

VOL I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Ralph F. Cothran, Circuit Court Judge

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S.C. Supreme Court

RAHIM FAREED CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000623

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

William Jeffrey Young, Family Court Judge

THE STATE,

RESPONDENT,

V.

RAHIM F. CARTER,

APPELLANT

RECORD ON APPEAL

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State of South Carolina)
)

County of Sumter)
)

The State of South Carolina,
Plaintiffs

vs.

2008-GS-43-597

Rahim F. Carter,
Defendant

General Sessions Court
August 5th-6th, 2009

Before The W. Jeffrey Young, Judge.

A P P E A R A N C E S:

Ms. Catherine Fant,
Assistant Solicitor for the State

Mr. Charles Thomas Brooks,
Public Defender

Margaret T. Sullivan,
Court Reporter

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1 (Whereupon, the trial commences on August 3, 2009
2 at 9:30 a.m.)

3 THE COURT: Madam Solicitor.

4 MS. FANT: May It Please the Court. Your
5 Honor, at this time the state calls the State of
6 South Carolina versus Rahim Fereed Carter.
7 Indictment No. 2008-597. Mr. Carter has been
8 indicted by the Grand Jury of Sumter County on
9 Count 1, for murder. Count 2, possession of a
10 firearm or knife during the commission of a
11 violent crime.

12 THE COURT: Thank you. Ladies and
13 Gentlemen, good morning, again. We are about to
14 start the case of the State versus Rahim Fareed
15 Carter. The Indictment as stated, states that,
16 Rahim Fereed Carter, did in Sumter County on or
17 about October 2nd 2007, feloniously, willfully,
18 and with malice aforethought either express or
19 implied, kill one Mathew Horace by means of
20 shooting him with a handgun. And that the said
21 Mathew Horace did die as an approximate result
22 thereof. Count 2, states that Rahim Fareed
23 Carter, did in Sumter County, on or October 2nd,
24 2007, was in possession of, and visibly displayed
25 a firearm or knife during the commission of a

1 violent crime; to wit: a handgun during the
2 commission of a murder or violation of Section
3 16-23-490 of the Code of laws of the State of
4 South Carolina.

5 Now, Ladies and gentlemen this Indictment
6 in no way implies that he nor are you to imply
7 that the defendant has done anything wrong in this
8 case. The defendant has pled not guilty and
9 therefore, you are to presume that he is innocent.
10 These are simply the way in which a case gets
11 before this court. So it has no inference should
12 be given to it as to whether or not a the
13 Defendant is guilty or not guilty. This again,
14 this is just the charge and that's all it is.

15 And now, Ladies and gentlemen, before we
16 select a jury there are a several questions that I
17 would need to ask you under oath. These are very
18 important questions and I need for you to be very
19 specific when you answer, and because the State
20 and the defense are relying on your answers.
21 Therefore, I am going to ask that for this case
22 that you be sworn again. Thank you.

23 (Whereupon, the jury pool is sworn.)

24 THE COURT: Thank you, Ladies and
25 Gentlemen. Is there anybody in the jury pool who

1 is not able to affirm or to swear to an oath that
2 you just took? If so please, stand.

3 (Whereupon, No response.)

4 THE COURT: First question, has anyone in
5 the jury panel ever been related by blood or
6 marriage to either the defendant Rahim Carter, or
7 the alleged victim, Mathew Horace? If so please
8 stand.

9 (Whereupon, no response.)

10 THE COURT: No one is standing, thank you.
11 Has anyone in the jury panel ever had any close,
12 personal or social or business relationship with
13 either Rahim Carter or the alleged victim
14 Mr. Mathew Horace? If so, please stand.

15 (Whereupon, no response.)

16 THE COURT: No one is standing. Thank
17 you. Ladies and gentlemen, listen carefully.
18 This is a list of potential witnesses who may be
19 testifying in this case. I will read through the
20 list slowly, so please listen up to see if you
21 know any of these people. And I will ask you,
22 William Lyons, Truman Duggin from the Sumter
23 Police Department. Jim Allsbrooks of the Sumter
24 Police Department. Irene Culick of the Sumter
25 Police Department. Suzann Cromer of the State Law

1 Enforcement Division. Also known as Sled.
2 Darrell Hawkins, Brandon Taylor, Sebastian
3 Jenkins, Henry Williams, Roger Lee Gooden, Barry
4 Lowery, Christopher Davis, Janice Ross. Tuomey
5 Hospital record's custodian, Juwan Holmes, Larry
6 Cooper, Frederick Owens, Lakita McGee, Michael
7 Horace, Quinten Ball, Lyeka Jones, Ca'brall
8 Archie, Kimberly Delay, Tia Bey.

9 If anybody knows any of these witnesses
10 either related to them or knows them personally or
11 a business contact, if so please stand. Yes,
12 ma'am.

13 THE JUROR: Just the custodian of the
14 medical records at the hospital.

15 THE COURT: Does the fact that you know
16 the custodian of medical records make it so that
17 you could not be fair and impartial to the state
18 or the defense in this case?

19 THE JUROR: No, sir.

20 THE COURT: Thank you. And your juror
21 number?

22 THE JUROR: 59.

23 THE COURT: And your name please?

24 THE JUROR: Mary Hice.

25 THE COURT: Yes, sir. Your jury number?

1 THE JUROR: 152.

2 THE COURT: 152. And your name?

3 THE JUROR: Thomas Williams.

4 THE COURT: Yes, sir.

5 THE JUROR: Frederick Owens.

6 THE COURT: Would The fact that you know
7 Frederick Owens make it so that you could not
8 provide, be fair and impartial to the State or the
9 defense in this case?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, sir. Yes, sir.

12 THE JUROR: Juror 129.

13 THE COURT: Juror 129. And your name?

14 THE JUROR: Andrew Spann. I know Frederick
15 Owens.

16 THE COURT: You know Frederick Owens as
17 well?

18 THE JUROR: Yes.

19 THE COURT: Would the fact that you know
20 Frederick Owens make it so you could not be fair
21 and impartial to the State or the defense in this
22 case?

23 THE Juror: No, sir.

24 THE COURT: Thank you, sir.

25 THE SOLICITOR: Judge, can we get his

1 number?

2 THE COURT: What is your juror number?

3 THE JUROR: 121.

4 THE COURT: 121.

5 MR. HOWLE: 129.

6 THE COURT: 129. Yes, ma'am, in the very
7 back.

8 THE JUROR: I know Irene Culick.

9 THE COURT: Okay. You know Irene Culick?

10 THE JUROR: Yes, sir.

11 THE COURT: And what is your number?

12 THE JUROR: 128.

13 THE COURT: And your name?

14 THE JUROR: Mary Solanes.

15 THE COURT: Would the fact that you know
16 Ms. Culick make it so you could not be fair and
17 impartial to the defense or the state in this
18 case.

19 THE JUROR: I can be fair.

20 THE COURT: You can be fair and impartial?

21 THE JUROR: Yes, sir.

22 THE COURT: Thank you. Yes, ma'am.

23 THE JUROR: Juror 53. Shannon Griffin.

24 Your Honor, would you state the last name?

25 THE COURT: Tia Bey. B-E-Y?

1 THE JUROR: Yes, sir. She is a client of
2 mine.

3 THE COURT: Would the fact that you know
4 her, would that make it difficult or impossible
5 for you to be fair to the state or the defense in
6 this case?

7 THE JUROR: I can be fair.

8 THE COURT: You can be fair to both the
9 State and the defense?

10 THE JUROR: Yes, sir, Your Honor.

11 THE COURT: Thank you, ma'am. Yes, sir.

12 THE JUROR: I am Juror 119.

13 THE COURT: Yes, sir.

14 THE JUROR: I know Frederick Owens.

15 THE COURT: Would the fact that you know
16 Frederick Owens make it difficult for you to be
17 fair and impartial to the state and or the
18 defendant in this case?

19 THE JUROR: I can be fair.

20 THE COURT: You can be fair and impartial?

21 THE JUROR: Yes, sir.

22 THE COURT: Thank you. Juror No.? Did
23 you get that?

24 MR. BROOKS: I did.

25 THE COURT: Yes, sir.

1 MR. BROOKS: I need to call my witnesses.

2 THE COURT: All right, if you want to call
3 your witnesses. Mr. Brooks will now call his
4 witnesses.

5 MR. BROOKS: Vernon Baxter. Sumter County
6 jail records custodian. Bruce Young, Bernard
7 Evans, Rodney James, Mark McCoy.

8 THE COURT: Ladies and Gentlemen, of the
9 jury panel, if any of you all knows any of the
10 witnesses who were just called by Mr. Brooks,
11 would you please stand at this time?

12 (Whereupon, no response.)

13 THE COURT: Thank you no one is standing.
14 The attorneys in this case are Ms. Catherine Fant,
15 for the Solicitor's Office. And Mr. Charles
16 Brooks for the defendant. Has any member of the
17 jury panel ever been represented by either of the
18 attorneys involved in this case, or their law
19 firms? If so please stand.

20 (Whereupon, no response.)

21 THE COURT: No one is standing. Thank
22 you. Has any member of the jury panel formed or
23 expressed an opinion about any issue or matter
24 involved in this case? Or know anything about
25 this case? But don't tell me how you know about

1 it. But I will ask you to come down in front of
2 the Court Reporter. But if anybody knows anything
3 about this case, please stand and come down now.

4 THE COURT: Yes, sir.

5 THE JUROR: Juror 61.

6 THE COURT: Juror 61.

7 THE JUROR: Raynard Hinton. Just
8 basically tracked it on the internet. Paper
9 trial.

10 THE COURT: You read the Item?

11 THE JUROR: Yes, sir, last week.

12 THE COURT: I am going to excuse you for
13 cause. Would the fact that you know about it make
14 it so that you could not be fair and impartial to
15 the state or the defense?

16 THE JUROR: Probably not. I have read in
17 detail.

18 THE COURT: I am going to excuse this
19 juror for cause. Thank you, sir. You are
20 excused, but stay with us. Yes, ma'am, your name
21 and juror number?

22 THE JUROR: 139.

23 THE COURT: Yes, ma'am.

24 THE JUROR: I just read about this case in
25 the item. I believe the case was in the Item, and

1 victim was in hospital.

2 THE COURT: Ma'am, do you think the fact
3 that you know something about this case would make
4 it impossible for you to be fair to the state and
5 to the defense?

6 THE JUROR: Possibly since I read so much
7 about it.

8 THE COURT: I am going to dismiss you for
9 cause in this case. You can go have a seat. Do
10 not discuss this with anyone in the jury room.

11 THE COURT: The gentleman who was up here
12 just a moment ago, would you come back up here,
13 please, sir? Mr. Hinton. I am going to excuse
14 you from this case. I ask that you not discuss
15 this with any other jurors. Thank you.

16 Is any member of the jury panel who is
17 aware of any bias or prejudice towards either the
18 state or the defendant in this case? If so,
19 please stand.

20 (Whereupon, no response.)

21 THE COURT: Thank you. No one is
22 standing. Is there any member of the jury panel
23 that was a member of the Grand Jury which issued
24 the Indictment in this case? If so, please stand.

25 (Whereupon, no response.)

1 THE COURT: No one is standing. Is there
2 any member of the jury panel who is a member or
3 contributor to any group which has its primary
4 concern for the promotion of law enforcement or
5 victim's rights? These groups would include
6 certain but not limited to MADD, SADD, or Citizens
7 Against Violent Crime? If so, please stand.

8 (Whereupon, no response.)

9 THE COURT: Thank you, no one is standing.
10 Is there any member of the jury panel who is
11 themselves or have family members who have been
12 the victim of a violent crime? If so, please
13 stand. Yes, ma'am. Your juror number and name,
14 please.

15 THE JUROR: Juror No. 138. Michelle
16 Vance.

17 THE COURT: I am going to ask that you
18 come down, please, ma'am. I am going to ask that
19 you come down, Ms. Vance. If you will just come
20 to the rail right here.

21 THE JUROR: In I believe, 1977, I am sorry
22 1987, my daughter was involved in a kidnapping and
23 a gun charge. Currently in jail.

24 THE COURT: Would the fact that your
25 daughter was involved with a kidnapping 20 years

1 would that make it so that you could not be fair
2 to the state or the defense in this case?

3 THE JUROR: No, sir. I can be fair.

4 THE COURT: Thank you. You are qualified
5 for jury service. Good morning. What is your
6 juror number and name?

7 THE JUROR: 66 Phyllis Hodge.

8 THE COURT: Ms. Hodge.

9 THE JUROR: My husband's cousin was shot
10 and killed by his cousin's girlfriend. It
11 happened about 25 years ago.

12 THE COURT: Would the fact that she was --
13 that it happened about 25 years ago, would that
14 make it so that you could not be fair to the State
15 or the defense?

16 THE JUROR: I can be fair.

17 THE COURT: Okay. Thank you for
18 disclosing that. Thank you. Ladies and Gentlemen
19 of the jury panel, has anyone had a family member
20 who or a close personal friend who has been
21 charged with the violent crime? Not whether they
22 have been the victim, but who has actually been
23 charged. If you know somebody.

24 (Whereupon, no response.)

25 THE COURT: Thank you. No one is

1 standing. All right, does any member of the jury
2 panel know of any reason whatsoever why he or she
3 should not serve as a juror in this case with
4 particular emphasis being placed upon your ability
5 to be fair and impartial to both the state and the
6 defendant in this case? If so, please stand.

7 Yes, sir, please come down.

8 THE JUROR: Joel Hodge. Juror No. 65. My
9 son is a deputy sheriff in Charleston County.

10 THE COURT: Thank you for disclosing that.
11 Would that fact make it so that you couldn't be
12 fair to the state or the defense?

13 THE JUROR: No, I can be fair. I just
14 want to mention that to you.

15 THE COURT: This juror is qualified. Does
16 the defense have any additional questions that you
17 would like to have asked, Mr. Brooks?

18 MR. BROOKS: Judge, one second, Your
19 Honor. Side bar judge.

20 THE COURT: Yes, sir.

21 (Whereupon, attorneys confer at the bench
22 with the judge.)

23 THE COURT: Are there any additional
24 questions from the State?

25 MS. FANT: No, sir, Your Honor.

1 THE COURT: Thank you. Ladies and
2 Gentlemen, the clerk will now select a list of
3 names and as your name is called, if you will come
4 up to the front, turn around and face them. And
5 then the state and the defense will select you or
6 not select you. They can strike you for various
7 reasons. It may be a trial strategy. But they
8 cannot strike you for reasons for gender or for
9 your race. But if you will please come forward
10 and we will select a jury in this matter.

11 THE CLERK: Juror No. 66 Phyllis Hodge
12 (f-w) defense struck. Juror No. 81 Ronnie Lowder
13 (m-w) defense struck. Juror NO. 115 Harry
14 Richardson (m-b) accepted. Juror No. 95 Suzann
15 Moore (f-w) accepted. Juror No. 152 Thomas
16 Williams (m-b) state struck. Juror No. 100
17 Michael Newman (m-w) defense struck. Juror No. 53
18 Shannon Griffin (f-w) defense struck. Juror No.
19 126 Chandra Smiling (f-b) accepted. Juror No. 17
20 Evelyn Brogdon (f-w) defense struck. Juror No.
21 128 Pamela Solanes (f-w) defense struck.

22 THE COURT: The next juror on my list has
23 already been excused.

24 THE CLERK: Juror No. 145 Andrea White
25 (f-w) accepted. Juror No. 59 Mary Hice (f-w)

1 defense struck. Juror No. 138 Michelle Vance.
2 (f-w) defense struck. Juror No. 129 Adrian Spann
3 (m-b) state struck. Juror No. 47 John Gibbs (m-b)
4 state struck. Juror No. 92 Angela Mims (f-b)
5 accepted. Juror No. 43 Minnie Frierson (f-b)
6 accepted. Juror No. 49 Maggie Glover (f-b) state
7 struck. Juror No. 56 Bernadette Hair (f-w)
8 accepted. Juror No. 119 Darrin Ross (m-b) state
9 struck. Juror No. 112 Phyllis Ventura (f-w)
10 accepted. Juror No. 136 Tony Thorpe (m-b)
11 accepted. Juror No. 65 Joel Hodge (m-w) defense
12 struck. Juror No. 156 Eunice Stukes (f-b)
13 accepted. Juror No. 44 Frank Garrett (m-b)
14 accepted. Juror No. 70 Latricia James (f-b)
15 accepted. First alternate Juror No. 50
16 June Graham (f-w) accepted. Second alternate
17 Juror No. 13 Stephne Boatwright (m-w) accepted.

18 THE COURT: Please call the names of the
19 jurors!

20 THE CLERK: Ladies and gentlemen, when I
21 call your name, please raise your hand. Harry
22 Richardson, Suzann Moore, Shandra Smiling, Andrea
23 White, Angela Mims, Minnie Frierson, Bernadette
24 Hair, Phyllis Raymond Ventura, Tony Thorp, Eunice
25 Stukes, and Frank Garrett, and Latricia James, and

1 June Graham, Stephen Boatwright.

2 THE COURT: Thank you, Mr. Bradley.

3 Ladies and gentlemen, you have been selected as
4 jurors for the first trial. At this time I need
5 to take up some issues with the attorneys. I am
6 going to dismiss you to your jury room. I am not
7 going to put you under oath yet. I remind you,
8 you are not to discuss anything about the pending
9 case while you are back there. I will bring you
10 back in a little while and we will go forward
11 then. Thank you. Can I see the attorneys up
12 here?

13 (Whereupon, the following takes place
14 outside the presence of the jury.)

15 THE COURT: Any objections from the state
16 or the defense, from the state first on the jury
17 selection in the manner in which it was selected,
18 Ms. Fant?

19 MS. FANT: Nothing from the State, Your
20 Honor.

21 THE COURT: Any objections from the
22 defense to this jury, or the manner in which it
23 was selected, Mr. Brooks?

24 MR. BROOKS: No, sir, Your Honor.

25 THE COURT: You may bring the jury.

1 (Whereupon, the following takes place
2 within the presence of the jury.)

3 THE COURT: Ladies and Gentlemen, you have
4 been selected as the jury for this next trial. At
5 this time, I am going to dismiss you until 2:30.
6 At that time, you will return and be sworn. I
7 will appoint the foreperson for the jury at that
8 time. While you are on your lunch break please do
9 not read any newspapers or listen to any radio.
10 Or do anything on the internet.

11 Please also do not discuss this case
12 amongst yourselves or with anyone else. If you
13 could be back here just a little bit before 2:30
14 so we can start promptly at 2:30. Thank you.

15 (Whereupon, at 12:13 p.m. jury is
16 dismissed.)

17 (Whereupon, the following takes place
18 outside the presence of the jury.)

19 THE COURT: Anything from the State in
20 this case?

21 MS. FANT: No, sir, Your Honor.

22 THE COURT: From the defense?

23 MR. BROOKS: Sequestration. I want to
24 make sure we do that.

25 THE COURT: Okay. Any objection?

1 MS. FANT: No, sir.

2 THE COURT: All witnesses who will be
3 testifying will be sequestered. Thank you.

4 THE COURT: All right, Mr. Brooks.

5 MR. BROOKS: I have a motion. Judge,
6 basically we are asking the court to reconsider
7 renewing our motion in regards to a continuance.
8 Basically not having the trial transcript, I
9 didn't have the ability to review the tapes Or
10 have the trial transcript. We are relying on
11 State v. McMillan which is a 2002 case, by the
12 South Carolina State Supreme Court. Basically
13 summarizing that particular case there were two
14 trials. The first trial ended up a hung jury. It
15 was tried January 5th or 6th of 98. A week later
16 the defendant's attorney requested a transcript on
17 the 13th. Two days later the State had called the
18 case for trial and requested a continuance. The
19 defendant requested a continuance so he could have
20 an opportunity to have a transcript. The trial
21 court denied it. The Court of Appeals affirmed
22 it. And the State Supreme Court reversed and
23 remanded it. And basically indicated that the
24 defendant and defense counsel obviously would not
25 necessarily have the right to the transcript, but

1 would have the right to be able to effectively
2 cross examine the witnesses in the case.

3 In particular in this case, we think the
4 court ruling on that case is even more
5 applicability to ours. Because that defense
6 lawyer basically had a week. And then had 10 days
7 before the trial, before the second trial. We are
8 looking at basically a 72-hour window of time
9 between when the first case officially ended, and
10 the start of this case. So we have got less time.
11 And in this case, the Court Reporter who took the
12 bulk of the testimony is out of the country.
13 Tapes unavailable. And be that as it may.

14 And also in this case, a great deal of the
15 State's case deals with a lot of fact witnesses
16 who say my client, No. 1. said A, B and C. And
17 No. 2, my client was there when this happened and
18 that happened. So obviously a lot of that is very
19 significant. And a great deal of the witnesses as
20 Your Honor recalls, do not even have written
21 statements that we can take and notarize the
22 Affidavits. So we have got prior court under oath
23 testimony that in the defendant's position should
24 be able to utilize that effectively and cross
25 examine them. And that is basically our motion.

1 THE COURT: Ms. Fant. And what I am going
2 to do is listen to some of your argument. I am
3 going to allow you both to go and do some further
4 research. And then we will resume this argument
5 at 9 o'clock tomorrow morning. Ms. Fant.

6 MS. FANT: Your Honor, I guess my position
7 right now would just be that I think our case is
8 distinguishable from McMillan. I must say that I
9 haven't had a chance to really read it thoroughly.
10 But from what I could tell, it was basically one
11 witness whose credibility was called in to
12 question even after she testified. And the jury
13 in fact had to rehear her testimony during the
14 initial trial that ended in a mistrial.

15 In addition, the jury deadlocked 8 to 4
16 there indicating that there was some true
17 disagreement as to the defendant's guilt. As you
18 know in this case, deadlocked 11 to 1. With one
19 juror not really deliberating as instructed. The
20 issue we would have is that if this a allowed to
21 be the basis for the continuance, then we would
22 never be able to call a case, once it had been
23 tried the week before. Because basically what he
24 is asking for is the entire transcript absent the
25 opening and closing. Which would, was our

1 witnesses. So given that and it's not an issue of
2 just one witness. And I do think the case is
3 distinguishable, but I will utilize the day to do
4 some more research on that.

5 THE COURT: What I am going to do then, I
6 am going to have my law clerk do some research as
7 well. And you all do some research. And I will
8 continue your arguments tomorrow morning at 9
9 o'clock. And at this time I will dismiss the jury
10 to go home for the evening and to be back at 10
11 o'clock tomorrow morning. If I rule in your
12 favor, Mr. Brooks, then we will strike another
13 jury in another case. If I rule against you, then
14 we will proceed at 10:00 o'clock.

15 THE COURT: Let's bring the jury in.

16 (Whereupon, the following takes place
17 within the presence of the jury.)

18 THE COURT: Ladies and Gentlemen, I hope
19 you had a nice lunch and a nice break.
20 Unfortunately we are not going to be able to start
21 this trial at this time. I am going to let you go
22 for the rest of the balance of the afternoon. And
23 then I will have you back at 10 o'clock tomorrow
24 morning. And so I didn't want to hold you up here
25 while we discuss some things. I am going to let

1 you go for the balance of the afternoon. And do
2 not discuss this case with anyone when you go
3 home. Do not discuss it among yourselves. Do no
4 research concerning this case whatsoever. I know
5 you won't do that. So I am going to release you
6 at this time. Be ready to start at 10:00 o'clock
7 tomorrow morning. Thank you.

8 (Whereupon, the Jury is dismissed at
9 2:52 p.m.)

10 THE COURT: Anything further from the
11 State?

12 MS. FANT: No.

13 THE COURT: Anything further from the
14 defense?

15 MR. BROOKS: Just one little aside, Judge.
16 My client has had some difficulty in Richland
17 County. What I mean by it, cosmetic things, being
18 able to get his hair cut, being a lot more
19 presentable. Richland County where he is being
20 housed now, is basically given a great deal of
21 difficulty allowing him to see his family. The
22 police have encountered some problems with the
23 transportation. I was hoping that perhaps the
24 Court could order them to at least allow him to
25 shave and get a haircut.

1 THE COURT: Well it is 3:00 o'clock. By
2 the time he gets back by four, if he can get to
3 the prison barber shop, prison barber shop by
4 then, he can do it. But I am not going to make
5 them stay on special hours.

6 MR. BROOKS: I understand.

7 THE COURT: He can shave anytime he wants
8 to in his room, can't he?

9 MR. BROOKS: No, sir. He has been moved
10 all the way over to Richland County. He doesn't
11 have anything. He doesn't have access to
12 anything. His people tried to go out there this
13 weekend, and they wouldn't let him see him. I do
14 also know in last week's trial, I do also that
15 they encountered some problems with communication.
16 To be able to go get him. I do know that has been
17 problematic with Richland County.

18 THE COURT: And I mean, I don't run the
19 jail. I would certainly encourage them to allow
20 him to do what is necessary to keep himself
21 presentable in court.

22 MR. BROOKS: Of course, I am going to
23 that, to make that request under the guise that
24 the court denied our motion. Obviously if it is
25 granted that would become---

1 THE COURT: I don't know when he is going
2 to get a hair cut. He is in court all this week.
3 You know, If I deny your motion he would be in
4 court.

5 MR. BROOKS: I think during the evening.

6 THE COURT: I am not going to ask some
7 barber staff to stay late if he doesn't want to --
8 you know, I would encourage them to assist him in
9 his grooming and hygiene efforts.

10 MR. BROOKS: I understand, Judge.

11 THE COURT: Thank you. The Court is
12 adjourned until 9 o'clock tomorrow morning.

13 (Whereupon, the trial commences on
14 Wednesday, August 5th 2009 at 9:30 a.m.)

15 THE COURT: Is there anything from the
16 state? Do we have evidentiary motions that we
17 need to make?

18 MS. FANT: Mr. Brooks and I never got
19 together yesterday. I am going to have her mark
20 some pictures now.

21 THE COURT: I will let you do that.

22 MS. FANT: And then he can let us know
23 which ones he objects to.

24 MR. BROOKS: I have a motion.

25 MS. FANT: Okay, do you want to make that

1 before she marks them?

2 MR. BROOKS: She has got to mark them
3 again?

4 MS. FANT: Yes.

5 MR. BROOKS: You can mark them now.

6 MS. FANT: It's different from the other
7 order, because we have changed the ordering
8 because the other pictures came in.

9 THE COURT: And who is the other witnesses
10 that I need to ask the jury about?

11 MS. FANT: Your Honor, actually it's just
12 one now. One of them is unable to be here. And
13 the one that needs to be added is Deslyn White.

14 THE COURT: Do you have any additional
15 witnesses?

16 MR. BROOKS: None other than what we have
17 put on the record. Your Honor, and even though I
18 don't exactly know which pictures, I can tell you
19 they were daytime photos that Truman Duggin took.
20 What my position would be is that those do not
21 even reflect the area around that same time that
22 these events occurred. In contrast, supposedly he
23 had taken a picture from the same angle, the same
24 position, around the same time. The street light
25 on, to get a better idea of how it looked. That's

1 what my motion would be.

2 THE COURT: Right. I think If I remember
3 correctly, I think I overruled it because he was
4 just trying to show where things were.

5 MR. BROOKS: Before I don't think I
6 objected to those pictures.

7 THE COURT: Okay.

8 (Photographs marked as State's Exhibit
9 Nos. 1-27 for id. only.) (Diagram marked State's
10 Exhibit No. 28 for evidence.)

11 MR. BROOKS: That was just -- would be
12 something that was not done last time.

13 THE COURT: Well I'll wait for that at
14 that point and time. I imagine we've already been
15 through the res gestae---

16 MR. BROOKS: Right.

17 THE COURT: ---statement. We have already
18 put the picture in on that. So we don't need to,
19 I would think that....

20 MR. BROOKS: But I think for the record
21 since it is a retrial, I still need to put my
22 arguments on the record in regards to that,
23 obviously to protect the records.

24 THE COURT: Right. I mean, I think you
25 also want to be sure that when you are working

1 that, that you try not to let the jury know this
2 was just tried last week as well.

3 MR. BROOKS: Right. I understand. And I
4 am just letting the Court know that that was
5 something we obviously we planned to make the same
6 motion in regards to that. And....

7 THE COURT: Do you want to go ahead and
8 make that now concerning the brother's testimony?

9 MR. BROOKS: We can.

10 THE COURT: I think we need to do that
11 now.

12 MR. BROOKS: Okay.

13 MS. FANT: I can do both. I can listen
14 enough. If you want him to go ahead and put it on
15 the record.

16 THE COURT: Go ahead, Mr. Brooks.

17 MR. BROOKS: She's quite a renaissance,
18 Judge. Judge, in regards to that specific brother
19 being involved to testify, there was a statement.
20 And the statement, I believe, rendered December
21 18th 2008. All these things kind of jumbled up.
22 I know December was 12th 07, where he indicated
23 that he showed her the hospital room. He
24 indicated he pulled out the picture out of his
25 pocket. It was crumbled. He showed it to his

1 brother and kept asking him, is this who shot you.

2 Is this who shot you.

3 His statement indicates that he nodded his
4 head to calm his bother down. Obviously our
5 position would be that while the state has
6 submitted it, it is an excited utterance. We
7 would submit to the court that Quinten Ball also
8 testified that he had calmed his brother down.
9 That he had basically calmed him down and was
10 getting excited. He actually also, some previous
11 testimony was, his brother was actually asleep
12 when he came in to the room.

13 So obviously when those come together we
14 would submit to the court, he is was no longer
15 under in regard to the defense which would prompt
16 the excited utterance. In addition, Mr. Ball
17 started talking about referencing why his brother
18 was reluctant to tell the court obviously that was
19 not an excited utterance. That was not something
20 that I would submit further, that was speculative.
21 So we would submit he could not say anything like
22 that. He could only say if the court ruled it
23 excited utterance. The first thing he said was;
24 "Q they got my legs." We don't object to that.

25 The second part was: "Hey is this the guy

1 that shot you. Is this the guy that shot you."
2 And he nodded his head. That's what we take issue
3 with. But obviously that could be interpreted
4 excited utterance. Our position is it's not
5 because of circumstances with the victim who is
6 asleep. The victim waking up. The witness
7 testifying that he had calmed his brother down.
8 He calmed him down. He was speaking basically
9 inside voice, as I questioned him. We would
10 submit that's not excited utterance. In addition,
11 any speculation about why his brother may have
12 been reluctant to say, A, B and C. Obviously we
13 would submit that would be totally speculative.

14 THE COURT: Ms. Fant.

15 MS. FANT: Yes, Your Honor. First of all,
16 Mr. Brooks I think, mischaracterizes some of the
17 testimony. Mr. Ball all he said was, "Yes, I
18 tried to calm him down. He never said, he became
19 calm. And what he will testify to, and we will
20 clarify that today; is that, it was, he couldn't
21 even talk he was so wound up. So he calmed him
22 down enough so he could express to him in words
23 what was going on. But there was no doubt he was
24 extremely emotionally upset about what had
25 happened. It was not a question of: "Oh, I am

1 fine. Let me just tell you." It was just that he
2 said, okay: "Talk. Calm down and talk to me,"
3 kind of thing.

4 So we would submit that that still is,
5 that he is still under the influence. It was some
6 3 to 4 hours after he had been shot and paralyzed.
7 I think the fact that he was paralyzed and that's
8 what he was talking about. It is significant,
9 because I think that is extremely traumatizing and
10 something that would keep you under that stress
11 for a longer period of time saying you got shot
12 and you were fine.

13 Regarding the statement that he made
14 after that, the reason the State believes that is
15 admissible because he had said earlier that he
16 didn't want to tell. There will be testimony that
17 he was like, you know, talk to Blue, or talk to
18 other people. He definitely was pulling it out of
19 him.

20 THE COURT: Yeah, but one person's
21 interpretation of what another person is thinking
22 is speculation.

23 MS. FANT: If he knows he doesn't want to
24 talk.

25 THE COURT: He still has to speculate. He

1 can say the witness didn't talk. But he can't say
2 what he was thinking. I don't think you got to
3 that point.

4 MS. FANT: Could he say he was reluctant
5 to talk about this?

6 THE COURT: He can say he was reluctant,
7 but he can't say why he was reluctant.

8 MS. FANT: Okay.

9 THE COURT: That clearly requires
10 speculation on the hearer's part. So he can say
11 he was reluctant. And that he didn't want to say
12 anything.

13 MS. FANT: Okay.

14 THE COURT: That he was reluctant and go
15 on from there. As to the testimony of someone,
16 seems like I remembered he was clenched fist, but
17 he was, you know, he was talking in a calm voice.
18 And then I am still going to hold that that is
19 part of the excited utterance res gestae of the
20 situation. This was his brother. It seemed like
21 a traumatic situation. I would allow that. But
22 nothing speculative as to what he interpreted
23 that.

24 MR. BROOKS: So I want to make sure we are
25 clear. This picture---

1 THE COURT: The picture does not come in
2 through the brother. If there is another witness
3 they have.

4 MS. FANT: Correct. We are going to show
5 it to him, and say, yes, he saw that picture.
6 That's what he gave Detective Lyons. But no---

7 THE COURT: I sustain your objection.

8 MR. BROOKS: All right.

9 THE COURT: Anything further?

10 MS. FANT: Well speaking of the photos, I
11 guess, are, is he objecting to all of them, such
12 that he wants me to put, you know, with each
13 individual one? Or is he admitting that some are
14 in, and just that one was out?

15 MR. BROOKS: What I said in regards to the
16 picture was, the picture Truman took was in the
17 daytime from all different angles. It does not
18 reflect how the area looked around the particular
19 time that the event occurred. And it may mislead
20 or actually mischaracterize what the area was.
21 How the area looked. What we mean is, there was a
22 lot of testimony about were the street lights on.
23 Our cross, Ms. Fant's direct about, where
24 Mr. Hawkins was. Where Ms. Jenkins was. Was
25 there a light here. Mr. Williams, do you remember

1 the light. All of that.

2 Whereas, Mr. Duggin's picture in the
3 daytime do not reasonably reflect that time of
4 day. And if his pictures if you recall on his
5 testimony was, I didn't take any pictures from a
6 different angle at night. I took them all from
7 the different angles from Salem Street. From
8 Wright Street. From this side of the street.
9 This side. He took all the different angles
10 during the day. And that's what we're asking the
11 court to suppress, because that would tend to
12 mislead the jury about how you're able to view
13 these different angles since none of this has
14 been in dispute; that this did not occur in broad
15 daylight per se. It occurred some time when it
16 was dusk, dusk to dark. Dark. There has been
17 some dispute able that. But I don't think there
18 is any issue that there has been a dispute about
19 whether it was in the daytime. And that's what we
20 are asking the court to suppress.

21 THE COURT: Ms. Fant.

22 MS. FANT: Your Honor, I do not believe
23 that the pictures have to show the scene of the
24 crime at the time. What he has to testify to,
25 and he did; is that, they depict what he is trying

1 to do now. There was a better view of the
2 daylight. You can see the layout of where the
3 park was. You can see things easier. There was
4 no testimony that that was exactly what it was
5 like the night before, because he specifically
6 said, I couldn't do that. I took some pictures at
7 night. This was the scene. I went back the next
8 day, which is common practice, because you can see
9 a little better. And this gives you a little
10 better idea of what -- the physical structures
11 didn't move overnight.

12 THE COURT: As long as your testimony is
13 clear that that is not how it was on the evening
14 of the situation of the shooting. That this is
15 strictly to show where the things were. And that
16 and has no implication whatsoever on what somebody
17 would have seen that night.

18 MS. FANT: Correct.

19 THE COURT: It is an entirely different
20 matter.

21 MS. FANT: I don't think he can testify to
22 that. But he can say what the purpose of it was
23 to show.

24 THE COURT: As long as we are clear, I
25 will allow it in.

1 MR. BROOKS: That's it on that issue?

2 MS. FANT: Well I guess. So the question
3 again was, does he want me to mark each
4 individually and go up there or are you?

5 THE COURT: As long as the testimony is
6 that they are not for the purpose of showing what
7 somebody would have seen that night. Now only for
8 the purpose of showing the layout of the land.
9 When you show the layout of the land, you are
10 going to do it where you can see it. And it is
11 only that person that has no inference that
12 somebody else is viewing the scene at the time of
13 the alleged shooting would have seen, would have
14 had that clear visibility.

15 MS. FANT: Correct. No question.

16 THE COURT: That would be admissible.

17 MR. BROOKS: That's what I was concerned
18 about, Judge.

19 THE COURT: As long as you are clear on
20 that.

21 MS. FANT: Okay, I don't want to belabor
22 this, but I am confused. Does that mean you are
23 already admitting them so I can just walk up and
24 show them?

25 THE COURT: As long as that testimony says

1 that way, then I am going to admit them.

2 MS. FANT: Okay.

3 MR. BROOKS: Judge,---

4 MS. FANT: And the other photographs with
5 the exception of the one that's not coming in.

6 MR. BROOKS: It looks like from a party or
7 something. The one we talked about.

8 MS. FANT: Right, the brother. Yes.

9 THE COURT: Right that's not coming in
10 through the brother.

11 MS. FANT: Okay.

12 THE COURT: Because the brother didn't
13 know who this picture, you know, who...

14 MS. FANT: Okay.

15 THE COURT: If somebody else because
16 actually the brother didn't know who he was at the
17 time either. So I did not allow that. And I will
18 not allow that in through the brother.

19 MS. FANT: Yeah, not through the brother.
20 We do have somebody who identified it.

21 THE COURT: Somebody else could identify
22 him. And that would be good enough.

23 MS. FANT: The only other issue we have,
24 Your Honor, exactly how to deal with the fact that
25 it is a retrial. I was speaking with Mr. Jackson

1 about this. About obviously you can't say that
2 there was a mistrial. We tried this last week or
3 whatever. But if, and I think the only time it
4 would come in is if he is attempting to impeach
5 somebody. And exactly what language would be
6 suggested to say that. I mean, that you gave a
7 prior statement or?

8 THE COURT: I would think you would say
9 you gave a prior statement just like you would
10 anywhere else. I mean, I don't know you are going
11 to say that. I think he wants to say, "It was
12 tried last week."

13 MR. BROOKS: Right. Obviously I don't
14 think I would say that, because that would
15 prejudice to my client.

16 THE COURT: And once you do that---

17 MR. BROOKS: And people go back and read
18 the newspaper like on line. Instead of prior
19 statement, I can say prior statement under oath.

20 THE COURT: That's fine. Because it was
21 under oath.

22 MR. BROOKS: It was.

23 THE COURT: And they don't know whether it
24 was a deposition or it was taken someplace else.
25 But from that standpoint you may ask it in that

1 fashion.

2 MR. BROOKS: Some of the same things from
3 a housekeeping standpoint, Judge, done the last
4 time in discovery. I will put on the record what
5 I have. But obviously, I am going to try a little
6 more. But basically I have the statements of
7 Darrell Hawkins. The statements that are on
8 record. Darrell Hawkins is one of the potential
9 witnesses for the State. Prior criminal records
10 of my client. Some statements about my client
11 when he was released when he was not in custody.

12 Obviously I mean I have heard allegations
13 about statements that my client made while he was
14 incarcerated from several witnesses. The
15 psychology report from the victims. The autopsy
16 reports, forensics, firearm that was given to me.
17 There was a letter supposedly, Iquananda Baker.
18 It didn't really come up in the trial. If it did
19 with her cross examination of my client. A Search
20 Warrant. A dodge charger. And obviously we
21 talked about the crime scene diagrams since the
22 state has taken the liberty to blow all those up.
23 And all the photos we were just talking about.
24 And the medical records from Tuomey and McLeod of
25 the victim. As well as the plea agreement of

1 Brandon Taylor. The records of Sebastian Jenkins,
2 Chris Davis, Chris Owens, Larry Cooper, Barry
3 Lowery, Darrell Hawkins. I think that covered. I
4 think that is everybody.

5 THE COURT: Ms. Fant, is there anything
6 else you need to give him?

7 MS. FANT: We have at least one new
8 witness.

9 THE COURT: Deslyn White.

10 MS. FANT: No record. At least no
11 impeachable record. Do you have any questions
12 about it?

13 MR. BROOKS: You're saying it is not
14 impeachable?

15 MS. FANT: It is not. It is simple
16 possession of marijuana, 30 days. Thirty days,
17 that's a magistrate level offense. That's not --
18 you can't go by that. The court charges would
19 actually get put. And whatever he is convicted of
20 is simple possession of marijuana which is 30
21 days. Which is not...

22 THE COURT: Yes, sir.

23 MR. BROOKS: There is no problem with
24 this, Judge.

25 THE COURT: Very well. Anything else

1 before we bring the jury in?

2 MS. FANT: Nothing from the State, Your
3 Honor.

4 MR. BROOKS: One second, Your Honor.

5 THE COURT: Yes, sir.

6 MR. BROOKS: I do have one other issue
7 about Brandon Taylor's testimony. I can wait
8 until she gets ready to call him. Because it
9 might require an In Camera hearing in regards to
10 that. So I will just let the court know about
11 that.

12 MS. FANT: Your Honor, normally the judges
13 let the witnesses stay during the opening. But I
14 will bend to your discretion on that. And then
15 they go out when the testimony starts. Because
16 the witnesses are in here right now.

17 MR. BROOKS: Our position is, there is a
18 Sequestration Order.

19 THE COURT: Sequestration is ordered from
20 the beginning of the case. And again, that is
21 y'all's responsibility to keep your witnesses out
22 of the courtroom.

23 MS. FANT: Mr. Allsbrooks was the evidence
24 custodian that stayed in last time, Your Honor.

25 THE COURT: I think he is allowed.

1 MR. BROOKS: I am not going to object to
2 him.

3 (Whereupon, all the State's witnesses
4 leave the courtroom.)

5 THE COURT: Let's bring the jury in.

6 (Whereupon, the following takes place
7 within the presence of the jury.)

8 THE COURT: Good morning, Ladies and
9 gentlemen. I will thank you again for your
10 promptness. And I was told by the bailiff that
11 you all were here at least 10 minutes before nine.
12 And I want you to know that we were not wasting
13 your time, we were handling pretrial issues. We
14 are getting ready to begin. There was another
15 witness' name who was not announced in the
16 courtroom. I need to ask about. There is a
17 Deslyn White.

18 Is any member of the jury panel related by
19 blood or marriage or have a business or social
20 relationship with a person by the name of Deslyn
21 White? If so, please stand.

22 (Whereupon, no response.)

23 THE COURT: All right, thank you. No one
24 has acknowledged any relationship with Deslyn
25 White.

1 THE COURT: Thank you. Please swear the
2 jury.

3 (Whereupon, the jury is sworn.)

4 THE COURT: Thank you may be seated.
5 Thank you, ladies and gentlemen. Thank you for
6 your patience over the last 2 days. Before we
7 begin this trial, I want to tell you this will
8 probably be different from what you might expect.
9 Many people do not have a chance to attend the
10 actual court session as you are now. And they
11 think from watching TV, movies, or reading books
12 that trials are always full of high drama,
13 riveting circumstances. Now while all of these
14 may be true at times, this trial is not for
15 entertainment purposes. This is a real trial
16 which is a fundamental part of our democracy. It
17 is a search for the truth in an effort to make
18 sure that justice is done.

19 Searching for the truth and insuring that
20 justice is done is often slow, deliberate and
21 repetitive. The opposite of what you may have
22 seen from TV or movies or read in books. This
23 courtroom is a place of honor dedicated to the
24 protection and preservations of citizen's rights,
25 which has been called by many, the greatest

1 justice system ever invented. The attorneys
2 appearing before you are advocates for the parties
3 they represent. But first and foremost, they are
4 officers of this court, who are sworn to uphold
5 the integrity and the fairness of our judicial
6 system, and help you the juror in your search for
7 the truth.

8 You should expect them to be professional,
9 competent and ethical in the representation of
10 their client's interest. And remember, that you
11 have also taken an oath to try this case and reach
12 a fair and just verdict. And you are expected to
13 be professional, reasonable and ethical as well.
14 Again, I would like to thank you for accepting
15 this responsibility of jury service and for your
16 distribution to our justice system now.

17 What I want to tell you now is intended to
18 serve as just an introduction to the trial of this
19 case. These remarks are not a charge on the law.
20 I will charge you with the law at the end of the
21 trial. This is merely an explanation of
22 procedures we will follow in this trial so that
23 you may better understand what is happening. Let
24 me say up front that during this trial, you will
25 not be allowed to take notes. Therefore it is

1 very important that you listen carefully
2 throughout the trial. The defendant is charged by
3 this Indictment filed in this court with the crime
4 of murder and possession of a weapon during the
5 commission of a violent crime. The elements will
6 be explained to you later.

7 The Indictment is simply the document by
8 which the case is brought in to this court. It is
9 not in any sense evidence of any of the
10 allegations therein. The defendant has pled not
11 guilty to this Indictment. Therefore, the state
12 has the burden of proving all of the elements of
13 the Indictment beyond a reasonable doubt. And it
14 will be your duty, Ladies and Gentlemen, to decide
15 whether the State has met that burden. Your
16 purpose as jurors is to find and determine the
17 facts. You are to determine the facts from the
18 testimony you hear and other evidence introduced
19 in court.

20 It is up to you to determine the inference
21 which you feel may be properly drawn from the
22 evidence which is presented. And it is
23 especially important that you perform your duty
24 diligently and conscientiously. Because
25 ordinarily there is no way to correct an erroneous

1 determination of facts by a jury. On the other
2 hand and with equal emphasis, the same law that
3 makes you the judges of the facts, makes me judge
4 of the law. This law as given by the court is the
5 only law that you can consider. And you must
6 accept the law as I give it and follow it, even
7 though you may disagree.

8 I can not tell you what the facts are, and
9 you cannot disagree with me about what the law is
10 or should be. Your job is to take the law as I
11 give it to you and apply the facts as you find
12 them from the testimony of the witnesses and any
13 other evidence introduced. After hearing the
14 evidence you will deliberate and render your
15 verdict, a true and just verdict under the solemn
16 oath that you just took as jurors.

17 Until I tell you to begin your
18 deliberations at the conclusion, you must not
19 discuss the case with others until authorized by
20 me to do so. You may not use a computer, cellular
21 phone or other electronic device with
22 communications capability while in attendance at
23 trial, or during your deliberations. These
24 devices may be used during lunch breaks, but may
25 not be used to obtain or disclose information

1 about the case when you are not in court.

2 Information about the case includes, but
3 is not limited to the following: information about
4 a party, a witness, an attorney, or a court
5 officer. News accounts of the case. Information
6 collected through juror research on any topic
7 raised or testimony offered by any witness or
8 information collected on jury research on any
9 other topic that you might think would be helpful
10 in deciding this case.

11 After the case is submitted to you, you
12 must discuss it only in the jury room with your
13 fellow jurors. The attorneys and the parties in
14 this case have been advised that they are not to
15 talk to you at all. But if you see someone
16 involved in this case and they don't even say
17 hello, well they are not being unfriendly. They
18 are just following my instructions. It is
19 important that you keep an open mind and not
20 decide any issue in this case until all of the
21 evidence has been presented. And the attorneys
22 have made their closing arguments, and I have
23 instructed you on the law. It is your solemn
24 responsibility to determine the guilt or the
25 innocence and your verdict must be based solely on

1 the evidence that is presented to you in this
2 trial and on the law as I instruct it to you
3 during the, at the close of the trial. Now in
4 just a moment the Solicitor is going to do what is
5 called an opening statement in which she will
6 explain to you what she believes the issues to be
7 in this case.

8 The attorney for the defendant may also
9 make an opening statement although he is not
10 required to do so. What the attorneys will tell
11 you during their opening statements is not
12 evidence in the case. It is only their contention
13 as to what the issues are. The evidence in this
14 case will be presented to you by the testimony of
15 sworn witnesses and from this witness stand, or by
16 any exhibits that may be introduced or any
17 stipulations of the parties.

18 Now from time to time during this trial,
19 you may hear one of the lawyers say something
20 like, Your Honor, I believe we have a question of
21 law or a matter of law to discuss with you. Or,
22 Your Honor, may we approach the bench. Or
23 sometimes I might find it necessary to excuse you
24 from the courtroom for a short time so the
25 attorneys and I can discuss a matter of law. The

1 reason for this is, because as I said, you are the
2 sole judges of the facts. And sometimes when I am
3 discussing matters of law with the attorneys it
4 may be necessary for me to make some comments
5 about the facts in connection with that ruling and
6 whether or not a particular law applies to that.

7 As I have said, I am not supposed to tell
8 you what I think about the facts or what the facts
9 are, so I will excuse you from the courtroom while
10 these discussions take place so that you in no way
11 will be influenced by anything that I might say or
12 do in connection with the facts. Also during the
13 trial you may hear an attorney make an objection
14 to certain evidence about to be presented.
15 Whether I sustain or grant the objection or
16 overrule which denies the objection, that should
17 not be construed in any that I favor one side or
18 the other. I simply do not, nor should you infer
19 that the objecting party is trying to hide
20 something.

21 In this court, as in all situations in
22 life, there are specific rules that must be
23 followed. The attorneys are merely trying to
24 follow the rules of evidence of this court in
25 making their objection. And I am only ruling

1 based on what I believe the law of this state to
2 be concerning the evidence being presented.

3 In determining what the true facts are in
4 this case, you must decide whether or not to
5 believe, whether or not the testimony of a witness
6 is believable. It will my responsibility to rule
7 as a matter of law, as to whether certain
8 testimony is in fact admissible. Once the
9 testimony is admitted, whether or not you decide
10 to believe it, is solely for you the jurors to
11 determine. In deciding whether to believe a
12 witness, you have the right to consider the
13 interest of any witness, the bias of any witness,
14 the prejudice of any witness, the opportunity of
15 the witness to have observed the matters and
16 things about which the witness may testify and the
17 way the witness actually acts on the witness
18 stand.

19 You have the right to consider anything
20 that is in the record that will help you evaluate
21 the testimony of the witness. That means it is
22 your duty to pay close attention to these
23 witnesses, to observe the witnesses, to listen to
24 the witnesses and to pay close attention to the
25 attorneys and to the court. And don't let your

1 thoughts wander and give strict attention to the
2 testimony in this case. So at the end of all the
3 testimony, after the arguments of counsel, and the
4 charge of the law by me, you will then be in a
5 position to determine what the true facts are, and
6 the to apply the law to those facts. And thus
7 render a true and just verdict.

8 It is your additional duty, Madam
9 foreperson, to preside in the jury room and be the
10 jury spokesperson in court. It would also be your
11 duty to write the verdict. And I will give you
12 further instructions on that at the appropriate
13 time. In order to preserve everyone's rights, I
14 will now give the parties an opportunity to object
15 to anything that I have said. Does the State any
16 objections or exceptions to anything I have stated
17 to the jury?

18 MS. FANT: No, sir.

19 THE COURT: Are there any exceptions by
20 the defense?

21 MR. BROOKS: No, sir, Your Honor.

22 THE COURT: Thank you. We will now begin
23 the trial of this case. Ms. Fant, for the state.

24 MS. FANT: May it Please the Court.

25 THE COURT: Yes, ma'am.

1 MS. FANT: Your Honor, Mr. Brooks, Ladies
2 and gentlemen of the jury, on October 2nd of 2007,
3 the defendant, Rahim Carter, shot his best friend,
4 Mathew Horace. It paralyzed him immediately when
5 the bullet severed his spinal cord. And a week
6 later he was dead. The evidence in this case is
7 going to explain the whole story of how this came
8 about, what happened, and even what the defendant
9 said afterward.

10 The first witnesses are going to tell you
11 about going to the crime scene. Where it happened
12 on Dingle Street in Sumter. That's on the west
13 side of Sumter. They will tell you what the
14 lighting was like. That there were four shell
15 casings found that were all fired by the same gun,
16 which was in the location where the witnesses will
17 say the defendant was shooting. This wasn't just
18 some random, oops, I let off a round and shot him.
19 It was four times. You will hear that evidence.
20 And one of them hit him, but it severed his spinal
21 cord. He died later from that wound.

22 In addition you will hear from witnesses
23 who will tell you what led up to this. Because
24 you will hear witnesses say that they were close.
25 They were very close. Almost like brothers. But

1 there got to be some issues as to some loyalty.
2 Who was hanging out with who. And some things
3 that happened went down that caused tension among
4 them. And you will hear from the witnesses about
5 that. And they will tell you that on this
6 particular day, that the victim in this case,
7 Mathew Horace, was at a house at
8 just talking to people. That that man came up,
9 asked somebody who was down at the house. Found
10 out that the victim Mathew Horace was down there.
11 Went down there. That the victim said: "Hey
12 what's up." And he's like, "I ain't here to
13 talk." They have a few more words. And then he
14 pulls out a gun and starts shooting. After that,
15 he runs off. And we'll have witnesses to tell you
16 that.

17 Now the important thing for you to know
18 and this is true in every case that we try. No
19 witness that we put up knows everything. Nobody
20 is going to tell you, I saw it planned. I saw it
21 executed. I saw the end of it. That is not real
22 life. But the people that are out there will tell
23 you what they know, what they saw, what they
24 heard. And they will give you pieces of the
25 puzzle that when they fit together, paints a

1 picture of what happened.

2 And the two most important witnesses that
3 you will hear from in this case are from the
4 victim, Mathew Horace. He's deceased, but he told
5 people right after the shooting that it happened.
6 And you will hear it from them when they tell you
7 what he said. And in addition, and maybe most
8 importantly, you will hear the words the very
9 defendant spoke. What he said about what
10 happened, and why he said it had to get done.

11 The bottom line is, we just ask that you
12 listen very carefully to what everyone says; that
13 you attempt to put each witness together as they
14 go. And we try to go in chronological order but
15 that's not always possible. And you're going to
16 hear a lot of names in this case, a lot of
17 nicknames. And we're going to try to make sure
18 that we let you know what each of those are so you
19 are not confused. Because this could have been a
20 confusing case. But we think the witnesses that
21 we are going to present to you, people who were
22 there, and the people who heard and saw things,
23 are going to let you know the whole story. And
24 for that reason we just ask that you pay close
25 attention and we ask for your patience and your

1 attention in this matter. Thank you.

2 THE COURT: Thank you. Mr. Brooks, for
3 the defense.

4 MR. BROOKS: Goods morning, Ladies and
5 Gentlemen. My name is Charles Brooks. And I am
6 representing Rahim Carter. Who is seated at the
7 table. Let me explain to you, here in this
8 country, a person who goes up for trial is
9 presumed to be innocent until the State proves
10 their case beyond a reasonable doubt. Now a lot
11 of times you may have listened to TV, read
12 newspapers, and seen things on the Internet, but
13 you don't really know and understand what
14 reasonable doubt means. That means they must
15 prove their case beyond a reasonable doubt.

16 Rahim comes in this court with a shroud of
17 innocence around him just like everyone else in
18 the country. And the State must take that shroud
19 away from him. You might hear a witness say this.
20 You might hear a witness say that. They might
21 bend to that shroud. They might tear a piece of
22 that shroud. At the end of the day, he still has
23 that shroud. That shroud of innocence.

24 Now let's talk about reasonable doubt.
25 What do I mean by reasonable doubt? Well the kind

1 of doubt that makes one hesitate to act. For
2 instance, many of us got up this morning and go to
3 work and our day or whatever. We get up and iron
4 our clothes. And we might walk out of the house,
5 and get a block down the street and you think, did
6 I leave the iron on. That's doubt. I am in doubt
7 as to whether or not I left the iron on. That
8 kind of doubt we're talking about.

9 Now as Ms. Fant said, you're going to hear
10 a lot of witnesses. Like Ms. Fant said, we want
11 you to listen to them and pay very close
12 attention. When you do that you really pay close
13 attention. Listen to what they say. And we will
14 also ask you to think about what they say. It's
15 very important. Now we may call witnesses. We
16 may put up witnesses. But I want you to know that
17 Rahim, under this country we live in, we don't
18 have to bring up any witnesses. We are not
19 obligated to prove anything.

20 It doesn't mean we won't, but it doesn't
21 necessarily mean we will. We don't have to do
22 that. They have to. They have to carry the
23 burden. That's a huge burden. Let me give you a
24 better example of what I mean by that. Some
25 people think this court is fair, and some don't.

1 But everybody has a general idea of what goes on
2 in baseball. You know what happens in baseball.
3 A man stands at the plate. And in softball, they
4 hit the ball, the people in the infield and the
5 outfield try to get to ball first base. The
6 person hits the ball. Her job is to get off to
7 first base. Well what happens if they get there
8 at the same time? The tie goes to the runner. If
9 there are Any doubts in your mind, it would go to
10 Rahim if you follow the law.

