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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CLARENCE W. JENKINS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002211

APPENDIX

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1 A. I would say so.

2 Q. And you had your crack at the trailer
3 on Tindal Road. Right?

4 A. Yes, sir.

5 Q. Okay. So your testimony is that you
6 had lots of crack at that trailer but you also
7 didn't live there. Is that right?

8 A. Yeah.

9 Q. You felt safe storing your crack in a
10 place where you didn't live?

11 A. It's far away from me and my kids.

12 Q. Okay. But you were also worried about
13 others finding the crack. Right?

14 A. Well, the only person that would be at
15 that place during that time would be Carman.

16 Q. How do you know that if you're not
17 there as you've testified?

18 A. I mean, I guess it's a possibility that
19 she could bring somebody else there.

20 Q. It was your testimony that Mekole
21 Harris was there without your knowledge. Right?

22 A. Yeah.

23 Q. Okay. So if that's true, there were
24 people there. Right?

25 A. I can't see who comes and goes if I'm

1 not there.

2 Q. Okay. Even though it wasn't your home
3 as you testified, you felt comfortable enough to
4 cook meth in a van in the yard?

5 A. Who said anything about cooking meth in
6 a van?

7 Q. Isn't that what you testified to?

8 A. No, I did not testify.

9 Q. What were you doing with meth -- I'm
10 sorry. Drugs in the van at the trailer?

11 A. I never said I cooked drugs in a van.
12 My precise words was that I was cooking drugs
13 inside of her trailer. It was cocaine. I can go
14 through the whole details and process if you want.

15 Q. Okay. So you would go over to that
16 trailer, is your testimony, to cook drugs in the
17 trailer?

18 A. Yeah. I sure couldn't cook it at my
19 mom's -- my sister's house.

20 Q. And you said you had four guns in that
21 trailer?

22 A. Well, yes, I had four guns until Carman
23 stole one and ended up getting it took by the
24 police.

25 Q. Okay. But if you have the criminal

1 record you did at that time and had just been out
2 of prison, were you allowed to have guns at that
3 point?

4 A. I had only been locked up for driving
5 offences. I had no criminal record.

6 Q. But you talked about one of the guns
7 being legal. How was the gun legal?

8 A. You can buy a gun off anybody for some
9 crack or drugs or whatever.

10 Q. So what made it illegal?

11 A. If you don't purchase a gun legally
12 through a store or someplace like that, it's
13 illegal.

14 Q. So you traded some kind of drugs for
15 it?

16 A. Yeah.

17 Q. Okay. So you don't live at this house.
18 You testified you don't really have anything to do
19 with that, but you're running a drug operation out
20 of it for guns.

21 A. I never said I was running a drug
22 operation. Just a place where --

23 Q. But what do you call cooking drugs from
24 a house? What is that?

25 A. That's just cooking drugs. All right.

1 You get a few ounces of cocaine. If you want to
2 break it down, let's break it down, sir. You get a
3 few ounces of cocaine. You add a little baking
4 soda or some blowup to it, and you make it just a
5 little cookie that you break up and sell the rocks.
6 That's not anything major. Basically, I was just
7 doing it to support my habit.

8 Q. Okay. Well --

9 A. And maybe a little money on the side.

10 Q. What was your habit?

11 A. Drinking and smoking crack.

12 Q. Okay. So you testified that while you
13 were at the trailer on Tindal Road on, I believe it
14 was, Sunday that someone drove up in the yard. You
15 testified that Carman --

16 A. No, I did not. I didn't say that I was
17 at Tindal Road on a Sunday. I said Sunday I was at
18 110 Cornelia Street. I was there all morning. I
19 said Carman came through there that afternoon. We
20 got into an argument, and we ended up leaving and
21 going to the library. Was gone for maybe about an
22 hour and argued all the way back. She dropped me
23 off and took off because she was trying to get me
24 to come to the trailer. I also stated that she
25 pretty much blew my phone up all that weekend, but

1 I was ignoring her calls.

2 Q. Okay. So you testified that Carman
3 took you to the trailer on a Monday night. Is that
4 right?

5 A. Yes. Monday night around 9:30, 9:40.

6 Q. Okay. You testified you didn't really
7 want to go. Is that right?

8 A. No, because I knew -- I knew what I was
9 in for. It ain't nothing but an arguing match with
10 her.

11 Q. So you also testified that a guy came
12 up in the yard. Right?

13 A. Yes.

14 Q. And you testified -- who was the guy?

15 A. Actually, I don't know his real name,
16 but they call him Weed Man.

17 Q. Call him what?

18 A. I said I don't know his real name, but
19 they call him Weed Man. We started out, I guess,
20 because he started out selling weed before moving
21 on up. An individual from Donaldson Center.

22 Q. And what were you two planning?

23 A. Well, I went there earlier. Carman
24 took me there a little bit earlier. He was one of
25 the people I used to cook for. So I went there to

1 just reopen -- give me a little something to smoke
2 while I'm cooking this stuff, but he was busy. So
3 I just told him to go back up over there.

4 Q. Okay. So you just testified you were
5 there earlier. You were where earlier.

6 A. On what day?

7 Q. Well, what day were you talking about
8 just now?

9 A. I don't know. You said I was there
10 earlier. I was trying --

11 Q. You just testified in an answer to my
12 question that you were there earlier that day?

13 A. Oh, you're talking about --

14 Q. Where were you --

15 A. -- Monday.

16 Q. Where were you earlier that day?

17 A. Donaldson Center.

18 Q. Okay.

19 A. It's a trailer park. If you go up to
20 Donaldson Center, back then you had two gas
21 stations on one side. If you're going up this way
22 on the right side, it's a trailer park. On this
23 side, I think it's some kind of factory or a
24 military base somewhere up there. But he stayed
25 over here to the right right by the gas station.

1 Drive down a few streets, make another left, and it
2 was like the second or third trailer down.

3 Q. Okay. What did you do there at the
4 Donaldson Center?

5 A. Carman took me over there to pick up
6 his supply and get me a little -- my extra for
7 cooking for him.

8 Q. Okay. What time were you at the
9 Donaldson Center?

10 A. I don't know. I'd say I probably left
11 Labor Finders as soon as I got off work. We waited
12 there about an hour and a half for Mekole to show
13 up, but she never did. So maybe about 6:00 or
14 7:00, somewhere around there. It wasn't dark, but
15 it was starting to get dark.

16 Q. Okay. So what time did you get to the
17 trailer on Tindal Road on Monday night?

18 A. That would be 9:30 to 9:40, somewhere
19 around there.

20 Q. So the Donaldson road trip, that's new.
21 You didn't mention that when you were testifying
22 earlier. Right?

23 A. Actually, I did, I said Donaldson
24 Center. I didn't go into details.

25 Q. On direct examination when Ms. Henry

1 was asking you questions?

2 A. Yeah. I didn't go into detail about
3 the gas stations or you turn right and what street
4 you turn on, but I did say Donaldson Center.

5 Q. Okay. So what were you and this guy
6 supposed to be meeting about at the trailer on
7 Tindal Road?

8 A. The same thing. I'm supposed to pick
9 up from him at his spot.

10 Q. Okay. So you sort of planned it out
11 where you where you were going to be?

12 A. Since he was already busy, I had just
13 told him to pull back up on me at her truck.

14 Q. Okay. So even though you were going
15 somewhere with Carman you didn't want to go, you
16 were making plans to meet this guy there?

17 A. Yeah.

18 Q. Okay. So you just testified you were
19 not looking forward to it. You thought you might
20 have an argument, but you're planning drug meets
21 too?

22 A. We did have an argument. I also told
23 you before that when -- that Carman was not going
24 to leave my side. I told you that she took me to
25 work that Monday, stayed outside the job site all

1 day in the van waiting for me. Took me from the
2 jobs site back to Labor Finders and waited there
3 and wasn't going nowhere until I talked to her. So
4 it wasn't actually like we was going anywhere else
5 except to her trailer. So when we did leave Labor
6 Finders, the Donaldson Center area was the first
7 place I went to. And since I already know that we
8 was going to have an argument, I told him -- I
9 said: Look, whenever you finish, just pull up on
10 me. I'll be down there. I left him, went to the
11 fuel supply, picked up some stuff and went over
12 there because I figured that she found everything,
13 which she did. And she was basically lying to me
14 that she did.

15 Q. Okay. This guy, what's his phone
16 number? Do you know?

17 A. It's been 15 years now. I was high
18 back then. No disrespect, but I don't remember the
19 phone number.

20 Q. You remember a lot of other details
21 you're saying?

22 A. Yeah.

23 Q. Okay. What was Carman's phone number?

24 A. I think it was 4418 something.

25 Q. Okay. So if we look at your phone

1 records, it's going to show calls to Carman and
2 calls to this other guy you were supposedly meeting
3 with that Monday night?

4 A. That and a lot of other calls too.

5 Q. So you testified about going in and
6 finding Ms. Harris' body on the floor. Then you
7 testified that you threw some things in the grill.
8 Why would you put stuff in the grill?

9 A. When I got there after me and Carman
10 got into it and she made these certain comments and
11 pointed toward the back and I went back there and
12 found Mekole back there, I completely lost it. I
13 mean, I was just trying to do any and everything,
14 whatever came to mind to try to get as far away
15 from the situation as I possibly can. I mean, I
16 literally honestly didn't know what to do. I
17 literally didn't know what to do.

18 Q. Well, you testified that you rounded up
19 things and burned them. That sounds like you were
20 thinking about what to do. Right?

21 A. No. Let's just -- let's put it in
22 perspective. Say you have a trailer. You have
23 other people that you're cooking for. This is not
24 your stuff, and these are not nice people. So,
25 one, you don't want to lose their stuff. Two,

1 there's a -- you just found a body in that trailer.

2 Q. Wait a second. I thought the drugs
3 were yours?

4 A. I just told you that I picked up some
5 drugs that I cooked for other people and they give
6 me basically to support my habit and make a little
7 extra money on the side. Not one time that I said
8 the drugs was mine, because if the drugs was mine,
9 I wouldn't have to go to them to get any to cook.

10 Q. You did testify that you had drugs at
11 the trailer. Right?

12 A. Yes.

13 Q. Okay. All right. Continue on. Why
14 are you burning stuff in the grill?

15 A. Actually, like I said, I didn't know
16 what to do. I was just running around doing
17 whatever came to mind.

18 Q. So the first thing that came to mind
19 was to burn clothes?

20 A. I never said I burned clothes. I said
21 I burned all the names and paperwork I had for
22 formulas because different people I did different
23 things for them. I cooked their stuff in a
24 different way. Not everybody has the same quality.

25 Q. So what exactly did you throw on the

1 grill?

2 A. Basically notebooks, paperwork,
3 little -- whatever I couldn't get in my big bag. I
4 had a lot of syringes. Syringes with different
5 gauges from .2 all the way up to .2 cc,
6 20 milliliters, different syringes, syringes that
7 are exchangeable depending on the syringes you've
8 got. It was just a whole bunch of stuff that I was
9 just trying to gather whatever I couldn't get in
10 the bag and just get rid of.

11 Q. What about what happened to the needles
12 or the syringes?

13 A. I mean, whatever got thrown in the
14 grill, they stayed in the grill.

15 Q. Were the needles still on the syringes
16 when you threw them in?

17 A. A few of them were because in the pack,
18 the syringes actually don't come -- the needles
19 actually don't come on the syringe. You actually
20 have to screw it onto or click it on.

21 Q. Okay. So you threw papers, notebooks,
22 and syringes?

23 A. Little plastic baggies. Whatever I
24 could. I mean, I don't actually remember verbatim
25 everything I threw in there. I was just -- I was

1 just grabbing stuff. And whatever I couldn't get
2 in the bag, I was just throwing it, trying to rush
3 and do something.

4 Q. All right. So the police didn't find
5 needles in the grill, though. Right?

6 A. I don't know what they found. I know
7 they found a spoon with gloves on it that they
8 didn't test.

9 Q. That wasn't in the grill, though.
10 Right?

11 A. No, but it was in the bathroom.

12 Q. All right. In the house with all your
13 drugs?

14 A. Well, there was no drugs right then,
15 but, yeah.

16 Q. I thought you testified the reason you
17 were worried is about people finding your drugs?

18 A. And you just heard me testify that
19 after I found Mekole there, I ran around gathering
20 everything up, put in the bag. And whatever I
21 couldn't stuff in the bag, I threw in the grill.
22 So by the time the police got there, they didn't
23 find much. Not counting the fact that they -- I
24 seriously doubt they used the drug dog or anything
25 like that because if they were so focused on

1 anything like that, they would have tested
2 everything that they found inside the house instead
3 of not testing it.

4 Q. So you walk in the house, according to
5 your version of events, and you find a friend of
6 yours, as you've testified, dead on the floor. And
7 your first thought is to burn evidence?

8 A. No. You said I couldn't say what the
9 argument that me and Carman had gotten into, so I
10 could only tell you what I did. I couldn't say the
11 backwards and forth that I did. I specifically
12 said when I went back there and seen Mekole down
13 there, I described what I've seen and the position
14 that she was in. I said, Carman was sitting there
15 looking at me, but she -- I couldn't tell you me
16 asking her these questions or her saying this or
17 her saying that.

18 Q. I'm not asking what she said. I'm
19 asking what you did. So you testified that you
20 were friends with Ms. Harris. You hung out with
21 her all the time at Labor Finders and smoked drugs
22 with her. And I believe you said at your
23 sentencing hearing that you had meals with her.
24 And yet you find her dead on the floor and you just
25 burn drugs. That's what you do when you find a

1 dead friend on the floor?

2 A. First of all, when I found her, I was
3 high and I was drunk. Second of all --

4 Q. Hold on. You testified that you
5 sobered up when you saw her though. Right?

6 A. Have you ever been -- have you ever
7 been on drugs?

8 Q. I haven't.

9 A. I have. So whenever you see something
10 traumatic and you are intoxicated or high, you do
11 sober up real quick. Now, you're not 100 percent
12 because you still have consumed the drugs. It's a
13 mind altering substance. So even though you're
14 seeing something traumatic, it's not like you're
15 just going to automatically be 100 percent. So I
16 did whatever I thought -- I specifically told you
17 that I didn't know what to do.

18 Q. Except to burn drugs. Correct?

19 A. No. I burned paper, plastic, syringes,
20 and whatever else I found.

21 Q. Well, you just testified --

22 A. I did not burn drugs.

23 Q. You just testified a minute ago that
24 the reason drugs weren't in the house is because
25 you burned them. Right?

1 A. No. I said I gathered them up, stuffed
2 them in the bag. And whatever I couldn't stick in
3 the bag from the syringes, papers, baggies, and
4 other stuff -- not drugs -- went into the grill or
5 the dumpster. I also specifically told you that
6 somebody came up there, and we got the bags and
7 left. Not one time did I say I burned drugs. The
8 drugs weren't mine. Why would I burn drugs that
9 aren't mine? Or burn drugs period.

10 Q. When you were at your mother's house
11 on --

12 A. Friday?

13 Q. -- I believe you testified April
14 the 4th, what were you doing at your mother's house
15 that day?

16 A. I -- basically after I left -- after I
17 picked up my bag from Carman, we shot over there to
18 my mom and my sister's house. I was letting them
19 know that I was going to be over there with them
20 the weekend just to chill out there all weekend
21 with them. I don't know. I probably got there
22 maybe around 8:00 or 9:00. I'm really not quite
23 sure exactly what time that morning, but I got over
24 there just to let them know that I'll be back over
25 there to spend the weekend with them.

1 Q. Okay. So you don't know exactly the
2 time you arrived at the house. Right? That's what
3 you're saying?

4 A. I know it was that morning. It
5 wasn't -- I can't remember verbatim, but I know it
6 was that morning --

7 Q. Did you go back --

8 A. -- maybe 9:00, 10:00, or 11:00,
9 somewhere around there.

10 Q. Did you go back to your mother's that
11 day?

12 A. Yeah, I went -- after I spent some time
13 up there at Labor Finders, I walked back to the
14 house.

15 Q. What time did you get back to your
16 mother's house on Friday?

17 A. It was probably around 6:30 or 7:00,
18 somewhere along there.

19 Q. What did you do there?

20 A. Well, after smoking on my way back down
21 there, got in, took me a shower. Just chilled out
22 with them. The rest of the night I don't remember
23 verbatim exactly what I did, but just chilled out
24 with my family.

25 Q. Do you not remember because you had

1 been smoking drugs that day too?

2 A. Well, it's been 15 years. And, yeah, I
3 was doing drugs back then.

4 Q. So that's affecting your memory, the
5 drugs?

6 A. I'm not going to say it's affected my
7 memory, but it makes things a little cloudy.

8 Q. What did you do on Sunday?

9 A. Sunday, got up that morning, chilled
10 out with them for the most part of that day.
11 Carman came around that afternoon. We got into an
12 argument outside. She was trying to get me to once
13 again come back over there to the trailer. We
14 ended up going to the library.

15 Q. Which library?

16 A. The library Downtown Greenville. I
17 think there's actually only one -- at the time
18 there was only one big library down there in
19 Greenville.

20 Q. Okay. And you went to the library
21 multiple times. Right?

22 A. Yeah.

23 Q. Okay. And you used the computers
24 there?

25 A. Yeah.

1 Q. And at trial, you were seen on video
2 doing that. Right?

3 A. Yeah.

4 Q. At the same time you were there, the
5 computers were accessing an email account that was
6 being put in ransom notes. Right?

7 A. I didn't know about the ransom notes at
8 that time.

9 Q. Okay. You just happened to be at the
10 library at the same time that the ransom email
11 account was being used?

12 A. No. I just specifically told you that
13 I was the one who checked the email.

14 Q. So you checked the ransom email?

15 A. No. I checked the email. I did not
16 know it was for ransom. And I also testified
17 earlier that an associate of mine in the early part
18 of March had basically put me on this scheme that's
19 called creeping where you make a fictitious email
20 address, and then you've got to find a way to link
21 it to some kind of site like Craigslist or some
22 kind of dating app, put a young female's picture on
23 there, and just try to lure people in to send you,
24 like, naked pictures of them. Then you say they're
25 under age and try to get them to pay. That's what

1 Carman was supposed to have been setting up for me,
2 but she didn't.

3 Q. Okay. What's your associate's name?

4 A. I'm sorry?

5 Q. You said you were working with an
6 associate. Who was that?

7 A. Yes. No, I didn't say I was working
8 with an associate; I said an associate put me up on
9 that.

10 Q. Who was the associate?

11 A. All I know him is by his nickname.
12 Nobody goes by their real name. They call him K.D.

13 Q. So you were using, according to your
14 testimony, the public library computers to run a
15 scam?

16 A. Yeah. Carman -- I checked it one time
17 at a place where she got really mad at me. I mean,
18 she really got heated at me, so I just went to the
19 library to check them other two times. But nothing
20 was ever there. And every time I asked her about
21 it, she would just tell me she's getting to it. I
22 mean, this was -- from what I was told, it
23 shouldn't take that long to set all that up, but it
24 took her forever. She still -- she never did get
25 around to it.

1 Q. What did you do on Saturday?

2 A. On Saturday I spent all that day at my
3 sister and mother's house at 110 Cornelia Street
4 just playing with the nieces and nephew of my
5 sister.

6 Q. So you stayed there all day?

7 A. Yeah.

8 Q. You never left?

9 A. No.

10 Q. And you testified it was your mother,
11 your sister, Jamease, and her kids. Right?

12 A. Yes.

13 Q. That's who was there?

14 A. Yes.

15 Q. Okay. And so when you say you were
16 spending time with family, you're always referring
17 to that place with those people?

18 A. Yeah. Whenever -- whenever -- like,
19 because my sister, my baby sister, Lulu, she did
20 work a lot.

21 Q. Which sister?

22 A. Jamease.

23 Q. Okay.

24 A. She worked a lot. Sometime she'll work
25 at night; sometimes she'll work early in the

1 morning. But I'll be over there with mom, the
2 kids, and with her whenever she's there.

3 Q. Okay. You testified earlier about
4 getting into a pushing match with Carman. Didn't
5 Carman and Grace testify at trial that you were
6 controlling?

7 A. That's what -- that's what they --
8 that's what she did testify. I don't know if Grace
9 testified to that, but I know Carman did.

10 Q. So a pushing match? You were pushing
11 each other?

12 A. No. I said -- actually, I never
13 actually put hands on Carman period. I never
14 actually put hands on a female period at all. I
15 use to be belligerent a lot and just say a whole
16 bunch of disrespectful stuff. But as far as
17 threatening or any type of violence, no.

18 Q. You were the one that came up with the
19 marriage vows for all three of you. Right?

20 A. Well, actually it was -- it was really
21 Carman's idea. I did write them up because she
22 said she wanted the three of us to be together.
23 Now, when she first initially -- when they both
24 first initially wrote, I was obviously upset about
25 that because that wasn't planned. I wasn't trying

1 to be with them. I was just having some fun. But
2 after being locked up for about a month and a half
3 and them writing me with detailed descriptions of
4 the different types of fun, I said okay.

5 Q. You testified earlier that when Grace
6 left, you kind of said okay and sort of whatever
7 about her. Right?

8 A. Yeah.

9 Q. Did she sort of just decide to leave on
10 her own?

11 A. No. Things started going down at the
12 trailer. And I think something happened where the
13 kids got taken away. I think one of the
14 requirements for her to get her kids back is she
15 had to get her own place or something like that. I
16 really don't remember all the details, but it was
17 something like that. I guess that's the reason why
18 she had to leave.

19 Q. You don't remember all the details? So
20 she sort of left on her own. Right?

21 A. Yeah. I remember she went back there,
22 had a conversation towards the master bedroom with
23 Carman. They got into an argument. Then when they
24 come out the back, Carman is upset, crying. They
25 go on for little bit. After a while, they calm

1 down. Carman goes in the back. Grace comes up
2 there and tells me she's got to leave for some
3 reason, to get her kids back or something like
4 that. I tell her okay.

5 Q. At your sentencing hearing, didn't you
6 tell Judge Miller that you made Grace leave?

7 A. I probably told -- I don't remember
8 saying I made Grace leave. I probably said that
9 Carman blamed me and said it was my fault that
10 Grace left. But she did blame me for that, but I
11 don't actually remember saying that I made Grace
12 leave. But if you can show me, if you've got it
13 down there, I'll be happy to...

14 MR. SMITH: Your Honor, may I approach?

15 THE COURT: Yeah.

16 BY MR. SMITH:

17 Q. And I'm going to be directing you to
18 page 779 of the transcript. Will you confirm that
19 this is after the jury has reached its verdict and
20 you're talking to Judge Miller down at the bottom
21 on 779?

22 A. Yeah, I see sentencing on the other
23 page.

24 Q. And you told the judge that Carman was
25 mad about how you forced Grace to leave. Right?

1 A. Yeah, I said that -- as a matter of
2 fact, I can actually read it verbatim. Okay.
3 Yeah, I said: Carman told me that Mekole came
4 there looking for me, and she was upset because me
5 and Carman had got into it, got into an argument,
6 about how I forced Grace to leave on March 16th.

7 Q. And then you repeat it again at the top
8 of page 780. Right?

9 A. Yeah.

10 Q. Forcing Grace to leave?

11 A. Yeah. Carman always basically said it
12 was my fault that Grace was leaving.

13 Q. Okay.

14 A. That was one of our major arguments
15 that we had.

16 Q. Okay. And you also, looking at
17 page 778, you told Judge Miller that you were back
18 and forth at the trailer that week. Right?

19 A. Actually, no, it doesn't say I went
20 back and forth to it that week. It says verbatim:
21 At my mother's house, and the defendant [sic] knows
22 that I was back and forth from my mother's house to
23 Carman's house. It doesn't say nothing about that
24 week because, like I stated earlier, that I was
25 going back and forth.

1 Q. I thought you testified you moved out
2 on the 16th --

3 A. I did.

4 Q. -- and then never went back?

5 A. I never said I didn't go back because
6 if I never went back, I wouldn't be able to go
7 there to cook the drugs or anything like that. I
8 never said I didn't go back. I said I moved out.

9 Q. Okay. So you were back and forth
10 though; you weren't at your mother's house all
11 weekend?

12 A. No. I was there all weekend. I never
13 said -- that paper does not say anything about me
14 not being there that weekend. It says I went back
15 and forth.

16 Q. Okay.

17 A. Nowhere on that paper does it say the
18 weekend.

19 Q. You testified earlier that someone at
20 the jail took your discovery. Who took that? Who
21 did that?

22 A. At the Greenville County Jail, they
23 have a booth where you don't actually have a key to
24 open up your own door. They can hit your button or
25 they can just leave your doors unlocked. But

1 anybody can come in anybody's cell and take
2 anything. There's been plenty of incidents at the
3 county jail where people have went into another
4 person's cell and took things, so I can't actually
5 say who did it.

6 Q. You said you told your lawyers. Who
7 did you tell?

8 A. I told the staff at the Greenville
9 County Detention Center that some of my legal work
10 was missing, and I also told my defense team. I
11 think that was one of the reasons why I think they
12 got mad at me for even having my legal work there
13 because I don't think they wanted me to probably
14 because of that reason.

15 Q. Who on your legal team did you tell?

16 A. It was either -- I think it was
17 probably Mauldin, Mauldin or Susannah. I really
18 didn't talk to Mauldin, but it was like Mauldin or
19 Susannah.

20 Q. Okay. The reason you moved out is the
21 house was dirty, and it was important for you that
22 Carman keep the house clean. Right?

23 A. That was one of the reasons I moved
24 out. Honestly, I would have probably got any
25 reason just to go. The house dirty or always

1 arguing. The few times we did sleep together was
2 far and few. It was just one thing after another.
3 Like I told you, Carman wasn't happy with me. I
4 didn't make her happy. She didn't make me happy.
5 It wasn't like we went into this whole relationship
6 type thing. Because think about it. A few months
7 after I met her, she ends up pregnant. A few
8 months after that, we end up married. And, I mean,
9 what relationship like that ever works?

10 Q. So if you were going in Carman's
11 trailer to cook drugs, as you testified, you at
12 least had keys to the trailer. Right?

13 A. Actually, the back door -- it's a
14 trailer. The back door didn't even lock, so if you
15 pull the back door, it comes right open. Now, I
16 did have a key, but one of the times that me and
17 her got into it, I took the key and through it
18 across the street and said a bunch of disrespectful
19 things and left.

20 Q. Okay. So you just came and went
21 through her back door as you pleased?

22 A. Yeah.

23 Q. Okay. And you also testified that
24 during this whole time period, you were on
25 unemployment, you were getting paid under the

1 table, and you were selling drugs. Is that right?

2 A. Well, working at Labor Finders, working
3 under the table, yeah.

4 Q. Did you seek medical attention for the
5 cuts you said you got on your arm from Carman's
6 knife?

7 A. Not from the hospital.

8 Q. Well, where from then?

9 A. I knew this stripper girl that used to
10 work at Godiva's down there in Greenville. She
11 used to get some dollars from me. She can tape it
12 up just like anybody else.

13 Q. So you went to a stripper to get it
14 taped up?

15 A. I went -- actually, I went to a
16 stripper to do more than be taped up, but, yeah,
17 that's what I did. I can show you the scar if you
18 want to see it though.

19 Q. Yes, show us.

20 THE APPLICANT: Do you mind? It's
21 right here. I got a cut mark that you can actually
22 see where it actually started and where it actually
23 ended and right over here on the side.

24 THE COURT: Can you roll up your
25 sleeves? Just sit right there. You can just stay

1 right there and roll up your sleeve. Can you roll
2 up your sleeves?

3 THE APPLICANT: No, sir. Could you
4 help me?

5 MR. SMITH: If it's going to be a big
6 production, that's fine.

7 THE APPLICANT: It's right there.

8 MR. SMITH: May I come up there, Your
9 Honor?

10 MS. HENRY: May we both approach, Your
11 Honor?

12 THE COURT: Yeah.

13 THE APPLICANT: Let me stand up for a
14 second.

15 MS. HENRY: Is it the white spot right
16 there, or is it somewhere -- something else? Show
17 us what you're talking about.

18 THE APPLICANT: It goes from here to
19 here. You can see this one a lot better.

20 MS. HENRY: They've really got you in
21 there, don't they?

22 THE APPLICANT: Yeah. See, that one
23 starts from right here and goes from right there.

24 MS. HENRY: Yes, very clearly.

25 Clarence, can you turn around and show the Court?

1 THE APPLICANT: It starts from right
2 here and goes to right there. When I went over
3 there to grab it, she hit down and cut me right
4 there. This one she grabbed the other hand and
5 slit me across there.

6 MR. SMITH: I don't see the one on his
7 left arm.

8 THE APPLICANT: I'll need to take my
9 jacket off.

10 THE COURT: I don't think we need to.

11 MS. HENRY: And for the record, Your
12 Honor, I think all of us can see, like, a white
13 scar on his right arm.

14 THE COURT: I see a -- I don't see it
15 as a significant scar. I see something on the
16 right arm. I did not see much on the left arm.
17 You may continue.

18 BY MR. SMITH:

19 Q. So tell me how you helped Carman take
20 Ms. Harris's body out. What did you do?

21 A. What I got to say right there Wednesday
22 night we got into a big argument about everything,
23 and basically I didn't have a choice. So I took my
24 daughter's playpen, picked Mekole up, placed her in
25 the playpen with everything that she was laying on.

1 Rolled the playpen out onto the front porch. She
2 backed the van up to the front porch. We rolled
3 Mekole into the van. I got in the passenger seat.
4 She drove off to the location where she knew at.
5 It was a gate in front of there. I got out of the
6 passenger seat, opened up the gate. She drove in,
7 then backed down a certain ways. After carrying
8 Mekole out of the van onto the ground, I left and
9 jumped in the passenger seat. She grabbed the gas
10 can out of the back of the van, poured it on Mekole
11 and the playpen. Threw the can back into the back
12 of the van and struck a match and threw it on the
13 playpen.

14 Q. Okay.

15 A. Walked over to the driver's side and
16 got in and we drove off and headed back to the
17 trailer.

18 Q. Okay. So that was the extent,
19 according to your testimony, of your involvement
20 with Ms. Harris's body?

21 A. Yes, sir.

22 Q. Okay. Was she heavy?

23 A. Yes, sir, but I was fat back then. I
24 mean, I'm fat now, but I didn't -- it's not like I
25 worked out or anything like that.

1 THE COURT: Mr. Smith, hold on just a
2 second. If I can get y'all up here.

3 (A bench conference was held off the
4 record.)

5 BY MR. SMITH:

6 Q. Isn't it true that after you met with
7 Ms. Ross and discussed her opinion that the
8 information you had given her about your
9 whereabouts the week of the murder would not be
10 sufficient for an alibi defense, that you or
11 someone that you knew you sent a letter to her
12 saying that you were in Florida that week.

13 A. In Florida?

14 Q. Yes. That's my question.

15 A. We never talked about anybody's sending
16 a letter saying I was in Florida. I do know
17 that -- and I found this out when I was going
18 through my discovery that one of the investigators
19 had spoke with somebody. I think it was -- I can't
20 remember his name. But it's a report that he spoke
21 with an individual. He was incarcerated when he
22 spoke to him. And the individual told him that I
23 used to frequently go up with him, meet him in Dade
24 County, Florida.

25 Q. Okay. So you deny that you sent a

1 letter or had someone send a letter saying that you
2 were in Florida that week?

3 A. No, I didn't send a letter.

4 Q. Okay. Isn't it true that you gave your
5 lawyers conflicting stories about what happened
6 that week?

7 A. I don't remember giving my attorneys no
8 conflicting stories.

9 Q. You don't remember?

10 A. No. I seriously doubt I would give
11 them conflicting stories.

12 Q. You told them about -- you talked to
13 them about the organization, didn't you? You told
14 people you were in an organization and that people
15 were trying to get you?

16 A. No.

17 Q. You never told anybody about an
18 organization?

19 A. No. I do know that --

20 Q. I'm asking the questions. So you
21 testified earlier about the people that you were
22 with at your mother's house, but you didn't say
23 anything about your sister Shanek Robinson. Right?
24 So how could she give an alibi for you if she
25 wasn't at your mother's that weekend or that week?

1 A. I didn't say she wasn't there that
2 weekend.

3 Q. Well, I asked you to list who was
4 there, and she wasn't on the list. Right?

5 A. For the most part of that whole week,
6 if my sister, Lulu, wasn't working, she was there.
7 My mother was always there. The kids -- Tunu, she
8 came by on Friday.

9 Q. Is that your sister Shanek?

10 A. Yes.

11 Q. Okay. So she was only there, according
12 to your testimony, on Friday. Right?

13 A. Yeah.

14 Q. When was she there on Friday?

15 A. Maybe about 9:00, 10:00, maybe 11:00.
16 Somewhere -- she was there before I left.

17 Q. 9:00, 10:00, or 11:00 in the morning or
18 at night?

19 A. In the morning.

20 Q. So you only saw your sister Shanek for
21 three hours or so at most on Friday morning.
22 Right?

23 A. At the most. I didn't think it was
24 that long, but yeah, Friday morning.

25 Q. Okay. And you testified that your

1 sister, Jameese, worked a lot.

2 A. Yeah.

3 Q. What was her work schedule?

4 A. Sometimes she would work early in the
5 morning, around 5 o'clock in the morning; sometimes
6 she would work at night. I mean, she worked a lot
7 of hours. She didn't have, like, one set schedule
8 like a nine-to-five.

9 Q. Okay. Was your mother working at that
10 time?

11 A. No.

12 Q. No more questions. Thank you.

13 THE COURT: All right. Any redirect.

14 MS. HENRY: Just very brief, Your
15 Honor, just in response to the most recent
16 questions.

17 REDIRECT EXAMINATION

18 BY MS. HENRY:

19 Q. Clarence, I just want to clarify -- so
20 I just want to clarify Jameese Gibbs, your sister,
21 she worked a lot, but she was home and she did live
22 there?

23 A. Yeah.

24 Q. Okay. And Shanek Robinson was in and
25 out...

1 A. Yeah.

2 Q. ... of the house that you lived at
3 while you were living with your sister, Jameese?

4 A. Yeah.

5 Q. And then was your mother -- her name
6 was Myrtle?

7 A. Myrtle Gibbs.

8 Q. Okay. And she was at home pretty much
9 all the time?

10 A. Yeah.

11 Q. So was she working?

12 A. No.

13 Q. No? So she was home all the time. She
14 was also on your defense attorney's witness list.

15 A. Yes.

16 Q. Okay. And she was also present at the
17 trial?

18 A. Yes.

19 Q. And would she have been able, do you
20 believe if she had testified, been able to provide
21 the most complete support for your timeline and
22 when you were -- when you are and when you were not
23 in the house?

24 A. Yes.

25 Q. And your mother has since been

1 deceased?

2 A. Yes, ma'am.

3 Q. When did she die?

4 A. She passed away in 2014.

5 Q. Okay. And this trial was held in 2012?

6 A. Yes.

7 Q. All right. So your mother was
8 available, she did have the most complete alibi
9 information for you, and she was not called as a
10 witness?

11 A. No.

12 Q. All right. No further questions.

13 THE COURT: Any recross?

14 MR. SMITH: No, Your Honor.

15 THE COURT: All right. You may step
16 down. Thank you.

17 All right. We'll take a lunch recess.
18 Let's be back here at 2:45. As I told you, I've
19 got a hearing at 2 o'clock that probably will not
20 last too long, but I have to hear it because it's
21 an injunction. So we'll reconvene at 2:45.

22 Not to hold you down, but just trying
23 to get an I idea. How many more witnesses?

24 MS. HENRY: I have two more witnesses,
25 Your Honor. It's Jamese Gibbs and Shanek Robinson

1 and then we'll rest.

2 THE COURT: And then how many witnesses
3 do you think you'll have from the State?

4 MR. SMITH: Two, maybe three today.

5 THE COURT: Okay. Now, is this going
6 to go into tomorrow because that other hearing is
7 supposed to be set to start at 9:30 in the morning,
8 I believe. Yeah, it looks like the other hearing
9 for tomorrow is set at 9:30. So is there a
10 possibility this is going to go into tomorrow?

11 MS. HENRY: I had certainly not
12 intended for it to, Your Honor. Mr. Jenkins was by
13 far my longest witness. I don't see either Jamese
14 or Shanek taking longer than half an hour each.

15 THE COURT: Well, I mean, we'll go to
16 get it concluded today if we can. But -- and I'm
17 not telling you to rush to do anything. I'm just
18 trying to get an idea from a logistical standpoint
19 and a scheduling standpoint because if it is,
20 there's a chance is going to go into tomorrow, the
21 hearing -- we need to alert everybody on the
22 hearing that starts tomorrow morning that that will
23 not be going forward at 9:30. So is there a
24 possibility we can get it finished today.

25 MR. SMITH: I think so.

1 MS. HENRY: Absolutely, Your Honor.

2 THE COURT: All right. Then I will go
3 until we can get it finished as long as our court
4 personnel is okay because I want to make sure
5 they're all right and don't have anywhere to be.
6 But, hopefully, we can kind of move it on after
7 Mr. Jenkins' testimony. Maybe we can get it done.
8 Let's do that.

9 So we'll recess until 2:45 and go from
10 there.

11 MS. HENRY: Yes, sir.

12 MR. SMITH: One more thing on schedule,
13 Your Honor. I talked with Mr. MacDougall, and he
14 said that he could be available tomorrow from 10:00
15 till 11:00, 11:00 to 12:00, or 2:00 to 3:00.

