

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Marion County

Honorable George M. McFaddin, Circuit Court Judge

BLATON W. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001590

APPENDIX

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VOLUME II OF II

PAGES 501-844

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 6-8, 2014	1
FINAL BRIEF OF APPELLANT	711
FINAL BRIEF OF RESPONDENT	725
<i>STATE V. SMITH</i> , UNPUBLISHED OPINION NO. 2016-UP-323 (FILED JUNE 22, 2016) ..	752
REMITTITUR	754
APPLICATION FOR POST-CONVICTION RELIEF	755
RETURN AND MOTION FOR MORE DEFINITE STATEMENT	762
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	767
PCR HEARING TRANSCRIPT DATED DECEMBER 12, 2022	769
APPLICANT’S EXHIBIT 1 (AFFIDAVIT OF JAMIE WILLIAMS)	816
TRANSCRIPT DATED APRIL 18, 2022	817
CONSENT ORDER TO SUBSTITUTE COUNSEL	825
ORDER OF DISMISSAL	826
INDICTMENT	842

JAMIE WILLIAMS - CROSS BY MR. DEBERRY

- 1 A: Yeah.
- 2 Q: How did Shaheed get there?
- 3 A: They picked him up.
- 4 Q: Y'all picked him up after they picked you up?
- 5 A: Yeah.
- 6 Q: Where did y'all pick him up?
- 7 A: Somewhere around Latta. I don't know no address or
- 8 nothing like that, man. I ain't good with roads.
- 9 Q: What kind of car were y'all in?
- 10 A: A Cadillac.
- 11 Q: Was it a white one?
- 12 A: Yeah.
- 13 Q: All right. Do you remember when you started shooting at
- 14 the house about where you were?
- 15 A: I don't recall shooting at the house, man, but I know
- 16 where I was in the car.
- 17 Q: So now you're saying you didn't shoot?
- 18 A: I did shoot, but I ain't aimed at no house.
- 19 Q: What did you shoot at?
- 20 A: I was nervous, man. I just shoot.
- 21 Q: This is State's Exhibit 37. You didn't shoot at the
- 22 house?
- 23 A: This house right there?
- 24 Q: Yeah.
- 25 A: No, I was just shooting.

JAMIE WILLIAMS - CROSS BY MR. DEBERRY

1 Q: All right. And your testimony is that y'all came from
2 Latta, turned around, and were heading back to Latta when you
3 started shooting?

4 A: Man, all I know is I was over the window and he was
5 hanging out the window.

6 Q: All right. Thank you very much.

7 THE COURT: Mr. Bailey, cross examination.

8 MR. BAILEY: Thank you, Your Honor. The Court's
9 indulgence for one second.

10 CROSS EXAMINATION

11 BY MR. BAILEY:

12 Q: Good afternoon, Mr. Williams.

13 A: How are you doing?

14 Q: You're dressed very nice today.

15 A: Thank you.

16 Q: You got those clothes last week?

17 A: Yeah.

18 Q: You were ready to go to trial last week, weren't you?

19 A: If that's what it took, yeah.

20 Q: You were -- last week -- as of last week, you were ready
21 to sit here at this table, weren't you?

22 A: If that's what it took, yeah.

23 Q: Okay. Did you get brought over from the jail today
24 wearing shackles?

25 A: Yeah.

26

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: They took the shackles off of you when you got here
2 today?

3 A: Yeah.

4 Q: Okay. You wore -- do you wear a jumpsuit in the jail?

5 A: Yeah.

6 Q: You don't get to dress like that over at the jail, do
7 you?

8 A: No.

9 Q: Okay. Did you review any of your statements prior to you
10 coming into court here today?

11 A: No.

12 Q: Over the last two-and-a-half years, have you reviewed any
13 of your statements?

14 A: No.

15 Q: Since meeting with law enforcement last week, have you
16 met with them prior to today?

17 A: Prior to today? No.

18 Q: You were born in April 1995?

19 A: Yeah.

20 Q: Does that make you about 19 years old today?

21 A: Yeah.

22 Q: Are you married?

23 A: No.

24 Q: Got a girlfriend?

25 A: Yeah.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 Q: You do?
- 2 A: Yeah.
- 3 Q: How long y'all been together?
- 4 A: About two -- three years.
- 5 Q: Two or three years?
- 6 A: Yeah.
- 7 Q: Before you got locked up in this case?
- 8 A: So-so. Yeah.
- 9 Q: Okay. Are y'all engaged to get married?
- 10 A: No. I don't know about that.
- 11 Q: Okay. Y'all got any children?
- 12 A: No, but I mean I consider him mine though.
- 13 Q: Okay. She has children of her own?
- 14 A: Yeah.
- 15 Q: Okay. How many children does she have?
- 16 A: One.
- 17 Q: One child?
- 18 A: Yeah.
- 19 Q: And you have no biological children of your own?
- 20 A: No.
- 21 Q: Prior to you getting arrested, who were you living with?
- 22 A: My mama.
- 23 Q: It was just you and your mama?
- 24 A: And my dad.
- 25 Q: Your mama and your daddy and that's it? Nobody else I

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 the house?

2 A: Uh-uh.

3 Q: Okay.

4 THE COURT: Is that a no? We need a verbal yes or no for
5 the record. Okay, Mr. Williams?

6 THE WITNESS: Yeah. Yes, sir.

7 Q: Do you have any brothers?

8 A: Yes. I got an older brother.

9 Q: You have one older brother?

10 A: Yeah.

11 Q: Where's he stay at?

12 A: Well, I don't know where he located right now.

13 Q: Okay. You got any sisters?

14 A: Yeah.

15 Q: Older? Younger?

16 A: Two younger and one older.

17 Q: Okay. They didn't live with you?

18 A: No.

19 Q: Who does -- who do your two younger sisters live with?

20 A: Their mama.

21 Q: Okay.

22 MR. CLEMENTS: Your Honor, I'm curious as to the
23 relevance of this line of questioning.

24 THE COURT: I understand it's cross, but get to your
25 point, please, sir.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 MR. BAILEY: Well, Your Honor, I'm attacking his -- his
2 bias. I mean that -- that's the purpose --

3 THE COURT: Go ahead.

4 MR. BAILEY: -- of the questions.

5 THE COURT: Go ahead.

6 BY MR. BAILEY:

7 Q: You got other relatives in Dillon County?

8 A: Yes, sir.

9 Q: Okay. There's people on the outside of jail who love
10 you, don't they?

11 A: Yeah.

12 Q: They don't want to see you go to prison, do they?

13 A: No.

14 Q: Was that a no?

15 A: That was a no.

16 Q: Okay. And you love those people on the outside. You
17 mama and your daddy, you love those people?

18 A: Pretty much, yeah.

19 Q: You don't want to go to prison and be away from them, do
20 you?

21 A: I mean no, but --

22 Q: But?

23 A: I mean I don't know what's going to happen, man.

24 Q: Okay. Now, you've been in jail since you got arrested;
25 correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: Correct.

2 Q: And that was about April the 30th, 2012?

3 A: I got locked up May 1st, 2012.

4 Q: May 1st?

5 A: Yeah.

6 Q: Okay. How do you like living out at the jail for the
7 last two-and-a-half years?

8 A: I mean it's jail.

9 Q: Yeah. Well, let's -- let's talk about what life is like
10 in the jail. Okay? What is your standard issue of clothing
11 in jail?

12 A: An orange jumpsuit, man, and some little patio shoes.

13 Q: Okay. Limited number of jumpsuits you get?

14 A: About three a week.

15 Q: Three a week? How about boxers? Do you get a limited
16 amount of those too?

17 A: Three.

18 MR. CLEMENTS: Your Honor, I'll object on the grounds of
19 relevance on this. I don't see how that even goes to bias.

20 THE COURT: Objection sustained. Go ahead.

21 BY MR. BAILEY:

22 Q: How many people live in a cell with you out at the jail?

23 A: One person.

24 Q: Okay.

25 MR. CLEMENTS: Objection on relevance.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Can y'all approach a minute, please?

2 (Whereupon, a bench conference is held in the presence of
3 the jury but out of the hearing of the jury as follows.)

4 THE COURT: I understand what you're doing, but -- and
5 that is is that it ain't a pleasant place to be. All right.

6 MR. BAILEY: But, Judge, here's the problem. We've got
7 twelve jurors over there who have probably never seen the
8 inside of a jail. They need to under -- they need to
9 understand what it's like to live out there every day and what
10 he's facing. 608 allows me to cross examine him.

11 THE COURT: It doesn't allow you to go wherever you want.
12 All right?

13 MR. BAILEY: If I want to attack his bias or his
14 prejudice --

15 THE COURT: Hold on a minute. I'm going to --

16 (Whereupon, the bench conference ends.)

17 THE COURT: Please step to the jury room for just a
18 minute. I'll get you back out here in just a minute, please.
19 Don't discuss the case. While we're stepping down, I've got a
20 juror that's got to make a phone call. Hold on just a minute.
21 While everybody else steps in the jury room, I need -- Mitch,
22 if you could take her out, please, and let her make her
23 telephone call.

24 MR. CLEMENTS: Your Honor, may I get the witness some
25 water?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Yeah.

2 (Whereupon, the jury exits the courtroom at 5:36 p.m.)

3 MR. WILL GROVE: Your Honor? Your Honor, may I approach
4 the witness?

5 THE COURT: For what?

6 MR. WILL GROVE: I'm here on behalf of Mr. Anderson.
7 He's indicated that he has some questions for me. I have no
8 idea what it is at this point.

9 THE COURT: You can't discuss -- he can't discuss his
10 testimony with you.

11 THE WITNESS: I just wanted some water.

12 MR. CLEMENTS: I've got some water.

13 MR. WILL GROVE: I think it was just the water.

14 THE COURT: Okay.

15 MR. CLEMENTS: May I approach, Your Honor?

16 THE COURT: Yes, sir. All right. Make sure that -- did
17 Mitch take that -- or somebody take that juror out?

18 THE CLERK: Yes, sir, they did.

19 THE COURT: Lock that door. I don't want them coming
20 back in here while I address this issue on the record, please.

21 DETECTIVE MARTIN BELL: Your Honor, may I approach?

22 THE COURT: Yes.

23 (Whereupon, a bench conference is held between the
24 detective and the Court as follows.)

25 DETECTIVE MARTIN BELL: It was just brought to my

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 attention that one of the defendant's mamas is out there with
2 a cell phone recording what's going on here in the courtroom.
3 I haven't seen it. It was just told to me just now. I
4 figured -- I had told Ed and Ed sent me to your attention.

5 THE COURT: One of the defendant's family?

6 DETECTIVE MARTIN BELL: Mm-hmm.

7 (Whereupon, the bench conference ends.)

8 THE COURT: Can the lawyers approach for a minute,
9 please?

10 (Whereupon, a bench conference is held as follows.)

11 THE COURT: Who told you that?

12 DETECTIVE MARTIN BELL: Ed's victims' advocate told me,
13 but she heard it from another person, Derrick. One of the
14 witnesses seen it. Me and Mike seen it out a while ago.

15 MR. BAILEY: What?

16 THE COURT: One of the defendant's family members is out
17 there with a cell phone.

18 DETECTIVE MARTIN BELL: The mother of one of them. Now,
19 which one I don't know.

20 MR. DEBERRY: How are you going to handle it?

21 THE COURT: I mean if that's cell phones, I'm going to
22 have them confiscated. You have a problem with that?

23 MR. CLEMENTS: No.

24 (Whereupon, the bench conference on the record ends and a
25 bench conference is held off the record.)

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: All right. Is the juror -- is that juror
2 back out there yet? Is that juror back out there yet?

3 THE BAILIFF: We're checking now. Yes.

4 THE COURT: Bring -- bring her on through, please.

5 (Whereupon, the juror is escorted to the jury room.)

6 THE COURT: All right. It's been brought to my attention
7 that somebody out in the audience has a cell phone recording
8 -- video recording and/or audio recording what's going on in
9 this courtroom right now with this co-defendant on this
10 witness stand. I want Mr. Bell -- Investigator Bell or
11 somebody else, I want any cell phones held by any people out
12 in the audience to be taken. She's okay. She's okay. She's
13 with the paper.

14 (Whereupon, there is a pause in the proceedings.)

15 THE COURT: Okay. Let me ask this question. When these
16 -- when individuals came in of the general public, whether
17 they be family members of defendants or victims and/or family
18 members, did they go through a metal detector?

19 A DEPUTY: They've been wandng everybody today, Your
20 Honor.

21 THE COURT: All right.

22 A DEPUTY: Downstairs.

23 THE COURT: And will that wand pick up whether or not
24 cell phones are on somebody?

25 A DEPUTY: Yes, sir.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: All right. I want them all taken out here
2 and before they come back in the courtroom, I want the wand
3 run over them to see whether or not they have any cell phones
4 on them. If they are, I want them confiscated. Check them as
5 they go out of this door right here. Check them as they go
6 out of this door. Check under the seats, as well as any
7 cushions out there.

8 (Whereupon, there is a pause in the proceedings.)

9 THE COURT: Can y'all come up here for just a minute,
10 please, while they're doing that?

11 (Whereupon, a bench conference is held as follows.)

12 THE COURT: Like I said, I understand what you're doing
13 here and it's within my discretion as to how far I let you go
14 on this. Okay? And I understand. I mean this is a situation
15 where -- I mean most people do understand the concept of jail
16 now. There's so much on TV. And while I'll allow you to some
17 extent -- I mean it's six o'clock.

18 MR. BAILEY: I know, but as Steven and I were talking
19 about it, Judge, I mean it wasn't our idea to call this case
20 on a Wednesday.

21 THE COURT: I understand.

22 MR. BAILEY: When there's 15 witnesses in a murder case
23 with two defendants.

24 MR. CLEMENTS: It's not 15. It's 13.

25 MR. BAILEY: I was close -- in the ballpark.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 THE COURT: Okay.

2 MR. CLEMENTS: I just wanted to be accurate. Y'all --
3 y'all just got to be close, but I've got to be accurate.

4 THE COURT: I mean get to the issues. I mean I
5 understand and I want to you to do whatever you need to do to
6 protect your client, but at the same token, all that's out
7 there.

8 MR. CLEMENTS: But some things you do don't protect your
9 client and waste time.

10 (Whereupon, the bench conference ends.)

11 THE COURT: All right. Everybody checked fine? And I
12 want to make this clear that the reason I did that is it's my
13 understanding that -- and I addressed this before we started
14 this trial -- that there were some issues relating to this
15 case wherein a bond hearing was conducted months ago by Judge
16 Seals. Bond was denied and whether it was in any way related
17 to this case at all, shortly thereafter within the hour I
18 believe there was a bomb threat made at this courthouse and to
19 Judge Seals.

20 For security purposes -- for security purposes, that's
21 why that was done. You are not to have cell phones in here
22 without prior Court authorization and approval and you are not
23 to be recording, whether it be by audio or video, any
24 proceedings going on in this courtroom without prior Court
25 approval, and that's why I did that for security reasons.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Okay? It's my understanding everything is fine.

2 You all, whether you are defendants' family or victims
3 and victims' family, you have every right to be in here and I
4 want you to be in here. I want you to be in here, but my
5 primary concern is making sure that security is completely
6 taken care of while everybody is in here. Okay?

7 All right. Now, the issue concerning the cross
8 examination I sent the jury out on. We've spoken about that
9 at sidebar. I'm certainly going to allow -- and it's within
10 this Court's discretion as to -- to what extent I'm going to
11 allow Mr. Bailey to go on his cross examination to establish
12 bias. I'm going to allow some of it, Mr. Bailey, but I want
13 you to get to the point.

14 MR. BAILEY: All right.

15 THE COURT: It's six o'clock. It's been a long day. And
16 I understand the case was called yesterday, but we're going to
17 plow along and we're going to finish this case. All right?

18 MR. BAILEY: I understand.

19 THE COURT: Anything also before I bring the jury out?

20 MR. CLEMENTS: No, Your Honor.

21 THE COURT: Anything else, Mr. Bailey or Mr. Deberry?

22 MR. BAILEY: No, sir.

23 THE COURT: Bring me the jury, please, sir.

24 (Whereupon, the jury enters the courtroom at 5:52 p.m.)

25 THE COURT: All right. All the jurors are present. Mr.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Bailey, you may continue with your cross examination.

2 MR. BAILEY: Thank you, Your Honor. May it please the
3 Court.

4 BY MR. BAILEY:

5 Q: Mr. Williams, prior to us taking a brief recess, we were
6 talking about -- a little bit about life in jail. You're
7 limited in the amount of meals that you receive in jail,
8 aren't you?

9 A: Yeah.

10 Q: It's not the best food in the world, is it?

11 A: No.

12 Q: You don't get to go to a restaurant and choose off of a
13 menu?

14 A: No.

15 Q: Has it been a good experience for you for the last two-
16 and-a-half years to be sitting in jail?

17 A: No.

18 Q: Now, I know you answered a little bit of the questions
19 about this earlier, but you are charged for -- with murder in
20 this case; correct?

21 A: Yeah.

22 Q: And you've been explained that murder carries 30 to life;
23 is that correct?

24 A: Yeah.

25 Q: You understand that you can't be paroled on that offense

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 if you're found guilty of it?

2 A: Yeah.

3 Q: If you receive a life sentence, you're going to die in
4 prison. Do you understand that?

5 A: Yeah.

6 Q: Okay. Now, on the four attempted murders, you understand
7 that that carries zero to 30 years on each count?

8 A: Yeah.

9 MR. CLEMENTS: Your Honor, I object to even going into
10 this. He's got pending charges, but I don't think he can --
11 it's improper for him to go into each sentence and possible --
12 because he's not sure --

13 THE COURT: Objection overruled. Continue the line of
14 questioning, please.

15 BY MR. BAILEY:

16 Q: And you understand that each of those 30-year sentences
17 on the attempted murder can be run consecutive; is that
18 correct?

19 A: Yeah.

20 Q: That means a total of 120 years is a possibility on those
21 four charges; correct?

22 A: Yeah, that's correct.

23 Q: All right. Now, you also have a discharging a weapon
24 into a dwelling charge; correct?

25 A: Yeah, I got that.

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: Okay. And that carries up to ten years; correct?

2 A: Correct.

3 Q: And that can be ran consecutive to any other sentence you
4 receive in this case; correct?

5 A: Correct.

6 Q: And you also have a possession of a weapon during a
7 violent crime charge; correct?

8 A: That's correct.

9 Q: And you understand that that carries up to five years in
10 prison; correct?

11 A: That's correct.

12 Q: And that's in addition to all of your other sentences you
13 could receive; correct?

14 A: That's correct.

15 Q: So you understand that coming into this case today you
16 are facing a possibility of life in prison plus 135 years,
17 don't you?

18 A: Mm-hmm.

19 Q: And last week you decided you didn't want to face those,
20 did you?

21 A: No. I was going to tell the truth regardless. I mean --
22 I mean ain't nothing going to change that.

23 Q: Now, you don't want to go to prison, do you?

24 A: No.

25 Q: You don't want to die in prison, do you?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 A: No.
- 2 Q: Was that a no?
- 3 A: That's a no.
- 4 Q: Okay. You'd be willing to do anything you could to avoid
- 5 having to go to prison on these charges, don't you?
- 6 A: I mean the truth is the truth, like I said before.
- 7 Q: Okay. Now, you testified earlier you have no deal put in
- 8 place on these charges for your testimony; correct?
- 9 A: I mean yeah, I did say that, but I'm coming out to tell
- 10 the truth today.
- 11 Q: So you do have a deal?
- 12 A: Hold up. Oh, no, I ain't got no deal. I thought you --
- 13 I ain't heard what you said. My bad. I'm sorry. I'm sorry.
- 14 Q: Okay. So there's no deal in place?
- 15 A: No. Ain't no deal in place.
- 16 Q: So after this trial concludes this week, you're going to
- 17 plead guilty to murder?
- 18 A: I mean -- no. I ain't going to try -- I ain't trying to
- 19 plead guilty to murder.
- 20 Q: Okay. But you don't have a deal put in place, do you?
- 21 A: No.
- 22 Q: So what do you think you're going to plead guilty to?
- 23 A: I don't know, man.
- 24 Q: You testified earlier that you don't remember the first
- 25 time you spoke with detectives in this case, do you?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 A: No.
- 2 Q: Did you go talk with them voluntarily?
- 3 A: I mean yeah.
- 4 Q: You did?
- 5 A: Yeah.
- 6 Q: Your first statement was voluntarily given to Detective
- 7 Bell?
- 8 A: Yeah.
- 9 Q: Okay. And you testified earlier that your first
- 10 statement was a complete lie, wasn't it?
- 11 A: Yeah.
- 12 Q: Okay. In your first statement, do you recall telling
- 13 them where you took the guns?
- 14 A: I can't remember. I know I lied. I can't remember.
- 15 Q: Okay. When you were making your first statement to
- 16 Detective Bell, did you tell him you were lying to him?
- 17 A: No.
- 18 Q: You were just trying to avoid having to go to jail,
- 19 weren't you?
- 20 A: I was already in jail. Why am I going to avoid going to
- 21 jail for that?
- 22 Q: Oh. So your first statement was given after you got
- 23 arrested in this case?
- 24 A: Yeah.
- 25 Q: Okay. So the shooting happened on April the 13th;

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 correct?

2 A: I'm not sure what exact day it was, but whatever y'all
3 say.

4 Q: Okay. And you got arrested on May the 1st?

5 A: Yes.

6 Q: That's about 19 days later; correct?

7 A: Yeah.

8 Q: At any point during that 19 days, did you walk or did you
9 go down to the Marion County Sheriff's Office and say I shot
10 somebody?

11 A: No.

12 Q: Okay. During that 19-day period, did you go talk to the
13 Dillon Police Department or the Latta Police Department and
14 say I shot somebody?

15 A: No.

16 Q: Okay. Did you go to any law enforcement agency during
17 that 19-year [sic.] period and say Blaton Smith made me shoot
18 somebody?

19 A: No.

20 Q: In fact, for 19 days you remained free out on the street;
21 right?

22 A: Pretty much.

23 Q: You only started talking because you got arrested; right?

24 A: No. I started talking because I wanted to start talking.

25 Q: Okay. And that first talking was a lie; correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 A: Correct.

2 Q: All right. If you would have never got arrested on May
3 the 1st, would you have ever come forward with any information
4 about this case?

5 A: No.

6 Q: Okay. Now, you testified for Solicitor Clements about
7 the night riding around in the car and you attributed some
8 statements that Blaton Smith made that night?

9 A: Pretty much.

10 Q: Okay. He's the one who told you to shoot; correct?

11 A: Correct.

12 Q: And you didn't tell that to the investigators the first
13 time you talked to them, did you?

14 A: No.

15 Q: Okay. He handed you a gun to shoot out of the window.
16 That's what you testified to a little bit earlier; right?

17 A: Correct.

18 Q: You didn't tell that to the law enforcement officers
19 earlier, did you?

20 A: No.

21 Q: You've had two-and-a-half years to get your story correct
22 to come into the court today, didn't you?

23 A: No. I mean, like, I know the truth, but I just wanted to
24 say it. I'm telling you the truth. I'm telling the truth.

25 Okay?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 Q: But --

2 A: Let me ask you a question.

3 THE COURT: No, sir.

4 Q: Sir, you cannot.

5 A: All right. Okay.

6 Q: Do you remember when Detective Bell and Detective Watson
7 picked you up from the jail to take you up to Florence to give
8 another interview after you got arrested?

9 A: No, I don't.

10 Q: You don't recall that?

11 A: I don't remember.

12 Q: Do you recall meeting with Detective Bell and Detective
13 Watson after your first statement and tell them I wasn't even
14 there?

15 A: Yeah, I remember that.

16 Q: You remember that?

17 A: Yeah.

18 Q: Okay. And -- and your story here today is that that was
19 another lie?

20 A: That was a lie.

21 Q: Okay. Because you're telling the truth today for us?

22 A: I'm telling you the truth.

23 Q: You were there that night; correct?

24 A: Yeah.

25 Q: Okay. Do you remember getting picked up from the

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 detention center and being transported up here to the Florence
2 City-County Complex up there? Do you recall that?

3 A: I can't recall right now because my mind -- not at the
4 moment, no.

5 Q: Do you recall having the opportunity to meet with an
6 officer in Florence by the name of Julie Duff?

7 A: I can't recall that.

8 MR. CLEMENTS: Your Honor?

9 A: I don't remember.

10 THE COURT: Hold on a minute.

11 MR. CLEMENTS: I think we may have a matter of law we
12 need to discuss.

13 THE COURT: All right. Can y'all come up here?

14 (Whereupon, a bench conference is held in the presence of
15 the jury but out of the hearing of the jury as follows.)

16 THE COURT: Yes, sir?

17 MR. CLEMENTS: The reason I interrupted was because you
18 can't unring a bell, but Julie Duff took him there for
19 polygraph purposes and the polygraph was inconclusive and I
20 don't -- I don't think -- it's inadmissible and I don't think
21 he should be allowed to pursue that line of questioning.

22 THE COURT: I don't want you to open that door.

23 MR. BAILEY: Judge, I'm not asking him anything specific,
24 but there -- on the polygraph questionnaire, there were two
25 questions. One of the questions was, like, did you lie about

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 seeing Blaton Smith shoot a gun. He said no. And then the
2 other --

3 THE COURT: How are you trying to get into that?

4 MR. CLEMENTS: He -- it's just inappropriate all the way
5 around.

6 MR. BAILEY: I can ask him if he was asked those
7 questions. Do you recall being asked --

8 MR. CLEMENTS: But he's laying -- he's liable to --

9 THE COURT: Y'all come over here.

10 (Whereupon, the bench conference on the record ends and a
11 bench conference is held off the record.)

12 THE COURT: Objection overruled on that issue. Go ahead.

13 MR. BAILEY: Are you ready to proceed, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. BAILEY:

16 Q: Mr. Williams, do you recall telling Julie Duff that you
17 did not shoot into the trailer on April the 13th?

18 A: Yeah, I recall that.

19 Q: And that was a lie then too; correct?

20 A: Correct.

21 Q: Okay. And do you recall telling her that you saw Blaton
22 Smith shoot into the trailer that night?

23 A: I probably said that. I don't know. I mean probably so,
24 yeah.

25 Q: Okay. And that would have been a lie as well; correct?

JAMIE WILLIAMS - CROSS BY MR. BAILEY

- 1 A: It was a lie, yeah.
- 2 Q: Now, since you've been in jail, Mr. Williams, have you
3 picked up any new charges?
- 4 A: I mean -- yeah.
- 5 Q: Do you have a pending charge right now?
- 6 A: Yeah.
- 7 Q: What county is your charge pending in?
- 8 A: Horry County.
- 9 Q: And what is that charge pending for?
- 10 A: Assault and battery second degree.
- 11 Q: Okay. Earlier you testified that you were scared and you
12 didn't know what to do when Mr. Deberry was questioning you
13 about your statement last week. Do you remember that?
- 14 A: Yeah, I remember that.
- 15 Q: Okay. You figured out real quick what you were going to
16 do last week, didn't you?
- 17 A: Yeah. I mean --
- 18 Q: How many people last week told you that you were looking
19 at life in prison?
- 20 A: Ain't nobody tell me that last week.
- 21 Q: Okay. Now, you would agree with me that this fourth
22 statement that you gave last week, all the details that you
23 testified for Solicitor Clements, they match perfectly to his
24 theory in court today; right?
- 25 A: I mean I don't remember nothing about no statement. I

JAMIE WILLIAMS - CROSS BY MR. BAILEY

1 know my statement though.

2 Q: Okay. Let me ask you a question, Mr. Williams, before I
3 wrap up. In your opinion, do you deserve to go to prison for
4 what you did in this case?

5 MR. CLEMENTS: Objection, Your Honor. First, it's an
6 opinion question. I think it's improper.

7 THE COURT: I'll allow him to answer the question.
8 Answer the question.

9 A: I mean if I do, I do, man, because at the end of the day
10 wrong is wrong and right is right.

11 Q: Okay.

12 MR. BAILEY: I have no further questions.

13 THE COURT: Any redirect?

14 MR. CLEMENTS: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q: Mr. Bailey was asking you about your different statements
18 in his questions about what you said back then and what you're
19 saying now. Did you ever put yourself as a shooter in this
20 back then?

21 A: No.

22 Q: And you were how old then?

23 A: Seventeen.

24 Q: How old are you now?

25 A: Nineteen.

JAMIE WILLIAMS - REDIRECT BY MR. CLEMENTS

1 Q: Are you the same man now at 19 as you were at 17?

2 A: No, sir.

3 Q: Why in the world would you put yourself as being the
4 shooter if it wasn't the truth?

5 A: I mean honestly I understand. You know what I'm saying?
6 If there's somebody that didn't do something, didn't really do
7 it, they should have their life. You know what I'm saying? I
8 mean the truth is the truth, man, and I feel like I'll become
9 better and I'll be forgiven for whatever I did as a man. Now
10 that I'm a man, I feel like I'm a better person today than
11 what I used to be as a boy.

12 Q: Are you owning up to what you've done?

13 A: Yeah.

14 MR. CLEMENTS: Thank you.

15 THE COURT: Any recross, Mr. Deberry?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Mr. Bailey?

18 MR. BAILEY: Nothing further.

19 THE COURT: All right. Sir, you may step down. Thank
20 you. As he's exiting, can the lawyers come up here a minute,
21 please?

22 (Whereupon, a bench conference is held in the presence of
23 the jury but out of the hearing of the jury off the
24 record regarding scheduling.)

25 THE COURT: All right. Ladies and gentlemen, it is after

1 six o'clock and we're going to stop for the day. It's been a
2 long day. I know you're probably tired. I'm going to ask
3 that you be back here at nine o'clock in the morning. We will
4 finish the trial of this case tomorrow. Okay? We'll finish
5 the trial of this case tomorrow; so be prepared to stay
6 tomorrow. All right?

7 Do not discuss the case. Do not discuss the case. I
8 look forward to seeing you back tomorrow morning. Get a good
9 night's sleep. Thank you. Nine o'clock.

10 (Whereupon, the jury exits the courtroom at 6:09 p.m.)

11 THE COURT: All right. Anything from the State before we
12 release -- before we go for the balance of the day or leave
13 for the day?

14 MR. CLEMENTS: No, Your Honor.

15 THE COURT: Mr. Deberry?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: Mr. Bailey?

18 MR. BAILEY: I just want to confirm the time, Judge.

19 THE COURT: Nine o'clock, 0900.

20 MR. BAILEY: With bells on.

21 THE COURT: All right. Mr. Clements? Mr. Clements?

22 MR. CLEMENTS: Yes?

23 THE COURT: On your objection to him asking about the
24 penalties -- do you remember that?

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: Look at State v. Whatley, 407 S.C. 460, which
2 was one of my cases that I was affirmed on, but look at it.

3 (Whereupon, the proceedings adjourn for the day at 6:11
4 p.m.)

5 AUGUST 8, 2014

6 (Whereupon, the proceedings resume at 9:02 a.m.)

7 THE COURT: All right. Anything from the State before I
8 bring the jury in? Anything from the State?

9 MR. CLEMENTS: No, Your Honor. We're ready.

10 THE COURT: Defense counsel, Mr. Deberry?

11 MR. DEBERRY: Your Honor, I'd just like to make the same
12 motion again as I made yesterday with regards to my objection
13 to the incarcerated co-defendants that come and testify
14 dressed in plain clothes.

15 THE COURT: Well, your objection is so noted for the
16 record. You got any case law you want me to look on that? We
17 had the overnight to look at it.

18 MR. DEBERRY: No, Your Honor.

19 THE COURT: Okay. Objection so noted for the record.
20 Anything else?

21 MR. DEBERRY: No, Your Honor.

22 MR. BAILEY: No, Your Honor.

23 THE COURT: Bring me the jury, please, sir.

24 (Whereupon, the jury enters the courtroom at 9:03 a.m.)

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 jury, I hope you all had a nice restful evening last night and
2 are ready to proceed this morning. At this time, I'm going to
3 recognize Mr. Clements. Call your next witness, please, sir.

4 MR. CLEMENTS: Thank you, Your Honor. If it please the
5 Court, we would call Willie Bethea. Willie O'Brian Bethea.

6 THE CLERK: Sir, if you would, come around and let me
7 swear you in, please, sir. Place your left hand on the Bible
8 and raise your right hand. Do you solemnly swear or affirm
9 the evidence you give in the trial of this case shall be the
10 truth, the whole truth, and nothing but the truth, so help you
11 God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Thank you. You can have a seat in the
14 witness box.

15 WILLIE BETHEA, being first duly
16 sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. CLEMENTS:

19 Q: Good morning.

20 A: Good morning.

21 Q: You're a little bit soft-spoken. I'm going to tell you
22 to try to speak into this microphone as best you can.

23 A: Yes, sir.

24 Q: And if you don't understand one of my questions, you ask
25 me to ask you again. And I want -- first, I want to ask you

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 if you would please tell this jury who you are and where
2 you're from?

3 A: I'm Willie O'Brian Bethea. I'm from Latta, South
4 Carolina.

5 Q: All right. And how long have you lived in Latta, Willie?

6 A: Probably about 17 years.

7 Q: All right. How old are you today?

8 A: Twenty-seven.

9 Q: Twenty-seven?

10 A: Yes, sir.

11 Q: Now, on -- do you go by a nickname?

12 A: Yes, sir.

13 Q: What's your nickname?

14 A: Boo Boo.

15 Q: Boo Boo? Do you know Blaton Smith?

16 A: Yes, sir. That's my cousin.

17 Q: That's your cousin? Do you see him here in the
18 courtroom?

19 A: Yes, sir.

20 Q: Can you point him out? What's he got on?

21 A: (Indicating) Buttoned-up shirt.

22 Q: All right.

23 MR. CLEMENTS: Let the record reflect he's identified Mr.
24 Blaton Smith.

25 THE COURT: So noted.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Do you know Shaheed Hayes?

2 A: Yes, sir.

3 Q: How do you know Shaheed Hayes?

4 A: One of my people from Latta.

5 Q: Okay.

6 A: Around the Latta area.

7 Q: Do you see him in the courtroom?

8 A: Yes, sir.

9 Q: What's he got on?

10 A: (Indicating) A buttoned-up shirt.

11 Q: All right.

12 MR. CLEMENTS: Let the record reflect he's identified

13 Shaheed Hayes.

14 Q: Now, let me ask you a few other questions about yourself
15 and about your history. Willie, do you have a conviction for
16 grand larceny and burglary and accessory after the fact of a
17 felony from 2008?

18 A: Yes, sir.

19 Q: All right. Do you have a malicious injury to personal
20 property conviction from 2010?

21 A: Yes, sir.

22 Q: Do you have a conviction from the state of Georgia for
23 giving a false name or address or birthdate?

24 A: Yes, sir.

25 Q: And right now, do you have pending charges for forgery in

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Marion County?

2 A: Yes, sir.

3 Q: And do you have pending charges from this event here for
4 murder, four counts of attempted murder, discharging a firearm
5 into a dwelling, and possession of a weapon during the
6 commission of a violent crime?

7 A: Yes, sir.

8 Q: Are you currently in jail?

9 A: Yes, sir.

10 Q: Now, you're dressed nice today. Did your family bring
11 you that to wear?

12 A: Yes, sir. My dad.

13 Q: Okay. But you're currently in jail without a bond; is
14 that correct?

15 A: Yes, sir.

16 Q: Now, how long have you known Blaton Smith?

17 A: All my life.

18 Q: How long have you known Shaheed Hayes?

19 A: A long time too.

20 Q: A long time too?

21 A: Yes, sir.

22 Q: Where is he from?

23 A: Latta.

24 Q: Latta? Okay. Do you know Adrian Smith?

25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Is Adrian Smith related to Blaton Smith?

2 A: Yes, sir.

3 MR. BAILEY: Objection. Relevancy, Your Honor.

4 THE COURT: I'll allow it. Go ahead.

5 BY MR. CLEMENTS:

6 Q: Answer the question.

7 A: Yes, sir.

8 Q: How is he related?

9 A: On his -- on his side of the family. We came through him
10 through my dad.

11 Q: Okay. So you're kin to Blaton, but you're not kin to
12 Adrian? Is that what you're telling us?

13 A: Yes, sir.

14 Q: Does Adrian have a nickname?

15 A: Duke.

16 Q: Duke?

17 A: Yes, sir.

18 Q: Does Blaton have a nickname?

19 A: Blaton.

20 Q: Blaton?

21 A: Nukie.

22 Q: Nukie?

23 A: Yes, sir.

24 Q: Okay. Now, did you know Jamie Christopher Williams?

25 A: No, sir. I met him through my cousin, Nukie.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: All right. How long had you known him?

2 A: It was, like, three or four days before this event
3 happened.

4 Q: Okay. Now, what kind of car does Blaton usually drive?

5 A: He had a Cadillac Deville.

6 Q: And who owned that car?

7 A: I think Duke.

8 Q: Okay. And who usually drove it?

9 A: My cousin, Blaton.

10 Q: Your cousin, Blaton? Okay. Do you remember what you
11 were doing the day of April 12th, 2012?

12 A: What I was doing?

13 Q: What were you doing that day and who were you with?

14 A: I was with my cousin. I was -- I was dealing with one of
15 Duke's sisters named Annette.

16 Q: Okay.

17 A: When we woke up that morning, we went to Dillon to get
18 some -- some spark plugs and stuff from AutoZone to fix the --
19 his Cadillac they he bought and we went to J&J on 301.

20 Q: Okay. Who -- who went there to J&J? You said we.

21 A: Me and my cousin, Blaton.

22 Q: Okay. And you went there to get spark plugs?

23 A: No. I went to AutoZone. We went to AutoZone and he
24 purchased some spark plugs.

25 Q: Okay. And did y'all go work on that car then or not?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 A: We took it to J&J.
- 2 Q: You took it to J&J?
- 3 A: But we -- we had to wait for a minute of time, but it
- 4 wasn't the right one. We had got the super sports one. We
- 5 had got the wrong ones.
- 6 Q: Okay. And did you end up getting the right ones and
- 7 fixing the car that day or not?
- 8 A: No, sir. We ended up leaving.
- 9 Q: Okay. All right. And what did you do later that --
- 10 later that day and later that evening?
- 11 A: We went back to the trailer at Oakie Point.
- 12 Q: Okay. At Oakie Point?
- 13 A: Yes, sir.
- 14 Q: And that's located where?
- 15 A: In Latta.
- 16 Q: All right. Later on, you stayed with Blaton? Did you
- 17 hang out with him the rest of the day and on into the night?
- 18 A: Yes, sir.
- 19 Q: All right. Later on, who did you get to be with other
- 20 than just Blaton?
- 21 A: Me, Jamie, and Shaheed.
- 22 Q: All right. How did y'all get Shaheed? Do you remember?
- 23 A: From the hilltop.
- 24 Q: You picked him up?
- 25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: And where is the hilltop?

2 A: It's in Latta. You go up, like, past the church and you
3 get to the left and you make a left and you go on a slight
4 curve. That's where he stay at.

5 Q: Okay. And y'all picked him up where he stayed?

6 A: Yes, sir.

7 Q: All right. And what about Jamie?

8 A: Jamie lived in Riverdale and that's in Dillon.

9 Q: Okay. Did y'all get up with him that day?

10 A: Yes, sir.

11 Q: How did you get up with him?

12 A: Me and Blaton went to go pick him up.

13 Q: Where did y'all pick him up at?

14 A: By his house. He stay in a doublewide trailer in
15 Riverdale.

16 Q: Okay.

17 A: We picked him up. He ran to the car and we went back to
18 Latta.

19 Q: All right. And did you pick Jamie up first or Shaheed up
20 first?

21 A: Jamie.

22 Q: Jamie?

23 A: Yes, sir.

24 Q: Okay. What were y'all doing that -- that day? And what
25 time -- when y'all picked up Jamie and Shaheed, what time of

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 day was that?

2 A: By the time we picked up Jamie, it was probably about
3 6:30 or something in the afternoon.

4 Q: Okay.

5 A: Around getting about pitch dark. It was getting dark
6 later on that day.

7 Q: Okay. And about what time did you pick up Shaheed?

8 A: Later on that night.

9 Q: Later on in that night?

10 A: Yes, sir.

11 Q: All right. In your mind, what -- what were y'all
12 planning on doing or what did you have in mind that you were
13 going to do?

14 A: Going to go to the club.

15 Q: Which club?

16 A: In Latta on Old Ebony Road.

17 Q: On Old Ebenezer Road?

18 A: Yes, sir.

19 Q: Whose club is that?

20 A: One of Adrian's people, Mike Mike.

21 Q: Mike Mike?

22 A: Yes, sir.

23 Q: All right. And where did you say Mike Mike's club was?

24 A: On Old Ebony Road.

25 Q: Old Ebenezer Road? I'm going to show you State's Exhibit

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 36. Can you identify that?

2 A: Yes, sir. That's the club.

3 Q: That's Mike Mike's club?

4 A: Yes, sir.

5 MR. CLEMENTS: Your Honor, at this time, I'd move State's
6 Exhibit 36 into evidence.

7 THE COURT: Any objection?

8 MR. DEBERRY: No, Your Honor.

9 THE COURT: Mr. Bailey?

10 MR. BAILEY: No objection.

11 THE COURT: Without objection, State's Exhibit 36
12 admitted into evidence.

13 MR. CLEMENTS: All right.

14 (Whereupon, State's Exhibit Number 36, a color
15 photograph, is admitted into evidence.)

16 BY MR. CLEMENTS:

17 Q: Are you pretty familiar with that area on Old Ebenezer
18 Road?

19 A: Yes, sir. My baby mama's grandma stay right in that
20 area.

21 Q: All right. Now, Mike Mike's club -- how far is that on
22 Old Ebenezer Road from Highway 501?

23 A: Not far.

24 Q: Not far?

25 A: No, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Okay. So how did y'all go? Y'all were on Old Ebenezer
2 Road. What vehicle were you in?
3 A: We was in the Cadillac Deville.
4 Q: And you -- you got up to Mike Mike's club. Did you stop
5 at Mike Mike's club?
6 A: We passed the club.
7 Q: You passed the club?
8 A: Yes, sir. And went to -- we turned to the left and we
9 went towards where Eyebrows live at.
10 Q: All right. And when you passed Mike Mike's club, what
11 did you think, if anything?
12 A: Probably thought we were going to Fusion or something,
13 but we stopped in front of the house.
14 Q: You thought maybe you were going to Fusion?
15 A: Yes, sir.
16 Q: Where is Fusion?
17 A: Marion.
18 Q: In Marion? Okay. And so you say you turned on 501.
19 Which way were you going? Towards Marion?
20 A: To the left.
21 Q: To the left?
22 A: Yes, sir.
23 Q: And that -- that's going where?
24 A: Towards Marion.
25 Q: Okay. All right. As you were riding down that road,

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 tell us what happened?

2 A: We were riding down the road and we stopped in front of

3 the trailer.

4 Q: All right. You stopped in front of what trailer?

5 A: Eyebrows' trailer.

6 Q: Now, did anybody say anything or did anything happen

7 prior to you stopping the car?

8 A: Yes, sir. My cousin stopped.

9 Q: He stopped the car? Did he say anything before he

10 stopped?

11 A: When he stopped, he was like, "This is the house right

12 here. That's the car in the back."

13 Q: He said that's the house right here?

14 A: Yes, sir.

15 Q: Okay. There were cars in the back? You could see the

16 cars as you were approaching?

17 A: You could see the trucks and the cars in the back.

18 Q: Okay. Now, who was driving the car?

19 A: My cousin, Blaton.

20 Q: Where were you seated?

21 A: The passenger seat.

22 Q: The passenger seat in the front or back?

23 A: Front.

24 Q: And who was in the back seat, if anyone?

25 A: Shaheed and Jamie.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Q: Where was Shaheed sitting in the back seat?
- 2 A: In the back of me.
- 3 Q: Back of you?
- 4 A: Yes, sir.
- 5 Q: And where was Jamie sitting?
- 6 A: In the back of my cousin.
- 7 Q: Back of your cousin? Behind Blaton?
- 8 A: Yes, sir.
- 9 Q: I want to show you what's been marked as State's Exhibit
- 10 43. Do you recognize that at all?
- 11 A: Yes, sir.
- 12 Q: What is that?
- 13 A: The residence where they were living at.
- 14 Q: And when you say the residence where they was living at,
- 15 who are you talking about?
- 16 A: Eyebrows. Derrick.
- 17 Q: Eyebrows? Derrick?
- 18 A: Yes, sir.
- 19 Q: Okay. How long have you known Eyebrows?
- 20 A: A long time. He got a cousin by my cousin, Demetrius.
- 21 Q: And he grew up -- you knew him from Latta?
- 22 A: Yes, sir. He used to play ball. I always knew all of
- 23 them.
- 24 Q: You knew all of them?
- 25 A: I'm talking about Demetrius. That's my -- that's my

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 daddy's niece.

2 Q: All right. And you say Demetrius and Derrick got a
3 child?

4 A: Yeah.

5 Q: Okay. Now, when you pulled up and you stopped in front
6 of the trailer, which direction was the car headed in?

7 A: Going towards Marion.

8 Q: Going towards Marion?

9 A: Yes, sir.

10 Q: Did you ever turn around or anything prior to that?

11 A: Yes, sir.

12 Q: All right. So it was going towards Marion?

13 A: Yes, sir.

14 Q: So if you were sitting in the passenger side and you
15 looked out the window --

16 A: I could see the house.

17 Q: You could see the house?

18 A: Yes, sir.

19 Q: All right. Now, what was said, if anything, at that
20 time?

21 A: Shaheed had started shooting, him and Jamie.

22 Q: All right. He started -- well, let me ask you this
23 backing up. Where did the guns come from?

24 A: The guns?

25 Q: Yes.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 A: They was in the car.

2 Q: They were in the car?

3 A: Yes, sir.

4 Q: Did you know they were in the car prior to this when you
5 were riding by Mike Mike's?

6 A: No, sir.

7 Q: All right. When did you first know the guns were in the
8 car?

9 A: When we got close by the house.

10 Q: All right. How did you find out the guns were in the car
11 then?

12 A: Because they started cocking the guns. Shaheed say it
13 and he started shooting.

14 Q: All right. Now, Shaheed was shooting and he was shooting
15 in what direction?

16 A: He was behind me shooting.

17 Q: He was behind you shooting?

18 A: Yes, sir.

19 Q: Did he have his arm or the gun in the car or outside of
20 the car?

21 A: Outside of the car.

22 Q: Outside?

23 A: Yes, sir.

24 Q: Did he get out or just put it out the window?

25 A: He just put his hand out of the window and start

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 shooting.