11 Judge Young in the black robe up here,
12 he's going to tell you the law. And you have
13 taken that oath to abide by that. And abide by
14 the judge. Any man while on trial must be proven
15 guilty beyond a reasonable doubt. You have that
16 trial or shroud at trial of innocence which is
17 very, very important. And now you are going to
18 hear some things that are not very pleasant to
19 hear, I submit that to you. But like anything out
20 there, there two sides to a story.

21 Just like in a coin, there is a head and
22 there's a tail. And I submit to you at the end of
23 the day, at the end of tomorrow, or however long
24 this trial goes, after you have heard everything
25 and digested it, and thought about your duty as

1 jurors, and the charge on the law from the judge,
2 you are going to only have one verdict to come
3 back. And American citizens who have sworn to
4 uphold the truth, you will come back with not
5 guilty. This is not a public opinion poll. This
6 is not a gut reaction to say in my gut what do I
7 think. They have the burden to prove their case
8 beyond a reasonable doubt. Keep that in mind.
9 And they will have in the end zone. It ain't good
10 enough to get across 50/50. We don't have to
11 score. And keep that in mind. Thank you.

12 THE COURT: Thank you, Mr. Brooks. The
13 State may call its first witness.

14 MS. FANT: The State will call Detective
15 Lyons.

16 Detective William Lyons, being
17 first duly sworn, testified as follows:

18 THE CLERK: Please state your full name
19 and spell your last for the record.

20 A William Lyons. L-Y-O-N-S.

21 Direct Examination by Ms. Fant

22 Q Detective Lyons, could you tell us where
23 you work?

24 A Sumter Police Department.

25 Q And how long have you worked there?

Detective Lyons-direct by Fant

1 A Since 2004.

2 Q What type of work do you do as a police
3 officer?

4 A Currently I am assigned to the
5 investigative services division as a detective.

6 Q And what types of duties do you have as a
7 detective at the police department?

8 A Currently I'm assigned to gang
9 investigation and violent crime investigations.
10 You know, investigating crimes involving violence:
11 Armed robberies, murders, shootings, things of
12 this nature.

13 Q Do you have any specialized training
14 regarding that type of investigation?

15 A Yes, ma'am. I received specialized
16 training especially, in gang investigations
17 through the Criminal Justice Academy here in South
18 Carolina, South Carolina Gang Investigative
19 Association. North Carolina Gang investigative
20 Association, through the ATF, the FBI. I received
21 some training from many different agencies
22 regarding investigating crimes that may involve
23 gang activity.

24 Q And how did you become involved in this
25 particular case?

Detective Lyons-direct by Fant

1 A I was contacted by senior detective John
2 Litaker on the night of the incident, and asked to
3 come out and respond and lend some additional
4 assistance. Detective Litaker was the detective
5 on call that night. And often in cases where we
6 have a serious crime, we call and ask for
7 additional detectives to come out and help our
8 people.

9 Q And where did you respond?

10 A I initially responded to the incident
11 scene at . And I made contact
12 with Detective Litaker who was already on the
13 scene. He advised me that he had contacted
14 Detective Truman Duggin who was our forensic
15 specialist, to come to the scene to process. As I
16 stood by Detective Litaker, as we waited for
17 Lieutenant Duggin's arrival.

18 Q Did you ultimately become the lead
19 detective on this case?

20 A Yes, ma'am. The case was ultimately
21 assigned to me by my supervisor and I became lead
22 investigator.

23 Q , is that in Sumter
24 County?

25 A Yes, ma'am. It is in Sumter County within

Detective Lyons-direct by Fant

1 our city limits.

2 Q Detective Lyons, I'll ask you to step
3 down, and show you what has been entered into
4 evidence as State's Exhibit 28. Could you just
5 describe what this is briefly?

6 (Whereupon, witness steps down from the
7 witness stand.)

8 A This basically is just a general overall
9 picture of what we considered to be the west side
10 of town. Liberty Street runs here. This is
11 Guinyard. You can see a little bit further.
12 Obviously we tried to get as much on the picture
13 as we could. Council Street runs here down south
14 towards the railroad tracks. We were actually all
15 the way over on South Sumter Street. We were
16 unable to get in the photograph.

17 Encompassed within this photograph is
18 Dingle Street where the crime occurred on Dingle
19 Street. Right here in this residence here at
20 Dingle. Here is the intersection of Dingle and
21 Wright Street. You have Oakland and Bartlette,
22 and some of the side streets mixed in the
23 neighborhood.

24 Q Now what time did the 911 call come in
25 regarding the shooting?

Detective Lyons-direct by Fant

1 A Our initial officers got the response, I
2 believe, it was 8:01 p.m. was when it was
3 initially dispatched to our office, our patrol
4 office.

5 Q What time did you get there?

6 A It was probably 30, 45 minutes later after
7 I was contacted by Detective Litaker. I wasn't
8 the initial detective who responded.

9 Q And who else was at the scene? What other
10 detectives were there?

11 A Detective Litaker, Lieutenant Truman
12 Duggin. And Detective Fluitt came originally, but
13 he got called to another assignment. He didn't
14 stay around. He had to go back to something else
15 that had come up.

16 Q And was Detective Culick there?

17 A Detective Culick was notified as well.
18 And she actually responded to the hospital to
19 speak to the victim.

20 Q Now at that time, did you speak with the
21 witnesses in this case?

22 A No, ma'am. Unfortunately and in many
23 cases like this, there was no one around when we
24 got there.

25 Q Was the body of the victim still at the

Detective Lyons-direct by Fant

1 house when you got there?

2 A No, ma'am, he had been transported by our
3 emergency medical services to the hospital.

4 Q So there was no one there really for you
5 to talk to?

6 A No, ma'am.

7 Q What was the -- you had indicated the call
8 came in about 8:01. Was it dark outside when you
9 got there?

10 A By the time I got there, it was getting
11 pretty dark. Like I say, It was some 45 minutes.
12 30, 45 minutes later. Closer to 9:00 p.m. by the
13 time I actually got to the scene.

14 Q And could you see to conduct a survey of
15 the crime scene?

16 A Yes, ma'am. There were street lights
17 located right there pretty much at the crime
18 scene. And they were in operation that night.
19 So you could stand out in the yard and definitely
20 see into the crime scene and into the roadway.

21 Q And did you and the other officers attempt
22 to canvas the neighborhood to try to find any
23 witnesses?

24 A Yes. I actually spoke with a gentleman
25 across the street from the incident location. A

Detective Lyons-direct by Fant

1 Mr. Ezekiel Simmons who was inside his residence.

2 The only thing he told me---

3 MR. BROOKS: Objection, Your Honor.

4 THE COURT: Sustained.

5 Q He did not indicate -- did he indicate
6 anything to you that he had seen anything?

7 MR. BROOKS: Objection, Your Honor. It's
8 still hearsay.

9 THE COURT: Sustained. You can ask what
10 he did.

11 Q Where was he at the time you talked to
12 him?

13 A Inside his residence.

14 Q Okay, and where is that residence located?

15 A It is across the street. I think it might
16 be or .

17 Q Was anyone else around?

18 A No, ma'am.

19 Q And what was the housing situation on this
20 street?

21 A Most of the houses are on that portion of
22 Dingle Street between Wright and Salem. Many of
23 them are abandoned. We spoke with Mr. Simmons who
24 lived across the street. And the next couple of
25 houses beside him are abandoned houses. And we

Detective Lyons-direct by Fant

1 spoke with another gentleman a few houses down
2 from the incident scene on the same side of the
3 road. He was inside his residence when we spoke
4 with him.

5 A For the most part, many of those
6 residences are abandoned on that short section
7 between Wright and Salem Street.

8 Q So after you talked to them, were you able
9 to determine exactly what had happened?

10 A Unfortunately, no.

11 Q And so what else did you do? Did someone
12 else, did you talk to somebody else that night?

13 A Yeah, as I was standing there assisting
14 Lieutenant Duggin and what not, with the
15 investigation, a Mr. Henry Williams came up and
16 indicated that---

17 MR. BROOKS: Objection, Your Honor.
18 Hearsay.

19 THE COURT: Sustained.

20 Q Did you just talk to him?

21 A Yes, we spoke to him.

22 Q Okay. And um, at that time did you know
23 who had done it?

24 A No, ma'am.

25 Q And so did you, what did you do next after

Detective Lyons-direct by Fant

1 that? After you had reviewed the crime scene and
2 attempted to find the witnesses?

3 A I eventually went up to the hospital where
4 Senior Detective Culick was at, to see if I could
5 assist her with any of the interviews up there.
6 And I stayed up there at the hospital with her
7 until we were released from the scene more or
8 less. And we did what we could do that evening,
9 and then we left.

10 Q And Now was Detective Culick able to take
11 a statement from the victim?

12 A No, ma'am, she was not.

13 Q Was he in a medical condition to give a
14 statement at that time?

15 A No, ma'am.

16 Q And was he able to even really explain to
17 her what had happened? Did he tell her?

18 A No, ma'am. He did not relay any
19 information to Detective Culick that night.

20 Q Now did you ever have a chance to
21 interview Mathew Horace?

22 A No, ma'am. Later that evening, he was
23 flown, I believe, to Florence, McLeod Regional
24 Hospital where he was intubated. Which made it
25 virtually made it impossible for us to get over

Detective Lyons-direct by Fant

1 there to talk to him over the next couple of days.
2 I think he was intubated, the next day, the next
3 morning. Which made it virtually impossible to
4 actually to be able to talk to him.

5 Q And excuse me. I guess at some point
6 shortly thereafter, he died and you weren't able
7 to---

8 A That is correct.

9 Q Now did you ultimately talk to some
10 witnesses in the case?

11 A Yes, we did.

12 Q And I am going to, Detective Lyons, I will
13 ask you to step down. And I will provide you a
14 blank piece of paper and this magic marker.

15 (Whereupon, the witness steps down from
16 the witness stand.)

17 Q Were, did a lot of the witnesses in this
18 case have nicknames that they went by?

19 A Yes, ma'am, they did.

20 Q I am going to ask you a few of them, and
21 if you will write them down so we can just keep
22 straight who was who. Rahim Carter, the
23 defendant?

24 A Mr. Carter goes by the nickname of Rock,
25 or Rahxzilla.

Detective Lyons-direct by Fant

1 Q And the victim, Mathew Horace?

2 A Mathew Horace went by the nickname of
3 Bread, or Cornbread.

4 Q Brandon Taylor?

5 A Brandon Taylor went by the nickname of
6 Blue.

7 Q And Sebastian Jenkins?

8 A Sebastian Jenkins went by the name of Sam.

9 Q Eugene Shaw?

10 A Eugene Shaw when by the nickname of Booji.

11 Q And could you just tell us where Booji
12 lives?

13 A is his address.

14 Q And that's the house where the shooting
15 occurred?

16 A Yes.

17 Q Larry Cooper.

18 A Larry Cooper goes by the nickname of
19 Taylor.

20 Q Christopher Davis?

21 A Christopher Davis goes by the nickname of
22 'Lil Chris.

23 Q Roger Gooden?

24 A Roger Gooden goes by the nickname of Fat
25 Roger.

Detective Lyons-direct by Fant

1 Q Juwan Holmes?

2 A Juwan Holmes goes by the nickname of
3 Petey.

4 Q Darrell Hawkins?

5 A Darrell Hawkins goes by the nickname of
6 'Lil D or little Darrell.

7 Q Ca'brall Archie?

8 A Ca'brall Archie goes by the nickname of
9 D' Mo.

10 Q And finally Virgil Bellamy?

11 A Virgil goes by the nickname of 'Lil Virg.

12 Q Thank you. You may be seated.

13 (Whereupon, the witness resumes the
14 witness stand.)

15 MS. FANT: Your Honor, at this time, I
16 would offer State's Exhibit 29 into evidence.

17 THE COURT: Any objection, Mr. Brooks?

18 MR. BROOKS: No objection.

19 THE COURT: Without objection, State's
20 Exhibit No. 29 is submitted into evidence.

21 (List of nicknames marked State's Exhibit
22 No. 29 into evidence.)

23 Q Detective, after you began speaking to the
24 witnesses, did you make an immediate arrest?

25 A No, ma'am, it wasn't until the date before

Detective Lyons-direct by Fant

1 Thanksgiving in October -- I'm sorry, November
2 2007, we made the arrest.

3 Q And why was that?

4 A It took us a while to, Ms. Fant, to put
5 the pieces of the puzzle together. We begin
6 receiving information through crime-stoppers 911
7 calls. After talking with some of the people that
8 we were able to identify as being on the scene, we
9 were able to establish enough to arrest Mr. Carter
10 for the incident.

11 Q Now did some of the people that you talked
12 to refuse to talk to you at first?

13 A Yes, ma'am. As is in the case in a crime
14 such as this, most of the time it takes a while
15 for people to decide to come around and start
16 talking to law enforcement.

17 Q Did, other than the 911, and
18 Crime-stoppers, did you all receive any anonymous
19 calls from confidential informants?

20 A Yes. We also received a few calls from
21 some of our CI's.

22 Q And who else did you interview?

23 A At first Brandon Taylor was interviewed
24 about, I guess it was probably a week, maybe two
25 weeks after Mathew Horace's death. He was one of

Detective Lyons-direct by Fant

1 the first people to be interviewed after we
2 learned through some of the CI's and through some
3 of the Crime-stopper's tips that he was actually
4 at the scene. So he was one of the first people
5 that we interviewed.

6 And then as time progressed, we ended up
7 interviewing Mr. Frederick Owens, a Larry Cooper,
8 in late December of 2007. And then a Darrell
9 Hawkins in earlier February of 2008. As these
10 witnesses began coming forward, we began getting
11 information that either they knew something about
12 what took place, or they were actually there when
13 we began getting this information, and we began
14 contacting them.

15 Q Did some of the witnesses actually come to
16 you on their own?

17 A Yes, they did. We did actually have a
18 couple who actually came to us and provided us
19 with some additional information that we had
20 already received.

21 Q And after -- well during the time you were
22 investigating it, did you receive a photo from the
23 victim's brother Quentin Ball?

24 A Yes, I did.

25 (Photos marked State's Exhibit Nos. 1

Detective Lyons-direct by Fant

1 through 17 for ID only.)

2 Q Without saying what is in this photograph,
3 this is State's Exhibit No. 1 for identification.

4 Is this a photograph that you received from
5 Mr. Ball?

6 A Yes, it is.

7 Q What did you do with it?

8 A I immediately put it in to evidence.

9 Q Once the defendant was arrested, were you
10 able to associate him with the known nicknames
11 that he had?

12 A Yes, I was. The nickname he went by was
13 Rock and Rahxzilla. And he had a tattoo down his
14 arm of Rahxzilla.

15 Q I will show you what has been entered as
16 State's Exhibit No. 2. Is that the photograph
17 that you took of that tattoo?

18 A Yes, ma'am.

19 MS. FANT: Your Honor, permission to
20 publish?

21 THE COURT: Any objection?

22 MR. BROOKS: Your Honor, may we approach?

23 THE COURT: You may.

24 (Whereupon, attorneys approach and confer
25 with judge.)

Detective Lyons-direct by Fant

1 Q Detective Lyons, can you just step down
2 and show the jury the direction that photo should
3 be looked at?

4 (Whereupon, the witness steps down from
5 the witness stand.)

6 A This is a picture of the defendant's right
7 forearm. I am standing here showing over my
8 forearm now. You can see the words, "Rahxzilla,"
9 running down his forearm there.

10 MS. FANT: Your Honor, at this point, I
11 would also ask the defendant to come forward and
12 show the jury the tattoo on his arm.

13 THE COURT: The defendant shall come
14 forward.

15 MR. BROOKS: Yes, Your Honor. We would
16 object to this.

17 THE COURT: I note your objection.
18 Overruled.

19 (Whereupon, the defendant shows the jury
20 his forearm.)

21 THE COURT: Thank you. You may sit down.

22 Q Following the arrest of the defendant,
23 Rahim Carter, did you further investigate the
24 case?

25 A Yes, It was an ongoing investigation. And

Detective Lyons-direct by Fant

1 we investigate basically right up until the day
2 when the trial starts. And It's always, it's
3 ongoing. We get new information, we follow up on
4 it whether it's 2 days after the crime, or 2 years
5 after the crime. It doesn't matter. If we get
6 any information, we are going to follow up on it.

7 Q And is that true for all the cases that
8 you investigate?

9 A Many times it is the truth. I mean, you
10 know, oftentimes it's normally the exception we
11 don't get a lot of information until a year or two
12 years until after the crime has been admitted.

13 Q And what did you learn when you
14 investigated about the relationship between the
15 defendant and the victim, Mathew Horace?

16 A Based on what I gathered, they were best
17 friends.

18 Q And did at some point they start having
19 problems?

20 A From what we gathered, there was some sort
21 of beef between two different sides. And the
22 choosing of sides.

23 Q And who were the people involved in the
24 sides that you are talking about?

25 A Mr. Brandon Taylor, and another gentleman

Detective Lyons-direct by Fant

1 by the name of Mark McKoy.

2 Q And what is the nickname that Mark McKoy
3 goes by?

4 A He goes by the nickname is Wise.

5 Q And were there also two other incidents
6 that occurred that police knew about, that related
7 to the relationship between these two?

8 A Yes, ma'am. The first incident happened,
9 happened a month or two before this. Ca'brall
10 Arhcie A/K/A D'Mo was allegedly robbed by the
11 victim in this case, Mr. Mathew Horace. And
12 another gentleman by the name of Roger Gooden who
13 went by the nickname of Fat Roger. We believe,
14 you know, that that was something that escalated
15 the ongoing feud. Then fortunately the day before
16 Mr. Horace was shot and killed, he allegedly had
17 been involved in an assault on a Christopher Davis
18 who goes by the nickname of 'Lil Chris.

19 Q Now which of the two sides were the
20 defendant, and D'Mo and Chris Davis with?

21 A They were associated with Mark McKoy who
22 goes by the nickname of Wise. They were part of
23 his group.

24 Q And what about the victim, Mathew Horace?

25 A Mathew was part of Brandon Taylor's group.

Detective Lyons-direct by Fant

1 Q Now at some point actually before the
2 defendant was arrested, did you have an
3 opportunity to talk to him?

4 A Yeah, I ran in to him. Myself and
5 Detective Pottieger, we attempted to speak to him.

6 Q And what did he say at that time?

7 A His immediate response was, you've got the
8 wrong Rock.

9 Q And how many other people in Sumter do you
10 know that go by that nickname?

11 A I don't know of anybody on the street that
12 goes by that nickname.

13 Q Do you know anybody else that goes by the
14 nickname of Rahxzilla?

15 A No, I don't know of anybody that goes by
16 the nickname of Rahxzilla.

17 Q And after he told you that, did he say
18 anything else?

19 A Yes. We asked him, you know, how he knew
20 Bread. And basically he wouldn't talk to us. And
21 just, and his comment was, "If you play dirty,
22 you're going to get dirty." And was the end of
23 it. And he turned around and walked off.

24 Q Did you ask him to further explain that
25 comment?

Detective Lyons-direct by Fant

1 A We attempted. Like I said, he doesn't
2 want to talk to us. He turned around and walked
3 off.

4 Q Now when you arrested the defendant, Rahim
5 Carter, who was with him?

6 A When he was arrested, Christopher Davis,
7 a/k/a 'Lil Chris, and his girlfriend Lyeka Jones,
8 were present with him during his arrest.

9 Q And following the arrest, did you
10 interview some additional witnesses in the case?

11 A Yes.

12 Q And who were they?

13 A Since his arrest, we've actually
14 reinterviewed many of our witnesses over and over
15 again. We reinterviewed Barry Lowery. Well Barry
16 Lowery and Frederick Owens were interviewed after
17 his arrest. He was arrested in November of 2007.
18 And they were interviewed in December of 2007.
19 And Darrell Hawkins was interviewed in February of
20 08. And then Brandon Taylor's interview on
21 countless numbers of occasions since a couple of
22 weeks after this incident, you know, all the way
23 up through 2009. He has been interviewed on many
24 different occasions.

25 Q During your investigation, did any other

Detective Lyons-direct by Fant

1 names come up as a possible suspect other than
2 Rahim Carter, Rahxzilla?

3 A No, ma'am.

4 MS. FANT: Please answer any questions
5 Mr. Brooks may have.

6 THE COURT: Mr. Brooks:

7 Cross Examination by Mr. Brooks:

8 Q Detective Lyons, you were the lead
9 investigator in this case?

10 A Yes, sir.

11 Q And as a part of your duties as lead
12 investigator, it's basically fair to say that
13 you're responsible for gathering all the
14 information involving the case presented here at
15 trial, isn't that correct?

16 A That is correct.

17 Q You are intimately familiar with each and
18 every piece of evidence in terms of ballistics,
19 autopsy photographs, medical records, and things
20 of that sort?

21 A Yes.

22 Q And one of the things that was also done
23 in this case was a gun residue test, isn't that
24 correct?

25 A That is correct.

Detective Lyons-cross by Brooks

1 Q And I believe you----

2 THE COURT: Yes, ma'am.

3 MS. FANT: Objection to any evidence about
4 that coming in. He did not take the test nor does
5 he know about the results.

6 MR. BROOKS: Judge, I hadn't asked the
7 question.

8 THE COURT: I think he can ask him. I am
9 going to overrule the objection.

10 Q There was gun residue test done on the
11 victim in this case, is that correct?

12 A Yes, sir.

13 Q And let me be, let me put it clear as
14 possible. If there was a gun residue test done on
15 anybody as part of this case, you would know about
16 it, wouldn't you?

17 A Yes.

18 Q Because you were the lead detective.

19 A Correct.

20 Q And you are intimately familiar with each
21 and every aspect of the case, isn't that correct?

22 A Correct.

23 Q Now was there a -- were there any other
24 gun residue tests done with any other individual
25 that was found when you arrived at the scene?

Detective Lyons-cross by Brooks

1 A There was nobody else to do it, a GSR kit.

2 Q Okay. Now you testified earlier that you
3 ran in to my client on an occasion prior to him
4 being arrested.

5 A That's correct.

6 Q Now on this particular occasion he
7 indicated to you when questioned, "You've got the
8 wrong, Rock." Isn't that correct?

9 A uh-huh. (Affirmative.)

10 Q Is that a yes?

11 A Yes, sir. I am sorry.

12 Q Now you do acknowledge that Sumter County
13 is a very big county.

14 A Correct.

15 Q And the City of Sumter, it's a fairly nice
16 sized city.

17 A Yes, sir.

18 Q So that it is fair to say that there may
19 be other individuals out there with the same
20 nickname Rock, isn't that correct?

21 A It may be fair to say.

22 Q Okay. would that be a yes?

23 A Yes.

24 Q I mean you can't say 100 percent sure
25 there is no other Rock out here in Sumter County

Detective Lyons-cross by Brooks

1 except for Rahim?

2 A Yes. If that's what you're saying.

3 Q Right.

4 A Do I know any more?

5 Q You can't, I mean you're not here to say
6 that there is nobody else other than Rahim that
7 goes by the nickname Rock?

8 A Right.

9 Q And you testified in regards to what
10 Ms. Fant asked you, you guys did canvass the
11 neighborhood?

12 A Yes, sir.

13 Q You said several houses were abandoned but
14 you all go and talk to somebody across the street.

15 A That is correct.

16 Q And you talked to somebody down at the
17 corner.

18 A Well not quite the corner.

19 Q Not quite.

20 A Two or three houses down from the incident
21 location.

22 Q You also talked to Henry Williams. And as
23 you testified earlier, some people start coming
24 under your radar to testify, as the case
25 progressed?

Detective Lyons-cross by Brooks

- 1 A Correct.
- 2 Q And you testified some of these people
- 3 actually came to you.
- 4 A Correct.
- 5 Q Voluntarily.
- 6 A Yes.
- 7 Q And you also talked about you went to the
- 8 hospital?
- 9 A Yes, sir.
- 10 Q Tuomey Hospital.
- 11 A Correct.
- 12 Q You also went to McLeod?
- 13 A No.
- 14 Q Did you or Detective Culick try to get a
- 15 statement from the victim?
- 16 A Yes. We tried to speak to him. She tried
- 17 to speak to him. I didn't.
- 18 Q You never tried to speak to him?
- 19 A No.
- 20 Q Okay.
- 21 A I allowed her to.
- 22 Q Okay. But based on your knowledge, she
- 23 tried to.
- 24 A Correct.
- 25 Q And based on your knowledge, she was

Detective Lyons-cross by Brooks

1 unable to gather anything from him?

2 A Correct.

3 Q Because of his medical condition.

4 A Correct.

5 Q Okay. Basically I believe your words
6 were, "It's virtually impossible to get anything
7 from him?"

8 A Correct.

9 Q Then a call came in about 8:01 p.m., is
10 that correct?

11 A Yes. If my memory serves me, I believe
12 that's when the initial incident report 8:01 p.m.
13 Okay.

14 Q And I believe Ms. Fant asked you this.
15 You had continued to follow up all the way through
16 trial, I believe that's what you said?

17 A Yes, sir.

18 Q And that's basically part of your role as
19 lead detective in a case.

20 A Yes, sir.

21 Q Is that investigation ongoing?

22 A Yes, sir.

23 Q People pop up and you continue to
24 investigate.

25 A Yes, sir.

Detective Lyons-cross by Brooks

1 Q Now it is fair that to say that the
2 distinction from this incident site to Salem and
3 Dingle is about 250 yards?

4 A It's actually 354 feet.

5 Q 354 feet. Okay. You talked about it
6 being about 250 yards before, you do admit that.

7 A Correct.

8 Q Okay.

9 A But it has been since measured.

10 Q You since measured it. But earlier as a
11 part of your investigation, you had said it was
12 about 250 yards, is that correct?

13 A Correct.

14 Q Did you happen to do the math on 354 feet
15 in relation to yards?

16 A No, I am not a math expert. I'm getting
17 somewhere about 118 to 120 yards.

18 Q But you're not a math expert.

19 A Three foot per yard so.

20 Q So is it fair to say that probably you
21 don't know what it would equate to in yards?

22 A It's three feet per yard. 354 feet
23 divided by 3 foot. About 118 yards.

24 Q So you are a little better mathematician
25 than you give yourself credit for. Is that

Detective Lyons-cross by Brooks

1 correct?

2 A I can multiply.

3 Q And you arrested my client the day before
4 Thanksgiving, is that correct?

5 A That's correct.

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

7 THE COURT: Yes, sir.

8 MR. BROOKS: No other questions.

9 THE COURT: Any redirect?

10 MS. FANT: Yes, Your Honor.

11 Redirect Examination by Ms. Fant:

12 Q Detective Lyons, to clarify a couple of
13 things when you initially said it was 250 yards
14 from 405 Dingle to Salem, why did you say that?

15 A That was a guess.

16 Q And subsequently was it actually measured?

17 A Yes, It was.

18 Q And is that where the 354 feet came from?

19 A Yes, ma'am.

20 Q And um, he asked you about the GSR kit
21 that was done on the victim. Why was the GSR kit
22 or gunshot residue kit done on the victim?

23 A It was our standard procedure. Any time
24 we have a shooting, we have a suspect or a victim
25 and or both. If both are available, we'll do the

Detective Lyons-redirect by Fant

1 suspect kit on each one of them.

2 Q Do you sometimes even do them on
3 witnesses?

4 A Yeah, we've been known to do them on
5 witnesses, especially if there is something that
6 sort of doesn't seem quite right. We have been
7 known to do GSR's on victim's as well. Excuse me,
8 witnesses as well.

9 Q And in this case, why did you not do a GSR
10 or a gunshot residue kit on the defendant, Rahim
11 Carter?

12 A Our State Law Enforcement Division
13 provides us with guidelines for the taking of the
14 actual kit. And they like to have between a 4 to
15 6 hour window of the time of the incident. So
16 obviously he wasn't arrested until November -- in
17 November of 07. So that's some month and a half
18 after, so it would have been of no use. No
19 evidentiary value.

20 Q And Mr. Brooks also asked you about going
21 to the hospital when Detective Culick attempted to
22 speak with the victim, but his medical condition
23 prevented that. Once he was stabilized, was he
24 able to tell family members what had had happened?

25 MR. BROOKS: Objection, Your Honor. He's

Detective Lyons-redirect by Fant

1 not a medical expert in regards to that. Unless
2 he was actually there, and he cannot testify to
3 that.

4 MR. FANT: Your Honor, it is not offered
5 for what they said. Or he is not going to say
6 what they said. Just that he was able to make
7 statements once he was stabilized.

8 MR. BROOKS: But he can't testify about
9 the condition.

10 THE COURT: That's correct. For that
11 limited purpose, you may ask him what his
12 condition was, what he understood. But he cannot
13 say what was said.

14 MS. FANT: Okay.

15 THE COURT: Objection sustained.

16 Q So when you all first arrived, what was
17 his medical condition?

18 A They were working on him. He wasn't
19 able -- we weren't really able to get over there
20 to talk to him because they were working on him so
21 extensively.

22 Q And were they able to stabilize him during
23 the time you were there?

24 A I don't believe he was stabilized when we
25 were there. Because I think we left the hospital

Detective Lyons-redirect by Fant

1 somewhere close to 10, 10:15, 10:20 that night,
2 after we left the hospital.

3 Q But ultimately he was stabilized before he
4 was flown to McLeod Medical Hospital?

5 A Correct.

6 Q And without saying what they said, was he
7 able to talk to some of his family members?

8 A Yeah. We received information from the
9 family that they had spoken with him.

10 MS. FANT: Thank you.

11 THE COURT: Any recross?

12 Recross Examination by Mr. Brooks:

13 Q Your testimony is, at some point
14 Mr. Horace stabilized, is that correct?

15 A After he stabilized, he was transported to
16 McLeod.

17 Q I mean, it's fair to you, you don't know
18 because you are not a doctor or a nurse.

19 A That is correct. I am not a doctor.

20 MR. BROOKS: Judge, our position is that
21 we ask that that particular portion of his
22 testimony be stricken because he can't really say
23 whether he was stable or not. That's a medical
24 personnel statement to make whether or not he was
25 stable enough to be able to speak or not speak or

Detective Lyons-recross by Brooks

1 whatever. He is not qualified to make that
2 decision.

3 THE COURT: I'll sustain the objection.
4 And the jury will strike that question.

5 MR. BROOKS: Thank you. No other
6 questions.

7 THE COURT: Thank you. You may step down.

8 MS. FANT: Your Honor, at this time, the
9 state would call Lieutenant Truman Duggin.

10 Detective Truman Duggin, after being
11 duly sworn, testified as follows:

12 THE CLERK: State your full name and spell
13 your last name for the record.

14 A Truman Hall Duggin. D-U-G-G-I-N.

15 Direct Examination by Ms. Fant:

16 Q Lieutenant Duggin, can you tell us where
17 you work?

18 A Sumter Police Department.

19 Q How long have you worked there?

20 A I have been employed there full time 16
21 years. And I was also a reserve officer for 5
22 years during my time period while I was stationed
23 in the Air Force before I retired.

24 Q And what are your, what have you done?

25 Are your duties as a law enforcement officer

Detective Duggin-direct by Fant

1 there?

2 A I started out as most officers. Well I
3 started out in the reserve for the officer
4 program. Got to liking the Police Department and
5 the type of work it went in to. When I retired
6 from the Air Force, I came on full-time. Started
7 out as a patrol officer. Went from there, in to
8 Criminal Warrants. And from there in to
9 investigations and crime scene work. And now I am
10 in the Investigative Services Section, the
11 supervisor, which includes Crime Scene Forensics,
12 Polygraph, and do Administrative functions. And
13 the evidence room.

14 Q Now have you had any specialized training
15 in crime scene analysis and crime scenes?

16 A Yes, I have. I have since 1997, when I
17 became a detective, I took on a part-time job as I
18 was a case worker. I was working in the crime
19 scene. About a year and a half later, I started
20 full-time crime scene. Besides having the basic
21 law enforcement training at the South Carolina
22 Criminal Justice Academy, I received over 40
23 different classes. Seminars. And some of them
24 weekly. We will take a week for training. Some
25 of them just day classes. And along with that I

Detective Duggin-direct by Fant

1 have my Bachelor Degree in Criminology.

2 Q Can you tell us approximately how many
3 crime scenes you have been to over your career?

4 A It is an untold amount. Most major scenes
5 that happen in the City of Sumter. It would be in
6 the thousands over a 10-year-period.

7 Q And what is meant by Crime Scene
8 processing?

9 A Crime Scene Processing is when I arrive at
10 a scene, it is to collect and preserve evidence
11 that may be used later to identify a person that
12 committed the crime. It might be needed to help
13 identify the victim. So it's used to collect
14 items for identification purposes. Also it is
15 used to support one way or another, how the crime
16 was committed so we can go back and take a logical
17 look at what happened.

18 Q And how long have you been doing crime
19 scene work?

20 A After I became a basic detective working
21 cases, I started as my additional duty. And that
22 was back in 1997. So right after I became a
23 detective, I started working as an additional
24 duty. And then late 98 or earlier 1999, I became
25 full-time.

Detective Duggin-direct by Fant

1 Q And have you ever been qualified as an
2 expert before in Crime Scene Processing Analysis?

3 A Yes, ma'am, on several occasions. In
4 Family Court and General Sessions Court.

5 Q And have you actually testified on those
6 occasions?

7 A That's right. Correct.

8 MS. FANT: Your Honor, at this time, I
9 would offer Lieutenant Duggin as an expert in
10 crime scene analysis and processing.

11 THE COURT: Any objection, Mr. Brooks?

12 MR. BROOKS: No objection.

13 THE COURT: Ladies and Gentlemen of the
14 jury, normally a person cannot give testimony
15 unless they actually saw it, heard it, felt it,
16 and smelled it. And however certain people who
17 have a certain level of expertise of education or
18 experience are considered to be expert witnesses.
19 And So I have qualified Detective Duggin as a
20 without objection, as a Crime Scene Processing
21 Analysis. He's an expert in that.

22 Now whether or not you accept his opinions
23 is for you to determine. You may accept all of
24 his testimony or part of his testimony. It's just
25 another piece of evidence for you to consider.

Detective Duggin-direct by Fant

1 You may gave an opinion when a normal lay witness
2 would not be able to. Thank you. You may
3 proceed, Ms. Fant.

4 Q Lieutenant Duggin how did you become
5 involved in this case?

6 A I was called out. One of my duties as a
7 Crime Scene Investigator on call. And I received
8 a phone call from the on scene detectives, to
9 respond to a shooting incident. And so I
10 responded.

11 Q And based upon what you observed, did you
12 prepare a diagram of the crime scene in this case?

13 A That's correct. When I arrived, I
14 arrived at approximately 9:00 o'clock that night.
15 And started my photography and documentation after
16 a briefing as to what happened. And with the
17 photograph measurements that I took that night,
18 and then going back later to look at it during the
19 daylight hours, we were able to reconstruct a
20 diagram.

21 Q Lieutenant Duggin, I will ask you to step
22 down, and take a look at what's been entered as
23 State's Exhibit 30. And could you step down here
24 please?

25 A Court's permission, Your Honor?

Detective Duggin-direct by Fant

1 THE COURT: Yes, sir.

2 (Whereupon, the witness steps down from
3 the witness stand.)

4 Q And can you just tell us, is that the
5 diagram that you prepared?

6 A Yes, this is a diagram I prepared in this
7 case showing Dingle Street, Salem Street, and
8 Wright Street. Houses and a church on one side of
9 the street. Shaw Lumber would be down in this
10 area. City park. Playground. And I think they
11 have a vegetable garden in it also. It is a
12 diagram basically just to show, not so much what
13 houses look like, it's just the position of the
14 evidence.

15 Q And is the diagram drawn to scale?

16 A No, the diagram is not drawn to scale. To
17 do a diagram to scale, it would for every inch, it
18 would be one inch on the board here. It is easier
19 for me to draw one. It's just how to put things
20 in perspective. So this house may be bigger than
21 this house in actuality. We did get a look at it.
22 But to keep things in perspective, there are
23 houses down this side. There is a sidewalk. Just
24 general information.

25 Q And does it accurately reflect the objects

Detective Duggin-direct by Fant

1 that are depicted and their relationship, their
2 physical relationship to each other?

3 A Yes, they do.

4 Q Excuse me. And now could you tell us a
5 little bit about the diagram, what information you
6 received and where things are on that?

7 A Yes, ma'am. Like I say, this is Dingle
8 Street. The rest the street was blocked off by
9 police officers to keep traffic down. When I
10 arrived, the victim had already been removed. He
11 was alive at the time. The other items were there
12 as I saw them, and I photographed them. And what
13 I have marked on the drawing. It was at
14 nighttime. And according to the police incident
15 report, approximately 8 o'clock is when the
16 incident happened. And I arrived at 9:00 o'clock.
17 So a couple of things I look at, lighting, street
18 lamps. I have noted shell casings, where they
19 were located. And where the victim was at.
20 Another way I have to show where the victim was
21 at, which way was his shirt laying. And that's
22 where I was told he was at in the general area in
23 the driveway. And the church, a house and a
24 church is back over here. And a park.

25 Q And were the street lights that are

Detective Duggin-direct by Fant

1 depicted on there, were they working at that time?

2 A They were working.

3 Q And did you have any trouble at least

4 getting a general view of the crime scene?

5 A No, ma'am.

6 Q I'm going to ask you to step down a couple

7 of minutes while we show some photographs that you

8 took. Now you indicated that you actually did

9 take some photographs that night?

10 A That's correct.

11 Q And I will show you what has been entered

12 in to evidence as State's Exhibit 8 through 19.

13 And If I could ask you to look at each one and

14 show the jury and tell us what is in those

15 photographs.

16 A State's Exhibit No. 8 would be from the

17 road on Dingle Street in front of where the victim

18 was found in front of the driveway. And you see a

19 tee shirt, or a white shirt laying in the driveway

20 on the ground. You can also see the area that is

21 lit up. And a couple of shadows from the house.

22 MS. FANT: Permission to publish these

23 individually, Your Honor?

24 MR. BROOKS: No objection.

25 A State's Exhibit No. 9 is a closer -- close

Detective Duggin-direct by Fant

1 up of the same item, the shirt. And there also I
2 believe there is a cell phone laying near the
3 shirt. And you can see the little black spot on
4 the shirt right next to it. And that's Item No. 5
5 on my identification. But It gives a closer up
6 look as to where the victim would have been.

7 State's Exhibit No. 10, is a photograph
8 that I have taken from the driveway where the
9 victim was at towards Wright Street. And it shows
10 four small cones in the road identifying where the
11 shell casings are located. And it also shows that
12 there was a street light on. State's Exhibit No.
13 11, I am on Dingle Street looking up towards
14 Wright Street. Towards Shaw Lumber. And it shows
15 again the four yellow cones where the shell
16 casings were found.

17 State Exhibit No. 12 is a photograph of
18 shell casings that I have numbered as number one.
19 Shows a scale picture that, when I say scale, it's
20 if you had to go and make different, and I blow
21 this picture up, a big presentation here. You
22 could give it the same perspective by respect to
23 the condition, one inch would be one inch. It is
24 what a scale photograph of a shell casing. But it
25 just depicts the shell casing that I retrieved for

Detective Duggin-direct by Fant

1 evidence from the road.

2 Q Now do you know if that was the first
3 shell casing of the first bullet that was found?

4 A No, ma'am. I had to start somewhere. So
5 more one, two, three, four. I have no idea which
6 one was fired first. There are several ways of
7 depicting the photographs, or the items of
8 evidence. The one you are looking at now, is one
9 way. And the State's Exhibit No. 13 shows another
10 way. After I removed the cone, I took reflective
11 chalk and made several photographs of the same
12 piece of evidence. And but using reflective chalk
13 instead of cones. So this is another picture of
14 the shell casings. Shell casing No. 1.

15 Q And why did you put the chalk instead of
16 the cone there?

17 A Well because at nighttime you get
18 different distances. You can actually see the
19 chalk, the reflective chalk. State's Exhibit No.
20 14 is shell casing No. 2. The same thing with a
21 yellow marker. So if you had to go to scale, this
22 would be shell casing No. 2. State's Exhibit No.
23 15, which was shell casing No. 2 with the cone
24 removed. And the shell chalking, protective
25 chalk. State's Exhibit No. 16 and shell casings

Detective Duggin-direct by Fant

1 No. 3, with the yellow cones were scaled versions.
2 State's Exhibit No. 17 would be the shell casing
3 No. 3 in the chalk. State's Exhibit No. 18 is
4 that shell casing No. 4 on the road using the
5 yellow maker. State's Exhibit No. 19 is shell
6 casing No. 4 with the chalk outline.

7 Q Thank you. You can return to your seat.

8 (Whereupon, the witness resumes to the
9 witness stand.)

10 Q Now did you take any other photographs
11 other than those that night?

12 A Yes, there was quite a few photographs
13 taken.

14 Q And did you also take some pictures the
15 next day?

16 A That's correct.

17 Q And why did do that?

18 A Basically to help me during my
19 reconstruction. If I had to go out and do
20 additional work. The diagram, for instance, and
21 it just depicts the scene, or not the scene but
22 the area of where the incident during the daylight
23 hours. And I used reflective, excuse me, I used
24 other types of things, stuff, to show where
25 evidence had been. Not where it was right then,

Detective Duggin-direct by Fant

1 because the evidence had already been seized. But
2 just to, so we could see what it looked like
3 during the daylight.

4 Q And is that something you do on all your
5 crime scenes?

6 A The major crime scenes, that's correct.

7 Q Detective, or excuse me, Lieutenant
8 Duggin, I show you what has been marked for
9 identification as State's Exhibits No. 20 through
10 27. And without saying what they are, do you
11 recognize those photographs?

12 A Yes, ma'am.

13 Q And did you actually take those
14 photographs?

15 A Yes, ma'am, I took these.

16 Q And excuse me. Do they fairly and
17 accurately reflect what they are purporting to be
18 in the picture?

19 A Yes, ma'am, they do.

20 MS. FANT: Your Honor, at this time, I
21 would offer State's 20 through 27 into evidence.

22 THE COURT: Any objection?

23 MR. BROOKS: The objection we had
24 previously noted about these particular pictures.
25 We would renew that, because we're saying not a

Detective Duggin-direct by Fant

1 fair collection of the actual site in time.

2 THE COURT: Ms. Fant.

3 Q Could you explain for us what it does
4 accurately reflect, and what your purpose was in
5 taking those photos?

6 A To give a daytime version of what I saw.
7 It is versus at night, you are limited at night
8 with flash equipment. And it would have been very
9 unreasonable to just block off the road for 12, 14
10 hours, until the sun came up to process the scene.
11 So I go back and take photos. But not necessarily
12 what I would call the original crime scene photo
13 from the initial onset of my investigation, but
14 just follow up photography.

15 Q So your purpose was not to actually depict
16 the crime scene as it was the night before?

17 A That's correct.

18 Q But rather to just show the location of
19 the objects in the pictures.

20 A That is correct. It is can be seen better
21 during the daylight versus having a flash and just
22 using ambient light.

23 MS. FANT: Your Honor, I would offer them
24 at this time.

25 THE COURT: I am going to overrule the

Detective Duggin-direct by Fant

1 objection. They will be allowed in evidence as
2 State's Exhibits, what numbers are those?

3 MS. FANT: 20 through 27.

4 THE COURT: 20 through 27 admitted in to
5 evidence.

6 (Photographs marked 20 through 27 into
7 evidence.)

8 Q Lieutenant Duggin, I will ask you to step
9 down again with these, and go through them for the
10 jury.

11 (Whereupon, the witness steps down from
12 the witness stand.)

13 Q State's Exhibit No. 20, I am standing
14 directly across the little church on the corner of
15 Wright and Dingle. And showing the general
16 location of where the shell casing would have
17 been. And I have kept the same number of sequence
18 1, 2, 3, 4. Shell casing 1, would have been in
19 that general inside that circle. And I have used
20 orange, a highway marker paint for this shell
21 casing. So I show you up in the yard, taking a
22 photograph, looking toward the church, where the
23 shell casings were found.

24 State's Exhibit No. 21 is a photograph. I
25 am directly in front of the church looking down

Detective Duggin-direct by Fant

1 Wright Street towards the incident area where the
2 victim was found. And showing where the shell
3 casings were located. And there is a telephone
4 pole or a light pole if you will, in front of the
5 house next door to the incident location. And
6 there is some orange marker paint. This is part
7 of my measuring that I had done from the night
8 before better known as triangulation of the
9 evidence. But I just wanted my known spots that I
10 could measure from.

11 State's Exhibit No. 22 is directly across
12 from the church. It shows one of the shell
13 casing, orange spots along with the light pole.
14 It is a letter A. And It shows the church. And
15 to the right of the church, is Wright Street and
16 the park. State's Exhibit No. 23, I am in front
17 of the house or duplex right next door to the
18 church. Looking towards Wright Street through the
19 church yard. And the photograph I am depicting
20 here is supposed to be looking up towards the
21 lights of the city park.

22 State's Exhibit No. 24, is standing near
23 the grass area across the house that is in between
24 where the victim was found and the church. And I
25 am looking toward Wright Street. And the corner

Detective Duggin-direct by Fant

1 of the church yard beside the church. And looking
2 at the park.

3 State's Exhibit No. 25 is an item over by
4 the shell casings off to the end of the grass.
5 Looking up Wright Street, excuse me, up Dingle
6 Street towards Wright. And there is another
7 telephone pole or light pole. And it has got some
8 orange marking paint on it also. And that was
9 another one of my markers for measurements and
10 identifying the light pole.

11 State's Exhibit No. 26 it shows the house
12 where the driveway between the two houses where
13 the victim was found. And that telephone pool,
14 light pole, right in front to show where it was
15 located in front of the house. State's Exhibit
16 No. 27 is the two houses with the driveway and the
17 orange spot. And that orange spot is where the
18 shirt was collected right there where the victim
19 was at.

20 Q Thank you, Lieutenant Duggin. Now were
21 you the person that actually collected the shell
22 casings that are seen in the photographs?

23 A Yes, ma'am.

24 Q And what did you do with them after you
25 collected them?

Detective Duggin-direct by Fant

1 A I collected them. And take them in to the
2 our laboratory we have at the Law Enforcement
3 Center. And packaged them for delivery to State
4 Law Enforcement Division to the firearm's lab.

5 Q Excuse me. I will show you what has been
6 marked for identification as State's Exhibit
7 No. 31 through 34. Do you recognize those?

8 A Yes, ma'am, I recognize these.

9 Q And how do you recognize them?

10 A These are the shell casings that I
11 recovered from the scene, and placed them inside
12 the brown envelope. And sealed it with evidence
13 tape, has my initials and the date I sealed it.

14 MS. FANT: Your honor, at this time, I
15 would offer 31, 32, 33 and 34 into evidence.

16 THE COURT: Any objection, Mr. Brooks?

17 MR. BROOKS: No objection.

18 THE COURT: Without objection. They are
19 offered or admitted in to evidence.

20 (shell casings marked State's Exhibit Nos.
21 31-34 into evidence.)

22 Q Now at some point did you ask that these
23 items be sent to the State Law Enforcement
24 Division?

25 A Yes, ma'am.

Detective Duggin-direct by Fant

1 Q Why did you do that?

2 A At this incident location we did have a
3 weapon. And so by sending them to the State Law
4 Enforcement Division, they have the ability to
5 determine what type of weapon fired that
6 particular cartridge.

7 Q Did you also attend the autopsy of the
8 victim in this case?

9 A Yes, ma'am.

10 Q And where did that take place?

11 A At the Newberry Regional Hospital in
12 Newberry.

13 Q Is that common procedure for you to do
14 that?

15 A Yes, and Newberry is the pathologist that
16 we use.

17 Q Why do you go to the autopsy?

18 A I attend most of the autopsies. If I am
19 on the scene as a crime scene investigator, I can
20 carry what I saw at the crime scene and photograph
21 at the crime scene, to the pathologist so they
22 have a complete picture of what happened. So I am
23 kind of delivering information to the pathologist.
24 So during the autopsy if they have questions, I
25 can help them. Plus, there is actual evidence

Detective Duggin-direct by Fant

1 from the body. I can retrieve it and maintain a
2 Chain of Custody of the evidence.

3 Q Did you take any photographs at the
4 autopsy?

5 A Yes, ma'am.

6 Q Lieutenant Duggin, I will show you what
7 has been entered into evidence as State's Exhibit
8 3, 4, 5, 6 and 7. And ask that you step down
9 again, and explain to the jury why you took these
10 photographs and what they depict.

11 THE COURT: Mr. Brooks, any objection?

12 MR. BROOKS: No objection.

13 THE COURT: State's Exhibit Nos. 3, 4, 5,
14 6 and 7 admitted without objection.

15 (photographs marked State's Exhibit Nos.
16 3, 4, 5, 6 and 7 into evidence.)

17 Q State's Exhibit 3 of the crime scene an ID
18 placard is what we use. And who took the picture.
19 This is an ID placard of when I attended the
20 autopsy on October 10, 2007. It was 1:25 p.m.
21 when I took this picture.

22 Q State's Exhibit No. 4 is a photograph of
23 the victim laying on his back. And it shows some
24 what is referred to as a chest tube. There was
25 some suturing around it. And another incision

Detective Duggin-direct by Fant

1 right below that. And these were made by medical
2 personnel. And right below the right arm pit,
3 down in this area, is a -- the gunshot wound.

4 Q Was there more than one bullet recovered
5 from Mr. Horace?

6 A No, ma'am. Only one. State's Exhibit No.
7 5 shows the victim laying on his left side with
8 the autopsy placard and another incision wound.
9 And back around here is where the bullet.

10 State's Exhibit No. 6 shows the x-ray.
11 There are two things in this x-ray. One of them
12 is the bullet. And it shows a lot better than the
13 other item. Which the other item is the medical
14 device, would be that chest tube. The bullet is
15 down here between the ribs. State's Exhibit No. 7
16 is a photograph of the bullet after it was removed
17 from the body.

18 MS. FANT: Thank you.

19 Q Lieutenant Duggin, I will show you what
20 has been marked as State's Exhibit No. 35 for
21 Identification. Do you recognize this?

22 A Yes, ma'am. This is the container and the
23 bullet that was recovered from the victim's body.

24 MS. FANT: Your Honor, at this time I
25 would offer State's Exhibit 35 into evidence.

Detective Duggin-direct by Fant

1 THE COURT: Any objection, Mr. Brooks?

2 MR. BROOKS: No objection.

3 THE COURT: Without objection State's
4 Exhibit No. 35 admitted into evidence.

5 (Bullet marked State's Exhibit No. 35 into
6 evidence.)

7 Q So this is the bullet that you actually
8 got from the autopsy?

9 A Yes, ma'am.

10 Q What did you do with it once you got it
11 from the pathologist?

12 A Returned it to the Sumter Police
13 Department and logged it in to our evidence room,
14 where it stayed until it was transported to State
15 Law Enforcement Division Offices in Columbia.

16 Q And what was the reason for requesting it
17 to be sent to sled?

18 A To determine what caliber the bullet was
19 or is, and determine what type of gun it was from.

20 Q And could you tell or explain to the jury
21 what tattooing or stippling means when it refers
22 to a gunshot wound?

23 A Yes, ma'am. Tattooing or stippling is
24 caused by a gunshot residue. It is a firearm that
25 has been fired. When a bullet, when a gun is

Detective Duggin-direct by Fant

1 discharged, there is first, especially one that
2 has a primary. It is going to the first initial
3 small explosion to start the chain reaction of
4 igniting the powder. As the powder is ignited and
5 it's going through its explosion, if you will, the
6 bullet is rejected out of the cylinder or the
7 barrel depending on the type of gun. As it is
8 going out, there is pressure being built up. And
9 because of these pressures, any place along where
10 the shell casing is at, there is going to be some
11 residue expelled. And then as the bullet leaves
12 the barrel, because of this especially this
13 particular weapon has rifling, so the bullet is
14 leaving in a twisting motion for stability and
15 flight. And when it does that, it's cutting
16 grooves, called land grooves in the bullet. So you
17 have small pieces of metal coming off of the
18 bullet as it is leaving.

19 Plus we have fired and unfired particles
20 leaving the end of the gun and around the axle.
21 And it can be deposited on the hand. As this is
22 happening, the tattooing and stippling would be if
23 as the bullet leaves the gun, there is going to be
24 fire coming out of that barrel. Generally the
25 make, model, a lot of variables. But there is

Detective Duggin-direct by Fant

1 going to be fire coming out of the end of the
2 barrel. And for there to be stippling and
3 tattooing, the muzzle of the gun at the end of the
4 barrel would have to be relatively close to the
5 victim or whoever is getting shot.

6 And if it is close enough, these burning
7 particles will burn the skin, and you would be
8 able to see that. And It would just be lots of
9 little small, basically little small black spots
10 of the burned skin. And that has to be done at
11 relatively close range.

12 Q Did you observe any on the victim at
13 autopsy or when you took the photos? Any
14 tattooing or stippling?

15 A No, ma'am. There was no tattooing or
16 stippling.

17 Q And what did that tell you just in general
18 about the gunshot?

19 A Basically a distant shot. It wasn't close
20 up, it was some distance.

21 MS. FANT: Please answer any questions Mr.
22 Brooks may have.

23 THE COURT: Mr. Brooks.

24 Cross Examination By Mr. Brooks:

25 Q How are you doing this morning?

Detective Duggin-direct by Fant

1 A Just fine, sir.

2 Q Make sure I understand your duties or
3 your role. You are the forensic's man for the
4 City of Sumter Police Department, is that right?

5 A Yes.

6 Q You gather up all the stuff. And
7 everything that you talked about and the
8 ballistics and go see the autopsy and all those
9 things, is that right?

10 A Pretty much. Yes, sir.

11 Q You also came up with a diagram by use of
12 your computer, is that correct?

13 A Yes, sir.

14 Q And that would be this one right here.

15 A Correct.

16 Q And that's something that you came up with
17 on your computer. Or use your computer to come up
18 with?

19 A Yes, sir.

20 Q And on this diagram it only shows we only
21 have one street light on Dingle Street and another
22 one---

23 MS. FANT: Your Honor, at this point I
24 would ask him to show Lieutenant Duggin.

25 THE COURT: Let him see what you are

Detective Duggin-cross by Brooks

1 talking about.

2 MR. BROOKS: Okay.

3 Q I will do better than that, judge. I will
4 hold it for him.

5 THE COURT: Make sure the jury can see as
6 well.

7 Q Lieutenant Duggin, I just wanted to make
8 sure he sees it. Is this only one street light
9 on your diagram for Dingle Street? Or is it one
10 on Dingle and one at the corner of Wright or
11 Dingle?

12 A There are two street lights. One at the
13 corner of Dingle and Wright. And one in front of
14 the, between the church and the house on Dingle
15 Street off the sidewalk. So two in that area.

16 Q Okay. And this one only shows one, is
17 that correct?

18 A No, sir.

19 Q How many street lights are on Dingle?

20 A Pardon?

21 Q How many street lights were on Dingle?

22 A I see two.

23 Q Okay. Are there any on your diagram
24 towards the corner of Salem and Dingle?

25 A No, sir. I concentrated around the

Detective Duggin-cross by Brooks

1 incident location itself given the information
2 that I had at the time.

3 Q So really you just focused within that
4 certain restricted area of where the victim was,
5 is that correct?

6 A The general area where the incident took
7 place. Obviously where the shooter was. Where
8 the victim was. Down the street, around the
9 street. No, sir, I didn't take any others.

10 Q Okay.

11 A No.

12 Q And I believe there was some pictures in
13 the daytime. You testified you can came back and
14 you took those pictures in the daytime. But those
15 are not a fair and accurate reflection of the time
16 this incident occurred and how it may have looked
17 in that area. Is that correct?

18 A That's correct. The incident happened at
19 night, not the daytime in the sunlight photos.

20 MR. BROOKS: No other questions.

21 THE COURT: Any redirect?

22 MS. FANT: No, sir, Your Honor.

23 THE COURT: You may step down.

24 MS. FANT: Your honor, may Lieutenant

25 Duggin be excused?

Detective Duggin-cross by Brooks

1 THE COURT: Any objection?

2 MR. BROOKS: No objection.

3 THE COURT: Thank You. Ladies and
4 gentlemen of the jury, it is now time for our
5 mid-morning break. I will send you back to the
6 jury room for 15 minutes. And we will resume
7 taking the testimony at the 11:30. While you are
8 in the jury room, you will not discuss the case or
9 any of the testimony that occurred or speak with
10 anyone about it. Thank you.

11 (Whereupon, the following takes place
12 outside the presence of the jury.)

13 THE COURT: The court will be in recess
14 until 11:30 p.m.

15 (Whereupon, the court takes a short
16 recess.)

17 THE COURT: You may bring the jury.

18 (Whereupon, the following takes place
19 within the presence of the jury.)

20 MS. FANT: Your Honor, the State would
21 call Dr. Janice Ross.

22 Dr. Janice Edwards Ross, Being
23 first duly sworn, testified as follows:

24 THE CLERK: Please state your full name
25 and spell your last name for the record.

Detective Duggin-cross by Brooks

1 A Janice Edwards Ross. R-O-S-S.

2 Direct Examination by Ms. Fant:

3 Q Dr. Ross, could you tell us where you
4 work?

5 A For Newberry Pathology Associates in
6 Newberry, South Carolina.

7 Q And what do you do there?

8 A We do hospital pathology and we do
9 forensic autopsies for coroners.

10 Q How did you become involved in this case?

11 A Verna Moore the coroner at the time,
12 called to ask if we would do an autopsy on
13 Mr. Mathew Horace.

14 Q Now do you have any educational background
15 as a pathologist?

16 A Yes.

17 Q Could you tell us about that, please?

18 A I have a Bachelor's Degree from the
19 University of South Carolina, and an MD from
20 Upstate Medical Center in Syracuse, New York.
21 That's where I did further training in pathology.
22 Which is the study of disease. We learn how to
23 look at tissue and identify cancers and different
24 diseases. We also learn how to do autopsies. I
25 have further trained in forensic pathology. Uses

Dr. Ross-direct by Fant

1 of the knowledge of pathology in legal matters;
2 such as, homicides and suicides and accidents and
3 rapes.

4 Q How long have you worked in the field of
5 Forensic pathology?

6 A 33 years.

7 Q Excuse me. And approximately during that
8 time how many autopsies have you performed?
9 Forensic autopsies?

10 A Over 5,000.

11 Q And have you been qualified as an expert
12 in forensic pathology before?

13 A Yes.

14 Q And have you actually testified in Court
15 regarding your findings?

16 A Yes.

17 MS. FANT: Your Honor, I would offer
18 Dr. Ross as an expert in forensic pathology.

19 THE COURT: Mr. Brooks, any objection?

20 MR. BROOKS: No objection.

21 THE COURT: Dr. Ross will be qualified as
22 a forensic pathologist in this trial. Ladies and
23 Gentlemen of the jury, as I stated earlier, the
24 fact that she is an expert and can give an opinion
25 versus someone who can only testify as to what

Dr. Ross-direct by Fant

1 they saw, heard, or felt, or smelled, she will be
2 allowed to give an opinion. That does not mean
3 you have to accept her opinion. You may give it
4 the value you deem it necessary. It carries no
5 more or less than any other evidence you are
6 consider. Thank you. You may proceed.

7 Q Dr. Ross, you indicated that Verna Moore,
8 the former coroner in Sumter County, called you
9 and asked you to do an autopsy in this case?

10 A Yes.

11 Q And did you actually perform that autopsy
12 on Mathew Horace?

13 A Yes.

14 Q Briefly tell us a little bit about your
15 autopsy procedures, what do you do, and what are
16 you looking for?

17 A We receive the body in the Morgue at the
18 Newberry County Hospital in a body bag. And we
19 look at the body externally including clothing if
20 there is any. We do photography and look for
21 evidence of injuries on the outside of the body.
22 And then we do a routine autopsy and each organ
23 internally, to identify injuries and or medical
24 disease.

25 Q And did you follow those procedures in

Dr. Ross-direct by Fant

1 this case?

2 A Yes.

3 Q To a reasonable decree of medical
4 certainty, can you tell the jury what your opinion
5 is on the cause of death of Mathew Horace?

6 A It was sepsis; was infection, due to
7 pneumonia. Due to a gunshot wound through the
8 right lung. Due to a gunshot wound to the chest.

9 Q Now the manner of death that you would
10 classify this?

11 A Matter of death was homicide.

12 Q And, excuse me, and also to a reasonable
13 degree of medical certainty, did Mathew Horace
14 sustain another traumatic injury as a result of
15 being shot?

16 A Yes. The bullet went through the spinal
17 cord also, so it caused a paralysis.

18 Q The gunshot wound that you observed, could
19 you tell us where it was located on the body in
20 words?

21 A Yes. It was in the right side of the
22 chest underneath the armpit and towards the back.

23 Q And could I ask you to step down just a
24 moment and just demonstrate for the jury, either
25 on me or yourself, the approximate location?

Dr. Ross-direct by Fant

1 (Whereupon, the witness steps down from
2 the witness stand.)

3 A Yes. It went in here.

4 Q If you could turn around, I'm sorry. Just
5 so they can see.

6 A Well here. (Witness indicates to the
7 jury.)

8 Q Okay. Thank you, Dr. Ross.

9 (Whereupon, the witness resumes the
10 witness stand.)

11 And I will show you what has been entered
12 as State's Exhibit No. 4. And is that a picture
13 of the gunshot wound?

14 A Yes, it is. And it also includes a
15 surgical wound.

16 Q And is the gunshot wound actually located
17 under the armpit toward the back of Mr. Horace?

18 A Yes.

19 Q I am going to also show you a couple of
20 other photos. State's Exhibit No. 6, can you tell
21 us what that is?

22 A Yes. This is a photograph of the x-ray
23 which we took of the decedent at the time of the
24 autopsy. Before we started the autopsy.

25 Q And what does it show in the x-ray?

Dr. Ross-direct by Fant

1 A It shows a bullet in the, well it looks
2 like it was in the chest, but it was underneath
3 the skin towards the back.

4 Q Also State's Exhibit No. 7. Do you
5 recognize that?

6 A Yes. This is the bullet we removed from
7 the decedent at the time of autopsy.

8 Q Now how many gunshot wounds did you
9 observe on Mr. Horace?

10 A Just one.

11 Q And how many bullets did you remove from
12 the body?

13 A One.

14 Q Now one of the things you indicated in, I
15 believe, in your report just now was that the
16 wound was in the chest area?

17 A Yes.

18 Q Could you explain what you mean by that?

19 A The chest cavity includes where the lungs
20 are. This is the front of the chest. The side of
21 the chest. The back of the chest. The bullet
22 wound went towards the back of the side of the
23 chest. So that's what I indicated as chest.

24 Q Excuse me, and is that where most of the
25 damage was done that ultimately led to Mr.

Dr. Ross-direct by Fant

1 Horace's death?

2 A Yes, the bullet went into the -- went from
3 right to left and slightly downward. It went
4 through one of the lobes of the right lung, and
5 went through the spinal cord. And it rested, it
6 came to rest underneath the skin near the
7 vertebral No. T-8 Thoracic 8. Which is sort of
8 the middle of the back. A little bit below the
9 middle of the back.

10 Q Now did you find any, what is known as
11 tattooing or stippling on Mathew Horace's body?

12 A No, I did not.

13 Q And could you tell us what that would
14 indicate to you about how he was shoot?

15 A If it was present, it would indicate that
16 the barrel of the gun was closer within say a
17 couple of feet to the skin. It depends on whether
18 he is wearing clothing. And also it's 8 days that
19 he has had a chance to heal. But there is no
20 evidence of the tattooing, which is little marks
21 on the skin. Actual burn marks caused by burning
22 powder that comes out of the gun along with the
23 bullet. But they only go a certain distance.

24 Q And so generally when there is absence of
25 tattooing or stippling, what does that tell you of

Dr. Ross-direct by Fant

1 the length or the distance?

2 A The range of the gunshot would be called
3 distant.

4 MS. FANT: Please answer any questions
5 Mr. Brooks may have for you.

6 THE COURT: Mr. Brooks.

7 Cross Examination by Mr. Brooks:

8 Q Dr. Ross, how are you today?

9 A Fine.

10 Q Now you did a report about the bullet
11 wound. It does not give that type of explanation.
12 Its just says fatal penetrating gunshot wound to
13 the chest, is that right?

14 A Yes. It said, the description of it is
15 further in to the report.

16 Q Okay. It talks about, you know, basically
17 lacerations to the lung and spinal cord. But
18 basically it says fatal penetrating wound. Fatal
19 penetrating gunshot wound to the chest?

20 A Correct.

21 Q And a prior statement under oath basically
22 said the same thing, isn't that correct?

23 A Correct.

24 Q Fatal gunshot wound to the chest?

25 A Correct.

Dr. Ross-cross by Brooks

1 MR. BROOKS: Okay. No other questions.

2 THE COURT: Redirect?

3 MS. FANT: No, sir, Your Honor. May Ms.

4 -- Dr. Ross be excused?

5 THE COURT: Any objection to Dr. Ross
6 being excused?

7 MR. BROOKS: No.

8 THE COURT: Without objection you are
9 excused.

10 MS. FANT: The State calls Ms. Suzann
11 Cromer.

12 THE COURT: Ms. Suzann Cromer.

13 Suzann Cromer, being first
14 duly sworn, testified as follows:

15 THE CLERK: Please state your full name
16 and spell your last name.

17 A My name is Susann Cromer. C-R-O-M-E-R.

18 Direct Examination by Ms. Fant:

19 Q Ms. Cromer, would you tell us where you
20 work, please?

21 A I'm employed by the South Carolina Law
22 Enforcement Division commonly known as sled.

23 Q How long have you worked there?

24 A Just under 11 years.

25 Q What do you do at sled?

Suzann Cromer-direct by Fant

1 A I am a firearm's and tool mark examiner.

2 Q Excuse me, do you have -- tell us about
3 your educational background.

4 A I received a bachelor's degree from
5 Clemson University. I did some graduate work at
6 the University of South Carolina. I have
7 completed sled's in-house training program. Which
8 is a 3 to 5-year intense study program. Where I
9 studied under a five-court qualified firearm's
10 examiners. It's more an apprenticeship, if you
11 will. I am a member of the Association of Firearm
12 and Tool Mark Examiners, which is an international
13 association.

14 I have attended two of their annual
15 conferences where we get together and we discuss
16 firearm's identification. I am also a member of
17 the South Carolina Chapter, excuse me, of the
18 International Association of identification. And
19 I have attended numerous seminars with them.

20 Q And is that the type of work you do at
21 sled?

22 A Yes, it is.

23 Q And approximately how many cases would you
24 estimate over the years that you have worked in
25 the area of firearm's identification?

Suzann Cromer-direct by Fant

1 A Hundreds if not thousands.

2 Q And have you previously been qualified as
3 an expert in this field?

4 A Yes, ma'am, I have.

5 Q And did you previously provide court
6 testimony in the field?

7 A Yes, I have.

8 MS. FANT: Your Honor, at this time, I
9 would offer Ms. Cromer as an expert in firearm's
10 identification?

11 THE COURT: Mr. Brooks, any objection?

12 MR. BROOKS: No objection.

13 THE COURT: Ms. Cromer, is qualified as an
14 expert in firearm's identification. As I stated
15 before, Ladies and Gentlemen of the jury, she is
16 basically an expert. She can give an opinion
17 based on something that she has not touched,
18 smelled, or tasted or heard. And I have deemed
19 her as an expert. That does not mean you have to
20 accept her opinion. You may give it the weight
21 you deem appropriate. Thank you. You may
22 proceed.

23 Q Ms. Cromer, how did you become involved in
24 this case?

25 A I received some evidence submitted from

Suzann Cromer-direct by Fant

1 the Sumter Police Department.

2 Q And what is your normal procedure that you
3 go through once you receive evidence?

4 A Actually I receive a case file from our
5 technician. And then I will go downstairs to our
6 in-take department and pick up the evidence and
7 bring it up to my office.

8 Q In this case what was that evidence?

9 A I received four fired 9 millimeter luger
10 cartridge cases. And one fired bullet.

11 Q Now, the sled has a procedure that it uses
12 in firearm's identification called,
13 micro-verification. Could you explain to the jury
14 what that is?

15 A It's actually micro-verification. All of
16 our conclusions that we reach in our department
17 are verified or checked by another examiner. So
18 if we issue a report, at least, two examiners have
19 looked at every conclusion that has come out.

20 Q And I will show you what has been entered
21 in to evidence as State's Exhibits 31, 32, 33 and
22 34. Do you recognize those items?

23 A Yes, ma'am, I do. First they are all in
24 sealed containers with my initials and the date
25 that I sealed them. And they appear to be marked

Suzann Cromer-direct by Fant

1 with my lab number, my item number, and my
2 initials.

3 Q And what are those items that you are
4 holding in your hand?

5 A State's Exhibit No. 31, 32, 33 and 34, are
6 my item numbers 2, 3, 4 and 5.

7 Q And are those the shell casings that you
8 received in this case?

9 A Yes, these are the four fired 9 millimeter
10 cartridge cases.

11 Q And would you describe for us how you
12 examined those, and what your conclusions were
13 when you received the shell casings?

14 A When I receive fired evidence; such as,
15 the cartridge case, I look at it. I note its
16 composition. It's primary type. Whether it was
17 fired or not. I note the type of firing pin that
18 fired it. And then I do a micro-examination on my
19 comparison microscope. Comparison microscope you
20 can look through binoculars, but it allows you to
21 see two items at the same time so you can actually
22 compare them against each other.

23 Q And did you do that in this case?

24 A Yes, ma'am, I did.

25 Q And what did you conclude based on that

Suzann Cromer-direct by Fant

1 examination?

2 A I concluded all these firearms were fired
3 by one -- that all these cartridge cases were
4 fired by one firearm.

5 Q So that would be the same gun that
6 actually fired each one of those.

7 A That is correct.

8 Q And let me also show you what's been
9 entered as State's Exhibit No. 35. Do you
10 recognize that item?

11 A Yes, ma'am. Again, it is still in a
12 sealed container with my initials, the seal date
13 in several places.

14 Q And what is actually contained in that
15 exhibit?

16 A This is a fired 9 millimeter caliber
17 bullet.

18 Q And Item 16 from the Sumter Police
19 Department is the bullet in this case?

20 A Yes, ma'am, it is.

21 Q Could you tell us how you went about
22 examining the bullet?

23 A Bullets are a little different. We look
24 at what's called the general rifling
25 characteristics. We weigh it. We measure its

Suzann Cromer-direct by Fant

1 diameter to determine its caliber. That's the
2 first and most important of the general rifling
3 characteristics. And then we look at the actual
4 rifling that's engraved on the bullet by passing
5 down the barrel of the gun. In this case, it had
6 9 lands and grooves. Which means there were 9
7 raised areas and 9 depressed areas. And it
8 twisted to the left. That means that the bullet
9 is traveling through the air, it is either going
10 to spin to the right or left. This would spin to
11 the left. Once we look at all those things, I
12 gather all that information, I can put it into a
13 computer program at the data base, and it will
14 give me a list of possible firearms that could
15 have fired that bullet.

16 Q And what did the examination reveal about
17 that particular bullet?

18 A As of this time, there is only one known
19 manufacturer that uses the 9 left rifling, and
20 that is the high point firearm.

21 Q Excuse me. And the bullet itself was what
22 caliber?

23 A 9 millimeter. Luger.

24 Q And again, how did you determine the high
25 point origin?

Suzann Cromer-direct by Fant

1 A Because of the 9 left, that is usually
2 when we see a 9 left bullet or a 380 auto, we
3 automatically think high point.

4 Q And just for clarification, what does
5 9 left mean? And why do you automatically think
6 high point?

7 A 9 left is the rifle characteristic. That
8 means that that gun manufacturer put inside the
9 barrel, 9 lands and grooves. And the rifling was
10 put there in the barrel to put rotary motion on
11 the bullet. Very similar to a quarterback
12 throwing a football. He wants it down with a
13 tight spiral to its receiver or its intended
14 target. So that's what the rifling in the gun
15 barrel does. It puts it into a tight spiral so it
16 will fly more accurately into its target.

17 So when we see 9 left, we know, or we
18 assume because right now we don't know of any
19 other manufacturers that use that, we think high
20 point.

21 Q Now after your examination of these items,
22 did you write a sled report describing your
23 findings?

24 A Yes, I did.

25 Q And were your findings subject to the

Suzann Cromer-direct by Fant

1 micro-verification, procedures you talked about?

2 A Yes, ma'am. After I render my conclusion,
3 I get another examiner to look at it. They render
4 a conclusion hopefully the same as mine. And when
5 we do that, then I issue a report. But before
6 that report can even go out, that examiner for the
7 micro-verification has to go over the report to
8 make sure that it states the findings that were
9 agreed upon.

10 Q And who was the second sled examiner in
11 this case?

12 A Kinette Whitler.

13 Q And did Mr. Whitler confirm your findings
14 and conclusions in this case?

15 A Yes, ma'am, he did.

16 MS. FANT: Please any questions Mr. Brooks
17 may have for you.

18 THE COURT: Mr. Brooks.

19 Cross Examination by Mr. Brooks:

20 Q Ms. Cromer, how are you?

21 A I am fine.

22 Q You seemed to be a little out of breath
23 earlier. Have you got your breath now?

24 A Yes, sir, I do.

25 Q You didn't have a gun to test in this

Suzann Cromer-cross by Brooks

1 case, is that correct?

2 A No, sir, I didn't.

3 Q And you basically only had four shell
4 casings and one bullet?

5 A Four cartridge cases and one fired bullet.

6 Q Okay. But you never got any of the other
7 bullets that may have come from those other
8 cartridges. Is that the case? I want to make
9 sure I use the right terminology.

10 A Cartridge cases, yes, sir.

11 Q But you never got those?

12 A No, sir, I didn't.

13 Q Is a 9 millimeter, is that a very common
14 handgun?

15 A We see a fair amount of 9 millimeters,
16 yes.

17 MR. BROOKS: No other questions.

18 THE COURT: Any redirect?

19 MS. FANT: Your Honor, may Ms. Cromer be
20 excused?

21 MR. BROOKS: No objection.

22 THE COURT: Without objection, you are
23 excused, ma'am.

24 A Thank you, sir.

25 MS. FANT: At this time the State calls

Suzann Cromer-cross by Brooks

1 James Allsbrook.

2 James Allsbrook, after being first

3 duly sworn, testified as follows:

4 THE CLERK: Please state your full name

5 for the record, and spell your last.

6 A James Allsbrook. A-L-L-S-B-R-O-O-K.

7 Direct Examination by Ms. Fant:

8 Q Mr. Allsbrook, could you tell us where you
9 work, please?

10 A I work for the City of Sumter Police
11 Department.

12 Q And how long have you worked there?

13 A Just over 3 years.

14 Q And what is your position or title at the
15 department?

16 A Evidence technician.

17 Q What do you do as part of your job as the
18 evidence technician?

19 A On a daily basis, my responsibilities are
20 to retrieve any evidence which is collected during
21 the commission of a crime by any officer. Which
22 has been placed in an individual locker and
23 locked. I take the evidence ofrom the locker.
24 And make sure there is a Chain of Custody
25 associated with the item or and proper paperwork.

James Allsbrooks-direct by Fant

1 It is noted. And take the items to my office.
2 Sign the Chain of Custody showing I received it,
3 and accepting responsibility for it. I log it
4 into our computer, and process it for its next
5 step into the court system.

6 Q And were you working as the evidence
7 technician at the Police Department in October of
8 2007?

9 A Yes, ma'am.

10 Q Were the shell casings and bullets that
11 were located in this case, received in to evidence
12 by you?

13 A Yes, ma'am, they were.

14 Q And from whom did they come?

15 A Lieutenant Duggin.

16 Q I'll just briefly show you State's Exhibit
17 No. 31, 32, 33, 34, 35. Are these the items that
18 you received from Lieutenant Duggin?

19 A Yes, ma'am.

20 Q And did you take these shell casings and
21 bullets to sled?

22 A Yes, ma'am, I did.

23 Q And did you later receive them back after
24 they had been analyzed?

25 A Yes, ma'am, I did.

James Allsbrooks-direct by Fant

1 Q And were they in the same or similar
2 condition when you received them back at the
3 evidence room?

4 A Yes, ma'am.

5 Q Did you also receive in to evidence a
6 photograph from Detective Bill Lyons?

7 A Yes, ma'am, I did.

8 Q Without stating what this photograph is, I
9 will show you State's Exhibit No. 1. Is this the
10 photograph that you received from Detective Lyons?

11 A Yes, ma'am.

12 Q Was the Chain of Custody maintained at all
13 times regarding the evidence in this case?

14 A Yes, ma'am, they were.

15 Q And did you have any other role or
16 responsibility in investigating the case?

17 A No, ma'am.

18 MS. FANT: Please answer any questions
19 from the defense.

20 THE COURT: Mr. Brooks.

21 MR. BROOKS: No questions.

22 THE COURT: Thank you. You may step down.

23 MS. FANT: The State would call

24 Christopher Davis, Your Honor.

25 Christopher Davis, after

James Allsbrooks-direct by Fant

1 being first duly sworn, testified as follows:

2 THE CLERK: State your full name and spell
3 your last name for the record.

4 A Christopher Davis. D-A-V-I-S.

5 Direct Examination by Ms Fant:

6 Q Chris, do you also have a nickname that
7 you go by?

8 A 'Lil Chris.

9 Q And do you live in the Sumter area?

10 A Yes, ma'am.

11 Q How long have you lived here?

12 A 6 years.

13 Q What type of work do you do?

14 A Coaching.

15 Q That would be athletic's coaching?

16 A Yes, ma'am.

17 Q And did you know Mathew Horace, the victim
18 in this case?

19 A Yes, ma'am.

20 Q What nickname did you know him as?

21 A Bread.

22 Q And how did you know him?

23 A I have known him for like 3 years.

24 Q Were you friends or were you?

25 A Yeah, something like that.

Chris Davis-direct by Fant

1 Q Excuse me, do you know the defendant,
2 Rahim Carter?

3 A Yes, ma'am.

4 Q And how do you know him?

5 A We were friends.

6 Q And about how long have you known him?

7 A Like about 2 years.

8 Q And what nicknames did he go by?

9 A Rock and Rahxzilla.

10 Q Now did you call him by both of those
11 names or did you refer to him as just Rock or
12 Rahxzilla?

13 A Either or.

14 Q And what was the relationship between
15 Bread and Rahxzilla?

16 A It was close.

17 Q Were they friends, or how would, what
18 would you describe them as being?

19 A Friends.

20 Q What kind of things did they do together?

21 A Rap.

22 Q Excuse me?

23 A Rap. Make music.

24 Q And were you ever with them when they were
25 doing Rap music?

Chris Davis-direct by Fant

1 A No.

2 Q Was there a time even though they were
3 friends, that shortly before Bread was killed,
4 that he and the defendant, Rahxzilla, were not
5 getting along?

6 A Yes.

7 Q What was all the beefing about?

8 A Choosing sides, Wise and Blue. Who is
9 going to be on Wise or Blue's side.

10 Q Okay. And when you say, "choosing sides,"
11 and you mentioned Wise. Who are you referring to
12 when you say Wise?

13 A McKoy.

14 Q Would that be Mark McKoy?

15 A Yes, ma'am.

16 Q And who are you referring to when you say
17 Blue?

18 A Brandon Taylor.

19 Q And would you say that Wise and Blue had
20 competing groups of people?

21 A Yes, ma'am.

22 Q And who hung with the Wise and his crew?

23 A Wise, D'Mo, Rock, Kim.

24 Q That would be Kim Delay?

25 A Yes, ma'am.

Chris Davis-direct by Fant

1 Q And is that Wise's girlfriend?

2 A Yes, ma'am.

3 Q And what about you? Who were you
4 generally hanging out with?

5 A Rock and them.

6 Q With the defendant, Rahxzilla?

7 A Yes, ma'am.

8 Q And who was Bread hanging out with?

9 A With Blue. Brandon Taylor.

10 Q Brandon Taylor?

11 A Yes, ma'am.

12 Q And did there come a point when Bread and
13 Rahxzilla even though they were close, started
14 drifting apart and began beefing?

15 A Yeah.

16 Q And when did that arise? If you remember
17 when did that come about?

18 A I don't remember the date. I don't
19 remember.

20 Q That's okay. Okay. Was it a long time
21 before Bread got shot or a short time?

22 A A short time.

23 Q And so you indicated you were in Rock's
24 group?

25 A Yes, ma'am.

Chris Davis-direct by Fant

1 Q Were you pretty close to him?

2 A Yes, ma'am.

3 Q And were you particularly close to the
4 victim in this case?

5 A So, so.

6 Q So, so?

7 A Yes, ma'am.

8 Q Would you say you were as close to Bread
9 as you were to Rahxzilla?

10 A No, ma'am.

11 Q And what about the relationship between
12 Wise and Blue? What was their relationship like?

13 A And they ain't see eye to eye.

14 Q Did they have some conflict between
15 themselves?

16 A Yeah.

17 Q Did everybody pretty much know about what
18 was going on?

19 A Yeah, so, so.

20 Q At least the people that hung out in
21 the---

22 A Yeah.

23 Q ---particular group?

24 A Yes, ma'am.

25 Q And now you indicated that you know

Chris Davis-direct by Fant

1 Rahxzilla and you were pretty good friends with
2 him?

3 A Yes, ma'am.

4 Q Did you ever see him with a gun?

5 A Yes, ma'am.

6 Q And was that often?

7 A Yes, ma'am.

8 Q How often did you see him with a gun?

9 A Every day.

10 Q What type of gun was that?

11 A A 9 millimeter high point.

12 Q Were -- where were you when he got
13 arrested actually for this crime?

14 A With him.

15 Q And was there anybody else with you all?

16 A His girlfriend.

17 Q Who was that?

18 A Violet King.

19 Q Can you tell us what the impression, "I
20 ain't pressed," means?

21 A Not able to talk.

22 Q So if someone came up and said, "Hello."
23 And you say, "I am not pressed," what does that
24 mean to the other person?

25 A You are not able to talk or nothing.

Chris Davis-direct by Fant

1 Q But would it be fair to say It means, I am
2 here for action?

3 A Yes, ma'am.

4 Q And were you present on Dingle Street when
5 the defendant shot Bread?

6 A No, ma'am.

7 MR. BROOKS: Objection, Your Honor.

8 THE COURT: Sustained.

9 Q When Bread was shot?

10 A No, ma'am.

11 Q Where were you?

12 A I was in the hospital.

13 Q And why were you in the hospital?

14 A Because I had got jumped the night before.

15 Q Excuse me. And did you suffer an injury
16 when you got jumped?

17 A Yes, ma'am.

18 Q About how long were you in the hospital
19 for that injury?

20 A 11 days.

21 Q And at some point when you were in the
22 hospital, did some of your group or crowd come to
23 see you?

24 A Yes, ma'am.

25 Q Who was that?

Chris Davis-direct by Fant

1 A Wise and Rock.

2 Q And what did they tell you?

3 A Don't talk to the police.

4 Q Could you say that again, please?

5 A Don't talk to no officers.

6 Q They didn't want you to talk to the
7 police, is that right? They did not?

8 MR. BROOKS: Your Honor, I would object.

9 If she needs to be able to pinpoint why is
10 hearsay.

11 THE COURT: Clarify who is saying it.

12 Q Were both of them talking to you?

13 A No, ma'am.

14 Q Who was talking to you?

15 A Rock.

16 Q Rock. And that would be Rahxzilla?

17 A Yes, ma'am.

18 Q He did not want you talking to the police?

19 A Yes, ma'am.

20 Q And was that about what happened to you?

21 A Yes, ma'am.

22 Q And did there come a time later when you
23 were at the detention center with the defendant,
24 Rahim Carter?

25 A Yes, ma'am.

Chris Davis-direct by Fant

1 Q Tell us what you remember about anything
2 that he said to you.

3 A He was going to write Petey a letter
4 saying, saying he been in the yard when the shoots
5 were fired at Dingle Street. The night we killed
6 Bread.

7 Q Now who is Petey?

8 A Juwan Holmes.

9 Q And where does Juwan Holmes live?

10 A On Blanding Street.

11 Q At the time of this incident in 2007,
12 where did he live in relationship to Wise's house?

13 A Two houses.

14 Q Two houses down from him?

15 A Yes, ma'am.

16 Q Were both of those houses on Blanding
17 Street?

18 A Yes, ma'am.

19 Q And why did the defendant indicate he was
20 going to write a letter to Petey?

21 A To try to help him.

22 Q Could you explain that? How did he want
23 Petey to help him?

24 A Help him to his trial, to when he go to
25 court.

Chris Davis-direct by Fant

1 Q And what did he tell you he was going to
2 tell Petey to say?

3 A That he been in the yard with him.

4 Q In whose yard?

5 A Petey's yard.

6 Q During what time period?

7 A When the shots was fired that killed
8 Bread.

9 Q Did you actually see him write this
10 letter?

11 A Yes, ma'am.

12 Q Excuse me. And did you read the letter
13 before he sent it?

14 A I don't think so.

15 Q But he told you what he was going to say?

16 A Yes, ma'am.

17 Q And did you really want to come to court
18 today?

19 A No, ma'am.

20 Q And why did you come?

21 A A subpoena.

22 Q So in other words, the State made you
23 come?

24 A Yes, ma'am.

25 Q And were you promised anything for your

Chris Davis-direct by Fant

1 testimony?

2 A No, ma'am.

3 MS. FANT: Please answer any questions
4 from the defense.

5 THE COURT: Mr. Brooks.

6 Cross Examination by Mr. Brooks:

7 Q Mr. Davis, how are you doing today?

8 A How are you doing?

9 Q I am all right. How are you?

10 A I am all right.

11 Q Are you good?

12 A Yeah.

13 Q Make sure I get this straight; we all get
14 this straight. You have got a record, is that
15 right? For drugs?

16 A Yes, sir.

17 Q You pled guilty to possession of cocaine
18 first offense, isn't that right?

19 A Yes, sir.

20 Q And you were put on probation in which you
21 finished your probation, is that right?

22 A Yes, sir.

23 Q Now you are coaching basketball, is that
24 right?

25 A Yes, sir.

Chris Davis-cross by Brooks

1 Q And you just started that this summer?

2 A Yes, sir.

3 Q Now you testified here just a few moments
4 ago about how Rock was coming to the hospital.

5 You are referring to Rahim, is that right?

6 A Yes, sir.

7 Q You said Rock came to you when you were in
8 the hospital after you got jumped, is that right?

9 A Yes, sir.

10 Q That's the same day that you got jumped,
11 right?

12 A No.

13 Q It was not the same day?

14 A No.

15 Q When was it? Was it the day after?

16 A I don't really remember. I know it wasn't
17 the same day, because I went in the nighttime.

18 Q Okay. Could it have been several days
19 later?

20 A Nah.

21 Q Was it a week?

22 A I didn't stay in Tuomey Hospital that
23 long.

24 Q Okay. Was it in Florence?

25 A No, Lexington.

Chris Davis-cross by Brooks

1 Q Over in Lexington. Over in Columbia?

2 A Yes, sir.

3 Q And they -- are you saying you don't know
4 if it was the same day, or you don't recall?

5 A I don't know. I don't recall.

6 Q Okay. So you don't know when Rahim came
7 and Wise came to see you, is that right?

8 A Yeah.

9 Q And you gave a prior statement under oath
10 about Rahim, and you didn't mention anything like
11 this, isn't that correct?

12 MS. FANT: Objection, Your Honor. May we
13 approach?

14 THE COURT: You may.

15 (Whereupon, attorneys approach and confer
16 with judge.)

17 THE COURT: The objection is sustained.

18 Q You never told the police about, well let
19 me rephrase. You never told in a prior statement
20 under oath.

21 MS. FANT: Objection.

22 THE COURT: Prior statement under oath.

23 Q You never said in a prior statement under
24 oath about this conversation at the hospital, did
25 you?

Chris Davis-cross by Brooks

1 A Not that I know of.

2 Q And you talked about being in the same
3 room when Rahim and this is at the jail, is that
4 right?

5 A Yeah.

6 Q Where, based on what you said, he was
7 sending letters to people, is that right?

8 A Yeah.

9 Q But you don't know anyone else that he
10 supposedly sent a letter to except for, Pete,
11 isn't that right?

12 A That's right.

13 Q Because you gave him the envelope, right?

14 A Huh?

15 Q Because you gave him the envelope?

16 A Yes, sir.

17 Q In the room was just you and Rahim about
18 this conversation about sending letters, right?

19 A Yes.

20 Q Wasn't nobody else around.

21 A No, sir.

22 Q And you told the police about this
23 conversation, isn't that right?

24 A Yes, sir.

25 Q And shortly thereafter, you were no longer

Chris Davis-cross by Brooks

1 in jail, is that right?

2 MS. FANT: Objection Your Honor. May we
3 approach?

4 THE COURT: You may.

5 (Whereupon, attorneys approach and confer
6 with judge.)

7 THE COURT: Your objection is overruled.

8 Q Again, Chris, you told the police about
9 this alleged conversation at the jail, is that
10 right?

11 A Yes, sir.

12 Q And shortly thereafter, you got out of
13 jail?

14 A Yes, sir.

15 Q In your conversation with the police about
16 this, was it to your recollection, was it ever
17 reduced to writing?

18 A No, not that I know of. Not that I know
19 of.

20 Q Does that mean you don't remember or?

21 A I don't remember.

22 MR. BROOKS: No other questions.

23 THE COURT: Redirect?

24 Redirect Examination by Ms. Fant:

25 Q Chris, you told Mr. Brooks that you

Chris Davis-cross by Brooks

1 weren't in Tuomey very long when you were in the
2 hospital?

3 A Yes, ma'am.

4 Q Do you know whether it was a day or two or
5 a week or two that you were in Tuomey?

6 A I don't think no longer than 3 days.

7 Q And then you went to Lexington?

8 A Yes, ma'am.

9 Q And the conversation when Rock and his
10 Wife came to the hospital, which hospital did they
11 come talk to you at?

12 A Tuomey.

13 Q So that would have to have been in those
14 short days?

15 A Yes, ma'am.

16 Q When he indicated that you had never in a
17 prior statement, talked about this conversation,
18 were you ever asked about it before?

19 A No, ma'am.

20 Q And Mr. Brooks also in reply that shortly
21 after you got out, or after you talked to the
22 police and and gave them this information, that
23 you got out of jail. Did the police help you get
24 out of jail?

25 A No, ma'am.

Chris Davis-cross by Brooks

1 Q Did they promise you or help you in any
2 way with your issues in, for the reason you were
3 there?

4 A No, ma'am.

5 THE COURT: Recross?

6 Cross Examination by Mr. Brooks:

7 Q Did I hear you say your conversation took
8 place in Lexington?

9 A No.

10 Q So now you said the conversation took
11 place in Tuomey?

12 A That's what I said.

13 Q All right. And you also in regards to
14 Ms. Fant's questions, said the police didn't
15 promise you anything, is that right?

16 A No, sir.

17 Q But you don't dispute the fact that
18 shortly thereafter you did talk to the police, you
19 did get out of jail?

20 A No, sir.

21 Q You don't dispute that?

22 A No, sir.

23 MR. BROOKS: No other questions.

24 MS. FANT: Your Honor, may Mr. Davis be
25 excused?

Chris Davis-cross by Brooks

1 THE COURT: Any objection, Mr. Brooks?

2 MR. BROOKS: No objection.

3 THE COURT: You may step down. Mr. Davis
4 is excused.

5 MS. FANT: The state calls Lakita McGee.

6 Lakita McGee, after being duly

7 sworn, testified as follows:

8 THE CLERK: State your full name and spell
9 your first name for the record.

10 Direct Examination by Ms. Fant:

11 Q Ms. McGee, would you tell us, do you live
12 in the Sumter area?

13 A Yes, ma'am.

14 Q And how long have you lived here?

15 A All my life.

16 Q Where do you work?

17 A I go to school.

18 Q Did you know the victim in this case,
19 Mathew Horace?

20 A Yes, ma'am.

21 Q How did you know him?

22 A My kid's father.

23 Q And did you know the defendant, Rahim
24 Carter?

25 A I seen him out. You know, I just see him

Lakita McGee-direct by Fant

1. around like a couple of times.

2. Q And had Bread actually introduced you to
3 him?

4 A Like one, maybe one or two times when I
5 saw him.

6 Q And what names or nicknames did you know
7 him to go by?

8 A Rock, Rahxzilla. Rahxzilla, I guess.

9 Q Rock and Rahxzilla?

10 A Uh-huh. (Affirmative.)

11 Q What was the relationship between Mathew
12 and the defendant?

13 A Friends.

14 Q Were they close friends?

15 A Close friends.

16 Q And do you remember the day that Bread got
17 shot?

18 A Yes, ma'am.

19 Q Where were you?

20 A Home.

21 Q Had you seen him earlier that day?

22 A Yes, ma'am.

23 Q And who was he with when you saw him?

24 A Brandon Taylor.

25 Q What name does Brandon also go by?

Lakita McGee-direct by Fant

1 A Blue.

2 Q And when they were together, do you know
3 what kind of car they were in?

4 A A charger. White charger.

5 Q And about what time, or did they leave the
6 house together?

7 A Yes, ma'am.

8 Q And what happened after that? They left
9 the house and did you find out something about
10 this case?

11 A Say it again.

12 Q What did you find out after they left?
13 Did you get a phone call?

14 A Yes, ma'am.

15 Q And what did you learn, from the phone
16 call?

17 A That he was shot.

18 Q So somebody called you and told you Bread
19 had been shot?

20 A Yes, ma'am.

21 Q And what did you do?

22 A Put on my clothes and went to the
23 hospital.

24 Q And which hospital was that?

25 A Huh, Tuomey.

Lakita McGee-direct by Fant

1 Q And was Blue the person that called---

2 A Yes, ma'am.

3 Q ---you on the phone? And after you got to
4 Tuomey, were you able to see Mathew at the
5 hospital?

6 A Yes, ma'am.

7 Q How long was this after the shooting?

8 A Like right after the shooting.

9 Q Were you able to talk to him?

10 A Yes, ma'am.

11 Q Did you ask him what happened?

12 A Yes, ma'am.

13 Q And what did he tell you?

14 A He just, he cried. He just cried for a
15 little while. And then after he cried, he took a
16 deep breath. And then I asked him. I was like:
17 "Is the guy named Rahxzilla who shot you. Like
18 what everybody else saying." And he just nodded
19 his head, "Yes."

20 Q Did he tell you anything else about what,
21 why he was upset, why he was crying?

22 A Say it is again.

23 Q Did he tell you why he was crying?

24 A He didn't say why he was crying.

25 Q But he was obviously upset?

Lakita McGee-direct by Fant

1 A Yes, ma'am.

2 Q So after he told you that this person who
3 shot him was Rahxzilla, did it take him awhile for
4 him to tell you that, or did he just pop right out
5 with that when you first saw him?

6 A Well, It took him a little while. I just
7 asked him over. You know, I asked him a couple of
8 times, but he didn't say anything. He was just
9 crying for a little while.

10 MR. BROOKS: Your Honor, I want to make
11 sure I renew my objection on this issue. I don't
12 think we have covered that. May we approach?

13 THE COURT: Yeah, let's take it up.

14 (Whereupon, attorneys approach the bench
15 and confer with judge.)

16 Q After he told you Rahxzilla had shot him,
17 did you tell anyone else what he told you?

18 A The detective.

19 Q The detective? So at some point they
20 asked you what he told you?

21 A Yes.

22 Q Do you recall which detective you talked
23 to?

24 A Detective Culick.

25 Q Ms. Irene Culick, does that sound

Lakita McGee-direct by Fant

1 familiar?

2 A Uh-huh. (affirmative.)

3 MS. FANT: Please answer any questions the
4 defense may have.

5 THE COURT: Mr. Brooks.

6 Cross Examination by Mr. Brooks:

7 Q Ms. McGee, how are you today?

8 A Fine.

9 Q Where do you live?

10 A Where do I live? In Sumter.

11 Q I wasn't specific, I am sorry. At the
12 time of this incident where were you living?

13 A In Dalzell.

14 Q In Dalzell?

15 A Yes, sir.

16 Q And you got a phone call, right?

17 A Yes, sir.

18 Q And then you immediately put on clothes
19 and raced to the hospital, right?

20 A Yes, sir.

21 Q And I believe you said you got there
22 somewhere around 9:00 o'clock?

23 A Got where?

24 Q To the hospital.

25 A It wasn't---

Lakita McGee-cross by brooks

1 MS. FANT: Your Honor, I would object. I
2 don't believe she just testified to any time.

3 THE COURT: You can ask her.

4 A I can't remember what time.

5 Q You can't remember. But it is fair to say
6 you did these things immediately, is that correct?
7 You testified you put on your clothes and you
8 immediately went to the hospital.

9 A Yes, sir.

10 Q Went to Tuomey, is that correct?

11 A Yes, sir.

12 Q And you saw Mathew, is that correct?

13 A Yes, sir.

14 Q In Tuomey?

15 A Uh-huh. (affirmative.)

16 Q Is that a yes?

17 A Yes, sir.

18 Q And some time after that, you had this
19 conversation with Mathew in his bed, is that
20 right?

21 A Yes.

22 Q And you said it was just you and him,
23 there, is that correct?

24 A Yes, sir.

25 Q There was nobody else around.

Lakita McGee-cross by brooks

1 A Not that I can remember.

2 Q It was about almost two years ago, isn't
3 that correct?

4 A Yes.

5 Q Is it fair to say some things you don't
6 quite remember as clearly, is that right?

7 A Yes.

8 Q And basically after that, you relayed this
9 conversation to Detective Culick, is that correct?

10 A Yes.

11 Q And Detective Culick, you never signed
12 anything in writing about the conversation with
13 Detective Culick, is that right?

14 A No, sir.

15 MR. BROOKS: No other questions.

16 THE COURT: Redirect?

17 MS. FANT: Just briefly.

18 Redirect Examination by Ms. Fant:

19 Q Even though this was a couple of years
20 ago, do you remember very clearly the conversation
21 you had with Mathew?

22 A Yes.

23 Q And why do you remember it so clearly?

24 A Say it again.

25 Q Why do you remember it so clearly? How is

Chris Davis-redirect by Fant

1 it that you can really remember that conversation?

2 A Because I talked to him.

3 Q Were you surprised when he indicated that
4 Rock had shot him?

5 A Yes.

6 Q Why was that?

7 A Because he told me they was best friends.
8 He was like, they were good friends.

9 MS. FANT: Thank you.

10 THE COURT: Any recross?

11 Recross Examination by Mr. Brooks:

12 Q I think you said Cornbread and Rahim were
13 good friends.

14 A Very good friends.

15 Q You said earlier that you, Cornbread,
16 Cornbread is the father of your child.

17 A Yes, sir.

18 Q And you had only seen Rahim around once or
19 twice, is that right?

20 A A couple of times. Yes, sir.

21 Q A couple of times. Yet you are saying to
22 this court that Rahim and Cornbread were very best
23 friends.

24 A That's what he said.

25 MR. BROOKS: No other questions.

Chris Davis-recross by Brooks

1 THE COURT: Thank you. You may step down.

2 MS. FANT: Your Honor, may Ms. McGee be

3 excused?

4 THE COURT: Any objection?

5 MR. BROOKS: No objection.

6 MS. FANT: Your Honor, the state calls

7 Michael Horace.

8 Michael Horace, being first
9 duly sworn, testified as follows:

10 THE CLERK: State your full name and spell
11 your last name for the record.

12 A Michael Horace. H-O-R-A-C-E.

13 Direct Examination by Ms. Fant:

14 Q Michael, could you tell, do you live in
15 Sumter?

16 A Yes, ma'am.

17 Q And how long have you lived there?

18 A Just about all my life.

19 Q And do you work?

20 A No, I am a full-time student.

21 Q Where do you go to school?

22 A Central Carolina.

23 Q What are you studying there?

24 A Machine Tooling.

25 Q Now the victim in this case, Mathew

Michael Horace-direct by Fant

1 Horace, how did you know him?

2 A That's my little brother.

3 Q And do you recall hearing some bad news
4 about him on October 2, 2007?

5 A Yes, ma'am. My mom told me he got shot.

6 Q And after your mom told you that, what did
7 you do?

8 A I went to Tuomey Hospital.

9 Q Were you able to talk to Mathew in the ER?

10 A No, ma'am. There was a whole bunch of
11 commotion going on. People running back and
12 forth. I didn't really talk to him.

13 Q But soon after that, were you able to talk
14 to him?

15 A After he got airlifted to Richland
16 Memorial that's when I finally really got to talk
17 to him.

18 Q To Richland Memorial?

19 A I am sorry, McLeod. It was McLeod in
20 Florence; yes, ma'am.

21 Q So when you were at the hospital at Tuomey
22 but not able to talk to him right at that point.
23 Did you hear what other people were saying?

24 A Yes, ma'am.

25 Q And what was it that they were saying?

Michael Horace-direct by Fant

1 A A couple of people---

2 MR. BROOKS: Objection, Your Honor.

3 MS. FANT: It's not offered for the truth
4 of the matter asserted. It's offered to show what
5 he did after he told him that.

6 THE COURT: He can just state what he did.
7 I'll sustain the objection.

8 Q So after you talked to the people that
9 were up at the hospital---

10 A Yes, ma'am.

11 Q ---what did you do?

12 A I went back home to drop my kids off. So
13 when my little brother was already transported to
14 McLeod, and I went and got a picture from my
15 house. And I made my way up to McLeod.

16 Q Now when you went to McLeod, did you get
17 to see Mathew when you got there?

18 A Yes, ma'am.

19 Q And what was condition at the time?

20 A At the time he was still -- he was still,
21 he was sitting up, but he was hurting real bad.
22 But he was sitting there talking and he was upset.

23 Q Did he seem pretty upset to you?

24 A Yes, ma'am, very upset.

25 Q And what did he tell you when you talked

Michael Horace-direct by Fant

1 to him at McLeod?

2 A He said---

3 MR. BROOKS: Objection, Your Honor, for
4 the record.

5 THE COURT: Your objection is noted and
6 overruled.

7 A He said, he called me Block. And he was
8 like, "Block, man, do you know who shot me man."
9 I was like, "Who shot you." He said, "Rahxzilla."
10 I was like, "Nah, that's your mans. Why you, what
11 is going on." He was like, "Man he took my legs,
12 man."

13 Q Were you surprised when he told you who
14 shot him?

15 A I was very surprised.

16 Q And why was that?

17 A Because I mean, they was like brothers.
18 They used to always be together, all the time.

19 Q Now did you actually know the defendant?

20 A Yes, ma'am.

21 Q And how did you know him?

22 A I have known him for about I would say 5
23 or 6 years. He's always been my little brother.
24 I mean, I took him as a little brother.

25 Q Now at some point over this period of time

Michael Horace-direct by Fant

1 that you know him, did you notice a change in him
2 and in his behavior?

3 A Yeah, I mean at first he was just Rahim.
4 I mean, he was cool. He was, but as he stopped
5 hanging with Mat, I mean I didn't see him hanging
6 with Mat no more. It was like, I mean, to me, he
7 just ain't look the same to me. You know what I
8 am saying? He was out there in the streets,
9 beard, all wild hair, all crazy. I mean, it
10 looked like he was on drugs to me.

11 MR. BROOKS: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q You indicated he wasn't hanging with Blue
14 and Mat at the time. Who was he hanging with?

15 A I am not sure. I mean, if he would have
16 said probably Wise then I guess that's who he was
17 hanging with.

18 Q Did you know Wise or who Wise was?

19 A I heard of him. I heard of him a couple
20 of times. I didn't really know him like that.

21 Q And after Mat told you at the hospital
22 that Rahxzilla was the person that had shot him,
23 did you actually have a photograph with you?

24 A Yes, ma'am.

25 Q Why did you have that photograph with you?

Michael Horace-direct by Fant

1 A I mean, after I heard what I heard at
2 Tuomey, I still didn't believe it. You know, what
3 I am saying. I was like, I mean, it didn't matter
4 who told me that, I did not believe that, because
5 I know how close they were. So I got the picture
6 because I want to show people who this person was,
7 because I knew who he was. So when I took the
8 picture up there, I just wanted to get
9 confirmation from my little brother. You know
10 what I am saying? I didn't show him the picture,
11 I just asked him. I said, when he told me,
12 actually when he told me in the room, he said,
13 "Block, Rahxzilla shot me." Actually my other
14 brother he wanted to know who Rahxzilla was. I
15 was like, "You know him." He was like, "No, I
16 don't know him."

17 MR. BROOKS: Objection, Your Honor.

18 THE COURT: Sustained.

19 Q Is that the reason that you got the
20 picture?

21 A Yes, ma'am, to show my brother. Yes,
22 ma'am.

23 Q And where did you get the picture from?

24 A I got it from my house. Actually we have
25 like a crate with all of our pictures in it. I

Michael Horace-direct by Fant

1 mean, it was some of Bread's pictures. Some of my
2 pictures. My pop's pictures. Just had a whole
3 bunch of pictures in it. When he said that, I
4 knew I had a picture of him in that crate.

5 Q Now without saying who is in this picture,
6 is this the picture that you got from the house?

7 A Yes, ma'am.

8 Q And is this the picture that you gave to
9 your brother Quinten?

10 A Yes, ma'am.

11 Q So after he told you that, what did you do
12 with the photograph?

13 A I gave it to my brother.

14 Q And did you talk to him or anything
15 further at that particular point?

16 A Not much. We just talked about his
17 condition and all that. He was just talking about
18 trying to calm down: "Man, like, I am paralyzed
19 man. It's going to be all right." You know what
20 I saying? Then I left. I went downstairs I had
21 to smoke me a cigarette.

22 MS. FANT: Please answer any questions
23 Mr. Brooks may have.

24 Cross Examination by Mr. Brooks:

25 Q Michael, your nickname is Block, is that

Michael Horace-direct by Fant

1 correct?

2 A Yes, ma'am. I mean, yes, sir.

3 Q And did you ever tell the police what you
4 are telling us here today?

5 A I don't recall. I don't remember.

6 Q You don't remember?

7 A No, I don't really remember. No.

8 Q That's at any time from October of 07,
9 until today?

10 A I really can't remember if I talked to any
11 cops. Actually I don't remember.

12 Q And just to make sure I am clear, you were
13 able to talk to your brother while he was at
14 Tuomey. Is that right?

15 A No, I didn't talk to him at Tuomey.

16 Q Because he was in ER, and there was a
17 bunch of commotion going on.

18 A He was in pain. He was almost crying
19 like. He was hurt.

20 Q And when you were really able to talk to
21 him was after he was now over in McLeod, is that
22 correct?

23 A Yes, sir.

24 Q And the conversation was just you and your
25 brother, Mathew?

Michael Horace-direct by Fant

1 A Yes, sir.

2 Q Just nobody else around?

3 A No, sir.

4 MR. BROOKS: No other questions.

5 THE COURT: Thank you, any redirect?

6 MS. FANT: No, sir, Your Honor. May

7 Mr. Horace be excused?

8 THE COURT: Any objection?

9 MR. BROOKS: No objection.

10 MS. FANT: The state calls Quinten Ball.

11 Quinten Ball, Being first duly

12 sworn, testified as follows:

13 THE CLERK: State your full name and spell
14 your last name for the record.

15 A Quinten Lanell Ball. B-A-L-L.

16 Direct Examination by Ms. Fant:

17 Q Quinten, can you tell us where you live
18 please?

19 A Columbia.

20 Q Where do you work?

21 A Verizon Wireless.

22 Q Did you know the victim in this case?

23 A Yes.

24 Q How did you know him?

25 A That's my little brother.

Quinten Ball-direct by Fant

1 Q Now do you recall getting a phone call on
2 October 2nd, 2007, regarding Mathew?

3 A Yeah. My mother called me and told me
4 that he had been shot.

5 Q What did you do as a result of that phone
6 call?

7 A Well, I was working lost prevention at
8 Best Buy, and I had just closed the doors to the
9 store. And as soon as I got that call, I told my
10 supervisor that I had a family emergency. And I
11 had go over there. My brother was shot. So she
12 said, "Go. Leave. Leave now." So I jumped in my
13 car, and I went home and told my wife what had
14 happened. And I got in the car and went to
15 Florence.

16 Q Did you ever go to Tuomey Hospital?

17 A No, because by the time I had spoken to my
18 mother, she said that they were going to airlift
19 him to Florence so don't waste my time coming to
20 Sumter. Just meet her in Florence.

21 Q And when you got to the hospital at McLeod
22 in Florence, were you able to talk to your
23 brother?

24 A Eventually. We had to wait around a long
25 time until they got him, you know, up and

Quinten Ball-direct by Fant

1 everything, and I eventually spoke to him.

2 Q But when you saw him, what condition was
3 he in?

4 A When I first walked in the room, he was
5 like half way sedated. Almost like in a half
6 sleep type state. And he had IV's and he had a
7 tube coming out of his side. I guess where they
8 were draining fluids from his lungs. I am not
9 sure. But he had a bunch of stuff coming out of
10 him.

11 Q When, excuse me, when he ultimately
12 recognized you, how did he seem to you?

13 A When he finally, when he woke up, he
14 looked and he kind of tried to focus his eyes.
15 And he looked at me, and he was like, "Q, Q, they
16 took my legs. Q, they took my legs."

17 Q Did he appear upset?

18 A Yeah, he was very upset. Because he was
19 shaking his leg. "They took my leg, man. They
20 took my legs, man."

21 Q And was he still in very serious medical
22 condition from the shooting?

23 A Yes. Yes, he was.

24 Q And when he told you that, "They took me
25 legs," what happened? Did he appear to stay upset

Quinten Ball-direct by Fant

1 or what happened?

2 A He was upset, because he said, "They took
3 my legs." And I was like, "I know. I know." I
4 said, "We know. I just want you to get better."
5 And he started doing this right here. Like he was
6 getting mad, and he was like, he wanted to do
7 something, but he couldn't. And I was like, "Man,
8 just calm down." I put my hands on his hands to
9 keep them from trembling and shaking. I said
10 like, "Just calm down." I said, "Just calm down."
11 I was like: "Tell me what happened. Tell me who
12 did this. Tell me who did this."

13 Q Were you able to get him to calm down a
14 little bit?

15 A A little bit. I got him to stop doing
16 this, (witness indicating) because I didn't want
17 him to get upset and, you know, things go wrong.
18 So I just wanted him to calm down enough to be
19 able to talk to me.

20 Q But was he still upset at that point?

21 A Yes. A little bit.

22 Q And after you at least got to talk to him,
23 what did you to?

24 A I got him, I said, "Mathew tell me who did
25 this. Who did this to you." And he was just

Quinten Ball-direct by Fant

1 doing this like he didn't want to say nothing.

2 I was like "Mathew," I keep on pressing him. I
3 was like, "Mathew tell me who did this." And I
4 took, hold the picture. "Mathew, is this who did
5 this." I said, "Who did this." And he was just
6 like, and then he just nodded his head, "Yes."

7 Q And that was in response to your showing
8 him the photograph?

9 A That's right.

10 Q And where did you get that photograph
11 from?

12 A I got it from my brother Michael before I
13 went in.

14 Q Now without saying what's actually in the
15 photograph, is this the photograph that Michael
16 gave you?

17 A That's the photograph, yes.

18 Q And is that the photograph that you showed
19 to Mathew?

20 A Yeah, this was folded. I had it in my
21 pocket. That's the photograph.

22 Q And after he finally admitted who had who
23 shot him, who did he tell you shot him?

24 A He said Rahxzilla shot him.

25 Q Did you know Rahxzilla?

Quinten Ball-direct by Fant

1 A No.

2 Q What else did he say about what happened
3 to him?

4 A Well I told him, I said, "Look just tell
5 me what happened." I said, "Tell me what
6 happened." And he said that he was out west. And
7 he was talking to this chick and, you know, out on
8 the west side.

9 Q And you mean by the west side, the west
10 side of Sumter?

11 A Yes, out west. He said, "Out west." I
12 knew what he was talking about.

13 Q Okay.

14 A And he said the dude walked up. And he
15 had words with the dude. And he noticed that he
16 was acting shifty, so he knew something was about
17 to go down. So he was acting all shifty. So he
18 just turned around to get back in the car. That's
19 when he heard shots.

20 Q When he said dude, who was he talking
21 about---

22 A Talking about Rahxzilla.

23 Q ---when he said dude?

24 A Talking about the guy who shot him.

25 Q And so he said that after that they had

Quinten Ball-direct by Fant

1 words---

2 A Right.

3 Q ---that he was trying to get back in the
4 car?

5 A Yeah. He had turned to try to get back in
6 the car. And that's when he said he heard about 4
7 or 5 shots.

8 Q And did he indicate to you he knew he had
9 been hit?

10 A Yeah, he said, I felt myself get hit. And
11 I -- and he said I fell back on my ass. And I
12 thought I could still feel my legs. I don't why
13 he said that. But he said: "I thought I could
14 still feel my legs, because I fell back on my ass
15 with my legs in the air."

16 Q Did that seem to be kind of his major
17 concern at that point, was the paralysis?

18 A Yeah. That was the first thing that he
19 said to me. He was saying, "I thought I could
20 still feel my legs. They took my legs. They took
21 my legs." That was pretty much what he was
22 harping on.

