

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

Brooks P. Goldsmith, Circuit Court Judge

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S.C. Supreme Court

CLARENCE KENDALL COOK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000366

APPENDIX

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MARQUIS SHORT - CROSS EXAMINATION

501

1 Q. They were everywhere?

2 A. Yes, ma'am.

3 Q. Did they look like they were looking for anybody?

4 A. Yes, ma'am.

5 Q. Did you ever go say, hey, I saw Clarence Cook run this
6 way?

7 A. No, ma'am.

8 Q. And you don't' remember them asking?

9 A. No, ma'am.

10 Q. Who is Maggie Short?

11 A. My Aunt.

12 Q. That is your Aunt. And is that DeShawn's Great Grandma?

13 A. Yes, ma'am.

14 Q. Is that Tymeka's Great Grandma?

15 A. Yes, ma'am.

16 Q. And DeShawn, would that be DeShawn Bland?

17 A. Yes, ma'am.

18 Q. Do DeShawn and Tymeka live with Maggie?

19 A. Yes, ma'am.

20 Q. Did you call Maggie from the County jail, and tell her
21 you had given a statement that was going to help you out
22 in this case?

23 A. No, ma'am.

24 Q. You didn't tell her that?

25 A. No, ma'am.

MARQUIS SHORT - CROSS EXAMINATION

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1 Q. Is your Mamma Mary Short?

2 A. Yes, ma'am.

3 Q. And was your Mamma at home on June 10th, around the time
4 of this shooting?

5 A. Yes, ma'am.

6 Q. Do you remember your Mamma running across the street
7 behind y'all?

8 A. No, ma'am.

9 Q. You don't remember your Mamma being there?

10 A. No, ma'am.

11 Q. Now, you said you saw Taylor over by Building 4. Which
12 building was the victim's body on the ground?

13 A. Three.

14 Q. Building 3?

15 A. Yes, ma'am.

16 Q. Now, when you say you saw Kim Brown taking things out of
17 the victim's pockets, where was Taylor at that moment?

18 A. Building 4.

19 Q. Building 4?

20 A. Yes, ma'am.

21 Q. So, she wasn't over by Building 3 where the body was?

22 A. No, ma'am.

23 Q. You said that you knew who the person was on the ground.
24 How did you know that it was Snook?

25 A. She was saying his name.

MARQUIS SHORT - CROSS EXAMINATION

503

1 Q. But did you actually see his face?

2 A. Yes, ma'am.

3 Q. You did. Was there anything covering his body?

4 A. No, ma'am.

5 Q. He was just lying there with nothing on him at all?

6 A. Yes, ma'am.

7 Q. Did you see a bag or anything lying there?

8 A. No, ma'am.

9 Q. Was there anything at all by his body?

10 A. Kim.

11 Q. Kim. Did you see a bag?

12 A. No, ma'am.

13 Q. Did you see watermelon rinds or anything like that?

14 A. No, ma'am.

15 Q. Did you see a pink blanket?

16 A. No.

17 Q. Did you see a telephone lying out there?

18 A. No, ma'am.

19 Q. How long after the shooting did you go over there?

20 A. Immediately.

21 Q. Now, you have never given anybody in law enforcement
22 this statement that you have testified to today; is that
23 correct?

24 A. Yes, ma'am.

25 Q. Okay. So, how did anybody know that you had this

1 information?

2 A. I volunteered to give it.

3 Q. Who did you call to volunteer it to?

4 A. Ms. Emily -

5 Q. Ms. Emily, is that a lawyer?

6 A. I think she is a Public Defender.

7 Q. Is that Emily Crayton, in the Public Defender's Office?

8 A. Yes, ma'am.

9 Q. And why did you call the Public Defender's Office and
10 say that you had this information?

11 A. Myesha had called me, and she came to visit. And I
12 decided I wanted to tell the information.

13 Q. Were any other lawyers there that day?

14 A. No, ma'am.

15 Q. Did you ever talk to Ms. Brown or Ms. Sellers? Ms.
16 Sellers is in the courtroom. Do you know Ms. Rosalyn
17 Sellers?

18 A. Yes, ma'am.

19 Q. Did you ever give that statement to Ms. Myesha Brown or
20 Ms. Rosalyn Sellers?

21 A. Yes, ma'am.

22 Q. Did you give them a written statement?

23 A. No, ma'am.

24 Q. Okay.

25 A. The written statement was given to Emily.

MARQUIS SHORT - CROSS EXAMINATION

505

1 Q. Okay. So, you did write something down at some point in
2 time?

3 A. Yes, ma'am.

4 Q. Do you have a copy of it?

5 A. No, ma'am.

6 Q. Did they give you a copy of it?

7 A. No, ma'am.

8 Q. Do you know where that statement is today?

9 A. No, ma'am.

10 Q. And what are your pending charges right now?

11 A. Armed robbery.

12 MS. JOHNSON-LEE: That's all the questions that I
13 have.

14 THE COURT: Is there redirect?

15 MS. BROWN: Your Honor, that's all the questions that
16 I have.

17 THE COURT: All right. Sir, you are free to step
18 down. Watch your step please leaving the witness box.

19 Defense, please call your next witness.

20 MS. BROWN: Defense calls Jessie Simmons.

21 THE COURT: Please come forward and take the oath of a
22 witness.

23 MR. SIMMONS: I don't swear.

24 THE COURT: We will ask you to affirm. You are not
25 required to swear. Please listen to the words that she will

JESSIE SIMMONS - DIRECT EXAMINATION

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1 say. All right. What you will need to do is raise your
2 right hand, and the question she is going to ask you is if
3 you will affirm to tell the truth. So, please tell us, after
4 you hear what she says. If you will raise your right hand.
5 Yes, or no.

WHEREUPON, JESSIE SIMMONS**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

6
7
8 **MR. SIMMONS:** I do.

9 **THE COURT:** All right. Sir, if you would come around
10 and be seated in the witness box.

11 **MR. SIMMONS:** I don't swear.

12 **THE COURT:** We will ask you to affirm. You are not
13 required to swear. Please listen to the words that she will
14 say.

15 All right. And, sir please tell us your full name?

16 **MR. SIMMONS:** Jessie James Simmons.

17 **THE COURT:** Thank you. Counsel.

18 **MS. BROWN:** Thank you, Your Honor.

19 **DIRECT EXAMINATION BY MS. BROWN**

20 Q. Mr. Simmons, thank you for being here. And where did
21 you live June of last year?

22 A. Oak Wood Apartment [REDACTED].

23 Q. Oak Wood Apartments, is that the same, or is it also
24 referred to as Marlboro Court?

25 A. Marlboro Court.

JESSIE SIMMONS - DIRECT EXAMINATION

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1 Q. And what apartment was it?

2 A. Apartment [REDACTED].

3 Q. [REDACTED]

4 A. [REDACTED].

5 Q. And, do you presently still live there?

6 A. Yes, ma'am.

7 Q. And did you contact law enforcement June of last year,
8 regarding a shooting incident?

9 A. Yes, I did.

10 Q. How did you contact them?

11 A. By phone.

12 Q. You contacted by phone?

13 A. Yes, ma'am.

14 Q. Do you recall giving a statement of what you observed
15 that day?

16 A. Yes, ma'am.

17 Q. Do you remember where that statement was given? Where
18 were you when you gave that statement?

19 A. I was in my house, in my kitchen.

20 Q. At any point did you go to the Bennettsville Police
21 Department?

22 A. Oh, when I give a statement?

23 Q. Yes.

24 A. Yes, ma'am. Yes, ma'am. Yes, ma'am.

25 Q. And when you went to the Bennettsville Police

JESSIE SIMMONS - DIRECT EXAMINATION

508

1 Department, did you give a statement?

2 A. Yes, ma'am.

3 Q. And do you remember who you met with?

4 A. No, ma'am, I don't know her name.

5 Q. You don't know the officer's name?

6 A. No, ma'am.

7 Q. Do you remember how many officers were present in the
8 room?

9 A. Just one.

10 Q. And do you remember what day you give that statement?

11 A. No, ma'am. I didn't keep up with the day.

12 Q. Was it the same day the shooting incident occurred?

13 A. Yes, ma'am.

14 Q. How were you transported to the Police Department?

15 A. By the police.

16 Q. A police officer took you?

17 A. Yes, ma'am.

18 Q. I am going to show you a photo, and I want to know if.
19 you have seen that photo, okay?

20 (PAUSE.)

21 Q. Mr. Simmons, do you know what is in that picture? Does
22 that pictures look familiar to you?

23 A. Yes, ma'am. That's my apartment.

24 Q. That is your apartment?

25 A. Yes, ma'am.

JESSIE SIMMONS - DIRECT EXAMINATION

509

1 Q. Does it appear to be an accurate depiction of what your
2 apartment looked like?

3 A. Yes, ma'am.

4 Q. And that is your building; is that correct?

5 A. That's the building.

6 Q. And can you show that picture to the jury panel, and can
7 you point to where you live?

8 A. This is the building, and I live upstairs.

9 MS. JOHNSON-LEE: Your Honor, objection. It is not in
10 evidence yet.

11 THE COURT: Very good. Counsel, before you can
12 display it to the jury it has to be admitted into evidence.

13 Q. You just indicated to me that that picture looks
14 familiar?

15 A. Yes, ma'am.

16 Q. Okay. And you also indicated that it appears to be an
17 accurate depiction of the building; is that correct?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BROWN: At this time, Your Honor, I would ask that
21 it be admitted into evidence as Defendant's Exhibit 5-A.

22 THE COURT: Is there an objection?

23 MS. JOHNSON-LEE: No objection.

24 THE COURT: All right. Let's mark it please as being
25 admitted without objection.

JESSIE SIMMONS - DIRECT EXAMINATION

510

1 WHEREUPON, DEFENDANT'S EXHIBIT
2 NUMBER 5 WAS ADMITTED INTO
3 EVIDENCE WITHOUT OBJECTION.

4 Q. I am going to hand you another picture. And can you
5 describe what you see in that picture?

6 A. Just the front of the building coming into the
7 apartment.

8 Q. That is in fact your building again?

9 A. Yes, ma'am, it is.

10 Q. Is this just a picture from a different angle?

11 A. Yes, ma'am.

12 Q. And, does it appear to be an accurate depiction of what
13 your building looks like?

14 A. Yes, ma'am.

15 MS. BROWN: At this time, Your Honor, I would like to
16 admit that exhibit as Defendant's Exhibit 6-A.

17 MS. JOHNSON-LEE: The state will have no objection to
18 six, and if she wants to go ahead and mark Number 7, we have
19 no objection to number seven either, Your Honor.

20 THE COURT: Let's mark them all, please.

21 WHEREUPON, DEFENDANT'S EXHIBIT
22 NUMBER 6 AND 7 WERE ADMITTED
23 INTO EVIDENCE WITHOUT
24 OBJECTION.

25 Q. Now, I hand you Defendant's 7-A. Can you tell me what

JESSIE SIMMONS - DIRECT EXAMINATION

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1 you see in that picture?

2 A. Yes, ma'am. That's the building that I live in.

3 Q. So, if you were standing outside of your building, would
4 that be the view that you would see?

5 A. That would be my building.

6 Q. And, June of last year, you said you provided a
7 statement to law enforcement?

8 A. I did.

9 Q. And it was the day of the shooting; was it?

10 A. Yes, ma'am.

11 Q. Let me ask you about that statement. Do you recall
12 telling the officer who was present -

13 **MS. JOHNSON-LEE:** Objection, she is leading the
14 witness.

15 **THE COURT:** Well, I haven't heard the full question,
16 but it did sound like it was getting ready to be leading.
17 So, please rephrase, and go ahead and ask your question.

18 Q. June of last year, I know you told the --- and the
19 interview I know it is long, and I'm trying not to get
20 you to tell everything. But at any point were you ---
21 Did you observe a lady lying over a body?

22 A. I observed her kneeling over a body.

23 Q. I'm sorry.

24 A. You said --- You asked me if I observed her lying over a
25 body. I observed a lady kneeling over a body.

JESSIE SIMMONS - DIRECT EXAMINATION

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1 Q. Kneeling over the body. Okay. And could you tell us
2 which direction that body was facing?

3 A. It was facing outward from their apartment, it was
4 facing outward.

5 Q. Now, if you look at -

6 A. -- laying outward --

7 Q. -- Defendant's Exhibit Number 7, I believe, and I would
8 like to show the jury panel this one. Can you hold it
9 so the jury can see. Can you tell me where you saw the
10 body lying?

11 A. The body was lying between these two walkways, walking
12 out of the house. It was in the middle.

13 Q. And did you see anyone out there near the body?

14 A. Well, at first when it happened it was -

15 Q. Let me rephrase the question. After the shooting took
16 place and the body is lying down, did you see anybody
17 next to it?

18 A. Yes.

19 Q. Do you know who was next to the body?

20 A. The defendant at the time.

21 Q. After the shots were fired?

22 A. After the first shot I seen the defendant standing over
23 the body.

24 Q. Let's make sure. Do you even know who the defendant is
25 in this case?

JESSIE SIMMONS - DIRECT EXAMINATION

513

1 A. Yes, ma'am.

2 Q. Have you seen him before?

3 A. Yes, plenty of times.

4 Q. Plenty of times.

5 A. Yes, ma'am.

6 Q. Did you tell law enforcement that particular day that
7 you had seen this defendant before?

8 A. Yeah, I think the police asked me that.

9 Q. Okay. Would you be able to identify the defendant
10 today?

11 A. Well I seen two people out there.

12 Q. Did you see a female out there?

13 A. Not at that time.

14 Q. At some point did you ever see a female?

15 A. I did.

16 Q. And at some point did you ever see a female --- What did
17 you see the female doing?

18 A. She was leaning over the body?

19 Q. Anything else you saw the female doing?

20 A. I seen her like, she reached down and she had a phone to
21 her head, she was rubbing him up, and taking stuff some
22 money, but I never did see nothing in her hand but that
23 cell phone.

24 Q. Okay. I want to make sure I understand what you are
25 testifying to. You saw a female?

1 A. Right.

2 Q. And what was the female doing?

3 A. She was leaning over the body. She was kneeling over
4 the body.

5 Q. Did you ever give a different statement to law
6 enforcement?

7 A. The only thing I can thing about, I told that fellow, I
8 said, man, if you go look at the film, I said it look
9 like she may be picking up something. She might have.

10 Q. Do you remember using a -

11 A. -- I could have, I'm not sure.

12 THE COURT: Counsel, please do not lead your witness.
13 There has not been an objection. But please move to your
14 next question rather than follow up on that.

15 MS. BROWN: Okay.

16 Q. I am going to show you your statement -

17 MS. JOHNSON-LEE: Objection. Improper bolstering of a
18 witness.

19 MS. BROWN: Your Honor, he was -

20 THE COURT: -- Actually, she may impeach her own
21 witness. Overruled. If you want to show the statement, go
22 ahead.

23 MS. BROWN: Thank you, Your Honor.

24 Q. Mr. Simmons, can you hear --- Well, can you see the
25 screen from where you are?

JESSIE SIMMONS - DIRECT EXAMINATION

515

1 A. I can see it.

2 (Whereupon, the witness' statement was
3 published to the jury.)

4 MR. SIMMONS: Would you turn it up.

5 MS. BROWN: I'm trying to turn it up.

6 (Whereupon, the witness' statement was
7 published to the jury.)

8 Q. Were you able to hear that at all?

9 A. I didn't quite hear it.

10 MS. BROWN: I'm going to try to play it once more.
11 Okay?

12 MR. SIMMONS: Okay.

13 MS. BROWN: Your Honor, may he sit right here so he
14 can hear his statement.

15 THE COURT: Is there an objection?

16 MS. JOHNSON-LEE: No, Your Honor.

17 THE COURT: Yes, sir. You may go down and sit right
18 there, and you will be right in front of it.

19 (Whereupon, the witness' statement was
20 published to the jury.)

21 Q. Did you just get an opportunity to hear that? Were you
22 able to hear your response?

23 A. It was about the cell phone.

24 Q. Okay. Did you use the word, "hiding", on that video?

25 A. Like I say, it seemed like she was hiding something.

JESSIE SIMMONS - DIRECT EXAMINATION

516

1 Q. Okay. That's all. Now, if you look at this view, can
2 you show it to the jury please? Can you show that to
3 the jury please?

4 Did you have your glasses on when you were
5 watching Ms. Brown in June of last year?

6 A. More than likely, yes, ma'am.

7 Q. And, based on where you were standing, would you say it
8 would be kind of difficult to determine exactly what she
9 was picking up?

10 MS. JOHNSON-LEE: Objection, she is leading the
11 witness.

12 MS. BROWN: I will rephrase that.

13 THE COURT: Sustained.

14 Q. Do you know whether or not it was a phone, a cell phone
15 that she was picking up?

16 A. Yes, ma'am. She had it up to her ear.

17 Q. And, is it --- Was the item in fact black? Did you say
18 it was black?

19 MS. JOHNSON-LEE: Objection. He didn't testify as to
20 the color of the cell phone. She is leading.

21 Q. Do you know what color the item was? The item that was
22 picked up?

23 A. Ma'am?

24 Q. Do you remember the color?

25 A. Well it looked like a gray phone from the front. From

JESSIE SIMMONS- CROSS EXAMINATION

517

1 the front, that phone there. I ain't say it was black
2 from the back. I knew what kind of phone it was. It
3 was black on the back and the front of it was -- I knew
4 it was a cell phone.

5 Q. Did you see the face of the person that did the
6 shooting?

7 A. No, not really.

8 Q. Did you see the face, yes or no?

9 A. No, he wasn't facing me.

10 Q. Okay. And, on June 10th, you contacted law enforcement;
11 is that correct?

12 A. Yes, ma'am.

13 MS. BROWN: No further questions, Your Honor, at the
14 time.

15 THE COURT: All right. Cross examination?

16 MS. JOHNSON-LEE: Beg court's indulgence.

17 THE COURT: All right.

18 (PAUSE.)

19 CROSS EXAMINATION BY MS. JOHNSON-LEE

20 Q. Mr. Simmons, are you sure the only thing that you saw
21 was Ms. Brown pick up was the cell phone?

22 A. That the only thing I seen.

23 Q. Now, you saw the shooter standing over the victim?

24 A. Yes, yes, ma'am.

25 Q. How did you know that person was the shooter?

JESSIE SIMMONS - REDIRECT EXAMINATION

518

1 A. Because I seen.

2 Q. Had you already heard a shot by that time?

3 A. Well, I was getting up, going to the window. Well, I
4 ended up going to my door, and as I was turning the
5 knob, a gunshot went off. I checked my door bolt, and
6 shot him again, and he took off.

7 Q. So, how long do you think the shooter stood over the
8 body before firing that shot?

9 A. Oh, Hell, four seconds.

10 Q. And did you make one of the 911 calls?

11 A. I hurried up on the phone.

12 MS. JOHNSON-LEE: Thank you, sir. No further
13 questions.

14 THE COURT: Is there redirect?

15 MS. BROWN: Just one second.

16 (PAUSE.)

17 REDIRECT EXAMINATION BY MS. BROWN

18 Q. You just testified that you saw the second shot; is that
19 correct?

20 A. Yes, ma'am.

21 Q. You didn't see the first shot?

22 A. I didn't see the first shot.

23 Q. And you did not see what lead to the shooting; is that
24 correct?

25 A. No.

CHASITY D. CARTER - DIRECT EXAMINATION

519

1 Q. You have no idea?

2 A. Have no idea.

3 MS. BROWN: Thank you. Nothing further, Your Honor.

4 THE COURT: Sir, you may step down. You are free to
5 leave if you wish, or you may stay if you wish.

6 MR. SIMMONS: Thank you.

7 THE COURT: You are free to go, sir. Have a good day.
8 Please call your next witness.

9 MS. BROWN: Your Honor, the defense calls Ms. Chasity
10 Carter.

11 THE COURT: Please come forward and take the oath of a
12 witness.

13 WHEREUPON, CHASITY DENISE CARTER

14 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

15 MS. CARTER: Yes.

16 THE COURT: And, ma'am, if you would please state your
17 full name.

18 MS. CARTER: Chasity Denise Carter.

19 DIRECT EXAMINATION BY MS. BROWN

20 Q. Ms. Carter, how are you?

21 A. Huh?

22 Q. How are you?

23 A. Fine.

24 Q. Ms. Carter, can you do me a favor, can you please speak
25 into the Mic., so we can all hear you.

CHASITY D. CARTER - DIRECT EXAMINATION

520

1 A. Yes.

2 Q. And can you state once again your full name?

3 A. Chasity Denise Carter.

4 Q. And, Ms. Carter, are you presently employed?

5 A. No, I am not.

6 Q. What was your last form of employment?

7 A. It's been over a year ago. I left because I became
8 sick.

9 Q. And do you know Mr. Clarence Cook?

10 A. Yes.

11 Q. How do you know Mr. Cook?

12 A. We dated for two years. He is my fiancé.

13 Q. Did you provide a statement to law enforcement about
14 what you observed?

15 A. Yes.

16 Q. June 10th of last year?

17 A. Yes, ma'am.

18 Q. Do you remember when you gave that statement?

19 A. It was about --- I went up there the day it happened,
20 but I had panic attacks, so I went back about two weeks
21 later or something. I don't know the exact time.

22 Q. Was that statement before this?

23 A. Yes.

24 Q. Did you in fact know Mr. Hayes or Snook?

25 A. Yes, I knew him as Snook.

CHASITY D. CARTER - DIRECT EXAMINATION

521

1 Q. And how long did you know Mr. Hayes?

2 A. About a year. He dated Kim Brown. Kim Brown lived
3 directly up under him.

4 Q. And, when you say he lived --- where did you live June
5 of last year?

6 A. I lived in Marlboro Court, Apartment [REDACTED]. Kim Brown
7 lived directly under me. I don't know the exact
8 apartment number she lived in.

9 Q. And how long were you living in Marlboro Courts?

10 A. I lived there two years.

11 Q. And are you presently living there now?

12 A. No.

13 Q. How long would you have known Mr. Hayes before his
14 death?

15 A. About a year.

16 Q. What kind of relationship did you have with Ms. Brown?

17 A. We didn't have no problems. In fact, she introduced me
18 and Clarence. Before the shooting she did seemed to
19 have a problem.

20 Q. But you didn't have any problem -

21 A. -- I did not have no problems with Kim Brown.

22 Q. Okay. And you say that at some point there appeared to
23 be problems. Why would you say that?

24 A. She seemed to have a problem with me, but I don't know
25 why she would have a problem with me. I know Snook and

1 Clarence had problems. Maybe that is where it started
2 from.

3 Q. How did you know Mr. Hayes and Clarence had any
4 problems?

5 A. Because Clarence was outside one day, and Mr. Hayes
6 approached him and said, there was some butt shit, you
7 are a snitch. You ain't nothing but a snitch. A snitch
8 carries stitches or something like that.

9 Q. You observed that incident?

10 A. Yes, I did.

11 Q. Where were you?

12 A. I was standing on my porch.

13 Q. And where was Clarence when that incident occurred?

14 A. He was coming up the stairs and Snook stopped him.

15 Q. Do you remember about what time frame that happened?

16 A. It was before the trial in North Carolina, in the North
17 Carolina case.

18 Q. All right. You just talked about a North Carolina case.
19 Do you remember when Mr. Cook testified? Did Mr. Cook
20 testify in the case?

21 A. Yes, he did.

22 Q. And do you remember about what time frame that happened?

23 A. It was at the end of April beginning of May, I don't
24 know the exact date. But I took him to High Point and
25 dropped him off, and came back and got him.

CHASITY D. CARTER - DIRECT EXAMINATION

523

1 Q. Did you witness problems between Mr. Cook and Mr. Hayes?

2 A. Yes, I did.

3 Q. And, you may have answered this, but I just want to make
4 sure we get all of this down correctly. When did you
5 first notice there were problems?

6 A. Before he testified in the case in North Carolina.
7 Snook came up to Kendell, Clarence, and said there was
8 some butt shit. You ain't nothing but a snitch. A
9 snitch carries stitches or something like that.

10 Q. Did Clarence respond?

11 A. No, he didn't say nothing.

12 Q. Was there in fact a confrontation that day?

13 A. No, there was no arguments that day.

14 Q. Do you remember or observe any other incident after
15 Clarence testified in the North Carolina case?

16 A. Yes. I was standing on my balcony, and it was dark.
17 And Snook approached Clarence and asked him did he
18 testify? Snooks response was yes. I mean, Clarence's
19 response was yes. And Snook said if I was those boys, I
20 would have you knocked.

21 Q. And where was Mr. Hayes when that statement was made to
22 Clarence?

23 A. He was on the sidewalk with Clarence.

24 Q. On the sidewalk?

25 A. Uh, on the sidewalk by my apartment. In front of my

1 apartment.

2 Q. Did Clarence respond in any fashion?

3 A. No. I acted like I had just come out the door to open
4 it. And I told Clarence he had an important phone call.
5 And he came upstairs.

6 Q. So, was there in fact a confrontation that day?

7 A. No, there wasn't.

8 Q. Did you observe any -- Did you perceive what you
9 observed as a threat; did you?

10 A. Yes.

11 Q. Did you observe any other threats?

12 A. Yes.

13 Q. Can you tell me about those threats?

14 A. Snook was on the phone one day, and me, Clarence, and my
15 baby sister was sitting on the balcony. Snook looked up
16 at Clarence and said, you may whip my ass the first
17 time, but the next time I'm bring hog hays to the table.

18 Q. What are hog hays?

19 A. I do not know.

20 Q. Is that the first time you have ever heard that
21 statement?

22 A. Yes.

23 Q. Did Clarence respond that day?

24 A. No.

25 Q. All right. Do you know whether or not Clarence heard

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1 that statement?

2 A. Yes, Clarence heard it. He was talking to Clarence when
3 he said it. Well, he was looking at Clarence when he
4 said it. He was on the phone. And he looked directly
5 up at us on the balcony when he made that comment. So,
6 I told Clarence to just go in the house and shut the
7 door.

8 Q. Were you in fact concerned about these threats?

9 A. Yes.

10 Q. If you were concerned, did you do anything at all?

11 A. Yes, I went to Sav-Way, because Deborah Young works at
12 Sav-Way on the weekends. And I went to tell her about
13 the drugs and the problems in the neighborhood. And
14 then I went to meet my mom, my baby sister, Clarence,
15 and Vivian Stubbs.

16 Q. Now, who is Vivian Stubbs?

17 A. She is the property manager.

18 Q. You said Ms. Young?

19 A. Ms. Deborah Young.

20 Q. Is Officer Young in the courtroom?

21 A. Yes.

22 Q. And, you went and met her? Did you contact her by
23 phone? How did you -

24 A. -- I drove up there and spoke to her at Sav-Way, me and
25 my daughter.

1 Q. Do you remember when you made that contact with Officer
2 Young?

3 A. It was on the weekend. She works at Sav-Way on the
4 weekends.

5 Q. And how many days, or months, or weeks before this
6 shooting did you in fact, reach out to Officer Young?

7 A. I can't remember how long it was that I reached out.
8 But the problems had got real worse when I reached out.
9 I mean, it was after the trial. June, May, June, I
10 don't know the exact day.

11 Q. You mentioned --- You told her about drugs?

12 A. And the problems in the neighborhood.

13 Q. What problems were you having with drugs in the
14 neighborhood?

15 A. Carlos and Snook were selling drugs in the neighborhood.

16 Q. Did you in fact notify Ms. Stubbs of that?

17 A. Ms. Stubbs approached me and asked me, y'all having a
18 lot of activity around your house. I said, I don't have
19 no activity. She said, no, I know where the activity is
20 coming from. And I left at that time.

21 Q. Do you know if Officer Young did anything at all after
22 you made contact with her at Sav-Way?

23 A. She did nothing. She just gave me Emily Foley's phone
24 number.

25 Q. Did you in fact contact Ms. Emily Foley?

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1 A. Yes, I called the Police Department, but she was off,
2 and I left a message for her to call me back, and she
3 never did.

4 Q. Now, when you say Emily Foley, she is with an agency?

5 A. She is with the police force.

6 Q. Have you personally heard someone call Clarence a
7 snitch?

8 A. Yes.

9 Q. Whom have you heard call Clarence a snitch?

10 A. I heard Carlos Kendell one day, and said you ain't
11 nothing but a snitch.

12 Q. Do you remember about what time frame that happened?

13 A. It was a Sunday, because we had just came back from
14 church.

15 Q. And after that incident, did you do anything at all?

16 A. I went and talked to the property manager.

17 Q. And who all was present when you met with the property
18 manager?

19 A. My mother, my baby sister, and Clarence, and Vivian
20 Stubbs.

21 Q. Do you recall observing a conversation between Clarence
22 and Ms. Stubbs?

23 A. Yes. He didn't want to, because he said it would lead
24 to more people calling him snitch in the neighborhood.

25 Q. And you were present that day, you certainly saw that?

1 A. Yes.

2 Q. So, did Clarence have any problems with Mr. Eaddy?

3 A. No, not really. But Snook make it clear that he had a
4 problem with Clarence.

5 Q. Let's talk about the day of the shooting, June 10th. I
6 am just going to let you tell me your story. What did
7 you observe on June 10th, the day of the shooting?

8 A. (No response.)

9 Q. Well, why don't I just start asking questions. Were you
10 with Clarence on June 10th?

11 A. Yes.

12 Q. And, where were were you guys doing that day?

13 A. I was washing clothes. Clarence had left that morning,
14 and I guess he went fishing. I went and washed clothes.
15 Clarence came and said he want Taco soup, so we left and
16 we were going to Piggly Wiggly. And as we were in the
17 car going to Piggly Wiggly, the phone rung, and it was a
18 private call. So, he did not answer it. Then a text
19 message came.

20 Q. And did you in fact --- did you observe that text
21 message?

22 A. Yes, I did.

23 Q. And, whose phone did it come into?

24 A. It came into Clarence's phone.

25 **MS. JOHNSON-LEE:** Hearsay, Your Honor. Objection.

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1 **MS. BROWN:** Your Honor, she is going to identify the
2 phone, and let me now whether or not it belongs to Mr. Cook,
3 and whether or not she saw the messages.

4 **THE COURT:** She may identify the phone. We will start
5 there.

6 Q. Ms. Carter, whose phone is that?

7 A. That is Clarence's phone.

8 Q. How do you know that?

9 A. Because my picture and his picture is in there.

10 Q. There is a picture inside of that phone?

11 A. Yes.

12 Q. A picture of whom?

13 A. Me and Clarence.

14 Q. Is that the phone that Clarence owned on June 10th of
15 last year?

16 A. Yes, ma'am.

17 Q. Is that in fact the phone that the text messages came
18 through?

19 A. Yes, it is.

20 Q. And when the text messages came to that phone, where
21 were you guys?

22 A. We was in our guys on the way to the Piggly Wiggly.

23 Q. Who all were in your vehicle?

24 A. Me, Clarence, and MoShawn.

25 Q. Who is MoShawn?

1 A. Clarence's cousin.

2 Q. And, who observed the text message first?

3 A. Clarence.

4 Q. And at some point did you look at the text messages
5 yourself?

6 A. Yes, I did.

7 Q. Why did you look at the text message.

8 Q. I was being nosey for one. And I wanted to see what Ken
9 said.

10 Q. Did Clarence at any point say who sent him the text
11 message?

12 MS. JOHNSON-LEE: Objection, leading.

13 THE COURT: I am going to overrule that -- just one
14 moment please. Overruled on leading. Go ahead.

15 MS. BROWN: Thank you, Your Honor. You may answer the
16 question.

17 A. And what was the questions again?

18 Q. Did Clarence inform you who sent the text message?

19 A. Yes.

20 Q. And who did he say send the text message?

21 A. Snook.

22 Q. All right. I am going to ask that you open the phone.
23 And can you stroll through the inbox and find the
24 message that you, yourself observed on June 10th?

25 A. Do you want me to read it out to you?

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1 Q. Did you locate the text message?

2 A. Yes. Yes.

3 Q. How many text messages do you recall came to that phone?

4 A. Two.

5 Q. And do you recall what time that text message came
6 through?

7 A. No, I can't recall offhand.

8 Q. Now, can you look in the phone and tell me what time the
9 text message came?

10 A. Yes. At 4:06 p.m.

11 Q. Are you in the inbox?

12 A. Uh'huh.

13 Q. Are you looking at the message that came in that day?

14 A. Uh'huh.

15 Q. Can you read it to yourself?

16 A. Uh'huh.

17 Q. Is it in fact the same message that our read on June
18 10th?

19 A. Yes, ma'am.

20 Q. Has it been changed or altered in any fashion?

21 A. No, ma'am.

22 MS. BROWN: At this time, Your Honor, I would like to
23 admit the phone into evidence as Defendant's Exhibit 7.

24 MS. JOHNSON-LEE: I would like to look at the exhibit
25 please.

1 (PAUSE.)

2 MS. JOHNSON-LEE: No objection.

3 THE COURT: All right. Without objection, then please
4 mark that as being into evidence.

5 WHEREUPON, DEFENDANT'S EXHIBIT

6 NUMBER 8 WAS ADMITTED INTO

7 EVIDENCE WITHOUT OBJECTION.

8 THE COURT: All right. Then Defense Exhibit 8 in
9 evidence without objection.

10 Q. Are you through? At this time can you read to me the
11 message that is in this phone?

12 A. "U fuck nigga I herd u being shit about me nigga and
13 about the bullshit that going on around here I don't
14 have shit to do with it so keep my name out your mouth."
15 [sic]

16 Q. is that in fact the message you read in June 10th?

17 A. Yes.

18 Q. Does it appear to have been altered or changed in any
19 fashion?

20 A. No.

21 Q. Was any other messages that you read on June 10th?

22 A. Yes.

23 Q. Can you find it in the phone please.

24 A. I have it.

25 Q. Can you read to me the message that came in on June 10th

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1 that you observed?

2 A. It say: "Nigga fuck u." [sic]

3 Q. And can you tell me the time that message came in?

4 A. 4:09 p.m.

5 Q. Now, can you switch and go to the sent section of that
6 phone?

7 A. Okay.

8 Q. Are you there?

9 A. Uh'huh.

10 Q. Are you aware of whether or not Clarence responded to
11 Mr. Hayes?

12 A. I know of one text that he did as he went into the
13 store.

14 Q. So, there was one text message that you in fact --- Did
15 you observe that message?

16 A. Yes.

17 Q. Can you find that message in the phone?

18 A. Okay.

19 Q. Can you read out loud the message that you observed that
20 Clarence sent back in response to Mr. Hayes' message?

21 A. "U aint shit 2 b talkn about I dnt care about yal or wat
22 y movn I dnt want u it aint me no words 4 u or los."
23 [sic]

24 Q. Okay. After the text messages were received and sent,
25 what happened next?

1 A. We went to Piggly Wiggly, Clarence went in with Moshawn,
2 they bought the meat. We left there and went back to
3 Man to Man. We went home. I saw Snook sit on the porch
4 with a white T-shirt on. There was another man standing
5 there with a black T-Shirt on.

6 Q. Now, before you go any further, before you left, did you
7 in fact see Mr. Hayes?

8 A. Yes, I did.

9 Q. Was Mr. Hayes in fact outside when you left?

10 A. He was leaving --- Mr. Hayes was getting into a black
11 car. We was getting ready to leave. He come out and
12 got into a black car. He left, so we sit there. Then
13 me, Clarence, and Moshawn left.

14 Q. So, when you exited your house, Mr. Hayes was not
15 outside? Was he outside?

16 A. He was standing on the porch. No, he was at --- I'm
17 lying. He was at over there at Mary's apartment,
18 standing up by the steps at Mary's apartment.

19 Q. Now, when you guys left to go to Piggly Wiggly, were
20 there any text messages sent at that time?

21 A. No, there wasn't.

22 Q. And when you guys left, did in fact Mr. Hayes say
23 anything to Clarence?

24 A. No, he just gave us a evil look. Got into a black
25 Caprice car and left.

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1 Q. Did Clarence say anything to Mr. Hayes before you went
2 to Piggly Wiggly?

3 A. No.

4 Q. When you left to go to Piggly Wiggly, was there anyone
5 else outside other than Mr. Hayes?

6 A. Kim was sitting on the porch. I don't know her real
7 name. Her name is Bootsie.

8 Q. So, let's go back to you guys were in Man to Man, and
9 after you left Man to Man, what happened?

10 A. After we left Man to Man, we went home. I saw Snook
11 sitting on the porch with a white shirt on, and a guy
12 there with a black T-shirt on. I told Clarence before
13 we got of the car not to say anything. So, we took the
14 groceries upstairs. Clarence was there. I started
15 putting them up. Clarence was eating watermelon, and he
16 was about to leave.

17 Q. Now when you arrived back, tell me again, who were
18 outside when you got there?

19 A. I only seen Snook sitting in a chair and another guy
20 standing up. I don't know who. I couldn't make out who
21 the other guy was.

22 Q. Can you describe that guy for us?

23 A. I didn't see his face. I just seen that they had on a
24 black T-shirt.

25 Q. And, at some point you guys went into the house?

1 A. Right.

2 Q. Did Quinton, Mr. Covington stick around?

3 A. He helped us take the groceries in and then he left.

4 Q. And when he left, where was Clarence?

5 A. Clarence was in the house eating watermelon.

6 Q. And at some point did Clarence ever leave the house
7 again?

8 A. Yes, he was getting ready for bed and I told him --- I
9 told him to take the watermelon rind out, because I
10 didn't want flies around the house while I was cooking.

11 Q. After Clarence left, what happened?

12 A. I asked him to take the watermelon rind out, because I
13 didn't want flies in the house. He put it in the bag
14 that we had just received from the store and he tied it
15 up. Clarence went down the stairs, I was getting food
16 ready. Clarence was going down the stairs. I heard
17 commotion, and it was Snook fussing with Clarence.

18 Q. When you heard Snook fussing with Clarence, how do you
19 know it was Snook?

20 A. Because I went to my window that is in my livingroom
21 directly behind my door and I looked out the window.

22 Q. Let me show you a picture, Ms. Carter. I am going to
23 hand to you Defense Exhibit 1-A, Ms. Carter. Does this
24 look familiar to you?

25 A. Yes, ma'am.

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1 Q. What is the picture of?

2 A. My apartment.

3 Q. And can you show me where --- Can you point to the jury
4 where you lived on June 10th of last year? Which
5 building belongs to you.

6 A. Right here.

7 Q. Which one belonged to Kim Brown, Ms. Brown?

8 A. This one right here.

9 Q. And, did at any point you observe anything that was
10 happening outside --- outside after Clarence left?

11 A. Yes. Snook was approaching Clarence.

12 Q. Before you get there, can you tell me where you were
13 looking, when you observed?

14 A. I was at this window here.

15 Q. What window is that?

16 A. That is the window directly behind my door in my
17 livingroom.

18 Q. And what prompted you to go to that window?

19 A. I heard confusion and fussing going outside, and I went
20 to the window, because Clarence had just gone outside.

21 Q. And when you looked outside that window, where was
22 Clarence standing?

23 A. Clarence was standing right here.

24 Q. And what about Mr. Hayes, where was he standing?

25 A. Right up in here.

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1 Q. Now, when you looked out the window, Mr. Hayes was
2 already standing right there?

3 A. Yes.

4 Q. Did you --- Were you able to see Mr. Hayes prior to
5 looking out the window? You didn't see Mr. Hayes? Did
6 you see Mr. Hayes -

7 A. -- I seen Mr. Hayes coming off the porch toward
8 Clarence.

9 Q. Where were you when you saw that?

10 A. I was in this top window looking down right here.

11 Q. Did you see anyone else that were out there?

12 A. Kim Brown came behind him. I took it that she was
13 trying to stop Snook. She come out behind him.

14 Q. But what do you mean that she take it trying to stop
15 him.

16 A. She had put her hands on him, but she backed up.

17 Q. Did you see the other guy that was standing out there?

18 A. No, I didn't.

19 Q. Now, when Clarence walked down the steps and Mr. Hayes
20 was standing where you just pointed, what else did you
21 see?

22 A. He was approaching Clarence with his hand in his pocket.
23 Clarence backed up. Clarence had backed up. That when
24 Kim come behind Snook. I guess I took it she was trying
25 to stop him. But she backed off. Then he started.

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1 approaching Clarence again, and Clarence backed up
2 again. I ran from my window to get my shoes. And
3 before I got to the door to unlock it, before I could
4 unlock the door, I heard shots.

5 Q. So, when the shots were fired, where were you?

6 A. I was inside my home, in my apartment.

7 Q. Were you still standing near that window?

8 A. No. I had left the window to put on my shoes to go
9 outside.

10 Q. Why did you want to go outside?

11 A. To tell Clarence to come back in the house, and then I
12 was going to call the police.

13 Q. Now, did you testify at some point --- did you observe
14 Clarence back up?

15 A. He backed up twice.

16 Q. And did you observe Mr. Hayes walking towards him?

17 A. I observed Mr. Hayes walking towards him with his hands
18 in his pocket. And that is when I ran from my window to
19 get my shoes. And by the time I got to my door to open
20 it, that is when shots were fired.

21 Q. Did you see anything in Mr. Hayes hands?

22 A. His hand was in his pocket.

23 Q. After the shots were fired, did you see Clarence?

24 A. No.

25 Q. At some point did you look out of your window?

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1 A. I opened my door. I thought it was Clarence that got
2 shot, because Snook was approaching him with his hand in
3 his pocket. When I did open my door I realized it was
4 Snook, and I just shut my door and fell to my feet.

5 Q. And after you shut the door what do you remember
6 happening next?

7 A. There was a knock at my door. I looked out the window
8 and it was my daughter. I observed Kim Brown removing
9 items out of Snook's pocket.

10 Q. Hold on. You in fact observed that?

11 A. Yes, I did.

12 Q. When did you observe items being removed?

13 A. My daughter had knocked on my door. I was afraid to
14 open my door, so I went to my window and looked out the
15 window. And I noticed it was my daughter on the porch.
16 So, I opened the door and Kim Brown was over Snook's
17 body taking stuff out of the pockets.

18 Q. Did you see what the items were?

19 A. I could not make out what the items were because of the
20 way the body was lying and how she was holding him.

21 Q. Did you notice anyone else outside at that time?

22 A. No, there was nobody.

23 Q. Where was Taylor, your daughter?

24 A. My daughter was in the house. She was in the house.

25 When she came up, I unlocked the door. And when Taylor

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1 come in the house, she told me, Mamma Kim is removing
2 items from Snook's pocket. And I just said, get in the
3 house.

4 Q. Did you daughter ever leave the house?

5 A. Yes.

6 Q. Where did she go?

7 A. She went to Shekeena and Bruce's house. (Phonetic)

8 Q. Did she take anything with her?

9 A. Yes.

10 Q. What did she take?

11 A. Marijuana.

12 Q. Did your daughter return?

13 A. Yes.

14 Q. And did she leave back out again?

15 A. No, she left out --- Turner came into my home, and I had
16 panic attacks. I was having seizures. And she was
17 upset, so Turner asked her to just step outside to let
18 the rescue squad handled me.

19 Q. Did she in fact give a statement to what she saw that
20 day? Did you see Taylor give a statement that day?

21 A. I went up there to give a statement, she was with me.
22 But I went to give a statement, and I started having
23 attacks again, so I went to the hospital.

24 Q. Were you able to complete your statement that day?

25 A. No, ma'am.

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1 Q. Do you remember how long it was after the shooting
2 before law enforcement arrived?

3 A. It was about thirty or forth minutes before they knocked
4 on my door.

5 Q. Before they knocked on your door?

6 A. Uh'huh.

7 Q. Okay.

8 A. I don't know how long it took them to get there, because
9 I stayed locked up in my house.

10 Q. Okay. Did law enforcement search your home?

11 A. They searched the house for Clarence.

12 Q. Did you show them anything when they came into your
13 house?

14 A. Yes. I showed Turner --- Turner came in, and I showed
15 him the merchandise that we had just bought and the
16 receipt.

17 Q. Prior to June 10th, did Clarence ever express to you
18 that he was afraid?

19 A. He never said he was afraid. He said that he was
20 definitely concerned about what Snook would do to him,
21 but I think he was afraid, because he would leave all
22 the time to get away from the problems.

23 Q. Where would he go?

24 A. He would either fishing or go sit at his cousin house.

25 Q. Do you remember about the time frame when you visited

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1 Ms. Stubbs?

2 A. It was two days before the shooting, I went over there
3 and told her there was a lot of crazy stuff going on.
4 And she told me that when she saw Mary and Kim, she
5 would talk to them.

6 Q. Now you mentioned crazy stuff. What is the crazy stuff
7 you are talking about?

8 A. Carlos and Snook kept approaching Clarence about him
9 snitching and having people evicted in the neighborhood.

10 Q. And you personally observed that?

11 A. Yes.

12 Q. Were there any other problems with snitching?

13 A. Not that I know of.

14 Q. Do you know whether or not -- I'll withdraw that
15 question. Did Clarence ever express concerns to you
16 about testifying in North Carolina?

17 A. Yes, he said he didn't want to, because it would lead to
18 people calling him a snitch.

19 Q. But did he testify?

20 A. Yes, he testified.

21 Q. Were you ever present when Clarence spoke to --- Do you
22 know whether or not Clarence reach out to any law
23 enforcement agency at all about his concerns?

24 A. I don't know.

25 Q. And did you reach out to any law enforcement about

1 concerns either than Officer Young?

2 A. No, I was waiting on Emily to call me back. That is who
3 she told me to talk to was Emily.

4 Q. So, you in fact did you place a call to Officer Crowley?

5 A. I called to the Police Department, and they said she was
6 off. She was not working. So, Ms. Young told me to
7 just leave a message up there, and I did.

8 MS. BROWN: One second, Your Honor.

9 (PAUSE.)

10 A. It's true. Deborah was shaking -

11 THE COURT: All right. Ma'am, excuse me. No, you
12 answered questions the lawyer would ask. Just please remain
13 in your seat where you are. Is there anything further?

14 MS. BROWN: Your Honor, I don't have any further
15 questions.

16 MS. JOHNSON-LEE: Thank you, Your Honor.

17 CROSS EXAMINATION BY MS. JOHNSON-LEE

18 Q. Since there has been questioning about that North
19 Carolina case, Clarence wasn't actually a snitch, he was
20 actually charged with murder up there wasn't he?

21 A. Actually, I don't know nothing about that case. That
22 was before my time. I got with Clarence, that case was
23 already going on. I have no idea what was going on in
24 North Carolina.

25 Q. Okay. You testified about how he was scared to go up

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1 there -

2 A. -- That is when we got together. We didn't get together

3 --- We only been together two years.

4 Q. Didn't you just testify last year, just two months
5 before this happened?

6 A. Two months before that happened, but I didn't know
7 nothing of it before we got together.

8 Q. Well, last year when you went to testify, did you know
9 he was under a murder charge?

10 A. Yes, I did.

11 Q. And did the murder charge get dismissed as a result of
12 his testifying?

13 A. I don't know nothing about the case. I'm telling you
14 the truth, I didn't know nothing about the case. All I
15 knew he was charged with that.

16 Q. Okay.

17 A. Cause I dropped him off. I didn't go into the
18 courtroom.

19 Q. So, you actually drove him up there?

20 A. I drove him to High Point and dropped him off, and I
21 come back to Bennettsville, because he spent the night
22 up there.

23 Q. Okay. Who did he spend the night with?

24 A. He spent the night with a friend, he had spent the night
25 with.

1 Q. Is that something that y'all planned out in advance?

2 A. His lawyer told him to be up there the first thing in
3 the morning.

4 Q. But did you plan in advance that you would come back and
5 he would spend the night?

6 A. Yes. He said he would spend the night, because I was
7 taking my daughter to school.

8 Q. Now, you said today that Snook asked Clarence if he had
9 testified in North Carolina. But you had never told
10 that to law enforcement before today have you?

11 A. Yes, I have.

12 Q. Did you tell that when you were being interviewed?

13 A. I was in the interview room when I told them.

14 Q. Okay. So, you say you did tell them that Snook
15 specifically asked Clarence if he testified in North
16 Carolina?

17 A. I spoke to Deborah Young the first time that I did the
18 video, and I was sitting outside. And I started talking
19 to Deborah, she was calming me down, and I had told her.
20 Then Turner had come up and he told me, do she know that
21 Clarence has been arrested, been locked up?

22 Q. So, when you were in the room being interviewed, you
23 didn't say that on tape in the interview room when you
24 were giving your full statement about everything that
25 was going on?

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1 A. I can't recall if I did or not.

2 Q. Now you said that you went to Vivian what, a day or two

3 --

4 A. -- Two days before the shooting.

5 Q. Two days before the shooting to complain about the drugs
6 and guns in the neighborhood. But there were guns and
7 drugs in your house wasn't there?

8 A. There was never a gun in my house that I knew of.

9 Q. So, you didn't know that -

10 A. -- I did not know that this guy had a gun. No, I did
11 not.

12 Q. And you didn't know he had it hid under your couch?

13 A. There was no gun hid up under my couch. I even told law
14 enforcement that they could even come search my house.
15 Deborah Young was sitting outside when Turner asked me
16 if he could come back to my house and search it. He
17 said, that they had taped it off and he told me, told my
18 mamma to come up there with me to get some clothes out
19 of the house. We sat and we waited for Turner to come,
20 because he said he wanted to search the house. I knew
21 nothing. But there was no gun ever under my couch.

22 Q. So, you didn't know that Kendell had taken the gun and
23 put it in his pant's pockets to go downstairs?

24 A. Clarence was --- When we come in from the grocery store
25 we went straight to my kitchen table and put the

1 groceries down. He went and he got a piece of
2 watermelon. He never left from the table. He had the
3 watermelon, then he got up, and then he took the
4 watermelon to the trash can. That is where he was
5 coming from.

6 Q. So, it is your testimony, Kendell never had a gun that
7 day?

8 A. I never seen a gun on Kendell that day.

9 Q. All right. You said he was going to take watermelon to
10 the trash can. Let's look at these exhibits. Let's
11 look at this one first, Defense Exhibit 3. Now, is this
12 your apartment building?

13 A. Yes.

14 Q. And is your apartment upstairs on the left?

15 A. Yes.

16 Q. And is Snook and Kim's apartment downstairs on the left?

17 A. Yes..

18 Q. And when these stairs come down, they come down to the
19 right?

20 A. Uh'huh.

21 Q. When you come downstairs, you have to go all the way to
22 the right to go to the trash can?

23 A. There and go back up.

24 Q. Okay. The trash can is way back over this way -

25 A. -- The trash can is right here.

CHASITY D. CARTER - CROSS EXAMINATION

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1 Q. But, it is not to the left it, is to the right?

2 A. Well, if you getting on the sidewalk, it is to the left,
3 and the apartment building is to the right.

4 Q. Let me show you Defendant's Exhibit Number 1. Okay.
5 When you come down off these steps, which way is to the
6 right?

7 A. If you coming off these steps coming down, going back to
8 that door, it is the right, and this is the left.

9 Q. You come right up here on the side by the steps, which
10 way is to the right of the trash can?

11 A. This way.

12 Q. Back that way. And you said when your attorney
13 questioned you, you said that Snook was standing over
14 here?

15 A. I said Snook was right here.

16 Q. Oh, I'm sorry, further over to the left?

17 A. He was right here. Right here, he come off the porch
18 and come right here. This is where he was at, and come
19 straight off from under here, and he was right here.
20 Clarence was here.

21 Q. So, Snook was over here to the left, trash can is back
22 to the right. Why did Kendell have to back up from
23 Snook if he was going to the trash can?

24 A. Because Snook was approaching him with his hands in his
25 pockets. If someone was coming at me fussing, I'm going

1 to turn around to see what's going on.

2 Q. So, instead of going off to the right to the trash can -

3 A. -- He just --- He stopped and turned to see what was
4 going on behind him.

5 Q. And you saw this from the window?

6 A. Yes, ma'am.

7 Q. Did you see the gun on Kendell?

8 A. I did not never see a gun on Kendell.

9 MS. BROWN: Your Honor, I am going to also object to
10 asked and answered. She has asked that question a few times.

11 MS. JOHNSON-LEE: I'll move on to another one.

12 THE COURT: Please move forward to your next question.

13 MS. JOHNSON-LEE: Yes, sir.

14 Q. Did you tell Deborah Young that you did not know where
15 Kendell's phone was at?

16 A. No, I never didn't. I went up to the Police Department,
17 the phone --- this phone right here was working. This
18 phone has been working. Moshawn had this phone. I was
19 cooperating with Turner, calling this phone. But
20 Moshawn had it in his pocket.

21 Q. Why did Moshawn have Clarence's telephone?

22 A. Because he made a phone call to see if his friend was
23 over there in Hill Crest. So, Clarence told him he
24 would get his phone later, to go ahead.

25 Q. So, how long did Moshawn have the telephone?

CHASITY D. CARTER - CROSS EXAMINATION

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1 A. Moshawn gave me the phone back the next day.

2 Q. The next day, that would be -

3 A. -- Yeah, the shooting -

4 Q. -- the day after the shooting? Okay. And why did you
5 not give it to law enforcement?

6 A. Law enforcement never asked -- Deborah Young, when she
7 questioned me the second time, she never asked me for
8 the phone. She asked me did I have the texts in my
9 phone. I said yes. She asked me if the phone was
10 working, and I told her yes. She say -- She asked me,
11 did I have the text message. I said, yes. I forwarded
12 the text messages to Deborah Young's phone, because
13 Shawn Lucas was sitting in there, and Shawn said ---
14 told Deborah that it could be forwarded to her phone.

15 Q. Okay.

16 A. That is how I got Deborah Young's number.

17 Q. And you didn't give a phone to Shawn Lucas either?

18 A. He did not ask for it.

19 Q. Now, what is the number for that telephone?

20 A. It is [REDACTED].

21 Q. 7782. Now, what do KC and CC stand for on the text
22 messages?

23 A. That is me and Clarence's initials.

24 Q. That is Kendell Cook and Chasity Carter?

25 A. Yes, ma'am.

CHASITY D. CARTER - CROSS EXAMINATION

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1 Q. Okay. So, any text message sent out from that telephone
2 would have KC and CC on it?

3 A. Yes, ma'am.

4 Q. Now, what is Moshawn's last name?

5 A. Covington.

6 Q. Is that Quentin Covington?

7 A. Yes, ma'am.

8 Q. Now, you said that you went out to take the watermelon -

9 A. -- Yes, ma'am -

10 Q. -- but yet you testified that after you heard the shots
11 you had to unlock the door. Why did you have to unlock
12 the door?

13 A. I locks my door --- If he leaves out or my daughter
14 leaves out, I locks my door.

15 Q. Now, why did you send your daughter back out to take
16 drugs if safety was an issue? Was there not a public
17 safety issue at that time?

18 A. There was nobody out there.

19 Q. There was nobody out there?

20 A. There wasn't a crowd of people out there. Moshawn had
21 called my father and said, will you bring me my bag.
22 And I said, what bag, and he told him. And I told him I
23 wasn't going outside. So, my daughter said she would
24 take it. So, Moshawn was over there at Shakema Bruce
25 house.

CHASITY D. CARTER - CROSS EXAMINATION

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1 Q. -- I am referring to when you sent her back out after
2 the shooting to take the drugs and the scales to Shakema
3 Bruce's house.

4 A. That is what I'm talking about. Moshawn was sitting
5 over there wanted me to take it. I was not going out
6 there.

7 Q. What was in the bag that Moshawn wanted?

8 A. It was the marijuana and the skittles.

9 Q. So, that belonged to him?

10 A. It was Clarence and Moshawn.

11 Q. You have no personal knowledge yourself of how Moshawn
12 knew to ask, and asked for Clarence's drugs after the
13 shooting, do you?

14 A. Moshawn was in Hill Crest right across from the
15 apartment complex.

16 Q. So, you have no way of knowing if Moshawn saw Kendell -

17 A. -- I stayed in my house.

18 Q. How long after the shooting did Moshawn call and say,
19 hey, you need to get Clarence's drugs out of the house?

20 A. He didn't say we needed to get Clarence's drugs out of
21 the house.

22 Q. What he said, we got to get that bag?

23 A. He said, I need that bag that was in your house.

24 Q. How long after the shooting?

25 A. Maybe ten or fifteen minutes.

1 Q. Do you have any idea if law enforcement was outside yet?

2 A. Law enforcement was not outside.

3 Q. So, is this early on then, right after the shooting?

4 A. Yes.

5 MS. JOHNSON-LEE: Beg court's indulgence.

6 (PAUSE.)

7 Q. Now, when you interviewed with Ms. Young, you told her
8 on the video that you saw Snook's left hand in his
9 pocket?

10 A. He was walking with his hand in his pocket holding up
11 something. I couldn't make out what it was. When I
12 seen when he was coming up, I ran from my window to get
13 my shoes.

14 Q. What was in his right hand?

15 A. Nothing was in his right hand that I saw.

16 Q. Where was his right hand?

17 A. It was down beside his leg.

18 Q. He was walking with his right hand down and you are
19 certain it was his left hand?

20 A. It was his left hand. I took it he was left handed, the
21 way I was looking out my window. He looked left handed
22 to me.

23 MS. JOHNSON-LEE: Beg court's indulgence.

24 (PAUSE.)

25 Q. When you interviewed with Detective Young, and you said

CHASITY D. CARTER - REDIRECT EXAMINATION

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1 that you had seen something being removed from Snook's
2 pockets, didn't you tell her it was a lighter?

3 A. When I opened the door to my daughter, Kim Brown had a
4 pink cigarette lighter. That all I seen.

5 Q. Okay.

6 A. That all I seen.

7 **MS. JOHNSON-LEE:** Thanks. That all the questions, I
8 have.

9 **THE COURT:** Is there redirect?

10 **MS. BROWN:** Yes, Your Honor.

11 **REDIRECT EXAMINATION BY MS. BROWN**

12 Q. Ms. Carter, at any point did you refuse to give any law
13 enforcement officer Clarence's phone?

14 A. No, I did not.

15 Q. At any point did anyone of the officers ask you for -

16 A. -- No they didn't. The only person who asked for the
17 phone was Emily in the public defender office, and I
18 gave it to her.

19 Q. Was that phone always available to law enforcement?

20 A. Yes, ma'am.

21 Q. Now, did you see Clarence with a gun at any time?

22 A. No, I did not, because I don't like guns. So, I don't
23 want to be around them.

24 **MS. BROWN:** Your Honor, I have no further questions.

25 **THE COURT:** All right. Ma'am, you are free to step

1 down. You may remain in the courtroom if you wish, or you
2 may leave.

3 **THE COURT:** Do you have further witnesses?

4 **MS. BROWN:** Your Honor, at this point the defense
5 rests.

6 **THE COURT:** Is there reply testimony?

7 **MS. JOHNSON-LEE:** No, Your Honor.

8 **THE COURT:** Then counsel, let's step up a moment and
9 talk about scheduling before we give further information to
10 the jury.

11 (Whereupon, a bench conference was held in the
12 presence of the jury, but out of their hearing range.)

13 **THE COURT:** All right. Ladies and gentlemen, all of
14 the testimony in the case is closed. There is certainly no
15 need at this hour for us to go forward with arguments and
16 charge. So, we are going to come back in the morning and
17 have arguments, final arguments for the jury, charge on the
18 law, and then you will retire to deliberate tomorrow.

19 So, let's be back tomorrow morning at 9:30. We started
20 at nine the last two days. We will start tomorrow at 9:30,
21 and give counsel time to prepare for closings. So, please be
22 back in your jury room at 9:30 tomorrow.

23 Now, again, the same instructions for your loved ones at
24 home. Please don't discuss the facts of the case. Keep an
25 open mind. You have not heard all of the arguments, nor have

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1 you heard the charge on the law. Nave a nice evening, and we
2 will see you tomorrow at 9:30. Let's all remain where we are
3 while the jury departs.

4 (Whereupon, the jury exits the courtroom at
5 5:06 p.m.)

6 **THE COURT:** Now, at the close of all the testimony,
7 are there motions from either side of the case. From the
8 defense?

9 **MS. BROWN:** Your Honor, at this time I am just going
10 to renew my motion for a directed verdict related to the
11 issue of murder. Same argument that I made earlier dealing
12 with the issue of malice aforethought.

13 **THE COURT:** All right. For the same reason the court
14 will deny that motion.

15 Are there any motions from the state?

16 **MS. JOHNSON-LEE:** Not related to the trial itself,
17 Your Honor. As to the testimony. The only motions will be
18 for the charge conference.

19 **THE COURT:** All right. Let's stand down and we will
20 have a charge conference in the back. Ladies and gentlemen,
21 this court is now adjourned until 9:30 tomorrow morning.

22 (Whereupon, the court concludes the day at
23 5:09 p.m. on Wednesday, April 20, 2010.)

24 **-- END OF DAY THREE OF TRIAL --**

25 (Whereupon, court resumes these proceedings

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1 at 9:11 a.m. on Thursday, April 21, 2011.)

2 -- DAY FOUR OF TRIAL --

3 THE COURT: All right. Counsel, let's go back on the
4 record. Good morning, everyone.

5 MS. JOHNSON-LEE: Good morning.

6 THE COURT: When we left yesterday, we had a charge
7 conference that was taken off the record. We had an issue at
8 the end of the conference which the court determined that I
9 would consider overnight, which was; whether or not the
10 charge voluntary manslaughter along with the charge of murder
11 as a lesser included offense. The state's position was that
12 they wanted the charge. The defendant's position was that
13 they did not.

14 The court has had the opportunity to review that issue,
15 and I am going to state my ruling, and the reasons for them,
16 and give each of you an opportunity to respond here outside
17 of the presence of the jury before we charge.

18 I have reviewed in response to this issue the cases of
19 The State versus Belcher, B-E-L-C-L-E-R, which is cited at
20 685 SE2d 802. The case of The State versus David Dwight
21 Smith, which is a 2010 case. It is a February 7, 2010 case
22 from South Carolina Supreme Court. And also, most
23 importantly, at least in terms of the court's decision, the
24 State versus Marvin Starnes, which is cited at 698 SE2d 604.
25 These cases provided to me by defense counsel. And the issue

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1 is addressed very clearly in the case of The State versus
2 Starnes. The law is, if the fact is disclosed, any basis for
3 a voluntary manslaughter charge, and that charge must be
4 given. Of course, there is some similarity to self-defense
5 and involuntary manslaughter. Through the years I think it
6 has been jumbled somewhat. But, of course, the court finds
7 that in this facts, the facts before me, the charge of
8 voluntary manslaughter must be given. The defendant has
9 asserted self-defense. And taking the facts as they were
10 before this court, is for the jury to determine what the
11 facts actually are. The facts based on the decision that the
12 court has heard is: Number one. The defendant was in fear
13 of --- based upon threats allegedly made by the victim.
14 Again, this is taken in the light most favorable to the
15 defendant at this juncture, that when the victim was
16 approached, the defendant --- the victim either had his hand
17 in his back pocket, or reached his hand into or toward his
18 back pocket, which gave the defendant the belief that he was
19 in danger. There is testimony that a weapon was later
20 removed from the victim. Again, this is disputed. But this
21 is taking the facts in the light most favorable to the
22 defendant. All of these may go to voluntary manslaughter,
23 and certainly they go to self-defense as well. But there is
24 no fact in this case that goes solely to voluntary
25 manslaughter instead of involuntary. That was incorrect. It

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1 was voluntary manslaughter. And that is, that the deceased
2 had two bullet wounds, both of which were to the head. One
3 would have, and it appears from the evidence and the
4 testimony of the pathologist, that either one of those would
5 have incapacitated the defendant. And the second shot would
6 have been shot while the defendant was down on --- excuse me,
7 while the victim was down. I mis-stated that. That would
8 have incapacity the victim, and the second shot was fired
9 while the victim was down on the sidewalk, on the ground.
10 For that reason the court finds that the second shot, which
11 is at issue here and in evidence, is clearly a fact for which
12 a voluntary manslaughter charge must be given. And while
13 that occurred in the sudden heat of passion, upon sufficient
14 legal provocation, and whether the defendant has lost his
15 reason is for the jury to determine. But the court finds it
16 appropriate to charge the lesser included offense to the
17 jury.

18 Now, does either side wish to respond? You are not
19 required to respond, but do you have anything you wish to
20 state for the record at this juncture? First, from the
21 defense?

22 **MS. BROWN:** Yes, Your Honor. Thank you, Your Honor.
23 I would like to state before I begin a response directly to
24 the cases that you just referred to, Your Honor. I would
25 like to remind the court that The State of South Carolina

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1 indicted Mr. Cook, December 2nd of last year for voluntary
2 manslaughter. That would be under Docket Number
3 2010GS340907. And the state of South Carolina on Monday
4 elected not to call that case, Your Honor. For whatever
5 reason, she certainly indicted, but did not call the case.

6 However, all the evidence was presented, they went back
7 and the state is now saying well, we want that case. Or now
8 we want that charge. It is our position that they have not
9 presented any evidence in the record at this time to suggest
10 that Mr. Cook at any point lost control, or that he was at
11 possession in his mind that he was out of control at any
12 point. No one testified to that. In fact, it was clear from
13 the state's witnesses that Mr. Cook came down stairs, and
14 just pulled the gun. So, it has nothing to do with control,
15 or the way he was acting, or where he was to be at the time
16 the shots were fired. And he made it very clear that he was
17 in fact afraid. And that is in evidence on this record. Not
18 loss of control. No one mentioned that.

19 I would also like to remind the court that State versus
20 Starnes, indicated that fear itself does not manifest an
21 uncontrollable impulse to do violence, that in fact a person
22 can be impaired. But the issue of voluntary manslaughter
23 does not necessarily warrant that charge. And that is our
24 position.

25 Our position is voluntary manslaughter requires two

1 things. Heat of passion as well as sufficient legal
2 provocation. It is our position that sufficient legal
3 provocation exist. That is where we prepared self-defense.

4 However there is no evidence Your Honor, that states
5 that heat of passion existed on this record. In order for
6 voluntary manslaughter to be in this --- to be granted or
7 charged to the jury, both of the elements should be present,
8 and they are not.

9 **THE COURT:** All right. Anything from the state at
10 this juncture?

11 **MS. JOHNSON-LEE:** Just to point out for the record
12 that in the defendant's video taped statement, he says
13 something to the effect of, before I knew it, I fired a
14 bullet. Which certainly goes to the sudden heat of passion
15 by his own statement, which is in the record.

16 **THE COURT:** All right. And on that same point the
17 court is aware that the defendant was asked in his statement
18 why did he shoot the second shot. And his response to that
19 which may indicate to this jury a temporary loss of reason.
20 The jury may determine there is not a loss of reason.
21 Nevertheless the court finds that there is sufficient facts
22 here for which that charge should go forward.

23 Now, one other thing I would point out. Ms. Brown, if
24 the jury here determines that there is --- Well, however the
25 jury decides this case, the court would intend to dismiss

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1 after argument the manslaughter charge, which may still be
2 out there pending. Because this issue is taken to the jury
3 in this case. Well, whatever they find it should be
4 dispositive of the manslaughter charge, which even though it
5 is not called for trial, it is certainly being taken for the
6 jury. We will take that up at the close of this case, after
7 the jury returns with a verdict.

8 MS. BROWN: Your Honor, I just once again note my
9 objection on the record.

10 THE COURT: All right. Objection so noted. All
11 right. We had agreed yesterday, I believe, that the court
12 would charge first, and then the defendant counsel would
13 charge, and then the state's counsel. Am I correct? What
14 says the defendant?

15 MS. BROWN: Yes, Your Honor.

16 MS. JOHNSON-LEE: Yes, Your Honor.

17 THE COURT: All right. Very good. Then please bring
18 in the jury.

19 (Whereupon, the jury enters the courtroom at
20 9:45 a.m.)

21 THE COURT: Well, good morning ladies and gentlemen.
22 Welcome back to the courtroom. And let me ask, since we were
23 last together, has there been any member of the jury who has
24 had a discussion about the facts of this case with anyone.
25 If so, please raise your hand. Let's let the record reflect

CHARGE ON THE LAW

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1 that no one has raised their hand. Thank you again for
2 complying with the court's request.

3 You will recall at the end of the day yesterday, the
4 defense rested. There was no reply testimony. And thus we
5 have ended the testimonial phase of the case. This morning
6 we come back for argument and charge. I have talked to the
7 attorneys, and they have agreed that the way will proceed
8 this morning is that I will give you the charge on the law
9 first. Then the defendant will argue. And then the state
10 will argue. The state is doing the final argument, because
11 they bear the burden of proof. And that is how we are going
12 to proceed.

13 So, let me have your attention for a few moments, if I
14 may, while I give you the charge on the law.

15 **CHARGE ON THE LAW**

16 **THE COURT:** As you are aware, the state has charged
17 the defendant, Clarence Kendell Cook with murder, and the
18 possession of a weapon during the commission of a violent
19 crime.

20 Of course we have been throughout the trial of this
21 case. I have been noticing or looking out over the
22 courtroom, I try to notice and look at the jury as well. I
23 never try to stare at you, I don't want you to feel
24 uncomfortable, but I gauge you for comfort level, for focus,
25 or interest, and throughout the trial, you may recall when we

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1 started on Monday, I mentioned to you that I knew that
2 everyone of you had a busy life before you ever got your
3 summons for jury service. And I want to just extend my
4 thanks to you for setting aside your busy life, because every
5 time I have looked over at you during the course of this
6 trial, you have sat just as you are now with close focus,
7 what I call wrapped attention. And I appreciate that level
8 of commitment, to set aside your busy life, because I know
9 whenever you retire to decide the facts on the charge of
10 murder, as well as possession of a weapon during the
11 commission of a violent crime, you will be in a position to
12 do that, because you have set aside your busy life and given
13 this case your utmost attention. Thank you for that level of
14 commitment to our justice system.

15 Now, as we stated at the beginning, the defendant plead
16 not guilty to these charges. You heard that. And by that
17 plea denies the allegations that are contained in those
18 indictments. Now, as I recall discussing with you, please
19 remember the state is sitting at the table closest to you.
20 They are the party with the burden of proof. And the
21 indictments which are set forth in this case are not
22 evidence. They are simply a set of allegations by which the
23 state commences a prosecution against an individual. The
24 evidence which you should consider in this case is what came
25 from this witness stand. That is the testimony of the

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1 witnesses right here under oath in your presence, as well as
2 any exhibits that were put in the record during the course of
3 the trial. And you will have those exhibits with you when
4 you retire to deliberate. And please remember, the defendant
5 comes into this courtroom clothed with a presumption of
6 innocence. And that presumption of innocence continues with
7 the defendant, and it continues throughout the case; and it
8 entitles the defendant to a verdict of not guilty, unless and
9 until it is dispelled by you or dispelled by evidence which
10 convinces you beyond a reasonable doubt, that the defendant
11 is guilty of one or more of the offenses charged. And the
12 state has proved each and every element of that particular
13 charge beyond a reasonable doubt.

14 Now, you may remember also when we first started, I
15 discussed that under our constitution you are the judges of
16 the facts. You are the sole fact finder. And I want to say
17 to you again throughout this case, as I resolve objections or
18 attempted to manage the case, in no way have I intended to
19 favor one side or the other. Because, I want to say to you
20 again, I don't have a position on the facts, because you are
21 the judges of the facts. So, please, again take no
22 inferences from any rulings you may have seen the court make
23 during the course of this trial. You may also remember that
24 I discussed with you that as the judges of the facts, you
25 will have to gauge the credibility and believability of

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1 witnesses, and witnesses will come in and say things that are
2 inconsistent or even mutually exclusive. Well, you have to
3 determine whether or not that has happened here. If it has
4 happened, then you have to determine credibility or
5 believability of these witnesses to determine which witness
6 gives the facts that are believable and credible. And let me
7 say, we talked about the fact that there are several things
8 that you may look to, several facts that you may consider in
9 determining credibility and believability. And there is no
10 need to be duplicative and go over those again. But I just
11 simply say this. Remember, we do this every day. We all do
12 it. You should apply those same facts that you use here in
13 the courtroom to determine the credibility and the
14 believability of the witnesses. But, let me say in deciding
15 what the facts are, you can believe as much or as little of
16 any one witness' testimony you think proper. You can believe
17 one witness against a whole group of witnesses, or you can do
18 just the opposite. You may believe part of what a witness
19 says, and completely disbelieve the rest. I will also say to
20 you, the fact that some testimony may not be directly
21 controverted, doesn't mean that you have to accept it as true
22 and undisputed. Because you must still gauge the credibility
23 and believability of the witness through which it comes to
24 determine the weight you should give that testimony. Keeping
25 in mind throughout this process of deciding the facts you

1 have one objective, and that is to seek and find the truth
2 regardless from which source, which side of the case, which
3 witness that may come.

4 Now, ladies and gentlemen, there are generally two types
5 of evidence in case such as this. There is direct evidence
6 and then there is circumstantial evidence. Direct evidence
7 is the testimony of a person who asserts or claims to have
8 actual knowledge of a fact, such as an eye witness who will
9 testify about what they saw, or heard, or did.

10 Circumstantial evidence on the other hand is indirect
11 evidence. Circumstantial evidence is proof of a chain of
12 facts and circumstances indicating the existence of yet
13 another fact. I will tell you the law makes no distinction
14 between the weight or value to be given to either direct or
15 circumstantial evidence, nor is a greater degree of one
16 required over the other. You should consider all of the
17 evidence and weighing all of the evidence in this case. And
18 after weighing all of the evidence, if you are not convinced
19 of the guilt of the defendant beyond a reasonable doubt, you
20 must find the defendant not guilty.

21 Now, in this courtroom you also heard testimony of
22 witnesses who came in who had special knowledge, or skill, or
23 experience, or training, or education in a particular field,
24 and they came in and gave their opinion as an expert in a
25 manner in which he or she was skilled. In determining the

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1 weight to be given those opinions, you should consider the
2 qualifications and the credibility of the expert, and the
3 reasons the bases they gave for their opinion. You are not
4 bound by those opinions. You give them the weight, if any,
5 you deem they are entitled to. The value and effect of an
6 expert's testimony is a matter, always a matter to be solely
7 estimated by you, ladies and gentlemen of the jury. No mere
8 opinion of a witness, an expert witness can be accepted in
9 and of itself as truthful and reliable, but it must be
10 weighed by you and convince you of your judgment beyond a
11 reasonable doubt, and in the same course and effect of any
12 other fact proven in this case before we can rely upon it as
13 a basis for conviction. Again, you must consider this
14 testimony in the same manner you would consider any other
15 testimony and you give it the weight you deem it to be
16 entitled to. Such testimony is not given for the purpose of
17 controlling your judgment, but for assisting you in finding
18 matters of fact that are before you, but are in the purview
19 of that expert.

20 Now, I talked to you a moment about going in and
21 weighing the evidence in the case. I have been back in the
22 jury room, not while you have been back there. But I know
23 you have noticed that there is not some set of scales to
24 weigh the evidence on. Well, that is obvious, because it is
25 clearly a mental process. But, I will say this to you about

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1 that, ladies and gentlemen. The evidence that weighs with
2 you is evidence that convinces you of its truth. Again,
3 regardless from which witness or what side of the case that
4 evidence may come.

5 Now, the same constitution that makes you the judge of
6 the facts makes me the judge of the law here in the
7 courtroom. And I will tell you, I have lived in a small town
8 all of my life, I know that there is a lot of bad information
9 out on the street about what the law is on any particular
10 subject, no matter what that subject may be. So, I am going
11 to ask you to set aside please, any preconceived notions you
12 may have about what the law is on a particular subject, or
13 even what you or I think might be a better idea. Just accept
14 the law as I have given it to you, which I have reviewed this
15 with counsel. And I have reviewed the law and I am giving it
16 to you correctly. Please accept it as I give it to you.
17 Apply it to the facts as you find them, and if you do that,
18 then you will reach a verdict which is just and which is fair
19 in this case.

20 Now, I want to tell you ladies and gentlemen, in a
21 criminal prosecution of this type, as we have already
22 discussed, the state has the burden of proof. And the
23 defense has no burden, the burden never shifts over to the
24 defendant. And the defendant is in fact presumed innocent.
25 In this state, according to our constitution, the prosecution

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1 must prove its case to the standard of proof we call beyond a
2 reasonable doubt before a finding of guilt may occur. If the
3 state fails to meet this high burden, then the defendant is
4 entitled to an acquittal.

5 Now, okay, so you say well, what is a reasonable doubt?
6 And I am going to start by telling you what it is not. It is
7 not an imaginary or fanciful doubt, or a weak doubt. It is a
8 substantial doubt. It is a doubt that the words imply. A
9 doubt for which you can give or assign a reason based on the
10 testimony and evidence in the case. A reasonable doubt is
11 not any sort of a doubt. You and I know from everyday life
12 experiences that you may have a sort of a doubt about any
13 matter that arises, no matter how trivial it may be, such as
14 what pair of shoes to wear to an event, or what tie to wear
15 to an event. That is not a reasonable doubt. A reasonable
16 doubt is a doubt which makes an honest, sincere, conscious
17 juror, in search of the truth, hesitate to act. Proof beyond
18 a reasonable doubt is proof which leaves your firmly
19 convinced of the defendant's guilt. If you have a doubt for
20 which you can give or assign a reason as to the guilt of the
21 defendant, then he is entitled to a verdict of not guilty.
22 Reasonable doubt may arise from evidence which is in the
23 case, or from the lack or absence of evidence in the case.
24 You the jury, must make the determination of whether or not
25 reasonable doubt exist as to the guilt of this defendant in

1 these two cases.

2 I tell you that the very fact that the jury goes back
3 and engages in a full and free discussion of the issues of
4 guilt or non guilt in this case, with the normal
5 conversational ebb and flow on these issues does not normally
6 mean that reasonable doubt exist in this case or in any other
7 case for that matter.

8 Now, let's talk about criminal intent. Now criminal
9 intent is a necessary element of each crime, and must be
10 proved by the state beyond a reasonable doubt. Criminal
11 intent is always a matter that must be determined by the jury
12 from the circumstances that surround a situation. You and I
13 know that there is no way to prove intent to some
14 mathematical certainty. There is no way that science will
15 allow us to look into someone's mind and determine what they
16 had in mind at a particular moment. So, the law says that
17 criminal intent may be inferred from the circumstances that
18 are shown to have existed both before and after the fact.
19 This is how you the jury, make a determination of whether or
20 not the element of criminal intent is present. Criminal
21 intent is a state of mind that operates jointly with an act
22 or a omission in the commission of a crime. Criminal intent
23 is a mental state of conscious wrongdoing. So, it is up to
24 you the jury, to determine what the defendant intended to do
25 based on the circumstances proved to have existed. I tell

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1 you, the state must prove criminal intent beyond a reasonable
2 doubt, just as the state must prove every other element of
3 these charges beyond a reasonable doubt.

4 Now, I want to define for you the charge of murder. As
5 you are aware, the defendant is charged with murder. In
6 order to prove this charge, the state must prove beyond a
7 reasonable doubt, that the defendant killed another person
8 with malice aforethought. Malice is hatred, or ill will, or
9 hostility towards another person. It is the intention of
10 doing a wrongful act without just cause or excuse, and with
11 an intent to inflict an injury, or under circumstances that
12 the law would infer an evil intent.

13 Malice aforethought does not require that malice exist
14 at any particular time before the act was committed. But
15 malice must exist in the mind of the defendant just before
16 and at the time that the act is committed. Therefore, there
17 must be a combination of previous evil intent in the act
18 itself.

19 Malice aforethought may be expressed or it may be
20 inferred. And under these terms expressed and inferred ---
21 they don't mean different kinds of malice, but merely a
22 manner in which malice may be shown or have existed, that is
23 either by direct evidence or by inference from the facts and
24 circumstances which are proved.

25 Expressed malice is shown when a person speak words that

1 express hatred or ill will for another, or when a person
2 prepares beforehand to do an act that is later accomplished,
3 which for example lying in wait for a person or some other
4 act of preparation that goes to show that the deed was within
5 the defendant's mind. Well, that would be expressed malice.

6 Malice may be inferred however from conduct showing a
7 total disregard for human life. Inferred malice may also
8 arise when the deed is done with a deadly weapon. However
9 the use of a deadly weapon standing alone is not sufficient
10 to prove malice. A deadly weapon is any article or
11 instrument likely to cause death or great bodily harm.

12 Now, also I am going to explain to you about the
13 definition of murder. But under our law, any greater
14 offense, which murder is the greater offense, may also
15 include what we call a lesser offense. And while that sounds
16 complicated, it really is not. What it means is the charge
17 of murder includes also the lesser offense of voluntary
18 manslaughter. Although the lesser crime is not charged in
19 the indictments that are before you, you may consider those
20 charges rather than the greater charge of murder. And
21 obviously, when a defendant is indicted for murder, he may
22 be convicted of a lesser charge of voluntary manslaughter if
23 the jury finds the evidence warrants it. So, I want to
24 discuss with you the requirements of voluntary manslaughter.
25 And I will tell you that there is a verdict form, and I will

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1 discuss this with you right before you deliberate. It has
2 questions in such a way to determine --- for you to determine
3 that if you do not find the defendant guilty of murder, then
4 you can consider --- That is, if you do not find him guilty
5 of murder, then you must consider a lesser included offense
6 of voluntary manslaughter.

7 Now, if again you find that the state has failed to
8 prove the greater offense of murder beyond a reasonable
9 doubt, then you consider whether the state has proved beyond
10 a reasonable doubt the lesser offense of voluntary
11 manslaughter. To prove voluntary manslaughter, the state
12 must prove beyond a reasonable doubt, that the defendant took
13 the life of another person in the sudden heat of passion
14 based on sufficient legal provocation. Both the heat of
15 passion and the sufficient legal provocation must be present
16 at the time of the killing to constitute voluntary
17 manslaughter. Sudden heat of passion may for a time affect
18 the person's self-control, and temporarily disturb a person's
19 reason. The sudden heat of passion must be the type that
20 would make an ordinary person unable to coolly reflect on his
21 actions, and would produce an uncontrollable impulse to do
22 violence. Sufficient legal provocation must be the type that
23 would make a person of ordinary reason and caution to become
24 enraged and lose control temporarily. The provocation
25 needed for voluntary manslaughter must come from some act

1 that is of or related to the victim. Now, words alone,
2 however vulgar they may be or insulting are not enough to be
3 sufficient legal provocation. When death is caused by the
4 use of a deadly weapon, the words must be accompanied by some
5 overt threatening act which could produce the heat of
6 passion. The exercise of a legal right, no matter how
7 offensive it is to another is never sufficient legal
8 provocation for voluntary manslaughter. If the heat of
9 passion had cooled, or if there were enough time between the
10 provocation if any, in the killing for the passion of a
11 reasonable person to cool, the killing would not be voluntary
12 manslaughter. In deciding whether a reasonable person would
13 have had enough time to cool off, you should consider all of
14 the circumstances surrounding the kill. You may consider the
15 nature of the provocation, if any. The defendant's mental
16 and physical state. And the circumstances and the
17 relationships between the parties. I will tell you ladies
18 and gentlemen, that if considering the verdict charge and the
19 lesser charge, if you have a doubt as to whether there is
20 proof of the murder charge, you must resolve that in favor of
21 the defendant, and find him --- that is find that the ---
22 that the state has proved the lesser charge, but you may not
23 find the defendant guilty of any charge unless the state has
24 proved that charge, and each element of that charge beyond a
25 reasonable doubt.

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1 Now, let me also define for you the possession of a
2 weapon during the commission of a violent crime. The
3 defendant is charged with possession of a weapon during the
4 commission of or attempt to commit a violent crime. The
5 state must prove beyond a reasonable doubt, that the
6 defendant was in possession of a firearm, or visibly
7 displayed what appeared to be a firearm during the commission
8 of a violent crime.

9 A firearm means any machine gun, automatic rifle,
10 revolver, pistol, or other weapon which is designed to or may
11 readily be converted to expel a projectile. In order to find
12 the defendant guilty of possession of a weapon during the
13 commission of a violent crime, you must also find the
14 defendant guilty of either committing a violent crime or
15 attempting to commit a violent crime. Both murder and
16 voluntary manslaughter are considered violent crimes in South
17 Carolina. But, of course, if you find the defendant not
18 guilty of murder and not guilty of voluntary manslaughter,
19 then the defendant is automatically not guilty of carrying a
20 weapon during the commission of a violent crime, because you
21 found that there has been no commission of a violent crime.

22 Now, the defendant has raised the issue of self-defense
23 in this case, and let's talk a little bit about that a little
24 bit. Self-defense is a complete defense. If it is
25 established, you must find the defendant not guilty of the

1 charges. The state has the burden of disproving self-defense
2 by proof beyond a reasonable doubt. If you have a reasonable
3 doubt as to the defendant's guilt after considering all the
4 evidence, including the evidence of self-defense, then you
5 must find the defendant not guilty. Or, on the other hand,
6 if you have no reasonable doubt of the defendant's guilt
7 after considering all of the evidence, including the evidence
8 for self-defense, then you must find the defendant guilty.

9 The following elements are required to establish self-
10 defense.

11 Number one. First, the defendant must be without fault
12 in bringing on the difficulty. If the defendant's conduct is
13 the type which was reasonable and calculated to and did
14 provoke a deadly assault, then the defendant would be at
15 fault in bringing on the difficulty, and would not be
16 entitled to an acquittal based on self-defense.

17 I further charge you that self-defense is not available
18 to a person who uses language which is so contentious that a
19 reasonable person would expect to bring on a physical
20 encounter which did actually contribute to the physical
21 encounter.

22 All right. Number two. Imminent danger. The second
23 element of self-defense is that the defendant must have been
24 in actual emanate danger of death or serious bodily injury,
25 or that the defendant actually believed he was in emanate

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1 danger of death or serious bodily injury. If the defendant
2 was actually in imminent danger, it must be shown that the
3 circumstances would have warranted a person of ordinary
4 firmness and courage to strike a fatal blow to prevent death
5 or serious bodily injury. If the defendant believed he was
6 in imminent danger or death, or serious bodily injury, it
7 must be shown that a reasonably prudent person in ordinary
8 firmness and courage would have had the same belief under
9 those circumstances. In deciding whether the defendant
10 actually was or believed he was in imminent danger of death
11 or serious bodily injury, you should consider all of the
12 facts and circumstances that surround the crime, including
13 the physical conditions and characteristics of the defendant
14 and the victim.

15 Now, the defendant does not have to show he was actually
16 in danger. It is enough if the defendant believe he was im
17 imminent danger, and a reasonably prudent person of ordinary
18 firmness and courage would have had the same belief under the
19 same circumstances. The defendant has the right to act on
20 appearances, even though the defendant's beliefs may have
21 been mistaken. It is for you to decide whether the
22 defendant's fear of imminent danger on death and serious
23 bodily injury was reasonable and would have been felt by an
24 ordinary person in the same situation. I will tell you that
25 words accompanied by hostile acts may, depending on the

1 circumstances, establish self-defense. The relative sizes,
2 and ages, and weights of the defendant, and the victim may be
3 considered by you in deciding the apparent or actual need for
4 force and self-defense, and the amount of force that was
5 needed. Threats made by the victim may also be considered in
6 determining whether the defendant actually was or believed he
7 was in imminent danger. Furthermore, the intoxication of the
8 victim may be considered in deciding whether the defendant's
9 fear of death or bodily harm was reasonable.

10 The third thing that must be --- the third element which
11 must be present for self-defense, is that the defendant had
12 no other probable road to avoid the danger and death of
13 serious bodily injury than to act as the defendant did in
14 this particular incident. We call this a duty to retreat.
15 However, the defendant has no duty to retreat if by doing so
16 the danger of being killed or suffering serious bodily injury
17 would have increased.

18 Now, a person cannot be required to make an exact
19 calculation as to the degree or amount of force that may be
20 needed to avoid death or serious bodily harm. Therefore, in
21 self-defense the defendant has the right to use the force
22 needed to avoid death or serious bodily harm. The force used
23 in self-defense does not have to be limited to the degree or
24 amount of force used by the victim. The defendant has the
25 right to use so much force as appeared to be necessary for

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1 complete self-protection in which a person of ordinary reason
2 and firmness would believe to be needed to prevent death or
3 serious bodily harm.

4 All right. Let's talk a little bit more about the
5 testimony in the case. Now, you all are aware that the
6 defendant in this case did not testify. You have heard the
7 evidence. And I want to say to you the fact that the
8 defendant did not testify is not a fact to be considered by
9 you in any way in deliberations and in your consideration of
10 the question of guilt or innocence of the defendant. It must
11 not be considered by you in any manner whatsoever. The
12 defendant has a constitutional right to remain silent. And
13 the assertion of that right must not be considered by a jury
14 in your deliberations. I repeat, under the oath that you
15 took when we began this case, you are to draw no conclusion
16 whatsoever from the fact that the defendant did not testify.
17 In fact, that should not even be discussed in your jury room.
18 The burden of proof, as I have stated to you from the
19 beginning, is always on the state. It never shifts to the
20 defendant. He is not required to prove his innocence. And
21 the burden remains on the state to be proven beyond a
22 reasonable doubt.

23 Now, also in the course of this trial, a statement which
24 was alleged to have been made by the defendant is admitted
25 into evidence in the case. Now, while the court has

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1 determined that the statement was admissible, I instruct you
2 that you may draw your decision of whether or not the
3 defendant made the statement. If the defendant did make the
4 statement, you must then determine whether that statement was
5 made by the defendant voluntarily, and of his own free will.
6 This means the statement was not caused by pressure, or
7 force, or fear, or threats, or coercion, or intimidation, or
8 by hope, or promise of leniency, or some reward of any kind.
9 In determining whether the statement was voluntary, you
10 should consider both the characteristics of the defendant and
11 the details of the questions. Some of the factors you must
12 consider are, the age of the defendant. The defendant's
13 education or lack of it. Number three, the defendant's
14 mental ability or capacity; the defendant's IQ or level of
15 intelligence. The defendant's background and environment,
16 the place and the length of attention. The nature of the
17 question, and the advice or the lack thereof to the defendant
18 of his constitutional rights. Including, but not limited to,
19 the right to remain silent. That any statement could be used
20 against him in a court of law. The right to have a lawyer
21 present. That if he could not afford a lawyer one would be
22 appointed for him without any costs. That he could stop
23 making a statement at any time. You must carefully consider
24 all of the surrounding circumstances before you give any
25 weight of alleged statement. The state has the burden of

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1 proof beyond a reasonable doubt that the statement was
2 voluntary. If you determine that it was, you may give the
3 statement any further consideration you deem prior. You must
4 determine what the weight if any, should be given to the
5 alleged statement. But, if you determine that the alleged
6 statement was not free and voluntary from the defendant, you
7 should not consider the statement at all.

8 All right. Now, I am going to end in just a moment and
9 turn this over to the lawyers. But, let me just make this
10 comment to you. Before I do, in a few minutes, you are going
11 to retire and begin your deliberations. Mr. Foreperson, and
12 ladies and gentlemen of the jury, as you retire to begin your
13 deliberations, I am going to impress to you a hope that I
14 have that you are mindful of the importance of your
15 responsibility. And I know you are. And you may remember
16 Monday when we gathered here and talked, I commented during
17 jury qualifications that you could only be required to serve
18 one time in a three year period in the same court. There is
19 a reason for that. It is because it is a difficult service.
20 It is a difficult task. It requires you and I to free our
21 minds of all outside and improper influences, because you and
22 I are acting for the community in seeing to it that every
23 trial here is fair, and every verdict is just.

24 Now, let me say to you, you have probably observed
25 throughout the trial that the presiding officer, which is me,

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1 is referred to as Your Honor. I know you know that is not
2 some title given to me individually. It is a title that is
3 given to the position that I am privileged to hold. Because
4 this court is intrusted with the honor of this community,
5 county, state, and indeed this nation, to see to it that
6 every trial here is fair, and every verdict is just.

7 Now, in a few moments you are going to take the care of
8 the honor of this community, county, state and nation into
9 the jury room with you as you decide this case. And, when I
10 say this to you, please understand, I am not telling you how
11 you should decide this case. That is not my point at all.
12 My point is this. As the presiding officer of this court, it
13 is of vital importance to me that whatever verdict you reach
14 be the result of you going back into your jury room,
15 confining your considerations to the evidence put forth right
16 here in this courtroom, weighing it fairly, weighing it
17 impartially, and applying it to the law that I have just
18 given you in this charge. I have every confidence that is
19 what you will do. And if that is what you do, then I know
20 that your verdict will represent the truth in this case. I
21 say to you that everyone here in this case, both sides of
22 this case are entitled to justice, both the state and the
23 defendant. Nothing more and nothing less. We owe no support
24 to any party. We owe no sympathy to any party. And again,
25 ladies and gentlemen, I am of the confirmed opinion that

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1 whatever verdict you reach will represent truth and justice.

2 Now, after the lawyers argue, I am going to wait until
3 their arguments are concluded and I will be back with you at
4 that time before you retire to deliberate.

5 At this time the court recognizes defense counsel for
6 closing argument.

7 **MS. BROWN:** May it please the court?

8 **THE COURT:** Yes ma'am.

9 **MS. BROWN:** Madame Solicitor.

10 **CLOSING ARGUMENTS BY MS. BROWN**

11 **MS. BROWN:** Good morning, ladies and gentlemen.

12 Before I begin my summation, I just want to take an
13 opportunity to thank you all for serving on this jury. Your
14 presence this week is what makes our criminal justice works.
15 So, I want to thank you.

16 Now, I will apologize in advance because my closing
17 remarks will take some time. I know you have been here this
18 entire week. But, as his honor has indicated, and as I have
19 said on Monday, this is a very important day for two
20 families. It is important for Mr. Hayes' family, and it is
21 also importance for Clarence's family. And you guys have
22 been given a lot of information this week. And, of course, I
23 am going to try my best to interpret what I observed as well
24 as the evidence that was given to you during the course of
25 this trial.

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1 Now, at the beginning of this trial I mentioned three
2 things.

3 The first thing I told you is that I was not certain the
4 State of South Carolina even believed what they are telling
5 you. Why is that? Well, at the beginning of this trial we
6 had four indictments. And I am going to say them really
7 quickly. One is murder, second was voluntary manslaughter,
8 third was possession of a firearm during the commission of a
9 violent offense. And fourth, was possession of a firearm
10 unlawfully. Today, we have two.

11 Now, that is really --- the number of indictments we
12 have today is not important for why I think the state don't
13 believe it theory. All you have to do is look at what the
14 state did, what they did not do, and what they said.

15 Now, let's begin with what the state told you. On
16 Tuesday, Ms. Sellers introduced parts of an interview
17 exchange between Sergeant Hepburn and Ms. Kim Brown. And, if
18 you remember, there was a Reneka McQueen that was also in
19 that video. I don't know if you could see her, but she was
20 talking. There was a female. And, she is a member of the
21 Solicitor's Office. And it appeared, based on what I saw,
22 that Sergeant Hepburn and Reneka McQueen seemed to have some
23 problems with what Ms. Kim Brown was in fact telling them.
24 In fact, I believe Ms. McQueen say something, and this is not
25 verbatim, something to the extent --- Well, it is going to be

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1 hard for the jury to believe this man just walked down the
2 steps and decide to shoot this guy for no reason. Now, that
3 is in the video. It is in evidence. It is an exhibit. You
4 are welcome to go back and listen to it again if you need to.
5 Well, Ms. McQueen is right. It is hard for any jury to
6 believe that, because it does not make any sense.

7 What other indicators exist to me that convince me that
8 The State of South Carolina don't believe it theory. Well,
9 let's consider the information provided in the incident
10 reports. Let's start there. If law enforcement believed
11 that this was a murder, then why didn't they include all of
12 the evidence good and bad. Everything. Why is it that a
13 murder case indictment is three pages long, and it is not
14 even three full pages? Well, according to Officer Young
15 yesterday, I now why. And this is verbatim. "I wrote the
16 stuff I wanted to put in my supplement." That is what she
17 wrote. Well, is that fair to both sides? One of the
18 responsibilities of law enforcement officer is to give us a
19 complete objective, factual, detailed report. An officer
20 should not be allowed to write what they want to write in a
21 report. But should write what they observe based on their
22 investigation, what they in fact came across. That didn't
23 happen in this case. Well, let's say, why not? Well, I
24 think they have taken a position that we are only going to
25 get in this incident report any information that suggests

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1 that this is in fact a murder. And why do I say that? Let's
2 think about the things that were left out? Taylor Locklear
3 came here, and she testified, she gave a statement. That was
4 not in the report. Chasity Carter gave an interview.
5 Nothing she said was in that report. Officer Young met with
6 Clarence Cook for nearly one hour, and she stated he kept
7 going on, and on, and on, and on, and on, and he was talking
8 about everything. But, did she say anything at all that he
9 said? Was it in that report? He said, I was protecting
10 myself. He said I was in fear. He said that I walked down
11 the steps and this guy immediately approached me. He said,
12 he had his hands in his pocket. He said, I only fired a shot
13 only after he reached for his. Was any of that in the
14 report? He said that Mr. Hayes jumped up and approached him
15 in a threatening manner. He also said, and I believe the
16 witnesses even supported this, which is Mr. Hayes made the
17 first comment. None of that is in the report. What about
18 the issue of the text messages? Not in the report. Why not?
19 Well, Officer Young made it very clear, it is not her
20 responsibility. Well, whose responsibility was it? Officers
21 that testified before Officer Young said she was the
22 investigating officer, or the lead officer, or whatever
23 officer you want to call it. The point is, she sat here this
24 entire trial next to the Solicitor, this is her case. She
25 was responsible. Lastly, the state only interviewed and

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1 located witnesses after they received information that people
2 will say, well guess what? Ms. Brown took a gun off him.
3 Then they decide well, we need to locate witnesses that are
4 going to say, we didn't see that. So, what did they bring
5 here? Ms. Deborah Carter. The only problem with saying that
6 you were there the whole time, is actually being there. It
7 is hard to be somewhere and not see what others saw. And
8 also not being questioned when others were in fact
9 questioned. Ms. Debra Carter claimed she was present the
10 entire time after the shooting. However, no one saw her,
11 even the state's witness DeShawn Bland, he said he didn't see
12 her out there when Ms. Brown was in fact near Mr. Hayes. In
13 fact, the incident report told you that three people were
14 present when law enforcement arrived. That was Mary Davis,
15 Terrance Bridges, who was here, and Ms. Kim Brown. In fact,
16 where is Ms. Mary Davis? She isn't here.

17 Well, then again, Marquis Short, my witness, the defense
18 witness did say he saw Ms. Carter, but he said she came long
19 after the items were taken off of Mr. Hayes. Well, one last
20 thing about Ms. Carter. According to her, she was there when
21 Officer Covington arrived, and he was, according to her, the
22 first officer on the scene. But you guys were here two days
23 ago. Officer Covington was not the first officer. You guys
24 heard the testimony. Ms. Tonya Williams from 911 said the
25 first officer was Cooper, the second officer was Williams,

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1 the third officer was Covington. You guys heard the
2 testimony. So, was she there or wasn't she there? Well, you
3 heard from Ms. Stubbs, and she is the property manager, and
4 she made it clear that there may be a problem between Ms.
5 Carter and Clarence at some point. She testified to that.
6 And then Ms. Carter testified that she was a friend of Ms.
7 Kim Brown. What about the other witness they located, the
8 one after Marquis Short, who said, I saw some stuff removed
9 off of his body. DeShawn Bland, and what did he tell you?
10 He heard three gunshots. He also told you that Ms. Brown
11 left Mr. Hayes to get a rag to place over the body. He
12 mentioned that Clarence made some words as Clarence was
13 running by. Now, we know he saw things that did happen. No
14 one mentioned a rag placed over the body. We also know that
15 he heard things that didn't happen, because no one mentioned
16 three gunshots. He is the only person.

17 Marquis, however said, I heard two gunshots, and in fact
18 saw Clarence running, and in fact, I didn't hear him utter
19 any words at all. Now, who do you believe, the person that
20 heard three shots, or the person that heard two? Those are
21 reasons I believe the state has failed to either prove their
22 own theory. They question the believability of their own
23 star witness, Ms. Kim Brown. They failed to give you a
24 complete report of what actually happened in this case, for
25 whatever reason. And, also they only looked for witnesses

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1 after they thought, well, you might have a problem with this
2 case. So, now it seems to me that they are now putting
3 together a case, not investigating one.

4 Now, the second thing I told you on Monday is this case
5 is like a puzzle. And, it is our job as officers of this
6 court to try to give you as much information possible so you
7 can put that puzzle together.

8 So, at this time I want to see if Ms. Sellers can please
9 join me so we can put these pieces together.

10 (PAUSE.)

11 Now, whenever you have a puzzle, of course you have a
12 whole bunch of pieces, and we are going to put all of this
13 stuff together.

14 The first piece of this puzzle is back in the beginning.
15 Where did this case begin? I think it started, and Mr. Cook
16 told you it started from him testifying in this North
17 Carolina case. That happened forty-three days before the
18 shooting. So, we've got Clarence testifying in North
19 Carolina, in April of last year. Then what happened? You
20 have Mr. Michael Troutman, who was his defense attorney who
21 came here. He testified to you that Clarence in fact,
22 informed him that there was in fact, some threats. He called
23 him to say that. He was concerned about his testimony. He
24 was concerned about retaliation. And what did Michael
25 Troutman told you, he contacted the district attorney

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1 personally. He got on the phone. So, the District Attorney,
2 Walt Jones was informed of these threats as well.

3 And the third thing that happened is that you heard
4 testimony that Clarence was in fact a snitch. And I started
5 off telling you that this is where this begin. A snitch and
6 stuff. I don't even understand the concept of snitch. You
7 know, if you know something you should in fact tell it. But,
8 you heard all the state witnesses. People snitching about
9 this, and people snitching about that. I have no idea what
10 that means, but of course it caused confusion in this case.
11 He was referred to, according to the witnesses, as a snitch
12 from Mr. Hayes. Who told you that? Jimmy Bridges told you
13 that, he heard the word many times. He testified as well as
14 Chasity.

15 Chasity testified, and that is in fact Mr. Cook,
16 Clarence girlfriend. She testified that I contact and I
17 spoke to Officer Deborah Young. I went to Sav-Way where she
18 works at on the weekend. And I was trying to in fact, tell
19 her that we have problems in the neighborhood. According to
20 her, she was talking about drugs. Now, think about this for
21 a second. Was that in the incident report? No. I guess
22 that is one of the things missing. Young decided she didn't
23 want to put it in as well.

24 Mr. Troutman once again testified that Clarence
25 expressed concern about retaliation. He traveled over two

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1 hours to tell you that. There was testimony that the
2 problems seem to occur between Clarence and Mr. Hayes, only
3 after he testified in North Carolina. And then you had Jimmy
4 Ridges that testified. And what did Mr. Ridges told you?
5 Now, let me think --- think about who Mr. Ridges is. He is
6 just a friend of Clarence. But he is a cousin of Ms. Kim
7 Brown. He told you, I love her. He has no dog in this
8 fight. But he told you exactly what he observed. I observed
9 on three separate occasions threats made. Now again, he does
10 have something to loose. He can loose his family
11 relationship. So, why would he come here and tell you
12 something that didn't happen?

13 Ms. Vivian Stubbs testified, and she in fact told you
14 that Chasity Carter told her about things going on in the
15 neighborhood. She came in here and we asked her, do you
16 remember Clarence coming in and complaining? She said, I
17 don't recall that. Well, even though she doesn't recall it,
18 Ms. Marie Clay, which is Chasity's mom, she came in here and
19 she testified, Clarence went over there. And even though
20 Marie Clay said that, you also have Chasity Carter. She told
21 you the same thing.

22 Now, there have been talks over and over again about
23 these text messages. And you saw them. You saw the
24 messages. They came in hours before the shooting. Now, when
25 I asked Ms. Brown, did he have an attitude, she said no, he

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1 didn't have an attitude. But you heard those text messages.
2 It appeared that he did have an attitude. But, even if the
3 text messages don't appear he had attitude, as soon as he saw
4 Clarence the very next time after he end that text message,
5 he jumped from where he was sitting and he advanced toward
6 Clarence. So, that is in fact evidence that he had an
7 attitude.

8 There is testimony that Mr. Charles Hayes was the
9 aggressor in this case, not Clarence. Mr. Hayes sent the
10 messages. Mr. Hayes jumped up as soon as he in fact, jumped
11 up and saw Clarence. Clarence didn't go down stairs heading
12 toward Mr. Hayes. He was confronted as soon as he got there.
13 Now, do you think he just wanted to have a casual
14 conversation? No. It was a confrontation, not a
15 conversation. As soon as he saw Clarence, and he got out of
16 his chair and he headed to approach him. As Clarence told
17 you, he is headed toward me with his hand in his pocket.
18 He's already gotten these threatening messages. Clarence is
19 in fact backing away. And how do you know that? Because,
20 Clarence said he was backing away. But, Chasity is looking
21 out of her window and she see him back away. But more
22 importantly let's say you don't believe our witnesses. Think
23 about what the state witnesses are saying. According to
24 Terrance Bridges, Clarence backed down. According to Carlos
25 Eaddy, who's across in the other building conveniently

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1 looking outside to see this at that particular time, he say
2 the same thing, Clarence backed up. Now, I asked Ms. Brown,
3 and of course she don't recall, because according to her, she
4 could only see his feet in the direction of his eyes, but she
5 couldn't see him. This, once again, who made the first
6 comment? Made by Mr. Hayes. This is he backing away.

7 Now, let's talk about testimony that Mr. Hayes had his
8 hands in his pocket, because this is important. Very
9 important, I think. There was a mention that according to
10 Clarence, as well as Chasity, that he is heading with his
11 hands behind his back, or in his pocket. Now, according to
12 the state's side, they are saying he had two phones in his
13 hands. He had a cell phone in one hand, and he had a house
14 phone in the other hand. Now, what is the problem with that?
15 In fact, that was pretty consistent with Ms. Brown said that.
16 It was Terrance Bridges, he said that, and it was also Carlos
17 Eaddy. Whose idea do you think that was? That was pretty
18 consistent. The only problem about that is, no one say that
19 on June 10th. No one ever mentioned about a cell phone being
20 in any one hand. That came up only after they were
21 questioned. So, when they came in court on yesterday or the
22 day before, he had a cell phone. But even if they forgot to
23 tell you that back in June, and Ms. Brown --- she
24 interviewed twice, September. Just think about this.
25 Picture this out. You have the crime scene photos. There is

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1 no cell phone in any of those pictures. So, where is the
2 cell phone? Let's think about this. If the cell phone was
3 in fact there, that means that someone moved it. But
4 according to Ms. Brown, she was the only one that was near
5 Mr. Hayes the entire time, and no one took anything off of
6 him. If the cell phone was there it was moved. And if it
7 was moved, what else was in fact moved?

8 There are photos that you are going to see that are the
9 autopsy photos, and you guys have the ones that are relevant,
10 important to the case. There are photos that are going to
11 show you blood near --- it is going to show you blood near
12 the pants pocket. Take a look at those photos if you haven't
13 already, and ask yourself, how did the blood get near his
14 pants pocket? There is no testimony to that, so you are
15 going to have to figure that one out for yourself.

16 Now, what about this issue of marijuana. That was a
17 huge contested matter. And what I did, I specifically gave
18 the state's witness an opportunity to just come out and tell
19 you. I asked repeatedly, did Mr. Hayes have marijuana that
20 day? They all say, no, no. In fact, Ms. Brown said, no, I
21 was with him the whole day, and she say specifically that he
22 wouldn't smoke marijuana in front of the baby. And what
23 happened the very following day? Dr. Batalis came in here
24 and told you that not only was marijuana in his blood, high
25 levels of marijuana was in his blood. Which, also suggest

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1 that he had just inhaled it shortly before the shooting.
2 What else did Dr. Batalis told you? He also say that
3 marijuana can in fact cause aggression in people. Once
4 again, let's think about this. He sent some threatening text
5 messages. He is now high on marijuana. And guess what? He
6 sees Clarence working down the steps. He jumps up and he
7 heads towards him. He has his hand in the back of his
8 pocket. What is he going to do?

9 Now, the issue of marijuana came up on our side as well.
10 And because I think it is only fair that you guys know
11 everything that we know, Taylor told you marijuana existed.
12 Remember, she ran out of her house and took it to somebody
13 else house? But we ain't hiding. We didn't lie about it.
14 It is what it is. You guys need to know all the information.
15 That is the difference between the state and the defense. We
16 want you to hear everything. We didn't try to hid it. You
17 be the judge of what happened that day.

18 Now, if you were to believe Ms. Brown, Ms. Brown wants
19 you to believe there were no problems between Clarence and
20 Mr. Hayes. She said, I didn't know of any problems. She
21 also said that we had nothing to do with that snitching
22 stuff. Well, if there weren't any problems, then why was Mr.
23 Hayes taking personal ownership of that. If there were
24 problems with other people, why is he sending a text message?
25 That doesn't make any sense. There were problems, because

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1 Jimmy Ridges said he observed one incident. But she also
2 wants you to believe that Mr. Hayes earns his money by
3 gambling, racing, and selling junk. That is what she said.
4 One of the most important things that you need to know about
5 this case, and you need to ask yourself, was there an
6 investigation done? Was there an investigation done? Or,
7 did they conclude someone died, and there's got to be a
8 murder? Did they even consider self-defense? Did they ever
9 consider anything at all? Or did they just say, shots were
10 fired, let's close the case? That is just the end of it.
11 And, is that fair? Well, just think about the information
12 that was left outside of the incident report. Because, in my
13 opinion, that incident report is useless. It doesn't tell
14 you anything at all about this case. It is not a
15 representation of what happened.

16 Now, you heard from Marquis and Taylor. Items were
17 taken from the pocket. They saw it. Nothing contested.
18 The only thing that you heard was nothing was taken out and
19 that's all. And, guess what? Marquis came in here with
20 handcuffs on. He came in here in a orange jump suit. There
21 is no reason for him to lie. In fact, I can't help but
22 wonder. He gets nothing from me for his testimony. He did
23 better not testifying, because it is going to help the state.
24 So, why did he testify? Because, that is what he in fact
25 saw.

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1 You heard testimony from Jessie Simmons that came in
2 here and said Ms. Brown was hiding something, and he said it
3 was a cell phone. But you have got to look at the view, and
4 you've got the photos. Where he was standing at the time he
5 saw all of this? He wears glasses. How is it that he know
6 it was a cell phone. And another thing, why would someone
7 hide a cell phone? That doesn't make sense. Hiding a gun
8 makes perfect sense.

9 One of the last pieces I have to this whole puzzle is,
10 can you trust Ms. Kim Brown? She is the star witness, she
11 and her Conrades, everyone that came up and testified. Can
12 you trust her? Do you believe what she in fact told you
13 about what she saw, what she knew prior? You saw the before
14 and after from June to September, the changes. And I will
15 not dare show you that again. But you have the video. You
16 can take it back there and look at the changes, she say back
17 and forth, back and forth, the inconsistencies about what she
18 saw and what she didn't saw, and what she heard and what she
19 didn't hear. And even if you didn't have the statements, you
20 saw her testimony that day.

21 The last thing I told you on Monday is that the defense
22 attorney --- I told you that the defense version of these
23 events has never changed. It has always been the same.
24 Clarence gave a statement on June 10th. He didn't change
25 that. He didn't tell you anything different. In fact, if

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1 you look at the things he said, we brought a lot of people up
2 here to support what he said. We didn't change anything at
3 all. The state however made quite a few changes. We did
4 not.

5 Then I want you to look at Mr. Hayes. He was six-one,
6 two hundred and sixty-five pounds. Clarence is no match for
7 him. That is something you too can consider. All homicides
8 are not murders. They just aint. Every time a person dies
9 does not mean that a crime has been committed. Let's think
10 about it. People are dying in Iraq and Afghanistan all the
11 time. In fact, officers fire shots in the line of duty all
12 the time. An officer, of course, if they believe that their
13 life is in danger, they fire over and over again. And they
14 are trained for dangerous situations. So, why do we expect
15 any more for regular folks. In this case two shots were
16 fired, and we know that. Clarence say he fired those shots.
17 But the case law governing self-defense makes it clear. You
18 may use necessary force until you believe the danger no
19 longer exits. That is the law. And don't let the state make
20 that second shot a red hearing for you, because that is what
21 they are wanting to do. The issue is not whether or not
22 Clarence fired the second shot. The question is, whether or
23 not the had the right to fire the first. Because, according
24 to Dr. Batalis, either shot would in fact taken his life.
25 And, why was the second shot necessary? Well, Clarence

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1 answered that for you. In his statement he said, if Mr.
2 Hayes had an opportunity I'm sure to get up, he was going to
3 die. Clarence would die. He already believed he had a gun.

4 Murder requires malice, and Your Honor has explained to
5 you what malice is. And according to case law, it is hatred,
6 ill will, or hostility towards another person. Your Honor,
7 mentioned evil intent. There is no evidence presented
8 throughout this case that Clarence had hatred, ill will, or
9 evil intent. In fact, the opposite was shown. It showed
10 that he was in fact was afraid. He fired shots out of fear.
11 The first shot was fired because he thought he was about to
12 be shot. And the second shot was fired because he was afraid
13 he would be a dead man. Just look at what he said on June
14 10th.

15 Now, I certainly could --- I have often asked, why do I
16 take certain cases. And this case is just a reminder why I
17 practice law. And, why is that? Because none of us know the
18 moment or the hour that our lives could change. We just
19 don't know that. As Clarence walked down his steps heading
20 to the trash receptacle, he had no idea one year later ---
21 less than a year he would be sitting here.

22 So, I do take these cases, because all of us have a
23 story to tell. The issue of snitching is not uncommon, but
24 it is certainly unfortunate. Because, we should proudly
25 testify in cases. And we should assist law enforcement. We

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1 should encourage our young people to assist them. And they
2 should not fear that if I assist law enforcement, I am not --
3 - have placed my life in jeopardy. It just doesn't make
4 sense.

5 So, before I end, I would be remiss if I did not hear
6 one last moment, very short from Clarence himself. So, let
7 me remind you of the plea he said on June 10th.

8 (Whereupon, a portion of the video statement
9 was published to the jury.)

10 Just leave me alone. I don't want any problems, leave
11 me alone. So, what is the last piece of this puzzle? This
12 is a self-defense case. It really is. If I ever seen one,
13 it is. Now, I want to tell you this. We have this issue of
14 voluntary manslaughter, another red hearing. This is not a
15 voluntary manslaughter case. This is not a murder case.
16 This is a self-defense case. And, had the state done their
17 job, they would have known that as well.

18 So, the question that I have to you us, we have proven
19 this is self-defense. We don't have a burden here, the state
20 does. It is their obligation at this point to prove to you
21 that it is not self-defense. My question is? Have they done
22 that? I say not. So, I ask you to return a not guilty
23 verdict on all indictments.

24 And I thank you so very much for your attention.

25 **THE COURT:** And for the state, closing.

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 **MS. JOHNSON-LEE:** May I just put this down while I do
2 my closing argument?

3 **THE COURT:** You may.

4 **MS. JOHNSON-LEE:** Your Honor, we had this set up
5 earlier, but the defense had to use it, so we had to take it
6 apart, because we have to reset it up.

7 **THE COURT:** How long do you think it will take?

8 **MS. JOHNSON-LEE:** To set it up, I will refer to my
9 tech support.

10 **THE COURT:** Five minutes?

11 **MS. JOHNSON-LEE:** We've got it, Your Honor.

12 **CLOSING STATEMENT BY MS. JOHNSON-LEE**

13 **MS. JOHNSON-LEE:** On June 10th, 2010, a summer
14 afternoon, this was a family time for Snook Hayes and his
15 family. He was outside on the porch at Marlboro Court
16 Apartments with his fiancé, his one year old baby, Charkemus,
17 (phonetic) and his nephew, who is a teenager, who had just
18 come over with his mom. On the porch there are two chairs.
19 There was a fan blowing cool air on them. There was a
20 tricycle, actually two tricycles. One was brand new. The
21 baby had just gotten it. They were out there having family
22 time. A little rain earlier. It wasn't raining at that
23 moment. The baby had been playing. Snook had been talking
24 on the telephone. He had a cordless house phone in hand and
25 he had the cell phone in another. He apparently liked

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1 talking on the telephone. They were having family quality
2 time. I want to point out in the picture here, this is the
3 picture taken at crime scene by Ira Dease. And if you will
4 notice, the picture supports what Kim Brown told you. These
5 are the steps that Clarence Kendell Cook came down along with
6 that gun. This is the apartment with the door right there
7 where Kim Brown and Snook lived with their baby. Right
8 outside the door here is the fan that had gotten knocked
9 over. Here is the tricycle. Here is another toy for the
10 baby. Two chairs here. The chairs that Kim and Snook had
11 been sitting in. And if you look close between the chairs,
12 it looks like a sippy cup for the baby. They had been out
13 here having family time. Clarence Kendell Cook armed himself
14 with a gun. Got a bag of watermelon rinds, coming down the
15 steps to confront Snook about whatever. Snook's whole thing
16 was, keep my name out your mouth. Keep my name out your
17 mouth. That is the same thing he had sent him on the text
18 earlier. That is the same thing he had told him in person
19 that day. Keep my name out your mouth man. And maybe he did
20 use some foul language. Clarence uses that himself. You see
21 that on the police video that is in evidence. He talks like
22 that too. Just in the interview with the police. He is
23 using the "F" word, and that is his language. But there was
24 never a threat by the victim. If you look at the text
25 messages, there aren't any threats. And, let's go through

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 those text messages beginning when they first started. And I
2 would like to point out on Clarence's video, when he talked
3 to the police, he said that the victim Snook, had gotten a
4 hold of his cell phone number, he didn't know how, and he
5 just started texting him. Well, that ain't true. Look at
6 this first text message that was still saved on the victim's
7 telephone. June 1st, nine days before the murder. This is
8 the inbox. This is coming in. KC & CC. Kendell Cook,
9 Clarence Kendell Cook and Chasity Carter, 7:30 p.m. "If u
10 got a zone of reg my lil cuz want it 4 70 n he'll com get it
11 im holdn bags." [sic]. It sounds like he is setting up a
12 drug deal. I don't know. That is for you to determine.

13 Next screen. That was nine days before the murder.
14 Here we go with another one, an inbox. And notice the number
15 again. Chasity Carter testified that this number, [REDACTED]
16 [REDACTED] is the telephone number for Clarence Kendell Cook's
17 telephone, which we finally got to see in court yesterday.
18 The officer had requested it. It was finally brought in the
19 courtroom yesterday, the first time we had seen that
20 telephone. But that is the number. "Y wont Kim tell Carlos
21 wat ann was gon do 2 his cuzn bout stayn der Kim do but im
22 done with dat shit." [sic] KC & CC. Monday, June 7th, three
23 days before the murder, 10:56 a.m. This is part of the he
24 say, she say that was going on out there. You heard about
25 that from several witnesses. Just a bunch of silly drama at

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 the apartment complex, and Clarence was all caught up in it,
2 because he is texting Snook about what Kim, his fiancé gonna
3 do about Ann? Look at the next one, Monday, June 7th. Same
4 day, 6:38. Again, three days before the murder. Here is
5 another one from [REDACTED]. This is another one from
6 Clarence Kendell Cook. "Tell Carlos 2 call me." [sic].
7 Now, on the video, when he was talking to the police,
8 Clarence Kendell Cook told the police that he was scared of
9 Carlos. Carlos was going to get him. He didn't like Carlos.
10 He was afraid of him. Well, if he is so afraid of him, why
11 is he three days before the murder trying to get the victim
12 to have Carlos call him. He wasn't scared of Carlos any more
13 than he was scared of Snook.

14 Now, this is the day of the murder. What ever happened
15 between June 7th and this day. What ever happen about he
16 say, she say going on at that apartment complex. You fuck
17 "N" word. "I herd u being shit about me ("N" word) and about
18 the bullshit that going on around here I don't have shit to
19 do with it so keep my name out your mouth." [sic] Yeah, he
20 used foul language, but what was he saying? Keep my name out
21 your mouth. This is he say, she say. There are no threats
22 whatsoever in this text message. None. Keep my name out
23 your mouth ain't a threat.

24 And this is Clarence's response. "U aint shit 2 b talkn
25 bout I dnt care bout yal or wat u movn I dnt want u it aint

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1 me no words 4 us or los." [sic] Life goes on. He didn't
2 send a text message back saying, man I'm sorry. He didn't
3 just ignore it, he had to respond. Clarence is just as part
4 of this as anybody. You got to respond back. You can't keep
5 quiet. You got to say something.

6 And here is Mr. Hayes "N" word, "fuck u" and then what
7 is Clarence's response? Laughing out loud. That is the text
8 messages. Those last four were two hours before the murder.
9 4:09 p.m. The murder happened just a minute or two before
10 six o'clock p.m. Less than two hours before the murder,
11 Clarence Cook, laughing out loud.

12 This case is simple. Clarence Cook shot an unarmed man
13 twice in his face. Once in his upper lip, and once in his
14 head. He gunned down an unarmed man in front of his one year
15 old baby boy, in front of his teenage nephew, and in front of
16 his fiancé. And what did he tell the police, I don't know if
17 you caught it, but during the interview when Ira Dease, said
18 why did you shoot him twice? Clarence Kendell Cook said, to
19 make sure he was gone, man. Those were the words out of his
20 mouth. And what did he do next, after shooting him twice, he
21 takes off running. Runs away and hides. Throws the gun
22 down. Hides for two hours until the police finally finds
23 him.

24 Under South Carolina law murder is defined as the
25 killing of any person with malice aforethought either

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 expressed or implied. Look at my next statement. Voluntary
2 manslaughter, I don't think it is this. Now, you have the
3 option of choosing voluntary manslaughter instead of murder.
4 But the state thinks this is a murder case. Voluntary
5 manslaughter is fear leading to uncontrollable violence. You
6 have the option of choosing, if you don't think it is murder,
7 and you think it is voluntary manslaughter, you can find him
8 guilty of that. If you think it was a reasonable fear that
9 lead to uncontrollable violence.

10 Malice, in order to have murder, you have to find there
11 was malice. Malice is wickedness. That is doing something
12 without a just cause or excuse. It springs from depravity.
13 From a heart devoid of social duty. Wholly bent on mischief.
14 It does not necessarily import ill will toward the specific
15 person who was injured, in this case, Mr. Hayes. But rather
16 it signifies a general malignancy towards a recklessness for
17 the life and safety of another, or a condition of the mind
18 that shows a heart devoid of social duty and fatally bent on
19 mischief.

20 And aforethought. How long does it take to have malice
21 aforethought? It can take seconds. It is no exact amount of
22 time. But let's not forget. Clarence Kendell Cook armed
23 himself with that gun upstairs in that apartment. Put it in
24 his pants, in his pocket, wherever, before he came downstairs
25 to see Snook Hayes, under pretense of going to the trash can.

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 Now, in order for you to find that Mr. Cook acted in
2 self-defense, you must find that he was without any fault in
3 bringing about that difficulty. Or, that he was in immanent
4 danger of losing his life or sustaining serious injury, or
5 that he was actual about to lose his life, or sustain serious
6 injury. And, if you think he actually believed that he was
7 about to loose his life, or sustain injury, then you have to
8 define what a reasonable and prudent person of ordinary
9 firmness and fairness, also come to that same conclusion.
10 You also have to show that he had no means to avoid this
11 danger.

12 Clarence Cook was not without fault. You saw the text
13 messages. As we said, when he got that message from Snook
14 about keeping his name our of Clarence's mouth, he had to say
15 something back. He couldn't keep his mouth shut even on a
16 touch screen. He also put that gun in his pocket to take out
17 the trash. If they are concerned about rinds, they could
18 have just sat that watermelon out on that porch upstairs
19 until Snook and his family went inside. They didn't have to
20 keep it inside the house or go to the trash can. And he
21 approached the victim. He didn't step off those steps, and
22 turn and go right over to the trash can. Remember what his
23 own girlfriend said? He was further over. He had to take
24 two steps back. He didn't turn and go to that trash can when
25 he came off those steps, he turned left to approach that

CLOSING STATEMENT BY MS. JOHNSON-LEE

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1 victim.

2 And one thing I would like to touch on. Detective Young
3 made some mistakes. She should have been more thorough in
4 what she put in her portion of that supplemental incident
5 report. But, that does not change the facts of this case.
6 So, keep your eye on the ball here. Don't deny justice to
7 this victim, because the police may not have written some
8 things down. And that incident report, if you remember when
9 I objected, neither I nor the defense can put an incident
10 report into evidence. It is inadmissible. You don't get it
11 anyway. Deborah Young admits she wasn't there when that
12 murder took place. She wasn't at the scene. But you have
13 Clarence Cook's video of what he said about what took place
14 out there. And on that video he admits shooting him twice,
15 to make sure he was gone. That is not self-defense.

16 Let's look at the picture again. Even Clarence admits
17 the victim fell straight back. His body went straight back.
18 Shoes still on. Do you see where his feet are located. It
19 is right there by the grassy area. Straight out in front of
20 the porch from the chair over to the bottom. If you come off
21 the steps over here, the trash can is back this way.
22 Clarence could have gone over the grassy area here, or he
23 could have gone down the sidewalk and turned. He didn't do
24 any of those things. He stepped off and stepped over here to
25 talk to the victim. How do we know this? Several ways.

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1 Number one, his own girlfriend said he had to take a couple
2 of steps back after firing the first shot. But most
3 importantly is what Dr. Batalis told us. There was stippling
4 on the victim's nose. Stippling comes --- when you have
5 stippling, that means that the gun was within four feet or
6 three feet, but yet there is soot all over the victim's
7 mouth. And Dr. Batalis, who is an expert, testified that
8 where there is soot present, that means the muzzle of that
9 gun was within one foot from the wound. One foot, which is
10 twelve inches. That gun was within this far from Snook's
11 mouth. And Mr. Cook had already stepped back twice just to
12 fire.

13 Means to avoid danger. Again, self-defense --- He
14 could have avoided any danger if he really thought there was
15 danger. He could have remained in the home. He could have
16 put the watermelon on the porch. He didn't have to put that
17 gun in his pocket and bring it downstairs. He could have
18 gotten off the steps, turned right, and just gone on to the
19 trash can. He shot the victim twice. That is overkill. He
20 wanted him dead. If he could have killed him twice, he would
21 have killed him twice that day. Mr. Cook was not in any
22 danger. That victim was unarmed. He had a cordless phone in
23 his right hand. He had a cell phone in his left hand. He
24 had never told Mr. Cook he was going to kill him or harm him.

25 And let me just back up just a moment. The state's

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1 witnesses say that Mr. Hayes never reached for anything.
2 Never reached for a gun. Mr. Cook on his video, on his video
3 he claimed that Mr. Hayes reached for the right for a gun.
4 And on the video he even demonstrates. He takes his hand to
5 pull it around this way to show the police how Mr. Hayes was
6 reaching for a gun. But what did his girlfriend say? She
7 was sure, because remember I questioned her about it. She
8 was absolute certain. There was nothing in his right hand.
9 And his left hand, was in his left pocket. They can't even
10 get their story straight about which pocket they are trying
11 to claim Mr. Hayes' hand was in.

12 And one more thing, the marijuana in his system. Yeah,
13 the victim had marijuana in his system. He had been smoking
14 weed. So what? That doesn't mean that Mr. Cook had a right
15 to go kill him.

16 The reason I put this one up, is to point out a couple
17 of things. This is the one photographs that shows this.
18 There is that cordless telephone, just inches from the
19 victim's right hand. That backs up what Kim Brown said.
20 That backs up what Terrance Bridges said. And here is the
21 watermelon. And remember what Kim told you about the cell
22 phone? It was in his left hand. Clarence told you that too.
23 And she admitted she picked up that cell phone. She admitted
24 she picked it up and by his body, she called his brother, oh,
25 my god, oh, my god. Remember what Mr. Simmons told you. He

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1 lived two buildings over. He was called by the defense as a
2 witness. Called by the defense. And the only thing that he
3 saw in Kim's hand was a cell phone. He even demonstrated, he
4 saw her put a phone to her ear. That backs up her story. He
5 thought she was trying to hide it, and that is what he kept
6 saying on the video. He is telling the police that you need
7 to go get that cell phone. He didn't know she had already
8 turned it over. She gave the phone to Shawn Lucas, and
9 handed it right to Deputy Young, who brought it to this
10 courtroom. There was no actual belief by Clarence Cook that
11 his life was in any danger. Look at the facts. If he was
12 afraid enough for his life that he thought that he had to get
13 a gun and put it in his pocket, why did he go downstairs?
14 The victim was unarmed. On Mr. Cook's video, if you go back
15 and look at it, he actually tells the police he never saw a
16 gun. Never saw it. Lies and said he thought he was reaching
17 for one with the right hand, but then the girlfriend lied and
18 said it was the left hand. But he admitted he never saw it.
19 And what he told the police is, I didn't think he had a gun
20 when he came down the stairs. Well, when he is down, on his
21 way down the stairs, and he didn't think the victim had a
22 gun, then why was he armed? He didn't need to have that gun
23 on him. He was hell bent on coming to kill Snook. The
24 victim was there with his baby boy Charkemus, (phonetic) his
25 teenage nephew, and his fiancé. And what did Mr. Cook do

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1 after killing him, he runs across the road, runs past Hill
2 Crest, he is bragging to a teenage boy out there, I just shot
3 that pussy ass "N" word. Those were his words.

4 On the police video, at one point he is asking the
5 police, he is asking Detective Young and Detective Dease to
6 apologize to the family whose fence he climbed over after he
7 ran through their yard. He was more concerned about
8 apologizing to that family about climbing over their fence
9 than he was about going to the police to tell them what
10 happened. Shots fired. There was not GSR on Clarence
11 Kendell Cook, but so what. We brought in the expert from
12 SLED to say, yeah, a GSR was done on his hands, it was
13 negative. But within a two hour time frame between the
14 murder and getting caught, that is not uncommon. Because,
15 every time you sweat, every time you touch something, you are
16 wiping that GSR off. And Clarence furthermore, admitted to
17 the two shots. Kim Brown said she heard two shots. Terrance
18 Bridges, the nephew heard two shots. Deborah Carter heard
19 two shots. Carlos Eaddy heard two shots. Jason Simmons,
20 witness for the defense heard two shots. And Dr. Batalis,
21 who did the autopsy, recovered two bullets from the skull.
22 The bullet fired through the mouth was actually lodged --- it
23 went through the brain and was lodged into the back of the
24 skull near the top. And the bullet that went into the top of
25 the head was sheared open by the force of when it hit the

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1 skull.

2 Again, this photo, you see the stippling around the
3 nose. This area here is what Dr. Batalis testified to, that
4 stippling shows that the muzzle of the gun was at least
5 within three to four feet, at least in that range. But all
6 this blackness on the lip, that is soot, that is proof
7 positive that the muzzle of the gun was within one foot from
8 the victim. That is the bullet to the head where he stood
9 over him, and fired the bullet in.

10 The gun. Clarence admitted he had a gun. He admitted
11 to the police that it was a .38. There was some questioning
12 by the defense as to why bullet casings weren't found.
13 Sergeant John B. Hepburn testified that .38 revolver casings
14 stay in the gun. They are not going to fall on the ground.
15 And, again Clarence said it was a .38. The SLED agent Jamie
16 Green, who testified, and he is the expert in firearms, said
17 that the one billet that he was able to examine, the other
18 one was too destroyed because it had been sheared apart by
19 the force of the impact. The one that he was fully able to
20 examine was consistent with being fired from a .38. And the
21 gun, what did Clarence do with that gun? He admits he threw
22 it down in front of Hill Crest Apartments. He admits there
23 were two live rounds still in that gun. He admits there were
24 teenagers and kids out in front of that apartment, and he
25 threw that gun down. And one of their own witnesses, since

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1 then, charged with an armed robbery. That shows his mind
2 set, throwing the weapon out in front of the children.

3 Clarence is not a snitch. There is no snitch underworld
4 as the defense claimed in her opening argument. He was not
5 working for the police in North Carolina as they claimed. He
6 was charged with murder in North Carolina. We know this,
7 because they brought his defense attorney from North
8 Carolina, put him on the stand. He had to be brought back to
9 North Carolina from Tennessee by the Marshalls, and this
10 murder case was dismissed after testifying. He wasn't up
11 there being a snitch. He was a defendant. He testified
12 against what he referred to on the police tape as these boys
13 from Bennettsville. He was one of these boys from
14 Bennettsville.

15 Clarence lied repeatedly in his video. He went on and
16 on about complaining to Vivian. Vivian Stubbs testified, she
17 is the apartment manager. She doesn't have any reason to
18 come to court and lie. She is not part of this case. She is
19 the apartment manager. And she said Clarence Kendell Cook
20 never came to her with any complaints about anybody out
21 there. He even claimed on the video, and you can go back and
22 look at it, that Vivian called him over one day, and that
23 they discussed Snook selling drugs, and Carlos selling. He
24 was selling drugs. On the video he says he had just gotten
25 that stash the Friday before, but he hadn't sold it yet

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1 because the police was on foot patrol, and because he wasn't
2 too sure who to sell to out there. And his girlfriend admits
3 that she gave it that day to her teenage high school student
4 daughter to go hide. And that child testified she went and
5 hid it at another girl's apartment. He lied about the phone.
6 He said, Snook got his number and started to texting. We
7 have already showed you the truth. He had been texting him
8 for at least nine days before the murder. Just totally
9 innocuous messages. Have Carlos call me. The he say, she
10 say. He said he was scared of Carlos, that is what he told
11 the police. Yet, seven days before the murder he is texting
12 him to have him call him. Claims he was scared of Snook.
13 But again, go back to the cell phone messages. He was
14 texting Snook. He was lying about shooting in self-defense.
15 Totally not true. His own Mom even went to Vivian Stubbs and
16 asked her to write a false statement. But Vivian wouldn't
17 do it, because it wasn't true. They were already setting up
18 the defense at that time. But don't let them deceive you.
19 Don't follow their trails. Use your common sense. This is
20 murder. It is not self-defense. It is not manslaughter it
21 is murder.

22 Let's look at the witnesses. Quentin, A.K.A. Moshawn.
23 He is a convicted felon. The only truth he gave from that
24 stand was that Clarence Cook was not upset after reading the
25 text message. And that Clarence Cook never expressed any

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1 concerns about Snook. That is his cuz, that is his good
2 buddy, that is who you have been hanging out with all day
3 before they went to the grocery store. Moshawn even went to
4 the grocery store with them. Chasity event old you that. He
5 was with him up to the point of not long before the actual
6 murder occurred, and he says Clarence Cook was not upset
7 after reading the text messages.

8 And also Moshawn miraculously ended up with Clarence
9 Cook's cell phone right after the murder. Remember when they
10 got back from Piggly Wiggly, Moshawn left to go over to Hill
11 Crest Apartments. Yet he had Snook's cell phone, because
12 right after the murder he is calling the girlfriend, telling
13 her, hey, get the dope out of there. He knew a murder had
14 taken place. And he knew Kendell did it. And he knew to
15 call over there and get the dope out before the police get
16 there.

17 Chasity Carter, she is Mr. Cook's girlfriend. She
18 changed her story, if you recall each time I held up that
19 tape and said I'm going to play this for the jury, and then
20 she backtracked. Remember the one statement she was sure of,
21 and then I held the tape up and said, we are going to play it
22 for the jury, then I didn't have to because she backtracked,
23 and she said, oh, I made that statement out in the hallway.
24 Didn't tell it to them in the interview room. She was
25 absolutely certain the victim's hand was in his left pocket.

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1 She lied about the gun. Kendell didn't have a gun. There
2 was no gun in that apartment. He didn't have a gun on him
3 when he went downstairs. Well, we know that is not true.
4 Kendell admits he had a gun. He admits to shooting the
5 victim. And why did she lock the door for Kendell just to go
6 carry some watermelon to the trash can. She claims she saw
7 Ms. Brown take a pink lighter off of the victim. Well, they
8 don't even have their stories straight about what Kim was
9 taking off the victim's body. More lies. She says she
10 complained to Vivian about guns and drugs. Well, she had
11 drugs in her own apartment that she was hiding for Kendell.
12 And Kendell had a gun in her apartment. Lies the defense has
13 been telling about Kim Brown. Chasity Carter says she saw
14 her take a pink lighter off. Taylor Locklear, Chasity's
15 daughter says she saw a gun, lighter and a cigarette case.
16 And she was standing on the balcony when she saw it. Marquis
17 Short, he says a gun, a bag with white powder cocaine, and
18 money. Totally different from what Taylor claims she saw.
19 And, he says Taylor was over by Building ■ when items were
20 being taken out of the pocket. They couldn't even get their
21 stories straight about when Kim allegedly took something out
22 of the pocket. But no other witness saw anything taken other
23 than Jessie Simmons, their witness, who said it was a cell
24 phone. And the witness Hurley, the lady who called 911. She
25 didn't know the names of any of these folks, she had just

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1 moved there. And lastly, Kim took those baggies out of his
2 pockets, and tried to clean him up to make sure the police
3 didn't find anything on him. There were two empty pieces of
4 bags on him. He was high on weed according to the Tox
5 screen, not night, but he had just smoked it within two
6 hours. So, he had the two empty baggies left on him. But
7 Kim was trying to clean him up and get stuff off of him,
8 wouldn't she had taken those? Jessie Simmons, no dog in
9 this fight. Lived two buildings over. Witness for the
10 defense. And remember, he heard the first shot, opened the
11 door and saw the second shot. Remember what he said, it was
12 about four seconds from the time he opened the door, he opens
13 the door, sees a shooter standing over the body, one, two,
14 three, four, about four seconds before that second bullet was
15 put into that victims's head. And he saw the person run
16 away. Clarence Cook is guilty of murder. He is a murderer.
17 He meant to shoot Snook Hayes. Snook was an unarmed victim.
18 Clarence ran away from the scene. He ditched the gun.
19 Erased the residue just by touching something, or washing.
20 We don't know what he did in that two hour period he was
21 hiding. He was recognized and identified by victims at the
22 scene, by the girlfriend, by Terrance, by Carlos, they all
23 identified Clarence Kendell Cook. Evading the incident was
24 an option. He didn't have to come downstairs. He didn't
25 have to get a gun. He had already said to the police, when

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1 he was coming down the stairs, he did not think at that time
2 Snook had a gun. He could have evaded this whole thing, and
3 he was already with excuses for the police. Those two hours
4 he was hiding out, he had time to get this thing together in
5 his head, and wrap his brain around what his excuse was going
6 to be.

7 To make sure he was gone. That is what he told the
8 police. That was his reason for shooting twice. Jessie
9 Simmons said the shooter stood over the victim four seconds
10 approximately, before that second shot. That backs up what
11 he told the police. He was making sure he was dead. Making
12 sure he was gone. DaShawn Bland, heard him say, I just killed
13 that pussy ass "N" word. And Clarence Cook claimed that
14 Snook, the victim, had called him before this happened on the
15 tape, and he was discussing what he heard. He claimed the
16 victim called him a young ass pussy "N" word. Those were
17 Clarence's words. That is Clarence's words, for the victim.
18 That is what he thought of that victim.

19 The judge charged you on reasonable doubt. And I want
20 to say, if in your heart of hearts you can leave out of here
21 today and say I just don't think he murdered him. I don't
22 think it was self-defense. I don't think it was
23 manslaughter. If you can walk out of here today in your
24 heart of hearts really believing he is not guilty, then it is
25 your duty to find him not guilty. But when you leave today,

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1 if in your heart of hearts you think he is guilty of murder,
2 it is your duty to find him guilty, because that is not
3 reasonable doubt. And I am convinced that there is no way
4 that you can have reasonable doubt. That second shot is the
5 crux of this murder case. That is why we are here. That
6 second shot tells it all. That second shot shows intent to
7 kill. That second shot shows malice in his heart. That
8 second shot shows that he had a evil and wicked purpose in
9 his heart and in his mind that day. He wanted that man dead.
10 The four seconds he stood over that victim before he gunned
11 him down with that second shot is telling. If you even think
12 for a second that it was self-defense before that first shot,
13 what is the defense for that second shot. That victim is on
14 the ground dead or dying. He is not a threat to anybody.
15 And yet he stands over that body and pops him in the head.
16 There ain't no self-defense in that.

17 Memories fade, some of the folks were a little sketchy
18 on things. This was almost a year ago. Pictures are worth a
19 thousand words. Photographs of the text messages. The
20 photographs from the crime scene. The photographs showing
21 the chairs, the tricycle, what was out there that day just as
22 the victim described it. The photographs of the phone right
23 there by his hand. But videos are priceless.

24 (Whereupon, a portion of the defendant's video statement was
25 published to the jury.)

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1 Ira Dease, why did you shoot him twice. And Clarence
2 Kendell Cook, to make sure he was gone.

3 Thank you.

4 **THE COURT:** All right. Ladies and gentlemen, let's
5 talk briefly about the verdict forms, and then I am going to
6 allow you to return and take a break, and then begin your
7 deliberations. The verdict forms has three questions. They
8 are entitled 1, 1-A, and 2. Now, the first question I am
9 just going to read to you, as to the charge of murder, we the
10 jury and beyond a reasonable doubt, find the defendant
11 Clarence Kendell Cook --- Now, let me just say, when I have
12 two choices, to give you on a form, I can't give them both at
13 the same place. One must come before the other. There is no
14 priority. But you must choose unanimously guilty or not
15 guilty, then there are instructions on what to do. Because,
16 if you choose not guilty of murder, then you must consider
17 the lesser included offense of voluntary manslaughter. But,
18 if you choose guilty of murder, you don't consider the
19 voluntary manslaughter, because that is a lesser offense and
20 you have found him guilty of the greater offense. And then
21 you go to question two, which involves the possession of a
22 weapon during the commission of a violent crime. You have
23 the same choices, guilty or not guilty. And, of course,
24 ladies and gentlemen, as I mentioned during my charge to you,
25 if you find the defendant not guilty of murder, and not

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1 guilty of voluntary manslaughter, you can not find him guilty
2 of possession of a weapon during the commission of a violent
3 crime, because you have not found him guilty of a violent
4 crime.

5 Now, again, you will have this with you. If you have
6 questions, please write down your question, knock on the
7 door, and we will gladly answer them. What I am going to do
8 is let you go back to the jury room, and take your break for
9 a moment or two while we gather the evidence, and make sure
10 we have it all in order; review it, and then we will send it
11 in to you. And at that time I will ask our alternates to
12 come out, and then we will allow the twelve to begin
13 deliberating. But let me say to our alternates, in your
14 presence I want to say to them. Thank you for your service.
15 I know a lot of times you get to the end and you think well,
16 my goodness, I have wasted my time because I am not
17 deliberating. What we are actually going to do is we are
18 going to place you in a room where you will be with one
19 another, but by yourselves in the event that something
20 happens to one of our twelve. I don't expect it to, but if
21 they are unable to complete deliberations, then we will still
22 have an alternate available. But I don't want you to think
23 somehow your time has been wasted, because if we had even
24 now, even at the end of this case one of our twelve got sick,
25 had an emergency, had to leave, the court would have to

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1 declare a mistrial, this case would have to be tried again if
2 we didn't have an alternate present. Your presence here has
3 prevented that in the event that it had happened, or may yet.
4 So, thank you for your service.

5 Now again, we will let you go back and say your goodbyes
6 for a moment or two, and then we will ask you to come back
7 out.

8 Ladies and gentlemen, when you take your break, if you
9 wish to go outside for a few moments, then we will give you
10 that opportunity before you begin deliberations. Just let us
11 know that.

12 Now, once you begin deliberations, please make sure that
13 everyone's voice was heard that wishes to be heard on a
14 particular issue. Because, at the bottom of this form, Mr.
15 Sweatt, when you sign, you sign under the words, I certify
16 this is the unanimous decision of the jury. Please make sure
17 that everyone who wishes to be heard will be heard on an
18 issue. And when you have a verdict, you will knock on the
19 door. Someone will be standing there to receive your
20 verdict, and we will return. If you have a question, please
21 write it down and we will respond to it in writing as well,
22 so we can preserve a record of any communications.

23 Ladies and gentlemen, now we will remain where we are
24 while you retire to the jury room.

25 (Whereupon, the jury exits the courtroom at

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1 11:27 a.m.)

2 THE COURT: All right. Are there exceptions or
3 objections to the charge as given by the court to the jury.
4 What says the state?

5 MS. JOHNSON-LEE: No, Your Honor.

6 THE COURT: And defense?

7 MS. BROWN: Your Honor, I just want to note my
8 objection to the charge of voluntary manslaughter.

9 THE COURT: All right. Very good. Objection noted for
10 the record.

11 Now, counsel, please come up and review all of the
12 evidence along with our court reporter and the verdict forms,
13 and when it is ready, we will send it in to the jury and
14 bring out our alternates.

15 Ladies and gentlemen, let's remain in session please,
16 because we are going to bring our alternate jurors in, in
17 just a moment.

18 (Whereupon, the evidence was reviewed by both
19 counsel to be sent into the jury.)

20 (Whereupon, the jury begins deliberations at
21 11:40 a.m.)

22 THE COURT: All right. Mr. Adams, Mr. Ladler, welcome
23 back to the courtroom, gentlemen. What we are going to do is
24 we are going to let you go into another room in the back, and
25 we will get you some refreshments, and let you just remain

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1 comfortable until we have a verdict. And at that time what
2 we will do is, we will bring you back in to join them. In
3 the event that there is a juror who has to leave, who has an
4 emergency to prevent a mistrial, one of you will be chosen at
5 that time to go in, and the deliberations will have to begin
6 again. So, if you would just be comfortable, we will take
7 you there now. And also, if we order lunch for the jury, we
8 will make sure that you are not left out of that process.
9 All right. Very good.

10 All right. Ladies and gentlemen, let me say to our
11 attorneys, to the parties, to the families who are here.
12 This is a hard case. This is a difficult case. And, you
13 know there is probably nothing more impacting on people lives
14 than the loss of a life. And, I appreciate the way you have
15 conducted yourself throughout this trial. I realize it is a
16 very hard fought and highly contested issues here. But this
17 case has been well tried. I am in the courtroom everyday,
18 and I know you are not. And for that, you probably say well,
19 thank goodness I am not. But this is what I do, and I can
20 tell you that this case, because of the hard positions and
21 what happened here, just the mortality of it all, and the
22 lives it has impacted will never be the same again. This
23 case could have easily broken down into objections
24 constantly, and fighting among counsel and witnesses, and
25 that didn't happen. It didn't happen because of the

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1 professionalism of your lawyers that you chose to represent
2 you in this case. And I commend both sides for the way the
3 lawyers have presented this case. This matter is in the
4 hands of the jury. This is the strength of our system. It
5 is what has stood our country well for the two hundred plus
6 years that we have been fortunate to be in this country. But
7 whatever the decision makes, your decision has been well
8 taken. You heard it right here in the courtroom. And argued
9 professionally, and capably, and cogently to this jury. And
10 now it is in their hands. So, we are going to stand down,
11 and this court will reconvene upon the call of the jury. But
12 whatever decision is made you can take comfort in the fact
13 that you are well represented here. And your issues as I
14 have said, well argued to this jury.

15 This court is now in recess. We have some
16 administrative business. Stand down for a few minutes. Take
17 some please in the interim. We will be in recess ten or
18 fifteen minutes.

19 (Whereupon, this hearing stands down at
20 11:40 a.m. awaiting the call of the jury.)

21 (Whereupon, the court receives a note
22 from the jury at 12:36 p.m.)

23 **THE COURT:** All right. In response to the jury's
24 inquiry, which has been marked as a court's exhibit that we -
25 - Counsel, we are on the record. In response to the jury's

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1 note that they wish to be able to see the DVD's. The court
2 has sent in a DVD player with the instructions that if they
3 wish to watch the statement of the defendant, then they must
4 return to the courtroom to watch that on the big screen. The
5 reason for that is that there is a roughly fourteen second
6 portion or at least a fourteen unit portion on that tape that
7 the volume must turn down because of a statement of
8 prejudicial value. Instructions have been given to the jury.
9 Now, is there any objection to the way the court has handled
10 this from the state?

11 MS. JOHNSON-LEE: No, Your Honor.

12 THE COURT: And from the defense?

13 MS. BROWN: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, over the
15 lunch period the foreperson of the jury, Mr. Sweatt, became
16 ill, and has actually gone home. The jury has stopped their
17 deliberations. There are eleven jurors who are seated in the
18 jury room, and the two alternates have been sequestered in a
19 separate room. It would be my intention that we would bring
20 all the jurors, all thirteen back in the courtroom. We would
21 then choose among the two alternates by placing their names
22 in a hat, and drawing one of the two. The one that will be
23 drawn will serve. The other will remain an alternate. Go
24 back in sequestration, and then the twelve jurors will go
25 back with instruction here in the courtroom that they are to

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1 begin anew their deliberations. Now, let me ask, is there
2 an objection from either side, or a response to what the
3 court has proposed. What says the defense?

4 MS. BROWN: Your Honor, my only concern is since it is
5 the foreperson, who has left, will you elect the foreperson?

6 THE COURT: Just one moment, please.

7 (PAUSE.)

8 THE COURT: I would intend that they would choose
9 their own foreperson.

10 MS. BROWN: Thank you, Your Honor.

11 THE COURT: Any objections to the procedure outlined
12 by the court. And what says the state?

13 MS. JOHNSON-LEE: No, Your Honor.

14 THE COURT: Hearing none, then let's bring in all
15 thirteen jurors. Our two alternates as well as our eleven
16 jurors.

17 (Whereupon, the jury enters the courtroom at
18 2:14 p.m.)

19 THE COURT: All right. Ladies and gentlemen, welcome
20 back to the courtroom. As you see Mr. Sweatt, our foreperson
21 is not with us, because unfortunately he has become ill and
22 needed to go home. What we are going to do at this time is,
23 we are going to draw an alternate juror. In the criminal
24 court the way that process is done, we have two alternate
25 jurors who remain sequestered and away from you while you

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1 have previously been deliberating. We have the two names in
2 a container right there, and we are going to let our clerk
3 turn around and pull one of those canisters. Is there an
4 objection to that from the defense?

5 MS. BROWN: No, Your Honor.

6 THE COURT: And from the state?

7 MS. JOHNSON-LEE: No, Your Honor.

8 THE COURT: We are unable to know which is which, but
9 please open the canister and call the name.

10 CLERK OF COURT: Williams Adams.

11 THE COURT: All right. Then Mr. Adams, you have been
12 seated now among the twelve. And what we will do, Mr. Ladler
13 we are going to return you, as the jury leaves, we are going
14 to let you return to the room that you have previously been,
15 and Mr. Adams will join the jury.

16 Now, ladies and gentlemen of the jury, the way this
17 process works is, because you have lost a juror you must
18 begin anew your deliberations, from the point that is just
19 from square one you start off again, and now that you have a
20 twelfth juror, you start as if deliberations had not
21 previously occurred. What I would like for you to do first
22 of all among your twelve is to elect your foreperson, again
23 among yourself. You know each other well by now. And
24 whomever you choose, please write the name of that person
25 down, and just send it out to us on a note. You don't need

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1 to come back out and tell us that. We will have the
2 information, and you just keep on deliberating with the
3 presiding officer in charge. And to our presiding officer,
4 whomever it may be, please remember as I told Mr. Sweatt,
5 that when you sign the form you are signing and certifying
6 that this is the unanimous decision of the jury. And to that
7 end we will return you back to the jury room.

8 Now, let me ask Mr. Brown. Did the jury get a break
9 after they finished their lunch?

10 MR. BROWN: No, sir.

11 THE COURT: All right. Let me just ask by a show of
12 hands. Do you want to take a break, ladies and gentlemen.
13 There we go. So, let's do this, before we begin
14 deliberations, we are going to let all of you go out and take
15 a break if you wish, and then when you come back in, the
16 twelve will go to the jury room. Our alternate will return
17 to the alternate room. Please choose a foreperson among your
18 selves, and then begin deliberations.

19 We will remain where we are while you go outside and
20 enjoy your break.

21 (Whereupon, the jury exits the courtroom at
22 2:18 p.m.)

23 (Whereupon, the jury begins deliberations anew
24 at 2:38 a.m.)

25 THE COURT: All right. Ladies and gentlemen, then

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1 again we will stand down subject to the call of the jury.

2 (Whereupon, a recess was taken from 2:38 p.m.
3 until 3:37 p.m. when the jury announced they had reached a
4 verdict.)

5 **THE COURT:** All right. Ladies and gentlemen, I am
6 advised by the jury that we have a verdict. Let me say that
7 it is important out of respect to this jury that whatever
8 verdict the is, I realize we have two different sides to it.
9 Let's maintain, and decorum, and respect in this courtroom,
10 whatever the decision may be. The court will not permit any
11 outbursts. Please be advised that we require that decorum be
12 kept at all times.

13 Please bring in the jury.

14 (Whereupon, the jury enters the courtroom at
15 4:00 p.m.)

16 **THE COURT:** Madame Forelady of the jury, have you
17 reached a verdict?

18 **FOREPERSON:** Yes, sir.

19 **THE COURT:** Thank you. Let's let the record reflect
20 that the verdict forms is appropriately filled out. And it
21 is signed by the foreperson.

22 Defendant, please rise. And Mr. Clerk, please publish
23 the verdict.

24 **CLERK OF COURT:** Indictment 2010-GS-34-091, 2010-GS-
25 34-466, The State of South Carolina versus Clarence K. Cook.

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1 As to the charge of murder, we the jury unanimously, beyond a
2 reasonable doubt find the defendant, Clarence K. Cook, not
3 guilty.

4 As to the lesser included charge of voluntary
5 manslaughter, we the jury, unanimously and beyond a
6 reasonable doubt find the defendant, Clarence K. Cook,
7 guilty.

8 As to the charge of possession of a weapon during the
9 commission of a violent crime, we the jury, unanimously and
10 beyond a reasonable doubt find the defendant, Clarence K.
11 Cook, guilty.

12 I certify this as the unanimous decision of the jury,
13 Laura Lattaker, Foreperson, April 21, 2011. Is this your
14 verdict, please say it by raising your right hand. Thank
15 you.

16 **THE COURT:** Let the record reflect that all of our
17 jurors have responded by raising their right hand. Counsel
18 and the defendant may be seated at this time.

19 All right. While we are in the presence of this jury,
20 are there any Motions for which a jury response would be
21 necessary; from defense?

22 **MS. SELLERS:** Your Honor, at this time we would ask
23 that the jury be polled.

24 **THE COURT:** All right. Ladies and gentlemen, what
25 that means is, that the defendant has asked that the jury be

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1 polled. And our clerk is going to call each of your names.
2 individually. Now, our alternate is seated in the box, and
3 of course the record should reflect that the alternate did
4 not deliberate with the jury, but was sequestered and has now
5 returned to the jury. Our clerk is going to call your name
6 individually, and ask you two questions. He is going to ask
7 one question, and stop and get the answer, and then the
8 second question, and stop and get the answer. These are the
9 questions. Number one. Was this your verdict? And, number
10 two. Is this still your verdict? So, when your name is
11 called, please stand and respond to the questions the clerk
12 is going to ask you, and then you can be seated.

13 **CLERK OF COURT:** Laura Lattaker, was this your
14 verdict?

15 **JUROR:** Yes.

16 **CLERK OF COURT:** Is this your verdict now?

17 **JUROR:** Yes.

18 **CLERK OF COURT:** Terry Anderson. Was this your
19 verdict?

20 **JUROR:** Yes.

21 **CLERK OF COURT:** Is it your verdict now?

22 **JUROR:** Yes.

23 **CLERK OF COURT:** Steven E. Davenport. Was this your
24 verdict?

25 **JUROR:** Yes.

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1 CLERK OF COURT: Is it your verdict now?

2 JUROR: Yes.

3 CLERK OF COURT: Oliver Harrington. Was this your
4 verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Is it your verdict now?

7 JUROR: Yes.

8 CLERK OF COURT: Travis Ingram. Was this your
9 verdict?

10 JUROR: Yes.

11 CLERK OF COURT: Is it your verdict now?

12 JUROR: Yes, it is.

13 CLERK OF COURT: Patrick Ridges, was this your
14 verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Is it your verdict now?

17 JUROR: Yes.

18 CLERK OF COURT: Avia P. Simmons, was this your
19 verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Is it your verdict now?

22 JUROR: Yes.

23 CLERK OF COURT: Lee R. Spears, was this your verdict?

24 JUROR: Yes.

25 CLERK OF COURT: Is it your verdict now?

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1 JUROR: Yes.

2 CLERK OF COURT: Albert Lee Tedder, was this your
3 verdict?

4 JUROR: Yes.

5 CLERK OF COURT: Is it your verdict now?

6 JUROR: Yes.

7 CLERK OF COURT: Freda M. Wright, was this your
8 verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Is it your verdict now?

11 JUROR: Yes.

12 CLERK OF COURT: John W. Yarborough, was this your
13 verdict?

14 JUROR: Yes.

15 CLERK OF COURT: Is it your verdict now?

16 JUROR: Yes.

17 CLERK OF COURT: That completes it, Your Honor.

18 THE COURT: All right. Actually was one of our
19 juror's name not called?

20 CLERK OF COURT: I'm sorry. Your Honor.

21 THE COURT: We seated an alternate.

22 CLERK OF COURT: William Adams, was this your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Is it your verdict now?

25 JUROR: Yes.

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1 **CLERK OF COURT:** Now, it is complete, Your Honor.

2 **THE COURT:** Now, all twelve have responded in the
3 affirmative to both questions, counsel. Are there further
4 motions for which a jury response will be necessary from
5 defense?

6 **MS. BROWN:** None, Your Honor.

7 **THE COURT:** All right. None for the jury. And now
8 from the state. Any motions for which a jury response would
9 be necessary?

10 **MS. JOHNSON-LEE:** No, Your Honor.

11 **THE COURT:** All right. Ladies and gentlemen, what is
12 going to happen now is the court is going to have a
13 sentencing hearing. I suspect it will probably take about
14 fifteen minutes. Rather than have you sit in the jury box
15 though, what I would like to do is release you as jurors, and
16 then give you the opportunity yourself, and it is completely
17 up to you if you wish to return to the back of the courtroom
18 and be seated in the courtroom and watch the sentencing
19 hearing, or if you just wish to go home. We will give you
20 that opportunity. I will tell you that in a few days, Mr.
21 Funderburk, they will receive a small check for your services
22 and your per diem, and your mileage. When will those go out?

23 **CLERK OF COURT:** Monday morning.

24 **THE COURT:** Okay. So, the county will be sending
25 their expression of gratitude to you in a few days. But, I

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1 am going to come down and shake your hand as you leave the
2 jury box as my expression of gratitude for a job well done,
3 and for a verdict that was fair and just for all parties in
4 this case. And again, we will give you the opportunity to
5 exit the rear. But, if you want to come around and be seated
6 in the back, we will give you that opportunity. We will wait
7 for you. But if you don't, you just want to go home, we
8 respect that and we will give you that opportunity. Let me
9 step over and say goodbye as you leave the jury box.

10 (PAUSE.)

11 THE COURT: Ladies and gentlemen, we are just going to
12 wait a moment and be at ease while we are waiting. What I
13 would like to do is go ahead and take the defendant into
14 custody. If you would like to place handcuffs in front so he
15 can still be seated at the table with us.

16 Counsel, what I would ask is if you would choose one
17 person among the victims who would like to be heard as a
18 spokesperson, I don't require it or demand it, but simply
19 will give them the opportunity to speak during the sentencing
20 hearing if they wish to do so.

21 MS. JOHNSON-LEE: Yes, Your Honor.

22 THE COURT: Thank you. All right. Mr. Brown, have
23 all of our jurors departed?

24 MR. BROWN: Yes, sir.

25 THE COURT: And all wish to go home, and not join us?

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1 **MR. BROWN:** They all wanted to go home.

2 **THE COURT:** All right. Very good. Now, are there any
3 motions for which the court would need to make a response
4 from defense or from the state after receiving the verdict?

5 **MS. JOHNSON-LEE:** None from the state.

6 **MS. BROWN:** Your Honor, of course at this time I would
7 move for a directed verdict notwithstanding the verdict that
8 was read. In light of the decision that the jury has found
9 Mr. Cook guilty of voluntary manslaughter, my position goes
10 back to I don't believe this should have been included on the
11 verdict forms. As well, I believe there was no evidence that
12 was presented to the jury that that Mr. Cook had sudden heat
13 of passion at the time the shots were fired. We all agree
14 that there may be sufficient evidence that there was legal
15 provocation, but not sudden heat of passion, of course as
16 required for voluntary manslaughter. Not to mention Your
17 Honor, I want to go again on the record that the Solicitor
18 pointed out in her closing, she didn't think this was a
19 voluntary manslaughter. She, in fact, indicted him and then
20 she argued to have it on the form anyhow. Your Honor, once
21 again we think in light of this decision that the jury has
22 reached, that this form should not have included voluntary
23 manslaughter, and we are asking you to overturn the decision
24 on that basis.

25 **THE COURT:** All right. Thank you. Do you want to be

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1 heard on that, Madame Solicitor?

2 MS. JOHNSON-LEE: Judge, I was disappointed the jury
3 didn't find guilty of murder. We are satisfied with the
4 jury's sentence. Clearly there was evidence presented in the
5 record that would support a voluntary manslaughter
6 conviction, even based on just the defendant's own statement
7 to police that was admitted into record and is a part of the
8 evidence. He stated that before he knew it, basically he had
9 fired the gun. He, himself put forth the facts for the
10 voluntary manslaughter conviction.

11 THE COURT: All right. Again, it is not for the court
12 to weigh evidence, it is rather to see if there is in the
13 record evidence that would support the jury's verdict.

14 I find that there is evidence that supports a voluntary
15 manslaughter charge, and verdict. Not only what was just
16 mentioned by our Solicitor, but also the fact that there was
17 a second shot fired, which was --- may have been evidence
18 that the jury so accepted it, that they defendant after
19 sufficient legal provocation and temporarily lost his reason
20 and reacted violently. For these reasons the court is going
21 to deny your motion, Ms. Brown, and proceed now into a
22 sentencing hearing.

23 Is there anything further before we have a sentencing
24 hearing, any further motions or issues from the defense?

25 MS. BROWN: None, Your Honor.

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1 **MS. SELLERS:** No, Your Honor.

2 **SENTENCING HEARING**

3 **THE COURT:** All right. Very good. Let me speak now
4 to family who has been here, or our victim throughout this
5 term of court. You have sat silently in this proceeding. I
6 know this has been difficult, because what happens here is
7 one of the blessings of the human mind is that when an event
8 happens the passage of time may dull that event. It
9 certainly won't go away, but it may soften the blow. But
10 when you come back to court, you relive it, you experience it
11 again through the testimony, and just having it brought to
12 the forefront of the mind takes courage to come forward and
13 be present to see this through. But I appreciate the
14 courage, restraint, and your fortitude in being here, that
15 justice is done.

16 Now, victims of crime have numerous rights in this
17 process. This trial has really been about the protection of
18 the defendant's rights. And I find the defendant's rights
19 have been well protected in this trial; including, excluding
20 certain evidence, advising him of all of his constitutional
21 rights, proceeding to trial, and affording him those rights
22 during the course of the trial. But, the fact that we have
23 focused on the defendant's rights in the trial doesn't mean
24 that those rights are any greater importance or priority over
25 the victim's rights. And thus at this time the court will be

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1 glad to hear, if someone wishes to speak on behalf of the
2 victims, whatever the victim's representative may wish to
3 say. And we will be glad to hear from you at this time, but
4 would ask that you please stand where you are and accept the
5 oath of a witness, so we can place you under oath.

WHEREUPON, ARIL HAYES

AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

8 THE COURT: Ma'am, you are a little soft spoken, I am
9 going to get you to come to the microphone so we can hear you
10 in the courtroom, please.

11 All right. Please tell us your full name, again.

12 MS. HAYES: My name is April Hayes.

13 THE COURT: Ms. Hayes.

14 MS. HAYES: This was my brother. And, all of these
15 events, all of this stuff is senseless. And he didn't
16 deserve to die. And he definitely didn't deserve the
17 overkill. He was already dead. And, which you took away
18 from us, you took away a father, a uncle, a brother, a son.
19 You disrupted our lives real bad, and nothing can ever fix it
20 back again. So, all of our lives are disrupted. My mother
21 don't have a son anymore. I really don't feel like your
22 mother should have a son either. But the I got to be bigger
23 than me. So, I am going to say right here is that I hope
24 they keep you in there a long time. I have a little one year
25 old nephew that doesn't have a father; nieces and nephews

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1 that don't have a father. I got to struggle with that and
2 tell them all of their life as they grow to remember their
3 father. But I have also got to remember what you have done
4 to them. So, I hope I never have to see you again.

5 **THE COURT:** Thank you, Ms. Hayes. Ma'am, you may
6 return to your family, or you may return to counsel's table,
7 if you wish.

8 Let me hear from the state as to what your position is
9 on sentencing, in addition any prior charges that the
10 defendant may have, and any other information you may wish to
11 give.

12 **MS. JOHNSON-LEE:** Yes, Judge. The state will
13 recommend the maximum sentence of thirty years on this
14 charge. He does have a prior record. Beginning in 1996, he
15 has two convictions for assault with a deadly weapon with
16 intent to kill. And a discharging a weapon into an occupied
17 dwelling. I have a copy of the North Carolina Administrative
18 Office of the Courts information showing those convictions, I
19 would like to hand up. It was initially marked as State's
20 Exhibit Number 43, but was never admitted because the
21 defendant did not testify.

22 **THE COURT:** Thank you.

23 **MS. JOHNSON-LEE:** He has had issues since that time in
24 2004, he had a felony possession of cocaine conviction in
25 Richmond County, North Carolina. In 2008, he had a burglary

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1 in South Carolina, here in Marlboro County, that actually
2 plead down to a receiving stolen goods. He also at the same
3 time had a possession of cocaine charge that he was convicted
4 of. And based on that prior record; he is only thirty years
5 of age. The two individuals in the first case in North
6 Carolina, they both survived, they did not die. In this case
7 the victim is deceased. He was not so lucky, so we would
8 request the maximum sentence.

9 THE COURT: All right. Anything further? Now, Ms.
10 Brown, do you have something you would like to say on behalf
11 of the defendant?

12 MS. BROWN: Yes, Your Honor. Your Honor, of course
13 most everybody in here throughout the course of this trial,
14 Mr. Cook has always -- back in June to this moment felt at
15 that time that he was threatened. We understand that the
16 jury has seen, and reached their conclusion. But we would
17 just like to give you some information about Mr. Cook.

18 He is in fact thirty years of age. He has lived in
19 Bennettsville the majority of his life. He has a fiancé. He
20 has a five year old daughter. I know he is a member of the
21 church, because the pastor has been here on several
22 occasions. At his bond hearing the same. In fact, he has
23 recommitted himself back to the church, Your Honor. I would
24 also like to say that throughout the years he has been a
25 production worker, a machine operator for a number of years.

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1 I understand that there was a conviction in 1996, and at that
2 time he was fifteen years of age. Of course, we have the
3 more recent charges which are not necessarily that serious as
4 that 1996 charge.

5 Your Honor, we just ask that in light of the -- what he
6 has been found guilty of, we ask that you consider a sentence
7 that would at some point allow him to return to his family.
8 At some point allow him to return to his daughter that is
9 here. And we ask that you also consider a sentence that runs
10 concurrent.

11 I believe right now he has his mother is present and his
12 sister that is there, and have been here throughout the
13 course of this trial.

14 We certainly apologize to the family. We understand
15 that someone has lost their life. And I think that Mr. Cook
16 is remorseful. Based on that video, he did appear that he
17 regretted his actions.

18 **THE COURT:** And, Ms. Brown, does your client wish to
19 speak. If so, we will give him an opportunity.

20 **MS. BROWN:** Your Honor, certainly may I --- and I
21 would also like to say that he in fact has been detained at
22 the Detention Center for 227 days as well.

23 **THE COURT:** Thank you.

24 **MS. BROWN:** I believe Mr. Cook would like to address
25 the court.

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1 **THE COURT:** All right. We are going to place you
2 under oath just where you stand. Please raise your hand and
3 follow our clerk's instruction.

WHEREUPON, CLARENCE KENDELL COOK**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

4
5
6 **MR. COOK:** I do. I just want the family to know I'm
7 sorry for what I've done. I'm sorry for y'all lost. I'm not
8 saying --- At the time and everything that took place I was
9 really defending myself. I regret it. And, I really am,
10 even though tears are coming out my eye, I'm trying to hold
11 them back on crying. I haven't had any sleep. I want you to
12 know that I am totally sorry. I am sorry.. And I mean it.
13 And I just hope y'all can forgive me one day. I really do.

14 **THE COURT:** All right. Sir, you may be seated. Just
15 a moment please.

16 **(PAUSE.)**

17 **THE COURT:** All right. Mr. Cook, you have been given
18 a trial by a jury of your peers sir, in which you have
19 through counsel fully participated in this trial. You have
20 been afforded all of your constitutional rights.

21 And the court finds that the evidence before the jury is
22 sufficient to support a finding of voluntary manslaughter.
23 In fact, based upon the allegation of the second shot, the
24 jury could have found you guilty of murder, sir. But they
25 have opted for the lesser included offense, voluntary

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1 manslaughter.

2 Based upon the record that you have, the violence of
3 this incident, the court finds it appropriate to sentence you
4 to twenty years in Department of Corrections for voluntary
5 manslaughter. And a consecutive five years for the
6 possession of a weapon during the commission of a violent
7 crime, which is a total of twenty five years.

8 That is the sentence of the court. I am going to credit
9 you against the voluntary manslaughter charge 227 days, which
10 you have served in the Detention Center awaiting these
11 proceedings. We are going to return you now to the Detention
12 Center for transport to the Department of Corrections.

13 **MS. JOHNSON-LEE:** Thank you, Your Honor.

14 **THE COURT:** Thank you. All right. Ladies and
15 gentlemen, this court now in recess and adjourns *sine die*.

16 (Whereupon, this trial was concluded at 4:38
17 p.m. on Thursday, April 21, 2011.)

18 **-- END OF TRANSCRIPT --**

CERTIFICATE OF REPORTER

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I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Marlboro County, South Carolina, on the 18th, 19th, 20th and 21st days of April 2011.

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

April 18, 2012

Pamela Ozment-Cartee
Circuit Court Reporter

WITNESSES

Deborah Young

Bennettsville Police Department

Law Enforcement Case #: 5725-10

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WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
1079611

ARRESTED ON: 2010-06-10

ACTION OF GRAND JURY

TRUE BILLED

Grand Jury Foreperson JUL 1 2010

Date

VERDICT

Grand Jury Foreperson

Date

[illegible]

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on July 1, 2010, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Clarence Kendall Cook did in Marlboro County, on or about June 10, 2010, willfully, feloniously, and intentionally kill the victim, Charles Hayes, with malice aforethought, either express or implied, by means of shooting the victim several times to the body and head, and the victim did die as a proximate result thereof on or about June 10, 2010 in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Bennettsville Police Department

Law Enforcement Case #: 5725-10

347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
MAR0004

ARRESTED ON: 2010-06-10

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-34-0091

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
February 2011

THE STATE

vs.

Clarence Kendall Cook

INDICTMENT FOR

Possession of a Weapon During the Commission
of a Violent Crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARLBORO)

Possession of a Weapon During the Commission of a
Violent Crime

§16-23-0490

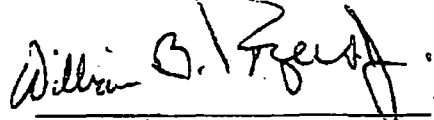
At a Court of General Sessions, convened on February 8, 2011, the Grand Jurors of Marlboro County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Clarence Kendall Cook did in Marlboro County, on or about June 10, 2010, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Bennettsville Police Department

Law Enforcement Case #: 5725-10



347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

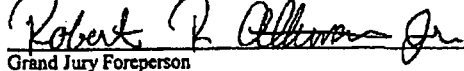
Defendant

ARREST WARRANT NUMBER
MAR0005

ARRESTED ON: 2010-06-10

ACTION OF GRAND JURY

True B:11



Grand Jury Foreperson

Date 2-8-2011

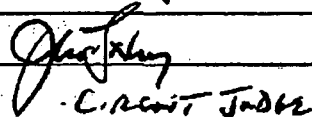
4/20/11

VERDICT

Charge dismissed by
Solicitor at close of State's
Case.

Petit Jury Foreperson

Date



DOCKET NUMBER:
2011-GS-34-0092

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
February 2011

THE STATE

vs.

Clarence Kendall Cook

INDICTMENT FOR

Unlawful Possession of a Pistol

§16-23-0030; 16-23-0050(A)

CDR Code: 2364

WILLIAM B. ROGERS, JR.
SOLICITOR GENERAL
MARLBORO COUNTY, S.C.
2011 FEB 10 PM 10 18

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

INDICTMENT FOR
Unlawful Possession of a Pistol

§16-23-0030; 16-23-0050(A)

At a Court of General Sessions, convened on February 8, 2011, the Grand Jurors of Marlboro County present upon their oath:

UNLAWFUL POSSESSION OF A PISTOL

CDR: 2364 16-23-0030(B), 16-23-50

*Amended 4/18/11
J. Saxey*

That Clarence Kendell Cook did in Marlboro County on or about June 10, 2010 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

658

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEMarlboro
VS.
Clarence Kendell Cook

AKA:

Race: Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: Bennettsville, SC 29512

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter

INDICTMENT/CASE#: 2010-GS-34-0466

A/W#: 1079611

Date of Offense: 6/10/2010

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Johnson-Lee, Mary T

65397
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 227 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2121

Sentence Date: 04/21/11

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

2011 APR 26 PM 10 29
FILED
WILLIAM B. FUNDERBORD
CLERK OF COURT
MARLBORO COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

657

COUNTY OF Marlboro
STATE VS.
Clarence Kendell Cook

AKA:

Race: Sex: M Age: 30

DOB: SS#: _____

Address: _____

City, State, Zip: Bennettsville, SC 29512

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mary J. Johnson
Johnson, Mary TSC Bar# 65347

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 10-65-34-0466☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 0☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2011-GS-34-0091A/W#: MAR0004Date of Offense: 6/10/2010S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

PTUP _____ days/hours Public Service/employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2121Sentence Date: 04/21/11

2011 APR 26 PM 1:29
FILED
CLERK OF COURT
MARLBORO COUNTY
WILLIAM B. FUNDENBERG
MARLBORO COUNTY

STATE OF SOUTH CAROLINA)

County of Marlboro)

IN THE COURT OF COMMON PLEAS

Clarence Kendall Cook 345807)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Marlboro County Detention Center
2. Name and location of Court which imposed sentence Marlboro County Court House
and it's located in Bennettsville, S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2610-GJ-34-0466

- (b) 2011-GS-34-0091
- (c) 2011-GS-34-0092
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 21, 2011
- (b) I'm to serve 25 yrs.
- (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, my lawyer failed to file it in a timely fashion
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept. 19th 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

FILED
 2012 FEB 18 PM 11 39
 WILLIAM B. FUJISERBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I wasn't guilty of voluntary manslaughter
- (b) ineffective counsel
- (c) conflict of interest
11. State concisely and in the same order the facts which support each of the grounds set out in (10): * refer to the back for 11(b) * refer to the back for 11(c) *
- (a) I didn't meet the elements of voluntary manslaughter
- (b) failure to call forth all my witnesses, to ask effective questions, and file app
- (c) two of my jurors knew the victim's family and were well
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

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FEB 16 PM 11 39
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

- 11(b) in a timely manner—White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)
- 11(b) my attorney wasn't prepared to fully represent me due to my trial being rushed, an accumulation of too many cases to defend.
- 11(b) my attorney failed to adequately cross-examine state's witnesses and my defense witnesses.
- 11(b) Attorney failed to investigate and consider valid defenses.
- 11(b) Failure to move for a mistrial
- 11(c) aware of my case/trial, which was the spokes lady and Avia Simmons (the other juror) was the ~~son~~^{C.G.} niece of Jesse Simmons. Jesse Simmons was one of my witnesses that I didn't want to use because Dt. Young was influencing his testimony and he didn't want to testify. Avia Simmons informed one of my relatives that she was going to find me guilty of something because I testified against her baby's father's brother in a murder trial in High Point, N.C. My lawyer was informed of this, but she stated, "I'm not telling Mr. Baxley that. That will confuse the court." My lawyer was angry and frustrated with my family and me because we couldn't pay her \$2,500 before my trial—which was against our retainer agreement.

- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____

FILED
2017 FEB 16 AM 11 39
WILLIAM H. FUNDENBURK
CLERK OF COURT
MARLBOROUGH COUNTY, S.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Myesha Latrice Brown
125 Warley St. Florence, S.C. 29501
- ii. Rosalyn Sellers
? address unknown? (Dillon, S.C.)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. failure to file a timely notice of an appeal
- ii. _____
- iii. _____

FILED
2012 FEB 16 PM 11 39
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

19. State clearly the relief you seek in filing this application:

a new trial or a re-sentence

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, Clarence K. Cook, 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.

Clarence K. Cook

SWORN to and subscribed before me this 6th
day of February, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires
October 8, 2014

My Commission Expires: _____

FILED
2012 FEB 16 AM 11 39
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Clarence K. Cook, 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.

Clarence K. Cook
Applicant

SWORN or affirmed to and subscribed before me this

6th day of February, 2012.


Notary Public

My Commission Expires: My Commission Expires
October 8, 2014

FILED
2012 FEB 16 AM 11 39
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2012-CP-34- 41
	)	
Clarence Kendall Cook, 345807	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent:	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 16, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted by the Marlboro County Grand Jury for voluntary manslaughter (2010-GS-34-466), unlawful possession of a pistol (2010-GS-34-92), possession of a weapon during the commission of a violent crime, (2010-GS-34-91). Myesha Latrice Brown, Esquire, represented Applicant.

On April 21, 2011, Applicant was tried before the Honorable J. Michael Baxley and a jury. After the jury returned convictions on Applicant's charges, Judge Baxley sentenced Applicant to five years imprisonment on possession of a weapon during violent crime, twenty years imprisonment on voluntary manslaughter, and to five years imprisonment on the Possession of a weapon during a violent crime charge, for an aggregate sentence of twenty-five years imprisonment. On information

from the Application, Applicant did not appeal his verdict and sentence. Counsel reserves the right to amend and add further information on the appeal upon receipt.

Attached herewith and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject conviction, Applicant's SCDC records, and Respondent will forward the trial transcript upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I wasn't guilty of voluntary manslaughter"
2. "ineffective counsel"
3. "conflict of interest"

Applicant seeks "a new trial or a re-sentence" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

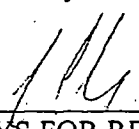
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

5/18/, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS

2012-CP-34-0041

CLARENCE KENDALL COOK, 345807)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Clarence Kendall Cook, 345807
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210**

DATED this 18th day of May, 2012.


Judy A. Carey, Legal Assistant
For Respondent

CLARENCE K. COOK)
APPLICANT)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)
RESPONDENT)

January 11, 2013
Darlington, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

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

TYSON A. JOHNSON, SR., ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

MARY P. MILES, ESQUIRE
Attorney for the Applicant

MYESHA L. BROWN, Esq.

ROSALIND L. SELLERS, Esq.

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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14	ROSILYN SELLERS	
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17	Direct By Ms. Miles	128
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DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Note	49	51
2			
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COLLOQUY

MR. JOHNSON: May it please the Court. Your Honor, this is Clarence Kendall Cook v. South Carolina. It's 2012-CP-34-41. Mr. Cook was indicted for voluntary manslaughter and unlawful possession of a pistol, and possession of a weapon during the commission of a violent crime. Myesha Brown and Rosaline Sellers represented him. And let me had that he was also indicted for murder.

On April 21st 2011 he was tried before Judge Baxley and a jury. Jury returned convictions. Judge Baxley sentenced him to five years imprisonment on the possession of a weapon charge, 20 years on manslaughter, and five years on the possession of a weapon during violent crime charge. On aggregate sentence as I understand it was a 25 year sentence.

He's represented today by Ms. Mary P Miles, and at this time I'll turn it over to Miss Miles.

THE COURT: All right. Miss Miles.

MS. MILES: Thank you, Your Honor, and please the Court. Your Honor, under these circumstances I was not privy to the transcript to most recently, but reading the transcript and also Mr. Cook, Your Honor, filed his application and the issues as -- that Mr. Cook indicated in his application, Your Honor, is threefold.

One in which that he says that he wasn't guilty of

1 voluntary manslaughter. And ineffective assistance of
2 counsel and conflict of interest. Your Honor, we will be
3 able to call three witnesses. Of course, Mr. Cook and two
4 other witnesses to show the ineffective assistance of
5 counsel in this matter.

6 THE COURT: All right.

7 MR. JOHNSON: I was wondering why he's not here yet.
8 I saw the coat, but looked more intently and realized we
9 don't have Mr. Cook here.

10 MS. MILES: I was wondering why he wasn't in here.
11 Beg the Court's indulgence, Your Honor.

12 THE COURT: All right. You may call your witness.

13 MS. MILES: Thank you, Your Honor. At this time I'd
14 like to call Mr. Clarence Cook.

15 CLARENCE COOK, after being duly sworn, testified
16 as follows:

17 MS. MILES: Thank you, Your Honor. Please the Court.

18 DIRECT EXAMINATION

19 BY MS. MILES:

20 Q. Mr. Cook, would you repeat your full name for the
21 Court, please?

22 A. Clarence Kendall Cook.

23 Q. Okay. Well, Clarence, we're not going to spend a lot
24 of time with the background information, but we want to go
25 right down to why you filed those applications for P.C.R.

1 Now, you are convicted and sentenced already. What were
2 you convicted of?

3 A. Voluntary manslaughter.

4 Q. Okay. And also a weapon?

5 A. Yes.

6 Q. Okay. And what was your sentence?

7 A. Twenty-five years.

8 Q. Was it 20 years for the manslaughter?

9 A. Yes, and five years for the gun.

10 Q. Unlawful ---

11 A. Um hum.

12 Q. --- use of a gun?

13 A. Yes, ma'am.

14 Q. Okay. Now, Clarence, we're going to move right on
15 into this. You were convicted what year?

16 A. 2011.

17 Q. Okay. And you filed your application for P.C.R. and
18 that's the reason why you're here today?

19 A. Yes, ma'am.

20 Q. Okay. So we're going to talk about the first
21 incident in which that you said that you did not meet the
22 elements of voluntary manslaughter. Were you first
23 charged and indicted for murder?

24 A. I don't recall being indicted for murder. I only
25 recall being charged for it.

1 Q. So there was not an indictment?

2 A. I never received the indictment for murder.

3 Q. Did your attorney question that?

4 A. No, ma'am.

5 Q. Did she discuss it with you?

6 A. No, ma'am.

7 Q. Okay. So all though you were charged with murder,
8 but you never was indicted?

9 A. No, ma'am.

10 Q. Were you indicted for manslaughter?

11 A. Yes, it was about eight and a half months later?

12 Q. Later?

13 A. Um hum.

14 Q. Okay. And did you know what caused it to be
15 manslaughter? Did you discuss this with your attorney?

16 A. No. On that day it was given to me during my bond
17 hearing.

18 Q. During your bond hearing?

19 A. The indictment was given to me at my bond hearing.

20 Q. What indictment was that?

21 A. Voluntary manslaughter.

22 Q. So you never was indicted for murder?

23 A. No, ma'am.

24 Q. Okay. Now, let's start in again because I didn't
25 find out who was your attorney. Who was your attorney on

1 the trial level?

2 A. Miss Myesha Brown.

3 Q. Okay. Was anyone else with Miss Brown?

4 A. During my trial it was Rosilyn Sellers.

5 Q. Okay. And they're here today?

6 A. Yes.

7 Q. Okay. Now, did you discuss this case with Ms. Brown
8 and Ms. Sellers prior to going to trial?

9 A. A never spoke with Ms. Sellers. I was speaking with
10 my lawyer which was Myesha.

11 Q. And did you go over the Rule Five, the discovery,
12 received from the Solicitor's Office?

13 A. Yes. Me and Myesha went over some things pertaining
14 to my Rule Five.

15 Q. Okay. And were you -- did you understand what you
16 were being indicted for?

17 A. Not at the present time because the indictment came
18 during my bond hearing.

19 Q. Okay. So when you discussed -- did you discuss after
20 the bond hearing with your attorneys what are the elements
21 for voluntary manslaughter?

22 A. Could you repeat that?

23 Q. Did you ever discuss with Miss Brown, your attorney,
24 the elements of the voluntary manslaughter?

25 A. Yes, cause prior to that I was given the I guess the

1 evidence papers which were for murder, voluntary.
2 manslaughter and involuntary manslaughter. That came from
3 the lawyer that I had before her.

4 Q. Oh, you had another attorney before -- prior to
5 Miss Brown?

6 A. Yes, ma'am.

7 Q. Okay. And so, therefore, did you discuss those
8 elements with Miss Brown?

9 A. Not under the voluntary manslaughter.

10 Q. Okay?

11 A. Only time they were brought up was at my trial.

12 Q. And at the trial, during the trial, did you discuss
13 it with Miss Brown?

14 A. It was discussed on the day that it was given because
15 they actually didn't even bring up voluntary manslaughter
16 at the beginning of my trial. It was like the second or
17 the third day of my trial that the Solicitor presented
18 voluntary manslaughter.

19 Q. Okay. So you thought that you were being tried for
20 murder?

21 A. Yes, ma'am.

22 Q. And that never was explained to you by your attorney?

23 A. No, ma'am.

24 Q. Miss Brown?

25 A. No, ma'am.

1 Q. Okay. Now, were you, in reaching the elements of the
2 manslaughter, did she discuss with you any passion that
3 during that time of the shooting were you at all in some
4 kind of distress?

5 A. I was only told that I would be going to Court for a
6 murder; that I was charged with murder, and that I would
7 be going to trial for murder. There was never an incident
8 where it came up for voluntary manslaughter until it was
9 presented which was like the second or third day of my
10 trial.

11 Q. Do you believe that if you would have -- if
12 Miss Brown would have discussed with you the elements of
13 at voluntary manslaughter that it would have made a
14 difference impact with you as far as whether or not you
15 were willing to take the voluntary manslaughter?

16 A. Yes, it would have made a difference.

17 Q. Okay. What difference do you think it would have
18 made?

19 A. I would have been able to try to get a plea
20 arrangement, a better plea arrangement.

21 Q. Okay.

22 A. For the lessor offense.

23 Q. Okay. Now, let's talk about the ineffective
24 assistance of counsel. So the first one is that voluntary
25 manslaughter. You didn't know that you were actually

1 being charged until after y'all were in the trial?

2 A. Yes, it was actually during the trial.

3 Q. During the trial?

4 A. Um hum.

5 Q. And did your attorney ever explain to you that this
6 is a reduction from murder?

7 A. No, ma'am. We didn't even -- actually, we didn't
8 even know anything about it being voluntary cause like I
9 said it was presented my second or third day into my
10 trial.

11 Q. Did she explain what malice was? The difference
12 between murder and involuntary manslaughter?

13 A. Later in the midst of my trial we discussed it. It
14 was like during our recess, but she was so -- she was kind
15 of like in an uproar because of a payment that wasn't made
16 to her. So I couldn't really get her to focus in on
17 anything that I was say. It was more of about money
18 issues at that time.

19 Q. Were you incarcerated during your trial?

20 A. No, ma'am, I had -- there was a period where i had --
21 I was locked back up because my lawyer had told me that I
22 could go look for a job and that she would take care of it
23 through the Solicitor. And I left. I left the State to
24 go look for a job which I ended up getting an interview
25 for this job.

1 And they placed me back into custody due to her
2 telling me that -- she had told me that it was okay to go,
3 and I left and the Solicitor had found out. Well,
4 actually, she went the filed a motion to amend my bond
5 order. And at that bond motion they had incarcerated --
6 locked me back up.

7 Q. All right. So you were incarcerated as a result of
8 your attorney not filing the proper motion?

9 A. No, she didn't take the proper procedures.

10 Q. The proper procedures?

11 A. Um hum. Which was we were suppose to have a written
12 permission statement from the Solicitor giving me
13 permission to leave. But she told me that it was fine.
14 She would take care of it, and I left and then when we
15 came for our motion it was brought up that I had went to
16 North Carolina to look -- well, actually, they were saying
17 that I went to North Carolina. And I told them that I did
18 go to North Carolina to look for a job. And, Judge
19 Baxley, he placed me back in the custody of the County
20 Jail.

21 Q. Because of lack of the procedure?

22 A. Yes, ma'am. And she stated it. She stated it that
23 she took full responsibility for it. He also said at the
24 hearing that he didn't -- it didn't matter because I left.
25 But she stated that she takes full responsibility for it;

1 that it was her fault.

2 Q. How long were you locked up?

3 A. Almost two months.

4 Q. Now, during the time in which that you were preparing
5 with Miss Brown for your trial did you go over a witness
6 list with Miss Brown?

7 A. Yes, we had a witness list. There was one.

8 Q. Did you at all give Miss Brown some witness -- names
9 of witnesses that you wanted Miss Brown to present at
10 trial they she didn't?

11 A. Yes. Yes, ma'am.

12 Q. Okay. And what those witnesses would have done for
13 your case do you think?

14 A. It would have been my favor.

15 Q. Okay. And who are those witnesses that you're
16 talking about that she did not bring to trial?

17 A. One would Mr. Walt Jones, who was the District
18 Attorney in High Point, North Carolina.

19 Q. And what would Mr. Jones would have been able to
20 testify to?

21 A. That I was -- that I had stood on the stand and I had
22 made several phone calls to him. But I also stood on the
23 stand and told him during that trial that I was testifying
24 in that I had fear for my life; that my life had been
25 threatened.

1 Q. Were you in fear of your life because of Mr. Charles
2 Haines, the deceased?

3 A. Yes.

4 Q. Okay. And he would have been able to testify that
5 you felt threatened?

6 A. Um hum. Yes, ma'am.

7 Q. That you were threatened?

8 A. Yes, ma'am.

9 Q. And she never got in contact with Mr. Walt?

10 A. No. She said that the State was calling him, and
11 there would be no need for her to do it because the State
12 would be calling them.

13 Q. Did you go over the Solicitor's witness list with
14 your trial lawyer, Miss Brown?

15 A. No, ma'am.

16 Q. So you didn't know whether he was on the list or not?

17 A. No. She just told me that they were calling -- the
18 State was calling him so it wouldn't be no need for her to
19 call him.

20 Q. And what was his full name?

21 A. All I know it was Mr. Walt Jones.

22 Q. Okay. And it wasn't Walter Covington? It was Walter
23 Jones?

24 A. Walt. Not Walter. Just Walt. Jones

25 Q. Would you be surprised to know that he wasn't on the

1 Solicitor's list, witness list?

2 A. Yes, I was really surprised.

3 Q. All right. Your attorney told you that the Solicitor
4 had Walt on their list?

5 A. Yes.

6 Q. Okay. Now, another thing in reference to witnesses.
7 Who else that you wanted Miss Brown to call that she
8 didn't?

9 A. There was guy by the name of Tate, but I don't know
10 is full name. I actually didn't know him by his full
11 name. And she said that she didn't ---

12 Q. Well, let's first find out who was Tate? I mean what
13 impact would Tate would have done in terms of your trial?

14 A. He would have stated that this guy had been paying
15 several people, trying to offer money to certain people
16 out there in the apartment complex to have something done
17 to me.

18 Q. Okay. So this person, Charles Haines, the deceased,
19 had a contract out on your life?

20 A. Yes, ma'am.

21 Q. And that Mr. Tate would have been able to testify to
22 that?

23 MR. JOHNSON: We have an objection.

24 MS. MILES: Okay.

25 MR. JOHNSON: We're going to object to relevance.

1 Being in fear for his life to the ultimate question of
2 ineffective assistance of counsel.

3 THE COURT: I'm sorry. Object to what?

4 MR. JOHNSON: Object to relevance to this line of
5 questioning.

6 THE COURT: Okay. The relevance of this line of
7 questioning?

8 MS. MILES: It's relevant because if you look showing
9 ineffective assistance of counsel there were witnesses
10 that could have made an impact on the outcome of the trial
11 because their defense was self-defense. And so,
12 therefore, there is all these persons that my client is
13 ask -- was asking his attorney to call would have shown
14 that there was a threat.

15 THE COURT: All right. I'll overrule the objection.

16 MS. MILES: Thank you, Your Honor.

17 THE COURT: You may proceed.

18 BY MS. MILES:

19 Q. So this tape, what information did you provide to
20 Miss Brown so she could locate this tape?

21 A. Locate what tape?

22 Q. The person in which that ---

23 A. Oh, you said 'Tate' not 'tape'. You said 'Tate'. I
24 thought you were saying 'tape'.

25 Q. No. Okay. Go ahead. Tell me what information you

1 provided to her so she could locate this person?

2 A. Well, I told her the exact area of the apartment that
3 he was stayed in, and she said that she wouldn't go out
4 there by herself. She said that she would have to have
5 somebody go out there with her. There were several
6 occasions where by wife would have to go with her or meet
7 her out there in the apartment complex because she said
8 that she didn't want to go out there due to the fact that
9 there were threats being made towards her for being my
10 lawyer.

11 Q. Okay. And this Tate lived out in the Marlboro Court
12 Apartments?

13 A. He stayed -- actually, he stayed in Gillcrest right
14 in front of it. But he was always at his sister's house
15 in Marlboro Court.

16 Q. So you know where the sister lived?

17 A. Yes, ma'am.

18 Q. Your family knew where Mr. Tate lived?

19 A. Yes, ma'am.

20 Q. Your wife knew where Mr. Tate lived?

21 A. Yes, ma'am.

22 Q. And so you do you know whether or not your attorney,
23 Miss Brown, hired a private investigator?

24 A. No. There was one.

25 Q. To find Mr. Tate?

1 A. No. There was no private investigator.

2 Q. Okay. So at any time that your family or you paid
3 Miss Brown her attorney's fees?

4 A. Yes, we are were charged \$3,500, and it was supposed
5 to have been paid in monthly installments of \$500. And
6 when, after we had gotten it down, she was asking for
7 \$10,000 and \$500. And we was paid for the month of April.
8 We were paid up for the month of April. And at the
9 beginning of my trial she said if she didn't have the rest
10 of her money she said she would show up, but she wouldn't
11 be there.

12 Q. At any time during the trial that she told you that
13 she could not find Mr. Tate?

14 A. At one time she said she wasn't going out there. I
15 remember her saying that she wasn't going to go out there
16 by herself. And just sort of got frustrated, and she said
17 that she wasn't going out there by herself. We wasn't
18 paying her enough money to jeopardize her life.

19 Q. Now, were there any other witnesses that -- you
20 mentioned Mr. Jones who was the defendant. I mean was
21 the -- he was the private -- what was Mr. Jones, again?

22 A. District Attorney.

23 Q. District Attorney; that could say that you actually
24 was threatened by Mr. Charles Haines?

25 A. Yes.

1 Q. Okay. And then you had Mr. Tate who could have
2 testified that, actually, Mr. Charles Haines put a
3 contract out on your life?

4 A. Yes.

5 Q. And, now, is there anyone else that you know of would
6 have made an impact on the outcome of your trial if Miss
7 Brown would have brought the witness to Court?

8 A. Actually, I say that there was someone that she did
9 bring in that she didn't question properly.

10 Q. Okay. And who was that person?

11 A. Michael Troutman.

12 Q. Michael Troutman, and who is Michael Troutman?

13 A. He was my lawyer in the last case in High Point,
14 North Carolina.

15 Q. Okay. All right. And according to the transcript he
16 did testify?

17 A. Yes, ma'am.

18 Q. And what is your problem with the questions in which
19 that she asked Mr. Troutman?

20 A. There wasn't any specific questions related to the
21 incident that I was in that he knew of. After the case,
22 which would be -- she didn't ask questions like as far as,
23 'did Mr. Cook mention to you that he was being threatened
24 by Charles -- Mr. Charles Haines', and there wasn't any of
25 those questions that were asked.

1 Also he, after I -- he had came off the stand he
2 stoop up there and he called me to the side and he said
3 that couldn't believe that she had him up there just to
4 answer two or three questions without there being any
5 substance behind it.

6 MS. MILES: Your Honor, I would like the Court to
7 take judicial notice of the transcript of the testimony on
8 Mr. Michael Troutman, Your Honor.

9 THE COURT: I don't have a copy of the transcript.

10 MR. JOHNSON: Your Honor, did you indicate that you
11 don't have a copy of his transcript or the transcript that
12 she's referring to?

13 MS. MILES: The transcript of the trial?

14 THE COURT: The trial or any transcript.

15 MR. JOHNSON: Your Honor, I can hand up my copy if I
16 can approach.

17 THE COURT: Thank you.

18 MS. MILES: Thank you, Your Honor. Your Honor, if
19 you would turn to, in the transcript, the Court have a
20 copy of Michael Troutman directed verdict starting on Page
21 435. Direct -- not verdict. I'm sorry. Direct
22 examination starting with Line 18 on page 435.

23 THE COURT: All right.

24 MS. MILES: Okay.

25 BY MS. MILES:

1 Q. Now, during the time of the trial was there a
2 question specifically asked of Mr. Michael at Troutman,
3 your former attorney, about Mr. Charles Haines threatening
4 you?

5 A. No, ma'am.

6 Q. Well, throughout the trial Miss Brown asked the
7 question to Mr. Michael Troutman?

8 MS. MILES: You don't have a copy of the transcript,
9 but, Your Honor, if you look on Page 438 on Line 20, the
10 question was from Miss Brown:

11 "Q Did he, meaning Mr. Cook, express
12 where those threats was coming from?"

13 BY MS. MILES:

14 Q. Now, this was a question in reference to you getting
15 threats prior to your testimony in High Point, North
16 Carolina?

17 A. Yes, ma'am.

18 Q. Okay.

19 MS. MILES: And the next line, Your Honor. The next
20 question is:

21 "Q Did he, meaning Mr. Cook, ever spoke
22 to you after you testified and expressed
23 concerns?"

24 BY MS. MILES:

25 Q. Okay.. So therefore there was nothing directly about

1 Charles Haines at that time?

2 A. No, ma'am.

3 Q. Okay. Now, also after you testified she asked Mr.
4 Troutman that after you testified in High Point whether or
5 not Mr. Troutman -- that you told Mr. Troutman or
6 expressed any concerns and during that time she never
7 asked him about whether or not you received threats from
8 Charles Haines; is that correct?

9 A. No, she never did.

10 Q. Okay?

11 MS. MILES: Your Honor, if you will look throughout
12 the testimony cross-examination, no redirect. There were
13 never, ever a question by Miss Brown to Mr. Troutman
14 whether or not Charles Haines, the deceased, threatened
15 Mr. Cook.

16 THE COURT: All right.

17 BY MS. MILES:

18 Q. Do you think that would have made an impact on the
19 outcome of this trial?

20 A. Yes, ma'am.

21 Q. And how would that -- you think that would have made
22 an impact?

23 A. Cause it would have showed that there was threats
24 that were being made and that I did reach out and -- as
25 far as reach out for some help because I did -- and I was

1 only told bu North Carolina that they could -- they
2 couldn't do anything; that I would have to sell everything
3 I had to relocate.

4 Q. But that would have helped with your defense of
5 self-defense?

6 A. Yes, ma'am.

7 Q. Now, were there any other witnesses in which that you
8 believe at trial that would have helped your case that
9 was -- who were not called or were not questioned
10 correctly.

11 A. There was one that was called that was actually -- I
12 was told that was for the State, Jesse Simmons.

13 MS. MILES: Okay. Jesse Simmons. And who is Jesse
14 Simmons?

15 A. Jesse Simmons is the uncle to Avian Simmons who was a
16 juror.

17 Q. Okay. Jesse Simmons testified at trial?

18 A. Um hum.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And Jesse Simmons was the uncle of one of the
22 jurors?

23 A. Yes, ma'am.

24 Q. Was Miss Brown aware of that?

25 A. Yes, she was.

1 MS. MILES: And according to the transcript, Your
2 Honor, that Jesse -- Avis Simmons was Juror 111. 111.
3 And that's on Page Five, Your Honor, of the transcript.

4 BY MS. MILES:

5 Q. And this juror does she at all -- when the witness
6 list was read out did she disclose to the Court that she
7 was a relative of one of the witnesses?

8 A. No, ma'am.

9 Q. Was Miss Brown aware that this was the nephew of one
10 of the witnesses?

11 A. She was aware that it was the niece of this witness.

12 Q. And you were told that it was -- Jesse Simmons was
13 going to be the State witness?

14 A. Yes, ma'am.

15 Q. Who told you that?

16 A. My lawyer, Myesha.

17 Q. Do you know whether Miss Brown ever spoke with Jesse
18 Simmons?

19 A. There was an incident where she said she had spoke
20 with him. Well, actually, she didn't say she spoke with
21 him. She said that my mother went and spoke with him.

22 Q. Whose mother?

23 A. My mother.

24 Q. Oh, your mother spoke with Jesse Simmons?

25 A. Yes, ma'am.

1 Q. Okay. But what Jesse Simmons, according to what your
2 mother told, although it's hearsay, but what you expected
3 Jesse Simmons to testified to?

4 A. Actually, I was tell her not to use him, but she said
5 that he was good for the use of expression that the things
6 that were saw that they were saying that they saw they
7 didn't actually see.

8 Q. So she never spoke with Jesse Simmons, but she put
9 Jesse Simmons on the stand?

10 A. Yes. And as a matter of fact he didn't actually want
11 to take the stand. He didn't want to go up.

12 Q. And during his testimony did he help your case?

13 A. No, ma'am.

14 Q. Did he hurt your case?

15 A. Yes, ma'am.

16 Q. How did he hurt your case?

17 A. Cause he stated things that he actually didn't see
18 that was totally -- he spoke totally against ---

19 MR. JOHNSON: Objection. We object to hearsay. He
20 can testify what he knows, but not what someone else said
21 or felt to say.

22 MS. MILES: Your Honor, I would like to direct the
23 Court to look at Page -- Jesse Simmons did testify on the
24 Defense witnesses, and you will see on direct that was on
25 505. Page 505 of the transcript.

1 THE COURT: Page 505 that individual testified?

2 MS. MILES: Yes, sir, he testified.

3 BY MS. MILES:

4 Q. And during the testimony of --

5 MS. MILES: I'm sorry, Your Honor. I proceeded
6 without letting you rule on the objection.

7 THE COURT: And the objection was -- was that the
8 objection? Does that satisfy the objection? I'm not sure
9 I fully understood the objection.

10 MR. JOHNSON: Well, I was just objecting to his
11 characterization of what someone who -- he can say what
12 his claims are. If the questioning wasn't sufficient or
13 the questioning was improper in some way, but it's way
14 outside the evidence. As I understood his answer it was
15 indicative of what the witness felt or thought. I thought
16 that was inappropriate hearsay.

17 THE COURT: If that was the line of questioning I
18 would sustain the objection then.

19 MS. MILES: Okay.

20 BY MS. MILES:

21 Q. During the time in which that Jesse testified on
22 direct was there anything that he said helped your case?

23 A. No, ma'am.

24 Q. Okay. Was there anything that hurt your case?

25 A. Yes, ma'am.

1 Q. Okay. And what specifically he said that hurt your
2 case?

3 A. He spoke about things that wasn't even pertaining to
4 what had taken place at his -- when they had took him for
5 questioning he had stated that there was a guy that had
6 dreds that had shot the deceased. But when he stood up on
7 the stand he stated that it was me. He pointed and said
8 that that was me that was actually out there.

9 And also there was an incident where he had told --
10 he told -- his stood up and said that Mr. Cook didn't --
11 did not have a gun at the present time; that there was the
12 deceased that had the gun.

13 MR. JOHNSON: Your Honor.

14 THE WITNESS: Looks like it was black.

15 MR. JOHNSON: We object.

16 THE COURT: Sure. Where are we in the transcript?
17 If you're going to ---

18 MS. MILES: We are doing the transcript, Your Honor.
19 We're putting in the transcript of the testimony. I would
20 ask the Court to take judicial notice of that. And I
21 specifically want to ask the question in reference to
22 Miss Brown asking Mr. Jesse Simmons.

23 THE COURT: What?

24 MS. MILES: And I'm looking for the line in which, as
25 I said, Your Honor. I thought I marked it. The line in

1 which that he said there were, I believe, it was three
2 shots and there were only two.

3 BY MS. MILES:

4 Q. But besides that Jesse Simmons was not a person in
5 which that you wanted her to call?

6 A. No, ma'am.

7 Q. And Jesse Simmons did not add anything to this case?

8 A. No, ma'am.

9 Q. Did Jesse Simmons act as though he was confused when
10 he was testifying?

11 A. Yes, he was.

12 Q. Did he act as though that he didn't want to be there
13 to testify on your behalf?

14 A. Yes. He acted more like he was against me.

15 Q. He was testifying against you?

16 A. Yes. Because he actually didn't even want to speak
17 to Myesha or me.

18 Q. But did you think in terms by calling Jesse, not
19 talking with Jesse Simmons made an impact on the jury?

20 A. Yes.

21 Q. And it also registered to the outcome of the case?

22 A. Yes, ma'am.

23 Q. So, therefore, Miss Brown didn't know what Jesse
24 Simmons was going to say prior to putting him on the
25 stand?

1 A. No, ma'am.

2 Q. Okay. Now, is there anyone else that you can think
3 of that you know that should have been called and she
4 didn't?

5 A. No, ma'am.

6 Q. Okay. Now, let's go back to Jesse Simmons and this
7 Juror Number 111. At any time did you spoke with this
8 juror, Ava Simmons, during the trial?

9 A. Yes, ma'am.

10 Q. During the trial she was as juror on your trial?

11 A. Yes, ma'am.

12 Q. On what occasion or why you spoke with her?

13 A. She -- her, like I said, I had a cousin that he
14 actually rode with her to the court room. She was -- she
15 would tell also him and me the direction that my case was
16 headed in.

17 Q. So, therefore, your cousin was riding with Ava
18 Simmons, a juror?

19 A. Yes, ma'am.

20 Q. And she would give your cousin information about what
21 the jury was discussing?

22 A. Yes, ma'am.

23 Q. And was Miss Brown aware of this?

24 A. Yes. I made a statement to her telling her that I
25 knew what was going on by Ava Simmons, and she told me

1 that she didn't want to bring it up. She didn't want to
2 confuse the Court.

3 Q. She told you that she didn't want to confuse the
4 Court?

5 A. Yes, ma'am.

6 Q. And she had knowledge that Ava Simmons, Juror Number
7 111, was discussing your case with someone, and Miss Brown
8 didn't bring it to the attention of the Court?

9 A. No, ma'am.

10 Q. Now, were you at any time made Miss Brown aware that
11 you were talking with this juror?

12 A. Yes. I spoke with her about it, and she said don't
13 mention it to anyone because you can get in trouble. She
14 said that she would speak to her herself. She said, "I'm
15 not getting in no trouble, but don't continue to speak to
16 her."

17 Q. So she told you to stop?

18 A. Yes, ma'am.

19 Q. And tell me, one, how many times you spoke with this
20 juror while you were in trial?

21 A. Maybe on three occasions.

22 Q. Where did you speak with her?

23 A. At her house.

24 Q. And what was the conversation about?

25 A. It was about my trial.

1 Q. And she said -- what -- I mean can you disclose what
2 was it about the trial?

3 A. She was saying that due to the -- due to the State's
4 witnesses being caught in so many lies that they wasn't
5 going to find me guilty of murder. She didn't she how
6 they were going to be able to find me guilty of murder.
7 And she said some was in my favor and other were talking
8 about leaving the stand -- I mean leaving the jury in
9 which two did walk off and say that they were sick.

10 Q. Okay. Now, tell me. Do you think that if Miss Brown
11 would have informed the Court about this misconduct of the
12 juror that it would have made an impact on the outcome of
13 the your case?

14 A. Yes, ma'am.

15 Q. And what way?

16 A. I would have been able to go for another trial
17 because at that point the jury had been tampered with.

18 Q. Okay. At any time that you were aware that
19 Miss Simmons said that you would be convicted of something
20 less than murder?

21 A. At that time when I had spoke with her voluntarily
22 manslaughter wasn't brought up. It had came in later.

23 Q. You didn't speak with her afterwards?

24 A. No, ma'am.

25 Q. All right. Now, let's talk about the fact that you

1 listed -- before I get to that is there anything else that
2 you feel or you believe that would have made an impact on
3 the outcome in your favor in this trial that Miss Brown
4 did not do?

5 A. Object to the indictment of voluntary manslaughter.

6 Q. What about the indictment of manslaughter?

7 A. It was actually -- it didn't have a true billed seal
8 stamping on it, and it wasn't signed by the Administrative
9 Judge. And I made that very clear with her.

10 Q. Did she put the objection on record?

11 A. I remember -- I can't recall her objecting, but I
12 don't know if it was to -- I don't know if it was for the
13 sentencing or me being found guilty of voluntary
14 manslaughter or -- cause I don't remember that.

15 But I know that she did object to something
16 pertaining to voluntary manslaughter. I'm not sure if it
17 was for the indictment, but never once did she bring up
18 the indictment.

19 Q. Also, as far as your appeal, after you were sentenced
20 when did you inform Miss Brown that you wanted to appeal
21 this case?

22 A. Right away.

23 Q. When you mean right away?

24 A. I told her that if things didn't turn out right that
25 I want her to file my appeal. She came to the county jail

1 right after they had took me to the court house -- took me
2 from the court house. And told me -- she told me that she
3 would file my appeal, but she went and told my mother that
4 if they didn't pay her the rest of her money she wasn't
5 going to file anything. And that they could sue her if
6 they wanted to.

7 Q. Okay. So, therefore, you immediately told Miss brown
8 that you wanted to file an intent to appeal?

9 A. Yes, ma'am. She also asked me to sign a paper that
10 she had stating that I had owed her. Actually, she took
11 it from \$3,500 to 33 cause I guess it was \$300 that she
12 was requesting for the appeal.

13 Q. Well, tell me. Did the appeal was filed?

14 A. No, ma'am. I had to -- when I got to Kirkland and
15 was able to use the phone it was like ---

16 Q. First, let's answer the question. Did Miss Brown
17 file an appeal?

18 A. No, ma'am.

19 Q. Okay. Did you file an appeal?

20 A. Yes, ma'am.

21 Q. When?

22 A. It was after the ten days.

23 Q. What happened to that appeal?

24 A. I was denied due to it not being served in a timely
25 fashion.

1 Q. Okay. Do you believe that if that intent to appeal
2 it would have made a difference in your case?

3 A. Yes, ma'am.

4 Q. Do you believe that you have any recourse now that it
5 has been denied?

6 A. Yes, ma'am.

7 Q. Do you have any way that you can get before the Court
8 of Appeals now that it has been denied?

9 A. Not that I know of.

10 Q. Okay. Now, you listed conflict of interest as one of
11 the reasons why you are filing this P.C.R. What do you
12 mean by conflict of interest?

13 A. Well, Ms. Ava Simmons was on the jury, and Jesse,
14 which was her uncle, was a witness for the State at first
15 which was given that Myesha had picked up for herself.

16 Q. Now, when I asked you the question earlier about the
17 witness, were there any other witnesses that should have
18 been called, were you one of those witnesses that was not
19 called?

20 A. Yes, ma'am.

21 Q. Did you ask to be called as a witness in your case?
22 Your own case?

23 A. Yes, ma'am, but I was told that if I took the stand
24 that it would open up everything that I -- my background
25 which later on everything was placed out there any way.

1 Q. Okay. So on direct when Michael Troutman was brought
2 to testify the incident that happened in High Point, North
3 Carolina --

4 MS. MILES: And, Your Honor, I would like the Court
5 to take judicial notice of his, Michael Troutman's,
6 testimony. He mostly talked about what happened in a
7 murder trial in which that happened in North Carolina --
8 in High Point, North Carolina in which that Mr. Cook was
9 accused of murder.

10 MR. JOHNSON: Your Honor, if I may reply on behalf of
11 the State. I don't know that I'm in a position to put the
12 State's position on this because I don't know what
13 transcript counsel is referring to. And if there is
14 another transcript on this case then it is part of the
15 record and we do not need it. I ask the Court to take
16 judicial notice.

17 However, if there is a transcript of a proceeding
18 from a different state I've not scene it, and I think the
19 contents of it would be hearsay just as any other out of
20 Court statement.

21 THE COURT: I thought she was talking about the
22 transcript in this case.

23 MR. JOHNSON: If it's the transcript of this case
24 it's part of the record. We don't need to take judicial
25 notice. It's part of the record.

1 MS. MILES: The reason why I stated on the record
2 because of the fact that the Court didn't have it and I
3 wanted the Court to make sure it turned to Page 435, as I
4 stated earlier in which that the direct examination of
5 Michael Troutman. And throughout that process Michael
6 Troutman spoke about the High Point murder case.

7 THE COURT: Right. Hadn't you already gone into all
8 that?

9 MS. MILES: Yes.

10 THE COURT: Okay.

11 BY MS. MILES:

12 Q. So, therefore, there was no reason why you couldn't
13 take the case because -- I mean take the stand because
14 Miss Brown had already opened the door?

15 A. Yes, ma'am.

16 Q. About that case? That murder charge?

17 A. Yes, ma'am.

18 Q. And that murder charge was dismissed; is that right?

19 A. Yes, ma'am.

20 Q. Okay. So you could have testified. Do you think by
21 your testimony and to talk about the harassment from the
22 deceased and the threats from the deceased and how you
23 feared for your life would have made a difference to the
24 jury?

25 A. Yes, ma'am.

1 Q. And you think it would have made an impact on the
2 outcome?

3 A. Yes, ma'am.

4 Q. You think that you were denied that opportunity?

5 A. Yes, ma'am. We didn't even prepare at all for it.

6 She never once -- she just told me that you want -- there
7 was no need for you to take to stand because they're going
8 to pull up your record -- your background. We don't want
9 the jury to see any, as far as, your background. We don't
10 want to paint a picture for them.

11 And so I asked her would there -- is there any other
12 way that we could go around. She said, "Well, if you take
13 the stand they're going to ask to see your record." And I
14 told her at that time that I didn't care. She said,
15 "Well, I'm saying that you don't need to be on the stand."
16 We were actually at each other's throats behind that
17 specific thing because she kept saying, "If you're going
18 to take the stand there is no need for me to be your
19 lawyer if you can't agree with what I'm saying."

20 Q. So you didn't take the initial to with -- to let the
21 Court know that you didn't want Miss Brown any longer?

22 A. I had done already went through one lawyer. She was
23 telling me that she wasn't going -- every day that she
24 walked in there it was like a blessing to me because she
25 had already told me she wasn't going to be there if she

1 didn't receive her money. So I was going in there every
2 day thinking that I wasn't even going to have a lawyer
3 present.

4 Q. Well, what kind of relationship did you and
5 Miss Brawn have during the trial?

6 A. It was terrible because the only thing that kept
7 coming up was money, money, money. It was hardly ever
8 about my trial.

9 Q. So she never prepared you for testimony? For you to
10 testify?

11 A. No, ma'am. And when I was out the first time before
12 my bond was revoked due to her negligence, I didn't speak
13 with her concerning what strategy we was -- how we were
14 going to strategize my case. It was only about trying to
15 stay away from the victim's family because they were
16 constantly calling the Solicitor trying to have me placed
17 back in Court.

18 Q. Did y'all discuss all about any theory of your case?
19 How she was going to prepare for your case?

20 A. She told me she would be -- she told me to leave it
21 up to her, was her words. Cause I asked her. I wanted to
22 know the strategy, and she told me, she said it's not for
23 me to know. Those were her words.

24 Q. Mr. Cook, are you telling the truth today?

25 A. Yes, ma'am, I am.

1 Q. Were you truthful to your attorney, Miss Brown,
2 during your trial?

3 A. Yes, I was. I also stated to her that our family
4 really didn't have a whole lot of money, but we would do
5 all that we could to see to it that she received her
6 payments. And we were actually caught up on our payments.
7 We didn't even owe her for that month of April. We had
8 paid her for the month of April. Our next payment wasn't
9 due until May, and she started demanding all of her money
10 at my trial.

11 Q. Okay. Mr. Cook, I'm going to stop now and allow
12 counsel to question you. Would you please answer any
13 questions that he has.

14 THE COURT: Well, probably a good time to take a
15 lunch break. Let's be in recess until 20 minutes til
16 2:00. Take a 50 minute lunch break. Court is in recess.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: All right. You can come back up and
19 retake the stand.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Cook, I just have a few questions for you
23 regarding your complaint about that you didn't understand
24 the indictments or what you were charged with. Help me
25 understand how that is ineffective assistance of counsel?

1 A. There was an argument that what I was saying to her
2 was that it should have been argued in Court because the
3 indictment that was presented wasn't -- it wasn't
4 presented at the beginning of the trial. And I didn't
5 even actually know what was going on. All I knew I was
6 being charged for murder.

7 Q. Okay. So which indictment wasn't presented until the
8 start of the trial?

9 A. It was involuntary. I mean voluntary. Not
10 involuntary, but voluntary manslaughter.

11 Q. Okay. And how does this amount to ineffective
12 assistance of counsel?

13 A. Because my lawyer didn't object to it.

14 Q. And when you say object to the indictment what do you
15 mean?

16 A. As far as when I say that I mean it was allowed. It
17 was being allowed in the Court, and she didn't object to
18 it.

19 Q. Well, did you understand the Solicitor or the State
20 brings those charges. Your lawyer really has -- all she
21 can do is defend you against the charges?

22 A. Yeah, but she had the right to object to something
23 that is being present that is not law.

24 Q. You mean the manslaughter indictment?

25 A. Um hum.

1 Q. And how was it not law?

2 A. Because it was brought in three days -- it was either
3 two or three days after my trial had been started.

4 Actually, I think it was the day before they deliberated
5 that it was presented.

6 Q. Okay. All right. So when it came to plea
7 negotiations did you tell your lawyer that the only plea
8 you would accept is one that was for probation?

9 A. No. When she came to me I told her I wouldn't take
10 any plea, and I told her I wasn't going to take any plea
11 for something that there is self-defense.

12 Q. So your testimony today is that you told your lawyer
13 you would not take any plea?

14 A. Yes, sir. I told her I would not take any plea
15 because I was being told self-defense.

16 Q. Did that ever change?

17 A. Yes. It never changed.

18 Q. Never changed. Regarding your not testifying whose
19 decision was it for you not to testify?

20 A. My lawyer.

21 Q. Did you tell her you wanted to testify?

22 A. Yes. And she told me it wouldn't be good for me to
23 do it because they would bring up my background. And she
24 said she didn't want the jury to have a bad imagine of me.
25 And which they still brought up my past background.

1 Q. How did your not testifying prejudice your case?

2 A. Because there was many things that wasn't stated that
3 I would say about as far as my fear that I had and the
4 threats that were made to me direct.

5 Q. But there were other witnesses that testified about
6 your fear, isn't that true?

7 A. Only one that actually testified about my fear.

8 Q. But his testimony was before the jury through that
9 witness?

10 A. Um hum.

11 Q. Wasn't it?

12 A. Yes, it was.

13 Q. So you testifying about your fear really would have
14 been on top of what they already heard?

15 A. No. It was more indirect.

16 Q. Now, on the witnesses, the witness that you claim
17 that your attorney should have called at trial, I made a
18 list or tried to write their names down, and I think I got
19 them all. But I guess my question to you. You didn't
20 bring those witnesses today, did you?

21 A. No, I didn't.

22 Q. All right. So ---

23 A. Actually ---

24 Q. --- we don't know what they would have said at trial,
25 do we?

1 A. Actually, this sort of came as a last minute thing,
2 and we wasn't all the way quite prepared for there being
3 any witness being called today.

4 Q. All right. But the fact remains that they're not
5 here?

6 A. Yes, sir.

7 Q. And you can say or you believe you know what they
8 would have testified to, but we don't know what they would
9 have said, do we?

10 A. I do. I can say I believe I know.

11 Q. I'm going to ask you some questions about Juror
12 Number 111, I think. What was that juror's name?

13 A. I don't know by juror number.

14 Q. Okay. Was there a juror that you spoke to before
15 jury deliberations began?

16 A. Yes, but not on that particular day. It wasn't the
17 day of the deliberations.

18 Q. Okay. I didn't ask you that. Did you talk to a
19 member of your jury before deliberations began?

20 A. Yes.

21 Q. And how did this come to be?

22 A. She was right -- well, one of my cousins was riding
23 with her to the courtroom.

24 Q. But go a little further. Tell me how it came to be
25 that you spoke with this person I think you said at her

1 home?

2 A. Yes, I spoke with her at her home.

3 Q. At her home?

4 A. Yes..

5 Q. A member of your jury?

6 A. Yes, sir. I spoke with her at home.

7 Q. Prior to deliberations?

8 A. Yes.

9 Q. That what I want to get at. How did this happen?

10 A. I was told to see what direction my case was going

11 in.

12 Q. You were told?

13 A. Yes.

14 Q. By who?

15 A. Yes, I was told by my attorney..

16 Q. Okay, but ---

17 A. But the thing that was stated was she said that she

18 didn't -- she wasn't going to go herself. She said she

19 didn't want to have anything to do with it. She said that

20 if went it was on me.

21 Q. All right. So you do go to the juror's house, and

22 discussed your case with her?

23 A. Actually, it wasn't a discussion of the case. She

24 just told me that at that present time that two jurors

25 were was going in a different direction, and that they

1 didn't want to be on the -- they didn't want to be on the
2 jury, and that the direction that my case was taking.
3 That's what she had told me. She told me that right now
4 you -- it's being said that you're not going to be found
5 guilty of murder. And that there was two people that was
6 going to be taken -- that was going to leave off the jury
7 and those two people did leave.

8 Q. I'm just trying to find out how you believe that this
9 is ineffective assistance of counsel?

10 A. She told me to go to them.

11 Q. You're claiming ---

12 A. After she knew -- after she knew that I -- what my
13 claim of ineffective and the conflict of interest was I
14 had made it clear to her that Ava Simmons was the niece of
15 Jesse Simmons. And she allowed it. She still allowed him
16 to be as one of my witnesses.

17 Q. Did you ask to have that juror stricken?

18 A. Did I ask to have that juror?

19 Q. Did would say ---

20 A. At the day of the trial I actually didn't know that
21 they had any -- that there was any connection between the
22 two. The day that they picked the jury.

23 Q. So the day of jury selection you did not see the
24 connection there yourself, did you?

25 A. Not the day we picked them.

1 Q. There would have been no way for your lawyer to know
2 either, would she?

3 A. I have no idea. She knew more before people than I
4 did, and she also stated to me that ---

5 Q. She's supposed to have known that this person was
6 somehow related?

7 A. Well, she knew that who to pick and who not to pick
8 because she was going through an officer by the name of
9 Charles Lemon. So she basically knew the background of
10 everyone.

11 Q. All right. Let me move on to your allegation of
12 appeal. Now, are you saying that you instructed
13 Miss Brown to file this particular appeal on your behalf
14 and she didn't? What is it that you're claiming?

15 A. Yes. I told her that I would like to have my case
16 appealed, and she said that she would take care of it.
17 But she told my mother and them that if she wasn't paid in
18 full she was not going to do it.

19 Q. When did you find out that your case was not being
20 appealed?

21 A. Say that again.

22 Q. When did you find out that your case was not being
23 appealed?

24 A. That my case had not been appealed? That's what
25 you're saying?

1 Q. Yes, sir.

2 A. I found out later on after I had got to Kirkland and
3 it was after I was given my pin number to use the phone.
4 That's when I found out cause my mother told me.

5 Q. Didn't Miss Brown cover with you in detail the
6 absolute deadline for filing those intent to appeal and
7 have you sign such a document?

8 A. No, ma'am. No, sir. No, she didn't. Only thing I
9 was told to sign was a paper that said the amount that I
10 owed which was -- it was \$3,300. And along with that, on
11 that very paper, she said that once this amount is covered
12 I'll take care of it, but Mr. Cook, I will file your
13 appeal. But you owe this remainder right here. This
14 remainder is owed to me.

15 Q. So you don't remember signing a document dealing with
16 or informing you that your appeal has got to be postmarked
17 by a certain day or you lose your right to appeal?

18 A. No. She never discussed any of that with me. She
19 even -- the paper that she had was a regular notebook
20 paper that I had signed off of. Cause I was not informed
21 that -- at all that I would have a deadline as far as
22 filing my appeal. I was told that she would file my
23 appeal. She told me she would file it.

24 MR. JOHNSON: May I approach the witness, Your Honor?

25 THE COURT: Certainly.

1 MR. JOHNSON: I need to have this marked as
2 Defendant's One.

3 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
4 identification only.)

5 BY MR. JOHNSON:

6 Q. All right, sir. I'm handing you a document that is
7 marked Defendant's Exhibit One, and I want to ask you if
8 you recognize the signature at the bottom. I'm directing
9 you to where the signature is.

10 A. Yes, sir. None of this was written. None of the
11 above was written on that paper. The only thing that was
12 written on there was the amount they I owed her.

13 Q. Okay.

14 A. And I see where it was all included in here because
15 she had me to write at the -- almost at the bottom to sign
16 on the amount that was owed. And there was space, but
17 none of that was in there.

18 Q. Does this appear to be your signature?

19 A. Yes, that is my signature. That is my signature.
20 But the middle writing was not in the paper. It was only
21 the amount that was owed.

22 Q. All right. And so as I hold up the paper just a few
23 feet away so that you can see it, and I'm referring to it
24 with a pen. Defendant's One has your signature two thirds
25 of the way down. Would you agree to that?

1 A. If you say so.

2 Q. Well, is it about two thirds of the way down. About
3 right here. Two thirds. And then the information that
4 you say was there is in the top portion of the page?

5 A. Um hum.

6 Q. Right. But you're claiming that the middle portion
7 was written in after you signed it?

8 A. Yes, because it wasn't even a full sheet of paper
9 that she had. She just tore it off. It wasn't even a
10 full sheet of paper. It was torn.

11 Q. So if this was presented to you with the information
12 at the top why would you have signed way down here?

13 A. That's exactly where she had me to sign. There was
14 nothing between. She pointed for me to sign there.

15 MR. JOHNSON: We'll move this in as Defendant's One.

16 THE COURT: All right. Without objection.

17 MS. MILES: I object. There is no way to
18 authenticate the piece. He's saying that that is not his
19 writing. Only thing that was a signature, so there is no
20 way to authenticate. I don't think that he can put this
21 in without first having the author of that document to
22 authenticate. He can't because he didn't.

23 THE COURT: Well, he does say that he can identified
24 part of that document.

25 MS. MILES: But he can't identify the whole document,

1 and he's asking that the whole document comes in.

2 THE COURT: I will overrule the objection. I'll
3 admit it.

4 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
5 into evidence.)

6 BY MR. JOHNSON:

7 Q. All right. And so we discussed your request for
8 appeal. I want to nail down when you made the request.
9 The date, if you recall, if you could do that for us?

10 A. The day it was at the County Jail. At the County
11 Jail because I asked her to appeal my case.

12 Q. Now, we talked about immediately after the verdict
13 you telling her?

14 A. Yes, cause she came up there, and she even told me.
15 She said, "You have a good appeal." She said, "Clarence,
16 you have a good appeal." She said, "You didn't even meet
17 the elements of voluntary manslaughter. You have a good
18 appeal." And she said that she would file the appeal.

19 But she said, "Now, there is some money that's owed to
20 me," and she wrote out the amount cause she added it up.

21 Q. Just referring back to the number of times that you
22 read, did you testify earlier that you met with Miss Brown
23 about 14?

24 A. I didn't say 14 times.

25 Q. I'm sorry. Tell me how many times?

1 A. Me and Miss Brown met on maybe -- since -- from the
2 time -- are you asking from the time that she became my
3 lawyer?

4 Q. Yes, sir.

5 A. From the time she became my lawyer she came to see me
6 approximately about four times. It's about four visits?

7 Q. All right.

8 A. I stayed in the County for roughly six months, and
9 then I was given bond. And when I got out on bond the
10 issue came up where she had told me I could leave the
11 State. The Judge told me not to have any direct or
12 contact with the Solicitor. So it had to come through her
13 for me to have permission to leave the State.

14 Q. All right.

15 A. And she admitted. She told the Judge, "Your Honor, I
16 take full responsibility because it was my fault that he
17 left. I told him to go, and my bond was revoked.

18 Q. All right?

19 A. I was back in the County. I was there for almost two
20 months. And during those two months I think I got one
21 visit from her, and it was just to tell me that I would be
22 coming back up for a bond.

23 Q. The North Carolina charge that's been referenced here
24 what was that a charge for?

25 A. The North Carolina charge?

1 Q. Yes, sir.

2 A. It was a charge for murder. I was actually charged
3 for murder there, and then later released on those
4 charges.

5 Q. Okay. So when you talked about questioning anyone
6 that had any relation to the North Carolina charges the
7 potential there is that they could be questioned in front
8 of the jury about pending murder charges in another state
9 separate from what we were dealing with here in South
10 Carolina?

11 A. My case wasn't pending at the time. It wasn't
12 pending.

13 Q. You talk about the questioning of the prosecutor and
14 the testimony of the transcript that was eluded to by your
15 lawyer. These were potential witnesses that could have
16 been asked about pending murder charges in North Carolina?

17 A. And also about what the case I was in at the present
18 time.

19 Q. Yes, sir. Thank you.

20 MR. JOHNSON: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. MILES: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. MILES:

25 Q. Now, Clarence, I don't know whether you understood

1 the question. Were there any pending murder charge in
2 High Point, North Carolina at the time in which that you
3 were being tried here in South Carolina?

4 A. Not for me. It wasn't for me.

5 Q. Okay. So that case had been dismissed; is that
6 right?

7 A. Yes, ma'am.

8 Q. So there were not any pending charges against you?

9 A. No, ma'am.

10 Q. Okay. So, therefore, when you answered the question
11 and said that the witnesses would testify to a pending
12 charges in North Carolina that you wanted to call that was
13 not correct what your answer was, was it?

14 A. No, ma'am.

15 Q. Okay. So, therefore, those witnesses were not being
16 by any means unable to testify on your behalf?

17 A. No, ma'am.

18 Q. Okay. Now, you told Miss Brown that you wanted those
19 witnesses to testify?

20 A. Yes, ma'am.

21 Q. Now, you saw an exhibit, Defendant's Exhibit One.
22 Now, do you remember the original document?

23 A. Yes, ma'am. It was -- she took the paper. It was a
24 half a sheet and she tore it. She had tore the paper. It
25 was torn in half, and she wrote it out on the top. She

1 said, "This is how much you owe me. This is the remainder
2 understand of what you owe me," okay. I said, "That's
3 fine." She said that she would -- she said that she
4 wanted it in full, but if my family couldn't pay it in
5 full that she would continue those papers but that she
6 wanted her money.

7 She said, "I will file your appeal. I will take care
8 of your appeal," and then after that, later on down the
9 line, after I had got to Kirkland and was able to get a
10 pin number to call home I found out that she said she
11 wasn't going to file my appeal because she hadn't been
12 given all her money.

13 Q. So the exhibit that is before the Court today this is
14 not an original?

15 A. No, ma'am, it's not.

16 Q. This is a copy?

17 A. Yes, ma'am, it is.

18 Q. Now, I want you to take --

19 MS. MILES: Your Honor, may I approach the witness?

20 THE COURT: Sure.

21 BY MS. MILES:

22 Q. Now, I want you to look at that document carefully.
23 You're saying that the middle of that statement was not
24 there when you signed it?

25 A. Ma'am, it was not on this paper. If I would have saw

1 that I would never put my signature on it.

2 Q. Is that also your writing?

3 A. Yes, ma'am.

4 Q. No.

5 A. At the bottom.

6 Q. At the bottom. But in the middle of it is that your
7 writing?

8 A. No, ma'am, that's not my writing.

9 Q. Is the date, is that your writing?

10 A. No. That's not my writing at all. That's not my
11 writing.

12 Q. Okay. Now, look at the paper. That's a copy; is
13 that right?

14 A. Yes. And this paper says that, "I, Clarence Cook."
15 I never ---

16 Q. Would you read that to publish it to the Court,
17 please?

18 A. It say, "I, Clarence Cook, have been informed that my
19 appeal -- my appeal not be filed or postmarked by May 2nd
20 2011 or I will lose my right to an appeal." That was
21 never there.

22 Q. That was never there?

23 A. And I never signed my name in that spot either.

24 Q. Okay.

25 A. I only signed my signature to the amount that I owed.

1 Q. Was it just one sheet that was given to you to sign?

2 A. Yes. It was torn. It was one paper that was torn.

3 Q. Just one paper? It wasn't in a pad?

4 A. Uh huh.

5 Q. Now, look at that paper real closely. Does that look

6 like that was in a pad?

7 A. No, ma'am.

8 Q. If you look or for example --

9 MS. MILES: May I approach him?

10 THE COURT: Sure.

11 BY MS. MILES:

12 Q. If you look on the side here but it looks like that

13 is a page out of a pad?

14 A. Yes, ma'am.

15 Q. So, therefore, the possibility of cut and paste?

16 A. Yes, ma'am.

17 Q. So this pad -- it looks as though that this is a

18 paper out of a pad?

19 A. Yes, ma'am.

20 Q. But the paper that you actually signed was just one

21 sheet?

22 A. Yes, ma'am.

23 Q. And when did you sign that?

24 A. After I saw on that paper that it had the amount that

25 was owed, and it was signed at the County Jail after my

1 trial sentencing.

2 Q. Okay.. Now, when you found out that Miss Brown had
3 not filed your appeal what did you do?

4 A. I immediately wrote a letter to the -- I want to say
5 it's the Commission of Lawyer Conduct. I wrote a letter
6 to them, and I told them that my appeal -- that I was told
7 that my appeal would be filed, but my lawyer didn't --
8 didn't file it. And also my mother had called them, and
9 we had filed a complaint and after they investigated it
10 was -- they said they didn't dismiss it, but they --
11 because of misconduct.

12 MR. JOHNSON: Your Honor, we're going to object to
13 the hearsay.

14 THE COURT: Sustain the objection.

15 BY MS. MILES:

16 Q. So what was the end result?

17 A. They placed something in her file.

18 Q. Okay.

19 MR. JOHNSON: Your Honor, same objection.

20 THE WITNESS: That was placed confidential.

21 BY MS. MILES:

22 Q. Okay?

23 A. Cause she pled guilty to it.

24 MR. JOHNSON: Same objection, Your Honor.

25 THE COURT: Sustain the objection.

1 BY MR. JOHNSON: We ask that it be stricken from the
2 record, Your Honor.

3 THE COURT: Court grants the motion.

4 MR. JOHNSON: Okay.

5 THE COURT: Directs that testimony be stricken.

6 MS. MILES: Thank you, Your Honor.

7 BY MS. MILES:

8 Q. As it stands right now the fact that the charge was
9 dismissed for murder in High Point?

10 A. Yes, ma'am.

11 Q. At the time you wished that your trial here in South
12 Carolina. Was there anything that would have hindered you
13 from testifying other than this supposedly bad act in the
14 North Carolina that was dismissed?

15 A. My lawyer, she didn't want me to testify at all.

16 Q. Okay. Thank you so have much, Clarence.

17 MR. JOHNSON: Nothing further, Your Honor.

18 THE COURT: Thank you. You may step down. Call your
19 next witness.

20 MS. MILES: Thank you, Your Honor. I would like to
21 call Ms. Chastity Carter.

22 CHASTITY CARTER, after being duly sworn,
23 testified as follows:

24 MS. MILES: Your Honor, may I?

25 THE COURT: Sure.

1 MS. MILES: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. MILES:

4 Q. Miss Chastity, would you tell us for the record just
5 repeat your full name?

6 A. Chastity Denise Carter.

7 Q. Okay. Miss Carter, would you tell us are you related
8 to Mr. Clarence Cook?

9 A. He's my husband?

10 Q. Your?

11 A. Um hum.

12 Q. And you recall when he was on trial for murder?

13 A. Yes.

14 Q. Did you testify in that trial?

15 A. Yes, ma'am.

16 Q. And during the trial did at any time did you have
17 conversation with Miss Brown who represented your husband?

18 A. Yes, ma'am.

19 Q. At any time were you aware of any juror ---

20 A. Yes, ma'am, Ava Simmons?

21 Q. --- that was communicating with the members of the
22 family as well as with your husband?

23 A. Yes, ma'am.

24 Q. And can you tell the Court specifically do you have
25 actual knowledge of conversations in which that Miss Brown

1 and -- was informed the family members to go talk to the
2 juror?

3 A. Yes, ma'am.

4 MR. JOHNSON: Objection, Your Honor, to the extent
5 that the question calls for hearsay from the witness.

6 MS. MILES: The question was actual knowledge. I was
7 asking her whether or not she has actual knowledge.

8 THE COURT: Well, we'll wait and see what her answer
9 is.

10 MS. MILES: Okay.

11 BY MS. MILES:

12 Q. Do you have actual knowledge?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. MILES: That was the answer. Okay. Thank you,
16 Your Honor.

17 THE COURT: What is it?

18 MS. MILES: Okay.

19 THE COURT: What is it?

20 MS. MILES: Okay.

21 BY MS. MILES:

22 Q. So, therefore, can you tell the Court specifically
23 when this happened and what was said when you were there.
24 Not when somebody else was there. When you were there?

25 MR. JOHNSON: I still -- Your Honor, I still ---

1 THE COURT: When she was where?

2 MS. MILES: Let me rephrase it.

3 BY MS. MILES:

4 Q. The conversation, did you have any conversation with
5 Miss Brown?

6 A. Yes, I was with Miss Brown and Clarence during the
7 conversation.

8 Q. And the conversation was about one of the jurors?

9 A. Yes, ma'am.

10 Q. And the juror was named Avis?

11 A. Simmons.

12 Q. Simmons?

13 A. Yes, ma'am.

14 Q. What was the conversation?

15 A. She came to me.

16 MR. JOHNSON: Your Honor, we still have the same
17 objections in regard to what the juror said. The juror is
18 not here to testify.

19 MS. MILES: Your Honor, she was present. She has
20 actual knowledge.

21 MR. JOHNSON: It would be hearsay.

22 MS. MILES: It's not hearsay.

23 THE COURT: Who are you trying to get her to quote?

24 MS. MILES: Excuse me?

25 THE COURT: Who are you trying to get the witness to

1 quote?

2 MS. MILES: This was actually -- first of all, the
3 question was did Miss Brown say anything in the
4 conversation to for them to do anything.

5 THE COURT: All right. Ask her a question along
6 those line.

7 MR. JOHNSON: If I could just object, basically, that
8 she would have to first ask Miss Brown did she make the
9 statement and then ask her witness in order to impeach her
10 if she denied making the statement, but that's not
11 happening here.

12 THE COURT: Well, Miss Miles, what do you say about
13 that?

14 MS. MILES: Your Honor, based on the circumstances of
15 direct and testimony she has actual knowledge. It's not a
16 hearsay. She can repeat what she said, what she heard
17 because she was right there involved with the
18 conversation.

19 THE COURT: All right. I over -- I sustain the
20 objection then. I disagree with you, now, and I'd sustain
21 that objection.

22 MS. MILES: Okay.

23 BY MS. MILES:

24 Q. Were there any reference to Ava Simmons who was on
25 the jury made by Miss Brown in your present?

1 A. Yes.

2 Q. Okay. And the reference was for the family member to
3 talk to?

4 A. Ava Simmons.

5 Q. Ava Simmons. Did any family member spoke to Ava
6 Simmons?

7 A. Yes, ma'am.

8 Q. Do you have actual knowledge that Clarence spoke with
9 Ava Simmons?

10 A. Yes, I took him over there.

11 Q. During the time of the trial?

12 A. During the trial. During the time and before the
13 trial. Miss Brown brought the jury paper to his
14 grandmother's house. She let Clarence go over the jury
15 paper. She asked me would I ride to Marlboro Court with
16 her where the incident happened. And she took pictures,
17 and when we got back she asked Clarence did he get the
18 names that he wanted for his jury.

19 He specifically said he knew Ava Simmons personally.
20 And Miss Brown said you need to go and talk to her. And
21 she also gave the address. The address was on the paper.
22 So she told Clarence to go over there and see if she would
23 be one of his jurors.

24 Q. Okay. Now, after that did he talk to her while the
25 trial was going on?

1 A. Yes, ma'am.

2 Q. How do you know that?

3 A. Because it was -- after Michael Troutman testified
4 they went to lunch. Miss Brown ---

5 Q. Who is they?

6 A. Who is they?

7 Q. Where is the lunch?

8 A. The courtroom. Everyone went to lunch.

9 Q. Okay.

10 A. And, Myesha, she went -- she came up to Clarence, and
11 she said specifically ---

12 Q. Who is Eisha?

13 A. Myesha. Miss Brown. The lawyer.

14 Q. Okay.

15 A. She specifically said if you ---

16 MR. JOHNSON: Your Honor, we want to object to this
17 witness testifying to what anyone else said. And I want
18 to -- if this witness, Myesha Brown, said, "I never said
19 that" on direct or cross then it think that perhaps we
20 could go into that with this witness, but we haven't
21 established that yet.

22 THE COURT: I'll sustain the objection.

23 MS. MILES: Okay.

24 BY MS. MILES:

25 Q. At any time during the trial did Clarence went over

1 to this juror's home?

2 A. Yes, he did.

3 Q. How do you know that?

4 A. I took him.

5 Q. And that was during the time in which the trial was
6 going on?

7 A. Yes, ma'am.

8 Q. Was Miss Brown aware of this?

9 A. Yes.

10 MR. JOHNSON: Objection, Your Honor. Object.

11 THE COURT: I'll overrule that objection. Go ahead.

12 BY MS. MILES:

13 Q. Was Miss Brown aware of it?

14 A. Miss Brown told Clarence to go see how Ava felt about
15 the trial.

16 Q. The question is was Miss Brown aware ---

17 A. Yes.

18 Q. --- that Clarence spoke with this juror?

19 A. Yes.

20 Q. And how do you know that?

21 A. Because I was there when she told him?

22 MR. JOHNSON: Objection.

23 MS. MILES: Okay.

24 THE COURT: Sustain the objection.

25 BY MS. MILES:

1 Q. Cause you were present?

2 A. I was present during the conversation.

3 Q. Okay. Now, I want to find out about the witnesses
4 that were not called. Did you know -- did you have a
5 conversation with Miss Brown about the witness' list and
6 who should be called and go over the strategies with
7 Miss Brown while you husband was there?

8 A. Could you repeat that?

9 Q. Okay. Were you present when Clarence and Miss Brown
10 was going over the witness list?

11 A. The -- I was present, but she had me looking at the
12 video in his grandmother's house while she talked to
13 Clarence at the bar in his grandmother's house.

14 Q. Okay. Did you know this witness that, Tate, or
15 whatever his name, that had the contract out on Clarence?

16 A. Yes.

17 Q. Where did he live?

18 A. He lived at -- well, he didn't live in the complex
19 that we lived in. I can't tell you where he lived because
20 he was from house to house.

21 Q. Okay. But you had knowledge how to find him?

22 A. Yes.

23 Q. Did you know whether or not Miss Brown tried to
24 locate him?

25 A. No.

1 Q. Was Miss Brown aware that he had knowledge that could
2 have helped Clarence's case?

3 A. Through his mother.

4 Q. Now, you testified at the trial that you saw Charles
5 Haines. Haines -- Hayes, approached Mr -- your husband?

6 A. Correct.

7 Q. And it was that your husband retreated two times?

8 A. Right.

9 Q. According to your testimony?

10 A. He backed up twice.

11 Q. Twice. Okay. Now, during that time when you
12 testified did you feel -- were you able to at least tell
13 the -- Miss Brown why Clarence action was in self-defense?

14 A. Yes.

15 Q. And y'all went over your testimony?

16 A. Yes. She typed it out and put the answers with it
17 and told me to study it. And that would be the answers
18 that she -- the piece of paper that I have that she typed
19 out with the answers are at my house.

20 Q. But did you go over it with her?

21 A. Yes.

22 Q. The answers?

23 A. Right. Correct.

24 Q. Okay. Now, Chastity, I don't have any further
25 questions. Would you answer any questions that

1 Mr. Johnson would have.

2 MR. JOHNSON: No questions, Your Honor.

3 THE COURT: All right. You may step down.

4 MS. MILES: I would like to call Miss Cook.

5 ARLENE COOK, after being duly sworn, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. MILES:

9 Q. Ms. Cook ---

10 MS. MILES: May it please the Court.

11 BY MS. MILES:

12 Q. Miss cook, would you please repeat your full name for
13 the record, please?

14 A. Arlene Cook.

15 Q. Are you related to Clarence Cook?

16 A. Yes.

17 Q. Okay. Do you know Miss Brown who represented your
18 son in a murder trial?

19 A. Yes.

20 Q. Okay. Have you had conversations with Miss Brown?

21 A. Yes.

22 Q. Okay. And at think time that -- during the process
23 of the trial were you aware of a juror named Ava Simmons?

24 A. Yes.

25 Q. What do you know about Ava Simmons?

1 A. She was supposed to have been one of the jurors on
2 this trial, and she had -- well, Myesha had ---

3 Q. Oh, would you please tell the Court who is Myesha.

4 A. His lawyer.

5 Q. Miss Brown?

6 A. Yeah.

7 Q. Okay.

8 A. Well, she had asked us to go -- when they had a
9 recess she had asked us to go and have a conversation with
10 her concerning my son's trial.

11 Q. With her. Who is with her? Who is her?

12 A. Ava.

13 Q. Avis?

14 A. Yes.

15 Q. So you spoke with Avis who was a juror?

16 A. Yes.

17 Q. During the trial?

18 A. Yeah.

19 Q. Okay. And during the trial were there any time in
20 which that you reported back to Miss Brown about the
21 conversation you had with this juror?

22 A. Yes.

23 Q. Okay. So she was fully aware that you were
24 communicating with this juror?

25 A. Yeah.

1 Q. At any time that you -- was there any request made or
2 motion made before the Court in regards to this juror and
3 communicating?

4 A. No.

5 Q. Now, there were witnesses in which that were not
6 called. Were you aware of this person, that Charles
7 Haines, the deceased, paid to have a contract on the life
8 of your son?

9 A. Yes.

10 Q. Would you tell the Court what you know about that?

11 A. It was told to me.

12 MR. JOHNSON: I object to hearsay, Your Honor.

13 MS. MILES: It's not told.

14 THE COURT: Okay.

15 MS. MILES: You cannot ---

16 THE WITNESS: Well, I got to tell who told me.

17 BY MS. MILES:

18 Q. No, you cannot say anything about what someone told
19 you.

20 A. Um hum.

21 Q. Okay. And the Court will let you know that because
22 it's hearsay.

23 A. Okay..

24 Q. But you have -- you can speak to the fact of what you
25 know.

1 A. Oh, okay.

2 Q. So tell us what you know. Not what someone told you?

3 A. Okay. He said -- well ...

4 Q. You know.

5 A. I know that he's supposed -- well, don't say it like
6 that, right? But the way I'm going to put it he had --
7 well, Mr. Haines ---

8 Q. The deceased?

9 A. Yeah. Had put a hit out on my son. Some guys at the
10 store was supposed to been paid to kill him.

11 Q. Do you know those individuals?

12 A. Yes.

13 Q. Okay. Did you let Miss Brown know about that?

14 A. Yes.

15 Q. And what was the conversation with Miss Brown?

16 A. Miss Brown had -- when I had mentioned it to her she
17 told me that it wasn't really necessary to have that into
18 his trial because for one thing she had wanted me to go
19 and talk to several other people concerning his trial.
20 And I had to go and get -- it was Jimmy ---

21 Q. Mr. Jimmy Simmons testified?

22 A. Yes. I had to get Mr. Jimmy ---

23 Q. Ridges?

24 A. I had to get Jimmy Ridges. I had to go and get Mr.
25 Troutman. I had to go and get -- I'm trying to think.

1 It's another one. I can't think of the man name, but he
2 stay out there in the complex where they was staying. I
3 had to go and talk to each one of those persons for her.
4 And I was the one that brought Mr. Troutman from High
5 Point for his case. And on our way going back to High
6 Point he indicated to me ---

7 MR. JOHNSON: Object, Your Honor.

8 BY MS. MILES:

9 Q. Don't say what he told you.

10 THE COURT: Sustain the objection.

11 BY MS. MILES:

12 Q. Not what someone told you, but what you know.

13 A. Okay. Well, I know that he told me that she did ---

14 MR. JOHNSON: Object, Your Honor.

15 THE COURT: Sustain the objection.

16 BY MS. MILES:

17 Q. Do you know whether or not Mr. Chapman -- Troutman
18 was pleased with the way how the trial was going?

19 A. No.

20 Q. Okay. Do you know whether or not Miss Brown asked
21 Mr. Troutman the question of whether or not there were
22 threats on -- by Mr. Hayes?

23 MR. JOHNSON: Objection.

24 THE WITNESS: No.

25 MR. JOHNSON: Objection, Your Honor.

1 THE COURT: I'll sustain the objection.

2 MR. JOHNSON: I ask that the answer be stricken.

3 THE COURT: So ordered.

4 BY MS. MILES:

5 Q. Were you in the courtroom when Mr. Troutman
6 testified?

7 A. No.

8 Q. Now, as far as the question concerning Ava Simmons,
9 how many times you spoke with Ava?

10 A. Three times.

11 Q. And that was during the trial?

12 A. When they were time for recess during the trial.

13 Yeah.

14 Q. Did you report those times back to Miss Brown?

15 A. Yes.

16 Q. So, therefore, you think that if Miss Brown would
17 have ---

18 MR. JOHNSON: Object to leading ---

19 MS. MILES: Okay.

20 MR. JOHNSON: --- Your Honor.

21 THE COURT: I sustain the objection.

22 MS. MILES: Thank you.

23 BY MS. MILES:

24 Q. Would -- did Miss Brown brought it to the attention
25 of the Court that you were communicating?

1 A. No.

2 Q. You believe that would have an impact on your son's
3 case if it was brought to the Court's attention?

4 A. Yes.

5 Q. And how would that have been?

6 A. For one thing I didn't think it was right for her to
7 have us talking to someone that's supposed to be
8 criminating him so see if he's guilty or not guilty. And
9 a lot of things that she did wasn't right. And that was
10 supposed to been illegal and especially when she sat there
11 and going to tell me that she wanted me to meet her at
12 eight o'clock that morning. And if I didn't have her --
13 the rest of her money she was not going to finish
14 representing my son.

15 And I had a television, and I left to go and take
16 that television back to Wal-Mart. And I couldn't let --
17 take it back because I had it -- I had bought it for a
18 while. It was still in the box cause I was in the process
19 of getting an apartment. And her, the lady, Rosilyn, that
20 was supposed to have been working with her, she asked to
21 buy the television.

22 And then she gone tell me that if I didn't get her
23 the rest of the money by that afternoon that she was
24 not -- that she was going to tell the Judge that she was
25 not going to represent him. She was not going to be there

1 unless she got the rest of her money before it was time
2 for us to go back to Court the next morning.

3 Q. You felt threatened?

4 A. Yes.

5 Q. So did you -- you thought that your son would not
6 have good representation if you didn't come up with the
7 money?

8 A. He didn't.

9 Q. Okay. Did you pay her?

10 A. I paid her. Me and my mother.

11 Q. You think that it would have been beneficial for your
12 son, if the defense -- self-defense defense would have
13 been prepared by Miss Brown?

14 A. Yes.

15 Q. And do you feel as though that she was prepared to go
16 forth on the defense of -- defense for your -- I mean
17 self-defense for your son?

18 A. She would have if she had got the rest of her money,
19 but she didn't get the rest of her money. She refused to
20 say anything to help him. Anything that was -- the
21 Solicitor and them put to the table she did not object to
22 a certain things. She did not do what she said she was
23 going to do, and she made a promise to me and my son that
24 my son will be coming home. Them were her exact words to
25 both of us.

1 Q. That's all I have. Would you please answer any
2 questions Counsel Johnson may have.

3 THE COURT: Cross-examination, Mr. Johnson.

4 MR. JOHNSON: No questions, Your Honor.

5 THE COURT: Thank you, ma'am. You made step down.
6 Call your next witness.

7 MS. MILES: Your Honor, we rest as this time.

8 THE COURT: Applicant rest's.

9 MS. MILES: Oh, yes, Your Honor. I apologize. I did
10 not call Miss Brown, the main witness. Miss Brown,
11 please.

12 MYESHA BROWN, after being duly sworn, testified
13 as follows:

14 MS. MILES: Thank you. May it please the Court, Your
15 Honor.

16 THE COURT: Certainly.

17

18 DIRECT EXAMINATION

19 BY MS. MILES:

20 Q. Thank you, Miss Brown. Would you please repeat your
21 full name for the record, please?

22 A. It's Myesha Latrice Brown.

23 Q. Miss Brown. Do you practice here in this area?

24 A. I have an office in Florence. I practice in the
25 State of South Carolina. Yes.

1 Q. Okay. And when you did you start practicing?

2 A. I finished law school in 2008, and I started
3 practicing that November of 2008 when I was sworn in.

4 Q. Okay. You practice alone?

5 A. I do now. Yes.

6 Q. Okay. Were you practicing alone when you were
7 representing Mr. Cook?

8 A. I did. Yes.

9 Q. So you got out of law school in 2008?

10 A. That is correct.

11 Q. And you started practicing alone in 2008?

12 A. No, that's not correct. 2008 is when I finished law
13 school. I worked for the Public Defender's Office
14 beginning in February 2009, and I left the Public
15 Defender's Office in June of 2010. And that's when I had
16 opened my own practice.

17 Q. Okay. So you represented Mr. Cook in 2010?

18 A. In 2010 Mr. Cook was a client of the Public
19 Defender's Office. That's how I met him, and when my
20 tenure ended at the Public Defender's Office his family in
21 fact sought me out to hire me to represent him. I believe
22 we did meet prior to my position ending at the Public
23 Defender's Office.

24 Q. Okay. And how since -- when you were with the Public
25 Defender's Office how many cases -- did you work only on

1 criminal cases?

2 A. Yes, ma'am.

3 Q. Okay. And how many cases did you try in the short
4 period of time that you'd been there?

5 A. I won't quote this verbatim, but I believe about
6 eight or nine cases. All of them would have been in the
7 General Sessions Court. One case would have been in
8 Magistrate's Court which was a criminal domestic violence.
9 The other cases were in General Sessions Court. I believe
10 I did two murders prior to leaving the Public Defender's
11 Office which of course included Mr. Cook's case.

12 Q. Okay. And when you went solo by yourself was
13 Mr. Cook was the only case that you were handling at that
14 time?

15 A. No, ma'am.

16 Q. How many cases, criminal cases, do you have?

17 A. I do not recall exactly. Excuse me. I don't recall
18 exactly the amount of cases I had. There were a number of
19 clients that left the Public Defender's Office and came
20 along with me. Of course, Mr. Cook was one. I don't
21 believe his was one of the first cases. I believe he was
22 maybe one of the fifth clients that came along with me
23 from the Public Defender's Office.

24 Q. Did you have a full staff working with you?

25 A. It was just myself and I did hire an assistant, a

1 legal assistant. Yes, ma'am.

2 Q. Okay. Now, during the time that you wish that you
3 represented Mr. Cook once you started your own practice
4 did you prepare a notebook, a trial notebook?

5 A. Yes, ma'am.

6 Q. And did you go over the trial notebook with Mr. Cook?

7 A. Yes, ma'am.

8 Q. What was your theory of that, your defense?

9 A. Certainly. When I met Mr. Cook he made it very clear
10 that he was asserting self-defense. He explained to me
11 the circumstances which lead to the shooting that
12 particular day. And the reason he believed at the time
13 that he was in fear for his life.

14 Mr. Cook talked extensively about a prior case that
15 took place in North Carolina. In that case he was in fact
16 charged with murder. He was one of several individuals
17 charged with murder. His case was ultimately dismissed
18 after he testified against others.

19 So the theory of the case was about snitching. He
20 believed that because he testified in a North Carolina
21 case it resulted in others, people in his community where
22 he was lived, wanting to hurt or harm him. So that was
23 the theory. It was the North Carolina case set in motion
24 that started as a result of that because he was being
25 threatened, accord to him, by a number of people in his

1 community.

2 Q. Okay. Were you -- did have time to develop that
3 theory?

4 A. Yes, ma'am. I have -- I think we actually did an
5 exhibit or we wanted to introduce evidence into the jury
6 about snitching itself. Actually, I purchased a puzzle
7 myself where it was part of the closing argument which
8 came in prior to the case.

9 I met with ever witness that he talked to or
10 discussed with me. Went to their homes. Went in their
11 communities. We had a number of exhibits introduced such
12 as photos of what the incident location looked like. We
13 had a transcript of everyone that gave a statement in this
14 case. We had about four or five witnesses that gave
15 statements, and I took it to Q & A Court Reporting and had
16 it transcribed so we could know exactly what they said.

17 There was extensive amount of work that was done on
18 this particular case. Every witness that Mr. Cook in fact
19 asked me to talk to I spoke with them. Not only at
20 detention centers. I spoke with them at their apartment
21 complexes. I spoke with them at their place of
22 employment. I spoke with them a number of times at their
23 homes. This would have, of course, would have been by
24 phone conference.

25 And, of course, there were some people that met me at

1 my office where Mr. Cook's family brought them because I
2 wanted to make certain I understood their version of what
3 they knew at the time.

4 Q. The witnesses that you discussed with Mr. Cook were
5 one of those witnesses Jesse Simmons?

6 A. Yes, ma'am.

7 Q. And you called Jesse Simmons to the stand; is that
8 correct?

9 A. Yes, I did call Jesse Simmons to the stand. Jesse
10 Simmons provided a statement of the date of the shooting
11 itself. He gave a video statement. I reviewed that video
12 statement. That was one of the statements that was
13 transcribed.

14 I wanted to meet with Mr. Simmons to get his version
15 and make sure he remembered what he saw. We had a very
16 difficult time reaching Mr. Simmons. I went out to
17 Mr. Simmons' home several times and because I had
18 difficulty locating Mr. Simmons I asked for the assistance
19 of his mother who lived in that community, Miss Arlene
20 Cook.

21 Q. Okay. Did you talk at all with Mr. Simmons before
22 you put him on the stand?

23 A. Yes, ma'am. Of course I did.

24 Q. So you knew what he was going to testify to?

25 A. I didn't know what he was going to say on the stand,

1 but I knew the questions that I asked him and I knew how
2 he would answer those questions.

3 Q. Well, when he testified --

4 MS. MILES: Your Honor, if you look at Mr. Simmons'
5 direct of the transcript, and that would be starting on
6 direct on Page 505.

7 THE COURT: What about it?

8 MS. MILES: I'm sorry. 506, Your Honor.

9 THE COURT: What about it?

10 MS. MILES: This is the testimony by Jesse Simmons.

11 BY MS. MILES:

12 Q. My question is that during the time in which your
13 direct questions to Mr. Simmons that Mr. Simmons at all
14 testified that he saw someone -- saw Mr. Haines or had
15 something in -- Mr. Haines had something in his pocket?

16 A. I don't have the transcript in front of me so I
17 apologize. I do recall the purpose of Mr. Simmons
18 testifying is that he was going to state he saw something
19 in Mr. Haines' hand from where he was standing at the
20 time. That was the reason I wanted Mr. Simmons' testimony
21 because Mr. Cook alleged that Mr. Haines was reaching for
22 what he believed was a gun at the time that he fired his
23 first shot.

24 There were no other witnesses. That, of course, said
25 anything of that sort except Mr. Jesse Simmons.

1 Mr. Simmons indicated, I recall, in his video testimony or
2 statement that it appeared that Mr. Haines, the deceased,
3 had something black in his hand. And that was, of course,
4 my line of questioning I believe Mr. Simmons.

5 Q. Did you impeach Jimmy -- Jesse Simmons with his
6 statement from the video?

7 A. I don't recall if that was a basis for impeachment
8 because he testified consistently to what he said on the
9 video. So there was not a basis for impeachment.

10 MS. MILES: Your Honor, I would like for the Court to
11 take notice that the testimony of Jimmy [sic] Simmons on
12 page -- Jesse Simmons ...

13 THE COURT: I'm sorry. I didn't understand. Which
14 page?

15 MS. MILES: All right. I'm getting the page here,
16 Your Honor. Your Honor, Page 516, and I would like the
17 Court to take notice on Line One. The question by
18 Miss Brown:

19 "Q Okay, that's all now. If you look at
20 the view can you show it to the jury, please.

21 BY MS. MILES:

22 Q. At the time in which that you were questioning
23 Mr. Simmons was Mr. Simmons able to hear what the video
24 was saying because you said that you had the video in
25 which that he testified to; is that correct?

1 A. I viewed the video prior to his testimony. I think
2 your question to me is whether or not I impeached him, and

3 ---

4 Q. Yes?

5 A. --- and he testified. There was not a basis to
6 impeach because in his video statement he indicated that
7 something appeared to be black. And the -- Mr. Haines,
8 the decedent's hand, and that's the reason I contacted
9 Mr. Simmons because I wanted to see whether or not he was
10 going to continue to testify in that fashion which in all
11 opinion would have been helpful because according to
12 Mr. Cook Mr. Haines was reaching for something which
13 appeared to be a gun.

14 Q. But is it on Line 28 -- 25 in Page 516 it says,
15 "Well, it looked like a gray phone."

16 MR. JOHNSON: Your Honor, I don't think that's a
17 proper question cause the witness has already told her
18 that she doesn't have the transcript. And she's just
19 reading ---

20 MS. MILES: Your Honor, if I may I would like to
21 present this -- what I'm trying to say is that she did not
22 impeach Mr. Jesse Simmons. When she had a video that she
23 already looked at, and Mr. Simmons has said one thing and
24 then when he got on the stand he was acting as though he
25 didn't know what was going on. And so, therefore, did she

1 impeach him and she said there was no basis for it.

2 THE COURT: All right.

3 MS. MILES: So I would like to show her in reference
4 to on Page 516, Line 25.

5 THE COURT: Okay.

6 MS. MILES: Or 24. May I approach the witness, Your
7 Honor.

8 THE COURT: Go ahead.

9 BY MS. MILES:

10 Q. Would you read -- publish to the Court on Page 516
11 and start with Line 24. And you are at that time
12 questioning Jesse Simmons.

13 A. Okay. Twenty-four?

14 Q. Yes.

15 A. Q for question. "Do you remember the color?
16 Twenty-five, answer, well, it looked like a gray phone
17 from the front. From the front? That phone there. I
18 didn't say it was black from the back. I knew what kind
19 of phone it was. It was a black on the back and the front
20 of it -- I knew it was a cell phone."

21 Q. Okay. Now, during the time of the video did he say
22 that Mr. Haines at the time was reaching for something
23 that was black?

24 A. No. What I recall from the video is that he said he
25 had something in his hand which looked black. Not that he

1 was reaching for it, but that he had it in his hand. He
2 never clarified on his video whether it was a cell phone,
3 whether it was a gun or whether it was a pocketbook. He
4 just said something black. When he testified he, of
5 course, testified to a cell phone.

6 Q. Well, that's the reason why I'm asking you the
7 question. Did you impeach him to show that the video most
8 closer to the time of accident -- I mean the incident than
9 when he testified; that he was so sure that it was a phone
10 at the time when he testified. But when he did the
11 test -- when he was interrogated or they did the
12 investigation he specifically said in the video; is that
13 correct?

14 A. In the video -- I'm not sure of your question but, in
15 the video he stated there was something black in the other
16 guy's hand. He never specifically stated what it was. He
17 didn't appear on the video to even be certain what it was,
18 but he did say it was something black. So in our strategy
19 that was our position to say whether or not that black
20 item could have in fact been a gun.

21 However, he testified on the stand that it was a cell
22 phone. Now, he didn't give us any knowledge of that when
23 he originally gave his statement to law enforcement. He
24 said it was black. It was something black in Mr. Haines'
25 hand.

1 Q. Well, then did -- there is no question, and even
2 going on to Page 517 in the transcript, as well as
3 redirect in which that you clarify how he would be so
4 certain that it was a phone, black phone, when he
5 testified on the stand and was not that certain when he
6 was due on the video?

7 A. Once again, in the video he indicated it was
8 something black in his hand. He never said it was a
9 phone. He never said it was a gun. He just said
10 something black, so my question to him: Did he see the
11 decedent or Mr. Haines have something in his hand. And he
12 then, of course, responded by saying it was black and he
13 believed it was a cell phone.

14 Q. Well, let's go back to when Mr. Cook was actually
15 re-incarcerated during the time of the bond. Can you
16 explain to the Court what happened in that situation?

17 A. Certainly. I want to look at the exact dates here.
18 I believe it was December 6 of 2010. We appeared in front
19 of Judge Baxley for a bond hearing. At the time of the
20 bond hearing the bond was in fact set at \$50,000. There
21 were conditions placed on that bond. One of the
22 restrictions or conditions that Mr. Cook was not to leave
23 the State of South Carolina without having written
24 permission from the Solicitor.

25 At some point, and I don't have the dates or exact

1 dates. I know it would have been close to the holiday
2 time. Mr. Cook contact my office and asked or informed
3 that he wanted to look for employment; that he needed a
4 job. He asked or stated to me that the job was in North
5 Carolina; that he was unable to find jobs here in South
6 Carolina. The unemployment rate was very high. I can't
7 recall exactly what he stated.

8 He wanted to go to North Carolina. I informed him
9 that I would, of course, contact the Solicitor's Office so
10 that she can know or we can receive permission so that he
11 can leave the State. That was part of the conditions of
12 the bond.

13 Mr. Cook, of course, and I didn't speak to one
14 another again until maybe the beginning of the year, and
15 at that time he had already left and went looking for a
16 job. I received a phone call from the Solicitor's Office.
17 The Solicitor informed me that there were members of the
18 decedent's family that was contacting her stating that
19 they had seen Mr. Cook in North Carolina and that Mr. Cook
20 was threatening them.

21 And they gave a number of other reasons trying to get
22 him re-incarcerated. At that time I informed her that
23 Mr. Cook had in fact wanted to go look for a job in North
24 Carolina. And as a result of that she indicated that
25 that, of course, would have been a violation of his bond.

1 We appeared back in front of the Court, Judge Baxley,
2 regarding this issue. At the time Judge Baxley made a
3 ruling that it was a violation of his bond and he was to
4 be placed back in custody.

5 According to the Judge one of the reasons that
6 Mr. Cook -- it would be for his own safety. There was a
7 number of testimony during the course of that hearing
8 regarding threats. There was a number of testimony -- of
9 course, at that hearing that there was just basically a
10 lot of bad blood that still remained. And he was
11 reincarcerated.

12 I did accept, and I informed the Court that he had
13 notified my office; that he had informed me that he was in
14 fact going to look for a job in North Carolina. And one
15 of the issues was that it was not a written permission
16 from the Solicitor's Office, and that was true.

17 Q. Okay. So you admit that you caused Mr. Cook to be
18 re-incarcerated?

19 A. I will certainly inform the Court that I had not
20 received the written permission which was ordered by the
21 Court; that is correct. And, thereafter, Mr. Cook was
22 released again because we went back in front of Judge -- I
23 did a motion to reconsider. I did another motion to get
24 him back out, and he was in fact released once again.

25 Q. And how long did it took for Mr. Cook to get out of

1 jail again?

2 A. I would say it was probably a month. I would say --
3 I don't know the exact dates, but he was there for about
4 four to six -- four maybe to five weeks. I don't know the
5 exact dates. I do know we appeared in front of -- we had
6 a phone conference with Judge Baxley a week following his
7 re-incarceration, and thereafter, we appeared in front of
8 Judge King, I believe, to have him released again.

9 Q. Okay. You were here on the direct testimony that
10 Mr. Cook said that he was there incarcerated at least by
11 two months?

12 A. I don't recall how long he was incarcerated.

13 Q. Okay. Now, those witnesses that you were here during
14 the testimony were there any witnesses that you feel as
15 though that you did not call that Mr. Cook informed you of
16 that would have helped his defense as far as self-defense?

17 A. No. Every witness that Mr. Cook asked that I contact
18 or reach out to I located them. I found them even if I
19 needed the assistance of his family. I spoke with them.

20 I met with them either at their place of employment.
21 I met them at their home. They came to my office. We had
22 phone conferences. I have a list of dates as well as
23 locations where I met each and every witness.

24 Now, whether or not all those witnesses were called
25 during the course of the trial. No, they were not. There

1 were certainly some witnesses that were not called based
2 on after talking with Mr. Cook we made a determination
3 they were not going to be helpful in his claim. But each
4 and every witness that he asked that I communicate with
5 and that I contact I did.

6 Q. Well, tell me. In reference to the testimony on
7 direct from Mr. Michael Troutman?

8 A. Okay.

9 Q. And that's on the transcript starting on Page 434.
10 Did you ask him the question any time whether or not Mr.
11 Cook was threatened by Charles Haines?

12 A. No. I did not ask him specifically about Mr. Haines
13 because based on my communications with him during our
14 phone conference he remember the names of individuals. He
15 specifically said that Mr. Cook had contacted him, and Mr.
16 Cook stated that there are people in the neighborhood. He
17 was not able to identify names at all. So, clearly, I
18 could not have asked him that question.

19 I will state that Mr. Troutman and I spoke several
20 times prior to his testimony. Miss Cook is correct. She
21 did go pick him up so that he can testify. He was in
22 North Carolina. He made it clear. That was his request.
23 Someone needs to pick him up so that he could testify. So
24 I agreed for someone to get him there to Court to make
25 sure he was present.

1 But, no, he did not inform the Court that Mr. Haines
2 testified Mr. Haines threatened Mr. Cook because he did
3 not have that knowledge based on our conversations.

4 Q. Do you ask in either direct or redirect from Mr.
5 Troutman whether or not the person in the neighborhood was
6 threatening Mr. Cook lived below Mr. Cook?

7 A. I asked him specifically did he recall having
8 conversations with Mr. Cook where Mr. Cook informed him he
9 was being threatened in his neighborhood. He said, yes.
10 Do you remember the names? No, he could not identify the
11 names.

12 Q. Well, the question is whether or not -- do you know
13 where the deceased was living?

14 A. I did know he was living beneath Mr. Cook at the time
15 know.

16 Q. Okay. So that you -- although Mr. Troutman may not
17 know the name did you ask him whether or not Mr. Cook
18 actually said that it was someone that lived below him?

19 A. That may have asked. I honestly would have to look
20 at the transcript to see whether or not I asked about
21 that. I do not recall.

22 Q. What if -- would that have made a difference?

23 A. I do not know if that would have made a difference.
24 I think that he answered the questions. The purpose of
25 his testimony was to say that there were threats and he

1 didn't know where the threats were coming from. But that
2 he received phone calls and received notice of threats.
3 That was the purpose of his testimony, and that
4 information came out to the Court.

5 Q. Now, wasn't your defense self-defense?

6 A. That's correct.

7 Q. So you're saying that you don't think that that was
8 relevant for the jury to know that his attorney from North
9 Carolina knew that the person in the neighborhood lived
10 below Mr. Cook?

11 A. I'm telling you that I do not recall that line of
12 questioning, so please. I also know that the information
13 he gave to the Court was substantial as relates to the
14 fear factor. That was the purpose of his testifying. And
15 he did give him information that Mr. Cook appeared or at
16 least contacting him stressing or expressing concern about
17 people in the neighborhood.

18 Q. Okay. Did Mr -- you said that you had conversation
19 with Mr. Cook about his fear of Mr. Charles, the person,
20 the deceased. Do you know that whether or not that you
21 talked to Mr. Cook about a contract on his life?

22 A. Mr. Cook has never informed me about a contract on
23 his life. Never.

24 Q. Do you recall that you at any time during the course
25 of the trial instructed Mr. Cook or his family members to

1 go to speak with one of the jurors?

2 A. No, I never instructed Mr. Cook or any of his family
3 members to speak with any potential juror or juror. Yes,
4 we did meet to talk about the names of those potential
5 jurors. We did discuss that. Mr. Cook never informed me
6 he knew any particular person. Never informed me that he
7 had relationships with any particular person. And, of
8 course, he never told me he had any conversations with
9 anyone at all who was on his jury panel.

10 Q. Were you at all recall when Mr. Cook's mother or his
11 wife was in your presence and you instructed Mr. Cook or
12 his family members to speak to one of the jurors?

13 A. I answered that question, but the answer is still no.
14 I've never instructed Mr. Cook, Mr. Cook's mother,
15 Mr. Cook's wife, no family member to contact any juror
16 members.

17 Q. Did you have any reason to believe that the juror --
18 jury pool was contaminated by any of the juror?

19 A. No. We didn't have any discussions about any jury
20 members. We talked about the course of the trial how
21 things were going during the course of the trial.
22 Testimony that took place. What testimony needs to happen
23 next. Evidence. We had a lot of motions. We never
24 talked about the jury panel or the jury while they were
25 deliberating or the jury members. He selected his jury

1 members. He told me who he wanted, and that's exactly the
2 individuals he got.

3 Q. Was the money issue as far as your attorney's fee ---

4 A. Sure.

5 Q. --- and I understand I know you have to be paid. All
6 of us want to be paid. Did it effect your performance?

7 A. I'm sorry. What's your question?

8 Q. The fact that Mr. Cole -- I mean Mr. Cook and his
9 family were not or did not pay you as you had expected did
10 they effect your performance in representing Mr. Cook?

11 A. No. Mr. Cook started off this case with four
12 indictments. There was an indictment for murder, an
13 indictment for voluntary manslaughter, an unlawful
14 carrying of a handgun and possession of a weapon during
15 the commission of a crime.

16 During the course of the trial one indictment was
17 never presented to the Court. So we moved forward on
18 three. As we continued during the course of the trial I
19 argued a directed verdict during -- after the State rested
20 related to the unlawful carrying because there was no
21 evidence that Mr. Cook had a criminal record at that point
22 because we excluded all of that evidence.

23 That particular indictment was withdrawn. So now he
24 had one or two indictments that would have been
25 potentially presented to the jury. I did everything I

1 could to assist Mr. Cook. I even funded his defense when
2 he didn't make his payments or when there were items we
3 needed during the course of the trial. I paid for it. I
4 showed up every single time. I met with each and every
5 witness he asked me to meet with. I did everything I could
6 to help him.

7 Now, I can't, of course, make the jury see things all
8 my way, but certain, you know, this guy was shot two times
9 close range to his face, and he got manslaughter and not
10 murder.

11 Q. What kind of relationship do you have with Mr. Cook?

12 A. I have no relationship with Mr. Cook. Mr. Cook was
13 my client. I was his attorney, and of course, I would
14 have any other client/attorney relationship with him during
15 the course of my representation.

16 Q. You think you spent adequate time with Mr. Cook ---

17 A. I spent more ---

18 Q. --- on that case?

19 A. Of course I did. Yes.

20 Q. Let's talk about the indictment. You mentioned that
21 he was indicted for four charges, and could you go into
22 more details about the indictments?

23 A. Certainly.

24 Q. You heard Mr. Cook's testimony. I read the
25 transcript. Was he indicted for manslaughter?

1 A. Yes. Mr. Cook was originally indicted for murder and
2 possession of a weapon during the commission of a crime.
3 He received a no bond initially. When we appeared I Court
4 in December 6th I believe in front of Judge Baxley he was
5 then presented at that bond hearing with the voluntary
6 manslaughter indictment. Of course, my argument to the
7 Court is Your Honor, clearly, there have to be a change of
8 circumstances that now the State is taking the position
9 that this is a voluntary manslaughter case and not a
10 murder case.

11 That was one of the reasons he did in fact receive a
12 \$50,000 bond. Now, at the call of the case once the trial
13 started the Solicitor elected to call three indictments
14 and not four. She called the murder. She called the
15 possession of a weapon during the commission of the crime
16 and the unlawful carrying of a handgun. She never
17 presented the indictment for voluntary manslaughter.

18 The reason the voluntary manslaughter was presented
19 to the jury is because the Solicitor argued to have that
20 jury charge in the verdict form. I argued against it. My
21 client and I discussed it extensively. He wanted to make
22 certain the jury made a decision between murder or not
23 murder. He didn't want the option of voluntary
24 manslaughter.

25 We did, during the course of the trial the day before

1 the jury deliberated, we had a chamber conference. I
2 explained to the Judge why I believe voluntary
3 manslaughter did not apply. I provided two cases to the
4 Judge. The Judge took it under advisement. The next day,
5 prior to calling the case, he informed us that he had made
6 a decision. And he made a decision that the voluntary
7 manslaughter charge should go to the jury.

8 Q. So that leads up to the appeal. Now, just listening
9 to you and reading the transcript there were several
10 issues that were presented that you objected to during the
11 process of the trial that could have been appealed.

12 Now, at any time that you had a conversation with
13 Mr. Cook that he indicated to you he wanted to appeal his
14 case?

15 A. No. After the jury made their decision and the
16 jury -- the verdict was read Mr. Cook, of course, went to
17 the Detention Center. I met with his family. They
18 thanked me for my services. I then went out to the
19 Detention Center and met with Mr. Cook along with my
20 assistant, Sheena Hicks, at the time. I believe her
21 signature is also on that document which he signed.

22 And I spoke to Mr. Cook about the possibility of an
23 appeal. I told him from my perspective what appealable
24 issues may exist. We counselled and spoke for quite some
25 time. And then I had him write -- I wrote out that the

1 deadline for which he needs to file for an appeal.

2 Mr. Cook never informed me at that time that he
3 wanted to file an appeal. He never asked me to file an
4 appeal for him. That's why he signed his name there
5 indicating the deadline that he needs to have it
6 postmarked if he so chose to file an appeal.

7 Q. Did any of his family members approach you about an
8 appeal?

9 A. His family members contacted me well after the appeal
10 process had already exhausted itself. And they contacted
11 me asking about videos and either evidence that they
12 believe they should have been entitled to. They did
13 contact me after Mr. Cook was sentenced.

14 Q. After the ten days?

15 A. Absolutely.

16 Q. Okay. Let me show you this document that was
17 introduced into evidence. This is a copy, is this
18 correct, of a document or Exhibit One for the Defendant.
19 Do you have the original?

20 A. I do not.

21 Q. What happened to the original?

22 A. The original was in fact provided as we thought of
23 another action that Mr. Cook filed against me. I had to
24 present the original to that jurisdiction.

25 Q. All right. Did you try to get that original back?

1 A. No.

2 Q. Is that original -- that process has been discarded,
3 right? And taken care of?

4 A. That procedure has concluded; that is correct.

5 Q. Right. And you knew that you were going to testify
6 today?

7 A. Yes.

8 Q. Okay. And you made no attempt to get the original?

9 A. No.

10 Q. So, therefore, the original -- you are saying to the
11 Court that the original would look just like this?

12 A. Absolutely. That is a copy of what I submitted in
13 the package relating to another matter, but it looks
14 identical to that. And the reason in which it -- that
15 came out of a notebook is because, once again, I didn't
16 prepare for that. We went and we spoke at the Detention
17 Center. We talked extensively. I wrote it out. He
18 signed it.

19 Q. Okay. So this is your handwriting up to the top?

20 A. Yes, it is. All of this is my handwriting with the
21 exception of where Mr. Cook signed and where Sheena Hicks
22 signed as a witness.

23 Q. And you discussed this with Mr. Cook?

24 A. I certainly did. I discussed the deadline to where
25 which he needs to file the appeal.

1 Q. Now, this says that, "I, Clarence Cook, have been
2 informed that my appeal must be filed or postmarked by May
3 2nd 2011 or I will lose my right to appeal."

4 A. That's correct. I wrote that.

5 Q. Is there any where on the notice to say that Mr. Cook
6 said that I don't want to appeal?

7 A. No, he didn't write that. And I didn't write that
8 out either. That is correct.

9 Q. Anywhere on this document to say in terms of Mr. Cook
10 did not ask you to file the motion to intent to appeal?

11 A. No, he didn't. That document does not state where he
12 did not ask me nor does it state that he did ask me.

13 Q. Okay. So it's just a document saying that he knew
14 the date?

15 A. He was informed of his rights to appeal and he knew
16 when it needed to be in fact postmarked. Yes.

17 Q. Well, do you think that it was upon you to appeal or
18 file the motion to intent to appeal?

19 A. No if he did not directed me to do so.

20 Q. Did you ask him whether or not he wanted you to
21 appeal?

22 A. We did not -- no. We did not have that discussion.
23 We talked specifically regarding the appealable issues and
24 we talked about, you know, his displeasure about the
25 outcome of the case. We talked about a number of things,

1 but, no, he never directed me to appeal his case.

2 Q. Well, why would you be talking with him about
3 appealable issues if he didn't have the intent to appeal?

4 A. I explained to him. He made it very clear that he
5 was unhappy with the outcome. I explained to him that he
6 can appeal and that here are some issues that I believe
7 would be helpful in your appeal. Certainly, I have an
8 obligation to counsel him on his appeal rights.

9 Q. So you don't think that y'all talking about the
10 appeal process and appealable issues that his intent was
11 to appeal?

12 A. No. I know that didn't direct me to appeal his case.
13 I know I have an obligation to explain to him that he has
14 a right to appeal, and we also say -- I also counsel him
15 on those issues I believe that may exist.

16 Q. Okay. Tell me something as far as the bond did
17 you -- were you here when Mr. Cook went back to jail
18 during the bond when Judge Baxley -- let me rephrase it.

19 Judge Baxley re-incarcerated Mr. Cook. Were you
20 available during that process so that you would have been
21 able to have gone ahead and followed the proper procedure?

22 A. Okay. When Mr -- when we appeared in front of Judge
23 Baxley relating to a bond issue, a bond review, and we
24 actually filed that particular action. And the basis of
25 the bond review is so that he would be able to leave the

1 State of South Carolina so he could look for employment.

2 When we made that presentation the deceased's family
3 members explained to the Court that they were threats and
4 that they had seen him outside of the State of North
5 Carolina; that they were afraid because he was out. All
6 that came up during that are particular proceeding. So
7 was I present? Yes, I was present, and the Judge made a
8 ruling.

9 Q. Okay. Now, did you go on vacation during the time in
10 which that -- that's the reason why you did not follow the
11 procedure in writing a written notice or permission
12 request for him to go to North Carolina to look for a job?

13 A. If your question is did I go on vacation during the
14 end of December. Yes, I did. I did have vacation. It
15 was during the holiday time. I think I testified to that.
16 I did go on vacation. Was I present in Court when we had
17 the hearing itself? I was there.

18 Q. Okay. But you were not available? You were not
19 available?

20 THE COURT: Let me interject something in here, Ms.
21 Miles.

22 MS. MILES: Yes.

23 THE COURT: I'm just not sure I understand the
24 relevance ---

25 MS. MILES: Relevance.

1 THE COURT: --- of this line of questioning.

2 MS. MILES: Okay. Your Honor.

3 THE COURT: And the application for a new trial.

4 MS. MILES: Excuse me?

5 THE COURT: This is an application for a new trial,
6 right?

7 MS. MILES: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. MILES: Yes, Your Honor.

10 THE COURT: And what does that have to do with the
11 application for a new trial?

12 MS. MILES: Your Honor, I think that I'm trying to
13 show the ineffective assistance of counsel starting not
14 only with just during the trial, but before the trial in
15 terms of the bond procedure.

16 THE COURT: But what does that have to do with the
17 trial of the case?

18 MS. MILES: Well, because it affected him in order to
19 help his attorney prepare for the trial.

20 THE COURT: I haven't seen any evidence of that so
21 far.

22 MS. MILES: Well.

23 THE COURT: It's my understand that he either spent
24 one or two months in jail ---

25 MS. MILES: That's right.

1 THE COURT: --- as a result of this bond proceeding?

2 MS. MILES: That's right.

3 THE COURT: All right. Let's move on to something
4 else.

5 MS. MILES: Thank you, Your Honor. I have no further
6 questions, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 Q. Miss Brown, witnesses that he told you about you
10 spoke with them?

11 A. Spoke with all of the witnesses.

12 Q. All of them?

13 A. Yes.

14 Q. And wasn't a single witness that he told you about
15 that you didn't talk to?

16 A. Not a single witness.

17 Q. You didn't call them all, but you determined which
18 would be helpful and which would not?

19 A. Absolutely.

20 Q. Those that were determined not to be helpful or
21 potentially harmful what happened to those witnesses?

22 A. That particular witness that he's referring to is a
23 Walt. Mr. Walt Jones was a District Attorney. He is in
24 North Carolina. I subpoenaed him. He appeared in Court.
25 It was clear to me that Mr. Jones was going to testify

1 that though Mr. Haines -- Mr. Cook's North Carolina murder
2 case was dismissed he believed he was instrumental in that
3 particular -- those particular acts.

4 Once I determined that he was going to make those
5 types of statements to the Court I did not call him as a
6 witness.

7 Q. It was some testimony that he got a certain
8 indictment after the trial began, and if you would just
9 speak to your knowledge on this. Where did he get those
10 indictment?

11 A. No, all indictments were presented prior to the
12 call -- of the case being called. The murder indictment
13 was presented at the very beginning. There was then a
14 possession of a weapon during the commission of a crime.
15 I think he's referring to the voluntary manslaughter.
16 That took place several months later at the bond
17 proceeding which was December 6 of 2010.

18 At that time we were then presented with the
19 voluntary manslaughter. Once again that was my argument
20 to give him a bond. Now, that particular charge or
21 indictment was never called at trial. Only the other
22 three were.

23 Q. So would you say that the indictment for voluntary
24 manslaughter perhaps actually worked to your benefit
25 because you were able to argument that the State may have

1 (inaudible) your case?

2 A. Absolutely.

3 Q. And did go over the elements of murder --
4 manslaughter with the Applicant?

5 A. I went over the elements of murder, voluntary
6 manslaughter because he was in fact indicted. Possession
7 of a weapon during the commission of a crime. Unlawful
8 carrying of a weapon. We also talked about self-defense.
9 He was presented with maybe seven or eight self-defense
10 cases. We discussed them thoroughly.

11 Q. One of the issues was your fee. When money came up
12 did the fact that you may not have gotten your entire fee
13 affect your defense of the case?

14 A. Absolutely not. We have a four day trial. It's
15 about 600 page transcript.

16 Q. And your trial strategy was that of self-defense?

17 A. Absolutely.

18 Q. Establishing that he had got threatened and had to
19 defend himself defend for his life?

20 A. There were witnesses that we called to the stand and
21 testified of the incidents in which they observed that
22 lead them to believe that maybe he was threatened. There
23 were -- we called about six or seven witnesses. Several
24 of them testified related to the threats or relating to
25 things that they observed that may have appeared to be

1 threatening.

2 All those individuals testified during the course of
3 this trial.

4 Q. Regarding the number of times you met with him I
5 asked him if the number was 14, and I think he said it was
6 somewhat less than that. What is your recollection of how
7 many times you met with him and if you would just briefly
8 talk about what was discussed.

9 A. I don't recall how many times I met with Mr. Cook. I
10 met with Mr. Cook at the detention center many times. I
11 met with him at his grandmother's home. I traveled there
12 and met with him there. We reviewed all the discovery,
13 the video of the video statement. He saw all the
14 questions that I intended to ask. We talked about
15 strategy. We looked at all the evidence.

16 There were forms that I in fact developed myself. We
17 review the photos. We went over the line of testimony is
18 any of his witnesses. While he was present the witnesses
19 were there. We tried to prepare them as best as we could.
20 Mr. Cook indicated in another document that I don't have
21 that I met with him at least 14 time. I came up with that
22 number from Mr. Cook. I don't recall how many times we
23 met with each other.

24 Q. All right?

25 A. But I would agree with that. At least 14.

1 Q. Okay. The questions that came during I think
2 Miss Chastity's testimony, questions that you were to ask
3 during the trial. The questions that you were to ask
4 during the trial you typed the questions out?

5 A. I did.

6 Q. Because I think Miss Carter also indicated that you
7 also typed out answers that she should respond?

8 A. No. I typed out questions for each and every witness
9 in which that were going to testimony. Just to help
10 prepare myself first. And also to go over it with them.

11 Now, as far as the responses when we met in my office
12 she gave me responses. And, yes, I did type those
13 responses in -- for her.

14 Q. But those were her responses?

15 A. Those were her responses.

16 Q. Not your's?

17 A. Not at all.

18 Q. Okay. At some point when he wanted to leave the
19 State to pursue another job, based on the testimony I
20 think the allegation here is that you told him that he had
21 full permission to go and he acted on your advice. He
22 went and was trying to do -- seek employment and then got
23 in trouble for it. Did you tell him that, "Hey, you're
24 free to go. I got authorization. It's not going to
25 affect you in any way." How did that happen?

1 A. No. Mr. Cook contact me, and he made it very clear
2 that he needed employment. He was unable to get
3 employment in South Carolina and he wanted to go to North
4 Carolina. He thought there was a potential job
5 opportunity. I then in return informed him, of course, I
6 would have to talk to the Solicitor about that. Now, I
7 will admit. I never had that discussion with the
8 Solicitor, and he, of course, I assume he went to North
9 Carolina because that was an issue that came up in Court
10 later. But I did not secure the written request. I did
11 not secure written permission from the Solicitor.

12 Q. And at any point in time did you tell him, "You're
13 free to go?"

14 A. No.

15 Q. So when he made the decision to go this was not
16 supported by anything you told him?

17 A. No.

18 Q. He made that decision on his own?

19 A. Yes.

20 Q. Did he ever tell you about a contract on his life?

21 A. No. The only issues we ever talked about was this
22 theory of snitching. That was part of our theory to the
23 jury that because he had testified in the North Carolina
24 case he had been labeled as a snitch in the community.
25 And as a result of the snitching he had now received

1 threats from people in the community.

2 Q. If he had told you about a contract on his life, I
3 mean, would that have played into the defense?

4 A. Absolutely. We would have looked for, spoke with,
5 explored that potential theory extensively.

6 Q. I want to ask you a few questions about this juror
7 that Mr. Cook admits today that he speak with prior to
8 deliberations. I'll just ask you. Did you tell him to go
9 talk with one of the jurors?

10 A. Absolutely not.

11 Q. Would you ever do that in a trial?

12 A. No. Absolutely not.

13 Q. What is your thought on -- I'm sorry. Let me slow
14 down. What are your thoughts on the appropriateness of
15 such an act?

16 A. I am an officer of the Court. I am certainly going
17 to follow all rules, ethically, legally, all rules that
18 exist. I would never inform or direct a defendant or
19 client or member of his family to contact anybody at all
20 that's a member of the jury panel. That information never
21 came out. There was no discussions regarding that.

22 The first I heard of that potential allegation was
23 when I received his complaint.

24 Q. If in fact he had asked you, 'what do you think about
25 me talking to one of the members of the jury', what would

1 you have told him?

2 A. Absolutely not. Do not do that.

3 Q. In fact that could be a crime, could it not?

4 A. Absolutely.

5 Q. We're talking about who selected the members of the
6 jury. How much of a part did Mr. Cook play in the
7 selection of those jurors?

8 A. Mr. Cook was instrumental in every aspect of his
9 trial. Every aspect. Once again, he received the jury
10 list. We reviewed it together. He made notations on the
11 jury list about people he wanted, people he didn't wanted.
12 He had reasons why he thought this person may not have
13 helped him in his case or may have had something against
14 him.

15 Mr. Cook, you know, I gave him cases related to his
16 particular case so he was well informed. He played an
17 instrumental role in picking his jury members as well as
18 directing his case itself.

19 Q. One of his allegations is that you told him not to
20 testify. Whose decision was it whether or not Mr. Cook
21 testified at the trial of his case?

22 A. That decision was Mr. Cook. Now, did I informed him
23 of the positives of testifying or the negatives of
24 testifying? Yes. I informed him thoroughly potentially
25 his criminal record which was extensive would come into

1 play. And everything that he wanted to get to the jury we
2 were going to have other witnesses presented to the jury.
3 And also Mr. Cook had a two hour video confession that was
4 presented as well.

5 And that information regarding his fear, all of that
6 was provided to the jury based on his own statement and
7 his confession.

8 Q. How damaging was that?

9 A. Well, we were able to get a lot of his comments
10 relating to his prior crimes and bad acts removed. The
11 Judge went ahead and agreed that those issues should not
12 go before the Court. So any time he made any reference to
13 that we turned the volume down. So none of that
14 information came out.

15 However, anything that he said relating to his fear,
16 relating to the incident that day, that of course, was
17 presented to the jury. And one of the damaging remarks
18 that, of course, that we had no way of keeping out was
19 that he indicated that wanted Mr. Haines dead.

20 Q. Okay. Let me go back to -- you didn't try this case
21 by yourself?

22 A. I did not.

23 Q. All right. So at some point did you realize that --
24 the serious nature of the case, gravity of the case, what
25 did you do?

1 A. Well, we were -- I was thoroughly prepared for the
2 case. However, it would have been my first case not
3 trying it with another member of the bar. So I contacted
4 Ms. Rosilyn Sellers. Asked her would she assist me with
5 the case, and she had agreed to.

6 Q. At that point your habit was to try to have a second
7 chair if you could?

8 A. Yes.

9 Q. And that really worked to the benefit of your client?

10 A. Absolutely. He had two attorneys for the price of
11 one.

12 Q. Okay. And so you did that in this case?

13 A. I did.

14 Q. Did it help you?

15 A. Absolutely. I think she was extremely helpful. Ms.
16 Sellers went and met with Mr. Cook as well. I informed
17 him of my idea of having another attorney sit on the case.
18 He didn't have any problems with that. He met with her.
19 We all talked about the case and we prepared for the case.
20 And she sat there the entire four days.

21 Q. Did you feel that you were prepared to try the case?

22 A. More than prepared. Yes.

23 Q. And were you comfortable with your trial strategy?

24 A. Yes.

25 Q. Had you shared your trial strategy with Mr. Cook?

1 A. Yes, I did. Every step of the way, and at the
2 conclusion of the closing argument Mr. Cook looked at me
3 and said, "I am so happy I could smile" like he was
4 pleased as well.

5 Q. And so at that point you felt that, actually, the
6 jury may come back and find ---

7 A. I though things were going well. I certainly did.

8 Q. So he didn't say to you, "You just messed this is.
9 You made this mistake or that mistake." He felt like he
10 could win?

11 A. He -- we believe, and I think that was even more
12 reasons why we made adamantly clear we did not want
13 voluntary manslaughter. We wanted only murder or not
14 murder, and this was after closing, and now we went and
15 talked about the jury charges. We talked about that
16 extensively.

17 Q. At the conclusion of closing arguments did he say, "I
18 think you're ineffective in some way. I think your
19 conduct fell below the standard of care?"

20 A. No.

21 Q. Would he say, "I think you messed this up or that
22 up?"

23 A. Never told me that.

24 Q. Let me ask you about the appeal allegation. You've
25 been here through the trial of this matter. You heard the

1 allegation. He said you should have filed notice of
2 intent to appeal followed up with the appeal for him. Did
3 he ask you to appeal?

4 A. No, he did not.

5 Q. But did you discuss the possibility of appeal?

6 A. Yes, I did.

7 Q. As part of your duty that you owe ---

8 A. As an officer, yes. I believe I had an obligation to
9 talk with him about the appeal, his right to appeal and
10 the deadline in which he needs in fact have it filed.

11 Q. And what did you think his position was regarding an
12 appeal?

13 A. Mr. Cook never expressed to me any -- he never rally
14 talked about whether he had wanted me to file an appeal,
15 not file an appeal. He didn't talk about it. He was not
16 happy with the verdict, of course, and we sat down and
17 talked about what issues may exist for an appeal.

18 Q. I want to ask you a few questions about the document
19 that is Defendant's One. And you're familiar with this.
20 I'm holding it up. You may be a little too far away to
21 see it, but you're aware of this document?

22 A. Yes, I am.

23 Q. And we've gone over all the details. The real part
24 that I want to get into with you is the why of the
25 question. Why did you think that it was necessary to have

1 this in writing with this particular client?

2 A. I think this was necessary with any client. In
3 particular he was sentenced to 25 years. We just had a
4 trial that did not go in his favor. Of course, he didn't
5 want to go to prison. We sat down and I talked to him
6 about the right to an appeal. And I wanted him to be
7 absolutely clear the deadline he had to file the appeal.

8 So I wrote it out specifically so he could read, so
9 he could actually look at it, and so that he could sign
10 something. And he did that without any questions.

11 Q. Was there -- have you altered this since he signed it
12 in any way?

13 A. Not at all.

14 Q. So the signature on here, really -- the rest of the
15 document was at that time as it appears today?

16 A. Absolutely.

17 Q. Was there ever a moment before the execution of
18 Defendant's One where you said to yourself, 'this
19 particular client, I better get his signature. I better
20 get something in writing because later on down the road we
21 could have a disparity between what I'm saying and what
22 he's saying'?

23 A. Well the thought always would cross my mind as it
24 relates to any defendant that's facing significant time,
25 yes. And in particular with Mr. Cook I wanted to make it

1 clear when he had to file that appeal. The date he needed
2 to file that appeal, and I wanted his signature on that
3 document.

4 Q. If he had said, "I want you to file an appeal for me"
5 on that day. "Don't have money to pay you I want you to
6 file the appeal". What would you have said?

7 A. I would have certainly have felt obligated to file
8 the appeal for him. Yes.

9 Q. If he had said, "I'm not sure if I want to file an
10 appeal or not and don't I have the money to pay you." To
11 protect his rights would you have filed notice of intent
12 to appeal?

13 A. I didn't believe I had an obligation to file the
14 appeal at that time. So certainly I did not, and he
15 didn't ask me to file the appeal for him. Clearly, I
16 wanted to help Mr. Cook out as much as I could. I did
17 everything I could to help Mr. Cook out.

18 And the last thing I want to do is to have any
19 significant time in prison. So I would have helped in any
20 way that I could.

21 Q. Please answer any questions Ms. Miles may have.

22 MS. MILES: I have no further questions.

23 THE COURT: Thank you, ma'am. You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: You may call your next witness.

1 MS. MILES: Thank you, Your Honor. I would like to
2 call Attorney Sellers, please.

3 ROSILYN SELLERS, after being duly sworn,
4 testified as follows:

5 MS. MILES: Thank you, Your Honor. May it please the
6 Court.

7 DIRECT EXAMINATION

8 BY MS. MILES:

9 Q. Ms. Sellers, for the record would you just repeat
10 your full name, please?

11 A. Yes. Rosilyn Latrice Sellers.

12 Q. And, Attorney Sellers, would you tell us where do you
13 practice?

14 A. I practice in Dillon, South Carolina with the Sellers
15 Law Firm.

16 Q. Are you a sole practitioner?

17 A. Yes, I am.

18 Q. Would you tell us when you started practicing?

19 A. I began practicing law in November 2007. I graduated
20 from North Carolina Central School of Law in 2006.

21 Shortly after graduating I clerked with Judge Clifton
22 Newman in the Third Judicial Circuit. After clerking with
23 Judge Newman I entered into the Fourth Circuit Solicitor's
24 Office as a prosecutor in Marlboro County. A full time
25 prosecutor.

1 I was with the prosecution, the Solicitor's Office,
2 for about a year. And then I began working in Dillon
3 County, by hometown, with the Public Defender's Office. I
4 worked with the Public Defender's Office in full time
5 capacity for about a year. And then began contracting
6 with them.

7 Q. And you started your sole practitioner in what year?

8 A. 2009.

9 Q. 2009?

10 A. So three years after law school. Yes. Yes:

11 Q. Now, you were attorney with the Solicitor's Office?

12 A. Yes.

13 Q. What sort of cases were you handling in the
14 Solicitor's Office?

15 A. I was the first full time Solicitor in Marlboro
16 County so I handled every case that came thus the
17 Solicitor's door. I was the only full time Solicitor
18 there. There were other Solicitors that would come in and
19 assist. Elizabeth Munnerlyn was the part-time Solicitor
20 the office, and she would come in once a week.

21 But I handled all felonies. At that time there was
22 also a grant, so I also assisted in prosecuting the
23 criminal domestic violence cases.

24 Q. And you worked there only a year?

25 A. A little over a year.

1 Q: Okay. Did you work -- did you have any murder cases?

2 A. I did not specifically try any murder cases. I did
3 assist. Sat second chair on a murder trial, but I
4 essentially did drug cases, C.D.V.s. Things of that
5 nature.

6 Q. Okay. Now, when you worked for the Public Defender's
7 Office, how long you work there?

8 A. I worked at the Public Defender's Office in a full
9 time capacity for about a year and a half. At that time I
10 was located or I was in the Dillon Office. However, at
11 that time with Michael Stephens just coming on board we
12 were working all over the Fourth Circuit.

13 It was not unusual for each week that I would be in a
14 different county. So I covered Marlboro, Dillon,
15 Chesterfield and Darlington County.

16 Q. And how many murder cases had you handled?

17 A. I can't recall how much murder cases I handled during
18 that time. There was quite a few murder cases that I was
19 assigned to. In terms of trying those cases, back in 2009
20 I know I tried at least four murder cases.

21 Q. Four murder cases. Okay. And you only worked there
22 a year and a half?

23 A. I worked as a full time Public Defender there for a
24 year and a half. Yes.

25 Q. Okay. So in reality you probably have about two and

1 a half years of criminal experience?

2 A. No, ma'am, because, actually, starting in 2005,
3 before even graduating from law school, I had an
4 opportunity to come here in Dillon -- Darlington County.
5 I spent the majority of my summer from early May until
6 late -- mid-August working with Judge Lockemy here. So in
7 terms of my experience in the criminal world I clerked
8 with him as well.

9 So my calculations it would be approximately four
10 years of criminal experience prior to this case.

11 MR. JOHNSON: Your Honor, we would concede the
12 extensive legal background of Ms. Sellers if it would
13 speed things along. The State would concede.

14 BY MS. MILES:

15 Q. You're actually practicing as an attorney is -- would
16 be about two and a half year?

17 A. Yes, ma'am.

18 Q. In 2010 you were a sole practitioner at that time?

19 A. That's correct.

20 Q. And were you contacted by Miss Brown to assist her
21 with this murder case?

22 A. That's correct.

23 Q. And tell me your participation in this case?

24 A. My participation in this case was somewhat limited.
25 I did have an opportunity to meet with Mr. Cook. I had an

1 opportunity to meet with his family, being his mother,
2 his -- at that time I believe she was his girlfriend,
3 Ms. Carter. Christy Carter. And then I also met with
4 Taylor, who was Ms. Carter's daughter. I also had an
5 opportunity to review some of the video statements that
6 were recorded by law enforcement. I had an opportunity to
7 speak with some of the law enforcement officers that
8 investigated the crime.

9 So I had an opportunity to review all the
10 information, but I had very limited contact when it came
11 to Mr. Cook's family, but I did meet with Mt. Cook on a
12 number of occasions.

13 Q. Approximately how many times you met with him?

14 A. Probably no more than five times.

15 Q. And during that time did y'all go over the witness
16 list?

17 A. I don't recall me specifically going over the witness
18 list with Mr. Cook. There were specific witnesses that I
19 had spoken with in terms of Miss Brown that she wanted me
20 to question. And they were primarily law enforcement
21 officers. So I don't recall going over an extensive
22 witness list with Mr. Cook.

23 Q. At any time did you advised Miss Brown to file for a
24 mistrial in this case?

25 A. No, I did not. I don't recall.

1 Q. Did you see a reason to file a motion for a mistrial?

2 A. I don't recall a reason for the motion for a
3 mistrial. No.

4 Q. Were you aware -- were you present when the juror was
5 selected?

6 A. Yes ---

7 Q. The jury?

8 A. --- I was present on that Monday.

9 Q. Did you have any knowledge about this Juror 111, I
10 say?

11 A. I believe that's the Ms. Simmons that you're
12 referring to?

13 Q. Yes.

14 A. I do not have any personal knowledge about Ms.
15 Simmons. We did have an opportunity prior to selecting
16 the jury to go through and put our notations because there
17 were some individuals that Miss Brown and I may or may not
18 have known because of our prior experience in working in
19 that county.

20 I did not have any personal knowledge of Ms. Simmons,
21 and it was not brought to our attention during jury
22 selection that there was any personal knowledge about
23 Ms. Simmons.

24 Q. You are not aware that Miss Simmons was -- her baby's
25 father was the brother that Mr. Cook had testified

1 against? Were you aware of that?

2 A. I don't know who you're speaking of. I don't know
3 anything about a baby and a baby's father regarding
4 testimony. So I'm not aware of that.

5 Q. When did it come to your attention that that witness
6 was related to one of the -- I mean that juror was related
7 to one of the witness on your witness list?

8 A. I believe that time my attention today. I'm not even
9 sure if I saw that in the application or if it
10 specifically -- explicitly listed, but that would have
11 come to my attention today.

12 Q. Do you think there was anything in which that on the
13 self-defense defense that y'all had for Mr. Cook that any
14 of those witnesses that were not called would have made an
15 impact on the outcome?

16 A. I'm not aware of any witnesses Mr. Cook presented or
17 told myself or Miss Brown about that were not called.

18 Q. As far as the appeal were you involved with any of
19 the conversations with the appeal?

20 A. No. I was not involved with any of the conversations
21 regarding the appeal. As Miss Brown told you that I was
22 present in the courtroom every day during the four day
23 trial. However, I do have a private practice, and that
24 specific -- that particular week I also had a death in my
25 family. So although I was present in the courtroom the

1 last two days I, on that Wednesday I believe, was the day
2 of the funeral so I did leave a little early.

3 And then the follow day, once the jury was read --
4 the verdict was read I went back to my office. So I soy
5 accompany Ms. Brown in speaking to Mr. Cook at the jail.

6 Q. Did you hear Mr. Cook at any time ask or talk about
7 appealing? Intent to appeal?

8 A. No.

9 Q. At any time were you privy to any conversation which
10 is that Miss Brown informed Mr. Cook or informed his
11 family members to make contact with this Ava Simmons, one
12 of the jurors?

13 A. No.

14 Q. Thank you.

15 MS. MILES: I have no further questions.

16 MR. JOHNSON: No questions, Your Honor.

17 THE COURT: Thank you, ma'am. You may step down.

18 And you may call your next witness.

19 MS. MILES: Your Honor, I would like to recall
20 Miss Chastity in reference to rebuttal to this -- one of
21 the questions in which that Miss Brown answered.

22 THE COURT: Call your witness.

23 MS. MILES: Ms. Chastity, please. A Miss Carter.
24 Chastity Carter.

25 THE COURT: Ma'am, let me remind you that your still

1 under oath.

2 CHASTITY CARTER, after previously being duly
3 sworn, testified as follows:

4 MS. MILES: Thank you, Your Honor. May it please the
5 Court.

6 DIRECT EXAMINATION

7 BY MS. MILES:

8 Q. Ms. Carter, were you present when Miss Brown informed
9 you, Mr. Cook, Mr. Cook's mother to approach Ava Simmons?

10 MR. JOHNSON: Your Honor, we are going to object.
11 This is for rebuttal, and I'm pretty sure she testified to
12 this on direct already.

13 MS. MILES: I don't think so in the manner in which
14 that I think counsel had objected and said in reference to
15 the fact that she couldn't say what someone told her. And
16 now that Miss Brown has already testified to the fact that
17 it never happened I am now rebutting this in reference to
18 Miss Carter. She was present.

19 THE COURT: All right. Overruled. Go ahead.

20 BY MS. MILES:

21 Q. Would you please tell the Court when this happened,
22 where it happened, and what was told to you by Ms. Brown?

23 A. Ms. Brown approached Clarence. It was lunch ---

24 Q. When was this?

25 A. It was -- I can't tell you the date. It was the date

1 that Michael Troutman testified.

2 Q. Okay.

3 A. I don't know what date that was. After Michael
4 Troutman testified we went to lunch. Everybody went to
5 lunch. Myesha approached the client, Clarence Cook, and
6 asked Clarence do not speak to the juror, Ava Simmons, in
7 front of the courtroom. Could y'all find somewhere to
8 talk and meet. That was with Arlene Cook and Clarence
9 Cook. And we went up East, it's Eastside Store. And Ava
10 Simmons spoke to Clarence that day.

11 Q. Were you privy to the conversation?

12 A. Yes.

13 Q. What was the conversation about?

14 A. The conversation said that she would not find him
15 guilty of murder, but she would find him ---

16 MR. JOHNSON: Your Honor, object. This was not
17 rebuttal from what was discussed earlier.

18 THE COURT: I sustain the objection.

19 MS. MILES: Okay.

20 BY MS. MILES:

21 Q. Thank you so much, Ms. Carter.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Just one or two questions. Ma'am, did you know that
25 speaking to a juror during deliberations certainly would

1 be perhaps contempt of Court and perhaps a crime?

2 A. Well, for one, I was going off what the lawyer said.

3 I don't know nothing about the Court system or anything.

4 I went solely off of what Myesha Brown told me?

5 Q. All right.

6 THE COURT: Thank you, ma'am. You can step down.

7 MS. MILES: Beg the Court's indulgence. Your Honor,

8 I have another rebuttal witness. I would like to recall

9 Mrs. Cook.

10 MR. JOHNSON: Your Honor, we object because we asked
11 for sequestration, and let me just confirm. Wasn't
12 Mrs. Cook sitting in the courtroom after she testified? I
13 think it was.

14 THE COURT: I think she was.

15 MS. MILES: After she testified, but the
16 sequestration was only for the time in which the two ---

17 THE COURT: I'll permit it. Go ahead.

18 MS. MILES: Thank you, Your Honor.

19 THE COURT: I'll remind you that you're still under
20 oath.

21 ARLENE COOK, after being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MS. MILES:

25 Q. Now, Ms. Cook, when was it that Ms. Brown was

1 informed that Clarence Cook had intent to appeal?

2 A. When I talked with Miss Brown it was right after they
3 gave him his sentence.

4 Q. The day of the sentencing?

5 A. The day of his sentencing. I asked her will she
6 appeal his case. She told me specifically that she will
7 not appeal his case until she got the rest of her money.
8 And that is the only way she will appeal it. If she
9 didn't get no money she wasn't doing anything. Those were
10 her exact words.

11 Q. Was she aware that Mr. Cook wanted to appeal?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: I'm sorry. Any additional questions for
15 the witness, Mr. Johnson? Hold on, Ms. Carter.

16 CROSS-EXAMINATION

17 MR. JOHNSON: Just briefly, ma'am. You're not
18 testifying that Mr. Cook told her, "I want you to file an
19 appeal?" You're testifying what Miss Brown told you; is
20 this correct?

21 A. I'm testifying -- I was sitting, when they gave my
22 son his sentence, I was sitting right there. She walked
23 back there because I went up -- my son, we were sitting
24 right there together. I went up, and I hugged my son.

25 She told me right there in front of him. I said,

1 "Myesha, is you going to give him an appeal" because she
2 told me right straight she will not give him no appeal
3 unless she got rest of her money. And them were her words
4 to me.

5 Her issue was giving her the rest of the money that
6 we were owing her, and we did not owe her anything
7 until -- the rest of it was supposed to be set up \$500
8 each month until the balance was paid out in full.

9 Q. All right. But you never heard Mr. Cook say, "I
10 don't want to you to file an appeal," did you?

11 A. Did I hear him say that?

12 Q. Yes, ma'am.

13 A. Yes, he did. I'm telling you when they sentenced him
14 we was all together. I was sitting right there in the
15 front. I went up there. Sit right beside him. He
16 specifically told her he wanted to get an appeal cause I
17 was sitting right there hugging him. Chastity wasn't even
18 in the courtroom.

19 I was in there the whole time waiting, and when they
20 gave him those 25 years she came up to me and said, "I'm
21 sorry how the case went, but I tried to do my best, but
22 I'm not going to do anything unless I gets my money."

23 I even tried to call her on the phone and she
24 pretended to be someone else. And cause I was going to
25 record her. I had her on speakerphone. I have two

1 witnesses that was there when she said she was not going
2 to do anything unless I gave her the rest of her money.

3 MR. JOHNSON: I don't think I have any more questions
4 for this witness, Your Honor. Hold on, Ms. Carter.

5 REDIRECT EXAMINATION

6 BY MS. MILES:

7 Q. Now, you testified that you had her on speaker phone?

8 A. On speaker phone.

9 Q. And when was that? Was that before the ten days was
10 up?

11 A. Yes it was.

12 Q. Who was present that heard that?

13 A. It was Charlotte and Chastity Carter.

14 Q. So Chastity heard that also?

15 A. Yes, she did.

16 Q. And why do you know that it was before the ten days?

17 A. Because it was two days right after they sentenced
18 him. I called her because she sat there, had me give her
19 money for buying this and that for the Court. I gave her
20 money at the jail. I gave her money at the office. She
21 lied and said I didn't give it to her. I got receipts in
22 my pocketbook.

23 Q. So are you testifying that Miss Brown was well aware
24 before the ten days that Clarence wanted to file an intent
25 to appeal?

1 A. Yes.

2 Q. Thank you.

3 MR. JOHNSON: Just one or two questions, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. If you say that she pretended to be someone else on
7 speaker phone how do you know it was her?

8 A. Let me tell you. I know her voice. When you talk to
9 someone everyday concerning your child, and when you're
10 trying to switch up your voice -- 'this is not Myesha.

11 This is her assistant, and I will tell her to call you
12 back'. I know her voice. She had just hung up with me.

13 It don't take a rocket science to realize somebody is
14 trying to switch their voice up pretending to be an
15 assistant, and she ain't have no assistant in there.

16 Q. It could have been her assistant, couldn't it?

17 A. She didn't have one. Any time we went there wasn't
18 nobody there but her. She didn't have one.

19 MR. JOHNSON: No further questions, Your Honor.

20 THE COURT: Thank you, ma'am. You may step down.

21 All right. You may call your next witness.

22 MS. MILES: Your Honor, we rest at this time.

23 THE COURT: Applicant rests. Mr. Johnson.

24 MR. JOHNSON: State rests, Your Honor.

25 THE COURT: State rests. Brief argument.

CLOSING STATEMENT BY MS. MILES

MS. MILES: Brief argument, Your Honor. I think that the -- Mr. Cook has established the fact of ineffective assistance of counsel based on the testimony of the persons that his application dealt with and for his P.C.R, your Honor. The self-defense defense for his case was not matured. It did not plan the witnesses. Were not really brought in that could have made a big difference and impact on this case. Mr. Cook did not get a chance to even testify. He was following the orders of his attorney, Your Honor.

I think in terms of the contract on his life would have gone directly to the issue of provocation and, therefore, it would have also indicated that Mr. Cook did not do anything as far as to cause -- that Mr. Cook was at fault in causing the act that occurred where Mr. Haines was shot.

I think that the self-defense was just not developed or established at all, and there were quite a few incidents in which that it could have easily established. Calling the witness as far as Mr. Jones who was also the D.A. would have made a great impact in reference to what was going on in that apartment complex where the deceased was living below Mr. Cook.

Also, Your Honor, the contract on Mr. Cook's life

1 would have gone directly to the self-defense defense for
2 Mr. Cook. Your Honor, there was -- I think that it could
3 have been shown that the self-defense was one in which
4 that in South Carolina, as you know Your Honor, you know
5 better than I that you can stand your grounds.

6 And if someone feels as though that he was
7 actually -- that someone -- the defendant believed he had
8 a right to be where he was supposed to be then -- and he's
9 threatened and feel as though he is -- his life is in
10 danger then they have a right to a self-defense defense.

11 It was not developed. The burden of proof, Your
12 Honor, in self-defense is not affirmative defense which
13 must be established by the defendant if the evidence leads
14 the jury there is a reasonable doubt as to self-defense.
15 And I think that if the witnesses were called, there was
16 impeachment of Mr. Simmons, if Mr. Cook was able to
17 testify, and then the confrontation between the attorney
18 and the client during for process of the trial, I think
19 that it had a direct affect on the outcome of Mr. Cook's
20 case in this matter.

21 Your Honor, I also would like to bring the Court's
22 attention to the fact that during the process of this case
23 that Miss Brown's lack of experience, and she already
24 indicated that she had very -- she did not have any
25 experience in the murder capacity when she worked prior to

1 going out. She might have assisted and then she testified
2 to the fact that she thought that she would bring someone
3 in who she thought in terms -- well, Mr. Cook was getting
4 two attorneys for one.

5 But the Court heard the testimony of Miss Sellers.
6 Miss Sellers, being that I know that she -- all both of
7 these attorney are very smart attorneys, and I hope my
8 comments is not offensive, but here we are with a young
9 man with 25 years, and between the two of them we have
10 less than five years of experience between the two of
11 them.

12 And which that they have been on their own, and they
13 don't have many -- the only one that have experience is
14 doing any murder cases at all would have been Ms. Sellers.
15 And based on what Miss Sellers testified to she only had
16 one -- her mostly was probably D.S.S. cases and other
17 cases.

18 But, Your Honor, I think that this is a case in which
19 that as I said before both of these attorneys, Miss
20 Sellers and Miss Brown, I believe are very good attorneys,
21 but under these circumstances and we are at a P.C.R, Your
22 Honor, their actions and acts showed insufficient
23 effective service to Mr. Cook.

24 THE COURT: All right.

25 MS. MILES: Your Honor, I'm, lastly. I know the

1 burden was on us to show that.

2 Number One, that Miss Brown and Miss Sellers, but
3 mostly Miss Brown, because Miss Sellers already testified
4 that her participation was very, very limited. But under
5 these circumstances I think that Miss Brown bit off more
6 than she could chew under the circumstances.

7 And I want to ask this Court under what we have
8 presented to let's give Mr. Cook another chance. Another
9 bite at the apple. Thank you.

10 THE COURT: Thank you, Ms. Miles. Mr. Johnson.

11 CLOSING STATEMENT BY MR. JOHNSON

12 MR. JOHNSON: Your Honor, this is a case of
13 outrageous allegations against counsel. And I wish I had
14 litmus paper or some kind of litmus test for ineffective
15 assistance. I don't, but I think the best substantive
16 that we have for a litmus test is what the jury said. And
17 in this case, a case where the victim was shot twice in
18 the face at close range by the Applicant, if the jury came
19 back and said not guilty of murder that's effective
20 assistance of counsel. And that's what we have here.

21 I could dispute these outrageous allegations. We can
22 talk about some other things, but I think we never really
23 reached those allegations because we never meet the
24 Strickland v. Washington standard. And I probably could
25 rest on the Strickland v. Washington standard. They need

1 to prove ineffective -- performance that fell below the
2 standard of care and also prejudice.

3 In this case we don't have performance that fell
4 below the standard of care. But even if the Court
5 believed that there was some performance that may have
6 been better the Applicant has failed to prove that they
7 were prejudiced by such acts. Because like I say they
8 came back with a verdict of not guilty on murder.

9 So the State is asking that this Court dismiss with
10 prejudice the application. Thank you.

11 DECISION OF THE COURT

12 THE COURT: All right. Thank you, Mr. Johnson. All
13 right. I find that the Applicant has failed to prove by
14 preponderance of the evidence that the -- he was
15 inappropriately represented:

16 That the attorney did not prepare for trial.

17 He failed to prove that they did not sufficiently
18 interview witnesses.

19 He's failed to show that their conduct fell below
20 reasonable standards.

21 Or that he was prejudiced, thereby.

22 His decision to testify -- not testify. Excuse me.
23 Was his decision.

24 On the issue of jury tampering, there has been
25 evidence that it occurred. The Applicant himself states

1 that he was involved in talking to a juror trying -- who
2 was trying his case knowing it was wrong. So he clearly
3 participated in it. He can't now come to the Court and
4 say, "Because of what I did I should get another trial."
5 He comes with unclean hands.

6 On the issue of the appeal or whether the appeal was
7 requested or promised, the evidence is conflicting on
8 that, but the Court is persuaded by the Defendant's
9 Exhibit Number One.

10 I do not find that the plaintiff -- excuse me. The
11 Applicant has proved that it was preponderance of the
12 evidence that it was altered. And, therefore, the Court
13 is left with that document. And that document is
14 inconsistent in the Court's mind with a promise of an
15 attorney to perfect an appeal or to file an appeal.
16 Excuse me.

17 And, therefore, for all of those reasons the Court is
18 compelled to deny the application. Mr. Johnson, you
19 prepare an order.

20 MS. MILES: Thank you, Your Honor.

21 END OF TRANSCRIPT OF RECORD
22
23
24
25

1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF MARLBORO)

6

7

8 I, HATTIE O. GORDON, Official Court Reporter for the

9 4th Judicial Circuit of the State of South Carolina, do

10 hereby certify that the foregoing is a true, accurate and

11 complete Transcript of Record of the proceedings had and

12 evidence introduced in the trial of the captioned case,

13 relative to appeal, in the Court of Common Pleas for

14 Marlboro County, South Carolina, on the 11th day of

15 January, 2013.

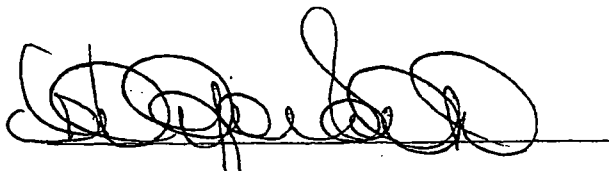
16 I do further certify that I am neither of kin,

17 counsel nor interest to any party hereto.

18

19 July 16, 2013

20

21 

22

23 HATTIE O. GORDON, Court Reporter

24

25

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF MARLBORO)

12-CP-34-41

Clarence Kendall Cook, 345807)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 16, 2012. The State made a timely Return. A hearing on the matter was convened at the Darlington County Courthouse on January 11, 2013. Applicant was present and represented by Mary P. Miles, Esquire. The State was represented by Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His counsel, Myesha Latrice Brown, Esquire, and Rosalind Sellers, Esquire, also testified. Applicant's wife Chastity Cook as well as his Mother, Arlene Cook testified. In addition, this Court had before it the transcript of Applicant's proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted by the Marlboro County Grand Jury for voluntary manslaughter (2010-GS-34-466), unlawful



possession of a pistol (2010-GS-34-92), possession of a weapon during the commission of a violent crime, (2010-GS-34-91). Myesha Latrice Brown, Esquire, represented Applicant. Rosalind Sellers, Esquire, also represented Applicant.

On April 21, 2011, Applicant was tried before the Honorable J. Michael Baxley and a jury. After the jury returned convictions on Applicant's charges, Judge Baxley sentenced Applicant to five years imprisonment on possession of a weapon during violent crime, twenty years imprisonment on voluntary manslaughter, and to five years imprisonment on the Possession of a weapon during a violent crime charge, for an aggregate sentence of twenty-five years imprisonment. On information from the Application, Applicant did not appeal his verdict and sentence.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I wasn't guilty of voluntary manslaughter"
2. "ineffective counsel"
3. "conflict of interest"

Applicant seeks "a new trial or a re-sentence" as a result of this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

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Ineffective Assistance of Counsel

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). This Court will now address each allegation of ineffective assistance of counsel:

Applicant's expectation of of a favorable verdict

Applicant was represented at trial by both attorneys Brown and Sellers. Applicant shot the victim, then kneeled down and shot him in the face at point blank range, then claimed self - defense. Applicant informed counsel the only plea he would accept would be probation.

Applicant complained that his indictment for manslaughter was given to him at his bond hearing. He had no probative argument as to how this could have prejudiced the outcome of his case. Counsel testified she had sufficient time to prepare for Applicant's trial, and met with him

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"more like twenty-five times." The Court finds no ineffectiveness or prejudice resulting therefrom, and therefore denies this allegation.

Applicant indicated he was told by Attorney Brown not to testify at his trial, and that he wanted to testify. Applicant indicates he was not given the ability to make the decision on his own. Attorney Brown indicated she discussed the value in testifying balanced against the risk of harm, and that it was Applicant's decision alone not to testify. This Court is not persuaded by Applicant's allegations, finds that it was Applicant's decision to not testify, and therefore denies this claim.

One of Applicant's allegations against Attorney Brown was that she told him he was free to leave the state, which resulted in a bond revocation. Brown testified that Applicant inquired about leaving for employment opportunities, but that she told Applicant first the Solicitor would have to approve such a request. Brown further testified the Solicitor never authorized the travel but that Applicant left the state anyway. Applicant was clearly told by counsel that his request would need approval before he could absent himself from the State, but he took it upon himself to leave without authorization and now attempts to hold counsel responsible. Brown also testified that shortly after his revocation, she moved the trial court to reconsider and obtained Applicant's freedom again until trial. The Court finds Applicant not credible in his claims. Additionally Applicant fails to meet his burden of proof in showing how this could have prejudiced the final outcome of his trial. This claim is therefore denied.

Applicant also alleges he gave Brown and Sellers a list of witnesses, and some of those witnesses were not called at his trial. Attorney Brown testified she did extensive investigation in determining the potential value of Applicant's witnesses, in that she either spoke to each one directly or on the telephone. "Each and every witness he asked that I contact, I did." Brown

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said she met with Applicant "more like twenty-five times" in the preparation of his case. Witnesses not called were either not helpful to Applicant's case or were actually potentially harmful to his case. Additionally, Applicant fails to show prejudice in that he also failed to call those witnesses in this proceeding, so the Court cannot determine what it is that they would have testified to. For these reasons, this Court denies this allegation.

Applicant alleges that attorney Brown encouraged him to speak with one of his jurors during the trial, but prior to deliberations. Applicant further testified that he did in fact travel to the juror's home and speak with her about his case, wherein the juror told Applicant the jury was inclined to render a "not guilty" verdict. Applicant's wife and mother also testified that attorney Brown knew of or encouraged Applicant to attempt to influence the juror. Attorney Brown vigorously and unequivocally denied this allegation. The Court finds Applicant's allegation not credible, and the court finds Counsel's reply credible. Even if such an allegation were to be believed, Applicant would have failed to show how actions he took himself prejudiced his case in any way, and therefore the Court denies this allegation.

Applicant testified he "wanted an appeal right away." Counsel testified after the verdict she met with Mr. Cook and talked with him about the potential for appeal, but that she did not agree to represent him on his appeal. The Court notes that in this proceeding, Applicant is not seeking a belated appeal either in any of his filed pleadings or via testimony. Since he has waived his request for a belated appeal, Applicant has not shown how this allegation prejudiced him in any way, therefore this allegation is denied.

Applicant testified that Attorney Brown brought money up in their discussions. Applicant's wife and mother also testified that attorney Brown inquired about the ability to pay the remaining amount of the fee that was agreed upon. Attorney Brown testified that while she

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did note the unpaid balance to Applicant, that this in no way affected her defense of Applicant. The record is replete with counsel's diligence in vigorously defending Applicant in a very difficult case. Indeed, counsel succeeded in avoiding a murder conviction in a case where Applicant shot the victim twice in the face, including a shot while the deceased was already laying incapacitated on the ground.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in his decision to try his case. Counsel's representation was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight. This Court finds Applicant's testimony to the contrary lacks credibility. As Applicant has failed to prove counsel was ineffective, and failed to show prejudice to his case, this Court denies the Application.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an

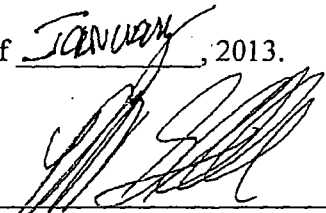
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applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

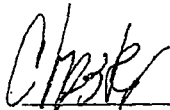
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of JANUARY, 2013.



Brooks Goldsmith
Presiding Judge
4th Judicial Circuit

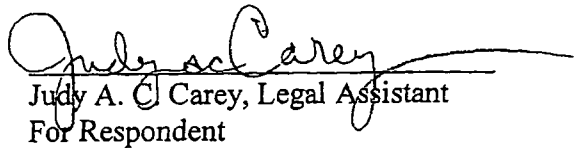

_____, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2012-CP-34-0041
	)	
CLARENCE KENDALL COOK, 345807	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order of Dismissal** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Mary P. Miles, Esquire
440 Knox Abbott Drive; Suite 360
Cayce SC 29033

DATED this 5th day of February 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent