired cartridge casings, and fired cartridge casings from a 5.7x28mm weapon.

Defendant testified that he then looked back and saw Sydni Collins laying supine in the roadway. Defendant testified that Aaron Collins immediately placed his motorcycle in neutral and dismounted in a lunge at him while Defendant was still standing over his motorcycle with his hand engaging the clutch. Defendant indicates that it was subsequent to this attack that he pulled his weapon and applied deadly force against Aaron Collins.

The Defendant testified he feared for his life as a result of the multiple gunshots and Aaron Collins' attack and that he shot Aaron Collins approximately six times with his FN model 5.7x28mm pistol. This fact was corroborated by the testimony of Amanda Metz, who indicated that the projectiles recovered from Aaron Collins at autopsy were consistent with being fired from the Defendant's FN model 5.7x28mm pistol. Defendant then testified that he was unable to restart his motorcycle which had stalled after he dropped it during Aaron Collins' attack. He testified that he left his motorcycle and rode from the scene in the truck of a friend who happened to be following him, only to return to the scene almost immediately



due to the presence of identifying information and content present on his cellphone and in his wallet which indicated the location of his family members. Defendant testified that he was afraid that Outcast members would deduce the location of his family and seek immediate reprisal. Defendant then testified to pushing his bike into an adjacent neighborhood and leaving in the car of another friend with the intent of securing his family.

The State did not elicit testimony upon the facts surrounding the confrontation between Defendant and Aaron Collins at the intersection of Parklane and Claudia, but did cross-examine Defendant on whether he ever left his motorcycle during the confrontation. Importantly, Defendant maintained, under the State's cross-examination, that he never left his motorcycle prior to Aaron Collins' attack upon him. The State's witnesses ultimately offered testimony only upon the dynamics of the contemporaneous confrontation between Riccardo Middleton\* and Sydni Collins, and thus did not provide an evidentiary basis upon which to contradict the Defendant's response to Aaron Collins' attack. Further, no evidence of a conspiracy or scheme between Riccardo Middleton and the Defendant was ever adduced by the State. In summations, the State argued that the Defendant left his motorcycle prior to being attacked pursuant to an inferred conspiracy with Middleton, that Defendant was not credible, and was not entitled to a grant of immunity pursuant to the Act.

\*Ricardo Middleton is Defendant's co-defendant and has been previously convicted for the murder of Sydni Collins.

Law

The Defendant has moved for a grant of immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 through 16-11-450. The pertinent provisions of the Act are set out below.

Section 16-11-420 provides:

It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

Section 16-11-440(A) provides:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

against whom the deadly force is used is in the process of

7.



unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Section 16-11-440(B) provides four exceptions to the presumption of Section 16-11-440(A), none of which are applicable here.

Section 16-11-430(4) defines "vehicle" as "a conveyance of any kind, whether or not motorized, which is designed to transport people or property."

Section 16-1-440(C) provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Section 16-11-450(A) provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force . . . .

The South Carolina Supreme Court held in *State v. Duncan*, 392 S.C. 404, 410-11,

709 S.E.2d 662, 665 (2011), that a claim of immunity under the Act requires a pretrial determination under a preponderance of the evidence standard. More recently, the Supreme Court has emphasized the responsibility of the circuit court to weigh the evidence presented in the pretrial hearing and make a factual determination as to the preponderance of the evidence. *See State v. Andrews*, 427 S.C. 178, 830 S.E.2d 12 (2019); *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019). In *Andrews*, the Court clarified that its earlier decision in *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013), was related to the specific and unique procedural posture of that case, "and was not intended to allow circuit courts to automatically deny immunity in cases with conflicting evidence." *See Andrews*, 427 S.C. at 181, 830 S.E.2d at 13. In *Cervantes-Pavon*, the Court rejected the lower court's determination that a conflict in the evidence at the pretrial hearing created a jury question on the issue of immunity. The mere existence of conflicting evidence as to an immunity issue "does not automatically require the court to deny immunity." *See Cervantes-Pavon*, 426 S.C. at 451, 827 S.E.2d at 569.

In *Curry*, the Supreme Court held that where a defendant claiming self-defense seeks immunity under the Act, a valid claim of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining the defendant's entitlement to immunity. This includes all elements of self-defense, save the duty to retreat. *Id See Curry*, 406 S.C. at 371, 752 S.E.2d at 266. Under South Carolina law, self-defense consists of four elements:

First, the defendant must be without fault in bringing on the difficulty;

Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life.

Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

*Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4, citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). The fourth element, the duty to retreat, is excused under the Act and the Castle Doctrine. *Curry*, 406 S. C. at 371 n.4, 752 S.E.2d at 266 n.4; see *Cervantes-Pavon*, 426 S.C. at 449, 827 S.E.2d at 568; *State v. Jones*, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016).

#### Holding

Under *Curry*, the Defendant has the burden of establishing the applicability of the Act and self-defense by a preponderance of the evidence. I find that the uncontroverted evidence which was presented by the Defendant clearly establishes the requisites for immunity under Section 16-11-440(A), and thereby gives rise to a presumption that the Defendant had a reasonable fear of imminent peril of death or great bodily injury to himself. Moreover, the evidence adduced is clearly sufficient to establish that the Defendant is entitled to immunity under Section 16-11-440(C).

As to Section 16-11-440(A), the Defendant established by a preponderance of the evidence that he was lawfully occupying his vehicle, a motorcycle, and Aaron Collins was in the process of assaulting him while unlawfully and forcefully entering the Defendant's occupied vehicle and



immediate vicinity. There is no evidence to suggest that Aaron Collins was attempting to do anything other than remove the Defendant from his vehicle against his will. Considering the earlier threats and the existence of gunshots, Defendant could have reasonably believed that an illegal and dangerous battery was occurring. Defendant had the right act on the appearance of the situation and was under no duty to retreat. Given his prior interaction with Aaron Collins from his testimony, the Defendant has clearly established by a preponderance of the evidence that he actually believed he was in imminent danger of losing his life.

As to Section 16-11-440(C), the Defendant was not engaged in any unlawful activity and was attacked in a place where he had the right to be, upon the roadway operating his motorcycle. Thus, he had no duty to retreat and clearly had the right to stand his ground and meet force with force, as he reasonably believed it was necessary to prevent his death or great bodily injury.

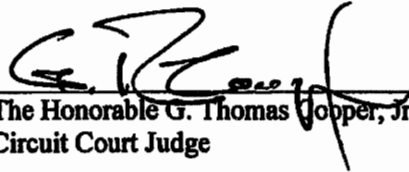
I find Defendant's testimony in this matter to be credible and by a preponderance of the evidence make the following finding:

After carefully considering all of the evidence, arguments, and applicable law, I conclude that the Defendant has met his burden in establishing all of the required elements of self-defense, and his entitlement to immunity under the pertinent provisions of the Act, codified at Sections 16-11-440(A), 16-11-440(C), and 16-11-450(A).



Therefore, **IT IS ORDERED AND ADJUDGED** that the Defendant's motion for immunity under the Act is granted, and indictment 2017-GS-40-06536 is dismissed.

**IT IS SO ORDERED.**



The Honorable G. Thomas Jopper, Jr.  
Circuit Court Judge

P.O. Box 1557  
Camden, South Carolina 29021

This 6<sup>TH</sup> day of DECEMBER, 2019.  
Camden, South Carolina.