16 THE COURT: Well, the problem there is
17 we have that other hearing. His testimony is going
18 to need to be either before we go or some kind of
19 lunch break or something because those times are
20 not suitable if we've got this other hearing that
21 goes tomorrow. I'm not going to stop that hearing
22 and then hear him and then resume unless we've got
23 either time before or time added. I don't want to
24 take anybody's lunch of our court personnel. I
25 don't want to take anybody's lunchtime as well, so

1 I'm not sure those times...

2 MS. HENRY: Your Honor, could we start
3 early tomorrow perhaps?

4 THE COURT: Yes.

5 MS. HENRY: I mean, I've also got
6 appointments tomorrow because I was not planning to
7 run it in to tomorrow. Again, I will move them if
8 we need to. I'm happy to start as early as the
9 Court can. I mean, Mr. MacDougall knew about this.
10 He said he was available before it was scheduled.

11 THE COURT: Yeah.

12 MS. HENRY: So I'm a little --

13 THE COURT: Well, he's had notice of
14 this thing, and you apparently didn't even know it.
15 And he's just telling you I've got these scheduling
16 problems.

17 MR. SMITH: I don't think he thought
18 that it would take as long as it has, but I did not
19 expect to have this many scheduling issues as we've
20 had.

21 THE COURT: Well, those times that he
22 has given you are probably not suitable. And,
23 again, as I said, I'm not going to stop the other
24 hearing for Mr. MacDougall. And so we may want to
25 take him up early in the morning if we don't --

1 hopefully we'll finish here today, and we can take
2 him up maybe at 8:30 or 8:45 or something in the
3 morning and get his testimony done. As I
4 understand, his is going to be about 45 minutes. I
5 know I'm not holding you to it. But, I mean,
6 generally it may be around 45 minutes?

7 MR. SMITH: Something like that.

8 MS. HENRY: Yes, sir. I have very
9 limited questions for Mr. MacDougall.

10 THE COURT: Okay. So I think if we can
11 start his maybe around 8:45 that we can get his
12 done, and that should keep us on schedule for the
13 other hearing. And of course, if it goes a few
14 minutes into that other hearing, that's all right.
15 But I don't plan to stop that other hearing in the
16 middle of that one and put this one up. So I think
17 we can put him up in the morning, and that should
18 take care of -- if there's some issue with the
19 scheduling on that, let me know, and maybe we can
20 do it at some kind of break or something. But, you
21 know, he's had notice of this from what I can see.

22 So we'll adjourn here until 2:45 on
23 this one.

24 (A lunch recess transpired.)

25 THE COURT: All right. Are we ready to

1 proceed?

2 MS. HENRY: Yes, Your Honor. Applicant
3 calls Jamese Gibbs. Your Honor, if I could step
4 outside to grab her?

5 THE COURT: Yeah.

6 JAMESE GIBBS,

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. HENRY:

10 Q. Ms. Gibbs, can you tell the Court where
11 you're working?

12 A. I'm working at the Embassy on Verdae.

13 Q. The Embassy? Is that Embassy Suites?

14 A. It's Embassy Suites. It's a golf
15 course out there.

16 Q. What do you do for them?

17 A. I am a banquet captain. I deal with
18 thousands of people a day.

19 Q. Okay. And, Jamese, do you have any
20 children?

21 A. I do. I have four.

22 Q. And how old are they now?

23 A. They are 21, 20, 19 and 18.

24 Q. Congratulations.

25 A. Thank you.

1 Q. Jamese, how far did you go in school?

2 A. I went to the 11th grade.

3 Q. Jamese, what's your relationship to the
4 defendant Clarence Jenkins?

5 A. That's my brother.

6 Q. And do you still talk to your brother?

7 A. Not really. He's locked up, so it's
8 really hard to talk to him.

9 Q. All right. So not very often?

10 A. Yeah.

11 Q. And you still care about him?

12 A. Yes, I do.

13 Q. So given that you've got that
14 relationship with him and you've testified you
15 cared about him, would you lie for him?

16 A. No.

17 Q. Okay. So, for instance, would you say
18 that he was somewhere he wasn't to help him out if
19 it wasn't the truth?

20 A. No.

21 Q. All right. And just to be clear for
22 the Court, you understand all of that and you're
23 here to tell the truth about what you remember
24 about the events related to the situation in 2008?

25 A. Yes, ma'am.

1 Q. All right. Well, I'm going to take you
2 back first 2007. Where were you living in 2007?

3 A. Cornelia Street.

4 Q. Okay. And who else was part of that
5 household?

6 A. It was me, my mom, and my four kids.

7 Q. You, your mom, and your four kids? And
8 whose house was it?

9 A. It was mine. I was renting it.

10 Q. Okay. So it was your house; it was
11 rented in your name?

12 A. Yes.

13 Q. But your mom was living with you?

14 A. Yes.

15 Q. Okay. All right. And in 2007, where
16 was Clarence living?

17 A. In a trailer.

18 Q. Was Clarence living with you in 2007?

19 A. In 2007?

20 Q. Uh-huh (affirmative).

21 A. No. I think he was in a trailer.

22 Q. Okay. So he was in a trailer. Was
23 Clarence married?

24 A. In 2007?

25 Q. Uh-huh (affirmative).

1 A. Yes, he was.

2 Q. All right. Who was he married to?

3 A. Carman Marie.

4 Q. Okay. And in 2007, did they have one
5 child?

6 A. Yes, there was one.

7 Q. All right. I also want to ask you
8 about 2007. Were you part of a victims class?

9 A. Yes, I was. I was part of the victims
10 class.

11 Q. And why were you there?

12 A. I walked in on my fiancé, and he had
13 another woman in there with my newborn. I got
14 arrested because they called me the aggressor. And
15 so then I wind up -- yeah, I wind up being in the
16 anger management class. And then when they figured
17 out what was going on, I wound up being in the
18 victims class. So they switched me from the anger
19 management class to the victims class.

20 Q. Okay. All right. And did you meet
21 anyone in that class?

22 A. I did.

23 Q. Who did you meet?

24 A. Grace.

25 Q. All right. Is that Grace Davis?

1 A. Yes.

2 Q. Is that the woman -- well, did that
3 woman -- did Grace Davis -- is she the person that
4 ultimately ended up in a romantic relationship with
5 both Clarence and Carman?

6 A. Yes.

7 Q. Is that the same Grace Davis?

8 A. Yes.

9 Q. All right. Did you introduce -- did
10 you introduce Grace and Clarence?

11 A. Yeah, because what it was is that she
12 had needed a way out. And when we was in the
13 victims class, we always tried to help each other
14 out. And she was having problems, and I had let
15 her spend the night at my house.

16 Q. The night that she stayed at your house
17 or was starting to stay at your house, is that the
18 night she met Clarence?

19 A. Yes.

20 Q. Okay. So were Clarence and Grace
21 together romantically after that in a relationship?

22 A. I saw that they started hanging out
23 together. I kind of figured it, but my brother, he
24 just wouldn't say, well, you know.

25 Q. Okay. After a while, did it become

1 obvious that they were together?

2 A. Yes.

3 Q. And what was Carman's reaction to that
4 initially?

5 A. I really don't know her reaction to the
6 fact of Grace there. The only thing that I do know
7 is that she actually was happy that Grace was
8 there.

9 Q. Okay. At some point, did Grace move
10 into the trailer with Clarence and Carman?

11 A. Yes.

12 Q. She did? And did she move in with her
13 children?

14 A. Yes, because her kids had wound up
15 being taken away from her.

16 Q. Okay. So sometime toward the end of
17 2007, Clarence, Grace, and Carman are all living
18 together with all the kids. Is that right?

19 A. Yes.

20 Q. Okay. Now I want to move you forward
21 into 2008. All right? Did Carman have her second
22 child in 2008?

23 A. Yes.

24 Q. Would the date March 3rd, 2008 -- would
25 that make sense for the birth date?

1 A. It would make sense because mom, she
2 was really excited about the baby being born in the
3 month that she was born.

4 Q. Was your mom born in March?

5 A. Yes.

6 Q. Okay. That would make sense. All
7 right. So as of March 3rd, 2008, Clarence and
8 Carman had two little girls?

9 A. Yes.

10 Q. A newborn and another very young child?

11 A. Yes.

12 Q. All right. So fast forwarding a little
13 bit further to March, I would say -- would around
14 March 19th make sense for the living arrangements
15 to change? Do you remember when the little girls
16 moved in with you?

17 A. I really don't remember, but I know it
18 was close to the time when she was born.

19 Q. Okay. So sometime in March?

20 A. Yes, because I kept telling her that,
21 you know, hey, she's a beautiful baby. The baby
22 needs to be with their mom.

23 Q. Okay. So there was some discussion
24 about how young that baby was?

25 A. Yes.

1 Q. So you distinctly remember that?

2 A. Yes. She was with me basically the
3 whole time. That was my baby until she got taken
4 away.

5 Q. Okay. So you developed quite an
6 attachment?

7 A. Yes, I did.

8 Q. All right. So the two little girls
9 come to live with you, your mom, and your kids?

10 A. Uh-huh (affirmative).

11 Q. Okay. Does Clarence come to live with
12 you as well?

13 A. Yes, to help out.

14 Q. Okay. So Clarence is also living with
15 you at this time?

16 A. Yes.

17 Q. How was that working? Where is
18 everybody staying? Where is everybody sleeping?

19 A. Okay. I think he took over my bed when
20 I wasn't there, but he would, like, lay on the
21 couch. My mom had her own room. My kids had their
22 own room. Like, my bedroom was -- like right when
23 I walked in the front door, it was like off to the
24 left. So whenever I would come in from work, he'll
25 be in my bed, and I'll be like: Hey, you've got to

1 get up.

2 Q. Finders keepers. Right? Okay. And
3 just for the record, what address was this that you
4 guys were living at? Where were you renting? Do
5 you remember?

6 A. It was on Cornelia Street.

7 Q. Okay.

8 A. About 220 Cornelia Street.

9 Q. All right. But you were on Cornelia
10 Street?

11 A. I was on Cornelia Street.

12 Q. Did you have another house at any point
13 in time on Cornelia Street, or is that the only
14 time you lived there?

15 A. That was the only place I had on
16 Cornelia Street because that house was the house
17 that I wound up getting to leave my ex.

18 Q. Okay. So it's a distinct memory?

19 A. Yes, very much.

20 Q. During the time that Clarence and the
21 little girls moved in with you, what was the status
22 of Carman and Clarence's relationship?

23 A. They were on the outs.

24 Q. Describe that. What was that like?

25 A. Not getting along, I guess. It's like

1 when you have somebody else in your relationship
2 and you're trying to be with that one person and
3 that one person don't want to be with you and wants
4 to be with somebody else, it makes -- what's the
5 word for it -- turmoil in a relationship to where
6 they weren't seeing eye to eye.

7 Q. All right. And what was the status of
8 Grace's relationship with Carman and Clarence?

9 A. They were happy. I mean, she was
10 happy. I mean, I just didn't understand it.

11 Q. Grace was happy in that relationship
12 with them?

13 A. Yes. So far that I know.

14 Q. And then what about after Clarence
15 moved in with you?

16 A. Afterwards?

17 Q. Did you see Grace at all after that?

18 A. I think I might have saw her one or two
19 times, but I didn't see her anymore, like, after
20 that.

21 Q. And then that was after she was trying
22 to get her kids back?

23 A. Yes. She was really upset about not
24 having her kids.

25 Q. Okay. And you said that Clarence moved

1 in to help you with the kids?

2 A. Yeah. I needed help.

3 Q. Hey, I'm not pushing back on that. I'm
4 trying to figure out how much was Carman over
5 there. How much was Carman home with the kids?

6 A. That's where the problem was. When I
7 would see her, she would come, like, every so
8 often. But I would tell her: Hey, newborn baby.
9 You know? Baby needs to be with their mama. I
10 mean, I was always the one always stressing about
11 the family and being together. We tried to talk to
12 her, but, you know, sometimes they just don't
13 listen.

14 Q. Very true. During this time period
15 when Clarence was living with you, March and
16 onward, did Clarence have any kind of car or
17 independent transportation?

18 A. Well, it wasn't his car.

19 Q. What car was it?

20 A. They had a van.

21 Q. So was that van, was that Carman's?

22 A. That was Carman's. That was Carman's
23 van.

24 Q. Okay. So did Clarence have his own
25 car?

1 A. No.

2 Q. How did he normally get around?

3 A. Sometimes he'd walk, or sometimes
4 Carman would come pick him up, or I would take him.

5 Q. So it was Carman with the independent
6 transportation with her own ride?

7 A. Yes.

8 Q. All right. Okay. And then I'm going
9 to talk to you a little bit about your schedule
10 just so we can kind of get an idea of what was
11 going on. So at that time that this -- so at the
12 beginning of April or certainly April 4th through
13 April 10th, where were you working?

14 A. I was working at the Hyatt Regency
15 Downtown.

16 Q. Okay. What were you doing for them?

17 A. I was actually a banquet captain down
18 there.

19 Q. What was your normal schedule?

20 A. My normal schedule would be 5:00 AM in
21 the morning. It varied because of what I do. I do
22 banquets. I do functions. I can't leave until my
23 function is over, then I have to do my closing
24 checks. So it varies. It might be 3:00; it might
25 be 4:00. It might be 1 o'clock the next morning.

1 Q. All right. Let's see. Then I want to
2 go ahead and move forward a little bit in April,
3 and I want to talk a little bit starting -- I want
4 to talk about April 4th, 2008. That would have
5 been a Friday. Do you remember what your schedule
6 was that day?

7 A. I had to go in at 5:00 that morning.

8 Q. Okay. And then you were going in and
9 working at the Hyatt?

10 A. Yes.

11 Q. And then do you remember when you got
12 home? As close as you can get.

13 A. Around 3:00 or 5:00.

14 Q. So sometime in-between 3:00 and 5:00?

15 A. In-between, yes.

16 Q. And then when you got home, do you
17 remember anything specific about your arrival? Who
18 was home?

19 A. My brother, he was there. He stepped
20 out on the porch laughing at me because my yard was
21 trashed. And I told him: Hey, you've got to clean
22 up this yard. He was like: Yeah. He never got it
23 done.

24 Q. Describe trash. It's clearly a
25 formative memory for you. Describe trash for me.

1 A. It is because it made me so mad. To me
2 it was like paper and stuff all in the yard, like
3 somebody -- I mean, I don't know -- dumped a trash
4 can or something. I don't even know what happened
5 while I was at work, but my yard was trashed.
6 Maybe he had the kids out there playing with the
7 paper and stuff. Not even paper airplanes. It was
8 trash.

9 Q. So after you talked to Clarence, what
10 did y'all do?

11 A. We went back inside.

12 Q. Who all was there when you guys went
13 back inside?

14 A. My mom.

15 Q. Were the kids there?

16 A. Yes, the kids are there.

17 Q. Okay. So they were home?

18 A. Yes.

19 Q. Okay. So what do you do then?

20 A. Sit there, talk with mom for a little
21 while. Mom, she talks. My mom talks. She talks.
22 And I think I wound up getting something to eat and
23 laid down and went to bed.

24 Q. Okay. Around what time would you say
25 you went to bed?

1 A. Around about 7:00.

2 Q. Okay. And then did Clarence leave the
3 house any time between the time when you got home
4 until the time you went to bed?

5 A. No. He was still there.

6 Q. So Clarence was still home? Okay. And
7 do you know whether Clarence left after you went to
8 sleep?

9 A. I don't know if he left.

10 Q. All right. Don't know. Well, I'm
11 going to take you forward a day to Saturday. This
12 will be April 5th. Did you have to work on
13 April 5th?

14 A. Yes, I did.

15 Q. Do you know what time you went in?

16 A. The same time.

17 Q. Did you get home around the same time?

18 A. Yes.

19 Q. So do you remember -- do you remember
20 whether or not Clarence was home?

21 A. No, I don't remember.

22 Q. Okay. That's all right. As part of
23 Carman's testimony -- this is in the transcript --
24 Carman testified that you came by the trailer on
25 Saturday and spoke to her for five to ten minutes.

1 Is that possible? Did you go by the trailer on
2 Saturday and speak to Carman?

3 A. I don't remember going by to see her or
4 talk to her.

5 Q. And her testimony, I believe, was that
6 it was during the day. Would that have been
7 possible with your work schedule?

8 A. No, because I can't get off from work
9 until everything is done.

10 Q. Okay. So -- okay. Thank you. All
11 right. Let's move forward -- moving forward into
12 Sunday, do you remember whether or not you had to
13 work on Sunday? This would be -- we just went
14 through Saturday. This would be on Sunday, and
15 this would be April 6th.

16 A. I think I was off that day. I was off
17 that day.

18 Q. All right. So if you were off, what
19 did you do?

20 A. Spent time with my kids because I
21 barely was spending time with them. I know I would
22 hold the baby and cuddle up with her. Just spend
23 time with the kids.

24 Q. So this would be Sunday. Did you see
25 Clarence at all that day?

1 A. Yes, I did.

2 Q. Okay. Where did you see him?

3 A. Carman had dropped him off.

4 Q. So he had been with Carman, and Carman
5 had dropped him off. Did Carman come inside?

6 A. No. She didn't come inside that day.

7 Q. Okay.

8 A. She said she had stuff to do.

9 Q. And then when Carman left, did she
10 leave without Clarence?

11 A. Yes.

12 Q. So she left Clarence at your house?

13 A. Uh-huh (affirmative).

14 Q. And what did Clarence do for the rest
15 of the day?

16 A. He hung out.

17 Q. All right. And then do you remember
18 what time you went to sleep on Sunday?

19 A. I went to sleep around about my normal
20 time at 7:00 because that next Monday, I had to go
21 back in to work.

22 Q. And did Clarence leave before, at any
23 time before you went to sleep after Carman dropped
24 him off?

25 A. I don't remember that. I don't know.

1 Q. All right. Carman testified that she
2 and Clarence had only lived apart one time since
3 their marriage, and that that was back in 2007
4 before he went to prison. She testified that she
5 and Clarence were living together in April of 2008.
6 Is that true?

7 A. No, because when he went to prison,
8 they were living together.

9 Q. Okay. Were Carman and Clarence living
10 together in March and April of 2008?

11 A. Of 2008?

12 Q. 2008.

13 A. No, because that's when he was staying
14 with me.

15 Q. Okay. And if you have been called as a
16 witness at the original trial, would you have told
17 the jury that that was a lie?

18 A. Yes.

19 Q. Would you have been able to testify
20 then that Clarence was living with you?

21 A. Yes.

22 Q. Okay. All right. Carman also
23 testified throughout the duration of her testimony
24 that Clarence was at the trailer from Friday,
25 April 4th, in 2008 after he got off work to at

1 least Monday April 7th when she claims he went to
2 Labor Finders, and they went together and that they
3 were together that entire time or that Clarence was
4 at the trailer. Is that -- is that true?

5 A. No, it's not true because how would my
6 yard get all messed up?

7 Q. Okay. So if Clarence had been gone
8 from Friday, April 4th, until Tuesday, April 8th,
9 would you have remembered that?

10 A. Yes.

11 Q. And you're testifying here today that
12 you saw Clarence on Friday. I believe Friday,
13 definitely Sunday, and then part of Saturday. Is
14 that accurate?

15 A. Yes, ma'am.

16 Q. Okay. So is it possible that -- so if
17 you had been called as a witness at the original
18 trial, would you have been able to testify that
19 Carman's timeline was not true?

20 A. Yes, I would be able to.

21 Q. Okay. All right. Can you describe
22 Clarence's general character? Is he loud?
23 Violent? Mean?

24 A. My brother, he's caring. He's a really
25 caring person. He's a little hardheaded sometimes,

1 like, growing up, you know. I tried to tell him
2 what he needs to do. Like being a bouncer at a
3 club, I thought that was a big no no because people
4 are weird. But he's really caring. I know he
5 loves his kids, and he cares about family. And I
6 think that when we sit down and we talk, it gets
7 some -- he gets it. He gets it. And he tries.
8 And I think that's the time when he had separated
9 from Carman because I was talking to him and
10 letting him know that, you know, that little love
11 triangle just wasn't working. You need to have
12 your family together to be a family. And he was
13 listening.

14 Q. Okay.

15 A. And he's very -- he's a real sweet
16 person.

17 Q. And what about Carman's personality and
18 behavior? Angry? Controlling? Violent? Sweet?
19 Who was she?

20 A. I couldn't tell with Carman. One
21 minute she's angry; the next minute, she's happy,
22 or she don't want to be with Junior. Or she's
23 putting on his clothes and walking around with
24 shades on. And I was like: Okay, we need to go
25 get you some clothes because you don't need to be

1 looking like a guy. You know, when I talked to
2 her, she seemed like that she would listen to me,
3 but then I felt like she really wasn't.

4 Q. Okay.

5 A. Especially dealing with the newborn
6 baby, her youngest one.

7 Q. She wasn't really paying attention?

8 A. I really wanted her to really be there
9 for her.

10 Q. Okay. Were you aware of any instances
11 where Carman was violent with Clarence?

12 A. No, I was not.

13 Q. You weren't?

14 A. I heard about it, but I think he kept
15 it a point probably to keep it away from me. But I
16 heard about it. That was about it.

17 MR. SMITH: Objection, Your Honor.

18 It's something she doesn't have personal knowledge
19 about.

20 THE COURT: Sustained.

21 BY MS. HENRY:

22 Q. Okay. Are you aware of any instances
23 where Clarence has been violent with Carman?

24 A. No.

25 Q. And in front of you, did Clarence ever

1 exhibit any behavior that was controlling?

2 Violent?

3 A. No.

4 Q. Okay. So Carman testified that she was
5 afraid of Clarence and that he was controlling and
6 abusive. If you had testified at the trial, would
7 you have been able to tell the jury that that was
8 not true?

9 A. Yes. I've never seen him be like that
10 towards her. It was always loving. It was
11 whatever she wanted, he would give her.

12 Q. Okay. How far did Clarence go in
13 school, James?

14 A. He didn't go that far. I think it was
15 elementary school.

16 Q. Elementary school?

17 A. Yeah.

18 Q. Okay. And was Clarence very tech savvy
19 or no?

20 A. Very what?

21 Q. Was he good at technology?

22 A. No.

23 Q. Okay. So Clarence has got an
24 elementary school education. He's not very tech
25 savvy. Carman testified that she was told that he

1 had gone through high school. Is that possible?

2 A. That is not possible.

3 Q. All right. And if you had been called
4 as a witness, would you have been able to tell the
5 jury that that was not true?

6 A. Yes.

7 Q. All right. So, Jameese, as you said
8 before, this happened over 15 years ago. So at the
9 time, do you feel like you remembered a lot more
10 detail?

11 A. Yeah, because it was fresh.

12 Q. Okay. Were you ever interviewed by
13 Clarence's attorneys?

14 A. I think -- I'm sorry. I was in this
15 building over there at the office.

16 Q. Oh, okay.

17 A. Yes, it was this building.

18 Q. Do you remember which lawyers
19 interviewed you?

20 A. John Mauldin was his lawyer.

21 Q. Do you know if you talked to John
22 Mauldin specifically, or was it somebody else?

23 A. I talked to him sometimes specifically.

24 Q. Okay.

25 A. And there was a lady, but I don't

1 remember her name.

2 Q. That's okay.

3 A. I'm sorry.

4 Q. That's okay. Do you know how many
5 times you talked to them?

6 A. It was every time that we came up here,
7 we would talk.

8 Q. Okay. When you were interviewed --
9 over the times that you were interviewed by his
10 legal team, did you provide them with a detailed
11 timeline of where you were and when you saw
12 Clarence?

13 A. Yes.

14 Q. Okay. And then were you subpoenaed to
15 appear at trial?

16 A. Yes.

17 Q. Did you come?

18 A. Yes.

19 Q. Were you called to testify?

20 A. No.

21 Q. So you were never able to tell the jury
22 what you knew?

23 A. I was never called to testify.

24 Q. And then did anyone ever tell you why
25 or talk to you about it?

1 A. I don't remember. I don't remember if
2 anybody talked to me about it.

3 Q. All right, Ms. Gibbs. I don't have any
4 other questions.

5 THE COURT: All right. Cross?

6 CROSS EXAMINATION

7 BY MR. SMITH:

8 Q. Ms. Gibbs, on April the 5th, you
9 testified that you -- what time did you go to work
10 on April 5th?

11 A. 5:00, my normal time.

12 Q. Okay. When you say normal time, does
13 that mean you went to work at 5:00 AM every day?

14 A. Yes. I have to open up stuff.

15 Q. Okay. You testified earlier that
16 sometimes you'd have to go in at 1:00. What was
17 that about?

18 A. I don't have to sometimes go in at
19 1:00; sometimes I stay past 1:00.

20 Q. Past 1:00?

21 A. Yes, because --

22 Q. So what's your normal -- I'm sorry. I
23 didn't mean to interrupt you.

24 A. Because what I do, I come in and open
25 up. I get the function going. I can't leave until

1 the function ends. Once the function ends, I have
2 to do closing paperwork to where I have to close
3 out everything, and then I'm able to leave.

4 Q. Okay. So you didn't have a set work
5 schedule where you worked, say, 5:00 AM to 3:00 PM;
6 it varied every day?

7 A. Yes, but mainly I went in -- my start
8 time would be around that time.

9 Q. Okay. How many days a week did you
10 work during that timeframe?

11 A. Almost every day. I would have at
12 least one day off.

13 Q. Okay. Did you get lunch breaks or any
14 kind of break during your work period?

15 A. Whenever I had time to get a lunch
16 break. Whenever I had time. Sometimes I had to
17 work straight through my lunch break. We call that
18 eating in lunch.

19 Q. All right. How long -- when you got a
20 lunch break, how long would it last?

21 A. It would vary because I would hardly
22 ever get a break. Maybe five minutes or
23 ten minutes.

24 Q. Did you ever get enough break where you
25 could, say, go grab something to eat from somewhere

1 else?

2 A. No.

3 Q. Okay.

4 A. That was not possible.

5 Q. Okay.

6 A. I was in charge of a lot of people.

7 And if I got missing, then they start getting
8 missing. Then I have to play babysitter and go and
9 find them. I just wasn't really about all that.

10 Q. Okay. So what was your work schedule
11 on April the 4th, 2008?

12 A. I went in in the morning and got off
13 around 3:00, maybe 5 o'clock.

14 Q. Okay. How long would it take you to
15 get home from work when you got off work?

16 A. It would take me a good five to
17 ten minutes because Cornelia Street is real, real
18 close to downtown.

19 Q. Okay. You talked about what you did on
20 April 4th. How do you know that your brother
21 didn't leave the house while you were there that
22 day?

23 A. On April 4th?

24 Q. Right.

25 A. Well, when I got up that morning, he

1 was there. When I went to work and I came back, he
2 was there. And he had to help my mom. He had to
3 help my mom with the kids.

4 Q. But you weren't there during that
5 timeframe, so you didn't observe that yourself.
6 Right?

7 A. No, but I know what he does. He
8 wouldn't leave mama there with the kids by herself.

9 Q. But you weren't there. Right? You're
10 assuming he did?

11 A. Uh-huh (affirmative).

12 Q. Okay. And you testified you don't
13 remember if your brother was home when you when you
14 went to work at 5:00 AM on April the 5th. Right?

15 A. Yes.

16 Q. What time did you get off from work on
17 April the 5th?

18 A. Around -- it would have to be right
19 about the same time of 3:00 and 5:00.

20 Q. Okay. Are you just guessing, or do you
21 know for a fact?

22 A. It's been so long ago. I know between
23 3:00 to 5:00. That's the normal time I would get
24 off.

25 Q. Do you know on that particular day,

1 though, or are you saying you know because that's
2 what time you think you got off from work that day?

3 A. I know I got off at 5:00.

4 Q. Okay. And then on April 6th, when did
5 you first see your brother?

6 A. That was Sunday?

7 Q. Correct.

8 A. I saw him, I think, around 2 o'clock
9 when Carman was dropping him off.

10 Q. Okay.

11 A. That's when I remember seeing him.

12 Q. So about 2:00 PM?

13 A. Yeah.

14 Q. Okay. And what did your brother do
15 after 2:00 PM?

16 A. Well, he came in the house. We hung
17 out like we normally do. That's about it.

18 Q. Were you in a position where you would
19 have known if he had left the house after 2:00 PM.

20 A. Yeah, I would have known.

21 Q. Okay.

22 A. Because my room is right there at the
23 door. Even if I went to sit down in there with the
24 babies, I could see him walk past to go out the
25 front door.

1 Q. And you testified a few minutes ago you
2 don't remember if he left before you went to sleep
3 that night?

4 A. After I went to sleep? I don't know
5 what he did after I went to sleep.

6 Q. You testified you don't remember if he
7 left before you went to sleep. Right?

8 A. He was there when I went to sleep.

9 Q. But you don't remember if he left at
10 any point before you went to sleep?

11 A. He did not leave at any point before I
12 went to sleep.

13 Q. Okay. So you weren't in a position to
14 personally observe what happened between your
15 brother and Carman when they were at the trailer.
16 Correct?

17 A. Yeah, I don't know.

18 Q. Okay. You said you talked to
19 Mr. Mauldin and a lady. Was it your understanding
20 that she was a lawyer, or what was her role?

21 A. I think she was helping Mr. Mauldin out
22 trying to figure out the case.

23 Q. Okay. Something like an assistant or
24 investigator or something?

25 A. She probably was an investigator.

1 Q. Okay. Just one moment. No more
2 questions. Thank you.

3 THE COURT: Redirect?

4 MS. HENRY: No, Your Honor.

5 THE COURT: All right, ma'am. You may
6 step down.

7 Next witness.

8 MS. HENRY: Your Honor, Applicant calls
9 Shanek Robinson.

10 (The witness was sworn.)

11 MR. SMITH: Your Honor, I'm sorry to
12 interrupt. I was talking with Ms. Henry about
13 this. Mark MacDougall got back to me; 8:45 does
14 work for him. So I think sometime this afternoon I
15 can work on an order from Your Honor asking CDC to
16 leave Mr. Jenkins here overnight.

17 THE COURT: Okay.

18 MR. SMITH: I understand that the
19 corrections officers were wanting to know if they
20 could be cut loose to go back instead of waiting.

21 THE COURT: Yeah. If we're going to go
22 at 8:45 and we'll keep him here, I'll sign an order
23 allowing, and they can go back.

24 MR. SMITH: Okay.

25 MS. HENRY: Thank you, Your Honor.

1 SHANEK ROBINSON,

2 being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HENRY:

5 Q. All right. So, Shanek, you've already
6 told the Court your name. Can you tell us what you
7 do for living?

8 A. I am a professor at Midlands Technical
9 College. I teach cardiac care.

10 Q. How long have you been doing that?

11 THE REPORTER: Can you speak into the
12 microphone?

13 BY MS. HENRY:

14 Q. I'm sorry. This courtroom can be hard
15 to hear in.

16 (Off-the-record conference.)

17 BY MS. HENRY:

18 Q. So you're a professor at Midlands Tech?

19 A. Midlands Technical College in Columbia.

20 Q. Is cardiac care -- is that a type of
21 nursing, or is it something else?

22 A. Well, it is a prerequisite for nursing,
23 so nursing students would take EKG. And so I teach
24 cardiac care and EKG. But it's not just for
25 nursing students. It's for paramedic students.

1 Anybody that's needing that particular skill.

2 Q. Okay. How long have you been doing
3 that?

4 A. Twelve years.

5 Q. All right. Then, Shanek, do you have
6 any kids?

7 A. Yes.

8 Q. How many?

9 A. Four.

10 Q. How old are they now?

11 A. They're 27, 26, 17, and 13.

12 Q. Oh, wow. Okay.

13 A. Two grand babies.

14 Q. Two grand babies? Okay. And then how
15 far did you have to go in school in order to be
16 able to teach?

17 A. Well, I finished my associates degree
18 and I started working in para medicine. And from
19 there -- so I teach -- I taught also adult
20 education to help adults pass the GED. So from
21 that background and me doing paramedicine, I
22 relocated to Columbia. And a friend of mine said:
23 Well, have you thought about teaching? And I was
24 like: I mean, I do adult education. She said --
25 and I said: I don't think it's the same thing.

1 And she said: Yeah, come try it out. So that's
2 how I ended up getting into teaching and then doing
3 credits so that I can have my certification to
4 teach cardiac care and EKG. So I started there.
5 So associates degree is my degree, but then I also
6 took other courses to teach.

7 Q. Okay. That was an excellent summary.
8 Tell us what your relationship is to Clarence
9 Jenkins.

10 A. Clarence is my younger brother. He's
11 my baby brother.

12 Q. Baby brother? Okay. Do you ever still
13 talk to Clarence?

14 A. Yes. Mostly write. But sometimes we
15 talk, but mostly write.

16 Q. And you still care about Clarence?

17 A. Oh, yeah.

18 Q. So given that relationship that you
19 still care about Clarence, would you lie for him?
20 For instance, would you say he was somewhere when
21 he wasn't? Would you make up any facts to help him
22 out?

23 A. Not at all, no.

24 Q. All right. And then just to be clear,
25 you're here today to tell the truth as you remember

1 it?

2 A. Yes, ma'am.

3 Q. Okay. All right, Shanek. I'm going to
4 take you back to March and April of 2008.

5 A. Okay.

6 Q. So where were you living in March and
7 April of 2008?

8 A. In Greenville on Pleasant Ridge Avenue.

9 Q. And who all was living with you? Who
10 was in your household?

11 A. Myself, my husband, my older two boys,
12 and I was pregnant with Kennedy.

13 Q. And then in April of 2008, where was
14 Clarence living?

15 A. With my sister.

16 Q. And then what was the setup that you
17 remember at your sister's house?

18 A. Well, he -- it was my brother and the
19 two girls, and he had to help take care of them.
20 They were -- well, my brother was married also at
21 the time, but they were having difficulties. And
22 so he and the girls moved in with my sister.

23 Q. Okay. And you already kind of touched
24 on it, but as far as you knew yourself, what was
25 the status of Carman and Clarence's relationship

1 during that time?

2 A. They were married. They were just
3 having marital problems is what they said.

4 Q. And you also knew Grace Davis or knew
5 of Grace Davis?

6 A. I knew of Grace Davis.

7 Q. So you didn't really know her?

8 A. No, I didn't know her. I've spoken to
9 her. I mean, I -- know her, know her? No, but I
10 have spoken to her. I knew who she was. But as
11 far as like knowing her personally, no.

12 Q. Okay. Were you aware of the
13 relationship between Clarence and Grace and Carman?

14 A. Yes.

15 Q. All right. During this time period
16 when Clarence and the two young girls are living
17 with your sister, was Carman helping out with the
18 kids? Was she over there all the time helping and
19 doing things?

20 A. No. As far as I know, I was helping
21 with diapers and wipes. So I would come maybe once
22 or twice a week and bring pampers wipes or money,
23 whichever my sister needed. As far as Carman, I
24 didn't really see her much.

25 Q. Okay.

1 A. I would say that if she was helping, I
2 didn't see it.

3 Q. Okay. Then how about Clarence? Was
4 Clarence there? Was he helping?

5 A. Yes, my brother was there. As far as
6 financially helping, I'm not sure what my sister
7 and him had settled, but he had to help keep the
8 kids and watch the kids. So if she worked, he was
9 there with the kids; if he worked, she was there
10 with the kids. So he had to help, yes, ma'am.

11 Q. And at that time, what was your
12 understanding of that three-way relationship? Was
13 that still going on?

14 A. The three -- okay. Be more specific.
15 Which three are you talking about?

16 Q. Sure. Between Carman, Grace, and
17 Clarence. Were they still together as a unit in
18 April of 2008 when he was living with your sister?

19 A. So my understanding from my brother was
20 that he did not want to participate in that type of
21 relationship anymore. And because of that, they
22 split.

23 Q. Okay.

24 A. Well, they split and back up because
25 they had gotten back together. But then -- and I

1 think she was the reason why they got back
2 together. I'm not 100 percent sure about that, but
3 he decided he didn't want to do that relationship
4 anymore. And as far as I know, there wasn't that
5 relationship anymore because he was staying with my
6 sister.

7 Q. Okay. So Clarence was done with the
8 relationship as far as you know?

9 A. As far as I know.

10 Q. Okay. And that was part of the reason
11 he was actually living with James?

12 A. Yes, ma'am.

13 Q. Instead of with Carman at the trailer?

14 A. Yes, ma'am.

15 Q. All right. Shanek, I'm sorry. Give me
16 one second. So I want to take you to Friday, April
17 -- oh, take your time.

18 A. I'm fine. I'm just trying to clean my
19 glasses off. I am -- the older you get, the harder
20 it is for you to see.

21 Q. Absolutely.

22 A. So mine we're a little bit cloudy.

23 Q. I'm sorry, Shanek. Give me one second.
24 So when you would come over to the house to visit
25 during these times and Clarence was there, what was

1 he doing?

2 A. Most of the time, he was sleeping.
3 Like laying around. Little Carman was jumping on
4 him, and Melissa, she was a teeny baby, so she was
5 asleep or whatever. But most of the time, he was
6 asleep. So I would wake him up and tell them I was
7 there and that I left something for him. You know,
8 we'd chit chat for a little while, and then I'd
9 head out.