2 Q: He started shooting? All right. Was there anybody else

3 shooting other than Shaheed?

4 A: Jamie.

5 Q: Jamie? How -- how did Jamie shoot?

6 A: Over the top of the hood of the car -- over the top of

7 the car.

8 Q: Over the top of the car?

9 A: Yes, sir.

10 Q: How did he get up over the top of the car?

11 A: He got hisself out of the car and started shooting.

12 Q: Did he get out of the car --

13 A: No.

14 Q: -- or did he get out --

15 A: He sort of leaned over the top of the hood of the car.

16 Q: Okay. So he got out the window?

17 A: With his ass sitting on top -- on the window.

18 Q: Okay. And shooting over the top of the car?

19 A: Yes, sir.

20 Q: Did you have a gun?

21 A: No, sir.

22 Q: Did you do any shooting?

23 A: No, sir.

24 Q: Did Blaton do any shooting?

25 A: No, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Did you ever see Blaton handle the guns?

2 A: He had some. He passed one.

3 Q: He passed them?

4 A: Yes, sir.

5 Q: Okay. Now, how many shots were fired, if you know?

6 A: A lot. He fired a lot of shots.

7 Q: You say he fired a lot of shots --

8 A: Shaheed.

9 Q: Shaheed?

10 A: Yes, sir.

11 Q: Did Jamie fire?

12 A: He fired some shots.

13 Q: Some shots?

14 A: A couple shots.

15 Q: A couple shots? About -- are you sure how many?

16 A: A couple. About seven or eight shots.

17 Q: All right. Now, did they shoot quickly or that there was

18 a drawn-out process shooting?

19 A: We probably stayed there about a little minute while they

20 were shooting.

21 Q: All right. Did it go bang, bang or bang, bang, bang,

22 bang, bang?

23 A: They shot a lot of times?

24 Q: Bang, bang, bang, bang, bang?

25 (Whereupon, there is no verbal response.)

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 THE COURT: Is that a yes?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MR. CLEMENTS:

5 Q: Now, once the shooting stopped, did anybody say anything?

6 A: He said he hoped somebody hit in the house.

7 Q: Who said that they hoped somebody was hit in the house?

8 A: Shaheed.

9 Q: Shaheed?

10 A: Yes, sir.

11 Q: All right. After the shooting stopped and that was said,
12 what -- what did y'all do with the car then?

13 A: We went straight up and branched off to the left and went
14 the back way going towards Latta. We went to Latta.

15 Q: All right. So you went straight. Does that mean you
16 went headed towards Marion?

17 A: Yes, sir. And we branched off to the left.

18 Q: Is there a road that turns to the left?

19 A: Yes, sir.

20 Q: What's -- what's on that road?

21 A: It's like when you make a left, you go to the end of the
22 road and there's, like, a church on the left side of the road.

23 Q: Okay. And then you turned which way after that?

24 A: We went left like going back towards Latta.

25 Q: Okay. Is that --

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 A: The back way.
- 2 Q: -- the back way?
- 3 A: Yes, sir.
- 4 Q: Okay. Do you know the name of that road?
- 5 A: I don't know. I don't know the name of it.
- 6 Q: Where did that road empty out onto?
- 7 A: It takes us, like, going back, like, the Old Ebony way
- 8 and we can go, like, the back way a lot.
- 9 Q: Okay. So you get back to Old Ebenezer and turn to the
- 10 right, which way does that go?
- 11 A: Going back to Latta.
- 12 Q: Going back to Latta? Is that the direction you went?
- 13 A: Yes, sir.
- 14 Q: Where did you go or where did you first stop at?
- 15 A: We went and dropped the guns off.
- 16 Q: Where did you drop the guns off?
- 17 A: Karen house.
- 18 Q: And what street was that on?
- 19 A: Around the road from my mom and dad's house behind IGA.
- 20 Q: All right. And do you know the name of the street?
- 21 A: No. I used to, but I don't know it. My nerves kind of
- 22 messed up. I think it's --
- 23 Q: Your nerves?
- 24 A: Yeah.
- 25 Q: All right. Tell me yes or no. Was it Session Street?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Or do you remember?
- 2 A: Yes, sir. That should be the street from around there.
- 3 Q: That should be the street?
- 4 A: Yes, sir.
- 5 Q: Okay. Now, you pulled up there in what car?
- 6 A: The Cadillac we were driving.
- 7 Q: All right. And who got out of the car?
- 8 A: My cousin.
- 9 Q: Blaton?
- 10 A: Yes, sir.
- 11 Q: What did he do when he got out of the car?
- 12 A: He took the guns in the house.
- 13 Q: How did he take them in the house?
- 14 A: Blanket.
- 15 Q: He had them in a blanket?
- 16 A: Yes, sir.
- 17 Q: Did anyone go in the house with him?
- 18 A: No, sir.
- 19 Q: What were y'all doing or saying in the car, if anything,
- 20 while Blaton went in the house?
- 21 A: Nothing.
- 22 Q: Nothing was being said?
- 23 A: No, sir.
- 24 Q: How did you feel?
- 25 A: Nervous.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Q: All right. How long was Blaton in the house?
- 2 A: Not long.
- 3 Q: He came back out and what happened? What was said and
- 4 what was done?
- 5 A: We went to Dillon and we were not going to say nothing
- 6 about it.
- 7 Q: All right. Went to Dillon for what reason?
- 8 A: We dropped Jamie off at the stop sign.
- 9 Q: You dropped Jamie off at the stop sign?
- 10 A: Yes, sir.
- 11 Q: In Riverdale?
- 12 A: Yes, sir.
- 13 Q: And then what did you do next?
- 14 A: We went to my -- my aunt's house on Quarters.
- 15 Q: On Quarters?
- 16 A: Yes, sir.
- 17 Q: Was anybody --
- 18 A: That's in Dillon.
- 19 Q: -- in that house at that time?
- 20 A: It's an abandoned house then.
- 21 Q: It was -- it was empty?
- 22 A: Yes, sir.
- 23 Q: Did y'all go inside the house?
- 24 A: Yes, sir. We didn't stay long.
- 25 Q: Okay. And what, if anything, was said there or done

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 there?

2 A: Nothing. We just said don't say nothing about it and
3 just keep your mouth closed.

4 Q: And the -- the house y'all were in there -- that belongs
5 to your aunt, but nobody's living in it; is that right?

6 A: Yes, sir. My sister stay there now.

7 Q: Your sister stays there now?

8 A: My sister and her mama.

9 Q: Okay. And after you left your aunt's house there, where
10 did you go next?

11 A: We went back to Latta.

12 Q: And then in Latta what did you do?

13 A: I got dropped off in Latta.

14 Q: You got dropped off in Latta? Where were you dropped off
15 at?

16 A: Home.

17 Q: Home?

18 A: My daddy's house.

19 Q: All right. When was the next time you saw Shaheed or
20 Blaton --

21 A: I didn't see Shaheed --

22 Q: -- or talked to them?

23 A: I didn't see him no more. I seen my cousin.

24 Q: You've seen Blaton?

25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: But you didn't see Shaheed anymore?

2 A: No, sir.

3 Q: Where would you see Blaton at after this?

4 A: We were having a cookout. He came by a couple times.

5 Q: He came by your house a couple times?

6 A: Yes, sir.

7 Q: All right. Did he say anything to you?

8 A: He was like, "Keep your cool." He brought -- he brought

9 my -- my shoes to the house. He brought my shoes to my mama

10 house.

11 Q: All right. How did he have your shoes?

12 A: He brought them to the house in the car.

13 Q: I mean why did he have your shoes?

14 A: I had -- I had some shoes at that trailer.

15 Q: Okay. At Adrian's trailer?

16 A: Yes, sir.

17 Q: All right. And Blaton stays there with Adrian?

18 A: Yes, sir.

19 Q: What kind of physical condition is Adrian in?

20 A: He's paralyzed.

21 Q: He's paralyzed? Okay. And your shoes that were -- you

22 got those back?

23 A: Yes, sir.

24 Q: Had you asked him to bring them to you or he just brought

25 them to you?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 A: He just brought them to me and said don't say nothing
2 about what happened.

3 Q: I'm sorry?

4 A: He brought them to me like don't say nothing about what
5 happened.

6 Q: Okay. All right. And had you said anything to anybody
7 and tell?

8 A: No, sir.

9 Q: When did you first find out that somebody got killed in
10 that shooting?

11 A: It started coming around -- it started going around to
12 people that somebody got shot.

13 Q: It started going around people? Just the news --

14 A: Yes, sir.

15 Q: -- got in the street?

16 A: Yes, sir.

17 Q: Did you know who got shot?

18 A: Yes, sir. I didn't know --

19 Q: Who?

20 A: It was Christian.

21 Q: Did you know him?

22 A: Yes, sir.

23 Q: Did -- did you know if he had any problems with anybody
24 in that car?

25 A: No, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: Did you have a -- was there a particular target in this
2 shooting?

3 A: Yes, sir.

4 Q: Who?

5 A: Eyebrows.

6 Q: And who was -- who was mad with Eyebrows?

7 A: Adrian.

8 Q: Adrian? How about Blaton?

9 MR. BAILEY: Objection, Your Honor.

10 THE COURT: Restate your question.

11 BY MR. CLEMENTS:

12 Q: Did Blaton and Derrick get along?

13 A: No, sir.

14 Q: Did they have bad blood?

15 A: Yes, sir.

16 Q: Okay. All right. Did you ever go back to Adrian's house
17 after this occurred?

18 A: No, sir.

19 Q: Where did you go and what did you do and why?

20 A: I went to Clio to my cousin's, my other paralyzed --
21 well, my paralyzed cousin on my mom's side named Don.

22 Q: And he lived in Clio?

23 A: Yes, sir.

24 Q: Why did you go to Clio?

25 A: Because I was nervous and scared and I ain't -- and I

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 knew there was consequences behind it.

2 Q: You were nervous and scared?

3 A: Yes, sir.

4 Q: Scared of the police finding out?

5 A: No. Just --

6 Q: What were you scared of?

7 A: -- worried something crazy was going to happen. That

8 somebody was going to get shot or something.

9 Q: You were scared somebody --

10 A: And I ain't wanted --

11 Q: -- was going to get shot?

12 A: I ain't wanted nothing to happen to my mom and them.

13 Q: You didn't want nothing to happen to your mom? Were you

14 worried about something happening to you?

15 A: Yes.

16 Q: Why?

17 A: Because they'd do something to me or something or they

18 want revenge about what happened to them.

19 Q: Okay. All right. So you kind of laid low?

20 A: Yes, sir.

21 Q: All right. Were you worried about Blaton or Shaheed or

22 any of them?

23 A: They just told me -- they kept calling me, like, don't

24 say nothing or we're going to do something to you. And then

25 we had a shooting uptown so I was like I ain't wanting nothing

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 to happen to my mom and daddy.

2 MR. BAILEY: Judge, I'm going to object to that.

3 THE COURT: Can the lawyers approach?

4 (Whereupon, a bench conference is held in the presence of
5 the jury but out of the hearing of the jury as follows.)

6 THE COURT: What's the objection?

7 MR. BAILEY: Judge, he's talking about the shooting
8 uptown. We have -- we're getting into it through the
9 detectives -- I mean if that's going to let us get into that
10 shooting.

11 MR. CLEMENTS: I wasn't going to ask him about it. I
12 didn't intend for him to ask it, but I think he told me Blaton
13 got shot at by Kollock.

14 THE COURT: Is that what had happened?

15 MR. DEBERRY: I don't know.

16 MR. BAILEY: I mean --

17 MR. CLEMENTS: That happened after this.

18 MR. BAILEY: No, no. I'm talking about the shooting with
19 Ren Ren Waldo.

20 MR. CLEMENTS: Oh, no, no. I don't know. I don't know
21 what he's talking about, but I wasn't going to get into any of
22 that.

23 MR. BAILEY: Well, I mean -- but the problem is now is
24 we've got him talking about a shooting that happened uptown.

25 THE COURT: Well, he didn't name anybody involved in the

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 shooting.

2 MR. BAILEY: Well --

3 THE COURT: Let me finish talking.

4 MR. BAILEY: Sorry.

5 THE COURT: He didn't name anybody as relating in any way
6 to what we're here for today. Now --

7 MR. BAILEY: Well, Judge, the questions preceding this
8 talked about the shooting.

9 THE COURT: He said he was scared.

10 MR. BAILEY: And he said he was scared of Blaton and he
11 was scared of him and then he starts talking about a shooting
12 that happened uptown. Judge, that's so far prejudicial.

13 MR. CLEMENTS: I don't think it is because he isn't --

14 THE COURT: Do what?

15 MR. CLEMENTS: I'm thinking it was very nebulous what he
16 said. I don't think it points out anything. He was just
17 nervous.

18 THE COURT: All right. Your objection is noted for the
19 record.

20 (Whereupon, the bench conference ends.)

21 BY MR. CLEMENTS:

22 Q: All right. Boo Boo, listen. Listen closely to the
23 question.

24 A: Yes, sir.

25 Q: Were you worried about possible revenge from the people

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 that got shot at from the trailer?

2 A: No, sir.

3 Q: Does that have -- were you nervous about that?

4 A: No, sir, not really about that. It was just, you know,
5 like, don't say nothing.

6 Q: All right.

7 A: Or we'll do something.

8 Q: Okay. Now, you went to Clio?

9 A: Yes, sir.

10 Q: How long did you stay there?

11 A: About a day with my cousin.

12 Q: Okay. And who came to get you?

13 A: My dad.

14 Q: And where did y'all go?

15 A: He took me to my baby mama house in Lakeview.

16 Q: All right. And how long did you stay there?

17 A: I put my little girl on the bus and then -- I stayed the
18 night, I put my little girl on the bus, and then my mama came
19 and said the police kept coming to her house and she wasn't
20 going to have it; so I let her take me over here and I turned
21 myself in.

22 Q: So you went and turned yourself in?

23 A: (No verbal response.)

24 THE COURT: Is that a yes?

25 Q: Is that a yes?

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 THE COURT: I mean I see you nodding your head, but I
2 want a verbal response for the record, please, sir.

3 Q: Say yes or no. She's got to --

4 A: Yes, sir.

5 Q: -- take down what your words are.

6 THE COURT: Okay. Thank you.

7 THE WITNESS: All right.

8 Q: And you turned yourself in?

9 A: Yes, sir.

10 Q: At that time right when you turned yourself in, did they
11 arrest you then?

12 A: Yes, sir.

13 Q: Or did they talk to you first?

14 A: They talked to me first, but I got arrested that day.

15 Q: You got arrested after you talked to them? Did you tell
16 them -- did you give them full cooperation?

17 A: Yes, sir.

18 Q: Did you tell them everything that happened?

19 A: Yes, sir.

20 Q: Did you tell them the same thing then that you're telling
21 us today?

22 A: Yes, sir.

23 MR. CLEMENTS: I beg the Court's indulgence.

24 Q: Did you tell them who all was in the car with you?

25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

- 1 Q: Who did you tell them was in the car?
- 2 A: Me, Willie Bethea, my cousin Blaton Smith, Shaheed, and
- 3 Jamie Williams.
- 4 Q: Did you tell them Jamie Williams at that time? Did you
- 5 know that name?
- 6 A: No. It was Lil Boosie then.
- 7 Q: That's his nickname?
- 8 A: Yes, sir.
- 9 Q: And you knew his nickname was Lil Boosie?
- 10 A: Yes, sir.
- 11 Q: You didn't know his real name?
- 12 A: No, sir.
- 13 Q: Well, how were you -- how could you identify him just by
- 14 nickname to the law enforcement officers?
- 15 A: I met him through my cousin.
- 16 Q: Okay. Did they ever show you any photographs?
- 17 A: Yes, sir.
- 18 Q: Did they show you --
- 19 A: A line-up.
- 20 Q: A line-up?
- 21 A: With pictures on it.
- 22 Q: With pictures on it?
- 23 A: Yes, sir.
- 24 Q: And was Lil Boosie on that line-up?
- 25 A: Yes, sir.

WILLIE BETHEA - DIRECT BY MR. CLEMENTS

1 Q: And you picked him out?

2 A: Yes, sir.

3 Q: And you found out then what his real name was?

4 A: Yes, sir.

5 Q: That's how you know his real name?

6 A: After he got incarcerated.

7 Q: Okay. All right. And have you been incarcerated ever
8 since?

9 A: Twenty-seven months.

10 Q: Okay. And the story you told them that day -- is that
11 the same thing you're telling here today?

12 A: Yes, sir.

13 Q: All right. Please answer any questions Mr. Bailey or Mr.
14 Deberry may have.

15 A: Yes, sir.

16 THE COURT: Cross examination, Mr. Deberry.

17 MR. DEBERRY: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. DEBERRY:

20 Q: Good morning, Mr. Bethea.

21 A: Good morning.

22 Q: How are you doing?

23 A: All right.

24 Q: Good. You've been in -- been in jail for how long?

25 A: Twenty-seven months.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Twenty-seven months? That's more than two years?

2 A: Yes, sir.

3 Q: Did you do any time on the crimes that you've been
4 convicted of?

5 A: Yes, sir.

6 Q: You've been to the South Carolina Department of
7 Corrections?

8 A: Yes, sir.

9 Q: How long have you been up there?

10 A: I went to -- I went to prison when I was -- I think I was
11 19.

12 MR. CLEMENTS: Your Honor, I object to this on relevance
13 about what he did on prior charges.

14 THE COURT: Can y'all approach, please?

15 (Whereupon, a bench conference is held in the presence of
16 the jury but out of the hearing of the jury as follows.)

17 THE COURT: It's cross examination. I'll allow him to
18 ask what sentence he received as a result of what happened,
19 but no more. All right?

20 MR. DEBERRY: I can ask him if he don't want to go back
21 though.

22 THE COURT: Huh?

23 MR. DEBERRY: I can ask him if he doesn't -- he doesn't
24 want to go back; right?

25 THE COURT: Yeah. Yeah. I mean I understand. I'm not

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 going to let him -- the rules don't permit you to go into all
2 the facts about what those prior convictions were, but I'll
3 certainly allow you to ask him you were charged with such and
4 such and you received a sentence of such and such and you went
5 to the Department of Corrections for how long. Okay? You can
6 ask him.

7 (Whereupon, the bench conference ends.)

8 BY MR. DEBERRY:

9 Q: So you -- so you spent some time in the Department of
10 Corrections in South Carolina?

11 A: Yes, sir.

12 Q: That's different than just Marion County time; right?

13 A: Yes, sir.

14 Q: Okay. Do you know -- do you know how much time you're
15 facing as a result of the charges that you're -- that you're
16 charged with now?

17 A: No, sir.

18 Q: You don't know that you've got the possibility to spend
19 the rest of your life in prison?

20 A: Yes, sir.

21 Q: You do know that?

22 A: Yes, sir.

23 Q: Are you planning on getting a deal from Solicitor
24 Clements for being here testifying for him today?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: So you're planning on going to prison?
- 2 A: I don't know. Whatever.
- 3 Q: You're not sure --
- 4 A: I'm just coming here to tell the truth.
- 5 Q: You're trying to help yourself; is that right?
- 6 A: No, sir.
- 7 Q: All right.
- 8 A: I'm just telling what happened.
- 9 Q: Tell me about the shoes that Blaton brought you sometime
- 10 after the crime?
- 11 A: Tell you about them?
- 12 Q: Yeah. They were shoes.
- 13 Q: What did they look like?
- 14 A: What did they look like?
- 15 Q: Yeah.
- 16 A: They were red, white, and blue Barkley's -- Charles
- 17 Barkley's.
- 18 Q: Were they burgundy could you say?
- 19 A: Red, white, and blue.
- 20 Q: It had some red on it?
- 21 A: Red, white, and blue.
- 22 Q: Okay. Tell me what Blaton Smith was wearing that night?
- 23 A: What night?
- 24 Q: That you -- that you claim that y'all rode over there and
- 25 shot the house up.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 A: He had on black on.
- 2 Q: He had on what?
- 3 A: It was dark and he had on black. He had on black jeans.
- 4 Q: You had on jeans?
- 5 A: He had on jeans -- Blaton, my cousin.
- 6 Q: Okay.
- 7 A: They were black.
- 8 Q: What kind of shoes did he have on?
- 9 A: Black Uptowns.
- 10 Q: He had black Uptowns on?
- 11 A: Yes, sir.
- 12 Q: Are those boots or shoes or what were they?
- 13 A: Shoes.
- 14 Q: All right. Are they laced up?
- 15 A: I don't know. It was dark.
- 16 Q: It was dark?
- 17 A: Yes, sir.
- 18 Q: But you'd been with him all day, hadn't you?
- 19 A: I told you it was black Uptown shoes. It was dark that
- 20 night. It was black Uptowns.
- 21 Q: But you testified earlier you got up with him -- I mean
- 22 that you picked up Lil Boosie around 6:30?
- 23 A: Yes, sir.
- 24 Q: That would have been in the daylight, wouldn't it?
- 25 A: Yeah. About 6:30, yeah.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: So what -- what was Lil Boosie wearing?
- 2 A: He had on black and burgundy with some Tims.
- 3 Q: He had on burgundy?
- 4 A: Burgundy and black, upper shirt with some Tims and some
- 5 jeans on.
- 6 Q: All right. How about Shaheed Hayes? What was he
- 7 wearing?
- 8 A: Black on.
- 9 Q: Huh?
- 10 A: He had on black too.
- 11 Q: Everybody was dressed in black?
- 12 A: Well, by the time we got him, it was dark.
- 13 Q: So you don't know what he was wearing?
- 14 A: He had on black and I think some shoes. He was in the
- 15 back of me.
- 16 Q: Shorts?
- 17 A: Pants.
- 18 Q: He had pants on? What kind of pants?
- 19 A: I don't know.
- 20 Q: Well, how about you? What were you wearing?
- 21 A: I had on some -- some Adidas and a hoodie jacket, an Army
- 22 fatigue jacket, and some 501 Levi jeans.
- 23 Q: You had a jacket with a hood on it?
- 24 A: Yes, sir. We were going to the club.
- 25 Q: Why do you need a hood to go to the club?

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 A: It was cold out at the time. I said -- I said an Army
2 fatigue coat what I got from Walmart.

3 Q: With a hood on it?

4 A: Yes. It's -- they come with the hood. The hunting --
5 like, when you go to Walmart and get hunting gear.

6 Q: Yeah.

7 A: Yes, sir.

8 Q: All right. What did you have in your pockets?

9 A: Money.

10 Q: Where did you get -- I mean what kind of money? How much
11 money?

12 A: I don't know. I was going out to the club.

13 MR. CLEMENTS: Your Honor, the relevance of this escapes
14 me.

15 THE COURT: Well, it's cross examination. I'll allow it
16 right now. Go -- get to your point, please, Mr. Deberry.

17 BY MR. DEBERRY:

18 Q: Just describe what you -- what you had on other than your
19 clothes -- than the -- the hooded shirt?

20 A: Just describe it?

21 Q: Yeah. What -- what kind of pants were you wearing?

22 A: I had on my 501 Levis.

23 Q: Some blue jeans?

24 A: Yes, sir.

25 Q: All right. Did you ever tell the detectives that y'all

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 rode back and forth in front of the house any?

2 A: No, sir.

3 Q: Okay. So it's your testimony you just pulled up there
4 and then every -- everybody started shooting?

5 A: Yes, sir.

6 Q: All right. But you were in the front?

7 A: Yes, sir.

8 Q: So when they started shooting, did you turn around?

9 A: Did I turn around?

10 Q: Yeah.

11 A: After they stopped shooting, we took off.

12 Q: I mean when they -- when they started shooting. Did you
13 turn around and look at them?

14 A: Can you repeat that again?

15 Q: Did you turn around and look at the shooters when they
16 started shooting?

17 A: I was nervous. I was just like, "Let's go."

18 Q: How do you know they had a hand out the window?

19 A: Sir?

20 Q: How do you know they had their hand out of the window?

21 A: How I know? Can you repeat that again? How I know --

22 Q: How do you know --

23 A: -- they had their hand out --

24 THE COURT: Hold on a minute. Hold on a minute. When
25 he's talking, let him finish answering the --

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 THE WITNESS: Yes, sir.

2 THE COURT: -- asking his question. Okay? When he's
3 talking, please let him finish his response.

4 THE WITNESS: Yes, sir.

5 THE COURT: The court reporter can't take down when both
6 of you are talking. Okay? Thank you. Go ahead, Mr. Deberry.

7 BY MR. DEBERRY:

8 Q: How do you know the particulars of how they were
9 shooting?

10 A: All that loud noise from the guns, I'm going to turn
11 around would have been off of my reflection -- my reaction.

12 Q: Did you ever hear Blaton Smith say or anybody say,
13 "There's Eyebrows' truck?"

14 A: We seen the truck in the back yard.

15 Q: Y'all saw a truck in the back yard?

16 A: Yes, sir.

17 Q: Which -- whose truck was it?

18 A: Eyebrows. Derrick.

19 Q: How did you -- how did you know what Eyebrows was
20 driving?

21 A: I told you earlier he got a cousin by my cousin,
22 Demetrius. He got a baby by my cousin, Demetrius.

23 Q: All right. I'm going to show you what's marked as
24 State's Exhibit 42. Which way were y'all coming from? This
25 way or this way? This is -- this is the house. Down on the

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 bottom is the front.

2 A: We were going that way towards Marion.

3 Q: All right. So if you're going towards Marion, where was
4 Eyebrows' truck?

5 A: In the back yard.

6 Q: If you could, just step down and point to it.

7 (Whereupon, the witness complies.)

8 A: You said where was it backed up?

9 Q: Mm-hmm.

10 A: (Indicating)

11 Q: Eyebrows' truck is over here?

12 A: Yes, sir.

13 Q: Okay. Have a seat.

14 (Whereupon, the witness complies.)

15 MR. DEBERRY: Just a second, Your Honor.

16 BY MR. DEBERRY:

17 Q: I'm going to show you what's marked as State's Exhibit
18 20. Do you see anything in that bottom picture?

19 A: Yes, sir.

20 Q: What do you see?

21 A: A hole.

22 Q: A hole?

23 A: Where's -- where's you talking about?

24 Q: What do you mean?

25 A: I can see the truck. It's kind of blurry at the bottom.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Can you tell much about it?

2 A: Yes, sir.

3 Q: What can you tell about it?

4 A: It's a truck.

5 Q: That's what you saw that night?

6 A: Yes, sir. I seen the truck. I told you I already know
7 the truck anyway because we all from Latta.

8 Q: Mm-hmm.

9 MR. DEBERRY: I'd like to publish this to the jury.

10 THE COURT: Mm-hmm.

11 BY MR. DEBERRY:

12 Q: So your testimony is that it was on the side that y'all
13 were coming up on?

14 A: Sir?

15 Q: It was on the side that y'all were coming up on?

16 A: That it was on the side --

17 Q: That the truck was -- all right. I'm sorry.

18 A: You can go.

19 Q: Is it your testimony that the truck was parked behind the
20 house but kind of on the side that y'all were coming up from
21 Latta where you could see it?

22 A: We was going toward Marion. The truck was parked in the
23 back where the concrete in the back yard is.

24 Q: Right. All right. If you're coming from Latta towards
25 the house the way y'all were, don't you come to some woods

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 before you get there?
- 2 A: Sir?
- 3 Q: Are some woods on your -- on your left before you get
- 4 there? Or on your right?
- 5 A: Some woods?
- 6 Q: Yes.
- 7 A: I don't really know what you're talking about.
- 8 Q: Okay.
- 9 A: What do you mean by woods? There's a lot of woods.
- 10 Q: Like a wooded area?
- 11 A: Sir?
- 12 Q: A wooded area?
- 13 A: A wooded area?
- 14 Q: Yeah.
- 15 A: It's a trailer park.
- 16 Q: Okay. All right. Are you familiar with General Road?
- 17 A: Sir?
- 18 Q: General Road?
- 19 A: No, sir. I'm not from around that area.
- 20 Q: Okay. Did you know there was a dirt road right there?
- 21 A: Yes, sir. There's a lot of dirt roads.
- 22 Q: Okay. Did you walk on those dirt roads?
- 23 A: No, sir. I'm not from around that area.
- 24 Q: Did you run on those dirt roads?
- 25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Did you get out of the car?

2 A: No, sir.

3 Q: You didn't get out of the car?

4 A: No, sir.

5 Q: Did anybody get out of the car?

6 A: No, sir.

7 Q: Let me ask you this. Who knocked on the back door right
8 before they started shooting?

9 A: Nobody never get out of the car to knock on no back door.

10 Q: If somebody knocked on the back door, you're saying you
11 don't know who it was?

12 A: No. I said -- I said nobody never get out of the car
13 because nobody never knocked on no back door.

14 Q: But you had on your red shoes?

15 A: No. I had on red, white, and blue Charles Barkley's.

16 Q: Let me ask you this. How did you know Christian Drawhorn
17 got shot?

18 A: Like I said earlier, it was around the neighborhood that
19 somebody got killed in the house.

20 Q: All right. Do you know Charlie B?

21 A: Yes, sir.

22 Q: Was he with y'all that night?

23 A: No, sir.

24 Q: Did you see him that day at all?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

1 Q: Did you talk to him that day at all?

2 A: I probably seen him walking around the neighborhood or
3 something. I ain't talked to him.

4 Q: You ever seen Charlie B over at Duke's house?

5 A: No, sir.

6 Q: Do you know if Charlie B and Duke know each other?

7 A: Everybody know each other from Latta.

8 Q: All right. How about Christopher Kollock? Do you know
9 him?

10 A: No, sir.

11 Q: Did you see anybody outside?

12 A: No, sir.

13 Q: Did you see anybody outside before the shooting?

14 A: No, sir.

15 Q: Did you see any outside -- anybody outside after the
16 shooting?

17 A: No, sir.

18 Q: Which way did y'all leave to go to leave from there?

19 A: We went straight like going towards Marion and we
20 branched off.

21 Q: You had to wait on people to run back to the car?

22 A: Like I told you earlier, nobody never get out the car.

23 Q: Did you ever hear that this thing was going to go down as
24 a robbery?

25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. DEBERRY

- 1 Q: Did y'all steal anything?
- 2 A: Nobody never get out the car to take anything, sir.
- 3 Q: Is that why you had your hoodie on?
- 4 A: I never had a hoodie on. I said I had on my hoodie
- 5 jacket. It came with a hoodie. You want to know where I
- 6 bought it from?
- 7 Q: Yeah.
- 8 A: Walmart.
- 9 Q: From Walmart?
- 10 A: Yes, sir.
- 11 Q: That's good. How long had you had it?
- 12 A: I just went and when I went shopping, I bought it.
- 13 Q: You bought it that day?
- 14 A: No. I had it for about two -- three weeks.
- 15 Q: Okay. Are you a football fan?
- 16 A: Yes, sir.
- 17 Q: Who's your team?
- 18 A: Cowboys.
- 19 Q: How about college?
- 20 A: Gamecocks.
- 21 Q: Are you a Michael Vick fan?
- 22 A: Yeah.
- 23 Q: You know he played for Virginia Tech?
- 24 A: He probably did.
- 25 Q: Thank you.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. CLEMENTS: Your Honor, I --

2 MR. DEBERRY: I don't have anything further.

3 THE COURT: All right. Thank you. Mr. Bailey, cross
4 examination.

5 CROSS EXAMINATION

6 BY MR. BAILEY:

7 Q: Mr. Bethea?

8 A: Yes, sir.

9 Q: Good morning. You've been in jail for the last 27 months
10 you say?

11 A: Mm-hmm.

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you.

15 BY MR. BAILEY:

16 Q: How many times have you met with law enforcement?

17 A: How many times have I met with them?

18 Q: Mm-hmm. About this case.

19 A: I don't know.

20 Q: More than two?

21 A: Yes, sir.

22 Q: More than five?

23 A: No, sir.

24 Q: So somewhere between two and five times over two -- 27
25 months?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: I can't recall. They should have it on record.
- 2 Q: They should have it on record?
- 3 A: Yes, sir.
- 4 Q: Okay. Were you transported to court yesterday?
- 5 A: Sir?
- 6 Q: Were you transported here yesterday?
- 7 A: Yes, sir.
- 8 Q: Did you meet with law enforcement yesterday?
- 9 A: I was -- met with my lawyer.
- 10 Q: But did you meet with law enforcement yesterday?
- 11 A: I was appointed to my -- Mr. Brooker. Yeah, law
- 12 enforcement was up there.
- 13 Q: Okay.
- 14 A: Yes, sir.
- 15 Q: Did you talk with law enforcement yesterday?
- 16 A: No. I was with my lawyer.
- 17 Q: Okay. Did you talk with Mr. Clements yesterday?
- 18 A: Mr. Ed Clements?
- 19 Q: Mm-hmm.
- 20 A: No, sir. I spoke to him one time.
- 21 Q: One time?
- 22 A: Yes, sir.
- 23 Q: When was that?
- 24 A: I don't --
- 25 Q: When did you talk to Mr. Clements?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Yesterday afternoon.

2 Q: Yesterday afternoon?

3 A: Yes, sir.

4 Q: Okay. What did y'all talk about?

5 A: He had told me about my lawyer, Mr. Brooker. They was
6 talking to me, asked me a few questions, like, was I nervous
7 or something, and I told them no. Let's get on and get this
8 over with.

9 Q: Okay.

10 A: Do we -- do we supposed to have something to talk about?

11 THE COURT: Let him ask the questions. Okay, Mr. Bethea?

12 THE WITNESS: Yes, sir.

13 BY MR. BAILEY:

14 Q: So -- so when you met with Mr. Clements yesterday, y'all
15 just talked about your lawyer, Mr. Brooker, sitting over
16 there.

17 A: I need to know directly what you want to -- want me to
18 answer you what were we talking about.

19 Q: Okay. Here's my question.

20 A: Yes, sir.

21 Q: What did you and Mr. Clements talk about yesterday
22 afternoon? Tell me everything y'all talked about.

23 A: I need to know what you want to know. We ain't talked
24 about --

25 Q: Mr. Bethea --

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: I mean --

2 Q: I'm going to ask you --

3 THE COURT: Hold on a minute. He wants to know
4 everything that y'all talked about.

5 THE WITNESS: I want to know what you want me to know
6 what he told me to talk about. The only thing I told him that
7 we talked about was them appointing me to my lawyer, Mr.
8 Brooker.

9 THE COURT: Was there anything else you talked about
10 yesterday?

11 THE WITNESS: He just told me to stay calm and -- and --
12 and speak the truth.

13 MR. BAILEY: Okay.

14 THE COURT: Okay. Go ahead, Mr. Bailey.

15 MR. BAILEY: Thank you, Your Honor.

16 BY MR. BAILEY:

17 Q: You testified earlier that you have a child?

18 A: Yes, sir.

19 Q: How old is your child?

20 A: Six years old. Rihanna Reeves.

21 Q: Any other children?

22 A: No, sir.

23 Q: Are you married?

24 A: No, sir.

25 Q: Live in Latta?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Yes, sir.
- 2 Q: Pretty much grew up in Latta; correct?
- 3 A: Yes, sir.
- 4 Q: Okay. And you testified a little bit ago that everybody
- 5 in -- everybody knows everybody in Latta?
- 6 A: Yes, sir.
- 7 Q: Small community?
- 8 A: Yes, sir.
- 9 Q: You never knew Jamie Williams before?
- 10 A: No, sir.
- 11 Q: Never knew he grew up in Latta?
- 12 A: I know he ain't grow up in Latta.
- 13 Q: Okay. Where did he grow up at?
- 14 A: I think he grewed up from Marion or something.
- 15 Q: Okay. Did you ever see him come into Latta?
- 16 A: I met him through my cousin.
- 17 Q: Okay. How many times have you guys met?
- 18 A: Not a lot.
- 19 Q: Two?
- 20 A: Probably two or three before we got in this.
- 21 Q: Okay. Who did you live with in Latta?
- 22 A: I live with my dad, Willie B. McKirk [phonetic].
- 23 Q: Where's your mama stay?
- 24 A: With my dad.
- 25 Q: Okay. You testified for Mr. Clements and Mr. Deberry

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 earlier that you have some convictions; right?
- 2 A: Sir?
- 3 Q: You have some prior convictions; correct?
- 4 A: Yes, sir.
- 5 Q: You went to prison on some of those prior convictions;
- 6 correct?
- 7 A: Yes, sir.
- 8 Q: How long did you have to go to prison for?
- 9 A: What is you talking about going to prison for? Which?
- 10 Q: Well, you pled guilty to accessory after the fact, grand
- 11 larceny, and burglary second degree all together. Do you
- 12 remember that?
- 13 A: It's on file.
- 14 Q: Did you go to prison for those charges?
- 15 A: Yes, sir. It's on the paper. Yes, sir.
- 16 Q: How long did you go to prison for?
- 17 A: Six months.
- 18 Q: Okay. After you got out of prison, did you return to
- 19 Latta?
- 20 A: Yes, sir.
- 21 Q: Excited to see your mama and daddy after six months?
- 22 A: Like everybody would.
- 23 Q: Yeah. Did y'all have a party?
- 24 A: No.
- 25 Q: No? Just excited to see mama and daddy?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Mm-hmm.

2 Q: Okay. Have you had any conversations with anyone about
3 what you're going to do with these pending charges today?

4 A: No, sir.

5 Q: None? You understand that you could get life in prison
6 for murder?

7 A: Yes, sir.

8 Q: And you have no deal regarding that murder charge?

9 A: No, sir.

10 Q: When are you scheduled to plead guilty to murder?

11 A: Sir?

12 Q: When are you scheduled to plead guilty to murder?

13 A: I don't know about that, sir. I just come in here to
14 tell the truth.

15 Q: How about the attempted murder? Do you understand you
16 could get up to 30 years on each one of those?

17 A: Yes, sir.

18 Q: And do you understand that that could be a total of 120
19 years?

20 A: If you add them up, yeah, that should be correct.

21 Q: Okay. When are you going to plead guilty to those four
22 counts of attempted murder?

23 A: I just told you. I don't know, sir.

24 Q: Okay. The discharging of a weapon into a dwelling -- you
25 have one of those charges?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Still have a charge with it, yes, sir.

2 Q: Okay. Don't know what's going to happen to that one
3 after today?

4 A: Sent all my -- sent all my charges home.

5 Q: Okay. Your lawyer hasn't had any talks with you about
6 what's going to happen after trial this week?

7 MR. CLEMENTS: I'll object to that, Your Honor. That's
8 attorney/client privilege.

9 MR. BAILEY: I didn't ask any specifics, Judge. I just
10 want to know if they talked about it.

11 THE COURT: Come here.

12 (Whereupon, a bench conference is held in the presence of
13 the jury but out of the hearing of the jury as follows.)

14 THE COURT: I mean I understand you're not asking
15 specifics, but you're walking a fine line there.

16 MR. BAILEY: That's the only question I'm going to ask.

17 THE COURT: Okay. You've asked him whether or not he's
18 got a deal. He's testified he doesn't. Whether he does or
19 not, he's testified he doesn't. Okay? I'm not going to allow
20 you to get into something or even open the door for a
21 possibility of him blurting out something that may be
22 protected by attorney/client privilege. Now, you understand?
23 I mean just be careful in walking that line.

24 MR. BAILEY: That was the only question I was going to
25 ask, if they've talked about any deals.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. CLEMENTS: And if he says --

2 THE COURT: Sure. I mean that's not anything that's
3 protected. He can ask that question, but --

4 MR. BAILEY: And I just want a yes or no.

5 THE COURT: If you get into that next --

6 MR. BAILEY: No.

7 THE COURT: -- or any more of those discussions, now
8 you've got a problem.

9 MR. BAILEY: Just a yes or no is all I'm looking for.

10 THE COURT: Okay. Well, I mean it goes to -- it
11 certainly goes to his bias or prejudice.

12 MR. CLEMENTS: But I don't know what his attorney might
13 have told him.

14 THE COURT: He didn't ask him what they said, but I'll
15 ask him -- I'll allow him to ask him if he talked to him about
16 it, but be careful. It's just a yes or no question.

17 (Whereupon, the bench conference ends.)

18 MR. BAILEY: Are you ready to proceed, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BAILEY:

21 Q: Mr. Bethea, my question was have you and any of your
22 lawyers had any discussions about resolving these charges?

23 A: I've only got one lawyer. That's Mr. Brooker. He told
24 me --

25 Q: I don't want to know what he talked about. Just a yes or

WILLIE BETHEA - CROSS BY MR. BAILEY

1 no question. Have you guys had any talks about resolving
2 these charges?

3 A: Resolving is saying what?

4 Q: Any deals on the table -- have you guys talked about
5 that?

6 A: No, sir.

7 Q: Okay. Now, Mr. Bethea --

8 A: Yes, sir.

9 Q: When -- when -- when you're in prison, the guards control
10 everything you do; correct?

11 A: Yes, sir.

12 Q: They can tell you where to go; right?

13 A: Yes, sir.

14 Q: Tell you where not to go?

15 A: Yes, sir.

16 Q: How many people are in a cell with you in prison?

17 A: It isn't a cell. It's a pod.

18 Q: It's a pod?

19 A: Three to a cell.

20 Q: Okay. So you have a cell in a pod?

21 A: Yes, sir.

22 Q: Okay. And there's three individuals in there with you?
23 Not a lot of privacy in prison, is there?

24 A: No, sir.

25 Q: A lot of bad people in prison?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Pretty much.
- 2 Q: People do bad things in prison?
- 3 A: Pretty much.
- 4 Q: Are you subject to being searched at all times?
- 5 A: Routine. Yeah. Yes, sir.
- 6 Q: Routine searches for you?
- 7 A: Every day.
- 8 Q: It's not a very pleasant experience to be in prison, is
- 9 it?
- 10 A: No, sir.
- 11 Q: You don't want to go back to prison, do you?
- 12 A: Nobody want to go to prison.
- 13 Q: Yeah. Okay. Now, Mr. Bethea, let me ask you have you
- 14 ever received any type of mental health treatment?
- 15 A: Yes, sir.
- 16 Q: Okay. Have you been diagnosed as a schizophrenic?
- 17 A: Yes, sir.
- 18 Q: Have you been diagnosed as having any type of psychosis
- 19 disorders?
- 20 A: What you mean by that?
- 21 Q: Have you been diagnosed -- are you aware of any diagnosis
- 22 for psychosis?
- 23 A: I don't know what psychosis is.
- 24 Q: Okay. Do you know what schizophrenia means?
- 25 A: I was diagnosed with it, but I don't really, really,

WILLIE BETHEA - CROSS BY MR. BAILEY

1 really know what it means.

2 Q: Okay. As a result of your mental health, you've been
3 institutionalized; correct?

4 A: What you mean by institutionalized?

5 Q: You've had to go up to Columbia to a mental health
6 hospital; correct?

7 A: A holding facility?

8 Q: Yeah.

9 A: Yes, sir.

10 Q: Okay. That's not a pleasant experience, is it, either?

11 A: No, sir.

12 Q: Did you get any mental health treatment while you were in
13 prison?

14 A: Yes, sir.

15 Q: Not the best treatment up there, is it?

16 A: No, sir.

17 Q: You can get better treatment out here on the street if
18 you need it?

19 A: Sir?

20 Q: You can get better mental health treatment if you're not
21 in prison; correct?

22 A: I don't know about all that.

23 Q: Okay. Do you recall telling any doctors that people were
24 jealous of your lifestyle?

25 A: I don't know what was going on during that time.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Okay.

2 MR. CLEMENTS: Your Honor, I object to the relevance of
3 that.

4 THE COURT: Can the lawyers approach?

5 (Whereupon, a bench conference is held in the presence of
6 the jury but out of the hearing of the jury as follows.)

7 THE COURT: First of all, his mental health treatment is
8 absolutely objectionable. I mean there's case law out there.
9 Unless you can tie -- tie that together with his inability to
10 tell the truth, it's not admissible.

11 MR. BAILEY: But, Judge, what I'm doing is I'm tying it
12 to him not getting the treatment in prison. He don't want to
13 go to prison because he can't get the treatment.

14 THE COURT: That's not relevant to this case.

15 MR. BAILEY: Him going to prison is not relevant in this
16 case?

17 THE COURT: That's not what you said.

18 MR. BAILEY: But the aspects of prison -- I mean I'm going
19 to ask him --

20 (Whereupon, the bench conference ends.)

21 THE COURT: Ladies and gentlemen, I'm going to ask you to
22 step to your jury room for just a minute. Do not discuss the
23 case. I'll get you back out here in just a second.

24 (Whereupon, the jury exits the courtroom at 9:55 a.m.)

25 THE COURT: All right. Yes, sir, Mr. Bailey?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 MR. BAILEY: Your Honor, I believe Mr. Clements had the
2 objection.

3 THE COURT: Well, he objected on the grounds of
4 relevancy. I want to hear your argument on the other side of
5 it.

6 MR. BAILEY: Your Honor, this -- his treatment for mental
7 health goes to his credibility as a witness first. Number
8 two, it goes towards his bias and his motive to testify
9 because he's already testified without objection that he
10 didn't get good mental health treatment in prison. He's
11 already testified he doesn't want to go back to prison. So I
12 should be allowed to cross examine those issues in front of
13 the jury.