23 Q And did he tell you anything else about
24 what happened?

25 A Well he said that after he fell back on

Quinten Ball-direct by Fant

1 his behind with his legs up in the air, that
2 was---

3 Q Did he, let me rephrase that. Did he ask
4 you to talk to anyone else to get further
5 information?

6 A He said, "Talk to my people." And he was
7 like, "Talk to Blue." I didn't know who Blue was.
8 That was pretty much it. I didn't find out who
9 Blue was until later on. And after, as I was
10 leaving, this is just something that, me and my
11 brothers really don't do a lot. We know we love
12 each other. We just don't vocalize it. And as I
13 walked out of that room, he was like, "I love you,
14 Quinten." And those were his words---

15 MR. BROOKS: Objection.

16 A Those were his last words to me.

17 THE COURT: Sustained.

18 MS. FANT: Please answer any questions
19 that Mr. Brooks may have.

20 THE COURT: Mr. Brooks.

21 Cross Examination BY MR. BROOKS:

22 Q Mr. Ball, this conversation that you are
23 referring to, it occurred in Florence, is that
24 right?

25 A That's right.

Quinten Ball-cross by Brooks

1 Q And this was early October. October 2nd
2 or October 3rd.

3 A The same night he got shot.

4 Q Either October 2nd that night, or October
5 3rd, that morning, right? I am just making sure.

6 A Yes.

7 Q And the conversation you are referring to
8 here today, you relayed that to the police, isn't
9 that correct?

10 A That's correct.

11 Q Okay. And you relayed that to the police
12 in a statement, December 8th, two months later.
13 Is that correct?

14 A It was around about that time. I don't
15 remember the exact date, but something like that.

16 Q Okay. But if I have a statement and I
17 say, December 8th, you don't dispute that.

18 A Right.

19 Q And the only thing you know is about your
20 conversation that you are telling us about with
21 your brother, just you and him, in the hospital in
22 Florence? That's his---

23 A It was me, him and Courtney. His baby's
24 mother.

25 Q Okay. You said, Courtney?

Quinten Ball-cross by Brooks

1 A Uh-huh. (Affirmative.)

2 Q Is that a yes?

3 A Yes.

4 MR. BROOKS: No other questions.

5 THE COURT: Thank you. Any redirect, Ms.

6 Fant?

7 MS. FANT: No, sir, Your Honor. May this
8 witness be excused?

9 THE COURT: Any objection?

10 MR. BROOKS: No, sir, Your Honor.

11 THE COURT: Thank you. Ladies and

12 gentlemen, we have about hit it on the nose. It

13 is 2 minutes until 1:00 o'clock. I am going to

14 dismiss you for lunch. As always, you will not

15 discuss the case amongst yourselves. You will not

16 discuss it with anyone else. We will resume

17 taking the testimony at 2:30. So I am going to

18 ask that you be back, as you have always done.

19 You have been so good about being prompt. Be here

20 just a little bit early, so we can start right at

21 2:30 p.m..

22 And just for your information, we will

23 probably go until 6:30 or 7 tonight. Thank you.

24 (Whereupon, at 1:00 o'clock jury goes to

25 lunch.)

Quinten Ball-cross by Brooks

1 (Whereupon, the following takes place
2 outside the presence of the jury.)

3 THE COURT: Thank you. Mr. Brooks, I
4 believe you had an objection you wanted to put on
5 the record.

6 MR. BROOKS: Yes, sir. In regards to the
7 status of the victim in the bed, we have got now 3
8 people who testified about his status. Ms. McGee,
9 Mr. Horace and Mr. Ball. It's our position in
10 regards to Mr. Horace and Mr. Ball's testimony,
11 that the victim had rested. He was asleep.
12 Several hours had passed. His testimony had
13 calmed down. Our position is he's not in the --
14 start for the advanced purposes of excited
15 utterance. And we would submit to the court that
16 that evidence should be suppressed and stricken
17 from the record.

18 THE COURT: Ms. Fant.

19 MS. FANT: Your Honor, there was no
20 testimony that this was several hours later. I
21 guess it depends on what you mean several. It
22 certainly would have been probably 2 or 3, because
23 he was airlifted to McLeod. But I think both
24 Mr. Michael Horace and Quinten Ball, in addition
25 to Lakita McGee, who did see him at Tuomey, who

1 did see him right after it happened and before he
2 went to McLeod; that he was still extremely upset.
3 Lakita testified he was crying when she was
4 talking to him. And both brothers testified that
5 he was quite upset because of the paralysis.
6 Which indicated they took his legs. He couldn't
7 walk. And wasn't going to be able to walk.

8 Mr. Ball particularly said that he still
9 tensed up. He was getting very agitated. That he
10 calmed him down, but only to the point where he
11 could ask him questions. But that he was still
12 upset. And we think under the law on the excited
13 utterance, that that would fit within the
14 exception.

15 THE COURT: I find that this is a
16 continuing thing. That he was actually, it still
17 excited him, what happened. I am going to
18 overrule the objection. Yes, sir.

19 MR. BROOKS: The last testimony in regards
20 to Mr. Ball when we objected, I think there was
21 some outpouring of emotion. And we are concerned
22 we may have a prejudicial impact on a jury. And
23 if Your Honor doesn't recall.

24 THE COURT: Yes, I got it. "I love you."

25 MR. BROOKS: Yes, basically I object.

1 Your Honor, it is the same objection. Obviously
2 we are concerned that that is going to prejudice
3 my client.

4 THE COURT: You can ask to move to strike
5 that, I will do that.

6 MR. BROOKS: That's correct.

7 THE COURT: I will. Anything further from
8 the state before we go to lunch?

9 MS. FANT: No, sir.

10 THE COURT: We will resume testimony at
11 2:30.

12 (Whereupon, the court takes a lunch recess.)

13 (Whereupon, the following takes place
14 outside the presence of the jury.)

15 MS. FANT: Your Honor, I was just
16 speaking to Ms. Sullivan, the court reporter, who
17 just indicated that she thought she had written
18 the wrong date down on some of the exhibits
19 putting the 6th, rather than the 5th. If it
20 pleases the court, I told her that maybe after we
21 are done today, she could just redate those to the
22 proper date.

23 THE COURT: That would be fine. Any
24 objection, Mr. Brooks?

25 MR. BROOKS: No objection. May we

1 approach?

2 THE COURT: You may.

3 (Whereupon, attorneys approach and confer
4 with judge.)

5 MR. BROOKS: Judge, I discussed with my
6 client and he decided, we don't want to raise the
7 issue because of what may happen in terms of
8 alternate jurors.

9 THE COURT: All right. Bring the jury in.

10 (Whereupon, the following takes place
11 within the presence of the jury.)

12 THE COURT: I hope you had a pleasant
13 lunch. We will now continue with the case.

14 THE COURT: Ms. Fant.

15 MS. FANT: The state calls Darrell
16 Hawkins.

17 THE COURT: Mr. Hawkins.

18 Darrell Hawkins, being
19 first duly sworn, testified as follows:

20 THE CLERK: Please state your full name
21 and spell your last name for the record.

22 A Darrell Hawkins. H-A-W-K-I-N-S.

23 Direct Examination by Ms. Fant:

24 Q Could you tell us where you live?

25 A

Darrell Hawkins-direct by Fant

1 Q And is that what is known as the west side
2 of Sumter?

3 A Yes, ma'am.

4 Q Did you live there back in October of
5 2007?

6 A Yes, ma'am.

7 Q Do you recall a day in October of 07, when
8 Cornbread got shot?

9 A Yes, ma'am.

10 Q Did you see the defendant Rahim Carter on
11 that day?

12 A Yes, ma'am.

13 Q Do you know him?

14 A Yeah, I know him, but not like that. I
15 know him though. When I see him, I know him.

16 Q And what other names do you know him by?

17 A Rock, Rahxzilla.

18 Q On that particular day before Bread get
19 shot, do you recall when you saw him?

20 A It was later on that night.

21 Q And that would have been on October 7th
22 2007?

23 A Yes, ma'am.

24 Q And what do you -- what happened? When
25 did you -- how did you see him? How did that come

Darrell Hawkins-direct by Fant

1 about?

2 A I was on Salem Street. Salem and Dingle.
3 On the corner of Salem, but Dingle intersecting
4 Salem. And he was walking down Salem Street
5 coming towards Dingle.

6 Q And did he actually talk to you at that
7 point?

8 A Yes.

9 Q What did he say?

10 A He just say, "What's up." And asked me
11 who all was down the street at Booji's house.

12 Q And Booji, who is Booji? Do you know his
13 real name?

14 A Yes, ma'am.

15 Q What is his real name?

16 A Eugene.

17 Q Where does he live?

18 A On Dingle Street.

19 Q So, the defendant was asking you who was
20 at Booji's house on Dingle Street?

21 A Yes, ma'am.

22 Q And what did you tell him?

23 A I tell him Darrell Spann and some smokers.

24 Q Did you tell him anybody else was there?

25 A No, ma'am.

Darrell Hawkins-direct by Fant

1 Q Do you recall telling him Mathew Horace or
2 Bread was there?

3 A No, ma'am.

4 Q In this case, did you give a written
5 statement to Detective William Lyons about what
6 happened that day?

7 A Yes, ma'am.

8 Q Do you recall in your statement whether or
9 not you said that he asked you and you told him
10 that Cornbread or Bread was down the street?

11 A No, ma'am.

12 Q Okay. Darrell, let me show you, well let
13 me get it marked first.

14 (Statement of Darrell Hawkins marked as
15 State's Exhibit No. 30 for id.)

16 Q Darrell, I will show you what has been
17 marked for identification as State's Exhibit No.
18 38, do you recognize that document?

19 A Are you talking about the statement? Yes,
20 ma'am.

21 Q Is that in fact your statement you gave to
22 Detective Lyons?

23 A Yes, ma'am.

24 Q Could you take a moment to read over it?
25 Okay. Does that help refresh your memory about

Darrell Hawkins-direct by Fant

1 what you told him that day?

2 A Right there.

3 Q And in the statement, did you actually
4 tell him that you told Rahim Carter that Bread was
5 down there?

6 A In the statement it said that, but I
7 don't recall saying that.

8 Q But it is in your statement. You admit
9 that?

10 A Yes, ma'am.

11 Q And after you told him about the people
12 that were down at Booji's house, what happened?

13 A He just left. Got me up, and walked down
14 to the street.

15 Q Who is he that you are referring to?

16 A Rock.

17 Q And do see him sitting in the courtroom
18 today?

19 A Yes, ma'am.

20 Q Could you point him out for us?

21 A Right there.

22 MS. FANT: Your Honor, let the record
23 reflect he is pointing to the defendant, Rahim
24 Carter.

25 THE COURT: So noted.

Darrell Hawkins-direct by Fant

1 Q And where did Rock walk to?

2 A He walked towards Booji's house.

3 Q Did you see where he stopped?

4 A He stopped in the middle of the road. I
5 can't tell you exactly where he stopped to. I
6 know he stopped in the middle of the road,
7 talking.

8 Q And you could see that from where you
9 were?

10 A Yes, ma'am.

11 Q And he started talking to somebody?

12 A Yes, ma'am.

13 Q Could you hear what he said?

14 A Yes, ma'am.

15 Q What did he say at that point?

16 A He was saying: "Fuck you, nigger. I
17 ain't impressed."

18 Q Okay. Could you tell us who he was saying
19 that to?

20 A No, ma'am.

21 Q Was he raising his voice or yelling? Or
22 was it just kind of what he said?

23 A It was real loud. It was real loud.

24 Q And was there -- were there some more
25 words exchanged? Did you hear any arguing?

Darrell Hawkins-direct by Fant

1 A No, ma'am.

2 Q After you heard him say that, what did you
3 see him do?

4 A Run. It say I see him start shooting in
5 my statement, but I don't recall saying that
6 neither. I know he run though.

7 Q Okay. So did you hear anything?

8 A Ma'am?

9 Q Did you hear anything after the words were
10 said?

11 A Oh, gunshots.

12 Q Okay. And you're saying now you don't
13 remember saying who shot them?

14 A Yes.

15 Q Okay, but would you agree with me that in
16 your statement that you gave back in February of
17 08, that it does indicate that you did see the
18 defendant shoot?

19 A Yeah, I was in, I mean it was like in the
20 statement. But like I said, I don't recall saying
21 that.

22 Q What does it say in the statement about
23 that?

24 A What did it say?

25 Q Yeah, about that. Just after you heard

Darrell Hawkins-direct by Fant

1 the words.

2 A It say, "After that, I saw him start
3 shooting towards the house." That's what it says
4 right there.

5 Q Okay. But you say you don't remember
6 saying that now?

7 A No, ma'am.

8 Q Now after, but you definitely agree that
9 you heard some gunshots?

10 A Yes, ma'am.

11 Q Excuse me. After the shots were fired,
12 what did you do?

13 A I run to see. I run towards the house to
14 see what it was. But then I stopped.

15 Q Okay.

16 A And then I ran back towards Salem and
17 Dingle Street, just to watch the police and all
18 that.

19 Q Do you know about what time it was when
20 all this happened?

21 A No, ma'am, it was dark, though.

22 Q Do you, do you recall whether or not you
23 were able to see when you got down towards Booji's
24 house?

25 A Was I able to see, yeah, I could see

Darrell Hawkins-direct by Fant

1 because there are street lights. The street
2 lights was next door.

3 Q Okay.

4 A And the street light was on.

5 Q So you didn't have any trouble seeing once
6 you got down there.

7 A No.

8 Q What did you see Rock do after you heard
9 the shots?

10 A Oh, run. He was running.

11 Q Where did he run?

12 A Running towards Wright Street, like
13 through the parkway.

14 Q The kind of city park that is there?

15 A Yes, ma'am.

16 Q Now did you know at that time that Mathew
17 Horace had been shot?

18 A No, ma'am.

19 Q Did you stick around at that time to tell
20 anybody what you saw?

21 A No, ma'am.

22 Q But you did eventually talk to Detective
23 Lyons about what you saw that day?

24 A Yes, ma'am.

25 Q And when you were talking to him, in

Darrell Hawkins-direct by Fant

1 addition to taking the statement we are talking
2 about, did he actually draw a diagram?

3 A Yes, ma'am.

4 Q And is that diagram based on what you told
5 him, where you were?

6 A Yes, ma'am.

7 Q Now, Darrell, I will show you what has
8 been marked for identification as this State's
9 Exhibit No. 36. Do you recognize that?

10 A Yes, ma'am.

11 Q How can you recognize it?

12 A By Detective Lyons drawing it.

13 Q And is that the drawing that he did based
14 on the information you gave him?

15 A Yes, ma'am.

16 MS. FANT: Your Honor, at this time I
17 would offer State's Exhibit No. 36 in to evidence.

18 MR. BROOKS: No objection.

19 THE COURT: Without objection, State's
20 No. 35 admitted into evidence.

21 MS. FANT: 36.

22 THE COURT: 36.

23 (Diagram marked State's Exhibit No. 36
24 into evidence.)

25 MS. FANT: Permission to publish, Your

Darrell Hawkins-direct by Fant

1 Honor?

2 THE COURT: Yes, ma'am.

3 Q Darrell, can I get you to step down,
4 please, in front of the jury box over here?

5 (Whereupon, the witness steps down from
6 the witness stand.)

7 Q And I would like you to show that to the
8 jury and tell them how Detective Lyons got the
9 information, and what you told him. You might
10 need to hold it up a little higher.

11 A Well this had all started, I live right
12 there on Salem and Dingle Street. Rock, he's
13 coming down Salem. Coming down right here. And
14 then he stopped, and he was like right up in
15 here. And he asked me who all was down here at
16 Booji's house. So I tell him Darrell Spann, which
17 was smoking. So he went, all right. And he
18 walked. So he walked, walked, walked, you know,
19 right here, where It says Rock. That's where he
20 was standing to. He had some little
21 confrontation with somebody. I don't know who it
22 was. I know he said "Fuck you, Nigger, I ain't
23 impressed."

24 And after that, I hear gunshots. And
25 that's when Rock was running up that way towards

Darrell Hawkins-direct by Fant

1 the parkway. He run up that way. I was still
2 right here, but I run right here to see what was
3 going on. And then I turned back around, and then
4 right there, and watched everything.

5 Q Thank you. You can have a seat.

6 (Whereupon, the witness resumes the
7 witness stand.)

8 Q Now after you and Detective Lyons did
9 that, you were obviously called to court for this
10 trial. Did you want to be here?

11 A No, ma'am, because I have already been
12 through this.

13 Q Just in terms of, were you happy about
14 testifying?

15 A No, ma'am.

16 Q And was it the state that required you to
17 be here?

18 A I guess, I don't have no idea. I just
19 know, you know, get a subpoena.

20 Q But you didn't voluntarily run to law
21 enforcement and try to help out at the beginning?

22 A No, ma'am.

23 Q And you are still a little, not real happy
24 about being here today?

25 A No, ma'am.

Darrell Hawkins-direct by Fant

1 MS. FANT: Please answer any questions

2 Mr. Brooks may have for you.

3 A Yes, ma'am.

4 Cross Examination by Mr. Brooks:

5 Q How are you doing, Darrell?

6 A Fine and you?

7 Q You said that things in the statement, and
8 Ms. Fant handed to you, and that you don't recall
9 saying. Is that correct?

10 A Yes, sir.

11 Q And in fact, you did not write this
12 statement up, is that correct?

13 A No, sir.

14 Q This was something that Detective Lyons
15 typed up?

16 A Yes, sir.

17 Q Or somebody within the police typed up?

18 A Yes, sir.

19 Q And then they handed it to you and got you
20 to sign it, is that right?

21 A Yes, sir.

22 Q How old you Darrell?

23 A 19.

24 Q It was dark that night, is that right?

25 A Yes, sir.

Darrell Hawkins-cross by Brooks

1 Q And you didn't stick around, is that
2 correct? You didn't -- after the police got
3 there,---

4 A Yes, sir.

5 Q ---you didn't stick around, right?

6 A No, sir.

7 Q And you didn't, according to what you are
8 saying here, you didn't tell Rahim anything about
9 Bread being there, is that right?

10 A No, sir.

11 Q Now you do have a burglary on your record,
12 is that correct?

13 A Sir?

14 Q You do have a burglary second degree
15 nonviolent on your record, is that correct?

16 A Yes, sir.

17 Q And criminal conspiracy, is that correct?

18 A What is that? Well I guess.

19 MR. BROOKS: May I approach the witness?

20 MS. FANT: Your honor, may I approach
21 please?

22 THE COURT: Yes.

23 (Whereupon, attorneys approach and confer
24 with judge.)

25 Q And my last question was about you having

Darrell Hawkins-cross by Brooks

1 a criminal conspiracy conviction on your record.

2 Is that true?

3 A I can't remember. I can't recall it.

4 Q Okay. So you're not denying you have it
5 on your record, you just don't remember?

6 A I don't remember.

7 MR. BROOKS: Your Honor, may I approach
8 and to refresh his memory?

9 THE COURT: Yes.

10 Q If you can, can you tell me what this is?

11 A Which part, the whole thing?

12 Q If you can tell me generally what it is.
13 If you can't tell me what it is, I understand.

14 A It is my record.

15 Q Now, do you see the second check mark?

16 A Yes, sir.

17 Q Does that have a criminal conspiracy
18 conviction on it? It is your record, isn't that
19 correct?

20 A Yes, sir.

21 THE COURT: You have to speak through the
22 microphone.

23 A Yes, sir.

24 Q So you do have a criminal conspiracy
25 conviction on your record?

Darrell Hawkins-cross by Brooks

1 A Yes, sir.

2 MR. BROOKS: I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. BROOKS: Your Honor, no other
5 questions.

6 THE COURT: Any redirect?

7 MS. FANT: Just briefly, Your Honor.

8 Redirect Examination by Ms. Fant:

9 Q Darrell, Mr. Brooks was asking you about
10 the criminal conviction you have. Was that as a
11 juvenile?

12 A Yes, ma'am.

13 Q Do you remember how old you were?

14 A No, ma'am. I know, I don't know. I know
15 I been a juvenile, 14, 15.

16 Q Have you been in any trouble since then?

17 A Yes, ma'am.

18 Q But have you been -- I guess have you been
19 convicted of anything?

20 A No, ma'am.

21 Q No convictions.

22 A No, ma'am.

23 MR. BROOKS: May we approach on that?

24 THE COURT: You may.

25 (Whereupon, the attorneys approach the

Darrell Hawkins-redirect by Fant

1 bench and confer with judge.)

2 MS. FANT: No more questions, Your Honor.

3 Recross Examination by Mr. Brooks:

4 Q Darrell.

5 A Yes, sir.

6 Q The state asked you have you been in

7 trouble before since then. And you said, "Yes,"

8 is that correct?

9 A Yes, sir.

10 Q What kind of trouble is that?

11 A Armed robbery.

12 Q Armed robbery with a deadly weapon?

13 A Yes, sir.

14 MS. FANT: Objection, Your Honor.

15 THE COURT: If that's the charge.

16 MS. FANT: That is not the charge.

17 THE COURT: The jury will -- well I am going to

18 allow you to question about that.

19 Q Anything else?

20 A At least one more. I can't remember

21 though. I can't remember.

22 Q Is it assault and battery with a high---

23 A Yes, sir.

24 Q ---and aggravated nature?

25 A Yes, sir.

Darrell Hawkins-recross by Brooks

1 Q That's it?

2 A Yes, sir, that's it.

3 Q So you have been in trouble before since
4 then, right?

5 A Yes, sir.

6 MR. BROOKS: Okay. No other questions.

7 THE COURT: Ms. Fant.

8 Redirect Examination by Ms. Fant:

9 Q Were you convicted of those charges?

10 A No, ma'am.

11 Q In fact they have been dismissed, weren't
12 they?

13 A I guess so. Yes, ma'am, I guess. I ain't
14 never went to court for them.

15 MS. FANT: Thank you.

16 THE COURT: Thank you.

17 MR. BROOKS: No other questions.

18 THE COURT: Thank you. You may step down.

19 MS. FANT: Your Honor, may he be excused?

20 THE COURT: Is there any objection to this
21 witness being excused?

22 MR. BROOKS: No, sir.

23 THE COURT: The witness is excused.

24 MS. FANT: Your Honor, the state calls Brandon
25 Taylor.

Darrell Hawkins-recross by Brooks

1 Brandon Taylor, being first duly sworn,
2 testified as follows:

3 THE CLERK: State your full name and spell your
4 last name for the record.

5 A Brandon Jermaine Taylor. T-A-Y-L-O-R.

6 Direct Examination by Ms. Fant:

7 Q Brandon, can you tell us where you live?

8 A

9 Q Are you from the Sumter area?

10 A Yes, ma'am.

11 Q Is in what is known as
12 the west side of Sumter?

13 A Yes, ma'am.

14 Q And do you have a nickname that people
15 know you by?

16 A Blue.

17 Q Did you know the victim in this case,
18 Mathew Horace or Bread?

19 A Yes, ma'am.

20 Q How did you know him?

21 A We was best friends. We grew up together.

22 Q And what name did most people call him?

23 A Cornbread.

24 Q Did they also call him Bread sometimes?

25 A Yes, ma'am.

Brandon Taylor-direct by Fant

1 Q And did you know the defendant in this
2 case, Rahim Carter?

3 A Yes.

4 Q How do you know him?

5 A We grew up together too.

6 Q And how long have you known him?

7 A Probably since middle school.

8 Q What nickname did you know him to go by?

9 A Rock and Rahxzilla.

10 Q And what was the relationship between
11 Bread and Rahxzilla?

12 A They were friends, and they used to rap
13 together.

14 Q Would you say they were close friends?

15 A Yes.

16 Q And you indicated that they rapped.
17 You're talking about the music rap CD?

18 A Yes.

19 Q And was there a time shortly before Bread
20 was shot, that he and Rahxzilla were not getting
21 along?

22 A Yes.

23 Q What can you tell us about that?

24 A They stopped getting along when Cornbread
25 and Rahxzilla, they beat up his friend, Chris.

Brandon Taylor-direct by Fant

1 And robbed Ca'brall Archie for his chain.

2 Q Was there also an issue that they were,
3 beefing about loyalties between you and Mark
4 McCoy?

5 A Yes.

6 Q What was that about?

7 A Me and, me and Mark McCoy had a little,
8 basically over a little drug territory. Who was
9 selling drugs where.

10 Q And Mark McCoy, what is he also known by?

11 A Wise.

12 Q And who was in Mark McCoy's group?

13 A Rock.

14 Q What about Chris Davis?

15 A Yeah, he was with them.

16 Q And Ca'brall Archie or D'Mo? And were
17 you -- do you recall being with Mathew on the
18 night of October 2nd 2007?

19 A Yes.

20 Q And how do you recall that day?

21 A We left from Brabham Street some time
22 during the day. And I was going to Camden, and he
23 wanted to go to his baby's mama's house in
24 Dalzell. And I dropped him off on my way to
25 Camden. And on my way back, I picked him up.

Brandon Taylor-direct by Fant

1 Q What kind of car were you driving?

2 A A white Charger.

3 Q A white Dodge Charger?

4 A Yes.

5 Q Was that your car?

6 A No.

7 Q Who did it belong to?

8 A Westley McFadden, I think. I think his
9 last was McFadden.

10 Q But you had just borrowed the car?

11 A Yeah.

12 Q Now at some point did you drive over to
13 ?

14 A Yes.

15 Q Who lives in that house?

16 A Booji and Fat Donnie.

17 Q Do you know Booji's real name?

18 A No.

19 Q What about Fat Donnie, do you know his
20 real name?

21 A No.

22 Q Do you know what his relationship is, or
23 what the relationship is between Fat Donnie and
24 Booji?

25 A Son and father.

Brandon Taylor-direct by Fant

1 Q And which one is the father?

2 A Booji.

3 Q So Fat Donnie would be his son?

4 A Yes.

5 Q And did the two of you -- who was with you

6 when you drove over to Booji's house?

7 A Just me and Bread.

8 Q And did you actually stop at Booji's

9 house?

10 A Yes.

11 Q Why did you stop?

12 A Because Tokie flagged us down.

13 Q And what did you do when he flagged you

14 down?

15 A We stopped, you know, just chilling out

16 there. Bread was talking to Courtney.

17 Q And where was the car at this time?

18 A In the driveway.

19 Q In whose driveway?

20 A Booji.

21 Q And who else do you remember seeing at

22 Booji's house?

23 A Sam, Tokie, Lil' Darrell. Bread's little

24 cousin, , and a couple of smokers. And

25 Booji and Courtney.

Brandon Taylor-direct by Fant

1 Q Now when say Sam, do you mean Sebastian
2 Jenkins?

3 A Yes, sir.

4 Q And, excuse me, Tokie, would be Larry
5 Cooper?

6 A Yes.

7 Q Now did you see the Defendant, Rahim
8 Carter there?

9 A Not when we pulled up.

10 Q Okay. What did you, when you first pulled
11 up, do you remember what time it was?

12 A I don't remember the time. It was first
13 dark.

14 Q First dark. You mean it was just starting
15 to get dark?

16 A Yes.

17 Q And could you see Booji's yard and
18 everybody?

19 A Yeah.

20 Q How could you see them?

21 A The street light right there.

22 Q Was the street light on?

23 A Yes.

24 Q And about how long was it that you all
25 were at Booji's house before Bread was shot?

Brandon Taylor-direct by Fant

1 A Probably about 5 or 10 minutes.

2 Q Now at some point did you see the
3 defendant?

4 A Yeah, he came walking up.

5 Q Where did he come walking from?

6 A On Salem Street direction.

7 Q And where did he walk to?

8 A And he was just walking past.

9 Q Do you mean past Booji's house?

10 A Yes.

11 Q And where was Bread at this time?

12 A Standing with everybody else on the
13 sidewalk.

14 Q And excuse me. And is that near the
15 roadway of Dingle?

16 A Yes, it's right there beside it.

17 Q What happened then?

18 A Bread saw Rock. And he was like, "What's
19 up Rock:" Rock, you know, said, "I am not
20 pressed. I ain't pressed for no words." Rock was
21 like, "What do you mean you ain't pressed for no
22 words." He said, "Just like I said, I ain't
23 pressed for no words."

24 Q What does that expression mean to you when
25 people use it on the street?

Brandon Taylor-direct by Fant

1 A I ain't come to talk.

2 Q And would it be fair to say that, "I am
3 here for action, not for talk?"

4 A Yes.

5 Q And after you heard him talk and say, "I
6 ain't pressed," what happened?

7 A They exchanged a few heated words, you
8 know, back and forth between each other.

9 Q Do remember Rock saying anything in
10 particular?

11 A He told him, he said, "Fuck you Bread."
12 And, you know, they had a little bit more words.
13 Bread, you know, Rock, he started to walk off.
14 Bread turned around to walk off. It looked like
15 it was about to be over. So I sat down in the
16 front seat of the passenger -- the driver's side
17 of the car. And we was getting ready to go. And
18 like a few seconds after I sat down, that's when
19 the window vice went in the back, back of Charger,
20 from a bullet coming from where Rock shot.

21 Q Okay. Was that the first gunshot?

22 A Yes.

23 Q Now did you actually see him, Rahxzilla
24 pull out the gun?

25 A No, I ain't see him pull the gun.

Brandon Taylor-direct by Fant

1 Q Well how did you know it was him shooting?

2 A Because I looked back when the first shot
3 come through the window where the bullets was
4 coming from.

5 Q And what did you see?

6 A I saw him shooting.

7 Q I will show you what's been marked for
8 identification as State's Exhibit 37. Do you
9 recognize those photographs?

10 A Yes. That's the Charger we was in.

11 Q Do they fairly and accurately show the
12 charger after the shooting that day; what it
13 looked like?

14 A Yes.

15 MS. FANT: Your Honor, at this time, I
16 would enter State's 37 into evidence.

17 THE COURT: Any objection from the
18 defense?

19 MR. BROOKS: No objection.

20 THE COURT: Without objection State's
21 Exhibit No. 37 is admitted in to evidence.

22 (Photograph of vehicle marked State's
23 Exhibit No. 37 into evidence.)

24 Q And in this lower photograph right here,
25 what in particular can you see about the back

Brandon Taylor-direct by Fant

1 window of the vehicle?

2 A The window is bust.

3 MS. FANT: Permission to publish, Your
4 Honor?

5 THE COURT: Yes.

6 Q So, Brandon, after the first gunshot, what
7 happened?

8 A I looked back and I saw Rock was shooting
9 over towards the car where Bread was at, and he
10 was walking back. And I got on the side of the
11 car, you know, to keep from getting hit.

12 Q And where was Bread when the shooting
13 started?

14 A On the other side of the car, the
15 passenger side.

16 Q Was he standing up, or was he in the car?

17 A He was walking back to the car.

18 Q And after the shooting started, and you
19 indicated you ducked down after you looked, did
20 you hear Bread say anything about the gunfire?

21 A Yeah. After the shooting stopped, I
22 started, you know, hollering his name. And he,
23 you know, he was yelling back, you know, "I am
24 hit. I am hit." And I came around, you know, to
25 the car, to the back side of the car, and then I

Brandon Taylor-direct by Fant

1 came around to the passenger side, and he was
2 laying there right in front of the passenger side
3 door. Like, kind of, when you open it, it is
4 open. He's laying right there.

5 Q And was that still in Booji's driveway?

6 A Yes.

7 Q And had y'all moved the car from when you
8 first drove in and parked it there?

9 A Nah.

10 Q And after you saw Bread lying there, did
11 you see the Defendant, Rahim Carter?

12 A Yeah, I looked over and he was running
13 through the park.

14 Q And did he say anything else at that time?

15 A No.

16 Q Now after you went and checked on Bread,
17 did he indicate to you that he had been shot?

18 A Yes. He said, "I am hit. It feels like I
19 am paralyzed."

20 Q What did you do?

21 A I said, well, you know, "Where are you hit
22 at."

23 Q And once you had talked to him about that,
24 did you stay around?

25 A No.

Brandon Taylor-direct by Fant

1 Q Why not?

2 A Because he told me to get from around
3 here, I wasn't there.

4 Q Why did he tell you that?

5 A So I wouldn't be involved.

6 MR. BROOKS: Objection, Your Honor.

7 THE COURT: Sustained, speculation.

8 Q What else did he tell you about that, "to
9 get?"

10 A What else did he do what?

11 Q When he told you that? Let me rephrase.
12 When he told you that.

13 A Yeah.

14 Q What did that mean to you?

15 A To get from around here, because the
16 police was coming. You wasn't here.

17 Q Now after that happened, and what did you
18 do?

19 A I left and took the car to Wesley, and
20 told, you know, to get rid of the car for the
21 night. You know, "I'll pay for, you know, the
22 window being damaged tomorrow. But, Get rid of it
23 tonight. Take it and put it up."

24 Q And at that point, why, did you want him
25 to hide the car?

Brandon Taylor-direct by Fant

1 A Because we didn't want the police
2 involved.

3 Q And why is that?

4 A Because we wanted to handle it ourselves.

5 Q Is the person you know as Rahxzilla or
6 Rahim Carter, did you see him in the courtroom
7 today?

8 A Yes.

9 Q Can you tell us where he is sitting?

10 A Right there.

11 MS. FANT: Let the record reflect he's
12 pointed to the defendant at defense counsel table.

13 THE COURT: The record will so indicate
14 that the witness pointed to the defendant.

15 Q Now, after the shooting, did you ever talk
16 to Rahxzilla again?

17 MR. BROOKS: Objection, Your Honor. If
18 you recall, I had a motion to take up in regards
19 to this witness.

20 THE COURT: Step over here.

21 (Whereupon, attorneys approach and confer
22 with judge.)

23 THE COURT: Ladies and gentlemen, we have
24 to take up some issues of law. I am going to let
25 you go and have a break. Do not discuss the case

Brandon Taylor-direct by Fant

1 among yourselves or with anything else while you
2 are in there.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Mr. Brooks. You can place
6 your motion on the record.

7 MR. BROOKS: Judge, our motion is that,
8 and obviously this is based on some of the prior
9 testimony that is obviously on the record. If you
10 will recall, Mr. Taylor testified that shortly
11 after his incident, or shortly before the end of
12 2007, He didn't want to involve the police;
13 specifically, Detective Irene Culick. My client
14 was in jail, arrested ever since the Thanksgiving,
15 the day before Thanksgiving November of 2007.

16 THE COURT: Right.

17 MR. BROOKS: The conversation that
18 Mr. Taylor is going to talk about, I believe, is
19 kind of based on the prior testimony occurring in
20 late spring, early summer. He testified that he
21 had gone to Lexington in July of 2008. But it was
22 summertime based on his testimony.

23 Our position is that he may have become an
24 agent of the state. And obviously by
25 participating in any type of conversation with

1 Mr. Carter who was appointed a Public Defender
2 through the Public Defender's Office at that time.
3 And then obviously we would not be able obviously
4 to patrol that situation. And, of course, there
5 is no written statement, and never was a written
6 statement by Mr. Taylor. And all I have got is
7 prior testimony he had given to the court. And he
8 is getting ready to go in to conversations he had
9 with Mr. Carter. If he had any type of contact
10 that would substantiate him being an agent then
11 obviously we would have grounds to have that
12 conversation we think he may have had with Rahim
13 Carter, to be stricken.

14 THE COURT: You want to question this
15 witness briefly and Ms. Culick?

16 MR. BROOKS: That's correct.

17 MS. FANT: Your Honor, I would just ask
18 one thing. He indicates that this is based on
19 some prior testimony. I would ask him to show me
20 what he is talking about. I don't recall that
21 testimony.

22 THE COURT: I don't remember anything
23 about that.

24 MR. BROOKS: Your Honor, it was in the
25 second tape, July 28th, side A. If you go back to

1 the counter is the only way I could keep track of
2 it. It is somewhere around 514. And it occurred
3 during my direct examination of Mr. Taylor where
4 he talked about, he had first talked about---

5 THE COURT: Well I mean I remember him
6 talking about he talked to him in jail.

7 MR. BROOKS: He also talked about, he
8 said, I went, "I went to the police voluntarily.
9 I went to Irene." This is Irene.

10 THE COURT: Right.

11 MR. BROOKS: So obviously he went to
12 Ms. Irene. He wasn't in jail at the time. And
13 that's what he testified to.

14 MS. FANT: Yeah, but because she had asked
15 him. She asked him to come give a statement.
16 And that would have led to show that they didn't
17 have to go corral him. There was nothing about
18 him, he did not testify---

19 THE COURT: I don't remember anything
20 suggesting that he was an agent of the state.

21 MS. FANT: Absolutely not.

22 MR. BROOKS: But my point is, of course,
23 they are not testifying about this. But my point
24 is, he went to Ms. Culick first. He was out in
25 the street. Our position is that, that I should

1 be allowed to ask questions.

2 THE COURT: If you would like to ask him
3 questions. I will let Ms. Culick be available as
4 well.

5 (Whereupon, the following takes place
6 outside the presence of the jury.)

7 Cross Examination by Mr. Brooks:

8 Q Mr. Taylor, you did go to Ms. Irene Culick
9 before you were incarcerated, is that correct?

10 A Yeah.

11 Q Do you remember exactly when you were
12 incarcerated? I am trying to establish a time
13 frame here.

14 A I don't remember the exact date.

15 Q Do you remember if it was January,
16 February of 08? December 07?

17 A It was June when I got arrested.

18 Q It was June.

19 A For the state. But I went Federal in
20 July.

21 Q Okay. Do you -- when did you talk to Ms.
22 Irene?

23 A It was a little before I got arrested at
24 the state.

25 Q It was before you got arrested?

Brandon Taylor-cross by Brooks

1 A Yeah.

2 Q And then you got arrested. Was it
3 shortly before you got arrested?

4 A Yes.

5 Q And then you went to jail, is that right?

6 A Yes.

7 Q And then this is when the conversation
8 took place with Rahim at the Sumter County
9 Detention Center, is that correct?

10 A Yes.

11 Q And then you got picked up on Federal
12 charges. And you were sent to Lexington County,
13 is that correct?

14 A (Whereupon, no response.)

15 Q And do you recall what Ms. Culick told you
16 in your conversations with her?

17 A She ain't tell me nothing. She was asking
18 me what happened.

19 Q She was asking you what happened?

20 A Yes.

21 Q Did she indicate to you in any way, shape
22 or form that Rahim was now in jail?

23 A No.

24 Q How did you find out he was in jail?

25 A It was all through the street he was in

Brandon Taylor-cross by Brooks

1 jail.

2 Q When did you discover that?

3 A As soon as he went to jail.

4 Q And you never in any way, did you,

5 rephrase that. Do you recall whether or not it

6 was, you said it was shortly after you talked to

7 Ms. Irene. That's when you went to jail in Sumter

8 County?

9 A Yes, it was a little bit before I went to
10 jail.

11 Q Do you recall everything that you told

12 Ms. Irene?

13 A Yes.

14 Q What exactly did you tell her?

15 A What I just told you all what happened.

16 Q About Rahim coming down Salem and turning

17 on Dingle, is that correct?

18 A Yes.

19 Q Did you tell her that you thought about

20 trying to get Rahim---

21 MS. FANT: Your Honor,---

22 Q ---back for that?

23 MS. FANT: ---at this point, I would

24 object. This has nothing to do with the

25 conversation about becoming an agent of the state.

Brandon Taylor-cross by Brooks

1 THE COURT: I think that's what he is
2 leading to. I am going to overrule your
3 objection.

4 Q You can answer. I mean, did you tell Ms.
5 Irene anything about wanting to get Rahim back?

6 A Yeah, that was the initial reason why I
7 didn't say nothing at first.

8 Q You told her that?

9 A Yes.

10 Q What else did you tell her after that?

11 A Just what happened.

12 Q I mean, after you told her, we want to get

13 -- "I want to get Rahim back?"

14 A Yes.

15 Q And did you tell her how you wanted to get
16 Rahim back?

17 A We called him, and he was shooting.

18 Q Did you tell her that?

19 A Yes.

20 Q You told Irene that?

21 A Yes.

22 Q What else did you tell her after that?

23 A What happened at the scene.

24 Q Okay. Let me back up. Did you tell her
25 about what happened at the scene? You told her

Brandon Taylor-cross by Brooks

1 that first, isn't that correct?

2 A All that went down during that
3 conversation.

4 Q And then you told her about, "We want to
5 get Rahim back," right?

6 A Yeah. And she asked me why. And I didn't
7 say nothing at the beginning.

8 Q And then you told her that you saw him,
9 and he was shooting.

10 A Yes.

11 Q Did you say anything after that about how
12 you wanted to get Rahim back?

13 A I don't get what you are trying to say.

14 Q You told what happened on Dingle Street.
15 Then you also told her that we were going to
16 handle it ourselves. We want to get Rahim back,
17 isn't that correct?

18 A Yes.

19 Q And you told her that the way you were
20 going to get him back if you saw him, you were
21 going to shoot him?

22 A Yeah.

23 Q Did you tell her anything else after that
24 about how you were going to get Rahim back?

25 A I just told you how were going to get him

Brandon Taylor-cross by Brooks

1 back. So what are you-----

2 Q Did you say anything else about how you
3 were going to get him back other than wanting to
4 shoot him?

5 A How else are you going to get him back?

6 Q I don't know. I'm asking you. You
7 promised to go in and talk to him, and tell her of
8 this confession?

9 THE COURT: He's answered. You can't
10 testify for him.

11 MR. BROOKS: No, I understand.

12 THE COURT: You asked and he's answered.

13 MR. BROOKS: But he asked me a question:
14 "How else did I get him back." And I posed that,
15 and that's my question. Now he can answer it if
16 he knows the answer, or if he wants to answer it.

17 A I told you how we were going to get him
18 back.

19 Q Did you talk about any other way of
20 getting him back other than shooting him?

21 A No.

22 MR. BROOKS: No other questions of this
23 witness.

24 THE COURT: Ms. Fant.

25 MS. FANT: No other questions of this

Brandon Taylor-cross by Brooks

1 witness, Your Honor. Detective Culick is here and
2 available..

3 THE COURT: Do you want to call
4 Ms. Culick?

5 MR. BROOKS: Yes, sir.

6 THE COURT: You may step down..

7 Detective Culick, Being first
8 duly sworn, testified as follows:

9 THE CLERK: State your full name and
10 spell your last name for the record.

11 A It's Irene Culick. C-U-L-I-C-K.

12 Direct Examination by Mr. Brooks:

13 Q How are you doing today?

14 A Good.

15 Q Do you recall when you talked to Brandon
16 Taylor?

17 A Shortly after the crime occurred. It was
18 in the first week during this investigation after
19 this -- after this shooting incident took place.

20 Q So this would have been in October?

21 A Yes, sir.

22 Q And can you tell us what basically was in
23 that conversation?

24 A Well we were trying to talk to all the
25 witnesses that we knew were there when the

Detective Culick-direct by Brooks

1 shooting took place. And we knew that Brandon
2 Taylor that people called Blue, was there that
3 night and was actually with the victim. So
4 Brandon contacted me at the law enforcement center
5 and asked if we could meet somewhere to talk. He
6 did not want to come down to the law enforcement
7 center to be seen with us. So he picked location,
8 behind a business here in Sumter.

9 Myself and my partner at the time,
10 Detective Pottleiger, who works for Berkeley County
11 now, went to meet with him. He had his
12 grandmother there also. And we sent them---

13 Q Hold on a second. You said, he. Are you
14 talking about Brandon?

15 A Brandon. His grandmother was there when
16 we pulled up with him at the location behind the
17 business. She stepped out of the vehicle. And we
18 got in the vehicle and spoke with him.

19 Q Is this the only time you talked to
20 Brandon prior to him getting incarcerated?

21 A Yes.

22 Q I beg the Court's indulgence. You did not
23 talk to him in June of 2008?

24 A June of 2008? What was June of 2008?

25 Q I mean, you did -- you didn't have any

Detective Culick-direct by Brooks

1 conversation with him in June of 2008?

2 A In reference to?

3 Q Rahim carter.

4 A No. I was not the lead investigator on
5 this case. It was Detective Lyons. I assisted
6 with talking with witnesses initially that were
7 involved in it, just to help them out. Because
8 normally when we have a shooting that results in a
9 death, then all of us pull together and help
10 interview witnesses. But no, I have not talked to
11 them since then until this time, this trial time.

12 MR. BROOKS: No other questions, Your
13 Honor.

14 THE COURT: Thank you. Ms.?

15 MS. FANT: Just briefly.

16 Cross Examination by Ms. Fant:

17 Q Detective Culick, had Mr. Carter even been
18 arrested when you talked to Brandon?

19 A No, he had not.

20 Q Did you have any conversation with Brandon
21 about him going in to the jail and trying to
22 obtain some sort of conversation with Mr. Carter?

23 A No, I did not.

24 MS. FANT: Thanks.

25 THE COURT: Thank you, you may step down.

Irene Cullick-cross by Fant

1 A Thank you.

2 THE COURT: Why don't we all take a
3 5-minute break. And we will come back and
4 continue.

5 (Whereupon, the following takes place
6 outside the presence of the jury.)

7 MR. BROOKS: Your Honor, our position is
8 that Mr. Taylor said shortly before the month of
9 June, he had this conversation with Ms. Cullick.
10 Even though I understand the detective testified
11 she talked to him somewhere in the month of
12 October. It is our position that we want Your
13 Honor to consider whether or not Ms. Fant on
14 behalf as an agent, and having this conversation.
15 It's not in dispute that obviously Mr. Carter was
16 locked up. Obviously we would have a public
17 defenders whether it's me or Ms. Stevens or other
18 various numbers of public defenders. But that's
19 the position we want.

20 THE COURT: Okay. But that is
21 speculation. There is no evidence whatsoever in
22 the record that he was an agent of the state
23 during that time. So I am going to deny the
24 motion. Thank you. Let's take a 5-minute break.

25 (Whereupon, the court takes a short

1 break.)

2 THE COURT: You may bring the jury.

3 (Whereupon, the following takes place
4 within the presence of the jury.)

5 Direct Examination continues by Ms. Fant:

6 Q Now Brandon, I believe we were talking
7 about after Bread got shot and you had talked to
8 Rahxzilla again after that. Did you have an
9 opportunity to talk to him?

10 A Yes, in Sumter County.

11 Q And what happened there that he told you
12 about what was going on?

13 A First, he sent me a note.

14 Q He sent you a note. What did that note
15 say?

16 A Asking me, you know, am I going to
17 testify, you know, against him. And, you know,
18 and he just trying to get me not to testify. If I
19 didn't testify against him, he would be all right
20 in the case. He would be able to beat it.

21 Q And did he also indicate, did he ask about
22 anything else, or was it asking about you?

23 A He asked me what Sam was going to do.

24 Q And who is Sam?

25 A Sebastian Jenkins.

Brandon Taylor-direct by Fant

1 Q And did he tell you anything else about
2 testifying when he was talking to you?

3 A No, what do you mean?

4 Q Well I guess I should rephrase that. You
5 indicated at first he sent you a note.

6 A Yes.

7 Q Did at some point he talk to you in
8 person?

9 A Yeah, he got the CO's to come down and
10 walk me to my cell.

11 Q And what did he say to you at that time?

12 A He was just basically trying to get me,
13 you know, get me not to testify against him.

14 Q And what did you tell him when he asked
15 you that?

16 A I told him I wasn't going to write a
17 statement, you know, on his behalf. I wasn't
18 going to take sides with him over Bread.

19 Q And what did he say when you told him
20 that?

21 A He ain't really say too much more about
22 it, you know, with me and him. He asked what I
23 think Sam is going to do. Is Sam going to testify
24 against him. Do I think Sam is going to testify.

25 Q Did he actually tell you what he had done

Brandon Taylor-direct by Fant

1 when Bread got shot?

2 A Yeah.

3 Q What did he say then?

4 A He told me, you know, "I didn't mean to do
5 that."

6 Q Did he say anything else?

7 A He didn't say nothing else. Nothing but
8 besides trying to get me, you know, not to
9 testify.

10 Q Did he talk to you about Christopher Davis
11 or Lil' Chris?

12 A Oh, yeah, he said, you know, he was upset
13 because Chris got pistol whipped and beat up real
14 bad by Bread and Roger. And, you know, Chris was
15 his little partner. He was about to put him down
16 and his gang. And he was upset over that.

17 Q And other than talking to you about your
18 testimony and what you were going to say, he
19 didn't say anything else?

20 A No.

21 Q And how did you feel about what he was
22 telling you?

23 A I say, at first, you know, I felt bad
24 about how the situation went down, because we all
25 was friends. Because he wasn't talking about, you

Brandon Taylor-direct by Fant

1 know, he was sorry about the situation. The only
2 thing he was worried about was how he was going to
3 beat it. He wasn't trying to take responsibility
4 for what he did. He was trying to beat the
5 charge.

6 Q And how do you feel about the defendant
7 now?

8 A I done forgive him for it.

9 Q Now, Brandon, you have been convicted of
10 Federal drug charges, is that right?

11 A Yes, ma'am.

12 Q And as a part of that process, did you
13 enter into a Plea Agreement with the Federal
14 government?

15 A Yes.

16 (Plea agreement marked State's Exhibit No.
17 39 marked for id. only.)

18 Q Brandon, I show you what has been marked
19 as State's Exhibit No. 39. Do you recognize that
20 document?

21 A Yes.

22 Q And how do you recognize it?

23 A It is the Plea Agreement I signed.

24 MS. FANT: Your Honor, at this point, we
25 would offer State's 39 into evidence.

Brandon Taylor-direct by Fant

1 THE COURT: Any objection, Mr. Brooks?

2 MR. BROOKS: No, objection.

3 THE COURT: State's Exhibit No. 39

4 admitted into evidence without objection.

5 (Plea Agreement marked State's Exhibit No.

6 39 into evidence.)

7 Q Now as far as the plea agreement, are you
8 facing a lot of time in prison?

9 A Yes.

10 Q But in light of the Plea Agreement, did
11 the Federal Government promise you anything in
12 that agreement?

13 A No.

14 Q What did you basically agree to and the
15 Federal Government agree to?

16 A I would tell the truth about what they
17 asked me. And things I was involved in.

18 Q And what happens if you don't tell the
19 truth?

20 A I get the maximum sentence on my time.
21 And I get a charge for lying.

22 MS. FANT: Please answer questions
23 Mr. Brooks may have.

24 THE COURT: Mr. Brooks.

25 Cross Examination by Mr. Brooks:

Brandon Taylor-direct by Fant

1 Q Brandon, you go by Blue, is that correct?

2 A Yes.

3 Q Now ms. Fant just asked you some things
4 about your Plea Agreement. You have pled guilty
5 go Federal drug charges, is that correct?

6 A Yes.

7 Q And you are waiting to be sentenced, is
8 that correct?

9 A Yes.

10 Q And you also plead guilty to Count 2,
11 which also talks about you having a gun, isn't
12 that correct?

13 A Yes.

14 Q Part of your agreement talks about getting
15 a, "downward departure," isn't that correct?

16 A Yes.

17 Q Downward departure means getting a lesser
18 sentence, isn't that correct?

19 A Yes.

20 Q A lesser sentence means less time, isn't
21 that correct?

22 A Yes.

23 Q And you do want less time when you get
24 sentenced, isn't that correct?

25 A Yes, sir, I do.

Brandon Taylor-direct by Fant

1 Q And part of your sentence you are looking
2 at a minimum of 10 years and a maximum of life,
3 isn't that correct?

4 A Yes.

5 Q And according to your Plea Agreement, the
6 government is the one that has to ask the court
7 for that "downward departure," isn't that correct?

8 A Yes, sir. The government asks and then my
9 lawyer has got to ask.

10 Q Well I want to give you this. Ms. Fant
11 has already moved this in to evidence. This is
12 your Plea Agreement, isn't that correct?

13 A Yes.

14 Q Paragraph 10, isn't that correct?

15 A Yes.

16 Q The 4th line talks about the government
17 agrees to move for a downward departure.

18 A Yes.

19 Q A reduction in your sentence.

20 A Yes.

21 Q And that's based on you getting a
22 substantial assistance, isn't that correct?

23 A Yes.

24 Q And that means, substantial assistance
25 means cooperate, isn't that correct?

Brandon Taylor-direct by Fant

1 A Yes.

2 Q And Ms. Fant also asked you about this
3 agreement hinders on you being able to tell the
4 truth. Isn't that correct?

5 A Yes.

6 Q Okay. And also if you lie, this agreement
7 is null and void. And they can go for the
8 maximum?

9 A Yes.

10 Q And the maximum is life.

11 A Yes.

12 Q Okay. Now can you read pretty good?

13 A Yes, sir, I can.

14 Q Can you read Paragraph 8 of the Plea
15 Agreement?

16 A It says, "The defendant agrees to submit
17 to a polygraph examination."

18 MS. FANT: Objection. Well never mind.

19 MR. BROOKS: Well she put it in evidence.

20 THE COURT: She has withdrawn her
21 objection.

22 Q Go ahead.

23 A "The defendant agrees to such polygraph
24 examination as may be requested by the government
25 and agrees that any such examination shall be

Brandon Taylor-direct by Fant

1 performed by a polygraph examiner selected by the
2 government. The defendant further agrees that his
3 refusal to take or his failure to pass any such
4 polygraph examination to the government
5 satisfaction will result at the Government's sole
6 discretion and the obligation of the Government
7 within the government becoming null and void."

8 Q And you, and you have given a prior
9 statement under oath about this situation. Isn't
10 that correct?

11 A Yes.

12 Q You have done that before, isn't that
13 correct?

14 A Yes.

15 Q Have you been given a polygraph about
16 that?

17 A No.

18 MS. FANT: Your Honor, I would object to
19 that. That's irrelevant. It is not part of the
20 plea agreement.

21 THE COURT: You can ask if he has been
22 given one.

23 MR. BROOKS: She put it into evidence. I
24 am sorry, judge.

25 Q Have you been given a polygraph?

Brandon Taylor-direct by Fant

1 A No.

2 Q In addition, you have a charge of
3 possession of a pistol by somebody under 21, isn't
4 that correct? A conviction, isn't that correct?

5 A Yes.

6 Q And you do carry a gun, don't you?

7 A Yes.

8 Q All kinds of guns, right?

9 A Yes.

10 Q Okay. At some point and time you have had
11 a 9 millimeter, isn't that correct?

12 A Yeah, I've have had a few.

13 Q Had a few?

14 A Yes.

15 Q Okay. You also have a conviction for
16 assault and battery of a high and aggravated
17 nature?

18 A Yes.

19 Q Now and in a prior sworn statement about
20 this incident, you talked about, Toke, Lil' Virg
21 and Sam and some smokers being in the area where
22 you were on this October 2nd 2007, isn't that
23 correct?

24 A Yes.

25 Q And in that statement you didn't mention

Brandon Taylor-direct by Fant

1 anything about Darrell, isn't that correct? Lil'

2 D.

3 A I said Lil' D was there.

4 Q You said Lil' D was there?

5 A I'm sure I said Lil' D was there.

6 Q In your prior statement---

7 A What do you mean, prior to today or when I
8 talked to him?

9 Q You have given a prior statement under
10 oath about what took place on October 2nd.

11 A Yes.

12 Q In that prior statement, you don't mention
13 anything that Lil' D being there?

14 A I told them Lil' D was there.

15 Q You told him Lil' D was there?

16 A Yes.

17 MR. BROOKS: Your Honor, may we approach?

18 THE COURT: You may.

19 (Whereupon, attorneys approach and confer
20 with judge.)

21 THE COURT: Ladies and gentlemen, I am
22 going to ask you to step out for just a minute.
23 As always, Please do not discuss the case. Do not
24 discuss it with anyone.

25 (Whereupon, the following takes place

Brandon Taylor-direct by Fant

1 outside the presence of the jury.)

2 THE COURT: Mr. Brooks.

3 Cross Examination by Mr. Brooks:

4 Q Brandon, on last week, is it safe for me
5 to say---

6 THE COURT: You can say, tell us, to make
7 that and any other point.

8 MR. BROOKS: I understand. I just wanted
9 to make sure.

10 (Whereupon, the following takes place
11 outside the presence of the jury.)

12 Q Last week when asked about who all was in
13 the driveway, do you recall saying under oath
14 with, not necessarily this lady, but another lady,
15 who was taking everything down last week, you had
16 said, "Toke was around. Virg, Lil' Virg, Sam and
17 some smokers. You and Bread." You didn't say
18 anything last week where, when you were sitting on
19 that stand about Lil' D being there, did you?

20 A I can't remember---

21 Q Okay.

22 A ---exact. But I also told you, you know,
23 there was a bunch of people out there, and I
24 couldn't name everybody.

25 Q So what you're saying now, but you do

Brandon Taylor-cross by Brooks

1 acknowledge that what you said last week about who
2 was there, what you're saying now may be
3 inconsistent as far as who all you named.