10 Q. Okay. And you said that you brought
11 pampers and some other stuff. So everybody in the
12 family was contributing to helping?

13 A. Everybody was contributing. Like our
14 uncle and his wife. Whatever we could do to kind
15 of help smooth things and things run smoothly. We
16 all tried to kind of work as a team to make sure he
17 has the -- my thing was diapers and wipes.

18 Q. And was Clarence working at the time?
19 What was your awareness of that?

20 A. He was working for -- not a -- like an
21 employment agency where you work a day and you get
22 paid or something like that.

23 Q. You're talking about Labor Finders?

24 A. Yeah, something like that. Yeah, Labor
25 Finders.

1 Q. Okay.

2 A. So you would work -- it wasn't like a
3 full-time employment like you had a job every day.
4 Whatever they had available for you according to
5 them was what -- well, I'll say my brother, and
6 what he would say was like if they have work for
7 you, then you would work that day, and then you
8 would get paid. So he didn't have, like, a lot of
9 money, so that's why all of us we were, like,
10 chipping in to do whatever we could.

11 Q. All right. And did Clarence have any
12 independent transportation?

13 A. No, ma'am.

14 Q. How was he getting to work?

15 A. Walk or my sister or sometimes his wife
16 Carman.

17 Q. Okay. So sometimes Carman would take
18 him?

19 A. Uh-huh (affirmative), yes, ma'am.

20 Q. Would Carman go to the house a lot?

21 A. I didn't really see her that much. I
22 only seen her once or twice. I didn't see her a
23 whole lot. And I, myself, wasn't there every day
24 either, so I was there maybe once or twice a week.

25 Q. Okay. Once or twice a week?

1 A. Yeah.

2 Q. Did you have usual days that you came
3 by?

4 A. Uh-huh (affirmative).

5 Q. Okay. What were those?

6 A. Wednesdays and Fridays.

7 Q. Okay. Well, let's go ahead and move
8 forward then to April 4th which would be the --
9 which was a Friday which is the Friday before all
10 this happened, the Friday that all this started.
11 Do you remember what your schedule was on that
12 Friday?

13 A. School, and probably after school,
14 picking up my kids from school. So school, my mom
15 and my sister's house, and then I'd leave in time
16 to pick up my kids from school.

17 Q. Okay. So it was your normal schedule
18 on Friday to go -- and were you going to teach?

19 A. Yes. So adult education. And, also, I
20 was taking classes. So adult education, classes,
21 my mom's, my brother's, leave their kids for
22 school.

23 Q. Okay. So the time that you would go
24 over to your mom's and brother's and sister's, was
25 that normally sometime in the morning on Fridays?

1 A. Yes. Normally in the morning. It was
2 about 11:00 or 11:30-ish.

3 Q. Okay. And then on Friday April 4th,
4 did you see Clarence?

5 A. Yes. He was asleep. And the girls
6 were there. And I talked to my mom, had coffee.
7 She was complaining as usual.

8 Q. Is this your mom complaining?

9 A. She was always complaining about
10 something.

11 Q. And where was Clarence?

12 A. Asleep.

13 Q. Did you talk to him at all while you
14 were there?

15 A. I would usually wake him up a little
16 bit just to let him know I was there and I came by.
17 And then he'll chit chat with me or go back to
18 sleep.

19 Q. Okay. And then when you're there, did
20 you normally do anything else?

21 A. Coffee with my mom, talk with my mom,
22 and in and out.

23 Q. Okay. After you did all that, what did
24 you do?

25 A. Leave there, go home, prepare to pick

1 the kids up from school.

2 Q. And then did you come back again that
3 week, or was it --

4 A. On that Friday? Are you talking about
5 Friday?

6 Q. Yeah. Did you come back again? You
7 said sometimes you visited on Fridays and
8 Wednesdays.

9 A. Oh, that's the next week. So, yes.
10 The next week, yes, on Wednesday. But that Friday
11 I didn't go back again because that's usually the
12 weekend, if that's what you're asking me.

13 Q. Yeah.

14 A. I did not go back after that day.

15 Q. Okay. Until the next week?

16 A. Until the next week.

17 Q. Okay. Do you have any idea why Carman
18 didn't keep the girls with her?

19 A. She said that she was having
20 difficulty --

21 MR. SMITH: Objection, hearsay.

22 THE COURT: Sustained.

23 BY MS. HENRY:

24 Q. Did you observe any changes in Carman's
25 behavior around the time that she would have left

1 the girls with your sister and your mother?

2 A. Depressive mood, sad. I would say that
3 she -- I guess that's what she said. But she said
4 she was trying to --

5 Q. Yeah, nothing that she said to you.
6 Just what you observed from her.

7 A. That she was sad. She was kind of not
8 in a good mood. Not like a mean mood, but just
9 kind of just sad. She had, you know, had a baby,
10 so for me, you know -- you know, sometimes when you
11 have children, you go through like a little
12 postpartum or whatever. And I tried to encourage
13 her with that, why she would be sad. But other
14 than that, just that she was sad.

15 Q. Did you observe any extreme behavior or
16 extreme emotion from Clarence?

17 A. Same thing. He was sad. He was sad
18 because of the circumstances with -- according to
19 him -- and you could see it though. But the things
20 that they were going through as a married couple.
21 He wanted a family, and she --

22 MR. SMITH: Objection, hearsay.

23 THE WITNESS: Well, that's not hearsay.
24 That's me observing my brother.

25 THE COURT: I'll overrule it.

1 THE WITNESS: He wanted a family, and
2 we all knew that. It was just kind of sad for him
3 as well.

4 BY MS. HENRY:

5 Q. That that wasn't happening?

6 A. Uh-huh (affirmative).

7 Q. All right. Can you -- let's see. So
8 Carman -- let's do it this way. So Carman
9 testified during the original trial that Clarence
10 was violent, that he was the abuser, that he
11 threatened her, and that she stayed in the
12 relationship out of fear. Do you know of any
13 instances where Clarence was violent toward Carman?

14 A. I do not.

15 Q. Do you know of any instances where
16 Carman was violent toward Clarence?

17 A. I do.

18 Q. Okay. Can you describe those for the
19 Court?

20 A. It was my brother -- well, one of my
21 friends got my brother a job working at a club as
22 security. And after that, when I saw him --
23 because usually, like I said, they didn't have a
24 lot of money, so we'd help out with different
25 things like diapers or whatever. And so he came by

1 the house to get money for diapers, and he had a
2 black eye. And I was like: What? Why do you have
3 a black eye? What happened? Was it something at
4 work? He was like: I'm okay. I'm fine.

5 MR. SMITH: Objection.

6 THE COURT: Sustained.

7 BY MS. HENRY:

8 Q. Did you ever find out that Clarence
9 received the black eye from Carman?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Did you ever have discussions with --
14 and don't tell me what you said. But did you talk
15 to both Clarence and Carman?

16 A. Yes.

17 Q. About the black eye?

18 A. Yes.

19 Q. And it was your understanding from both
20 of them that Carman had hit Clarence?

21 A. Yes.

22 Q. Okay. Is that the only time that you
23 became aware of Carman being violent with Clarence?

24 A. That was the only time that I was aware
25 that she was violent with him, yes.

1 Q. Okay. Did you feel or did you -- did
2 you see a change in Clarence's behavior during his
3 relationship with Carman?

4 A. What do you mean by change? What do
5 you mean by that? Like -- okay. Let's see.

6 Q. If the answer is no, that's okay too,
7 Shanek?

8 A. Well, I --

9 Q. I mean, what was Clarence like --

10 A. I would say --

11 Q. -- before the relationship?

12 A. I would say that he became a husband
13 and a father. I did see those changes in him, that
14 he was more responsible or he wanted to be more
15 responsible for taking care of his family and
16 making sure his family was okay. That change I did
17 see in him.

18 Q. Did you ever observe Clarence being
19 violent or threatening toward anyone else other
20 than Carman?

21 A. No.

22 Q. Okay. How would you describe
23 Clarence's personality?

24 A. My brother can be a pain in the butt,
25 but most of the time he's jovial. And pain in the

1 butt like annoying sometimes. Just normal sibling
2 relationship. Nothing -- we just had a normal
3 relationship, you know. He was -- he's a loving
4 person. Did he get roared up? Probably, yeah.
5 But, I mean, he had sisters, so we didn't really
6 have a whole bunch of roughhousing. Just a normal
7 sibling relationship. I guess that's the best way
8 I can describe it.

9 Q. How did your brother handle blood?

10 A. He didn't.

11 Q. Can you describe it for us? Can you
12 explain that to the Court?

13 A. Okay. I can give you an example. So
14 at my house -- and he was younger, probably about
15 15 or so. Maybe 14. I was trimming the hedges,
16 and I ended up getting cut or whatever. So I had
17 called over to him to go in the house to grab
18 something for me. And he came over to help and I
19 had just a little blood on my hand, and he went
20 boop. And so my mom --

21 Q. What is boop?

22 A. He just fell out.

23 Q. Did Clarence pass out?

24 A. Yeah, like -- and I'm saying: Mom,
25 what in the world is he doing? And she said: He

1 does that. And I go: I don't think that's normal.
2 So when we got him to come to, I told him: You
3 could have let me die out here. I got cut with the
4 hedges and you just fell out on me. And he would
5 do that. He wasn't -- he was just squeamish.

6 Q. What happened when your son broke his
7 arm?

8 A. So my son fell from two stories because
9 there was a piece of a gate missing when we were at
10 a hotel. And he fell on his arm, and his arm
11 looked like an M. And my brother saw it, and my
12 brother did the same thing. He just passed out.

13 Q. Okay. So there's a pattern to this
14 with Clarence?

15 A. Uh-huh (affirmative).

16 Q. Related to blood and injuries?

17 A. Uh-huh (affirmative).

18 Q. Okay. Did you guys have any kind of
19 family jokes about what would happen when he had
20 kids?

21 A. That he wouldn't be able to watch the
22 delivery because he would just pass out.

23 Q. Okay. Carman testified at the original
24 trial that not only the murder but also the
25 mutilation was Clarence. And that included blood

1 and cutting and amputation of hands and feet. That
2 was her testimony that it was Clarence. Given what
3 you know about Clarence and how he handles injury,
4 blood, is that even possible?

5 A. Not to me, no. Not to me and even my
6 family members.

7 Q. Is Carman at all squeamish as far as
8 you know?

9 A. Not as far as I know.

10 Q. Any family histories or jokes that are
11 similar to what you've just told about Clarence?

12 A. For Carman?

13 Q. Uh-huh (affirmative).

14 A. Just that -- she would just -- she was
15 in charge.

16 Q. Carman had a powerful personality?

17 A. Yeah, she was just in charge.

18 Q. All right. So if you had been called
19 to testify at the original trial, would you have
20 been able to tell those stories about Clarence?

21 A. Yeah.

22 Q. And would you have been able to testify
23 that you found it very unlikely that Clarence would
24 have been able to do the things that Carman
25 described?

1 A. Yes.

2 Q. Okay. All right. Just a couple more
3 questions, Shanek. So Carman also testified that
4 she and Clarence were still living together in
5 March and April of 2008. As far as you're aware,
6 was that true?

7 A. No.

8 Q. Okay. And if you had been called to
9 testify, would you have been able to testify that
10 that was not true?

11 A. Yes.

12 Q. Okay. All right. Did you ever talk
13 to -- were you interviewed by Clarence's attorneys?

14 A. Yes, ma'am.

15 Q. Do you remember who you talked to?

16 A. Mr. Mauldin, and I think her name was
17 Susan. Susan?

18 Q. Do you remember what you talked about
19 with them?

20 A. Timelines, history, family history. A
21 lot of stuff. A lot of stuff I can't even remember
22 that we talked about, but it was a lot. I used to
23 drive from Columbia here to meet up with them as
24 well. And it would be hours that we would talk
25 about different things with the case.

1 Q. Okay. And this happened over 15 years
2 ago at this point. Right? And would you say that
3 at the time you were discussing this with
4 Clarence's defense team that you had a much sharper
5 recollection --

6 A. Oh, yeah.

7 Q. -- of dates, times and timelines?

8 A. Uh-huh (affirmative).

9 Q. And did you disclose all that
10 information to his defense team?

11 A. Yes. Whatever they asked of us. We
12 disclose all information we had available at the
13 time.

14 Q. And did you receive a subpoena to
15 appear at trial?

16 A. Yes.

17 Q. And did you come? Were you there?

18 A. Did I do what?

19 Q. Did you come to the trial?

20 A. Yes.

21 Q. And were you called to testify?

22 A. No.

23 Q. So you were never given the opportunity
24 to tell the jury all the information that you and I
25 just reviewed today?

1 A. No, ma'am.

2 Q. And were you ever told why?

3 A. The -- I would say no. Because of the
4 explanations, it's more like hearsay, so I would
5 say no, it wasn't a real good explanation of why.

6 Q. All right. No further questions.

7 Thank you.

8 THE COURT: All right. Cross?

9 CROSS EXAMINATION

10 BY MR. SMITH:

11 Q. Ms. Gibbs, a lot of your understanding
12 of the dynamic in the three-way relationship
13 between your brother, Carman, and Grace comes from
14 whatever your brother told you. Right?

15 A. Mrs. Robinson.

16 Q. I'm sorry.

17 A. That's okay.

18 Q. I apologize.

19 A. That's fine. Say that one more time.

20 Q. Your understanding of the internal
21 dynamics of the three-way relationship between your
22 brother, Carman, and Grace comes from what your
23 brother told you. Right?

24 A. No, not just from what my brother told
25 me but from what I observed myself and what the

1 three of them said.

2 Q. Okay.

3 A. They actually had a whole thing written
4 out that I read that was between the three of them.

5 Q. Marriage vows?

6 A. I guess, explaining the relationship
7 between them.

8 Q. Okay. And are you aware that your
9 brother wrote those?

10 A. That they wrote them together. That's
11 what they said, they wrote them together.

12 Q. Okay. And you testified about visiting
13 your sister's house on February the 4th, and you
14 talked about your usual Friday routine. How do you
15 know that you visited there specifically on this
16 Friday rather than remembering your general
17 routine?

18 A. Well, because that's what I always do.
19 And probably since I can remember, we -- our
20 family, we spend a lot of time at dinners, so we
21 visit a lot. And everybody helps out. And my days
22 are always those days.

23 Q. Okay.

24 A. Now, that doesn't mean that I wouldn't
25 come an extra day because I would sometimes

1 depending on if they needed me for something. But
2 usually my time with them would be Wednesdays and
3 Fridays.

4 Q. Okay. What time did you leave your
5 sister's house on April the 4th?

6 A. It was sometime that afternoon before I
7 -- I left there, went home, and got ready to pick
8 my kids up from school. So sometime that
9 afternoon. I don't know the exact time, but it was
10 sometime that afternoon.

11 Q. Okay.

12 A. And school gets out for my children
13 around 2:30.

14 Q. Was your brother there the entire time
15 that you were there?

16 A. Yes.

17 Q. Okay. You testified about the fact
18 that you felt that your brother was trying to
19 provide for his family. Would it surprise you to
20 know that he testified earlier today that he was
21 cooking crack and selling it to people at Labor
22 Finders?

23 A. Would that surprise me? Yes, a little.

24 Q. All right.

25 A. A little. Yeah, that would surprise me

1 a little bit.

2 Q. Would it surprise you if he testified
3 that he would go to the trailer on Tindal Road when
4 Carman was not there and cook crack inside the
5 trailer?

6 A. Yes.

7 Q. Okay. Would it surprise you to know
8 that earlier today he testified that when he saw
9 Ms. Harris' body on the floor that after being
10 shocked, the first thing he did essentially was to
11 go around and find things and burn them so that the
12 police wouldn't find them?

13 A. Yes.

14 Q. Okay. Would it surprise you to know he
15 testified earlier today that he helped Carman take
16 Ms. Harris' body and set it on fire with gasoline
17 and leave it somewhere on the roadside?

18 A. Yes.

19 Q. Okay. And I think you testified
20 earlier that you weren't around Carman and her
21 family that much.

22 A. (Witness moves head from side to side.)

23 Q. Okay. The things you testified to here
24 today, did you tell those same things to the
25 lawyers you met --

1 A. Yes.

2 Q. -- Mr. Jenkins' lawyers?

3 A. Yes.

4 Q. Okay. Just one moment, please. Thank
5 you. No more questions.

6 THE COURT: All right. Any redirect?

7 MS. HENRY: No, your Honor.

8 THE COURT: All right. You may step
9 down. Thank you, ma'am.

10 MS. HENRY: Applicant rests, Your
11 Honor.

12 THE COURT: All right.

13 MS. HENRY: Your Honor, may I release
14 Ms. Gibbs and Ms. Robinson.

15 THE COURT: Any objection from the
16 State?

17 MR. SMITH: No objection.

18 THE COURT: All right. They are
19 released.

20 MS. HENRY: Your Honor, if you'll give
21 me one second.

22 THE COURT: Yes, ma'am.

23 MS. HENRY: Thank you, Your Honor.

24 THE COURT: All right. Anything before
25 we start the State's case?

1 MR. SMITH: Your Honor, may I grab
2 Mr. Mauldin real quick?

3 THE COURT: All right.

4 MR. SMITH: Your Honor, I call Mr. John
5 Mauldin.

6 THE COURT: All right.

7 JOHN MAULDIN,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q. Mr. Mauldin, can you tell me when you
12 begin practicing law?

13 A. February of 1974.

14 Q. Can you give me a brief summary of your
15 legal experience?

16 A. Yeah. I graduated from Emory Law
17 school in '73. Went on active duty in the
18 military. Came to Greenville in February of '74
19 and worked for two and a half years in the public
20 defender's office as an assistant. Began private
21 law practice in probably '76 and practiced
22 privately until 1992 when I was appointed the
23 public defender after the retirement of Pete Partee
24 and served as the public defender for Greenville
25 and then as the Thirteenth Circuit Public Defender

1 until my retirement in 2018. I've been retired
2 since then.

3 Q. Okay. How did you get involved in
4 Mr. Jenkins' underlying criminal case?

5 A. Our office would have been appointed
6 after his arrest. He apparently applied for a
7 public defender, and our office was appointed. And
8 due to the nature of the case, I assumed lead
9 counsel representation at that time. I don't know
10 the exactly the date of the appointment, but it
11 would have been very quickly after his arrest.

12 Q. Okay. What other lawyers were involved
13 in the representation of Mr. Jenkins?

14 A. I can't recall exactly the date of the
15 death penalty noticed in this case. From the time
16 he was arrested until the State served a death
17 penalty noticed, I would have been primary and the
18 only counsel. When the death penalty notice was
19 served, he became eligible for appointment of a
20 second chair. And Susannah Ross who was in private
21 law practice in Greenville was appointed second
22 chair to assist us or assist me. I then enrolled
23 the assistance of a law firm out of Washington that
24 I had worked with previously and had had good
25 experiences with to further assist us.

1 Q. Is that how Mr. Mark MacDougall got
2 involved?

3 A. Yeah. Mark MacDougall is a partner in
4 the Akin Gump Law Firm.

5 Q. Okay. How did you share the duties of
6 representation of Mr. Jenkins with those other
7 lawyers?

8 A. Well, we had to -- you know, it's been
9 14 years, I guess, ago, so I'm just giving you the
10 best I can recall. We would have gotten together,
11 looked at the potential areas that were naturally
12 separated, that could be naturally separated in a
13 case of that complexity, and then talked among
14 ourselves about how best to do that. As lead
15 counsel, I took the responsibility of making the
16 final decision. And so we did go through the
17 process collectively of looking at issues and
18 trying to figure out the best way to separate the
19 responsibilities.

20 Q. Okay. And what were those different
21 areas that all of you identified?

22 A. The separation that we came up with
23 basically was that Mr. MacDougall would be
24 responsible for issues that involved forensics. We
25 knew certainly that there would be a lot of blood

1 evidence, DNA evidence, fingerprint evidence,
2 murder weapon evidence. And those were forensic
3 issues that Mark had a great interest in, and it
4 was natural for him. And he also had a lot of
5 resources. In a law firm of that size, he could
6 enroll assistance from associates in that law firm
7 to help him with the forensic analysis.

8 Susannah -- Susannah and I both had met
9 with Mr. Jenkins at the jail. And Clarence, I felt
10 like, had responded very positively to Susanna's
11 approach to discussing his case with him and so
12 forth. Mine was probably a little more harsh. And
13 so what we did was we said, okay, Susannah is going
14 to handle the direct client part of the case.
15 She's going to be responsible for Clarence's
16 testimony if he were to end up testifying at trial.
17 She's going to meet with him regularly at the jail
18 because that's a very important part of a
19 complicated case is to maintain a relationship with
20 the client. And that was her area of
21 responsibility.

22 And my responsibility in the initial
23 was the handling of the codefendant, the wife. And
24 I felt like I wanted to assign myself the
25 responsibility of the mitigation in the anticipated

1 penalty phase of the case because it was a capital
2 case at that time. So I attempted to manage the
3 experts and the mitigation and also be responsible
4 for the codefendant's positioning in the case.

5 Q. Okay. Do you remember how long it was
6 before you were served with the death notice, and
7 then again how long it was that you labored under
8 the impression that the trial would be a capital
9 trial?

10 A. I can't tell you exact. I think the
11 file would actually answer that. In the file,
12 there's notice of intent to seek the death penalty
13 somewhere. There's also an order appointing
14 cocounsel, so that would be the time at which --
15 but I don't think it was a very long time. I think
16 that Mr. Ariail, at the time, was very intent on
17 seeking the death penalty in this case, and I think
18 that notice was served pretty quickly.

19 When Mr. Ariail did not seek reelection
20 in November of 2010, Mr. Wilkins took over as the
21 solicitor. The death notice was still on the table
22 at that point, and it seems like -- I can't recall
23 when Mr. Wilkins withdrew the notice, but he still
24 maintained that it would be a capital case for a
25 good long period of time while in his service as

1 solicitor.

2 Q. Okay. So what sorts of pretrial
3 investigation and factual development did you do at
4 that time because you believed it would be a
5 capital trial? Was there anything unique about
6 your work there?

7 A. Well, obviously we had to retain a
8 number of different experts, mental health experts,
9 mitigation, social worker, people that were
10 potential witnesses in a penalty phase, but they
11 were hired to go out and do exactly what you're
12 describing. We had a private investigator that we
13 hired for what I would describe as the guilt phase
14 of the case. That's the innocence/guilt trial. If
15 I recall, Pete Skidmore from Rock Hill was our
16 investigator, and he was assigned to review the
17 police records and determine whether or not
18 follow-up investigations were necessary on a
19 factual basis.

20 We obviously retained experts with
21 regard to any DNA potential, any fingerprint
22 potential. Handwriting was also, if I recall, an
23 issue in this case. So we had all those experts
24 hired, and they would do whatever we asked them to
25 do.

1 Q. Okay. As best as you can, can you give
2 me a brief summary of the State's case against
3 Mr. Jenkins?

4 A. I don't really know how much background
5 you want to know. I mean, I can give you as much
6 as I can recall. The State's case essentially was
7 that Clarence and Carman had a friend named Grace,
8 and they were very, very close friends. And
9 Clarence went to jail on a driving under suspension
10 charge, and I think it was a 60- to 90-day period.
11 Seems like a 90-day timeframe where he was out of
12 the house in jail. And during that period of time,
13 Carman, who was Mr. Jenkins' wife and the
14 codefendant, and Grace developed an intimate
15 relationship. And when Clarence came home from
16 jail, they continued that relationship and
17 essentially created sort of a three-party,
18 three-party marriage, if you would, so to speak.

19 This went on for a number of months.
20 It did develop some significant friction. Grace
21 had some children that were living in that house
22 with them. DSS took Grace's children. And as a
23 result, Grace left the relationship and went back
24 to her family. And Carman, the wife, was very
25 disappointed that Grace had left and was

1 essentially going to do anything she could to get
2 Grace to come back. They tried a number of
3 efforts. Clarence and Carman tried to get Grace to
4 come back. She wouldn't.

5 And what then ended up happening was
6 Clarence met a woman named Mekole Harris. And with
7 his efforts at Labor Finders when he was working
8 through Labor Finders -- and Mekole would sometimes
9 be around the Labor Finders location. Clarence
10 started seeing Mekole. He then brought Mekole to
11 the trailer where he and Carman were living.
12 Almost -- you could almost describe it as somewhat
13 of a substitute for Grace. It did not suit Carman,
14 and so they -- you know, the allegation by the
15 State was that the two of them committed a
16 horrendous murder of Mekole, dismembered her and
17 left body parts on two different -- at two
18 different front doors of Grace's family members
19 with threatening letters that Grace needed to come
20 back. And that was kind of the nutshell of how it
21 happened, how it evolved. Then it was committed.
22 And they identified Mekole through fingerprint
23 evidence as the victim. They then through
24 investigation at Labor Finders connected Clarence
25 with Mekole. They then connected Carman with

1 Clarence, and the case began to be put together.

2 Q. Okay.

3 A. That's kind of -- that's definitely it
4 in a nutshell. It's obviously much more
5 complicated, but that's kind of the overall theory,
6 I think.

7 Q. Okay. Did you personally meet with
8 Mr. Jenkins' two sisters, Shanek Robinson and
9 Jameese Gibbs?

10 A. I'm not really sure that I ever
11 personally met with them. What I recall is that
12 very early in the case when the death notice was
13 served, the family of my client would come to the
14 my office so that I could explain the complicated
15 process by which the case would go. That it would
16 be two trials. If this was a long term, that we
17 really were going to need the family's support, the
18 family's help, in preparing the case. I believe
19 that I may very well have met with the sisters that
20 you've identified in that context. I know that I
21 met with Clarence's mother in that I know she came
22 to the office, and I seem to recall -- but I might
23 be getting it mixed up with another one of these
24 cases. It's hard for me to say particularly, but
25 that would have been the context of an early

1 meeting with family members.

2 Q. Okay. Is it your understanding that
3 Ms. Ross met with them? Do you know if she did?

4 A. Yes. And that is my understanding as a
5 result of conversations, that she would have been
6 having regularly -- and I don't remember back -- I
7 can't say that she went down there like every week,
8 but she had -- over the long time this case was
9 pending, she had many, many, many jail visits with
10 Clarence. And I know as a result of those jail
11 visits, she did meet with family members. And
12 those two sisters, I think, were among those family
13 members.

14 Q. Okay. Did you have good communication
15 with Mr. Ross and Mr. MacDougall?

16 A. Absolutely. We had regular staff
17 meetings. Probably -- I would say we probably got
18 together -- as a team, we would probably get
19 together every six weeks or so while the case was
20 processing.

21 This is a long-term case. And while
22 the death penalty notice was in effect, it had to
23 be communicated to each other what we were coming
24 up with or what we were working on. I would be
25 reporting on what mitigation was being developed or

1 what I had discovered about the codefendant, Mark
2 would discuss forensics, and Susannah would discuss
3 communications with Clarence. And that would have
4 included the family members.

5 Q. Okay. So you met about every six weeks
6 over the course of years?

7 A. You know -- and I'll tell you, I
8 can't -- I can't really say that it was absolutely
9 every six weeks, but we met certainly periodically,
10 certainly regularly. But what timeframe between
11 each meeting, I can't say under oath.

12 Q. Did you personally discuss a potential
13 alibi with Mr. Jenkins and his family members?

14 A. Did I personally discuss an alibi with
15 Clarence? No.

16 Q. Okay. Did you ever discuss that with
17 his family members personally?

18 A. No, I don't think that discussion took
19 place between me and the family members.

20 Q. So when you were talking with -- you
21 mentioned you did meet with Mr. Jenkins. When you
22 talked to him about the State's allegations, did he
23 tell you where he was on these few dates in April,
24 April 4th, 5th, and 6th?

25 A. He did not, not personally to me.

1 Q. Okay.

2 A. And let me elaborate on that just a
3 bit. Early in the case, the communication between
4 me and Clarence was limited basically to our need
5 that he be open and clear and honest with people
6 participating in his defense and the procedure.
7 You know, he was in jail and he was not going to
8 get out on bond, so he needed to be aware that it
9 was a long time. It would take a long time. We
10 would have a lot of different people coming down to
11 talk to him. We would have experts that would be
12 dealing with mental evaluation information and that
13 he needed to understand and to be very cooperative.
14 Those were the communications he would have been
15 getting from me.

16 The meetings that he had with Susannah
17 Ross were certainly more case specific from a
18 factual -- you know, where were you? Who did you
19 do this with? What about this? Susannah would be
20 getting the discovery and would be asking Clarence
21 what he thinks about certain disclosures that we
22 were receiving. That kind of conversation was
23 going on between Ms. Ross and Clarence, not between
24 me and Clarence.

25 Q. So that was because that was her

1 sphere?

2 A. That was the area that she really had
3 responsibility for.

4 Q. So let me ask you, you mentioned these
5 conversations you had with Mr. Jenkins about
6 cooperating. Was there any particular reason that
7 you felt the need to have those conversations with
8 him, or is that just a routine thing you were doing
9 considering it could work out to be a capital
10 crime?

11 A. They are routine, those -- the types of
12 meetings that I have described are those that I
13 felt would occur in every case of this nature. I
14 do recall -- and I don't remember what the
15 hesitancy was with Clarence. There was one time
16 when I had to go down to the jail and encourage
17 that he cooperate with our experts. I don't
18 remember which expert, but I do remember that this
19 came up that he was really afraid to share
20 information and so forth with the people that we
21 had working on the case. So I had to go down and I
22 met with him -- I believe that's the case -- and
23 told him he really needed to be cooperative with
24 us. So that's my best recollection.

25 Q. Okay. Did you discuss with Ms. Ross

1 and Mr. MacDougall -- did all of you have a
2 conversation about whether you could present an
3 alibi defense for Mr. Jenkins?

4 A. The issue of potential for alibi
5 definitely came up in conversation.

6 Q. Okay. Was that just one conversation,
7 or was that an ongoing thing?

8 A. No. Once it was brought up -- and
9 obviously we had to make sure that we determined
10 the legitimacy of the issue. And if I recall
11 correctly, the initial communication about a
12 potential alibi was maybe a year and a half or more
13 into the case. There was this moment in time when
14 it was brought to our attention as a team that
15 there was potential witness testimony that could be
16 considered an alibi. So we had to make a
17 determination about how legitimate that piece of
18 information was. And that's what that was --
19 Susannah was responsible for that.

20 Q. Okay. What sort of conclusion did the
21 three of you come to about whether you could pursue
22 an alibi defense?

23 A. The problem that presented itself --
24 first of all, one of the problems was that this
25 information came after such a lengthy period of

1 time. That did -- that gave us pause to try to
2 feel like whether or not this was really the case.
3 So we had to kind of put that in the formula. The
4 information that Susannah was sharing with us was
5 that he was what was described as in and out of his
6 mother -- of Myrtle's house during this, the
7 critical timeframe. That he was, what you might
8 say, coming and going. He would be over there
9 some, and then he would be gone the other times.
10 And the -- so it did present us with the difficulty
11 about whether or not that we could actually rely
12 upon that as an alibi, particularly because it was
13 family members and because -- I think if I'm not
14 mistaken, about a year and a half had passed before
15 that was ever even presented to us. The client at
16 that point had not presented such information. At
17 least best I can recall, the client had not
18 presented that information to Susannah, but you can
19 ask her about those conversations. And so it was
20 suspect. It was very suspect. And we were
21 concerned about it. And we discussed it. We did
22 not conclude absolutely that we were not going to
23 seek information in that regard. If I'm not
24 mistaken, I believe Susannah actually did meet with
25 the sisters, take information about what they were

1 saying. And it was kind of like -- the fact of the
2 matter was it was what I would call an imperfect
3 situation. Our strategy was in trying to what we
4 consider save Clarence's life -- because it was
5 still a death penalty case. That would have been
6 -- the credibility for the defense would have been
7 suspect if we presented that type of testimony and
8 claimed it was alibi when it really wasn't. It was
9 not what we considered to be a valid alibi claim.
10 It wasn't that he wasn't coming and going. It was
11 that the coming and going did not mean that at the
12 critical moments he was involved in the case, and
13 we felt like the credibility of our case would be
14 injured significantly if that type information was
15 presented.

16 Q. Okay. So essentially what you're
17 saying is you weren't sure that the information you
18 had from Mr. Jenkins' family members would be
19 enough to prove that he was not at the trailer at
20 the time of the kidnapping and the murder. Is that
21 right?

22 A. Well, obviously, yeah, I guess if I
23 understood your question. If we had information
24 that we felt like was valid and credible and had --
25 for example, I think -- what's your name? Taylor

1 Smith?

2 Q. That's right.

3 A. Mr. Smith, for example, when we met
4 with family at the beginning of the case, I was
5 concerned because if Clarence had actually been
6 elsewhere, it seemed like they would be telling us
7 that then. I mean, you know, this case was a week
8 old or two weeks old at that point. And if he was
9 somewhere else, they would have been saying that.
10 And then for it to come up a year and a half later,
11 we did have serious questions about that and how
12 reliable that was. I would admit that perhaps
13 trial counsel shouldn't be making a determination
14 of the credibility of a piece of evidence, but we
15 also had to attempt to save Clarence's life. And I
16 just felt like the credibility of our presentation
17 would have been gutted if we had put up that type
18 of information that really did not fill in the
19 blanks. It was not helpful.

20 Q. Okay. So I'd like to turn a little bit
21 now toward Mr. Jenkins himself. Did you all
22 consider having Mr. Jenkins testify at his trial?

23 A. Absolutely.

24 Q. Okay. And what sort of things did you
25 take into consideration there?

1 A. Well -- and let me -- if I may go back
2 just one moment about the information about the
3 alibi. This issue was brought to our attention,
4 like I said, probably a year and a half into the
5 case. Well, sometime about a year after that, we
6 were -- we received information. And I don't
7 really know exactly how to say it. This is -- but
8 we received information about an alibi in Florida.
9 And this alibi, you know, it served to contaminate
10 our consideration of this previous -- we had two
11 informations about alibis which were totally
12 inconsistent, totally inconsistent. And this was
13 information that was provided to Ms. Ross about the
14 Florida situation. She brought it to the
15 attention, of course, of our group that represented
16 Clarence. And we absolutely knew that that was not
17 true. We just knew that that was not true. And it
18 just -- it placed us in a position where we had --
19 it was just a very, very, very disconcerting
20 situation. And I would suggest that perhaps
21 Susannah, when she testifies, I believe since it
22 did come to her, I think she would be the one to
23 explain the predicament it placed the defense in.

24 Q. Okay. And since your responsibility at
25 trial was to cross-examine Carman Jenkins, do you

1 think that any of the information all of you had
2 for Mr. Jenkins' family members make you feel as if
3 you could put them on the stand to challenge
4 Carman's version of the events for the week?

5 A. I'm going to ask that you repeat that.
6 I can't quite -- I'm not following.

7 Q. I think it's me.

8 A. No. I'm not following you.

9 Q. So you're cross-examining Carman at
10 trial?

11 A. Right.

12 Q. And you want to challenge her version
13 of events?

14 A. Yes.

15 Q. Did you think the information you had
16 from Mr. Jenkins' family members was good enough or
17 exculpatory enough that you wanted to put them on
18 the stand to provide contrary testimony?

19 A. Absolutely not.

20 Q. Okay.

21 A. The information that Clarence and also
22 other members of his family were providing Ms. Ross
23 that were -- and that information was then being
24 provided to us as a group to decide what strategies
25 to implement. The value of calling the family

1 members to attempt to impeach the information that
2 Carman was providing on the stand would not have
3 been worthwhile. And that was my call. I did not
4 believe that their information that they were going
5 to provide, or at least that Susannah was giving
6 me, would have had any effect on Carman's
7 credibility. I was in a position attempting to
8 attack her credibility, and that was not going to
9 be one of the weapons I would use.

10 Furthermore, I believed -- and I, if
11 placed in the same position, I believe that I would
12 take the same posture. I believed that Clarence
13 should not testify. I did not think that his
14 testimony would have helped him. There was too
15 much correspondence from the jail that could have
16 been used to totally impeach Clarence, and we were
17 certainly hoping that he would not testify. That
18 was going to be his decision, but we were hoping he
19 would not. He chose not to. And I certainly --
20 after he made that choice, I certainly would not
21 have called the sisters in the absence of
22 Clarence's testimony.

23 Q. Okay. Why are you worried about
24 jailhouse correspondence?

25 A. Well, let me preface that answer with

1 this was correspondence that almost all of it was
2 addressed to Ms. Ross. So I'm not really sure.
3 There were things in correspondence that were not
4 in the best interest of the client as far as the
5 guilt or innocence of the crime, so I don't really
6 know how I'm supposed to answer your question. And
7 I'll be glad to answer it if I'm supposed to, but
8 I'm not really sure I'm supposed to.

9 Q. Is that because you're not entirely
10 sure what was in the correspondence?

11 A. Well, we got -- the correspondence are
12 in the file. They're in this file. And this file
13 is open to unrestricted inspection, as far as I
14 know. But there were contents in the
15 correspondence that were written to Susannah Ross
16 that would not necessarily have served in our
17 client's best interest.

18 Q. Okay.

19 A. Does that answer your question?

20 Q. I think so. I just want to clarify
21 that I'm asking you Mr. Jenkins has alleged today
22 that he wanted to testify and believes he should
23 have testified. Okay? And you understand that
24 he's waived his attorney-client privilege by
25 presenting this case today. Right?

1 A. Yes. But this was not communication to
2 me directly. It was not Clarence to John; it was
3 Clarence to Susannah Ross who was on the defense
4 team that I had the opportunity to hear about.

5 Q. Okay.

6 A. So I'm thinking that perhaps she would
7 be the one to relate the contents of those types of
8 correspondence.

9 Q. Okay. Was it correspondence you
10 reviewed yourself, or did you just hear about it
11 from Ms. Ross?

12 A. No. Some of the correspondence, I
13 certainly read. They were important.

14 Q. Okay. You know -- you're aware that
15 Mr. MacDougall said in his opening statement that
16 Mr. Jenkins was an unconventional person. Are you
17 aware of that?

18 A. I am.

19 Q. Are you aware that he said that
20 Mr. Jenkins sometimes gave what he called
21 fantastical stories?

22 A. I am.

23 Q. Okay. In your experience in
24 representing Mr. Jenkins, did you share the same
25 opinion?

1 A. Well, I would suspect that my opinion
2 is probably irrelevant on that, but I'll be glad to
3 answer if necessary. Mr. MacDougall's opening
4 statement -- he was assigned the responsibility to
5 present an opening statement. That was -- as we
6 went down the case, we would assign specific
7 responsibilities to various people. And Mark was
8 given that responsibility. I did not meet with
9 Mark. I mean, Mark had been an integral part of
10 the team. He knew exactly what we were attempting
11 to do and try to do. And the opening statement was
12 his opening statement. I did not find anything he
13 said to be objectionable or outside the realm of
14 what we were attempting to say and do. So whatever
15 he said, I would endorse.

16 Q. Okay. So your hesitation to put
17 Mr. Jenkins on the stand, was it merely because you
18 were worried that he could be impeached with
19 something, or did you also feel worried about what
20 he might say on the stand?

21 A. We were worried about both.

22 Q. Okay.

23 A. We were worried -- you know, we
24 certainly had gotten to know Clarence over those
25 years, and Susannah was the person -- and Susannah

1 would have handled his examination. Her judgment
2 on whether or not it was in his best interest to
3 testify would have been taken very seriously by
4 cocounsel because she was the one that had a
5 relationship with Mr. Jenkins.

6 Secondly, we were aware of
7 correspondence from the jail that we knew would be
8 part of the cross-examination of Clarence if he
9 testified. And it was our view that it was not in
10 his best interest to testify, both because of what
11 we would not be able to control about what he would
12 or wouldn't say, which was a concern to us, but
13 because we felt that the State was in possession of
14 material that clearly could impeach the client.

15 Q. Okay.

16 A. So I think that we conducted that part
17 of the case with a great respect for the client's
18 right to testify or not. We certainly realized
19 that if he didn't testify, then there would be no
20 defense witnesses and that that was going to be a
21 very difficult hill to climb, so to speak. But we
22 also felt that if he did testify, my thought was he
23 would have no chance.

24 Q. Okay. Did you ever hear Mr. Jenkins
25 talking about being a member of some kind of

1 organization or some group that was after him? Do
2 you have any knowledge about that?

3 A. That was -- that was the subject of
4 some of our communications in the team setting. It
5 clearly was an issue in the case that was very,
6 very hard to grasp in terms of its reality, and we
7 were concerned about whether or not there was any
8 way that we could present such information. It
9 just -- well, that's all I can say about it.

10 Q. Was it your understanding that it was
11 some kind of conspiracy type thing or a gang?

12 A. This is, again, a matter of my attempt
13 to put together my recollection of this part of the
14 case. When the idea of sending letters to family
15 members of Grace in an effort to what I would call
16 intimidate her and attempt to get her to come back
17 to Carman, references to these what the
18 organization might do or would do, it was part of
19 what appeared to be a part of an idea of
20 threatening and intimidating Grace to come back to
21 Carman and Clarence. So it was like part of the
22 text, if you will, of the idea of leaving these
23 body parts as a threat, and letters as a threat, to
24 get them to do what Carman and Clarence wanted them
25 to do.

1 Q. Does the name Ronnie Mitchell sound
2 familiar to you?

3 A. No. I'm not sure.

4 Q. Do you remember having any sorts of
5 discussions with Ms. Ross and Mr. MacDougall about
6 anyone claiming to have seen Ms. Harris out and
7 about during the timeframe in which the State
8 alleged she had been kidnapped?

9 A. Okay. Let me see if I -- this was
10 someone who says they saw her out and about that
11 would be inconsistent with her having been taken
12 and staying at the trailer? Is that what you mean?

13 Q. At least during the time we know of,
14 the Friday through Sunday, Friday night through
15 Sunday. So say you have a three-day period. And
16 the State's presentation is that she's kidnapped
17 that whole time and is killed at the end. And a
18 witness comes up and says they saw her on day
19 number two somewhere. Are you aware of any kind of
20 information like that coming up during the case?

21 A. All right. I'm going to say, no, I am
22 not aware. I don't know this name that you gave
23 me, and I'm am not aware of a piece of evidence
24 that would have indicated that from the time
25 Clarence and Mekole Harris were at Labor Finders

1 and Mekole went with Clarence to the residence on
2 Tindal Avenue -- from the time she showed up at
3 Tindal Avenue, I am not aware of anybody saying she
4 was somewhere else. Does that answer your
5 question?

6 Q. It does.

7 A. Okay.

8 Q. In terms of defending the case, would
9 you have given consideration to putting a witness
10 saying that up on the stand to say I saw Mekole
11 Harris somewhere else on Saturday, whatever date?

12 A. All right. Let me make sure I
13 understand your question, and I'll have a specific
14 answer if I do. If I were aware that from the time
15 Mekole went to Tindal Avenue with Clarence,
16 thereafter if I were made aware of a witness that
17 said they saw Mekole Harris at some third location,
18 yes, I would have seriously considered
19 investigating and perhaps using that person as a
20 witness. I don't recall being aware of any such
21 person. Is that right?

22 Q. So you would have wanted to know more
23 information. Right?

24 A. If I had had that information, I would
25 have certainly attempted to investigate whether or

1 not that person was answering what -- was giving me
2 information that I was understanding.

3 MR. SMITH: Your Honor, may I approach?

4 THE COURT: Yes.

5 MR. SMITH: And I'd like to have
6 something marked for identification as State's
7 Exhibit 1.

8 (STATE'S EXHIBIT 1, RONNIE MITCHELL
9 INDICTMENT, was marked for identification.)

10 MS. HENRY: Your Honor, I'm looking at
11 the exhibit that the State is trying to introduce
12 through Mr. Mauldin and would ask him to identify
13 it. The witness has already testified that he
14 doesn't recognize the name Ronnie Mitchell, so it
15 would be our position that attempting to introduce
16 this through this witness would be inappropriate.

17 THE COURT: How are you going to get
18 that in, Mr. Smith?

19 MR. SMITH: Your Honor, this is a
20 self-authenticating document. Mr. Mitchell
21 testified earlier. We discussed this off record
22 earlier, but the purpose of this exhibit would be
23 to show that Mr. Mitchell had an impeachable
24 offense at the time of trial. This is not
25 something that could be used to impeach his

1 testimony today, but at the trial in 2012, this was
2 fair game. I'm sure it's something that could have
3 come up at trial had he taken the stand. And so I
4 would like to get this document in through
5 Mr. Mauldin. Obviously, he says he has no
6 awareness of Mr. Mitchell, so the purpose is not to
7 have him discuss Mr. Mitchell specifically. But I
8 think I can get the document in through him in
9 terms of authenticating it and then asking him.

10 THE COURT: Well, that's two different
11 things. If you're getting it through him to
12 authenticate, you get it through him through
13 authentication. Self-serving under the rules of
14 evidence, that's a different thing. You can get it
15 in as far as authenticating it. That's not an
16 issue, and you're not trying to authenticate it
17 with Mr. Mauldin.

18 What's the objection? What's the basis
19 of the objection? It is a self-authenticating
20 document, so I'll allow it there. But what is the
21 objection?

22 MS. HENRY: At this point based on the
23 State's reason for wanting to get it admitted,
24 which is to prove that Mr. Mauldin wouldn't have
25 used it or didn't put Ronnie Mitchell on the stand

1 because he has an impeachable offense or had an
2 impeachable offense at the time, makes absolutely
3 no sense and is completely irrelevant now that
4 Mr. Mauldin has testified that he didn't even know
5 who Ronnie Mitchell was.

6 THE COURT: There's the objection.

7 MR. SMITH: But he clarified that.

8 THE COURT: There's the objection.
9 It's irrelevant. It's certainly authenticated, so
10 you don't even need Mr. Mauldin to authenticate it
11 because it's authenticated under the rules of
12 evidence.

13 MR. SMITH: Right.

14 THE COURT: The basis of the objection
15 is relevance. Mr. Mauldin never heard of
16 Mr. Mitchell, doesn't know Mr. Mitchell. Didn't
17 use it in his defense strategy. Didn't use it in
18 the trial of the case. Didn't use it in his
19 preparation. Didn't use it for any other purpose.
20 So unless you convince me otherwise of the
21 relevance through Mr. Mauldin, I'm not going to
22 allow it, but I'll hear you out.

23 MR. SMITH: Okay. So I'm not offering
24 it to say that Mr. Mauldin -- this is why
25 Mr. Mitchell did not take the stand. From

1 Mr. Mauldin's testimony, he doesn't know who Ronnie
2 Mitchell is. I think this on its own goes to the
3 State's prejudice argument as to Mr. Mitchell.
4 Even if Your Honor finds that he should have called
5 Mr. Mitchell as a witness at trial, I believe that
6 this is evidence that goes to the State's position
7 on prejudice which shows that Mr. Mitchell's
8 testimony at trial would have been impeachable.
9 Now, I don't think it really matters for that point
10 whether Mr. Mauldin knows about him or not. It's a
11 stand-alone prejudice issue.

12 THE COURT: Just saying you wanted it
13 admitted because it would -- had they known about
14 this, they probably wouldn't have called him
15 because of impeachment issue, I'll be honest. I've
16 tried a bunch of cases in my life, and I've put on
17 witnesses -- even though they had convictions, I
18 put them on the stand sometimes. And I would
19 preface it with my own witness and say: Now,
20 Mr. Smith or Mr. Jones, you do have a conviction
21 for such and such. But if their testimony was very
22 important, I still would put them on potentially.
23 Now, there would be times when I wouldn't. So with
24 this particular witness for purposes of your
25 argument, I don't think it is relevant. And so I

1 sustain the objection on relevance.

2 MR. SMITH: So just for clarification
3 Your Honor, is the objection to the exhibit itself
4 or to my asking Mr. Mauldin would this have
5 affected his decision had he known about
6 Mr. Mitchell?

7 THE COURT: The objection is not to the
8 admissibility as far as authentication. It's
9 authenticated as a public record. The objection is
10 sustained as to the relevance through this
11 particular witness admitting the document into
12 evidence. You can certainly ask him a question.
13 Well, if you knew a witness had a criminal record,
14 would you allow that? Well, I don't know because
15 the thing is he doesn't even know Mr. Mitchell,
16 never heard of Mr. Mitchell, doesn't know anything
17 about him. In fact, Mr. Mauldin said he didn't
18 even know of any potential testimony about anybody
19 seeing Ms. Harris during this weekend. And
20 certainly Mr. Mauldin would have used that had he
21 known that, but he didn't know about it.

22 MR. SMITH: Can I try it one more time
23 a different way?

24 THE COURT: I'll hear you.

25 MR. SMITH: Well, may I admit this as a

1 stand-alone thing without asking Mr. Mauldin about
2 it to say whether it's a strong argument or not,
3 that it least it is a relevant one that
4 Mr. Mitchell, had he testified at trial, would have
5 had an impeachable felony on his record?

6 THE COURT: I think I can take judicial
7 notice that if Mr. Mauldin -- I mean Mr. Mitchell
8 has a conviction that it would have been on his
9 record and is -- let me see it.

10 MR. SMITH: Because that would be good
11 enough for me.

12 THE COURT: It's grand larceny. It's
13 an impeachable record. That occurred in 2006. So
14 at the time at trial, it would have been within ten
15 years, so under 609, it would have been an
16 impeachable offense. So I'll take judicial notice
17 of the fact that it would have been an impeachable
18 offense most likely. Of course, it would have had
19 to have undergone a 403 analysis. And I don't know
20 what the trial judge would have done with it. But
21 I don't think it's admissible as a piece of
22 evidence through Mr. Mauldin.

23 MR. SMITH: Okay. And if Your Honor
24 takes judicial notice, I withdraw the attempt to
25 get the exhibit in. Thank you.

1 THE COURT: Let's take a short little
2 restroom break here. And in the logistics, after
3 Mr. Mauldin, you have one or two more?

4 MR. SMITH: One more. However, there
5 is a private investigator too. And if there's some
6 things that -- Ms. Ross was the person that in my
7 position talked the most with witnesses. And if
8 there's something that she can't remember or thinks
9 that the investigator is the person who had such
10 and such interaction, that may affect my decision
11 on that. But I think Ms. Ross will be it.

12 THE COURT: All right. I would like to
13 finish today because, again, we have this three-day
14 hearing starting tomorrow at 9:30. And we're going
15 to have Mr. MacDougall at 8:45, so I want to get
16 through these two witnesses here this afternoon.
17 So let's just take a short restroom break, and then
18 we'll start back.

19 (A recess transpired.)

20 THE COURT: All right.

21 BY MR. SMITH:

22 Q. Mr. Mauldin, I have some questions
23 about the indictments. This is my last topic
24 today. Did you personally review the indictments?

25 A. Did I personally review the indictment?

1 Yes.

2 Q. Did you feel like they adequately
3 informed you and Mr. Jenkins of the State's case
4 and the elements they'd have to proof at trial?

5 A. I felt like the indictment appeared to
6 be valid on its face.

7 Q. Okay. Did you see a basis to challenge
8 the indictment, to move to quash it, because it did
9 not allege a specific cause of death?

10 A. No, I did not.

11 Q. Is that something you considered?

12 A. Well, if you're asking if we -- we
13 would have made such a motion if we, in fact, felt
14 like it was an appropriate motion to make. We did
15 not -- if I -- if I recall correctly, we did not
16 challenge the face of the indictment. So, I mean,
17 we didn't do it.

18 Q. Okay.

19 A. We would have done it had we felt like
20 it was an appropriate position to take.

21 Q. At the time, did you think an
22 indictment would be invalid because it did not
23 allege a specific cause of death?

24 A. Well, you know, I suspect that's a
25 matter of law. I mean, the indictment either is or

1 isn't sufficient. And in this particular case, I
2 saw no deficiency that would support a motion to
3 quash that indictment.

4 Q. Why did you -- did you consider
5 challenging the indictment on the basis that it may
6 have been supported through the grand jury by
7 hearsay?

8 A. No, I did not consider making that
9 objection.

10 Q. What's your understanding of hearsay
11 before a grand jury?

12 A. I understand that hearsay in the
13 presentation to a grand jury is common.

14 Q. Okay.

15 A. And please be assured I'm not saying I
16 endorse that, but I think that kind of happens all
17 the time.

18 Q. Okay. At the beginning of trial, you
19 stated you had no objection to the State's oral
20 motion to amend the indictment to change the date
21 range. Can you tell me why you had no objection to
22 that?

23 A. Okay. I'm going to tell you right now
24 I have no independent recollection of that specific
25 event you just described. Maybe if I looked at

1 whatever the transcript reflects about what they
2 did and what I didn't do, maybe I could answer
3 that. It is not uncommon -- at least in my
4 experience, it is not uncommon for the State to
5 amend its indictment. We clearly were on notice of
6 what our client was being tried for, and we
7 understood what we thought to be the timeframe of
8 the events. So I don't think it was that we were
9 then somehow caught by surprise. So if the
10 transcript in this case reflects that an amendment
11 was made to the indictment and I did not object,
12 then the transcript speaks for itself. I don't
13 think I would have felt like I needed to object, so
14 I didn't.

15 Q. Okay. No more questions. Thank you.

16 THE COURT: Cross?

17 MS. HENRY: Yes, Your Honor. Your
18 Honor, may I approach?

19 THE COURT: Yes. Y'all don't need to
20 ask me permission to approach. Y'all can approach
21 any time.

22 CROSS EXAMINATION

23 BY MS. HENRY:

24 Q. I'm going to kind of post up here.
25 Mr. Mauldin, can you hear me?

1 A. Yes, I can. Thank you.

2 MS. HENRY: I'd like to have this
3 marked as Applicant's Exhibit A.

4 THE REPORTER: One?

5 MS. HENRY: One?

6 THE REPORTER: Yes.

7 (APPLICANT'S EXHIBIT 1, INDICTMENT,
8 marked for identification.)

9 BY MS. HENRY:

10 Q. Mr. Mauldin, I'm going to hand you
11 applicant's Exhibit 1. Would you flip to those and
12 tell me if you recognize all those.

13 A. I have looked at them.

14 Q. And do you recognize all of those?

15 A. Yes.

16 Q. Can you tell the Court what you've got?

17 A. Okay. Page 1 is what I will call the
18 outside page of the indictment in this matter, and
19 the second page is what I would describe as the
20 inside of the indictment that alleges the offense
21 in question. The third page is the arrest warrant,
22 and it appears that this is a copy of the arrest
23 warrant actually delivered to the client, Clarence
24 Jenkins. And then the fourth page is what seems to
25 be a copy of page 21 which I am going to make an

1 assumption is page 21 out of the trial transcript
2 in this case.

3 Q. Yes, Your Honor. Sorry. Yes,
4 Mr. Mauldin.

5 A. That's what's contained in that
6 package.

7 MS. HENRY: Okay, Your Honor. I'd ask
8 that Applicant's Exhibit 1 be moved into evidence.

9 THE COURT: Any objection --

10 MR. SMITH: No objection.

11 THE COURT: Applicant's Exhibit 1 is
12 admitted into evidence without objection.

13 MS. HENRY: Thank you, Your Honor.

14 (APPLICANT'S EXHIBIT 1, INDICTMENT,
15 admitted into evidence.)

16 BY MS. HENRY:

17 Q. All right. Mr. Mauldin, if you would
18 tell us what's the date of the offense according to
19 the grand jury? And that's on the second page of
20 the indictment. What was the original date as
21 identified by the State Grand Jury -- or the grand
22 jury?

23 A. The original date was on or about the
24 10th day of April.

25 Q. Okay. And that is what the grand jury

1 identified as the date of the offense or the date
2 of the murder in this case? That is the murder
3 indictment. Correct?

4 A. Yeah. I don't -- that's what it says.

5 Q. Okay. All right. And that's on the
6 second page of the indictment?

7 A. Right.

8 Q. And then if you'll flip to the third
9 page and take a look at the arrest warrant for me.
10 What does the arrest warrant say the date of the
11 offense is?

12 A. On or about 4/7/08.

13 Q. So April 7th, '08?

14 A. That's the arrest warrant.

15 Q. Okay. And if you'll flip back to
16 page 2 for me on the indictment. What was the date
17 of the offense according to the handwritten change
18 on the indictment?

19 A. On or about the 6th day of April.

20 Q. Okay. And then if you'll flip back to
21 the last page of the packet to page -- is it 21 --
22 of the transcript, of the trial transcript. What
23 day -- when was the change made to the indictment,
24 the official change? Was it made during the first
25 day of the trial?

1 A. I would actually have to say that the
2 transcript would have to speak for itself on which
3 day of the trial this was. I would certainly make
4 an assumption that I think is fair, that this was
5 part of the first day's proceeding.

6 Q. I understand.

7 A. But the page is not actually dated.

8 Q. Was the defendant and you, his
9 counsel -- were you told that the offense day was
10 going to be modified or that the offense date was
11 going to be different from the warrant and from the
12 indictment given down by the grand jury?

13 A. I cannot recall a specific moment when
14 Mr. Wilkins would have made a statement to me that
15 they intended to amend the date, but his statement
16 is -- contains the quote: We've discussed this
17 previously. So I'm going to accept the fact that
18 we had -- that the defense had been approached
19 about that amendment and had no objection to it.

20 Q. Okay. So can you tell me -- and flip
21 back to the -- this should be on the indictment.
22 Can you tell me whose initials are on the
23 indictment?

24 A. Pardon me?

25 Q. Whose initials are on the indictment by

1 the date change?

2 A. The initials on the indictment?

3 Q. Uh-huh (affirmative), on the second
4 page by the date change from the 10th to the 6th.

5 A. Are you asking me about this amendment?

6 Q. Yes, sir.

7 A. I actually cannot read those letters.
8 I don't know what that says.

9 Q. Okay. So you don't know whose initials
10 those are?

11 A. I do not know whose initials are on
12 page 2 of this package.

13 Q. Okay. All right. I'm going to ask you
14 to go back to the first page of the packet, the top
15 page of the indictment. Whose name is on there as
16 the witness that testified before the grand jury?

17 A. C.T. Miller.

18 Q. Okay. And do you remember Deputy
19 Miller or C.T. Miller?

20 A. I do not. I don't have any independent
21 recollection of his involvement.

22 Q. Okay. And then -- all right. I'll ask
23 you to flip to the warrant again, Your -- sorry. I
24 apologize, Mr. Mauldin. And can you tell us who
25 signed the warrant affidavit?

1 A. C.T. Miller.

2 Q. Okay. And then the offense date on the
3 warrant, again, that's April 7th. Right?

4 A. The date of when the incident is
5 alleged to have occurred is April 7th.

6 Q. Thank you for the clarity. I
7 appreciate that. Okay. So on the warrant that
8 Deputy Miller signed as an affidavit, he stated
9 that the offense date was April 7th?

10 A. Yeah.

11 Q. All right. And then the grand jury --
12 and he was also the person that testified in front
13 of the grand jury according to his signature on the
14 indictment?

15 A. Well, according to this document, he is
16 listed as the witness for the indictment.

17 Q. Are there any other witnesses listed on
18 the indictment?

19 A. None that I can see, but, you know, I
20 wouldn't want to say that I am unfamiliar with what
21 happened here in the indictment, so I really don't
22 know. I don't know whether other people testified
23 or not. I really do not have knowledge of that.

24 Q. I understand. And I understand that
25 the grand jury proceeding is secret.

1 A. Right.

2 Q. But I'm just asking if the solicitor's
3 office or the grand jury indicated that they
4 received testimony from anyone else on the
5 indictment. Do you see anybody --

6 A. His name is the only name listed as a
7 witness supporting this indictment.

8 Q. All right. And then apparently
9 according to what's on the second page of the
10 indictment, the grand jury determined, based on the
11 evidence that was presented to it, that the crime
12 happened on April 10th according to the original
13 text of the document?

14 A. Original text, that's correct.

15 Q. Okay. And since we don't have access
16 to grand jury testimony, is there any way for you
17 to know how the grand jury came up with that date?

18 A. I cannot.

19 Q. April 10th could, in fact, be the
20 correct date?

21 A. The only -- the only thing I would say
22 is that the language on or about is on all these
23 documents, both these documents.

24 Q. Okay.

25 A. But I do not know what supported that

1 other than Mr. Miller.

2 Q. Okay. And then the date on the
3 indictment was changed by four full days, right,
4 from April 10th to April 6th?

5 A. From the 10th to the 6th.

6 Q. And then for alibi purposes, isn't that
7 kind of a significant difference?

8 A. Do what?

9 Q. For alibi purposes, is a four-day
10 difference --

11 A. Oh, yeah.

12 Q. -- for when the murder occurred?

13 A. That would be relevant in terms of the
14 evaluation of the quality of the alibi information.

15 Q. Okay. So after the date change by the
16 solicitor's office or by -- as allowed by the Court
17 and requested by the solicitor's office on the
18 morning of trial, shouldn't the defendant have been
19 given time to regroup his alibi evidence and
20 re-examine it perhaps?

21 A. The best I can respond, Ms. Henry, is
22 that the operaty (phonic) or what I would describe
23 relevant timeframe is included in all of these
24 dates. It was a weekend essentially if I'm
25 recalling correctly. It was a weekend of, you

1 know, a Friday, Saturday, Sunday, Monday timeframe.
2 Each one of the days, the 10th, the 6th, the 7th,
3 they all are in that same timeframe. And we had
4 prepared our case based upon that time block. So
5 when it was modified or amended, we did not then
6 sense that we needed to somehow revisit the alibi
7 information.

8 Q. Okay. I'm going to ask you to take
9 another look at the second page of the indictment.
10 And could you read that language into the record
11 for me?

12 A. Pardon me?

13 Q. Would you read that language into the
14 record.

15 A. The paragraphs contained in the
16 indictment?

17 Q. Yes, sir.

18 A. That Clarence Williams -- you want me
19 to read the first part?

20 Q. Oh, no. Just the body of the
21 paragraph.

22 A. The body of the indictment?

23 Q. Yes, sir.

24 A. Okay. That Clarence Williams Jenkins
25 did in Greenville County on or about the 10th day

1 of April of 2008 unlawfully and with malice
2 aforethought killed Mekole Harris. And then it
3 cites the statute. The 10th was subsequently
4 amended to the 6th.

5 Q. Okay. And I'm sure that you're
6 familiar with Code Section § 17-19-30 that walks
7 you through what allegations are sufficient for an
8 indictment of murder?

9 A. Well, it's been a number of years since
10 I've actually read that statute.

11 Q. Would you like me to refresh your
12 memory?

13 A. Yeah, I would love for you to
14 refreshment my memory.

15 Q. All right. Every indictment for murder
16 shall be deemed and adjudged sufficient and good in
17 law which in addition to setting forth the time and
18 place together with the plain statement divested of
19 all useless phraseology of the manner in which the
20 death of the deceased was caused. Charges that the
21 defendant did feloniously, willfully, and of his
22 malicious aforethought killed and murder the
23 deceased.

24 A. Okay.

25 Q. So having heard that now and having

1 read the body -- the language in the body of the
2 indictment, you can see that there is no cause of
3 death or manner of death listed or outlined in the
4 indictment?

5 A. That's true.

6 Q. Okay. Why no objection to that?

7 A. I don't really have any explanation for
8 that. I think that certainly in most of the cases
9 that I have been involved in over the years,
10 whether a murder victim was killed by a gun or a
11 knife or strangulation or some other means or
12 manner simply in many, many cases it's not
13 contained in the body of the indictment. So the
14 absence of the actual cause of death in this
15 indictment we're looking at now did not spark a
16 sense that I needed to object to it as being
17 deficient on its face.

18 Q. And reading the discovery related to
19 this case, the -- in this case, the body was
20 damaged. Correct? The majority of the victim's
21 body in this case was burned?

22 A. That's right.

23 Q. Okay. Was the coroner able to
24 establish a cause of death based on forensics alone
25 in this case?

1 A. No. I did not -- we did not believe
2 that that would be even attempted.

3 Q. And wasn't the cause of death, the
4 manner of death, really left up to the
5 codefendant's testimony, Carman --

6 A. For the most --

7 Q. Sorry. Carman Jenkins?

8 A. For the most part, that's correct. The
9 codefendant's description of the manner in which
10 the codefendant and Clarence committed the actual
11 homicide was going to be relied upon by the State
12 to establish the cause of death.

13 Q. Okay. And given that there was no
14 independent forensic information or evidence at
15 least that was definitive related to the cause of
16 death or the manner of death in this case, and that
17 the State was relying almost entirely on Carman
18 Jenkins' version of the events, do you not think
19 that it might have been important to force the
20 State to articulate in the indictment the manner of
21 death that they were proceeding with? Do you think
22 that might have affected the way that you managed
23 the case or your strategy?

24 A. Well, I guess the best answer I can
25 give you is that, no, I did not. I did not object

1 to the deficiency that you are asserting in the
2 indictment because I actually did not believe that
3 it had to be in there. And if I'm wrong about it,
4 I'm wrong. I did not look at this indictment and
5 feel that there was a violation of the process by
6 which a person would have been indicted for this
7 offense. You know, the only physical remains at
8 the time of the arrest at the -- let me see when
9 this indictment was. At the time of this
10 indictment, the remains of Ms. Harris, I believe,
11 had not been found. Now, I may stand to be
12 corrected because it was a four-year period. But I
13 believe that this indictment was issued prior to
14 Carman directing or taking law enforcement to the
15 location where her remains had been disposed of.

16 Q. And, Mr. Mauldin, in addition to the
17 majority of the timeline and the manner of the
18 death coming from the codefendant, there were
19 remains that were found almost immediately. And
20 that was the victim's appendages?

21 A. Right.

22 Q. Hands and feet?

23 A. Yes.

24 Q. And were they tested by a toxicologist?

25 A. Yes.

1 Q. And that was a toxicologist provided by
2 the State?

3 A. Yes.

4 Q. And did the report come back and state
5 that she had drugs in her system?

6 A. It did. And, again, I would say I'm
7 just going to have to -- this is just a memory. I
8 can look in that seven-box file there and see if I
9 could actually find that toxicology report. But if
10 I recall correctly, there was trace evidence, some
11 evidence, of drugs that were discovered from the
12 hands and feet.

13 Q. Okay. And from looking at the reports
14 that were provided -- and I don't know if you
15 remember this report, but stop me if this does not
16 sound correct. But they were not able to give an
17 actual amount of the drugs due to the decomposition
18 of the hands and feet, so they were able to
19 identify that there were drugs in her system, but
20 they were not able to give a baseline or an amount.
21 Does that sound accurate to you?

22 A. That's not -- and I can't really say
23 that that's exactly how I remember it. I remember
24 that we were aware of what we, as a group,
25 identified as -- what I think I previously said

1 trace -- there was trace evidence. And by that I
2 meant there was some evidence of drugs in her
3 system, but we did not have an impression that that
4 was any significant amount. Now, if your question
5 is did they say they didn't know the amount, I do
6 not recall that.

7 Q. Okay.

8 A. I don't recall that report that you
9 just referenced.

10 Q. All right. I want to break away a
11 little bit from this portion of the conversation.
12 You've reviewed -- even though you guys had
13 partitioned out portions of action on this case,
14 you reviewed all the discovery. Right? You went
15 through the incident reports, the police reports,
16 any witness statements, as lead counsel on this
17 case?

18 A. When we would receive discovery
19 material, the way it -- the way it would work is
20 that material would generally be delivered to me.
21 I would then identify what area of the case -- for
22 example, I would run a copy of all of the discovery
23 and provide it to the other two counsel so that
24 they could actually go through it and identify --
25 if it was forensics, for example, Mr. MacDougall

1 would pay attention particularly to that. Or if it
2 was specific factual witnesses and so forth,
3 Susannah might pay close attention to that. So the
4 material was received by me, duplicated, provided
5 to cocounsel, and then I would basically pretty
6 much attempt to review everything. It was a lot of
7 material, but I would attempt to review and
8 certainly had my antenna up for anything that
9 related, for example, to the codefendant or
10 something that I knew I was working on
11 specifically.

12 Q. Okay. So what was the overall -- you
13 mentioned this a couple of times in talking with
14 the attorney general. What was the overall trial
15 strategy from your perspective in this case?

16 A. The overall trial strategy was to do
17 all we possibly could to discredit the
18 codefendant's story because, like you mentioned a
19 few moments ago, it was her story that supported
20 the date of the offense. Well, her story was the
21 center of the case. And the discrediting of that
22 witness was critical to any potential success. And
23 the secondary was that what Carman was doing,
24 Clarence was following her. So that -- the
25 strategy was to discredit her to the extent that we

1 could because it just -- quite frankly, her prints
2 basically were all over the case.

3 The motive for sending out the
4 threatening letters. She was the educated one.
5 She was the leader, so to speak. And we wanted to
6 discredit her, and we wanted the jury, at the
7 worst, to accept the fact that Clarence was
8 essentially following her lead, that that was the
9 overall strategy of the case. And I admit, quite
10 frankly, that it was a reach. There was no
11 question about the difference in the two
12 defendants. Carman had received a scholarship to
13 go to college. Clarence had a fifth-grade
14 education, so there was a tremendous difference
15 between the two participants in this offense. And
16 so our strategy was to try to discredit her to the
17 extent possible.

18 Q. So outside -- there were a couple of
19 independent points on the timeline, right, that
20 were corroborated by video or third parties. For
21 instance, the fact that Clarence and Carman did, in
22 fact, go to the library together on Sunday?

23 A. They went to the library more than on a
24 few occasions checking the computer.

25 Q. Okay.

1 A. And then there was information,
2 third-party information, regarding Clarence being
3 at Labor Finders with Mekole.

4 Q. Yes. At Labor Finders with Mekole.
5 But outside of a couple of those independently
6 verifiable instances between April 4th, 2008, and
7 April 7th, 2008, when the State alleges this
8 happened, the rest of it, all of the information
9 that was internal to the trailer, the manner of
10 death, who did what inside the trailer, all that,
11 like you testified to, came from Carman Jenkins.
12 Right?

13 A. You know, all is a pretty encompassing
14 term. I'm not going to deny what you just said,
15 but the case predominantly relied upon the
16 information from Carman. And that's why it was so
17 important for us to discredit her.

18 Q. Okay. So that's what I want to talk
19 about next then. So you testified earlier that the
20 value of calling the family to impeach Carman was
21 not worthwhile. I want to talk to you about that
22 based on the strategy that you just outlined for
23 the trial. So Carman testified that -- Carman
24 testified that Clarence was violent, controlling,
25 and threatening during the trial. Do you remember

1 that?

2 A. Yes.

3 Q. Okay. Would it surprise you that
4 Jameese Gibbs and Shanek Robinson testified today
5 that Carman was the violent one and that Carman was
6 the controlling one. Was that part of your
7 awareness of what their testimony would be prior to
8 the trial in 2012?

9 A. You're saying that a person testified
10 today? I was sequestered, so I don't know what
11 people have said. But someone said today that
12 Carman was the violent one?

13 Q. Yes.

14 A. My cross examination of Carman, I
15 think, speaks for itself in terms of our position
16 about her being aggressive and a violent person.
17 To the extent that that cross-examination could
18 have been, what I would say, enhanced by a member
19 of the family of the codefendant, the measure of
20 that quality would have been pretty tight if that
21 meant, you know -- the sister of Clarence, it's
22 kind of hard to classify her as some third person.
23 She is a member of his family. She's his sister.
24 And so her confirmation that Carman would have been
25 the violent one, I'm really not sure whether that

1 would have risen to the level to warrant then
2 calling her as a witness.

3 Q. Let me back it up. How much did you
4 discuss with Susannah the testimony that Jameese
5 Gibbs and Shanek Robinson would have provided?

6 A. You know, the way that would work and
7 the way I would call recall it working is that when
8 any one of the members of the team came up with
9 information that they thought was relevant to
10 present in the case, they would bring it to the
11 team, and we would discuss what I would describe as
12 pros and cons of any such information. Susannah
13 was communicating with family members and making
14 notes. I'm sure you've read them. You've had
15 access to our file. And so she would have been
16 basically relating to us what she was taking notes
17 about her discussions with those family members.
18 So how we would have measured it would depend
19 directly upon what Susannah told us those witnesses
20 were saying.

21 Q. Okay. So if you were -- and we'll save
22 some of that then. So if you were aware of a
23 testimony from a family member, from Jameese and
24 Myrtle, who is now deceased, or from Shanek that --
25 let me back this up. So Carman testified

1 essentially that Clarence was with her or at the
2 trailer from after work when he got back from Labor
3 Finders on April 4th in 2008 at least until he went
4 back to Labor Finders on Monday, I believe,
5 April 7th of 2008, and that the murder occurred on
6 April 6th, 2008. All right. If you had a witness,
7 including -- I mean, either a real third-party, as
8 you suggest, or a family member that could testify
9 that Clarence was, in fact, not there the entire
10 weekend, would that not have been an important
11 witness to impeach Carman's timeline?

12 A. The information, if I recall, that was
13 given to us was that Clarence was coming and going
14 during that three to four critical days, that he
15 was coming and going. And, you know, he was at the
16 trailer. He was not at the trailer. He was at the
17 trailer. He was not at the trailer. That was the
18 information that was provided to me through
19 Susannah Ross about what this family said. So it
20 was like we had to take what I would have described
21 as somewhat of an imperfect situation and measure
22 the potential effect that it might have. And
23 that's exactly what we found ourselves doing.

24 Q. Okay.

25 A. We were making strategic decisions

1 about what value any particular witness would have
2 been either to discredit Carman or to establish
3 some potential alibi.

4 Q. Okay. So if you had -- so Carman's
5 testimony -- let me just break it down. So
6 Carman's testimony is that Clarence picked up
7 Mekole Harris, right -- picked up Mekole Harris and
8 brought her home around 5:00 PM on Friday
9 April 4th?

10 A. And I'm going to have a hard time
11 knowing which day was which. But, yes, the
12 testimony was that Clarence had been at Labor
13 Finders more than once with Mekole Harris and that
14 at a particular day leading up to that weekend,
15 Mekole Harris went to Clarence and Carman's
16 trailer.

17 Q. Okay. All right.

18 A. And I do not believe that there was
19 ever any impression that Mekole Harris ever went
20 anywhere else after that.

21 Q. Agreed.

22 A. Right.

23 Q. Agreed. And then that they kept her --
24 this is according to Carman. That Carman's
25 testimony was that they kept her at the trailer.

1 Once she came to the trailer around 5:00 they kept
2 her at the trailer Friday through her murder on
3 Sunday morning.

4 A. That's my recollection, and the
5 testimony, of course, would speak for itself.

6 Q. Okay. And then Carman testified that
7 she and Clarence hung out all day on Saturday while
8 Mekole was in the house. Carman further testified
9 that Clarence did not leave, that Carman was the
10 only one who left to go get burgers and bring them
11 back. Do you remember that testimony?

12 A. I remember her testifying that she
13 left, I do...

14 Q. And if you had a witness that was able
15 to testify that they saw Clarence on Saturday not
16 at the trailer, that would have been valuable
17 testimony?

18 A. Well, if that was what the witness was
19 actually saying, it could have been of value. And,
20 again, the information, if I recall -- and this was
21 information coming to me through cocounsel -- was
22 that this information was a year and a half after
23 the incident, and that this coming -- the
24 description about him coming and going during that
25 weekend was a year and a half. And one of the

1 issues with it, of course, was its reliability. It
2 was -- it did not appear to be very reliable to us
3 in terms of any pinpointing of any information
4 about when he was or wasn't at the trailer.

5 Q. The same information -- when you guys
6 were initially deciding whether or not to put the
7 two sisters, Jamease Gibbs and Shanek Robinson, up
8 as witnesses, it sounds like you decided that they
9 were not a full alibi witness?

10 A. Well, we had -- just like in any -- the
11 evaluation of any witness, we had to decide the
12 value of whatever the witness is going to testify
13 to. We had to decide exactly what kind of posture
14 that would put the defense in if, in fact, we
15 decided to present such what I would call imperfect
16 information. That sometime during that weekend, he
17 may have been there; he may not have been there.
18 And I'll give you a perfect example. I can't
19 remember off the top of my head which one of the
20 sisters it was, but one of the sisters said that
21 she went to the trailer Saturday morning and
22 knocked on the door to get money for Clarence and
23 Carman's children. And this was -- the children
24 were staying over at the -- at Myrtle's house who
25 was the mother. This sister went to the residence

1 to attempt to get money from Clarence and Carman.
2 And it simply would not have made any sense for
3 that sister to then say Clarence wasn't over there.
4 This was my method of evaluating it. It wouldn't
5 make sense for her to say I went over there to get
6 money to help with the children if Clarence was
7 already over there with the children. That would
8 not make any sense, so our concern was that the
9 credibility of our case would have gone down the
10 drain. And that's -- you know, I had to make a
11 judgment call. I had to do the best I could with
12 what I had, and I just simply had to make that
13 call. And that, the information about going over
14 that Saturday morning, that was information that
15 Susannah related to me. But that was also taken
16 into account when a year and a half later there's
17 all of a sudden he was staying at mom's house.
18 That just did not measure up.

19 Q. Okay. So you communicated a lot with
20 Susannah about this case via email?

21 A. Pardon?

22 Q. You communicated between the attorneys
23 a lot via email?

24 A. Absolutely. Well -- and I would say --
25 I don't know that I would say I communicated a lot

1 by email. You know, in cases like we had, we
2 prefer to be communicating in person or by phone.

3 Q. Okay. You guys did communicate some
4 via email?

5 A. Uh-huh (affirmative).

6 Q. Maybe I should add a qualifier there.
7 It looks like you guys became aware at the very
8 least, according to the documents that are in your
9 file, that you had witnesses that said that the
10 client was with his girls at Jameese's all weekend
11 as early as, it looks like, mid 2009. Does that
12 sound right? This would have happened in '08.

13 A. If I could see -- I can't -- if you
14 could show me what you're asking me about if you
15 don't mind.

16 MR. SMITH: I would request a copy too.
17 I'm not sure what this is. I don't have a copy of
18 that.

19 MS. HENRY: Sure.

20 MR. SMITH: Is there any way we can get
21 a copy made?

22 THE COURT: Are you moving to put it
23 into evidence?

24 MS. HENRY: No, Your Honor.

25 MR. SMITH: He's still being questioned

1 about it.

2 MS. HENRY: He's refreshing his own
3 memory at his request.

4 THE COURT: He asked her to refresh his
5 recollection, so -- you can look at it, but she's
6 not putting it into evidence. She's just
7 refreshing his recollection.

8 MR. SMITH: I think I still would like
9 a copy because it could be relevant to questions I
10 could ask him on recross [sic].

11 THE COURT: Is that in the file?

12 MS. HENRY: Yes, Your Honor.

13 THE COURT: It's in the file. I'm not
14 going to stop here to get a copy. You can refresh
15 his recollection with it.

16 BY MS. HENRY:

17 Q. Mr. Mauldin, do you feel refreshed, or
18 do you need me to hand it back up?

19 A. No. I haven't -- you're asking me
20 about communications between me and the cocounsel.

21 Q. Yes, sir.

22 A. And I would have to actually know a
23 little more about it before I can be responsive to
24 whatever you're asking.

25 Q. Okay. Will taking a look at the

1 communication I'm referencing help refresh your
2 memory?

3 A. Yeah, that would be fine. I don't know
4 whether I remember.

5 Q. That's okay. Either you do or you
6 don't.

7 A. (Reviews document.) Okay. Just having
8 looked at that document you handed me, it is -- it
9 appears to be a document created by Ms. Ross. It
10 is her handwriting, so I don't have any
11 recollection of that document.

12 Q. Okay. Well, let's move on. Do you
13 remember receiving copies of affidavits that were
14 collected from Myrtle Gibbs and Jamese Gibbs on
15 September 17th, 2009, by your office?

16 A. I remember when asked about that by the
17 attorney general. I went into the file and saw two
18 one-page affidavits signed by those people.

19 Q. All right. And then do you remember
20 sending communication to Robert Ariail, to Bob
21 Ariail, April 1st of 2010 related to the Jenkins
22 case?

23 A. Do I remember sending -- was it
24 correspondence?

25 Q. Correspondence. It's a two-page letter

1 from Bob Ariail to you. Would taking a look at it
2 help refresh your memory?

3 A. Yes. (Reviews document) I remember --
4 I remember the context in which this communication
5 was prepared by me and sent to the solicitor.

6 Q. Okay.

7 A. And there was an attempt -- this was
8 when the death penalty continued to be on the
9 table, and we had a conversation about providing
10 what I would describe as a supporting position by
11 us in an effort to get the prosecutor to not seek
12 the death penalty and try the case as a noncapital
13 murder. That was the context. And the information
14 provided in that letter if you -- I believe there
15 was reference to the rules that it would remain
16 confidential, that it was not going to be then used
17 against Mr. Jenkins in any trial. It was kind of
18 like -- it was almost like a settlement proposal.
19 It was a negotiated kind of a settlement type
20 proposal.

21 Q. And I think you're very clear about
22 that at the beginning of the letter.

23 A. Yes. I tried to be.

24 Q. Yes. What I wanted to ask you about is
25 other portions of the letter.

1 A. Okay.

2 Q. In the letter, you reference that mid
3 March 2008 Clarence Jenkins was spending the
4 majority of time at his mother's and sister's house
5 due to marital difficulties.

6 A. That's right.

7 Q. Does that sound accurate?

8 A. That's what I said.

9 Q. Okay. So it sounds like, at least by
10 April 1st, 2010, right, that your understanding of
11 what happened in the case was that Clarence was
12 spending his time and was living with Myrtle and
13 James?

14 A. No, I did not. I'm sorry. That really
15 was not what I understood to be the case.

16 Q. So Clarence Jenkins was spending the
17 majority of time at his mother and sister's house
18 due to marital difficulties does not track at all
19 with --

20 A. That was not -- what you just read is
21 what I sent to the solicitor. In the month prior
22 to the homicide, that they were having marital
23 difficulties and that Clarence was spending a good
24 bit of his time at his mother and sister's house,
25 but I don't think I was trying to indicate that he

1 was living there because my understanding was that
2 they really were living together but he was using
3 the mother, his mother's house, as essentially a
4 place to get away from Carman because of problems.
5 So he was back and forth between these two
6 residences. And they're -- they're not a long way
7 apart. They're both in Greenville, so it's easily
8 a back-and-forth short trip.

9 Q. Okay. And as part of the letter, too,
10 you also said that Clarence didn't even know about
11 Mekole's death until Carman Jenkins picked him up
12 at his sister Jamesese's house and drove him over to
13 the trailer. Does that sound right?

14 A. Well, I'll have to see the --

15 MR. SMITH: Your Honor, I think I'm
16 going to object under the best evidence rule.
17 Since so much of this letter is getting quoted, if
18 it be offered into evidence so we can consider the
19 whole context of the letter.

20 THE COURT: Is your issue as to what's
21 in the letter, because that's where the best
22 evidence rule comes in?

23 MR. SMITH: Or the rule of completeness
24 that if we're going to talk about --

25 THE COURT: That's a different rule.

1 The rule of completeness and the rule of best
2 evidence rule is different. The best evidence rule
3 applies if there's an issue as to the nature of the
4 writing or the question of whether or not what's in
5 the document is at issue. And I don't hear that as
6 an issue here, so the best evidence rule doesn't
7 necessarily come into play.

8 MR. SMITH: I misstated the rule.

9 THE COURT: I see. The doctrine of
10 completeness requires that if a part is admitted
11 into evidence, that the rest of it, and to get a
12 context, is admitted. So is that an issue here?

13 MR. SMITH: It is, Your Honor.

14 THE COURT: What is the issue of
15 completeness with this?

16 MR. SMITH: We're quoting from parts of
17 the letter, and I think the context of the whole
18 letter, since there's a purpose to this letter, it
19 could be relevant to give me context.

20 THE COURT: It can be accomplished in
21 two ways. One, it can be accomplished on redirect.
22 He can read the rest of it or we can have
23 Ms. Henry.

24 How long is the letter?

25 MR. SMITH: It's a page and a half.

1 And I'm not asking him necessarily about whether or
2 not he sent this to Bob Ariail. We've already
3 establish that. I'm asking him if this was his
4 understanding of the trial at this time, April --
5 like at the time that he sent this to Bob Ariail,
6 April 1st, 2010.

7 THE COURT: So you're not asking him to
8 read it; you're just asking him that question?

9 MS. HENRY: Yes.

10 THE COURT: All right. You can ask the
11 question.

12 And, Mr. Mauldin, you can answer that.
13 I don't think she's leaving anything out. She's
14 just asking him if he sent that to Mr. Ariail.

15 Correct?

16 MS. HENRY: Yes, sir.

17 BY MS. HENRY:

18 Q. All right. Moving on. So at the time
19 that you --

20 THE COURT: Let me ask you real quick,
21 how much longer on cross? We're going to end the
22 day here, but how much longer?

23 MS. HENRY: Not long. Not long, Your
24 Honor.

25 THE COURT: All right. This will be

1 the last one. We're going to go into tomorrow, so
2 this will be the last witness for today.

3 BY MS. HENRY:

4 Q. All right. Mr. Mauldin, just a couple
5 of other quick questions. On March 26, 2012, did
6 you send -- do you remember as a group sending
7 three alibi witness names in response to the
8 State's request for disclosure of an alibi defense?

9 A. I did not remember that until I was
10 subpoenaed and went through the file to be
11 responsive to the questions. I do recall seeing --
12 if I remember correctly, the way this developed was
13 according to Rule 5, if we we're going to declare
14 either alibi or mental illness, we had to give
15 notice. We did. The State then asked for more
16 particular information, and we provided, I think,
17 what you're referring to. So that's -- I do recall
18 that.

19 Q. And did you list James Gibbs, Shanek
20 Gibbs [sic], and Myrtle Gibbs as your alibi
21 witnesses?

22 A. Well, I can't -- I do not have a
23 recollection of who was listed on that document.

24 Q. Okay. So you don't remember which
25 alibi witnesses you provided to the State?

1 A. Well...

2 Q. I'm sorry. Am I asking --

3 A. You're asking me to testify under oath
4 what is on a document that was produced ten years
5 ago, so I'm just going to say if you would allow me
6 to see the document you're referring to, I'll be
7 glad to tell you whose names are on it.

8 Q. Well, that's my fault. Do you remember
9 who you submitted to the State as alibi witnesses
10 for the Clarence Jenkins' case?

11 A. I can't say that I do.

12 Q. Okay.

13 A. I mean, I think that the mother was
14 still living at the time, and I believe she was on
15 that list. I think that the sisters were likely to
16 be on that list. Whether or not there was any
17 other additional -- we had to -- we had to keep our
18 options as open as possible. And if we didn't
19 provide them a name and then attempted to use
20 someone at trial, we would have not been allowed to
21 do that. So I do believe that the mother and the
22 two sisters' names would have been on that response
23 we sent to the State, but I can't testify that
24 that's the only thing on there.

25 Q. Okay. And then were those three names

1 also on the names that you passed up to the judge
2 as part of your witness list at the trial?

3 A. Well, I'll only answer it this way. I
4 do not recall the names that were on a witness
5 list, if any. I just do not have an independent
6 recollection of the document. I would be glad to
7 look at any document and confirm its authenticity,
8 but I don't know what -- whether we gave a list and
9 if we did, what names were on it.

10 Q. Okay.

11 MS. HENRY: One moment, Your Honor.

12 Okay. I don't have any other questions.

13 Thank you, Mr. Mauldin.

14 THE COURT: All right. Any redirect?

15 MR. SMITH: I'll try to limit it to
16 three, Your Honor.

17 RE CROSS EXAMINATION

18 BY MR. SMITH:

19 Q. Mr. Mauldin, you testified a few
20 minutes ago about hearing that one of the sisters
21 was knocking on Mr. Jenkins' door?

22 A. Right.

23 Q. Do you know who told you that?

24 A. Yeah. Susannah Ross told me that.

25 Susannah had an opportunity to speak with the

1 sisters, and one of the things that she told me was
2 that one of the two sisters -- and I can't remember
3 which one -- had gone over that Saturday of that
4 weekend and knocked on the door to get money from
5 Clarence and Carman for their children who were
6 staying over at her mother's house.

7 Q. Okay. Is it unusual for defense
8 lawyers to put people on a witness list that they
9 end up not calling at trial?

10 A. Well, that's not unusual at all.

11 Q. Okay. And then referring to the
12 communications you had with Solicitor Ariail, did
13 you go about presenting your case in such a way to
14 Solicitor Ariail so as to try to convince him to
15 withdraw the death notice?

16 A. Absolutely. The context was, quite
17 frankly, that this case was definitely going to be
18 a trial. It was going to be tried either capital
19 or noncapital. We were making a full throttle
20 effort to get the prosecution to pull the capital,
21 and we would then prepare to try the case as a
22 noncapital murder, which is, in fact, what ended up
23 happening. We were incredibly -- quite frankly
24 incredibly pleased that we were able to accomplish
25 that. We felt like that was a real victory to some

1 extent. So the communication that was referred to
2 a few moments ago, I was doing everything I could
3 possibly do to try to get Mr. Ariail to see it my
4 way, so to speak.

5 Q. Okay. Putting the best picture on your
6 case that you could. Is that a good way to put it?

7 A. Well, yeah. I mean, the case was
8 horrible, and it was really kind of hard to put any
9 good face on it. I just was expressing to
10 Mr. Ariail, give him an opportunity to consider
11 every factor before we went into the trauma of a
12 capital trial.

13 Q. Thank you.

14 THE COURT: Any recross?

15 MS. HENRY: No, your Honor.

16 THE COURT: All right. Thank you,
17 Mr. Mauldin.

18 We are going to adjourn for the day,
19 and we'll start at 8:45 with the WebEx witness, and
20 then we will go to whoever the next witnesses are.
21 That means that the hearing set for tomorrow will
22 be -- will not start until after this one. Maybe
23 11 o'clock. Maybe later. I don't know. It just
24 depends on when this one gets finished. And
25 considering how it's gone today, I don't know when

1 this is going to get finished tomorrow morning. So
2 that hearing, the next thing after this, we'll
3 just...

4 If you would, Mr. Smith, let the
5 parties know that we'll give them an 11 o'clock
6 time, but that may or may not be the case.

7 So we'll resume here -- I mean adjourn
8 here until 8:45 in the morning.

9 MS. HENRY: Thank you, Your Honor.

10 THE COURT: Any objection to
11 Mr. Mauldin being excused?

12 MS. HENRY: No, your Honor.

13 THE COURT: You are excused. Thank
14 you, Mr. Mauldin.

15 MR. SMITH: Can we get an order to have
16 Mr. Jenkins --

17 THE COURT: We've got it signed, and
18 the deputy has that right there.

19 (Court adjourned for the day at
20 approximately 6:11 PM.)

21 **JANUARY 31, 2023**

22 THE COURT: All right. Are we ready to
23 proceed? I think the next witness is by WebEx. Is
24 that right?

25 MR. SMITH: That's right.

1 THE COURT: All right. Are we ready to
2 proceed?

3 MR. SMITH: We are, Your Honor.

4 THE COURT: All right.

5 MR. SMITH: And he can hear me through
6 that microphone. Is that right?

7 THE COURT: He should be able to. Just
8 try it out. Is he on yet? There we go.

9 All right. Are you Mr. MacDougall?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Can you hear us
12 pretty good? Can you hear us good?

13 THE WITNESS: I can, Your Honor, yes.

14 THE COURT: All right. Good deal.
15 Mr. Smith?

16 MR. SMITH: Is it okay if I remain
17 seated, Your Honor?

18 THE COURT: Yeah, with the microphone,
19 that will be fine.

20 MR. SMITH: Good morning,
21 Mr. MacDougall. Can you hear me?

22 THE WITNESS: Good morning. Yes, I
23 can.

24 MR. SMITH: I'd ask that Mr. MacDougall
25 be sworn.

1 THE COURT: If you would, raise your
2 right hand.

3 MARK MACDOUGALL,

4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. Mr. MacDougall, can you tell me a
8 little bit about your education and legal
9 experience?

10 A. Sure. I graduated from Notre Dame in
11 1978 and received an MBA from Boston University in
12 1979. I then went to law school at George
13 Washington University and graduated in 1985. Went
14 to work for a law firm for four years, then joined
15 the Department of Justice in the criminal division
16 for several years where I prosecuted bank fraud
17 cases. I returned to this law firm, Akin Gump, in
18 1994 where I have been -- 1993, I'm sorry -- where
19 I have continued to practice ever since. I became
20 a partner in 1995 and primarily practice
21 white-collar criminal defense law.

22 Q. How did you come to be involved in
23 Clarence Jenkins' underlying criminal case?

24 A. I started working with a lawyer named
25 Bill Nettles from Columbia in 1999 on another death

1 penalty case. I did two more cases with Bill, one
2 of which involved a case in Greenville in which
3 John Mauldin was the public defender, so I got to
4 know John. And Clarence Jenkins' case was the
5 fourth case that we tried pro bono with the lawyers
6 in South Carolina.

7 Q. Okay. How did you share the
8 responsibility of the representation with the other
9 lawyers?

10 A. It's collegial. When we've done these
11 cases in South Carolina, and since then elsewhere,
12 we work with local public defenders or
13 court-appointed lawyers. And, you know, there's a
14 discussion about how we're going to proceed at
15 trial. One of the things the firm brings to the
16 case is resources, research, and writing and that
17 sort of thing, so we do a great deal of that. I
18 usually bring a couple of associates who may argue
19 motions, but it's a collegial discussion. We work
20 it out as any lawyers would in a case.

21 Q. Okay. Did you have a conversation with
22 John Mauldin and Susannah Ross about dividing up
23 responsibilities in Mr. Jenkins' case?

24 A. I'm sure we had several of those
25 conversations, many of them. I had already tried a

1 case with John. Knew him well. I have great
2 respect for him. I enjoyed working with him, so
3 I'm sure we have had multiple conversations as we
4 did with Ms. Ross.

5 Q. Okay. How long did you work for
6 Mr. Jenkins with the understanding that he was
7 going to have a capital trial?

8 A. I don't know how long it was. John
9 called us, I believe, shortly after the death
10 notice was served. We began looking at the file.
11 I know Mr. Mauldin persuaded or negotiated a
12 withdrawal of the death notice by the State at
13 which point the case was no longer, obviously, a
14 death penalty case but remained a capital trial.
15 John asked us if we'd continue notwithstanding the
16 fact that there was no longer risk of the death
17 penalty, and we agreed and moved on. But I can't
18 tell you how long that period was. It was
19 certainly a matter of months. It may have been
20 more than a year.

21 Q. Generally, what sort of work do you
22 remember being done in this case in anticipation of
23 a death penalty trial?

24 A. Extensive review of the record, the
25 discovery produced by the State. Now, if it's

1 anticipation of a death penalty trial, my
2 recollection is that -- and I don't have the
3 timeframe, but my recollection is that the death
4 notice was withdrawn fairly early on. In other
5 words, it was quite a bit of time between the
6 withdrawal of the death notice and trial.

7 So we did what you do when you prepare
8 a case. We ultimately talked to witnesses to the
9 extent they were available, reviewed the file, and
10 collaborated with Ms. Ross and Mr. Mauldin in
11 preparation to try the case.

12 Q. Okay. So did you meet with Mr. Jenkins
13 personally?

14 A. Yes. I don't have a specific
15 recollection of meeting him in the jail. I'm sure
16 we did. I just can't tell you what day that was or
17 what the circumstances were.

18 Q. Okay. Did you meet with potential
19 witnesses personally?

20 A. Again, most of what I did at trial was
21 -- I think the record reflects this -- was forensic
22 cross-examination of police witnesses and SLED
23 witnesses and so forth. So I don't know -- and I'm
24 quite certain I didn't meet with him in advance of
25 trial just because of the circumstances of their

1 job and my job. So I don't have a specific
2 recollection of meeting with a witness, but given
3 the scope of what I did at trial and the focus on
4 the forensic and police witnesses, that wouldn't be
5 unusual.

6 Q. Was it your understanding that either
7 Susannah Ross or John Mauldin would be more
8 responsible for dealing with potential witnesses?

9 A. Well, the critical witness was Carman
10 Jenkins, of course. And from the outset, John was
11 going to conduct that cross-examination. She was
12 in detention as well. Ms. Ross, I believe -- and,
13 again, it's been ten years, but I believe Ms. Ross
14 was focused on the examination, cross-examination,
15 of Grace Davis. You know, beyond that, most of the
16 witnesses were, you know, forensics or, as I said,
17 police or lay witnesses.

18 Q. Okay. Did you have a discussion with
19 Ms. Ross and Mr. Mauldin about the possibility of
20 pursuing an alibi defense at trial?

21 A. Yes. My recollection, again, with the
22 passage of time is that Mr. Jenkins had witnesses
23 who were in detention with him, one or more, who
24 were willing to testify that he was somewhere other
25 than Greenville when the crime was committed. We

1 determined -- I did anyway. I don't speak for
2 anybody else. My conclusion was that these were
3 not credible witnesses.

4 Let me just expand on that for a
5 minute. You know, when we try a case, the goal is
6 often to provide, usually and should be, to provide
7 an alternative narrative consistent with the
8 evidence. And the alternative narrative strategy
9 that we decided on was that Carman Jenkins was
10 primarily responsible for the homicide and the
11 associated crimes. And so trying to introduce
12 witnesses who perhaps were prepare to testify that
13 Mr. Jenkins was somewhere else was inconsistent
14 with that strategy.

15 Q. Okay.

16 A. And then I would quell that in the fact
17 that we did -- we concluded, at least to the extent
18 that I recall the recollection, that those
19 witnesses did not have credibility.

20 Q. Do you remember the reasons that you
21 felt those witnesses were not credible?

22 A. I think the nature -- again, it's been
23 ten years, but the nature of their proffer, the
24 evidence that contradicted what we understood they
25 might be willing to say, he was in another state.

1 In particular there was video evidence of Carman
2 Jenkins and Clarence Jenkins walking into the
3 library at the time the computers there were used.
4 So to have introduced witnesses, even if they were
5 prepared to testify under oath that Mr. Jenkins was
6 not in Greenville or was not in South Carolina at
7 the time, would have been a lie by fairly
8 compelling evidence that he was. So in order to
9 maintain credibility and consistent with our
10 strategy, I think that was the decision. I don't
11 speak for John Mauldin or Susannah Ross. They may
12 have other color on that, but that's my
13 recollection.

14 Q. Okay. Do you remember discussions
15 about whether Mr. Jenkins would testify?

16 A. Yes. That's always a possibility.
17 And, you know, the decision is ultimately the
18 defendant's. I can tell you my recollection was
19 that it would be -- he would have a very difficult
20 time testifying. The cross-examination would be
21 difficult to sustain consistent with our strategy
22 of emphasizing Carman Jenkins' role in the offense.

23 Q. Okay. So I'd like to ask you questions
24 about your opening statement. At one point in your
25 opening statement, you referred to Mr. Jenkins as

1 an unconventional person who was given to
2 fantastical stories. Can you tell me what you
3 meant by that?

4 A. Sure. As you know, an opening
5 statement is intended to provide a preview of what
6 the evidence will show. And it's also from a
7 defense perspective useful, if possible, to dilute
8 or address some of the more damaging evidence the
9 jury is going to hear.

10 There was discovery that clearly
11 suggested to was that one of the things, for
12 example, that Mr. Jenkins had told people was that
13 he was part of some organization. I think the
14 testimony was that the organization was watching
15 the house, and the organization was involved in all
16 kinds of activities. That was, as far as we could
17 tell, completely made up, and there was no gang or
18 organized crime or Mafia that he was associated
19 with. And the jury was going to hear that. And
20 the aim -- and if you put that statement in the
21 context of the opening statement, the aim was to
22 paint Mr. Jenkins as someone who was not a
23 dangerous person. And to the extent the jury was
24 going to hear evidence that he claimed to be part
25 of some ominous organization, that that was just

1 not true. That he was someone who, you know, was
2 given to making statements like that which were
3 harmless. And the point of that portion of the
4 opening statement was that Clarence Jenkins is
5 harmless. Clarence Jenkins has never had a violent
6 crime charged. His principal crime was driving
7 without a license, and he does that a lot. And
8 that sometimes he says things that are just, you
9 know, innocuous but also not believable. I think
10 the point of that statement, the reference to
11 fantastical statements, is that he was a defendant
12 who was not part of some dark organized crime group
13 but rather was just someone who had limited
14 capabilities and made things up.

15 Q. Did Mr. Jenkins do or say anything
16 during the course of your representation of him
17 that made you concerned about what he might say if
18 he were on the stand?

19 A. I don't recall any in particular. We
20 were concerned about his cross-examination. I was
21 concerned about his cross-examination. I think
22 everyone was should he choose to testify.

23 Q. Okay. Did you discuss your opening
24 statement with Mr. Mauldin or Ms. Ross ahead of
25 time?

1 A. I'm sure I did. I don't have a
2 specific recollection of any such conversation, but
3 I'm sure I would have discussed it with them just
4 as Mr. Mauldin discussed his closing argument with
5 us.

6 Q. Okay. And I asked you just a little
7 earlier about potential witnesses. Were you -- and
8 I heard you testify also that you felt that Carman
9 Jenkins' testimony was critical to the State's
10 case. Were you aware of any potential witnesses
11 that you felt could have been called to credibly
12 impeach her version of events?

13 A. Any witnesses that could impeach?
14 Well, sure. I mean -- well, by impeach, I think
15 further implicate her in the crime. Her testimony,
16 as I recall it, and her cooperation with the State
17 was geared toward implicating Mr. Jenkins much more
18 actively in the homicide and the kidnapping than we
19 believed was appropriate. So, for example, you
20 know, Grace Davis would testify that the van
21 belonged to Carman and the trailer belong to Carman
22 and the computer belonged to -- so to the extent
23 that impeaches her testimony by making her a more
24 dominant figure, I suppose it does. But, you know,
25 Mr. Mauldin's cross examination of her, as I recall

1 it, was focused on the inconsistencies in her
2 story.

3 Q. Okay. Can you tell me why the defense
4 did not put Mr. Jenkins' sisters on the stand at
5 trial, or his mother?

6 A. I don't recall. That was not -- as I
7 said, most of my cross-examination, as I remember,
8 was focused on SLED and police witnesses. So there
9 may well have been those discussions. I just -- I
10 wasn't part of them or I don't recall.

11 Q. Okay. Are you aware of anyone named
12 Ronnie Mitchell who allegedly had information about
13 Ms. Harris' location during the timeframe at issue
14 with the kidnapping indictment?

15 A. You know, I have a recollection that
16 there was some person who was willing to say that
17 the victim -- that she'd seen the victim during the
18 time that the State alleged Mekole Harris was being
19 held. Beyond that, I don't have a specific
20 recollection of a name or what she might have said.

21 Q. Okay. So using the pronouns there, I
22 take it that that person you're referring to was a
23 female?

24 A. Yes, but I could be wrong about that.

25 Q. Okay.

1 A. I could -- again, a lot of time has
2 gone by, and any of those witnesses were not my
3 primary responsibility in the case.

4 Q. Okay. The final topic I'd like to ask
5 you about would be the indictments. Did you see
6 any basis upon which the indictments could be
7 quashed for lack of specificity about the cause of
8 death or the fact that it was amended during the
9 course of trial?

10 A. No. I think the circumstances of the
11 homicide, I understood, made a determination of
12 cause of death problematic. I don't have a
13 recollection of it being amended during the course
14 of trial. And I should tell you I'm not a South
15 Carolina lawyer, so, I mean, I've tried cases all
16 over the country and several in South Carolina.
17 But as far as defects that might be peculiar to
18 South Carolina law, I rely on the local public
19 defenders to analyze that. But I don't recall an
20 amendment in the course of trial.

21 Q. Okay. Do you feel that you had
22 adequate notice from the indictment and discovery
23 to defend Mr. Jenkins at trial?

24 A. Yes.

25 Q. Okay. All right. No more questions.

1 Thank you, Mr. MacDougall.

2 THE COURT: All right.

3 Cross-examination?

4 MS. HENRY: Thank you, Your Honor.

5 Just one moment. No questions for Mr. MacDougall.

6 THE COURT: All right. Thank you,
7 Mr. MacDougall. I appreciate you being able to
8 join us here today. Thank you.

9 THE WITNESS: Thank you. May I be
10 excused, Your Honor?

11 THE COURT: You are excused.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Next witness.

14 MR. SMITH: Your Honor, that will be
15 Susannah Ross. May I take a moment to get in touch
16 with her.

17 THE COURT: Yes, you may.

18 MR. SMITH: Your Honor, she's on her
19 way here. She says she's one mile away.

20 THE COURT: Okay.

21 MR. SMITH: Is it all right if we take
22 a brief break?

23 THE COURT: Yeah, that will be fine.
24 Yeah, we'll take a brief recess.

25 (A recess transpired.)

1 THE COURT: All right. I see Ms. Ross
2 is here. Mr. Smith, call your next witness.

3 MR. SMITH: Yes, Your Honor. I call
4 Ms. Ross.

5 (The witness was sworn.)

6 THE WITNESS: I'd like to go ahead and
7 get my file because I know I'll need it.

8 SUSANNAH C. ROSS,

9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q. Can you tell me when you were admitted
13 to practice in South Carolina?

14 A. Gosh, '95 or '96. The end of '95.

15 Q. And can you give us a brief summary of
16 your legal experience?

17 A. I've always -- I worked at -- I've
18 always done criminal defense. I worked at the
19 public defender's office for six years and then
20 part time for probably another 10 or 15. And then
21 I'm in my own law practice.

22 Q. How did you come to be involved in
23 Mr. Jenkins' criminal case?

24 A. John Mauldin asked me to second chair,
25 and I was appointed to do that.

1 Q. Okay. How did the responsibility for
2 the representation get divvied up between the
3 lawyers?

4 A. Well, John Mauldin was lead counsel. I
5 was second chair. I did a lot of going down to the
6 jail back and forth to visit with Mr. Jenkins, so
7 that was sort of my job. I worked with social
8 history. Aiken Gump sort of volunteered to be
9 involved in the case when it was a death penalty
10 case, so I really let them have it. With that, we
11 -- he had a number of assistants. There was just a
12 whole team that they had, so I just divvied stuff
13 up to them to take a look at this, take a look at
14 this, and limit my capacity to really to social
15 history and just visiting, making jail visits.

16 Q. Okay. And by he, you're referring to
17 Mark MacDougall?

18 A. Yes.

19 Q. Okay. What was your understanding of
20 his responsibility at trial?

21 A. He did opening and, I think, science
22 cross. And, again, this was -- I did cross on just
23 a few lay witnesses. And I can't remember. I
24 believe Mr. Mauldin had Carman.

25 Q. Okay. Was there any particular reason

1 that you took the issues dealing with Mr. Jenkins?

2 A. I had gone -- I had done a lot of the
3 social history stuff and was just fairly familiar
4 with it.

5 Q. Okay. What sorts of work did you do in
6 anticipation of trial while you still believed it
7 was going to be a death penalty trial?

8 A. We had probably biweekly team meetings.
9 I can't even remember. This was over ten years
10 ago. But we had team meetings quite often. I met
11 with Mr. Mauldin. We discussed it often. A lot of
12 jail visits. I met with Clarence's family members
13 along with Tracy and Jan Vogelsang. So we would go
14 talk to family members. Went to the scene. Just
15 did a general investigation. We did a battery of
16 mental health tests on Mr. Jenkins to see if there
17 were any issues there. We were really trying to
18 work a lot on, you know, the penalty phase if it
19 happened.

20 At the same time, there was a change of
21 incoming solicitors, so we were making every effort
22 to make sure to try not -- to get this to go not as
23 a death penalty case. So that was a real victory
24 for us. We spent hours and hours, you know, me
25 meeting with Betty just trying to encourage her --

1 Betty Strong -- to let's just take this as a
2 regular case that's not a death penalty case
3 because we've got so many mental health issues, and
4 they were -- for the longest time, there were
5 issues of -- there were just evidentiary issues and
6 problems that they potentially had that I was
7 trying to make the most of to make this case not be
8 a death penalty case.

9 Q. Okay. You referred to Betty Strong.
10 Was she a prosecutor in the solicitor's office?

11 A. Yes.

12 Q. Okay. How many times did you meet with
13 Mr. Jenkins personally?

14 A. I don't know. And I thought I had time
15 sheets somewhere, but I can't find them. I tried
16 to go biweekly at the least, so a couple times a
17 month. I'm sure I missed some time over the three
18 or four years. I can't even remember his
19 representation.

20 Q. Okay. So maybe twice a month for three
21 to four years with some exceptions?

22 A. Uh-huh (affirmative).

23 Q. Okay. Did you meet with Mr. Jenkins --
24 when you met with Mr. Jenkins, did either
25 Mr. Mauldin or Mr. MacDougall go with you.

1 A. No, usually not. Sometimes they did.

2 Q. Okay. Did you meet with Mr. Jenkins'
3 sisters personally?

4 A. One sister I remember for sure. I
5 don't know about the other sister.

6 Q. Okay. So the sister you met, was that
7 Jamese Gibbs?

8 A. Yes. Tracy and I and Jan went to her
9 house and met with her.

10 MS. HENRY: I'm sorry. I missed that.

11 THE WITNESS: Tracy and I went to her
12 house and met with Jamese Gibbs.

13 BY MR. SMITH:

14 Q. And who is Tracy?

15 A. Tracy was the investigator on the case.

16 Q. Okay.

17 A. Tracy Burnett.

18 Q. She was working for the public
19 defender's office?

20 A. Yes.

21 Q. Which sister did you meet with?

22 A. I think it was Jamese.

23 Q. Did you meet with his other sister,
24 Ms. Robinson?

25 A. I probably did, but I really don't

1 remember specifically.

2 Q. Okay. How about Mr. Jenkins' mother?

3 A. Yes, I met with her. I believe Myrtle
4 was her name.

5 Q. Okay. Did you meet with his family
6 collectively, or did you just sort of meet with
7 them one at a time?

8 A. I think I went over to Jameese's house
9 once or twice, and I know -- I'm pretty sure Myrtle
10 was there when I went there. Again, this was a
11 long time ago, like 13 years ago, I think, when I
12 did that, so I could be wrong. But I do remember
13 going to her house. I'm just not sure exactly who
14 was there.

15 Q. Okay. Did Mr. Jenkins' mother or
16 either of his two sisters ever give you information
17 that you believe supported an alibi defense?

18 A. At one point -- not really. So when I
19 went over right after the incident and I went over
20 and met with them, there was no he has an alibi.
21 He couldn't have done this. That was not a topic.
22 They had mentioned that he had been staying with
23 them. Eventually -- and I believe this was efforts
24 to pursue a non death penalty case -- I did get
25 affidavits from them saying that he lived with

1 them, but -- and I think that's true, but it was
2 certainly not what I would call an alibi.

3 Q. Okay. So I guess a different part to
4 that -- and we'll come back to some of this. But
5 when you said that they told you that he was
6 staying with them, did you take that to mean that
7 he was living there or that he would visit
8 sometimes?

9 A. I thought visit sometimes. They didn't
10 show me, like, his room there or anything like
11 that.

12 Q. Okay. Did you ask them for information
13 about where he had been on the critical dates in
14 April, or were you sort of waiting on them to offer
15 that information?

16 A. I can't remember specifically. I know
17 I got -- I found a file. I had files on different
18 people. And I'm looking at the file on James
19 Gibbs who I believe is his sister. And I'm looking
20 at my notes. And they -- they do say -- they say:
21 Clarence was in and out. They say -- Myrtle says:
22 Carman and Clarence left with the children at noon.
23 Let's see. She said: Clarence was working.
24 Carman was working at Sports Authority but quit.
25 She said something about working and taking baby.

1 Did go over to the house on Saturday to ask for
2 money for the kids. And something about Melissa
3 may. And she said: The trailer was close to their
4 house.

5 That's what I mean by it's an imperfect
6 alibi. If it's an alibi, why is Jameese going over
7 to the trailer to get money for the kids if
8 Clarence is staying at that house with her where
9 they'd have the money?

10 Q. And the Saturday, is that referring to
11 April 5th, 2008?

12 A. I'm guessing.

13 Q. And are these notes you took while you
14 were meeting with her, or are they contemporaneous
15 notes?

16 A. These are just notes I had at some
17 point when I talked to her. I just put Jameese
18 notes, and then I have sort of a line of
19 questioning that I would have asked her if we put
20 her on the stand. So I prepared her as if she
21 would be a witness but did not anticipate her being
22 a witness.

23 Q. Okay. Did you take that to mean that
24 she did not present a complete alibi for
25 Mr. Jenkins?

1 A. Yes.

2 Q. Okay. What do you remember about what
3 Mr. Jenkins' mother told you?

4 A. I've got that file. She said a lot,
5 and she was kind of all over the place. It was
6 hard to keep up with her a little bit. And I have
7 a lot, for some reason, a lot of -- I think Jan's
8 notes are in her file. I don't think I anticipated
9 her being a witness. So, yeah, I don't have a lot
10 of notes in this file from her. There might be
11 somewhere else, but I just did not have a lot on
12 her.

13 Q. Okay. Did you feel that what she told
14 you would have been helpful for an alibi defense?

15 A. No, not really. Another problem with
16 alibi, if I'd put either of these up, what we had,
17 we had jail letters from people at the jail. And
18 one of them was someone Mesat Klus (phonetic), and
19 another was Wilson -- Wallace Willard. And so what
20 happened, at some point I believe I was discussing
21 with Clarence an alibi defense. And I think the
22 situation -- it was so many years ago, I don't
23 remember for sure. But I think the situation was
24 him saying: I've got an alibi defense, my mother
25 and my sister, and me saying: There's a problem

1 with that because my other witnesses saw you at
2 Labor Finders. You're on video all over the place.
3 You're going back and forth to work. That is an
4 imperfect alibi. It doesn't make it less likely
5 that you're guilty because it was so imperfect.

6 And he said: Well, you know, what
7 would be a perfect alibi? And I said: Like being
8 in Florida for two weeks during the time of the
9 crime. That would be a perfect alibi. You were
10 out of the state. You couldn't have gone and done
11 it. And so then like a couple months later, I get
12 these letters saying, you know: Hey. I'm a friend
13 of Clarence's. He and I were in Florida over this
14 weekend partying and celebrating that I'm now
15 single. And blah, blah, blah. And so I think this
16 was sent to me, but there's also a file where
17 copies were sent to law enforcement. And there was
18 another guy, this Willard guy, and they went and
19 investigated him. And both these people denied
20 writing these letters and had been roommates of
21 Mr. Jenkins. So I felt if we put up an alibi
22 defense, that would open the door and they would
23 immediately come in and say, well, did you know he
24 was in Florida during this time like his roommates
25 at the jail said. So I found that would be a

1 terrible -- you know, alibis aren't great when, you
2 know, Nema (phonic) comes in and says he was with
3 me the whole time. It's not the strongest defense.
4 But then when it has that many holes in it and then
5 opens the door to, you know, letters -- which this
6 whole case involved sending letters. You know,
7 just more sort of forged weird letters, I thought
8 would just be super damaging to the case. Which
9 the trial was going fairly well. You know, the
10 jury had a question. It was a good trial, and I
11 think putting them up with, you know, a bad alibi
12 defense would have killed the case.

13 Q. Okay. So you mentioned the uniqueness
14 of getting letters. That was one of the
15 allegations against Mr. Jenkins was that he and
16 Carman were sending ransom letters through the
17 mail. Right?

18 A. That's correct.

19 Q. So I think I heard you say that law
20 enforcement had these letters from this person
21 about an alibi in Florida. Is that right?

22 A. Yes.

23 Q. Okay. Were you concerned about the
24 possibility that they could do some rebuttal
25 evidence if you were to present an alibi based on

1 that or something else at trial?

2 A. Exactly. I think that would absolutely
3 open the door to where they could ask that question
4 of that witness.

5 Q. Okay. May I see the letter?

6 A. And if they couldn't, I think they
7 could recall -- I mean, they could just recall and
8 put up the evidence in general.

9 MR. SMITH: Your Honor, is it okay if I
10 take a look?

11 THE COURT: Yeah.

12 THE WITNESS: Here's the sort of
13 incident reports about this Wallace Willard.
14 Here's the letter I had.

15 BY MR. SMITH:

16 Q. Which?

17 A. I think one is a photocopy of the
18 other.

19 Q. Okay. Is there any way I could get a
20 copy of this? I'd like to offer it. I don't have
21 a copy myself.

22 A. We could go across the hall and do it.

23 THE COURT: Yeah, we can do it on a
24 break.

25 MR. SMITH: Okay.

1 BY MR. SMITH:

2 Q. And the same with the notes that you
3 have from the interview with Ms. Gibbs.

4 A. And these are just my notes. I mean, I
5 wrote them out ten years ago.

6 Q. Okay. And then is this where it says
7 that he was in and out?

8 A. Yes, it says that somewhere in there.

9 Q. I just want to make sure it's the right
10 thing.

11 A. This one is the working and taking
12 baby. Did go over to house. This one just says
13 Clarence.

14 THE COURT: Can you hear her?

15 THE REPORTER: No, sir.

16 THE COURT: Ms. Ross, please speak up.

17 THE WITNESS: I'm sorry. That's where
18 it says Clarence in and out.

19 MR. SMITH: Okay. So should I wait
20 till the break and deal with that or offer them
21 now?

22 THE COURT: You can go ahead and offer
23 them now, and then we'll make a copy.

24 Any objection?

25 Let counsel see them.

1 MS. HENRY: Okay.

2 THE COURT: All right. Any objection?

3 MS. HENRY: Your Honor, it depends on
4 the purpose he's offering it for. As far as the
5 letter goes, you know, the witness is saying that
6 she received it in the mail from a witness. If
7 it's just to show that she received it and that it
8 was part of their deliberation, then I don't have
9 an objection. But as far as its veracity or its
10 truth or where it's coming from, I mean, I do
11 object if it's for any other purpose than to show
12 that Susannah did receive a letter from some person
13 that stated that what this letter says regarding
14 being in Florida with Clarence.

15 THE COURT: All right. Mr. Smith?

16 MR. SMITH: I'm not offering it for the
17 truth of the matter asserted because obviously I
18 don't believe he was in Florida at the time. I
19 think it goes to show that they had reason to doubt
20 an alibi defense, and this is something they
21 considered.

22 THE COURT: I'll admit it over -- is it
23 one or two letters?

24 MR. SMITH: The letter would be State's
25 Exhibit 2, and the notes would be State's Exhibit

1 3.

2 THE COURT: All right. So State's
3 Exhibit 2 is admitted into evidence over objection.
4 States Exhibit 3 is admitted into evidence over
5 objection.

6 (STATE'S EXHIBIT 2, FLORIDA ALIBI
7 WITNESS LETTER, was offered and admitted into
8 evidence.)

9 (STATE'S EXHIBIT 3, SUSANNAH ROSS
10 NOTES, was offered and admitted into evidence.)

11

12 MR. SMITH: Or 1. I'm sorry.

13 THE COURT: Is it 1?

14 (Off-the-record conference.)

15 BY MR. SMITH:

16 Q. Did Mr. Jenkins himself ever provide
17 you with information you believed would support an
18 alibi defense?

19 A. There was so much information back and
20 forth. I'm sure at some point he did say, you
21 know, I have an alibi. But he said a lot. I mean,
22 there was a lot, you know, going back and forth.
23 Upon our investigation of the case, we did not feel
24 that there was a strong alibi defense. We made a
25 strategic decision not to present an alibi defense

1 because we thought that would be unbelievable and
2 that the State had a lot of evidence that they
3 could make holes in that alibi.

4 Q. Okay. So you said there was a lot
5 going back and forth. When you say a lot, what do
6 you mean by that?

7 A. Well, we were visiting for years and
8 talking about different cases, and Clarence was
9 talking to me about different defenses, different
10 situations. You know, this was so long ago, I had
11 forgotten a lot of this. But then I'm looking at
12 letters I got that were talking about how he was
13 sort of dealing drugs, and, you know, some cartel
14 or someone got in and set him up. This would --
15 there was all kinds of stuff that was bantered
16 around about defenses. And that can happen in a
17 case that gets so old back and forth where what are
18 you talking about for years and years. And I'm
19 trying to address all his concerns and have it in a
20 place where -- certainly in a death penalty case,
21 if you have a situation where you can remove death
22 penalty for the situation, you want the client's
23 trust enough to hope that he will believe you when
24 you advise one way or the other. So that was what
25 the objective was going down there, and he had many

1 different defenses over the years.

2 Q. Okay. So where did he say he was on
3 April 4th, 5th, and 6th?

4 A. I can't remember.

5 Q. Okay. Do you remember him saying that
6 he spent that whole time with his family?

7 A. He probably did at some point.

8 Q. Okay. Do you remember him saying
9 anything that contradicted that?

10 A. Well, you know, when he was saying that
11 he was in Florida, that contradicted that.

12 Q. So he said -- he told you he was in
13 Florida?

14 A. Yes. He was backing up the Florida
15 letter situation.

16 Q. Okay. So you discussed that letter
17 with him, and then he told you he agreed with that?

18 A. You know, it so long ago I don't have a
19 specific recollection of that discussion, but I
20 would have discussed that letter with him. I went
21 and discussed it with the people who allegedly
22 wrote the letters. You know, I investigated, fully
23 investigated, these letters.

24 Q. Okay. So I guess overall why did you
25 not believe that his family members could be

1 credible alibi witnesses?

2 A. Because I felt that the State could
3 cross-examine them. It's been so long on this
4 case, but I believe there were videos at the
5 Greenville County Library, two sets of videos at
6 the library. There were witnesses who saw Clarence
7 outside burning stuff at his grill at the trailer
8 over this weekend in question.

9 Some of the letters that were sent
10 out -- there was a fingerprint on a letter with
11 Clarence's fingerprint on the letter that was found
12 in the couch of the trailer that would have been
13 sent out over that weekend. Like, how did this
14 letter get there?

15 Q. That was the trailer where he and
16 Carman lived together?

17 A. Right. You know, that had been
18 spray-painted with all crazy -- trashed and -- yes,
19 that's where he and Carman had lived. And there
20 was more. There was just -- there was a lot of
21 stuff that could put holes in that alibi defense.

22 Q. Okay. Did Mr. Jenkins tell you what he
23 was doing with the grill? What was he burning in
24 the grill?

25 A. I don't remember. I mean, I know from

1 the case that they said that there were remnants of
2 clothes that were burned in the grill, but I don't
3 remember him saying what was burned in the grill.
4 I don't even know if he was -- if we ever -- if he
5 ever got to the point where he was saying he burned
6 anything in the grill at all.

7 Q. Okay.

8 A. I guess they had his prints on the
9 lighter fluid too.

10 Q. Did he deny burning stuff in the grill?

11 A. I don't remember. It was just so long
12 ago. I mean, basically he denied these charges.
13 That was his position the entire time. I thought
14 it was a big victory for us to get death penalty
15 off the table because usually that requires a plea
16 of some sort, and he was not pleading to anything.
17 So having a trial that wasn't a death penalty trial
18 was a victory in this case.

19 Q. Did he tell you that he cooked cocaine
20 and crack in the trailer on Tindal Road?

21 A. I don't remember specifically. I do
22 remember he was talking about how he was a major
23 drug dealer and was selling drugs to different
24 people.

25 Q. Okay. Did he ever tell you that the

1 reason he helped -- did he ever tell you that he
2 helped Carman dismember Ms. Harris and dispose of
3 her remains because she had threatened to reveal
4 his drug operation?

5 A. I don't remember that specifically. He
6 could have well said that. If anything, the
7 problem with that is while they're finding DNA
8 evidence in the shower cap and around, they went
9 through this trailer very thoroughly. No evidence
10 of cooking cocaine or anything in the microwave.
11 No drugs, I don't believe, were found that all in
12 the trailer.

13 Q. Okay.

14 A. So that just made it hard. And we
15 did -- I mean, a lot of the whole defense was
16 Carman was the mastermind. You know what I mean?
17 That she was the guilty one. And I think that
18 defense was presented pretty well.

19 Q. Okay. Did you discuss with Mr. Mauldin
20 and Mr. MacDougall your opinions about the
21 possibility of raising an alibi defense or your
22 opinions about what Mr. Jenkins' family members
23 told you?

24 A. I probably did. We would have gone to
25 a meeting about it. I talked to Tracy Burkett

1 yesterday about this, and what her recollection was
2 -- and she recalled going over and speaking -- she
3 and Jan going over and speaking to the Gibbs about
4 the alibi defense, but I don't recall having a
5 specific discussion with them about that.

6 Q. Okay. Do you recall getting any
7 letters or any sort of communications from
8 Mr. Jenkins from jail that you thought were
9 incriminating?

10 A. I got a lot of letters from him from
11 the jail. I don't know whether they'd be -- I
12 don't know whether they'd be incriminating or not.
13 I can't remember, but I don't think so. I think
14 there was so many, I think one problem was sort of
15 that I'd seen enough of them that I could tell when
16 I saw some forgeries with some other stuff. It
17 looked like his handwriting because I had seen so
18 much of it. But as far as, you know, he never
19 confessed in a letter to me or anything like that.

20 Q. Okay. Did you discuss with Mr. Mauldin
21 and Mr. MacDougall about whether or not it would be
22 a good idea for Mr. Jenkins to testify?

23 A. I think he would be a terrible witness
24 on the stand most likely with the evidence they had
25 against him. That being said, he's a very

1 compelling person as well. When we first went to
2 meet with Clarence, I think he had been -- right
3 when we were appointed, he had a driving under
4 suspension or something, so we went to Columbia to
5 SCDC to meet with him. And both just came out
6 like, I cannot believe these charges against this
7 person. I'm stunned. So in that sense, I think he
8 could be compelling. I just think that there were
9 so many efforts that he made in the case to sort of
10 correct his case and to fix it, you know, like
11 leaving a trail of his handwriting that I think
12 that he could be cross-examined and the jury would
13 think, well, no one who didn't do this stuff would
14 do this much to contaminate the case to make it to
15 try to exonerate himself.

16 Q. Okay. Did he make any statements that
17 he was in an organization or some organization or
18 group was after him?

19 A. At some point, I do remember that, yes,
20 but this is not a situation where you meet with
21 him, he's just been, you know, charged with murder
22 and he says, wait, there's this organization after
23 me. I'm not guilty. I have an alibi. I was with
24 my parents. All this stuff developed through three
25 years of representation. This was not something

1 that, you know, was initially told to us.

2 Q. Okay. Did Mr. Jenkins -- did he tell
3 you that he helped Candace dispose of Ms. Harris'
4 body, or did he deny that he had been there
5 altogether?

6 A. I can't remember. I think we were
7 all -- probably both, but I can't remember
8 specifically.

9 Q. Okay. Do you remember him admitting to
10 any part of the crimes?

11 A. No. He was denying them. And it was
12 not admissible in court -- we had sort of -- we
13 even had a polygraph done. Part of the negotiation
14 to get rid of the death penalty was to offer a
15 polygraph with an agreement that it cannot be used
16 by anyone. We thought that would be safe. And
17 then as it turned out, they wouldn't let me in to
18 witness it itself, but some of the pre-questions
19 they were mirandizing him. And I asked them not to
20 because our deal was not to use any of these
21 polygraph questions. And they -- anyway, they
22 stopped at some point, and I think it's because I
23 probably stopped the process of the polygraph, but
24 I can't recall specifically. But I did have in my
25 notes that they were saying he seemed deceptive in

1 even the pre-questions that they give. And I think
2 that's where it got -- I got it pulled where it was
3 like, we're not getting anywhere with this and
4 there's too much risk. But it wasn't like we had a
5 passed polygraph to go with either. I'm just
6 saying that as an addition, that was saying he was
7 showing that he was being deceptive.

8 Q. What do you mean by pre-questions?

9 A. They do -- when you get a polygraph,
10 they'll ask, did you do this? Did you not? But
11 before all that, they'll say what's your name?
12 Where did you go to school? They ask, like, a list
13 of sort of base questions.

14 Q. Okay. Is that something you took into
15 consideration when deciding whether it would be a
16 good idea for Mr. Jenkins to testify?

17 A. Yes. I don't think it was the end-all
18 be-all because they can't use the polygraph. But
19 it certainly is something I would consider. But,
20 also, you know, I was second chair on this. And
21 Mr. Jenkins himself, I mean, he was asked whether
22 he wanted to testify. That wasn't really me. You
23 know, I didn't tell him he can't testify. It was
24 just we all agreed that he wouldn't do a good job.

25 Q. So when you say that Mr. Jenkins denied

1 everything, what did he deny? Did he say I wasn't
2 there; I didn't kill her, but I did this? I'm
3 trying to narrow down to nail this down. What is
4 it that he denied?

5 A. I don't recall exactly. I don't make
6 it my practice -- when I have a client who is not
7 going to plead or admit guilt at all and we're
8 going to talk, I usually don't spend a lot of time
9 breaking down exactly what they did and didn't do
10 because at this point, I don't care. I'm just
11 trying to defend the case the best I can.

12 Q. Okay. So you mentioned about having
13 the family members sign these affidavits. Was that
14 in preparation for trial, or was that for use in
15 negotiations with the solicitor's office to
16 withdraw the death penalty?

17 A. I think it was just in general to get
18 it, but it was trying to get them to withdraw the
19 death penalty. I don't think the death penalty had
20 been withdrawn at that point, and I was trying to
21 do anything or get anything. We offered up a lie
22 detector test. We were doing anything we could try
23 to do to make the State not have this as a death
24 penalty case.

25 Q. Okay. Did you intend to call his

1 sisters and mother as alibi witnesses at trial?

2 A. We would have discussed that, but, no,
3 we did not have any intent one way or the other at
4 that point. I think the trial was three or
5 four years off, so it was still a death penalty at
6 that point. We would have probably called them
7 certainly as social witnesses in the penalty phase
8 of a death penalty. So at that point, that's where
9 we were.

10 Q. Is it unusual for you in criminal
11 defense practice to list witnesses on a witness
12 list but not to call them in the end?

13 A. No. We do that all the time.

14 Q. Okay.

15 A. It's to leave things open. You know,
16 with that being said, it's been -- again, this case
17 is so old. But when we were thinking about as a
18 death penalty case, it's a little different in how
19 you think about it. So it can -- having alibi
20 could have been a factor then. We just didn't have
21 all the evidence.

22 Q. Did Mr. MacDougall consult with you
23 about his opening statement, what he planned to
24 say?

25 A. I don't think so, no. I think he said

1 or did it beforehand and said he had done it. I
2 think that was it. I just don't recall that.

3 Q. Okay. Are you familiar with someone
4 named Ronnie Mitchell?

5 A. That doesn't ring a bell. Could be.
6 I'm terrible with names.

7 Q. Do you recall being aware of someone
8 who allegedly would testify that Ms. Harris had
9 been seen somewhere in the public during the time
10 window in which the State alleged she had been
11 kidnapped?

12 A. I don't recall that, but it's certainly
13 possible. It's been a long time.

14 Q. Okay. Is that the sort of thing that
15 you would have used in Mr. Jenkins' defense, or
16 would you have rejected that as not useful?

17 A. I don't really know. It's difficult
18 with this case with an on-or-about kind of
19 indictment where Ms. Harris, Mekole's body, wasn't
20 found for a year or more. I mean, it did not have
21 an exact time of death that I recall other than
22 what Carman ended up saying whenever she turned and
23 led them to the body like a year or two years
24 later. So I think that time of death was a very
25 open question there. So I don't know if someone

1 saying, oh, on Saturday afternoon, I saw her, so
2 she couldn't have been killed that day wouldn't be
3 helpful because it could have been at any time.
4 And obviously she was killed.

5 Q. Did you consider using Mr. Jenkins'
6 family members to put on the stand to contradict
7 Carman's testimony about their relationship or his
8 actions during this time window?

9 A. I don't remember. I just would say
10 probably not because sometimes when there's been so
11 much out there, all the things, Carman's testimony.
12 There was a lot of stuff in there. And to come in
13 and say, you know, well, she didn't give good care
14 to one of the kids. You know, a lot of the stuff
15 that she can say about Carman, I didn't think that
16 would be a powerful witness position, especially
17 when you're giving up putting up no defense and
18 getting final closing versus coming up and saying,
19 you know, Carman didn't tell the truth about one
20 little tiny thing. I didn't think that would bring
21 the whole testimony into question enough to be
22 worthwhile.

23 Q. Was it important to you,
24 Mr. MacDougall, and Mr. Mauldin to have final
25 closing?

1 A. That was really Mr. Mauldin's thing.
2 It's always nice to have final closing. I mean, if
3 the State puts up a compelling -- generally the way
4 I sort of measure things, if I feel like there's a
5 good chance that you can win a case with final
6 closing, that's a good way to go. If the case is
7 just terrible and you're desperate and you have to
8 put up your -- if you have testimony that you want
9 to put up or you need to put up something, that's
10 when you rethink whether you're going to put up
11 witnesses or not.

12 Q. Do you remember having any problem with
13 the State's amending the indictment on the date of
14 trial to change the date from April 10th to
15 April 6th?

16 A. You know, I saw that. And I couldn't
17 remember it happening. I think that would be
18 something that team MacDougall would look into. I
19 mean, that's where you have the paralegal and five
20 underling lawyers and they look into that and see
21 if it's enough. Usually my gut on that with
22 changing the date in an on-or-about situation, I
23 think if we wanted a continuance of the trial,
24 that's what you'd get if he objected to the
25 indictment. They would just, okay, we'll reindict

1 and you'll be trying this case in a month. I
2 didn't -- and I thought it was quite likely that
3 Judge Miller wouldn't care and just keep it there.

4 Q. Okay. Do you feel like you had enough
5 notice from the indictment and the discovery to
6 prepare a defense for Mr. Jenkins?

7 A. Yes. And I think that would have been
8 Judge Miller's reasoning. If we moved to change
9 the indictment, he would have said, you know full
10 well when this happened. This did not prevent your
11 ability to prepare the case, this change in the
12 date of the indictment.

13 Q. Okay. Did you see any reason to
14 challenge the indictment based upon the possibility
15 that it may have been supported by hearsay before
16 the grand jury?

17 A. No. That issue has been litigated and
18 has been lost a number of times. And just another
19 thing on the indictment -- again, it's so long ago,
20 I don't have a super specific reference. But
21 sometimes if I feel like something is wrong with an
22 indictment, under recent case law, I will not say
23 anything ahead of time and hope they just try the
24 case with the wrong indictment. And then you have
25 something to come back later and say, wow, that was

1 -- you know, there's a problem. But if they
2 correct it beforehand or -- sometimes that's the
3 thing to do, and I don't remember if I had done
4 that or not at the time.

5 Q. One moment, please. No more questions.
6 Thank you.

7 THE COURT: Cross-examination?

8 MS. HENRY: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. HENRY:

11 Q. Okay. So, Susanna, both Mark
12 MacDougall and John Mauldin both testified that you
13 were the person that handed all these fact
14 witnesses, that you were the one that did the
15 interviews with potential alibi witnesses and, like
16 you testified before, kind of did the followup on
17 people that came up related to this alibi including
18 his family. Is that accurate?

19 A. To some degree. A lot of that was
20 through Jan and Tracy. Their job as the
21 investigator and social worker was to meet with
22 family members more so than my job because it was a
23 social history thing. So they went and met --
24 there were times with when I didn't meet with
25 family members when they did. But, yes, as far as

1 the three lawyers, I was the one doing point with
2 the social witness history.

3 Q. And then as far as the investigators,
4 you would have been the attorney in charge of their
5 work product?

6 A. Yes.

7 Q. Okay. And Mauldin also testified that
8 the case strategy for Clarence's defense team was
9 twofold. One, to discredit the codefendant's
10 story. So that would be Carman Jenkins. Discredit
11 her version of events. And then, two, to
12 demonstrate that Clarence Jenkins was a follower.
13 Would you say that's accurate for what your defense
14 strategy was?

15 A. I guess so, yeah. I mean...

16 Q. Okay. I mean, do you disagree with it?

17 A. No.

18 Q. Okay. Great. All right. So Carman --
19 you mentioned before there were a couple of points
20 of independent timeline reference. So, for
21 instance, I think there was a Labor Finders
22 reference, is what Mauldin testified to. There was
23 the library visit that was on film on Sunday. And
24 then there was potentially a third party that
25 claimed that they saw Clarence out at the grill, I

1 think, either Sunday on Monday.

2 A. Right. And there could have been more
3 than that. I just -- I did not redo this trial or
4 re-prepare and go over all the facts again, so
5 there could be more. You know, I know there was at
6 least that.

7 Q. Okay. The majority of the timeline for
8 when all this happened was provided by the
9 codefendant, Carman Jenkins. Would you say that
10 that's accurate?

11 A. Yeah, probably so.

12 Q. All right. Okay. So you testified a
13 minute ago that you did --

14 A. Actually, let me rephrase that.

15 Q. Sure.

16 A. We had Mark MacDougall. Their firm had
17 prepared, you know, an 11-page chronology that went
18 through all the discovery and network back and
19 forth. So going through this, it's not all what
20 Carman said. This was prepared before Carman. It
21 was just everywhere, the whole chronology, the
22 whole timeline, everywhere he had been. And then I
23 created a second timeline of my own. So I don't
24 think it's fair to say that Carman created the
25 whole timeline by her statement because a lot of

1 these were done before her statement even happened.

2 This was just --

3 Q. Carman also gave a statement to police.

4 Right?

5 A. That's true.

6 Q. All right. And did that form the basis

7 for your timeline?

8 A. No.

9 Q. It didn't? What did then?

10 A. Incident reports, where things were
11 discovered, what other witnesses said. Everything.
12 It was part of the timeline. Everything in
13 discovery became the timeline. It wasn't just what
14 Carman said.

15 Q. Okay. Was there anything in forensics
16 that formed a portion of the timeline?

17 A. I don't think so, no.

18 Q. Okay.

19 A. I can't remember any of that about the
20 case. I can't remember whether the autopsy gave a
21 time of death or not. I don't think it did, but I
22 didn't review any of that.

23 Q. Okay. And then the other people that
24 testified at the trial as to independent pieces of
25 the timeline would have been, at least as far as

1 what I've read, is the person from the library, the
2 person from Labor Finders, and the woman that
3 testified that she saw Clarence out at the
4 barbecue. The rest of the timeline was provided by
5 -- via Carman Jenkins' testimony?

6 A. Uh-huh (affirmative).

7 Q. Okay. All right. Moving forward, you
8 testified that you remember James Gibbs and that
9 you remember her as Clarence's sister?

10 A. Yes.

11 Q. And that you did speak to her?

12 A. I believe we went to her house.

13 Q. Okay. So you interviewed her as a
14 potential witness. Would it surprise you to find
15 out that she had testified that she met with either
16 you or members of your team several times to go
17 over a timeline for her.

18 A. No, that wouldn't surprise me. The
19 timeline part would surprise me. A lot of it was
20 social history because it was a death penalty case.
21 So at that point, we are asking what happened when
22 Clarence was a baby. He had some illnesses. He
23 has some different stuff. So a lot of that was the
24 start of it that I recall more. I don't recall so
25 much sitting, with her going over a timeline.

1 Q. And, Susanna, do you remember when the
2 death penalty notice was removed?

3 A. No, I don't. It was sometime after Bob
4 Ariail left as the solicitor, so 20 -- I think we
5 were a year or two in.

6 Q. Okay. So it was removed at least by
7 the year that this case was tried?

8 A. Yes.

9 Q. So 2012?

10 A. Yes.

11 Q. So sometime before then?

12 A. Uh-huh (affirmative).

13 (APPLICANT'S EXHIBIT 2, EMAIL FROM
14 SUSANNAH ROSS, marked for identification.)
15 BY MS. HENRY:

16 Q. All right. I'm going to hand you this
17 piece of paper marked Plaintiff's Exhibit 2. Just
18 take a look at it.

19 A. Okay.

20 Q. I just want to ask you about -- do you
21 recognize it?

22 A. You know, yes. I mean, I recognize
23 what it is. I don't, in fact, have an independent
24 recollection of sending that.

25 Q. That's okay.

1 A. But I'm sure I did.

2 Q. Okay. Will you tell the Court what it
3 is?

4 A. It's an email from me saying I met with
5 Jamese and Shanek yesterday and gave them some
6 subpoenas. They are on board with testifying and
7 plan to come on April 9th.

8 Q. Okay. Great. Thank you.

9 MS. HENRY: And I'll ask that this be
10 admitted as Plaintiff's Exhibit 2.

11 THE COURT: Any objection?

12 MR. SMITH: No objection.

13 THE COURT: All right. Applicant's
14 Exhibit 2 is admitted into evidence without
15 objection.

16 (APPLICANT'S EXHIBIT 2, EMAIL FROM
17 SUSANNAH ROSS, admitted into evidence.)

18 BY MS. HENRY:

19 Q. All right. And the reason I'm asking
20 you about that is because by the time that you sent
21 this email to, it looks like, John Mauldin, the
22 death penalty had already been withdrawn.

23 A. Okay.

24 Q. Right? So you would not have been
25 talking to them in order to get a social history

1 anymore.

2 A. Okay.

3 Q. You would have been interviewing them
4 as actual witnesses.

5 A. Okay.

6 Q. So I'm asking if you remember the
7 conversations that you reference having with Jameese
8 Gibbs and Shanek regarding testifying at the trial?

9 A. No.

10 Q. Okay. That's all right. So Jameese
11 Gibbs testified yesterday that Clarence was living
12 with her and not with Carman during the time this
13 occurred. She also testified that Clarence was at
14 her home until at least 7:00 PM on April 4th, the
15 night that Carman claimed that the victim was
16 kidnapped.

17 A. Uh-huh (affirmative).

18 Q. She also testified that Clarence was
19 also at her home from the time that Carman dropped
20 him off and go into the library until 7:00 PM on
21 Sunday, that Clarence had a 6th grade education,
22 and that Clarence was not obsessed with Grace, that
23 that was a Carman issue. And she kind of fleshed
24 all this out a little further.

25 A. Uh-huh (affirmative).

1 Q. Is that consistent with the
2 conversations -- although obviously she didn't
3 testify to it, that's what she testified to
4 yesterday. And it's your testimony today that you
5 don't recall your conversations with her in
6 anticipation of trial?

7 A. I don't specifically recall them. That
8 does not surprise me. We talked a lot about, you
9 know, Carman, that the whole point was Carman was
10 in control and had this other person living with
11 them and kind of ran the show. And that was really
12 the defense in the case.

13 Q. Okay. So that was the defense in the
14 case. So all of these statements pretty much
15 directly contradict Carman Jenkins' testimony and
16 her timeline. Do you not think that that would
17 have been key and very helpful to the defense's
18 stated strategy defense?

19 A. It would have been if there weren't
20 other problems with that. There were too many
21 holes in her timeline, and being related -- it was
22 her brother -- and the recollection was from a long
23 time ago. I did not think that was a great
24 defense. And, again, there were three of us on the
25 team doing it, so it could have been different

1 decisions. But if we had felt like this is the
2 biggest loser case, the jury is going to be out for
3 three seconds unless we do something, those
4 witnesses were there to present an alibi. But
5 since we felt that there were a lot of holes in the
6 alibi and a lot of problems, we didn't use those
7 witnesses. And some of the problems were -- I
8 mean, I just noticed in my timeline -- let's see.
9 There was an application for the SunTrust Bank. I
10 had notes: Clarence says bought six pounds of
11 marijuana and left at Tindal Street. He had two or
12 three phones. And that was just -- I did some
13 notes about what he said there. On Saturday, they
14 checked the email account registered to Grace, and
15 then they checked the library Sunday at 3:15. I
16 just didn't think -- I thought that there were
17 going to be problems showing that timeline. And
18 for me -- I can't remember -- I don't want to say
19 for sure. But the exact time of death, I don't
20 think that was dispositive in this case. In other
21 words, if you could have said Clarence was right in
22 front of me, here's a video at 3 o'clock on
23 Saturday, I think there were -- I think there was
24 -- time of death was kind of -- could have been
25 different times of death.

1 Q. So I'm going to ask you really quickly
2 about Shanek Robinson as well. So yesterday she
3 testified that Clarence was living with Jamese and
4 not with Carman which contradicted Carman's
5 testimony. She testified that Carman was the
6 violent one and not Clarence which also
7 contradicted Carman's testimony. She testified
8 that Carman had actually given Clarence a black eye
9 which also contradicted Carman's testimony. That
10 Clarence was not tech savvy and had a 6th grade
11 education which also contradicted Carman's
12 testimony. And that Clarence also had a history of
13 fainting and passing out in the face of, like,
14 medical extremes. So blood, broken bones, that
15 type of thing, which directly contradicted Carman's
16 testimony. And I know that you've already
17 testified that you don't remember speaking with
18 Jamese, so I'm not going to ask if that's
19 consistent with her conversations with you. But
20 given that's what she's testified to under oath
21 here, I think we can assume that it would have been
22 something similar. Do you not think that those
23 statements directly contradicting Carman, her
24 timeline, and her depiction of her relationship
25 with Clarence, given that your strategy was to show

1 that he was a follower and to discredit Carman,
2 that those would have been an important -- that
3 would have been an important witness?

4 A. If I didn't think that it could go
5 wrong, that would have been an important witness.
6 We were trying this case to win it and were aware
7 or would have been aware -- but I don't remember
8 exactly what those witnesses would have said and
9 didn't think that would be helpful to the case to
10 put up those witnesses. And that's why we didn't
11 do it.

12 Q. Mr. Mauldin and you both said that
13 about trying to win the case. What part of this --
14 it sounds like a slow plea. So the way that it --
15 right? Because you don't have any independent
16 witnesses. You didn't put Clarence up. It was
17 small attacks on Carman about the education, and
18 the idea seems to have been that Clarence was there
19 and participated but was not the leader. So what
20 was -- what was the winning strategy? And if
21 that's what it was, then that's fine. I just want
22 to make sure I understand why you would not have
23 put these people up if there was no way we were
24 winning -- you were winning this with what you had?

25 A. I think if we put up an alibi witness,

1 I think the State could have put up a number of
2 witnesses showing that Clarence was manipulative
3 and he was manipulating the case and sending out
4 fake letters with fake alibis. And, there again,
5 like I said in the beginning, all the letters,
6 which these letters that went out were -- the case
7 was all about this. So I think putting them up
8 would have opened the door to that. Now, if I'm
9 wrong there, then okay. But I think if we had put
10 them up, I think that could have certainly brought
11 out a rebuttal of these people if not cross-
12 examination with that. So that's what I was
13 worried about. I thought that would have blown the
14 case up, and I think Clarence would have lost
15 100 percent if we had done that. And that's why we
16 didn't.

17 Q. Okay. Susanna, thank you so much. I
18 don't have any other questions.

19 THE COURT: All right. Any redirect?

20 MR. SMITH: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. Ms. Ross, regardless of what
24 Mr. Jenkins' sisters told you during whatever
25 conversations are referenced in that email I think

1 is Plaintiff's 2, you had already -- correct me if
2 I'm wrong. You had already formed an opinion that
3 they would not be good alibi witnesses. Is that
4 right?

5 A. I thought they would be fine witnesses.
6 I just thought that -- I mean, I think they're nice
7 people. I'm sure they were great yesterday. I
8 just didn't think that -- I thought that that could
9 bring in issues that the State could poke holes in
10 the alibi and then get up in closing and make us
11 look bad.

12 Q. And you had already formed an opinion
13 that they had incomplete -- they offered an
14 incomplete alibi?

15 A. Yes.

16 Q. Okay. No more questions. Thank you.

17 THE COURT: All right. Any recross or
18 anything?

19 MS. HENRY: No, your Honor.

20 THE COURT: Thank you, Ms. Ross.

21 THE WITNESS: Thank you. Should I just
22 leave that stuff there?

23 THE COURT: You want to make copies of
24 those two?

25 MR. SMITH: Yes, Your Honor. The State

1 rests.

2 THE COURT: All right. Why don't we --
3 when we finish up -- the State rests. When we
4 finish up, let's have copies made and then the
5 originals can be given back to Ms. Ross. You want
6 to go ahead? You can do it now if you want to.

7 All right. The State rests?

8 MR. SMITH: Yes, sir.

9 THE COURT: All right. Anything else?
10 Would y'all like to summarize or not? Anything
11 from the Applicant?

12 MS. HENRY: Your Honor, I did just want
13 to make sure that we had made -- and I'm sure it
14 probably already is automatically, that we had
15 made -- I did a lot of referencing to the
16 transcript. And I just want to make sure that
17 that's part of the record.

18 THE COURT: Referencing to the
19 transcript?

20 MS. HENRY: The trial transcript, Your
21 Honor.

22 THE COURT: All right. And you're
23 talking about in your examinations when you were
24 referencing the transcript.

25 MS. HENRY: Yes, sir. And I did it

1 assuming -- because we normally make the trial
2 transcript a part of -- like, an exhibit of the
3 record at the beginning. I wasn't sure if we had
4 done that. I just want to make sure that we had
5 because I didn't...

6 MR. SMITH: We can do that.

7 THE COURT: Yeah, I don't think it has
8 been made part of the record yet. Unless there's
9 any objection from the State.

10 Is there any objection from the State?

11 MR. SMITH: No objection.

12 THE COURT: All right. So we'll admit
13 that. Do you want to admit that as part of the
14 Applicant's case?

15 MS. HENRY: Sure. That's fine, Your
16 Honor.

17 THE COURT: Or a joint exhibit?
18 Whatever you want to do.

19 MR. SMITH: Either way.

20 MS. HENRY: Either way.

21 THE COURT: Why don't we just make it
22 as a joint exhibit to the Court, so we'll do that
23 Joint Exhibit Number 1, Susan.

24 (JOINT EXHIBIT 1, TRIAL TRANSCRIPT,
25 marked and entered into evidence.)

1 MS. HENRY: Thank you, Your Honor.

2 MR. SMITH: Can we just also note the
3 appellate briefs and opinion just by reference or
4 something, just that they'll be part of the record
5 too?

6 THE COURT: Do you want to make those
7 part of the record then?

8 MS. HENRY: I mean, we didn't call them
9 as a witness, and no one referenced any of the
10 appellate briefs or decisions in any of their
11 arguments, so I don't see --

12 THE COURT: I don't think -- Mr. Smith,
13 what would the relevance of making the appellate
14 briefs part of the record? I mean, they're part of
15 the trial record obviously.

16 MR. SMITH: I think they're for Your
17 Honor to take into consideration for whatever value
18 they may have in considering the issues in the
19 case.

20 MS. HENRY: I feel like they weren't
21 submitted to the Court. And this is probably
22 pointless. They are part of the trial record.
23 They're there for you to reference, but neither of
24 the parties referenced them. The appellate counsel
25 wasn't called as a witness, and, you know, no one

1 attempted to introduce any information from them.

2 THE COURT: Yeah, I don't think they've
3 been introduced. I've read them. I read the file.

4 MR. SMITH: That's good enough.

5 THE COURT: But they've not been
6 referenced or made part of the record, so I won't
7 admit those in the record. I've actually read the
8 file.

9 MR. SMITH: That's good enough.

10 MS. HENRY: And, Your Honor, I did just
11 want to reference for the record as well that the
12 statutes that I was referring to when discussing
13 the indictment with John Mauldin was South Carolina
14 Code Section § 17-19-100 and South Carolina Statute
15 § 17-19-30.

16 THE COURT: Okay.

17 MS. HENRY: I think I did reference
18 them, but I wasn't sure if I made that clear.

19 THE COURT: All right. Do either one
20 of you -- do you want to give any closing? I mean,
21 I'm familiar with what's happened, but I'll give
22 you certainly the opportunity if you want to do any
23 summary. Do either one of you want to?

24 MS. HENRY: Your Honor, just really
25 briefly. As we discussed with all the witnesses,

1 the offense date on the indictment issue. The
2 offense date on the indictment was April 10, 2008.
3 It was certified by the grand jury using testimony
4 that was provided by the State with, according to
5 them, a hearsay police officer that then later did
6 not testify at the trial. It was the certified
7 date provided by the grand jury. The date that it
8 was changed to on the indictment was April 6th.
9 And I just want to know did the offense date on the
10 arrest warrant provided by the same officer that
11 allegedly testified at the grand jury proceeding
12 was April 7th on the warrant.

13 Section § 17-19-100 deals with these
14 indictment changes. Only the Court can make this
15 change, and only if the change does not change the
16 nature of the offense charged and does not present
17 any kind of surprise. It would be our position
18 here that the testimony from all the witnesses was
19 that this offense was alleged to have occurred
20 between April 4th and April 7th. The grand jury
21 indicted on an April 10th incident day. That's
22 really a large difference. That's four plus days
23 difference between the date, what the date was
24 eventually changed to, and it's different from the
25 day on the warrant which was signed -- which is an

1 affidavit that was signed by the same person that
2 testified allegedly at the grand jury. It would be
3 our position that given the large difference in
4 time, the date and time that it was changed, which
5 would be the eve of trial, that the defense team
6 should have asked for a continuance and
7 reformulated the potential alibi situation or at
8 least requested that the grand jury come back and
9 find out whether or not the State could indict on
10 an April 6th offense date.

11 And as to the rest of this, as to the
12 rest of it, you know, Your Honor, you've heard all
13 of the testimony related to the potential
14 witnesses. And I do want to emphasize that we
15 modified our argument at the beginning to include
16 not just that they should have been called as a
17 total alibi witness, but that they should have been
18 called to impeach Carman Jenkins which was the
19 State's entire case. She provided the majority of
20 the timeline. Nothing that was outside of Carman
21 Jenkins proved anything other than that Clarence
22 Jenkins was at the library and was grilling.

23 THE COURT: Ms. Henry, don't you think
24 that if those alibi witnesses were called that it
25 would totally have destroyed the defense's case?

1 The holes that they could have poked on
2 cross-examination and the evidence that could have
3 been bought out in response to the alibi witnesses,
4 do you not think that that would just have really
5 shut the door on the defense or at least provided a
6 just extremely strong case for conviction in this
7 case?

8 MS. HENRY: So are you talking about
9 the letters that Susanna --

10 THE COURT: And it was a year and a
11 half before they came forward. Now, let me -- a
12 year and a half. All of a sudden a year and a half
13 later, oh, by the way, they were -- he was at our
14 house, and he was living there. And one of the
15 witnesses, one of the sisters said, I went to work
16 in the morning and came back to work late in the
17 afternoon. So she was gone the whole day. And the
18 library testimony, the seeing him on the grill.
19 And had that evidence being put up, do you not
20 think that would have just really harmed the
21 defense's case?

22 MS. HENRY: So all of the evidence that
23 you're referencing already came in. And I don't
24 believe that any of the testimony from Jameese Gibbs
25 or from Shanek Robinson contradicted the

1 independent spottings of Clarence. They didn't
2 contradict that he went to the library. They
3 didn't contradict that he was there at the grill.
4 What it did was contradict Carman Jenkins' timeline
5 and her credibility. And so I do think that given
6 what the defense had and given the fact that Carman
7 Jenkins' credibility was already pretty compromised
8 by the deal she'd made with the State that it might
9 have been effective in at least getting a mistrial
10 or having the jury conclude that they couldn't
11 trust her. And since the majority of the timeline,
12 who killed her, all of that, everything internal
13 certainly to the trailer was coming from the
14 codefendant. I do think that impeaching Carman's
15 reliability and her version of events would
16 potentially have changed the outcome of the trial.

17 But I understand everything you're
18 saying. I do. That's all we've got. Thank you,
19 Your Honor.

20 THE COURT: All right. Thank you.

21 Yes, sir?

22 MR. SMITH: And, Your Honor, I'll just
23 try to go quickly and in order. The first issue
24 would be the alibi witnesses. I think regardless
25 of what they said here today, the two sisters, all

1 the lawyers gave good reasons for not putting them
2 up as witnesses at trial, and they had good reason
3 not to do that. For one, as Your Honor pointed
4 out, they waited so long to come forward with an
5 alibi. None of them could be a complete alibi.
6 They also seemed to apparently contradict
7 themselves over time and said something different
8 this week than they told Ms. Ross when she took
9 those notes.

10 Additionally, what they said
11 contradicted what Mr. Jenkins told Ms. Ross when he
12 agreed with this letter that came in saying that he
13 was in Florida. That's another reason for her to
14 not put up an alibi defense because very suspicious
15 circumstances. After she has this conversation
16 with Mr. Jenkins in which she gives an example of
17 his being in Florida, she gets a suspicious letter
18 that is even more suspicious after the
19 investigation is done into its source. So she
20 projects that he can't really put an alibi defense
21 up. I think the clear implication from that is if
22 she believes he was manufacturing an alibi, then --
23 so they had good reasons for not putting them up.

24 Also, I think even this week there's
25 good reason not to -- for Your Honor to find that

1 the alibi witnesses wouldn't have been helpful to
2 Mr. Jenkins. None of them were there the whole
3 time. Their memories were not so great. I guess
4 understandably, it's been so long. One sister had
5 only been there one day that week, and then the
6 other sister couldn't remember some details but
7 strangely she remembered very specific times about
8 when she was at work. But I think even then she
9 still contradicted some of what she said about
10 that. And then -- so those are the alibi
11 witnesses.

12 The next issue would be the opening
13 statement. I think it seems clear in this case
14 that Mr. Jenkins had made statements that could be
15 considered fantastical. I think Mr. MacDougall was
16 trying to put a benign characterization on that in
17 anticipation that those things could come out in
18 evidence at trial, to lessen the blow so to speak.
19 And it seems clear in this case that they all
20 believed that Mr. Jenkins had made some sort of
21 bizarre statements over time, so I don't think
22 that's a big problem.

23 We had one witness who said he saw
24 Ms. Harris during this time even though -- he, of
25 course, had a felony conviction on his record.

1 Also could have been impeached with a previous
2 felony conviction at the time of trial. I will
3 note for Your Honor that according to the
4 sentencing sheet that was admitted in that case
5 that his address at the time of that -- I believe
6 it was a 2016 conviction -- was Tindal Road. And
7 it had a lot number on it which sounds like a
8 trailer park address. So I think that, you know,
9 there's some circumstances there which it would be
10 reasonable to question whether he lived near
11 Mr. Jenkins or knew him is, you know, quite strange
12 that he would live on the same street and in a
13 trailer park on that street.

14 But anyway, moving on to the issue of
15 the indictments. All the lawyers agreed they
16 didn't see any problem with this. They felt
17 prepared for trial and they understood what the
18 issues would be. And cause of death and I think
19 even date of death, they don't have to be elements
20 the State has to prove. And I know that because
21 you could have a circumstance in which you had no
22 idea when someone had died, but you could still
23 prove they were guilty of murder. You sort of give
24 a time window. You don't have to know a specific
25 date when someone died. Regardless of the

1 amendment, they were aware of the situation and had
2 discussed that they felt prepared to represent
3 Mr. Jenkins. And if they didn't feel alarmed at
4 the day back then, I don't think we should take
5 issue with it today. They've given good reasons
6 for believing that.

7 There's some authority out there for
8 why an indictment is fine even if it's based on
9 hearsay. I point Your Honor to US Supreme Court
10 opinion *Castella v. United States* -- the case
11 number is 350 US 359 -- where they note that all
12 the evidence before a grand jury in that specific
13 case was hearsay and felt that regardless they were
14 not -- that it was not a requirement under the
15 Fifth Amendment that all evidence before the grand
16 jury be tried by competency and adequacy. And our
17 South Carolina Supreme Court has adopted that in
18 various cases as has the Fourth Circuit Court of
19 Appeals. For example, *Jones v. Taylor*, 547 F.2nd
20 808, and the Fourth Circuit said: It is settled
21 that a bill of indictment based on hearsay
22 testimony does not violate any constitutional
23 right. And in *State v. Williams*, a South Carolina
24 Supreme Court case, 263 SC 290, the Supreme Court
25 said: While adopting the holding in *Costello*, an

1 indictment based on hearsay does not violate the
2 South Carolina Constitution. And our appellate
3 court opinions, quote, preclude inquiry into the
4 factual basis for an indictment by the grand jury.
5 Additionally, the rules of evidence don't apply in
6 grand jury proceedings. And there's Supreme Court
7 case law in South Carolina saying that indictments
8 a notice indictment -- a notice document in 2021.
9 State v. Lewis 434 SC 158, the Supreme Court said:
10 The primary purpose of an indictment is threefold,
11 to put the defendant on notice of the elements of
12 the offense, to allow him to decide whether to
13 plead guilty or stand trial, to enable the trial
14 court to know what judgment to pronounce following
15 a conviction. The threshold for an indictment
16 invalid is generally not high. I think that all
17 that case law is basically dispositive on this
18 point.

19 And finally whether the witnesses'
20 provided testimony could have been used to
21 contradict or impeach Carman's version of events at
22 trial. There was enough outside corroborating
23 evidence that the lawyers reasonably concluded that
24 what his family members may have had to say on was
25 Carman mean or did she do a good job of taking care

1 of the kids would not be enough to overcome her
2 testimony which implicated herself and which
3 matched the specific pieces of evidence out there
4 like the sighting of Mr. Jenkins with Ms. Harris,
5 the witness who saw him burning things in a grill
6 which he testified here this week was he was
7 burning things in the trailer there. His
8 fingerprint was on one of the letters. It was a
9 ransom note that had been going around leading up
10 to the kidnapping. So enough corroboration there
11 that they felt would not be helpful. Particularly,
12 they were afraid of other issues coming in. And
13 I'll state finally, Your Honor -- I'll stress again
14 Ms. Ross said that Mr. Jenkins told her that he was
15 in Florida at the time. She said he also may have
16 told her that he was with his family members that
17 week. But once he contradicts himself on that, I
18 mean, they're not putting up an alibi defense
19 anymore. So I think all of their decisions were
20 reasonable.

21 So any other issues, I'll be happy
22 to...

23 THE COURT: All right. Thank you both.
24 Both of you did a good job. I've read the file,
25 but I'll look at it again and my notes from the

1 hearing today and yesterday and I'll let you know
2 my decision.

3 MS. HENRY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (The hearing was concluded at
6 approximately 10:50 AM.)

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CERTIFICATE OF REPORTER

I, Renee H. Tollison, Certified
Verbatim Reporter and Notary Public for the State
of South Carolina (Retired) at Large, do hereby
certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 24th day of August,
2023, at Anderson, Anderson County, South Carolina.

S/Renee H. Tollison

Renee H. Tollison, CVR
Official Court Reporter (Retired)
My Commission expires
August 15, 2032

WITNESSES

C. T. Miller

C.T. Miller

Greenville County Sheriffs Office

4/11/2008

ARREST WARRANT NUMBER

1475288

ACTION OF GRAND JURY

TRUE BILL

James L. Mayes

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Donna Davis April 13, 2012

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-8409
BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2008

THE STATE

VS.

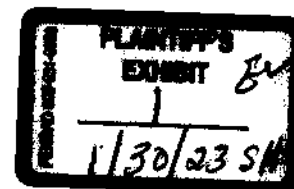
CLARENCE WILLIAMS JENKINS

Indictment for

0116

MURDER

VIOLATION § 16-03-0010



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

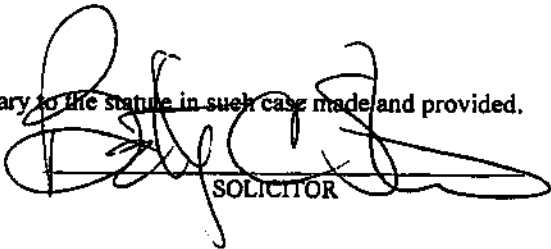
At a Court of General Sessions, convened on
County present upon their oath:

NOV 18 2008

the Grand Jurors of Greenville

That CLARENCE WILLIAMS JENKINS did in Greenville County, on or about the 6th day of April, 2008, unlawfully and with malice aforethought kill MEKOLE HARRIS. This is in violation of §16-03-0010 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

ARREST WARRANT

1-475288

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-08-051550

against

Clarence Williams Jenkins

Address:

Greenville, SC 29617-

Phone: SSN:

Sex: M Race: B Height: 6 3 Weight: 315

DL State: SC DL #:

DOB: 1984 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: C.T. Miller - 0545

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Clarence W. Jenkinson 4-11-08James M. Hudson #2

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate #2

4 Mc Gee Street Room 116-B

Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant C.T. Millerbeing duly sworn deposes and says that defendant Clarence Williams Jenkins

did within this county and state on or about

04/07/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Affiant states that on or about the above date, the defendant and co-defendant Carman Jenkins did willfully and knowingly with malice aforethought kill Mckole Michelle Harris and dismembered her body. Human remains discovered within Greenville County have been positively identified, in-part, as belonging to the victim Mekole Michelle Harris. Affiant has physical evidence which was collected from the defendants residence which directly links to evidence recovered at the locations where the victim's remains were located. This case is filed with the Greenville City Police Department under case# 2-08-027864 and with the Greenville County Sheriff's Office under case# 1-08-051550.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5227

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/7/2008

defendant Clarence Williams Jenkins

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/11/2008

(L.S.)

Signature of Issuing Judge
James V. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

1 jury list? I don't have the witness list for the State.

2 THE CLERK: Oh, I'm sorry, I thought you said
3 jury list.

4 THE COURT: All right.

5 MR. WILKINS: Your Honor, the State is going to
6 ask Your Honor to amend the murder indictment -- we've
7 discussed this previously, the Defense has no objection --
8 to change the date from the 10th day of April, 2008, of
9 the alleged offense to the 6th day of April, 2008.

10 MR. MAULDIN: No objection.

11 THE COURT: All right. Now, on the kidnapping,
12 it's between four and six, you want to leave that the
13 same?

14 MR. WILKINS: Yes, sir, that stays the same.

15 THE COURT: All right.

16 MR. MAULDIN: Your Honor, we have passed to the
17 State our voir dire questions, specific voir dire
18 questions, that we ask that the Court review. And
19 Ms. Ross will be presenting that for your consideration.

20 THE COURT: Does the State have any?

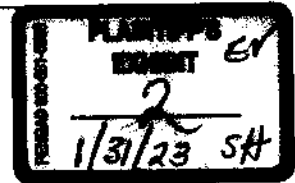
21 MR. WILKINS: Special voir dire, no, sir, no
22 special voir dire from the State.

23 THE COURT: All right. Y'all review theirs and
24 see what you think.

25 MS. ROSS: Judge, I didn't date it, I apologize.

Mauldin, John

From: Mauldin, John
Sent: Saturday, March 24, 2012 9:16 AM
To: Susannah Ross
Subject: RE: Jenkins stipulations
great - thanks. are we subpoenaing Myrtle?



From: Susannah Ross [mailto:susannahross@hotmail.com]
Sent: Sat 3/24/2012 8:17 AM
To: Mauldin, John
Subject: Re: Jenkins stipulations

I met with Jamese and Shanik yesterday and gave them subpoenas. They are on board with testifying and plan to come to Greenville April 9.

Sent from my iPhone
Susannah Ross
Ross & Enderlin, PA

On Mar 23, 2012, at 11:12 AM, "Mauldin, John" <JMauldin@greenvillecounty.org> wrote:

Mark & Susannah,

Met with Betty about remains stipulation. Attached is her letter and stip. I intend to sign.

Page 3 is a proposed stip references dates in the indictment. I don't want to "stipulate" the change but would "have no objection" to the amendment at the time of trial. Thoughts?

John I. Mauldin
CHIEF PUBLIC DEFENDER
13TH JUDICIAL CIRCUIT
Greenville County Courthouse, Room 123
305 East North Street
Greenville, South Carolina 29601
jmauldin@greenvillecounty.org
864-467-8522 office
864-467-8521 fax

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

<Skeletal remains.pdf>

1255

WITNESSES

Brian Garrett

Ainette/S

Greenville County Sheriffs Office

12/14/2005

ARREST WARRANT NUMBER

1359782

ACTION OF GRAND JURY

TRUE BILL

Berolby J. Reynolds

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-23-

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2006

PLEAD GUILTY

THE STATE

vs.

LAVERNA RONNIE MITCHELL

(Signature)

creach

0478

Indictment for

GRAND LARCENY

VIOLATION § 16-13-0030

0000071

A Certified Copy
Paul D. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 1/30/06



2006

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

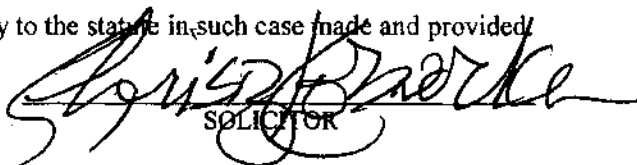
INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on April 18, 2006 the Grand Jurors of Greenville

County present upon their oath:

That LAVERNA RONNIE MITCHELL did in Greenville County, on or about the 13th day of December, 2005, feloniously take and carry away the personal property of CLIFFSTAR CORP of the value of more than One Thousand Dollars, described as follows: Dell Laptop Computer, with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VS.Laverna Mitchell

AKA:

Race: B Sex: M Age: 42DOB: 10-08-1963 SS#: 248-33-7024Address: RTE 1 BOX 45 DBLUFFTON, SCDL#: 09190307 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006-3397A/W#: 1359782Date of Offense: 12-13-2005S.C. Code §: 16-13-0030(B)(1)CDR Code #: 0478☐ CASE RESTORED
SENTENCE☒ PLEA ☐ TRIAL☐ CONVICTED OF or ☒ PLEADSIn disposition of the said indictment comes now the Defendant who was
TO: Larceny / Grand Larceny, value more than \$1.000 but less thain violation of § 16-13-0030(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0478☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ 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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	

Paul B. Wehensamer
Clerk of Court/ Deputy ClerkCourt Reporter: Renson

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, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE C. J. [Signature]Judge Code: 2 11 12 16Sentence Date: 8-8-06

I Mesac Cleus being first duly sworn to, depose and say that I am a witness that on the date of April 4th, (Friday) 2008, That I picked MR. Jenkins (Clarence W. Jenkins) up from his Mother's house at 110 Cornelia st. and we left and proceeded back to Jacksonville, FL, when we continued celebrating the fact that MR. Jenkins was single again, but like perversely we had to put our celebrating on hold that Monday morning for MR. Jenkins had to be back at work that day, which we didn't arrive in Greenville until it was daylight. I was suppose to pick MR. Jenkins back up Thursday the 10th but I had heard that he was arrested, for what I thought was DUS 5 (driving under suspension) fifth, which he already knew he had and was trying to stay as far away from the police and doing anything wrong as possible, for he was scared of going back to jail because he had just got out of prison November 30, 2007, so I didn't think anymore about the situation, plus I was going through problems of my own. But when I came across one of his people and was informed about the false accusations against MR. Jenkins, I knew on my own, that I had to tell all that I know that happened around that time, which this is all I know. I further understand that a false statement in this affidavit will subject me to penalties for perjury. I further say, that I have not been as or made to write this statement.

That I, ~~Mark~~ ~~Rollins~~ took it upon myself to write and will testify to everything that I have stated in this affidavit, I stand by this statement a hundred percent.

~~Mark~~ ~~Rollins~~

Sworn before me on 6-24-10.

Colleen F Rollins

My Commission Exp. 10-17-2016.

Tamesse

- did work on Sat + thanks
 went to Trailer 4/5/08
 LATE 12:00 or 1:00 knocked
 on door ~~they~~ did not let
 in ~~NO KIDS~~
~~NO KIDS~~ CARMEN
- Robert knew where Tamesse,
 and Myrtle on "Countryside St."
- Tamesse worked Banquets at Hyatt
 split shift worked am. went
 home NO KIDS then got call
 Beverly → THURS 4/10/08
- Myrtle says Carmen + Clarence
 left w/ children at 12:00
- Clarence in and out
- Vactor class at Compass of Carolina
- when found out Grace w/ Carmen + Dr
 told to leave for kid SHE SAID NO
 KIDS came second

- Grace talking about hurting her family members
 3 of them talking stupid stuff - Grace not allowed in house
- no drugs, no games
- Carman attacked Myrtle, then moved in w/ Gamise
- Boo + 4 kids + Myrtle at Comda
- Boo took him to work
 sometimes, Myrtle doesn't driver
 Carman pick up sometimes
- Carman + Fur took kids 4/9
- swords - DECORATION
- Carman living at 1st. Trailer like when met Grace
- ✦ Boo took Grace from her house to shelter - then to shelter
- ✦ Grace killed dog in trailer
- ✦ Grace happy w/ Grace in picture

- Sports Authority she quit, she wouldn't work when Clarence in jail → CARMAN TOLD MURTEL & JAMISE THAT SHE QUIT SPORTS AUTHORITY
- PICKED UP JR a few days after baby born never took him to Dandusville
- WORKING & TAKING BABY DID GO OVER TO HOUSE ON SATURDAY TO ASK FOR \$ for the kids THEY KIDS MELISSA MAY
- TRAILER close to their house
- Mon. Baby Finders check came to Cornelia St. Murtha walked to Tindal → unemployment checks
- Tues. Carman told Jamise Clarence at work
- always wore Jr. clothes
- CARMAN COULD HAVE CALLED ANY TIME RE ABUSE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Clarence W. Jenkins, SCDC #323856	)	Case No.: 2015-CP-23-02629
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	<i>(with prejudice)</i>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before this Court by way of Applicant Clarence W. Jenkins's application for post-conviction relief filed on April 20, 2015, and amended on January 23, 2023. In his original application, Applicant made several allegations of ineffective assistance of trial counsel. Respondent filed a return to the application on September 18, 2015, which disputed the claims of ineffective assistance but requested an evidentiary hearing to resolve those claims. By order dated October 26, 2018, and filed October 30, 2018, Sarah Henry, Esquire, was appointed to represent Applicant.¹ PCR counsel filed an amended application on January 23, 2023.

An evidentiary hearing was convened before this Court on January 30, 2023, at the Greenville County Courthouse. Applicant appeared with counsel, Ms. Henry. Assistant Attorney General Taylor Smith of the South Carolina Attorney General's Office appeared on behalf of the State. Applicant proceeded on the claims raised in his amended application, with additional

¹ The public index reflects that Applicant was appointed a number of attorneys previously who were relieved by the court prior to the appointment of Ms. Henry in October of 2018. See <https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23002&Casenum=2015CP2302629&CaseType=V&HKey=1191011077249837499118104845156119100739075734389977011711810979104841074765102691126569851211105510869>

amendments submitted at the beginning of the evidentiary hearing and accepted by this Court.² (See PCR Tr. pp. 6-8). After accepting the amendments, the Court received testimony from Applicant, Laverne Ronnie Mitchell, Jameese Gibbs and Shanek Robinson as part of Applicant's case. The State, in their case, presented testimony from former trial counsel, John Mauldin, Esq., Mark MacDougall, Esq., and Susannah Ross, Esq. Further, both parties offered a number of exhibits. (See PCR Tr. p. 4).

Following a thorough review of the record in its entirety, including the testimony presented at the trial and the testimony, evidence, and arguments presented in the subsequent PCR evidentiary hearing, this Court finds Applicant has failed in his burden of proof in showing any ineffective assistance entitling him to relief.³ Accordingly, the application as amended is denied and dismissed with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In November 2008 and September 2011, the Greenville County Grand Jury indicted Applicant for the murder (2008-GS-

² This Court deems the last amended issues to be controlling and the only issues to be considered by the Court. As such, the recitation of issues in this Order, (p. 7, *infra*), follows the amendments from PCR counsel as accepted by this Court.

³ By email dated February 6, 2023, this Court advised counsel for the parties that it had determined that relief would be denied and directed counsel for the State to prepare and provide a proposed order of dismissal. Due to changes of counsel for the State, the proposed order delayed. However, the State ordered the transcript of the hearing and provided counsel for Applicant the transcript, as well a copy to the undersigned, to ensure accuracy in this process. Further, Applicant's counsel has been provided a copy of the proposed order drafted by the State for this Court's review and has been encouraged to carefully review the order pursuant to *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019), particularly to bring to the Court's attention any argument or issue that Applicant believes was not sufficiently addressed.

23-8409) and kidnapping (2008-GS-23-007528A) of Mekole Harris. The Greenville County Public Defender's Office was appointed to represent Applicant, and then Chief Public Defender John Mauldin assumed the lead counsel role.

After the State served notice of intent to seek the death penalty, Susannah Ross, Esq., was appointed to assist in Applicant's defense. Mr. Mauldin also associated Mark MacDougal, Esq., of the Akin Gump Law Firm, to also assist in the defense. Solicitor Walt Wilkins, Assistant Solicitor Betty Strom and Assistant Solicitor George Campbell of the Thirteenth Circuit Solicitor's Office prosecuted the case. The State subsequently withdrew the death penalty notice.

A jury trial began on April 9, 2012, before the Honorable Edward W. Miller, Circuit Court Judge. The jury convicted as indicted, and Judge Miller sentenced Applicant to life in prison.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Susan Hackett of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Applicant in the appeal. By published opinion filed May 21, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence. The South Carolina Supreme Court denied Applicant's petition for certiorari review, and the remittitur was returned to the circuit court in February 2015.

As referenced above, Applicant filed this action on seeking post-conviction relief which this Court now addresses.

FACTS OF THE CRIME

This Court has had the benefit of not only the entire trial transcript, and the appellate briefs, but also the Court of Appeals opinion. That opinion provides a good summary of the general case development and facts of the crime. As there has been no contest to the appellate court's summary of these facts, this Court includes that portion of the Court of Appeals opinion for context here:

On the morning of April 7, 2008, Sue Bostic discovered a garbage bag with unknown contents sitting on her front porch and a threatening note under the windshield wiper of her automobile. [FN 2]. Bostic contacted the Greenville City Police Department, and Officer Scott Odom responded to the call. Officer Amber Allen also arrived at the scene and spoke with Bostic while Officer Odom took the garbage bag to the back of his vehicle to inspect the bag's contents. Officer Odom discovered a severed human foot and hand and several severed toes. Officer Michael Petersen, who was employed with the forensic division of the Greenville County Department of Public Safety, then arrived to assist in processing the crime scene and collecting the evidence. Officers Allen and Petersen were informed that a similar note and garbage bag containing severed body parts had been left at the residence of Judon Burnside. They later proceeded to this residence to collect the evidence.

Officer Petersen took the garbage bags and their contents to the morgue and rolled fingerprint impressions from the severed hands. Captain Jackie Kellet, of the forensic division of the Greenville County Department of Public Safety, examined the fingerprints processed by Officer Petersen and matched them to fingerprints on file for Mekole Harris (Victim).

On April 10, 2008, police arrested Appellant and his wife, Carmen Jenkins (Wife), for the murder of Victim. On November 18, 2008, the Greenville County Grand Jury indicted Appellant for murder. In December of 2008, the State filed a Notice of Intent to Seek the Death Penalty against Appellant and Wife. In September of 2009, Wife advised investigators of the location of Victim's remains in exchange for the State's withdrawal of its Notice of Intent to Seek the Death Penalty against Wife.

On March 9, 2011, Wife entered into a plea agreement with the State, requiring her truthful testimony in Appellant's trial in exchange for the State's subsequent request for a reduction in Wife's sentence. On September 13, 2011, the Grand Jury indicted Appellant for the kidnapping of Victim. On March 27, 2012, Wife pled guilty to the murder of Victim and was sentenced to fifty years of imprisonment. On this same day, the State withdrew its Notice of Intent to Seek the Death Penalty against Appellant.

Appellant's trial took place on April 9 through 13, 2012. Captain Kellet, who had matched the fingerprints from the severed hands to Victim's fingerprints, was qualified as an expert in fingerprint analysis, and she explained the process she went through in identifying Victim's fingerprints. The first step was entering the

unknown fingerprints into the Automated Fingerprint Identification System (AFIS), a computerized database maintained by the South Carolina Law Enforcement Division (SLED). She explained that AFIS sends back a list of potential matches, and in this case “we ask for the top 25 people.” Here, Victim’s “State ID number” [FN 3] was the first number on the list of potential matches. Captain Kellet then pulled a fingerprint card for Victim from agency records and visually compared, point by point, Victim’s prints to the unknown prints. Once she determined the known and unknown fingerprints matched, she felt no need to examine any other fingerprints from the AFIS list of potential matches.

The State also presented the testimony of Wife, who testified about Appellant’s alleged plan to intimidate a former housemate, Grace Davis, into returning to their home and continuing to live with them. According to Wife, during the time Davis lived with Appellant and Wife, Davis developed an intimate relationship with both of them. Eventually, the Department of Social Services removed Davis’s children from the home and notified her that she could not regain custody of her children as long as she was living with Appellant and Wife. Therefore, Davis left the home. A few days later, Appellant told Wife that Davis “needed to come back to [their] relationship because she was a partner in [their] relationship” and “she knew too much about the organization that he was in.” Appellant also told Wife “the organization would kill all of [them] if she didn’t come back.” Wife testified that she had never heard about this organization until that day.

Appellant began executing his plan to intimidate Davis by mailing threatening letters to her and to members of her family. Next, on the evening of Friday, April 4, 2008, Appellant brought home Victim, a prostitute, and handcuffed her to a bed. Appellant told Victim that he and Wife were police officers and that Victim was “under arrest for prostitution and possession of crack.” Appellant also told Victim that the only way she would get out of those “charges” was for her to help Appellant and Wife with a “case.” The “case” Appellant referenced was his plan to intimidate Davis into returning to their home.

After Victim agreed to cooperate, Appellant removed the handcuffs. Appellant wrote out a script for Victim to read over the telephone to members of Davis’s family. Appellant then handcuffed Victim again and gave the script to her to memorize. Sometime around midnight, Appellant, Wife, and Victim went to a pay telephone at a nearby gasoline station, and Appellant dialed the telephone numbers for Davis’s mother, Judon Burnside, and Davis’s aunt, Sue Bostic.

During each telephone call, Victim recited the material from the script written by Appellant. Appellant and Wife then took Victim back to their home, and Appellant handcuffed Victim to a chair for the remainder of the day on Saturday.

On Saturday night, Appellant crushed up “some Tylenol PM and some other sleeping medicine,” mixed it into some ice cream, and gave it to Victim. However, Victim only ate a small amount of the ice cream. On the next day, Sunday, April 6, 2008, Appellant ordered Wife to kill Victim, who was still handcuffed to the chair. Wife attempted to strangle Victim with a cable cord, but as Victim struggled against Wife, Wife lost control of the cord. Appellant then tied the cord to the back of the chair, placed a plastic bag over Victim’s head, and suffocated her.

Appellant and Wife took Victim’s body to the bathroom and placed her body in the shower. Later that day, Appellant dismembered Victim’s body, forcing Wife to participate, and placed the dismembered hands and feet in the couple’s freezer. Appellant and Wife disposed of Victim’s body near a golf course on Paris Mountain and returned to their residence, where Appellant placed the dismembered parts into two separate garbage bags.

After midnight, Appellant and Wife went to Bostic’s apartment. Appellant “dropped [Wife] off right at the entrance of the apartments....” Wife took one of the garbage bags and threw it onto Bostic’s front porch. Wife then left a threatening letter on the windshield of Bostic’s car. Next, Appellant drove Wife to Burnside’s residence. Wife placed a second threatening letter in Burnside’s mailbox and placed the second garbage bag on Burnside’s front porch.

Robin Taylor, a SLED employee, also testified at Appellant’s trial. Taylor described the DNA analysis she performed on a swab from the severed hand. Taylor matched the DNA from this swab to the DNA from swabs of blood collected from (1) a wall near the ceiling in a bathroom at Appellant’s residence; (2) a wall on the right side of the medicine cabinet in Appellant’s bathroom; (3) a latex glove found on the floor of Wife’s van; and (4) the p-trap of the shower drain in Appellant’s bathroom.

[FN 2] The facts of this case are horrific; however, it is necessary to discuss them to give context to Appellant’s arguments regarding

circumstantial evidence and to explain the relevance of Appellant's arguments regarding the fingerprint identification of the victim.

[FN 3] The State ID number “is assigned to you by SLED if you’ve ever been fingerprinted.”

[FN 4] The record does not indicate when the swabs were taken from Appellant’s bathroom and Wife’s van.

State v. Jenkins, 408 S.C. 560, 564–67, 759 S.E.2d 759, 761–63 (Ct. App. 2014), *cert. denied* (Feb. 4, 2015).

ALLEGATIONS BEFORE THE COURT

Applicant submits that he is being held in custody unlawfully as a result of ineffective assistance of counsel. Applicant, thought he amendments submitted by his PCR counsel, makes the following specifical allegation of ineffective assistance:

1. The Applicant submitted alibi witnesses to defense counsel who were available to testify at trial but were not called as witnesses;
2. Trial counsel was ineffective by indicating to the jury during opening statement that Applicant was untrustworthy;
3. Trial counsel failed to call witnesses to testify that they saw the victim during the time she was allegedly held captive;
4. Trial counsel failed to effectively use a witness to impeach the co- defendant’s timeline and story; and
5. Trial counsel failed to move to quash the indictment for murder for lack of specificity as no manner of death was alleged on the indictment, the indictment was based on hearsay testimony before the grand jury, and counsel failed to object to the State’s motion at trial to amend the indictment to change the date of the alleged crime.

SUMMARY OF THE EVIDENTIARY HEARING**Applicant's Case**

Applicant called Laverne Ronnie Mitchell, who testified he saw the victim riding her bicycle on a Friday afternoon at approximately 5:30 p.m. on a Friday and he told law enforcement about it on April 7, 2008.⁴ On cross-examination, he testified he saw the victim on either the third or fourth, but asserted it was a Friday. Further, Mr. Mitchell's uncertain responses worked to cast doubt on his general ability to recall past events. He admitted he had a 2016 conviction for possession with intent to distribute cocaine base, first offense. (PCR Tr. pp. 11-21).

Applicant testified on his own behalf. He testified at length about his somewhat complicated relationship with his co-defendant, Carmen Jenkins, and another female. Applicant testified that he met the victim in early 2005 through an associate he sold drugs with, and he gave her some drugs. They married in December 2007 after she became pregnant. However, he testified their arrangement was open. Their relationship was also rocky, with several times of estrangement. In one time of estrangement, Jenkins met Grace Davis. Eventually, Carmen came back and the three began a relationship with each other. Applicant testified he left at one point but still used their trailer to cook crack cocaine. (PCR Tr. pp. 22-40).

Applicant testified that, specifically, around April 2008, he would to the trailer "off and on," but the three "we[re] not living together." Applicant testified that he had met the victim

⁴ According to the calendar, April 7, 2008, was a Monday. That would have been the weekend after the victim's disappearance according to testimony appearing in the trial transcript (which was provided to the Court). Carmen Jenkins testified at trial that Applicant brought the victim to their home around April 3rd or 4th and the victim was confined in a bedroom. (See Trial Tr. pp. 436-438). Ms. Vivian Young testified that she last saw the victim on April 3, 2008, and the victim was with Applicant. (Trial Tr. pp. 238-245). A credit card application in the victim's name was dated April 4, 2008, but had Applicant's home address, phone number and e-mail). (Trial Tr. pp. 347-349. 369-372).

initially in 2005, through a person he was in the drug business with, and Applicant provided the victim with drugs and he would see her occasionally since they knew a number of the same people who were also involved in drugs. Applicant testified that he would frequently see her at Labor Finders. The victim would assist him in finding “customers” for his drugs. They also became intimate. (PCR Tr. pp. 40-43).

Applicant was also working through Labor Finders, and, at the time the victim disappeared, he had been cleaning at the Easley Ingles. Applicant claimed when he left work around 4:00 am on Friday, he went to Labor Finders; the victim was not there. According to Applicant, he went to Carmen’s trailer, then on to his sister’s home, then back to Labor Finders. At that point, the victim was present. They made sells and also used drugs. She left for a lighter and, according to his PCR testimony, Applicant went to stay with family the rest of the night and on Saturday and was still with them on Sunday.⁵ (PCR Tr. pp. 43-51).

Applicant testified that Carmen came over to his sister’s home that Sunday and they argued. Eventually, he left with Carmen for the local library to attempt to set a “creeper thing” which lures someone for criminal activity and then extorts money. After the library activity, Applicant testified that he returned to his family at his mother’s home. (PCR Tr. pp. 51-54).

Applicant testified that the next day, Monday, he went back to Labor Finders where he received a work ticket. Carmen tried to talk to him there, as well. Applicant testified he thought she was upset because he had left drugs in her trailer. Applicant testified that he never saw the victim at Labor Finders that day. Carmen drove him to “pick up drugs,” and they eventually went

⁵ Applicant specifically referenced the family home on Cornelia Street. Applicant testified that it was his mother’s home (Myrtle Gibbs), but also that his sister (Jamese Gibbs) lived there with her children. (PCR Tr. p. 35). Ms. Jamese Gibbs testified that while her mother lived with her, the home was rented in Ms. Jamese Gibbs’ name. (PCR Tr. p. 135).

back, that evening to Carmen's trailer. Applicant testified the victim was dead when he arrived at the trailer. Applicant testified he felt he had "no choice but to help her cover up what happened." (PCR Tr. pp. 54 -65).

Applicant also testified that in his opinion it was Carmen who was the violent one in their relationship and that, contrary to her trial testimony, Carmen was not in fear of Applicant. Applicant opined that if he had testified at trial, he could have "refute[d] or impach[ed]" much of Carmen's testimony, but his attorneys advised him not to testify. (PCR Tr. pp. 70-77). Applicant denied the kidnapping and murder but admitted "hiding and disposing of [victim's] body." (PCR Tr. p. 79). Applicant testified that he advised the defense team of his alibi, giving his sisters' names (Jamese and Shanek). Applicant also disagreed with the opening statement that, to him, indicated he had a history of lying, and also disagreed with his attorney not challenging the indictment. (PCR Tr. pp. 79-89).

Applicant's sister, Jamese Gibbs, testified that Applicant and his two minor daughters moved in with her in March 2008 because Applicant and the co-defendant "were on the outs." On Friday, April 4, 2008, Ms. Gibbs went to work at 5:00 a.m. and returned home around 3:00 or 3:30 p.m.. She testified Applicant was at the home when she arrived and remained there until she went to bed around 7:00 p.m., but she did not know if he left after she went to bed, and she did not remember if Applicant was at the home on Saturday. Ms. Gibbs was off work on that Sunday and she testified that Carmen brought Applicant to her home at some point. She stated she went to bed at 7:00 p.m., and she did not remember if Applicant left at any point between the time the co-defendant dropped him off and when she went to bed. (PCR Tr. pp. 133-149).

Ms. Gibbs testified that she talked with Applicant's defense teams multiple times after his arrest and she provided them with a detailed timeline of what she observed and knew about the weekend at issue. (PCR Tr. pp. 155-162).

Applicant's sister, Shanek Robinson, testified that Applicant was living with their sister Jameese in April 2008, and he helped take care of his children who were also living there. She stated that most of the time she went over to Jameese's home Applicant was sleeping or laying around. Ms. Robinson testified she usually went by the home once or twice a week on Wednesday and Friday. Applicant was sleeping when she went to the home the morning of Friday, April 4th, and she did not return to the home until the next week. She further testified about aspects of the what she perceived about the relationship between Applicant and Carmen, and that she was interviewed by Applicant's defense team and advised them of the "[t]imelines," "family history," and basically "[a] lot of stuff." (PCR Tr. pp. 164-185).

State's Case

John Mauldin testified he was the Chief Public Defender in April 2008 when he received the case. After the death penalty notice was issued, Susannah Ross was appointed as second chair on the case. Mr. Mauldin also obtained the assistance of a law firm he had worked with previously; Mark MacDougall was a partner at that firm and he became part of the defense team. The team met to assess the issues in the case and who should handle the various issues. Mr. MacDougall assumed responsibility for the forensic issues; Ms. Ross had developed a positive rapport with Applicant and assumed the responsibility of the direct client part of the case; and Mr. Mauldin assumed responsibility of handling the co-defendant and any mitigation evidence in the anticipated death penalty trial. The defense team secured "a number of different experts, mental health experts, mitigation, social worker," identified various others who may testify in a penalty phase,

and also investigated and retained experts for the guilt phase. Mr. Mauldin testified there were regular team meetings to discuss any developments in the case. The defense would also meet with Applicant's family to discuss the general trial procedures. (PCR Tr. pp. 190-200).

Mr. Mauldin testified that the team discussed the potential for an alibi defense. The information regarding "a potential alibi was maybe a year and a half or more into the case." (PCR Tr. p. 203). The defense found problems with the potential alibi. Mr. Mauldin testified that "one of the problems was that this information came after such a lengthy period of time" which gave the team "pause" on its legitimacy. (PCR Tr. p. 204). The team was also faced with a fluid report of Applicant's whereabouts, "that he was what was described as in and out of his mother's" home, "[t]hat he was, what you might say, coming and going," which created a "difficulty" in establishing an actually alibi. (PCR Tr. 204). Further, the "alibi" information came not only late in representation but from "family members," rendering it, in the defense team's opinion "suspect." (PCR Tr. 204). The team determined that the information was not credible and presenting it at trial could significantly adversely affect the credibility of the defense case. (PCR Tr. pp. 205-206). Mr. Mauldin also testified that about another year after the family alibi surfaced, the team was given information on another alibi theory, this one based on "an alibi in Florida." (PCR Tr. p. 207). Knowing that was not true at all also placed the team in a "very disconcerting situation," and "served to contaminate ... consideration of" the family alibi. (PCR Tr. p. 207). In addition, the team decided that the information provided by the family members would not have any impact on the credibility of the co-defendant's version of events. (PCR Tr. pp. 208-209). Further, Mr. Mauldin testified that he did not believe Applicant should testify because of some correspondence Applicant wrote while in jail that could be used to "totally impeach" him, and also that he was "worried" about what he might say on the stand. (PCR Tr. p. 212). Mr. Mauldin testified that

Applicant made the decision not to testify, and his sisters would not be called to testify in the absence of Applicant's testimony. (PCR Tr. pp. 209-213).

Mr. Mauldin did not recall ever hearing about Ronnie Mitchell and he was not aware of any evidence that would indicate the victim was somewhere other than the co-defendant's residence during the weekend of April 4-6, 2008. (PCR Tr. pp. 215-216). He testified that if he had known of a witness who would testify they saw the victim at another location, he would have "seriously considered investigating and perhaps using that person as a witness" at trial, but he did not recall being aware of such a witness. (PCR Tr. p. 216). This Court also took judicial notice of public records showing that Mr. Mitchell had a 2006 grand larceny that would likely have been available for use for impeachment at trial, had Mr. Mitchell been called at the 2012 trial. (PCR Tr. p. 222).

Mr. Mauldin testified he did not think there was a legitimate basis to challenge the indictment against Applicant; and, particularly, not on a failure to allege a specific cause of death or hearsay presented to the grand jury. (PCR Tr. pp. 224-225). He further testified it was not uncommon for the State to amend an indictment, and regardless of the date change at trial, the team was clearly on notice of what Applicant was charged with and the timeframe of the events. (PCR Tr. pp. 225-226).

On cross-examination, Mr. Mauldin again testified that the indictment gave the team the relevant timeframe to prepare the defense, they did not believe it was deficient for failing to specify a cause of death, and the date change at trial did not affect their trial preparation. He further testified that the team determined the potential alibi witnesses were not credible under the circumstances and presenting them at trial would have adversely impacted the defense strategy. Their overall strategy was to discredit the co-defendant and her story as much as possible, and they

did not believe those witnesses would have furthered that strategy. He reiterated that testimony on redirect examination and recross examination. (PCR Tr. pp. 226-264). Mr. Mauldin testified that the defense team considered it “a real victory” when the State withdrew the notice of intent to seek death. (PCR Tr. pp. 263-264).

Mark MacDougall testified⁶ that he joined Applicant’s defense team when the case was a death penalty case, and he assumed responsibility for the forensic aspects of the case. After the death penalty notice was withdrawn, Mr. Mauldin asked Mr. MacDougall to continue assisting with the case and he agreed. Mr. MacDougall testified that the defense team did discuss the potential alibi witnesses. Mr. MacDougall recalled that Applicant has at one point suggested that he had witnesses who were also in jail “willing to testify that he was somewhere other than Greenville when the crime was committed.” (PCR Tr. pp. 267-271). Mr. MacDougall assessed “that these were not credible witnesses” and would not advance the trial strategy to address the evidence that Carmen was the primary action. (PCR Tr. p. 272). In particular, Mr. MacDougall noted that the evidence in the case included video that confirmed Applicant was with Carmen in the library in Greenville when the computer was used, thus, the out-of-state alibi “would have been a lie by fairly compelling evidence that he was” in Greenville. (PCR Tr. p. 273).

Mr. MacDougall also echoed Mr. Maudin’s testimony that, while “the decision” to testify “is ultimately the defendant’s,” he assessed that Applicant “would have a very difficult time testifying,” and the cross-examination likely to be inconsistent with the strategy showing Carmen as the primary actor. (PCR Tr. p. 273, 275). Mr. MacDougall addressed the complaint about his opening statement referencing the Applicant’s “fantastical stories,” was meant to neutralize the evidence that Applicant claimed connection to some “organization ... involved in all kinds of

⁶ This Court allowed Mr. MacDougall to be presented via Webex. (See PCR Tr. 267).

activities,” by suggesting that Applicant “was someone ... given to making statements like that which were harmless,” essentially “that Clarence Jenkins is harmless.” (PCR Tr. p. 274-275). Mr. MacDougall had a vague recollection of an individual (perhaps a woman, though he was uncertain) that may have “seen the victim during the time that the State alleged Mekole Harris was being held,” but also testified that type of witness would not be his responsibility given the division of case responsibilities. (PCR Tr. pp. 277-278). Mr. MacDougall testified he had not issue with the indictments and added that “the circumstances of the homicide .. made a determination of cause of death problematic,” and, though relied on the South Carolina lawyers to identified any specific error under state law, he was satisfied with the notice the indictment provided. (PCR Tr. p. 278).

Susannah Ross testified next and explained that her primary responsibility was meeting with Applicant and working on his social history. (PCR Tr. 280-282, 310-311). Ms. Ross testified that the defense team met biweekly and she discussed the case with Mr. Mauldin often; that she conducted numerous jail visits with Applicant (approximately two times a month); and that she met with Applicant’s mother and sisters. (PCR Tr. pp. 282-285). Ms. Ross testified that when she first met with the family member there was no mention of a possible alibi, just that “[h]e couldn’t have done this.” (PCR Tr. p. 285). Ms. Ross testified that the family advised that Applicant had been living with them, “but it was certainly not what [she] would call an alibi.” (PCR Tr. pp. 285-286).

Ms. Ross shared her file notes recording the information that the two residences were close; and around the time of the murder, *i.e.*, around April 5, 2008, while the family claimed Applicant lived with them, one sister was going to the other residence (the trailer where Carmen stayed) to request money to help care for a child. The alibi at best was “imperfect,” especially where there was video evidence that refuted their information. She recalled that Applicant asked what would

constitute sufficient evidence of alibi, Ms. Ross indicated as an example, “being in Florida for two weeks during the time of the crime,” after which she received letters purportedly from a friend indicating that Applicant had been in Florida the weekend in question. Presenting an alibi under the totality of the circumstances “would just be super damaging to the case,” and “would have killed the case.” (PCR Tr. pp. 286-290). She noted that the Florida alibi letters had been sent to law enforcement, so everything about the “forged weird letters” likely would have come in by the defense opening the door. (PCR Tr. pp. 289-291). She confirmed that that defense “made a strategic decision not to present an alibi defense because [they] thought it would be unbelievable and that the State had a lot of evidence they could make holes in that alibi.” (PCR Tr. pp. 294-295). Ms. Ross again noted that library visit on video, and noted there were witnesses who saw Applicant at the trailer “burning stuff at his grill,” and also that Applicant’s “fingerprint on a letter ... that was found in the couch of the trailer that would have been sent out over that weekend.” (PCR Tr. p. 297).

Further, Ms. Ross reiterated that the defense team considered “it was a big victory for [them] to get the death penalty off the table[.]” (PCR Tr. p. 298). She also agreed that after discussion, the defense team concluded that Applicant “would be a terrible witness on the stand most likely with the evidence they had against him.” (PCR Tr. p. 300). Ms. Ross recalled that the family, *i.e.*, Applicant’s mother and sisters, would likely have been called in a penalty phase, but an alibi was not contemplated. (PCR Tr. pp. 304-305). Ms. Ross did not recall any mention of Mr. Mitchell, or anyone who could possibly “testify that Ms. Harris had been seen somewhere in ... public during the time window in which the State alleged she had been kidnapped[.]” (PCR Tr. 306). She noted, however, that the evidence as to “exact time of death ... was a very open question there,” such that a lone sighting in or round the weekend in question would not likely be helpful.

(PCR Tr. pp. 306-307). Ms. Ross testified that the killing could have occurred anytime that specific weekend, and “obviously she was killed.” (PCR Tr. pp. 306-307).

As to the amending the indictment, Ms. Ross testified that at most that may secure a continuance, but the State could simply reindict. Further, Ms. Ross had no quarrel with sufficient notice and believed a challenge to notice would be unavailing. (PCR Tr. pp. 308-309). Likewise, an argument that hearsay was presented to the grand jury as a basis to undermine the indictment had been rejected a number of times and was not a sound basis for challenge. (PCR Tr. p. 309).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearings and 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 (2003).

Ineffective Assistance Claims: Standard of Review

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. “ *Strickland*, at 700.

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the

distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. Further, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCP. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

Moreover, courts must apply the *Strickland* standard with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, at 689-690. For a fair analysis of an applicant’s claim, the claims must be considered within the context of the case: “The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*, at 690.

“[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Id.*, at 690–91. As a general matter, where counsel testifies as to his or her trial strategy, and that strategy is consistent with the facts and laws, counsel will not have failed in his duty to provide adequate and acceptable representation. *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). *See also Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530, 531 (1992) (“Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.”).

This Court will address the following claims not only in light of the *Strickland* standard as set out, but also having made its credibility determinations based on the presentation at the evidentiary hearing.

Allegation Trial Counsel was ineffective for failing to call certain alibi witnesses who were available to testify at trial but were not called as witnesses.

This Court reviewed the trial record and has carefully considered trial counsel's testimony on this point. This Court credits counsel's testimony on investigation and finds the team's assessment of the information on purported alibi sound based on the known facts (particularly the library video). (*See* PCR Tr. pp. 203-206, 285-295). This Court, in facts, agrees with counsel, though the standard is not this Court's agreement, but *Strickland's* requirement which Applicant has not met.

This Court notes the very fact that Applicant presented counsel with two different alibi scenarios gave his trial attorneys reasonable pause. Further, the alibi evidence was not immediately relayed but only mentioned long after the initial interviews – a red flag to defense counsel, and logically so. Further still, the out-of-state alibi was known to be false considering the library video from the very weekend in question. Additionally, the family alibi evidence as offered in the hearing before this Court, even if taken as true, never formed a complete alibi. Applicant was with Carmen at differing times that weekend even according to them, and the residences were close to each other. “[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused’s guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.” *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am.Jur.2d Criminal Law § 136)).

Moreover, this Court, having considered the testimony presented to it in context of the totality of the available facts, finds that the family witnesses presented at the PCR hearing,

Ms. Gibbs and Ms. Robinson, are not credible in their attempts to provide an alibi given the delay in relaying the information and the incompleteness of the whereabouts testimony. Specifically, though it is possible that Applicant was at the family home at times similar to those the witnesses described in their PCR testimony, the residences are not far apart, and the library video places Applicant with Carmen. That powerful evidence continues to exist, consequently, even liberally construing the PCR testimony the potential alibi is never complete.

Additionally, as Ms. Ross credibly testified, other evidence in or near the trailer (a witness who saw Applicant use the grill at the trailer,⁷ and a print from an envelope that could have only been created that weekend)⁸ soundly rebuffs the contention that Applicant was absent. This Court finds counsel's decision not to use the purported alibi(s) not only sound strategy, but an ethical response to prevent the presentation of false evidence, particularly as to the out-of-state alibi evidence brought to their attention.

This Court credits counsel's consistent and persuasive testimony. Counsel made a reasonable determination that presenting the testimony would seriously adversely affect the defense strategy and certainly cause a loss of credibility. Critically, the evidence was not ignored or dismissed out of hand. Counsel had many meetings and discussions regarding the alibi defense, investigated and considered the potential alibi witnesses' information, and made a strategic decision not to present it at trial. Thus, based on the record before this Court, counsel's strategic

⁷ Carmen testified at trial that she and Applicant used the grill on Monday night to get rid of evidence, (Tr. p. 468), and a neighbor (Brandi Bolt) confirmed that Applicant was the one "feeding the fire" in the grill, (Tr. p. 511).

⁸ Not of little impact is the fact that Applicant, in his PCR testimony, admitted to being at the trial using the grill, and that he helped dispose of the body. (*See* PCR Tr. pp. 60-64, 79).

decision was well supported. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective by indicating to the jury during opening statement that Applicant was untrustworthy.

This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. At the evidentiary hearing, Mr. MacDougall testified he used the reference to Applicant's "fantastical stories" in his opening statement to minimize the impact of evidence the State intended to present. This Court finds counsel's testimony credible, considering that the facts of record that the jury would hear about references to some shadowy "organization" for criminal activity that would be attributed to Applicant. (See PCR Tr. 274). It is reasonable for an attorney to intentionally reframe the evidence to attempt to dampen the effect of what may otherwise be reference to "some ominous organization[.]" (PCR Tr. 274; *see also* Trial Tr. pp. 425-426 and 687). This is a clear and reasonable strategy. As such, in context of this case, counsel's strategy as articulated must be afforded *Strickland* deference. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective for failing to call certain witnesses to testify they saw the victim during the time she was allegedly held captive.

Mr. Mauldin testified that he was not aware of anyone who said they saw the victim during the weekend in question after the victim went into the co-defendant's trailer with Applicant. He stated that if he had learned of such a witness, he would have "seriously considered investigating and perhaps using that person as a witness. (PCR Tr. p. 216). Ms. Ross testified she did not recall receiving information that people had seen the victim during the weekend at issue, but she did not believe that information would have been helpful because no one knew the exact day or time the

victim was killed. (PCR Tr. pp. 306-307). As recited above, Applicant presented Mr. Mitchell who testified that he saw the victim on Friday evening.⁹

It is clear from the record that trial counsel thoroughly investigated and considered any and all information they received regarding the events of the weekend at issue. Further, the team worked together to assess a wealth of information. Here, Mr. MacDougall vaguely recalled some information but possibly from a female witness though he was not sure and advised that would not have been his area of responsibility; while Mr. Mauldin and Ms. Ross simply did not recall such a witness. (*Compare* PCR Tr. p. 277-278 *with* PCR Tr. p. 216, 306). This Court finds that it is likely either that the team had identified or interviewed Mr. Mitchell but did not consider the information of note, or that they did not identify or interview Mr. Mitchell but his evidence would not have prompted further necessary investigation; however, this Court need not make a clear finding of fact on that matter. The critical fact here is the one that Ms. Ross noted – the time of death was not specific but the death surely occurred. This Court agrees with Ms. Ross that even if given information that the victim had been seen during the weekend, the murder could have occurred anytime that weekend. Further, given that Mr. Mitchell’s testimony only referenced Friday afternoon – the eve of the weekend – the testimony simply is of no significant value in addressing

⁹ Taking the totality of Mr. Mitchell’s testimony into consideration, this Court is not convinced that Mr. Mitchell has accurate recall as to the Friday in question. Though his PCR testimony on direct appeared sure that he saw the victim on her bike late Friday afternoon, why he would remember is unclear. Notably, Mr. Mitchell deemed the event non-momentous, indicating he often saw the victim riding a bicycle in the area, even agreeing that would be considered “routine.” (PCR Tr. p. 17). Moreover, Mr. Mitchell’s uncertain responses on matters such as the date he lived in the Tindal Road area (which, curiously, is where Carmen and Applicant had their trailer) cast doubt on his actual ability to recall past events. (*See* PCR Tr. pp. 15-16 and Trial Tr. 422-423, 488, 508). This Court does not credit the testimony as accurate; even so, the Court will consider the information as it would fit into the known facts of this case and counsel’s description of those known facts. That shows counsel the information would have no impact on the case for the reasons cited in this section.

the victim's death which likely occurred sometime over the weekend. Further still, that sighting on April 4th, if accurate (which has not been established, *see* n. 7, *supra*), does not even clearly go to the time of the kidnapping, as the 4th clearly continued after Mr. Mitchell's purported, brief, late afternoon sighting. (*See generally* Trial Tr. pp. 436-438). Again, the information, if accurate, simply holds little to no value to the case.

This Court concludes that Applicant has failed to show either deficient performance or prejudice. Consequently, this Court denies and dismisses this allegation with prejudice.

Allegation Counsel was ineffective for failing to effectively use a certain witness to impeach the co-defendant's timeline and story.

Applicant primarily presented testimony from his sisters, and apparently also relies on his own testimony, to assert that counsel failed to impeach Carmen's testimony. At base, Applicant would testify that Carmen failed to take care the home and was aggressive toward him on several occasions; however, that testimony would have to come from him testifying. Trial counsel testified, consistently, that would not be a good option in this case, especially given attempted false out-of-state alibi attempt. Moreover, the choice was Applicant's to make and he advised the trial judge, on the record, that he had decided not to testify. (Trial Tr. p. 668-670, 673-674).¹⁰ Further, Applicant's sisters offered little toward impeachment of any value.

Ms. Gibbs testified that Applicant and Carmen's two young children moved in with her around late March of 2008, just after the baby was born in early March, and that Applicant and Carmen "were on the outs." (PCR Tr. pp. 139-141). Ms. Gibbs testified that she had chided Carmen about failing to be with her newborn. (PCR Tr. p. 143). She testified that though

¹⁰ The trial transcript shows that the judge reviewed the right to testify with Applicant and afforded Applicant time over a lunch break to, if he so chose to do so, consult with counsel and make his final decision. (*See* Trial Tr. pp. 670 and 673-674).

Applicant was at the home helping her with the children, Carmen still provided transportation. (PCR Tr. p. 144). Ms. Gibbs challenged Carmen's trial testimony that Carmen had spoken to Ms. Gibbs at Carmen's trial on Saturday, in light of Ms. Gibbs' work schedule and that she did not remember speaking with Carmen that day. (PCR Tr. p. 148). She, however, confirmed Applicant was with Carmen the Sunday of that weekend. (PCR Tr. pp. 148-149). Ms. Gibbs also testified that Carmen's assertion that Carmen and Applicant were together at their trailer over the weekend in question was not correct, because he had been in her house. (PCR Tr. p. 151). Ms. Gibbs also generally testified to Carmen's character but was not aware of any instances of violence toward Applicant. (PCR Tr. pp. 152-153). She also testified that Applicant treated Carmen well. (PCR Tr. pp. 154-155).

Ms. Robinson testified similarly: that Applicant had moved in with Ms. Gibbs with the child and that he and Carmens "were having difficulties" at that time; Applicant was seeking Grace; Carmen was not caring for the girls at that time; and, that Carmen was still providing transportation for him at times. (PCR Tr. pp. 167 – 170). She added that Carmen was depressed, or in her precise word, "sad" at that time. (PCR Tr. p. 176). Like Ms. Gibbs, Ms. Robinson did not know of any instances when Applicant was violent toward Carmen. (PCR Tr. p. 177, 179). However, she testified they both confirmed to her that Carmen had hit Applicant and given him a black eye once. (PCR Tr. p. 178). She testified that she could speak to Applicant's general "jovial" nature, and that he did not handle seeing blood very well. (PCR Tr. pp. 179-181). Even though Applicant admitted in his PCR testimony that he helped dispose of the victim's body, (PCR Tr. p. 62, 79), Mr. Robinson continued to believe that was unlikely. (PCR Tr. p. 182). She added that Carmen was an "in charge" type of personality. (PCR Tr. p. 182).

Applicant has failed to in his burden of proof. First, this was not an average case; rather, this case was investigated and prepared as a capital case. The defense team included experts and investigations far beyond the scope of the average non-capital trial. (*See* PCR Tr. p. 195). This Court finds credible Ms. Ross's testimony that she spoke with the family members and developed testimony for mitigation or information to attempt to convince the State to withdraw the notice of intent to seek death. (*See* PCR Tr. pp. 256-257, 281, 285-286, 304-305). Applicant has failed to show a lack of reasonable investigation. Defense counsel was well-aware of the evidence—particular the timeline and evidence as to Applicant's whereabouts—but as explained above the evidence never made a complete alibi and the suggestion of alibi would have greatly damaged the defense's credibility.

As to other cross-examination, the type and quality of cross-examination Applicant has suggested goes to character; that Carmen was a bad mother and, though not witnessed, one sister believed that Carmen had once given Applicant a black eye. This Court finds that if somehow admissible, which is unlikely, *see* Rule 404(b), SCRE, Applicant has failed to show a reasonable probability of a different result. In this case, Carmen admitted that the children "mostly ... stayed" with Applicant's mother. (Trial Tr. p. 436). Moreover, without personal knowledge of the black eye event, Applicant has failed to show not only mere character evidence which carries a problem with admissibility, but also the lack of personal knowledge which carries its own hurdle to admissibility. *See* Rule, 404(b), SCRE; Rule 602, SCRE. Further, the type of character evidence that would be allowable goes to truthfulness, not violence. *See* Rule 608, SCRE. Applicant has failed to show any admissible evidence was actually available for additional impeachment.

However, as noted, even if somehow available, the offered evidence would be cumulative or otherwise of little if any impact given the totality of the evidence at trial concerning the events

of the murder. Notably, this includes not just Carmen's testimony about the murder but also evidence linking Applicant to intimidation prior to the murder, (*see* Trial Tr. 429-432, use of library computer for letters to Grace's family,¹¹ destruction of evidence of the murder (by use of the grill), and active participation in using the victim's name to attempt to gain financial benefit. The evidence shows Applicant's deep involvement in this crime and supports the jury verdict. Applicant has shown nothing to establish a reasonable probability of a different result.

This Court concludes that Applicant has failed to show either deficient performance or prejudice. Consequently, this Court denies and dismisses this allegation with prejudice.

Allegation Trial Counsel was ineffective by failing to move to quash the murder indictment for lack of specificity as to cause of death and that it was based on hearsay testimony before the grand jury, and by failing to object to the State's motion to amend the murder indictment at trial by changing the date set forth in the indictment.

When questioned about the contents of the murder indictment, specifically the failure to state a cause of death, all trial counsel testified the defense team had sufficient notice of the allegations against Applicant and ample time to investigate and prepare his defense. This Court credits counsel's testimony. Mr. Mauldin testified he did not see a basis to challenge the indictment for failing to state a cause of death, particularly because that "simply in many, many cases it's not contained in the body of the indictment." (PCR Tr. p. 237). Under common practice, and other acceptable indictments, counsel assessed there was no viable challenge. (PCR Tr. pp. 238-239). Further, the cause of death was problematic because of the treatment of the body; the body was burned. (PCR Tr. p. 237). As to amendment allegation, Mr. Mauldin testified that the amendment regarding dates was of no surprise as they had prepared a defense based on the

¹¹ These acts were also linked by use of the victim's body parts to attempt further intimidation of Grace's family. (*See* Trial Tr. 455-460).

weekend dates. (PCR Tr. pp. 234-235). As to presentation of hearsay, Ms. Ross testified that the issue had been raised and rejected in other cases. (PCR Tr. 309). Notably, Ms. Ross testified that a challenge to the indictment, at most, would garner merely delay. (PCR Tr. p. 308-309). Based on consideration of this testimony and the controlling case law, this Court find Applicant has failed to show any ineffective assistance on these points.

“[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong[.]” *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An indictment does not control subject matter jurisdiction; rather, the indictment is a notice document. *Id.*, at 102, 610 S.E.2d at 500. “In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances” and it matters not “whether the indictment could be more definite or certain is irrelevant.” *Id.*, at 103, 610 S.E.2d at 500 (citations omitted). A challenge to an indictment that it is “insufficient or defective” must be made before the jury is sworn and jeopardy attaches. *Id.*, at 101, 610 S.E.2d at 499.

Applicant raised the issue of S.C. Code §17-19-30 (2014), which states that indictments are considered “sufficient” if it includes a plain statement of the manner of death, as a basis for showing counsel was deficient in not challenging the indictment. However, given that indictments still remain notice documents, *Gentry, supra*, this statute could only be guidance for making the indictment more detailed but cannot affect basic jurisdiction of the court. Moreover, § 17-19-30 does not alter or amend the elements of murder. *See* S.C. Code § 16-3-10 (defining murder as “the killing of any person with malice aforethought, either express or implied”); *see also Joseph v. State*, 351 S.C. 551, 562-563, 571 S.E.2d 280, 286 (2002) (“17-19-30 is a procedural statute not intended to alter the elements of the offense of murder”), *overruled on other grounds by State v.*

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)).¹²

Of note, even before *Gentry*, our Court did not demand strict adherence to other portions of this procedural statute. For instance, the statute also provides for sufficiency that an indictment should indicate “that the defendant did feloniously, willfully” commit the murder; however, in *State v. Joseph*, the Court found the indictment sufficient without those precise words. In doing so, the Court noted not only the procedural nature of the statute, but also that the Legislature’s “obvious intent in promulgating § 17-19-30 was to simplify indictments” not to impose additional burdens in drafting indictments. 351 S.C. at 562, 571 S.E.2d at 285. Applicant has shown no meritorious basis for a challenge to the indictment.

Additionally, this Court credits Mr. Mauldin’s further analysis in which he acknowledged that Applicant’s and the co-defendant’s actions in dismembering the victim’s body and burying most of it in a location so it would not be found, made determining the cause of death difficult. Taken to its logical conclusion, Applicant’s argument would mean that no murder indictment would be sufficient without a statement of cause of death, regardless of the circumstances, and a person could avoid being held accountable if he successfully disposes of the body such that the cause of death could never be determined. Interpreting and applying §17-19-30 in that way would lead to an absurd result that could not have been intended by the Legislature, a result to be avoided. *See State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) (citation omitted).

Moreover, as a factual matter, counsel logically did not raise a notice issue because counsel had no reason to – counsel had prepared and was aware of the evidence to be presented. As Ms.

¹² The portion of the opinion indicating that the indictment was tied to subject matter jurisdiction was overruled by *Gentry*. In *Joseph*, the Court concluded: “We find the indictment was sufficient to *confer subject matter jurisdiction* because it informed petitioner of the elements of murder.” (emphasis added). 351 S.C. at 563, 571 S.E.2d at 286.

Ross credibility testified, a challenge would only lead to delay which was not needed based on counsel's preparation for trial. Applicant has failed to show counsel provided deficient representation in regard to the indictment, much less that he suffered any prejudice from counsel not challenging the indictment.

Applicant's next argument that a challenge could be raised based on hearsay presented to the grand jury similarly lacks merit. As Ms. Ross correctly noted, this has been raised and rejected before. Our Supreme Court has long held that an indictment founded upon hearsay evidence is not a basis to dismiss. *See State v. Williams*, 263 S.C. 290, 295-296, 210 S.E.2d 298, 301 (1974). Accordingly, this Court denies this allegation and dismisses it with prejudice.

Lastly, Applicant argues counsel should have objected to the amendment to the indictment on the days at issue. Mr. Mauldin credibly testified he saw no reason to object to the State's request at trial to change the date in the indictment from April 10 to April 6 because both dates were within the timeframe the defense team focused on during preparation. (PCR Tr. pp. 233-235). Changing the dates at issue did not catch the defense by surprise at all. Again, having no factual basis to make a challenge, Applicant has failed to show any deficiency in representation in this regard.

This Court denies the allegation in its entirety.

CONCLUSION

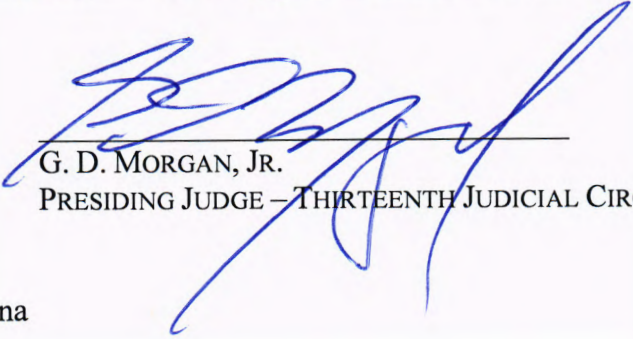
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations requiring this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied in its entirety and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain in custody to serve his sentences imposed as a result of his convictions.

AND IT IS SO ORDERED this 3rd day of October, 2025.


G. D. MORGAN, JR.

PRESIDING JUDGE – THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina

Copy mailed to

Attorney general and Sarah Henry

on 10 / 6 / 2025.

WITNESSES

C. T. Miller

C.T. Miller

Greenville County Sheriffs Office

4/11/2008

ARREST WARRANT NUMBER

1475288

ACTION OF GRAND JURY

TRUE BILL

Greg L. Mayes

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Donna Buis April 13, 2012

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-8409
BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2008

THE STATE

vs.

CLARENCE WILLIAMS JENKINS

Indictment for

0116

MURDER

VIOLATION § 16-03-0010

ENTERED
ACCT. SE

1293

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

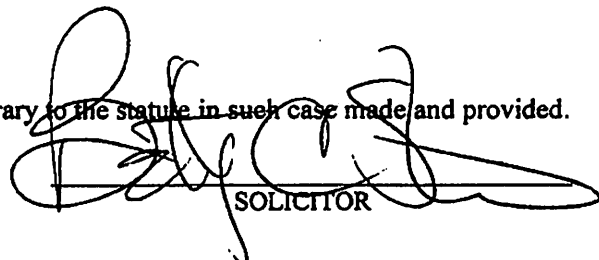
At a Court of General Sessions, convened on
County present upon their oath:

NOV 18 2008

the Grand Jurors of Greenville

That CLARENCE WILLIAMS JENKINS did in Greenville County, on or about the ^{6th day} 10th day of April, 2008,
unlawfully and with malice aforethought kill MEKOLE HARRIS. This is in violation of §16-03-0010 of the
South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

1295

WITNESSES

Greenville County Sheriffs Office

DOA: 4/11/2008 B/M DOB: 2/20/1984

SSN 250-57-8674

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

BCS

007258A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2011

THE STATE

vs.

CLARENCE WILLIAMS JENKINS

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

Dennis B. [Signature] April 13, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

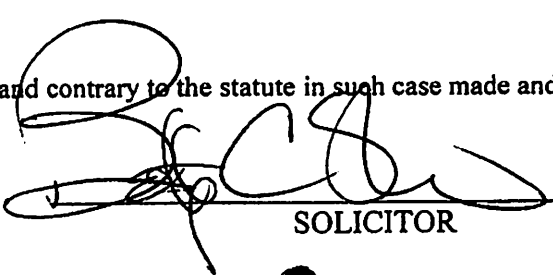
At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

SEP 13 2011

That CLARENCE WILLIAMS JENKINS did in Greenville County, between April 4, 2008 and April 6, 2008, unlawfully seize, abduct, confine, inveigle, decoy or carry away MEKOLE HARRIS, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR