

VOLUME III OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

DRAKE CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001342

APPENDIX

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CHAD SMITH - DIRECT EXAM BY MR. THROWER

1 the left-hand twist is Hi-Point firearms.

2 Q. Now, is there anything distinctive
3 about a Hi-Point 380, the appearance of it? I'm
4 sure you're familiar with it.

5 A. We see a lot of them in our department.

6 Q. Is the frame unique? Is the handle
7 unique or coloring --

8 A. Depending on compared to what firearm I
9 don't know, but they're typically black in color.
10 The frames were made in metal; some are now made in
11 polymer. They're typically heavy guns.

12 Q. Now, the polymer like a plastic, a
13 super hard plastic?

14 A. It's a plastic, correct.

15 Q. Does that come in different colors?

16 A. I think they do make some different
17 colored versions.

18 Q. So the slide -- the top slide might be
19 silver and the frame might be black?

20 A. Yes. I think at one time they made a
21 version of that.

22 Q. Or vice versa? I guess you could have
23 it either way.

24 A. I haven't seen a silver-colored frame
25 version, but that's not to say they didn't make

CHAD SMITH - DIRECT EXAM BY MR. ARCHER

1 one. They've made various versions throughout the
2 years.

3 Q. Would you say that you would have to
4 know a Hi-Point 380 -- you would have to be
5 familiar -- you couldn't look at a 380 and say
6 that's a 380 Hi-Point. Is it that distinct that
7 you would be able to tell -- from me to you, if I
8 held up a 380, would you say, oh, that's a
9 Hi-Point?

10 A. I probably could tell it's a Hi-Point
11 because we see them so frequently. I can't say for
12 sure if a common person seeing one would know
13 exactly what it was.

14 MR. THROWER: Okay. All right. Thank
15 you very much.

16 THE COURT: Mr. Archer.

17 CROSS-EXAMINATION

18 BY MR. ARCHER:

19 Q. I take it what your testimony basically
20 is, is that the shell casings all came from the
21 same gun?

22 A. Yes, sir.

23 Q. And the bullet ends all came from the
24 same gun compared bullet end to bullet end?

25 A. Correct.

CHAD SMITH - DIRECT EXAM BY MR. ARCHER

1 Q. Are you able in any way to tie the
2 bullet ends to the casings?

3 A. No, sir.

4 Q. Okay. So -- now you've got -- we know
5 that all the casings were fired by the same gun and
6 all the bullet heads were fired from a similar gun?

7 A. Yes.

8 Q. You had no gun to compare them to; is
9 that correct?

10 A. That's correct; no gun was submitted
11 for comparison.

12 Q. Okay. And let me ask you, the shell
13 casings and bullets, are we talking about a pistol
14 or a rifle?

15 A. Pardon?

16 Q. The shell casings, are they ammunition
17 for a pistol or a rifle, or either?

18 A. Either. Again, there are rifles that
19 can shoot 380 auto and then there's semiautomatic
20 pistols that can shoot 380 auto, so I can't
21 determine which one was fired --

22 Q. So whatever you were sent could have
23 been fired either by a pistol or by a rifle?

24 A. If it were chambered in 380 auto or
25 possibly a 9 mm Luger, it could have fired those

CHAD SMITH - DIRECT EXAM BY MR. SMALDONE

1 cartridge casings.

2 Q. Now, you said that the grooves and
3 stuff are unique to a particular gun?

4 A. With regards to the bullets. So the
5 actual projectile was unique to a specific brand,
6 Hi-Point Firearms.

7 Q. And is that a rifle or a pistol?

8 A. It could be both. They make a Harding
9 version of the nine millimeter Luger, which 380
10 auto can be fired out of some Hi-Point firearms.
11 And they also make a semiautomatic pistol in the
12 same caliber, so it could be either/or.

13 Q. So there is no way of knowing if a
14 rifle or pistol fired the shell casings or the
15 bullets?

16 A. Correct, not without having the
17 specific firearm to compare them to.

18 MR. ARCHER: Okay. Yeah. Okay. No
19 other questions.

20 THE COURT: Mr. Smaldone.

21 CROSS-EXAMINATION

22 BY MR. SMALDONE:

23 Q. Good afternoon.

24 A. Afternoon.

25 Q. My name is Grant Smaldone, and I

CHAD SMITH - DIRECT EXAM BY MR. SMALDONE

1 represent Drake Campbell here. I know it's getting
2 close to lunchtime, but I just have briefly a
3 couple of questions.

4 Is it fair to say Hi-Point is one of
5 the most popular guns you run across?

6 A. We see them a fair bit in our line of
7 work, yes.

8 Q. Probably in the top three, right?

9 A. Possibly. We don't keep track of those
10 kind of statistics, but we see them quite a bit.

11 Q. And I don't know this, but if I was to
12 say it was the most popular, you wouldn't be able
13 to rebut that, right?

14 A. Probably not. It's very common.

15 Q. And fair to say of Hi-Point and of
16 handgun rounds, 380 is one of the most popular
17 rounds you run across?

18 A. Very popular, that's correct.

19 Q. And probably -- and probably not number
20 one of all the calibers?

21 A. It's not something that we keep stats
22 on, so I really can't say, but we do see 380
23 caliber a bit.

24 Q. Probably the top three, right?

25 A. It's possible.

CHAD SMITH - DIRECT EXAM BY MR. SMILEY

1 Q. It's possible. And fair to say that
2 Hi-Point 380 is a fairly popular gun in your line
3 of work?

4 A. We do see them, yes.

5 MR. SMALDONE: That's all I have.

6 Thank you.

7 THE COURT: Mr. Smiley.

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q. The bullet projectile that was taken
11 from the deceased and the fragment that was taken
12 from Ms. Snipe, they came from the same gun?

13 A. Correct. Both of the bullets that were
14 submitted for examination were determined to be
15 fired by the same firearm.

16 Q. And reading it, it said fragments for
17 Ms. Snipe.

18 A. That's how it was potentially logged
19 in. When I received -- as I received it, it was
20 pretty much an intact bullet. So it was just --
21 somebody might call it a fragment, but in our line
22 of work we can probably narrow it down more to a
23 bullet.

24 Q. Okay. So you got -- from everything
25 that you analyzed -- I know you can't make the

CHAD SMITH - DIRECT EXAM BY MR. SMILEY

1 ultimate decision -- you have four shell casings
2 from a 380?

3 A. They were .380 auto caliber. It's not
4 to say it couldn't have been fired in a nine
5 millimeter.

6 Q. It would be consistent being shot from
7 a 380 Hi-Point?

8 A. Could have been, yes, sir.

9 Q. And we know those casings are all the
10 same. Came from the same gun, right?

11 A. Yes, sir.

12 Q. And we know the projectiles came from
13 the same gun?

14 A. Yes, sir.

15 Q. And they are inclusive of one another.
16 So the one gun could have fired four times and
17 those are two projectiles from that gun, correct?

18 A. Repeat the question.

19 Q. Maybe I'm being to -- you have two
20 projectiles that came from a Hi-Point?

21 A. That's correct.

22 Q. And they were -- they were -- the
23 bullets were 380 or 9 -- 380?

24 A. The bullets, yes, sir.

25 Q. And that -- and I say bullets because

CHAD SMITH - DIRECT EXAM BY MR. SMILEY

1 they are projectiles?

2 A. Yes, sir.

3 Q. Those projectiles you could say either
4 came from a Hi-Point 380 or from a Hi-Point or from
5 a nine Luger, right?

6 A. Again, it -- still a Hi-Point, but it
7 could have been a .380 auto or potentially a 8 mm r
8 Luger.

9 Q. So we know that and then we have four
10 casings that you know came from a 380 --

11 A. Or possibly a nine.

12 Q. Or nine?

13 A. Because they were all fired by the same
14 gun.

15 Q. And what I'm saying is, they are
16 consistent with one another if they were found in
17 the same space from coming from one gun?

18 A. Consistent, yes. There is nothing to
19 say that the same gun that fired the bullets was
20 the same gun that fired the cartridge cases. I
21 can't say that without having the actual firearm to
22 compare.

23 Q. All right. For instance, if the
24 fragment had been a .357, they would be exclusive
25 to one another, correct?

1 A. If we were to determine -- correct. We
2 try to determine if it's a different caliber or
3 they had different characteristics --

4 Q. So your analysis doesn't do anything to
5 show there was more than one weapon fired?

6 A. No, sir.

7 MR. SMILEY: That's all I've got.

8 THE COURT: Any redirect?

9 MR. ALFARO: No, Your Honor.

10 THE COURT: Any objection to the
11 witness being excused? From the State?

12 MR. ALFARO: No, Your Honor.

13 THE COURT: From the defense.

14 MR. THROWER: No, Your Honor.

15 MR. SMILEY: No, Your Honor.

16 MR. SMALDONE: No, Your Honor.

17 MR. ARCHER: No, Your Honor.

18 THE COURT: Sir, you're excused.

19 THE WITNESS: Thank you, Judge.

20 THE COURT: Mr. Foreman, ladies and
21 gentlemen, we're going to take advantage of this
22 break for you to have your lunch. It's just
23 arrived.

24 During the break, please do not discuss
25 the case amongst yourselves, and leave your

1 notepads in the seat.

2 We will follow the same process as
3 yesterday. Once you have eaten and you would like
4 to go outside and get some air, let the bailiff
5 know and they will accommodate you.

6 (Jury out, 12:24 p.m.)

7 THE COURT: The State has the DNA and
8 serologist witnesses left.

9 MR. MCNEELY: That's correct.

10 THE COURT: And that would be it.

11 MR. MCNEELY: That's correct.

12 THE COURT: Okay. Does the defense
13 anticipate calling any witnesses?

14 MR. THROWER: No.

15 THE COURT: Each of you have the same
16 witness on your list, Mr. Cannon.

17 MR. THROWER: I think he was released.

18 MR. SMALDONE: We released him, Your
19 Honor.

20 THE COURT: Other than your clients, do
21 you anticipate any witnesses?

22 MR. SMALDONE: No.

23 MR. SMILEY: No, Your Honor.

24 THE COURT: Why don't we -- how long do
25 you think the DNA and serology people would be? An

1 hour each?

2 MR. MCNEELY: At most.

3 THE COURT: Why don't we -- yesterday
4 the jury -- only took them 20 minutes to eat and go
5 outside and get air. Why don't we take 30 minutes
6 which would put us 1:15.

7 You can leave the stuff in here. The
8 courtroom will be locked.

9 (A luncheon recess transpired.)

10 THE COURT: State ready to proceed?

11 MR. ALFARO: We are, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. THROWER: Yes, Your Honor.

14 MR. SMILEY: Yes, Your Honor.

15 MR. SMALDONE: Yes.

16 MR. ARCHER: Yes.

17 THE COURT: Who is the State's next
18 witness?

19 MR. MCNEELY: Courtney Thompson.

20 THE COURT: Is the witness present?

21 (Jury in, 1:31 p.m.)

22 THE COURT: You may be seated.

23 Ladies and gentlemen, I hope you
24 enjoyed your lunch. We will now resume testimony.

25 MR. MCNEELY: The State calls Courtney

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Thompson.

2 COURTNEY THOMPSON,

3 being first duly sworn, testified as follows:

4 THE CLERK: Please state your full name
5 and spell your last.

6 THE WITNESS: My name is Courtney
7 Thompson, T-H-O-M-P-S-O-N.

8 THE COURT: You may proceed.

9 MR. MCNEELY: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MCNEELY:

12 Q. Good afternoon, Ms. Thompson.

13 A. Good afternoon.

14 Q. Where are you currently employed?

15 A. I'm employed at the South Carolina Law
16 Enforcement Division, also referred to as SLED.

17 Q. What is your position there and how
18 long have you been employed there?

19 A. My position is that I'm a forensic
20 serologist in the DNA casework department, and I've
21 been there for about five and a half years.

22 Q. Please describe your education and
23 training for the jury.

24 A. I have a Bachelor's in Science -- in
25 Forensic Science from Southern Wesleyan University.

1 I've also completed graduate level course work from
2 the University of Florida in biological evidence
3 and serology.

4 My training included the in-house
5 training program that the DNA casework department
6 uses in order to certify every forensic serologist
7 prior to admitting casework; and it involves
8 learning how to handle evidence, the different
9 types of testing I need to be able to perform,
10 maintaining chain of custody, report writing and
11 then also learning courtroom testimony.

12 I had to go through a series of tests
13 to deem that I was competent to handle evidence
14 alone, which included an oral exam, a written exam,
15 a mock case in a mock court. And all of those had
16 to be passed in order for me to be deemed competent
17 to handle any type of independent work alone.

18 Q. Do you hold any licenses or
19 certifications?

20 A. No, not at this time.

21 Q. But the examinations you just
22 referenced through SLED, were you certified through
23 them?

24 A. That's correct, through SLED, the
25 training program that I went through.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. Tell the jury about your work history.

2 A. My work history involves, like I said,
3 five and a half years approximately at SLED in the
4 forensic serology department. So I go through and
5 handle various items of evidence throughout my week
6 from different types of cases that range all over
7 the state.

8 I process these items of evidence for a
9 variety of types of DNA, most commonly are body
10 fluids such as blood, semen, and saliva because
11 they are a good source of DNA. I also can process
12 items of evidence for what's known as touch DNA or
13 ownership DNA, and that just implies the wearer of
14 a particular item or who may have handled a
15 particular item.

16 And I can evaluate evidence and attempt
17 to recover DNA from those items based off of the
18 type of evidence that's submitted and the cases --
19 the case scenario and such.

20 And like I said, I've been doing that
21 for some time; and I'm also the training officer
22 for the forensic serology department, and I've been
23 doing that about two years.

24 Q. You may have covered a good chunk of
25 this; please explain to the jury what is meant by

1 forensic serology.

2 A. Forensic serology is the examination of
3 bodily fluids such as blood, semen, and saliva in a
4 forensically relevant setting. And the reason why
5 they are forensically relevant is that they are
6 very good sources of DNA.

7 Q. So do you work -- would it be fair to
8 say that you work closely with the DNA analysis
9 section of SLED?

10 A. Yes. We are -- the forensic serology
11 section is a division of the DNA casework
12 department.

13 Q. What does your day-to-day
14 responsibilities at SLED include?

15 A. My day-to-day responsibilities include
16 handling items of evidence, examining them for
17 various types of DNA, issuing reports based off of
18 the findings that I have, working with agencies and
19 -- solicitor's office and defense attorneys on
20 trials, and then testifying in court as necessary.

21 Q. How does evidence come to be in your
22 possession at SLED?

23 A. All evidence is housed in our secure
24 storage area known as evidence control in the
25 forensic lab; and before I can maintain custody of

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 any type of evidence, I must receive it from the
2 secured location within SLED.

3 Q. Once you take possession of evidence,
4 how do you handle it?

5 A. Once the evidence is in my possession,
6 it will be stored in also our secured storage area
7 of the lab and only authorized personnel have
8 access to that. And the evidence maintains its
9 state of sealed integrity until I'm ready to work
10 on the item.

11 I do not open up any evidence and look
12 at it until I'm ready to proceed with testing. And
13 at that point only one item of evidence is opened
14 at a time in order to avoid any kind of
15 contamination or also to make sure that all of the
16 cases that I'm working are worked in the proper
17 order that they need to be done in.

18 Q. Approximately how many cases have you
19 worked since you started at SLED?

20 A. It's hard to say. It's definitely in
21 the high upper hundreds. I've touched definitely
22 thousands of samples though.

23 Q. Have you previously been qualified to
24 testify as an expert in the field of serologist?

25 A. Yes, I have.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. Was that in state court in South
2 Carolina?

3 A. It has been.

4 Q. How many times have you been qualified
5 to testify as an expert in that field?

6 A. Approximately 15 times.

7 MR. MCNEELY: At this time the State
8 would move to admit Ms. Thompson as an expert in
9 forensic serology.

10 THE COURT: Any objection or questions?

11 MR. THROWER: Absolutely not.

12 MR. SMILEY: No, ma'am.

13 MR. SMALDONE: No, Your Honor.

14 MR. ARCHER: No, Your Honor.

15 THE COURT: So admitted without
16 objection. You may proceed.

17 MR. MCNEELY: Thank you.

18 BY MR. MCNEELY:

19 Q. Ms. Thompson, let's talk about what you
20 actually do as a forensic serologist when you
21 encounter a piece of evidence.

22 A. It is very case-scenario dependent and
23 also dependent on what kind of item was submitted
24 to me. So whenever an item comes into my custody,
25 I have to come and see what are they looking for on

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 this item. How do I process it in order to obtain
2 what they're interested in?

3 And so each item is evaluated
4 individually before I work it to try and figure out
5 the best way to collect the evidence off of the
6 item.

7 Q. As it applies to the DNA's analyst, are
8 you -- is a large part preparing evidence for the
9 DNA analyst to evaluate?

10 A. That's correct. I try and pare down
11 much larger items into smaller, more manageable
12 size of the sample. That's typically in the form
13 of either a swab off of the item or a cutting
14 that's taken from the item because the DNA analyst
15 does not need the entire item to perform DNA
16 analysis.

17 Q. For example, if you got a swab that an
18 agency collected from a surface and submitted for
19 DNA analysis, would it go through serology or
20 directly to the DNA?

21 A. Most of the time that would go directly
22 to the DNA analysis.

23 Q. On the other hand, if you received a
24 recovered shirt, hat, or article of clothing and
25 the agency wanted to have that tested for DNA,

1 would that go through serology or would that go
2 directly to the DNA analyst?

3 A. It would come through me first and I
4 would process that item and then either cuttings or
5 swabs would be forwarded to the DNA analyst.

6 Q. So if you received a shirt or an
7 article of clothing, describe for the jury how you
8 would process that to prepare for the DNA analyst.

9 A. There's a lot of different ways that I
10 can process that. It depends on what the
11 submitting agency is looking for, but if it's body
12 fluid, I will screen that item of evidence for the
13 body fluid that they are interested in and then
14 take cuttings off that if I can.

15 And if they are looking for something
16 like touch or ownership DNA, that involves swabbing
17 the area typically.

18 Q. And once you collect those swabs or
19 cuttings, what do you do with them?

20 A. They are then sealed into individual
21 envelopes. Those envelopes are then placed inside
22 what we call a heat-sealed pouch which is kind of
23 like a special plastic bag. I then use that heat
24 sealer to ensure that the bag cannot be opened in
25 any way, and I will then initial it and date it and

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 send it back to evidence control where it will
2 await pickup from the DNA analyst.

3 Q. What about, for example, a shirt if you
4 processed it through serology and took swabbings or
5 scrapings, what would happen to the shirt itself?

6 A. The shirt itself, it would contain some
7 markings on it from where I have identified the
8 item. All evidence is marked to indicate the case
9 number and the item number and my initials to show
10 that I worked the item.

11 It might also indicate some markings
12 from where I collected the evidence from. Then the
13 shirt is wrapped in the processing paper in which I
14 actually performed the collection on, placed back
15 into the packaging it was submitted in, sealed up,
16 returned to evidence control where it remains
17 there.

18 Q. Okay. So your samples would go on to
19 the DNA analyst; the original item would return to
20 evidence?

21 A. That's correct.

22 Q. During your work as a forensic
23 serologist, did you receive evidence to process in
24 this case L16-16763?

25 A. Yes, I did.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. And did you receive multiple items for
2 this case?

3 A. Yes, I did.

4 Q. When you received the items for this
5 case from Berkeley County Sheriff's Office, were
6 all of them properly sealed or had they been
7 unsealed or tampered with?

8 A. To my knowledge, no, nothing had been
9 unsealed or tampered with. And if it appeared to
10 have been so, I would not have worked the items.

11 Q. What would you have done with the item
12 if they appeared to be tampered with?

13 A. If it appeared to have been tampered
14 with, I would have stopped immediately and
15 contacted not only just our evidence control
16 department but the agency so we could figure out
17 what happened.

18 Q. Is it fair to say that they most likely
19 would not have been tested?

20 A. That's fair to say.

21 Q. So if items that you evaluated were
22 tested, then likely when you received them they
23 were properly sealed in compliance with SLED
24 policy?

25 A. Yes.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. Did the condition of the items in this
2 case meet the SLED standards for packaging?

3 A. Yes, they did.

4 Q. I want to walk you through each
5 individual item you received for this case starting
6 with what's been admitted as State's 152.

7 MR. MCNEELY: Permission to approach?

8 THE COURT: You may.

9 BY MR. MCNEELY:

10 Q. Ms. Thompson, please look at that item
11 and tell me if you performed any serological
12 analysis or efforts on that item.

13 A. Yes, I do recognize this item. All
14 packaging prior to analysis is labeled by myself
15 with the unique SLED lab number that is received
16 upon submission to the lab, the item number that
17 corresponds to it, and the date that I processed
18 the item.

19 And I can also reach in and show you
20 that this is also the extra packaging. I do that
21 for every layer of packaging that is provided when
22 the item is submitted.

23 Q. Do you prepare a report in each case
24 mirroring your efforts?

25 A. Yes, I do.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. And what is what's been marked as
2 State's 152? I believe it is SLED Item 1?

3 A. Yes, that is SLED Item 1.

4 Q. What is it?

5 A. It's a glove.

6 Q. And what did you do in your serology on
7 that item?

8 A. I swabbed the exterior and interior of
9 the glove.

10 Q. You selected swabs?

11 A. Uh-huh.

12 Q. Would those swabs have been sealed and
13 packaged separately when you collected them?

14 A. Yes.

15 Q. I want to show you what was marked as
16 State's 168.

17 MR. MCNEELY: Permission to approach,
18 Your Honor?

19 THE COURT: You may.

20 BY MR. MCNEELY:

21 Q. Please look at State's 168 and tell me
22 if you recognize that item and its contents.

23 A. Yes, I do recognize this item. It is
24 the heat-sealed pouch I created in order to house
25 the swabs that I collected in this case. I

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 recognize it based off of just I filled out the
2 heat-sealed pouch myself, and there is the seal
3 that I made on the side that has my initials and
4 date it was sealed.

5 Q. And are the swabs you collected from
6 the gloves State's 52 contained in that package?

7 A. Yes, they are.

8 Q. And what was done with that package
9 after you placed all of your swabs and various
10 collection items in it?

11 A. After I finished collecting all of the
12 items in this case, they were returned to the
13 evidence control department where they awaited
14 pickup from the DNA analyst.

15 Q. I show you what was marked as State's
16 151.

17 MR. MCNEELY: Permission to approach
18 the witness?

19 THE COURT: You may.

20 BY MR. MCNEELY:

21 Q. Do you recognize State's 151?

22 A. Yes. I recognize this as Item 12 on my
23 report.

24 Q. Okay. And what is Item 12?

25 A. Item 12 is another glove.

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 Q. And what did you do with that item?

2 A. The same as I did with Item 1; I
3 swabbed the exterior and interior of the glove.

4 Q. And were those substances packaged
5 separately?

6 A. Yes; they were packaged individually.

7 Q. And sealed?

8 A. Yes.

9 Q. And please look at State's 168. Does
10 that contain those swabs as well?

11 A. Yes, it does.

12 Q. I'm showing you what was submitted as
13 State's 154. Please look at that item and tell me
14 if you recognize that item.

15 A. Yes; I recognize this as SLED Item 20.

16 Q. What is that item?

17 A. Item 20 is a piece of tape.

18 Q. Okay. What did you do with that item?

19 A. This item I collected swabs from a
20 section of the tape, and they tested presumptively
21 positive for blood, so they were forwarded to the
22 DNA section.

23 Q. Are the swabs you collected from
24 State's 154 or SLED Item 20 contained in State's
25 168?

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 A. Yes, they are.

2 Q. And were those placed in the package to
3 be forwarded to the DNA analyst?

4 A. Yes.

5 Q. I'm going to show you what was marked
6 as State's 142. Please look at this item and tell
7 me if you recognize it.

8 A. I recognize this as SLED Item 40.

9 Q. And what is that item?

10 A. Item 40 is a bandana.

11 Q. And what did you do on that item?

12 A. For this item I collected a swab from
13 the bandana and also some hair off the bandana.

14 Q. Were each of the items separately
15 packaged and sealed?

16 A. They were.

17 Q. Were they placed as well into State's
18 168 and forwarded to DNA?

19 A. Yes, they were.

20 Q. Okay. State's 143. Please look at
21 this item, Ms. Thompson, and tell me if you
22 recognize it.

23 A. Yes. I recognize this as SLED Item 41.

24 Q. And what is SLED Item 41 in State's
25 143?

1 A. SLED 41 is a sweatshirt.

2 Q. What did you do to that sweatshirt or
3 with that sweatshirt?

4 A. For this shirt, I collected swabs off
5 of it and also collected hair.

6 Q. Okay. And where were the substances
7 from the sweatshirt?

8 A. The swabs were collected from scraping
9 the inside of the cuff and inside the collar of the
10 sweatshirt.

11 Q. Why did you scrape these specific
12 areas?

13 A. That's a typical spot that when
14 processing a long-sleeved item where the -- where
15 the wearer would most rub against their skin. So
16 that's where we're looking for the most collection
17 of cells that would be left, and also just from
18 your collar rubbing on your neck.

19 That's a common area that we will
20 scrape and then swab behind our scraping to
21 hopefully concentrate the amount of DNA that might
22 be there.

23 Q. So you're looking at the areas that are
24 most likely to have a DNA sample on them from the
25 wearer of the shirt?

COURTNEY THOMPSON - DIRECT EXAM BY MR. MCNEELY

1 A. That's correct.

2 Q. And after collecting those samples, the
3 swabs and the hair from State's 143, SLED 41, did
4 you package them individually and seal them?

5 A. Yes.

6 Q. And were they placed in State's 168 for
7 submission to DNA analysis?

8 A. Yes, they were.

9 Q. I believe you've already testified to
10 this, but just to clarify, State's 168, after you
11 completed your serology on these items, what was
12 done with State's 168?

13 A. This particular heat-sealed pouch was
14 sealed, signed by myself, dated, and then returned
15 to evidence control until the DNA analyst was ready
16 to pick it up.

17 Q. Just so the jury is clear, you,
18 yourself, did not perform any DNA analysis on these
19 items?

20 A. That's correct.

21 Q. Okay. You more or less prepared them
22 for DNA analysis?

23 A. That's correct.

24 MR. MCNEELY: Your Honor, at this time,
25 if not done, I may be incorrect --

COURTNEY THOMPSON - CROSS EXAM BY MR. THROWER

1 THE COURT: State's 168 was marked and
2 admitted on 8/28 without objection.

3 MR. MCNEELY: Okay. Thank you, Your
4 Honor. No further questions.

5 THE COURT: You're welcome.

6 Mr. Thrower.

7 MR. THROWER: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 CROSS-EXAMINATION

10 BY MR. THROWER:

11 Q. I heard you mention that you do touch
12 DNA and/or ownership DNA testing?

13 A. Yes, that's correct. Those are types
14 of collections that I can perform on items of
15 evidence.

16 Q. And what -- would you explain how that
17 might happen in a case or what would be submitted
18 or subjected to touch DNA?

19 A. That's going to be something that a
20 person has handled. So it would be most likely an
21 object such as a cup, a phone, a pen, something
22 like that where the handler of the item may have
23 left behind some DNA and I can process that DNA --
24 and process that item in hopes of collecting DNA
25 off of it.

COURTNEY THOMPSON - CROSS EXAM BY MR. THROWER

1 Q. All those items are kind of hard in
2 nature than what we've seen here. We have a
3 sweatshirt and things like that. Is the sample
4 taken from the sweatshirt different from the sample
5 of, say, a gun?

6 A. They are processed differently, but,
7 essentially, what we're still kind of looking for
8 is who -- who is on that item. That's still kind
9 of main -- the main goal; however, recovery of
10 touch DNA can be a little more difficult than
11 recovery of DNA off of items of clothing just
12 because items of clothing are typically -- they
13 just wear more on the individual so there is more
14 chances for the DNA to be shed onto the clothing.

15 And touch DNA leaves behind less, but,
16 I mean, that's just the nature of processing those
17 items.

18 Q. Is most touch DNA like from
19 perspiration? Or would it be -- of course if
20 you're bleeding, you would leave blood samples, but
21 is it perspiration, saliva, that kind of thing?

22 A. It's from skin cells naturally shedding
23 off of your hands. If there are any types of body
24 fluids, like we were mentioning, we don't really
25 consider that touching. We consider that body

1 fluid type of analysis instead.

2 Q. So dry skin cells are what you're
3 looking for with touch DNA?

4 A. That's typically what is left behind by
5 whoever is handling or touched that particular
6 item.

7 Q. Have you ever taken a sample -- a DNA
8 sample off of a spent fired cartridge?

9 A. I did swab cartridge cases, yes.

10 Q. Have you taken a -- pulled a sample off
11 of a firearm?

12 A. I did swab guns. I do not always know
13 the results of the testing because I don't perform
14 DNA; however, I did collect that type of evidence.

15 Q. Okay. Did you -- were you asked to do
16 either of those tests on a spent cartridge, any
17 type of firearm in this case?

18 A. No. There was no request for any type
19 of swabbing on any type of firearms or firearms
20 evidence.

21 MR. THROWER: Okay. Thank you very
22 much.

23 THE COURT: Mr. Archer.

24 CROSS-EXAMINATION

25 BY MR. ARCHER:

COURTNEY THOMPSON - CROSS EXAM BY MR. ARCHER

1 Q. Just one or two questions. You simply
2 collect the DNA samples?

3 A. Yes, that's correct.

4 Q. Then you send it on to somebody else
5 for analysis?

6 A. Yes, that's correct. I just forwarded
7 the samples I collected onto the DNA analyst.

8 MR. ARCHER: Okay. No other questions.

9 THE COURT: Mr. Smaldone.

10 MR. ARCHER: Just one more, Your Honor.

11 BY MR. ARCHER:

12 Q. You didn't collect any DNA samples off
13 of cell phones, did you?

14 A. No, no cell phones or anything like
15 that were provided by me.

16 Q. Would they be processed by you?

17 A. They were not.

18 Q. They were not in this case?

19 A. That's correct.

20 MR. ARCHER: Okay. Thank you.

21 THE COURT: Mr. Smaldone.

22 MR. SMALDONE: Nothing from this
23 witness.

24 THE COURT: Mr. Smiley.

25 MR. SMILEY: I don't have anything,

1 Your Honor.

2 THE COURT: Any exception to the
3 witness being excused? From the State?

4 MR. MCNEELY: No, Your Honor.

5 THE COURT: From the defense?

6 MR. THROWER: No, Your Honor.

7 MR. SMILEY: No, Your Honor.

8 MR. SMALDONE: No, Your Honor.

9 MR. ARCHER: No, Your Honor.

10 THE COURT: Thank you very much.
11 You're excused.

12 Call your next witness.

13 MR. MCNEELY: Permission to approach,
14 Your Honor?

15 THE COURT: Sure.

16 (Bench conference. No court reporter.)

17 MR. MCNEELY: The State calls Adrienne
18 Hefney.

19 ADRIENNE HEFNEY,

20 being first duly sworn, testified as follows:

21 THE CLERK: Please be seated. State
22 your full name for the record and spell your last.

23 THE WITNESS: Adrienne Hefney,
24 H-E-F-N-E-Y.

25 THE COURT: You may proceed.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 MR. MCNEELY: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MCNEELY:

4 Q. Afternoon, Ms. Hefney.

5 A. Afternoon.

6 Q. Where are you currently employed?

7 A. With the South Carolina Law Enforcement
8 Division, more commonly known as SLED.

9 Q. What is your position there and how
10 long have you been employed there?

11 A. Forensic DNA analyst. I've been there
12 since November of 1997. So right about 21 years.

13 Q. Please describe your educational
14 training for the jury.

15 A. I have a Bachelor's of Science Degree
16 from the University of South Carolina; I have a
17 Master's of Business Administration from Winthrop
18 University; I was trained on the job by a
19 court-qualified analyst, and since then I've taken
20 postgraduate courses in the field of molecular
21 biology genetics population statistics, and that
22 should be it.

23 Q. Okay. Are you a member of any
24 professional associations?

25 A. I am an FBI DNA auditor where I go

1 around to other labs and audit them.

2 Q. Do you participate in continuing
3 education?

4 A. Yes, sir. Every year we're required to
5 do at least eight hours of continuing education,
6 whether that's in-house or attending a conference.

7 Q. Please explain to the jury what is
8 meant by forensic DNA analysis.

9 A. Forensic DNA is a comparative science.
10 It's known that we get half of our DNA from our
11 mother and half from our father. What we do in
12 forensic science is we look at evidence that was
13 left behind at a crime scene and develop a DNA
14 profile from it.

15 And we make that comparison to known
16 standards which are standards that you -- directly
17 taken from the victim or subject in a case.

18 Q. Tell the jury about your primary
19 functions at SLED.

20 A. My primary function is forensic DNA
21 analysis.

22 Q. Is that what you do day in and day out
23 at SLED?

24 A. Yes, sir, amongst a whole lot of other
25 things.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. I believe you already said it, but how
2 many years have you been doing this?

3 A. Almost 21. And I've been -- I was a
4 technician for the first year and then an analyst
5 from them on.

6 Q. Analyzing DNA?

7 A. Yes, sir.

8 Q. How does evidence come to be in your
9 possession at SLED?

10 A. I receive evidence from evidence login
11 or either directly from our serologists if they
12 make cuttings from it.

13 Q. How do you perform the analysis?

14 A. I first start by evaluating the
15 evidence, seeing what I have, and what biological
16 fluids that we're looking for as well as DNA. Then
17 I make the cutting and I'll add different chemicals
18 to it to extract the DNA from the substrate and
19 then take it through a step called quantitation and
20 then on to amplification.

21 Amplification is simply -- if you think
22 about a Xerox copier where you have -- we can take
23 a little, small piece of DNA and copy it a
24 millionfold times so we can get a DNA profile from
25 that. And then I compare that DNA profile that was

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 developed from evidence to the DNA profile that was
2 developed from the known and make that comparison
3 to see if it matches. If it does, we apply a
4 statistical weight to it.

5 Q. How many cases have you worked
6 analyzing DNA for SLED?

7 A. At this point, it's probably thousands.

8 Q. Have you previously been qualified to
9 testify as an expert in the field of forensic DNA
10 analysis?

11 A. Yes, sir, over 70 times in federal and
12 state courts.

13 MR. MCNEELY: The State would move to
14 qualify Ms. Hefney as an expert under Rule 702 in
15 the field of forensic DNA analysis.

16 THE COURT: Any objection?

17 MR. THROWER: No objection.

18 MR. SMILEY: No objection.

19 MR. SMALDONE: No objection.

20 MR. ARCHER: No objection.

21 THE COURT: So admitted without
22 objection. You may proceed.

23 MR. MCNEELY: Thank you.

24 BY MR. MCNEELY:

25 Q. Ms. Hefney, what is DNA?

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 A. DNA is the scientific name for
2 deoxyribonucleic acid and its genetic material
3 that's found in each nuclear cell of our body,
4 which is what we get from our mother and our father
5 and makes us who we are. No two people will have
6 the same DNA except for identical twins.

7 Q. How do people leave their DNA on
8 various items or surfaces?

9 A. They can leave it through blood,
10 saliva, skin cells, bone, sweat, various ways. Any
11 kind of biological fluid can leave behind DNA;
12 semen in sexual assault cases.

13 Q. What is its forensic significance?

14 A. Because no two people have the same
15 DNA, we can use it in forensics to make
16 comparisons, compare known versus unknown; unknown
17 being the evidence left behind at a crime scene.

18 Q. What is a known standard?

19 A. A known standard is -- it can be blood
20 or, lately, swabs from the inside of your cheek
21 where you know exactly where it came from is a
22 known standard.

23 Q. What is a buccal swab?

24 A. Buccal swab is a swab from the inside
25 of the cheek.

1 Q. Is it a type of known standard?

2 A. Yes, sir.

3 Q. Okay. What about a blood spot card?

4 A. Blood spot card is another type of
5 known standard that you receive directly from your
6 blood. And we also have hair samples that are
7 known sample standards too.

8 Q. Let's talk about the evidence samples
9 you received. How do you process those?

10 A. Same way, just that we do the known
11 standards; we make the cuttings, apply chemicals to
12 it that's going to release the DNA. You know, go
13 through the purification step and the quantitation
14 step, and then that amplification step, the Xerox
15 copier that I explained earlier.

16 Q. Are you always able to develop a DNA
17 profile from an evidence sample?

18 A. No. Sometimes it's too little evidence
19 there to be able to get a DNA profile, too little
20 of a sample.

21 Q. It may be far too simple, but must DNA
22 be on the evidence to identify it?

23 A. Yes. In order to get a DNA profile,
24 there would have to be DNA left behind.

25 Q. Are there times in your work where you

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 were able to identify DNA, but the sample may not
2 be sufficient to match it to a known standard?

3 A. Yes, a lot of times is the case.

4 Q. Okay. And why would that occur?

5 A. Well, it could be that you leave so
6 little DNA behind, especially in the example of
7 touch DNA where it's not blood or saliva, where you
8 could touch the object or an item and theoretically
9 leave your DNA behind, but you may only leave
10 enough behind that we could not use it to get a DNA
11 profile.

12 Q. When you talk about touch DNA, could it
13 be something as simple as me touching this podium?

14 A. And me swabbing it behind you, yes.

15 Q. And there is a likelihood that I don't
16 leave enough at that time to identify, correct?

17 A. Absolutely.

18 Q. What is a mixture?

19 A. A mixture is several people may have
20 touched an item or worn an item and leave DNA
21 behind. So we come back and -- say, everybody that
22 touched this spot here (indicating), we take a swab
23 from it. And it could be three or four people that
24 have left DNA behind.

25 And sometimes that's hard to interpret

1 too, because it could be a little bit from
2 everybody which is still a little bit of DNA
3 profile.

4 Q. To follow up to that, what is a major
5 contributor and a minor contributor?

6 A. A major contributor is, say you have
7 this mixture of three or four people, but one
8 person has left more DNA than the next person.
9 That's the major contributor, and everybody else
10 will be a minor contributor to that profile.

11 Q. Are there times when you're able to
12 make identifications as major contributors and
13 minor contributors?

14 A. Yes, quite often.

15 Q. Are you able to evaluate evidence and
16 its sufficient sample of the person's DNA is left
17 on an item or surface, identify a person with that
18 evidence, or do you have a known standard for the
19 person?

20 A. If we have the known standard, yes,
21 sir, we can make that comparison.

22 Q. And, likewise, are you often able to
23 exclude people just as you could include someone?

24 A. Absolutely.

25 Q. Did you receive evidence at SLED to

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 analyze in this case under SLED Lab Number L1616763
2 from the Berkeley County Sheriff's Office?

3 A. I did.

4 Q. When you received the items for this
5 case, were all of them properly sealed?

6 A. Yes, they were.

7 Q. What if they had not been properly
8 sealed; what would happen?

9 A. We would make a note of it and not
10 analyze it -- not analyze it depending on the
11 severity of it not being sealed. We would also
12 make a call to the submitting agency about it not
13 being sealed.

14 Q. Okay. And is it fair to say, if you
15 analyzed it, it was properly sealed when you
16 received it?

17 A. Yes, sir.

18 Q. Do you receive evidence in the case to
19 analyze for DNA that comes directly to you through
20 SLED from investigating agency without another
21 department in SLED processing it?

22 A. No. What happens is the submitting
23 agency will send it to the evidence login
24 department and I retrieve it from them. Now there
25 are instances where I can, like after hours or

1 special circumstances we can take it directly from
2 the person bringing it, but that wasn't the case in
3 this one.

4 Q. If an investigating agency collects
5 swabs of touch DNA or buccal swabs or something
6 like that, does anyone perform any analysis before
7 it gets to you?

8 A. If they take swabs directly, usually it
9 will come straight to me. Sometimes it goes to our
10 serology department.

11 Q. And that brings me to serology. If an
12 agent submits items of, lets say, shirts, hats,
13 some type of clothing item, would that go through
14 serology before it got to you?

15 A. Yes.

16 Q. And would you get the actual item or
17 would you get a swab or cutting or scraping that
18 serology did?

19 A. I would get the swab or scraping or
20 cutting from it.

21 Q. Are there other times when departments
22 other than serology send you swabs to evaluate?

23 A. Yes.

24 Q. Let's talk about, first, the known
25 standards. Did you see receive multiple known

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 standards to analyze for this case?

2 A. I did.

3 Q. What do you do when you receive a known
4 standard? How do you analyze it?

5 A. We develop a DNA profile from the known
6 standards.

7 Q. I'm going to show you what was marked
8 as State's 160, 161, 162, 163, 164, and 165.
9 Please look at these items starting with 160, and
10 we will talk about them individually.

11 Did you analyze 160?

12 A. Yes, sir, I did. I see my initials
13 right here where I sealed it, and dated and
14 initialed it.

15 Q. What is State's 160?

16 A. This is a known standard from Darius
17 Hamilton.

18 Q. And were you able to develop a known
19 standard for that?

20 A. Yes, sir, I was to able to develop a
21 DNA profile from this standard.

22 Q. And State's 161?

23 A. State's 161; again, I see my initials
24 and the date. This was a known standard from
25 Sherrod Palmer.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. Were you able to develop a known DNA
2 standard for Defendant Palmer?

3 A. Yes, sir, I was.

4 Q. What about State's 162?

5 A. As verified by my initials and date,
6 this is a known buccal swab from Kenneth Campbell.

7 Q. And were you able to develop a known
8 DNA profile from that sample?

9 A. Yes, sir, I was.

10 Q. And State's 163?

11 A. This is a buccal swab from Jacob
12 Mouzon, and I was able to develop a DNA profile
13 from it. And my initials are verified right here
14 and right there.

15 Q. Also, State's 164?

16 A. This is a buccal swab from Drake
17 Campbell, and I was able to get a DNA profile from
18 him as well.

19 Q. State's 165?

20 A. State's 165; my initials and date, and
21 this is a known standard buccal swab from Krystal
22 Snipe.

23 Q. Were you able to develop a DNA profile
24 from that?

25 A. Yes, sir, I was.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. Please look at State's 156. Do you
2 recognize that item?

3 A. This is a blood spot card from Kadeem
4 Johnson.

5 Q. Were you able to develop a known DNA
6 profile for Mr. Johnson from that item?

7 A. Yes, sir, I was.

8 Q. Having developed the known profile
9 submitted to you in this case, please explain what
10 is next in your process.

11 A. Then I will evaluate the evidence and
12 develop DNA profiles from there.

13 Q. And did you evaluate multiple pieces of
14 evidence in this case to see if you can develop DNA
15 profiles to match the known standards?

16 A. Yes, sir, I did.

17 Q. Let's discuss each of those
18 individually please. Look at State's 152. Do you
19 recognize that?

20 I apologize; that went through
21 serology.

22 Please look at State's 168.

23 A. My initials and date are on top.

24 Q. Do you recognize the envelopes in that
25 package?

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 A. Yes, sir. These are various cuttings
2 sent to me from Courtney Thompson.

3 Q. As to what is labeled SLED 1.1, what
4 were you able to -- what is it and able to drive
5 from it?

6 A. Item 1.1 are swabs from exterior of
7 black latex glove as submitted from Hamilton's
8 truck, and I was unable to develop a DNA profile.
9 No DNA profile developed.

10 Q. And what about State's 1.2 -- or,
11 excuse, me SLED 1.2?

12 A. Item 1.2, swabs from interior of black
13 latex glove as submitted from Hamilton's truck, no
14 DNA profile was developed.

15 Q. Thank you. So that's to say that you
16 did not pick up anyone else's DNA on the swabs?

17 A. That's correct.

18 Q. Didn't include or exclude, you just
19 didn't have any DNA?

20 A. I was unable to get a DNA profile from
21 that.

22 Q. I would ask you to look at what's been
23 marked as State's 172. Tell me if you recognize
24 this.

25 A. It has my initials and date on this

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 one. It's -- and it's marked with AR on the
2 outside of the package which equates to our Items
3 6, 7, and 8.

4 Q. As to SLED Item 6, what were you able
5 to derive from your analysis?

6 A. Item 6 were swabs from an LG Verizon
7 cell phone with a red and black case, and a partial
8 DNA profile is a possible mixture and is not
9 suitable for interpretation.

10 Q. Okay. What does that mean?

11 A. So that means I got -- it was probably
12 a bunch of people on this cell phone, and I was
13 unable to get a profile that was interpretable.

14 Q. And what is SLED Item 7?

15 A. SLED Item 7, swabs from a black cell
16 phone with broken screen.

17 Q. And what were you able to derive from
18 your analysis?

19 A. It was a partial DNA profile developed
20 that was a possible mixture and not suitable for
21 interpretation.

22 Q. So you couldn't identify it?

23 A. No, sir.

24 Q. Okay. And SLED Item 8?

25 A. Swabs from LG Verizon black cellphone

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 found between the seats, and the DNA profile is a
2 mixture of at least two individuals on that one,
3 but due to the inability to calculate a statistic,
4 no further interpretation will be offered.

5 Q. Can you please explain the difference
6 between your results for 7 where it was a partial
7 DNA profile mixture not suitable for interpretation
8 as opposed to your results for Item 8, which is a
9 mixture of at least two but you were unable to
10 calculate a statistic?

11 A. I got very little DNA from Items 6 and
12 7 where I couldn't -- it was so little that it
13 looked like it was possibly more than one person,
14 and that's why I said a possible mixture. And with
15 stuff that low we don't interpret it because it's
16 not a reliable interpretation.

17 And as far as Item 8, I could tell that
18 I had two individuals on this phone, but when we
19 can't apply statistical weight to it, we don't make
20 an assumption. So what -- that's why I reported it
21 due to the inability to calculate a statistic no
22 further interpretation will be offered.

23 Q. Please look at State's 169; see if you
24 recognize those.

25 A. I see my initials and date on the

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 outside of it. And these are described as two DNA
2 swabs: Item 9 being from the doorway floor, and
3 Item 10 from the front porch steps of the
4 residence.

5 Q. And what were you able to derive in
6 your analysis from Item 9?

7 A. It was the swabs from the doorway floor
8 of the residence. I did a presumptive test because
9 they came straight to me instead of going through
10 serology, and the presumptive test for blood was
11 positive, and the DNA profile matches a DNA profile
12 of Kadeem Johnson.

13 And the probability of randomly
14 selecting an unrelated individual having a DNA
15 profile matching this item is 1 in 1.1 decillion.

16 Q. Sounds like a lot of zeros?

17 A. That's a lot of zeros. That's a 1
18 followed by a group of ten zeros.

19 Q. What about Item 10?

20 A. Item 10 -- and I said a 1 followed by a
21 group of -- yeah, a groups of three, yeah, ten
22 zeros.

23 And Item 10, swabs from the front porch
24 steps to the residence presumptive testing for
25 blood was positive. The DNA profile matches the

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1 DNA profile of Krystal Snipe, and the probability
2 of randomly selecting an unrelated individual
3 having a DNA profile matching this item is
4 approximately 1 in 3.19 million, nine groups of
5 three zeros.

6 Q. So to clarify, as to 9, it was blood
7 and it was matching Kadeem Johnson, and as to 10,
8 it was blood and it was matching Krystal Snipe?

9 A. Yes, sir.

10 Q. Please look at State's 167. Did you
11 analyze that item?

12 A. I see my initials on this and this is
13 Item 11.1. 11.1 were swabs of suspected blood from
14 Item 11, which is clear tape from the front porch.

15 Q. Where did you get that swab from?

16 A. This is what agent Tom Darnell swabbed.

17 Q. What were the results of your
18 performing DNA analysis on that swab?

19 A. Presumptive testing for blood was
20 positive. The DNA profile matches the DNA profile
21 of Krystal Snipe, and the probability of randomly
22 selecting an unrelated individual having a DNA
23 profile matching this item is approximately 1 in
24 3.19 million.

25 Q. So it's Krystal Snipe's blood on the

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 tape on the front porch, correct?

2 A. Yes, sir.

3 Q. Now, SLED Items 12.1 and 12.2, which
4 should be contained in State's 168 in front of you.
5 A serology envelope.

6 A. Okay. Yes, 12.1 and 12.2.

7 Q. What is 12.1?

8 A. 12.1 are swabs from exterior of white
9 glove as submitted from a driver's side door
10 compartment of gray Crown Vic.

11 Q. And what were the results of your
12 analysis on that?

13 A. The partial DNA profile is a possible
14 mixture and it's insufficient for interpretation.

15 Q. And as to 12.2?

16 A. Swabs from interior of white glove as
17 submitted from the driver's side door compartment
18 of gray Crown Vic, and there was no DNA profile
19 developed.

20 Q. I ask you to look at State's 170. Do
21 you recognize 170?

22 A. Yes. These contain five swabs from a
23 gray Crown Vic, Items 13, 14, 15, 16 and 17.

24 Q. Okay. What is Item 13, and what were
25 you able to derive from your analysis?

1 A. Item 13, swabs from the passenger rear
2 door of the gray Crown Vic. The partial DNA
3 profile developed is a mixture of at least two
4 individuals, and due to the inability to calculate
5 statistics, no further interpretation will be
6 offered.

7 Q. So you were unable to include or
8 exclude based on that swab?

9 A. That's correct.

10 Q. And for 14?

11 A. Swabs from the passenger front door of
12 the gray Crown Vic, and there was no DNA profile
13 developed from that.

14 Q. As to 15?

15 A. Swabs from the driver's side front door
16 of gray Crown Vic, and the partial DNA profile is a
17 possible mixture and not suitable for comparison.

18 Q. Item 16?

19 A. Swabs from the steering wheel of the
20 gray Crown Vic, the partial DNA profile is a
21 mixture of two individuals, and the inability to
22 calculate a statistic, no further interpretation
23 will be offered.

24 Q. Couldn't include or exclude anyone?

25 A. That's correct.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. And as to Item 17?

2 A. Item 17 was swabs from the driver's
3 rear passenger door of the gray Crown Vic, and
4 there was no DNA profile developed from that.

5 Q. Okay. Please look at State's 168
6 again. Is there an envelope contained therein
7 labeled 20.1, the serology envelope?

8 A. Yes, sir. Item 20.1, swab from the
9 section of clear plastic tape.

10 Q. And what did your analysis on 20.1
11 produce?

12 A. The DNA profile matches the DNA profile
13 of Kadeem Johnson, and the probability of randomly
14 selecting an unrelated individual having a DNA
15 profile matching this item is approximately 1 in
16 1.1 decillion.

17 Q. And that was a swab from clear tape?

18 A. Yes, sir.

19 Q. Now, as to State's 171. Please look at
20 State's 171.

21 A. Okay. These are five DNA swabs from a
22 white Crown Vic, and they will be associated with
23 our Items 24, 25, 26, 27, and 28.

24 Q. Okay. And as to 24, where is the swab
25 from and what were you able to derive?

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1 A. Item 24, swabs from rear driver's side
2 door handle from white Crown Vic, partial DNA
3 profile developed is a mixture of two people, two
4 individuals, and due to the inability to calculate
5 a statistic, no further interpretation offered.

6 Q. Couldn't include or exclude anyone?

7 A. No.

8 Q. SLED 25?

9 A. Swabs from rear passenger side door
10 handle from white Crown Vic. The partial DNA
11 profile is a possible mixture and not suitable for
12 comparison.

13 Q. And SLED 26?

14 A. Swab from inside front passenger door
15 side door handle from white Crown Vic. The DNA
16 profile is a mixture of three individuals and due
17 to the inability to calculate a statistic, no
18 further interpretation will be offered.

19 Q. And SLED 27?

20 A. Swabs from the steering wheel gear
21 shift from white Crown Vic. The DNA profile is a
22 mixture of at least two individuals, and due to the
23 inability to calculate a statistic, no further
24 interpretation will be offered.

25 Q. And 28?

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1 A. 28, swabs from inside driver's door
2 handle from white Crown Vic. The partial DNA
3 profile is a mixture of at least two individuals,
4 and due to the inability to calculate a statistic,
5 no further interpretation will be offered.

6 Q. Okay. And just to clarify something
7 while we're here. Back to 20.1, was a swab from a
8 clear plastic tape, would that sample be described
9 as touch DNA?

10 A. It would, skin cells or touch DNA.

11 Q. Okay. Is tape -- in your experience,
12 is tape a viable location to collect skin cell DNA?

13 A. Yes. It has that sticky adhesiveness
14 to it.

15 Q. And as to 24 through 28, swabs from
16 various surfaces of the white Crown Vic, are the
17 swabs looking to collect touch DNA?

18 A. They are.

19 Q. And you were not able to include or
20 exclude anyone with it?

21 A. No. We got mixtures of at least two
22 people on some of them, and it was so low we were
23 unable to do a statistic on it.

24 Q. In your experience as an analyst, is it
25 uncommon when you're looking at multiple people

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 having touched a door handle to not be able to
2 include or exclude anyone?

3 A. It is not uncommon. And in some cases
4 doors have been wiped or anything like that, and
5 you may get a trace of something, but not a whole
6 profile.

7 Q. Okay. I will ask you now to please
8 look at State's 168 again, which is the serology
9 samples. As to Envelopes 41.1 and 41.2, please
10 explain what those are.

11 A. Item 41.1 and 41.2 are ownership swabs
12 from a sweatshirt.

13 Q. Do you have noted where the sweatshirt
14 was located?

15 A. Yes, sir. You asked me where it was
16 located?

17 Q. Yes.

18 A. Yes. One second. All right. The 41.1
19 swabs from the scrapings cuff and collar of the
20 sweatshirt found on Yellow Jacket Road in the
21 woods.