4 MS. FANT: Objection, Your Honor. He's
5 asking him to reach a legal conclusion about
6 inconsistencies.

7 THE COURT: Right. But that's...

8 Q Did you say anything last week about Lil'
9 Darrell being there?

10 A I don't remember.

11 MR. BROOKS: Judge, it's our position that
12 we should be able cue it up. Because he may be
13 able---

14 THE COURT: Put it up. Do you know where
15 it is at, cue it up.

16 MR. BROOKS: Where is the tape recorder I
17 had yesterday?

18 MS. FANT: Judge, if he had a statement,
19 he could refresh his memory. Your Honor, could I
20 ask one thing that might make that unnecessary?
21 The state's position would be if he says he
22 doesn't remember, that that is consistent. He has
23 to deny that he---

24 THE COURT: You may want to ask him that.

25 MS. FANT: And so he can ask him, and he

Brandon Taylor-cross by Brooks

1 says, "I don't remember." That would be the end
2 of it.

3 MR. BROOKS: But then if that's the case,
4 then I have the opportunity to refresh his memory.

5 MS. FANT: No, because it is not
6 inconsistent.

7 THE COURT: It is not inconsistent. You
8 can ask him that.

9 MR. BROOKS: Make sure I am clear. Ask
10 him what, judge?

11 THE COURT: Ask him if Lil' D was there as
12 well. I mean that's---

13 Q Did you say last week in this courtroom
14 when asked about who was there, did you say Lil' D
15 was there?

16 A I can't remember.

17 MR. BROOKS: If he can't remember, I have
18 the opportunity to refresh his memory. If I can
19 be able to show him and say, "Do you recall saying
20 yeah or nay."

21 MS. FANT: Not as a prior inconsistent
22 statement. If he had a statement, he can refresh
23 his memory.

24 THE COURT: But there is no statement,
25 Mr. Brooks.

Brandon Taylor-cross by Brooks

1 MR. BROOKS: There is a statement. There
2 is the testimony---

3 THE COURT: I'll let you listen to it on
4 the tape. Cue it up right now. It needs to be
5 relevant.

6 MR. BROOKS: Judge, it is relevant,
7 because Lil' D is a fact witness that has already
8 testified to being there. He doesn't say anything
9 in his prior statement about that.

10 THE COURT: Cue the spot you are referring
11 to.

12 (Whereupon, the tape is played in open
13 court.)

14 Q Now do you remember saying that last week?

15 A Yes, that's last week.

16 Q That's correct.

17 A Yeah.

18 Q You do agree that you don't mention
19 anything about Lil' Darrell being there when you
20 came up here last week.

21 A Yeah.

22 Q That's so now you understand you did under
23 a prior statement under oath, you didn't say
24 anything about Lil' Darrell being there.

25 A Yeah.

Brandon Taylor-cross by Brooks

1 MR. BROOKS: Okay. So I guess my
2 position, I would be able to ask that.

3 THE COURT: You can ask him about that.

4 MR. BROOKS: In the presence of the jury.

5 THE COURT: Correct. Let's bring the jury
6 back in. Don't ask him where he heard it from.

7 MS. FANT: Can you just explain to
8 Mr. Taylor what is meant by the prior sworn
9 statement?

10 THE COURT: Mr. Taylor, you testified in
11 court last week in this courtroom. He's going to
12 ask you about a prior statement under oath. You
13 are not to mention that it was in this courtroom.
14 He's just going to ask you the generalities about
15 did you give a statement. Hold the jury one
16 second. Without referring to this trial being
17 last week.

18 MS. FANT: Thank you, Your Honor.

19 (Whereupon, the following takes place
20 within the presence of the jury.)

21 THE COURT: Mr. Brooks, you may continue
22 on.

23 Cross Examination by Mr. Brooks:

24 Q Brandon, in a prior statement under oath,
25 you recall not mentioning anything about Lil' D or

Brandon Taylor-cross by Brooks

1 Darrell being there, isn't that correct?

2 A Yes.

3 Q Now you also talked about being, I am
4 sorry. You also talked about being at the
5 detention center with my client, is that correct?

6 A Yes.

7 Q And you talked about, you said that he
8 sent you a note telling you not to testify, isn't
9 that correct?

10 A Yes.

11 Q Did you, have you every given the note to
12 the police?

13 A No.

14 Q You said a CO let him out to come talk to
15 you, is that correct?

16 A Yes.

17 Q And you said, I believe, these
18 conversations occurred with just you and him, is
19 that correct?

20 A Yes.

21 Q With nobody else around?

22 A No.

23 Q Okay. And some time thereafter, you got
24 sent to Lexington as a part of the Federal stuff,
25 is that right? So you were no longer here.

Brandon Taylor-cross by Brooks

1 A No.

2 Q But there was nobody else around to
3 witness or be a part of these conversations with
4 you and Rahim, is that correct?

5 A No.

6 MR. BROOKS: No other questions, judge.

7 THE COURT: Thank you. Any redirect?

8 MS. FANT: No, sir, Your Honor. May Mr.
9 Taylor be excused?

10 THE COURT: Yes. Any objection to
11 Mr. Taylor being excused?

12 MR. BROOKS: No objection, Judge.

13 THE COURT: Thank you. You may step down.

14 MS. FANT: Your Honor, at this time, the
15 state would call Sebastian Jenkins.

16 Sebastian Jenkins, after being duly
17 sworn, testified as follows:

18 THE CLERK: State your full name and spell
19 your last name for the record.

20 A Sebastian Jenkins. J-E-N-K-I-N-S.

21 Direct Examination by Ms. Fant:

22 Q Could you tell us, do you live in the
23 Sumter area?

24 A Yes, ma'am.

25 Q How long have you lived here?

Sebastian Jenkins-direct by Fant

1 A All my life.

2 Q Where do you work?

3 A At Santee Lynches Housing Development.

4 Q Do you have a nickname that you go by?

5 A They called me Sam.

6 Q Now did you know Bread, the victim, in

7 this case?

8 A Yes, ma'am.

9 Q How did you know him?

10 A We all grew up together.

11 Q Did you also know the defendant, Rahim

12 Carter?

13 A Yes, ma'am.

14 Q And how did you know him?

15 A The same way. We all grew up together.

16 Q What other nicknames do you know the

17 defendant to go by?

18 A Rock, Rahxzilla. That's it.

19 Q Now when you were growing up, were all of
20 you friends?

21 A Yes, ma'am.

22 Q Now, I am going to show you what has been
23 marked for identification as State's Exhibit No.

24 1. Without saying what is in that picture, do you
25 recognize it?

Sebastian Jenkins-direct by Fant

1 A What do you mean?

2 Q Do you know who that is in that picture?

3 A Yes, ma'am.

4 Q Okay. And is this an accurate picture of
5 what those two people look like?

6 A Yes, ma'am.

7 MS. FANT: Your Honor, at this time I
8 would offer State's No. 1 into evidence.

9 THE COURT: Any objection?

10 MR. BROOKS: No objection.

11 THE COURT: Without objection, State's
12 Exhibit No. 1 is admitted in to evidence.

13 Q Now, Sam, I would ask you to take a look
14 at this picture, and just tell the jury who are
15 the two people in the picture.

16 A Rahim and his brother.

17 Q By Rahim, is that Rahxzilla the defendant?

18 A Yes, ma'am.

19 Q And which one is him?

20 A The one on the left-hand side.

21 Q The one at the bottom left of the picture?

22 A Yes, ma'am.

23 Q Okay. The other one is his little
24 brother?

25 A Yes, ma'am.

Sebastian Jenkins-direct by Fant

1 MS. FANT: Permission to publish, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 Q On October 2nd 2007, when Bread got shot,
5 where were you?

6 A I was next door standing in the driveway.

7 Q Next door to who?

8 A The house where the incident took place.

9 Q And whose house is that?

10 A A fellow we call Booji.

11 Q And is that house on Dingle Street?

12 A Yes, ma'am.

13 Q And what were you doing?

14 A Just hanging out.

15 Q Were there a lot of people out there?

16 A Yeah, At Booji's house there was a few
17 head of people. Several head of people.

18 Q Who do you remember seeing drive up?

19 A I remember Bread and Blue. Brandon drove
20 up in a white Dodge.

21 Q And who was driving the car?

22 A Brandon.

23 Q And do you recall what time it was?

24 A It was like right at dark. So I know it
25 couldn't have been no later than 9 or 10 o'clock.

Sebastian Jenkins-direct by Fant

1 It couldn't have been no later.

2 Q And could you still see around that whole
3 area?

4 A Yes, ma'am.

5 Q And why is that? Why could you see?

6 A They had street lights out there.

7 Q And were they working?

8 A Yes, ma'am.

9 Q And what kind of car did Blue and Bread
10 drive up in?

11 A It was a Dodge Magnum or a Charger. One
12 of them two. It was one of them.

13 Q And where did they park when they got
14 there?

15 A In Booji's driveway.

16 Q And about how long were they there before
17 the shooting started?

18 A Only for like 10/15 minutes. It wasn't
19 long at all.

20 Q Now did you see the defendant come up
21 Dingle Street at some point?

22 A Yes, ma'am.

23 Q What did you, where did you see, what
24 direction did you see him coming from?

25 A From like the Salem Street area.

Sebastian Jenkins-direct by Fant

1 Q And was he walking towards Wright?

2 A Yes, ma'am.

3 Q And did you remember what he was wearing?

4 A I can't exactly tell you what it was. But
5 it was like dark clothes.

6 Q And were you concerned when you saw him?

7 A Yeah, when I seen him, I just left you
8 know. Ran off.

9 Q Why is that?

10 A Because it was already in the area that
11 they had a beef---

12 MR. BROOKS: Your Honor, ---

13 A ---and I know they was over there.

14 THE COURT: There is an objection. What
15 is your objection?

16 MR. BROOKS: Objection, speculation. I
17 saw him there.

18 MS. FANT: Your Honor, that's -- he's
19 giving his reasons for why he ran off. It doesn't
20 even necessarily have to be true, but if what he
21 believes he can tell us.

22 THE COURT: He can testify. Overruled.

23 Q And why did you run?

24 A Because I knew they had a beef. It was
25 already in the air.

Sebastian Jenkins-direct by Fant

1 Q What do you remember about what happened?

2 A That night, after I ran off, I just heard
3 some arguing. And like as soon as the argument
4 was over, I heard several shots.

5 Q Was the arguing loud?

6 A Yeah, it loud enough so I could hear. I
7 mean because I was already running. And I heard
8 it.

9 Q And did the arguing start before or after
10 you saw the defendant coming up the street?

11 A After.

12 Q And after you heard the gunshots, what did
13 you do?

14 A Well I waited until they cleared. And I
15 ran to Salem Street, and I came back up. And I
16 seen Bread laying in the driveway.

17 Q About how long was this after the
18 shooting?

19 A In minutes, like two or three minutes,
20 because I didn't get far.

21 Q Was the defendant Rahxzilla there when you
22 got back?

23 A No, ma'am.

24 Q And you indicated you saw Bread laying in
25 the driveway?

Sebastian Jenkins-direct by Fant

1 A Yes, ma'am.

2 Q Did you go over to him?

3 A Nah, I couldn't take it. I couldn't look
4 at him.

5 Q Did you at that point stay around and tell
6 law enforcement what happened?

7 A No, ma'am. I didn't stay around. I heard
8 the sirens coming and I left.

9 Q Why did you leave at that point?

10 A Because I really didn't want to be in it.
11 I really didn't.

12 Q Did you want to come to court today?

13 A Did I want to come?

14 Q Are you happy about being here?

15 A Not necessarily.

16 Q Not necessarily.

17 A No, ma'am.

18 Q Are you a little nervous about being here?

19 A Yeah, somewhat.

20 MS. FANT: Please answer any questions the
21 defense has for you.

22 THE COURT: Mr. Brooks.

23 Cross Examination by Mr. Brooks:

24 Q Sebastian, you have a nickname Sam, is
25 that correct?

Sebastian Jenkins-cross by Brooks

1 A Yes.

2 Q And you were in the driveway between these
3 houses, is that correct?

4 A Yes, sir.

5 Q And you said Bread and Blue pulled up.
6 And there was some smokers out there, right?

7 A Yeah.

8 Q And when you mean smokers, you're talking
9 about customers, right?

10 A I said smokers, because I know they will
11 do drugs. They smoke.

12 Q But you were referring to customers,
13 right?

14 A I never said that.

15 Q Were you referring to customers?

16 A No, I said smokers.

17 Q Now, you do have a conviction on your
18 record for distribution for cocaine, isn't that
19 correct?

20 A Yes, sir.

21 Q And that conviction is from, when is that
22 conviction from?

23 MS. FANT: Objection, Your Honor. If he
24 has impeached him with a conviction, the date is
25 not relevant.

Sebastian Jenkins-cross by Brooks

1 THE COURT: I will let him ask it.

2 Q I will go ahead. Is it from April of
3 2006?

4 A April. April. I can't remember the
5 exactly what date. I am not too sure.

6 Q Okay. Does that sound in the neighborhood
7 time wise? I mean it wasn't last week. It was
8 some time in the early 2006?

9 A Yeah, it 2006. I know it happened in
10 January, and they picked me up a couple of months
11 later.

12 Q Okay.

13 A It wasn't in April though.

14 Q It wasn't April.

15 A Nah, it was in February.

16 Q February. The same year?

17 A Yeah, the same year.

18 Q Okay. And you said earlier when Ms. Fant
19 asked you, you were just hanging out, is that
20 right?

21 A Uh-huh. (Affirmative.)

22 Q Were you talking to anybody.

23 A I was by myself.

24 Q You were by yourself.

25 A Yeah.

Sebastian Jenkins-cross by Brooks

1 Q Nobody else, right?

2 A Nobody else.

3 Q Just you?

4 A Just me.

5 Q How long were you there by yourself?

6 A Back and forth all day.

7 Q When you say back and forth, if you
8 weren't there, where did you go?

9 A If I wasn't there, I was probably at
10 Booji's or home.

11 Q How long had you been in that spot before
12 you went -- how long were you in that spot before
13 you went to someplace else?

14 A I was out there probably before I went
15 somewhere else. I wasn't there maybe an hour, 30
16 minutes. I wasn't there long at all.

17 Q And you were just hanging there by
18 yourself.

19 A Yes.

20 Q You weren't doing nothing?

21 A Nothing.

22 Q You didn't see anyone else at Salem and
23 Dingle, is that correct?

24 A No.

25 Q And you didn't talk to, you say you didn't

Sebastian Jenkins-cross by Brooks

1 stick around, right?

2 A Yes, sir.

3 Q You didn't stick around and give any type
4 of -- talk to any law enforcement or anybody about
5 that, right?

6 A No, sir.

7 Q As a matter of fact, the first time you
8 talked to law enforcement was probably about two
9 weeks ago, is that correct?

10 A I think it was a week before the trial
11 started.

12 Q Okay. Lil' Virg out there too, right?

13 A I didn't even see him. I don't recall
14 seeing him.

15 Q Okay. Was Toke out there too?

16 A If he were there, he was next door. I
17 told you I was myself. I didn't see anybody.

18 MR. BROOKS: Okay. No other questions,
19 Judge.

20 THE COURT: Any redirect?

21 MS. FANT: No, sir. May Mr. Jenkins be
22 excused, Your Honor?

23 THE COURT: Any objection?

24 MR. BROOKS: No objection.

25 THE COURT: Thank you.

Sebastian Jenkins-cross by Brooks

1 MR. BROOKS: Can we have a quick side bar?

2 THE COURT: You may.

3 (Whereupon, the attorneys approach the
4 bench and confer with judge.)

5 MS. FANT: The state would call Barry
6 Lowery.

7 Barry Lowery, after being
8 first duly sworn, testified as follows:

9 THE CLERK: Please state your full name
10 and spell your last name for the record.

11 A Barry Lowery. L-O-W-E-R-Y.

12 Q Mr. Lowery, do you live in the Sumter
13 area?

14 A Yes, ma'am.

15 Q How long have you lived here?

16 A All my life.

17 Q Did you know Mathew Horace, or otherwise
18 known as Bread, who was the victim in this case?

19 A No, ma'am.

20 Q What about the defendant Rahim Carter?

21 A Yes, ma'am.

22 Q And, excuse me, how long have you known
23 him?

24 A I met him in 07.

25 Q And what names did you learn that he went

Barry Lowery-dierct by Fant

1 by; in addition to, Rahim Carter?

2 A Rahxzilla.

3 Q And who introduced you to Rahxzilla?

4 A Wise.

5 Q How do you know Wise?

6 A Dealing with them in the drug gang.

7 Q What is the relationship between Wise and
8 Rahxzilla?

9 A They were partners.

10 MR. BROOKS: Objection.

11 THE COURT: If he knows.

12 MR. BROOKS: Well our position is he
13 wouldn't know.

14 THE COURT: He said if he knows.

15 Objection over ruled. Which is premature.

16 Q Do you know whether or not Rahxzilla and
17 Wise knew each other?

18 A Yes.

19 Q What was the relationship between them?

20 A Because they was partners.

21 Q Did, were they equal partners or was there
22 one at the head and one sort of below?

23 A I would say Wise was like, you know, like
24 he was running things.

25 Q And do you also know Devon Archie

Barry Lowery-dierct by Fant

1 otherwise known as D'Mo?

2 A Yes, sir.

3 Q How do you know him?

4 A In the drug gang.

5 Q Who is he also close to?

6 A Wise.

7 Q And what about the defendant?

8 A They was, yes, they used to be together.

9 Q Now did you ever see Rahxzilla with a gun?

10 A Yes.

11 Q Excuse me. Was it frequently or just once

12 or twice?

13 A Every time I see him.

14 Q And where were you when on the night of,
15 that Bread got shot over on Dingle Street?

16 A On Samson Street.

17 Q So you weren't on Dingle Street when the
18 actual shooting happened?

19 A No, ma'am.

20 Q Did you later see Rahxzilla at some point?

21 A Yes, ma'am.

22 Q When was that?

23 A Yes, ma'am.

24 Q When was that?

25 A I seen him the next day.

Barry Lowery-direct by Fant

1 Q Did y'all have a conversation at that
2 time?

3 A No, ma'am.

4 Q And did you see him again some time after
5 that?

6 A Yes, ma'am.

7 Q When was that?

8 A About a week or two after Bread got shot.

9 Q And how do you remember the time frame on
10 that?

11 A I can't exactly remember. But I mean, I
12 just, I had just got out of prison on the 1st.
13 So it was like a week after I got out. A week or
14 two after I got out.

15 Q Do you remember where Lil' Chris was at
16 that time? Christopher Davis?

17 A He was in the hospital.

18 Q So when you talked to him the second time,
19 Chris Davis was in the hospital?

20 A Yes, ma'am.

21 Q And the second time when you saw him a
22 couple of weeks after the shooting, where did you
23 to see him?

24 A At Wise's house.

25 Q Who else was there?

Barry Lowery-dierct by Fant

1 A Wise, Rock and Petey. And some other guy
2 was there, but I don't know his name. I don't
3 know who he was.

4 Q Okay. Do you know Petey's real name?

5 A No, ma'am.

6 Q Do you know where Petey lives?

7 A Yes, ma'am.

8 Q Where does he live?

9 A About two houses down from Wise.

10 Q And during that conversation when you saw
11 them, at some point, did Bread's name come up?

12 A Yes, ma'am.

13 Q And when that happened, what did the
14 defendant say?

15 A He said, "The little nigger fucked up.
16 Justice had to be served, so I did what I had to
17 do."

18 Q Did he say anything else after that?

19 A No, ma'am.

20 Q Why not?

21 A Wise told him to chill---

22 MR. BROOKS: Objection.

23 A ---he was talking too much.

24 THE COURT: Sustained. The jury will
25 disregard the statement.

Barry Lowery-dierct by Fant

1 Q But after he told you that, did he tell
2 you anything else?

3 A No, ma'am.

4 Q And did you ever talk to him about the
5 situation with Bread after that?

6 A No, ma'am.

7 MS. Fant: Please answer any questions Mr.
8 Brooks may have.

9 THE COURT: Mr. Brooks.

10 Cross Examination by Mr. Brooks:

11 Q Mr. Lowery, how are you today?

12 A I am doing all right.

13 Q Now you really don't know my client, isn't
14 that correct?

15 A Not really.

16 Q And isn't that because as you said
17 earlier, you had just got out of prison?

18 A Yeah. I remember the day I got out.

19 Q Okay. You had -- you knew Wise through
20 the drug gang.

21 A Yes.

22 Q And you said you had come to Wise's house
23 to get crack, isn't that correct?

24 A Yes.

25 Q And in fact you got out of prison for

Barry Lowery-cross by Brooks

1 burglary, is that correct?

2 A Yes.

3 Q Burglary second degree?

4 A Yes.

5 Q And you admitted you were sentenced and
6 you did 5 years?

7 A Yes.

8 Q And now a week later this conversation
9 took place with Rahim and you present. Is that
10 correct?

11 A Yes, sir. Between a week and 2 weeks
12 later something like that.

13 Q And you said earlier you don't remember --
14 there some other people around you. You don't
15 remember, is that right?

16 A There was one guy who I did not -- really
17 didn't know him.

18 Q And some shortly after that, is that when
19 you went to the police?

20 A No.

21 Q Did you ever tell the police that about
22 this conversation with my client?

23 A Yes.

24 Q Did they put it down on paper for you?

25 A Yes.

Barry Lowery-cross by Brooks

1 Q And you, you recall signing something, is
2 that right?

3 A Yes.

4 MS. FANT: Your Honor, may we approach?

5 THE COURT: You may.

6 (Whereupon, the attorneys approach and
7 confer with the judge.)

8 THE COURT: Objection is overruled.

9 Q Mr. Lowery, you earlier stated you went
10 there to -- you went to Wise's house to get crack,
11 is that right?

12 A Yes, sir.

13 Q You do acknowledge at that time you used
14 crack every now and then, is that correct?

15 A Yes, sir.

16 Q And, I beg the court's indulgence, Your
17 Honor.

18 THE COURT: Yes, sir.

19 Q Do you recall when you were spoke to the
20 police about your conversation with Rahim?

21 A Back in 08.

22 MS. FANT: Your Honor, may we approach?

23 (Whereupon, attorneys approach and confer
24 with judge.)

25 MR. BROOKS: No other questions.

Barry Lowery-cross by Brooks

1 THE COURT: Ms. Fant, any redirect?

2 MS. FANT: No, sir. May -- well just one
3 question.

4 Redirect Examination by Ms. Fant:

5 Q When you told the police what Rahxzilla
6 had said to you when you were at Wise's house, did
7 you ever tell them anything different than that?

8 A No, ma'am.

9 MS. FANT: Thank you.

10 THE COURT: Thank you, you may step down.
11 May this witness be excused?

12 MR. BROOKS: No objection.

13 MS. FANT: Your Honor, at this time the
14 state would call Frederick Owens.

15 Frederick Owens, being
16 first duly sworn, testified as follows:

17 THE CLERK: State your full name and spell
18 you last name for the record.

19 A Frederick O'Neal Owens. O-W-E-N-S.

20 Direct Examination by Ms. Fant:

21 Q Could you tell us, do you live in the
22 Sumter area?

23 A Yes, ma'am.

24 Q And how long have you lived here?

25 A All my life.

Frederick Owens-direct by Fant

1 Q And did you know the victims in this case
2 known as Cornbread or Bread?

3 A No, ma'am, I didn't know him, but I heard
4 of him.

5 Q What about the defendant Rahim Carter?

6 A Yes, ma'am. I went to Sumter High School.
7 He was on the wrestling team with me.

8 Q What did you call him when he was in high
9 school?

10 A We called him Rahim or Heem.

11 Q Did there come a point where he started
12 going by others names?

13 A After I came back from serving in the
14 military, I heard they was calling him Rock or
15 Rahxzilla.

16 Q And you have an ABHAN, conviction from
17 2006, is that right?

18 A Yes, ma'am.

19 Q For assault and battery?

20 A Yes, ma'am.

21 Q And did you go to prison on that charge?

22 A No, ma'am. I received probation.

23 Q And did you somehow end up at the
24 Sumter/Lee Detention Center in 07?

25 A Yes, ma'am. I, at that time, violated my

Frederick Owens-direct by Fant

1 probation in 07. I received 18 months probation.
2 I mean I received, I had 18 months probation. I
3 violated because I went to Charleston. My
4 girlfriend had severe preeclampsia. And they was
5 about to do an emergency C Section. I was
6 supposed to go see my Probation Officer the
7 following day. And I chose to see what was going
8 on with her and my daughter.

9 Q And what happened when you did that?

10 A They violated me.

11 Q And did they revoke part of your
12 probation?

13 A Yes, ma'am.

14 Q Do you recall when that would have been?

15 A That was around the end of 07, December
16 time frame.

17 Q Now while you were at the detention
18 center, did you run across the Defendant, Rahim
19 Carter?

20 A Yes, ma'am. I was in Delta pod, and he
21 was in Echo pod. And I was walking past the south
22 port door. I didn't know who he was. Because
23 somebody was calling my name, and I didn't
24 recognize him because he had like a bunch of hair.
25 Like a bunch of facial hair. He almost looked

Frederick Owens-direct by Fant

1 like a cave man. I didn't know who it was until
2 he said: "It's Heem." Who he was.

3 Q Did you have a conversation with him at
4 that time?

5 A Yes, ma'am. I asked him what was he in
6 here for, and he told me to go to church on
7 Sunday.

8 Q Now what did he mean by go to church on
9 Sunday?

10 A It's where you go and socialize with other
11 people from the other pods.

12 Q Is it an actual church service?

13 A No, not really. It was conducted by
14 Simon Major. Nobody really paid attention to it.
15 They would just go there to socialize with
16 everybody else from the other pods.

17 Q Why would he have told you to go to church
18 so he could talk to you?

19 A Because we couldn't talk. He was across
20 the hall. We couldn't have a conversation, you
21 know, across from, we was across from each other.
22 We couldn't really talk.

23 Q Now did you actually go to church that
24 next weekend?

25 A Yes, ma'am.

Frederick Owens-direct by Fant

1 Q And what happened when you saw him at
2 church?

3 A He told me to come sit down beside him.
4 And when I sat down beside him I was like, "Hey
5 man, what are you doing in here." He was like,
6 "Man, he done messed up. He was running with a
7 little crew on west side." And I was like, "Well,
8 what did you do." He was like, I said, "What did
9 you do." He said, "Man they are trying to get me
10 on this body." He was like, "But I ain't really
11 pressed about it, because they don't got no
12 witnesses. Nobody is going to testify. They
13 don't got no gun." He was like, "They are going
14 to keep it G."

15 Q Now when he told you, did he tell you what
16 actually prompted Bread's shooting?

17 A Yes, ma'am. He said that he, that Bread
18 took some money. And took some -- he took some
19 money and some drugs from his man. And he
20 couldn't let him play his man like that.

21 Q Now did he tell you when the shooting
22 happened, what he had said to Cornbread just
23 before the shooting?

24 A He said he wasn't, "pressed."

25 Q What did that mean? "I am not pressed?"

Frederick Owens-direct by Fant

1 A Meaning he wasn't really concerned about
2 it, you know.

3 Q Concerned about what?

4 A He wasn't really concerned about the money
5 or the work that he took from him.

6 Q Did he indicate that they had a
7 conversation at that point?

8 A I just took it as, you know, that's the
9 conversation he said to him.

10 Q And what specifically did he say about the
11 shooting of Cornbread?

12 A He said that, He said, "He wasn't pressed.
13 He wasn't pressed. He couldn't let him play his
14 man like that." And I asked him, I was like, "Did
15 he do something to you." And he said, "No." He
16 said, "I just couldn't let him play my man like
17 that." You know, I couldn't believe he said that.
18 You know, like this man ain't did nothing to him,
19 but he is admitting that he shot this man.

20 Q Did he seem concerned about his situation?

21 A No, ma'am. He said he had a paid lawyer.
22 He will be out in 3 weeks.

23 MR. BROOKS: Objection?

24 THE COURT: What is your objection?

25 MR. BROOKS: She's trying to, she's

Frederick Owens-direct by Fant

1 talking about something that is speculation.

2 THE COURT: Rephrase your question.

3 Q When he was talking to you in the church,
4 how he was talking?

5 A It was almost like he was bragging. He
6 was smiling, you know. It wasn't bothering him
7 that he did this.

8 MR. BROOKS: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q Did he indicate why he wasn't worried?

11 A Yeah, he said that nobody was going to
12 testify. He said that they was going to keep it
13 G.

14 Q And what does keep it G mean?

15 A Keep it gangster. Don't snitch. Just
16 keep it in the streets.

17 Q And what did you think after he told you
18 this? What were you thinking?

19 A I just couldn't believe, you know, like he
20 was talking like, you know, he didn't really care.
21 This wasn't the same Rahim I knew from high
22 school, you know. After I came back from the
23 military, I thought this ain't the same dude I
24 knew in school.

25 Q And what did you do as a result after he

Frederick Owens-direct by Fant

1 told you all this?

2 A I got in touch with Detective Allen who
3 also went to Sumter High and was on the wrestling
4 team with us. And I informed him of the
5 conversation me and Mr. Carter had.

6 Q Why did you do that?

7 A It was the right thing to do.

8 Q Would that be Detective Lonnell Allen?

9 A Yes, ma'am.

10 Q Do you remember when you contacted him.

11 A This was the end of December, or December
12 07 time frame.

13 Q Would it have been shortly after you had
14 the conversation, or a long time afterwards?

15 A Shortly after.

16 Q And do you remember, after you talked to
17 him, did you also talk to some other detectives on
18 the case at that time?

19 A No, ma'am. It was just Detective Allen.
20 He took notes down.

21 Q And what was your sentence on your
22 probation?

23 A I, for violating my probation, they gave
24 me 90 days. But since I went to the Annex, I only
25 received 45 days. When you're in the Annex for

Frederick Owens-direct by Fant

1 every one day you do, you get two days. So I only
2 had to do 45 days.

3 Q Did Detective Allen or other detectives
4 help you get out of jail?

5 A No, ma'am, I was already sentenced. There
6 was nothing they could do.

7 Q Were you promised anything to testify in
8 Court in this case?

9 A No, ma'am.

10 Q Are you happy about having to come here to
11 testify?

12 A No, ma'am. Rahim is a friend of mine.
13 And who would want to, you know, testify against
14 their friend.

15 Q But why did you come?

16 A It was the right thing to do in 07. And
17 it's the right thing to do now.

18 MS. FANT: Please answer any questions the
19 defense may have.

20 THE COURT: Mr. Brooks.

21 Cross Examination by Mr. Brooks:

22 Q How are you doing today, Mr. Owens?

23 A I'm doing fine, sir.

24 Q Do you have a nickname?

25 A Not really. They just call me Frederick

Frederick Owens-cross by Brooks

1 or Fred.

2 Q How old are you?

3 A I am 27.

4 Q And you've got a -- Ms. Fant had talked
5 about an ABHAN conviction, is that right?

6 A Yes, ma'am. Yes, sir.

7 Q And you were on probation and you violated
8 that probation, is that right?

9 A Yes, sir.

10 Q And that's when you got sentenced to jail
11 90 days. Right?

12 A Yes, sir.

13 Q And you're basically saying you only did
14 45 days, is that right?

15 A Yes.

16 Q And basically you also talked about this
17 conversation that took place at church. Is that
18 right?

19 A Yes, sir.

20 Q And the church is where people go for --
21 people who are in jail go, and have some type of
22 religious ceremony on Sunday, is that correct?

23 A It's not a religious ceremony. It's just
24 when if you want to talk to other people that's in
25 other pods. You know, like you can't talk to

Frederick Owens-cross by Brooks

1 them, you know. If you're in D pod you can't talk
2 to somebody in the J/K pod, because it's on the
3 other side of the jail.

4 Q Now Simon Major wanted to direct the
5 service to you, is that right?

6 A Yes, sir.

7 Q So there is somebody directing the
8 service?

9 A Yes, sir. But nobody really paid
10 attention to him. Everybody is in there
11 conversating.

12 Q They're just conversating. But there is a
13 service going on.

14 A Yeah. I guess if you want to call it
15 that.

16 Q I mean, but is there a service going on?

17 A I mean, I don't call -- I don't call it a
18 service, you know. I am not, from when I am used
19 to going to church, and, you know, when I'm used
20 to worshiping in my church, I don't call it a
21 service.

22 Q Okay. So but you went to church?

23 A Right.

24 Q And there was somebody directing the
25 services?

Frederick Owens-cross by Brooks

1 A Yes, sir. If you want to call it that,
2 yes, sir.

3 Q Isn't that what you call it?

4 A I don't call it a -- I don't really call
5 it a service, you know. I mean Simon Major,
6 pastor of services. I don't really call it a
7 service.

8 Q I mean, you do acknowledge giving a prior
9 statement under oath about this meeting at the
10 church?

11 A Yes, sir.

12 Q With Rahim?

13 A Yes, sir.

14 Q With Simon Major---

15 A Yes, sir.

16 Q ---giving the service.

17 A Yes, sir.

18 Q And it was a packed house?

19 A Yes, sir.

20 Q And as you said, everybody wants to go
21 there to get out of the pod?

22 A Yes, sir.

23 Q Yet, you are saying to this court that it
24 was a conversation just between you and Rahim. Is
25 that right?

Frederick Owens-cross by Brooks

1 A Yes, sir.

2 Q And nobody else participated in that
3 conversation?

4 A No, sir.

5 Q Even though it was a packed house?

6 A Yes, sir.

7 Q It was somewhat of a religious service?

8 A Yes, sir.

9 Q And at this service Rahim, who you have
10 not seen, in what, how long has it been since you
11 to seen him, 8 or 9 years?

12 A Yeah, around about.

13 Q That was because you had gone in to the
14 military?

15 A Yes, sir.

16 Q That right? Gone away. Come back. And
17 basically someone that you have not seen for 8 or
18 9 years. Basically that you could not even
19 recognize at first, is that correct?

20 A Yes, sir.

21 Q That he engaged in this conversation with
22 you, and told you that he shot Cornbread?

23 A Yes, sir.

24 Q And you didn't tell him anything but just
25 sit there and listen, is that right?

Frederick Owens-cross by Brooks

1 A Yeah. I asked him, you know, like what he
2 was, you know, what he was in there for, you know.
3 You know, that kind of engaging. But just really
4 sat there listening, because I really didn't
5 believe he was saying this.

6 Q Okay. But you kept on asking him
7 questions to try to get things out, right?

8 A Yes, sir.

9 Q And somebody you hadn't seen in 8 or 9
10 years, basically decides to confess to you that he
11 has shot somebody.

12 A Me and Rahim, we was always friends. You
13 know, we were on the wrestling team together.
14 You're like brothers, you know.

15 Q But you hadn't been on the wrestling team,
16 because you hadn't seen him in 8 or 9 years,
17 correct?

18 A But we were like brothers. We were on the
19 wrestling team together. We bled together, we
20 sweat together.

21 Q And this brother that called because you
22 were on the wrestling team, you didn't even
23 recognize him.

24 A Not looking like a cave man, I didn't.

25 Q Looking like a cave man, isn't that right?

Frederick Owens-cross by Brooks

1 And based on what you are saying, he sees you, you
2 don't recognize him, correct?

3 A Right.

4 Q At the jail, stops you and says, "Hey, I
5 want to talk to you?"

6 A He actually yelled across from his pod to
7 my pod, and he was calling my name.

8 Q Other people in the pods, right?

9 A Yes, sir.

10 Q And once he called your name he says:
11 "Hey man, meet me at the church."

12 A Nah, it wasn't like that. He was like,
13 "Fred, Fred." And I am looking over like, who is
14 this cave man calling me.

15 Q Right.

16 A And he was like, "It's Heem. It's Heem."
17 And so that's how I knew it was him, because
18 that's what we used to call him.

19 Q Okay. But he also said, "Hey, meet me at
20 the church."

21 A No, I was asking him. I was like, "Man,
22 what are you doing in here." And he was like,
23 come to church on Sunday, and I'll talk to you.

24 Q But this exchange was across the hall,
25 correct?

Frederick Owens-cross by Brooks

- 1 A Yes, sir.
- 2 Q Between the pods?
- 3 A Yes, sir.
- 4 Q Because as you said, you were in the Delta
- 5 pod?
- 6 A And he was in Echo pod.
- 7 Q And he was in Echo Pod?
- 8 A Yes, sir.
- 9 Q And basically that's across the hall?
- 10 A Yeah.
- 11 Q Of several feet?
- 12 A Yes.
- 13 Q And he says -- you asked him what is he in
- 14 for, correct?
- 15 A Yes, sir.
- 16 Q And he says, "Go to church on Sunday."
- 17 A Yes, sir.
- 18 Q And you go to church, because you want to
- 19 hear what Rahim has got to say.
- 20 A Yes, sir.
- 21 Q And you go church. Simon Major. Packed
- 22 house. Nobody else participates, and he basically
- 23 bears his soul to you.
- 24 A Yes, sir.
- 25 Q Okay. And then somebody you have not seen

Frederick Owens-cross by Brooks

1 in 8 or 9 years that now you say you were like
2 brothers on a wrestling team. Correct?

3 A Yes, sir.

4 Q Who you did not even recognize, because
5 you said he looked like a cave man?

6 A Yes, sir.

7 Q And I meant to ask you, you do acknowledge
8 you do have an ABHAN conviction on your record?

9 A Yes, sir.

10 Q Assault and battery of a high and
11 aggravated nature.

12 A Yes, sir.

13 MR. BROOKS: No other questions.

14 THE COURT: Ms. Fant, any redirect?

15 MS. FANT: No, sir, Your Honor. May
16 Mr. Owens be excused?

17 THE COURT: Any objection from the defense
18 to this witness being excused.

19 MR. BROOKS: No objection.

20 THE COURT: Thank you, Mr. Owens, you are
21 excused.

22 MS. FANT: Your Honor, at this time,
23 the state would recall Detective Lyons.

24 Detective Lyons, being
25 previously sworn, retakes the witness stand and

Frederick Owens-cross by Brooks

1 testifies as follows:

2 Q Detective Lyons, were any of the witnesses
3 in this case promised anything to come to court
4 today and testify?

5 A No, ma'am.

6 Q What about Brandon Taylor?

7 A No, ma'am.

8 Q Is -- does he have an opportunity to at
9 least get some credit for coming?

10 A He has an opportunity to possibly receive
11 what was referred to earlier as a, "Downward
12 departure."

13 Q Is that guaranteed?

14 A No, ma'am, it is not. It's at the
15 discretion of the presiding Federal Court Judge.

16 Q And what happens under the terms if
17 Brandon's fails to tell the truth?

18 A If Brandon lies to us about anything, he
19 will get no consideration whatsoever.

20 Q And in this case, did he cooperate with
21 you as required by the agreement?

22 A Yes, ma'am.

23 Q Did the government ever have to give
24 Mr. Brandon a polygraph?

25 A No, ma'am. We believed his statements to

Detective Lyons-direct by Fant

1 us to be truthful, and there was no need for the
2 polygraph.

3 Q Did law enforcement give any special
4 favors to anyone for their exchange of their
5 cooperation in this case?

6 A No, ma'am.

7 Q Did the police have anything to do with
8 anybody getting out of jail, or anything that
9 might have happened like that?

10 A No, ma'am.

11 Q Now one of the things that Mr. Brooks has
12 asked you about is the written statements of
13 certain witnesses. Did you take a written
14 statement from every witness in this case?

15 A No, ma'am, we did not.

16 Q Why not?

17 A Oftentimes, it's not necessary to take
18 their written statement. It's simply us speaking
19 to them. The verbal statements are often times
20 enough. Sometimes it's hard to get people to come
21 to the law enforcement center. Sometimes it takes
22 awhile before they are willing to come. But
23 ultimately our speaking to them often serves as
24 that statement. A conversation between two people
25 is just as good as it being on paper.

Detective Lyons-direct by Fant

1 Q And did you take a written statement from
2 some of the witnesses in this case?

3 A Yes, I did.

4 Q And was Darrell Hawkins one of them?

5 A Yes, he was.

6 Q And in the statement, what did he tell you
7 after he said, "Rock walked down the street."
8 What did he tell you when he was making that
9 statement about what he thought?

10 MR. BROOKS: Your Honor, I object.

11 THE COURT: What is your objection?

12 MR. BROOKS: She's basically trying to,
13 you know, trying to bolster testimony from state
14 witnesses already on the stand. He testified. He
15 testified being things that he firsthand knew,
16 saw, smelled, tested, whatever. And now to come
17 back up with Detective Lyons and to basically try
18 to say well his statement is, it is great. She
19 has already put it in evidence. Judge, what is
20 the purpose here? I mean, you want to call Mr.
21 Hawkins?

22 THE COURT: Counsel, what is the purpose?
23 The statement is in evidence.

24 MS. FANT: The statement is not in
25 evidence, Your Honor. In fact typically---

Detective Lyons-direct by Fant

1 MR. BROOKS: He's testified.

2 MS. FANT: He, but he, Darrell Hawkins
3 denies that he told Detective Lyons that, what I
4 was about to ask him. And I think the state is
5 allowed to impeach him.

6 THE COURT: I am going to overrule the
7 objection.

8 Q Well in the statement, what did he tell
9 you that he saw after he heard the argument
10 between Rahxzilla and somebody at Booji's house?

11 A He said he saw Rahim Carter, the
12 defendant, shooting towards the house.

13 Q Now would that have been a statement if he
14 hadn't said that?

15 A No. There would be no need for something
16 like that to be in there if he hadn't relayed
17 that to me himself.

18 Q And was Darrell given an opportunity to
19 read the statement after it was completed?

20 A Yes, ma'am, he was.

21 Q And after that, were any changes made to
22 his statement?

23 A No, ma'am, he reviewed the statement as it
24 was his words and he affirmed that by signing the
25 bottom of the statement. And myself seeing it.

Detective Lyons-direct by Fant

1 Q Now before this case came up, did you know
2 Frederick Owens?

3 A No, ma'am.

4 Q How did law enforcement find out about him
5 and that he had some information?

6 A I was contacted by Detective Lynell Allen
7 that he knew someone that had some information
8 about a case that I was working. And he was going
9 to talk with him and get some information. And
10 that information was passed on.

11 Q And did he tell you why -- Lynell, excuse
12 me, that Fred called him?

13 A Yes. Lynell, Detective Allen, Detective
14 Lynell Allen, Frederick Owens, and the defendant
15 Rahim Carter, were all on the wrestling team
16 together at Sumter High School. So they each knew
17 one another.

18 Q And did law enforcement assist Frederick
19 Owens in any way for in exchange for him giving
20 you that information?

21 A No, ma'am. If you are referring to
22 getting him out of jail, he was sentenced by a
23 General Sessions Court judge for a probation
24 violation. We have no control over that
25 whatsoever. That is the judge's decision.

Detective Lyons-direct by Fant

1 Q And were other any promises made to him?

2 A No, ma'am.

3 MS. FANT: Please answer any questions

4 Mr. Brooks may have.

5 THE COURT: Thank you. Mr. Brooks.

6 Cross Examination by Mr. Brooks:

7 Q Detective Lyons, you have already
8 testified in this case, right?

9 A Yes, sir, that is correct.

10 Q You didn't mention this the first time on
11 the stand, isn't that correct?

12 A I was not asked this anytime before.

13 Q Please answer the question. You didn't
14 mention this the first time you testified, isn't
15 that correct?

16 A No, I was not asked it.

17 Q And now as a result after all of these
18 people have testified, you were called up here and
19 now you are answering these questions, is that
20 right?

21 A Yes, sir, that is correct.

22 Q And basically let's go back to Brandon
23 Taylor. You made a decision for, or the
24 government made a decision there was no need to
25 polygraph him, isn't that correct?

Detective Lyons-cross by Brooks

1 A That is correct.

2 Q And you indicated you felt that he was
3 telling the truth, isn't that correct?

4 A That is correct.

5 Q But there is a polygraph paragraph in his
6 Plea Agreement, isn't that correct?

7 A That is correct.

8 Q And it has never -- he has never been
9 submitted to that polygraph, is that correct?

10 A It was not necessary. And no, he has not
11 taken one.

12 Q And he has given a prior statement under
13 oath about this incident, isn't that correct?

14 A That is correct.

15 Q Has not been sentenced yet.

16 A No, he hasn't.

17 Q And the government, you or other
18 government officials have not double checked that.
19 Isn't that correct, by giving him a polygraph?

20 A There was no need to give him a polygraph.

21 Q There is no need. So you feel he is
22 telling the truth, isn't that correct?

23 A That is correct.

24 Q And it's because you feel that he is
25 telling the truth, then the polygraph hasn't been

Detective Lyons-cross by Brooks

1 given him, isn't that correct?

2 A Not only myself, but the agents with the
3 Bureau of Alcohol, Tobacco and Firearms who are
4 assisting in this investigation.

5 Q But they are relying on you for purposes
6 of this case to decide whether or not they should
7 give a polygraph? Isn't that correct?

8 A They have also been present during the
9 interviews between he and I.

10 Q I understand. But they haven't been
11 present here today, have they?

12 A No, sir.

13 Q Okay. They're relying on you. And they
14 weren't present at the prior statement under oath
15 by Mr. Taylor. Isn't that correct?

16 A Correct.

17 Q They're relying on you to decide, hey,
18 maybe we should double check this and give him a
19 polygraph and make sure he is telling the truth,
20 isn't that correct?

21 A Yes.

22 Q So if you had said, I don't believe he is
23 telling the truth, they would have given him a
24 polygraph, isn't that correct?

25 A If I felt he lied to us about something, I

Detective Lyons-cross by Brooks

1 would have put him on the polygraph myself.

2 Q And you haven't done that.

3 A No, sir.

4 Q Because you feel he is telling the truth.

5 A That is correct.

6 Q And you now come up here today, the second
7 time around. Isn't that correct?

8 A That is correct.

9 Q And you testified that nobody is given any
10 special favors, isn't that correct?

11 A That is correct.

12 Q And you do acknowledge you didn't
13 interview each and every witness in this case.

14 A That is correct.

15 Q Okay. So you don't know what the back and
16 forth was to each and every witness in this case?

17 A Clarify.

18 Q You didn't interview each and every
19 witness in this case, isn't that correct?

20 A That is correct.

21 Q So you don't know the back and forth of
22 the conversation between law enforcement and a
23 particular witness in this case.

24 A I have read notes and or either statements
25 that were given. That is how I have my

Detective Lyons-cross by Brooks

1 information.

2 Q And you are basically, your investigation,
3 is assuming that those statements are accurate.

4 A I would assume that the law enforcement
5 officers that I work with would be telling me the
6 truth if they take the notes from talking with
7 someone.

8 Q Now but you also indicate that you didn't
9 take notes with all the witnesses that you talk
10 about in this case.

11 A That is correct.

12 Q And basically you can't remember all of
13 the statements that you got out of each and every
14 witness that you took in this case, right?

15 A They may not give us a written statement,
16 but if you and I have a verbal conversation, I am
17 going to take notes.

18 Q Okay. So you do -- so you are saying you
19 do remember statements taken out of each and every
20 witness that you took, even though there was no
21 written statement. Stuff that you took notes on.
22 Stuff that was just given orally.

23 A Right.

24 Q You remember everything.

25 A If I write down the stuff, then it's not

Detective Lyons-cross by Brooks

1 a -- a written statement is not notes of our
2 conversation.

3 Q Just the oral statement.

4 A Right.

5 Q And you remember all the oral statements.

6 A I took the notes of when I talked to the
7 people.

8 Q Okay. You said earlier that sometimes
9 written statements are not taken in all cases such
10 as this, is that correct?

11 A Correct.

12 Q And basically that means you or some other
13 detective is really relying totally on your memory
14 and your notes, isn't that correct?

15 A My notes would have been from the time
16 we're sitting there talking. If we're sitting
17 here talking now if I were interviewing you,---

18 Q Uh-huh. (affirmative.)

19 A ---I would be writing down what I asked
20 you.

21 Q Okay.

22 A If I asked you for example, what color
23 your jacket. And you answered, it would be in a
24 question form, or It would be as you said things
25 to me, I would write them down. It's not like me

Detective Lyons-cross by Brooks

1 and you talked and then I would wait 6 months from
2 now and go back and write it down. It would be
3 right there as we were having a conversation.

4 Q And you have kept all the notes you have
5 taken on each and every case you have worked that
6 you didn't do a written statement on, is that
7 correct?

8 A Yes.

9 Q You have been a detective for how long
10 now?

11 A Two years.

12 Q And I am sure you have worked a bunch of
13 cases?

14 A On and off. It depends.

15 Q And in each and every case that you have,
16 you keep notes. Your notes are always correct
17 about the general conversation with these
18 witnesses, is that correct?

19 A My notes would be correct if I had a
20 conversation? No.

21 Q Your notes are correct or an accurate
22 reflection---

23 A Of my conversations.

24 Q ---of your conversations.

25 A Correct.

Detective Lyons-cross by Brooks

1 Q So you're saying that there is no way that
2 the witness may have said something else that
3 contradicts your notes.

4 A I write notes down as we're talking. If
5 they said something else at some other time that
6 would be different than when the first interview.

7 Q Basically what you're saying that your
8 notes are 100 percent accurate.

9 A If I write it down then it's what I heard.
10 To me, it is accurate for me.

11 Q I understand. Your notes that were taken
12 from witnesses that didn't give written
13 statements, out of all the cases are 100 percent
14 accurate?

15 A I am not sure what your question is. I
16 mean you are asking if everybody has ever told me
17 the truth.

18 Q No, No. I am asking you if your notes
19 from statements that you have taken from witnesses
20 that you didn't give a written statement on, they
21 were just oral statements where you jot down
22 notes, your notes are 100 percent accurate?

23 A In my opinion, yes.

24 Q Okay. Have you ever had an opportunity
25 where your notes are not accurate?

Detective Lyons-cross by Brooks

1 A As far as if someone lied to me, then,
2 yes, they would be not accurate.

3 Q No, no. I am not saying somebody lied to
4 you. If your notes said one thing and something
5 else occurred?

6 A Well that would be someone not telling me
7 the truth. Correct? As my notes.

8 Q For example, you're taking notes of my
9 statements. I tell you x, your notes said y, that
10 would be different than what our conversation was.

11 A Okay.

12 Q Are you saying that it has never -- that
13 has never been a situation with notes that are
14 taken?

15 A Not that I ever recall.

16 Q Okay. No other questions.

17 THE COURT: Any redirect?

18 MS. FANT: No, your honor.

19 THE COURT: You may step down.

20 A Thank you.

21 MS. FANT: At this time the state would
22 rest.

23 THE COURT: Ladies and gentlemen, I am
24 going to send you to your jury room at this point
25 and time. And I will bring you back out. As

1 always, please do not discuss the case among
2 yourselves or with anyone else. Thank you.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Any motions from the state or
6 defense at this time?

7 MS. FANT: No motions. We do have an
8 issue we need to take up with the court.

9 THE COURT: What is that issue?

10 MS. FANT: Your Honor, after Mr. Owens
11 testified, he left the courtroom and informed
12 Ms. Culick, Detective Culick here, that he
13 recognized one of the jurors, Ms. Smiling on the
14 panel. And that he knew for a fact that her
15 sister had dated Rahim Carter. And obviously he
16 had seen them together. He knew about it. He
17 knew the sister's name, I believe, it was Courtney
18 Smiling.

19 And that she obviously did not disclose.
20 And we think that is a serious problem. And we
21 believe there needs to be an inquiry on that.
22 Mr. Owens is still here if you want to swear him
23 in about that. But certainly a juror whose sister
24 has dated the Defendant is not someone by
25 definition in our opinion, that could be fair.

1 And we certainly would have struck her had we
2 known that.

3 THE COURT: Mr. Brooks.

4 MR. BROOKS: Judge, we asked in the voir
5 dire if anybody had a close personal relationship.
6 We went through that. I don't know anything about
7 that. Obviously. Obviously we had an issue about
8 Freddie Owens about a great deal of things. So I
9 think the issue really is not asking about Freddie
10 Owens. The issue is should Your Honor decide to
11 inquire of that particular juror.

12 THE COURT: Well I will need to get
13 Mr. Owens' testimony before I will do that. And
14 then I will probably question the juror at that
15 time. Do you have another motion?

16 MR. BROOKS: I do, Judge. Basically, it's
17 our position that the state has not met it's
18 burden. We feel that what is appropriate now is a
19 directed verdict dismissing this case. A directed
20 verdict granting in favor of my client, Rahim. We
21 feel that the evidence is not before me, does not
22 rise to the standard.

23 THE COURT: Ms. Fant.

24 MS. FANT: Your Honor, as Your Honor
25 knows, the motion has to be considered in the

1 light most favorable to the nonmoving party. That
2 would be the state. We believe we have presented
3 both direct or circumstantial evidence in this
4 case, which is more than sufficient to send the
5 case to the jury. There was testimony from many
6 witnesses, not only that the victim had indicated
7 Mr. Carter had shot him, but also that Mr. Carter
8 himself had told people that he did this.

9 THE COURT: As always, directed motions is
10 imputed in the light most favorable to nonmoving
11 party. And in this case, the state. I find that
12 there has been sufficient evidence presented to
13 me, to take it to the next phase of this trial.
14 So I going go to respectfully deny your motion,
15 Mr. Brooks.

16 Why don't we bring the jury back in. I am
17 going to release them for the day. And then I
18 will question Mr. Owens. And then in the morning
19 I will decide what I am going to do with that
20 juror.

21 MS. FANT: Yes, Your Honor.

22 THE COURT: Thank you. Excuse me.

23 MR. BROOKS: I guess our position would
24 be, it would be appropriate to ask that juror.

25 THE COURT: I am going to do that at the

1 appropriate time, which will be tomorrow morning.

2 MR. BROOKS: Okay.

3 MS. FANT: Your Honor, may we approach?

4 THE COURT: You may.

5 (Whereupon, the attorneys confer with
6 judge.)

7 THE COURT: Your may bring the jury.

8 (Whereupon, the following takes place
9 within the presence of the jury.)

10 THE COURT: Ladies and gentlemen, I am
11 going to dismiss you for the afternoon. We
12 will -- the next testimony will be tomorrow
13 morning at 9:30 p.m. So that will let you sleep a
14 little later than you normally would. As always,
15 please do not discuss this case amongst
16 yourselves. And you are not to discuss it with
17 anyone else. As I told you, you are not to do any
18 research on this case. You are not to go to the
19 scene and do your own juror research. Or anything
20 like that.

21 When you go home for the evening, and you
22 will have a nice evening. You will be ready to
23 listen to the testimony tomorrow. Thank you, have
24 a nice evening.

25 THE COURT: The Court would now call

1 Frederick Owens.

2 Frederick Owens, being
3 previously sworn, retakes the witness stand and testifies
4 as follows:

5 THE COURT: Ms. Fant.

6 Direct Examination by Ms. Fant:

7 Q Mr. Owens, after you testified here, and
8 you walked out, did you have an opportunity to
9 talk to Detective Culick?

10 A Yes, ma'am.

11 Q And what did you tell her about something
12 that concerned you?

13 A I told her that one of the jurors knows
14 Mr. Carter.

15 Q And how, did you know that juror's name?

16 A Yes, ma'am. Shanda Smiling.

17 Q And how do you know her?

18 A Her sister used to play basketball for
19 Sumter High. I am not sure, but I think her
20 sister at Sumter High. But she knows Mr. Carter
21 really well.

22 Q And have you actually ever seen them
23 together in a group before?

24 A No, ma'am.

25 Q But what was her sister's name?

1 A Courtney Smiling.

2 Q And is that the person who dated
3 Mr. Carter in high school?

4 A Yes, ma'am. I think they dated, I am not
5 sure. But I know they know each other really
6 well. Because all athletes, we kind of bond with
7 each other.

8 Q So regardless of whether or not they
9 dated, there is no question that Courtney Smiling
10 knows the defendant very well.

11 A Yes, ma'am.

12 Q And that her sister is Chanay or Chandra
13 Smiling, I am not sure how to say her name, who is
14 sitting on this jury.

15 A Yes, ma'am.

16 Q Excuse me. And is that what you told
17 Detective Culick when you talked to her?

18 A Yes, ma'am.

19 Q Did you also tell Detective Culick that
20 you felt that the juror, Chanay Smiling knew Rahim
21 Carter?

22 A Yes, ma'am.

23 MS. FANT: Thank you.

24 Cross Examination by Mr. Brooks:

25 Q Mr. Owens, have you ever seen Rahim Carter

1 talking to this juror.

2 A No, but I know if he knows Courtney he
3 knows Chandra. Because everybody, if you have
4 been around Courtney, y'all know her sister.