14 THE COURT: When was the mental health treatment? What
15 does it have anything to do with his ability to get on this
16 witness stand and tell the truth or not tell the truth? Do
17 you have any case law that you can provide to me that would
18 say that the cross examination of a witness concerning their
19 mental health is admissible when it's not -- when you can't
20 tie it at least -- and I haven't heard it yet -- tie it to his
21 ability to tell the truth or not tell the truth.

22 MR. BAILEY: I'm not -- I do not have a case, Judge.

23 THE COURT: Okay.

24 MR. BAILEY: I just --

25 THE COURT: Well, I've researched that issue before

WILLIE BETHEA - CROSS BY MR. BAILEY

1 because I had it in a case not too long ago over in Florence
2 County wherein a witness had been diagnosed with schizophrenia
3 or some issues relating to it, and the case law that I recall
4 did not allow you to go into that because it's not relevant to
5 their ability to tell the truth. All right?

6 Now, I understand what you're saying that it is your
7 intention to put out there that he doesn't want to go to
8 prison because he can't get the mental health treatment that
9 he needs. I've heard nothing that would indicate -- and maybe
10 you have it. I just want to hear it and I'll allow you to
11 proffer it, but nothing that he had ongoing mental health
12 treatment and that there is a need for ongoing mental health
13 treatment that would tie it in.

14 You've established through your cross examination that
15 jail ain't a good place. I've allowed you to do that and that
16 certainly goes to bias or whatever you want to call it as to
17 his testimony for that jury to make a decision on, but as far
18 as this mental health stuff, I mean it's just -- it's not
19 relevant at this point unless you can give me some more
20 information as to its relevancy.

21 MR. BAILEY: Judge, I would just note my exception to
22 that.

23 THE COURT: Well -- and I want you to proffer whatever
24 you want. If you want to proffer something --

25 MR. BAILEY: I just have one question for him.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Okay.

2 MR. BAILEY: He has made statements in his past to two
3 doctors about visual hallucinations when he smokes marijuana.

4 THE COURT: Well, I --

5 MR. BAILEY: And number two, Judge, if you just let me
6 put this on the record.

7 THE COURT: Yes, sir.

8 MR. BAILEY: And number two, Judge, when he went for his
9 psychiatric evaluation in connection with this case, he told
10 that physician that he smoked marijuana 30 minutes before he
11 got arrested.

12 THE COURT: Okay.

13 MR. BAILEY: Am I allowed to bring those up?

14 THE COURT: Mr. Clements?

15 MR. CLEMENTS: Your Honor, he hadn't smoked marijuana 30
16 minutes prior to taking this witness stand. I can tell you
17 that and that's what he's testified to. Any statement he made
18 back then if he was delusional, that statement's not before
19 the -- the Court. There's a video of it that if Mr. Bailey
20 wants to put into evidence, then the jury can watch it and see
21 if they thought he was delusional at that time, but I think
22 he's gone far afield and what he's attempting to do is not
23 admissible at all.

24 THE COURT: Okay. Well, you've brought out what you
25 wanted to get out outside the presence of the jury, but

WILLIE BETHEA - CROSS BY MR. BAILEY

1 there's no evidence that every time he smoked marijuana that
2 he was delusional, is it? Or is it?

3 MR. BAILEY: Judge, it's just he gets delusional. He has
4 visual hallucinations when he smokes marijuana is what he told
5 the doctor.

6 THE COURT: Well, is there evidence within that report
7 that he was delusional or hallucinating that night that he
8 conveyed to his doctor?

9 MR. BAILEY: Well, Judge, the --

10 THE COURT: I mean first go back to my first question.
11 Is there evidence in there that he was delusional every time
12 he smokes marijuana? And if so -- do you understand what I'm
13 getting at?

14 MR. BAILEY: Well, I understand, Judge, and -- and no.
15 His statement to the doctor does not say specifically every
16 time I smoke marijuana it's visual hallucinations. It's just
17 I see visual hallucinations when I smoke marijuana.

18 THE COURT: Okay. I understand. Your objection is so
19 noted for the record, but I'm not going to allow you to go
20 there. I don't think the case law allows it. It doesn't go
21 to his ability to tell the truth. So I'm not going to allow
22 it. Anything else?

23 MR. DEBERRY: Your Honor, just for the record, I'd like
24 to join in that objection.

25 THE COURT: So noted for the record. All right. We're

WILLIE BETHEA - CROSS BY MR. BAILEY

1 going to stand down for just a minute before I bring the jury
2 back out. Sir, you can step down and have a seat right over
3 there, but you can't -- listen to me. Okay? You can't
4 discuss your testimony. Okay? You can't discuss your
5 testimony with anybody.

6 THE WITNESS: Yes, sir.

7 (Whereupon, there is a break in the proceedings from
8 10:02 a.m. until 10:17 a.m.)

9 THE COURT: Mr. Bethea, if you would, come back up and
10 take the stand, please, sir. All right. Let me ask this
11 question before we go any further. Mr. Bailey has questioned
12 this witness about mental -- some mental health issues and we
13 discussed this back in chambers, but I want to ask these
14 questions on the record. Has this witness been declared
15 incompetent?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: All right. Has through his evaluation it
18 indicated that he has an inability to know right from wrong?

19 MR. CLEMENTS: No, Your Honor.

20 THE COURT: Has it been declared in his evaluation that
21 he does not know the difference between a truth and a lie?

22 MR. CLEMENTS: No, Your Honor.

23 THE COURT: All right. Again, that is the basis of my
24 ruling here and I've heard nothing to the contrary. And while
25 Mr. Clements has responded to my questions, the questions were

WILLIE BETHEA - CROSS BY MR. BAILEY

1 directed at Mr. Bailey because it was his effort to try -- I
2 mean whoever answered the questions, whether it Mr. Bailey or
3 Mr. Clements, I needed to know those answers to determine to
4 what extent where we go from here. All right? Anything else?

5 MR. BAILEY: Nothing from me, Your Honor.

6 THE COURT: All right. Anything else? And it's noted
7 that Mr. Deberry has joined in that objection. All right.
8 Bring me the jury, please, sir.

9 (Whereupon, the jury enters the courtroom at 10:19 a.m.)

10 THE COURT: Thank you for your patience. Please note
11 that all jurors are back in the courtroom. Mr. Bailey, you
12 may continue.

13 MR. BAILEY: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 BY MR. BAILEY:

17 Q: Mr. Bethea, you had testified earlier that you
18 voluntarily submitted yourself to the Marion County Sheriff's
19 Office on April the 30th; is that correct?

20 A: Yes, sir.

21 Q: Okay. And this incident happened on April the 13th;
22 correct?

23 A: I don't know. It been a minute ago.

24 Q: Okay. Would you disagree with me that it was April the
25 13th?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: Sir?
- 2 Q: Would you disagree with me that it was April the 13th was
- 3 the night this --
- 4 A: I don't disagree. I would like for you to tell me what's
- 5 on the paper because it's been a minute -- a minute ago.
- 6 Q: You testified earlier that for one day you spent out in
- 7 Clio; correct?
- 8 A: Yes, sir.
- 9 Q: One day you spent out in Lakeview, maybe two days out in
- 10 Lakeview?
- 11 A: No. I said I put my little girl on a bus.
- 12 Q: And did you stay the night in Lakeview?
- 13 A: I came and stayed one night, yeah.
- 14 Q: Okay.
- 15 A: And I put her on the bus that morning.
- 16 Q: So that's two nights you stayed away from Latta?
- 17 A: Yes, sir.
- 18 Q: Were you in Latta for the other 17 nights?
- 19 A: Sir?
- 20 Q: Were you in Latta --
- 21 A: Yes, sir.
- 22 Q: -- for the other 17 nights?
- 23 A: Yes, sir.
- 24 Q: Did you tell your daddy about what happened that night?
- 25 A: Did I tell him? No, sir.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Did you tell your mama?

2 A: No, sir.

3 Q: Did you go to the Latta Police Department and tell them
4 what happened that night?

5 A: To the police department?

6 Q: Yeah. In Latta. Did you go there and tell them what
7 took place on April the 13th? Did you tell them about this
8 shooting?

9 A: I was in Dillon.

10 Q: Okay.

11 A: I was in Dillon.

12 Q: Did you go to the Dillon Police Department and tell them
13 what happened on the --

14 A: No, sir.

15 Q: -- night of the shooting? So you told nobody until you
16 showed up in Marion County at the Sheriff's Department?

17 A: Yes, sir.

18 Q: Okay. Now, they interviewed you that day; correct?

19 A: Yes, sir.

20 Q: They told you that that interview was going to be video
21 recorded; correct?

22 A: Yes, sir.

23 Q: You had an opportunity to talk to them before they put
24 you on video; correct?

25 A: I turned my -- my mama brought me up.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Okay. Did Detective Bell and Detective Watson interview
2 you prior to them placing you on a video recording?

3 A: Did they interview me?

4 Q: Yes.

5 A: That's saying as what?

6 Q: Did they ask you any questions before they told you we're
7 going to video record your statement?

8 A: Questions like what?

9 Q: My question --

10 A: Pertains to the case?

11 Q: In regards to this case before you went on video, did
12 they ask you any questions?

13 A: They asked me what I want -- what -- my mama had told me
14 the police was coming -- kept coming to our house. That's how
15 I came up.

16 Q: Okay. And when you went there, did you sit down in a
17 room and talk with them?

18 A: Me and my mama went in the waiting -- in the waiting area
19 at the Marion County Detention Center.

20 Q: Okay. Where did you go after that?

21 A: Where I go?

22 Q: Mm-hmm.

23 A: In a room.

24 Q: Okay. And who was in that room with you?

25 A: Mr. Martin Bell.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: Okay. Was Detective Watson there with you? He's a real
2 big detective.

3 A: Yes, sir.

4 Q: Real muscular guy?

5 A: Yes, sir.

6 Q: Okay. Did they immediately tell you that you were going
7 to be on video?

8 A: No. I told them what happened.

9 Q: Okay. And then they said, well, let's video record this?
10 Is that what happened?

11 A: Sir?

12 Q: After you told them what happened, did they want your
13 story on video?

14 A: Did they want it on video?

15 Q: Yes.

16 A: I wanted -- I could have wrote it, but I -- I demanded
17 video.

18 Q: How many times did you drive by the trailer that night?

19 A: I told you we went only one time, sir.

20 Q: Okay. Do you recall telling the detectives that you
21 passed in front of that trailer a number of times?

22 A: Did I recall telling them that?

23 Q: Yeah. Do you recall telling them that?

24 A: No, sir. If I did, I was kind of nervous.

25 Q: Okay. So it's possible that you told them that?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: Is it --

2 Q: Do you recall telling the detectives that there were a
3 lot of cars outside the trailer that night?

4 A: Yes, sir.

5 Q: Okay. Were there a lot of cars outside the trailer that
6 night?

7 A: Yes, sir.

8 Q: There was? A lot of people coming and going at that
9 trailer?

10 A: I told you we just stopped.

11 Q: Okay. But did you see people coming and going to the
12 trailer?

13 A: Yes, sir.

14 Q: You did?

15 A: I ain't see it. We just stopped. There was cars in the
16 back yard like I told them.

17 Q: Okay. Do you recall telling the police that you saw no
18 guns that night?

19 A: I seen some guns that night when they got -- when the
20 shooting started.

21 Q: When Mr. Clements asked you a question earlier, you first
22 testified that Blaton Smith handed no one a gun that night.
23 Do you remember that?

24 A: Yes, sir.

25 Q: Okay. Then he asked you another question and you changed

WILLIE BETHEA - CROSS BY MR. BAILEY

1 your story and said yes, Blaton Smith handed somebody one gun.

2 Do you remember that?

3 A: I said that. Yes, sir.

4 Q: Okay. So what is it, Mr. Bethea? Did he hand a gun to
5 somebody or did he not?

6 A: Yes, sir. The guns was in the car, yes.

7 Q: The guns were in the car?

8 A: Yes, sir.

9 Q: Were they in the front seat or the back seat?

10 A: It was on the floor.

11 Q: On the floor of the front seat or the back?

12 A: I just know they was on the floor in the car.

13 Q: Okay. But were they in the front of the car or were they
14 in the back of the car with where you say Shaheed and Jamie
15 were sitting?

16 A: There was guns in the car, sir.

17 Q: Okay. Do you recall telling the detectives that there
18 were no guns in the car when you picked up Shaheed Hayes?

19 A: No, sir.

20 Q: You don't recall that? If I showed you your statement,
21 do you think it would help refresh your memory as to what you
22 told them about that?

23 A: Yes, sir.

24 Q: Okay. Mr. Bethea, here's a copy --

25 MR. CLEMENTS: Your Honor, may we approach?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Yes.

2 (Whereupon, a bench conference is held in the presence of
3 the jury but out of the hearing of the jury as follows.)

4 THE COURT: Yes?

5 MR. CLEMENTS: We got a video. I don't know what that is
6 he's got right there. I assume it's something somebody typed
7 up, but I haven't seen it and I don't know if it's accurate or
8 not. Do you want to play the video? If he wants to play the
9 video, we can put the video into evidence. I mean I don't
10 know what he's getting ready to show him. I haven't seen it.

11 MR. BAILEY: Here. Do you want to look at it?

12 MR. CLEMENTS: I mean I don't know if it's accurate.

13 MR. BAILEY: It was transcribed by Q&A Court Reporting
14 from the disk that you gave me.

15 MR. CLEMENTS: But that is not the best evidence.

16 THE COURT: You've got to look at the video and look at
17 this to insure that it's accurate.

18 MR. CLEMENTS: The best evidence is the video.

19 MR. BAILEY: Well, I'm --

20 THE COURT: Do you want to take a break and let's play
21 the video?

22 MR. BAILEY: Judge, because here's the problem. I mean
23 he made -- he's made a ton of inconsistent statements between
24 his testimony today and what he said at this interview. I
25 mean he's already --

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: I understand. I understand, but for you to
2 pull out a transcript that they haven't -- the State hasn't
3 even had an opportunity to review it and compare it to what
4 the video is.

5 MR. BAILEY: Well, he -- I mean he's had the disk. He
6 could have had it transcribed himself.

7 MR. CLEMENTS: The best evidence rule is the disk.

8 THE COURT: How long is the video?

9 MR. BAILEY: Probably an hour.

10 MR. CLEMENTS: An hour and 30 minutes or so.

11 MR. BAILEY: No. It's like an hour.

12 THE COURT: Okay. Well, do you want to stop and let me
13 listen to it and watch it?

14 MR. CLEMENTS: I object to that because it's not the best
15 evidence. I mean however you choose to deal with it.

16 THE COURT: I mean it's not --

17 MR. BAILEY: I mean I'm not introducing it. I just want
18 to refresh his recollection. I can use any document to
19 refresh his recollection.

20 MR. CLEMENTS: If it's accurate. What are you talking
21 about? Where do you say there's an inconsistency?

22 MR. BAILEY: Here he's talking about -- so you went and
23 picked up Shaheed. Yeah, I picked him up and the other little
24 dude. No guns or nothing in the car? No. So he had to have
25 the guns.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 THE COURT: Well --

2 MR. CLEMENTS: He didn't say that. He said there was no
3 guns in the car.

4 MR. BAILEY: I can -- I need to clarify that. I mean at
5 the time he picked him up --

6 THE COURT: Here's the way you do it. All right? You
7 can pull out his statement and you can cross examine -- you
8 can use this in questioning. Do you recall saying this? You
9 told them this? Then do you -- are you saying this now?
10 What's the -- what's the truth in this? I mean --

11 MR. BAILEY: Okay.

12 THE COURT: -- you can cross examine him on that just
13 like you're holding a copy of this statement. You were
14 talking to the police on such and such a day.

15 MR. BAILEY: Okay. I'll do it that way.

16 THE COURT: Yes, sir. Do you remember telling them such
17 and such? Do you understand what I'm saying?

18 MR. BAILEY: Yeah. I'll do it that way.

19 THE COURT: Hey. Can y'all come back here a minute? One
20 of the best cross examinations I saw one time was by Judge
21 Nicholson when he was prosecuting a rape case down in
22 Kingstree. Audiotape recording of the defendant's statement
23 wherein he made statements concerning what happened and they
24 played it back to that jury and every time he would give an
25 inconsistency, he'd stop the tape. Do you remember saying

WILLIE BETHEA - CROSS BY MR. BAILEY

1 that?

2 But anyway, I'm not going to allow -- I'm not going to
3 allow you to put that -- and you're assuming he can read.

4 MR. BAILEY: Well, I was going to ask him if can read it.

5 THE COURT: Well, anyway, I believe the best avenue is to
6 --

7 MR. BAILEY: Well, I'll just question him.

8 THE COURT: Question him the way I told you to.

9 MR. BAILEY: Okay.

10 (Whereupon, the bench conference ends.)

11 MR. BAILEY: Ready to proceed, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. BAILEY:

14 Q: Mr. Bethea --

15 A: Yes, sir.

16 Q: You testified earlier that the -- that you believe the
17 white Cadillac was owned by Adrian Smith; correct?

18 A: I don't know who owned it.

19 Q: Okay. So you don't know who owns that Cadillac?

20 A: No. My cousin was driving it.

21 Q: Okay. Have you ever driven that Cadillac?

22 A: Yes, sir.

23 Q: You have? On how many occasions have you driven that
24 Cadillac?

25 A: Not a lot.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: No? Have you ever driven that Cadillac down to Georgia?

2 A: No, sir.

3 Q: No? You testified earlier that you were hanging out with
4 Blaton Smith pretty much all day on the 13th? Or on the 12th I
5 guess it is?

6 A: I guess.

7 Q: Okay. The day before the shooting, you and Blaton Smith
8 were hanging together?

9 A: You say the day before?

10 Q: Yeah.

11 A: I told you I was dealing with one of his -- I was dealing
12 with Adrian's sister.

13 Q: Okay. And you guys went into Dillon and went to an
14 AutoZone?

15 A: Yes, sir.

16 Q: And got some spark plugs? Did you tell that to Detective
17 Bell?

18 A: Sir?

19 Q: Did you tell that to Detective Bell?

20 A: I just told him I went to J&J to fix the car.

21 Q: Okay. Do you remember telling Detective Bell during your
22 interview that you also got the windows tinted on the car?

23 A: I never said I got the windows tinted. I said we got
24 tint for the windows.

25 Q: Oh, so you got -- so you got tint for the windows, but

WILLIE BETHEA - CROSS BY MR. BAILEY

1 you didn't put it on the windows?

2 A: That ain't my car.

3 Q: Okay. Do you remember telling Detective Bell that Blaton
4 Smith dropped you off at home and you went to sleep that
5 afternoon?

6 A: Sir?

7 Q: Do you remember telling Detective Bell in your statement
8 that Blaton Smith dropped you off at home that afternoon and
9 you went to sleep?

10 A: No, sir.

11 Q: You don't remember telling him that?

12 A: No, sir.

13 Q: Did you go home that day and go to sleep?

14 A: That day of what?

15 Q: The day before the shooting.

16 A: The day before the shooting?

17 Q: Mm-hmm. Yes, sir. The day before the shooting, did you
18 go home and go to sleep?

19 A: I can't really recall 27 months ago.

20 Q: Okay.

21 A: Unless you got it down.

22 Q: Okay. Did Detective Bell tell you he could help you out
23 in these charges if you cooperate?

24 A: No, sir. I told you that earlier.

25 Q: He never told you that?

WILLIE BETHEA - CROSS BY MR. BAILEY

- 1 A: No, sir.
- 2 Q: What time did you pick up Shaheed that night?
- 3 A: It was around getting dark. I don't know the exact time.
- 4 Q: Okay. Did you see Shaheed get in the car with a gun?
- 5 A: I don't know what he had on him then.
- 6 Q: Okay. Then y'all went and picked up Jamie?
- 7 A: No. I told you --
- 8 Q: You picked up Jamie first?
- 9 A: -- we picked up Jamie first.
- 10 Q: Okay. Did you see him get in the car with a gun?
- 11 A: It was dark. He got in. He came and ran to the car.
- 12 Q: Okay. Did he take out a gun when he got in the car?
- 13 A: No, sir.
- 14 Q: Did Shaheed take out a gun when he got in the car?
- 15 A: Later on.
- 16 Q: You saw him take out the gun?
- 17 A: Yes, sir.
- 18 Q You were sitting in front of Shaheed; correct?
- 19 A: Yes, sir.
- 20 Q: When Martin Bell asked you what kind of guns were used
- 21 that night, you told him that you thought they were .40
- 22 calibers; correct?
- 23 A: Yes, sir.
- 24 Q: You didn't know for sure; correct?
- 25 A: No, sir.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Q: He also asked you if they were black or chrome. Do you
2 remember that?

3 A: Sir, I said -- like I told you, it was dark.

4 Q: Okay. Do you recall telling the detectives that you
5 thought they were black .40s?

6 A: It was real dark, sir.

7 Q: Do you recall making that statement?

8 A: No. No, sir.

9 Q: Did you see any other guns in the car besides a .40
10 caliber?

11 A: An automatic weapon.

12 Q: You saw an automatic weapon?

13 A: It was something in the blanket.

14 Q: Okay. And where was that?

15 A: In the back.

16 Q: In the back? Did you tell Detective Bell when he
17 interviewed you that there was an assault rifle in the back
18 seat of that car?

19 A: I said there was guns in the car.

20 Q: Okay. How did you get to court today?

21 A: Sir?

22 Q: How did you get to court today?

23 A: How did I get to court today?

24 Q: Mm-hmm. Yes, sir.

25 A: I'm not trying to be funny, but how -- how do you -- by

WILLIE BETHEA - CROSS BY MR. BAILEY

1 assistance from Marion County Detention Center.

2 Q: Okay. So they drove you over here?

3 A: Yes, sir.

4 Q: Were you shackled?

5 A: Yes, sir.

6 Q: They took the shackles off before you came up here in the
7 courtroom?

8 A: Sir?

9 Q: They took the shackles off of you right before you came
10 into the courtroom?

11 A: Yes, sir.

12 Q: Do you recall telling Detective Bell that you got dropped
13 off in Dillon after the shooting?

14 A: Sir?

15 Q: Do you recall telling Detective Bell that you got dropped
16 off in Dillon after the shooting?

17 A: Sir, like I told you in the past, if it's on the
18 statement, that's what I said, sir.

19 Q: Okay. Did you tell Detective Bell about this abandoned
20 house that y'all ended up at that night?

21 A: I stated my aunt from Alabama owned that house.

22 Q: Okay. And you told that to Detective Bell that night?

23 A: Anything that's on the paper I said.

24 Q: When you pulled up and you stopped in front of the house
25 for the shooting, you were sitting closest to the house;

WILLIE BETHEA - CROSS BY MR. BAILEY

1 correct?

2 A: Yes, sir.

3 Q: Okay. It would have made a lot of sense for you to shoot
4 out your window; right?

5 A: It would have, but like I told you, I didn't have no gun.

6 Q: Everybody else in the back seat had guns shooting; right?

7 A: Sir?

8 Q: Everybody else had a gun in the back seat and they were
9 shooting?

10 A: Everybody else? What you mean by everybody else?

11 Q: Well, your testimony was Shaheed and Jamie were in the
12 back seat shooting?

13 A: Yes, sir.

14 Q: And it would have been easier for you to shoot out of the
15 car than Jamie. You would agree with that; right?

16 A: Well, it probably would have been easier, but I told you
17 I ain't had nothing to do with it.

18 Q: You could have just rolled down your window and shot
19 right out of the car; correct?

20 A: I just told you I ain't had no business shooting so I
21 ain't -- why would I roll down my window and shoot a gun?

22 Q: My question is -- is it would have been easier for you to
23 roll down your window and shoot directly out of --

24 A: It would have been easier for me to do --

25 THE COURT: Hold on a minute. Hold on a minute. Mr.

WILLIE BETHEA - CROSS BY MR. BAILEY

1 Bethea, let him finish asking his question. Okay? And then
2 you answer. Okay?

3 Q: It's just a yes or no question, Mr. Bethea. Okay? Would
4 you agree with me that it would have been easier for you to
5 roll down your window and shoot than it would be for Jamie to
6 shoot over the top of the car?

7 A: Why would I shoot? Shoot --

8 MR. BAILEY: Judge, he won't answer --

9 THE WITNESS: Yes, sir.

10 THE COURT: Answer the question, Mr. Bethea.

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay?

13 THE WITNESS: Yes, sir.

14 BY MR. BAILEY:

15 Q: Do you know Fred Frye?

16 A: Yes, sir.

17 Q: Do you hang out with Fred Frye?

18 A: I told you everybody from Latta know each other. I don't
19 hang out with nobody, just my associate.

20 Q: He's your associate?

21 A: I know him from the Latta area.

22 Q: Do you do drugs with Fred Frye?

23 A: No. I don't do drugs with Fred Frye.

24 Q: Okay. I know you testified earlier that you know Charlie

25 B. Are you friends with Charlie B?

WILLIE BETHEA - CROSS BY MR. BAILEY

1 A: I told you everybody from Latta.

2 Q: Okay. My question is is are you friends with Charlie B?

3 A: I said he's -- he's just a person that's around the Latta
4 area.

5 Q: Mr. Bethea, my question is just a simple yes or no.

6 A: I just told you. You said -- asked me is he my friend
7 and I said he just be in Latta.

8 Q: Is that yes, he's your friend or no, he's not your
9 friend?

10 A: I consider that as a friend, yes.

11 Q: Okay. Do you know Gino Upton?

12 A: No, sir.

13 Q: Okay. You ever buy drugs from Derrick Wilson?

14 A: No, sir.

15 Q: How about Gavin Graves? You ever buy drugs from him?

16 A: I don't even know him.

17 Q: Okay. Do you smoke marijuana, Mr. Bethea?

18 A: Yes, sir.

19 Q: And do you recall telling Detective Bell that you snort
20 cocaine?

21 A: I did a couple times.

22 Q: Okay.

23 MR. BAILEY: The Court's indulgence for one moment, Your
24 Honor.

25 THE COURT: Yes, sir.

1 MR. BAILEY: I have no further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. CLEMENTS: No, Your Honor.

4 THE COURT: All right. Sir, you may step down. Call
5 your next witness.

6 MR. CLEMENTS: Your Honor, at this time the State would
7 rest.

8 THE COURT: All right. All right. Ladies and gentlemen,
9 the State has presented its case and they have rested. What I
10 am going to do right now if I am going to ask you -- I have to
11 ask you to step to the jury room. There's some matters of law
12 that we need to take up at this time outside of your presence.
13 I'm going to ask you to step to the jury room. Do not -- do
14 not discuss the case at all. I'll get you back out here as
15 quickly as possible. Please step to the jury room.

16 (Whereupon, the jury exits the courtroom at 10:42 a.m.)

17 THE COURT: Hold it down, please. All right. Any -- the
18 State has rested. Any motions from you, Mr. Deberry,
19 concerning your client?

20 MR. DEBERRY: Your Honor, at this time we would like to
21 renew all of our prior objections up to this point in time and
22 make a motion for a directed verdict. We believe that any
23 evidence that's been produced against my client, Shaheed
24 Hayes, is completely inconsistent and non-existent to the fact
25 that he committed these crimes.

1 THE COURT: Thank you, sir. Mr. -- I'm going to hear
2 from both of you and then I'm going to hear from the State and
3 then I'll make my ruling. Go ahead, Mr. Bailey.

4 MR. BAILEY: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Yes, sir.

7 MR. BAILEY: Judge, likewise we would renew all of our
8 pre-trial motions and our objections to any of the Court's
9 rulings. We would also move for a directed verdict of not
10 guilty in this case. Two of the alleged victims of the
11 attempted murder did not take the stand. Additionally, Judge,
12 we believe that the inconsistent nature of the statements
13 established that there is no evidence linking Blaton Smith to
14 this shooting and that this matter should not proceed further
15 and go to the jury.

16 THE COURT: All right. Mr. Clements, anything in
17 response?

18 MR. CLEMENTS: Your Honor, I think there's sufficient
19 evidence to go to the jury on all counts. It doesn't matter
20 that the two victims of the attempted murder were not here.
21 The other two victims of the attempted murder testified to
22 them hitting the ground squirming around and they were all
23 scrambling for their life as the bullets went flying through
24 the trailer.

25 And I certainly believe we have established by competent

1 evidence that both Blaton Smith and Shaheed Hayes were there
2 and that Blaton Smith was in control, he was the man in
3 charge, and he was driving the car. He put them there on the
4 scene, provided the weapons, and Shaheed Hayes was the first
5 to shoot and by testimony emptied his clip, and I believe
6 there's sufficient evidence for both these gentlemen to have
7 to answer to the jury.

8 THE COURT: All right. Mr. Deberry didn't say this, but
9 -- and Mr. Bailey did, but I want to put it on the record as
10 Mr. Deberry making this motion as well. Mr. Deberry simply
11 said renew all prior objections. Mr. Bailey said prior
12 objections and motions. For the record, I assume you're
13 joining in all prior motions too, Mr. Deberry?

14 MR. DEBERRY: Yes, Your Honor.

15 THE COURT: I want to make sure the record is protected
16 for your client on that. Okay?

17 With regards to the prior objections and prior motions of
18 each defense counsel, the Court's rulings remain the same on
19 all prior motions and objections.

20 With regards to each of the defendant's motion for
21 directed verdict, under the law the trial court is concerned
22 with the existence -- with the existence or non-existence of
23 evidence, not its weight. If there is any direct evidence or
24 any substantial circumstantial evidence reasonably --
25 reasonably tending to prove the guilt of the accused, then the

1 case should be submitted to the jury.

2 In this particular case, based upon the testimony of Mr.
3 Williams, Jamie Williams, and Willie Bethea as to the
4 involvement of Shaheed Hayes and Blaton Smith, the Court
5 believes that there is sufficient evidence for this case to go
6 to the jury on all charges -- on all charges. Therefore, the
7 Court is respectfully denying the defendants' motion for a
8 directed verdict.

9 Now, at this time what I am going to do is advise each of
10 the defendants of their rights. Mr. Blaton Smith, if you
11 would, stand, please, sir. Mr. Hayes, if you would, stand,
12 please, sir.

13 (Whereupon, the defendant comply.)

14 THE COURT: If each of you would, raise your right hand
15 to be sworn. Do you swear to tell the truth, the whole truth,
16 and nothing but the truth, so help you God, Mr. Smith?

17 THE DEFENDANT SMITH: Yes, sir.

18 THE COURT: Mr. Hayes?

19 THE DEFENDANT HAYES: Yes, sir.

20 THE COURT: All right. You can put your hands down. All
21 right. At this time, gentlemen, I am going to explain to you
22 certain of your rights. If you do not understand anything
23 that I say, please let me know. If you want me to explain
24 anything in more detail, please let me know as well. Do each
25 of you understand, Mr. Smith?

1 THE DEFENDANT SMITH: Yes, sir.

2 THE COURT: Mr. Hayes?

3 THE DEFENDANT HAYES: Yes, sir.

4 THE COURT: All right. We have now reached the stage of
5 the trial where you may present your defense. You have the
6 right to claim the protections given to you by the Fifth
7 Amendment to the Constitution of the United States and that
8 amendment states in part that no person -- no person shall be
9 compelled in any criminal case to be a witness against
10 himself. This means that you cannot -- you cannot be required
11 to testify in this case.

12 You have the right to testify on your own behalf.
13 However, no one -- and I repeat no one can make you testify.
14 This is a personal right and no one can waive this right
15 except you.

16 If you decide to testify, you will be subject to the same
17 rules that govern other witnesses and you may be examined and
18 cross examined on any relevant issue in this case. In
19 addition, if you have any convictions involving dishonesty or
20 false statement or for crimes punishable by imprisonment for
21 more than one year and this Court determines that the
22 probative value of admitting this evidence outweighs its
23 prejudicial effect to you, the solicitor will be able to
24 introduce your record to attack your credibility.

25 If you decide to testify, this decision on your part must

1 be freely, voluntarily, and intelligently made with knowledge
2 of the protections given to you by the Fifth Amendment and the
3 consequences of your decision to testify. If you decide not
4 to testify, I will instruct the jurors that they cannot --
5 that they cannot give the fact that you did not testify any
6 consideration whatsoever and that there is to be absolutely no
7 prejudice to you because you did not testify.

8 Now, it is left entirely up to you whether or not you
9 testify. You may talk with your attorney, your family,
10 friends, or anyone else, but the final decision is left
11 entirely up to you. Do you understand what I have explained
12 to you, Mr. Smith?

13 THE DEFENDANT SMITH: Yes, sir.

14 THE COURT: Mr. Hayes?

15 THE DEFENDANT HAYES: Yes, sir.

16 THE COURT: Do you have any questions about what I have
17 explained to you, Mr. Smith?

18 THE DEFENDANT SMITH: No, sir.

19 THE COURT: Mr. Hayes?

20 THE DEFENDANT HAYES: No, sir.

21 THE COURT: Have you discussed with your attorney whether
22 or not you should testify, Mr. Smith?

23 THE DEFENDANT SMITH: Yes, sir.

24 THE COURT: Mr. Hayes?

25 THE DEFENDANT HAYES: Yes, sir.

1 THE COURT: Do you need any more time to talk to your
2 attorney, Mr. Smith?

3 THE DEFENDANT SMITH: No, sir.

4 THE COURT: Mr. Hayes?

5 THE DEFENDANT HAYES: Yes, sir.

6 THE COURT: All right.

7 MR. BAILEY: I was going to request a few minutes to
8 talk.

9 THE COURT: Well, I'm going to stand down for just a
10 minute and allow you two to -- or allow each of you to talk
11 with your respective attorneys. Let me know when you all are
12 finished talking to your clients. At that time, I want to
13 talk with all the lawyers in chambers concerning the charge
14 and et cetera. All right?

15 All right. We'll stand down for just a few minutes. You
16 all may be seated, Mr. Hayes and Mr. Smith.

17 (Whereupon, there is a break in the proceedings from
18 10:52 a.m until 11:16 a.m.)

19 THE COURT: All right. We stood down for a minute for
20 the defendants, Mr. Smith and Mr. Hayes, to speak with their
21 respective attorney. Mr. Smith, if you would, please stand.
22 Mr. Hayes, would you please stand? Have each of you had
23 sufficient time -- enough time to talk with your lawyer
24 concerning whether or not you will testify, Mr. Smith?

25 THE DEFENDANT SMITH: Yes, sir.

1 THE COURT: Mr. Hayes?

2 THE DEFENDANT HAYES: Yes, sir.

3 THE COURT: Do you wish to testify in this case, Mr.
4 Smith?

5 THE DEFENDANT SMITH: No, sir.

6 THE COURT: Mr. Hayes?

7 THE DEFENDANT HAYES: No, sir.

8 THE COURT: All right. I'm going to ask that you be
9 seated at this time. Thank you, gentlemen, very much. What I
10 am going to do now is I'm going to bring the jury back out and
11 I'm going to recognize Mr. Deberry, followed by my recognition
12 of Mr. Bailey. Is there any other testimony or any --
13 anything you all are going to put up, Mr. Deberry?

14 MR. DEBERRY: No, Your Honor.

15 THE COURT: Mr. Bailey?

16 MR. BAILEY: Nothing, Judge.

17 THE COURT: All right. You all can rest in front of the
18 jury and then what we are going to do is I'm going to let the
19 jury go and tell them to be back here like we discussed in
20 chambers at 12:45 and we will move forward at that time with
21 arguments and my charge on the law. Okay? Anything before I
22 bring the jury in?

23 MR. CLEMENTS: No, Your Honor.

24 THE COURT: Mr. Deberry?

25 MR. DEBERRY: No, Your Honor.

1 THE COURT: Mr. Bailey?

2 MR. BAILEY: No, Judge.

3 THE COURT: All right. Bring me the jury, please, sir.

4 (Whereupon, the jury enters the courtroom at 11:17 a.m.)

5 THE COURT: All right. Mr. Foreman and ladies and
6 gentlemen of the jury, thank you for your patience. At this
7 time, I am going to recognize Mr. Deberry. Mr. Deberry, you
8 are so recognized.

9 MR. DEBERRY: Thank you, Your Honor. The defense for
10 Shaheed Hayes rests.

11 THE COURT: All right. Mr. Bailey, I recognize you, sir.

12 MR. BAILEY: Thank you, Your Honor. May it please the
13 Court. On behalf of my client, Blaton Smith, the defense
14 rests.

15 THE COURT: All right. All right. Ladies and gentlemen,
16 you all have heard all of the testimony that you're going to
17 hear in this case. What we're going to do now is I am -- I
18 told you I was going to keep you here today, but we changed up
19 here. I'm going to let you go to lunch. Okay? I'm going to
20 let you go to lunch and I'm going to ask that you be back here
21 at 12:45. It's a little bit early, but please be back at
22 12:45.

23 The only thing that remains in the trial of this case
24 before it's submitted to you all for your decision is
25 arguments of counsel, the State and the defendants, and my

1 charge on the law to you -- and my charge on the law. During
2 your break, don't discuss the case with anybody. Don't do any
3 independent investigation. You're to decide this case, as
4 I've told you from the outset, based upon the testimony from
5 this witness stand and/or exhibits that have been admitted
6 during the course of this trial.

7 Anything before I release this jury and have them back
8 here at 12:45, Mr. Clements?

9 MR. CLEMENTS: Nothing from the State, Your Honor.

10 THE COURT: Mr. Deberry?

11 MR. DEBERRY: No, Your Honor.

12 THE COURT: Mr. Bailey?

13 MR. BAILEY: Nothing, Your Honor.

14 THE COURT: All right. Please be back at 12:45 and we
15 will resume and conclude the trial of this case. Thank you.

16 (Whereupon, the jury exits the courtroom at 11:19 a.m.)

17 THE COURT: Are all jurors clear? Are all jurors clear?

18 THE DEPUTY: Yes.

19 THE COURT: All right. Close that door, please. Thank
20 you very much.

21 All right. At this time, I'm going to recognize you, Mr.
22 Deberry. I assume you want to renew all prior motions, as
23 well as objections?

24 MR. DEBERRY: Yes, Your Honor. At this time, we would
25 renew all prior motions and objections and our motion for

1 directed verdict.

2 THE COURT: Very well. Mr. Bailey?

3 MR. BAILEY: Your Honor, I would also renew all prior
4 objections, prior motions, rulings by this Court adverse to
5 Mr. Smith, and our motion for directed verdict.

6 THE COURT: Very well. I wanted to make sure you all's
7 client's rights were protected with regards to those
8 particular motions. This Court so notes those objections and
9 motions for the record, but the Court's rulings remain the
10 same. The Court's rulings remain the same.

11 All right. Now, what we are going to do is we are going
12 to stand down right now. I do want to see the lawyers back in
13 my chambers real -- for a few minutes. We started -- started
14 -- started to review the charge and after making some
15 decisions came out here to let the jury go. Just come back in
16 my chambers just for a few minutes so we can try to finalize
17 that so once the jury comes back at 12:45 we can move right
18 into closing arguments and my charge on the law. Okay? We'll
19 stand at ease until 12:45.

20 (Whereupon, there is a break in the proceedings from
21 11:21 a.m. until 12:47 p.m.)

22 THE COURT: For the record, myself, Mr. Clements, Mr.
23 Deberry, and Mr. Bailey went over the jury charge prior to us
24 coming back in here. I will note in going over the jury
25 charge I initially had in there identification as being part

1 of a charge. Mr. Deberry indicated he wanted that in there.
2 However, I have taken it out and I want to note for the record
3 his objection to that. I want to note for the record his
4 objection to that.

5 Now, in reviewing the charge over lunch -- let me ask
6 this question. In reviewing my charge specifically as it
7 relates to possession of a weapon during the commission of a
8 violent crime, the charge reads as follows:

9 The defendants are charged with possession of a weapon
10 during the commission of a violent -- excuse me -- during the
11 commission of or attempt to commit a violent crime. The State
12 must prove beyond a reasonable doubt that the defendants were
13 in possession of a firearm or visibly displayed what appeared
14 to be a firearm during the commission of a violent crime.

15 It goes on and defines a firearm. One thing what it does
16 not include is the definition of possession, and possession
17 can be actual or constructive. It can be actual or
18 constructive, which I believe needs to be added in there
19 simply saying that actual possession is possession and
20 constructive possession includes dominion and control. Mr.
21 Clements?

22 MR. CLEMENTS: I have no objection to that, Your Honor.

23 THE COURT: Mr. Deberry?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: Mr. Bailey?

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Okay. Let me ask you all this before I bring
3 the jury out and you start closing arguments and then my
4 charge on the law.

5 (Whereupon, there is a pause in the proceedings as the
6 Court and the law clerk confer.)

7 THE COURT: As I go through my charge -- and I told and
8 instructed the jury at the outset of this trial that they are
9 to decide this case based solely upon the testimony from this
10 stand and the evidence -- that which is introduced into
11 evidence during the course of this trial.

12 There's been testimony throughout this trial of video
13 statements, handwritten statements, incident reports, et
14 cetera. Do either -- and inevitably -- inevitably, it seems
15 like every time a jury comes back with a question. We want to
16 see the video statement or we want to see the police incident
17 report. Does anybody as I charge this jury have any objection
18 to me saying something to the effect of video statements,
19 incident reports, written statements aren't admitted into
20 evidence and you can't consider it? Does anybody have any
21 objection to that, Mr. Clements?

22 MR. CLEMENTS: No objection, Your Honor.

23 THE COURT: Mr. Deberry?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: Mr. Bailey?

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Okay. All right. Anything else before I
3 bring the jury in, Mr. Clements?

4 MR. CLEMENTS: No, sir, Your Honor.

5 THE COURT: Mr. Deberry?

6 MR. DEBERRY: No, Your Honor.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: Nothing, Your Honor.

9 THE COURT: All right. Bring me the jury, please, sir.

10 (Whereupon, the jury enters the courtroom at 12:50 p.m.)

11 THE COURT: All right. Mr. Foreman and ladies and
12 gentlemen of the jury, I hope you had a good lunch and are
13 ready to proceed in the trial of this case.

14 What we are going to do at this time is have closing
15 arguments by counsel. Under our rules, Mr. Clements will go
16 first, followed by Mr. Deberry and then Mr. Bailey. And at
17 the conclusion of their arguments to you, I will charge you on
18 the applicable law in this case.

19 Prior to them making their arguments, ladies and
20 gentlemen, I want to remind you that arguments of counsel --
21 arguments of counsel are not evidence in this case. It is not
22 evidence in this case.

23 Mr. Clements, you're so recognized for closing argument.

24 MR. CLEMENTS: Thank you, Your Honor. If it please the
25 Court.

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. CLEMENTS: Good afternoon. I want to thank you for your attention and your patience and your consideration on behalf of the State of South Carolina and on behalf of Christian Drawhorn and on behalf of the other four young men that were with him that night and also on behalf of the defendants.

My job is to represent the State of South Carolina and my job is to present this matter to you beyond a reasonable doubt and to do it in a fashion where the rights of the accused are always protected and that they get a fair trial. We have a wonderful, wonderful system of justice. I think Mr. Deberry rightly so -- and I agree with him on this matter wholeheartedly is he said it was the greatest nation that has ever been on the face of this earth. Part of that reason is because of our judicial system.

And the reason why this judicial system is so good -- it's not perfect because it's made out of people, but it's so good because it's made out of people like you, citizens that come in and listen and weigh the facts and weigh the evidence and listen to the law as the judge gives it to them and apply that law to the facts to bring about a verdict as I told you earlier in our opening, veredicto, a verdict that speaks the truth.

Now, remember -- it seems like many, many days ago, but

1 it was just a couple days ago. Remember when I stood before
2 you and these gentlemen stood before you and we made our
3 opening statements and there were promises made to you. We
4 made promises to you and I want to tell you at the end of this
5 I think and believe firmly that you will see that my promises
6 were kept.

7 So I asked you to hold my feet to the fire and make sure
8 the promises that were made to you on opening statements were
9 kept. And that is to present a case against these two
10 defendants, Shaheed Hayes and Blaton Smith, and find them
11 guilty beyond a reasonable doubt.

12 Now, the judge is going to tell you that the only
13 evidence is what came from this witness stand, sworn
14 testimony, and the exhibits that have been presented into
15 evidence, and every bit of that is right here. These pictures
16 -- and y'all probably got tired of looking at so many pictures
17 of holes in the wall, but, you know, there was a lot of holes.
18 That trailer was like Swiss cheese. So trying to document,
19 there was a lot of pictures taken and we chose these to
20 present to you. So you saw a lot and if you thought it was
21 redundant, we're just trying to be thorough.

22 We had a projectile here that was testified to by Agent
23 Eichenmiller and we had shell casings that were presented to
24 her. She tested them and came back to Marion County and, as
25 Lieutenant Sawyer said, took them back to attempt to have

1 fingerprints done. Maybe that should have been done first,
2 but it wasn't done first. The ballistics test was done first.
3 And so when it was submitted for fingerprint analysis, it was
4 futile because of what had already been done, but they came
5 back to you and that was why it was in packaging and she said
6 it wasn't her packaging because it had gone that second time,
7 as Lieutenant Sawyer testified to.

8 So this is all the evidence right here: these two charts,
9 the trailer, a very rough not-to-scale drawing, and then this
10 map that shows you the area, these items of ballistic nature,
11 and these pictures, and then this testimony. Nothing else.

12 You probably heard all kind of things referred to. We
13 talked about statements and that were recorded. Well, you got
14 people that testified so you don't need those. They're not in
15 evidence. You've got incident reports that the officers wrote
16 up. Well, they testified so that's not -- those incident
17 reports aren't in evidence. But what you heard and what you
18 saw right here and right here and I'm going to ask you to
19 weigh every bit of it and to bring your common sense and your
20 wisdom to it.