22 Q. And 41.2?

23 A. 41.2 was hair from the sweatshirt.
24 41.2.1 and 41.2.2 were both hairs from that same
25 sweatshirt.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. What did your analysis reveal about the
2 hair?

3 A. About the hair?

4 Q. Yes.

5 A. There was no DNA profile developed from
6 the hair from the sweatshirt on Item 41.2.1, and
7 there was no human DNA detected from the hair from
8 the sweatshirt on 41.2.2.

9 And what that means is we have to look
10 for a hair root when we look for it. And so if we
11 get a hair fragment, the type of DNA testing that
12 we do at SLED will not give us a profile. Even
13 when we have a hair root, it pretty much has to
14 have some connective tissue associated with it,
15 like the hair was yanked out of there.

16 So oftentimes with hair we don't get a
17 DNA profile from it. And the reason one says, no
18 DNA profile was developed, and the other one, no
19 human DNA was detected, we go through that
20 quantitation step that I explained to see how much
21 DNA we have.

22 On that 41.2.2, there was no -- it said
23 there was no DNA there, period. And then on the
24 41.2.1, the other hair, it may have been very
25 little, so we took it on to see if we could get a

1 DNA profile, but still was unable to get a DNA
2 hair.

3 Q. And 41.1, what was that again?

4 A. 41.1 is a swab from the scraping of the
5 cuff and collar of a sweatshirt. And that was
6 found on Yellow Jacket Road in the woods. And we
7 call that ownership so you can see who wore that or
8 who owns that sweatshirt --

9 Q. And --

10 A. -- because those are areas where -- if
11 it's a sweatshirt, the cuff is going to have your
12 skin rubbing up against the cuff and the collar
13 definitely, and so we'll swab that.

14 Q. And what were the results of your DNA
15 analysis on 41.1, the swabs from the sweatshirt
16 found on Yellow Jacket Road?

17 A. The DNA profile is a mixture of at
18 least three individuals. The partial DNA profile
19 was a major contributor matching the DNA profile of
20 Jacob Mouzon. The probability of randomly
21 selecting an unrelated individual having DNA
22 profiles matching the major contributor to this
23 mixture is approximately 1 in 7 trillion.

24 And then due to the inability to
25 calculate a statistic, no further interpretation

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 will be offered regarding the minor contributors.

2 Q. Okay. Just to clarify, so it's a
3 mixture of three?

4 A. Yes, sir.

5 Q. And you identified a major contributor?

6 A. Yes, sir.

7 Q. And that was Jacob Mouzon?

8 A. Yes, sir.

9 Q. And what was your probability in
10 randomly selecting an unrelated individual?

11 A. 1 in 7 trillion.

12 Q. So there is a 1 in 7 trillion chance it
13 wasn't Jacob?

14 A. Yes. That's, theoretically, if you
15 were to look at 7 trillion people, you should only
16 see this DNA profile one time.

17 Q. What is CODIS?

18 A. CODIS is the Combined DNA Index System.
19 And what it is is a database that we put case
20 samples in, and it's also a database that has
21 convicted offender samples in it. So any time we
22 get a DNA profile from a case, we will enter that
23 into the database known as CODIS.

24 And sometimes we hit case to case, and
25 that's how we're able to solve -- sometimes solve

1 unsolved cases that way.

2 Q. I ask that question to ask this: Is
3 there a sufficiency standard for putting an
4 identification into CODIS?

5 A. Yes, sir, there is.

6 Q. And why is that?

7 A. Well, it has to be because it's
8 searched nationally. It has to meet a certain
9 criteria as to the number of loci that you have
10 that you're going to enter. And loci is just
11 genetic markers that we enter, because if it's
12 going to search, you don't want it to hit a million
13 different times. So the FBI requires a certain
14 amount that we are entering in before it goes in.

15 Q. And was the sample in this case
16 sufficiently positive for Jacob Mouzon to be
17 provided to CODIS?

18 A. Yes. This DNA profile was entered into
19 CODIS, the major contributor.

20 Q. Now as to State's 168, Items 40.1 and
21 40.2?

22 A. Those were swabs from scraping the
23 entire bandana found on 402 on the ground next to
24 the white Crown Vic. That's Item 40.1. And then
25 Item 40.2.1 is a hair from that bandana.

ADRIENNE HEFNEY - DIRECT EXAM BY MR. MCNEELY

1 Q. And as to 40.2.1, what was your
2 determination on hair?

3 A. There was no human DNA detected --
4 again, in the quantitation step, that was zero.
5 And with hairs we double quant them so there was a
6 0 two times.

7 Q. And as to 40.1, what is that item
8 again?

9 A. Item 40.1, a swab from scraping the
10 entire bandana found on 402 on the ground next to
11 the white Crown Vic.

12 Q. And what were the results of your
13 analysis for DNA on that swab?

14 A. Okay. The DNA profile is a mixture of
15 at least three individuals; the partial DNA profile
16 of the major contributor matches the DNA profile of
17 Drake Campbell; the probability of randomly
18 selecting an unrelated individual having a DNA
19 profile matching the major contributor to this
20 mixture is approximately 1 in 1 septillion.

21 This profile was also entered into
22 CODIS, the major contributor, and due to the
23 inability to calculate a statistic, no
24 interpretation will be offered regarding the minor
25 contributors.

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 Q. So it was positive for Drake Campbell's
2 DNA?

3 A. Yes, sir.

4 Q. And it was sufficient for -- it was a
5 sufficiency enough size profile to enter into
6 CODIS?

7 A. Yes, sir.

8 MR. MCNEELY: Thank you. No further
9 questions from the State.

10 THE COURT: Mr. Thrower.

11 CROSS-EXAMINATION

12 BY MR. THROWER:

13 Q. Afternoon, Ms. Hefney. How are you?

14 A. Good afternoon.

15 Q. My name is Bill Thrower; I represent
16 Mr. Mouzon. And he was the sample that was matched
17 from the sweatshirt.

18 A. Yes.

19 Q. You said if you looked at 7 trillion
20 people, you would only find his DNA --

21 A. You should only expect to see it one
22 time.

23 Q. And I understand some things with DNA,
24 and sometimes I'm lost, and this is going to sound
25 almost dumb, but do you have a database of 7

1 trillion people?

2 A. What it is, is it's known as product
3 roll when we do statistics. And so with each --
4 with the DNA profile that's developed, it will have
5 a number. So everybody has different numbers in
6 their DNA profile.

7 It's almost like shoe sizes. So say
8 his DNA profile at one location is a 12, 13. He
9 would have gotten the 12 from either his mother or
10 father and 13 from either his mother or father. We
11 will put the 12 in, and it would generate a
12 frequency of how often a 12 was in our database of
13 however many people.

14 And then it would generate a frequency
15 for the 13, and we would see how often a 13 was
16 seen in the database for however many people. So
17 you do this for each part of that profile and
18 multiply those frequencies together and that's how
19 you get the big number at the end.

20 Q. And it's a huge number.

21 A. Yes.

22 Q. To put it into perspective, it's like
23 something out of a Dr. Seuss book, like the
24 population of Whoville. I mean, 7 trillion people.
25 There are approximately 7 billion people on the

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 earth.

2 A. Yes, sir.

3 Q. And this is 1,000 billion --

4 A. Yes, sir.

5 Q. -- is a trillion?

6 A. Uh-huh.

7 Q. So you're saying out of 1,000 earths
8 circling the sun, one guy has that DNA?

9 A. You should only -- it's a probability,
10 but you should only expect to see that profile one
11 time.

12 Q. Do you take into account that he may or
13 may not have an identical twin? Wouldn't that cut
14 it in half immediately?

15 A. Now, if he has an identical twin, they
16 would have the same DNA profile. So it could very
17 well belong to his identical twin if he has one.

18 Q. Then your data would be wrong?

19 A. Or it would still be that same profile.

20 Q. The profile --

21 A. We couldn't tell if it belonged to him
22 or his identical twin.

23 Q. Okay. How -- I know -- and you've been
24 doing this for 20 years, and I've been dealing with
25 it for 20 years. How big is the database that you

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 have? How many people have you got a DNA sample
2 from to help your --

3 A. We use a software program generated by
4 the FBI. I'm not sure how many people are in their
5 databases. It's the same database that all DNA
6 labs across the country will use. It's known as
7 pop stats.

8 Q. Do you know if it's over a million?

9 A. I'm not sure. I'm definitely not sure.

10 Q. What generates the database? Where do
11 they get their samples? I know it's from criminal
12 cases, but --

13 A. That's a CODIS database that you may be
14 thinking about. The statistical database is just
15 where they -- as long as the FBI or any other DNA
16 lab in this country has been doing DNA, they are
17 building the database of frequencies.

18 That's very different from the CODIS
19 database which is profiles of case samples and
20 convicted offenders. We don't get our stats from
21 the CODIS database. It's from a different
22 population -- or population genetic database.

23 Q. How does that -- how is that database
24 information gathered? Where did the samples come
25 from?

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 A. Now how they built their database, I'm
2 not sure of. They -- at one time, they were taking
3 all the babies born in the United States and doing
4 DNA profiles and that's how they would build the
5 database.

6 That was many, many, many years ago
7 when we first got into DNA, but -- and I guess over
8 years it kept building and building and building.

9 Q. Are they all taken from the same area?

10 A. No; it's a nationwide database.

11 Q. Worldwide database?

12 A. Yes, sir. It's the FBI, so all that
13 they encompass. Yes, sir, nationwide.

14 Q. Again, when I hear these numbers and I
15 think, well, 7 trillion and -- hell, his is the
16 smallest one. You've got septillion and numbers --
17 you said one is nine sets of three zeros?

18 A. Yes. That is a nine million. Like
19 when I first started doing DNA, we would have
20 thirteen markers we would look at. And now it's up
21 to like 23 markers that we look at.

22 Do you know what I mean by markers?
23 There are different chromosomes. You know your DNA
24 is separated into chromosomes. And you have 23
25 sets or 46 chromosomes.

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 And so we will look at, say, chromosome
2 three at site whatever on that chromosome and
3 develop a frequency from that. That was the 12, 13
4 I mentioned before. Well, how that has advanced
5 over the years we've gone from looking at 13 to now
6 looking at 23 different locations which further
7 increases discrimination from it.

8 So you're able to discriminate between
9 profiles better which is how you get this large
10 number that we have now. So the numbers didn't use
11 to be this large because we didn't have as many
12 markers as we look at now. We've expanded the
13 amount of markers we look at, the numbers have
14 expanded.

15 Q. Is that --

16 A. And that's common amongst every DNA
17 lab. We just went to this set maybe a couple of
18 years ago; we're required to go to expanded loci.
19 It's so you can't falsely -- or it lessens the
20 chance of falsely accusing anybody.

21 Q. You said 23 markers you're using now?

22 A. We're using, yes, sir.

23 Q. That's a new number to me. Does that
24 have anything to do with the chromosomes?

25 A. There are 23 sets of chromosomes in

ADRIENNE HEFNEY - CROSS EXAM BY MR. THROWER

1 your body, so 46 chromosomes. We look at 20
2 different chromosomal locations. And I can show
3 them to you if you need me to.

4 Q. Okay. No. That's the first time I've
5 heard the 23 and it triggered --

6 A. It's expanded since we first started
7 looking at 13. And then I think -- I think it went
8 from 13 all the way to 23 because we will look at
9 -- now it includes a Y marker where it's just male
10 DNA; it also includes two of those and some more
11 expanded chromosome locations.

12 Q. This is about the time that it blurs
13 for me because I don't get it anymore. But you're
14 telling me you'd have to test 1,000 earths circling
15 the sun to get his DNA?

16 A. You should only expect to see it one
17 other time, yes, sir.

18 Q. Do his parents have any other children?
19 Does that matter?

20 A. No. Unless they were twins, they won't
21 have the same DNA.

22 Q. Okay. If you say so.

23 MR. THROWER: Thank you.

24 THE COURT: Mr. Archer.

25 MR. ARCHER: I have no questions.

ADRIENNE HEFNEY - CROSS EXAM BY MR. SMALDONE

1 THE COURT: Mr. Smaldone.

2 CROSS-EXAMINATION

3 BY MR. SMALDONE:

4 Q. Good afternoon.

5 A. Afternoon.

6 Q. All right. I'm Grant Smaldone, and I
7 represent Mr. Drake Campbell.

8 A. Yes, sir.

9 Q. Are you having a good afternoon so far?

10 A. Yes.

11 Q. Okay. I want to talk a little bit
12 about what's called touch DNA.

13 A. Yes.

14 Q. So is it fair to say on that bandana
15 touch DNA is what you found?

16 A. Probably more so skin cells on a
17 bandana because it's worn.

18 Q. Okay. And would skin cells, would that
19 -- I thought that was basically the same thing as
20 touch DNA.

21 A. Well, touch DNA is when you touch an
22 object and leave something behind, and it could be
23 skin cells, but when you wear something, your skin
24 cells are going to keep sloughing off.

25 If you wear a bandana around your head,

1 it's going to slough off from right here, or
2 whatever, touching your ears or your hair scalp.
3 That's where it's different between touch, but it
4 touches essentially skin cells. But that's from
5 touching an object.

6 Ownership swabs is also skin cells.
7 That's from wearing an object or wearing a piece of
8 clothing.

9 Q. Are there different types of -- did you
10 perform both tests to see which one it is?

11 A. No. I just performed one test and it's
12 -- it's not a different test for either. You're
13 developing a DNA profile the same way.

14 Q. Okay. So you're kind of assuming that
15 because it's a bandana, it must be skin cells?

16 A. Or it could have been sweat, or if he
17 was bleeding it could be blood, but we would see
18 blood. So more than likely it was sweat or skin
19 cells, or both.

20 Q. And you don't have a way of telling --

21 A. Where it came from? No. But just like
22 if you were to swab the collar of this jacket I'm
23 wearing, I'm probably sloughing off skin cells in
24 that collar at some point whether it's today and
25 whenever I've worn it. And then you should be able

ADRIENNE HEFNEY - CROSS EXAM BY MR. SMALDONE

1 to get a DNA profile from that.

2 Q. Okay. Now -- and this might seem
3 obvious to you, and I don't want to insult your
4 intelligence, but with things like skin cells and
5 touch DNA, there is no, like, half life on that,
6 correct?

7 A. Half life? No. Well, if you -- it
8 depends on how you keep it. So say if it's in the
9 summertime and it's 100 degrees outside, extreme
10 heat or moisture are the only thing that can damage
11 DNA. So if it's kept in prime condition, such as
12 not in extreme heat or moisture, you should be able
13 to get a DNA profile for however many years.

14 Q. Right. Right. And I'm not trying to
15 Johnny Cochran you. That's not what I meant. I
16 mean, you can't tell how long that DNA had been
17 there before you took it into evidence?

18 A. No, sir, we cannot tell age.

19 Q. So it could have been -- that DNA could
20 have been on there for weeks?

21 A. Absolutely.

22 Q. Months?

23 A. Uh-huh. As long as it hasn't been
24 laundered or anything like that, yes, sir.

25 Q. Okay. Now, and you said it was a mix

1 of three individuals?

2 A. Yes, sir. So possibly at some point,
3 three people had worn this bandana, but, again, the
4 major contributor is the one that's is major. It's
5 the one that probably wore it the most or wore it
6 the most recent.

7 Q. Well, it could also be the one that
8 tends to shed more or give off more oil and sweat,
9 correct?

10 A. It could be that as well.

11 Q. If I'm a dry-skin fellow and I have a
12 -- if I wear a bandana, I could wear it all day and
13 then if I give it to my friend -- let's call him
14 Sweaty Bob. If I give it to Sweaty Bob and he has
15 it for five minutes, it's possible that Sweaty Bob
16 would be the major contributor, correct?

17 A. That's possible.

18 Q. Okay. Now, obviously you're pretty
19 qualified, I'm not going to challenge you as an
20 expert, so you know a little bit about the concept
21 of transference?

22 A. Yes, sir.

23 Q. Explain what that is.

24 A. Transference is when you transfer DNA
25 from one object to the other. So say if you have

ADRIENNE HEFNEY - CROSS EXAM BY MR. SMALDONE

1 laundry and all of it is thrown in a bag, whether
2 your laundry is mixed with your child's laundry,
3 your DNA would slough on to that.

4 Is that what you mean?

5 Q. Yes, ma'am. So basically -- and it's
6 been a long day; I'm trying to think of a good
7 example. If I stick my hand in a bucket of wet
8 paint and I plop it here, and then Mr. Thrower
9 comes up and puts his hand here, he's going to have
10 that paint on his hand, correct?

11 A. That's correct.

12 Q. And even though he didn't touch the
13 bucket of paint, right?

14 A. Yes.

15 Q. Is that a dumbed down version of what
16 transference is?

17 A. Sort of, yes, sir.

18 Q. Okay. So, essentially, there is no way
19 of proving that Drake wore the bandana, correct?

20 A. His DNA is on it. At some point -- and
21 he's the major contributor. At some point I
22 wouldn't think that the major contributor
23 transferred on there. Whether it's impossible?
24 No. But it's probable? Maybe.

25 Q. Okay. And, again, he may be the major

1 contributor because of his oiliness or something of
2 that nature?

3 A. That's true.

4 Q. I'm not saying he's an oily fellow, but
5 it's possible, right?

6 A. Yes.

7 MR. SMALDONE: Beg the Court's
8 indulgence?

9 THE COURT: Uh-huh.

10 BY MR. SMALDONE:

11 Q. Let's talk a little bit more about the
12 concept of transference. Obviously -- and I don't
13 want to insult anyone's intelligence, but if you're
14 transferring DNA, it's a lot more likely to be
15 amongst friends or people that are in the same
16 common area, correct?

17 A. Are you talking about like having worn
18 an item or just --

19 Q. Well, that's one way.

20 A. The items are transferring to each
21 other from being packaged together.

22 Q. I think we're confusing two different
23 things, but actually you bring up a good point.
24 There's no way to say ownership of the item because
25 -- because of someone being the major contributor,

1 right?

2 A. Essentially, that's what, you know, we
3 say normally you see the major contributor being
4 the owner of the item, but, again, if -- anything's
5 possible. So it could be transfer from sweating,
6 somebody that transferred more than the other.

7 Q. Right. Okay. And it would be --

8 A. Probable but unlikely.

9 Q. Well, you don't know that.

10 A. I don't know that for sure.

11 Q. Right. Right. If I get a jacket from
12 the thrift store, it could have been the other guy
13 -- you know, someone else's DNA on it mostly,
14 right?

15 A. Saying if you just got a jacket from
16 the thrift store and it was swabbed, and you hadn't
17 worn it but a few minutes, and the person who
18 turned it over to the thrift store had worn it
19 years and never laundered it, it could possibly.
20 We could scrape it and get DNA from the previous
21 owner.

22 Q. Right. And I'm not saying you bought a
23 bandana at a thrift store. That's just kind of an
24 example.

25 A. I understand.

1 Q. And so that's kind of about ownership.
2 And I think I might have mixed up two concepts. So
3 really no way to say ownership. It's probably --
4 you know, again, it's probably more likely than
5 not, but there's no way to prove it, correct?

6 A. Right.

7 Q. Now, with transference, though, that is
8 -- and I think you have a better example than mine.
9 That's the laundry basket analogy, right?

10 A. And that's in theory, that if you have
11 a bunch of people's laundry in there, you could
12 possibly get transference. It's unlikely, but it's
13 possible.

14 Q. But no way to prove whether or not it
15 was transference. There is no difference between
16 the DNA that you test that was transferred versus
17 the one that wasn't transferred, right?

18 A. That's correct, we just test for DNA.

19 Q. And we're not talking -- well, this is
20 where I mixed it up earlier with transference.
21 It's a lot more likely for transference of an item
22 to be transferred amongst people who are in close
23 quarters, let's say, friends, right?

24 A. You mean transfers as like him taking
25 the bandana off and giving it to his friend?

ADRIENNE HEFNEY - CROSS EXAM BY MR. SMALDONE

1 Q. No. I mean, actual -- the -- the wet
2 paint analogy. People who are -- I can't get
3 transfer DNA on my clothes from the Queen of
4 England because she's in England and I'm here,
5 right?

6 A. Well, the friends would have to be
7 touching each other or rubbing against each other
8 to do the transfer. So if they were doing that,
9 then possibly, but it's skin to skin. If my
10 clothes rub up against your clothes, on the outside
11 of them I wouldn't expect transfer, but if we're
12 rubbing collars together, then I would probably
13 expect transfer.

14 Q. Right. And a group of friends or
15 family members that hang out together are more
16 likely to do that than strangers that live miles
17 apart, right?

18 A. More likely to probably rub up against
19 each other in that way? Possibly, yes, sir.

20 Q. And, again, just like with the regular
21 touch DNA or skin cells, there's no expiration date
22 on that, right? It could have been from any point
23 probably prior to -- since it had last been washed,
24 right?

25 A. That's correct.

ADRIENNE HEFNEY - CROSS EXAM BY MR. SMALDONE

1 MR. SMALDONE: No further questions.

2 Thank you.

3 THE COURT: Mr. Smiley.

4 MR. SMILEY: Lots of questions, but not
5 relevant in this case.

6 THE COURT: Does the State have any
7 redirect?

8 MR. MCNEELY: Nothing further.

9 THE COURT: Any objection to this
10 witness being excused? From the State?

11 MR. MCNEELY: None from the State.

12 MR. THROWER: No, Your Honor.

13 MR. SMILEY: No, Your Honor.

14 MR. SMALL: No, Your Honor.

15 MR. ARCHER: No, Your Honor.

16 THE COURT: You're excused.

17 THE WITNESS: Thank you.

18 THE COURT: State may proceed.

19 MR. MCNEELY: Your Honor, permission to
20 approach?

21 THE COURT: Sure.

22 (Off-the-record discussion.)

23 THE COURT: State may proceed.

24 MR. ALFARO: Your Honor, the State
25 rests.

STATE RESTS - MOTIONS

1 THE COURT: Mr. Foreman, ladies and
2 gentlemen, the State has rested their case. There
3 are some matters of law I need to take up with
4 counsel.

5 During the break, please do not discuss
6 the case in any manner whatsoever and leave your
7 notepads in your seats.

8 (Jury out, 2:57 p.m.)

9 THE COURT: You may proceed.

10 The State has rested. Are there any
11 motions?

12 MR. THROWER: Yes, Your Honor. I would
13 make a motion for a directed verdict on all the
14 charges pending on Mr. Mouzon. I don't think the
15 State has met the burden of proof at this point in
16 the trial.

17 THE COURT: I'm going to let everybody
18 make their motions and then you can respond at one
19 time. Does that work?

20 MR. ALFARO: Yes, Your Honor.

21 THE COURT: Mr. Smiley.

22 MR. SMILEY: Yes, ma'am. I certainly
23 make a directed verdict motion in this case. By my
24 recollection, Your Honor, there is only one witness
25 that subsequently ties my client to this event.

STATE RESTS - MOTIONS

1 And while I'm not asking you to pass on
2 the credibility of the witness, I believe there's a
3 threshold that at least has to be looked at. The
4 only person that puts my client involved in this
5 event is Darius Hamilton, and I would offer that he
6 has zero credibility and that his testimony should
7 be disregarded. It's disregarded.

8 There is no evidence to tie my client
9 to any of these crimes and therefore I would make a
10 directed verdict. And that's the only basis I
11 have.

12 THE COURT: Okay.

13 MR. SMALDONE: Thank you, Your Honor.
14 Grant Smaldone for Drake Campbell. For the record,
15 at this time I move for a direct verdict on all
16 pending charges as the State -- the defendant
17 believes the State has not met their burden or
18 presented any evidence to my client.

19 THE COURT: And, Mr. Archer.

20 MR. ARCHER: Judge, I certainly join
21 Mr. Smiley. I think, you know, that there is only
22 one bit of evidence that anyone ties my client to
23 this case, and that is Darius Hamilton. And I
24 think that his credibility is so bad that it's --
25 that it's barely a scintilla of evidence, and that

STATE RESTS - MOTIONS

1 the State has to prove its case beyond a reasonable
2 doubt.

3 And I think it would be appropriate for
4 you to direct the verdict. Even though there may
5 be some scintilla of evidence, it's certainly not
6 enough to support a guilty verdict beyond a
7 reasonable doubt.

8 THE COURT: Would the State like to
9 respond?

10 MR. ALFARO: Yes, Your Honor. The
11 Court is aware the standard is whether there is any
12 evidence in the light most favorable to the State
13 to support these charges going to the verdict for
14 their -- to the jury for their consideration. The
15 State believes that ample testimony has been
16 provided by witnesses linking these defendants to
17 the crime.

18 The victim testified that there were
19 five subjects all armed with weapons that
20 approached them at night. She directly identified
21 Defendant Jacob Mouzon as the shooter. Mr. Mouzon
22 also has been identified by two other witnesses of
23 being in the area nearby before apprehension.

24 In addition, the victim also testified
25 that her two vehicles were stolen during the course

STATE RESTS - MOTIONS

1 of this burglary, armed robbery, kidnapping and
2 murder. And law enforcement located those vehicles
3 -- the white Crown Victoria within 30 minutes of
4 the 911 call.

5 Individuals were spotted running from
6 the vehicle by law enforcement, and within very
7 close proximity to that, or right next door to
8 that, the victim's stolen Crown Victoria, is the
9 DNA -- or the bandana that has Defendant Drake
10 Campbell's DNA on it.

11 Within proximity to that, further
12 search shows there is a hooded sweatshirt; that
13 there has been testimony that Defendant Mouzon's
14 DNA is on that along with the rifle that was
15 described by the victim as being used during the
16 commission of the crimes, as well as by
17 Mr. Hamilton.

18 Again, any evidence, direct and/or
19 circumstantial, would -- in the light most
20 favorable to the State would support moving forward
21 on charges on all defendants -- all charges for all
22 defendants.

23 There has been testimony -- the
24 credibility, or lack thereof, for Mr. Hamilton is
25 to be determined by the jury. And he has indicated

STATE RESTS - MOTIONS

1 that there was a plan, that all five acted in
2 concert to do this. The victim herself indicated
3 that all five approached immediately, and there has
4 been testimony that the -- they laid in wait for a
5 considerable time before this happened.

6 For those reasons, the State would ask
7 that you deny the motions for directed verdict.

8 THE COURT: Considering the evidence in
9 the light most favorable to the State, the Court is
10 concerned with the existence or nonexistence of
11 evidence and not its weight.

12 The State, of course, has the burden of
13 proving its case beyond a reasonable doubt, and the
14 evidence presented must rise above the level of
15 mere suspicion; however, they are not required to
16 prove guilt to the exclusion of any other
17 reasonable hypothesis, nor is the Court required to
18 make that finding.

19 There is both direct and substantial
20 circumstantial evidence reasonably tending to prove
21 the guilt of each defendant, both directly and
22 under the theory of accomplice liability. That
23 being established by the eye witness, that being
24 the victim in this case, Ms. Snipe, as well as
25 their co-defendant, Mr. Hamilton.

STATE RESTS - MOTIONS

1 In addition to that, it is corroborated
2 by the DNA testimony provided by the State, as well
3 as the other two independent witnesses who were
4 able to corroborate the defendants' presence in or
5 about the immediacy of this incident; therefore,
6 the Court finds there is direct and substantial
7 circumstantial evidence reasonably tending to prove
8 each defendant's guilt that rises above the level
9 of mere suspicion, and any issues regarding the
10 credibility or believability of witnesses is left
11 to the sound discretion of the finder of facts.

12 The motions are denied.

13 Do you-all want to spend the rest of
14 the afternoon going over the evidence and have the
15 charge conference? We can close and charge in the
16 morning.

17 MR. ARCHER: The State and all defense
18 counsel talked earlier and --

19 THE COURT: I don't ever close and
20 charge after 3:00. I don't know a lawyer that
21 talks less than an hour.

22 MR. ARCHER: Right.

23 THE COURT: They say 20 minutes, but it
24 never ends up 20 minutes. If we say it once, we
25 say it three times. And besides that, you don't

1 know how long the jury is going to deliberate and
2 they shouldn't have to feel pressure about
3 deliberating. If you close and charge this late at
4 night, you have to reread the charge because they
5 don't remember.

6 Please get the jury for me.

7 Oh, wait. Please take them back out.

8 THE COURT: If each defendant would
9 stand. I'll remind you that you are still under
10 oath.

11 This morning I advised each of you of
12 your right to testify. Do any of you have any
13 questions regarding your rights as I have explained
14 them to you?

15 Mr. Mouzon?

16 DEFENDANT MOUZON: No, ma'am.

17 THE COURT: Mr. Palmer?

18 DEFENDANT PALMER: No, ma'am.

19 THE COURT: Mr. Campbell, Mr. Drake
20 Campbell?

21 DEFENDANT CAMPBELL: No, ma'am.

22 THE COURT: Mr. Kenneth Campbell?

23 DEFENDANT KENNETH CAMPBELL: No, ma'am.

24 THE COURT: And have each of you had an
25 adequate opportunity to discuss with your attorney

1 if you should or should not testify?

2 Mr. Mouzon?

3 DEFENDANT MOUZON: No, I haven't.

4 THE COURT: Mr. Palmer.

5 DEFENDANT PALMER: Yes.

6 THE COURT: Mr. Drake Campbell?

7 DEFENDANT CAMPBELL: Yes.

8 THE COURT: Mr. Kenneth Campbell?

9 DEFENDANT KENNETH CAMPBELL: Yes.

10 THE COURT: And do you need to speak
11 with your lawyer any more at this time, Mr. Mouzon?

12 DEFENDANT MOUZON: Yes.

13 THE COURT: Mr. Sherrod Palmer?

14 DEFENDANT PALMER: No.

15 THE COURT: Mr. Drake Campbell?

16 DEFENDANT CAMPBELL: No.

17 THE COURT: Mr. Kenneth Campbell?

18 DEFENDANT KENNETH CAMPBELL: No.

19 THE COURT: And Mr. Sherrod Palmer, do
20 you wish to testify?

21 DEFENDANT PALMER: No.

22 THE COURT: Mr. Drake Campbell, do you
23 wish to testify?

24 DEFENDANT CAMPBELL: No, ma'am.

25 THE COURT: And Mr. Kenneth Campbell,

1 Junior, do you wish to testify?

2 DEFENDANT KENNETH CAMPBELL: No, ma'am.

3 THE COURT: All right. We'll be at
4 ease for a few moments while Mr. Thrower speaks
5 with his client about whether he wants to testify
6 or not. If he wants to, we're going to do it
7 today.

8 (A recess transpired.)

9 THE COURT: Mr. Thrower, have you had
10 an adequate opportunity to discuss with your client
11 whether he should or should not testify.

12 MR. THROWER: I think we have, Your
13 Honor.

14 THE COURT: Do you need any more time
15 to discuss the matter with him?

16 MR. THROWER: No, ma'am.

17 THE COURT: Mr. Mouzon, have you had an
18 adequate opportunity to discuss with Mr. Thrower
19 whether you should or should not testify?

20 DEFENDANT MOUZON: Yes, ma'am.

21 THE COURT: Do you understand your
22 rights?

23 DEFENDANT MOUZON: Yes, ma'am.

24 THE COURT: Do you have any further
25 questions for the Court?

1 DEFENDANT MOUZON: No, ma'am.

2 THE COURT: Sir, do you need any more
3 time to speak with Mr. Thrower?

4 DEFENDANT MOUZON: No, ma'am.

5 THE COURT: Do you wish to testify?

6 DEFENDANT MOUZON: Yes, ma'am.

7 THE COURT: Okay. You can take your
8 seat.

9 Bring in the jury.

10 Are all defendants ready to proceed?

11 MR. SMILEY: Yes, Your Honor.

12 MR. SMALDONE: Yes, Your Honor.

13 MR. ARCHER: Yes, Your Honor.

14 THE COURT: Would counsel come forward
15 please for a minute?

16 THE COURT REPORTER: Judge, do you need
17 me?

18 THE COURT: Yes.

19 THE COURT REPORTER: Okay.

20 (Bench conference.)

21 THE COURT REPORTER: Hold on. Hold on.

22 THE COURT: I'm sorry. In Charleston
23 we have a better setup. She's like a mad dash with
24 the mic.

25 Yes, sir.

1 MR. ALFARO: No ma'am.

2 THE COURT: Perfect. That was my
3 question.

4 MR. SMILEY: While we're up here, can
5 we talk about the order of examination? If he
6 testifies, then Mr. Alfaro cross-examines and then
7 we can if we wish.

8 THE COURT: I don't know if you get to
9 cross.

10 MR. SMILEY: Oh, we absolutely get to
11 cross.

12 THE COURT: I don't know, because you
13 don't have any burden of proof and he doesn't
14 either. I don't know, I have to think through it.

15 MR. SMILEY: Would you? Because I --

16 THE COURT: I don't know.

17 MR. SMILEY: I want out of the
18 courtroom otherwise.

19 THE COURT: I don't know. I'll think
20 about it. I'll figure it out.

21 (End of bench conference.)

22 (Jury in 3:34 p.m.)

23 THE COURT: You can be seated, I'm
24 sorry.

25 All right. Mr. Thrower, you may

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 proceed.

2 MR. THROWER: Thank you, Your Honor.

3 Mr. Mouzon would like to testify.

4 THE COURT: Call your witness.

5 MR. THROWER: Jacob Mouzon.

6 JACOB MOUZON,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please state your full name
9 and spell your last.

10 THE WITNESS: Jacob Mouzon,
11 M-O-U-Z-O-N.

12 DIRECT EXAMINATION

13 BY MR. THROWER:

14 Q. Okay. I'm going to get you to turn a
15 little bit more.

16 Mr. Mouzon, can you tell us a little
17 bit about yourself?

18 A. I'm 20 years old; I graduated from
19 Timberland High School May 27, 2016. Shortly
20 before graduating, I enlisted in the National
21 Guard, and before that I had got a scholarship to
22 SC State for being a completer.

23 Q. So at South Carolina State your
24 scholarship was based on being a completer?

25 A. Yes, sir.

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 Q. What does that mean?

2 A. It means I took all the courses for a
3 certain job field. Like in my case, I took all of
4 the courses that my school had to offer for
5 business.

6 Q. How does enroll in the National Guard
7 work in with that?

8 A. Well, I enrolled in the National Guard
9 because -- well, instead of any other branch
10 because I really wanted to focus on helping
11 citizens here like through crisis and not like
12 really going to war.

13 Q. So you're going to do that and go to
14 South Carolina State?

15 A. Yes, sir.

16 Q. Okay. Now, let's go ahead and get to
17 it because we've been here all week. Can you tell
18 us what happened starting July 20, 2016, which is
19 just a couple of months after you finished high
20 school? Tell us what was going on that day.

21 A. All right. Well, the beginning of that
22 day, I woke up, took my little sister to work. At
23 the time she was working at McDonald's. Went back
24 to the house, chilled --

25 Q. Where's your house? Where is the

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 McDonald's?

2 A. McDonald's is in --

3 Q. Slow down and give us a little more
4 facts.

5 A. All right. All right. McDonald's is
6 in Moncks Corner. And at the time my sister was
7 staying in St. Stephen, but I was staying in
8 Bonneau.

9 Q. With whom?

10 A. My father.

11 Q. So you drove from Bonneau to Moncks
12 Corner to take her to work?

13 A. Well, I had to pick her up from St.
14 Stephen, but, yeah, I took her to Moncks Corner.

15 Q. Kind of a loop?

16 A. Yes.

17 Q. What happened after you dropped her off
18 at work. And what time was that?

19 A. That was around eight or nine in the
20 morning.

21 Q. Okay.

22 A. After that, I went back home, chilled,
23 got on social media, you know, teenage stuff, until
24 about 12. I contacted my mom and asked her if she
25 wanted to have lunch. I went to her job and we had

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 lunch. I had shrimp and sweet potato fries.

2 After that, I went straight to the gym,
3 O2 Fitness on 176. That's in Goose Creek. Played
4 ball for a couple of hours until I got a text from
5 my girlfriend at the time saying that I could come
6 over.

7 Q. And what was her name?

8 A. Jeanine Wigfall.

9 Q. Go ahead.

10 A. And I showered real quick, put on a
11 different change of clothes and went over to her
12 house like 7:00.

13 Q. Okay. And she lives where?

14 A. In North Charleston.

15 Q. You told me. It's kind of by
16 Northwoods Mall?

17 A. Yeah. It's a little bit before you get
18 there.

19 Q. So how did you get -- what car were you
20 in from 176, O2 Fitness to -- did you go home and
21 shower first?

22 A. No, I showered at the gym.

23 Q. Okay.

24 A. But I was in my father's car. But we
25 shared it.

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 Q. Morris's car?

2 A. Yes.

3 Q. So you drive -- you drove from O2
4 Fitness after you showered to her house in North
5 Charleston?

6 A. Yes.

7 Q. And what happened next?

8 A. Well, then we was chilling and taking
9 pictures on Snapchat, just spending time together.
10 And I noticed my phone kept ringing, but we was
11 talking about me leaving soon and, you know, how --
12 what would we do about our relationship.

13 Q. Where were you leaving soon?

14 A. I was going to drill for the Guard.

15 Q. Okay. Explain more about that. When
16 were you leaving and what does drill entail?

17 A. I was leaving not the next day or the
18 next day, but any day. And that entailed just
19 going, learning to be a soldier, like working out,
20 learning stances, learning pledges and learning how
21 you should carry yourself as a soldier of the
22 United States.

23 Q. Where was drill going to be?

24 A. In Walterboro.

25 Q. How were you going to get there?

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 A. My recruiter was picking me up.

2 Q. From your dad's house?

3 A. Well, I usually met him at the
4 recruiter's office and he would take me. The
5 recruiting office is right by O2 Fitness, the gym.

6 Q. All right. So that would be right
7 there.

8 How long were you at Jade's apartment?

9 A. Until like 10:00.

10 Q. And you had gotten there when?

11 A. About seven.

12 Q. So 10:00 your phone is ringing. What
13 is going on?

14 A. Well, I'm -- we were discussing what we
15 were going to do about us because I'm fixing to go.
16 So I noticed my phone was ringing, but I wasn't
17 answering. When I did answer, it was a call from
18 my friends and they was, like, we need to get
19 together one last time, you know, before we all
20 split.

21 The summer is almost ended, and
22 everybody had different things going on at that
23 point in time.

24 Q. Okay. And so you say your friends.
25 Who was calling you?

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 A. It was either Drake or Darius, one of
2 the two.

3 Q. Okay. So what was the plan that
4 you-all came up with after you spoke?

5 A. Just to go to the club, drink a couple
6 of beers, you know. I was leaving in a day; Drake
7 was in the process of enlisting in the Army; Kenny
8 had just got a job at the lumberyard; and Sherrod
9 was going to Virginia soon. So it was just like
10 one last time, summer ended, getting back to life
11 now.

12 Q. So you were still in Morris's car?

13 A. Uh-huh.

14 Q. What did you do when you left Jade's
15 apartment?

16 A. I went and took the car back home to
17 Bonneau.

18 Q. All the way to Bonneau. And then?

19 A. That was -- I got there like 10:40.

20 Q. Okay. And then what happened?

21 A. Well, Darius and Drake pulled up and
22 picked me up.

23 Q. In what vehicle?

24 A. His truck.

25 Q. Who is his?

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 A. Darius's truck. Darius has like an old
2 pickup truck.

3 Q. Okay. So Darius and Drake are in his
4 old pickup truck?

5 A. Yes, sir.

6 Q. And they come all the way to Bonneau
7 and pick you up about 10:40?

8 A. Probably about 10:45.

9 Q. Okay.

10 A. I got home and talked to my pops before
11 I went straight back out the door.

12 Q. Okay. And you gave him his keys and --

13 A. Yeah, telling him I was leaving.

14 Q. All right. And then what happened?

15 A. Well, we left to go to the club. I got
16 to the club probably like 45 minutes later. It was
17 like -- it was a ride.

18 Q. Where is the club?

19 A. I'm not familiar with Huger at all, the
20 Huger area at all. So, I honestly --

21 Q. Was it the club that the fellow
22 testified about earlier? I think Mr. Williams?

23 A. Yeah. I do remember seeing him that
24 night briefly.

25 Q. It's that club in Huger that he was

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 speaking of?

2 A. Yeah, I'm pretty sure.

3 Q. Okay. But you're not in the club,
4 right?

5 A. No. I'm too young to get inside the
6 club.

7 Q. So when you say, we went to the club,
8 what does that mean?

9 A. Well, usually, in the country when you
10 go to the clubs, you can find a little party going
11 on in the parking lot outside.

12 Q. And drinking and --

13 A. Yeah, folks are drinking.

14 Q. And people have music playing?

15 A. Music playing from the cars. It's a
16 good scene.

17 Q. Okay. And people sneaking beers to
18 you?

19 A. Yeah. They was sneaking beers. I was
20 underage so, you know.

21 Q. So how long were you at this club in
22 Huger?

23 A. I ended up staying there about for two,
24 three, probably closer to three hours. Maybe a
25 little longer.

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 Q. And now who -- Darius is driving, Drake
2 is in the truck and you are in the truck?

3 A. Yes.

4 Q. You three get to the parking lot of the
5 club, and do you three hang out together?

6 A. Yes. Well, me -- Kenny and Sherrod was
7 already there. So we got there and passed out a
8 couple of beers and everybody high five each other,
9 how everybody doing and stuff, just like speaking
10 about our plans.

11 And me and Drake were just starting our
12 life; we just got out of high school, you know.
13 Sherrod, he was like -- he was leaving so he could
14 get to Virginia earlier. And we was like, all
15 right, have a good trip. If we can link up again,
16 we'll do this again.

17 Darius left like five or ten minutes
18 later; he was going to meet his cousin and score
19 some weed.

20 Q. Did you see anybody leave with him?

21 A. No, I did not.

22 Q. Did you see -- who else did you
23 recognize there in the parking lot?

24 A. People was coming and going. I seen a
25 few girls that I knew, but I believe I seen Mark

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 Turner and David Burnett.

2 Q. They were there, and then the five that
3 we're talking about, you guys were there?

4 A. Yeah. Well --

5 Q. What was the average age of the people
6 out there?

7 A. Anywhere from -- not too many people
8 are the dudes there that testified; he was on the
9 older side, but from 30s until -- we were probably
10 one of the youngest ones there at the time.

11 Q. Were there more people outside the club
12 or inside the club?

13 A. At first -- I never went inside the
14 club, so I'm not sure. Towards the closing hours,
15 I'm guessing like two, that's when the parking lot
16 really got jumping.

17 Q. Okay. And so that's 2:00. When did
18 you leave?

19 A. I would have to say 3:00 or 3:30.

20 Q. And you're pretty drunk by now?

21 A. Yeah. I had about five -- four or five
22 beers.

23 Q. And what happened next? How did you
24 leave?

25 A. First, Darius pulls up so we all --

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 because we was like, hey, come on. You know,
2 what's up? He was like, no, everybody get in the
3 truck real quick. And he was in such a rush that
4 he didn't let us get inside the truck.

5 It was more like just hop in the back.
6 Before we could even climb all the way on, the
7 truck was pulling back off again.

8 Q. Who was in the back of the truck at
9 that point?

10 A. Me, Drake and Kenny.

11 Q. And so you and the Campbells?

12 A. Uh-huh.

13 Q. Who is in the front of the truck?

14 A. Just Darius.

15 Q. And what happened next?

16 A. Well, he was driving really, really
17 fast.

18 Q. In what direction? Headed home?

19 A. I guess that's the direction to home.
20 Like I said, I am not familiar with the area at
21 all, so --

22 Q. Was he going back to the direction you
23 came?

24 A. Yeah. He came -- well, we would be
25 going -- we was coming this way so we would be

1 going back, yeah, the direction we came.

2 Q. Then what happened?

3 A. Well, he was driving real fast, and
4 when we slowed down -- I was cold, because he was
5 going really fast and driving reckless -- I opened
6 the toolbox and grabbed a sweater out of there. He
7 keeps clothes in there because he do be hunting.

8 So he keeps like hoodies and a long
9 pair of pants, all that in the truck at any time.
10 So I grabbed a hoodie and put it on.

11 Q. Okay. And how long into the ride is
12 that? Just --

13 A. It got cold instantly, so probably
14 within three or four minutes of the ride.

15 Q. Was he driving faster than normal?

16 A. Of course. He was driving -- like I
17 said, I was in the back of the truck, but I would
18 say at least 70, 80 miles. In these little roads,
19 kind of like when he go around the corner, I could
20 feel the truck pulling to the side away from where
21 he was turning. That's how fast he was going.

22 Q. What happened next?

23 A. Well, I noticed this car behind us,
24 like headlights and stuff. I noticed the car
25 behind us because of the headlights and it was kind

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 of bright in our eyes. You know, we were tripping,
2 kind of like drunk a little bit.

3 So I hear the sirens next and I hear
4 Darius be like, man, what's going on? He was like,
5 everything F'd up. And then he was like -- you
6 know, he pulled over real quick and he was like,
7 everybody, get out, get out, get out. And we got
8 out of the truck and ran.

9 Q. And was that unusual that he told you
10 to get out?

11 A. That was very unusual. His whole
12 demeanor since he came back from -- because when he
13 was supposed to get the weed, he wasn't supposed to
14 be gone long because we was all celebrating. But
15 he came back and his demeanor since he came back
16 everything was just off.

17 Q. How long was he gone when he went to
18 get the weed?

19 A. The whole night. I never saw him until
20 he came back about two hours later, three hours
21 later.

22 Q. Okay. And so you hop out of the truck.
23 What did you do?

24 A. I ran.

25 Q. Why?

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 A. Well, because I heard sirens and I was
2 confused. I didn't understand what was going on.
3 I'm young, I'm drunk. Just wasn't trying to get
4 into trouble. I had drill the next day. Not the
5 next day, but -- well, now it's the next day I got
6 drill. I ain't trying to get in no trouble.

7 Q. Did you see Darius, the direction he
8 went or what he did?

9 A. He just kept going in the direction he
10 was headed. As soon as we got out, he pulled off
11 again.

12 Q. He just took off?

13 A. Took off, no questions asked.

14 Q. Did you see the other car that looked
15 like a police car? What did it look like?

16 A. It looked like a police car.

17 Q. One that came up behind you?

18 A. Yes.

19 Q. Did you see what that car did?

20 A. All I did was immediately went through
21 -- went through the brush.

22 Q. Okay. And what happened after that?
23 Now we're like at four in the morning. What
24 happened after that?

25 A. Yeah. We just ran until we didn't hear

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 sirens anymore. We were trying to figure out what
2 was going on. By that time, all the buzz is killed
3 and we're not feeling no buzz no more. I ain't
4 feeling no buzz no more.

5 I was wide awake trying to figure out
6 what was going or what should we do. And the best
7 thing we thought to do was try to get home.

8 Q. You don't feel a buzz. Are you still
9 drunk enough to be in trouble with the Guard?

10 A. Oh, yeah. I'm still -- still like --
11 as far as me -- as far as me taking like a drug
12 test or something, I didn't want to get involved
13 with none of that.

14 Q. Okay. So now we're at -- is it still
15 dark now?

16 A. Yeah, it's still dark.

17 Q. What are you guys doing? The three of
18 you are together, right? You and --

19 A. Drake and Kenny.

20 Q. What did you do? What was your plan?

21 A. Well, we just -- we was just -- only
22 plan we could think of was just try to get home.
23 We are in an area we're not familiar with at all.
24 We don't know where we're at; the police is around
25 us.

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 And not to sound like we were into
2 criminal activity, or nothing like that, but where
3 I'm from, it's just -- we're not used -- we're not
4 used to being -- I don't want to say we. I'm not
5 used to seeing good things coming out of contact
6 with the police at all. So I was just avoiding
7 them at all costs.

8 Q. Okay. And so now let's get to
9 daylight. What's happening when the sun is coming
10 up?

11 A. Well, we end up -- I end up seeing some
12 dude in a gray truck. It was the dude that
13 testified, Kenny Hoffa. I saw him. I was looking
14 at him dead in his face trying to -- hope he would
15 ask for help or ask if we needed anything, because
16 I needed to use his phone, but he never -- he just
17 went by and came back and went by.

18 Q. Okay. And who did you see next?

19 A. I saw the lady that testified,
20 Brittany.

21 Q. Bordeaux, I believe her name was?

22 A. Yes.

23 Q. What was your encounter with her?

24 A. Well, to be honest, she stopped the car
25 and was like, what the H we doing around that area,

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 and like we could be shot just for being black in
2 that area, it's not common to see black people in
3 this area.

4 So that's how that came about honestly,
5 but we was just, can we use your phone? We don't
6 know where we're at; we're just trying to get home.
7 That's it.

8 Q. And did she let you use her phone?

9 A. Yes.

10 Q. Who did you call?

11 A. I didn't call nobody, but I'm not sure
12 -- I can't remember who made a call and who was
13 called, but --

14 Q. Okay. So it was one of the Campbells?

15 A. Yeah.

16 Q. All right. And what did you do next?
17 Did you get a ride?

18 A. No, we never got a ride. I saw that
19 dude come back that testified. He came back
20 through, but he still didn't offer us no help.

21 Q. So the phone call didn't get you a
22 ride?

23 A. No.

24 Q. So you kept walking towards, I guess,
25 near the church?

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 A. She gave us -- she gave us directions
2 to a highway. You know, we were asking which way,
3 and she gave us directions to the highway. And we
4 came up on the church, I guess.

5 Q. And then what happened when you were
6 near the church?

7 A. We just kept it moving.

8 Q. Okay. Did you ever get a ride home?
9 What happened?

10 A. No, we never got a ride home. We just
11 kept headed in the direction that she gave us. We
12 eventually came across a road, I guess. It ended
13 up being Highway 41 towards Jamestown. When we
14 looked this way, it looked the same as looking that
15 way, and it didn't have no signs.

16 You know, we came out the woods, so I
17 didn't know which way to go, just trying to get
18 home. So we just stayed along the highway and
19 walked one way thinking that was the highway she
20 gave us directions to.

21 Q. And now nobody ever picked you up, but
22 the police arrested you. How did that happen?

23 A. Well, I heard like a dinging, ding,
24 ding, ding, ding, ding, like that. And so I was
25 just running away from the sound. It was happening

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 for a long time. I wouldn't say I knew I was
2 running in circles, but it just felt like I wasn't
3 getting nowhere, like I never saw the end to -- you
4 know.

5 And, eventually, it was like -- kind of
6 like, you know, for me like a flank. It just kind
7 of like flanked us. And as soon as they gave the
8 command, you know, you just did what they said to
9 do and went down without any trouble. Got
10 arrested, got to the side of the road, medical
11 attention, Gatorade.

12 Q. Who was with you when you got arrested?

13 A. Just me -- it was just Drake.

14 Q. Where was Kenny?

15 A. Well, Kenny had got cramps earlier from
16 us running and we had kind of split. Like not
17 intentionally, but we was trying to find water
18 because it was the middle of summer and there was
19 no water in the woods. I was trying to find water
20 to help him out, and I kind of told him to sit
21 still while I got the water.

22 But, you know, by the time I found the
23 water, I had just used my hand to point to the
24 direction where he'd been and I couldn't find him.
25 I went back --

JACOB MOUZON - DIRECT EXAM BY MR. THROWER

1 Q. What did you do with your hoodie?

2 A. I took it off almost -- not
3 immediately, but within a few minutes of running.
4 Once I got through the woods, it was like a little
5 road. We look a left and kept on running and I
6 took it off and threw it.

7 Q. Did you try and hide it or did you --

8 A. No. I just took hung it -- I didn't
9 try to hide it at all. I just took it off and
10 throwed it. I'm not carrying it.

11 Q. It was hanging in a tree. Was that
12 next to a road?

13 A. Yeah, right next to the road.

14 Q. So you could come back and get it
15 later?

16 A. Yeah; possibly, if Darius wanted it.

17 Q. And you have been in jail since that
18 day?

19 A. Yes, sir, since that day. I've been
20 here two years, 25 months.

21 Q. Hill-Finklea?

22 A. Hill-Finklea, right across -- walk
23 across that tunnel right over there.

24 MR. THROWER: No further questions.

25 THE COURT: Mr. Smiley.

JACOB MOUZON - CROSS EXAM BY MR. ARCHER

1 MR. SMILEY: I have no questions for
2 this witness.

3 THE COURT: Mr. Smaldone.

4 MR. SMALDONE: No questions, Your
5 Honor.

6 THE COURT: Mr. Archer.

7 MR. ARCHER: Yeah, I have a couple of
8 questions.

9 CROSS-EXAMINATION

10 BY MR. ARCHER:

11 Q. What time did you leave the club?

12 A. I didn't look -- we didn't have our
13 phones, so I didn't look at the time. It had to be
14 like 3:20, 3:30, around that time.

15 Q. And are you saying are -- you
16 testifying that you never made it to Kadeem
17 Johnson's house?

18 A. I'm testifying that I never been there
19 in my life.

20 Q. Never been there?

21 A. Never.

22 Q. Not that night?

23 A. Not that night, not any other night,
24 never.

25 Q. Okay. You claim that you were with

1 Drake and Kenny at the club?

2 A. Yes, sir.

3 Q. And that would have been until about
4 three in the morning?

5 A. Maybe after.

6 Q. Maybe after. Okay. And at some point
7 in time you-all were -- you say that Darius
8 Hamilton told you to get out of the truck and run?

9 A. After he came back and picked us up, he
10 did.

11 Q. He told you that?

12 A. He told us to get out of the truck.

13 Q. And you-all took off in the woods?

14 A. Well, we heard sirens and that
15 explained how, you know, police contact.

16 Q. When you got out of the truck, what
17 direction did Kenny go in?

18 A. We all went the same direction.

19 Q. Okay. So you were -- according to you,
20 you-all took off into the woods?

21 A. Yeah.

22 Q. Okay. Any idea why somebody may have
23 picked you out of a lineup at being at Kadeem
24 Johnson's house that night?

25 A. Honestly -- I honestly don't know, but

JACOB MOUZON - CROSS EXAM BY MR. ARCHER

1 the lineup wasn't 100 percent identification. It
2 was 50 percent --

3 MR. ALFARO: Objection.

4 THE COURT: Basis of the objection?

5 MR. ALFARO: It's outside of his scope
6 as to the authenticity of the lineup.

7 THE COURT: I'm going to overrule to
8 the extent that he is simply repeating what was
9 written on the form. It doesn't require
10 specialized knowledge.

11 BY MR. ARCHER:

12 Q. Okay. So I just want to make sure that
13 I have it straight what your testimony is. You're
14 saying that you never made it to Kadeem's house
15 that night?

16 A. Me, nor Kenny, nor Drake, nor Sherrod;
17 nobody.

18 Q. Nobody made it?

19 A. That's what I'm testifying.

20 Q. Where was Sherrod all this time?

21 A. He left for Virginia.

22 Q. He wasn't in the truck with you?

23 A. No, sir.

24 Q. Who all was in the back of that truck?

25 You?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. Drake.

2 Q. Drake?

3 A. Kenny.

4 Q. Kenny. Okay. And according to you,
5 Darius Hamilton was in the -- was in the front
6 seat?

7 A. He was driving.

8 Q. He was driving. Okay.

9 MR. ARCHER: No more questions.

10 THE COURT: Any questions of the
11 witness?

12 MR. ALFARO: Yes, Your Honor.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. ALFARO:

16 Q. Mr. Mouzon, let's start out with saying
17 what we can agree on?

18 A. All right.

19 Q. All right. You are -- you were 20
20 years old when this happened or you're 20 years old
21 now?

22 A. I'm 20 years old now.

23 Q. And I think you said you graduated
24 Timberland High School?

25 A. May 27, 2016.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 Q. All right. And how long have you known
2 Drake Campbell?

3 A. Me and Drake first met in third grade.

4 Q. Third grade. So that's a long time,
5 right?

6 A. Yeah, that's a long time.

7 Q. Good friends?

8 A. Really good.

9 Q. Do a lot together?

10 A. Do a lot.

11 Q. Did you play any ball together?

12 A. We played basketball and football on
13 the streets together.

14 Q. Okay. Would you call him a really good
15 friend?

16 A. I would.

17 Q. Do anything for him?

18 A. I would.

19 Q. So if you know Drake and you're real
20 good friends with Drake like that, you must know
21 Kenneth Campbell, too, right?

22 A. I do.

23 Q. Okay. Good friends with him, too?

24 A. Yeah, we was friends.

25 Q. Hang out with him?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. Before I have.

2 Q. Do anything for him?

3 A. I would. I feel like --

4 Q. I have to ask you a question and then
5 you get to answer. Okay?

6 A. I already done with this little --
7 that's not -- that's not what I would do. I have
8 sworn on the Bible not to --

9 THE COURT: Sir, I need you -- he's
10 going to ask you a question and you need to answer
11 yes or no and then you may explain your answer.

12 THE DEFENDANT: All right.

13 THE COURT: You may proceed.

14 BY MR. ALFARO:

15 Q. So good friends with Drake, do anything
16 for him; good friends with Kenny, do anything for
17 him. What about Sherrod Palmer?

18 A. I know him, too.

19 Q. Do you know what his nickname is?

20 A. I call him Sherrod.

21 Q. Did you ever call him Sav?

22 A. I've heard people call him that, but,
23 you know.

24 Q. Okay. Friends with him?

25 A. Yeah, I would say we were friends.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 Q. Good friends?

2 A. What do you mean by good friends?

3 Q. Hang out?

4 A. Yeah, I hang out. We hung out before,
5 yeah.

6 Q. They must have been pretty good friends
7 because you wanted to hang out on your last night
8 before your drill with Kenny, Drake, and Sherrod,
9 right?

10 A. That's correct.

11 Q. You knew what everybody was doing with
12 their life, right?

13 A. That's correct, sir.

14 Q. You knew who was going to Virginia and
15 who was getting a job and who was going to go on
16 about other things?

17 A. Correct.

18 Q. Okay. And you also mentioned Darius
19 Hamilton, that you were friends with him, right?

20 A. Friends, yeah. Friends? Yeah,
21 friends. We were friends.

22 Q. Go to school with him?

23 A. I've been to school with him for a long
24 time.

25 Q. Play ball with him?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. He's not good at ball, but me and him
2 not as good of friends as me and Drake. I know of
3 him and be around type thing, but as far as be
4 friends -- we were friends, but it don't go no
5 further than that.

6 Q. Okay. So it doesn't go any further
7 with Darius, but you were really, really tight with
8 Drake?

9 A. Yes, sir.

10 Q. Okay. And you said that you were with
11 your girlfriend between 7 and 10:00 the night
12 leading into the murder of Kadeem Johnson, right?

13 A. Yes, sir.

14 Q. And you said, if I remember right, your
15 phone was blowing up, right?

16 A. Ringing, yeah.

17 Q. Okay. And so you get the phone call
18 and you finally answer it, right? And you tell
19 your girl that you have to go to Huger?

20 A. Yes, sir.

21 Q. And where did Darius and Drake pick you
22 up from again?

23 A. My father's house in Bonneau.

24 Q. So Bonneau --

25 A. Well, Bonneau Beach. It's -- Bonneau

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 is extended off of Bonneau, but Bonneau.

2 Q. Okay. And you testified that you went
3 to a club on 41 in Huger?

4 A. I didn't testify where it was at. I
5 said I'm not familiar with the area, but I have
6 been to a club. If you think it's 41 because of
7 where he testified, I'm not sure, but I would like
8 to remind you that he also said they hop around
9 clubs.

10 So it may be a club he's been to and
11 then went to another street, I'm not sure. But I
12 did go to the club on Highway 41. Huger, I'm not
13 sure.

14 Q. Okay. Anything else you want to say
15 before I ask you another question?

16 A. No. I just wanted to clarify that.

17 Q. Okay. Well, that's why we're here.
18 We're going to clarify a few things with you.
19 Okay?

20 So you get picked up by Darius in
21 Darius's truck, right?

22 A. Correct.

23 Q. Drake's in the truck?

24 A. Correct.

25 Q. You get in the truck?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. Correct.

2 Q. The three of you ride in the front?

3 A. Yes.

4 Q. Going to Huger?

5 A. Correct.

6 Q. Meet up with Kenneth Campbell?

7 A. Yes.

8 Q. Meet up with Sherrod Palmer?

9 A. Correct.

10 Q. And hang out at the same club that
11 Bernard Williams was in, right?

12 A. Like I said, he said that he hops
13 around. On that day, I forget what he said -- he
14 called it Red Robin or something, so I'm not sure.
15 He was there; I saw him briefly, yes. If it was
16 the same club that he had been there, you know, I
17 saw him there.

18 Q. Well, I think you've only testified
19 that you and Drake and Kenny and Sherrod only went
20 to one club?

21 A. That's true.

22 Q. Okay. So if you went to one club and
23 you saw Bernard Williams, then you were at the one
24 club that Bernard Williams was at, right?

25 A. I was at -- yeah. I was at one club

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 with him, but, like I said, and like he said, he
2 goes to different clubs that day. So his
3 testimony, I don't know if he was speaking of the
4 same club that we been to at that time, but I did
5 see him that night at a club. Which club, I don't
6 know.

7 Q. Well, let me see if -- maybe I need to
8 slow this down for you.

9 A. No. I understand perfectly fine.

10 Q. I'm not sure that you do because you're
11 saying that you went to one club that night with
12 Sherrod and Kenny and Drake, right?

13 A. Correct.

14 Q. You went to one club?

15 A. Correct.

16 Q. Okay. And you saw Bernard Williams at
17 the club that you were at, right?

18 A. Correct.

19 Q. So, therefore, Bernard Williams saw you
20 at the club he was testifying about?

21 A. Correct. Correct.

22 Q. Okay. Not a trick question.

23 A. No. I'm not saying it's a trick
24 question, but --

25 Q. Okay.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. He testified that he goes to different
2 clubs. So you never asked him yesterday which club
3 did he testify to, and I'm not sure which club I
4 was at because I'm not familiar with the area. So
5 I'm just letting it be known that whatever club
6 that he testified to may or may have not been the
7 same club I was at. That's all.

8 I'm not trying to be smart or have a
9 trick question. I just want everything to be
10 understood fully.

11 Q. Okay.

12 A. That's all.

13 Q. Fair enough. All right. So Darius,
14 according to your testimony, leaves and comes back,
15 and you, Drake, Kenny, all jump in the back of his
16 pickup truck; is that right?

17 A. As he told us, yes.

18 Q. Are you older than Darius or younger?

19 A. I think Darius is older than me by --
20 in the paperwork it says his birthday is March and
21 mine is in June. So he's older than me by about a
22 couple of months.

23 Q. So when you-all drove to the truck, he
24 let you ride in front of the truck, right?

25 A. That's correct.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 Q. When he pulls up to pick you up this
2 time, he says, jump in the back, you just jump in
3 the back?

4 A. Yeah. It's a pickup truck.

5 Q. 3:00 in the morning?

6 A. Or later.

7 Q. You said you were instantly cold on
8 July 21, 2016, right?

9 A. That's correct.

10 Q. Okay. And that's why you put on the
11 black hoodie, right?

12 A. That's correct.

13 Q. So fair to say that while you were with
14 Drake and Kenny and Darius, you were wearing a
15 black hoodie?

16 A. See, I feel like that's a trick
17 question.

18 Q. Simple question; were you wearing a
19 hoodie or were you not wearing a hoodie?

20 A. I wore a hoodie once I got back in the
21 truck and we were driving at speeds top of 70,
22 80 miles per hour which has wind, which will get
23 you cold. I did put on a sweater, yes, I did.

24 Q. Okay. Now, obviously, because of your
25 testimony, you've been paying a lot of attention

1 because you were telling everybody what Bernard
2 Williams said and what the victim in this case
3 Krystal Snipe said on her identification. So
4 you've been paying attention to all of this, right?

5 A. I'm fighting for my life right now,
6 yes, sir.

7 Q. I got ya. And in paying attention to
8 that, you heard about the DNA on that black hooded
9 sweatshirt, right?

10 A. Yes, sir. Three -- mixture of three,
11 the major contributor is me.

12 Q. Okay. But we can -- can we agree that
13 there is no question that is your DNA on that black
14 hooded sweatshirt?

15 A. 1 in 7 trillion that is my DNA on that
16 black sweatshirt, yes, sir, I agree.

17 Q. So you agree it's your DNA?

18 A. I agree.

19 Q. Okay. And you'd agree with me when you
20 -- well, let me back up a second.

21 A. Can I please have some water?

22 THE CLERK: Yes.

23 (Water given to the defendant.)

24 BY MR. ALFARO:

25 Q. Good?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. Yes, sir.

2 Q. All right. So let's go back to where
3 -- just before that hoodie finds it's way into the
4 woods off of Yellow Jacket Road. You are
5 testifying to this jury that you were with Drake
6 Campbell, correct?

7 A. Correct.

8 Q. And you were with Kenneth Campbell,
9 correct?

10 A. Correct.

11 Q. And that those -- that you two saw or
12 that -- I'm sorry, you're driving down the road in
13 the back of the pickup truck?

14 A. Correct.

15 Q. Not in a white Crown Vic?

16 A. Not in the white Crown Vic. In the
17 back of Darius' pickup truck.

18 Q. With Kenny and with Drake?

19 A. All three of us in the back of his
20 pickup truck.

21 Q. And when you're with them you see blue
22 lights and sirens?

23 A. No, sir, not at first. I seen -- I
24 seen headlights behind us.

25 Q. Okay.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. I hear sirens. We hear sirens coming,
2 but right during that time, like almost instantly,
3 we was already asking Darius -- there's a little
4 side window, in pickup trucks they have a window --
5 you know, what was going on. And he said,
6 everything F'd up.

7 Q. So that's while -- you're having that
8 conversation while you're driving?

9 A. No, I'm not driving.

10 Q. I'm sorry, while the car is moving?

11 A. Yeah. We were yelling it through the
12 window, what is going on.

13 Q. Truck is going 70 or 80 miles an hour I
14 think is what you testified to.

15 A. Yeah. Yeah, about that. About that.

16 Q. You were in the back?

17 A. I'm in the back.

18 Q. And your testimony is that you can have
19 a conversation with the person driving that truck
20 at 70, 80 miles an hour, and they're supposed to
21 hear you or you're supposed to hear them?

22 A. We didn't have a, like, full
23 conversation as in how me and you speaking right
24 now, not a question and answer type thing. I asked
25 him something; he responded. That was it.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 Q. That's not a conversation to you?

2 A. I mean, the way you put it made it
3 sound like we were talking for a long time and
4 understood everything clearly. Like I said, I'm
5 not trying to be smart. I just want everything to
6 be understood (sic) fully.

7 Q. Okay.

8 A. I understand your job and what you're
9 trying to do, but I want to make sure that my
10 position is understood and fully. That's all.

11 Q. Okay. So at some point in the area of
12 Yellow Jacket Road you end up running into the
13 woods with Drake Campbell and Kenneth Campbell,
14 right?

15 A. Correct.

16 Q. Okay. Now, before you ran into the
17 woods, I'm just not clear, did you see the blue
18 lights or not see the blue lights?

19 A. Before we ran into the woods, I didn't
20 see blue lights, but I heard sirens.

21 Q. And you testified that you just didn't
22 know what was going on, right?

23 A. Very confused.

24 Q. Very confused. Hear sirens and just
25 run into the woods?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. Well, like I said before, I was drunk;
2 at the time I was 18, which is not the legal age to
3 drink; I had drill the next day; and from where I'm
4 from, not trying to sound like I'm involved in
5 criminal activity or anything, but it's almost
6 unstated that you avoid police contact regularly.
7 So, yes, sir, to answer your question, I ran into
8 the woods.

9 Q. So you didn't think that in a situation
10 that's confusing -- and you've already said that
11 supposedly Darius's whole attitude has changed.
12 You don't think the better course of conduct for a
13 person getting ready -- who has graduated high
14 school, scholarship, getting ready to go into the
15 National Guard, going to do the drill the next day,
16 that the better course of action for you is just to
17 stop and see what is going on?

18 A. No, sir, it had nothing to do with me,
19 so I wouldn't stop. I would have avoided the
20 situation. That's my thinking.

21 Q. Okay. So, again, because you heard
22 everything going on this week, you know that the
23 hooded sweatshirt was found on Yellow Jacket Road?

24 A. Yes, sir.

25 Q. And you also know, and would agree with

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 me, would you not, that in the area of where that
2 sweatshirt -- that you said had had your DNA on it,
3 right?

4 A. Yes.

5 Q. The sweatshirt with your DNA that you
6 were wearing that night was found, that on that
7 road, the main road where apparently Darius was
8 driving and you were riding in the back of the
9 pickup truck?

10 A. Yes, sir.

11 Q. You said there was a Crown Vic behind
12 you, or headlights behind you?

13 A. Yes, sir.

14 Q. Was it a Crown Vic behind you?

15 A. I don't know. Now from being here, I
16 know that it was a Crown Vic.

17 Q. Okay.

18 A. From testimony like from Corinthian
19 Green.

20 Q. Okay. So your testimony is that there
21 was a white Crown Vic, the victim's stolen --

22 A. Headlights behind us.

23 Q. -- was following Darius's truck?

24 A. My bad, I interrupted you.

25 Q. So your testimony today is that Darius

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 is driving on that road which is, as you saw on the
2 map, Highway 402, right?

3 A. Correct.

4 Q. And there is a white Crown Vic
5 following behind it, right?

6 A. My testimony would be that I saw
7 headlights. Because of this trial, I know now it
8 was a white Crown Vic.

9 Q. Okay. When you three got ready to run
10 into the woods, was the white Crown Vic parked on
11 402?

12 A. I honestly don't know.

13 Q. Okay.

14 A. I was -- like, we hopped out of the
15 truck and we ran. It wasn't like hop out of the
16 truck, stand around to see what was going on. It
17 was get away from the situation. That's what it
18 was. I don't know about --

19 Q. So you run from where you said that you
20 saw the Crown Vic was parked?

21 A. I didn't say -- I didn't say nothing
22 about -- I don't know nothing about no Crown Vic
23 parked, sir.

24 Q. You're aware -- let's say this: You
25 were clearly with Drake and Kenny when this

1 happens?

2 A. Yes, sir.

3 Q. Okay. And in the area where you ran,
4 there is a bandana found, correct?

5 A. No, sir.

6 Q. There's not a bandana found?

7 A. In the area from which we ran, no, sir.

8 Q. Okay.

9 A. You're asking me trick questions and
10 I'm up here trying to tell the truth. No, sir, not
11 from the area in which we ran. No, sir.

12 Q. Okay. Well, let's go to the area where
13 the sweatshirt with your DNA is found. Would you
14 agree with me that this rifle was found?

15 A. I would agree that they found that on
16 that road, but neither I nor anybody that's been in
17 this courtroom all week saw that rifle in relation
18 to like how they take pictures.

19 They didn't show any pictures with
20 those two -- he said within five yards or five feet
21 between each other. But I do agree there was
22 testimony that they found it on the road. I agree
23 they found that rifle on that road, yes, sir.

24 Q. Did you drop this?

25 A. No, sir.

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 Q. So if it wasn't you, it must have been
2 Kenny or Drake, right?

3 A. No, sir.

4 Q. Did it just happen to show up right
5 near your -- the sweatshirt you told me had your
6 DNA on it?

7 A. Nobody has proof that it was right next
8 to the sweatshirt. I don't know what happened. I
9 don't know if it just happened to appear or -- I
10 don't know. I know me, Drake, nor Kenny put that
11 there nor had that.

12 Q. So was it you, Drake, or Kenny that
13 dropped the bandana that had Drake's DNA on it?

14 A. Once again, I never saw a bandana nor
15 am I going to testify -- that would be a lie --
16 that anybody dropped it either. I don't know about
17 the bandana. I heard it had Drake's DNA on it.
18 Everybody heard that, but have I seen him with it?
19 No. Nor I have not seen him drop it, no.

20 Q. Okay. And so you-all ran into the
21 woods down Yellow Jacket, and I think you testified
22 you ran until you couldn't hear sirens anymore,
23 right?

24 A. That's correct.

25 Q. Okay. And at the point that you

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 couldn't hear sirens, you were still with Drake and
2 Kenny?

3 A. That's correct.

4 Q. Okay. And you testified on direct that
5 you saw Kenny Hoffa that morning, right?

6 A. On direct.

7 Q. When your lawyer was asking you
8 questions and you were telling your story, you said
9 that you saw that guy that testified, Kenny Hoffa,
10 and I think you said, looked him dead in his face?

11 A. That's correct.

12 Q. So the person that identified you in
13 court you made face-to-face eye-to-eye contact
14 with?

15 A. Yes, sir.

16 Q. Okay. And then you testified when your
17 lawyer was asking you questions that you saw
18 Brittany Bordeaux?

19 A. After I saw him, yes, sir.

20 Q. So you see Hoffa first and then you see
21 Brittany Bordeaux. Did you look her dead in the
22 face, too?

23 A. Well, I said that we used her phone so
24 I talked to her.

25 Q. So it was no question, you would agree

1 with me, when she saw the three people that were
2 using her phone, it was you, correct?

3 A. Correct.

4 Q. Drake, correct?

5 A. She didn't say -- I mean, she saw -- if
6 you're asking me was they there or are you asking
7 me did she see --

8 Q. I'm asking when her phone was used,
9 when you saw her --

10 A. Me, Drake, and Kenny.

11 Q. Okay. And did all three of you use her
12 phone?

13 A. No, sir.

14 Q. Who used her phone?

15 A. As I testified, I'm not sure.

16 Q. Okay. You don't know which of the
17 other two used her phone?

18 A. Correct.

19 Q. And did you ask her if you could use
20 her phone?

21 A. No, sir.

22 Q. Weren't you just trying to find some
23 help?

24 A. Trying to get back home, yes.

25 Q. So you didn't want to call somebody or

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 call the cops to come and get you?

2 A. Not the cops. We were running from the
3 cops.

4 Q. Running from the cops.

5 A. Not even running from the cops. We
6 were running from the situation.

7 Q. Okay. Running from the cops, running
8 from the situation. You, Kenny, and Drake running
9 from the cops, running from the situation, right?

10 A. Say that again.

11 Q. You, Kenny --

12 A. No, I heard that part. I'm talking
13 about you said, and running from the cops and the
14 situation. Just ask me the question again.

15 Q. We don't need to go back over that
16 part.

17 A. Okay.

18 Q. After you see Bordeaux, you see Hoffa
19 again, right?

20 A. Correct.

21 Q. And he didn't stop and you didn't try
22 to stop him?

23 A. That's correct. We had already gotten
24 a call through. There was no need to stop him.

25 Q. Well, if you don't know who made the

1 call, how do you know that a call had gotten
2 through?

3 A. I was told a call had gotten through.

4 Q. Who told you a call had gotten through?

5 A. I honestly still don't remember.

6 Q. But you remember what you had for lunch
7 with your momma the day before the guy got killed?

8 A. I certainly -- that's my last meal as a
9 free man. I do remember that. That's one of my
10 last moments with my momma in the last two years.
11 I remember that for sure.

12 Q. All right. And you said when you saw
13 Mr. Hoffa that you ran to a church and kept it
14 moving; is that right?

15 A. No, sir.

16 Q. Okay. Well, what did you do when you
17 saw Kenny Hoffa?

18 A. It wasn't when I saw Kenny Hoffa --
19 you're taking his statement and trying to blend it
20 with mine, and that's two different things.

21 Q. Actually, I'm just quoting what you
22 told your lawyer on direct examination.

23 A. I never said I saw him and ran. He
24 testified that he saw me running. So if he
25 testified that he saw me running that would mean

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 that he saw me. I didn't look at him and run. I
2 told you I saw him again. I didn't run.

3 Q. Let me ask it this way. When you saw
4 Hoffa, did you stay there or did you move?

5 A. Move.

6 Q. Did you move slowly or did you move
7 quickly?

8 A. If you're asking me if I ran, I didn't
9 run, but I kept moving. He saw us -- he testified
10 he saw us walking. We were no longer running.

11 There was no longer by any sirens. We didn't hear
12 any sirens so we had no reason to run. We were
13 walking when he saw us. He testified he did.

14 Q. So you moved behind the church. Is
15 that fair to say?

16 A. No, no, sir.

17 Q. Okay. So when you see Hoffa and move,
18 you didn't run behind the church and one of you
19 didn't drop State's 157?

20 A. No, sir.

21 Q. It just happened to be found in the
22 same church that you were seen hours after a
23 robbery and a burglary and a murder where this was
24 stolen from Martha Lane; is that correct? Just a
25 coincidence?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. The question was did it just happen to
2 be there? Somebody put it there, but I'm
3 testifying it wasn't me or none of the people that
4 I was with. It just didn't appear if that's what
5 you're asking, but it wasn't me or Drake or Kenny,
6 no, it wasn't.

7 Q. You don't know how this bag magically
8 made it from 135 Martha Lane to Eccles Church?

9 A. I wouldn't say magically. I don't --
10 no, sir, I don't know how it magically got there.

11 Q. You can take another drink of water if
12 you need it.

13 Okay. So at some point after you moved
14 on from Eccles Church, you said Kenny started
15 cramping up?

16 A. Correct. But the beginning part of
17 your question just now, from moving from Eccles
18 Church. I never said that we were there.

19 Q. Okay.

20 A. You're trying to get me to admit, but
21 if you would just listen to the story I told, then
22 you would -- and that's the truth, sir. You
23 wouldn't have to try to get me to admit to
24 something else. I'm telling the truth.

25 Q. At some point after you moved on from

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 where you saw Mr. Hoffa the second time, did Kenny
2 cramp up?

3 A. Yes, sir.

4 Q. So up until then, from the time when
5 you saw Mr. Hoffa the second time, it was still
6 you, Drake, and Kenny, correct?

7 A. Yes, sir.

8 Q. Okay. But at some point after that,
9 you split up, right?

10 A. Not -- yeah. We ended up split up, but
11 it wasn't on purpose.

12 Q. So you were planning to just keep
13 running together until you got away?

14 A. We all live in the same area. It
15 wasn't a plan to run. Yeah, we was running, but it
16 wasn't a plan.

17 Q. And you live in the same area so --

18 A. St. Stephen.

19 Q. You-all live in St. Stephen -- well,
20 you live in Bonneau Beach?

21 A. My mom lives in St. Stephen. My father
22 lives in Bonneau Beach. I go back and forth every
23 day.

24 Q. Okay. Regardless, you testified that
25 you weren't familiar with the Huger area?

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 A. That's correct.

2 Q. Which I'm assuming is the explanation
3 for why when the three of you-all ran from the
4 police you got lost and couldn't get back to St.
5 Stephen?

6 A. That's correct.

7 Q. All right. Do you remember about what
8 time you split off from Kenny?

9 A. No, sir, not at all. It was daytime.

10 Q. Were you still with Kenny when he got
11 caught by the SLED bloodhound team that afternoon
12 or evening?

13 A. No, sir. I didn't know Kenny was
14 arrested until I saw him in jail.

15 Q. So after you split off from Kenny, I
16 think you said that you were going to try to get
17 him some water?

18 A. Well, all of us was thirsty, but, yes,
19 sir, him especially.

20 Q. So there's probably -- you said -- tell
21 me again when you split off from Kenny, you think
22 you did? Was it still daylight or not?

23 A. I told you it was daylight, sir.

24 Q. So you got caught the next day at
25 11:30, approximately; is that right? 11:30 in the

JACOB MOUZON - CROSS EXAM BY MR. ALFARO

1 morning?

2 A. I don't know what time, but I did get
3 caught the next day.

4 Q. It was daylight?

5 A. Yes, sir, it was daylight.

6 Q. So a pretty long time passed between
7 the time you split from Kenny and the time you got
8 caught?

9 A. Yes, sir.

10 Q. And when you got caught by the blood
11 hound team, you were still with Drake?

12 A. Yes, sir.

13 Q. How far did you run before you stopped
14 for the police?

15 A. Well, after -- we was already running.
16 So when they came up and flanked, they gave a
17 command to get on your knees, put your hands up.
18 Just long enough to stop running and get on your
19 knees and put your hands up. That's all.

20 Q. Now, that's the second time I've heard
21 you use that phrase, flank. What does that mean?

22 A. That's a word I use knowing, like --
23 it's one of the words that -- I don't know exactly
24 if you want me to explain it.

25 Like I said, we was going this way, but

1 they came up from -- I mean --

2 Q. Came up from the side?

3 A. One side. That's how I use the word.

4 That's what I mean when I use the word.

5 Q. Let me ask you a question. If I'm
6 walking up to you or to a house, and two people
7 come at me from one side and three people come at
8 me from the other side, would that be considered
9 flanking?

10 A. Yes, sir.

11 Q. And you were asked either on direct or
12 on cross whether you had ever made it to Kadeem
13 Johnson's house at 135 Martha Lane; is that right?

14 A. Yes, sir, I was asked that.

15 Q. And I'm not mistaken, you said that you
16 had been there and her ID was not 100 percent. Is
17 that what you said?

18 A. Yes, sir. I said, I wasn't there that
19 night and I never been there in my life. And I
20 said her ID was 50 percent, not 100. Basically to
21 the point that she wasn't sure is what that means,
22 honestly.

23 Q. 50 percent is not 0 percent chance that
24 I was at her house, is it?

25 A. From her statement, no, sir, that's

DEFENSE RESTS

1 correct. That's not a 0 percent chance, no, sir.
2 I could tell you 100 percent that I wasn't there,
3 but her statement was 50 percent. That's not 0.

4 MR. ALFARO: Thank you.

5 THE COURT: Any redirect?

6 MR. THROWER: No, ma'am.

7 THE COURT: Sir, you may step down.

8 THE DEFENDANT: All right.

9 THE COURT: Mr. Thrower, you may
10 proceed.

11 MR. THROWER: No other witnesses.

12 THE COURT: Mr. Smiley, you may
13 proceed.

14 MR. SMILEY: The defense rests for
15 Mr. Palmer.

16 THE COURT: Mr. Smaldone, you may
17 proceed.

18 MR. SMALDONE: Defense rests, Your
19 Honor.

20 THE COURT: Mr. Archer, you may
21 proceed.

22 MR. ARCHER: Defense rests, Your Honor.

23 THE COURT: Reserve motions.

24 Was there any rebuttal testimony?

25 MR. ALFARO: None from the State, Your

DEFENSE RESTS

1 Honor.

2 THE COURT: Mr. Foreman, ladies and
3 gentlemen, both the State and defense have rested
4 their cases. The next part of the process is
5 closing arguments and the Court's instructions, but
6 it's 4:23 and I still have some matters of law to
7 take up with counsel before we can begin that
8 process.

9 I'm going to excuse you for the
10 afternoon and we will resume in the morning at
11 9:15. While you have heard all of the evidence in
12 this case, you have not heard closing arguments or
13 the Court's instructions on the law. It is
14 essential that you maintain your impartiality and
15 not discuss this case among yourselves or with
16 anyone else.

17 During the break, again, do not talk
18 about the case with anyone. That includes among
19 yourselves, family members, or friends. Do not
20 read, watch, or listen to any media accounts if
21 there are any. That includes anything on the
22 radio, television, newspapers, or the Internet, and
23 don't do any independent research of any type on
24 the Internet or otherwise.

25 You are bound by your oath to decide

DEFENSE RESTS

1 this case according to the sworn testimony that has
2 been produced and the other evidence.

3 You will follow the same routine we
4 have been following every day. We have already
5 made provision to order your lunch on tomorrow.

6 If you would leave your notepads in
7 your seats. Hope you have a great evening. We
8 will see you in the morning at 9:15.

9 (Jury out, 4:35 p.m.)

10 THE COURT: You may be seated.

11 Defendant has rested. Any motions?

12 MR. THROWER: No motions, Your Honor.

13 MR. SMILEY: For the record, I would
14 renew the one that I made after the close of the
15 State's case.

16 THE COURT: Any motions, Mr. Smaldone?

17 MR. SMALDONE: Your Honor, I would
18 renew my motion for directed verdict.

19 THE COURT: Mr. Archer?

20 MR. ARCHER: I renew my motion, too.

21 THE COURT: Do you want to renew your
22 motion as well, Mr. Thrower?

23 MR. THROWER: I thought I heard you say
24 renewed motions, but I'm glad to, yes, ma'am.

25 THE COURT: All right. State want to

DEFENSE RESTS

1 respond or rely on your previous argument?

2 MR. ALFARO: Previous argument, Your
3 Honor.

4 THE COURT: The Court will incorporate
5 its previous findings into this portion of the
6 record as I stated verbatim and find there is a
7 direct and substantial circumstantial evidence to
8 reasonably tending prove the defendant's guilt.
9 Motion for directed verdicts are denied.

10 How long do you need for closing
11 arguments? From the State?

12 MR. ALFARO: Given the number of
13 defendants, probably 45 minutes to an hour.

14 MR. THROWER: Twenty minutes.

15 THE COURT: Mr. Smiley.

16 MR. SMILEY: Thirty, 45 minutes, Your
17 Honor.

18 THE COURT: Mr. Smaldone?

19 MR. SMALDONE: Your Honor, I'm not
20 sure. Mine always seem to last about 40 minutes;
21 so from previous experience, 40 minutes.

22 THE COURT: Okay. Mr. Archer.

23 MR. ARCHER: I guess I would --
24 somewhere between 30 and 45 minutes.

25 THE COURT: I have ordered the jury's

1 lunch. It should be here around 12:30. So
2 whenever their lunch arrives, we will take it as it
3 comes and we will break when their lunch arrives
4 because it's hot and I'll need to break so they can
5 eat, and then we will resume argument and
6 instruction.

7 I'm trying to remember -- I know
8 Mr. Smiley's client introduced evidence.

9 MR. THROWER: I introduced a photo
10 lineup.

11 THE COURT: And, Mr. Archer, did you
12 introduce any evidence? I don't think you did.

13 I guess we will have the State open in
14 full, then Mr. Thrower and Mr. Smiley will argue
15 and the State will respond, and then Mr. Smaldone
16 and Mr. Archer will be able to argue. I need a
17 flow chart. They didn't introduce evidence, so
18 they get last argument. I don't know how else to
19 do it.

20 MR. ALFARO: I think in a trial with
21 multiple defendants, the State --

22 THE COURT: There's one Answer, yeah.
23 I have to do a little research on that.

24 MR. SMILEY: My understanding would be
25 that Mr. Alfaro opens in full, then we go with

1 Mr. Archer, and Mr. Smaldone, myself -- Mr. Thrower
2 first and then myself, and then Mr. Alfaro can
3 rebut, do the rebuttal at once, but that's as to
4 each person.

5 THE COURT: I'm going to do some
6 research on multiple defendants.

7 MR. SMILEY: Yes, ma'am, I thought
8 there was a modification -- okay.

9 THE COURT: It's a very convoluted
10 opinion. The only thing different is it's
11 requiring the State to open in full. They can't
12 waive their opening, but the State -- the person
13 with the burden of proof always gets the last say;
14 however, in cases -- I'm not aware of any multiple
15 defendant cases where you get last argument because
16 you didn't introduce evidence.

17 However, lingering in the back of my
18 mind, there seems to be an opinion that says when
19 you have multiple defendants, that anybody who
20 introduces evidence you forego last argument. I
21 have to look it up. I don't want to rely on my
22 memory.

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: And whatever case law says,
25 that's what we will do.

CHARGE CONFERENCE

1 MR. SMILEY: Absolutely. I will look
2 at it myself tonight.

3 THE COURT: I will give the jury a
4 general instruction regarding their responsibility
5 and my responsibility, how they are to judge
6 witness credibility and believability. I'll give
7 them a general instruction on expert witness
8 testimony; give them a general instruction on
9 direct and circumstantial evidence as well as a
10 general instruction regarding the charge, the
11 arrest and the indictment are not evidence, as well
12 as on the presumption of innocence.

13 I will give an instruction regarding
14 the Defendants Campbell, Campbell and Palmer not
15 testifying and that that can't be construed against
16 them or discussed in any manner.

17 I will give a general instruction on
18 reasonable doubt which is Victor v. Nebraska, and
19 then charge the elements of murder, which is
20 16-3-10. I will also instruct express and inferred
21 malice, which are applicable because there is no
22 allegation pursuant to Belcher of self-defense,
23 express and inferred.

24 I will charge the elements of attempted
25 murder, which are 16-3-29. Included within that,

CHARGE CONFERENCE

1 the Court will redact the language as required by
2 State v. King, that being the old language that
3 says intent was not a required element when, in
4 fact, it now is. I will give a brief definition of
5 intent which is included in case law, as well as
6 define attempt.

7 And I will give a very brief definition
8 of criminal intent, which is a mental state
9 consciousness of wrong doing, and that the State
10 must prove beyond a reasonable doubt that the
11 defendant had an intent to kill the victim.

12 Then charge the elements of first
13 degree burglary, which is 16-11-311. And I think
14 we know what the elements of that are. And the
15 provisions of the statute that would apply would be
16 Subsection 1; which is, when entering, while in the
17 dwelling or fleeing, the defendant or an accomplice
18 was armed with a deadly weapon or explosive and
19 thereby defining a deadly weapon.

20 Subsection 2; which is, when entering,
21 while in the dwelling or fleeing, the defendant or
22 an accomplice caused physical injury to anyone not
23 participating in the crime.

24 Subsection 3; which is, when entering,
25 while in the dwelling or fleeing, the defendant or

CHARGE CONFERENCE

1 an accomplice used or threatened to use a dangerous
2 object.

3 Four; when entering, while in the
4 dwelling or fleeing, the defendant or an accomplice
5 displayed what was or appeared to be a knife,
6 pistol, revolver, shotgun, machine gun, or other
7 firearms.

8 And the last provision of the statute,
9 the defendant entered or remained in the dwelling
10 in the nighttime, which is the period between
11 sunset and sunrise which there is not enough
12 daylight to recognize the persons's face except for
13 artificial light or moonlight.

14 Then charge the elements of kidnapping,
15 which is 16-3-910. I think we all know the
16 elements of kidnapping without me belaboring that
17 point. And then the elements of armed robbery,
18 which is 16-11-330. And I think we all know the
19 elements of armed robbery as well.

20 I will charge the elements of
21 16-23-490, which is possession of a weapon during
22 the commission of a violent crime. What would be
23 applicable under these circumstances is a firearm
24 is not a knife; and then the provision of statute
25 16-1-60 which define murder or attempted murder,

CHARGE CONFERENCE

1 armed robbery, kidnapping and burglary first as
2 violent crimes. And that the State must prove
3 beyond a reasonable doubt that the weapon further
4 advanced or helped in the commission of the crime.

5 I will then give a general instruction
6 regarding identification as that is an issue in
7 this case. I'll instruct and give a general
8 instruction on accomplice liability, which is hand
9 of one.

10 I will then give a general instruction
11 regarding multiple charges which means there are
12 several indictments and the State has to prove each
13 and every element of every offense beyond a
14 reasonable doubt and that the parties can be
15 convicted or acquitted on any or all of the
16 indictments.

17 I will then give a general instruction
18 regarding multiple defendants, that each of them
19 has different offenses. The State must meet its
20 burden regarding each defendant and the no --
21 basically, the options that, you know, the evidence
22 warrants it, one can be convicted, acquit the
23 other; you can acquit all or you may convict none.

24 It just depends on their view of the
25 evidence, and they are to take each defendant and

CHARGE CONFERENCE

1 consider the evidence as to that defendant and the
2 instructions on the law, and they will have to
3 write a separate verdict of guilty or not guilty on
4 each defendant.

5 I will give a general instruction
6 regarding punishment, because that has been entered
7 into the record, and give a general instruction
8 regarding the forms of the verdict.

9 Any exceptions from the State?

10 MR. ALFARO: Your Honor, we would be
11 asking for a mere presence -- I'm sorry, felony
12 murder, and I believe Mr. Archer was going to ask
13 for mere presence.

14 THE COURT: Mere presence is included
15 within the hand of one.

16 MR. ALFARO: Regarding the felony
17 murder?

18 THE COURT: Bear with me one second.
19 Any exception from the defense regarding -- I think
20 it's certainly appropriate under the facts. Any
21 exception from the defense? Mr. Thrower?

22 MR. THROWER: The only thing I would --
23 I would take exception to is if you're charging
24 felony murder, which I think is appropriate, I
25 don't know how much it overlaps and kind of

CHARGE CONFERENCE

1 duplicates hand of one.

2 THE COURT: Well, no, it says --
3 basically just gives rise to inference of malice,
4 and it's an evidentiary fact for the jury to
5 consider along with the other evidence. They can
6 consider it or disregard it; it's up to them in
7 their province as the finder of the fact. So those
8 are two different concepts.

9 MR. THROWER: Okay.

10 THE COURT: Any exception, Mr.
11 Thrower?

12 MR. THROWER: No, ma'am.

13 THE COURT: Mr. Smiley.

14 MR. SMILEY: You just read what you
15 were going to -- what the charge is going to be?

16 THE COURT: It says, if one
17 intentionally kills another during the commission
18 of a felony, the inference of malice may arise. If
19 facts are proven beyond a reasonable doubt
20 sufficient to raise an inference of malice to your
21 satisfaction, this inference would simply be an
22 evidentiary fact to be considered by you along with
23 the other evidence in the case, and you may give it
24 the weight, value, and effect that you decide it
25 should receive.

CHARGE CONFERENCE

1 MR. SMILEY: No exception.

2 THE COURT: Mr. Smaldone.

3 MR. SMALDONE: No exception, Your
4 Honor. Hypothetically, if one didn't know, would
5 Victor Nebraska, is that firmly convinced or
6 hesitate to act?

7 THE COURT: Firmly convinced. I think
8 hesitate to act is confusing. I don't know what
9 that means, and I'm a lawyer.

10 MR. SMALDONE: No exception.

11 MR. ARCHER: No objection.

12 THE COURT: Any further exceptions from
13 the State? Or requests from the State?

14 MR. ALFARO: No, Your Honor.

15 THE COURT: Any exception from the
16 charges as proposed, Mr. Thrower?

17 MR. THROWER: No, Your Honor.

18 THE COURT: Mr. Smiley.

19 MR. SMILEY: No, Your Honor.

20 THE COURT: Mr. Smaldone.

21 MR. SMALDONE: No, Your Honor.

22 THE COURT: Mr. Archer.

23 MR. ARCHER: This is an exception to
24 what, Your Honor?

25 THE COURT: To the charges as proposed.

CHARGE CONFERENCE

1 MR. ARCHER: None, no.

2 THE COURT: And I did not include any
3 lesser included offenses, because I didn't think
4 you-all wanted any, and I didn't think the facts
5 particularly supported it.

6 MR. SMILEY: What we want and what we
7 get is probably two different things. I don't
8 think I have basis to request any lessers for my
9 client.

10 THE COURT: Well, you say it didn't
11 happen at all.

12 MR. SMILEY: Mr. Palmer said he wasn't
13 there.

14 THE COURT: Same thing. Didn't happen
15 at all, wasn't there.

16 MR. SMILEY: It didn't happen if --

17 THE COURT: You know what I mean.

18 MR. SMILEY: Yes, I do. I do.

19 THE COURT: Anything else before we
20 look at the verdict form? From the State?

21 MR. ALFARO: No, Your Honor.

22 THE COURT: From the defense?

23 MR. THROWER: No, ma'am.

24 MR. SMILEY: No, ma'am.

25 MR. SMALDONE: No, ma'am.

CHARGE CONFERENCE

1 MR. ARCHER: No, ma'am.

2 THE COURT: Give me a couple of minutes
3 to put that all together and I'll let you approach
4 the bench and look at them.

5 Mr. Thrower, and, Mr. Alfaro, if you
6 will approach for me.

7 Any objection to the form of the
8 verdict, Mr. Thrower?

9 MR. THROWER: No objection.

10 THE COURT: Mr. Alfaro.

11 MR. ALFARO: No.

12 THE COURT: Give me time to print it.

13 Mr. Alfaro, Mr. Archer, I need you to
14 look at the verdict form.

15 Any objection or exception of the
16 verdict form, Mr. Archer?

17 MR. ARCHER: No, Your Honor.

18 THE COURT: Mr. Alfaro.

19 MR. ALFARO: No, Your Honor.

20 THE COURT: Thank you.

21 Counsel, approach for Mr. Sherrod
22 Palmer.

23 Any exception to the verdict form?

24 MR. SMILEY: On behalf of Mr. Palmer,
25 no.

CHARGE CONFERENCE

1 THE COURT: Mr. Alfaro.

2 MR. ALFARO: No, Your Honor.

3 THE COURT: We have one left and then
4 you will be on your way.

5 Mr. Smaldone, and, Mr. Alfaro, please
6 approach to look at the verdict form.

7 THE COURT: Any objection to form of
8 the verdict, Mr. Smaldone?

9 MR. SMALDONE: No exception.

10 THE COURT: Mr. Alfaro.

11 MR. ALFARO: No, Your Honor.

12 THE COURT: All right. If you-all
13 could go through the evidence before you leave and
14 make sure everything is accounted for with Denise
15 so that we don't have to spend time doing that in
16 the morning.

17 (These proceedings were recessed 5:08
18 p.m., to be continued, 8/31/18, at 9:30 a.m.)

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1 (The following proceedings were had
2 8/31/2018, 9:36 a.m., in re State v. Mouzon,
3 Campbell, Campbell, and Palmer.)

4 THE COURT: Let me take the benefit of
5 this time and let you know that we researched last
6 night in State v. Beatty --

7 THE DEPUTY: Order.

8 THE COURT: -- that when you have
9 multiple defendants and one defendant introduces
10 evidence that -- let me make sure that I'm reading
11 this correctly -- if two or more defendants are
12 jointly tried and one defendant introduces
13 evidence, the State has the final closing argument.
14 And that's a 2018 Supreme Court opinion.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: So as soon as the juror
17 gets here, we will get started. I assume there is
18 nothing else for me to deal with.

19 MR. ALFARO: Nothing from the State.

20 MR. THROWER: No, Your Honor.

21 MR. SMILEY: No, Your Honor.

22 MR. SMALDONE: No, Your Honor.

23 MR. ARCHER: No, Your Honor.

24 (A recess transpired.)

25 THE COURT: State ready to proceed?

1 MR. ALFARO: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. THROWER: Yes, Your Honor.

4 MR. SMILEY: Yes, Your Honor.

5 MR. SMALDONE: Yes, Your Honor.

6 MR. ARCHER: Yes, Your Honor.

7 THE COURT: And you have gotten with
8 the court reporter and checked and all of the
9 exhibits are in order.

10 Is that correct, Ms. Denise?

11 THE COURT REPORTER: Yes, Judge. Thank
12 you.

13 THE COURT: You're welcome.

14 MR. ARCHER: There is a comment I want
15 to make, or objection, on one exhibit.

16 THE COURT: I don't think you can do it
17 now.

18 MR. ARCHER: Not whether it's
19 admissible, but it's the box it's in.

20 THE COURT: Tell me what you're talking
21 about.

22 MR. ARCHER: The rifle. It says on
23 there, Kadeem Johnson. This rifle was never
24 connected in any way by testimony by forensics.

25 THE COURT: Do you-all have another

1 container to put it in? He's accurate. It
2 shouldn't have anybody's name on it.

3 MR. ALFARO: I don't know if we have
4 another box. We can tape a piece of tape over it
5 if that helps.

6 THE COURT: We can do that.

7 MR. ARCHER: That's why I objected.

8 THE COURT: Well, that's the victim's
9 name, right?

10 MR. ARCHER: Well, the implication is
11 he was shot by that rifle. There is no proof of
12 that --

13 THE COURT: I think that's a stretch.
14 If it was one of the defendant's names, yeah, but
15 it's the victim in the case. How else are they
16 going to identify it?

17 MR. ALFARO: I can leave it out of the
18 box if you prefer that.

19 MR. ARCHER: I would prefer --

20 MR. ALFARO: I don't think it's going
21 to go back to them in the jury room.

22 THE COURT: Yes. It's in evidence.

23 I guess I'm trying to figure out -- I
24 mean, that's the victim in the case and his name is
25 on the box. If it was one of the defendant's names

1 I would be concerned. And I apologize, I
2 misapprehended what you said because I heard a K.

3 I really didn't look until just now and
4 it's Johnson, not Campbell. And it's not Kenneth,
5 it's Kadeem.

6 MR. THROWER: I'd really rather it be
7 in the box.

8 THE COURT: It's going to be in the
9 box. I'm not going to send a firearm, locked or
10 not, just sitting on the cart to the jury.

11 I can't discern any prejudice to the
12 defendant with the victim's name being on the box.
13 I don't know how the police would have identified
14 the item other than putting warrant numbers on it,
15 which I think would have been far more prejudicial
16 than putting the defendant's name on it, which
17 would have been extremely prejudice.

18 All right. Ready to proceed with
19 closing argument?

20 MR. ALFARO: The State is ready.

21 MR. THROWER: Yes, ma'am.

22 MR. SMILEY: Yes, ma'am.

23 MR. SMALDONE: Yes, ma'am.

24 MR. ARCHER: Yes, ma'am.

25 THE COURT: And just preliminarily,

1 after the State makes its closing, do you want to
2 follow the same order in closing that you did in
3 questioning or the order that you're sitting?

4 MR. SMILEY: My preference is that we
5 go in the order that we went.

6 THE COURT: Any exception?

7 MR. THROWER: None at all.

8 MR. SMALDONE: None at all.

9 MR. ARCHER: No. We're going to
10 proceed the way we went through trial?

11 THE COURT: Yes. So then the State
12 will argue, and Mr. Thrower, Mr. Archer,
13 Mr. Smaldone, and Mr. Smiley, and then the State
14 will have rebuttal. But I reserve the right to
15 stop as we need to for restroom breaks and when
16 their lunch gets here. I think that will be about
17 12:30.

18 (Jury in, 9:54 a.m.)

19 THE COURT: You may be seated.

20 Good morning, everybody. Hope you had
21 a pleasant evening. As I explained on yesterday,
22 both the State and the defense have rested their
23 cases. We have now reached the stage of the trial
24 where we will have closing argument and the Court's
25 instructions.

CLOSING - BY MR. ALFARO

1 I would ask that you give counsel your
2 undivided attention. We will take breaks as
3 appropriate, and we ordered your lunch and it
4 should arrive at 12:30. So we will sort of play it
5 by ear to see when we need to take breaks.

6 Again, I would ask that you give
7 counsel your undivided attention.

8 You may proceed.

9 MR. ALFARO: Five guys, five guns, one
10 plan. On July 21, 2016, Kadeem Johnson had no idea
11 that when he drove to his mother's house off of
12 Highway 41 in Huger, here in Berkeley County, to
13 pick up his girlfriend, Krystal Snipe, and drive
14 her back to their house at 135 Martha Lane, that
15 that was going to be the last time that he made
16 that drive through Huger.

17 Because what he didn't know and what
18 Krystal didn't know is that five guys -- Jacob
19 Mouzon, Sherrod Palmer, Kenny Campbell, and Drake
20 Campbell, and Darius Hamilton -- those five guys,
21 all with guns, a rifle and four pistols, were lying
22 in wait in the dark in the woods surrounding their
23 house, waiting to put their plan to rob and steal
24 from Kadeem and Krystal because they knew Kadeem
25 was a drug dealer. Lying in wait, ready to ambush,

CLOSING - BY MR. ALFARO

1 already flanked, two on one side, three on the
2 other.

3 When Kadeem and Krystal pulled up in
4 their white Crown Vic into the yard, into the
5 driveway of their home, that should have been the
6 end of the night, but it was just the beginning of
7 the plan of these defendants to rob and steal from
8 them. Again, five guys, five guns, and one plan.

9 When they got out of that car and they
10 started walking up into their house at 2:00 or 3:00
11 in the morning, dark outside, front porch light on
12 -- you saw in the pictures -- that's when these
13 four defendants and Darius Hamilton converged out
14 of the woods on them, held them at gunpoint,
15 yelling at them, taking the Hello Kitty bag that
16 you heard about and saw during this trial full of
17 drugs from them, holding them at gunpoint until
18 eventually ordering them up the front steps into
19 their house; making Krystal open the door for them
20 so they could go in and finish stealing and robbing
21 and burglarizing them.

22 And it wasn't enough that they did
23 that. They take them into the house at gunpoint
24 and lead them into the bedroom at gunpoint. Make
25 Kadeem Johnson, a grown man, kneel on the floor in

CLOSING - BY MR. ALFARO

1 his bedroom while his girlfriend watches this.
2 While Jacob Mouzon stands over them with a gun in
3 his hand pointing at them, holding them hostage,
4 making sure they don't do anything that interferes
5 with their plan to rob and steal and burglarize.

6 And you heard from Krystal, Jacob
7 Mouzon did a real good job of that because he never
8 left. He stood right in front of them the whole
9 time, holding that gun on them making sure they
10 didn't move. Even after Darius Hamilton came in
11 and taped their hands where they couldn't do
12 anything if they wanted to with five guys and guns,
13 he still stayed there and pointed that gun at them
14 to make sure that they couldn't get away, that they
15 couldn't mess up their plan to get drugs and money
16 and whatever else they could get their hands on.

17 That's the plan. That's what they did.
18 And after their hands were taped and he stood there
19 in front of them with no mask on, gun in hand
20 pointing at them, Krystal tells you she watched him
21 and saw him the whole time he pointed the gun at
22 her. She picked him out of the courtroom with no
23 hesitation. That's the man that shot me and that's
24 the man that shot Kadeem.

25 There is no question that Jacob Mouzon

CLOSING - BY MR. ALFARO

1 is one of these five guys in their plan that killed
2 Kadeem Johnson and tried to kill Krystal Snipe.

3 Now, the other four go outside. Jacob
4 Mouzon is left in the house with them and that's
5 when he does it. That's when he fires the shot
6 standing over Kadeem on his knees with his hands
7 taped, helpless. At no point did he put up a
8 fight. At no point could he, because there's five
9 guys with guns.

10 He stands over him and points that .380
11 at him and pulls the trigger. And he blows his
12 brains out on the bedroom floor of his house while
13 Krystal sits three feet away and watches this.

14 Still not enough. Already got drugs,
15 already got the TV, already got the shoe bag,
16 already got the bracelet off his wrist when they
17 taped his hands, already killed and murdered Kadeem
18 Johnson. Jacob Mouzon, not enough, turns the gun
19 on Krystal and fires at her trying to kill her
20 because she saw his face.

21 That's why Kadeem got killed because
22 Kadeem saw his face. That's why he tried to kill
23 her because she saw his face. He's trying to avoid
24 what happened in this courtroom; her surviving this
25 violent, vicious and unnecessary attack to sit on

CLOSING - BY MR. ALFARO

1 that witness stand and identify him as the person
2 who shot Kadeem and shot her.

3 No question; that's why he did it. He
4 managed to murder Kadeem, but he didn't manage to
5 kill her.

6 He runs outside. She plays dead,
7 bleeding from the gunshots. You heard how one was
8 lodged in her hand, how they took that out later.
9 She's bleeding. She waits; she runs outside to get
10 help.

11 And think about the testimony that you
12 heard. To get out of that house she had to step
13 over the body of her murdered boyfriend. Walk
14 through a room full of blood to get outside and try
15 to get help.

16 And she runs next door and she sees
17 Jacob Mouzon, she sees Kenny Campbell, she sees
18 Drake Campbell driving off in the white Crown Vic;
19 and she sees the gray Crown Vic is gone too, which
20 means that Sherrod Palmer and Darius Hamilton left
21 too.

22 She sees them driving away and she runs
23 to her neighbor's house. And she is dripping blood
24 as she walks up. You saw the pictures at 129
25 Martha Lane where she's beating on the door and

CLOSING - BY MR. ALFARO

1 there's blood all over the front door, blood all
2 over the windows. So much blood it's dripping down
3 onto the plants in front of the house.

4 That is what happened as a result of
5 their plan and Jacob Mouzon murdering Kadeem and
6 shooting her. No question that's what happened.

7 She manages -- nobody answers at 129
8 Martha Lane. Nobody -- she's beating on the door;
9 nobody comes out. She manages to run right back to
10 where she came, pouring blood again, finds a flip
11 phone that she has to charge, plug in, to call 911.
12 And you saw the pictures of that phone. Blood
13 everywhere. All over the phone, all over that box
14 that it's sitting on. That's what she had to use
15 to call 911.

16 She tells the people on 911 five guys,
17 at least three black, one or two light-skinned or
18 Hispanic. Five guys, all with guns. She gives
19 them the description of the cars, gray Crown
20 Victoria and the white Crown Victoria, and then she
21 waits.

22 And you didn't listen to the whole 911
23 tape. It's in evidence if you want to listen to
24 all of it. You listened to a part of it and you
25 heard how long she waited sitting in her house with

CLOSING - BY MR. ALFARO

1 her dead boyfriend laying on the ground, instantly
2 dead.

3 As soon as Jacob Mouzon pulled that
4 trigger, Kadeem Johnson was dead. The medical
5 examiner told you that. He could have been shot in
6 the emergency room and it wouldn't have mattered.

7 So that delay for the cops to get there
8 and the EMS to get there, it didn't cost Kadeem's
9 life. Jacob Mouzon and their plan cost Kadeem his
10 life.

11 She waits. And while she's waiting for
12 someone to come help her, Jacob Mouzon, Drake
13 Campbell, and Kenny Campbell driving that stolen
14 white Crown Victoria up Highway 41, down 402, and
15 on Highway 402 near Yellow Jacket Road and Irish
16 Town Road, Corinthian Green, Officer Deputy
17 Corinthian Green -- good police work -- paying
18 attention as he's driving to a crime scene, sees
19 the Crown Vic that matches the description that was
20 given to them as stolen from the victims during
21 the course of this murder, attempted murder,
22 burglary, armed robbery, kidnapping.

23 He sees the Crown Vic and turns around.
24 As he passes it the first time, he sees two people,
25 a driver and front seat passenger. Turns around

CLOSING - BY MR. ALFARO

1 and catches up to the car; car stopped in the
2 middle of the road by Irish Town which leads right
3 to Yellow Jacket Road. Back door is open. Common
4 sense tells you that means three people were in the
5 car, the two in the front and the guy that got out
6 of the back seat.

7 And Corinthian Green tells you that as
8 he pulls up and sees that, he sees one guy standing
9 in the road and jumps into the woods and runs away.
10 And we know who that was -- well, we know one of
11 the three people that he saw because we know who
12 went into the woods right there.

13 We know that Jacob Mouzon went into the
14 woods right there at Highway 402 and Yellow Jacket
15 Road. We know Kenny Campbell went into those woods
16 near Highway 402 and Yellow Jacket Road. We know
17 Kenneth Campbell and Drake Campbell were with
18 Jacob.

19 Because why? Well, first of all,
20 (indicating), this bandana with Drake's DNA all
21 over it is laying on the ground that far
22 (indicating) from the side of the Crown Vic, two
23 steps. Dropped when he got out of that car and ran
24 with Jacob Mouzon. As Jacob himself told you from
25 the witness stand, he ran with Kenny and he ran

CLOSING - BY MR. ALFARO

1 with Drake.

2 And he tells you that he ran with them
3 into those woods because he heard sirens, running
4 from the police. He wants you to think he only did
5 it because he was drunk and he had drill the next
6 day. He doesn't want to tell you what the rest of
7 the evidence tells you; that he was running from
8 the cops because he knows he had just murdered
9 Kadeem Johnson, and he had just shot Krystal Snipe,
10 and he had just robbed them and burglarized their
11 house and kidnapped them.

12 That's why he's running. And that's
13 why he's running with Drake and that's why he's
14 running with Kenny. And they run, and he tells you
15 where they run. He tells you they ran right to
16 where?

17 This hooded sweatshirt is found in the
18 woods by Deputy Hamm. This sweatshirt with Jacob
19 Mouzon's DNA all over it is found in the woods in a
20 straight line, straight shot from where they ran
21 from the Crown Vic where the bandana with Drake's
22 DNA was found, to where this hoodie was found. A
23 hundred, 200 yards from the Crown Vic is where this
24 was found in the woods.

25 And so incidentally enough, found five

CLOSING - BY MR. ALFARO

1 or ten yards from that hooded sweatshirt with Jacob
2 Mouzon's DNA all over it is this rifle. Krystal
3 Snipe described it as somebody having a long dark
4 rifle pointed at Kadeem's back as they led them
5 into the house at gunpoint to commit their crimes
6 and execute their plan.

7 It just happens to be found five to
8 ten yards away from the sweatshirt that she told
9 you on the witness stand that he was wearing. They
10 run into the woods and keep running. This is all
11 around 3:30 is when Corinthian Green saw them jump
12 into the woods.

13 A little bit later is when Deputy Hamm
14 finds the sweatshirt. It's still dark outside; he
15 uses his spotlight -- again, good police work --
16 and finds that hooded sweatshirt and finds that
17 rifle.

18 The next thing that comes, they've got
19 the perimeter set up, you heard the testimony about
20 that. That morning, leading into that morning,
21 Kenny Hoffa comes into contact with Jacob Mouzon,
22 Drake Campbell, and Kenny Campbell. Sees them
23 walking near Eccles Church. They don't run, they
24 don't do anything. He sees them, he's taking his
25 kid to work, he keeps moving.

CLOSING - BY MR. ALFARO

1 Shortly after that, Brittany Bordeaux
2 saw them in the same area. They stop her and they
3 use her phone. Jacob told you that they called
4 Sherrod trying to get help. They're trying to get
5 out of the woods because they're not familiar with
6 where they're at. They're not familiar with the
7 area. Brittany Bordeaux identifies Jacob Mouzon as
8 being one of the three guys.

9 Jacob Mouzon tells you that he was
10 indeed one of the three guys because he saw her
11 when she saw him, Kenny, and Drake. She leaves;
12 Kenny Hoffa happens to come back by a little after
13 that. He sees the same three guys -- Jacob, Kenny,
14 and Drake -- standing in front of the church. They
15 run behind the church.

16 That's what Kenny Hoffa describes.
17 Jacob Mouzon described it as they moved quickly
18 behind the church, but in that area where they're
19 seen running and Jacob says they ran, the police
20 find this Hello Kitty bag, the Hello Kitty bag that
21 Krystal Snipe told you was stolen from them by the
22 people that attacked them and ambushed them in
23 front of their house at 135 Martha Lane.

24 Ten miles down the road from this is
25 where this was stolen, and it just happens to be

CLOSING - BY MR. ALFARO

1 found in the woods behind the church where Jacob
2 Mouzon, Kenny Campbell, and Drake Campbell are
3 running.

4 Again, you saw the pictures of where
5 that was found. That's good police work that found
6 that bag and connects it to the murder and the
7 burglary and the armed robbery. Directly connects
8 it to Jacob Mouzon, Drake Campbell, and Kenny
9 Campbell.

10 More police work; they set up the
11 perimeter at that location. SLED bloodhound team
12 comes down. SLED bloodhound team 1 starts at that
13 location, does their tracking. About 5:30 that day
14 they find Kenny Campbell laying in the brush,
15 hiding in the woods; they take him into custody.
16 Jacob Mouzon and Drake Campbell, as Jacob told you,
17 were still running.

18 Left him because he was cramping up, as
19 Jacob told you; but left him, nonetheless, and kept
20 running from 5:30 that same day of the murder until
21 11:30 the next day when the second bloodhound team
22 came in to relieve them, found them running in the
23 woods and took them into custody.

24 Ladies and gentlemen, that is what the
25 evidence has shown you. You heard from the medical

CLOSING - BY MR. ALFARO

1 examiner that told you that the same gun that fired
2 the bullet that murdered Kadeem fired the bullet
3 that was removed from Krystal in surgery after this
4 happened.

5 The medical examiner told you it was
6 one gunshot wound to the head that she recovered
7 the bullet. The SLED ballistics guy tells you it
8 was a match. The SLED ballistics guy also tells
9 you that the four fired shell casings, the .380
10 shell casings that were found inside that bedroom,
11 three in the bedroom and the one right in front of
12 the laundry room, all came from the same gun as
13 well, the same .380.

14 That tells you what Krystal tells you;
15 Jacob Mouzon was the one shooter. That Jacob
16 Mouzon, who she identified, who was holding them
17 hostage at gunpoint the entire time, whose face she
18 watched shot Kadeem and shot her.

19 Now, at the beginning of this trial you
20 heard a lot about Darius Hamilton, and the only
21 thing that was going to connect any defendant to
22 this crime was going to be Darius Hamilton, the
23 snitch, one of their co-defendants, one of the five
24 guys with the five guns that's just as guilty as
25 the rest of them.

CLOSING - BY MR. ALFARO

1 You were told that he was going to be
2 probably the only thing that connected any of them.
3 The entire time I have been up here and laid out
4 the case against these defendants, none of that
5 comes from Darius Hamilton. That's police work by
6 Corinthian Green; that's police work by Deputy
7 Hamm; that is citizens taking the time to call
8 police when they see something, Brittany Bordeaux
9 and Kenny Hoffa; that is police work by Detective
10 Wilson Phillips who finds the Hello Kitty bag that
11 is stolen from the victims during the course of the
12 robbery; it's good work from the SLED bloodhound
13 team who finds Kenny Campbell hiding in the woods,
14 and the next day finds Jacob Mouzon and Drake
15 Campbell hiding in the woods.

16 It's the testimony of them, it's the
17 work of them; and it's the corroboration of Jacob
18 Mouzon because Jacob Mouzon is the one who puts
19 Kenny Campbell and Drake Campbell with him in those
20 woods where the bandana -- or where the stolen car
21 is found first, where the bandana is found with
22 Drake's DNA on it, where the hooded sweatshirt of
23 Jacob's DNA is found, where the rifle that was used
24 during the course of this was found at Eccles
25 Church where the Hello Kitty bag was found.

CLOSING - BY MR. ALFARO

1 They're not caught because of Darius
2 Hamilton. They're not guilty because of Darius
3 Hamilton. They're guilty because they were part of
4 the same plan with Sherrod Palmer and Darius
5 Hamilton. That's why they're guilty. It's not
6 Darius Hamilton.

7 Now, Darius Hamilton came in and Darius
8 Hamilton told you what they did during the course
9 of that. And nobody is standing here at any point
10 during this trial telling you that Darius Hamilton
11 is a good guy, and that Darius Hamilton is doing
12 the right thing or that Darius Hamilton just wanted
13 to help the police out. He is clearly trying to
14 help himself. There's no question about that and
15 there's also no question that he was part of this
16 plan.

17 And no matter how wrong he is from the
18 stand about how guilty he is, he is absolutely just
19 as guilty of murder as Jacob Mouzon, Kenny
20 Campbell, Drake Campbell, and Sherrod Palmer.

21 While there is no testimony that they
22 themselves pulled the trigger, other than Jacob
23 Mouzon, clearly, he's the one that pulled the
24 trigger; Krystal tells you that; Darius tells you
25 that too, but here's the thing.

CLOSING - BY MR. ALFARO

1 At first, he has a chance to tell the
2 cops everything. And he tells them that he was
3 with him. He tells them he was with Drake and he
4 tells them that he was with Jacob. He tells them
5 he drove them and some other guy to 135 Martha
6 Lane, but never got out. Nobody believes that.

7 He meets with them again the next day,
8 tells them basically the same story, but this time
9 the unknown is now Sav. But still he didn't go in.
10 Nobody believes that.

11 He eventually gets to the point where
12 he's finally ready to admit and accept that he's
13 just as bad as Jacob Mouzon who killed Kadeem
14 Johnson and tried to kill Krystal Snipe. He tells
15 you he's part of that plan, he's one of those five
16 guys.

17 He's one of those five guys that had a
18 gun. He's the guy that went in and taped their
19 hands. He's the guy that took the bracelet off of
20 his wrist. He's the guy that started the cars that
21 were stolen from them after these crimes happened.
22 He tells you that.

23 Obviously, he's telling you that to try
24 to help himself, and in the process he's burying
25 himself in the same pile of guilt as these other

CLOSING - BY MR. ALFARO

1 defendants. And nobody, as I said, is asking you
2 to think that he's a great guy.

3 And the Judge is going to tell you what
4 credibility is and she's going to tell you how you
5 judge them.

6 And the thing with credibility, you can
7 believe some of it, you can believe all of it, you
8 can believe none of it; but in the course of
9 analyzing what you should or should not believe, I
10 ask you to look at what matches up to other
11 people's testimony.

12 He tells you that Jacob Mouzon was the
13 only person in the house when they got killed.
14 Krystal Snipe tells you the same thing. The other
15 four were outside when Jacob Mouzon turned the gun
16 down on Kadeem and shot him in the head and turned
17 the gun to her and shot her. That's what Krystal
18 says. That's what Darius said.

19 He tells you that he's the one that
20 taped their hands. Krystal tells you that it was a
21 different person that taped their hands than the
22 one that shot her. She said Mouzon is holding them
23 hostage, holding them at gunpoint. He's not the
24 one that taped their hands. Darius is the one that
25 tapes their hands.

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1 She tells you that there's one other
2 guy inside, one guy standing on the porch, and the
3 other guy is outside. She sees three guys in the
4 house; that's what Darius tells you.

5 Again, you heard the entire case that
6 connects these defendants to that without even
7 hearing anything that came solely from Darius
8 Hamilton. He fills in the gaps afterwards and
9 corroborates some things that other people say.

10 Like I said, there are things that he
11 minimizes and things that he didn't tell you at
12 first, but what does he tell you that matches up
13 with other people? That's what matters.

14 It doesn't matter if you like him or
15 not. You shouldn't; he's a murderer, a burglar, a
16 robber, a kidnapper. Just like these other four
17 defendants. Nothing to like about them. His
18 information is what mattered.

19 Now, let's talk about the other one
20 that testified who was there; Jacob Mouzon. What
21 does Jacob Mouzon tell us? Jacob Mouzon tells us
22 that he's with Kenny Campbell and Drake Campbell
23 and Sherrod Palmer hanging out that night.

24 Well, first of all, let's back up a
25 second. Darius tells you that they rode there in

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1 his truck, him and Jacob and Drake. That's how
2 they got to Huger. Jacob tells you the same thing.
3 The difference is who is driving, but they rode
4 there together. They both tell you that.

5 He tells you that they were going to
6 that bar in Huger and they met up with Sherrod
7 Palmer and Kenneth Campbell. So that bar on 41
8 that Bernard Williams said he saw Sherrod Palmer
9 and Kenny Campbell and Drake Campbell and Jacob
10 Mouzon, it's the same bar that Jacob says they were
11 at and they were hanging out.

12 He said they were celebrating. He
13 wanted to tell you -- give you a reason why Sherrod
14 eventually gets caught in Virginia after the murder
15 happened. He tells you that they're all together,
16 that they're hanging out until 3:20 or 3:30
17 together, which oddly enough, ironically, happens
18 to be right after the murder happens. Because
19 around that time is when Corinthian Green sees the
20 white Crown Vic.

21 Jacob wants you to believe that they
22 were just hanging out in that bar and Darius showed
23 back up and pulled up on the side of the road and
24 said, get in the back of the truck. And they just
25 did it. No questions. And then he wants you to

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1 believe that Darius is driving 70, 80 miles an
2 hour, and he's talking to him through a little slit
3 in the window, and he hears what Darius is saying.

4 And then he wants you to believe that
5 Darius just stops and he just jumps out of the car.
6 Him and Kenny and Drake just jump out of the car
7 because of sirens, because Jacob Mouzon has been
8 drinking. That's what he wants you to believe, and
9 he wants to try to explain away why he ran.

10 He has no explanation for why his DNA
11 is on the sweatshirt next to the rifle, or how a
12 bandana with Drake's DNA is lying on the ground
13 next to the victim's stolen car. He doesn't have
14 an explanation of that.

15 You judge his credibility the same way
16 that you judge Darius Hamilton's and every other
17 witness that sits on the stand. What makes sense?
18 What makes more sense? What are you firmly
19 convinced of? And after the testimony and what
20 you've heard, you should be firmly convinced that
21 Jacob Mouzon murdered Kadeem Johnson. You should
22 be firmly convinced that Jacob Mouzon tried to
23 murder Krystal Snipe.

24 And you should be firmly convinced that
25 Jacob Mouzon and Sherrod Palmer and Kenny Campbell

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1 and Drake Campbell all committed burglary in the
2 first degree when they ran out of those woods with
3 guns, led them into the house and forced their way
4 in with guns, forced her to open the door.

5 You should be firmly convinced that
6 Jacob Mouzon, Drake Campbell, Kenny Campbell, and
7 Sherrod Palmer are guilty of armed robbery. They
8 were guilty of that the minute they ran, two on one
9 side of the woods and three on the other side, and
10 converged on them with guns drawn, ordering them to
11 stop, leading them into the house at gunpoint,
12 taking the Hello Kitty bag full of drugs, and
13 leading them into the house to keep stealing from
14 them. That's armed robbery.

15 You should be firmly convinced that
16 they're guilty of kidnapping. All four of these
17 defendants are guilty of kidnapping because all
18 four came out with guns. And the minute that they
19 pointed -- any one of them pointed a gun at Kadeem
20 Johnson and pointed a gun at Krystal Snipe and they
21 weren't free to go, that's kidnapping.

22 You don't have to tie somebody up --
23 oh, wait. They did tie people up. But you don't
24 have to. If you point a gun at somebody -- you
25 point that rifle at somebody, you point a .380

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1 handgun or any other pistol at somebody and tell
2 them they can't move, you've kidnapped them.

3 Even if you make them stand in one
4 spot, steal from them and run, that's kidnapping.
5 In this case, it's much more than that because they
6 walked them into the house at gunpoint, taped their
7 hands, robbed them, and shot them. All four of
8 them are guilty of this.

9 There's a theory that the judge is
10 going to tell you about called the hand of one.
11 And the hand of one means that just because Jacob
12 Mouzon is the one that pulled the trigger that
13 murdered Kadeem, and because Jacob Mouzon is the
14 one who by himself fired the shot trying to kill
15 Krystal, just because he's the one that pulled the
16 trigger by himself, it doesn't mean that the other
17 four aren't responsible for what he did.

18 Because in South Carolina, if five
19 people enter into a plan to rob or kidnap, or
20 commit a burglary while armed with guns, and as a
21 natural and reasonable consequence of that someone
22 gets killed, they're all guilty.

23 Jacob Mouzon had the gun in his hand
24 physically that fired those shots, but because they
25 are all part of the same plan, it's as if every one

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1 of them had their hand on that gun, and every one
2 of them put their finger on that trigger, and every
3 one of them pulled that trigger with him at the
4 time that he blew Kadeem Johnson's brains out, and
5 pulled that trigger when he turned that gun on
6 Krystal Snipe and tried to kill her because he was
7 trying to eliminate witnesses to what they did.

8 Every single one of these defendants
9 under the law had their hands on that gun when
10 Jacob Mouzon murdered Kadeem Johnson and tried to
11 murder Krystal Snipe.

12 Now, Sherrod Palmer, admittedly, his
13 name hasn't come up as much as everybody else's.
14 Here's the thing that's interesting about Sherrod
15 Palmer. Darius tells you he's there; Jacob tells
16 you that they're hanging all night together;
17 Sherrod Palmer, not only is he eventually caught in
18 Virginia a week later, but Jacob Mouzon tells you
19 that him and Kenny and Drake, they're not familiar
20 with the area. They're from Bonneau and St.
21 Stephen.

22 You know which one of these defendants
23 is from Huger? You know which one of these
24 defendants has a girlfriend that lives right next
25 door to Kadeem Johnson's mom? Do you know which

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1 one of these defendants knows Kadeem and Krystal?
2 Krystal told you that they knew Sherrod, that
3 Sherrod was dating Kadeem's aunt. Kadeem's
4 girlfriend -- or Kadeem's aunt lives right next
5 door to Kadeem's mom. Right next door to the house
6 where he picked her up from.

7 And if they know Kadeem Johnson and
8 they know Krystal and they know that he's carrying
9 that Hello Kitty bag full of drugs because they
10 know he's a drug dealer, he's the information.
11 He's the source. He's the one that helped
12 coordinate this whole thing.

13 He's one of the five guys with the gun.
14 He's one of the guys that committed the armed
15 robbery, the burglary, the kidnapping, and
16 attempted murder. He's the guy.

17 He's the one that knew them. He's the
18 one that knew they were the easy target. He's the
19 one -- and you heard testimony how tucked away and
20 dark it is on Martha Lane, how hard it is to find
21 Martha Lane. You have to know where you're going
22 when you want to go to 135 Martha Lane. You have
23 to know why you're going there. You don't just end
24 up there.

25 You don't just coincidentally end up

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1 all the way back at 135 Martha Lane in the dark of
2 night and just happen to cross a drug dealer that
3 you can rob. You go there with a plan. You know
4 where to go, you know when to go, and you wait
5 because you know they're going to come back and you
6 know that they are going to have drugs.

7 And you know that if they're going to
8 have drugs, they're probably going to have money,
9 and you know that you can get into the house and
10 get anything else you want. Maybe more drugs and
11 maybe more money.

12 That's the plan; they are there to rob
13 and steal. In the course of their plan to rob and
14 steal, Jacob Mouzon murdered Kadeem Johnson and
15 tried to kill Krystal Snipe. They are all guilty
16 of every single crime that they are charged with.

17 And the Judge is going to tell you in
18 addition to the hand of one, the felony murder
19 rule, that if you're committing a felony like the
20 ones here -- burglary, armed robbery, and
21 kidnapping -- and someone gets killed, you can
22 infer malice in that.

23 I'm going to show you a little bit
24 about the law and then I'm going to wrap up. They
25 are charged with armed robbery. Armed robbery in

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1 South Carolina is the unlawful taking and carrying
2 away of personal property of another with the
3 intent to permanently deprive the owner, with
4 violence or putting the owner in fear of violence
5 while armed with a deadly weapon.

6 We have the burden of proving every
7 single one of those elements beyond a reasonable
8 doubt. You've heard testimony and you've seen the
9 evidence that they took away; the white Crown
10 Victoria, the gray Crown Victoria, the Hello Kitty
11 bag with the drugs in it, the TV that was found in
12 the white Crown Victoria, the bag of shoes that was
13 found in the white Crown Victoria, and other
14 clothes that were found in the gray Crown Vic, with
15 the intent to permanently deprive the owner.

16 First of all, they shot one of the
17 owners in the head; so they clearly weren't
18 bringing it back. Secondly, the only reason they
19 didn't keep that white Crown Vic longer than they
20 did is because Corinthian Green caught them driving
21 away with it.

22 Violence, or putting the owner in fear
23 of violence. The minute they pointed the guns at
24 them, they committed armed robbery. When they used
25 those guns, that's armed robbery too. When you're

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1 armed with a deadly weapon, pistols are deadly
2 weapons. That rifle, clearly a deadly weapon.
3 They all had guns. They're all guilty of this.

4 Burglary, first degree. All that means
5 is that they entered the house without consent.
6 Now, technically Krystal opened the door for them.
7 That's not consent. Five guys pointing guns at you
8 and your boyfriend and tell you to open the door,
9 that's not consent. That's being forced to open
10 the door.

11 They went inside with the intent to
12 commit the crime inside which is stealing more
13 stuff. And these things here, (indicating) they're
14 all ors. So if any one of these matches, they're
15 guilty. In this case, every single one they did.

16 They're all armed. They caused injury
17 to Kadeem and Krystal who weren't part of this.
18 They all used the deadly weapon -- or threatened to
19 use the deadly weapon that they were armed with,
20 and they all displayed those guns. Krystal saw all
21 of them. She told you she saw five guys with five
22 guns.

23 And even more so than that, this
24 happened at night, which by itself makes this a
25 first-degree burglary.

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1 Kidnapping, I already explained it to
2 you. That's a bunch of legalese for shoving a gun
3 at somebody and telling them they can't move and
4 they're not free to go; and then forcing them into
5 their house at gunpoint, making them -- one of them
6 get on their knees and making one of them sit on a
7 bed, and then taping their hands and holding a gun
8 at them so they can't move the entire time your
9 friends are committing these crimes. That's the
10 one.

11 Murder, the unlawful killing of another
12 with malice aforethought. Malice aforethought --
13 malice is a fancy legal word for hatred, ill will
14 or hostility. It just means a wicked heart. It's
15 just mean.

16 There are different -- malice can be
17 either express or implied. You can say things that
18 are malicious or mean; you can prepare beforehand
19 to do the act. Kind of like going to the woods and
20 putting two people on one side, three people on the
21 other side armed with guns, waiting for them to
22 come home, laying in wait for them to show up so
23 you can do your crimes.

24 You can also infer it from conduct
25 showing a total disregard for human life or from

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1 the use of a deadly weapon. Clearly, a deadly
2 weapon was used in this crime. That bullet went
3 through his skull, through his brain, and killed
4 him immediately. Conduct showing total disregard
5 for human life.

6 He was on his knees, hands taped,
7 helpless, feet away from his girlfriend who was
8 also helpless, shot in the head, left dead on the
9 floor of his own house, while they shoot his
10 girlfriend and make her watch. That is as evil and
11 malicious and as much of a total disregard for
12 human life that you can possibly imagine.

13 Felony murder. As I told you, if two
14 or more persons combine to commit the act, in this
15 case, of robbery, burglary, and kidnapping, and as
16 a natural consequence of that someone -- one of
17 their team commits a murder, they're all guilty of
18 it.

19 Even if they didn't specifically plan
20 for them to kill someone. They clearly all planned
21 to rob Kadeem and Krystal. They all went there
22 with guns, they all went there together. They
23 split up, two on one side and three on the other.
24 They ambushed them when they got out of the car.
25 They ran up on them and ordered them into the

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1 house, which was the kidnapping. They took the
2 Hello Kitty bag, which is the robbery. They forced
3 her to open the door, which is the burglary. And
4 they did all of that with guns.

5 Common sense tells you if you're with
6 four other people, if there are five of you with
7 guns and you're committing all of these crimes,
8 there is a very reasonable and probable consequence
9 that somebody is getting shot. You don't bring
10 them unless you're willing to use them.

11 Now, attempted murder, that's for
12 Krystal. You have to intend to kill. You have to
13 try to kill someone, and you do it with malice; all
14 of those same things that I told you before.

15 And just as malicious as it was to
16 shoot Kadeem Johnson in his head while he was on
17 his knees with his hands taped, it's just as
18 malicious and just as evil to shoot Krystal because
19 she saw your face, and you're trying to get rid of
20 witnesses, and you're trying to get rid of
21 something that you did.

22 Clearly, it's evil. It's wicked. Same
23 inferences that are for murder are the same things
24 for attempted murder.

25 Hand of one, as I told you, it is just

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1 the same as if all five of them were holding that
2 gun that murdered Kadeem, if all five were holding
3 that gun that shot Krystal. They all had their own
4 guns for the armed robbery and they all had their
5 own guns for the burglary first, they all had their
6 own guns for the kidnapping.

7 So the hand of one applies mostly to
8 the murder and the attempted murder because Jacob
9 Mouzon is the one that actually pulled the trigger
10 on both of those victims.

11 And as I told you, you're going to hear
12 what reasonable doubt is. What's important to
13 remember for reasonable doubt is it's a doubt that
14 would cause a reasonable person to hesitate. It's
15 not beyond all doubt. It's not absolute certainty.
16 You have to be firmly convinced that these
17 defendants are guilty of each element of these
18 offenses that I have just run through.

19 There are very few things in this world
20 that I or anyone else could convince you of beyond
21 any and all doubt. Our burden is to prove to you
22 beyond a reasonable doubt that what we tell you
23 happened, when Sherrod Palmer, Kenny Campbell,
24 Drake Campbell and Jacob Mouzon happened, and that
25 you're convinced -- firmly convinced that that

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1 happened.

2 Now, as I told you, you will have all
3 the evidence back there when you go back there if
4 you want to look at it. You can look at the
5 pictures that show Kadeem Johnson laying on the
6 floor in a pool of his own blood with his hands
7 taped if you need to figure out whether that's
8 malicious or not. If you want to talk about that,
9 you have that.

10 You'll have all of the other pictures
11 that were shown. You'll have the physical
12 evidence. You'll have the Hello Kitty bag; you'll
13 have the rifle; you have Drake Campbell's
14 DNA-covered bandana.

15 As Krystal said, they had masks except
16 for Jacob Mouzon. Drake just made the mistake of
17 dropping his mask when him and Kenneth and Jacob
18 ran into the woods on Highway 402. And you'll have
19 the hooded sweatshirt from Jacob Mouzon that he
20 tells you he was wearing, that he tells you that he
21 threw in the woods as he was running from the cops
22 with Kenneth Campbell and Drake Campbell.

23 And you'll have the Hello Kitty bag
24 found at Eccles Church after Kenny Hoffa and
25 Brittany Bordeaux identified Jacob Mouzon and they

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1 ran away and dropped what they went there to steal
2 in the first place.

3 This, ladies and gentlemen, is murder.
4 This is attempted murder. This is armed robbery of
5 both Krystal and Kadeem. And this is a kidnapping
6 of Krystal and Kadeem. And they did all of this
7 while they were armed with a deadly weapon which
8 makes it possession of a weapon during the
9 commission of a violent crime.

10 Ladies and gentlemen, the evidence has
11 shown you -- the evidence independent of Darius
12 Hamilton has shown you that these defendants are
13 guilty beyond a reasonable doubt. Thank you.

14 THE COURT: Does anyone need a comfort
15 break before we proceed?

16 THE JURY: (Indicating)

17 THE COURT: Mr. Thrower, you may
18 proceed.

19 MR. THROWER: Last night I was talking
20 with my wife and I was thrilled to be talking about
21 something else. She brought up a situation at
22 work. She works with special needs kids. She
23 works at a school over in West Ashley near my
24 office. And she has a little guy in her class, and
25 his name is Stan. He's a nice little guy. He's

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1 the one that made her make switch from kindergarten
2 to special needs. And she's had him last year, and
3 they're kind of getting back into things this year.

4 Last year on the second or third day of
5 school, he has a seizure. Well, he started feeling
6 weird in her class and said, I don't feel right.
7 And so she wheeled him down to the nurse. In the
8 nurse's office, there's another little guy already
9 there. His name is Jack. And he was sitting there
10 and he was seeing the nurse, and she brought Stan
11 in and he was in there.

12 And right before he had his little
13 seizure, he kind of had a moment. The nurse was
14 dealing with Jack, and Stan was behind her. And
15 she said that Jack went like this (indicating)
16 around the nurse and looked at Stan, and he
17 flinched and had a seizure. First one he's ever
18 had.

19 Well, they looked -- the nurse turned
20 and looked at him and she called the ambulance.
21 They got him and took him to the hospital. And he
22 saw a doctor, and the doctor said, yeah, this is
23 something we need to address, and set him up for an
24 MRI. That was about a month later.

25 And he's in the MRI -- and my wife

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1 found this out later. He's having the MRI and --
2 or he's hooked up and getting ready to go in and he
3 has another seizure, just which is kind of a good
4 thing because they got a lot of data.

5 And it was more of a violent seizure
6 than the first one. The first one he kind of
7 flinched and -- well, the only one that says that
8 is Jack. And so we don't know exactly, but the
9 nurse didn't see the first one and she -- of
10 course, the doctor saw the second one. And they
11 got the data, and the doctor talked to the parents
12 and he wants to do -- and this is coming up at the
13 beginning of this year.

14 And I saw this on 60 Minutes. It's
15 fascinating. They actually take the top of your
16 head off and they take a big chunk of your brain
17 out. It's the part of your brain that causes
18 seizures. And they bring you out of anesthesia,
19 just like rebooting a computer, and the brain
20 starts hooking back up.

21 And even though you have a big void
22 there, your brain reboots itself. You're almost
23 exactly like you were before the surgery. You
24 might have some different emotions and different --
25 slightly different, but the possibility of that

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1 seizure is gone because the trigger is out of your
2 body.

3 And it's a radical surgery, and this
4 doctor kind of wants to do it. And he said -- and
5 what happened was, he said, the criteria is two
6 violent grand mal seizures within a six-month
7 period. And my wife is like, well, I know he had
8 the one, but I don't know about the first one. Was
9 that really, really it? And the parents have kind
10 of relied on asking her what do you think? What do
11 you think we should do?

12 And last night she was kind of
13 agonizing over it. And I said, all you can do is
14 tell them to ask every question, ask everything
15 that you can possibly ask them to prove; make sure
16 you don't influence them one way or the other, but
17 encourage them to ask everything. Ask what test
18 you can run and what test you did run, what the
19 tests prove, what the tests don't prove. Make sure
20 you get all the information before you make an
21 informed decision. Just kind of stay out of it.

22 And I was giving her the talk about it
23 and trying to give her my input, and I realized
24 that's what I'm asking you guys to do. Just
25 consider every test, every test that was run, every

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1 bit of evidence, everything that wasn't run,
2 everything that could possibly have happened from
3 that stand, is that enough?

4 You know, the last witness we heard
5 from the State said this is a -- the one-in-7
6 trillion chance that that DNA on the sweatshirt
7 belonged to Jacob Mouzon. Never said it did. What
8 does that prove? He was wearing the sweatshirt or
9 he had worn the sweatshirt. He told you he did.
10 Is that the best test? One in 7 trillion? So
11 you've got a great test that's almost esoteric in
12 how accurate it is, that you've got 7 trillion
13 people and you can say this is one of them.

14 So you've got that test -- and I'll
15 tell you. That is -- it's hard to even comprehend
16 that's what they can come up with.

17 Now, what tests did they do from the
18 scene? There was no DNA evidence taken from Martha
19 Lane that matched Mr. Mouzon. Well, okay. So,
20 Krystal Snipe said he was there for hours -- or I
21 think her -- she was mistaken, but he was there a
22 long time to not have left any DNA? You can test
23 to one in 7 trillion, but you can't find one cell
24 from a guy who was standing there? For an extended
25 period of time?

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1 What about the blood? Sergeant
2 Pinckney who was on the stand, you could tell it
3 was disturbing for him to recount this crime scene.
4 He said there was blood everywhere. Mr. Alfaro
5 said she's dripping blood as she's running; there's
6 blood everywhere. Did he have any blood on him or
7 his sweatshirt that they found his own DNA on?

8 Wouldn't he have blood if he was
9 standing so close that the blood is just going
10 everywhere and he has to run through it and get
11 out? Nothing? You've got a test that you can find
12 one in 7 trillion, but you can't find a speck of
13 blood from a crime scene that looks like a butcher
14 shop? Not one little piece of blood, not one
15 droplet?

16 And you find him the next day not --
17 Krystal said he was shooting like this, pow, pow,
18 pow. You don't have gunshot residue anywhere?
19 Wouldn't it be on the sleeves of that hood?
20 Wouldn't it be on your hands? Any gunshot residue
21 anywhere? I mean, four shots fired. Four shots
22 fired because we know that's how many shell casings
23 were in there.

24 Who loaded those shell casings in the
25 magazine? Was there any DNA on the shell casings?

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1 Was there fingerprint on the shell casings? Was
2 there anything on the shell casings that connected
3 back to Jacob Mouzon? Not a thing. You can test
4 for one in 7 trillion, but you can't find a piece
5 of DNA off of something shoved into a magazine?

6 If you have ever loaded a magazine for
7 a automatic pistol, it takes a good amount of force
8 to get in there. Not on Jacob. Nobody. They
9 didn't test it. It just seems like they want you
10 to see the tests that they want you to see.

11 The .380 Hi-Point that Mr. Hamilton
12 tells you, oh, of course, everybody knows what a
13 .380 Hi-Point looks like. That's the one he
14 testified he had in his hand. He said, I have
15 a.380 Hi-Point. Yeah, I know what it looks like.
16 Everybody does.

17 Well, the expert said, well, sometimes,
18 you know, they are distinctive if they have the
19 two-tone or the polymer; but the one thing that
20 Darius Hamilton said that I thought he was
21 convincing on, yeah, I'm the one that had the .380
22 Hi-Point. Not much else came out of his mouth that
23 made sense.

24 And he said that there was a Mark
25 Turner there first and another dude that threatened

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1 to kill him dead if he opened his mouth. Mark
2 Turner -- was a lineup done with Mark Turner? No.
3 They had developed Jacob Mouzon as the primary
4 suspect. And why not eliminate Mark Turner? Why
5 not make sure he's not the other Hispanic guy? Why
6 not make sure he's not the one white guy? Why not
7 make sure?

8 You've got Krystal who is 100 percent
9 sure that that is Jacob Mouzon that shot her, but
10 is she 100 percent sure that that's Jacob Mouzon or
11 is she 100 percent sure that he's the guy that she
12 picked out from the lineup? Because that step from
13 lineup to that, she was 100 percent sure. She was
14 50 percent the guy that shot her on the scene is
15 the guy in the lineup.

16 Now, there's a big difference in saying
17 that's the guy right there that shot me and saying
18 that's the guy from the lineup. Because when she
19 says the guy from the lineup, going back to the day
20 after, she was only 50 percent sure. Now she looks
21 over, and she's been looking at his picture for two
22 years, she is 100 percent sure. Oh, yeah, that's
23 him.

24 And he's unique. How wasn't she
25 100 percent before? The other two people who say

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1 him were, why Brittany Bordeaux and the other
2 fellow in the truck. They were 100 percent sure.
3 Mr. Hoffa. They didn't have any problem. Oh,
4 yeah, that's him. Absolutely. He is a
5 unique-looking guy. How was she only 50 percent
6 sure that night. She stood there looking at him
7 forever, she testified.

8 When you've got all these tests and you
9 either don't do them or they aren't conclusive or
10 helpful, you have to go back and start putting
11 together credibility and things like that. And
12 that's, again, with the -- with the MRI and the
13 seizures, they kind of fell back and decided, well,
14 let's talk to Jack.

15 And I've met Jack over at the class.
16 And they're just trying to figure out if he can
17 confirm this violent seizure so they can do the
18 surgery. And I met him and his credibility was
19 about that of Darius Hamilton; different reasons,
20 but the same result.

21 I walked in and I said, hi. And he
22 said, hi, my name is Jack. And I said, I like your
23 Ironman T-shirt. He said, Ironman gave that to me.
24 And I said, well, that's terrific. And I wasn't
25 asking him anything about what he had seen. I was

CLOSING - BY MR. THROWER

1 just in there talking to him.

2 And I talked with him for about five
3 minutes. And in that five minutes I got, Ironman
4 gave it to him, but Superman may have given it to
5 him, and his dad might be Superman. And he's
6 looking forward to meeting me again because maybe
7 I'm Ironman. And, by the way, my name is John.

8 And he gave me all that in just a
9 splatter of time. And I thought, this little guy,
10 you couldn't ask -- and I asked my wife, does he
11 remember the seizures? And she said, yeah, he
12 remembers it. Every day he talks about it, every
13 single day.

14 And every day he remembers the guy that
15 was wearing what he was wearing today, and then I
16 remember you had that seizure yesterday. You were
17 wearing -- and he describes what he has on, and he
18 thinks it was yesterday, and it's absolutely of no
19 value.

20 So you've got your tests, and they're
21 right on the edge of being able to prove that he
22 had a second one, but they can't. So that's how we
23 are here. We have tests that don't really put
24 everything together. There's a lot of holes in it
25 and they can't corroborate it because you can't

CLOSING - BY MR. THROWER

1 believe a word out of Darius Hamilton's mouth.
2 Anything.

3 Mr. Mouzon testified, and he -- I hope
4 you got the message that he had a future. He
5 wouldn't have thrown it away on something stupid
6 like this. So thank you very much.

7 THE COURT: Does anyone need a break or
8 is everyone still comfortable?

9 MR. ARCHER: I do, Your Honor.

10 MR. SMILEY: I need to go to the
11 restroom. I know you were talking to the jury, but
12 --

13 THE COURT: Mr. Foreman, we are going
14 to take a brief comfort break. During the break,
15 please do not discuss this case and please leave
16 your notepads in your seats.

17 (Jury out, 11:07 a.m.)

18 THE COURT: You may be seated. Go to
19 the restroom and come right back.

20 (A recess transpired.)

21 THE COURT: State ready to proceed?

22 MR. ALFARO: State is ready to proceed.

23 THE COURT: Is the defense ready to
24 proceed?

25 MR. SMILEY: No, ma'am, we're waiting

CLOSING - BY MR. ARCHER

1 on --

2 THE COURT: I need order in the
3 gallery. And when there is argument, I don't
4 expect much movement at all. It's distracting to
5 the jury.

6 (Jury in, 11:17 a.m.)

7 THE COURT: You may be seated. We will
8 resume argument.

9 Mr. Archer, you may proceed.

10 MR. ARCHER: I'm Mark Archer; I
11 represent Kenneth Campbell.

12 Kenneth, would you stand up?

13 MR. CAMPBELL: (Complies)

14 MR. ARCHER: This is my client. Okay.
15 Have a seat.

16 I'm kind of a senior guy, an old guy.
17 I'm 70 years old. I've been in this business for
18 46 years. Okay. And there's one thing that I can
19 tell you, is that this is a really poorly
20 put-together case by the prosecution.

21 And I think that in itself weighs on
22 issues like reasonable doubt. They put -- they put
23 in a little evidence and then they want you to make
24 leaps of faith from that little bit of evidence to
25 a big conclusion.

CLOSING - BY MR. ARCHER

1 I will give you a few examples of where
2 -- really, what I think happened was, backing up,
3 is that Darius Hamilton came in the date after
4 shooting, confessed, and after he confessed, then
5 80 percent of the investigation stopped. And they
6 figured, well, we have this solved now; but they
7 didn't.

8 Okay. And some examples of that are
9 this. Three cell phones are found in the cars, in
10 the Fords that they were taken that day, three cell
11 phones. Do the police find out who those cell
12 phones are registered to? No. And that would make
13 a big difference if one of the cell phones was
14 registered to Sherrod Palmer and one was registered
15 to my client and the other was registered to his
16 brother. That would be important evidence.

17 Do they try to find out who the phones
18 are registered to? No, they don't. Do they try to
19 do any phone dumps? What they call phone dumps,
20 which is find out what calls were made from those
21 phones on the evening of the shooting. Okay.

22 And that's frequently done in major
23 cases. They go through and pull every phone call
24 made out of that call within a certain length of
25 time of the crime.

CLOSING - BY MR. ARCHER

1 Well, what does that tell you? Well,
2 if somebody calls Suzy Jones and you are a police
3 officer, you're going to call Suzy Jones and say,
4 who called you? Well, Sherrod Palmer called me.
5 Oh, okay. So then you know Sherrod is associated
6 with that phone. Or they say Kenny Campbell called
7 me. And then you know Kenny Campbell is associated
8 with that phone. All right.

9 But they don't do any phone dumps.
10 They don't do any investigation as -- first, they
11 don't find out who the phones are registered to;
12 and, secondly, they don't find out who made any
13 calls from those phones and when. That's important
14 information to note.

15 If they look at the phones and they
16 found out who it was registered to and it was
17 registered to Joseph Rodriguez, or Jose Vargas,
18 then we know we have some Hispanic guys we need to
19 find. Okay. But, no, they don't even bother to
20 find out who the phones are registered to.

21 There's testimony that there were at
22 least five guns out there. Okay. Do they serve
23 search warrants to see if they can find any of
24 those guns? No. You don't have a single gun in
25 evidence that's associated with any defendant here.

CLOSING - BY MR. ARCHER

1 Not with Mr. Mouzon, not with Mr. Sherrod Palmer,
2 not with Drake Campbell, and not with Kenny
3 Campbell. Okay. They just stopped. They stopped
4 looking.

5 You know, they probably should have
6 gone out and served search warrants to every one of
7 the houses and every one of the cars until they
8 found some guns. What happened to the five guns?
9 Nobody knows. And the police simply stopped
10 looking. So that's the kind of investigation we
11 have and it's, pardon the expression, half A'd.
12 It's a half A investigation, and you know what I
13 mean by A. Okay. Halfway, half A.

14 But this is so important. We've got
15 five guys who basically their lives are at stake
16 here. They deserve a better investigation. All
17 right.

18 Now, basically, with the exception of
19 Mr. Mouzon, they're all here -- the only real
20 evidence against any of them comes from Darius
21 Hamilton. That's the only thing that ties any of
22 these guys to this crime. Okay. Now, I think you
23 can tell from what went on -- they all grew up in
24 the same neighborhood. They all grew up in
25 St. Stephen.

CLOSING - BY MR. ARCHER

1 So there's no question they all knew
2 each other. Okay. But doesn't mean they were all
3 together in committing a crime, you know. But the
4 whole case, whole case, is based upon Darius
5 Hamilton. And, you know, 3,000 years ago people
6 could be charged with -- adultery was a death
7 penalty case. Okay. This is according to the
8 Bible.

9 And there were a lot of serious crimes
10 set forth in the Bible, but the Bible provided some
11 protection. And one of the protections was,
12 according to the Bible, you could not be convicted
13 of a crime on the testimony of one person alone.
14 You had to have at least two witnesses in order to
15 be convicted of a crime.

16 Well, that's not the law today. You
17 are free to find people guilty based on the
18 testimony of one person. Okay. Of one person
19 alone.

20 But there's some wisdom to the
21 two-witness rule that was there 3,000 years ago.
22 Okay. And I say even today if you are going to
23 find someone guilty of a crime, any crime, but
24 particularly a crime as serious as this, there need
25 to be additional standards if it's on the testimony

CLOSING - BY MR. ARCHER

1 of one person alone.

2 First off, the testimony of that
3 witness, that witness needs -- you need to find
4 that that witness is an extremely credible
5 individual. We're going to send four guys to jail
6 forever based on his testimony. You need to find
7 that he's a very reliable, honest individual;
8 therefore, you can take his word and put all these
9 guys away.

10 Well, is Darius a highly credible
11 individual? No. From day one he lies. He goes to
12 the police and he says, well, there is who was
13 there. I was there, but I never went inside.
14 Never went inside. Lies to them. Lies to them
15 that day in the first statement, lies in the second
16 statement, lies in the third statement.

17 In November, he goes and meets with the
18 prosecutor, Mr. Cannon, and he signs an agreement
19 where he says, I will tell the truth, the whole
20 truth and nothing but the truth or this agreement
21 is out the window. And what does he do? He lies.
22 And I would submit to you he lied to you in this
23 courtroom, you know.

24 Mr. Smiley cross-examined him and he
25 was saying, well, I'm not guilty of anything. And

CLOSING - BY MR. ARCHER

1 other thing he says was, I don't expect to get
2 anything out of this. Baloney. If you believe
3 that, I'm going to tell you it's going to snow this
4 afternoon and you're going to all go get your coats
5 on.

6 Of course he's getting something out of
7 it. He's going to get favorable -- he's admitted
8 from day one he was involved. Has he plead guilty?
9 No. Why? Because the prosecution wants to hold
10 over his head what the sentence will be. Okay.

11 They don't tell him exactly what
12 they're going to give him because they don't want
13 me getting up here and saying, well, you're charged
14 with murder and that carries life and you're only
15 going to do ten years, right? And they want him to
16 say, no, I haven't been promised anything. But of
17 course he has.

18 I mean, I don't think you're so
19 incredibly naive to think he's just here to be
20 good. That why I asked him, you know, you'll have
21 to go to jail for life, this carries life. Yeah.
22 Well, what deal you got? Nothing. What do you
23 expect? Nothing. Oh, so you're ready to go to
24 jail for life? Well, I want to do what is right.
25 Come on. We weren't born yesterday.

CLOSING - BY MR. ARCHER

1 You know, he's here. He's ready to say
2 anything that he needs to say to make these guys
3 over here happy. And I would say otherwise too,
4 the agreement they get him to sign says he will
5 tell the truth, and if he doesn't tell the truth
6 the agreement is off.

7 Well, he lied to the police. He lied
8 to the prosecutors. He doesn't really begin to
9 come clean about going into the house until about
10 two weeks before this trial in the middle of
11 August. Okay? And by the middle of August, he
12 finally admits, yeah, I went inside.

13 So what do they do? Do they say, you
14 lied, the deal is off? No. They don't call off
15 the deal for lying. Why? They don't really care
16 what he says as long as what he says convicts these
17 four guys. That's the bottom line. Prosecutor
18 doesn't care what he said, whether it's true or not
19 true, as long as they get their conviction.

20 All right. That's not right. You
21 know, the prosecutor -- we are here to defend our
22 clients. The prosecutor is here to defend justice
23 no matter how justice comes down or what it turns
24 out to be.

25 So I think, number one, that you ought

CLOSING - BY MR. ARCHER

1 to -- first off, you've got one guy, and based
2 solely upon his testimony, he has to be extremely
3 credible. And this guy has no credibility at all.
4 He's the -- pardon the French -- a damned liar.
5 Okay.

6 And so you have to figure out in your
7 head, beyond a reasonable doubt, what is he saying
8 that's true and what he's saying is a lie. I don't
9 know how you figure that out, but you can't say
10 he's a very credible, honest and reliable
11 individual, because that is one thing he's not.

12 And you can't find these guys guilty
13 unless you can come to the conclusion that Darius
14 Hamilton is a very honest and reliable individual.
15 That alone is enough for a reasonable doubt. Okay.
16 As it should be; that's common sense. It should
17 be. You send guys to jail forever on the word --
18 solely on the word of a liar? No.

19 The second thing where it's one person
20 alone is, not only should he be relied on, there
21 should be other evidence that corroborates his
22 story. Other evidence out there that tends to show
23 he's telling the truth. Well, there is none.
24 There's none. There is only one ID in the case,
25 and that's of Jacob Mouzon. Okay.

CLOSING - BY MR. ARCHER

1 Mr. Sherrod Palmer, nobody IDs him as
2 being there or being involved. Mr. Drake Campbell,
3 nobody IDs him as being there or being involved.
4 Kenny Campbell, my client, nobody IDs him as being
5 there or being involved. Okay.

6 So Kenny -- nobody says he was there
7 other than Darius Hamilton. Okay. There is no
8 fingerprints of Kenny Campbell there to say he was
9 present. There is no DNA of him there to say he
10 was present. There is none of the fruits of the
11 crime are found on him; nothing that was stolen was
12 found on him.

13 Darius Hamilton said he took the
14 bracelet off of the deceased and gave it to Kenny
15 Campbell. Was the bracelet found on Kenny
16 Campbell? No.

17 Did you hear the detective say, we
18 found this gold bracelet that belonged to the
19 deceased? No. There is nothing, absolutely
20 nothing to tie my client to this crime other than
21 Darius Hamilton. Okay.

22 You know, you can find a reasonable
23 doubt based on the evidence, and you can find a
24 reasonable doubt based on the lack of evidence.
25 And I think in this case you're going to have both;

CLOSING - BY MR. ARCHER

1 you're going to have evidence and you're going to
2 have lack of evidence.

3 You know -- and I'm going to back up a
4 little bit. Talking about sloppy investigation, we
5 have a rifle sitting here. That's going to go back
6 into the room. That was found somewhere in the
7 woods, but has that rifle ever been tied to this
8 case by any evidence? No.

9 There was a bullet taken from the
10 deceased by the medical examiner. That could have
11 been sent off to SLED, it could have been matched
12 to that rifle -- the bullet could have been matched
13 with the rifle. It wasn't.

14 It's another example of sloppy
15 investigation. We have a rifle, and they've
16 written on here, Kadeem Johnson, but they have no
17 evidence to tie that rifle to Kadeem Johnson.

18 That's one of those situations like I
19 told you. They put in a little evidence and expect
20 you-all to make huge leaps of faith in order to
21 find our clients guilty. No. No. No. It's their
22 job to cross the Ts and dot the I's in order to
23 prove to you beyond a reasonable doubt guilty.

24 As I said, there is no -- as far as
25 corroboration is concerned, no ID, person-to-person

CLOSING - BY MR. ARCHER

1 ID. There is no fingerprints. There is no DNA.
2 There is no gun found. There is no loot found from
3 the robbery. And there's one other thing. My --
4 Ms. Snipe says all five guys were dressed in black.
5 Well, my fellow is not arrested dressed in black.

6 Here are the pictures of him taken on
7 the day of his arrest. (Indicating) Does that
8 look like black to you? No. It's an orange shirt.
9 And how about his pants? No. His pants aren't
10 black either. They're sort of a bright blue. And
11 yet Ms. Snipe says all of the people who came in
12 were dressed all in black. And I don't see any
13 black on Kenny Campbell.

14 And there is one huge problem that the
15 State has in this case that they haven't even
16 addressed to you. Okay. And that is this: On the
17 night of the shooting, Ms. Snipe makes a call to
18 911. You saw it up here. And I don't know if you
19 noticed, because you're not always certain when you
20 first see something what to look for, but in the
21 call, the lady -- the 911 lady says, well, what are
22 the races of the people that robbed and shot you?

23 And she said there were three black
24 guys and two Hispanics. That's really critical
25 evidence. Three black guys, two Hispanics. I want

CLOSING - BY MR. ARCHER

1 you to tell me where in the lineup there are two
2 Hispanics. Maybe Mr. Mouzon could be considered to
3 be or thought to be Hispanic, but where is the
4 other Hispanic? You don't see them.

5 Now, how about the black guys? Well,
6 we know who one of the black guys is. One of the
7 black guys is Darius Hamilton. Boom. Now we're
8 down to two black guys. We have one, two, three
9 black guys on trial, and we're looking for two.

10 We have one too many black guys here,
11 if there were three black guys involved, only three
12 black guys involved. For these guys to be found
13 guilty, there would have to be two Hispanics and
14 four black guys. Do you follow me? But there's
15 not.

16 Darius -- three black guys and one is
17 Darius. And who are the other two? God knows who.
18 What we do know is we have one too many black guys
19 over here. One of them by definition was not
20 there. Only two -- only two out of these three
21 could have been there under that testimony. Okay.

22 You need -- when you go back there,
23 pull up the disk with the call to EMS and listen to
24 it. You will hear Ms. Snipe say without reserve,
25 two Hispanic and three black guys.

CLOSING - BY MR. ARCHER

1 You know, I think that they're asking
2 you to do something that you-all are just not
3 capable of doing. They're asking you to figure out
4 which two out of those three defendants were there.
5 If any of them.

6 I mean, there's a question; were any of
7 them there? The only way we know that they're
8 there is from Darius Hamilton, and he lives up
9 there and grew up with them and called their names.
10 He knew them.

11 Okay. But you're going to have to be
12 able to say beyond a reasonable doubt which two out
13 of those three guys was there and involved, and
14 which one was not there and involved. And I don't
15 think you can do it. I don't think you have any
16 evidence whatsoever that you can use to figure out
17 which two out of the three fellows was at the
18 crime.

19 And, quite frankly, I know it's not --
20 it's not real appealing to you, but unless you can
21 say beyond a reasonable doubt it was Sherrod and
22 Drake or it was Drake and Kenny, and the other one
23 -- and this one wasn't there at the time, but these
24 two were, unless you can reach that conclusion
25 beyond a reasonable doubt, I don't think you can

CLOSING - BY MR. ARCHER

1 convict any of them. Because you're just guessing.
2 You're just guessing which ones were there.

3 And, like I said, that is a huge
4 problem with this case if you can't figure out
5 beyond a reasonable doubt who -- which two out of
6 the three were there and which one was not there.
7 The only person that you can convict is Jacob
8 Mouzon.

9 And that may not be a bad result in
10 this case. I'm not going to question or comment on
11 whether there's enough evidence to convict Jacob
12 Mouzon beyond a reasonable doubt, but there's more
13 evidence -- there's very little evidence on any of
14 these guys, other than Darius Hamilton.

15 There is more evidence on Jacob Mouzon.
16 Jacob Mouzon, at least, has been identified as
17 being there by Ms. Snipe and identified as a
18 shooter. So you have some pretty fairly credible
19 evidence that he was there.

20 Okay. But, truly, I mean, I just think
21 you're in a position that unless you can resolve
22 this issue of which two out of three were there
23 beyond a reasonable doubt, you have to let all
24 three of them go. Why? Because there's a
25 reasonable doubt as to which ones were there. And

CLOSING - BY MR. ARCHER

1 I don't know how you get around that. I don't
2 think you can get around that problem.

3 Now, I've talked a lot about reasonable
4 doubt, and there's a -- let me tell you -- what is
5 a reasonable doubt? The judge is going to tell you
6 legally what a reasonable doubt is, but there is a
7 saying in the American law that it's better for 100
8 guilty men to go free than for one innocent man to
9 be found guilty.

10 Now, the fellow who said that was a
11 lawyer. Sounds like lawyer talk, doesn't it? It
12 doesn't sound like an average everyday person talk.
13 We're not going to allow 100 guilty men to go just
14 to keep one innocent guy -- he was a lawyer.

15 He was not only a lawyer, he was a
16 radical lawyer. He was a lawyer that advocated the
17 violent overthrow of his duly appointed government
18 and at one point in time even took up arms against
19 his government.

20 He was a lawyer, he was a radical, he
21 was a revolutionary. He was a fellow by the name
22 of John Adams, a signer of the Declaration of
23 Independence, a signer of the Constitution of the
24 United States, the first Vice President of the
25 United States and our second President.

CLOSING - BY MR. ARCHER

1 And he said that when he was defending
2 the British troops for the Boston Massacre which
3 took place before the American Revolution. And
4 that's where that statement comes from in his
5 defense of the British troops of the Boston
6 Massacre.

7 He's not the only person that said
8 that. In 1785, Benjamin Franklin wrote a letter to
9 Benjamin Vaughn who was a Virginia proprietor. And
10 in that letter he said that it's better for 100
11 guilty persons to escape than one innocent person
12 shall suffer. Benjamin Franklin was also a signer
13 of the Declaration of Independence. Benjamin
14 Franklin is also a drafter of our Constitution.

15 And I think you can tell from this
16 historical stuff that the idea of guilt beyond a
17 reasonable doubt was a part of the holy grail of
18 our Founding Fathers. You know, Benjamin Franklin,
19 we all know as a famous patriot and American
20 writing in 1785, which is after the Revolution,
21 that it's better for 100 guilty guys to be let go
22 than an innocent man to be found guilty. And the
23 same thing from our first Vice President and our
24 second President of this country.

25 That tells you how important the

CLOSING - BY MR. ARCHER

1 concept of guilty beyond a reasonable doubt was to
2 our Founding Fathers. And I think over the years
3 there's been a tendency to lessen that, to try to
4 convince people that guilty beyond a reasonable
5 doubt isn't a big deal. It ain't a big deal, you
6 know.

7 As long as you have a pretty solid
8 feeling that they're guilty, find them guilty, but
9 it's clear that the Founding Fathers -- they said,
10 it's better that 100 guilty guys go free than to
11 find one innocent guy guilty. That shows they
12 believed there was an extremely high standard for
13 guilty beyond a reasonable doubt.

14 And I think you should have that high
15 standard. And the standard they've proven this
16 case to is not a high standard. It's a very low
17 standard. It's a sloppy put-together case. It's a
18 case based on the testimony of one guy who is
19 admittedly a liar, you know. And, frankly, I don't
20 think that you should find that that meets the
21 standard of guilt beyond a reasonable doubt.

22 I'm just going to tell you this: Your
23 job is to do justice here, and your job is to
24 follow the directions of the law. And part of the
25 directions of the law is it has to be guilt beyond

CLOSING - BY MR. SMALDONE

1 a reasonable doubt. I'm going to tell you, maybe
2 if you find -- let go three or four of these guys,
3 you might let go one of them that had something to
4 do with it, but it's better to let go of a guilty
5 fellow and not send an innocent one to jail.

6 That's what Benjamin Franklin said and
7 that's what John Adams said. Okay. And that there
8 is no shame in a verdict of not guilty. Whatever
9 verdict is reached, if it's based upon your
10 conscience that it's a good verdict, a righteous
11 verdict, there is no shame if you find people not
12 guilty. You have simply done your sworn duty as
13 jurors.

14 Thank you very much.

15 THE COURT: Mr. Smaldone.

16 MR. SMALDONE: Thank you, Your Honor.
17 May it please the Court.

18 THE COURT: Yes, sir.

19 MR. SMALDONE: Ladies and gentlemen of
20 the jury, at the beginning of the case you heard
21 from a whole bunch of people, opening statements --
22 well, you heard that there were four separate
23 trials. All right. We know that. Four separate
24 trials, weigh the evidence against each
25 accordingly. Four separate trials, all of these

CLOSING - BY MR. SMALDONE

1 different offenses. You heard evidence, kind of
2 obviously for expedient's sake, evidence about all
3 of them kind of at one time.

4 So ask yourself in your head who's been
5 on trial this week? Who are the four separate
6 trials? Who has been on trial? Who are we here to
7 -- who has to do stuff? Right? Whose week has it
8 been? Whose time is it to shine? Think about it.
9 Think about what they look like.

10 Think about what they did, what they
11 didn't do. Picture that image in your mind, and
12 think about which table they're sitting at. Which
13 seat in that table they're sitting at. I'm at the
14 wrong table.

15 The State has been on trial this week.
16 The State has made some serious allegations against
17 the people at my table, and they've been on trial
18 all week.

19 The trial is, has the State proved
20 beyond a reasonable doubt that each, or
21 individually, any or all of these guys is guilty,
22 or -- of each or any of the offenses that they
23 decided to try them for? That's what it's been
24 about.

25 You hear about State v Drake Campbell,

CLOSING - BY MR. SMALDONE

1 State v. Mr. Mouzon -- all these folks. And you
2 think the name, because the State -- obviously, the
3 State is going to be in there, but the important
4 part is State. That's what we're here for. So
5 they better be prepared. And that's their job.
6 They know it's their job. I'm not saying anything
7 outrageous. That's their job. They better be
8 prepared.

9 So what have they done this week? And
10 listen, I agree with -- I think most of us agree
11 with them on a lot of things. Like, I'm not saying
12 it's a hoax and nothing terrible ever happened.
13 I'm not saying that, you know, the self-defense or
14 that this is all a conspiracy and no one died.

15 Someone lost their life that day --
16 that night, and that's terrible. Like, I'm not
17 going to say that it's not right. I'm not going to
18 -- you know, just so we're clear, I'm not saying
19 this happens all the time; oh, it's fine. That's
20 not what I'm here to do. I'm saying that something
21 terrible happened, and I agree with them, but Drake
22 Campbell didn't have anything to do with it.

23 What have they brought to the table to
24 show that he did? Let's talk about it. I'm going
25 to tell you. If they're going to tell you, I'm

CLOSING - BY MR. SMALDONE

1 going to tell you. What have they used to prove
2 it?

3 Let's talk about before that night.
4 What do we know about before that night? Not
5 really anything. We have not heard much of
6 anything about what went on before. Like, we don't
7 know anything really.

8 You know, what we've heard about before
9 is, like, my brain is scrambled because the only
10 thing we know that the State has used to try to
11 show is big guy up there. Right. You're probably
12 tired of hearing the name Darius Hamilton. Sorry,
13 you're going hear it a couple more times. I will
14 try to limit it.

15 Darius Hamilton gets up there and he's
16 telling you the story about -- and, again, my brain
17 is scrambled. You know, I'm a lawyer; I prepared
18 for the case. So I'm trying to read like a million
19 different things that he said. I'm trying to keep
20 track of which one is which in my mind and it's --
21 maybe someone smarter than me can do it, but it's
22 pretty tough.

23 So John knows what he said. Right. He
24 tells you something about at first, obviously, he
25 was just driving around, and then somehow he

CLOSING - BY MR. SMALDONE

1 implicates my -- Drake in there somehow driving
2 around. I think he changed back, or did he? I
3 honestly can't remember. So that's what the State
4 has brought to bat for before the incident.

5 The planning, all that stuff, somehow
6 Darius is up there, you know, not worth two cents.
7 Darius who, you know, confesses to doing this and
8 then he says, I'm innocent. I'm innocent. I
9 didn't do anything. Even though I just told you I
10 did. That's Darius. So Darius -- so, I wish him
11 luck.

12 That's what the State has used though.
13 That's their tools, that's their ammunition. What
14 else has the State used? Let's talk about what
15 happened that night. Let's talk about the scene,
16 right. The actual -- what we're all here for.
17 And, again, you know, sometimes I can be flippant
18 and I yell and I move around, but I don't want to
19 underscore -- that was a terrible thing. Right.

20 And, again, I'm not saying it didn't
21 happen. But I'm saying, what does Drake have to do
22 with it? And, again, I don't have to show
23 anything. I can sit there all week and just
24 listen. It doesn't lessen what the State has to do
25 for Drake.

CLOSING - BY MR. SMALDONE

1 What do they have to show that Drake
2 was there? Not just there, but a participant. I'm
3 like really trying to think of something other than
4 Darius because I want to talk about it. I'm tired
5 of talking about Darius all week, but it's Darius.
6 Darius is the only thing that has anything to do
7 with what happened at the scene.

8 The evidence collected from the scene,
9 let's talk about what was collected from the scene.
10 It was stuff that we already know, you know,
11 findings of blood of the victims -- you know, by
12 all means, innocent victims that were there. We
13 know that's there. Right.

14 We know there are some shell casings
15 found. What ties that to Drake? Nothing, right.
16 No DNA or anything that has to do with Drake at the
17 scene. No, you know, no shoe prints or anything
18 like that. Literally nothing.

19 Their strongest evidence is the fact
20 that he's at the table right now. Nothing connects
21 him to that scene. Think about it. Nothing. When
22 I was briefly working as an assistant solicitor in
23 a different county, I had a supervisor who I'd
24 bring these cases to and, like, we got them this
25 time.

CLOSING - BY MR. SMALDONE

1 And he'd say, Grant, what are you
2 doing? You have to get rid of this. His term was
3 musta cause. Right. We have probable cause and
4 this is not probable cause. This is musta cause.
5 You need to get rid of it.

6 He musta caused it because we don't
7 have any evidence. That's what he would say. The
8 State have musta cause against Drake.
9 Circumstantial evidence that, you know, afterwards
10 all this stuff -- nothing tying him to it. What
11 the State wants to use -- here's what they want to
12 use. I haven't talked about that yet. What they
13 want to use is a bandana, single bandana. Found
14 not at the scene, but on the road.

15 What do we know about the bandana? I'm
16 not going to hide from it. I wouldn't be doing my
17 job if I just hoped you-all would forget it. He's
18 going to talk again and he's going to mention it.
19 And that's his job.

20 I want to talk about this bandana.
21 You'll have -- I don't know if you know this yet,
22 but you're going to get pretty much all of the
23 evidence at this table, and they're going to put it
24 in the jury room. Right.

25 And don't worry, the gun has a lock on

CLOSING - BY MR. SMALDONE

1 it. We'll talk about the gun in a little while.
2 But there is a bandana that was found. It has
3 Drake's DNA on it. What does DNA mean? It means
4 that he wore that at some time in the past. The
5 lady said -- you know, I mean, it's kind of common
6 sense.

7 She said, he wore it in the past,
8 probably since it was last washed obviously, but we
9 don't know when he wore it. There's no expiration
10 date on it. It's not like -- it's not like your
11 DNA stays on something for a week and then fades
12 away. We didn't hear any evidence of that.

13 He wore it some time in the past. And
14 we know he's friends with Darius. Would Darius
15 have had it? Probably. I don't know. We also
16 know that, you know, maybe there's a chance that he
17 might not have even wore it. He could have came
18 into contact with something he wore. I don't know;
19 I'm not an expert. She is.

20 But more importantly than the fact that
21 he either wore it or didn't wear it sometime in the
22 past -- I'm saying, take it back there. I want you
23 to take it back there and carefully consider it.
24 Does it look distinguishable at all? And is it all
25 black? Those are the two questions I want you to

CLOSING - BY MR. SMALDONE

1 ask. Is it distinguishable, meaning would you
2 notice it and would you remember it? And, also, is
3 it all black?

4 I'm not going to wade through the
5 evidence because I'm kind of disorganized and I
6 would probably mess everything up, but you saw it.
7 It's a pretty distinguishable money bandana, and it
8 sure ain't all black. That's what you saw and
9 that's what you will see. And that's what we know.

10 But even though it doesn't match up
11 with what we know was there, he must have done it
12 because that's all we got. He musta caused it
13 because that's what the State wants to use for its
14 pretty -- I mean, I think we agreed, it's a pretty
15 serious set of charges. That is their evidence.

16 So what else do we know? He was found
17 in the woods. Ask yourself, is that illegal? Is
18 it? Did they charge him with trespass? It's not a
19 trespassing case. He was found in the woods.

20 That's what they've got, man. I'm
21 telling you, it's pretty simple. I might talk a
22 lot and talk kind of loud because it's important,
23 but simple and important can coexist. It's really
24 simple. That's what they have.

25 We know from the 911 tape there are

CLOSING - BY MR. SMALDONE

1 four or -- sorry, five guys, three of them black,
2 two -- I believe it said two were white or
3 Hispanic. I didn't hear specifically, but you will
4 have the tape. We might disagree. Three black,
5 two white or Hispanic.

6 We know that -- according to the tape
7 four or five had guns. Now it's all five had guns.
8 And I'm not saying she's lying. I'm just saying
9 she was excited. I'm not trying to attack her by
10 any means, because she saw what she saw. And she
11 didn't see Drake.

12 Why do we know it? Well, he wasn't
13 there, but also because he wasn't identified.
14 Right. And you might think, well, of course he
15 wasn't there. He wasn't identified. He was
16 wearing a bandana. Well, was the bandana
17 identified? Was the money bandana identified or
18 was Drake? You could do -- you know, you can do
19 one or the other, or both, but you can't do
20 neither.

21 You can say you saw Drake. You can say
22 you saw a money bandana with Drake's DNA on it, but
23 you can't do neither. Neither one was identified.
24 You heard it yourselves. No ID of Drake by
25 anybody.

CLOSING - BY MR. SMALDONE

1 And let's talk about -- you know,
2 Mr. Archer talked about the investigation. Right.
3 And, you know, sure, I agree with him; a lot of
4 conclusions were jumped to. Right. You've got a
5 big river. The river of reasonable doubt, and they
6 want you to build a bridge, but they want to make
7 you jump a few steps along the way to help us out a
8 little bit. Right.

9 And every time a solicitor in closing
10 says common sense, it means we don't got it, but
11 help us out a little bit. Common sense is what
12 they want you to rely on. They want you to put
13 together a lot of pieces for them.

14 Mainly, why wasn't Drake or the bandana
15 that he wore at sometime in the past ever
16 identified at the scene? What puts Drake there?
17 Testimony of Darius Hamilton. I'm sorry, I had to
18 say it one more time. Darius Hamilton. All right.

19 But Mr. Archer is right. They didn't
20 -- what boggles my mind is, you have a case where
21 either four or five guns were present, right,
22 according to testimony. I'm by no means saying
23 Krystal Snipe was a liar. Four or five guns
24 present.

25 Well, strike one; no guns were found.

CLOSING - BY MR. SMALDONE

1 There was a rifle found in the woods, may or may
2 not be part of that. I don't know. None of the
3 other guns were found, especially the gun that was
4 used to murder Kadeem Johnson. Right? That was
5 never found. That's strike one, and that's bad.

6 They don't have the weapon. They don't
7 have -- there's like three, four, five other
8 weapons. None of them were found, right? But then
9 they get this -- and I don't want to be the guy
10 that pulls the rifle around, you-all see the rifle.

11 They get the rifle. What do they do
12 with it? Like, what do they do with it? They do
13 the same thing that I do when I go to Target and I
14 buy a bunch of stuff that I don't need or want. I
15 leave it in the shopping bag for, like, forever. I
16 still think I have stuff in there from last year.
17 They don't do anything with it.

18 You heard testimony; there's no -- I
19 don't believe there were any tests done on it, and
20 if there were -- I don't think there were, but I
21 don't want to misstate something. If there were, I
22 sure know that they weren't tied to anybody here
23 today.

24 This should be like the one -- this
25 should be the -- the only term I could think of is

CLOSING - BY MR. SMALDONE

1 smoking gun, but it's too spot on for it to be even
2 an analogy, right? Like, this is the gun that they
3 think was used, not shot, but used -- and there's
4 nothing done to it. Baffles me. Nothing ties this
5 gun to the scene.

6 They do the same thing I do with stuff
7 I impulse bought at Target; still sitting by my
8 front door. This is now worth nothing because they
9 chose it to be. Why did they choose it to be? Why
10 did they choose it to be? The answer is -- I'm
11 going to make you-all mad again -- Darius Hamilton.
12 Because they're like, oh, we have Darius. We don't
13 need to do anything. We got him. We got the case.
14 We cracked the case.

15 We got Darius. We don't need to test
16 the gun and see who used it or touched it or
17 whatever because we got our star witness up there.
18 And I understand, people jump to conclusions. And
19 I understand that the State later on realized,
20 uh-oh, this ain't as good as we thought it was, but
21 -- sorry, nothing personal, but that ain't my job.
22 That's not something that I have to worry about.

23 They're on trial this week. Have they
24 met their burden? Four individual trials; have
25 they met their burden for Drake? No, they haven't.

CLOSING - BY MR. SMALDONE

1 I'm not going to get up here and talk about, you
2 know, what if a bunch of guilty people go free, so
3 -- which is a true statement. I'm not trying to
4 belittle it.

5 Let guilty people -- a thousand guilty
6 people go so one innocent man go free. Like, i
7 don't need to worry about that because you ain't
8 letting a guilty person go with Drake Campbell. I
9 promise. That ain't something we need to worry
10 about today.

11 Worry about has the State met their
12 burden? Have they proved beyond a reasonable doubt
13 that Drake Campbell was a participant? Have they
14 proved Drake Campbell guilty of murder? No. Have
15 they proved Drake guilty of kidnapping? No. Armed
16 robbery? No.

17 Because you have to get back there --
18 it's their burden. You have to say, what are they
19 -- what do we use to find Drake Campbell guilty of
20 murder beyond a reasonable doubt? What are the
21 tools that they gave us to get there and are those
22 tools enough for a reasonable doubt? Sorry, beyond
23 a reasonable doubt.

24 Talked about reasonable doubt a little
25 bit for the other folks, but it's important you

CLOSING - BY MR. SMALDONE

1 know that is the highest standard. Like, right?
2 Like, there is a few different standards in the
3 law. You have reasonable suspicion. That's enough
4 to get, you know, cops start investigating and
5 maybe get pulled over. That's reasonable suspicion
6 that a crime is afoot. That is -- as a criminal
7 defense attorney, I know it's basically nothing.
8 Right.

9 And then you have probable cause. In
10 school we learned that's a high standard. As a
11 lawyer, it's pretty much nothing also. Probable
12 cause means that's enough for a cop to maybe get a
13 search warrant or an arrest warrant. Probable
14 cause, that's a fairly low standard.

15 And then the standard that I don't want
16 you to get tripped up on is the next standard
17 called preponderance of the evidence. You have
18 seen the scales of Lady Justice, right? You know,
19 every TV lawyer has that at the end with the phone
20 numbers on -- you know, they'll have like a little
21 statue with the Scales of Justice. Which side do
22 you believe? It's basically 51 percent. Does that
23 make sense?

24 Which side leans slightly more than the
25 other? A lot of people get tripped up on that, but

CLOSING - BY MR. SMALDONE

1 that's not what we're here about. It's not whether
2 you believe us or them. It's not whether you
3 believe my closing argument or the solicitor's
4 office. It's not if you believe Mr. Mouzon's
5 testimony or Darius Hamilton's testimony. We are
6 not in a contest about that here, because the State
7 is on trial.

8 It's not 51 percent. Right? It's not
9 what we're here for. If it was a car wreck case,
10 and I was trying to get some money out of you,
11 maybe. But that's not what it's about. It's the
12 standard of proof.

13 And there's one more -- there's two
14 more. There's clear and convincing evidence. That
15 means there's enough for the State to take your
16 kids away. There's a few more things -- that's a
17 fairly high standard, but beyond a reasonable
18 doubt, this is it. This is it. This is the
19 highest we got.

20 What tools did they use to prove Drake
21 Campbell guilty of any or all of these offenses?
22 Nothing.

23 I think you musta caused it because
24 they were in the woods. He was in the woods. I
25 don't have to explain that. I don't have to do

CLOSING - BY MR. SMALDONE

1 anything. They have to show, not that he was in
2 the woods, but that he was at Martha Lane and he
3 did this. And they didn't. And he didn't.

4 Ladies and gentlemen of the jury, I'm a
5 little younger than some of these other folks, but
6 I've been doing this almost seven years. And I do
7 nothing but criminal defense. I try a lot of
8 cases, and every time I still get the stomach --
9 the nervousness, right? An older lawyer told me
10 that when you stop getting it, it's time to hang it
11 up. It means you don't care, and I care.

12 Why I talk about that is because I'm
13 nervous now. This is the hardest part. The
14 hardest part is when I've said what I needed to
15 say; because for the last two years, I've
16 represented Drake. I've kind of protected Drake,
17 or I felt like he was under my wing and I had him.

18 And I will make sure that, you know,
19 he'll be all right. Helped him out, answered his
20 questions for two years now, almost.

21 And this is the hardest part, and it
22 makes me nervous because right now Drake isn't in
23 my hands anymore. He's in your hands. And this is
24 the last time that I'm going to be able to talk to
25 you. So if you have questions or if you have

CLOSING - BY MR. SMILEY

1 doubts, things don't make sense, I'm not going to
2 get back there and explain them to you. I wish I
3 could, but I can't. I would ask that you answer
4 them for me. Each and every individual jurors of
5 you individual jurors have been selected because
6 you can.

7 So, ladies and gentlemen of the jury,
8 I'm giving you Drake Campbell in your hands. And
9 Drake Campbell is not guilty of each and every one
10 of these offenses. Thank you.

11 THE COURT: Mr. Smiley.

12 MR. SMILEY: I told you in the
13 beginning before trial, I feel like I'm dealing
14 with apples and oranges in this courtroom. I'm not
15 here to comment on evidence that doesn't have
16 anything to do with Mr. Palmer. I'm here to talk
17 about Sherrod Palmer. I've had the honor to
18 represent him since the day his momma called me two
19 years ago. I have found him to be a very pleasant
20 client.

21 Last night I went home, and I was
22 sitting there trying to watch a football game for a
23 few minutes and take my mind off of things. And
24 I'm a pretty confident guy. I go through life and
25 I think I keep my head up and try to do the right

CLOSING - BY MR. SMILEY

1 thing.

2 And as I sat there last night, I
3 started to worry. I've been doing this a long
4 time, but have I done everything I could to help
5 you understand what we're dealing with in this
6 courtroom? It's hard.

7 I can promise you, I did not choose to
8 be in the courtroom with three other co-defendants.
9 I did not. That's the State's prerogative. And I
10 understand it because it started with a simple one
11 incident, but at that point the evidence in this
12 case really diverts.

13 If I had had this trial with just
14 Sherrod in this case, that table right there would
15 be empty. It would be empty. Roughly, 28 people
16 got on that stand during the course of this week.

17 And Mrs. Hensley over there is the
18 greatest typist there ever was. She can keep up
19 with our court reporter, and that's hard to do.
20 And she has typed down every word that has been
21 spoken to the best of her ability, and not that
22 it's official, from this stand. And she is
23 fantastic at organizing information. She did that
24 for me.

25 And I went through that and said, how

CLOSING - BY MR. SMILEY

1 many people even talked about Sherrod, at all?
2 Krystal Snipe, Deputy Betts, Bernard Williams, and
3 the police. I appreciate what Mr. Alfaro told you
4 in his close. He separated this case from
5 Mr. Hamilton. And what I mean by that is he is a
6 respected member looking for justice, and he didn't
7 vouch for Mr. Hamilton. I don't think he could,
8 before trial.

9 Let's go to Mr. Palmer. Ms. Snipe had
10 a tragic event that night. And I would say and
11 continue to say my prayers for her and Kadeem
12 Johnson. I do not believe that she lied about or
13 told an intentional mistruth about anything from
14 the stand. I do believe she was wrong about a few
15 things.

16 Because she -- the only thing she could
17 say about Sherrod is that she knew him. She knew
18 him because of Kadeem's aunt. That is my client's
19 girlfriend. And the fact that Sherrod, while he
20 was raised in St. Stephen, had been staying with
21 his girlfriend in Huger.

22 You did not hear that he had ever been
23 to that trailer. You did not hear that he bought
24 drugs from Kadeem Johnson. You did not hear that
25 he knew where Martha Lane was and so you cannot

CLOSING - BY MR. SMILEY

1 assume that he did. You cannot.

2 You are not here to make leaps and
3 bounds. You are here to take what you heard from
4 that stand and what's on that table and apply it;
5 however, Ms. Snipe did tell you some other things.
6 And you heard the 911 tape and it's evidence. She
7 said, two -- she said three -- first she said four
8 or five people; three of them black, two of them
9 Hispanic.

10 Listen to the tape. It's pretty clear.
11 She testified that she got shot in her hand. She
12 also talked about having a bullet in the chest, but
13 you heard no other evidence about that. She told
14 you that the gentleman, the killer, fired two guns.
15 We know that's not true. She's just wrong.

16 One gun, fired four cartridges. One of
17 which killed Kadeem Johnson; one of them injured
18 Ms. Snipe.

19 Deputy Betts talked about Sherrod.
20 Talked about taking a few buccal swabs, that's her
21 own thing, so that they could test the evidence
22 they had collected to see if Sherrod's DNA was on
23 it.

24 We heard from Bernard Williams, the
25 elder man that hung out at the club. He saw

CLOSING - BY MR. SMILEY

1 Sherrod that night at the club on 41. Okay.
2 That's not evidence of his participation. He was
3 there, saw Kadeem. He didn't talk about him having
4 troubles with Kadeem that night, didn't talk about
5 him being with the other boys. He said he was
6 around Kadeem earlier that night. That's it.
7 That's what you can take from that.

8 We heard from the case agent in regards
9 to Kadeem and -- excuse me, in regards to Sherrod,
10 and she's the one that told you that Sherrod was
11 asleep at his mother's house in St. Stephen at
12 roughly 7:00 the next morning.

13 She told you that she executed a search
14 warrant looking for evidence at the trailer on 41
15 and that nothing was found pertinent to this case;
16 no mask, no guns, no proceeds from a robbery,
17 nothing.

18 Now, the only direct evidence in this
19 case concerning my client came from Darius
20 Hamilton. And I'm going to suggest you do the same
21 thing Mr. Alfaro basically suggested. You can't
22 believe a word he says. Look at the case that they
23 have otherwise.

24 In my career, I don't know that I have
25 ever seen someone sit on the stand and perjure

CLOSING - BY MR. SMILEY

1 themselves so blatantly and then act like it's no
2 big deal. It's a big deal. It is a big deal. I
3 mean, it makes me go, is our system gone to the
4 point that we could just take the viable out of
5 here? It means something.

6 We expect people that come in this
7 courtroom and put their hand on that Bible and
8 raise their hand to have some import on what that
9 means. He could care less.

10 Now, I would like to tell you to forget
11 about Darius and let's just move on, but I'm going
12 to pound on him a little bit. Darius wasn't there.
13 Just dropped some guys off. Named other people.
14 Does not name Sherrod.

15 You know, this is at Eccles Creek
16 Church when he's inside the church lying. Just
17 flat lying. He said he was up there to help them.
18 Well, we found out it's because the police asked
19 him to come up there. The next day when they
20 interview him again on video, he changes his story.
21 He gives more detail.

22 At that time, oh, I went up and I
23 stayed on the side of the road while the boys were
24 gone. I think I asked him about it, and he kept
25 his windows rolled up and sat in that truck for

CLOSING - BY MR. SMILEY

1 three hours and took off. Whatever.

2 He does mention Sav. And he is shown a
3 picture of Sherrod that day and asked about him.
4 He said, yeah, I know him. Does not say, that guy
5 was the one that was with us when we did the
6 robbery.

7 Ms. Snipe, she wrote down her
8 identification. She said, this gentleman is the
9 one who shot me, and I'm 50 percent sure of that.
10 She didn't say I know him. Darius Hamilton was
11 thumbing his nose at the police from day one. He
12 thought he was smarter than everybody, and he was
13 quite unintelligent.

14 He confessed to murder. He confessed
15 armed robbery. He confessed to kidnapping. He
16 confessed to perjury. And then what he told me?
17 You heard it so I know you -- well, you can ask for
18 redemption at any time. I was confounded. You can
19 ask for redemption any time. He thinks it's okay.

20 And then after he gets his evidence and
21 gets his lawyer, they go in and -- God knows he
22 needed one. And they go in and he is given an
23 opportunity to continue to cooperate. This is
24 after Sherrod has been arrested and the other
25 gentlemen have been found in the woods and evidence

CLOSING - BY MR. SMILEY

1 has been collected, police reports were coming and
2 going, but then with Mr. Cannon he tells another
3 story. Another story.

4 Then he realizes that ain't going to
5 work the way I've been telling it, that I was just
6 a totally innocent guy that had no clue what was
7 going on and I was just going to get some weed; but
8 when I left the house I dressed in all black and
9 put -- a mask, just in case I needed it, I took one
10 with me.

11 Now, in his November statement to
12 Mr. Cannon before they got to that, they signed the
13 proffer statement, which I call the umbrella. It's
14 -- under a proffer, anything you say, as long as
15 it's the truth, cannot be used against you. So
16 there at that point, no reason for him to tell
17 anything but the truth. You can't use it against
18 him.

19 And he lies that day. He admitted from
20 that stand, right after he signed it, he lied. Got
21 him out of jail. He was sitting in jail, but by
22 doing the proffer, shortly thereafter he gets out.

23 And for two years, 21 months, he's been
24 going about things, no big deal, guess it worked
25 out for me. And then he had to deal with

CLOSING - BY MR. SMILEY

1 Mr. Alfaro. And Mr. Alfaro went over it with him
2 and -- went over his proffer with him in July of
3 this year, the first part. Had him come back a
4 week later; some of this stuff just doesn't match
5 up. And he starts changing again and starts
6 modifying what he said.

7 Because, first, he wasn't there, and
8 then he was sitting out in the road. Oh, yeah,
9 yeah, yeah, I went there. Oh, yeah, I had a gun.
10 Oh, yeah, I had a mask. Oh, yeah, I taped them up.
11 He said he was outside.

12 Krystal Snipe says the guy that taped
13 her up, Darius Hamilton, also was one of the
14 fellows toting stuff out the door. He wouldn't
15 ever admit to that. Why? I don't know. He's
16 already admitted to everything else. So he's still
17 changing his story. Still changing his story.

18 He said that Sherrod called him the
19 next day, at that point in time I believe. He
20 continues on and his story changed again on the
21 stand. He keeps trying to make his story better.

22 I was watching Mr. Alfaro, and he was a
23 little dumbfounded when the first time he's ever
24 heard it up here is this new lie about, oh, oh,
25 Sherrod was in the truck with me. Okay. Makes the

CLOSING - BY MR. SMILEY

1 case look better for the State, some direct
2 evidence about Sherrod, but it's a lie.

3 And I'm going to show you how it's a
4 lie. His story on the stand was that -- you know,
5 he said he parked the truck down the road at the
6 two-story building near the corner of Charity
7 Church and Cainhoy. And his story changed that
8 instead of running back to his truck, that Sherrod
9 now is in the gray car and is driving it, and he
10 gets in the passenger side.

11 That Sherrod drives him up this eighth
12 of a mile, 250 yards, whatever it is, and dropped
13 him off. And immediately he gets in the truck,
14 comes to the corner, takes a right, and there is
15 Sherrod on the road, and he picked him up and took
16 home. That is flat fiction and here's how we know.

17 The car was not parked on Cainhoy Road.
18 That car is in the back of the recreation area at
19 Huger recreation at Henry Nelly Road. It's not up
20 near the road. He had time to drive back there,
21 park it, get out the Cainhoy Road and flag down
22 Mr. Hamilton. That's not the only thing that we
23 know is fiction.

24 Nobody got in the front seat of that
25 car. There is a clothes hamper full of clothes in

CLOSING - BY MR. SMILEY

1 the front seat. Remember I said, are you sure you
2 were in the passenger front seat? Yes, sir. I
3 guess he was sitting on top of this hamper full of
4 clothes trying not to get everything out of order.

5 What else is in that car? The roll of
6 tape right there on the floorboard. With whose
7 fingerprint on it? The only piece of physical
8 evidence that's tied to anybody is the tape with
9 his fingerprints on it. What I suggest to you --
10 oh, something else that shows up pure fiction.

11 The white car was behind the gray car.
12 All right. There is one way in and one way out,
13 but he insisted the gray car went out first. So I
14 guess he got in the car, backed up, turned it
15 around, got around the white car -- come on. I
16 mean, he is a liar.

17 And I would ask you -- because the
18 judge will instruct you, you are the judges of
19 credibility. I would ask you to disregard anything
20 that that man says because you cannot in good
21 conscience convict on.

22 I keep wondering -- apples and oranges;
23 I think Darius is an apple, a rotten one.

24 Also, in that second statement, this
25 white fellow that's a friend of Darius pops up

CLOSING - BY MR. SMILEY

1 being at the scene. Mark Turner, another white
2 guy; we never heard any more evidence of that. But
3 Darius sure did put him in the middle of it. They
4 have as much evidence on -- listen, they have as
5 much evidence on Sherrod Palmer as they do on Mark
6 Turner. Darius calling his name. That's it.

7 There are no fingerprints that my
8 client has in this case. There is no DNA that link
9 my client in this case. There are no cell phone
10 records that links my client to this case. And
11 according to the man with the plan, Mr. Hamilton,
12 Sherrod was making phone calls while sitting out
13 there for three hours -- or two hours, or whatever
14 it was.

15 Well, if that was the case, we would
16 have heard some corroboration. Yeah, we were able
17 to corroborate what he said. You didn't hear it
18 because they couldn't. When you have someone who
19 is a liar and asking you to believe part of what he
20 says, you have to look for corroboration. What
21 corroboration? Is there any corroboration of any
22 of the allegations against Mr. Palmer? Any? No.
23 No, there is not. There is no corroboration.

24 How about -- you know, nowadays you
25 make a phone call, it pings off a tower, and you

CLOSING - BY MR. SMILEY

1 look to see where that phone call was made. We
2 don't have any of those records that place Sherrod
3 at the scene.

4 And, by the way, Ms. Snipe has known
5 Sherrod for a couple of years. And I know it was
6 dark out there because I made a point of
7 establishing -- trying to paint the scene as best I
8 could. I know it was dark out there, but she was
9 in the presence of these fellows for a period of
10 time; more than a few seconds. And she also told
11 us she had the ability to see outside of the
12 bedroom and outside of the trailer.

13 I don't care if he's wearing a mask. I
14 don't care if he's all in black. She didn't
15 recognize him. She didn't even say, I think I know
16 one of the guys, he looked familiar, his posture,
17 anything. You did not hear that. No
18 corroboration. No corroboration.

19 And everything to do with the flight
20 down 402 and into the woods and that whole thing,
21 as Sav said, I wish we had a different trial.
22 You-all wouldn't have heard any of that because it
23 doesn't apply to Mr. Palmer. I tried asking the
24 corporal, I believe it was, Corporal Green, if he
25 could see who was in the pickup truck, and there

CLOSING - BY MR. SMILEY

1 was a reason for that. Because it was obvious,
2 that the -- to Corporal Green, that the pickup
3 truck and the white car seemed to be travelling
4 together.

5 And so I was looking for some
6 corroboration. Did you see two people in the
7 pickup truck? He did not. So there is no
8 corroboration to the story that he made up that
9 day.

10 Now, I'm not going to go through every
11 single piece of evidence. You-all are -- 12 brains
12 are much better than my old worn-out brain, but I
13 need -- and I asked you in the beginning to keep an
14 open mind. I need you to still keep an open mind
15 until you get back there and able to deliberate.

16 You are the judges of the facts; you
17 are the judges of credibility. You are the ones
18 that are to try to find the truth within our
19 system. They must prove their case by a reasonable
20 doubt, and they put up the best case they could
21 against Sherrod Palmer because that's their job,
22 but it falls way short.

23 Just as Mr. Smaldone in his close
24 explained about the moving scale of different
25 burdens of proof in a football field, you don't

CLOSING - BY MR. SMILEY

1 have to go from one end line to the other. That
2 would be beyond all doubt that you scored a
3 touchdown, but you have to get past the 50-yard
4 line for sure. That would be 50/50, which we use
5 in criminal court.

6 I would say you have to get down into
7 the red zone to even be approaching beyond a
8 reasonable doubt. And this is a horrible crime. I
9 am not up here to make light of it at all. It was
10 a terrible thing that happened, and it bothers me
11 every day that this continues to happen in our
12 community.

13 It's awful, but I need you to be
14 courageous. Not to just throw all individuals into
15 the same bath water, to look at what they have
16 proved and to return a just verdict from the
17 evidence that you have heard.

18 This isn't about, well, I think; or,
19 gosh, it's suspicion; or, maybe. To know beyond a
20 reasonable doubt is when you have a real important
21 matter in your life, one that you -- and, trust me,
22 this is the most important day in Sherrod Palmer's
23 life. He's a young man, and you-all, as
24 Mr. Smaldone said, hold his future in your hands.

25 And I know -- I've watched you-all. I

CLOSING - BY MR. SMILEY

1 was sitting there. I was watching you the whole
2 time, and you've been very attentive and taken
3 great notes. And I watched what notes you write
4 down, so I know that you do take this very serious
5 and that your oath means something to you.

6 I'm asking you to be courageous. Be
7 courageous and return the only verdict -- the only
8 verdict as to Mr. Palmer. The State has not proven
9 their case. They basically said, we ain't got much
10 on him. She knew him; he was out on 41 that night;
11 this slug has told us some things, but we can't
12 tell you he's telling the truth. You have to
13 decide what you think of him.

14 We found him in Virginia. Okay. What
15 does that prove? That he was running away? Come
16 on. Once his name started getting called in the
17 street, he went to his family in Virginia and he
18 came back. He was brought back. He was scared.
19 You ought to be. Going to Virginia is not against
20 the law.

21 Beg your indulgence for one moment
22 while I walk over and talk to Mrs. Hensley to make
23 sure that I haven't forgotten something, and then
24 I'm going to sit down.

25 Beg the Court's indulgence.

CLOSING - BY MR. SMILEY

1 (Short break)

2 MR. SMILEY: Just like I said, I'm not
3 going to be able to, nor am I attempting to, cover
4 the stuff that's gone on. The only other thing
5 that I will bring up is by Ms. Snipe's description
6 of the events there that night is that two people
7 never came in the house, and they were outside.

8 By the State's allegations, they would
9 say Mr. Mouzon was in the house. By the slug's,
10 the flipper's admissions, he was in the house.
11 There was a third fellow in the house carrying
12 things out. There were two fellows outside that
13 never came in. And she said that she's five, six,
14 and the people outside were shorter than her.

15 You have a hard job. I hope I have
16 helped you paint a picture in regards to the case
17 the State has tried to put up against Sherrod
18 Palmer. I feel very inadequate, because it's hard.
19 I mean, I want to crawl in the box with you and go
20 back there and say, yeah, but. But I don't get to
21 do that.

22 I trust that you 12 collective people
23 will do the yeah-buts to each other and at the end
24 of it will say, they didn't prove their case
25 against Sherrod Palmer, and we have to do what the

CLOSING - BY MR. ALFARO

1 Constitution of the United States and the oath that
2 we took requires and return a not guilty. Thank
3 you.

4 THE COURT: Does anyone need a restroom
5 break?

6 MR. SMILEY: Yes, ma'am, but I can wait
7 if I have to.

8 THE COURT: Thank you; I appreciate
9 that.

10 Ready to proceed, Mr. Alfaro?

11 MR. ALFARO: Yes, Your Honor.

12 These are the facts that are
13 uncontroverted. Krystal Snipe and Kadeem Johnson
14 were robbed at gunpoint, their house was
15 burglarized, and in the course of that a Hello
16 Kitty bag was stolen with drugs in it, the white
17 Crown Victoria was stolen and the gray Crown
18 Victoria was stolen. Those are the facts.

19 Corinthian Green was driving down
20 Highway 402 on the way to 135 Martha Lane where
21 those items were stolen and came in contact with
22 the white Crown Victoria that was stolen from the
23 victims's home.

24 Jacob Mouzon, Kenny Campbell and Drake
25 Campbell ran into the woods at that location on

CLOSING - BY MR. ALFARO

1 Highway 402 where Corinthian Green found the stolen
2 white Crown Victoria that was taken from 135 Martha
3 Lane.

4 Directly next to that stolen white
5 Crown Victoria was a bandana that was used as a
6 mask by Drake Campbell whose DNA is on that
7 bandana. A straight shot from the stolen Crown
8 Victoria, the DNA on -- the bandana with the DNA on
9 is a hooded sweatshirt that Jacob Mouzon tells you
10 he was wearing the night that this murder happened.

11 Directly next to the hooded sweatshirt
12 with Jacob Mouzon's DNA on it is that SK long rifle
13 that Krystal says and describes as being used to
14 hold them at gunpoint.

15 Jacob Mouzon, Kenny Campbell, and Drake
16 Campbell are seen at Eccles Church Road by Eccles
17 Church by Kenny Hoffa and Brittany Bordeaux. Jacob
18 Mouzon corroborates that in his testimony. He saw
19 Kenny Hoffa, looked him dead in his face; saw
20 Brittany Bordeaux, they used her phone. They
21 called to try to get somebody to pick them up.

22 At that church where they are seen, and
23 Jacob Mouzon admits that he and Kenny and Drake
24 are, is the Hello Kitty that Krystal tells you and
25 that absolutely we know to be true was stolen

CLOSING - BY MR. ALFARO

1 during the course of that armed robbery, burglary,
2 kidnapping, murder, and attempted murder.

3 That stolen item we know came from 135
4 Martha Lane is found in the woods behind the church
5 exactly where Jacob Mouzon and Kenny Campbell and
6 Drake Campbell are by Mouzon's own testimony, the
7 testimony of Kenny Hoffa, and the testimony of
8 Brittany Bordeaux.

9 They are caught in the woods in that
10 area by the SLED's bloodhound team. Kenny Campbell
11 was caught that evening at 5:30. The next day at
12 11:30, Jacob Mouzon and Drake Campbell still
13 together are caught by law enforcement. Those are
14 the facts.

15 And as I told you before, despite what
16 all the other closing arguments you heard were,
17 none of that comes from Darius Hamilton. Darius
18 Hamilton absolutely didn't tell the truth from day
19 one. Nobody is saying he did. I am certainly not
20 saying that, but it's slightly different from what
21 Mr. Smiley asks is I'm telling you that you don't
22 have to believe everything.

23 You don't have to believe anything if
24 you don't want to, but what I'm asking you to do is
25 when you look at his testimony, see what

CLOSING - BY MR. ALFARO

1 corroborates and matches up with what Krystal said,
2 with what the DNA says, and what the other evidence
3 says. If you find nothing, fine.

4 But when you find that the story he
5 tells matches up with Krystal's story that five
6 guys came, two from one side and three from the
7 other, armed with guns, that happened. We know
8 that happened. We know the Crown Vic was stolen
9 from there.

10 We know the white Crown Vic was found
11 right on 402 and that the bandana with Drake
12 Campbell's DNA is right next to it. We know that
13 slightly down the road from that is the hooded
14 sweatshirt with Jacob Mouzon's DNA and the rifle
15 next to it.

16 We know all these things. Those things
17 don't change because Darius Hamilton is just as
18 guilty as the people he helped commit these crimes.
19 Those facts don't change because Darius Hamilton
20 lied. Those facts and that evidence is that
21 evidence. We know that Jacob Mouzon, identified by
22 the victim Krystal Snipe, shot Kadeem Johnson in
23 the head. She said that the same person that shot
24 Kadeem shot her.

25 SLED tells you that the bullet that

CLOSING - BY MR. ALFARO

1 came out of Kadeem Johnson's head matched the
2 bullet that came out of Krystal. One person shot
3 both of them. The same person shot both of them.
4 This person shot both of them.

5 And Darius Hamilton, what he tells you
6 has nothing to do with that or the hooded
7 sweatshirt or the DNA on the bandana or the rifle
8 found there or the victims' stolen property somehow
9 making it from 135 Martha Lane all the way to
10 Eccles Church Road where three of these defendants
11 are seen and one of them admits that the three of
12 them were.

13 Again, we've proven our case without
14 Darius Hamilton. Believe him if you want, some or
15 all; ignore him completely if you want. We don't
16 need it. We know Jacob Mouzon, Kenny Campbell,
17 Drake Campbell were there with Darius Hamilton and
18 Sherrod Palmer that night.

19 THE COURT: Ladies and gentlemen, if
20 you would please bear with me for one moment. I'm
21 trying to find an ETA on your lunch and then I'll
22 decide if I'm going to proceed with instructions or
23 not.

24 Does anyone need to go to the restroom?
25 Bear with me one second.

1 THE COURT: Ladies and gentlemen, your
2 lunch has arrived. They are in the process of
3 bringing it upstairs, and since it is hot, I don't
4 want to run the risk of it getting cold. We're
5 going to take a brief recess for you to eat lunch.
6 As soon as you are done eating, if you want to get
7 some air, let the bailiffs know. And as soon as
8 you've done that, we will resume with the Court's
9 instruction.

10 While you have heard the arguments of
11 counsel, please do not discuss this case. You have
12 not yet heard the Court's instructions. If you
13 would leave your notepads in your seats, as you-all
14 get settled, they will be bringing your lunch in to
15 you. Let the bailiffs know when you are done, and
16 then we will resume.

17 (Jury out, 12:54 p.m.)

18 THE COURT: You may be seated.
19 Anything before we take a brief lunch recess? From
20 the State?

21 MR. ALFARO: No, Your Honor.

22 THE COURT: Mr. Thrower.

23 MR. THROWER: No, Your Honor.

24 THE COURT: Mr. Smiley.

25 MR. SMILEY: No, ma'am.

1 THE COURT: Mr. Smaldone.

2 MR. SMALDONE: No, Your Honor.

3 THE COURT: Mr. Archer.

4 MR. ARCHER: No, Your Honor.

5 (A luncheon recess transpired.)

6 THE COURT: State ready to proceed?

7 MR. ALFARO: Yes.

8 MR. THROWER: Yes.

9 MR. SMILEY: Yes.

10 MR. SMALDONE: Yes.

11 MR. ARCHER: Yes.

12 THE COURT: For the benefit of the
13 gallery, while the Court is instructing the jury,
14 there is to be no movement. If you feel that you
15 cannot abide by those rules, I would suggest that
16 you leave if you need to. During the Court's
17 instructions, those doors will be closed and no one
18 will be able to leave or come in.

19 (Jury in, 1:43 p.m.)

20 THE COURT: You may be seated.

21 I hope that you had a pleasant lunch.
22 I indicated at the conclusion of argument, we have
23 now reached the stage of the trial where I will
24 instruct you on the law applicable to this case.

25 During this trial, ladies and

JURY CHARGE

1 gentlemen, you and I have certain duties to
2 perform. As the trial judge, it is my
3 responsibility to preside over the trial of this
4 case. I also have the duty to rule upon or pass
5 upon the admissibility of evidence offered during
6 this.

7 You are to consider only the competent
8 evidence before you, and you are to disregard and
9 disabuse from your mind any testimony that this
10 Court has ordered stricken from the record during
11 the course of this trial. You are to consider only
12 the testimony which has been presented from the
13 witness stand, along with any exhibits which have
14 been made part of the record in this case, as well
15 as any stipulations of counsel which have been
16 placed on the record.

17 And as I explained previously, a
18 stipulation is an agreement between counsel and it
19 requires no further proof.

20 I have the additional duty to charge or
21 instruct you on the law applicable to this case.
22 As the presiding judge, I am the sole judge of the
23 law of this case, and it is your duty as jurors to
24 accept and apply the law as I now state it to you.

25 If you have a preconceived idea as to

JURY CHARGE

1 what the law is or what the law ought to be in a
2 case, or in this case, and it should not agree with
3 what I tell you the law is, you are obligated under
4 your oath to abandon this preconception on your
5 part as you were sworn to accept the law and apply
6 the law precisely as I now state it to you.

7 In every case tried in this case before
8 a jury, the jury becomes the sole and exclusive
9 judges of the facts. You, the jury, are the sole
10 judges of the facts in this case. This Court is
11 the judge of the law.

12 The Constitution of our state has
13 declared that a trial judge will not intimate,
14 state, comment upon, or make any statement to a
15 trial jury about the facts in a case. Since you
16 the jury are the sole judges of the facts in this
17 case, you are not to infer anything from what I
18 have said during the progress of this trial in
19 ruling upon the admissibility of evidence or
20 otherwise that I have any opinion about the facts.
21 The law does not allow me to have an opinion about
22 the facts.

23 This is a matter solely for you, the
24 jury, to determine. As jurors, then, it is your
25 duty, as I have instructed, to determine the

JURY CHARGE

1 effect, the value, the weight and the truth of the
2 evidence presented during this trial. Necessarily
3 you must assess the credibility of witnesses who
4 have testified in this case. And as I explained
5 previously, credibility is simply a legalistic term
6 meaning believability.

7 Some of the things you may consider as
8 you decide whether or not to believe a witness's
9 testimony about a particular matter include what
10 was the manner and appearance of the witness who
11 testified? Was he or she straightforward or
12 hesitant in answering? Was the testimony of a
13 witness consistent or inconsistent? How did the
14 witness come to know the facts that he or she
15 testified to? Or what was his or her ability to
16 know these facts?

17 Is there some reason a witness would
18 want to give testimony which would help or hurt one
19 side or the other; in other words, was the witness
20 biased or prejudiced? And was the testimony of a
21 witness strengthened or weakened by other testimony
22 or evidence?

23 I further instruct you that in
24 determining the question of the credibility or
25 believability of witnesses who have testified, you

JURY CHARGE

1 may believe one witness as against several
2 witnesses, or several witnesses as against one
3 witness. You may believe a part of the testimony
4 of a witness or reject the remaining part of the
5 testimony of that same witness.

6 If you have a good and sound reason,
7 you may believe the testimony of a witness in its
8 entirety or reject it in its entirety. You can
9 believe as much or as little of each witness's
10 testimony as you think proper.

11 You may also consider the demeanor of a
12 witness; that is the manner and appearance of a
13 witness from the witness stand. Again, ladies and
14 gentlemen, you can believe as much or as little of
15 each witness's testimony as you think proper. And
16 I instruct you that you have but one objective
17 during the course of the trial; that is to
18 determine the facts and give the evidence the
19 weight, value and effect you decide it should
20 receive.

21 Our rules of evidence ordinarily do not
22 permit witnesses to testify to opinions and
23 conclusions. An exception to this rule exists for
24 witnesses we call expert witnesses. A witness who
25 by their education, training, and experience has

JURY CHARGE

1 become an expert in some art, science, profession
2 or calling may state an opinion as to relevant and
3 material matters in which the witness claims to be
4 an expert and may also state the reason for the
5 opinion.

6 You should consider any expert opinion
7 received in evidence in this case like any other
8 evidence. Give it the weight that you think it
9 deserves. If you decide that the opinion of an
10 expert witness is not based on sufficient
11 education, training, and experience, or if you
12 conclude that the reasons given in support of the
13 opinion are not sound, or that the opinion is
14 outweighed by other evidence, you may disregard the
15 opinion entirely.

16 An expert witness's testimony is to be
17 given no great weight than that of other witnesses,
18 simply because the witness is an expert.
19 Furthermore, you are not required to accept an
20 expert's opinion, even though it is not
21 contradicted.

22 Ladies and gentlemen, there are two
23 types of evidence which are generally presented
24 during a trial: Direct evidence and circumstantial
25 evidence. Direct evidence is the testimony of a

JURY CHARGE

1 person who asserts or claims to have actual
2 knowledge of a fact, such as an eyewitness.

3 Circumstantial evidence is proof of a
4 chain of facts and circumstances indicating the
5 existence of a fact.

6 The law makes absolutely no distinction
7 between the weight or value to be given to either
8 direct or circumstantial evidence. Nor is a
9 greater degree of certainty required of
10 circumstantial evidence than of direct evidence.

11 As I have instructed, there are two
12 types of evidence which are generally presented:
13 Direct evidence and circumstantial evidence.

14 Crimes may be proven by circumstantial
15 evidence and, again, the law makes no distinction
16 between the weight or value to be given to either
17 direct or circumstantial evidence; however, to the
18 extent the State relies on circumstantial evidence,
19 all of the circumstances must be consistent with
20 each other, and when taken together, point
21 conclusively to the guilt of the accused beyond a
22 reasonable doubt.

23 If these circumstances merely portray
24 the defendant's behavior as suspicious, the proof
25 has failed.

JURY CHARGE

1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. This
3 burden rests with the State regardless of whether
4 the State relies on direct evidence, circumstantial
5 evidence, or some combination of the two.

6 After weighing -- you should weigh all
7 of the evidence in this case. After weighing all
8 of the evidence, if you are not convinced of the
9 guilt of the defendant beyond a reasonable doubt,
10 you must find the defendant not guilty.

11 Conversely, if you are convinced of the
12 guilt of the defendant beyond a reasonable doubt,
13 then you must find them guilty.

14 I instruct you that the fact that the
15 defendants were arrested, charged, and indicted is
16 not evidence in this case, and it cannot be
17 considered by you as evidence of guilt in this
18 case; nor does it create a presumption or inference
19 of guilty.

20 This documentation, ladies and
21 gentlemen, are simply the formal written
22 instruments which contain the charge or charges
23 made against the defendant. It simply serves as
24 the formal documentation by which this case is
25 processed or brought into the Court.

JURY CHARGE

1 The defendants have pled not guilty to
2 the indictments and that plea casts the burden on
3 the State to prove the defendants guilty, because a
4 person charged with committing a criminal offense
5 in South Carolina is never required to prove
6 himself innocent.

7 I instruct you, Mr. Foreman, ladies and
8 gentlemen, that it is a cardinal and important rule
9 of the law of evidence that the defendants in a
10 criminal trial, no matter what the seriousness of
11 the charge or charges made against them may be,
12 will always be presumed to be innocent of the crime
13 for which they are indicted unless their guilt has
14 been proven by evidence satisfying of that guilt
15 beyond a reasonable doubt.

16 This presumption of innocence does not
17 cease when you retire to deliberate, but it
18 accompanies each defendant from the time of his
19 arraignment throughout the trial until you reach a
20 verdict in this case.

21 Our Supreme Court has said the
22 presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the
24 defendant, and it remains with him and assigns him
25 to that class, the innocence, until that

JURY CHARGE

1 presumptive robe of righteousness has been stripped
2 of his person by evidence satisfying you of that
3 guilt beyond a reasonable doubt.

4 The presumption of innocence is not
5 mere legal theory. It is not just a legal phrase.
6 It is a substantial right to which every defendant
7 is entitled unless you, the jury, are satisfied
8 from the evidence of his guilt beyond a reasonable
9 doubt.

10 The State has the burden of proving the
11 defendants guilty beyond a reasonable doubt. Some
12 of you may have served as jurors in civil cases
13 where you were told that it is only necessary to
14 prove that a fact is more likely true than not
15 true, such as by the greater weight, or
16 preponderance of the evidence.

17 In criminal cases, the State's proof
18 must be more powerful than that. It must be beyond
19 a reasonable doubt. Proof beyond a reasonable
20 doubt is proof that leaves you firmly convinced of
21 the defendant's guilt. There are very few things
22 in this world we know with absolute certainty, and
23 in criminal cases the law does not require proof
24 that overcomes every possible doubt.

25 If, based on your consideration of the

JURY CHARGE

1 evidence, you are firmly convinced that the
2 defendant is guilty of the crime charged, you must
3 find the defendant guilty. If, on the other hand,
4 you think there is a real possibility that the
5 defendant is not guilty, you must give him the
6 benefit of that doubt and find him not guilty.

7 I instruct you and emphasize that the
8 fact that the Defendants Kenneth Campbell, Junior,
9 Drake Edward Campbell, and Sherrod Palmer did not
10 testify is not a factor to be considered by you in
11 any manner whatsoever in your deliberations of this
12 case. It must not be considered by you in any
13 manner whatsoever. A defendant has the
14 constitutional right to remain silent and the
15 assertion of this right must not be considered by
16 you in your deliberations.

17 I repeat, under your oath, you are to
18 draw no conclusion whatsoever from the fact that
19 these defendants in this case did not testify. The
20 fact that these defendants did not testify cannot
21 be discussed in any manner whatsoever in the jury
22 room.

23 The burden of proof as I have stated to
24 you is on the State. The defendants are not
25 required to prove their innocence. The burden of

JURY CHARGE

1 proof remains on the State to prove guilt beyond a
2 reasonable doubt.

3 Each defendant is charged with murder.
4 The State must prove beyond a reasonable doubt that
5 the defendant killed another person with malice
6 aforethought. Malice is hatred, ill will, or
7 hostility toward another person. It is the
8 intentional doing of a wrongful act without just
9 cause or excuse and with an intent to inflict an
10 injury or under circumstances that the law will
11 infer an evil intent.

12 Malice aforethought doesn't require
13 that malice exists for any particular time before
14 the act is committed, but malice must exist in the
15 mind of the defendant just before and at the time
16 the act is committed; therefore, there must be a
17 combination of the previous evil intent and the
18 act.

19 Malice aforethought may be express or
20 inferred. These terms, express and inferred, do
21 not mean different kinds of malice, but merely the
22 manner in which malice may be shown to exist. That
23 is either by direct evidence or by inference from
24 the facts and circumstances which are proven.

25 Express malice is shown when a person

JURY CHARGE

1 speaks words which express hatred or ill will for
2 another. Or when the person prepared beforehand to
3 do the act which was later accomplished. For
4 example, lying in wait for a person or any other
5 acts of preparation going to show that the deed was
6 within the defendant's mind would be express
7 malice.

8 Malice may be inferred from conduct
9 showing a total disregard for human life. Inferred
10 malice may also arise when the deed is done with a
11 deadly weapon.

12 A deadly weapon is any article,
13 instrument, or substance which is likely to cause
14 death or great bodily harm. Whether an instrument
15 has been used as a deadly weapon depends on the
16 facts and circumstances of each case.

17 The following are examples of
18 instruments which may be deadly weapons: A pistol,
19 a shotgun, a rifle, a dirk, a dagger, a knife, a
20 slingshot, metal knuckles, a razor, gasoline, a
21 fire bomb or Molotov cocktail and lighter fluid. A
22 gun may be a deadly weapon even if it is not
23 operating.

24 If facts are proven beyond a reasonable
25 doubt sufficient to raise an inference of malice to

JURY CHARGE

1 your satisfaction, this inference would simply be
2 an evidentiary fact to be taken into consideration
3 by you along with all the other evidence in the
4 case, and you may give it the weight, value, and
5 effect you decide it should receive.

6 I instruct you that if one
7 intentionally kills another during the commission
8 of a felony, the inference of malice may arise. If
9 facts are proven beyond a reasonable doubt
10 sufficient to raise an inference of malice to your
11 satisfaction, this inference would simply be an
12 evidentiary fact to be taken into consideration by
13 you, along with all the other evidence in this
14 case, and you may give it the weight, value, and
15 effect you decide it should receive.

16 The defendants are charged with
17 attempted murder. In order to prove this crime,
18 the State must prove the defendants attempted to
19 kill another person with malice aforethought,
20 either express or implied.

21 Again, as I have instructed, malice is
22 hatred, ill will, or hostility towards another
23 person. It is the intentional doing of a wrongful
24 act without just cause or excuse, and with an
25 intent to inflict an injury, or under circumstances

JURY CHARGE

1 that the law will infer an evil intent.

2 Malice aforethought doesn't require
3 that it exists from any particular time before the
4 act is committed, but malice must exist in the mind
5 of the defendant just before and at the time the
6 act is committed; therefore, there must be a
7 combination of the previous evil intent and the
8 act.

9 Malice aforethought may be express or
10 inferred. These terms, express and inferred, do
11 not mean different kinds of malice, but merely the
12 manner in which it may be shown to exist. That is
13 either by direct evidence or by inference from the
14 facts and circumstances which are proven.

15 Express malice is shown when a person
16 speaks words which express hatred or ill will for
17 another or the person prepared beforehand to do the
18 act that was later accomplished.

19 For example, lying in wait for a
20 person, or any other act of premeditation going to
21 show that the deed was within the defendant's mind
22 would be express malice.

23 Malice may be inferred from conduct
24 showing a total disregard for human life. Inferred
25 malice may also arise when the deed is done with a

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1 deadly weapon.

2 A deadly weapon is any article,
3 instrument, or substance which is likely to cause
4 death or great bodily harm. Whether an instrument
5 has been used as a deadly weapon depends on the
6 facts and circumstances of each case.

7 The following are examples of
8 instruments which may be a deadly weapon: A
9 pistol, a shotgun, a rifle, dirk, dagger, a knife,
10 a slingshot, metal knuckles, a razor, gasoline, a
11 fire bomb or a Molotov cocktail, and lighter fluid.
12 A gun may be a deadly weapon even if it's not
13 operating.

14 If facts are proven beyond a reasonable
15 doubt sufficient to raise an inference of malice to
16 your satisfaction, this inference would simply be
17 an evidentiary fact to be considered by you, the
18 jury, along with the other evidence in the case,
19 and you may give it the weight, value, and effect
20 you decide it should receive.

21 Intent means intending the result which
22 actually occurs, not accidentally or involuntarily.
23 Intent may be shown by acts and conduct of the
24 defendant and other circumstances from which you
25 may naturally and reasonably infer intent.

JURY CHARGE

1 Evidence of the character of the act, the character
2 of the instrument used, the manner in which it was
3 used, the purpose to be accomplished, and the
4 resulting wound or injuries may be considered in
5 determining the intent with which the act was
6 committed.

7 Intent may also be inferred when it is
8 demonstrated that the defendant voluntarily and
9 willfully commits an act, the natural tendency of
10 which is to destroy another's life. An attempt is
11 an effort to accomplish a crime which does not
12 succeed. An attempt includes a specific intent to
13 do a particular criminal act along with an act
14 falling short of the act intended.

15 The State must show more than mere
16 preparation and intent. There must be some overt
17 act committed in the effort to commit the crime.

18 Intent means intending the result which
19 actually occurred, not accidentally or voluntarily.
20 Intent may be shown by acts and conduct of the
21 defendant and other circumstances from which you
22 may naturally and reasonably infer intent.

23 Criminal intent, ladies and gentlemen,
24 is a mental state. A consciousness of wrongdoing.
25 It is up to you, the jury, to determine what the

JURY CHARGE

1 defendant intended to do based on the circumstances
2 shown to have existed.

3 To find the defendant or defendants
4 guilty of attempted murder, the State must prove
5 beyond a reasonable doubt that the defendants had
6 an intent to kill the victim.

7 The defendants are charged with
8 first-degree burglary. The State must first prove
9 beyond a reasonable doubt that the defendants
10 entered a dwelling without consent.

11 A dwelling is any building or portion
12 of a building in which a person ordinarily sleeps.
13 A building constructed as a dwelling but has never
14 been occupied cannot be considered a dwelling for
15 purposes of a burglary, but a building is a
16 dwelling even if the residents are temporarily
17 absent from the building.

18 In order to prove that the defendants
19 entered the dwelling, the State does not have to
20 show that the defendant's entire body entered the
21 dwelling. The smallest entry is sufficient. It
22 may be any part of the body such as a hand or foot,
23 or even an instrument such as a hook or other
24 instrument. In addition, the State does not have
25 to prove that force was used to gain entry.

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1 If a person enters a building by using
2 deception, artifice, trick, or misrepresentation to
3 get consent to enter, this is an entry without
4 consent.

5 Next, the State must prove beyond a
6 reasonable doubt that the defendant intended to
7 commit a crime, either a felony or a misdemeanor at
8 the time of the entry. The mere entry into a
9 dwelling without consent is not burglary. If the
10 intent to commit a crime is formed after the entry,
11 it is not burglary. On the other hand, if the
12 defendant intended to commit a crime at the time of
13 the entry, it is a burglary even if the intent was
14 abandoned after the entry. It does not matter that
15 the intended crime was not completed.

16 Intent may be shown by acts and conduct
17 of the defendant and other circumstances from which
18 you may naturally and reasonably infer intent.

19 Finally, the State must prove beyond a
20 reasonable doubt one or more of the following
21 circumstances. When entering, while in the
22 dwelling, or when fleeing, the defendant or an
23 accomplice was armed with a deadly weapon or
24 explosive.

25 A deadly weapon is any article,

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1 instrument, or substance which is likely to cause
2 death or great bodily harm.

3 Whether an instrument has been used as
4 a deadly weapon depends on the facts and
5 circumstances of each case. The following are
6 examples of instruments which may be deadly
7 weapons: A pistol, a shotgun, a rifle, a dirk,
8 dagger, a knife, a slingshot, metal knuckles, a
9 razor, gasoline, a firebomb or Molotov cocktail,
10 and lighter fluid. A gun may be a deadly weapon
11 even though it's not operating.

12 These are simply evidentiary facts to
13 be taken into consideration by you, along with the
14 other evidence in the case, and to be given the
15 weight, value, and effect you decide it should
16 receive; or, when entering, while in the dwelling,
17 or when fleeing, the defendant or an accomplice
18 caused physical injury to anyone not participating
19 in the crime; or, when entering, while in the
20 dwelling, or when fleeing, the defendant or an
21 accomplice used or threatened to use a dangerous
22 object; or, when entering, while in the dwelling,
23 or when fleeing, the defendant or an accomplice
24 displayed what was or appeared to be a knife,
25 pistol, revolver, rifle, shotgun, machine gun, or

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1 other firearm; or, the defendant entered or
2 remained in the dwelling in the nighttime.

3 Nighttime is the period between sunset
4 and sunrise during which there is not enough
5 daylight to recognize a person's face except by
6 artificial light or moonlight.

7 Why don't you-all stand up for a
8 second? You have just eaten lunch. Get the
9 circulation moving a little bit. It's a lot of
10 talking.

11 (Brief pause)

12 THE COURT: The defendants are charged
13 with kidnapping. The State must prove beyond a
14 reasonable doubt that the defendants knowingly and
15 unlawfully seized, confined, inveigled, decoyed,
16 kidnapped, abducted or carried away another person
17 without authority of law.

18 To do a thing unlawfully is to do it
19 willfully against the law. Knowingly means with
20 knowledge, consciously, not accidentally. Seize
21 means to take hold of suddenly or forcibly.
22 Confine means to limit, restrict, or enclose within
23 bounds, imprison or shut or keep in. Inveigle
24 means to lure, entice, or lead astray by false
25 representation, promises or other deceitful means.

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1 Decoy means to lure by or if by decoy. A decoy is
2 something to entice a person into a trap. Kidnap
3 is to remove a person against his will by unlawful
4 force or by fraud. Abduct means to carry off
5 secretly or by force for an illegal purpose. Carry
6 away means to remove.

7 The State does not have to prove that
8 the defendant did all of these things. Instead, if
9 you find beyond a reasonable doubt that the
10 defendants did any of these things, you may find
11 the defendants guilty of kidnapping.

12 Something done without authority of law
13 is something which the law does not sanction,
14 permit, allow, condone or provide justification
15 for. The kidnapping does not have to be for any
16 personal or monetary gain or any illegal purpose,
17 but may be for any reason whatsoever.

18 The defendants are charged with armed
19 robbery. In order to prove this offense, the State
20 must prove beyond a reasonable doubt that the
21 defendants took personal property from the person
22 or presence of another person.

23 Property is in the presence of a person
24 if it is within the person's reach, inspection,
25 observation, or control so that the person could,

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1 if not overcome with violence or prevented by fear,
2 keep possession of the property.

3 The State must prove beyond a
4 reasonable doubt that the defendants carried the
5 property away intending to permanently deprive the
6 owner, or owners, of the property and to keep the
7 property for the defendant's own use. The
8 slightest removal of the property for the -- or the
9 complete possession of the property even for an
10 instance by the defendant is sufficient to show a
11 taking and carrying away of the property.

12 The taking and carrying away of the
13 property must have been done with violence or by
14 putting the owner in fear of violence.

15 Finally, the State must prove beyond a
16 reasonable doubt that the defendants were armed
17 with a deadly weapon during the robbery.

18 A deadly weapon is any article,
19 instrument, or substance which is likely to cause
20 death or great bodily harm. Whether an instrument
21 has been used as a deadly weapon depends on the
22 facts and circumstances of each case.

23 The following are examples of
24 instruments which may be deadly weapons: A pistol,
25 a shotgun, a rifle, a dirk, a dagger, a knife, a

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1 slingshot, metal knuckles, razor, gasoline,
2 firebomb or Molotov cocktail, and lighter fluid. A
3 gun may be a deadly weapon even if it's not
4 operating.

5 If facts are proven beyond a reasonable
6 doubt, this inference would simply be an
7 evidentiary fact to be considered by you, the jury,
8 along with the other evidence in this case, and you
9 may give it the weight, value, and effect you
10 decide it should receive.

11 The defendants are charged with
12 possession of a weapon during the commission of a
13 violent crime. The State must prove beyond a
14 reasonable doubt that the defendants were in the
15 possession of a firearm or visibly displayed what
16 appeared to be a firearm during the commission of a
17 violent crime.

18 A firearm means any machine gun,
19 automatic rifle, revolver, pistol, or any weapon
20 which will, is designed to, or may be readily
21 converted to expel a projectile.

22 In order to find the defendants guilty
23 of possession of a weapon during the commission of
24 a violent crime, you must find the defendant guilty
25 of either committing a violent crime or attempting

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1 to commit a violent crime.

2 I instruct you that South Carolina Code
3 Section 16-1-60 defines murder, attempted murder,
4 armed robbery, kidnapping, and burglary first as
5 violent crimes. The State must also prove beyond a
6 reasonable doubt that the weapon further advanced
7 or helped in the commission of the crime.

8 An issue in this case, ladies and
9 gentlemen, is the identification of the defendants
10 as the persons who committed the crimes charged.
11 The State has the burden of proving identity beyond
12 a reasonable doubt. You must be satisfied beyond a
13 reasonable doubt of the accuracy of the
14 identification of the defendants before you may
15 convict the defendants.

16 Identification testimony is an
17 expression or believe -- expression of belief or
18 impression by a witness. You must determine the
19 accuracy of the identification of the defendants.
20 You must consider the believability of each
21 identification witness in the same way as any other
22 witnesses.

23 You may consider whether the witness
24 had an adequate opportunity to observe the offender
25 at the time of the offense.

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1 This will be affected by things like
2 how long or short a time was available, how far or
3 close the witness was, the lighting conditions, and
4 whether the witness had the chance to see or know
5 the person in the past.

6 Once again, I instruct you the burden
7 of proof on the State extends to every element of
8 the crimes charged. And this specifically includes
9 the burden of proving beyond a reasonable doubt the
10 identity of the defendant as the person or persons
11 who committed the crime.

12 If after examining the testimony you
13 have reasonable doubt as to the accuracy of the
14 identifications, you must find the defendants not
15 guilty.

16 If a crime is committed by two or more
17 people acting together in committing a crime, the
18 act of one is the act of all. A person who joins
19 with another to commit an unlawful act is
20 criminally responsible for everything done by the
21 other person which happens as a probable or natural
22 consequence of the acts done in carrying out the
23 common plan and purpose.

24 For example, two people can be guilty
25 of killing another person when only one of the two

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1 had a gun; there was only one bullet and only one
2 of the two fired the shot that caused the death.
3 If two or more people are acting together -- are
4 acting together, assisting each other in committing
5 the offense, the act of one is the act of all. As
6 it is sometimes said, the hand of one is the hand
7 of all.

8 Prior knowledge that a crime is going
9 to be committed without more is not sufficient to
10 make a person guilty of that crime. Mere knowledge
11 that another person is going to commit a crime,
12 even if the defendant is present when the crime is
13 committed, is not sufficient to convict the
14 defendant as a principal.

15 Guilt as a principal is shown by actual
16 or constructive presence at the scene as a result
17 of prior arrangement; therefore, a finding of a
18 prior arranged plan or common scheme is necessary
19 for a finding of guilt as a principal.

20 The State must prove beyond a
21 reasonable doubt by competent evidence the theory
22 of the hand of one is the hand of all. A principal
23 in a crime is one who either actually committed the
24 crime or who was present aiding, abetting or
25 assisting in committing the crime. When a person

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1 does an act in the presence of and with the
2 assistance of another, the act is done by both.

3 Where two or more acting with a common
4 plan or intent are present at the commission of a
5 crime, it does not matter who actually commits the
6 crime. All are guilty; the hand of one is the hand
7 of all.

8 Present at the commission of a crime
9 means to be sufficiently near to aid and bet and
10 assist in the commission of the crime; however,
11 mere presence at the scene of a crime is not
12 sufficient to convict one as a principal on the
13 theory of aiding and abetting.

14 Intent is also a necessary element, or
15 there must have been a common design or intent to
16 commit the crime, and the crime must have been
17 committed pursuant thereto with the person aiding
18 and abetting by some overt act.

19 Intent means intending the result which
20 actually occurs, not accidentally or involuntarily.
21 Intent may be shown by acts and conduct of the
22 defendant and other circumstances from which you
23 may naturally and reasonably infer intent.

24 The State must prove these elements
25 beyond a reasonable doubt. Mere presence at the

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1 scene is not sufficient to prove someone guilty of
2 a crime. A defendant's presence where a crime is
3 committed or mere associate with the person who
4 commits the crime does not make a defendant an
5 accomplice or an aider and abetter of the person
6 committing the crime. The burden of proof is on
7 the State to prove every element of the crime
8 charged.

9 If you find, after reviewing all the
10 evidence, that the State has not proven that the
11 defendants were -- that the defendant was only
12 present at the scene of a crime and that they have
13 not proven beyond a reasonable doubt any other
14 participation in the crime, then you must find the
15 defendant not guilty.

16 The law is that proof of at the scene
17 of the crime is not sufficient to find someone
18 guilty.

19 Ladies and gentlemen, there are
20 multiple indictments in this case and each allege
21 several different offenses against each defendant.
22 And those offenses are as follows: Murder,
23 attempted murder, burglary first, kidnapping, armed
24 robbery, and possession of a weapon during the
25 commission of a violent crime.

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1 Each indictment charges a separate and
2 distinct offense. You must decide each indictment
3 separately on the evidence and the law applicable
4 to it uninfluenced by your decision as to any other
5 indictment. The defendant may be convicted or
6 acquitted on any or all of the offenses charged,
7 and you will be asked to write a separate verdict
8 of guilty or not guilty for each indictment.

9 There are also four defendants in this
10 case, each of whom is charged with murder,
11 attempted murder, burglary first, kidnapping, armed
12 robbery, and possession of a weapon during the
13 commission of a violent crime. The case of each
14 defendant and the evidence and the law concerning
15 that defendant should be considered separately and
16 individually.

17 Your verdict does not have to be the
18 same for all defendants. The fact that you may
19 find one defendant guilty or not guilty should not
20 control your verdict as to the other defendants.
21 Where more than one person is charged with a crime,
22 if the evidence warrants it, you may convict one
23 and acquit the other, or you may acquit all, or you
24 may -- or you may acquit all or you may convict
25 all.

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1 It will depend upon your view of the
2 testimony and evidence. You must take each
3 defendant and consider the evidence as to that
4 defendant and my instructions to you on the law.
5 You will then write a separate verdict of guilty or
6 not guilty for each defendant.

7 Ladies and gentlemen, you have heard
8 testimony or references made concerning the
9 potential penalty a person can serve for the crimes
10 alleged in the indictments. In determining whether
11 the State has met their burden of proof regarding
12 each defendant, you cannot consider any potential
13 or possible penalty for any particular crime.

14 The potential punishment for a crime is
15 a matter of law for the Court to determine and
16 should never be considered by you in any manner
17 whatsoever in arriving at a fair and impartial
18 verdict in this case.

19 There are several potential verdicts,
20 and because of the sheer number of them and because
21 they all say the exact same thing with the
22 exception of the difference of each defendant's
23 name, I will only go over one set of them with you.
24 Because, again, they each -- I will try to do it
25 collectively because they all say the exact same

JURY CHARGE

1 thing.

2 I emphasize, ladies and gentlemen, that
3 there is no significance whatsoever to the order in
4 which I state the potential verdicts. It is simply
5 that one must be stated first. And you don't have
6 to try to write this down; the verdict forms will
7 go into the jury room with you and you will have
8 that available to you.

9 And as to each defendant, that being
10 Jacob Malachi Mouzon, Kenneth Campbell, Junior,
11 Drake Edward Campbell, and Sherrod Deon Palmer, as
12 to the offense for murder, the options are guilty
13 of murder or not guilty.

14 And as to each defendant regarding the
15 offenses of attempted murder, the options are as
16 follows: Guilty of attempted murder or not guilty.

17 As to the indictment for burglary in
18 the first degree, the options are each defendant
19 are guilty of burglary in the first degree or not
20 guilty.

21 And as to kidnapping, guilty of
22 kidnapping or not guilty.

23 As to armed robbery, guilty of armed
24 robbery or not guilty.

25 And possession of a weapon during the

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1 commission of a violent crime, guilty of possession
2 of a weapon during the commission of a violent
3 crime or not guilty.

4 Again, each verdict form reads exactly
5 the same for each defendant for each offense and it
6 is prefaced by, we, the jury, by unanimous consent
7 find the defendant. And, again, there is a
8 different, separate verdict form for each offense
9 that is attached to each indictment for each
10 defendant.

11 Ladies and gentlemen, your verdict must
12 be a unanimous one which means that all 12 of you
13 must agree in order to reach a verdict in this
14 case. And, again, there is no significance
15 whatsoever to the order in which I published the
16 potential verdicts to you.

17 Ladies and gentlemen, I'm going to ask
18 that you return to your jury room -- actually, I
19 need to do something, I apologize.

20 Mr. Foreman, it is your responsibility
21 to fill out the verdict form. It is also your
22 responsibility to write out any questions the jury
23 may have during deliberations. You should write
24 those questions out in long hand, sign and date the
25 note, give the note to the bailiff, and they will

JURY CHARGE

1 then bring it to the Court's attention.

2 Ladies and gentlemen, I tell you in
3 advance, if you have any questions there will be a
4 delay in our response because there is a procedure
5 we must follow in answering your questions. So
6 know if you have a question there will be a delay
7 because we are following that process.

8 Also, Mr. Foreman, no notes that you
9 send to the Court should ever indicate any
10 numerical breakdown of the jury. Jury
11 deliberations and their processes are secret and
12 should not be disclosed outside of the jury room.

13 Once the jury has reached a unanimous
14 verdict, it is your responsibility to fill out the
15 verdict form. I will have them bring a pen to you
16 so you can do that in pen, not pencil. Each of
17 those will need to be filled out, signed and dated.

18 And once you have reached a unanimous
19 verdict on each of the indictments, knock on the
20 door and advise the bailiff that the jury has
21 reached a unanimous verdict.

22 Ladies and gentlemen, I'm going that
23 you -- again, your verdict must be unanimous, which
24 means all 12 of you must agree in order to reach a
25 verdict on each of these indictments. I will ask

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1 that you return to your jury room, but do not begin
2 your deliberations.

3 I have some brief matters of law to
4 take up with counsel that may require further
5 instruction or clarification of an instruction;
6 however, if there is no further instruction, at
7 that time we will excuse the alternate, we will
8 bring in the evidence, the indictments, the verdict
9 forms, as well as your note pads, and at that time
10 you will be allowed to begin your deliberations.

11 If you would leave your notepads in
12 your seats, and do not yet begin your
13 deliberations.

14 (Jury out, 2:22 p.m.)

15 THE COURT: You may be seated.

16 Any exception from the State?

17 MR. ALFARO: No, Your Honor.

18 THE COURT: From the defense?

19 Mr. Thrower?

20 MR. THROWER: No, Your Honor.

21 THE COURT: Mr. Smiley?

22 MR. SMILEY: No, ma'am.

23 THE COURT: Mr. Smaldone?

24 MR. SMALDONE: No, Your Honor.

25 THE COURT: Mr. Archer?

1 MR. ARCHER: No, ma'am.

2 THE COURT: Can you make sure -- my
3 court reporter has checked and she says the
4 evidence is in order, but if you could double-check
5 with her as the bailiffs begin to load that up. We
6 have a clean laptop in there for them to play
7 evidence.

8 I'm giving the verdict forms to my
9 clerk to give to the bailiff, and if you-all can go
10 ahead and get their notebooks and bring out the
11 foreperson to me, please.

12 Not the foreperson, the alternate so I
13 can excuse him.

14 (Whereupon, Alternate Juror 220 was
15 excused.)

16 (2:20 p.m. evidence went back.)

17 THE COURT: The record should reflect
18 that the jury began its deliberations at 2:21 p.m.)

19 (A recess transpired.)

20 THE COURT: We have a note from the
21 jury.

22 (Court's Exhibit 5.)

23 THE COURT: Reads as follows: Would it
24 be possible to either -- to either get a print of
25 the charge of law specifically related to burglary,

1 first degree, and hand of one, or have the judge
2 reread the charge related to those two items?

3 And in response I will reinstruct them
4 on burglary in the first degree and hand of one.

5 Any exception from the State?

6 MR. ALFARO: No, Your Honor.

7 THE COURT: From the defense?

8 Mr. Thrower?

9 MR. THROWER: No, Your Honor.

10 THE COURT: Mr. Smiley.

11 MR. SMILEY: No, ma'am.

12 THE COURT: Mr. Smaldone.

13 MR. SMALDONE: No, Your Honor.

14 THE COURT: Mr. Archer?

15 MR. ARCHER: No, Your Honor.

16 (Jury in, 3:35 p.m.)

17 THE COURT: You may be seated.

18 Ladies and gentlemen, if you would bear
19 with me just a moment, I apologize.

20 Ladies and gentlemen, I received your
21 note regarding a written -- request for a written
22 copy of the Court's instructions. Under our case
23 law, it does not make any provision for a jury to
24 receive a written copy of the instructions;
25 however, I can comply with your other portion of

1 your request, which is to have the instructions for
2 burglary, first degree, and hand of one
3 reinstructed.

4 And that is as follows: The defendants
5 are charged with first-degree burglary. The State
6 must first prove beyond a reasonable doubt that the
7 defendants entered a dwelling without consent. A
8 dwelling is any building or a portion of a building
9 in which a person ordinarily sleeps.

10 A building constructed as a dwelling
11 but that's never been occupied cannot be considered
12 a dwelling for purposes of burglary, but a building
13 is a dwelling even if the residents are temporarily
14 absent from the building.

15 In order to prove that the defendants
16 entered the building, the State does not have to
17 show that the defendant's entire body entered the
18 dwelling. The smallest entry is sufficient. It
19 may be any part of the body such as a hand or foot,
20 or an instrument such as a hook or other
21 instrument.

22 In addition, the State does not have to
23 prove that force was used to gain entry. If a
24 person enters a building by using deception,
25 artifice, trick or misrepresentation to get consent

1 to enter, this is an entry without consent.

2 Next, the State must prove beyond a
3 reasonable doubt that the defendant intended to
4 commit a crime, either a felony or a misdemeanor,
5 at the time of the entry. The mere entry into a
6 dwelling without consent is not burglary. If the
7 intent to commit a crime is formed after the entry,
8 it is not burglary.

9 On the other hand, if the defendant
10 intended to commit a crime at the time of the
11 entry, it is a burglary even if the intent was
12 abandoned after the entry. It does not matter that
13 the intended crime was not completed.

14 Intent may be shown by acts and conduct
15 of the defendants and other circumstances from
16 which you may naturally and reasonably infer
17 intent. These are simply evidentiary facts to be
18 taken into consideration by you along with the
19 other evidence in the case and given the weight,
20 value, and affect you decide it should receive.

21 Finally, the State must prove beyond a
22 reasonable doubt one or more of the following
23 circumstances. When entering, while in the
24 dwelling, or when fleeing, the defendant or an
25 accomplice was armed with a deadly weapon or

1 explosive.

2 A deadly weapon is any article,
3 instrument, or substance which is likely to cause
4 death or great bodily harm.

5 Whether an instrument has been used as
6 a deadly weapon depends on the facts and the
7 circumstances of each case.

8 The following are examples of
9 instruments which may be a deadly weapon: A
10 pistol, a shotgun, rifle, dirk, dagger, a knife, a
11 slingshot, metal knuckles, a razor, gasoline, fire
12 bomb or Molotov cocktail, and lighter fluid. A gun
13 may be a deadly weapon even if it is not operating.

14 Again, these are simply evidentiary
15 facts to be taken into consideration by you the
16 jury along with the other evidence in the case and
17 to be given the weight, value, and affect you
18 decide it should receive.

19 Or when entering, while in the dwelling
20 or when fleeing, the defendant or an accomplice
21 caused physical injury to anyone not participating
22 in the crime; or when entering, while in the
23 dwelling or when fleeing, the defendant or an
24 accomplice used or threatened to use a dangerous
25 object; or while entering, while in the dwelling or

1 when fleeing, the defendant or an accomplice
2 displayed what was or appeared to be a knife,
3 pistol, revolver, rifle, shotgun, machine gun, or
4 other firearm; or the defendant entered or remained
5 in the dwelling in the nighttime.

6 Nighttime is the period between sunset
7 and sunrise during which there is not enough
8 daylight to recognize the person's face except by
9 artificial light or moonlight.

10 If a crime is committed by two or more
11 people acting together in committing a crime, the
12 act of one is the act of all. A person who joins
13 with another to commit an unlawful act is
14 criminally responsible for everything done by the
15 other person which happens as a probable or natural
16 consequence of the acts done in carrying out the
17 common plan and purpose.

18 For example, two people can be guilty
19 of killing another person when only one of the two
20 had a gun; there was only one bullet, and only one
21 of the two fired the shot that caused the death.

22 If two or more people are together,
23 acting together, assisting each other in committing
24 the offense, the act of one is the act of all. Or
25 as it is sometimes said, the hand of one is the

1 hand of all.

2 Prior knowledge that a crime is going
3 to be committed without more is not sufficient to
4 make a person guilty of that crime. Mere knowledge
5 that another person is going to commit a crime,
6 even if the defendant is present when the crime is
7 committed, is not sufficient to convict the
8 defendant as a principal.

9 Guilt as a principal is shown by actual
10 or constructive presence at the scene as a result
11 of prior arrangement; therefore, a finding of a
12 prior arranged plan or common scheme is necessary
13 for a finding of guilt as a principal.

14 The State must prove beyond a
15 reasonable doubt by competent evidence the theory
16 that the hand of one is the hand of all.

17 A principal in a crime is one who
18 either actually commits the crime or who was
19 present aiding, abetting, or assisting in
20 committing a crime. When a person does an act in
21 the presence of and with the assistance of another,
22 the act is done by both.

23 Whether two or more acting with a
24 common plan or intent are present at the commission
25 of the crime -- where two or more acting with a

1 common plan or intent are present at the commission
2 of crime, it does not matter who actually commits
3 the crime, all are guilty; the hand of one is the
4 hand of all.

5 Present at the commission of a crime
6 means to be sufficiently near to aid and abet and
7 assist in the commission of the crime; however,
8 mere presence at the scene of a crime is not
9 sufficient to convict one as a principal on the
10 theory of aiding and abetting.

11 Intent is also a necessary element
12 where there must have been a common design or
13 intent to commit the crime and the crime must have
14 been committed pursuant thereto with the person
15 aiding and abetting by some overt act.

16 Intent means intending the result that
17 actually occurs, not accidentally or involuntarily.
18 Intent may be shown by acts and conduct of the
19 defendant and other circumstances from which you
20 may naturally and reasonably infer intent. The
21 State must prove these elements beyond a reasonable
22 doubt.

23 Mere presence at the scene is not
24 sufficient to prove someone guilty of a crime. A
25 defendant's presence where a crime is being

1 committed or mere association with the person who
2 commits the crime does not make a defendant and
3 accomplice or an aider and abetter of the person
4 committing the crime.

5 The burden is on the State to prove
6 every element of the crime charged. If you find
7 after reviewing all of the evidence that the State
8 has proven that the defendant was only present at
9 the scene of a crime, and they have not proven
10 beyond a reasonable doubt any other participation
11 in the crime, then you must find the defendant not
12 guilty. The law is that the proof of at the scene
13 of the crime is not sufficient to find someone
14 guilty.

15 If you need anything further, I will
16 accommodate your request immediately.

17 (Jury out, 3:54 p.m.)

18 THE COURT: You may be seated. Any
19 exception from the State?

20 MR. ALFARO: No, Your Honor.

21 THE COURT: Any exception from the
22 defense?

23 MR. THROWER: No, Your Honor.

24 MR. SMILEY: No, Your Honor.

25 MR. SMALDONE: No, Your Honor.

VERDICT

1 MR. ARCHER: No, Your Honor.

2 THE COURT: We'll be at ease.

3 (Recess 3:55 p.m. - 5:02 p.m.)

4 THE COURT: Jury has reached a verdict.

5 Anything before we proceed?

6 MR. ALFARO: No, Your Honor.

7 MR. THROWER: No, Your Honor.

8 MR. SMILEY: No, Your Honor.

9 MR. SMALDONE: No, Your Honor.

10 MR. ARCHER: No, Your Honor.

11 THE COURT: Please bring in the jury.

12 (Jury in, 5:02 p.m.)

13 THE COURT: You may be seated.

14 Mr. Foreman, has the jury reached a
15 verdict?

16 THE FOREMAN: We have.

17 THE COURT: Hand the verdict forms to
18 the bailiff, please.

19 THE FOREMAN: Yes, ma'am.

20 THE COURT: Mr. Mouzon, if you would
21 stand for publication of the verdicts.

22 State of South Carolina versus Jacob
23 Malachi Mouzon. As to the Indictment

24 2016-GS-08791: We, the jury, by unanimous consent,
25 find the defendant guilty of armed robbery.

VERDICT

1 As to Indictment 792: We, the jury, by
2 unanimous consent, find the defendant guilty of
3 burglary first.

4 As to Indictment 2017-GS-08793: We,
5 the jury, by unanimous consent, find the defendant
6 guilty of murder.

7 As to indictment 794: We, the jury, by
8 unanimous consent, find the defendant guilty of
9 armed robbery.

10 As to Indictment 795: We, the jury, by
11 unanimous consent, find the defendant guilty of
12 attempted murder.

13 As to Indictment 796: We, the jury, by
14 unanimous consent, find the defendant guilty of
15 kidnapping.

16 As to Indictment 797: We, the jury by
17 unanimous consent, find the defendant guilty of
18 kidnapping.

19 And Indictment 798: We, the jury, by
20 unanimous consent, find the defendant guilty of
21 possession of a weapon during the commission of a
22 violent crime.

23 Signed by the Foreperson and each dated
24 August 31, 2018.

25 Ladies and gentlemen, if this be your

VERDICT

1 verdicts, please indicate by raising your right
2 hands.

3 THE JURY: (Raised hands.)

4 THE COURT: Let the record indicate
5 that all 12 have raised their right hands. You may
6 put your right hand down.

7 Is there any request to poll the jury?
8 From the State?

9 MR. ALFARO: None.

10 THE COURT: From the defense?

11 MR. THROWER: No, Your Honor.

12 THE COURT: Sir, you may take your
13 seat.

14 Mr. Palmer, if you would stand for
15 publication of the verdicts.

16 As to Indictment 2017-GS-08799, the
17 State v Sherrod Deon Palmer: We, the jury, by
18 unanimous consent, find the defendant not guilty of
19 armed robbery.

20 As to Indictment 2017-GS-08-800: Not
21 guilty of armed robbery.

22 As to Indictment 801: Not guilty of
23 attempted murder.

24 As to Indictment 802: Not guilty of
25 burglary in the first degree.

VERDICT

1 As to Indictment 803: Not guilty of
2 murder.

3 As to Indictment 804: Not guilty of
4 kidnapping.

5 As to Indictment 805: Not guilty of
6 kidnapping.

7 As to Indictment 806: Not guilty of
8 possession of a weapon during the commission of a
9 violent crime.

10 Ladies and gentlemen, if this be your
11 verdicts, please indicate by raising your right
12 hands.

13 THE JURY: (Raised hands)

14 THE COURT: Let the record indicate
15 that all 12 raised their right hand.

16 You may put your right hand down.

17 Any request to poll their jury from the
18 State?

19 MR. ALFARO: No, Your Honor.

20 THE COURT: From the defense?

21 MR. SMILEY: No, ma'am.

22 THE COURT: You may take your seats.

23 Mr. Drake Edward Campbell, if you would
24 stand for publication of the verdicts.

25 The State of South Carolina versus

VERDICT

1 Drake Edward Campbell. As to Indictment
2 2017-GS-08784: We, the jury, by unanimous consent,
3 find the defendant not guilty of burglary first
4 degree.

5 As to Indictment 783: Guilty of armed
6 robbery.

7 As to Indictment 785: Not guilty of
8 murder.

9 As to Indictment 786: Guilty of armed
10 robbery.

11 As to Indictment 787: We, the jury, by
12 unanimous consent, find the defendant not guilty of
13 attempted murder.

14 As to Indictment 788: We, the jury, by
15 unanimous consent, find the defendant guilty of
16 kidnapping.

17 As to Indictment 789: We, the jury, by
18 unanimous consent, find the defendant guilty of
19 kidnapping.

20 And as to Indictment 2017-GS-08790:
21 We, the jury, by unanimous consent, find the
22 defendant guilty of possession of a weapon during
23 the commission of a violent crime.

24 Ladies and gentlemen of the jury, if
25 this be your verdict, please indicate by raising

VERDICT

1 your right hands.

2 THE JURY: (Raised hands)

3 THE COURT: Let the record indicate
4 that all 12 raised their right hand.

5 You may put your right hand down.

6 Any request to poll the jury from the
7 State?

8 MR. ALFARO: No, Your Honor.

9 THE COURT: From the defense?

10 MR. SMALDONE: No, Your Honor.

11 THE COURT: You may take your seat.

12 Kenneth Campbell, Junior, please stand
13 for pronouncement of your verdict.

14 State of South Carolina v Kenneth
15 Campbell, Junior; as to Indictment 2018-GS-08765:
16 We, the jury, by unanimous consent, find the
17 defendant guilty of armed robbery.

18 As to Indictment 766: We, the jury, by
19 unanimous consent, find the defendant not guilty of
20 burglary in the first degree.

21 As to Indictment 767: We, the jury, by
22 unanimous consent, find the defendant not guilty of
23 murder.

24 As to Indictment 768: We, the jury, by
25 unanimous consent, find the defendant guilty of

VERDICT

1 armed robbery.

2 As to Indictment 769: We, the jury, by
3 unanimous consent, find the defendant not guilty of
4 attempted murder.

5 As to Indictment 770: We, the jury, by
6 unanimous consent, find the defendant guilty of
7 kidnapping.

8 And as to Indictment 771: We, the
9 jury, by unanimous consent, find the defendant
10 guilty of kidnapping.

11 And as to Indictment 772: We, the
12 jury, by unanimous consent, find the defendant
13 guilty of possession of a weapon during the
14 commission of a violent crime.

15 Ladies and gentlemen, if this be your
16 verdict, please indicate by raising your right
17 hand.

18 THE JURY: (Raised hands)

19 THE COURT: Let the record indicate
20 that they raised their right hand.

21 You can put your right hands down.

22 Is there any request to poll the jury
23 from the State?

24 MR. ALFARO: No, Your Honor.

25 THE COURT: From the defense?

1 MR. ARCHER: No, Your Honor.

2 THE COURT: You may take your seat.

3 Ladies and gentlemen, we thank you for
4 your time and your attention to this case. I hope
5 that you've learned that jury duty is nothing like
6 what you see on television. I hope it's been
7 educational for you and I hope that you have
8 learned how vital your service is to us and to the
9 system.

10 We hold jury trials -- Berkeley County
11 has grown exponentially. Of course Charleston and
12 Berkeley are part of the same Ninth Circuit,
13 different counties, but the same circuit.

14 In Charleston we hold criminal -- three
15 terms of criminal court every week and two terms of
16 civil court every week. Berkeley has grown
17 exponentially and almost caught up because we hold
18 -- I remember a time when we would hold criminal
19 court in Berkeley every other month or once every
20 six months, or hold civil court once every other
21 month or once every six months; but now we are
22 because of growth of the county have almost caught
23 up in terms of its exponential growth.

24 A lot of what circuit judges do
25 requires the service of jurors; although, there are

1 times when we sit as the finder of fact, but we
2 could not do it without your willingness to
3 participate in the system and give of your time to
4 us.

5 So I hope you know how very valuable
6 your service has been. You are welcome to discuss
7 this case if you would like. Sometimes the lawyers
8 will contact you to get feedback so they can have a
9 common sense perspective on how the proceedings
10 went.

11 If you want, you can discuss the case;
12 however, if you don't want to discuss the case and
13 someone should exceed your level of comfort, please
14 let us know so that we can take the appropriate
15 action to protect your privacy.

16 We have your work excuses for you. I
17 think Mr. Marvin probably has and will give them to
18 you on your way out. Your checks, otherwise, will
19 be mailed to you.

20 Is there anyone that would like to
21 remain for sentencing? If so, you can remain
22 seated in the jury box; otherwise, you are excused
23 with the Court's profound thanks.

24 I need sentencing sheets, please.

25 (Jury excused, 5:15 p.m.)

1 THE COURT: Any posttrial motions?

2 MR. THROWER: Motion for a verdict
3 notwithstanding -- or judgment notwithstanding the
4 verdict and, I guess, renew my directed verdict.
5 That would be it.

6 THE COURT: State like to respond?

7 MR. THROWER: I don't think they're --

8 THE COURT: Oh, I had my head down. We
9 will do this over in a second when they come back.
10 I didn't realize they had walked out.

11 (Brief pause)

12 THE COURT: Mr. Thrower.

13 MR. THROWER: I think I was making my
14 motion for judgment not withstanding the verdict on
15 all counts that he was convicted of.

16 THE COURT: Would the State like to
17 respond?

18 MR. ALFARO: Your Honor, the jury had
19 ample opportunity to hear all of the evidence and
20 testimony, but, clearly, by the time they were out
21 put a lot of thought into the verdict. The State
22 would ask that the jury verdict be allowed to
23 stand.

24 THE COURT: Anything further,
25 Mr. Thrower?

1 MR. THROWER: No, ma'am.

2 THE COURT: I would consider the
3 defense's motion as a motion for a new trial and
4 removal of his original motions on directed
5 verdict. Those motions are denied.

6 It does not appear that while the
7 standard is if there is any evidence to support the
8 jury's verdict and there is -- that standard is
9 met; therefore, the motion is denied.

10 Any posttrial motions, Mr. Smiley? You
11 don't have any posttrial motions.

12 Mr. Smaldone, any posttrial motions?

13 MR. SMALDONE: Your Honor, I would just
14 ask for a -- renew my motion for directed verdict
15 and ask for -- ask for a new trial.

16 THE COURT: Would the State like to
17 respond?

18 MR. ALFARO: No, Your Honor. Using the
19 standard that you just used for Mr. Mouzon, we
20 would stand by that as well for Mr. Campbell.

21 THE COURT: Anything further,
22 Mr. Smaldone?

23 MR. SMALDONE: No, Your Honor.

24 THE COURT: There is direct and
25 substantial circumstantial evidence reasonably

1 tending to prove the defendant's guilt; and where
2 there's any evidence to support the verdict, the
3 Court is bound to uphold the verdict and not
4 substitute judgment; therefore, the motion is
5 denied.

6 THE COURT: Any posttrial motions,
7 Mr. Archer?

8 MR. ARCHER: Yes, ma'am, a motion for
9 judgment notwithstanding the verdict, and in the
10 alternative for a new trial.

11 What strikes me is the verdicts we got
12 received -- that were received are inconsistent.
13 That they find him not guilty of murder and not
14 guilty of attempted murder and not guilty of
15 burglary, but find him guilty of kidnapping and
16 guilty of armed robbery.

17 And I don't see how those verdicts can
18 be consistent because, you know, burglary says he
19 didn't go into the dwelling without -- with
20 intention to commit a crime therein.

21 They found him not guilty of that, but
22 they find him guilty of kidnapping. They found him
23 not guilty of kidnapping and not guilty of murder,
24 both of which take place inside under the same
25 facts and circumstances. So the verdicts seem to

1 be totally inconsistent with one another, and they
2 strike me as maybe being compromised verdicts from
3 a jury.

4 So I think there is good grounds for --
5 if not judgment notwithstanding the verdict, at
6 least a new trial.

7 THE COURT: Would you like to respond?

8 MR. ALFARO: Your Honor, based on the
9 testimony that was provided, there is evidence to
10 support the verdicts that were rendered by the
11 jury, and we ask that they be allowed to stand.

12 THE COURT: On first blush it might
13 seem that the verdicts are inconsistent, but what
14 it appears to me is they are wholly consistent with
15 the testimony presented. It appears that based on
16 the testimony of the co-defendant, that they
17 believed that Mr. Mouzon acted in concert with him.

18 It is also clear that it appears that
19 they believed the other defendants who were found
20 guilty on the other myriad of charges acted in
21 concert with both Mr. Mouzon and Mr. Hamilton.

22 They do not, however, feel that they
23 acted in concert on the murder and the attempted
24 murder, and that that was never a part of the
25 concerted efforts to which was the burglary and the

1 armed -- well, not burglary, the armed robbery and
2 kidnapping.

3 Because neither of those require the
4 hand of one, hand of all theory because there's
5 direct testimony that they, in fact, held these
6 people and did not allow them freedom of movement
7 and that they acted in concert in that regard. So
8 I do not perceive them to be inconsistent.

9 It appears that they took the Court's
10 directions to heart, which is they are the finders
11 of the facts. They can believe some of the
12 testimony, none of the testimony, all of the
13 testimony. They can believe part of the testimony
14 of a witness and disregard the remaining part of
15 the witness.

16 And based on Mr. Mouzon's relationship
17 with Mr. Hamilton in combination with his own
18 testimony, it would seem to me that they are wholly
19 consistent and that there was not a compromise.

20 MR. ARCHER: Are you talking about
21 Mr. Mouzon or are you talking about --

22 THE COURT: Mr. Mouzon and Mr. --

23 MR. ARCHER: Mr. Hamilton?

24 THE COURT: -- I'm talking about -- no,
25 Mr. Hamilton and Mr. Mouzon. He testified that

1 they were longtime friends.

2 MR. ARCHER: Well, my client is not
3 Mr. Mouzon. My client is --

4 THE COURT: I'm sorry, I had -- no, but
5 it's still -- what I said is still applicable
6 because I'm speaking -- you said they're
7 inconsistent verdicts. I can't make reference to
8 your client's verdict without making reference to
9 all of them in terms of them being consistent or
10 inconsistent with one another.

11 MR. ARCHER: But I wasn't talking about
12 any inconsistency with Mouzon's verdict. I'm just
13 talking about the verdicts brought in solely
14 against my client. I think those are inconsistent
15 with each other.

16 THE COURT: I don't perceive that.
17 They believed some of the testimony and disregarded
18 other parts of it.

19 MR. ARCHER: Okay.

20 THE COURT: The motion for new trial is
21 denied. Based on applicable case law precedent,
22 there is more than adequate support for the jury's
23 verdict and there is direct and substantial
24 circumstantial evidence reasonably tending to prove
25 his guilt on each of the offenses.

1 MR. SMALDONE: I'm sorry, Your Honor,
2 briefly, and maybe this is premature, and I'm sure
3 the appropriate co-counsel -- we ask for a finding
4 on the record that the kidnappings were not sexual
5 in nature.

6 THE COURT: I have to look at that
7 statute again because it has changed. You used to
8 have to make an affirmative finding, and I can't
9 ever remember which one --

10 MR. SMILEY: It's an opt out --

11 THE COURT: I have to look at it. I
12 always forget.

13 MR. ALFARO: May I approach?

14 THE COURT: Sure.

15 Now, Mr. Smiley's client has other
16 pending charges; is that correct?

17 MR. SMILEY: There is one pending
18 charge, Your Honor.

19 THE COURT: And what is that?

20 MR. SMILEY: Possession with intent to
21 distribute cocaine. That was prior to this, and he
22 was out on bond, \$10,000 bond. When he got
23 arrested on this, he was brought before the Court,
24 and at that point in time it appears the bond was
25 revoked. Mr. McNeely has that case. At least it

1 was originally assigned to him.

2 So right now he does not -- he posted
3 the bond. The bondsman did a surrender and bond
4 was denied again in July of 2017, but he certainly
5 wants to go home. I just told him to sit tight
6 because you have a whole bunch of stuff up there in
7 front of you.

8 THE COURT: Can you-all agree to a --
9 have you talked about a bond?

10 MR. SMILEY: We haven't talked because
11 we just got the verdict, and I didn't want to talk
12 about it beforehand.

13 MR. ALFARO: We don't have any
14 objection to the prior bond being put into place
15 until we can talk about the case further.

16 THE COURT: Well, I think once the
17 basis of the revocation --

18 MR. SMILEY: Right.

19 THE COURT: The basis of the revocation
20 would be new charges. These charges that he's been
21 found not guilty. That impediment having been
22 removed, I think he can post his bond. I don't
23 think I have to do anything.

24 MR. SMILEY: We have to actually --

25 THE COURT: He has a bond. It's been

1 set. I need to see the file.

2 MR. SMILEY: Yes, ma'am, and while
3 you're doing -- I'll check if you don't mind me
4 walking --

5 THE COURT: I need to see the file to
6 see exactly what's going on. I don't want to speak
7 out of turn; I need to see exactly where we are.

8 Okay. I'll be glad to hear from the
9 State regarding Mr. Mouzon.

10 MR. ALFARO: Your Honor, during the
11 course you've heard the testimony, seen the
12 photographs, heard the testimony of the medical
13 examiner as to how Mr. Johnson was instantly killed
14 as a result of a gunshot wound inflicted by
15 Mr. Mouzon.

16 You also saw during the course of the
17 trial what the victim went through in reliving the
18 incident, testifying, as well as listening to the
19 911 tape again and having to relive that again.
20 And, obviously, his desire to testify in his own
21 behalf should not have an influence on what the
22 verdict is; however, there is an attitude that came
23 through in that as sort of a dismissive nature of
24 how serious these incidents are and how serious it
25 is that Kadeem Johnson lost his life and that he

1 almost took the life of Krystal Snipe as well as a
2 result of this plan that was put into place.

3 Based off of all that, we were asking
4 for a life sentence on Mr. Mouzon for the charge of
5 murder, life sentence on the charge of burglary,
6 first degree, and maximum 30-year sentences on the
7 armed robberies and kidnappings.

8 THE COURT: He has no record, correct?

9 MR. ALFARO: That's correct, Your
10 Honor.

11 MR. THROWER: There is a pending.

12 THE COURT: What else does he have
13 pending? There was one indictment, wasn't there?

14 MR. ALFARO: That charge is going to be
15 dismissed, Your Honor.

16 THE COURT: What was it?

17 MR. ALFARO: It was an armed robbery, I
18 believe.

19 THE COURT: Arising out of a separate
20 incident?

21 MR. ALFARO: Yes, Your Honor.

22 THE COURT: What was that indictment
23 number? I don't remember. I know I gave it back
24 to the clerk.

25 MR. ALFARO: We're pulling our system

1 up now, Judge.

2 THE COURT: Andrea is looking for it.

3 But other than -- he has no record, correct?

4 MR. ALFARO: No other convictions,
5 that's correct.

6 THE COURT: And he had a pending --
7 it's 2017-GS-08-764, for armed robbery that's going
8 to be nolle prossed that arises out of a separate
9 incident.

10 MR. ALFARO: That's correct.

11 THE COURT: Mr. Thrower, happy to hear
12 from you.

13 MR. THROWER: Thank you.

14 You probably know as much about
15 Mr. Mouzon as I do. He was 18 years old when this
16 happened; he had a bright future. He grew up in
17 this area and has a lot of family, and there's just
18 no explanation for it.

19 I think he could get it turned around
20 if he were given the chance. I know he would be a
21 middle-aged man by the time he got out, but at
22 least that's something for him to work with.

23 Mr. Mouzon would like to say he still
24 maintains his innocence.

25 THE COURT: Mr. Mouzon, is there

1 anything you would like to state on your own
2 behalf?

3 DEFENDANT MOUZON: I'm being wrongfully
4 convicted and I still want to maintain my
5 innocence.

6 THE COURT: For the record -- pardon
7 me?

8 DEFENDANT MOUZON: I would like to put
9 in for appeal.

10 THE COURT: Sir, they automatically
11 appeal everything. The Indigent Defense will get
12 it and they will be in contact with you.

13 DEFENDANT MOUZON: All right. Thank
14 you.

15 THE COURT: You're welcome.
16 I assume that you will file his notice
17 of appeal.

18 MR. THROWER: I will file his notice,
19 yes, ma'am.

20 THE COURT: Anything further?

21 MR. ALFARO: No, Your Honor.

22 THE COURT: Sir, you can take your
23 seat. I need to think a little bit.

24 Anything further from the State
25 regarding Drake Edward Campbell?

1 MR. ALFARO: Your Honor, while
2 Mr. Drake Campbell does not have a prior criminal
3 record, the State believes that the maximum
4 sentence on all charges -- or are all convictions
5 would be appropriate given the fact that the armed
6 robbery, kidnapping that he was convicted of led
7 directly to the death of Kadeem Johnson as well as
8 the injuries that Ms. Snipe endured during the
9 course of this event.

10 We would ask for 30 years on each count
11 of armed robbery, 30 years on each count of
12 kidnapping, and to run concurrent, Your Honor.

13 THE COURT: Mr. Smaldone, glad to hear
14 from you.

15 MR. SMALDONE: Thank you, Your Honor.
16 May it please the Court.

17 THE COURT: Yes, sir.

18 MR. SMALDONE: The crux of my job, but
19 sometimes also the toughest part is representing
20 clients who are genuinely likable and respectful
21 and trying to reconcile that with the things -- the
22 mistakes that they have made and the things they
23 have done. And it's something that I live for, but
24 also something that is going to take a lot of years
25 off of my lifespan.

1 Your Honor, Drake is a perfect example
2 of that. Prior to this, he was an all-star at
3 Timberland High School. He was a wide receiver and
4 he really had a bright future, Your Honor. He did.

5 He's -- he loves his family and he
6 wanted to go to college or work. He -- you know,
7 some people called him up and he said, yes, when he
8 should have said no.

9 And that's not to minimize this at all
10 because he said yes to something terrible, and we
11 certainly are not trying to minimize what happened
12 that night, Your Honor. I respect the jury's
13 verdict.

14 I think it's clear that Drake never
15 went inside that house and it's clear that he --
16 the jury's spoken and he did make that terrible
17 mistake of doing what he did, but certainly he was
18 not an aggressor and certainly he was not a ring
19 leader.

20 Your Honor, I think that some outside
21 influences who -- I don't want to throw anybody
22 under the bus, but some outside influences who
23 might be present in this courtroom at this table
24 might have sucked him into that.

25 Your Honor, I think that he -- he has

1 -- he had a bright future, and with Your Honor's --
2 I don't really want to call it mercy because
3 Mr. Campbell knows he's going to prison for quite a
4 while, for a long time, regardless of what Your
5 Honor decides.

6 Your Honor has the ability to certainly
7 punish with a little hope in the future, and that's
8 what we ask for.

9 I have two letters, Your Honor. And I
10 apologize, I haven't showed the State yet due to
11 everything going on. I have a letter from his
12 bondsman and also a letter from a member of his
13 church.

14 May I approach?

15 THE COURT: Yes, sir.

16 MR. SMALDONE: Mr. Campbell was
17 obviously incarcerated as a result of this. He did
18 make a bond. I can't remember what date that was
19 -- he made bond on July 20, 2017. Since then, he's
20 obviously stayed out of trouble. He's worked at
21 Wendy's and spent time with his family, Your Honor.

22 So we would ask the Court for a
23 ten-year sentence and we would ask the Court, you
24 know, certainly for credit time served, but also
25 credit for time served because he was on GPS

1 monitoring the whole time. And as Your Honor can
2 see, with no new violations.

3 THE COURT: Only the Department of
4 Corrections can calculate time served. I will
5 check the box because he's entitled to it, but I
6 can't. By regulation, they are tasked with giving
7 credit for time served, and I believe as
8 interpreted, that means time that you are actually
9 in a facility. So I don't want to mislead him to
10 believe he's going to get credit time for --

11 MR. SMALDONE: Your Honor, my
12 understanding it was at the judge's discretion --

13 THE COURT: That's why they took that
14 line off of the sentencing sheet and have strictly
15 admonished us that it is not up to us. The
16 legislature says SCDC has to do that.

17 MR. SMALDONE: Certainly.

18 THE COURT: If I put down one day,
19 that's all they are going to give him.

20 MR. SMALDONE: I've heard.

21 THE COURT: It's best for them to get
22 his records and decide what he's entitled to. I
23 wouldn't want him to be prejudiced in any way
24 because of my inability to know the whole picture.

25 Anything further, Mr. Smaldone?

1 MR. SMALDONE: Your Honor, I do not
2 believe so.

3 THE COURT: Mr. Campbell, is there
4 anything that you would like to say on your own
5 behalf?

6 MR. CAMPBELL: No, ma'am.

7 THE COURT: State have anything further
8 it wishes to add?

9 MR. ALFARO: No, Your Honor.

10 THE COURT: You can take your seat. I
11 need to think a little bit. Are these his bonds
12 records that you gave me? The check-in log --

13 MR. SMALDONE: I didn't hear you.

14 THE COURT: Is this from his bonding
15 company?

16 MR. SMALDONE: Yes. And that was just
17 part of the letter saying his record --

18 THE COURT: Oh, it got separated. Do
19 you want that in his file or do you want it back?

20 MR. SMALDONE: I will take it. I'll
21 take the check-in times back. Mr. Campbell wanted
22 you to see how diligent he's been.

23 THE COURT: All right. Kenny Campbell,
24 Junior, Mr. Archer?

25 State have anything further?

1 MR. ALFARO: Your Honor, Kenneth
2 Campbell, Junior was served with life without
3 parole notice for the notice of the State's
4 intention to seek a sentence of life without parole
5 on these indictments. That notice was served upon
6 him and his attorney on July 20, 2018.

7 That is a result of his prior
8 conviction for voluntary manslaughter. His prior
9 record is in total a 2008 petit larceny; a 2012
10 unlawful carrying of a weapon; 2016, two counts of
11 forgery. And also in 2016, he was convicted of
12 voluntary manslaughter. That sentence was amended
13 on April 25, 2016, as a result of him testifying in
14 a separate case.

15 So as you can tell by that date, less
16 than three months later he's involved in this
17 incident which resulted in the death of Kadeem
18 Johnson and Krystal Snipe. Because of his prior
19 record, the State sought to seek life without
20 parole sentence and we're asking that that be
21 imposed.

22 THE COURT: Because the armed robbery
23 is the most serious -- armed robbery -- okay.

24 Mr. Archer.

25 MR. ARCHER: Well, Judge, I think that

1 the State has to submit proof of the prior most
2 serious offense in order for you to be able to
3 impose it.

4 MR. ALFARO: May I approach, Your
5 Honor?

6 THE COURT: Uh-huh.

7 MR. ALFARO: This is a copy of the
8 file, life without parole notice packet that was
9 filed on July 20th, 2018. It contains a copy -- a
10 certified copy of the sentencing sheet from
11 Orangeburg with the voluntary manslaughter listed
12 on it.

13 THE COURT: Do you contest the validity
14 of the service of the life without parole notice,
15 Mr. Archer?

16 MR. ARCHER: Excuse me?

17 THE COURT: I said, you're not
18 contesting the validity of the life without parole
19 notice having been appropriately served?

20 MR. ARCHER: Well, it was served --

21 THE COURT: Your client signed for it.
22 I have his original signature.

23 MR. ARCHER: I believe so. Yes.

24 THE COURT: And this is a certified
25 copy of his conviction attached to the notice.

1 MR. ARCHER: Your Honor, I don't know
2 if you've got any discretion --

3 THE COURT: None. The legislature took
4 it away from me.

5 MR. ARCHER: All right.

6 THE COURT: If there is anything you
7 want to place on the record you should feel free to
8 do so.

9 MR. ARCHER: Well, Your Honor, if you
10 have no discretion, there's no need to put --

11 THE COURT: Unless you have something
12 for me to consider that says I do, I think the
13 statute is the best --

14 MR. ARCHER: Excuse me, I'm sorry?

15 THE COURT: And I shouldn't have turned
16 my head away from you. I apologize.

17 I said, if you have some statute or
18 case law that says I have discretion, I will be
19 glad to look at it, but it's my understanding when
20 the legislature changed the law, they divested me
21 of any discretion.

22 MR. ARCHER: I'm not aware of that at
23 this time. I observe the right to file a request
24 for re-sentencing should I find something on that.

25 THE COURT: You have to do it within

SENTENCING

1 ten days of today.

2 MR. ARCHER: I understand.

3 THE COURT: Is there anything, sir,
4 that you would like to state for the record on your
5 own behalf?

6 DEFENDANT CAMPBELL JUNIOR: I'm
7 innocent.

8 THE COURT: Anything further from the
9 State?

10 MR. ALFARO: No, Your Honor.

11 THE COURT: Mr. Kenneth Campbell, on
12 each offense, that being 2017-GS-08765, 76 -- which
13 is armed robbery; 768, which is armed robbery; 770,
14 kidnapping; 771, kidnapping; 772, possession of a
15 weapon during the commission of a violent crime,
16 possession of a weapon during the commission of a
17 violent crime.

18 Consistent with the life without parole
19 notice pursuant to 17-25-45 you are sentenced to
20 life in the State Department of Corrections.

21 You will get credit for any time that
22 you have served, if applicable, to be calculated
23 and applied by the Department of Corrections. I
24 don't think under that scenario that they give you
25 any credit for time, other than as it relates to

SENTENCING

1 the possession of a weapon during the commission of
2 a violent crime, but it would be nonparolable as I
3 understand it, but I'm imposing a five-year
4 sentence regarding that.

5 All of these sentences are concurrent
6 with one another.

7 And we will be at ease for a few
8 moments because I need to think about young Mr.
9 Campbell and Mr. Mouzon.

10 (A recess transpired.)

11 THE COURT: You may be seated.

12 Mr. Mouzon, if you would stand for
13 sentencing. On Indictment 2017-GS-08-791, armed
14 robbery, you are sentenced to the State Department
15 of Corrections for a period of 20 years.

16 On the charge of burglary, first
17 degree, Indictment 792, you are sentenced to 15
18 years; Indictment 793, murder, you are sentenced to
19 40 years; Indictment 794, 20 years; Indictment 795,
20 attempted murder, 30 years; kidnapping, 796 and
21 797, 20 years each; and possession of a weapon
22 during the commission of a violent crime, five
23 years.

24 These sentences are concurrent with one
25 another. You will GET credit for pursuant to

SENTENCING

1 24-13-40 to be calculated and applied by the
2 Department of Corrections.

3 And pursuant to code section
4 23-3-430-C15, I've noted that this does not involve
5 a criminal sexual conduct or attempted criminal
6 sexual conduct.

7 Mr. Campbell, if you would stand for
8 sentencing.

9 On Indictment 2017-786, armed robbery,
10 and 783, armed robbery, you are sentenced to the
11 State Department of Corrections for a period of
12 20 years. On Indictment 788 and 798, both
13 kidnapping, you're sentenced to the State
14 Department of Corrections for a period of 20 years.
15 Possession of a weapon during the commission of
16 violent crime, Indictment 790, you are sentenced to
17 the Department of Corrections for a period of five
18 years.

19 These sentences are concurrent with one
20 another. You will get credit pursuant to 24-13-40
21 to be calculated and applied by the Department of
22 Corrections.

23 On both kidnapping charges, pursuant to
24 code section 23-3-430-C15, I've notated that the
25 kidnappings do not involve a CSC or attempted CSC.

SENTENCING

1 Thank you very much.

2 (These proceedings were concluded at

3 6:30 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 5th day of January, 2019at
13 Charleston, Charleston County, South Carolina.

14

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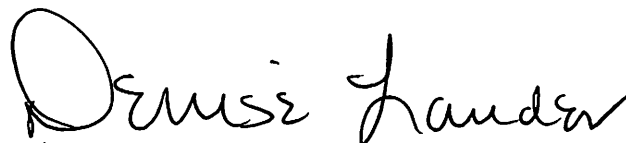
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25



S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

BAA/0319988
WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401031

DATE OF ARREST

07/22/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

[Signature]
Foreperson of Petit Jury

8/31/17
Date:

DOCKET NO. 2017-GS-08-00783

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DRAKE EDWARD CAMPBELL

B/M [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

17 APR 26 PM 2:40
MARY P. GROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

[Signature]
FILED

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about July 21, 2016, in Berkeley County, South Carolina, the Defendant, Drake Edward Campbell, while acting in concert with co-defendants, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Kadeem Johnson with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina 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.



BRYAN A. ALFARO
DEPUTY SOLICITOR

BAA/0319988

WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401049

DATE OF ARREST

07/22/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

[Signature]
Foreperson of Petit Jury

8/31/18
Date:

DOCKET NO. 2017-GS-08-00786

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DRAKE EDWARD CAMPBELL

B/M [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 APR 26 PM 2:40

[Signature]
FILED

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about July 21, 2016, in Berkeley County, South Carolina, the Defendant, Drake Edward Campbell, while acting in concert with co-defendants, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Krystal Snipe with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina 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.



BRYAN A. ALFARO
DEPUTY SOLICITOR

BAA/0319988
WITNESSES

5668
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401079

DATE OF ARREST

07/22/2016

ACTION OF GRAND JURY

True Bill

Don H. D. Hunt
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

Joshua Jones
Foreperson of Petit Jury

8/31/18
Date:

DOCKET NO. 2017-GS-08-00788

The State of South Carolina-
County of Berkeley

COURT OF GENERAL SESSIONS
APRIL TERM 2017

THE STATE

VS.

DRAKE EDWARD CAMPBELL
B/M [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

1348

JH
FILED
17 APR 26 PM 2:40
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

JH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about July 21, 2016, the Defendant, Drake Edward Campbell, while acting in concert with co-defendants, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Krystal Snipe, without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.



BRYAN A. ALFARO
DEPUTY SOLICITOR

BAA/0319988

WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401080

DATE OF ARREST

07/22/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

[Signature]
Foreperson of Petit Jury

8/31/18
Date:

DOCKET NO. 2017-GS-08-00789

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DRAKE EDWARD CAMPBELL
B/M [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

1350

[Signature]
17 APR 26 PM 2:40
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about July 21, 2016, the Defendant, Drake Edward Campbell, while acting in concert with co-defendants, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Kadeem Johnson, without authority of law; all in violation of Section 16-3-910 of the South Carolina 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.



BRYAN A. ALFARO
DEPUTY SOLICITOR

BAA/0319988
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401123

DATE OF ARREST

07/22/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

[Signature]
Foreperson of Petit Jury

8/31/18
Date:

DOCKET NO. 2017-GS-08-00790

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
APRIL TERM 2017

THE STATE

VS.

DRAKE EDWARD CAMPBELL
B/M [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 APR 26 PM 2:40

[Signature]
FILED

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

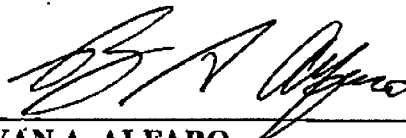
INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about July 21, 2016, the Defendant, Drake Edward Campbell, while acting in concert with co-defendants, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

DRAKE EDWARD CAMPBELL

AKA:

Race: Black/African American

Sex: M

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Adaro, Deputy Solicitor

70502
SC Bar #

Defendant

Attorney for Defendant

100410
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 8/31/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther:

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$150

\$50-21-114 (BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$128.75

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge:

Judge Code:

Sentence Date:

2128

8/31/18

Clerk of Court/Deputy Clerk:

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 1255

COUNTY OF BERKELEY

STATE VS.

DRAKE EDWARD CAMPBELL

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature]
Bryan A. Alfaro, Deputy Solicitor70502
SC Bar #

Defendant

[Signature]
Attorney for Defendant100410
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years, and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 8/31/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-18-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2128Sentence Date: 8/31/18

COUNTY OF BERKELEY
STATE VS.DRAKE EDWARD CAMPBELL

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,☐ (def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Altaro, Deputy Solicitor

70502
SC Bar #

Defendant

Attorney for Defendant

100410
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 8/31/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Per SC Code Ann §23-3-430(C)(15) does not involve
a CSC or an attempted
C&C.☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Recipient:

*Fine:

\$

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75Clerk of Court/Deputy Clerk: L. HillCourt Reporter: Denise SandersPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 8/31/18

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY
STATE VS.DRAKE EDWARD CAMPBELL

AKA:

Race: Black/African AmericanSex: M

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.☐ (def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Alfaro, Deputy Solicitor70502
SC Bar #

Defendant

Attorney for Defendant

100410
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and or payment
of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 8/31/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: per SC Code Ann §23-3-430(C)(15) does not involve
a CSC or attempted CSC.☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso (Public Def/Probation)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 3.25

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk:

Court Reporter: Denise RauderPresiding Judge: DR JonesJudge Code: 2128Sentence Date: 8/31/18

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

DRAKE EDWARD CAMPBELL

AKA:

Race: Black/African American

Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Amaro, Deputy Solicitor 70502 SC Bar #

Defendant

Attorney for Defendant

100410 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$ plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 8/31/18
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning *Fine: \$ Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ pmts. of \$ Beginning §56-5-2995 (DUI Assessment) \$12 \$ \$ Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ Other: Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$3.75TOTAL \$128.75☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: L. HillPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 8/31/18Court Reporter: Denise Souder

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DRAKE EDWARD CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2018-001648

ANDERS BRIEF OF APPELLANT

RECEIVED
JUL 16 2019
SC Court of Appeals

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to sever Appellant's trial from the trial of his three co-defendants?

STATEMENT OF THE CASE

In April of 2017, the Berkeley County Grand Jury indicted Appellant, Drake Edward Campbell, for burglary first degree, two counts of armed robbery, murder, attempted murder, two counts of kidnapping and possession of a weapon during the commission of a violent crime, indictments #2017-GS-08-783 – 790. On August 27, 2018, Appellant, with three other co-defendants, proceeded to jury trial before the Honorable Deadra Jefferson. Grant B. Smaldone represented Appellant at trial. Bryan A. Alfaro and Wilton McNelly prosecuted the case. The jury found Appellant not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder. The jury found Appellant guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime.

The jury found the alleged triggerman, co-defendant Jacob Mouzon, guilty on all counts. The jury found Appellant's brother and co-defendant, Kenneth Campbell, not guilty of burglary first degree, not guilty of murder and not guilty of attempted murder but found him guilty of both counts of armed robbery, both counts of kidnapping and of possession of a weapon during the commission of a violent crime, the same charges for which the jury returned verdicts of guilty for Appellant. The jury found co-defendant Sherrod Palmer not guilty on all counts.

Judge Jefferson sentenced Appellant to twenty (20) years concurrent for each of the armed robbery charges, twenty (20) years concurrent for each of the kidnapping charges and five (5) years concurrent for the weapon charge. A timely notice of intent to appeal was served on September 7, 2018. This appeal follows.

STANDARD OF REVIEW

Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Boys, 302 S.C. 545, 397 S.E.2d 529 (1990). Motions for a severance and separate trial are addressed to the discretion of the trial court. Id. Absent a showing of an abuse of discretion, this Court will not disturb the trial court's ruling on appeal. Id.

State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997)

ARGUMENT

The trial judge erred in refusing to sever Appellant's trial from the trial of his three co-defendants.

Kadçem Johnson and Krystal Snipe were robbed as they arrived home in the early morning hours of July 21, 2016. The two were forced inside of their home where Johnson was fatally shot and Snipe was shot in the hand. One of the items stolen was a red Hello Kitty bag that Johnson used to store the drugs he sold. (R. p. 247, lines 9-23). According to Snipe there were five men, two Hispanic and three black. (R. p. 310, lines 6-8). Snipe testified that only three of the men entered the house, one Hispanic and two black. (R. p. 310, lines 11-22). Snipe identified co-defendant Mouzon as the shooter. (R. p. 284, lines 8-22). Snipe picked Mouzon out of a photo line-up, indicating a fifty percent identification. (R. p. 303, lines 2-11). Snipe was unable to identify the other four men.

Darius Hamilton testified for the State. Hamilton gave various statements to the police minimizing his involvement but at trial testified that he and co-defendants Kenneth Campbell and Mouzon went in the house while Appellant and co-defendant Palmer remained outside. (R. p. 742, lines 1-25). Hamilton admitted taping the hands of Johnson and Snipe and taking a bracelet from Johnson. (R. p. 743, lines 5-22). Hamilton testified that he was outside in the yard with Appellant, Kenneth Campbell and Palmer when Mouzon shot Johnson and Snipe. (R. p. 747, line 23 – p. 748, lines 1-23). According to Hamilton, he and Palmer left in Johnson's gray Crown Victoria and Appellant, Kenneth Campbell and Mouzon left in Johnson's white Crown Victoria. (R. p. 749, lines 7-14). Both cars were found abandoned shortly after the incident. A money bandana with Appellant's DNA was found next to the white car. (R. p. 1062, lines 9-20).

Later the same day two witnesses reported seeing three males, one light skinned two dark skinned, near Eccles Church Road. (R. pp. 490-492; pp. 554-555). Both later identified Mouzon as one of the three men they saw. (R. pp. 499-500; pp. 558-559). The red Hello Kitty bag with cocaine was found near Eccles Church. (R. p. 400, lines 1-21; p. 411, lines 2-23). Law enforcement officers searched the area near Eccles Church Road and discovered Kenneth Campbell in the woods. (R. p. 545, lines 1-25). The next day officers found Appellant and Mouzon in the woods.

Of the four men who went to trial, Mouzon was the only one to testify. Mouzon testified that Hamilton and Appellant picked him up in Hamilton's truck and drove to a club in Huger, South Carolina where they met Kenneth Campbell and Palmer. (R. pp. 1098 – 1100). Mouzon testified that Hamilton left to "meet his cousin and score some weed." (R. p. 1100, lines 17-19). Several hours later, as the club was closing, Hamilton returned in his truck in a rush and told Mouzon, Appellant and Kenneth Campbell to get in the back. (R. p. 1101, line 17 – p. 1102, lines 1-14). After the three got in the bed of the truck, Hamilton took off speeding and then, when he heard sirens, pulled over on the side of the road and told the three of them to get out. (R. p. 1104, line 3 – p. 1105, lines 1-6). Hamilton took off in his truck and Mouzon, Appellant and Kenneth Campbell ran into the woods. (R. pp. 1106 – 1107). Mouzon testified that he, Appellant, Kenneth Campbell and Palmer were never at Johnson's house. (R. p. 1114, line 12 – p. 1115, lines 1-8).

Prior to trial Appellant and co-defendant, Kenneth Campbell, moved for severance. (R. pp. 50 – 69). Specifically, Appellant argued, "However, I will ask that my client, Drake Campbell's trial be severed because of the possibility and likelihood that antagonistic defenses will present themselves along the line. It's not a Bruton issue; it's a due process issue." (R. p.

62, lines 5-10). The trial judge denied both motions to sever. In regard to Appellant's motion to sever the trial judge stated, "So the mere allegation of an antagonistic defense is insufficient, and I have not heard anything specific in nature that would rise to the level of what would be required by case law to grant a severance; and, therefore the motion is denied." (R. p. 68, line 24 – p. 69, lines 1-4). The trial judge abused her discretion in refusing to grant the severance motion.

In State v. Smith, 359 S.C. 481, 489, 597 S.E.2d 888, 892–93 (Ct. App. 2004), the South Carolina Court of Appeals wrote:

Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). A motion for severance is addressed to the discretion of the trial court and the court's ruling should not be disturbed on appeal absent an abuse of that discretion. Id. Further, "[t]he general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a codefendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime." State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). To successfully challenge the trial court's exercise of discretion in denying a motion to sever, the defendant must demonstrate some prejudice resulting from the joint trial. State v. Thompson, 279 S.C. 405, 408, 308 S.E.2d 364, 366 (1983).

In the present case, while Mouzon testified that he and Appellant and co-defendant, Kenneth Campbell remained at the club while Hamilton left, establishing an alibi for all three, the jury found Mouzon guilty on all counts, including the murder, attempted murder and burglary. The jury's guilty verdicts for Mouzon indicate that the jury did not find Mouzon to be a credible witness. The jury's credibility finding with regard to Mouzon prejudiced Appellant's case.

In State v. Dennis, 337 S.C. 275, 281–82, 523 S.E.2d 173, 176 (1999), the South Carolina Supreme Court wrote:

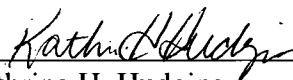
The trial judge, however, must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as

redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313, 315; 400 S.E.2d 487, 488 (1991). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. State v. Holland, 261 S.C. at 494, 201 S.E.2d at 121.

In the present case the judge, without objection, failed to give a cautionary instruction before testimony began and, without objection, gave a very brief cautionary instruction at the end of the trial. (R. pp. 155-165; P. 1295, lines 9-16). The brief cautionary instruction given did not cure the prejudice that resulted from the joint trial. The trial judge's abuse of discretion in refusing to sever Appellant's trial from the trial of his co-defendants requires a reversal of the conviction and sentence and remand for a new trial.

CONCLUSION

Based on the above argument this Court should reverse the conviction and sentence and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of July, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Berkeley County

 Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DRAKE EDWARD CAMPBELL,

APPELLANT

 PETITION TO BE RELIEVED AS COUNSEL

RECEIVED
 JUL 16 2019
 SC Court of Appeals

Counsel for Drake Edward Campbell states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on August 27 - 31, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Drake Edward Campbell.

Respectfully Submitted,


 Kathrine H. Hudgins
 Appellate Defender
 ATTORNEY FOR APPELLANT

This 16th day of July, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DRAKE EDWARD CAMPBELL,

APPELLANT

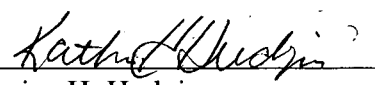
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript pages 1-1343.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 16, 2019


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

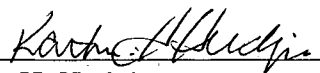
ATTORNEY FOR APPELLANT

RECEIVED
JUL 16 2019
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

July 16, 2019.


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
JUL 16 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

RECEIVED
JUL 16 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

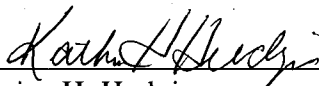
V.

DRAKE EDWARD CAMPBELL,

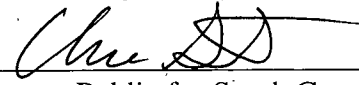
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Drake Edward Campbell, 377575, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of July, 2019.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of July, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019

**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.

Drake Edward Campbell, Appellant.

Appellate Case No. 2018-001648

Appeal From Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2021-UP-140
Submitted March 1, 2021 – Filed April 28, 2021

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

KONDUROS, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Berkeley)Drake Campbell 317575)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

21 JUN -8 AM 8:13

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

2021-CP-08-01168INSTRUCTIONS - 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 Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County, Moncks Corner SC
3. Name(s) of co-defendant(s) (if any) Kenneth Campbell JR., Jacob Moulton, Darius Hamilton, Sherrod Palmer
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping 2X 2017-6S-08-00788, 2017-6S-08-00789
 - (b) Arm Robbery 2X 2017-6S-08-00786, 2017-6S-08-00783

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 31, 2018
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- ✓ (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION Affirm-ed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 28, 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See Attached Exhibit
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Dont Apply
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: see attached Exhibit A through A1
- (a) Ineffective assistance of counsel for failing to call
- (b) witness and failing to Request for a severance Also counsel
- (c) failed to advise defendant that he had the right to testify after waiving his right to due to the surprise testimony by co-defendant
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached exhibit b through b/3
- (b) _____
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? DNA
- (d) any other petitions, motions or applications in this or any other Court? DNA
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. DNA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. DNA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DNA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. DNA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. DNA
- 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. DNA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. DNA
- 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) Ineffective assistance of Counsel
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? None
 (b) your trial, if any? Grant B. Smaldone
 (c) your sentencing? Grant B. Smaldone
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Kathrine haggard Hudgins
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
None

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. Trial Attorney: Grant B. Smaldone, 105 Watpon creek dr. Charleston SC 29412
- ii. Appeal Attorney: Kathrine haggard Hudgins, 1330 Lady Street, Suite 401 Columbia SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial Attorney: Grant B. Smaldone
- ii. Appellate Attorney: Kathrine haggard Hudgins
- iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Berkeley County)

VERIFICATION

I, Drake Edward Campbell, 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.

Drake Campbell

SWORN to and subscribed before me this 20th
day of May, 2021.

Sianne Jacobs (L.S.)
Notary Public

My Commission Expires: 4/13/25

21 JUN -8 AM 8:13
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Drake Edward Campbell, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Drake Campbell
Applicant

SWORN or affirmed to and subscribed before me this

20th day of May, 2021.

Sianni Jacobs
Notary Public

My Commission Expires:

4/13/25

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

21 JUN -8 AM 8:13

FILED

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Drake Campbell, #377575

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2021-CP-08-01168

**RETURN TO THE
APPLICATION FOR POST-
CONVICTION RELIEF AND PARTIAL
MOTION TO DISMISS**
(Counsel Already Appointed)

21 OCT -8 PM 2:17
LEAH GUESSY
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

Respondent, the State of South Carolina, making its return to the application for post-conviction relief by Applicant Drake Campbell on June 8, 2021¹, and received by the State on June 29, 2021, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2017 term, a Berkeley County Grand Jury indicted Applicant for burglary in the first degree (2017-GS-08784); two counts of armed robbery (2017-GS-0873; 2017-GS-08786); murder (2017-GS-8785); attempted murder (2017-GS-08787); two counts of kidnapping (2017-GS-08788; 2017-GS-08789) and possession of a weapon during the commission of a violent crime (2017-GS-08790). Applicant was represented by Grant B. Smaldone. Assistant Solicitors Bryan A. Alfaro and Wilson McNeely of the Ninth Circuit Solicitor's Office prosecuted the case.

¹ Respondent's return was due to be filed on September 27, 2021. See Rule 12(a), SCRCF ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

cc: DG, EA

Applicant proceeded to a jury trial along with three of his co-defendants on August 27, 2018 before the Honorable Deadra J. Jefferson. On August 31, 2018, the jury convicted Applicant of both counts of kidnapping, both counts of armed robbery and possession of a weapon during the commission of a violent crime. Applicant was acquitted of the attempted murder, burglary in the first degree and murder. Judge Jefferson sentenced Applicant to twenty years for both kidnapping charges, twenty years for both armed robbery charges, and five years for the possession of a weapon during a violent crime, to be served concurrently.

A timely notice of appeal was filed on Applicant's behalf on September 10, 2018. Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense - Office of Appellate Defense, submitted a brief pursuant to *Anders v. California*, 368 U.S. 738 (1967), raising the issue of whether or not the Court's denial of the motion for severance was reversible error. On April 28, 2021, in an unpublished opinion, the South Carolina Court of Appeals, granted the petition to be relieved as counsel and dismissed the appeal. *State v. Drake Campbell*, Unpub. Op. No. 2021-UP-140 (Ct. App Filed April 28, 2021). The remittitur was issued on May 20, 2021.

II. SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

On the night of July 21, 2016, the unthinkable happened to Krystal Snipe. She found herself shot multiple times, and her boyfriend, Kadeem Johnson, murdered. Tr. p. 190. Her night began at the home of Kadeem's mother, while Kadeem was at a local club down the street. Kadeem initially went home, forgetting that Krystal was still with his mother. Tr. p. 238 lines 22-25.; Tr. p. 239 line 20-21; Tr. p. 241 lines 5-11. He returned to his mother's house, picked up Krystal, and headed home. Tr. p. 241 lines 12-14.

In the meantime, Applicant, and four other co-defendants, each armed with a gun, were lying in wait in the woods for Krystal and Kadeem to return. Tr. p. 735 lines 14-21. When Krystal

and Kadeem arrived at their home, five armed and masked men appeared from the woods behind them. Two men came from one side, and three men came from the other. The men held guns to Krystal and Kadeem's backs, and ordered them up their porch. Tr. p. 244-245. The men took a set of keys from each victim, and a red Hello Kitty bag that Kadeem used to carry drugs in. Tr. p. 247-248.

Three men forced Krystal and Kadeem (hereinafter "victims") into the home, while the other two remained outside. Tr. p. 249. The men inside led the victims inside to the bedroom, and told them to kneel on the floor. Tr. p. 250. One man had two guns pointed at both victims. Tr. p. 251. Another person tied both of the victims' hands up with duct tape. Tr. p. 252. The men took Kadeem's gold bracelet and began going through the house, taking additional items such as the TV and other boxes of valuables. Tr. p. 253. Before they exited the home, one of the men took his mask off. After realizing he would be easily recognizable, he shot both victims -- ultimately killing Kadeem—and fled in the vehicles that belonged to the victims. Tr. p. 748-749.

Three of the men, including Applicant, were later spotted in the area on foot. Tr. p. 491. They approached a witness and asked if they could use her phone. Tr. p. 493 lines 1-4. That witness alerted authorities about the suspicious sighting of the three men. Tr. p. 496. Applicant was later apprehended in a wooded area with his other co-defendant.

III. CURRENT APPLICATION

In his application for post- conviction relief, Applicant asserts he is entitled to relief on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Failing to call witness
 - b. Failing to request a severance
 - c. "Failure to advise defendant that he had the right to testified after waiving his right to the surprise testimony by co-defendant."(sic)

Applicant seeks a reversal of his conviction as relief.

Attached to this return and incorporated into this application therein are the Berkeley Clerk of Court records regarding the convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal, the trial transcript (included in the record on appeal) and the current application for relief. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

IV. MOTION TO DISMISS ALLEGATION OF INEFFECTIVE ASSISTANCE FOR FAILURE TO MOVE FOR SEVERANCE

Respondent moves to dismiss Applicant's allegation trial counsel was ineffective for failing to move for severance of his trial because there is no genuine issue of material fact, as it is refuted by the record. Applicant alleges trial counsel was ineffective because he failed to request a severance. However, the trial transcript, reflects trial counsel requested a severance on the record before the beginning of the trial based upon antagonistic defenses between co-defendants, which was denied by Judge Jefferson. Furthermore, trial counsel asked for leave to renew the motion if there were any specific instances that arose within the trial where severance was appropriate. Judge Jefferson directed trial counsel to make any motion that was appropriate at the time. Tr. p. 62. Applicant's allegations of a failure to move for severance are without merit and clearly and unambiguously refuted by the record. Therefore, this allegation should be summarily dismissed because there is no genuine issue of material fact which would necessitate a hearing.

V. RESPONSE TO REMAINING ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant asserts trial counsel was ineffective in his representation of Applicant for failing to present numerous witnesses and failing to advise Applicant of his right to testify after the testimony of a co-defendant.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee

Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions) (emphasis added). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to

prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, "does not guarantee perfect representation [—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing

court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate 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.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may

evaluate the prejudice prong only. *Id.*

Ineffective Assistance of Trial Counsel for Failure to Call Witnesses

Applicant's claim of ineffectiveness for failure to call witnesses is likely without merit. *Strickland* requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's

mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

In conclusion, Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test for his claim of failure to call witnesses as ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

Ineffective Assistance of Counsel for Failure to Adequately Advise Applicant of his Right to Testify

Applicant alleges that Counsel was ineffective for failing to advise the applicant of his right to testify on his behalf, following the testimony of Applicant's co-defendant. Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Smith v. State*, 404 S.C.493, 500, 745 S.E.2d 378, 382 (2012). *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Accordingly, Applicant will not likely be able to depict that additional consultation about his right to testify would have resulted in a different outcome in his trial. In addition to Applicant's co-defendant's testimony, there were multiple days' worth of testimony implicating Applicant as a participant in the crimes. Furthermore, Applicant indicated to the Court that he was on notice of his right to testify on his own behalf. At trial, Judge Jefferson advised Applicant of his right to testify, and later asked him whether he had any questions regarding his ability to testify, and if he had consulted with his attorney regarding testimony. Tr. p. 1086-87. Applicant answered in the affirmative to consulting with his attorney and told the court he had no questions regarding

testifying and chose not to testify on his own behalf. *Id.* This exchange happened before Applicant's co-defendant testified, but he was clearly on notice of his right to testify. Therefore, Applicant's claim of ineffective assistance of counsel based on failure to advise Applicant of his right to testify after the testimony of his co-defendant is likely without merit and cannot satisfy either requirement of the *Strickland* test.

However, due to the colloquy being before the co-defendant's testimony, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; *see also* Rules 15(a)-(b), SCRPC. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel, specifically, counsel's alleged failure to call certain witnesses and advise Applicant of his right to testify on his own behalf and enter a motion to dismiss on the claim of failure to file for a motion for severance.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LAUREN MIMS
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

October 5, 2021

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Drake Campbell, #377575)

Applicant,)

vs)

State of South Carolina,)

Respondent,)

IN THE COURT OF COMMON PLEAS

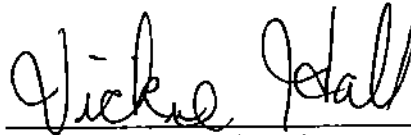
2021-CP-08-01168

CERTIFICATE OF SERVICE BY MAIL

FILED
 21 OCT -8 PM 2:17
 DEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Denise G. Swope, Esquire
The Swope Law Firm, P.A.
1525 Sam Rittenberg Boulevard, Suite 208
Charleston, SC 29407

DATED this 5th day of October, 2021.


Vickie Hall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Drake Campbell, #377575	)	Case No.: 2021-CP-08-01168
	)	
Applicant,	)	
	)	
v.	)	AMENDED POST CONVICTION
	)	RELIEF APPLICATION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed June 8, 2021, to add the following allegations:

1. In State v. Dennis, 337 S.C. 275, 281-82, 523 S.E.2d 173, 176 (1999), the South Carolina Supreme Court wrote:

The trial judge, however, must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. State v. Holland, 261 S.C. at 494, 201 S.E.2d at 121.

There was ineffective assistance of counsel in that trial counsel in the instant case failed to object when the Court failed to give a cautionary instruction before testimony began. Further trial counsel failed to object when the Court gave a very brief cautionary instruction at the end of the trial. (R. pp. 155-165; P. 1295, lines 9-16). The brief cautionary instruction did not cure the prejudice resulting from the joint trial, and trial counsel's failure to object and thus preserve these issues for appellate review therefore prejudiced the Applicant entitling him to a new trial.

2. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or

unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

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Dated: March 1, 2024

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BERKELEY

2021-CP-08-01168

Drake Campbell)

) TRANSCRIPT OF RECORD

-vs-)

) September 9, 2024

State of South Carolina)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Denise G. Swope, Esquire
Attorney for the ApplicantDanielle Dixon, Esquire
Attorney for the State

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

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Ms. Dixon 23

1 THE COURT: Yes, ma'am. Ms. Dixon,
2 I'm going to ask you, if you could, to set forth
3 the caption of the case and the procedural history.

4 MS. DIXON: Yes, sir. May it please the
5 Court. I'm Danielle Dixon, assistant attorney general
6 for the state of South Carolina. This is the case
7 of Drake Campbell v. State, Docket No. 2021-CP-08-1168.

8 Mr. Campbell is currently serving an
9 aggregate 20-year sentence. He was indicted by the
10 Berkeley County Grand Jury in April of 2017 for murder,
11 attempted murder, first-degree burglary, two counts of
12 armed robbery, two counts of kidnapping, and possession
13 of a weapon during a violent crime. Those are
14 indictment Nos. 2017-GS-08-785, 787, 784, 783, 786, 788,
15 789, and 790.

16 He proceeded to a jury trial August 27th
17 through 31st, 2018, before the Honorable Deadra
18 Jefferson. He was tried with co-defendants
19 Kenneth Campbell, Jacob Mouzon, and Sherrod Palmer.
20 And he was represented by Mr. Smaldone at trial --
21 Grant Smaldone at trial. Assistant Solicitors
22 Bryan Alfaro and Wilton McNeely prosecuted the case.

23 Mr. Campbell was acquitted of murder; he
24 was also acquitted of attempted murder and first-degree
25 burglary. But he was convicted of all other charges

1 and sentenced to 20 years for each charge of kidnapping
2 and armed robbery, and then five years for the weapon
3 charge, and those were all concurrent.

4 He filed a direct appeal, which was
5 perfected by appellate defender, Katherine Hudgins.
6 She filed an Anders brief. It was dismissed by the
7 Court of Appeals, pursuant to Anders. The remittitur
8 was sent May 20th, 2021. He timely filed this PCR
9 action June 8th, 2021, raising effectively three claims
10 of ineffective assistance of counsel. And those,
11 as we understand it, are failure to call a witness,
12 failure to request a severance, and failure to advise
13 the Defendant that he had the right to testify, after
14 waiving his right due to the surprise testimony
15 of a co-defendant.

16 THE COURT: Failure to call -- failure
17 to call a witness. The second one was?

18 MS. DIXON: Failure to request a severance.
19 And, just for the record, the State moved to dismiss
20 that claim on the basis that the severance was, in fact,
21 requested at the start of the trial, and that's raised
22 on pages 51 and 60 through 69 of the trial transcript.

23 THE COURT: And the last -- the last
24 of the three is?

25 MS. DIXON: The last claim was failed

1 to advise him that he had the right to testify after
2 he waived his right due to the surprise testimony of
3 a co-defendant. There was a co-defendant who testified
4 in his defense, and, I guess, he's saying that he should
5 have been re-advised after that.

6 There is one more issue that we just came
7 -- brought to our attention, and I'll let Denise --
8 oh, there's an amendment. Okay. Sorry, Judge.

9 THE COURT: I've read the amendment.

10 MS. DIXON: I have not ---

11 THE COURT: It has to do with a curative
12 charge, or a cautionary charge; is that correct?

13 MS. DIXON: It looks like -- let's see.

14 THE COURT: It has to do with a cautionary
15 charge.

16 MS. DIXON: Failed to object to the failure
17 to give a cautionary instruction before the testimony
18 began.

19 THE COURT: Okay. I understand -- I
20 understand that. All right. Ms. Swope, you -- does
21 your client intend on going forward on each of these
22 four?

23 MS. SWOPE: We are going forward on the
24 one for the amendment, Your Honor. And ---

25 THE COURT: For the amendment.

1 MS. SWOPE: --- and failure to ---

2 THE COURT: For the amendment.

3 MS. SWOPE: The amendment regarding the
4 curative instruction.

5 THE COURT: Okay. All right.

6 MS. SWOPE: The lack of curative instruction
7 and objection to that, as well as his understanding
8 of his right to testify or not to testify. And there
9 is another issue that we can't address until tomorrow,
10 and we're going to be asking for it to be held
11 in abeyance because the State needs an opportunity
12 to review it, and we'll have a witness tomorrow,
13 Mr. Alfaro, who was the prosecutor, that can address
14 that as well.

15 THE COURT: Okay. And you're going forward
16 on the allegation of ineffectiveness for failing to call
17 a witness?

18 MS. SWOPE: No, Your Honor.

19 THE COURT: Okay. So that is waived?

20 MS. SWOPE: Yep.

21 THE COURT: All right. With regard to the
22 allegation that there was not a motion for severance
23 made ---

24 MS. SWOPE: Yes.

25 THE COURT: --- you're going forward on that

1 one?

2 MS. SWOPE: Failure to advise, Your Honor?
3 I'm sorry.

4 THE COURT: No. The issue with regard
5 to a severance.

6 MS. SWOPE: It's -- it's ---

7 THE COURT: The record ---

8 MS. SWOPE: --- interrelated to the
9 amendment as well. It's -- he requested a severance,
10 but he didn't follow through with requesting it again
11 when the co-defendant testified.

12 THE COURT: Okay. We'll go forward to that.

13 MS. SWOPE: Yeah.

14 THE COURT: Okay. All right. And you may
15 call your first witness.

16 MS. SWOPE: I would call Mr. Drake Campbell
17 to the stand, please, Your Honor.

18 THE COURT: Mr. Campbell, please come
19 forward, and let's see -- where is the -- I'm going
20 to ask you to come forward and have a seat. Well,
21 first of all, I'm going to ask you to approach
22 the clerk as she swears you in. I'm not really sure
23 about the logistics here. Do we have a Bible here?
24 I'm going to ask, if you could, to -- you can set
25 your paperwork down, please, sir. Place your left hand

1 on the Bible and raise your right hand as the clerk
2 administers the oath.

3 MR. DRAKE CAMPBELL was called as a witness,
4 being duly sworn, was examined and testified as follows:

5 THE CLERK: Please have a seat.

6 THE COURT: Mr. Campbell, have a seat.
7 And I'm going to ask, if you could, to state your
8 full name for the record. And I'm going to ask that
9 you speak loudly, clearly, and slowly in order for me
10 to hear everything that you have to say. Let's start
11 with your full name.

12 THE APPLICANT: Drake Edward Campbell.

13 THE COURT: Thank you, Mr. Campbell.
14 Ms. Swope.

15 DIRECT EXAMINATION

16 BY MS. SWOPE:

17 Q. Mr. Campbell, now we do have the issue regarding
18 the email that we're going to address tomorrow. Other
19 than that issue, can you explain to the Court what you
20 feel your attorney should have done, or failed to do,
21 in regards to your trial?

22 A. Yes, ma'am. Yes, ma'am, failed to advise defense
23 that he -- that I had the right to testify after waiving
24 my right due to the surprise of my co-defendant,
25 Jacob Mouzon.

1 Q. So my understanding is your co-defendant
2 testified in a way that surprised you?

3 A. Yes, ma'am.

4 Q. And you didn't understand that although you
5 had waived your right to testify, that you could have
6 testified -- changed your mind and testified at that
7 point?

8 A. Yes, ma'am.

9 Q. Okay. And you don't feel like your attorney
10 explained to you that you had the right to take the
11 stand after you were surprised by that testimony?

12 A. Yes, ma'am, that's correct.

13 Q. Okay. And -- hold on just one second. And
14 in terms of the severance issue, the attorney made
15 a request for severance, but you feel like he didn't
16 follow through with that request for severance during
17 the trial?

18 A. Yes, ma'am. Because once we asked for a separate
19 trial, if we would have -- I believe if we were to give
20 more details into why, based upon the evidence against
21 each defense -- because at the same time I feel like
22 though it was four trials going on, but one -- if you
23 understand what I'm saying.

24 Q. Okay.

25 A. So that's why I feel like, though, if I had

1 a separate trial, things would have -- it would have
2 been another outcome.

3 Q. Okay. And other than the email that we're saving
4 until tomorrow when the former prosecutor can be here,
5 is there anything else that you wanted to explain to
6 the judge today?

7 A. No, ma'am. That's really it due to that email.

8 Q. Okay.

9 MS. SWOPE: That's it, Your Honor.

10 THE COURT: Cross-examination?

11 MS. DIXON: No questions.

12 THE COURT: You may step down, Mr. Campbell.

13 Any further witnesses from that?

14 MS. SWOPE: No.

15 THE COURT: State, your record.

16 MS. DIXON: State calls Grant Smaldone.

17 THE COURT: I'm going to ask, if you could,
18 to come forward, place your left hand on the Bible,
19 raise your right hand as the clerk administers the oath.

20 MR. GRANT SMALDONE was called as a witness,
21 being duly sworn, was examined and testified as follows:

22 THE CLERK: Thank you. You may be seated.

23 All right. I'm going to ask, if you could, to state
24 your full name for the record. Ask that you speak
25 loudly, clearly, and slowly.

1 THE WITNESS: Yes. My name is
2 Grant Smaldone, S-M-A-L-D-O-N-E.

3 DIRECT EXAMINATION

4 BY MS. DIXON:

5 Q. Mr. Smaldone, how are you today?

6 A. I'm doing all right.

7 Q. Good. And can you tell us how -- what your
8 involvement with this case was?

9 A. I represented Mr. Drake Campbell throughout,
10 I think, the entirety of the case up to the trial.

11 Q. Okay. And do you recall, just generally,
12 what the State's evidence against Mr. Campbell was?

13 A. Yes.

14 Q. And what was that evidence?

15 A. Well, there's, you know, obviously a murder,
16 so there was a deceased person. There was a gun
17 recovered -- I think just one gun recovered, but I might
18 be wrong. I remember there was a Hello Kitty bag
19 with drugs in it that, I believe, belonged to the victim
20 in the case. But I think the bulk of the evidence was
21 probably through co-defendant testimony that matched,
22 you know, kind of -- well, that mostly matched about
23 what kind of physical evidence was found.

24 Additionally, they found my client, I think,
25 in the woods in an area that was -- I think someone

1 spotted a co-defendant, and he was with the
2 co-defendant, if I recall correctly. It's been awhile.

3 Q. Okay. And do you recall one of the victims that
4 survived testifying at trial?

5 A. Yes.

6 Q. And do you recall kind of, generally, what she
7 said happened?

8 A. Yes.

9 Q. And what did she say happened?

10 A. If I -- you know, if I recall correctly, I think
11 they had -- the victim and co-victim -- the decedent
12 and the surviving victim came home late to a trailer --
13 their home, which is a trailer, kind of -- I visited
14 the location actually. It was a pretty remote area.
15 They came home, and then I think as soon as they got out
16 of the car, a group of young men came from both sides,
17 surrounded them, got them in the house, duct taped
18 the surviving victim's hands together, and possibly
19 the decedent's hands, I don't know. But, basically,
20 went through the house, robbed it, killed the victim
21 in the case, shot -- sorry, killed the decedent in the
22 case, shot the surviving victim.

23 The surviving victim, I think, said -- you know,
24 pleaded for her life, which is, you know, sad, and
25 I think she said she was pregnant, so they didn't shoot

1 her again. I might be off, but this is what I remember.
2 They left, and then she went to a neighbor's house,
3 banged on the door, and then -- that was generally what
4 happened.

5 Q. Called 911 ---

6 THE COURT: You're saying that she was shot
7 once?

8 THE WITNESS: I believe she was shot once
9 in the chest, if I recall correctly, yes, but she
10 survived.

11 BY MS. DIXON:

12 Q. And then, do you recall if she called 911?

13 A. I honestly don't recall.

14 Q. Okay.

15 A. I don't think she -- I think the neighbors
16 had to call 911, but I might be wrong.

17 Q. Do you recall law enforcement finding vehicles
18 matching the description shortly after this invasion?

19 A. Yeah. I don't recall specifics. I think there
20 were two cars, and I think one of them was found sort
21 of near the national forest, but those details are
22 fuzzier than most.

23 Q. Gotcha. Do you recall police using a K-9 unit
24 to apprehend Mr. Campbell?

25 A. Yes.

1 Q. Okay. And do you recall them finding a red
2 bandana in the road near the vehicles?

3 A. I remember a bandana; I don't remember a red one.

4 Q. Okay. Do you recall any DNA from that bandana?

5 A. No.

6 Q. No? That's okay. The record will speak to that.
7 That's fine.

8 A. Okay.

9 Q. Now in terms of this case, getting ready for it,
10 do you recall how many times you met with Mr. Campbell?

11 A. I honestly don't recall. I know it was ample,
12 I believe. I worked pretty hard on this case, in my
13 opinion.

14 Q. Did he have any defenses?

15 A. You know, there's always defenses, but I don't
16 recall which one. I think the -- I think it was a mere
17 presence defense, probably. Mere presence afterwards,
18 kind of saying that just because he met up with them
19 afterwards doesn't mean that he was there at the scene.

20 Q. Okay. And what was, kind of, your strategy going
21 into this?

22 A. Like I said, mere presence. And also, hopefully,
23 that the jury would not pick Mr. Campbell out as the bad
24 guy because I think there were some pretty bad people
25 involved.

1 Q. Okay.

2 A. More so than, you know, Mr. Campbell, certainly.

3 Q. And did you discuss with him the evidence?

4 A. Yes.

5 Q. Did you discuss with him your strategy?

6 A. Yes.

7 Q. And did you have any concerns with his ability
8 to understand your conversations?

9 A. No, not at all. He's a bright guy.

10 Q. Okay. Did you have any -- do you feel that
11 you had adequate time to prepare for trial?

12 A. Yes.

13 Q. Okay. And then, in terms of the -- did you talk
14 to him about his right to testify?

15 A. Yes.

16 Q. And do you recall what -- generally speaking,
17 when you discuss that with a client, do you advise
18 them as to whether or not you think they should testify,
19 or do you kind of just give them options and let them
20 decide?

21 A. I always want to make it clear that it is their
22 option, but the more -- the further along I get in my
23 career, the more I advise them, hey, I think this would
24 or wouldn't be a good idea. I definitely -- when I was
25 just starting out, I would say, up to you, I don't know.

1 But now, I definitely give an opinion.

2 Q. Gotcha. Do you recall if you gave an opinion
3 in this case?

4 A. I probably told him it's best not to, probably,
5 but I don't recall in this specific case.

6 Q. Okay. And did you believe he understood he could
7 testify?

8 A. Yes.

9 Q. Okay. And -- just one moment. Did you know the
10 co-defendant was going to -- well, not the co-defendant
11 that testified for the State, but the other one.
12 Did you have any notice that he was going to testify?

13 A. No, that was a surprise to everyone.

14 Q. Okay.

15 A. I think even his attorney, yes.

16 Q. Even ---

17 A. So even his attorney, but no one had any clue.

18 Q. Okay. Gotcha.

19 MS. DIXON: I have nothing further.

20 Thank you.

21 CROSS-EXAMINATION

22 BY MS. SWOPE:

23 Q. Hi, Mr. Smaldone.

24 A. Hello.

25 Q. Thank you for being here.

1 A. No problem.

2 Q. All right. In terms of the issue for severance,
3 you said that there was the surprise witness of the
4 co-defendant, and that echos my client's testimony
5 as well. Everybody was shocked ---

6 A. Yes.

7 Q. --- that the co-defendant suddenly testified.
8 Did you, at that point, renew your motion for severance,
9 or raise the Bruton issue?

10 A. I do not believe that I did.

11 Q. Okay. Did you discuss, or did my client mention,
12 testifying after that surprise testimony?

13 A. I do not believe we discussed it.

14 Q. Okay. So you did not explain to him that --
15 because of the surprise, you guys didn't talk about
16 the possibility of whether he would want to take the
17 stand?

18 A. I don't believe -- I don't recall, but I don't
19 believe so.

20 Q. Okay. And as to the issue regarding the curative
21 instructions for a multiple-defendant trial, in the
22 beginning -- and I've got the pages that are relevant,
23 if you want to review them. When she was -- when the
24 judge was charging the jury, she didn't raise the issue
25 at all regarding whether or not -- how you would

1 approach from a juror's perspective avoiding pitfalls
2 in a multiple-defendant trial.

3 And in the end, after the trial was concluded,
4 the judge's statement was simply, there are also four
5 Defendants in this case, each of whom is charged with
6 murder -- and this is page 1,295, Your Honor -- each
7 of whom is charged with murder, attempted murder,
8 burglary first, kidnapping, armed robbery, and
9 possession of a weapon during a violent crime. The case
10 of each Defendant and the evidence and law concerning
11 that Defendant should be considered separately and
12 individually.

13 Did you feel that that was an appropriate
14 curative instruction, and was there a reason that you
15 didn't state that it needed to be stated more firmly
16 and with more detail to protect your client's rights?

17 A. I don't recall. I think I probably would say
18 that would have sufficed.

19 Q. Okay. Did you discuss with your client at all
20 regarding this issue?

21 A. No.

22 Q. Okay. Did you have any prepared instructions
23 covering the issue of charges -- excuse me -- prepared
24 charges for the judge's perusal regarding severance
25 as well as curative instructions in a joint-defendant

1 trial?

2 A. No.

3 Q. Okay.

4 MS. SWOPE: I don't have any other
5 questions, Your Honor.

6 THE COURT: Let me ask you a couple,
7 if I could.

8 THE WITNESS: Sure.

9 THE COURT: You did, indeed, move for
10 a severance?

11 THE WITNESS: I did -- I think we all moved
12 for a severance, Your Honor, if I recall correctly,
13 but I was part of that at the very -- I think the very
14 beginning of the trial, yes.

15 THE COURT: And, of course, the law doesn't
16 require that a case be severed; that's within the
17 discretion of the judge; isn't that correct?

18 THE WITNESS: Most -- almost always, yes,
19 sir.

20 THE COURT: And in the event the case would
21 have been severed, these Defendants would have testified
22 anyway; isn't that correct?

23 THE WITNESS: I believe so, yes.

24 THE COURT: And there's been some mention
25 in passing about a Bruton issue. Was there a Bruton

1 violation in the testimony of the co-defendant?

2 THE WITNESS: Your Honor, I don't want
3 to sound too dumb, but my understanding of Bruton
4 is it would apply to -- and I might be totally wrong
5 on this. But I thought that would apply to hearsay
6 statements, basically, pretrial statements. So if they
7 played a co-defendant's statement at trial that says,
8 you know, Drake was there, Drake did it, then certainly,
9 that would be a Bruton issue. I don't recall ---

10 THE COURT: But you don't recall any Bruton
11 violations?

12 THE WITNESS: In my mind, I did not see
13 any Bruton violations at the time, but I'm a little
14 rusty on it.

15 THE COURT: All right. And I think the
16 record speaks for itself, but Judge Jefferson gave
17 the standard colloquy with regard to the Defendant's
18 right to testify, and it was completely left up to him;
19 isn't that correct?

20 THE WITNESS: Yes. I think she went over
21 it with all the non-testifying and testifying Defendants
22 at the beginning of our case, yes.

23 THE COURT: Was there any prejudice that
24 you perceived with regard to all of the Defendants being
25 tried together? I mean, this Defendant was actually

1 acquitted on the most serious charges.

2 THE WITNESS: Right. I don't believe
3 so because the jury actually did -- I don't think any
4 two Defendants got the same verdict. I might be wrong,
5 but they were kind of all over the place and each
6 verdict applied to each Defendant. Making -- seeing
7 the trial, as I did, I understood the jury's logic
8 for each Defendant, if that makes sense.

9 THE COURT: All right. And so, in your
10 estimation, there was no prejudice by virtue of the fact
11 they were tried together?

12 THE WITNESS: I don't believe so.

13 THE COURT: You don't believe that there
14 was prejudice?

15 THE WITNESS: Right. I do not believe that
16 there was prejudice.

17 THE COURT: And I'm going to allow you --
18 I'm going to allow -- yes. Do you have any further
19 questions?

20 MS. SWOPE: Briefly, Your Honor.

21 BY MS. SWOPE:

22 Q. I believe that Kenneth Campbell received the same
23 result in sentence, my client's brother. Is that your
24 recollection?

25 A. No. I remember this well. Mr. Campbell --

1 Kenneth Campbell got -- I think you're right, he did get
2 the same verdict, but he was -- because of his prior ---

3 THE COURT: The same sentence?

4 THE WITNESS: No, the same verdict. He got
5 a life without parole sentence because of a prior
6 manslaughter conviction.

7 BY MS. SWOPE:

8 Q. But he had the same verdict from the jury?

9 A. You're right.

10 Q. Okay, okay.

11 A. I believe that he did, yes. I apologize for
12 that.

13 Q. That was my recollection as well.

14 MS. SWOPE: Nothing further, Your Honor.

15 THE COURT: Okay. You had mentioned that
16 there should have been some other charge. Do you want
17 to proffer a charge that would have been more
18 appropriate than what Judge Jefferson did?

19 MS. SWOPE: I could not get it to print
20 this morning. If I could proffer that tomorrow when
21 we conclude the case, if that would be acceptable.

22 MS. DIXON: Do you have a case that it's
23 based on?

24 MS. SWOPE: I don't have it with me because
25 I couldn't get it to print this morning.

1 MS. DIXON: Is it this?

2 MS. SWOPE: Partly.

3 MS. DIXON: Will you email it to me?

4 MS. SWOPE: I will. Absolutely. I can
5 email it to you and the Court as well when I get back.
6 I just couldn't get it to print.

7 THE COURT: Any more questions of
8 Mr. Smaldone?

9 MS. DIXON: Just real quick on redirect.

10 REDIRECT EXAMINATION

11 BY MS. DIXON:

12 Q. I think you were questioned about the judge's
13 cautionary instruction, and you believed it was
14 sufficient?

15 A. Yes.

16 Q. Okay.

17 MS. DIXON: Nothing further.

18 THE COURT: All right. You may step down.

19 THE WITNESS: All right. Thank you.

20 THE COURT: Anything -- anything further?

21 MS. SWOPE: Nothing, Your Honor.

22 THE COURT: All right. And I understand
23 that there's been a request to keep the record open
24 for additional testimony; is that correct?

25 MS. SWOPE: It should be very brief,

1 I believe, Your Honor.

2 THE COURT: And when will that take place?

3 MS. SWOPE: Tomorrow. We believe that
4 the prosecutor on this case, I believe, is supposed
5 to be there tomorrow, so we can cover the remaining
6 issue. I was given information today that I want
7 to cover. I think it's very short, but I want to put
8 it in the record.

9 THE COURT: All right. Has there been
10 arrangements for Mr. Campbell to be transported?

11 MS. DIXON: I can reach out to SCDC.
12 I don't know if it makes more sense to leave him here.

13 THE COURT: Okay. Well ---

14 MS. DIXON: Which, I guess, you can ---

15 THE COURT: --- certainly, he's going
16 to have to be transported from here to there. Whether
17 he goes back to whatever facility ---

18 MS. SWOPE: He's in Lee County.

19 THE COURT: Lee or here, somebody has
20 got to make arrangements for him to be in Charleston.
21 Can we make sure of that?

22 MS. SWOPE: Absolutely.

23 MS. DIXON: Do you think it's easier just
24 to have him transported back by SCDC, and then we'll
25 just -- I can reach out to them now and -- I don't know

1 if it's easier to do that, or have him ---

2 THE COURT: I don't know which is easier
3 logistically -- I don't know how they do that. It might
4 be that -- I don't know if they need an order for him
5 to be detained here or not. Y'all can look into that,
6 and if you want me to sign an order one way or the
7 other, I will.

8 MS. DIXON: Okay.

9 THE COURT: But he needs to be there
10 tomorrow.

11 MS. DIXON: I will email SCDC right now
12 and see what they think. If we can just keep him here
13 for maybe a few more hours while we work that out ---

14 THE COURT: Yes.

15 MS. DIXON: --- rather than having him sent
16 back right now.

17 (End of Transcript of Record.)

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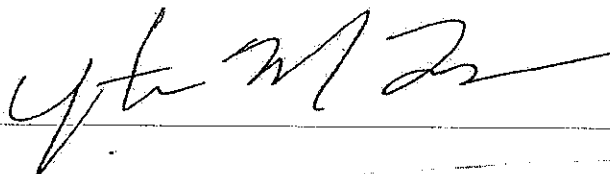
CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 9th of September, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 29, 2025



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
)
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

Drake Campbell,)
) Case No. 2021-CP-08-01168
)
vs)
)
State of South Carolina,)
)
 Defendant.)

H E A R I N G

BEFORE THE HONORABLE MICHAEL G. NETTLES

DATE: September 10, 2024
LOCATION: South Carolina Circuit Court 9
TRANSCRIBER: Jessica Antonucci

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EXHIBITS

(NONE MARKED)

1 JUDGE NETTLES: Ms. Smaldone, if it's easier for you
2 to sit, I have no problem with that.

3 MS. SWOPE: Oh, no, I'm fine.

4 JUDGE NETTLES: You'd rather stand?

5 MS. DIXON: I'd rather stand. Getting out of the
6 chair is challenging, so standing is good.

7 JUDGE NETTLES: All right, well I'm gonna recognize
8 Ms. Dixon at this time. And we have addressed the
9 procedural history yesterday; is that correct?

10 MS. DIXON: Correct, Your Honor.

11 JUDGE NETTLES: I'm not gonna ask that you do that
12 again, but I am going to make a part of the record that
13 Ms. Torres.

14 MS. TORRES: Yes.

15 JUDGE NETTLES: Ms. Torres was the court reporter
16 for yesterday's -- the first portion of this hearing.
17 And that hearing took place in Moncks Corner, Torres,
18 that way we can connect the two records for appellate
19 review.

20 MS. DIXON: Correct. And just for the sake of the
21 record, this is Drake Campbell v. State, docket number
22 2021-CP-08-116.

23 JUDGE NETTLES: All right. And you are recognized.

24 MS. DIXON: Danielle Dixon on behalf of the State.

25 And as Your Honor said, we did open this yesterday, and I

1 believe Denise had some additional evidence.

2 JUDGE NETTLES: Yes.

3 MS. SWOPE: I did, Your Honor. I held the record
4 open regarding the submitting a proffered cautionary
5 instruction. I emailed these to the Court, but I wanted
6 to hand up a hard copy in case that made things easier
7 regarding the cautionary instruction for multiple
8 defendants.

9 And, I was presented yesterday from my client in his
10 paperwork he found an email from the prosecutor in the
11 case, Mr. Alfaro, to one of the co-defendants attorneys,
12 and we left the case open so that everyone would have the
13 opportunity to review that information and speak with Mr.
14 Alfaro.

15 JUDGE NETTLES: All right. Let me look at this
16 curative instruction here.

17 MS. SWOPE: Yes, Your Honor.

18 JUDGE NETTLES: Ms. Dixon, you read into the record
19 the portion of the transcript where she did indeed in her
20 charge to the jury say that each defendant needs to be
21 considered separately and distinctly in each offense;
22 isn't that correct?

23 MS. DIXON: I believe that is in there, Your Honor.

24 MS. SWOPE: It's page 1295. There was no curative
25 instruction for trial, there was a minimal one after

1 trial on page 1255.

2 JUDGE NETTLES: Well I think what she said really
3 adds nothing more. I mean, it doesn't -- it in my mind
4 this charge is not saying more than what she charged at
5 the conclusion of the case. Anything further from either
6 side?

7 MS. DIXON: Just on that kind of same point. The
8 standard under Strickland does not require a lawyer to --
9 its effectiveness under prevailing professional forms and
10 I think the charge given was a standard -- pretty
11 standard charge given and that's what Mr. Stefan (sic)
12 testified to yesterday. So, I mean, it's not deficiency
13 to not raise something new or novel.

14 JUDGE NETTLES: Right.

15 MS. SWOPE: And, Your Honor, if I may. I believe
16 that the case law speaks to that there should be every
17 effort taken to avoid any confusion or prejudice with the
18 jury. And as I said, there was no curative instruction
19 given at the beginning to prepare the jury for the issue,
20 and then a much less detailed one in my opinion and
21 could've been given at the end. So, it's more of an in-
22 ~~run from my perspective that the jury wasn't prepared to~~
23 clearly separate the issues between these defendants.

24 JUDGE NETTLES: Well, wouldn't -- and correct me if
25 I'm wrong, we've dealt with a number of these over the

1 last two days, but as I understand, there were a number
2 of defendants in this case; is that correct?

3 MS. SWOPE: There were.

4 JUDGE NETTLES: And weren't the verdicts that were
5 rendered a lot different? Which would seem to indicate
6 that the jury did indeed consider the evidence as applied
7 to each defendant, and did it in a separate and distinct
8 fashion; wouldn't you agree with that?

9 MS. SWOPE: Some of the verdicts were identical.
10 The sentences ended up not being identical, but some of
11 the verdicts were identical.

12 JUDGE NETTLES: But some of them were not.

13 MS. SWOPE: Some of them were not.

14 JUDGE NETTLES: Which would seem to indicate that
15 they understood that each defendant should be handled
16 separately and distinctly. That's at least some
17 indication of that, some -- as they say in the legal
18 world, indicia of --

19 MS. DIXON: And just for the record, only one was
20 convicted of the murder and the attempted, and one was
21 acquitted of everything. So, the jury did seek to
22 consider each person individually.

23 JUDGE NETTLES: Which would seem to indicate that
24 they took the charge to heart in evaluating the evidence
25 as applied to each defendant, which would seem to be an

1 indication that there was no bias and there was no
2 prejudice with regard to him not charging this particular
3 charge that was set forth in State vs. Hawkins. Which is
4 not the only charge; it was just one that the Supreme
5 Court said it would be okay.

6 MS. SWOPE: And just to get back to yesterday as
7 well, my client did testify that he was not clear that he
8 had the right to testify once he had forgone that road,
9 after the surprise testimony of the co-defendant, that by
10 definition -- by testimony of trial counsel --

11 JUDGE NETTLES: Let me ask you this. I've given
12 that some thought. If -- there is a colloquy in the
13 transcript where he explains that he has an absolute
14 right to take the witness stand if he wants to.

15 MS. SWOPE: Right.

16 JUDGE NETTLES: And there's an explanation of the
17 Fifth Amendment, and it goes on to explain that he can
18 talk to his lawyer. He can talk to his family members.
19 He can talk to his friends. The ultimate decision is
20 left up to him.

21 MS. SWOPE: Right.

22 ~~JUDGE NETTLES: And that was covered in the trial~~
23 transcript, don't you agree?

24 MS. SWOPE: In the beginning yes, Your Honor, but
25 all -- Mr. Smaldone then did --

1 JUDGE NETTLES: Well, that's my point.

2 MS. SWOPE: Yeah.

3 JUDGE NETTLES: But you do agree that it was covered
4 with specificity at the appropriate time, before the
5 Defendant put on their case, wouldn't you agree with
6 that?

7 MS. SWOPE: I would. My concern is that Mr.
8 Smaldone testified --

9 JUDGE NETTLES: We're getting to that in a moment.

10 MS. SWOPE: Okay.

11 JUDGE NETTLES: I was just asking he -- the judge
12 did indeed do that at the appropriate time, in the
13 traditional time, after the State finishes their case,
14 before the Defendant offers any defense on their behalf;
15 wouldn't you agree?

16 MS. SWOPE: I would agree that that was put on the
17 record.

18 JUDGE NETTLES: All right. Well let me ask you
19 this, if a judge -- the judge went through it in great
20 detail, and he under oath, said that he did not want to
21 testify. And if a judge revisits that, don't you think
22 that that could be construed as pressure on him to
23 testify?

24 MS. SWOPE: My concern is not necessarily that the
25 judge didn't revisit it, but that the trial attorney

1 stated that everyone was surprised by this testimony,
2 including himself, that the testimony was damaging and
3 that --

4 JUDGE NETTLES: Well, I thought your objection was
5 the fact that the judge did not address the issue.

6 MS. SWOPE: No, my objection was that after the
7 surprise testimony of the co-defendant, that no one was
8 expecting, that trial counsel did not revisit the issue
9 with my client and explain to him that he could change
10 his mind after having put it on the record. My client's
11 not a lawyer. He relies on his attorney for that advice,
12 and he felt as if he had waived that right and the issue
13 wasn't revisited with counsel whether or not it would be
14 advisable to take the stand to deal with the surprise
15 testimony or that he had the right to do so.

16 JUDGE NETTLES: I might not have remembered the
17 testimony correctly, but didn't defense counsel in this
18 case say that under no circumstances would his testimony
19 be helpful?

20 MS. SWOPE: I believe -- I don't remember the exact
21 words, I believe he said that he agreed with the decision
22 not to take the stand.

23 JUDGE NETTLES: Right.

24 MS. SWOPE: I don't remember the exact words but, my
25 client did not feel like he -- he did not understand he

1 had the right to change his mind, and trial counsel did
2 not revisit that issue.

3 JUDGE NETTLES: In order for me to appropriately --
4 I'm not asking you to do this, but in order for me to
5 appropriately understand whether that was an error or
6 not, don't you think you'd have to proffer what he would
7 testify to?

8 MS. SWOPE: We certainly can, if you give me a
9 moment to speak with my client.

10 JUDGE NETTLES: Say that again?

11 MS. SWOPE: If you would give me a moment to speak
12 with my client, I can explain it to him.

13 JUDGE NETTLES: I mean, don't you think that's one
14 thing that I would have to do as to whether or not that
15 affected the outcome of the trial? And according to the
16 trial counsel it would've been detrimental and not
17 exculpatory.

18 MS. SWOPE: I understand, Your Honor.

19 JUDGE NETTLES: All right. Yes, you can talk to --
20 yeah, you can talk with your client if you'd like.

21 MS. SWOPE: Thank you, Your Honor. Your Honor, my
22 client at this time has stated to me that he wishes to
23 waive his right to give that testimony.

24 JUDGE NETTLES: Okay, very good.

25 MS. SWOPE: So we're withdrawing that.

1 JUDGE NETTLES: Thank you. And the record will
2 reflect that for appellate review.

3 MS. DIXON: So, just for purposes of this -- just
4 this issue is being withdrawn though?

5 MS. SWOPE: It is.

6 MS. DIXON: Okay.

7 JUDGE NETTLES: The whole issue is being withdrawn?

8 MS. SWOPE: Regarding the right to testify, yes,
9 Your Honor.

10 JUDGE NETTLES: Oh, okay, good. Very good.

11 MS. DIXON: All right.

12 MS. SWOPE: Because I do believe Your Honor is
13 correct, we would need to proffer that testimony.

14 JUDGE NETTLES: Right. Anything further from
15 anybody?

16 MS. DIXON: Well, I think you're going to --

17 MS. SWOPE: I would call the prosecutor in this
18 case, Brian Alfaro, to the stand, please.

19 JUDGE NETTLES: Okay, yes. Please come forward.
20 I'm going to ask you if you could, place your left hand
21 on the bible, raise your right hand as the Clerk
22 administers the oath. If we can find the bible. There
23 it is, right there. All right.

24 CLERK: Do you swear or affirm the testimony you
25 shall give the Court is the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 MR. ALFARO: Yes.

3 CLERK: Please be seated. Please state your full
4 name, spelling your last name loudly and clearly into the
5 microphone.

6 MR. ALFARO: My name is Bryan Alfaro, B-R-Y-A-N,
7 last name is Alfaro, A-L-F, as in Frank, A-R-O.

8 BY MS. SWOPE:

9 Q. Mr. Alfaro, you were the prosecutor in this case; is
10 that correct?

11 A. I was.

12 Q. And you had a proffer agreement, am I correct, with
13 one of the co-defendants, Darius Hamilton?

14 A. That's correct.

15 Q. Okay. And my client has recently found in his
16 paperwork, although we're not too clear (inaudible) in
17 his paperwork we have an email from you to the attorney
18 for Mr. Hamilton, and I'm handing that up for
19 identification, if you can.

20 A. Yes, this appears to be an email provided by Mr. --
21 sent to me -- or sent by me to Mr. Steve Davis, who was
22 the attorney for Darius Hamilton. This is his copy.

23 Q. And do you feel like Mr. Hamilton was truthful with
24 the Court when he testified?

25 A. I believe that he added some things to his testimony

1 in Court that were not consistent with his prior
2 statements. He was impeached by me, for I believe about
3 14 pages worth of the transcript about it, and then each
4 defense attorney had an opportunity to cross-examine him
5 about his inconsistencies and his statements.

6 Q. And how did the judge address those inconsistencies
7 for the record?

8 A. The one that stands out the most is during cross-
9 examination by Mr. Archer he asked about a polygraph and
10 Mr. Hamilton indicated --

11 JUDGE NETTLES: Who asked about the polygraph?

12 BY THE WITNESS:

13 A. The defense attorney Mark Archer, I can't remember
14 which defendant he represented. But he asked about a
15 polygraph that was mentioned in the proffer agreement,
16 and we stopped the proceedings, sent the jury out, and
17 that issue was addressed. He did not -- he had never
18 been asked to take a polygraph, despite what he said in
19 Court. And then there was a stipulation that was entered
20 into by all the parties regarding the fact that that had
21 not actually taken place.

22 ~~Q. Correct me if I'm wrong, but he also claimed that~~
23 there was not a proffer agreement, which you also
24 corrected on the record?

25 A. I don't recall that. I know he had said that he had

1 not been promised anything by --

2 Q. I see, okay.

3 A. -- the -- in the proffer agreement, but I don't
4 think he ever denied that there was an actual agreement.

5 Q. Okay, but he claimed that there was nothing promised
6 at that time?

7 A. That's correct.

8 Q. And was there anything promised at that time?

9 A. No.

10 Q. Okay. And in the end, what was the proffer
11 agreement?

12 A. It's the standard proffer agreement that was used by
13 the office at the time. It laid out his constitutional
14 rights not to give any kind of statement. It was the
15 understanding that no promises were made to him regarding
16 charges that may or may not be prosecuted, no promises
17 were made as to sentencing that may or may not occur, and
18 that the primary thing for him was that he was to tell
19 the truth in order to be protected under the terms of
20 that proffer agreement that was entered into with Mr.
21 Hamilton as well as his attorney Mr. Davis.

22 Q. And he violated the terms of that agreement and I
23 believe the email says you were asking for 30 years?

24 A. That we were -- the email that you showed me laid
25 out for Mr. Davis that we believe that the terms of the

1 proffer had been violated, and that we were going to
2 prosecute him as laid out in that email regarding the
3 charges that he would plead to, and that he would be
4 looking at a range of 15 to 30, I believe we were capping
5 the burglary at 30 years, took the murder off the table
6 and allowed him to plea to voluntary, I believe.

7 Q. And the sentence he received, I believe, is 15
8 years?

9 A. It was -- I believe that's correct, yes.

10 Q. The email also states that based on Mr. Hamilton's
11 testimony that arguably he was more culpable than Mr.
12 Campbell, but Mr. Campbell actually received a greater
13 sentence of 20 years, whereas Mr. Hamilton received 15;
14 is that correct?

15 A. I believe that's correct. I think that part of the
16 email was based off of Mr. Hamilton's testimony at trial,
17 where he made himself actually more culpable than what
18 his prior statements had indicated. The sentence of 15
19 was determined by the judge, it was not anything that we
20 recommended or asked for.

21 MS. SWOPE: I have nothing further, Your Honor.

22 ~~JUDGE NETTLES: Okay. Ms. Dixon?~~

23 MS. DIXON: One moment, Your Honor.

24 BY MS. DIXON:

25 Q. Mr. Alfaro, how are you today?

1 A. I'm good.

2 Q. Good. And just to clarify for the record, this
3 email was sent after the trial date, correct?

4 A. I believe so, yes.

5 Q. Okay. And in the proffer agreement you didn't make
6 any promises to the witness, correct?

7 A. Correct.

8 Q. Did not promise to dismiss charges?

9 A. Correct.

10 Q. Did not promise any type of sentence?

11 A. Correct.

12 Q. And then just to clarify for the record, there was
13 no polygraph test?

14 A. No.

15 Q. And that was new surprise testimony for you as well
16 as everyone else?

17 A. It was new surprise testimony when he said that he
18 had been asked to take one, or had taken one, I can't
19 remember how he worded it, but that never took place.
20 There is language in the proffer agreement that is
21 potentially he could be asked to take one, but he was not
22 in this case.

23 Q. And did that surprise testimony impact the State's
24 case in any way?

25 A. I believe it did. I believe it was at least in part

1 responsible for the acquittal of Sherrod Palmer. And I
2 believe it played a role in combination with some other
3 testimony as to why some were convicted of murder and
4 some were not.

5 Q. And was he impeached with any of his prior
6 inconsistent statements?

7 A. He was. I impeached him regarding the
8 inconsistencies in his statements. I know Mr. Smaldone
9 impeached him, I believe, directly referencing every
10 statement that had been given previously. And I know Mr.
11 Thrower, and Mr. Smiley, and Mr. Archer all cross-
12 examined him as well.

13 Q. So, the jury heard this multiple times?

14 A. Yes.

15 Q. And in closing argument was this all brought out
16 again?

17 A. It was. We obviously for the closing argument had
18 to address that elephant in the room, so it changed I
19 believe how the case came out.

20 Q. Nothing further.

21 JUDGE NETTLES: Any redirect?

22 ~~MS. SWOPE: Nothing further, Your Honor.~~

23 JUDGE NETTLES: You may step down. You may be
24 excused.

25 MR. ALFARO: Thank you.

1 JUDGE NETTLES: Anything further from anybody?

2 MS. SWOPE: In terms of witnesses, no, Your Honor.

3 MS. DIXON: Nothing further from the State.

4 JUDGE NETTLES: Any closing remarks?

5 MS. SWOPE: Just, Your Honor, that I believe we
6 covered the earlier issues regarding curative
7 instructions and separate trials. My client wanted me to
8 emphasize to the Court that although the prosecutor felt
9 that this gentleman was more culpable in the issues that
10 occurred here, that he actually received a lesser
11 sentence and my client does not feel that that is
12 equitable and is part of the reason that he's asking the
13 Court to consider awarding him a new trial in this case.

14 JUDGE NETTLES: All right. What do you think about
15 the fact that the sentence -- first of all, I can't do
16 anything about the sentence, we all know that.

17 MS. SWOPE: I've explained that. He wanted me to
18 raise it as a fairness issue.

19 JUDGE NETTLES: In addition to that, in virtually
20 every case with co-defendants, every co-defendant has an
21 opportunity to cooperate with the State, and those who do
22 get treated accordingly. Some people say they get more
23 lenient treatment, some people would say that people who
24 did not cooperate don't get harsh treatment, but get fair
25 treatment.

1 MS. SWOPE: That is correct, Your Honor. And I
2 think that my client would agree with that assessment,
3 except that it would appear that Mr. Hamilton was not
4 forthright and -- in terms of his testimony and that he
5 should not have been afforded --

6 JUDGE NETTLES: It's really in his benefit, I would
7 think.

8 MS. SWOPE: In terms of whose benefit, Your Honor?

9 JUDGE NETTLES: His adding to his testimony, the
10 mentioning of a polygraph inure to his benefit, wouldn't
11 you agree?

12 MS. SWOPE: I think that you can certainly argue
13 that.

14 JUDGE NETTLES: Right.

15 MS. SWOPE: My client just has a fundamental
16 fairness issue with someone who basically lied to the
17 Court getting a better sentence. And I can't say that I
18 disagree with that, and that's part of the reason that
19 he's asking the Court to consider granting him a new
20 trial today.

21 JUDGE NETTLES: All right. Yes, ma'am?

22 ~~MS. DIXON: Yeah, I would just say that's not a~~
23 basis for finding counsel was ineffective; certainly not
24 the sentence that the judge chose to give. And it seems
25 to me to be -- I mean, he's got two kidnapping

1 convictions on there. He potentially was facing a lot
2 more time than 20 years, so I feel that he got a very
3 fair sentence, all things considered. I mean, probably
4 could've been much harsher than it was.

5 But we would just submit that they haven't met their
6 burden of proving any deficiency or prejudice. I believe
7 they've withdrawn the issue regarding failing to call
8 witnesses and failing to advise that he could testify
9 again.

10 So, that only leaves the severance issue, which was
11 raised on the record very adequately, and I think the
12 record speaks for itself in that regard. And then the
13 issue that they brought up now about, I guess, the issue
14 is that the State was putting up perjured testimony. I
15 don't think there's any evidence that the State knowingly
16 elicited any perjured testimony. You know, witnesses
17 change their testimony all the time. So, we would just
18 submit they haven't met their burden.

19 JUDGE NETTLES: And under any circumstance, it's
20 kind of hard to say whether what he said in court was
21 true or what's he told --

22 MS. DIXON: We don't know, yeah. We don't know.
23 And I think the jury got to hear about much his story had
24 changed and that certainly probably weighed on their mind
25 whenever they considered his credibility.

1 JUDGE NETTLES: Anything further?

2 MS. SWOPE: No, Your Honor. I believe that the
3 amended PCR application does address my concerns with the
4 curative instructions, and I would leave it to the
5 Court's good offices to interpret whether those
6 deficiencies, arguable deficiencies, rise to the level of
7 Strickland.

8 JUDGE NETTLES: All right. Ms. Smaldone, you've
9 done a very fine job, but --

10 MS. SWOPE: Swope, Your Honor. Smaldone was the
11 trial lawyer.

12 JUDGE NETTLES: That's right, that's right, Ms.
13 Swope. You've done a very fine job and you're protected
14 on the record in all respects. I'm going to deny the
15 application for Post Conviction Relief.

16 I find that the instruction that was given at the
17 conclusion of the case explained how the jury was to
18 evaluate the evidence and the actual verdicts that were
19 rendered seemed to indicate that they did treat each
20 defendant separately and according to the evidence
21 presented against them.

22 ~~As far as the issue of severance, that's clearly~~
23 within the sound discretion of the trial judge, and under
24 these circumstances it would be -- it's not a reversible
25 error not to sever the case, and I'm sure that that issue

1 was probably addressed on appeal. But nonetheless, it's
2 certainly within the sound discretion of the judge not to
3 sever a case.

4 And as far as the issue of fairness, what his
5 sentence was versus the cooperating witness, for me to
6 rule otherwise would really have ramifications for the
7 way the criminal judicial system works, because people
8 who cooperate with the State get consideration for their
9 efforts in that regard.

10 And so, and for that reason I don't think -- I think
11 that he got a fair trial. I don't think there's been a
12 showing that the trial judge fell short in his
13 performance and even if he did, it did not affect the
14 outcome of the case. And I'm going to ask Ms. Dixon if
15 you will prepare an Order to that effect.

16 MS. DIXON: Yes, Your Honor.

17 MS. SWOPE: Thank you, Your Honor.

18 JUDGE NETTLES: Good luck to you.

19 MS. DIXON: Thirty days, Judge?

20 JUDGE NETTLES: That'll be fine.

21 MS. DIXON: Okay, thank you.

22

23

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Berkeley

I, JESSICA ANTONUCCI, 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 hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 9, Berkeley County, South Carolina, on the 10th day of September, 2024.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Jessica Antonucci
Jessica N. Antonucci

Transcriber

August 13, 2025

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Drake Campbell, #377575,

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2021-CP-08-01168

ORDER OF DISMISSAL

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

2025 JUN -5 AM 11:05

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Drake Campbell (Applicant) on June 6, 2021. Respondent made its return requesting an evidentiary hearing. Respondent also moved to dismiss a claim related to counsel's failure to move for a severance on the basis the transcript showed counsel did, in fact, move for a severance. On September 9-10, 2024, an evidentiary hearing convened before the Honorable Michael G. Nettles.¹ Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the Court heard testimony from Applicant trial counsel Grant B. Smaldone, Esquire; and Assistant Solicitor Bryan Alfaro. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

¹ This matter was previously set for hearings and continued on November 2, 2022, August 21, 2023, and October 20, 2023, at the request of Applicant's counsel; and on March 11, 2024 at Respondent's request.

This hearing began September 9, 2014, and this Court held the record open at Respondent's request to procure the testimony of the solicitor. The record was reopened September 10, 2024.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In April 2017, the Berkeley County Grand Jury indicted Applicant for murder (2017-GS-08-785), attempted murder (-787), two counts of kidnapping (-788, -789), two counts of armed robbery (-786, 787), first-degree burglary (-784), and possession of a weapon during the commission of a violent crime (-790).

On August 27-31, 2018, Applicant and three of his co-defendants proceeded to a jury trial before the Honorable Deadra J. Jeferson. Grant B. Smaldone, Esquire, represented Applicant, and Assistant Solicitors Bryan Alfaro and Wilson McNeely prosecuted the case. The jury acquitted Applicant of murder, attempted murder, and first-degree burglary, but convicted him as indicted on the remaining charges.² Judge Jefferson sentenced him to concurrent terms of twenty years for each kidnapping and armed robbery charge, and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine H. Hudgins through the filing of an Anders³ brief raising the issue of whether the Court erred in denying the motion to sever. The South Carolina Court of Appeals dismissed pursuant to Anders. The remittitur was sent May 20, 2021.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

At trial, Krystal Snipe testified she and her boyfriend Kadeem Johnson were returning home around 2:00 a.m.; as they were getting out the car, five masked-men approached armed with

² Co-defendant Jacob Mouzon was convicted as indicted of all charges, and co-defendant Sherrod Palmer was acquitted of all charges. Co-defendant Kenneth Campbell, like Applicant, was acquitted of murder, attempted murder, and first-degree burglary; but convicted of two counts of kidnapping and armed robbery, and one count of possession of a weapon during a violent crime.

³ Anders v. California, 386 U.S. 738 (1967).

guns and forced Snipe and Johnson inside their home. (Tr. 242, 244). She stated three of the men went inside while two remained outside. Once inside, Snipe and Johnson were forced at gunpoint to their bedroom, where their hands were taped. Snipe stated one of the men stayed in the bedroom holding two guns on them while the other two men took items—including a red Hello Kitty bag—from their home. (Tr. 247, 250-53). Snipe testified one of the men removed his mask, and the men began “arguing about they saw our faces, they saw our face. And at that point, he shot Kadeem and he fell in front of me. And then he shot me, and he ran out the door.” (Tr. 282). The men left in the victims’ white Crown Victoria and gray Crown Victoria; after they left, Snipe called 911. (Tr. 202-03, 292). She later identified co-defendant Mouzon as the shooter. (Tr. 284).

Deputy Corinthian Green was dispatched to the shooting. On her way, she received a BOLO for a white Crown Victoria. As she heard the BOLO, a white Crown Victoria and a truck passed her “going around that curve probably about 80 miles per hour. (Tr. 357, 359-60). She turned around to pursue the vehicles; however, the Crown Victoria stopped in the road. As Deputy Green approached, she saw “a black male in the middle of the highway” and surmised he came from the car. (Tr. 362-63). Deputy Green testified the man ran into the woods. She observed a red bandana from the ground near the car. (Tr. 372).

Law enforcement established a perimeter around the abandoned vehicle and began searching. Deputy Timothy Ham observed a black hoody and an AK-47 rifle on Yellow Jacket Road—a forestry road directly through the woods from where the Crown Victoria was abandoned. (Tr. 388, 390-93).

Brittany Bordeaux testified she saw three men walking in the road near Eccles Church and “stopped them because they were in an unusual area for that time of morning.” (Tr. 490-93). She allowed them to use her phone and overheard one of the men asking for a ride. (Tr. 493-94).

Bordeaux stated the men didn't know where they were, and she provided directions to the nearest highway. (Tr. 494). After learning about the shooting, Bordeaux notified police about her encounter. (Tr. 495-96, 499-500).

Kenny Hooffa testified he saw three men walking down a dirt road about two miles from Eccles Church. (Tr. 553-54). He was in the area a short time later and saw the three men "going through the front yard of the church, and they took off running into the woods behind the church." (Tr. 554). Hoffa contacted police; he later identified Mouzon from a lineup. (Tr. 556, 558-59).

Deputy Ham responded to Eccles Church and found a red Hello Kitty bag in the wooded area by the church. (Tr. 397-400). Bloodhound Tracker Richard Hunton had his dog track the area where the men ran into the woods; he subsequently located and apprehended Applicant and Mouzon—who both ran from him as he approached. Bloodhound Tracker Jamar Bennett located Kenneth Campbell in a different area lying under brush on a dirt road. (Tr. 613-14).

Law enforcement recovered Darius Hamilton's fingerprint on tape found in the gray Crown Victoria. (Tr. 974-75). They determined the four cartridges recovered from the bedroom were fired by the same weapon. (Tr. 993-94). A DNA analyst testified Applicant was a major contributor to a mixture of at least three people recovered from the red bandana, and Mouzon was a major contributor to a mixture of DNA on the black hoody. (Tr. 1062).

Co-Defendant Darius Hamilton testified about the events surrounding the shooting and implicated Applicant, Kenneth Campbell, Mouzon, and Palmer. He testified they all met near a two-story building in a wooded area, and Kenneth gave Applicant, Mouzon, Palmer, and Hamilton pistols while Kenneth carried a rifle. (Tr. 732-34). Hamilton testified they approached a trailer in the wooded area and waited two to three hours. (Tr. 735). He stated a car pulled up, and a man and a woman got out. Kenneth and Mouzon ran toward them, and Applicant, Palmer, and Hamilton

walked up to them. (Tr. 740). Hamilton testified he, Kenneth, Mouzon went inside, while Applicant remained outside and Palmer stood in the doorway. (Tr. 742). Hamilton taped their hands, Mouzon held them at gunpoint, and Kenneth searched the house “looking for the weed.” (Tr. 743-44).

CURRENT APPLICATION

On June 8, 2021, Applicant timely filed this PCR application alleging counsel was ineffective for:

- a. failing to call witness;
- b. Failing to request a severance; and
- c. Failing to advise Applicant he could testify after waiving his right to testify following the surprise testimony of a co-defendant.

Respondent filed a return and moved for summary judgment on allegation (b) on the on the basis counsel *did* move to sever the trial. Thereafter, Applicant served on Respondent an amended application alleging counsel was ineffective for failing to object:

- (1) to the trial court’s failure to give a cautionary instruction before testimony began, and
- (2) to the trial court’s brief cautionary instruction, which did not cure the prejudice resulting from a joint trial.

At the hearing, Applicant waived his allegation that counsel was ineffective for failing to call witnesses. He likewise waived his allegation that counsel was ineffective for failing to advise him he could testify after waiving his right to testify following the surprise testimony of a co-defendant. Applicant proceeded on the remaining allegations of his initial and amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁴ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

⁴ This Court will reference PCR testimony where relevant below.

different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to request severance

Applicant contends counsel was ineffective for failing to request a severance. Respondent moved for summary judgment on the basis counsel did, in fact, move for a severance. At the PCR hearing, Applicant amended this allegation to assert counsel was ineffective for not requesting a severance when the co-defendant testified. This Court finds Applicant did not prove counsel was ineffective in this regard.

“Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right.” Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). “A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction.” Id. at 558-59, 552 S.E.2d at 317. “The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., *accuse one another of committing the crime.*” Id. at 559, 552 S.E.2d at 317 (emphasis added). “The rule allowing joint trials is not impugned simply because the codefendants may present evidence accusing each other of the crime.” State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005) “A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt.” State v. Halcomb, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009). “A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial.” Hughes, 346 S.C. at 559, 552 S.E.2d at 317.

Initially, counsel *did* move for a severance prior to trial, arguing there could be antagonistic defenses that would violate due process. The trial court denied this motion. (Tr. 61-64, 68-69). At

the PCR hearing, Applicant merely testified, “I believe more details would have aided severance.” Applicant did not set forth with any specificity *what* details he believed would have caused the trial court to sever the trial. Applicant likewise did not set forth what additional argument counsel should have made related to the motion to sever. Thus, this Court finds Applicant did not prove deficiency or prejudice in this regard.

This Court further finds Applicant did not prove counsel was ineffective for not moving for a severance when co-defendant Jacob Mouzon testified. Initially, this testimony came at the conclusion of trial—after the State had rested its case, and well after the time to move to sever had passed. Thus, counsel was not deficient in this regard. Further, it is not reasonably probable the trial court would have granted a motion to sever at the end of trial when it had been previously denied. Critically, Applicant had the opportunity to cross-examine Mouzon, and Applicant has not set forth a specific trial right that was compromised by Mouzon’s testimony. Applicant thus has not met his burden of proving deficiency or prejudice, and this claim is denied. See, e.g., State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005) (finding no abuse of discretion in trial court’s denial of motion to sever when co-defendants blamed each other for murder); id. (“These antagonistic defenses do not constitute the requisite prejudice.”).

Cautionary Instruction

Applicant asserts counsel was ineffective for failing to object to the trial court’s failure to give a cautionary instruction before testimony began. He likewise contends counsel was ineffective for failing to object to trial court’s cautionary instruction, which he avers was brief and did not cure the prejudice from a joint trial. Applicant did not prove this ground.

In State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999), a joint trial, the trial judge gave the following preliminary statement to the jury:

Now, as you may have heard during the jury selection process, there are two Defendants in this case charged in separate indictments. You must consider each charge separately, and you must decide separately whether each individual Defendant is guilty or not guilty of each charge alleged by the indictment. It is your duty to give such consideration to each individual Defendant on each separate charge alleged in the indictment. You must therefore consider separately the evidence and the law for each individual Defendant for each charge and write your verdict accordingly.

Id. at 281 n.2, 523 S.E.2d at 175 n.2. During its charge, the trial court charged:

As you are aware, there are two Defendants in this case, and each Defendant is charged with one count of murder. *Whatever verdict you find does not have to be the same as to all Defendants. You take each Defendant and consider the evidence as to that Defendant alone, and write your verdict accordingly, in conformity with the evidence in the case and the instructions which I have given to you. Where more than one person is charged with a crime, you may convict one and acquit the other if the evidence warrants it, or you may acquit both or you may convict both.* It will depend upon your view of the testimony and the evidence which you alone can act upon.

Id. (emphasis added). On appeal, the Court analyzed whether the trial court abused its discretion in denying the defendant's motion to sever. In finding the trial court did not err, the Court noted:

The trial judge . . . must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. *A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial.*

Id. at 281-82, 523 S.E.2d at 176 (internal citations omitted) (emphasis added).

In State v. Halcomb, 382 S.C. 432, 442, 676 S.E.2d 149, 154 (Ct. App. 2009), the Court approved the following cautionary instruction for a joint trial:

I will talk with you a little bit further about the fact that these are two individuals charge[d] separately. And you must consider that

separately and render your determinations separately with regard to these cases.... *Now, you must consider each charge separately and you must decide separately whether each individual defendant is guilty or not guilty of the charges alleged in the indictment against that particular individual. It's your duty to give such consideration to each individual defendant on those separate charges alleged in those separate indictments. And you must therefore consider separately the evidence and the law for each individual defendant for each of the charges and write your verdict accordingly.* Please do not forget that at any point during the proceeding.

(emphasis added).

In his application, Applicant relied on Dennis to support this claim. At the PCR hearing, he handed up Halcomb as an example of what should have been charged. Initially, the issue in Dennis and Halcomb was whether the trial court erred in denying the motion to sever—not whether the trial court’s cautionary instruction was adequate. Dennis and Halcomb do not *mandate* a cautionary instruction be given, nor do they prescribe specific language that must be provided for a cautionary instruction to be sufficient. Applicant’s reliance on these cases is thus misplaced.

Further—and critically—*the instruction here is similar to the instructions in Dennis and Halcomb.* Here, the judge gave the following cautionary instruction:

Each indictment charges a separate and distinct offense. ***You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment.*** The defendant may be convicted or acquitted on any or all of the offenses charged, and you will be asked to write a separate verdict of guilty or not guilty for each indictment.

There are also four defendants in this case, each of whom is charged with murder, attempted murder, burglary first, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. ***The case of each defendant and the evidence and the law concerning that defendant should be considered separately and individually.***

Your verdict does not have to be the same for all defendants. The fact that you may find one defendant guilty or not guilty should not

control your verdict as to the other defendants. Where more than one person is charged with a crime, *if the evidence warrants it, you may convict one and acquit the other, or you may—or you may acquit all or you may convict all.*

It will depend upon your view of the testimony and evidence. *You must take each defendant and consider the evidence as to that defendant and my instructions to you on the law.* You will then write a separate verdict of guilty or not guilty for each defendant.

(Tr. 1295-96). Like Dennis and Halcomb, the Court here charged the jury that (1) each charge must be considered separately, (2) each defendant must be considered separately, (3) the evidence against each defendant should be considered separately, and (4) the verdicts did not need to be the same for all defendants. Nothing in Dennis or Halcomb indicates this instruction was inadequate, and Applicant has not pointed to any caselaw that indicates the foregoing language was insufficient. Because Applicant has not pointed to any caselaw at the time of this trial that mandated specific language for a cautionary instruction or otherwise provided the instruction here was inadequate, Applicant did not meet his burden of proof in this regard.

Likewise, Applicant has not pointed to caselaw at the time of Applicant's trial that *required* a cautionary instruction to be given *prior to* testimony. Because the standard of effectiveness under Strickland does not require attorneys to advocate for changes in the law, and because Applicant has not pointed to any law that indicates this instruction a cautionary instruction must be provided at the *start* of a joint trial, he did not meet his burden of proving deficiency related to counsel's failure to request a cautionary instruction *prior to* trial.

Finally, the jury here gave different verdicts for each defendant—showing the jury in fact understood it must consider each charge, each defendant, and the evidence against each defendant separately. (Tr. 1310-17). See Dennis, 337 S.C. at 283, 523 S.E.2d at 176 (“Jurors obviously were able to follow those instructions, as they found appellant guilty and his brother not guilty.”).

Applicant thus cannot show a reasonable probability the outcome would have been different had counsel requested a pretrial instruction or objected to the adequacy of the instruction provided during the jury charge. Thus, this claim is denied.

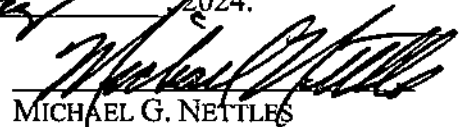
CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 8 day of May, 2024.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Conway, South Carolina