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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XABIAN URONIE BAILEY,

APPELLANT

APPELLATE CASE NO. 2024-001526

SUPPLEMENTAL RECORD ON APPEAL

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1 minutes.

2 MS. CHARBONNEAU: Thank you.

3 (Off the record.)

4 THE COURT: All right. Is the State -- is the State
5 ready to proffer its witness?

6 MS. MORGAN: Yes, Your Honor.

7 THE COURT: All right -- all right. If you'll call
8 your witness.

9 MS. MORGAN: Your Honor, the State calls
10 Investigator Greg Faulkner.

11 THE COURT: All right.

12 GREGORY FAULKNER,

13 having been duly sworn, testifies as follows:

14 THE CLERK: Have a seat.

15 THE COURT: Thank you.

16 THE WITNESS: Gregory Faulkner. It's F-A-U-L-K-N-E-R.

17 DIRECT EXAMINATION

18 BY MS. MORGAN:

19 Q. Good afternoon, Investigator.

20 A. Good afternoon.

21 Q. Could you just for -- for the Court sake how long
22 have you -- what is your current position?

23 A. Investigator.

24 Q. And what -- what agent -- what agency?

25 A. With Aiken County Sheriff's Office.

1 Q. And how long have you been in law enforcement?

2 A. It's going to be 10 years this year.

3 Q. Did there come a time that you had any involvement
4 with the case of State v Xabian Bailey?

5 A. Yes, ma'am.

6 Q. And did you have the opportunity to interview a
7 possible witness called Fantasia Carroll?

8 A. Yes, ma'am.

9 Q. And that -- was that interview recorded?

10 A. Yes, ma'am.

11 Q. Have you had the opportunity to review the
12 transcript of that interview?

13 A. Yes, ma'am.

14 Q. And is that transcript accurate as to what you all
15 spoke about on the date on June 26, 2022?

16 A. Yes, ma'am.

17 Q. Now, during your interview, did you have to -- did
18 you ask her who that walked with her to X26 Wadley Drive had
19 a gun on it?

20 A. Yes, ma'am.

21 Q. How did she respond?

22 A. Xay and Alvin.

23 Q. And by Xay, who?

24 A. Xabian.

25 Q. Defendant Xabian did. And ask her where they

1 carried the guns?

2 A. Yes, ma'am.

3 Q. And what anything -- what did she say?

4 A. In their pants.

5 Q. Did you ask her how she knew that they had the
6 guns in their pants?

7 A. She said she saw them when they shot.

8 MS. MORGAN: No further questions, Your Honor.

9 THE COURT: Ms. McKellar?

10 MR. MCKELLAR: Your Honor, I -- I don't have any
11 questions because I just have an argument.

12 THE COURT: All right. Very good. Mr. Faulkner,
13 Investigator -- Investigator Faulkner, I'll have you to come
14 sit down. He will call you back on the stand.

15 THE WITNESS: Yes, ma'am.

16 MR. MORGAN: Your Honor.

17 THE COURT: Mr. McKellar?

18 MR. MCKELLAR: The last name he says, should not be
19 admitted to the evidence that I saw when they shot. The
20 State asked Fantasia Carroll, "Did you not say that you saw
21 them both shoot." And her response was, "To my recollection,
22 what I wrote down. I didn't see him shoot." She didn't say
23 I didn't say it. She never answered her question. And
24 because she never answered her question, she can't be
25 impeached on that.

1 And as the rest of it, I think -- I think the proper
2 foundation has been laid. But for that particular thing,
3 that particular question, "Did you not say -- did you see the
4 -- did you not see" -- the question was, "Did you not say you
5 saw them both shoot." And her response was, "To my
6 knowledge, I did not see them shoot. Not that I didn't say."

7 MS. MORGAN: Your Honor, the witness states she --
8 after I impeached her first, I'll allow -- I'll allow her to
9 read the transcript from Investigator Faulkner and the
10 answers that she provided and her answer in the end was,
11 "That is what that paper says. But I don't -- I don't know,
12 or I didn't do it." She never conceded that she saw them
13 shoot, she never conceded that she -- that they had -- that
14 she said that they had the weapons in their pants.

15 And she never conceded that she identified the
16 Defendant Xabian Bailey, nor the Defendant Alvin Artis as
17 having weapons. She never conceded that. She said that,
18 "That's what that paper says. That's what they -- but I --
19 you know, I don't really remember that. I don't know." She
20 said she didn't consent to any of this. And she did -- and
21 -- and it wasn't a denial.

22 MR. MCKELLAR: She didn't -- Your Honor, the only --
23 the only time I believe that question was passed was once. I
24 believe the State only asked one time, "Did you not see --
25 develop part of the proffer, one time with seeing them

1 shoot?" With her seeing them, Xabian and Alvin shoot. And
2 the State's question was, "Did you not say this?" And she
3 didn't answer that question.

4 MS. MORGAN: She -- she didn't concede -- she did not
5 concede --

6 THE COURT: And Jessica, can you run back?

7 MS. MORGAN: -- either the two points. That was the
8 point of contention. And I do believe --

9 THE COURT: -- you have that ability.

10 MS. MORGAN: -- defense counsel can ask us because I
11 was doing it. What I understand to be across is that you --
12 you know, you can't say that. You can't pin her down into
13 saying that that was, I believe we went outside for that.

14 UNIDENTIFIED SPEAKER: Can we go off record?

15 THE COURT: Yeah, you can go off record.

16 (Off the record.)

17 THE COURT: We're back on the record. While off the
18 record, we had the opportunity to listen to the testimony in
19 question of Fantasia Carroll. And Mr. McKellar, your
20 argument is that, or your motion is that this witness is
21 improper because she did -- turn on the motion.

22 MR. MCKELLAR: Thank Your Honor, the foundation has not
23 been laid under Rule 613B, extrinsic evidence of prior
24 inconsistent statement. When a person is confronted with the
25 possible, prior inconsistent statement there to be advised of

1 the substance of the statement.

2 The time and place it was allegedly made, and the
3 person to whom it was made and given an opportunity to
4 explain or deny the statement, she did not explain the
5 statement. She did not deny it. She didn't either of those
6 things. And they didn't, the State did not force an answer.

7 The State just asked repeatedly, "Is it on this piece
8 of paper? Is it on this piece of paper?" And and the answer
9 was, "Yeah, it's on the piece of paper." That's it. And
10 regarding to the shoot, "Did -- do you deny telling
11 Investigator Faulkner that you saw Xabian and Alvin shoot?"

12 Her response was not to explain the statement or deny
13 it or explain it, but to affirm again that she did not see
14 them shoot, she doesn't answer her question. She never
15 answers her question. And so, therefore the proper
16 foundation hasn't been laid.

17 THE COURT: I'm not sure that I'm in agreement that she
18 didn't answer the question. She very clearly says on the
19 record that it's on that piece of paper. She -- she -- she
20 answered Mr. McKellar, she didn't answer with a yes or no,
21 but she repeatedly says this on that paper when she's asked,
22 "Is this what she said?"

23 And so, to indicate that, "Is this what -- is this what
24 you said?" Was on that piece of paper to me that indicates
25 that a yes, what I said is on that paper. That's what --

1 that's -- that's it indicates that to me. And so, go ahead.

2 MR. MCKELLAR: Your Honor, the last thing she said is I
3 think the most clear example of what's not addressed because
4 they only talk about who you once, she only mentions Xabian
5 shooting once. The question's only asked once.

6 And the question they asks is, "Did you deny making
7 this statement?" I believe that was the question, "Do you
8 deny making this statement?" And her answer was, "I did not
9 see them shoot." But she didn't answer the question.

10 THE COURT: But that was -- I believe, the fourth or
11 fifth --

12 MR. MCKELLAR: Judge -- Judge, the -- all the other
13 mentions of -- I think that everything before that point was
14 about guns. "Who had guns? Did you see guns? Where were
15 they? Did you not say guns were here previously?" Shooting,
16 I think, was only brought up once. Your Honor, comment for
17 -- if, Your Honor's ruling is that she admitted making the
18 statement, that's the end of the analysis. There's no
19 impeachment.

20 THE COURT: That's what -- that's why. Madam
21 Solicitor?

22 MS. MORGAN: Your Honor, just more than one issue here.
23 So initially, the witness said that she didn't remember. The
24 State, which defense has a copy of, I took the page to her
25 for her to read that had my three questions in number one,

1 "Did you identify people with guns? Did you say where they
2 had the guns located and why" -- based on her prior statement
3 to Investigator Faulkner. "Why did you say that?"

4 In -- when I was questioning or proffering the witness,
5 I asked her, I said, "Do you recall talking to law
6 enforcement?" And even as we were going back and forth, I
7 asked, "So what you're saying that this statement that you
8 made in June" -- I believe I said, and I -- and you know,
9 going back and forth was two difficult witnesses today,
10 "June of 2022. Did you in fact say this?"

11 So prior to me getting to the third question, the
12 witness had become as what Mr. McKellar described yesterday
13 with Mr. Smith non-responsive, she was saying, "Well, that's
14 what's on the paper. That's what's on the paper. That's
15 what's on the paper." And then she said, in real -- after
16 reading what was on the paper that she said that it -- she
17 saw Alvin Artis, she read it and she saw Xabian Bailey shoot.

18 She said in open Court, "I did not see them shoot."
19 Which is contrary to her prior statement to law enforcement,
20 therefore based on 801(d), I believe, yes, 801 -- 801(d),
21 that her statement is -- her what -- to -- it's not an
22 improper impeachment based on what she said to Investigator
23 Faulkner prior to, because she was clear. She -- and -- and,
24 you know, didn't ask the question.

25 Didn't ask the question, because she read. She just

1 said, based on what -- what's on that paper? It says this.
2 But now I'm either being non-responsive or I'm not saying
3 that in Xabian Bailey was shooting as well.

4 THE COURT: So Madam Solicitor, just so I'm clear, you
5 do not take the statements, "It's on the paper. It's on the
6 paper" as an admission?

7 MS. MORGAN: I take, "It is on the paper, that's on
8 the" --

9 THE COURT: When she said -- when you asked her if she
10 had said that in the interview, and then she responded by
11 saying, "It's on the paper." Did -- did you take that as an
12 admission or a non-answer?

13 MS. MORGAN: I take it as a non-answer. She didn't
14 say, "Yes, I said it." She didn't say, "No." And even if
15 that be the case, on the third and clear question, did she
16 identify Xabian -- Xabian Bailey as a shooter? She said,
17 "No, I did not see him shoot." Which is absolutely contrary
18 to what was on the paper. So - therefore, the impeachment in
19 this instance is absolutely proper because she's denying what
20 she read on the paper. And -- and she's denying what she
21 said in June of 2022.

22 (Bench conference.)

23 THE COURT: Madam Solicitor, you referencing 801(d),
24 prior statement by witness, (d)(1)?

25 MS. MORGAN: Yes.

1 THE COURT: How does this support your argument for the
2 accused defendant as opposed to it not being hearsay? This
3 is -- how does this will support your argument?

4 MS. MORGAN: Because it -- Your Honor, because it's
5 admissible, because her testimony --

6 THE COURT: What's admissible? Her testimony is
7 admissible?

8 MS. MORGAN: And --

9 THE COURT: And this testimony based on this rule? Is
10 that what you're saying? I'm just asking for clarification.

11 MS. CHARBONNEAU: Yes. Because otherwise the jury has
12 been misled because she's testifying differently today than
13 she did two years ago. So the -- so the proper impeachment
14 under (d)(1) is to have Investigator Faulkner answer those
15 same three questions that this is what she said back in 2022.
16 It's different than what she said today. And then the jury
17 can decide the credibility.

18 MR. MCKELLAR: Your Honor.

19 THE COURT: Yes, sir.

20 MR. MCKELLAR: I think that defines what -- what is and
21 what is not hearsay, but it does not address what the
22 appropriate foundation is.

23 MS. MORGAN: Your Honor, I go back to Mr. McKellar's
24 foundational question that those questions were answered.
25 "When did it happen? What did you say?" Under what -- that

1 was answered as I was properly in Court today. So he's
2 saying, "Well, she had no idea when she made the statement.
3 She had no idea what she said." Well, she absolutely did.

4 And the foundation was laid prior to this argument as
5 to whether the witness can be impeached. So I think his
6 argument is saying that she can't be impeached if a witness
7 lies on the stand. I think he's saying that she can't be
8 impeached.

9 (Bench conference.)

10 THE COURT: All right. So Madam Solicitor?

11 MS. CHARBONNEAU: Yes, Your Honor.

12 MS. MORGAN: Yes, Your Honor.

13 THE COURT: I don't believe that 801(d) is -- is
14 relevant to this argument. I will say that the prior
15 statement, 601, 613 -- excuse me, 613(b) is really where the
16 crux of the dispute between the two of you lies. And that's
17 where the dispute really is. And it's whether or not the
18 witness, Fantasia -- Fantasia Carroll admitted or did not
19 admit through your questioning.

20 Now, you are asking -- you were -- you were saying that
21 I -- I think we're talking about two different things. One
22 is the first question, which is about whether or not he had a
23 gun. Is that correct? And then the second question is about
24 whether or not he shot a gun.

25 MS. MORGAN: There were three -- there were three --

1 there was three lines of questioning from the page that I
2 showed her or what the State was questioning from.

3 THE COURT: Right.

4 MS. MORGAN: The first line of questioning, did she
5 identify -- with the people that she walked up? Did she
6 identify any person that was with her in that group of six if
7 they had a gun?

8 In that statement to Investigator Faulkner, she
9 identified Xabian Bailey. She identified Alvin Artis as
10 having guns. The next question was where -- where were and
11 did -- well more in a cross, "You said that they were hiding
12 in -- hiding in -- in their pants."

13 The final question was -- was -- she denied saying that
14 she saw them shoot because in that same -- very same
15 questioning with Investigator Faulkner, which is on page
16 three of the transcript that was recorded that I mentioned to
17 her, that was in of June of 2022.

18 Did -- she say the reason she knew they had guns is
19 because she saw them shoot. And that specifically she
20 denied, which is even clear under 613(b) at leaves the jury
21 with a false impression that she never admitted to making the
22 statement. She said, "That's on the paper. That's on the
23 paper." As if the State for some reason or another type of
24 -- of -- of a fake transcript.

25 I mean, that could -- could be in the minds of the jury

1 like where did this transcript, "Did it just appear? Did she
2 really say this? Is this something they interpreted?" But
3 the transcript, it was recorded at the time. And so, the
4 impeachment is proper because the -- the witness is saying
5 something totally different on a statement and denying --
6 denying she said it's on the paper is if she didn't know this
7 even occurred.

8 THE COURT: All right. Mr. McKellar?

9 MR. MCKELLAR: Your Honor, the rule provides that --
10 that they have to be confronted with the statement, given the
11 time and place of when it was made to whom it was made and is
12 given the opportunity to explain or deny the statement. I
13 could see that she was given plenty of opportunity to explain
14 or deny the vast majority of what she asked.

15 But she was not given the opportunity to explain or
16 deny the last question, which was, "Didn't you say
17 Xabian Bailey and Alvin Artis, didn't you say you saw them
18 both shoot." And she doesn't even address the question she
19 mine somewhere else. She says, "I didn't see them shoot."
20 Now, they could have followed up. They could have asked him
21 again. They should have asked for a more specific answer.
22 "Did you not say" --

23 THE COURT: Mr. McKellar, my issue with that is that
24 she has to be given the opportunity to explain or deny the
25 statement. She has to be given, but she doesn't have to be

1 forced to explain or deny the statement. And so, the
2 question gave her the opportunity, did it not? She -- she
3 chose not to answer that question.

4 MR. MCKELLAR: We don't know -- we -- well, we don't
5 know what was going through her head. If she understood the
6 question and chose not to answer it, then yes, but we don't
7 know what was going through her head and the State didn't
8 follow up. The State never asked her the question, "Do you
9 deny making this statement?" Or any of it, but especially
10 that.

11 The State could've asked, "Do you deny the statement or
12 can you explain this statement?" None of that happened.
13 Well, I take that back. You did say, "Did you not -- did you
14 not say to Investigator Faulkner?" Sorry, I take that last
15 part that, but we don't know how she interpreted the
16 question.

17 THE COURT: All right. Thank you very much,
18 Mr. McKellar and thank you very much, Ms. Morgan. I'm going
19 to allow the rebuttal, Mr. McKellar and Ms. Morgan. I -- I'm
20 going to make a finding that the witness was given the
21 opportunity that all of the elements in 613(b) were met.

22 And now it becomes -- it becomes apparent that perhaps
23 some other people may have viewed that different. That --
24 that -- whether that was admission or not differently than I
25 may have. And so, I am going to allow the rebuttal

1 testimony. I will also -- Mr. McKellar, you did indicate
2 earlier that you had a surrebuttal. Do you -- you do not
3 have one?

4 MR. MCKELLAR: I did, but the State has informed me
5 they do not attend the -- the attempt to call the two
6 witnesses that I was going to use prior assistance statements
7 --

8 THE COURT: I see.

9 MR. MCKELLAR: -- against. So I will no longer will.

10 THE COURT: Okay. All right. You're passing up the
11 opportunity. The rare opportunity?

12 MR. MCKELLAR: This probably would've been the only
13 time in my career.

14 THE COURT: Right. That's all right, Mr. McKellar. I
15 am going to allow testimony -- the State to allow -- to
16 elicit the rebuttal testimony in front of a jury.
17 Mr. McKellar, your objections, both your objection and your
18 argument as well as my analysis are on the record. And so,
19 we will allow that testimony to come in.

20 Yes, sir?

21 MR. MCKELLAR: Your Honor, if I may, at the conclusion
22 of this testimony of -- object -- renew my objections.

23 THE COURT: Certainly, will allow you to do that.

24 MR. MCKELLAR: Thank you.

25 THE COURT: All right. Madam Solicitor, are you ready

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	Warrant #2022A0210700148
COUNTY OF AIKEN)	
)	
)	
)	
)	
STATE OF SOUTH CAROLINA,)	
PLAINTIFF,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
XABIAN URONIE BAILEY,)	
DEFENDANT.)	
_____)	

April 18, 2024
Aiken, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE

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

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from DCRP, Digital
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Project

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(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:16 AM; XABIAN
BAILEY is duly sworn.)

MS. CHARBONNEAU: Your Honor, we're here for the
State's motion for a DNA buccal swab from the defendant,
but he also filed a motion to relieve counsel. As a way
of history, he has done that before on January 23, 2024,
in front of Judge McLeod, and it was withdrawn on the
record and now we have a second one that we probably need
to take care of before the Schmerber motion.

MR. McKELLAR: Your Honor, I spoke with my client
this morning about this motion. I do not know what --
whether he wishes to go forward or not.

DEFENDANT BAILEY: No, sir.

MR. McKELLAR: I think he said no, he does not wish.
Do you wish to withdraw the motion?

He wishes to withdraw the motion, Your Honor.

THE COURT: (Indiscernible) stay on.

MR. McKELLAR: I'll stay on. I have no problem
staying on.

THE COURT: Okay.

MR. McKELLAR: I'll stay on.

THE COURT: Great.

I think we might better get that on the record. He
motioned to me, but he didn't say. So you want to

1 withdraw the motion; is that correct?

2 DEFENDANT BAILEY: Yes, sir.

3 THE COURT: Okay. All right.

4 MS. CHARBONNEAU: Okay. Then the State would call
5 Investigator Scott Neel to the stand.

6 THE COURT: Come around and be sworn, please.

7 WHEREUPON,

8 SCOTT NEEL

9 After having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CHARBONNEAU:

12 Q Please state your name and spell your last name.

13 A Scott Neel, last name spelled N-E-E-L.

14 Q And where do you work?

15 A The Aiken County Sheriff's Office.

16 Q And how long have you been in law enforcement all
17 total?

18 A About 18 years.

19 Q And are you the lead investigator on a case involving
20 Xabian Bailey, Alvin Artis and Antonio Jones?

21 A Yes, ma'am.

22 Q And is that a triple homicide?

23 A It is.

24 Q Okay. We're here for a Schmerber motion. Can you
25 please tell us why you want the DNA swab.

1 A Yes, ma'am. On June 26, 2022, this defendant along
2 with two codefendants committed three counts of murder and
3 possession of a weapon during a violent crime. The
4 victims were W.G. [REDACTED], age 17; I.P. [REDACTED], 16 years
5 old; and C.C. [REDACTED] who was 16 years old.

6 The defendant along with the codefendants on video
7 walked to X26 Wadley Drive in Aiken to confront the
8 victims while all three defendants were armed with guns.
9 The three young victims were hanging out in the front yard
10 of the house. The three defendants opened fire on the
11 victims shooting W.G. [REDACTED] eight times, I.P. [REDACTED]
12 two times and C.C. [REDACTED] four times.

13 W.G. [REDACTED] and I.P. [REDACTED] died at the scene. C.C. [REDACTED] died at
14 the hospital shortly after the incident.

15 Xabian Bailey was arrested the same night at
16 10:35 p.m. hiding under a bathroom sink in a house on
17 Woodcut [phonetic] Road.

18 Three eyewitnesses positively identified Xabian
19 Bailey, Alvin Artis and Antonio Jones in photos and photo
20 lineups as the shooters.

21 Antonio Jones gave a post-Miranda statement saying
22 that he went to Wadley Drive to clear their names. He
23 stated that we shot first. Alvin Artis shot first of all
24 of us. Xay, a known nickname for Xabian Bailey, had a
25 Glock 9 millimeter.

1 Xabian Bailey gave a post-Miranda statement saying
2 that he and his codefendants went to Wadley Drive to
3 confront the victims and clear their names. Someone
4 behind him, a codefendant, started shooting. He ran with
5 Antonio Jones to his house and then caught a ride to a
6 house on Woodcut Road.

7 Antonio Jones told a witness a few weeks before the
8 murders that he was going to kill the victims.

9 GSR came back positive on Xabian Bailey's T-shirt.

10 The firearms analysis came back stating that 21 of
11 the 9 millimeter shell casings recovered were fired from
12 the same gun. One 9 millimeter shell casing was fired
13 from a second gun.

14 Projectiles recovered from the autopsies of C.C.
15 [REDACTED] and J.P. [REDACTED] were from a 9 millimeter. We are
16 still awaiting results on four .40 caliber shell casings.

17 A DNA report dated January 10, 2024, was received on
18 April 8, 2024, and determined that there were DNA profiles
19 found on Items 24 and 25. The analyst has requested known
20 standards for all three defendants. A known standard from
21 the defendant is needed to complete this comparison.

22 MS. CHARBONNEAU: Your Honor, you have a copy of my
23 motion with the DNA report attached?

24 THE COURT: I do.

25 MS. CHARBONNEAU: Okay. Then the State has nothing

1 further.

2 THE COURT: Any questions?

3 MR. McKELLAR: I do, Your Honor, like a handful.

4 CROSS EXAMINATION

5 BY MR. McKELLAR:

6 Q Good morning, Investigator Neel. How are you?

7 A Good. How are you, sir?

8 Q I'm good. Thank you.

9 In paragraph 10 you mentioned Antonio Jones told a
10 witness a few weeks before the murders that he was going
11 to kill the victims. Who was that witness?

12 A Victoria Toots [phonetic].

13 Q Okay. Was there any evidence in this case that the
14 three decedents were also armed?

15 A Not that we found, no.

16 Q Now, when I say -- was there no eyewitness testimony
17 that the three decedents were armed?

18 A There were from one witness and a second witness, I
19 believe, yes.

20 Q Okay. Who was that witness?

21 A Bear with me one second.

22 Q Let me ask you this. Was it Fantasia Carroll?

23 A Fantasia Carroll, yes.

24 Q And what was her recollection of the events?

25 A She stated that the three victims had firearms as

1 well.

2 Q Okay. And she was an eyewitness to this?

3 A Yes, sir.

4 Q Did she say what happened to those three victims'
5 firearms?

6 A She claimed that they were picked up and hidden prior
7 to our arrival.

8 Q Did she say where they were hidden?

9 A She stated they were hidden in her uncle's
10 (indiscernible).

11 Q And her uncle is who?

12 A Tywaine [phonetic] Carroll.

13 Q And did y'all get a search warrant for Tywaine
14 Carroll's house?

15 A No, sir.

16 Q Why not?

17 A I wasn't aware that she had said that the day that
18 this incident happened.

19 Q Okay. When did you become aware?

20 A I believe -- I would estimate four to five days
21 later.

22 Q 45 days?

23 A Four to five. Sorry.

24 Q Four to five days later?

25 A Yes.

1 Q Okay. Have you discussed this issue with
2 Investigator Faulkner?

3 A Yes.

4 Q Did he explain why he did not get a search warrant
5 for Tywaine Carroll's house?

6 A He did not.

7 Q In the search warrant for [XXX] Lloyd Town Road --
8 well, it may not be the search warrant for [XXX] Lloyd Town
9 Road.

10 What other search warrants mentioned that at -- one
11 of the search warrants mentions that at [XXX] Lloyd Town
12 Road, a computer was seized, and attached to that computer
13 were cameras. Does that ring a bell?

14 A I believe -- I believe it was the search warrant for
15 the original incident location. There were cameras and a
16 computer taken from that at [X26] Wadley Drive.

17 Q Are you aware of a Lenovo Think Center computer that
18 was seized at [XXX] Lloyd Town Road?

19 A Not saying it's not, just I don't remember off the
20 top of my head. I know that there was a camera system
21 taken from the house at [X26] Wadley Drive. There may have
22 been a camera taken from the house on Lloyd Town as well.

23 Q Okay. So you're just not aware one way or the other?

24 A Correct.

25 Q Okay. Before this incident did you -- were you aware

1 that you know of C.C. [REDACTED], I.P. [REDACTED] or W.G. [REDACTED]
2 [REDACTED]?

3 A I did not, no.

4 Q Since you have learned of these three individuals,
5 have you learned of -- have you learned whether they had a
6 reputation for violence?

7 MS. CHARBONNEAU: I'm going to object. This is
8 beyond the scope of a probable cause hearing for DNA.

9 MR. McKELLAR: Judge, part of a probable cause
10 hearing for DNA is the State establishing that there is
11 probable cause, and whether or not a person uses
12 self-defense goes to whether or not there's probable
13 cause. I think this is ---

14 THE COURT: I'm going to allow that question.

15 MR. McKELLAR: Thank you.

16 THE COURT: But this is not a fishing expedition,
17 now.

18 MR. McKELLAR: Yes, sir. I'll wrap it up.

19 THE COURT: Let's stick to the point.

20 MR. McKELLAR: Yes, sir.

21 THE COURT: We grant the Schmerber motion. We're not
22 here to try the case.

23 MR. McKELLAR: Yes, sir. This will be my last line
24 of questions.

25 THE COURT: Okay. Go ahead.

1 BY MR. MCKELLAR:

2 Q Are you aware of any reputation that these three
3 individuals have?

4 A Since the incident occurred, yes.

5 Q And what is that reputation?

6 A That there's a known gang affiliation.

7 Q Have they been reported to be in any shootings --
8 reported to be in any shootings that you're aware of?

9 MS. CHARBONNEAU: Objection. Beyond the scope. It's
10 irrelevant.

11 THE COURT: I'll let you ask it. But like I said
12 now ---

13 MR. MCKELLAR: This will be my last question. I can
14 probably ask ---

15 THE COURT: That's a -- that's a borderline one
16 there.

17 MR. MCKELLAR: I'll probably ask it after the fact.
18 I'm sure he'll be willing to talk to me.

19 BY MR. MCKELLAR:

20 Q Do you know of any shootings that these three
21 individuals were alleged to have been involved in?

22 A I don't know of any three -- excuse me. I don't know
23 of any specific shootings that those three were identified
24 as suspects. I have not heard that.

25 MR. MCKELLAR: I have no further questions, Your

1 Honor.

2 MS. CHARBONNEAU: Just a brief, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. CHARBONNEAU:

5 Q Were the three defendants also in a gang?

6 A Yes, ma'am.

7 Q And the two gangs, the victims -- the three victims
8 and the three defendants are in opposing gangs?

9 A Correct.

10 MS. CHARBONNEAU: Nothing further.

11 THE COURT: Okay. I heard mention in a video, didn't
12 I?

13 MS. CHARBONNEAU: I'm sorry?

14 THE COURT: Wasn't there -- wasn't there testimony
15 about videos and witnesses?

16 MS. CHARBONNEAU: Yes, yes.

17 THE COURT: Well, this is an easy one. It's granted.

18 I would urge you to cooperate and cooperate with your
19 attorney. Don't make matters complicated unless there's
20 just reason to.

21 (WHEREUPON, proceedings concluded at 11:29 AM.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, to the best of my ability based on the audio and notes provided, of the digitally recorded proceedings had from the DCRP, Digital Courtroom Recorder Project, and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 18th day of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 27, 2024

Cheryl A. Smith
Cheryl A. Smith, CVR-M
Court Reporter

CERTIFICATE OF COUNSEL FOR APPELLANT

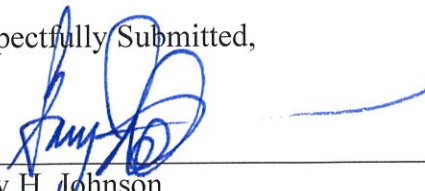
Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Jan 22 2026

SC Court of Appeals

Respectfully Submitted,



Gary H. Johnson
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ATTORNEY FOR APPELLANT

This 22nd day of January, 2026.