21 And the judge is going to tell you when he charges you on
22 the law that the credibility of the witnesses and the facts,
23 that's what you're the judge of. He's the judge of the law.

24 So you've heard from witnesses up here. Look at their
25 demeanor. Look at how they presented themselves. Look at

1 whether they had some reason to try to protect theirsself or
2 not and what gave them motivation to testify as you weigh out
3 what they had to say.

4 And I'm going to tell you the first day started a little
5 rough for us. We called up patrol officers that came up and
6 they got barraged with a lot of questions about all these
7 things they didn't do which were things that the investigators
8 did that came on later, but you remember Officer Pike did a
9 good job. He was the first one there. He didn't see anybody
10 else on the scene, but the victims.

11 Then we had Marion Richardson come up and I guess he just
12 flat forgot he went up there and moved those shell casings out
13 of the highway so they wouldn't get run over, but they were
14 still all there. They were still close to the scene, but he
15 moved them. He said he didn't. He said he didn't remember
16 going out there. He didn't remember a lot of things. Mr.
17 Deberry and Mr. Bailey kept asking him if he had notes I guess
18 you'd remember better. Well, I guess that's now why he's in
19 codes enforcement instead of the Sheriff's Office.

20 But he came up and he testified. Clemson Legette came up
21 and he explained to y'all what happened when he came on scene
22 and how he called the investigators and the investigators came
23 and they began to go over that trailer and go over that
24 landscaping there with a fine-toothed comb.

25 And, you know, this isn't one of these cases where it's

1 heavy with forensic evidence like you see on TV with CSI and
2 all these -- all these different kinds of TV shows. Well, I
3 want to tell you that's Hollywood. In every case you don't
4 have a lot of forensic evidence. You don't have a lot of
5 forensic evidence here because the perpetrators of this crime
6 drove by, slowed up, came to a stop, fired a bunch of bullets
7 into this trailer, and then they were gone.

8 So there's not a lot of forensic evidence. So don't be
9 confused by that. And don't let that worry you about whether
10 -- well, you don't have fingerprints, you don't have this.
11 You got testimony and you got what we have.

12 Now, Charlie Watson came to start off the next day. He
13 testified about the investigation and what it led to and how
14 they followed it up, what they found, and who they talked to
15 and what charges were made. He and Martin Bell.

16 And then we brought in Dr. Schandl who told you what
17 killed Christian Drawhorn, what kind of wound he had. You
18 heard from two of the young men that were in the trailer and I
19 don't know if I'll ever forget Gavin Graves explaining what
20 happened and how scared he was. He stood about right here
21 before you and he said they heard two shots and said what is
22 that and then it just went ping, ping, ping, ping, ping, ping,
23 and it all chaos broke loose and he hit the ground.

24 As a matter of fact, Derrick grabbed him and pulled him
25 down to the ground and how he -- I think he's the one who used

1 the term about they squirmed around for their life when all
2 these bullets came flying through. And they were consistent
3 the entire time. They talked about all these bullets came
4 through the front and they came from the highway in the front.

5 And Mr. Bailey and Mr. Deberry did a good job, a real
6 good job, of trying their best to confuse them and talk about
7 things in the back yard and all this like there was some kind
8 of shooting or something going on in the back yard. Nothing
9 went on there. You heard the testimony. Every one of those
10 came through the front wall and some went out the back wall.
11 Some stopped inside the trailer, but how all of them fell and
12 cowered there for their lives as bullets were flying over
13 their heads.

14 And then they realized Christian was hit and they took
15 him out and had him outside here when EMS came and when law
16 enforcement came. And don't be confused about, you know, if
17 there was a knock on the door or not or whatever. All that
18 wasn't relevant. Nobody was there at the door, you know.
19 Bullets didn't come from the back. Nobody was shot in the
20 back.

21 And there was a lot made by Mr. Deberry particularly and
22 Mr. Bailey about, well, it was all in the back. You couldn't
23 see anything. Well, we had all the testimony from the
24 different people and we got the map right here. As it curves
25 -- and you saw the pictures and the picture is in there. When

1 you are approaching that trailer of Gavin Graves where he and
2 Derrick were living and you're approaching it from the north,
3 you can see clean into that back yard, everything that's back
4 there, and then you curve and there you are right in front of
5 it. There it is down the slope right where that white
6 Cadillac stopped that Blaton Smith drove it and they riddled
7 that trailer with bullets.

8 So don't be confused by any of that. You know, I'm
9 reminded of when I was in law school way back in the day and
10 my third year when I took a course called Trial Advocacy, and
11 it was taught by not just law professors but guys that were
12 practicing attorneys that were in court all the time trying
13 cases and they also worked with the university as an adjunct
14 law professor.

15 And one of them told me -- he said, "Ed, when you get to
16 court and you become a lawyer and you're trying a case, if
17 you've got the facts, argue the facts. And if you have the
18 law, you argue the law."

19 And I said, "Professor, what do I do if I don't have
20 either one of them?" He says, "Well, in that case you just
21 blow smoke."

22 Well, there's been a lot of smoke blown here today and
23 yesterday and the day before, but clear that smoke out the way
24 and look at the facts and apply the law Judge Brown is going
25 to give you, and the facts boil down to something that's not

1 complex at all. Basically, that's Jamie Christopher Williams
2 and Willie O'Brian "Boo Boo" Bethea.

3 What did they do? What did they testify to? What did
4 they say they did? Were they consistent? Were they
5 inconsistent? What was their demeanor on the stand? Those
6 are the things you've got to judge. And does what they say
7 get supported by all the other evidence that we know about?

8 But it boils down to those two young men and I'll admit
9 to you right now if you don't believe them, the State doesn't
10 have that much of a case, but I'm going to tell you they're
11 believable. They're credible. Just as I know that y'all know
12 they were credible. You heard it on the stand. They could
13 not be shaken from what they said.

14 Jamie Williams -- when he came he was -- he said he was
15 17 years old. He was following after these older fellows,
16 following after Duke -- Adrian Smith. And he got -- well, he
17 got picked up by Blaton and they went and he said there they
18 are, there's the trailer, there they are, that's his truck,
19 shoot, shoot. What did he tell y'all? He felt like if he
20 didn't shoot that there was going to be some trouble.

21 So he shot. He said he shot a few times and he kind of
22 froze up. He said he shot three to five times the best he can
23 remember. Willie said he thought he shot seven -- eight
24 times. He wasn't sure, but both of them were consistent in
25 one thing and that is that Shaheed Hayes emptied his clip.

1 Well, can you believe what Jamie was saying? The defense
2 attorneys asked him about his inconsistent statements. They
3 asked him when you first talked to law enforcement, what did
4 you tell him? He told them he wasn't doing anything, that
5 Willie was driving and that Blaton was shooting and Shaheed
6 was shooting. He put himself out of it. He wasn't shooting.
7 He wasn't doing it. He was just there, you know, and he said,
8 yeah, that was a lie. That was a lie.

9 And then later he told law enforcement, man, I wasn't
10 even there. I wasn't even there. And that was a lie. He was
11 trying to protect himself. But he gets up here under oath and
12 he says he decided he wanted to get it off his chest and he
13 had to tell the truth regardless and hopefully it's going to
14 help him out, but he's just got to go with what the truth is
15 because what's right is right and what's wrong is wrong.
16 Remember him saying that several times when they questioned
17 him? I just got to tell the truth.

18 He told me I'm a different man now. I'm 19. He was 17
19 years old when this happened. I imagine he's had a lot of
20 time to think this over and think, man, how can I live with
21 myself? I imagine every day he's got to look in the mirror
22 and go, you know, what have I been a part of?

23 Well, I asked him on this stand right here and I said why
24 in the world would you put yourself as being a shooter in a
25 murder case if it wasn't the truth? And I submit that same

1 question to y'all, ladies and gentlemen of the jury. Why in
2 the world would he say, yeah, I'm the shooter? I shot over
3 the top of the car. I'm a shooter. Under oath, why would you
4 claim that action if he didn't do it? The reason he claimed
5 that action, ladies and gentlemen, is because he's telling the
6 truth. He did it. He shot.

7 And was -- his statement about what he did, what is
8 corroborated by anything else? Well, he said he shot three to
9 five times and Shaheed emptied his clip. I think a clip on a
10 .40 is sixteen -- fifteen and one in the chamber. You got 16.
11 If he shot five times, how many is that? Twenty-one. How
12 many shell cases were found out there? Twenty-one.

13 Well, maybe they missed a few shell casings might be
14 argued by Mr. Deberry and Mr. Bailey. We don't know if that
15 was the number of shots. We don't know. We know there's 21
16 shell casings found. And if there was a few more, Willie said
17 he thought he might have shot seven to eight times. Well,
18 what did Jamie say? He said I kind of froze up. I kind of
19 froze up.

20 And Mr. Deberry kept trying to trick him and get him to
21 say they were driving back towards Latta and he kept saying,
22 man, I ain't good on roads. He's 17 years old. He's sitting
23 in the back seat. He don't -- he ain't going to know where
24 they're going. He's not familiar with that area.

25 He kept saying -- he kept coming back to Mr. Deberry and

1 Mr. Deberry was trying to put those words in his mouth that he
2 was driving back towards Latta and he says all I can tell you
3 is I was shooting over the top of the car. If he's shooting
4 over the top of the car, the car is going towards Marion, just
5 like Willie "Boo Boo" Bethea told you it was. He's shooting
6 over the top of the car and Shaheed is shooting out of the
7 window.

8 They're parked right out here on this Highway 501,
9 stopped right there. You heard both of them testify when they
10 saw Derrick's car, the white Yukon with rims -- you've seen
11 the picture of it where it got shot where the bullets passed
12 through and hit it. Derrick told you about it. It was parked
13 there -- parked around here in the back. I don't know if it
14 was here, here, somewhere in this area around this concrete
15 pad, and this is not to scale, but it was back here in the
16 back and when they were coming down 501 headed towards Marion,
17 they could see it and Blaton got excited. There it is. There
18 it is. That's the truck. That's him. And then stopped the
19 car and bang, bang, bang, bang, bang, bang.

20 I submit to you, ladies and gentlemen, Jamie was telling
21 the truth. He told about how they got rid of the guns. He
22 told you that Blaton was in charge. Blaton was driving the
23 car. You know, whoever is driving the car is going to
24 determine where they go; right? Whoever is driving the car is
25 going to determine whether that car stops in front of that

1 trailer or keeps going. Am I not right?

2 So whoever is driving that car, he's in control of that
3 situation, and I'm telling you Blaton was in control. He was
4 Adrian's number two man. Blaton was the number one man in
5 that car. He was in control. He was calling the shots and he
6 gave them the guns so he made sure the shots were fired. And
7 Blaton was in control.

8 And you might say, well, you know, Blaton didn't pull the
9 trigger. He didn't. He didn't. There's no evidence Blaton
10 pulled a trigger except in that first statement that Jamie
11 gave law enforcement which he says he lied. Blaton didn't
12 shoot. He was shooting.

13 So Blaton is in control of the situation and the judge is
14 going to tell you about the law and he's going to tell you
15 that the hand of one is the hand of all. So Blaton is just as
16 responsible for those shots being fired as Shaheed is and
17 Jamie is. He was in control and he gave them the guns. The
18 hand of one is the hand of all.

19 So if you've got any questions about murder or attempted
20 murder or even shooting a firearm into a dwelling, you look at
21 it under the hand of one is the hand of all. What were they
22 planning to do? What did they have in their minds? Blaton
23 had in his mind as soon as he saw Derrick's car, he stopped
24 and said there it is, y'all shoot. So that's what he intended
25 to happen.

1 The only thing that didn't happen the way they wanted to
2 happen -- you heard about that. Jamie said we went back to
3 Adrian and he was mad that the wrong fellow got hit. You
4 know, poor Christian Drawhorn. We heard from what Derrick
5 said when they started interviewing him -- he said, hey, who
6 you got problems with? Who are your enemies? Who you got a
7 beef with? He told them about the Smiths, but he put them
8 straight when he was asked about it. Didn't you write this
9 down for law enforcement? That Christian Drawhorn didn't have
10 any problems with the Smiths. He didn't have a problem with
11 anybody. He was there. He catches a bullet just because of
12 where he is.

13 Well, the judge is going to tell you about transferred
14 intent. They might not have intended to kill Christian. They
15 might have intended to kill Derrick. Well, that intent got
16 transferred to Christian and Christian is dead. So that means
17 murder. That's what happened.

18 Now, Jamie -- I think he told the truth absolutely clear,
19 you know, getting it off his conscience and putting himself
20 there and putting himself in and owning up to what he did.
21 And Boo Boo -- Willie -- nobody ever said Willie fired
22 anything and Willie told you that when this happened, he was
23 scared and he was like let's go, let's go. He thought they
24 were going to Mike Mike's club, which is right there on Old
25 Ebenezer Road right before you hit 501, and they drove by it.

1 And then he went, oh, where we going? Are we going to Fusion
2 in Marion? Fusion's Club here in Marion?

3 But then they stopped because they saw Derrick's truck
4 and Willie said guns came out. Shaheed was shooting out the
5 window. Jamie was shooting over the top of the car. Did they
6 ever turn around? No, they never turned around. They came
7 up, they saw it as they approached, and then they stopped.
8 And when they left, what did Willie say? They left going back
9 towards Marion and then they took that first left by the old
10 church and went the back way back to Latta.

11 And when they went to Latta, they went to someone's house
12 there on Session Street and they dropped off the guns.
13 Shaheed got -- Shaheed stayed in the car. Blaton had them
14 wrapped up in a blanket with some weapons that weren't used.
15 They said an assault rifle was in there. They didn't use
16 that. He took it in that house on Session Street and that's
17 the house law enforcement testified to. They executed a
18 search warrant and they got a gun there and they thought maybe
19 this was the gun and they submitted it, but it was tested and
20 it wasn't the gun that was used in these -- with these shell
21 casings and these projectiles.

22 And they took Derrick's gun and they tested it. It was
23 not used to shoot anything on that scene that night where
24 these shells were found and these bullets were collected.
25 Neither one of those guns matched.

1 But what did Agent Eichenmiller tell us that makes
2 everything consistent with what Boo Boo said and what Jamie
3 said? She said there were two guns. All these that were
4 fired comes back to two guns. What was testified to by Boo
5 Boo and what was testified to by Jamie? Two guns. Two .40
6 calibers, one shot by Shaheed and one by shot by Jamie across
7 the top of the car.

8 And the numbers of the shots that they think they fired
9 emptying a clip and the number that Jamie shot very close to
10 the number of shell casings that were found. All that's what
11 you call circumstantial evidence. Well, it backs up and it
12 matches. It does not contradict what Boo Boo said. It does
13 not contradict what Jamie said.

14 And then Boo Boo said he went back when he got home and
15 he was real nervous. He was staying away from it. And Blaton
16 kept coming by. Don't say nothing. Don't say nothing. Don't
17 say nothing. And he was scared and he went out of town and
18 went to Clio and stayed with a relative, went to Lakeview, and
19 then his daddy said, man, come on, and his mom and he came and
20 he turned himself in to be interviewed by law enforcement.

21 And they didn't have an arrest warrant for him yet. They
22 were investigating. Once they talked to him and they found
23 out, they arrested him right then and they arrested Blaton,
24 who he knew all his life, his cousin. They arrested Shaheed,
25 who he knew for years. And all he knew about Jamie was that

1 he's Lil Boosie. So what did he say? They showed him a photo
2 line-up and he picked him out and who was Lil Boosie? That
3 was Jamie Williams.

4 Does Willie's statement contradict Jamie's? No. Does
5 Jamie's statement contradict Willie's when he finally said I'm
6 telling the truth and I'm putting myself where I was and what
7 I did and being a man? His statement backs up everything
8 Willie said.

9 And all the circumstantial evidence -- and I don't need
10 to go over all of it because y'all have heard it. Y'all
11 listened very carefully. Every bit of the circumstantial
12 evidence matches up and corroborates what they tell you
13 happened. It corroborates what Derrick told you happened,
14 what Gavin told you happened, what law enforcement told you
15 happened. It all matches up.

16 And, you know, we could sit here and we could say there's
17 a million other things you could have done. You could have
18 gone to the lumber company and got twenty-foot dowels and run
19 them through the holes in the trailer and seen where the
20 bullets went. I mean use your common sense. That's not
21 necessary.

22 You know, you could use a string and run through to see.
23 You know, it doesn't matter to me and I don't think it matters
24 to you which -- which hole in the wall on the front wall did
25 the bullet go through that went through the back wall and hit

1 Derrick's car. Is that critical to who did this? Absolutely
2 not.

3 You know, what is critical is where did all the bullets
4 come from and they were testified to by the people that were
5 there when the bullets were being fired that all of them came
6 from the front, and they were testified to by Charlie Watson
7 when he followed my man right here. My mind's gone blank.
8 When he followed him around as he helped them as he took
9 pictures, all the bullet holes were in the front.

10 So don't get caught up on all this trivial stuff about
11 whether you use dowels or ran string or anything else and
12 whether you tested the blood. You know, they want to make a
13 big deal out of the blood. Well, the pathologist told you
14 that he bled and he had a tremendous amount of blood on the
15 inside and some of it had already been drawn off from the
16 resuscitation efforts.

17 So he bled out on the inside, not on the outside, and so
18 what Gavin told you and what Derrick told you about how much
19 blood was on him, that's corroborated. The fact that there's
20 not blood all up and down on the floor and on the steps and
21 the walkway, that's corroborated. He bled out on the inside.
22 The bullet went in his back shoulder -- right shoulder, went
23 through a couple of arteries, and they're constantly under
24 pressure Dr. Schandl said and that blood would have been
25 pumped out on the inside and he died.

1 A little bit of blood on the dryer. No need to test
2 that. We know only one person was shot and one person was
3 bleeding. Use your common sense. Why bog down SLED's lab
4 even more so for stuff like that?

5 So don't get caught up in that smoke. Weigh it. Compare
6 it. All these pieces of the puzzle fit together and you can
7 believe Jamie and you can believe Boo Boo. I'm sure they're
8 hoping -- you know, we've all been told all our lives the
9 truth will set you free. The truth is your friend. You've
10 got to be truthful. And if you're truthful, good things can
11 happen to you. You know, no deals have been made. They
12 testified to that. Nothing has been offered, but they know.
13 They're not stupid. They know the best thing they can do is
14 tell the truth and hope for the best, and they told the truth.
15 They told the truth.

16 And there was no evidence of anybody else being there.
17 There was no evidence of anybody else being the shooter.
18 There's no evidence of anybody else out there with a gun.
19 Perhaps there maybe was a knock on the door, but nobody was
20 there. There -- there's other things that were -- people that
21 were talked to. Charlie said he followed up on those. We
22 followed all those leads and we talked to Charlie B. He gave
23 us a statement and later recanted. It was a bunch of lies.

24 The evidence is what you heard from that witness stand.
25 The evidence is what's in these exhibits and in these

1 pictures. The evidence is not what I say. It's not what
2 Deberry says. It's not what Bailey says. Take the evidence,
3 weigh it, apply the law the judge is going to give to you.
4 The hand of one is the hand of all. That's the law in South
5 Carolina. And return a verdict that tells the truth.

6 Now, I'm going to sit down and I don't get to get back
7 up. I'm the last person that gets to speak for Christian
8 Drawhorn and he needs justice. His family needs justice.
9 These other young men -- you know, beat them up if you want to
10 for selling some pot. Beat them up if you want to for that.
11 Well, law enforcement was out there. That wasn't the drug
12 unit. The drug unit is going to take care of the others.
13 They were there to investigate a murder. It doesn't matter,
14 you know, if they had marijuana there. It doesn't make them
15 not be a victim. They were victims and they're lucky to be
16 alive. And I'm the last person that gets to speak for them
17 too, you know.

18 There's always what we have to answer to that we do and
19 it might be another time or another place, but that is not
20 this time and that is not this place about the marijuana and
21 the cocaine that was found there that all we know is Christian
22 Drawhorn had that in his system. Maybe it was his. I don't
23 know.

24 But that's for another time and another place. Today is
25 the day that is Shaheed Hayes' day in court and Blanton Smith's

1 day in court. So hold them accountable.

2 Murder -- this is the last thing I'm going to tell you.
3 Murder is when you kill somebody with malice aforethought.
4 How much more malice, which is an evil intent of the heart --
5 how much more malice can there be than to pull up in front of
6 a trailer not caring who's in there, who's behind there,
7 whether there's somebody's child in there -- and Gavin's six-
8 year-old son was there 30 minutes earlier -- and just blow
9 that trailer up with bullets not caring who you're going to
10 hit? If that's not malice, nothing is, and that's murder and
11 that's attempted murder, and these two young men are guilty.

12 THE COURT: Mr. Deberry?

13 MR. DEBERRY: Thank you, Your Honor. Mr. Bailey. Mr.
14 Clements.

15 CLOSING ARGUMENT ON BEHALF OF DEFENDANT HAYES

16 MR. DEBERRY: One nation, under God, with liberty and
17 justice for all. That's why we're here is for justice. Mr.
18 Clements just forgot to mention that everybody that's a
19 citizen of this country deserves justice.

20 Did the crime happen? Absolutely. Did somebody get
21 murdered? Absolutely. Were there four counts of attempted
22 murder? Absolutely. Is somebody guilty of those crimes?
23 Absolutely. Has the State proved beyond a reasonable doubt
24 that Shaheed Hayes is guilty of those crimes? Absolutely not.
25 Absolutely not.

1 And that's where the word justice comes into this
2 equation. Do the victims deserve justice? Absolutely. Does
3 my client deserve justice? Absolutely. And the reason we
4 live in the greatest nation there ever was is because the
5 twelve of you are going to decide what justice is.

6 Mr. Clements -- he told you, you know, he believes that
7 you believe. Well, let me tell you something. We selected
8 you -- or at least I did. We went through a jury selection a
9 couple days ago and I contemplated every person that stood
10 before us and my main objective, my only objective, during
11 that entire process was to find twelve people who I believed
12 would give us a fair trial. And I appreciate that because you
13 paid attention. I watched you the whole time.

14 Mr. Clements says that we're blowing smoke. He's hanging
15 his hat on Hollywood and TV. We live in the real world. It's
16 not that hard to do your job. Do some investigation. For the
17 love of God, you're trying to put people in prison for the
18 rest of their life plus 135 years, but they want you to
19 believe just because you watched TV for the past ten or 15
20 years and you've seen some unbelievable crime scene stuff
21 going on that Marion County Sheriff's Office doesn't have to
22 do their job anymore.

23 When I was back in law school, I graduated and just like
24 you see the judge's clerk up there, I did a clerkship for a
25 judge down in Manning, South Carolina, and I learned more

1 during that year than I probably ever have in my entire life.
2 The man that I did that clerkship with, the Honorable -- his
3 name is Judge Ferrell Cothran and he's still on the bench.
4 He's a great person. He was a prosecutor for 35 years. He
5 went on the bench the same day that I graduated law school or
6 we started the job the same day together. He hadn't been a
7 judge for long, but he had been a minister of justice as a
8 prosecutor for 35 years.

9 And I'll be honest with you. I figured when I sat and
10 watched him take guilty pleas day after day and preside over
11 trials, I figured that, he being a prosecutor, he would
12 probably limit himself to being kind of hard on crime, you
13 know, to being sided with the prosecution. And the greatest
14 thing I learned from that man was that we can have belief in
15 our individuals and our citizens that people can be fair.

16 And he would tell people -- and I don't know how many
17 times I heard him tell this story, but it makes so much sense
18 and I think about it all the time and I've been thinking about
19 it ever since we learned that they just kicked these shells
20 out of the roadway. He would say there's two types of people
21 in this world that break the law. There's criminals and
22 there's police officers. There's a major difference in those
23 two types of people.

24 I submit to you, ladies and gentlemen, that the way you
25 become a criminal is that you get charged and you go through

1 the justice system. You either plead guilty or you go to
2 trial and you're found by a jury of your peers that you're
3 guilty beyond a reasonable doubt and then you're a criminal.
4 The judge has told you and he'll tell you again Shaheed Hayes
5 and Blaton Smith are innocent until the State proves them
6 guilty beyond a reasonable doubt. So they're not criminals.

7 The difference is they're on trial for their lives and
8 the police officers get to go home after they break the law.
9 Charlie Watson told you it's against the law to tamper with
10 evidence. I don't know if it's against the law or not to do
11 an investigation or not, but it sure seems like that would be
12 a fair thing to do.

13 You heard that there was more than a dozen cars parked
14 out there on General Road that night. And you also heard that
15 Charlie Watson had information to believe that there was a
16 Cadillac -- a white Cadillac that parked on the end of General
17 Road that night. And he also said all those shell casings --
18 they were kind of found a little ways down from General Road,
19 but we don't know where they were found and, if we had, then
20 we might could determine that there were shooters from
21 different places. And if there were shooters from different
22 places, then the two individuals that came in here trying to
23 save their life aren't telling the truth.

24 And if so far anything I've said has raised a reasonable
25 doubt in your mind, you can't convict these guys. You cannot

1 convict Shaheed Hayes. They haven't been proven guilty beyond
2 a reasonable doubt.

3 If we knew where those shell casings were -- but we don't
4 because Marion Richardson -- he lied about even moving them.
5 What if they were from here to the other wall over there
6 apart? How are they coming out of the same car? And the
7 reason I asked so many questions about trajectory or the way
8 bullets are traveling is because it makes a big difference.
9 They just want you to believe I'm blowing smoke and that they
10 don't have CSI technology like you see on TV and that you
11 can't find a 14-foot dowel rod.

12 I'm not talking about a 14-foot dowel rod. I'm talking
13 about a six-inch wall. All I want to know is if this is a
14 wall and it's riddled with bullet holes, which way did they
15 come through the wall? That's all I want to know because it
16 supports the theory that maybe they weren't in the car. It
17 supports the theory that Gavin Graves hears the knock on the
18 door. It supports the theory that maybe there was a robbery.

19 And by the way, Gavin Graves knew what kind of shoes
20 Willie Bethea had on. Thank about it. What else does he
21 know?

22 MR. CLEMENTS: Your Honor, I object to that. I think
23 he's arguing facts not in evidence.

24 THE COURT: Can y'all approach?

25 (Whereupon, a bench conference is held in the presence of

1 the jury but out of the hearing of the jury as follows.)

2 MR. CLEMENTS: I don't think Gavin Graves even knew
3 Willie Bethea.

4 MR. DEBERRY: I meant Charlie B -- Graves.

5 THE COURT: All right.

6 MR. CLEMENTS: And Charlie B wasn't here testifying.
7 That's not in evidence.

8 MR. DEBERRY: It is in evidence.

9 THE COURT: What's in evidence?

10 MR. DEBERRY: That Charlie Watson had information that
11 Boo Boo was there standing on the sidewalk with red shoes on.

12 MR. CLEMENTS: I don't recall that coming into evidence.
13 I can recall them asking about that outside the presence of
14 the jury.

15 MR. DEBERRY: No.

16 MR. CLEMENTS: And it was hearsay.

17 MR. DEBERRY: I can recall that coming in.

18 MR. CLEMENTS: And it wasn't -- it wasn't red. He said
19 it was orange and burgundy or something, Virginia Tech colors,
20 is what the statement said that I read that Charlie B gave to
21 them. And he also said Charlie B came back later and said
22 that was all a lie.

23 MR. DEBERRY: That doesn't mean I can't argue it.

24 THE COURT: The facts as I recall them is that there were
25 inconsistent statements given by Charlie B, which turned out

1 to be untrue.

2 MR. DEBERRY: Well, we don't know that. That's for the
3 jury to decide.

4 THE COURT: That was what the testimony was, was it not?

5 MR. DEBERRY: That they were untrue? Yeah, but the jury
6 can decide whether to believe them or not.

7 THE COURT: You cannot -- I mean Charlie B's statements
8 are hearsay.

9 MR. CLEMENTS: They're not in evidence.

10 MR. DEBERRY: Judge --

11 THE COURT: They're not.

12 MR. DEBERRY: There was one -- there was two parts of it
13 that came in, the part that Boo Boo was on the sidewalk with
14 the shoes and the part that the Cadillac was parked on General
15 Road. The rest of it you kept out.

16 THE COURT: Say that again?

17 MR. DEBERRY: There's two parts of it that came in, the
18 part that Boo Boo was outside the car on the sidewalk with
19 what he was wearing and the fact that the white Cadillac was
20 parked on General Road. After that, we did the proffer and
21 then you kept the rest of it out.

22 THE COURT: All right.

23 MR. DEBERRY: It's in the record.

24 MR. CLEMENTS: The only thing I remember is he asked him
25 did you have information there was a white Cadillac out in the

1 road and he said yes. I don't remember anything about shoes
2 coming into evidence.

3 THE COURT: I don't remember the specifics of it. I'm
4 going to tell this jury that your arguments aren't evidence.
5 That they're to decide what is evidence in this case.

6 (Whereupon, the bench conference ends.)

7 MR. DEBERRY: Continue?

8 THE COURT: Ladies and gentlemen, I'm going to allow him
9 to continue his arguments. I'll remind you again that
10 arguments of counsel are not evidence in this case. They're
11 not evidence in this case.

12 Mr. Deberry, I'll remind all lawyers that your arguments
13 need to be confined to that -- that which is in the record and
14 reasonable inferences to be drawn therefrom. You may
15 continue.

16 MR. DEBERRY: Thank you. Ladies and gentlemen, I may
17 have said Gavin Graves, but I meant David Graves, also known
18 as Charlie B. Okay?

19 Charlie B, if you'll remember, was the individual that
20 came by selling underwear and socks sometime that night before
21 the murder. And then, if you'll recall, Mr. Gavin Graves
22 testified -- he testified that he came by and sold the
23 underwear and the socks. He also testified that Charlie B
24 told him I got a room, fellows. I'm gone for the rest of the
25 night. Then later, you hear from Eyebrows that he got a call

1 from Charlie B after the shooting. They needed to know what
2 happened. They needed to know what happened.

3 There's so much reasonable doubt here. It's not smoke.
4 It's not smoke. Charlie Watson was on this stand and every
5 now and then it kind of really bothered me because if you
6 don't believe anything I say, please believe that I believe in
7 this system and that I believe in fair trials and that law
8 enforcement act fairly. He grinned and he chuckled several
9 times and it really bothered me. He wasn't truthful a hundred
10 percent and he told you SLED was never involved, but later you
11 found out that he and Martin Bell went and did some
12 investigating with Stephen Hough, a SLED agent.

13 I mean why is it so hard for them just to do their job?
14 Don't hide in the budget for a dowel rod. All it is is a
15 piece of wood about the size of your little finger. You stick
16 it right through a bullet hole and it will tell you which way
17 some bullets were coming from.

18 And all those pictures -- he decided to make one of them
19 an exit hole out of the back of the trailer. I don't have any
20 doubt that bullets went through and through everywhere. It
21 was a terrible situation, you know, and it was a tragedy. The
22 State hasn't proved that Shaheed Hayes did it.

23 Derrick Wilson, Eyebrows -- he got up here and the
24 solicitor corrected him, but he first told you that a bullet
25 went out of the back of the front window. I mean I give the

1 solicitor credit. He said, no, I think you meant came this
2 way and then he -- then he conformed.

3 Jamie Williams and Boo Boo -- Boo Boo told you nobody
4 wants to go to prison and the solicitor told you the truth
5 will set you free. Now, you think and you believe what you
6 want to believe about what those boys have coming, that
7 they've got a deal or not.

8 We know Gavin Graves had a deal. He got charged from
9 that -- from those drugs in his house that night, but two-and-
10 a-half years later, it comes rolling around to trial time and
11 he's going to take a PTI, pre-trial intervention, so he can
12 keep his job.

13 Something stinks. Something stinks. And they want you
14 to convict. He's asked you and told you that he believes that
15 justice requires conviction. Nothing could be further from
16 justice in my opinion. Absolutely nothing.

17 Do I believe that the people who did this should be held
18 accountable? Absolutely. Do I believe it was a terrible
19 crime that occurred? Absolutely. Do I believe that Christian
20 Drawhorn's family deserves closure? Absolutely.

21 But I'm a minister of justice and that's what I'm seeking
22 here today. I'm just going to ask you. You know, if you've
23 got a reasonable doubt, you can't convict. The judge is going
24 to tell you you have to find them not guilty. And I explained
25 to you when we first -- at the very outset of this trial that

1 doesn't mean that you believe in your heart that they may have
2 done it or they may not have done it. It just means that
3 you're not firmly convinced that they did it. That means that
4 you have a hesitation to act.

5 And hesitation whatsoever to convict Shaheed Hayes of
6 these crimes, you have to find him not guilty. That's the
7 law. That's the law. So please think about it. Think about
8 all the inconsistencies. The two that are coming up here that
9 don't want to go to prison, that are speaking the truth
10 because it will set them free, their stories are inconsistent.
11 They have been from day one.

12 Tell -- if you tell somebody a story about how something
13 happened one time and then you change later and you say no, I
14 wasn't there, and then you change later and all of a sudden a
15 week before you're looking at 135 years plus whatever time you
16 live on this earth and then everything lines up because the
17 truth will set you free.

18 Is that right or wrong? That's up for y'all. That's a
19 -- that's a question for you to answer. Is that right or
20 wrong?

21 There was a robbery that was planned to take place that
22 night. I believe they got out of that car. I believe that
23 Jamie Williams and Boo Boo were there. I believe that Charlie
24 B was there. I believe that somebody ran around the back of
25 that house and knocked on the door. And there's something

1 that really worries me and concerns me about what to believe
2 when it comes to Christopher Kollock. Why did he run out of
3 that house? Or was he in that house?

4 I know probably y'all are from around here and you've
5 experienced hurricanes on one point or another in our lives.
6 I can remember Hurricane Hugo. It was probably the worst that
7 I can remember. And my mother always told me and my father,
8 you know, that there's an eye in the hurricane and that it's
9 real calm and that, you know, you can get the worst of the
10 hurricane on the tail end, you know.

11 And Hurricane Hugo came through at nighttime and all I
12 can remember is sitting up, you know, in a safe place in the
13 house with my family, my sisters, and talking about what
14 hurricanes were and hearing the trees crash and the lights go
15 out and everything. And then it became daylight. We weren't
16 sure if it was the eye of the storm or if it was over. Mom
17 and Dad didn't let us go outside.

18 It might have been the eye of the storm and then we might
19 have got stuck outside for the rest of it, number one, and,
20 number two, that storm created some dangerous conditions.
21 They wouldn't let me ride my bicycle anywhere. I couldn't do
22 any of that kind of stuff because a tree might fall on me and
23 there might be some electric lines down. There's all kind of
24 hazards out there.

25 Let me tell you, ladies and gentlemen, if you're in a

1 house and it gets shot full of holes and everybody is on the
2 floor, you don't just get up and run outside. You don't just
3 do that. You already know Charlie B came over earlier. Were
4 there other informants? Were there other people that were on
5 the inside on the inside?

6 All these are questions that I don't have an answer to,
7 but I'd submit to you that all of them are questions that
8 raise a reasonable doubt. They all are.

9 They don't even have the car driving down the road in the
10 same direction. And if the car is traveling in different
11 directions, then there might have been bullet holes according
12 to their story -- I mean bullet shells according to their
13 story way across Highway 501 North. We've all gone Highway
14 501 North. You got four lanes of traffic and a -- and a
15 median. But we don't know because they didn't even include
16 where they did find the shell casings in the crime scene area.

17 And then, you know, it was later I guess that Charlie
18 Watson and Mr. Bell heard about a car that was parked -- the
19 while Cadillac was parked on the end of General Road. The
20 trouble was there was over a dozen vehicles from law
21 enforcement and all -- everybody that responded to the scene
22 that night that parked on General Road. So all that evidence
23 was destroyed, if there was any. So that's the only place
24 they found anything, but I'm -- you know, they didn't look
25 really where they needed to. All their cars were parked out

1 there.

2 There's just a lot here, ladies and gentlemen, and
3 there's a lot on the line for my client. If you believe he
4 did it, then find him guilty. If that's what justice calls
5 for in this case, find him guilty. But I'm a believer in this
6 system. I'm a believer in this nation. I'm a citizen of this
7 nation and I'm so proud to be one, and one of the main reasons
8 is because I believe you can get a fair trial in this -- in
9 this country and I know you can get a fair trial in Marion
10 County and that's why I know that we've already received it.

11 The smoke? That's from the Solicitor's Office. The
12 smoke is all around Martin Bell and the investigation they
13 didn't do. I ask you to find him not guilty. Thank you.

14 THE COURT: Mr. Bailey?

15 MR. BAILEY: Thank you, Your Honor. May it please the
16 Court. Solicitor Clements. Mr. Deberry.

17 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT SMITH

18 MR. BAILEY: Ladies and gentlemen, I've been waiting over
19 two years to stand up here and talk to you about this case.
20 I've had it sitting in my office for over two years.

21 When I stood up here two days ago, I told you about two
22 things you were going to hear in testimony. You were going to
23 hear lies and that was true. You heard lies. And I told you
24 there wasn't even one piece of physical evidence in this case
25 that says Blaton Smith had anything to do with this. Why is

1 there no physical evidence? The short answer? Martin Bell.

2 How many times in the first four witnesses -- Deputy
3 Pike, Marion Richardson, Clemson Legette, and Charlie Watson.
4 How many times did we hear from them about notes? I didn't
5 take any notes. All that responsibility is on that man right
6 there.

7 (Whereupon, counsel points at Detective Martin Bell.)

8 MR. BAILEY: He sat here for three days. He heard every
9 single thing that came out of this stand. His responsibility.
10 He took the pictures. He collected the evidence, interviewed
11 witnesses. His responsibility. Why didn't he testify?

12 I submit to you that's the million dollar question. Why
13 didn't he get up here and tell us? I can answer the question
14 for you. He didn't do an investigation. He did not do an
15 investigation.

16 My esteemed Mr. Deberry came up here and was talking to
17 you about the crime scene, shell casings, tampering with
18 evidence. I would assume if it was an ordinary citizen who
19 tampered with evidence, they'd have got arrested. And
20 Solicitor Clements even put Marion Richardson on the stand to
21 try to get him to talk about that, to explain why he did it.
22 And what did he do? He lied to you. His testimony was I
23 didn't have anything to do with the crime scene. I was called
24 and I showed up. I stood back by my car. I waited for the
25 EMS to come and then I followed them down to the hospital.

1 But then when his supervisor testified next, what did he
2 tell you? Yes, he had something to do with that crime scene.
3 We sent him out looking for evidence. And then it came to
4 light. The light bulb turned on. He tampered with the
5 evidence. You heard him. We could have got fingerprints off
6 those shell casings. DNA is pretty solid evidence in a
7 criminal case. Marion Richardson touched them. That could
8 have damaged those fingerprints right there.

9 You heard from Eddie Sawyer. Who makes the decisions on
10 what evidence gets submitted to SLED and for what testing
11 purposes? The lead detective. Martin Bell. He called the
12 shots. He submitted it to the firearms department first. I
13 can't imagine this is his first rodeo in a murder case. Any
14 person knows submit it for DNA and latent print analysis
15 first. That might tell us who the real killers are.

16 Imagine that. The evidence sat in his office for over
17 two years that could have put the real killers in this
18 courtroom, but because he made the wrong decisions and had
19 incompetent deputies working for him coming out to the scene,
20 we don't -- we don't get to hear any of that.

21 I agree with Mr. Deberry. We got shell casings that were
22 all bunched up into a gutter. Where did they come from?
23 Where did they come from? Twenty-five feet that way? Fifteen
24 feet this way? Maybe five or ten feet back that way? We
25 don't know.

1 Solicitor Clements stands up here and he's got a theory
2 and his theory was that this was a drive-by. And I told you
3 at the beginning two days ago this case was going to boil down
4 to two witnesses, Willie Bethea and Jamie Williams. Nobody
5 else puts a car out there. Nobody but those two guys. Is it
6 so far unreasonable, ladies and gentlemen, that those two guys
7 could have been in the car by themselves? That's possible.

8 One witness, Jamie Williams -- he got up here and told
9 you the car never stopped. They just kept rolling. Willie
10 Bethea comes in. He testifies no, we stopped for a minute.
11 We stopped for a minute and shot. Was that enough time for a
12 driver and a passenger to shoot a gun? I submit to you,
13 ladies and gentlemen, Willie Bethea and Jamie Williams in a
14 car by themselves. It's a possibility. It causes you to
15 think a little bit. That's reasonable doubt.

16 How about this car? How about this car? A white
17 Cadillac. Sure they say my client drives a white Cadillac on
18 occasion. You heard Willie Bethea. He drives a white
19 Cadillac on occasion. Did they go find the white Cadillac?
20 Did they seize it, put it into evidence, and examine the car
21 for any evidence? They could have, but they didn't do it.

22 Do we know if they even went to look for the car? That's
23 a question I would have asked Detective Bell if he got on that
24 stand. What investigation did you do into this white
25 Cadillac? The name of a possible owner came up. Adrian

1 Smith. Did you go to his house? Execute a search warrant?
2 Pull DMV records? All of these things I would have asked
3 Detective Bell if he would have got on the stand for us.

4 It didn't happen. I submit to you why. Because he
5 didn't do it. Okay? We asked Detective Watson did y'all
6 execute a search warrant at Adrian Smith's house. It wasn't
7 done. Why not? You went and executed a search warrant at
8 another house. They found a gun. They probably thought it
9 was the smoking gun. Submitted it to SLED. Not connected.

10 Why didn't they go interview Adrian Smith? Why? Why
11 didn't Solicitor Clements bring Adrian Smith and put him on
12 this stand? He could have brought him in here just like he's
13 brought every other witness he's got. He could have put him
14 on that stand right there and said did you order this hit?
15 Did you tell these boys what to do? Who did you tell to go do
16 it?

17 We don't have that testimony, and it's not my job to do
18 it and it's not Mr. Deberry's job to do it. The government,
19 ladies and gentlemen, has to prove their case. I would have
20 loved to have the opportunity to cross examine Adrian Smith.
21 I would have loved it. We might have been here until next
22 week, but I'd have enjoyed it.

23 I wish I could have asked Detective Bell questions. You
24 heard me ask names about -- did you associate with these
25 random people throughout the night? You heard about Charlie

1 B. Out of left field, he -- they're talking about him selling
2 drawers and socks. Do y'all really believe he went to this
3 house to sell these grown men drawers and socks? That's what
4 Gavin wants you to believe. Really?

5 This is coming from a man who claims he only sells
6 marijuana. Okay? His house gets blown up with bullet holes
7 and what was his first instinct? Dadgum, I better throw my
8 marijuana in the bedroom. The cops are coming. Not is
9 Derrick shot? Darrell -- is he shot? Christopher Kollock --
10 is he shot? Christian Drawhorn -- is he shot? No. This was
11 a man who was worried about a little bit of marijuana and he
12 stayed calm enough during this shooting to throw it in his
13 bedroom before he does anything else.

14 And you heard him because I asked him. Is dealing drugs
15 a dangerous business? Yeah. Sure it is. We probably hear on
16 the news a lot about drug dealers getting robbed. Reasonable
17 doubt? A possibility in this case? Absolutely. Absolutely.

18 Now, we heard from Jamie Williams first, and I told you
19 that you're going to hear from people who have to tell a lie
20 to cover another lie to cover another lie. At what point is
21 the truth? What point is the truth? I asked that question.
22 The very first words out of my mouth on Wednesday -- in a
23 world of lies, there is nothing more dangerous than the truth.
24 And we don't know where it is.

25 Solicitor Clements comes up here and he wants you to

1 believe that, oh yeah, he told a lie the first three times he
2 talked to law enforcement, but last week when his mama and
3 daddy brought him a suit nicer than anybody wearing in this
4 courtroom because he's getting ready to come to trial this
5 week looking at life in prison, going to die if he's found
6 guilty, put 135 years on top of that, he says no, I'm going to
7 tell the truth. He's had 27 months to tell the truth and he
8 ain't done it yet, but last week he's going to tell the truth
9 or at least that's what Solicitor Clements is going to have
10 you believe.

11 And let me ask you, ladies and gentlemen, is it a
12 coincidence that after 27 months waiting to come to court that
13 Jamie Williams gets up here and corroborates the first witness
14 that law enforcement based this case on? Is it a coincidence?
15 Their stories were too much identical to be a coincidence.
16 Too much. Too much alike to be the truth.

17 They talked to Willie Bethea and he told a story. Okay?
18 He told a story about what happened. Detective Bell I'm
19 assuming ran with it because it wasn't until Willie Bethea
20 came in and talked to them that he got warrants issued for
21 everybody's arrest. Nineteen days passed by. They have no
22 physical evidence and they get this guy who walks in off the
23 street and says let me tell you about a crime I committed.
24 Y'all been out at my house looking for me, but I better come
25 tell you what I did. And let me take you down this road.

1 Okay.

2 What happened to all the other people that Detective Bell
3 interviewed? The other evidence? You heard Mr. Deberry talk
4 about shoes. We hear a knock at the back door. Did they
5 investigate that? There's a knock at the back door and
6 shortly thereafter -- and I'm talking I think the testimony
7 was a minute or two -- bullets start ringing out. Where's
8 that guy? Because I can tell you this. That guy would have
9 seen whoever was outside shooting. There ain't no doubt about
10 that. There ain't no doubt about that.

11 Guns -- .40 calibers. We hear for the first time in two-
12 and-a-half years that there's an AK assault rifle in the back.
13 If you really wanted to do damage or you really wanted to kill
14 somebody, wouldn't you have used an automatic assault rifle if
15 it was in the car? But it glorifies the case. It glorifies
16 it. Jamie Williams sounded real good talking about these
17 guns. He says my guy hands out the guns as they're
18 approaching the house. He gets one from Blaton Smith.
19 Shaheed gets one from Blaton Smith. They start shooting. My
20 guy tells them shoot, shoot, shoot. Really?