5 Q How old is this particular juror?

6 A Chandra would have to be probably in her
7 30's.

8 Q How long is Courtney?

9 A Courtney is probably about 20. I would
10 say she is about 24, 25.

11 Q And Courtney was on, was an athlete at
12 Sumter High with you all?

13 A Yes, sir, she was on the basketball team.

14 Q And because she was on the girl's
15 basketball team and you were on the wrestling
16 team, everybody knew each other, is that right?

17 A The basketball team and the wrestling team
18 we had practice around the same time. I used to
19 like to mess with the girl's basketball team, you
20 know, they were athletes.

21 Q Was if what you are saying is true, she
22 also knows you, right?

23 A Yes.

24 Q And you didn't Date Courtney Smiling, is
25 that right?

1 A No.

2 Q And you don't know if Rahim dated her,
3 right?

4 A I am not sure. I can't remember. But I
5 am not sure. I know they know each other really
6 well though.

7 Q Because you know her very well, is that
8 right?

9 A We both knew her.

10 Q And you're saying that you know this is
11 her sister?

12 A Yes.

13 Q And you know this juror too?

14 A Yes.

15 Q So she knows you well.

16 A Yes.

17 Q This juror.

18 A Yes.

19 Q Okay. No other questions, judge.

20 THE COURT: Ms. Fant.

21 MS. FANT: No further questions, Your

22 Honor.

23 THE COURT: I have a question. How long
24 ago are we talking about? How long ago was it
25 that Chandra Smiling supposedly knew the

1 defendant?

2 A This had to have been between I would say,
3 97 until, I guess, 97 until Courtney graduated
4 probably in 2005. No, 2001, 2002 when Courtney
5 graduated.

6 THE COURT: So Mr. Carter dated Courtney
7 Smiling, is that correct?

8 A He dated the sister, sir. Yes, sir.

9 THE COURT: Her name is Courtney.

10 A Yes, sir.

11 THE COURT: So do you have any information
12 about any contact since then?

13 A No, sir.

14 THE COURT: So the last time they could
15 have possibly that you know of, that they would
16 have been together was approximately 8 years ago?

17 A Yes, sir.

18 THE COURT: Pretty much as 12 years ago?

19 A Yes, sir.

20 MS. FANT: Your Honor, I do have one
21 additional question.

22 THE COURT: Excuse me?

23 MS. FANT: I do have one additional
24 question.

25 THE COURT: Yes, ma'am.

1 Redirect Examination by Ms. Fant:

2 Q Is there any question that you know both
3 Courtney and Chandra Smiling?

4 A Yes, I know both of them.

5 Q And they both know you?

6 A Yes, ma'am.

7 THE COURT: Mr. Brooks?

8 MR. BROOKS: No other questions, judge.

9 THE COURT: Thank you. You may step down.

10 Yes, ma'am.

11 MS. FANT: Just at the appropriate time, I
12 want to be heard, Your Honor.

13 THE COURT: Yes, ma'am. I will let you be
14 heard at this point.

15 MS. FANT: Your Honor, the concern about
16 Courtney Smiling the sister of the juror dating
17 or knowing Mr. Carter, is one of importance to the
18 state. The more important concern is that she
19 did not reveal that she actually knew Fred Owens.
20 His name was called as one of the witnesses. And
21 in fact, three people stood up and said they know
22 him. Excuse me, that they recognized him and that
23 they knew him. And the state struck all three of
24 those people. We would have obviously struck
25 Ms. Smiling had we known and she been truthful

1 that she knew Mr. Owens.

2 THE COURT: Mr. Brooks.

3 MR. BROOKS: Judge, I think all of this is
4 premature. I mean we haven't had a chance to talk
5 to the juror.

6 THE COURT: I am giving you an opportunity
7 at this time.

8 MR. BROOKS: As far as you know that juror
9 may come in here and say, you know, I don't even
10 know Frederick Owens. He is flat wrong. We don't
11 know.

12 THE COURT: I am not going to rule now. I
13 am going to speak with the juror.

14 MR. BROOKS: And it's hard for me to be
15 able to challenge my response to the motion
16 without hearing what the individual juror has to
17 say.

18 THE COURT: Well I will speak with the
19 juror in the morning when they come in, by herself
20 in here. And then we will---

21 MS. FANT: And, Your Honor, I would just
22 bring one thing to your attention. And that is
23 that if Mr. Owens didn't know them, he would have
24 no idea what her name was. They don't wear badges
25 that say their names. It just says, juror. And I

1 would just point that out for the court.

2 THE COURT: Court is adjourned until
3 9:00 o'clock. The jury doesn't have to come until
4 9:30. The court is adjourned until 9 o'clock.
5 Thank you. Have a good evening.

6 (Whereupon, the trial commences on Thursday, August
7 the 6th 2009, at 9:00 a.m.)

8 (Whereupon, the following takes place
9 outside the presence of the jury.)

10 (Whereupon, the judge questions a juror
11 Ms. Smiling.)

12 THE CLERK: Get her right now, judge?

13 THE COURT: Yes, sir.

14 THE COURT: Ms. Smiling, you are not in
15 trouble. Mr. Brooks, Ms. Fant, come up here.
16 Ms. Smiling, after one of the witnesses testified,
17 that witness said that you know Frederick Owens.

18 MS. SMILING: I know him. I know him but
19 not well. He is younger than me. I think I just
20 know him in the past.

21 THE COURT: Did your sister at any time
22 date the defendant?

23 MS. SMILING: Not that I know.

24 THE COURT: Do you have a younger sister?

25 MS. SMILING: Yes.

1 THE COURT: And what is her name?

2 MS. SMILING: Courtney Smiling.

3 MS. FANT: I would ask if she knows the
4 defendant, not date.

5 THE COURT: Do you know if your sister
6 knows the defendant?

7 MS. SMILING: I don't think so.

8 THE COURT: Do you know him?

9 MS. SMILING: No.

10 THE COURT: Have you ever met him?

11 MS. SMILING: No. No, sir.

12 THE COURT: When the defendant's name was
13 called out, why did you not discuss that you knew
14 him?

15 MS. SMILING: I wasn't thinking about it.
16 I didn't know him like that. I know Fred, that's
17 it.

18 THE COURT: I mean, why did you not
19 inquire about that, that you knew Frederick Owens?
20 Three other people stood up and said they knew
21 him. But you didn't for Frederick Owens.

22 MS. SMILING: There was another one I
23 knew.

24 THE COURT: But you didn't inquire.

25 MS. SMILING: No, sir.

1 THE COURT: I am going to excuse you and
2 let the alternate replace her. Okay, you are
3 released from this trial. You can just step out.

4 MS. SMILING: Thank you.

5 (Whereupon, the following takes place
6 outside the presence of the juror.)

7 THE COURT: Do you want me to just flip a
8 coin heads or tails? Mr. Brooks?

9 MR. BROOKS: I have---

10 THE COURT: Let me put on the record. I
11 have met with the juror, and the juror admitted
12 that she knew Frederick Owens. She heard his name
13 called and just didn't think that's who it was.
14 But she should have inquired. Because the state
15 has stated that they struck three other people who
16 knew Frederick Owens. Just pending your
17 statement, I would like to hear from you,
18 Mr. Brooks, on that.

19 MR. BROOKS: Judge, it is our position
20 that maybe I misheard her. We may have to bring
21 her back here and ask her some more questions.
22 But what I gathered from listening to her in a few
23 short moments that the court inquired was that she
24 indicated that she was a little unsure. And then
25 she may have recognized him once he was here.

1 Remember he was not here to stand up and be shown.
2 And Frederick Owens is not a name that has a very
3 unique characteristic to it. Such that somebody
4 may not be able to, you know, there may be other
5 Fred Owenses. So I don't need to alter in that
6 regard. I think it would have been different if
7 he was here and stood up, as some of the state's
8 witnesses did, as well as the defense did.

9 But we also inquired about the obligation
10 of her sister dating my client. She said she
11 didn't know anything of the sort. She doesn't
12 know my client. And she said that standing up
13 during the voir dire. She said that a few moments
14 ago. I think it is inappropriate for the court to
15 basically just decide that because she indicated
16 that she didn't know him. She just knows his
17 face. We just---

18 THE COURT: Mr. Owens' testimony under
19 oath was -- is a little more compelling than that.
20 And it is quite, I mean, what he said matched up
21 with what she said that may not have been to a
22 different level. But he said that with
23 substantial knowledge and confirmed it. I mean if
24 she had come up and said she didn't have a sister,
25 then that would be one thing. But she confirmed

1 what he had said at that point.

2 MR. BROOKS: And just because he knows she
3 has a family member in her family, does not mean
4 he actually knows her. We, I know there was some
5 allegations about whether or not she had had some
6 prior history. And he supposedly, he knew her
7 well enough. We didn't ask her those questions.
8 And I think it is inappropriate unless you are
9 going to put her in here, and then delve into.

10 THE COURT: Bring her back in. I will
11 let the state ask her specific questions.

12 MS. FANT: Can I make an argument first?

13 THE COURT: Yes, ma'am.

14 MS. FANT: Your Honor, I believe there is
15 no need for any further discussion on it, because
16 she did admit that she knew Frederick Owens. And
17 that he was younger than her. How would she know
18 that if she didn't know him? And then she
19 specifically said well, when I heard the name
20 Frederick Owens, I thought it was another
21 Frederick Owens. So she obviously recognized the
22 name. Mr. Owens testified under oath that he
23 doesn't go by a street nickname or anything like
24 that. His name was Frederick or Fred. Clearly
25 when she heard the name Frederick Owens whether

1 she thought it was this one or another one, It was
2 incumbent upon her to stand up and say that.

3 I just want to put on the record that the
4 three people who did stand up and say they knew a
5 Frederick Owens are: Thomas Williams, and Adrian
6 Spann, and Darin Ross. Those were Jurors 152,
7 129 and 119. They all stood and said they knew a
8 Frederick Owens and the state struck all three of
9 them. Obviously had she disclosed even if she
10 knew a Frederick Owens, we would have had a right
11 to exercise our strike on that. And I think that
12 is sufficient on it's own without any further
13 inquiry.

14 THE COURT: Mr. Brooks, if she said she
15 knew a Frederick Owens based upon what she has
16 done, and they would have struck her.

17 MR. BROOKS: For that you have to have a
18 crystal ball. Again I think you need to inquire
19 of the juror.

20 THE COURT: I am satisfied the juror did
21 not fully disclose. She could have said I know a
22 Frederick Owens. She did not do that. She had an
23 opportunity to disclose that very easily. I mean,
24 without any embarrassment whatsoever. So I am
25 going to dismiss that juror, and we need to do a

1 blind draw. A blind draw on the alternate juror.

2 Thank you.

3 THE CLERK: Do you want me to bring her
4 back?

5 (Whereupon, Ms. Smiling reenters the
6 courtroom.)

7 THE COURT: Ms. Smiling, you haven't done
8 anything wrong. But out of an abundance
9 precaution, I am going to release you from this
10 jury. Now the other question I have too, did you
11 tell any other jurors that you knew Mr. Owens?

12 THE JUROR: No, sir.

13 THE COURT: Then I'm going to dismiss you.
14 They are calling the jury back at 10:30. The main
15 juror pool. I don't know what that message is so.

16 MS. FANT: I do know it is some time in
17 the morning. I am not quite sure what time, Your
18 Honor.

19 THE COURT: Okay. You will need to check
20 with the clerk before you leave. But thank you,
21 you will be paid for these days that you here.

22 Thank you. You have a nice day.

23 We have two capsules. The one has -- the
24 one with the black top has the one name. And the
25 other one has the other name on it. Mr. Brooks, I

1 will give you the opportunity to select which
2 names.

3 MR. BROOKS: I am sorry.

4 THE COURT: We have to do a blind draw.

5 MR. BROOKS: Right.

6 THE Court: Unlike a civil case where you
7 take the first one and you select the alternate as
8 the first one. And then the second one in a
9 criminal case is random. Somebody has got to
10 select A or B. And I am going to let you select
11 which one you want. I saw you getting ready to
12 flip a coin.

13 MR. BROOKS: I might do it that way,
14 Judge.

15 THE COURT: That's probably as accurate as
16 this is.

17 MR. BROOKS: I pick the black one.

18 THE COURT: The alternate juror will be
19 Steven C. Boatwright.

20 MR. BROOKS: Thank you, judge.

21 THE CLERK: Steven c. Boatwright.

22 THE COURT: Mr. Brooks, I will now need to
23 question your witness concerning his testifying.
24 Please place the defendant under oath.

25 (Whereupon, the defendant sworn.)

1 THE COURT: Mr. Carter, at this time, I am
2 going to explain to you certain of your rights.
3 If you do not understand anything I say, please
4 let me know. If you want me to explain anything
5 in a little more detail, let me know as well. Do
6 you understand what we are getting ready to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We have now reached the stage
9 in the trial where you can present your defense.
10 You have the right to claim the protections given
11 to you by the 5th Amendment of the Constitution of
12 the United States. This Amendment states in part,
13 no person shall be compelled in any criminal case
14 to be a witness against himself. This means that
15 you cannot be required to testify in this case.
16 You have the right to testify on your own behalf;
17 however, no one can make you testify. This is a
18 personal right. And no one not even your
19 attorney, can waive it. Only you can waive your
20 right.

21 If you do decide to testify, you will be
22 subject to the same rules that govern other
23 witnesses. You may be examined and cross examined on
24 any relevant issue in this case. In addition, if
25 you have any convictions involving dishonesty or

1 false statements or for crimes punishable by
2 imprisonment of more than one year and the court
3 determines that the probative value of admitting
4 it into to evidence outweighs the prejudicial
5 effect on you, the solicitor will be able to
6 introduce your record to attack your credibility.

7 If you decide to testify, your decision
8 must be freely, voluntarily and intelligently made
9 with knowledge of the protections given to you by
10 the 5th Amendment. Consequences of your decision
11 to testify.

12 And if you decide not to testify, I will
13 instruct the jurors that they cannot give the fact
14 that you did not testify any consideration
15 whatsoever. And that there is to be absolutely no
16 prejudice to you because you did not testify. And
17 I will instruct the jury as well that they are not
18 even to discuss the fact that you did not testify
19 in the jury room. This is left entirely up to you
20 whether or not you want to testify. And you may
21 talk with your attorney further, with family
22 members, or any friends or anyone else. But the
23 final decision will be left entirely up to you.
24 Do you understand what I have explained to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions
2 about what I have explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you discussed with your
5 lawyer whether or not you should testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you wish to talk to
8 Mr. Brooks anymore at this time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to testify?

11 MR. BROOKS: I just want to talk to him a
12 little bit more.

13 MR. BROOKS: When he came back in, we
14 were dealing with the jury issue. We were in the
15 middle of talking about this. Go back and
16 continue to talk about it.

17 THE COURT: I will give you 10 minutes.
18 And we will start, I will come back in. We will
19 be in recess until a quarter till ten.

20 (Whereupon, the court takes a short
21 recess.)

22 THE COURT: Mr. Brooks, when we --
23 Mr. Carter, when you stopped to talk a moment ago,
24 I was going to let you talk to your attorney about
25 whether or not you want to testify. Have you had

1 that opportunity to speak with your attorney?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you wish to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Brooks, do you anticipate
6 you will put up a defense?

7 MR. BROOKS: No, sir.

8 THE COURT: What I think we will do at
9 this time, I will explain to the jury the fact
10 that he is not going to testify; is not going to
11 put up a defense, because you don't have to. And
12 then I will break, we will break for you, if you
13 want.

14 MS. FANT: We are prepared, so.

15 THE COURT: Are you prepared to go in to
16 closing arguments.

17 MR. BROOKS: In about 30 minutes.

18 THE COURT: Then I will give you, I will
19 bring the jury in and tell them that, and I will
20 dismiss them to the jury room. And then 30
21 minutes after that we will begin closing
22 arguments.

23 MS. FANT: He does need to rest on the
24 record.

25 THE COURT: Yes. Let's go on the record.

1 THE COURT: You want to rest on the
2 record.

3 MR. BROOKS: I think I need to.

4 MS. FANT: I think that is true, Your
5 Honor.

6 THE COURT: Anything before we proceed?

7 MR. BROOKS: No, sir.

8 THE COURT: Thank you. You may bring the
9 jury.

10 (Whereupon, the following takes place
11 within the presence of the jury.)

12 THE COURT: Thank you, ladies and
13 gentlemen of the jury, I hope you had a good
14 night's sleep so we can continue with the case
15 today. You may notice something a little
16 different happened. One of the jurors, your
17 fellow jurors, didn't do anything wrong, but I
18 felt for reasons I thought should be relieved. So
19 now Mr. Boatwright, you are the new juror. So you
20 are no longer an alternate. And it was nothing
21 but a blind draw. So you may consider yourself to
22 be the lucky one or whatever. You may be the
23 unlucky one. But it was just a blind draw. So
24 Mr. Boatwright is now, you are the sole alternate
25 at this stage. Are we ready to proceed?

1 MS. FANT: Yes, Your Honor. The State is
2 ready.

3 THE COURT: Mr. Brooks, are you ready to
4 proceed?

5 MR. BROOKS: Yes, sir.

6 THE COURT: Thank you. The State has
7 rested. It will now be time for the defense.

8 MR. BROOKS: Your Honor, the defense
9 rests.

10 THE COURT: Thank you. Ladies and
11 gentlemen, the defense has rested their case.
12 That means that at this time there will be no more
13 evidence presented to you. And I want to
14 emphasize that and instruct you that the fact that
15 the defendant did not testify is not any factor to
16 be considered by you in any way in your
17 deliberations. And I am going charge you again on
18 that, but I want to remind you of this. It shall
19 not be considered in any way by you concerning his
20 guilt or innocence. You must not consider it in
21 any manner. You may must not even discuss it.

22 He has the constitutional right to remain
23 silent. And the assertion of this right must not
24 be considered by you in your deliberations. You
25 took an oath that you would follow the law, and

1 you are to draw no conclusion whatsoever from the
2 fact that the defendant did not testify. The fact
3 that the defendant did not testify, or should as I
4 said, should not even be discussed in the jury
5 room.

6 The burden of proof as I have said before,
7 is still on the State to prove his guilt beyond a
8 reasonable doubt. He does not have to prove
9 anything. So the fact that he did not take the
10 stand cannot to be held against him.

11 Now, Ladies and gentlemen, I am going to
12 dismiss you to the jury room at this point and
13 time for approximately, for a little while. And
14 then when you come back, and then we will have
15 closing arguments at that time. As I stated
16 always before, do not discuss the case amongst
17 yourselves until I have told you to start. And
18 then we will be with you shortly. Thank you.

19 (Whereupon, the following takes place
20 Outside the presence of the jury.)

21 THE COURT: Any motions from the State?

22 MS. FANT: No, sir, Your Honor.

23 THE COURT: Any motions from the defense?

24 MR. BROOKS: Judge, other than what we
25 have previously put you before you to renew those

1 same motions.

2 THE COURT: That would be your motion for
3 a directed verdict?

4 MR. BROOKS: That's correct.

5 THE COURT: Thank you. And based upon
6 what the State has put up, nothing has changed
7 since they closed their case. I will respectfully
8 deny your motion for a directed verdict. We will
9 go into recess until 10:30. At which time, the
10 State will open and close in its entirety. And
11 Mr. Brooks will have the last argument. Thank
12 you. The court is in recess.

13 (Whereupon, the court takes a short
14 recess.)

15 THE COURT: Is there anything on behalf
16 from Ms. Fant or Mr. Brooks?

17 MS. FANT: No, sir.

18 MR. BROOKS: No, sir.

19 THE COURT: Thank you. Anything before we
20 bring the jury back in?

21 MS. FANT: No, sir, Your Honor.

22 MR. BROOKS: No, sir.

23 THE COURT: Bring the jury.

24 (Whereupon, the following takes place
25 outside the presence of the jury.)

1 THE COURT: Ladies and Gentlemen, all of
2 the testimony that you will hear in this trial,
3 you have now heard. What we will do now is we
4 will have closing arguments. The State will give
5 their closing argument or summation of what they
6 believe they have shown. And will ask you how
7 they want you to return a verdict. The defense
8 may also do that. The defense will go last in
9 this case today. So you can settle in. Please
10 pay close attention as you have done throughout
11 this trial. Is the State ready to proceed with
12 closing arguments?

13 MS. FANT: Yes, Your Honor.

14 THE COURT: Thank you. You may proceed.

15 MS. FANT: May it please the court.

16 THE COURT: Yes, ma'am.

17 MS. FANT: Mr. Brooks, Ladies and
18 gentlemen, "Justice had to be served. I couldn't
19 let him play my man like that. I did what I had
20 to do."

21 Who does that man think he is? Who does
22 he think he is to decide who lives and who dies?
23 He thinks he is all powerful, but he in fact, he
24 is just a remorseless thug who killed his best
25 friend. And we are going to review the evidence

1 that reveals that. First, I want to talk to you
2 briefly about the law. And the judge told you
3 that he is going to tell you what the law is and
4 charge you on the law. But basically as he told
5 you at the beginning of the trial, the defendant,
6 Rahim Carter, is charged with murder and
7 possession of a firearm at night during the
8 commission of a violent crime.

9 He will tell you that murder is the
10 killing of another with malice aforethought.
11 Obviously when you kill another person you have to
12 have some element of intent. But the State does
13 not have to prove that Rahim Carter intentionally
14 murdered Mathew Horace. What we have to show is
15 that when he fired that gun, he did so with malice
16 aforethought. That is a required element. And
17 the judge is going to let you know what malice is.

18 Malice has been defined as evil doing.
19 The doing of a wrongful act under circumstances of
20 which you have no right to do. It also can be
21 defined when someone or shown when someone does an
22 act that just demonstrates total disregard for
23 human life; such as, firing a firearm. And he
24 will tell you it can either be expressed, "The
25 little nigger fucked up. I had to do what I had

1 to do." That shows malice. Or implied or
2 inferred; that you can infer from the facts of the
3 case that he premeditated and found out who was
4 down there, walked down the street when Mathew
5 said, "What's up." He's like, "I ain't here to
6 talk." He ended up shooting him.

7 You can also infer malice from the fact
8 that he used a handgun. Just from that fact
9 alone, to commit this crime. The judge will also
10 instruct you on possession of a firearm during the
11 commission of a violent crime. And that was easy.
12 If you believe that he in fact had a handgun when
13 he committed this crime, the judge will tell you
14 that murder is a violent crime; and therefore,
15 that crime would have been committed as well.

16 Now the judge is the decider of the law in
17 this case, but you are the deciders of the facts.
18 And the facts that you heard came from that
19 witness stand through the state's witnesses that
20 we put up to tell you what they either saw or
21 heard, or what the defendant told them or what the
22 victim told them. Whatever knowledge they had
23 about the case. And I can assure you that the
24 defense is going to try to say, "Man they are just
25 all lying. Every one of them. They are all up

1 here. You know, this witness said that. And
2 didn't say that. Or said this."

3 But all I ask you to do is look at the
4 entire picture that each witness as we said from
5 the beginning, provided a small piece of the
6 puzzle. And that when you put those together,
7 they complete the picture of what happened. And
8 why would somebody come up and just say, "Well I
9 saw him. And I saw him wearing dark clothes, but
10 I didn't see him shoot." If they were going to
11 lie they would have laid it out. We would have
12 had much more evidence than, "Yes, I saw him
13 shooting." But they are telling you what they
14 know. And that's what I ask you to look in to.

15 I would like to talk to you about, a
16 little bit about, corroboration. And
17 corroboration, as I am sure you know, is just an
18 act that strengthens or validates somehow supports
19 some other thing or makes it more certain. In
20 this case we are not asking you to take every
21 witness at face value and say: "Oh, Yes, yes,
22 okay I believe everything he says." We are asking
23 you to look at how each thing that they said was
24 complemented or supported by something that
25 someone else said.

1 An example would be, excuse me, Darrell
2 Hawkins. His testimony, he heard the defendant
3 say, "Nigger, I ain't pressed and fuck you." Well
4 two other people heard that, and he admitted to
5 someone himself that he had said that. That's
6 what corroboration is. It is not just one person.
7 Well how would they know the same thing if they
8 weren't telling you the truth? So as the State
9 needed to, we presented you all of the witnesses
10 that we had. The first witness Lieutenant Truman
11 Duggin. He told you about finding the shell
12 casing in the roadway right here. Those are the
13 shell casings that were sent to sled, and
14 determined by the two experts, who said they have
15 all been fired by the same gun. And in addition
16 the bullets that were taken from the victim,
17 Mathew Horace, could only have come from a high
18 point handgun according to their testimony.
19 Because they know of no other manufacturer who
20 makes a barrel in a handgun with a left, I think,
21 it was a 9 left, which means 9, what do you call
22 it, lands and grooves, I think, and a left twist.
23 But anyway, she said immediately anything high
24 point when we hear 9 left. And she told you that.
25 So what we know about finding the casings

1 there is that corroborates what Darrell Hawkins
2 who was standing down there says he saw; that the
3 defendant went up here to the roadway and started
4 arguing with somebody. And that's where the shots
5 came from. And this is corroborated by where
6 Mathew was shot. Which was toward the back, right
7 under the arm. Which is consistent with him
8 trying to get in the vehicle that would have been
9 right there and not facing the defendant.

10 So the fact that the shell casings were
11 not found there is important. And the fact that
12 the bullet came from that high point 9 millimeter
13 is extremely important. Because Chris Davis who
14 was a defense, he was not a state's friend. He
15 wasn't even happy to be here. Said that that's
16 the kind of gun that Rahim Carter carried.

17 Christopher Davis himself who told you
18 that he was in their crew, with Wise, with Rock,
19 with D'Mo. Those people. That he saw Rock write
20 a letter to Rock's friend, Petey. And Rock told
21 him, "Hey, I am going to write this letter to
22 Petey. And Petey is going to provide me an alibi.
23 He's going to say I was in Petey's yard at the
24 time. I couldn't have done that." And that
25 corroborates Brandon Taylor's testimony that Rock

1 sent him a letter asking him to lie about what
2 happened. Or to write a statement that would
3 clear him. Or and it further corroborates what
4 Brandon told you about him asking about Sam. "Is
5 Sam going to testify. Man, if he's going to
6 testify it might be cool." That's what the
7 defendant did, and he told different people. It
8 wasn't just one.

9 And all of that actually further
10 corroborates about or validates Fred Owens'
11 testimony; that he wasn't worried because
12 witnesses weren't even going to show up for Court.
13 They weren't going to testify. They were going to
14 keep it G. Keep it in the street. Keep it
15 gangster. But they did testify. Chris told you
16 what he had heard and observed. Darrell Hawkins.
17 Darrell didn't tell you he saw everything and knew
18 everything. But the thing that he provided that
19 was most helpful was when he told Detective Lyons
20 about what he saw. And Detective Lyons drew it.
21 And he told you that this was his version of what
22 happened; that he was standing here; that
23 Rahxzilla comes up to you to say, "Hey man, who is
24 down at Booji's Street." And then he tells him.

25 And that he then walks off down here. He

1 shows Rock in the roadway in front of Booji's
2 house right where the shell casings were found.
3 He said that he heard them talking. And this
4 would be the person. He didn't say it was Bread.
5 It didn't tell you he knew it was Bread. But he
6 said that he was arguing with someone there. And
7 that he heard him say, "Nigger, I ain't pressed."
8 And, "Fuck you." And some arguing and heard the
9 gunshots.

10 So that corroborates everything else that
11 was said by Brandon Taylor; that Bread was
12 standing right there. And that he saw it. And
13 then he told you that he saw him run through the
14 park here, which is also on the diagram. He also
15 told you that the Defendant was wearing all black
16 or all dark clothing. That was also noticed by
17 Sam Jenkins and Brandon Taylor. He said that,
18 excuse me, that he told all this to Detective
19 Lyons when he was talked to, and that's what he
20 came and told you yesterday.

21 Brandon Taylor also known as Blue, said
22 the same thing basically. That he saw the
23 defendant Rahxzilla coming toward the house. Came
24 from Salem Street up Dingle going toward Wright.
25 The exact same thing Darrell Hawkins says. That

1 Bread says, said "Hey, what is up Rock." And he
2 said, "I ain't pressed. I ain't pressed." Which
3 two people told you, "I am not here to talk." At
4 that time he said there was more words exchanged.
5 That Rock says: "Fuck you," or yells at Bread.
6 Then the first gunshot. It goes through the
7 window of the back. And he turns around and said,
8 "Help." He's thinking he is going to get hit.

9 And he sees the defendant shooting the
10 gun. He then hears Bread or Mathew say that he
11 had been hit. And he left. Was that necessarily
12 the proper thing to do. I don't think so. But
13 that was him, and he didn't deny that. He told
14 you about it. He said also that he talked to the
15 defendant later and the defendant asked him, "Hey,
16 what is Sam going to say. What is Sam going to
17 say. Do you think he is going to testify?" And
18 he says the defendant sent him a letter. And
19 asked him to write a statement to clear him.
20 Because, you know, "Hey, let's keep it G. Let's
21 just keep it between us."

22 The defendant said to Mathew, excuse me,
23 to Brandon, that he was angry with Mathew because
24 he had jumped 'Lil Chris. And 'Lil Chris told you
25 he did get jumped. And he was in the hospital in

1 fact for a couple of weeks after it. And that's
2 why I was angry. And says, "Hey I'm getting ready
3 to jump in, in to my gang." In to my space. And
4 He drew that up for you. This was the next day
5 that he shot Mathew Horace. The very next day.

6 And one of the things I am sure the
7 defendant will mention and that's why we brought
8 it to you, and we introduced into evidence as part
9 of the State's case, is Brandon Taylor's Plea
10 Agreement.

11 Brandon Taylor is a drug dealer. There is
12 absolutely no question about that. And he has
13 been indicted and in fact pled guilty to those
14 charges in Federal Court. And he sat up here and
15 told you what happens if he doesn't testify
16 truthfully. If he testifies about the wrong color
17 of someone's eyes, or that they were wearing
18 different clothing, or anything that the Feds are
19 able to determine is untrue, his deal is off the
20 table. And he can spend the rest of his life in
21 prison.

22 I think that is a powerful reason for
23 Brandon to come up here and tell you the truth of
24 what had happened. He admitted the bad with the
25 good. He told you also that he had forgiven the

1 Defendant. But that he wasn't going to lie for
2 him, and choose him over Brad. But he indicated
3 he doesn't have Animosity. He's not trying to
4 bury him. He's just trying to tell what happened.

5 Sam Jenkins. Sam told you that he saw the
6 defendant walking up Dingle Street from Salem,
7 going toward Wright, that he was in dark clothing,
8 that he had seen Brandon and Blue, excuse me,
9 Brandon and Mathew drive up in his white Dodge
10 Charger and park it in his driveway. But he took
11 off because he knew or he felt that something
12 isn't right. Something is going to happen. So he
13 didn't even say I stood there and I watched him
14 and I could tell you that. He said he took off
15 when he heard the arguing and he heard the shots.

16 Barry Lowery, you know people that have
17 been in jail or some how know people from jail,
18 are not always going to be the best witnesses that
19 we can put up. But who else is Rahim Carter going
20 to talk to. He is not going to come and say:
21 "You who are out on the street, Hey, this is what
22 happened." He's going to tell some people that he
23 feels comfortable with. And those people were the
24 people that Barry Lowery told you about; that
25 Brandon told you about.

1 He said he was over at Wise's house. He
2 remembered it was a couple of weeks after the
3 shooting, because Brandon who had beat up the
4 night before, was still in the hospital. And he
5 told you that the subject of Bread's name came up.
6 And that that man without remorse said, "Little
7 nigger fucked up. Justice had to be served. I
8 had to do what I had to do." Does that sound like
9 something someone would make up? Who is going to
10 make that up? Why wouldn't you just say: "Hey,
11 man he told me he shot him." But yet he
12 remembered it, because it was so shocking to have
13 come from the defendant's mouth.

14 And the same was true of Frederick Owens,
15 the last witness who testified. He told you, he
16 didn't have a beef with the defendant, but they
17 very close friends at Sumter High. On the
18 wrestling team. And you can use your common sense
19 to determine that. When people are on athletic
20 teams together, they are close; particularly, in
21 high school when you have to go on the same bus
22 with everybody else. And he told you that they
23 were friends. But he also said that when he heard
24 the defendant was in jail, even though it had been
25 many years; that he was shocked. And that he had

1 to tell Detective Allen, because he just couldn't
2 believe that somebody would admit to killing
3 somebody so callously and so openly. And he told
4 Detective Allen of a mutual friend who was also on
5 the wrestling team. And, you know, that makes
6 sense, because he did not just again call 911. He
7 said I am going to call Lynell. Lynell is --
8 He's not going to believe it either.

9 Now the defense is going to take issue and
10 they tried to when he was on the stand, with the
11 fact that it had been several years since he had
12 seen him. But I would submit to you, if you are
13 good friends with somebody in high school, and
14 the next time you see them they are in jail on a
15 murder charge, you are probably going to ask them
16 what happened. And according to his testimony,
17 the defendant had no problem telling him what it
18 was.

19 The two reasons that we know that Fred was
20 telling the truth, because he was friendly with
21 him. He had no axe to grind. But more
22 importantly, the defendant was bragging about what
23 he had done. Frederick testified that he was
24 smiling. He wasn't even sorry about it. He
25 admitted that Mathew didn't even do anything to

1 him. "Hey, I have to exact restitution for my
2 man. I can't let him play my man like that. Keep
3 it G."

4 Fred just couldn't believe that he could
5 do that. He also told Fred that ain't nobody
6 going to testify. No problem. And that
7 corroborates what he told Brandon. And why he was
8 so anxious to get a letter to Petey, to get a
9 letter to Brandon, and have them lie about what
10 had happened. But perhaps the most important
11 witness was the words that came from Mathew Horace
12 himself. Who told us what happened through the
13 testimony of his brothers, Quinten and Mike. And
14 through the mother of his child Lakita McGee. His
15 brother Michael told you that Mat didn't really
16 want to tell him who shot him. He wasn't trying
17 to broadcast it. He was more being quiet. And he
18 pressed him. And he finally said, Rahxzilla.

19 And Mike himself who told you that Rock
20 was like a little brother to him. That they all
21 couldn't believe it. I can't believe it. I
22 wouldn't believe it if you hadn't told me. But
23 Bread did tell him that, and that's how he knew.
24 His other brother did not know who the defendant
25 was, so he went home and got a picture. And said,

1 you know: "Heck, I got this picture. Well I will
2 show him who he is.". And that's what he did. And
3 he also told Michael the very same thing that he
4 told you when he first saw him, "Man, they took my
5 legs. They took my legs."

6 His brother Quinten, he told you that that
7 was the first thing that came out of his mouth
8 when he talked to his brother in the hospital.
9 But as with Michael, with Q or Quinten, he was
10 also hesitant to tell him. But he pressed him.
11 And he finally said he was on the west side, that
12 Rahxzilla came up; that they had words. That he
13 thought that Rahxzilla was acting shifty, and that
14 he turned to get back in the car when Rock shot
15 him. And that supports the physical evidence
16 which shows that the vehicle which everyone said
17 was parked here, the victim was found right beside
18 it, where he was trying to get into the car.

19 He also said that he said the name
20 Rahxzilla. But he showed him the picture, and
21 said, "Is this the person who shot you. Right
22 there, the defendant Rahim Carter." And he said,
23 "Yes." Lakita McGee she says that Blue had called
24 her, Brandon, who she knew, and said Bread got
25 shot. And at the hospital again he wasn't, "Oh

1 let me tell you who shot me." He was upset, and
2 he was crying. And he was like, "I can't believe
3 it. I can't believe it."

4 And finally she said was it this Rahxzilla
5 guy that shot you. He nodded and said, "Yes." And
6 coming from a man who had just been shot, and just
7 found out he was paralyzed. Never going to walk
8 again. Who is crying about what happened because
9 he is so upset. And thinking that he could die at
10 any minute. If it wasn't true would he point the
11 finger at his best friend? I don't think so. I
12 don't think so. Mat was devastated. He couldn't
13 believe that someone who was like a brother to him
14 had shot him.

15 The bottom line in this case is that the
16 State has proved that the defendant Rahim Carter
17 murdered Mathew Horace. The defendant is hoping
18 that you just don't care. That you don't care
19 about the witnesses that were up here; that you
20 don't care about the victim and what happened to
21 him. But I care, law enforcement cares. And the
22 system cares. Mat's family cares. And we hope
23 that you do too. As I mentioned earlier, murder
24 is the killing of another with malice
25 aforethought. And we believe that the malice

1 demonstrated in this case is abundant.

2 There was evidence of premeditation; that
3 the defendant asked Darrell Hawkins who was at
4 Booji's house before he even went up there. That
5 he then started a conversation when he got up
6 there. And all Mathew said, "What's up." And
7 he like, "Nigger, I ain't pressed. I ain't here
8 to talk." And then before he shoots him, he
9 yells, "Fuck you," at Mathew. You can infer
10 malice from the fact that he just started
11 shooting. We know he shot not 1, not 2, not 3,
12 but 4 times. Four times. And the fact that he
13 used a handgun to do it.

14 Ladies and gentlemen of the jury, "Justice
15 had to served. I couldn't let him play my man
16 like that." I did what I had to do. The
17 defendant had no right, no right, to seek his own
18 brand of justice. Particularly against someone
19 who was his friend. And who he admitted hadn't
20 even done anything wrong to him. His actions are
21 an affront to our very system of justice and
22 everything we believe is right about this country
23 and we simply cannot tolerate such action in our
24 society.

25 Mathew Horace is a victim of a senseless

1 and violent crime. Please don't forgot that. At
2 the beginning of the trial you took an oath as
3 jurors to return a true and just verdict in this
4 case. Ladies and Gentlemen, justice does need to
5 be served. And it needs to be served in a court
6 of law here where all civilized societies settle
7 their disputes. On behalf of the State of South
8 Carolina, I ask you to return a verdict finding
9 the defendant guilty as charged.

10 THE COURT: Mr. Brooks.

11 MR. BROOKS: Good morning, I hope
12 everybody had a lovely evening. You may have
13 heard in the last couple of days, me and Ms. Fant
14 going at it. We are representing our respective
15 sides. We don't take it personally. We have two
16 different points of view. She has shared hers
17 with you. Now I am going to share mine. Now we
18 don't disagree with her this was a senseless
19 killing. What we do disagree with is whether my
20 client Rahim was the one that did it.

21 As Judge Young has told you, and will
22 tell you again, my client is presumed innocent. I
23 explained this to you in opening. And he will
24 explain it to you. I will explain it to you
25 again. He will charge you that way. You guys are

1 the triers of fact. You have taken an oath. A
2 very serious oath. Probably the most serious oath
3 that you can get as a citizen to look at the
4 evidence in this case very seriously. This is not
5 a public opinion poll or anything of the sort.
6 And remember, the state must prove their case
7 beyond a reasonable doubt. What do I mean by
8 that? Before what did we equate reasonable doubt
9 to be?

10 Now I am going to go back through the same
11 bunch of witnesses that Ms. Fant just previously
12 related to you, because like I said, the different
13 points of view. And as I also told you in the
14 beginning, we have nothing, you know, I have no
15 obligation to prove anything. And that's our
16 system. That is an oath that you took. And the
17 Judge will explain to you. My client doesn't have
18 to say anything. That's his right. While he is
19 on trial he doesn't have to say anything. And
20 you are not to consider that in any way, shape or
21 form if you are true to the oath that you have
22 taken as an American citizen.

23 Now this case appears to be what I call
24 microwave justice. Now you scratch your head and
25 scratch your head and you may think, you know,

1 what is he talking about, microwave justice. What
2 I mean by that is, some people like to make a meal
3 and get into the kitchen and they slave over the
4 stove, and do all this. Put together a
5 Thanksgiving dinner. You get stuff out of the
6 garden. Cut it up right. And you may go fishing.
7 Your bring the fish and you scale it. And put it
8 in. And put together it into a pot. And you go
9 through all this stuff to put forth this dinner.

10 What I mean by microwave justice is,
11 instead of doing all of that labor, putting
12 together a meal, he just goes in the freezer,
13 sticks something in. Press a button for
14 convenience and pop, we got a meal. Now frankly I
15 don't care too much for microwave meals. And I
16 certainly do not care about microwave justice.
17 And what do I mean? Let's go back and start off
18 with putting everybody together.

19 I will start off with Chris Davis. And
20 Chris Davis talks about being in a cell and my
21 client tells him, "I am going to send a letter to
22 Petey." And the other people say, I was here,
23 there or whatever. And now the problem with this
24 is their letter. Where is Petey? We haven't
25 heard from anybody else who supposedly got a

1 letter from Petey, or the letter itself to
2 corroborate, which is a very good word that Ms.
3 Fant used; to corroborate this discussion that
4 took place between Chris and my client.

5 Now Chris as you know, and he did tell
6 you, he got's a record for drugs okay. But
7 Ms. Fant wants you to believe Chris. Now we also
8 heard from Darrell Hawkins who if you recall when
9 he got up on the stand he's I don't know if he was
10 confused. I don't know. He said, I don't
11 remember saying all these things in my statement
12 that he had given Detective Lyons. And I asked
13 him, did you put these words down on paper, or did
14 the police put these words down on paper. He
15 said, "They wrote it up, and typed it up, and I
16 signed it." How convenient is that?

17 And you also heard about Darrell in a
18 sense that he also has a record for burglary. And
19 Ms. Fant asked him has he ever been in any other
20 trouble. He said, armed robbery. And she asked,
21 is it dismissed? He said, yes. Armed robbery
22 case, been dismissed. That's Darrell. She wants
23 you to believe in him. And now after we come to
24 one of the stars in the show, Brandon Taylor, who
25 is also known as Blue. Blue said me and Bread, we

1 sold drugs together. And whatever maybe this is
2 our click. Group, whatever. Whatever you want to
3 call it. Now she put the Plea Agreement that
4 Brandon Taylor made with the government. The
5 Federal government. For drugs and also a gun.

6 And I asked Brandon, do you carry a gun?
7 "Yes." Have you ever had a gun. "Yes." Also in
8 that Plea Agreement he has pled guilty, and waived
9 his sentence. He does have a lot at stake. He is
10 looking at 10 years minimum. Max/life. The
11 government moves for a, "Downward departure."
12 what is, "Downward departure." Well I asked
13 Brandon, that means a lesser sentence. The
14 government asked the court for a lesser sentence.
15 Yeah, what does that mean? Do you think he wants
16 a lesser sentence? Of course he does.

17 And I also asked him to read paragraph 8.
18 And you will have the Plea Agreement with you.
19 And you will have the luxury of sitting down and
20 reading Paragraph 8; that talks about he doesn't
21 tell the truth. The government doesn't think he
22 is telling the truth; that they give a polygraph.
23 You heard me ask Brandon Taylor, did he ever give
24 you a polygraph. No. You also heard me ask
25 Brandon Taylor about who all was out there that

1 night. He rattled off a few names. And one of
2 the names he said, at first, here, he says Lil B.
3 And you heard me ask him, you had a chance to say,
4 that same question, previously under oath stating.
5 He now says I didn't say that. I acknowledged
6 what I said before was different than what I said
7 now. This statement is different than this
8 statement to the same question. It is
9 inconsistency.

10 Well we have another word, inconsistent
11 statement. And that is a lie. Plain and simple.
12 A lie. The state put Detective Lyons back on the
13 stand to say: "Well, Yeah, that is his Plea
14 Agreement. The Polygraph, I have a feeling, I
15 have a feeling he is telling the truth." But
16 you've got to give him a polygraph. Yeah, I
17 agree. But I feel he was telling the truth.
18 Therefore, I decided not to give him a polygraph.

19 He give a prior statement under oath. Why
20 don't you take steps and give him a polygraph.
21 Microwave justice. Now we get to talk about
22 Brandon again. And a/k/a Blue. He talks about
23 when I was in jail Rahim gets the CO, and they
24 talk to me. Passed me a note wanting me to say he
25 wasn't there, he didn't to it. Etc., etc., etc.

1. Nobody around to confirm this. No guard, no CO.
2. Nobody else in his cell to witness and confirm
3. that Rahim had even talked to him. But we do know
4. Brandon is looking for some substantial
5. assistance. And you scratch your head and say
6. "What is the substantial assistance." Another
7. word for that is help. Help me. I am looking at
8. 10 to life. I am looking for some help. That's
9. what substantial assistance means. Help. I need
10. some help.

11. Now inconsistent statements. Didn't give
12. a polygraph to talk about inconsistent statements.
13. The only substantial assistance which equates to
14. him, Brandon Taylor has got a whole lot of reasons
15. to come and tell you anything, and point the
16. finger at Rahim. Every reason in the world. He
17. certainly doesn't want to get life. Can you blame
18. him? If you believe Brandon Taylor said, let's go
19. buy beach front property in Nebraska. There is a
20. whole bunch of it out there.

21. Now let's move on to some other witnesses.
22. Some of the same witnesses that Ms. Fant just told
23. you about previously. Sebastian Jenkins a/k/a
24. Sam. A/k/a dope dealer. He has got a conviction.
25. He admitted it. He says, I am hanging out. I'm

1 chilling. Back and forth between the houses.
2 Sitting out. I see Rock. Rahim, Rock, whatever
3 they want to call him. I ain't sticking around.
4 I ain't in to stuff like that. And you heard me
5 asking did you see, little -- anyone else out 'Lil
6 D. Nah. Microwave justice. Things don't add up.
7 Pieces of the puzzle don't fit.

8 Ms. Fant talks about small pieces of the
9 puzzle. Well you can't put circular pieces of the
10 puzzle in a square field. But what they want to
11 do is, they want to freeze them. Pull it out,
12 stick it in the microwave. Push the button,
13 microwave justice. Meal ready to serve. Rahim.

14 And now Barry, Barry Lowery. Well he's
15 an interesting fellow. I ain't never really met
16 Rahim. I got out of prison for burglary. Meet
17 him this day. And, you know, remember he knew
18 Wise. I went to go buy drugs. That's what I was
19 doing. There was some other people around them.
20 I don't remember. But I remember Rahim. Oh, it
21 was convenient that you remember Rahim. Rahim is
22 the only one sitting at that table. It is
23 convenient. Another case of just go in, get
24 something out of the freezer, stick it in the
25 microwave. Microwave justice.

1 Barry Lowery. Crack head and burglar.
2 And Ms. Fant comes to you and says believe him.
3 Freddy Owens, Freddie comes in and dressed dapper.
4 And gets up on the stand, little articulate.
5 ABHAN assault and battery on his record. And
6 basically he tells you that he some time in
7 December of 07, he saw Rahim. He was on the
8 wrestling team with him at Sumter High. And he
9 hasn't seen him in 8 or 9 years. Couldn't
10 recognize him. And said Rahim hollers at him from
11 across the hall, and this pod and that pod. I'm
12 sure there is other people out there at the jail.
13 Nobody confirming any of that. Rahim, "Hey, man,
14 come to the church, man, I have got something to
15 tell you. Let's talk. Get to the church." At
16 the jail. Fred says it was a packed house for the
17 service. Yet, nobody else remembers any of this
18 conversation occurring. No guards. Inmates,
19 guards, staff. Where are they? But it's
20 convenient to have Fred come up here and look as
21 dapper as he does, and tells you that the
22 gentleman who I have not seen in 8 or 9 years,
23 come over and confessed and bore his soul to me
24 about this entire incident. It is just highly
25 unlikely. People go to school with people in high

1 school, and you move on with your lives. And you
2 may see somebody, five years later, 8 or 9 years,
3 10 years later.

4 I used to play basketball years ago in
5 high school. People, we used to go to games
6 together. Haven't seen people in 10 years. All
7 of a sudden I see them in 10 years. I am going to
8 invest in what my inner desires and everything
9 about the last year to them? No. You move apart
10 from one another. We have grown apart from one
11 another. It's highly unlikely that something that
12 bizarre could happen. And there is nobody, nobody
13 coming in to court to even confirm that these two
14 people even sat together at one time out at the
15 jail. And this is among a packed house of people
16 as Freddie would say. I submit to you it didn't
17 occur. And if you believe Fred, I have beach
18 front property out in Nebraska. A little bit
19 more, I would love to sell it to you.

20 Now one of other things that Ms. Fant
21 talked about Cornbread giving statements when he
22 was in the hospital. Well, there's a lot of
23 conflict with that. Detective Lyons says that he
24 was in no condition at Tuomey to talk to anyone.
25 Ms. McGee says she talked to him at Tuomey. Well,

1 somebody has got to be wrong. Michael Horace says
2 that he talked to his brother in Florence. And he
3 said the first time he told anybody about this.
4 It has been over 2 years ago.

5 And Quinten who says I was in Florence and
6 my brother said these things accusing Rahim of
7 doing this. He says that Courtney was around.
8 Where was Courtney when this was going on. He
9 said, where was the medical personnel and staff?
10 Where are they? Where is the police? Detective
11 Lyons says to his knowledge, the lead detective,
12 nobody went to Florence. And correct me if I am
13 wrong, but I thought Florence was only 40 miles
14 away. We are not talking about California, the
15 other side of the country, the other side of the
16 planet.

17 If Cornbread was saying these things, it
18 would have been nothing for the officers to jump
19 in the car and ride to Florence 45 minutes and
20 say: "Hey, what is this." Let's get this down.
21 You say, what, where is that." And one thing I
22 want to point out to you, Michael, he is telling
23 you that until yesterday. Quinten told the
24 police, he told the police more than two months.
25 Detective Lyons says they apprehended my client,

1 Rahim, the day before Thanksgiving.

2 Quinten tells the police several weeks
3 after that, almost a month later. How convenient
4 is that? Another example microwave justice. Now
5 if you remember Dr. Ross, she testified, that the
6 penetrating wound to the chest. You also heard
7 Ms. Cromer, the ballistic's expert from sled. She
8 talked about she had one bullet to test, and four
9 cases. And she also said a 9 millimeter is a
10 fairly common gun. There was no gun ever
11 presented to her. And we heard Quinten, if you
12 recall say, his brother said, "I got shot." And
13 I left---

14 MS. FANT: Objection, Your Honor. May we
15 approach?

16 THE COURT: You may.

17 (Whereupon, the attorneys approach the
18 bench and confer with judge.)

19 THE COURT: The jury will disregard your
20 last sentence.

21 MR. BROOKS: As I was saying, microwave
22 justice. That's what you have got here.
23 Microwave justice. I am going to show you how the
24 state failed to provide this. They don't you tell
25 this. But they recalled Detective Lyons to the

1 stand. His notes, he didn't take written
2 statements from a bunch of people. So his notes
3 aren't 100 percent accurate. He didn't go out to
4 Florence. He felt there was no need to take a
5 polygraph from Brandon, even though, he had the
6 ability to do so. To accurately know whether or
7 not this guy is telling the truth, even though he
8 had given a prior statement under oath.

9 Here again, microwave justice. Detective
10 Lyons should have made sure. He just didn't.
11 He could have gotten, if he had done a test, I
12 would submit, if he had done a test, it would have
13 come out differently. It wouldn't have fitted
14 what they want to present to you.

15 So why not do that? I want to make sure
16 to keep the microwave heat. Keep it plugged in.
17 Because I want it to come out. An example of
18 microwave justice. That's the bottom line. Now I
19 just recited all Ms. Fant's witnesses so you can
20 see the different points of view. And if you
21 recall in the very beginning when we talked about
22 the reasonable doubt what that means. In
23 baseball, the tie goes to the runner.

24 We don't have to prove anything. I submit
25 to you that the case and the witnesses they have

1 are so problematic, It would be unreasonable for
2 you not to have a doubt about who was telling the
3 truth about A, B, C. It doesn't make any sense.
4 They didn't even get the ball into the end zone.
5 And they didn't get the ball past the defendant.
6 That's the case that they want, and they want to
7 sell to you. Microwave justice. It is not your
8 job to plug in the holes of their case. Well
9 people testified that there was a bunch out there.
10 Well where are they? Well I just get a statement.
11 No, no, not. That's a good question. Where are
12 all of these people who supposedly were out there
13 to witness this incident? What about the people
14 in the neighborhood? You heard Detective Lyons,
15 he said he canvassed the neighborhood. He said
16 something about a guy, Ezechieel Simmons across
17 the street. Where is the other gentleman? Where
18 is this other gentleman they talked about? Where
19 are they?

20 You heard, other nicknames, 'Lil Virg,
21 Roger, Donnie, and so many other names of people,
22 I can't necessarily remember all that. Well where
23 are they? And this is just an incident. Where
24 are all these other people who would have heard my
25 clients say this, that, and the other? Where are

1 they? Barry talked about being at Wise's house.
2 Rahim said who? Wise. Where is wise? Where is
3 this other guy whose name I don't even remember.
4 Where are they.

5 If you notice out of all of these things
6 when they talk about a conversation with my
7 client, there is nobody to corroborate it. There
8 was note. A letter went out. They couldn't even
9 have the notes and the letter. The police didn't
10 even take written statements from these guys
11 except for one. Where are they?

12 You cannot, you do not know when these
13 conversations allegedly took place with my client.
14 You don't even when the conversation with the
15 police about the conversation with my client took
16 place. That's bizarre. But it is not, and you
17 are trying to get microwave justice. And plain
18 and simple.

19 You may not like it, some may. But this
20 is not a situation where like I said before, you
21 have present reaction from the defendant as to
22 what happened. This is a public opinion poll.
23 You are taking what they presented, and you and I,
24 judge what they may present. I submit to you, all
25 they are trying to tell you; microwave justice.

1 Then there is beach front property in the State of
2 Nebraska. There is no other conclusion you can
3 come back with other than not guilty.

4 The State has no case. You listened to
5 all of the witnesses. You are grown. You
6 understand. You listened to the case. And you
7 also understand that you have taken an oath that
8 you, I am sure, are going to respond and uphold.
9 And if you do that, if you do follow the law,
10 which I am sure you will, you will no other
11 outcome but not guilty. This case is like swiss
12 cheese, filled with holes. And the State is
13 trying to sell it to you. And I don't want to
14 minimize the fact that somebody should be guilty,
15 and they didn't try. But to sit there and point
16 the finger at that young man there, you have got
17 to do better than microwave justice. Thank you.

18 THE COURT: Ladies and Gentlemen of the
19 jury, all the testimony and other evidence has
20 been presented to you in this case. Now is the
21 time in this trial when I will charge you with the
22 law to be applied in this case. The Indictment
23 charges the defendant with various crimes. I
24 remind you of the fact that the defendant was
25 arrested, charged and indicted in this case, is

1 not evidence in this case. And cannot be
2 considered by you as evidence of guilt in this
3 case. Nor does it create any presumption or
4 inference of guilt. These Indictments are simply
5 the formal written instrument which contain the
6 charges made against the defendant. They are the
7 formal documents by which the case has been
8 brought in to this court.

9 The indictment in this case alleged two
10 different offenses against the defendant. The
11 charges are Count 1, murder. Count 2, possession
12 of a firearm or knife during the commission of a
13 violent crime. Each Indictment charges a separate
14 and distinct offense. You must decide each
15 Indictment separately on the evidence and the law
16 applicable to it uninfluenced by your decision as
17 to any other count in the Indictment. Each
18 defendant may be convicted or acquitted on any or
19 all of the offenses charged.

20 You will be asked to write a separate
21 verdict of guilty or not guilty for each count of
22 the Indictment. The defendant has pled not guilty
23 to this Indictment and that plea puts the burden
24 on the State to prove the defendant guilty. A
25 person charged with committing a crime or criminal

1 offense in South Carolina is never required to
2 prove their innocence. I charge you that this is
3 an important rule of law that the defendant in a
4 criminal trial no matter how serious the charge
5 may be, will always be presumed to be innocent of
6 the crime for which the Indictment was issued
7 unless guilt has been proven by evidence
8 satisfying you the jury of guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does end
11 when you begin your deliberations, but it
12 accompanies the defendant throughout the trial
13 until you reach a verdict of guilt based on the
14 evidence that satisfies you of guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is like a
17 robe of righteousness placed about the shoulders
18 of the defendant which remains there until the
19 defendant has been stripped from the -- until it
20 has been stripped from the defendant by evidence
21 that satisfies you of that guilt beyond a
22 reasonable doubt. The presumption of innocence is
23 not a mere legal theory. It is not just a phrase
24 that we use in law. It is a substantial right to
25 which every defendant is entitled to unless you

1 the jury are satisfied from the evidence of his
2 guilt beyond a reasonable doubt.

3 I instruct you and emphasize the fact that
4 the defendant did not testify is not a factor to
5 be considered by you in any way in your
6 deliberations and in your consideration of the
7 questions of guilt or innocence of the defendant.
8 It must not be considered by you in any manner
9 whatsoever. The defendant has a constitutional
10 right to remain silent, and the assertion of this
11 right must not be considered by you in your
12 deliberations.

13 I repeat under your oath, you are to draw
14 no conclusion whatsoever from the fact that the
15 defendant in this case did not testify. The fact
16 that the defendant did not testify should not even
17 be discussed in the jury room. The burden of
18 proof as I have stated to you, is on the state.
19 The Defendant is not required to prove his
20 innocence. And the burden of proof remains on the
21 state to prove guilt beyond a reasonable doubt.

22 What is reasonable doubt? In the law, a
23 reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act. The
25 State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. Some of you may
2 have been seated as jurors in a civil case where
3 you were told that it is only necessary to prove a
4 fact is more likely true than not true; such as,
5 by the greater weight or preponderance of the
6 evidence.

7 In a criminal trial the state must prove a
8 more powerful -- must be more powerful than that.
9 It must prove guilt beyond a reasonable doubt.
10 Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's
12 guilt. There are very few things in this world
13 that we know with absolute certainty. And in a
14 criminal cases the law does not require proof that
15 overcomes every possible doubt. If based upon
16 your consideration of the evidence you are firmly
17 convinced that the defendant is guilty of the
18 crime as charged, you must find the defendant
19 guilty.

20 If on the other hand, you think there is a
21 real possibility that the defendant is not guilty,
22 you must give the defendant the benefit of the
23 doubt and find him not guilty. I remind you that
24 during the trial you and I have certain duties to
25 perform. As trial judge it is my responsibility

1 to preside over the trial of this case. And I
2 also have the duty to rule on the admissibility of
3 evidence offered during this trial. You are to
4 consider only the competent evidence before you.
5 If there was any testimony ordered stricken from
6 the record in this case during the trial, you must
7 disregard that testimony. You are to consider
8 only the testimony which has been presented from
9 this witness stand. Any exhibits that have been
10 made a part of the record in this case or any
11 stipulations of counsel.

12 I have the additional duty to charge you
13 the law applicable to this case. As the presiding
14 judge, I am the sole judge of the law for this
15 case. And it is your duty as jurors to accept and
16 apply the law as I now state it to you. If you
17 already have some idea as to what the law is, or
18 what the law ought to be, and it does not agree
19 with what I tell you now that the law is, you must
20 abandon that idea, because you are sworn to accept
21 the law and apply the law exactly as I state it to
22 you.

23 In every case tried in this court before a
24 jury, the jury becomes the sole and exclusive
25 judges of the facts in this case. As a trial

1 judge, I cannot intimate, state, comment on or
2 make any statement to a trial jury about the facts
3 in this case. Since you are the jury, you are the
4 sole judge of the facts of the case, and you are
5 not to infer from what I have said during the
6 progress of this trial in ruling upon the
7 admissibility of evidence or otherwise, or
8 anything that I say now during the course of this
9 instruction to you, that I have any opinion about
10 the facts in this case. The law does not allow me
11 to have an opinion about the facts of this case.
12 This is a matter solely for you, the jury to
13 determine. As jurors it is your duty to determine
14 the effect, the value, the weight, and the truth
15 of the evidence presented during this trial.

16 There are two types of evidence which are
17 generally presented during a trial. There is
18 direct evidence and circumstantial evidence.
19 Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact; such
21 as, an eye witness. It is evidence which
22 immediately establishes the main fact to be
23 proved. Circumstantial evidence is proof of a
24 chain of facts and circumstances indicating the
25 existence of a fact.

1 It is evidence which immediately
2 establishes a collateral fact from which the main
3 fact may be inferred. Circumstantial evidence is
4 based on inferences and not on personal knowledge
5 or observation. The law makes absolutely no
6 distinction between the weight or the value to be
7 given either direct or circumstantial evidence.
8 Nor is a greater degree of certainty required for
9 circumstantial evidence than of direct evidence.
10 You should weigh all of the evidence in this case.
11 After weighing all of the evidence in this case if
12 you are not convinced of the guilt of the
13 defendant beyond a reasonable doubt, you must find
14 the defendant not guilty. Necessarily, you must
15 determine the credibility of witnesses who have
16 testified in this case.

17 Credibility simply means believability.
18 It becomes your duty as jurors to analyze and to
19 evaluate the evidence and determine which evidence
20 convinces you of its truth. In determining the
21 believability of witnesses who have testified in
22 this case, you may believe one witness over
23 several witnesses. Or several witnesses over the
24 one witness. You may believe a part of the
25 testimony of a witness and reject the remaining

1 part of the testimony of that same witness.

2 You may believe the testimony of a witness
3 in its entirety. Or reject the testimony of a
4 witness in its entirety. You may consider whether
5 any witness has exhibited to you any interest,
6 bias, prejudice, or the other motive in this case.
7 You may also consider the appearance and the
8 manner of a witness while on this witness stand.

9 The rules of evidence ordinarily do not
10 permit witnesses to testify to opinions or
11 conclusion. An exception to the rule exists for a
12 witness we call an expert witness. A witness who
13 by education and experience has become an expert
14 in some Art, Science or profession or calling may
15 state an opinion as to relevant matters which the
16 witness claims to be an expert and may also state
17 a reason for the opinion.

18 And you should consider an expert opinion
19 received in evidence in this case like any other
20 evidence and give it the weight you think it
21 deserves. If you decide the opinion of an expert
22 witness is not based on sufficient education and
23 experience or if you conclude that the reason
24 given in support of the opinions of the expert are
25 not sound, or that the opinion is outweighed by

1 other evidence you may disregard the opinion
2 entirely.

3 An expert witness' testimony is to be
4 given no greater weight than that of any other
5 witness simply because the witness is an expert.
6 Further, you are not required to accept an
7 expert's opinion even though it is not
8 contradicted. The defendant is charged in this
9 case with murder. The State must prove beyond a
10 reasonable doubt that the defendant killed another
11 person with malice aforethought. Malice is
12 hatred, ill will or hostility towards another
13 person. It is the intentional doing of a wrongful
14 act without just cause or excuse and with an
15 intent to inflict an injury under circumstances
16 that the law will infer an evil intent.

17 Malice aforethought does not require that
18 malice exist for any particular time before the
19 act is committed. But malice must exist in the
20 mind of the defendant just before and at the time
21 the crime is committed. Therefore, there must be
22 a combination of the previous evil intent of the
23 act. Malice aforethought, may be expressed or
24 inferred. These terms express or inferred do not
25 mean the different kinds of malice, but merely the

1 manner which malice may be shown to exist; that
2 is, either by direct evidence or by inference from
3 the facts and the circumstances which are proved.

4 Express malice is shown when a person
5 speaks words which express hatred or ill will for
6 another, Or when the person prepared beforehand to
7 do the act which was later accomplished. For
8 example, lying in wait for a person or any other
9 acts of preparation going to show that the deed
10 was in the defendant's mind when expressed malice.
11 Malice may be inferred from conduct showing total
12 disregard for human life. Inferred malice may
13 also arise when the deed is done with a deadly
14 weapon. A deadly weapon is an article or
15 substance which is likely to cause death or great
16 bodily harm. Whether an instrument has been used
17 as a deadly weapon depends on the facts and
18 circumstances of each case.

19 The following are examples of instruments
20 which may be deadly weapons: a pistol, a shotgun,
21 a knife, dirk, dagger or other items. A gun may
22 be a deadly weapon even if it is not operating.
23 The defendant is also charged with possession of a
24 weapon during the commission or an attempt to
25 commit a violent crime. The state must proof

1 beyond a reasonable doubt the defendant was in
2 possession of a firearm, or visibility had one
3 during the commission of a violent crime. A
4 firearm means any machine gun, gun, automatic
5 rifle, revolver or any weapon that is designated
6 or ready to expel a projectile.

7 In order to find the Defendant guilty of
8 possession of a weapon during the commission of a
9 violent crime, you must first find that the
10 defendant was guilty of committing the violent
11 crime, or attempting the commitment of a violent
12 crime. Murder is a violent crime.

13 Ladies and Gentlemen, there are two
14 possible verdicts which you may find in this case
15 on the charge of murder and possession of a
16 firearm during the commission of a violent crime.

17 This is the verdict form which you will
18 take into the jury room with you. As to
19 Indictment 2008-GS-43-597 charging murder. Guilty
20 or not guilty. As to the indictment charging
21 possession of a firearm during the commission of a
22 violent crime, you may, you may find the defendant
23 not guilty or guilty. There is no significance
24 whatsoever to the order in which I just stated
25 these possible verdicts. It's simply one must be

1 stated first.

2 Ladies and Gentlemen, the verdict must
3 unanimous. All 12 of you must agree on the
4 verdict. Your decision must not be based on
5 sympathy, passion, prejudice, emotion, or any
6 other consideration not in evidence in this case.
7 Madam foreperson, when the jury agrees on the
8 verdict, you will write the verdict on the back of
9 the indictment and you will sign it. And you will
10 also check in the boxes on the verdict form. And
11 you will sign your name. And then you will knock
12 on the door of the jury room, and will inform the
13 bailiff that you will have reached a verdict. At
14 that time, we will receive you back here in the
15 courtroom for publication of your verdict.

16 And I ask that you now return to your jury
17 room but do not begin your deliberations until you
18 are told to do so by the clerk or the bailiff.
19 There are some matters which must be discussed
20 with the attorneys before you begin your
21 deliberations. Thank you.

22 (Whereupon, the following takes place
23 outside the presence of the jury.)

24 THE COURT: I am going to ask that the
25 alternate juror if you will remain here. Or you

1 may go out with them, and I will bring you back.

2 Any objections or additions to the jury
3 charge from the state?

4 MS. FANT: Nothing from the state, Your
5 Honor.

6 THE COURT: Anything -- any objections or
7 additions from the defense to this jury charge?

8 MR. BROOKS: No, Your Honor.

9 THE COURT: Thank you. If you will gather
10 the evidence, I will then instruct the jury they
11 can begin their deliberations. And if you could
12 bring the alternate.

13 (Whereupon, the alternate returns to the
14 jury room.)

15 THE COURT: Ma'am, you have been the
16 alternate for this case. However, the case has
17 now gone to the full jury and you have completed
18 your pass. I appreciate your time that you spent
19 listening. And we would have done what was
20 necessary had you been called on. Now you are
21 welcome to stay. Please do not discuss the case
22 with anybody.

23 (Whereupon, at 11:45 a.m. the jury
24 commences deliberations.)

25 (Whereupon, at 1:36 p.m. the jury has

1 question.)

2 THE COURT: "

3 Lil Daryl's statement."

4 THE REPORTER: That is not in.

5 MS. FANT: Which can't go in actually.

6 THE COURT: What I am going to write down

7 is I am going to write, "The statement did not

8 come in to evidence. The witness statement did

9 not come in to evidence." And I am just going to

10 leave it.

11 MR. BROOKS: That's what I was going to

12 do.

13 THE COURT: Because they're looking for,

14 what it is, is you have got a lady who is probably

15 some type of record's custodian---

16 MS. FANT: Accountant or something?

17 THE COURT: ---or accountant. Well I

18 think they saw it went 37, 39. And wondering what

19 was missing.

20 THE COURT: So I am going to write---

21 MS. FANT: Or Darrell Hawkins' statement

22 is not in evidence.

23 THE COURT: Darrell Hawkins' statement is

24 not in evidence.

25 MS. FANT: Just the---

1 THE COURT: Well I still think that is the
2 correct answer. "Darrell Hawkins' statement is
3 not in evidence. His testimony is in evidence. I
4 can't go into it."

5 MS. FANT: I guess the only concern about
6 that, you don't think they will think that his
7 testimony is not in evidence between the written
8 statement and, you know?

9 THE COURT: I will write that Darrell
10 Hawkins' statement is not in evidence. He
11 testified. He only testified.

12 MS. FANT: Darrell Hawkins' testimony is
13 in evidence. Or the testimony about the statement
14 is in evidence.

15 (Jury note marked Court's Exhibit No. 1
16 for id.)

17 (Whereupon, the note was sent back in to
18 the jury room.)

19 THE COURT: Court will be at ease.

20 (Whereupon, at 2:28 p.m. jury has a
21 question.

22 MR. BROOKS: You want me to tell them to
23 bring my client in?

24 (Jury Note marked Court's Exhibit No. 2
25 for id.)

1 THE COURT: Are you ready? I have
2 received a note from the foreperson, and the note
3 says: "We can't come to a united decision." If
4 you all want me to, I am going to ahead and give
5 an Allen Charge at this time. They have been out
6 for approximately 3 hours. So I am going to give
7 them the Allen Charge, and then send them back
8 into the jury room to deliberate. Do you want to
9 bring them in?

10 (Whereupon, the following takes place
11 within the presence of the jury.)

12 (Whereupon, at 2:43 p.m. Allen Charge is
13 given.)

14 THE COURT: Thank you, Mr. Bradley.
15 Madam forelady, and Ladies and gentlemen of the
16 jury, I have received your note that says, "We
17 can't come to an agreement or a verdict in this
18 case as instructed earlier." The verdict must be
19 unanimous. Now when a matter is in dispute it
20 isn't always easy for even two people to agree.
21 So when 12 people must agree it becomes even more
22 difficult. In most cases absolute certainty
23 cannot be reached or as expected. However, you
24 have a duty to make every reasonable effort to
25 reach a unanimous verdict.

1 In doing this you should consult with one
2 another. Express your own views, and listen to
3 the opinions of your fellow jurors. Tell each
4 other how you feel and why you feel that way.
5 Discuss your differences with open minds.
6 Although the verdicts of the jury must be
7 unanimous, everyone of you has the right to your
8 own opinion. The verdict you agree on must be
9 your own verdict, a result of your own
10 convictions. You should not give up on firmly
11 held beliefs merely to be in agreement with your
12 fellow jurors.

13 The majority should consider the minority
14 position. And the minority should consider the
15 majority position. You should carefully consider
16 and respect the opinions of each other. And
17 reevaluate your position for reasonableness,
18 correctness and impartiality. You must lay aside
19 all outside matters and reexamine the question
20 before you based upon the law and the evidence of
21 this case. And if you do not agree on a verdict
22 in this case, I must declare a mistrial.

23 In that case it does not mean that anybody
24 wins. It just means that at some future time,
25 either I or another judge will try this case, with

1 some other jury sitting where you are sitting now.
2 The same participants will come. And the same
3 lawyers will ask basically the same questions.
4 And get basically the same answers. And we go
5 through this whole process again. You were
6 selected in the same manner, and from the same
7 source as any future jury will be. And although
8 there is no reason for me to suppose that the case
9 would ever be submitted to more, to 12 more
10 intelligent, impartial, conscientious and
11 competent jurors than you are, and or that more
12 clearer evidence will be produced to you from one
13 side or the other, I don't think anything will
14 change.

15 Therefore I will now ask you to return to
16 your deliberations. With the hope that you can
17 arrive at a verdict within a reasonable time.
18 Thank you.

19 (Whereupon, the following takes place
20 outside the presence of the jury.)

21 THE COURT: Court will be in recess.

22 (Whereupon, Deliberations commence at
23 2:48 p.m.)

24 (Whereupon, the court receives a note at
25 3:40 p.m. from the jury.)

1 (Jury note marked Court's Exhibit No. 3
2 for id.)

3 THE COURT: I received another inquiry. I
4 guess it is an inquiry. This letter states:
5 "Quinten Balls testimony." So I think what I
6 will, the only thing I can do is ask them, do they
7 want to hear the testimony. They are not asking.
8 They're just saying, "Quinten Ball's testimony."
9 I don't know whether they think I can. Do you
10 have that available, Margaret, where we can play
11 that back, if necessary? So that is going to be
12 my response. Any objection to that, Mr. Brooks?

13 MR. BROOKS: Yes, sir.

14 THE COURT: Is there any objection to my
15 saying "Do you want to hear the testimony."

16 MR. BROOKS: No objection.

17 THE COURT: Do you all want to look at my
18 note before I sent it back? I will wait and see
19 if they want it.

20 (Whereupon, At 3:13 p.m. jury has a note.)

21 THE COURT: "Can we listen to the verbal
22 testimony?"

23 (Jury note marked Court's Exhibit No. 4
24 for id.)

25 MS. FANT: If they want. There are a few

1 sentences during the end of direct testimony and
2 cross examination---

3 The COURT: What she will have to do is
4 stop it there. And she is going to have to leave
5 the courtroom and play it for a moment. Or to get
6 it to cross examination. There ought to be an
7 easier way to do it unless she has an ear set so
8 that she can listen to it.

9 MS. FANT: Well I guess, I don't know.
10 The state's position would be to just let them
11 hear it. But it is stricken. You ordered it
12 stricken. And they are supposed to abide
13 obviously by what you said.

14 THE COURT: The best way to make sure it
15 is stricken is for them not to hear it again.

16 MS. FANT: Well except our concern is that
17 when she goes out, they are going to think we are
18 hiding something from them. They are going to
19 say---

20 THE COURT: I will tell them that I
21 ordered the last sentence of his testimony to be
22 stricken.

23 MS. FANT: Okay.

24 THE COURT: Then there will be a short
25 break, and she will cue up the cross examination.

1 And then they will hear cross examination. They
2 will hear any redirect. And recross. We are only
3 talking about picking out one sentence.

4 MS. FANT: No, and I don't have a problem.
5 As long as we let them know that she is not going
6 out and erasing the tape, and then coming. You
7 know, jurors think a lot of.

8 THE COURT: I will tell them that. Bring
9 the jury in.

10 MS. FANT: Thank you. Are we at the
11 beginning? I don't think we are at the beginning,
12 Your Honor. Your Honor, I would just like to put
13 one more thing on the record; to make is that, we
14 feel that it is quite possible that the jury the
15 reason they want to hear Mr. Ball's testimony was
16 because of what Mr. Brooks did in closing
17 argument. Which was to say when he fell, "He
18 pulled out and let off a few."

19 The concern with stopping the tape, and
20 having it stricken, and telling them that it has
21 been stricken---

22 THE COURT: I can tell them, cure it in a
23 reference concerning a motion. And that it has
24 been stricken. Not because, but that's what the
25 whole.

1 MR. BROOKS: Well I just think what you
2 originally said was we will stop it, and we don't
3 hear that part. It has been stricken. I think
4 that's, I mean, we jump into---

5 THE COURT: I can't speculate that. I am
6 going to explain. Here is what I am going to do.
7 I am going to play back the tape, the part of the
8 testimony. I am not going to editorialize it for
9 them. I am not going to infer anything by it. I
10 am going to let them know. And I will let them
11 know that one sentence was stricken from the
12 testimony. And that one sentence they will not
13 hear.

14 No inferences they take from that. I
15 can't speculate as to what they're hung up on.
16 You're wanting me to go one step further and
17 explain to them, I can't do.

18 MS. FANT: Well, except I don't seen what
19 the problem in just referencing what it dealt
20 with. Because Mr. Brooks purposefully did that.

21 THE COURT: I don't know if that's the
22 case.

23 MS. FANT: Well, and he knew certainly
24 that -- well that's just the state's position.

25 THE COURT: So noted. Bring the jury in.

1 (Whereupon, the following takes place
2 within the presence of the jury.)

3 THE COURT: Ladies and Gentlemen, you have
4 requested to hear the direct testimony and the
5 cross examination of the witness Quinten Ball. We
6 have made arrangements for that.

7 Now at the end of his testimony, a
8 statement was given and I told that that would be
9 stricken. Now as this tape plays through, when we
10 get to that one last sentence, I will, the Court
11 Reporter will stop the tape. She will then reset
12 it to play from the cross examination testimony.
13 I have ordered that that testimony be stricken.
14 So I am not going to let you hear it again and
15 whatever and then tell you to strike it again. So
16 that is the procedure we will take. And then I
17 will send you back into the jury room.

18 (Whereupon, Quinten Ball's testimony is
19 played to the jury.)

20 (Whereupon, tape is cued.)

21 THE COURT: Now you can go to cross
22 examination.

23 (Whereupon, the cross examination of
24 Quinten Ball's testimony is played to the jury.)

25 THE COURT: Ladies and Gentlemen, I will

1 now direct you back to your jury room and you will
2 resume your deliberations. Thank you.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Anything from the state?

6 MS. FANT: No, sir.

7 THE COURT: Anything from the defense?

8 MR. BROOKS: No, sir.

9 THE COURT: The court will remain in
10 recess pending the jury's verdict.

11 (Whereupon, at 3:54 p.m. jury reached a
12 verdict.)

13 THE COURT: I have received correspondence
14 that the jury has reached a verdict in this
15 matter. Before the jury comes in, I would like to
16 remind everyone that the jury has worked long and
17 hard for them to come to this verdict. This Court
18 will not tolerate any shows of emotion whether
19 the verdict is guilty or whether the verdict is
20 not guilty from anyone. Anyone showing emotion at
21 the time, I will hold in contempt of court.

22 Now if there is anyone in this courtroom
23 who does not believe that they can sit there
24 without showing emotion to this jury, if you don't
25 believe you can do it, this is your opportunity to

1 leave. But I caution anyone, if there is a show
2 of emotion that they will be held in contempt of
3 court. Is there anyone who does not understand my
4 directive?

5 (Whereupon, no response.)

6 THE COURT: Then I will assume that
7 everyone in this courtroom understands my
8 directive. Thank you.

9 THE CLERK: Are you ready for the jury,
10 Your Honor?

11 THE COURT: Yes, sir.

12 (Whereupon, the following takes place
13 within the presence of the jury.)

14 THE COURT: Thank you, Mr. Bradley.

15 Madam Forelady, I am advised that the jury
16 having deliberated, has reached a verdict in the
17 case of the State versus Mr. Carter. Is that
18 correct?

19 THE FORELADY: Yes, we have, Your Honor.

20 THE COURT: Please pass the verdict to the
21 bailiff. Mr. Clerk, you can publish the verdict.

22 THE CLERK: The State of South Carolina,
23 County of Sumter, in the Court of General
24 Sessions, Docket No. 2008-GS-43-597, The State of
25 South Carolina versus Rahim Carter, Defendant.

1 As to Count 1, charging murder, we the
2 jury unanimously find the defendant, guilty.
3 Count 2, charging possession of a firearm or knife
4 during the commission of a violent crime. We the
5 jury unanimously find the defendant, guilty.
6 Signed, Bernadette Hair, foreperson. Dated,
7 August 6th 2009. Ladies and Gentlemen, if this is
8 your verdict so say you all by raising your right
9 hands please. Thank you.

10 (Whereupon, all jurors affirm.)

11 THE COURT: Does the state request the
12 polling of the jury?

13 MS. FANT: No, sir.

14 THE COURT: Does the defense request the
15 polling of the jury?

16 MR. BROOKS: Yes, sir.

17 THE COURT: Please poll the jury.

18 THE CLERK: Ladies and gentlemen, when
19 your name is called, please stand and answer my
20 questions, please. Juror No. 115 Harry
21 Richardson, is this your verdict and still your
22 verdict?

23 MR. RICHARDSON: Yes, sir.

24 THE CLERK: Thank you, you may be seated.
25 Suzanne Moore, is this your verdict and still your

1 verdict?

2 MS. MOORE: Yes, sir.

3 THE COURT: Thank you. You may be seated.

4 Juror No. 145, Andrea White. Is this your verdict
5 and still your verdict?

6 MS. WHITE: Yes.

7 THE CLERK: Thank you. You may be seated.

8 Angela Mims, is this your verdict and still your
9 verdict?

10 MS. MIMS: Yes, sir.

11 THE CLERK: Thank you. Minnie Frierson,
12 is this your verdict and still your verdict?

13 MS. FRIERSON: Yes, sir.

14 THE CLERK: Thank you, ma'am. You may be
15 seated. Bernadette Hair, is this your verdict and
16 still your verdict?

17 MS. HAIR: Yes, sir.

18 THE CLERK: Thank you, ma'am, you may be
19 seated. Phyllis Raymond Vatura, is this your
20 verdict and still your verdict?

21 MS. VATURA: Yes, it is.

22 THE CLERK: Tony Thorp, is this your
23 verdict and still your verdict?

24 MR. THORP: Yes, sir.

25 THE CLERK: Thank you. You may be seated.

1 Eunice Stukes, is this your verdict and still your
2 verdict?

3 MS. STUKES: Yes, sir.

4 THE CLERK: Thank you, ma'am. Frank
5 Garrett, is this your verdict and still your
6 verdict?

7 MR. GARRETT: Yes, sir.

8 THE CLERK: Thank you. Latrisha James, is
9 this your verdict and still your verdict?

10 MS. JAMES: Yes, sir.

11 THE CLERK: Thank you, ma'am. Steven
12 Boatwright, is this your verdict and still your
13 verdict?

14 MR. BOATWRIGHT: Yes, sir.

15 THE CLERK: Thank you. Your Honor, the
16 jury has been polled and the verdict stands.

17 THE COURT: Thank you. Anything from the
18 state at this time?

19 MS. FANT: No, sir, Your Honor.

20 THE COURT: Anything from the defense at
21 this time?

22 MR. BROOKS: Nothing else in regards to
23 the jury.

24 THE COURT: Thank you. Ladies and
25 Gentlemen of the jury, it has been a long

1 afternoon. And I thank you for the time you took
2 to deliberate on the evidence that was presented
3 in this case. I am going to dismiss you now. In
4 approximately 30 minutes, I will sentence the
5 defendant based upon your verdict. You may stay
6 if you would like. You may go if you would like.

7 Now that the case is over with, you have
8 been under strict restraint not to speak to anyone
9 concerning your verdict. And you may do so at
10 this point and time if you choose to. Again, you
11 couldn't talk to anybody before, but you may now.
12 However, I will tell you that if someone, If you
13 decide you do want to speak to someone about the
14 case, then you do not have to talk with them. If
15 they persist in speaking with you, you can inform
16 one of the bailiff's or someone who will inform
17 me, and I will make sure that that person does not
18 inquire of you any more concerning the reason that
19 you made your verdict.

20 And again, the reasons that you came to
21 your verdict are from your heart and your heart
22 only. If you want to, you do not have to discuss
23 it with anyone. Ladies and gentlemen, I would
24 like to thank you for your service this week. You
25 have been a conscientious, alert and diligent

1 jury. I thank you for your service. The county
2 will pay you an immense sum for your services
3 today. So I would like to thank you. And I would
4 like to shake your hand as you leave. Thank you.

5 (Whereupon, the jurors are dismissed.)

6 THE COURT: The Court be at ease for 30
7 minutes. At that time, Mr. Brooks, yes, sir.

8 MR. BROOKS: Would you like post-trial
9 now?

10 THE COURT: Yes, sir.

11 MR. BROOKS: At this time we would
12 respectfully request the court to grant a new
13 trial or a mistrial. We just put it on several
14 motions. An objection for the record we
15 previously argued at the end of the case.
16 Obviously we dealt with the motion of excited
17 utterance issues. Things of that sort, that we
18 have already put forth---

19 THE COURT: Yes, sir.

20 MR. BROOKS: Through the statement at this
21 time. Renew those motions and ask for a new trial
22 in this matter.

23 THE COURT: Yes, sir. Your objections are
24 noted. You have previously made them clearly on
25 the record. I denied them at that time. I am

1 denying your motion again at this time. Any other
2 motions?

3 MR. BROOKS: Give me one second, Your
4 Honor.

5 THE COURT: Take a moment.

6 MR. BROOKS: Judge, one of things we were
7 concerned about, one of the things I want to point
8 out are some issues that came about up about the
9 emotional things that came out on behalf of the
10 victim's family. It's our position that may have
11 had some emotional prejudice to the jury. We also
12 put that on the record in regards to that.

13 THE COURT: What specifically are you
14 referring to?

15 MR. BROOKS: Even though Your Honor had
16 stricken the testimony of Mr. Ball in regards to,
17 I can't remember the actual verbiage that we had
18 talked about it as far as playing back his
19 testimony.

20 THE COURT: Yes, sir.

21 MR. BROOKS: Even though the court had
22 ruled to strike that particular testimony for the
23 record, obviously that was something that the
24 court heard and the jury heard. And we would ask
25 the court to, that that was too prejudicial for

1 my -- for the defendant in this matter. And my
2 client, we would respectfully request that you
3 grant a new trial.

4 THE COURT: Thank you. Ms. Fant.

5 MS. FANT: Your Honor, I believe that was
6 the sentence he was referring to that was stricken
7 from the record upon objection. You did not as
8 was appropriate let the jury hear that in the
9 replay. I believe your original ruling was
10 sufficient.

11 THE COURT: I believe if I remember the
12 statement was as he was walking out of the room,
13 the victim said, "I love you." And that was
14 stricken, and they did not hear it again. I think
15 I gave the curative charge. I asked the jury not
16 to adhere to that. And then when they listened
17 the second time, they did not hear it at all. So
18 I will respectfully deny your motion. Thank you.
19 We will reconvene in 30 minutes for sentence.

20 (Whereupon, the court takes a short
21 recess.)

22 THE COURT: Mr. Carter, you have been
23 tried by a jury of your peers. They have listened
24 to the evidence in this case, and they have found
25 you guilty and charged you with murder and

1 possession of a weapon during a violent crime. I
2 will hear from the state and your attorney before
3 I sentence you.

4 MS. FANT: May it please the court, Your
5 Honor, first I will hand up the sentencing sheets.

6 THE COURT: Thank you.

7 MS. FANT: As Your Honor, I am sure you
8 are aware, this is the second time we have tried
9 this case; of what the facts are. And I am not
10 going to belabor them. I would just like to point
11 out a few things on behalf of the state. Then I
12 know that Detective Lyons would like to address
13 the court, and at least one family member from the
14 victim Mathew Horace's family.

15 First, Your Honor, the defendant does have
16 a prior criminal history beginning in 2001, public
17 disorderly. 2002, possession of drug
18 paraphernalia and public disorderly conduct.
19 2002, simple possession of marijuana. 2002,
20 possession of the crack cocaine. Worthless checks
21 and false information to police. Also 2002, a
22 resisting arrest. 2003, unlawful weapon. Also
23 interference with police. 2004, driving offenses,
24 possession of marijuana second. 2004, also a
25 distribution of cocaine base first. And in 2005,

1 a strong armed robbery.

2 Your Honor, the State's concerns in this
3 case are many. There were many things that
4 happened during the preparations that gave us
5 concerns. Concerns about the safety of the
6 community. About our witnesses in this case.
7 More than one of whom was either directly
8 threatened, felt threatened. The facts of this
9 case are just equally troubling. In the fact that
10 this was a friend. And if you actually would kill
11 your friend, I would hate to think what you would
12 do to your enemy.

13 It was a senseless, senseless, and just
14 very violent crime. Our concerns is that you take
15 that in consideration in sentencing. And please
16 sentence him accordingly. Detective Lyons would
17 like to speak with you.

18 THE COURT: Detective Lyons.

19 DETECTIVE LYONS: Your Honor, If it
20 pleases the Court, I would echo Ms. Fant's words
21 that she just spoke. The west side of town, Your
22 Honor, has become a violent neighborhood without a
23 shadow of a doubt, with the robberies, shootings,
24 this being one of them. People in that
25 neighborhood are extremely terrified. I talked to

1 many people before this trial started.

2 Many people told me they would like to
3 come, but they are still afraid to come because
4 they may not want their faces to be seen in this
5 courtroom. Either be it because of Mr. Carter,
6 the defendant, or maybe even because to some of
7 the people that we have testifying on our behalf.
8 This type of violence has become the norm it seems
9 rather than the exception, especially in the City
10 of Sumter over the past year, year and a half.

11 It seems to me that this type of senseless
12 killing, especially if it is somebody that you
13 know, can be prohibited. It needs to be
14 prohibited. These guns need to be taken out of
15 the hands of dangerous people. In my opinion,
16 Rahim Carter is an extremely dangerous person. To
17 echo Ms. Fant's words, he killed his own friend.
18 As one of his now associates, Mark McKoy, whose
19 name was brought up during this trial was on, was
20 a possible witness listed as his defense, serving
21 life in prison for murder. The very same
22 circumstances almost surrounding a similar type of
23 case.

24 It is our position that he poses a great
25 threat to the community. We certainly are worried

1 about our folks that testified. Many of them I
2 have spoken to, are still afraid. Some will be
3 getting away for awhile until things cool down.
4 The streets are still going to be hostile. The
5 officers are going to get out. And we will
6 probably have flare ups. We have had numerous
7 flare ups at the jail. Which is why we moved
8 Mr. Carter to Richland County for protection to be
9 brought there. For his protection as well.

10 It is our point as the law enforcement
11 officer in the City of Sumter, that he should
12 deserve the most severe punishment and that is
13 life in prison. Thank you, Your Honor.

14 THE COURT: Anyone from the victim's
15 family request to speak?

16 MS. HORACE: My name is Lisa Horace. And
17 I just want to say, on behalf of my family first
18 and foremost, we would like to thank God. Even
19 though he has answered our prayers, that still did
20 not take away the pain of not being able to see or
21 touch Mat again. Our hearts go out to Ms. Carter
22 and her family because we just lost another
23 brother to the streets. He has been chewed up and
24 spit out; however, they still have a chance to see
25 him, correspond with him, and that's not the case

1 with our family.

2 His kids, Minor 1 , Minor 2 , Minor 3 and
3 Minor 4 will never hear their father tell them,
4 "I love you," again. And I, and excuse me. And
5 so in all fairness, we ask that you take that into
6 consideration when you give your sentencing.

7 THE COURT: Thank you.

8 MS. HORACE: Sarah Horace. I would just
9 like to say, Your Honor, that there are no winners
10 in this case. Mathew is gone. Mr. Carter is
11 looking at life in prison. Who won? This is the
12 most senseless thing that I have ever heard of.
13 That I hate to see. I am the parent of three
14 sons. And I fear every day for their lives,
15 because of situations like this. I just ask that
16 when you look at -- go into your sentencing
17 period, that you take into consideration our
18 family, the children that we are rearing on the
19 west side.

20 There are children now because of
21 incidences like this, they can't go to the
22 playground. I pray now that we as taxpayers pay
23 for, because they can't even enjoy. Because of
24 the violence and the senselessness that goes on in
25 the neighborhood. And I think that if we were to

1 sit back and allow things just to happen, just
2 allow it to go on, and people get slaps on the
3 back of their hands just to say, don't do it
4 again, it just continues.

5 I just want the system to portray what it
6 says; that it is dedicated of the citizens of
7 Sumter County, and that we can have faith in the
8 system so that when situations like this arise,
9 our families won't continue to suffer, whether we
10 be victims or defendants.

11 We just ask you to take these things into
12 consideration. Because our children deserve
13 better. The people that live in the neighborhood
14 deserve better. The people that work every day
15 and can't afford to go anywhere deserve better; to
16 go outside in their yards and sit on their
17 porches. Except for things of these natures that
18 go on. They can even enjoy their lives. I just
19 want you to take that into consideration when you
20 think about these things in your sentencing.
21 Because we all deserve better. The Horace family,
22 the Carter family. I just think we all deserve
23 better.

24 THE COURT: Anything further from the
25 state?

1 MS. FANT: No, sir, Your Honor.

2 THE COURT: Mr. Brooks?

3 MR. BROOKS: Before I begin, I want to see
4 if my client's mother, or my client want to say
5 anything.

6 THE DEFENDANT: All I have got to say,
7 Your Honor, what I have been saying from the very
8 beginning. I maintain my innocence. I am going
9 to fight this. I don't feel that, I respect the
10 jury's decision. But I don't agree with it. I am
11 going to fight it until the end. I maintain my
12 innocence. I am sorry that Mat is gone. I am
13 sorry that Bread is not here no more. I love him
14 like a brother. I am always going to love him no
15 matter what nobody says or what nobody thinks. I
16 am always going to love him. I hold no grudges
17 against him. Because I know in my heart Mathew
18 didn't say some of the things some of these people
19 are saying he said. I love Bread. He was my man.
20 And no amount of arguing or bickering could
21 separate me and him to come to a point like this.
22 I say I didn't do it. I maintain my innocence.

23 MR. BROOKS: Judge, I'll just summarize
24 and say, my client basically, he does maintain his
25 innocence. That's what he indicated to me.

1 However, he respects the system. And respects the
2 jury's decision. It's just obviously a
3 disappointment. I do agree with the Horace family
4 in this regard, because this is a senseless act
5 that occurred.

6 All of the things that went on. I can say
7 as far as my dealings with Rahim, I have
8 represented numerous clients in similar
9 situations. He has been very respectful with me.
10 He and I have had a pretty good attorney/client
11 relationship throughout this process at the jail
12 as far as me working on his behalf. And being
13 appointed by the court. And I would ask Your
14 Honor to take that into account. At least, my
15 dealings with him as far as our rapport. Never
16 been any problem. Never been an issue in that
17 regard. Never been any concerns with his mother.

18 Things that may have occurred with
19 attorney/client relationships. I am sure Your
20 Honor is aware. And while he does maintain his
21 innocence in this regard, we would ask the court
22 to bear in mind Rahim is about 26 years of age.
23 He graduated from Sumter High. And obviously is a
24 very young man. We would just ask Your Honor to
25 take all that in to consideration.

1 THE COURT: Thank you.

2 THE COURT: Can I see the convictions?

3 His convictions. Anything further, Ms. Fant?

4 MS. FANT: No, sir.

5 THE COURT: The Court will be at ease or

6 until I come out.

7 (Whereupon, the Court takes a short

8 recess.)

9 THE COURT: Thank you, please be seated.

10 Mr. Carter, without a doubt, this is a
11 difficult decision in dealing with such a young
12 man as you are. I have considered the statements
13 of the solicitor and the victim's, family. I have
14 considered the statements made by your attorney.
15 And by you. One thing that is sure from everyone;
16 that this is a tragedy of the highest magnitude.

17 Mr. Carter regardless of what you say now,
18 the jury has evaluated all the evidence and found
19 you guilty beyond a reasonable doubt. In reaching
20 my decision concerning your sentence, I have
21 considered your age. I have considered your
22 criminal history. Your criminal history is
23 extensive. It is one that has progressively
24 become more bold and violent.

25 Your actions demonstrate a callous

1 was just not any other human which in itself is
2 reprehensible, but this is one who had been your
3 friend. You made the decision that a wrong done
4 to a member of your gang could be vindicated by
5 you. You did not and never have -- and never have
6 that right to take justice in your own hands as
7 you did on the October 2nd of 2007.

8 For these reasons, the Court sentences you
9 as follows: As to Indictment 2008-GS-43-597,
10 Count 1, charging you with murder, Rahim Fareed
11 Carter, you are hereby committed to the State
12 Department of Corrections for a period to extend
13 for the remainder of your life. As to Indictment
14 2008-GS-43-597, Count 2, charging you with
15 possession of a deadly weapon during the
16 commission of a violent crime: Rahim Faheed
17 Carter, you are hereby committed to the State
18 Department of Corrections for a period of 5 years.
19 Those crimes were committed concurrently on
20 October 2nd of 2007. Therefore, these sentences
21 shall run concurrently. That is the sentence of
22 the Court.

23 MS. FANT: Thank you, Your Honor.

24 End of requested transcript of record.

25

Certificate

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court, August 5th and 6th 2009, in Sumter County, Sumter, South Carolina.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

11-6-09
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 10-11-03

AMENDED
DOCKET NO. 2008-GS-43-597
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE
vs.

RAHIM FAREED CARTER

Indictment for

MURDER, POSSESSION OF FIREARM
OR KNIFE DURING THE COMMISSION
OF A VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

WITNESSES

SPD

B. LYONS

ARREST WARRANT NUMBER

J303408

D/A: 11/21/07

ACTION OF GRAND JURY

Teddy Bice

[Signature]

Foreperson of Grand Jury
Date: 21 MAY 2009

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
INDICTMENT FOR
MURDER, POSSESSION OF FIREARM OR
KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME

At a Court of General Sessions, convened on May 21, 2009, the Grand Jurors of
SUMTER County present upon their oath:

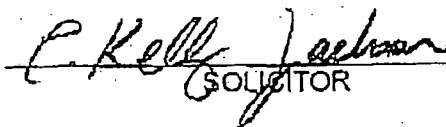
COUNT ONE - MURDER

That RAHIM FAREED CARTER did in Sumter County on or about October 2, 2007, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Matthew Horace by means of shooting him with a handgun, and that the said Matthew Horace did die as a proximate result thereof.

COUNT TWO - POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

That RAHIM FAREED CARTER did in Sumter County on or about October 2, 2007, was in possession of and did visibly display a firearm or knife during the commission of a violent crime, to-wit: a handgun during the commission of a murder, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 1st, 2010


Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

County of SUMTERRAMON FREED CARTER,

Full name and prison number, if any, of applicant.

v.

STATE OF SOUTH CAROLINA,

Name of Respondent

RECORDED

In the Court of Common Pleas

2011 OCT 10 PM 1:01

2011 OCT 14 PM 3:35

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICATION FOR

2011-CP-43-19

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION, 990 WISACKY HIGHWAY, BEHOPVILLE, SOUTH CAROLINA 29010
2. Name and location of Court which imposed sentence SUMTER COUNTY COURT OF GENERAL SESSIONS, SUMTER, SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 (a) 2008-93-43-00597; MURDER and POSSESSION OF A
(1) FIREARM DURING THE COMMISSION OF A VIOLENT
(2) CRIME
4. The date upon which sentence was imposed and the terms of the sentence:
 (a) AUGUST 10, 2009; LIFE and FIVE (5) YEARS
 (b) _____
 (c) _____

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? YES, I DID.
7. If you answered "yes" to (6), 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. DISMISSED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. JANUARY 25, 2011
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2011-UP-020; UNPUBLISHED OPINION
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL
 - (b) DENIAL OF EQUAL PROTECTIONS OF THE LAW
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) COUNSEL FAILED TO ADEQUATELY INVESTIGATE CASE.
COUNSEL FAILED TO PRESERVE MOTIONS FOR REVIEW OR
- (b) THE JURY WAS DEERED INTO RENDERING A VERDICT
DENYING ME MY RIGHT TO A FAIR AND IMPARTIAL TRIAL
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law ?

NO, I HAVE NOT.

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO, I HAVE NOT.

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO, I HAVE NOT.

- (d) any other petitions, motions or applications in this or any other Court?

NO, I HAVE NOT.

12. If you answered "yes" to any part of (11), 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.~~ _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO, THEY HAVE NOT-

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- ~~i.~~ N/A
- ~~ii.~~ _____
- ~~iii.~~ _____

(b) the proceedings in which each ground was raised:

- ~~i.~~ N/A
- ~~ii.~~ _____
- ~~iii.~~ _____

15. If any ground set forth in (9) 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) FIRST COLLATERAL ATTACK
- (b) FIRST COLLATERAL ATTACK
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES, I WERE.
- (c) your sentencing? YES, I WERE.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES, I WERE.
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. CHARLES THOMAS BROOKS, III, P.O. BOX
- ii. ROBERT M. PALIAR, P.O. BOX 11539, COLUMBIA, SC 29208
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. TRIAL AND SENTENCING
- ii. SOUTH CAROLINA COURT OF APPEALS
- iii. _____

18. State clearly the relief you seek in filing this application.

REVERSE THE JUDGMENT, CONVICTIONS AND SENTENCE BE
REVERSED AND REMANDED FOR A NEW TRIAL.

19. Are you now under sentence from any other court that you have not challenged?

NO, I AM NOT.

2

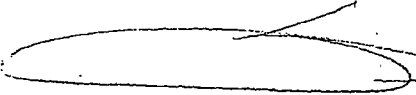
STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

VERIFICATION

OCT 14 PM 3:35

I, RAHIM JARRED CARTER, #290290, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


Sworn to and subscribed before me

This 13 day of OCT, 2011.

Debra Sims L.S.

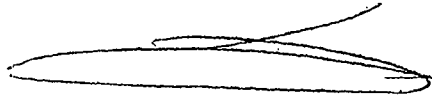
Notary Public for South Carolina

My Commission Expires 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RAHIM JARRED CARTER, #290290, 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 proceeding or give security therefor.


Applicant

Sworn to and subscribed before me

This 13 day of OCT, 2011.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-1918
	)	
Rahim Fareed Carter, #290290,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 14, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm or Knife During the Commission of a Violent Crime (2008-GS-43-0597). Charles T. Brooks, III, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. Applicant was found guilty, and on August 6, 2009, Applicant was sentenced to life imprisonment.

A notice of appeal was filed and an appeal perfected. Applicant's appeal was dismissed. State v. Carter, Op. No. 2011-UP-020 (S.C. Ct. App. filed January 25, 2011). The Remittitur was sent on February 18, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Denial of effective assistance of counsel."
 - a. "Counsel failed to adequately investigate case; counsel failed to preserve motions for review."
2. "Denial of equal protections of the law."
 - a. "The jury was coerced into rendering a verdict denying me my right to a fair and impartial trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCR.

III.

For purposes of this Return, Respondent interprets all allegations as allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Jan. 18, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-1918
	)	
RAHIM, FAREED CARTER, 290290,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
-
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William A. W. Buxton, Esquire
Curtis & Croft, LLC
325 W. Calhoun St.
Sumter, SC 29150

DATED this 18th day of January, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	2011-CP-43-01918

Rahim Fareed Carter,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

December 13, 2012
Sumter, South Carolina

B e f o r e:

The Honorable Ferrell Cothran, Judge

A p p e a r a n c e s:

Wm. A.W. Buxton, Esq.
Attorney for the Plaintiff

Megan Harrigan, Esq.
Ben Aplin, Esq.
Attorneys for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Ms. Harrigan	4
Motion/Mr. Buxton	5
Response/Ms. Harrigan	5
Ruling of the Court	7
Direct Cross Redirect Recross	
Rahim Carter	
Mr. Buxton 7	
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Charles T. Brooks, III	
Ms. Harrigan 17 53	
Mr. Buxton 45	
Decision of the Court	55
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS --

1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the first case the State
4 will call is *Rahim Carter vs. The State of South Carolina*,
5 Docket No. 2011-CP-43- -- and Your Honor, your packets are
6 in front of you ---

7 THE COURT: Okay.

8 MS. HARRIGAN: --- this morning. The larger ones.

9 THE COURT: Gotcha.

10 MS. HARRIGAN: Docket No. 2011-CP-43-1918. Applicant
11 was indicted by the Sumter County Grand Jury for murder
12 and possession of a firearm or knife during the commission
13 of a violent crime. Charles T. Brooks, III represented
14 him.

15 Applicant proceeded to a jury trial before the
16 Honorable W. Jeffrey Young, where applicant was found
17 guilty as indicted.

18 On August 6, 2009, Judge Young sentenced applicant to
19 life imprisonment for murder, and a concurrent five years
20 for the weapons charge.

21 A notice of appeal was filed and an appeal was
22 perfected. Following the submission of an *Anders* and pro
23 se brief, the Court of Appeals confirmed the applicant's
24 conviction and sentence. The remittitur was sent on
25 February 18, 2011. Thereafter, applicant filed a timely

1 application for post-conviction relief on October 14,
2 2011, alleging that he was being held in custody
3 unlawfully based on the following allegations: Denial of
4 effective assistance of counsel, as counsel failed to
5 adequately investigate the case and failed to preserve
6 motions for review; and denial of equal protections of the
7 law.

8 The State made its return on January 18, 2012. He is
9 represented in this action by William Buxton, who at this
10 time has a motion before the Court.

11 THE COURT: Okay. Yes, sir.

12 MR. BUXTON: Your Honor, we'd like to make a motion
13 for a continuance. My client is -- apparently been
14 talking to another attorney, hired another attorney. And
15 feels that he'd be more prepared with other counsel.

16 THE COURT: Were you -- were you retained or
17 appointed?

18 MR. BUXTON: Appointed.

19 THE COURT: Okay. And he wants to hire retained
20 counsel?

21 MR. BUXTON: Yes, sir, Your Honor.

22 THE COURT: What's the State's position?

23 MS. HARRIGAN: The State would object. We're prepared
24 to go forward today. Mr. Buxton, from our discussions, is
25 prepared to go forward. We have Mr. Brooks here today.

1 Additionally, Judge Young was the trial judge on this
2 case. And Judge Young will be the next PCR-term judge in
3 March. This case wouldn't be able to be heard until the
4 fall of 2013 at the earliest. We don't know who the judge
5 will be those two terms in the fall.

6 Judge Young had two of the three terms this year, so
7 it's likely that Judge Young might also be one of the fall
8 terms.

9 Additionally, he has not retained any other counsel,
10 and often, throughout the state, we see that before a term
11 of court, applicants or their family members will enter
12 into discussions with retained attorney, but not actually
13 hire them. In this case we have no evidence that any
14 private counsel has actually been retained in this case.

15 The State's prepared to go forward. Our understanding
16 is Mr. Buxton is prepared for this case. And we'd ask the
17 case to move forward at this time.

18 THE COURT: Okay. Is there any indication that he's
19 actually retained counsel?

20 MR. BUXTON: I'm not sure, Your Honor. I know he's
21 been speaking with a specific attorney in Columbia, I
22 believe, by the name of Tricia Blanchette.

23 MS. HARRIGAN: And the State was contacted. I believe
24 on Monday, we received -- I received an e-mail from Ms.
25 Blanchette. She told me that the family had contacted her

1 and that she had expressed to them that she could not even
2 review the file or think about taking the case if -- since
3 it was already on the roster at this point, she wouldn't
4 be, unless it was continued.

5 So Ms. Blanchette, at this point, hasn't even reviewed
6 the file.

7 THE COURT: Okay. All right. Then I'm going to deny
8 your motion and we'll have the hearing today.

9 MR. BUXTON: Yes, sir, Your Honor.

10 THE COURT: Okay. And you can call your first
11 witness.

12 MR. BUXTON: Yes, sir. Your Honor, we call Rahim
13 Fareed Carter.

14 THE COURT: Okay.

15 RAHIM FAREED CARTER, having been
16 first duly sworn, testifies as follows:

17 THE BAILIFF: State your name please, and spell your
18 first and last name for the record.

19 THE WITNESS: Rahim Carter; R-a-h-i-m, C-a-r-t-e-r.

20 THE COURT: Okay.

21 DIRECT EXAMINATION BY MR. BUXTON:

22 Q Mr. Carter, do you -- do you remember the events of
23 August 5 and 6, 2008 -- 2009?

24 A Yes, sir.

25 Q What happened that day? Those two days.

1 A I went to trial for my murder charge, sir.

2 Q And you were represented by Mr. Charles Brooks?

3 A Yes, sir.

4 Q Did you thoroughly discuss your case with Mr. Brooks
5 prior to the trial?

6 A No, sir.

7 Q How many times did Mr. Brooks meet with you before the
8 trial?

9 A To discuss the case or just met with me period?

10 Q To -- to be with you to discuss the trial -- the case,
11 your case.

12 A We didn't never went -- actually sat down and went
13 over the case, sir, because when he came and brung me my
14 motion to discovery, he hand it to me and he told me he
15 would be back later on that week so we could go over the
16 case together; sit down, actually go over the case.

17 But they moved me on Friday before -- and we went to
18 trial that Monday, and he say he didn't know where I was
19 at. So that's why we never went over the case.

20 Q How many times did he meet you prior to trial?

21 A Maybe six or seven.

22 Q And how long did those meetings usually last?

23 A Maybe 10/15 minutes a piece.

24 Q Did you -- did you have confidence in his preparation?

25 A No. No, sir.

1 Q Did he explain your charges and the sentences that
2 went with those charges?

3 A He told me that if I lost, the judge was going to give
4 me life.

5 Q But did -- did he explain your charges though, the
6 maximum sentences that are carried with each charge?

7 A I mean, that's the explanation right there. Other
8 than that, no, sir.

9 Q All right. Do -- do you feel that he made the
10 appropriate objections during your trial?

11 A No, sir.

12 Q And do you -- do you feel that he called appropriate
13 witnesses?

14 A No, sir. I gave him a list of witnesses that I wanted
15 to call, but he didn't subpoena them. And I gave him the
16 same list bout -- maybe three/four times in person, and I
17 -- I mailed the list to him maybe three/four times.

18 And when we came to court, I asked him did he subpoena
19 them. And he told me he didn't subpoena all of them
20 because he didn't want all of them there.

21 Q How many witnesses did you have?

22 A I had around 13.

23 Q And can you name just a few?

24 A Juwan [phonetic] Holmes; Jonathan Martin, Jr.; Demetri
25 Baxter; Robert Baxter; Paul Hough.

1 Q Okay. And -- and -- and another thing you alleged in
2 your PCR application was that you felt that the jury was
3 coerced into a verdict.

4 A Yes, sir. I had a mistrial on my first trial, and I
5 had a hung jury on my second trial. The jury still
6 couldn't come up with a verdict. And they came out again,
7 and the judge read them the *Anders* brief.

8 They went back. I think they had came out like twice
9 before they could've finally reached they're verdict.

10 Q You have anything else you'd like to tell the Court
11 today?

12 A Basically, that my case dealt with a lot of -- a lot
13 of fact witnesses. There was no physical evidence, it was
14 a lot of fact witnesses. And I gave Mr. Brooks another
15 list of witnesses to place me somewhere else, alibi
16 witness at the time, as well as witness to contradict some
17 of the witnesses that the State's brung back from -- from
18 the jailhouse saying I said this and I said that.

19 I gave him a lot of witnesses and I asked him
20 repeatedly that -- to subpoena those witnesses, because
21 the whole time I was telling him that I wanted a jury
22 trial. I -- I wasn't pleaing, that plea -- pleaing was
23 never on the table. So I wanted to put up a defense. The
24 only reason I couldn't because none of my witnesses was
25 subpoenaed.

1 And when I asked about a continuance, he said the
2 judge wasn't gonna grant us no continuance. So I had no
3 choice but to go -- move forward in the case without my
4 witnesses.

5 Q Did he give you any reason why he wasn't calling the
6 witnesses?

7 A He said cause some of them had criminal backgrounds,
8 and he was, like, they might not be good witnesses.

9 But I was telling him those witnesses are the
10 witnesses that saying I was -- I was here when the -- when
11 the incident was going on. So I really had wanted those
12 witnesses there.

13 But do to the fact that they wasn't -- and we asked
14 the judge for a continuance -- recess so we could get the
15 witnesses, but -- but the judge denied it. And the
16 witnesses never did show up, my mother had to go and pick
17 those people up.

18 Q All right. Thank you, Mr. Carter. If you would
19 answer any questions for the State and the Court.

20 MS. HARRIGAN: May it please the Court.

21 THE COURT: Yes, ma'am.

22 DIRECT EXAMINATION BY MS. HARRIGAN:

23 Q Mr. Carter, your testimony is that you met with your
24 attorney six to seven times ---

25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. HARRIGAN - RAHIM CARTER

12

1 Q --- before your trial?

2 A Yes, ma'am.

3 Q Was this before your first trial or your second trial
4 or just total?

5 A Total.

6 Q Total, six to seven. Okay.

7 And you recall reviewing your discovery materials with
8 your attorney?

9 A No. We never reviewed it.

10 Q So he never showed you the evidence the State planned
11 ---

12 A No, ma'am.

13 Q --- to have against you. Okay.

14 Did he mail these documents to you?

15 A No. He brung -- he brung me my motion of discovery.
16 But he just handed it to me, and he told me he was just
17 coming to drop that off. And he was going to come back
18 and we was going to go over it later on that week. But he
19 never came back cause they moved me.

20 Q Were you able to review this discovery on your own?

21 A I mean, I had it.

22 Q Did you review it on your own?

23 A Yes, ma'am. I looked at it.

24 Q Did you ask your attorney any questions based on your
25 review of this material?

1 A Yes, ma'am, I did.

2 Q Did he answer these questions for you?

3 A I mean, kind of. In a way, yeah; in a way.

4 Q So he did answer questions you had about your
5 discovery.

6 A I mean, they was just in there.

7 Q Do you recall discussing possible defenses you had
8 with Mr. Brooks?

9 A Say again.

10 Q Do you recall discussing possible defenses you had to
11 these charges with your attorney Mr. Brooks?

12 A No. We never discussed what we was going to do. Only
13 thing I did was give him my list of witnesses and that was
14 -- that was it.

15 Q Were these witnesses to help in your defense?

16 A Yes, ma'am.

17 Q So you did discuss a defense with Mr. Brooks.

18 A Yes, ma'am.

19 Q Okay. And your testimony is you gave him
20 approximately 13 witnesses that you wanted called to
21 trial?

22 A Yes, ma'am.

23 Q And his response to you was that a lot of these
24 witnesses had prior criminal backgrounds, correct?

25 A That was during trial. He told me he was going to

1 subpoena them.

2 Q And to your knowledge, do you know if he did subpoena
3 them?

4 A No, he didn't.

5 Q You know for a fact he did not subpoena them.

6 A Yeah. He told me he that.

7 Q And do you recall what his reasoning was for not
8 subpoenaing -- subpoenaing these witnesses?

9 A He said he don't need them.

10 Q And one of your allegations is that Mr. Brooks was
11 ineffective for not investigating your case fully,
12 correct?

13 A Yes, ma'am.

14 Q Okay. What additional investigation do you feel he
15 should have done?

16 A I gave him name of these witnesses when he first
17 became a lawyer, and I just felt that he should have
18 talked to them and got their side of the story, what was
19 going on. Because that's what he told me he was going to
20 do when I gave him the name of the witnesses.

21 Every time I gave them to him he said he was going to
22 send his investigator to talk to these people.

23 Q Do you know if he did have a private investigator in
24 this case?

25 A Yes, he did.

1 Q He did have an investigator. Okay.

2 Did you ever meet with the investigator?

3 A Yes, ma'am.

4 Q Do you recall how many times you met with the
5 investigator?

6 A Maybe twice.

7 Q And was Mr. Brooks present for these meetings with the
8 private investigator?

9 A No, ma'am.

10 Q Were you able to give this investigator the name of
11 these witnesses?

12 A Yes, ma'am, I did.

13 Q Do you know if the investigator followed up with these
14 witnesses?

15 A No. He didn't go talk to them.

16 Q To your knowledge he didn't go talk to them.

17 A That's what he told me.

18 Q Do you have any of those 13 witnesses here today to
19 testify?

20 A No. My lawyer told me I didn't need them here. Mr.
21 Buxton told me that.

22 Q And your testimony before was that a plea offer was
23 never made to you in this case, correct?

24 A No. A plea offer was made.

25 Q Do you recall what the plea offer was?

CROSS-EXAMINATION BY MS. HARRIGAN - RAHIM CARTER

16

1 A I think it was 15.

2 Q And was this before your first or second trial?

3 A Before my first.

4 Q Did Mr. Brooks communicate this plea offer to you?

5 A Yes, ma'am.

6 Q And was it -- did he discuss with you whether or not
7 it was a good idea to take this plea offer or proceed to
8 trial?

9 A No. He just told me -- he already knew I wanted to go
10 to trial. So he just came, and he was like, he obligated
11 to tell me that they put a plea on -- on the table, where
12 he knew I wasn't going to take it.

13 Q And it was your decision to turn this plea offer down.

14 A Yes, ma'am.

15 Q At the beginning of your second trial, Mr. Brooks
16 moved for a continuance before Judge Young, correct?

17 A Yes, ma'am.

18 Q And this was denied by Judge Young, correct?

19 A Yes, ma'am.

20 MS. HARRIGAN: No further questions, Your Honor.

21 THE COURT: Okay. Anything further?

22 MR. BUXTON: No, sir, Your Honor.

23 THE COURT: You can step down.

24 (The witness exits the stand.)

25 THE COURT: Any further witnesses?

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1 MR. BUXTON: No, sir, Your Honor.

2 THE COURT: Okay.

3 MS. HARRIGAN: The State at this time would call
4 Charles T. Brooks, III.

5 THE COURT: Okay. You can come around, please, sir.

6 CHARLES T. BROOKS, III, having
7 been first duly sworn, testifies as follows:

8 THE BAILIFF: State your name please, and spell your
9 first and last name for the record.

10 THE WITNESS: Charles T. Brooks, III. (To the court
11 reporter) Did you need me to spell all that?

12 THE COURT REPORTER: (Indicates "no.")

13 DIRECT EXAMINATION BY MS. HARRIGAN:

14 Q Good morning, Mr. Brooks.

15 A Good morning. Good morning.

16 Q How -- how long have you been practicing law?

17 A Since '96; 1996.

18 Q Roughly what percentage would you say is criminal
19 defense work?

20 A I guess I would probably put it in the 40/45/50
21 percent range, somewhere in that range.

22 Q Do you consider yourself proficient in criminal
23 defense work?

24 A I think I'm okay.

25 Q Do you recall whether you were appointed or retained

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1 on this case?

2 A I was appointed.

3 Q Do you recall an approximate date of your appointment?

4 A Honestly, I can't remember all the dates. I -- I was
5 on Rahim's case for what I consider a good little while,
6 because you know, the way he described it -- meeting about
7 six or seven times -- is pretty accurate. So I -- I -- I
8 -- I would have to -- if you wanted to look back to
9 specific -- I don't have any reason to dispute whatever
10 the court appointment date was and the trial date. But I
11 -- I was on his case for a considerable period of time.

12 Q Okay. And Mr. Carter was tried twice, correct?

13 A Oh, yes. Can I explain?

14 Q Certainly.

15 A All right. We had a prosecutor in Sumter at the time;
16 name was Catherine Fant. And for those of us who have
17 done defense work around here, Catherine had a little bit
18 of a reputation. She was -- she was probably what I would
19 consider a "police officer's" prosecutor. She would take
20 whatever the police said as the gospel and she was going
21 to prosecute a case as vigorously -- very idealistic.

22 She was -- and when you tried a case for that period
23 of time against her, you were the enemy. She treated you
24 probably like you were the defendant, and you're the
25 defendant's attorney.

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1 At any rate, Catherine had this case for a
2 considerable period of time, and she and I discussed it.
3 The issue in this case was -- the -- the police -- the --
4 the State's position was this was a killing over some drug
5 turf, that -- that -- that -- that Rahim was supposedly an
6 enforcer for some other guy around here who was higher up
7 in -- in the drug game.

8 And of course, they really didn't put any evidence up
9 to support that, but I'm just telling you that was the
10 motivation behind it.

11 So Catherine gave me all the discovery. And then
12 right before the trial, like Rahim said, they moved to
13 Richland County, where it was a lot tougher -- I -- I
14 don't know why -- I -- I can't remember exactly why they
15 did it.

16 But obviously that created a problem for me seeing
17 Rahim. I want to say they did it maybe a week before
18 trial or whatever -- whatever Rahim -- Rahim said about
19 when he was moved, I -- I wouldn't dispute that.

20 And anyway, Catherine had offered -- prior to the
21 first trial, she had offered 15 years. And Rahim turned
22 it down.

23 Q Was the 15 years for a lesser included voluntary
24 manslaughter?

25 A It -- it would have been. Yeah. That's -- that's

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1 presumably what she would have done is drop the murder
2 down to manslaughter.

3 We tried -- we -- we got into the trial of the case,
4 and I was in contact with Rahim's family and Rahim. And
5 when we tried the case, we had -- I do remember I had John
6 Johnson. We did bring in some of these witnesses.

7 Q Was John Johnson your private investigator?

8 A That I used at the time, yeah. He was.

9 And then, we -- there was one fellow who had testified
10 for us that Rahim was someplace else. But the State's
11 position was that Rahim might have been someplace else,
12 but it would have been at a different time, but the same
13 day.

14 At any rate, we tried the case, and we got a hung
15 jury. And I specifically remember this because I'd never
16 had this happen to me and I don't know any other defense
17 lawyer who's ever had this issue: Is -- this is in front
18 of Judge Young. Thursday afternoon, when he basically
19 said, "This is a hung jury. We're not going --" he
20 declared it a mistrial.

21 Catherine went crying to the judge either Thursday
22 afternoon or Friday morning. And I do mean almost -- when
23 I say "crying," I mean that, you know, she was, "Judge, we
24 need to try this case again. We can't get these
25 witnesses. These people are scared."

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1 And I -- I said, "Judge, this -- we just spent a week
2 long in a trial, and that's not really fair. I would want
3 to get the transcript to be able to -- be able to impeach
4 witnesses the second time around. I just don't think
5 that's inherently fair to turn around and try the case the
6 very next week."

7 So we're talking about less than 72 hours. And at any
8 rate, of course, Judge Young didn't see it my way. And --

9 Q Did you move for a continuance on the record in this
10 case?

11 A I -- I did. And I moved -- what happened is I told
12 them I was going to continue it like that Thursday
13 afternoon or Friday morning. I can't remember exactly
14 when we had the conversation.

15 And of course, Monday morning, I come back, trying to
16 be the due-diligent lawyer and present the law. I said,
17 "Judge, you should give me a continuance. We'll have the
18 transcript."

19 And the court reporter from the first trial, Melissa -
20 - can't -- think Melissa's last name now is "Winfield," I
21 believe -- she had gone on vacation. And I think Margaret
22 Sullivan was now the court reporter for the second trial.

23 And Judge Young had said, "Well, we got the tapes, Mr.
24 Brooks. All I need to do is give you access to the
25 tapes."

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1 And he told me this on Monday. And he found -- he
2 spent -- I think, court personnel may have spent some
3 considerable time -- they found Melissa's tapes, because
4 she was gone; she was on vacation.

5 And Judge Young said, "Well, Mr. Brooks, you can
6 listen to the tapes, but you got to listen to them all in
7 the courthouse. And take as much time as you need, but
8 you can't leave the courthouse with the tapes."

9 I thought that was unfair, thought that was very
10 unfair to Rahim.

11 So I ---

12 Q Did you listen to these tapes?

13 A Yeah. I spent all day -- almost 9:30/10 o'clock at
14 night listening to these tapes.

15 And of course, Judge Young had told me that I needed
16 not only listen to the tapes, but if I referred back to
17 the tapes, that I needed to be able to specifically be
18 able to refer to where this was in the tape that I was
19 trying to impeach somebody.

20 Q And during the second trial, you were able to
21 successfully do that with a few witnesses, were you not?

22 A There was one particular witness, Blue, who had pled
23 guilty to some Federal drug charges. He was a State
24 witness.

25 Q When you say "Blue," are you referring to Brandon

1 Taylor?

2 A That would -- I think that sound like his name. I
3 just remember "Blue."

4 Q Okay.

5 A Because he and I got into a little tit for tat up on
6 the stand in -- in -- in Rahim -- you know, when I was
7 defending Rahim. And I was able -- I don't think Judge
8 Young thought I could do this, but I was able to point to
9 the specific place in the tape where this guy had lied, or
10 should we say "giving an inconsistent statement."

11 And I -- I just thought that was just unfair for me
12 personally, as a lawyer, to have to go through that
13 grueling ordeal, to stay up all night, to basically --
14 when I say "up all night," stay in the courthouse, say,
15 like 9:30/10 o'clock and listen to the tapes that entire
16 day; and to be able to effectively deal with all of the
17 State's witnesses, particularly those who might have said
18 something different between Week 1 and Week 2.

19 Q Mr. Brooks, have you tried murder cases before?

20 A I have.

21 Q Approximately how many would you say?

22 A (No audible response.)

23 Q A rough estimate.

24 A Ten? Ten, fifteen; somewhere in that range.

25 Q Often on the eve of trial, do you stay up late

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1 preparing for the trial to begin the next day?

2 A Well, I mean, depends on the case.

3 Q Have you stayed up until 10 p.m. before preparing for
4 a murder trial to start the next day?

5 A I -- I have.

6 Q And you were able to successfully impeach at least one
7 witness with his prior testimony from these tapes,
8 correct?

9 A That's true. But I do have to tell you this: If I
10 had been given ample time to prepare for the second trial,
11 meaning getting the transcript, I think -- I just think
12 things might have been a little different for Rahim.

13 Q Were the witnesses essentially the same for the first
14 and second trial on the -- on the State's ---

15 A On the State's side.

16 Q Yes.

17 A Pretty much, pretty much. I think they were -- there
18 were about the same, but of course, you know -- I think
19 they were pretty much the same.

20 Now, I'll say this: Between the first and the second
21 trial, you know, I did have a talk with Rahim. We -- we
22 tried to talk about maybe doing a plea.

23 I mean, for those of you guys who know Catherine Fant,
24 you know, she decided she didn't want to put the plea back
25 on the table, which I thought was unfair, and it was

1 unfair for -- for -- for Rahim.

2 Q But you did approach Solicitor Fant in between and
3 after the plea offer was still on the table.

4 A I did.

5 Q You did attempt to negotiate on behalf of your client
6 her plea offer at his request.

7 A Well, I don't know -- I wouldn't say, like, "his
8 request." I kind of said, "Hey, Catherine, why don't you
9 do this." And she was, like, "Nah. I don't want to do
10 it."

11 And then I kind of went back to Rahim, and I had his
12 mama come in. And it was -- Officer Richardson was the
13 one that was transporting him on behalf of the City. And
14 we sat in the clerk's -- the law clerk's -- right -- less
15 than maybe 5/10 feet away from here. And Rahim's mama
16 said, "Hey, if they put that deal on the table, let's take
17 it."

18 And Rahim, you know, reluctantly said, "You know, Mr.
19 Brooks, if they do that, I -- I -- I'll take the deal."

20 But of course, Ms. Fant, being who she was, she
21 wouldn't do it.

22 Q And this was after the first trial.

23 A That's correct.

24 Q Do you ---

25 A And I think that was unfair.

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1 Q Do you remember the split of the jury, what it was
2 with the hung jury, numbers were for the first trial?

3 A No.. I didn't know first hand. I can only tell you
4 what I -- I remember hearing from the clerk. I think
5 there was just one hold out for Mr. Carter in the first
6 trial.

7 Q So 11 to 1 ---

8 A I -- I think. But of course, I'm only going off of
9 what, you know -- some of the bailiffs, they kind of get a
10 feel at -- at any trial, particularly if it's hung, the
11 bailiffs kind of get an idea of what kind the split was.

12 But you never know for sure what the -- the split was.
13 So I -- that's what I distinctly kind of remember. The --
14 that notion was kind of floating out there: 11 to 1.

15 Q Did you feel you were prepared for the first trial,
16 adequately prepared for the first trial?

17 A I think we were adequately prepared for the first
18 trial. But I think we were at a distinct disadvantage in
19 his second trial.

20 Q I believe you testified before the witnesses, for at
21 least the State, were essentially the same for the second
22 trial; is that correct?

23 A That's correct. That's a -- that -- I -- I would
24 think that's correct, but if -- if you look at both
25 transcripts, you know -- now, I've never seen the first

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1 transcript, obviously. But I would venture to guess that
2 it was probably more or less the same witnesses.

3 Q Did you file any *Brady* or Rule 5 motion before the
4 first trial in this case.

5 A Standard -- you know, standard things we do in order
6 to get the pieces of evidence -- discovery. Yes.

7 Q Did you have any reason to believe the State did not
8 honor this request fully?

9 A I say many things about Ms. Fant, but she did give me
10 the discovery.

11 Q Did you review this material with your client Mr.
12 Carter?

13 A Now, just like Rahim said, I -- I -- I -- I brought
14 him the discovery, and we met pretty much like he said. I
15 don't know if it was like -- I would say 15 minutes; it
16 might have been 30 minutes. But it -- you know, short
17 meetings.

18 Because like he said, there was no -- it was -- it was
19 not a forensic-type case. There was no -- there was no
20 blood, fingerprints. It was all fact witnesses.

21 And a lot of the fact witnesses were people that, you
22 know, might have been kind of shady. And when I say "kind
23 of shady," I mean, look at Brandon Taylor, a.k.a. "Blue."
24 He was already on some Federal drug charges, and there
25 were a couple of other people that might have had some

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1 charges pending who -- you know, they're credibility was
2 kind of shaky.

3 Some of them you might not have been able to -- judge
4 might not have let me get into it, because some of them
5 might have had like just arrests. They might have been
6 what I call "stretched out."

7 Q Quite a few of the State's witnesses you were allowed
8 to impeach with their prior records, correct?

9 A Now, the one I remember getting into, obviously, was
10 Blue. He had already pled guilty. Brandon -- a.k.a.
11 "Brandon Taylor."

12 Q Do you recall impeaching Christopher Davis, a.k.a.
13 "Lil Chris," with his prior record?

14 A If it's in -- you know, the case has been over three
15 years. So if it's -- I would have to defer to what's in
16 the transcript, if -- if -- if the judge had allowed me to
17 get into that.

18 But I remember there were some others that had some
19 other shady things that I couldn't really get into.

20 Q Such as -- do you recall impeaching Darrell Hawkins
21 with his prior record, his convictions for burglary in the
22 second degree, as well as criminal conspiracy?

23 A If it's in the transcript.

24 Q So you -- you do feel you were able to successfully
25 impeach these so called "shady witnesses."

1 A Well, now, I don't know if I'd put it that way, Megan.
2 Because you say "do I feel." I feel that I was not
3 because of the circumstances we were in.

4 Q But these witnesses were called at the first trial,
5 correct?

6 A I believe they were. That -- here again, I've never
7 seen the transcript from the first trial to be sure, but
8 if you wanted to be sure, you know, you can get the first
9 trial transcript.

10 But more or less, they were pretty much the -- you
11 knew what -- you -- you had an idea of what people were
12 going to say. But the problem was, at a second trial so
13 closely coming back after the first trial, you know,
14 people got -- they got a little bit of time -- they were --
15 -- they were in the best possible position for the State.

16 They had a little bit of time to kind of tidy up their
17 testimony and fill in the holes. And not too much time
18 where it was fresh in their memory of what they said, so
19 they could tidy it up and fill in the holes.

20 Q Such is the case with Blue.

21 A That's correct.

22 Q Which you ---

23 A That's correct.

24 Q --- successfully impeached with his prior inconsistent
25 statement.

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1 A Yes, that's -- that -- that's correct, that's correct.

2 Q Did you ever discuss Mr. Carter's version of the facts
3 leading to this incident with him?

4 A We -- we talked about it. I guess, you know, did I --
5 did we discuss, you know, the case? We discussed it. I
6 think -- but personally, I think, if -- if I -- if I knew
7 what I know now, I probably would have taken the shot with
8 bringing back some of those witnesses that he had.

9 I think some of the witnesses in the first trial --
10 see, that's -- that -- that's -- that's the thing about
11 having the -- the -- having or not having the transcript,
12 that really put Rahim at a disadvantage, because I really
13 didn't have a opportunity to really be able to -- to
14 ascertain whether or not we should bring back this witness
15 versus that witness.

16 Some of his witnesses, I think, testified pretty
17 soundly. Some of his other witnesses, I think, were real
18 shaky.

19 Q Did quite a few of these 13 witnesses he provided you
20 with have prior records, criminal backgrounds?

21 A If my memory -- my memory serves me correct, they --
22 they had -- you weren't dealing with nuns and saints. You
23 know, the State's witnesses had shady backgrounds, and --
24 and some of the people that we would -- had called and
25 then perhaps thought about calling the second time around,

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1 they had some -- what I call some "issues." We just
2 didn't have pristine, clean witnesses.

3 But there was -- there was one guy that -- I can't
4 remember his name. Rahim might remember his name. He
5 testified about Blue -- Brandon Taylor's boys or I can't
6 remember exactly what it was. But he testified about some
7 shooting occurring at another place, in somebody's
8 backyard, with Rahim there, and -- and Rahim ducking for
9 cover, I -- or running. I -- I can't exactly remember. I
10 can't remember that witness's name.

11 But he was -- and he was not very -- and it was very
12 tough for us in a -- in a back-to-back, to even try to go
13 get him to come back again, because you know, these folks
14 -- you know, I -- I don't know how many cases you done
15 tried, but these folks ain't exactly raising their hand,
16 itching to come to court to testify in a criminal case.

17 These are folks you got to try to go dig them up, can
18 you get them; and then -- and of course, the State had
19 more resources than -- than Rahim got. So that put us at
20 a distinct disadvantage.

21 And these are some of the things that I was kind of,
22 you know, talking to Judge Young back in chambers about,
23 and try to ask for a continuance to get the transcript.
24 And of course, we know what happened.

25 Q Do you feel these 13 witnesses that were provided for

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1 you, at least a few of them, the State would have been
2 able to impeach their credibility with their prior
3 records?

4 A I don't know -- and let -- let me say this: I don't --
5 -- I don't know -- I remember they had issues. And when I
6 say "issues," they might have had some minor charges. And
7 I can't remember if there were people that had actual
8 felonies that Catherine could impeach.

9 One -- you know, some people might have had that; some
10 people might have been witnesses who might have had a
11 little shady past, but you might not have -- you know, it
12 might have been charges pending; it might have been
13 misdemeanors that she couldn't have used.

14 But there were people that, "I really don't want to
15 come to court. You know, it's hard for me to get to court
16 again. I really don't want to be there and ..." --

17 Q You'd characterize these witnesses as having
18 credibility issues perhaps?

19 A They -- and some of them -- you know, they might have
20 had -- in talking with John, my investigator, they may
21 have had some credibility issues.

22 And -- and when I look at credibility, I'm not only
23 talking about, you know, whether or not you -- you -- how
24 they going to testify up here on the stand. But sometimes
25 credibility is can you even get them here.

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1 And like Rahim said, I think, one witness came with
2 his mama. I don't know if that was the first trial or the
3 second trial. You know, he -- he -- something -- a lot of
4 what he said up here on the stand was accurate.

5 Q Did you explain to your client you felt numerous
6 amounts of these witnesses had credibility issues?

7 A I may have mentioned that to him, yeah. I -- I --
8 because I met him -- I would have mentioned that to him.
9 I -- and I think that was kind of what we talked about in
10 the interim between the first and the second trial.

11 And that was one of the things that Rahim had thought
12 about and said, you know -- and -- and his mama was there,
13 and you know, and it's -- it's -- it's emotional for folks
14 when you start talking about taking a plea and going to
15 jail for a considerable period of time.

16 So you know, there was some emotion there and talked
17 about how the witnesses -- what we thought how this
18 witness testified and how that witness testified.

19 I can't remember specifically as to say, "Rahim, "X"
20 testified this way; "Y" testified -- I don't think he's
21 believable."

22 I can't remember exactly which person I would have
23 told him about that. But I -- I do remember, you know,
24 having the conversations and saying, "Hey, this is the
25 problem you have. This is the upside; this is the

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1 downside; this is the -- you know, maybe we can get this
2 on the table," and that kind of thing.

3 I just think it was just unfair the way that whole
4 case went down. That's just my personal opinion.

5 Q Did Mr. Carter ever deny having a gun during this
6 incident to you?

7 A I don't think we ever -- we never discussed that, did
8 he ever have a -- did he ever have a gun in his lifetime?
9 Or did he ever ---

10 Q During this incident.

11 A I don't think we ever -- I -- I don't think I ever
12 asked him, "Hey, Rahim, did you have a gun at all that
13 day?" Or "Did you have a gun and walk around?" I -- I
14 don't think that was the issue.

15 The issue was whether or not he was the one that came
16 down that street, over in that particular area, and came
17 out and pulled out a gun and started shooting.

18 Q Numerous witnesses saw your client with a gun shooting
19 that day, correct?

20 A Now, this is what I remember, and if -- if the
21 transcript is different -- there were a couple of
22 witnesses that said -- one witness said, "I saw Rahim
23 coming. And then I turned my head, and started looking
24 some place else; and all of a sudden, I saw everybody
25 running."

1 So those are -- those are some discrepancy issues.

2 There were -- there was -- I don't think there was very
3 many people -- and you can look back at the transcript --
4 that actually said, "I saw Rahim stand there, pull out the
5 weapon, and shoot."

6 There were people that testified that Rahim came
7 walking down the street; there was somebody that said, "I
8 remember Rahim running away," when I guess everybody
9 started running away.

10 But there were some issues about that. So -- but here
11 again, I would defer to the -- whatever the transcript is,
12 because you know, that's been a little while.

13 Q And you testified before that you did retain a private
14 investigator in this case.

15 A Well, when you say "retained," that implies that I
16 spent some money out of my pockets. And the answer to
17 that is "no." But I -- I was able to get court approval
18 to get Mr. Johnson to assist me. That might be a better
19 way of phrasing it.

20 Q You did have the services of Mr. Johnson, a private
21 investigator, in this case.

22 A I -- I did, Megan. That's correct.

23 Q Are you aware of what investigation he did in this
24 matter?

25 A Well, John wasn't -- and he doesn't do any

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1 investigations. I know he's a former SLED agent.

2 He -- he wasn't -- I -- I guess best way to explain
3 this is I dealt with certain number of investigators here
4 in Sumter. John was probably a little less formal in the
5 sense. Let me give you an example.

6 Like, I've used another gentleman named "Glen
7 Harrold," on -- on some other cases before. Glen is going
8 to have documentation, because I think that's kind of all
9 that he does is investigations. He's going to have
10 documentation; he's going to give you a report. Might be
11 written, sitting down; telling you, you know, it was
12 raining on this particular day at this particular time,
13 and -- and that sort of thing.

14 John is more -- a little less formal. He keeps notes
15 that -- you know, just for his own personal opinion. But
16 he would come to me and say, "Hey. This is what I'm
17 thinking, Brooks. This is what I'm finding."

18 So it wasn't -- he wasn't probably as formal, because
19 I do know in -- in John's life, he would do other things;
20 that he -- he worked for, you know, funeral homes and
21 cemeteries. And he would go and do investigating because
22 he -- he had been a former SLED agent.

23 And sometime, you know, as a lawyer, you would kind of
24 try to figure out which investigator I should use, given a
25 certain situation. And in this situation, you know, a lot

1 of the people that had involvement in this are going to
2 come from Southside who, you know, primarily, you know, an
3 African-American neighborhood, drug culture.

4 And I thought, at the time, that John was probably
5 more suited to go in and try to figure out what was going
6 on. Because it wasn't a forensic-type situation; whereas,
7 if I had a case with a lot more forensics, I probably
8 going -- I would probably use Glen Harrold in that kind of
9 situation, because he -- he -- that's all he does. He's
10 going to pick apart everything and if it's -- if it's more
11 of a racially-mixed situation -- situation like that, then
12 I think he tend to be more effective for me.

13 But in this situation, you know, all these people -- a
14 lot of these people were, you know, what I call "fly by" -
15 - "fly-by-night people." You know, they're here today,
16 gone tomorrow. You know, work by a nickname. You call
17 out their real name, nobody knows who they are. When you
18 say nickname, everybody say, "Oh, yeah, that's so and so.
19 He stay down here," or "Mama live there and you go there."

20 John was just -- in my opinion, was probably a little
21 more suited for that. But he didn't keep, like, rigorous
22 notes. He would just go and try to find out, you know,
23 information on who we thought the State might call. Who
24 these witnesses were, who -- and then, you know, the list
25 of people that -- that Rahim may have gave -- given me.

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1 You know, he would go and look into and that sort of
2 thing, if that -- if that makes any sense for you.

3 Q Do you feel like you had adequate time to meet with
4 your client Mr. Carter before trial?

5 A Now, that's -- that's a good question, too. I had
6 good time to meet with him before the first trial, and I
7 think I had sufficient time to talk to him about what we
8 were going to do in the second trial.

9 But the problem with the second trial really wasn't
10 talking with Rahim for the second trial. The problem with
11 the second trial was the circumstances that we were in,
12 that didn't have anything to do with me talking to Rahim.

13 Q So you do feel that you had adequate time to meet with
14 him before the first and the second trial.

15 A As far as my interaction with him, yes. But like I
16 said, the problem was the circumstances that Rahim was in,
17 and what I -- what I was in as his lawyer.

18 Q Would you categorize your overall trial strategy for
19 both first and second trial, what defense you put forth.

20 A My overall trial strategy? Well, my trial strategy
21 was to get my guy off.

22 Q What -- what defense did you put forth?

23 A Well, in the first trial, we -- you know, we -- we --
24 we had these people that -- that were alluding to the fact
25 that Rahim was not there at the time -- and -- and this

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1 was -- there were some temporal issues there as far as,
2 you know, time and space: Was he here at this time? Was
3 he here at that time?

4 And that -- that's -- that's where one of the -- one
5 of the witnesses that we used in the first trial.

6 Q Would you categorize it as an imperfect alibi?

7 A Ma'am, I categorize everything as an imperfect alibi,
8 imperfect trial, imperfect circumstances.

9 Q And what defense did you put forward at the second
10 trial?

11 A Well, considering the situation we were put in, the
12 strategy at that point was to try to figuratively punch as
13 many holes in these witnesses that the State had, because
14 now -- I remember -- I think Rahim testified at the first
15 trial. I think he testified at the first trial.

16 I don't know. I can't -- you know, see, that was part
17 of the problem with not being able to have the transcript
18 of the first trial.

19 Q And it's been quite a few years now since ---

20 A Oh, yeah. Now, I can tell you ---

21 Q --- the first trial.

22 A --- this was the -- this was the end of July/
23 beginning of August, 2009.

24 Q So your memory was probably better between the first
25 and second trials than now, reflecting on the first and

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1 second trial.

2 A I would agree with that.

3 Q Did you file any pre-trial motions or make any motions
4 before the Court before the case started the second time?

5 A Absolutely..

6 Q Do you recall what those motions were?

7 A Well, I want a motion for continuance in order to get
8 the transcript. I thought it was unfair and prejudicial
9 to my client.

10 Q Judge Young did allow you to listen to the tapes,
11 correct?

12 A He did.

13 Q And you were able to successfully impeach at least one
14 witness, Brandon Taylor, based on your review of these
15 tapes.

16 A You know, I -- I was, but can I explain?

17 Q Certainly.

18 A Okay. I think that if I'd had the transcript, I would
19 have done a much more effective job for Rahim, because
20 then, I would have been in a better position to be able to
21 -- be able to impeach other witnesses.

22 What I mean -- give an -- give an example: If all I
23 had was my memory and had to listen to the tapes, a lot of
24 potential impeachable opportunities probably floated past
25 me that probably would not have floated past me had I had

1 the transcript in writing, as you sitting there listening
2 to people.

3 Because in that position, you can have the transcript,
4 and when Catherine Fant, as the solicitor, says, "I'm
5 calling 'X,'" I can turn to the transcript and look at
6 what "X" is saying; so that when "X" says something
7 different, you know, I -- I'm dead on.

8 But you know, in his trial the second time around, I
9 had to totally rely on memory and try to -- some notes to
10 pinpoint where so-and-so would have testified at -- this
11 particular tape. And -- and -- and that -- that just
12 presented a problem. That's what I mean by -- I was able
13 to -- to catch Blue, but who else I would have been able
14 to catch had I had that transcript.

15 Q And you set forth this argument in your motion to
16 continue the case before Judge Young.

17 A Well, I asked for that. I -- I -- I put that argument
18 to him, but the problem is -- see, in hindsight, the
19 argument is stronger, because now, you can get the first
20 transcript because it's three years later. And you can
21 look at it and then you can say, "Oh, man. I could have
22 said this; I could have asked him this; I could have asked
23 him that."

24 And that's why -- that's why I mean that that put him
25 at a -- at -- at a disadvantage.

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1 Q Have you had an opportunity to review the first
2 transcript and see what inconsistencies are between the
3 first and second?

4 A No. Because nobody's ever given me a first
5 transcript.

6 Q So it's speculative to know what witnesses, besides
7 Brandon Taylor, you would have been able to impeach with a
8 prior inconsistent statement.

9 A That would be true.

10 Q Did you make a motion to sequester witnesses?

11 A I think I did. You'd have to look back at the
12 transcript. I -- I just -- and let me say this: I did --
13 when it comes to other motions that were filed, I would
14 defer to what was in the second trial transcript that
15 we're working off of.

16 But the one thing that I totally remember was
17 obviously this whole issue about a transcript, a
18 continuance, because I can remember the whole thing
19 because of how -- how I felt for my client.

20 Q Do you recall making a motion to suppress the crime
21 scene photos due to the angle and time of day?

22 A If it's in -- if it's in the transcript, I -- you
23 know, I would say yes.

24 Q Did you make a motion to suppress the statement of the
25 victim's brother claiming hearsay rules?

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1 A That's the guy who worked at -- I remember him working
2 at Best Buy in Columbia, or one of those stores, who said
3 he'd come up to the hospital while his brother was still
4 alive.

5 Yeah. I thought that was something that was unfair.
6 I think I did make a motion to suppress that. I think I
7 did that both times.

8 Q And do you recall what Judge Young's ruling was in
9 regards to your motion?

10 A Oh, he let it in.

11 Q Do you recall under what rule he let it in?

12 A No. I can't remember what rule.

13 Q If the record reflected it was ruled to be an excited
14 utterance, would you dispute that?

15 A Whatever -- I mean, whatever he said in -- in the
16 record. I -- I mean, I have no reason to dispute what --
17 what the record said.

18 Q Did you move for a directed verdict at the close of
19 the State's case?

20 A I -- I always do that.

21 Q Did you renew this motion after the defense rested?

22 A I -- I think I did that as well.

23 Q During deliberations, did the jury indicate that they
24 were having difficulty reaching a unanimous decision?

25 A Which trial are you talking ---

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1 Q In the second trial.

2 A Okay. I don't necessarily -- if it's in the
3 transcript, I would defer to that.

4 Q Did the Court decide to give an *Allen* charge in
5 regards to trouble reaching a unanimous decision in the
6 second trial?

7 A If -- if it's in the transcript, I'll -- I'll defer to
8 that. This -- now, in fairness, some of them started --
9 you know, some of that first trial and the second trial
10 are starting to run together in my mind. Because
11 remember, we -- you know, I pretty much eat, slept, and
12 breathed Rahim Carter for two weeks.

13 Q Do you feel that the *Allen* charge that was given by
14 the Court was proper in the second trial?

15 A I don't know if I made a motion in regards to that. I
16 -- I can't remember that.

17 Q If you felt that the charge was improper, is your
18 normal practice to object?

19 A Yes.

20 Q And if the record reflects you did not object?

21 A Are you asking me if the record reflects that I did
22 not object that ---

23 Q Yes. Do you just do that.

24 A --- it would be safe.

25 Q Yeah.

1 A I don't have -- I don't -- I don't dispute what's in
2 the record.

3 MS. HARRIGAN: No further questions, Your Honor.

4 THE COURT: Okay. Anything further?

5 MR. BUXTON: Yes, sir. Just a few follow up on that;
6 not many.

7 CROSS-EXAMINATION BY MR. BUXTON:

8 Q I -- so before the first trial, you were able to meet
9 with Rahim five or six times?

10 A Pretty accurate, like he described it.

11 Q Okay. And you feel like that was -- that was pretty
12 thorough going over the case with him?

13 A Well, it -- it -- it was as far as the beginning
14 process, but the only thing I really didn't get to do,
15 like he described, was kind of when you started getting
16 down to the wire and you're ready to go to trial, because
17 they moved him, that presented a little bit of a problem.
18 Because they had moved him without me actually knowing.

19 Q How far was that before the trial that he moved?

20 A I want to say it was shortly before him getting ready
21 to go to trial they moved him. And I didn't know
22 initially.

23 Q Right. And were you able to get to Richland to visit
24 him?

25 A Well, I think, you know, probably because some, you

1 know, personal things I probably had planned to do, the
2 weekend or whatever, that -- that presented a problem for
3 me, even though I live in Northeast Columbia area.

4 I had planned to visit Rahim, like, you know,
5 Wednesday, Thursday, or Friday leading up to the following
6 week, and then he was gone.

7 Q Right.

8 A And you know ---

9 Q And you weren't aware ---

10 A --- over ---

11 Q You weren't aware that he had moved.

12 A Right. And I think it would have been fair for the
13 State to let me know, hey, we're getting ready to move
14 your guy, so that I could -- you know, it would have been
15 fair for me to make the adjustment.

16 Because what happened is I find out after he's gone.
17 And the solicitor said, "Oh, yeah."

18 Q Okay.

19 A "We forgot to tell you."

20 Q And the trial was the following week.

21 A Yeah.

22 Q Well, I just wanted to touch on the -- the witnesses.
23 Rahim said he gave you 13 witnesses.

24 A And let me say this: I can't remember exactly how
25 many he gave. He did give me, you know, quite a few

1 witnesses.

2 Q Did you have the opportunity to talk to all those
3 witnesses?

4 A Well, that's what I had John Johnson for.

5 Q Okay.

6 A You know, basically, Rahim gave me some witnesses, and
7 you know, John, you know, he kind of -- he -- he did what
8 an investigator's supposed to do.

9 Q And -- and out of that list, do you recall how many
10 you -- how many of those witnesses you called to the first
11 trial?

12 A I know I -- I -- and it's been a little while, but I
13 know I remember calling one guy in Rahim's defense. I
14 know I -- that's not to say I didn't call any others. But
15 I know I specifically called one particular guy. Because
16 he was very -- he was just apprehensive about being in
17 court.

18 And that's just the type of -- you know, Mr. Buxton,
19 you'll see that when you start doing a lot of criminal
20 cases, that, you know, it ain't like it is on TV, where
21 folks are, "Oh, we're here ready to go to testify for
22 you."

23 No, no. You got to dig these people up. They don't
24 want to be there. And a lot of times people, you know,
25 they got other things. They got jobs; they got things

1 they got to do; they're living hand to mouth. They're
2 scared when you start talking about people in the
3 community: "I don't want to be involved." All -- all
4 kinds of things.

5 But I do remember this was one guy. He was really,
6 really nervous about being there. And he had talked about
7 Rahim being at a bar-b-que at somebody else's backyard and
8 then some shooting had gone on or something like that.

9 And I -- what he was trying to say or what we were
10 trying to utilize his -- his testimony to say that when
11 "the shooting" went on, Rahim was here, in the backyard
12 where some people overheard the shooting.

13 What the police were saying is that what this witness
14 said he heard the shooting was a totally different
15 shooting. It was a shooting that Brandon Taylor, a.k.a.
16 "Blue," was now coming looking for retribution, which
17 would have occurred later after the shooting of -- I can't
18 remember the victim's name other than "Cornbread." That's
19 what the -- the -- the nickname that the victim went by.
20 That's what -- that's what I remember.

21 Q Were you able to call the same amount or any witnesses
22 in the second trial?

23 A Was -- was I able?

24 Q Did you?

25 A I -- we did not. Okay. And that may be the better

1 question. We did not.

2 Q That's mainly because of the time frame in between the
3 two.

4 A Just like I described when she was asking me. You
5 think about it, you know, from our standpoint, you know,
6 it's not like the State -- I mean, it's not like the
7 Court's going on to say, "Hey, we're going to give you a
8 whole bunch more money to go get another investigator and
9 round up all these people."

10 I had John Johnson and that's all I had, versus
11 Catherine Fant, who's got, you know, the City of Sumter
12 Police Department and all it's vast resources at her
13 disposal, to be able to make sure that people come back in
14 a short period of time.

15 So basically, the second trial put Rahim at a distinct
16 disadvantage when you think about it even from that
17 aspect. And then when you compound it with not having a
18 transcript and not being able to -- be able to read what I
19 consider to be at -- at optimum position to impeach all of
20 the witnesses.

21 Q Right. You really only had 72 hours.

22 A If that. And I'm going to tell you, that was really,
23 really tough.

24 Q I'm sure it was. You -- your trial started that
25 following Monday, right?

1 A Yeah. I'm still a little ticked off about that, too.

2 Q So you feel you were at a disadvantage to adequately
3 prepare for that second trial based on ---

4 A On -- on -- on -- and -- and -- and -- and it -- and --
5 -- and I guess the way to -- to touch on it is when you say
6 "adequate," I knew what the State's theory was going to
7 be. And you had -- you had a general idea of what
8 witnesses were going to say, because you just had them in
9 the week prior.

10 But what put Rahim at a distinct disadvantage was now
11 you're not in a position to be able -- what I feel to be
12 able to effectively cross-examine and impeach people;
13 because like I explained to the Attorney General, I was
14 able -- I -- I remembered what Brandon Taylor had said,
15 and then was able to pinpoint it at the tape.

16 That's different as opposed to having the entire
17 transcript, where I've had trials before where they were
18 hung. And then some time goes by and you get the
19 transcript. Obviously, you can do a much better job
20 effectively cross-examining the State's witnesses, because
21 now you've got the document there. And you can go up to --
22 -- and -- and it's a more effective cross-examination as
23 opposed to -- let me give you an example.

24 When you got the transcript, you can go up to the
25 witness and you can say, you know, "You've given prior

1 sworn statement -- or prior statement under oath. You
2 said 'dah, dah, dah, dah, dah, dah, dah,' Isn't that
3 true? You said this, 'dah, dah, dah, dah, dah.'"

4 And what -- you know, now, in the face of the jury,
5 you have significantly undermined that person's
6 credibility.

7 But when you take into account where you're just
8 talking about a tape, you know, they played the tape back,
9 that's a lot different and it's a lot more difficult to be
10 able to cross-examine, you know, certain witnesses because
11 now you can focus in on, "Ooo, they said this when they
12 said that." You know they zigged when they should have
13 zagged. And now you're able to -- to effectively cross-
14 examine them. And that's where I thought Rahim was at a
15 distinct disadvantage and it just wasn't fair.

16 Q As far as the second trial goes with the witnesses,
17 did you -- did you subpoena any of them or was there not
18 time? What -- what ...

19 A I don't know if we did. I don't know -- you know,
20 when you've tried some cases, you start getting a feel of
21 -- you know, and all of this is unwritten.

22 You know, the bailiff might have said, "Oh. Oh, you
23 know, it was 11-to-1 split, and people, you know, didn't
24 buy this."

25 So you kind of -- well, should I do this the next

1 time; should I do that?

2 And then again, you know, these witnesses, like I
3 said, they -- it's not like they lining up and they easy
4 to get a hold of. I mean, for -- it's actually a lot
5 harder to bring in defense witnesses, and some local
6 defense lawyers can attest to this, because of the fact
7 that people don't want to get involved. So when you get
8 them there that first time, that's your shot.

9 And then when the State turns around says, "We're
10 going to call this case again," and they got the police to
11 go out and gather up these witnesses, and make sure they
12 kind of corral them to make sure they're available; and
13 you don't have those same resources, then it makes it a
14 lot tougher.

15 And then as the trial goes on and then you don't have
16 the necessary people, you start to, you know, make certain
17 decisions while you're sitting there, you know, "What
18 should I do?"

19 And then you compound that with the ability -- you
20 know, not having the transcript, I just think it -- like I
21 said, I think when you -- when you factor -- when you
22 factor calling the case as quickly as you -- they did, and
23 how much of an advantage the State has as opposed to, say,
24 calling it the next month -- the next term, where I would
25 have had the transcript; you throw that as far as

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1 gathering witnesses, and you put that together with not
2 having the transcript to be able to be at -- be in your
3 optimum position to be able to effectively cross-examine
4 the State's witnesses, that distinctly puts the defendant
5 -- in this type of situation, where there is no forensics,
6 it's only fact witnesses; that's all he had, just like he
7 testified to -- that just -- that does distinctly -- in my
8 opinion, put you at a distinct disadvantage.

9 Q Right. Right. Aside from the transcript issue
10 between the first and second trial, do you feel that you
11 made all the appropriate motions from the first trial all
12 the way through the second trial for Mr. Carter?

13 A I think I did everything I could for what I had to
14 work with. And that's not -- that's not a knock on Rahim.
15 Just a -- and maybe the better phrase is what --
16 considering the circumstances that he was under, that I
17 was under as his lawyer representing him, you know, we
18 just did the best.

19 I mean, you know, when the judge tell you, you know,
20 "We're going to do 'X,'" you know, what can you do?

21 Q Right.

22 MR. BUXTON: I have no further questions, Your Honor.

23 MS. HARRIGAN: Just briefly, Your Honor.

24 RE-DIRECT EXAMINATION BY MS. HARRIGAN:

25 Q Besides moving for the continuance before Judge Young

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1 before the second trial, and arguing vigorously for more
2 time, what else could you have done to prepare and proceed
3 to the best of your ability once the motion was denied?

4 A Ask me that one more time? I want to make sure I get
5 it.

6 Q Besides moving for your continuance --

7 A Okay.

8 Q -- arguing vigorously that you needed the transcript -

9 -

10 A Uh-huh.

11 Q -- and after that was denied, what other options did
12 you have besides listening to the tapes and vigorously
13 preparing for the next trial?

14 A I don't know what other options I had.

15 Q So you did provide effect assistance of counsel in
16 that regard.

17 A I did the best I -- I did the best I could.

18 Q With the judge's ruling.

19 A With the circumstances, with the judge's ruling, and
20 the prosecutor put us in.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: Okay.. You can step down.

23 (The witness exits the stand.)

24 MS. HARRIGAN: The State has no additional witnesses
25 to call. That's the State's case.

1 THE COURT: Okay. Anything further from?

2 MR. BUXTON: (No audible response.)

3 THE COURT: Anything further?

4 MR. BUXTON: No, sir, Your Honor.

5 THE COURT: All right. I will review the transcript
6 and let y'all know.

7 MS. HARRIGAN: Thank you, Your Honor.

8 MR. BUXTON: Thank you, Your Honor.

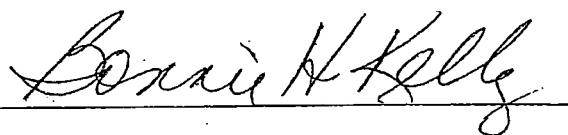
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10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Sumter County, South Carolina, on the 13th day of December, 2012.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

June 21, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) IN THE COURT OF COMMON PLEAS
2013 FEB 21 PM 1:17) FOR THE THIRD JUDICIAL CIRCUIT

Rahim Fareed Carter, #290290, JAMES D. JAMES) Case No. 2011-CP-43-1918
Applicant, CLERK OF COURT)
SUMTER COUNTY, S.C.)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sandra C. Dickerson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 14, 2011. The Respondent made its Return on January 18, 2012. An evidentiary hearing into the matter was convened on December 13, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by William A.W. Buxton, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the May 2008 term of the Sumter County Grand Jury for (1) Murder and (2) Possession of a Firearm during the Commission of a Violent Crime (2008-GS-43-0597). He was represented by Charles T. Brooks, III, Esquire. On August 5-6, 2009, Applicant proceeded to a trial before the Honorable W. Jeffrey Young and a jury, where he was convicted as indicted. Judge Young sentenced Applicant life imprisonment for Murder and five years imprisonment for Possession of a Firearm during the Commission of a Violent Crime, with both sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected on Applicant's behalf. Following the submission of an Anders¹ brief and Applicant's *pro se* brief, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Carter, Op. No. 2011-UP-020 (S.C. Ct. App. filed January 25, 2011). The Remittitur was sent on February 18, 2011.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. "Denial of effective assistance of counsel."
 - a. "Counsel failed to adequately investigate case; counsel failed to preserve motions for review."
2. "Denial of equal protections of the law."
 - a. "The jury was coerced into rendering a verdict denying me my right to a fair and impartial trial."

In its Return, Respondent interpreted Applicant's allegations as ineffective assistance of counsel.

At the evidentiary hearing, Applicant presented his claims as ineffective assistance of counsel.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from trial counsel Charles T. Brooks, III, Esquire (herein "Counsel"). This Court also had before it a copy of the Applicant's trial transcript, the records of the Sumter County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that he was tried twice, with his first trial resulting in a hung jury before being convicted as indicted at the conclusion of his second trial the following week. He testified that he was represented by Counsel for both trials and that he met with Counsel approximately six or seven times prior to his trials. Applicant testified that Counsel did not fully review his discovery with him, although he acknowledged

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

that Counsel did provide him with a copy of discovery and he reviewed it thoroughly. Applicant testified that he discussed possible defenses with Counsel. Specifically, Applicant testified that he gave Counsel the names of various witnesses to investigate and subpoena for trial, but that Counsel failed to investigate these witnesses. Applicant testified that Counsel employed a private investigator to assist him with the preparation of Applicant's defense. Applicant testified that he met with this investigator more than once and also gave him the names of various witnesses. Applicant acknowledged that he did not have any witnesses present to testify at the evidentiary hearing and presented no affidavits or other evidence regarding this allegation.

Applicant testified that Counsel advised him of the potential sentences for the charges he was facing including that murder had a maximum penalty of life imprisonment. Applicant testified that Counsel advised him that if he was convicted of murder, there was a significant chance that that he would receive a life sentence. Applicant testified that Counsel informed him of a plea offer from the State, but that he turned the offer down because he wanted to proceed to trial. However, Applicant testified that he had no confidence in Counsel's preparation for trial. Applicant testified he wanted his second trial continued and asked Counsel to move for a continuance. Applicant acknowledged that Counsel did move for a continuance, which was denied by the trial court.

Following Applicant's testimony, Counsel was called to testify by Respondent. Counsel testified that he has been practicing law since 1996 and approximately half of his practice is comprised of criminal defense work. Counsel testified he was appointed to represent Applicant and testified that he met with him at least six or seven times prior to his trials. Counsel testified that he was also in contact with Applicant's family throughout his representation. Counsel

testified that he represented Applicant for "a significant period of time" before the case was called to trial.

Counsel testified that this case involved a "killing over drug turf" and that Applicant was "enforcement" for members "higher up" his particular drug ring. Counsel testified that the case was "not a forensic type of case" and the discovery dealt mostly with "fact witnesses," who witnessed Applicant approaching the scene and shooting. Counsel testified that he provided Applicant with a copy of his discovery and reviewed the materials with him. Counsel testified that he moved for funds to hire a private investigator, which was granted. Counsel testified that he employed private investigator John Johnson, who helped him prepare the case for trial. Counsel testified that Johnson met with Applicant on more than one occasion. Counsel testified that he selected Johnson as his private investigator for this case because Johnson was the "most suited to talk to this type of client." Counsel elaborated that Johnson is less formal, but kept accurate notes and kept him well informed as his investigation progressed. Counsel testified that Johnson interviewed all the witnesses that Applicant requested, as well as additional witnesses he was able to locate.

Counsel testified that the assistant solicitor prosecuting Applicant's case was Catherine Fant, whom he described as a "Police Officer's Prosecutor," a "vigorous prosecutor", and that she treated opposing counsel as the enemy. Counsel testified that Fant offered to allow Applicant plead to the lesser included offense of voluntary manslaughter for a fifteen year sentence. Counsel testified that he communicated this plea offer to his client, but that Applicant turned down the plea offer. Counsel testified Applicant's first trial resulted in a hung jury and the trial court declared a mistrial. Counsel testified that the State immediately called the case to trial again the following week. Counsel testified that he moved for a continuance because he

wanted an opportunity to receive and review a transcript of the first trial for impeachment purposes. Counsel testified that Judge Young denied his continuance requests, but allowed him access to the court reporter's tapes of the first trial immediately following the first trial. Counsel testified that he spent a great deal of time listening to these tapes and taking notes before the second trial began. Counsel testified that he felt he was prejudiced by not having a typed transcript by which to impeach witnesses. However, Counsel acknowledged that he was able to successfully impeach at least one witness based on his review of the tapes. Counsel testified that once Judge Young denied his motion for continuance, he had no option other than to prepare for the second trial to the best of his ability. Counsel testified that he felt he had adequate time to prepare for the trials, aside from his desire to have a typed transcript before beginning the second trial.

Counsel testified that the State called essentially the same witnesses at the first trial at the second trial. Counsel testified that he presented witnesses at Applicant's first trial in an attempt to establish an alibi, but that there were "issues with the time" resulting in an imperfect alibi. Counsel testified that he made a strategic decision not to call any witnesses for the second trial and instead focus on "punch[ing] as many holes in the State's case as possible." Counsel stated that he had a very hard time subpoenaing witnesses for this case, as the potential witnesses were not willing to get involved with criminal matters and were difficult to locate.

Counsel testified that he made several pre-trial motions in this case. Specifically, Counsel testified that he moved to suppress crime scene photos as a mischaracterization of the crime scene, as well as moved to exclude a statement from the victim's brother as hearsay. Counsel testified that he felt that he was able to bring out relative inconsistencies of the State's witnesses during his cross-examination, as well as highlight credibility issues with most of the

State's fact witnesses. Specifically, Counsel testified that most of the witnesses were either currently incarcerated or had a prior record that he was able to use for impeachment purposes. Counsel testified that he moved for a directed verdict at the close of the State's case and that he properly renewed this motion at the appropriate time.

Counsel testified that during deliberations, the jury indicated difficulty in reaching a unanimous decision. Counsel testified that the trial court gave the jury the Allen² charge, to which neither the State or he objected. Counsel testified that he did not object to the Allen charge because he did not feel it was improper. Counsel testified that his standard practice is to object to any jury charge that he feels is improper.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

² Allen v. United States, 164 U.S. 492 (1896).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to adequately investigate the case

Applicant alleges that Counsel was ineffective for failing to adequately investigate his case. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding an

applicant is not entitled to relief where no evidence presented at post-conviction relief hearing to show how additional preparation would have had any possible effect on the result at trial). Counsel testified that he fully reviewed the discovery with the Applicant and discussed Applicant's version of the facts with him. Counsel testified that he moved for funds to hire a private investigator to assist with this case, and once funds were granted, he hired a private investigator specifically suited for his particular needs in this case. Counsel and Applicant both testified that private investigator Johnson visited with Applicant on more than one occasion. Counsel testified that Johnson interviewed all witnesses given to him by Applicant as well as other witnesses he was able to locate. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant failed to provide the Court with any evidence of how specifically Counsel was ineffective in this regard or what additional investigation could have been performed. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

Counsel was ineffective for failing to properly preserve motions for review

Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that he made numerous motions on the record, including pre-trial motions, post-trial motions, and necessary objections. Additionally, based on a review of the trial transcript, this Court finds that Counsel was not deficient in his performance in regards to this allegation. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has

shown no actual prejudice from any alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

CONCLUSION

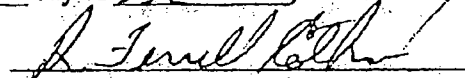
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

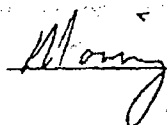
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court 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 Respondent.

AND IT IS SO ORDERED this 14 day of Feb., 2013.


R. FERRELL COTHAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Family Court Judge

THE STATE,

RESPONDENT,

V.

RAHIM F. CARTER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the verdict against appellant was coerced after the trial court gave the jury an Allen charge when they said they were deadlocked?

STATEMENT OF THE CASE

Appellant was convicted of murder and possession of a deadly weapon after a jury trial held before the Honorable W. Jeffrey Young on August 5-6, 2009, in Sumter County. Respective sentences of life imprisonment and five (5) years were imposed.

This appeal follows.

ARGUMENT

The verdict against appellant was coerced after the trial court gave the jury an Allen charge when they said they were deadlocked.

Appellant was tried for murder in what was considered a gang related killing. After over 2 ½ hours of deliberation the jury sent a note to the trial court stating that they could not come to a united decision. The trial court brought the jury into the courtroom and gave them an Allen charge. Then he sent the jury back to deliberate. (ROA p. 369, line 23 – p. 372, line 13) After about another hour of deliberations the jury reached a verdict. (ROA. P. 380, lines 11-12)

“The trial judge has a duty to urge the jury to reach a verdict, but he may be coerce it.” State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 108-09 (1996); see State v. Darr, 262 S.C. 585, 587, 206 S.E.2d 870, 870 (1974). (“It is the duty of the trial judge to urge the jury to agree upon a verdict provided he does not coerce them.”) Review of an Allen charge requires this court to consider the chare in light of the accompanying circumstances. See generally State v. Hale, 284 S.C. 348, 326 S.E.2d 418 (Cl. App. 1985).

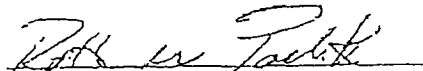
Factors to be considered in determining whether a charge is coercive include the length of the deliberations prior to the charge, the length of the deliberations following the Allen charge, and the total length of deliberations. The trial judge may not indicate to or threaten the jury that they must agree or failing to agree, they will remain in the jury room for a specified length of time. (footnotes omitted)

The trial court’s Allen charge in this case was over two pages long. (ROA p. 372, line 14 – p. 374, line 18) It coerced the jury into arriving at a verdict.

CONCLUSION

Because appellant's verdict was coerced he should be given a new trial.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of March, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 William Jeffrey Young, Family Court Judge

THE STATE,

RESPONDENT,

V.

RAHIM F. CARTER,

APPELLANT

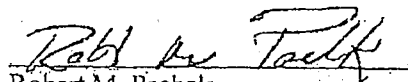
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rahim F. Carter states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on August 6, 2009, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Rahim F. Carter.

Respectfully submitted,



 Robert M. Pachak
 Appellate Defender

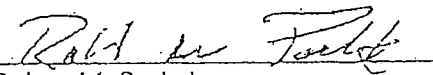
ATTORNEY FOR APPELLANT

This 22nd day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 22, 2010


Robert M. Pachak
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Family Court Judge

THE STATE,

RESPONDENT,

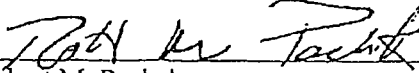
V.

RAHIM F. CARTER,

APPELLANT

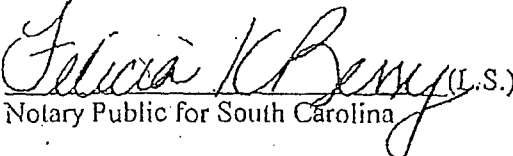
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Rahim F. Carter, #290290 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010; this 22nd day of March, 2010.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of March, 2010.


Notary Public for South Carolina (L.S.)

My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Kouns, presiding judge

Rahim F. Carter

Appellant

VS

The State

Respondent

Appellant's Brief

Rahim F. Carter

#290290 Sum-N-2245

Lee C.I. 990 Wisacky Hwy

Bishopville, S.C. 29010

Pre se

[Handwritten signature] 2/16/10

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