

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable B. Alex Hyman, Post-Conviction Relief Court Judge

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Case No. 2025-001566

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State of South Carolina

Petitioner,

v.

Christopher J. Wells, #193588

Respondent.

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AMENDED APPENDIX

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All Exhibits were retained by the Clerk of Court for  
Laurens County.



1 MR. RICHEY: Yes, sir.

2 THE COURT: I'll hear you on that.

3 MR. RICHEY: Your Honor, I have talked to my client.  
4 Essentially, he has indicated to me that he does not want  
5 me to represent him for various reasons. I will let him  
6 explain to the Court, but one of the things is my supposed  
7 lack of experience in doing this type of case. My client  
8 believes that this is my first criminal trial.

9 Also, he has some issues with the strategy of this  
10 case that I don't necessarily agree with, but I'll be more  
11 than happy to try the case the way he wants it tried.  
12 It's just throughout this representation, Your Honor, it's  
13 been that I'm part of this conspiracy to convict him in  
14 this case. And he just hasn't shown a willingness to  
15 cooperate in the manner that I believe is sufficient for  
16 this case.

17 THE COURT: Just so the record is clear on this  
18 before I turn to Mr. Wells, that motion -- I think the  
19 record should reflect that I think Mr. Wells has had two  
20 prior attorneys appointed, Matthew Turner and John  
21 Nasrollahi; is that correct, Solicitor?

22 MR. MOWRY: I know Mr. Nasrollahi, I believe Mr.  
23 Turner has as well, Your Honor.

24 Part of the common complaint with Mr. Wells, Johnny  
25 Lee Saxon, who is a co-defendant, and David Lee Walker,

1 who is also a co-defendant and has been convicted of  
2 murder, is that there's collusion between all private  
3 attorneys, public defenders and solicitors in the Eighth  
4 Judicial Circuit. And that was part of the complaint that  
5 each of them has made.

6 Well, each of them ended up with attorneys from  
7 outside of the Eighth Circuit. Mr. Richey is in the  
8 Thirteenth Circuit, does not have any ties beyond  
9 occasional handling of cases in the Eighth Circuit, is not  
10 a resident of the Eighth Circuit. So that was part of the  
11 attempt, at least, to satisfy Defendant's complaints about  
12 his representation.

13 THE COURT: And the Court does recall that Ms. Wiygul  
14 represented Mr. Walker. I think she ended up getting  
15 appointed after we went through a similar situation with  
16 all the lawyers being excused from further representation.

17 Mr. Saxon currently has Mr. Delgato. I think when  
18 the State tried to call that earlier this year, Judge  
19 Griffith relieved appointed counsel on that. And, I  
20 think, at that time, perhaps, the second or third lawyer  
21 that Mr. Saxon had had. I think he had had at one point  
22 in time Laura Saunders and --

23 MR. MOWRY: Rodney Brown -- Russell Brown --

24 THE COURT: Russell Brown --

25 MR. MOWRY: -- from Columbia.

1 THE COURT: -- was the one that ended up getting  
2 relieved last time.

3 MR. MOWRY: That was, actually, last summer, I  
4 believe. And Your Honor had already issued an order on  
5 Mr. Saxon that if he relieved Mr. Brown that he would have  
6 to hire private counsel, that no others would be appointed  
7 for him. But Judge Griffith on his own volition appointed  
8 Mr. Delgato as Mr. Saxon's attorney.

9 THE COURT: Right.

10 Mr. Wells, I'm happy to hear from you or anything  
11 that you want to tell me about why you're seeking to  
12 relieve Mr. Richey. In chambers, Mr. Richey did tell me  
13 that he's ready to represent you. He's prepared to go  
14 forward today. He is comfortable doing so. And Mr.  
15 Richey has appeared in front of this Court numerous times,  
16 so I'm well familiar -- very familiar with his ability to  
17 zealously represent those he is obtained or appointed to  
18 represent.

19 But if Mr. Wells, if there's something I need to know  
20 about or something you need to tell, now is the time to  
21 let me know concerning this motion to fire Mr. Richey.

22 THE DEFENDANT: May I stand?

23 THE COURT: Yes, sir.

24 THE DEFENDANT: Mr. Richey has been assigned to me  
25 for over a year now and he done been down here three times

1 to see me. The only time -- every time he done came, he  
2 come with a plea from the Solicitor. And I got a motion  
3 of discovery that got evidence in it that's clearing me  
4 from this case. He don't want to talk about what's going  
5 on with my motion. He want to go on a hearsay statement,  
6 something that somebody said, done told somebody that's  
7 inadmissible in the courtroom anyway. But I got a  
8 statement from the eyewitness that was at the scene. He  
9 don't want to talk about that, so we get in an argument.  
10 I don't trust him. I believe he working with the  
11 Solicitor.

12 THE COURT: All right. Well, sir, I really --

13 THE DEFENDANT: I don't trust him.

14 THE COURT: I appreciate your position. I understand  
15 you have been through several attorneys already. This is  
16 the eleventh hour -- actually, worse than the eleventh  
17 hour. This is an extremely last minute motion where  
18 you're seeking to relieve counsel that tells me they're  
19 ready, willing and able to represent you. Mr. Richey's  
20 reputation is excellent. And understand, Mr. Wells,  
21 sometimes the obligation of an attorney is to tell the  
22 client what they need to hear, but maybe not necessarily  
23 what they want to hear.

24 And at this point in time, after you've been through  
25 so many attorneys, after you've had so many other lawyers

1 relieved, it just has to stop at some particular in time.  
2 I'm hearing that you want to represent yourself. I'm  
3 hearing that you want another lawyer. So I'm saying you  
4 can't get another lawyer and the case is going to go  
5 forward today. That's where we are on that.

6 In terms of any sort of statements from the  
7 eyewitness, I'm quite certain that if that statement  
8 exist, Mr. Richey will be more than happy to cross-examine  
9 that witness on that statement if he has grounds to do so.  
10 And that's quite, obviously, where we are.

11 Mr. Richey, you had mentioned differences in opinions  
12 you had between Mr. Wells in terms of trial strategy. Is  
13 that anything that the Court needs to address outside the  
14 presence of the jury or is he discussing something  
15 factually that maybe we just better not go into at this  
16 point?

17 MR. RICHEY: I would say I don't want to go into with  
18 the Solicitor here, but I think it's -- if I'm going to  
19 represent him, I will go over it with him again.

20 THE COURT: You will be representing him.  
21 You want to say something else, Mr. Wells?

22 THE DEFENDANT: Yes.

23 THE COURT: Yes, sir.

24 THE DEFENDANT: I done gave grounds on why I don't  
25 want this gentleman to represent me. I ain't fired -- I

1 done fired one lawyer, that's all. The other dude, the  
2 Matt dude, they done that saying there was a conflict of  
3 interest.

4 THE COURT: All right.

5 THE DEFENDANT: But if after I done told you I don't  
6 trust him and I done told you the grounds on why I want  
7 him fired, if you're going to force me to go to trial with  
8 him, I ain't got no choice, but I want this to be on  
9 record that I was forced, forced into going to trial.

10 THE COURT: Well, for the reasons I've already put on  
11 the record, Mr. Wells, Mr. Richey is representing you.  
12 You are getting a lawyer paid for by the State of South  
13 Carolina, no money out of your pocket, and he is one of  
14 the best. So you are in good hands. And I regret that  
15 you find yourself unable to trust Mr. Richey. I can  
16 assure you that you can trust Mr. Richey.

17 THE DEFENDANT: No, I can't trust him.

18 THE COURT: And, obviously, with appointed counsel,  
19 you do not get counsel of your choosing. You just  
20 happened to luck out and get a good lawyer, a really good  
21 lawyer, who has great criminal experience. So we are  
22 going forward. Your objection, however, is noted for the  
23 record. For the reasons stated previously, I am denying  
24 your motion to fire Mr. Richey.

25 THE DEFENDANT: Okay.

1 THE COURT: I'll need witness list.

2 MR. MOWRY: Yes, sir.

3 And just for the record, Your Honor, we did locate  
4 the indictments.

5 THE COURT: Okay.

6 MR. MOWRY: They are indictments 15-1162, charging  
7 the Defendant with murder; 15-503, possession of a weapon  
8 during the commission of a violent crime; 15-504 for armed  
9 robbery; and 15-505 for criminal conspiracy.

10 I'm going to present Your Honor with the -- well,  
11 actually, the Clerk with the witness list, the tracking  
12 sheets and the originals of the indictments. Mr. Richey  
13 has copies of the indictments that we have prepared for  
14 him.

15 THE COURT: All right. Very good.

16 It's the Court's intention to take a brief break  
17 while we bring the jury panel back in here. Anything we  
18 need to take up from either side before we bring the jury  
19 panel back in?

20 MR. MOWRY: No, sir. There are a couple of matters,  
21 but we can do that after the selection of the jury.

22 THE COURT: Yes, sir.

23 MR. RICHEY: Your Honor, my client filed some motions  
24 in relation to these indictments. They have been filed  
25 with the Court. I will tell Your Honor, these motions are

1 for speedy trial and these motions are that he has not  
2 been properly indicted, and because he was not properly  
3 indicted, the cases should be dismissed against him. And  
4 the arguments are laid out in these motions.

5 He contends that these indictments are not true  
6 billed. I went over it with him, but he contends they are  
7 not true billed. So that's what these motions -- and  
8 they're in the file. So there's a speedy trial motion  
9 and, also, a motion to dismiss because he has not been  
10 properly indicted.

11 THE COURT: All right. I've looked and I have all  
12 the court indictments in my hand at this point in time.  
13 It appears that Mr. Wells -- or each of these indictments  
14 for Mr. Wells were true billed by the grand jury.  
15 Indictment 1162 charging him with murder was true billed  
16 on July the 24th of 2015, signature of the Court versus  
17 the grand jury is listed there. The other three  
18 indictments were true billed on April the 10th of 2015,  
19 Ms. Thompson, Foreperson of the grand jury signed.  
20 They're all indicated as true billed. I really would ask  
21 if there's something else or some other evidence. I don't  
22 see where -- the motion concerning the indictments not  
23 being true billed, I don't see where that is accurate.

24 In terms of violation of his motion for a speedy  
25 trial, Mr. Richey, at this point in time, can you point to

1 any prejudice that he has suffered? I know that he's been  
2 at the detention center probably since October 31st of  
3 2013, or sometime after that, close after that when this  
4 incident took place. Is there any prejudice that you can  
5 show the Court at this point in time in limine concerning  
6 that motion?

7 MR. RICHEY: Your Honor, it's his position that he  
8 should have been timely indicted prior to the amount of  
9 time it's taken for him to get to trial. That is his  
10 position.

11 In terms of prejudice, I will tell the Court, we were  
12 in front of the Court, I want to say, about four or five  
13 months ago where this issue was brought up at a bond  
14 hearing. And the Court, basically, said he had to be  
15 tried by next month or something. So I would say we got  
16 into court and we discussed this issue at a bond hearing.

17 THE COURT: Do you want to speak to that, Mr. --

18 MR. MOWRY: Your Honor, first of all, I never  
19 responded to these motions because the Defendant does not  
20 have a right to hybrid representation. He either  
21 represents himself or allows his attorney to represent  
22 him. It is not a combination of the two.

23 So since he has been represented by an attorney the  
24 entire time, I have, essentially, ignored these motions.  
25 This is something that we get a lot. It is way too

1 confusing to try to do both. So if the Defendant is  
2 represented by counsel, we respond to the counsel's  
3 motions, not the Defendant's. The Defendant can make the  
4 motions through counsel, if he wishes. So at any rate,  
5 that explains that.

6 I would submit, also, that speedy trial, if there is  
7 an action by the Defendant that delays the trial, then  
8 that's on him. And I would submit that the Defendant, by  
9 firing Mr. Nasrollahi, has, obviously, delayed his own  
10 court action. Mr. Richey was appointed. Mr. Richey has  
11 to get up to speed on the case and that takes time.

12 The State tried Mr. Walker, David Walker, the  
13 co-defendant, about a year ago. We were prepared to go to  
14 trial on Mr. Saxon in January. I would submit that we  
15 probably did not need to sever the cases, but out of an  
16 abundance of caution, we did. We are trying these  
17 defendants individually. And it just simply takes time to  
18 get the cases into court. There has been nothing done by  
19 the State that unduly delayed these actions. We are  
20 simply getting them up as we can based on the court  
21 backlog that we're trying to address.

22 THE COURT: Were these three indictments -- I notice  
23 that the murder charge was indicted -- or the grand jury  
24 acted on the murder charge after the weapons charge, the  
25 armed robbery charge and the conspiracy charge. I'm

1 assuming that there was prior presentment or warrants had  
2 been issued or something along those lines?

3 MR. MOWRY: We just simply determined to go forward  
4 on conspiracy as well based on the way our investigation  
5 concluded. It wasn't -- it was done after the other  
6 three, but it was quite some time ago.

7 THE COURT: Okay.

8 MR. MOWRY: One other thing, Your Honor, I would  
9 point out just to make sure we are all reading off the  
10 same page. We have served Mr. Wells with a notice of  
11 intent to seek life without parole should he be convicted  
12 of murder, for a lesser included offense, like voluntary  
13 manslaughter, or of armed robbery.

14 He has a prior -- he was indicted for murder. He  
15 pled guilty -- or I think he was found guilty of  
16 manslaughter back in 1992 and was sentenced to 25 years in  
17 prison for that. Since voluntary manslaughter is a  
18 violent crime, murder, manslaughter or armed robbery would  
19 be a violent crime. That would be make him eligible for  
20 life without parole.

21 THE COURT: All right.

22 MR. MOWRY: Or a most serious, I'm sorry, not  
23 violent.

24 THE COURT: And notification of LWOP has been  
25 provided to the Defense, at least, 10 days prior to this

1 hearing?

2 MR. MOWRY: Yes, sir, several months ago.

3 THE COURT: And y'all acknowledge receipt of that,  
4 Mr. Richey?

5 MR. RICHEY: Yes, sir.

6 THE COURT: Well, based on what has been presented to  
7 me, again, the indictments have been true billed. The  
8 charges stand as indicted. And in terms of the motion for  
9 a speedy trial, the State does have a point, Mr.  
10 Nasrollahi had been previously appointed to represent and  
11 he was discharged by Mr. Wells.

12 Do you want to chime in on something else, sir?

13 THE DEFENDANT: Yes, about the true billed  
14 indictments, sir.

15 THE COURT: Yes, sir.

16 THE DEFENDANT: There's a time limit on how you give  
17 indictments and it's through Rule 3(c).

18 THE COURT: I understand, and I'm familiar with Rule  
19 3(c), sir, but that does not serve -- it is not fatal to  
20 the State's case if Rule 3(c) is not followed strictly,  
21 sir.

22 THE DEFENDANT: I done had indictments before. This  
23 ain't no true billed indictment. I don't see no grand  
24 jury stuff or seal or nothing.

25 THE COURT: All right. I'll be more than happy to

1 have the clerk make copies of these indictments, but I am  
2 ruling right now --

3 They have previously received copies?

4 MR. MOWRY: Yes, sir, gave them to them as late as  
5 this morning. And I would, also, state for the record,  
6 Your Honor, this is exactly what Mr. Saxon said in  
7 January.

8 THE COURT: All right.

9 THE DEFENDANT: And I would like to say I been locked  
10 up since December the 13th of 2013. These indictments  
11 didn't come until the 15th. Ain't there some rule after  
12 90 days or two court terms that if you ain't been indicted  
13 --

14 THE COURT: The provision of law that you're  
15 referring to, sir, gets a little bit technical, but the  
16 provision of law that you're referring to is the one that  
17 says that if a charge is not brought or a person is not  
18 indicted after two terms of court, then the person has to  
19 be set free. Is that, basically, the section of law that  
20 you're citing from?

21 THE DEFENDANT: It can't be brought to trial for the  
22 charges.

23 THE COURT: Well, the section of law that I'm  
24 thinking of and that I believe you're referring to, sir,  
25 that only applies to the statutory terms of court created

1 under the offices of the general assembly through the  
2 code. It does not apply -- those terms were, actually,  
3 cancelled. The statutory terms of court were, actually,  
4 cancelled by order of the Chief Justice, so that section  
5 doesn't apply.

6 There's, actually, a case directly on point that says  
7 that that provision of the code of laws does not apply  
8 because we're dealing with the terms of court created by  
9 the Chief Justice as opposed to those that are expelled  
10 out in Title -- I want to say Title 14 of the code of  
11 laws.

12 THE DEFENDANT: So --

13 THE COURT: Yes, sir.

14 THE DEFENDANT: So if my memory is right, that don't  
15 count for nothing under the Constitution?

16 THE COURT: Which one, sir?

17 THE DEFENDANT: This right here, what I'm speaking  
18 of. That's my Fifth Amendment right.

19 THE COURT: All right. Your objection, Mr. Wells, is  
20 noted for the record. We're going to move forward with  
21 this case, move on with this trial.

22 THE DEFENDANT: Okay. As long as it's on the record.

23 THE COURT: Yes, sir.

24 Solicitor, you've already handed me a witness list.

25 Mr. Richey, do y'all have any additional witnesses?

1 MR. RICHEY: No, sir.

2 THE COURT: Very good.

3 We'll have the jury brought in. I'll take five  
4 minutes while they come in. We'll move straight into jury  
5 selection. I'll need the when, where, what of the  
6 incident, okay?

7 MR. MOWRY: Yes, sir.

8 THE COURT: Bring the jury in, please.

9 (WHEREUPON, the jury venire enters the courtroom  
10 at 11:55 a.m.)

11 THE BAILIFF: All jury is present, Your Honor.

12 THE COURT: Thank you very much, sir.

13 Ladies and gentlemen of the jury panel, sorry for the  
14 delay in getting you back in here. Things took a little  
15 longer than I initially anticipated.

16 We're now about to begin with jury selection in the  
17 case of the State of South Carolina vs. Christopher  
18 Jermaine Wells. And Mr. Wells is charged with four  
19 indictments filed in this court, ladies and gentlemen,  
20 with the offenses of murder, possession of a weapon during  
21 the commission of a violent crime, armed robbery, and  
22 criminal conspiracy.

23 Now, at the get-go, ladies and gentlemen, I want to  
24 tell you that the fact that Mr. Wells was charged or  
25 indicted in these particular cases is, of course, not

1 evidence of guilt in any way, shape, or form. These  
2 indictments are merely the legal method by which a case is  
3 brought to this Court. Mr. Wells has pled not guilty to  
4 these indictments. And that plea puts the burden of proof  
5 firmly on the State of South Carolina to prove each and  
6 every element of these charges beyond a reasonable doubt.  
7 So, again, the fact that Mr. Wells was indicted or charged  
8 with these crimes is, of course, not proof of any of the  
9 allegations contained in those indictments.

10 Now, in this case, ladies and gentlemen, the State of  
11 South Carolina is being represented by Mr. Mowry and Mr.  
12 Neely.

13 Mr. Mowry, if you would care to stand and introduce  
14 yourself and anyone else seated at counsel table with you.

15 MR. MOWRY: Thank you, Your Honor.

16 Ladies and gentlemen, my name is Warren Mowry. I'm  
17 attorney and deputy solicitor here in Laurens County.  
18 With me is Ruston Neely, he's an assistant solicitor here  
19 in Laurens. And he and I will be presenting the case for  
20 the State. Also, Walter Bentley, who is the investigator  
21 for the solicitor's office. And, finally, Lieutenant  
22 Bryant Cheek, who was the investigator for the Laurens  
23 County Sheriff's Office and chief investigator for this  
24 case.

25 THE COURT: Thank you, Mr. Mowry.

1           The Defense in this case, ladies and gentlemen, is  
2 being represented by Mr. Richey.

3           Mr. Richey, if you care to introduce yourself and,  
4 certainly, your client to the jury.

5           MR. RICHEY: Thank you, Your Honor.

6           I'm Rodney Richey. I practice law in Greenville.  
7 This is my client, Christopher Wells. Thank you.

8           THE COURT: Thank you, Mr. Richey.

9           Ladies and gentlemen, I now need to ask you some  
10 specific questions that relate to this case in particular.  
11 We're going to use the same process that we used earlier.  
12 If the question applies to you, unless I tell you  
13 otherwise, just stand up and give me that response. So if  
14 the question applies to you, just stand and I'll ask you  
15 to explain.

16           First question, ladies and gentlemen, is there any  
17 member of the jury panel who is currently being  
18 represented or has previously been represented by any of  
19 the attorneys involved in this case, either Mr. Neely, Mr.  
20 Mowry or Mr. Richey? If so, please, stand.

21           Yes, sir, you've previously been represented by some  
22 of these lawyers?

23           THE POTENTIAL JUROR: Not represented, I had a case  
24 that happened at my home and this guy represented me.

25           THE COURT: How long ago was that, sir?

1 THE POTENTIAL JUROR: A year ago.

2 THE COURT: And what was your name just for the  
3 record, please?

4 THE POTENTIAL JUROR: [REDACTED] Hinojos.

5 THE COURT: And that was approximately a year ago?  
6 It was a criminal case?

7 THE POTENTIAL JUROR: They pleaded guilty.

8 THE COURT: It was prosecuted by this solicitor's  
9 office?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: But it's over and done with?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: All right. The fact that this  
14 solicitor's office handled that case for you, would that  
15 affect your ability to be fair and impartial to both  
16 sides?

17 THE POTENTIAL JUROR: No, sir.

18 THE COURT: You can be fair to everyone involved  
19 then?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Very good, sir. Have a seat, please.  
22 Anyone else?

23 (There was no response.)

24 THE COURT: No one is standing.

25 Is there any member of the jury panel related by

1 blood or marriage, or has any close business or social  
2 relationships with any of the attorneys involved in this  
3 case? If so, please, stand.

4 (There was no response.)

5 THE COURT: No one is standing.

6 The Defendant in this case, ladies and gentlemen, is  
7 Christopher Jermaine Wells. And the State is alleging  
8 that the individual who is deceased or was killed, his  
9 name is [REDACTED]

10 Is there any member of the jury panel who is related  
11 by blood or marriage to either the Defendant in this case,  
12 or [REDACTED] or who has or had any close business  
13 or social relationships with either the alleged victim,  
14 Mr. [REDACTED] or Mr. Wells? If so, please, stand.

15 (There were no response.)

16 THE COURT: No one is standing.

17 I'm going to read a list of potential witnesses in  
18 this case, ladies and gentlemen. When I'm done reading  
19 this list, I'm going to ask whether there's any member of  
20 the jury panel who is related by blood or marriage to any  
21 of these folks, or has any close business or social  
22 relationship with any of these folks. So, please, pay  
23 attention to these names that I'm about to read out.

24 Here are the possible witnesses who may testify in  
25 this case: Marty Crain, who works with Laurens Sheriff's

1 Department; Jamison Taylor; Bryant Cheek with Laurens  
2 Sheriff's Department; Steven Sweat; Robert Timmons with  
3 Laurens Sheriff's Department; Andrew Ashley with Laurens  
4 Police Department; Todd Alexander, also, with the  
5 sheriff's department; David Craig with the sheriff's  
6 department; Jeremy McMahan with the sheriff's department;  
7 ██████ Ball; Karon Bridges, who works at Laurens 911; James  
8 Green with SLED; Kimberly Mears, M-E-A-R-S, with SLED;  
9 Tiffany Hezel, H-E-Z-E-L, also, with SLED; Jennifer  
10 Stoner, who, also, works, at SLED; Toris, T-O-R-I-S,  
11 Moore; Emily Dawkins; Dr. Michael Ward; Willie Belle  
12 Williams; Billy Baines, Jr.; David Walker; Johnny Lee  
13 Saxon; and Antonio Morris.

14 Is there any member of the jury panel who is related  
15 by blood or marriage to any of those folks, or has any  
16 close business or social relationships with any of those  
17 possible witnesses?

18 Yes, ma'am, what's your name, please?

19 THE POTENTIAL JUROR: ██████ Nabors.

20 THE COURT: Ms. Nabors, who of those folks do you  
21 know?

22 THE POTENTIAL JUROR: ██████ Sweat.

23 THE COURT: How do you know Mr. Sweat?

24 THE POTENTIAL JUROR: He is like a very close friend.  
25 My brother-in-law is his brother.

1 THE COURT: Your brother-in-law is his?

2 THE POTENTIAL JUROR: Brother.

3 THE COURT: Brother, okay. How long have you known  
4 Mr. Sweat?

5 THE POTENTIAL JUROR: Over 10 years.

6 THE COURT: How often do you see him?

7 THE POTENTIAL JUROR: Like a couple a times a year,  
8 but our kids are in the same class and they're best  
9 friends.

10 THE COURT: Got you.

11 THE POTENTIAL JUROR: My friends call him Uncle  
12 Steven.

13 THE COURT: All right. If Mr. Sweat were to testify  
14 in this particular case, would that affect your ability to  
15 be fair to both the State and the Defense?

16 THE POTENTIAL JUROR: It would.

17 THE COURT: Very good. I'll let you sit this one out  
18 then. Do you recall your juror number, ma'am?

19 THE POTENTIAL JUROR: 133.

20 THE COURT: All right. 133 won't serve on this case.  
21 Anyone else need to respond to that last question?

22 (There was no response.)

23 THE COURT: No one is standing.

24 Ladies and gentlemen, the State alleges that this  
25 incident -- that this offense took place on or about

1       October the 31st of 2013, sometime between 11:30 and  
2       midnight. It took place, the State is alleging, in  
3       Enoree, at [REDACTED], which is right next to the  
4       Enoree River Bridge, just off of 26. I'm told that it's  
5       close to the Little Cricket over there in Enoree.

6               Is there any member of the jury panel who thinks they  
7       may know anything about the allegations involved in this  
8       case or has formed or expressed any opinion concerning the  
9       allegations involved in this? In a nutshell, ladies and  
10       gentlemen, I'm asking is there any juror who thinks that  
11       they may know anything about the allegations or about this  
12       particular incident? If so, please, stand.

13               (There was no response.)

14               THE COURT: No one is standing.

15               Is there any member of the jury panel who has any  
16       deeply-held moral or religious beliefs which would prevent  
17       you from serving on jury duty? In a nutshell, ladies and  
18       gentlemen, is there any member of the jury panel who has a  
19       religious creed or follows a particular branch of religion  
20       which would prevent you from serving on a jury? If so,  
21       please, stand.

22               (There was no response.)

23               THE COURT: No one is standing.

24               Is there any member of the jury panel who is a member  
25       of any organization, the primary purpose of which is

1 victims' advocacy or victims' rights? An organization  
2 along those lines might be something like Mothers' Against  
3 Drunk Driving, or CAVE, Citizens Against Violent Crime,  
4 that kind of a thing.

5 So is there any member of the jury panel who's a  
6 member of any kind of an organization along those lines?  
7 If so, please, stand.

8 Yes, ma'am, your name again, please?

9 THE POTENTIAL JUROR: [REDACTED] Lovejoy.

10 THE COURT: Ms. Lovejoy. And what kind of  
11 organization is it, ma'am?

12 THE POTENTIAL JUROR: Victim's rights.

13 THE COURT: Victim's rights organization. How long  
14 have you been a member?

15 THE POTENTIAL JUROR: I've been certified in victim  
16 advocacy for two years now.

17 THE COURT: Okay. Do you feel that your involvement  
18 in that organization or the fact that you're a victim's  
19 advocate, would that affect your ability to be fair -- do  
20 you appear in court frequently, ma'am?

21 THE POTENTIAL JUROR: I haven't in the last year. I  
22 used to all the time, but I haven't in the last year.

23 THE COURT: And I think that you told me you worked  
24 for an eye doctor at one point and you're no longer  
25 employed there?

1 THE POTENTIAL JUROR: Yes, because of the injury.

2 THE COURT: I understand. Would this involvement  
3 that you have affect your ability to be fair and impartial  
4 to all concerned?

5 THE POTENTIAL JUROR: I would be fair.

6 THE COURT: You would be fair? Okay. Very good.  
7 You can have a seat. Thank you, ma'am.

8 No one else is standing.

9 Is there any member of the jury panel who knows of  
10 any reason whatsoever why you cannot give both the State  
11 of South Carolina and the Defendant in this case, Mr.  
12 Wells, a fair case, judging this case based solely on the  
13 evidence and the law as I instruct you? Any reason  
14 whatsoever why you feel you can't be fair to both sides?  
15 If so, please, stand.

16 (There was no response.)

17 THE COURT: No one is standing.

18 Additional voir dire from the State?

19 MR. MOWRY: Nothing from the State, Your Honor.

20 THE COURT: From the Defense?

21 MR. RICHEY: May we approach?

22 THE COURT: Sure. Come on up, please.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: Next question, ladies and gentlemen --  
25 and the way I usually handle this -- and I meant to ask it

1 earlier, but the way I'll handle this is if you need to  
2 respond to this, I'll let you come forward and speak with  
3 me privately down here next to my court reporter.

4 Here's the question, is there any member of the jury  
5 panel who has been a victim of a violent crime or had a  
6 close family member or a very close friend who's ever been  
7 a victim of a violent crime, or is there any member of the  
8 jury panel who has had a family member or you, yourself,  
9 have been charged with a violent or a serious crime? I  
10 define serious crime as being something like murder, rape,  
11 burglary first degree, things of that nature, okay, things  
12 that you would generally consider to be kind of more top  
13 shelf violent crimes.

14 First, I'm going to ask that you stand if you have  
15 been a victim of a violent crime or had somebody in your  
16 family charged with a violent crime? So is there anybody  
17 that may apply to? If so, please, stand.

18 (Potential jurors stand.)

19 THE COURT: All right. Very good. If it applies to  
20 you, I'm going to let you come forward and you can speak  
21 with me down front here next to the court reporter.

22 What was your name again, just for the record?

23 THE POTENTIAL JUROR: [REDACTED] Lovejoy.

24 THE COURT: Ms. Lovejoy, yes, ma'am. How does that  
25 apply to you, Ms. Lovejoy?

1 THE POTENTIAL JUROR: I was raped.

2 THE COURT: How long ago was that, Ms. Lovejoy?

3 THE POTENTIAL JUROR: Let's see, it was in 2008.

4 THE COURT: If I may, not to pry, but was the matter  
5 brought to court, was a prosecution initiated?

6 THE POTENTIAL JUROR: It was dropped in court because  
7 they couldn't find the guy.

8 THE COURT: Okay. Was that locally here or was that  
9 somewhere else?

10 THE POTENTIAL JUROR: It was in Newberry.

11 THE COURT: All right. Ms. Lovejoy, the Defendant in  
12 this case is, obviously, charged with murder, armed  
13 robbery and a few other charges like that. The fact that  
14 you experienced this in 2008, is that affecting -- or  
15 would that affect your ability to be fair to the  
16 Defendant?

17 THE POTENTIAL JUROR: No. I've dealt with it.

18 THE COURT: Very good. Fair enough, Ms. Lovejoy.  
19 Thank you.

20 112 is okay.

21 THE BAILIFF: Juror #88.

22 THE COURT: Yes, sir.

23 THE POTENTIAL JUROR: I've got a nephew that was  
24 involved with a murder and he's in prison for three lives.

25 THE COURT: Is he in prison in South Carolina?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Was that prosecuted here in Laurens or  
3 somewhere else?

4 THE POTENTIAL JUROR: I believe in Greenville.

5 THE COURT: In Greenville, okay. And that's your  
6 nephew?

7 THE POTENTIAL JUROR: Yes.

8 THE COURT: All right. The fact that your nephew  
9 went through that, sir, would that affect your ability to  
10 be fair and impartial to all concerned?

11 THE POTENTIAL JUROR: I've never had the mind to do  
12 any kind of thinking of doing anything like that, so it  
13 wouldn't affect me at all.

14 THE COURT: Okay. Thank you, sir. You can have a  
15 seat.

16 Juror #88 is okay.

17 THE BAILIFF: Juror #75.

18 THE COURT: Ms. Grant, yes, ma'am. How does that  
19 question apply to you, ma'am?

20 THE POTENTIAL JUROR: Yeah, I just had a close  
21 relative murdered about two weeks ago.

22 THE COURT: You said two weeks ago?

23 THE POTENTIAL JUROR: Yeah, in Newberry County.

24 THE COURT: Was it -- okay. Was it the gentleman who  
25 ran the funeral home?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Okay. How is he related to you?

3 THE POTENTIAL JUROR: My brother worked for him. He  
4 was just a close friend for like 25 years.

5 THE COURT: So he's a close friend?

6 THE POTENTIAL JUROR: Yeah.

7 THE COURT: The Defendant in this case is, also,  
8 charged with murder, Ms. Grant. I'm just going to ask you  
9 a question. I want you to be honest. This happened two  
10 weeks ago, do you -- is this hitting a little bit too  
11 close to home? Is this a bit too fresh?

12 THE POTENTIAL JUROR: Yeah, yeah.

13 THE COURT: You feel like maybe you need to sit this  
14 one out?

15 THE POTENTIAL JUROR: Yeah.

16 THE COURT: Okay. That's what we're going to do  
17 then, Ms. Grant. You can have a seat back out there. You  
18 won't serve on this jury. Just have a seat.

19 #75 will not serve on this case.

20 THE BAILIFF: Juror #198.

21 THE COURT: Ms. Yeargin. Yes, ma'am, how did that  
22 question apply to you, ma'am?

23 THE POTENTIAL JUROR: I had a first and a second  
24 cousin that was murdered in 2014.

25 THE COURT: Is that being prosecuted in the Eighth

1 Circuit or somewhere else?

2 THE POTENTIAL JUROR: Here.

3 THE COURT: In Laurens?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: And that was in 2014?

6 THE POTENTIAL JUROR: Yes, sir.

7 THE COURT: And these were your first and second  
8 cousins who were victims?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: Ms. Yeargin, you know, 2014 wasn't that  
11 long ago. Is this hitting a little bit too close to home  
12 for you? Do you feel like what your family's been through  
13 the last year and a half, do you feel like that might  
14 affect your ability to be fair in this case?

15 THE POTENTIAL JUROR: I don't think so.

16 THE COURT: You've got to be certain. If you think  
17 there's the slightest chance that what your family went  
18 through in 2014 could affect your judgment in this case, I  
19 need you to let me know. But if you're telling me you're  
20 okay to serve, I'm good to let you serve.

21 THE POTENTIAL JUROR: I'm okay.

22 THE COURT: Okay. Good enough, Ms. Yeargin. You can  
23 have a seat out there. Thank you.

24 #198 is qualified to serve.

25 THE BAILIFF: Juror #162.

1 THE COURT: Ms. Smith, Frank Addy. Yes, ma'am. How  
2 does the question apply to you?

3 THE POTENTIAL JUROR: I had a first cousin who was  
4 murdered. It's been probably 15, 16 years ago, though.

5 THE COURT: Okay.

6 THE POTENTIAL JUROR: [REDACTED] Jones, he was killed by  
7 Jimmy Locklear, who will never see the light of day.

8 THE COURT: All right. Was that prosecuted locally  
9 here or was that somewhere else?

10 THE POTENTIAL JUROR: I don't think it was, actually,  
11 Laurens County.

12 THE COURT: That was a good time ago. Can you put  
13 that aside and judge this case based solely on the facts  
14 and be fair to everybody, especially Mr. Wells?

15 THE POTENTIAL JUROR: Yeah. I did, also, have a --  
16 my second cousin's husband was Deputy Roger Rice, who was  
17 killed.

18 THE COURT: Okay.

19 THE POTENTIAL JUROR: But she's my second cousin.  
20 You know, it's not close, close family.

21 THE COURT: Can you put both of those incidents aside  
22 and try this case fairly?

23 THE POTENTIAL JUROR: I think so.

24 THE COURT: You're sure?

25 THE POTENTIAL JUROR: Yes.

1 THE COURT: You've got to be sure.

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Thank you, Ms. Smith. Have a seat.

4 Juror #162 will serve.

5 THE BAILIFF: Juror #116.

6 THE COURT: It's Ms. Martin, right?

7 THE POTENTIAL JUROR: That's right.

8 THE COURT: Yes, ma'am, how does that question apply  
9 to you?

10 THE POTENTIAL JUROR: The incident happened over four  
11 years ago. My mother-in-law was a victim of a home  
12 intrusion where she shot and killed the intruder.

13 THE COURT: Okay. And that was your mother-in-law?

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: Okay. The fact that this happened in  
16 your family -- obviously, this is a different kind of a  
17 case, that was a burglary. Can you put any experience  
18 you've had aside as far as that's concerned and judge this  
19 case based solely on the evidence and testimony and law?

20 THE POTENTIAL JUROR: I feel like I could, yes.

21 THE COURT: You're certain of it then?

22 THE POTENTIAL JUROR: Yes.

23 THE COURT: Very good, Ms. Martin. Thank you. Have  
24 a seat.

25 #116 is okay.

1 THE BAILIFF: Juror #199.

2 THE COURT: Ms. Young, yes, ma'am. How does that  
3 question apply to you, ma'am?

4 THE POTENTIAL JUROR: I have couple cousins that's  
5 been convicted of murder and killing a dog.

6 THE COURT: All right. The fact that your cousins  
7 were convicted of the same kind of offense that the  
8 Defendant is charged with, would that affect your ability  
9 to be fair and impartial?

10 THE POTENTIAL JUROR: No.

11 THE COURT: You're certain?

12 THE POTENTIAL JUROR: Yeah.

13 THE COURT: Okay. Good enough. Ms. Young, thank  
14 you.

15 #199 is okay.

16 THE BAILIFF: #113, Your Honor.

17 THE COURT: Now, you are Ms. Lovelist. Yes, ma'am.  
18 How does that --

19 THE POTENTIAL JUROR: I had to come to court for  
20 domestic violence.

21 THE COURT: And when did this take place, ma'am?

22 THE POTENTIAL JUROR: Twenty years ago.

23 THE COURT: Obviously, this is not -- I'll tell you  
24 that the allegations in this case don't involve domestic  
25 violence. Can you put aside the fact that this happened

1 to you 20 years ago and judge this case based solely on  
2 the facts and the law?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: Very good. You can have a seat. Thank  
5 you.

6 #113 is okay.

7 THE BAILIFF: Juror #55.

8 THE COURT: It's Ms. Dendy?

9 THE POTENTIAL JUROR: Uh-huh.

10 THE COURT: Ms. Dendy, how does that question apply  
11 to you?

12 THE POTENTIAL JUROR: With my son, molestation.

13 THE COURT: How long ago was that?

14 THE POTENTIAL JUROR: 2000, I think it was.

15 THE COURT: This is, obviously, a different kind of  
16 crime than what happened to your son. Can you put aside  
17 what your family went through when that happened 16 years  
18 ago and judge this case based solely on the evidence and  
19 the law?

20 THE POTENTIAL JUROR: Yes.

21 THE COURT: Very good. Ms. Dendy, thank you.

22 Any additional voir dire from the State?

23 MR. MOWRY: No, Your Honor.

24 THE COURT: Any from the Defense?

25 MR. RICHEY: None, Your Honor.

1 THE COURT: The strikes are going to be five for the  
2 State, 10 for the Defense. We will select one alternate.  
3 Strikes on those will be one and two.

4 Ladies and gentlemen, in a moment, the Clerk of Court  
5 will generate a list of potential jurors. If your name is  
6 called, that means that you have been picked as a possible  
7 juror on this particular case. So if your name is called,  
8 what I need for you to do is come forward and stand right  
9 here where this table is in front of me and then turn  
10 around and face towards the back of the courtroom. At  
11 that point in time, the State will be given an opportunity  
12 to either seat you or to excuse you, and the Defense will  
13 have a similar opportunity.

14 Now, ladies and gentlemen, I'm going to tell you what  
15 I tell every jury panel. If for some reason, one of the  
16 attorneys ask that you not serve on this case or if, for  
17 some reason, one of the lawyers excuses you from serving,  
18 don't take it personal. There are about 14,000 lawyers in  
19 the State of South Carolina and each and every one of them  
20 has a different way of picking a jury. So if you're asked  
21 not to serve on this case, again, ladies and gentlemen, it  
22 ain't personal, I promise you that.

23 (Pause.)

24 THE COURT: Madam Clerk, if you'll give me a jury.

25 THE CLERK: Juror #150, [REDACTED] Rogers.

1 (WHEREUPON, [REDACTED] Rogers, a white female,  
2 came forward.)

3 THE CLERK: What says the State?

4 MR. MOWRY: Please present Ms. Rogers.

5 THE CLERK: What says the Defense?

6 MR. RICHEY: Please present the juror.

7 THE COURT: Did you say please seat her? I'm sorry.

8 MR. RICHEY: Yes, present the juror for the trial of  
9 this case.

10 THE COURT: Have a seat over there, ma'am.

11 THE CLERK: Juror #31, [REDACTED] Butler.

12 (WHEREUPON, [REDACTED] Butler, a white female,  
13 came forward.)

14 THE CLERK: What says the State?

15 MR. MOWRY: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. RICHEY: Please present the juror for the trial  
18 of this case.

19 THE CLERK: Juror #184, [REDACTED] Whitten.

20 (WHEREUPON, [REDACTED] Whitten, a white male, came  
21 forward.)

22 THE CLERK: What says the State?

23 MR. MOWRY: Your Honor, could we approach briefly?

24 THE COURT: Sure.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: What says the State?

2 MR. MOWRY: Beg the Court's indulgence for just a  
3 moment.

4 THE COURT: Yes, sir.

5 MR. MOWRY: We'll excuse the juror from this trial.

6 THE CLERK: Juror #51, [REDACTED] Eubanks.

7 (WHEREUPON, [REDACTED] Eubanks, a white female,  
8 came forward.)

9 THE CLERK: What says the State?

10 MR. MOWRY: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. RICHEY: Please strike the juror from the trial  
13 of this case.

14 THE CLERK: Juror #71, [REDACTED] Gary.

15 (WHEREUPON, [REDACTED] Gary, a black male,  
16 came forward.)

17 THE CLERK: What says the State?

18 MR. MOWRY: We'll excuse the juror from this trial,  
19 Your Honor.

20 THE CLERK: Juror #12, [REDACTED] Barbrey.

21 (WHEREUPON, [REDACTED] Barbrey, a white male,  
22 came forward.)

23 THE CLERK: What says the State?

24 MR. MOWRY: We'll excuse Mr. Barbrey.

25 THE CLERK: Juror #196, [REDACTED] Wooten.

1 (WHEREUPON, [REDACTED] Wooten, a white male, came  
2 forward.)

3 THE CLERK: What says the State?

4 MR. MOWRY: Present the juror.

5 THE CLERK: What says the Defense?

6 MR. RICHEY: Please excuse the juror from the trial  
7 of this case.

8 THE CLERK: Juror #200, [REDACTED] Young.

9 (WHEREUPON, [REDACTED] Young, a black male, came  
10 forward.)

11 THE CLERK: What says the State?

12 MR. MOWRY: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. RICHEY: Please present the juror for the trial  
15 of this case.

16 THE CLERK: Juror #113, [REDACTED] Lovelist.

17 (WHEREUPON, [REDACTED] Lovelist, a black female,  
18 came forward.)

19 THE CLERK: What says the State?

20 MR. MOWRY: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. RICHEY: Please present the juror for the trial  
23 of this case.

24 THE CLERK: Juror #116, [REDACTED] Martin.

25 (WHEREUPON, [REDACTED] Martin, a white female,

1 came forward.)

2 THE CLERK: What says the State?

3 MR. MOWRY: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. RICHEY: Please excuse the juror.

6 THE CLERK: Juror #159, [REDACTED] Shirey.

7 (WHEREUPON, [REDACTED] Shirey, a white male, came  
8 forward.)

9 THE CLERK: What says the State?

10 MR. MOWRY: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. RICHEY: Please present the juror for the trial  
13 of this case.

14 THE CLERK: Juror #17, [REDACTED] Blackwell.

15 (WHEREUPON, [REDACTED] Blackwell, a white male,  
16 came forward.)

17 THE CLERK: What says the State?

18 MR. MOWRY: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. RICHEY: Please present the juror for the trial  
21 of this case.

22 THE CLERK: Juror #162, [REDACTED] Smith.

23 (WHEREUPON, [REDACTED] Smith, a white female,  
24 came forward.)

25 THE CLERK: What says the State?

1 MR. MOWRY: Please present Ms. Smith.

2 THE CLERK: What says the Defense?

3 MR. RICHEY: Please excuse the juror from the trial  
4 of the case.

5 THE CLERK: Juror #58, [REDACTED] Edwards.

6 (WHEREUPON, [REDACTED] Edwards, a white female,  
7 came forward.)

8 THE CLERK: What says the State?

9 MR. MOWRY: Please present Ms. Edwards.

10 THE CLERK: What says the Defense?

11 MR. RICHEY: Please excuse the juror.

12 THE CLERK: Juror #96, [REDACTED] Johnson.

13 (WHEREUPON, [REDACTED] Johnson, a black male, came  
14 forward.)

15 THE CLERK: What says the State?

16 MR. MOWRY: Please excuse Mr. Johnson.

17 THE CLERK: Juror #199, [REDACTED] Young.

18 (WHEREUPON, [REDACTED] A. Young, a black female,  
19 came forward.)

20 THE CLERK: What says the State?

21 MR. MOWRY: Beg the Court's indulgence just one  
22 moment.

23 THE COURT: Yes, sir.

24 MR. MOWRY: Please present Ms. Young.

25 THE CLERK: What says the Defense?

1 MR. RICHEY: Please present the juror.

2 THE CLERK: Juror #195, [REDACTED] Woody.

3 (WHEREUPON, [REDACTED] Woody, a white male, came  
4 forward.)

5 THE CLERK: What says the State?

6 MR. MOWRY: Please present Mr. Woody.

7 THE CLERK: What says the Defense?

8 MR. RICHEY: Please present the juror for the trial  
9 of this case.

10 THE CLERK: Juror #77, [REDACTED] Gray.

11 (WHEREUPON, [REDACTED] Gray, a white male, came  
12 forward.)

13 THE CLERK: What says the State?

14 MR. MOWRY: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. RICHEY: Please excuse the juror.

17 THE CLERK: Juror #70, [REDACTED] Garrett.

18 (WHEREUPON, [REDACTED] Garrett, a white male,  
19 came forward.)

20 THE CLERK: What says the State?

21 MR. MOWRY: Please present Mr. Garrett.

22 THE CLERK: What says the Defense?

23 MR. RICHEY: Please excuse the juror.

24 THE CLERK: Juror #60, [REDACTED] Smart.

25 (WHEREUPON, [REDACTED] Smart, a white female, came

1 forward.)

2 THE CLERK: What says the State?

3 MR. MOWRY: Please present Ms. Smart.

4 THE CLERK: What says the Defense?

5 MR. RICHEY: Please present the juror.

6 THE CLERK: Juror #192, [REDACTED] Windley.

7 (WHEREUPON, [REDACTED] Windley, a white female,  
8 came forward.)

9 THE CLERK: What says the State?

10 MR. MOWRY: Please present Ms. Windley.

11 THE CLERK: What says the Defense?

12 MR. RICHEY: Please present the juror.

13 THE CLERK: Juror #173, [REDACTED] Thomas.

14 (WHEREUPON, [REDACTED] Thomas, a white male,  
15 came forward.)

16 THE CLERK: What says the State?

17 MR. MOWRY: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. RICHEY: Please present the juror.

20 THE CLERK: Juror #18, [REDACTED] Bodie.

21 (WHEREUPON, [REDACTED] Bodie, a white male, came  
22 forward.)

23 THE CLERK: What says the State?

24 MR. MOWRY: Please present the juror.

25 THE CLERK: What says the Defense?

1 MR. RICHEY: Please present the juror.

2 THE COURT: Okay, that's 12. Let's have one  
3 alternate. Strikes are one for the State, two for the  
4 Defense.

5 THE CLERK: Juror #9, [REDACTED] Arnold.

6 (WHEREUPON, [REDACTED] Arnold, a white male, came  
7 forward.)

8 THE CLERK: What says the State?

9 MR. MOWRY: Please present Mr. Arnold.

10 THE CLERK: What says the Defense?

11 MR. RICHEY: Please excuse the juror.

12 THE CLERK: Juror #180, [REDACTED] Verdin.

13 (WHEREUPON, [REDACTED] Verdin, a white male,  
14 came forward.)

15 THE CLERK: What says the State?

16 MR. MOWRY: Please present Mr. Verdin.

17 THE CLERK: What says the Defense?

18 MR. RICHEY: Please present the juror.

19 THE COURT: Any issue with the selection and  
20 composition of the jury from the State?

21 MR. MOWRY: Nothing from the State, Your Honor.

22 THE COURT: From the Defense?

23 MR. RICHEY: Nothing, Your Honor.

24 THE COURT: Very good.

25 Ladies and gentlemen who were selected on this

1 particular jury, I need to ask that you step back to the  
2 jury room. The bailiff will show you where that is.  
3 Don't get too comfortable. I've got to give some  
4 instructions to the rest of the jury panel on when to call  
5 back, that kind of a thing, and then I'll bring you out  
6 here and just give you a few preliminary instructions  
7 before we take a break for lunch at 1:00.

8 One comment or refrain that you'll hear me saying  
9 over and over again, ladies and gentlemen, is don't  
10 discuss the case while we're taking any kind of breaks.  
11 Certainly, that goes -- at this point in time, don't talk  
12 about the case. That should be basically simply because  
13 at this point in time, you know nothing about the case.

14 Adjourn to the back for a moment. We'll have you  
15 back here in about five or 10 minutes and I'll excuse you  
16 for lunch. Thank you.

17 (WHEREUPON, the jury exits the courtroom at  
18 approximately 12:49 p.m.)

19 THE COURT: Solicitor, do you want me to have the  
20 jury call back in tomorrow evening or -- is that  
21 acceptable?

22 MR. MOWRY: I think that will work, Your Honor.

23 THE COURT: All right.

24 Ladies and gentlemen who were not picked on the first  
25 case, I'm going to ask that you call back in tomorrow

1 night to that number that should be on the juror  
2 information stuff that you got. Call back tomorrow night  
3 any time after 6:00.

4 If we have been -- if we've moved forward  
5 sufficiently in this case, I might ask that you come back  
6 at a later point in time. But I really have to see how  
7 long the presentation of the case is going to take. I  
8 need to get a feel for that before I can make an educated  
9 guess on whether we can get a second case in this week.

10 Two quick things. First, if we are not able to get a  
11 second case in this week, I want to thank you for coming  
12 in here and remind you that you will -- or that you are,  
13 rather, entitled to that get out of jury service free  
14 card. It's not, actually, a card, so you'll just have to  
15 remember it. I'm not going to, actually, give you a card.  
16 If you get summoned for jury duty for this court any time  
17 in the next three years, you can get an automatic  
18 exemption just by contacting the clerk's office. You  
19 don't even have to show up on the first day. So that's  
20 the first thing that I did want to mention.

21 Second thing -- and I meant to do this earlier, but  
22 this is a point of personal privilege that I do want to  
23 take because I am the Judge and I can do it, so I'm going  
24 to do it anyway. You know, even judges need lawyers. My  
25 lawyer is sitting to my immediate left. Her name is

1 Hallie Willm. She is from Chapin. And as of Friday, she  
2 became a full-fledged member of the South Carolina Bar by  
3 passing the South Carolina Bar exam. Having done that 22  
4 years ago, ladies and gentlemen, I will tell you it is no  
5 small accomplishment. It is no small feat. This year,  
6 approximately half the people who took the Bar exam did  
7 not pass. She did pass. That just shows how smart I am  
8 in hiring such a smart young lady to be my lawyer. So  
9 she'll be sworn in as an attorney on May the 23rd. I'm  
10 very proud of her and I just felt like throwing that out  
11 there and letting y'all know that I am proud of her.

12 (Clapping.)

13 THE COURT: I think she'll make a great addition to  
14 the Bar here in South Carolina.

15 Don't forget to call back tomorrow night any time  
16 after 6:00, follow whatever those instructions are. Then  
17 I'd ask you to call back again Wednesday night. With  
18 that, take care. You're free to go for the rest of the  
19 day, today and tomorrow. Thank you very much.

20 (WHEREUPON, the jury pool is released at  
21 approximately 12:54 p.m.)

22 THE COURT: Let's start getting the jury back out  
23 here, please.

24 I'm going to have the jury report back at 2:15.

25 (WHEREUPON, the jury returns to open court at

1 approximately 12:55 p.m.)

2 THE BAILIFF: All the jury is present, Your Honor.

3 THE COURT: Thank you.

4 Ladies and gentlemen of the jury, what we're going to  
5 do is take a lunch break now. I talked to the Solicitor  
6 and there's, actually, a plea that I need to address at  
7 2:15. It's one of the cases that's on the docket for this  
8 week, so I'm going to go ahead and get that resolved at  
9 2:15. So I'm going to ask that y'all be back in the jury  
10 room, if you would, at 2:30. I promise you, I won't keep  
11 you waiting too long back there.

12 Once we resume on this particular case, I will  
13 appoint a Foreperson, you will take your oath as jurors,  
14 and we will go straight into the trial of this case. I  
15 will tell you, ladies and gentlemen, sometimes stuff just  
16 comes up. If it's necessary for me to keep you waiting  
17 longer than I should, I'm going to apologize from the  
18 get-go for that. Because I will tell you, very often,  
19 just something comes up at the last possible second. And  
20 y'all are going to be sitting back there wondering what  
21 I'm doing out here. I promise you, I'm not out here  
22 twiddling my thumbs. I'm not trying to waste your time.  
23 But sometimes, stuff comes up.

24 While you're at break for lunch, please, don't talk  
25 about the case with anyone. Don't discuss it -- if you

1 happen to go to lunch with one of your fellow jurors,  
2 friend, family member, whatever the case may be, that's  
3 fine, that's not a problem, just don't talk about the  
4 case. Again, that will be a common refrain.

5 Do keep those juror badges on you. Wear those back  
6 to the courtroom when you come back after lunch. You'll  
7 take those home tonight, try and remember to wear them  
8 back tomorrow because it helps the security people and the  
9 bailiffs identify you and help in getting you where you  
10 need to be sooner rather than later.

11 With that, enjoy your lunch. Please be back in the  
12 jury room at 2:30. At that point in time, we'll start the  
13 trial. Thank you very much. Have a great lunch.

14 (WHEREUPON, the jury exits the courtroom at  
15 approximately 12:57 p.m.)

16 THE COURT: We'll be at ease on this case until 2:30.  
17 We'll resume court at 2:15 with that plea that Mr. Neely  
18 has with Ms. Saunders.

19 MR. MOWRY: Your Honor, would you like to -- well,  
20 two things. Would you like to go ahead and address some  
21 of the matters that Mr. Richey and I spoke to you about  
22 earlier?

23 THE COURT: No, quite frankly.

24 MR. MOWRY: I understand. And I also just wanted to  
25 inform the Court, I'm going to ask Mr. Richey to get with

1 me and we -- I think we can premark a lot of the exhibits.  
2 And we'll get with Tara after lunch and get the stickers  
3 on.

4 THE COURT: That's perfectly fine. I'm not going to  
5 have her be back --

6 MR. MOWRY: No, sir. No, sir. Not asking her to do  
7 that, just wanted to let you know.

8 THE COURT: Not a problem. Thank you, gentlemen.

9 (WHEREUPON, a lunch break was taken.)

10 (WHEREUPON, State's Exhibit Nos. 1 through 30  
11 were marked for identification only.)

12 THE COURT: All right. We'll go back on the record  
13 on the State vs. Christopher Wells. I am told the jury is  
14 back. I know y'all have been diligently marking exhibits.  
15 Is there anything that's agreed to that we need to put on  
16 the record at this time, Solicitor?

17 MR. MOWRY: Your Honor, basically, all of the  
18 exhibits that we plan to introduce during the course of  
19 the trial we have premarked. Mr. Richey has seen  
20 everything. He says he has no problem with it, subject to  
21 tying it in -- not purely the chain witnesses, but the  
22 folks that found it and that sort of thing. So that's  
23 taken care of.

24 He, also, has said that he wanted to sequester  
25 witnesses. That, we really don't have any contest to, so

1 that has been done.

2 Investigator Cheek is here. And Ms. Bridges, who is  
3 the first witness is, also, in the courtroom. She is the  
4 911 supervisor and would present the 911 video.

5 We still have, Your Honor, the issue of Toris Moore  
6 and whether or not the statement that was made to her by  
7 Johnny Lee Saxon the day after the event is part of a  
8 continuing conspiracy. And we would submit, obviously,  
9 that it is, that it was designed -- and she would,  
10 actually, say that she assumed he was telling her that to,  
11 basically, instruct her to be quiet. And on that basis,  
12 we believe that the statement the co-conspirator made to  
13 Ms. Moore should be allowed. And I would like to get a  
14 ruling on that before we make opening statements because  
15 that will, obviously, affect what I'm going to say to the  
16 jury.

17 THE COURT: All right. My understanding is she did  
18 give a statement to law enforcement, which I assume has  
19 been turned over to Mr. Richey.

20 MR. MOWRY: Yes, sir.

21 THE COURT: And I know that she testified in the  
22 prior trial. According to my notes, she testified on  
23 February the 24th of last year at 11:42 is when she took  
24 the stand.

25 Do you want her testimony to be proffered at this

1 particular time, Mr. Richey?

2 MR. RICHEY: Your Honor, I know what her testimony is  
3 going to be. It's my position that her testimony is  
4 purely hearsay. It's not any furtherance of a conspiracy  
5 the way the State has outlined to the Court that they  
6 believe that this was -- she interpreted this as being. I  
7 don't think -- I think it has to be a statement in  
8 furtherance of a conspiracy, not one that we have to say  
9 in her mind, she thought. And I believe at that point,  
10 the conspiracy was over. The robbery, the murder,  
11 everything was over at that point. And there's no  
12 evidence that's going to come out that this statement was  
13 intended for anybody to hide or anything.

14 I think the State has taken this statement and made  
15 all the assumptions about what she believed. And, Your  
16 Honor, I just don't think this statement is nowhere near  
17 in furtherance of a conspiracy. Because as the State  
18 would have it, the conspiracy -- at some point -- these  
19 guys are in jail. It has to end. And under the State's  
20 logic, it never ends. It's just a perpetual thing.

21 MR. MOWRY: Well, I would submit, Your Honor, this  
22 is, perhaps, a day or so later and that it's a truism.  
23 It's not the crime, it's the coverup. We saw that with  
24 Watergate and a whole bunch of other events in the past.  
25 And I would submit that it's the same here.

1           The idea with Saxon was to get somebody that he knew  
2           had information that they were seeking a gun -- I mean,  
3           that's going to be purely admissible, obviously,  
4           admissible under our theory.

5           And the whole idea behind his going to her is not  
6           just to confess to her that he took part in the shooting,  
7           but there was a purpose behind it. It was to get her to  
8           be quiet about it. That's, certainly, the implication  
9           that she took from it, the inference that she took from  
10          it. And it is something that the jury should be able to  
11          consider, Your Honor. It goes to the weight, not the  
12          admissibility.

13          MR. RICHEY: Well, Your Honor, if he's characterized  
14          this as a confession, I would think, clearly, it's not  
15          admissible.

16          MR. MOWRY: No, I'm not characterizing it as a  
17          confession.

18          THE COURT: Go ahead, Mr. Richey.

19          MR. RICHEY: His characterization of it, he said he  
20          gave her this confession. Okay, that's characterization  
21          of it and we know right there it's not admissible. And  
22          see, that's what the State is using this for, as a  
23          confession. They're not using it as a furtherance of a  
24          conspiracy. They're trying to bootstrap the furtherance  
25          of a conspiracy onto this alleged confession they have to

1 get the statement in. So I believe it's not admissible.

2 MR. MOWRY: It's quite the opposite, Your Honor. I'm  
3 saying it's not a confession. He's not going to her to  
4 simply bare his soul and get this off his chest. Mr.  
5 Saxon went to her to get her to be quiet. That's the way  
6 she, certainly, took it. He never said it out loud, but  
7 that's, certainly, what she gleaned from the conversation.

8 THE COURT: Okay. Do we have her available?

9 MR. MOWRY: Yes, sir.

10 THE COURT: I really think that the most prudent  
11 thing to do at this point in time is to proffer her  
12 testimony briefly and see which way --

13 MR. MOWRY: She was in the courtroom until just a few  
14 minutes ago, Your Honor.

15 THE COURT: If you would, just ask her to step in so  
16 we can go ahead and proffer her testimony.

17 And, Mr. Neely, I think you had a case on point,  
18 State vs. Sims, the case that you cited in support of  
19 this.

20 MR. NEELY: Yes, Your Honor. The cite is 377 S.C.  
21 598.

22 THE COURT: Do you have a copy of that, by any  
23 chance, that I could borrow?

24 MR. NEELY: I do, Your Honor.

25 THE BAILIFF: If you would, place your left hand on

1 the Bible and raise your right.

2 Thereupon;

3 TORIS MOORE, after having been duly  
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q Toris, you testified last year in the case against  
8 David Walker; is that right?

9 A Yes, sir.

10 Q And you told about Walker coming to -- or to you  
11 seeing Walker with this Defendant, Christopher Wells, and  
12 with Johnny Lee Saxon on the night of [REDACTED]  
13 shooting; is that right?

14 A Yes, sir.

15 Q I'm not going to ask you about that, but I am going  
16 to ask you about seeing [REDACTED] [sic] the next  
17 day. Did you see him the day after [REDACTED]  
18 shooting?

19 A Who?

20 Q Johnny Lee Saxon.

21 A Yes, I did.

22 Q Where did you see him?

23 A At his residence.

24 Q What is his relationship to you?

25 A None.

1 Q None, okay. What were the circumstances that you saw  
2 [REDACTED] [sic]? Tell us about that.

3 A I was -- I had a relationship with his God sister at  
4 the time and she stayed down there, so I spent the night  
5 that night.

6 Q Now, is that on [REDACTED] Road?

7 A Correct.

8 Q Near [REDACTED]?

9 A Correct.

10 Q Tell us about your meeting with [REDACTED] and  
11 what happened -- Johnny Lee Saxon, sorry, Johnny Lee  
12 Saxon.

13 A Well, as far as why he was talking to me?

14 Q Yeah.

15 A Well, I had got a phone call saying my Uncle Walker  
16 had been shot, so I looked over at Saxon and asked him  
17 what happened to my uncle.

18 Q Because you knew they had been together the night  
19 before; is that right?

20 A Correct.

21 Q Okay.

22 A And at that point, he asked to talk to me outside, so  
23 me and him went outside and talked, spoke in the car.

24 Q Was anybody else present in the car?

25 A No, it was just me and him.

1 Q Were there other people present in the residence when  
2 he asked you to do that?

3 A Yes.

4 Q So he wanted you to go outside to be alone; is that  
5 right?

6 A Yes.

7 Q Is that what it appeared to you?

8 A Yes.

9 Q What did he tell you?

10 A He told me that the last thing he heard from my uncle  
11 was that he had broke his collarbone. They had went to  
12 Ware Shoals to rob a bank and things went bad and they  
13 left David down there.

14 Q Okay. They left David down there?

15 A Uh-huh.

16 Q Was it Ware Shoals or Enoree?

17 A Enoree. I'm not sure.

18 Q Did he go into detail about what happened?

19 A Yeah, he went into detail.

20 Q Did you include that in your statement to Detective  
21 Cheek?

22 A Yes, sir.

23 Q I'm not going to ask you to go into that day. You've  
24 reviewed your statement; is that right?

25 A Yes, sir.

1 Q Is that consistent with what you would testify to in  
2 court?

3 A Yes, sir.

4 Q What then was the purpose in your mind -- how did you  
5 perceive Johnny Lee Saxon asking you to go out to the car?  
6 What was the purpose in that?

7 A Tell me his side of the story, I guess.

8 Q And was there any other reason that you perceived?  
9 Did you believe that he wanted you to keep silent about  
10 this?

11 MR. RICHEY: Your Honor, I object. That's leading.

12 MR. MOWRY: This is for Court purposes, Your Honor.

13 THE COURT: I understand it's for Court purposes, but  
14 to the extent possible, please, ask an open-ended  
15 question.

16 MR. MOWRY: Yes, sir.

17 BY MR. MOWRY:

18 Q Did you perceive any reason behind -- besides just  
19 asking you to come out there and tell you the story -- for  
20 his doing that?

21 A Yeah, that it was just between me and him.

22 Q Just between me and him. What do you mean by that?

23 A As far as he didn't want me to tell anyone else.

24 Q Not wanting you to tell anyone else.

25 MR. MOWRY: I think that's all I have, Your Honor.

1 THE COURT: Cross.

2 CROSS-EXAMINATION

3 BY MR. RICHEY:

4 Q Ma'am, you had a decent relationship with him,  
5 correct?

6 A Yeah.

7 Q So it was the kind of relationship that he, actually,  
8 could confide in you and you could confide in him,  
9 correct?

10 A I wouldn't say I would confide in him, but he felt he  
11 could confide in me.

12 Q Well, let's put it this way, he knew -- or you think  
13 he knew what happened to your uncle, right?

14 A Correct.

15 Q And so, he had enough respect for you to when you  
16 said let's go outside and talk, he did, correct?

17 A Well, he asked me to go outside and talk and yeah, I  
18 did.

19 Q But you didn't have to force him to do anything, he  
20 went out there on his own volition, correct?

21 A Correct.

22 Q And you all had this conversation. It was,  
23 essentially, him coming clean to you, correct?

24 A Correct.

25 Q And you, actually, saw this as him confessing,

1 correct?

2 A I would guess so.

3 Q Okay. And after he confessed to you, then he didn't  
4 say to you don't tell anybody, did he?

5 A No, that wasn't the first thing out of his mouth.

6 Q He didn't tell you to not go to the police of  
7 anything, correct?

8 A Correct.

9 Q The basis of this conversation was you and him  
10 sitting down, getting to the bottom of what happened,  
11 correct?

12 A Correct.

13 Q And he didn't expect anything out of you and you  
14 didn't expect anything out of him, correct, from that  
15 conversation?

16 A Correct.

17 Q This was just simply a conversation where two people  
18 sit down and talk and come clean. And you had no  
19 expectation to do anything after this conversation,  
20 correct?

21 A Correct.

22 MR. RICHEY: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. MOWRY:

25 Q You didn't have expectation to do anything after that

1 conversation except for stay quiet, though, right? Isn't  
2 that the impression you got from Johnny Lee Saxon?

3 A To stay quiet. I mean, I wasn't going to go tell  
4 anyone about the conversation.

5 MR. MOWRY: Thank you.

6 RECROSS EXAMINATION

7 BY MR. RICHEY:

8 Q I'll ask you this again. You talked to him and it  
9 was the two of y'all in the conversation, correct?

10 MR. MOWRY: Your Honor, I believe this is asked and  
11 answered already. It's not in response to my redirect.

12 THE COURT: I appreciate that. The Court needs  
13 clarification on this point.

14 Ask your question.

15 BY MR. RICHEY:

16 Q Ma'am, when you sit down and talk to him, okay, your  
17 purpose was to find out what happened to your uncle,  
18 correct?

19 A Correct.

20 Q And he answered that purpose, correct?

21 A Correct.

22 Q And when you left -- when that conversation ended,  
23 you had no expectations to do anything, did you?

24 A No.

25 MR. RICHEY: Thank you.

EXAMINATION

1  
2 BY THE COURT:

3 Q Just so I'm clear in my head, ma'am, you said you  
4 were initially in the house and there were other people in  
5 the house?

6 A Yes.

7 Q And that he asked you to step outside and y'all --  
8 this is after you got word that your uncle had been shot?

9 A Correct.

10 Q And you asked him what happened? I think you had  
11 been privy -- were you privy to what was about to happen  
12 the day before, before this incident took place?

13 A Yes.

14 Q He asked you to step outside and you have this  
15 conversation in the car. And he related to you what  
16 happened to your uncle; is that what happened in the car?

17 A Yeah, he gave me the story of what happened that  
18 night in his words.

19 Q Okay. And if memory serves from your testimony last  
20 year, the day before the day of this -- the day of the  
21 shooting itself, they had come to you looking for guns or  
22 wanting to borrow a gun?

23 A My uncle came to me.

24 Q Your uncle came to you looking for a gun. And that's  
25 when they told you what their plan was initially?

1 A That's what my uncle told me that day.

2 Q And your uncle, again, is who?

3 A Walker.

4 Q Mr. Walker, all right.

5 MR. MOWRY: Your Honor, just to make it clear, also,  
6 when she had that conversation with Walker, he was  
7 accompanied by both Wells and Saxon. So all three of them  
8 were together when that went on. She had the conversation  
9 with Walker, but all three of them were there.

10 THE COURT: All right.

11 BY THE COURT:

12 Q Did Mr. Walker ever -- he never told you, look, I  
13 just need you to keep your mouth shut, he never said  
14 anything like that?

15 A No.

16 MR. MOWRY: Your Honor, just a point of  
17 clarification. Walker was in jail.

18 THE COURT: Yes, you're right. You're right.

19 BY THE COURT:

20 Q Who was it that came to you the second day, it was  
21 Mr. Saxon?

22 A Yes.

23 Q All right. And Mr. Saxon, did he ever give you the  
24 impression or did he ever tell you -- did he ever give you  
25 the impression that he wanted you to stay quiet about all

1 this or was he simply relating to you what went down?

2 What was your impression of what he was saying to you?

3 A I mean, he gave me his story of what went down. Did  
4 I get the impression that he wanted me to tell anybody or  
5 say anything, no. But with him wanting me to go outside  
6 and talk by myself, you know, other people was in the  
7 house. But did he ever say anything, no.

8 Q Okay. I think I know what your testimony is now.

9 THE COURT: Additional followup based on the Court's  
10 questions?

11 MR. MOWRY: No, sir, I think that covers it.

12 MR. RICHEY: No, Your Honor.

13 THE COURT: Thank you, ma'am.

14 Let me ask this question before I ask for additional  
15 argument or input, her testimony, I think the State would  
16 intend to elicit what happened when the three of them came  
17 to her house the day of the shooting, October 31st?

18 MR. MOWRY: Yes, sir.

19 THE COURT: So you're looking to get that information  
20 in as far as what she observed, what was talked about, who  
21 was present, et cetera?

22 MR. MOWRY: Yes, sir. She, actually, says in her  
23 statement and she would testify -- she testified last time  
24 that they were going to go rob a drug dealer in Enoree,  
25 who lived with a white woman, all of which is connected

1 with this case.

2 THE COURT: All right. And then we have the incident  
3 taking place the next day where Mr. Saxon comes to her --  
4 or she's in the company of Mr. Saxon and they step  
5 outside?

6 MR. MOWRY: Right. She gets a message that Walker  
7 has been shot and knows that he was -- Saxon was with him  
8 the night before and asked him what happened. And that's  
9 when they stepped outside, Saxon asked her to step outside  
10 and they got in the car.

11 THE COURT: Okay. The motion -- as I understand  
12 what's on deck right now or what the Court has to concern  
13 itself with relates only to that point after October 31st;  
14 am I right?

15 MR. RICHEY: After the part where he tells her the  
16 story.

17 THE COURT: Right.

18 MR. MOWRY: I don't think there's any contest that  
19 Walker seeking the gun the day before is admissible.

20 THE COURT: Right.

21 (Pause.)

22 THE COURT: All right. The Sims case that the State  
23 has handed up is a Court of Appeals decision. The Supreme  
24 Court did review the decision that Mr. Neely provided to  
25 me and that's what's causing the Court so much hesitation.

1 And it's at note six -- well, just prior to note six, The  
2 State urges us to accept the Court of Appeals's view that  
3 the co-conspirator's statement was admissible under the  
4 co-conspirator exception to the hearsay rule. We agree  
5 with the Court of Appeals that the evidence establishes  
6 the existence of a conspiracy and that the co-defendant's  
7 purported statement to another co-defendant was made  
8 during the conspiracy. We part company with the Court of  
9 Appeals only as it relates to Rule 801 requirement that  
10 the statement be made "in furtherance of the conspiracy".

11 Next paragraph, concerning the in furtherance of  
12 prong, our law provides that a statement by a  
13 co-conspirator must advance the conspiracy to be  
14 admissible under 801(d)(2)(E), cites Gilchrist. And then  
15 it cites Gilchrist again, "Where mere conversation or  
16 narrative declarations -- while mere conversation or  
17 narrative declarations are not admissible under this rule,  
18 statements made to induce enlistment, further  
19 participation, prompt further action, allay fears, or keep  
20 co-conspirators abreast of an ongoing conspiracy's  
21 activities are admissible.

22 And then it cites State V. Anderson, which I think  
23 Mr. Neely alluded to briefly in chambers. It says in this  
24 case, English's statement that Sims had murdered somebody  
25 was simply part of her narrative, best described as

1 "spilling the beans". We thus conclude the statement was  
2 not admissible under 801. It then goes through a harmless  
3 error analysis.

4 As it relates to the statement that took place on  
5 November the 1st, the Court is of the opinion in this case  
6 that that statement was not made in furtherance of the  
7 conspiracy. It was a narrative made to Ms. Moore in  
8 response to a question about what happened to one of the  
9 co-defendants.

10 I understand that Mr. Sims wanted this discussion --  
11 or Mr. Saxon, rather, wanted this discussion to take place  
12 in a car, that this seems to fall within the Court's  
13 definition -- the Supreme Court's definition in State V.  
14 Sims of a "spilling the beans" kind of thing.

15 Obviously, when Mr. Sims -- or Mr. Saxon and Ms.  
16 Moore's uncle had approached her the previous day, she  
17 already knew, based on that previous day's conversation,  
18 what was going to be going down that evening, what was  
19 planned, what they anticipated doing. It would be  
20 unreasonable for Saxon to try to get her to cover up for  
21 it when she was already apprised of what was going to take  
22 place.

23 So for that reason, I would conclude that the  
24 statement made on November the 1st by Mr. Saxon, that was  
25 not a statement made in furtherance of the conspiracy

1 based upon the information that's been proffered and the  
2 testimony that we've had and the Supreme Court holding in  
3 State V. Sims, which is at 287 S.C. 557 2010.

4 MR. MOWRY: Your Honor, Mr. Neely just has -- I  
5 understand your ruling, he just has something to correct.

6 THE COURT: By all means, if I misunderstood  
7 something, please, correct me.

8 Go ahead, Mr. Neely.

9 MR. NEELY: Judge, all I was going to add is we  
10 contend that their approaching Ms. Toris before the  
11 conspiracy happened to try to bring her into conspiracy.  
12 They asked her for a gun to commit the robbery that took  
13 place later that night. Obviously, that's not being  
14 challenged. But after they tried to enlist her, they came  
15 back the day after and told her what had happened. She  
16 didn't know it, actually, happened. All she knew at that  
17 time was that David Walker had been shot.

18 And Mr. Richey kept harping on no further actions  
19 took place. Certainly, advancing the conspiracy can also  
20 be defined as keeping a co-conspirator abreast of the  
21 activities that took place that night. And that is not an  
22 action that took place, that is -- but that, also, covers  
23 the -- what we believe took place that night was -- at  
24 first, they attempted to bring into the conspiracy, was  
25 being kept abreast of what had happened in the conspiracy

1       itself. It doesn't prompt any action, but, certainly, it  
2       keeps her abreast of the activities after they induced  
3       enlistment the day before.

4           THE COURT: I would agree with you if she, actually,  
5       engaged in the conspiracy. My recollection of her  
6       testimony from over a year ago was that she did not give  
7       them a gun. They told her what was -- they were planning  
8       on doing. They told her what they were planning on  
9       accomplishing in terms of the conspiracy. Had she  
10      furnished the gun, she would have been, by definition, a  
11      co-conspirator. A statement made in furtherance of the  
12      conspiracy or to keep a co-conspirator abreast of what is  
13      taking place, I agree, clearly, if I'm under 801. Her  
14      being outside of the conspiracy, though, is, clearly,  
15      problematic for the State's theory on why the Court should  
16      allow that series of events the next day.

17           MR. NEELY: We understand your ruling, Your Honor. I  
18      was just putting it out there because it's a two-prong  
19      theory of how it could be a co-conspirator.

20           THE COURT: I understand. I don't believe she was  
21      charged with conspiracy, aiding, abetting, misprision of a  
22      felony --

23           MR. MOWRY: No, sir.

24           THE COURT: I think that the --

25           MR. MOWRY: She didn't come forward with the

1 information, which it could be said she was doing kind of  
2 what Saxon wanted her to do, but she did not give false  
3 information to the police that would have led to a  
4 misprision. When the police approached her -- when law  
5 enforcement approached her, she was fully forthcoming.

6 THE COURT: Right. And --

7 MR. MOWRY: But that was not until January of 2014.

8 THE COURT: Well, my understanding was Walker was the  
9 one that initially approached her the previous day. If  
10 she's looking to cover for anybody, it would be her uncle,  
11 Mr. Walker, as opposed to Mr. Saxon, who she's not related  
12 to. Obviously, Walker was in the hospital because he had  
13 been shot.

14 MR. MOWRY: Yes, sir.

15 THE COURT: All right. My ruling stands. I do  
16 understand y'all's argument and maybe it's a very close  
17 call, but as I said before, the tie goes to the runner.

18 MR. MOWRY: That's fine, Your Honor.

19 THE COURT: And that's where we are.

20 MR. MOWRY: Appreciate you making a ruling, Your  
21 Honor.

22 THE COURT: Yes, sir.

23 I, also, indicated in chambers the State had hoped to  
24 get into the fact that the co-defendant had already been  
25 convicted and I just explained in chambers that we just

1 need to stay away from that. Obviously, it's a standard  
2 provision of law that every -- the evidence against each  
3 defendant must stand on its own. And the fact that a  
4 co-defendant has previously been found guilty of murder in  
5 this case, obviously, is not evidence that this gentleman  
6 did anything wrong. That's simply proof that somebody  
7 else in front of a different jury was found guilty of the  
8 offense of murder. Obviously, the prejudicial effect to  
9 Mr. Wells would outweigh any probative value of allowing  
10 the prior conviction.

11 I have kept the jury waiting for about an hour, but I  
12 need another brief break. I'm terribly sorry. Gentlemen,  
13 we'll take five minutes for ourselves. A genuine  
14 five-minute break and then back on the record.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: We will go back on the record. The  
17 record should reflect that the Defendant is present with  
18 counsel.

19 Mr. Mowry, Mr. Neely is not here. Can I go ahead and  
20 bring the jury in nonetheless?

21 MR. MOWRY: Yes, sir.

22 THE COURT: Let's have the jury, please.

23 (WHEREUPON, the jury entered the courtroom at  
24 3:32 p.m.)

25 THE COURT: The record should reflect, first of all,

1 that the jury is back. The bailiff informs me that we  
2 have one member of the jury panel who may need to test  
3 their blood sugar periodically.

4 My son's, actually, a Type I diabetic, so I know the  
5 importance of monitoring one's glucose levels. And if you  
6 need any sort of candies or crackers or anything like  
7 that, feel free to bring those in here. Do you have some  
8 with you now?

9 THE JUROR: Yes.

10 THE COURT: Okay. So don't worry about etiquette.  
11 If you need to put something in there to get your blood  
12 sugar back up, go ahead and take it, okay? Do anything  
13 you need to do, ma'am.

14 THE JUROR: Okay.

15 THE COURT: Ladies and gentlemen, I want to thank you  
16 for being back here at 2:30. The plea that I took at 2:15  
17 took a bit longer than I was expecting. We, also, had a  
18 few matters to address in the case that we're about to  
19 begin the trial of. The State and the Defense have  
20 premarked several exhibits. That should, actually, help  
21 expedite the case, move things along. And we, also, went  
22 ahead and took the time to deal with a few evidentiary  
23 rulings on the case. And, hopefully, that will speed  
24 things along and prevent y'all from having to get up and  
25 go back there while I take up issues with the attorneys.

1           I say that just as an explanation -- or by way of an  
2 explanation of why we've kept you waiting, okay? I  
3 apologize for keeping you waiting. I do thank you for  
4 being back here on time.

5           The first order of business, the Court needs to  
6 appoint a foreperson of the jury. Who is Mr. Young,  
7 Richard Young?

8           Mr. Young, I would like to appoint you the foreperson  
9 if that's okay. I will tell you, your vote would count no  
10 more, no less than any other juror's vote. Your primary  
11 job would just be to make sure everybody has their chance  
12 to have a fair say once deliberations begin. And, if  
13 necessary, you would be the jury spokesperson in court.  
14 If you're okay with doing that, I'd like to make you the  
15 foreperson, but if you don't want to do it, I won't make  
16 you.

17           JUROR YOUNG: I don't want to.

18           THE COURT: I, actually, have some other options  
19 here. I've got Norman Blackwell. Who is Mr. Blackwell?

20           How about you? Same deal? I need somebody to do it.

21           JUROR BLACKWELL: I really don't.

22           THE COURT: All right. In that case, let's move down  
23 to Belinda Young.

24           Ms. Young? No?

25           We're going to do it this way. What's your name?

1 JUROR THOMAS: Charles Thomas.

2 THE COURT: All right. Mr. Thomas, you're in the  
3 lucky seat. That's, actually, where the foreperson would  
4 normally sit. How about we let fate decide this and since  
5 you got the lucky seat, you'll be the foreperson. Can we  
6 do that?

7 What was your name again?

8 JUROR THOMAS: Charles Thomas.

9 THE COURT: All right, Mr. Thomas, you'll be the  
10 foreperson.

11 Ma'am, I think you're our alternate; is that correct?

12 ALTERNATE JUROR VERDIN: No, sir.

13 THE COURT: You're the alternate, okay.

14 The two of y'all, if you could, y'all stay in those  
15 seats throughout the trial.

16 The rest of you, if need be, can feel free to move  
17 around. Usually, the seats on the first row are a little  
18 bit easier to hear, so if somebody has difficulty hearing,  
19 you might want to have a seat on the front row. If at any  
20 point in time, anyone does have any trouble hearing any of  
21 the testimony or the lawyers, I want you just to raise  
22 your hand. That will be my cue to ask them to speak up  
23 and speak a little bit more loudly. So if you can't hear  
24 anything or you're having difficulty hearing, hand goes  
25 up, they'll speak up. Additionally, if you need a break

1 at any point during this trial, simply raise your hand and  
2 we'll take a 10-minute break for our own comfort.

3 Now, ladies and gentlemen, we're about to begin the  
4 trial of the case of the State of South Carolina vs.  
5 Christopher Jermaine Wells. And before we begin the  
6 trial, I want to tell you that this trial is probably  
7 going to be a little bit different from what you've come  
8 to expect from seeing trials depicted in TV or in the  
9 movies or reading about them in books. What we see in  
10 popular culture, we often get the impression that trials  
11 are filled with intense drama, riveting circumstances and  
12 that everything is wrapped up neatly inside of an hour or  
13 two hours.

14 I have been involved in cases that took very, very  
15 little time, sometimes as little as an hour or two. More  
16 often than not, though, obviously, cases take a lot longer  
17 than the two hours that we see in the movies.

18 And, ladies and gentlemen, the reason for that is  
19 what we're engaged in here is a time-honored practice.  
20 It's a method by which dispute is settled between the  
21 State of South Carolina and a person facing charges. This  
22 case, of course, is very serious. It is not for  
23 entertainment. This is very serious to both the State  
24 and, of course, to the Defendant in this case, Mr. Wells.

25 I know that none of you volunteered to come in here.

1 I know that none of you wanted to be a juror. I know that  
2 none of you asked to be summoned for this case. But I'll  
3 tell you that this is similar to paying taxes, which we  
4 did earlier this month. This is similar to serving our  
5 country in uniform, which maybe some of you have done.  
6 This is what we have to do sometimes because we are  
7 citizens of a great country. That's a part of the  
8 obligation of having the benefits of living in the Unites  
9 States, part of it is the obligation of jury service.

10 So I want to thank you at the get-go for this. I  
11 want to apologize again for the inconvenience that we are  
12 causing to you. And I assure you there is no other way to  
13 get this case resolved other than to have 13 people come  
14 in here with absolutely no stake in the outcome of this  
15 trial, listen to the evidence, listen to the law, and make  
16 a decision based upon the facts and the law. So, again,  
17 thank you very much for your attention. Thank you very  
18 much for your patience. And, most importantly, thank you  
19 very much for your willingness to do what your civic duty  
20 requires of you.

21 With that, I'm going to ask you to stand where you  
22 are and raise your right hand so the Clerk of Court can  
23 administer your oath to you as jurors. So, if you would,  
24 just stand up and raise your right hand.

25 Madam Clerk, if you will the jury, please.

1                   (WHEREUPON, the jury was sworn.)

2           THE COURT: Now, ladies and gentlemen, what I now say  
3 to you is intended to serve as an introduction to the  
4 trial of this case. And these remarks are not an  
5 instruction on the law. I'll instruct you on the law that  
6 applies at the conclusion of the trial before you begin  
7 your deliberations. Again, this is just an overview so  
8 that you can better understand what's going to be going  
9 forward -- what's going to be taking place as we go  
10 forward.

11           First of all, if you want to take notes during the  
12 trial, that's perfectly fine. Just ask the bailiff for a  
13 notebook or a pen, he'll provide that to you. Some people  
14 take notes, some people don't take notes. I, myself, am a  
15 note taker. If you feel the need to take notes or if it  
16 helps you remember things, by all means, feel free to do  
17 that. Please just don't let the taking of notes distract  
18 you from the testimony.

19           Second rule about the note taking, those are your  
20 personal property. Notes constitute your personal  
21 property, for your eyes only, pretty much. So if you take  
22 notes, just leave the notebook here at the courthouse  
23 overnight. They'll be secured overnight and passed back  
24 out to you the next morning. And when we conclude the  
25 trial, just take any notes with you. You can take them

1 home. You can throw them away, keep them as a keepsake or  
2 whatever, but they're for your eyes only.

3 Now, ladies and gentlemen, as I mentioned earlier  
4 today, the Defendant in this case, Christopher Jermaine  
5 Wells, is charged by four indictments filed with this  
6 Court with the offenses of murder, possession of a weapon  
7 during the commission of a violent crime, armed robbery,  
8 and criminal conspiracy. I'll explain the elements of  
9 these charges to you at a later point in time.

10 Again, ladies and gentlemen, these indictments are  
11 merely the formal written instruments which bring the  
12 charges against Mr. Wells and they are not in any sense of  
13 the word evidence of any of the obligations contained in  
14 the indictments. In this case, ladies and gentlemen, Mr.  
15 Wells has pled not guilty to these charges. The State,  
16 therefore, has the burden of proving each and every  
17 element of these charges beyond a reasonable doubt. It  
18 will be up to you to determine whether the State has met  
19 this burden.

20 Your purpose as jurors, ladies and gentlemen, is to  
21 find and determine the facts. You're the sole judges of  
22 the facts in this case. So if at any time, I make a  
23 comment concerning the facts, you must disregard that  
24 comment. You'll determine the facts from the testimony  
25 that you hear from witnesses who are sworn as well as the

1 other evidence which is introduced. It will be up to you  
2 to determine the inferences which you feel can probably be  
3 drawn from the evidence presented.

4 Ladies and gentlemen, it's especially important that  
5 you perform your duty of determining the facts diligently  
6 and conscientiously because, ordinarily, there is no way  
7 of correcting an erroneous determination of facts by a  
8 trial jury.

9 On the other hand and with equal emphasis, the same  
10 law that makes you the judge of the facts makes me the  
11 judge of the law. The law as given by the Court is the  
12 only law that you will be able to consider. You have to  
13 accept it and apply it even though you may disagree with  
14 it. Again, the law does not permit me to have any opinion  
15 about the facts or tell you what the facts are, and you're  
16 not allowed to disagree with me about what the law is or  
17 what the law should be. Your job will be to take the law  
18 as I give it to you, apply it to the facts as you find  
19 them be. After doing that, you will render your verdict  
20 under the oath that you have just taken as jurors.

21 Now, until I advise you to begin your deliberations,  
22 please, don't discuss this case with anyone, not friends,  
23 family members, not even your fellow jurors. Once the  
24 case is submitted to you, you can discuss it only in the  
25 jury room.

1           Now, the lawyers in this case and the parties  
2           involved have been told that they're to have nothing to do  
3           with you while the case is going on. So if you might  
4           happen to bump into one of them while going to your car or  
5           coming to and from the courthouse and they're not even  
6           saying hello to you, understand, they're not being rude.  
7           They're just following my instruction to have nothing to  
8           do with you while the case is going on.

9           The reason for this is self-evident. If one side  
10          were to see the other side talking to you, even if it's  
11          just a slight gesture or a flight conversation about the  
12          weather, it could easily be misconstrued as an effort at  
13          jury tampering. So the easiest way to keep that issue  
14          from coming up is just to say that jurors are off limits  
15          while the trial is going on.

16          Ladies and gentlemen, until this trial is concluded,  
17          while the trial is going on, please, don't read, listen to  
18          or watch any news reports about the case. I don't know  
19          that there will be anything published in the paper that I  
20          think comes out on Wednesday, I don't know if there's  
21          going to be something published or not. But, obviously,  
22          you cannot consider anything that you may have read -- or  
23          may read about this case or hear about this case outside  
24          the courtroom, whether that's before or during the trial.

25          Along those lines, ladies and gentlemen, I will tell

1 you, I've heard that jurors might even be tempted once  
2 they go home for the evening to start Googling people's  
3 names or doing some kind of web search. I'll tell you  
4 that it would be a violation of your oath, ladies and  
5 gentlemen, to perform any kind of independent research  
6 along those lines. And I think you can probably guess the  
7 reason for this. As you all well know, the stuff that's  
8 posted on line, it has no filter. Somebody can put  
9 something out there and there is nobody screening it to  
10 try to make sure it's true or make sure it's accurate.

11 The same is not true about the rules of evidence.  
12 They've been tested for hundreds and hundreds of years in  
13 an effort to give you the best information possible, the  
14 most reliable information possible. And the same can't be  
15 said about what's put online. Often, reporters try to get  
16 it right, but despite their efforts, every often, they get  
17 it wrong. So what you decide in terms of this verdict  
18 when the case is submitted, you have to base it only on  
19 this evidence and not on anything else that might be out  
20 there.

21 Additionally, ladies and gentlemen, this is fair  
22 warning. Judges have been presented with situations where  
23 jurors have decided to go against what the judge said, the  
24 juror went home, they did some independent research. That  
25 information came to the Court's attention and the judge

1 was not at all happy with that juror. I've tried hundreds  
2 of cases wearing the black robe. I've never had a  
3 situation where a juror decided to go against what I've  
4 asked them to do, what I've told them to do. I've never  
5 been faced with that. I don't want to be faced with a  
6 juror who decides to ignore my instructions on independent  
7 internet research. So what I'm asking is, please, don't  
8 mess up my perfect record, okay? Don't put me in that  
9 kind of position because I don't want to be in that  
10 position and I guarantee, you wouldn't either.

11 Now, ladies and gentlemen, of course, it's important  
12 that you keep an open mind. Don't decide any issue in  
13 this case until all the evidence has been presented,  
14 you've heard the attorneys' closing arguments and you've  
15 received my instruction on the law. It will be your  
16 solemn responsibility to determine the guilt or the  
17 innocence of it. And then your verdict has to be based on  
18 the evidence and on the law as I instruct you.

19 Now, in a moment, ladies and gentlemen, the solicitor  
20 will make an opening statement in which he will explain to  
21 you what the issues are in this case, or what he contends  
22 the issues are. The attorney for Mr. Wells, Mr. Richey,  
23 will also be able to give you an opening statement even  
24 though he's not required to do so. Of course, what the  
25 lawyers say during their opening is not evidence. It's

1 merely a road map or their intentions to what will be  
2 proven or won't be proven in this case. Again, the  
3 evidence will be presented through the testimony of sworn  
4 witnesses from the witness stand as well as any other  
5 exhibits which have been introduced into the record.

6 Now, from time to time during the trial, ladies and  
7 gentlemen, it may be necessary for us to take a break.  
8 You might hear one of the lawyers says something like,  
9 Judge, we have a matter of law for the Court. We need to  
10 take up an issue of law. During this time, it's necessary  
11 that I ask you to step back to the jury room. I'm asking  
12 you to go back to the jury room because sometimes in  
13 ruling on legal matters, I have to make a comment on what  
14 facts or what evidence has been presented.

15 Because you're the sole judge of the facts, I don't  
16 want anything I say about the facts to have any effect on  
17 what you, ultimately, find those facts to be. So the  
18 safest thing I can do is just ask you to leave the  
19 courtroom. That way, I can have a candid discussion out  
20 here with my court reporter and the attorneys on the  
21 record about the matter of law and I can be certain that  
22 what I say about the facts have no influence or effect on  
23 what you find those facts to be. Of course, during those  
24 breaks, please, don't speculate about what I'm saying  
25 concerning the facts. The law does not permit me to have

1 any opinion about the facts in this particular case.

2 Ladies and gentlemen, in determining what the true  
3 facts are, you'll have to decide whether or not the  
4 testimony of witnesses is believable. It will be my  
5 responsibility to rule on whether certain testimony can be  
6 admitted. Once that testimony is admitted, whether or not  
7 you choose to believe it is solely for you to determine.

8 In deciding whether to believe a witness, you have  
9 the right to consider the interest of any witness, the  
10 bias of any witness, the prejudice of any witness, the  
11 opportunity for the witness to have seen the matters and  
12 things about which the witness may testify, and you can  
13 consider, also, the way the witness acts while on the  
14 witness stand. You have a right to consider anything  
15 that's in the record in this case which will help you  
16 evaluate the testimony of the witnesses. That means it's  
17 your duty to pay close attention to them, listen to them,  
18 observe them and pay close attention to the lawyers and to  
19 the Court.

20 Try to keep your thoughts from wandering, stay  
21 focused on the testimony and what's going on here. So  
22 that at the conclusion of the trial, you will be in the  
23 best position possible to properly find what the true  
24 facts are, apply the law to those facts and thus render a  
25 verdict under the oath that you have just taken.

1           Now, in order to preserve everyone's rights, I'll  
2           give the lawyers an opportunity to object to any of these  
3           opening remarks and then we'll proceed with the attorney's  
4           opening statements and the trial.

5           Any objections from the State, Mr. Mowry?

6           MR. MOWRY: Nothing from the State, Your Honor.

7           MR. RICHEY: Nothing, Your Honor.

8           THE COURT: Very good. We'll begin the trial.

9           Mr. Mowry, you're recognized for your opening, sir.

10          MR. MOWRY: Thank you very much, Your Honor.

11                               Opening Statement by Mr. Mowry

12          MR. MOWRY: Mr. Foreman, ladies and gentlemen of the  
13          jury, allow me to reintroduce myself. My name is Warren  
14          Mowry. I am the deputy solicitor. I'm the prosecutor  
15          here in Laurens County. Now, David Stumbo is your elected  
16          circuit solicitor and he has appointed me, along with Mr.  
17          Neely, along with Mr. Bentley to work up criminal cases  
18          that come before the courts in Laurens County. Bryant  
19          Cheek is a deputy sheriff. He's a lieutenant with  
20          investigations with the sheriff's office here in Laurens  
21          County. And together, we are presenting the case for the  
22          State against Christopher Jermaine Wells. Every case that  
23          is brought in South Carolina is brought in the name of the  
24          people of the State. And that's why cases are entitled  
25          State versus whomever, like the State vs. Christopher

1 Jermaine Wells.

2 As His Honor instructed you, Mr. Wells has a number  
3 of charges against him. First of all, murder. This  
4 indictment charges Mr. Wells with murder of [REDACTED]  
5 [REDACTED] You will find out that Mr. [REDACTED] ran  
6 a liquor house. He, basically, sold liquor illegally out  
7 of his house. He also sold drugs. You will find out,  
8 ladies and gentlemen, from the testimony of the witnesses  
9 that will come before you that Christopher Jermaine Wells  
10 and Johnny Lee Saxon and David Walker, three individuals,  
11 got together on Halloween night, October 31st, 2013, for  
12 the purpose of going over to rob [REDACTED]

13 And you can understand, ladies and gentlemen, why  
14 they would choose to rip off a drug dealer. Who's going  
15 to call law enforcement and say hey, I just had a bunch of  
16 guys come over here and steal my drugs, or steal my  
17 illegal liquor? So they figured he was an easy target.  
18 But instead, the testimony will prove to you that [REDACTED]  
19 [REDACTED] didn't just roll over and give up. He fought  
20 back. He drew his own gun on his own property just  
21 outside his own residence and opened fire.

22 You will hear, ladies and gentlemen, from a witness  
23 at the scene who saw Christopher Jermaine Wells at the  
24 scene before he turned and fled. She described the car  
25 that Christopher Jermaine Wells got into to drive off.

1           You will hear from a witness that will testify,  
2 ladies and gentlemen, that later that evening, David  
3 Walker, Christopher Wells and Johnny Lee Saxon came to her  
4 looking for a gun. And she was told the purpose was to go  
5 and rip off a drug dealer in Enoree.

6           ████████████████████ was mortally wounded. David Walker  
7 was seriously injured. Both of them were taken to the  
8 hospital. Mr. Walker lived, Mr. ██████████ did not.

9           You will, also, hear, ladies and gentlemen, from law  
10 enforcement officers. The witness at the scene who called  
11 911, she will testify to you as well. And she will tell  
12 you that she was able to identify Mr. Wells. Not only  
13 that, but she described the car he ran to and fled the  
14 scene in.

15           Based on that description, law enforcement officers  
16 saw a similar car. It was so similar that the law  
17 enforcement officer when he met the car said that looks  
18 like the car they just talked about and turned around and  
19 followed it. He followed the car to Gray Court, at which  
20 time, for a brief period of time, officers lost sight of  
21 the vehicle. But they were able to locate Christopher  
22 Wells later on that night.

23           All they had on him at that time, ladies and  
24 gentlemen, was a description of the car. It may or may  
25 not have been connected to the shooting. They weren't

1 sure, but they talked with Mr. Wells that night. And then  
2 some time later, ladies and gentlemen, on the same street  
3 in Gray Court where law enforcement officers saw Mr.  
4 Wells's car driving, they discovered a wallet with a few  
5 contents, including a card identifying it as [REDACTED]  
6 [REDACTED] wallet.

7 So, ladies and gentlemen, Mr. Wells's car is  
8 identified in Enoree. Law enforcement officers follow it  
9 back to Gray Court. And Mr. [REDACTED] wallet is found a  
10 short distance away from where Mr. Wells was staying.

11 Now, I said that Mr. Wells is charged with murder.  
12 Murder -- let me just give you the definition real quick.  
13 It's an unlawful killing of a human being with malice,  
14 either expressed or implied, malice aforethought. Let me  
15 break that down just a little bit. Some killings by one  
16 human being of another are legal. Some of them are  
17 excusable. Some of them are just an accident. Sometimes  
18 someone can intend to kill another person, but it's legal  
19 to do it, it's justifiable to do it. It's self-defense,  
20 for example. Or a soldier in war time killing the enemy,  
21 that's justified. But murder, ladies and gentlemen, is an  
22 unlawful killing. It's against the law. There's no  
23 justification or excuse for it. And I submit to you, once  
24 we have completed this case, that will be the only  
25 conclusion you can reach.

1           It's an unlawful killing with malice. What does that  
2 mean? Well, malice, basically, means meanness,  
3 wickedness. There's a rather flowery case that describes  
4 it as a heart bent fatally on mischief.

5           I want to add one other thing, ladies and gentlemen.  
6 There is a point of law in South Carolina called the  
7 felony murder rule. And if someone is committing a felony  
8 and kills another person in the commission of that felony,  
9 you are allowed to infer that there is malice involved.  
10 And that, I would submit to you, is what we have here.

11           Now, ladies and gentlemen, there's another point of  
12 law that I want to bring up. And I bring that up because  
13 we don't know who did the shooting that night. We know  
14 that Christopher Wells, David Walker and Johnny Lee Saxon  
15 all conspired together to go to Enoree to try to rob  
16 [REDACTED] and he ended up being killed as a result  
17 of it, but we don't know who did the shooting.

18           But does it matter? No, it does not. Because His  
19 Honor will instruct you at the close of the case of  
20 another point of law. And that is that the hand of one is  
21 the hand of all. When two or more people join together to  
22 commit a crime, then all of them are responsible for the  
23 actions of the individuals. If one person does a  
24 shooting, all of them are equally responsible. So it  
25 really doesn't matter who pulled the trigger. It doesn't

1 matter if Christopher Jermaine Wells pulled the trigger.  
2 He's just as guilty as all of them. He's just as guilty  
3 as the one who did.

4 Now, ladies and gentlemen, Mr. Wells is also charged  
5 with armed robbery. Robbery is simply stealing. Stealing  
6 something from somebody by force. And armed robbery means  
7 that he's armed with a deadly weapon.

8 And what we will show, ladies and gentlemen, is that  
9 that trio, Wells, Saxon and Walker were armed with this  
10 Lorcin semi-automatic handgun. We will prove to you that  
11 a bullet from this gun was what killed [REDACTED]  
12 We will have a pathologist, a doctor trained in death  
13 investigation, come in to testify about that. I will,  
14 also, have an examiner from SLED, from the State Law  
15 Enforcement Division, who's going to tell you about  
16 comparisons of the projectile that was in Mr. [REDACTED] and  
17 the shell casings that were found at the scene that came  
18 from this gun.

19 So, ladies and gentlemen, they stole from [REDACTED]  
20 [REDACTED] and they did it with a threat or the use of a  
21 deadly weapon. That's armed robbery.

22 We're, also, going to prove to you, ladies and  
23 gentlemen, that Christopher Jermaine Wells is also guilty  
24 of possession of that pistol during the commission of a  
25 violent crime. Again, we don't know if he pulled the

1 trigger. He may well have, we can't say for certain.  
2 But, again, it doesn't matter. Why not? Because if he  
3 had that gun in his hand, he would be in actual possession  
4 of it. But these conspirators, ladies and gentlemen --  
5 His Honor will instruct you on constructive possession as  
6 well. And I think you'll be satisfied at the end of the  
7 trial that the three of them jointly possessed that gun  
8 and that Christopher Jermaine Wells is guilty of the  
9 crime.

10 Finally, ladies and gentlemen, criminal conspiracy.  
11 You've heard conspiracy a lot probably as it relates to  
12 crime shows and whatnot. In South Carolina, it's just  
13 simple a combination of two or more individuals to do an  
14 unlawful act. I don't believe you're going to have any  
15 doubt at the end of the day, ladies and gentlemen, at the  
16 close of this trial that Christopher Jermaine Wells,  
17 Johnny Lee Saxon and David Walker conspired to go over to  
18 [REDACTED] residence in Enoree, conspired to go  
19 from Gray Court to Enoree to try to rob him, that [REDACTED]  
20 [REDACTED] was killed by this pistol as a result of their  
21 actions, and then [REDACTED] wallet is carried by  
22 Christopher Wells and Johnny Saxon back to Gray Court  
23 where it's pitched when they realize they're being  
24 followed by law enforcement officers.

25 That's pretty much the State's case, ladies and

1 gentlemen. That's what we're going to prove to you during  
2 the course of this trial.

3 Now, ladies and gentlemen, the State has the burden  
4 of proving this case. And it's a burden that we take  
5 willingly. As His Honor told you, we have to prove this  
6 case beyond a reasonable doubt. You've probably heard  
7 that term before. It doesn't mean beyond every doubt,  
8 every conceivable doubt. You hear about a shadow of a  
9 doubt. That's impossible to prove. You cannot prove  
10 something to a one hundred percent certainty. Nothing in  
11 human endeavor can be proven like that.

12 What a reasonable doubt means, ladies and gentlemen,  
13 or beyond a reasonable doubt means that you are left  
14 firmly convinced of the truth and accuracy of the  
15 proposition before you. And I submit to you, by the close  
16 of the trial, you will be firmly convinced that  
17 Christopher Jermaine Wells is guilty of murder, armed  
18 robbery, possession of a pistol during the commission of a  
19 violent crime, and criminal conspiracy.

20 Now, ladies and gentlemen, I'd like to ask you to do  
21 three things during the course of this trial and they're  
22 all equally important. The first is to listen very  
23 carefully to the testimony that comes off the witness  
24 stand. Because it is only that testimony and then  
25 whatever exhibits are brought before you and admitted into

1 evidence during the course of the trial that you are to  
2 consider as evidence. That's it. So listen very  
3 carefully to this testimony and consider that when you're  
4 rendering your verdict.

5 The second is to listen very carefully at the close  
6 of the trial when His Honor instructs you in the law in  
7 this case. Now, as he told you, it may not be the law as  
8 you think it is. Frankly, it may not be the law as you  
9 think it ought to be. But by your oath, it's the law that  
10 you have to take with you back there to the jury room when  
11 you're considering your verdict. So listen to the law,  
12 listen to the evidence. And do that one last thing.

13 Each and every one of y'all comes from a different  
14 background. All of y'all are from Laurens County, yes,  
15 but different background, different job, different  
16 lifestyle, perhaps. But each and every one of y'all have,  
17 at least, one thing in common, and that's common sense. I  
18 ask you to use your common sense when you're considering  
19 the evidence. Use your common sense when you're applying  
20 the law that His Honor gives you to that evidence.

21 And if you do all those three things, ladies and  
22 gentlemen, at the close of this trial, you're going to  
23 come back with a just, fair and true verdict and that's  
24 all any of us ask. Thank you very much.

25 THE COURT: Thank you, Mr. Mowry.

1 Mr. Richey, you're recognized for your opening  
2 statement.

3 MR. RICHEY: Thank you, Your Honor. May it please  
4 the Court?

5 THE COURT: Yes, sir.

6 Opening Statement by Mr. Richey

7 MR. RICHEY: Christopher Wells is not guilty of these  
8 charges. And Mr. Mowry is a great prosecutor, but the  
9 story really isn't that long. It's really a short story.  
10 I mean, it's not complicated, it's not long. I'm not  
11 going to stand up here for 40 minutes.

12 On October 31st, 2013, the victim, Mr. [REDACTED] and  
13 his girlfriend, [REDACTED] Ball, they were at home. And they  
14 hear a knock on the door. And what the evidence will show  
15 and what the testimony will be is that Ms. Ball, she  
16 thought it was suspicious that Mr. [REDACTED] didn't invite  
17 the people in. He kind of looked back and went inside.  
18 That's what's going to be the evidence. And the testimony  
19 is going to be after an argument, after an argument, she  
20 heard shots. She heard shots. That's the story. That's  
21 the story of what happened. It's that simple.

22 But Ms. Ball, she was there. So we know she was  
23 there. The evidence and testimony will be that she said  
24 it's awful suspicious how he was acting, and then he goes  
25 outside. And the testimony is going to be that both

1 gentleman got shot. That's the evidence. It's not that  
2 hard who shot who. That's what the testimony will be,  
3 that these two gentlemen shot each other and,  
4 unfortunately, one lived and one didn't. That's what the  
5 evidence will show. That's what it will show.

6 What it, also, will show is that Ms. Ball, she was  
7 there that night. And, you know, like a girlfriend would  
8 be, she was upset. She heard gunfire and the guy she was  
9 dating came in the house. And the evidence will be he  
10 told her who shot him. That's what the evidence and  
11 testimony will be. He told her. So it's not that  
12 complicated. He told her who shot him.

13 And what the evidence will show, also, is Ms. Ball,  
14 she saw a guy running off. She saw a guy running off.  
15 That's what the evidence will show and the testimony will  
16 be, she saw a gentlemen running off. And she described  
17 that gentlemen, even gave the police a name of who the  
18 gentlemen resembled. That's what the evidence will be.  
19 And she told them that this gentlemen that did it, he was  
20 dark-skinned. He was very tall, big guy. We believe the  
21 evidence will be that they will never make Mr. Wells  
22 dark-skinned. We believe the evidence will show and the  
23 testimony will be they will never make him dark-skinned.  
24 Never do it. But that's what [REDACTED] Ball stated. No  
25 question about it.

1           We, also, believe the testimony will be it was a very  
2 large guy. We don't believe they're going to be able to  
3 make Mr. Wells large. We just don't believe it. We don't  
4 believe that the evidence will be produced and the  
5 testimony will be that the guy that was there that night  
6 was him. We believe that because the witness is going to  
7 testify. That's what we believe.

8           And you're going to hear a name Ty from Boyd Street.  
9 You're going to hear Ms. Ball get on this witness stand  
10 and you're going to hear her say hey, he resembled Ty from  
11 Boyd Street. And we believe the testimony shall be and  
12 the evidence will be did they go put Ty in a photo lineup?  
13 No.

14           This story isn't complicated. It's, actually, really  
15 easy to figure out. Really easy. Because we believe the  
16 testimony and the evidence, based off that witness that  
17 was there that night, we believe that the State, no matter  
18 what they say about who shot this and that, that they're  
19 going to have to tell us a dark-skinned, large man did  
20 this. And we --

21           See, when I first started practicing law, you know,  
22 sometimes you get all this education. You know, you think  
23 you're a hot shot. You've got seven years of education,  
24 you know everything. But that Judge up there, when I was  
25 a very young lawyer, he said if you've got a sixth grade

1 education, you can be on the jury. I was like, sixth  
2 grade? Sixth grade? I've been to law school all this  
3 time. But then I started trying these cases. And I said,  
4 you know, it doesn't take a rocket scientist. This is  
5 simple stuff. It really is simple stuff. It's simple  
6 stuff. It's not complicated. It's not CSI. It is real  
7 simple.

8           And we believe the testimony will be he didn't rob  
9 anybody. We believe the testimony will be he didn't  
10 murder anybody. We know the testimony will be undisputed  
11 he didn't shoot anybody. We know that. That's what the  
12 testimony is going to be. So we're going to ask you to  
13 find him not guilty because we don't -- we submit to you  
14 he does not even fit the description the lady gave them  
15 that night.

16           And see, that's what we mean when we talk about  
17 listening to the witnesses. When the prosecutor says  
18 listen to the witnesses and listen to what they're going  
19 to say. What he's saying to you is listen to the  
20 description they give, listen to the facts they give. You  
21 can believe one witness over another. Listen to  
22 everything they say. Listen to everything. Listen to  
23 everything they say.

24           But my contention is the evidence of who was out  
25 there that night, they going to tell us about it. She's

1 going to tell us about it. She's going to tell us who ran  
2 away. She's going to tell us who shot and killed him.  
3 She's going to tell us. She's going to tell us. She will  
4 not tell you Chris shot him. She will not tell you. And  
5 you listen to the testimony. She will not tell you that.  
6 She will not tell you that.

7 And we believe the testimony and the evidence will be  
8 in this case that this is going to be a disturbing case.  
9 We believe the evidence and the testimony, it's going to  
10 be a very disturbing case. And the reason why from the  
11 evidence and the testimony it's going to be a scary case  
12 because it's a case, we believe, the lady gave a  
13 description of someone else. And this gentlemen who drove  
14 this car is not big and is not dark-skinned. And he got  
15 arrested. He got arrested. He got arrested. He got  
16 arrested. He got arrested. But we're going to put some  
17 common sense back in. Thank you.

18 THE COURT: Thank you, Mr. Richey.

19 Solicitor, you may call your first witness, please.

20 MR. NEELY: The State would call Karon Bridges.

21 THE BAILIFF: Put your left hand on the Bible and  
22 raise your right.

23 Thereupon;

24 KARON BRIDGES, after having  
25 been duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. NEELY:

Q Afternoon, Ms. Bridges. If you would, would you please state and spell your name for the record?

A Karon Bridges, K-A-R-O-N, B-R-I-D-G-E-S.

Q Thank you. And where do you currently work, Ms. Bridges?

A Laurens County 911.

Q And where did you work on the night of October 31st, 2013?

A Laurens County 911.

Q And on that date and time, what were the responsibilities of your job?

A We take emergency calls. We, also, take nonemergency calls. We dispatch law enforcement, city, county, EMS, fire.

Q And was that what you were doing that night?

A I was assigned to a specific radio. I think I had EMS and fire that night. We do not what calls come in. We take everything and dispatch appropriately.

Q And that night of October 31st, 2013, did you receive an emergency call about a shooting?

A I did.

Q And I'm going to hand you what's been marked as State's Exhibit No. 24. Do you recognize this CD?

1 A I do.

2 Q And what is it?

3 A It's a recording of the 911 call that I was given  
4 that night.

5 Q And how do you know that?

6 A I listened to it.

7 Q And have you marked it in any way to --

8 A I put my initials on it.

9 Q And is that how you know that that's the CD?

10 A Yes.

11 Q Okay. You say you've listened to that call. Is that  
12 a true and accurate representation of the call that you  
13 received that night?

14 A Yes, it is.

15 MR. NEELY: Your Honor, at this time, I'd like to  
16 enter State's 24 into evidence.

17 MR. RICHEY: No objection.

18 THE COURT: Without objection, State's 24 is in  
19 evidence.

20 (WHEREUPON, State's Exhibit No. 24 was admitted  
21 into evidence.)

22 MR. NEELY: And we'd, also, like to publish it to the  
23 jury.

24 THE COURT: You may proceed.

25 MR. NEELY: If anyone has trouble hearing it, either

1 too loud or too soft, just raise your hand.

2 THE COURT: Just so the jury is aware, all the items  
3 that are introduced into evidence, you will, also, have  
4 the benefit of having them back there in the jury room  
5 once you start deliberating the case. So you can play the  
6 tape over and over again if need be.

7 Go ahead. I'm sorry.

8 (WHEREUPON, State's Exhibit No. 24, the 911  
9 call, was played in open court.)

10 BY MR. NEELY:

11 Q Okay. Ms. Bridges, a couple of follow-up questions  
12 for you. Somebody in that video said, I think we have bad  
13 signal. Who was that?

14 A The call came in from Spartanburg County. She was  
15 right there on the county line. I think that may have  
16 been Spartanburg County. When we lost connection with  
17 [REDACTED] she could see on her end that it was an open line.  
18 The way she was moving around in the house, it was just a  
19 bad signal. And she had moved, I think, from the front of  
20 the house, maybe into the center of the room and she was  
21 in a bad range, but she thought someone was trying to  
22 break in.

23 Q Okay. Some of those blank spaces from [REDACTED] Ball's  
24 side of the phone call would have been a bad signal?

25 A There was some blank spaces because what I was doing

1 was dispatching on the radio. And as I'm typing, I'm  
2 coordinating with my coworkers to send EMS and we had  
3 mobile units going. I have to hit my mute button so  
4 they're not hearing other things, you know, things  
5 shouting across the room, making sure EMS knows to stand  
6 by. And the two roads that were mentioned in the call, it  
7 would be the River Road or [REDACTED] And I think they  
8 ended up placing it on River Road.

9 Q And that is in Laurens County?

10 A Yes, it's in Laurens County.

11 Q Okay. Now, [REDACTED] on the phone call was talking in a  
12 hysterical manner, a panicked manner. Is that normal or  
13 is that the usual thing you hear when you're talking about  
14 emergency calls like this?

15 A I think she was -- yeah, he had been shot. You know,  
16 she was panicked. And for a moment you could talk to her  
17 and kind of talk her down, but it would escalate again.  
18 That's why I asked her over and over again her road name.  
19 Initially, it come in as one road as Spartanburg was  
20 saying and then she kept saying [REDACTED] And if you  
21 have a map, you could see they run right off -- well, they  
22 run off of a main road.

23 Q And was that your entire involvement in this case?

24 A I think so.

25 MR. NEELY: Okay. I have no further questions.

1 Please answer any questions Mr. Richey has for you.

2 MR. RICHEY: No questions.

3 THE COURT: Thank you for coming. You can step down  
4 and you're free to go.

5 Mr. Mowry, call your next witness.

6 MR. MOWRY: I call Toris Moore.

7 Thereupon;

8 TORIS MOORE, after having been  
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MOWRY:

12 Q You are Toris Moore?

13 A Yes, sir.

14 Q Toris, how old are you?

15 A I'm 33.

16 Q Do you live in Laurens County?

17 A Not at the time.

18 Q Okay. Let me ask you then to think back to Halloween  
19 night of 2013. Did you live in Laurens County then?

20 A Yes, sir.

21 Q Where do you work now?

22 A Bausch & Lomb.

23 Q Up in Greenville; is that right?

24 A Yes.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 3. It's got three pictures on there. Do you  
2 recognize these guys?

3 A Yes, sir.

4 Q Who are they? Let's start at the upper left-hand  
5 corner.

6 A Johnny Lee Saxon.

7 Q Okay. Who is this over here on the right?

8 A David Walker.

9 Q And who's that at the bottom?

10 A Chris Wells.

11 Q And is Chris Wells in the courtroom?

12 A Yes, sir.

13 Q Where is he?

14 A Sitting over to my left.

15 MR. MOWRY: Your Honor, for the record, she has  
16 identified the Defendant.

17 THE COURT: The record will reflect the witness has  
18 identified Mr. Wells.

19 BY MR. MOWRY:

20 Q What were you doing Halloween night of 2013? Can you  
21 tell the jury about that?

22 A I went trick or treating.

23 Q Who all did you go with?

24 A I went with Emily Dawkins and her two little sisters.

25 Q And Emily Dawkins, she, also, goes by Kisha; is that

1 right?

2 A Quisha.

3 Q So you took the children trick or treating. How late  
4 did y'all go out; do you remember?

5 A I know it was dark when we got back in. I'm not sure  
6 how long.

7 Q How long were you out?

8 A Maybe a couple of hours.

9 Q When you were finished with trick or treating, where  
10 did you go?

11 A We went back to Ellen's house, Ellen Saxon's house.

12 Q Ellen Saxon's house. Whose relative is that? Is  
13 that Johnny Lee Saxon's relatives?

14 A Yes, sir.

15 Q Where is that residence?

16 A On [REDACTED] Road near Gray Court.

17 Q Near Gray Court? Did you see anybody else there  
18 later that night?

19 A Yes, sir.

20 Q Who did you see there later that night?

21 A The three of them.

22 Q So you saw Saxon and Walker and Christopher Wells  
23 together?

24 A Yes, sir.

25 Q Are you related to any of those three?

1 A Yes, sir.

2 Q Which one?

3 A David Walker.

4 Q What's your relation to David Walker?

5 A He's my uncle.

6 Q Did you have a conversation with David Lee Walker?

7 A I did.

8 Q What did -- what was the gist of the conversation?

9 Tell me about that.

10 A He walked up to me and told me that they was about to  
11 go rob somebody and they needed another gun and asked me  
12 for my gun.

13 Q Did he describe anything about the target of the  
14 robbery?

15 A Yes, sir.

16 Q What did he say?

17 A He said he was about to go rob an old man that stayed  
18 with a white lady.

19 Q Did he say what that old man did?

20 A He said he ran a liquor house and sold some drugs.

21 Q Okay. And they were going to go rob him?

22 A Yes, sir.

23 Q So he was looking for another gun; is that right?

24 A Yes, sir.

25 Q Did he indicate whether or not he already had one?

1 A Yes, sir.

2 Q Do you know where that gun came from, whose gun that  
3 was?

4 A He said the only gun they had was Chris Wells's gun.

5 Q Okay. What did you -- what was your reaction when  
6 you heard that?

7 A I just didn't want nothing to do with it.

8 Q Okay. Did you, in fact, have a gun?

9 A No, sir.

10 Q What did you tell him about the gun?

11 A I told him that my mom had the gun.

12 Q Okay. And did you say that that gun was not  
13 available or did you say it was available or what?

14 A I said it wasn't available.

15 Q Wasn't available. Where did you tell him it was?

16 A That my mom had it, I think. Either my mom or my  
17 cousin.

18 Q All right.

19 A That somebody had it.

20 Q Did you, in fact, tell him it was in a pawn shop?

21 A Correct.

22 Q And was it in a pawn shop?

23 A No.

24 Q Just didn't want him to have that gun; is that right?

25 A Yeah.

1 Q How did Walker and Saxon and Wells get there? Did  
2 they come on foot?

3 A No, they was in Chris Wells's car.

4 Q Let me show you what have been marked as State's  
5 Exhibits 28, 29 and 30. Do you recognize anything in  
6 those pictures?

7 A Yes, sir.

8 Q What are those?

9 A Pictures of Chris Wells's car.

10 Q Was that the color it was on Halloween night?

11 A No, sir.

12 Q What color was it on Halloween night?

13 A It was like a gray color.

14 Q So it's been repainted; is that right?

15 A That's what it looks like.

16 Q Do you know when it got repainted?

17 A No.

18 Q But it was not that color, it was kind of a dark --  
19 you said a gray car?

20 A A gray car.

21 Q On Halloween night, 2013; is that right?

22 A Yes, sir.

23 MR. MOWRY: Beg the Court's indulgence for just one  
24 moment.

25 THE COURT: Yes, sir.

1 BY MR. MOWRY:

2 Q Did you know Christopher Wells by Christopher Wells  
3 or did you know him by another name?

4 A I knew him by another name.

5 Q What name did you know him by?

6 A Nightmare.

7 Q Nightmare. And this car in 28, 29 and 30 was  
8 Nightmare's car; is that right?

9 A Yes, sir.

10 MR. MOWRY: That's all I have. Thank you, ma'am.

11 Answer any of Mr. Richey's questions, please.

12 CROSS-EXAMINATION

13 BY MR. RICHEY:

14 Q Ma'am, you know Chris Wells, right?

15 A Yes, sir.

16 Q He's not dark-skinned, right?

17 A He's not dark-skinned?

18 Q Yes, he's not dark-skinned, right?

19 A No.

20 Q So it would surprise you if someone said he was  
21 dark-skinned, correct?

22 A Yes.

23 Q He's not a real big guy, correct? He's not a real  
24 big, large guy, correct?

25 A No.

1 Q Okay. So any description describing him as  
2 dark-skinned and large would not be an accurate  
3 description of him; would it?

4 A No.

5 Q And on the night that this happened -- you know the  
6 difference between brown and gray, right?

7 A Brown and gray?

8 Q Brown and gray.

9 A Yes, sir.

10 MR. MOWRY: I'm going to object to that, Your Honor.  
11 This is beyond the scope of her knowledge.

12 THE COURT: Overruled. I think she can testify as to  
13 the color brown and the color gray, so we'll let that keep  
14 rolling.

15 Go ahead.

16 BY MR. RICHEY:

17 Q When you saw that car of Christopher Wells, there was  
18 no doubt in your mind that that car was gray, correct?

19 A Yes, sir.

20 Q On October 31st, that car was not brown, correct, his  
21 car?

22 A Right.

23 Q His car was gray?

24 A Yes, sir.

25 Q If someone told you that Christopher Wells's car was

1 brown, they wouldn't be telling the truth, would they? On  
2 that night, would they?

3 A On that night, no.

4 Q And do you know where Body Street is?

5 A Boyd Street?

6 Q Boyd Street.

7 A You talking about in Gray Court?

8 Q Yeah.

9 A Not off the top of my head.

10 Q David Walker asked you about a gun, right?

11 A Correct.

12 Q You don't know what happened that night of this at  
13 [REDACTED] house -- let me say this, you were not  
14 present at [REDACTED] house that night, correct?

15 A Correct.

16 MR. RICHEY: Thank you.

17 THE COURT: Redirect?

18 MR. MOWRY: Just a few questions.

19 REDIRECT EXAMINATION

20 BY MR. MOWRY:

21 Q Who was David Walker with?

22 A Chris Wells and Johnny Lee Saxon.

23 Q What did they say they were going to do?

24 A Going to rob somebody.

25 Q Going to rob who?

1 A [REDACTED]

2 Q Well, did you know his name at the time?

3 A Old black man who stayed with a white woman.

4 Q In Enoree?

5 A In Enoree.

6 Q Whose car were they in?

7 A Wells.

8 Q Whose gun did they have?

9 A Wells.

10 Q Could you recognize the gun?

11 A No.

12 Q But that's what David Walker told you, that they had  
13 Wells's gun, but they wanted another one?

14 A Correct.

15 Q Any doubt that 28, 29 or 30, that that's Chris  
16 Wells's car?

17 A It's Chris's.

18 MR. MOWRY: Thank you very much. That's all I have.

19 MR. RICHEY: No further questions.

20 THE COURT: Thank you very much for coming. You may  
21 step down and you're free to go.

22 Solicitor, do you have an additional short witness  
23 for today?

24 MR. MOWRY: Not a short one, Your Honor.

25 THE COURT: Let me meet with counsel up here very

1 briefly.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, in talking with the  
4 attorneys, I anticipate the next witness will probably  
5 take about an hour, hour and a half, so we're going to go  
6 ahead and take a little bit of an early break for the  
7 evening because I don't want to put y'all out. I know  
8 y'all have lives. You've got families and things of that  
9 nature. So we're going to go ahead and break for the  
10 evening.

11 I will ask that you be back in the jury room tomorrow  
12 morning at 9:30. I know they'll have some coffee, maybe  
13 some crackers, that sort of thing, but not a big breakfast  
14 buffet, so you may want to grab something.

15 As I mentioned earlier, ladies and gentlemen, please,  
16 don't talk to anybody about this case this evening. I  
17 know full well that when you go home tonight, whoever it  
18 is you share a roof with, I know that they know you have  
19 jury duty, okay. Because, obviously, when you got your  
20 jury summons a month ago, you opened it up and you're like  
21 oh, honey, wow, exciting, great news, I'm going to be on a  
22 jury panel. And, obviously, they knew you had to report  
23 to the courthouse this morning and show up here.

24 So what's going to happen when you go home, probably  
25 the same thing that happens when I go home. The wife ask

1 me honey, how was your day? And I say, oh, it was fine.  
2 And in your case, they're probably going to say after they  
3 ask that, well, did you get picked on a jury. Perfectly  
4 fine to say yes, honey, I got picked on a jury. What's  
5 the next question they're going to ask? Well, what kind  
6 of case is it? That's where you've got to draw the line.

7 Ladies and gentlemen, you 13 individuals were the  
8 ones that were selected for this jury, not your  
9 significant other, not your spouse, not your kids, whoever  
10 it is that you share a roof with. This is your decision  
11 to make and your decision cannot be influenced by  
12 something that somebody else tells you, no matter how  
13 well-intentioned their comments might be.

14 So at that point in time when they ask well, what  
15 kind of case is it, just say the Judge told me this is  
16 going to be my decision to make. I can't talk to you  
17 about it. Just blame it on me. Just say the mean old  
18 Judge said that you can't talk about it. You'll be at  
19 liberty to talk about it at length with them later on once  
20 the case is concluded and you've gone home. And,  
21 hopefully, your lives are a little bit more interesting  
22 and you've got other stuff to talk about than this trial.  
23 So again, don't discuss it.

24 Please be back in the jury room tomorrow morning at  
25 9:30. I don't intend to keep you waiting. I intend to go

1 straight into the first witness and keep rolling from  
2 there. Hope you have a great evening. Take care. See  
3 you in the morning at 9:30.

4 (WHEREUPON, the jury exits the courtroom at 4:48  
5 p.m.)

6 THE COURT: The jury is out and we will be at ease  
7 until 9:30 in the morning. We'll go back on the record at  
8 that time.

9 What time would you like to have Mr. Wells here, Mr.  
10 Richey? Do you have a preference?

11 MR. RICHEY: Nine is fine.

12 THE COURT: Nine is fine? Nine o'clock?

13 MR. MOWRY: I think they should have him here by  
14 8:30, Your Honor, 8:00 or 8:30.

15 THE COURT: Nine at the latest, if you don't mind,  
16 please.

17 See y'all in the morning.

18 (WHEREUPON, Court was adjourned for the day to  
19 be reconvened on Tuesday, April 26, 2016.)

20 DAY 2 -TUESDAY, APRIL 26, 2016

21 THE COURT: We're back on the record. The Defendant  
22 is present, of course, with counsel. We did have a brief  
23 meeting in chambers this morning. It's my understanding  
24 the Defense is not challenging the photo lineup that the  
25 next witness will be testifying about.

1           Is that accurate, gentlemen?

2           MR. RICHEY: Yes, sir.

3           MR. MOWRY: Yes, sir. We had a discussion about  
4 whether or not a Neal V. Biggers hearing would be required  
5 and it will not.

6           THE COURT: Witnesses, of course, are still  
7 sequestered and we have a number of people out there. But  
8 just to make sure we have everybody where they need to be,  
9 your witness is already in the courtroom, though, correct?

10          MR. MOWRY: Yes, she is right there.

11          THE COURT: Let's have the jury then, please.

12                   (WHEREUPON, the jury enters the courtroom at  
13 10:03 a.m.)

14          THE BAILIFF: All jurors are present, Your Honor.

15          THE COURT: Ladies and gentlemen of the jury, welcome  
16 back. Thank you for being here and thank you for being  
17 here this morning on time. I sincerely appreciate that.  
18 Again, we did not keep you waiting unnecessarily. It's  
19 always a pleasure to work with attorneys who are efficient  
20 and competent. We had some discussions and, hopefully, as  
21 a result of those discussions, that will help expedite a  
22 few things with the trial. So again, we weren't -- we  
23 were working. I apologize for keeping y'all waiting back  
24 there.

25           We are, of course, still in the State's case in chief

1 in the case of the State of South Carolina vs. Christopher  
2 Wells.

3 At this point, Mr. Mowry, if you'll call your next  
4 witness, please.

5 MR. MOWRY: Thank you very much, Your Honor.

6 The State would call [REDACTED] Ball to the stand.

7 THE BAILIFF: If you would, place your left hand on  
8 the Bible and raise your right.

9 Thereupon;

10 [REDACTED] BALL, after having been  
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MOWRY:

14 Q You are [REDACTED] Ball?

15 A Yes.

16 Q Ms. Ball, did you know the victim in this case,  
17 [REDACTED]

18 A Yes.

19 Q How did you know him?

20 A We had been friends for several years. I met him  
21 through drug use.

22 Q Through your own drug use; is that right?

23 A Correct.

24 Q Did he sell you drugs?

25 A Yes.

1 Q Did he occasionally sells drugs out of his house?

2 A Yes.

3 Q Did he sell anything else?

4 A Yes.

5 Q What did he sell?

6 A Liquor.

7 Q Liquor? Nontax paid, I guess?

8 A Yes.

9 Q So he would sell drugs occasionally and, also, sell  
10 liquor out of the house?

11 A Correct.

12 Q Okay. How would you characterize your relationship  
13 with him?

14 A What do you mean by that?

15 Q Friends?

16 A He was my best friend, yes, sir.

17 Q What was his age?

18 A He was 62.

19 Q And you, back in 2013, were how old?

20 A 35.

21 Q Were you with him on Halloween night of 2013?

22 A Yes, I was.

23 Q Describe the events that went on that night,  
24 transpired that night?

25 A He came and picked me up from a friend's. From

1       there, we went to Waffle House to pick him up some food.  
2       Left from the Waffle House and went directly back to his  
3       home.

4       Q     Okay. Let me show you this chart that is marked as  
5       State's Exhibit No. 2. I'd ask you if you can tell us --  
6       I guess I'll flip it up this way. Where is his house in  
7       that chart?

8       A     This is his residence.

9       Q     This is listed as [REDACTED] and there's a vacate lot over  
10      here that's listed as [REDACTED]. We've heard that the address  
11      is [REDACTED]. Is that -- is this chart not accurate?

12      A     It is not.

13      Q     So this would be [REDACTED], that is the address that you  
14      had listed; is that right?

15      A     Correct.

16      Q     But this is his residence on [REDACTED] Road in  
17      Enoree; is that right?

18      A     Yes, sir.

19      Q     When he picked you up, what was he driving?

20      A     A blue SUV, a blue Suburban.

21      Q     Okay. I'm going to hand you what's been marked as  
22      State's Exhibit No. 7. Do you recognize that vehicle?

23      A     Yes, it is his blue Suburban.

24           MR. MOWRY: I would offer this as a State's Exhibit  
25      at this time, Your Honor.

1 MR. RICHEY: No objection.

2 THE COURT: Which exhibit?

3 MR. MOWRY: This is No. 7.

4 THE COURT: State's Exhibit No. 7 is in evidence  
5 without objection.

6 (WHEREUPON, State's Exhibit No. 7 was admitted  
7 into evidence.)

8 BY MR. MOWRY:

9 Q So this was the car he drove, or the vehicle he  
10 drove?

11 A Yes, sir.

12 Q How long were y'all at the Waffle House?

13 A I, actually, drove to the Waffle House. Once we got  
14 to the Waffle House, he sat in the car, gave me the money  
15 to go in, pay for the food and I came back out.

16 Q You said he gave you the money. Where did he get the  
17 money from?

18 A From his wallet.

19 Q Okay. I'm going to hand you what's been marked as  
20 State's Exhibit No. 17. Do you recognize that?

21 A Yes.

22 Q What is that?

23 A That's Lee's wallet.

24 Q That is his wallet?

25 A Yes, sir.

1 Q Would you look inside the wallet? Just take a look  
2 at the contents.

3 A It's Lee's inmate identification, Lee's ID, Lee's  
4 social security card.

5 Q And you recognize the wallet itself, though; is that  
6 right?

7 A Yes.

8 Q But there's also his cards inside?

9 A Yes, sir.

10 Q Were you able to see how much money he had that  
11 night?

12 A I wasn't able to count exactly, but Lee had a couple  
13 thousand dollars.

14 Q Okay. Pretty good stack of money?

15 A Absolutely, yes.

16 Q Is that what he normally carried?

17 A Yes.

18 Q Okay. What did he get at the Waffle House; do you  
19 remember?

20 A He got a large plate, grits, bacon, hash browns, I  
21 think, some toast. A large plate.

22 Q All right. What was he doing with that on the way  
23 back to [REDACTED]

24 A I drove and he was eating.

25 Q Okay. About what time of night is this; do you

1 recall?

2 A Before I had said it was like 10:00, but I think it  
3 may have been a little later, maybe 10:30, 11:00.

4 Q But it was the latter part of the evening, though; is  
5 that right?

6 A Yes.

7 Q I'm not asking you the exact time, but later on in  
8 the evening?

9 A Yes.

10 Q When y'all got back to [REDACTED] Road, what did  
11 y'all do then?

12 A We exited the vehicle and went inside the home and  
13 sat down in the living room. And he continued to eat the  
14 rest of his plate.

15 Q Okay. Where were you sitting?

16 A I was sitting in the living room on the left-hand  
17 side, which would be directly in front of the hallway.  
18 And he was sitting on the right-hand side of me in his  
19 recliner.

20 Q Anything happen that was unusual later on, soon after  
21 y'all got home?

22 A Within five minutes, there was a knock at the door.

23 Q Okay. What happened? Who answered the door?

24 A Lee answered the door.

25 Q Were you visible from the doorway where you were

1 sitting?

2 A Not with the door ajar.

3 Q Okay. Was this an unusual occurrence, for somebody  
4 to come knocking at the door that late?

5 A It's not unusual for someone to knock that late, no.

6 Q Okay. Looking to buy something; is that correct?

7 A Correct.

8 Q When Mr. [REDACTED] answered the door, what happened?

9 A He opened the door and he stepped outside. That's  
10 not what would normally happen, though.

11 Q Okay. What would normally happen?

12 A Normally, if it was just someone stopping to purchase  
13 something, they would step inside the door and they would  
14 push the door to behind them. At that time, they would be  
15 able to see me and I would be able to see them. But at  
16 this time, he didn't. They didn't step inside, he stepped  
17 outside of the home.

18 Q Were you able to see who was knocking at the door?

19 A No.

20 Q Were you able to hear anything at that point?

21 A Yes.

22 Q What did you hear?

23 A There was a verbal altercation.

24 Q Let me ask you this, what kind of structure was Mr.  
25 [REDACTED] home?

1 A It was a trailer.

2 Q So not exactly well insulated, not thick walls or  
3 anything like that?

4 A No.

5 Q You could hear some of what was being said?

6 A Yes.

7 Q You said there was an altercation. Describe what you  
8 mean by that.

9 A I heard an individual say, I'm here to rob you.

10 Q Okay. Do you know whose voice that was?

11 A Not at that time, no.

12 Q Do you know how many people there were outside?

13 A At least, two, possibly three.

14 Q How do you know that there was more than one person  
15 out there?

16 A Because I could hear voices of more than one person.

17 Q Okay. How long did this altercation go on?

18 A I would say maybe a minute.

19 Q Okay.

20 A Maybe it was longer. After something like this, time  
21 seems shorter or longer, but I would say approximately a  
22 minute or so.

23 Q So it was a short period of time, though; is that  
24 right?

25 A Yes.

1 Q What did you hear then?

2 A I heard one gunshot.

3 Q Okay. What did you hear after that -- or what  
4 happened after that?

5 A After about 10 or 15 seconds, I heard several more  
6 gunshots, like three to five more gunshots.

7 Q Okay. Do you know how many exactly?

8 A No, I don't know exactly.

9 Q What was your state of mind when you heard that first  
10 gunshot?

11 A I began to panic and I was worried, so I was already  
12 up out of my seat after the first gunshot. But before I  
13 could ever make it down the hall to the door, which is a  
14 very short hall, the other gunshots had already went off.

15 Q Okay.

16 A So then I was in full guard.

17 Q All right.

18 A In full panic.

19 Q Did you make any phone calls at that point?

20 A Yes.

21 Q Who did you call?

22 A 911.

23 Q All right. We have heard on State's Exhibit No. 24  
24 the recording of a 911 call. Have you heard that as well?

25 A Yes.

1 Q Is that your voice on that phone call?

2 A Yes, sir.

3 Q What would you say your state of mind was at that  
4 point?

5 A I was hysterical.

6 Q Okay. Once you had gotten 911 on the phone, what did  
7 you do?

8 A I went to the yard to check on Lee and started to get  
9 him as close to the house as I could from where he was  
10 lying.

11 Q Now, let me refer back to the chart, State's Exhibit  
12 No. 2, and ask you if you could point -- if you could  
13 stand up and point for the jury where Lee was.

14 A Okay. The Suburban would have been parked right  
15 here. Lee's body was at the very front of this Suburban,  
16 which would have been approximately right here.

17 Q Okay. So a short distance from the front door; is  
18 that right?

19 A Yes.

20 Q What kind of lighting was there outside?

21 A Not very good, but, I mean, good enough to where, you  
22 know, you could see who was who.

23 Q Was there any kind of special lighting out there?

24 A In the yard, there was a motion light and at the top  
25 of the hill, there was a mercury light or either a

1 florescent light.

2 Q A street light?

3 A Yes.

4 Q And when you say the top of the hill, you mean --

5 A Way up there --

6 Q -- up in here?

7 A Yes.

8 Q Yeah, up at the driveway. But there was lighting out  
9 here?

10 A Yes, but it's a motion light.

11 Q Okay. Had there been movement in the yard?

12 A Yes.

13 Q Was that light on?

14 A Yes.

15 Q When you opened the door, what did you see?

16 A Lee was lying at the front of his Suburban on the  
17 ground shot.

18 Q Did you see anybody else at that stage?

19 A Not from the porch, not from the door, I couldn't,  
20 no, sir.

21 Q What did you do then?

22 A Once I made it to where Lee was lying and I began to  
23 try to move him towards the house, then I could see there  
24 was an additional body laying at the tail end of the  
25 Suburban.

1 Q Did you know who that was?

2 A No, sir.

3 Q Did you later find out who that was?

4 A Yes, sir.

5 Q Who was that, please, ma'am?

6 A David Walker.

7 Q Let me show you what's been marked as State's Exhibit  
8 No. 3. Can you point out David Walker out of this?

9 A Yes, sir, this is David Walker.

10 Q This is David Walker right here, okay. What else did  
11 you see?

12 A There was someone in the driveway who was facing  
13 towards me. Then once I began to exit the home and get  
14 closer into the yard to where Lee was, he turned and ran  
15 up the hill.

16 Q Okay.

17 A Up the driveway to the top of the hill.

18 Q When you say he was facing towards you, how close was  
19 he would you estimate?

20 A Eight to 10 feet.

21 Q And you say that there was -- the motion sensor light  
22 was on; is that right?

23 A Yes.

24 Q How long did you have an opportunity to see him?

25 A It was probably, maybe 15 seconds, but it felt like,

1       you know, a minute.

2       Q       How -- you said he went up the driveway towards the  
3       street. How did he go?

4       A       He initially started moving stepping backwards. And  
5       then after three to five steps backwards, he turned and  
6       ran.

7       Q       So you saw him face-to-face, you would say it was  
8       about this close, eight to 10 feet?

9       A       Yes.

10      Q       And then he started stepping backwards like this and  
11      then turned and ran up the hill; is that right?

12      A       Correct.

13      Q       Let me show you State's Exhibit No. 3 again. Do you  
14      see the man that you saw in the driveway that night?

15      A       Yes, sir.

16      Q       Which one is he?

17      A       (Indicated).

18             MR. MOWRY: Your Honor, for the record, she has  
19      pointed out the Defendant.

20             THE COURT: The record will reflect that she  
21      identified the Defendant on the exhibit.

22      BY MR. MOWRY:

23      Q       What else did you see at the top of the hill?

24      A       There was a vehicle.

25      Q       Where did it come from?

1 A It came from the Spartanburg County end, which would  
2 be --

3 Q Going back to No. 2 again, if you could point out  
4 which direction that vehicle was moving?

5 A The vehicle was coming from this direction.

6 Q Do you know whether it was parked up there or did you  
7 just see it moving?

8 A It was parked up there initially. Then once this --  
9 when Christopher Wells started running up the driveway,  
10 then the car started moving.

11 Q Okay. Was the motor running? It wasn't just rolling  
12 out of gear; was it?

13 A No.

14 Q So the motor was running. Were you able to tell what  
15 kind of car that was?

16 A All I know, it was an older, box-style car.

17 Q When you say box-style car, what do you mean?

18 A Squared off, it was a squared-off car.

19 Q All right. Let me show you three pictures, State's  
20 Exhibits 28, 29 and 30. Just look at those and tell me if  
21 the car you saw that night -- I'm not asking you was it  
22 the same car, but is that similar to the one you saw?

23 A This car does resemble the car I saw.

24 Q Okay. Did you make a written statement after this  
25 event?

1 A Yes.

2 Q How did you describe the car at that time? What  
3 color do you describe it?

4 A I described it as a brown, older model, box-style  
5 car.

6 Q Okay. You talked about the lighting up at the top of  
7 the hill, was that the only light that you could see the  
8 color of the car in?

9 A Yes.

10 Q And what kind of light was that again?

11 A It was like a mercury light, a florescent light. And  
12 it was a ways off.

13 Q Right. When the man you've identified as Christopher  
14 Wells got to the top of the driveway, did he meet the car  
15 at that stage?

16 A Yes.

17 Q What did he do as far as the car was concerned?

18 A He jumped into the passenger side back seat.

19 Q Back seat of the passenger side?

20 A Yes, sir.

21 Q So he did not jump into the driver's seat; is that  
22 right?

23 A No, sir.

24 Q What did the car do at that point?

25 A It sped away.

1 Q Do you know how many other people were in the car?  
2 Were you able to tell?

3 A No.

4 Q Let me show you a few items, if I may. I'm going to  
5 refer to State's Exhibit No. 18. Do you recognize --  
6 there's a tiny little item in there. Do you recognize  
7 that?

8 A Yes.

9 Q What is that, please, ma'am?

10 A That's Lee medallion off of his necklace.

11 Q Okay. And I'm going to show you State's Exhibit No.  
12 19. Do you recognize that?

13 A Yes.

14 Q What is that?

15 A Lee's necklace.

16 Q Was he wearing the necklace and the medallion that  
17 night?

18 A Yes.

19 Q Did he habitually wear those?

20 A Yes.

21 Q [REDACTED] when Lee went outside that night, do you know  
22 whether he was armed at all in some way?

23 A Yes.

24 Q What did he normally carry?

25 A A gun.

1 Q What kind of gun; do you know? Are you familiar with  
2 guns?

3 A No, sir.

4 Q Was it a semi-automatic or was it a revolver?

5 A A revolver.

6 Q Okay. Let me show you what's been marked as State's  
7 Exhibit No. 25.

8 MR. MOWRY: And I will state for the record, Your  
9 Honor, there is a cable through. It is inoperable.

10 THE COURT: Ladies and gentlemen of the jury, the  
11 weapons that are going to be displayed here shortly have  
12 previously been rendered incapable of being fired, so you  
13 don't need to be concerned about that. Out of an  
14 abundance of caution, anybody who handles a weapon will  
15 either point it towards the ceiling or the floor.

16 Solicitor.

17 MR. MOWRY: Force of habit on that one, Your Honor.

18 BY MR. MOWRY:

19 Q Let me hand you what's been marked as State's Exhibit  
20 No. 25. Do you recognize that?

21 A Yes.

22 Q What is that, please, ma'am?

23 A That's Lee's gun.

24 Q Did you see Lee's gun that night?

25 A Yes.

1 Q Where did you see it?

2 A He gave it to me after I finally got him pulled into  
3 the home.

4 Q Okay. At what stage did you get him into the home?

5 A I got him halfway to the home before the car started  
6 to speed away. But then I got afraid that they were going  
7 to fire from the car again or shoot from the car again, so  
8 I left him laying on the step up on the porch to get  
9 myself back into safety so I wouldn't be shot just in case  
10 they started shooting again. And then once the car was  
11 gone, I went back out there and pulled him the rest of the  
12 way into the home and locked the door behind us.

13 Q Okay. What kind of condition was he in as far as you  
14 could tell?

15 A I mean, he had been shot, but he didn't --

16 Q Was he able to speak with you?

17 A Yes.

18 Q And converse in a rational fashion?

19 A Yes.

20 Q Okay. How far into the house did you get him?

21 A Just right inside the door and locked the door behind  
22 us. I didn't want to move him any farther than what I  
23 just had to to get him back into safety.

24 Q Okay. Once you did that -- were you still on the  
25 phone with 911?

1 A Yes.

2 Q Once you did that, what happened then?

3 A After a brief while, there was a knock at the door --  
4 a bang at the door.

5 Q Was it something falling against the door or somebody  
6 knocking on the door, beating on the door?

7 A Something knocking, beating the door.

8 Q Was anything said?

9 A Yes. I said, Who is it?

10 Q And what was the reply?

11 A David.

12 Q What did you do then?

13 A I didn't do anything because then Lee spoke up and  
14 said, Do not open that door, that's who shot me.

15 Q Okay. So he was saying that David was the one that  
16 shot him?

17 A Yes, sir.

18 Q Okay. You hadn't seen the shooting, though; is that  
19 right?

20 A No.

21 Q How long was it after that before First Responders  
22 got there, the emergency personnel, the police and  
23 ambulances?

24 A I would say 10, 15 minutes.

25 Q Okay.

1 A After David knocked on the door.

2 Q Okay. What was your mental state at that time?

3 A I was very hysterical.

4 Q Is that reflected on the audio?

5 A Yes.

6 Q What happened then?

7 A Then the knocking stopped. And after 10 or 15 more  
8 minutes, First Responders arrived. Once they arrived, I  
9 hung up with 911 and let -- once they were into the home,  
10 then I hung up with 911. Because, at first, I wasn't sure  
11 if it was First Responders or if it was -- you know, after  
12 what had just happened, my mind went a million ways. I  
13 didn't know who it may be.

14 Q Right. So after First Responders got there, you hung  
15 up with 911; is that right?

16 A Correct.

17 Q That's the end of the recording?

18 A Correct.

19 Q In the meantime, had you done something with this  
20 gun?

21 A Yes.

22 Q With State's Exhibit No. 25. What did you do with  
23 it?

24 A I reached over on a beside, got an envelope, picked  
25 the gun up with the envelope and put it under Lee's

1 mattress.

2 Q Why did you do that?

3 A That's where it would normally be kept.

4 Q Did you have any other plans of taking Lee yourself  
5 to the hospital?

6 A Yes, he begged me to.

7 Q Okay. Why didn't you do that?

8 A I had no keys.

9 Q Where were the keys? You had just gotten back from  
10 the Waffle House, where were they?

11 A He had them on him when the robbery took place.

12 Q Okay.

13 A And they took everything. They took the keys to the  
14 home, the car. Everything he owned, they took, the  
15 wallet, everything.

16 Q Did he have this wallet, State's Exhibit No. 17, on  
17 him?

18 A Yes.

19 Q And you said it was a pretty good stack of cash in  
20 there?

21 A Yes, sir.

22 Q Was that on him when you got to him?

23 A No.

24 Q So the wallet was gone and the keys were gone. Did  
25 you have keys to his vehicle?

1 A No.

2 Q Did you have any other means of transportation?

3 A No.

4 Q When law enforcement arrived, what did you do?

5 A I let them inside.

6 Q You let them in?

7 A Yes, sir.

8 Q Did you speak with them that night?

9 A Yes.

10 Q I'm not going to ask you to describe what went on  
11 during that time, but did you speak with law enforcement  
12 at length that evening?

13 A Yes.

14 Q Or early the next morning?

15 A Yes.

16 Q Did you make a written statement to them?

17 A Yes.

18 Q Did you describe as much as you could at that time?

19 A Yes.

20 Q What was your demeanor, what was your mental state a  
21 few hours later?

22 A I was still in shock.

23 Q Did you speak later with Detective Cheek?

24 A Yes.

25 Q A few days later?

1 A Yes.

2 Q Did you make another written statement at that time?

3 A Yes.

4 Q Did you try to go into more detail?

5 A Yes.

6 Q How did you describe the man that you saw in the  
7 driveway in your written statement; do you recall?

8 A Yes, a large black male. And I even described his  
9 clothing.

10 Q Did you refer to anybody else?

11 A Yes.

12 Q Who did you refer to?

13 A Ty.

14 Q How did you know Ty?

15 A Through Lee. He had been having dealings with Ty.  
16 But I referred to Ty because that was the only person's  
17 body frame, their build, and their beard that I could use  
18 to say this person looked like him in this way, this  
19 manner.

20 Q So was that person Ty that you saw in the driveway?

21 A No.

22 Q You're just saying he looked sort of like Ty; is that  
23 right?

24 A Absolutely.

25 Q How did you describe his size?

1 A I said he was very large. He was a large man.

2 Q How tall are you?

3 A I'm five foot.

4 Q So I don't mean to -- you're kind of small; is that  
5 right?

6 A Right.

7 Q Kind of short?

8 A Yes.

9 Q Did he appear large to you?

10 A Yes.

11 Q At some point later, did Detective Cheek and a couple  
12 of other investigators from the sheriff's office and,  
13 maybe, another deputy come and see you?

14 A Yes.

15 Q About how long after this night was that; do you  
16 recall?

17 A I would say a month and a half.

18 Q Okay. What did they do?

19 A They come and asked me did I recognize anyone off of  
20 that paper.

21 Q What did they show you?

22 A They showed me a paper with several pictures and  
23 asked me did I -- was anyone on that picture there that  
24 night.

25 Q Okay. Let me show you State's Exhibit No. 27, this

1 sheet of paper with several pictures on there. How many  
2 pictures are on there?

3 A Six.

4 Q And what are those pictures of?

5 A Men that look similar to one another.

6 Q Okay. Did you recognize anybody?

7 A Yes.

8 Q Which number did you recognize?

9 A Five.

10 Q What did you do -- or when you recognized that  
11 individual, what did you tell the investigators?

12 A This is the guy. This is the guy who ran away from  
13 the scene.

14 Q Okay. And how did you demonstrate physically that  
15 that was the guy?

16 A I circled it and initialed it.

17 Q Okay. Are these your initials down there at the  
18 bottom?

19 A Yes, sir.

20 Q Did you draw those circles around the picture?

21 A Yes.

22 Q Did anybody suggest to you anybody to pick out?

23 A No.

24 Q Nobody said how about number five, take a close look  
25 at him?

1 A No.

2 Q They just laid it in front of you and said do you  
3 recognize the person you saw that night?

4 A Yes.

5 Q And did you recognize the person you saw that night?

6 A Yes.

7 Q Do you see that person in the courtroom today?

8 A Yes.

9 Q Where is he?

10 A (Indicated.)

11 MR. MOWRY: Your Honor, for the record, she has  
12 pointed out the Defendant.

13 THE COURT: The record will reflect the witness has  
14 identified Mr. Wells.

15 MR. MOWRY: And I would offer State's Exhibit No. 27  
16 into evidence at this time.

17 MR. RICHEY: No objection.

18 THE COURT: Without objection, State's Exhibit No. 27  
19 is in evidence.

20 (WHEREUPON, State's Exhibit No. 27 was admitted  
21 into evidence.)

22 BY MR. MOWRY:

23 Q So number five is who you picked out?

24 A Yes, sir.

25 Q And that's your -- those are your initials down at

1 the bottom?

2 A Yes, sir.

3 Q And you drew the circles around that picture; is that  
4 right?

5 A Yes, sir.

6 Q I'm going to show you once again State's Exhibit No.  
7 3. Do you see the person you saw in the driveway that  
8 night in this selection?

9 A Yes.

10 Q Where is he?

11 A (Indicated.)

12 Q The one at the bottom of the three pictures? The one  
13 at the bottom of the poster?

14 A Yes.

15 Q Is that the same person you saw that night?

16 A Yes.

17 Q Is that the same person you -- is that the same  
18 person you picked out of the lineup?

19 A Yes.

20 Q Is that the same person you see seated over at  
21 Defense table today?

22 A Yes.

23 MR. MOWRY: Beg the Court's indulgence just a moment.

24 THE COURT: Yes, sir.

25 MR. MOWRY: Thank you, [REDACTED] that's all I've got.

1 THE COURT: Cross?

2 MR. RICHEY: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. RICHEY:

5 Q Ma'am, why did you hide his gun? Why did you hide  
6 Lee's gun?

7 A Lee had gave me his gun and said put it where it  
8 goes.

9 Q Okay. And at this time, there has been a criminal  
10 act done and you all did not give the police the  
11 opportunity to see where that gun was, correct?

12 A The gun was already removed with Lee from the yard as  
13 I removed Lee from the yard.

14 Q What I'm saying is, the gun -- when the shooting was  
15 done, the gun was on the ground, correct?

16 A Not Lee's.

17 Q Where was Lee's gun?

18 A Lee's gun was in his holster.

19 Q Okay. Okay.

20 A After he did his shooting, he put his gun back in his  
21 holster and that's where it was whenever I got to him, but  
22 I wasn't there to see the shooting.

23 Q Okay. So when the cops got there, they didn't have  
24 the opportunity to see where that gun was at the time all  
25 this happened because you all moved it, correct?

1 A I didn't move the gun from the yard, Lee did. I  
2 didn't -- Lee handed me the gun once inside the home.

3 Q Okay. The gun -- your story is the gun was in his  
4 holster, correct?

5 A Yes.

6 Q When the police got there, you had moved the gun,  
7 correct?

8 A Yes. He handed me the gun.

9 Q So don't you think that's odd for you to go try to  
10 hide his gun at that point?

11 A I wasn't trying to hide it. I gave it to them as  
12 soon as they got there and told them exactly where it was.

13 Q Okay. To put it up, do you believe that's odd when  
14 someone has been shot to go put the gun underneath the  
15 bed? Do you find that strange?

16 A I don't.

17 Q Okay. Do you -- so when Lee -- he had got shot,  
18 right? He had got shot and it was obvious, right?

19 A Yes.

20 Q The first thing you did was not call 911, the first  
21 thing you did was put that gun up, correct?

22 A No, I called 911 before I ever went into the yard  
23 where Lee and the gun were.

24 Q Okay. All right.

25 A I never exited the home until I called 911.

1 Q And Lee, he had large sums of money, correct?

2 A Correct.

3 Q That is consistent with somebody dealing large sums  
4 of drugs, correct?

5 A Correct.

6 Q And he was a major guy? He kept moving up, up, up,  
7 up, right?

8 A Somewhat.

9 Q And the night that this happened, you felt like --  
10 because normally, these people he sells this poison to,  
11 y'all bring them in your home, right? Or he stands at the  
12 door where you can see the people when the deal is done,  
13 right?

14 A Uh-huh.

15 Q You have to answer yes or no.

16 A Yes.

17 Q But on this day, you found it odd that he, in fact,  
18 kind of pushed them outside. He went freely, correct?

19 A Yes.

20 Q Nobody grabbed him outside?

21 A Correct.

22 Q Nobody forced him to go outside?

23 A Correct.

24 Q He went outside after he answered the door and talked  
25 to whoever it was, correct?

1 A He went outside after he seen them. I never heard  
2 any discussion whatsoever at the door.

3 Q Right. So he didn't make any hesitation or show any  
4 signs of fear from your recollection when he walked out  
5 that door, correct?

6 A My recollection, it was very strange from the  
7 beginning because anyone he was not afraid of would have  
8 came inside the home. He pushed himself through the door,  
9 and not only that, tried to slam the screen door behind  
10 him getting it to latch and it failed to do so.

11 Q And you know Ty, right? You know him, right?

12 A Correct.

13 Q You know him real well, correct?

14 A Correct.

15 Q You've seen him a lot of times, right?

16 A Correct.

17 Q Okay. And Ty, his skin complexion would be close to  
18 this, correct?

19 A Correct.

20 Q Not closer to that, right?

21 A I agree.

22 Q Okay. Ty is about 6'2", right, a big guy?

23 A I don't know. I just know it was a tall man, much  
24 bigger than myself.

25 Q That's not what I'm asking you. I'm asking you, Ty,

1 Ty that you know is a big man?

2 A Yes, he's a big man.

3 Q Okay. And so Ty is a dark-skinned, large man,  
4 correct?

5 A Correct.

6 Q You know Ty because Lee, he kept escalating in drug  
7 dealer and he needed Ty because Ty can provide him with  
8 more drugs, correct?

9 A Correct.

10 Q And so you know the characteristics of Ty,  
11 everything, correct?

12 A Somewhat.

13 Q Okay. So when you give a description to law  
14 enforcement two days after this happened and you say that  
15 it is a large, dark-skinned man, that description is more  
16 closer to Ty than it is him, correct?

17 A What I told them is that the person resembled Ty.

18 Q That's not my question to you. My question is this,  
19 when you say it's a large, dark-skinned man, correct?

20 A Yes.

21 Q That description is closer to Ty than it is this  
22 young man, correct?

23 A Correct.

24 Q And even in that statement, you referenced Ty's name,  
25 correct?

1 A I did. I said it resembled Ty, but it was not Ty.

2 Q Okay. Lee was playing a dangerous game, correct?

3 That's a dangerous game?

4 A Yes.

5 Q And when you start dealing this dope in the volume he  
6 was dealing it, it's really -- it's dangerous, correct?

7 A Correct.

8 Q And oftentimes, these drug dealers, they get in  
9 arguments, correct?

10 A Yes.

11 Q And most of the time, they're armed, correct?

12 A Yes.

13 Q So on that day when these people came over there --  
14 well, let me ask you this. You said that gun is normally  
15 underneath the mattress, right?

16 A Right. Unless we're going somewhere, then he takes  
17 it out and puts it in his holster.

18 Q So when y'all go out to eat or anything, he arms  
19 himself?

20 A Yes.

21 Q And he arms himself because of all the dope he's  
22 carrying -- all the money he's carrying, right?

23 A I assume. I can't answer that.

24 Q Okay. And you don't have any doubt in your mind this  
25 was a drug transaction? No doubt in your mind this had

1 something to do with drugs?

2 A This that happened that night?

3 Q Yeah.

4 A No, I don't agree with that. This was not any form  
5 of transaction. This was someone coming to take what they  
6 wanted.

7 Q And you use a word re-up. What does that mean,  
8 re-up?

9 A When you're out of drugs, you go get more and you  
10 re-up.

11 Q When you re-up, is it a large, small?

12 A A re-up can be a small re-up or it can be a large  
13 re-up. I don't understand the question.

14 Q So it's not the amount of times you re-up, it's the  
15 quantity of it? It can be a quantity, too?

16 A Right.

17 Q So I could re-up for a little bit or a lot, correct?

18 A Correct.

19 Q And what Lee was doing, he needed more drugs,  
20 correct?

21 A When?

22 Q At the time this happened, because his drug supplier  
23 that he had was not consistent?

24 A At the time this happened, Lee had drugs. He was  
25 re-upping.

1 Q Let me ask the question this way, Lee needed a new  
2 drug supplier, right, because the one he had was not  
3 reliable, correct?

4 A Lee had multiple sources he could use.

5 Q So he had a lot of people he was dealing with these  
6 drugs, correct?

7 A Correct.

8 Q So he didn't just need one guy because he had tons of  
9 guys he could go buy all this dope from, right?

10 A Agreed.

11 Q And all these guys out there he's buying dope from,  
12 they're all dangerous, correct?

13 A Correct.

14 Q And they're all the kind of people that when you get  
15 in an argument with them, it could be deadly, correct?

16 A Correct.

17 Q And that night, what you heard, what you heard, you  
18 heard a verbal altercation, correct?

19 A Correct.

20 Q That means that's two people arguing, correct?

21 A Two, possibly three.

22 Q They were arguing, correct?

23 A Correct.

24 Q And those arguments were some of the arguments you've  
25 heard before when these people argue over these drugs,

1 right?

2 A No. No one ever before has told Lee "I am here to  
3 rob you" because Lee would have shot them.

4 Q He would have shot them?

5 A Lee ain't going to let somebody just rob him.

6 Q Lee -- and Lee, in fact, shot somebody this night;  
7 didn't he?

8 A After he was shot.

9 Q But he shot somebody, correct?

10 A Correct.

11 Q So if you try to argue and fight with Lee, he'll  
12 shoot you, right? Right, he'll shoot you?

13 A I've never known Lee to shoot anyone. This night, he  
14 shot that gun because he had already been shot at.

15 Q Well, who shot him?

16 A According to him, David shot him.

17 Q According to Lee, David shot him?

18 A Correct.

19 Q Did you tell the police that that's who shot him?

20 A No, Lee did himself.

21 Q Oh, so he told that's who shot him?

22 A Yes.

23 Q So that's not a mystery who shot him, right?

24 A Right.

25 Q Let me go to State's Exhibit 3, State's Exhibit 3.

1 We've got all these three men up here, right?

2 A Correct.

3 Q Okay. Does any one of these three guys on here, are  
4 they dark-skinned?

5 A They're all black men.

6 Q Do you understand the difference between a  
7 dark-skinned black man and a light-skinned black man?

8 A I do.

9 Q Okay. Are all these -- are any one of these  
10 gentlemen up here dark-skinned?

11 A Not very dark-skinned, no. But you've got to  
12 remember it was dark. There was very little lighting.

13 Q Is any one of these guys of the skin tone or skin  
14 color of Ty?

15 A No.

16 Q So you were never presented a photo lineup with Ty in  
17 it, correct?

18 A I don't think Ty was in the lineup that I chose from,  
19 no.

20 Q And in your statement that you gave -- so you gave  
21 two statements, correct?

22 A Correct.

23 Q And in the first statement, you said nothing about  
24 this robbery deal, right? You said nothing about it? You  
25 said nothing about this robbery deal, right?

1 A Not to my knowledge. You've got to remember this is  
2 right directly after this took place.

3 Q And in your second statement, would this be correct  
4 when you say, Now, after the fact, I realized that I heard  
5 a strange voice? Did you say that, Now, after the fact, I  
6 realized that, correct?

7 A Yes.

8 Q So at that time when you were out there, when  
9 everything was fresh in your mind, you were putting that  
10 gun away, you didn't tell the police that, correct?

11 A That I heard an altercation?

12 Q No, no, no, no, that you heard a voice saying, I'm  
13 here to rob you?

14 A I didn't tell them what I heard the voice say. I  
15 told them that I heard voices arguing.

16 Q But you didn't hear anybody say I'm here to rob you,  
17 right?

18 A I did hear them say that, but there was a lot on me  
19 that night. It was very fresh and I was very hysterical.  
20 I wrote what I could keep it together to write. I can't  
21 help that I didn't remember every single detail. I did  
22 the best I could in the hysterical situation I was in.

23 Q What color was that car?

24 A I'm not sure. Like I said, it was a mercury  
25 florescent light. I can tell you it was a box-style,

1 older model car. It did look brown due to the lighting at  
2 the top of the hill, but what color it really was, I do  
3 not know.

4 Q You told the police it was brown, right?

5 A I told them it was brown.

6 Q You can distinguish between gray and brown, right?

7 You know the difference between gray and brown, right?

8 A I know the difference, but you've got to realize, I'm  
9 25 feet away from the top of the hill where the car is and  
10 it's under a mercury light.

11 Q But my question is, you can distinguish between gray  
12 and brown, correct?

13 A Yes.

14 Q And if that car -- if you saw that car and it was  
15 gray, you would have recognized that, correct?

16 A Not if it was in the same spot, I may not have been  
17 able to tell you that that's a gray car.

18 Q I just want to make sure I understand what you told  
19 the police. You told the police it was brown, correct?

20 A I did.

21 Q And you told them the truth on that, correct?

22 A Yes, to the best of my ability at that time. What  
23 was to my knowledge of what color the car was to my  
24 knowledge. But like I say, the lighting could have  
25 changed the color of the car. I can't say it did and I

1 can't say it didn't.

2 Q So are you exactly positive of who you identified  
3 that night?

4 A I am absolutely positive of who I identified. His  
5 eyes met mine, my eyes met his. He walked backwards at  
6 first.

7 Q So you're absolutely positive on the guy you  
8 recognize, but you're not positive on the car?

9 A You're talking a difference of eight feet and 25  
10 feet.

11 Q Twenty-five feet. Okay. I'm 25 feet, right?

12 A Oh, no, much farther than that up the hill, much  
13 farther.

14 Q You saw --

15 A Out to the back of the courtroom is still not far  
16 enough to go all the way up the hill to see the car.

17 Q So --

18 A The car is back further than that away from me.

19 Q So the gentleman ran a long distance to get to that  
20 car, right?

21 A Yes.

22 Q A long distance?

23 A Uh-huh.

24 Q And when he's running a long distance, the one thing  
25 that you can -- you might not be able to see his face,

1 correct, but you can see his build, right?

2 A I seen his face before he ever started running.

3 Q Right, but you can see his build, right?

4 A Right.

5 Q So when he's running from you, that build that you're  
6 seeing is a large build, correct?

7 A Right.

8 Q Okay.

9 MR. RICHEY: Hold on, Your Honor, please.

10 THE COURT: Yes, sir.

11 BY MR. RICHEY:

12 Q The windows to this car, could you tell whether the  
13 windows were up or down?

14 A I could not tell.

15 Q You could not tell. So you don't really know whether  
16 somebody's in this car or not?

17 A The car was running, it was driving up the road  
18 before he made it to the car.

19 Q Okay. Inside this car, you couldn't see who was  
20 inside this car? You don't know if it was one, two, three  
21 people?

22 A Absolutely.

23 Q Okay. So, basically, you're saying you saw the one  
24 guy, correct, that you -- the one guy that was tall and  
25 dark, you saw that guy, but you didn't see anybody else,

1 correct?

2 A No, that's not true.

3 Q Okay.

4 A There was a guy collapsed at the back of the vehicle.  
5 I seen that guy. There was a guy standing in the driveway  
6 staring me down. That guy. That's the only two men I  
7 seen other than Lee.

8 Q Okay. So you're saying the gentleman was standing  
9 this close to you? Staring you down about this close?

10 A No. We were less apart than what we are now.

11 Q About this far?

12 A No. Further.

13 Q Right here? You were about this close?

14 A Further away.

15 Q This way? Okay, this way?

16 A Yeah, away would be away.

17 Q And that's something you identified from this  
18 distance?

19 A Yeah, about that distance.

20 MR. RICHEY: Thank you, ma'am.

21 THE COURT: Redirect?

22 MR. MOWRY: Just a few questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MOWRY:

25 Q [REDACTED] Mr. Richey was asking you isn't it strange you

1 took the gun and put it under the mattress. Again, what  
2 was your mental state?

3 A I was hysterical.

4 Q What did Lee tell you to do with the gun?

5 A Put it where it goes.

6 Q Were you just simply following his instructions?

7 A Correct.

8 Q Did you know any of the three people depicted -- I  
9 never can remember the number -- in State's Exhibit No. 3  
10 before that night?

11 A No.

12 Q Did you know Ty before that night?

13 A Yes.

14 Q You made a statement -- a second statement to law  
15 enforcement on November the 5th; isn't that correct?

16 A Yes.

17 Q It was about a four-page statement; isn't that right?

18 A Yes.

19 Q I want you to read the sentence that begins right  
20 there, "this man".

21 A This man strongly resembled a man named Ty from Boyd  
22 Road.

23 Q Okay. Was your purpose in that description to tell  
24 the officers it was Ty?

25 A No.

1 Q You knew Ty; is that right?

2 A Correct.

3 Q If it had been Ty, would you have told them it was  
4 Ty?

5 A Absolutely.

6 Q So this was just something to try to give the  
7 officers an idea of --

8 A Of his makeup, his build. Even the beard was  
9 similar.

10 Q Okay. Now, Mr. Richey was trying to characterize  
11 [REDACTED] as a business, I'll put it that way.  
12 What kind of car did he drive?

13 A A blue Suburban.

14 Q How old was it?

15 A I don't know, late 80's or early 90's.

16 Q So it wasn't a brand new car is what I'm getting at?

17 A No.

18 Q What kind of residence did he have?

19 A A trailer.

20 Q Not exactly Al Pacino in Scar Face, was it?

21 A No.

22 Q You testified that you were able to hear parts of the  
23 conversation; is that right?

24 A Yes.

25 Q Mr. Richey asked you about that. Did you ever hear

1 anybody say I'm here to buy drugs from you?

2 A No.

3 Q What did you hear them say?

4 A I am here to rob you.

5 MR. MOWRY: Thank you, ma'am, that's all I've got.

6 MR. RICHEY: I've just got a few more.

7 THE COURT: Go ahead.

8 RECROSS-EXAMINATION

9 BY MR. RICHEY:

10 Q Two thousand dollars is a lot of money?

11 A Yes.

12 Q And that's regularly what he had on him, 2,000 or  
13 more dollars, correct?

14 A Yes.

15 Q And 2,000 or more dollars is consistent with somebody  
16 selling a lot of drugs?

17 A Was that a question?

18 Q Yes.

19 A I mean, yeah, it could be.

20 Q So this stuff the prosecutor is trying to say, his  
21 car wasn't nice and all that, he moved a lot of dope,  
22 correct?

23 A No. He did not move a lot of dope. He did move  
24 small amounts, but not a lot, not where you're going with  
25 it. He did not move a lot of dope.

1 Q Unfortunately, you've done drugs before,  
2 unfortunately, correct?

3 A Unfortunately, yes, sir.

4 Q And \$2,000 in drugs would be a lot of drugs to you,  
5 correct?

6 A Right.

7 MR. RICHEY: Thank you, ma'am.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. MOWRY:

10 Q Let me ask you this, and this is going to be it.  
11 Have you done drugs in the last couple of years?

12 A No.

13 MR. MOWRY: Thank you, ma'am.

14 MR. RICHEY: No questions.

15 THE COURT: Ma'am, you can step down. Thank you very  
16 much. You're free to leave the courthouse, but you remain  
17 under the subpoena.

18 Ladies and gentlemen, I don't know if y'all need a  
19 brief break, the Court does, so we will take a brief  
20 break, just five or 10 minutes.

21 I meant to mention to y'all yesterday, if any of  
22 y'all smoke, that's perfectly fine. Just let the bailiff  
23 know and they'll escort you outside. Don't discuss the  
24 case. We'll break for about five or 10 minutes.

25 (WHEREUPON, the jury exits the courtroom at

1 10:58 a.m.)

2 (WHEREUPON, a short break was taken.)

3 (WHEREUPON, the jury enters the courtroom at  
4 11:19 a.m.)

5 THE BAILIFF: All present, Your Honor.

6 THE COURT: All right. The record will reflect that  
7 the jury is back and seated. Of course, the Defendant is  
8 present with counsel.

9 Solicitor, call your next witness, please.

10 MR. MOWRY: I call Marty Crain.

11 THE BAILIFF: Place your left hand on the Bible and  
12 raise your right hand.

13 Thereupon;

14 MARTY CRAIN, after having been  
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOWRY:

18 Q You are Marty Crain?

19 A Yes, sir.

20 Q And I see you're wearing bars on your collar. Are  
21 you a lieutenant?

22 A Yes, sir.

23 Q With the Laurens County Sheriff's Office?

24 A Yes, sir.

25 Q Can you describe for the jury what your duties are

1 with the sheriff's office, please, sir?

2 A I'm the supervisor over the uniform patrol division.

3 Q And what hours do you normally work or does it  
4 rotate?

5 A We work 7:00 p.m. to 7:00 a.m.

6 Q Okay. Were you employed in that capacity back on the  
7 31st of October, going into the 1st of November, 2013?

8 A Yes, sir.

9 Q What were you doing the latter part of that evening?

10 A I was answering calls and supervising the shift.

11 Q What do you have to do as a supervisor?

12 A All calls that come in for service through the  
13 Laurens County Dispatch Center are dispatched to me and I  
14 assign the call to the designated deputy that works that  
15 area.

16 Q So whoever you've got close or whatever, you tell  
17 that person to go; is that right?

18 A Yes, sir.

19 Q Late that evening, did you receive a call about an  
20 event on [REDACTED] Road in Enoree?

21 A Yes, sir.

22 Q How did you receive that call?

23 A Dispatch received a call, dispatched to me that there  
24 was a possible shooting that had occurred on [REDACTED]  
25 Due to the severity of the call, I responded as well as

1 the assistant supervisor, the sergeant. And because of  
2 the severity of it, I had several other deputies respond  
3 as well.

4 Q So pretty much all hands on deck; is that right?

5 A Yes, sir.

6 Q All right. Where were you when you received the  
7 call; do you remember?

8 A I do remember. I was at the red light in Laurens at  
9 the big intersection there by Rite-Aid and KFC.

10 Q Okay. How far is it from that spot in Laurens out to  
11 21 to Enoree?

12 A Maybe 12, 15 miles.

13 Q Did you obey the speed limit?

14 A I responded in emergency capacity, which is code  
15 three, blue lights and sirens.

16 Q Okay. And did you go fast?

17 A Yes, sir.

18 Q Put it that way?

19 A Yes, sir.

20 Q Any idea how long it took you to get there?

21 A Not precisely, no.

22 Q You got there as fast as you could, though; is that  
23 right?

24 A Yes, sir.

25 Q Were you one of the first officers on the scene?

1 A Yes, sir.

2 Q Describe what you saw when you got there.

3 A When I pulled up to the residence, I made my approach  
4 to the house. There was a vehicle sitting in the yard.  
5 Because there were calls of gunfire being exchanged there  
6 at the residence, I used the back of that vehicle for  
7 cover as I approached the house with my weapon drawn. I  
8 was covering the residence.

9 As I stepped up on -- there was a small porch right  
10 in front of the house. I stepped up on the porch and I  
11 encountered an individual who was sitting in a swing on a  
12 front porch.

13 Q All right. Let me take you through step by step.  
14 You talked about using a car or a vehicle as cover. Let  
15 me show you State's Exhibit No. 7. That photograph, do  
16 you recognize the vehicle in there?

17 A Yes, sir.

18 Q What is that?

19 A I believe it's a Chevrolet Suburban or a Tahoe.

20 Q And was that the vehicle that you were using?

21 A Yes, sir.

22 MR. MOWRY: If we could get the lights, please.

23 BY MR. MOWRY:

24 Q Is that the vehicle?

25 A Yes, sir.

1 Q And you talked about going up to the residence. Is  
2 that the residence that you talked about?

3 A Yes, sir.

4 Q Describe what kind of structure that is.

5 A It's a single dwelling mobile home with an attachment  
6 on the front porch.

7 Q Okay. But it's a trailer; is that right?

8 A Yes, sir, a trailer.

9 Q And what did you see when you got there?

10 A As I approached -- it was dark, so when I approached,  
11 I approached to the right-hand corner of this vehicle. As  
12 I went around the vehicle with my weapon drawn, I saw --  
13 there's a swing that you look -- when you step up on that  
14 porch, you look directly at a swing. There was a swing  
15 there --

16 Q Right in here?

17 A Yes, sir. There was a swing there with an individual  
18 that was sitting on the swing slumped over.

19 Q Okay. I'm going to show you a chart with some  
20 pictures on it. And this is State's Exhibit No. 3. Do  
21 you recognize the individual that you saw sitting in the  
22 swing?

23 A (Indicated.)

24 Q This individual right here?

25 A Top right-hand corner.

1 Q Did you later find out what his name is?

2 A Mr. Walker.

3 Q David Walker?

4 A Yes, sir.

5 MR. MOWRY: And for the record, Your Honor, he has  
6 indicated the person on the upper right-hand side of the  
7 chart.

8 THE COURT: Very good.

9 BY MR. MOWRY:

10 Q What was Mr. Walker's condition when you saw him?

11 A When I asked him had he been shot or anything, he  
12 told me his arm was broken. At which time, as I was  
13 speaking with him, my sergeant came up behind me. And I  
14 heard a female yelling to my right behind the closed door  
15 inside the residence.

16 Q Did you later determine who that female was?

17 A It was -- I think her name was [REDACTED]

18 Q [REDACTED] Ball?

19 A Yes, sir.

20 Q All right. What did you do next?

21 A I advised her that it was law enforcement, to open  
22 the door. She was kind of hesitant. She didn't believe  
23 us at first. She was on the phone with my dispatcher.  
24 And once she was convinced -- she asked me my name, I told  
25 her my name. And I guess she confirmed that on the phone

1 with dispatch and she opened the door and let me in. And  
2 once I opened the door and started in, that's where I  
3 encountered the other victim.

4 Q And did you later determine who that was?

5 A Mr. [REDACTED]

6 Q All right. What -- how did he appear?

7 A He was lying in the floor gasping and bleeding  
8 profusely.

9 Q What did you do when you saw him in that condition?

10 A Once we made sure the residence was secure, we  
11 immediately notified medical and fire to come in to start  
12 -- for their procedures to start rendering aid. I'm,  
13 again, talking with him, trying to get as much information  
14 as I could from him due to the fact that he had been -- I  
15 had noticed a couple of bullet wounds. And I just started  
16 asking him questions, who shot him, if he knew where the  
17 person was that shot him, where the weapons were, things  
18 like that.

19 Q Okay. You said you saw a couple of bullet wounds,  
20 where were they?

21 A One that I saw was on the neck and the other one was  
22 in his lower extremity, near the abdomen somewhere.

23 Q All right.

24 A That's where the most amounts of blood were coming  
25 from.

1 Q Okay. You talked about making sure the residence was  
2 secure. What do you mean by that?

3 A To ensure that no one else was there, possibly  
4 another shooter, or another suspect, or any more victims  
5 were inside the residence.

6 Q How do you go about doing that?

7 A We clear the house room by room.

8 Q Okay. Y'all go through room by room to make sure --

9 A Any obvious space that a person could fit.

10 Q So to avoid ambush?

11 A Yes, sir.

12 Q No problems?

13 A No, sir.

14 Q What did you do next?

15 A I stayed with Mr. [REDACTED] and began talking to him.  
16 And then, finally, after I got Ms. Ball calmed down, I  
17 found out where the weapon was that he had possessed and  
18 she took and showed me where it was at.

19 Q Let me ask you this, how would you characterize the  
20 scene at this point? Was it orderly or --

21 A Total chaos.

22 Q All right. You had two individuals that were shot?

23 A Yes, sir.

24 Q You didn't know what the story was. You didn't know  
25 where the shooter was. There were people that were

1 distressed, upset. Was there anything else going on?

2 A A dog barking loudly, very loudly.

3 Q And you've been doing this for how long?

4 A Almost 20 years.

5 Q And how would you rate this as far as chaos is  
6 concerned?

7 A A 10. On a scale of one to 10, a 10.

8 Q How quickly after you got there did other officers  
9 get there?

10 A A matter of moments.

11 Q Did medical personnel arrive as well?

12 A They did, but it was several minutes later because we  
13 had to make sure the scene was secured before they came  
14 in.

15 Q Among the officers that arrived there, can you list  
16 some names?

17 A Myself, Sergeant Timmons, Deputy Sweat, Deputy  
18 Taylor, and Deputy McMahan.

19 Q All right. Did you start giving out assignments  
20 while you were there?

21 A Yes, sir.

22 Q What did you tell Sweat and Taylor to do?

23 A I told them to start photographing and collecting  
24 evidence outside, if they could find anything outside,  
25 which a few of them had noticed some evidentiary items

1 outside. So they started to photograph and collect those.

2 Q Okay. I'm going to show you a photograph, State's  
3 Exhibit No. 12. Do you recognize that?

4 A Yes, sir.

5 Q What is that, please, sir?

6 A That is the markers for evidence where the shell  
7 casings, clothing articles, weapons, anything like that.  
8 That's our evidence markers.

9 Q That's pretty much the same picture as State's  
10 Exhibit No. 7, except the markers have been put down; is  
11 that right?

12 A Yes, sir.

13 Q Okay.

14 MR. MOWRY: Let me show this.

15 THE COURT: You want to move that in first?

16 MR. MOWRY: Yeah, I'm sorry. State's Exhibit No. 12  
17 into evidence, Your Honor. I'm sorry. We marked them and  
18 I completely neglected -- we had not moved it into  
19 evidence.

20 THE COURT: Very good.

21 (WHEREUPON, State's Exhibit No. 12 was admitted  
22 into evidence.)

23 BY MR. MOWRY:

24 Q You see the yellow triangles in there or yellow  
25 squares, triangles, whatever shape you want to call them.

1 Are those the markers you're talking about?

2 A Yes, sir.

3 Q What's the significance of all of the markers?

4 A The numbered sequences when they noticed a piece of  
5 evidence as they start making it as they came onto the  
6 scene. They went back from where we came on and they  
7 marked them in that order.

8 Q Okay. And who was responsible for collecting the  
9 evidence once it had been discovered?

10 A Deputy Taylor collected the evidence that night.

11 Q All right. Were you able to determine where they  
12 needed to look or was this --

13 A We searched the whole premises and they started  
14 locating stuff outside.

15 Q Okay. Did you ask about any weapons or anything like  
16 that?

17 A The only weapon -- when I asked about a weapon -- I  
18 asked Mr. [REDACTED] and he explained to me where his weapon  
19 was at.

20 Q After you had spoken with him, where did you go to  
21 look?

22 A Ms. Ball directed me to the bedroom that was to my  
23 right -- from where Mr. [REDACTED] was when I went into the  
24 residence to my right. It was between the mattress.

25 Q Okay. I'm going to show you what's been marked as

1 State's Exhibit No. 14. Do you recognize that?

2 A Yes, sir.

3 Q What is that, please, sir?

4 A That is the weapon that was recovered from between  
5 the mattresses in the bedroom.

6 Q Okay.

7 MR. MOWRY: I offer State's Exhibit No. 14 into  
8 evidence, Your Honor. I'm going to do 15 in just a  
9 minute, but, apparently, no objection as well.

10 THE COURT: All right. State's 14 and 15 will be in  
11 evidence without objection.

12 (WHEREUPON, State's Exhibit Nos. 14 and 15 were  
13 admitted into evidence.)

14 BY MR. MOWRY:

15 Q Let me show you what's been marked as State's Exhibit  
16 No. 25. Does this appear to be the revolver that was  
17 recovered from under the mattress?

18 A It does. It appears to be same one.

19 Q Did you collect this revolver?

20 A I did.

21 Q And who did you turn it over to?

22 A Deputy Taylor.

23 Q While you were in the house, did Mr. [REDACTED] appear to  
24 be in any kind of distress?

25 A Yes.

1 Q Describe what you're talking about, please.

2 A He had shallow breathing, bleeding profusely, and he  
3 began to vomit.

4 Q All right. What was your concern when he began to  
5 vomit?

6 A That he was about to go unconscious.

7 Q When that begin to happen, what did you do in  
8 response?

9 A We had to, actually, move him from where he was  
10 located because they couldn't -- the rest of the emergency  
11 personnel couldn't get through the door because,  
12 partially, he was blocking the door. So we moved him  
13 slightly back so they could get the rest of the way  
14 through the door with their equipment. We moved him back  
15 towards a small bathroom there.

16 Q So that was a life-saving maneuver; is that right?

17 A Yes, sir.

18 Q In the process, did you find anything unusual?

19 A Yes, sir. When we lifted him up to move him back, a  
20 bullet slug fell out of his clothing.

21 Q Let me show you State's Exhibit No. 15 that's in  
22 evidence now. Do you recognize that?

23 A Yes, sir, that's the round that fell out of his  
24 clothing onto the floor.

25 Q And is that near where he was?

1 A Yes, near the bathroom.

2 Q But that fell out of his clothing when you were  
3 moving him?

4 A Yes, sir.

5 Q What was done with that slug?

6 A It was collected as evidence, photographed and  
7 collected as evidence.

8 Q By --

9 A Deputy Taylor.

10 Q Deputy Taylor. What else did you do at the scene?

11 A Once we got him in there with the help and  
12 everything, I went back outside to where they were taking  
13 the photographs and starting to collect evidence. I made  
14 contact with dispatch to have any investigators that was  
15 on call notified and respond to the scene.

16 Q And was that Lieutenant Cheek?

17 A Yes.

18 Q How soon thereafter did he arrive?

19 A I don't remember. It wasn't very long.

20 Q But in the meantime, you were the senior officer on  
21 the scene; is that right?

22 A Yes, sir.

23 Q What was done with Mr. Walker during this time?

24 A He was being tended to by medical as well.

25 Q All right. What happened after that?

1 A He was transported. And that was the last I saw of  
2 him once he was transported.

3 Q Transported by?

4 A EMS.

5 Q So ambulances came?

6 A Yes, sir.

7 Q They loaded up Mr. Walker?

8 A Yes, sir.

9 Q And they took him off?

10 A Yes, sir.

11 Q Did you assume to the hospital?

12 A Yes, sir.

13 Q What was done with Mr. [REDACTED]

14 A He was transported as well. If I'm not mistaken, I  
15 think they transported him to a location. They  
16 transported him by helicopter.

17 Q Did you know at that point whether his injuries were  
18 fatal?

19 A No, sir.

20 Q Did you think they were?

21 A From what it appeared to be, yes.

22 Q What other involvement did you have there that night?

23 A Just supervising the scene and responding.

24 MR. MOWRY: Thank you, Lieutenant. That's all I  
25 have. Answer any of Mr. Richey's questions, please.

CROSS-EXAMINATION

1  
2 BY MR. RICHEY:

3 Q Sir, when you got there, you made a determination  
4 that these gentlemen shot each other? Is that the  
5 determination that you made?

6 A No, sir.

7 Q Okay. You said that Mr. [REDACTED] -- did he tell you  
8 who shot him?

9 A Yes, he did.

10 Q Who did he say shot him?

11 A He said Mr. Walker.

12 Q Mr. Walker shot him.

13 A And he was on the porch.

14 Q So you made a determination that Walker shot him.  
15 And you have no reason not to believe that, correct?

16 A That's what he said.

17 Q Okay. And you, also, know that Mr. Walker was, also,  
18 shot, too, correct?

19 A At first, I didn't notice he was shot because he said  
20 his arm was broken.

21 Q Well, did you determine he was shot?

22 A Later.

23 Q So you get there and both of these gentlemen are shot  
24 and one guy says the other one shot him, correct?

25 A Yes.

1 Q Okay. This picture -- well, let me ask you this  
2 first. From that bedroom that you went and got the gun  
3 out of, was that in the front or the back of the house?

4 A It's to the right. It was on this end of the house,  
5 the right end.

6 Q So when you come in, you've got to go this way to  
7 that bedroom down a hallway?

8 A Yes, sir -- well, it's not much of a hallway.

9 Q But you had to go down just a little bit, correct?

10 A It's closer than you and I are right now to it.

11 Q Okay. So it's about this far?

12 A It's immediate right, bathroom, then the bedroom. So  
13 it's like, actually, maybe a little closer than that.

14 Q Right here?

15 A Somewhere right in there. I didn't measure it.

16 Q Okay. And when I look at this picture up here where  
17 all these shell casings are right here, would it be  
18 reasonable to say that whatever happened, the shootings,  
19 it could have happened in this area, correct, right in  
20 here?

21 A Yes, sir.

22 Q So if I'm in this area, okay, and I leave this area  
23 and go to that bedroom, then that distance becomes a  
24 little bit farther, right?

25 A Yes, sir.

1 Q So if I'm sitting -- if I'm out there and take a gun  
2 from that area and I go to the bedroom, that's a pretty  
3 good distance -- it's a distance to go, correct?

4 A Yes, sir.

5 Q As a law enforcement officer, with you being there on  
6 the scene, you do not want anybody move any of this  
7 evidence, correct?

8 A That's correct.

9 Q If the gun's down on the ground, you want it to stay  
10 on the ground, right?

11 A Yes, sir.

12 Q Because when it stays on the ground right there, it  
13 helps y'all in determining what, actually, happened,  
14 correct?

15 A Yes, sir.

16 Q And when it's moved, it interferes with your  
17 investigative process, correct?

18 A Yes, sir.

19 Q And so what it does is it causes a lot of facts to be  
20 in doubt, correct?

21 A I assume so.

22 Q It could? It could, correct? So when that gun --  
23 when someone tells someone to move that gun, that's awful  
24 suspicious to you; isn't it?

25 A I wasn't aware anybody told anybody to move a gun.

1 Q Okay. Let me put it this way, if somebody moved that  
2 gun before you got there, that would be suspicious to you,  
3 correct?

4 A Correct.

5 Q And it would make you investigate the case in  
6 somewhat of a different manner, correct? It could affect  
7 the investigation, correct?

8 A It could affect the investigation, yes.

9 Q Okay. Looking at this picture again --  
10 MR. RICHEY: Lights, please.

11 BY MR. RICHEY:

12 Q I'm going to try to get out of your way here. When  
13 we look at this picture, is this the front door right  
14 here?

15 A Yes.

16 Q That's the front door, okay. So this is the front  
17 door and this is where all this stuff happens, correct?

18 A Yes. That's all different pieces of evidence. It's  
19 not all necessarily shell casings. It's any evidence.

20 Q Right. But it's a lot of evidence collected in that  
21 one area, correct?

22 A Yes, sir.

23 MR. RICHEY: Lights, please.

24 BY MR. RICHEY:

25 Q So when I step out the front door to that spot, I'm

1 walking probably about this distance, correct?

2 A Yes, sir.

3 Q Okay. Where did you find the gun at again?

4 A In the bedroom between the mattresses.

5 Q So it was shoved in between the mattresses?

6 A It was between the mattresses.

7 Q Whose gun was it?

8 A Mr. [REDACTED]

9 Q No doubt in your mind it was his, right?

10 A They said it was his.

11 MR. RICHEY: Thank you.

12 MR. MOWRY: Just a couple of questions, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MOWRY:

15 Q Mr. Richey asked you about the weapon, the revolver  
16 that you had spoke of. How did you become aware of this?

17 A When I asked him where his weapon was at, he told Ms.  
18 Ball to show me where it was at.

19 Q Any hesitation?

20 A No.

21 Q And just to make sure that we're aware, all of those  
22 yellow markers are not for shell casings; is that right?

23 A No, it's any evidence that was on the ground as it  
24 was being photographed.

25 Q Might be shell casings, but it could be other stuff,

1 too?

2 A Could be.

3 Q What was [REDACTED] Ball's demeanor during this time that  
4 you were with her?

5 A Hysterical.

6 Q Very upset?

7 A Very.

8 MR. MOWRY: Excuse me, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. MOWRY: Thank you, sir. That's all I have.

12 MR. RICHEY: I've just got one question.

13 RECROSS-EXAMINATION

14 BY MR. RICHEY:

15 Q When you say she was hysterical, did she know where  
16 she was, her whereabouts, and have good understanding?

17 A Yeah, she knew where she was -- well, she knew where  
18 she was and what was going on, but she was still  
19 hysterical.

20 MR. RICHEY: Thank you.

21 THE COURT: Sir, thank you. You can step down.

22 Any objection to excusing this witness at this point?

23 MR. MOWRY: No, Your Honor.

24 MR. RICHEY: No, Your Honor.

25 THE COURT: Call your next witness, Mr. Mowry.

1 MR. MOWRY: I call Steven Sweat.

2 Thereupon;

3 STEVEN SWEAT, after having  
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q You are Steven Sweat?

8 A Yes, sir.

9 Q Mr. Sweat, back in October of 2013, where were you  
10 employed?

11 A Laurens County Sheriff's Office.

12 Q And what was your position with the sheriff's office  
13 here in Laurens?

14 A Uniform patrol deputy.

15 Q Are you still with the sheriff's office?

16 A No, sir.

17 Q How recently did you leave?

18 A End of March.

19 Q Okay. So about a month ago?

20 A Yes, sir.

21 Q When you left, what was your rank?

22 A I was sergeant in the investigations division,  
23 subsection narcotics.

24 Q All right. Where have you gone for employment?

25 A BMW.

1 Q Okay. More money?

2 A Yes, sir.

3 Q But back in October of 2013, you said you worked in  
4 uniform patrol; is that right?

5 A Yes, sir.

6 Q Which shift were you on?

7 A The night shift.

8 Q With Lieutenant Crain?

9 A Yes, sir, he was my direct supervisor, assisted by  
10 Sergeant Timmons.

11 Q Sometime late that night, did you receive a call to  
12 go to [REDACTED]?

13 A Yes, sir. You're talking about Enoree?

14 Q Yes, sir.

15 A Yes, sir.

16 Q What was the gist of that call? What were you  
17 expecting to find when you got there?

18 A We had -- the call came in, I believe it was two  
19 people -- someone had been shot. I can't remember if the  
20 call came out as one person or two people. But myself and  
21 other units responded there.

22 Once we arrived, we found an individual by the name  
23 of David Walker on the front porch, who had an apparent  
24 gunshot wound. Where exactly on him, I can't remember off  
25 the top of my head. But we got the scene cleared. We

1 were let in the house by a female, I want to say her last  
2 name was Ball.

3 Q [REDACTED] Ball?

4 A Yes, sir.

5 Q All right.

6 A She let us in and we found the homeowner, Mr. [REDACTED]  
7 or [REDACTED] I think it was Johnny. He was just inside the  
8 doorway laying up against the wall. It was a single-wide  
9 trailer. And this door would regularly be the back door  
10 on any residence, but it was situated as the front on this  
11 one. We went right into the hall and he was laid up in  
12 there. And he had a gunshot wound, I think to his -- I  
13 can't remember which side it was on, but it was his upper  
14 body. I'll have to reference my report.

15 Q Feel free to do so.

16 A He was laying on the floor. He was shot in the right  
17 side of his neck and shoulder. We got the area secured,  
18 got crime scene tape up, got EMS in there. And we spoke  
19 with Ms. Ball, interviewed her briefly. She told us that  
20 the guy on the front porch was the one who she thought had  
21 shot Mr. [REDACTED] shot back at the man. We were  
22 able to locate a firearm that was under the master bedroom  
23 bed. We tried to speak to Mr. Walker, but he would only  
24 tell us his arm was broke.

25 Q Let me ask you this before we go on.

1 A Yes, sir.

2 Q Let me show you State's Exhibit No. 25. Does that  
3 appear to be the gun?

4 A The one in the master bedroom?

5 Q Yes.

6 A Yes, sir.

7 Q And who took this gun into custody or into  
8 possession?

9 A I want to say Lieutenant Crain went in there, off the  
10 top of my head. I know Deputy Taylor collected a lot of  
11 the evidence, but I believe while me and him were in the  
12 process of doing that in the yard, Lieutenant Crain was  
13 able to get that out of the house. But, ultimately, it  
14 ended up in Deputy Taylor's control and went back to the  
15 office to be processed -- or put into evidence.

16 Q So Deputy Taylor was the one that was taking control  
17 of the evidence as it was found; is that right?

18 A Yes, sir.

19 Q How do you go about documenting a scene?

20 A Pretty much, once we get everything secured and  
21 render aid and whatnot, we'll start going around and  
22 finding items that we think might be of evidentiary  
23 importance. Once that -- once one is found, we'll start  
24 making its location with the scene markers on the screen  
25 there. The total amount of evidentiary items that were

1 on-scene, I can't remember. Again, I've got it documented  
2 in here. I typed the report and he handled the evidence.  
3 But there was a good bit outside and a couple things  
4 inside.

5 Q Okay. I'm going to hand you a series of pictures.

6 MR. MOWRY: And for the record, Your Honor, State's  
7 Exhibit 6, 8, 9, 10, 13 and 16.

8 BY MR. MOWRY:

9 Q I'd ask you to go through those and just tell me if  
10 you can identify those pictures?

11 A That's going to be one of the shell casings --

12 Q You don't need to describe it at this point, but just  
13 tell me whether or not you recognize the subjects of those  
14 photos.

15 A Yes, sir.

16 Q In general, what are those, sir?

17 A You've got a shell casing --

18 Q Well, I mean, what -- in general, what do those  
19 pictures depict? What do they show?

20 A The things on the ground outside the residence.

21 Q The evidence outside?

22 A Yes, sir.

23 Q Referring back to State's Exhibit No. 12, would those  
24 markers indicate where these various pieces of evidence  
25 were that you just described?

1 A Yes, sir.

2 MR. MOWRY: Your Honor, I would move the pictures  
3 that I just listed, 6, 8, 9, 10, 13 and 16, into evidence  
4 at this time.

5 MR. RICHEY: No objection.

6 THE COURT: Without objection, those are in evidence.

7 (WHEREUPON, State's Exhibit Nos. 6, 8, 9, 10, 13  
8 and 16 were admitted into evidence.)

9 BY MR. MOWRY:

10 Q Deputy Sweat, let me ask you, specifically, about No.  
11 16. What is that?

12 A It's a shell casing for a firearm.

13 Q Do you recall what kind of shell casing it was?

14 A 380.

15 Q Okay. Who put down all the markers; do you remember?

16 A I did.

17 Q You did?

18 A Yes, sir.

19 Q Who photographed them?

20 A I did.

21 Q You did?

22 A Yes, sir.

23 Q And Deputy Taylor's function was to do what?

24 A Collect.

25 Q Let me show you State's Exhibit No. 13. It says

1 evidence marker number nine. What is that?

2 A It appears to be a chain necklace, silver.

3 Q Let me show you what's already been marked as State's  
4 Exhibit No. 19 and ask you if you recognize the contents  
5 of that bag?

6 A That's it.

7 Q That's the chain?

8 A Oh, yeah.

9 Q That's shown in picture No. 13; is that right?

10 A It doesn't have a pendant, correct?

11 Q It does not. Speaking of which, let me show you a  
12 couple of pictures, this is No. 6 and No. 8. Can you  
13 identify those?

14 A It appears to be the pendant --

15 Q And --

16 A -- of Jesus Christ on a cross.

17 Q So it's a crucifix?

18 A Yes.

19 Q Let me show you then now State's Exhibit No. 18 and  
20 ask you if you can identify that?

21 A That's it.

22 Q That's the one that you found?

23 A Yes, sir.

24 Q And who took that into possession?

25 A Yeah, it's going to be Deputy Taylor.

1 Q But this is what you found; is that right?

2 A Yes, sir.

3 Q In that scene up there?

4 A Yes, sir. It should be marked as item number one up  
5 there on the screen.

6 MR. MOWRY: Your Honor, I would move the chain and  
7 the pendant into evidence at this time. That's State's  
8 Exhibit Nos. 18 and 19.

9 MR. RICHEY: No objection.

10 THE COURT: Without objection, State's Exhibit Nos.  
11 18 and 19 are now in evidence.

12 (WHEREUPON, State's Exhibit Nos. 18 and 19 were  
13 admitted into evidence.)

14 BY MR. MOWRY:

15 Q I want to show you, also, State's Exhibit No. 10. Do  
16 you recognize that?

17 A That's the shell casing.

18 Q And what caliber shell casing was that?

19 A 380.

20 Q Let me show you this photograph, State's Exhibit No.  
21 9, and ask you if you recognize that?

22 A Absolutely, yes, sir.

23 Q What is that, please, sir?

24 A Lorcin handgun, 380.

25 Q Where was that found?

1 A Outside on the ground. And it was -- just a moment  
2 and I'll tell you which marker it was under.

3 Q Detective -- or excuse me, Mr. Sweat --

4 A Here it is. It's listed as item number 15.

5 Q But it's all in that same area; is that right?

6 A Yes, sir.

7 Q Let me show you now what has been marked as State's  
8 Exhibit No. 26. Do you recognize that?

9 A Yes, sir.

10 Q What is that, please, sir?

11 A Revolver.

12 Q Is that the same weapon that's depicted in No. 9?

13 A Yes, sir.

14 Q This is the handgun that you're talking about; is  
15 that right?

16 A Yes, sir.

17 Q What is the constitution of the driveway? What kind  
18 of material did it have in it?

19 A Some type of mulch, dirt, maybe a little rock here  
20 and there and whatnot, but, mainly, what you see on the  
21 screen.

22 Q But that's the condition you found it in; is that  
23 right?

24 A Yes, sir. It was right there beside the SUV,  
25 Chevrolet SUV shown in the picture.

1 Q Okay. Thank you, sir.

2 MR. MOWRY: I believe that's all I have, Your Honor.

3 THE COURT: Cross?

4 MR. RICHEY: Yes, Your Honor. Thank you.

5 CROSS-EXAMINATION

6 BY MR. RICHEY:

7 Q Officer, I think you said in your report that Ms.  
8 Ball told you she saw the victim get shot at, she saw him  
9 shoot back; is that correct?

10 A You're talking about Mr. [REDACTED] shoot Mr. Walker?

11 Q Mr. Walker shoot at Mr. [REDACTED]

12 A Yes.

13 Q Ms. Ball told you she, actually, saw that?

14 A I think she said she believed -- again, give me a  
15 second to reference it. It's been several years.

16 Q Okay.

17 A Ms. Ball advises that she thought the individual we  
18 found on the porch -- which was Mr. Walker, she advised  
19 she thought the individual we found on the porch had tried  
20 to rob [REDACTED] after she and [REDACTED] got back at the  
21 residence that was shown above -- or on the screen. And  
22 she states [REDACTED] shot back at the man who had tried to  
23 rob him. And the gun that [REDACTED] used was in the bedroom.

24 Q You saw David Walker on the swing on the porch?

25 A Yes, sir.

1 Q You saw him sitting there, correct?

2 A Correct.

3 Q Okay. Let me put this other up beside it. Okay.  
4 Officer, you see the picture on the left is where the gun  
5 was found, correct?

6 A Yes, sir.

7 Q You see the picture on the right is where these  
8 evidence markers are, correct?

9 A Yes, sir.

10 Q Was that gun found where these markers were?

11 A Where evidence marker 15 was, it was off to the side  
12 of that SUV up there.

13 Q Is it up towards this way?

14 A No, it's towards the driver's side rear. So it's  
15 going to be probably -- I want to say it's going to be in  
16 the foreground outside that shot, but off the top of my  
17 head -- it was found more towards this direction away from  
18 the porch, yes, sir.

19 Q It was found out there and that was the condition --  
20 when y'all got to the scene, that's what y'all saw, that  
21 gun sitting there?

22 A Yes.

23 Q Hadn't been moved?

24 A No, sir.

25 Q And that would be consistent with the story that this

1 gentlemen, Mr. Walker, was shot and the gun came out his  
2 hands? Would that be a consistent story?

3 A I can't speculate. I didn't investigate, I just took  
4 what was on scene. But, I mean, it's a possibility.  
5 Again, I was a responding officer. I cleared, I collected  
6 evidence, I found evidence, and I photographed.

7 Q Well, you would agree if this is his gun -- this is  
8 his gun, correct, and it's on the ground. And he's in the  
9 swing. He's been separated from that gun, correct?

10 A Oh, that gun was a long way from where we found Mr.  
11 Walker.

12 Q Yeah. When you say a long way, is it from me to you?

13 A In that picture -- I'd say a lot farther than that.  
14 In that picture, you've got a full-sized Chevrolet, I  
15 think it's a Tahoe --

16 Q Hold on a second. Okay.

17 A It looks like a Tahoe. You've got a full-sized Tahoe  
18 sitting there in the yard. It's going to be several feet  
19 along -- about maybe -- I don't know, 10 feet, maybe. And  
20 it's not particularly close to the porch. And you can see  
21 the overhang of that porch right there.

22 Q Right.

23 A Now, the swing on that porch is on the very far side  
24 away from it away from us.

25 Q So this side?

1 A Yeah.

2 Q Okay.

3 A And you go back towards the house a little bit,  
4 that's where the swing was. That's where we found Walker.

5 Q Right.

6 A And the gun was clear back over here, kind of, like I  
7 said, towards the back of that SUV right there.

8 Q It was toward back here?

9 A Yeah. Probably a little closer towards the --

10 Q The door?

11 A -- camera. Toward where the photograph was taken  
12 from, yes, sir.

13 Q Okay. And --

14 A Back towards us.

15 Q I'm sorry?

16 A Back towards where the shot was taken from.

17 Q Okay. And this SUV, this is an older model car; is  
18 that correct?

19 A Yes, sir, I'd say so. It's going to be a late 90's  
20 model, probably.

21 Q But has it been kind of, I use the phrase tricked up  
22 some?

23 A It's been customized.

24 Q And that customization is consistent with someone who  
25 sells drugs? You typically see that?

1 MR. MOWRY: Your Honor, I would object to that  
2 question.

3 THE COURT: I'll sustain that. It calls for  
4 speculation. I think the point is made.

5 Go ahead.

6 BY MR. RICHEY:

7 Q You said the distance from the front porch to this  
8 spot right here, you said that was a good amount of  
9 distance?

10 A We're inside, but if I were going to estimate the  
11 distance, I'd say from where Walker was to where that gun  
12 was would be about from the back courtroom door to where  
13 Mr. -- maybe a little bit -- about where the front of the  
14 table is in front of where Mr. Mowry is sitting.

15 Q I'm sorry, I didn't understand. Maybe that's my  
16 fault.

17 A The front of the table -- pretty much my side of the  
18 table right there to that door, maybe just a little bit  
19 farther. And we're inside, so that changes things.

20 Q Okay. Okay. Okay.

21 MR. RICHEY: Thank you, sir. No further questions.

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

23 Call your next witness, Mr. Mowry.

24 MR. MOWRY: I call Mr. Taylor.

25 THE COURT: And you're free to go, sir. Thank you.

1 Thereupon;

2 JAMISON TAYLOR, after having  
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MOWRY:

6 Q You are Jamison Taylor?

7 A Yes, sir.

8 Q And I see you're wearing your uniform, who are you  
9 employed by?

10 A I'm currently employed by the Union County Sheriff's  
11 Office.

12 Q Back in October of 2013, who were you employed by?

13 A Laurens County Sheriff's Office.

14 Q What were your duties with the sheriff's office?

15 A In 2013, when I worked at the Laurens Sheriff's  
16 Office, I was assigned to the uniform patrol division to  
17 respond to calls for service from citizens or visitors of  
18 the county.

19 Q Okay. And were you employed in that capacity back on  
20 the 31st of October going into the 1st of November?

21 A Yes, sir.

22 Q What shift were you working that night?

23 A It was night shift.

24 Q Were you on the same shift with Lieutenant Crain and  
25 Sergeant Sweat?

1 A I was.

2 Q Long about midnight during your shift, did you  
3 receive a communication?

4 A We did in regards to a possible shooting event in the  
5 Enoree area of Laurens County.

6 Q Okay. And in response to that call, what did you do?

7 A I responded from the area I was assigned, which was  
8 the eastern end, for assistance with other deputies to  
9 this call in the kind of northeastern end of the county.

10 Q Okay. What did you find when you got there?

11 A Found, pretty much, I guess you would say, mass  
12 confusion because everything -- I believe we found the  
13 victim in this case when the report was done to be shot, I  
14 believe it was on the front porch, if I remember  
15 correctly.

16 Q Did you find two people that were shot?

17 A I don't recall. I do remember the one.

18 Q What was your assignment -- who made your assignment,  
19 let me ask you that?

20 A Pretty much, we just kind of got together and started  
21 working everything to get the scene secured, getting it  
22 roped off with crime scene tape that we're provided by the  
23 sheriff's office with, locating any evidence out in the  
24 yard that may be potential to the call. I do remember we  
25 found a pistol out in the yard by a vehicle.

1 Q Let me just stop you there and show you State's  
2 Exhibit No. 9. Do you recognize that?

3 A Yes, sir, this is a pistol that was found out in the  
4 yard by, I believe, an SUV or pickup, something like that  
5 in the yard.

6 Q And did you take possession of that gun?

7 A I did, after we photographed it.

8 Q And you, in fact, took the photographs; is that  
9 right?

10 A Yes, sir.

11 Q So that photograph was taken by you. And let me show  
12 you State's Exhibit No. 26. Do you recognize that?

13 A Yes, sir, same weapon as in the picture.

14 Q And did you take that into possession as well?

15 A Yes, sir.

16 Q Very good.

17 MR. MOWRY: I would offer State's Exhibit No. 26 into  
18 evidence at this time, Your Honor.

19 MR. RICHEY: No objection.

20 THE COURT: State's 26 is in evidence.

21 (WHEREUPON, State's Exhibit No. 26 was admitted  
22 into evidence.)

23 BY MR. MOWRY:

24 Q Do you have a list of the items that you collected?

25 A Yes, sir. It was, actually, loaded in as a report.

1 It was a chrome in color Lorcin 380 semi-automatic  
2 handgun.

3 Q And that is State's Exhibit No. 26; is that right?

4 A Yes, sir.

5 Q What else?

6 A We located two spent 380 caliber shell casings in the  
7 yard as well.

8 Q All right. And let me show you State's Exhibit No.  
9 29, two packets there. Do you recognize that?

10 A Yes, sir. They're going to be the spent shell  
11 casings that were found in the yard, recovered by me.

12 Q Okay. And let me show you State's Exhibit -- excuse  
13 me, not 29, I apologize. It's 21. And let me show you  
14 State's Exhibit No. 20 as well and ask you if you can  
15 identify that?

16 A There was, also, a -- what we call a lead slug, the  
17 top one, and then another spent shell casing that was  
18 located at the same road.

19 Q Do you recall where you found these, the lead slug  
20 that you referred to, regarding State's Exhibit No. 20?

21 A If I'm permitted to review over the report?

22 Q Yes. Deputy Taylor, let me show you State's Exhibit  
23 No. 15 and ask you if that would help at all?

24 A That does. That was, actually, I believe, just  
25 inside the residence on the floor.

1 Q So on the threshold of the trailer?

2 A Yes, sir.

3 Q And that was on the floor. You collected that as  
4 well; is that right?

5 A Yes, sir.

6 Q And is that the lead slug that you referred to in  
7 State's Exhibit No. 20?

8 A Yes, sir.

9 Q What else did you find?

10 A Also, was find a yellow in color necklace with a gold  
11 pendant, was found on the ground around the front bumper  
12 of the vehicle that was parked in the yard.

13 Q And did you take that into possession?

14 A Yes, sir.

15 Q That's State's Exhibit No. 19. Let me hand you that,  
16 is that the item you're talking about, the chain?

17 A Yes, sir.

18 Q And, also, State's Exhibit No. 18, did you take that  
19 into possession?

20 A Yes, sir.

21 Q And what is No. 18, please, sir?

22 A That's going to be the crucifix charm.

23 Q Okay. Were all these pretty much found in the same  
24 area?

25 A Yes, sir.

1 Q Let me refer you now to State's Exhibit No. 14. Do  
2 you recognize that?

3 A Yes, sir, that was the revolver that was found inside  
4 the residence. I believe it was located by Lieutenant  
5 Crain under the mattresses in the victim's bedroom.

6 Q Let me hand you now State's Exhibit No. 25 and ask  
7 you if you can identify that?

8 A Yes, sir, that's the weapon that's in that picture.

9 Q Did you check the cylinder of the weapon for any kind  
10 of ammunition?

11 A I believe Lieutenant Crain might have whenever he  
12 recovered it to make it safe to be placed into evidence.  
13 It's part of our policy.

14 Q And I want to hand you State's Exhibit No. 23. Do  
15 you recognize that?

16 A That would be the rounds that came out of that weapon  
17 along with spent casings.

18 Q Describe what we had in there.

19 A It was pretty much two, what we call, live rounds,  
20 which are bullets ready to fire. Of course, a revolver  
21 doesn't eject them like a semi-automatic, so it would hold  
22 all the casings in there. We found the two live rounds  
23 along with two spent rounds, which are empty, that have  
24 been fired.

25 Q And how many shots does this revolver hold?

1 A Five.

2 Q So there was one empty --

3 A One empty --

4 Q -- slot?

5 A -- slot, chamber.

6 Q Is that common?

7 A It can be. Some owners in my time in law enforcement  
8 will have one that will be empty to use it as a safety.  
9 Because on a revolver -- there are safety measures you can  
10 do with it, but a lot of people will have an empty  
11 chamber.

12 Q Rather than accidentally flipping the hammer back and  
13 having a round go off, you've got an empty spot in the  
14 cylinder; is that right?

15 A If it goes in a clock-wise motion, they'll usually  
16 have the next -- they'll have one loaded and when you cock  
17 the weapon back it will be on an empty cylinder so it  
18 doesn't accidentally go off in their pocket or something  
19 like that.

20 Q Got you. And these were the shell casings that were  
21 retrieved from this gun; is that right?

22 A Yes, sir.

23 Q That's your handwriting?

24 A Yes, sir.

25 MR. MOWRY: I would offer this as State's Exhibit No.

1 23, Your Honor.

2 MR. RICHEY: No objection.

3 THE COURT: Without objection, 23 is in.

4 (WHEREUPON, State's Exhibit No. 23 was admitted  
5 into evidence.)

6 MR. MOWRY: Beg the Court's indulgence one more  
7 moment.

8 THE COURT: Yes, sir.

9 MR. MOWRY: Your Honor, before Deputy Taylor steps  
10 down, I would offer State's Exhibit No. 25 and No. 14 into  
11 evidence.

12 THE COURT: Those are already in.

13 MR. MOWRY: Good. I just wanted to make sure.

14 THE COURT: They're in evidence without objection in  
15 case I misstated.

16 (WHEREUPON, State's Exhibit No. 25 was admitted  
17 into evidence.)

18 MR. MOWRY: I believe that's all I have, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. RICHEY:

21 Q You, basically, collected this evidence, correct?

22 A Yes, sir.

23 Q I'll ask you about a statement you put in your  
24 report. You stated Ms. Ball, who was at the house, saw  
25 Mr. [REDACTED] shoot back at the man; is that correct?

1 A Mind if I review over that part?

2 Q Yes. It's on the front page?

3 A You said it's on the front page?

4 Q Front page about three lines up to the right.

5 A What was your question again? I'm sorry.

6 Q Okay. This is on the first page, She states [REDACTED]

7 shot back at the man who tried to rob him?

8 A Yes, sir.

9 Q So she told you that he shot back at the man,  
10 correct?

11 A Yes, sir.

12 Q And that she saw it?

13 A Yes, sir.

14 MR. RICHEY: Okay. Thank you, sir.

15 REDIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q Let's make sure we've got what we're referencing  
18 here. Your report says that she thought the individual we  
19 found on the porch had tried to rob [REDACTED] after she and  
20 [REDACTED] had arrived back at the above location from the  
21 Waffle House?

22 A Yes, sir.

23 Q The next thing says "she states", but doesn't "she  
24 thought" refer to that as well?

25 MR. RICHEY: I'm going to object to that.

1 MR. MOWRY: Your Honor, he asked the question. He  
2 opened the door. I'm trying to clarify it.

3 THE COURT: Let's handle it this way. Ask the  
4 witness what he meant by those two sentences.

5 BY MR. MOWRY:

6 Q Let me ask you this, are those two sentences  
7 connected?

8 A Yes, sir, they would be.

9 Q So do you know whether she definitively saw that or  
10 whether she is reporting what she thinks?

11 A More than likely reporting what she thinks.

12 Q All right. Thank you, sir. And you weren't there;  
13 is that right?

14 A No, sir, we didn't get there until after the fact.

15 MR. MOWRY: Okay. That's all. Thank you.

16 RE CROSS EXAMINATION

17 BY MR. RICHEY:

18 Q Again, this states very clearly "she states". When  
19 this says "she states", that means she said it, correct?

20 A Yes, sir.

21 Q So when she said "she states", that's implying that  
22 you are talking to her, right?

23 A Yes, sir.

24 Q And she states, as this says, that she saw him shoot,  
25 correct?

1 MR. MOWRY: Your Honor, that's a mischaracterization  
2 and I think it's asked and answered as well.

3 THE COURT: We're going around and around. I think  
4 the point has been made by everybody. So we're good.

5 MR. MOWRY: May I just ask one last question on how  
6 this report came to be?

7 THE COURT: We're good.

8 Sir, you can step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Mr. Mowry, call your next witness,  
11 please, sir.

12 MR. NEELY: The State would call Andrew Ashley.

13 Thereupon;

14 ANDREW ASHLEY, after having  
15 been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. NEELY:

18 Q Mr. Ashley, if you would, would you state your name  
19 and spell it for the record?

20 A Andrew Ashley, A-N-D-R-E-W, A-S-H-L-E-Y.

21 Q And where do you currently work?

22 A Laurens City Police Department.

23 Q And where were you working on October 31st, 2013?

24 A Laurens City Police Department.

25 Q Do you recall what you were doing that night?

1 A Vaguely remember, but I know I was going to a welfare  
2 check on a subject that we received a call about. I  
3 believe they were towards Enoree or somewhere like that,  
4 Gray Court area.

5 Q Did that have anything to do with the shooting?

6 A Nothing at all.

7 Q Okay. So while you were out on a welfare check, did  
8 you receive a description of a vehicle suspected to be  
9 involved in a shooting?

10 A I did.

11 Q And what was that description?

12 A Older model blue car, dark blue car. I can't recall  
13 if it was specific, like what model. I just know it was  
14 an older box-style is what we were told.

15 Q Okay. And can you come down off the stand?

16 A (The witness complied.)

17 Q And did you see a vehicle that was matching that  
18 description?

19 A I did.

20 Q I'm going to have you just place a blue star where  
21 you saw that vehicle.

22 A (The witness complied.)

23 Q And this is State's Exhibit 1, a map of Laurens  
24 County.

25 A I can't recall exactly, but I know we were close to

1 the Laurens County line near 101, somewhere around in  
2 here.

3 Q So that's not the exact location, but approximate?

4 A Approximate location.

5 Q And when you saw the vehicle that you believed  
6 matched that description, what did you do then?

7 A It passed me heading south onto Highway 101 North. I  
8 was headed north. Like I said, I was lost. I'm not  
9 familiar with the areas as much as I should be. I'm a  
10 city officer.

11 Q I'm going to ask you to sit back down with the  
12 microphone because it's hard for the court reporter to  
13 hear you right now.

14 A Okay. As I was saying, I'm a city officer, so I'm  
15 not as familiar with the county as I should be. At that  
16 time, I was lost. I observed a vehicle matching the  
17 description pass me headed south on 101 North and I was  
18 headed north.

19 Q So what did you do then?

20 A I turned around and tried to observe the vehicle that  
21 I believed matched the description. And I began following  
22 it as I called the tag number into our dispatch.

23 Q So you thought it matched the description well enough  
24 that you pulled a U-turn?

25 A I did.

1 Q And once you were following the vehicle, you called  
2 in the license plate number?

3 A I did.

4 Q Could you tell how many people were in that vehicle?

5 A I could not.

6 Q And why not?

7 A The tint on the windows was very dark, very hard to  
8 see into, especially it being dark outside as well.

9 Q So while you were following that vehicle, did you  
10 notice anything you thought suspicious about the driving  
11 pattern?

12 A Not at first.

13 Q Not at first?

14 A Not until we got into the city limits of Gray Court.

15 Q And once you got into the city limits of Gray Court,  
16 I'm going to have you trace the route you followed that  
17 car on on this map right here.

18 A Okay.

19 Q I'll have you come down here.

20 THE COURT: And Mr. Ashley, speak as loudly as you  
21 can.

22 THE WITNESS: Yes, sir.

23 THE COURT: I know you're soft-spoken. Try and  
24 project your voice as best you can, sir.

25 BY MR. NEELY:

1 Q I'm going to have you mark down on -- this is State's  
2 Exhibit No. 4. I'll hand you this Sharpie. If you would,  
3 just outline the route that you followed that vehicle.

4 A It's my understanding 101 comes in somewhere along in  
5 here. We then took a right turn -- I'm sorry. We took a  
6 right turn off of 101 that comes in right about here onto  
7 Highway 14. We followed Highway 14 to Rock Street, made a  
8 left, took another right here and followed it all the way  
9 -- made another left-hand turn onto 101 South. At that  
10 time, I was a little ways behind. I observed the vehicle  
11 make a left here. As I made the turn, I was somewhere  
12 along in here as I observed the vehicle turn, take another  
13 right on Goose Way.

14 Q Did you see where the vehicle went down after it made  
15 that right-hand turn on Goose Way?

16 A I did not.

17 Q And why not?

18 A At the time, my supervisor was a -- he had worked for  
19 Laurens County and was familiar with the area. And he  
20 told me that that area was a dead-end and he did not want  
21 me going any further due to I might be ambushed or  
22 something like that if that was, in fact, the vehicle in  
23 question.

24 Q And because those roads that follow down Goose Way is  
25 a dead-end, what did you do?

1 A I had already been on dispatch talking back and forth  
2 with the county. Without losing sight of Goose Way, I  
3 pulled back up somewhere around in here and I met with  
4 Deputy McMahan since he was so close.

5 Q Do you recall how long it took Deputy McMahan to get  
6 there?

7 A Less than five minutes. A very short period of time.  
8 Probably less than three.

9 Q And you said you stayed in view of the Goose Way  
10 entrance. Why did you do that?

11 A Knowing -- having that knowledge that it was, in  
12 fact, a dead-end, there's only one way in and one way out.  
13 I wanted to make sure if that vehicle had exited again I  
14 would have eyes on it as it exited.

15 Q And if you would, just put a little "X" where you  
16 stayed to watch that entrance.

17 A I want to say it was somewhere right in here. I  
18 believe I was between the school somewhere along in here.

19 Q And after Deputy McMahan got there, what did y'all  
20 then do?

21 A I seen him coming. I was backed into -- I can't  
22 remember what address it was. I believe it was 138 here.  
23 I was backed into a residence. I then turned and met him  
24 somewhere along in the school and I told him what I  
25 observed. And I followed him down to try to locate the

1 vehicle where it turned onto Goose Way.

2 Q So after back-up arrived and you went down to locate  
3 the vehicle, did y'all then locate a vehicle?

4 A Deputy McMahan did.

5 Q And after he located the vehicle, did he call you?

6 A He did.

7 Q And did you go to him?

8 A I did.

9 Q And when you got to the residence -- which residence  
10 was it?

11 A 76 Jones Hill here at the end.

12 Q And was the vehicle in the driveway?

13 A It was.

14 Q And did it match the description?

15 A It did match the description, having the same tag  
16 that I ran whenever we was on Highway 101.

17 Q And after you located the vehicle, what did you then  
18 do?

19 A Since I was out of my jurisdictional boundaries, I  
20 was just assisting Deputy McMahan. He walked up to the  
21 front door, knocked and spoke with a female there and  
22 inquired about the vehicle in the yard.

23 Q Okay. And after he inquired about the vehicle in the  
24 yard, what happened then?

25 A She advised us that the vehicle belonged to her

1 boyfriend and we asked if we could speak with him.

2 Q And who was her boyfriend?

3 A Christopher Wells. I want to make sure that's  
4 correct on my paper, incident report. Christopher Wells,  
5 date of birth of [REDACTED] is the information I wrote  
6 down.

7 Q And what was his height and weight at the time?

8 A I have in my report 5'10", 235 pounds.

9 Q Okay. So after you located Mr. Wells, what did y'all  
10 then do?

11 A Deputy McMahan spoke with him, inquired about a  
12 search of the vehicle, which was allowed. And --

13 Q Stop right there. When you say that was allowed,  
14 what do you mean by that?

15 A We asked Mr. Wells if we could search his vehicle and  
16 he advised us that we could, indeed, search the vehicle.

17 Q And did you find anything in the vehicle?

18 A The only thing that we found inside the vehicle that  
19 I observed was a CD case that contained CDs.

20 Q So nothing of evidentiary value?

21 A No.

22 THE COURT: Is he done with the chart? Can he go  
23 ahead and sit down?

24 (WHEREUPON, the witness retook the stand.)

25 BY MR. NEELY:

1 Q Deputy Ashley, let me just ask you, is this map a  
2 fair and accurate representation of the roads in Gray  
3 Court that you drove down?

4 A Yes, sir, it is.

5 MR. NEELY: Your Honor, at this point, I'd like to  
6 introduce State's Exhibit No. 4 into evidence.

7 MR. RICHEY: No objection.

8 THE COURT: Without objection, State's 4 is in  
9 evidence.

10 (WHEREUPON, State's Exhibit No. 4 was admitted  
11 into evidence.)

12 MR. NEELY: And I would, also, like to introduce  
13 State's Exhibit No. 1.

14 BY MR. NEELY:

15 Q Is this a fair and accurate representation of Laurens  
16 County?

17 A Yes, sir.

18 THE COURT: No objection to the map?

19 MR. RICHEY: None, Your Honor.

20 THE COURT: State's 1 is in as well.

21 (WHEREUPON, State's Exhibit No. 1 was admitted  
22 into evidence.)

23 BY MR. NEELY:

24 Q Deputy, I just want to hand you what's been marked as  
25 State's Exhibit Nos. 28, 29 and 30. If you can look at

1 those. Do you recognize those pictures?

2 A That looks very similar to the vehicle.

3 Q What doesn't look similar about the vehicle?

4 A The paint scheme. It's a different color than it was  
5 that evening.

6 Q So when you saw it, what color was it?

7 A Dark blue.

8 Q Dark blue, okay.

9 MR. NEELY: That's all I have of this witness.

10 If you would, answer any questions Mr. Richey has for  
11 you.

12 CROSS-EXAMINATION

13 BY MR. RICHEY:

14 Q You followed this car from here -- so this incident  
15 location would be somewhere back here, correct?

16 A Yes, sir.

17 Q So you picked it up and you followed this car all the  
18 way. You watched what it did, right?

19 A Yes, sir.

20 Q And did this car stop anywhere?

21 A Not that I could observe.

22 Q And you were following it pretty closely, correct?

23 A No, sir.

24 Q Did you follow it close enough to see it make this  
25 path?

1 A Yes, sir, I did.

2 Q Did you follow it close enough to see if the car  
3 stopped for a long period of time?

4 A Yes, sir, I would have noticed if it stopped for a  
5 long period of time.

6 Q Okay. So, basically, this car was continuously  
7 moving, correct?

8 A I can't say definitely that it was continuously  
9 moving. I was, at some points, several hundreds behind  
10 it, so if it was stopped -- if you go down here where  
11 Pleasant View is, the roads tend to dip and come back up a  
12 little bit where you can still see the entrance of Goose  
13 Way. If it had stopped -- like I said, I was trying to  
14 keep a good distance between the vehicles.

15 Q Okay. When you're keeping this good distance, you  
16 still can see the vehicle pretty good? You can't see it  
17 great, but you can see it out in front of you?

18 A Yes, sir.

19 Q And if this vehicle had stopped and let somebody out,  
20 you would have saw that, correct?

21 A More than likely, yes.

22 Q So more than likely -- well, you got down here to Mr.  
23 Wells's house, correct?

24 A Yes, sir.

25 Q Did you notice any other men there or was it just him

1 and the girlfriend?

2 A Yes, sir, as far as my knowledge.

3 Q So based off your investigation, it would be more  
4 likely that Mr. Wells was driving this car, correct?

5 A Yes, sir.

6 Q And that he was not in the back seat, correct?

7 A I can't say definitively due to I couldn't see inside  
8 the vehicle on who was inside the vehicle.

9 Q But when you got down there, Wells was in the house  
10 with the girlfriend, correct?

11 A Yes, sir.

12 Q And when you got there and you knocked on the door  
13 and you spoke to Mr. Wells, he was cooperative with you,  
14 correct?

15 A Yes, sir.

16 Q He wasn't stand-offish, correct?

17 A Not to my knowledge.

18 Q And he was relatively pleasant, correct?

19 A To my knowledge, he was. I did not speak with him as  
20 much as Deputy McMahan did.

21 Q If he hadn't been -- well, at some point, you all  
22 were advised that the vehicle did not match -- did not  
23 possibly match the description; is that correct? Dispatch  
24 advised y'all at one point that the vehicle was the wrong  
25 color and that Christopher was not involved; do you

1 remember that from dispatch?

2 A No, sir, I don't.

3 Q Were you there with Officer McMahan?

4 A Yes, sir, I was.

5 Q And y'all sat there together, correct? Not standing,  
6 correct?

7 A We were there at the same incident location. We may  
8 not have been standing right beside each other, but we  
9 were at the same incident location.

10 Q But you were involved at this point? You weren't  
11 involved because it was your jurisdiction, you were  
12 involved because you happened to follow the car, correct?

13 A Yes, sir.

14 Q And you were just there for that purpose. And what  
15 color was the car?

16 A Dark blue.

17 Q It was blue, okay. And it wasn't brown, correct?

18 A No, sir.

19 Q And it wasn't gray?

20 A Not that I recall.

21 Q It was blue. And you were right behind it, correct?

22 A Yes, sir, I followed it for a good ways.

23 Q So if someone said that car was brown, that wouldn't  
24 be the truth, correct?

25 A Yes, sir, it wouldn't be the truth.

1 Q If they said it was gray, that wouldn't be the truth  
2 either, would it?

3 A According to my report, it would not.

4 MR. RICHEY: Thank you, sir.

5 MR. NEELY: Just a couple redirect questions, Your  
6 Honor.

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. NEELY:

10 Q Were you or Deputy McMahan allowed in the house?

11 A No, sir.

12 Q So you didn't go in the house?

13 A No, sir.

14 Q Could there have been somebody else in the house?

15 A Possibly.

16 Q Would you have known if there was?

17 A No, sir.

18 Q And you said there was about five minutes that you  
19 waited for Deputy McMahan?

20 A Yes, sir.

21 Q Could somebody have gotten out of the vehicle after  
22 he turned on Goose Creek Road?

23 A Absolutely.

24 Q Could somebody have left a vehicle at that location?

25 A Possibly.

1 Q And would you have seen it?

2 A No, sir.

3 Q And we have a lot of trees right here at this  
4 intersection. When you made this left turn onto Pleasant  
5 View Drive, did you lose sight of the vehicle for a  
6 second?

7 A I did.

8 Q About how far behind were you following?

9 A It's hard to say. I was possibly a quarter of a  
10 mile.

11 Q But it would be fair to say that you lost sight when  
12 it made that direct turn?

13 A Yes, sir. I know for a fact I lost sight of that  
14 vehicle when it made the turn. I lost sight of it as it  
15 made the turn onto 101 South.

16 Q So whenever you had trees in the way of a turn, you  
17 couldn't see it after it made the turn?

18 A Yes, sir.

19 Q And is the route that this vehicle took to that  
20 location the most direct route?

21 A No, sir, it's not.

22 MR. NEELY: Thank you. That's all the questions I  
23 have.

24 MR. RICHEY: No questions.

25 THE COURT: Thank you, sir. You may step down.

1 MR. NEELY: The State would call Deputy McMahan.  
2 And Judge, may we have Mr. Ashley excused as well?

3 MR. RICHEY: No objection.

4 THE COURT: Certainly.

5 Thank you for coming, sir.

6 Thereupon;

7 JEREMY MCMAHAN, after having  
8 been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NEELY:

11 Q Deputy McMahan, if you would, would you spell and  
12 state your name for the record?

13 A Yes, sir. It's Jeremy McMahan. First name,  
14 J-E-R-E-M-Y, last name McMahan, M-C-M-A-H-A-N.

15 Q And where do you currently work?

16 A Laurens County Sheriff's Office.

17 Q And where were you working on October 31st, 2013?

18 A Here in Laurens County. Specifically, I was working  
19 the middle area.

20 Q And do you recall receiving a description of a  
21 shooting that took place that night?

22 A Yes, sir. We got a call about a shooting and then en  
23 route -- ask me the question one more time, I apologize.

24 Q You're on the right track.

25 A I was on the right track, okay.

1 Q Whenever you received a call about a shooting, what  
2 happened?

3 A At the initial time, I had made a stop on 221,  
4 arrested an individual. I was leaving the jail. Once we  
5 got it, I came out, made my way to the city and got on 221  
6 North. En route there, Lieutenant Crain and several  
7 others who were ahead of us had noted they had seen a  
8 box-style, what they called it was a Chevy Crown Vic or  
9 that type body style, possibly gold or brown in color,  
10 leave the area up 221 North. At that time, I was still  
11 proceeding up 221 North towards the call.

12 Q And what happened to make you not proceed to that  
13 call?

14 A What made me detour from it, Sergeant Gainey, who  
15 works for Laurens City, he monitors -- or keeps one radio  
16 on our channel. Officer Andrew Ashley was going with  
17 Deputy Jamison Taylor to Country Estates up in Fountain  
18 Inn to do a welfare check. Well, Deputy Taylor left  
19 Officer Ashley up there once we got this call on [REDACTED]

20 [REDACTED] Andrew Ashley was trying to make his way back to --  
21 find his way back to the city.

22 While on Highway 101 North, he passed a box-style  
23 Chevy Crown Vic. I'm not sure if he turned around or what  
24 the ordeal --

25 Q Let's kind of go off what he did and what he said.

1 How did you become involved in --

2 A It was relayed to me that Officer Ashley was  
3 following this vehicle. His driving seemed to be a little  
4 bit erratic on how he was getting to wherever he was  
5 going. It's like, you know, the officer was behind him  
6 and stuff. With the description we had of [REDACTED] I  
7 started initially going that way. We were, at least,  
8 going to do an ID and do a traffic stop and see who was in  
9 the car.

10 Q And was the traffic stop ever initiated?

11 A The traffic stop was never initiated. I had to turn  
12 up 221, so it took me -- Andrew was right there at it.  
13 Officer Ashley followed the car around, so they turned off  
14 Pleasant View and they turned on Goose Way. He was not  
15 familiar with the area. I do remember Sergeant Gainey  
16 telling me he asked Officer Ashley to back off.

17 At this time, I was coming into Gray Court, at which  
18 time, the road, it went down. Sergeant Gainey had told  
19 him it was a dead-end, so Officer Ashley was going to be  
20 standing by on Pleasant View Road waiting for me. Within  
21 the next couple of minutes, I met up with Officer Ashley  
22 on Pleasant View and he could still see the last initial  
23 place that he saw this vehicle go down.

24 Q After you met up with Officer Ashley, what did y'all  
25 then do?

1 A He give me the description of the car he was behind,  
2 told me the tag number, told me the color and what it  
3 looked like. I said, Okay. So once you turn off Goose  
4 Way, which was the last place he saw it, it forks off two  
5 other roads. Once he turned, he didn't go all the way  
6 down. So what we did is we split up. I went down Tally  
7 Hoe and Jones Hill, and Andrew, actually, went down the  
8 rest of Goose Way.

9 Once I got down on Jones Hill, the gray, silver in  
10 color, box-style Crown Vic that he described to me with  
11 the tag number, I found it at the end of Jones Hill. I  
12 asked Sergeant Gainey to have Andrew, actually, come back  
13 over with me just to verify this is the vehicle he was  
14 behind. He said it was.

15 We got out, went up to the front door, knocked on the  
16 door. There was a lady who answered it. I was inquiring  
17 about the vehicle outside. She said, That's my fiance.  
18 At which time, she said, Christopher -- or she called him  
19 Chris, I believe. But he came to the door. We spoke with  
20 him.

21 While speaking to him, I was asking him, Were you  
22 just driving the car? He said, Yeah. I asked him where  
23 he came from and he told me he was coming from  
24 Spartanburg. I was, Whereabouts in Spartanburg? And he  
25 said he was a friend's house. He was just being very

1 vague and kind of reluctant.

2           They were blocking the doorway. And the fiance, I'm  
3 not sure what she was thinking. I asked Mr. Wells to come  
4 outside and talk to us, you know, get away from her. At  
5 which time, he told me that he was at a friend girl's  
6 house. Wouldn't name a name, wouldn't name a place. He  
7 said he didn't want his fiance to hear about it. I said,  
8 Okay.

9           I advised him as to why we were there, why we were  
10 inquiring --

11 Q       Let me just stop you right there. You said he didn't  
12 want his fiance to hear that he was at another girl's  
13 house?

14 A       Yes, sir.

15 Q       Did he ever give you a location or a name?

16 A       No. He didn't want her to know, but he, also, never  
17 give me a location, never give me a name. All he told me  
18 was Spartanburg.

19 Q       Okay.

20 A       That's all he would say.

21 Q       And what was his demeanor again?

22 A       He didn't really want to talk to us. He didn't  
23 really want to answer the questions. When I asked  
24 specifically, you know, where were you coming from and he  
25 said Spartanburg, again, I asked where. He just didn't

1 want to talk to us. He was just kind -- you could tell he  
2 wanted us to leave. He didn't really want to talk to us.

3 Q And did you ever go in the house?

4 A Never went into the house. I could see right inside  
5 where the foyer was. And I could tell while speaking to  
6 her there was some other rooms off to the back left.  
7 That's where Mr. Wells came from out to speak to us.

8 Q But you couldn't see into the rooms?

9 A No, I could not see into the rooms. I have no idea  
10 what that room was he came from.

11 Q Okay. And just for verification, on this map of Gray  
12 Court, which house were you at?

13 A It's at the very end -- forgive me on the numerics,  
14 but it's the very last house on the right on Goose Way.

15 Q Okay.

16 A I apologize, Jones Hill.

17 Q And if you could, come down and just point to the  
18 location where y'all were at?

19 A The house we were at, very last one, which would be  
20 right there.

21 MR. NEELY: And just for the record, he's indicated  
22 No. 76 on State's Exhibit No. 4.

23 THE COURT: All right.

24 BY MR. NEELY:

25 Q And you've already said you spoke to Mr. Wells. Is

1 Mr. Wells in the courtroom?

2 A He is. Mr. Wells is sitting here.

3 MR. NEELY: Just for the record, he has indicated the  
4 Defendant in this case.

5 THE WITNESS: The individual, more specifically, with  
6 the white shirt on.

7 THE COURT: Very good. The record will reflect the  
8 witness has identified the Defendant.

9 MR. NEELY: Thank you. I believe that's all the  
10 questions I have. Please answer any questions Mr. Richey  
11 has.

12 CROSS-EXAMINATION

13 BY MR. RICHEY:

14 Q Mr. Wells was cooperative with you, correct?

15 A He was cooperative by he didn't tell us to leave or  
16 anything. He just was very vague in answering questions.

17 Q And he had a legal right to deny that search. He  
18 could have said no and legally been correct, right?

19 A That's correct.

20 Q But he allowed you to do it, correct?

21 A He did.

22 Q And you thoroughly searched the car, correct?

23 A I am not the officer that searched the car. I stood  
24 by and spoke with Mr. Wells and Officer Ashley is the one  
25 that searched the car.

1 Q But you don't doubt he did a good job, right?

2 A I trust Officer Ashley.

3 Q And at the time -- what color was the car?

4 A At the time -- it was nighttime, but at the time, it  
5 was gray to me, like a gray-silver color.

6 Q So it was gray, not brown? It wasn't brown, right?

7 A It was not brown.

8 Q Not blue?

9 A It was not blue.

10 Q It was gray?

11 A It was gray. In the dark where we were at, it looked  
12 gray-silver.

13 Q So you were right there by the car, right? You could  
14 see the car, correct?

15 A I could see the car, but we didn't have a flood  
16 light. It was in the dark.

17 Q Okay. This ain't that car, right?

18 A That is the car. That is the car that is painted a  
19 different color. The tags are the same. The rims are the  
20 same. The tinted windows are the same.

21 Q So it's painted brown now?

22 A It is now a different color than the night that I  
23 first encountered it.

24 Q So the color of the car after the night is brown,  
25 correct?

1 A I don't know when it was brown, but it's been painted  
2 brown. It was not that color the night that I encountered  
3 Mr. Wells.

4 Q Right. So if I see the car four days after this  
5 incident, I would call it brown, correct?

6 A That color there would be brown, red, burgundy to me.

7 Q But if I saw that car the night of this incident, I  
8 wouldn't say it was brown; would I?

9 A It was not brown.

10 Q And that wouldn't identify that car, would I?

11 A By simply looking at the car and the color, yes.  
12 It's the same body style. It's the same type windows,  
13 same type rag top, same type rims, plus the tag on the  
14 back of it matches.

15 Q But it's going to be gray, right?

16 A It was gray, that's the only difference.

17 Q At some point, did you get a call from dispatch that  
18 alerted you to the car was the wrong color and Mr. Wells  
19 wasn't involved? Did you get a call from dispatch to that  
20 extent?

21 A It was not from dispatch. It was from my lieutenant  
22 who was working the shift. Again, it was dark. He passed  
23 a car. I thought I heard what might have been like a gold  
24 or brown or something.

25 Q Gold?

1 A Yeah, possibly gold.

2 Q Okay. So the car could have been gold?

3 A But the description was like a box-style, like a  
4 Crown-Vic-type-style car.

5 Q So you don't remember saying the vehicle was possibly  
6 the wrong color; you remember that?

7 A I do remember being told that we could clear, that  
8 the car may have been the wrong color, Mr. Wells -- or the  
9 individual who was out there may have not had anything to  
10 do with it at the time.

11 Q And when you encountered Mr. Wells -- because the  
12 testimony was he was followed all around here, correct?

13 A Yes, sir.

14 Q When you encountered Mr. Wells, he wasn't breathing  
15 heavy; was he?

16 A No. Mr. Wells, he was, if I remember right, had a  
17 sandwich or something. He came from the back of the  
18 house. It was cold outside. And I don't quite honestly  
19 remember.

20 Q He came out the house with a sandwich in his hand?

21 A He had a plate that he had went in there and grabbed  
22 something and came back. He said he was getting ready to  
23 fix himself something to eat.

24 Q Okay.

25 A I do remember that.

1 Q And nothing about his demeanor alerted you that he  
2 was involved in a murder, correct?

3 A At the time, his demeanor was he just didn't want to  
4 talk to us. He was ready for us to leave.

5 Q He wasn't sweating or anything?

6 A It was cold outside. It was like 30 degrees.

7 MR. RICHEY: Thank you.

8 MR. NEELY: Nothing further.

9 THE COURT: Sir, you can step down. Thank you very  
10 much for coming.

11 MR. NEELY: Your Honor, we would ask that he be  
12 excused as well.

13 THE COURT: Without objection?

14 MR. RICHEY: No objection.

15 THE COURT: You're free to go.

16 MR. MOWRY: And, Your Honor, this would be a good  
17 time to break.

18 THE COURT: I surmised as much.

19 Ladies and gentlemen of the jury, we're going to go  
20 ahead and take our lunch break. At this point in time,  
21 I'm going to ask that you please be back in the jury room,  
22 let's say, at 2:00. That should give you about an hour  
23 and 10 minutes to grab a bite somewhere.

24 Please don't talk about the case. We'll resume with  
25 the trial at 2:00. Thank you very much. You're excused.

1 (WHEREUPON, the jury exits the courtroom at  
2 12:52 p.m.)

3 THE COURT: We're off the record until 2:00.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: We will go back on the record. The  
6 record should, of course, reflect that the Defendant is  
7 present with counsel.

8 Let's have the jury out, please.

9 (WHEREUPON, the jury enters the courtroom at  
10 approximately 2:20 p.m.)

11 THE BAILIFF: All the jury is present, Your Honor.

12 THE COURT: All right. The jury is back.

13 Mr. Neely, call your next witness, please.

14 MR. NEELY: Thank you, Your Honor. The State would  
15 call Tiffany Hezel to the stand.

16 Thereupon;

17 TIFFANY HEZEL, after having  
18 been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. NEELY:

21 Q And Ms. Hezel, if you would, please state and spell  
22 your full name for the record.

23 A Tiffany Hezel, H-E-Z-E-L.

24 Q And where are you currently employed?

25 A I'm employed at the South Carolina Law Enforcement

1 Division, commonly referred to as SLED.

2 Q And where were you employed in November 2013?

3 A I was employed at SLED.

4 Q In what capacity are you employed at SLED?

5 A I'm employed as a special agent both in the crime  
6 scene unit and within the latent print unit.

7 Q So what does that mean in layman's terms?

8 A In layman's terms, I respond to crime scenes and  
9 process the scene for evidence, document with photographs,  
10 sketching and so forth. I, also, work as a latent print  
11 examiner within the latent print unit, meaning that I  
12 process evidence for latent fingerprints and I, also,  
13 perform latent print comparisons to known fingerprints.

14 Q So latent print comparisons to known fingerprints, is  
15 that just a fingerprint match up?

16 A In most common terms, yes. It's taking an unknown  
17 impression developed from a piece of evidence and  
18 comparing it to known persons within an investigation.

19 Q And do you have special training to do this?

20 A Yes, I do. I have completed the in-house training  
21 program within SLED, and I've, also, completed several  
22 external training courses in different aspects of the  
23 comparison processing.

24 Q And do you have an educational background that led  
25 you to that?

1 A My educational background is I have a Bachelor of  
2 Science degree in criminal justice from the University of  
3 Wisconsin, and I have a Master's Degree in forensic  
4 science from the University of Central Oklahoma. In  
5 addition to being a certified State Law Enforcement  
6 officer here in the State of South Carolina, I'm a  
7 nationally certified medical legal death investigator and  
8 a nationally certified crime scene analyst.

9 Q And is there any continuing education that you do  
10 yearly to keep yourself up to date?

11 A We maintain a yearly proficiency within the latent  
12 print discipline, so, meaning, every year we take a  
13 standardized test where there are comparisons. And we  
14 must pass that test annually to maintain being qualified  
15 in the discipline.

16 Q And if you failed that test, what would happen?

17 A You would be taken off of processing and comparison  
18 and you would go through remedial training.

19 Q Have you ever failed that test?

20 A No, sir, I have not.

21 Q On the date November 7, 2013, did you have occasion  
22 to examine a lab L13-1419 form report?

23 A I completed a technical review on this report.  
24 Within the latent print discipline, all processing and  
25 comparisons undergo a peer review by another examiner

1 who's competent in those fields.

2 In this particular case, an item of evidence was  
3 processed by Special Agent Kimberly Mears. And I  
4 completed the technical review, just reviewing that all  
5 policies and protocol within the latent print division  
6 were followed.

7 Q So when you say you did a technical review of all the  
8 policies and procedures, does that, basically, mean you  
9 reexamined the piece?

10 A With processing of evidence, no, it does not. What  
11 it means is I will then do a review of her worksheet where  
12 she documented her processing of the item, that she  
13 performed reliability tests and all, chemicals that were  
14 used to process the item to make sure that they were  
15 working in accordance with protocol, and that everything  
16 was documented accordingly.

17 Q So you reviewed her procedures and agreed with her  
18 result?

19 A Yes, I did.

20 MR. NEELY: Your Honor, I would like to qualify Ms.  
21 Hezel as an expert in latent fingerprint examination and  
22 identification.

23 THE COURT: Any objection?

24 MR. RICHEY: No objection.

25 THE COURT: Ladies and gentlemen, usually, when a

1 witness testifies, they have to testify about something  
2 that they observed with one of their five senses, either  
3 they saw or heard. An exception to this rule exist for  
4 individuals who are experts in some particular field.

5 In this case, the parties agree that Ms. Hezel is an  
6 expert in the field of latent prints and latent print  
7 identification. Therefore, she can give opinion testimony  
8 in that area. It doesn't mean that you have to accept it,  
9 but it is evidence that you can use if you choose to.

10 Go ahead, sir.

11 MR. NEELY: Thank you, Your Honor.

12 BY MR. NEELY:

13 Q And do you have your report with you?

14 A Yes, I do.

15 Q And could you verify that this was the gun that you  
16 examined -- or that Kimberly Mears examined and you did a  
17 technical review of?

18 A The weapon that was documented was a Lorcin handgun  
19 bearing a serial number of 438650, as does this one. As  
20 per policy and procedure, all pieces of evidence that are  
21 examined for latent fingerprints by a fingerprint agent  
22 are documented with a lab number, the unique item number  
23 given to that piece of evidence and the initials of the  
24 examiner. This specific piece of evidence bears the lab  
25 number, item number and initials of Special Agent Mears

1 inside of the magazine floating port at the base of the  
2 gun.

3 Q In Ms. Mears's opinion and in your technical review  
4 opinion, what's your opinion on whether the gun had any  
5 latent prints?

6 A Based upon the documentation of processing that  
7 Special Agent Mears performed of the chemical processing  
8 applied to the weapon, fingerprint evidence was found;  
9 however, it was not of value for further comparison.

10 Q What does that mean?

11 A When you touch something, you have raised portions of  
12 areas on your skin, which we call ridges. So based on  
13 environmental factors, the surface that you're touching,  
14 how much sweat and oil you've accumulated along your  
15 hands, there's a chance that you could leave almost a  
16 stamped impression of your fingerprint on that item.

17 Now, if the item is handled a lot, you're sweaty,  
18 it's cold, all of these factors play into it, and there  
19 might only be a portion of that ridge detail that has been  
20 stamped on an item.

21 In that case, it's not enough ridge detail for us to  
22 then compare that unknown to a known fingerprint source.  
23 Meaning, if we collect your fingerprints with ink and you  
24 get that true stamped image, there's not enough of that  
25 unknown to compare to the known for us to be 100 percent

1 certain that it is a match.

2 Q Now, this is kind of a strange question, but on CSI  
3 and police shows like that, you see something like I could  
4 touch this and then just touch it a bunch of different  
5 times and take different prints and they merge them all  
6 together and come up with a good fingerprint that they  
7 match it to. Is that how that works?

8 A No.

9 Q It's just not the science of it?

10 A No, that's TV, and we don't get commercial breaks.  
11 When you touch something -- if you think about a stamp,  
12 your return address stamp or a business card stamp that  
13 you put on your cards. You're taking a whole object,  
14 you're applying pressure evenly across the surface onto  
15 the ink pad and then you're placing that whole stamped ink  
16 onto your envelope and you're getting a true  
17 representation of that full picture on your stamp.

18 Think about when you touch things throughout the day.  
19 You touch your car, a glass of water, you touched your  
20 chair when you sat down. You're not touching with the  
21 full pressure of your hand on everything you touch every  
22 single time. A lot of times, it's just a chance touch,  
23 you're holding the door for somebody, you're grabbing your  
24 car handle.

25 You're not applying pressure evenly upon your hand

1 onto that surface and you're not stamping your hand prior  
2 to. All you have on there is your natural sweat,  
3 secretion, makeup build up, dirt, anything like that that  
4 you're transferring. So you don't have the CSI 45-minute  
5 ideal condition situation when you're just touching  
6 something.

7 Now, if you take into the account the piece of  
8 evidence we're discussing now, a handgun. You're sliding  
9 it, your racking it, you're loading it, you're handling  
10 it. Every time you touch it, you're not pressing and  
11 holding. You're just handling it in an everyday manner.  
12 So you're not constantly leaving fingerprints.

13 Fingerprint evidence is a chance piece of evidence.  
14 We process it to try to locate it. It's not always there.  
15 Does that mean it wasn't handled? No, it does not. It  
16 just means that the conditions were not ideal for ridges  
17 of value to be left.

18 Q So the way somebody could grab something could change  
19 whether fingerprints were left or not?

20 A Correct.

21 Q And the material that was grabbed could also change  
22 that?

23 A Absolutely. If the material is rough or textured,  
24 your ridges aren't going to make contact with it evenly  
25 already. So now, you're making a whole other factor. So

1 it's just a series of factors. And we don't get those  
2 beautiful fingerprints you see on television very often.  
3 Usually, it's only a partial. And more times than not, we  
4 get what we got in this case here where we have evidence  
5 that it was touched, but there's just not enough there for  
6 us to move forward with performing a comparison.

7 Q So that's what we have here, just not enough to make  
8 a comparison?

9 A Correct. There was evidence that it was touched.  
10 You can see evidence that ridges were there. There was  
11 just not enough evidence for us to move forward to then go  
12 do a comparison of comparing that little piece of ridge  
13 detail to a known subject.

14 Q How much ridge detail do you need to make that  
15 comparison?

16 A Unfortunately, there is no specific amount. We don't  
17 count points. We just look for overall ridge flow and  
18 characteristics within that ridge flow.

19 Now, when I say characteristics, you have these lines  
20 all over your hand and your feet, okay. Each of these  
21 lines is going to do one of four things. It's either  
22 going to continue, it's going to stop, it's going to flow  
23 along and fork into two, or it's going to make what's  
24 called a dot. And that's just going to look like a period  
25 at the end of a sentence.



1 other people?

2 A It is possible. There's a lot of things that could  
3 change whether or not -- again, in this situation, we're  
4 not saying there wasn't evidence of it being touched.  
5 We're just saying that evidence that we documented was not  
6 enough to move forward.

7 Q So you're saying that you don't know who handled this  
8 gun and who shot it based off what you did, correct?

9 A Correct.

10 Q So it could have been handled by various people, you  
11 just don't know, correct?

12 A Correct.

13 MR. RICHEY: Thank you.

14 THE COURT: Ma'am, thank you very much for coming.  
15 You may step down.

16 MR. NEELY: We ask she be excused, Your Honor.

17 MR. RICHEY: No objection.

18 THE COURT: You're free to leave.

19 Call your next witness.

20 MR. MOWRY: I call James Green.

21 Thereupon;

22 JAMES GREEN, after having been  
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MOWRY:

1 Q You are James Green?

2 A Yes, sir.

3 Q And I believe you, like Ms. Hezel, are employed by  
4 the State Law Enforcement Division; is that right?

5 A Yes, sir.

6 Q What kind of duties do you perform for SLED?

7 A I'm a firearms examiner in the forensic services  
8 laboratory. And what that means is when submitting  
9 agencies submit firearms-related evidence, a gun, fired  
10 cartridge cases, fired bullets, things like that to our  
11 department, I examine them under a comparison microscope  
12 to try to determine if they were fired by the same gun or  
13 different guns. Or if there is a firearm submitted, we  
14 try to say if they were fired by this gun or not.

15 Q What sort of training have you had in this area?

16 A Once I was hired at SLED, I started the forensic  
17 firearm and tool mark course instruction. It's, roughly,  
18 a three to three and a half year course instruction in an  
19 apprentice-type fashion, studying under a court-qualified  
20 firearms examiners learning to do what I do now.

21 Q And was one of your instructors, I guess, Ira  
22 Parnell?

23 A Yes, sir, he was my training instructor when I was  
24 hired.

25 Q How long had Mr. Parnell worked for SLED in firearms

1 identification?

2 A At that time, I believe it was 32 years.

3 Q And he ended up working about 40 years there; is that  
4 right?

5 A Roughly, yes, sir.

6 Q Do you graduate from that program or are you just  
7 simply termed qualified? How does that work?

8 A At the end of the course of instruction, we're given  
9 fake cases to work on our own. During the course of the  
10 instruction, we're given probably a hundred or so written  
11 exercises, discussion questions, that kind of thing, and  
12 then we're given practical problems. And at the end of  
13 the thing, I was given, roughly, 11 or 12 fake cases to  
14 work on my own as well as a comprehensive written final.

15 Q And did you successfully complete that course?

16 A Yes, sir.

17 Q How long ago was that?

18 A I finished, I think, in 2008.

19 Q And you've been working in that area for the last  
20 eight years?

21 A Well, I started at SLED in 2005, but I was qualified  
22 as a firearms examiner from 2005 to 2008 as a trainee.  
23 And since 2008, I've been testifying, yes, sir.

24 Q What sort of education do you have in this field?

25 A I have a Bachelor of Arts from Charleston Southern

1 University. I, also, have a Master's of Science in  
2 criminal justice from Charleston Southern as well as  
3 completed a SLED firearms and took mark course of  
4 instruction.

5 Q How many cases do you think you've examined during  
6 the course of your career? Just ballpark.

7 A Ballpark, a thousand.

8 Q And have you testified in courts in this field  
9 before?

10 A Yes, sir.

11 Q How many times would you say you've testified?

12 A I've testified 47 times in State courts and once in  
13 Federal.

14 Q And have you been declared an expert witness in any  
15 of those courts?

16 A Yes, sir, in every one.

17 Q So close to 50 times being an expert; is that right?

18 A Yes, sir.

19 MR. MOWRY: Your Honor, we would offer him as an  
20 expert in the field of firearms examination and  
21 identification.

22 MR. RICHEY: No objection.

23 THE COURT: As I explained a moment ago, ladies and  
24 gentlemen, normally, a witness cannot testify as to  
25 opinion evidence or opinions. In this case, Mr. Green,

1 the parties have agreed that he is an expert in the field  
2 of firearms examination and identification, so he can give  
3 opinion testimony that you may use as you deem  
4 appropriate.

5 BY MR. MOWRY:

6 Q I'm going to hand you a series of items. I'm going  
7 to give you State's Exhibit No. 26, State's Exhibit No.  
8 25, State's Exhibit No. 23, State's Exhibit No. 21 and 20.  
9 And, lastly, I'm going to hand you, also, State's Exhibit  
10 No. 22. Have you seen any of those items before?

11 A Yes, sir. State's Exhibit 26 is the Lorcin pistol,  
12 which was submitted in the SLED lab as SLED item seven.  
13 State's Exhibit 25 is the SLED item eight revolver that I  
14 examined in this case.

15 Let me back up a second. Ladies and gentlemen of the  
16 jury, you see me look at the evidence, rotating around  
17 looking. I'm looking for my markings on it. When we get  
18 evidence, firearms particularly, we scribe on it with an  
19 electric pencil with our lab number, item number and  
20 initials so that when we do come to court, just like he  
21 said have you seen this before, I can look at it, match  
22 the serial number to what I have on the report as well as  
23 my markings and see that is what I was looking at. So  
24 that's what I'm doing right now.

25 State's Exhibit No. 29 is the item five and six

1 cartridge cases I examined.

2 Q I'm sorry, you need to read off the white marks.

3 A Okay, I'm sorry.

4 Q Sorry, that's our bad.

5 A Sorry about that. State's Exhibit 21 is SLED item  
6 five and six cartridge cases. State's Exhibit 20 is the  
7 SLED item three bullet, as well as the item four cartridge  
8 case in State's Exhibit 20. State's Exhibit 22 is a  
9 magazine, which I have not seen.

10 Q Okay. I have a question about that, whether you have  
11 seen it or not. I just wanted to simply ask you?

12 A No, sir, that was not submitted. And State's Exhibit  
13 23, looks like two fired cartridge cases and two unfired  
14 cartridges, which was not submitted.

15 Q Let's talk about the Lorcin then, the chrome  
16 semi-automatic pistol. What can you tell us about that?

17 A This is a Lorcin model L3 semi-automatic pistol with  
18 serial number 438650, which I said before was State's  
19 Exhibit 26 with the SLED item seven pistol that was  
20 admitted in this case.

21 Q Just for reference purposes, given your familiarity  
22 with firearms, how would you qualify, I guess, the quality  
23 of that weapon?

24 A It is an inexpensive firearms purchase.

25 Q That's very political. Thank you. Very polite, I

1 guess is a better way to put it. What kind of comparisons  
2 were you able to do with the projectile and the shell  
3 casings?

4 A Whenever firearms are submitted to our laboratory,  
5 the first thing we do is examine them physically to make  
6 sure they're safe to fire. I like all 10 fingers. I've  
7 read things where people shoot guns and they explode. I  
8 don't want that to happen. So we'll check them to make  
9 sure they're safe to fire. And then we'll look at the  
10 evidence submitted, fired cartridge cases or fired  
11 bullets, and see what type of ammunition was used. And  
12 then we'll shoot the guns ourself.

13 In this case, I shot this pistol myself. We have a  
14 two-story water tank about three feet diameter. We'll  
15 shoot down into and there's a colander at the bottom  
16 attached to a chain. We shoot the ammunition out of the  
17 gun that was submitted into the tank, pull the colander up  
18 and our bullets and cartridge cases are in there. We can  
19 say with a hundred percent certainty they were fired by  
20 that gun because we fired them ourself.

21 Then I'll look at those under our comparison  
22 microscope to see if the gun is marking consistently.  
23 Each gun will mark individually. They have their own  
24 fingerprint, if you will. And then we'll use the test  
25 that we fired from the gun to be fired the bullets or

1 cartridge cases submitted in the case.

2 Q How are the guns marked specifically? You talked  
3 about the fired bullets and cartridge casings having,  
4 essentially, a fingerprint on it. How does that happen?

5 A During the manufacturing process, the gun  
6 manufacturing, in this case, Lorcin Engineering Company,  
7 says they want to have a gun that marks a certain way.  
8 They want a certain number of lands and grooves in their  
9 barrel, which is the rifling. They want those lands and  
10 grooves to be a certain depth. And they want the rifling  
11 to have a right or left twist. All those are rifling  
12 characteristics that are unique. Not unique to a  
13 particular gun, they're all the Lorcins. However, when  
14 they're creating the gun, metal to metal contact by the  
15 tools used to make the working surfaces of the gun --

16 You know, if we all go to the beach and we all take  
17 the same rake and all of us rake the same  
18 two-foot-by-two-foot spot, each one of us rakes our own  
19 using the same rake, it's all going to look the same. But  
20 when we look at it microscopically and how many grains of  
21 sand that fall, how each one using the same tool look the  
22 same, but different at the same time. It's like that with  
23 firearms. When the metal removes metal, tiny microscopic  
24 pieces are different on this one and the next and the one  
25 made right after it. So every firearm will mark

1 differently.

2           There's been lots of studies which I've partaken in  
3 where they get 10 consecutively-made barrels or 10  
4 consecutively-made slides using the same tool, and  
5 although there are some similarities, if you're trained  
6 and know what you're looking for, you can readily tell the  
7 difference.

8 Q       And is that what your three-and-a-half-year training  
9 program with SLED was all about, learning how to do --

10 A       Yes, sir.

11 Q       -- examination for that?

12 A       Yes, sir.

13 Q       When you examined the Lorcin and the shell casings  
14 and the bullets -- or the bullet, the projectile, what are  
15 you looking for?

16 A       When the cartridge is fired by the gun, the firing  
17 pin hits the primer, the primer explodes and sends a  
18 little tiny flame through the flash on the cartridge case  
19 to the powder. The powder burns and it builds up  
20 pressure. Whenever the critical pressure is reached, the  
21 bullet is expelled out of the cartridge casing, down the  
22 barrel. And when it's going down the barrel through the  
23 rifling, it takes on the markings of the barrel. And the  
24 cartridge case is slammed back up against the breech face  
25 and takes on markings of the breech face that were put

1       there by the manufacturer.

2       Q       What is done with the spent shell casing at that  
3       point?

4       A       At that point, in a firearm like this, you can see  
5       where the gun lock goes through here, that's the ejection  
6       port.  When the slide comes rearward, which is like a  
7       little claw, it will grab on the cartridge case, pull it  
8       rearward and it will hit the ejector.  In this case, it  
9       pivots the cartridge case out from the firearm, so it  
10      expels the fired cartridge case.  If there's more  
11      cartridges in the magazine, the slide will close and when  
12      it does, it trips the top cartridge off the magazine, it  
13      loads it into the chamber and ready to be fired again.

14      Q       Does it make unique markings when the shells are  
15      extracted?

16      A       Sometimes, there will be extractor marks on the  
17      cartridge cases, yes, sir, that will be unique to that  
18      gun.

19      Q       Were you able to determine whether or not there were  
20      any in this case?

21      A       I didn't really see any.  It was kind of there, but  
22      it was muddy.  It goes back to the quality of the firearm.

23      Q       What were you looking for, then, to determine whether  
24      or not those shell casings came from the same gun?  What  
25      helped you determine whether or not they did?

1 A The breech face mark, which is -- you're not going to  
2 be able to see it, but at the back of the slide where the  
3 firing pin protrudes from is a breech face. It's a  
4 vertical wall where the firing pin protrudes from. When  
5 the cartridge case is slammed back up against that, it can  
6 sometimes take on the marks left by a manufacturer.

7 Q And did you find marks like that in the shell casings  
8 from the 380?

9 A From the -- State's Exhibits 20 and 21, the fired  
10 cartridge cases submitted in this case?

11 Q Yes.

12 A I was able to match the three cartridge cases to each  
13 other, but I was not able to match them to the gun.

14 Q Okay. Any reason why that was the case?

15 A 380 caliber, which this is, it's a relative low  
16 pressure, so you're not going to get a lot of markings.  
17 It goes back to the quality of the firearm. Or it could  
18 simply be the difference in ammunition. I tried to shoot  
19 as close as possible to what was used, but sometimes, even  
20 though you can get the same make and brand of cartridge,  
21 it may not mark the same.

22 Q But the cartridge casings, were they compatible with  
23 the Lorcin?

24 A Yes, sir, they were 380, so it could have been fired  
25 in this gun. And when I was doing the microscopic

1 comparisons of State's Exhibits 20 and 21, the fire  
2 cartridge cases, with tests I fired from State's Exhibit  
3 26, I was able to see some similarities. I gave what is  
4 called an inconclusive answer. It means they could have  
5 been fired by that gun or they could have been fired by  
6 another gun.

7 Q So just to sum up, you're saying as far as the shell  
8 casings are concerned, you can say that they were fired by  
9 the same gun, but you can't say conclusively that they  
10 were fired by State's Exhibit No. 26?

11 A Yes, sir. It's like school, you know, 70 is a  
12 passing grade. For being fired by this gun, they would  
13 have gotten like a 67 or a 68. There was enough for me to  
14 say well, it could have been that gun. There wasn't  
15 enough for me to say it was this gun.

16 Q All right. Now, let's switch over to the projectile,  
17 the bullet there. Tell us what you were looking for on  
18 that.

19 A When the bullet goes down the barrel, it engages the  
20 rifling, which makes it spin. It's like a quarterback  
21 throwing a spiraling football. When you throw a football,  
22 you know that nice spiral -- excuse me, the football  
23 spins. It's fairly accurate and it goes a decent  
24 distance. That's what rifling does to a bullet. It  
25 engages the rifling and makes it spin.

1           When it does that, when it passes through the  
2 rifling, it takes on the markings left by the rifling.  
3 The lands and the grooves will mark the bullet and grip  
4 it. It's a really tight fit. I mean, you can't take your  
5 finger and push a bullet through there. It's the pressure  
6 that does it. And it, basically, scrapes away and  
7 scratches the top of the surface of the bullet.

8           Q     And what -- were you able to conduct a test on the  
9 bullet that you've got before you as far as the comparison  
10 of the Lorcin is concerned?

11          A     Yes, sir. I did the same thing. I shot it and I got  
12 the cartridge case and the bullets. I looked at the  
13 bullets and made sure the gun was marking consistently.  
14 And I was able to match the SLED item three, State's  
15 Exhibit 20, bullet back to this pistol. So State's  
16 Exhibit 20, bullet, was fired by the item -- excuse me,  
17 State's Exhibit 26 pistol.

18          Q     So unlike the shell casings, you were able to say  
19 conclusively that that bullet came from that gun?

20          A     Yes, sir.

21               MR. MOWRY: Mr. Green, thank you very much. If you'd  
22 answer any questions that Mr. Richey has, please.

23               MR. RICHEY: No questions.

24               THE COURT: Thank you, sir, for coming. You are free  
25 to go and released from your subpoena.

1 Mr. Mowry, call your next witness.

2 MR. MOWRY: Can you give us a second, Your Honor? I  
3 think Dr. Ward is here. I just want to make certain.

4 THE COURT: Okay.

5 MR. MOWRY: Your Honor, Dr. Ward, our pathologist,  
6 who's coming down from Greenville, apparently, there's  
7 traffic on the interstate. He says he'll be here in about  
8 five minutes.

9 THE COURT: We'll go ahead and take a break for  
10 ourselves while we're waiting for the next witness to get  
11 here, ladies and gentlemen. Don't talk about the case.

12 (WHEREUPON, the jury exits the courtroom at  
13 approximately 2:49 p.m.)

14 (WHEREUPON, a short break was taken.)

15 (WHEREUPON, the jury enters the courtroom at  
16 approximately 3:11 p.m.)

17 THE BAILIFF: The jury is all present, Your Honor.

18 THE COURT: The record will reflect the jury is back  
19 as is Defendant and counsel.

20 Mr. Mowry, call your next witness, please.

21 MR. MOWRY: I call Dr. Michael Ward.

22 Thereupon;

23 MICHAEL WARD, M.D., after  
24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MOWRY:

2 Q You are Michael Ward?

3 A Yes, I am.

4 Q I believe you are a medical doctor; is that correct?

5 A That's correct.

6 Q Do you have any particular speciality in the practice  
7 of medicine?

8 A My speciality is pathology, and I have subspeciality  
9 training in forensic pathology.

10 Q Can you explain to us what forensic pathology is?

11 A Pathology is the study of disease and disease  
12 processes and how they affect man. Forensic pathology  
13 takes that one step further where the primary focus is on  
14 trauma, injury patterns and disease processes and how they  
15 affect and why people die, and then the presentation of  
16 that information in a court of law.

17 Q And on the criminal side, part of your determination  
18 is to figure out the cause and manner of death; is that  
19 correct?

20 A That is correct.

21 Q Can you explain what the difference between cause and  
22 manner of death are?

23 A Cause of death is either a disease process or an  
24 injury that starts the ball rolling down the hill that,  
25 ultimately, ends in your death. So if you have a blunt

1 force trauma to the head or if you have a stab wound to  
2 the chest, those would be particular causes of death.

3 Manner of death is the circumstances in which that  
4 occurs. So the five choices that we have in South  
5 Carolina are natural death, accidental, suicide,  
6 undetermined or homicide.

7 Q Can you take us through your education and training  
8 that led you to the positions that you hold today?

9 A I received my undergraduate degree in biology from  
10 University of Alabama. I have a Master's Degree in  
11 forensic science from the University of Alabama in  
12 Birmingham. I received my medical degree from the  
13 University of South Alabama, which is in Mobile. I did a  
14 four-year anatomic pathology residency at the Medical  
15 University of South Carolina in Charleston and a one-year  
16 fellowship in forensic pathology at the University of New  
17 Mexico, which is in Albuquerque. I'm certified by the  
18 American Board of Pathology in both anatomic and forensic  
19 pathology.

20 Q Don't mean to give away your age, but how long have  
21 you practiced medicine?

22 A I received my medical degree in 1988. I finished my  
23 training in 1993. So I've been actively participating in  
24 forensic pathology for approximately 23, 24 years.

25 Q Have you testified in courts of law before?

1 A Yes, I have.

2 Q And have you testified in this courtroom before?

3 A I have.

4 Q Have you been declared an expert witness in forensic  
5 pathology?

6 A Yes, I have.

7 Q And could you give us a ballpark figure as to how  
8 many times?

9 A It's well over a hundred times.

10 MR. MOWRY: Your Honor, I would offer Dr. Ward as an  
11 expert in forensic pathology.

12 MR. RICHEY: No objection.

13 THE COURT: Again, ladies and gentlemen, the parties  
14 agree that Dr. Ward is an expert in the field of forensic  
15 pathology, so he can give opinion testimony. He's not  
16 limited to simply things that he observed. He can give  
17 opinion testimony in that area that you may use as you  
18 deem appropriate.

19 Mr. Mowry.

20 BY MR. MOWRY:

21 Q Dr. Ward, did you examine the body of [REDACTED]

22 [REDACTED] the victim in this case?

23 A Yes, I did.

24 Q Under what circumstances did you come to examine his  
25 body?

1 A I was requested by Laurens Coroner Nick Nichols to  
2 perform an autopsy on Mr. [REDACTED]

3 Q And as part of that process, did you receive medical  
4 records from the hospital in Spartanburg?

5 A Yes, I did.

6 Q Can you kind of review what was done with Mr. [REDACTED]  
7 -- review for the jury what was done with Mr. [REDACTED] what  
8 kind of treatment was given to him in efforts to save his  
9 life?

10 A Certainly. A review of the medical records indicate  
11 that he was transported from the scene to Spartanburg  
12 Regional Hospital where he received various treatments to  
13 include blood and blood products as well as being taken to  
14 the operating room where a laparotomy was performed, which  
15 is an incision to expose the abdominal cavity. Treatment  
16 for his gunshot wound was provided there with removal of  
17 various segments of the intestinal tracts, small  
18 intestine, large intestine, repair of a defect to the  
19 stomach as well as a repair of a defect to the liver. He,  
20 also, had exploration of the wound to his neck to  
21 determine that it was superficial in nature and there was  
22 no grade vessels that needed repair.

23 Q Have you -- in your review of the treatment that was  
24 given to him, was that appropriate treatment?

25 A Yes, it seemed to be.

1 Q And yet, as a result, Mr. [REDACTED] did die?

2 A That is correct.

3 Q When did you receive his body for your examination?

4 A The examination was performed on November 2nd, 2013.  
5 So he would have made it to Greenville approximately in  
6 the early morning hours of November 2nd.

7 Q Okay. How do you go about conducting an autopsy?  
8 What is the procedure?

9 A The autopsy begins with an initial external  
10 examination where we examine the body for any external  
11 evidence of trauma or disease processes, documentation of  
12 those injuries, both on paper and photographing. Then we  
13 extend the external examination to an internal examination  
14 where we examine the organs of the chest, abdomen as well  
15 as the brain. We're looking for natural disease as well  
16 as any extent of trauma that may be present internally as  
17 well.

18 Q Do you do what is called toxicology?

19 A Yes, we do.

20 Q Can you explain what that is?

21 A Toxicology is a chemical analysis of body fluids.  
22 And in this case, blood that was taken at Spartanburg  
23 Regional Hospital, his admission blood, before he was  
24 given any drugs for treatment, before he was given any  
25 other blood products, that blood was tested for

1 commonly-used medications as well as commonly-used drugs  
2 or abuse and alcohol.

3 Q What was the result of his toxicology screen?

4 A This was performed on anti-mortem blood, or blood  
5 that was drawn at the hospital. Mr. [REDACTED] had a blood  
6 alcohol concentration of 0.8 percent and he, also, had a  
7 metabolite of marijuana present in his blood.

8 Q Which meant what?

9 A That at some time within the reasonable past, he had  
10 smoked marijuana. Not necessarily that day, but within  
11 the last few days.

12 Q Okay. And when you mention the alcohol concentration  
13 of 0.08, can you give us an idea of what kind of affect  
14 that had on him?

15 A Affects of blood alcohol on an individual depend on  
16 how much they are used to drinking. So an individual who  
17 is relatively naive to alcohol may show signs of  
18 intoxication at this level. So they may appear  
19 intoxicated. They may be a little more outgoing or more  
20 reserved, depending on their personality. They may have  
21 difficulty with reaction time. Mr. [REDACTED] may or may not  
22 have appeared intoxicated to individuals who knew him,  
23 depending on how used to alcohol he was.

24 Q Were you able to determine how old Mr. [REDACTED] was?

25 A Mr. [REDACTED] was stated to me to be 61 years of age.

1 Q And did he appear to be that age?

2 A Yes, he did.

3 Q What about his size, his height and his weight?

4 A He was 5 feet, nine inches and -- excuse me, and 140  
5 pounds.

6 Q What else did you do as far as your examination was  
7 concerned, your procedures?

8 A Well, the procedure is to document the presence of  
9 any injury that's present. And in this case, gunshot  
10 wounds. So describing their location, photographing them,  
11 following their path through the body and, in this case,  
12 documenting where they exited. We, also, looked at each  
13 and every visceral organ or the heart, lung, liver,  
14 kidney, brain of Mr. [REDACTED] to determine any natural  
15 disease that may have been present.

16 Q Did you find any natural disease that might have  
17 contributed to his death?

18 A Yes, we did.

19 Q What did you find?

20 A Mr. [REDACTED] had severe coronary artery disease in that  
21 he had had a previous heart attack. He had had previous  
22 bypass, which is where they, basically, open your chest,  
23 take vessels from your legs and bypass the disease vessels  
24 of your heart. He had had a previous bypass. And he,  
25 also, had some changes in his lungs consistent with

1 cigarette smoking called emphysema or chronic lung  
2 disease.

3 Q Were either of these the cause of his death?

4 A They were not, no.

5 Q Okay. What, based on your examination, caused his  
6 death?

7 A Mr. [REDACTED] died as a result of a gunshot wound of the  
8 abdomen.

9 Q You said that he had two gunshot wounds; is that  
10 right?

11 A That is correct.

12 Q Let's talk about the one on the shoulder first -- or  
13 the neck, the upper body. Can you describe that for us?

14 A Certainly. This is gunshot wound to the right side  
15 of the neck, which entered roughly in this area here on  
16 what we call the lateral or the outside portion of the  
17 neck. It passed from his back to front downward and very  
18 slightly from his right to his left. This created,  
19 basically, a gutter-type wound. And that is ripping  
20 through the skin and the underlying subcutaneous tissues,  
21 but it does not, actually, penetrate into the underlying  
22 deep muscles. So this would be a superficial, actually, a  
23 fairly deep graze-type gunshot wound. Superficial in its  
24 injury and would not have caused the death of Mr. [REDACTED]

25 Q You said, though, that it came from the back to the

1 front; is that right?

2 A That's correct.

3 Q Let's talk about the other wound then.

4 A The second gunshot wound that Mr. [REDACTED] had was an  
5 entrance gunshot wound to the abdomen. This was located  
6 within the midline of the body approximately two inches  
7 below the umbilicus or the belly button. This wound  
8 passed through multiple loops of small intestine. It  
9 passed through a portion of the liver, through a portion  
10 of the stomach, and exited out the left upper back --  
11 well, the left midback of Mr. [REDACTED] So it went in the  
12 front and exited out the back. So it passed from front to  
13 back, from the midline to the left, so from right to left,  
14 and slightly upward.

15 Q Doctor, do you know which order those wounds were  
16 received?

17 A No, I do not.

18 Q Let me ask you this, assuming hypothetically that the  
19 abdominal wound came first, would it be consistent after  
20 having been shot with turning around like this and  
21 presenting his back to the shooter and then the second  
22 shot came across his shoulder?

23 A That is, certainly, possible, yes.

24 Q And what did you say was the -- what, essentially,  
25 led to his death then? What was the mechanism -- you said

1 gunshot wound. What caused his death in the hospital?

2 A The mechanism of death in this case would be the  
3 blood loss associated with the gunshot wound to the  
4 abdomen.

5 Q In spite of all the medical process that was done, he  
6 died as a result of this gunshot wound; is that right?

7 A That is correct.

8 Q And what would you -- did you have an opinion as to  
9 the manner of death?

10 A Yes, I do.

11 Q What is your opinion, please, sir?

12 A That this was a homicide.

13 MR. MOWRY: Thank you, sir. I believe that's all I  
14 have.

15 THE COURT: Cross?

16 MR. RICHEY: Couple of questions.

17 CROSS-EXAMINATION

18 BY MR. RICHEY:

19 Q You said that the abdomen wound was upwards?

20 A Yes, sir.

21 Q And the one to the shoulder was upwards?

22 A It's not really a gunshot wound to the shoulder.

23 It's a gunshot wound to the neck. And it is very slightly  
24 downward.

25 Q Okay. So I'm shot in the abdomen and that shot is

1 going, your testimony, like this, right?

2 A Well, not that much upward, no, but it is trending  
3 upward, yes.

4 Q So for me to get that gun to go upwards, I've got to  
5 have it pointed this way, correct? Because I can't point  
6 it down, it goes down, right?

7 A You either have to be pointing it upward or be  
8 positioned lower than the victim.

9 Q Right. So the guy that shot him, based on your  
10 testimony, could have been lower than him, correct?

11 A Certainly, could have been.

12 MR. RICHEY: Thank you.

13 MR. MOWRY: Just a couple of questions.

14 REDIRECT EXAMINATION

15 BY MR. MOWRY:

16 Q Doctor, could the shot have come from the hip down  
17 like this?

18 A Yes.

19 Q And when a bullet strikes a human body, is there a  
20 predictable path or does the bullet sometimes go in an  
21 unusual manner?

22 A It may sometimes go in an unusual manner. If it  
23 strikes bone, it can deflect and go in a different -- or  
24 change its initial path, so it is sometimes unpredictable.

25 MR. MOWRY: Thank you, sir. That's all I have.

1 MR. RICHEY: No questions. He can be excused, Your  
2 Honor.

3 THE COURT: Doctor, thank you very much for coming.  
4 You may step down and you are free to go.

5 Mr. Mowry.

6 MR. MOWRY: I call Antonio Morris, Your Honor.  
7 Thereupon;

8 ANTONIO MORRIS, after having  
9 been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MOWRY:

12 Q You are Antonio Morris?

13 A Yes, sir.

14 Q Mr. Morris, I don't mean to embarrass you, but you've  
15 got a criminal record; don't you?

16 A Yes, sir.

17 Q You've got a petit larceny back in 1999, false  
18 information to the police in 2008, fraudulent check in  
19 2009 and burglary and larceny back in 2009, and then  
20 financial transaction credit card fraud back in 2014;  
21 isn't that right?

22 A Yes, sir.

23 Q And I believe you're in jail right now on a DUI/DUS;  
24 is that right?

25 A Yes, sir.

1 Q Let me ask you to think back to 2013. Whereabouts  
2 did you live in the latter part of 2013?

3 A In Gray Court on Pleasant View Drive.

4 Q Pleasant View Drive?

5 A Yes, sir.

6 Q I'm going to ask you to refer to -- if you could come  
7 down for just a second.

8 A (The witness complied.)

9 Q I'm going to ask you to refer to State's Exhibit No.  
10 4. Have you seen this chart before?

11 A I stayed right there, 138 --

12 THE COURT: He needs to speak up, Mr. Mowry.

13 THE WITNESS: 138 Pleasant View Drive.

14 BY MR. MOWRY:

15 Q So this area right here is where you stay; is that  
16 right?

17 A Yes, sir.

18 Q If you will take the stand again.

19 A (The witness complied.)

20 Q Do you still have a residence there?

21 A Well, a couple weeks ago, the house caught on fire.

22 Q But you lived there up until then?

23 A Yes, sir.

24 Q You were living there in --

25 A My whole life.

1 Q Yeah, the last part of 2013, particularly. Do you  
2 know the Defendant in this case, Christopher Wells? Have  
3 you ever seen him before?

4 A No, sir.

5 Q But you lived right here; is that right?

6 A Yes, sir.

7 Q Sometime in the early part of November, or  
8 thereabouts, did you find anything unusual on Pleasant  
9 View?

10 A Yes, a wallet.

11 Q You found a wallet?

12 A Yes, sir.

13 Q How did you come about finding it?

14 A I was walking on my way to the Dollar Store. And up  
15 the street from my house by the Washerette, there was a  
16 wallet laying on the side of the road and I had picked it  
17 up.

18 Q So up in this area? The Washerette is right here;  
19 isn't it?

20 A Yes, sir.

21 Q Right at the corner of Highway 101 South and Pleasant  
22 View, right?

23 A Yes, sir.

24 Q And whereabouts did you find a wallet?

25 A Can I point it out to you?

1 Q Okay.

2 A I found the wallet up in this area here.

3 Q Okay. So you found it on the side of the road. And  
4 I'm just going to ask you, is it between 62 and 38, the  
5 numbers that are listed on this chart?

6 A Yes, sir.

7 Q Okay. Thank you. I'm going to hand you what's been  
8 marked as State's Exhibit 17. Do you recognize that?

9 A Yes, sir.

10 Q What is that, please, sir?

11 A That's the wallet I had found.

12 Q Okay. That's the wallet you found lying on the side  
13 of Pleasant View Road?

14 A Yes, sir.

15 Q Okay. Was there anything inside that wallet?

16 A It was a dollar and the man ID and a bunch of other  
17 little cards.

18 Q Do you remember whose ID's they were?

19 A I remember the last name was [REDACTED]

20 Q Was it [REDACTED]

21 A Yes, sir.

22 Q Okay. What did you do with the dollar?

23 A I kept the dollar.

24 Q Okay. Did you keep on going to the Dollar Store?

25 A Yes, sir. On my way to the Dollar Store, it's a

1 field across the street from it. After I got the man ID  
2 and the little silver thing you keep on your clip, I had  
3 got that out and I tossed the wallet out in the field. I  
4 went to the Dollar Store.

5 When I got back home, my aunt had called and she was  
6 telling me about somebody had got killed. And when she  
7 brought that man name up, I had told her I had found his  
8 ID and stuff. So they came to my house to look at it and  
9 verify it was the person.

10 Q Who is they?

11 A Nicole Sullivan and Jerry May.

12 Q Who are they?

13 A I think Jerry May is kin to him. I think that's his  
14 cousin.

15 Q Kin to [REDACTED]

16 A Yes, sir.

17 Q Did you ever see this man?

18 A That's who we called.

19 Q Okay. You called Bryan Cheek?

20 A Yes, sir.

21 Q And did he come talk to you?

22 A Yes, sir.

23 Q And what did he ask you?

24 A I told him where I found the wallet at and I took him  
25 to where I throwed it.

1 Q And that was up where?

2 A By the Dollar Store, in the field.

3 Q And what did y'all do when y'all got to the field?

4 A We walked around the field and looked for it until we  
5 found it.

6 Q And did you find it?

7 A Yes, sir.

8 Q And did Detective Cheek take possession of that  
9 wallet?

10 A Put it in evidence.

11 Q And you have no doubt that State's Exhibit 17 is the  
12 wallet you found?

13 A That's it.

14 Q And again, you found it right here?

15 A Yes, sir.

16 Q Mr. Morris, can I get you to come down just a second?

17 A (The witness complied.)

18 Q And I'm going to ask you to take this little gold  
19 star sticker and put it right where you found the wallet.

20 A (The witness complied.) Somewhere in that area  
21 there.

22 Q Right. And this "X" denotes where you lived?

23 A Yes, sir.

24 Q Thank you, sir.

25 MR. MOWRY: I believe that's all I have, Your Honor.

1 THE COURT: Mr. Richey.

2 MR. RICHEY: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. RICHEY:

5 Q That's not why you told about that wallet. That's  
6 not why you told them about that wallet. You kept those  
7 credit cards, too; didn't you?

8 A There wasn't no credit cards in there.

9 Q You didn't keep any credit cards?

10 A No, sir.

11 Q You didn't try to use any credit cards?

12 A No, sir.

13 Q So if anyone said you did, they would not be telling  
14 the truth, correct?

15 A They would be telling a lie.

16 Q They would be telling a lie, right?

17 A Yes, sir.

18 Q Okay. And you -- none of this stuff you've done out  
19 of the goodness of your heart because you do have a record  
20 for not telling the truth, correct?

21 A Yes, sir.

22 Q And this wallet that you supposedly found, you didn't  
23 call the police and say hey, I found this wallet right  
24 here; did you?

25 A When I found out that it was a dead man's wallet, I

1 called his family and then called the police.

2 Q And you called the family, but you took the wallet  
3 and threw it away, right?

4 A I didn't know who the person was before then.

5 Q But you knew it wasn't your wallet, right?

6 A Yes. It could be anybody's walking and pass on the  
7 side of the road.

8 Q No, no, this wallet -- no, no, no, that's not what  
9 we're talking about. See, we're talking about a wallet  
10 right here and we open it up -- you see that? When we  
11 open this wallet up when we find it, we can say, hey,  
12 that's [REDACTED] right?

13 A Yeah, and it was in there.

14 Q And we can say hey, there's his driver's license,  
15 right?

16 A (Witness did not respond.)

17 Q You have to answer.

18 A Yes, sir.

19 Q And this driver's license -- I'm going to hand it to  
20 you. You take that. That driver's license right there  
21 has that man's address on it, right?

22 A Yes, sir.

23 Q So you find this wallet, you know whose wallet this  
24 is, correct?

25 A I didn't know the man, but ID and stuff was in there.

1 Q You know his name and address, correct?

2 A Yes, sir.

3 Q Okay. And when you found this man's wallet, you're  
4 telling us it was only a dollar in it, right?

5 A Yes, sir.

6 Q And you realize this man carried around substantial  
7 money, right?

8 A I don't know. I don't know the man.

9 Q But you never went to the address on this driver's  
10 license and told him you found his wallet?

11 A No, sir.

12 Q And you claim that you found this wallet up by the  
13 Washerette?

14 A Yes, sir.

15 MR. RICHEY: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. MOWRY:

18 Q Just one or two questions, Antonio.

19 A Yes, sir.

20 Q You didn't try to get in touch with [REDACTED]  
21 when you found the wallet; did you?

22 A No, sir.

23 Q But when you found out that he was a murder victim,  
24 what did you do?

25 A Called his family and got in contact with Detective

1 Cheek.

2 Q And helped Detective Cheek find that wallet, right?

3 A Yes, sir.

4 MR. MOWRY: Thank you, sir. That's all.

5 THE COURT: Thank you, sir. You can step down.

6 Mr. Mowry, call your next witness, please.

7 MR. MOWRY: I call Bryant Cheek.

8 Thereupon;

9 BRYANT CHEEK, after having  
10 been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MOWRY:

13 Q You are Bryant Cheek?

14 A Yes.

15 Q Would you spell your last name, please, sir?

16 A C-H-E-E-K.

17 Q And what is the last name of the victim in this  
18 particular case?

19 A Cheeks, with an S, C-H-E-E-K-S.

20 Q So a different spelling. Are y'all at all related?

21 A No, sir.

22 Q Okay. Just to make that clear for the record. What  
23 is your job right now? What do you do?

24 A I work in the criminal investigation division for the  
25 Laurens County Sheriff's Office. I'm a criminal

1 investigator. My main focus is the Gray Court area on  
2 Highway 101 South and Highway 14 and everything up to  
3 Fountain Inn.

4 Q Okay. Are you occasionally, also, on call?

5 A Yes, sir, we do rotation on call every nine weeks.

6 Q And were you involved in an investigation in the  
7 Enoree area on Halloween night of 2013?

8 A Yes, sir, I was on call that night.

9 Q How did you become aware of this case?

10 A The call came out from dispatch that they had a  
11 shooting on [REDACTED] Road.

12 Q And what did you do in response to that call?

13 A I left my residence and ran lights and siren to [REDACTED]  
14 [REDACTED] Road.

15 Q What did you find when you got there?

16 A When I got to the scene at [REDACTED] Road, I met  
17 with Lieutenant Marty Crain and other deputies. They  
18 started explaining to me what was going on and what they  
19 had found so far.

20 Q Did you, also, meet with [REDACTED] Ball there that night?

21 A Yes.

22 Q What was her state at that point?

23 A She was visibly upset, hysterical, panicky.

24 Q What kind of process did you go through? What steps  
25 did you take in investigating this matter?

1 A I talked with Lieutenant Crain, Sergeant Timmons,  
2 other officers there at the scene. They began to explain  
3 to me what happened. We, also, talked with Mr. [REDACTED] Mr.  
4 Walker as well as [REDACTED] Ball.

5 Q Let me ask you this, at the outset, did you know  
6 whether David Walker was a victim or a perpetrator?

7 A At the outset, he told me that he was a victim.

8 Q Okay. When did things begin to turn as far as that's  
9 concerned?

10 A For me, it didn't turn -- I still treated him as a  
11 victim because of what he had to share with us sitting  
12 there on the porch and we were still gathering information  
13 through the investigation.

14 Q And not for the truth of the matter asserted, but did  
15 he tell you that he had been attacked by two guys that he  
16 didn't know?

17 A Yes.

18 Q And they hit him over the head and shot him; is that  
19 right?

20 A Yes.

21 Q Did you learn something different from Mr. [REDACTED]

22 A Yes. We learned from Mr. [REDACTED] that he had said  
23 that David Walker -- or he pointed to the gentleman on the  
24 porch had come to rob him.

25 Q And was that, in fact, David Walker?

1 A Yes, it was.

2 Q Did he indicate whether or not anybody else was with  
3 Mr. Walker?

4 A Not that I can remember. I thought he said they came  
5 to rob me, but he was pointing at Mr. Walker.

6 Q Do you see David Walker on this chart?

7 A Yes, I do.

8 Q Which one is he?

9 A (The witness indicated.)

10 MR. MOWRY: And for the record, Your Honor, he is  
11 pointing to the upper right-hand figure on State's Exhibit  
12 No. 3.

13 THE COURT: Thank you.

14 BY MR. MOWRY:

15 Q What happened next?

16 A Talked with Mr. Walker. Of course, we were securing  
17 the scene. We were processing the scene. EMS was there.  
18 They were working with Mr. Walker on the front porch. EMS  
19 was working with Mr. [REDACTED] in the house. They  
20 transported them to the hospital.

21 Q Did you go to the hospital?

22 A Yes. After we had processed the scene and the  
23 deputies had collected the evidence, then I left [REDACTED]  
24 [REDACTED] Road and went to Spartanburg Regional Hospital.

25 Q Did you speak with Mr. [REDACTED] there?

1 A No. I didn't get to speak with Mr. [REDACTED] he was in  
2 surgery.

3 Q Did you ever get to speak with Mr. [REDACTED] before he  
4 died?

5 A No, sir, I did not get to speak with Mr. [REDACTED]

6 Q Was his condition just bad?

7 A Yes, he was in surgery that night. And then when I  
8 went home and came back, they had taken him back down to  
9 surgery again the following morning.

10 Q After Mr. [REDACTED] died, did you speak with [REDACTED] Ball?

11 A Yes.

12 Q What was the purpose in speaking with her that second  
13 time?

14 A I wanted to give her a little time to think about her  
15 statement. We, also, talked with her that night. We put  
16 her in the back of one of the police cars, got her calmed  
17 down and asked her to give us a handwritten statement to  
18 the best of her ability of what she could recall happened.

19 Q What was her state?

20 A She was very nervous, still upset.

21 Q And you were in the courtroom when the 911 call was  
22 played; is that right?

23 A Yes.

24 Q Was that pretty much the way she was?

25 A Yes, sir.

1 Q A few days later, was she able to give another  
2 statement?

3 A She was able to give us another handwritten  
4 statement.

5 Q Did you have any other suspects Mr. Walker at that  
6 point?

7 A Based on her statement, she had indicated to us there  
8 were some other people out there.

9 Q So you had indications there were other people, but  
10 did you know who?

11 A No, sir.

12 Q How did you become aware of Christopher Wells?

13 A Through the course of the investigation, what I  
14 started doing was try to see who some of David Walker's  
15 friends were. So I discovered some of his friends and who  
16 his friends were, so it started there.

17 Q Now, was Mr. Walker arrested for this homicide?

18 A Not at the time.

19 Q Was he still in the hospital for a while?

20 A Yes, he was at the hospital.

21 Q At that point, had you focused on him as a suspect in  
22 this case?

23 A Yes.

24 Q Go ahead and describe what you did then. You said  
25 you were looking for some of his associates.

1 A We were looking for some of his associates. Of  
2 course, Mr. Walker was in the hospital. We did not arrest  
3 him. Mr. Walker came out the hospital, we still had not  
4 arrested him. We were just kind of pounding the pavement  
5 trying to get leads and do follow-up.

6 Q What led you then to Christopher Wells?

7 A Through the course of the investigation, Ms. Ball had  
8 given us a description on another individual that  
9 resembled another gentleman by the name of Ty --

10 Q Let me ask you this, did she ever say that the  
11 individual -- did she ever indicate to you that the  
12 individual, Ty, was the person she saw that night?

13 A No, sir, she didn't.

14 Q What was the reference to Ty all about then?

15 A She gave us a description of an individual that fit a  
16 picture of someone that she knew, I guess, that she was  
17 acquainted with or dealt with in the past.

18 Q Okay. And did you take it from there?

19 A Yes.

20 Q Where did your investigation lead you from there?

21 A So throughout the course of the investigation, I  
22 looked back at the entire case. Because of the situation  
23 of the investigation down on [REDACTED] Road, I never did  
24 copy the radio traffic that the other deputies were out  
25 with Mr. Wells at the time. So when I asked dispatch to

1 set the CAD aside and the recording --

2 Q When you say CAD, what is that?

3 A Everything that comes in through is recorded and is  
4 CAD'ed with times.

5 Q Okay. So it's, basically, a transcript of all the  
6 radio traffic; is that right?

7 A Yes, sir.

8 Q Let me just ask you this in general, in your  
9 experience as an investigator, is an investigation usually  
10 a straight line or are there a lot of branches that go off  
11 in different directions?

12 A There are a lot of branches in a lot of different  
13 directions.

14 Q Okay. And was this one no exception?

15 A No exception.

16 Q What was it about the CAD that you found to be  
17 interesting?

18 A I started looking back at the CAD, started looking at  
19 the various times. And then when I was looking at it, all  
20 of a sudden, I discovered the description of the car had  
21 been given. I didn't know our deputies had stopped a car  
22 or one of the guys from Laurens City had gotten behind a  
23 car. So when I saw that and I saw the name, it kind of  
24 clicked with me from there.

25 Q And what name did you find?

1 A Christopher Wells.

2 Q Okay. Where did you determine that Mr. Wells was  
3 approached by law enforcement that night?

4 A On Jones Hill Road.

5 MR. MOWRY: And I'm referring, Your Honor, to State's  
6 Exhibit No. 4.

7 BY MR. MOWRY:

8 Q And Jones Hill Road is right here, right?

9 A Yes.

10 Q And up here was Mr. Morris's house?

11 A Yes.

12 Q And up here, this little star, is where the -- he  
13 says the wallet was found; is that right?

14 A Yes, sir.

15 Q How far -- what kind of distance are we talking about  
16 here between the house and, let's say, the corner of 101  
17 and Pleasant View?

18 A It's not a long way. I'm not good with the mileage.  
19 I don't think it's more than a mile. It's kind of a short  
20 distance. It's just kind of a road that comes straight  
21 down and turns off.

22 Q Okay. And how far is this area from [REDACTED]  
23 Road in Enoree?

24 A May eight, 10, 12 miles. I'm not sure. It's a good  
25 distance.

1 Q Quite a good distance, okay. Based on your  
2 information about Mr. Wells, what did you do?

3 A Based upon the information in the CAD system and  
4 finding out that law enforcement had spoke with him that  
5 night, I took a photo ID of him, submitted it to South  
6 Carolina Law Enforcement Division, which they compiled a  
7 photo lineup and then we showed it to Ms. Ball.

8 Q And I'm going to show you State's Exhibit No. 27. Is  
9 this the lineup that you presented to [REDACTED] Ball?

10 A Yes, sir.

11 Q And which photograph of Mr. Wells did you submit to  
12 SLED -- or which photograph is Mr. Wells that you  
13 submitted to SLED?

14 A Number five.

15 Q And the others, you have no idea who they are; is  
16 that right?

17 A No, sir.

18 Q When SLED does something like this, prepares a lineup  
19 like this, what are the criteria? What are they trying to  
20 do?

21 A They're trying to give the witness something to look  
22 at or can ID an individual based upon what we submit to  
23 them.

24 Q And you give them information and they give you  
25 similar-looking people; is that right?

1 A Yes, sir.

2 Q And they compiled this themselves?

3 A They compiled that themselves.

4 Q How did you present that to Ms. Ball?

5 A Well, we talked with her. I told her I was going to  
6 show her a photo lineup to see if anybody on there looked  
7 familiar to her. So when we set the photo lineup down,  
8 she immediately went to number five. I gave her a pen,  
9 she circled it and I asked her to put her initials right  
10 there indicating that she had ID'd this individual.

11 Q Did you, also, speak to Toris Moore?

12 A Yes.

13 Q How did you become aware of her?

14 A Through the course of the investigation. Again, just  
15 pounding the pavement, following up every lead.

16 Q And did you take a written statement from her?

17 A Yes.

18 Q And you heard her testimony in court yesterday; is  
19 that right?

20 A Yes, sir.

21 Q Do you recall about when Antonio Morris got in touch  
22 with you?

23 A No, sir. I know it was after the incident, some time  
24 after that. I don't really recall the date and time.

25 Q Okay. Describe what you did when you got that

1 information.

2 A When I received the information that a wallet had  
3 been discovered, I immediately went to meet with him. And  
4 when I got there, he gave me the contents of the wallet.  
5 I asked him to explain exactly where he found the wallet.  
6 He kind of gave me a description of it. And I asked him  
7 where was the wallet. He had the contents of the inside  
8 of the wallet. He said, I threw the wallet down up on  
9 West Main, which is across from the Dollar Store.

10 Q And I'm going to show you State's Exhibit No. 17. Is  
11 this the wallet that y'all retrieved?

12 A Yes, sir.

13 Q Okay. Now, Investigator Cheeks, did you become aware  
14 of Johnny Lee Saxon around the same time?

15 A Yes, sir.

16 Q How did you become aware of him as a possible  
17 suspect?

18 A Just following up leads from various people. We  
19 started out looking for a Johnny Tribble. He, also, went  
20 by Johnny Tribble, but it's, also, Johnny Saxon.

21 Q Okay. Did Toris Moore give you information about  
22 him?

23 A Yes.

24 Q And which one on State's Exhibit No. 3 is Johnny  
25 Saxon?

1 A This is Johnny Saxon right here.

2 Q All right. Do you know whether Johnny Saxon has  
3 relatives that live on Pleasant View Road -- Pleasant View  
4 Drive?

5 A Yes.

6 Q He does?

7 A Yes, sir.

8 Q Can you point out on this chart --

9 MR. MOWRY: I'm referring again, Your Honor, to  
10 State's Exhibit No. 4.

11 BY MR. MOWRY:

12 Q Can you point out on this chart where those relatives  
13 live?

14 A I think it's 172, I think.

15 Q So it's in this area? I'm going to put this star  
16 there; is that about right?

17 A I think so.

18 Q Okay. I'm going to hand you what have been marked as  
19 State's Exhibit 28, 29 and 30, and ask you if you can  
20 identify those?

21 A Yes.

22 Q What are those, please, sir?

23 A These are photos that were taken at Jones Hill Road.

24 Q Okay. What do those depict?

25 A It depicts the description of the car that was given

1 out that night, the BOLO.

2 Q And whose car is that?

3 A Christopher Wells.

4 Q Is that the same car it was on -- the same color it  
5 was on Halloween night5?

6 A No, sir, it is not.

7 Q How do you know that?

8 A We discovered through the course of the investigation  
9 that the car had been painted.

10 Q Okay. Do you know how long after that event that it  
11 had been repainted?

12 A No, sir.

13 Q Okay. But that's the same car?

14 A Yes, sir.

15 Q That's Christopher Wells's car?

16 A Yes, sir.

17 MR. MOWRY: Beg the Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. MOWRY:

20 Q Based on your investigation, what charges do you  
21 bring against this Defendant?

22 A Murder, possession of a weapon during the commission  
23 of a violent crime, armed robbery.

24 MR. MOWRY: Thank you, sir.

25 Your Honor, at this time, I would ask to enter the

1 aerial photographs of River View Road, I believe, from the  
2 crime scene. I would, also, like to introduce State's  
3 Exhibit No. 3, the photographs, and No. 17, the wallet,  
4 and I would like to introduce State's Exhibits 28, 29 and  
5 30, the photographs of the car.

6 MR. RICHEY: No objection.

7 THE COURT: So I've got State's 3, State's 17, 28, 29  
8 and 30?

9 MR. MOWRY: Yes, sir. And if I could confer with the  
10 court reporter to make sure I'm not missing anything.

11 THE COURT: All right.

12 MR. MOWRY: No. 2, the aerial view of the crime  
13 scene. Your Honor, I would, also, like to admit State's  
14 Exhibit No. 20, 21, which are the shell casings. And in  
15 order to keep bullets and firearms separate, I will not  
16 introduce the magazine with the other live rounds.

17 THE COURT: Okay. Any objections to State's 2, 20 or  
18 21?

19 MR. RICHEY: No objection, Your Honor.

20 THE COURT: Okay.

21 MR. MOWRY: And I think that's it.

22 THE COURT: State's 2, 3, 17, 20, 21, 28, 29, and 30  
23 are in evidence without objection.

24 MR. MOWRY: Thank you, Your Honor.

25 (WHEREUPON, State's Exhibit Nos. 2, 3, 17, 20,

1 21, 28, 29, and 30 were admitted into evidence.)

2 THE COURT: Mr. Richey.

3 CROSS-EXAMINATION

4 BY MR. RICHEY:

5 Q Okay. Mr. Cheeks, you're the last witness, so I'm  
6 going to try not to keep you up here too long. Do you  
7 have your report up there?

8 A Yes, sir.

9 Q This wallet right here that was found, this wallet,  
10 Antonio Morris, he used the credit cards in that wallet;  
11 didn't he? He took them out and used them for himself,  
12 correct?

13 A I don't know.

14 Q Is that what you have in your report? Look at your  
15 report and where you've got December 18th, 2013?

16 A Yes, sir, I have it.

17 Q You see where it says Antonio Morris?

18 A Yes, sir. It says, Antonio Morris found a wallet on  
19 the side of the road on Pleasant View Road on 101 South.  
20 Morris went through the wallet and kept the credit cards  
21 from inside the wallet and threw it out in the field on  
22 Old Lawrence Road.

23 Q So when he got on that witness stand and said there  
24 were no credit cards in that wallet, he was not telling  
25 the truth, correct? Based off your report, he was not

1 telling the truth?

2 A Yes.

3 Q And he tried to use those cards?

4 A I don't know if he tried to use those cards.

5 Q And let me go back to this car. Your version of the  
6 color was not brown, right? That night, the car wasn't  
7 brown?

8 A I didn't copy the radio traffic for the description  
9 of the car. All I copied was the BOLO -- well, ask me the  
10 question again.

11 Q Let me ask it this way, you were at the house that  
12 night, correct?

13 A Yes.

14 Q Okay. And you were privy to all the radio transfers  
15 from law enforcement on dispatch, correct?

16 A No, sir.

17 Q You were not?

18 A I was privy to the radio traffic, but down in the  
19 hole, the radio was distorted.

20 Q So you don't know what color the car was?

21 A No, sir.

22 Q You have no idea? It could have been red?

23 A No, sir.

24 Q Right?

25 A No, sir.

1 Q You don't know what the color was, is that your  
2 answer?

3 A Yes, sir.

4 Q Okay. So when you say that this depicts the color of  
5 his car, you don't know what the color of the car was,  
6 correct?

7 A It depicts the --

8 Q The color of the car, you did not know the color of  
9 the car?

10 A No, I did not know the color of the car.

11 Q So you don't know what color that car was the night  
12 that the incident occurred, correct?

13 A No, sir.

14 Q So these pictures, based on your testimony, do not  
15 reflect the car that you saw, correct?

16 A I did not see the car.

17 Q Okay. So you said that car was painted, right?

18 A Yes, sir.

19 Q When [REDACTED] Ball originally gave her statement, that  
20 was that night, right?

21 A She gave us one statement that night, yes, sir.

22 Q And then, subsequently, at a time after that, she  
23 gave you another statement a week or two after that,  
24 correct?

25 A Yes, sir.

1 Q And in that statement of hers, she described the car  
2 as being brown, right?

3 A I think so.

4 Q And we know at the of the incident the car was not  
5 brown, correct?

6 A Yes, sir.

7 Q [REDACTED] Ball told you that the guy that was there  
8 looked like Ty, right?

9 A Yes, sir.

10 Q And Ty is a dark-skinned, big guy, right?

11 A Yes, sir.

12 Q Did you ever put Ty in a lineup and show her?

13 A Yes, sir.

14 Q You did?

15 A Yes, sir.

16 Q And you have that lineup?

17 A Yes, sir.

18 Q Okay. And did she pick out Ty?

19 A No, sir.

20 Q So she -- your testimony is that she picked out  
21 somebody that looked totally different than the  
22 description she gave you?

23 A Say that again now.

24 Q This description right here -- this picture right  
25 here, this gentleman is not dark-skinned, right?

1 A No, sir.

2 Q So she picked out an individual that was not the  
3 description of the guy there that night, correct, based on  
4 this?

5 A Yes, sir.

6 Q And this is -- don't you think all this story is kind  
7 of strange? We've got a guy that we know is a know drug  
8 dealer, correct?

9 A Yes, sir.

10 Q That moves a lot of dope, correct?

11 A I don't know that for a fact.

12 Q But he sells it -- or sold it?

13 A Yes, sir.

14 Q Don't you think from your investigation that it's  
15 kind of strange for somebody to knock on his door and say,  
16 oh, I'm here to rob you? You don't find that being  
17 strange?

18 MR. MOWRY: Speculation, Your Honor.

19 THE COURT: I'll let the question stand.

20 Go ahead and answer it if you can.

21 BY MR. RICHEY:

22 Q That's not your traditional robbery; is it?

23 A In my understanding, robberies can take on many forms  
24 and fashions. I want to make sure I understand what  
25 you're asking me.

1 Q In your career, have you seen another one like this  
2 where somebody come and say I'm going to rob and they go  
3 out the house with them; have you seen that before?

4 A I'm not really sure if I recall any.

5 Q Right. So it's a first, right? From your  
6 recollection, it would be a first because you can't recall  
7 another one; is that correct?

8 A Yes.

9 Q And it would seem strange to you that somebody would  
10 go to the door and voluntarily walk out the house with  
11 somebody that's going to rob them? That would be strange  
12 to you?

13 A No, sir.

14 Q It would not be strange if somebody opened the door  
15 and walked out with a guy that says I'm going to rob you?

16 A In my understanding, if an individual knocks on the  
17 door and walks out in the yard, I can't say whether or not  
18 he's walking out in the yard and he knows that individual  
19 is getting ready to rob him. I don't know.

20 Q These people in this case, these people are  
21 dangerous, right? These [REDACTED] are dangerous, right?

22 A I can't say they're dangerous. I've never had any  
23 dealings with them in law enforcement.

24 Q Okay. But you found in your investigation, he  
25 carried a gun, right?

1 A Based on?

2 Q Your investigation, talking to [REDACTED] Ball and  
3 everybody, Cheeks carried a gun?

4 A Yes, sir.

5 Q He had large sums of money on him, right?

6 A Yes, sir.

7 Q He sold drugs and had several drug suppliers; is that  
8 correct?

9 A I don't know all -- yes, sir.

10 Q Okay. So --

11 A Based on her testimony.

12 Q Based on her testimony, he had all these dangerous  
13 people around him. These people -- these drug folks are  
14 dangerous; aren't they?

15 A Yes, sir.

16 Q And it doesn't surprise you when drug dealers have a  
17 shoot out; does it?

18 A No, sir.

19 Q You expect it, right?

20 A Yes, sir.

21 Q Because they boys, they don't play hand to hand  
22 combat; do they?

23 A No, sir.

24 Q When they get mad, they shoot, right?

25 A Occasionally.

1 Q And this case right here, it fits that description;  
2 doesn't it?

3 A Yes.

4 MR. RICHEY: Thank you, sir.

5 MR. MOWRY: Your Honor, could I take up a matter of  
6 law very briefly?

7 THE COURT: Sure.

8 Ladies and gentlemen of the jury, I need to take up  
9 an issue of law with the attorneys. I'll need to ask you  
10 to adjourn to the back. Don't discuss the case. I'll  
11 have you back up here in a few minutes. Adjourn to the  
12 back.

13 (WHEREUPON, the jury exits the courtroom at  
14 approximately 4:08 p.m.)

15 THE COURT: The jury is out, Mr. Mowry.

16 MR. MOWRY: Your Honor, at this point, since Mr.  
17 Richey is casting speculation on other people that might  
18 have done the shooting, I think it would be appropriate  
19 for the jury to know that 12 jurors in Laurens County have  
20 found David Walker guilty beyond a reasonable doubt of  
21 murder of [REDACTED] And I would submit that the  
22 State should be allowed to enter into evidence the  
23 certified copy of the indictment and sentencing sheet in  
24 his case.

25 THE COURT: Mr. Richey?

1           MR. RICHEY: Judge, I didn't open the door. I just  
2           said these people shoot. I said nothing about any other  
3           person. I was talking about Walker and this individual,  
4           who we've all said -- he put in evidence -- there's no way  
5           I even remotely opened the door to let that conviction in.

6           MR. MOWRY: I think he kicked it open, Your Honor.

7           THE COURT: You're referencing the portion of the  
8           testimony, Mr. Mowry, where he asked -- the last question  
9           he asked this witness about, doesn't this more closely  
10          resemble a shoot out between drug dealers' robbery, is  
11          that kind of what you're getting at?

12          MR. MOWRY: That's exactly what I'm getting at, Your  
13          Honor. And I think the jury should be -- in order to give  
14          them a complete picture in this case, they should know  
15          that David Walker has already been convicted in this case.

16          THE COURT: The Court would like to take a moment to  
17          reflect on that, Mr. Mowry. However, would it be possible  
18          -- or wouldn't it be possible for the State to, perhaps,  
19          rehabilitate this witness's testimony -- if that is what  
20          was asked on cross, would it not be possible for you to  
21          then on redirect ask this investigator well, did you  
22          pursue the possibility that this was a shoot out? Or what  
23          led you to conclude that it was not a drug-related type of  
24          -- drug dealer on drug dealer kind of offense? The Court  
25          is sympathetic with the way the question was asked, but

1 the Court, of course, has many considerations.

2 MR. MOWRY: Yes, sir.

3 THE COURT: Usually, there are two avenues by which  
4 that can be achieved. But let me reflect on that and,  
5 perhaps, you can gather your thoughts in the event I would  
6 rule against you on that. We'll take about five minutes  
7 while I consult with my law clerk on that question.

8 Mr. Cheek, you can step down and make yourself  
9 comfortable. Just don't discuss your testimony with the  
10 solicitor or anyone else while we're on break.

11 Will this be your last witness?

12 MR. MOWRY: Yes, sir.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: We'll go back on the record. With  
15 regards to the request by the State, the jury is -- first  
16 of all, these jurors are not idiots. I've been observing  
17 them and they've been paying attention. They've heard the  
18 testimony. They, clearly, understand that the State's  
19 theory of the case is that Mr. Walker was the shooter.

20 MR. MOWRY: Yes, sir.

21 THE COURT: The 50-cent question -- well, the first  
22 question that the Court has to answer is whether the door  
23 was opened. I disagree with the State's characterization  
24 that it was kicked open, but I would agree that the door  
25 was opened to a degree by that last series of questions

1 concerning drug dealers and isn't it possible that this is  
2 a drug-on-drug-type of a thing. I'm certain that the  
3 State can rehabilitate this witness, but at the same time,  
4 in light of those questions, in light of the evidence as a  
5 whole, I have the sneaking suspicion that the jury has  
6 already concluded that Mr. Walker is not walking around  
7 Laurens County.

8 So what the Court is inclined to do, I'm not going to  
9 allow you to ask this witness whether or not 12 people  
10 from Laurens County in this very courtroom on February the  
11 25th of 2015 found Mr. Walker guilty of the crime of  
12 murder. I will allow you to ask this witness is it your  
13 understanding that Mr. Walker is currently in the  
14 Department of Corrections serving a sentence for murder in  
15 this incident. So I will allow you to ask them that.

16 The Court will, also, be giving the jury an  
17 instruction -- because the one thing the Court wants to be  
18 certain of is that the jury understands that this case has  
19 to stand alone as it relates to this Defendant, Mr. Wells.  
20 The fact that Mr. Walker was tried and convicted by 12  
21 people is not relevant to that ultimate question.

22 But, again, these jurors are not idiots. And I think  
23 that the first question if I sent this question back to  
24 them, based on my experience -- and this is only the  
25 eighth murder I've tried in the last eight months. But my

1 experience is that the first question I would get from the  
2 jury is okay, we're just curious what happened to Mr.  
3 Walker? And, clearly, the evidence points out the State's  
4 theory that -- and the State's theory has been made  
5 abundantly clear to them. I will allow you to ask this  
6 deputy that question about Mr. Walker's current custody  
7 status, but I would ask that you phrase it the way I did.

8 MR. MOWRY: I'm trying to write that down just as you  
9 said it, Your Honor. Are you familiar with the fact that  
10 David Walker is in the South Carolina Department of  
11 Corrections --

12 THE COURT: Serving time for this homicide. And that  
13 is a proportional response to the degree in which the door  
14 was opened. It also is consistent with the State's theory  
15 with the Court charging the jury -- and what I'm going to  
16 do is use the modified charge where you're trying, you  
17 know, several co-defendants, you know that charge from the  
18 bench book.

19 I'll modify that somewhat so that it is perfectly  
20 clear to the jury that the evidence in this case has to be  
21 judged only as it relates to the culpability of Mr. Wells  
22 himself and anything else is not a proper consideration.  
23 So I'll have to play with that a little bit this evening,  
24 but I will allow you to ask this witness that question  
25 because, again, it is consistent with the State's theory.

1 It's along the lines of evidence that's already been  
2 presented that the jury has already heard about. They  
3 know that Walker is the shooter in this case. It does no  
4 harm to the potential defense that maybe Ty was the person  
5 standing with Mr. Walker, which is kind of what I've  
6 heard, perhaps, from the right side of the courtroom. It  
7 does no damage, it does no violence to that, and the  
8 prejudice is minimal. Again, it's a proportional question  
9 in light of the last series of questions that were asked.

10 If you, also, want to rehabilitate this witness about  
11 his investigation and how he concluded this was not a drug  
12 transaction, that's fine, too, however, you want to play  
13 it. I'm not going to gag you on that.

14 But that's my ruling. I understand the Defense does  
15 object.

16 Let's have the jury out.

17 MR. MOWRY: Thank you, Your Honor.

18 THE COURT: And you do not need to contemporaneously  
19 object, you are covered.

20 MR. MOWRY: Thank you, Your Honor.

21 (WHEREUPON, the jury enters the courtroom at  
22 approximately 4:35 p.m.)

23 THE BAILIFF: All the jury is present, Your Honor.

24 THE COURT: Let the record reflect the jury is back.

25 Mr. Mowry, you may continue with your redirect, sir.

1 MR. MOWRY: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MOWRY:

4 Q Investigator Cheek, in your study of the CAD, the  
5 report of the radio traffic, the log, I guess, of the  
6 radio traffic that was kept that night, you became  
7 familiar with Patrolman Ashley and Deputy McMahan's  
8 encounter with the car, Mr. Wells; is that right?

9 A I didn't at the time.

10 Q Well, you became familiar with it?

11 A I became familiar, yes.

12 Q Were you able to look at the time elapsed between the  
13 report of the incident on [REDACTED] Road and the  
14 encounter?

15 A Yes.

16 Q Did the time fit? Could the vehicle -- in that time,  
17 would it have fit for the vehicle to go from here to here?

18 A From where to --

19 Q From [REDACTED] Road to --

20 A To Gray Court.

21 Q Well, to where they encountered the vehicle on 101?

22 A Yes.

23 Q It fit?

24 A Yes.

25 Q Is there a fairly direct route to get there? Are you

1 familiar with the roads?

2 A No, sir, not familiar with the roads.

3 Q Okay. But the time fit; is that right?

4 A Yes, sir.

5 Q And you had an opportunity in court to hear the 911  
6 audio; is that right?

7 A Yes, sir.

8 Q Do you recall on there [REDACTED] Ball talking about a  
9 brown car?

10 A Yes, sir.

11 Q So she reported it contemporaneously; is that right?

12 A Yes, sir.

13 Q And that's what she saw?

14 A That's what she saw.

15 Q During the course of your investigation, was there  
16 any evidence that this was a shooting by a drug rival?

17 A No, sir.

18 Q Who did the victim say to you was his assailant?

19 A David Walker.

20 Q Did he identify anyone else as his assailant?

21 A No, sir.

22 Q Did Toris Moore give you the name of David Walker?

23 A Yes, sir.

24 Q Christopher Wells?

25 A Yes, sir.

1 Q Johnny Lee Saxon?

2 A Yes, sir.

3 Q Where was the wallet found by Antonio Morris,  
4 according to your investigation?

5 A Right off of Highway 101 on Pleasant View Drive.

6 Q Where did Johnny Lee Saxon have family?

7 A Pleasant View Drive.

8 Q Where did Christopher Wells have a girlfriend?

9 A Jones Hill.

10 Q Right off of Pleasant View, right?

11 A Yes, sir.

12 Q Are you familiar with the fact that David Walker is  
13 in the South Carolina Department of Corrections serving  
14 time for this homicide?

15 A Yes, sir.

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

17 THE COURT: Any further questions?

18 RE CROSS-EXAMINATION

19 BY MR. RICHEY:

20 Q Officer, you don't, actually, know where that wallet  
21 was found, correct?

22 A I know where Mr. Morris took me to.

23 Q Where he told you it was found, but other than that,  
24 you don't have any idea where that wallet was found?

25 A He told me it was found at the corner of 101 and

1 Pleasant View Drive.

2 Q Right. Other than that, you don't have any other  
3 independent evidence that wallet was found at that place?

4 A Nothing but what he told me.

5 MR. RICHEY: Thank you, sir.

6 THE COURT: Thank you for coming. You may step down.  
7 Call your next witness.

8 MR. MOWRY: Your Honor, that's the State's case. We  
9 rest at this time.

10 THE COURT: Ladies and gentlemen of the jury, here's  
11 what we're going to do. There's a few legal matters that  
12 I do need to address with the attorneys. What I'm going  
13 to ask is that you be back in the jury room tomorrow  
14 morning -- I'll ask that you be back at the same time,  
15 okay, 9:30, please. Be back in the jury room at 9:30. At  
16 that point in time, we'll proceed with the case.

17 Again, do not discuss the case this evening while  
18 you're on break. Talk about anything else, don't talk  
19 about the case. I trust y'all will have a pleasant  
20 evening. We're going to stick around and do some more  
21 stuff, some more motions and a few other things that we  
22 have to address on this case. I'll see you at 9:30 and  
23 we'll resume at that point in time. Have a great night.

24 (WHEREUPON, the jury leaves the courtroom at  
25 4:42 p.m.)

1 THE COURT: At this point, Mr. Richey, you move for a  
2 directed verdict; is that correct, sir.

3 MR. RICHEY: Yes, Your Honor. Looking at the  
4 evidence in the light most favorable to the State, they  
5 cannot prove the elements of the charges against my  
6 client.

7 THE COURT: In the light most favorable to the State,  
8 considering the law and the testimony, the Court would  
9 deny that motion. The Court does find there is sufficient  
10 direct and circumstantial evidence. Direct evidence,  
11 namely, direct identification by a person present at the  
12 scene. Additionally, there is circumstantial evidence in  
13 this case which would warrant submitting the case to a  
14 jury.

15 Mr. Richey, I'm assuming that you've had an  
16 opportunity to discuss with Mr. Wells whether or not he's  
17 choosing to testify or y'all intend to present a defense;  
18 is that correct?

19 MR. RICHEY: Yes, Your Honor.

20 THE COURT: It's done a variety of ways. Nowadays, I  
21 think it's typical for me to ask him a few questions about  
22 his right to testify. Are you comfortable with me  
23 proceeding with that?

24 MR. RICHEY: I'm comfortable with the Court inquiring  
25 of him, yes, sir, I am.

1 THE COURT: Mr. Wells, you can stay seated. I do  
2 need to ask you a few questions, okay, sir, just under  
3 oath. So if you would, just raise your right hand for me.  
4 Thereupon;

5 CHRISTOPHER WELLS, after  
6 having been duly sworn, testified as follows:

7 THE COURT: These are simple questions. I just need  
8 you to understand the responses I get have to be honest,  
9 okay, Mr. Wells? And you can put your hand down. Thank  
10 you, sir.

11 Mr. Wells, at this point in the trial, we've reached  
12 that part of the trial where you can present a defense.  
13 And I need to explain to you certain rights that you have  
14 under the Fifth Amendment to the United States  
15 Constitution. Okay, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At this point in time, the State has  
18 rested. And if you need to ask me about anything I  
19 explain to you in greater detail, just let me know. I'll  
20 let you talk to me. I'll let you talk to Mr. Richey. But  
21 if you don't understand something I'm telling you, I need  
22 you to tell me, okay, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, again, Mr. Wells, we've reached this  
25 point in the trial where you have a right to present a

1 defense. And you, also, have the right to claim the  
2 protections given to you by the Fifth Amendment of the  
3 U.S. Constitution. Basically, this amendment says you  
4 cannot be forced to be a witness against yourself in any  
5 criminal case. Do you understand that, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Thank you. Now, Mr. Wells, what that  
8 means is that, basically, the solicitor cannot force you  
9 to take the stand, the Court cannot make you take the  
10 stand, Mr. Richey cannot make you take the stand. No one  
11 can force you to be a witness in this particular case. Do  
12 you understand that, Mr. Wells?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, Mr. Wells, this is a personal right,  
15 your Fifth Amendment right to testify or not to testify is  
16 a personal right. Only you can waive it. If you decide  
17 to testify, Mr. Wells, please, understand you'll be  
18 subject to the same rules of cross-examination that govern  
19 the other witnesses. So the solicitor would be able to  
20 ask you about any relevant material or any relevant  
21 questions that the solicitor wants to ask you about.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: So if you choose to testify, obviously,  
25 you'll be subject to the same questioning process that we

1 have seen with other witnesses.

2           Additionally, aside from your conviction for  
3 voluntary manslaughter some years ago, I think the  
4 solicitor said it was '92 or something like that, aside  
5 from that, I really don't know what your criminal history  
6 holds. And it's possible that the Court would allow the  
7 State to inquire of you or to bring out the fact that  
8 maybe you've been convicted of other crimes, perhaps,  
9 crimes involving dishonesty or crimes that carry more than  
10 a year in prison if the Court determines that the  
11 probative value outweighs any prejudice to you.

12           So understand, Mr. Wells, that if you decide to  
13 testify, this decision has to be made freely, voluntarily  
14 and with the understanding of all the protections  
15 guaranteed to you under the Fifth Amendment.

16           Do you understand what I've told you so far, sir?

17           THE DEFENDANT: Yes.

18           THE COURT: Very good. If you decide not to testify,  
19 Mr. Wells, I would instruct the jury that they cannot give  
20 the fact that you did not testify any consideration  
21 whatsoever in deciding whether you're, actually, guilty of  
22 this crime. They can't talk about it. They can't discuss  
23 it and they're not to infer anything negative about you  
24 because of the fact you didn't testify.

25           Do you understand that, Mr. Wells?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, Mr. Wells, it's entirely up to you  
3 on whether or not you want to testify. You can chat with  
4 your family about this. You can talk to your attorney  
5 about this. Truthfully, I would suggest strongly that you  
6 rely upon the advice of your attorney as far as whether or  
7 not you choose to testify or even present a defense.  
8 Because, obviously, if you choose not to present a  
9 defense, then your may get -- or your lawyer will get last  
10 argument and sometimes that's a very valuable thing from  
11 the defense side of things.

12 Do you understand that, Mr. Wells?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So any decision on whether or not you  
15 testify, it's entirely up to you. The final decision has  
16 to be yours.

17 Have you understood everything I've talked to you  
18 about, Mr. Wells?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The way I usually leave it is if Mr.  
21 Richey were to call you as a witness, I will assume you  
22 have voluntarily waived your right under the Fifth  
23 Amendment. Is that a good way to handle it for you, sir,  
24 or do you know if you want to testify at this point in  
25 time? Have you made that decision?

1 THE DEFENDANT: (There was no response.)

2 THE COURT: If you haven't made a decision, just tell  
3 me and you can think about it tonight, you can talk to Mr.  
4 Richey some more, if you want to leave it like that.

5 THE DEFENDANT: Let me talk about it.

6 THE COURT: That's perfectly fine. Very good. Just  
7 let me know what y'all decide to do in the morning.

8 Anything else we need to cover this evening?

9 MR. MOWRY: I don't think so, Your Honor.

10 THE COURT: My law clerk has been working on the jury  
11 instructions. This is not her first rodeo either, so she  
12 will be e-mailing those to y'all sometime this evening  
13 that you can take a look at.

14 MR. MOWRY: Your Honor, I've got the copy that you  
15 had distributed for Mr. Walker's trial. Would it be  
16 similar to that, do you anticipate?

17 THE COURT: Perhaps, it will. Perhaps, it won't. I  
18 need to look at what she has been working on. We will be  
19 giving an instruction on felony murder inference, not  
20 felony murder rule, felony murder inference, the same  
21 language, an inference of malice can arise, that kind of  
22 thing, but the jury is free to reject that inference. At  
23 this point in time, we're charging hand of one, mere  
24 presence, prior record of a witness, based upon the fellow  
25 who testified this afternoon. And then I've got to tweak

1 the multiple co-defendant instruction to make it clear to  
2 the jury that they have to judge this case based on the  
3 evidence not against Mr. Walker --

4 MR. MOWRY: Yes, sir.

5 THE COURT: -- or the other guy, but solely against  
6 Mr. Wells. So that's what I'll be charging so far. If  
7 there are any other additions that you can think of right  
8 now, go ahead and let me know and we'll put them in there.  
9 But we will e-mail this to you, gentlemen, sometime this  
10 evening.

11 MR. MOWRY: Sounds very good.

12 MR. RICHEY: Thank you, Your Honor.

13 MR. MOWRY: What time are we starting in the morning?

14 THE COURT: If y'all don't mind, if we could,  
15 perhaps, start at maybe 9:15 in the event Mr. Wells  
16 chooses not to testify. That way, we can go straight to  
17 closing arguments and charge.

18 Do you anticipate any additional witnesses if Mr.  
19 Wells weren't to testify?

20 MR. RICHEY: No, Your Honor.

21 THE COURT: Okay. Very good.

22 So if there is going to be a defense case, it will be  
23 Mr. Wells alone, that's what I'm hearing. If that  
24 changes, just let me know. Otherwise, we'll plan on going  
25 straight into closings and charge.

1 MR. MOWRY: Very good.

2 THE COURT: See y'all in the morning, around 9:15 if  
3 y'all could.

4 (WHEREUPON, the proceedings were adjourned for  
5 the day to be reconvened on Wednesday, April 27, 2016.)

6 Day 3 - WEDNESDAY, April 27, 2016

7 THE COURT: We'll go ahead and go back on the record  
8 in the State vs. Mr. Wells. The record should reflect  
9 that, first of all, of course, the Defendant is present,  
10 along with counsel.

11 A few housekeeping matters that we need to address.  
12 First of all, my clerk has already given to you a copy of  
13 the proposed instructions. We just realized that we  
14 omitted two things from the instructions that I think will  
15 need to be included based upon conversations that we had  
16 in the courtroom this morning off the record.

17 First, Mr. Richey, Mr. Wells, it's my understanding  
18 that Mr. Wells is not going to be testifying; is that  
19 correct?

20 MR. RICHEY: Yes, sir.

21 THE COURT: Is that accurate, Mr. Wells? Is that  
22 correct, sir, you've chosen not to testify?

23 (Pause.)

24 THE COURT: And the reason I'm asking, Mr. Wells, in  
25 anticipation of your not testifying, I need to include

1 some instructions for the jury that there's no inference  
2 raised against you because of your not testifying, that  
3 the jury is not to consider that in any way, shape or  
4 form. That's the reason I was asking that question. I  
5 need to include that language at this point in time in the  
6 instructions.

7 THE DEFENDANT: No, I ain't going to testify.

8 THE COURT: All right.

9 Additionally, I did not include in the instructions  
10 the limiting language that I said I was going to include  
11 yesterday. I e-mailed that to my clerk. I thought it had  
12 been copied to y'all, but it did not go through. What I  
13 have added as it relates to Mr. Walker and the other  
14 co-defendants, I added a portion to the instructions that  
15 says, You've heard testimony that three individuals were  
16 charged in connection with this incident. Only Mr. Wells  
17 is on trial in this case, therefore, the evidence against  
18 Mr. Wells must be considered separately and apart from the  
19 cases against any other defendant and the manner in which  
20 a case against any other defendant has been resolved. In  
21 short, you must consider the evidence in this case in its  
22 totality only as it relates to Mr. Wells without regard to  
23 the case of any other co-defendant.

24 So that was the limiting language I put in there.

25 MR. MOWRY: No problem from the State, Your Honor.

1 MR. RICHEY: That's fine, Your Honor.

2 THE COURT: Additionally, it was brought to my  
3 attention last night that we did have an issue with one of  
4 the jurors.

5 Which juror is it, Mr. Neely?

6 MR. NEELY: I believe it was the younger female juror  
7 that was sitting in the middle front.

8 THE COURT: Do we have her name? I think you gave it  
9 to me yesterday. Did you give it to me yesterday?

10 MR. NEELY: I don't have her name.

11 THE CLERK: I think it's Kayla Windley.

12 THE COURT: Windley?

13 THE CLERK: Yes. #10 on the list.

14 THE COURT: Okay.

15 THE CLERK: 192 is her juror number.

16 THE COURT: Apparently, one of the officers saw her  
17 sitting outside waiting for a ride yesterday -- one of the  
18 officers who had testified in the case saw her sitting  
19 waiting for her ride, offered to give her a ride and,  
20 apparently, did, in fact, give her a ride home. I don't  
21 know what the Defendant's position is on her, but,  
22 apparently, she is the younger, I believe, black-haired  
23 lady sitting on the front row, somewhat of a petite build,  
24 if I'm not mistaken. I may be mistaken, but I'm thinking  
25 that that's the juror. I'm seeing some heads nod out

1 there.

2 MR. MOWRY: Yes, sir, that, apparently, is the one.  
3 I did not see it, but that's what was reported to me.

4 THE COURT: Obviously, if the Defense wants, I'll  
5 replace her. If they feel like they'd rather keep her --

6 I was assured, and I'm assuming, Solicitor, that  
7 you've already spoken to the officer and that there was no  
8 conversation about this case?

9 MR. MOWRY: No, sir. He said it was very innocent.  
10 He did not intend for there to be a problem. There wasn't  
11 any collusion or anything, but -- Your Honor, if I may  
12 state the State's position. That's what we've got  
13 alternates for. And to avoid any appearance of  
14 impropriety, it might be a good idea to use the alternate.

15 MR. RICHEY: Your Honor, my client, he can't remember  
16 which one she is, so he would like for her to be brought  
17 out so he can see because he may want to keep her.

18 THE COURT: Very good.

19 And you say you believe her name is Lindley?

20 THE CLERK: Windley.

21 THE COURT: Ask Ms. Windley to step out here, okay?

22 And it's Officer Ashley?

23 MR. MOWRY: Yes, sir.

24 (WHEREUPON, Ms. Windley enters the courtroom.)

25 THE COURT: Hey, Ms. Windley, how are you?

1           THE JUROR: Good.

2           THE COURT: First thing, you're not in trouble, so  
3 don't be nervous. I just need to ask you a quick  
4 question. It was related to me after we finished up  
5 yesterday that you were waiting on a ride outside the  
6 courthouse and that one of the officers, who had testified  
7 in this case, I think it was Officer Ashley, happened to  
8 see you sitting there and then offered you a ride home.  
9 Are you the juror that got a ride home from him?

10          THE JUROR: That's correct.

11          THE COURT: At any point in time when you got that  
12 ride did y'all discuss the case in any way?

13          THE JUROR: No, sir.

14          THE COURT: He just gave you a lift? How far is it  
15 to your house from here?

16          THE JUROR: In driving time, maybe 20 minutes.

17          THE COURT: Okay. And I'm assuming that you -- even  
18 though he helped you out and gave you that ride, that lift  
19 yesterday, are you able to still sit as a fair and  
20 impartial juror being fair to everybody involved in this?

21          THE JUROR: Of course. Of course.

22          THE COURT: Very good, Ms. Windley. Thank you very  
23 much. You can go back.

24                   (WHEREUPON, the juror exits the courtroom.)

25          THE COURT: All right. Gentlemen, thoughts?

1 MR. MOWRY: I'll leave it to the Defense and you,  
2 Your Honor.

3 MR. RICHEY: We want her. My client says he wants  
4 her to stay.

5 THE COURT: You'd rather keep her. Okay. Very good.  
6 If there were to be any prejudice, the prejudice  
7 would adhere to the Defendant, and since they want her to  
8 stick around, we'll let Ms. Windley continue to serve.

9 All right. I need to print out the final version of  
10 the instructions. Let me get a copy of that.

11 When we come back, Mr. Richey, you can rest on the  
12 record. We'll go straight into closings. Of course,  
13 you'll have final closing.

14 MR. RICHEY: Thank you, Your Honor.

15 THE COURT: Five minutes while we get this.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: We will go back on the record. The Court  
18 has the instructions at this particular point in time.

19 When I bring the jury out, Mr. Richey, I'll just turn  
20 to you and at that point in time, you can rest and we'll  
21 go straight into closings.

22 MR. RICHEY: Yes, sir.

23 THE COURT: Ask the bailiffs to bring the jury out.

24 (WHEREUPON, the jury enters the courtroom at  
25 10:10 a.m.)

1 THE BAILIFF: All jurors are present.

2 THE COURT: Thank you.

3 Ladies and gentlemen of the jury, again, I apologize  
4 for keeping you waiting. We were working out here on a  
5 few matters that did not involve you. We are, of course,  
6 still engaged in the case of the State vs. Mr. Wells. At  
7 this point, the State has rested.

8 Mr. Richey.

9 MR. RICHEY: The Defense rest at this time, Your  
10 Honor.

11 THE COURT: Ladies and gentlemen, we have reached  
12 that point in the trial where you have received all the  
13 evidence that you're going to have in order to judge this  
14 case. At this point in time, the attorneys will be given  
15 an opportunity to give either a closing argument or their  
16 closing summation.

17 Normally, when the lawyers talk to you in their  
18 closings, it's normal for them to reference facts or  
19 testimony or evidence that has been introduced into the  
20 record. I will tell you that since you are the sole  
21 judges of the facts that if at any time they say something  
22 about the facts, the lawyers say something about the facts  
23 and it differs from what you recall the testimony being,  
24 you should go with your recollection, of course, because  
25 you're the judge of the facts in this case. Not the

1 attorneys, not the Court, you're the sole judges of the  
2 facts.

3 For example, if they were to say that yesterday, the  
4 weather was cold, rainy and miserable and you recall  
5 yesterday being the most perfect spring day, you should go  
6 with your recollection of the weather as opposed to what  
7 they say it was.

8 The way we will proceed is the State will go first  
9 with their closing, to be followed by Mr. Richey.

10 So at this point in time, Solicitor, you're recognize  
11 for your closing.

12 MR. MOWRY: Thank you very much, Your Honor.

13 Closing Statement by Mr. Mowry

14 MR. MOWRY: Ladies and gentlemen, we've come to the  
15 time where, as the Judge said, you've gotten everything  
16 you're going to get, except for lawyers flapping their  
17 gums.

18 I wanted to talk with you for a few minutes about the  
19 law in the case. I want to tie that law in to the facts  
20 that you've heard over the last couple of days. This is  
21 the only opportunity that I get -- or the last opportunity  
22 that I get to talk with you, for which some of you may be  
23 eternally grateful. But what I want you to do is remember  
24 what you've heard and remember what I'm telling you now.  
25 Because I don't get another chance. Mr. Richey will get

1 the last argument. And that's a powerful tool in our  
2 system.

3 But I want to talk with you a little bit about the  
4 law in the case. Remember, I told you at the start of the  
5 trial that a murder is an unlawful killing. Well, was  
6 [REDACTED] doing anything that deserved killing?  
7 Yes, he dealt drugs. And some of you may say well, drug  
8 dealers deserve killing. That didn't give David Walker  
9 and Johnny Saxon and Christopher Wells the authority to be  
10 judges, jurors and executioners. This was an unlawful  
11 killing. Without justification, without excuse of a human  
12 being. No doubt about that. With malice, either  
13 expressed or implied.

14 His Honor is going to instruct you a little later on  
15 that malice can either be expressed -- and that is saying  
16 -- somebody saying I am going to kill you. That would be  
17 expressed malice. And then you can infer malice from the  
18 surrounding circumstances. His Honor is going to instruct  
19 you that you can infer malice from the fact that the  
20 homicide was committing during the commission of a felony.

21 Armed robbery. That's stealing property from  
22 somebody with the threat of the use of a deadly weapon.  
23 What did you hear from [REDACTED] Ball? I'm here to rob you.  
24 This weapon was used in the commission of that unlawful  
25 act. By force or violence, intimidation while armed with

1 a deadly weapon. This weapon that Toris Moore told you  
2 David Walker told her was Christopher Wells's killed  
3 [REDACTED] Oh, it most assuredly is a deadly  
4 weapon.

5 Possession of a firearm during the commission of a  
6 violent crime is another crime that Mr. Wells has been  
7 charged with. Murder and armed robbery are both violent  
8 crimes. His Honor will instruct you of that.

9 Now, can we prove to you that Christopher Wells was  
10 the trigger man? No. We don't have any eyewitnesses that  
11 can come in here and testify to that. No doubt about it.

12 [REDACTED] Ball heard the altercation. She testified that she  
13 heard the gunshots and then went out. But she did not see  
14 who pulled the trigger, so we cannot prove that  
15 Christopher Wells was in actual physical custody of that  
16 gun. We cannot prove to you that he's the one that pulled  
17 the trigger.

18 But His Honor is going to instruct you about  
19 constructive possession as well. Constructive possession  
20 -- listen carefully to his charge. That means that  
21 several people can possess the same thing at the same  
22 time. Listen carefully to that charge when that times  
23 comes up.

24 Criminal conspiracy. This is a meeting of the minds.  
25 Several people combining together, getting together and

1 coming to an agreement to commit a criminal act. It  
2 started out as a plan to go to Enoree to rob, then it  
3 extended out to a murder.

4 His Honor will instruct you of the legal principle, I  
5 guess is the good word, in South Carolina of the hand of  
6 one is the hand of all. There's a very good reason behind  
7 this. Basically, it keeps people from getting together as  
8 a mob and carrying out some kind of illegal act. And  
9 that's what we, essentially, have here.

10 We have three men, Wells, Saxon and Walker, getting  
11 together, planning out, going to Enoree. Remember what  
12 they told Toris Moore. They told her this before. We're  
13 going to Enoree and we're going to rob a drug dealer that  
14 lives with a white woman. And is that what happened? I  
15 submit to you that it did.

16 The whole idea behind the hand of one is the hand of  
17 all is that one person acting alone might well not commit  
18 a crime. But if you get a group together, that group  
19 dynamic kind of builds up. You get some people egging  
20 other people on, other people not wanting to fail in the  
21 eyes of the other folks. So that group can a lot of times  
22 do an act that the individuals alone would never do. That  
23 is why the hand of one is the hand of all is a principle  
24 of law in South Carolina. His Honor will instruct you on  
25 that as well.

1           And remember, His Honor will instruct you about the  
2 inference of malice that arises during the commission of a  
3 felony. If a homicide is committed during the commission  
4 of a felony, you can infer that there was malice involved  
5 with that killing, which might well make it murder in your  
6 eyes.

7           His Honor is going to instruct on the concepts of  
8 direct and circumstantial evidence. Both of them are  
9 present here. Direct evidence is eyewitness testimony.

10         ██████████ Ball saw Christopher Wells in the driveway. She was  
11 able to describe the car, Wells's car. And you have  
12 circumstantial evidence as well. Circumstantial evidence  
13 you can consider as pieces in a puzzle, that taken by  
14 themselves are not of that great significance, but when  
15 you start putting them together, all of a sudden, just  
16 like a puzzle, the big picture emerges.

17           The fact that the victim's wallet was discovered in  
18 Gray Court by itself may not have been that significant.  
19 But when you start putting the other pieces together,  
20 Toris Moore talking about how Saxon and Wells and Walker  
21 were together going to rob ██████████ as it turns  
22 out, in Enoree; the fact that Officer Ashley followed the  
23 car down 101; the fact that the car drove erratically or  
24 evasively; the fact that the wallet is found within a  
25 short distance of both Saxon's family's house and Wells's

1 girlfriend's house. All of those are pieces that come  
2 together circumstantially to give you the complete  
3 picture.

4 So, ladies and gentlemen, let me talk about how this  
5 law fits in together. You know, there's a principle of  
6 philosophy that I hear every once in a while called  
7 Occam's Razor. And it says, basically, that the simplest  
8 explanation of an occurrence is usually the best one.  
9 Perhaps, even the most accurate.

10 So let's consider this case in that regard. We know  
11 that [REDACTED] was mortally wounded at his home on  
12 Halloween night in 2013. We know that David Lee Walker,  
13 this man right here, was found sitting wounded on [REDACTED]  
14 [REDACTED] front porch after the incident. We know that  
15 David Lee Walker had been in Gray Court that evening not  
16 long before this incident, that he had been there in  
17 search of a gun from Toris Moore. He wanted to borrow a  
18 gun he thought she had. They had this one, but they  
19 wanted a second one.

20 Now, when you saw Toris testify, I can tell you it  
21 was fairly obvious that David Lee Walker's niece wanted to  
22 be anywhere else but here. She didn't want to be here.  
23 She had no desire whatsoever to be in this courtroom. You  
24 could tell that from her demeanor. But what she testified  
25 to about her uncle's conversation with her and his

1 associates rings true. And that's what I want you to take  
2 back there. She's got no reason to come in here and tell  
3 the story she did unless it's the truth. Why is she going  
4 to put her own kin in jeopardy?

5 Walker told her that they were going to go rob a drug  
6 dealer in Enoree who lived with a white woman. As I said,  
7 they wanted a second gun, not just this one. We know from  
8 her testimony that Walker was in the company of Saxon and  
9 Wells. We know that they were traveling in Christopher  
10 Wells's car. And we know from her testimony that the  
11 conspiracy had already begun. They had already entered  
12 into a meeting of the minds to commit a criminal act.  
13 They had already decided here's what we're going to do.

14 And she knew about this several hours before. She  
15 didn't want any part of it. So she came up with a story  
16 that the gun -- she didn't have it. It wasn't available.  
17 They couldn't have it. And off they went. Apparently,  
18 maybe, they decided that one gun was enough.

19 So how did David Walker get from Enoree in, say, an  
20 hour, hour and a half -- get from Gray Court, I should  
21 say. David Walker, who is found wounded on [REDACTED]  
22 [REDACTED] front porch sometime between 11:30 and midnight  
23 on Halloween night of 2013, how did he get from Gray Court  
24 to Enoree? It's 10 or 12 miles. We're talking an hour  
25 and a half. He, certainly, didn't walk it. Weren't any

1 other cars found.

2 The simplest explanation, ladies and gentlemen, is  
3 that these three carried out the plan that Walker had  
4 outlined to Toris Moore. That they used Wells's car, that  
5 box-style car, that you can see in these pictures. That  
6 they drove from Gray Court to Enoree because they were  
7 going to rob [REDACTED] a man that [REDACTED] Ball told  
8 you had habitually carried a big wad of cash and probably  
9 wasn't going to report this to law enforcement. They  
10 figured this was an easy, safe score. They figured three  
11 on one, even with only one gun. This was an easy score.

12 Remember, Dr. Ward told us that [REDACTED] was  
13 61 years old. I'm almost that old, so I know it's not  
14 ancient, but it's not 40 and it's not 20. He was 61 years  
15 old. He was five foot, nine, 140. Remember, what Andrew  
16 Ashley put in his report, that Christopher Wells was  
17 nearly a hundred pounds heavier, 235 pounds. They hadn't  
18 counted on [REDACTED] fighting back. They just  
19 thought they were going to grab the wallet and go. But he  
20 did, he did fight back. He managed to shoot and wound  
21 Walker before this trio put him down himself.

22 Now, remember, [REDACTED] Ball wanted to get [REDACTED]  
23 into his car. She wanted to drive him to the hospital.  
24 That's what she testified to. She wanted to get him  
25 there, but couldn't. Because the only set of keys that

1 [REDACTED] had had been stolen by these robbers  
2 along with [REDACTED] wallet. The fact that they  
3 took his keys and his wallet, the fact that they did it at  
4 gunpoint while armed with a deadly weapon, ladies and  
5 gentlemen, that's armed robbery.

6 Now, you'll have all the evidence with you back there  
7 in the jury room. You'll have the 911 call. If you want  
8 to hear that again, we can make arrangements to do that.  
9 That's your province. You make that decision. But you  
10 can hear the desperation and hysteria in [REDACTED] Ball's  
11 voice. I submit to you that's no act. That was real.

12 You can hear her description at the top of the  
13 driveway. They did a lot of talking about colors of the  
14 car. But she said that the car was brown. That's what  
15 she said in the recording. That's what she wrote several  
16 days later in her written statement. Her perception that  
17 night was it was brown. But she explained to you, it's  
18 under a mercury light. I may be wrong, but that's the way  
19 it looked to me that night. And that's the description  
20 that went out.

21 But you can hear the description of the car, the  
22 box-style car. The description of the car that matches  
23 the description of the car owned by the man she saw  
24 backing up the driveway, Christopher Wells. That she saw  
25 face to face as she came out after the gunshots subsided.

1 She saw Christopher Wells backing up the driveway. Her  
2 description of the box-style car matches up with these  
3 pictures.

4 And, ladies and gentlemen, it was a description  
5 accurate enough for Andrew Ashley to have decided this is  
6 worthy of investigation when a short time after the  
7 shooting in Enoree, he encountered a box-style car,  
8 box-style sedan on Highway 101 heading towards Gray Court.  
9 He turned around and followed the vehicle. And where did  
10 that car go, ladies and gentlemen? It went, amazingly  
11 enough, to Pleasant View Drive with a lot of twists and  
12 turns that really weren't necessary. The car could have  
13 come in, could have gone across here, could have gone  
14 straight down here and made this turn. But instead, they  
15 turned here, they turned here, they go up here, they turn  
16 here. Little evasive. The same street that Antonio  
17 Morris found the wallet. Same street -- or same area, at  
18 least, that Christopher Wells's girlfriend lived on. Same  
19 street, ladies and gentlemen, that Johnny Lee Saxon's  
20 family lives on.

21 Now, do you need a complicated, convoluted  
22 explanation? No, not when simple is the best. By some  
23 luck and by some good police work, Andrew Ashley happened  
24 to follow the right car to the right place. He didn't  
25 know that that night. He checked it out as much as he

1       could. He wasn't sure if there was anything there. He  
2       was told no, that's probably the wrong color. They're  
3       saying it's brown. So you can imagine how Saxon and Wells  
4       felt when they're fleeing the scene of what eventually  
5       became a homicide and, all of a sudden, they see a police  
6       car coming towards them and then stop and turn around and  
7       get behind them. That's why all that evasive driving.  
8       They knew what was going on.

9               Now, I don't know if Saxon stayed as the driver on  
10       the trip from Enoree to Gray Court. [REDACTED] Ball said she  
11       saw the car come pulling across the driveway and she saw  
12       Christopher Wells go running up the drive. He backed away  
13       from her for several steps, turned around and ran. Where  
14       did he get in? She said the back passenger side door is  
15       where he got in. He jumped in the back seat and the car  
16       took off. So I don't know if Saxon stayed the driver the  
17       whole time they were going to Gray Court. I don't know if  
18       he and Wells switched in transient. And I don't know if  
19       Saxon bailed out on Pleasant View Drive. You heard  
20       Officer Ashley say, I lost sight of them. I was, he said,  
21       a quarter of a mile behind them. He was a distance behind  
22       them. So there was a time when he didn't see them. He  
23       lost sight of them. But I don't know if he got out there  
24       -- if Saxon got out there or he went with Wells to his  
25       girlfriend's house, Well's girlfriend house.

1           Remember, the officers, McMahan and Ashley, said they  
2 never went inside Wells's girlfriend's house. Never did.  
3 So who's to say Saxon wasn't in there? It doesn't matter,  
4 though. It doesn't matter. Because we do know that  
5 Wells, the car and the wallet all made that trip from  
6 Enoree to this area of Gray Court, 10 or 12 miles away.

7           Now, what does that mean, ladies and gentlemen? What  
8 does that mean for us? Well, it means that we can tie  
9 Christopher Wells to the crime before the shooting of  
10 [REDACTED] when the conspirators were in Gray Court  
11 trying to get the second gun from Toris Moore. And we can  
12 tie him to the shooting when it happened based on the  
13 testimony of [REDACTED] Ball, her eyewitness identification of  
14 him.

15           His Honor is going to tell you about mere presence.  
16 Mere presence at a crime is not enough to convict. But  
17 Christopher Wells wasn't merely present. It was his car,  
18 it was his gun and he was there to rob [REDACTED]  
19 Just like Saxon, just like Walker, Christopher Wells was  
20 there to commit a robbery and ended up being responsible  
21 for a murder.

22           So we can tie it to him before, we can tie him in  
23 during and we can tie him in after. Once again, how else  
24 did [REDACTED] wallet get from Enoree to Gray  
25 Court and to the same street where Saxon lived to the same

1 neighborhood that Wells's girlfriend lived, except by  
2 traveling in Wells's car with Wells and Saxon. Ladies and  
3 gentlemen, they divided the cash between them and pitched  
4 the wallet where they figured, okay, this isn't going to  
5 incriminate us.

6 Ladies and gentlemen, do you remember what Toris  
7 Moore said Wells's nickname and the name she knew him by  
8 was? Well, remember, again, according to Toris, it was  
9 his gun. It was his gun that Walker referred to. We've  
10 already got one, we need another. It was Wells's car.  
11 Wells had [REDACTED] wallet and cash. He was  
12 well and truly [REDACTED] nightmare, ladies and  
13 gentlemen.

14 Now, Mr. Richey has made quite a bit about [REDACTED]  
15 [REDACTED] occupation. I doubt any of us consider that a  
16 badge of honor that he was wearing. You might not have  
17 liked [REDACTED] Ball's lifestyle at the time. You might not  
18 like Antonio Morris's criminal record. But what you have  
19 to ask about [REDACTED] -- yeah, what he did might  
20 have been a dangerous occupation -- did that give these  
21 three any authority, any basis for going over there and  
22 robbing him and gunning him down? And the answer is no.

23 [REDACTED] Ball's lifestyle and Antonio Morris's criminal  
24 record, you might not like them, but the question is, were  
25 they believable? Did what they told you from the witness

1 stand ring true to you? And I think you can agree that it  
2 did.

3 Now, Mr. Richey, has been forced to play the hand  
4 he's been dealt. And he's done an admirable job of it.  
5 He's been kind of like a slight of hand magician. He'll  
6 do something up here while the other hand is doing the  
7 trick. It's called misdirection. He's trying to convince  
8 you that issues like skin tone or car color make up for  
9 all the incriminating evidence that the State has brought  
10 against Wells. He keeps bringing up Ty and tries to  
11 misdirect you with that. Remember, [REDACTED] Ball used Ty as  
12 an example. The frame was like Ty. The beard was like  
13 Ty. This was not as a suspect. She didn't think did it.  
14 She knew Ty. If it was Ty, she would have said so.

15 Based on her observations that night, based on her  
16 recollection that night, she picked him out of this  
17 lineup. She picked Wells out of this lineup. Now, either  
18 she is making a remarkable, incredible coincidence for  
19 that's the guy. And the simplest explanation is, ladies  
20 and gentlemen, is that's the guy.

21 Mr. Richey has also talked about an anonymous phantom  
22 rival of [REDACTED] doing the killing, when we know  
23 that David Walker has been convicted of this homicide.  
24 David Walker, who was with the other two, Saxon and Wells,  
25 that night planning out the robbery. He tries to convince

1 you that Christopher Wells is not a large man that [REDACTED]  
2 Ball described. Remember, [REDACTED] is five feet tall. And  
3 then it came out that Christopher Wells was 235 pounds.  
4 That ain't small.

5 Mr. Richey has reminded me at times of the old lawyer  
6 joke -- not saying that he's a joke at all, not by any  
7 stretch of the imagination. But the old line about when  
8 you have the law, you pound the law. When the facts are  
9 in your favor, you pound the facts. When both of them are  
10 against you, you pound the table. And Mr. Richey has had  
11 to do a lot of table pounding in this case because that's  
12 about all he has.

13 Ladies and gentlemen, I asked you at the start of  
14 this trial to do three things for me and you've already  
15 done one of them admirably. You've listened closely to  
16 the testimony that's been brought before you. Y'all have  
17 been attentive. Y'all have been zoned in. And we  
18 appreciate that, that's important. So that's number one.

19 We're going to ask you to continue to listen very  
20 carefully when His Honor instructs you in the law. And  
21 then apply the law that you hear to the facts as you find  
22 them to be. Y'all are the fact finders in this case.  
23 Y'all determine what the truth is. That's number two,  
24 listen very carefully to His Honor.

25 And then when you go back there in that jury room,

1 ladies and gentlemen, after you've heard the Judge's  
2 charge, I ask you to do that third thing that I asked from  
3 you in my opening statement. I ask you to use your common  
4 sense. Your common sense will tell you, ladies and  
5 gentlemen, the State has proved its case against  
6 Christopher Wells. He's guilty of murder. The hand of  
7 one is the hand of all. He's guilty of armed robbery.  
8 He's guilty of conspiracy with these other two. And he's  
9 guilty, either actually or constructively, of possessing a  
10 weapon during the commission of a violent crime. Common  
11 sense will tell you that the State has carried its burden.  
12 We've proved our case beyond a reasonable doubt. We've  
13 left you firmly convinced of his guilt. And we ask you to  
14 bring back verdicts of guilty on all charges. Thank you  
15 very much.

16 THE COURT: Mr. Richey, you're recognized for your  
17 closing.

18 MR. RICHEY: Thank you, Your Honor.

19 Closing Argument by Mr. Richey

20 MR. RICHEY: I'm not no magician. I can't do tricks.  
21 I can just tell you about what happened. See, this case,  
22 this case, when I say this case is a dangerous case, this  
23 prosecutor, these police officers, they've got a dual job.  
24 Their job is to convict people and not to convict to the  
25 innocent. They've got a dual job. And to do that,

1 they've got to come out here and be straight with you.  
2 They've got to be straight and honest. But when this  
3 prosecutor stood up in this opening statement and tell you  
4 he don't know who shot [REDACTED] he does know. They told  
5 him, David Lee Walker.

6 I'm not going to be transparent. I'm not going to do  
7 a magic trick and make a second gun appear over here. I'm  
8 not going to do a magic trick. It's here. It's a reason  
9 why he didn't touch this gun one time. It's a reason why  
10 he came over here and kept saying, this gun, this gun,  
11 this gun, this gun. He's not being straight with you. If  
12 he was being straight with you, he'd come over here and  
13 say you know what, it was two guns. It was this gun and  
14 it was this gun. He'd be straight with you. That's a  
15 magic trick. He'd be straight with you. And he'd look at  
16 this evidence and he'd be straight with you.

17 Let me tell you what happened out there that night.  
18 It's real straightforward. What happened out there that  
19 night, we all know [REDACTED] had a large sum of money, that  
20 he was involved in these drugs. He always carried money  
21 on him. We know that's a fact.

22 We know [REDACTED] Ball was in the house with him. [REDACTED]  
23 Ball is not somebody -- she's not a stand-by-me woman.  
24 She's not -- she didn't get up here and say, you know  
25 what, I loved that man. I loved him. I really miss him.

1 God, I miss him. She didn't say any of that. All she  
2 talked about was he's got all these other sources that he  
3 can get his dope from. He's got all these people he's  
4 getting his dope from. Okay. So we know that's a fact.

5 We know he got a knock at the door and we know it's a  
6 fact he walked out there. Nobody held a gun to him. They  
7 didn't come to the door and say, hey, sir, we're robbing  
8 you. Back up. He went out there freely and voluntarily  
9 to get armed robbed.

10 And you know what that police office said, he said he  
11 never seen anything like this. He never seen an armed  
12 robbery where a guy walk out of the house voluntarily and  
13 get robbed. It doesn't happen. These people are armed  
14 and they're dangerous. So when he walked out of that  
15 house with David Walker for some other reason, not to be  
16 robbed. We know that.

17 Then when they got out there, they started arguing.  
18 We know both of them are armed. We know both of them are  
19 carrying this stuff. We know that, okay. They get in an  
20 argument, shots fired. Shots fired.

21 I'm going to tell you what got this started.  
22 Unfortunately, Mr. [REDACTED] was 61 years old. He was living  
23 a life at 61 he shouldn't be living. We all know that,  
24 but he chose that life to live. And what happened is when  
25 he got out there with Walker, we know that he shot Walker

1 first. We know that. You know how we know that? Because  
2 of the evidence.

3 The pathologist testified -- you remember the  
4 pathologist? No magic trick of mine. I didn't call him  
5 as a witness. He said that [REDACTED] had shots in his  
6 abdomen that were upward. You remember, he said the  
7 person had to be underneath to do that shot, or lower than  
8 you. So we know whoever shot [REDACTED] was lower than him by  
9 the pathologist. So we know he got shot. So we know that  
10 David Walker didn't -- he shoots Walker first. Walker's  
11 down, he does an upward shot. That's consistent with the  
12 evidence. That's what the man testified to.

13 And I'm going to tell you when this armed robbery  
14 game started. [REDACTED] is out there shot, okay. You know  
15 what [REDACTED] Ball did, she went out there and got that gun.  
16 She got that gun, okay, and she moved that gun a great  
17 distance.

18 When we look at this photo that was put up, this  
19 photo right here that was put up, where they say all the  
20 stuff happened where those markers are. That's where  
21 everything happened where those markers are. Okay.  
22 That's where everything happened. So we know she went out  
23 that house and moved that gun. We know that. That's not  
24 a smoking mirror by me, that's what's the evidence because  
25 she moved that gun. And why would she move that gun?

1 Because this is the story, unfortunately, that a man dying  
2 and her came up with. I wasn't the aggressor, meaning  
3 [REDACTED] He shot me first. He robbed -- that's what the  
4 story was.

5 And we know Christopher Wells didn't shoot him. They  
6 tell you that. So this is a beef that these gentlemen had  
7 that started up when he -- when they got there, they  
8 didn't have a beef. They walked out the house like normal  
9 people and then they started arguing. So we know that  
10 Walker did not come there to rob him because they went  
11 outside and started arguing. How do you argue with a guy  
12 that's there, I'm here to rob you? That's not arguing.  
13 So we know that don't make any sense. Because they don't  
14 make common sense for somebody to open sir, we're here to  
15 rob you. We know that doesn't make sense.

16 Now, we look at Wells. [REDACTED] Ball, she says hey, I  
17 saw the guy. I saw who he was. He was dark-skinned. He  
18 was big. When he was up here, did he say that Toris told  
19 us that Christopher Wells was not big and that he was  
20 light-skinned? She told us that. She, also, told us that  
21 the car was gray. She told us that.

22 See, the descriptions of these people could not be  
23 more opposite. We can look at dark-skinned,  
24 light-skinned. It's just a contrast. That's not me.  
25 That's how she described the guy. That's how she

1 described the guy. And we know that description -- we can  
2 all sit here and say, you know what, that description does  
3 not fit Mr. Wells. That's not a game. We know that's not  
4 him. We know that.

5 They said he was robbed. They said he was robbed.  
6 They stole his wallet and all of this stuff. They stole  
7 his wallet. That gentlemen got on the witness stand --  
8 you remember him, the wallet guy? One word he said was  
9 not the truth. I'll give you an example. He sat up here.  
10 I said, Sir, do you know whose wallet that was? I had no  
11 idea who it was. He said, I had no idea who it was. When  
12 he was out here, I showed him. It's got the man's  
13 driver's license and all this stuff in it, so he knows  
14 whose wallet it was. No question he knows.

15 Oh, he's got a criminal record, don't worry about.  
16 Then, I say to him, sir, did you use those credit cards?  
17 See, that's how they got him. See, that's how they got  
18 him, the credit cards. He used those credit cards.  
19 That's how they got him. That's how they got him. And  
20 this stuff about --

21 MR. MOWRY: Your Honor, I hate to object during a  
22 closing argument, but there's been no evidence that he  
23 used those cards besides a statement from Mr. Richey.

24 THE COURT: Overruled. The jury will recall the  
25 facts as they recall them to be.

1           Mr. Richey, please, continue, sir.

2           MR. RICHEY: Thank you, Your Honor.

3           And we can see how this wallet was filled up. You  
4 know, like my wallet is real thin because I don't put a  
5 lot of money in it. But this wallet is a wallet that is  
6 filled with a lot of money. This guy got up here and told  
7 you it was one dollar in here and I went to the Dollar  
8 Store. Somebody going to run -- we know this man's got  
9 large sums of money in here. They're going to take all  
10 and leave one dollar in here? I mean, that doesn't make  
11 any common sense.

12           But you know what, when this gentleman strolled in  
13 here, when I'm sitting over here and this gentleman,  
14 Antonio with the wallet, sitting over there and he strolls  
15 in here, this guy is about six-one, six-two. He sat down  
16 and he started talking, I'm looking at him and I'm  
17 thinking, fits the description. Fits the description,  
18 dark-skinned, tall. Did you believe he lives down here?  
19 See, the State has the burden of proof. They want you to  
20 believe that he lives down there. That he lives there.  
21 We have to believe him to say he lives there. No way.  
22 They didn't bring in evidence, oh, this is his mail,  
23 nothing. So we've got to take his word for it, the man  
24 that's lied to us repeatedly, that fit that description of  
25 a dark-skinned, tall man sitting there with the wallet.

1 Because he fits the description and he's got this wallet.

2 Christopher Wells, the prosecutor says to you, oh, he  
3 was driving erratically. Oh, he was driving erratically.  
4 What evidence did the officer say he was driving erratic?  
5 The officer said he's back there, cruises by and him  
6 following him. He's not speeding. He's not weaving off  
7 the road. He's just driving through there. He's just  
8 driving through there. He goes and makes a left turn and  
9 he drives. And I asked him, If he had let someone out,  
10 would you have saw him? Because he was behind him. He  
11 was behind him. And he was cruising through here. He  
12 comes down here, gets out, gets home.

13 What happened when he got home? Two officers came to  
14 the house. They knock on the door, a woman answers the  
15 door. He's sitting there with a plate and a sandwich.  
16 He's got a plate and a sandwich. And see, his demeanor  
17 did not alarm these officers. See, his demeanor, it did  
18 not raise suspicion. So they talked to him and they said  
19 hey, where you been. He said hey, I was over in  
20 Spartanburg with this girl and I'd prefer his girlfriend,  
21 fiance, not hear them. And that officer, he was  
22 satisfied. When you look at this testimony, he was  
23 satisfied. Was he sweating? Because, you know, according  
24 to them, he just ran, jumped in the car, done all this  
25 stuff. Was he sweating? No. Nothing.

1           Then the officer got a call and said hey, this car  
2 don't fit the description. That car does not fit the  
3 description. We know the car was gray because that  
4 officer got there, he said wait, this car is gray. It  
5 doesn't fit the description. So we know it was gray. And  
6 see, gray and brown, no, that's not close. Gray and brown  
7 is not close. Not even close to gray. Not even close.  
8 And that's not a magic trick. That's not even close to  
9 gray. It's not. If you put lights on this, gray don't go  
10 to brown. It just don't happen. It doesn't happen. It  
11 does not happen.

12           But you know what's interesting about this? You  
13 know, [REDACTED] Ball gave that initial statement. She gave an  
14 initial statement. And she came back later and made a  
15 statement. And they're down there with her with this.  
16 And she said oh, yeah, it was brown. It was brown. But  
17 see, what she didn't know is that officers had already  
18 been down there. She didn't know that. When she's  
19 telling these officers hey, Christopher Wells jumped in a  
20 car on the passenger side, all this stuff, she didn't know  
21 that Christopher Wells's car was being followed by a  
22 police officer. She didn't know that. She didn't know  
23 that.

24           And see, the State of South Carolina, the State of  
25 South Carolina, the reason why that burden is so high, the

1 reason why the reasonable doubt burden is so high is  
2 because the resources that the State has, that's why this  
3 burden is so high. They didn't prove to you this was  
4 Christopher Wells's car. They didn't. We use our common  
5 sense here to figure out whether this car here is  
6 registered to Christopher Wells. He wants you to believe  
7 this is his car. That's what he wants you to believe.  
8 But we use our common sense and we say why wouldn't he go  
9 out and get the VIN number on this and come in and say  
10 yeah, that's it. Why didn't he do that when there's all  
11 this dispute over color? And he's going to bring this in  
12 and wants you to believe this is his car.

13 This is a murder trial, okay. This is a murder  
14 trial. He's asking this man to be convicted of murder.  
15 And he's going to ask you to believe this is his car.  
16 He's going to ask you to believe that this man found this  
17 wallet. We can't believe him.

18 Photo lineup. Look at this lineup. It's not one  
19 dark-skinned person in this thing. I mean, why don't you  
20 have a photo lineup -- when this lady has told you that  
21 the guy dark-skinned, why would you have this lineup? But  
22 see, they want you to convict this man for murder, for  
23 murder with this stuff.

24 You know, oftentimes, when you're in your car -- you  
25 know, you get in your car and you put your feet in and you

1 go, all this stuff, and the car is dirty and all this  
2 stuff. That officer searched Christopher Wells's car that  
3 night. We know that. Christopher Wells gave them  
4 permission. He searched that car and he didn't find  
5 anything suspicious in that car. Because what we have to  
6 understand is this is a surface that we're talking about  
7 the people were on. This is the surface that we're  
8 talking about that he's running on through. If you  
9 believe this story, this is the surface. That officer  
10 didn't say, you know what, I found some wood chippings in  
11 the bottom of Christopher Wells's car that was consistent  
12 with this. He didn't say that. He didn't say he found  
13 any of this stuff.

14 This car. He tried to make oh, this is an older car.  
15 Look at the rims on this car. This car has got  
16 substantial money put into it, but we know that because he  
17 had a lot of money and he dealt a lot of money. This is  
18 not about smoking mirrors. This is not a game. It really  
19 isn't. This is serious business. Because I'm  
20 representing a client that they want you to convict him of  
21 murder. And see, they have a burden of reasonable doubt.  
22 See, reasonable doubt is the kind of doubt that will make  
23 you hesitate to act. It makes you hesitate to act.  
24 That's what reasonable doubt is. The Judge will charge  
25 you that reasonable doubt is a doubt that will make you

1 hesitate to act. But when I look at this case, what would  
2 make you hesitate to convict?

3 Number one, we know the identification is wrong, not  
4 even close. That would make you hesitate, why is this ID  
5 screwed up? Number two, has the car been proven to be  
6 his? No. Because this is some car -- I don't know what  
7 this car is, but we know his car was gray. Do we believe  
8 that this was an armed robbery? Do we believe that? Do  
9 we believe that these two guys went out there and got in  
10 an argument and it was an armed robbery? Do we believe  
11 that? Do we believe that Christopher Wells's demeanor  
12 that night with the police was a guy that ran and hid all  
13 this stuff, to be in a house eating a sandwich? And that  
14 officer out there that night had the opportunity to judge  
15 his demeanor. Do we believe that his demeanor was the  
16 demeanor of somebody that had done something? No. The  
17 officer didn't either.

18 He wasn't there. That's what the evidence is. He  
19 wasn't there. Mere presence has nothing to do with it.  
20 He wasn't there. He was not there. Armed robbery?  
21 Wasn't there. They never told you anything about  
22 Christopher Wells being armed, never said one thing about  
23 it. But, unfortunately, [REDACTED] left this world  
24 very unfortunate. He left this world very unfortunate.  
25 And that had nothing to do with Christopher Wells.

1 Nothing. He got in a shouting match and the shouting  
2 matching became a verbal altercation and a shooting match.  
3 He told you. He told you what it was. He told you what  
4 it was.

5 We're going to ask you to come back with a verdict of  
6 not guilty. Not guilty. Because we believe when the  
7 stakes are high, when the stakes are high, this high, the  
8 State cannot get up here -- Mr. Mowry said we don't know  
9 if he put Johnny Saxon out. You have to know. You have  
10 to know. You have to know. He deserves to know. He  
11 deserves to know. Because he's sitting over there, he  
12 deserves to know. And when they don't have the answers,  
13 when the State doesn't have the answers and they come in  
14 here playing games, he deserves better. Because this is  
15 his life. It's his. It's his life.

16 We're going to ask you to find him not guilty for all  
17 these charges. You've got to believe that they went there  
18 with the intent to rob him and all the other stuff. Done.  
19 Done. Case over. It's over. And we know it wasn't that  
20 way. Thank you.

21 THE COURT: Thank you, sir.

22 Charge on the Law by the Court

23 THE COURT: Ladies and gentlemen of the jury, by my  
24 count, you've been out there for about an hour and five  
25 minutes. It's going to take me about 20 to 25 minutes to

1 give you the instructions on the law. Does anyone need a  
2 brief break?

3 (WHEREUPON, the jury responded in the negative.)

4 THE COURT: Ladies and gentlemen, it becomes my  
5 obligation to instruct you on the law that applies in this  
6 particular case. And when I first started practicing law  
7 24 years ago, the way that a judge would do this and the  
8 way some judges still do this is they would sit up here  
9 and, basically, read you 25 pages of the law taken from  
10 the law books. And you were supposed to sit there and  
11 absorb it all and hear it one time and get it right.  
12 Basically, you're supposed to get right in 20, 25 minutes,  
13 the same stuff that took me three years to learn in law  
14 school.

15 I always found that a little bit unreasonable. So  
16 long story short, ladies and gentlemen, I'm going to give  
17 you a copy of these instructions that you can refer to if  
18 you need to in the jury room during your deliberations.  
19 If you have any questions about these instructions or the  
20 law that applies, I can answer any legal questions. So if  
21 you have any questions about these instructions, I can  
22 answer any sort of legal question as it relates to the  
23 law. However, if you have any factual questions, I cannot  
24 answer those. Because, again, you're the judges of the  
25 facts and I cannot make any comment on the facts. And at

1 this point in the trial, it's not possible to reopen the  
2 record and take additional testimony. So factual stuff, I  
3 can't help you with. Legal stuff, I can help you with.

4 Of course, consider these instructions as a whole and  
5 don't simply pay attention to part of the instructions to  
6 the detriment of other portions of the instructions. And  
7 if you would, if you would just return these to me after  
8 you're done with your deliberations.

9 Now, ladies and gentlemen, the indictments in this  
10 case charge the Defendant with the offenses of murder,  
11 armed robbery, possession of a weapon during the  
12 commission of a violent crime, and conspiracy. I'll  
13 remind you the fact that Mr. Wells was arrested and  
14 charged and indicted in this case is not evidence, nor can  
15 these indictments be considered by you as evidence of  
16 guilt. These indictments do not create any presumption or  
17 inference of guilt. The documents are merely the formal  
18 written instruments which contain the charges made against  
19 Mr. Wells, the formal documents by which this case is  
20 brought into court.

21 Now, ladies and gentlemen, the indictments in this  
22 case allege several different offenses against the  
23 Defendant. The charges are murder, armed robbery,  
24 possession of a weapon during the commission of a violent  
25 crime, and conspiracy. Each indictment charges a separate

1 and distinct offense or crime. You must decide each  
2 indictment separately on the evidence and the law  
3 applicable to it uninfluenced by your decision as to any  
4 other indictment. The Defendant may be convicted or  
5 acquitted on any or all of the offenses charged. And  
6 you'll be ask to write a separate verdict of guilty or not  
7 guilty for each of the indictments issued.

8 Now, ladies and gentlemen, you've heard testimony  
9 that three individuals were charged in connection with  
10 this incident. I emphasize to you that only Mr. Wells is  
11 on trial in this case. Therefore, the evidence against  
12 Mr. Wells must be considered separately and apart from the  
13 cases against any other defendant and the manner in which  
14 the case against any other defendant has been resolved.  
15 In short, you must consider the evidence in this case in  
16 its totality only as it relates to Mr. Wells without  
17 regard to the case of any other co-defendant for the  
18 manner in which that case against that other co-defendant  
19 was resolved.

20 Now, ladies and gentlemen, the Defendant, Mr. Wells,  
21 has pled not guilty to these indictments. That plea puts  
22 the burden on the State to prove the Defendant's guilt. A  
23 person charged with committing a criminal offense in this  
24 state is never required to prove himself innocent. I  
25 instruct you that it's an important rule of law that the

1 defendant in a criminal trial, no matter what the  
2 seriousness of the charge may be, will always be presumed  
3 to be innocent of the crimes for which the indictments  
4 were issued unless guilt has been proven by evidence  
5 satisfying you of his guilt beyond a reasonable doubt.

6 Presumption of innocence, ladies and gentlemen, does  
7 not end when you begin your deliberations, but it  
8 accompanies the defendant throughout the trial of a case  
9 until you reach a verdict of guilt based on evidence  
10 satisfying you of his guilt beyond a reasonable doubt.  
11 The presumption of innocence is like a robe of  
12 righteousness. It's placed about the shoulders of the  
13 Defendant. It remains with him until it has been stripped  
14 from him by evidence satisfying you of his guilt beyond a  
15 reasonable doubt.

16 Now, ladies and gentlemen, the presumption of  
17 innocence is not merely a legal theory, it's not just a  
18 legal phrase. It's a substantial right to which every  
19 defendant is entitled unless you are satisfied from the  
20 evidence of his guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, I instruct you and  
22 emphasize the fact that the Defendant did not testify is  
23 not a factor to be considered by you in any way in your  
24 deliberation and in your consideration on the question of  
25 the guilt or the innocence of the Defendant. It must not

1 be considered by you in any manner whatsoever. The  
2 Defendant has the Constitutional right to remain silent.  
3 And the assertion of this right must not be considered by  
4 you during your deliberations.

5 I repeat, under your oath, you're to draw no  
6 conclusions whatsoever from the fact that the Defendant in  
7 this case did not testify. The fact that he did not  
8 testify should not even be discussed in the jury room.  
9 The burden of proof, as I stated to you, is on the State.  
10 The Defendant is not required to prove his innocence. The  
11 burden of proof remains on the State to prove guilt beyond  
12 a reasonable doubt.

13 What is a reasonable doubt in the law? A reasonable  
14 doubt is the kind of doubt that would cause a reasonable  
15 person to hesitate to act. The State has the burden of  
16 proving the Defendant's guilt beyond a reasonable doubt.  
17 Some of you may have served as jurors in civil cases where  
18 you were told that it's only necessary to prove that a  
19 fact is more likely true than not true or greater weight  
20 of the preponderance of the evidence. In criminal cases,  
21 the State's proof must be more powerful than that. It  
22 must be proof beyond a reasonable doubt. Proof beyond a  
23 reasonable doubt is proof that leaves you firmly convinced  
24 of the Defendant's guilt.

25 Now, there are very few things that we know in this

1 world with absolute certainty. And in criminal cases, the  
2 law does not require proof that overcomes every possible  
3 doubt. If, based on your consideration of the evidence,  
4 you're firmly convinced the Defendant is guilty of the  
5 crimes charged, you should find him guilty. If on the  
6 other hand, you think there's a real possibility the  
7 Defendant is not guilty, you must give him the benefit of  
8 the doubt and find him not guilty.

9 Ladies and gentlemen, I remind you that during this  
10 trial, you and I have certain duties to perform. As the  
11 trial judge, it is my responsibility to preside over the  
12 trial of this case. I, also, have the duty to rule on the  
13 admissibility of evidence offered during the trial. You  
14 should consider only the competent evidence before you.  
15 So if any testimony was stricken from the record, you will  
16 have to disregard that testimony because you are to  
17 consider only the testimony which has been presented from  
18 the witness stand as well as any exhibits which have been  
19 made a part of the record in this case.

20 I have the additional duty to charge you the law  
21 applicable. And as the presiding judge, I am the sole  
22 judge of the law. It is your duty to accept and apply the  
23 law as I state it to you. So if you already have any  
24 ideas as to what the law is or what it should be and it  
25 does not agree with what I now tell you the law is, you

1 have to abandon this idea because you're sworn to accept  
2 and apply the law exactly as I state it to you.

3 Again, every case tried in this court before a jury,  
4 the jury becomes the sole and exclusive judge for the  
5 facts in the case. A trial judge cannot intimate, state,  
6 comment on or make any statement to a trial jury about the  
7 facts. Since you the jury are the sole judges of the  
8 facts, you're not to infer from what I said during the  
9 progress of this trial in ruling upon the admissibility of  
10 evidence or otherwise, or anything I say to you now during  
11 the course of these instructions that I have any opinion  
12 about the facts. Ladies and gentlemen, the law does not  
13 permit me to have an opinion about the facts in this case.  
14 This is a matter solely for you to determine. As jurors,  
15 it's your duty to determine the effect, value, weight and  
16 truth of the evidence presented.

17 Typically, there are two types of evidence presented  
18 during a criminal trial, direct evidence and  
19 circumstantial evidence. Direct evidence directly proves  
20 the existence of a fact and does not require deduction,  
21 such as testimony by an eyewitness. Circumstantial  
22 evidence is proof of a chain of facts and circumstances  
23 indicating the existence of a fact. I instruct you that  
24 crimes may be proven by circumstantial evidence. The law  
25 makes no distinction between the weight or value to be

1 given to either direct or circumstantial evidence.  
2 However, to the extent the State may rely on  
3 circumstantial evidence, all of the circumstances must be  
4 consistent with each other and when taken together point  
5 conclusively to the guilt of the accused beyond a  
6 reasonable doubt. If these circumstances merely portray  
7 the Defendant's behavior as suspicious, then the proof has  
8 failed. The State has the burden of proving the Defendant  
9 guilty beyond a reasonable doubt. And this burden rest  
10 with the State regardless of whether the State relies on  
11 direct evidence, circumstantial evidence or some  
12 combination of the two.

13 Now, ladies and gentlemen, necessarily, you'll have  
14 to determine the credibility of witnesses who have  
15 testified in this case. And, of course, credibility  
16 simply means believability. It's your duty as jurors to  
17 analyze and to evaluate the evidence and determine which  
18 evidence convinces you of its truth. In determining  
19 believability of witnesses who have testified in this  
20 case, you may believe one witness over several witnesses,  
21 or several witnesses over one witness. You may believe a  
22 part of the testimony of a witness and reject the  
23 remaining part of the testimony of that same witness. You  
24 may believe the testimony of a witness in its entirety or  
25 reject the testimony in its entirety. You can consider

1 whether any witnesses exhibited to you any interest, bias,  
2 prejudice or other motive in this case, and you can, also,  
3 consider the appearance and manner of a witness while on  
4 the witness stand.

5 Now, as I explained yesterday, ladies and gentlemen,  
6 normally, the rules of evidence don't permit witnesses to  
7 testify as to opinions or conclusions, but an exception to  
8 this rule exist for expert witnesses. A witness who by  
9 education and experience has become an expert in some art,  
10 science, profession or calling may state an opinion as to  
11 relevant and material matters in which the witness claims  
12 to be an expert and may, also, state the reasons for that  
13 opinion. You should consider any expert opinion received  
14 in evidence in this case and, like any other evidence,  
15 give it the weight you think it deserves.

16 If you decide the opinion of an expert witness is not  
17 based on sufficient education and experience, or if you  
18 conclude that the reasons given in support of the opinion  
19 are not sound, or that the opinion is outweighed by other  
20 evidence, you may disregard the opinion entirely. An  
21 expert witness's testimony is to be given no greater  
22 weight than that of any other witness simply because the  
23 witness is an expert. And you're required to accept an  
24 expert's opinion even though it's not contradicted.

25 There has been evidence presented during this trial

1 that witnesses have made prior statements which are not  
2 consistent with the testimony at trial. You may use this  
3 evidence to decide whether or not to believe the witness,  
4 and you may, also, use the evidence of the earlier  
5 contradictory statement to determine the truth of those  
6 statements. It's up to you to decide whether to believe  
7 the earlier statements or the testimony given at trial.  
8 If a witness is shown to have knowingly testified  
9 untruthfully concerning any matter, you may consider this  
10 in determining whether to trust the witness's testimony as  
11 to other matters. You may reject all of the testimony of  
12 that witness or give or part of the testimony the weight  
13 you think it deserves.

14 Now, ladies and gentlemen, I instruct you that a  
15 person who has a past criminal record is competent to  
16 testify during a trial. A past record does not affect the  
17 ability of that witness to testify. A past record may  
18 only be considered by you, if at all, in determining the  
19 witness's believability. Remember, you're the sole judges  
20 of the facts in this case and of the believability of any  
21 and all of the witnesses who have testified.

22 Now, ladies and gentlemen, I instruct you that if a  
23 crime is committed by two or more people who are acting  
24 together in committing a crime, the act of one is the act  
25 of all. A person who joins with another to commit an

1 unlawful act is criminally responsible for everything done  
2 by the other person which happens as a probable or natural  
3 consequence of the acts done carrying out the common plan  
4 and purpose. If two or more people are acting together,  
5 acting with each other, assisting each other in committing  
6 the offense, the act of one is the act of all, or as it is  
7 sometimes said, the hand of one is the hand of all.

8 I instruct you that prior knowledge that a crime is  
9 going to be committed without more isn't sufficient to  
10 make a person guilty of that crime. Mere knowledge that  
11 another person is going to commit a crime, even if the  
12 Defendant is present when the crime is committed, isn't  
13 sufficient to convict the Defendant as a principle. Guilt  
14 as a principle is shown by actual or constructive presence  
15 at the scene as a result of prior arrangement. Therefore,  
16 a finding of a prior arranged plan or common scheme is  
17 necessary for a finding of guilt as a principle. The  
18 State must prove beyond a reasonable doubt by competent  
19 evidence the theory of the hand of one is the hand of all.

20 A principle in a crime is one who either, actually,  
21 commits the crime or who is present aiding, abetting or  
22 assisting in the commission of the crime. When a person  
23 does an act in the presence of and with the assistance of  
24 another, the act is done by both. Where two or more  
25 people acting with a common plan or intent are present at

1 the commission of the crime, it doesn't matter who,  
2 actually, commits the crime, all are guilty. The hand of  
3 one is the hand of all.

4 Present at the commission of a crime means to be  
5 sufficiently near to aid and abet and assist in the  
6 commission of that crime. However, mere presence at a  
7 scene isn't sufficient to convict one as a principle on  
8 the theory of aiding and abetting. Intent is, also, a  
9 necessary element. There must have been a common design  
10 or intent to commit the crime and the crime must have been  
11 committed pursuant thereto with the person aiding and  
12 abetting by some overt act.

13 Intent means intending the result which, actually,  
14 occurs, not accidentally or involuntarily. Intent may be  
15 shown by acts and conduct of the Defendant and other  
16 circumstances from which you may naturally and reasonably  
17 infer intent. The State must prove these elements beyond  
18 a reasonable doubt.

19 Again, ladies and gentlemen, I instruct you that mere  
20 presence at the scene of a crime is not sufficient to  
21 prove someone guilty of a crime. A defendant's presence  
22 where a crime is being committed or near association with  
23 a person who commits a crime does not make a defendant an  
24 accomplice or an aider and abettor of the person  
25 committing the crime. The burden is on the State to prove

1 every element of the crime charged. If you find after  
2 reviewing all the evidence that the State has proven the  
3 Defendant was only present at the scene of the crime and  
4 they have not proved beyond a reasonable doubt any other  
5 participation in the crime, then you must find the  
6 Defendant not guilty. The law is that proof being at the  
7 scene of a crime is not sufficient to find someone guilty.

8 Now, ladies and gentlemen, the Defendant in this case  
9 is charged with murder. So the State must prove beyond a  
10 reasonable doubt that the Defendant killed another person  
11 with malice aforethought. Malice is hatred, ill will or  
12 hostility towards another person. It's the intentional  
13 doing of a wrongful act without just cause or excuse and  
14 with an intent to inflict an injury or under circumstances  
15 that the law will infer an evil intent. Malice  
16 aforethought does not require that malice exist for any  
17 particular time before the act is committed, but malice  
18 must exist in the mind of the Defendant just before and at  
19 the time the act is committed. Therefore, there must be a  
20 combination of the previous evil intent in the act.  
21 Malice aforethought may be expressed or inferred.

22 Now, these terms expressed and inferred don't mean  
23 different types of malice, but merely the manner in which  
24 malice may be shown to exist. That is either by direct  
25 evidence or by inference from the facts and circumstances

1 which are proven.

2 Expressed malice is shown when a person speaks words  
3 which express hatred or ill will for another or when the  
4 person prepared beforehand to do the act which was later  
5 accomplished. For example, laying in wait for a person or  
6 any other acts of preparation going to show that the deed  
7 was within the Defendant's mind would be expressed malice.

8 Malice may also be inferred from conduct showing a  
9 total disregard for human life. Inferred malice may,  
10 also, arise when the deed is done with a deadly weapon. A  
11 deadly weapon is any article, instrument or substance  
12 which is likely to cause death or great bodily harm.

13 The following are examples of instruments which may  
14 be deadly weapons: A pistol, shotgun, rifle, dirt,  
15 dagger, knife, slingshot, metal knuckles, a razor,  
16 gasoline or Molotov cocktail or lighter fluid. A gun may  
17 be a deadly weapon even if it's not operating. If the  
18 facts are proven beyond a reasonable doubt sufficient to  
19 raise an inference of malice to your satisfaction, this  
20 inference would be simply an evidentiary fact to be  
21 considered by you along with the other evidence in this  
22 case to be given the weight you think it deserves.

23 Now, ladies and gentlemen, I instruct you that if one  
24 intentionally kills another person during the commission  
25 of a felony, the inference of malice may arise. If facts

1 are proven beyond a reasonable doubt sufficient to raise  
2 an inference of malice to your satisfaction, this  
3 inference would simply be an evidentiary fact to be taken  
4 into consideration by you, along with any other evidence  
5 in this case, and you may give it the weight you decide it  
6 should receive.

7 The Defendant is also charged, ladies and gentlemen,  
8 with the crime of armed robbery. In order to prove this  
9 offense, the State must first prove beyond a reasonable  
10 doubt that the Defendant took the personal property from  
11 the person or presence of another person. Property is in  
12 the presence of a person if it is within the person's  
13 reach, inspection, observation or control so that the  
14 person could, if not overcome with violence or prevented  
15 by fear, retain possession of that property.

16 The State must, also, prove beyond a reasonable doubt  
17 that the Defendant carried the property away intending to  
18 permanently deprive the other of that property and to keep  
19 the property for the Defendant's own use. The slightest  
20 removal of the property or the complete possession of the  
21 property, even for an instant, by the Defendant is  
22 sufficient to show a taking and carrying away of the  
23 property. The taking and carrying away of the property  
24 must have been done with violence or by putting the owner  
25 of the property in fear of violence.

1           Finally, the State must prove beyond a reasonable  
2           doubt that the Defendant was armed with a deadly weapon  
3           during the robbery. Again, a deadly weapon is any  
4           article, instrument or substance which is likely to cause  
5           death or great bodily harm. Whether an instrument has  
6           been used as a deadly weapon depends on the facts and  
7           circumstances of each case. Of course, the deadly weapons  
8           that I gave as examples, that still stands for the offense  
9           of armed robbery.

10           The Defendant is, also, charged with possession of a  
11           weapon during the commission of a crime or attempt to  
12           commit a violent crime. Therefore, the State must prove  
13           beyond a reasonable doubt the Defendant was in possession  
14           of a firearm or visibly displayed what appeared to be a  
15           firearm during the commission of a violent crime.  
16           Firearm, again, means any machine gun, automatic rifle,  
17           revolver, pistol or any weapon which will or may be  
18           readily converted to expel a projectile.

19           In order to find the Defendant guilty of possession  
20           of a weapon during the commission of a violent crime, you  
21           must find the Defendant guilty of either committing a  
22           violent crime or attempting to commit a violent crime. I  
23           instruct you that under the law of South Carolina, both  
24           armed robbery and murder are classified as violent crimes.  
25           The State must, also, prove beyond a reasonable doubt that

1 the weapon further advanced or helped in the commission of  
2 the crime.

3 Finally, ladies and gentlemen, the Defendant is  
4 charged with conspiracy. The State must prove beyond a  
5 reasonable doubt the Defendant combined with one or more  
6 persons for the purpose of committing an unlawful act or  
7 of committing an unlawful act by unlawful means -- I'm  
8 sorry. Let me restate that and just start over.

9 The Defendant is charged with conspiracy. The State  
10 must prove beyond a reasonable doubt the Defendant  
11 combined with one or more persons for the purpose of  
12 committing an unlawful act or of committing a lawful act  
13 by unlawful means. There must be a mutual understanding,  
14 agreement or common intention and plan. Mere passive  
15 knowledge or consent to the criminal conduct of another  
16 isn't enough to make a person a conspirator. There must  
17 be guilt of knowledge and participation.

18 Similarly, the fact that the Defendant may have  
19 associated with another person or met with another person  
20 and discussed common schemes and interests does not  
21 necessarily establish proof of the existence of a  
22 conspiracy or that the Defendant was involved in a  
23 conspiracy.

24 On the other hand, it's not necessary that the  
25 agreement be a formal one, that the persons hold a meeting

1 and expressly state the terms of the common plan or that  
2 the agreement be stated in words between them. The  
3 agreement of a criminal conspirator may come into being  
4 through an implied mutual understanding. The willful,  
5 intentional and knowing adoption by two or more persons of  
6 a common plan is sufficient. No overt acts need to be  
7 shown to establish a conspiracy. A conspiracy may be  
8 shown by circumstantial evidence and the conduct of the  
9 parties.

10 In order to convict the Defendant of conspiracy, the  
11 State must prove beyond a reasonable doubt not only that  
12 the Defendant knew of the unlawful conduct, but the  
13 Defendant agreed and combined with the other persons for  
14 the purpose of accomplishing the unlawful conduct.

15 Now, ladies and gentlemen, there are four possible  
16 verdicts in this case.

17 And I've prepared this verdict form to help guide  
18 your deliberations, Mr. Foreman. Basically, the verdict  
19 form has it all outlined with regard to the four charges.  
20 It gives you the option of finding the Defendant guilty or  
21 not guilty with respect both the murder -- with respect to  
22 the murder charge, the armed robbery charge, the  
23 possession charge as well as the conspiracy charge.

24 If you find that the State has met its burden of  
25 proving any one, two, three or all of those charges, find

1 the State has met its burden of proving the Defendant's  
2 guilt beyond a reasonable doubt, you would just initial  
3 next to guilty for each and every one of the separate  
4 charges. Once you're done with all four of them, knock on  
5 the door, let the bailiff know and we'll receive you back  
6 in the courtroom.

7 Similarly, if you find that the State has failed to  
8 meet its burden of proving the Defendant's guilt beyond a  
9 reasonable doubt with respect to one, two, three or all of  
10 the charges, just initial next to not guilty as applicable  
11 on the verdict form, knock on the door, let the bailiff  
12 know and we'll get you back in here.

13 Now, ladies and gentlemen, the verdict has to be a  
14 unanimous one in this case. That means that all of you  
15 have to agree on the verdict. We do not have majority  
16 verdicts in South Carolina, so all 12 of you must agree  
17 with regard to each and every verdict on all four charges.

18 Once you have agreed on a verdict, as I've said, Mr.  
19 Foreman, sign your name on the verdict form, knock on the  
20 door and we'll get you back in the courtroom.

21 If any member of the jury panel has any issue or  
22 question about the law, simply bring that to my attention  
23 by writing me a note. We'll then you bring you -- I'll  
24 discuss the note with the attorneys. We'll then bring you  
25 back into the courtroom and I'll give you further

1 instruction on the law.

2 At no time, however, should any member of the jury  
3 panel or should you, the Foreperson, indicate any  
4 numerical division as a result of your deliberations. So  
5 I never want to know and, please, don't tell me if you're  
6 voting 11 to one or seven to five or whatever the case may  
7 be. I don't want to know anything about any numerical  
8 division. That's none of my business, okay. So don't  
9 give me any of that information along those lines.

10 Now, ladies and gentlemen, I'll remind you that  
11 you've been chosen as fair and impartial individuals. In  
12 other words, you have no enemies to punish, you have no  
13 friends to reward in this case. Your job is to render a  
14 verdict based solely upon the evidence and the law as I  
15 instructed you.

16 Now, I'm going to ask that you go ahead and return to  
17 the jury room in just a few moments. Before I do that, I  
18 will mention to you that there are a couple of firearms  
19 that are in evidence in this case. They have been secured  
20 so that they can't fire, but out of an abundance of  
21 caution, and as you all know, treat every firearm as if  
22 it's loaded. So that goes without saying. Point at the  
23 ceiling, point at the floor. Don't point it at each  
24 other. I don't think you could ever get those things to  
25 fire, but at the same time, treat every gun as if it's

1 loaded. I'm required to tell you that under the rules.

2 Secondly, we're getting close to lunch time. If you  
3 would care to have lunch, that's perfectly fine. While  
4 we're getting the evidence together to send back to you,  
5 if y'all want to discuss whether you want to order  
6 something or you feel like maybe you want to deliberate  
7 for a few minutes before you decide to order, that's  
8 perfectly fine. It usually takes about 45 minutes to get  
9 the food here. Typically, we order pizza from across the  
10 street or --

11 We're going to order from across the street if they  
12 want lunch?

13 THE CLERK: From Palmetto.

14 THE COURT: All right. We'll get something from The  
15 Palmetto if you want lunch. If you have any certain  
16 dietary restrictions, let us know what those are and we'll  
17 try to accommodate those with a salad or something  
18 different. So any dietary restrictions, just let us know  
19 and we'll try to accommodate that.

20 At this point in time, go ahead and retire to the  
21 jury room, but don't begin your deliberations yet. Your  
22 cue to begin your deliberations will be receipt of these  
23 instructions, the evidence involved in this case and my  
24 asking the alternate to step out. So that's when you can  
25 start talking about the case. If you want to go ahead and

1 start talking about lunch, feel free to do that.

2 (WHEREUPON, the jury exits the courtroom at  
3 11:39 a.m.)

4 THE COURT: Exceptions or additions from the State to  
5 the instructions?

6 MR. MOWRY: Your Honor, I didn't know with regard to  
7 possession of a firearm during the commission of a violent  
8 crime if you wanted to talk about actual and constructive  
9 possession? I don't believe any mention was made of that.

10 MR. RICHEY: Going on the conspiracy theory, I don't  
11 believe the Court has to instruct them on actual and  
12 constructive possession.

13 MR. MOWRY: I believe that's an element of the crime,  
14 though, Your Honor, and they ought to have the option, I  
15 guess you could say.

16 THE COURT: While my computer is warming up, any  
17 exceptions or additions from the Defense?

18 MR. RICHEY: No, Your Honor.

19 THE COURT: While I appreciate the State's request  
20 for constructive possession charge, I've instructed on the  
21 hand of one, hand of all. And I think I made it  
22 abundantly clear that if more than one person engages in  
23 conspiracy that the hand of one is the hand of all. So I  
24 don't know that that's terribly necessary. If they  
25 struggle with that or I get some indication that they're

1 struggling with an issue concerning constructive  
2 possession, then, perhaps, I'll give them that additional  
3 charge. But I think if they don't have it now after 27  
4 pages of it and hand of one, hand of all, they're not  
5 going to get it.

6 MR. MOWRY: Yes, sir.

7 THE COURT: I appreciate your position, but I decline  
8 to issue that instruction. Quite honestly, I looked at  
9 the most recent case on constructive possession. Most of  
10 that is contained, pretty much, in the same language of  
11 the hand of one, hand of all. So that's where we are.

12 MR. MOWRY: Thank you, Your Honor.

13 THE COURT: My clerk is reprinting the verdict form.  
14 One small typo on that. Y'all get together on the  
15 evidence and make sure we've got what we've got going  
16 back. I kept track of it separately, but, obviously, the  
17 court reporter has primary responsibility for that, so  
18 what she says goes.

19 (WHEREUPON, deliberations began at 11:49 a.m.)

20 THE COURT: We'll go back on the record. We've  
21 received two communications from the jury.

22 Of course, the record should reflect Defendant is  
23 present with counsel.

24 The jury, first, requested a transcript, essentially,  
25 wanting a copy of the testimony of [REDACTED] Ball. I

1 explained to the jury that we could not do that because  
2 the transcript, obviously, has not been prepared. Then  
3 with the consent of counsel off the record, I went to the  
4 back and told the Foreperson -- because Ms. Ball's  
5 testimony was an hour in length, I told the Foreperson  
6 that if they wanted to, they could narrow down their  
7 inquiry. And if they gave me some approximation of the  
8 question that they had with testimony they were having  
9 difficulty recalling that we could probably cue that up.

10 The jury did respond with another note that's been  
11 marked as Court's 2. And, basically, they're wanting to  
12 hear that portion of the testimony where Ms. Ball says --  
13 the portion just after the 911 call where she placed the  
14 911 call and she goes into the yard.

15 So what I'm going to do -- we have that cued up, the  
16 court reporter has cued that up. I'll have the jury come  
17 back into the courtroom and we'll play that portion of her  
18 testimony. And I'll tell the Foreperson -- or the jury  
19 just to sort of give me a nod or an indication when they  
20 want me to stop playing that testimony back, when they  
21 feel like they've heard enough of her testimony. So that  
22 is my plan.

23 Let's have the jury, please.

24 (WHEREUPON, the jury enters the courtroom at  
25 2:54 p.m.)

1 (WHEREUPON, Court's Exhibit Nos. 1 and 2 were  
2 marked for identification.)

3 THE BAILIFF: All jurors are present.

4 THE COURT: All right. We're back on the record.

5 Mr. Foreman, based on your notes that you've given to  
6 me, I've asked the court reporter to cue up that portion  
7 of the testimony. And I think we've found that part that  
8 y'all are looking for, but you're asking for the part of  
9 the testimony where Ms. Ball is outside of the house  
10 helping Mr. [REDACTED] back inside and seeing the Defendant  
11 and identifying Wells/Ty. So the portion that we're going  
12 to play for you is the part where Ms. Ball has just made  
13 the 911 call and that precedes the portion of the  
14 testimony I think you guys are getting at, okay?

15 What I'm going to do is when you feel like you've  
16 gotten the answer or you feel like you've heard what you  
17 need to hear, just kind of tell me to stop. And if  
18 somebody else wants to hear more, then y'all can speak up  
19 and we'll hear more -- play more.

20 Madam Court Reporter, go ahead and proceed to play.

21 (WHEREUPON, the requested portion of the  
22 testimony of Ms. [REDACTED] Ball was played in open court for  
23 the jury.)

24 THE COURT: We can do the same thing for any  
25 additional testimony. It's a little bit cumbersome, but

1 we have no problem doing that for you if you need --

2 You want to hear additional portions, sir?

3 THE FOREPERSON: We're having a difficult time with  
4 the 911 tape. We're not able to get the speakers to work.  
5 We know what we're doing and we're trying to compare the  
6 911 tape to this.

7 THE COURT: I got you. My clerk can go back there  
8 and try and fix it.

9 THE JUROR: The green light just wasn't on on the  
10 speakers when we plugged it in, so.

11 THE COURT: Okay.

12 MR. MOWRY: I don't know if the audio is better here,  
13 but it sounds like it is, we can play it here. It might  
14 be better.

15 THE COURT: We're happy to play it here.

16 Y'all adjourn to the back. Let me let my clerk take  
17 a shot at it first. If that's not satisfactory, we'll  
18 bring you guys out and do it out here. Thank you.

19 (WHEREUPON, the jury exits the courtroom at 3:08  
20 p.m. to continue deliberations.)

21 THE COURT: We'll just be at ease until we figure out  
22 if she can get it to work. If she can't, we'll just bring  
23 them out here. Let's all stay here until we find out if  
24 they're going to need to come back in.

25 (WHEREUPON, Court was in recess awaiting a

1 verdict.)

2 THE COURT: We'll go back on the record in the State  
3 vs. Mr. Wells. Mr. Wells is present with counsel. I'm  
4 told the jury has reached a verdict.

5 Anything before we receive the jury back in the  
6 courtroom from the State?

7 MR. MOWRY: No, sir.

8 THE COURT: The Defense?

9 MR. RICHEY: Nothing, Your Honor.

10 THE COURT: Very good.

11 I have no way of knowing what the verdict is. It's  
12 my custom to remind everybody that this jury did not  
13 volunteer to come in here and hear this case. I do not  
14 like to see any kind of emotional reaction when verdicts  
15 are read. That only serves to convey disrespect to the 12  
16 people who have had to make this decision. Clearly, it  
17 was not an easy one. They have been deliberating for some  
18 time now. So if you find yourself unable to keep your  
19 composure or maintain your composure when the verdict is  
20 announced, feel free to quietly stand and leave through  
21 the back of the courtroom.

22 Let's have the jury, please.

23 (WHEREUPON, the jury enters the courtroom at  
24 4:13 p.m.)

25 THE BAILIFF: All jurors are present.

1 THE COURT: Thank you.

2 The record will reflect that the jury is back.

3 Mr. Thomas, I'm told that the jury has reached a  
4 verdict; is that correct?

5 THE FOREPERSON: Yes, sir.

6 THE COURT: And all 12 jurors agree on a verdict; is  
7 that correct?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: If you would, please, hand the form to  
10 the bailiff for me.

11 Madam Clerk, if you will publish, please.

12 Verdict

13 THE CLERK: Your Honor, in the case of the State of  
14 South Carolina vs. Christopher Jermaine Wells, case number  
15 2015-GS-30-1162, 503, 504 and 505, we, the jury, in the  
16 above captioned case on the charge of murder unanimously  
17 find Christopher Jermaine Wells not guilty. We, the jury,  
18 in the above captioned case on the charge of armed robbery  
19 unanimously find Christopher Jermaine Wells guilty. We,  
20 the jury, in the above captioned case on the charge of  
21 possession of a weapon during the commission of a violent  
22 crime unanimously find Christopher Jermaine Wells guilty.  
23 We, the jury, in the above captioned case on the charge of  
24 conspiracy unanimously find Christopher Jermaine Wells  
25 guilty. Signed by the Foreperson, [REDACTED] Thomas, dated

1 April 27, 2016, Laurens, South Carolina.

2 Ladies and gentlemen, if that be your verdict,  
3 please, indicate by raising your right hands.

4 (WHEREUPON, all jurors raised their hands.)

5 THE COURT: Let the record reflect that all 12 jurors  
6 did, in fact, raise their right hand.

7 Anything further from the jury from the State?

8 MR. MOWRY: Not from the jury, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. RICHEY: No, Your Honor.

11 THE COURT: Ladies and gentlemen of the jury, I want  
12 to thank you for your service on this case. I know that  
13 it's always difficult for even a couple of people to agree  
14 on an outcome. And as I mentioned when I instructed you  
15 earlier, we don't have majority verdicts in South  
16 Carolina. And I hope we never do because, quite honestly,  
17 if 12 people can agree on an outcome, then that's about as  
18 certain as I think we can get in this mortal life. So I  
19 want to thank you for your efforts on this particular  
20 case.

21 And I would very much like to say that you are free  
22 to go for the week. Regrettably, I must request that you  
23 be back here tomorrow morning at 9:00. We have one more  
24 case that we possibly can get to. We, actually, have two  
25 more cases that we can possibly get to this week. So if

1 you would, please, report back to the courtroom tomorrow  
2 at 9:00. None of you -- I think there were a few jurors  
3 that I protected for Friday. Are any of y'all protected  
4 for Friday? This is your opportunity to raise your hand  
5 and lie to me because I would not recall.

6 Yes, ma'am.

7 THE JUROR: Your Honor, you did not protect me, but  
8 on Friday, my son does have -- in a talent show at school  
9 at 2:00. And I would like to attend.

10 THE COURT: What's your name, ma'am?

11 THE JUROR: [REDACTED] Young.

12 THE COURT: Remind me of that tomorrow. We have one  
13 case that will go into Friday. The other one will be  
14 completed tomorrow. So just remind me of that tomorrow,  
15 Ms. Young.

16 With that, Mr. Thomas, I need for you to stick around  
17 and sign the actual indictments -- the verdict on the  
18 actual indictments.

19 The rest of you, if you want to stay around for  
20 sentencing, at this point in time, what I will usually do  
21 is hear any kind of victim impact evidence from the State  
22 as well as any post-trial motions from the Defense and  
23 then we would proceed with sentencing. So if you would  
24 like to stay, that's perfectly fine. What I would need  
25 you to do, though, is just kind of go out that door and

1 then come back around and we'll have some seats available  
2 for you out here if you choose to stay the remainder of  
3 the proceedings.

4 With that, you have my thanks. I'll see y'all back  
5 tomorrow morning at 9:00. Thank you very much for your  
6 work and patience.

7 (WHEREUPON, the jury was released at 4:18 p.m.)

8 MR. MOWRY: And Your Honor, if you'll give me a few  
9 minutes, I'll go get the sentencing sheets.

10 THE COURT: Thank you, sir.

11 If there are any jurors who want to come around,  
12 y'all just pick a row or something back there, deputies,  
13 where they can sit, please.

14 (Pause.)

15 THE COURT: We're back on the record.

16 At this point, Mr. Richey, obviously, you renew all  
17 previous pretrial motions, all objections, all motions  
18 made during the course of the trial; is that correct?

19 MR. RICHEY: Yes, sir, Your Honor.

20 THE COURT: Same ruling as before. And, of course,  
21 you move for a new trial; is that correct?

22 MR. RICHEY: Yes, sir.

23 THE COURT: The motion for a new trial is denied.  
24 Same rulings with respect to all prior motions and  
25 objections from the Defense.

1           At this point, Solicitor, I assume these may be some  
2           of the victim's family members behind you. I was, of  
3           course, involved with the Walker trial, but if there's  
4           anything that they wanted to relate to me or that you  
5           wanted to relate on their behalf?

6           MR. MOWRY: Your Honor, it is quite a number here. I  
7           have spoken with the spokesman for the family. I have  
8           told them that in this case, since the Defendant has a  
9           prior record for a violent crime and has been convicted of  
10          a violent crime in this case after having been served with  
11          a notice of life without parole that the sentence of life  
12          is mandatory. And given that circumstance, I don't  
13          believe they wish to relate anything further.

14          THE COURT: All right, sir.

15          MR. MOWRY: Your Honor, do you have the certified  
16          copy of the indictment on which he was convicted for  
17          voluntary manslaughter?

18          THE COURT: I do not.

19          MR. MOWRY: We had it here just a few moments ago.

20          THE COURT: At some point, that would need to be made  
21          a part of the record.

22          MR. MOWRY: I'm going to hand up the entire packet  
23          that I got from Greenville, Your Honor. It includes a  
24          whole bunch of stuff. But it has the certified copy of  
25          the indictment and a copy of the sentencing sheet that was

1 in use at that time.

2 I will state for the record, Your Honor, that Mr.  
3 Wells, according to our records, was released from the  
4 South Carolina Department of Corrections in August, late  
5 August of 2013, about two months before this event  
6 occurred.

7 THE COURT: All right.

8 The State has presented to the Court a copy of the  
9 notice seeking life without the possibility of parole  
10 under 17-25-45, the Defense has previously acknowledged  
11 service of notice upon them before we ever went to trial.  
12 The Court, also, notes that according to the documents  
13 presented to the Court, it would appear that Mr. Wells was  
14 convicted of -- he was tried, apparently, for murder and  
15 was convicted of voluntary manslaughter on December the  
16 18th of 1992. I believe that's Judge Patterson's  
17 signature.

18 MR. MOWRY: That is Judge Patterson's signature, Your  
19 Honor.

20 THE COURT: And received a 25-year sentence on that  
21 charge. Obviously, voluntary manslaughter is a violent  
22 crime and a most serious offense under the laws of this  
23 state.

24 At this point in time, Mr. Richey, I'll turn it over  
25 to you for anything that you may want to say or anything

1 that your client may want to say.

2 MR. RICHEY: Yes, just real brief because the  
3 sentence is what it is, but he has been out since 2007.  
4 And he was, actually, doing pretty good. I think the  
5 record reflects he was staying out of trouble. He was  
6 working at Duke Mayonnaise. He was pretty much with his  
7 grandkids and all that. So he was really doing real well.

8 I will tell the Court that -- I talked to my client  
9 about this. I think this was a risk that was taken that  
10 he felt real strongly about his innocence. And in terms  
11 of the plea offer that was offered to us, it was a real  
12 severe risk, but he believed in his innocence in this case  
13 that much. And there's nothing I can say for sentencing  
14 because the sentence is what it is.

15 And my client does not want to speak. Thank you,  
16 Your Honor.

17 Sentence of the Court

18 THE COURT: All right. Well, Mr. Wells, I,  
19 certainly, appreciate your position and respect the fact  
20 that you felt very strongly that you weren't guilty of  
21 these particular crimes. Obviously, by the verdict of the  
22 jury, you were guilty of the armed robbery and the other  
23 two offenses. They did find you not guilty of the murder.  
24 At the same time, Mr. Wells, the law does provide for a  
25 very serious penalty for people who repeatedly commit

1 violent crimes. And you've previously committed a  
2 homicide, a voluntary manslaughter, and somehow, you find  
3 yourself wrapped up in an armed robbery. Even though you  
4 weren't convicted of the underlying murder in this  
5 particular case, obviously, these crimes in this incident  
6 we tried this week, these are, certainly, interrelated.  
7 And in the Court's opinion, you are -- regrettably, sir,  
8 you are deserving of this sentence.

9           So the sentence on indictment 504, that's the armed  
10 robbery is that you be committed to the Department of  
11 Corrections for the balance of your natural life as  
12 required under section 17-25-45. You will receive a  
13 five-year sentence on the conspiracy charge. And under  
14 state law, because you received a life sentence on the  
15 armed robbery charge, there will be no sentence imposed on  
16 indictment 503. That's the possession of a weapon during  
17 the commission of a violent crime. All sentences run  
18 concurrently and you'll receive credit for time service.  
19 Good luck, Mr. Wells.

20           For the record, you have 10 days to file notice of  
21 intent to appeal.

22           Mr. Richey, if you would perfect this appeal, please,  
23 for Mr. Wells.

24           We stand in recess.

25           \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF AIKEN                    )

I, PENNY M. JOHNSON, Official Court Reporter for the  
Second Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate, and  
complete Transcript of Record of the proceedings had and the  
evidence introduced in the trial of the captioned case,  
relative to appeal, in Court of General Sessions for Laurens  
County, South Carolina, on the 25th through 27th days of  
April, 2016.

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

July 14, 2016



Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA )

COUNTY OF *Laurens* )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) )

*Christopher J. Wells #193588* )

vs. )

-CP-

2019 **CP30-134**

*State of South Carolina* )

Defendant(s) )

Submitted By: *Christopher J. Wells #193588*

Address: *Perry Corn. Inct  
430 Oaklawn Rd  
Pelzer, S.C. 29669*

SC Bar #: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Other: \_\_\_\_\_  
E-mail: \_\_\_\_\_

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |  |
|--|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20-CP-_____</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul>   | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim of Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>   |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>  |  | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>  |  |

LYNN W. ANCASTER  
2019 FEB 19 PM 12:52  
LAURENS COUNTY  
CLERK OF COURT

Submitting Party Signature: \_\_\_\_\_

*[Handwritten Signature]*

Date: *2/14/19*

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 )  
 County of LAURENS )  
 )  
Christopher dermaine wells )  
 Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

v.

State of South Carolina )  
 )  
 )  
 )

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst, 430 DAKLAWN Ad,  
Delzer, S.C. 29166
2. Name and location of Court which imposed sentence LAURENS  
County General Sessions
3. Name(s) of co-defendant(s) (if any) David Walker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015- GS- 30- 504 Armed Robbery
  - (b) 2015- GS- 30- 505 Crim. CONSP.

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 27, 2016 - life/5yrs
  - (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. S.C. Court of Appeal
    - ii. S.C. Court of Appeal (Rehearing)
    - iii. S.C. Supreme Court (Writ of Certiorari)
  - (b) the result in each such Court to which you appealed:
    - i. Affirmed
    - ii. Denied
    - iii. Denied
  - (c) the date of each such result:
    - i. filed Nov. 8, 2017
    - ii. January 18, 2018
    - iii. May 3, 2018
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. Unpublished op. 2017-up-417
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_  
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) see attached pages
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) see attached pages
- (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? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. Petition for Rehearing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. S.C. Court of Appeal
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Denied
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. January 18, 2018
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any?  \_\_\_\_\_
- (c) your sentencing?  \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Rodney Richey  
P.O. Box 10916 Greenville, S.C. 29603-0916
  - ii. Katherine Hudgins  
Appellate Defense, Columbia, S.C.
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Jury trial
  - ii. Direct Appeal
  - iii. \_\_\_\_\_

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Christopher Dermaine Wells, 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.

*Christopher Dermaine Wells*  
Applicant

SWORN or affirmed to and subscribed before me this  
14th day of February, 2019.

*Tamara Conwell*  
Notary Public

**RECEIVED**

FEB 14 2019

P.C.I. MAILROOM

My Commission Expires: My Commission Expires  
September 25, 2023

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence  
Remand for New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA )  
County of Laurens )

VERIFICATION

I, Christopher dermaine Wells, 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.

Christopher Wells

SWORN to and subscribed before me this 14th day of February, 2019.

Tamara Crumwell (L.S.)  
Notary Public

My Commission Expires: My Commission Expires  
September 25, 2023

RECEIVED

FEB 14 2019

P.C.I. MAILROOM

State of South Carolina } Court of Common Pleas  
 County of Laurens }

Christopher J. Wells #193588

Applicant,

vs.

State of South Carolina

Respondent

Motion To Subpoena  
 Witnesses

and  
 Motion For Execution  
 of Subpoena

Comes now, Christopher Jermaine wells #193588, motioning this Honorable Court to subpoena a witness for an upcoming Post-Conviction Relief hearing to be determined at a later date. Said witness was a participant in the jury trial of the above applicant. The witness to be subpoenaed is:

Kayla Windley  
 Address unknown

I, Christopher Jermaine wells #193588  
 certify and verify under the penalty of perjury  
 that the foregoing is true and correct

Christopher Jermaine wells

State of South Carolina } Court of Common Pleas  
 County of Laurens }

Christopher J. Wells #193588 )  
 Applicant,

vs

State of South Carolina  
 Respondent

Certificate of Service

Comes Now, the applicant in the above entitled case certify that he have served the Respondents with a copy of my motion to Subpoena + Execution of Subpoena, by placing the same in the hand of the Perry Corr. Institution mailroom for mailing, postage prepaid addressed as follows:

Lauren County Clerk  
 P.O. Box 287  
 Laurens, S.C. 29360

I, Christopher Jermaine Wells #193588 certify and verify under the penalty of perjury that the foregoing is true and correct.

Christopher Jermaine Wells

STATE OF SOUTH CAROLINA

ISSUED BY THE Laurens County COURT IN THE COUNTY OF Laurens  
Christopher J. Wells, Plaintiff

v.  
Kayla Windley, Defendant Case Number: \_\_\_\_\_  
Pending in Laurens County

SUBPOENA IN A CIVIL CASE

TO: Kayla Windley  
 YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY Laurens County Court of Common Pleas COURTROOM \_\_\_\_\_  
DATE AND TIME \_\_\_\_\_

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION \_\_\_\_\_ DATE AND TIME \_\_\_\_\_

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE \_\_\_\_\_ DATE AND TIME \_\_\_\_\_

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES \_\_\_\_\_ DATE AND TIME \_\_\_\_\_

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 17C(2)(d) AND THAT NOTICE AS REQUIRED BY RULE 17C(2)(d) HAS BEEN GIVEN TO ALL PARTIES

Issuing Officer's Signature: Christopher Jermaine Wells #193588 Date: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Title: PCE, Q2B-112  
Address and Telephone Number: 430 Oaklawn Rd, Pelzer, S.C. 29669

## PROOF OF SERVICE

<b>SERVED</b>	<b>DATE</b>	<b>FEEES AND MILEAGE TENDERED TO WITNESS</b>
	<b>PLACE</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO <b>AMOUNT \$</b>
<b>SERVED ON</b>		<b>MANNER OF SERVICE</b>
<b>SERVED BY</b>		<b>TITLE</b>

## DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

**Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):**

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena was issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person from whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that would enable the demanding party to contest the claim.

- 1) Trial counsel was ineffective for giving applicant erroneous advice on which he based his decision not to testify.
- 2) Trial counsel failed to put the state's case through adversarial testing by not objecting to the charged indictments before the jury was sworn, and failure to preserve issue for appellate court review.
- 3) Subject matter jurisdiction may be raised at anytime, even on appeal.
- 4) Trial counsel was ineffective for failure to request a lesser-included offense instruction.
- 5) Trial counsel was <sup>ineffective</sup> after denying applicant's right to an impartial jury as guaranteed by the S.C. Constitution and by the Sixth and Fourteenth Amendment of the U.S. Const.
- 6) Trial counsel failed to investigate and interview the victim's friend and state witnesses prior to trial.

- 7) Trial counsel was ineffective for failure to object and preserve applicant's constitutional rights, compulsory process rights and hearsay assertions.
- 8) Trial counsel was ineffective for failure to convey and communicate a favorable plea offer to the applicant.
- 9) Trial counsel was ineffective for not being specific in applicant's directed verdict motion.
- 10) Trial counsel was ineffective during cross-examination of an investigator who opened the door to allow testimony from the investigator ~~that~~ another jury found a non-testifying co-defendant guilty of the murder for which petitioner stood trial.
- 11) Trial counsel failed to object and preserve a argument regarding the limiting instruction.  
See Petition For Rehearing
- 12) Appellate counsel failed to raise on Direct Appeal appellant's jurisdictional issue/See S.C. Constitution Art. I § 11
- 13) Due Process Violation

10(a) Trial counsel ineffective for failure to request instruction that jurors could not consider codefendant's conviction on offence as evidence of defendant's guilt. *United States v. Prowl*, 168 F.3d 662

## Legal Citation

The applicant allege and can prove that he was denied effective assistance of trial counsel and appellate counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial, 104 S.Ct. 2064.

counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different

Applicant contends and can show that his conviction and sentence was in violation of the U.S. Constitution, S. C. Constitution and laws of this state,

The applicant is asserting a 5th, 6th and 14th Amendment violation which sets forth a *prima facie* violation of his constitutional rights. Applicant's grounds for relief are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with demands of fair procedure.

The following acts and omissions by trial counsel constituted ineffective assistance of counsel.

1) Trial counsel was ineffective for giving applicant erroneous advice on which he based his decision not to testify

applicant maintains his decision not to testify was based on trial counsel's advice that he would be subject to cross-examination on his prior criminal convictions. Applicant contend that trial counsel's advice was in error since neither convictions were admissible for the purpose of impeachment.

In order to meet the two-pronged test establishing ineffective assistance of counsel, a defendant must prove, 1) that counsel's representation fell below an objective standard of reasonableness; and 2) that, but for counsel's error, there is a reasonable probability the result would have been different. Martinez v. State, 403 S.E.2d 113, Butter v. State, 334 S.E.2d 813.

There is no showing in the record that trial counsel sought a ruling on the impeachment value of his prior convictions

from the trial judge. Obviously, counsel's advice in this instance was premised upon an unsubstantiated legal assumption, and he was under a duty to move the court for a ruling either confirming or invalidating his assumption. A Cole analysis should have been requested by trial counsel.

Errors of law were involved, rendered more egregious by lack of ambiguity in the law. Counsel's representation fell below an objective standard of reasonableness. See Horton v. State, 411 S.F. 2d 223.

- 2) Trial counsel failed to put the state's case through adversarial testing by not objecting to the charged indictments before the jury was sworn, and failure to preserve for appellate court review.

Applicant raised several motions before the trial court prior to his jury trial, one of the main issues was subject-matter-jurisdiction (citing) South Carolina Constitution Article I § 11 State in part, Right of a party to be tried in the county where the crime was

committed is jurisdictional. Applicant's indictment was a sham legal process that failed to confer subject-matter-jurisdiction upon the trial court.

Applicant stated in his pro se motion to the court on page ~~13~~ <sup>13</sup> 2, 23-25, pg #1421 that his indictments were not valid, for the purpose of trying the applicant. Applicant's motion was denied by the trial court on page ~~20~~ <sup>20</sup> 4, 19-23.

Issue of subject-matter-jurisdiction may be raised at any time. State v. Small, 519 S.E.2d 793 (S.C. App. 1999) courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte. U.S. v. White, 139 F.3d 998 (4th Cir. 1998) cert. denied 119 S.Ct. 343. The burden shifts to the court to prove jurisdiction 469 F.2d 416.

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court. 204 U.S. 8, 27 S.Ct. 236 (1907)

Accordingly, applicant contends that his indictment(s) was a sham legal process that did not confer subject matter jurisdiction upon trial court to try and convict him. S.C. Code of Law 16-17-735 defines a sham legal process, in relevant part as follows: the issuance display, reliance on or instrument that is not the instrument is produced for inspection or actually exist, which purports to... (b) assert jurisdiction or authority over or determine or adjudicate the legal status right dispute or privilege of a person. [emphasis added]

Applicant submits that his three (3) indictments indicate that during April 2015 term of General Session Court for Laurens County he was indicted specifically on April 10, 2015. S.C. Legislature has enacted schedules for convening General Sessions court for all counties, to include Laurens County. The S.C. Legislature has enacted S.C. Code of Law § 14-9-170 which mandated the following provision for convening of a

Grand Jury to return indictments. The Grand Jury as drawn in accordance with law for service upon the Court of General Sessions in each of the counties shall constitute the grand jury for the county court and shall meet with the court at each of its terms.

Here, as there are no provision by the S.C. legislature set forth by statutory law in S.C. for a term of general session court in Laurens County on April 2015. The applicant assert that his three (3) indictments 503-505, which indicate he was indicted by the Laurens Grand Jury on April 10, 2015 when there was no term of general sessions court operates as a sham legal process that did not confer subject-matter-jurisdiction upon trial court to try and convict him. See State v. Hann, 12 S.F. 2d 720 (S.C. 1940) § 14 & 170 supra S.C. Const. Art. 1 § 11.

Further, applicant submits that as a threshold matter, his conviction and sentence was based on fraudulent indictment that legally could not support trial court's jurisdiction to convict and sentence him.

- 3) subject-matter-jurisdiction may be raised at anytime, even on appeal.

The applicant contends and prove that the alleged crime of murder, armed robbery, poss of weapon and criminal conspiracy allegedly in Spartanburg County, as opposed to Laurens County where the trial took place.

Trial counsel failed to object to the indictments before the jury was sworn, thereby causing prejudice to the applicant. See South Carolina Constitution Article I § 11 which state a party have a right to be tried in the county where the crime was committed, S.C. Art. I § 11 is controlling in this state and this case.

Once challenged, jurisdiction can not be assumed, it must be proved to exist.

Stuck v. Medical Examiners, 94 Cal2d 751, 211 P.2d 389. Once a court, as in the case at bar fail to observe safeguards it amounts to a denial of due process of law, court is deprived of jurisdiction. Merritt v. Hunter, 170 F.2d 739. See indictments.

4) Trial counsel was ineffective for failure to request a lesser-included offense instruction

Trial counsel's actions prejudiced the applicant and unduly subjected him to federal law violations and U.S. Supreme Court precedents. In Keble v. United States, 412 U.S. 205, 93 S.Ct. 1993, the Supreme Court stated although the lesser included offense doctrine developed at common law to assist the prosecution in cases where the evidence failed to establish some element of the offense originally charged. It is now beyond dispute that the applicant

was entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater. See Sansone v. United States, 380 U.S. 343, 85 S. Ct. 1004; Berra v. United States, 351 U.S. 131, 76 S. Ct. 685; Stevenson v. United States, 162 U.S. 313, 16 S. Ct. 839

The U.S. Supreme Court ruled in Spaziano v. Florida, 468 U.S. 447, 104 S. Ct. 3154 (1984), the absence of a lesser included instruction increases the risk that the jury will convict simply to avoid setting the defendant free... the goal of the "Beck Rule" in other words is to eliminate the distortion of the factfinding process that is created when the jury is forced into an all-or-nothing choice between guilt or innocence. See Beck v. Alabama, 447 U.S. 625, 100 S. Ct. 2382 (1980) Keble, *supra*.

Applicant assert that trial counsel's refusal to request a lesser included offense on the major charges not only

subject him to due process rights violation under the 14th amendment, but also clearly subjected him to equal protection rights violation. See State v. Drafts for the S.C. Supreme Court's ruling and mandates. The very same constitutional equal protection rights should have been afforded to the applicant.

Applicant asserts he was denied a substantial constitutional right of effective assistance of counsel in violation of the 6th Amendment.

- 5) Trial counsel was ineffective for denying applicant's right to an impartial jury as guaranteed by the S.C. Constitution and by the Sixth and Fourteenth Amendments of the U.S. Constitution.

Applicant contends that he was prejudiced in this effect, whereas, trial counsel failed to request for a alternate juror to replace juror #192. See page #333 l. 2-4 or request for an individual voir dire on each of the jurors, independently.

Trial counsel deprived applicant a full and fair trial when he failed to request an alternate juror to replace juror #192. Trial counsel agreed to keep juror #192 instead of replacing her. Trial judge asked the question as to whether she should be replaced, but trial counsel answered for the applicant without his consent. See pg #306 L. 38, which in turn deprived him of his constitutional right to trial by an impartial jury. If it were not for counsel's acts and omissions, there is a reasonable probability that the outcome would have been different. State v. Woods, 345 S.C. 583, 550 S.E.2d 282, McClay v. State, 401 S.C. 363 (2013) 737 S.E.2d 623.

- 6) Trial counsel failed to investigate and interview the victim's friend and the state's witnesses prior to trial

Prior to trial, applicant contend that his trial counsel did nothing but accept the version of the solicitor's file and reports. Trial counsel did no investigation of the alleged facts, no interviewing of witnesses, no

preparation of a defense, no discovery, no visiting of the crime scene and no trial preparation.

Trial counsel made little use if any of the evidence garnered from the state (STED) reports which tend to substantiate his innocence. Applicant contended that actual and substantial prejudice have occurred because trial counsel failed to utilize his actual innocence evidence. Even less excusable is trial counsel's failure to interview the state's witnesses whom he knew would testify against the applicant. Although the names of the state witnesses and victim's friend had been provided, trial counsel did not attempt to contact them. See House v. Balkom, 725 F.2d 608.

Trial counsel's failure to investigate the facts is unconscionable and fall below the level of performance by counsel required by the Sixth Amendment, when a lawyer fails to conduct a substantial investigation into any of his client's

plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Pre-trial investigation principally because it provide a basis upon which most of the defense must rest, is the most critical stage of a lawyer's preparation. Von Moltke v. Gillie, 332 U.S. 708, 68 S.Ct. 316, Powell v. Alabama, 53 S.Ct. at 59. The Sixth Amendment involve the independent duty to investigate and prepare. Chambers v. Armontrout, 907 F.2d 825

If trial counsel would have done the minimum of investigation prior to trial, there is a reasonable probability that the outcome of the trial would have been different.

7) Trial counsel was ineffective for failure to object and preserve applicant's constitutional rights, compulsory process rights and hearsay assertions.

Trial counsel failed to challenge, object and preserve applicant's constitutional confrontation rights, compulsory process rights and hearsay assertions. Trial counsel's acts and omissions deprived the applicant a fundamental fair trial, in violation of the S.C. Constitution Article 1 § 3 and the U.S. Constitution 14<sup>th</sup> Amendment. If it were not for trial counsel's errors, the outcome of the applicant's trial would have been different.

Rule against hearsay prohibits admission of testimony, or written evidence of a statement made out of court, offered in court to prove truth of the matter asserted. The admission of hearsay constituted

reversible error because its admission prejudiced the applicant. Prejudice is presumed because the hearsay had some probative value on a material fact in this case.

Like the testimony in the instant case, the police officer's testimony in State v. Corn, 215 S. C. 166, 54 S. E. 2d 559 (1949); State v. Pollard, 260 S. C. 457, 196 S. E. 2d 839, their testimony had no purpose other than to prove the truth of the matters asserted.

The confrontational clause provides: In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him, Article I, section 14 of the S. C. Constitution gives an accused this same right, See also § 17-23-60 and State v. Smith, 230 S. C. 164, 94 S. E. 2d 886 (1956). The right to confrontation envisions:

a personal examination and cross-examination of the witness, in which

the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

Trial counsel failed to put the state's case through adversarial testing by denying applicant's personal 6th and 14th amendment rights.

These tests of truthfulness are so important that the absence of confrontation and compulsory process at trial calls into question the ultimate integrity of the fact-finding process. Ohio v. Roberts, 448 U.S. at 63, 100 S. Ct. at 2538, quoting Chambers v. Mississippi, 410 U.S. 284, 295, 93 S. Ct. 1038 and Berger v. California, 393 U.S. 314, 315, 89 S. Ct. 540; State v. Williams, 331 S.E.2d 354

Prejudice worked to applicant's actual and substantial disadvantage, infecting his entire trial with error of constitutional

dimensions. Ouska v. Cahill-Masching,  
 246 F. 3d 1036, 1050 quoting 456 U.S.  
 152, 170, U.S. v. Frady, 102 S. Ct. 1584

See trial transcript pages # 91 L. 4-5

~~# 110 L. 10-12, # 111 L. 4, # 115 L. 23-24, # 182 L. 7-11,~~  
~~# 186 L. 10, # 330 L. 13~~

8) Trial counsel was ineffective for failure to communicate a favorable plea offer to the applicant.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment of the United States Constitution. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S.Ct. 2052, (1984).

Our Supreme Court has also held "a defendant has the right to effective assistance of counsel during the plea bargaining process". Davie, 381 S.C. at 607, 675 S.E.2d at 419.

As a general rule, defense counsel has the duty to convey and communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Fry, 130 S.Ct. at 1408; see also Davie, 381 S.C. at 609, 675 S.E.2d at 420 (2009) adopting rule

that counsel's failure to convey and communicate a favorable plea offer constitutes deficient performance.

First, a plea was made by the state and that counsel failed to convey and communicate the favorable plea offer to the applicant. Second, applicant would have accepted the favorable plea offer had he known about the specific terms of the offer. Third, the difference between the sentence received, LWOP, and the plea offer is proof of prejudice. There is a reasonable probability that, but for this error of counsel, the result to the applicant would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Applicant would have accepted the plea offer which was favorable. whatever the terms was inherently prejudicial because the deficient conduct prevented the applicant from making an informed decision Bell v. State, 765 S.F.2d 4; Douie, 675 S.F.2d 416

- 10) Trial counsel was ineffective during cross-examination of an investigator who opened the door to allow testimony from the investigator that another jury found a non-testifying codefendant guilty of the murder for which petitioner stood trial
- 10(a) Trial counsel ineffective for failure to request instruction that jurors could not consider codefendant's conviction on offense as evidence of defendant's guilt. see u.s. v prawl, 168 f3d 662

On October 31, 2013, officers with the Laurens County Sheriff's Department answered a 911 call in reference to shots fired on River Hill Road in Enoree. When the officers arrived at the scene they found David Lee Walker outside of the trailer and Johnny Lee Cheeks inside of his trailer. Both men had been shot. (R. p. 160-166). Investigator Marty Crain testified that Cheeks told him that Walker shot him. (R. p. 174, lines 7-16). According to Investigator Bryant Cheek, Walker stated that he had been attacked by two guys he did not know. (R. p. 276, lines 5-20). Cheeks later died as a result of blood loss from a gunshot wound to the abdomen. (R. p. 263, lines 2-4). Walker survived.

Kelly Ball testified that sometime between 10:30 PM and 11:00 PM on the night of October 31, 2013, she was with Cheeks inside of his trailer when someone knocked on the door. (R. pp. 118-119). Ball testified that Cheeks sold drugs and liquor from his trailer. (R. p. 114, lines 1-11). Cheeks answered the door and went outside when Ball heard a verbal altercation and then gunshots. (R. p. 119, line 9 – p. 120, 121, lines 1-6). Ball called 911 and then went outside to check on Cheeks. (R. p. 122, lines 6-10). Ball found Cheeks lying on the ground and noticed another person on the ground by Cheeks' Suburban SUV. (R. p. 123, lines 22-25). At trial she identified that person as Walker. (R. p. 124, lines 1-9). Ball claimed to have seen another individual standing in the driveway that night. (R. p. 124, lines 12 – 25). She told police that the person in the driveway resembled Ty, a large, dark skinned black male. (R. p. 292, lines 7-11). Ball, however, identified the individual as Petitioner. (R. p. 125, lines 13-21).

Investigator Cheek admitted that Petitioner was not dark skinned. (R. p. 292, line 20- p. 293, lines 1-5). Petitioner's complexion on the Department of Corrections website is noted as medium brown.

Ball claimed that when she pulled Cheeks inside the trailer after the shooting that he handed her his gun from his holster and she put the gun under the mattress. (R. p. 132, lines 19 – p. 133, lines 1-3; p. 140, line 5 – p. 141, lines 1-16). The gun found inside the trailer under the mattress was a revolver with two live rounds and two spent rounds. (R. p. 199, lines 1-24). A Lorcin 380 semi-automatic handgun was found outside in the yard. (R. p. 196, lines 3 – p. 197, lines 1-4). Officers additionally found three 380 shell casings in the yard and a slug inside the trailer. (R. p. 197, lines 6-25). The firearms examiner from the South Carolina Law Enforcement Division [SLED] testified that the casings came from the same gun but he could not conclusively say that the casings were fired by the 380 found in the yard. (R. p. 250, lines 9 – p. 251, lines 1-10). The examiner was, however, able to testify that the slug found inside the trailer was fired by the 380 found in the yard.

Ball testified that the individual she saw in the driveway turned, ran up the hill and got into the back passenger seat of a brown older model box style car and left. (R. p. 125, line 23 – p. 126, 127, lines 1-25). Despite Balls' description of the car as brown, Officer Ashley with the Laurens City Police Department claimed that he received information that an older model dark blue car had been involved in a shooting. (R. p. 205, lines 7-14). Based on the blue car description, Officer Ashley followed a ~~blue~~ car and eventually found it parked at Petitioner's girlfriend's house. (R. p. 210, line 2 – p. 211, lines 1-6). Petitioner consented to a search of his vehicle and nothing of evidentiary value was found. (R. p. 211, lines 11-21).

Toris Moore testified that she saw her uncle, co-defendant David Walker, Petitioner and Johnny Lee Saxon together on Halloween night. (R. p. 100, line 20 – p. 101, 102, lines 1-5). According to Moore, Walker told her they needed another gun because they were going to rob an old man who stayed with a white lady and sold liquor and drugs from his house. (R. p. 102, lines 6- 24).

At the start of the case the judge stated:

I, also, indicated in chambers the State had hoped to get into the fact that the co-defendant had already been convicted and I just explained in chambers that we just need to stay away from that. Obviously, it's standard provision of law that every – the evidence against each defendant must stand on its own. And the fact that a co-defendant has previously been found guilty of murder in this case, obviously, is not evidence that the gentleman did anything wrong. That's simply proof that somebody else in front of a different jury was found guilty of the offense of murder. Obviously, the prejudicial effect to Mr. Wells [Petitioner] would outweigh any probative value of allowing the prior conviction.

(R. p. 74, line 23 – p. 75, lines 1-10).

After Petitioner's cross examination of Investigator Cheek, the State, outside the presence of the jury, stated:

Your Honor, at this point, since Mr. Richey is casting speculation on other people that might have done the shooting, I think it would be appropriate for the jury to know that 12 jurors in Laurens County have found David Walker guilty beyond a reasonable doubt of murder of Johnny Lee Cheeks. And I would submit that the State should be allowed to enter into evidence the certified copy of the indictment and sentencing sheet in his case.

(R. p. 296, lines 16-24). Petitioner argued, "Judge, I didn't open the door. I just said these people shoot. I said nothing about any other person. I was talking about Walker and this individual, who we've all said – he put in evidence – there's no way I even remotely opened the door to let that conviction in." (R. p. 297, lines 1-5). After a short break the judge determined

that the door was opened to a degree by the “last series of questions concerning drug dealers and isn’t it possible that this is a drug-on –drug-type of a thing.” (R. p. 298, line 25 – p. 299, lines 1-2). The judge ruled, “I will allow you to ask this witness is it your understanding that Mr. Walker is currently in the Department of Corrections serving a sentence for murder in this incident.” (R. p. 299, lines 12-15). After a brief explanation, the judge told Petitioner, “And you do not need to contemporaneously object, you are covered.” (R. p. 301, lines 18-19).

On re-direct examination, the prosecutor asked Investigator Cheek, “Are you familiar with the fact that David Walker is in the South Carolina Department of Corrections serving time for this homicide?” (R. p. 304, lines 12-14). Investigator Cheek answered, “Yes, sir.” In closing argument the prosecutor referenced Walker’s conviction stating, “Mr. Richey has also talked about an anonymous phantom rival of Johnny Cheeks doing the killing when we know David Walker has been convicted of this homicide. David Walker, who was with the other two, Saxon and Wells, that night planning out the robbery.” (R. p. 333, lines 21-25). At the close of the case Petitioner renewed all objections and the judge again denied the motions. (R. p. 378, lines 16-25). The judge erred in allowing Investigator Cheek to testify that Walker had been convicted of the murder of Johnny Lee Cheeks.

In regard to reference to the guilty plea of a non-testifying co-defendant, the Fourth Circuit Court of Appeals in United States v. Blevins, 960 F.2d 1252, 1260 (4th Cir. 1992) wrote:

Courts have generally agreed that evidence of a non-testifying co-defendant’s guilty plea should not be put before the jury. See, e.g., United States v. Leach, 918 F.2d 464, 467 (5th Cir.1990); United States v. De La Vega, 913 F.2d 861, 866 (11th Cir.1990). The reason for this prohibition is twofold. First, by not having the opportunity to cross-examine the co-defendant who entered the guilty plea, the defendant on trial is unable to probe the motivations for entry of the plea. This significantly undercuts the defendant’s right to have a jury’s verdict based only upon evidence that is presented in open court and is thereby subject to scrutiny by the defendant. See United States v. Griffin, 778 F.2d 707, 711 (11th Cir.1985) (citing Turner v. Louisiana, 379 U.S. 466, 472-73, 85 S.Ct. 546, 549-50, 13

L.Ed.2d 424 (1965)). Second, introduction of such guilty pleas raises the concern that a defendant might be convicted based upon the disposition of the charges against the co-defendants, rather than upon an individual assessment of the remaining defendant's personal culpability. See Griffin, 778 F.2d at 711.

In regard to reference to a conviction after jury trial of a testifying co-conspirator, the Fourth Circuit Court of Appeals in United States v. Mitchell, 1 F.3d 235, 240 (4th Cir. 1993) wrote:

It is a well-accepted principle that "evidence about the conviction of a co-conspirator is not admissible as substantive proof of the guilt of a defendant." United States v. Leach, 918 F.2d 464, 467 (5th Cir.1990), cert. denied, 501 U.S. 1207, 111 S.Ct. 2802, 115 L.Ed.2d 976 (1991). In criminal cases, it is the province of the defendant's jury to resolve questions of credibility; referring to what another jury may have done is clearly improper because the defendant's jury cannot permissibly rely on what they may assume a previous jury to have found. See United States v. Samad, 754 F.2d 1091, 1100 (4th Cir.1984) (observing that a prosecutor may not argue evidence not presented to the jury). Such conduct "raises the concern that a defendant might be convicted based upon the disposition of the charges against the [co-conspirator], rather than upon an individual assessment of the remaining defendant's personal culpability." Blevins, 960 F.2d at 1260. Indeed, improper use of a co-conspirator's conviction infringes on the principle that the "central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence." Delaware v. Van Arsdale, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674 (1986).

In the present case Walker was a non-testifying co-defendant, like the co-defendant in Blevins, but was convicted after jury trial like the co-conspirator in Mitchell. As in Blevins and Mitchell, it was improper to allow testimony that Walker had been convicted of the murder of Johnny Lee Cheeks. Petitioner's jury had to make their own decisions in regard to credibility without reference to what they may have presumed another jury found in regard to Walker's conviction. As in Blevins and Mitchell, the improper testimony raises the concern that Petitioner's conviction was based on Walker's conviction rather than an individual assessment of Petitioner's guilt. The prosecutor, in effect, argued to the jury that Walker's conviction should

be used as substantive evidence of Petitioner's guilt. The argument was improper. The judge erred in allowing the testimony about Walker's conviction.

The trial judge initially and correctly found that evidence of Walker's conviction was inadmissible and more prejudicial than probative. (R. p. 74, line 23 – p. 75, lines 1-10). Later, however, the trial judge ruled that Petitioner's questioning of Investigator Cheek in regard to the possibility that the shooting may have been a "drug-on –drug-type of a thing" opened the door to allow testimony about Walker's conviction. The trial judge erred. Petitioner had every right, and counsel for Petitioner had a duty to challenge the State's theory of the case by challenging the State's evidence that Walker was the shooter.

The Court of Appeals agreed that the judge erred in admitting the testimony about Walker's conviction because Petitioner did not open the door to that testimony when he questioned Investigator Cheek about whether the victim's status as a drug dealer exposed him to heightened levels of danger. The Court of Appeals wrote:

We find the trial court erred in admitting testimony about Walker's sentence because Wells did not open the door to that testimony when he questioned Investigator Cheek about whether the victim's status as a drug dealer exposed him to heightened levels of danger. See State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) ("Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially." (quoting State v. Albert, 303 N.C. 173, 177, 277 S.E.2d 439, 441 (1981))). Wells's cross-examination of Investigator Cheek did not explicitly or implicitly question the fact that Walker was the shooter. On the contrary, the questioning was consistent with Wells's theory of the case that Walker shot the victim over a drug-related dispute. Thus, evidence that Walker was serving time for murder did not "explain or rebut" Investigator Cheek's testimony. Further, the testimony about Walker's sentence was not used to refute testimony by Wells. See State v. Murphy, 270 S.C. 642, 643-44, 244 S.E.2d 36, 36-37 (1978) (allowing the admission of co-defendant's guilty plea into evidence in trial for housebreaking to refute defendant's contention that co-defendant never communicated an intent to commit a crime once inside); State v. Moore, 337 S.C. 104, 108, 522 S.E.2d 354, 357 (Ct. App. 1999) (finding Murphy

stood only for "the narrow proposition that a co-defendant's guilty plea may, in some cases, be admissible to impeach the credibility of a testifying defendant").

State v. Wells, Op. No. 2017-UP-417 (S.C. Ct.App. filed November 8, 2017). (App. p. 2).

The Court of Appeals, however, found the error to be harmless writing:

However, we find the trial court's error was harmless beyond a reasonable doubt. See State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result."); State v. Tapp, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012) ("Engaging in [a] harmless error analysis . . . requires [this court] not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict."). Wells introduced to the jury during opening statements that Walker was the shooter. Additionally, the trial court instructed the jury members to consider Wells's guilt "separate and apart" from the guilt of Walker. Accordingly, evidence Walker was serving time for murder did not prejudice Wells.

State v. Wells, Op. No. 2017-UP-417 (S.C. Ct.App. filed November 8, 2017) (fn #2 omitted). (App. p. 2). The Court of Appeals erred in finding that the error was harmless. There is a difference between Petitioner properly arguing that a co-defendant was the shooter in opening statement and the State improperly arguing that Petitioner should be found guilty because another jury found the co-defendant guilty. The instruction to the jury was inadequate, especially in light of the weak State's evidence and the State's closing argument.

The error was not harmless. The State's case was based on the testimony of Toris Moore placing Petitioner with Walker and Saxon on the night of the incident and her conversation with Walker about robbery plans and the questionable identification of Petitioner and the car by Kelly Ball. The State's evidence was not overwhelming. In Blevins the Fourth Circuit found that the minimal discussion of the non-testifying co-defendants did not warrant reversal and wrote, "If for whatever reason the jury does learn that co-defendants have pleaded guilty, the court upon request should issue a limiting instruction to jurors stating that the evidence of such guilty pleas

is not to be taken as substantive evidence of guilt of the remaining defendants.” 960 F.2d at 1260. In contrast, in the present case the State was allowed to directly question the investigator about Walker’s conviction and the State relied upon that testimony in closing argument. Additionally, in the present case, the only limiting instruction to the jurors is found in the judge’s final instructions on the law when he stated:

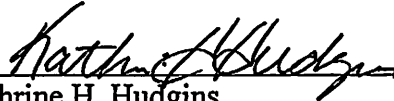
Now, ladies and gentlemen, you’ve heard testimony that three individuals were charged in connection with this incident. I emphasize to you that only Mr. Wells is on trial in this case. Therefore, the evidence against Mr. Wells must be considered separately and apart from the cases against any other defendant and the manner in which the case against any other defendant has been resolved. In short, you must consider the evidence in this case in its totality only as it relates to Mr. Wells without regard to the case of any other co-defendant for the manner in which that case against that other co-defendant was resolved.

(R. p. 350, lines 8-19). The instruction does not adequately tell the jury that evidence of Walker’s conviction is not to be taken as substantive evidence of Petitioner’s guilt. Even if the judge had directly instructed the jury that evidence of a co-defendant’s conviction is not to be taken as substantive guilt of the Petitioner, the error in the present case cannot be deemed harmless in light of the weakness of the State’s evidence. Based on the above argument in regard to the prejudicial non-harmless nature of the error in allowing the State to argue that Petitioner should be found guilty because another jury found the co-defendant guilty, Petitioner seeks review by this court and a reversal and remand for a new trial.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2018.

11)

STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CHRISTOPHER JERMAINE WELLS,

PETITIONER

APPELLATE CASE NO 2016-000950

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

Opinion No. 2017-UP-417

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Christopher Jermaine Wells petitions the Court for rehearing. Counsel respectfully submits that the Court misapprehended the prejudicial impact of the trial judge erroneously admitting evidence that the non-testifying co-defendant was found guilty by another jury. There is a difference between properly arguing that a co-defendant was the shooter and improperly arguing that Petitioner should be found guilty because another jury found the co-defendant guilty. Petitioner respectfully submits that this Court correctly found that the trial court erred in admitting testimony that another jury found a non-testifying co-defendant guilty of the murder for which Petitioner stood trial. Petitioner respectfully

submits, however, that this Court erred in finding the error harmless because Petitioner argued that the non-testifying co-defendant, David Walker, was the shooter. The error was not harmless.

On October 31, 2013, officers with the Laurens County Sheriff's Department answered a 911 call in reference to shots fired on River Hill Road in Enoree. When the officers arrived at the scene they found David Lee Walker outside of the trailer and Johnny Lee Cheeks inside of his trailer. Both men had been shot. (R. pp. 160-166). Investigator Marty Crain testified that Cheeks told him that Walker shot him. (R. p. 174, lines 7-16). According to Investigator Bryant Cheek, Walker stated that he had been attacked by two guys he did not know. (R. p. 276, lines 5-20). Cheeks later died as a result of blood loss from a gunshot wound to the abdomen. (R. p. 263, lines 2-4). Walker survived.

Kelly Ball testified that sometime between 10:30 PM and 11:00 PM on the night of October 31, 2013, she was with Cheeks inside of his trailer when someone knocked on the door. (R. pp. 118-119). Ball testified that Cheeks sold drugs and liquor from his trailer. (R. p. 114, lines 1-11). Cheeks answered the door and went outside when Ball heard a verbal altercation and then gunshots. (R. p. 119, line 9 – p. 120, 121, lines 1-6). Ball called 911 and then went outside to check on Cheeks. (R. p. 122, lines 6-10). Ball found Cheeks lying on the ground and noticed another person on the ground by Cheeks' Suburban SUV. (R. p. 123, lines 22-25). At trial she identified that person as Walker. (R. p. 124, lines 1-9). Ball claimed to have seen another individual standing in the driveway that night. (R. p. 124, lines 12 – 25). She told police that the person in the driveway resembled Ty, a large, dark skinned black male. (R. p. 292, lines 7-11). Ball, however, identified the individual as Petitioner. (R. p. 125, lines 13-21). Investigator Cheek admitted that Petitioner was not dark skinned. (R. p.

292, line 20- p. 293, lines 1-5). Petitioner's complexion on the Department of Corrections website is noted as medium brown.

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At the start of the case the judge stated:

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(R. p. 296, lines 16-24). Petitioner argued, "Judge, I didn't open the door. I just said these people shoot. I said nothing about any other person. I was talking about Walker and this individual, who we've all said – he put in evidence – there's no way I even remotely opened the door to let that conviction in." (R. p. 297, lines 1-5). After a short break the judge determined that the door was opened to a degree by the "last series of questions concerning drug dealers and isn't it possible that this is a drug-on –drug-type of a thing." (R. p. 298, line 25 – p. 299, lines 1-2). The judge ruled, "I will allow you to ask this witness is it your

understanding that Mr. Walker is currently in the Department of Corrections serving a sentence for murder in this incident.” (R. p. 299, lines 12-15). After a brief explanation the judge told Petitioner, “And you do not need to contemporaneously object, you are covered.” (R. p. 301, lines 18-19).

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In regard to reference to the guilty plea of a non-testifying co-defendant, the Fourth Circuit Court of Appeals in United States v. Blevins, 960 F.2d 1252, 1260 (4th Cir. 1992) wrote:

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conviction should be used as substantive evidence of Petitioner's guilt. The argument was improper. The judge erred in allowing the testimony about Walker's conviction.

The trial judge initially and correctly found that evidence of Walker's conviction was inadmissible and more prejudicial than probative. (R. p. 74, line 23 – p. 75, lines 1-10). Later, however, the trial judge ruled that Petitioner's questioning of Investigator Cheek in regard to the possibility that the shooting may have been a "drug-on –drug-type of a thing" opened the door to allow testimony about Walker's conviction. The trial judge erred. Petitioner had every right, and counsel for Petitioner had a duty to challenge the State's evidence.

In affirming the sentence and conviction this Court wrote, "We find the trial court erred in admitting testimony about Walker's sentence because Wells did not open the door to that testimony when he questioned Investigator Cheek about whether the victim's status as a drug dealer exposed him to heightened levels of danger." State v. Wells, Op. No. 2017-UP-417 (S.C. Ct.App. filed November 8, 2017). This Court, however, found the error harmless writing, "Wells introduced to the jury during opening statements that Walker was the shooter. Additionally, the trial court instructed the jury members to consider Wells's guilt 'separate and apart' from the guilt of Walker. Accordingly, evidence Walker was serving time for murder did not prejudice Wells." State v. Wells, Op. No. 2017-UP-417 (S.C. Ct.App. filed November 8, 2017) (fn #2 omitted). Respectfully, Petitioner submits that he was prejudiced by the error in admitting evidence that another jury convicted Walker of the murder. The error was not harmless.

The State's case was based on the testimony of Toris Moore who placed Petitioner with Walker and another on the night of the incident. Moore testified about her conversation

with Walker about robbery plans. The other State's evidence consisted of a questionable identification of Petitioner by Kelly Ball. The State's evidence was not overwhelming.

In Blevins the Fourth Circuit found that the minimal discussion of the guilty plea of non-testifying co-defendants did not warrant reversal and wrote, "If for whatever reason the jury does learn that co-defendants have pleaded guilty, the court upon request should issue a limiting instruction to jurors stating that the evidence of such guilty pleas is not to be taken as substantive evidence of guilt of the remaining defendants." 960 F.2d at 1260. In the present case the State was allowed to directly question the investigator about Walker's conviction and the State relied upon that testimony in closing argument. In closing the prosecutor argued; "Mr. Richey [defense counsel] has also talked about an anonymous phantom rival of Johnny cheeks doing the killing, when we know that David Walker has been convicted of this homicide. David Walker, who was with the other two, Saxon and Wells, that night planning out the robbery." (R. p. 333, lines 21-25).

Additionally, in the present case, the only limiting instruction to the jurors is found in the judge's final instructions on the law when he stated:


Now, ladies and gentlemen, you've heard testimony that three individual were charged in connection with this incident. I emphasize to you that only Mr. Wells is on trial in this case. Therefore, the evidence against Mr. Wells must be considered separately and apart from the cases against any other defendant and the manner in which the case against any other defendant has been resolved. In short, you must consider the evidence in this case in its totality only as it relates to Mr. Wells without regard to the case of any other co-defendant for the manner in which that case against that other co-defendant was resolved.

(R. p. 358, lines 8-19). The instruction does not adequately tell the jury that evidence of Walker's conviction is not to be taken as substantive evidence of Petitioner's guilt. Even if the judge had directly instructed the jury that evidence of a co-defendant's conviction is not to

be taken as substantive guilt of the Petitioner, the error in the present case cannot be deemed harmless in light of the weakness of the State's evidence.

Based on the above argument in regard to the prejudicial non-harmless nature of the error in allowing the State to argue that Petitioner should be found guilty because another jury found the co-defendant guilty, Petitioner seeks rehearing and a reversal and remand for a new trial.

Respectfully Submitted,

  
\_\_\_\_\_  
KATHRINE H. HUDGINS  
Appellate Defender

This 22nd day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

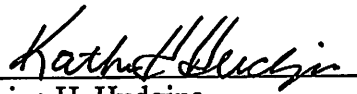
V.

CHRISTOPHER JERMAINE WELLS,

PETITIONER

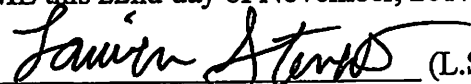
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Ranee Saunders, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Christopher Jermaine Wells, #193588, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 22nd day of November, 2017.



Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE  
ME this 22nd day of November, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2019-CP-30-00134
Christopher J. Wells, #193588,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February 19, 2019, to add the following:

1. Ineffective Assistance of Counsel of Rodney W. Richey, Esquire:
  - a. Failure to object to the sufficiency of the limiting instruction given during the trial.
  - b. Failure to raise the issue that Theresa Loveless, one of the jurors, goes to church with and knows Detective Cheeks and did not disclose this during jury selection.
  - c. Failure to object to the alternate juror being present in the jury room during deliberations. See transcript p. 376, line 1 – p. 378, line 19. The record does not reflect that the judge asked the alternate to step out nor does the record reflect that the alternate was excused.
  - d. Failure to adequately relay the plea offer made during the trial. Mr. Mowry offered a plea to armed robbery with a dismissal of the murder charge while the trial was in progress. However, the Applicant had been served with LWOP notice prior to the trial and Applicant was not sure if he took this plea offer that the Solicitor meant for him to get life without parole or to plead straight-up with life taken off the table.
  - e. Failure to challenge or request further discovery from the Solicitor's office. There was a phone with text messages on it as well as body

camera video that was available that Mr. Saxon, the Applicant's co-defendant, was able to obtain through his attorney, Ms. Aimee Zmroczek, but Mr. Richey never had.

- f. Failure to move to have the case dismissed against the Applicant because he was never read his Miranda rights when being questioned on video.
- g. Failure to adequately cross-examine Kelly Ball about her inconsistent statements given to the police and her testimony in trial.
- h. Failure to request a Neil v. Biggers hearing on the photo line-up.
- i. Failure to request that Juror #10 be released after she got a ride home from the sheriff's department.

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); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,

*Ashley A. McMahan*

---

ASHLEY A. McMAHAN

McMAHAN LAW

PO Box 60536

Columbia, SC 29250

803-219-1110

ashley@mcmahanolawsc.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

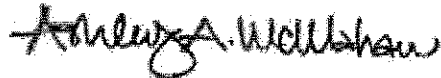
November 20, 2023

**CERTIFICATE OF SERVICE**

I certify that I have served this document via email to:

Zachary W. Jones  
Assistant Attorney General  
zacharyjones@scag.gov

This 20<sup>th</sup> Day of November, 2023.



ASHLEY A. MCMAHAN  
Attorney for Applicant

2023 DEC -4 P 1:06  
M. MICHELLE SIMONS  
CLERK OF COURT

## MCMAHAN LAW, LLC

November 20, 2023

Michelle Simmons  
Laurens County Clerk of Court  
Attn: PCR's  
PO Box 287  
Laurens, SC 29360-0287

Re: Christopher J. Wells, #193588 vs. State of South Carolina  
2019-CP-30-00134

Dear Ms. Simmons:

Please find enclosed an Amended PCR Application and one copy. Kindly clock in this document and return a clocked copy to me in the enclosed envelope. Please note: as this is a PCR matter, it cannot be filed online.

Should you have any questions I can be reached at the address listed below.

Best regards,



ASHLEY A. MCMAHAN  
ATTORNEY AT LAW

AAM  
Enclosures

MICHELLE SIMMONS  
2023 DEC -14 P 1:06  
LAURENS COUNTY  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF LAURENS )

IN THE COURT OF COMMON PLEAS )  
FOR THE EIGHTH JUDICIAL CIRCUIT )

Christopher Wells, #193588, )

2019-CP-30-134

Applicant, )

v. )

RETURN, MOTION FOR MORE DEFINITE )  
STATEMENT, AND PARTIAL MOTION TO )  
DISMISS )

State of South Carolina, )

Respondent. )

LAURENS COUNTY )  
CLERK OF COURT )  
2019 JUN 23 PM 3:47 )  
LYNN W. ANCASTER )

In response to the application for post-conviction relief (PCR) filed on February 19, 2019, the State (Respondent) would respectfully show this Court:

**I. Procedural History**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During its April 2015 term, the Laurens County Grand Jury indicted Applicant for armed robbery (indictment #15-GS-30-0504) and criminal conspiracy (indictment #15-GS-30-0505). Deputy Solicitor Warren Mowry and Assistant Solicitor Ruston Neely of the Eighth Circuit Solicitor’s Office prosecuted the case. Rodney Richey, Esquire represented Applicant.

On April 25, 2016, Applicant proceeded to a jury trial before the Honorable Frank R. Addy, Jr. The jury convicted Applicant on both counts as indicted. Judge Addy sentenced Applicant to life imprisonment for armed robbery and a concurrent sentence of five years’ imprisonment for criminal conspiracy.

Subsequently, Applicant timely appealed his sentences and convictions. Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense—Office

of Appellate Defense submitted final briefs on behalf of Applicant. On April 4, 2017, Assistant Attorney General Ranee Saunders filed Respondent's final brief. On November 8, 2017, in an unpublished opinion, State v. Wells, 2017-UP-417 (Ct. App. 2017), the South Carolina Court of Appeals affirmed Applicant's conviction. On November 22, 2017, Hudgins filed a Petition for Rehearing on behalf of Applicant. On January 18, 2018, Applicant's petition for rehearing was denied. On May 14, 2018, the Remittur was issued to the lower court.

## **II. Factual Background**

Lieutenant Marty Crain of the Lauren County Sheriffs Office responded to a call reporting a possible shooting and arrived at the scene to find David Lee Walker slumped over on the porch swing of a mobile home. (R. 160-1 64.) Walker initially indicated his arm was broken, but he had in actuality been shot. (R.174.) Lieutenant Crain then proceeded inside the home and there he discovered Johnny Lee Cheeks (Victim) bleeding profusely from gunshot wounds to his neck and abdomen. (R. 160-1 65.) Investigator Bryant Cheek arrived shortly after and spoke with Victim, Walker, and Victim's girlfriend Kelly Ball, who was also present at the scene. (R.275-276.) Walker informed Investigator Cheek that he had been attacked by two men he did not recognize; however, Victim indicated Walker had come to rob him. (R.276.) Victim ultimately died of his wounds. (R.278.) During the course of the investigation, Investigator Cheek began looking into what company Walker kept and eventually arrested Walker, Applicant, and Johnny Lee Saxon.

Applicant was charged with murder, armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy. (R.13, 21 .) Prior to the start of trial, the court noted for the record that during an in camera discussion the State had been instructed not to discuss the fact that Walker had already been convicted in connection with this incident. (R.74.)

At trial, the State called Walker's niece Toris Moore to testify. She stated that on the night of the incident, Walker, Applicant, and Saxon came to her home. (R.101.) Walker asked her for her gun, stating they planned to rob someone and the only gun they had was Applicant's. (R.103.) Moore did not have a gun and sent them away empty-handed. (R.103.) Investigator Cheek also testified about the evening and his investigation. During cross examination, he acknowledged that Victim was a known drug dealer. (R.293.) Defense counsel then posed questions to the investigator about the nature of drug dealers, asking whether it was true that "these drug folk are dangerous" and "when they get mad, they shoot." (R.295.) He then asked whether "this case right here ... fits that description." (R.296.) The State objected and, outside the presence of the jury, argued that defense counsel's insinuation that some other people may have been responsible for the shooting opened the door for allowing the State to question Investigator Cheek about Walker's murder conviction. (R.297.)

Ultimately, the trial court concluded Applicant did indeed open the door for the admission of evidence about Walker's conviction. (R.299.) It also stated it would give a jury instruction indicating that Applicant's case must stand alone and Walker's conviction has no bearing on Applicant's guilt. (R.299.) Accordingly, on redirect, Investigator Cheek clarified Victim identified Walker as his assailant. (R.303.) The solicitor then asked whether Walker was currently "serving time for this homicide," and Investigator Cheek answered in the affirmative. (R.304.) The State rested and Applicant offered no evidence in his defense. (R.305, 319.) Prior to charging the jury, the trial court indicated it was including language about how the evidence against Applicant must be considered "separately and apart from the cases against any other defendant and the manner in which the case against any other defendant was resolved." (R.350.) Applicant made no objection

to the adequacy of this charge. (R.3 1 5.) The trial court thereafter charged the jury and Applicant took no exceptions. (R.369.)

### **III. Current Application**

In his Application for post-conviction relief, Applicant makes several allegations, which Respondent interprets as the following:

#### **A. Ineffective Assistance of Counsel**

1. Trial counsel provided “erroneous advice on which [Applicant] based his decision not to testify.”
2. Trial counsel failed to object to Applicant’s indictments and failed to preserve the issue for appellate court.
3. Failure to request a lesser-included offense instruction
4. “denying Applicant his right to an impartial jury...”
5. Failure to investigate
  - i. Failure to interview “victim’s friend”
6. Failure to “object and preserve applicant’s constitutional rights, compulsory process rights, and hearsay assertions.”
7. Failure to communicate plea offer
8. Failure to be “specific in applicant’s directed verdict motion”
9. Failure to prevent testimony indicating that a co-defendant was found guilty of murder
10. “failure to object and preserve a[n] argument regarding the limiting [jury] instruction”
11. Appellate counsel “failed to raise on direct appeal Applicant’s jurisdictional issue”

Applicant requests that he receive a “vacate[d] conviction and sentence and remand for new trial.”

Attached to this return and incorporated herein are the Laurens County Clerk of Court records, Applicant’s records from the South Carolina Department of Corrections, the appellate record (including the Record on Appeal), and the records of this current PCR action.

### **IV. Response to Allegations of Ineffective Assistance of Counsel**

In his Application, Applicant alleges that counsel was ineffective for: (1) provided “erroneous advice on which [Applicant] based his decision not to testify”; (2) “denying Applicant

his right to an impartial jury...”; (3) failing to object to Applicants indictments and preserve indictment issues for appeal; (4) failing to “object and preserve applicant’s constitutional rights, compulsory rights, and hearsay assertions”; (5) failing to “be specific in Applicant’s directed verdict motion”; and (6) failing to interview “victim’s friend”; (7) failing “to object and preserve a[n] argument regarding the limiting [jury] instruction”; and (8) Appellate counsel’s failure to “raise on direct appeal Applicant’s jurisdictional issue.”

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989.) Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690.) The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland,

466 U.S. at 690.) The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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.

Applicant does not provide any supporting information to support these allegations such as what erroneous advice counsel allegedly provided, how Applicant was allegedly denied an impartial jury, how Applicant's indictments were allegedly defective, what "constitutional rights, compulsory rights, and hearsay assertions" should have been objected to, how counsel's directed verdict motion was not sufficient, how testimony from "victim's friend" would have supported his case, what argument should have been preserved regarding the jury instruction, and what jurisdictional issue should have been raised on his direct appeal. Accordingly, Respondent is unable to respond to these claims and moves herein for a more definite statement so that it can effectively respond through an amended or supplemental return.

Applicant also alleges that counsel was ineffective for failing to request a lesser-included offense instruction and for failing to communicate a plea offer. Respondent submits Applicant cannot satisfy either requirement of the Strickland test regarding either trial or appellate counsel. However, some of the allegations concerning Applicant's ineffective assistance of counsel probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 24 (1983).

### **V. Summary Dismissal for Ineffective Assistance of Counsel Claim**

Additionally, Applicant asserts that counsel failed to prevent testimony indicating that Walker, Applicant's co-defendant, was found guilty of murder. However, this allegation should be summarily dismissed based on *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). Whether Applicant was prejudiced by this testimony has already been decided in Applicant's direct appeal. More specifically in Applicant's direct appeal, Applicant argued that "the trial court erred in finding that Applicant's cross examination of an investigator opened the door to allow testimony from the investigator that another jury found a non-testifying codefendant guilty of the murder for which Applicant stood trial." (App. Brief p. 3). Accordingly, Respondent moves to summarily dismiss this allegation herein.

In its unpublished opinion, the South Carolina Court of Appeals found that the trial court erred in admitting testimony about the co-defendant's sentence, but that the error constituted harmless error beyond a reasonable doubt. State v. Wells, No. 2017-UP-417 at \*2 (Ct. App. 2017), citing State v. Black, 400 S.C. 10, 27 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result) (citations omitted). The court further determined that "the trial court instructed the jury members to consider Well's guilt 'separate and apart' from the guilt of Walker", and accordingly, the evidence that Walker was serving time for murder did not prejudice Wells. State v. Wells, No. 2017-UP-417 at \*2 (Ct. App. 2017). Accordingly, Respondent requests that this allegation be summarily dismissed.

## **VI. Motion for More Definite Statement**

In his Application, Applicant fails to set forth with specificity the facts and circumstances upon which the following ineffective assistance of counsel claims are based: counsel (1) provided “erroneous advice on which [Applicant] based his decision not to testify”; (2) “den[ied] Applicant his right to an impartial jury...”; (3) failed to object to Applicants indictments and preserve indictment issues for appeal; (4) failed to “object and preserve applicant’s constitutional rights, compulsory rights, and hearsay assertions”; and (5) failed to “be specific in Applicant’s directed verdict motion”; (6) failed to interview “victim’s friend”; (7) failed “to object and preserve a[n] argument regarding the limiting [jury] instruction”; and (8) failed to “raise on direct appeal Applicant’s jurisdictional issue.” The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for these claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss these claims.

## **VII. Any Future Amendments**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the

State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act<sup>1</sup> and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. 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), SCRCPP.

#### **VIII. Response to Any and All Other Allegations**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

#### **IX. Request for an Evidentiary Hearing, Amended Return, and Partial Summary Dismissal**

WHEREFORE, having made its return, Respondent request that an evidentiary be held only as to the allegations that were sufficiently alleged by Applicant. Respondent further requests that Applicant, through his counsel, amend the application to provide required specificity for the aforementioned allegations of ineffective assistance of counsel claims that were not sufficiently identified. Respondent further requests that Applicant's claim that "prevent testimony indicating that a co-defendant was found guilty of murder" be summarily dismissed.

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<sup>1</sup> S.C. Code Ann. §§ 17–27–10 to –160.

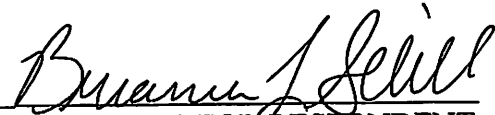
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

May 30, 2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LAURENS )  
 )  
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 )  
 CHRISTOPHER WELLS, #193588, )  
 )  
 ) Applicant, )  
 )  
 ) vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent. )  
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IN THE COURT OF COMMON PLEAS

2019-CP-30-134

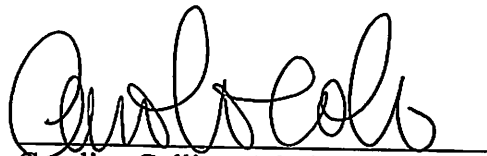
AFFIDAVIT OF SERVICE BY MAIL

LAURENS COUNTY  
 CLERK OF COURT  
 2019 JUN -3 PM 3:47  
 LYNN W. LANCASTER

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, Motion for More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire  
 McMahan & Taylor, Attorneys, LLC  
 Post Office Box 5501  
 West Columbia, South Carolina 29169

DATED this the 30<sup>th</sup> day of May, 2019.



Caroline Collins, Administrative Coordinator  
 For Respondent

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STATE OF SOUTH CAROLINA

-----x

CHRISTOPHER J. WELLS,

Applicant

Case No.

-against-

2019-CP-30-00134

STATE,

Respondent.

-----x

November 28, 2023

Newberry, S.C.

B E F O R E :

HONORABLE B. ALEX HYMAN

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

ASHLEY MCMAHAN,

Attorney for the Petitioner

ZACHARY JONES

Attorney for the Respondent

Aileen Butler

Official Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Christopher Wells				
4	Ms. McMahan	5			
5	Aimee Zmroczek				
6	Ms. McMahan	28		55	
7	Mr. Jones		48		
8	Rodney Richey				
9	Mr. Jones	55		65	
10	Ms. McMahan		63		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Phone		33
P-2	Report		33
P-3	Transcript		37
P-4	Notes		38
P-5	Photo		43
P-6	Photo		43
P-7	Body cam footage		44
P-8	Photo		45

1 MR. JONES: This is the matter of Chris Wells  
2 versus State of South Carolina. Case number  
3 2019-CP-30-134. My name is Zachary Jones from the  
4 State of South Carolina.

5 Mr. Wells is present as is his attorney,  
6 Ashley McMahan. Mr. Wells was indicted during the  
7 April 2015 term of Laurens County Grand Jury for  
8 armed robbery and criminal conspiracy as well as  
9 murder. Mr. Wells proceed to a jury trial before  
10 the Honorable Frank R. Addy Jr. on April 25th of  
11 2016. He was convicted on armed robbery and  
12 criminal conspiracy as indicted. Was acquitted of  
13 the murder charge.

14 Judge Addy sentenced Mr. Wells to life  
15 imprisonment for armed robbery and a concurrent  
16 sentence of five years imprisonment for criminal  
17 conspiracy. Mr. Wells timely appealed his  
18 conviction and sentences. An appeal was perfected  
19 by public defender Katherine H. Hudgins of the  
20 office of appellant defense. The unpublished  
21 opinion State versus Wells, case number  
22 2017-UP-417-2017 South Carolina Court of Appeals  
23 confirmed Mr. Wells conviction. The remittitur  
24 was issued on May 14th of 2018 and this Post  
25 Conviction relief application was filed on

1 February 19, 2019.

2 With that I will turn it over to Miss  
3 McMahan.

4 MS. MCMAHAN: One moment Your Honor.

5 Your Honor, at this point in time the  
6 applicant calls Mr. Wells.

7 THE COURT: All right, Mr. Wells, if you will  
8 please step up to the witness stand.

9 CHRISTOPHER J. WELLS, called as a witness,  
10 was sworn by the clerk and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MCMAHAN:

13 Q. Do you have a middle name?

14 A. Jermaine.

15 Q. And did you file your initial PCR application?

16 You filed this PCR application?

17 A. Yes.

18 Q. And who was your attorney that represented you  
19 are?

20 A. At trial?

21 Q. Yes.

22 A. Rodney Richey.

23 Q. Was he appointed or retained?

24 A. Appointed.

25 Q. And how long after you got arrested was he

1 appointed to you?

2 A. About a year or so.

3 Q. Did you have somebody before that?

4 A. Yes.

5 Q. Who did you have before that?

6 A. A dude named Mozerrati. Something like that.

7 Q. Nasrollahi?

8 A. Yeah.

9 Q. Joshua Nasrollahi?

10 A. Yes, ma'am.

11 Q. His name has already come up today too. And so  
12 then you ended up with Mr. Richey, correct?

13 A. Yes, ma'am.

14 Q. Do you recall right after Mr. Richey was  
15 appointed when you first met with him?

16 A. Say that again.

17 Q. After Mr. Richey was appointed to represent you  
18 when did you first meet with him?

19 A. I don't know right off, but I would say about  
20 ninety days.

21 Q. Okay. Do you recall what you guys talked about?

22 A. Yes.

23 Q. What did you guys talk about?

24 A. He didn't want to talk about the case. He come  
25 with a plea.

1 Q. And what was the plea offer?

2 A. He said five years.

3 Q. But you wanted to talk about the case, right?

4 A. Yeah.

5 Q. Did you want to go to trial?

6 A. I wanted -- I wanted somebody -- I wanted us to  
7 go over this case because there was a lot of flaws in  
8 the case.

9 Q. By go over, do you mean like go through the  
10 evidence and all that kind of stuff?

11 A. Yes, ma'am.

12 Q. And after he gave you the plea offer did you  
13 guys get a chance to talk about the evidence and all  
14 that kind of stuff?

15 A. No, ma'am. We never talked about the evidence.

16 Q. What did you guys talk about just the plea  
17 offer?

18 A. Yeah, he just kept saying the solicitor said  
19 they ain't trying to pursue you. They got a deal for  
20 you and he said, but they want you to write a statement  
21 saying that I seen such and such shoot this man or  
22 whatever and I told him I wasn't there. I couldn't say  
23 that.

24 Q. So at that point did you guys talk about a  
25 defense of like mere presence or your defense was you

1 weren't there at all?

2 A. Yeah.

3 Q. So that was the first time you met with him you  
4 talked about that plea offer?

5 A. Yes.

6 Q. How many other times do you think you met with  
7 him?

8 A. About two or three more times.

9 Q. Okay. And each time do you remember how long it  
10 was when you met with him?

11 A. It didn't last long. They had made him leave  
12 because we kept getting in arguments or whatever.

13 Q. Okay, so you and Mr. Richey kept yelling at each  
14 other?

15 A. Yes, ma'am.

16 Q. What were you all yelling about?

17 A. He was trying to force me to take a plea. Like  
18 they was going to try and seek the death penalty and all  
19 this and everything and I was like, man, just sit down  
20 with me and go over the motion of discovery. We'll see  
21 what's going on.

22 Q. So when you were meeting with him did he show  
23 you like any body camera footage or anything like that?

24 A. No, ma'am.

25 Q. Did he show you any of the statements any of the

1 other people had made?

2 A. No, ma'am.

3 Q. Did he talk about some of the witnesses that was  
4 going to be called for the trial if you went to trial?

5 A. No, ma'am.

6 Q. Did you guys talk about what the elements of the  
7 charge that the State would have to prove in order to  
8 find you guilty of what you were initially charged with?

9 A. No, ma'am.

10 Q. You were initially charged with murder and armed  
11 robbery, right?

12 A. No, ma'am.

13 Q. What were you initially charged with?

14 A. Accessory before and after the fact.

15 Q. And then they added the murder and the armed  
16 robbery later?

17 A. Yes, ma'am.

18 Q. And how far after the first charges did they add  
19 the second charges?

20 A. On December 13th was the first charge.

21 Q. Okay. And then when was the next one?

22 A. January 3rd was when they added the other  
23 charges.

24 Q. And so ultimately what did you go to trial on?  
25 What charges?

1 A. 2016 I went to trial for first degree murder,  
2 armed robbery, possession of a weapon on a violent crime  
3 and criminal conspiracy.

4 Q. What were you found not guilty of?

5 A. Murder.

6 Q. And what were you found guilty of, armed robbery  
7 and everything else?

8 A. Yes, ma'am.

9 Q. And ultimately what did you get?

10 A. Natural life.

11 Q. Did you have a prior record?

12 A. I had a manslaughter charge in '92.

13 Q. And they had given you LWOP notice?

14 A. Yes, ma'am.

15 Q. And so you were obviously sentenced to life. So  
16 when you and Mr. Richey were meeting for the trial, did  
17 you meet just before the trial or after the trial?

18 A. We met before the trial.

19 Q. Okay. And were you talking about any possible  
20 witnesses you all were going to call or anything like  
21 that?

22 A. No, ma'am.

23 Q. Did you tell him about people to call?

24 A. Yes, ma'am.

25 Q. Who did you tell him to to call?

1       A.     I told it's a female that was -- could have been  
2 a witness for me.

3       Q.     Okay. Was that person at the trial?

4       A.     No, ma'am.

5       Q.     So let's just go over your PCR application. Was  
6 it Kayla Winley (phonetics)?

7       A.     Yes, ma'am.

8       Q.     That's the person you wanted?

9       A.     Yes.

10      Q.     Okay. And so let's just go over all the issues  
11 in your application now.

12            The first one is that he was ineffective for  
13 erroneous advice to base your decision on which not to  
14 testify. What kind of advice was that that was  
15 erroneous?

16      A.     He told me that -- first he said you must be  
17 crazy. And I was like, man, I just want to tell my  
18 side of the story and he was just -- he said about my  
19 prior conviction. All that would come in and he says  
20 they got me on impeachment or something. In other words  
21 he was just saying -- he was telling me bad stuff.

22      Q.     So he was telling you that if you went and  
23 testified that they would bring up your record against  
24 you?

25      A.     Yeah.

1 Q. And he thought you were crazy that you wanted to  
2 testify?

3 A. Yes, ma'am.

4 Q. Knowing what you know now would you have  
5 testified if you had that opportunity?

6 A. Yes, ma'am.

7 Q. You also have in here that Mr. Richey didn't  
8 request any lesser included offense instruction?

9 A. Right.

10 Q. So what kind of -- do you mean like attempted  
11 murder or lesser armed robbery like common law, strong  
12 arm robbery?

13 A. Right. Yes. Anything other than that.

14 Q. Did you guys have any conversations about that?

15 A. No, ma'am.

16 Q. What specifically was Mr. Richey not doing that  
17 you asked him to do?

18 A. To investigate the evidence in this case.

19 Q. And can you give some examples of that?

20 A. Like the witnesses that the State was going to  
21 intend to use to testify. So, the statements didn't add  
22 up.

23 Q. Do you feel he was ineffective in the way he  
24 cross examined those witnesses and those statements at  
25 the trial?

1 A. Well, I'm saying --

2 Q. Well, their statements didn't add up, right?

3 A. Right.

4 Q. Do you feel that Mr. Richey asked them about why  
5 their statements didn't add up enough at trial?

6 A. No, he didn't. Not enough at trial.

7 Q. So he didn't adequately cross examine those  
8 witnesses regarding those inconsistent statements?

9 A. Yes, ma'am.

10 Q. Okay. And what was the issue with the  
11 investigator who opened the door to allow testimony from  
12 a co-defendant?

13 A. Brian Cheeks?

14 Q. Yes.

15 A. He was over the case. Brian had -- I think  
16 Brian he had him on cross examination and he brought up  
17 something and I think the solicitor objected to it and  
18 they were saying that Rodney -- yeah, Rodney opened the  
19 door for this to come in.

20 Q. You said, the whole thing was you weren't there  
21 so essentially some other person had committed this  
22 crime, right?

23 A. Yes, ma'am.

24 Q. So Rodney was trying to ask Cheeks about that,  
25 right? Like somebody else probably did this. That kind

1 of thing, like he didn't?

2 A. Yes.

3 Q. Okay. And then what was the issue with the  
4 alternate juror being present?

5 A. I think the officer testified that she was a  
6 juror. After court he gave her a ride home.

7 Q. Okay. Who is he?

8 A. Well, I don't remember the officer's name.

9 Q. So there was a juror that the officer had given  
10 a ride home?

11 A. Yes, ma'am.

12 Q. Was there a part in the transcript where it  
13 didn't notate whether the alternate juror had been  
14 excused from deliberations?

15 A. No, there wasn't no notate.

16 Q. No, I mean in your trial. In your trial  
17 transcript?

18 A. Yes. I got it wrong. I'm nervous up here.

19 Q. That's okay. Take your time.

20 A. Yes, when the judge suppose to like -- they had  
21 -- can I look at my paper?

22 Q. Sure.

23 A. Yes. Yes.

24 Q. Okay.

25 A. Two alternate jurors present in the courtroom --

1 in the jury room while the deliberation begin. So I go  
2 to the transcript, page transcript 376, line 20 to 25.

3 Q. Okay. So the alternate juror was never it  
4 excused --

5 A. Right.

6 Q. -- from the courtroom?

7 A. Right, and this is what the judge said. "At  
8 this point in time go ahead and retire you to the jury  
9 room, but don't begin your deliberation yet. Your clue  
10 to begin your deliberation will be receipt of these  
11 instructions, the evidence involved in this case, and my  
12 asking the alternate to step out. So that's when you  
13 can start talking about the case." And then it says  
14 right here there's no where on the record showing that  
15 the presiding judge asked the alternate to step out of  
16 the jury room when deliberation began.

17 Q. Okay, and then the issue with the other juror  
18 that was juror number ten that was given the ride home  
19 with the officer, right?

20 A. Yes, ma'am.

21 Q. So what was the issue with Mr. Richey never --  
22 did he not object to the limiting instruction during the  
23 trial?

24 A. No, he didn't.

25 Q. And so that issue wasn't preserved for appeal?

1 A. Right.

2 Q. Okay.

3 MS. MCMAHAN: And then just for record,  
4 judge, 1-B I'm striking. So we're not going  
5 forward on that.

6 Q. And then what was the issue about the plea offer  
7 that were you given during the trial?

8 A. The plea offers were they said -- my trial  
9 counsel Rodney said they'll drop the murder if I plead  
10 to armed robbery.

11 Q. Okay.

12 A. But they already had -- they already had gave me  
13 a -- seeking that life. What is it AWOP.

14 Q. LWOP.

15 A. The LWOP notice and I was like, that don't make  
16 no sense because if I get found guilty of murder or  
17 armed robbery or any lesser those offense they will seek  
18 life.

19 Q. Okay. And so were you confused as to whether or  
20 not you took that offer if you would get life or not?

21 A. Yes, ma'am.

22 Q. Was that explained to you at all?

23 A. No, ma'am.

24 Q. And had you been told it would just have been  
25 straight up to armed robbery with the life taken off the

1 table would you taken that offer?

2 A. No.

3 Q. Okay. But you just -- but Mr. Richey didn't sit  
4 and explain whether or not that LWOP notice was going to  
5 apply to this offer that was given during the middle of  
6 this trial?

7 A. No, ma'am.

8 Q. What about the issue with your Miranda rights.  
9 What's that?

10 A. They never gave me. They never read my Miranda  
11 rights.

12 Q. Did you give a statement to the police? Did you  
13 give a statement to the police?

14 A. A statement?

15 Q. Did you talk to the cops?

16 A. Yeah. They called me. They came to interview  
17 and after the interview they said put your hands behind  
18 your back.

19 Q. So they never read your Miranda rights before  
20 that interview?

21 A. No, ma'am.

22 Q. Okay. Did you and Mr. Richey have a  
23 conversation about that?

24 A. Yes.

25 Q. And what was that about?

1 A. Richey said that doesn't matter that much.

2 Q. Okay, and did you guys have a Neal v Biggers  
3 hearing about photo lineup?

4 A. Richey denied.

5 Q. What do you mean he denied it? He just didn't  
6 ask for one or ...

7 A. The judge -- the judge called him in chambers,  
8 him and the solicitor, and they both agreed -- Rodney  
9 and the solicitor agreed a Neal v Biggers wouldn't be  
10 needed for the next witness what she'll be testifying.

11 Q. What was the witness who had done the lineup,  
12 was it Kelly Ball?

13 A. Kelly Ball.

14 Q. Was she asked about that lineup at all during  
15 your trial?

16 A. Yes.

17 Q. But there was never any hearing about whether or  
18 not it was an adequate photo lineup or not?

19 A. No. No, ma'am.

20 Q. Okay. And let's talk about Kelly Ball. Her  
21 testimony at trial did you feel like Mr. Richey did an  
22 adequate job addressing her inconsistencies in all the  
23 statements she had given?

24 A. On the descriptions --

25 Q. Yeah.

1       A.     -- of the descriptions of me and my car, yes, he  
2 did.

3       Q.     But she had given several statements prior to  
4 your trial, right?

5       A.     Right.

6       Q.     Were some of them inconsistent with each other?

7       A.     All of them.

8       Q.     Do you feel that Mr. Richey had addressed that  
9 with her adequately about all her inconsistent  
10 statements she had given?

11      A.     No, ma'am.

12      Q.     Do you remember if Mr. Richey ever asked her  
13 about her drug use?

14      A.     I think -- I think he did, yes, ma'am.

15      Q.     Do you remember if there was any questioning  
16 about whether or not she was on drugs that night when  
17 all this happened?

18      A.     No, ma'am.

19      Q.     Did he question her about her stay at Marshall  
20 Pickens?

21      A.     No, ma'am.

22      Q.     Did he question her about any of her medical  
23 records? About what statements she had given to some of  
24 the medical personnel?

25      A.     No, ma'am.

1 Q. Do you remember if he asked her about her  
2 statement that she gave to the medical people about four  
3 people came and killed [REDACTED]?

4 A. No, ma'am.

5 Q. Okay. What other issues in the PCR application  
6 have we not talked about yet that you want to bring up?

7 A. Where he failed -- he failed to object and  
8 preserve the indictment before -- before they sworn the  
9 indictment. Sworn and got the indictment squashed  
10 before the jury came.

11 Q. So he didn't make a motion to quash the  
12 indictment?

13 A. He didn't make no motion.

14 Q. Okay. And so because of that there was no issue  
15 related to the indictment preserved for appeal, right?

16 A. Right.

17 Q. And what other things did he talk about like  
18 that you want to bring up about Mr. Richey?

19 Were the body cameras shown during your trial?

20 A. No, ma'am.

21 Q. Okay. Tell me about that?

22 A. I didn't -- the body cam, the audio, the victim  
23 cellphone. I ain't -- I didn't know nothing about it.  
24 It wasn't brought up in my trial period. I recently  
25 found this out about year or so ago.

1 Q. What that the victim had a cellphone that was  
2 seized?

3 A. Yes, ma'am.

4 Q. And you didn't have anything from that  
5 cellphone?

6 A. No, ma'am.

7 Q. And what about the body cameras or anything like  
8 that? You didn't have any of those?

9 A. No, ma'am.

10 Q. And what were the audio statements that you're  
11 talking about?

12 A. Alleged co-defendant, Walkers's transcript says  
13 I think Marty Crain, (phonetics) why he was talking to  
14 the victim. The victim, the victim's video cam -- audio  
15 of the victim told him he shot -- the man on the porch  
16 shot him. He shot the man. So, Marty Crain asked him  
17 what gun you had. He said I had a 32 automatic, but a  
18 32 automatic was never in my trial.

19 Q. It was revolver wasn't it? What kind of gun was  
20 in you're a trial?

21 A. A revolver, a 38 and a 380.

22 Q. There was also an automatic that was found  
23 outside, right?

24 A. That's the 380.

25 Q. And that was not in your trial at all?

1 A. The 380 was in the trial.

2 Q. Okay.

3 A. The 32 wasn't in my trial.

4 Q. Sorry, I don't keep up with guns as much as you  
5 do. So the 380 was in the trial?

6 A. Yes, ma'am.

7 Q. But the 32 was not?

8 A. No, ma'am.

9 Q. And which gun was supposedly the 32? Who had  
10 that gun?

11 A. That's suppose to have been [REDACTED].

12 Q. And the 380 belonged to who?

13 A. They don't know.

14 Q. Okay. But Mr. Cheek's audio and Mr. Crain's  
15 body camera is when he's saying the guy on the porch  
16 shot me and I shot back?

17 A. Yeah.

18 Q. Who was the the guy on the porch?

19 A. David Walker.

20 Q. So Mr. Walker was shot on the porch at [REDACTED]'s  
21 house, right, according to Mr. Walker's trial?

22 A. Yes.

23 Q. Okay. So let me just back up for a second.

24 Supposedly there were three of you that were

25 co-defendants. It was Johnny Saxton, you and David

1 Walker, right?

2 A. Yes, ma'am.

3 Q. But allegedly you and Mr. Saxton were never at  
4 the house. Their argument was that you guys were up on  
5 the hill or somewhere away from the house?

6 A. Who argument?

7 Q. You and Mr. Saxton.

8 A. I'm talking about who argument.

9 Q. The State is arguing that, the solicitor?

10 A. Okay.

11 Q. That's what they were arguing, right?

12 A. Yes.

13 Q. And that you guys were driving a car, a getaway  
14 car and there was an issue of what color that car was  
15 from Kelly Ball?

16 A. Right.

17 Q. And Kelly Ball what did she ultimately testify  
18 to as the color of that car?

19 A. She testified that this was gold'ish brown.

20 Q. And what kind of car was it, allegedly, that  
21 left the scene? Was it a gold'ish brown car that was  
22 involved?

23 A. That's what she described.

24 Q. Okay, but what kind of car do you have?

25 A. I have a silver grey car.

1 Q. Okay. Did they search your car and find  
2 anything in it?

3 A. No. The same -- the the same night of the crime  
4 they searched my car in the yard.

5 Q. Okay.

6 A. I gave them permission to search my car. They  
7 went through it and didn't find nothing. And when the  
8 police was out there they got a call on his walkie  
9 talkie saying whoever you're out there with they got  
10 nothing to do with it. Wrong color car. So the police  
11 said you're good. He left. That was the night the  
12 crime.

13 Q. Yeah. And what else is left in the application  
14 that you want to talk to the Court about why Mr. Richey  
15 was ineffective. Take your time.

16 A. It was so much. He was ineffective for not  
17 challenging the State's witness, James Green about what  
18 he testified about. The State like on exhibits -- like  
19 the State they turn in a 380 but they didn't turn in the  
20 magazine. It says right here transcript, page 253, line  
21 eight through 14. The State exhibit 22 is a magazine  
22 which I have not seen. No objection from trial counsel.

23 Q. Okay.

24 A. Okay, I have a question about that. Whether you  
25 have seen it or not. I just want to simply ask you and

1 the dude said, no, sir. That was not submitted, and  
2 State exhibit 23 looks like two fired cartridge cases  
3 and two unfired cartridge cases which was not submitted.  
4 Rodney didn't object.

5 Q. Did Rodney follow up with any questions about  
6 those not being submitted?

7 A. No, ma'am. He said no questions.

8 Q. Okay. And what else?

9 A. The exhibit -- the slug. James Cheeks, when the  
10 police -- they said the slug fell out of his clothes.  
11 This was exhibit 15, but that was never submitted to --  
12 to the SLED.

13 Rodney was in effective for not checking on that  
14 slug. We don't know what gun it came from.

15 Q. Let's just clarify something for Judge Hyman.  
16 There is a Brian Cheeks that was the investigator,  
17 right?

18 A. Yes, ma'am

19 Q. And then the victim in case was [REDACTED]  
20 [REDACTED], right?

21 A. Yes, ma'am.

22 Q. And you sometimes -- [REDACTED] is the victim is  
23 sometimes referred to as [REDACTED]?

24 A. Oh, okay.

25 Q. And sometimes he is referred to as [REDACTED]

1 [REDACTED], right? So any time there is reference to [REDACTED]  
2 [REDACTED] or [REDACTED] that's the victim in the  
3 case and Brian Cheeks is a member of law enforcement?

4 A. That's right.

5 Q. Sorry. I just wanted to clear that up. It's a  
6 little confusing. But there was a slug that fell out of  
7 [REDACTED], the victim, right?

8 A. Clothes.

9 Q. And that slug was never submitted to SLED or  
10 anything or you never saw a report about it?

11 A. No, ma'am.

12 Q. Anything like that, and so you never seen a  
13 report as to maybe if that slug would have come back  
14 from one of the guns that was allegedly referred to, the  
15 380 or the 32?

16 A. Right.

17 Q. Okay, and the 32, again, was never entered in  
18 your trial?

19 A. Right.

20 Q. Okay. Was it entered in another trial?

21 A. I don't --

22 Q. You don't think so?

23 A. I don't think so. I didn't see it.

24 Q. Okay. So continue on for your next issue. Was  
25 there is an issue that Mr. Richey didn't object when the

1 State was arguing that you should be found guilty  
2 because another person was also found guilty?

3 A. Yes, ma'am. That's what I was trying to find.

4 Q. And that was the limiting instruction that the  
5 judge gave, right?

6 A. Right.

7 Q. And there was no objection to the limiting  
8 instruction either to preserve those issues for appeal,  
9 right?

10 A. No.

11 Q. Is there another issue you want to bring up?

12 A. That was it right there. You just said it.

13 Q. Are there any other issues you want the Court to  
14 know today about your case?

15 A. I think that's it.

16 Q. And attached to your application you've attached  
17 like a written memorandum and that sort of outlines a  
18 lot of what we talked about today, right?

19 A. Yes, ma'am.

20 Q. And the additional amendments that I added are  
21 also attached to your application, correct?

22 A. Yes.

23 Q. Okay. Answer any questions the attorney general  
24 may have?

25 MR. JONES: Beg the court's indulgence.

1 THE COURT: Sure.

2 MR. JONES: No questions for the witness.

3 MS. MCMAHAN: Your Honor, we call Miss  
4 Zmroczek.

5 AIMEE ZMROCZEK, called as a witness, was sworn  
6 by the clerk and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Would you please spell your last name for the  
10 court reporter?

11 A. Z-m-r-o-c-z-e-k.

12 Q. And it Aimee, A-i-m-e-e?

13 A. Yes.

14 Q. Miss Zmroczek check who did you represent in the  
15 three co-defendants?

16 A. I was appointed to represent Johnny Saxton.

17 Q. And that case went to trial to? I mean, that  
18 also that case went to the trial, correct?

19 A. It did separately.

20 Q. And did you have another attorney helping you?

21 A. Jack Delgado.

22 Q. And basically what were the facts of the case?

23 A. So basically there was a residence of Laurens  
24 County who ran an illegal distribution of alcohol and  
25 drugs out of his shed in Laurens and there was some sort

1 of altercation and then he ended up being shot and  
2 another person was shot at the house.

3 Q. Was it during the daytime? At night?

4 A. It was at night in the middle of Laurens. It  
5 was very dark.

6 Q. And allegedly were there some people that were  
7 also like standing on a hill or near a hill?

8 A. So there were some witnesses that were present.  
9 We don't know exactly when they were present because  
10 they started to gather. It was a couple of different  
11 manufactured homes in the area and so there were some  
12 people that had started to gather.

13 I think there were some statements given from a  
14 female down at the -- I want to say down at the house  
15 because actually it went by the location and just  
16 because the descriptions were very important and so when  
17 I went down a few things that I was really surprised to  
18 know is that the trailer was supper far back from the  
19 road and that there was no way anybody could have seen  
20 what they said they saw.

21 Q. So some of the witnesses were talking about  
22 people that were incredibly far away allegedly?

23 A. Right.

24 Q. Based on your trip to the trailer area did you  
25 go at night?

1           A.     I did. I went at the exact same time and I was  
2 treated with a visual of a transaction happening so I  
3 left and then came back the next night at the very same  
4 time and let the person know that lived there because I  
5 wanted to see it from the road as well.

6           Q.     And were you surprised how far away some of  
7 these people were supposedly standing?

8           A.     Very. Very surprised.

9           Q.     How far away would you say like a football  
10 field?

11          A.     Not quite a football field but close. It was  
12 significant.

13          Q.     And how -- when you went at the same time how  
14 dark was it out there?

15          A.     Oh gosh, I couldn't -- I couldn't even see in  
16 front of my face.

17          Q.     So from that house you couldn't even see in the  
18 dark how far away it was?

19          A.     I could not.

20          Q.     There was some testimony about street lights and  
21 stuff. Did the street light go as far back as allegedly  
22 some of these people were seeing?

23          A.     No, not, it was.

24          Q.     What about flood lights or anything?

25          A.     No.

1 Q. Because there was some testimony about flood  
2 lights too?

3 A. Right.

4 Q. In your work on this case what type of items did  
5 you receive from the State initially?

6 A. So I got on the case. John Delgado, my mentor,  
7 he and I were doing a lot of work together and we  
8 actually had for some reason we were actually at this  
9 courthouse and we were leaving and Judge Griffith  
10 stopped us on the steps and asked if he asked me if I  
11 would take the case and I said I'd only take it if John  
12 gets to do it with me because it was up for trial soon  
13 and it was murder, just heavily involved. And so we  
14 initially got the discovery from I think it was Warren.  
15 I can't remember who it was -- Lowery -- and then -- so  
16 I went through discovery which was a lot of paper  
17 discovery. They had -- I think I had the benefit of  
18 both co-defendants had already gone to trial. So I had  
19 trial transcripts as well. I had all of that. But I  
20 always regardless of how many attorneys had been on it  
21 before and some times because of how many attorneys have  
22 been on it before I go through everything like it's the  
23 first time I have ever seen anything. And in doing that  
24 I noticed there were some pretty key items that I needed  
25 in order to go forward with the case. Most notably

1 there were some cell phones that I specifically remember  
2 had a lot of information and I think persuaded the jury.

3 Q. So those cell phones ultimately how did you end  
4 up getting them?

5 A. I honestly can't remember. I'm sorry.

6 Q. So ultimately you ended up with the cellphones  
7 in your possession. Had the State provided you with any  
8 like reports of dumps or anything from these phones or  
9 was that something you had to get done yourself?

10 A. No. No, I had to hire my own expert. I just  
11 even remember seeing that they were -- like barely  
12 seeing that they were collected and so I went ahead and  
13 hired my own expert on it.

14 Q. And so there were a couple of cell phones  
15 involved weren't there, right

16 A. Two at least that I can remember.

17 Q. And one was like a black little Kyocero phone?

18 A. Yes.

19 Q. And there was ultimately nothing on that one?

20 A. Correct.

21 Q. But there was on another phone and I'm going to  
22 show this. Do you recognize this?

23 A. I do.

24 Q. Is that the other phone?

25 A. This is the other phone.

1 Q. Who did that phone belong to?

2 A. A female, I believe.

3 Q. Okay.

4 A. Honestly I can't remember.

5 Q. Is this the report from that phone that you got?

6 A. Oh, yes. So the text was from a female. This  
7 was the cellphone of the decedent.

8 Q. Okay, and this was the report that your expert  
9 was able to pull off that phone?

10 A. He put together, yes.

11 MS. MCMAHAN: Your Honor, at this time I like  
12 to move these into evidence as Applicant's one and  
13 two.

14 THE COURT: Any objection?

15 MR. JONES: Can I just go ahead and see them.

16 MS. MCMAHAN: Yeah, I'm sorry. (Handed)

17 MR. JONES: No objection.

18 THE COURT: They are admitted as Applicant's  
19 one and two.

20 (WHEREUPON, Applicant's one and two were  
21 received into evidence.)

22 Q. So ultimately the State didn't give you these at  
23 first?

24 A. No.

25 Q. And you had to basically say, hey, I want -- I

1 need these phones?

2 A. Yeah, there were multiple motions filed.

3 Q. In order to compel these phones to be given to  
4 you?

5 A. Right.

6 Q. And specifically there were some text messages  
7 on Mr. [REDACTED] -- and when I say Mr. [REDACTED] I mean the  
8 victim [REDACTED] -- from this individual who is a lady. In  
9 one of those text messages she is actually threatening  
10 the victim?

11 A. Yes.

12 Q. And how is she threatening the victim?

13 A. So basically he was in a relationship where he  
14 would give her narcotics and alcohol and she would  
15 return the favors.

16 Q. Sexually?

17 A. Yes.

18 Q. And so she literally would -- and I think this  
19 message was sent the night or the date of the shooting  
20 where she was threatening that if her little hoe, just  
21 be a man about it. Tell me. Don't be so scared and  
22 then love you. It was clearly in my reading of it  
23 someone who was in withdrawals and needed drugs?

24 Q. But ultimately she -- this is someone named  
25 Theresa, right?

1 A. Right.

2 Q. On this phone it doesn't say her name is  
3 Theresa, but on the phone extraction it's noted as  
4 someone named Theresa?

5 A. Yeah. So the expert that I hired was able to  
6 gather information obviously from the phone and how it  
7 was entered in and I think some one else confirmed that  
8 was her number. I can't remember.

9 Q. At some point she threatened Mr. [REDACTED] and said  
10 you're going down?

11 A. Yes.

12 Q. She clearly did not like Kelly Ball who was one  
13 of the witnesses in the trial?

14 A. Right.

15 Q. And you actually asked Kelly Ball about Theresa,  
16 didn't you in your trial?

17 A. Yes.

18 Q. And Kelly Ball had actually gotten arrested and  
19 had a conviction from her interaction with Theresa at  
20 one point?

21 A. Yes. Yeah, talking about evidence, that  
22 additional evidence that I didn't have. I could tell by  
23 just going through the transcript and just reading the  
24 discovery and quite honestly doing a very minimal effort  
25 on trying to find out who this Kelly person was, it

1 turns out that she had made many, many, statements and  
2 was out of mental hospitals and so I remember spending  
3 months getting those records and I did finally get them  
4 I think right before the trial.

5 Q. And that were the medical records from ER and  
6 then also from Marshall Pikens?

7 A. Right. Right, from the ER and from the addiction  
8 -- wherever she went.

9 Q. Marshall Pickens is sort of mental health rehab  
10 hospital equivalent to like Three Rivers kind of in  
11 Columbia?

12 A. Yeah, in the upstate.

13 Q. And so you asked her -- you went through all of  
14 her statements that she had given up to that trial with  
15 Mr. Saxton?

16 A. Correct.

17 Q. And Mr. Saxton was the last trial of the three?

18 A. Amongst the three, yes.

19 Q. And so excluding Mr. Walker and Mr. Wells's  
20 statements she gave in court, there were like seven  
21 other statements that she had given?

22 A. Correct.

23 Q. And some of those statements came from the  
24 medical records?

25 A. Correct.

1 MS. MCMAHAN: Judge, I would like the Court  
2 to take judicial notice. This is the testimony of  
3 Kelly Ball and Mr. Saxton in this case of Ms.  
4 Zmroczek and if I could, I would like to go ahead  
5 make an exhibit. It's obviously a transcript.

6 MR. JONES: No objection.

7 THE COURT: Admitted as Applicant's number  
8 three.

9 MS. MCMAHAN: Yes, Your Honor.

10 (WHEREUPON, Applicant's number three was  
11 received in evidence)

12 Q. As to the telephone, [REDACTED]'s phone and the text  
13 messages, were you able to use those at trial with John  
14 Saxton?

15 A. Yes.

16 Q. And then I will show you what is marked as  
17 Applicant's four. Can you identify that?

18 A. My notes from my cross examination, yes.

19 Q. And those were your notes that were you using  
20 going in to cross examining Kelly Ball?

21 A. Correct.

22 MS. MCMAHAN: At this time I would I like to  
23 move those into evidence as Applicant's four.

24 MR. JONES: No objection.

25 THE COURT: Applicant's four admitted.

1 (WHEREUPON, Applicant's number four was  
2 admitted into evidence.)

3 Q. Let's talk about Kelly Ball some more. What was  
4 your impression of what Kelly Ball was?

5 A. Bless her heart is probably the most accurate  
6 description. She was just a very -- or is I think. I  
7 don't know what her condition is now -- mentally ill,  
8 self-medicating female.

9 Q. The records you had gotten and in the  
10 transcript you asked her if she had been diagnosed as  
11 bipolar?

12 A. Yes.

13 Q. And she was not taking the medication she was  
14 suppose to take?

15 A. She was self-medicating.

16 Q. And while she didn't directly admit that she had  
17 done drugs just at this time she admitted she had done  
18 drugs earlier that day?

19 A. Correct.

20 Q. And she would get drugs from [REDACTED] all the time?

21 A. Yes.

22 Q. And she in fact lived with him?

23 A. I think there was some questions, but I think  
24 she ultimately -- because I think her dog was there as I  
25 remember.

1 Q. Peanuts the dog?

2 A. Yeah.

3 Q. And that Chihuahua doesn't like anybody, right?

4 A. No.

5 Q. And also at some point, you know, I guess Kelly  
6 was sort of hysterical at the time this happened. Was  
7 her -- I guess your thought -- I don't want to put words  
8 in your mouth -- was your goal to make her seem like  
9 she's basically a drug addict who is mentally unstable  
10 who couldn't possibly have said or seen all these  
11 statements that she's been given and that her statements  
12 were ragingly inconsistent?

13 A. Yeah, I mean, that was the goal. I mean it all  
14 came down to credibility and unfortunately jurors who  
15 don't live in the world of criminal defense they don't  
16 understand some times people words are very powerful and  
17 when they're just blatantly not true it can, I think,  
18 effect an outcome.

19 Q. Were some of the statements that she gave the  
20 medical people like four people had attacked the home?

21 A. Yes. She gave multiple, multiple statements  
22 that didn't match any of the evidence.

23 Q. And one statement I think during Mr. Saxton's  
24 trial that she's talking about is Mr. Walker is banging  
25 on the door screaming I'm going to kill you. But during

1 the 911 call there's no evidence of that ever happening?

2 A. Not at all. She was on the phone the whole time  
3 so you could hear not only when the police got there  
4 with body cam stuff, but you could hear the 911 call.

5 MS. MCMAHAN: And Your Honor, I believe the  
6 911 call was entered into evidence. It's already  
7 an exhibit in Mr. Wells's trial.

8 Q. And these two exhibits, five and six, do you  
9 recognize those?

10 A. Those were more exhibits that I used during the  
11 trial.

12 Q. What is five?

13 A. Five is simply a still shot from a body camera  
14 of responding officer that evening. But the reason --  
15 and obviously it's blurry because there are lights and  
16 everything -- but the reason that it was so important --  
17 I wanted to do a jury view but Judge Hocker declined my  
18 request. Especially to go at one in the morning. But  
19 when I went out there this is literally how I saw it and  
20 it was just the best way that I could get to show a jury  
21 Applicant's five of just -- and the reason it was  
22 important because down here where the is body cam  
23 numbers are there is also a little picket fence in front  
24 of the manufacture home and where the police cars are,  
25 the road is up a little further, but she was claiming