21 Willie Bethea testified that the guns -- he never saw
22 them. Then he changes it when Solicitor Clements questions
23 him on it a little bit more and he says, oh, yeah, yeah,
24 Blaton did hand one gun to the back. Just one? It's the
25 inconsistencies. Okay?

1 Now, we heard a lot of testimony from people who say I
2 know Eyebrows' truck. I saw Eyebrows' truck. Blaton saw
3 Eyebrows' truck. Solicitor Clements asked Eyebrows, "Have you
4 got a unique truck?" It's a white Tahoe Suburban, rims and
5 tires. I see a lot of those.

6 That's what started this whole thing -- seeing a truck
7 parked behind a trailer. You've heard different testimony.
8 It's over here. It's over there. Coming in from Latta.
9 Maybe they're coming in from the Marion side. You're looking
10 behind it and this was after midnight in April.

11 Thankfully, somebody took some photographs. I've been
12 waiting to stand up here and talk to y'all about these
13 photographs. Okay? These were taken the night of the
14 shooting with a camera by law enforcement. You're going to
15 have these photos when y'all go back to begin your
16 deliberations here in a little bit. Okay?

17 Take a close look at these. If you can remember State's
18 Exhibit 19, 18, and 20 -- 18, 19, and 20. Okay? There was
19 testimony the top picture is the intersection where the dirt
20 road is at 501 and General. You can see the street sign. Do
21 you see anything else? No. It's not light out. Look how
22 dark it is in this bottom picture. That's showing you 501.
23 Okay? Do you see anything? You see some lights, but they're
24 not illuminating anything.

25 The testimony was this top picture here showed a picture

1 of the trailer that night on 501. And this was taken standing
2 I'm assuming right here on the sidewalk looking at that house.
3 What do you see? You don't see hardly anything. It's pitch
4 black out there. If it's pitch black and you can't see
5 anything, tell me how any of these people saw a truck as
6 they're driving down the road? You're on 501. The speed
7 limit is not 15 miles an hour.

8 You heard about bent shell cases. Cars were driving.
9 You're going to have to be driving on 501. But here's the
10 best picture of them all. Okay? Here's the best picture --
11 20, this bottom picture. Y'all remember? This was a close-up
12 picture on the night of the shooting of Eyebrows' truck. That
13 picture was probably taken two feet away from that truck.
14 Y'all can hardly see that truck.

15 So if you can't see the truck from two feet away, how are
16 you going to see it from down the road? Consider this. This
17 is question. This is doubt. Okay?

18 The State put forth a theory, but that's it. They're
19 going to -- Solicitor Clements claimed Mr. Deberry and I were
20 going to come up here just to blow some smoke up here to try
21 to fog your vision on what it was. References to CSI and TV.
22 No. We're not going to have any fancy forensic examinations.
23 It typically doesn't happen in real life trials.

24 But, ladies and gentlemen, shouldn't we have some
25 evidence? Some evidence instead of two guys who do not want

1 to risk going to prison for the rest of their life to come in
2 here and say yeah, Blaton told me what to do and Shaheed --
3 yeah, he just shot. That's tough to believe.

4 Is our system built to allow law enforcement to build
5 cases without physical evidence and base it solely on the
6 testimony of people who have everything to gain and everything
7 to lose? It isn't. That's why we selected you two -- you
8 twelve two days ago.

9 Willie Bethea and Jamie Williams -- they're liars.
10 They're snitches. They're rats. Whatever you want to call
11 them, that's what they are. The person who comes to mind as
12 the most famous snitch, so to speak, that I could think of as
13 I heard this testimony here over the last two days is Judas.

14 Y'all remember what happened with Judas. He snitched and
15 then he tried to take it back. He got paid 30 pieces of
16 silver and he tried to take it back, but it was too late.
17 Well, we don't have 30 pieces of silver in this -- this
18 courtroom.

19 This isn't about testimony and money. No. Jamie
20 Williams and Willie Bethea -- they don't have money. They
21 can't buy their way out of this, but they have time. They
22 have time hanging over their head. I'll give you whatever you
23 want. Just cut me a deal. It's going to happen. We know it.
24 They can sit up there and say it's not. Jamie Williams, you
25 know, he says I'm not going to -- I'm not going to prison for

1 murder. How do we know if we take his word at it?

2 But we have the chance with this system we have put in
3 place. We can prevent two convictions based on the testimony
4 of two Judases from that stand. We can. And I'm confident
5 that once y'all get back there and you start talking and you
6 look at these pictures, you're going to say there's no way
7 that night that these boys were driving down the road and see
8 that truck parked behind a trailer. No. Ain't going to
9 happen. Reasonable doubt. Not guilty.

10 Consider the evidence. Solicitor Clements asked you to
11 do it. Consider those pictures. Find Blaton Smith not guilty
12 because he is not guilty. Thank you.

13 THE COURT: All right. Ladies and gentlemen, everybody
14 okay? Anybody need a break? If you want to stand up and
15 stretch your legs before I give you the charge on the law,
16 please do so at this time. All right. Do you need a break?
17 Okay.

18 (Whereupon, there is a pause in the proceedings.)

19 CHARGE ON THE LAW BY THE COURT

20 THE COURT: All right. Ladies and gentlemen, it is now
21 my duty as the trial judge under the constitution of this
22 state to charge and instruct you on the law applicable to this
23 case. It is your duty as jurors to accept and apply the law
24 as I will now state it to you.

25 Furthermore, it is your exclusive duty to decide all the

1 issues of fact in this case, and to determine the effect,
2 value, weight, and truth of the evidence. Both the State and
3 the defendants have a right to expect that you will carefully
4 consider and evaluate the evidence and apply the law of this
5 case to it so that in the end both the State of South Carolina
6 and the defendants will receive a fair and impartial trial. I
7 want you to understand that when I use the word defendants, I
8 refer to Mr. Blaton Smith and Mr. Shaheed Hayes.

9 The charges alleged in the indictment are murder,
10 discharging a firearm into a dwelling, possession of a weapon
11 during the commission of a violent crime, and four counts of
12 attempted murder.

13 Now, to these charges, the defendants have entered pleas
14 of not guilty. These pleas of not guilty places the burden of
15 proof on the State to prove the guilt of the defendants to
16 you, the jury, beyond a reasonable doubt.

17 I charge you that there are two defendants in this case,
18 ladies and gentlemen, each of whom is charged with the
19 offenses as previously stated. The case of each defendant and
20 the evidence and the law concerning that defendant should be
21 considered separately and individually. Your verdict does not
22 have to be the same for both defendants. The fact that you
23 may find one defendant guilty or not guilty should not control
24 your verdict as to the other defendant.

25 Where more than one person is charged with a crime, if

1 the evidence warrants it, you may convict one and acquit the
2 other, or you may acquit both, or you may convict both. It
3 will depend upon your view of the testimony and evidence. You
4 must take each defendant and consider the evidence as to that
5 defendant and my instructions to you on the law. You will
6 then write a separate verdict of guilty or not guilty for each
7 individual defendant as to each charge.

8 Now, as I mentioned above, the indictments in this case
9 allege seven separate and distinct offenses against each
10 defendant. You must decide each charge separately on the
11 evidence and the law applicable to it, uninfluenced by your
12 decision as to any other charge. The defendants may be
13 convicted or acquitted on any or all of these offenses. As
14 stated previously, you will be asked to write a separate
15 verdict of guilty or not guilty for each charge alleged in the
16 indictment as to each defendant.

17 Now, I remind you, ladies and gentlemen, that the fact
18 that the defendants were arrested, charged, and indicted in
19 this case is not evidence in this case and cannot be
20 considered by you as evidence of guilt in this case, nor does
21 it create any presumption or inference of guilt. The
22 indictment is simply the formal written instrument which
23 contains the charges made against the defendants. It is the
24 formal document by which this case is brought into this court.

25 It is vital to understand, ladies and gentlemen, that the

1 defendants are presumed under the law to be innocent of these
2 charges. The defendants have no obligation to prove their
3 innocence. It is a fundamental rule of our law that a
4 defendant, irrespective of the seriousness of the charges
5 against him, is always presumed innocent of the crimes for
6 which he is charged, unless and until his guilt has been
7 proven by evidence that satisfies you, the jury, beyond a
8 reasonable doubt.

9 The presumption of innocence is not a mere legal theory
10 or a legal phrase. The presumption of innocence is very
11 important and you need to understand that this presumption
12 accompanies the defendants from the time of their arrest and
13 appearances in this court and continues with them even after
14 you retire to the jury room to deliberate. In other words,
15 the defendants receive the benefit of the presumption of
16 innocence until the very end of this trial when you, the jury,
17 will deliberate upon the evidence and decide whether the State
18 has proven their guilt beyond a reasonable doubt.

19 Now, what is a reasonable doubt in the law? A reasonable
20 doubt is the kind of doubt that would cause a reasonable
21 person to hesitate to act. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the defendants'
23 guilt.

24 Now, there are very few things in this world, ladies and
25 gentlemen, that we know with absolute certainty; so even in

1 criminal cases the law does not require proof that overcomes
2 every possible doubt. However, if, based on your
3 consideration of the evidence, you are firmly convinced that
4 the defendant is guilty of the crime charged, you must find
5 him guilty. If, on the other hand, you think there is a real
6 possibility that he is not guilty, you must give him the
7 benefit of the doubt and find him not guilty.

8 Please understand that reasonable doubt may arise from
9 evidence which has been presented in the case or from the lack
10 of evidence in the case. It is your responsibility to
11 determine whether or not reasonable doubt exists as to the
12 guilt of the defendants.

13 I charge you that the defendants are entitled to every
14 reasonable doubt arising in the whole case. If, upon any
15 issues of fact essential to conviction and a verdict of
16 guilty, you have a reasonable doubt as to how that issue
17 should be resolved, it would be your duty to resolve that
18 reasonable doubt in favor of the defendant.

19 Now, during this trial, ladies and gentlemen, you and I
20 have had separate duties to perform. As the trial judge, it
21 is my responsibility to preside over this trial, and I also
22 have the duty to rule upon the admissibility of evidence
23 offered during the process of this trial. In that regard, you
24 are to consider only the competent evidence before you, and
25 you are all -- you are to disregard from your mind any

1 testimony that was ordered stricken from the record of this
2 case during the progress of the trial, if there was any. And
3 you are to consider only the testimony which has been
4 presented from this witness stand, together with any exhibits
5 admitted into the record of this case and any stipulations of
6 counsel made into the record.

7 Furthermore, I have the additional duty to charge you on
8 the applicable law of this case and, in that regard, I am the
9 sole judge of the law of this case. It is your duty to accept
10 and apply the law as I state it to you. If you have any
11 preconceived ideas as to what the law is, or what the law
12 ought to be, and it does not agree with what I tell you the
13 law is, you are obligated under your oath to abandon these
14 preconceptions, because you are sworn to accept the law
15 precisely as I state it to you.

16 In this trial, you are the sole and exclusive judge of
17 the facts, and I am the judge of the law. Do not infer that I
18 have any opinion about the facts in this case from anything I
19 have said during the course of this trial in ruling upon the
20 admissibility of evidence or otherwise, or from anything that
21 I say during the course of this charge to you. In this
22 regard, the law simply does not permit me to have an opinion
23 about the facts. As jurors, it is your duty alone to
24 determine the effect, value, weight, and truth of the evidence
25 presented during the course of this trial.

1 In determining what the facts in this case are, you must
2 judge the credibility, which simply means the believability,
3 of the witnesses and the value of weight to be given to their
4 testimony. You alone must decide the force, effect, and truth
5 of the testimony. Now, in making this decision there are many
6 things that you may, and should, take into consideration, such
7 as the appearance and manner of the witness on the stand, a
8 characteristic often referred to as the demeanor of the
9 witness.

10 Was the witness forthright or hesitant? Was the
11 witness's testimony consistent or did it contain
12 discrepancies? What was the ability of the witness to know
13 the facts about which he or she testified? Did the witness
14 have a cause or reason to be biased and prejudiced in favor of
15 the testimony he or she gave? Was the testimony of the
16 witness corroborated or made stronger by other testimony and
17 evidence or was it made weaker or impeached by such other
18 testimony and evidence?

19 As jurors, please understand you have the right to
20 believe a small portion of a witness's testimony and discard
21 the larger portion or vice versa. You may believe all of a
22 witness's testimony or none. You may believe the testimony of
23 a single witness against that of many witnesses or the other
24 way around.

25 In exercising your mental processes and attempting to

1 decide the truth, the law simply requires that you exercise
2 your good judgment, your common sense, your sense of logic and
3 reason, and your experiences in life. You then apply these
4 attributes to the evidence and apply the law as I state it to
5 you, and thus arrive at a verdict.

6 Now, there are two types of evidence which are generally
7 presented during a trial: direct evidence and circumstantial
8 evidence.

9 Direct evidence is the testimony of a person who claims
10 to have actual knowledge of a fact, such as an eyewitness. It
11 is evidence which immediately establishes the main fact to be
12 proved.

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It is
15 evidence which immediately establishes collateral facts from
16 which the main fact may be inferred. Circumstantial evidence
17 is based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between the
20 weight or value to be given to either direct or circumstantial
21 evidence. Nor is a greater degree of certainty required of
22 circumstantial evidence than of direct evidence. You should
23 weigh all of the evidence in the case. If, after weighing all
24 the evidence, you are not convinced of the guilt of the
25 defendants beyond a reasonable doubt, you must find the

1 defendants not guilty.

2 Now, there has been evidence presented during the course
3 of this trial that witnesses have made prior statements which
4 are not consistent with the witnesses' present testimony. You
5 may use this evidence to decide whether to believe the
6 witness. You may also use evidence of the earlier
7 contradictory statements to determine the truth of those
8 statements. It is up to you to decide whether to believe the
9 earlier statements or the testimony given at trial.

10 If a witness is shown to have knowingly testified
11 untruthfully concerning any material matter, you may consider
12 this in determining whether to trust the witness -- witness's
13 testimony as to other matters. You may reject all testimony
14 of that witness or give all or part of the testimony the
15 weight that you think it deserves.

16 Is there a problem?

17 AUDIENCE MEMBER: No, sir.

18 THE COURT: Please sit down.

19 A person who has a past criminal record, ladies and
20 gentlemen, is competent to testify during a trial. A past
21 record does not affect the ability of that witness to testify.
22 The past record may only be considered by you, if at all, in
23 determining the witness' believability. Remember, you are the
24 sole judges of the facts in the case and of the believability
25 of any and all of the witnesses.

1 Ladies and gentlemen, now during the course of the trial,
2 you heard the testimony of police officers. Please understand
3 that the testimony of a police officer is not entitled to more
4 weight than that of any other witness. You are the sole judge
5 of the credibility of a witness, and you are not to give more
6 weight to a police officer's testimony solely because he or
7 she is a police officer. Rather, you should judge an
8 officer's testimony by the same standard that you apply to all
9 other witnesses.

10 In this case, you also heard the testimony of individuals
11 who were qualified as experts. The rules of evidence
12 ordinarily do not permit witnesses to testify to opinions or
13 conclusions. An exception to this rule exists for witnesses
14 we call expert witnesses. A witness who, by education and
15 experience, has become an expert in some art, science,
16 profession, or calling may state an opinion as to a relevant
17 and material matter in which the witness claims to be an
18 expert and may also state the reasons for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case and, like any other evidence, give it
21 the weight you think it deserves. If you decide that the
22 opinion of an expert witness is not based on sufficient
23 education and experience, or if you conclude that the reasons
24 given in support of the opinion are not sound, or that the
25 opinion is outweighed by other evidence, you may disregard the

1 opinion entirely.

2 Furthermore, an expert witness's testimony is to be given
3 no greater weight than that of other witnesses simply because
4 the witness is an expert. Further, you are not required to
5 accept an expert's opinion, even though it is not
6 contradicted.

7 Now, ladies and gentlemen, I instruct you and I emphasize
8 to you that the fact that the defendants did not testify is
9 not a factor to be considered by you in any way in your
10 deliberation and in your consideration on the question of
11 their guilt or innocence. It must not be considered by you in
12 any manner whatsoever.

13 A defendant has the constitutional right to remain
14 silent, and the assertion of this right must not be considered
15 by you in your deliberations. I repeat, under your oath, you
16 are to draw no conclusion whatsoever from the fact that the
17 defendants in this case did not testify. The fact that the
18 defendants did not testify should not even be discussed in the
19 jury room.

20 The burden of proof, as I have stated to you, is on the
21 State. The defendants are not required to prove their
22 innocence. The burden of proof remains on the State to prove
23 guilt beyond a reasonable doubt.

24 Now, in order to establish criminal liability, criminal
25 intent is required. For example, the mental state required to

1 be proven by the State for a particular crime might be
2 purpose, intent, knowledge, recklessness, or criminal
3 negligence. Criminal intent must be proven by the State
4 beyond a reasonable doubt. Criminal intent is always a matter
5 that must be determined by the jury from the circumstances
6 surrounding the situation.

7 There is no way to prove intent to a mathematical
8 certainty. There is no way that medical science can dissect a
9 person's brain and determine what the person had in mind; so
10 the law says that criminal intent may be inferred from the
11 circumstances shown to have existed. This is how you make a
12 determination of whether or not the element requiring intent
13 was present.

14 It is not necessary to establish intent by direct and
15 positive evidence, but intent may be established by inference
16 in the same way as any other fact by taking into consideration
17 the acts of the parties and all the facts and circumstances of
18 the case. Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what each defendant
20 intended to do based on the circumstances shown to have
21 existed.

22 Criminal intent can arise from action or a failure to
23 act. It may arise from negligence, recklessness, or an
24 indifference to duty or to consequences that is considered by
25 the law to be the equivalent of criminal intent.

1 I will tell you that if the defendant, ladies and
2 gentlemen, with malice aforethought, attempts to kill another
3 person, but by mistake injures or kills a different person,
4 the defendant still has the intent to kill. The intent to
5 kill is merely transferred from the original person the
6 defendant attempted to kill to the actual person killed or
7 injured.

8 Now, if a crime is committed by two or more people who
9 are acting together in committing a crime, the act of one is
10 the act of all. A person who joins with another to commit an
11 unlawful act is criminally responsible for everything done by
12 the other person which happens as a probable or natural
13 consequence of the acts done in carrying out the common plan
14 or purpose.

15 For example, two people can be guilty of a larceny or
16 stealing of farm equipment valued at more than \$2,000 when two
17 go to the scene and only one drives the equipment away. If
18 two or more people are together, acting together, assisting
19 each other in committing the offense, the act of one is the
20 act of all or, as it is sometimes said, the hand of one is the
21 hand of all.

22 Prior knowledge that a crime is going to be committed
23 without more is not sufficient to make a person guilty of that
24 crime. Mere knowledge that another person is going to commit
25 a crime, even if the defendant is present when the crime is

1 committed, is not sufficient to convict the defendant as a
2 principal.

3 Guilt as a principal is shown by actual or constructive
4 presence at the scene as a result of prior arrangement.
5 Therefore, a finding of a prior arranged plan or a common
6 scheme is necessary for a finding of guilt as a principal.
7 The State must prove beyond a reasonable doubt by competent
8 evidence that the theory of the hand of one is the hand of
9 all.

10 A principal in a crime is one who either actually commits
11 the crime or who is present aiding, abetting, or assisting in
12 committing the crime. When a person does an act in the
13 presence of and with the assistance of another, the act is
14 done by both. Where two or more, acting with a common plan or
15 intent, are present at the commission of a crime, it does not
16 matter who actually commits the crime. All are guilty. The
17 hand of one is the hand of all.

18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the commission
20 of the crime. However, mere presence at the scene of a crime
21 is not sufficient to convict one as a principal on the theory
22 of aiding and abetting. Intent is also necessary as a
23 necessary element, for there must have been a common design or
24 intent to commit the crime and the crime must have been
25 committed pursuant thereto with the person aiding and abetting

1 by some overt act.

2 Intent means intending the result which actually occurs;
3 not accidentally or involuntary. Intent may be shown by acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent. The
6 State must prove these elements beyond a reasonable doubt.

7 Now, the defendants, ladies and gentlemen, are charged
8 with the murder of Christian Drawhorn. The State -- the State
9 -- the State must prove beyond a reasonable doubt that the
10 defendants killed Mr. Christian Drawhorn with malice
11 aforethought.

12 Malice is hatred, ill will, or hostility toward another
13 person. It is the intentional doing of a wrongful act without
14 just cause or excuse and with an intent to inflict an injury
15 or under circumstances that the law will infer an evil intent.

16 Malice aforethought does not require that malice exists
17 for any particular time before the act is committed, but
18 malice must exist in the mind of the defendant just before and
19 at the time the act is committed. Therefore, there must be a
20 combination of the previous evil intent and the act.

21 Malice aforethought may be express or inferred. These
22 terms, "express" and "inferred", do not mean different kinds
23 of malice but merely the manner in which malice may be shown
24 to exist, that is either by direct evidence or by inference
25 from the facts and circumstances which are proved.

1 Express malice is shown when a person speaks words which
2 express hatred or ill will for another or when the person
3 prepared beforehand to do the act which was later
4 accomplished; for example, lying in wait for a person or any
5 other act of preparation going to show that the deed was
6 within the defendant's mind would be express malice. Malice
7 may be inferred from conduct showing a total disregard for
8 human life.

9 The defendants are also charged with discharging a
10 firearm at or into a dwelling. The State must prove beyond a
11 reasonable doubt that the defendants discharged or caused to
12 be discharged unlawfully a firearm at or into a dwelling.

13 A dwelling, ladies and gentlemen, is any building or
14 portion of a building in which a person ordinarily sleeps. A
15 building constructed as a dwelling that has never been
16 occupied cannot be considered a dwelling. However, a building
17 is a dwelling even if the residents are temporarily absent
18 from the building.

19 Now, the defendants are also charged with possession of a
20 weapon during the commission of a violent crime. The State
21 must prove beyond a reasonable doubt that the defendants were
22 in possession of a firearm or visibly displayed what appeared
23 to be a firearm during the commission of a violent crime.

24 Now, there are two types of possession, ladies and
25 gentlemen, actual possession and constructive possession.

1 Actual possession means that the weapon was in the actual
2 physical custody of the defendant, while constructive
3 possession means that the defendant had dominion and control
4 or the right to exercise dominion and control over the weapon.

5 A firearm means any machine gun, automatic -- automatic
6 rifle, revolver, pistol, or any weapon which will, is designed
7 to, or may be readily converted to expel a projectile.

8 In order to find the defendants guilty of possession of a
9 weapon during the commission of a violent crime, you must
10 first find the defendants guilty of either committing a
11 violent crime or attempting to commit a violent crime. I will
12 tell you that murder and attempted murder are violent crimes.
13 The State must prove beyond a reasonable doubt that the weapon
14 furthered, advanced, or helped in the commission of the crime.

15 The defendants are also charged with four counts of
16 attempted murder: one count of attempted murder of Derrick
17 Lamont Wilson, one count of attempted murder of Darrell
18 Antonio Davis, one count of attempted murder of Gavin Graves,
19 and one count of attempted murder of Christopher Kollock.

20 In order to prove this crime, the State must prove beyond
21 a reasonable doubt that the defendants attempted to kill
22 Derrick Lamont Wilson, Darrell Antonio Davis, Gavin Graves,
23 and Christopher Kollock with malice aforethought, either
24 express or implied.

25 Now, as I stated to you previously and I will say again,

1 while the defendants are charged with four counts of attempted
2 murder, in addition to murder, discharging a firearm into a
3 dwelling, and possession of a weapon during the commission of
4 a violent crime, you must decide each charge separately on the
5 evidence and the law applicable to it, uninfluenced by your
6 decision as to any other charge. The defendants may be
7 convicted or acquitted on any or all of the offenses charged.

8 Now, malice as I explained to you earlier, ladies and
9 gentlemen -- malice is as I have explained to you earlier.
10 Furthermore, malice aforethought again may be express or
11 inferred.

12 If facts are proved beyond a reasonable doubt sufficient
13 to raise an inference of malice to your satisfaction, this
14 inference would be simply an evidentiary fact to be considered
15 by you, the jury, along with the other evidence in the case,
16 and you may give it the weight you decide it should receive.

17 A specific intent to kill is not an element of attempted
18 murder, but there must be a general intent to commit serious
19 bodily injury. Intent means intending the result which
20 actually occurs; not accidentally or involuntary. Intent may
21 be shown by acts and conduct of the defendants and other
22 circumstances from which you may naturally and reasonably
23 infer intent.

24 Evidence of the character of the act, the character of
25 the instrument used, the manner in which it was used, the

1 purpose to be accomplished, and the resulting wounds or
2 injuries, if any, may be considered in determining the intent
3 with which the act was committed. Intent may also be inferred
4 when it is demonstrated that the defendants voluntarily and
5 willfully commit an act, the natural tendency of which is to
6 destroy another's life.

7 Now, ladies and gentlemen, I am now drawing near the end
8 of my charge and I want you to clearly understand that you are
9 not partisans or advocates for the State of South Carolina or
10 the defendants. It is your duty by your joint deliberations
11 to determine the truth in this case, giving to the defendants
12 the benefit of every reasonable doubt on each and every issue.

13 Then, to the facts which you determine to be true, you
14 should take and apply the law which has been given to you by
15 this Court and thus arrive at a verdict which speaks the truth
16 in this case. In fact, the word verdict, which has a Latin
17 derivative, means a true saying. Thus, when you have
18 accomplished these responsibilities, you will have satisfied
19 your oath as jurors and you will have discharged your duty to
20 this Court.

21 Now, once you retire to the jury room, the bailiff will
22 give the verdict form to the foreman. When you, the jury,
23 arrive at a verdict as to the offenses charged in this case,
24 the foreman will select the verdict as to the charge on the
25 verdict form.

1 If the State has failed to prove the guilt of the
2 defendant beyond a reasonable doubt, your verdict will be "not
3 guilty." Likewise, if the State has proven the guilt of the
4 defendant beyond a reasonable doubt, your verdict will be
5 "guilty." Now, once a decision has been made as to each
6 charge, the foreman will check whichever choice is the verdict
7 of the jury -- which is the verdict of the jury as to the
8 charge.

9 The verdict that you render, ladies and gentlemen, must
10 be the verdict of each and every juror. It must be your
11 unanimous verdict. All twelve jurors must agree on the
12 verdict which you authorize the foreman to write for the jury.

13 Ladies and gentlemen, I want you to further understand
14 that the order in which the choices of verdict appear on the
15 verdict form are not suggestive of any verdict on the part of
16 the Court. The verdict in this case is to be determined by
17 you, the jury, not the Court.

18 Furthermore, please understand that even though I will
19 give the verdict form to the foreman, it is not his verdict
20 alone. It is the verdict of all twelve of you and I emphasize
21 again that it must be unanimous.

22 I will now ask you to retire to the jury room, but do not
23 begin your deliberations until you are told to do so. The law
24 requires that I consult with the attorneys to make sure that I
25 have not left anything out of these instructions.

1 Now, after I have checked with the attorneys, the bailiff
2 will bring in the items which have been introduced into
3 evidence along with the verdict form and instruct you to begin
4 your deliberations. Now, during your deliberations should you
5 have any questions, you, Mr. Foreman, must reduce them to
6 writing, knock on the door and let my bailiff know and he'll
7 get the question to me and I'll answer it however the Court
8 deems appropriate.

9 Once you have reached a verdict, please knock on the door
10 again and let the bailiff know that you all have reached a
11 unanimous verdict as to each charge and I will get you back
12 into the courtroom as quickly as possible.

13 You all may -- let me ask you this before I have you step
14 to the jury room. Does everybody feel okay on the jury?
15 Anybody not feeling well? All right. If you all will, step
16 to the jury room, but do not begin deliberations until you're
17 told to do so.

18 (Whereupon, the jury exits the courtroom at 2:49 p.m.)

19 THE COURT: While the jury is exiting the courtroom, can
20 the lawyers come up and look at the items of evidence and make
21 sure everything is there?

22 (Whereupon, there is a pause in the proceedings.)

23 THE COURT: All right. Hold on a second. Any exception
24 -- before we go any further, any exception or objection to the
25 charge by the State?

1 MR. CLEMENTS: No, Your Honor.

2 THE COURT: Mr. Deberry?

3 MR. DEBERRY: No, Your Honor.

4 MR. BAILEY: No, Your Honor.

5 THE COURT: Okay.

6 (Whereupon, there is a pause in the proceedings as the
7 evidence is checked by counsel and the alternate jurors
8 are released by the Court.)

9 THE COURT: Please take in the items of evidence, Mr.
10 Lewis, along with the verdict forms. Where are the verdict
11 forms? The verdict forms are over here. Take those items of
12 evidence in and tell them they can begin their deliberations,
13 please, sir.

14 (Whereupon, jury deliberations begin at 2:50 p.m.)

15 THE COURT: All right. We'll stand at ease. We'll stand
16 at ease.

17 (Whereupon, there is a break in the proceedings from 2:50
18 p.m. until 4:10 p.m.)

19 THE COURT: All right. It is my understanding that the
20 jury has reached a verdict on the charges. And I will remind
21 everybody in the courtroom to keep your emotions in check
22 whatever the verdict may be. Your failure to do so could
23 result in you being held in contempt of court and sentenced to
24 a period of incarceration. If you do not believe that you can
25 keep your emotions in check, now is your time to leave this

1 courtroom. Anything from the State before I bring the jury
2 out, Mr. Clements?

3 MR. CLEMENTS: No, Your Honor.

4 THE COURT: Mr. Deberry?

5 MR. DEBERRY: No, Your Honor.

6 THE COURT: Mr. Bailey?

7 MR. BAILEY: Nothing, Your Honor.

8 THE COURT: Bring me the jury, please.

9 (Whereupon, the jury enters the courtroom at 4:11 p.m.)

10 THE COURT: Madam Clerk?

11 THE CLERK: Ladies and gentlemen of the jury, have you
12 reached a verdict?

13 THE FOREMAN: We have.

14 THE CLERK: Thank you, sir.

15 (Whereupon, the verdict forms are delivered to the
16 Court.)

17 THE COURT: The verdicts appear to be in order. Madam
18 Clerk, you may --

19 THE CLERK: Thank you, Your Honor.

20 THE COURT: -- publish the verdicts. If the defendants
21 will stand for the verdicts.

22 VERDICTS OF THE JURY

23 THE CLERK: The State of South Carolina, County of
24 Marion, versus Shaheed Hayes. Verdict Form. Indictment
25 Number 2013-GS-33-0097.

1 As to the -- as to the charge of the murder of Christian
2 James Drawhorn, we, the jury, unanimously find the defendant,
3 Shaheed Hayes, guilty.

4 As to the charge of attempted murder of Derrick L. --
5 Derrick Lamont Wilson, we, the jury, unanimously find the
6 defendant, Shaheed Hayes, guilty.

7 As to the charge of attempted murder of Darrell Antonio
8 Davis, we, the jury, unanimously find the defendant, Shaheed
9 Hayes, guilty.

10 As to the charge of attempted murder of Gavin Graves, we,
11 the jury, unanimously find the defendant, Shaheed Hayes,
12 guilty.

13 As to the charge of attempted murder of Christopher
14 Kollock, we, the jury, unanimously find the defendant, Shaheed
15 Hayes, guilty.

16 Is this your verdict, say you one, say you all?

17 (Whereupon, the jury indicates in the affirmative.)

18 THE CLERK: Thank you.

19 MR. CLEMENTS: There's a second page.

20 THE CLERK: I'm sorry. As to the charge of discharging a
21 firearm into a dwelling, we, the jury, unanimously find the
22 defendant, Shaheed Hayes, guilty.

23 As to the charge of possession of a weapon during the
24 commission of a violent crime, we, the jury, unanimously find
25 the defendant, Shaheed Hayes, guilty.

1 Signed, James Michael Cullipher, Foreperson. Dated
2 8/8/2014.

3 Now, is this your verdict, say you one, say you all?

4 (Whereupon, the jury indicates in the affirmative.)

5 THE CLERK: State of South Carolina, County of Marion,
6 versus Blaton Smith. Indictment Number 2013-GS-33-0097.
7 Verdict Form.

8 As to the charge of the murder of Christian James
9 Drawhorn, we, the jury, unanimously find the defendant, Blaton
10 Smith, guilty.

11 As to the charge of the attempted murder of Derrick
12 Lamont Wilson, we, the jury, unanimously find the defendant,
13 Blaton Smith, guilty.

14 As to the charge of the attempted murder of Darrell
15 Antonio Davis, we, the jury, unanimously find the defendant,
16 Blaton Smith, guilty.

17 As to the charge of the attempted murder of Gavin Graves,
18 we, the jury, unanimously find the defendant, Blaton Smith,
19 guilty.

20 As to the charge of the attempted murder of Christopher
21 Kollock, we, the jury, unanimously find the defendant, Blaton
22 Smith, guilty.

23 As to the charge of discharging a firearm into a
24 dwelling, we, they jury, unanimously find the defendant,
25 Blaton Smith, guilty.

1 As to the charge of possession of a weapon during the
2 commission of a violent crime, we, the jury, unanimously find
3 the defendant, Blaton Smith, guilty.

4 Signed, James Michael Cullipher, Foreperson. Dated
5 8/8/2014.

6 THE COURT: Madam --

7 THE CLERK: Is this your verdict, say you one, say you
8 all?

9 THE COURT: Madam, let me see the verdict form? You said
10 -- as to the charge of discharging a firearm into a dwelling
11 the jury found him unanimously not guilty.

12 THE CLERK: I'm sorry.

13 THE COURT: Found him not guilty -- not guilty on that
14 charge. Okay. Now you can ask the question of them about the
15 verdict.

16 THE CLERK: Is this your verdict, say you one, say you
17 all as to Blaton Smith?

18 (Whereupon, the jury responds in the affirmative.)

19 THE CLERK: Thank you.

20 THE COURT: All right. All right. Anything from the
21 State at this time?

22 MR. CLEMENTS: Sir?

23 THE COURT: Anything from the State at this time?

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

25 THE COURT: Mr. Deberry?

1 MR. DEBERRY: Your Honor, can I ask that the jury be
2 polled?

3 THE COURT: All right. Madam Clerk, if you would, come
4 around to poll the jury, please.

5 THE CLERK: James Michael Cullipher, is this your verdict
6 on Blaton Smith and Shaheed Hayes? Was this your verdict and
7 is this still your verdict?

8 THE FOREMAN: What was the question again?

9 THE CLERK: Is this your verdict and is it still your
10 verdict?

11 THE FOREMAN: Yes, it is.

12 THE CLERK: Thank you.

13 THE CLERK: Diamond A. Brown.

14 THE COURT: You can be seated, Mr. Cullipher. Go ahead.

15 THE CLERK: Diamond A. Brown, was this your verdict and
16 is this still your verdict on both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. Janice M. Weeks, was this your
19 verdict and still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: On both defendants?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Thank you. Billy W. Coleman Jr., was this
24 your verdict and is this still your verdict?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: On both defendants?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Thank you. Takesa S. Owens, was this your
4 verdict and still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: On both defendants?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Thank you. Amy Thomas Stroud, was this your
9 verdict and still your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: On both defendants?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Thank you. Rosetta D. Brooks, was this your
14 verdict and still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: On both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. Rosa Ann Weaver, was this your
19 verdict and still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: On both defendants?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Thank you. Russell L. Rodes, was this your
24 verdict and still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: On both defendants?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Reginald Doyle Jr., was this your
4 verdict and still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: On both defendants?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Thank you. Pecolia Legette, was this your
9 verdict and still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: On both defendants?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Rachel Williams, was this your
14 verdict and still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: On both defendants?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you.

19 THE COURT: All right. Anything else from defense
20 counsel, Mr. Deberry, at this time?

21 MR. DEBERRY: No, Your Honor.

22 THE COURT: Mr. Bailey?

23 MR. BAILEY: Nothing.

24 THE COURT: All right. Mr. Solicitor, do you have
25 sentence sheets?

1 MR. CLEMENTS: Your Honor, I have to go downstairs and
2 get them.

3 THE COURT: All right. The defendants can be seated at
4 this time.

5 MR. CLEMENTS: I want to be sure I got it all straight.
6 It's guilty on everything but discharging a firearm by Mr.
7 Smith?

8 THE COURT: Correct. All right. Ladies and gentlemen of
9 the jury, you all have fulfilled your responsibilities this
10 week as jurors. Throughout the trial of this case I told you
11 that you -- I instructed you not to talk about the case -- not
12 to talk about the case. Now that the case is concluded, you
13 may talk about the case. However, you cannot be made to talk
14 about the case if you don't want to.

15 I tell you that to say this. If anybody approaches you
16 to talk about the case and you tell them you don't want to
17 talk about it and they don't leave you alone, you let the
18 Clerk's Office here know and we will handle it. Okay?

19 Now, you all have fulfilled, as I said, your
20 responsibilities as jurors this week. Carrying out your
21 responsibilities as jurors is not an easy task. It is not an
22 easy task. But I want to thank you for your service this
23 week. Your service as jurors is invaluable. It is
24 invaluable.

25 You all having carried out your responsibilities as

1 jurors, what will take place now is sentencing. Sentencing
2 will be carried out by the Court. That will be my
3 responsibility. You all are free to stay if you so desire to
4 watch or to observe, but if you do not want to, you can leave
5 as well. Now is your time to leave if you so desire to leave.

6 The solicitor has gone downstairs to get sentence sheets
7 as to each of the charges that these defendants were convicted
8 on. That may take a -- I don't know how long that may take.
9 It may take a few minutes to do that. If you want to stay,
10 you may certainly stay, but you don't have to.

11 So at this time I will give you an opportunity to leave
12 if you so desire. Okay? If you all want to stay -- if you
13 want to leave, go ahead and leave. If you want to stay, you
14 can step into the jury room and I'll bring you back out here
15 when I get ready to sentence.

16 (Whereupon, the jury is released and exits the courtroom
17 at 4:20 p.m.)

18 THE COURT: Make sure, deputies, that they get safely to
19 their cars and are out of here. Everybody else remain in this
20 courtroom while this jury exits the courtroom.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: All right. While the solicitor is retrieving
23 the sentence sheets, I'm going to step down for just a minute.

24 (Whereupon, there is a pause in the proceedings.)

25 THE COURT: All right. Mr. Clements has provided me with

1 sentence sheets as it relates to Mr. Blaton Wakeem Smith and
2 Mr. Shaheed Hayes. Before I turn it over to defense counsel
3 to hear from them, I am going to hear from Mr. Clements along
4 with any comments from the victims. Mr. Clements, you're so
5 recognized.

6 MR. CLEMENTS: Thank you, Your Honor, if it please the
7 Court. In regards to Mr. Blaton Smith, AKA Nukie, he has a
8 conviction for carrying weapons on school property. He has an
9 armed robbery that was reduced down to a common law strong-
10 armed robbery, which he did a sentence of 13 months with
11 probation for 18 months, and it was five years suspended to
12 that, Your Honor.

13 He has a conviction for manufacture and possession of
14 other substances in Schedule I, II, or III with intent to
15 distribute, first offense. He got 30 months upon service of
16 two days, two years' probation. He also had an assault and
17 battery by a mob with bodily injury, third degree, which I do
18 not have a disposition on from March of 2012.

19 Your Honor, we met in the preparation for this case with
20 Investigator Gary Street from the Solicitor's Office and
21 myself and met with a lot of members of law enforcement of
22 Latta, Dillon County, Marion County, SLED, and an assistant
23 U.S. attorney and agents with Alcohol, Tobacco and Firearms,
24 and Chief Kristal Moore of Latta was going to be very happy if
25 we were able to get a conviction in this case. She's had lots

1 and lots of problems emanating from Adrian "Duke" Smith, who
2 we believe is the head of this situation, and these gentlemen
3 that did a lot of his bidding. And that bled over from Dillon
4 County into Marion County and thankfully we were able to try
5 this case in Marion County.

6 THE COURT: All right.

7 MR. CLEMENTS: The victims would wish -- some of them I
8 believe wish to speak at the appropriate time, Your Honor.

9 THE COURT: Well, before that, give me -- what about Mr.
10 Hayes' record?

11 MR. CLEMENTS: All right, Your Honor. I apologize. I
12 was trying to take them one at a time.

13 Your Honor, Mr. Hayes has got convictions. In 2008, he
14 had an armed robbery, which he got a common law strong-armed
15 robbery conviction under the Youthful Offender Act not to
16 exceed six years. And in 2010, he had assault -- simple
17 assault and battery, three counts, conviction, and a malicious
18 injury to personal property conviction. He had other charges
19 in 2011 regarding armed robbery and firearms, which there is
20 no convictions on. And also January 2012, a pointing and
21 presenting a firearm and discharging a firearm into a dwelling
22 where there's no conviction on those, Your Honor.

23 I think he has charges pending in Dillon County. I'm not
24 sure what they are, but I know that he has pending charges in
25 Dillon County.

1 THE COURT: All right. All right. Now, anything else
2 concerning either one of the defendants before I hear from the
3 family members or victims?

4 MR. CLEMENTS: Your Honor, there's no need for me to
5 recite any of the facts. You heard everything under oath that
6 we presented. These are dangerous individuals, Your Honor,
7 and I wish that you would consider a maximum sentence under
8 the statute.

9 THE COURT: All right. Thank you, Mr. Clements. All
10 right. Ms. Vicky, I'll be happy to hear from any of the
11 victims. If they wish to speak, please make sure you direct
12 any comments to the Court -- to the Court.

13 MR. CLEMENTS: Your Honor, Ms. Drawhorn told me she
14 didn't wish to speak. She wanted me to thank everybody for
15 all their hard work and she's very relieved that this day has
16 reached us.

17 THE COURT: Okay.

18 MR. DERRICK WILSON: I just want to say thank you --

19 THE COURT: State -- state -- tell me your name. I know
20 who you are, but to make the record clear, please state your
21 name again for the record.

22 MR. DERRICK WILSON: My name is Derrick Wilson. I just
23 want to thank you for justice being served for my friends.

24 THE COURT: Yes, sir? Tell me your name again for the
25 record.

1 MR. GAVIN GRAVES: Gavin Graves. I want to thank
2 everybody for working with this case and I ask for the respect
3 for Chris Drawhorn for the maximum sentence you can give them.

4 THE COURT: All right. Anything else? All right. Mr.
5 Deberry, I'd be happy to hear from you at this time.

6 MR. DEBERRY: Thank you, Your Honor. We heard the
7 verdict and understand the verdict and we respect the verdict.
8 We do take exception to the verdict obviously, Your Honor. We
9 think, you know, that it could have gone either way and that's
10 always a risk that you take when you decide to go for a jury
11 trial.

12 Judge, I think given the State's theory on the case and
13 that there is absolutely a player involved here that's not
14 been charged and still -- that still remains free today and
15 given, you know, all the State's case and their theory, I
16 believe that he's probably more -- more culpable than anybody
17 in the entire situation, Your Honor.

18 You know, given all that I said and the facts that are in
19 the record before you, I just ask, you know, that you consider
20 a 30-year sentence and that everything run concurrent.

21 THE COURT: All right. Mr. Bailey -- well, before I hear
22 from you, Mr. Bailey, does your client wish to say anything?
23 He doesn't have to and I don't want him to say anything that
24 may affect his appellate rights, but I'll certainly give him
25 an opportunity. If you wish to say anything, Mr. Hayes,

1 please direct any comments to the Court.

2 THE DEFENDANT HAYES: I ask that you show a little mercy
3 and sympathy. Thank you.

4 THE COURT: All right. Thank you, sir. All right. Mr.
5 Bailey, I'd be happy to hear from you, sir.

6 MR. BAILEY: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. BAILEY: Your Honor, regarding these circumstances
10 that brought us here today, I would incorporate Mr. Deberry's
11 comments regarding that. My client is young, 22 years today.
12 He has had family with him in court. On behalf of Mr. Smith,
13 we would ask that you take his age in consideration, along
14 with his family, and incorporate a sentence in this Court's
15 order in the amount of 30 years with all charges to be run
16 concurrently.

17 THE COURT: All right. Thank you, Mr. Bailey.

18 MR. BAILEY: And that -- and, Your Honor, my client -- he
19 does want to address the Court.

20 THE COURT: I'll be happy to hear from you, Mr. Smith.

21 THE DEFENDANT SMITH: Sir, like Ed Clements said, you
22 heard there are things that they really don't have no facts
23 against me and I ask that you just be lenient on your
24 sentencing. And I have a family back there that I really love
25 and want to get back to and I ask that you just be lenient on

1 the sentence.

2 THE COURT: Thank you. Let me give -- the victim's
3 family certainly had an opportunity to speak. Anybody here on
4 behalf of Mr. Hayes' family that wishes to speak, Mr. Deberry?

5 MR. DEBERRY: No, Your Honor.

6 THE COURT: All right. Anybody here on behalf of Mr.
7 Smith that wishes to speak?

8 MR. BAILEY: It will be his mother, Your Honor.

9 THE COURT: All right. She can stand right there. Tell
10 me your name for the record, please. You're good. Tell me
11 your name for the record.

12 MS. JEANNIE SMITH: My name is Jeannie Smith. Blaton is
13 my youngest son.

14 THE COURT: All right. Tell me your name -- I'll be
15 happy to hear from you. I'm sorry.

16 MR. JEANNIE SMITH: On behalf of the Drawhorn family,
17 that's also as part of my family also, I would like to say I'm
18 sorry for your loss, and the fact that I've been with this
19 case for the whole time and I didn't understand a lot of
20 things. This was my first time coming to trial with anyone,
21 the first time ever being in a courtroom like this. So I wish
22 that everyone that was involved will show a little bit of
23 mercy towards my son and Shaheed, since I do know him as well.

24 THE COURT: All right. Thank you, ma'am.

25 (Whereupon, there is a pause in the proceedings.)

1 THE COURT: All right. Anything else from the State?

2 MR. CLEMENTS: Your Honor, the only thing I can say is
3 that one thing Mr. Deberry said I agree with -- there's
4 somebody else that's very culpable. Unfortunately, they're
5 not in my jurisdiction and we're -- that's why we've called
6 the federal authorities who are going to pursue that at a
7 later date, Your Honor, but other than that I don't have
8 anything else to say.

9 THE COURT: All right. Well, it's very unfortunate what
10 brings everybody who is in this courtroom today and it's
11 tragic what I see from the position that I hold week in and
12 week out. The terrible decisions people make bring them into
13 this courtroom.

14 I listened to this case over the last two-and-a-half days
15 and it's just -- it's a tragedy for everybody involved, for
16 the loss of your son to what these young men face here today.
17 Unfortunately, nobody wins. Nobody wins.

18 Each decision we make has a consequence, some greater
19 than others. Listening to the records of Mr. Smith and Mr.
20 Hayes indicates they're no stranger to the -- the criminal
21 justice system, even at their young age. The criminal justice
22 system tries to -- and our rules of evidence are put into
23 place to believe that people can -- can change and get on the
24 right path if they so desire. That's why you have probation.
25 That's why you have pre-trial intervention.

1 And as my grandfather used to tell me when I was a child,
2 everybody makes mistakes. It's whether or not you learn from
3 those mistakes. Unfortunately, the mistake involved here cost
4 somebody their life. It could have cost more lives.
5 Thankfully, it didn't cost more lives.

6	SENTENCE BY THE COURT

7 THE COURT: On Indictment 2013-GS-33-97, possession of a
8 weapon during the commission of a violent crime, each of the
9 defendants are hereby committed to the State Department of
10 Corrections for a period of five years.

11 As to each -- as to -- excuse me. As to Mr. Hayes,
12 discharging a firearm into a dwelling, the defendant is hereby
13 committed to the State Department of Corrections for a period
14 of ten years.

15 As to Defendant Hayes and Defendant Smith on the four
16 counts of attempted murder, each of the defendants are hereby
17 committed to the State Department of Corrections as to each
18 count of attempted murder for 30 years.

19 On the final charge of murder, each of the defendants are
20 hereby committed to the State Department of Corrections for
21 the balance of their natural life.

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22      Each of these sentences are to run consecutive.
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23	Anything else from the State?

24 MR. CLEMENTS: No, Your Honor.

25 THE COURT: Mr. Deberry?

1 MR. DEBERRY: No, Your Honor.

2 THE COURT: Mr. Bailey?

3 MR. BAILEY: Nothing, Your Honor.

4 THE COURT: Thank you. That will conclude the trial.

5 Please make sure that the victims and victims' family get out
6 of here safely.

7 (Whereupon, the proceedings end at 4:56 p.m.)

8

9 --- END REQUESTED TRANSCRIPT ---

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1	STATE OF SOUTH CAROLINA	)	
2		)	CERTIFICATE
3	COUNTY OF FLORENCE	)	

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 709 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Marion County, South Carolina, on the 6th
13 through 8th days of August, 2014.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 S/ Krystal J. Smith

18	Court Reporter

20	Florence, South Carolina

21	January 3, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BLATON WAKEEM SMITH,

APPELLANT

APPELLATE CASE NO. 2014-001769

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases

<u>Chambers v. Mississippi</u> , 410 U.S. 284 (1973)	8
<u>State v. Gillian</u> , 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004).....	8, 9
<u>State v. Hill</u> , 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011)	9
<u>State v. Stokes</u> , 381 S.C. 390, 673 S.E.2d 434 (2009)	9
<u>United States v. Partin</u> , 593 F.2d 750 (5 th Cir. 1974)	9
<u>Walden v. Department of Transp.</u> , 27 P.3d 297 (Alaska 2001).....	9

Other Authorities

U.S. Const. amend VI	8, 9
<u>Wigmore on Evidence: Impeachment and Rehabilitation</u>	9

Rules

Rule 608, SCORE	8

STATEMENT OF ISSUE ON APPEAL

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, whether the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana?

STATEMENT OF THE CASE

On January 31, 2013, a Marion County grand jury indicted appellant for murder, discharging a firearm into a dwelling, a weapons charge, and four counts of attempted murder. R. 622 – 623. Three others were charged in the same indictment. R. 622. On August 6, 2014, appellant was tried before the Honorable D. Craig Brown and a jury. R. 1. Appellant was tried with his co-defendant, Shaheed Hayes. R. 1. Ed Clements represented the State. R. 1. Steven DeBerry represented Shaheed Hayes. R. 1. Joshua Bailey represented appellant. R. 1. Shaheed Hayes was convicted of all charges. R. 617, l. 22 – 619, l. 4. Appellant was acquitted of discharging a firearm into a dwelling, but convicted of the remaining charges. R. 619, l. 5 – 620, l. 18. Judge Brown sentenced appellant to four terms of thirty years' imprisonment for attempted murder and life imprisonment for murder. R. 621, ll. 15 – 21. Judge Brown imposed each of these sentences consecutively. R. 621, l. 22. This appeal follows.

ARGUMENT

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana.

Relevant Facts

On the night of April 12, 2012, police responded to a shooting call at a trailer in Marion County. R. 28, ll. 13 – 20. The first officer on the scene saw “a bunch of bullet holes in the trailer” and shell casings on the highway. R. 30, ll. 6 – 18. Five to seven people were at the scene. R. 76, ll. 9 – 11. The officers did not make a record of the people at the scene. R. 35, ll. 14 – 20. One man, Christian Drawhorn a/k/a “Murder” (“Drawhorn”), suffered one wound to his arm and a fatal gunshot wound to his torso. R. 279, l. 23 – 280, l. 18. R. 29, ll. 10 – 17. R. 314, ll. 3 – 7. Drawhorn was the only person injured.

The trailer where the shooting took place was used for illegal gambling and selling drugs. R. 286, ll. 17 – 20. The trailer belonged to Gavin Graves (“Graves”). R. 285, ll. 10 – 12. It was located on a major highway, Highway 501. R. 285, ll. 1 – 2. A total of five men were in the trailer. R. 285, ll. 22 – 24. They were playing cards, smoking marijuana, drinking alcohol, and selling drugs. R. 292, ll. 12 – 19. R. 308, l. 17 – 21. Graves recalled two or three people coming by that night to buy drugs. R. 308, ll. 17 – 21. When the police searched the trailer after the shooting, they found crack cocaine and marijuana. R. 301, ll. 8 – 19.

Shortly after midnight, the men in the trailer heard a soft knock at the door. R. 292, ll. 20 – 24. When they looked out the door, no one was there. R. 293, ll. 1 – 10. About three minutes later, the trailer was riddled with bullets. R. 293, ll. 1 – 10. None of the men left the trailer until after the shooting had stopped and could not identify any person or vehicle involved in the shooting.

Appellant Blaton Smith (“Smith”) denied having anything to do with the shooting. R. 222, ll. 10 – 12. Smith voluntarily went to the police office and gave a statement. R. 223, l. 5 – 224, l. 6. The police admitted they had no physical evidence linking Smith to the shooting. R. 231, l. 24 – 232, l. 3.

The State’s entire case rested on the testimony of two co-defendants. The first to testify was Jaime Williams, a/k/a “Lil Boosie” (“Williams”). R. 393, l. 20 – 394, l. 1. Williams was also charged with murder and four counts of attempted murder. R. 419, ll. 14 – 18. Williams denied hoping for a deal from the State. R. 420, ll. 6 – 9. Williams’ trial was originally scheduled prior to appellant’s trial. R. 421, ll. 13 – 23. Williams admitted that he changed his story the week before appellant’s trial. R. 421, ll. 9 – 23. Williams claimed he only changed his story because he wanted “to tell the truth about it.” R. 421, ll. 22 – 23.

Williams claimed at trial that he lied to police in his original statement. R. 421, ll. 2 – 6. In his original statement, Williams claimed that Willie Bethea (“Bethea”) was driving a car containing Williams, Smith, and Shaheed Hayes (“Hayes”). R. 420, l. 20 – 423, l. 21. Smith and Hayes were in the back seat in this version. R. 421, ll. 2 – 4. Smith shot at the trailer in this version. R. 411, ll. 14 – 16.

In the version Williams gave the jury at trial, Smith was driving with Bethea in the front seat, Williams sitting behind Smith and Hayes sitting behind Bethea. R. 397, l. 18 – 399, l. 11. They were traveling from Latta down Highway 501 toward Marion. R. 418, ll. 1 – 6. The trailer was on their right. R. 418, ll. 4 – 6. Hayes saw a truck belonging to Derrick Wilson a/k/a “Eyebrows” (“Wilson”). R. 286, ll. 2 – 3. R. 400, ll. 23 – 25. They turned around and slowed down in front of the trailer. R. 402, ll. 2 – 13. Williams, Hayes, and Bethea all shot into the house from their car. R. 402, l. 14 – 404, l. 19.

Interestingly, Williams claimed he fired from over the top of the car. R. 404, ll. 18 – 19. He claimed he was sitting behind the driver. R. 397, l. 18 – 399, l. 11. With the trailer on the right as they traveled from Latta, this firing position would have made sense. But given Williams’ testimony that they turned around, Williams, had he been telling the truth, could have just fired directly from his window. When cross-examined on this point, Williams became frustrated and said, “Man, look, man, I was shooting over the top of the car.” R. 423, ll. 11 – 14. When defense counsel continued to press Williams, Williams responded, “Man, we came – I don’t know highways that good. I ain’t going lie to you, but I know what I did and I’m admitting to what I did.” R. 423, ll. 15 – 18.

In Bethea’s version, the men drove straight to the trailer and opened fire. R. 465, l. 1 – 468, l. 21. The men were “riding down the road and we stopped in front of the trailer.” R. 466, ll. 2 – 3. Smith was driving. R. 466, ll. 18 – 19. At no point did Bethea mention seeing Wilson’s car and turning around to go back to the trailer. R. 493, ll. 3 – 5. Bethea claimed he did no shooting he did not shoot at the trailer. R. 470, ll. 20 – 23.

Bethea admitted he knew that he was facing the possibility of life in prison. R. 488, ll. 18 – 20.

Bethea gave a statement to police the same day he was arrested. R. 484, ll. 10 – 22. On prompting from the solicitor, he claimed he told the police the same story when he was arrested that he told the jury. R. 484, ll. 20 – 22. During cross-examination, Bethea admitted he was a schizophrenic and had been institutionalized in a mental hospital. R. 511, l. 13 – 512, l. 11. The State objected to this line of questioning on relevance grounds. R. 513, ll. 2 – 3. The trial judge sent the jury out of the courtroom. R. 513, l. 24.

Smith proffered that during Bethea's psychiatric evaluation, he told the physician that he smoked marijuana thirty minutes before he was arrested. R. 516, ll. 8 – 11. Bethea made statements to doctors in the past that he had visual hallucinations when smoked marijuana and became delusional. R. 516, ll. 2 – 3. R. 517, ll. 3 – 5. The trial judge refused to allow this cross-examination. R. 517, ll. 18 – 22.

Discussion

The refusal to allow impeachment of Bethea that he smoked marijuana and was possibly delusional when he gave his version of events to police was error that requires reversal. The impeachment would have related to Bethea's capacity, bias, and credibility. Rule 608, SCORE.

The Sixth Amendment guarantees the right to fully cross-examine adverse witnesses. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004). The right to confront and cross-examine witnesses are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973). The right of cross-examination is implicit in the

constitutional right of confrontation. Id. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination. State v. Gillian, supra. The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross-examination. State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011); State v. Stokes, 381 S.C. 390, 400-01, 673 S.E.2d 434, 439 (2009).

Witnesses may be impeached regarding their ability to perceive events and recall them accurately. See Wigmore on Evidence: Impeachment and Rehabilitation, § 8.1. "Evidence of a witness's psychiatric condition is admissible if the witness suffered from some mental aberration rendering his observation and memory . . . unreliable." Walden v. Department of Transp., 27 P.3d 297, 307 (Alaska 2001) (internal quotations omitted). In Walden, the witness suffered from bipolar disorder and took lithium. Id. at n. 32. The court ruled that evidence regarding the effect of the witness's mental disorders on his perception and memory was admissible and could be used for impeachment. Id. at 307.

"In simple language, the defendant has the right to explore every facet of relevant evidence pertaining to the credibility of those who testify against him." United States v. Partin, 593 F.2d 750, 763 (5th Cir. 1974). In Partin, the jury was entitled to know that the witness had been committed to a mental hospital and suffered from auditory hallucinations. Id. at 764. Similarly, here the jury had a right to know that Bethea was high on drugs and suffered from delusions and hallucinations when he locked himself into a statement that implicated appellant.

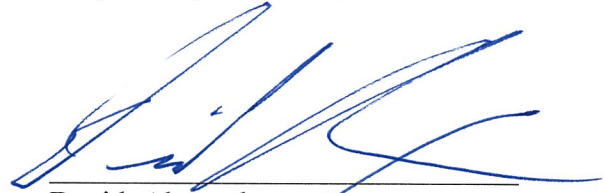
Bethea was the State's key witness at trial. Unlike Williams, Bethea did not give conflicting statements. Bethea could not be impeached like Williams with a version of the shooting that was internally inconsistent. Williams' version had the car facing the

wrong direction with Williams was shooting over the top of the car. Bethea's version contained no such inherent inconsistency and therefore the impeachment that Bethea suffered from delusions was important to attack a statement that otherwise seemed coherent. If Bethea was delusional when he gave his first statement, he had an incentive to stick to his original statement to curry favor with the State. Appellant should have been allowed to cross-examine Bethea to show problems with his capacity, credibility, and bias.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

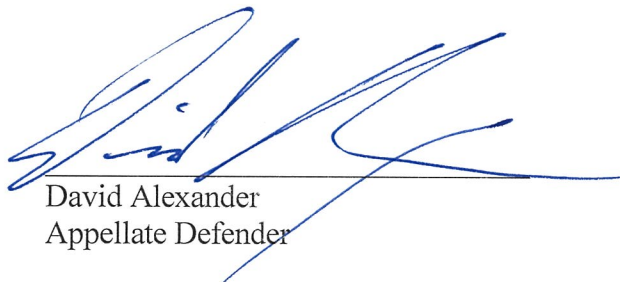
ATTORNEY FOR APPELLANT

This 1st day of December, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 1, 2015



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BLATON WAKEEM SMITH,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of December, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of December, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

Respondent,

V.

BLATON WAKEEM SMITH,

Appellant

Appellate Case No. 2014-1769

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
APPELLANT’S STATEMENT OF ISSUE ON APPEAL.....	1
RESPONDENT’S COUNTER STATEMENT OF ISSUE ON APPEAL.....	1
RESPONDENT’S STATEMENT OF THE CASE.....	2
RESPONDENT’S STATEMENT OF THE FACTS.....	3
ARGUMENT	
Appellant’s issue is not preserved because he did not proffer the testimony he believes the trial court erroneously excluded.....	7
The trial court did not err in prohibiting Appellant from questioning a fact witness about his mental health history, including an alleged statement to a psychiatrist about drug use two weeks after the crime shortly before his arrest where that information was not relevant or, if it was relevant, it was only marginally so and would have confused the issues.	8
Introduction.....	8
How the Issue Was Raised at Trial	8
Standard of Review	11
Analysis.....	11
This Issue Is Not Preserved.....	11
The Evidence Was Not Relevant.	13
If Relevant, the Evidence Was Properly Excluded Under Rule 403, SCRE. .	18
Appellant Was Not Prejudiced.....	18
Any Error Was Harmless.	19
CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases

<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	20
<i>State v. Aleksey</i> , 343 S.C. 20, 538 S.E.2d 248 (2000)	11
<i>State v. Gaster</i> , 349 S.C. 545, 564 S.E.2d 87 (2002).....	11
<i>State v. Gracely</i> , 399 S.C. 363, 731 S.E.2d 880 (2012).....	20
<i>State v. Jackson</i> , 384 S.C. 29	12
<i>State v. Jenkins</i> , 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996).....	12, 13
<i>State v. Morris</i> , 376 S.C. 189, 656 S.E.2d 359 (2008)	11
<i>State v. Roper</i> , 274 S.C. 14, 260 S.E.2d 705 (1979).....	12
<i>State v. Schmidt</i> , 288 S.C. 301, 342 S.E.2d 401 (1986).....	12
<i>State v. Starnes</i> , 340 S.C. 312	12
<i>State v. Stokes</i> , 381 S.C. 390, 673 S.E.2d 434 (2009)	20
<i>State v. Turner</i> , 373 S.C. 121, 644 S.E.2d 693 (2007)	17, 18
<i>United States v. Barnes</i> , 480 F. App'x 231 (4th Cir. 2012).....	15
<i>United States v. Lopez</i> , 611 F.2d 44 (4th Cir. 1979).....	15, 16
<i>United States v. Owens</i> , 484 U.S. 554 (1988).....	20

Statutes

U.S. Const. amend. VI	11

Rules

Rule 401, SCORE	14

Rule 403, SCRE..... i, 8, 18, 19

Rule 613, SCRE..... 16

Other Authorities

22 Wright & Graham, Federal Practice & Procedure § 5215 16

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, whether the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in limiting Appellant's cross-examination of a fact witness where Appellant failed to proffer the cross-examination testimony and where the court found the evidence was not relevant based on the information presented by Appellant.

RESPONDENT'S STATEMENT OF THE CASE

A Marion County Grand Jury indicted Appellant, Blaton Wakeem Smith, in February 2013 for the murder of Christian James Drawhorn (Victim), as well as for discharging a firearm into a dwelling, for possession of a weapon during the commission of a violent crime, and for four counts of attempted murder. (Indictment Number 2013-GS-33-00097).

On August 6, 2014, Appellant's case was called to trial before the Honorable D. Craig Brown. (R.p. 1, Tr. p. 1). Appellant was represented by Joshua Bailey, Esq. during the three-day trial. (R.p. 1, Tr. p. 1). Appellant was tried along with his co-defendant, Shaheed Hayes, who was represented by Steven DeBerry Esq. (R.p. 1, Tr. p. 1). Solicitor Ed Clements represented the State. (R.p. 1, Tr. p. 1). As to Appellant, the jury returned verdicts of guilty on all counts as charged, except that they found him not guilty of discharging a firearm into a dwelling. (R. 619-20, Tr. p. 694, line 5–p. 695, line 18). The jury returned verdicts of guilty on all counts as charged for Hayes. (R. 617-19, Tr. p. 692, line 22–p. 694, line 4). Judge Brown sentenced Appellant to life imprisonment for murder, to thirty years imprisonment for each count of attempted murder. (R. 621, Tr. p. 708, lines 21.) Judge Brown set the sentences to run consecutively. (R. 621, Tr. p. 708, line 22).

Thereafter, Appellant served a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF THE FACTS

On the night of April 12, 2012, Gavin Graves,¹ Victim,² Derrick Wilson,³ Christopher Kollock,⁴ and Darrell Davis⁵ were sitting in a home off of North Highway 501 in Marion County. (R. 284-86, Tr. p. 359, line 2–p. 361, line 13). The home belonged to Graves, but Wilson lived there, too. (R. 281-82, 353, Tr. p. 360, line 1–p. 362, line 10; Tr. p. 428, lines 11–21). The group had started the evening playing cards, but then they hooked Graves's computer up to his television to browse Facebook. (R. 287, Tr. p. 362, lines 11–20). They were also drinking beer and smoking marijuana. (R. 292, Tr. p. 367, lines 12–19). A little after midnight they thought they heard a knock at the back door. (R. 287-93, 357-60, Tr. p. 362, line 11–p. 368, line 5; Tr. p. 432, line 10–p. 435, line 8). Davis got up to check, but there was no one there. (R. 293, Tr. p. 368, lines 1–7).

About three minutes later, a number of bullets were fired into the home from somewhere outside. (R. 293-94, Tr. p. 368, line 1–p. 369, line 15). According to Graves, “[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop.” (R. 294, Tr. p. 369, lines 11–13). Inside the trailer, “[t]he sheetrock was busting up. It was smoky. The cabinets [were] opening up. Glass that was sitting out that the bullet must have went through. You could hear the glasses breaking.” (R. 293, Tr. p. 368, lines 20–22). Wilson testified that “it sounded like at least 20–25” gunshots, but there might have been more. (R. 363, Tr. p. 438, lines 16–22). When the gunfire stopped, the men realized that Victim had been hit. (R. 294-95, 364-65, Tr. p. 369, line

¹ Also known as “Bullet” or “G.” (R. 355, Tr. p. 430, lines 16–19).

² Also called “C-Murder” because his favorite rapper was C-Murder Master P. (R. 355-56, Tr. p. 430, line 24–p. 431, line 6).

³ Also known as “Eyebrows.” (R. 356, Tr. p. 431, lines 7–13).

⁴ Also known as “O.J.” or “Juice Man.” (R. 355, Tr. p. 430, lines 20–23).

⁵ Also called “Goo Baby.” (R. 355, Tr. p. 430, lines 12–15).

16–p. 370, line 7; Tr. p. 439, line 13–p. 440, line 7). They immediately called 9-1-1 and then tried to care for Victim, who was gasping for breath. (R. 295-97, 365-66, Tr. p. 370, line 1–p. 372, line 5; Tr. p. 440, line 8–p. 441, line 18). They took Victim outside because he said he was hot, and then the group waited for emergency responders to arrive. (R. 295-97, 366-67, Tr. p. 370, line 8–p. 372, line 19; Tr. p. 441, line 13–p. 442, line 17). EMS came and took Victim away, but he later died from a gunshot wound. (R. 279-82, 297-98, Tr. p. 354, line 23–p. 357, line 15; Tr. p. 372, line 14–p. 373, line 14). The other men stayed at the house and talked to police officers who had arrived to investigate the shooting. (R. 369-70, Tr. p. 444, line 8–p. 445, line 11).

The police were unable to recover any physical evidence from the scene that pointed to any particular suspects. However, Wilson provided the officers with information that helped them to develop potential suspects. Wilson told police that Victim had never had any problems with “the Smith boys” or anybody that Wilson knew of. (R. 371-72, Tr. p. 446, line 23–p. 447, line 6). Wilson, on the other hand, had had problems with Adrian Smith, Appellant’s cousin, and he told police about that. (R. 372, Tr. p. 447, lines 7–11). Detectives Charlie Watson and Martin Bell with the Marion County Sheriff’s Department followed up on those leads. (R. 149-156, Tr. p. 224, line 17–p. 231, line 18). The detectives contacted Appellant’s mother, and she brought him to Marion County for an interview with police, but Appellant was uncooperative. (R. 153, Tr. p. 228, lines 2–15).

Through their investigation, Detectives Watson and Bell also learned that a man named Willie Bethea⁶ may have been involved in the shooting. (R. 152, Tr. p. 227, lines 4–11). Bethea also met with police, and he admitted his involvement in the shooting. (R. 153-55, Tr. p.

⁶ Also called “Boo Boo.” (R. 456, Tr. p. 531, lines 11–14).

228, line 16–p. 230, line 17). As a result of their conversation with Bethea, the police arrested Appellant, Shaheed Hayes, Willie Bethea, and Jamie Williams.⁷ (R. 154-55, Tr. p. 229, line 6–p. 230, line 25). Adrian Smith was not arrested because he was out of their jurisdiction, and police could not pinpoint anything that Adrian Smith had done in Marion County. (R. 156, Tr. p. 231, lines 1–18).

At trial both Jamie Williams and Willie Bethea testified about what happened the night of the shooting. Williams testified that Appellant, Hayes, and Bethea picked him up from his home on April 12, 2012. (R. 397-99, Tr. p. 472, line 7–p. 474, line 17). Appellant was driving Adrian Smith's car, and Bethea was in the front passenger seat. (R. 397-99, Tr. p. 472, line 20–p. 474, line 1). Hayes was sitting in the back seat on the passenger's side, and Williams took the seat beside him on the driver's side. (R. 399, Tr. p. 474, lines 2–13). According to Williams, they drove past a home on Highway 501, and Hayes saw Wilson's SUV parked out back. (R. 399-402, Tr. p. 474, line 18–p. 477, line 7). Appellant turned around and slowly drove back by the home⁸ while Hayes and Williams shot at the house. (R. 402-05, Tr. p. 477, line 2–p. 480, line 25). Williams testified that Appellant told him to shoot. (R. 405, Tr. p. 480, lines 16–21). Hayes was shooting directly out of the rear, passenger window, and Williams had to hang out of the car and shoot over the top of the car. (R. 404, Tr. p. 479, lines 3–22). Williams testified that he only shot three to five bullets because he "froze up." (R. 404-05, Tr. p. 479, line 23–p. 480, line 7), but Hayes emptied a clip into the home. (R. 405, Tr. p. 480, lines 8–15). They then

⁷ Also known as "Lil Boosie." (R. 155, 393-94, Tr. p. 230, lines 20–25; Tr. p. 468, line 20–p. 469, line 2).

⁸ Williams was very unsure of the roads in that area. At the time of the shooting, he did not even know they were on Highway 501, but he found out that information afterwards. (R. 399-400, Tr. p. 474, line 18–p. 475, line 1). Williams testified that before the shooting began "we turned around, I don't know how it happened. Like, I don't know the roads or nothing like that. We turned back around and slowed down." (R. 402, Tr. p. 477, lines 8–11).

drove back to Latta where Appellant stopped at a house and took the guns inside while the others waited in the car. (R. 405-07, Tr. p. 480, line 22–p. 482, line 9). After that, they dropped off Williams back at his house. (R. 407-08, Tr. p. 482, line 19–p. 483, line 4).

Two days after the shooting, Williams received a call from Appellant, who told him that someone had died and warned him that he better not say anything. (R. 408, Tr. p. 483, lines 5–20). Williams went to Adrian Smith's house later that day. (R. 408, Tr. p. 483, lines 21–24). Williams testified that "they were kind of mad that they hit the wrong person" (R. 08-09, Tr. p. 483, line 25–p. 484, line 2). According to Williams, "Eyebrows" was the person who was supposed to have gotten hit—"they wanted him dead." (R. 409, 414, Tr. p. 484, lines 3–8; Tr. p. 489, lines 1–8). Williams did not know Wilson (Eyebrows). (R. 415, Tr. p. 490, lines 9–19). Williams testified that he was scared of Adrian Smith because though Adrian Smith is a paraplegic, "[h]e got people too." (R. 409-10, Tr. p. 484, line 20–p. 485, line 5).

Williams testified that when he first spoke with police, he lied and said that Appellant and Hayes were the shooters, but he later admitted that he was one of the shooters and that Appellant was driving the car instead. (R. 410-12, Tr. p. 485, line 20–p. 487, line 21).

Bethea's testimony regarding the shooting was largely consistent with Williams's. Bethea testified that he and Appellant were cousins. (R. 456, Tr. p. 531, lines 15–25). He also identified Hayes as "[o]ne of my people from Latta." (R. 457, Tr. p. 532, lines 1–13). Bethea testified that he and Appellant were together all day on April 12, 2012. (R. 460-61, Tr. p. 535, line 10–p. 536, line 18). They picked up Williams and Hayes later that evening. (R. 461-63, Tr. p. 536, line 16–p. 538, line 10). Bethea believed they were going to a club in Latta on Old Ebenezer Road, which is not far from Highway 501. (R. 463, Tr. p. 538, lines 11–24). But they passed that club, so he assumed they were headed to Fusion in Marion. (R. 465, Tr. p. 540, lines

4–17). Appellant, who was driving, then stopped in front of a trailer that Bethea identified as “Eyebrows’ trailer.” (R. 465-66, Tr. p. 540, line 25–p. 541, line 8). Appellant said, ““This is the house right here. That’s the car in the back.”” (R. 466, Tr. p. 541, lines 9–14). Hayes and Williams then started shooting. (R. 468-72, Tr. p. 543, line 19–p. 547, line 3). After they finished, Hayes said he hoped he hit somebody in the house. (R. 472, Tr. p. 547, lines 5–10). They then drove back to Latta, and Appellant dropped the guns off at “Karen[’s] house.” (R. 472-75, Tr. p. 547, line 11–p. 550, line 6).

According to Bethea, afterwards, “[w]e just said don’t say nothing about it and just keep your mouth closed.” (R. 475-76, Tr. p. 550, line 25–p. 551, line 3). Appellant later told Bethea, ““Keep your cool”” and advised him not to say anything about what had happened. (R. 477-78, Tr. p. 552, line 7–p. 553, line 5). Bethea learned that Victim had been killed in the shooting. (R. 478, Tr. p. 553, lines 9–25). Bethea testified that it was Wilson, not Victim, who was the intended target of the shooting because Wilson and Appellant had bad blood. (R. 479, Tr. p. 554, lines 1–15). Bethea left town because he was “worried something crazy was going to happen. That somebody was going to get shot or something.” (R. 479-80, Tr. p. 554, line 16–p. 555, line 20). When asked if he left town because he was worried about Hayes or Appellant, Bethea responded, “They just told me—they kept calling me, like, don’t say nothing or we’re going to do something to you.” (R. 480, Tr. p. 555, lines 21–24). Nevertheless, Bethea eventually turned himself in after his mother told him “the police kept coming to her house and she wasn’t going to have it” (R. 483-84, Tr. p. 558, line 16–p. 559, line 14). After the police spoke with Bethea, they arrested him. (R. 484, Tr. p. 559, lines 10–22).

ARGUMENT

Appellant’s issue is not preserved because he did not proffer the specific testimony he argues the trial court erroneously excluded.

However, he trial court did not err in prohibiting Appellant from questioning a fact witness about his mental health history, including an alleged statement to a psychiatrist about drug use two weeks after the crime shortly before his arrest, where that information was not relevant or, if it was relevant, it was only marginally so and would have confused the issues.

Introduction

Appellant argues that the trial court erred in limiting his cross-examination of a witness regarding statements allegedly made to doctors that the witness had visual hallucinations when he smoked marijuana and further that he had smoked marijuana thirty minutes before he was arrested. This issue has not been properly preserved for direct appeal since counsel failed to proffer the witness's specific testimony on these statements. Additionally, there was no error where the trial court concluded that such evidence was not relevant. In the alternative, the cross-examination was properly limited under Rule 403, SCRE where any minimal relevance was far outweighed by the danger of unfair prejudice or of confusing the jury.

How the Issue Was Raised at Trial

During Appellant's cross-examination of Bethea, Appellant's counsel asked a series of questions about Bethea's mental health and whether he would be able to get adequate mental health treatment in prison. (R. 511-12, Tr. p. 586, line 13–p. 587, line 22). Bethea admitted that he had been diagnosed as schizophrenic and further affirmed he had received mental health treatment in prison but the treatment was not the best. (R. 512, Tr. p. 587, lines 2–22). Appellant's counsel then asked Bethea, "Do you recall telling any doctors that people were jealous of your lifestyle?" (R. 512, Tr. p. 587, lines 23–24). Bethea responded, "I don't know what was going on during that time." (R. 521, Tr. p. 587, line 25). The solicitor objected on relevance grounds. (R. 513, Tr. p. 588, lines 2–3).

A short conference was held out of the presence of the jury where the trial court informed the parties that “his mental health treatment is absolutely objectionable Unless you can tie—tie that together with his inability to tell the truth, it’s not admissible.” (R. 513, Tr. p. 588, lines 5–10). The trial court then dismissed the jury from the courtroom, and the discussion about Bethea’s mental health continued. (R. 513, Tr. p. 588, lines 20–25).

Appellant’s counsel asserted Bethea’s mental health treatment went to his credibility as a witness and towards his bias and motive to testify. (R. 514, Tr. p. 589, lines 6–13). The trial court then asked Appellant’s counsel if he had any case law that said cross-examination of a witness regarding their mental health was admissible without some connection to that witness’s ability to tell the truth. (R. 514, Tr. p. 589, lines 14–21). Appellant’s counsel responded he did not have any cases to that effect. (R. 514, Tr. p. 589, lines 22–24).

The trial judge stated he had recently researched the issue for another case, and he recalled the case law did not allow questioning on mental health where it was not relevant to the witness’s ability to tell the truth. (R. 514-15, Tr. p. 589, line 25–p. 590, line 5). The trial court then ruled as follows:

Now, I understand what you’re saying is that it is your intention to put out there that he doesn’t want to go to prison because he can’t get the mental health treatment that he needs. I’ve heard nothing that would indicate—and maybe you have it. I just want to hear it and I’ll allow you to proffer it, but nothing that he had ongoing mental health treatment and that there is a need for ongoing mental health treatment that would tie it in.

You’ve established through your cross examination that jail ain’t a good place. I’ve allowed you to do that and that certainly goes to bias or whatever you want to call it as to his testimony for that jury to make a decision on, but as far as this mental health stuff, I mean it’s just—it’s not relevant at this point unless you can give me some more information as to its relevancy.

(R. 515, Tr. p. 590, lines 6–20). Appellant’s counsel then noted his objection, and the trial court stated, “I want you to proffer whatever you want. If you want to proffer something” (R. 515, Tr. p. 590, lines 21–24).

Appellant’s counsel stated, “I just have one question for him.” (R. 515, Tr. p. 590, line 25). He then went on to provide the following information:

He has made statements in his past to two doctors about visual hallucinations when he smokes marijuana.

....

And number two, Judge, when he went for his psychiatric evaluation in connection with this case, he told that physician that he smoked marijuana 30 minutes before he got arrested.

....

Am I allowed to bring those up?

(R. 516, Tr. p. 591, lines 2–13). The solicitor replied that Bethea had not smoked marijuana thirty minutes before taking the witness stand at trial and further asserted, “I think he’s gone far afield and what he’s attempting to do is not admissible at all.” (R. 516, Tr. p. 591, lines 21–23).

The trial court asked if there was any evidence that every time Bethea smoked marijuana he had delusions. (R. 516-17, Tr. p. 591, line 24–p. 592, line 2). Appellant’s counsel answered that Bethea’s statement to the doctor did not say that every time he smoked marijuana he had delusions—it was just that he saw visual hallucinations when he smoked marijuana. (R. 517, Tr. p. 592, lines 3–17). The trial court ultimately ruled defense counsel could not go into that area because such cross-examination did not go to Bethea’s ability to tell the truth. (R. 517, Tr. p. 592, lines 18–22).

Before the jury came back into the court room, the trial court asked if Bethea had been declared incompetent, had an inability to know right from wrong, or had been shown not to know

the difference between the truth and a lie. (R. 518, Tr. p. 593, lines 9–21). The solicitor responded, “No, Your Honor” to each of those questions. (R. 518, Tr. p. 593, lines 9–22). The trial court then affirmed its earlier ruling. (R. 518, Tr. p. 593, lines 23–24).

Standard of Review

The Confrontation Clause of the Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI.

The right to a meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accusers. This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness’ safety, or interrogation that is repetitive or only marginally relevant.

State v. Aleksey, 343 S.C. 20, 33–34, 538 S.E.2d 248, 255 (2000) (internal quotations and citations omitted). Generally, “[t]he admission or exclusion of evidence is left to the sound discretion of the trial court, and the court’s discretion will not be reversed absent an abuse of discretion.” *State v. Morris*, 376 S.C. 189, 205–06, 656 S.E.2d 359, 368 (2008) (citing *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). And even where a court errs in limiting a defendant’s cross-examination of a witness, that error is subject to a harmless error analysis. See *State v. Starnes*, 340 S.C. 312, 326 n.11, 531 S.E.2d 907, 915 n.11 (2000).

Analysis

This Issue Is Not Preserved.

As an initial matter, Respondent asserts this issue has not been properly preserved because neither Appellant’s counsel nor Hayes’ counsel proffered Bethea’s testimony regarding his prior statements to doctors about what happens to him when he smokes marijuana and

whether he smoked marijuana shortly before he was arrested. Instead, counsel merely stated what he believed Bethea's testimony would be. In Respondent's view, that proffer was not sufficient.

"Ordinarily, [South Carolina appellate courts] will not review the alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402–03 (1986) (citing *State v. Roper*, 274 S.C. 14, 260 S.E.2d 705 (1979)). In order for the proffer to be proper, the record should "fairly [show] what the rejected testimony would have been." *Roper*, 274 S.C. at 20, 260 S.E.2d at 708. Nevertheless, "[t]he rule regarding proffers has been relaxed where the trial court refuses to allow a proffer and the record clearly demonstrates prejudice, or where the appellate court is able to determine from the record what the testimony was intended to show and that prejudice clearly exists." *State v. Jackson*, 384 S.C. 29, 34 n.3, 681 S.E.2d 17, 20 n.3 (Ct. App. 2009).

Respondent submits the record does not fairly show what the rejected testimony would have been in this case—it is unclear whether Bethea would have admitted to making those statements or would have denied making them. In *State v. Jenkins*, 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996), this Court found counsel's representations of what a witness's testimony would have been (as opposed to the actual testimony) were adequate to preserve the issue where, according to the Court, counsel had made a sufficient attempt to proffer and where the Court could discern prejudice even without the proffer. However, *Jenkins* is distinguishable from the instant case because in *Jenkins* "defense counsel's frustration with the limits placed upon his cross-examination by the trial judge was apparent at every turn; additionally, the trial judge continued to assure him his position was protected for the record." *Id.* at 368, 474 S.E.2d at 817. In contrast, here, the trial court did not refuse to allow the proffer of Bethea's testimony, nor did

it frustrate counsel's attempts to do so. Indeed, the record reflects that the trial judge told counsel he wanted him to proffer the testimony. (R. 515, Tr. p. 590, lines 6–24). Nevertheless, Appellant failed to proffer Bethea's actual testimony.

Respondent urges this Court to find Appellant's proffer insufficient in this case. Judge Goolsby's dissent in *Jenkins* identifies the problems with merely summarizing the anticipated testimony as opposed to presenting the testimony itself. Judge Goolsby explained that the rule requiring a proffer necessarily

requires an appellant to proffer *testimony*, not mere questions. Without showing [appellant's] disallowed questions would have elicited testimony that was both favorable and material to her case, [appellant] cannot show she was prejudiced by the trial court's ruling. Explaining the answers she *hoped* her questions would elicit is not sufficient.

Jenkins, 322 S.C. at 370, 474 S.E.2d at 818 (Goolsby, J., dissenting) (emphasis in original) (internal citation omitted). The proffer offered by Appellant is insufficient because it does not fairly show what Bethea's testimony would have been—it only indicates what Appellant *hopes* Bethea's testimony would have been. And this Court should not overlook the failure to make a proper proffer where the trial court did not disallow or inhibit Appellant from proffering Bethea's testimony.

Furthermore, this court should not overlook the failure to proffer where, even assuming Bethea would have testified consistently with counsel's assertions; there was no prejudice to Appellant in excluding that testimony as explained in further detail below.

The Evidence Was Not Relevant.

The trial court correctly concluded the testimony Appellant sought to introduce was not relevant. And the court did not abuse its discretion in prohibiting cross-examination on whether Bethea had visual hallucinations when he smoked marijuana and whether he smoked marijuana

shortly before he was arrested. Appellant cannot articulate the relevance of the evidence based on the paltry record before this Court without engaging in speculation.

Appellant's counsel informed the trial court he wanted to cross-examine Bethea about some previous statements he had made to medical professionals, namely:

He has made statements in his past to two doctors about visual hallucinations when he smokes marijuana.

....

And . . . when he went for his psychiatric evaluation in connection with this case, he told that physician that he smoked marijuana 30 minutes before he got arrested.

(R. 516, Tr. p. 591, lines 2–11). The subject matter of that cross-examination was not relevant. *See* Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). The shooting occurred in the early morning hours of April 13, 2012, but Bethea did not turn himself in to police, give his statement, and get arrested until over two weeks later on April 30, 2012. (R. 519–20, Tr. p. 594, line 17–p. 595, line 5). There was no evidence (or any representation to the court) Bethea smoked marijuana around the time of the shooting. Thus, Appellant’s proposed cross-examination of Bethea was not relevant to Bethea’s ability to perceive events the night of the murder. Similarly, there was no evidence (or any representation to the court) Bethea smoked marijuana around the time of his testimony. Thus, Appellant’s proposed cross-examination of Bethea was not relevant to Bethea’s ability at trial to recall the night of the murder and to testify truthfully to those events.

The Fourth Circuit has held that a trial court did not abuse its discretion in excluding cross-examination testimony by a co-defendant regarding statements he made to nurses that he

had seen hallucinations of dead people. *United States v. Barnes*, 480 F. App'x 231, 236–37 (4th Cir. 2012). The Fourth Circuit acknowledged:

Mental defect can be a proper basis by which to attack a witness's credibility if the alleged mental defect was "at a time probatively related to the time period about which he was attempting to testify," and it "go[es] to the witness' qualification to testify and ability to recall," and does "not introduce into the case a collateral issue which would confuse the jury."

Id. at 237 (quoting *United States v. Lopez*, 611 F.2d 44, 46 (4th Cir. 1979)⁹). However, the Fourth Circuit found there was no suggestion the co-defendant was unable to perceive or recall the details of the crime because he was experiencing hallucinations at or around the time of the crime. *Id.* Nor was there any evidence the co-defendant "was experiencing hallucinations at the time of trial or that they affected his ability to recall and testify accurately at trial." *Id.* Because "the evidence did not reflect [the co-defendant's] hallucinations occurred 'at a time probatively related to the time period about which he was attempting to testify,'" the trial court did not abuse its discretion in excluding that evidence. *Id.*

Appellant concedes there was no challenge to Bethea's competency as a witness. Thus, Appellant's proposed cross-examination could only conceivably be used to impeach Bethea's

⁹ In *Lopez*, the Fourth Circuit noted,

One's psychiatric history is an area of great personal privacy which can only be invaded in cross-examination when required in the interests of justice. This is so because cross-examination of an adverse witness on matters of such personal privacy, if of minimal probative value, is manifestly unfair and unnecessarily demeaning of the witness. Moreover, such cross-examination will generally introduce into the case a collateral issue, leading to a larger amount of testimony substantially extraneous to the essential facts and issues of the controversy being tried. Because of the obvious unfairness of such a cross-examination and its needless waste of judicial time, it has been posited in an authoritative text that, "Courts should have the power to protect witnesses against cross-examination that does little to impair credibility but that may damage their reputation, invade their privacy, and assault their personality."

Lopez, 611 F.2d at 45 (quoting 22 Wright & Graham, Federal Practice & Procedure § 5215).

April 30th statement to police two weeks after the April 12th incident. That is to say, the cross-examination could only have been used to challenge Bethea's ability, at the time he made his statement to police, to recall and communicate what happened the night of the murder. This is where Appellant's failure to proffer Bethea's testimony becomes problematic. If Bethea denied making both or either of the statements counsel attributed to him,¹⁰ then there is no relevance to that testimony. If Bethea never stated he had visual hallucinations when he smoked marijuana, and if he did not smoke marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting. If Bethea told doctors he had visual hallucinations when he smoked marijuana, but he denied stating he smoked marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting. If Bethea never told doctors that he had visual hallucinations when he smoked marijuana, but he admitted he told a doctor he had smoked marijuana thirty minutes before his arrest, then that evidence has no relevance to his ability on April 30th to truthfully recall the night of the shooting.

Even assuming Bethea would have affirmed on cross-examination he had visual hallucinations when he smoked marijuana and he smoked marijuana thirty minutes before he was arrested, that limited bit of evidence is insufficient to impeach Bethea's April 30th statement to police. The case *State v. Turner*, 373 S.C. 121, 644 S.E.2d 693 (2007), is instructive on that point. In *Turner* the South Carolina Supreme Court found a trial court did not err in limiting the defense's cross-examination of a victim on her schizophrenia diagnosis. The victim in *Turner*

¹⁰ If he denied making those statements, and Appellant sought to introduce the prior inconsistent statement under Rule 613, SCRE, then Appellant would presumably have had to call the doctors to whom Bethea made the alleged statements, to make a relatively minor point of impeaching Bethea's first statement to police. This scenario exemplifies Respondent's arguments that to allow the cross-examination had a great possibility of introducing a collateral issue that could have confused the jury.

testified during a proffer she had been diagnosed with schizophrenia and she took Prozac and Risperdal for her condition, and when she did not take her medications, she would become confused, hear voices, and have problems with her memory. 373 S.C. at 129, 644 S.E.2d at 698. The victim further testified she had not been without her medication either during the time of the crimes or anytime recently. *Id.* The trial court disallowed cross-examination on the victim's mental health, finding

[T]here would be very little that would assist the jury in evaluating her ability to recall what happened or her credibility. The court felt it would require speculation on the jury's part to connect the medical testimony to her ability to testify truthfully. The court stated there was a significant potential for unfair prejudice because it may cause the jury to decide the case on an improper basis.

Id. at 130, 644 S.E.2d at 698. The Supreme Court affirmed, finding that when the victim was taking her medication during the crime and at the time of trial, her specific diagnosis and medication regimen "were irrelevant to her ability to truthfully recall the events." *Id.* at 131, 644 S.E.2d at 698. The Supreme Court further pointed out the appellant had failed to show a nexus between the victim's medications and any alleged misidentification of the appellant. *Id.* Here, too, because Appellant failed to develop Bethea's testimony, he also failed to show a nexus between the alleged visual hallucinations and Bethea's ability to truthfully recall and communicate the events of April 13, 2012. As in *Turner*, it would require speculation on the jury's part to connect the visual hallucination evidence to Bethea's ability to give a truthful statement to police.¹¹ Thus, the trial court correctly determined the evidence was relevant based on the information presented to the court, and the court properly limited the cross-examination.

¹¹ Appellant has failed to articulate how visual hallucinations could have impacted Bethea's statement to police on April 30th. Presumably, the visual hallucinations would be present (if at all) at the time Bethea was giving his statement to police, but there has been no showing that the visual hallucinations impaired Bethea's memory of the shooting or his ability to communicate what he remembered. There has been no showing of what the visual hallucinations even were.

Based on the record, the information Appellant sought to elicit through cross-examination was not relevant. Thus, the trial court did not abuse its discretion in excluding it.

If Relevant, the Evidence Was Properly Excluded Under Rule 403, SCRE.

Even if this Court finds the testimony that would have been elicited through the proposed cross-examination was relevant, Respondent submits the trial court did not abuse his discretion in limiting Appellant's cross-examination where there was reason to limit it under Rule 403, SCRE. If Bethea denied making the statements, then Appellant would presumably have called the doctors to testify, and the presentation of that testimony on such a relatively minor point would have been a waste of time and likely confusing to the jury. *See* Rule 403, SCRE. Furthermore, even if Bethea admitted making the statements, as in *Turner*, the slight probative value of that evidence would be outweighed by unfair prejudice (particularly without further development on the nature of the visual hallucinations or whether they were present on April 30th).

Appellant Was Not Prejudiced.

Moreover, Appellant was not prejudiced by the trial court's limitation on his cross-examination of Bethea where there were other ways in which Appellant could and did impeach Bethea. For example, both Appellant and Hayes questioned Bethea about his motive to testify and the potential sentence he was facing for his participation in the shooting. (R. 488-89, 507-10, Tr. p. 563, line 8-564, line 8; Tr. p. 582, line 2-p. 585, line 6). Bethea was also questioned about his experience in prison. (R. 510-12, Tr. p. 585, line 9-p. 587, line 22). Bethea admitted to the jury he had been diagnosed with schizophrenia and he had been institutionalized in the past. (R. 511-12, Tr. p. 586, line 13-p. 587, line 22). Appellant questioned Bethea regarding inconsistencies in his testimony about what happened the night of the shooting. (R. 524-25, Tr.

p. 599, line 17–p. 600, line 19). Appellant also questioned Bethea about his past drug use, and Bethea admitted he smoked marijuana and had snorted cocaine “a couple times.” (R. 537, Tr. p. 612, lines 17–21). There were a number of other ways in which Appellant and his co-defendant could, and did, impeach Bethea, including his schizophrenia diagnosis and his drug use. Thus, Appellant was not prejudiced by the trial court’s limitation of his cross-examination of Bethea. *See State v. Stokes*, 381 S.C. 390, 401–02, 673 S.E.2d 434, 439–40 (2009) (“[T]he Confrontation Clause ‘guarantees only an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.’” (quoting *United States v. Owens*, 484 U.S. 554, 559 (1988))).

Any Error Was Harmless.

Even if Appellant established Bethea had made statements to doctors he had visual hallucinations when he smoked marijuana and he smoked marijuana thirty minutes before he was arrested, and if Appellant further established such evidence was relevant and should not have been excluded by the trial court, any error was harmless.

“Whether such an error is harmless in a particular case depends upon a host of factors The factors include the importance of the witness’s testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.”

State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)).

Though Bethea’s testimony was important to the State’s case due to the lack of physical evidence connecting Appellant and his co-defendants to the crime scene, Bethea’s story was not the sole evidence relied upon by the State. The State also presented the testimony of Williams,

whose testimony was largely consistent with Bethea's.¹² Furthermore, as discussed earlier, the evidence Appellant sought to elicit only went to impeach Bethea's statement to police on April 30th—it was not relevant to Bethea's testimony about what he recalled from the night of the shooting. Appellant and Hayes were able to cross-examine Bethea on a wide range of matters, including that he was facing charges for his involvement in the drive-by shooting and he had been diagnosed with schizophrenia and had received treatment for it. In their closing arguments, both Appellant and Hayes referenced Bethea's motive to testify, and Appellant specifically noted inconsistencies in Bethea's testimony. (R. 580-81, 590-91, Tr. p. 655, line 3–p. 656, line 11; Tr. p. 665, line 17–p. 666, line 25). Accordingly, the *Van Arsdall* factors indicate that any error in limiting the cross-examination of Bethea was harmless.

¹² Respondent considers the testimonies to be largely similar because Williams and Bethea testified consistently to a number of facts, including the people in the car, where those people were sitting, who fired guns, the way that the gunmen fired (Williams out the window, over top of the car and Appellant directly out of the window), what they did with the guns afterward, and what warnings they received from Appellant and Smith.

Appellant claims that Williams's and Bethea's versions of the shooting have the car facing in opposite directions at the time of the shooting. However, Williams made it clear during his testimony that he was not familiar with the roads in the area. (R. 399-402, 422-27, Tr. 474, line 18–p. 477, line 11; 497, line 9–p. 502, line 5). On the other hand, he was sure of where he was sitting in the car and in what direction he and Appellant were shooting. (R. 423, 427, Tr. p. 498, lines 11–14; Tr. p. 502, lines 1–5). Williams testified that they turned around after passing the house once and drove by again—it is possible, particularly in light of the fact that Williams was admittedly unknowledgeable about the roads, that rather than making a u-turn and driving back by the house in the opposite direction, they somehow turned around and drove back by the house in the same direction as they had before. Were that the case, Williams's testimony would be both internally consistent (except that he would have been incorrect that the car was facing Latta at the time of the shooting) and consistent with Bethea's testimony.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

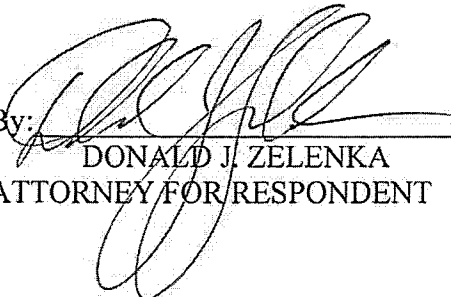
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar No. 5758

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

E.L. CLEMENTS, III
Solicitor, Twelfth Circuit

By: 

DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

December 2, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

Respondent,

V.

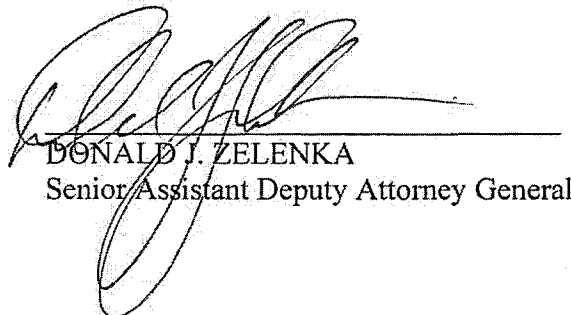
BLATON WAKEEM SMITH,

Appellant,

Appellate Case No. 2014-1769.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 Order of the South Carolina Supreme Court entitled “ Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

December 2, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

Respondent,

V.

BLATON WAKEEM SMITH,

Appellant

Appellate Case No. 2014-1769.

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, counsel for Respondent, certify that I have served the within Final Brief of Respondent on Appellant by depositing two (2) copies of the same in the InterAgency Mail to his attorney of record at:

David Alexander
Appellate Defender
SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 2nd day of December, 2015.


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Blaton Wakeem Smith, Appellant.

Appellate Case No. 2014-001769

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2016-UP-323
Submitted April 1, 2016 – Filed June 22, 2016

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Donald J. Zelenka, all
of Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) ("It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402-03 (1986) ("Ordinarily, this [c]ourt will not review alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record."); *id.* at 303, 342 S.E.2d at 403 ("However, where the trial court refuses to allow the proffer, but [this court] can determine from the record . . . what the testimony was intended to show, we will address the merits."); *State v. Jenkins*, 322 S.C. 360, 367-68, 474 S.E.2d 812, 816-17 (Ct. App. 1996) (declining to find the trial court's decision excluding cross-examination testimony was not preserved when "it was very clear what testimony defense counsel hoped to elicit on cross-examination," "the proffer was not necessary to enable [this court] to discern prejudice," and "defense counsel made a sufficient attempt to proffer the disputed testimony"); *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19-20 (Ct. App. 2009) (finding the defendant's failure to proffer excluded testimony about the victim's violent history rendered the trial court's exclusion of that testimony unpreserved).

AFFIRMED.¹

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 08, 2016

The Honorable Sherry R. Rhodes
PO Box 295
Marion SC 29571-0295

REMITTITUR

Re: The State v. Blaton W. Smith
Lower Court Case No. 2013GS3300097
Appellate Case No. 2014-001769

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

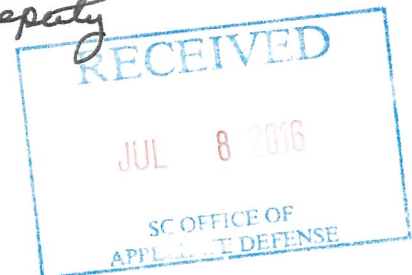
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Edgar Lewis Clements, III, Esquire
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
John W. McIntosh, Esquire



FORM 5

STATE OF SOUTH CAROLINA

2016-CP-33-802
IN THE COURT OF COMMON PLEASCounty of MARIONBlaton W. Smith, #329015

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTION INSTITUTION 990 WISACKY HWY., BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence MARION COUNTY CIRCUIT COURT 100 WEST COURT STREET, P.O. BOX 295, MARION, SC 29571
3. Name(s) of co-defendant(s) (if any) SHANEED HAYES
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-33-00097-MURDER; 2013-GS-33-00097-POSS.
 - (b) WEAPON DURING VIOLENT CRIME; IF NOT ALSO NO PAROLE OR DEATH; 2013-GS-33-00097-Attempted Murder

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 8, 2014
- (b) 11 " 11
- (c) 11 " 11
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE STATE OF SOUTH CAROLINA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 22, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. ☒ _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED SHEET
- (b) SEE ATTACHED SHEET
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. JOSHUA BAILEY, Esq. 814 W. EVANS STREET
FLORENCE, S.C. 29503
 ii. DAVID ALEXANDER, public DEFENDER, 1330 Lady STREET,
SUITE 401 COLUMBIA, S.C. 29201-8332
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. DIRECT APPEAL
 iii. _____

State of South Carolina
County of Marion

FILED

IN The Court of Common Pleas

Attached Sheet from 11(A), (b), 19

2016 DEC 12 PM 1:01
SHERRI R. KNUDES
CLERK OF COURT

Blaine W. Smith, # 329045
Applicant,

Attached Sheet
FOR
Post Conviction Relief

v.
State of South Carolina,
Respondent.

Applicant asserts that his right to Effective Assistance of Counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution; and Article 1 Section 14 of the South Carolina Constitution was violated. In that Counsel of Record failed to provide reasonable professional assistance within the standard of performance demanded of Attorney's representing clients in criminal matters for which Applicant justly request that his conviction be reversed and remanded.

Blaine Smith 329045
Applicant

DATE: 12/8/16
Bishopville, S.C. 29010

19. State clearly the relief you seek in filing this application:

SEE ATTACHED SHEET

2016 DEC 12 PM 1:01

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Bishopville)

VERIFICATION

I, Blaton Wakeem Smith #329045, 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.

Blaton Smith

SWORN to and subscribed before me this 8
day of Dec, 2016.

Diane Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2026

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Blaton W. Smith, #329045,

2016-CP-33-0802

Applicant,

v.

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on December 12, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's orders of commitment. Applicant was indicted by the February 2013 term of the Marion County Grand Jury for one count each of murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). Joshua Bailey, Esquire, represented him. On August 6-8, 2014, Applicant proceeded to trial before the Honorable D. Craig Brown and a jury. Applicant was found guilty as indicted for murder, possession of a weapon during the commission of a violent crime, and all four counts of attempted murder. Applicant was found not guilty of discharging a firearm into a dwelling. Judge Brown sentenced Applicant to life in prison for murder, thirty years for each count of attempted murder, and five years for possession of a weapon during the commission of a violent crime. The sentences are to be run consecutively.

Applicant filed a timely notice of appeal. An appeal was perfected by David Alexander, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

Smith, Op. No. 2016-UP-323 (S.C. Ct. App. filed June 22, 2016). The Remittitur was returned on July 8, 2016.

Attached hereto and incorporated herein by reference are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Ineffective Assistance of Appellate Counsel"

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The test is the same for appellate counsel; Applicant must show that appellate counsel’s performance was deficient and that he was prejudiced by the deficiency. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003); Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v.

Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of trial and appellate counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also moves for a more definite statement. In his Application, Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

It is incumbent upon Applicant, through counsel, to amend his application well in advance and set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Each and every allegation not expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial and appellate counsel were ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ.
Chief Deputy Attorney General

MEGAN HARRISON JAMESON
Special Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: Jessica E. Kemp for LAM
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

4.19.17, 2017

FILED
2017 APR 24 PM 4:46
MARION COUNTY SC
CHRISTY H. GRAY
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
Blaton Smith, 329045,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2016-CP-33-802
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed December 12, 2016, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

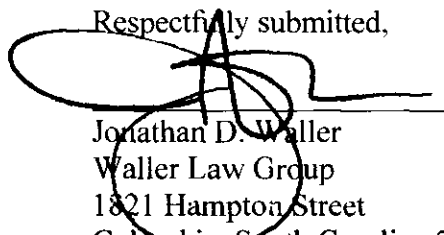
1. As to representation rendered by Joshua Bailey, Esquire:

- a. Applicant's co-defendant, Jaime Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.
- b. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.

FILED
2021 MAR 31 AM 10:19
MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

- c. Counsel was ineffective for failing to properly object to impermissible testimony and argument during the course of Applicant's trial, allowing the jury to hear impermissible testimony and thus failing to preserve the issues for direct appeal.
- d. Counsel was ineffective for failing to object to the incorrect instruction on the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.
- e. Counsel was ineffective for failing to object to improper vouching testimony during the testimony of Investigator Charlie Watson.
- f. Counsel was ineffective for failing to move for a directed verdict with respect to the charge of Possession of a Weapon During the Commission of a Violent Crime.

Respectfully submitted,


Jonathan D. Waller
Waller Law Group
1821 Hampton Street
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

August 27, 2021

Columbia, South Carolina

Smith vs. State of SC
Amendment to PCR Application

Page 2 of 2

FILED
2021 AUG 31 AM 10:19
CLERK OF COURT
CHRISTY H. GRAY
CLERK OF COURT
CLERK OF COURT

State of South Carolina	)	In the Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Marion	)	Case No. 2016-CP-33-00802
	)	
Blaton W. Smith,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

December 12, 2022
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Jonathan D. Waller, Esquire
 Attorney for the Applicant

Danielle Dixon, Esquire
 Attorney for the Respondent

Krystal J. Smith
 Official Circuit Court Reporter III

1	<u>I N D E X</u>	
2		
3	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
4	Post-Conviction Relief Hearing.....	4
5	Jamie Williams	
6	Direct by Mr. Waller.....	8
7	Cross by Ms. Dixon.....	14
8	Rachel Williams	
9	Called but not present.....	15
10	Diamond Brown	
11	Called but not present.....	16
12	Joshua Bailey	
13	Direct by Mr. Waller.....	19
14	Cross by Ms. Dixon.....	28
15	Blaton W. Smith	
16	Direct by Mr. Waller.....	31
17	Cross by Ms. Dixon.....	40
18	Applicant Rests.....	44
19	Joshua Bailey	
20	Direct by Ms. Dixon.....	45
21	State Rests.....	46
22	Under Advisement.....	46
23	Court Reporter Certification.....	47
24		
25		

APPLICANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Affidavit of Jamie Williams		13

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 DECEMBER 12, 2022

2 (WHEREUPON, the proceedings began at 10:18 a.m.)

3 THE COURT: Ready?

4 MS. DIXON: May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. DIXON: Danielle Dixon, assistant attorney general
7 for the State of South Carolina. This is the case of Blaton
8 Smith v. State, Docket Number 2016-CP-33-802.

9 Mr. Smith is serving a life sentence. He was indicted by
10 the Marion County Grand Jury in February of 2013 for murder,
11 possession of a weapon during a violent crime, discharging a
12 firearm into a dwelling, and attempted murder, four counts of
13 attempted murder. That's Indictment Number 2013-GS-33-97.

14 These charges arose from the April 13th, 2012, fatal
15 shooting of Christian James Drawhorn. He was indicted. Mr.
16 Smith was indicted with Willie Bethea, Shaheed Hayes, and
17 Jamie Williams, and this was basically a situation where the
18 four men were driving by a mobile home where the victims were
19 and shot into the home as they were driving by.

20 He did proceed to a jury trial before the Honorable Craig
21 Brown on August 6th through 8th, 2014. He was tried with co-
22 defendant Shaheed Hayes. Joshua Bailey represented Mr. Smith,
23 and Ed Clements prosecuted the case.

24 He was acquitted of discharging a firearm into a dwelling
25 -- into the dwelling, but convicted as indicted on all other

1 charges, was sentenced to life for murder, 30 years for each
2 attempted murder, and five years for the possession charge.
3 Those were all consecutive.

4 He filed a direct appeal and was represented by David
5 Alexander. The Court of Appeals affirmed in a 220(b) per
6 curiam opinion, and the remittitur was sent July 8th, 2016.
7 He timely filed this PCR application December 12th, 2016,
8 raising various claims of ineffective assistance of counsel,
9 and filed an amended application August 31st and June 22nd --
10 27th of 2022.

11 The claims -- well, I'll let Mr. Waller set forth the
12 claims that he's going to go forward on today.

13 THE COURT: All right.

14 Okay. Mr. Waller?

15 MR. WALLER: Thank you, Your Honor. May it please the
16 Court.

17 Judge, Mr. Smith, obviously, filed his application.
18 That's what started this whole entire process. Then I filed
19 two -- I believe it was two separate amendments to
20 applications for post-conviction relief. Actually, I believe
21 it's three, Your Honor.

22 Kind of in order here, Your Honor, there was -- the first
23 one is as to represent -- representation rendered by Joshua
24 Bailey. Applicant's co-defendant, Jamie Williams, who
25 testified against the applicant, has given what we allege to

1 be an affidavit that he provided false testimony during the
2 trial, as well as there was information regarding a potential
3 plea offer that had been made to him prior to the trial.

4 The -- that counsel was ineffective for failing to
5 properly investigate the facts and circumstances surrounding
6 the allegations.

7 That counsel was ineffective for failing to properly
8 object to impermissible testimony and argument during the
9 course of the applicant's trial, allowing the jury to hear
10 impermissible testimony and thus failing to preserve the issue
11 for an appeal.

12 That counsel was ineffective for failing to object to
13 incorrect instruction of law to the jury, specifically with
14 regards to the instructions for the charge of attempted
15 murder.

16 That counsel was ineffective for failing to object to the
17 improper vouching testimony during the -- during the testimony
18 of Investigator Charlie Watson.

19 That counsel was ineffective for failing to move for a
20 directed verdict with respect to the charge of possession of a
21 weapon during the commission -- commission of a violent crime.

22 And, Your Honor, there was an allegation, additionally,
23 that two jurors were sleeping during the trial and that no
24 remedial measures were taken by counsel during -- after being
25 made aware of their sleeping.

1 Your Honor, I am ready to proceed on each of those issues
2 here today.

3 THE COURT: All right, sir. I'm ready.

4 MR. WALLER: Your Honor, the applicant would call Jamie
5 Williams.

6 THE COURT: Okay.

7 THE DEPUTY: Is that an inmate?

8 MR. WALLER: Yes. Thank you.

9 (WHEREUPON, there was a pause in the proceedings until
10 the witness entered the courtroom, after which the
11 proceedings resumed as follows.)

12 THE CLERK: Raise your right hand as much as you can.
13 Do you swear or affirm the testimony you give will be the
14 truth, the whole truth, and nothing but the truth, so help you
15 God?

16 THE WITNESS: It'll have to be the truth, the whole
17 truth.

18 THE CLERK: All right.

19 MR. RICHARDSON: Your Honor, Brad Richardson. I
20 represent Mr. Williams as appointed representative. If I may
21 have just one minute?

22 THE COURT: Yes, sir. Yes, sir.

23 (WHEREUPON, there was a pause in the proceedings for
24 counsel and witness to confer, after which the
25 proceedings resumed as follows.)

JAMIE WILLIAMS - DIRECT BY MR. WALLER

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 Proceed, sir.

4 MR. WALLER: Thank you, Your Honor. May it please the
5 Court.

6 JAMIE WILLIAMS, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 Q: Good morning, Mr. Williams. How are you today?

11 A: Good morning to you.

12 Q: All right. Mr. Williams, do you -- do you recall
13 testifying in the trial of Blaton Smith and Shaheed Hayes?

14 A: Yeah.

15 Q: All right. And at the time you testified, you were also
16 charged with a lot of these same offenses; is that right?

17 A: Yeah, that's right. That's correct.

18 Q: Okay. When you testified, had you pled guilty to
19 anything at that point?

20 A: Discharging a firearm into a dwelling, yeah.

21 Q: You had already -- you already pled guilty to that at the
22 time of your testimony?

23 A: Oh, no, I pled guilty after the test -- yeah, after
24 testimony, I pled guilty to discharging a firearm into a
25 dwelling.

JAMIE WILLIAMS - DIRECT BY MR. WALLER

1 Q: You pled guilty after you testified?

2 A: Yeah.

3 Q: Okay. Had you had any conversations with a solicitor
4 about -- about what your offer might be if you testified?

5 A: So-so. Yeah.

6 Q: Okay. What do you mean, so-so?

7 A: I talked to my lawyer about pleading to eight non-violent
8 once upon a time. Right? But I didn't think I was going to
9 get there, but after the testimony, I pled to discharging a
10 firearm into a dwelling for eight non-violent. So --

11 Q: Okay. Now, I don't want to get into any conversations
12 you and your lawyer may have had, but what -- what was your
13 understanding about before your -- before you testified, what
14 was your understanding about any sort of deals you might be
15 offered?

16 A: Oh, oh, about -- about him?

17 Q: Yes, sir.

18 A: Oh. Seriously, no. Over the little bit of a -- of a
19 testimony of a pleading to non -- non -- discharging a firearm
20 into a dwelling non-violent of a substance of providing.

21 Q: Okay.

22 A: Prior to -- prior to a prior record of him of doing
23 violence at the time. You know, I like to go sometimes, but
24 --

25 Q: When you say him, are you talking about Mr. Smith?

1 A: Yeah.

2 Q: Okay. So before you testified, you'd been offered a deal
3 to plead guilty to discharging a firearm into a dwelling?

4 A: I'm going to put it to you like -- no, oh, no. I mean,
5 my lawyer said something about it, but, like, okay, through
6 the substance, like after I -- after I testify, that's --
7 that's when everything came up on it.

8 Q: Okay.

9 A: All I said was I hung out the window like grand theft
10 auto and shot the house up.

11 Q: Okay. Had you -- did you have any meetings or
12 conversations with the solicitor or anyone from that office
13 prior to your testimony to discuss your testimony?

14 A: Oh, no. I ain't -- I ain't had no meetings. We had --
15 we had talked due to the prior -- when they -- when they was
16 going to try it.

17 Q: Okay. Did you talk to anybody about what you were going
18 to testify about?

19 A: During the trial? Yeah. Like, I told them where I was
20 going. Basically, man, this shouldn't have happened, man. I
21 told the man straight up that I was going to say I shot -- I
22 shot the house up, you know.

23 Q: Okay. Did you have that conversation before you --
24 before you -- you got on the witness stand in the criminal
25 trial of Shaheed Hayes and Blaton Smith?

JAMIE WILLIAMS - DIRECT BY MR. WALLER

1 A: Pretty much. I told them I did it.

2 Q: Okay. Who did you have that conversation with?

3 A: Ed, Ed Clements.

4 Q: Okay. Did y'all talk about any sort of plea offers at
5 that point?

6 A: Oh, no. I ain't -- I ain't knew I was going to catch the
7 suspicion of eight non-violent, no, but it was something I
8 took. I ain't know I was going to catch that, you know.
9 Like, I talked to my lawyer. He had mentioned something about
10 it, but I ain't knew I was going to catch that at the point in
11 time until after the testimony.

12 Q: Okay. Did you and Solicitor Clements or anyone else from
13 that office discuss what your answers to certain questions may
14 be during the testimony?

15 A: Well, no.

16 Q: Okay.

17 MR. WALLER: I beg the Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 MR. WALLER: All right.

20 BY MR. WALLER:

21 Q: Mr. Williams, you testified that you and Solicitor
22 Clements had -- had discussed your testimony. What did he
23 tell you about -- about testifying?

24 A: Oh. Oh, that after I do -- after I testify, the case
25 will be closed, but I got a paper due to perjury saying that

JAMIE WILLIAMS - DIRECT BY MR. WALLER

1 if I -- if I witness on the case, you know, that he ain't do
2 nothing, it'd be perjury. So that's what -- that's what I'm
3 trying to do.

4 Q: Okay. Did -- did the solicitor make any comments to you
5 about Mr. Smith or Mr. Hayes?

6 A: I mean, yeah. I mean, besides murder here, I mean, no,
7 but, yeah, I can't explain that. We was in a murder case.

8 Q: Okay.

9 MR. WALLER: Your Honor, may I approach the witness?

10 THE COURT: Yes, sir.

11 BY MR. WALLER:

12 Q: Mr. Williams, I'm going to show you what's been marked as
13 Applicant's Exhibit 1 and ask if you recognize that.

14 A: Oh, yeah. Yeah.

15 Q: Okay. Is that your signature down there?

16 A: That's my signature.

17 Q: All right.

18 MR. WALLER: Your Honor, I would offer this as
19 Applicant's Exhibit 1. It is the affidavit of Jamie Williams
20 dated December 6th, 2017.

21 MS. DIXON: Object to hearsay.

22 MR. WALLER: Your Honor, it's --

23 THE COURT: Yes, sir?

24 MR. WALLER: It's his statement. It's a -- it's a
25 notarized statement. So it's a self-authenticating document.

JAMIE WILLIAMS - DIRECT BY MR. WALLER

1 I mean, he's testified it's his signature on the bottom of it.

2 I don't -- I don't believe it's -- it's hearsay.

3 THE COURT: Ms. Dixon, what would be the basis of your
4 objection?

5 MS. DIXON: It is hearsay. It is also -- he hasn't
6 testified to any of this stuff in here specifically. It was
7 not -- it would basically be -- it's not like a prior
8 inconsistent statement or anything. He hasn't offered any
9 testimony today that would allow us to --

10 THE COURT: Okay. Mr. Waller, anything else?

11 MR. WALLER: Your Honor, I believe he has. I mean, he's
12 -- he's mentioned -- he's mentioned discussions with the
13 solicitor regarding prior to his testimony. It's directly
14 addressed in here, but, Your Honor, when I say his testimony
15 today is --

16 THE COURT: Let me ask you is it properly notarized?

17 MR. WALLER: It is, Your Honor.

18 THE COURT: Jurat and everything else?

19 MR. WALLER: It is, Your Honor.

20 THE COURT: All right. Ms. Dixon, I'll allow it in,
21 ma'am, over your objection.

22 (WHEREUPON, Applicant's Exhibit Number 1, affidavit of
23 Jamie Williams, was admitted into evidence.)

24 MR. WALLER: Nothing further from this witness.

25 THE COURT: Ms. Dixon?

JAMIE WILLIAMS - CROSS BY MS. DIXON

CROSS-EXAMINATION

1

2 BY MS. DIXON:

3 Q: Mr. Williams, how are you today?

4 A: I'm all right.

5 Q: All right. Do you remember testifying at this trial --
6 at this trial years ago? What was your testimony? Do you
7 remember?8 A: Oh, all I had to do was got on the stand and explain what
9 happened.

10 Q: Explain it. Tell me what happened.

11 A: I shot the gun.

12 Q: You shot the gun? And who was driving the car?

13 A: Him, but --

14 Q: And --

15 A: -- he ain't do nothing.

16 Q: He was driving the car? And you testified at trial that
17 he was driving the car?

18 A: Uh-huh.

19 Q: And I believe -- did you also testify at trial that at
20 that time you were telling the truth?

21 A: Uh-huh.

22 Q: And was that the truth?

23 A: Yeah, it was the truth.

24 Q: It was the truth?

25 MS. DIXON: No further questions.

1 THE WITNESS: I did it though.

2 THE COURT: Mr. Waller?

3 MR. WALLER: Nothing further from this witness, Your
4 Honor.

5 THE COURT: You may step down, sir. Thank you.

6 THE WITNESS: Yeah.

7 THE COURT: Mr. Waller?

8 MR. WALLER: Your Honor, the applicant would call Rachel
9 Williams.

10 Mr. Richardson would like to ask if he --

11 MR. RICHARDSON: Judge, may I be relieved?

12 THE COURT: Yes, sir. Have a good day, sir.

13 MR. RICHARDSON: Thank you. Thank you, Your Honor.

14 I'll see you -- I'll see you in January. Merry Christmas,
15 everyone.

16 THE BAILIFF: Is the witness out here?

17 MR. WALLER: I hope so. Rachel Williams is the name.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 THE BAILIFF: No Rachel Williams.

21 MR. WALLER: Would you call Diamond Brown? Diamond
22 Brown.

23 THE BAILIFF: Diamond Brown?

24 MR. WALLER: Yes, sir.

25 (WHEREUPON, there was a pause in the proceedings, after

1 which the proceedings resumed as follows.)

2 THE BAILIFF: No answer.

3 THE COURT: What was the name of the witness?

4 MR. WALLER: Judge, the first was Rachel Williams.

5 THE COURT: Yes, sir.

6 MR. WALLER: Judge, she was -- she was subpoenaed. I
7 spoke with her on the telephone on Friday. Judge, she
8 testified, as you'll recall, in the companion case or Mr.
9 Smith's co-defendant's case before Your Honor several months
10 ago.

11 Ms. Brown -- I -- I don't know if she was able to be
12 subpoenaed or not, if she was ever properly served. We've
13 attempted to serve her in the past and have been unable to do
14 so.

15 Judge, I would -- I guess I would ask to be able to
16 supplement the record with the transcript of her prior
17 testimony. The allegation is exactly the same. She was
18 cross-examined by a member of the Attorney General's Office,
19 and her statement was made part of that record as well.

20 THE COURT: Are you talking about Ms. Williams now?

21 MR. WALLER: Yes, sir, Your Honor.

22 THE COURT: Ms. Dixon?

23 MS. DIXON: I mean, no one has ordered that transcript.
24 I guess y'all will be ordering it?

25 MR. WALLER: If need be, yes.

1 MS. DIXON: I haven't seen it, so it's hard to know what
2 kind of objection I may have. I mean, I -- my understanding
3 is she did -- was -- was present at the last hearing and
4 testified that she was not actually sleeping, but I, candidly,
5 was not here at that hearing.

6 THE COURT: I vaguely remember the testimony. I
7 certainly couldn't rely on it without seeing it again. I
8 personally don't have any objection, but how long will that
9 take, I mean?

10 MS. DIXON: Sixty to 90 days, probably.

11 MR. WALLER: I don't know if it would take that long,
12 particularly if it's just a portion.

13 THE COURT: Well, let me ask you this. If it's -- if
14 it's her -- if it's her testimony, that should be in -- in the
15 transcript of that PCR hearing. Unless y'all object, just
16 copy those pages and send it to me.

17 MR. WALLER: That -- that was -- that's what I -- my -- I
18 meant --

19 THE COURT: Yeah.

20 MR. WALLER: -- by my suggestion, Your Honor.

21 THE COURT: We know it was sworn testimony in a
22 courtroom. We know that. Unless Ms. Dixon, you --

23 MS. DIXON: Yeah. I would just ask that, like, we have
24 an official request in within, like, ten days or so.

25 MR. WALLER: Sure.

1 THE COURT: Okay.

2 MS. DIXON: So we aren't unnecessarily delayed.

3 THE COURT: That's fine. I don't think it was long
4 testimony, not that I recall.

5 MR. WALLER: It wasn't. Essentially, Your Honor, my
6 recollection is she said she didn't recall a good bit. Her
7 affidavit was admitted into evidence. And I think in this
8 situation, it would be more proper for that to be part of the
9 transcript than made an exhibit here today because it was part
10 of --

11 THE COURT: Yes, sir, and it was all -- it was all part
12 of the same --

13 MR. WALLER: It was.

14 THE COURT: -- event.

15 MR. WALLER: The same trial, Your Honor.

16 THE COURT: Okay. All right.

17 MS. DIXON: And I believe you did preside over that.

18 THE COURT: Ma'am?

19 MS. DIXON: I believe you presided over --

20 THE COURT: And I did, too. Yeah, I was.

21 THE COURT REPORTER: She needs to speak up.

22 THE COURT: Okay.

23 MS. DIXON: Oh, I'm sorry. Okay. I'm sorry. I will
24 speak up.

25 THE COURT: All right. So now we'll do that.

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 So who's next, Mr. Waller?

2 MR. WALLER: I would call Joshua Bailey.

3 THE CLERK: Do you swear or affirm that the testimony you
4 give will be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you.

8 THE COURT: All right, sir.

9 MR. WALLER: Thank you, Your Honor. May it please the
10 Court.

11 JOSHUA BAILEY, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q: Good morning, Mr. Bailey. How are you today?

16 A: I'm good, Mr. Waller. Thank you.

17 Q: All right. Mr. Bailey, how did you come to represent
18 Blaton Smith?

19 A: I was appointed to represent Mr. Smith.

20 Q: Okay. Is that through work with the Public Defender's
21 Office? Was there a conflict? How?

22 A: Yeah, I think it was through the conflict. It was pre-
23 608 appointments. I think I was on the list for criminal
24 cases out of Marion County --

25 Q: Okay.

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 A: -- Public Defender's Office. With there being four co-
2 defendants, they conflicted three out.

3 Q: Okay. So when you were appointed to represent Mr. Smith,
4 about how long -- if you recall, what's your standard practice
5 on going to visit with a client?

6 A: Well, my standard practice would be I would send out
7 communication, let them know that I've been appointed, file my
8 initial Rule 5 and *Brady* motions, get the initial information
9 from the Solicitor's Office, and then I would schedule times
10 to go out and provide them with the discovery --

11 Q: Okay.

12 A: -- that I've received from the Solicitor's Office.

13 Q: All right. When you first met with Mr. Smith in this
14 case, did you -- had you been provided with any discovery or
15 anything like that?

16 A: I don't recall.

17 Q: Okay. Had Mr. Smith had a bond hearing at that point?

18 A: I don't recall.

19 Q: Okay. Did you represent him at any bond hearings that
20 you can recall?

21 A: Yes.

22 Q: Okay.

23 A: I think two or three bond hearings.

24 Q: Okay.

25 A: I think.

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 Q: Was he ever given a bond or was he ever -- a bond that he
2 was able to make?

3 A: The -- so his bond was denied throughout the case until
4 -- I think maybe it was the last time that we went up for
5 bond. It was Judge Seals, and I think Judge Seals set a
6 deadline for the solicitors to try the case or bond would be
7 set at that point in time.

8 Q: Okay. All right. If you could, what were the -- what
9 were the State's version of the allegations against Mr. Smith?

10 A: My recollection was this involved an alleged gang from
11 Latta and one from Marion, and Mr. Smith was the number two in
12 the gang. As far as the specific shooting between the two
13 groups, my recollection was the State was taking the position
14 that Mr. Smith was the mastermind and had everybody else
15 working for him.

16 Q: Okay.

17 A: And that he was the operator of -- I think they were
18 driving a Cadillac. It also had Mr. Williams, who just
19 previously testified. There was Willie Bethea, who I believe
20 is the cousin of Mr. Smith, and then Shaheed Hayes.

21 Q: Okay. Now, the vehicle that was being driven in this
22 case, was that owned by Blaton Smith?

23 A: No, I do not believe it was.

24 Q: Okay. Was it owned by maybe a relative of his?

25 A: I don't know who it was.

1 Q: Okay.

2 A: But my recollection is I don't think it was Blaton who
3 was the registered owner of the vehicle.

4 Q: Okay. Do you recall the name Adrian Smith in this case?

5 A: Now that you mention it, that does sound familiar.

6 Q: Okay. And was he alleged to have been part of this group
7 or, in fact, the leader of this group as well?

8 A: Yes. That was the allegation that the State wanted. In
9 fact, Solicitor Clements wanted Blaton Smith to testify
10 against -- I think his name is Adrian Smith.

11 Q: Was he ever charged? Do you know?

12 A: No.

13 Q: Okay.

14 A: Not that I'm aware of.

15 Q: Okay. Was his -- do you recall if his name came up in
16 the trial?

17 A: I think it did.

18 Q: Okay.

19 A: Yeah.

20 Q: Okay. All right. When -- if you recall, when did you
21 receive discovery in the case?

22 A: I couldn't tell you when I -- I know there was different
23 points different pieces would be provided.

24 Q: Okay. What, if you recall, was the -- were there any
25 issues with the investigation?

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 A: Yeah. I thought it was a subpar investigation conducted
2 by the Sheriff's Office.

3 Q: Okay. What do you mean by that?

4 A: So there was no -- there was no physical evidence, to my
5 knowledge, that linked Blaton to the crime. I don't know how
6 many days after the specific shooting occurred there was no
7 arrest made. Law enforcement never recovered the Cadillac
8 that they were driving. They recovered shell casings at the
9 scene where the shooting occurred. No DNA evidence had come
10 back. No fingerprint evidence. There was nothing until, I
11 think, the investigation was triggered by Willie Bethea.

12 Q: Okay.

13 A: I think Willie Bethea had come out and finally spoke to
14 law enforcement. He might have got picked up on something
15 else or stopped on something else. He was going to get in
16 trouble for it and then said, hey, let me tell you about this
17 murder.

18 Q: Okay. The shell casings you just mentioned, those came
19 out at trial those had been moved out of the roadway prior to
20 their collection.

21 MS. DIXON: Objection. Leading.

22 THE COURT: Sustained.

23 BY MR. WALLER:

24 Q: Do you recall any -- anything about the trial about the
25 shell casings?

1 A: Yeah.

2 Q: Okay. What do you recall learning about the shell
3 casings?

4 A: So I don't remember which deputy it was with the Marion
5 County Sheriff's Office, but he testified at trial that -- so
6 the road that this trailer sets on -- set on is 501/38 coming
7 out of Marion heading to Latta. So it's kind of a busy road.
8 And his testimony was that when they secured the crime scene,
9 the shell casings were in a -- some of them -- I don't know
10 how many -- were in a lane of travel, and he had kicked those
11 out of the lane of travel and, I guess, into the gutter by the
12 sidewalk that might have been right there in front of the
13 trailer.

14 Q: Okay. Were y'all aware of that before the trial started?

15 A: No.

16 Q: Okay. What actions did you take when you became aware of
17 that issue?

18 A: I cross-examined the officer. I mean, there really -- in
19 my opinion, there wasn't much action to take because the shell
20 casings -- there was no DNA, no fingerprints, nothing came
21 back linking Blaton Smith to the shell casings, and the
22 testimony at trial was he was not the shooter.

23 Q: Okay. Okay. As you are meeting with Mr. Smith and
24 reviewing discovery, what -- what was your defense strategy in
25 the case?

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 A: Ultimately, the defense strategy was to discredit Jamie
2 Williams and Willie Bethea. They were the only things in
3 terms of evidence. It was the only testimony that was going
4 to link Blaton Smith to the case, in my opinion.

5 We had a number of discussions because Mr. Smith wanted
6 to present an alibi defense, which I told him was his right to
7 do. We reviewed his alibi defense. His alibi defense would
8 have been his girlfriend, and that was it. I expressed to him
9 my opinion as an attorney that a girlfriend as an alibi
10 witness is not the strongest witness to have testify, and that
11 I think he would have a better defense attacking the lack of
12 investigation and lack of evidence and the biased testimony of
13 Mr. Williams and Mr. Bethea, and that's ultimately what he
14 chose to go with.

15 Q: Okay. Prior to the trial starting, were you -- you were
16 obviously made aware that Mr. Bethea and Mr. Williams were
17 going to testify?

18 A: Yes.

19 Q: Had you been made aware of any sort of plea offers or any
20 that they might have been given at that time?

21 A: No. Did I suspect it? Of course.

22 Q: Okay. Had they given any written statements to law
23 enforcement at the time?

24 A: I want to say Willie Bethea's statement was video
25 recorded. I'm not a hundred percent certain on Mr. Williams.

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 However, about a week -- the week before trial, I believe
2 Solicitor Clements gave me some notes that his investigator
3 had taken with one of the two witnesses. I want to think it
4 was Mr. Williams, but I'm not a hundred percent sure.

5 Q: Okay.

6 MR. WALLER: Your Honor, may I approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. WALLER:

9 Q: Mr. Bailey, if I can get you to turn to page 230? That
10 should be the testimony of Investigator Charlie Watson.

11 A: Yes.

12 Q: Okay. If you would take a look at the question beginning
13 on line 9 through the end of the answer on line 15?

14 A: Okay.

15 Q: Was there any trial strategy to not objecting to -- to
16 the answer of Investigator Watson to that one?

17 A: I don't recall honestly. I mean, should there have been
18 an objection there? Probably.

19 Q: Okay.

20 A: But I can't recall specifically without going back to
21 review Mr. Bethea's testimony the information I had on him for
22 cross-examination. I don't know how long Mr. Watson had been
23 testifying up until this point in time, but I mean, there
24 could have been. But I don't know off the top of my head what
25 it would have been at this time.

JOSHUA BAILEY - DIRECT BY MR. WALLER

1 Q: Okay. Same question for the using of that information or
2 the referencing of that testimony in the State's cross --
3 excuse me -- closing arguments. Was there a strategy behind
4 not objecting to Solicitor Clements telling the jury that you
5 heard from Investigator Watson about Mr. Bethea's cooperation?

6 A: And my testimony would be the same. I mean, it probably
7 should have been objectionable.

8 Q: Okay. Did you request any jury charges?

9 A: I don't recall if I did.

10 Q: Did you have any objections to any of the proposed jury
11 charges that you recall?

12 A: No. I think -- I think when we had the charging
13 conference, I believe there was a discussion in chambers about
14 the charges.

15 Q: Okay.

16 A: I think Judge Brown afforded us the opportunity to review
17 the charges, and I don't think there was.

18 Q: Okay. You didn't have any cause to object to any of the
19 final jury charges presented to the jury?

20 A: I don't think I objected to them, no.

21 Q: Okay. All right. Did you -- did you make a motion for a
22 directed verdict in this case?

23 A: I believe I did.

24 Q: Okay. Did you make a specific one, do you recall, or
25 just a general as it relates to all the charges all at once,

1 or --

2 A: It probably would have been a general one --

3 Q: Okay.

4 A: -- all together, and there might have been a specific one
5 about the charge that Mr. Smith was not found guilty of,
6 discharging the firearm into the dwelling.

7 Q: Okay.

8 A: But I don't -- I don't recall. I think all the charges
9 went to the jury though.

10 Q: Okay. Did you consider making a specific one for
11 possession of a weapon during the commission of a violent
12 crime?

13 A: I mean, did the thought cross my mind? Probably.

14 Q: Okay.

15 MR. WALLER: I beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. WALLER: Thank you, Mr. Bailey. I have nothing
18 further.

19 THE COURT: Ms. Dixon?

20 CROSS-EXAMINATION

21 BY MS. DIXON:

22 Q: How are you today?

23 A: I'm good, Ms. Dixon. How are you?

24 Q: I am good, thank you, and I don't think I'm going to have
25 a lot because it seems like you went over a good bit of it on

JOSHUA BAILEY - CROSS BY MS. DIXON

1 direct, but I do want to ask, is there anything specific that
2 Mr. Smith had ever asked you to investigate?

3 A: No, not -- not that I can recall.

4 Q: Nothing specific that you can recall? Okay. And then --

5 A: I mean, we talked about the evidence that was not
6 necessarily collected, but for instance, the Cadillac.

7 Q: Right, right.

8 A: I mean, we had discussions about that and how law
9 enforcement didn't get it, how we would be able to use that at
10 trial.

11 Q: Uh-huh.

12 A: Or the shell casings, but in terms of evidence, there
13 really wasn't a whole lot of evidence to investigate. You had
14 the purported victims that were in the trailer on 38 there.
15 None of them saw anything. And then you had the allegation of
16 Mr. Smith, Mr. Hayes, Mr. Williams, and Mr. Bethea in the car.
17 They were all secured by counsel. And other than the alibi,
18 Mr. Smith's position throughout my entire representation was
19 he was not involved and wasn't there.

20 Q: He was not there? Okay. And I mean, in terms of -- I
21 believe you testified on direct there was no actual physical
22 evidence linking him?

23 A: None, none that I recall. Again, I think the only
24 evidence that might have been collected was the shell casings
25 that were on the roadway, and then that wasn't -- there was no

JOSHUA BAILEY - CROSS BY MS. DIXON

1 evidence that connected those to Mr. Smith.

2 Q: In terms of -- you were asked about whether you made a
3 specific motion based on possession of a weapon during a
4 violent crime. Do you recall Jamie Williams's testimony about
5 the guns themselves and where they came from?

6 A: I have a vague recollection, but I mean, I'm not certain.
7 For some reason, I want to state that his testimony was that
8 the guns were in the front seat with Blaton, and then he
9 handed them out, but -- but I'm not a hundred percent sure on
10 that.

11 Q: But your recollection is that he testified Blaton handed
12 the guns?

13 A: I believe so, yes.

14 Q: And he -- and I guess -- do you recall who Mr. Williams
15 said was driving the vehicle?

16 A: Yeah. I believe his testimony was that Blaton was
17 operating the vehicle.

18 Q: Blaton was driving it? Okay.

19 MS. DIXON: Give me just a moment, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. DIXON: I have nothing further.

22 THE COURT: Mr. Waller?

23 MR. WALLER: Thank you, Your Honor. I'd call Blaton
24 Smith. I'm sorry. I have nothing further for Mr. Bailey.

25 THE COURT: Okay.

BLATON W. SMITH - DIRECT BY MR. WALLER

1 MR. WALLER: I'm getting ahead of myself.

2 THE WITNESS: Jon, do you want me to leave the
3 transcript?

4 MR. WALLER: If you don't mind. Thanks.

5 THE CLERK: If you would, stop and place your hand on the
6 Bible, your right hand on the Bible -- your left hand on the
7 Bible and raise your right hand as much as you can. Sorry.
8 Do you swear to tell the truth, the whole truth, and nothing
9 but the truth, so help you God?

10 THE APPLICANT: Yes, ma'am.

11 THE CLERK: Thank you.

12 BLATON W. SMITH, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q: All right. Good morning, Mr. Smith. How are you today?

17 A: I'm good.

18 Q: All right. Mr. Smith, you are a little soft spoken, so
19 I'm going to ask that you keep -- speak up so everybody can
20 hear you, particularly our court reporter. And obviously, the
21 judge needs to be able to hear everything you say.

22 A: Okay.

23 Q: Mr. Smith, I'm going to take you back kind of in time to
24 when you were first -- first arrested. Do you remember that?

25 A: Yes, sir.

BLATON W. SMITH - DIRECT BY MR. WALLER

1 Q: All right. When you were first arrested, what -- what
2 were you charged with?

3 A: With murder, four attempted murders, possession of a
4 firearm during the commission of a violent crime, and
5 discharging a firearm into a dwelling.

6 Q: All right. You had three -- three co-defendants; is that
7 right?

8 A: Yes.

9 Q: Okay. Or three that were actually charged with offenses?

10 A: Yes.

11 Q: Okay. How long after you were arrested did you have a
12 lawyer?

13 A: Well, I think I first saw -- talked to Bailey, and I
14 think I received my transcript in August or something like
15 that, but I think I had went to a hearing in that January.
16 I mean, not January, but that August. I'm not sure. I'm not
17 sure.

18 Q: Okay. Was it a couple of months afterwards? A --

19 A: A couple of months.

20 Q: -- couple of days?

21 A: Couple of months, yeah.

22 Q: Okay. All right. So was Mr. Bailey your first and only
23 lawyer in this case?

24 A: Well, I had had a bond hearing lawyer.

25 Q: Okay.

BLATON W. SMITH - DIRECT BY MR. WALLER

1 A: Who just did my bond hearing, but -- but yes.

2 Q: Okay. But anything after -- after bond, Mr. Bailey
3 represented you?

4 A: Yes.

5 Q: Okay. All right. When you -- when you and Mr. Bailey
6 were able to -- to finally meet, did you -- what did y'all
7 talk about?

8 A: Well, we just -- he basically just gave me the -- my Rule
9 5 and told me to look over it.

10 Q: Okay.

11 A: And we didn't really -- we didn't talk about nothing at
12 the first meeting. He just gave it to me and told me to look
13 over it and he'd come back to see me or something.

14 Q: Okay. Now, at that time, do you know if you had
15 everything in your Rule 5 or was it the first part or what do
16 you know?

17 A: No, I didn't know what was in there. I had to check it
18 or whatever.

19 Q: Okay. I think this has already been testified to, but
20 where were you -- where were you living during from when you
21 were arrested to your trial?

22 A: Where I was living? In Latta.

23 Q: Did you -- were you able to make bond or were you in the
24 detention center?

25 A: Oh, no, I was in -- oh, no, I was in the Marion County

1 Detention Center.

2 Q: Okay. All right. When you were able to meet with Mr.
3 Bailey again, did y'all have a chance to go over the
4 discovery?

5 A: Yes. Yes.

6 Q: Okay. Did y'all talk about the investigation in the
7 case?

8 A: Not really. He was just saying that there was two
9 witnesses against me. That's about Jamie and -- and Willie.
10 That's about it.

11 Q: Okay. So at that point, you understood that they were --
12 that two of your co-defendants were already testifying against
13 you?

14 A: Yes.

15 Q: Okay. What did you and Mr. Bailey talk about as far as
16 potential defenses might be?

17 A: Well, we ain't really -- we ain't really talked about
18 none. Basically, I did -- like I said, I did tell him about
19 an alibi, which we came to -- to a conclusion that it maybe
20 wouldn't be a good idea. And basically, he said he was going
21 to try to just impeach them, to discredit them, and so we
22 really didn't have any too many discussions. It was mostly --
23 from my understanding, it was mostly trying to get me to
24 cooperate, to testify or to cooperate against Adrian Smith,
25 and I would be given X amount of time or that was basically

BLATON W. SMITH - DIRECT BY MR. WALLER

1 what it was about cooperation.

2 Q: Okay. You mentioned that part of the strategy was trying
3 to impeach the witnesses against you. What did you know about
4 any potential testimony they were going to give before your
5 trial started?

6 A: What did I know about the testimony they was going to
7 give?

8 Q: I mean, did you -- had you been made aware that they were
9 -- had been given a plea offer or what did you know at the
10 time your trial was going to start?

11 A: Well, all I knew was -- well, I didn't really know
12 nothing about what they was going to receive or nothing like
13 that, but my understanding was before my trial that Willie --
14 Willie wrote -- I mean, he took a video statement and it was
15 an hour long, but he had multiple different stories in that
16 one video. And Willie -- I mean, Jamie, he wrote maybe three,
17 maybe four different statements and took a polygraph and it
18 came back inconclusive, but he wrote one of the statements a
19 week before the trial, and it matches up everything that
20 Willie was saying. And then I went to trial.

21 Q: Okay. So --

22 A: That's all.

23 Q: You -- you understood that the stories were changing, but
24 each person had given multiple statements?

25 A: Yes.

BLATON W. SMITH - DIRECT BY MR. WALLER

1 Q: Okay. You didn't know whether or not anybody had made -
2 A: No, sir.
3 Q: -- any sort of plea agreement or anything like that?
4 A: I mean, no. Well, I can't -- no, I didn't know.
5 Q: Okay.
6 A: I mean, they was -- they was made to me. It was made to
7 me. I don't know firsthand whether or not they was made to
8 them or not.
9 Q: Okay. What -- once the trial started, did you and Mr.
10 Bailey have a chance to -- to talk during breaks or -- you're
11 sitting at the same table obviously?
12 A: Yeah.
13 Q: Did y'all to have a chance to talk about how things were
14 going?
15 A: No, we ain't really -- we didn't talk about how it was
16 going or nothing like that.
17 Q: Okay. Had you given him anything other than the alibi,
18 any other information you wanted him to review or to -- to use
19 as a defense?
20 A: No. Well, I couldn't really -- I couldn't really do
21 nothing at -- I couldn't do nothing at trial because at the
22 beginning of the trial, the judge had told me that anything I
23 needed to communicate was I needed to communicate through my
24 lawyer. But, like, I was telling him that I didn't believe
25 that Bailey had my best interest at heart, and he wouldn't

BLATON W. SMITH - DIRECT BY MR. WALLER

1 listen to me if I thought something was right or whatever, but
2 we didn't have too many talks.

3 Q: Okay. There's been mention of -- or we made the
4 allegation that two different jurors were asleep during your
5 trial?

6 A: Yes.

7 Q: Did you witness that yourself?

8 A: Yes.

9 Q: Okay.

10 A: I mentioned that to him.

11 Q: Did you -- did -- did you tell Mr. Bailey about it?

12 A: Yes.

13 Q: Okay. Did you tell him about it while they were still
14 sleeping where he could see it himself or was it afterwards,
15 or how did that go?

16 A: Well, there was one time the judge had -- and Rachel was
17 sleeping. Like, this was, like, at the beginning of the
18 trial. He woke her up and told her to take her outside of the
19 jury and everything.

20 Then later on in the trial, we -- I noticed a sleeper,
21 but I think I want to say it was, like, Brown -- Brown at the
22 time she was asleep. I don't think it was at that specific
23 moment because I think we was -- there was -- something was
24 going on. But yeah, I think it was, like, shortly after I saw
25 her sleeping and I told Bailey.

BLATON W. SMITH - DIRECT BY MR. WALLER

1 Q: Okay. You called her Rachel just now. Is this --

2 A: Rachel, just by the -- just by the statements that I was
3 given.

4 Q: Okay. So that was my next question.

5 A: Okay.

6 Q: You didn't know her?

7 A: No, no, no.

8 Q: Okay.

9 A: Right.

10 Q: All right. Did you and Mr. Bailey have a chance to
11 discuss some of the charges? I guess some of the -- I don't
12 want to diminish any of them, but some of the lower-level
13 charges that you -- that you -- you faced, possession of a
14 weapon during the commission of a violent crime being one of
15 them. Did y'all have a chance to discuss those?

16 A: We didn't discuss no charges. We just --

17 Q: Okay.

18 A: -- discussed me cooperating.

19 Q: Okay. Was there ever any allegation that you ever saw
20 that you were the shooter in any of this?

21 A: Yes. I think in one of Jamie's statements he said that I
22 was the shooter.

23 Q: In one of -- that was one of Jamie Williams's statements?

24 A: Yes. He said I was the shooter.

25 Q: Did the State, the Solicitor's Office, or anyone else

BLATON W. SMITH - DIRECT BY MR. WALLER

1 from the State ever make that allegation during the trial?

2 A: No. They -- they -- they -- they said that I wasn't -- I
3 wasn't the shooter at trial.

4 Q: Okay. They said you were just driving the car?

5 A: Yes.

6 Q: Okay. Mr. Smith, I've asked you all the questions that I
7 have for you. Is there anything you think I've neglected to
8 ask that Judge McFaddin needs to be aware of Mr. Bailey's
9 representation of you?

10 A: But, yes, the fact about this -- about this attempted
11 murder charges where during the Court's charge -- the Court's
12 charge to the jury on the attempted murder, the judge
13 instructed the jury that a specific intent to kill is not an
14 element of attempted murder, but there must be a general
15 intent to commit serious bodily injury. Transcript, dated
16 2008, page 687, line 17 through 19. He should have objected
17 to that because -- and --

18 Q: And so that's something that you think that Mr. Bailey
19 should have objected to?

20 A: He should have objected to, yes.

21 Q: Okay. Anything else relating to the conversations you
22 had with Mr. Bailey or the process kind of maybe before the
23 trial started?

24 A: It was just basically me and him -- just him trying --
25 well, him trying to basically tell me to cooperate. That's

BLATON W. SMITH - DIRECT BY MR. WALLER

1 the only conversation we had. I've talked to the solicitor.
2 The solicitor came, him, the solicitor, and two private
3 investigators, they all came, visited me and asked me to
4 cooperate, and I'd be given X amount of time or whatever.

5 Q: Okay.

6 MR. WALLER: All right. Thank you, Mr. Smith. I don't
7 have anything further for you. Please answer any questions
8 Ms. Dixon may have.

9 THE COURT: Ms. Dixon?

10 CROSS-EXAMINATION

11 BY MS. DIXON:

12 Q: Mr. Smith, how are you today?

13 A: I'm good.

14 Q: Good. I'm just going to be just a few quick questions.
15 Now, you did say in direct -- in your direct examination that
16 you received the discovery from Mr. Bailey; correct?

17 A: Yeah.

18 Q: And you reviewed it, and he informed you that two
19 witnesses would be testifying against you; correct?

20 A: Yes, ma'am.

21 Q: So you were aware of the discovery that the State had
22 provided, the evidence that the State had; correct?

23 A: I was aware of it, yes.

24 Q: Yes? Okay. And y'all discussed your alibi, and I
25 believe you said on direct that you and him came to the

BLATON W. SMITH - CROSS BY MS. DIXON

1 agreement that it wasn't --

2 A: Yes.

3 Q: -- your strongest defense?

4 A: Yes.

5 Q: So you agree that that was not your strongest defense?

6 A: I mean, now I don't -- I just don't believe -- I believe
7 I should have put up a defense, but yes.

8 Q: But at the time of --

9 A: Yes.

10 Q: -- trial when you had that conversation --

11 A: Yes.

12 Q: -- with him --

13 A: Yes.

14 Q: -- you believed --

15 A: Yes.

16 Q: -- you agreed, you believed it was not your strongest
17 defense --

18 A: Yes.

19 Q: -- at the time of trial?

20 A: Yes.

21 Q: And let's see, you did testify that Williams's statement
22 right before trial, I believe, it changed a little bit, but
23 right before trial, it was, in fact, consistent with Bethea's
24 --

25 A: No.

1 Q: -- statement against you?

2 A: No, it actually changed completely. He -- he -- it
3 changed completely actually. Actually, he came in. At first,
4 him and Willie had conflicting statements. And then not even
5 a week before my trial -- I was supposed to went to trial on
6 -- I think it was August the 4th, and he wrote the statement
7 on July the 31st, if I'm not mistaken, but in that statement,
8 it corrected everything what Jamie was saying now -- I mean,
9 what Willie was saying. First it was a conflict and then a
10 week before the trial, it just all matched up.

11 Q: It all matched up? And so --

12 A: Then he started saying that -- in that statement, he
13 started saying that I was driving the car, that I gave them
14 the guns, that I told him to shoot, and that all these extra
15 things that the solicitor been trying to prove from the
16 beginning.

17 Q: So at the end, it did line up?

18 A: Yes.

19 Q: And do you recall he was cross-examined about the prior
20 inconsistent statements?

21 A: Yes.

22 Q: He was, in fact, cross-examined. So the jury had that
23 information?

24 A: About the statements, yes.

25 Q: And knew that they -- and ultimately, whose decision is

BLATON W. SMITH - CROSS BY MS. DIXON

1 it in terms of getting to believe which witness to believe?

2 A: It's the jury's decision.

3 Q: It's the jury? Okay. And then you brought up that your
4 lawyer you believe was ineffective for not objecting to the
5 attempted murder charge, the specific intent, and you cited to
6 a case. Can you tell us what year that opinion came out for
7 that case?

8 A: Well, it's -- you got two different -- two different
9 years. You got the one is 2015, which is the older one. Then
10 you've got the one that's a newer one is 2017, but --

11 Q: So you --

12 A: -- if you look farther -- if you look farther into it,
13 you will see it's referencing *Sutton v. State*, which is early
14 2000, which is the original case as far as that issue.

15 Q: Do you recall whether *Sutton v. State* actually dealt with
16 the statutory crime of attempted murder or the common-law
17 offense?

18 A: It -- *State v. Sutton*, it stated that a common-law
19 attempted murder charge would require the specific intent to
20 kill.

21 Q: And were you tried under the common law or a statute?

22 A: Was I -- was I charged under the common law or the
23 statute?

24 Q: Uh-huh.

25 A: I think it was the statute.

BLATON W. SMITH - CROSS BY MS. DIXON

1 Q: You were charged under the statute?

2 A: The statute.

3 Q: And so you said those cases talking about a specific
4 intent for attempted murder came out in 2015 and 2017. And
5 when was your trial?

6 A: Hold on, hold on, hold on. Although the statutory
7 enactment of attempted murder did not occur until 2010, the
8 Court in *Kings* noted that *Sutton* distinguished the common law
9 offense of attempted murder from the common law of *Averitt*,
10 who the --

11 Q: And when was your trial?

12 A: 2014.

13 Q: '14? So prior to this change in the law regarding the
14 statute for attempted murder?

15 A: (No audible response.)

16 MS. DIXON: No further questions.

17 THE COURT: Mr. Waller?

18 MR. WALLER: I have nothing further, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 Mr. Waller?

21 MR. WALLER: No further witnesses from the applicant,
22 Your Honor.

23 THE COURT: Ms. Dixon?

24 MS. DIXON: Yeah. We would like to call Mr. Bailey.

25 THE COURT: Go ahead.

JOSHUA BAILEY - DIRECT BY MS. DIXON

1 MS. DIXON: This is something that came up during the
2 testimony --

3 THE COURT: Yes, ma'am.

4 MS. DIXON: -- after we crossed him before.

5 THE COURT: You're still under oath, sir.

6 THE WITNESS: I'm sorry, Judge. I didn't hear you.

7 THE COURT: I said you're still under oath.

8 JOSHUA BAILEY, being previously
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. DIXON:

12 Q: There's been some testimony about sleeping jurors. Do
13 you recall sleeping jurors during this trial?

14 A: Honestly, I do not have a recollection of it. I know Mr.
15 Smith testified that -- that Judge Brown admonished one of the
16 jurors. I don't have a recollection of it, if y'all have it
17 in the transcript. Do I recall Mr. Smith talking to me about
18 it at some point later in the trial? I do not.

19 Q: No recollection? What would you -- in general, as part
20 of your general practice, if you've noticed a juror sleeping,
21 what would you do?

22 A: I would have brought it to the judge's attention and
23 moved for a mistrial.

24 Q: Moved for a mistrial?

25 MS. DIXON: Nothing further.

1 THE COURT: Mr. Waller?

2 MR. WALLER: Nothing further, Your Honor.

3 THE COURT: All right, sir. Thank you.

4 Ms. Dixon?

5 MS. DIXON: The State has no further witnesses.

6 THE COURT: All right. You know me well. Give me time
7 to study this. As I've often said, and I say this to you, Mr.
8 Smith, y'all have lived with this for months, if not years. I
9 only met this case about an hour ago. So bear with me while I
10 come up with a decision.

11 Thank you, all.

12 MS. DIXON: Thank you.

13 MR. WALLER: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 11:23 a.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

Court Reporter

August 7, 2024

Affidavit of Jamie Williams

My name is Jamie Williams. I am 22 years old, currently incarcerated at 4460 Broad River Rd Columbia, SC 29210. My SCDC ID is 00361191.

I was a witness in a Marion County, SC trial. The trial started on August 06, 2014. The case was State of South Carolina vs. Shaheed Hayes and Blaton Wakeem Smith. I gave a false testimony at the trial. My statement and testimony was coerced by the solicitor, Ed Clements. I was given a deal to testify against Shaheed Hayes and Blaton Wakeem Smith. Shaheed Hayes and Blaton Wakeem Smith did not have anything to do with the crime accused and committed for this trial. I was told by the solicitor that he wanted me to get both of the defendants off of the streets and if I did, I would be given a deal. I do understand that perjury is a crime and I declare this statement true.

Jamie Williams

Jamie Williams

Acknowledgment by Individual State of South Carolina

County of Richland

The foregoing instrument was acknowledged before me this 6th December 2017 by _____.

Janelle T. Spearman
(Notary Public)

Print



Date

12/6/17

(Seal)



State of South Carolina	)	
	)	Court of General Sessions
County of Florence	)	2017CP330219

Shaheed Hayes	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina	)	

April 18, 2022
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge.

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

John Waller, Esq.
 Attorney for the Plaintiff

Laurel Panday
 Transcriber



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Rachel Williams

Mr. Waller

4

1 MR. WALLER: Your Honor, the applicant will call Rachel
2 Williams.

3 THE DEPUTY CLERK: (Indiscernible) and raise your right
4 hand.

5 RACHEL WILLIAMS, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. WALLER:

9 Q Good morning, Ms. Williams. How are you today?

10 A I'm good.

11 Q And Ms. Williams, you are under a subpoena to be here
12 today; is that right?

13 A Yes, sir.

14 Q Okay. And thank you for being here. I know you've been
15 subpoenaed before, and I do apologize for that.

16 Ms. Williams, you were a juror at this trial; is that
17 right?

18 A Yes, sir.

19 Q Okay. While you were acting in your capacity as a juror,
20 were you awake for the entire time?

21 A I don't recall.

22 Q You don't recall? Okay. Do you recall being asleep at
23 any point?

24 A I don't -- I don't recall.

25 Q Okay. All right. Ms. Williams, the trial of this case

1 started on August 6th of 2014 and went for a couple days.

2 Where were you working at the time?

3 A At Walmart.

4 Q Okay. What shift did you work?

5 A It was, like, swing shifts.

6 Q Okay. What hours did you work, what time?

7 A Well, I had a open schedule, so it could be anytime.

8 Q Okay. Do you recall whether you worked any night shifts
9 or late shifts during the trial of this case?

10 A I'm not sure.

11 Q Okay.

12 A I don't know.

13 Q Ms. Williams, do you recall signing an affidavit on July
14 19th of 2016?

15 A No, sir.

16 Q You don't recall that?

17 A No, sir.

18 Q Okay.

19 MR. WALLER: Beg the Court's indulgence, Your Honor?

20 THE COURT: Yes, sir.

21 MR. WALLER: And Your Honor, there is an Exhibit B
22 attached to the back of Mr. Hayes' application. I don't have
23 a hard copy of that with me, but I'm going to show it on here
24 and counsel's aware of that.

25 BY MR. WALLER:

1 Q Ms. Williams, is that your signature?

2 A Yes, sir.

3 Q It is your signature?

4 A Yes, sir.

5 Q Okay. Let me -- Ms. Williams, I'm going to ask that you
6 see if -- ask that you read that and see if that refreshes
7 your memory.

8 A (Indiscernible).

9 Q Just read it to yourself.

10 A Okay.

11 Q Sorry. Does that refresh your recollection?

12 A Yes, sir.

13 Q Okay. So after having read that, do you recall saying
14 that you were sleeping during portions of the trial?

15 A Yes, but not the whole trial. Probably was nodding off,
16 but I mean, I wasn't asleep where I couldn't, you know, hear
17 anything.

18 Q Okay.

19 MR. WALLER: Your Honor, I believe it's already part of
20 the record, it's contained in Mr. Hayes' application, but I
21 would just offer the affidavit attached as Exhibit B as
22 Applicant's Number 1. Her recollection is unclear. But it is
23 a self-authenticating document, I believe. So Your Honor, I'd
24 just offer it as Applicant's Number 1.

25 THE COURT: Any objection?

1 UNIDENTIFIED SPEAKER: I don't object, Your Honor.

2 THE COURT: Okay. In.

3 (WHEREUPON, Plaintiff's Exhibit B was received into
4 evidence.)

5 MR. WALLER: Nothing further, Ms. Williams. Thank you.

6 (End of Transcript Excerpt)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Florence)

I, LAUREL PANDAY, a court-approved transcriber, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Florence County,
South Carolina, on the 18th day of April, 2022.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

February 18, 2023

Laurel Panday
Laurel Panday, CDLT-281
Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
Blaton W. Smith, # 329045	)	Case No.: 2016-CP-33-00802
	)	
Applicant,	)	
	)	
v.	)	CONSENT ORDER TO
	)	SUBSTITUTE COUNSEL
State of South Carolina,	)	
	)	
Respondent.	)	

It appears to the Court that Applicant has withdrawn his consent to allow counsel of record, Jonathan D. Waller, to represent him and his co-defendant in the PCR proceedings. Therefore, counsel has petitioned to be relieved. Mr. Waller was appointed pursuant to his contract with the South Carolina Commission on Indigent Defense (SCCID) and ask the court to substitute **Ashley A. McMahan** as applicant's counsel of record. Attorney McMahan agrees to such representation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Jonathan D. Waller is relieved as and that **Ashley A. McMahan** (P. O. Box 50536, Columbia, SC 29250; (803) 219-1110, ashley@mcmahanlawsc.com) is substituted as the attorney for the applicant.

AND IT IS SO ORDERED this 26 day of MARCH, 2025


 Chief Administrative Court Judge
 Twelfth Judicial Circuit

I SO MOVE:

s/ *Jonathan D. Waller*

Jonathan D. Waller, SC Bar # 76290

I CONSENT:

s/ *Ashley A. McMahan*

Ashley A. McMahan, SC Bar # 71676

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Blaton W. Smith, SCDC #329045,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2016-CP-33-0802

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before the Court by way of Applicant Blaton W. Smith's application for post-conviction relief (PCR) filed on December 12, 2016.¹ Respondent filed its Return and Motion for a More Definite Statement requesting an evidentiary hearing. On December 12, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable George M. McFadden, Jr. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant proceeded on the allegations in his third amended application. In support, Applicant testified on his behalf and presented the testimony of co-defendant Jamie Williams. Applicant attempted to also call as witnesses Rachel Williams and Diamond Brown, but they were not present in the courtroom during the hearing. Respondent presented the testimony of Joshua A. Bailey, Esquire. (Trial Counsel). Following a thorough review of the record, along with testimony and evidence presented at the hearing, this Court finds Applicant has failed to prove any ground and, accordingly, denies and dismisses this action with prejudice.

¹ Applicant filed amended applications on December 4, 2018, August 31, 2021, and June 27, 2022.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In February 2013, the Marion County Grand Jury indicted Applicant ~~for~~ murder, discharging a firearm into a dwelling, possession of a weapon during the commission of a violent crime, and four counts of attempted murder (2013-GS-33-0097). On August 6-8, 2014, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Applicant was represented by Joshua A. Bailey, Esquire (Trial Counsel). Solicitor Edgar (Ed) L. Clements, III, prosecuted the case. Applicant was found guilty as indicted for murder, possession of a weapon during the commission of a violent crime, and all four counts of attempted murder. Applicant was found not guilty of discharging a firearm into a dwelling. Judge Brown sentenced the Applicant to consecutive sentences of life without parole for murder, thirty years for each count of attempted murder, and five years for the weapon charge.

Applicant filed a timely Notice of Appeal, which was perfected by Deputy Chief Appellate Defender David Alexander, by briefing the following issue:

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, whether the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana?

Following briefing, the South Carolina Court of Appeals affirmed, finding the issue unpreserved. State v. Smith, Op. No. 2016-UP-323 (S.C. Ct. App. filed June 22, 2016). The Remittitur was sent on July 8, 2016.

FACTS GIVING RISE TO THE CONVICTION

On the night of April 12, 2012, Gavin Graves (the victim), Derrick Wilson, Christopher Kollock, and Darrell Davis were hanging out at Grave's home. (Tr. 359). A little after midnight

they thought they heard a knock at the back door. (Tr. 362, 368, 432, 435) Davis got up to check, but there was no one there. (Tr. 368).

2025 JUN 23 P 2:37
About three minutes later, a number of bullets were fired into the home from outside. (Tr. 368 - 369). According to Graves, "[i]t was like a rain of bullets, like ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping, ping. Like—it was like it wouldn't never stop." (Tr. 369). Wilson testified "it sounded like at least 20—25" gunshots, but there might have been more. (Tr. p. 438). Victim was hit in the gunfire. (Tr. 369, 370, 439, 440).

The police were unable to recover any physical evidence that pointed to any suspects. Wilson had prior problems with Adrian Smith ("Adrian"), Applicant's cousin, and he told police about that. (Tr. 447). However, he told police that Victim had never had any problems with "the Smith boys" or anybody that Wilson knew of. (Tr. 446 - 447). Detectives followed up on those leads. (Tr. 224, 231). Applicant's mother took him to Marion County for an interview with police, but Applicant was uncooperative. (Tr. 228).

Through their investigation, Detectives learned that a man named Willie Bethca² may have been involved in the shooting. (Tr. 227). Bethca met with police and admitted his involvement in the shooting. (Tr. 228, 230). As a result of their conversation with Bethca, the police arrested Applicant, Shaheed Hayes, Bethca, and Jamie Williams.³ (Tr. 229).

At trial, both Williams and Bethca testified about the shooting. Williams testified that Applicant, Hayes, and Bethca picked him up from his home; Applicant was driving Adrian's car, Bethca sat in the front passenger seat, Hayes sat in the back seat on the passenger's side, and Williams sat behind the driver (Tr. 472, 474). According to Williams, they drove past a home and

² Also called "Boo Boo." (Tr. 531).

³ Also known as "Lil Boosie." (Tr. 230, 468, 469).

Hayes saw Wilson's SUV ~~parked out back~~. (Tr. 474). Applicant turned around and slowly drove back by the home while Hayes and Williams shot at the house. (Tr. 477, 480). Williams testified that Applicant told him to shoot. (Tr. 480). Hayes shot directly out of the rear, passenger window, while Williams hung out of the car and shot over the top of the car. (Tr. 479). Williams testified he only shot three to five bullets before he "froze up", but Hayes emptied a clip into the home. (Tr. 479 - 480). They then drove back to Latta where Applicant stopped at a house and took the guns inside. (Tr. 480, 482). After that, they dropped Williams off back at his house. (Tr. 482 - 483).

Two days after the shooting, Williams received a call from Applicant, who told him someone had died and warned him that he better not say anything. (Tr. 483). Williams went to Adrian's house later that day. (Tr. 483). Williams testified "they were kind of mad that they hit the wrong person." (Tr. 483). According to Williams, "Eyebrows" was the person who they intended to hit—"they wanted him dead." (Tr. 484, 489). Williams did not know Wilson. (Tr. 490). Williams testified he was scared of Adrian because although Adrian is a paraplegic, "[h]e got people too." (Tr. 484 - 485). Williams testified that when he first spoke with police, he lied and said that Applicant and Hayes were the shooters, but he later admitted he was one of the shooters and that Applicant was driving the car. (Tr. 485).

Bethea's testimony regarding the shooting was largely consistent with Williams'. Bethea testified that he and Applicant were cousins. (Tr. 531). He also identified Hayes as "[o]ne of my people from Latta." (Tr. 532). Bethea testified that he and Applicant were together all day on April 12, 2012, and they picked up Williams and Hayes later that evening. (Tr. 535 - 536, 538). Bethea believed they were going to a club; when they passed that club, he assumed they were headed to a different club. (Tr. 540). Applicant, who was driving, stopped in front of a trailer that Bethea identified as "Eyebrows' trailer." (Tr. 540 - 541). Applicant said: "This is the house right here.



That's the car in the back." (Tr. 541). ~~Hayes and Williams~~ then started shooting. (Tr. 543 – 547). After they finished, Hayes said he hoped he hit somebody in the house. (Tr. p. 547). They then drove back to Latta, and Applicant dropped the guns off at "Karen['s] house." (Tr. 547).

According to Bethea, afterwards, "[w]e just said don't say nothing about it and just keep your mouth closed." (Tr. 550 – 551). Applicant later told Bethea, "keep your cool" and advised him not to say anything about what had happened. (Tr. 552 – 553). Bethea testified it was Wilson who was the intended target because Wilson and Applicant had "bad blood". (Tr. 554). Bethea left town because he was "worried something crazy was going to happen. That somebody was going to get shot or something." (Tr. 554). When asked if he left town because he was worried about Hayes or Applicant, Bethea responded, "They just told me—they kept calling me, like, don't say nothing or we're going to do something to you." (Tr. 555). Nevertheless, Bethea eventually turned himself in. (Tr. 558 – 559). After the police spoke with Bethea, they arrested him. (Tr. 559).

CURRENT ACTION

On December 12, 2016, Applicant timely filed an application for post-conviction relief alleging:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

Applicant requested his conviction be reversed and remanded.

On December 4, 2018, Applicant filed an amended application alleging:

1. After discovered evidence: Applicant's co-defendant Jamie Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.

On August 31, 2021, Applicant filed a second amended application alleging:

1. After ~~discovered~~ Evidence: Applicant's co-defendant, Jamie Williams, who testified against Applicant has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.
2. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
3. Counsel was ineffective for failing to object to the incorrect instruction of the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.
4. Counsel was ineffective for failing to move for a directed verdict with respect to the charge of Possession of a Weapon during the Commission of a Violent Crime.

On June 27, 2022, Applicant filed a third amended application alleging:

1. Applicant's co-defendant Jamie Williams, who testified against Applicant, has given a statement that he provided false testimony during Applicant's trial. Neither Applicant nor counsel had notice of the admission of falsity of Mr. Williams' testimony and could not have discovered such. Mr. Williams has provided an affidavit, dated December 6, 2017, where he acknowledges the falsity of his testimony.
2. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
3. Counsel was ineffective for failing to properly object to impermissible testimony and argument during the course of Applicant's trial, allowing the jury to hear impermissible testimony and thus failing to preserve the issues for direct appeal
4. Counsel was ineffective for failing to object to the incorrect instruction on the law to the jury; specifically with regards to the instructions for the charge of Attempted Murder.
5. Counsel was ineffective for failing to object to improper vouching testimony during the testimony of Investigator Charlie Watson.
6. Counsel was ineffective for failing to move for a directed verdict

with respect to the charge of Possession of a Weapon During the Commission of a Violent Crime.

2025 JUN 23 7. Counsel was ineffective for failing to object to, and/or move for a mistrial, due to two jurors sleeping during various portions of the trial.

At the PCR hearing, Applicant proceeded forward on the allegations of the third amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Marion County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. 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. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by S.C. Code §17-27-80.

Newly Discovered Evidence

Applicant alleges that his co-defendant, Jamie Williams, gave a statement that he provided false testimony during Applicant's trial, which he contends constitutes newly discovered evidence. Applicant has not proved this ground.

A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code §17-27-20(A)(4). To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;

2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). "Where a motion for a new trial is based on recantation of testimony given at the trial, such recantation is looked upon with utmost suspicion." United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973) (internal quotation omitted). "Where the circumstances surrounding the recantation suggest it is the result of coercion, bribery, or misdealing, the court . . . is justified in disregarding it." Id.

In his application, Applicant submitted an affidavit from co-defendant Jamie Williams, which stated: "I gave a false testimony at the trial" and "Shaheed Hayes and Blaton Wakeem Smith did not have anything to do with the crime accused and committed for this trial." (Applicant's Exhibit 1). At the PCR hearing, Jamie Williams testified to the opposite of what was in his affidavit. (PCR Tr. 14). Specifically, Williams testified he told the truth at trial and Applicant was the driver of the car. This Court finds this evidence fails to meet the first prong of the Hayden test and would not have any impact on the result if there was a new trial. Thus, Applicant did not meet his burden, and this claim is denied.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117,

386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.E.2d at 442, 334 S.E.2d at 814 (citing Strickland, 366 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625.

Failed to Investigate

Applicant alleged Trial Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant. Applicant did not prove this ground.

At the PCR hearing, Applicant testified Trial Counsel met with him and reviewed the discovery and told him there were two witnesses against him. (PCR p.34, lines 8-9). Applicant testified he told Trial Counsel about an alibi defense, but they concluded that it would not be a good idea to present. Applicant testified Trial Counsel told him that he was going to try and impeach and discredit the witnesses. (Id. at lines 17-22.) On cross examination. Applicant testified that after his conversation with Trial Counsel, he believed the alibi defense was not his strongest defense. (PCR p.41, lines 5-20). He recalled that Williams was cross-examined about prior inconsistent statements, so the jury had that information. (PCR p.42, lines 19-24).

Trial Counsel could not recall anything specific that Applicant asked him to investigate, and there was not a whole lot of evidence to investigate. (PCR p.29). Trial Counsel testified that Applicant's position throughout his representation was he was not involved and was not there. Trial

Counsel testified that there was no actual physical evidence linking Applicant to the shooting.

2025 JUN 23 10:28 AM
 This Court finds Trial Counsel's foregoing testimony credible. Further, this Court finds Trial Counsel's investigation was reasonable under prevailing professional norms and not deficient. Critically, Applicant failed to produce evidence of what Trial Counsel may have discovered upon further investigation and thus failed to prove prejudice. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial; Moorehead v. State, 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). Based on the foregoing, this allegation is denied and dismissed.

Failing to Object – Impermissible Testimony and Argument

Applicant alleged Trial Counsel was ineffective for failing to object to impermissible testimony and argument during trial, thereby failing to preserve the issues for direct appeal. Applicant did not prove this ground.

When questioned at the PCR hearing about whether there was a strategy behind not objecting when the solicitor told the jury that Investigator Watson testified about Mr. Bethea's cooperation, Trial Counsel testified that he probably should have objected. (PCR p.27, lines 3-7). However, the only reference to Investigator Watson in the closing argument was: "Now Charlie Watson came to start off the next day. He testified about the investigation and what it led to and how they followed it up, what they found, who they talked to and what charges were made." (Tr. 631). At no point in the solicitor's closing argument did the solicitor tell the jury that Investigator Watson testified about Bethea's cooperation. Applicant did not point to any other testimony that

counsel should have objected to that would have possibly changed the outcome of his trial or his direct appeal, and thus failed to meet his burden of proving deficiency or prejudice. Therefore, this claim is denied.

2025 JUN 23 P 2:37

Failed to Object – Jury Charge

Applicant alleged counsel was constitutionally ineffective to object to the jury instruction in regard to Attempted Murder. Applicant did not prove this ground.

At the PCR hearing, Applicant testified that counsel should have objected when the judge instructed the jury that specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. (PCR p.39, lines 10-20). Trial Counsel testified that he did not believe he objected to the jury instructions. (PCR p.27, lines 10-20). This Court finds that the instruction on the law to the jury was correct at the time of trial, and therefore Trial Counsel was not deficient for not objecting. Although, the South Carolina Supreme Court later determined attempted murder required proof that the defendant had specific intent to kill, this case was decided after Applicant's 2014 trial. See State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) (Attempted murder required proof that defendant had specific intent to kill). Trial Counsel is not expected to anticipate the changes in the law. See Thornes v. State, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.") Thus, Applicant did not prove counsel was deficient.

Additionally, Applicant's reliance on State v. Sutton,⁴ is misplaced. In Sutton, the South Carolina Supreme Court stated that *common-law* attempted murder requires specific intent. Applicant correctly testified that he was charged under the attempted murder statute and not the

⁴ State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000).

common law offense. Therefore, Sutton is inapplicable. Based on the foregoing, this claim is denied.

2025 JUN 23 P 2:37

Failed to Object - Vouching

Applicant alleged Trial Counsel was ineffective for failing to object to improper vouching by Investigator Charlie Watson. Applicant did not prove this ground.

At trial, the following occurred on direct examination of Investigator Charlie Watson:

- Q: Okay. When you talked to Willie Bethea, can you describe for us what was his demeanor and how did he act?
- A: Mr. Willie Bethea was very cooperative. Out of all the co-defendants involved in this, he was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.

(Tr. 230).

At the PCR hearing, Trial Counsel did not recall if there was any trial strategy to not objecting to this testimony. Trial Counsel testified there probably should have been an objection. Trial Counsel did not know what his objection would have been. (PCR p.26, lines 15-25).

This Court finds Trial Counsel was not deficient for not objecting to this answer. The question was framed to Investigator Watson as to what Bethea's demeanor was and how he acted. Investigator Watson made no comments on the credibility or truthfulness of Bethea's testimony in his answer. From context, Investigator Watson was describing Bethea's emotional demeanor. He was not offering an opinion on the credibility of Bethea's testimony. Stating that Bethea was cooperative, sincere, apologetic and remorseful for what happened does not rise to the definition of improper vouching. *Contra Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499 (Ct. App. 2019) (State's forensic interviewer improperly vouched for and bolstered the victim's credibility by testifying, "Children don't often life about sexual abuse incidents."). Thus, Trial Counsel was

not deficient for not objecting.

Further, Applicant has failed to prove any prejudice from Investigator Watson's single statement. This Court finds the outcome of Applicant's trial did not hinge on this one-off statement nor would the outcome of the trial have been different had this statement from the investigator had not been made at all. Additionally, Bethea was thoroughly cross-examined on his inconsistent statements made to law enforcement—thereby highlighting to the jury that Bethea's credibility was questionable and diluting Investigator Watson's single statement. Furthermore, this single instance was not so crucial as to undermine the results of the proceedings. Based on the foregoing, this claim is denied.

Failed to Move for Directed Verdict

Applicant alleges Trial Counsel was ineffective for failing to move for a directed verdict with respect to the charge of Possession with a Weapon During the Commission of a Violent Crime. This Court finds this allegation to be without merit.

When ruling on a criminal defendant's motion for directed verdict, a trial court is concerned with the existence of evidence, not its weight. State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998). If there is any direct or substantial evidence tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced, the case should be submitted to the jury. State v. Johnson, 334 S.C. 78, 84, 512 S.E.2d 795, 798 (1999).

At the PCR hearing, Applicant testified that there was an allegation that he was the shooter when he testified that in one of Jamie Williams's statements, he said Applicant was the shooter. (PCR p.38, lines 19-24). Applicant testified that at trial the State said he was not the shooter, he was just driving the car. (PCR p.39, lines 2-5). Trial Counsel recalled the evidence showed the guns were in the front seat with Applicant and he handed them out. (PCR 30).

This Court finds there was no basis for making a directed verdict motion in this case. At

trial, Williams testified that Applicant handed him a gun to shoot out the window (Tr. 521). Additionally, Williams testified that the first time he talked to investigators, he said Applicant and Shaheed were shooting. (Tr. 486) The record clearly reflects the existence of evidence to support this charge. Whether or not the witness Jamie Williams' testimony was credible was a question for the jury. However, the testimony supports the existence of evidence that Applicant was in possession of a weapon. See Wiggins *supra*. Trial Counsel cannot be found deficient for not making a directed verdict motion in this case when there was no basis. Applicant did not set forth an argument counsel should have made that reasonably would have resulted in a directed verdict on the possession of a weapon charge, and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

Sleeping Jurors

Applicant alleges Trial Counsel was ineffective for failing to object to and move for a mistrial when two jurors were allegedly sleeping during various portions of the trial. This Court finds this allegation to be without merit.

At the PCR hearing, Applicant testified that he witnessed two different jurors asleep during his trial. Applicant testified he told Trial Counsel about it. Applicant testified that "at the beginning of the trial, Juror Rachel Williams was sleeping, and the judge woke her up and told her to take her outside of the jury". Applicant testified he did not tell Trial Counsel about it at the specific moment because something was going on, but he thought he told Trial Counsel shortly after.⁵ (PCR p.37, lines 3-25). Trial Counsel had no recollection of sleeping jurors during the trial and did not recall Applicant talking to him about it at later in the trial. Trial Counsel testified that if he had

⁵ Applicant was allowed to supplement the record with the transcript of Juror Rachel Williams's testimony from co-defendant's PCR hearing. The undersigned presided over the co-defendant's hearing and was in a position to observe her demeanor and assess her credibility at that time.

noticed a juror sleeping, he would have brought it to the judge's attention and moved for a mistrial. (PCR p.45, lines 12-18).

2025 JUN 23 P 2:37
This Court finds Applicant's testimony on this matter to be not credible. The credible testimony entered by the alleged sleeping juror from co-defendant Shahced Hayes' PCR hearing indicates that she may have dozed off, but she was not asleep to the extent that she could not hear anything. Trial Counsel credibly testified he had no recollection of a sleeping juror. Applicant did not talk to him about a sleeping juror, and if he had noticed a juror sleeping, he would have brought it to the judge's attention and moved for a mistrial. Applicant has not presented any credible evidence other than his own self-serving testimony to support this allegation. Contrary to Applicant's testimony, the transcript does not mention or note any juror falling asleep. Therefore, this Court finds that Trial Counsel was not deficient. Applicant did not prove deficiency or prejudice and thus this claim is denied.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

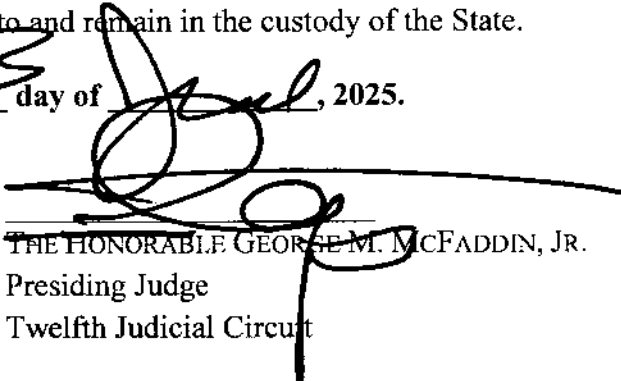
Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 13 day of June, 2025.


 THE HONORABLE GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Twelfth Judicial Circuit

Sumter, South Carolina

FILED

BOOK _____ PAGE _____

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MARION COUNTY SC
CLERK OF COURT

WITNESSES

MARTIN BELL Marion County Sheriff

E. L Clements, III

ARREST WARRANT NUMBER

M397251/M397255/M397259/M397263/M397277

M397260/M397261/M397262/M397279/M397274/
M397275/M397258/M397276/M397280/M397253/M397252/
M397254/M397256/M397278/M397257/M397285/M397271/
M397266/M397270/M397267/M397268/M397289/M397264

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

Pauline R Scott
Jan 31, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-33-00097

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

vs.

BLATON WAKEEM SMITH
WILLIE OBRIAN BETHEA
SHAHEED HAYES
JAMIE WILLIAMS

Indictment for

**MURDER;
DISCHARGING FIREARM INTO DWELLING;
POSSESSION OF WEAPON DURING
COURSE OF VIOLENT CRIME;
ATTEMPTED MURDER
(FOUR COUNTS)**

842

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

INDICTMENT FOR

MURDER
DISCHARGING FIREARM INTO DWELLING
POSSESSION OF WEAPON DURING COURSE OF
VIOLENT CRIME
ATTEMPTED MURDER
(FOUR COUNTS)

At a Court of General Sessions, convened on JANUARY 31, 2013 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAEED HAYES AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, willfully, feloniously, and intentionally kill the victim, Christian James Drawhorn, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 13, 2012 in Marion County, in violation of Section 16-03-0010, 20 S. C. Code of Laws, 1976, as amended.

COUNT TWO- DISCHARGING FIREARM INTO DWELLING

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County on or about April 13, 2012, discharge or cause to be discharged unlawfully, firearms at or into a dwelling house or other building or enclosure regularly occupied by persons; located at [REDACTED] N. Hwy 501, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

844

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED MURDER, DISCHARGING A FIREARM INTO A DWELLING, POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME AND FOUR COUNTS OF ATTEMPTED MURDER WITH THE AFORESAID NAMES(S) OF BLATON SMITH, WILLIE O. BETHEA, SHAHEED HAYES AND JAMIE WILLIAMS SHOWN THEREON

COUNT FOUR- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Derrick Lamont Wilson, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT FIVE- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Darrell Antonio Davis, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT SIX- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Gavin Graves, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT SEVEN- ATTEMPTED MURDER

That BLATON W. SMITH, WILLIE O. BETHEA, SHAHEED HAYES, AND JAMIE WILLIAMS did in Marion County, on or about April 13, 2012, with malice aforethought attempt to murder one, Christopher Kollock, by shooting into dwelling causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR